

Michael R. Johnson (7070)
David H. Leigh (9433)
RAY QUINNEY & NEBEKER P.C.
36 South State Street, 14th Floor
P.O. Box 45385
Salt Lake City, UT 84145
(801) 532-1500
Email: mjohnson@rqn.com
Email: dleigh@rqn.com

Attorneys for Steven R. Bailey, Chapter 7 Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:

**EMPIRE SOLAR GROUP, LLC,
Debtor.**

Bankruptcy Case No. 21-23636

Chapter 7

Honorable Joel T. Marker

**CHAPTER 7 TRUSTEE'S FIRST OMNIBUS MOTION TO REJECT UNEXPIRED
LEASES OF NONRESIDENTIAL REAL PROPERTY**

**COUNTERPARTIES RECEIVING THIS MOTION SHOULD LOCATE THEIR
RESPECTIVE NAMES AND LEASES IN THE LIST OF LEASES TO BE REJECTED,
ATTACHED TO THIS MOTION AS EXHIBIT 1.**

**Counterparties are hereby provided notice that the Debtors intend to reject the Leases,
stop performing thereunder, and terminate all related services as of the date on which the
Court enters an Order granting the relief sought herein.**

Pursuant to 11 U.S.C. § 365 and Federal Rule of Bankruptcy Procedure 6006, Steven R. Bailey, the duly appointed Chapter 7 Trustee in the above-entitled case (the “**Trustee**”), through counsel, hereby files this motion (the “**Motion**”) for the entry of an Order rejecting twenty (20) unexpired leases of nonresidential real property (collectively, the “**Leases**”). In further support hereof, the Trustee states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334.
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

STATEMENT OF FACTS

4. Empire Solar Group, LLC (the “**Debtor**”) filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on August 22, 2021 (“**Petition Date**”).

5. Prior to the Petition Date, the Debtor engaged in the selling and installing of residential solar energy systems in various locations throughout the United States.

6. Prior to the Petition Date, the Debtor entered into the Leases, as lessee, with various counterparties, as lessors (individually, a “**Counterparty**” and collectively, the “**Counterparties**”), for the purpose of running its business operations and storing equipment and inventory. There are twenty (20) Leases that the Trustee believes should be rejected. Exhibit 1 attached hereto describes each of the Leases and identifies the corresponding Counterparty.

7. The Trustee does not intend to operate the Debtor’s business, and does not need to maintain the Leases.

8. Absent their rejection, the Leases will continue to accrue administrative expenses for the bankruptcy estate (the “**Estate**”) to the detriment of the Estate and the Debtor’s creditors.

9. The Trustee believes the Leases are at market rates, and are of no value to the bankruptcy estate. Thus, the Trustee does not believe that there is economic value in the Leases for the Estate.

RELIEF REQUESTED

10. By this Motion, the Trustee seeks the entry of an Order finding and deeming the Leases rejected.

ARGUMENT

11. The Bankruptcy Code provides that “the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). “[C]ourt approval under Section 365(a), . . . , except in extraordinary situations, should be granted as a matter of course.” *In re Summit Land Co.*, 13 B.R. 310, 315 (Bankr. D. Utah 1981). Moreover, courts generally approve motions to reject unexpired leases under Section 365(a) when “rejection will benefit the estate under a ‘business judgment’ test.” *In re At Home Corp.*, 292 B.R. 195, 199 (N.D. Cal. 2003), *aff’d*, 392 F.3d 1064 (9th Cir. 2004).

Rejection of the Leases Reflects the Trustee’s Sound Business Judgment

12. The Trustee submits that rejection of the Leases is based on sound business judgment. The Trustee, after consultation with his professional advisors, has made an independent and informed decision based on his knowledge of the Leases.

13. Given that the Trustee does not intend to operate the Debtor’s business and that the Leases are at market rates, the Leases provide no value to the Estate. Thus, the Estate is incurring administrative expenses from the Leases without receiving any return benefit.

14. By rejecting the Leases, the Trustee will be able to preserve assets of the Estate for its benefit and the benefit of the Debtor’s creditors.

15. Accordingly, the Trustee’s request to reject the Leases is based on sound business judgment and will benefit the Estate.

The Motion Satisfies Bankruptcy Rule 6006(f)

16. Under Federal Bankruptcy Rule 6006(f), a motion to reject multiple unexpired leases that are not between the same parties must:
- (a) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;
 - (b) list parties alphabetically and identify the corresponding contract or lease;
 - (c) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and
 - (d) be limited to no more than 100 executory contracts or unexpired leases.
17. The Trustee believes that the Motion complies with these requirements.

Notice of the Motion is Proper

18. Concurrent with the filing of this Motion, the Trustee will serve upon all Counterparties to the Leases by first class U.S. mail, postage prepaid, a copy of this Motion and also a copy of the *Notice of Chapter 7 Trustee's First Omnibus Motion to Reject Unexpired Leases of Nonresidential Real Property and Notice of Hearing* (the "Notice"). This Motion and the Notice also will be served electronically upon all electronic filing users in this case.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that the Court enter an Order granting this Motion, and:

- A. Finding that the Leases contained in **Exhibit 1** are deemed rejected; and
- B. Granting such other relief as the Court deems just and appropriate.

A proposed Order granting this Motion is attached hereto as Exhibit 2.

DATED this 1st day of October, 2021.

RAY QUINNEY & NEBEKER P.C.

/s/ Michael R. Johnson

Michael R. Johnson

David H. Leigh

Attorneys for Chapter 7 Trustee

CERTIFICATE OF SERVICE

I further hereby certify that on the 1st day of October, 2021, a true and correct copy of the foregoing **CHAPTER 7 TRUSTEE’S FIRST OMNIBUS MOTION TO REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY** was filed and therefore served via ECF on the following:

- **Steven R. Bailey tr** karen@baileylaw.org, UT06@ecfbis.com
- **Megan K Baker** baker.megan@dorsey.com, long.scarlette@dorsey.com
- **Matthew M. Boley** mboley@ck.law, klopez@ck.law
- **Deborah Rae Chandler** dchandler@aklawfirm.com
- **Michael R. Johnson** mjohnson@rqn.com, docket@rqn.com;vmood@rqn.com
- **David H. Leigh** dleigh@rqn.com, moakeson@rqn.com;docket@rqn.com
- **Christopher J Martinez** martinez.chris@dorsey.com
- **Blake D. Miller** bmiller@aklawfirm.com, millermobile@gmail.com;millr.blaked@gmail.com
- **Gregory S. Moesinger** gmoesinger@kmclaw.com, tsanders@kmclaw.com
- **Mark C. Rose** mrose@mbt-law.com, markcroselegal@gmail.com
- **Mark S. Swan** mswan@strongandhanni.com, mark@swanlaw.net
- **Jeffrey L. Trousdale** jtrousdale@cohnekinghorn.com, mparks@ck.law;tkosec@ck.law
- **United States Trustee** USTPRegion19.SK.ECF@usdoj.gov

I further certify that on the 1st day of October, 2021, a true and correct copy of the foregoing was mailed by first class mail, postage prepaid, to the parties requesting Notice in this bankruptcy case and to the designated mailing addresses for notice of Counterparties/Lessors of rejected leases:

Gil Miller
Rocky Mountain Advisory
215 South State Street Ste 550
Salt Lake City, UT 84111

John P. Dillman
Linebarger Goggan Blair &
Sampson, LLP
PO Box 3064
Houston, TX 77253-3064

Steven W. Kelly
S&D Law
1290 Broadway Ste 1650
Denver, CO 80203

Raymond J. Rotella
Kosto & Rotella P.A.
P.O. Box 113
Orlando, FL 32802

815-847 Arnold Drive, LLC
P.O. Box 399266
San Francisco, CA 94139-9266

CREF3 Felt Owner LLC
c/o CT Corporation System
1108 E South Union Ave.
Midvale, UT 84047

Jay & Mike Investments, LLC
14331 Ewing Avenue S.
Burnsville, MN 55306

Arka Miramar II, LP;
9350 Wilshire Blvd Suite 302
Beverly Hills, CA 90212

CREF3 Felt Owner LLC
1345 Avenue of the Americas
46th FL
New York, NY 10105

Mesa Ridge Business Park I, LLC
c/o Wilson Property Services, Inc.
8120 East Cactus Road Suite 300
Scottsdale, AZ 85260
Attn: Property Management Division

AIM 786, LLC
PO Box 954053
Lake Mary FL 32795-4053

Crescentville Partners, LLC
11590 Century Blvd Suite 204
Cincinnati, OH 45246

Mooney Longbranch II, LLC
13210 Spring Hill Drive
Spring Hill, FL 34609

Force Franklin I, LP
9350 Wilshire Blvd., Suite 402
Beverly Hills, CA 90212

D & J Properties, LLC
Ryan Wallace
4231 Balboa Ave, Suite 102
San Diego, CA 92117

PCI Corp Parkway, LLC
2911 Turtle Creek Blvd. #1200,
Dallas, TX 75219

Force 10580, LLC:
9350 Wilshire Blvd., Suite 402
Beverly Hills, CA 90212

Derksen Concrete Fencing
1560 Tuskegee Pl.
Colorado Springs, CO 80915

Platinum Owner GA, LLC
c/o Alpha Industrial Properties
1500 North Halsted, Second Floor
Chicago, IL 60642
Attn. Legal Department

SR32 San Diego Portfolio, LLC
25 East E Street
Encinitas, CA 92024

Dr. Chet Gray
4415 Meadowlark Ln
Midland, TX 79707

Platinum Owner GA, LLC
c/o KKR
600 Travis Street, 72nd Floor
Houston, TX 77002
Attn: Asset Management-AIP

Pacifica Real Estate V, LLC
10345 W Olympic Blvd
Los Angeles, CA 90064

ExpertVoice
9 East Exchange Place,
Suite 1000
Salt Lake City, UT 84111

SD&S/Franklinpark, LLC
401 E. Prospect Ave. Suite 103
Mt. Prospect, IL 60056

Pacifica Encinitas Beach, LLC
10345 W Olympic Blvd
Los Angeles, CA 90064

Freeway Holdings, LLC and
Wailea Investments, LLC
Attention: Nathan Anderson,
Manager
4400 College Blvd., Suite 170,
Overland Park, KS 66211

TPRF/TREP Acquisition 4, LLC
c/o Triten Real Estate Partners, LLC
3657 Briarpark Drive, Suite 300
Houston, TX 77042

CI DEN I-GW, LLC
Attention: General Counsel
90 Park Avenue 32nd Floor
New York, NY 10016

Freeway Holdings, LLC
c/o NAI Heartland
P.O. Box 6193
Leawood, KS 66206

York Palmdale Properties, LLC
6300 Canoga Avenue, Suite 1520
Woodland Hills, CA 91367

CI DEN I-GW, LLC
220 Commerce Drive, 4th Floor
Fort Washington, PA 19034

FJR Trading, LLC
PO Box 531
Cotulla, TX 78104

/s/ Carrie Hurst

1579702

EXHIBIT 1

COUNTERPARTY/LESSOR	ADDRESS OF LEASED PROPERTY	APPROXIMATE DATE OF LEASE
815-847 Arnold Drive, LLC	Bay 11 and Bay 12 at 8175 Arnold Drive Martinez, CA 94553	5-Apr-20
AIM 786, LLC	Building 2 at 3670 Naseem Lane Sanford, FL 32771	10-Sep-20
Arka Miramar II, LP; Force Franklin I, LP; Force 10580, LLC; SR32 San Diego Portfolio, LLC; Pacifica Real Estate V, LLC; and Pacifica Encinitas Beach, LLC	9040 Carroll Way Suite 3 San Diego, CA 92121	10-Jan-20
CI DEN I-GW, LLC	4801-4885 Moline Street and 4800-4818 Lima Street Denver, CO 80239	1-May-21
CREF3 Felt Owner LLC	341 South Main Street, Suites 100 and B100 Salt Lake City, UT 84111	4-Nov-20
Crescentville Partners, LLC	2521 E. Crescentville Rd. Sharonville, OH 45241	27-Aug-20
D & J Properties, LLC	3016 South West Temple, Salt Lake City, UT 84115	8-Oct-20
Derksen Concrete Fencing	3318 and 3320 Adobe Court Colorado Springs, CO 80907	30-Oct-20
Dr. Chet Gray	#3 E Industrial Loop Midland, TX 79703	14-Feb-20
ExpertVoice	9 East Exchange Place Suite 400 Salt Lake City, UT 84111	28-May-19

Freeway Holdings, LLC and Wailea Investments, LLC	3601 N. Kimball Drive Kansas City, MO 64161	6-Mar-20
FJR Trading, LLC	5723 Rittiman Plz San Antonio, TX 78218	16-Mar-21
Jay & Mike Investments, LLC	14341 Ewing Avenue S. Burnsville, MN 55306	26-Feb-20
Mesa Ridge Business Park I, LLC	4255 East McDowell Road Suite 103 Mesa, AZ 85215	7-Feb-20
Mooney Longbranch II, LLC	5212 Cone Rd Suite 5212 Tampa, FL 33610	Sep-19
PCI Corp Parkway, LLC	6750 Corporation Parkway Fort Worth, TX 76126	20-Mar-20
Platinum Owner GA, LLC	5800 Oakbrook Parkway Norcross, GA 30093	5-Mar-21
SD&S/Franklinpark, LLC	2925 Lucy Ln Franklin Park, IL 60131	15-Feb-21
TPRF/TREP Acquisition 4, LLC	5650 Guhn Road Houston, TX 77040	1-Apr-20
York Palmdale Properties, LLC	190 Sierra Court, Unit # A-1 Palmdale, CA 93550	7-Oct-19

EXHIBIT 2

Prepared and Submitted by:

Michael R. Johnson (7070)
David H. Leigh (9433)
RAY QUINNEY & NEBEKER P.C.
36 South State Street, 14th Floor
P.O. Box 45385
Salt Lake City, UT 84145
(801) 532-1500
Email: mjohnson@rqn.com
Email: dleigh@rqn.com

Attorneys for Steven R. Bailey, Chapter 7 Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:

**EMPIRE SOLAR GROUP, LLC,
Debtor.**

Bankruptcy Case No. 21-23636

Chapter 7

Honorable Joel T. Marker

**ORDER AUTHORIZING THE TRUSTEE TO REJECT CERTAIN NON-
RESIDENTIAL REAL PROPERTY LEASES MORE SPECIFICALLY IDENTIFIED
ON EXHIBIT 1 TO THE TRUSTEE'S MOTION**

This matter is before the Court on the *Chapter 7 Trustee's First Omnibus Motion to Reject Unexpired Leases of Nonresidential Real Property* (the "**Motion**") filed by Steven R. Bailey, the duly appointed Chapter 7 Trustee in the above-entitled case (the "**Trustee**"). In the Motion, the Trustee requests entry of an Order from the Court authorizing him to reject twenty (20) unexpired leases of real property (the "**Leases**"). The Leases are more fully described in Exhibit 1 to the Motion, which Exhibit 1 also identifies each counterparty to the Leases.

The Court, after reviewing the Motion and such other matters in the Court's file as the Court deemed appropriate, and after noting the lack of any objections or responses to the Motion in the Court's file, and the time for objecting or responding to the Motion having now expired, has determined that the Motion is well-taken, and that the relief requested therein should be granted.

Based upon the foregoing and good cause appearing therefore, **IT IS HEREBY ORDERED** as follows:

1. The Court has jurisdiction over this case and the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(G), and the Motion is a core proceeding. Venue of this case is appropriate under 28 U.S.C. § 1408(a).

2. Notice of the Motion, of the objection deadline and of the opportunity for a hearing on the Motion, was appropriate under the circumstances. No timely objections to the Motion were filed with the Court.

3. As requested in the Motion, and pursuant to 11 U.S.C. § 365(a), the Trustee shall be, and he hereby is, authorized to reject each of the Leases identified on Exhibit 1 to the Motion, with such rejection being effective as of the date of entry of this Order.

-----END OF DOCUMENT-----

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 2021, the foregoing Proposed **ORDER AUTHORIZING THE TO REJECT CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY** was electronically filed and therefore served via ECF on the following:

- **Steven R. Bailey tr** karen@baileylaw.org, UT06@ecfcbis.com
- **Megan K Baker** baker.megan@dorsey.com, long.scarlette@dorsey.com
- **Matthew M. Boley** mboley@ck.law, klopez@ck.law
- **Deborah Rae Chandler** dchandler@aklawfirm.com
- **Michael R. Johnson** mjohnson@rqn.com, docket@rqn.com;vmoody@rqn.com
- **David H. Leigh** dleigh@rqn.com, moakeson@rqn.com;docket@rqn.com
- **Christopher J Martinez** martinez.chris@dorsey.com
- **Blake D. Miller** bmiller@aklawfirm.com, millermobile@gmail.com;miller.blaked@gmail.com
- **Gregory S. Moesinger** gmoesinger@kmclaw.com, tsanders@kmclaw.com
- **Mark C. Rose** mrose@mbt-law.com, markcroselegal@gmail.com
- **Mark S. Swan** mswan@strongandhanni.com, mark@swanlaw.net
- **Jeffrey L. Trousdale** jtrousdale@cohnekinghorn.com, mparks@ck.law;tkosec@ck.law
- **United States Trustee** USTPRegion19.SK.ECF@usdoj.gov

I further certify that on the ____ day of _____, 2021, a true and correct copy of the foregoing was mailed by first class mail, postage prepaid, to the following:

Gil Miller
Rocky Mountain Advisory
215 South State Street Ste 550
Salt Lake City, UT 84111

John P. Dillman
Linebarger Goggan Blair & Sampson, LLP
PO Box 3064
Houston, TX 77253-3064

Steven W. Kelly
S&D Law
1290 Broadway Ste 1650
Denver, CO 80203

Raymond J. Rotella
Kosto & Rotella P.A.
P.O. Box 113
Orlando, FL 32802

DESIGNATION OF PARTIES TO BE SERVED

Service of the foregoing **ORDER AUTHORIZING THE TO REJECT CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY** (the “Order”) should be served on the persons in the manner designated below:

By electronic service: I certify that the parties of record in this case as identified immediately below are registered CM/ECF users and will be served notice of entry of the foregoing Order through the CM/ECF system:

By U.S. Mail – In addition to the foregoing persons of record receiving notice of the entry of the Order through the CM/ECF system, the parties set forth below AND the parties reflected on Exhibit 1, attached hereto attached hereto, should be served with a copy of the Order by U.S. Mail pursuant to Fed R. Civ. P. 5(b).
