



Sponsor: Administrator

TOWN OF FRANKLIN

RESOLUTION 19-23

Authority for Town Administrator to Settle Pending Litigation Against Town and Payment Appropriation

WHEREAS, SUNEDISON, INC., which previously owned a commercial solar facility in Franklin has filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York: Case No. 16-10992 (SMB) and SUNEDISON Litigation Trust has filed a claim in said proceedings against the Town of Franklin seeking its repayment of \$73,665, more or less, which Town previously received from SUNEDISON, INC., and

WHEREAS, Town has retained outside legal counsel to defend it against said claim and legal counsel has negotiated a proposed settlement of \$27,500, and

WHEREAS, Franklin Town Code Chapter 4 Administration of Government Article II Administrator Section 4-4 provides that any settlement in excess of \$5,000 requires a Town Council authorizing vote, and

WHEREAS, there are sufficient funds available in certified free cash to pay said settlement

NOW THEREFORE, THE TOWN COUNCIL be it voted by the Franklin Town Council that:

1. The Town Administrator is hereby authorized to settle SUNEDISON, INC's/SUNEDISON Litigation Trust's above described claim against Town for \$27,500 and further the Town Administrator is authorized to execute any and all documents and to take any and all action necessary to finalize said settlement.
2. The Sum of \$27,500 is hereby appropriated from certified free cash to pay the settlement described in paragraph one.

This resolution shall become effective according to the provisions of the Town of Franklin Home Rule Charter.

DATED: _____, 2019

VOTED:
UNANIMOUS _____

YES _____ NO _____

A True Record Attest:

ABSTAIN _____

ABSENT _____

RECUSED _____

Teresa M. Burr
Town Clerk

Glenn Jones, Clerk
Franklin Town Council

The COLE SCHOTZ P.C.
1325 Avenue of the Americas, 19th Floor
New York, New York 10019
Telephone: (212) 752-8000
Facsimile: (212) 752-8393
David R. Hurst
Daniel F.X. Geoghan

Counsel to the SunEdison Litigation Trust

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

In re:

SUNEDISON, INC., *et al.*,

Reorganized Debtors.¹

Chapter 11

Case No. 16-10992 (SMB)

(Jointly Administered)

SUNEDISON LITIGATION TRUST,

Plaintiff,

– against –

Adv. Pro. No. 18-01183 (SMB)

TOWN OF FRANKLIN,

Defendant.

¹ The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor's tax identification number, are as follows: SunEdison, Inc. (5767); SunEdison DG, LLC (N/A); SUNE Wind Holdings, Inc. (2144); SUNE Hawaii Solar Holdings, LLC (0994); First Wind Solar Portfolio, LLC (5014); First Wind California Holdings, LLC (7697); SunEdison Holdings Corporation (8669); SunEdison Utility Holdings, Inc. (6443); SunEdison International, Inc. (4551); SUNE ML 1, LLC (3132); MEMC Pasadena, Inc. (5238); Solaicx (1969); SunEdison Contracting, LLC (3819); NVT, LLC (5370); NVT Licenses, LLC (5445); Team-Solar, Inc. (7782); SunEdison Canada, LLC (6287); Enflex Corporation (5515); Fotowatio Renewable Ventures, Inc. (1788); Silver Ridge Power Holdings, LLC (5886); SunEdison International, LLC (1567); Sun Edison LLC (1450); SunEdison Products Singapore Pte. Ltd. (7373); SunEdison Residential Services, LLC (5787); PVT Solar, Inc. (3308); SEV Merger Sub Inc. (N/A); Sunflower Renewable Holdings 1, LLC (6273); Blue Sky West Capital, LLC (7962); First Wind Oakfield Portfolio, LLC (3711); First Wind Panhandle Holdings III, LLC (4238); DSP Renewables, LLC (5513); Hancock Renewables Holdings, LLC (N/A); EverStream HoldCo Fund I, LLC (9564); Buckthorn Renewables Holdings, LLC (7616); Greenmountain Wind Holdings, LLC (N/A); Rattlesnake Flat Holdings, LLC (N/A); Somerset Wind Holdings, LLC (N/A); SunE Waiawa Holdings, LLC (9757); SunE Minnesota Holdings, LLC (8926); SunE MN Development Holdings, LLC (5388); SunE MN Development, LLC (8669); Terraform Private Holdings, LLC (5993); Hudson Energy Solar Corporation (3557); SunE REIT-D PR, LLC (5519); SunEdison Products, LLC (4445); SunEdison International Construction, LLC (9605); Vaughn Wind, LLC (4825); Maine Wind Holdings, LLC (1344); First Wind Energy, LLC (2171); First Wind Holdings, LLC (6257); and EchoFirst Finance Co., LLC (1607). The address of the Reorganized Debtors' corporate headquarters is Two CityPlace Drive, 2nd floor, St. Louis, MO 63141.

**STIPULATION BY AND BETWEEN SUNEDISON LITIGATION TRUST
AND TOWN OF FRANKLIN COMPROMISING AND SETTLING CLAIMS
ARISING UNDER SECTIONS 547, 548 AND 550 OF THE BANKRUPTCY CODE**

The SunEdison Litigation Trust (the “**Litigation Trust**”) and Town of Franklin (the “**Defendant**”) hereby enter into this stipulation (the “**Stipulation**”) and agree as follows:

RECITALS

WHEREAS, beginning on April 21, 2016 (the “**Petition Date**”), SunEdison, Inc. and certain of its affiliates and subsidiaries (collectively, the “**Debtors**”) filed with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) voluntary petitions for relief under chapter 11 of title 11 of United States Code, 11 U.S.C. § 101, *et seq.* (the “**Bankruptcy Code**”); and

WHEREAS, on March 28, 2017, the Debtors filed their Joint Plan of Reorganization of SunEdison, Inc. and its Debtor Affiliates [Docket No. 2671] (as amended from time to time, the “**Plan**”); and

WHEREAS, on July 28, 2017, the Court entered the Findings of Facts, Conclusions of Law and Order Confirming Second Amended Plan of Reorganization of SunEdison, Inc. and its Debtor Affiliates [Docket No. 3735] (the “**Confirmation Order**”), thereby approving the Plan and the GUC/Litigation Trust Agreement (the “**Litigation Trust Agreement**”); and

WHEREAS, on December 29, 2017, the Plan became effective [Docket No. 4495] (the “**Plan Effective Date**”); and

WHEREAS, on the Plan Effective Date, all of the Debtors’ rights, title and interests in the Avoidance Actions (as that term is defined in the Plan), including the claims and

causes of action asserted by the Litigation Trust against Defendant, were transferred to the Litigation Trust; and

WHEREAS, on the Plan Effective Date, Drivetrain, LLC was appointed as the trustee (the “**Litigation Trustee**”) for the Litigation Trust; and

WHEREAS, pursuant to Section 7.6(b) of the Plan, the Litigation Trust is authorized to settle, release and compromise the Avoidance Actions without further approval of the Bankruptcy Court; and

WHEREAS, on or about April 9, 2018, the Litigation Trust filed Adv. Pro. No. 18-01183 (SMB) (the “**Complaint**”), thereby seeking to avoid and recover certain transfers identified in the Complaint as preferences and/or constructively fraudulent transfers made by the Debtors to Defendant (the “**Transfers**”); and

WHEREAS, Defendant asserts that the Transfers alleged in the Complaint are not avoidable; and

WHEREAS, the Litigation Trust has concluded that the compromise and settlement embodied herein is in the best interests of the beneficiaries of the Litigation Trust, considering, among other things, the cost, expense and delay associated with litigating the disputed matters and issues, the result of which is uncertain.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Litigation Trust and Defendant:

STIPULATION

1. Defendant shall: (i) deliver an executed copy of this Stipulation to Cole Schotz P.C. at the address set forth on the signature page of this Stipulation; and (ii) transmit payment in the amount of \$27,500 (the “**Settlement Amount**”), as follows: (a) by check, made

payable to the SunEdison Litigation Trust, and delivered to Cole Schotz P.C. at the address set forth on the signature page of this Stipulation, or (b) by wire, using the wire instructions set forth immediately below (with evidence of such wire transfer being sent to dhurst@coleschotz.com):

Beneficiary:	SunEdison Litigation Trust
Account Address:	630 3rd Avenue, 21 FL c/o Drivetrain, LLC New York, NY 10017
Account No.:	2469708032
Routing No.:	121000248
SWIFT Code:	WFBIUS6S
Bank Name:	Wells Fargo Private Bank

2. Upon (i) execution and delivery of this Stipulation and (ii) timely and complete payment of the Settlement Amount, both in the manner set forth in the preceding paragraph, this Stipulation shall become fully effective (the “**Settlement Effective Date**”); provided, however, that if the Settlement Effective Date does not occur within fifteen (15) days after execution of this Stipulation by the Litigation Trust and delivery of this Stipulation to Defendant, this Stipulation shall become null and void.

3. On the Settlement Effective Date, the Litigation Trust shall be deemed to have waived and released any and all claims and causes of action that it may have against Defendant arising under sections 502(d), 547, 548 and 550 of the Bankruptcy Code relating to the Transfers alleged in the Complaint.

4. On the Settlement Effective Date, Defendant shall be deemed to have waived and released any and all claims and causes of action that it may have against the Debtors and the Litigation Trust relating to the Transfers alleged in the Complaint, including any claim arising under section 502(h) of the Bankruptcy Code for, or on account of, its payment of the Settlement Amount.

5. Defendant shall not file any proofs of claim in the Debtors' chapter 11 cases in connection with payment of the Settlement Amount, and any such claim shall be deemed immediately expunged without any further order of the Bankruptcy Court.

6. On the Settlement Effective Date, any filed or scheduled claims by or in favor of Defendant shall be deemed immediately expunged on the claims register maintained in these chapter 11 cases.

7. Within fourteen (14) days after the Settlement Effective Date, the Litigation Trust shall cause the Complaint to be dismissed and discontinued, with prejudice, with all parties to bear their own costs, including attorney's fees and expenses.

8. The terms and provisions of this Stipulation shall be kept strictly confidential by the parties hereto and shall not be disclosed to any persons or entities who are not a party to this Stipulation. Notwithstanding the foregoing, the terms and provisions of this Stipulation may be disclosed by the parties on an as needed basis to their respective directors, officers, members, employees and professionals, or as may otherwise be required by law, or pursuant to a court order, or pursuant to a validly served subpoena, or as is needed to enforce the terms and provisions of this Stipulation. For the avoidance of doubt, any party's directors, officers, members, employees or professionals receiving a copy of this Stipulation shall be bound by the Stipulation's confidentiality provisions and shall not disclose the terms and provisions of this Stipulation except as permitted in this paragraph.

9. This Stipulation is the entire agreement and understanding of the parties. All prior understandings, terms or conditions, written, oral, express or implied, are superseded by this Stipulation.

10. This Stipulation may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same agreement. Facsimile and electronically-transmitted signatures shall have the same force and effect as original signatures. The Stipulation of Settlement shall be binding upon and shall inure to the benefit of the parties hereto and their legal representatives, predecessors, successors and assigns.

11. It is expressly understood and agreed that the terms hereof, including the recital paragraphs and headings, are contractual and that the agreement herein contained and the consideration contemplated hereby is to compromise disputed claims and avoid litigation, and that no statement made herein, payment, or release or other consideration given shall be construed as an admission by any of the parties hereto of any kind or nature.

[Remainder of Page Intentionally Left Blank]

12. Each party and signatory to this Stipulation represents and warrants to each other party hereto that such party or signatory has full power, authority and legal right and has obtained all approvals and consents necessary, to execute, deliver and perform all actions required under this Stipulation.

Dated: New York, New York
March __, 2019

SUNEDISON LITIGATION TRUST

By its Counsel,
COLE SCHOTZ P.C.

By:

David R. Hurst
Daniel F.X. Geoghan
1325 Avenue of the Americas
19th Floor
New York, New York 10019
Telephone: (212) 752-8000

Dated: New York, New York
March __, 2019

TOWN OF FRANKLIN

By its Counsel:
TEITELBAUM LAW GROUP, LLC

By:

Jay Teitelbaum
1 Barker Avenue
3rd Floor
White Plains, New York 10601
Telephone: (914) 437-7670