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**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 REPORT OF AUCTION

Pursuant to Federal Rule of Bankruptcy Procedure 6004(f), Steven R. Bailey (the “**Trustee**”), Chapter 7 Trustee of the Chapter 7 bankruptcy estate of Empire Solar Group, LLC (the “**Debtor**”), through counsel, hereby files this Report of Auction concerning the sale of various assets of the Debtor currently pending before this Court [Dkt. 36] and scheduled for hearing on October 19, 2021 (the “**Sale Motion**”). Specifically, the Trustee reports that, on October 15, 2021, he conducted an auction (the “**Auction**”) remotely by Zoom. The Trustee conducted the Auction pursuant to the procedures outlined in the auction bidding instructions (the “**Auction Procedures**”), a copy of which is attached hereto as Exhibit A and incorporated herein by reference. The results of the Auction are set forth below:

1. In the Sale Motion, the Trustee sought the entry of an order approving the Asset Purchase Agreement (the “**APA**”) between the Trustee, as seller, and TELT Ventures, LLC, d/b/a 1 Solar, as purchaser (“**1Solar**” or the “**Stalking Horse Bidder**”) and authorizing the sale of the following assets to 1Solar: (1) the bankruptcy estate’s interests in the Debtor’s uncompleted solar equipment contracts (“**Uncompleted Contracts**”); (2) all accounts receivable, payment rights, or intangibles associated with the uncompleted solar contracts; (3) twenty-three unencumbered vehicles (“**Unencumbered Vehicles**”); (4) twenty-two encumbered vehicles (“**Encumbered Vehicles**”); all furniture, fixtures, and equipment (“**FF&E**”) owned by the Debtor in any of the Debtor’s warehouses; (5) computer equipment owned by the Debtor and located at either of the Debtor’s main offices in the Boston Building and/or the Felt Building in Salt Lake City, UT; (6) any inventory (the “**Inventory**”) owned by the Debtor and located at its warehouses; and (7) the Debtor’s rights and liabilities arising under a lease for nonresidential real property in Las Vegas, Nevada (the “**Las Vegas Lease**”) (collectively, “**Included Assets**”).

2. 1Solar offered to purchase the Included Assets from the Trustee with an initial cash payment of \$600,000.00 allocated in the following manner: \$230,000.00 for the Unencumbered Vehicles; \$20,000.00 for the Encumbered Vehicles and assumption of all rights and liabilities associated therewith; and \$350,000.00 for the FF&E, Inventory, and Las Vegas Lease. Additionally, 1Solar offered to purchase the estate’s rights and interests in the Uncompleted Contracts and in all accounts receivable, payment rights, and intangibles associated therewith for a purchase price consisting of future payments (“**Future Payment Stream**”), payable to the estate within two weeks after receipt of payment under the following terms: \$0.45 per watt for every assumed contract in which an M1 payment has already been received by the Debtor; or \$0.20 per watt for every assumed contract in which an M1 payment has not already

been received by the Debtor. 1Solar's collective bid is referred to hereafter as the "**Stalking Horse Bid.**"

3. The Trustee entered into the Stalking Horse Bid with 1Solar on September 21, 2021 and filed the Sale Motion on September 23, 2021. In the Sale Motion, the Trustee explained that the APA was subject to higher and better offers. For any parties interested in making a higher and better offer to purchase the Included Assets, the Trustee required that such parties submit a qualified competing overbid and fund a \$150,000.00 deposit by October 8, 2021 (the "**Bid Deadline**").

4. The Trustee received bids from Suntuity Solar Limited Liability Company ("**Suntuity**") and PAIC Financial ("**PAIC**") prior to the Bid Deadline. However, PAIC failed to timely fund the \$150,000.00, and its bid was disqualified prior to the auction.

5. Suntuity made a qualified overbid for the Included Assets. In summary, Suntuity's qualified overbid stated that it would acquire the Uncompleted Contracts on the same terms as proposed by the Stalking Horse Bidder. It also would pay \$625,000.00 in cash for the Included Assets, allocated as follows: (i) \$255,000.00 for Unencumbered Vehicles, (ii) \$20,000.00 (and assumption of all liabilities) for Encumbered Vehicles, and (iii) \$350,000.00 (and assumption of liabilities associated with the Las Vegas Lease) for the Las Vegas Lease, FF&E, and the Inventory. Finally, Suntuity offered to waive its claim that a certain portion of the inventory to be sold under the APA was property of Suntuity and could not be sold [Dkts. 77-79].

6. Prior to conducting the Auction, the Trustee prepared and circulated the Auction Procedures to 1Solar and Suntuity (the "**Bidders**"). The Bidders and their counsel attended and participated in the Auction. The Trustee was accompanied by his counsel and financial advisor.

Uinta Bank (the “**Bank**”), the senior lienholder on the Future Payment Stream, the FF&E, and the Inventory, and its counsel, also attended via Zoom.

7. At the commencement of the Auction, the Trustee announced that Suntuity’s bid was higher and better than the Stalking Horse Bid. Accordingly, pursuant to the Auction Procedures, any subsequent bids would be required to exceed the preceding bid by incremental amounts of no less than \$15,000.00 *in value*—not necessarily cash. To the extent any subsequent bid failed to meet such criteria, the Trustee would deem that bid as being unqualified. The Trustee thus permitted 1Solar to make a qualified overbid, and 1Solar did so.

8. The Bidders then took turns reviewing each bid with their counsel and submitting qualified overbids. The Auction lasted approximately 5 hours and 45 minutes. At the conclusion of the Auction, the Trustee, in consultation with his professional advisors, determined that Suntuity had made the highest and best bid for the Included Assets (the “**Winning Bid**”) and 1Solar had made the next highest and otherwise best bid (the “**Back-Up Bid**”).

9. During the auction, the Trustee was asked to provide his business judgment as to the “value” of the Suntuity Waiver. When the auction first began, the Trustee’s business judgment was that the value of the Suntuity Waiver was at least \$50,000.00. Toward the end of the auction, however, the Trustee revised his business judgment and determined that the value of the Suntuity Waiver was at least \$200,000.00.

10. The Trustee’s revised valuation of the Suntuity Waiver was a result of various data points. First, the value of the assets as a whole increased as the auction went forward, which necessarily meant that the value of the Suntuity Waiver increased as well. Second, Suntuity was claiming that it owned not only certain inventory in the Debtor’s warehouses, but certain property that had already been installed on rooftops, and the amount it was claiming exceeded \$1.4 million. The Trustee determined that costs and expenses of litigating with

Suntuity would be at least \$50,000.00, and that even valuing Suntuity's chances of success at only 10% the value of its waiver would be over \$140,000.00.

11. In the Winning Bid, Suntuity offered \$700,000.00 as an initial cash payment (the "**Initial Cash Payment**") along with a Future Payment Stream for Uncompleted Contracts of (1) \$0.45 per watt for every Uncompleted Contract in which an M1 payment has already been received by the Debtor, and (2) \$0.20 per watt for every Uncompleted Contract in which an M1 payment has not already been received by the Debtor.

12. The Winning Bid allocated the Initial Cash Payment in the following manner: \$285,000.00 for the Unencumbered Vehicles; \$20,000.00 for the Encumbered Vehicles; and \$395,000.00 for the Las Vegas Lease, the Inventory, and the FF&E. The Winning Bid also included minimum guaranteed payments made to the Estate for the Uncompleted Contracts as follows: \$500,000.00 by December 31, 2021; and \$300,000.00 by March 31, 2022 (the "**Minimum Guaranteed Payments**"). By including the Minimum Guaranteed Payments in the Winning Bid, Suntuity explained that, as set forth in the APA, it would make payments to the Estate within two weeks after receipt of Future Payment Stream funds. To the extent such payments did not amount to \$500,000.00 by December 31, 2021, and \$300,000.00 by March 31, 2022, Suntuity would pay any remaining amount owed to the Estate by those dates, thus guaranteeing at least \$800,000.00 in payments for the Uncompleted Contracts. Lastly, the Winning Bid included an offer from Suntuity to waive its claim that a certain portion of the inventory to be sold under the APA was property of Suntuity and could not be sold (the "**Suntuity Waiver**").

13. In consultation with his professional advisors, and as explained in the Trustee's Declaration, the Trustee ultimately valued the Suntuity Waiver at \$200,000.00. The Trustee reached this valuation by considering, among other things, the cost to the estate of litigating

Suntuity's ownership objection (both actual litigation costs and expenses and the probability of Suntuity successfully proving its objection) and the minimum guaranteed value of the Uncompleted Contracts. By aggregating the Initial Cash Payment, the Minimum Guaranteed Payments, and the Waiver, the Trustee determined that the Winning Bid had a total value of \$1,700,000.00.

14. After Suntuity made the Winning Bid, 1Solar made a bid that the Trustee, in consultation with his professional advisors, valued at \$1,200,000.00. Because the total value of the last 1Solar bid was below that of the Winning Bid, the Trustee determined that it was an unqualified bid. Given that 1Solar's final bid did not constitute a qualified overbid, the Trustee determined that the Back-Up Bid would constitute 1Solar's last qualified overbid before the Winning Bid. The Back-Up Bid, therefore, offered \$700,000.00 as an initial cash payment allocated in the same manner as the Winning Bid, and payment of Future Payment Steam for Uncompleted Contracts on the same terms as the Winning Bid. The Back-Up bid also included the Minimum Guaranteed Payments in the same manner described in the Winning Bid. Thus, the Trustee, in consultation with his professional advisors, valued the Back-Up Bid at \$1,500,000.00.

15. At the hearing on the Sale Motion, the Trustee will ask the Court to approve and authorize the sale of the Included Assets to Suntuity for the Winning Bid, the general terms of which are set forth above. The Trustee will also ask the Court to authorize the sale of the Included Assets to 1Solar pursuant to the terms of the Back-Up Bid, in the event the sale to Suntuity does not close and fund.

16. The only objection to the Sale Motion was the objection, filed on October 8, 2021, by Suntuity. [Dkt. 78] Based upon Suntuity's Winning Bid, Suntuity's objection is now moot.

17. The Bank supports the Trustee's recommendations regarding the foregoing and supports the sale to Suntuity for the amount of the Winning Bid, or alternatively to 1Solar for the amount of the Back-Up Bid, all as set forth more fully above.

DATED this 19th day of October, 2021.

RAY QUINNEY & NEBEKER P.C.

/s/ Michael R. Johnson
Michael R. Johnson
David H. Leigh
Counsel Steven R. Bailey, Chapter 7 Trustee

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October, 2021, a true and correct copy of the foregoing **CHAPTER 7 TRUSTEE’S REPORT OF AUCTION** was electronically filed and therefore served via ECF on the following:

- **B. Scott Allen** allen@mvmlegal.com, coley@mvmlegal.com
- **Steven R. Bailey** karen@baileylaw.org, UT06@ecfcbis.com
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- **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 19th day of October, 2021, a true and correct copy of the foregoing was mailed by first class mail, postage prepaid, to the following:

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/s/ Carrie Hurst

1582117

EXHIBIT A

In re Empire Solar Group, LLC
Information and Day of Auction Guidelines and Instructions

By Motion dated September 23, 2021 (the “Sale Motion”), Steven R. Bailey, the duly appointed chapter 7 trustee (the “Trustee”) in the Empire Solar Group, LLC (the “Debtor”) chapter 7 bankruptcy case, captioned *In re Empire Solar Group, LLC*, Bankr. Case No. 21-23636-JTM (the “Bankruptcy Case”), sought approval of, among other things, the sale of all the Debtor and the Debtor’s chapter 7 bankruptcy estate’s (the “Estate”) right, title and interest in certain personal property owned by the Debtor (collectively, the “Purchased Assets”) to the party that submits, in the Trustee’s business judgment, the highest or otherwise best offer for the Purchased Assets (a “Sale Transaction”).

The Debtor filed its voluntary petition for relief under chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”) on August 22, 2021, in the United States Bankruptcy Court for the District of Utah (the “Bankruptcy Court”).

As referenced in the Sale Motion, an Asset Purchase Agreement (collectively with all exhibits and schedules, the “Stalking Horse APA”), dated as of September 21, 2021, has been entered into between the Trustee, on the one hand, and TELT Ventures, LLC, dba 1 Solar (“1 Solar” or the “Stalking Horse Bidder”), on the other hand. The Stalking Horse APA contemplates a sale of the Estate’s right, title and interests in the Purchased Assets to the Stalking Horse Bidder or its designees on the terms set forth in the Stalking Horse APA under sections 105, 363 and 365 of the Bankruptcy Code (the “Stalking Horse Bid”). A copy of the Stalking Horse APA is attached as an exhibit to the Sale Motion.

After the filing of the Sale Motion, the Trustee received two additional bids for the Purchased Assets. Both bids (the “Overbids”) have been deemed by the Trustee to constitute higher and better bids for the Purchased Assets. The Overbids were submitted by PAIC Financial, LLC (“PAIC”) and Suntuity Solar Limited Liability Company (“Suntuity”).

While the Trustee is still reviewing the Overbids, the initial bid comparison between the Stalking Horse Bid and the Overbids indicates the following key differences between the Stalking Horse Bid and the Overbids:

Empire Solar Bid Comparisons	<u>1Solar</u>	<u>Suntuity</u>	<u>PAIC</u>
Initial Cash Payment			
Non-Leased Vehicles	\$ 230,000.00	\$ 230,000.00	\$ 230,000.00
Inventory/FF&E	\$ 370,000.00	\$ 395,000.00	\$ 470,000.00
	\$ 600,000.00	\$ 625,000.00	\$ 700,000.00
Future Payment Stream	\$0.45 Per watt M1 Pmt Made	\$0.45 Per watt M1 Pmt Made	\$0.45 Per watt M1 Pmt Made
	\$0.20 Per Watt M1 Not Made	\$0.20 Per Watt M1 Not Made	\$0.20 Per Watt M1 Not Made

Purchased Assets to Be Sold Free and Clear

Except as otherwise provided in the Stalking Horse APA (including any exhibits or schedules thereto), the Trustee intends to sell all of the Debtor's and the Estate's right, title, and interest in and to the Purchased Assets, free and clear of any and all claims, pledges, liabilities, interests, encumbrances, security interests, liens, financing statements, mortgages, mechanics' liens, lis pendens, or other interests in and/or claims against the Purchased Assets (collectively, "Encumbrances") to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Encumbrances to attach to the net proceeds of the sale of the Purchased Assets with the same validity and priority as such Encumbrances applied against the Purchased Assets. The Purchased Assets will be sold in their "as is," "where is," "if is" condition, without representation or warranty of any kind including any representations as to the current quantity, location, or condition of the Purchased Assets.

Initial Review of Bids

The Trustee has preliminarily determined that the Stalking Horse Bid and the Overbids are each a "Qualified Bid," and that 1 Solar, PAIC and Suntuity are each a "Qualified Bidder"; provided, that, if any Qualified Bidder fails to comply with reasonable requests for additional information from the Trustee or his professional advisors, the Trustee may, after consulting with his professional advisors, disqualify any Qualified Bidder and Qualified Bid, in the Trustee's discretion, and such Qualified Bidder shall not be entitled to attend or participate in the Auction. The Trustee shall make a determination of which Bidders have been finally qualified as a Qualified Bidder by no later than 1:00 p.m. on Tuesday, October 12, 2021, and shall immediately provide notice to 1 Solar, PAIC and Suntuity (collectively, the "Bidders") if any of the Bidders is not deemed to be a Qualified Bidder entitled to participate in the Auction.

For the avoidance of doubt, the Trustee has finally determined that the Stalking Horse Bid is a Qualified Bid and the Stalking Horse Bidder is a Qualified Bidder for all purposes, and shall be entitled to participate in the Auction.

At the Auction, each Qualified Bidder, by submitting a Bid, shall be deemed to acknowledge and agree that it is not relying upon any written or oral statements, representations, promises, warranties or guarantees of any kind whether expressed or implied, by operation of law or otherwise, made by any person or party, including Trustee, his agents, and representatives, including his professional advisors (other than as may be set forth in a definitive agreement executed by the Trustee), regarding the Debtor, the Purchased Assets, these Sale Procedures, or any information provided in connection therewith.

The Auction

Subject to the Trustee's final determination that the Trustee has received two or more Qualified Bids from the Bidders, the Trustee will hold an auction to determine the highest or otherwise best Qualified Bid for the Purchased Assets (the "Auction").

The Auction will be conducted on **Tuesday, October 12, 2021, at 5:00 p.m. (MDT)**, which Auction shall be conducted remotely by Zoom. The Zoom instructions for the Auction are as follows:

Zoom Instructions for Auction

Topic: Empire Solar -- Auction of Purchased Assets
Time: Oct 12, 2021 05:00 PM Mountain Time (US and Canada)

Join Zoom Meeting:

<https://us02web.zoom.us/j/89781403626?pwd=VnVJdC9wd3JSZHBUbWozWW9Tbzk0dz09>

Meeting ID: 897 8140 3626
Passcode: 291035

Dial by your location

+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 929 205 6099 US (New York)

Meeting ID: 897 8140 3626
Passcode: 291035

Only the Trustee, his professional advisors, all Qualified Bidders, and Uinta Bank, the Debtor's senior secured lender, and their representatives and counsel, may participate in the Auction. The Stalking Horse Bidder and all other Qualified Bidders at the Auction shall be deemed to have (a) consented to the jurisdiction of the United States Bankruptcy Court for the District of Utah to enter an Order or Orders, which shall be binding in all respects, in any way related to the Trustee, the Debtor, the Estate, the Sale Procedures, the Stalking Horse APA, any Asset Purchase Agreement submitted by a Qualified Bidder, the Purchased Assets, the Auction, or the construction of any Qualified Bid or related documents; and (b) waived any right to a jury trial in connection with any disputes relating to the Trustee, the Debtor, the Estate, the Sale Procedures, the Stalking Horse APA, any Asset Purchase Agreement submitted by a Qualified Bidder, the Purchased Assets, the Auction, or the construction of any Qualified Bid or related documents.

In the Trustee's sole discretion, the Auction may be recorded by stenographer, audio recording, and/or other means.

At the Auction, participants will be permitted to increase their bids and improve their terms. Bidding for the Purchased Assets will start at the purchase price and terms proposed in the Baseline Bid (as defined below).

The Baseline Bid. Prior to the Auction, the Trustee shall determine whether the Stalking Horse Bid or another Qualified Bid is the current highest and best offer, which shall serve as the starting point at the Auction (the "Baseline Bid").

Overbids. An “Overbid” is any bid made at the Auction, in accordance with the requirements set forth herein. All bidding at the Auction is subject to the following terms:

(a) Initial Overbid. The Initial Overbid, if any, shall provide for total consideration with a value that exceeds the value of the consideration in the Baseline Bid by an incremental amount that is not less than \$15,000.

(b) Successive Overbids. Each Successive Overbid after the initial Overbid, if any, shall exceed the then-existing Overbid by an incremental amount of not less than \$15,000.

(c) Description of Consideration and Changes to Asset Purchase Agreement. Qualified Bidders, in connection with any Overbid, must describe all cash and non-cash consideration, as well as all other changes, if any, to the Asset Purchase Agreement the Qualified Bidder previously submitted with its Bid.

(d) Overbids Irrevocable. Any Overbid shall be irrevocable and shall remain open and binding upon the Qualified Bidder in accordance with the terms of these Sale Procedures.

(e) Proof of Financial Ability to Perform: In the Trustee’s discretion, and to the extent not previously provided (which shall be determined by the Trustee in consultation with his professional advisors), a Qualified Bidder submitting an Overbid must submit written evidence in a form acceptable to the Trustee demonstrating such Qualified Bidder’s ability to consummate the Sale Transaction proposed by such Overbid.

The Trustee, after consultation with his professional advisors, may at any time adopt rules for the Auction that the Trustee reasonably determines to be appropriate to promote the goals of the sale process, provided that such rules are not in conflict with these Sale Procedures or the Bid Procedures Order and are disclosed to each Qualified Bidder participating in the Auction.

If the Trustee does not receive any Qualified Bids other than the Stalking Horse Bid by the Bid Deadline: (a) the Trustee will not hold an Auction; (b) the Stalking Horse Bid will be the Successful Bid (as defined below) and the Stalking Horse Bidder will be named the Successful Bidder (as defined below); and (c) the Trustee will proceed to request at the Sale Hearing (as defined below) that the Bankruptcy Court enter an Order approving the Sale Transaction in accordance with the Stalking Horse APA.

Selection of a Successful Bid and a Backup Bid

At the conclusion of the Auction, the Trustee, after consultation with his professional advisors, will determine the highest or otherwise best Qualified Bid for the Purchased Assets (the “Successful Bid,” and the Bidder submitting such Successful Bid, the “Successful Bidder”) and the next highest or best Qualified Bid (the “Backup Bidder”). There shall only be one Backup Bidder. This determination shall take into account any factors the Trustee, in consultation with his professional advisors, reasonably deems relevant to the value of the Qualified Bid to the Estate and may include, but are not limited to, the following: (a) the amount and form of the consideration offered, and the resulting recovery to creditors; (b) the number, type and nature of any changes to the Stalking Horse APA requested by each Bidder; (c) the extent to which such modifications are likely to delay closing of the sale of the Purchased Assets and the cost to the Estate of such modifications or delay; (d) the total consideration to be received by the

Estate, including the assumption of any liabilities of the Estate; (e) the Bidder's ability to close a transaction and the timing thereof; and (f) the net benefit to the Estate (collectively, the "Bid Assessment Criteria"). The Trustee shall not consider any Bids submitted after the conclusion of the Auction.

The Backup Bidder shall be required to keep its Bid (the "Backup Bid") open and irrevocable until the earlier of: (i) the closing of the transaction with the Successful Bidder; or (ii) 30 days after the Sale Hearing.

After the close of the Auction and at or prior to the Sale Hearing, the Trustee shall file with the Bankruptcy Court a notice of the Successful Bid and the Backup Bid. Subject to the entry of an Order of the Bankruptcy Court approving and authorizing the sale of the Purchased Assets to the Successful Bidder, the Successful Bidder must close the sale transaction by no later than eight (8) calendar days after the entry of the Bankruptcy Court's Order. If the Successful Bidder fails to consummate the purchase of the Purchased Assets by this deadline, the Trustee may deem the Backup Bidder to have the new prevailing bid, and the Trustee will be authorized, without further order of the Bankruptcy Court, to consummate the transaction with the Backup Bidder.

In the case of a failure to consummate the purchase of the Purchased Assets on the part of such Successful Bidder (including any Backup Bidder designated as a Successful Bidder), the defaulting Successful Bidder's Good Faith Deposit shall be forfeited for the benefit of the Estate. In addition, the Trustee specifically reserves the right to seek all available damages, including specific performance, from any defaulting Successful Bidder (including any Backup Bidder designated as a Successful Bidder) in accordance with the terms of the Sale Procedures.

Sale Is As Is/Where Is/If Is

Except as otherwise set forth in the Asset Purchase Agreement of the Successful Bidder or an order of the Bankruptcy Court approving the Sale Transaction, the sale of the Purchased Assets pursuant to the Sale Procedures shall be on an "AS IS, WHERE IS, IF IS" basis and without any representations or warranties of any kind, nature, or description by the Trustee (including his professional advisors) or the Estate. By submitting a Bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets prior to making its offer; that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its Bid; and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties of any kind whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in these Sale Procedures or as set forth in the Asset Purchase Agreement of a Successful Bidder or the Sale Order. By submitting a Bid, each Qualified Bidder shall be deemed to be familiar with the Purchased Assets, be a knowledgeable, experienced and sophisticated investor, and to understand and accept the risks inherent in the purchase and ownership of the Purchased Assets.

Sale Hearing

The Successful Bid and the Backup Bid will be subject to approval by the Bankruptcy Court. A hearing to approve the Successful Bid and any Backup Bid (the "Sale Hearing") shall take place on **October 13, 2021 at 10:30 a.m. (MDT)**.

Return of Good Faith Deposits

The Good Faith Deposits of all Qualified Bidders shall be held in by the Trustee in one or more escrow accounts. Except as otherwise provided in the Stalking Horse APA, the Good Faith Deposit of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearing. Except as otherwise provided in the Stalking Horse APA, the Good Faith Deposit of the Backup Bidder, if any, shall be returned to the Backup Bidder the earlier of: (i) two (2) business days after the closing of the transaction with the Successful Bidder; or (ii) forty-five (45) days after the Sale Hearing. If the Successful Bidder timely closes the Sale Transaction, its Good Faith Deposit shall be credited towards the purchase price, in accordance with the Successful Bidder's Asset Purchase Agreement.

Reservation of Rights of Trustee

Except as otherwise provided in the Stalking Horse APA, the Sale Procedures or the Sale Procedures Order, the Trustee reserves the right as he may reasonably determine, in his sole business judgment, to be in the best interest of the Estate, its creditors, and/or other parties in interest, to: (a) determine which bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest or best proposal and which is the next highest or best proposal; (d) reject any Bid that is, in the Trustee's business judgment, (1) inadequate or insufficient, (2) not in conformity with the requirements of the Sale Procedures or the requirements of the Bankruptcy Code, or (3) contrary to the best interests of the Estate, its creditors, and/or other parties in interest; (e) waive non-compliance with any of the terms and conditions set forth herein as the Trustee determines to be in the best interests of the Estate, its creditors, and/or other parties in interest; (f) impose additional terms and conditions with respect to all potential bidders; (g) extend the deadlines set forth herein; (h) continue or cancel the Sale Hearing in open court, or by filing a notice on the docket of the Bankruptcy Case, without further notice to creditors or other parties in interest; and (i) implement additional procedural rules that the Trustee determines will better promote the goals of the bidding process and discharge the Trustee's fiduciary duties; provided, however, that any modification or additions to the Sale Procedures shall not be materially inconsistent with the Sale Procedures Order or any other order of the Court, the Bankruptcy Code, or the Bankruptcy Rules, and shall be disclosed to each Qualified Bidder.