IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: CTN HOLDINGS, INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 25-10603 (TMH) (Jointly Administered) **Hearing Date: May 12, 2025 at 11:00 a.m. (ET)** **Reply Deadline: May 7, 2025 at 4:00 p.m. (ET)** **Related Docket Nos. 21, 65, 113 & 117**

DEBTORS' OMNIBUS REPLY (I) IN SUPPORT OF (A) DIP MOTION AND (B) BIDDING PROCEDURES MOTION, AND (II) IN RESPONSE TO OBJECTIONS OF (A) OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND (B) OFFICE OF UNITED STATES TRUSTEE

The above-captioned debtors and debtors in possession (the "**Debtors**") hereby file this reply (the "**Reply**") in support of the following pleadings filed by the Debtors:

- *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Term Loan Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Hearing and (VI) Granting Related Relief* [D.I. 21] (the "**DIP Motion**"); and

- *Debtors' Motion for Entry of an Order Approving (I)(A) the Debtors' Entry into Stalking Horse Agreement and Related Expense Reimbursement and Break-Up Fee; (B) the Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets; (C) the Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) the Form and Manner of Notice of the Sale Hearing, Assumption Procedures and Auction Results, and (E) Dates for an Auction and Sale Hearing; (II)(A) the Sale of Substantially All of the Debtors' Assets Free and Clear of All Claims, Liens, Liabilities, Rights, Interests, and Encumbrances and (B) the Debtors' Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [ECF No. 65] (the "**Bidding Procedures Motion**");

[1] The Debtors in these chapter 11 cases, along with the last four digits of the Debtors' federal tax identification numbers, are CTN Holdings, Inc. (9122), CTN SPV Holdings, LLC (8689), Make Earth Green Again, LLC (4441), Aspiration QFZ, LLC (1532), Aspiration Fund Adviser, LLC (4214), Catona Climate Solutions, LLC (3375) and Zero Carbon Holdings, LLC (1679). The mailing address for the Debtors is 548 Market Street, PMB 72015, San Francisco, CA 94104-5401.

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and in response to the *Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors' (I) DIP Financing Motion and (II) Sale Procedures Motion* [D.I. 113] (the "**Committee Objection**") filed by the Official Committee of Unsecured Creditors (the "**Committee**") on May 2, 2025, and the objection [D.I. 117] (the "**UST Objection**") filed by the Office of the United States Trustee (the "**U.S. Trustee**") on May 6, 2025. The Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

1. The DIP Facility represents the best possible DIP financing, and indeed only DIP financing, available to the Debtors under the circumstances and is essential to the success of these Chapter 11 Cases. The Debtors have obtained the agreement of the DIP Lender to provide financing and consensual use of cash collateral sufficient to fund a sale process ("**Sale Process**") for substantially all of the Debtors' assets, thereby maximizing value for their creditors. But the Debtors will not be able to achieve any of these goals, and will instead suffer immediate and irreparable harm, absent access to additional liquidity provided by the DIP Facility.

2. Likewise, the Bidding Procedures represent a path to a fair, competitive and open Sale Process that balances the financial realities of the Chapter 11 Cases with all parties' desire for a full and robust marketing process. While the proposed sale timeline is accelerated, the Debtors are confident that their marketing efforts, and those of its professionals, are effectively targeting potentially interested bidders and creating opportunity for third-party participation in the Auction.

3. The Committee does not object to the Debtors' need for the DIP Facility or take issue with the fact that the DIP Facility provides the necessary liquidity to (a) maintain the Debtors' ordinary course operations, (b) preserve value for the benefit of all interested parties, including unsecured creditors, and (c) conduct the Sale Process and consummate a value maximizing sale of the Debtors' assets. Instead, the Committee objects to specific provisions of the DIP Facility that

are both customary and appropriate for financings of this type, and well within the ambit of comparable financings in this District.

4. With respect to the Bidding Procedures, the Committee and the U.S. Trustee similarly do not object to the need for a sale of the Debtors' assets. Further, the Debtors are in general agreement with the Committee's requested two-week extension of the sale schedule and have extended the sale deadlines to provide for additional marketing. The Debtors have also voluntarily agreed to make certain other changes recommended by the Committee that they believe will enhance the Sale Process. The Committee and U.S. Trustee's primary objections relate to the Stalking Horse Bid Protections to be provided to the Stalking Horse Bidder. The Stalking Horse Bid Protections are an essential component of the Stalking Horse Bidder's agreement to backstop the auction process. As set forth herein, the Stalking Horse Bid Protections proposed under the Bidding Procedures are actual and necessary both to preserve the Debtors' estate and to effectuate a value maximizing sale of the Debtors' assets.

5. The Debtors intend to continue to engage with the DIP Lender, the Committee, and the U.S. Trustee in a good-faith effort to resolve, or at least narrow, both the Committee Objection and the UST Objection. To the extent the parties do not reach a consensual resolution of all issues raised with respect to the DIP Motion and the Bidding Procedures Motion, the Debtors respectfully submit that all objections should be overruled, the DIP Motion should be approved on a final basis and the Bidding Procedures Motion should be granted.

REPLY IN SUPPORT OF DIP MOTION[2]

A. The Debtors Have Voluntarily Agreed to Make Certain of the Revisions to the Final Order Requested by the Committee

6. While the Debtors believe that the DIP Motion and the proposed final order approving the DIP Motion (the "**Final Order**") are reasonable and appropriate as drafted, in consultation with the DIP Lender and in an effort to narrow the areas of dispute, the Debtors have agreed to make several of the changes requested in the Committee Objection as follows:

a. Committee Notices. The Committee requests that the Final Order require the Debtors to provide copies to the Committee of all notices and reports the Debtors deliver to the DIP Agent and DIP Lender under the Final Order or DIP Documents. *See* Committee Objection at ¶ 32(b). The Debtors do not object to including the Committee as a notice party in the Final Order and will amend the Final Order to provide that the Committee will receive all notices and reports the Debtors deliver to the DIP Agent and DIP Lender under the Final Order or DIP Documents.

b. Carve-Out Definition. The Committee requests that the Debtors clarify whether the Carve-Out is limited to the Committee's allocated fees in the Budget, or if it includes all fees ultimately allowed to the Committee professionals. *See* Committee Objection at ¶ 32(g). The Debtors do not believe the Carve-Out is ambiguous as it states that the Carve-Out is limited to the fees "up to the amounts specifically included in the DIP Budget" and allocated to the Committee. *See* Final Order at ¶ 4(a). Nevertheless, the Debtors will work with the Committee to address any concerns they have with such language and ensure that the provisions of the Final Order are clear.

[2] Defined terms in the section "Reply in Support of DIP Motion" that are not otherwise defined in this Reply shall have the meaning or meanings ascribed thereto in the DIP Motion.

c. Extension of the Maturity Date. The Committee requests an extension of the Maturity Date of the DIP Loan by an amount of time sufficient to confirm a chapter 11 plan. *See* Committee Objection at ¶ 32(h). The Debtors agree and have addressed this concern in the Bidding Procedures. The Bidding Procedures provide that in the event the Successful Bidder elects to consummate the Sale through the confirmation of a chapter 11 plan of reorganization/liquidation, the DIP Credit Agreement shall be deemed amended to extend the deadline to have consummated the Sale through and including forty-five (45) days from the conclusion of the Sale Hearing, or such other date as the Successful Bidder and DIP Lender agree, to permit the Successful Bidder to propose and obtain confirmation of such chapter 11 plan.

B. The Roll-Up of the Prepetition Secured Note Obligations is Appropriate and Provides Value to the Debtors' Estates.

7. The roll-up of the Debtors' Prepetition Secured Note Obligations is reasonable and appropriate, equal to or less than roll-ups approved in similar cases in this District, and, therefore, should be approved.

8. The DIP Facility makes $4.21 million[3] in additional "new money" funding available to the Debtors. Access to this additional funding is critical to the Debtors' efforts in these Chapter 11 Cases because the DIP Facility is the Debtors' only source of financing to fund their operations and the costs of this bankruptcy process.

9. Prior to the Petition Date, the Debtors had been utilizing capital infusions from investors, principally from entities related to one of the Debtors' founding investors Joseph Sanberg (the "**Investor**"). The Investor ceased making capital infusions into the Debtors in

[3] As of the filing of this Reply, the DIP Facility remains at a total of $4.21 million in "new money." Given the extension of the Sale Process to allow for additional marketing of the Debtors' assets (discussed herein), the Debtors are in discussions with the DIP Lender to increase the DIP Facility to fund these cases for the additional period. References to the "DIP Budget" herein include any amended DIP Budget agreed to with the DIP Lender to accommodate the extended sale timeline, which amended DIP Budget will be submitted to the Court for approval at the hearing to be held on May 12, 2025.

February 2025. Despite active efforts by the Debtors, they were unable to locate sufficient sources of alternative capital.

10. On or around March 4, 2025, the Debtors contacted the DIP Lender, which is one of the Debtors' Prepetition Secured Noteholders, notifying it that they lacked the funds needed to cover critical expenses, including payroll, and no longer had access to funding sources sufficient to cover these needs. The Debtors requested immediate contributions from the DIP Lender to cover these necessary expenses.

11. Between March 11, 2025, and March 25, 2025, the DIP Lender advanced a total of $1.175 million in bridge loans to the Debtors to cover payroll, insurance, taxes and other operating expenses as well as to fund retainers for the Debtors' restructuring professionals. The Debtors and the DIP Lender understood and intended that the total $1.175 million advanced by the DIP Lender be pre-debtor in possession financing in connection with the Debtors' planned bankruptcy filings (the "**Prepetition Lender Financing**").

12. Postpetition, the Debtors are similarly reliant on the DIP Lender to provide the DIP Facility to fund the Debtors' operations in the Chapter 11 Cases and to facilitate the Sale Process. Since much of the Debtors' revenue is tied to forward-looking contracts, the Debtors are not expecting cash inflows from revenues in any material amount during the pendency of the Chapter 11 Cases. As a result, the Debtors are entirely dependent on the funds committed under the DIP Facility to fund these cases.

13. Accordingly, while the Committee contends that the roll-up is "inappropriate and excessive," this complaint overlooks the objective reality of the Debtors' financial position and the critical need for DIP financing to fund the Chapter 11 Cases and preserve the possible chance for creditor recoveries.

14. The Roll-Up Loan is a necessary inducement to convince the DIP Lender to provide the DIP Facility. The proposed roll-up of the Prepetition Secured Note Obligations owed to the DIP Lender is justified under the circumstances and is an indispensable part of the DIP Facility. The DIP Lender specifically negotiated for the Roll-Up Loan in the context of its commitment to provide the DIP Facility on the terms set forth in the proposed Final Order. The Debtors and the DIP Lender engaged in hard-fought and arms'-length negotiations, and ultimately agreed to the Roll-Up Loan as consideration for, among other things, the DIP Lender making available $4.21 million in new money to fund the Chapter 11 Cases. Indeed, the DIP Lender has indicated to the Debtors that the Roll-Up Loan is a critical inducement to the DIP Lender providing the DIP Facility.

15. The Debtors, in the exercise of their business judgment, therefore submit that the DIP Facility could not have been obtained without the Roll-Up Loan. Roll-up provisions are regularly approved by courts in this District, and such courts have granted relief similar to the relief requested herein. Here, the DIP Facility provides a roll-up upon entry of the Final Order on an approximately three-to-one basis, with $4.21 million in new money and a roll-up of $13.805 million, which is well within the range of roll-ups that have been approved by this Court. *See, e.g., In re IM3NY, LLC*, No. 25-10131 (BLS) (Bankr. D. Del. Feb. 28, 2025) [D.I. 118] (authorizing $19.1 million DIP facility comprised of $4.1 million of new money and a $15 million roll-up); *In re Mondee Holdings, Inc.,* No. 25-10047 (JKS) (Bankr. D. Del. Mar. 19, 2025) [D.I. 444] (authorizing $140 million DIP facility comprised of $35 million of new money and a $105 million roll-up); *In re American Tire Distributors, Inc*., No. 24-12391 (CTG) (Bankr. D. Del. Oct. 25, 2024) [D.I. 90] (authorizing a DIP facility with a roll-up on a three-to-one basis upon entry of the interim order); *In re Never Slip Holdings, Inc*., No. 24-10663 (LSS) (Bankr. D. Del. Apr. 26, 2024) [D.I. 133] (authorizing $120.8 million DIP facility comprised of $30.8 million of new money and a $90 million roll-up); *In re*

Sientra, Inc., No. 24-10245 (JTD) (Bankr. D. Del. Mar. 11, 2024) [D.I. 168] (authorizing $90 million DIP facility comprised of $22.5 million of new money and a $67.5 million roll-up); *In re Phoenix Servs. Topco LLC*, Case No. 22-10906 (MFW) (Bankr. D. Del. Sept. 29, 2022) [D.I. 237] (authorizing $100 million DIP facility comprised of $25 million of new money and a $75 million roll-up); *In re Nine Point Energy Holdings, Inc.*, No. 2110570 (MFW) (Bankr. D. Del. March 17, 2021) [D.I. 240] (authorizing $13 million of new money and a roll-up of $39 million pursuant to interim order); *In re Real Indus. Inc.*, No. 17-12464 (KJC) (Bankr. D. Del. Nov. 20, 2017) [D.I. 348] (authorizing approximately $365 million DIP facility that included a creeping roll-up pursuant to interim order and a full rollup pursuant to entry of a final order of approximately $266 million prepetition debt). Indeed, some courts have approved roll-ups greatly in excess of the approximately 3:1 roll-up sought by the DIP Lender. *See, e.g., In re Edgio Inc, et al.*, No. 24-11985 (KBO) (Bankr. D. Del. Oct. 15, 2024) [D.I. 230] (authorizing $116.2 million DIP facility comprised of $12.5 million of new money and a $103.7 million roll-up); *In re PetroQuest Energy, Inc.*, No. 24-12609 (CTG) (Bankr. D. Del. Dec. 10, 2024) [D.I. 145] (authorizing $14.145 million DIP facility comprised of $1.695 million of new money and a $12.45 million roll-up).

16. The Roll-Up Loan benefits the Debtors' estates by allowing the Debtors to run a robust sale process as well as to fund the administration of these Chapter 11 Cases. Given the circumstances, the Debtors' agreement to an approximately three-to-one Roll-Up Loan under the DIP Facility represents an exercise of the Debtors' sound business judgment and should be approved on a final basis.

C. The Granting of DIP Liens, Adequate Protection Liens and DIP Super-Priority Claims on Unencumbered Assets is Appropriate and Warranted.

17. The Committee objects to the grant of any DIP or adequate protection liens in favor of the DIP Lender on any assets that were not encumbered as of the Petition Date, including but not

limited to avoidance actions, commercial tort claims and insurance policies and proceeds, other than to secure the "new-money" portion of the DIP Facility. Such a result would eviscerate the purpose of a roll-up of prepetition debt. The DIP Facility provides a substantial amount of additional funding that is critical to the success of these cases, and in light of this additional funding, it is entirely appropriate for the Debtors to grant liens on previously unencumbered collateral to secure the roll-up portion of the facility. To the extent there are any unencumbered assets, the Debtors, in their business judgment, may pledge such assets to secure the DIP financing needed to fund the Chapter 11 Cases. As detailed in the DIP Motion, the Debtors accepted the best, and indeed only, financing terms available and the provision of the specific liens contemplated in the proposed Final Order was negotiated and ultimately required as a condition of the DIP Facility.

18. The Bankruptcy Code permits the Debtors to grant liens on unencumbered estate property when necessary to obtain postpetition financing, subject to Court approval. Section 364(d) of the Bankruptcy Code expressly authorizes the grant of liens on unencumbered property, and the grant of superpriority claims, where a debtor is not otherwise able to obtain needed financing. Further, courts in this District routinely authorize liens on previously unencumbered assets, many times including avoidance actions and commercial tort claims and the proceeds thereof. *See, e.g., In re SiO2 Medical Prods., Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 26, 2023); *In re Carestream Health, Inc.*, No-10778 (JKS) (Bankr. D. Del. Sept. 27, 2022); *In re Akorn, Inc.*, No. 20-11177 (KBO) (Bankr. D. Del. Jun. 15, 2020); *In re Charming Charlie LLC,* Case No. 19-11534 (Bankr. D. Del. Aug. 14, 2019); *In re Blackhawk Mining LLC,* Case No. 19-11595 (LSS) (Bankr. D. Del. Aug. 13, 2019); *In re RUI Holding Corp.,* Case No. 1911509 (JTD) (Bankr. D. Del. Aug. 7, 2019); *In re Energy Future Holdings*, Case No. 14-10979

(CSS) (Bankr. D. Del. Jun. 28, 2016); *In re Karmaloop, Inc.*, Case No. 15-10635 (MFW) (Bankr. D. Del. Mar. 23, 2015); *In re Caché, Inc.*, Case No. 15-10172 (MFW) (Bankr. D. Del. Feb. 2, 2015); *In re Ambient Corporation*, Case No. 14-11791 (KG) (Aug. 11, 2014); *In re Tuscany Int'l Holdings (U.S.A.) Ltd.*, Case No. 14-10193 (KG) (Bankr. D. Del. Mar. 21, 2014); *In re Ultura (LA) Inc.*, Case No. 14-12382 (KG) (Bankr. D. Del. Dec. 4, 2014); *In re Conexant Sys., Inc.*, Case No. 13-10367 (MFW) (Bankr. D. Del. Apr. 19, 2013); *In re Sch. Specialty, Inc.*, Case No. 13-10125 (KJC) (Bankr. D. Del. Feb. 26, 2013); *In re Source Interlink Cos.*, Case No. 09-11424) (KG) (Bankr. D. Del May 28, 2009). The Committee provides no persuasive reason why the Debtors should not be allowed to provide liens on the proceeds of avoidance actions, commercial tort claims and their proceeds, or other unencumbered assets, as a condition to obtaining DIP financing that is in the estates' best interests and enables the sale of the Debtors' assets for the benefit of their creditors.

19. In these cases, the agreement between the Debtors and the DIP Lender required the Debtors to provide the DIP Lender with the customary liens and adequate protection set forth in the proposed Final Order. The Committee does not provide any basis in fact or law from which to argue that the DIP Liens, Adequate Protection Liens, and DIP Super-priority Claims are outside the range of reasonableness in the District or otherwise. Accordingly, the DIP Liens, Adequate Protection Liens, and DIP Super-priority Claims provided in the proposed Final Order should be approved.

D. The Sections 506(c) and 552(b) Waivers Are Reasonable and Customary, and Appropriate as Proposed.

20. Both the section 506(c) waiver and the section 522(b) waiver contained in the Debtors' proposed Final Order are appropriate in these cases. The Committee contends that until the payment of all administrative expenses is ensured under the budget, the estates' rights under

sections 506(c) and 552(b) of the Bankruptcy Code must be preserved. The Debtors submit that these waivers are appropriate given the adequacy of the Carve-Out and the DIP Budget.

21. The Committee's objections to the Debtors' section 506(c) and 522(b) waivers are premised on the Committee's claims that the DIP Facility and DIP Budget do not ensure the payment of administrative expenses in these cases. *See* Committee Objection at ¶ 25. This premise is incorrect. The proposed DIP Facility and DIP Budget provide for the Carve-Out and the payment of postpetition administrative expenses incurred from the Petition Date through the closing of the sale of the Debtors' assets.

22. Courts in this District have routinely approved waivers of the debtors' section 506(c) and 552(b) rights, particularly where, as here, such waivers are supported by their business judgment and the secured creditor agrees to a carve-out for professional fees and other amounts. *See, e.g. In re Never Slip Holdings, Inc.*, Case No. 24-10663 (LSS) (Bankr. D. Del. Apr. 26, 2024) [D.I. 133] (approving waivers of section 506(c) and section 552(b) in the final DIP order); *In re Joann Inc.*, No. 24-10418(CTG) (Bankr. D. Del. Apr. 12, 2024) [D.I. 224] (same); *In re Lucky Bucks, LLC*, Case No. 23-10758 (KBO) (Bankr. D. Del. July 14, 2023) [D.I. 169] (same). Moreover, section 506(c) claims are available to, and are an asset of, the Debtors, and not any other party in interest. *See Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (holding that only a trustee or a debtor in possession may seek recovery under section 506(c)); *In re Muma Servs.*, 322 B.R. 541, 559 (Bankr. D. Del. 2005) ("[T]he Supreme Court has determined that creditors do not have standing under section 506(c) to assert a claim for preserving a secured creditor's collateral.").

23. Here, the Debtors have determined in their business judgment that the clear benefits to the Debtors' estates provided by the DIP Facility more than justify the waiver of section 506(c) and

the "equities of the case" under section 552(b). The waivers are a critical component of the DIP Facility, and the DIP Lender would not have agreed to provide the DIP Facility nor consented to the Debtors' continued use of Cash Collateral without such waivers. As the DIP Facility ensures the payment of post-petition administrative claims set forth in the DIP Budget during the budget period and enables the Debtors to maximize the value of their assets, the Court should overrule the Committee's Objection and approve the section 506(c) and section 522(b) waivers.

E. The DIP Budget is Reasonable and Adequate.

24. The Committee contends that the proposed Final Order and the DIP Budget impose significant roadblocks to the Committee's ability to fulfill its fiduciary duties. The Committee asserts that the DIP Budget falls short of the "33% benchmark" for Committee professionals and represents only 20% of the amounts allocated to the Debtors' professionals. *See* Committee Objection at ¶ 28.

25. As an initial matter, the Committee's professional fee budget is approximately 30% of the Debtors' professional fee budget, not 20%. The Committee compares the total amount of the budgeted Debtors' professional fees with the total amount of Committee Professional fees for the entire 10-week period set forth in the DIP Budget and does not account for the fact that the Debtors' professionals performed essential services to the Debtors for several weeks before the Committee was formed and its professionals were retained. Compared on a weekly basis starting with the retention of the Committee's professionals, the amount of the Committee's budgeted professional fees consistently is approximately 30% of the amount of the Debtors' budgeted professional fees.

26. Further, the DIP Budget allocated to the Committee is consistent with budgets approved in other comparable cases. *See In re Advantage Holdco, Inc.*, Case No. 20-11259 (JTD) (Bankr. D. Del. Mar. 2, 2022) (aggregate fees of professionals of the official committee of

unsecured creditors amounting to approximately 24% of aggregate fees of comparable debtor professional counterparts); *In re SHL Liquidation Indus. Inc.*, Case No. 20-12024 (LSS) (Bankr. D. Del. July 16, 2021) (aggregate fees of professionals of the official committee of unsecured creditors amounting to approximately 24% of aggregate fees of comparable debtor professional counterparts); *In re BBGI US, Inc.*, Case No. 20-11785 (CSS) (Bankr. D. Del. May 20, 2021) (aggregate fees of professionals of the official committee of unsecured creditors amounting to approximately 31% of aggregate fees of comparable debtor professional counterparts); *see also In re Cal Dive Int'l, Inc*., Case No. 15-10458 (CSS), 2015 WL 9487852 (Bankr. D. Del. Dec. 28, 2015) (granting committee counsel's first interim fee application and noting that committee counsel fees were approximately 30% of debtors' counsel).[4]

27. Further, the Debtors and their advisors engaged in extensive arms-length negotiations with the DIP Lender over the course of several weeks in order to obtain the best possible DIP Facility terms. The DIP Budget represents the highest possible amounts that the Debtors could obtain. The DIP Lender was at that time and, as of the filing of this Reply, still remains unwilling to increase the size of the DIP Facility. As such, the DIP Budget is reasonable and adequate under the circumstances and provides a budget for the Committee well within the range approved in this District. The Committee's Objection to its professional fee budget should be overruled.

28. The Committee also contends that it is prohibited from using any portion of the Carve-Out, DIP Loans or Collateral to investigate claims or causes of action against, among others, the DIP Secured Parties or Prepetition Secured Parties, and requests that such restrictions be removed. *See* Committee Objection at ¶ 30. This is incorrect. Paragraph 19 of the proposed Final

[4] This analysis was performed using professional fee figures listed in final fee applications of the respective professionals of the debtors and of the official committee of unsecured creditors filed in each of these cases.

Order provides that the proceeds of the DIP Loans and/or DIP Collateral may be used by the Committee to investigate claims up to an aggregate cap of no more than $20,000. Thus, the Committee is not prohibited from using DIP Loan Proceeds or DIP Collateral to investigate such claims and the Objection should be overruled.

F. The DIP Budget Adequately Funds these Chapter 11 Cases

29. The Committee Objection also asserts that the DIP Budget appears "insufficient to support any alternative transaction" and does not include "proper funding of a wind-down budget" to an unstated case resolution. *See* Committee Objection at ¶ 29. Funding an "alternative transaction" is neither required nor the deal struck between the Debtors and the DIP Lender. The DIP Lender agreed to sponsor a sale of the Debtors' assets, which Sale Process is fully funded in the DIP Budget. The DIP Lender did not agree to fund a different transaction of unknown duration or cost. Such a demand would not be a reasonable requirement of any lender.

30. Further, the sale contemplated in the Final Order and the Bidding Procedures is for substantially all of the Debtors' assets. If the winning bidder elects to close on the sale under section 363 of the Bankruptcy Code, minimal assets would remain in the estate to administer rendering a complicated wind-down process unnecessary. A chapter 7 trustee could easily and efficiently administer any remaining assets and close these cases. And, should the winning bidder elect to consummate a sale through a chapter 11 plan, such bidder will be required to pay the cost of such plan process. The DIP Budget is appropriate for the Chapter 11 Cases.

G. The Commencement of a Challenge as an Event of Default is Appropriate and Reasonable.

31. The Committee argues that the language in the DIP Credit Agreement providing that the commencement of a Challenge to the Prepetition Secured Note Obligations constitutes an event of default effectively strips the Committee of its challenge rights and should be removed. *See*

Committee Objection at ¶¶ 12, 13. While the Committee may prefer a Challenge that does not impact the Debtors' access to liquidity, this specific provision is part of a comprehensive bargain that was carefully negotiated by the Debtors and the DIP Lender. The DIP Lender agreed to provide the DIP Facility as part of a comprehensive restructuring solution that would include a sale process, with the DIP Lender serving as the stalking horse purchaser for the assets of the Debtors. The DIP Lender did not agree to continue to fund these cases if it is being sued by the Committee on behalf of the Debtors' bankruptcy estates. Removing events of default under the extensively negotiated DIP Credit Agreement would strip the DIP Lender of its negotiated rights in exchange for providing critical funding to the Chapter 11 Cases. Importantly, the Committee fails to cite to any authority that would support its request to strip the DIP Lender of the benefit of its bargain. In fact, should that bargain be altered beyond the DIP Lender's agreement, the DIP Lender may simply refuse to fund the Debtors' cash needs in the Chapter 11 Cases. It is unreasonable to expect the DIP Lender to continue to fund the Chapter 11 Cases while the Committee actively litigates against it. For these reasons, the Committee's Objection should be overruled.

H. The Challenges to the Remaining "Objectionable Provisions" Identified in the Committee Objection Should Be Overruled.

32. The remainder of the Committee's Objection lacks merit and should be overruled:

ISSUE	DEBTORS' RESPONSE
Mandatory Loan Prepayments	The Committee's request that any net revenues from asset sales and extraordinary receipts be held "to ensure proper funding of these Chapter 11 Cases" is inconsistent with the funding agreement struck by the Debtors and DIP Lender. As of the date of this Reply, the DIP Lender has agreed to fund new-money DIP financing in the amount of $4.21 million. Withholding any postpetition revenues, which are collateral of the DIP Lender, for use by the Debtors' bankruptcy estates effectively increases the amount of the DIP Financing on an involuntary basis and without providing the DIP Lender with its bargained-for benefits with respect to new money contributions. While the Debtors do not dispute that these Chapter 11 Cases must be properly funded, any additional funding that may be required should be accomplished

	through an amended DIP Budget negotiated and agreed to by the DIP Lender, Debtors, and other parties in interest.
Challenge Period	Local Rule 4002-1(a)(i)(Q) requires parties to specifically justify any request for a Challenge Period that does not give parties in interest "at least 75 days from the entry of the first interim order to commence a challenge." This rule therefore suggests that, absent extraordinary circumstances, a 75-day Challenge Period starting on entry of Interim Order is presumptively sufficient. The Committee's request to start a 75-day Challenge Period from the date of Committee formation identifies no such extraordinary circumstances that would justify a longer period, especially given the fact that all other aspects of these cases are moving quickly. The current Challenge Period provides ample opportunity for the Committee to investigate any claims and causes of action it may have, and this objection therefore should be overruled.
Releases	The releases contained in the Final Order were negotiated as part of the DIP Facility, are not prohibited under the Bankruptcy Code, and are appropriately tailored. First, the Committee does not cite authority prohibiting the granting of releases to a DIP lender in connection with approval of a DIP facility and use of cash collateral. To the contrary, granting releases to a DIP lender in connection with a final DIP order, subject to a challenge period, is routine practice. For example, this Court entered a final DIP order in the *Christmas Tree Shops, LLC* bankruptcy case (Case No. 23-10576 (TMH); D.I. 229) granting similarly broad releases in paragraph 5.17 of the order, subject to the rights of the committee and other third parties to assert timely challenges to the stipulations, releases, agreements, and admissions contained therein. Soon after, Judge Owens entered a final DIP order with similar releases in *AeroCision Parent, LLC* (Case No. 23-11032 (KBO); D.I. 81). Examples of similar orders abound. Additionally, on appeal to the United States District Court for the District of Delaware in *KII Liquidating, Inc.*, Judge Stark noted: "On May 16, 2017, following the 'first day' hearing in the Chapter 11 cases, the Bankruptcy Court entered an order granting the DIP Financing Motion on an interim basis (B.D.I. 48) (the 'Interim DIP Order'). **As is customary, the Interim DIP Order contained stipulations from the Debtors as to the amount and validity of the Second-Lien Debt and the absence of claims against the Second-Lien Lenders, and also included affirmative releases of any claims against the Second-Lien Lenders**." *In re KII Liquidating, Inc.*, 607 B.R. 398, 400 (D. Del. 2019) (emphasis added). The releases contained in the Final Order are both reasonable and customary and should be approved. Second, the releases are sufficiently limited to claims held by the Debtors and their bankruptcy estates against the DIP Lender that arise out of or relate to the Prepetition Secured Note Documents, DIP Documents and the obligations and activities incidental to the same. Further, the releases

	are subject to a Committee challenge, as set forth in the Final Order, and expressly (x) exclude claims and causes of action against the Investor and entities controlled by the Investor and (y) do not relieve the DIP Lender from its obligations under the DIP Documents from and after the date of the Final Order. Lastly, the releases are a bargained for and non-negotiable right demanded by the DIP Lender. Absent final approval of the releases, the DIP Lender may not advance further funds under the DIP Facility.
No Marshaling	The marshalling waiver was a negotiated aspect of the DIP Facility and there is nothing unreasonable about granting such a customary waiver. The Court has routinely approved similar waivers. *See e.g.*, *In re GST Autoleather, Inc.*, No. 17-12100 (LSS) (Bankr. D. Del. Nov. 15, 2017); *In re Appvion, Inc.*, No. 17- 12082 (KJC) (Bankr. D. Del. Oct. 31, 2017); *In re Nuverra Envtl. Sols., Inc.*, No. 17-10949 (KJC) (Bankr. D. Del. Jun. 6, 2017); *In re Filip Techs., Inc.*, No. 16-12192 (KG) (Bankr. D. Del. Oct. 27, 2016); *In re Milagro Holdings LLC*, No. 15-11520 (KG) (Bankr. D. Del. Aug. 19, 2015); *In re Ambient Corp.*, Case No. 14-11791 (KG) (Bankr. D. Del. Aug. 11, 2014); *In re Tuscany Int'l Holdings (U.S.A.) Ltd.*, Case No. 1410193 (KG) (Bankr. D. Del. Mar. 21, 2014).
Definition of "Adequate Protection"	The Committee requests "confirmation that unencumbered assets are excluded from the scope of adequate protection liens." Committee Objection at ¶ 32(f). To be clear, unencumbered assets are <u>not</u> excluded from the scope of adequate protection liens. The Prepetition Collateral Agent, for itself and for the benefit of the other Prepetition Secured Parties was by the Interim Order and is pursuant to the proposed Final Order granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements) in the amount of the Prepetition Secured Parties' Adequate Protection Claims, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral (inclusive of unencumbered property of the Debtors) (the "**<u>Adequate Protection Liens</u>**"), in each case senior to all other liens but subject and subordinate only to (a) the DIP Liens, and (b) the Carve-Out. Such Adequate Protection Liens are appropriate for the reasons stated in section B of this Reply
Good Faith Finding Premature	The terms and conditions of the DIP Facility are fair and reasonable, and were negotiated extensively by well-represented, independent parties in good faith and at arm's length, and there are neither allegations nor evidence to the contrary. The Debtors and/or DIP Lender will present evidence in support of this finding at the upcoming May 12th hearing. Accordingly, the Court should find that the DIP Lender is a "good faith" lender within the meaning of Bankruptcy Code section 364(e) and is entitled to all of the protections afforded by that section.

REPLY IN SUPPORT OF BIDDING PROCEDURES MOTION[5]

I. The Debtors Have Voluntarily Agreed to Make Certain of the Revisions to the Bidding Procedures Requested by the Committee

33. The Debtors have considered the objections raised by the Committee in the Committee Objection in consultation with the DIP Lender, and, in an effort to narrow the areas of dispute, the Debtors have agreed to make several of the requested changes as follows:

a. *Overbid Amount*. The overbid increment under the Bidding Procedures has been reduced from $250,000 to $100,000. *See* Committee Objection at ¶ 46.a.

b. *Consultation Rights*. The Committee has been added as a Consultation Party under the Bidding Procedures. *See* Committee Objection at ¶ 46.b.

II. The Bidding Procedures Timeline Has Been Extended in Response to the Objections and Comments of Various Parties-in-Interest and is Reasonable, Necessary and Adequate Under the Circumstances.

34. The Committee Objection requests that the Court delay the Debtors' sale process by no less than two weeks to permit additional marketing of the Debtors' assets. *See* Committee Objection at ¶ 37 ("the Committee requests that the Court extend the proposed sale process by delaying the Bid Deadline, Auction and Sale Hearing by two (2) weeks"). The Debtors and DIP Lender have accommodated this request for a two-week delay and similar requests and comments from other parties-in-interest. The Debtors and DIP Lender propose to extend the previously-suggested deadlines by approximately two weeks, as follows:

[5] Defined terms in the section "Reply in Support of Bidding Procedures Motion" that are not otherwise defined in this Reply shall have the meaning or meanings ascribed thereto in the Bidding Procedures Motion.

Deadlines	**Old Deadline**	**New Deadline**
Bid procedures hearing	April 30, 2025	May 12, 2025
Deadline to enter Bidding Procedures Order	April 30, 2025	May 13, 2025
Deadline to serve Cure Notice	May 2, 2025	May 14, 2025
Sale Objection Deadline	May 9, 2025	May 23, 2025
Bid Deadline	May 13, 2025	May 23, 2025
Auction	May 15, 2025	May 27, 2025
Deadline to file Supplemental Sale Objections and Non-Stalking Horse Objections and Non-Stalking Horse Assumption or Cure Objections	May 19, 2025	May 30, 2025
Sale Hearing	May 21, 2025	June 2, 2025
Deadline to enter Sale Order	May 22, 2025	June 3, 2025
Deadline to Consummate Sale (assuming closing via 363 sale)	May 24, 2025	June 6, 2025

35. As revised, the proposed Bidding Procedures contemplate an approximately eight-week marketing and sale process whereby the Auction will be conducted on May 27, 2025, the Sale Hearing will occur on June 2, 2025, and the Sale will have closed by June 6, 2025. The Debtors believe that this timeline is reasonable, necessary and adequate under the circumstances of the Chapter 11 Cases.

36. It is essential that the Debtors proceed with the Sale Process according to this schedule. The Debtors' revenue is tied to forward-looking contracts, and the Debtors are not expecting cash inflows from revenues during the pendency of the Chapter 11 Cases. Consequently, the Debtors are entirely reliant on the funds committed under the Debtors' DIP Facility to execute their bankruptcy strategy. The DIP Lender has not agreed to advance further funds beyond the DIP Budget. The Debtors have extensively negotiated with the DIP Lender and pushed the proposed sale timeline as far as the available funding will allow. Thus, it is paramount that the Debtors

proceed along the proposed schedule to avoid risks that could derail the Sale Process and to ensure that the Debtors are able to consummate a value maximizing sale within their existing DIP Budget.

37. This proposed schedule is also necessary to preserve and maximize the value of the Debtors' going concern. Notwithstanding the benefits of proceeding under chapter 11, the pendency of the bankruptcy cases is a challenge to the Debtors' business. While in bankruptcy, (a) the Debtors' access to the capital needed to conduct extended operations and continue their partnerships with carbon credit project developers is severely limited, (b) the uncertainty and complications inherent to the bankruptcy process obstruct the Debtors' ability to source and secure funding for carbon projects, and (c) customers interested in purchasing carbon credits from the Debtors are unwilling to enter into long-term contracts for fear that the Debtors will not perform on future obligations. The longer the Debtors remain in bankruptcy, the greater the duration and cost of these interruptions to the Debtors' business. In the face of such headwinds, a quick exit from bankruptcy is required to return the Debtors' going concern to "business as usual," which, in turn, is essential to optimizing operations and, ultimately, realizing the highest value for the Debtors' going concern at a bankruptcy sale.

38. The timeline for the proposed Sale Process is also adequate and provides all interested parties a reasonable opportunity to conduct diligence, assess the Company and its assets, and submit a potential bid.

39. First, the Debtors have already secured the Stalking Horse Purchase Agreement as the Stalking Horse Bid under the Bidding Procedures, which serves the critical function of setting a "floor" for further competitive bidding. The Stalking Horse Purchase Agreement was publicly filed and served along with the Bidding Procedures Motion and is available to all parties in interest for review.

40. Second, the Debtors, in coordination with their professionals, have already created and populated a data room (the "**Data Room**"), which potential bidders may access to conduct due diligence with respect to the Debtors' assets. As discussed in detail below, the Data Room has already garnered significant interest from potential bidders.

41. Third, the universe of parties potentially interested in purchasing the Debtors' assets is small due to the nature of the carbon credit industry, the significant capital outlays and risks associated with the business, and the long-time horizon for realizing a return from carbon credit development projects for owners and investors. The accelerated marketing period targeted to these potential buyers proposed here strikes an appropriate balance between the Debtors' current cash situation and the need to test the market for the Debtors' assets.

42. To target these potential buyers, and to ensure a competitive sale process, notwithstanding the accelerated schedule, the Debtors retained Hilco Corporate Finance, LLC ("**Hilco**") as of April 1, 2025, subject to court approval, to serve as their investment banker and to market the Debtors' assets.

43. Hilco is a leading investment banking firm whose professionals have worked with financially troubled companies and their stakeholders in a variety of industries in complex financial restructurings, both in chapter 11 cases and out-of-court proceedings.

44. Since its retention on April 1, 2025, Hilco has provided extensive services in connection with advising and facilitating the Sale Process. Hilco has become familiar with the Debtors' corporate and capital structure, management, and business operations and has gained significant institutional knowledge of the Debtors' business and financial affairs and other potential issues that may arise in the context of these Chapter 11 Cases. Hilco is both well qualified

and uniquely able to render investment banking services to the Debtors in these Chapter 11 Cases in an efficient and timely manner.

45. Hilco's marketing efforts are well underway. As of the filing of this Reply, Hilco has reached out to over one hundred and eighteen (118) parties with teaser materials and a non-disclosure agreement ("**NDA**"), which parties include both strategic and financial investors with access to sufficient capital and interest in the carbon credit industry or sustainable investing. So far, nineteen (19) interested parties have executed NDAs and gained access to the Data Room, while four (4) more parties are currently negotiating NDAs. Hilco has conducted over fifteen (15) calls with interested parties and will continue its efforts to market the Debtors' assets.

46. Based upon the foregoing, the proposed timeline under the Bidding Procedures is necessary, reasonable and adequate under the circumstances because it appropriately balances the economic and practical realities of these cases while still establishing a fair, open and competitive bidding and auction process for the sale of the Debtors' assets. Further, the Bidding Procedures serve the essential dual purposes of (a) providing a market check and topping bid that would maximize value for the Debtors' estates or, in the alternative, (b) confirming that the consideration offered in the Stalking Horse Purchase Agreement is the highest and best bid for the Debtors' assets as determined by a thorough marketing process. As such, the Debtors respectfully request that the Court overrule the

objections of the Committee and the U.S. Trustee to the proposed sale schedule and grant the Bidding Procedures Motion.

III. The Stalking Horse Bid Protections are Actual, Necessary and Benefit the Debtors' Bankruptcy Estates.

47. The Stalking Horse Bid Protections proposed under the Bidding Procedures are actual and necessary both to preserve the Debtors' estate and to effectuate a value maximizing sale of the Debtors' assets. The objections of the Committee and the U.S. Trustee alleging otherwise should be overruled. *See* Committee Objection at ¶¶ 38-45; UST Objection at ¶¶ 15-22.

48. The Stalking Horse Bidder is not the typical pre-petition lender seeking to take ownership of its collateral through a bankruptcy case. As counsel to the Stalking Horse Bidder made clear on the record at the first-day hearing, the Stalking Horse Bidder did not enter the Chapter 11 Cases "wanting to be the buyer or [loan] to own" the Debtors' assets, and it is "happy for other people to come in and bid" as part of the Sale Process. *See* Transcript of Hearing, 25:3-9, Apr. 2, 2025. The Stalking Horse Bidder is not a "loan to own" lender and is here only reluctantly.

49. Based upon the Debtors' inquiry, the Stalking Horse Bidder also is not an "insider" of the Debtors under section 101(31) of the Bankruptcy Code. It does not own a controlling equity interest in the Debtors and does not control the Debtors' operations or corporate decision making.

50. The Break-Up Fee and Expense Reimbursement are reasonable and appropriate under the circumstances. At filing, the Debtors had been unable to secure financing from other sources, had no immediate sale prospects, and would have had to resort to a chapter 7 filing but for the Stalking Horse Bidder's intervention. The Debtors' management team believes in the company and that a sales process in chapter 11 makes the most sense and provides the best way to

maximize value. But without the Stalking Horse Bidder there is no floor and no asset purchase agreement. Since the Petition Date, the Stalking Horse Bidder has expended time, money and resources to develop, negotiate, and document the Stalking Horse Agreement to provide a floor against which other parties can bid. The Stalking Horse Bidder and Debtors have spent time and money identifying contracts and issues related to the contracts identified as potentially representing the most likely salable contracts. These undertakings have required extensive diligence and ongoing negotiations to see if there is any value to be obtained. All of these efforts have been directed at making sure those agreements can be transferable to any potential purchaser. The Break-Up Fee and Expense Reimbursement are only relevant if these efforts produce an overbid, thus demonstrating the value resulting from the Stalking Horse Bidder's efforts. The Break-Up Fee and Expense Reimbursement are market and, in the event of an overbid, would fairly reward the Stalking Horse Bidder for creating that value for the estates and reimburse the Stalking Horse Bidder for the efforts expended that inured to the benefit of the Debtors' estates.

51. This context supports granting the Stalking Horse Bid Protections to the Stalking Horse Bidder under the *O'Brien* standard cited by both the Committee and the U.S. Trustee. *See generally Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999)

52. First, in accordance with *O'Brien*, the proposed Stalking Horse Bid Protections "promote more competitive bidding" under the Bidding Procedures "by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *Id.* at 537. The Stalking Horse Bidder entering into the Stalking Horse Agreement was not a *fait accompli*. As stated by counsel to the Stalking Horse Bidder during the first-day hearing, the Stalking Horse Bidder does not want to be in this role. It is not a loan-to-own strategy. The Stalking

Horse Bidder has made clear that it would be happy to allow another bidder to come forward to backstop the auction. To date, no such other bidder has materialized. The Stalking Horse Bid Protections were an actual inducement to the Stalking Horse Bidder, and if the Stalking Horse Bid Protections are not approved, the Stalking Horse Bidder may move to terminate the Stalking Horse Bid. To preserve the value of the Debtors' going concern, the Stalking Horse Bidder has already taken on the risk of serving as the Debtors' DIP Lender. It has additionally taken on the risk of serving as the Stalking Horse Bidder to establish a bidding "floor" that ensures a competitive Sale Process. To induce the Stalking Horse Bidder to serve this critical role, and to ensure competitive bidding for the Debtors' assets, the Stalking Horse Bid Protections are necessary.

53. Second, and further in accordance with *O'Brien*, the "availability of break-up fees and expenses" induced the Stalking Horse Bidder "to research the value of the [D]ebtor[s] and convert that value to a dollar figure on which other bidders can rely," thus providing "a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth." *Id.* at 537. Since the Stalking Horse Bidder is not an insider, the Stalking Horse Bidder did not possess the requisite information and knowledge about the Debtors and their assets prior to the Petition Date that a purchaser would customarily demand before entering into an asset purchase agreement. While the Stalking Horse Bidder was a prepetition secured lender to the Debtors, the Debtors were in a different line of business at the time the prepetition loans were made. At that time, the Debtors were focused on their consumer financial services business. Now, the Debtors have pivoted to carbon credits and related services. The Stalking Horse Bidder's pre-investment diligence largely is no longer applicable to the Debtors' current assets and business lines.

54. And, in the run-up to the Petition Date, the Stalking Horse Bidder also did not conduct the level or type of diligence necessary to investigate the potential acquisition and

operation of the Debtors' new assets, which largely consist of carbon credit development projects and related agreements. Pre-petition diligence regarding collateral for a loan is a much different inquiry than the inquiry necessary to evaluate the potential acquisition and operation of a large-scale carbon credit development partnership in Kenya.

55. Instead, the Stalking Horse Bidder has performed these activities postpetition. Based on these circumstances, the Stalking Horse Bidder demanded the Stalking Horse Bid Protections to induce the Stalking Horse Bidder to conduct this postpetition diligence and enter into the Stalking Horse Bid. As a result of these inducements, the Stalking Horse Bidder entered into the Stalking Horse Bid, which has increased the likelihood of the Debtors' assets being sold to a third-party bidder for consideration that reflects their true worth.

56. The Debtors further note that the Stalking Horse Bidder set its credit bid at a level designed to facilitate active bidding. The Stalking Horse Bidder holds an approximately $60 million claim. It could have set its Stalking Horse Bid at its full $60 million claim amount to chill other potential bidders. But it did not do so. It instead set its bid at the much lower amount of $20 million in an effort to bring other potential buyers to the Sale Process. This choice confers a clear benefit to the Debtors' estates.

57. Lastly, the Committee's Objection argues that bid protections should be awarded retroactively and subject to hindsight attacks. *See* Committee Objection at ¶ 45 ("The Committee requests that the Court deny the [Stalking Horse] Bid Protections, or in the alternative, reserve its decision on the Bid Protections until after the Sale Hearing."). This approach entirely undercuts the purpose and value of the Stalking Horse Bid Protections, which are designed to promote competitive bidding by locking in a guaranteed initial bid, which the Stalking Horse Bidder will not abandon during the Sale Process. The inducements and incentives created by the Stalking

Horse Bid Protections are premised on front-end approval of the same. If the Stalking Horse Bid Protections are subject to back-end approval and hindsight attacks, the Stalking Horse Bidder may not agree to continue to backstop the sale process. And such back-end protection is unnecessary for the Debtors' estates where the Stalking Horse Bid Protections are only paid if the sale generates overbids; if no higher or better offers are received, then no Stalking Horse Bid Protections are paid.

58. As a final note, the proposed Stalking Horse Bid Protections are reasonable in amount and are in line with bid protections allowed in similar cases in this District. As already cited in the Bidding Procedures Motion, this Court has approved protections similar to the Expense Reimbursement and Break-Up Fee proposed therein as reasonable. *See* Bidding Procedures Motion at ¶ 37.

59. Based on the foregoing, the proposed Stalking Horse Bid Protections are actual and necessary costs of preserving the Debtors' bankruptcy estates in accordance with Third Circuit precedent and section 503(b)(1)(A) of the Bankruptcy Code and should be approved.

IV. Response to Other Objections to the Bidding Procedures

60. *Acquired Assets (Avoidance Actions)*. The Committee also objects to the Stalking Horse Bidder's proposed acquisition of Avoidance Actions (as defined in the Stalking Horse Bid). *See* Committee Objection at ¶ 46.c. Far from being improper, the purchase of Avoidance Actions by a going-concern buyer is a commonplace and prudent business decision. No buyer wants to buy a business only to have critical customers, suppliers, and other business partners sued for avoidance actions by the legacy debtor. Purchasing Avoidance Actions in these cases will allow the Stalking Horse Bidder to ensure that such potential business interruptions are avoided. The Third Circuit has not prohibited the sale of Avoidance Actions under section 363 of the Bankruptcy Code. *See, e.g.*, *Artesanias Hacienda Real S.A. de C.V. v. North Mill Capital, LLC (In re Wilton Armetale, Inc.)*, 968 F.3d 273, 285 (3d Cir. 2020) (explaining that the Third Circuit's opinion in

Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery (In re Cybergenics Corp.), 226 F.3d 237, 244-45 (3d Cir. 2000) did not prohibit transfers of trustee "causes of action"). Further, courts in this District have approved the sale of Avoidance Actions. *See, e.g., Official Comm. of Unsecured Creditors of HDR Holdings, Inc. v. GenNx360 Capital Partners, L.P. (In re HDR Holdings, Inc.)*, 2020 U.S. Dist. LEXIS 209077 at *6-*9 (D. Del. Nov. 9, 2020) (appeal of an order approving sale of avoidance actions, which appeal the district court dismissed as moot). *See also, e.g., Pitman Farms v. ARKK Food Co., LLC (In re Simply Essentials, LLC)*, 78 F.4th 1006 (8th Cir. 2023) (holding that "avoidance actions are property of the estate under § 541(a)(1)" and affirming the approval of a trustee's motion to sell property of the estate); *Briar Cap. Working Fund Cap., L.L.C. v. Remmert (In re S. Coast Supply Co.)*, 91 F.4th 376, 385 (5th Cir. 2024) (holding "preference actions may be sold pursuant to 11 U.S.C. § 363(b)(1)").

CONCLUSION

WHEREFORE, based upon the foregoing, and for good and just cause having been shown, the Debtors respectfully request that the Court overrule all objections, approve the DIP Motion on a final basis, grant the Bidding Procedures Motion, and further grant such other and further relief as is just and proper.

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Dated: May 7, 2025
Wilmington, Delaware

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