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Counsel for Debtors and Debtors in Possession

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

In re:

SUNEDISON, INC., et al.,

Debtors.¹

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Chapter 11

Case No. 16-10992 (SMB)

(Jointly Administered)

¹ 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); and SunE Waiawa Holdings, LLC (9757). The address of the Debtors' corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

NOTICE OF DEBTORS' MOTION FOR (I) AN ORDER (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF EQUITY INTERESTS IN CERTAIN NORTH AMERICAN UTILITY PROJECT COMPANIES, (B) ESTABLISHING THE NOTICE PROCEDURES AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (C) SCHEDULING A SALE HEARING, AND (D) GRANTING RELATED RELIEF AND (II) AN ORDER (A) APPROVING THE SALE OF EQUITY INTERESTS IN CERTAIN NORTH AMERICAN UTILITY PROJECT COMPANIES FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND (B) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that SunEdison, Inc. and certain of its affiliates, the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") hereby file the *Debtors' Motion For (I) An Order (A) Approving Bidding Procedures For The Sale Of Equity Interests In Certain North American Utility Project Companies, (B) Establishing The Notice Procedures And Approving The Form And Manner Of Notice Thereof, (C) Scheduling A Sale Hearing, And (D) Granting Related Relief And (II) An Order (A) Approving The Sale Of Equity Interests In Certain North American Utility Project Companies Free And Clear Of All Liens, Claims, Encumbrances, And Other Interests, And (B) Granting Related Relief* (the "Motion").

PLEASE TAKE FURTHER NOTICE that, on August 9, 2016, the Bankruptcy Court (defined below) entered the *Order To Show Cause Scheduling Hearing On Shortened Notice For The Debtors' Motion For (I) An Order (A) Approving Bidding Procedures For The Sale Of Equity Interests In Certain North American Utility Project Companies, (B) Establishing The Notice Procedures And Approving The Form And Manner Of Notice Thereof, (C) Scheduling A Sale Hearing, And (D) Granting Related Relief And (II) An Order (A) Approving The Sale Of Equity Interests In Certain North American Utility Project Companies Free And Clear Of All Liens, Claims, Encumbrances, And Other Interests, And (B) Granting Related Relief* (Docket No. 937) (the "Order to Show Cause").

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge for the Southern

District of New York, in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Courtroom 723, New York, New York 10004 (the “Bankruptcy Court”), on **August 18, 2016 at 10:00 a.m. (Prevailing Eastern Time)** (the “Hearing”), or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that responses or objections to the Motion and the relief requested therein, if any, must be made in writing and (a) filed with the Bankruptcy Court no later than **4:00 p.m. (Prevailing Eastern Time) on August 16, 2016** (the “Objection Deadline”) and (b) served so as to be actually received by the following parties by the Objection Deadline:

(i) the Debtors, SunEdison, Inc., 13736 Riverport Dr., Maryland Heights, Missouri 63043;

(ii) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036, Attn: Jay M. Goffman (Jay.Goffman@skadden.com), J. Eric Ivester (Eric.Ivester@skadden.com), and 155 North Wacker Dr., Chicago, IL 60606, Attn: James J. Mazza, Jr. (James.Mazza@skadden.com) and Louis S. Chiappetta (Louis.Chiappetta@skadden.com);

(iii) the Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014, Attn: Paul Schwartzberg (Paul.Schwartzberg@usdoj.gov);

(iv) counsel to the administrative agent under the Debtors’ prepetition first lien credit agreement, Latham & Watkins, 330 North Wabash Avenue, Suite 2800, Chicago, IL, Attn: Richard Levy (richard.levy@lw.com) and Brad Kotler (brad.kotler@lw.com);

(v) counsel to the Tranche B Lenders (as defined in the debtor-in-possession credit agreement) and the steering committee of the second lien creditors, Akin Gump Strauss Hauer & Field, LLP, One Bryant Park, Bank of America Tower, New York, NY, 10036, Attn: Arik Preis (apreis@akingump.com) and Naomi Moss (nmoss@akingump.com);

(vi) counsel to the administrative agent under the Debtors’ prepetition second lien credit agreement, Pillsbury Winthrop Shaw Pittman LLP, 1540 Broadway, New York, NY 10036, Attn: Daniel S. Brown (daniel.brown@pillsburylaw.com);

(vii) counsel to the collateral trustee under the Debtors’ prepetition second lien credit agreement and the indenture trustee under each of the Debtors’ outstanding bond issuances, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103 (mpollio@goodwin.com);

(viii) the Office of the United States Attorney for the Southern District of New York, 86 Chambers Street, 3rd Floor, New York, NY 10007;

(ix) counsel to the administrative agent under the postpetition debtor-in-possession financing facility, White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036-2787, Attn: Scott Greissman (sgreissman@whitecase.com) and Elizabeth Feld (efeld@whitecase.com);

(x) counsel to the ad hoc group of certain holders of the Debtors' convertible senior notes, White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036-2787, Attn: Tom Lauria (tlauria@whitecase.com);

(xi) counsel to the official committee of unsecured creditors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Matthew S. Barr, David J. Lender, Jonathan D. Polkes, Joseph H. Smolinsky and Jill Frizzley (SunEWeilBFR@weil.com) and Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019, Attn: Lorenzo Marinuzzi (lmarinuzzi@mofo.com), Jennifer Marines (jmarines@mofo.com) and Jonathan I. Levine (jonlevine@mofo.com);

(xii) counsel to TerraForm Power, Inc. and TerraForm Global, Inc., Sullivan & Cromwell, 125 Broad Street, New York, NY 10004, Attn: Michael H. Torkin (torkinm@sullcrom.com), Andrew G. Dietderich (dietdericha@sullcrom.com), John L. Hardiman (hardimanj@sullcrom.com) and David R. Zylberberg (zylberbergd@sullcrom.com);

(xiii) the Internal Revenue Service, 290 Broadway, New York, NY 10007, Attn: District Director; and

(xiv) the Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281, Attn: Bankruptcy Department.

PLEASE TAKE FURTHER NOTICE that unless a written objection to the Motion, with proof of service, is filed with the Bankruptcy Court and a courtesy copy delivered to the Honorable Stuart M. Bernstein's chambers by the Objection Deadline, the Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order attached to the Motion, which order may be entered with no further notice or opportunity to be heard.

Dated: August 9, 2016
New York, New York

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: /s/ Shana A. Elberg

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

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In re	:	Chapter 11
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SUNEDISON, INC., <i>et al.</i> ,	:	Case No. 16-10992 (SMB)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
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DEBTORS' MOTION FOR (I) AN ORDER (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF EQUITY INTERESTS IN CERTAIN NORTH AMERICAN UTILITY PROJECT COMPANIES, (B) ESTABLISHING THE NOTICE PROCEDURES AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (C) SCHEDULING A SALE HEARING, AND (D) GRANTING RELATED RELIEF AND (II) AN ORDER (A) APPROVING THE SALE OF EQUITY INTERESTS IN CERTAIN NORTH AMERICAN UTILITY PROJECT COMPANIES FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND (B) GRANTING RELATED RELIEF

SunEdison, Inc. ("SUNE") and certain of its affiliates, the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors" and, together with their non-Debtor affiliates, "SunEdison" or the "Company")² hereby move (the "Motion") this Court, pursuant to sections 105(a), 363(b), 363(f), 363(m), 503, 507, 541(a), 1107, and 1108 of Title 11 of the United States Code (the "Bankruptcy Code"), and Rules 2002, 6003, 6004, 9006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of two orders.

First, the Debtors request entry of an order substantially in the form attached hereto as Exhibit A (the "Sale Procedures Order"): authorizing and approving (i) the proposed bidding procedures (the "Bidding Procedures") for soliciting other bids for the Equity Interests in the form attached to the Bidding Procedures Order as Exhibit 1,³ including approval of the Bid Protections, including the Breakup Fee and the Expense Reimbursement (each as defined below), (ii) establishing notice procedures and approving the form of notice and manner of all procedures, protections, schedules, and agreements in connection with the Auction and the Sale

² For purposes herein, the definition of "SunEdison" and "Company" does not include Terraform Power, Inc. ("TERP") and Terraform Global, Inc., and each of their respective direct and indirect subsidiaries, unless otherwise provided.

³ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures or the Stalking Horse Agreement (defined below), as applicable.

Transaction (each as defined below), (iii) scheduling a Sale Hearing (as defined in the Bidding Procedures) to approve the Sale Transaction, and (iv) granting related relief, including authorizing and approving the Sellers'⁴ entry into that certain Purchase and Sale Agreement with NRG Renew LLC (the "Stalking Horse Buyer"), dated as of August 8, 2016 and attached hereto as Exhibit B (the "Stalking Horse Agreement" or the "Purchase and Sale Agreement").⁵

Second, the Debtors also hereby move this Court for entry of an order, substantially in the form attached hereto as Exhibit C (the "Sale Order"): ⁶ authorizing and approving, but not directing, the sale of the Equity Interests (as defined in the Stalking Horse Agreement) and granting related relief.⁷

In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration (defined below), the Declaration of Shana A. Elberg to Show Cause (the "Elberg Declaration"), the Declaration of Simon Pratt in Support of the Motion (the "Rothschild Declaration"), attached hereto as Exhibit D, and the Declaration of John S. Dubel in Support of the Motion (the "Company Declaration"), attached hereto as Exhibit E.

In further support of the Motion, the Debtors, by and through their proposed undersigned counsel, respectfully represent:⁸

⁴ The "Sellers" are, collectively, SUNE Wind Holdings, Inc., SunE Waiawa Holdings, LLC, First Wind California Holdings, LLC, First Wind Solar Portfolio, LLC, Somerset Wind Holdings, LLC, Buckthorn Renewables Holdings, LLC, Rattlesnake Flat Holdings, LLC, SunE Hawaii Solar Holdings, LLC, and Greenmountain Wind Holdings, LLC.

⁵ Consistent with the Sale Guidelines, the Stalking Horse Agreement is attached hereto as Exhibit B.

⁶ Consistent with the Sale Guidelines, the proposed Bidding Procedures Order and the proposed Sale Order are attached hereto as Exhibit A and Exhibit C, respectively.

⁷ This Motion contains the Debtors' request for entry of the Bidding Procedures Order and approval of the Sale Order. The Debtors are seeking approval of the Bidding Procedures Order at the initial hearing to be conducted on this Motion. The Sale Order is requested to be considered at the Sale Hearing.

⁸ The Debtors have actively engaged with the advisors to the lenders (the "DIP Lenders") under the Debtors' debtor in possession financing facilities and the advisors to the Committee in connection with the relief

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JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion 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.

2. The legal predicates for the relief requested herein are Bankruptcy Code sections 105, 363, 365, 503, and 507 and Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 6004-1 and 6006-1 of the Local Rules (the “Local Bankruptcy Rules”) for the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) and the Guidelines for the Conduct of Assets Sales promulgated by General Order M-383 of the Bankruptcy Court (the “Sale Guidelines”).

BACKGROUND

A. The Chapter 11 Cases

3. On April 21, 2016 (the “Petition Date”),⁹ the Debtors each commenced a case (the “Initial Chapter 11 Cases”) by filing a petition for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York. On June 1, 2016, an additional six

(cont’d from previous page)

requested herein. Specifically, the Debtors provided drafts of the Purchase and Sale Agreement, the Bidding Procedures, and this Motion to advisors to the DIP Lenders and the Committee and included various comments received from such advisors. The Debtors also provided other information to, and answered questions from, advisors to the DIP Lenders and the Committee, including with respect to the expedited timing of the sale of the Equity Interests.

⁹ For the avoidance of doubt, all references to “Petition Date” refer to the April 21, 2016 filing of the 26 debtors unless specified that it is the “June 1st Petition Date.”

Debtors¹⁰ filed voluntary petitions for relief under the Bankruptcy Code (the “June 1 Chapter 11 Cases”), and on July 20, 2016, an additional Debtor¹¹ filed a voluntary petition for relief under the Bankruptcy Code (the “July 20 Chapter 11 Case”). On the date hereof and prior to filing the Motion, the following five Debtors filed voluntary petitions for relief under the Bankruptcy Code (collectively with the Initial Chapter 11 Cases, the June 1 Chapter 11 Cases, and the July 20 Chapter 11 Case, the “Chapter 11 Cases”) in order to obtain relief under Bankruptcy Code section 363: Buckthorn Renewables Holdings, LLC, Somerset Wind Holdings, LLC, Rattlesnake Flat Holdings, LLC, SunE Waiawa Holdings, LLC, and Greenmountain Wind Holdings, LLC (collectively, the “August 9 Debtors”). The August 9 Debtors are Sellers under the Stalking Horse Agreement along with certain of the Debtors that commenced the Initial Chapter 11 Cases. The Debtors’ Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered.

4. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

5. On April 29, 2016, the Office of the United States Trustee for the Southern District of New York (the “United States Trustee”) appointed an Official Committee of Unsecured Creditors (the “Committee”). To date, no trustee or examiner has been appointed in the Debtors’ Chapter 11 Cases.

¹⁰ 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).

¹¹ EverStream HoldCo Fund I, LLC (9564).

6. SunEdison is one of the world's leading developers of renewable-energy solutions. In addition to its development business, SunEdison owns, operates, and/or provides maintenance services for clean power generation assets. SunEdison's renewable-energy development business is a global enterprise with substantial development activities on six continents.

7. Additional factual background information regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to these Chapter 11 Cases, is set forth in detail in the Declaration of Patrick M. Cook, Vice-President – Capital Markets and Corporate Finance of SunEdison, Inc. in Support of Chapter 11 Petitions and First Day Pleadings (the "First Day Declaration") [Docket No. 4], filed on April 21, 2016.

B. The Debtors' North American Utility Business

8. The Company is in the business of developing, constructing, financing and selling solar, wind and other renewable energy systems across the following business units: (i) residential and small commercial ("RSC"); (ii) large commercial and industrial ("C&I"); (iii) utility scale ("Utility"); (iv) global asset management ("GAM"); and (v) the Solar Materials Business Unit.

9. The Company's Utility business unit builds large-scale renewable energy facilities, and sells power and other attributes produced by such energy facilities to utility and other customers. SUNE's Utility business also sells certain completed Projects to certain of its "yieldco" subsidiaries as well as other third parties.

10. As part of the Utility business, the Sellers own certain direct or indirect (as applicable) equity or membership interests (the "Equity Interests") in project companies (the "Project Companies") owning certain utility scale projects (the "Projects"). The Projects are

held through the Project Companies comprised of each of the Utah/Development Group, the Hawaii Group or the Buckthorn Group, respectively.

11. The Utah/Development Group owns Equity Interests in the following Projects: (i) Enterprise Project, the 108 megawatt (“MW”) DC solar power project located in Iron County, Utah; (ii) Escalante I Project, the 108 MW DC solar power project located in Beaver Country, Utah; (iii) Escalante II Project, the 108 MW DC solar power project located in Beaver County, Utah; (iv) Escalante III Project, the 108 MW DC solar power project located in Beaver County, Utah; (v) Granite Mountain East Project, the 80 MW AC solar power project located in Iron County, Utah; (vi) Granite Mountain West Project, the 50.4 MW AC solar power project located in Iron County, Utah; (vii) Iron Springs Project, the 80 MW AC solar power project located in Iron County, Utah and owned by Iron Springs Solar, LLC, an indirect wholly-owned subsidiary of SunE Wind Holdings, Inc.; (viii) Jupiter Project, the 329 MW DC solar power project located in California and owned by California Jupiter, LLC, a wholly-owned subsidiary of First Wind California Holdings, LLC; (ix) Somerset Project, the 85 MW AC wind power project located in Maine and owned by Somerset Wind, LLC, a wholly-owned subsidiary of Somerset Wind Holdings, LLC; (x) Rattlesnake Project, the 150 MW AC wind power project located in Washington and owned by Rattlesnake Flat, LLC, a wholly-owned subsidiary of Rattlesnake Flat Holdings, LLC; and (xi) County Line Project, the 449 MW AC wind power project located in Maine and owned by Greenmountain Wind, LLC, a wholly-owned subsidiary of Greenmountain Wind Holdings, LLC. Each of (i), (ii), (iii) and (iv) is indirectly owned by Four Brothers Capital, LLC, a wholly-owned subsidiary of SunE Wind Holdings, Inc. Each of (v) and (vi) is indirectly owned by Granite Mountain Capital, LLC, a wholly-owned subsidiary of SunE Wind Holdings, Inc.

12. The Hawaii Group owns Equity Interests in the following Projects: (i) Waiawo (Waipio) Project, the 64 MW DC solar power project located in Waipio, Hawaii (the “Waipio Project”) and owned by Waipio PV, LLC, an indirect wholly-owned subsidiary of SunE Hawaii Solar Holdings, LLC; (ii) Mililani II (Lanikuhana) Project, the 19 MW DC solar power project located in Mililani, Hawaii (the “Mililani II Project”) and owned by Lanikuhana Solar, LLC, an indirect wholly-owned subsidiary of SunE Hawaii Solar Holdings, LLC; (iii) Kawaihoa Project, the 66 MW DC solar power project located in Kawaihoa, Hawaii and owned by Kawaihoa Solar, LLC, an indirect wholly-owned subsidiary of First Wind Solar Portfolio, LLC (the “Kawaihoa Project”); (iv) Waiawa Project, the 65 MW DC solar power project located in Waiawa, Hawaii and owned by SunE Waiawa Solar, LLC, a wholly-owned subsidiary of SunE Waiawa Holdings, LLC; and (v) Mililani South I Project, the 27 MW DC solar power project located in Mililani, Hawaii and owned by Welawela Solar, LLC, an indirect wholly-owned subsidiary of First Wind Solar Portfolio, LLC.

13. The Buckthorn Group owns Equity Interests in the Buckthorn Project, the 200 MW DC solar power project located in Texas and owned by Buckthorn Westex, LLC, an indirect wholly-owned subsidiary of Buckthorn Renewables Holdings, LLC.

C. The Sellers

14. The Sellers consist of SUNE Wind Holdings, Inc., SunE Waiawa Holdings, LLC, First Wind California Holdings, LLC, First Wind Solar Portfolio, LLC, Somerset Wind Holdings, LLC, Buckthorn Renewables Holdings, LLC, Rattlesnake Flat Holdings, LLC, SunE Hawaii Solar Holdings, LLC, and Greenmountain Wind Holdings, LLC.

D. The Debtors’ Marketing and Sales Efforts

15. Prior to execution of the Stalking Horse Agreement, in connection with a potential sale process for the Equity Interests as well as other assets of the Company,

Rothschild¹² identified and developed a list of potentially interested parties and solicited such parties' interest in a sale transaction, including from the Stalking Horse Buyer.

16. In connection with a potential sale process for some or all of the Company's interests in various project companies, Rothschild identified and developed a list of potentially interested parties and solicited such parties' interest in one or more sale transactions. Beginning in April, 2016, Rothschild contacted 346 potential buyers, of which 254 of these parties entered into non-disclosure agreements ("NDAs") with the Debtors to further explore the potential purchase of certain of the Company's equity interests in various project companies. Of these parties, 112 parties were interested in the Debtors' Utility business. Among other things, a virtual data room was established containing extensive information about, among other assets and businesses, the Utility business and the projects that fall within the Utility business.

17. In connection with the Utility business, 34 parties submitted bids for one or more of the Projects sought to be sold pursuant to the Purchase and Sale Agreement, with 10 parties submitting a bid for the Utah/Development Projects (whether alone or as part of a larger portfolio bid for a number of assets). Rothschild assisted the Debtors in reviewing and evaluating all bids received in the competitive, comprehensive post-petition marketing process.

18. Subject to section 7.11 of the Stalking Horse Agreement, which provides a limited "go dark" period from the date of execution of the Stalking Horse Agreement until the Court enters the Bidding Procedures Order, the Debtors will continue to market the Equity

¹² On May 20, 2016, this Court entered an Order authorizing the Debtors to retain Rothschild, Inc. ("Rothschild") as their financial advisor and investment banker to provide general financial advisory services and to assist SunEdison in a restructuring, sale transaction, or financing transaction to the extent pursued.

Interests until the Bid Deadline (as defined in the Bidding Procedures) and will permit interested parties to participate in the Bidding Process (as defined below).

19. As a result of the robust marketing and sales process that has transpired, and the extensive arm's-length negotiations among the parties, the Debtors believe that the sale of the Equity Interests to the Stalking Horse Buyer or to any other Prevailing Purchaser at the Auction (the "Prevailing Purchaser") will maximize the value of the Debtors' estates for the benefit of all their creditors, their stakeholders, and other parties in interest.

20. Indeed, entry into the Stalking Horse Agreement stabilizes the business by providing confidence to dealers that the business will continue with a financially sound buyer.

RELIEF REQUESTED

21. By this Motion, the Debtors first seek entry of the Bidding Procedures Order, which will authorize and approve, among other things: (i) the proposed Bidding Procedures, including the Bid Protections (defined below) provided therein; (ii) the notice procedures and the form of notice and manner of all procedures, protections, schedules, and agreements in connection with the Auction and the Sale Transaction; (iii) the scheduling of the Sale Hearing to approve the Sale Transaction; and (iv) related relief.

22. Second, at the Sale Hearing, the Debtors will seek entry of the Sale Order that will approve the sale of the Equity Interests and grant related relief.

23. For the reasons set forth herein, the Debtors submit that the relief requested herein is in the best interest of the Debtors, their estates, creditors, stakeholders and other parties in interest, and therefore, should be granted.

BASIS FOR RELIEF

A. Sound Business Purpose

24. The Debtors have a sound business justification for consummating the Sale Transaction. The Debtors' highest priority in the Chapter 11 Cases is to maximize the value of their estates for the benefit of their creditors and other stakeholders. To that end, the Debtors believe that the Purchase and Sale Agreement, secured after extensive negotiations with a sophisticated, well-informed third party, serves as a compelling offer from the Buyer to serve as a Stalking Horse Buyer for the Equity Interests.

25. Specifically, the Purchase Price in the Stalking Horse Agreement is for \$144 million, which amount shall be allocated and payable at the applicable Closing in proportion to each Package (as defined in the Bidding Procedures), plus certain Earnout Payments following the Closings and less certain potential purchase price reductions.

26. Moreover, the Bidding Procedures allow the Debtors to continue to market the Equity Interests in search of a higher or otherwise better offer than that provided by the Stalking Horse Buyer.¹³

27. In the meantime, the Stalking Horse Agreement will provide a floor for other competitive bids; the Debtors believe that the entry of the Sellers into the Stalking Horse Agreement will stabilize the business and encourage bidders to submit Qualified Bids. Accordingly, entry into the Stalking Horse Agreement is a necessary first step toward maximizing the value of the Debtors' estates by (1) preserving the Debtors' option to accept the highest or otherwise best offer received while mitigating the risk of non-consummation and

¹³ The Stalking Horse Agreement does provide for a limited "go dark" period between signing of the Stalking Horse Agreement and the entry of the Bidding Procedures Order. However, the Debtors and their advisors have been marketing the Projects for several months and will continue to robustly market the Equity Interests after the Bidding Procedures Order is entered pursuant to the terms thereof.

(2) attracting additional offers from potential bidders who might not attend the Auction but for the existence of the baseline offer provided by the Stalking Horse Buyer.

28. In exchange for the stalking horse arrangement, the Debtors seek to provide the Stalking Horse Buyer with the Bid Protections. The Debtors, after consultation with their experienced advisors, have determined that these Bid Protections constitute a reasonable expense in light of the benefits discussed in the preceding paragraph. As further set forth in the Rothschild Declaration, but for these Bid Protections, the Debtors do not believe the Stalking Horse Buyer would have entered into the Stalking Horse Agreement, which requires the Stalking Horse Buyer to incur significant upfront costs, absent deal certainty.

B. The Stalking Horse Agreement

29. After extensive arm's-length negotiations, the Sellers and the Stalking Horse Buyer executed the Stalking Horse Agreement. By establishing a minimum acceptable bid, the Stalking Horse Agreement, together with the Bidding Procedures, promotes competitive bidding and allows the Debtors to maximize the value received through a sale of the Equity Interests while stabilizing the business in the short-term.

30. Critical to the Stalking Horse Buyer's agreement to enter the Stalking Horse Agreement, the Sellers have agreed to pay the Stalking Horse Buyer, in accordance with Section 11.03 of the Purchase and Sale Agreement: (a) reasonable documented out-of-pocket costs and expenses (including expenses of outside counsel, accountants and financial advisors) incurred by the Stalking Horse in connection with or related to its evaluation, diligence, negotiation, and documentation of a possible transaction with any Seller or in connection with or related to the transactions contemplated by the Purchase and Sale Agreement, up to a maximum amount of \$4,500,000 (the "Expense Reimbursement") and (b) \$5,500,000 (the "Break-up Fee,"

and together with the Expense Reimbursement, the “Bid Protections”), upon the occurrence of entry into an Alternative Transaction, as set forth in the Purchase and Sale Agreement.

31. The Stalking Horse Buyer is entitled to be paid the Bid Protections if (a) the Stalking Horse Agreement is terminated pursuant to Section 11.01(a)(ii)(2) therein or if the Purchase and Sale Agreement is terminated by Buyer due to Sellers’ Willful Breach (as defined in the Purchase and Sale Agreement) prior to the First Closing (as defined in the Purchase and Sale Agreement) and (b) the Sellers consummate an Alternative Transaction within six (6) months of such termination.

32. The Debtors submit that the Bid Protections are fair and reasonable in light of the circumstances. Moreover, the Bid Protections are actually necessary to preserve the value of the estate because the Stalking Horse Buyer would not have entered into the Stalking Horse Agreement without the Bid Protections. In sum, the Sellers’ ability to offer the Bid Protections enables them to ensure the sale of the Equity Interests to the Stalking Horse Buyer at a price they believe to be fair while, at the same time, providing them with the potential of even greater benefit to the estates. Moreover, payment of the Bid Protections will not diminish the Debtors’ estates. The Sellers do not intend to terminate the Stalking Horse Agreement if to do so would incur an obligation to pay the Bid Protections, unless to accept an alternative bid, which bid must exceed the consideration offered by the Stalking Horse Buyer by an amount sufficient to pay the Bid Protections.

33. The Stalking Horse Agreement was negotiated, proposed, and entered into by the Sellers and the Purchaser without collusion, in good faith, and from arm’s-length bargaining positions. The Sellers, the Stalking Horse Buyer, and all other relevant parties were represented by practical and experienced advisors and attorneys.

C. The Bidding Procedures¹⁴

34. The Bidding Procedures are designed to maximize value for the Debtors' estates, while ensuring an orderly sale process consistent with the timeline available to the Debtors under the Stalking Horse Agreement. The Bidding Procedures describe, among other things, the procedures for interested parties to access due diligence, the manner in which bidders become Qualified Bidders (as defined in the Bidding Procedures) and bids become Qualified Bids (as defined in the Bidding Procedures), the receipt and negotiation of bids received, the conduct of any Auction, the selection and approval of any ultimately successful bidders, and the deadlines with respect to the foregoing (the "Bidding Process"). The Debtors believe that the Bidding Process affords the Debtors a sufficient opportunity to maximize the value of a sale of the Equity Interests to their estates.

35. The Bidding Procedures establish the following key dates for the Bidding Process:

- **Bid Deadline**: To participate in the Bidding Process, each potential bidder, other than the Stalking Horse Buyer, must deliver to the notice parties enumerated in the Bidding Procedures a written offer, so as to be received by no later than September 6, 2016 at 4:00 p.m. (EST) (the "Bid Deadline").
- **Auction**: If the Sellers receive one or more Qualified Bids, in addition to the Stalking Horse Agreement, the Debtors are authorized to conduct an auction of the Equity Interests (the "Auction"). If the Auction is held, it shall take place on September 9, 2016 at 10:00 a.m. EST) at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036, or such other location and time as shall be timely communicated to all entities entitled to attend the Auction. Otherwise, the Sellers shall promptly submit the Stalking Horse Bid to the Bankruptcy Court for approval at the Sale Hearing.

¹⁴ The following summary is qualified in its entirety by reference to the provisions of the Bidding Procedures, a full copy of which are included as part of the proposed Bidding Procedures Order attached hereto as Exhibit A. In the event of any inconsistencies between the provisions of the Bidding Procedures and the terms herein, the terms of the Bidding Procedures shall govern. Unless otherwise defined in the summary set forth in the accompanying text, capitalized terms shall have the meanings ascribed to them in the Bidding Procedures.

- **Sale Hearing**: The hearing to approve the sale of the Equity Interests to the Prevailing Purchaser is scheduled to take place on September 15, 2016 at 10:00 a.m. (EST) 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.

36. Key terms of the Bidding Procedures are highlighted as follows:

- **Access to Diligence Materials**: Upon execution of a confidentiality agreement, in form and substance satisfactory to the Debtors, any qualified party that wishes to conduct due diligence on any of the Equity Interests may be granted access to information that has been or will be provided to the other bidders subject to these Bidding Procedures and the Bidding Procedures Order.
- **Form and Content of Qualified Bids**: A Qualified Bid is the Stalking Horse Bid or a written offer to purchase some or all of the Equity Interests submitted to the notice parties set forth in the Bidding Procedures and received by the Bid Deadline that:
 - states that such bidder offers to purchase all or some portion of the Equity Interests, with a specific indication of which Packages are subject to the bid;
 - provides evidence satisfactory to the Debtors that such bidder is reasonably likely to satisfy all customary conditions and other requirements for entering into a power purchase agreement with respect to the projects owned by the Subsidiaries (including, without limitation, any third party consents and/or regulatory approvals);
 - includes executed transaction documents, including a definitive purchase agreement and all schedules and exhibits thereto (substantially in the same detail as those attached to the Stalking Horse Agreement filed with the Bankruptcy Court on August 9, 2016), signed by an authorized representative of such bidder, pursuant to which such bidder proposes to effectuate an alternate transaction that still qualifies as a Qualifying Sale (which may, as indicated elsewhere in these procedures, only be an offer for one or more of the Packages) (the "Bidder Agreement"), and such Bidder Agreement shall also include a copy of the Bidder Agreement marked against the Stalking Horse Agreement to show all changes requested by such bidder (including those related to the consideration to be paid for the Stalking Horse Package or any of the Packages);
 - proposes a purchase price (which consideration may consist of cash or otherwise, in the discretion of the Debtors, after consultation with the Committee and the DIP Lenders) that is a higher and/or better offer for the Stalking Horse Package and/or the particular Package(s) (as

compared to the offer of the Stalking Horse Buyer, which may, but does not have to be, considered and measured on an aggregate basis with unrelated bids); provided, however, that an offer shall not be considered a higher and/or better offer unless such offer proposes a purchase price that is equal to or greater than:

- the Purchase Price (as defined in Stalking Horse Agreement) set forth in the Stalking Horse Agreement (unless such bid is only for a particular Package or Packages, in which case such price need only be greater than the price allocated by the Debtors to such Package(s) in the Stalking Horse Buyer's bid), *plus*
 - a break-up fee equal to \$5,500,000 of the Purchase Price set forth in the Stalking Horse Agreement, *plus*
 - cash equal to the reasonable and documented out-of-pocket costs, fees, and expenses incurred or to be incurred by the Stalking Horse Buyer or its affiliates in connection with evaluating, diligencing, negotiating, documenting, and performing the transactions contemplated by the Stalking Horse Agreement or any predecessor agreements in respect of the transactions set forth in the Stalking Horse Agreement (including reasonable fees, costs, and expenses of any professionals (including financial advisors, outside legal counsel, accountants, experts, and consultants) retained by Stalking Horse Buyer, including its affiliates, in connection with or related to the authorization, preparation, investigation, negotiation, execution, and performance of the Stalking Horse Agreement or any predecessor agreements in respect of the transactions set forth in the Stalking Horse Agreement and the transactions contemplated thereby), which total cash amount, in the aggregate, shall not exceed \$4,500,000 (collectively, the "Expense Reimbursement").¹⁵
- is irrevocable until and unless the Debtors accept a higher or otherwise better Qualified Bid and the bidder is not selected as a Back-Up Bidder;
 - does not request any expense reimbursement, break-up fee, "topping," termination, contribution, or other similar fee or payment;

¹⁵ The Debtors propose that, solely for purposes of evaluating bids from potential Qualified Bidder(s) for bids for less than the Stalking Horse Package (i.e., bids for one or two Packages), the Break-Up Fee and Expense Reimbursement to be included in any such bid shall be apportioned pursuant to an allocation set forth in more detail in the Bidding Procedures.

- (i) provides for replacement or back-to-back letters of credit required for development of the projects owned by the Project Companies or, alternatively, (ii) commits to posting adequate cash collateral;
 - contains such financial and other information that will allow the Debtors to make a determination as to the bidder's financial and other capabilities to consummate the transactions contemplated by the Bidder Agreement and these Bidding Procedures, which information shall be satisfactory to the Debtors (in consultation with the Committee), including (but not limited to) contact names and numbers for verification of financing sources;
 - contains such information requested by the Debtors, regarding the identity of each entity that will be bidding for any of the Stalking Horse Package and/or Package(s) or otherwise participating in connection with such bid, and the complete terms of any such participation, which information is satisfactory to the Debtors (in consultation with the Committee);
 - includes evidence 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 Bidder Agreement, and financing agreements and any other ancillary documents or agreements, which evidence is satisfactory to the Debtors;
 - includes covenants and conditions commercially reasonable for a transaction of this type and acceptable to the Debtors (in consultation with the Committee and the DIP Lenders), but under no circumstances shall a bid 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 Bidder Agreement; and
 - is accompanied by a good faith cash deposit in an amount no less than 10% of the purchase price set forth in the Bidder Agreement, which shall be deposited in an escrow account to be established by the Debtors subject to a customary escrow agreement satisfactory to the Debtors, and which shall be credited against the purchase price.
- **Auction and Auction Procedures:** At the Auction, Qualified Bidders may each present Overbids (as defined in the Bidding Procedures); provided, however, any such Overbid over and above the applicable Auction Baseline Bid shall be made in increments valued at not less than 2% of the applicable Auction Baseline Bid or then highest or otherwise best Overbid, as applicable. Any Auction shall continue until the Debtors determine, in consultation with the Committee and the DIP

Lenders, that a Qualified Bid or an Overbid, or a set of Qualified Bids or Overbids, as applicable, is the highest or otherwise best offer from among the Qualified Bids (including Overbids and the bid of the Stalking Horse Buyer) (the “Successful Bid,” and the party or parties that submitted such Successful Bid, the “Prevailing Purchaser”), which shall be subject to Bankruptcy Court approval. In selecting the Successful Bid, the Debtors, in consultation with the Committee and the DIP Lenders, 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 or Qualified Bidders’ 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. If an Auction is conducted, the party with the Qualified Bid or Overbid that is next highest or otherwise best to the Successful Bid at the Auction, as determined by the Debtors in consultation with the Committee and the DIP Lenders, shall be required to serve as a back-up bidder (a “Back-Up Bid” and a “Back-Up Bidder,” respectively) and keep such bid open and irrevocable until 11:59 p.m. (EST) on the date that is the earlier of (a) thirty (30) days after the date of the Sale Hearing, and (b) the closing of the sale transaction with the Prevailing Purchaser; provided, however, that without its prior written consent the Stalking Horse Buyer shall not be required to be the Back-Up Bidder for more than 14 days following the commencement of the Auction. Following the Sale Hearing, if the Prevailing Purchaser fails to consummate a sale in accordance with the Successful Bid because of a breach or failure to perform on the part of such Prevailing Purchaser, the Debtors (in consultation with the Committee and the DIP Lenders) are authorized to deem a Back-Up Bidder to be the new “Prevailing Purchaser,” and the Debtors will be authorized, but not required, to consummate a sale with a Back-Up Bidder as contemplated by a Back-Up Bid without further order of the Bankruptcy Court.

- **Bid Protections:** In the event that the Sellers accept a higher or otherwise better offer, the Stalking Horse Buyer is entitled to certain Bid Protections. More specifically, Stalking Horse Buyer is entitled to recover the Break-up Fee, which is equal to \$5,500,000, and an amount that shall not exceed \$4,500,000 in Reimbursable Expense (as defined above).
- **Reservation of Rights:** Notwithstanding anything to the contrary in the Bidding Procedures, the Debtors reserve their rights, as they may determine to be in the best interest of their estates and in the exercise of their fiduciary obligations, to: (a) modify the Bidding Procedures or impose, at or prior to the Auction, different and/or additional terms and conditions on the sale of the Auction Packages, (b) announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction and which additional procedural rules shall only apply from and after such announcement, (c) determine which bidders are Qualified Bidders, (d) determine which bids qualify as Qualified Bids and Overbids, (e) determine whether to accept any Qualified Bid or Overbid (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, the Bidding Procedures Order or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors and their estates, (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 Overbid) or the Stalking Horse Buyer's rights thereunder; and (ii) without the prior written consent of the Stalking Horse Buyer, the Debtors shall not modify, or waive compliance (or accept non-compliance) with, any of the following: (A) subsections (c), (d) or (l) of the requirements of a Qualified Bid specified herein; (B) subsection (b) of the requirements of an Overbid specified herein; (C) the right of the Stalking Horse Buyer to credit bid up to the full amount of the Break-Up Fee and Reimbursable Expenses; or (D) this clause (ii) or the immediately preceding clause (i).

D. Purchase Price

37. Under the Stalking Horse Agreement, the Sellers have agreed to sell the Equity Interests for \$144 million plus potential Earnout Payments less certain potential purchase price reductions. As set forth herein, the Sellers entered into the Stalking Horse Agreement after extensive marketing efforts, negotiations, and analysis, and submit that the Purchase Price (as defined in the Stalking Horse Agreement) set forth in the Stalking Horse Agreement is fair and provides reasonable value in exchange for the Equity Interests.

38. To ensure that the Debtors will maximize the value received from the Sale Transaction, the Debtors will continue to market the Equity Interests up until the Bid Deadline, subject to the limited "go dark" provision set forth in the Stalking Horse Agreement for the period between signing of the Stalking Horse Agreement and entry of the Bidding Procedures Order. To the extent the Successful Bid includes non-cash or deferred payments, the Debtors will discuss at the Sale Hearing their assessment of the credit worthiness of the Prevailing Purchaser and its competitors, and the ability of the Prevailing Purchaser to realize the projected earnings upon which any future payments or other forms of consideration to the estate are to be

based. The Debtors will also discuss at the Sale Hearing any material purchase price adjustment provisions included in the Successful Bid.

39. In light of the preceding, the Debtors believe that the Bidding Process will produce the highest and/or best offer under the circumstances, and that the Sale Transaction is in the best interests of the Debtors, their creditors, their estates, their stakeholders, and other parties in interest.

E. Notice Procedures

40. Notice of Sale Transaction and Sale Hearing. Within two (2) business days after the entry of the Bidding Procedures Order, or as soon thereafter as practicable (the “Mailing Date”), the Debtors (or their agents) shall serve this Motion, the Stalking Horse Agreement, the Bidding Procedures Order, and the Bidding Procedures by first-class mail, postage prepaid, upon (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) counsel for D.E. Shaw; (h) the U.S. Attorney for the Southern District of New York; (i) counsel to the administrative agent under the postpetition debtor-in-possession financing facility; (j) counsel to the Committee in these Chapter 11 Cases; (k) counsel to TerraForm Power, Inc. and TerraForm Global, Inc.; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) any party known to have asserted a lien, encumbrance, claim or other interest in any of the Equity Interests; (o) all affected federal, state and local regulatory and taxing authorities,

including the Internal Revenue Service; (p) the Securities and Exchange Commission; (q) all entities known to have expressed an interest in a transaction with respect to all or part of the Equity Interests; (r) any such other party entitled to notice pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York.

41. Sale Notice. On the Mailing Date or as soon thereafter as practicable, the Debtors (or their agents) shall serve by first-class mail, postage prepaid, the sale notice, substantially in the form attached hereto as Exhibit F (the “Sale Notice”), upon the Notice Parties and all other known creditors of the Debtors.

42. Publication Notice. The Debtors also propose, pursuant to Bankruptcy Rules 2002 and 6004, that the publication of a version of the sale notice, substantially in the form of the Sale Notice, as may be modified for publication purposes (the “Publication Notice”), in *The Wall Street Journal* on the Mailing Date or as soon as practicable thereafter, be deemed sufficient and proper notice of the Sale Transaction to any other interested parties whose identities are unknown to the Debtors.

43. Post Auction Notice. As soon as possible after the conclusion of the Auction, if any, the Debtors shall file, but not serve, a notice identifying any Prevailing Purchaser and the date and time of the Sale Hearing, substantially in the form attached hereto as Exhibit G (the “Post Auction Notice”).

F. Extraordinary Provisions Under the Sale Guidelines

44. The proposed Bidding Procedures Order, the proposed Sale Order, and the Stalking Horse Agreement contain the following items that may be considered Extraordinary Provisions under the Sale Guidelines:¹⁶

- **Successor Liability**: The Debtors seek a finding that the Prevailing Purchaser is taking free and clear of any successor liability relating to the Sellers and the Debtors' other business or projects not being purchased pursuant to the Purchase and Sale Agreement. The Buyer is not, however, seeking to avoid successor liability for business conducted by the Project Companies. See Sale Order ¶¶ Y, 5, 13-15. The Debtors submit that the notice of the Debtors' request for this relief is adequate, and that the relief is appropriate, as the Buyer is not purchasing all or substantially all of the assets of any of the Debtors, nor is the Buyer seeking to avoid successor liability for the businesses conducted by the Project Companies. Accordingly, the Debtors believe it is appropriate to grant the limited findings with respect to successor liability set forth in the Sale Order.
- **Relief from Bankruptcy Rule 6004(h)**: The Debtors seek relief from the fourteen day stay imposed by Bankruptcy Rule 6004(h). As described in more detail herein and in the Rothschild Declaration, the Debtors believe that any delay in consummating the sale of the Equity Interests pursuant to the terms of the Purchase and Sale Agreement would result in value degradation and the inability to maximize the value of the Equity Interests.
- **Good Faith Deposit**: All Qualified Bidders are required to submit a good faith deposit in the amount of no less than 10% of the total purchase price proposed. The Buyer, in its role as a stalking horse bidder, is not required to submit a deposit.
- **Deadlines that Effectively Limit Notice**:
 - As set forth in the Purchase and Sale Agreement, the Sale Transaction may be terminated by Buyer, if (A) the Sale Motion has not been filed by August 9, 2016, (B) the Sale Procedures Order has not been entered by the Bankruptcy Court by August 19, 2016, (C) the Auction has not been held within 30 days after entry of the Sale Procedures Order, (D) the Sale Approval Order has not been entered by the Bankruptcy Court by September 20, 2016, (E) at any time after entry of the Sale Procedures Order, such Sale Procedures Order (including the provisions therein

¹⁶ The following list of possible Extraordinary Provisions, as such term is defined in the Sale Guidelines, is not intended to be an admission that any of these items are unusual relief in a sale of significant assets of a large chapter 11 debtor pursuant to Bankruptcy Code section 363. Extraordinary Provisions that are not applicable here have not been included in the following list.

relating to the Bid Protections) is reversed, stayed (other than pursuant to Bankruptcy Rule 6004), vacated or otherwise modified (if such modifications are materially adverse to Buyer) by the Bankruptcy Court, or (F) at any time after entry of the Sale Approval Order, such Sale Approval Order is reversed, stayed (other than pursuant to Bankruptcy Rule 6004), vacated or otherwise modified (if such modifications are materially adverse to Buyer); *provided further* that (1) with respect to clause (A), Buyer exercises such right of termination by 5:00 PM Eastern Time on August 12, 2016 and (2) with respect to clause (B), Buyer exercises such right of termination by 5:00 PM Eastern Time on August 22, 2016.

- As set forth in the Purchase and Sale Agreement, the Sale Transaction may be terminated by Sellers, if (A) the hearing with the Bankruptcy Court for the Sale Motion is held on August 18, 2016 and (B) the Sale Procedures Order has not been entered by the Bankruptcy Court by August 19, 2016; *provided* that Sellers exercise their right of termination pursuant to this Section 11.01(a)(viii) by 5:00 PM Eastern Time on August 22, 2016.
- As set forth in the Purchase and Sale Agreement, the Sale Transaction may be terminated by Sellers, if (A) the Bankruptcy Court declines to schedule the hearing for the Sale Procedures Order for August 18, 2016 and (B) Buyer fails to agree in writing by 5:00 PM Eastern Time on August 12, 2016 to extend (1) the date set forth in Section 11.01(a)(vi)(B) to September 20, 2016, (2) the deadline set forth in Section 11.01(a)(vi)(C) to seventy-five (75) days and (2) the date set forth in Section 11.01(a)(vi)(D) to October 15, 2016.
- Moreover, as is common for auctions in chapter 11 cases, the identity of the Prevailing Purchaser will not be known until shortly before the Sale Hearing; in this case, 7 days before the Sale Hearing.
- **Limited “Go Dark”**: The Stalking Horse Agreement contains a limited “go dark” provision to protect the Stalking Horse Buyer until the Bid Protections are approved by the Bankruptcy Court. The limited “go dark” provision is limited by a fiduciary out provision. Given the Debtors request to shorten the notice period until the Bidding Procedures, including the Bid Protections, are considered by this Court, the Debtors respectfully submit that the limited period for the no-shop provision correctly balances protecting the Stalking Horse Buyer for setting a floor for the Equity Interests while still permitting the Debtors to market the Equity Interests to achieve the highest and best offer. As set forth in the Rothschild Declaration, the limited no-shop provision is necessary to obtain a sale, and will not chill the receipt of higher or better offers.¹⁷ See Rothschild Declaration at ¶ 10.

¹⁷ The Debtors are not seeking approval of the limited no-shop period, but, instead are pointing it out for transparency. Indeed, assuming this Court enters the Bidding Procedures Order, the limited no-shop period ends.

- **Bid Protections**: As noted, the Debtors seek approval of the Stalking Horse Agreement and the Bid Protections therein, including the Break-up Fee and the Expense Reimbursement. In the event that the Debtors accept an overbid from a third party for the Equity Interests and close the Sale Transaction with such third party, the Stalking Horse will receive a break-up fee in the amount of \$5,500,000. The Stalking Horse Buyer is also entitled to the reimbursement of its actual and reasonable expenses, including attorney's fees in an amount not to exceed \$4,500,000. See APA, 11.01, 11.02, 11.03.

APPLICABLE AUTHORITY

45. Ample authority exists for approval of the Bidding Procedures, the Bid Protections and the Sale Transaction. The Debtors submit that application of the section 363(b) standard for sales outside of the ordinary course of a debtor's business is met here. Section 363(b) of the Bankruptcy Code provides, in relevant part: "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). This Court's power under Bankruptcy Code section 363 is supplemented by Bankruptcy Code section 105(a), which provides in relevant part: "The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). As set forth below, the Debtors submit they have satisfied the requirements of Bankruptcy Code sections 105, 363 and 365 as those sections have been construed by courts in the Second Circuit.

A. Approval Of The Sale Transaction Is Warranted Under Bankruptcy Code Section 363(b) Because A Sound Business Reason Exists For The Sale Transaction.

46. Bankruptcy Code section 363(b)(1) provides, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when there is an "articulated business justification" for the action to be taken. See Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991) (citation omitted). When a valid business

justification exists, the law vests the debtor's decision to use property out of the ordinary course of business with a strong presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (citation omitted).

47. The Debtors have articulated a clear business justification for entering into the sale of the Projects. As explained in greater detail above, the Debtors have determined that a sale, conducted in accordance with the Bidding Procedures will maximize value and is in the best interests of the Debtors, their creditors, their estates, their stakeholders, and other parties in interest.

48. Once a court has determined there is a sound business justification for a sale outside of a plan, the court must also determine that (i) the debtors have provided the interested parties with adequate and reasonable notice, (ii) the sale price is fair and reasonable and (iii) the purchaser is proceeding in good faith. See In re Gen. Motors Corp., 407 B.R. 463, 493-94 (Bankr. S.D.N.Y. 2009); In re Betty Owens Sch., No. 96 Civ. 3576 (PKL), 1997 U.S. Dist. LEXIS 5877, at *14 (S.D.N.Y. Apr. 16, 1997); Polvay v. B.O. Acquisitions, Inc. (In re Betty Owens Sch., Inc.), No. 96 Civ. 3576 (PKL), 1997 WL 188127, at *4 (S.D.N.Y. Apr. 17, 1997).

49. To date, as set forth in greater detail above and in the Rothschild Declaration, the Debtors and their professionals have engaged in extensive sale and marketing efforts for the Projects for several months. In addition, the Debtors and their advisors have participated in significant negotiations with the Stalking Horse Buyer in the formulation of the

Stalking Horse Agreement and the Sale Transaction. Thus, the Debtors entered into the Stalking Horse Agreement after a long, robust, and deliberate effort to market the Equity Interests and, while hopeful that other bidders materialize, are confident that the sale price is fair and reasonable.

50. Moreover, both the Debtors and the Stalking Horse Buyer were represented by practical and experienced advisors and attorneys in the arm's-length negotiation of the Stalking Horse Agreement. Accordingly, it is a valid exercise of the Debtors' business judgment to seek the relief requested by this Motion.

B. The Proposed Sale Transaction Satisfies The Requirements Of Bankruptcy Code Section 363(f) For A Sale Free And Clear

51. Bankruptcy Code section 363(f) permits a debtor to sell property free and clear of another party's interest in the property if: (a) applicable non-bankruptcy law permits such a free and clear sale; (b) the holder of the interest consents; (c) the interest is a lien and the sale price of the property exceeds the value of all liens on the property; (d) the interest is in bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. See 11 U.S.C. § 363(f). Because Bankruptcy Code section 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the proposed sale. See Scherer v. Fed. Nat'l Mortg. Ass'n (In re Terrace Chalet Apartments, Ltd.), 159 B.R. 821, 825 (N.D. Ill. 1993) (sale extinguishes liens under section 363(f) as long as one of the five specified exceptions applies).

52. The sale of the Equity Interests to the Buyer pursuant to the terms set forth in the Purchase and Sale Agreement is appropriate under section 363(f) of the Bankruptcy Code. The Sellers propose to sell the Equity Interests in a commercially reasonable manner and expect that the value of the proceeds from such sales or transfers will fairly reflect the value of the

property sold. To the extent that any lien holder does not object to the proposed sale, that entity should be deemed to have consented to the relief sought herein, thereby satisfying Bankruptcy Code section 363(f)(2). Any entity holding liens, claims, encumbrances and other interests on the Equity Interests will receive notice of this Motion and the sale hearing. Accordingly, all parties in interest will be given sufficient opportunity to object to the relief requested herein. Failure to object should be deemed consent. See Futuresource LLC v. Reuters Ltd., 312 F.3d 281, 285-86 (7th Cir. 2002) (“It is true that the Bankruptcy Code limits the conditions under which an interest can be extinguished by a bankruptcy sale, but one of those conditions is the consent of the interest holder, and lack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt’s assets had to execute a formal consent before they could be sold.”) (internal citations omitted).

53. The Debtors further propose that any party with an interest in the Equity Interests pursuant to this Motion shall have a corresponding interest in the proceeds of such sale (with all of the Debtors’ claims, defenses and objections with respect to the amount, validity, or priority of each such interest and the underlying liabilities expressly preserved). See MacArthur Co. v. Johns-Manville Corp., 837 F.2d 89, 94 (2d Cir. 1988) (“It has long been recognized that when a debtor’s assets are disposed of free and clear of third-party interests, the third party is adequately protected if his interest is assertable against the proceeds of the disposition.”) Therefore, any lien holders are adequately protected and could be compelled to accept a monetary satisfaction of their interest. As such, the requirements of section 363(f) of the Bankruptcy Code would be satisfied for the Equity Interests sale free and clear of all Liens.

54. Pursuant to Bankruptcy Code sections 363(f)(1), (4) and (5), the Equity Interests may be sold free and clear of any claims and interests on account of a prepetition agreement by the Debtors to transfer the Equity Interests to a third party (the “Prepetition Sale Agreement”), with any such purported claims attaching to the proceeds of such sale of Equity Interests pursuant to the Purchase and Sale Agreement or any agreement with a Prevailing Purchaser in the order of priority consistent with the Final DIP Order. Moreover, the Debtors believe that the Sellers’ execution, delivery and performance of the Purchase and Sale Agreement shall not result in any liability to the Buyer based on any claim by a third party against Buyer, including claims asserting tortious interference, based upon the Prepetition Sale Agreement.

55. Courts have consistently held that a buyer of a debtor’s assets pursuant to a Bankruptcy Code section 363 sale takes free and clear from successor liability relating to the debtor’s business. See, e.g., In re Chrysler LLC, 405 B.R. 84, 111 (Bankr. S.D.N.Y. 2009) (“In personam claims, including any potential state successor or transferee liability claims against New Chrysler, as well as in rem interests, are encompassed by section 363(f) and are therefore extinguished by the Sale Transaction.”); Contrarian Funds, LLC v. Westpoint Stevens, Inc. (In re Westpoint Stevens, Inc.), 333 B.R. 30, 50 (S.D.N.Y. 2005) (“Where . . . a sale is to be free and clear of existing liens and interests other than those of the estate, one or more of the criteria specified in section 363(f) of the statute must also be met.”), rev’d in part on other grounds, 600 F.3d 231 (2d Cir. 2010). Here, the Buyer is not seeking to avoid successor liability for businesses conducted by the Project Companies; instead, the Buyer is only seeking to take free and clear of any successor liability relating to the Sellers’ and the Debtors’ other businesses

or projects. This exemption is appropriately tailored given the scope of the Purchase and Sale Agreement.

56. For these reasons, the Buyer should not be liable under any theory of successor liability relating to the Debtors' businesses other than those businesses conducted by the Project Companies, but should hold the Equity Interests free and clear of Liens and successor liability.

C. A Prevailing Purchaser Should Be Entitled To The Protections Of Bankruptcy Code Section 363(m).

57. Bankruptcy Code section 363(m) provides in relevant part that the reversal or modification on appeal of an authorization under section 363(b) of a sale or lease of property does not affect the validity of a sale or lease under such authorization to a purchaser who bought or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. See 11 U.S.C. § 363(m). "Although the Bankruptcy Code does not define the meaning of 'good-faith purchaser,' . . . most courts have adopted a traditional equitable definition: 'one who purchases the assets for value, in good faith and without notice of adverse claims.'" In re Gucci, 126 F.3d at 390 (citation omitted). The Third Circuit has held that: "[t]he requirement that a purchaser act in good faith . . . speaks to the integrity of [purchaser's] conduct in the course of the sale proceedings.'" In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 147 (3d Cir. 1986) (citation omitted). Typically, the misconduct that would destroy a purchaser's good faith status involves "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'" Hoese Corp. v. Vetter Corp. (In re Vetter Corp.), 724 F.2d 52, 56 (7th Cir. 1983) (quoting In re Rock Indus. Mach. Corp., 572 F.2d 1195, 1198 (7th Cir. 1978) (interpreting Bankruptcy Rule 805, the precursor to section 363(m))).

58. As set forth in greater detail in this Motion and the declarations in support thereof, the Stalking Horse Agreement was negotiated at arm's-length and without collusion, with both parties represented by their own counsel. Accordingly, the Debtors request that the Sale Order include a provision that the Prevailing Purchaser for Seller's Equity Interests is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Debtors believe that providing the Prevailing Purchaser with such protection will ensure that the maximum price will be received for the Equity Interests and that the closings of the same will occur promptly.

D. The Prevailing Purchaser Should be Entitled to Findings that it Did Not Violate Bankruptcy Code Section 363(n).

59. Section 363(n) provides in relevant part that a trustee may avoid a sale under Bankruptcy Code section 363 "if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recovery any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount." 11 U.S.C. § 363(n); see also In re New York Trap Rock Corp., 42 F.3d 747, 752 (2d Cir. 1994) (holding potential bidders must agree to influence the sale price to come within the ambit of the prohibition of section 363(n)); In re GSC, Inc., 453 B.R. 132, 182 (Bankr. S.D.N.Y. 2011) (finding no violation of 363(n) where bidders acted in good faith and bidding procedures and modifications were fully disclosed and consented to); In re Borders Group, Inc., 2011 WL 5520261 at *4 (Bankr. S.D.N.Y. Sept. 27, 2011) (no violation of 363(n) where the "Debtors and their management actively participated in the sale process and acted in good faith" and "sale price of the Transaction was not controlled by an agreement with any bidder"); In re Nightlife Enterprises, L.P., No. 10-10956(ALG), 2010 WL 5265128, at *3 (Bankr. S.D.N.Y. July

26, 2010) (same); In re Mesa Air Grp., Inc., No. 10-10018(MG), 2010 WL 5264066, at *2 (Bankr. S.D.N.Y. June 24, 2010) (same). Rather, the Debtors submit that the purchase price proposed to be paid by the Buyer in the Purchase and Sale Agreement was agreed upon by the Sellers after extensive arms-length negotiations spanning several months and extensive marketing processes in which the Debtors received many third-party expressions of interest.

60. Accordingly, the Debtors submit that the Buyer is entitled to the findings set forth in the Sale Order with respect to not violating Bankruptcy Code Section 363(n).

E. The Purchase Price Constitutes Reasonably Equivalent Value for the Equity Interests Transferred.

61. A debtor receives reasonably equivalent consideration when “the debtor’s net worth has been preserved” following a transfer of its assets. Harrison v. N.J. Cmty. Bank (In re Jesup & Lamont, Inc.), 507 B.R. 452, 472 (Bankr. S.D.N.Y. 2014); see also Mellon Bank, N.A. v. Metro Commc’ns, Inc., 945 F.2d 635, 646-47 (3d Cir. 1991) (“The touchstone is whether the transaction conferred realizable commercial value on the debtor reasonably equivalent to the realizable commercial value of the assets transferred.”). A finding of reasonably equivalent value does not require an exact equivalent exchange of consideration; rather, the benefits that a debtor receives from the transfer must approximate its costs. Harrison, 507 B.R. at 472 (“[I]f [the value received] approximates the value of what the debtor transferred, there will be reasonably equivalent value[.]”). Further, transactions between a debtor and a third-party on an arms’ length basis are presumptively for reasonably equivalent value. See Mishkin v. Ensminger (In re Adler, Coleman Clearing Corp.), 247 B.R. 51, 109 (Bankr. S.D.N.Y. 1999) (“[W]hen there is an arms-length transaction by parties that have equal knowledge, a court should not substitute its own view of a fair market price.”) (citing Cooper v. Ashley Comm., Inc. (In re Morris Communications NC, Inc.), 914 F.2d 458, 465, 474-75 (4th Cir. 1990)).

62. Here, the sale of the Equity Interests constitutes an arms'-length transaction between the Debtors and an unaffiliated third party. The Company expects to receive approximately \$144 million in net sale proceeds for the Equity Interests pursuant to the Purchase and Sale Agreement less certain potential purchase price reductions. As set forth in the Company Declaration, given the other challenges to preserving value in the Projects, the Debtors believe that the sale proceeds represent reasonably equivalent value for the Equity Interests. See Company Declaration at ¶ 11. Finally, the Debtors have kept their primary creditor constituencies apprised of the Purchase and Sale Agreement negotiations and analysis regarding the sale transaction.

F. The Bidding Procedures Are Fair And Are Designed To Maximize The Value Received For The Equity Interests.

63. The Debtors believe that the Bidding Procedures are appropriate under Bankruptcy Code sections 105 and 363 to ensure that the sale process is fair and reasonable and will yield the maximum value for their estates, their creditors, their stakeholders, and other parties in interest. The Bidding Procedures proposed herein are designed to maximize the value received for the Equity Interests by facilitating a competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids, within a timeframe designed to address the impending deadlines and operational issues outlined above. The Bidding Procedures provide potential bidders with sufficient notice and an opportunity to acquire information necessary to submit a timely and informed bid, especially in light of the Debtors' extensive marketing efforts of the Equity Interests. Thus, the Debtors and all parties in interest can be assured that the consideration for the Equity Interests will be fair and reasonable. At the same time, the Bidding Procedures provide the Debtors with the opportunity to consider

competing offers and to determine, in consultation with the Committee and the DIP Lenders, the highest or otherwise best offer for the Equity Interests.

64. Similar procedures have been previously approved by courts in this District. See, e.g., In re The Great Atlantic & Pacific Tea Co., Inc., No. 15-23007 (RDD) (Bankr. S.D.N.Y. Nov. 16, 2015); In re Relativity Fashion, LLC, No. 15-11989 (MEW) (Bankr. S.D.N.Y. Sept. 1, 2015); In re Excel Mar. Carriers Ltd., No. 13-23060 (RDD) (Bankr. S.D.N.Y. July, 3, 2013); In re Eastman Kodak Co., No. 12-10202 (ALG) (Bankr. S.D.N.Y. Aug. 22, 2012); In re Alexander Gallo Holdings, LLC, No. 11-14220 (ALG) (Bankr. S.D.N.Y. Oct. 6, 2011).

65. Accordingly, the Debtors believe the Court should approve the Bidding Procedures.

G. The Bid Protections Should Be Authorized.

66. As described above, the Stalking Horse Agreement provides for Bid Protections for the Stalking Horse Buyer in the event that the Stalking Horse Agreement is terminated pursuant to the terms therein. Approval of break-up fees and expense reimbursements, and other forms of bidding protections in connection with the sale of significant assets pursuant to Bankruptcy Code section 363 has become established practice in chapter 11 cases. Courts in this District have held that break-up fees should be approved as long as (i) the relationship between the parties is not tainted by self-dealing, (ii) the fee does not hamper bidding, and (iii) the amount of the fee is reasonable in relation to the size of the transaction. See e.g., Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 658 (S.D.N.Y. 1992).

67. The Debtors submit that all three of the above requirements have been met. The relationship between the parties has not been tainted by self-dealing; rather,

negotiations have been at arm's length, with all relevant parties represented by experienced counsel and advisors.

68. Nor will the Bid Protections hamper bidding. To the contrary, and as set forth in more detail above, the Bid Protections are actually necessary to preserve the value of the estate. But for the Bid Protections, the Debtors do not believe the Stalking Horse Buyer would have entered into the Stalking Horse Agreement. In the absence of this agreement, the Debtors believe that the Auction would be imperiled, with no one party wishing to be burdened with the expense of taking the lead on doing diligence on the assets and setting a baseline bid for their purchase. See In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bidding incentives may be “legitimately necessary to convince a ‘white knight’ to enter the bidding by providing some form of compensation for the risks it is undertaking”) (citation omitted).

69. Finally, as set forth in more detail in the Rothschild Declaration, the aggregate amount of the Bid Protections is reasonable and appropriate in light of the size and nature of the transaction and the efforts that have been and will be expended by the Stalking Horse Buyer. See, Rothschild Declaration at ¶¶ 11-13. Indeed, Courts in this District have approved protections similar to the Bid Protections as reasonable and consistent with the type and range of bidding protection typically approved. See, e.g., In re Silicon Graphics, Inc., Case No. 09-11701 (MG) (Bankr. S.D.N.Y. Apr. 3, 2009), ECF No. 55 (approving a break-up fee and expense reimbursement totaling approximately 6% of the total purchase price); In re Hostess Brands, Inc., Case No. 12-22052 (RDD) (Bankr. S.D.N.Y. Feb. 11, 2013) ECF No. 2275 (approving break-up fee and expense reimbursement 5.4% of purchase price); In re Advance Watch Company, LTD., Case No. 15-12690 (MG) (Bankr. S.D.N.Y. Oct. 23, 2015), ECF No.

105 (approving break-up fee and expense reimbursement 4.67% of purchase price); In re MSR Resort Golf Course LLC, Case No. 11-10372 (SHL) (Bankr. S.D.N.Y. Dec. 20, 2011), ECF No. 920 (approving topping fee and expense reimbursement 4.0% of purchase price); In re Cabrini Med. Ctr., No. 09-14398 (AJG) (Bankr. S.D.N.Y. Dec. 30, 2009), ECF No. 224 (approving a break-up fee of approximately 3.75% of the purchase price); In re Tronox Inc., No. 09-10156 (ALG) (Bankr. S.D.N.Y. Sept. 23, 2009), ECF No. 715 (approving a break-up fee and expense reimbursement totaling approximately 3.72% of the total purchase price); In re Choice Bldg. Supplies of Westchester Co. Inc., No. 13-23859 (RDD) (Bankr. S.D.N.Y. Apr. 1, 2014), ECF No. 26 (approving a break-up fee of approximately 3.64% of the purchase price).

70. Such bidding protections enable a debtor to ensure a sale to a contractually committed bidder at a price the debtor believes is fair, while providing the debtor with an opportunity to enhance the value received by its estate through an auction process that will be more robust due to the presence of a baseline bid.

SHORTENED NOTICE SCHEDULING HEARING ON MOTION

71. Contemporaneously with the filing of this Motion, the Debtors have submitted (i) the Declaration of Shana Elberg Pursuant to Local Bankruptcy Rule 9077-1(a) in Support of Order to Show Cause Scheduling Hearing on Shortened Notice for Debtors' Motion for (I) An Order (A) Approving Bidding Procedures for the Sale of Equity Interests in Certain North American Utility Project Companies, (B) Establishing the Notice Procedures and Approving the Form and Manner of Notice Thereof, (C) Scheduling a Sale Hearing, and (D) Granting Related Relief and (II) An Order (A) Approving the Sale of Equity Interests in Certain North American Utility Project Companies Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (B) Granting Related Relief (the "Elberg Declaration") and (ii) the

proposed Order to Show Cause Scheduling Hearing on Shortened Notice for Debtors' Motion for (I) An Order (A) Approving Bidding Procedures for the Sale of Equity Interests in Certain North American Utility Project Companies, (B) Establishing the Notice Procedures and Approving the Form and Manner of Notice Thereof, (C) Scheduling a Sale Hearing, and (D) Granting Related Relief and (II) An Order (A) Approving the Sale of Equity Interests in Certain North American Utility Project Companies Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (B) Granting Related Relief (the "Order to Show Cause").

72. Bankruptcy Rule 2002(a)(1) provides that this Court may, "for cause shown," shorten the required notice period for and direct another method of giving notice of a motion. Fed. R. Bankr. P. 2002(a)(1). As set forth more fully in the Elberg Declaration, the Debtors respectfully submit that sufficient "cause" exists for expedited consideration of the relief sought under the Motion. Specifically, the sale of the Equity Interests is necessary to prevent a delay in closing which would, among other things, dissipate or otherwise decrease value related to certain of the Projects.

73. Accordingly, for the reasons set forth herein and in the Elberg Declaration, the Debtors request that this Court enter an Order to Show Cause, substantially in the proposed form filed by the Debtors concurrently herewith, scheduling consideration of the relief requested under the Motion, solely as it relates to the Sale Procedures Orders, for the hearing scheduled for August 18, 2016 at 10:00 a.m. (Prevailing Eastern Time).

74. The Debtors propose to give notice of the Motion, the Elberg Declaration, and the Order to Show Cause in accordance with the provisions set forth in the Order to Show Cause, as entered by this Court.

**IMMEDIATE RELIEF IS NECESSARY TO AVOID
IMMEDIATE AND IRREPARABLE HARM**

75. Bankruptcy Rule 6003(b) provides that the Court shall not issue an order granting a motion to use, sell, lease or otherwise incur an obligation regarding property of the estate within 21 days after the filing of a petition unless such relief “is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003; see also In re First NLC Fin. Servs., LLC, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008) (holding that Bankruptcy Rule 6003 permits entry of retention orders on interim basis to avoid irreparable harm). The Second Circuit has interpreted the language “immediate and irreparable harm” in the context of preliminary injunctions. In that context, the Second Circuit instructed that irreparable harm “‘is a continuing harm which cannot be adequately redressed by final relief on the merits’ and for which ‘money damages cannot provide adequate compensation.’” Kamerling v. Massanari, 295 F.3d 206, 214 (2d Cir. 2002) (quoting N.Y. Pathological & X-Ray Labs., Inc. v. INS, 523 F.2d 79, 81 (2d Cir. 1975)). Further, the “harm must be shown to be actual and imminent, not remote or speculative.” Id.; see also Rodriguez v. DeBuono, 175 F.3d 227, 234 (2d Cir. 1998). The Debtors submit that with respect to the August 9 Debtors, for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

76. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). The sale of the Equity Interests must be approved and consummated promptly in order to preserve the value of the Equity Interests. Therefore, time is of the essence in consummating the Sale Transaction, and

the Debtors and the Purchaser intend to close the Sale Transaction as soon as reasonably practicable. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

77. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365; or (e) otherwise affect the Debtors' rights under Bankruptcy Code section 365 to assume or reject any executory contract with any party subject to this Motion.

NOTICE

78. Notice of this Motion shall be 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; (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) counsel for D.E. Shaw; (h) the U.S. Attorney for the Southern District of New York; (i) counsel to the administrative agent under the postpetition debtor-in-possession financing facility; (j) counsel to the Committee in these Chapter 11 Cases; (k) counsel to TerraForm Power, Inc. and TerraForm Global, Inc.; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) any party known to

have asserted a lien, encumbrance, claim or other interest in any of the Equity Interests; (o) all affected federal ,state and local regulatory and taxing authorities, including the Internal Revenue Service; (p) the Securities and Exchange Commission; (q) all entities known to have expressed an interest in a transaction with respect to all or part of the Equity Interests; (r) any such other party entitled to notice pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York. The Debtors submit that no other or further notice need be provided.

NO PRIOR REQUEST

79. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE the Debtors respectfully request that the Court enter the Bidding Procedures Order and granting such other and further relief as is just and proper.

Dated: New York, New York
August 9, 2016

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Counsel for Debtors and Debtors in Possession

EXHIBIT A

PROPOSED SALE PROCEDURES ORDER

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

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

**ORDER (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF EQUITY
INTERESTS IN CERTAIN NORTH AMERICAN UTILITY PROJECT COMPANIES,
(B) ESTABLISHING THE NOTICE PROCEDURES AND APPROVING THE FORM
AND MANNER OF NOTICE THEREOF, (C) SCHEDULING A SALE HEARING,
AND (D) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), including SUNE Wind Holdings, Inc., SunE Waiawa Holdings, LLC, First Wind California Holdings, LLC, First Wind Solar Portfolio, LLC, Somerset Wind Holdings, LLC, Buckthorn Renewables Holdings, LLC, Rattlesnake Flat Holdings, LLC, SunE Hawaii Solar Holdings, LLC, and Greenmountain Wind Holdings, LLC

¹ 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); and SunE Waiawa Holdings, LLC (9757). The address of the Debtors’ corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

² Capitalized terms used in this Order but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or the Bidding Procedures, as applicable.

(the “Sellers”), for entry of an order, pursuant to sections 105, 363, 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6003, 6004, 6006, and 9014, among other things: (i) approving the Bidding Procedures attached hereto as Exhibit 1, including approval of the Break-up Fee and the Expense Reimbursement, (ii) establishing notice procedures and approving the form of notice and manner of all procedures, protections, schedules, and agreements in connection with the Auction and the Sale Transaction, (iii) scheduling a Sale Hearing to approve the Sale Transaction, and (iv) granting related relief; and upon the First Day Declaration, the Rothschild Declaration, the Company Declaration, and the Elberg Declaration; and it appearing that proper and adequate notice of the Motion has been given and it appearing that no other or further notice need be provided; and a hearing having been held on August 18, 2016 to consider the relief requested in the Motion and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; after due deliberation thereon; and sufficient cause appearing therefor, it is

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. The Court has jurisdiction to hear and determine the Motion pursuant 28 U.S.C. §§ 157 and 1334.

B. Venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The proceeding on the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

³

The findings and conclusions set forth herein shall constitute this Court’s findings of fact and conclusions of law as described in Bankruptcy Rule 7052, made applicable to this matter by Bankruptcy Rule 9014.

C. The legal predicates for the relief sought in the Motion are sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6003, 6004, 6006, and 9014, and Local Rules 6004-1 and 6006-1.

D. The Debtors have articulated good and sufficient business justification for the Court to approve the Motion, Bidding Procedures, the Auction, the Stalking Horse Agreement and other relief sought in the Motion, and all of the relief requested in the Motion is reasonable and appropriate under the circumstances.

E. The Stalking Horse Bidder is a “good faith” purchaser within the meaning of section 363(m) of the Bankruptcy Code and is granted the full benefits and protections of section 363(m) of the Bankruptcy Code. The Stalking Horse Bidder is neither an “insider” nor an “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 exist between the Stalking Horse Bidder and any of the Debtors.

F. The form and manner of each of the notices approved herein are appropriate and reasonably calculated to provide interested parties with timely and proper notice of the Motion, Bidding Procedures, the assumption and assignment procedures, the Auction, and the Sale Hearing, under the circumstances.

G. The Stalking Horse Agreement and the Bidding Procedures (including the Bid Protections) were negotiated, proposed and entered into without collusion, in good faith and at arms’ length between the Debtors and the Stalking Horse Bidder.

H. The Debtors have provided, under the circumstances, good and sufficient notice of the relief sought in the Motion, and no other or further notice of the Motion need be effectuated except as expressly set forth herein with respect to the Auction and the Sale Hearing.

Subject to the immediately preceding sentence, a reasonable opportunity to object or to be heard regarding the relief requested in the Motion was afforded to all interested persons and entities.

I. The entry of this Order approving the relief requested by the Motion (including the Bid Protections) is in the best interests of the Debtors', their estates, their creditors, their stakeholders and all parties in interest.

J. The Stalking Horse Agreement represents the highest or best offer the Debtors have received to date for the Equity Interests. Entry into the Stalking Horse Agreement by the Debtors is in the best interests of the Debtors and their estates, and is a sound exercise of the Debtors' business judgment. The Stalking Horse Agreement will enable the Debtors to secure a fair and adequate baseline price for the Equity Interests and, accordingly, will provide a clear benefit to the Debtors' estates, their creditors, their stakeholders, and other parties in interest.

K. The Debtors have demonstrated that the Bid Protections, including the Break-up Fee and the Expense Reimbursement, are a material inducement to (and express conditions of) the Stalking Horse Bidder to submit the bid that will serve as the minimum bid for other bidders, and are necessary to ensure that the Stalking Horse Bidder will continue to pursue its proposed acquisition of the Equity Interests upon the terms and subject to the conditions set forth in the Stalking Horse Agreement, and are intended to promote more competitive bidding by inducing the bid of the Stalking Horse Bidder. The Stalking Horse Bidder has provided a material benefit to the Debtors, their estates, and their creditors by increasing the likelihood of competitive bidding at the Auction and encouraging additional bidders to participate in the bidding process, thereby increasing the likelihood that the Debtors will receive the best possible price for the Equity Interests. The Stalking Horse Bidder is unwilling to commit to hold open its offer to acquire the Equity Interests upon the terms and subject to the conditions set forth in the Stalking

Horse Agreement unless it is assured of the approval of the Bid Protections as set forth herein and in the Stalking Horse Agreement. Consequently, the Bid Protections represent actual and necessary expenses of the Debtors' estate, within the meaning of Bankruptcy Code section 503(b), and are reasonable and appropriate under the circumstances.

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED, as set forth herein.
2. All objections to the relief requested in the Motion, if any, that have not been withdrawn, waived, or settled as announced to the Court are denied and overruled in their entirety on the merits, with prejudice.

BIDDING PROCEDURES

3. The Bidding Procedures, attached hereto as Exhibit 1 and incorporated by reference as though fully set forth herein, are hereby approved. The Debtors are authorized to solicit bids and conduct an Auction on the terms set forth in the Bidding Procedures. The Bidding Procedures shall govern the submission, receipt, and analysis of all bids, and any party desiring to submit a higher or otherwise better offer must do so strictly in accordance with the terms of the Bidding Procedures and this Order.

4. The Sellers shall proceed with the Sale Transaction in accordance with the Bidding Procedures and are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures in accordance with the following timeline:

Milestone	Date
Bid Deadline	September 6, 2016 at 4:00 p.m. (EST)
Auction (if necessary)	September 9, 2016 at 10:00 a.m. (EST)
Sale Hearing	September 15, 2016 at 10:00 a.m. (EST)

5. The process for submitting Qualified Bids is fair, reasonable, and appropriate and is designed to maximize recoveries for the benefit of the Debtors' estates, their creditors, their stakeholders and other parties in interest. Any disputes related to the Bidding Process, the Auction, or the Sale Transaction shall be resolved by this Court.

6. The Debtors are authorized to conduct the Auction in the event they receive one or more timely and acceptable Qualified Bids (in addition to the Stalking Horse's bid). The good faith deposits of all Qualified Bidders including, for the avoidance of doubt, the Stalking Horse Bidder, shall not become property of the Debtors' estates absent further court order.

BID DEADLINE, AUCTION AND SALE HEARING

7. The deadline for submitting a Qualified Bid shall be **September 6, 2016** (the "**Bid Deadline**").

8. The Stalking Horse Agreement is a Qualified Bid and the Stalking Horse Bidder is a Qualified Bidder, for all purposes and requirements pursuant to the Bidding Procedures.

9. If the Stalking Horse Bidder's bid, as reflected in the Stalking Horse Agreement, is the only Qualified Bid that is received by the Debtors by the Bid Deadline, no Auction will be

conducted for the Equity Interests and the Stalking Horse Bidder shall be the Prevailing Purchaser for the Equity Interests. Otherwise, the Debtors are authorized to hold the Auction for the Equity Interests. The Auction, if any, shall take place at the offices of counsel for the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036 on **September 9, 2016**, or such other place and time as the Debtors shall timely notify all parties entitled to attend the Auction (including the Stalking Horse Bidder).

10. Each Qualified Bidder participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the assets described in the Motion, (b) reviewed, understands, and accepts the Bidding Procedures, and (c) consents to the core jurisdiction of the Bankruptcy Court. All Qualified Bidders will be deemed to have submitted to the exclusive jurisdiction of this Court with respect to Motion, Bidding Procedures, the Assumption and Assignment Procedures, the Auction and other relief sought in the Motion.

11. All interested parties (whether or not Qualified Bidders) that participate in the bidding process shall be deemed to have knowingly and voluntarily (a) consented to the entry of a final order by this Court in connection with the Motion or this Order (including any disputes relating to the Bid Process, the Auction, and/or the Sale Transaction) to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution and (b) waived any right to jury trial in connection with any disputes relating to any of the foregoing matters.

12. The Court shall hold the Sale Hearing on **September 15, 2016 at 10:00 a.m. (EST)** or as soon thereafter as counsel and interested parties may be heard, at which time the Court shall consider the approval of the Sale Transaction to the Prevailing Purchaser, and confirm the results of the Auction, if any. The Sale Hearing may be adjourned or rescheduled

without further notice to any other party in interest by an announcement of the adjourned date at the Sale Hearing or by notice filed with the Court.

13. Any Objections to approval of the Sale Transaction shall (a) be in writing, (b) state the basis of such objection with specificity, (c) be filed with this Court and (d) be in accordance with the Bankruptcy Rules, the Local Rules and the Case Management Procedures and served so as to be actually received by the Bankruptcy Court and the following parties on or before **September 8, 2016** (the “Objection Deadline”): (1) the Debtors, 13736 Riverport Dr., Maryland Heights, Missouri 63043, Attn: Martin Truong and David Ringhofer; (2) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036, Attn: Jay M. Goffman and J. Eric Ivester; (3) investment banker for the Debtors, Rothschild Inc., 1251 Avenue of the Americas, 33rd floor, New York, NY 10020, Attn: Simon Pratt; (4) counsel to the Stalking Horse Bidder, Baker Botts LLP, 1299 Pennsylvania Avenue NW, Washington, DC 20004, Attn: Elaine Walsh, and 2001 Ross Avenue, Dallas, TX 75201, Attn: Luckey McDowell; (5) the Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014, Attn: Paul Schwartzberg; (6) counsel to the administrative agent under the Debtors’ prepetition first lien credit agreement, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, IL 60611, Attn: Richard Levy and Brad Kotler; (7) 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”), Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Arik Preis and Naomi Moss; (8) counsel to the administrative agent under the Debtors’ prepetition second lien credit agreement, Pillsbury Winthrop Shaw Pittman LLP, 1540 Broadway, New York, NY 10036-4039, Attn: Daniel S. Brown; (9) counsel to the collateral

trustee under the Debtors' prepetition second lien credit agreement, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103-1919, Attn: Marie C. Pollio; (10) counsel to the indenture trustee under each of the Debtors' outstanding bond issuances, Shipman & Goodwin LLP, One Constitution Plaza, Hartford, CT 06103-1919, Attn: Marie C. Pollio; (11) counsel to the administrative agent under the postpetition debtor-in-possession financing facility, White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036-2787, Attn: Scott Greissman and Elizabeth Feld; (12) counsel to the Committee, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Matthew Barr and Joseph Smolinsky; (13) counsel to TerraForm Power, Inc. and TerraForm Global, Inc., Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004, Attn: Michael H. Torkin and Andrew G. Dietderich; and (14) to the extent not listed herein, any such other party entitled to notice pursuant to Local Bankruptcy Rule 9013-1(b).

14. If the Debtors do not receive any Qualified Bids (other than the Stalking Horse Bid) on or prior to the Bid Deadline, the Debtors shall promptly cancel the Auction and seek approval of the Sale Transaction of the Equity Interests to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement at the Sale Hearing.

NOTICE PROCEDURES

15. The form of the Sale Notice and the Post Auction Notice are hereby approved and appropriate under the circumstances and sufficient for all purposes. No other or further notice shall be required if the Debtors serve such notices in the manner provided in the Motion to the extent modified by this Order, including:

- a) Within two (2) business days after the entry of this Order, or as soon as practicable thereafter, causing the Sale Notice to be served by first-class mail, postage prepaid upon (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 to have asserted a lien, encumbrance, claim or other interest (the “Encumbrances”) in any of the Equity Interests; (n) all affected federal, state and local regulatory and taxing authorities, including the Internal Revenue Service; (o) the Securities and Exchange Commission; (p) all entities known to have expressed an interest in a transaction with respect to all or part of the Equity Interests; (q) any such other party entitled to notice pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York;

- b) Within two (2) business days after the entry of this Order, or as soon as practicable thereafter, causing the Publication Notice to be published in the Wall Street Journal; and
- c) As soon as possible after the conclusion of the Auction, if any, causing the Post Auction Notice to be filed, but not served.

STALKING HORSE AGREEMENT AND BID PROTECTIONS

16. Entry into the Stalking Horse Agreement by each of the Debtor Sellers is hereby approved.

17. The Stalking Horse Bidder’s right to exercise its rights and remedies under, and in accordance with, the Stalking Horse Agreement is hereby approved, notwithstanding 11 U.S.C. § 362 or other provisions of the Bankruptcy Code and Bankruptcy Rules that may impair such rights.

18. The Bid Protections, including, the Break-up Fee and the Expense Reimbursement, are hereby approved on the terms and subject to the conditions set forth in the Stalking Horse Agreement. The Sellers shall pay any and all such amounts owing to the Stalking

Horse Bidder on account of the Bid Protections in full in cash in accordance with the terms of the Stalking Horse Agreement without further action of, order from, or notice to the Court.

19. The Break-up Fee and Expense Reimbursement, to the extent payable pursuant to the terms of the Purchase and Sale Agreement, shall be paid in cash upon the consummation of an Alternative Transaction and from the proceeds of such Alternative Transaction prior to distribution of such Alternative Transaction proceeds on account of DIP Obligations (as defined in the Purchase and Sale Agreement).

20. The Bid Protections are binding upon the estate of each Debtor and shall survive the appointment of a chapter 11 trustee, conversion of the chapter 11 cases to cases under chapter 7 of the Bankruptcy Code, or any dismissal of any such cases.

RELATED RELIEF

21. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted to the extent necessary, without further order of the Court, to allow the Stalking Horse Bidder to deliver any notice provided for in the Stalking Horse Agreement, including, without limitation, a notice terminating the Stalking Horse Agreement, and to allow the Stalking Horse Bidder to take any and all actions permitted under the Stalking Horse Agreement in accordance with the terms and conditions thereof.

22. The Debtors are hereby authorized to execute any additional or supplemental documents incident to the relief granted pursuant to this Order.

23. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein, including any and all actions necessary to implement the Bidding Procedures.

24. Notwithstanding anything to the contrary contained herein, any authorization contained herein and proceeds obtained by the Sellers 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 in the Final DIP Order).

25. Notwithstanding any applicability of Bankruptcy Rules 6003, 6004(h), and 6006(d), the terms and conditions of this Order shall be effective and enforceable immediately upon its entry. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

26. This Order shall be binding on the Debtors and any chapter 7 or chapter 11 trustee or other estate representative appointed for the Debtors. The Stalking Horse Bidder shall have standing to appear and be heard on all issues relating to the Bidding Procedures, the Auction, and/or the Sale Transaction.

27. To the extent the provisions of this Order are inconsistent with the provisions of any exhibit referenced herein or with the Motion, the provisions of this Order shall control and govern.

28. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: _____, 2016

HONORABLE STUART M. BERNSTEIN

EXHIBIT 1

BIDDING PROCEDURES

BIDDING PROCEDURES

These “**Bidding Procedures**” set forth the process by which SUNE Wind Holdings, Inc., SunE Waiawa Holdings, LLC, First Wind California Holdings, LLC, First Wind Solar Portfolio, LLC, Somerset Wind Holdings, LLC, Buckthorn Renewables Holdings, LLC, Rattlesnake Flat Holdings, LLC, SunE Hawaii Solar Holdings, LLC, and Greenmountain Wind Holdings, LLC (collectively, the “**Sellers**”), 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), are authorized to conduct a sale by auction (the “**Auction**”) of 100% of Sellers’ direct or indirect (as applicable) membership and other equity interests of some or all of the project companies owning the utility scale projects described on Exhibit A hereto (such entities, the “**Project Companies**”, and such equity interests, the “**Equity Interests**”) in one or more transactions in accordance herewith and with the Sale Procedures Order (as defined below) (each such sale of some or all of the Equity Interests in accordance with these Bidding Procedures, the Sale Procedures Order (as defined below), and any other applicable Bankruptcy Court orders, a “**Qualifying Sale**”).

These Bidding Procedures were approved by order of the Bankruptcy Court dated August ___, 2016 (the “**Sale Procedures Order**”), pursuant to the motion of the Sellers and the other debtors and debtors-in-possession in the Chapter 11 Cases (collectively, the “**Debtors**”) for (a) an order (i) approving bidding procedures in connection with the sale of the Equity Interests, (ii) approving the form and manner of notice, (iii) scheduling an auction and sale hearing, and (iv) granting related relief; and (b) an order (i) approving the Purchase and Sale Agreement (together with all exhibits and schedules thereto, the “**Stalking Horse Agreement**”), between the respective Sellers, as sellers, and NRG Renew, LLC, as buyer (collectively, the “**Stalking Horse Buyer**”), a copy of which was filed with the Bankruptcy Court on August 9, 2016, (ii) approving bid protections in favor of the Stalking Horse Buyer, (iii) authorizing the sale of the Equity Interests free and clear of liens, claims, and encumbrances (other than those permitted by the Stalking Horse Agreement or the Bidder Agreement (as defined below) of the Prevailing Purchaser (as defined below), as applicable), and (iv) granting related relief (the “**Motion**”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed them in the Motion and/or the Sale Procedures Order, as applicable.

Any party desiring to obtain a copy of the Motion, the Stalking Horse Agreement, the Bidding Procedures, and/or the Sale 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, Shana Elberg.

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 or any portion thereof.

1. Confidentiality Agreements

Upon execution of a confidentiality agreement, in form and substance satisfactory to the Debtors, any qualified party that wishes to conduct due diligence on any of the Equity Interests may be granted access to information that has been or will be provided to the other bidders subject to these Bidding Procedures and the Sale Procedures Order. For a party to be considered a “qualified party,” such party must demonstrate, in the Debtors’ judgment, that such party has the ability (including, without limitation from a financial and regulatory approval perspective) to close promptly on the Qualifying Sale following the Bankruptcy Court’s approval of such party’s Qualified Bid (excluding any third party consents and/or regulatory approvals). Additionally, the “material 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 Stalking Horse Buyer shall not be required to execute a confidentiality agreement or make any demonstration required under this Paragraph 1; provided, however, that all information (material and otherwise) made available to the Stalking Horse Buyer will be promptly made available to any qualified party that enters into a confidentiality agreement with the Debtors. Potential bidders may seek to jointly bid with other potential bidders (as further set forth below).

2. Assets to be Sold

All of the Equity Interests are available for sale. A party who is interested in purchasing the Equity Interests in any of the Project Companies may submit a bid to purchase:

- A. All Equity Interests in the Project Companies set forth on Exhibit A hereto (the “**Stalking Horse Package**”);
- B. the Equity Interests in the Project Companies set forth on Exhibit B-1 hereto (the “**Utah Group Companies Package**”);
- C. the Equity Interests in the Project Companies set forth on Exhibit B-2 hereto (the “**Hawaii Group Companies Package**”);
- D. the Equity Interests in the Project Companies set forth on Exhibit B-3 hereto (the “**Buckthorn Group Companies Package**” and, together with the Utah Group Companies Package and the Hawaii Group Companies Package, the “**Packages**”); or
- E. two or more of the Utah Group Companies Package, the Hawaii Group Companies Package or the Buckthorn Group Companies Package.

3. Due Diligence from Bidders

Each party expressing an interest in any of the Stalking Horse Package and/or Package(s) shall comply with all reasonable requests for additional information by the Debtors regarding such party and its contemplated transaction. Failure by a party to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors, in

consultation with the Committee¹ and DIP Lenders², to determine that such bidder is not a Qualified Bidder (as defined below).

By submitting a bid, each bidder (including the Stalking Horse Buyer) shall be deemed to acknowledge and represent that it has had an opportunity to conduct due diligence on the Equity Interests prior to making its bid; that it has relied solely upon its own independent due diligence in making its bid; and 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 Debtors, the Equity Interests or the completeness of any information provided in connection therewith.

4. Determination of “Qualified Bidder” Status

To participate in the bidding process for any of the Equity Interests and be deemed a “**Qualified Bidder**,” each potential bidder (or group acting together as a bidder to the extent permitted hereunder and under the Sale Procedures Order), other than the Stalking Horse Buyer, must deliver to (a) the Debtors, 179 Lincoln Street, Suite 500, Boston, MA 02111, Attn: Brian Kirk; (b) counsel for the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036, Attn: J. Eric Ivester, Shana Elberg and Skadden, Arps, Slate, Meagher & Flom LLP, 920 N. King Street, Wilmington, DE 19801, Attn: Sarah E. Pierce; (c) financial advisor to the Debtors, Rothschild Inc., 1251 Avenue of the Americas, 33rd floor, New York, NY 10020, Attn: Simon Pratt; (d) counsel for the statutory committee of unsecured creditors appointed in the Chapter 11 Cases (the “**Committee**”), Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Gavin Westerman and Jill Frizzley; and (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 counsel for the Tranche B Lenders, Akin, Gump, Strauss, Hauer & Feld, LLP, One Bryant Park, New York, NY 10036, Attn: Arik Preis and Naomi Moss; a written offer, **so as to be received by no later than September 6, 2016 at 4:00 p.m. (EST)** (the “**Bid Deadline**”), that:

- (a) states that such bidder offers to purchase all or some portion of the Equity Interests, with a specific indication of which Packages are subject to the bid;

¹ All references to the “Committee” shall be to the legal and financial advisors to the Official Committee of Unsecured Creditors. Such legal and financial advisors shall treat information received pursuant to these Bidding Procedures as “highly confidential” pursuant to any and all applicable non-disclosure and confidentiality agreements, and shall receive and review such information on an “advisors’ eyes only” basis, unless otherwise agreed to by the Committee and the Sellers.

² Except as otherwise expressly provided herein, all references herein to the “**DIP Lenders**” shall be to the legal and financial advisors to the DIP Agent and DIP Arrangers (as defined in the DIP Financing Order (defined below)) and the legal and financial advisors to the Tranche B Lenders (as defined in the DIP Credit Agreement (defined below)). Such legal and financial advisors shall treat information received pursuant to these Bidding Procedures as “highly confidential” pursuant to any and all applicable non-disclosure and confidentiality agreements, and shall receive and review such information on an “advisors’ eyes only” basis, unless otherwise agreed to by the DIP Lenders and the Sellers.

- (b) provides evidence satisfactory to the Debtors that such bidder is reasonably likely to satisfy all customary conditions and other requirements for entering into a power purchase agreement with respect to the projects owned by the Subsidiaries (including, without limitation, any third party consents and/or regulatory approvals);
- (c) includes executed transaction documents, including a definitive purchase agreement and all schedules and exhibits thereto (substantially in the same detail as those attached to the Stalking Horse Agreement filed with the Bankruptcy Court on August 9, 2016), signed by an authorized representative of such bidder, pursuant to which such bidder proposes to effectuate an alternate transaction that still qualifies as a Qualifying Sale (which may, as indicated elsewhere in these procedures, only be an offer for one or more of the Packages) (the “**Bidder Agreement**”), and such Bidder Agreement shall also include a copy of the Bidder Agreement marked against the Stalking Horse Agreement to show all changes requested by such bidder (including those related to the consideration to be paid for the Stalking Horse Package or any of the Packages);
- (d) proposes a purchase price (which consideration may consist of cash or otherwise, in the discretion of the Debtors, after consultation with the Committee and the DIP Lenders) that is a higher and/or better offer for the Stalking Horse Package and/or the particular Package(s) (as compared to the offer of the Stalking Horse Buyer, which may, but does not have to be, considered and measured on an aggregate basis with unrelated bids); provided, however, that an offer shall not be considered a higher and/or better offer unless such offer proposes a purchase price that is equal to or greater than:
 - (i) the Purchase Price (as defined in Stalking Horse Agreement) set forth in the Stalking Horse Agreement (unless such bid is only for a particular Package or Packages, in which case such price need only be greater than the price allocated by the Debtors to such Package(s) in the Stalking Horse Buyer’s bid), *plus*
 - (ii) a break-up fee equal to \$5,500,000 as set forth in the Stalking Horse Agreement (the “**Break-Up Fee**”), *plus*
 - (iii) cash equal to the reasonable and documented out-of-pocket costs, fees, and expenses incurred or to be incurred by the Stalking Horse Buyer or its affiliates in connection with evaluating, diligencing, negotiating, documenting, and performing the transactions contemplated by the Stalking Horse Agreement or any predecessor agreements in respect of the transactions set forth in the Stalking Horse Agreement (including reasonable fees, costs, and expenses of any professionals (including financial advisors, outside legal counsel, accountants, experts, and consultants) retained by Stalking Horse Buyer, including its affiliates, in connection with or related to the authorization, preparation, investigation, negotiation,

execution, and performance of the Stalking Horse Agreement or any predecessor agreements in respect of the transactions set forth in the Stalking Horse Agreement and the transactions contemplated thereby), which total cash amount, in the aggregate, shall not exceed \$4,500,000 (collectively, the “**Reimbursable Expenses**”),

provided, however, that any purchase price not paid in cash at the closing may be discounted in the Debtors’ discretion, after consultation with the Committee and the DIP Lenders;

provided, however that, solely for purposes of evaluating bids from potential Qualified Bidder(s) for bids for less than the Stalking Horse Package (i.e., bids for one or two Packages), the Break-Up Fee and Reimbursable Expenses to be included in any such bid shall be apportioned as follows: (a) bids for the Utah Group Companies Package shall include an amount sufficient to cover 61% of (x) the Break-Up Fee (i.e., \$3,355,000) and (y) Reimbursable Expenses (i.e., \$2,745,000); (b) bids for the Hawaii Group Companies Package shall include an amount sufficient to cover 34% of (x) the Break-Up Fee (i.e., \$1,870,000) and (y) Reimbursable Expenses (i.e., \$1,530,000); and (c) bids for the Buckthorn Group Companies Package shall include an amount sufficient to cover 5% of (x) the Break-Up Fee (i.e., \$275,000) and (y) Reimbursable Expenses (i.e., \$225,000) ((a), (b) and (c) together, the “**Package(s) Bid Allocation**”); provided further, however that, for the avoidance of doubt, the Package(s) Bid Allocation and/or the Partial Package(s) Bid Allocation (as defined below) shall apply solely for the evaluation of Qualified Bids and Overbids and shall apply only if otherwise Qualified Bids are received for each of the Utah Group Companies Package, the Hawaii Group Companies Package and the Buckthorn Companies Package, as applicable. Qualified Bidder(s) submitting bids for less than the Stalking Horse Package (i.e., bids for one or two Packages) shall confirm in such written bids that, in the event that (x) Qualified Bid(s) are received for only one Package, their bid shall be deemed to include the full amounts of the Break-Up Fee and Reimbursable Expenses without a Package(s) Bid Allocation of the same and (y) Qualified Bid(s) are received for only two Packages, their bid shall be deemed to include an amount sufficient to cover 50% of the Break-Up Fee and Expense Reimbursement ((y), the “**Partial Package(s) Bid Allocation**”). For the further avoidance of doubt, application of the Package(s) Bid Allocation and/or the Partial Package(s) Bid Allocation applies solely to the evaluation of bids, and application of the Package(s) Bid Allocation and/or the Partial Package(s) Bid Allocation does not in any way alter the Stalking Horse Buyer’s entitlement to the full amount of the Break-Up Fee and Reimbursable Expenses under the terms of and consistent with the Stalking Horse Agreement and the Bid Procedures Order.

- (e) is irrevocable until and unless the Debtors accept a higher or otherwise better Qualified Bid and the bidder is not selected as a Back-Up Bidder (as defined below);
- (f) does not request any expense reimbursement, break-up fee, "topping," termination, contribution, or other similar fee or payment;
- (g) provides for replacement letters of credit required for development of the projects owned by the Project Companies;
- (h) contains such financial and other information that will allow the Debtors to make a determination as to the bidder's financial and other capabilities to consummate the transactions contemplated by the Bidder Agreement and these Bidding Procedures, which information shall be satisfactory to the Debtors (in consultation with the Committee), including (but not limited to) contact names and numbers for verification of financing sources;
- (i) contains such information requested by the Debtors, regarding the identity of each entity that will be bidding for any of the Stalking Horse Package and/or Package(s) or otherwise participating in connection with such bid, and the complete terms of any such participation, which information is satisfactory to the Debtors (in consultation with the Committee);
- (j) includes evidence 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 Bidder Agreement, and financing agreements and any other ancillary documents or agreements, which evidence is satisfactory to the Debtors;
- (k) includes covenants and conditions commercially reasonable for a transaction of this type and acceptable to the Debtors (in consultation with the Committee and the DIP Lenders), but under no circumstances shall a bid 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 Bidder Agreement; and
- (l) is accompanied by a good faith cash deposit in an amount no less than 10% of the purchase price set forth in the Bidder Agreement, which shall be deposited in an escrow account to be established by the Debtors subject to a customary escrow agreement satisfactory to the Debtors, and which shall be credited against the purchase price.

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. Upon the Stalking Horse Buyer's infeasible receipt of payment of the Break-Up Fee and Reimbursable Expenses, the Stalking Horse Buyer, in its capacity as such, shall be deemed to waive the right to assert or seek payment of any 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.

A competing bid meeting the above requirements (all of which information shall be shared with the Committee and the DIP Lenders), as may be supplemented or waived by the Debtors, in consultation with the Committee and the DIP Lenders, shall constitute a "**Qualified Bid**." Subject to the other terms and conditions set forth herein, the Debtors shall make a determination, in consultation with the Committee and the DIP Lenders, regarding whether a bid is a Qualified Bid and shall notify all bidders before the Auction whether their bids have been determined to be Qualified Bids. Notwithstanding anything herein to the contrary, the Stalking Horse Buyer shall constitute a Qualified Bidder and the Stalking Horse Agreement (including any Overbid (as defined below) made in connection therewith) shall constitute a Qualified Bid for all purposes.

Under no circumstances will the Stalking Horse Buyer (or any other bidder) be permitted to review any bids of other bidders, except for the Auction Baseline Bid (as defined below), the terms of any Overbid (as defined below) made at the Auction, and any other bids the Debtors determine to disclose to all Qualified Bidders in connection with the Auction. In any case, the Debtors shall notify the Stalking Horse Buyer within twenty-four hours of the Bid Deadline whether any other Qualified Bids were received.

5. 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 (upon consultation with the Committee and the DIP Lenders), 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 may be improved at the Auction as set forth herein.

6. Auction Baseline Bid / No Qualified Bids

On or prior to 4:00 p.m. (EST) one (1) business day before the Auction, the Debtors shall make a determination regarding, and provide each Qualified Bidder, the Committee and the DIP Lender notice of, the terms of:

- A. the Package or Packages to be auctioned by the Debtors, including a Stalking Horse Package, to be auctioned by the Debtors (each, an "**Auction Package**"); *provided* that an Auction Package for a Stalking Horse Package may not include less than all of the Equity Interests for Project Companies listed on Exhibit A hereto;

- B. the Package(s) or Stalking Horse Package included in an Auction Package;
- C. the highest or otherwise best Qualified Bid or Qualified Bids for each Auction Package (each, an “**Auction Baseline Bid**”) and such bidder or group of bidders, a “**Baseline Bidder**”) to serve as the starting point at the Auction for such Auction Package;
- D. which Bids have been determined to be Qualified Bids and the Auction applicable to such Qualified Bid (provided that the Debtors may permit a Qualified Bidder to bid on any other Auction Package).

If no Qualified Bids (other than the Stalking Horse Agreement) are submitted by the Bid Deadline, the Debtors shall not hold an Auction and shall proceed to obtain Bankruptcy Court approval of the Stalking Horse Agreement as the Prevailing Bid (as defined below) and to consummate the Stalking Horse Agreement in accordance with its terms.

7. Auction

In the event that the Debtors (in consultation with the Committee and the DIP Lenders) determine that they have received more than one Qualified Bid, the Debtors are authorized to conduct an Auction. Other than as expressly set forth herein, the Debtors may conduct an Auction in the manner they determine, in consultation with the Committee and the DIP Lenders, will result in the highest or otherwise best offer for the Equity Interests. The Auction shall be held on September 9, 2016 at 10:00 a.m. (EST), at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036, or such other location and time as shall be timely communicated to all entities entitled to attend the Auction. The Debtors, the Qualified Bidders, the Committee, the DIP Agent, the DIP Lenders (as defined in the DIP Financing Order), and their respective advisors shall be permitted to attend the Auction.

An “**Overbid**” is any Qualified Bid made by a Qualified Bidder at the Auction on any Auction Package, subsequent to the Debtors’ announcement of the Auction Baseline Bid(s). To submit an Overbid at the Auction, a Qualified Bidder must comply with the following conditions:

- (a) any Overbid over and above the applicable Auction Baseline Bid shall be made in increments valued at not less than 2% of the applicable Auction Baseline Bid or then highest or otherwise best Overbid, as applicable;
- (b) the Stalking Horse Buyer (or its designee(s)) shall be permitted to bid at the Auction;
- (c) any Overbid shall remain open and binding on the Qualified Bidder until and unless (a) the Debtors accept as an Overbid a higher Qualified Bid for some or all of the Auction Packages that are the subject of the Overbid referred to in the sentence preceding this sub-clause (a), and (b) such Overbid is not selected as a Back-Up Bid (as defined below); and
- (d) to the extent not previously provided, a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, evidence demonstrating such Qualified

Bidder's ability (including without limitation from a financial perspective) to close the transactions proposed by such Overbid promptly following the Bankruptcy Court's approval of the Prevailing Bid (excluding any required FERC approvals, provided such FERC approvals are reasonably expected to be obtained within ninety (90) days following the Bid Deadline).

In addition to complying with the above requirements, the Auction shall be governed by the following procedures:

- (i) the Auction will be conducted openly by the Debtors, and only the Qualified Bidders and their respective advisors shall be entitled to make any subsequent Qualified Bids at the Auction;
- (ii) each Qualified Bidder shall be required to represent that it has not engaged in any collusion with respect to the bidding or the sale (provided, however, that for the avoidance of doubt, Qualified Bidders are permitted to submit joint bids, with the consent of the Debtors);
- (iii) the Qualified Bidders shall appear in person at the Auction, through a duly authorized representative, or as otherwise agreed to by the Debtors;
- (iv) the bidding shall commence and proceed as determined by the Debtors, in consultation with the Committee and the DIP Lenders;
- (v) the bidding at the Auction shall be transcribed or videotaped, at the Debtors' election;
- (vi) all Qualified Bidders shall have the right to submit additional Qualified Bids and propose additional modifications to the Stalking Horse Agreement or the Bidder Agreement, as applicable, at the Auction; provided that (a) any such modifications to the Stalking Horse Agreement or Bidder Agreement, must comply with these Bidding Procedures and the Sale Procedures Order, and, on an aggregate basis and viewed in whole, shall not be less favorable to the Debtors than such Qualified Bidder's previous bid in the Debtors' discretion (in consultation with the Committee and the DIP Lenders) and (b) for the avoidance of doubt, any such additional or modified bid must meet the requirements of a Qualified Bid;
- (vii) in each round of bidding, the Stalking Horse Buyer (or its designee(s)) shall have the right to submit a credit bid up to the full amount of (i) the Reimbursable Expenses and (ii) the Break-Up Fee, without prejudice to the Stalking Horse Buyer's right to receive the Break-Up Fee and Reimbursable Expenses if it is not the Prevailing Purchaser and as otherwise provided in the Stalking Horse Agreement.
- (viii) any Auction shall continue until the Debtors determine, in consultation with the Committee and the DIP Lenders, that a Qualified Bid or an Overbid, or a set of

Qualified Bids or Overbids, as applicable, is the highest or otherwise best offer from among the Qualified Bids (including Overbids and the bid of the Stalking Horse Buyer) (the “**Prevailing Bid**,” and the party or parties that submitted such Prevailing Bid, the “**Prevailing Purchaser**”)³, which shall be subject to Bankruptcy Court approval;

- (ix) in selecting the Prevailing Bid, the Debtors, in consultation with the Committee and the DIP Lenders, 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 or Qualified Bidders’ 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;.
- (x) the Debtors shall have the ability to decide, at any point (upon consultation with the Committee and the DIP Lenders), that bids may be aggregated, joined, disjoined, or otherwise separated; and
- (xi) the Debtors shall have the ability to decide, at any point (upon consultation with the Committee and the DIP Lenders), that they are not selling any or all of the Packages, or removing certain Packages (or portions thereof) from the Auction and only selling others.

8. Sale Hearing

The Prevailing Bid will be subject to approval by the Bankruptcy Court. The hearing to approve the sale of the Auction Package(s) to the Prevailing Purchaser (the “**Sale Hearing**”) is scheduled to take place on **September 15, 2016 at 10:00 a.m. (EST)** 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 (in consultation with the Committee and the DIP Lenders) 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.

9. Failure to Consummate Purchase by the Prevailing Purchaser

If an Auction is conducted, the party with the Qualified Bid or Overbid that is next highest or otherwise best to the Prevailing Bid at the Auction, as determined by the Debtors in consultation with the Committee and the DIP Lenders, shall be required to serve as a back-up bidder (a “**Back-Up Bid**” and a “**Back-Up Bidder**,” respectively)⁴ and keep such bid open and

³ The Prevailing Bid and the Prevailing Purchaser may be more than one bidder if each is bidding on separate Packages that together form the Prevailing Bid.

⁴ The Back-Up Bid and Back-Up Bidder may be more than one bidder if each is bidding on separate Packages that together form the Back-Up Bid.

irrevocable until 11:59 p.m. (EST) on the date that is the earlier of (a) thirty (30) days after the date of the Sale Hearing, and (b) the closing of the sale transaction with the Prevailing Purchaser; provided, however, that without its prior written consent the Stalking Horse Buyer shall not be required to be the Back-Up Bidder for more than 14 days following the commencement of the Auction.

Following the Sale Hearing, if the Prevailing Purchaser fails to consummate a sale in accordance with the Prevailing Bid because of a breach or failure to perform on the part of such Prevailing Purchaser, the Debtors (in consultation with the Committee and the DIP Lenders) are authorized to deem a Back-Up Bidder to be the new "Prevailing Purchaser," and the Debtors will be authorized, but not required, to consummate a sale with a Back-Up Bidder as contemplated by a Back-Up Bid without further order of the Bankruptcy Court. In such case, (a) the defaulting Prevailing Purchaser's deposit, if any, shall be forfeited to the Debtors, and (b) all parties in interest, and the Debtors specifically, reserve the right to seek all available damages from the defaulting Prevailing Purchaser.

Except as otherwise provided herein, all deposits shall be returned to each bidder not selected by the Debtors as the Prevailing Purchaser or a Back-Up Bidder by no later than the fifth (5th) business day following the conclusion of the Auction. The deposit of a Back-Up Bidder shall be held by the Debtors until the earliest of two (2) business days after (a) forty-five (45) days after the date of the Sale Hearing; (b) such date upon which the Debtors, in consultation with the Committee and the DIP Lenders, will notify a Back-Up Bidder, and (c) the closing of the sale transaction with the Prevailing Purchaser. The Debtors shall not be required to pay any interest to bidders on any such deposits.

10. Status of Stalking Horse Agreement

Notwithstanding anything in these Bidding Procedures to the contrary, the Stalking Horse Agreement and related transaction documents shall remain in full force and effect until such agreements have terminated in accordance with their respective terms.

11. Consultation Rights

For the avoidance of doubt, the granting of consultation rights to the Committee and DIP Lenders shall not impair or otherwise affect the rights of such Committee or DIP Lenders to object to the decisions or actions of the Debtors and their advisors made in connection with these Bidding Procedures.

Notwithstanding anything to the contrary herein, all rights, claims, interests, benefits, and other protections of the lenders and, as applicable, their respective affiliates, assignees, designees, or partners in their capacities as "DIP Secured Parties" under (a) and as defined 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, 363, 363 and 364 entered by the Bankruptcy Court on June 9, 2016 [Docket No. 523] (together with all annexes, schedules, and exhibits thereto, the "**DIP Financing**

Order”), and under (b) the Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of April 26, 2016, among SunEdison, Inc., as Borrower, Deutsche Bank AG New York Branch, as Administrative Agent, Deutsche Bank Securities Inc., Barclays Bank PLC, Apollo Credit Opportunity Fund III AIV I LP, Goldman Sachs Bank USA and Macquarie Capital (USA) Inc., as Joint Lead Arrangers and Joint Bookrunners, Wells Fargo Bank, National Association, Royal Bank of Canada, and KeyBank National Association, as L/C Issuers, and the lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the “**DIP Credit Agreement**”) and the other DIP Loan Documents (as defined in the DIP Financing Order), (c) the Bankruptcy Code, and (d) other applicable law, in each case, shall be fully preserved and not limited or otherwise impaired in any respect by these Bidding Procedures.

12. Reservation of Rights; Consent to Jurisdiction

Notwithstanding anything to the contrary in these Bidding Procedures, the Debtors reserve their rights, as they may determine to be in the best interest of their estates and in the exercise of their fiduciary obligations, to: (a) after consultation with the respective representatives and advisors for the DIP Agent, Tranche B DIP Lenders and 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 Auction Packages, (b) announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction and which additional procedural rules shall only apply from and after such announcement, (c) determine which bidders are Qualified Bidders, (d) determine which bids qualify as Qualified Bids and Overbids, (e) determine whether to accept any Qualified Bid or Overbid (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, the Sale Procedures Order or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors and their estates, (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 Overbid) or the Stalking Horse Buyer’s rights thereunder; and (ii) without the prior written consent of the Stalking Horse Buyer, the Debtors shall not modify, or waive compliance (or accept non-compliance) with, any of the following: (A) subsections (c), (d) or (l) of the requirements of a Qualified Bid specified herein; (B) subsection (b) of the requirements of an Overbid specified herein; (C) the right of the Stalking Horse Buyer to credit bid up to the full amount of the Break-Up Fee and Reimbursable Expenses; (D) the right of the Stalking Horse Buyer to not be the Back-Up Bidder for more than 14 days following the commencement of the Auction without its prior written consent; or (E) this clause (ii) or the immediately preceding clause (i).

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 Sellers and their assets, and have waived any right to a jury trial in connection with any disputes relating to the Sellers,

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.

Exhibit A

Acquired Entity Interests

100% of the membership and other equity interests in the following companies:

<u>Seller</u>	<u>Company</u>
SunE Wind Holdings, Inc.	Four Brothers Capital, LLC
	Iron Springs Capital, LLC
	Granite Mountain Capital, LLC
SunE Waiawa Holdings, LLC	SunE Waiawa Solar, LLC
First Wind California Holdings, LLC	California Jupiter, LLC
First Wind Solar Portfolio, LLC	Kawailoa Solar Holdings, LLC
	Welawela Land Holdings, LLC
Buckthorn Renewables Holdings, LLC	Buckthorn Renewables, LLC
SunE Hawaii Solar Holdings, LLC	SunE Oahu Solar Holdings, LLC

Somerset Wind Holdings, LLC	Somerset Wind, LLC
Rattlesnake Flat Holdings, LLC	Rattlesnake Flat, LLC
Greenmountain Wind Holdings, LLC	Greenmountain Wind, LLC

Exhibit B-1

Utah Group Companies Package

<u>Seller</u>	<u>Company</u>	<u>Purchase Price Allocation</u>
SunE Wind Holdings, Inc.	Four Brothers Capital, LLC	\$ 111,200,000
	Iron Springs Capital, LLC	
	Granite Mountain Capital, LLC	
First Wind California Holdings, LLC	California Jupiter, LLC	
Somerset Wind Holdings, LLC	Somerset Wind, LLC	
Rattlesnake Flat Holdings, LLC	Rattlesnake Flat, LLC	
Greenmountain Wind Holdings, LLC	Greenmountain Wind, LLC	

Exhibit B-2

Hawaii Group Companies Package

<u>Seller</u>	<u>Company</u>	<u>Purchase Price Allocation</u>
SunE Waiawa Holdings, LLC	SunE Waiawa Solar, LLC	\$17,000,000
First Wind Solar Portfolio, LLC	Kawailoa Solar Holdings, LLC	
	Welawela Land Holdings, LLC	
SunE Hawaii Solar Holdings, LLC	SunE Oahu Solar Holdings, LLC	

Exhibit B-3

Buckthorn Group Companies Package

<u>Seller</u>	<u>Company</u>	<u>Purchase Price Allocation</u>
Buckthorn Renewables Holdings, LLC	Buckthorn Renewables, LLC	\$15,800,000