

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

CTN HOLDINGS, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 25-10603 (TMH)

(Jointly Administered)

**Re: Docket No. 171**

**BIDDING PROCEDURES**

On April 11, 2025, CTN Holdings, Inc., CTN SPV Holdings, LLC, Make Earth Green Again, LLC, Aspiration QFZ, LLC, Aspiration Fund Adviser, LLC, Catona Climate Solutions, LLC, and Zero Carbon Holdings, LLC, debtors and debtors in possession (collectively, the “Sellers”) in the chapter 11 cases (the “Cases”) pending in the United States Bankruptcy Court for the District of Delaware (“Court”) and jointly administered under Case No. 25-10603 (TMH), filed a motion [D.I. 65] (the “Motion”), seeking, among other things, authorization for the Sellers to perform their obligations under that certain Asset Purchase Agreement (together with all exhibits thereto, the “Stalking Horse Agreement”) <sup>2</sup> entered into by and among the Sellers, Carbon Sequestration I, LLC, Carbon Sequestration II, LLC, Carbon Sequestration III, LLC, Reforestation Initiatives I, LLC and/or Reforestation Initiatives II, LLC (collectively, the “NonDebtor Sellers”, and together with the Sellers, the “Debtors”), and Inherent Aspiration, LLC (or its designee, the “Stalking Horse Bidder”), substantially in the form attached to the Motion as Exhibit B, subject to higher and better bids for the Acquired Assets as described below. As described in the Motion, the Stalking Horse Agreement contemplates, pursuant to the terms and subject to the conditions contained therein, the sale of the Acquired Assets in exchange for a purchase price (the “Stalking Horse Purchase Price”) consisting of (i) a credit bid of amounts owed pursuant to the Prepetition Secured Loan Facility and/or pursuant to the DIP Facility (the “Credit Bid”) pursuant to Section 363(k) of the Bankruptcy Code in an amount equal to \$20,000,000.00 (the “Credit Bid Amount”), which shall be allocated in the Purchaser’s sole discretion as a dollar-for-dollar credit against the amount of all of the outstanding obligations under the Prepetition Secured Loan Facility and/or DIP Facility as of the Closing Date, (ii) the assumption of Assumed Liabilities, and (iii) payment in full of Cure Costs.

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Stalking Horse Agreement.



The Stalking Horse Agreement provides for payment of bid protections in the form of a reimbursement of the Stalking Horse Bidder's actual, reasonable, documented out-of-pocket expenses up to an amount not to exceed \$400,000.00 (the "Expense Reimbursement").

On May 14, 2025, the Court entered the *Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-A(A) Approving Bid Procedures for the Sale of Substantially all of the Debtors' Assets, (B) Approving the Debtors' Entry Into the Stalking Horse Agreement and Related Expense Reimbursement, (C) Approving Procedures for the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases, (D) Scheduling an Auction and Sale Hearing and (E) Approving Forms and Manner of Notice of Respective Dates, Times and Places in Connection Therewith; and (F) Granting Related Relief* [D.I. 171] (the "Bidding Procedures Order"), which, among other things, (i) authorized the Debtors to perform their pre-closing obligations under the Stalking Horse Agreement and (ii) approved the bidding procedures set forth herein (the "Bidding Procedures") governing the submission of competing proposals to purchase the Acquired Assets pursuant to section 363 of the Bankruptcy Code. The sale of the Acquired Assets will be implemented pursuant to the terms and conditions of the Bidding Procedures Order and the Stalking Horse Agreement, as the same may be amended pursuant to the terms thereof, subject to the Debtors' selection in their reasonable discretion, after consultation with Inherent Group, LP, as administrative agent and collateral agent for the Debtors' senior secured lenders (in such capacity, "Prepetition Collateral Agent" and "DIP Agent" (each as defined in the interim and final orders authorizing the Debtors to obtain postpetition financing and use of cash collateral (the "DIP Orders")) and, together, the "Agents"), Inherent Aspiration, LLC (as defined in the DIP Orders, the "DIP Lender"), and the Committee (the Agents, the DIP Lender, and the Committee are hereinafter referred to as the "Consultation Parties"), of a higher and otherwise better bid as the Successful Bid (as defined below) in accordance with these Bidding Procedures.

#### **A. Notice Parties**

Information required to be provided under these Bidding Procedures must be provided to the following parties (collectively, the "Notice Parties"): (a) the Debtors, c/o CTN Holdings, Inc., 548 Market Street, PMB 72015, San Francisco, CA 64104-5401, Attn: Statton Hammock, and c/o CTN Holdings, Inc., 13355 Noel Road, Suite 2005, Dallas, Texas 75240, Attn: Miles Staglik; (b) counsel to the Debtors, Whiteford, Taylor & Preston LLP, 3190 Fairview Park Drive, Suite 800, Falls Church, VA 22042-4510, Attn: David W. Gaffey (dgaffey@whitefordlaw.com), Brandy M. Rapp (brapp@whitefordlaw.com) ("Whiteford"); (c) proposed investment banker to the Debtors, Hilco Corporate Finance, LLC, 401 N. Michigan, Suite 1630, Chicago, IL 60611, Attn: Terri Stratton (tstratton@hilcofc.com) ("Hilco"); (d) counsel to the Stalking Horse Bidder, Proskauer Rose LLP, Eleven Times Square, New York, NY 10036-8299, Attn: Vincent Indelicato (vindelicato@proskauer.com) and One International Place, Boston, MA 02110, Attn: Charles A. Dale (cdale@proskauer.com), and Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St, 16<sup>th</sup> Floor, Wilmington, DE 19801, Attn: Robert J. Dehney, Sr. (rdehney@morrisnichols.com), Matthew B. Harvey (mharvey@morrisnichols.com), Brenna A. Dolphin (bdolphin@morrisnichols.com); (e) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (Rosa.Sierra-Fox@usdoj.gov); and (f) proposed counsel to the Official Committee of

Unsecured Creditors, Gibbons, P.C., 300 Delaware Avenue, Suite 1015, Wilmington, DE 19801, Attn: Katharina Earle (kearle@gibbonslaw.com), and One Gateway Center, Newark, NY 07102, Attn: Robert K. Malone (rmalone@gibbonslaw.com), Brett S. Theisen (btheisen@gibbonslaw.com).

**B. Key Dates**

<b>Event</b>	<b>Deadline</b>
Deadline for Debtors to File Cure Notice	May 16, 2025
Sale Objection Deadline	May 23, 2025, at 4:00 p.m. (ET)
Bid Deadline	May 23, 2025, at 4:00 p.m. (ET)
Deadline to Designate Qualified Bids	May 24, 2025
Auction	May 27, 2025, at 10:00 a.m. (ET)
Deadline to Serve Notice of Successful Bidder and Adequate Assurance Notice	One (1) business day after the close of the Auction
Deadline to File Adequate Assurance Objection	May 30, 2025, at 4:00 p.m. (ET)
Sale Hearing	June 2, 2025, at 2:00 p.m. (ET)

**C. Potential Bidder Requirements**

To participate in the formal bidding process or otherwise be considered for any purpose hereunder, a person (other than the Stalking Horse Bidder) interested in submitting a bid (an “Interested Party”) must deliver to the Debtors, counsel to the Debtors and Hilco an executed confidentiality agreement substantially in the form previously sent to Agents’ counsel on April 9, 2025 (each, a “Confidentiality Agreement”). Such person or entity that has delivered an executed Confidentiality Agreement shall be considered a potential bidder (a “Potential Bidder”).

**D. Due Diligence**

The Debtors will provide to each Potential Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request, provided that if any Potential Bidder is (or is affiliated with) a competitor of the Debtors, the Debtors will not be required to disclose to such Potential Bidder any trade secrets, proprietary information, or other commercially sensitive information unless, under the Debtors’ business judgment in consultation with the Consultation Parties, the Confidentiality Agreement executed by such Potential Bidder (i) sufficiently protects the Debtors’ estates, and (ii) contains appropriate provisions to ensure that such trade secrets or proprietary information will not be used by such Potential Bidder or its Affiliates for an improper purpose or to gain an unfair competitive advantage. Each Potential Bidder will comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Potential Bidder and its contemplated transaction. If the Debtors, after consultation with the Consultation Parties, determine at any time in their reasonable discretion that a Potential Bidder is not reasonably likely to be a Qualified Bidder (as defined below), then the Debtors’ obligation to provide due diligence information to such Potential Bidder will terminate and all information provided by the Debtors prior to such time

shall be returned to the Debtors or destroyed in accordance with the terms of the applicable Confidentiality Agreement.

**E. Bid Requirements**

To be eligible to participate in the Auction, each Potential Bidder must submit a proposal (a “Bid”)<sup>3</sup> to purchase some or all of the Debtors’ assets by **May 23, 2025 at 4:00 p.m. (ET)** (the “Bid Deadline”) and such Bid must satisfy each of the following conditions (together the “Bid Requirements”):

- 1) state that the applicable Potential Bidder offers to purchase the Acquired Assets upon terms and conditions no less favorable to the Debtors’ estates as the Debtors, in consultation with the Consultation Parties, may reasonably determine, than the transactions contemplated in the Stalking Horse Agreement;
- 2) be accompanied by a deposit (each, a “Good Faith Deposit”) in the form of a wire transfer or certified check or such other form acceptable to the Debtors in their sole discretion, payable to the order of Kurtzman Carson Consultants, LLC dba Verita Global (the “Escrow Agent”), in an amount equal to 10% of the cash portion of the Purchase Price being bid;
- 3) specify the amount of cash or other consideration offered by the Potential Bidder (the “Purchase Price”), which Purchase Price must:  
(a) exceed the aggregate sum of (i) the aggregate consideration set forth in the Stalking Horse Agreement; (ii) the Assumed Liabilities set forth in the Stalking Horse Agreement; (iii) the Expense Reimbursement, and (iv) the minimum bid increment of \$100,000; and  
(b) include an amount of cash consideration at closing that exceeds the aggregate sum of (i), (iii) and (iv) (such aggregate sum specified in (a) and (b), the “Minimum Purchase Price”);
- 4) include an executed asset purchase agreement, together with all exhibits and schedules thereto, pursuant to which the Potential Bidder proposes to effectuate a proposed transaction at the Purchase Price (the “Transaction Documents”), which Transaction Documents must include a copy of the proposed asset purchase agreement marked against the Stalking Horse Agreement to show all changes requested by the Potential Bidder including, but not limited to, treatment of any assumed liabilities;

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<sup>3</sup> Promptly (and in any event within 1 business day after receipt), Debtors will provide all Bids (and all related materials) to the Agents.

- 5) be irrevocable by the Potential Bidder until the selection of the Successful Bid in accordance with the terms of these Bidding Procedures; *provided* that if such Potential Bidder is selected as the Successful Bidder or Back-Up Bidder and is required to be a Back-Up Bidder hereunder, its Bid must remain irrevocable until the Debtors' consummation of a sale with the Successful Bidder;
- 6) include a list which specifies in detail which of the Debtors' unexpired leases and executory contracts are to be assumed by the Debtors and assigned to the Potential Bidder in connection with the consummation of the proposed transaction and an agreement that the Potential Bidder will pay any related cure costs;
- 7) contain a description of how the Potential Bidder intends to treat the Debtors' current employees;
- 8) provide a commitment to close by June 6, 2025;
- 9) not be conditioned on any contingency, including unperformed due diligence, obtaining financing, obtaining third-party consents, or any internal approval;
- 10) include an acknowledgement that the sale or transfer of the Acquired Assets will be on an "as is, where is" basis and without representations or warranties of any kind by Debtors or their agents other than as set forth in the Stalking Horse Agreement;
- 11) include a description of all governmental, licensing, regulatory or other filings, approvals or consents, that are required to be made or obtained to close the proposed transaction, together with evidence of the ability to make any applicable filings or submissions within three (3) business days of being declared the Successful Bidder;
- 12) contain written evidence of a commitment for financing or other evidence of the ability to consummate a proposed transaction at the Purchase Price (including sufficient financial or other information to establish adequate assurance of future performance pursuant to section 365(f)(2) of the Bankruptcy Code and, if applicable, section 365(b)(3) of the Bankruptcy Code to the non-Debtor counterparties to any executory contracts and unexpired leases to be assumed by the Debtors and assigned to the Potential Bidder in connection with the proposed transaction), satisfactory to the Debtors in their reasonable discretion with appropriate contact information for such financing sources;

- 13) contain written evidence satisfactory to the Debtors, after consultation with the Consultation Parties, of authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and consummation of such Bid and the transaction(s) contemplated therein and any Overbid(s) (as defined below), and related Transaction Documents;
- 14) not request or entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment (except to the extent consented to in writing by Debtors after consultation with Agents and Committee);
- 15) fully disclose the identity of each entity that will be bidding for the Acquired Assets or otherwise sponsoring, financing (including through the issuance of debt in connection with such Bid), participating in or benefiting from (including through license or similar arrangement with respect to the assets to be acquired in connection with such Bid) such Bid (a "Participating Party"), and the complete terms of any such sponsorship, participation, financing or benefit;
- 16) constitute a good faith, bona fide offer to effectuate the proposed transaction;
- 17) include a written acknowledgement by such Potential Bidder that it agrees to all of the terms for sale set forth in these Bidding Procedures;
- 18) include an agreement to provide any other information reasonably requested by the Debtors; and
- 19) be received by the Bid Deadline.

#### **F. Designation as Qualified Bidder**

A qualified bidder ("Qualified Bidder") is a Potential Bidder that, in the Debtors' reasonable determination, after consultation with the Consultation Parties, (i) has timely submitted a Bid that satisfies each of the Bid Requirements listed above and (ii) is able to consummate the proposed transaction within the required timeframe if selected as the Successful Bidder (such Bid submitted by a Qualified Bidder, a "Qualified Bid"); *provided* that the Debtors reserve the right to work with any Potential Bidder to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid. Within two (2) business days after a Potential Bidder delivers all of the documents described above, the Debtors will determine in their reasonable discretion, after consultation with the Consultation Parties, whether such Potential Bidder is a Qualified Bidder, and notify the Potential Bidder of such determination. For the avoidance of doubt, (i) the Stalking Horse Bidder is a Qualified Bidder, (ii) the Stalking Horse Agreement is a Qualified Bid, and (iii) the Stalking

Horse Bidder is authorized to submit any Overbids (as defined below) during the Auction, in each instance without further qualification required of the Stalking Horse Bidder.

Notwithstanding anything herein to the contrary, without any further action of any kind: (a) each Agent (and any designee of each Agent, including, without limitation, any entity that may be formed by or on behalf of any of the DIP Lender (and any designee of the DIP Lender) may submit a Bid and, in connection with any such Bid, is, and will be deemed to be, a Qualified Bidder for all purposes under and in connection with these Bidding Procedures and may credit bid all or any portion of the Prepetition Secured Note Obligations and the DIP Obligations (each as defined in the DIP Orders) in accordance with applicable law, including, without limitation, at any Auction; (b) any credit bid made by any Agent or any DIP Lender (or such designee) is, and will be deemed to be, a Qualified Bid in each instance and for all purposes under and in connection with the Bidding Procedures and will be deemed to be, and will be evaluated by the Debtors, and the Consultation Parties as, a cash Qualified Bid; and (c) subject to the proviso at the end of this sentence, Agents, DIP Lender and such designees will not be subject to the terms and conditions of the section entitled “Bid Requirements”: clauses (2), (3), (9), (11), (12), (13), and (18); *provided*, however, that (x) such Agent or such DIP Lender (or any designee thereof) submitting a credit bid will provide a Good Faith Deposit, provided that such Good Faith Deposit shall consist of a reduction in the applicable secured claim of such Agent or such DIP Lender in the Cases and will not be payable in cash notwithstanding anything to the contrary in these Bidding Procedures and (y) any such bid must provide for the payment in full in cash of the Expense Reimbursement. These Bidding Procedures are subject to the terms and provisions of the DIP Orders.

In the event that any Agent or DIP Lender(or such designee) submits a Bid and is still participating in the Auction process, the Agents and DIP Lender(or such designee) shall no longer be considered a Consultation Party with respect to the assets for which it has submitted a Bid; provided, that if any such party irrevocably indicates in writing that it is no longer a bidder for such assets, such party shall thereafter be considered a Consultation Party.

#### **G. “As Is, Where Is”**

Any sale or transfer of the Acquired Assets will be on an “as is, where is” basis and without representations or warranties of any kind by the Debtors and their agents, except and solely to the extent expressly set forth in a final purchase agreement. Each Qualified Bidder will be required to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Debtors’ assets that are the subject of the Auction prior to making its Bid and that it has relied solely upon its own independent review and investigation in making its Bid.

#### **H. Auction**

(1) **Auction.** If the Debtors receive two or more Qualified Bids (including the Stalking Horse Bid), the Debtors may hold an Auction; *provided* that the Debtors in their discretion and with the prior written consent of the Agents (acting at the direction of the Prepetition Secured Parties or DIP Lender (as defined in the DIP Orders) may elect to forego an Auction and select a Qualified Bid as the Successful Bid.

If no Qualified Bids (other than the Stalking Horse Bid) are received by the Bid Deadline, then the Auction shall be cancelled, the Stalking Horse Bidder will be deemed the Successful Bidder, the Stalking Horse Agreement will be the Successful Bid, and, at the Sale Hearing, the Debtors will seek final Court approval of the sale of the Acquired Assets to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Agreement.

(2) **Auction Date and Location.** If an Auction is held, it will commence on or before May 27, 2025, at 10:00 a.m. (Prevailing Eastern Time) at the offices of Whiteford, Taylor & Preston, LLC, 600 North King Street, Suite 300, Wilmington, DE 19801, telephonically or by video via Zoom, or such later time or other place, in consultation with the Consultation Parties; *provided, however*, that the Debtors, in their discretion, and in consultation with the Consultation Parties, shall have the right to hold the Auction at another place or virtually, with instructions for Qualified Bidders to participate to be provided prior to the Auction, with notice and access instructions to all Qualified Bidders, permitted observers, and any other invitees. The Auction will be transcribed to ensure an accurate recording of the bidding at the Auction.

(3) **Baseline Bid.** No later than one (1) day prior to the commencement of the Auction, the Debtors will provide all Notice Parties and Consultation Parties with complete copies of all Transaction Documents and all other bid materials submitted by each other Qualified Bidder, subject to exclusion of any confidential financial information as determined by the Debtors in their reasonable discretion or which has been so designated by the applicable Qualified Bidder. At the commencement of the Auction, the Debtors will notify all Qualified Bidders, Notice Parties and Consultation Parties of the highest acceptable Qualified Bid, as determined by the Debtors in their reasonable discretion after consultation with the Consultation Parties (the "Baseline Bid"). The Debtors' determination of which Qualified Bid constitutes the Baseline Bid, in consultation with the Consultation Parties, shall take into account factors such as the potential recovery to general unsecured creditors, if any, pursuant to such Qualified Bid and the certainty of such recovery, whether all administrative, priority and secured claims will be paid in full under such Qualified Bid and any other factors the Debtors, in consultation with the Consultation Parties, reasonably deem relevant to the value of the Qualified Bid to the estates. No later than the day prior to the commencement of the Auction, each Qualified Bidder that has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction; *provided* that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid will nevertheless remain fully enforceable against such Qualified Bidder.

(4) **Participation Requirements.** Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction. The authorized representatives of each of the Qualified Bidders (including the Stalking Horse Bidder), the Debtors, the Agent, and the Committee will be permitted to attend the Auction. In addition, pursuant to Local Rule 6004-1, all creditors of the Debtors who have not submitted Bids may attend the Auction as observers, *provided* that they send an email to Debtors' counsel indicating that they intend to attend the Auction no less than one (1) Business Day prior to the Auction, *provided further* that the Debtors' right to object on an emergency basis to any such creditor's proposed attendance at the Auction is reserved.

(5) **Auction Procedures.** The Debtors and their professionals will direct and preside over the Auction. At the start of the Auction, the Debtors will describe the terms of the Baseline Bid. All Bids made thereafter must be Overbids (as defined below) and will be made and received on an open or closed basis, as determined by Debtors in consultation with the Consultation Parties, and all material terms of each Bid will be fully disclosed to all other Qualified Bidders. The Debtors will maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, the Successful Bid and the Back-Up Bid. Each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the sale of the Acquired Assets. The Debtors, in their reasonable discretion, after consultation with the Consultation Parties, reserve the right to conduct the Auction in a manner designed to maximize value based upon the nature and extent of the Qualified Bids received. The Debtors and their professionals will consult in good faith with the Consultation Parties throughout the Auction process.

During the Auction, bidding will begin initially with the Baseline Bid and subsequently continue in minimum increments of at least \$100,000.00 (each, an “Overbid”). The Debtors will announce at the Auction the material terms of each Overbid, value each Overbid in accordance with these Bidding Procedures and provide each Qualified Bidder with an opportunity to make a subsequent Overbid (except in the event of a round of closed, final bidding). Additional consideration in excess of the amount set forth in the Baseline Bid may include cash and/or other consideration acceptable to the Debtors in accordance with these Bidding Procedures; *provided*, however, that no portion of the consideration may include non-cash consideration other than in the form of the assumption of Assumed Liabilities without the prior written consent of Agents (acting at the direction of the Prepetition Secured Parties pursuant to the Prepetition Secured Note Documents and DIP Documents (each as defined in the DIP Orders)). Qualified Bidders must submit a Bid in each round of bidding that is higher or otherwise better than the highest or otherwise best Bid submitted by a Qualified Bidder in the prior round of bidding in order to remain eligible to participate in future rounds of bidding in the Auction. To the extent that a Qualified Bidder fails to submit a Bid in a round of bidding that is higher or otherwise better than the highest or otherwise best Bid submitted by a Qualified Bidder in the prior round of bidding, such Qualified Bidder shall be disqualified from continuing to participate in the Auction. When bidding at the Auction, the Stalking Horse Bidder will receive a cash credit in the amount of the Expense Reimbursement and will be allowed to bid the Expense Reimbursement.

To the extent that an Overbid has been accepted entirely or in part because of the addition, deletion, or modification of a provision or provisions in the applicable Transaction Documents or the Stalking Horse Agreement, the Debtors, after consultation with the Consultation Parties, will provide notice to each participant of the value ascribed by the Debtors to any such added, deleted, or modified provision or provisions, with such value being determined by the Debtors in their reasonable discretion, after consultation with the Consultation Parties.

Any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder unless and until (i) the Debtors accept a higher and otherwise better bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such Overbid is not selected as the Back-Up Bid (as defined below). To the extent not previously provided (which will be determined by the Debtors), a Qualified Bidder submitting an Overbid

must submit at the Debtors' request, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors (in consultation with the Consultation Parties)) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such Overbid.

### **I. Selection of Successful Bid**

At the conclusion of the Auction, the Debtors, in the exercise of their reasonable business judgment, in consultation with the Consultation Parties, will select (i) the highest acceptable Bid (the "Successful Bid") or collection of Bids (the "Successful Bids") submitted by a Qualified Bidder during the Auction that the Debtors believe is most beneficial to the Debtors and their estates, and (ii) at the Debtors' discretion, the next highest acceptable Bid (the "Back-Up Bid") or collection of Bids (the "Back-Up Bids") after the Successful Bid(s). In selecting the Successful Bid(s) and the Back-Up Bid(s), if any, the Debtors, in consultation with the Consultation Parties, shall take into account the projected percentage recovery to general unsecured creditors and the certainty of such recovery and whether all administrative, priority and secured claims will be paid in full and may also consider, among other things: (i) the number, type and nature of any changes to the Stalking Horse Agreement which may delay closing of the contemplated transaction and the cost to the Debtors of such modifications or delay; (ii) the liabilities being assumed; (iii) the likelihood of the Qualified Bidder's ability to close its proposed transaction and the timing thereof; (iv) the expected net benefit of the transaction to the Debtors' estates and (v) any other factors the Debtors may reasonably deem relevant. The Qualified Bidder that submits a Successful Bid will be deemed a "Successful Bidder," and the Qualified Bidder that submits a Back-Up Bid, if any, will be deemed a "Back-Up Bidder." The Successful Bidder(s) and Back-Up Bidder(s), following the completion of the Auction, must increase their Good Faith Deposits so that they equal 10% of such Successful Bid or Back-Up Bid, as applicable.

The Auction will close when the Debtors announce that a Successful Bid(s) and, to the extent the Debtors determine, in consultation with the Consultation Parties, a Back-Up Bid(s), have been selected. Notwithstanding anything herein to the contrary, the Debtors are authorized, but not required, to select a Back-Up Bidder and a Back-Up Bid. For the avoidance of doubt, the Debtors will not consider or support any Bid for any of the Acquired Assets (whether or not such bid is made by a Qualified Bidder) received after the close of the Auction.

Upon declaration of the Successful Bid, the Successful Bidder shall, in its sole discretion, elect to consummate the Sale via entry of the Sale Order (i) granting the Motion pursuant to sections 105, 363 and 365 of the Bankruptcy Code or (ii) confirming a plan of reorganization/liquidation pursuant to sections 1123(a)(5)(D) and 1141(c) of the Bankruptcy Code.<sup>4</sup>

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<sup>4</sup> 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.

The Back-Up Bid(s), if any, will remain open and binding on the Back-Up Bidder(s) until consummation of the Successful Bid(s) with the Successful Bidder(s). If a Successful Bidder fails to consummate a Successful Bid within the time set forth therein, the Debtors will be authorized, but not required, to select a Back-Up Bidder, if any, as the new Successful Bidder, and shall proceed to consummate the Successful Bid of the new Successful Bidder.

**J. Implementation of the Sale**

The hearing to authorize the sale of the Acquired Assets to the Successful Bidder(s) pursuant to the Successful Bid(s) (the “Sale Hearing”) will be held before the Court on June 2, 2025, at 2:00 p.m. (Prevailing Eastern Time). The Sale Hearing may be adjourned or rescheduled by the Debtors to a time and date consistent with the Court’s calendar, as set forth in notice on the docket of the Cases, a notice of agenda or stated orally on the record at a hearing before the Court. Upon the Court’s approval of the Successful Bid(s), the Successful Bid(s) will be deemed accepted by the Debtors, and the Debtors will be bound to the terms of that Successful Bid(s) with no further opportunity for an auction or other process.

If a Successful Bidder or a Back-Up Bidder (if a Successful Bidder fails to consummate the proposed transaction) fails to enter into their respective asset purchase agreement as promptly as practicable or consummate the proposed transaction consistent with the Successful Bid or Back-Up Bid (if applicable), because of a breach or failure to perform on the part of the Successful Bidder or Back-Up Bidder (if applicable), all parties in interest reserve the right to seek all available damages from the defaulting Successful Bidder or Back-Up Bidder (if applicable), including specific performance and retention of the Good Faith Deposit.

**K. Consent to Jurisdiction as Condition to Bidding**

All Qualified Bidders irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the Bankruptcy Court for any litigation arising out of or relating to the Auction (and agrees not to commence any litigation relating thereto except in the Bankruptcy Court) and waives any objection to the laying of venue of any such litigation in the Bankruptcy Court. To the extent the Bankruptcy Court declines, or is otherwise unable to, exercise jurisdiction, then the Qualified Bidders agree that the state or federal courts in New Castle County, State of Delaware, shall have jurisdiction.

**L. Return of Good Faith Deposit**

All Good Faith Deposits will be held by the Debtors in a non-interest-bearing escrow or trust account. Good Faith Deposits of Qualified Bidders, other than a Successful Bidder and a Back-Up Bidder, if any, will be returned to the unsuccessful bidders within five (5) days after selection of a Successful Bidder and Back-Up Bidder, if any, in accordance with these Bidding Procedures. A Successful Bidder’s Good Faith Deposit will be applied to the Purchase Price of their Successful Bid at closing, and the Debtors will be entitled to retain such Good Faith Deposit as part of their damages if a Successful Bidder fails to meet their obligations to close the transaction contemplated by their Successful Bid. The Good Faith Deposit of a Back-Up Bidder,

if any, will be returned to the Back-Up Bidder, if any, within five (5) days after the consummation of the sale with a relevant Successful Bidder.

**M. Reservation of Rights**

The Debtors reserve the right, in consultation with the Consultation Parties, in their reasonable discretion and subject to the exercise of their business judgment, to alter or modify any of the rules or procedures set forth herein, to waive terms and conditions set forth herein with respect to all potential bidders, extend the deadlines set forth herein, alter the assumptions set forth herein, and/or to terminate discussions with any and all prospective acquirers and investors at any time and without specifying the reasons therefor, in each case to the extent not materially inconsistent with the Bidding Procedures Order or the Stalking Horse Agreement; *provided*, however, that the Debtors shall not waive the requirement to make a Good Faith Deposit.

Nothing in the Bidding Procedures shall require the Debtors to take any action, or to refrain from taking any action to the extent the Debtors determine that refraining from taking such action or taking such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

Nothing herein or contemplated hereby constitutes, or will be deemed to constitute or otherwise result in, the consent or approval of the Agents or any Lender to any sale of the Acquired Assets, any Bid, or to any agreement, motion, document or pleading relating thereto, or the waiver or modification of any of the terms of, or any rights under, any existing agreement, instrument or document, including, without limitation, any Prepetition Secured Note Document, any DIP Documents (each, as defined in the DIP Orders), or any default arising thereunder or relating thereto. Any and all rights of such parties to object or otherwise oppose any sale of the Acquired Assets, any Sale Order, Bid, or any agreement or document related thereto are hereby expressly preserved and reserved.