

This order is SIGNED.

Dated: October 20, 2021



JOEL T. MARKER
U.S. Bankruptcy Judge



Prepared and Submitted by:

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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

**ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION TO APPROVE ASSET
PURCHASE AGREEMENT AND TO ASSUME AND ASSIGN LAS VEGAS LEASE
AS PART OF THE TRANSACTION, AUTHORIZING SALE OF INCLUDED ASSETS
FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES, AUTHORIZING
ASSUMPTION AND ASSIGNMENT OF LAS VEGAS LEASE, AND GRANTING
RELATED RELIEF**

This matter came before the Court on October 19, 2021 for a hearing (the "**Hearing**") on the *Chapter 7 Trustee's Motion to Approve Asset Purchase Agreement and to Assume and Assign Las Vegas Lease as Part of the Transaction* (the "**Sale Motion**") [Dkt. 36] filed by

Steven R. Bailey, the Chapter 7 Trustee (the “**Trustee**” or “**Seller**”). At the Hearing, Michael R. Johnson and David H. Leigh appeared on behalf of the Trustee, who also was present. Other counsel and parties-in-interest noted their appearances on the record.

Without limitation, this order (the “**Sale Order**”) (1) confirms that Suntuity Solar Limited Liability Company (“**Suntuity**” or “**Buyer**”) made the highest and best offer at the Auction (as defined below), (2) approves the Asset Purchase Agreement, dated as of October 19, 2021, by and between the Trustee, as seller, and Suntuity as buyer, a copy of which (without exhibits) is attached as **Exhibit A** (as approved and/or modified by this Sale Order, the “**Final APA**”), and (3) authorizes the Trustee to sell the Included Assets¹ to Suntuity pursuant to the terms and conditions of the Final APA.

After reviewing and considering the Final APA, the Sale Motion, the Trustee’s Report of Sale [Dkt. 94], the Declaration of Steven R. Bailey, Trustee [Dkt. 95], and such other and further matters of record as the Court deemed appropriate, in light of the evidence received at the hearing on the Sale Motion, and based upon the representations and concessions of the parties through their counsel at the hearing, the Court hereby **FINDS AND CONCLUDES** as follows:

- A. The Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334;
- B. The Sale Motion presents a core proceeding pursuant to 28 U.S.C. § 157;
- C. Notice of the Sale Motion, of the hearing thereon and of the objection deadline related thereto was sent to all parties entitled to notice in accordance with Federal Rule of

¹ Unless otherwise defined herein, this and other capitalized terms used in this Sale Order shall have the meanings specified in the Final APA.

Bankruptcy Procedure 2002(a)(2) and other applicable requirements, including all orders of the Court, and such notice was adequate and proper within the meaning of 11 U.S.C. § 102(1);

D. In the Sale Motion, the Trustee sought the entry of an Order: (i) approving the Asset Purchase Agreement (the “**1Solar 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 Included Assets to 1Solar; (ii) approving the sale of the Included Assets to 1Solar or to another purchaser for a higher and better price on substantially similar terms as those set forth in the 1Solar APA; (iii) authorizing the sale of the Included Assets (except only the Encumbered Vehicles), free and clear of all liens, claims, rights, encumbrances, and other interests, with valid liens, claims, rights, encumbrances, and other interests attaching to the proceeds; and (iv) granting related relief.

E. As stated in the Sale Motion, the Trustee’s proposed sale of the Included Assets to 1Solar was expressly subject to the receipt of higher or better offers from other parties interested in the assets, and to an auction process in the event such higher or better offers were received;

F. As stated in the *Notice of Chapter 7 Trustee’s Motion to Approve Asset Purchase Agreement and to Assume and Assign Las Vegas Lease as Part of the Transaction*, and *Notice of Hearing* (the “**Notice**”) [Dkt. 44], the deadline for any parties to submit a competing bid for the Included Assets was October 8, 2021 (the “**Bid Deadline**”);

G. On October 8, 2021, Suntuity filed *Suntuity Solar Limited Liability Company’s Notice of Interest Pursuant to 11 U.S.C. §§ 541(d) and 546(b)(2)* [Docket No. 77] (the “**Suntuity Notice of Interest**”), whereby Suntuity asserted an ownership interest in certain of the Included Assets, including “solar equipment and other ‘inventory’ located in the Debtor’s warehouses and/or installed on the roofs or other property of the Debtor’s customers having a total value of \$1,400,208.03” which “Suntuity ordered, purchased, and delivered to the Debtor’s warehouses (or, in some instances, directly to the homes of the Debtor’s customers)” and related “rights to

collect money associated with the Debtor's customer contracts," as set forth in more detail in the Suntuity Notice of Interest (collectively, the "**Disputed Suntuity Ownership Interests**").²

H. Suntuity also filed an *Objection to Chapter 7 Trustee's Motion to Approve Asset Purchase Agreement and to Assume and Assign Las Vegas Lease as Part of the Transaction* [Docket No. 78] and supplemental objection [Docket No. 86] (collectively, the "**Suntuity Objection**"). Without limitation, the Suntuity Objection asserted (i) that some or all of the Inventory and other Included Assets to be sold pursuant to the Sale Motion were owned (legally and/or equitably) by Suntuity, (ii) that the Trustee could not sell the Inventory and other assets owned (legally or equitably) by Suntuity free and clear of Suntuity's ownership interests, and (iii) in the alternative, that Suntuity's rights and interests would attach to the proceeds of the sale.

I. Prior to the Bid Deadline, the Trustee received inquiries about the assets to be sold pursuant to the Sale Motion from Suntuity, PAIC Financial, and Genesis, and provided certain requested information to each of those potential bidders;

J. Prior to the Bid Deadline, Suntuity made a qualified competing overbid for the Included Assets and funded the \$150,000 deposit required by the Notice. In summary, the terms of Suntuity's competing bid were 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, allocated as follows: (i) \$255,000 for Unencumbered Vehicles, (ii) \$20,000 for Encumbered Vehicles (subject to existing liens perfected on the vehicle titles), (iii) \$350,000 to purchase all of the Inventory and FF&E together with the option to assume the Las Vegas Lease (and, subject

² As described in the *Trustee's Complaint for Declaratory Judgment* [Docket No. 84], the Trustee disputes (and formally has disputed) the ownership interests asserted by Suntuity.

to its actual assumption of the Las Vegas Lease, assumption of liabilities associated with the Las Vegas Lease);

K. As part of its bid for the Included Assets, Suntuity offered to waive the Suntuity Objection and further offered to waive any claim to proceeds of the sale arising from Suntuity's Disputed Ownership Interests (the "**Suntuity Waiver**");

L. Based upon Suntuity's qualified competing overbid, the Trustee conducted an auction of the Included Assets on October 15, 2021 beginning at 10:00 a.m. MDT (the "**Auction**"). The Auction was conducted remotely by Zoom, and was recorded;

M. Both 1Solar and Suntuity attended and actively participated in the Auction. The Auction also was attended by representatives of Uinta Bank. At the beginning of the Auction, the Trustee announced that, in his view, the qualified competing overbid submitted by Suntuity on or before the Bid Deadline was the highest and best bid for the Included Assets;

N. The Auction concluded with Suntuity making the highest and otherwise best bid for the Included Assets (the "**Winning Bid**"), and with 1Solar making the next highest and otherwise best bid for the Included Assets (the "**Back-Up Bid**");

O. Specifically, at the Auction, Suntuity, which submitted the Winning Bid, offered \$700,000 as the "Initial Cash Payment," allocated as follows: (i) \$285,000 for Unencumbered vehicles; (ii) \$20,000 for Encumbered Vehicles;³ and (iii) \$395,000 to purchase all of the

³ As more particularly described in section 1.3.b of the Final APA, the Encumbered Vehicles will be sold and conveyed to Suntuity subject to existing liens perfected on the vehicle titles, but free and clear of all other liens and interests. Although Suntuity is taking title to the Encumbered Vehicles subject to perfected liens, Suntuity is not assuming the Debtor's obligations or liabilities secured by the Encumbered Vehicles.

Inventory and FF&E together with the option to receive a quit claim assignment of the Debtor's interests in the Las Vegas Lease;⁴

P. In addition to the Initial Cash Payment, Suntuity's Winning Bid includes additional payments calculated as a portion or allocation of cash proceeds that Suntuity actually receives from or on account of Uncompleted Contracts (the "**Future Payment Stream**")⁵ in an amount equal to (i) \$0.45 per watt for every Uncompleted Contract in which an M1 payment has already been received by the Debtor, and (ii) \$0.20 per watt for every Uncompleted Contract in which an M1 payment has not already been received by the Debtor;

Q. Suntuity guaranteed the following minimum payments from the Future Payment Stream and/or on account of the Uncompleted Contracts (the "**Guaranteed Minimum**"):

(i) \$500,000, to be paid on or before December 31, 2021; and (ii) \$300,000, to be paid on or before March 31, 2022;

R. In addition to the Initial Cash Payment and the Future Payment Stream, Suntuity offered the Suntuity Waiver as part of its Winning Bid;

S. In the Trustee's reasonable business judgment, considered with the input of his financial advisors and legal professionals, the value of the Suntuity Waiver is at least \$200,000;

T. 1Solar, which submitted the Back-Up Bid, offered \$700,000 as the Initial Cash Payment, allocated in an identical manner as Suntuity's Winning Bid, along with a Future Payment Stream for Uncompleted Contracts of (i) \$0.45 per watt for every Uncompleted Contract

⁴ As more particularly described in section 1.3.c of the Final APA, Suntuity shall have the right (but not the obligation) to receive an assignment of the Las Vegas Lease, and such assignment shall not be binding on the estate absent a further stipulation between the Trustee, Suntuity and the landlord that is approved by the Court.

⁵ The Future Payment Stream refers to the per watt allocation that Suntuity is obligated to pay, as part of the Purchase Price, as a split of proceeds (i.e., cash payments) that Suntuity actually receives from, or on account of, the counter-parties to the Uncompleted Contracts. Subject to the Guaranteed Minimum, Suntuity's obligation to pay the "per watt" split of proceeds from the Future Payment Stream is dependent upon Suntuity's actual success in monetizing the Uncompleted Contracts on an individual, case-by-case, contract-by-contract basis.

in which an M1 payment has already been received by the Debtor, and (ii) \$0.20 per watt for every Uncompleted Contract in which an M1 payment has not already been received by the Debtor, and 1Solar further offered the same Guaranteed Minimum payment the “Future Payment Stream” of \$500,000 on or before December 31, 2021, and \$300,000 on or before March 31, 2022;

U. The sale of the Included Assets to Suntuity for the Winning Bid, and on the terms and conditions agreed to in principle at the Auction and as modified in Final APA, is in the best interests of the bankruptcy estate and its creditors;

V. The Trustee exercised reasonable business judgment in selecting the Winning Bid of Suntuity as the highest and best offer made during the Auction;

W. The sale of the Included Assets to 1Solar for the Back-Up Bid, solely in the event the sale to Suntuity does not close and fund in a timely manner, and on the terms and conditions agreed to at the Auction, is also in the best interests of the bankruptcy estate and its creditors;

X. The amount of the Winning Bid and the amount of the Back-Up Bid both represent a fair and reasonable price for the Included Assets;

Y. The Auction procedures employed by the Trustee, as more fully outlined in the Auction Report, were fair and reasonable;

Z. Suntuity did not engage in any improper or disqualifying collusion or other unfair dealings as part of the sale process, including at the Auction;

AA. Suntuity is a good faith purchaser of the Included Assets within the meaning of 11 U.S.C. § 363(m);

BB. The Trustee exercised sound business judgment with respect to the sale process, his decision to sell the Included Assets, his valuation and consideration of the Winning Bid

(including but not limited to his valuation of the Suntuity Waiver) and the Back-Up Bid, the handling and conduct of the Auction, and the terms of the Final APA;

CC. The Trustee should be authorized, pursuant to 11 U.S.C. §§ 363(b), (f) and (h) and Rules 6004 and 9014 of the Federal Rules of Bankruptcy Procedure, to sell the Included Assets (excepting the Encumbered Vehicles) free and clear of all liens, claims and interest, with any valid and properly perfected liens, claims or interests attaching to the proceeds of the sale to the same extent and with the same priority as they existed in the Included Assets;

DD. The Trustee should be authorized, pursuant to 11 U.S.C. §§ 363(b), (f) and (h) and Rules 6004 and 9014 of the Federal Rules of Bankruptcy Procedure, to sell the Encumbered Vehicles (i) subject to existing liens perfected on the vehicle titles, and (ii) free and clear of all other liens, claims and interest, with any other liens, claims or interests attaching to the proceeds of the sale to the same extent and with the same priority as they existed in the Included Assets;

EE. With respect to the holders of purported liens, claims and interests against the Included Assets, including secured creditors, such parties either consent to the sale, hold interests that are in bona fide dispute, or could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of their interest;

FF. From the proceeds of sale of the Included Assets, the Trustee is entitled to retain, as unencumbered funds of the estate, the portion of the sale price allocated to the Unencumbered Vehicles and the equity for the Encumbered Vehicles, and such other amounts as were agreed to between the Trustee and Uinta Bank, the holder of the senior lien on the Included Assets, as set forth in the Stipulation filed with the Court on October 8, 2021, as Dkt. 74. The remainder of all proceeds received and to be received for the Included Assets shall be paid by the Trustee to the

holders of perfected liens against the Included Assets, in their order of priority under applicable non-bankruptcy law;

GG. As part of the Court's approval of the Final APA, the Trustee is authorized to transfer the estate's interest in the Las Vegas Lease to Suntuity provided, however, that to the extent Suntuity agrees to formally assume the Las Vegas Lease such assumption shall not be effective and shall not bind the estate unless a stipulation for assignment and assumption is entered into between the Trustee, Suntuity and the landlord, and is thereafter approved by the Court. Further, in the event of a formal assumption and assignment of the lease, Suntuity shall be solely and exclusively responsible for any cure costs and any other charges or expenses, whether now existing or hereafter arising, which are or may become due under the lease, and shall hold the estate harmless. For the avoidance of any doubt, however, Suntuity is not obligated to assume the Las Vegas Lease, and shall only assume and take over the estate's interest in the Las Vegas Lease if an acceptable stipulation for assumption and assignment is entered into between the parties and is thereafter approved by the Court;

HH. Cause exists to order that the fourteen day stay otherwise applicable to the sale of the Property under Federal Rule of Bankruptcy Procedure 6004(h) should be waived in that, among other things, (i) any objections to the Sale Motion have been resolved or withdrawn, (ii) the proposed sale is time sensitive as the Uncompleted Contracts are at risk of continuing diminution and loss of value, and (iii) a stay of the Order would negatively impact the estate by increasing the expense and burden of the Included Assets to the estate and causing a decrease in the net proceeds payable to the consolidated estate;

II. The legal and factual bases set forth in the Sale Motion establish good and sufficient cause for the relief granted herein; and

JJ. The Sale Motion is well taken and should be granted.

WHEREFORE, based upon the Sale Motion, the Trustee's Report of Sale, the Declaration of Steven R. Bailey, Trustee, all other papers filed in support of the Sale Motion, the arguments and evidence proffered and/or received at the hearing on the Sale Motion, and the foregoing findings and conclusions, the Court hereby **ORDERS** that:

1. The Sale Motion shall be, and hereby is GRANTED.
2. Pursuant to 11 U.S.C. §§ 363(b) and (f) and Federal Rules of Bankruptcy Procedure 6004 and 9014, the Trustee shall be, and he hereby is, authorized and empowered to sell the Included Assets to Suntuity, or to 1Solar in the event that Suntuity does not timely close and fund, free and clear of all liens, claims and interests except as otherwise provided in the Final APA (or, to the extent applicable, the 1Solar APA), for the amount of Winning Bid or alternatively the amount of the Back-Up Bid, and upon such other terms and conditions as have been agreed to by the Trustee and Suntuity and 1Solar, all as are more particularly set forth in the Sale Motion, the Trustee's Report of Sale, the Declaration of Steven R. Bailey, Trustee, this Order, and the Final APA (or, to the extent applicable, the 1Solar APA).
3. Effective as of the closing of the sale of the Included Assets, and except as otherwise set forth in the Final APA (or, to the extent applicable, the 1Solar APA), all liens, claims and interests in the Included Assets, including but not limited to the liens, claims or interests of all secured creditors, shall be, by this Order and judicial declaration, deemed released, discharge and cleared from the Included Assets, and the Included Assets shall be conveyed to Suntuity (and to 1Solar if Suntuity does not timely close and fund) free and clear of all liens, claims and encumbrances.

4. With respect to the Encumbered Vehicles that are the subject of the Final APA (and, to the extent applicable, the 1Solar APA), as of and after the closing of the sale, the automatic stay of 11 U.S.C. § 362(a) and any other stays or injunctions imposed by applicable law shall be terminated with respect to the Encumbered Vehicles, the Encumbered Vehicles shall no longer be property of the Estate, and any holders of perfected liens on or interests in such Encumbered Vehicles may exercise their rights and remedies against such Encumbered Vehicles without further notice or order of the Court.

5. In connection with certain Empire customer contracts, GreenLancer, Inc. (“**GreenLancer**”) asserts that it provided certain residential permit-ready set designs (“**Plansets**”) which GreenLancer asserts were necessary to the installation of solar panels relating to those customer contracts. GreenLancer further asserts ownership of uncompensated Plansets. The entry of this Order is without prejudice to GreenLancer’s right to assert a claim against the proceeds of the sale based on its asserted ownership of the Plansets and without prejudice to the rights of any party, including the Trustee or any secured lenders, to oppose any claim asserted by GreenLancer against such sale proceeds.

6. From and after the closing, Suntuity shall accede to all rights of the Debtor under the Included Assets, including the Uncompleted Contracts. As described in sections 1.2.b and 1.3 of the Final APA, and except as otherwise provided in the Final APA, Suntuity is not assuming any liabilities of the Debtor or the bankruptcy estate.

7. Although Suntuity is not assuming the Debtor’s obligations under the Uncompleted Contracts, Suntuity shall act in good faith and use commercially reasonable efforts to reach agreement with each counterparty to the Uncompleted Contracts on terms anticipated to result in a reasonable net profit to Suntuity considering, without limitation (a) the costs of labor

and materials that Suntuity may be required to provide to satisfy the counter-party to the Uncompleted Contract and/or its financier(s), (b) the risks of litigation and/or negative reviews and/or customer complaints, and (c) the allocated portion of gross proceeds that must be paid as part of the purchase price in the form of the Future Payment Stream. Suntuity shall not have any obligation to monetize the rights under any individual Uncompleted Contract unless it is commercially practicable and feasible to do so. Suntuity shall not be required to reach agreement with the counter-party to any Uncompleted Contract that Suntuity reasonably believes will not generate recoverable net proceeds for Suntuity under the particular contract after Suntuity deducts from the revenues to be received costs and expenses it reasonably expects to incur in performing such agreement, and the payments it will be required to pay as part of the Future Payment Stream. With respect to Uncompleted Contracts that Suntuity is reasonably able to monetize, Suntuity shall act in good faith and shall use commercially reasonable efforts to collect monies due from, or payable on behalf of, the counter-party, with the collected proceeds to be shared with the Estate in accordance with the terms of the Final APA. Further, and for the avoidance of any doubt, Suntuity shall be obligated to pay the Future Payment Stream arising from any amended or replacement contracts that Suntuity enters into with the counter-parties to the Uncompleted Contracts as a result of the good faith, commercially reasonable efforts contemplated by this paragraph.

8. Notwithstanding any different or contrary term or provision of the draft APA submitted by either 1Solar or Suntuity or the Final APA attached to this Order, the sale of the Included Assets shall be deemed to include, in addition to all other terms and conditions agreed to between the Trustee and either 1Solar or Suntuity (and the final form of APA to be signed shall so reflect), the following additional requirements:

A. The successful purchaser shall close and consummate the transactions authorized hereby by no later than eight (8) business days after the entry of this Order. If the successful purchaser fails to consummate and close the sale by this deadline, the Trustee may deem the back-up bidder to have the new prevailing high bid, and the Trustee is authorized, without further order of the Court, to close and consummate the sale with the back-up bidder. The back-up bidder shall have eight (8) business days after the Trustee notifies the back-up bidder that it now holds the prevailing high bid to close and consummate the transaction.

B. The successful purchaser's escrowed or held funds shall be applied by the Trustee to reduce or satisfy, as applicable, the successful purchaser's obligation to pay the Initial Cash Payment at or before closing. Absent further order of the Court, the Trustee shall return any escrowed and held funds or deposits to the unsuccessful purchaser within ten (10) days of the closing and consummation of the sale to the successful purchaser.

C. The Trustee and the successful purchaser shall work directly with all contract funders in an attempt to establish a "split invoice payment" system for all payments on all acquired Uncompleted Contracts so that contract funders remit the estate's share of contract proceeds directly to the Trustee. If a "split invoice payment" system cannot be arranged with a contract funder and the successful purchaser directly receives the estate's share of contract proceeds ("**Estate's Share**"), the successful purchaser shall hold the Estate's Share in trust for the exclusive benefit of the Estate, and shall pay the Estate's Share to the Trustee by no later than thirty (30) days after receipt.

D. By no later than thirty (30) days of closing of the sale, the successful purchaser shall provide the Trustee or the Trustee's financial advisor with a written report of all Uncompleted Contracts that it has preliminary identified as contracts that it desires or intends to

complete. Such report shall identify, at a minimum, the name of the customer, the address and other contact information of the customer, and the identity of any third party contract funder associated with the contract. If additional Uncompleted Contracts are identified by the successful purchaser after the delivery of the written report, the successful purchaser shall update the written report, and timely provide the updated written report to the Trustee.

E. On no less than a semi-monthly basis, the successful purchaser shall provide the Trustee or the Trustee's financial advisor with a status report which contains summary information as to the status of the purchaser's efforts to monetize the Uncompleted Contracts set forth on its written report, along with any other pertinent information which the Trustee may reasonable request.

F. Upon reasonable notice to the successful purchaser of not less than forty-eight (48) hours, the Trustee and/or the Trustee's advisors shall be entitled to inspect and review any and all records maintained by the successful purchaser regarding the Uncompleted Contracts, including but not limited to all communications and correspondence with the customers and/or contract funders associated with the Uncompleted Contracts. The Trustee and his advisors also shall be entitled to communicate directly with the customers and/or the third party funders regarding the Uncompleted Contracts if, in the Trustee's business judgment, such communications are necessary for the Trustee to monitor and insure compliance by the successful purchaser with the terms of its agreement.

9. The Auction procedures employed by the Trustee in the sale of the Included Assets, and the Trustee's valuation and assessment of the Winning Bid as being the "highest and best" bid for the Included Assets, as outlined in the Auction Report, were fair and reasonable, and they shall be, and hereby are, approved.

10. The Trustee shall be, and he hereby is, authorized and empowered to execute and deliver such deeds and other documents as may be necessary or appropriate to affect the transfer of the Included Assets to the successful purchaser pursuant to this Order and the Final APA (or, if applicable, the 1Solar APA).

11. From the proceeds of sale of the Included Assets, the Trustee is entitled to retain, as unencumbered funds of the estate, the portion of the sale price allocated to the Unencumbered Vehicles and the portion of the sale price allocated to the estate's equity in Encumbered Vehicles, and such other amounts as were agreed to between the Trustee and Uinta Bank, the holder of the senior lien on the Included Assets, as set forth in the Stipulation filed with the Court on October 8, 2021, as Dkt. 74. The remainder of all proceeds received and to be received for the Included Assets shall be paid by the Trustee to the holders of perfected liens against the Included Assets, in their order of priority under applicable non-bankruptcy law.

12. The Trustee is authorized to transfer the estate's interest in the Las Vegas Lease to Suntuity provided, however, that to the extent Suntuity agrees to formally assume the Las Vegas Lease such assumption shall not be effective and shall not bind the Estate unless a stipulation for assignment and assumption is entered into between the Trustee, Suntuity and the landlord, and is thereafter approved by the Court. Further, in the event of a formal assumption and assignment of the lease, Suntuity shall be solely and exclusively responsible for any cure costs and any other charges or expenses, whether now existing or hereafter arising, which are or may become due under the lease, and shall hold the estate harmless. For the avoidance of any doubt, however, Suntuity is not obligated to assume the Las Vegas Lease, and shall only assume and take over the estate's interest in the lease if an acceptable stipulation for assumption and assignment is entered into between the parties and is thereafter approved by the Court.

13. The liens, claims and interests of any person or entity entitled to assert an interest in the Included Assets as of the date of this Order shall attach to proceeds of the sale to the same extent and with the same priority as they existed on the Included Assets, *provided, however*, that pursuant to the Suntuity Waiver, and subject to the closing of the APA, Suntuity is hereby deemed to have waived and released any claim to the proceeds of the sale based on its asserted ownership interest(s) in the Included Assets.

14. As of and after the closing, Suntuity (and 1Solar, in the event that Suntuity does not close and fund but 1Solar does close and fund) shall be deemed a good faith purchaser of the Included Assets, and shall be entitled to all of the protections afforded by 11 U.S.C. § 363(m).

15. Any and all objections to the Sale Motion that were not withdrawn at or prior to the hearing on the Sale Motion and that are not resolved by this Order shall be, and they hereby are, overruled.

16. For cause shown, the fourteen-day stay period otherwise imposed by Federal Rule Bankruptcy Procedure 6004(h) shall be, and it hereby is, waived and declared inapplicable.

----- END OF ORDER -----

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 2021, the foregoing proposed **ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION TO APPROVE ASSET PURCHASE AGREEMENT AND TO ASSUME AND ASSIGN LAS VEGAS LEASE AS PART OF THE TRANSACTION, AUTHORIZING SALE OF INCLUDED ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES, AUTHORIZING ASSUMPTION AND ASSIGNMENT OF LAS VEGAS LEASE, AND GRANTING RELATED RELIEF**

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
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- Deborah Rae Chandler dchandler@aklawfirm.com
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- United States Trustee USTPRegion19.SK.ECF@usdoj.gov

/s/ Carrie Hurst

Carrie Hurst

DESIGNATION OF PARTIES TO BE SERVED

Service of the foregoing signed **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:

- **B. Scott Allen** allen@mvmlegal.com, coley@mvmlegal.com
- **Steven R. Bailey tr** karen@baileylaw.org, UT06@ecfcbis.com
- **Megan K Baker** baker.megan@dorsey.com, long.scarlette@dorsey.com
- **Matthew M. Boley** mboleym@ck.law, klopez@ck.law
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- **Ellen E. Ostrow** ellen.ostrow@stoel.com, docketclerk@stoel.com; michelle.smock@stoel.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

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 following Non-ECF parties requesting notice and other parties-in-interest, should be served with a copy of the Order by U.S. Mail pursuant to Fed R. Civ. P. 5(b).

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

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

Micheal Gipson
411 West Walnut St
Independence, MO 64050

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

Uinta Bank
140 Yellow Creek Rd.
Evanston, WY 82930

Durham Commercial Capital Corp
101 Sullys Trail, Bldg 20
Pittsford, NY 14534

D & J Properties
3020 South West Temple
Salt Lake City UT 84115

Wesco Distribution, Inc.
3425 East Van Buren Street
Phoenix, AZ 84008

Gambit, LLC
235 Washakie Dr.
Evanston, WY 82930

Consolidated Electrical Distributors, Inc.
15230 N. 75th St., Suite 2020
Scottsdale, AZ 85260

CT Corporation System, as representative
330 N. Brand Blvd., Suite 700
Glendale, CA 91203
Attn: SPRS

BFG Corporation
721 N McKinley Rd.
Lake Forest, IL 60045

Suntuity Solar Limited Liability Company
2137 NJ-35
Holmdel, NJ 07733

Onesource Distributors, LLC
3951 Oceanic Drive
Oceanside, CA 92056

Codale Electric Supply, Inc.
5225 W. 2400 South
South Salt Lake City, UT 84120

Crawford Electric Supply Company, Inc.
7390 Northcourt Rd.
Houston, TX 77040

Independent Electric Supply, Inc.
2001 Marina Blvd,
San Leandro, CA 94577

QED Inc., dba Quality Electrical Distributors
1661 W. 3rd Ave.,
Denver, CO 80233

Viking Electric Supply, Inc.
451 Industrial Boulevard NE,
Minneapolis, MN 55413

World Electric Supply, Inc.
569 Stuart Lane
Jacksonville, FL 32254

High Speed Capital, LLC
116 Nassau St.,
Suite 804
New York, NY 10038

Ally Bank
PO Box 9001948
Louisville, KY 40290-1948

Bank of America, N.A.
P.O. Box 31785
Tampa, FL 33631-3785

Courtesy Chevrolet Center
750 Camino Del Rio
North San Diego, CA 92108-3296

Americredit Financial Services, Inc.
dba GM Financial
P O Box 183853
Arlington, TX 76096

Ford Motor Credit Company LLC
Tax Department Ford WHQ Room 612
1 American Road
Dearborn, MI 48126

Ford Motor Company
CT Corporation System
1108 E South Union Ave
Midvale, UT 84047

Bank of America, N.A.
c/o CT Corporation System
1108 E South Union Ave
Midvale, UT 84047

Wells Fargo Auto
C/O Corporation Service Company
15 W South Temple Ste 1701
Salt Lake City, UT 84101

Wells Fargo Auto
C/O Corporation Service Company
15 W South Temple Ste 600
Salt Lake City, UT 84101

/s/ Michael R. Johnson

EXHIBIT “A”

ASSET PURCHASE AGREEMENT

This PURCHASE AGREEMENT (this “Agreement”) is entered into effective as of October ____, 2021 (“Effective Date”), by and among Steven R. Bailey, solely in his capacity as the Chapter 7 Trustee of the bankruptcy estate of Empire Solar Group, LLC (“Seller”) and Suntuity Solar Limited Liability Company, a New Jersey limited liability company (“Buyer” or “Suntuity”).

RECITALS

A. WHEREAS, on or about August 22, 2021 (the “Petition Date”), Empire Solar Group, LLC (the “Debtor”) filed a voluntary petition for relief under chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Utah (the “Bankruptcy Court”), thereby commencing the bankruptcy case styled *In re Empire Solar Group, LLC*, Bankr. No. 21-23636 (the “Bankruptcy Case”).

B. WHEREAS, the Seller, Steven R. Bailey (the “Trustee”), is the duly appointed Chapter 7 trustee of the bankruptcy estate of the Debtor (the “Estate”).

C. WHEREAS, the Debtor was formerly in the business of contracting with residential customers throughout the United States to sell and install solar energy panels and related equipment.

D. WHEREAS, the Buyer also is in the business of contracting with residential customers throughout the United States to sell and install solar energy panels and related equipment.

E. WHEREAS, as described in the Notice of Interest that Buyer filed in the Bankruptcy Case [Docket No. 77], within less than sixty days prior to the Petition Date, Buyer asserts that it purchased, delivered to the Debtor’s warehouses (or, in some instances, directly to the homes of the Debtor’s customers) and claims to currently own solar equipment and other “inventory” located in the Debtor’s warehouses and/or installed on the roofs or other property of the Debtor’s customers having a total value of \$1,400,208.03 (“Suntuity’s Disputed Property Interests”). As described in the *Trustee’s Complaint for Declaratory Judgment* [Docket No. 84], the Trustee disputes (and formally has disputed) the ownership interests asserted by Suntuity, as well as the nature, validity and amount of any claim that Buyer asserts with respect to such Suntuity’s Disputed Property Interests.

F. WHEREAS, in the Trustee’s sale motion [Docket No. 36] as amended [Docket No. 59] (the “Sale Motion”), the exhibits to the Sale Motion, including the Asset Purchase Agreement between the Trustee and 1Solar (the “1Solar APA”), and the notice of the Sale Motion [Docket No. 39] (the “Notice”), the Trustee seeks authority to sell the Included Assets free and clear of liens, claims and interests, including Suntuity’s Disputed Property Interests.

G. WHEREAS, Suntuity objected to the Sale Motion [Docket Nos. 78 and 86] (“Suntuity’s Objection”) relating to the Trustee’s proposed sale of property to 1Solar (and/or any other bidders other than Suntuity) to the extent the property to be sold includes Suntuity’s Disputed Property Interests.

H. WHEREAS, the Trustee conducted an auction of the Included Assets on October 15, 2021 beginning at 10:00 a.m. MDT (the “Auction”);

I. The Auction concluded with Suntuity making the highest and otherwise best bid for the Included Assets, on the terms and conditions described in this Agreement;

J. WHEREAS, Seller desires to sell, transfer and assign to Buyer, and Buyer desires to purchase from Seller, the Included Assets, as further described in this Agreement, through the process of a “Section 363 Sale” under Sections 105(a), 363 and 365 of the U.S. Bankruptcy Code and upon the terms and subject to the conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the respective representations, warranties, covenants, and agreements contained in this Agreement, the parties to this Agreement hereby agree as follows:

ARTICLE I

SALE AND PURCHASE OF ASSETS AND ASSUMPTION OF CERTAIN LIABILITIES

Section 1.1 Sale and Purchase of Assets.

a. Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date (as hereinafter defined), Seller agrees to sell, transfer, convey, assign and deliver to Buyer, and Buyer agrees to purchase, acquire and accept from Seller, free and clear of certain claims, liens, restrictions, encumbrances or security interests, all of Seller’s right, title and interest in and to all of the assets described in Section 1.1(b) below (the assets to be purchased hereunder being called the “Included Assets”).

b. The Included Assets shall consist of the following assets of the Debtor:

- i. All of the Debtor’s rights under uncompleted solar contracts (“Uncompleted Contracts”) in which the Debtor has unperformed material obligations, including the Uncompleted Contracts identified in Confidential Exhibit “A” attached hereto. As of the Petition Date, the estimated number of Uncompleted Contracts was nine hundred forty-six (946), although Seller and Buyer both agree and acknowledge that the actual number of Uncompleted Contracts could be less or more than that number.
- ii. All trade secrets and other information specifically relating to the Uncompleted Contracts (but not the Debtor’s trade secrets and information generally), including all information regarding the counter-parties to the Uncompleted Contracts held or compiled by the Debtor or the Trustee, including all such information contained in the Debtor’s CRM database.
- iii. Subject to the rights (if any) of licensors, a license to access and use any and all databases and systems that the Debtor used to store and track customer information, project status, survey information, designs, dealer information, etc.; provided, however that Buyer (not Seller) shall be

obligated to pay any and all license or sub-license fees or other charges necessary to maintain such databases and systems and provide access thereto to Buyer.

- iv. All rights of Seller under confidentiality, non-circumvention, or nondisclosure agreements executed by 1Solar, PAIC Solar, and/or other persons relating to the Uncompleted Contracts and/or the Included Assets.
- v. All materials, work in process, inventory and solar equipment supplied or installed, and the value of all services provided, specifically related to the Uncompleted Contracts.
- vi. Excluding Chapter 5 claims, all claims, causes of action and choses in action (including any commercial tort claims) relating directly to, or arising directly from, the Uncompleted Contracts, or material supplied or installed and/or services provided in connection with Uncompleted Contracts, including claims against the customers, homeowners or counter-parties to the Uncompleted Contracts.
- vii. Excluding Chapter 5 claims, all claims, causes of action and choses in action (including any commercial tort claims) relating directly to, or arising directly from, the Uncompleted Contracts, or material supplied or installed and/or services provided in connection with Uncompleted Contracts, including claims against third parties that may have interfered with the Uncompleted Contract in violation of any provision of the Bankruptcy Code, including the automatic stay arising under section 362(a) of the Bankruptcy Code, and/or in violation of applicable non-bankruptcy laws.
- viii. All accounts receivable, payment rights, payment intangibles, and other rights to collect money relating to the Uncompleted Contracts.
- ix. All solar equipment, inventory, work in process and other materials as of the Petition Date – wherever located – including without limitation all inventory currently (or, formerly, as of the Petition Date) located at any of the warehouses identified in Exhibit “B” attached hereto (collectively and including all materials, work in process, inventory and solar equipment supplied or installed in connection with Uncompleted Contracts, “Inventory”).
- x. All furniture, fixtures or equipment (“FF&E”) owned by the Debtor and currently (or, formerly, as of the Petition Date) located in any of the warehouses identified in Exhibit “B” attached hereto (including desks, chairs, computer equipment, tools, safety equipment, survey drones, pallet jacks, owned forklifts, storage bins and shelving).
- xi. All property of the Debtor and the Estate of which TELT Ventures, LLC d/b/a 1Solar (“1Solar”) took possession, including all vehicles, Inventory,

laptops, computers, monitors, and other property that 1Solar removed from the Debtor's warehouses and offices.

- xii. The twenty-three (23) titled vehicles identified on Exhibit "C" attached hereto ("Unencumbered Vehicles"), which Unencumbered Vehicles the Seller asserts are owned free and clear of any perfected liens or security interests. The Unencumbered Vehicles include ten (10) vehicles that were financed through a loan from Uinta Bank in 2020, but for which Uinta Bank is unsecured.
- xiii. The twenty-two (22) titled vehicles identified on Exhibit "D" attached hereto ("Encumbered Vehicles"), which Encumbered Vehicles are pledged to certain secured parties as more fully set forth on Exhibit "D."
- xiv. Any FF&E owned by the Debtor and located at either the Debtor's main offices in the Boston Building and/or the Felt Building located in downtown Salt Lake City that consists specifically of computers, computer monitors, or computer equipment such as power cords and computer mice.
- xv. The Debtor's rights as a tenant under that certain non-residential real property lease for real property located at 6855 Speedway Boulevard, Suite 0104, Las Vegas, Nevada 89115 (the "Las Vegas Lease").

Section 1.2 **Excluded Assets and Excluded Liabilities.**

Notwithstanding Section 1.1, Buyer shall not purchase or assume, and Seller shall retain, the following assets and liabilities (collectively, the "Excluded Assets" and "Excluded Liabilities"):

a. Any other real or personal property assets either owned by the Debtor or under which the Debtor is a lessee, and not listed or described in Section 1.1. By way of example and not by way of limitation, the Excluded Assets shall include, among other things, all cash, all insurance claims, all insurance refunds, all fully completed solar contracts (contracts in which the Debtor has already materially performed and is currently entitled to payment), all accounts receivable associated with any fully completed solar contracts, all leased equipment and FF&E, all claims and causes of action (except for claims and causes of action that relate to or arise from the Uncompleted Contracts and/or the other Included Assets), including all claims and causes of action of the Seller or its estate under sections 502(d), 544, 545, 547, 548, 550 and 553, any other avoidance actions under the Bankruptcy Code and any commercial tort claims or any proceeds thereof, all trade names, trademarks and other intellectual property of the Debtor, and all FF&E located in the Boston Building and the Felt Building other than computers, computer monitors and related computer equipment.

b. Except only as provided in sections 1.3(b) and/or 1.3(c) of this Agreement, Buyer is not assuming, and shall not be liable for, any liabilities of Seller, the Debtor or the Estate, including without any limitation (i) the Debtor's liabilities and obligations (if any) to the counterparties to the Uncompleted Contracts, (ii) the Debtor's obligation to pay commissions or

other remuneration to dealers or employees involved in (A) originating or sourcing the Uncompleted Contracts, (B) performing construction services in connection with the Uncompleted Contracts, (iii) the Debtor's obligations to materialmen, suppliers, contractors, subcontractors, laborers, design professionals, engineers or any other person that provided labor, materials or services in whole or partial performance of the Uncompleted Contracts, (iv) the Debtor's obligation to pay the debts secured by the Encumbered Vehicles, and (v) the Debtor's past and future liabilities under the Las Vegas Lease.

Section 1.3 Free and Clear; All Liens, Claims, and Interests Attach to Proceeds (Other than Encumbered Vehicles and the Las Vegas Lease).

- a. Except for the Encumbered Vehicles and the Las Vegas Lease, the purchase and sale of the Included Assets shall be free and clear of any and all liens, claims and interests. Buyer is not assuming any of Seller's liabilities which shall be broadly construed to mean any and all liabilities and encumbrances.
- b. With respect to the Encumbered Vehicles, Buyer shall acquire such vehicles subject to the liens and claims of all creditors holding perfected liens on such vehicles, but the Buyer is not assuming the obligation to pay the claims of such creditors. The liabilities to the holders of perfected liens on the Encumbered Vehicles shall be *in rem* only (i.e., limited to the Encumbered Vehicles) and, absent a future agreement among Buyer and the holder of such perfected lien, shall be without recourse as against Buyer. The Buyer shall negotiate directly with the secured creditors having liens on these vehicles regarding the terms of any proposed assumption, and shall have the right, but not the obligation, to assume any unpaid obligations related to such vehicles. If and to the extent and agreement between the Buyer and a secured creditor is not reached with respect to any particular vehicle, then the holder of perfected lien may exercise its right to request and obtain repossession, in which instance Buyer shall cooperate and shall turnover possession and control of such vehicle to the secured creditor or its authorized agent.
- c. With respect to the Las Vegas Lease, and subject to the approval of the Bankruptcy Court, if the Las Vegas Lease is assumed by Buyer, then Buyer shall be solely and exclusively responsible for any cure costs and any other charges or expenses, whether now existing or hereafter arising, which are or may become due under the lease. Notwithstanding anything else set forth herein, however, Buyer is not obligated to assume the Las Vegas Lease, and shall only assume and take over Seller's interest in the Las Vegas Lease if an acceptable arrangement is reached between Buyer and the landlord. If no acceptable arrangement is reached between Buyer and the Landlord, then Buyer shall have no interest in the Las Vegas Lease, and the lease shall thereafter be rejected by the Seller.
- d. Buyer shall use its best efforts to remove all Included Assets from the Debtor's leased facilities as quickly as possible, and any event by no later than thirty (30) days from the date of execution of this Agreement. Buyer shall also work directly with all landlords to remove such Included Assets on a time schedule that will not unreasonably interfere with the landlords' attempts to re-let any leased facilities.

**PURCHASE PRICE
CLOSING AND PAYMENTS
BANKRUPTCY COURT APPROVAL**

Section 1.4 Purchase Price.

The purchase price for the Included Assets shall consist of an initial cash payment of SEVEN HUNDRED THOUSAND DOLLARS (\$700,000.00) (the “Initial Cash Payment”), plus the following additional payments (collectively referred to as the “Future Payment Stream”): (a) \$0.45 per watt for every Uncompleted Contract in which an M1 payment has already been received by the Debtor, and/or (b) \$0.20 per watt for every Uncompleted Contract in which an M1 payment has not already been received by the Debtor.

At or before Closing, Buyer shall pay to the Trustee, by wire transfer or other form of payment acceptable to Seller, the sum of FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$550,000.00) which, along with the ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) deposit that Buyer previously tendered, shall fulfill Buyer’s obligation to pay the Initial Cash Payment.

Amounts payable to Seller as part of the Future Payment Stream shall be paid to Seller by no later than two weeks (2 weeks) after the receipt of funds by Buyer. Buyer shall make payments to Seller every Friday based upon the previous week’s funding to Buyer. By way of example only, if Buyer receives any payments under an Uncompleted Contract between Monday September 25, 2021 and Friday, September 29, 2021, then Buyer must remit Seller’s share of the funds to Seller by no later than Friday, October 5, 2021.

Buyer and Seller shall work directly with all contract funders in an attempt to establish a “split invoice payment” system for payments to be received on all acquired Uncompleted Contracts so that contract funders remit the Seller’s share of contract proceeds directly to Seller. If a “split invoice payment” system cannot be arranged with a contract funder and Buyer directly receives Seller’s share of contract proceeds (“Estate’s Share”), Buyer shall hold the Estate’s Share in trust for the exclusive benefit of the Estate, and shall promptly remit the Estate’s Share to Seller.

By no later than thirty (30) days after Closing, Buyer shall provide Seller with a written report of all Uncompleted Contracts that it has preliminary identified as contracts that it desires or intends to complete. Such report shall identify, at a minimum, the name of the customer, the address and other contact information of the customer, and the identity of any third party contract funder associated with the contract. If additional Uncompleted Contracts are identified by the successful purchaser after the delivery of the written report, Buyer shall update the written report, and timely provide the updated written report to Seller.

On no less than a semi-monthly basis, and by no later than the 7th and 22nd of each month, Buyer shall provide Seller with a status report which contains summary information as to the status of Buyer’s efforts to monetize the Uncompleted Contracts set forth on its written report, along with any other pertinent information which Seller shall reasonable request.

Upon reasonable notice to Buyer of not less than forty-eight (48) hours, Seller shall be entitled to inspect and review any and all records maintained by Buyer the Uncompleted Contracts, including but not limited to all communications and correspondence with the customers and/or contract funders associated with the Uncompleted Contracts.

Buyer has guaranteed the following minimum payments to Seller from the Future Payment Stream and/or on account of the Uncompleted Contracts (the "Guaranteed Minimum"): (i) \$500,000, to be paid on or before December 31, 2021; and (ii) \$300,000, to be paid on or before March 31, 2022. The Guaranteed Minimum is not in addition to the Future Payment Stream and, if the aggregate amounts paid to Seller as of December 31, 2021 and March 31, 2022 exceed the Guaranteed Minimum, no additional payments will be due. Further, Buyer shall only be required to remit, as of December 31, 2021 and March 31, 2022, the difference between the Guaranteed Minimum and the amounts actually paid to Seller under the Future Payment Stream. For example, if on December 31, 2021 Buyer has remitted \$350,000.00 in payments from the Future Payment Stream, then Buyer shall only be required to remit to Seller an additional \$150,000.00 to meet the Guaranteed Minimum of \$500,000.00 due on December 31, 2021. To the extent the Guaranteed Minimum constitutes a future payment from the Future Payment Stream, Buyer shall not be required to pay periodic Future Payment Stream payments until the amount due under the payment formula for the Future Payment Stream exceeds the amount already paid.

The Initial Cash Payment shall be allocated as follows: (a) \$285,000.00 for the Unencumbered Vehicles, (b) \$20,000.00 (subject to existing liens perfected on the vehicle titles) for the Encumbered Vehicles, and (c) \$395,000.00 for the Inventory, the FF&E and the right (but not the obligation) to receive an assignment of the Las Vegas Lease.

No portion of the Initial Cash Payment shall be allocated to the Uncompleted Contracts or to any accounts receivable or payment rights associated with such Uncompleted Contracts.

In addition to the foregoing value and consideration, to the extent the Included Assets are sold to Suntuity (and not to 1Solar or another bidder), Suntuity waives Suntuity's Objection to the sale of Suntuity's Disputed Property Interests and further waives its disputed right to all or a portion of the proceeds of the sale arising from or on account of Suntuity's Disputed Property Interests. Stated another way, Suntuity waives any ownership interest or ownership rights that it may hold in Inventory (independent of its rights as Buyer under Agreement), and waives its right, if any arising on account of Suntuity's Disputed Property Interests, in the cash proceeds of the Purchase Price paid or to be paid to Seller under this Agreement.

For the avoidance of doubt, Suntuity does not waive or release any of its claims against the Debtor or the Estate, or its concomitant rights to distribution from the Estate, including (a) the claims evidenced by the Proof of Claim Suntuity filed in the Bankruptcy Case [Claim No. 143] as it may be amended, (b) any rights or claims Suntuity may hold as a secured creditor or lienholder of the Debtor, (c) any administrative claims of which Suntuity may seek allowance or payment pursuant to Bankruptcy Rule 1007(k) or otherwise, and (d) treating as a loan advance, asserting claims based upon quantum meruit or otherwise including as part of Suntuity's monetary claims against the Estate the \$1,400,208.03 that Suntuity paid to purchase the solar equipment and inventory which are the subject of Suntuity's Disputed Property Interests. For the further avoidance of doubt, the Trustee, on behalf of the Estate, reserves any and all rights and

defenses regarding the foregoing matters, and any and all claims that Suntuity has filed or may in the future file against the Debtor and the Estate.

Section 1.5 Closing.

Upon the terms and subject to the conditions set forth in this Agreement, the closing of the sale and purchase of the Included Assets (the "Closing") shall take place at such other place and time and/or on such date as the parties hereto may mutually agree but in no event later than eight (8) business days after the Bankruptcy Court enters an Order approving and authorizing this Agreement. The day on which the Closing takes place shall be referred to as the "Closing Date."

Section 1.6 Closing Matters.

Upon the terms and subject to the conditions set forth in this Agreement, at or before the Closing:

- a. Buyer shall pay the Initial Cash Payment to Seller by wire transfer of immediately available funds to an account to be designated in writing by Seller.
- b. Seller shall deliver to Buyer such deeds, bills of sale, endorsements, assignments, titles, license agreements and other good and sufficient instruments of conveyance and transfer, in form and substance reasonably satisfactory to Buyer, as shall be effective to vest in Buyer all of Seller's right, title and interest in and to the Included Assets.
- c. Seller and Buyer shall deliver to each other such other documents, certificates, instruments, and writings required to be delivered pursuant to Article VI of this Agreement or otherwise required pursuant to this Agreement.

Section 1.7 Bankruptcy Court Approval

- a. The obligations of the parties hereto are expressly conditioned upon entry of a Final Sale Order, as defined below, by the Bankruptcy Court, in the Bankruptcy Case, approving this Agreement and authorizing Seller to perform its obligations hereunder.
- b. Seller shall use its best efforts to ensure that notice of the proposed sale shall be properly given to the holders of any liens or encumbrances against the Included Assets as reflected in the Debtor's records and in searches from relevant records of the Utah Division of Corporations and Commercial Code.
- c. Should a Final Sale Order approving this Agreement not be entered within thirty (30) days of the Effective Date, as such dates may be extended by agreement of Buyer, Buyer may, at any time thereafter, on written notice to Seller, terminate this Agreement.
- d. For purposes of this provision, a Final Sale Order means an order entered by the Bankruptcy Court: (1) which contains an express finding, in accordance with Section 363(m) of the Bankruptcy Code, that Buyer is a good faith purchaser; (2) for which as of the Closing Date, no appeal is pending, or, if any such appeal is pending, no stay pending appeal has been

procured; and (3) which provides for the conveyance of the Included Assets to Buyer (except as otherwise noted herein) free and clear of all liens, claims and encumbrances.

Section 1.8 [OMITTED]

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer the following on the date of this Agreement and on and effective as of the Closing Date:

Section 2.1 Authority.

Subject to the approval of this Agreement by the Bankruptcy Court, Seller has all requisite power and authority to execute and deliver this Agreement and each other agreement, instrument, or document to be executed and delivered by Seller pursuant hereto or in connection herewith (collectively, the "Related Agreements"), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Seller and, upon the entry of a Final Sale Order, will constitute the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms. Upon its execution and delivery by Seller, each Related Agreement will constitute the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

Section 2.2 No Required Filings and Consents.

The execution and delivery of this Agreement and the Related Agreements by Seller does not, and the performance by Seller of this Agreement and the consummation of the transactions contemplated hereby and thereby will not, require Seller to obtain any consent, approval, authorization or permit of, or to make any filing with or notification to, any court, administrative agency or commission or other governmental entity, authority or instrumentality, whether foreign or domestic (a "Governmental Entity"), other than approval by the Bankruptcy Court in the Bankruptcy Case.

Section 2.3 Warranty of Title.

Except for the Encumbered Vehicles and the Las Vegas Lease, and subject to Suntuity's Disputed Property Interests, Seller owns all right, title, and interest in and to, all of the Included Assets, and upon the sale of the Included Assets, they will be free and clear of all Liens. Upon the sale of the Included Assets to Buyer pursuant to this Agreement, all right, title and interest in and to all of the Included Assets, free and clear of all Liens (except where noted herein), will pass to Buyer on the Closing Date, and Buyer shall have all of the rights and privileges thereunder after the Closing Date to the same extent as though Buyer were the original party thereto.

Section 2.4 Brokers.

Any broker, finder, or investment banker, including any director, officer, employee, affiliate, or associate of Seller, that may be entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based on arrangements made by or on behalf of Seller or any of its affiliates, shall be paid by Seller out of the proceeds of the sale.

ARTICLE III

Representations and Warranties of Buyer

Buyer hereby represents and warrants to Seller the following on the date of this Agreement and on and effective as of the Closing Date:

Section 3.1 Authority.

The execution and delivery of this Agreement by Buyer, the performance of this Agreement by Buyer and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of Buyer and except as provided herein no other proceeding on the part of Buyer is necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

Section 3.2 No Conflict; Required Consents and Approvals.

a. The execution and delivery of this Agreement by Buyer do not, and the performance of this Agreement by Buyer and the consummation of the transactions contemplated hereby will not, (i) conflict with or violate any United States federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree applicable to Buyer or by or to which any of its properties or assets is bound or subject or (ii) result in any breach of, or constitute a default (or an event that with notice or lapse of time or both would constitute a default) under, any Contracts to which Buyer is a party or by which any of its properties or assets is bound.

b. The execution and delivery of this Agreement by Buyer does not, and the performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby will not, require Buyer to obtain any consent, approval, authorization or permit of, or to make any filing with or notification to, any court, administrative agency or commission or other Governmental Entity.

Section 3.3 Brokers.

No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

ARTICLE IV

COVENANTS; CONDUCT OF BUSINESS PRIOR TO CLOSING

Section 4.1 Further Assurances.

At any time and from time to time after the Closing, Seller shall, at the reasonable request of Buyer and provided such request would not cause Seller to incur unreasonable costs or expenses in complying with such request, execute and deliver any further deeds, bills of sale, endorsements, assignments and other instruments of conveyance and transfer, and take such other actions as Buyer may reasonably request in order (a) more effectively to transfer, convey, assign and deliver to Buyer, and to place Buyer in possession and control of, and to vest, perfect or confirm, of record or otherwise, in Buyer all right, title and interest in, to and under the Included Assets, (b) to assist in the collection or reduction to possession of any and all of the Included Assets, or (c) to otherwise carry out the intents and purposes of this Agreement.

To facilitate Buyer's ability to monetize the Uncompleted Contracts and to maximize the Future Payment Stream, Buyer needs access to the various databases and systems that the Debtor used to store and track customer information, project status, survey information, designs, dealer information, etc. Accordingly, the Trustee will maintain and will provide a license to Suntuity (or, at the Trustee's option and subject to agreement of licensors (if necessary), will transition to Suntuity) all databases, platforms and software systems used and maintained by the Debtor related to the Included Assets.. Suntuity will pay directly any and all license or sublicense fees or other charges necessary to continue or maintain (or, at the Trustee's option, to transition to Suntuity) such databases, including any past-due fees or charges required by licensors to continue such databases.

Upon reasonable request by Buyer, and subject to reasonable financial assurances, Seller may, in the Trustee's discretion, assist Buyer to obtain or recover possession of the Included Assets. Such assistance may include (a) seeking turnover of the Included Assets pursuant to section 542 of the Bankruptcy Code, (b) seeking avoidance of any post-petition transfers of the Included Assets pursuant to sections 549 and 550 of the Bankruptcy Code, or (c) enforcing the Estate's rights in the Included Assets under section 362(a) of the Bankruptcy Code. Further, to the extent third parties have interfered with the Uncompleted Contracts in violation of the Bankruptcy Code, including in violation of section 362(a), Seller may, and subject to reasonable financial assurances, seek appropriate remedies available under the Bankruptcy Code, including declaratory relief that actions in violation of the "automatic stay" are void, contempt sanctions and/or avoidance pursuant to sections 549 and/or 550 of the Bankruptcy Code.

Upon reasonable request by Buyer, and subject to reasonable financial assurances, Seller may, in the Trustee's discretion, enforce the rights of Seller, the Debtor and/or the Estate in trade secrets and proprietary information relating to the Uncompleted Contracts, including the Trustee's rights under any nondisclosure agreements executed by 1Solar and other persons.

Section 4.2 Books and Records.

On the Closing Date, Seller shall use its best efforts to deliver to Buyer copies of, or access to, all of the books and records specifically relating to the Included Assets. However, if at

any time after the Closing Date, Seller or Buyer discovers any other books and records pertaining to the Included Assets that have not been delivered to Buyer, Seller shall promptly deliver them to Buyer. From and after the Closing Date, Seller may retain copies of such tax, finance and legal records as Seller may deem reasonably necessary. Seller shall not and shall cause its representatives not to use any information retained pursuant to this Section for any purpose unrelated to the transactions contemplated by this Agreement.

ARTICLE V

Representations and Warranties Survival

Section 5.1 Survival.

Subject to the limitations and other provisions of this Agreement, the representations and warranties contained in this Agreement shall survive until the Closing Date but shall expire thereafter.

Section 5.2 Included Assets Sold “As is, Where is, If is,” and without Representations or Warranties of any kind.

Except as explicitly set forth in Article II, the Included Assets shall be sold and purchased in their “AS IS, WHERE IS, AND IF IS” condition, and without representations or warranties of any kind, express or implied. Among other things, Seller shall be solely responsible for any warranty, service or other obligations arising out of or related to any of the Included Assets, regardless of when such warranty, service or other obligations first arose or accrued. Among other things, Buyer acknowledges and agrees as follows:

a. Full Investigation. Buyer is relying solely on its own investigations of the Included Assets and is not relying in any way on any information regarding the Included Assets furnished by Seller. Buyer acknowledges and agrees that Buyer shall be solely responsible for conducting its own investigations and an analysis of the Included Assets, and that Seller has no obligation to conduct any such investigations, or to report any conclusions of any such investigations, to Buyer.

b. Disclaimer. Seller specifically disclaims (and Buyer expressly agrees that Seller is not making or giving) any covenant, undertaking, representation or warranty, express or implied, in connection with this Agreement, the Included Assets or any other matter relating hereto or thereto that survives Closing, including, without limitation, as to the following matters:

(i) the existence on the Closing Date of any specific items constituting the Included Assets or the quantity or quality thereof; or

(ii) the condition, quality, suitability, value, merchantability or fitness for a particular purpose of any of the Included Assets, or of the past, present or future financial condition, businesses, prospects, or operations of Debtor, or any aspect thereof, including, without limitation, the validity, enforceability, priority, amounts or any other aspect of the contracts and agreements of the Debtor, or that the books, records, systems, processes, and operations of the Debtor have been maintained in a secure or confidential fashion.

c. BUYER ACKNOWLEDGES AND AGREES THAT (A) EXCEPT AS EXPLICITLY SET FORTH IN ARTICLE II, THE SALE OF THE INCLUDED ASSETS TO BUYER IS: WITHOUT RECOURSE TO SELLER; ON AN "AS IS, WHERE IS AND IF IS" BASIS; WITHOUT ANY REPRESENTATIONS OR WARRANTIES AS TO ITEMS, EXISTENCE, OWNERSHIP, TITLE, DESIGN, CONDITION, WORKMANSHIP, COMPLIANCE OF THE INCLUDED ASSETS WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO, PATENT INFRINGEMENT OR ABSENCE OF INFRINGEMENT UPON ANY OTHER INTELLECTUAL PROPERTY RIGHTS, LATENT DEFECTS, QUANTITY, OR ANY OTHER MATTERS WHATSOEVER; (B) SELLER IS SELLING TO BUYER ALL CLAIMS AND CONTRACT RIGHTS OF SELLER THAT ARE PART OF THE INCLUDED ASSETS WITHOUT RECOURSE TO SELLER, WITH RESPECT TO THE AMOUNTS OR COLLECTABILITY OF SUCH CLAIMS AND CONTRACT RIGHTS OF SELLER OR THE CREDITWORTHINESS OF ANY OBLIGOR WITH RESPECT TO SUCH CLAIMS AND CONTRACT RIGHTS OF SELLER OR ANY OTHER ASPECT OF SUCH CLAIMS AND CONTRACT RIGHTS OF SELLER; (C) SELLER MAKES NO REPRESENTATION OR WARRANTY AS TO THE VALUE, IF ANY, OF THE INCLUDED ASSETS BEING TRANSFERRED HEREBY: AND (D) NEITHER SELLER NOR ANY OF ITS AFFILIATES, ATTORNEYS, AGENTS OR REPRESENTATIVES HAS MADE OR MAKES ANY WARRANTY OR REPRESENTATION WHATSOEVER REGARDING THE INCLUDED ASSETS, OR ANY OTHER MATTER IN ANY WAY RELATED TO THE INCLUDED ASSETS, INCLUDING, BUT NOT LIMITED TO, TITLE TO THE INCLUDED ASSETS, USE, MERCHANTABILITY, FITNESS OF PARTICULAR PURPOSE, VALUE, OR ANY OTHER CONDITION OF THE INCLUDED ASSETS.

ARTICLE VI

Conditions to Closing; Closing Deliveries

Section 6.1 Closing Expenses.

All costs incurred in connection with this Agreement shall be borne by the party who incurs such cost.

Section 6.2 Conditions to Obligations of the Buyer.

The obligations of the Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or before the Closing, of each of the following conditions:

a. The representations and warranties of Seller set out in this Agreement and any document or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality) or in all material respects (in the case of any representation or warranty not qualified by materiality) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such

date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects);

b. Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other actions to be performed or complied with by it on or before the Closing Date;

c. No action shall have been commenced against Buyer or Seller, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Entity, and be in effect, which restrains or prohibits any transaction contemplated hereby;

d. From the date of this Agreement, there shall not have occurred any material adverse effect which, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a material adverse effect;

e. The Final Sale Order shall have entered in the Bankruptcy Case; and

f. The Seller shall have delivered (or cause to be delivered to Buyer) the following documents at Closing in form and substance acceptable to Buyer:

- i. Quit Claim Bill of Sale. An assignment and quit claim bill of sale, executed by Seller, assigning and conveying to Buyer title to the Included Assets, free and clear of all liens, claims and encumbrances (except for such liens, claims and encumbrances that Buyer has agreed to assume or as otherwise set forth herein).
- ii. Business Records. Originals or copies of all business records in Seller's possession or reasonable control related to the Included Assets or, alternatively, Seller shall provide Buyer with electronic access to such records and shall further provide Buyer with a license to access and use business records.
- iii. Other. Such other documents and instruments as may reasonably be required by Buyer and that may reasonably be necessary or appropriate to consummate this transaction and to otherwise effect the agreements of the parties pursuant to this Agreement.

Following the Closing, Seller shall execute and deliver to Buyer such further documents and instruments as Buyer shall reasonably request to effect this transaction and otherwise effect the agreements of the parties.

Section 6.3 Conditions to Obligations of Seller.

The obligations of the Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or the Seller's waiver, at or before the Closing, of each of the following conditions:

a. The representations and warranties of Buyer set out in this Agreement and any document or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality) or in all material respects (in the case of any representation or warranty not qualified by materiality) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects);

b. The Final Sale Order shall have been entered in the Bankruptcy Case; and

c. Buyer shall have delivered (or cause to be delivered) the following documents and things to Seller in form reasonably acceptable to Seller:

i. Initial Cash Payment. The Initial Cash Payment shall be delivered pursuant to the terms of this Agreement.

ii. Other. Such other documents and instruments as may reasonably be required by Seller and that may reasonably be necessary or appropriate to consummate this transaction and to otherwise effect the agreements of the parties pursuant to this Agreement.

ARTICLE VII

Termination

Section 7.1 Termination.

This Agreement may be terminated at any time before the Closing:

a. By the mutual written consent of Buyer and Seller;

b. By Buyer by written notice to Seller if:

(1) There has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant, or agreement made by Seller under this Agreement that would give rise to the material failure of any of the conditions specified in this Agreement and such material breach, inaccuracy or failure has not been cured by Seller within 3 days of Seller's receipt of written notice of such breach from Buyer; or

(2) A Final Sale Order approving this Agreement is not entered within forty (40) days of the Effective Date; or

(3) Any of the conditions set forth in Section 6.2 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Closing Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements, or conditions hereof to be performed or complied with by it before the Closing Date.

c. By Seller by written notice to Buyer if:

(1) There has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant, or agreement made by Buyer under this Agreement that would give rise to the material failure of any of the conditions specified in this Agreement and such material breach, inaccuracy or failure has not been cured by Buyer within 3 days of Buyer's receipt of written notice of such breach from Seller; or

(2) Any of the conditions set forth in Section 6.3 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Closing Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements, or conditions hereof to be performed or complied with by it before the Closing Date.

d. By either Buyer or Seller if there shall be any law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited.

e. This Agreement shall be deemed terminated automatically if, after its approval, the Bankruptcy Court approves by a final order the sale of the Included Assets to a person or entity who makes a higher and better offer for the Included Assets, and that transactions contemplated by that higher and better offer are closed and consummated.

Section 7.2 Effect of Termination.

In the event of the termination of this Agreement as set forth herein, this Agreement shall forthwith become terminated and of no further force and effect and there shall be no liability on the part of any party hereto except repayment of the Initial Cash Payment to Buyer if such Initial Cash Payment has been received prior to the date of termination.

ARTICLE VIII

Miscellaneous and General

Section 8.1 Entire Agreement; Assignment; Etc.

This Agreement (including any exhibits attached hereto) constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all other agreements, understandings, representations, and warranties, both written and oral, among the parties. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and legal representatives. This Agreement shall not be assignable without the prior written consent of the non-assigning party.

Section 8.2 Captions.

The Article, Section and paragraph captions herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

Section 8.3 Severability.

If any term or other provision of this Agreement, or any portion thereof, is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms and provisions of this Agreement, or remaining portion thereof, shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any such term or other provision, or any portion thereof, is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are consummated to the fullest extent possible.

Section 8.4 Modification or Amendment.

The parties hereto may modify or amend this Agreement at any time, only by a written instrument duly executed and delivered by each party hereto.

Section 8.5 Notices.

All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given on the date delivered, if delivered personally, or on the fifth business day after being mailed by registered or certified mail (postage prepaid, return receipt requested), in each case, to the parties at the following addresses, or on the date sent and confirmed by electronic transmission to the telecopier number specified below (or at such other address or telecopier number for a party as shall be specified by notice given in accordance with this Section):

If to Buyer, to:

Dan Javan, President
Daniel Mee, General Counsel
Suntuity Solar Limited Liability Company
2137 NJ-35
Holmdel, NJ 07733
Email: dan.javan@suntuity.com and daniel.mee@suntuity.com

With a copy to:

Matthew M. Boley
Jeffrey Trousdale
Cohne Kinghorn, P.C.
111 E. Broadway, 11th Floor
Salt Lake City, UT 84111
Email: mb@ck.law and jt@ck.law

If to Seller, to:

Steven R. Bailey, Trustee
2454 Washington Blvd.
Ogden, UT 84401
Email: steve@baileylaw.org

With a copy to:

Michael R. Johnson, Esq.
David H. Leigh, Esq.
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
Salt Lake City, UT 84111
Email: mjohnson@rqn.com
Email: dleigh@rqn.com

No provision of this Agreement, including this Section 8.5, shall be deemed to constitute consent to the manner and address for service of process in connection with any legal proceeding (including such arising out of or in connection with this Agreement), which service shall be effected as required by applicable law.

Section 8.6 Failure or Delay Not Waiver, Remedies Cumulative.

Time is of the essence for all obligations under this Agreement. No failure or delay on the part of any party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty, covenant or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

Section 8.7 Counterparts.

This Agreement may be executed in the original or by telecopy in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

Section 8.8 Governing Law.

This Agreement shall be governed by and construed in accordance with the law of the State of Utah, without regard to the conflicts of laws principles thereof.

IN WITNESS WHEREOF, this Asset Purchase Agreement has been duly executed and delivered by the duly authorized officers of each of the parties hereto as of the date first written above.

SELLER

STEVEN R. BAILEY, solely in his capacity as the Chapter 7 trustee of Empire Solar Group, LLC, Case No. 21-23636 (Bankr. D. Utah)

By: _____
Steven R. Bailey, Trustee

BUYER

SUNTUITY SOLAR LIMITED LIABILITY COMPANY, a New Jersey limited liability company

By _____
Daniel Mee
Its General Counsel

Exhibit "A"
SCHEDULE OF UNCOMPLETED CONTRACTS

Exhibit "B"
EMPIRE WAREHOUSES

NAME	ADDRESS/LOCATION
AZ-Mesa	4255 East McDowell Road, Suite 103, Mesa, Arizona 85215
CA-LA	190 Sierra CT, Unit A1, Palmdale, California 93550
CA-North	817 Arnold Dr., Unit 11 & 12, Martinez, California 94553
CA-South	9040 Carroll Way, Unit 3, San Diego, California 92121
CO-Colorado Springs	3318 Adobe Ct & 3320 Adobe Ct, Colorado Springs, Colorado 80907
CO-Denver	4800 Lima Street, Denver, Colorado 80239
FL-Orlando	3670 Naseem Lane, Sanford, Florida 32771
FL-Tampa	5204 Cone Rd, Tampa, Florida 33610
GA-Norcross	5800 Oakbrook Parkway Suite D, Norcross, Georgia 30093
ILL-Franklin Park	2925 Lucy Lane, Franklin Park, Illinois 60131
MN-Burnsville	14341 Ewing Avenue , Burnsville, Minnesota 55306
MO-Kansas City	3601 N Kimball Dr, Kansas City, Missouri 64161
NV-Las Vegas	6855 Speedway Blvd STE O104, Las Vegas, Nevada 89115
OH-Cincinnati	2523 East Crescentville Road, Cincinnati, Ohio 45241
TX-North	6750 Corporation Parkway Suite F, Fort Worth, Texas 76126
TX-San Antonio	5723 Rittiman Plaza, San Antonio, Texas 78218
TX-West	43 E. Industrial Loop, Midland, Texas 79701
TX-South	5650 Guhn Road, Suite #118, Houston, Texas 77040
UT-Salt Lake City	3016 South West Temple, Salt Lake City, Utah 84115

EXHIBIT "C"
SCHEDULE OF UNENCUMBERED VEHICLES

Cargo van	2006	Gmc	SAVANA	1GTGG252461166752
Box truck	2007	Gmc	W3500	4KDB4B1U47J802089
Cargo van	2007	Chevrolet	EXPRESS	1GCFG15X871236997
Cargo van	2007	Chevrolet	EXPRESS	1GCHG35U371147753
Box truck	2007	Gmc	W3500	4KDB4B1U97J800435
Pick up	2008	Chevrolet	SILVERADO	2GCEK13C081135619
Cargo van	2008	Gmc	SAVANA	1GTHG35K581207757
Cargo van	2010	Gmc	SAVANA	1GTZGGBA3A1134921
Pick up	2012	Chevrolet	SILVERADO	1GB4KZCGXCF114781
Small cargo	2013	Nissan	NV200	3N6CM0KN3DK696696
Box truck	2014	Ford	ECONOLINE	1FDWE3FL6EDB09783
Cargo van	2015	Chevrolet	CITY EXPRESS	3N63M0ZN8FK724274
Cargo van	2015	Gmc	SAVANA	1GD374CG3F1900091
Cargo van	2020	Chevrolet	EXPRESS 2500	1GCWGAFP3L1274730
Cargo van	2020	Chevrolet	EXPRESS 2500	1GCWGAFP2L1274637
Cargo van	2020	Chevrolet	EXPRESS 2500	1GCWGAFPXL1274739
Cargo van	2020	Chevrolet	EXPRESS 2500	1GCWGAFPXL1274756
Cargo van	2020	Chevrolet	EXPRESS 2500	1GCWGAFPXL1274773
Cargo van	2020	Chevrolet	EXPRESS 2500	1GCWGAFP1L1274760
Cargo van	2020	Chevrolet	EXPRESS 2500	1GCWGAFP3L1274727
Cargo van	2020	Chevrolet	EXPRESS 2500	1GCWGAFP3L1277076
Cargo van	2021	Chevrolet	Express 2500	1GCWGAFP0M1204300
Cargo van	2021	Chevrolet	Express 2500	1GCWGAFP5M1151464

Exhibit "D"
SCHEDULE OF ENCUMBERED VEHICLES

Model	Make	VIN	Debt	Secured Creditor
Box truck	Chevrolet	54DCDW1B1JS810095	\$33,973.30	Ally Truck Loan 0918 (JS8100)
Box truck	Chevrolet	54DCDW1B0KS807092	\$41,251.69	Ally Truck Loan 1612 (807092)
Cargo van	Chevrolet	1GCWGAFG9J1906031	\$18,154.99	Ally Truck Loan 5017 (906031)
Cargo van	Gmc	1GTW7AFG9J1902836	\$20,225.03	Ally Truck Loan 5508 (902836)
Box truck	Chevrolet	54DCDW1B4KS808052	\$39,482.44	Ally Truck Loan 6601 (808052)
Box truck	Chevrolet	54DCDW1B4KS807970	\$41,230.45	Ally Truck Loan 9866 (807970)
Cargo van	Gmc	1GTW7AFG7J1902088	\$19,219.00	Ally Truck Loan 9882 (902088)
Small cargo	Nissan	3N6CM0KN3KK701828	\$13,999.99	BoA Loan 7233 (701828)
Small cargo	Ford	NM0LS7E28K1384856	\$13,040.33	Ford Loan 57835801 (384856)
Small cargo	Ford	NM0LS7E22K1386490	\$15,555.00	Ford Loan 57835806 (386490)
Small cargo	Ford	NM0LS7E22K1394007	\$15,567.81	Ford Loan 57835813 (394007)
Small cargo	Ford	NM0LS7F21K1390254	\$21,413.15	Ford Loan RJ 3341 (390254)
Small cargo	Ford	NM0LS7F25K1383341	\$18,104.35	Ford Loan RJ 8465 (383341)
Small cargo	Ford	NM0LS7E29K1431389	\$17,388.70	Ford Loan RJ 8542 (431389)
Small cargo	Ford	NM0LS7F29K1416101	\$19,792.56	Ford Loan RJ 9099 (416101)
Small cargo	Ford	NM0LS7F20K1383344	\$19,792.56	Ford Loan RJ 9124 (383344)
Cargo van	Gmc	1GTW7AFG6J1902065	\$20,436.32	GM Financial Loan 2515 (902065)
Box truck	Chevrolet	54DCDW1B7JS810098	\$36,368.43	GM Loan 1239 (RJ) (810098)
Cargo van	Chevrolet	1GCWGAFG2J1907229	\$13,649.64	GM Loan 1915 (907229)
Cargo van	Chevrolet	1GCWGAFG8J1908840	\$21,760.88	WF Loan 1824 (908840)
Cargo van	Gmc	1GTW7AFG2J1902841	\$20,459.94	WF Loan 2509 (ESG) (902841)
Cargo van	Chevrolet	1HA3GSCG1KN006842	\$30,495.55	WF Loan 2640 (ESG) (006842)