



**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

THE HONOURABLE REGIONAL

SENIOR JUSTICE MORAWETZ

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)

MONDAY, THE 13TH

DAY OF AUGUST, 2018

B E T W E E N:

IN THE MATTER OF THE PROPOSAL OF
HB SOLAR CANADA INC.
OF THE CITY OF VAUGHAN, IN THE PROVINCE OF ONTARIO

ORDER APPROVING PROPOSAL— (Sec. 60(5))

THIS MOTION, made by HB Solar Canada Inc. (the “**Debtor**”) for the approval of its proposal (the “**Proposal**”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Report on the Proposal of Dodick Landau Inc., in its capacity as the trustee of the Proposal (in such capacity, the “**Proposal Trustee**”) dated July 27, 2018 (the “**Report**”), and the Appendices thereto including the Report of Trustee on Proposal dated July 13, 2018, and the Supplemental Report of Proposal Trustee dated August 13, 2018, and on hearing the submissions of counsel for the Proposal Trustee, counsel for the Debtor, and counsel for those other parties listed on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Service of Mary Ann Menalo, sworn August 3, 2018, filed:

1. **THIS COURT ORDERS** that the time for service of the Motion Record and the Notice of Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that defined terms not otherwise defined herein shall have the meanings attributed to them in the Proposal.
3. **THIS COURT ORDERS** that the Proposal, attached as Schedule "A" to this Order, be and is hereby approved.



James R. S. J.

SCHEDULE "A"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE PROPOSAL OF
HB SOLAR CANADA INC.
OF THE CITY OF VAUGHAN, IN THE PROVINCE OF ONTARIO

PROPOSAL

HB SOLAR CANADA INC. ("HB" or the "Company") hereby submits the following proposal ("Proposal") pursuant to the provisions of the *Bankruptcy and Insolvency Act*, (Canada), R.S.C. 1985, c. B-3.

**PART I
Interpretation**

Definitions

1. In this Proposal unless otherwise stated or the context otherwise requires, capitalized terms shall have the following meanings:
 - (a) "Act" means the *Bankruptcy and Insolvency Act*, (Canada) R.S.C. 1985, c. B-3, as amended;
 - (b) "Administrative Fees and Expenses" means the proper fees and expenses of the Trustee and the Company incidental to the NOI, the sale process conducted pursuant to the SISP Order, the preparation, presentation, consideration and implementation of the Proposal, any amendments thereto, and the proceedings, transactions and agreements contemplated thereby or arising therefrom, including all legal fees and disbursements incurred by the Trustee and the Company before and following execution, acceptance and approval of this Proposal and in connection with the NOI, the sale process and the preparation of this Proposal;
 - (c) "Affected Creditors" means those Creditors of the Company forming the class of Unsecured Creditors;
 - (d) "Anniversary Purchase Price Payments" has the meaning given in paragraph 7 hereof;
 - (e) "Anniversary Payment Pool" has the meaning given in paragraph 12 hereof;

- (f) **"Approval Order"** means an Order of the Court approving (i) this Proposal pursuant to the provisions of the Act, and (ii) the Purchase Transaction contemplated by the Purchase Agreement;
- (g) **"Assets"** means the Purchased Assets;
- (h) **"Bankruptcy Reserve"** means a reserve amount of \$25,000.00 to be held by the Trustee as security for the administrative costs of the bankruptcy of the Company in the event that this Proposal is annulled and the Company becomes bankrupt;
- (i) **"Business Day"** means a day, other than a Saturday, Sunday or a day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable therein on which banks are generally open for business in Toronto, Ontario;
- (j) **"Claim"** means any right of any person against the Company in connection with any indebtedness, liability, or obligation of any nature whatsoever of the Company to any person, whether liquidated, unliquidated, fixed, contingent, matured, legal, equitable, secured, unsecured, present, future, known or unknown, and whether by guarantee, surety or otherwise, incurred or arising or relating to the period prior to the NOI Filing Date, and **"Claims"** has a corresponding meaning;
- (k) **"Court"** means the Ontario Superior Court of Justice [Commercial List];
- (l) **"Creditor"** means any person who holds one or more Claims, including Secured Creditors and Unsecured Creditors and **"Creditors"** has a corresponding meaning;
- (m) **"Creditors' Meeting"** means a meeting of the Unsecured Creditors called for the purpose of considering and voting on the Proposal;
- (n) **"Crown Priority Claims"** means Claims of Her Majesty in right of Canada or any province of all amounts of a kind contemplated by section 60(1.1) of the Act;
- (o) **"Effective Date"** means the date on which the Approval Order is issued;
- (p) **"Event of Default"** has the meaning given to it in Part XI of this Proposal;
- (q) **"Initial Payment"** has the meaning given in paragraph 7 hereof;
- (r) **"Initial Payment Pool"** has the meaning given in paragraph 11 hereof;
- (s) **"Inspector"** means an inspector appointed, if any pursuant to the Proposal in accordance with the provisions of the Act;
- (t) **"Levy"** means the levy imposed by the Superintendent of Bankruptcy under the Act;

- (u) **"Maturity Date"** means the date on which all payments to the Creditors have been made, provided that no Event of Default has occurred that has not been cured or waived;
- (v) **"NOI"** means the Notice of Intention to Make a Proposal filed by the Company on April 10, 2018;
- (w) **"NOI Filing Date"** means April 10, 2018 the date on which the Company filed the NOI;
- (x) **"Payment GSA"** has the meaning given in paragraph 7 hereof;
- (y) **"Performance of the Proposal"** means full performance of this Proposal as set out in Part IV hereof;
- (z) **"Person"** means any individual, partnership, joint venture, trust corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other entity howsoever designated or constituted;
- (aa) **"Preferred Claim"** means any Claim that is afforded priority under Section 136(1) of the Act;
- (bb) **"Preferred Creditor"** means any Unsecured Creditor holding a Preferred Claim, solely in respect to that Preferred Claim;
- (cc) **"Proposal"** means this Proposal and any amendments thereto;
- (dd) **"Proof of Claim"** means the proof of claim required by the Act to be provided to each known creditor prior to the Creditors' Meeting;
- (ee) **"Proposal Period"** means the period between the Effective Date and the Maturity Date;
- (ff) **"Proven Claim"** of a Creditor means the amount of the Claim of such Creditor finally determined and allowed in accordance with the provisions of the Act;
- (gg) **"Purchase Agreement"** means the agreement of purchase and sale between the Company, by Dodick Landau Inc. solely in its capacity as Trustee under the terms of the SISP Order, and Craig Chornaby on behalf of a company to be incorporated made as of June 29, 2018, and amended as of July 3, 2018, substantively in the form attached to this Proposal as "Schedule A";
- (hh) **"Purchase Price"** has the meaning given in paragraph 7 hereof;
- (ii) **"Purchase Transaction"** means the purchase and sale transaction contemplated by the Purchase Agreement;

- (jj) **"Purchased Assets"** means those assets purchased by the Purchaser, as described in the Purchase Agreement;
- (kk) **"Purchaser"** means Craig Chornaby on behalf of a company to be incorporated;
- (ll) **"Secured Creditor"** means any Creditor holding a mortgage, hypothec, pledge, charge, lien, encumbrance, security interest or privilege on or against the property of the Company or any part thereof as security for a Claim, and **"Secured Creditors"** has a corresponding meaning;
- (mm) **"Trustee"** means Dodick Landau Inc. or its duly appointed successor, in its capacity as proposal trustee under the Act;
- (nn) **"Unsecured Creditor"** means any Creditor other than Preferred Creditors and Secured Creditors (except to the extent of their ordinary unsecured Proven Claims) with unsecured Proven Claims; and
- (oo) **"Voting Letter"** shall mean the voting letter required by subsection 51(1) of the Act to be mailed or sent by electronic transmission to each known Creditor prior to the Creditors' Meeting.

Headings

2. The division of this Proposal into Parts and Section and the insertion of headings are for the convenience of reference only and do not affect the construction or interpretation of this Proposal. The terms "this Proposal", "hereof", "hereunder" and similar expressions refer to this entire Proposal and not to any particular Part, Section or other portion hereof and include any agreement supplemental hereto. Unless something in the subject matter or contest is inconsistent herewith, references herein to Parts and Sections are to Parts and Sections of this Proposal.

Extended Meanings

3. In this Proposal words importing the singular number only include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

Date for Any Action

4. If any date on which any action required to be taken hereunder by any of the parties is not a Business Day, such action must be taken on the next succeeding day which is a Business Day precluded by statute.

PART II

Purpose and Effect of This Proposal

Purpose of Proposal

5. The purpose of this Proposal is to effect a restructuring of the indebtedness of the Company by completion of the Purchase Transaction in the expectation that all Creditors will derive a greater benefit from the restructuring and the continued operation of the business and affairs of the Company than would result from a bankruptcy of the Company.

Effect of Proposal

6. This Proposal restructures the indebtedness of the Company and provides the essential terms on which all Claims will be fully and finally resolved and settled. During the Proposal Period, and provided that no Event of Default has occurred that has not been cured or waived, all Creditors will be stayed from commencing or continuing any proceeding or exercising any remedy against the Company or any of its property or assets in respect of a Claim, including without limitation, any proceeding or remedy to recover payment of any monies, to recover or enforce any judgment against the Company in respect of a Claim or to commence any formal legal proceeding against it other than as provided for under this Proposal.

PART III

Purchase Transaction

7. Pursuant to the Purchase Agreement, the consideration paid by the Purchaser for the purchase of the Purchased Assets will be equal to the aggregate sum set out in section 2.6 of the Purchase Agreement, in the amount of \$1,900,000 (the "Purchase Price"). The Purchase Price is comprised of the amount of \$810,000 payable at least two Business Days prior to closing of the Purchase Transaction (the "Initial Payment"), two additional payments of the Purchase Price in the amount of \$500,000 each payable on or before the first and second annual anniversaries of closing of the Purchase Transaction, respectively (the "Anniversary Purchase Price Payments") and a deposit of \$90,000 (the "Deposit") which has been received by the Trustee on behalf of the Company. The

Payment of the Anniversary Purchase Price Payments are to be secured by a General Security Agreement granted by the Purchaser over its assets and undertaking to the Trustee on behalf of the Company (the "Payment GSA"). The Deposit is held in trust by the Trustee pending closing of the Purchase Agreement and credited towards the Purchase Price on closing of the Purchase Transaction.

8. The Purchased Assets will be sold to the Purchaser on an "as is, where is" basis and the Company will not be liable or responsible in any way for the condition of the Purchased Assets or the delivery of such tangible assets to be purchased by the Purchaser.
9. The Purchased Assets remain at the risk of the Company until closing of the Purchase Agreement.
10. The closing date of the Purchase Transaction is the date that is five Business Days following the date the Approval Order is granted, or such earlier date as may be agreed.
11. Upon closing of the Purchase Transaction, the Company will direct the Purchaser to pay the Initial Payment as follows:
 - a) An amount equal to the Administrative Fees and Expenses, Bankruptcy Reserve and Crown Priority Claims less the Deposit, as calculated by the Company and approved by the Trustee, to the Trustee;
 - b) An amount equal to the respective Proven Claim of each Secured Creditor directly to such Secured Creditor; and
 - c) Any amounts remaining from the Initial Payment after payment of (a) and (b), to be paid to the Trustee (the amounts paid to the Trustee pursuant to (a) and (c) of this paragraph are collectively, the "Initial Payment Pool").
12. The Company will direct the Purchaser to pay the Anniversary Purchase Price Payments as follows:
 - a) If any Proven Claims of Secured Creditors were not paid in full from the Initial Payment, then such remaining amounts to provide for payment in full of the Proven Claims of Secured Creditors will be paid directly to such Secured Creditors; and
 - b) All other amounts to the Trustee on behalf of the Company (the "Anniversary Payment Pool").

PART IV

Classification of Creditors

13. For the purpose of this Proposal, there shall be one class of Creditors consisting of a class of Unsecured Creditors. Claims of Her Majesty in right of Canada and any province for all amounts other than Crown Priority Claims shall vote in the Unsecured Creditors class. Preferred Creditors shall also vote in the Unsecured Creditor Class.

PART V
Proposal and Treatment of Creditors

14. Pursuant to this Proposal, the Trustee will distribute the Initial Payment Pool and Anniversary Payment Pool when sufficient amounts have, in the Trustee's discretion, accumulated to warrant an distribution in the following order of priority, including a final distribution when the payment in full of the Anniversary Purchase Price Payments has been received:
- (a) First, to the Administrative Fees and Expenses, in full;
 - (b) Second, to establish the Bankruptcy Reserve, to be held in trust by the Trustee, which amount shall be used to fund the administrative costs of the bankruptcy of the Company in the event that this Proposal is annulled and the Company becomes bankrupt, failing which such amount shall be distributed in accordance with this paragraph;
 - (c) Third, to any Crown Priority Claims, in full;
 - (d) Fourth, to pay the Proven Claims of Preferred Creditors (if any), in full; and
 - (e) Fifth, *pro rata* among all the Unsecured Creditors on account of Proven Claims.
15. In the event that the Proposal is not accepted by the Creditors or the Court refuses to issue the Approval Order, the Company will become a bankrupt and the Purchase Price will not be available to the Creditors in accordance with the respective priorities set out herein.
16. For greater clarity:

Crown Priority Claims

- a) All Proven pre-filing Crown Priority Claims will be paid out of the Initial Payment Pool and Anniversary Payment Pool in the priority provided in paragraph 14 hereof and will be remitted by the Trustee to Her Majesty in the Right of Canada or of any province, as applicable, within six (6) months of the Court Approval Date.

Secured Creditors

- b) Secured Creditors will be paid in full from the Purchase Price directly from the Purchaser and will receive no distributions pursuant to this Proposal. Accordingly, Secured Creditors are not Affected Creditors for the purposes of this Proposal, and therefore shall not be entitled to vote. For greater certainty, the Company acknowledges and agrees the Royal Bank of Canada ("RBC") is not an Affected Creditor in this Proposal.

Preferred Claims

- c) Preferred Creditors shall vote in the Unsecured Creditor class and the Proven Claims of Preferred Creditors will be paid out of the Initial Payment Pool and Anniversary Payment Pool in the priority provided in paragraph 14 hereof, which provides for payment of such Proven Claims in full, in priority to all claims of Unsecured Creditors with ordinary unsecured claims, in accordance with the scheme of distribution set forth in the Act. This includes payment to employees of amounts equal to the amounts that employees would be qualified to receive under s.136(1)(d) if the employer became bankrupt on the NOI Filing Date as well as wages, salaries, commissions or compensation for services rendered after that date and before the Effective Date, together with disbursements properly incurred by any travelling salesperson during that period.

Unsecured Creditors

- d) The Unsecured Creditors shall vote as a class and will be paid out of the Initial Payment Pool and Anniversary Payment Pool in the priority provided in paragraph 14 hereof and in accordance with the scheme of distribution set out in the Act.

PART VI

Procedure for Validation and Valuation of Claims

17. Upon receipt of a completed Proof of Claim, the Trustee will examine the Proof of Claim and deal with each Claim in accordance with the provisions of the Act.
18. The procedure for valuing Claims of Creditors and resolving disputes with respect to such Claims will be as provided for in the Act. The Company and/or Trustee reserves the right to seek the assistance of the Court in valuing any Claim of a Creditor and in respect of any other matter as may be required.

PART VII

Meeting of Creditors

Creditors' Meeting

19. On July 25, 2018, the Company shall hold the Creditors' Meeting in order for the Unsecured Creditors to consider and vote upon the Proposal.

Notice of Creditors Meeting

20. The Trustee will provide the Creditors with notice of the time and place of the Creditors' Meeting by mail pursuant to the Act. All Proofs of Claim must be delivered in

accordance with the provisions of the Proposal, the Act and any order which may be issued by the Court in respect of the procedure governing the Creditors' Meeting.

Conduct of Meeting

21. The Official Receiver, or any nominee thereof, will preside as the chair of the Creditors Meeting and will decide all matters relating to the conduct of the Creditors Meeting. The only persons entitled to attend the Creditors Meeting are those persons (including the holders of proxies) entitled to vote at the Creditors' Meeting and the officers, directors and legal counsel of the Company together with such representatives of the Trustee as the Trustee may appoint in its discretion. Any other persons may be admitted on invitation of the chair of the Creditors Meeting or with the consent of the Creditors.

Adjournment of Meetings

22. The Creditors' Meeting may be adjourned in accordance with section 52 of the Act.

Voting by Creditors

23. To the extent provided for herein, each Unsecured Creditor will be entitled to vote to the extent of the amount which is equal to the Proven Claim of such Unsecured Creditor and each Preferred Creditor will be entitled to vote to the extent of the amount which is equal to the Proven Claim of such Preferred Creditor.

Approval by Creditors

24. In order for the Proposal to be binding on the Creditors, it must first be accepted by the Unsecured Creditors at the Creditors' Meeting by a majority in number of the Unsecured Creditors who actually vote upon the Proposal (whether in person or by Proxy) at the meeting or by a Voting Letter, representing two-thirds in value of the Proven Claims of the Unsecured Creditors who actually vote upon the Proposal (whether in person or by Proxy) at the Creditors' Meeting or by a Voting Letter.

Appointment of Inspectors

25. At the Creditors' Meeting, the Unsecured Creditors may appoint up to five (5) inspectors whose powers will include, but not be limited to, the following:
 - (a) Advising the Trustee concerning any dispute which may arise as to the validity of Claims;

(b) Waiving any default in performance of any provisions of the Proposal; and

(c) Advising the Trustee from time to time with respect to any other matter that the Trustee may refer to them.

Any decision, direction or act of the Inspectors may be referred to the Court by the Trustee and the Court may confirm, reverse or modify the decision, direction or act and make such order as it deems just.

PART VIII

Conditions Precedent to Implementation of the Proposal

26. As provided for in the Act, the arrangements set out in this Proposal will not take effect unless the conditions set forth below are satisfied:

(a) All approvals and consents to the Proposal that may be required have been obtained;

(b) The Approval Order has been issued and the Effective Date has passed;

(c) No order or decree restraining or enjoining the consummation of the transactions contemplated by this Proposal has been issued;

(d) All agreements or instruments necessary to effect the intention and purpose of this Proposal have been received by the Debtor and the Purchaser in a form satisfactory to the Debtor and Purchaser;

(e) The Purchase Transaction shall have been completed; and

(f) All and any orders of the Court have been obtained which are required to facilitate the transactions referred to herein.

PART IX

Release

27. As at 12:01 a.m. on the Maturity Date, the Company, shall be released and discharged from any and all Claims. This release shall have no force or effect if the Company goes bankrupt before the terms of the Proposal are performed.

28. As of 12:01 a.m. on the Maturity Date, each and every present and former officer and director of the Company shall be released from claims against them that arose before the Date of Filing and that relate to the obligations of the Company where such persons are by law liable in their capacity as directors for the payment of such obligations, provided that nothing herein shall release or discharge any director or officer of the Company

from any claims coming within the exceptions set out in section 50(14) of the Act. This release shall have no force or effect if the Company goes bankrupt before the terms of the Proposal are performed.

PART X Miscellaneous

Consents, Waivers and Agreements

29. On the Effective Date, all Creditors will be deemed to have consented and agreed to all of the provisions of this Proposal in its entirety. For greater certainty, each such Creditor will be deemed to have waived any default by the Company in any provision, express or implied, in any agreement existing between the Creditor and the Company that has occurred on or prior to the Effective Date, and to have agreed that, to the extent that there is any conflict between the provisions of any such agreement and the provisions of this Proposal, the provisions of this Proposal take precedence and priority and the provisions of any such agreement are amended accordingly.

Effect of Payment

30. Creditors will accept the payments provided for in this Proposal in complete satisfaction of all of their Claims, and all liens, certificates of pending litigation, executions or any other similar charges or actions or proceedings in respect of such Claims will have no effect in law or in equity against the property, assets and undertaking of the Company including the Assets. On the Effective Date, any and all such registered liens, certificates of pending litigation, executions or other similar charges or actions will be discharged, dismissed or vacated without cost to the Company.

Preferential Payments

31. Sections 95 to 101 of the Act shall not apply to any dealings by the Company to at time prior to the NOI Filing Date. The releases contemplated in paragraph 26 of this Proposal include releases in favour of the Released Parties from all claims, actions, or remedies available to Creditors or others pursuant to sections 95 to 101 of the Act, provided nothing herein shall release any director of the Company from any claims coming within the exceptions set out in Section 50(14) of the Act.

Amendment to Proposal

32. This Proposal may be amended by the Company with the consent of the Trustee at any time prior to the conclusion of the Creditors' Meeting called to consider the Proposal, provided that any amendment made pursuant to this section shall not reduce the rights and benefits given to the Creditors under the Proposal before any such amendment, and

provided further that any and all amendments shall be deemed to be effective as of the NOI Filing Date.

Performance Certificate

33. The Trustee will give the Company and the Official Receiver the certificate provided for in section 65.3 of the Act within 5 Business Days following the Trustee being satisfied that all of the conditions set out in this Proposal, and all payments of the Purchase Price, including the Anniversary Purchase Price Payments, have been met, paid or waived.

Court Approval

34. After the Creditors acceptance of the Proposal, the Trustee will proceed to seek the Approval Order from the Court, on or about, August 13, 2018 and to have the Court make any ancillary orders that may be necessary or desirable to permit the transfer of the Purchased Assets to the Purchaser free and clear from all encumbrances as contemplated by the Purchase Transaction or Purchase Agreement, including an order releasing any existing encumbrances from the Purchased Assets other than the Permitted Encumbrances as referred to in the Purchase Agreement (and continuing such encumbrances in the proceeds of sale only). Creditors' acceptance of the Proposal shall constitute their consent to such ancillary Court orders.

Binding Effect

35. The provisions of this Proposal will be binding on the Creditors, the Company and their respective heirs, executors, administrators, successors, and assigns, upon issuance of the Approval Order. If this Proposal is annulled by an order of the Court, all payments on account of Claims made pursuant to the terms of this Proposal will reduce the Claims of Creditors.

PART XI

Event of Default

36. The following events will constitute Events of Default for purposes of Section 63 of the Act and otherwise under this Proposal:
- (a) the non-payment by the Company of any of its obligations hereunder within thirty (30) days after written notice has been given by the Trustee that such payment is past due; and
 - (b) the breach or failure by the Company to observe and perform any other covenant and provision of this Proposal, other than payment as provided for in this

Paragraph 36, which is not remedied within thirty (30) days after written notice thereof has been given to the Company by the Trustee.

- (c) The failure of the Purchaser to satisfy its obligations under the Purchase Agreement to the Trustee, which is not remedied within thirty (30) days after written notice thereof has been given to the Company by the Trustee.

PART XII

Trustee

- 37. Dodick Landau Inc. shall be the Trustee under this Proposal and all monies payable under this Proposal shall be paid over to the Trustee who shall make the payment of all dividends in accordance with the terms of this Proposal.
- 38. Dodick Landau Inc. is acting in its capacity as Trustee under this Proposal and not in its personal capacity and no officer, director, employee or agent of Dodick Landau Inc. shall incur any obligations or liabilities in connection with this Proposal or in respect of the business or liabilities of the Company.
- 39. Any payments made by the Trustee to the Creditors hereunder shall be made by the Trustee net of any levies payable or due under the Act.
- 40. Upon payment by the Trustee of the amounts contemplated in this Proposal, the Trustee shall have discharged its duties as Trustee and the Trustee shall be entitled to apply for its discharge as Trustee hereunder. For greater certainty, the Trustee will not be responsible or liable for any obligations of the Company and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by the Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default.


SIGNATURE PAGE TO FOLLOW

SIGNATURE PAGE TO PROPOSAL FILED BY HB SOLAR CANADA INC.

Dated at Toronto this 6th day of July, 2018.

HB SOLAR CANADA INC.

Per: _____



Name: ERIC STEPHENSON

Title: DIRECTOR

I have authority to bind the corporation.

SCHEDULE "A"

AGREEMENT OF PURCHASE AND SALE

This Agreement is made as of the 3rd day of July, 2018, between

Formatted: Superscript

HB SOLAR CANADA INC.
(the "Vendor" or "Solar")

and

Craig Chornaby on behalf of a company to be incorporated
(the "Purchaser")

RECITALS

1. On April 10, 2018, Solar filed a Notice of Intention to make a Proposal (the "NOI") under the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended (the "BIA");
2. Dodick Landau Inc., solely in its capacity as the Proposal Trustee of Solar (the "Proposal Trustee") was appointed as proposal trustee of Solar;
3. On May 14, 2018, the Ontario Superior Court of Justice (Commercial List) (the "Court") issued an order (the "SISP Order"), among other things, approving the Two-Stage Sale and Investment Solicitation Process attached thereto (the "SISP") to identify one or more purchasers of, or investors in, the business and assets of Solar;
4. Pursuant to the SISP Order, the Proposal Trustee was granted enhanced powers in relation to the SISP, including that the Proposal Trustee was exclusively authorized and empowered, but not required, to take actions and steps and execute any and all documents and writings on behalf of, and in the name of, Solar, to carry out its duties under the SISP Order, including to execute all documents relating to the SISP, and to execute and deliver any documents on behalf of Solar to implement the transactions contemplated under the SISP approved by the Court;
5. Pursuant to the SISP Order, the Proposal Trustee has assisted in carrying out the SISP while Solar has continued to operate its business; and
6. The SISP provides that the Proposal Trustee will evaluate offers and that any offer submitted must be subject to the approval of Solar's creditors and the Court (including (i) approval of a BIA proposal to Solar's creditors, by affected creditors in the requisite numbers in accordance with the BIA, in which the sale of assets to the successful bidder(s) is proposed, and (ii) an order of the Court sanctioning that proposal) (collectively, the "Approvals"). Subject to such Approvals and on the terms set out herein, the Vendor wishes to sell to the Purchaser and the Purchaser wishes to purchase from the Vendor, substantially all of the assets which make up the business of Solar.

IN CONSIDERATION OF THE COVENANTS AND AGREEMENTS HEREIN CONTAINED, the Parties agree as follows:

SECTION 1 – INTERPRETATION

1.1 Definitions

In this Agreement:

- (a) **"Agreement"** means this Agreement of Purchase and Sale;
- (b) **"Approvals"** has the meaning set out in the Recitals;
- (c) **"Assumed Obligations"** has the meaning set out in section 2.4(b);
- (d) **"Balance"** has the meaning set out in section 2.7(b)(iii);
- (e) **"BIA"** has the meaning set out in the Recitals;
- (f) **"Business Day"** means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (g) **"Court"** has the meaning set out in the Recitals;
- (h) **"Court Approval Date"** has the meaning set out section 4.3(a);
- (i) **"Closing"** means the successful completion of the Transaction;
- (j) **"Closing Date"** means the date on which the Closing occurs, which shall be the date that is five (5) Business Days following the date on which the Approvals are granted, or such earlier date as may be agreed upon by the Vendor (but only if prior written consent is obtained by the Vendor from the Proposal Trustee) or the Proposal Trustee on behalf of the Vendor, and the Purchaser;
- (k) **"Contracts"** means those contracts to which Solar is a party listed on Schedule 1.1(k)(4) hereto;
- (l) **"Deposit"** has the meaning set out in subsection 2.7(b)(i);
- (m) **"Employees"** means persons who are employed by Solar;
- (n) **"ETA"** means the *Excise Tax Act* (Canada);
- (o) **"Excluded Assets"** means cash on hand at the time of Closing save and except any pre-paid amounts for work-in-progress or work not yet commenced at Closing which amount shall be subject to a post-closing

adjustment to be verified by the Proposal Trustee; those listed on Schedule 1.1(p) hereto;

- (p) "GST/HST" means goods and services tax/harmonized sales tax under the ETA and includes any provincial equivalents thereof;
- (q) "Intellectual Property" means all intellectual and industrial property and any and all forms of protection having equivalent or similar effect anywhere in the world and all rights therein as recognized under the laws of Canada and/or other countries or jurisdictions, whether registered or unregistered and including applications for the registration or grant of any such rights, including rights in and to: (a) trademarks; (b) patents; (c) copyrights and works of authorship; (d) mask works; (e) trade secrets, know-how, and proprietary and confidential technical or business information; (f) any technology; (g) industrial designs; (h) customer lists and databases; (i) supplier lists and databases; and (j) the trade names "●" and "●", and including the Intellectual Property listed on Schedule 1.1(q)(+);
- (r) "NOI" has the meaning set out in the Recitals;
- (s) "Outside Date" means ●, 2018;
- (t) "Parties" means the Vendor and the Purchaser;
- (u) "Premises" means the premises located at ◇;
- (v) "Proposal Trustee" has the meaning set out in the Recitals;
- (w) "Purchase Price" has the meaning set out in section 2.6;
- (x) "Purchased Assets" means all of the assets, properties and undertakings of Solar including, without limitation, but does not include the Excluded Assets:
 - (i) those located on the Premises, including all records of employment for Transferred Employees;
 - (ii) inventory;
 - (iii) all book debts and accounts receivable owing to Solar;
 - (iv) equipment;
 - (v) Intellectual Property;
 - (vi) all of Solar's rights, entitlements and obligations under the Contracts;
 - (vii) choses in action;

- (viii) **"Goodwill"** meaning all goodwill, together with the ability of the Purchaser to represent itself as carrying on the Solar business in succession to Solar and the right to use any words indicating that the Solar business is so carried on, including the use if otherwise permitted by law of the corporate name "HB Solar Canada Inc" and the domain name "www.hbsolar.ca"; and
- (ix) those listed on Schedule 1.1(~~x~~)(~~y~~) hereto.
- (y) **"SISP"** has the meaning set out in the Recitals.
- (z) **"SISP Order"** has the meaning set out in the Recitals.
- (aa) **"Solar"** has the meaning set out in the Recitals.
- (bb) **"Time of Closing"** means 12:00 a.m. (EST) on the Closing Date or such other time on the Closing Date as the Vendor (but only if prior written consent is obtained by the Vendor from the Proposal Trustee) and the Purchaser may mutually agree;
- (cc) **"Transaction"** means the transaction of purchase and sale and assignment and assumption contemplated by this Agreement;
- (dd) **"Transferred Employees"** has the meaning set out in section 2.4(a); and
- (ee) **"Vendor"** has the meaning set out in the Recitals.

1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof.

1.3 Extended Meanings

Words importing the singular include the plural and vice versa, words importing gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings, and the term "third party" means any person other than the Vendor and the Purchaser.

1.4 Schedules

The following Schedules are incorporated in and form part of this Agreement:

Schedule ~~1.1(k)~~1.1(l) – Contracts

Schedule ~~1.1(o)~~1.1(p) – Excluded Assets

Schedule ~~1.1(x)~~~~1.1(y)~~ – Purchased Assets

Schedule 2.6 – Purchase Price Allocation

Schedule 5.2(d) – Form of bill of sale, assignment and assumption

Schedule 5.2(e) – Form of Intellectual Property Assignment

1.5 Calculation of Time

In this Agreement, unless something in the subject matter is inconsistent therewith, or unless otherwise herein provided, in the computation of periods of time from a specified date to a later specified date, the word “from” means “from but excluding” and the words “to” and “until” each mean “to and including”. If the last day of any such period is not a Business Day, such period will end on the next Business Day. When calculating the period of time “within” which, “prior to” or “following” which any act or event is required or permitted to be done, notice given or steps taken, the date which is the reference date in calculating such period is excluded from the calculation. If the last day of any such period is not a Business Day, such period will end on the next Business Day.

1.6 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.7 Proposal Trustee Acting on Behalf of Vendor

The Purchaser acknowledges that the Proposal Trustee may act on behalf of the Vendor in relation to the SISP, this Agreement and the transactions contemplated hereby, including signing this Agreement and delivering notices hereunder. The Purchaser acknowledges that in no event shall the Purchaser hold the Proposal Trustee liable as a result of the Proposal Trustee's performance on behalf of the Vendor unless arising from the Proposal Trustee's own willful misconduct, gross negligence, fraud or bad faith.

SECTION 2 – SALE AND PURCHASE AND ASSIGNMENT

2.1 Sale and Purchase of Purchased Assets

Subject to the terms and conditions hereof, on the Closing Date, the Vendor shall sell to the Purchaser, and the Purchaser shall purchase, all of the Vendor's right, title and interest in and to the Purchased Assets, as of and with effect from the Time of Closing. The Purchaser acknowledges that it is not purchasing any Excluded Assets.

2.2 Assignment and Assumption of Contracts

- (a) Subject to the conditions and terms hereof and in accordance with applicable law, on the Closing Date, the Vendor shall assign to the Purchaser all of the Vendor's right, title and interest in and to the Contracts, and the Purchaser shall assume the obligations and liabilities of the Vendor, if any, under the Contracts, as of and with effect from the Time of Closing.
- (b) Notwithstanding anything else contained herein, the Purchaser shall be responsible for any and all costs required to be paid in connection with the assignment of any Contract to the Purchaser, including amounts required to be paid under the terms of any such Contract in the context of the assignment of such Contract, and fees of any third party advisors in connection therewith.
- (c) This Agreement and any document delivered under this Agreement shall not constitute an assignment or an attempted assignment of any Contract contemplated to be assigned to the Purchaser under this Agreement which is not assignable without the consent of a third party if such consent has not been obtained.

2.3 "As is, Where is"

- (a) THE PURCHASER ACKNOWLEDGES THAT THE VENDOR IS SELLING THE ASSETS ON AN "AS IS, WHERE IS" BASIS AS THEY SHALL EXIST AS OF THE TIME OF CLOSING. THE PURCHASER FURTHER ACKNOWLEDGES THAT IT HAS ENTERED INTO THIS AGREEMENT ON THE BASIS THAT THE VENDOR DOES NOT GUARANTEE TITLE TO THE ASSETS AND THAT THE PURCHASER HAS CONDUCTED SUCH INSPECTIONS OF THE CONDITION OF AND TITLE TO THE ASSETS AS IT DEEMED APPROPRIATE AND HAS SATISFIED ITSELF WITH REGARD TO THESE MATTERS. NO REPRESENTATION, WARRANTY OR CONDITION IS EXPRESSED OR CAN BE IMPLIED AS TO TITLE, ENCUMBRANCES, DESCRIPTION, FITNESS FOR PURPOSE, MERCHANTABILITY, CONDITION, QUANTITY OR QUALITY OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER CONCERNING THE ASSETS OR THE RIGHT OF THE VENDOR TO SELL OR ASSIGN SAME SAVE AND EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED HEREIN.
- (b) Without limiting the generality for the foregoing, and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. Any description of the Purchased Assets contained herein or in the Schedules hereto is for the purpose of identification only. No representation, warranty or condition has or will be given by the Vendor concerning completeness or the accuracy of such descriptions.

2.4 Employees and other Assumed Obligations

- (a) The Purchaser may, in its sole discretion, conditional upon Closing, offer to employ, effective as of immediately following the Time of Closing, any of the Employees who remain employed by Solar as of immediately prior to the Time of Closing. Not less than three (3) Business Days prior to Closing, the Purchaser shall deliver to the Proposal Trustee a list of Employees to whom the Purchaser intends to offer to employ. By no later than two (2) Business Days prior to the Closing Date, the Purchaser will provide written confirmation to the Proposal Trustee of all such Employees who accept offers of employment with the Purchaser (the "Transferred Employees"). Following the receipt of the list of the Transferred Employees, and in any event no later than one (1) Business Day prior to the Closing Date, the Vendor (either by actions taken directly or on its behalf by the Proposal Trustee) will provide each such Transferred Employee with a memorandum confirming that effective as of the Time of Closing, their employment with Solar will cease and their employment agreement with Solar will be null and void.
- (b) All obligations arising after the Time of Closing in relation to the Transferred Employees, together with the obligations and liabilities of Solar arising after the Time of Closing under the Contracts, are herein collectively referred to as "Assumed Obligations".
- (c) In connection with its acquisition of the Purchased Assets, the Purchaser shall assume the Assumed Obligations as of the Time of Closing. If so required by the Vendor, the Purchaser shall enter into such specific assumption agreement(s) as the Vendor may reasonably require with respect to any Assumed Obligations.

2.5 Excluded Obligations

Other than the Assumed Obligations, the Purchaser shall not assume and shall not be liable for any other liabilities or obligations of the Vendor including, in particular, any liabilities to or in respect of Employees who are not Transferred Employees.

2.6 Purchase Price

The purchase price for the Purchased Assets shall be a total of \$CDN ~~1,900,000.00~~ (the "Purchase Price") to be allocated amongst the Purchased Assets as follows:

~~to be determined prior to closing~~

2.7 Payment of the Purchase Price

- (a) Upon execution of this Agreement, the sum of \$CDN 90,000.00 shall be paid by the Purchaser to the Proposal Trustee, on behalf of the Vendor, as a deposit (the "Deposit") by wire transfer of immediately

available funds to an account of the Proposal Trustee specified in writing by the Vendor. The Deposit shall to be held by the Proposal Trustee, in trust, until the Time of Closing and credited toward the Purchase Price upon Closing.

(b) Subject to this Agreement, on or prior to the Time of Closing, the Purchaser shall satisfy the payment of the Purchase Price as follows:

- (i) the assumption by the Purchaser of the Assumed Obligations;
- (ii) the application of the Deposit against the Purchase Price; and

(iii) the payment by the Purchaser of the sum of \$CDN 1,810,000.00 to the Proposal Trustee, on behalf of the Vendor, by wire transfer of immediately available funds to an account of the Proposal Trustee specified in writing by the Vendor as follows, which payments shall collectively be defined as the "**Balance**":

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1. \$810,000.00 to the Proposal Trustee, on behalf of the Vendor, representing the balance of the Purchase Price (the "**Balance**");
by wire transfer of immediately available funds to an account of the Proposal Trustee specified in writing by the Vendor at least two (2) Business Days prior to Closing;

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2. \$500,000.00 on or before the period ending 12 months after Closing; and

(iii) 3. \$500,000.00 on or before the period ending 24 months after closing.

2.8 Taxes

- (a) The Purchaser shall pay upon Closing, in addition to the Purchase Price, all applicable federal, provincial, state or other taxes exigible in connection with the purchase and sale of the Purchased Assets including, without limitation, GST/HST and retail sales tax. Alternatively, where applicable, the Purchaser shall have the option to furnish the Vendor with appropriate exemption certificates.
- (b) The Purchaser agrees to and hereby indemnifies and saves the Vendor and the Proposal Trustee harmless from and against all claims and demands for payment of the above-mentioned taxes including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such taxes when due.

SECTION 3 – REPRESENTATIONS AND WARRANTIES

3.1 Purchaser's Representations

The Purchaser represents and warrants to the Vendor that:

- (a) the Purchaser is a corporation duly incorporated, organized and subsisting under the laws of TBC;
- (b) the Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations and the execution and delivery of this Agreement and the consummation of the transactions contemplated have been duly authorized by all necessary corporate action on the part of the Purchaser;
- (c) the Purchaser is not a party to, bound or affected by or subject to any indenture, agreement, instrument, charter or by-law provision, order, judgment or decree which would be violated, contravened or breached by the execution and delivery by it of this Agreement or the performance by it of any of the terms contained herein;
- (d) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Purchaser's knowledge, threatened against or relating to the Purchaser or any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of the Purchaser to enter into this Agreement or to consummate the transactions contemplated and the Purchaser is not aware of any existing ground on which any action, suit or proceeding may be commenced;
- (e) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party have been, or will be as at the Time of Closing,

duly and validly executed and delivered by the Purchaser and constitutes or will, as at the Time of Closing, constitute legal, valid and binding obligations of the Purchaser, as the case may be, enforceable in accordance with the terms hereof or thereof;

- (f) the Purchaser is registered for GST/HST purposes under Part IX of the ETA, and its registration number is ~~4-1bc~~; and
- (g) the Purchaser has available to it, or the Purchaser has a firm written commitment from a lending institution for, and will have available to it on the ~~Closing Date~~^{above noted payment dates}, sufficient funds to pay the Purchase Price, any fees and expenses of the Purchaser related to the transactions contemplated by this Agreement and to consummate all other transactions contemplated by this Agreement to be so consummated by the Purchaser.

3.2 Vendor's Representations

The Vendor represents and warrants to the Purchaser as follows:

- (a) the Vendor has the right to enter into this Agreement and to complete the Transaction, subject to the granting of the Approvals; and
- (b) the Vendor is not a non-resident of Canada within the meaning of that term as used in the *Income Tax Act* (Canada).

SECTION 4 – CONDITIONS

4.1 Conditions - Purchaser

The obligation of the Purchaser to complete the Transaction is subject to the following conditions, which conditions are for the exclusive benefit of the Purchaser, being fulfilled or performed at or prior to the Closing Date:

- (a) all representations and warranties of the Vendor contained in this Agreement shall be true and correct in all material respects as of the Closing Date with the same effect as though made on and as of that date;
- (b) the Vendor shall have performed or complied with in all material respects each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date;
- (c) the Purchaser shall have been furnished with a certificate signed by an officer of the Vendor (not in their personal capacity and without personal liability) dated the Closing Date, to the effect that sections 4.1(a) and 4.1(b) have been complied with; and
- (d) no action or proceedings shall be pending to restrain or prohibit the completion of the Transaction contemplated by this Agreement.

4.2 Conditions – Vendor

The obligation of the Vendor to complete the Transaction is subject to the following conditions, which conditions are for the exclusive benefit of the Vendor, being fulfilled or performed at or prior to the Closing Date:

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects as of the Closing Date with the same effect as though made on and as of that date;
- (b) the Purchaser shall have performed and complied with in all material respects each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date;
- (c) the Vendor shall have been furnished with a certificate signed by an officer of the Purchaser (not in their personal capacity and without personal liability) dated the Closing Date, to the effect that sections 4.2(a) and 4.2(b) have been complied with;
- (d) no action or proceedings shall be pending to restrain or prohibit the completion of the Transaction contemplated by this Agreement; and
- (e) the Vendor shall not have lost its ability to convey the Purchased Assets or any part thereof.

4.3 Approvals

- (a) The obligations of the Vendor and the Purchaser to complete the Transaction are subject to having received the Approvals on or ~~before~~ ^{around August 17} 2018 (the "Court Approval Date").
- (b) The Parties acknowledge that the foregoing conditions are for the mutual benefit of the Vendor and the Purchaser.

4.4 Commercially Reasonable Efforts

Each of the Vendor and the Purchaser shall use its commercially reasonable efforts to satisfy the conditions set out in this ~~3.2(a) Section 4~~ — prior to the Outside Date.

4.5 Non-Satisfaction of Conditions

If any condition set out in this section 4 is not satisfied or performed on or prior to the dates specified in sections 4.1 through 4.3, the party for whose benefit the condition is inserted may (in the case of the Vendor (but only if prior written consent is obtained by the Vendor from the Proposal Trustee)):

- (a) waive compliance with the condition in whole or in part in its sole discretion by written notice to the other party and without prejudice to any of its rights

of termination in the event of non-fulfilment of any other condition in whole or in part; or

- (b) elect on written notice to the other party to terminate this Agreement before Closing.

SECTION 5 – CLOSING

5.1 Closing

The completion of the Transaction shall take place with effect as of the Time of Closing at the offices of < on the Closing Date or as otherwise determined by mutual agreement of the Vendor (but only if prior written consent is obtained by the Vendor from the Proposal Trustee) and the Purchaser in writing.

5.2 Purchaser's Deliveries on Closing

At or before the Time of Closing, the Purchaser shall execute and/or deliver, as applicable, to the Vendor the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- (a) payment of the Deposit in accordance with section 2.7(a);
- (b) payment of the Balance in accordance with section 2.7(b)(iii);
- (c) payment or evidence of payment of applicable federal, state and provincial taxes or alternatively, appropriate exemption certificates, as required by section 2.8;
- (d) a bill of sale, assignment and assumption executed by the Purchaser, substantially in the form attached as Schedule 5.2(d);
- (e) a specific assignment of Intellectual Property executed by the Purchaser (if applicable), substantially in the form attached as Schedule 5.2(e);
- (f) the certificate referred to in section 4.1(c); and
- (g) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

5.3 Vendor's Deliveries on Closing

At or before the Time of Closing, the Vendor shall execute and deliver to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) a bill of sale, assignment and assumption executed by the Vendor (if applicable) substantially in the form attached as Schedule 5.25.2(d);

- (b) a specific assignment of Intellectual Property executed by the Vendor substantially in the form attached as Schedule 5.25.2(e);
- (c) the certificate referred to in section 4.2(c);
- (d) the Trustee's Certificate, as referred to in the Approvals; and
- (e) all Approvals.

5.4 Purchaser's Acknowledgement

The Purchaser acknowledges that the Vendor is selling the Vendor's right, title and interest in and to the Purchased Assets pursuant to the Approvals. The Purchaser agrees to purchase and accept the right, title and interest of the Vendor in and to the Purchased Assets pursuant to and in accordance with the terms of this Agreement, the bill of sale, assignment and assumption, the assignment of Intellectual Property and the Approvals.

5.5 Possession of Purchased Assets

- (a) The Vendor shall remain in possession of the Purchased Assets until the Time of Closing. On Closing, the Purchaser shall take possession of the Purchased Assets where situated at the Time of Closing. The Purchaser acknowledges that, subject to the terms of this section 5.5, the Vendor has no additional obligation to deliver physical possession of the Purchased Assets to the Purchaser. In no event shall the Purchased Assets be sold, assigned, transferred or set over to the Purchaser until the conditions set out in the Approvals have been satisfied and the Purchaser has satisfied all delivery requirements outlined in section 5.2. The Purchaser shall promptly notify the Vendor of any Excluded Assets which may come into the possession or control of the Purchaser, and shall promptly release such Excluded Assets to the Vendor, or to such other person as the Vendor may direct in writing.
- (b) The Vendor agrees that the Purchaser shall have access to the Premises for the purposes of removing the Purchased Assets located therein for a period of 30 days following the Closing Date. At its own cost and expense, the Purchaser will be responsible for the checkout, dismounting, dismantling and removal of the Purchased Assets from the Premises, which checkout, dismounting, dismantling and removal shall be done with the care that a prudent tenant would use, by reputable and competent personnel, in a good and workmanlike manner, and in compliance with all laws. At its own cost and expense, the Purchaser shall leave the Premises in an orderly, clean, sanitary and broom swept condition and shall be required to remedy or repair any physical damage or other condition resulting from the checkout, dismounting, dismantling and removal of the Purchased Assets. The Purchaser shall not be obligated to remove any Excluded Assets and shall not be required to remedy any condition existing prior to the Closing.

5.6 Risk

The Purchased Assets shall be and remain at the risk of the Vendor until Closing and at the risk of the Purchaser from and after Closing. If, prior to Closing, the Purchased Assets are substantially damaged or destroyed by fire or other casualty, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within 15 days after notification to the Purchaser by the Vendor of the occurrence of damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 days of the Closing Date) in which event this Agreement shall be terminated automatically and the Purchaser shall be entitled only to a return of the Deposit paid under section 2.7(a) but without any other compensation. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of the proceeds of insurance, if any, referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of the proceeds of insurance, if any, referable to such damage or destruction provided that such damage or destruction is insured or, otherwise, to an agreed abatement. If any dispute arises under this section 5.6 as to whether damage or destruction is substantial or with respect to the amount of any abatement, such dispute will be determined in accordance with section 5.7.

5.7 Dispute Resolution

If any dispute arises (a) under section 5.6 as to whether any damage or destruction is substantial or with respect to the amount of any abatement, or (b) with respect to any other matter related to the Transaction, such dispute will be determined by the Court in the current proceedings relating to Solar, or by such other person or in such other manner as the Court may direct.

5.8 Termination

- (a) This Agreement may, in the case of section 5.8(a)(iv) will, be terminated as follows and in no other manner:
 - (i) by written agreement of the Vendor (but only if prior written consent is obtained by the Vendor from the Proposal Trustee) and the Purchaser;
 - (ii) by either the Vendor (but only if prior written consent is obtained by the Vendor from the Proposal Trustee) or the Purchaser pursuant to section 4.5
 - (iii) by the Purchaser pursuant to section 5.6: or
 - (iv) automatically if the Closing does not occur by the Outside Date, provided that the right to terminate this Agreement under this clause shall not be available to any Party whose act or failure to act has been a principal cause of, or resulted in, the failure of the Closing to occur on or before the Outside Date.
- (b) If this Agreement is validly terminated pursuant to section 5.8(a):

- (i) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end;
- (ii) subject to section 5.9, the Purchaser shall be entitled to have the Deposit paid hereunder to the Proposal Trustee returned with interest earned thereon (if any) but without deduction; and
- (iii) subject to section 5.9, neither party shall have any right to specific performance or other remedy against, or any right to recover damages or expenses from, the other.

5.9 Breach by Purchaser

If the Purchaser fails to comply with the terms of this Agreement, the Vendor may by notice to the Purchaser elect to treat this Agreement as having been repudiated by the Purchaser. In that event, the Deposit and any other payments made by the Purchaser shall be forfeited to the Vendor and the Purchased Assets may be resold by the Vendor. In addition, the Purchaser shall pay on demand to the Vendor (i) the deficiency, if any, arising upon such resale, being the amount that the net sale proceeds on resale (after deducting the expenses of resale) together with the forfeited Deposit are less than the Purchase Price, and (ii) interest and all other damages or charges occasioned by or resulting from the default by the Purchaser.

SECTION 6 – GENERAL

6.1 Further Assurances

Each of the Parties shall, from time to time after the Closing Date, at the request and expense of the other, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such documents and further assurances as may be reasonably necessary to give effect to this Agreement.

6.2 Preservation of Records

The Purchaser shall preserve and keep the records relating to the Purchased Assets for a period of seven years following the Closing Date, and shall make such records and personnel available to Vendor as may be reasonably required by such party in connection with, among other things, any insurance claims by, actions or tax audits against, or governmental investigations of the Vendor or any of their respective affiliates or in order to enable the Vendor to comply with its obligations under this Agreement and each other agreement, document, or instrument contemplated hereby or thereby. In the event the Purchaser wishes to destroy such records before or after that time, such party shall first give 90 days prior written notice to the Vendor, and the Vendor shall have the right at its option and expense, upon prior written notice given to Purchaser within such 90 day period, to take possession of the records within one hundred and eighty (180) days after the date of such notice.

6.3 Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by fax, addressed in the case of the Purchaser, as follows:

[Insert Purchaser's address]

Attention: _____ Craig Chornaby
Telephone No.: _____ 519-240-4193
Fax No.: _____

with a copy to:

~~{Law firm}~~ Lipman, Zener & Waxman LLP
~~{address line 1}~~ 1220 Eglinton Avenue West
~~{address line 2}~~
~~{address line 3}~~
~~{city, province, postal code}~~ Toronto, Ontario, M6C 2E3

Attention: ~~{lawyer}~~ Jason Spetter
Tel: ~~XXX.XXX.XXXX~~ 416-789-0652 x367
Fax: ~~XXX.XXX.XXXX~~ 416-789-9015
Email: ~~email@email.com~~ jspetter@lzwlaw.com

and in the case of the Vendor, as follows:

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with a copy to:

Pallett Valo LLP
77 City Centre Drive, West Toronto
Suite 300
Mississauga, ON L5B1M5

Attention: Alex Ilchenko
Facsimile: (905) 273-6920
Email: ailchenko@pallettvalo.com

with a copy to:

Dodick Landau Inc.
4646 Dufferin St.
Suite 6
Toronto, ON M3H 5S4

Attention: Rahn Dodick

Facsimile: (416) 649-7725
Email: rahn.dodick@dodick.ca

with a copy to:

McCarthy Tétrault LLP
Suite 5300
TD Bank Tower
Box 48, 66 Wellington Street West
Toronto, ON M6K 1E6

Attention: Heather Meredith
Email: hmeredith@mccarthy.ca

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by fax before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day, and if transmitted by fax after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

6.4 Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendor (but only if prior written consent is obtained by the Vendor from the Proposal Trustee) and the Purchaser or by their respective solicitors.

6.5 Currency

Except where otherwise indicated, all references herein to money amounts are in Canadian currency.

6.5 Survival

No covenants, representations or warranties of any Party contained in this Agreement or any certificate provided pursuant to this Agreement will survive the Closing, except for the covenants, if any, that by their terms are to be satisfied or survive after the Time of Closing, which covenants will continue in full force and effect in accordance with their terms.

6.6 Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns, provided that the Purchaser shall not assign its rights, entitlements or obligations under this Agreement without the prior written consent of the Vendor (but only if prior written consent is obtained by the Vendor from the Proposal Trustee).

6.7 Entire Agreement

This Agreement (including the agreements and orders contemplated hereby) and the attached Schedules constitute the entire agreement between the Parties with respect to the subject matter and supersede all prior negotiations and understandings. This Agreement may not be amended or modified in any respect except by written instrument executed by the Vendor (but only if prior written consent is obtained by the Vendor from the Proposal Trustee) and the Purchaser.

6.8 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

6.9 Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provision's validity or enforceability in any other jurisdiction.

6.10 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

6.11 Commission

The Purchaser acknowledges that there are no agent or broker fees or other commissions payable by the Vendor on the Purchase Price or otherwise in connection with the Transaction, and the Purchaser agrees to indemnify the Vendor against any claim for compensation or commission by any third party or agent retained by the Purchaser in connection with, or in contemplation of, the Transaction.

6.12 Fees and Expenses

Each of the Vendor and the Purchaser will pay their respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement and any other costs and expenses whatsoever and howsoever incurred.

6.13 Public Announcement

Except as required by applicable law or by the Court, no public announcement or press release concerning the sale and purchase of the Purchased Assets may be made by the Vendor or the Purchaser without the prior consent and joint approval of the Vendor (but only if prior written consent is obtained by the Vendor from the Proposal Trustee) and the Purchaser.

6.14 Relationship with Proposal Trustee

In this Agreement, references to a required consent from the Proposal Trustee are in reference to obligations of the Vendor only and, as they relate to the Purchaser, such references are only for informational purposes.

6.15 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or email of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

[Signature page follows]

The Parties have executed this Agreement.

HB SOLAR CANADA INC. [by Dodick
Landau Inc., solely in its capacity as the
Proposal Trustee under the terms of the SISP
Order, and not in any other capacity]

Per: 

Name: Rahn Dodick

Title: President

I have authority to bind the Corporation.

~~NAME OF PURCHASER~~ CRAIG
CHORNABY ON BEHALF OF A
COMPANY TO BE INCORPORATED

Per: 

Name:

Title:

I have authority to bind the Corporation.

CRAIG CHORNABY
PRESIDENT

Schedule 1.1(I) - Contracts

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None

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**IN THE MATTER OF THE PROPOSAL OF
HB SOLAR CANADA INC.**

Court File No. 31-2364769

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST**

**PROCEEDING COMMENCED AT
TORONTO**

ORDER APPROVING PROPOSAL -- (Sec.60(5))

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