

**SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**

Jay M. Goffman

J. Eric Ivester

Four Times Square

New York, New York 10036-6522

Telephone: (212) 735-3000

Fax: (212) 735-2000

-and-

James J. Mazza, Jr. (admitted *pro hac vice*)

Louis S. Chiappetta (admitted *pro hac vice*)

155 N. Wacker Dr.

Chicago, Illinois 60606-1720

Telephone: (312) 407-0700

Fax: (312) 407-0411

*Counsel for Debtors and Debtors in Possession*

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

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

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number are as follows: SunEdison, Inc. (5767); SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc. (2144); SUNE Hawaii Solar Holdings, LLC (0994); First Wind Solar Portfolio, LLC (5014); First Wind California Holdings, LLC (7697); SunEdison Holdings Corporation (8669); SunEdison Utility Holdings, Inc. (6443); SunEdison International, Inc. (4551); SUNE ML 1, LLC (3132); MEMC Pasadena, Inc. (5238); Solaicx (1969); SunEdison Contracting, LLC (3819); NVT, LLC (5370); NVT Licenses, LLC (5445); Team-Solar, Inc. (7782); SunEdison Canada, LLC (6287); Enflex Corporation (5515); Fotowatio Renewable Ventures, Inc. (1788); Silver Ridge Power Holdings, LLC (5886); SunEdison International, LLC (1567); Sun Edison LLC (1450); SunEdison Products Singapore Pte. Ltd. (7373); SunEdison Residential Services, LLC (5787); PVT Solar, Inc. (3308); SEV Merger Sub Inc. (N/A); Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A); EverStream HoldCo Fund I, LLC (9564); Buckthorn Renewables Holdings, LLC (7616); Greenmountain Wind Holdings, LLC (N/A); Rattlesnake Flat Holdings, LLC (N/A); Somerset Wind Holdings, LLC (N/A); and SunE Waiawa Holdings, LLC (9757); SunE Minnesota Holdings, LLC (8926); SunE MN Development Holdings, LLC (5388); and SunE MN Development, LLC (8669). The address of the Debtors' corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

**NOTICE OF DEBTORS' MOTION FOR (I) AN ORDER (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF EQUITY INTERESTS IN CERTAIN PROJECT COMPANIES, (B) ESTABLISHING 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 THE EQUITY INTERESTS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (B) APPROVING THE PSA RELEASES AND ECOPLEXUS SETTLEMENT, AND (C) 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 Project Companies, (B) Establishing 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 The Equity Interests Free And Clear Of All Liens, Claims, Encumbrances, And Other Interests, (B) Approving The PSA Releases And Ecoplexus Settlement, And (C) Granting Related Relief* (the "Motion").

**PLEASE TAKE FURTHER NOTICE** that, on August 10, 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 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 The Equity Interests Free And Clear Of All Liens, Claims, Encumbrances, And Other Interests, (B) Approving The Ecoplexus Settlement, And (C) Granting Related Relief* (Docket No. 953) (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](mailto:Jay.Goffman@skadden.com)), J. Eric Ivester ([Eric.Ivester@skadden.com](mailto:Eric.Ivester@skadden.com)), and 155 North Wacker Dr., Chicago, IL 60606, Attn: James J. Mazza, Jr. ([James.Mazza@skadden.com](mailto:James.Mazza@skadden.com)) and Louis S. Chiappetta ([Louis.Chiappetta@skadden.com](mailto: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](mailto: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](mailto:richard.levy@lw.com)) and Brad Kotler ([brad.kotler@lw.com](mailto: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](mailto:apreis@akingump.com)) and Naomi Moss ([nmoss@akingump.com](mailto: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](mailto: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](mailto:mpollio@goodwin.com));

(viii) the Office of the United States Attorney for the Southern District of New York, 86 Chambers Street, 3<sup>rd</sup> 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](mailto:sgreissman@whitecase.com)) and Elizabeth Feld ([efeld@whitecase.com](mailto: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](mailto: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](mailto:SunEWeilBFR@weil.com)) and Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019, Attn: Lorenzo Marinuzzi ([lmarinuzzi@mofo.com](mailto:lmarinuzzi@mofo.com)), Jennifer Marines ([jmarines@mofo.com](mailto:jmarines@mofo.com)) and Jonathan I. Levine ([jonlevine@mofo.com](mailto: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](mailto:torkinm@sullcrom.com)), Andrew G. Dietderich ([dietdericha@sullcrom.com](mailto:dietdericha@sullcrom.com)), John L. Hardiman ([hardimanj@sullcrom.com](mailto:hardimanj@sullcrom.com)) and David R. Zylberberg ([zylberbergd@sullcrom.com](mailto: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 10, 2016  
New York, New York

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: /s/ J. Eric Ivester

Jay M. Goffman

J. Eric Ivester

Four Times Square

New York, New York 10036-6522

Telephone: (212) 735-3000

Fax: (212) 735-2000

-and-

James J. Mazza, Jr. (admitted *pro hac vice*)

Louis S. Chiappetta (admitted *pro hac vice*)

155 N. Wacker Dr.

Chicago, Illinois 60606-1720

Telephone: (312) 407-0700

Fax: (312) 407-0411

*Counsel for Debtors and Debtors in Possession*

**Hearing Date: August 18, 2016 at 10:00 a.m. (Prevailing Eastern Time)**  
**Objection Deadline: August 16, 2016 at 4:00 p.m. (Prevailing Eastern Time)**

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

Jay M. Goffman

J. Eric Ivester

Four Times Square

New York, New York 10036-6522

Telephone: (212) 735-3000

Fax: (212) 735-2000

-and-

James J. Mazza, Jr. (admitted *pro hac vice*)

Louis S. Chiappetta (admitted *pro hac vice*)

155 N. Wacker Dr.

Chicago, Illinois 60606-1720

Telephone: (312) 407-0700

Fax: (312) 407-0411

*Counsel for Debtors*

*and Debtors in Possession*

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

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

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number are as follows: SunEdison, Inc. (5767); SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc. (2144); SUNE Hawaii Solar Holdings, LLC (0994); First Wind Solar Portfolio, LLC (5014); First Wind California Holdings, LLC (7697); SunEdison Holdings Corporation (8669); SunEdison Utility Holdings, Inc. (6443); SunEdison International, Inc. (4551); SUNE ML 1, LLC (3132); MEMC Pasadena, Inc. (5238); Solaicx (1969); SunEdison Contracting, LLC (3819); NVT, LLC (5370); NVT Licenses, LLC (5445); Team-Solar, Inc. (7782); SunEdison Canada, LLC (6287); Enflex Corporation (5515); Fotowatio Renewable Ventures, Inc. (1788); Silver Ridge Power Holdings, LLC (5886); SunEdison International, LLC (1567); Sun Edison LLC (1450); SunEdison Products Singapore Pte. Ltd. (7373); SunEdison Residential Services, LLC (5787); PVT Solar, Inc. (3308); SEV Merger Sub Inc. (N/A); Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A); EverStream Holdco Fund I, LLC (9564); Buckthorn Renewables Holdings, LLC (7616); Greenmountain Wind Holdings, LLC (N/A); Rattlesnake Flat Holdings, LLC (N/A); Somerset Wind Holdings, LLC (N/A); SunE Waiawa Holdings, LLC (9757); SunE Minnesota Holdings, LLC (8926); SunE MN Development Holdings, LLC (5388); and SunE MN Development, LLC (8669). The address of the Debtors' corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

:  
:  
-----x

**DEBTORS' MOTION FOR (I) AN ORDER (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF EQUITY INTERESTS IN CERTAIN PROJECT COMPANIES, (B) ESTABLISHING 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 THE EQUITY INTERESTS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (B) APPROVING THE PSA RELEASES AND ECOPLEXUS SETTLEMENT, AND (C) 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"), hereby move (the "Sale Motion") this Court for entry of two orders.<sup>2</sup>

First, the Debtors request entry of an order substantially in the form attached hereto as Exhibit A (the "Bidding 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,<sup>3</sup> including approval of the Breakup Fee and the Expense Reimbursement (each as defined below), as allowed administrative expenses pursuant to sections 503 and 507(b) of the Bankruptcy Code, (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 Transactions (each as defined below), (iii) scheduling a Sale Hearing (defined below) to approve the

---

<sup>2</sup> For purposes herein, the definition of "SunEdison" and "Company" does not include TerraForm Power, Inc. and TerraForm Global, Inc., and each of their respective direct and indirect subsidiaries, unless otherwise provided.

<sup>3</sup> 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.

Transactions, and (iv) granting related relief, including authorizing and approving the entry of SunE MN Development, LLC (the “Seller”) into that certain Purchase and Sale Agreement with SoCore MN Acquisition LLC (the “Stalking Horse Buyer” or “Buyer”), dated as of August 10, 2016 and attached hereto as Exhibit B (the “Stalking Horse Agreement” or the “PSA”).<sup>4</sup>

Second, the Debtors also hereby move this Court for entry of an order, in accordance with the Bidding Procedures and substantially in the form attached hereto as Exhibit C (the “Sale Order”) <sup>5</sup> authorizing and approving, but not directing the Debtors to enter into the: (i) Stalking Horse Agreement and (ii) Ecoplexus Settlement Agreement (as defined below).<sup>6</sup>

In support of the Sale Motion, the Debtors rely upon and incorporate by reference the First Day Declaration (defined below), the Declaration of J. Eric Ivester to Show Cause (the “Ivester Declaration”), and the Declaration of Rafael Dobrzynski in Support of the Sale Motion (the “Dobrzynski Declaration”), attached hereto as Exhibit D. In further support of the Sale Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Sale 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 Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

---

<sup>4</sup> Consistent with the Sale Guidelines, the Stalking Horse Agreement is attached hereto as Exhibit B.

<sup>5</sup> 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.

<sup>6</sup> This Sale Motion contains the Debtors’ request for entry of the Bidding Procedures Order and approval of the Sale Order. For the avoidance of doubt, the Debtors are solely seeking approval of the Bidding Procedures Order at the initial hearing to be conducted on this Sale Motion. The Sale Order, which authorizes and approves the Debtors to enter into the Stalking Horse Agreement and the Ecoplexus Settlement Agreement, is requested to be considered at the later Sale Hearing.



2. The legal predicates for the relief requested herein are Bankruptcy Code sections 105, 363, 365, 503, and 507 and Rules 2002, 6003, 6004, 6006, 9006, 9007, 9014 and, 9019 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,<sup>7</sup> twenty-six of the Debtors 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 Debtors<sup>8</sup> filed voluntary petitions for relief under the Bankruptcy Code (the “June 1 Cases”). On July 20, 2016, an additional Debtor<sup>9</sup> filed a voluntary petition for relief under the Bankruptcy Code (the “July 20 Case”). On August 9, 2016, an additional five Debtors<sup>10</sup> filed voluntary petitions for relief under the Bankruptcy Code (the “August 9 Cases”). On August 10, 2016,

---

<sup>7</sup> A reference to the “Petition Date” refers, with respect to the Initial Chapter 11 Cases, to April 21, 2016, with respect to the June 1 Cases, to June 1, 2016, with respect to the July 20 Case, to July 20, 2016, with respect to the August 9 Cases, to August 9, 2016, and with respect to the August 10 Cases, to August 10, 2016, unless specified otherwise.

<sup>8</sup> 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).

<sup>9</sup> EverStream Holdco Fund I, LLC (9564).

<sup>10</sup> 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).

three additional Debtors<sup>11</sup> (the “August 10 Case Debtors”) filed voluntary petitions for relief under the Bankruptcy Code (the “August 10 Cases,” and together with the Initial Chapter 11 Cases, the June 1 Cases, the July 20 Case, August 9 Cases, and the August 10 Cases, the “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.

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

---

<sup>11</sup> SunE MN Development, LLC (8669); SunE MN Development Holdings, LLC (5388); SunE Minnesota Holdings, LLC (8926). The August 10 Case Debtors filed for relief here to effect the relief subject of the Sale Motion.

Petitions and First Day Pleadings (the “First Day Declaration”) [Docket No. 4], filed on April 21, 2016.

**B. The Minnesota Projects**

8. Through its large commercial and industrial segment (commonly referred to as “C&I”) – SunEdison has 22 C&I projects under development in the State of Minnesota (the “Minnesota Projects”). These projects include 15 self-developed projects and 7 additional projects that have been co-developed with Ecoplexus, Inc. (“Ecoplexus”) under the terms of a prior agreement (the “Ecoplexus Purchase Agreement”). The Minnesota Projects will provide 136 MW of power upon reaching their commercial operation dates and are located in a cold weather state with a project construction season dictated by the freeze and thaw cycles at project sites. Furthermore, under current Minnesota Public Utility Commission (“MNPUC”) guidelines, which sets commercial operation date (“COD”) deadlines from the time an application is “deemed complete,” over 2/3 of the Minnesota Projects have hard COD deadlines expiring in May-June 2017.<sup>12</sup> Although a recent unofficial decision by MNPUC may extend this timeline, there is no certainty that the current COD deadlines can be officially extended. The combination of the seasonal construction requirements and the second quarter 2017 completion deadline required Seller to move quickly to sell the Minnesota Projects by October 2016 to allow the Buyer to effectively plan, stage, and execute on the construction of the Minnesota Projects in total. This is necessary to preserve the full value and viability of the project portfolio.

---

<sup>12</sup> Although a recent unofficial decision by MNPUC may extend this timeline, there is no certainty that the current COD deadlines can be officially extended.

### C. The Proposed Transactions

9. The Stalking Horse Agreement contemplates the sale of the Equity Interests in the companies that own the Minnesota Projects (the “Project Companies”) to the Stalking Horse Buyer for a total of \$79,804,159, subject to certain adjustments,<sup>13</sup> and is comprised of a \$57,972,159 development fee (the “Base Development Fee”), reimbursement of \$9,500,000 of deposits under the State of Minnesota’s Community Solar Garden Program (“CSG Deposit Fees”), and reimbursement of \$12,332,300 in interconnection costs (the “Interconnection Costs”) previously paid for by the Debtors (collectively, the “Purchase Price,” and the transactions contemplated by the PSA, collectively, the “Transactions”).<sup>14</sup>

10. Also under the Stalking Horse Agreement, each project must achieve what is known as “notice to proceed” or “NTP” as an outside demarcation of the Closing Date.<sup>15</sup> With respect to the Transactions, the outside NTP Deadline (as defined in the Stalking Horse Agreement)<sup>16</sup> can be only be reached once a project has satisfied all conditions precedent (e.g. permitting, interconnection, etc.) and is ready for the Stalking Horse Buyer to advance through to construction. These dates exist in the contract in order to ensure projects can be fully constructed within the constraints of meeting certain key milestones in existing land use permits and utility interconnection agreements as well as accounting for a seasonal construction cycle in the

---

<sup>13</sup> Purchase price may be increased if SunEdison is able to extend the lease term of underlying site leases (the “Residual Adder”) or reduced if capacity is less, or interconnection cost is different, than expected, security for land use permits changes, or if certain closings are delayed.

<sup>14</sup> See Stalking Horse Agreement, Schedule 2.2.

<sup>15</sup> As set forth in the First Day Declaration, the Debtors’ businesses generate cash inflows primarily from the sale of renewable energy projects that have reached the “NTP” or the “COD” stage. NTP is reached once a project has satisfied the requirements (e.g., permitting, licensing, etc.) to begin construction. COD is reached once a project is ready to supply power to the grid.

<sup>16</sup> Indeed, the terms NTP Deadline and Closing Deadline are used interchangeably in the Stalking Horse Agreement.

Minnesota market. Meeting the NTP Deadline is also crucial to the Transactions because 75% of the consideration is paid at the closing of each sale which occurs on a project-by-project basis when each project achieves reaches the NTP Deadline. Accordingly, project cash flows are front-end weighted and missing the October 1, 2016 set of Closing Dates in the deal could put at risk any significant cash flows from the Minnesota Projects in 2016. In other words, the sooner a project meets the NTP Deadline, the more valuable the project.

11. In addition, if the Minnesota Projects do not achieve the NTP Deadline on schedule, then the COD deadlines in the second quarter of 2017, which are also fundamental to the economics of the deal as 25% of the sale's consideration comes from the Stalking Horse Buyer on COD, run the risk of not being achieved. This is because normal construction lead times are 1-2 months long and onsite construction requires 2-3 months to complete, and with the impending Minnesota winter, failure to break ground before October would potentially jeopardize the construction schedule and put the economics of the entire deal at risk.<sup>17</sup> The realities of winter construction in Minnesota limit the amount of site work that can be accomplished after November. The result is: extended construction timelines; increased costs; and inability to complete certain tasks (*e.g.*, underground work) during that time span. In short, the Debtors have a limited window to maximize the full value of the Minnesota Projects and would suffer irreparable harm if the Bidding Procedures are not approved in the near term sufficient to allow the sale to proceed.

12. As part of the Transactions contemplated by the Stalking Horse Agreement, certain Project Assets will be transferred to the Project Companies from Debtors Sun

---

<sup>17</sup> The Debtors submit that a buyer would not agree to any purchase of the Minnesota Projects if such buyer did not feel comfortable that both the NTP Deadlines and the COD Deadlines could be met.

Edison LLC and SunE Minnesota Holdings LLC (the former being an Initial Chapter 11 Case Debtor and the latter being an August 10 Case Debtor). Specifically, SunEdison LLC will be transferring its interests in two Project Companies to the Seller and assigning conditional and interim use permits to associated Project Companies. SunE Minnesota Holdings LLC will transfer its interest under a permit and certain interconnection agreements to associated Project Companies.

13. The Seller, SunE MN Development, LLC, owns all the Equity Interests contemplated to be transferred under the Stalking Horse Agreement, but SunE Minnesota Holdings, LLC and SunE MN Development Holdings, LLC each transferred assets to the Project Companies prior to the August 10, 2016 Petition Date. Accordingly, the Stalking Horse Buyer would not execute the Stalking Horse Agreement unless each of August 10 Case Debtors commenced a proceeding in the Chapter 11 Cases and provided releases to provide finality to the sale of the Equity Interests. Pursuant to the order entered at Docket No. 66, the Chapter 11 Cases are being jointly administered under Case No. 16-10992.

**D. The Debtors' Marketing and Sales Efforts**

14. SunEdison began an extensive marketing process for the sale of the Equity Interests in October 2015. At that time, SunEdison received twelve bids, from which it selected six bidders, including the Stalking Horse Buyer, to participate in further discussions. SunEdison determined that the Stalking Horse Buyer's bid was the most attractive because, among other reasons, it offered the highest purchase price and provided substantially greater certainty with respect to financing, execution, and consummation of the proposed transactions, due to its

backing by Edison International,<sup>18</sup> a publicly-traded utility company with a market capitalization of \$25 billion.

15. After additional negotiations, in January 2016 the Seller entered into a letter of intent with the Stalking Horse Buyer, and the Stalking Horse Buyer began conducting due diligence. However, negotiations stalled as SunEdison experienced financial distress and approached Chapter 11.

16. After the Debtors filed the Initial Chapter 11 Cases, in May 2016, the Seller restarted negotiations with the Stalking Horse Buyer regarding the Equity Interests whose offer had increased post-petition. While discussing the terms of a proposed transaction with the Stalking Horse Buyer, Seller received two additional bids for the Equity Interests. The Stalking Horse Buyer's revised bid was higher than the other two post-petition bids and remained the most attractive offer for the Equity Interests.

17. On June 9, 2016, the SunEdison LLC and the August 10 Case Debtors entered into a letter of intent with the Stalking Horse Buyer agreeing, among other things, that the Seller would negotiate in good faith exclusively with the Stalking Horse Buyer for a period of 45 day.

18. As a result of the marketing and sales process that has transpired, and the extensive arm's-length negotiations among the parties, the Seller believes that the sale of the Equity Interests to the Stalking Horse Buyer or to any other Successful Bidder at the Auction (the "Successful Bidder") will maximize the value of the Seller's estate for the benefit of all its creditors, its stakeholders, and other parties in interest.

---

<sup>18</sup> Edison International is not affiliated with SunEdison, despite its similar name.

**E. The Ecoplexus Purchase and Sale Agreement**

19. In connection with the Stalking Horse Agreement, the Debtors seek approval of that certain Settlement Agreement by and between Ecoplexus and Sun Edison LLC, dated August 10, 2016 (the “Ecoplexus Settlement Agreement”), attached hereto as Exhibit E. The Ecoplexus Settlement Agreement resolves certain claims related to a Purchase and Sale Agreement, dated September 30, 2015, by and between Ecoplexus, as seller, and Sun Edison LLC, as buyer (the “Ecoplexus PSA”). Sun Edison LLC first acquired certain of the Equity Interests, among other project companies, from Ecoplexus pursuant to the Ecoplexus PSA. Additionally, Sun Edison LLC acquired the rights to the refunds of any deposits made by Ecoplexus to Xcel Energy, Inc. (“Xcel”), an interconnection utility, on behalf of any of the acquired project companies under the Ecoplexus PSA.

20. In the months since the Ecoplexus PSA was executed, the Debtors have determined that certain of the projects acquired thereunder are no longer viable. The Ecoplexus PSA, subject to certain conditions, allows Sun Edison LLC to “reject”<sup>19</sup> such non-viable projects and retain any deposits held by Xcel on behalf of such projects. At Ecoplexus’ request, Sun Edison LLC must assign back its rights in any rejected project. Additionally, in the event of a breach of certain of Sun Edison LLC’s obligations thereunder, Ecoplexus may have the right to repurchase the Ecoplexus Projects from the Seller.

21. Since the Stalking Horse Agreement contemplates the sale of projects acquired under the Ecoplexus PSA (the “Ecoplexus Projects”), the Debtors must finally seek to

---

<sup>19</sup> The rejection of a project is not the same as the rejection of a contract under the Bankruptcy Code. Rather, if SunEdison had deemed the project non-viable (typically because of interconnection or permitting feasibility), then SunEdison would give Ecoplexus notice that the project would not be accepted.



resolve their claims with Ecoplexus thereunder, designating which projects will be accepted or rejected, and allocating the refunds of any interconnection deposits held by Xcel.

22. To fully and finally resolve all claims under the Ecoplexus PSA, the Debtors and Ecoplexus entered into the Ecoplexus Settlement Agreement, which designates certain projects as accepted,<sup>20</sup> others as rejected, and includes the payment of up to \$0.12 per DC Watt of capacity of Accepted Projects (as defined in the Ecoplexus Settlement Agreement, and which are estimated to be approximately \$5.15 million in aggregate) to Ecoplexus from the proceeds of the Stalking Horse Agreement as each Accepted Project reaches NTP.<sup>21</sup> Since these terms resolve all outstanding claims under the Ecoplexus PSA, the Ecoplexus Settlement Agreement contains a mutual release of all claims arising out of, or related thereto.

#### **RELIEF REQUESTED**

23. By this Sale 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 Transactions; (iii) the scheduling of the Sale Hearing to approve the Transactions; and (iv) related relief.

24. Second, at the Sale Hearing, the Debtors will seek entry of the Sale Order that will approve entry into the (i) Stalking Horse Agreement and (ii) Ecoplexus Settlement Agreement (as defined below).

---

<sup>20</sup> All “accepted” projects under the Ecoplexus Settlement Agreement are contemplated to be transferred to the Stalking Horse Buyer.

<sup>21</sup> The Ecoplexus Settlement Agreement also provides Ecoplexus a narrow repurchase right, in the event that Ecoplexus is not paid the consideration that it has been promised, subject to other conditions.

25. 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**

26. The Debtors have a sound business justification for consummating the Transactions. 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 have secured, after extensive negotiations, a compelling offer from the Stalking Horse Buyer for the Equity Interests.

27. Specifically, the Purchase Price in the Stalking Horse Agreement is for \$79,804,159, subject to certain adjustments as set forth in more detail in the Stalking Horse Agreement.

28. 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. In the meantime, the Stalking Horse Agreement will provide a floor for other competitive 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 (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.

29. In exchange for the stalking horse arrangement, the Debtors seek to provide the Stalking Horse Buyer with the Bid Protections (as defined below). The Debtors, after consultation with their 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 Dobrzynski Declaration, but for these Bid Protections, the Debtors do not believe the Stalking Horse Buyer would have entered into the Stalking Horse Agreement, which required the Stalking Horse Buyer to incur significant upfront costs, absent deal certainty.

30. The PSA was entered into on August 10, 2016 by the Seller, immediately prior to the commencement of the August 10 Case and the filing of the Sale Motion.

**B. The Stalking Horse Agreement**

31. After extensive arm's-length negotiations, the Seller and the Stalking Horse Buyer executed the Stalking Horse Agreement, just prior to the Seller's bankruptcy filing. To effectuate the sale of the Equity Interests pursuant to Bankruptcy Code section 363, the August 10 Case Debtors filed chapter 11 petitions contemporaneously with the filing of this Motion.

32. 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.

33. Critical to the Stalking Horse Buyer's agreement to enter the Stalking Horse Agreement, the Seller has agreed to pay the Stalking Horse Buyer, in accordance with Section 8.3.1 of the PSA: (a) documented actual, reasonable out-of-pocket costs and expenses (including fees and expenses of counsel) incurred by Buyer or its Affiliates (other than Seller) in connection with the negotiation, documentation and implementation of the PSA and the transactions and all proceedings incident thereto and appeals therefrom, up to a maximum amount of \$1,250,000 (the "Expense Reimbursement") and (b) a break-up fee of up to 2.6% of the Purchase Price or \$2,100,000, subject to reduction to \$1,525,000 in the event that 6 projects

on properties where interim land use permits have been issued, but conditional land use permits<sup>22</sup> have not been issued (such projects, the “IUP Projects”), are no longer subject to exclusivity (the “Breakup Fee,” and together with the Expense Reimbursement, the “Bid Protections”). Interim use permits are, for various reasons,<sup>23</sup> inferior to conditional use permits and may be subject to discretionary revocation by the issuing municipality. For that reason, IUP Projects are treated differently under the PSA, allowing the Sellers to continue to market the IUP Projects beginning on 30 days after the Agreement Date.

34. The following chart sets forth the conditions that may trigger payment of the Bid Protections:

Triggering Event	Bid Protections Owed
PSA terminated for Alternate Sale Transaction <sup>24</sup>	Expense Reimbursement
	Breakup Fee (earned only upon consummation of such Alternative Transaction) and paid out of proceeds of Alternative Sale Transaction

<sup>22</sup> Conditional land use permits are defined under the terms of the Stalking Horse Agreement as permits having the following qualities: (i) the permit’s term lasts as long as the lease of the applicable Project Site, and shall not be subject to discretionary revocation or termination, (ii) in the name of the Project Company or runs with the land (iii) conditions not inconsistent with customary industry standards, which could result in a material adverse effect, (iv) sufficient to allow for construction and operation of the project and reasonable design changes, (v) may not include terms or conditions imposing monetary or other liability on the applicable Project Company. Stalking Horse Agreement § 3.3.17. These conditions are described in more detail in the Stalking Horse Agreement.

<sup>23</sup> As discussed above, an IUP Project holds only interim land use permits, which do not possess any of the five features of a conditional land use permit described in footnote 22 above. In short, interim land use permits bear a greater risk of losing their permit status than a project possessing a conditional land use permit.

<sup>24</sup> An “Alternate Sale Transaction” is a proposed transaction or series of related proposed transactions involving one or more agreements executed by Seller and/or an Affiliate of Seller, pursuant to which such party has agreed to sell, transfer, lease or otherwise dispose of any portion of the Equity Interests or Project Assets (other than the IUP Projects from and after the date the IUP Projects cease to be subject to exclusivity), to a party or parties other than Buyer or an Affiliate of Buyer. An Alternate Sale Transaction may be effectuated through an asset sale, stock sale, merger, reorganization, or bankruptcy plan of reorganization or liquidation, or other similar transaction, including a stand-alone plan of reorganization or refinancing. However, a sale of the equity or substantially all of the assets of any Affiliate of Seller which does not result in Seller directly or indirectly selling the Project Companies to a third party is not an “Alternate Sale Transaction”.

PSA terminated for Alternate Non-Sale Event <sup>25</sup>	Expense Reimbursement
After Closings have occurred under the PSA and Seller breaches its closing obligation with respect to any of the remaining Projects without valid excuse	Pro Rata Expense Reimbursement

35. 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 Seller's ability to offer the Bid Protections enables it to ensure the sale of the Equity Interests to the Stalking Horse Buyer at a price it believes to be fair while, at the same time, providing it with the potential of even greater benefit to its estate.

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

### **C. Summary of Certain Terms**

37. A summary of the principal terms of the Stalking Horse Agreement is as follows:<sup>26</sup>

---

<sup>25</sup> "Alternate Non-Sale Event" means occurrence of any of the following events: (a) the Bankruptcy Sale Order has not been entered by September 30, 2016, subject to extension caused by the Bankruptcy Court's unavailability timely to hear the Bidding Procedures Motion and/or the Sale Motion, (b) a breach by Seller of its no-shop covenants, or (c) a breach by Seller of its Closing obligation without valid excuse.

<sup>26</sup> The following summary is qualified in its entirety by reference to the provisions of the Stalking Horse Agreement. In the event of any inconsistencies between the provisions of the PSA and the terms herein, the  
*(cont'd)*

- **Purchase Price and Sale of Equity Interests.** In full consideration for the sale and transfer by Seller of the Equity Interests, and provided that all of the conditions precedent to the obligations of Buyer and Seller set forth in Article 3 have been satisfied or waived by the relevant Parties at or prior to each Closing as described in Article 3, Buyer will pay the Purchase Price. The Purchase Price is comprised of several components, paid on a project-by-project basis at each Closing. Under the PSA, the Sellers’ commercial and industrial team will continue developing the Project Companies to ensure that the Closings can be achieved.

<b><u>Name of Payment</u></b>	<b><u>Estimated Value of Aggregate Payment</u></b>	<b><u>Date Payable</u></b>
Estimated Interconnection Costs	\$12,332,300	Closing <sup>27</sup>
CSG Deposit Fees and Interconnection Deposit Fees that are fully reimbursable to Project Company	\$9,500,000	Closing
Base Development Fee, subject to adjustment in <u>Section 2.3.1</u>	\$57,972,159	75% payable at Closing 25% payable at COD
Residual Adder, if applicable	\$30,000 per MWac increase	If earned at Closing: 75% payable at Closing 25% payable at COD  If earned after Closing but before COD: 100% payable at COD  If earned after COD, 100% payable within 15 business days of lease amendment execution

See PSA, § 3.2.

- **Seller.** SunE MN Development, LLC. See Stalking Horse Agreement recitals. There are no non-debtor sellers.
- **Equity Interests.** The Equity Interests consist of 100% of the equity in the Project

*(cont’d from previous page)*

terms of the PSA shall govern. Capitalized terms used in this Section C of the Sale Motion and not otherwise defined shall have the meanings ascribed thereto in the PSA.

<sup>27</sup> Closing occurs on a project-by-project basis with payment amounts based upon Schedule 2.2 to the Stalking Horse Agreement.

Companies listed in Schedule 2.2 to the Stalking Horse Agreement.

- **Releases:** Seller provides full releases of all Claims with respect to the Transactions, each of the Asset Holding Companies (each as defined in the PSA), as well as SunE Origination1, LLC, SunE Origination Holdings, LLC, Sun Edison LLC, and SunEdison, Inc.

**D. Extraordinary Provisions Under the Sale Guidelines**

38. 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:<sup>28</sup>

- **Purchase Price Adjustments:** The Purchase Price is subject to (1) upward adjustment upon the amendment of a site lease for a Project to provide for at least a total thirty year term from the date of commencement of the term, and provided that the conditional use permit for such project has a term at least as long as the extension, (2) upward or downward adjustment if the interconnection cost is different than expected, (3) downward adjustment if capacity of a purchased project is less than expected, if a Closing is delayed, or if additional security for land use permits is required.
- **Deadlines that Effectively Limit Notice:** As is set forth in the PSA, the Transactions may be terminated if (i) the Bidding Procedures Order has not been entered by August 25, 2016, or (ii) the Bankruptcy Sale Order has not been entered by September 30, 2016. See PSA, § 8.1.5. Moreover, as is common for auctions in chapter 11 cases, the identity of the Successful Bidder will not be known until shortly before the Sale Hearing; in this case, two days before the Sale Hearing.
- **Good Faith Deposit:** The Buyer and all Qualified Bidders (as defined below) are required to submit a good faith deposit in the amount of 10% of the Purchase Price. See proposed Bidding Procedures.
- **Interim Arrangements with Proposed Buyer:** The Stalking Horse Agreement required the Seller and certain of its affiliates to file voluntary petitions under chapter 11 of the Bankruptcy Code to ensure that the Seller and the Asset

---

<sup>28</sup> 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.

Holding Companies become Debtors to obtain the relief under the Sale Order.<sup>29</sup> The Seller is required to comply with certain customary interim operating covenants under the terms of the Stalking Horse Agreement.

- **Use of Proceeds**: For federal, state and local income tax purposes, the Parties agree to treat the sale of the Equity Interests in each Project Company as a sale to Buyer of all of the assets of such Project Company and an assumption by Buyer of the liabilities of such Project Company.
- **Requested Findings as to Successor Liability**: The Debtors seek a finding that the Successful Bidder is not and shall not be deemed a successor to the Seller as a result of the consummation of the Transactions. See Sale Order ¶ P.
- **Requested Findings as to Fraudulent Conveyance**: The proposed Sale Order requests findings that the Stalking Horse Agreement was not entered into, and neither the Seller, the Releasing Parties, nor the Buyer proposes to consummate the Transactions, for the purpose of hindering, delaying, or defrauding the present or future creditors of the Seller, the Debtors and the Releasing Parties, either under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing. Each of the Seller and Releasing Parties is receiving value that is reasonably equivalent for the transfers made to the Buyer. See Sale Order ¶ M.
- **Bid Protections**: As noted, the Debtors seek approval of the Stalking Horse Agreement and the Bid Protections therein, including the Breakup Fee and the Expense Reimbursement. The Stalking Horse Buyer is entitled to be paid the Expense Reimbursement within forty-five days of the PSA's termination for an Alternate Sale Transaction, whether or not such transaction is consummated or the Bidding Procedures Order is entered. PSA, § 8.3. The Stalking Horse Buyer is entitled to be paid the Breakup Fee if (i) an Alternate Sale Transaction is consummated, and (ii) the Bidding Procedures Order has been entered. If such Alternate Sale Transaction does not require Bankruptcy Court approval,<sup>30</sup> the Breakup Fee is payable even if the Bidding Procedures Order has not been entered. PSA, § 8.3. Additionally, in the event that the PSA is terminated for an Alternate Non-Sale Event, the Stalking Horse Buyer may be entitled to a pro-rata Expense Reimbursement, calculated in a formula set forth in Section 8.3.3 of the PSA. The Seller's ability to pay the Expense Reimbursement and/or Breakup Fee is subject to the entry by the Bankruptcy Court of an order authorizing such payment. PSA, §§ 8.3.1, 8.3.2.

---

<sup>29</sup> In order to comply with this provision, pursuant to the DIP budget the Debtors used proceeds of their debtor-in-possession financing to pay off an \$11.2 million loan secured by the Equity Interests.

<sup>30</sup> Unless the Seller's chapter 11 case is dismissed, the Debtors believe that any Alternative Transaction would likely be subject to Bankruptcy Court approval.



- **No-Shop Provisions**: The Stalking Horse Agreement only allows the Seller to market the Equity Interests (i) as provided in the Bidding Procedures, or (ii) in connection with a Platform Sale or a sale of the Feeley Project. See PSA, §§ 6.1.4, 6.2.3.
- **Relief from Bankruptcy Rule 6004(h)**: The Debtors seek relief from the fourteen day stay imposed by Bankruptcy Rule 6004(h).

#### E. The Bidding Procedures<sup>31</sup>

39. The Debtors seek approval of the Bidding Procedures. The Bidding Procedures are designed to maximize the value of the Equity Interests for the Debtors' estates, while ensuring an orderly sale process consistent with a necessary timeline to effect the sale of the Equity Interests, to meet cliff dates under important contracts, and ability of the Debtors to solicit additional offers. 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"). Given the extensive marketing of the Equity Interests to date, 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.

40. 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

---

<sup>31</sup> 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.

the Bidding Procedures a written offer, so as to be received by no later than September 16, 2016 at 4:00 p .m. (EST) (the “Bid Deadline”).

- **Auction**: If the Seller receives one or more Qualified Bids, in addition to the Stalking Horse Agreement, the Seller will conduct an auction of the Equity Interests (the “Auction”). If the Auction is held, it shall take place on September 20, 2016 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 Seller shall promptly submit the Stalking Horse Bid to the Bankruptcy Court for approval at the Sale Hearing.
- **Sale Hearing**: The hearing to approve the sale of the Equity Interests to the Successful Bidder is scheduled to take place on September 22, 2016 at 10:00 a.m. (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.

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

- **Access to Diligence Materials**: Any party that demonstrates, in the Debtors’ judgment, that such party has the ability (including, without limitation from a financial and, if applicable, regulatory approval perspective) to close promptly on the Transactions following the Bankruptcy Court’s approval of such party’s or parties’ Qualified Bid(s) may be granted access to diligence materials upon execution of a confidentiality agreement, in form and substance satisfactory to the Debtors.
- **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 (as defined in the Bidding Procedures) so as to be received by the Bid Deadline that:
  - identifies all or a portion of the Equity Interests to be purchased and the contracts and leases to be assumed and assigned, as well as the consideration, cash or otherwise, to be provided in exchange;
  - is accompanied by a good faith deposit equal to 10% of the purchase price offered by such bid;
  - offers a purchase price equal to or greater than the sum of (a) the Purchase Price (as defined in the Stalking Horse Agreement), (b) the Breakup Fee (as defined below) and the Expense Reimbursement (as defined below), and (c) \$250,000; provided, however, that a Qualified Bid may be for a lesser amount if it is for only a portion of the assets, so long as such Qualified Bid together with other Qualified Bids for

non-overlapping portions of the Equity Interests offers a purchase price equal to or greater than the sum set forth in this paragraph;

- is irrevocable until (a) the conclusion of the Auction to the extent such Qualified Bidder is not the Successful Bidder or the Backup Bidder, or (b) the closing of the Transactions to the extent the bidder is the Successful Bidder or the Backup Bidder, and in the event the relevant Qualified Bidder is chosen as the Successful Bidder (as defined below) or Back-Up Bidder (as defined below), until the Seller and the Successful Bidder consummate the Transactions, provided that the Backup Bidder shall not be required to keep its Backup Bid open following the earlier of (i) 60 days following the date of the Sale Hearing or (ii) November 29, 2016;
- is not conditioned on the obtaining or the sufficiency of financing or any internal or credit committee approval, syndication requirements, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, all of such shall be specifically set forth in the Qualified Bid;
- sets forth each regulatory and third-party approval required for the Qualified Bidder to consummate the transaction and provides evidence satisfactory to the Seller that each such approval can be obtained in a time period satisfactory to the Debtors;
- includes evidence satisfactory to the Debtors of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the Purchase Agreement (as defined below), financing agreements and any other ancillary documents or agreements;
- includes a duly authorized and executed PSA (a "Purchase Agreement") on substantially the terms of, or on terms that are more favorable to the Seller than those set forth in the Stalking Horse Agreement, including any exhibits and schedules, all marked to show the required amendments and modifications to the Stalking Horse Agreement and the proposed Sale Order, which Purchase Agreement shall specify the amount of cash or other consideration offered by the Qualified Bidder for the Equity Interests;
- includes an acknowledgement and representation that the bidder has had an opportunity to conduct any and all required due diligence regarding the Equity Interests prior to making its offer;
- does not request any expense reimbursement, break-up fee, "topping," termination, contribution, or other similar fee or payment;

- contains sufficient and adequate information to demonstrate, to the satisfaction of the Seller, that the relevant Qualified Bidder has the financial wherewithal and ability to consummate the Transactions;
  - fully discloses the identity of each entity (and each entity's shareholders and ultimate controlling entities) that will be bidding for or purchasing the Equity Interests or otherwise participating in connection with such bid, and the complete terms of any such participation, along with sufficient evidence that the relevant Qualified Bidder is legally empowered to complete the transactions on the terms contemplated by the parties;
  - states that the relevant Qualified Bidder consents to the core jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Seller and its assets, and has waived any right to a jury trial in connection with any disputes relating to the Seller, the Chapter 11 Cases, the Bidding Procedures, the Stalking Horse Agreement, the Auction, or the construction and enforcement of the Stalking Horse Agreement or any Purchase Agreement related thereto;
  - confirms that the relevant Qualified Bidder has not engaged in any collusion with respect to the bidding, the Auction or the sale; and
  - contains such other information as the Seller deems appropriate.
- **Auction and Auction Procedures**: At the Auction, Qualified Bidders may each present Subsequent Bids (as defined in the Bidding Procedures); provided, however, such Subsequent Bids must provide a net value to the estate of at least an additional \$200,000 above the prior bid. The Auction shall continue until the Debtors determine, after consultation with the Committee and the DIP Lenders, that a Qualified Bid or a Subsequent Bid, or a set of Qualified Bids or Subsequent Bids, as applicable, is the highest or otherwise best offer from among the Qualified Bids (the "Successful Bid," and the party or parties that submitted such Successful Bid, the "Successful Bidder"), which shall be subject to Bankruptcy Court approval. The Debtors shall have the ability to decide, at any point (upon consultation with the Committee and the DIP Lenders), that bids of more than one Qualified Bidder may be aggregated, joined, disjoined, or otherwise separated. In selecting the Successful Bid, the Debtors may consider all factors, including the amount of the purchase price, the form and total amount of consideration being offered, the likelihood of each Qualified Bidder's 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. The party with the Qualified Bid or Subsequent Bid that is next highest or otherwise best to the Successful Bid at the Auction, as determined by the Debtors, shall be required to serve as a Backup Bidder and keep such bid open and irrevocable until the closing of the Transactions with the Successful Bidder or the

earlier of (i) 60 days following the date of the Sale Hearing or (ii) November 29, 2016. Should the Successful Bidder breach or fail to perform in accordance with the Purchase Agreement, the Debtors are authorized to deem the Backup Bidder to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate a sale with a Backup Bidder as contemplated by Backup Bidder's Purchase Agreement without further order of the Bankruptcy Court.

- **Bid Protections**: In the event that the Seller accepts 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 Breakup Fee, which is up to \$2,100,000, and up to \$1,250,000 in documented actual, reasonable out-of-pocket costs and expenses (including fees and expenses of counsel) incurred by Buyer or its Affiliates (other than Seller) in connection with the negotiation, documentation and implementation of the Stalking Horse Agreement and the transactions and all proceedings incident thereto and appeals therefrom, subject to applicable provisions in the PSA.
- **Reservation of Rights**: Notwithstanding anything to the contrary in the Stalking Horse Agreement, any Bidder Agreement (as modified by any modification, Overbid, or subsequent bid at the Auction), or 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 Equity Interests, (b) announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, (c) determine which bidders are Qualified Bidders, (d) determine which bids qualify as Qualified Bids, (e) determine whether to enter into or accept a Qualified Bid (other than the Stalking Horse Agreement), (f) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal, (g) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Seller, (h) waive terms and conditions set forth in the Bidding Procedures with respect to all potential bidders, and (i) extend the deadlines set forth in the proposed Bidding Procedures; provided, however, that (i) nothing in the Bidding Procedures shall, or shall be construed to, in any way amend, impair, alter or otherwise modify the terms of the Stalking Horse Agreement (as may be modified by any Subsequent Bid by the Stalking Horse Buyer) or the Stalking Horse Buyer's rights thereunder; and (ii) without the prior written consent of the Stalking Horse Buyer, the Seller shall not modify, or waive compliance with certain portions of the Bidding Procedures.

## **F. The Purchase Price**

42. Under the Stalking Horse Agreement, the Seller has agreed to sell the Equity Interests for \$79,804,159 subject to certain purchase price adjustments and closing

conditions as set forth in more detail in the Stalking Horse Agreement. As set forth herein, the Seller 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.

43. To the extent the Successful Bid includes non-cash or deferred payments, the Seller will discuss at the Sale Hearing its assessment of the credit worthiness of the Successful Bidder and its competitors, and the ability of the Successful Bidder to realize the projected earnings upon which any future payments or other forms of consideration to the estate are to be based. The Seller will also disclose at the Sale Hearing any material purchase price adjustment provisions included in the Successful Bid.

44. 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 Transactions are in the best interests of the Debtors, their creditors, their estates, their stakeholders, and other parties in interest.

#### **APPLICABLE AUTHORITY**

45. Ample authority exists for approval of the Bidding Procedures, the Bid Protections and the Transactions. 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 Transactions Is Warranted Under Bankruptcy Code Section 363(b) Because A Sound Business Reason Exists For The Transactions.**

46. A debtor should be authorized to sell assets outside of the ordinary course of business pursuant to section 363 of the Bankruptcy Code and prior to obtaining a confirmed plan of reorganization if it demonstrates a sound business purpose for doing so. See, e.g., Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 143-45 (2d Cir. 1992) (holding that a judge reviewing a section 363(b) application must find from the evidence presented a good business reason to grant such application); see, e.g., Licensing by Paolo, Inc. v. Sinatra (In re Gucci), 126 F.3d 380, 387 (2d Cir. 1997); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070-71 (2d Cir. 1983); In Bos. Generating, LLC, 440 B.R. 302, 322 (Bankr. S.D.N.Y. 2010); In re Glob. Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); In re Ionosphere Clubs, Inc., 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989). As discussed above, the Seller and certain of its affiliates have filed voluntary petitions under chapter 11 of the Bankruptcy Code in order to obtain the benefits of the proposed Sale Order.

47. The Debtors have articulated a clear business justification for entering into the Transactions. 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 Buyer 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 Dobrzynski Declaration, the Debtors have engaged in extensive sale and marketing efforts since October 2015. 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 Transactions. Thus, the Debtors entered into the Stalking Horse Agreement after a long, fulsome, and deliberate effort to market the Equity Interests and, while hopeful that other bidders materialize that provide consideration in excess of the Stalking Horse Bid, are confident that the sale price contemplated thereby is fair and reasonable.

50. Moreover, both the Debtors and the Stalking Horse Buyer were represented by sophisticated 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 Sale Motion.



**B. The Proposed Transactions 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). See also, In re GSC, Inc., 453 B.R. 132, 183 (Bankr. S.D.N.Y. 2011) (“[c]onsent pursuant to section 363(f)(2) may be satisfied where an entity has not objected to a sale”); In re Enron Corp., 2004 WL 5361245, at \*2 (Bankr. S.D.N.Y. 2004) (“[t]hose parties who did not object, or who withdrew their objections, to the Motion concerning the sale of the ECTRIC Claim are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.”); FutureSource LLC v. Reuters Ltd., 312 F.3d 281, 285 (7th Cir. 2002).

52. The Debtors 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. The Debtors further propose that any party with an interest in the Equity Interests pursuant to this Sale Motion shall have a corresponding security interest in the proceeds of such sale. As such, the requirements of section 363(f) of the Bankruptcy Code would be satisfied for the sale of the Equity Interests free and clear of all

Liens, Claims, Encumbrances and Interests. Based on the Seller's lien searches, the Seller believes that the DIP Secured Parties hold the only liens on the Equity Interests. Additionally, the Debtors note that the Project Company's liabilities will not be extinguished under section 363(f) of the Bankruptcy Code, because only the Equity Interests are being sold pursuant to that section, not the assets of the Project Companies.

53. The Debtors also submit that it is appropriate to sell the Equity Interests free and clear of successor liability relating to the Debtors' businesses. Such limitations on successor liability ensure that the Successful Bidder is protected from any claims or lawsuits premised on the theory that the Successful Bidder is a successor in interest to one or more of the Debtors' estates, the Company, or any subsidiaries of the Company. If such relief is not granted, the purpose of an order purporting to authorize the transfer of assets free and clear of Encumbrances would be frustrated by the potential for claimants to thereafter use the transfer as a basis to assert claims against a Buyer arising from a seller's pre-sale conduct. Moreover, without such assurances, the Debtors would run the risk that potential bidders may not enter the Auction or, if they did, would do so with reduced bid amounts.

54. 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 General Motors Corp., 407 B.R. at 505-06 (holding that "the law in this Circuit and District is clear; the Court will permit GM's assets to pass to the Buyer free and clear of successor liability claims, and in that connection, will issue the requested findings and associated injunction"); In re Chrysler LLC, 405 B.R. 84, 111 (Bankr. S.D.N.Y. 2009) ("[I]n 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).

55. Moreover, this Court’s authority under Bankruptcy Code section 363 is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a); see 2 Collier on Bankr. ¶ 105.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2016); see also Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.), 25 F.3d 1132, 1136 (2d Cir. 1994)

(“[B]ankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process.”); Croton River Club, Inc. v. Half Moon Bay Homeowners Ass’n (In re Croton River Club, Inc.), 52 F.3d 41, 45 (2d Cir. 1995) (holding that bankruptcy courts have broad equity power to manage the affairs of debtors); Chinichian v. Campolongo (In re Chinichian), 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of claims] is within the court’s equitable powers when necessary to carry out the provisions of Title 11.”).

56. For these reasons, the Successful Bidder should not be liable under any theory of successor liability relating to the Debtors' businesses, but should hold the Equity Interests free and clear of Encumbrances and successor liability.

**C. A Successful Bidder 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 Buyer 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 Buyer,' . . . 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 Buyer act in good faith . . . speaks to the integrity of [Buyer'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 Buyer's good faith status involves "fraud, collusion between the Buyer 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 Sale 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 separate counsel. Accordingly, the Debtors

request that the Sale Order include a provision that the Successful Bidder for the Equity Interests, is a “good faith” Buyer within the meaning of section 363(m) of the Bankruptcy Code. The Debtors believe that providing the Successful Bidder with such protection will ensure that the maximum price will be received by the Debtors for the Equity Interests and that the closing of the same will occur promptly.

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

59. 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.

60. The Bidding Procedures proposed herein are designed to maximize the value received for the Seller’s assets by facilitating a competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids. The Bidding Procedures provide potential bidders with sufficient notice and an opportunity to acquire information necessary to submit a timely and informed bid. Thus, the Debtors and all parties in interest can be assured that the consideration for the Equity Interests will be fair and reasonable, particularly since parties will engage with the Seller to complete due diligence during the period between the entrance of the Bidding Procedures Order and the Auction. At the same time, the Bidding Procedures provide the Debtors with the opportunity to consider all competing offers and to select, in their discretion, and after consultation with the Committee and the lenders under the postpetition debtor-in-possession facility, the highest and best offer for the Equity Interests.

61. 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).

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

**E. The Bid Protections Should Be Authorized.**

63. 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 reimbursement, 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).

64. 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.

65. 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).

66. Finally, as set forth in more detail in the Dobrzynski Declaration, the aggregate amount of the Bid Protections, which is up to 2.6% of the Purchase Price, 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. Pro rata payment of the Expense Reimbursement may be triggered in the event that the Seller breaches its Closing obligation with respect to any of the Projects without valid excuse, even if an Alternative Transaction has not occurred.

67. Further, the Bid Protections will in no event exceed 5% of the Purchase Price, which is a percentage within the range of those approved by courts in this District. 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., Order (A) Approving (i) Bidding Procedures, (ii) the Time, Date, Place and Form of Notice for the Auction and Sale Hearing, and (iii) Break-Up Fee and (B) Establishing the Date and Time for a Sale Hearing with Respect to the Debtor’s Real Property and Related Assets, at 4, In re D.A.B. Grp., LLC, No. 14-12057 (SCC) (Bankr. S.D.N.Y. Dec. 18, 2014), ECF No. 79 (approving a break-up

fee of approximately 3% of the purchase price); Order (A) Approving Bidding Procedures for Sale of Substantially all of Debtor's Assets, (B) Approving a Break-Up Fee, (C) Approving the Form and Manner of Notice of the Proposed Sale and the Hearing Thereon, (D) Scheduling an Auction and Sale Hearing and (E) Authorizing the Debtor to Sell its Remaining Assets Privately and Setting Special Procedure for the Sale Thereof, at 4, 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); In re Hostess Brands, Inc., No. 12-22052 (RDD) (Bankr. S.D.N.Y. Jan. 28, 2013) (approving a break-up fee of approximately 3% of the purchase price); Second Revised Order (A) Authorizing the Debtors' Entry into the Stalking Horse PSA, (B) Authorizing and Approving the Bidding Procedures and Break-Up Fee, (C) Approving the Notice Procedures, and (D) Setting a Date for the Sale Hearing, at 6, In re HMX Acquisition Corp., No. 12-14300 (ALG) (Bankr. S.D.N.Y. Nov. 29, 2012), ECF No. 185 (approving a break-up fee and expense reimbursement of approximately 3.46% of the purchase price).

68. 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.

**F. The PSA Releases and Ecoplexus Settlement Agreement Are Appropriate Under Bankruptcy Rule 9019 and Section 363(b) of the Bankruptcy Code**

69. To resolve issues regarding the Ecoplexus PSA, the Debtors and Ecoplexus entered into the Ecoplexus Settlement Agreement, which designates certain projects as accepted, others as rejected, and includes the payment of up to \$5,148,000 in aggregate consideration to Ecoplexus from the proceeds of the Stalking Horse Agreement. Since these



terms resolve all outstanding claims under the Ecoplexus PSA, the Ecoplexus Settlement Agreement contains a mutual release of all claims arising out of, or related thereto.

70. In determining to enter into the Ecoplexus Settlement Agreement, the Debtors considered several alternatives. First, the Debtors could pay Ecoplexus under the terms of the Ecoplexus PSA, which would require payments of approximately \$15.7 million. Alternatively, the Debtors could have rejected the Ecoplexus PSA, facing the risk that Ecoplexus objects to such rejection with the Bankruptcy Court and ceases its development activities. Such actions would create a risk of delay, which could cause the failure to close on the sale of certain projects to the Stalking Horse Buyer. Since Ecoplexus first obtained the permits from the municipalities that are required to develop the Project Companies, their relationships with such municipalities are invaluable to continuing their development and reaching each Closing. In the event that Ecoplexus ceased its efforts (which would likely occur in a rejection scenario), the Sale Transactions would be placed at risk. Furthermore, the Ecoplexus PSA purportedly grants Ecoplexus a repurchase right in the event the Ecoplexus PSA is breached by SunEdison. Given the uncertainty as to whether this right would be upheld in bankruptcy, the Debtors determined in their business judgment to avoid this potential risk which could destroy value for their estates. Rejection of the Ecoplexus PSA would provide Ecoplexus a direct claim against the Seller, structurally superior to creditors of upstream Debtors.

71. Additionally, as a condition precedent to the Buyer's obligations to Closing, the Seller must provide full releases of all Claims with respect to the Transactions, each of the Asset Holding Companies (as defined in the PSA), as well as SunE Origination<sup>1</sup>, LLC, SunE Origination Holdings, LLC, Sun Edison LLC and Sun Edison, Inc. (such releases, the "PSA Releases"). Seller has agreed to provide these releases to alleviate the Buyer's concern

that potential fraudulent conveyance claims could lead to the Transactions being undone at a later date. Given the Debtors' view that no such fraudulent conveyances have occurred, and that the Transactions represent the best option to maximize value for their estates, such releases are justified.

72. Compromises are “a normal part of the process of reorganization.” Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) (quoting Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106, 130 (1939)). The decision to approve a particular compromise lies within the sound discretion of the bankruptcy court. See Nellis v. Shugrue, 165 B.R. 115, 123 (S.D.N.Y. 1994). A settlement must not “fall below the lowest point in the range of reasonableness.” Vaughn v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Grp.), 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991); see also Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983); In re Spielfogel, 211 B.R. 133, 144 (Bankr. E.D.N.Y. 1997). Discretion may be exercised by the court “in light of the general public policy favoring settlements.” In re Hibbard Brown & Co., Inc., 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998). A proposed compromise and settlement implicates the issue of whether it is “fair and equitable, and in the best interest of the [debtor’s] estate.” In re Best Products, 165 B.R. 35, 50 (Bankr. S.D.N.Y. 1994) (internal citations omitted).

73. The following factors are considered in determining whether a settlement should be approved: (i) the probability of success in litigation, with due consideration for the uncertainty in fact and law; (ii) the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay; (iii) the proportion of creditors who do not object to, or who affirmatively support, the proposed settlement; and (iv) the extent to which the settlement is truly the product of arm’s-length bargaining and not the product of fraud or

collusion. See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc., 390 U.S. at 424; In re Ashford Hotels, Ltd., 226 B.R. 797, 804 (Bankr. S.D.N.Y. 1998); In re Best Prods. Co., 168 B.R. at 50.

74. While a court must “evaluate . . . all . . . factors relevant to a fair and full assessment of the wisdom of the proposed compromise,” Anderson, 390 U.S. at 424-25, a court need not conduct a “mini-trial” of the merits of the claims being settled, W.T. Grant Co., 699 F.2d at 608, or conduct a full independent investigation. In re Drexel Burnham Lambert Group, 134 B.R. at 505. “[T]he bankruptcy judge does not have to decide the numerous questions of law and fact . . . . The court need only canvass the settlement to determine whether it is within the accepted range of reasonableness.” Nellis, 165 B.R. at 123 (internal citations omitted).

75. The court may give weight to the “informed judgments of the . . . debtor-in-possession and their counsel that a compromise is fair and equitable, and consider the competency and experience of counsel who support the compromise.” In re Drexel Burnham Lambert Group, 134 B.R. at 505 (internal citations omitted); see also In re Purofied Down Prods. Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993); accord In re Ashford Hotels Ltd., 226 B.R. at 802 (“Significantly, that test does not contemplate that [the court] substitute [its] judgment for the Trustee’s, but only that [the court] test his choice for reasonableness . . . . If the Trustee chooses one of two reasonable choices, [the court] must approve that choice, even if, all things being equal, [the court] would have selected the other.”).

76. There is no requirement that “the value of the compromise . . . be dollar-for-dollar the equivalent of the claim.” In re Ionosphere Clubs, Inc., 156 B.R. 414, 427 (S.D.N.Y. 1993). While not the settlement at bar, “there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the

potential recovery.” *Id.* at 427-28 (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974)).

77. The Ecoplexus Settlement Agreement and the PSA Releases are crucial components of the Seller’s sale of the Equity Interests. Absent the Ecoplexus Settlement Agreement, the Debtors could be forced to litigate over assets they no longer even own. Both the Ecoplexus Settlement Agreement and the PSA Releases were negotiated on an arms’ length basis, with input of counsel, and the Debtors submit that they represent a reasonable compromise that will fully and finally resolve a potential dispute with Ecoplexus relating to the sale of the Equity Interests and help to alleviate the Buyer’s uncertainty as to potential fraudulent conveyance claims. Therefore, the Ecoplexus Settlement Agreement and PSA Releases should be approved by this Court.

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

78. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “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, 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)**

79. 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 Transactions, and the Debtors and the Buyer intend to close the Transactions 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**

80. 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 Sale Motion.

#### **NOTICE**

81. Notice of this Sale 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 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 in any of the Equity Interests; (n) any party to an executory contract or unexpired lease to be assumed and assigned, or rejected as part of the Transactions; (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**

82. 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 10, 2016

SKADDEN, ARPS, SLATE, MEAGHER &  
FLOM LLP

By: /s/ J. Eric Ivester

Jay M. Goffman

J. Eric Ivester

Four Times Square

New York, New York 10036-6522

Telephone: (212) 735-3000

Fax: (212) 735-2000

-and-

James J. Mazza, Jr. (admitted *pro hac vice*)

Louis S. Chiappetta (admitted *pro hac vice*)

155 N. Wacker Dr.

Chicago, Illinois 60606-1720

Telephone: (312) 407-0700

Fax: (312) 407-0411

*Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Bidding Procedures Order**



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

---

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

---

**ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a), 363, 503, AND 507 AND BANKRUPTCY RULES 2002, 6004, 9007, AND 9014, (A) AUTHORIZING SUNE MN DEVELOPMENT, LLC’S ENTRY INTO THE STALKING HORSE AGREEMENT; (B) APPROVING BIDDING PROCEDURES AND STALKING HORSE BID PROTECTIONS IN CONNECTION WITH SALE OF EQUITY INTERESTS OF SUNE MN DEVELOPMENT, LLC; (C) SCHEDULING AUCTION AND SALE HEARING; AND (D) GRANTING RELATED RELIEF**

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

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number are as follows: SunEdison, Inc. (5767); SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc. (2144); SUNE Hawaii Solar Holdings, LLC (0994); First Wind Solar Portfolio, LLC (5014); First Wind California Holdings, LLC (7697); SunEdison Holdings Corporation (8669); SunEdison Utility Holdings, Inc. (6443); SunEdison International, Inc. (4551); SUNE ML 1, LLC (3132); MEMC Pasadena, Inc. (5238); Solaicx (1969); SunEdison Contracting, LLC (3819); NVT, LLC (5370); NVT Licenses, LLC (5445); Team-Solar, Inc. (7782); SunEdison Canada, LLC (6287); Enflex Corporation (5515); Fotowatio Renewable Ventures, Inc. (1788); Silver Ridge Power Holdings, LLC (5886); SunEdison International, LLC (1567); Sun Edison LLC (1450); SunEdison Products Singapore Pte. Ltd. (7373); SunEdison Residential Services, LLC (5787); PVT Solar, Inc. (3308); SEV Merger Sub Inc. (N/A); Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A); EverStream Holdco Fund I, LLC (9564); Buckthorn Renewables Holdings, LLC (7616); Greenmountain Wind Holdings, LLC (N/A); Rattlesnake Flat Holdings, LLC (N/A); Somerset Wind Holdings, LLC (N/A); SunE Waiawa Holdings, LLC (9757); SunE Minnesota Holdings, LLC (8926); SunE MN Development Holdings, LLC (5388); and SunE MN Development, LLC (8669). The address of the Debtors’ corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

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

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

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

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

---

<sup>3</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. The Break Up Fee and the Expense Reimbursement are approved and shall be payable to the Stalking Horse Buyer in cash in accordance with the terms and conditions of the Stalking Horse Agreement. The Break Up Fee and the Expense Reimbursement (i) shall be paid to the Stalking Horse Buyer prior to any other payments being made out of the proceeds of any Alternate Sale Transaction and (ii) shall be paid to the Stalking Horse Buyer free and clear of all prepetition and postpetition Liens, Liabilities, Claims, and Interests, including, without limitation, all prepetition and postpetition Liens, Liabilities, and Claims of the Prepetition Secured Parties and the DIP Secured Parties (as each such term is defined in the Final DIP Order (as defined below)) under, or otherwise described in, the *Final Order (I) Authorizing Debtors to (A) Obtain Senior Secured, Superpriority, Postpetition Financing Pursuant to Bankruptcy Code Sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) and (B) Utilize Cash Collateral Pursuant to Bankruptcy Code Section 363, and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to Bankruptcy Code Sections 361, 362, 363 and 364* [Docket No. 523] (the “Final DIP Order”) or the other DIP Loan Documents (as defined in the Final DIP Order), in each case notwithstanding any provision to the contrary in the Final DIP Order, the other DIP Loan Documents, or any other order of this Court. In addition, the obligation of Seller to pay the Break Up Fee and the Expense Reimbursement shall survive the termination of the Stalking Horse Agreement as set forth therein.

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

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

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

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

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



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

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

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

16. Notwithstanding anything to the contrary contained herein, any authorization contained herein and any proceeds obtained by the Seller pursuant to the Transactions shall be subject to any applicable requirements imposed on the Debtors under the *Final Order (I) Authorizing Debtors to (A) Obtain Senior Secured, Superpriority, Postpetition Financing Pursuant to Bankruptcy Code Sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) and (B) Utilize Cash Collateral Pursuant to Bankruptcy Code Section 363, and*

(ii) *Granting Adequate Protection to Prepetition Secured Parties Pursuant to Bankruptcy Code Sections 361, 362, 363 and 364* [Docket No. 523] (the “Final DIP Order”) and the other DIP Loan Documents.

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

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

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

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

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

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

Dated: New York, New York

\_\_\_\_\_, 2016

\_\_\_\_\_  
HONORABLE STUART M. BERNSTEIN

**Exhibit 1**

**Bidding Procedures**

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

---

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

---

**BIDDING PROCEDURES**

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

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

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

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number are as follows: SunEdison, Inc. (5767); SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc. (2144); SUNE Hawaii Solar Holdings, LLC (0994); First Wind Solar Portfolio, LLC (5014); First Wind California Holdings, LLC (7697); SunEdison Holdings Corporation (8669); SunEdison Utility Holdings, Inc. (6443); SunEdison International, Inc. (4551); SUNE ML 1, LLC (3132); MEMC Pasadena, Inc. (5238); Solaicx (1969); SunEdison Contracting, LLC (3819); NVT, LLC (5370); NVT Licenses, LLC (5445); Team-Solar, Inc. (7782); SunEdison Canada, LLC (6287); Enflex Corporation (5515); Fotowatio Renewable Ventures, Inc. (1788); Silver Ridge Power Holdings, LLC (5886); SunEdison International, LLC (1567); Sun Edison LLC (1450); SunEdison Products Singapore Pte. Ltd. (7373); SunEdison Residential Services, LLC (5787); PVT Solar, Inc. (3308); SEV Merger Sub Inc. (N/A); Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A); EverStream Holdco Fund I, LLC (9564); Buckthorn Renewables Holdings, LLC (7616); Greenmountain Wind Holdings, LLC (N/A); Rattlesnake Flat Holdings, LLC (N/A); Somerset Wind Holdings, LLC (N/A); SunE Waiawa Holdings, LLC (9757); SunE Minnesota Holdings, LLC (8926); SunE MN Development Holdings, LLC (5388); and SunE MN Development, LLC (8669). The address of the Debtors’ corporate headquarters is 13736 Riverport Dr., Maryland Heights, Missouri 63043.

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

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

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

### **Assets to Be Sold**

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

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

**Key Dates and Deadlines**

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

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

**Bid Requirements**

1. Access to Diligence; Due Diligence from Interested Parties

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

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

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

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

## 2. Qualified Bids

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

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

\$1,525,000; *plus*

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

(iv) \$250,000;

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

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



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

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

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

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

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

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

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

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

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

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

### Auction

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

## Auction Process

### 1. Auction Procedures

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

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

### 2. Selection of Successful Bid

The Sellers will review and evaluate each Qualified Bid and determine, after consultation

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

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

### 3. Backup Bidder

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

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

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

Notwithstanding anything in these Bidding Procedures to the contrary, the Stalking Horse Agreement and related transaction documents (as such may be modified in connection with any Auction held) shall remain in full force and effect until such agreements have terminated in

accordance with their respective terms.

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

### **Sale Hearing**

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

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

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

### **Reservation of Rights**

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

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

### **Consent to Jurisdiction**

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

**Exhibit E**

**Ecoplexus Settlement Agreement**

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Settlement Agreement”), dated as of August 10, 2016 (the “Settlement Date”), is entered into by and between Ecoplexus, Inc. a Delaware corporation (“Ecoplexus”) and Sun Edison LLC (“SunEdison,” or the “Debtor,” and together with Ecoplexus, the “Parties”).

### RECITALS:

- A. On September 30, 2015, Ecoplexus, as seller, and SunEdison, as buyer, entered into that certain Purchase and Sale Agreement (the “Agreement”) regarding certain project assets located in Minnesota.
- B. The Debtor has commenced a case (together with and the cases commenced by Debtors’ affiliates jointly administered under Case No. 16-10992 (SMB) (jointly administered), collectively, the “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) by filing a voluntary petition for relief with the United States Bankruptcy Court for Southern District of New York (the “Bankruptcy Court”) on April 21, 2016 (the “Petition Date”).
- C. To resolve any and all claims between the Parties related to claims arising from or related to the Agreement, Ecoplexus and SunEdison have agreed to enter into this Settlement Agreement.

NOW THEREFORE, in consideration of the premises set forth above and subject to the conditions below, by execution of this Settlement Agreement, Ecoplexus and SunEdison agree as follows:

- 1. Accepted Projects. Ecoplexus will transfer, or cause to be transferred, to SunEdison, and SunEdison will accept, all of Ecoplexus’ (or any of its affiliates’) remaining rights in the projects set forth on Schedule A hereto, including all related real estate contracts and other development assets (together, the “Accepted Projects”). Ecoplexus will reasonably cooperate with SunEdison in completing outstanding development items for such Accepted Projects (including, but not limited to, obtaining final real estate amendments, site easements and land use permits). For the avoidance of doubt, other than as set forth in paragraph 5 below, Ecoplexus shall not receive any additional compensation for the Accepted Projects.
- 2. Rejected Projects. SunEdison will (A) reject the projects set forth on Schedule B hereto (together, the “Rejected Projects”) in accordance with the terms of the Agreement and (B) within fifteen (15) days following the entry of the 363 Order (as defined in Section 8(a)), (i) transfer, or cause to be transferred, to Ecoplexus all of SunEdison’s (or any of its affiliates’) remaining rights in the Rejected Projects, and (ii) will notify Northern States Power Company, doing business as Xcel Energy (“Xcel”) of the change in project ownership. SunEdison will work in good faith with Ecoplexus and Xcel regarding any questions that Xcel may have related to project control or project ownership.



3. Cancelled Projects. The Parties agree and acknowledge that the projects set forth on Schedule C hereto have been cancelled, and are not subject to any claim by either Party.
4. Withdrawal from CSG Program. No later than 10 days after the later of (i) the 363 Order, and (ii) SunEdison obtaining amendments to the real property contracts for the Randolph and Richmond projects, in form and substance consistent with industry standards and reasonably acceptable to SunEdison, SunEdison will withdraw from the CSG programs the self-originated projects listed on Schedule D attached hereto.
5. Settlement Consideration. Within 15 days of NTP for an Accepted Project, SunEdison shall pay, or cause to be paid, to Ecoplexus \$0.12 per DC Watt of capacity of such Accepted Project (the "Purchase Price"). For purposes of the preceding calculation, the capacity of each Accepted Project shall be based on an AC to DC ratio of 1.3. "NTP" for a Project shall occur upon the earlier of (a) sale and assignment of an Accepted Project to a third party (whether directly or indirectly through the transfer of direct or indirect ownership interests in the Accepted Project), or (b) issuance of a final notice to proceed from the then-owner of the project to an EPC contractor.
6. Repurchase Right.
  - (a) SunEdison shall provide written notice to Ecoplexus if any Accepted Project is or becomes "Available" (as defined herein) within five (5) days of the later of March 1, 2017 and the date that such Accepted Project first becomes Available. An Accepted Project is "Available" if and when: (i) Ecoplexus has not been paid the Purchase Price pursuant to Section 5 of this Agreement, (ii) no third-party has an exclusive right to purchase such Accepted Project; (iii) no third-party has purchased the portion of the SunEdison C&I business unit that includes the Accepted Project (which would constitute NTP under Section 5); and (iv) if SunEdison (or its affiliate) owns such Accepted Project and (A) it has not submitted an application for the applicable discretionary land use permit, (B) it has not executed an interconnection agreement with Xcel Energy and paid any required interconnection cost deposits, or (C) it has not obtained all necessary real estate documents (including without limitation any leases, easements or other required real estate documents) in form and substance consistent with industry standards.
  - (b) For a period of 15 days after SunEdison has given notice to Ecoplexus that an Accepted Project is Available, Ecoplexus shall have the right to repurchase any Available Accepted Project. If Ecoplexus exercises its repurchase right, the purchase price for such Accepted Project shall be an amount equal to (i) the refundable CSG Program deposit of \$100/kWac associated with each project's SRC number, (ii) any non-refundable Interconnection Upgrade Deposit amounts paid to Xcel for such Accepted Project, and (iii) actual and reasonable out-of-pocket development expenses incurred by SunEdison, including, for all costs set forth in Sections 6(b)(i)-(iii) (collectively, the "Repurchase Payment"). Ecoplexus shall pay the Repurchase Payment within fifteen (15) business days of its notice that it is exercising its repurchase right pursuant to this Section 6(b).

7. Mutual Release. Except as otherwise expressly set forth herein, each Party fully and forever releases and shall be deemed to have fully and forever release the other Party, and in each case including, as applicable, its direct and indirect, past and present parent companies, subsidiaries, members, partners, representatives, agents, financial advisors, industry experts/advisors, attorneys, and joint ventures, and each of their respective predecessors, successors and assigns, from any and all claims (including in respect of any derivative claim by any third party), obligations, suits, judgments, damages, demands, debts, rights, causes of action, liabilities, matters, liens, mortgages, security interests, pledges, encumbrances, privileges, priorities or issues arising out of or relating to the Agreement (other than claims arising under this Settlement Agreement), from the beginning of the world until the date of this Settlement Agreement, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, in law, equity or otherwise, which in each case are fully and forever discharged, waived, released and settled. Without limiting the foregoing, SunEdison, as well as the estate of, and any trustee or other party empowered to act on behalf of, SunEdison, NVT Licenses, LLC and SunE MN Development, LLC, each release Ecoplexus and its employees, agents, representatives and affiliates, of any claim under Chapter 5 of the Bankruptcy Code arising out of or related to the Agreement or this Settlement Agreement. Upon satisfaction of the Conditions in Section 8(a) of this Agreement, the mutual release by each Party of the other pursuant to this Section 7 shall be effective and irrevocable. For the avoidance of doubt, upon effectiveness of the mutual release in this Section 7, Ecoplexus shall not have and shall not file a claim against any Sun Edison, LLC or its affiliates in the Chapter 11 Cases for any of the claims released pursuant to this Section 7.
8. Conditions Precedent. The Parties obligations under this Settlement Agreement shall be subject to:
- (a) The entry of a final order by the Bankruptcy Court (reasonably acceptable to both Parties) approving this Settlement Agreement under Section 363(b) of the Bankruptcy Code and Bankruptcy Rule 9019 (“363 Order”). SunEdison shall promptly file a motion seeking the 363 Order contemplated by this paragraph and Ecoplexus shall reasonably cooperate with SunEdison in connection with such motion; and
  - (b) In the event that a final 363 Order is not obtained by October 1, 2016, unless the Parties otherwise agree in writing, which agreement may be withheld in each Party’s sole discretion, this Settlement Agreement shall be null and void and the Parties restored to their respective positions as existed prior to the execution and delivery of this Settlement Agreement as though this Settlement Agreement had never been executed and delivered.
9. Further Assurances. Each Party shall use commercially reasonable efforts to do and perform or cause to be done and performed all further acts and things and shall execute and deliver all further agreements, certificates, instruments and documents as any other Party may reasonably request in order to carry out the intent and accomplish the purposes

of this Settlement Agreement and the consummation of the transactions contemplated hereby.

10. Assignment. This Settlement Agreement may not be assigned by either Party without the prior written consent of the other party; *provided*, to the extent that NTP occurs prior to the payment of the Purchase Price for an Accepted Project, SunEdison's obligation to pay the Purchase Price for such Accepted Project may be assigned to such buyer without Ecoplexus' consent; *provided*, SunEdison will remain liable for payment of the Purchase Price until paid, notwithstanding any such assignment.
11. Governing Law. This Settlement Agreement shall be governed by, and construed and enforced in accordance with, as appropriate, federal bankruptcy law and the laws of the State of New York, without regard to conflicts of law principles.
12. Consent to Jurisdiction. The Bankruptcy Court will have jurisdiction over the Parties hereto and any and all disputes between or among the Parties, whether in law or equity, arising out of or relating to this Settlement Agreement and any transaction contemplated hereby; *provided*, if the Bankruptcy Court is unwilling or unable to hear any such dispute, the courts of the State of New York and the Federal Courts of the United States of America located in the Southern District of New York will have sole jurisdiction over any and all disputes between or among the parties, whether in law or equity, arising out of or relating to this agreement or any agreement contemplated hereby.
13. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
14. Representations and Warranties.
  - (a) The Parties hereto acknowledge that they are executing this Settlement Agreement without reliance on any representations, warranties, or commitments other than those representations, warranties, and commitments expressly set forth in this Settlement Agreement.
  - (b) SunEdison represents and warrants that it has not assigned, transferred, or otherwise conveyed all or any portion of its interest in the Agreement, to any person or for any purpose whatsoever.
15. Entire Understanding; Agreement Termination. This Settlement Agreement constitutes the entire understanding of the Parties in connection with the subject matter hereof. This Settlement Agreement may not be modified, altered, or amended except by an agreement in writing signed by the Parties. Upon the effectiveness of the Settlement Agreement the Agreement will be terminated and cease to have further force or effect.
16. No Party Deemed Drafter. This Settlement Agreement is being entered into among competent persons who are experienced in business and represented by counsel, and has been reviewed by Ecoplexus and its counsel. Therefore, any ambiguous language in this

Settlement Agreement shall not be construed against any particular Party as the drafter of such language.

17. Counterparts. This Settlement Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Settlement Agreement by facsimile or electronic mail shall be equally as effective as delivery of an original executed counterpart of this Settlement Agreement.

**Accepted and agreed to by:**

**Sun Edison LLC**

By \_\_\_\_\_

Name:

Title:

Dated: \_\_\_\_\_, \_\_\_\_\_

**Ecoplexus, Inc.**

By  \_\_\_\_\_

Name: Erik Stuebe

Title: President

Dated: August 4, 2016

**Schedule A**

Accepted Projects

1. Chisago 2
2. Gopher
3. Hilltop Farm
4. Lindstrom
5. Randolph
6. Taylor Falls
7. Richmond

**Schedule B**

Rejected Projects

1. Anoka
2. Delano
3. Felton
4. Peterson

**Schedule C**

Cancelled Projects

1. Corcoran
2. Lake Crystal

**Schedule D**

Withdrawal from CSG Program

1. Gergen
2. Ramler