UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1

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In re:	Chapter 11
CBRM REALTY INC., *et al.*,	Case No. 25-15343 (MBK) (Jointly Administered)
Debtors.[1]	

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: CBRM Realty Inc. (2420), Crown Capital Holdings LLC (1411), Kelly Hamilton Apts LLC (9071), Kelly Hamilton Apts MM LLC (0765), RH Chenault Creek LLC (8987), RH Copper Creek LLC (0874), RH Lakewind East LLC (6963), RH Windrun LLC (0122), RH New Orleans Holdings LLC (7528), RH New Orleans Holdings MM LLC (1951), and Laguna Reserve Apts Investor LLC (N/A). The location of the Debtors' service address in these chapter 11 cases is: In re CBRM Realty Inc., et al., c/o White & Case LLP, 1221 Avenue of the Americas, New York, New York 10020.

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DEBTORS' (I) MEMORANDUM OF LAW IN SUPPORT OF (A) FINAL APPROVAL OF THE DISCLOSURE STATEMENT AND (B) CONFIRMATION OF THE AMENDED JOINT CHAPTER 11 PLAN OF CBRM REALY INC. AND CERTAIN OF ITS DEBTOR AFFILIATES AND (II) OMNIBUS REPLY TO OBJECTIONS THERETO

Table of Contents

Table of Authorities

CASES

STATUTES

FEDERAL RULES

STATE RULES

OTHER AUTHORITIES

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**") file this memorandum of (this "**Memorandum**") (a) in support of (i) final approval of the Disclosure Statement[1] and (ii) confirmation of the Plan for Debtors CBRM Realty Inc., Kelly Hamilton Apts LLC, and Kelly Hamilton Apts MM LLC and (b) in response to the *Objection of Chardell Bacon—on her Own Behalf and on Behalf of those Similarly Situated—to Joint Chapter 11 Plan of CBRM Realty Inc. and Certain of its Debtor Affiliates and to Approval of the Kelly Hamilton Sale Transaction; and (II) Motion to Certify Class of Objectors Pursuant to Bankruptcy Rules 9014 and 7023* [Docket No. 453] (the "**Bacon Objection**"),[2] the *Objection of the City of Pittsburgh to: (A) the Debtors' Sale Motion for the Kelly Hamilton Property and (B) Confirmation of Debtor's Plan of Reorganization and Request for the Appointment of an Examiner Pursuant to 11 U.S.C. § 1104(c)(1)* [Docket No. 455] (the "**City Objection**"), and the *United States Trustee's Objection to the Joint Chapter 11 Plan of CBRM Realty Inc. and Certain of its Debtor Affiliates* [Docket No. 460] (the "**U.S. Trustee Objection**" and, together with the Bacon Objection and the City

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[1] Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the *Amended Joint Chapter 11 Plan of CBRM Realty Inc. and Certain of Its Debtor Affiliates* [Docket No. 469] (including all exhibits and supplements thereto and as may be modified, amended, or supplemented from time to time, the "**Plan**"), the *Disclosure Statement for the Joint Chapter 11 Plan of CBRM Realty Inc. and Certain of Its Debtor Affiliates* [Docket No. 360, Ex. A] (including all exhibits thereto and as may be modified, amended, or supplemented from time to time, the "**Disclosure Statement**"), the *Order (I) Conditionally Approving the Adequacy of the Information Contained in the Disclosure Statement, (II) Approving the Solicitation and Voting Procedures with Respect to Confirmation of the Plan, (III) Approving the Form of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates with Respect Thereto, and (V) Granting Related Relief* [Docket No. 347] (the "**Disclosure Statement Order**"), or the *Order (I) Approving (A) Bidding Procedures, the Sale Timeline, and the Form and Manner of Notice Thereof for the Kelly Hamilton Property, (B) the Debtors' Entry into and Performance Under the Stalking Horse Agreement, (C) Bid Protections in Connection with the Stalking Horse Agreement, and (D) Assumption and Assignment Procedures, and (II) Granting Related Relief,* [Docket No. 325] (the "**Bidding Procedures Order**"), as applicable.

[2] The Bacon Objection attaches a *Memorandum of Law in Support of the Objection of Chardell Bacon—on her Own Behalf and on Behalf of those Similarly Situated—to Joint Chapter 11 Plan of CBRM Realty Inc. and Certain of its Debtor Affiliates and to Approval of the Kelly Hamilton Sale Transaction; and (II) Motion to Certify Class of Objectors Pursuant to Bankruptcy Rules 9014 and 7023* attached thereto (the "**Bacon Memorandum**"), which is addressed herein in connection with the Bacon Objection.

Objection, the "**Objections**").[3] In further support of confirmation of the Plan, final approval of the Disclosure Statement, and in response to the Objections, the Debtors rely upon and incorporate by reference the *Declaration of Matthew Dundon, Principal of IslandDundon LLC, in Support of Final Approval of the Disclosure Statement and Confirmation of the Amended Joint Chapter 11 Plan of CBRM Realty Inc. and Certain of Its Debtor Affiliates* (the "**Dundon Declaration**"), filed contemporaneously herewith, the *Declaration of Justin Utz in Support of Final Approval of the Disclosure Statement and Confirmation of the Amended Joint Chapter 11 Plan of CBRM Realty Inc. and Certain of Its Debtor Affiliates* (the "**Utz Declaration**"), filed contemporaneously herewith, and the *Declaration of Andres A. Estrada with Respect to the Solicitation and the Tabulation of Votes on the Joint Chapter 11 Plan of CBRM Realty Inc. and Certain of Its Debtors Affiliates* [Docket No. 462] (the "**Voting Report**").[4]

Background

I. Company Background

1. The Debtors are part of a larger real estate portfolio indirectly owned by Debtor CBRM Realty Inc. and formed by real estate investor Mr. Silber and certain affiliated parties (the "**Crown Capital Portfolio**"). The Crown Capital Portfolio holds dozens of multifamily housing

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[3] The Debtors have reached an agreement in principle to resolve the City Objection and Bacon Objection. To the extent any issue remains unresolved at the time of the Confirmation Hearing, the Debtors submit this Memorandum and reserve all rights.

[4] The *Declaration of Matthew Dundon, Principal of IslandDundon LLC, in Support of Debtors' Chapter 11 Petitions and First Day Pleadings* [Docket No. 44] (the "**First Day Declaration**"), the *Declaration of Matthew Dundon, Principal of IslandDundon LLC, in Support of Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [Docket No. 156] (the "**DIP Declaration**"), and the *Declaration of Matthew Dundon, Principal of IslandDundon LLC, in Support of Debtors' Motion for Entry of an Order (I) Approving (A) Bidding Procedures, the Sale Timeline, and the Form and Manner of Notice Thereof for the Kelly Hamilton Property, (B) the Debtors Entry into and Performance Under the Stalking Horse Agreement, (C) Bid Protections in Connection with the Stalking Horse Agreement, and (D) Assumption and Assignment Procedures, and (II) Granting Related Relief* [Docket No. 313] (the "**Bidding Procedures Declaration**") are incorporated by reference.

projects across the United States, including the Kelly Hamilton Property, and has been historically funded, at least in part, by the federal government's housing assistance programs, such as Section 8. Ultimately, the Crown Capital Portfolio raised hundreds of millions of dollars of financing, including (i) over $200 million from the sale of bonds issued by Crown Capital and guaranteed by CBRM (the "**Notes**") and (ii) approximately $450 million of property-level mortgage loans provided by an array of different financing sources.

2. Among the assets in the Crown Capital Portfolio is the Kelly Hamilton Property, a 110-unit multifamily residential apartment complex located in Pittsburgh, Pennsylvania. The Kelly Hamilton Property serves low-income tenants and participates in various government-supported housing programs, including U.S. Department of Housing and Urban Development ("**HUD**") housing assistance and rent-restricted programs under applicable regulatory agreements. The Debtors' primary business is the ownership, financing, and operation of this single affordable housing asset.

II. Founder Misconduct and Breakdown in Governance

3. Prior to the Petition Date, Mr. Silber was the target of an extensive investigation by the federal government in connection with a multi-year conspiracy to fraudulently induce a financial institution to issue a $74 million loan to BRC Williamsburg Holdings, LLC, a shell company controlled by Mr. Silber.[5] On April 17, 2024, Mr. Silber entered into a plea agreement with the Fraud Section of the Department of Justice and the United States Attorney for the District of New Jersey for conspiracy to commit wire fraud affecting an institution under 18 U.S.C. § 371.[6]

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[5] *See USA v. Silber*, No. 24-00446 (D.N.J. July 9, 2024) [Docket No. 1].

[6] *See USA v. Silber*, No. 24-00446 (D.N.J. July 9, 2024) [Docket No. 6].

4. During the course of the investigations and plea negotiations, Mr. Silber neglected the management of the Crown Capital Portfolio, leading to numerous properties falling into default or becoming subject to receivership proceedings.[7] Indeed, as set forth in the First Day Declaration, a considerable share of the Debtors' distress arises from the fact that many, if not all, of the properties of the Debtors and their affiliates are likely worth much less today than the appraised values which supported the issuance of the Notes and certain of the property-level mortgage loans, largely as a result of Mr. Silber's negligence and mismanagement of the Crown Capital Portfolio.[8]

5. Once the plea became public, Mr. Silber was disqualified from continuing to manage the Crown Capital Portfolio.[9] By Mr. Silber's own admission, "[m]y guilty plea precipitated a crisis for my real estate business by making CBRM, Crown, and their dozens of subsidiaries unbankable while I remained in control of them. This left the business unable to access capital and credit it needed to perform day-to-day operations and pay expenses such as maintenance, repairs, utilities, wages, salaries, and debt service."[10]

6. Crown Capital Portfolio's stakeholders, including certain investors (the "**Noteholders**") who purchased the Notes from Debtor Crown Capital, as issuer, with Debtor CBRM as guarantor, were concerned about these developments because Crown Capital Portfolio's value supported the payment of principal and interest under the Notes.[11] On August 29, 2024, following discussions between Mr. Silber's counsel and the Noteholders' counsel and financial

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7 *See* First Day Declaration ¶ 10.

8 First Day Declaration ¶ 10.

9 *Id*. ¶ 11.

10 *Motion of Party in Interest Moshe ("Mark") Silber for Appointment of an Equity Security Holders Committee or, in the Alternative, Appointment of Counsel* [Docket No. 348] (the "**Silber Motion**") ¶ 13.

11 First Day Declaration ¶ 11.

advisor, the parties entered into a forbearance agreement (the "**Forbearance Agreement**").[12] The Forbearance Agreement addressed various matters involving pending defaults under the Notes and Mr. Silber's go-forward involvement with the portfolio, and established a process to ensure that the Crown Capital Portfolio had sufficient fiduciary oversight.[13] The Forbearance Agreement, among other things, required "Mr. Silber to appoint an independent fiduciary" of CBRM and Crown Capital, and provided "that individual with an irrevocable proxy for so long as the obligations under the Forbearance Agreement remained pending."[14]

7. Mr. Silber and the Noteholders entered into the Forbearance Agreement because the Debtors and the Crown Capital Portfolio did not have sufficient capital and liquidity to manage the portfolio or pay interest payments to the Noteholders.[15] Many of the properties were in a state of disrepair and required substantial capital to improve and maintain.[16] In this context, by September 20, 2024, the Debtors identified Kelly Hamilton Lender LLC (the "**Kelly Hamilton Lender**"), an affiliate The Lynd Group, as the only available financing source willing to provide urgently needed working capital. On that date, Kelly Hamilton Lender extended a $3,500,000 term loan to Kelly Hamilton Apts LLC ("**Kelly Hamilton**") pursuant to a Loan and Security Agreement, dated September 20, 2024, between Kelly Hamilton as borrower and Kelly Hamilton Lender as lender (the "**Prepetition Kelly Hamilton Loan**"). The Prepetition Kelly Hamilton Loan

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12 *Id*. ¶ 12.

13 *Id*.

14 *Id*.

15 *Supplemental Declaration of Matthew Dundon, Principal of IslandDundon LLC, in Support of (I) Debtors' Objection to Motion of Party in Interest Moshe ("Mark") Silber for Appointment of an Equity Security Holders Committee or, in the Alternative, Appointment of Counsel and (II) Debtors' Limited Objection to Motion of Party in Interest Moshe ("Mark") Silber for Issuance of a Subpoena Duces Tecum Pursuant to Fed. R. Bankr. P. 2004(C) and 9016* [Docket No. 376] (the "**Supplemental Dundon Declaration**") ¶ 6.

16 Supplemental Dundon Declaration, ¶ 6.

was evidenced by a Term Note of the same date and secured by an Open-End Commercial Mortgage, Security Agreement, and Assignment of Leases and Rents in connection with the Kelly Hamilton Property, also dated September 20, 2024. Shortly thereafter, LAGSP was retained as the asset manager of the over 50 properties in the Crown Capital Portfolio, and Lynd Management was retained as the property manager of the Kelly Hamilton Property.

8. On September 26, 2024, the Noteholders party to the Forbearance Agreement consented to the appointment of Elizabeth A. LaPuma—a restructuring professional with over 20 years' experience as an investment banker and corporate director, including for companies in distress—as the independent fiduciary for CBRM and Crown Capital (the "**Independent Fiduciary**").[17] However, soon after Ms. LaPuma's appointment, Mr. Silber began to unwind the existing management structure for the Crown Capital Portfolio, including laying off many of his employees.[18] Mr. Silber's actions caused turnover issues, a lack of continuity in (or, in some cases, a complete absence of) employees, and a lapse in company recordkeeping, thus undermining the portfolio's ability to maintain its value.[19] For example, for certain entities, LAGSP received organizational charts that were inaccurate or did not receive any organizational charts at all.[20] This lapse in information made it difficult for the new advisors to manage the Crown Capital Portfolio.[21]

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[17] First Day Declaration ¶ 13.

[18] Supplemental Dundon Declaration ¶ 8.

[19] *Id*.

[20] *Id*.

[21] *Id*.

9. In light of this situation, following Ms. LaPuma's appointment, Lynd created an asset recovery plan.[22] In connection with that plan, Lynd conducted a thorough analysis of the Debtors' properties to determine which, if any, had value in excess of their mortgage balances that could support unsecured creditor recoveries or even dividends upon equity.[23] Lynd determined, as a result of its analysis, that most of the properties in the Crown Capital Portfolio, potentially worth more than their respective mortgage balances, could only realize that incremental value with substantial additional capital investment.[24] Any rent collections within the portfolio exceeding day-to-day operating costs were used to maintain units.[25] IslandDundon LLC ("**IslandDundon**") reviewed Lynd's analyses, conducted its own analyses, and reached the same conclusions.[26]

10. This situation was exacerbated by the guilty pleas by Mr. Silber and his co-conspirator, Mr. Schulman, which made obtaining financing for the Debtors and the Crown Capital Portfolio nearly impossible.[27] As a general matter, lenders and other financing parties do not want to provide capital or financing to counterparties controlled by parties with felony convictions.[28] Mr. Silber is the sole equity holder of CBRM, which is the parent entity of the Crown Capital Portfolio.[29]

11. On December 9, 2024, Ms. LaPuma was appointed as manager of the Debtors through an omnibus written consent. However, Mr. Silber, and in some instances, Mr. Schulman,

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22 Supplemental Dundon Declaration ¶ 9.

23 *Id*.

24 *Id*.

25 *Id*.

26 *Id.*

27 *Id*. ¶ 10.

28 *Id*.

29 *Id*.

had direct or indirect equity interests in many of the entities of the Crown Capital Portfolio.[30] As such, Mr. Silber's and Mr. Schulman's felony convictions and refusal to forfeit their equity interests made it impossible for the Debtors and other entities within the Crown Capital Portfolio to obtain prepetition financing.[31] Additionally, Mr. Silber and Mr. Schulman still retained control of multiple managing member entities within the Crown Capital Portfolio and did not give that control of such entities to the Independent Fiduciary.[32] This retention of control by Mr. Silber and Mr. Schulman caused serious issues with obtaining financing from lenders and funding from the Department of Housing and Urban Development with respect to certain properties within the Crown Capital Portfolio.[33] In March 2025, Mr. Silber was sentenced to a term of imprisonment of 30 months.[34]

III. The Chapter 11 Cases

12. On May 19, 2025 (the "**Petition Date**"), with no viable out-of-court restructuring alternatives and facing the imminent sheriff's sale in Rockland County, New York of certain CBRM assets—including its equity interest in Crown—the Debtors commenced these chapter 11 cases (the "**Chapter 11 Cases**"). On August 18, 2025, Laguna Reserve Apts Investor LLC filed a voluntary petition with this Court under chapter 11 of the Bankruptcy Code. These Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases and no official committees have been appointed or designated.

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30 Supplemental Dundon Declaration ¶ 10.

31 *Id*.

32 *Id*.

33 *Id*.

34 *See USA v. Silber*, No. 24-00446 (D.N.J. Mar. 24, 2025) [Docket No. 56].

13. Additional factual information regarding the Debtors' business, their capital structure, and the circumstances leading to these chapter 11 filings is contained in the First Day Declaration.

IV. The Kelly Hamilton DIP Credit Agreement

14. Prior to commencing these Chapter 11 Cases, the Debtors pursued refinancing and restructuring efforts outside of court; however, these efforts were severely impaired by Silber's prosecution and the nature of the allegations against him.[35] With the assistance of their advisors, the Debtors engaged numerous parties regarding potential out-of-court financing initiatives, all of which proved to be unsuccessful.[36] The Debtors ultimately concluded that financing outside a court-supervised restructuring process was not feasible.[37]

15. The Debtors then began discussions with Lynd Management Group LLC and its related entities (collectively, "**Lynd**") and with 3650 Real Estate Investment Management LLC ("**3650 REIT**"), a financing partner identified by Lynd, regarding a potential debtor-in-possession facility secured by the assets of the Kelly Hamilton Debtor.[38] This proposal contemplated financing between the Kelly Hamilton Debtor and 3650 SSI Pittsburgh LLC (the "**Kelly Hamilton DIP Lender**"), an entity formed by Lynd and 3650 REIT (the "**Original Kelly Hamilton DIP Proposal**"). At the same time, the Debtors also began to engage with certain of the Noteholders regarding a potential financing facility secured by the assets of both the Kelly Hamilton Debtor and certain other Debtor entities (the "**Noteholder DIP Proposal**").[39]

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35 DIP Declaration ¶ 14.

36 *Id.*

37 *Id*.

38 *Id.*

39 *Id*.

16. Upon commencing these Chapter 11 Cases, the Debtors initially determined that the Noteholder DIP Proposal was superior to the Original Kelly Hamilton DIP Proposal because it (i) provided financing for both the Kelly Hamilton Debtor and the other Debtors; (ii) committed significant startup capital for a litigation trust; and (iii) had the support of certain noteholders.[40] However, the Noteholder DIP Proposal also contemplated a non-consensual priming lien on all of the other Debtors' prepetition funded debt creditors, approval of which would likely have required the Debtors to engage in costly and distracting litigation.[41]

17. While attempting to finalize documentation of the Noteholder DIP Proposal, the Debtors also recommenced discussions with Lynd and 3650 REIT regarding a revised financing proposal for the Kelly Hamilton Debtor (the "**Kelly Hamilton DIP Proposal**").[42] Following extensive negotiations among the Debtors, the Noteholder steering committee, the Kelly Hamilton DIP Lender, and the prepetition lenders to the other Debtors, the Debtors ultimately finalized terms with the Kelly Hamilton DIP Lender, resulting in the Kelly Hamilton DIP Facility.[43]

18. A key element of the revised Kelly Hamilton DIP Proposal was the use of proceeds from the Kelly Hamilton DIP Facility to repay amounts outstanding on the Prepetition Kelly Hamilton Loan. Repayment of the Prepetition Kelly Hamilton Loan with proceeds from the Kelly Hamilton DIP Facility was disclosed in Exhibit A to the Binding Term Sheet for Senior Secured, Superpriority Debtor-in-Possession Financing, dated May 26, 2025 (the "**DIP Term Sheet**"), which set forth the sources and uses of the Kelly Hamilton DIP Facility. The DIP Term Sheet was

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[40] *Id.* ¶ 15.

[41] *Id.* ¶ 15.

[42] *Id.* ¶ 16.

[43] *Id.* ¶ 17.

filed in connection with the Kelly Hamilton DIP Motion (defined below), the Kelly Hamilton Interim DIP Order (defined below), and the Kelly Hamilton Final DIP Order (defined below). In addition, the "Debt Balance (Payoff)" of the Prepetition Kelly Hamilton Loan was specifically reflected in the Court-approved budget (the "**Approved Budget**") attached to both the Interim and Final DIP Orders.

19. On May 28, 2025, the Debtors filed the *Motion for Entry of an Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [Docket No. 61] (the "**Kelly Hamilton DIP Motion**"). The Court held a hearing on interim approval of the facility on June 2, 2025. Prior to the hearing, creditor Cleveland International Fund – NRP West Edge, Ltd. filed an objection, but only with respect to financing for certain Debtors other than the Kelly Hamilton Debtor [Docket No. 94]. No other formal objections were filed regarding interim approval of the Kelly Hamilton DIP Facility, and the Objectors did not present objections at the hearing [Docket No. 111]. On June 4, 2025, the Court entered an order granting interim approval of the Kelly Hamilton DIP Facility [Docket No. 107] (the "**Kelly Hamilton Interim DIP Order**").

20. On June 17, 2025, the Court held a hearing on final approval of the Kelly Hamilton DIP Facility. Prior to this hearing, creditor Spano Investor LLC ("**Spano**") filed the *Limited Objection and Reservation of Rights of Spano Investor LLC with Respect to Final DIP Financing Orders* [Docket No. 135]. No other formal objections were filed, including by the Objectors (as defined below), nor were any issues raised at the hearing [Docket No. 234].

21. On June 19, 2025, the Court entered approved the Kelly Hamilton DIP Facility on a final basis [Docket No. 178] (the "**Kelly Hamilton Final DIP Order**"). In doing so, the Court

found that: (i) the Debtors were unable to obtain credit from any other source on more favorable terms; (ii) the Kelly Hamilton DIP Facility was fair, reasonable, and negotiated in good faith and at arm's length among the parties; (iii) the facility represented a sound and prudent exercise of the Debtors' business judgment; (iv) the financing was necessary to preserve estate value and prevent immediate and irreparable harm to hundreds of HUD-subsidized tenants; and (v) repayment of the Prepetition Kelly Hamilton Loan, along with its sources and uses, was properly disclosed and the Debtors were authorized to make payments in accordance with the Approved Budget.

V. The Kelly Hamilton Sale Transaction

22. In May 2025, the Debtors retained IslandDundon as their financial advisor and investment banker. Among other things, IslandDundon advised the Debtors in connection with one or more postpetition transaction(s) concerning the Kelly Hamilton Property with the goal of maximizing its value for the Debtors' stakeholders.

23. As explained above, the first step in that process consisted of the Debtors obtaining debtor-in-possession financing to fund the administration of these Chapter 11 Cases. The Debtors accomplished this by securing the Kelly Hamilton DIP Facility. Next, as required by the terms of the Kelly Hamilton DIP Facility, the Debtors, with IslandDundon's assistance, negotiated with the Kelly Hamilton DIP Lender to become the "stalking horse" bidder for the Kelly Hamilton Property.

24. These negotiations culminated in the Kelly Hamilton DIP Lender's presentation of proposed transaction terms to purchase the Kelly Hamilton Property. The Debtors, with the assistance of IslandDundon and the Debtors' legal counsel, evaluated (a) the amount of consideration provided; (b) the structure of the proposed plan transactions; (c) the requested bid protections and any possible impact on any auction; (d) the risk that Kelly Hamilton DIP Lender

might be unable to consummate the purchase; and (e) the potential consequences of refusing the proposal, including but not limited to being required to repay the Kelly Hamilton DIP Facility with cash. Based on this evaluation, the Debtors determined that acceptance of the terms proposed by the Kelly Hamilton DIP Lender was in the best interests of the Estates and therefore, authorized the drafting, execution and delivery of definitive documentation embodying the accepted terms.

25. On July 11, 2025, the Kelly Hamilton Debtor and the Kelly Hamilton DIP Lender entered into a purchase and sale agreement (the "**Kelly Hamilton Purchase Agreement**") whereby the Kelly Hamilton DIP Lender agreed to credit bid the Kelly Hamilton DIP Facility Obligations and the Manager Administrative Expense Claim (each as defined in the Kelly Hamilton Purchase Agreement), to acquire substantially all of the Kelly Hamilton Property owned by the Kelly Hamilton Debtor. The Kelly Hamilton Purchase Agreement includes procedures that treat the Kelly Hamilton DIP Lender's purchase commitment as a "stalking horse" bid, i.e., subject to a continued marketing process by the Debtors and to being supplanted, after payment of a breakup fee, by a third party's higher and better bid, should one emerge from such continued marketing process.

26. Recognizing the likely need for a sales process for the Kelly Hamilton Property that includes potential buyers other than the Kelly Hamilton DIP Lender, however, the Debtors, with the assistance of IslandDundon and their other advisors, initiated a sales process before the Petition Date of these Chapter 11 Cases. IslandDundon identified 37 parties interested in purchasing and/or financing the purchase of the Kelly Hamilton Property.

27. To further this process and to receive court approval for the Debtors to enter into the Kelly Hamilton Purchase Agreement, the Debtors sought approval of certain bidding and sale

procedures for the Kelly Hamilton Property.[44] On July 14, 2025, the Court entered an order establishing the objection deadline for the Bidding Procedures Motion as July 21, 2025 at 4:00 p.m. (prevailing Eastern Time).[45] The Debtors received no formal objections to the Bidding Procedures Motion before or at the hearing to consider the Bidding Procedures Motion.[46]

28. On July 24, 2025, the Court entered the Bidding Procedures Order. Among other things, the Bidding Procedures Order authorized the Debtors to "enter into and perform all of their respective pre-closing obligations under the [Kelly Hamilton Purchase Agreement]," determining that pursuit of the Kelly Hamilton Purchase Agreement "reflect[ed] a sound exercise of the Debtor's business judgment."[47] The Bidding Procedures Order also approved the proposed bid protections and provided that "[n]o party may object to the right of the [Kelly Hamilton DIP Lender] to credit bid the sum of the Kelly Hamilton DIP Facility Obligations and the Manager Administrative Expense Claim."[48] Further, the Bidding Procedures Order provided that the "[Kelly Hamilton DIP Lender] shall be permitted to credit bid the sum of the Kelly Hamilton DIP Facility Obligations and the Manager Administrative Expense Claim."[49]

29. Following entry of the Bidding Procedures Order, the Debtors and their advisors continued the marketing process to test the market and ensure that no higher or better offers were

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[44] *See Debtors' Motion for Entry of an Order (I) Approving (A) Bidding Procedures, the Sale Timeline, and the Form and Manner of Notice Thereof for the Kelly Hamilton Property, (B) the Debtors' Entry into and Performance Under the Stalking Horse Agreement, (C) Bid Protections in Connection with the Stalking Horse Agreement, and (D) Assumption and Assignment Procedures, and (II) Granting Related Relief* [Docket No. 281] (the "**Bidding Procedures Motion**").

[45] *See* [Docket No. 289].

[46] *See* July 24, 2025 Hr'g Tr. [Docket No. 335].

[47] Bidding Procedures Order at 5.

[48] Bidding Procedures Order at 8.

[49] *Id*. at 11.

available for the Kelly Hamilton Property. Specifically, the Debtors, with the assistance of IslandDundon and Hilco Real Estate, LLC, the Debtors' real estate advisor, contacted 125 potentially interested parties who received a non-confidential marketing overview, and provided further diligence materials to the nineteen parties who executed confidentiality agreements. The Debtors provided extensive additional material to a subset of nineteen potential purchasers who agreed to execute and deliver confidentiality agreements with the Debtors. Moreover, the Debtors and IslandDundon continued to conduct discussions with any party that complied with the requirements of the Bidding Procedures Order.

30. The Debtors also filed the *Notice of Proposed Sale, Entry into Stalking Horse Agreement, Bidding Procedures, Auction, and Confirmation and Sale Hearing* (the "**Sale Notice**") [Docket No. 333] and served this notice on interested parties in accordance with the Bidding Procedures Order. The Sale Notice, among other things, provided the bid deadline and the date of the auction for the Kelly Hamilton Property (if any). The Debtors also published the Sale Notice in the *Newark Star Ledger* and the *Pittsburgh Post-Gazette*.[50]

31. As described in the Dundon Declaration, despite the robust outreach and diligence process, no qualifying alternative bids were received for the Kelly Hamilton Property on or before August 15, 2025. There was no realistic prospect that any party could have negotiated and financed an executable transaction even in the absence of the Kelly Hamilton Purchaser's credit bid. The lack of competing bids was attributable to the distressed condition of the property and the broader financial and operational context—not any flaw or impropriety in the marketing process.

[50] *See Affidavit of Publication of Notice of Proposed Sale, Entry into Stalking Horse Agreement, Bidding Procedures, Auction, and Confirmation and Sale Hearing* [Docket No. 366].

32. As a result, on August 15, 2025, the Debtors cancelled the auction and designated the stalking horse bid submitted by the Kelly Hamilton Purchaser as the successful bid.[51] The Debtors now seek to effectuate the terms of the Kelly Hamilton Sale Transaction through the Plan.

VI. Plan Solicitation and Notification Process

33. On July 11, 2025, the Debtors filed a motion seeking conditional approval of the Disclosure Statement and associated voting and solicitation procedures [Docket No. 283] (the "**Disclosure Statement Motion**"). On August 1, 2025, the Court entered the Disclosure Statement Order. In compliance with the Disclosure Statement Order and the Bankruptcy Code, only Holders of Claims in Class 3 (Kelly Hamilton Go-Forward Trade Claims), Class 4 (Other Kelly Hamilton Unsecured Claims), Class 5 (Crown Capital Unsecured Claims), Class 6A (CBRM Unsecured Claims), and Class 6B (Spano CBRM Claim) (the "**Voting Classes**") were entitled to vote to accept or reject the Plan.[52] The following Classes of Claims and Interests were not entitled to vote on the Plan, and the Debtors did not solicit votes from the Holders of such Claims and Interests:[53]

Class	Claims and Interests	Status	Voting Rights
Class 1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
Class 2	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)

[51] *See Notice of Cancellation of Auction and Designation of the Stalking Horse Bid as the Successful Bid for the Kelly Hamilton Property* [Docket No. 383].

[52] 11 U.S.C. § 1126.

[53] As described in the Voting Report, following solicitation of the Plan, the Debtors determined that a NOLA Restructuring Transaction would not occur prior to Confirmation of the Plan. Accordingly, Crown Capital Holdings LLC is not a Debtor under the Plan and the *Joint Chapter 11 Plan for Crown Capital Holdings LLC and Certain of Its Debtor Affiliates* [Docket No. 389] (as may be modified, amended, or supplemented from time to time) shall constitute the sole plan for Crown Capital Holdings LLC. After filing the Voting Report, the Debtors filed an amended Plan removing Crown Capital Holdings LLC as a Debtor and conforming the Classes of Claims and Interests and related definitions prior to the Confirmation Hearing. As a result, the numbering of the class labels reflected in the Voting Report differ from those that appear in the Plan.

Class 7	Intercompany Claims	Impaired	Not Entitled to Vote
Class 8	Intercompany Interests	Impaired	Not Entitled to Vote
Class 9	CBRM Interests	Impaired	Not Entitled to Vote (Deemed to Reject)
Class 10	Crown Capital Interests	Impaired	Not Entitled to Vote (Deemed to Reject)
Class 11	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)

34. The voting results, as reflected in the Voting Report, are summarized as follows:

Class	**Total Ballots Received**			
	Accept		**Reject**	
	Amount (% of Amount Voted)	**Number (% of Number Voted)**	**Amount (% of Amount Voted)**	**Number (% of Number Voted)**
Class 3 - Kelly Hamilton Go-Forward Trade Claims	100%	100%	0%	0%
Class 4 - Other Kelly Hamilton Unsecured Claims	91.44%	50%	8.56%	50%
Class 6A - CBRM Unsecured Claims	99.94%	97.2%	0.06%	2.78%
Class 6B - Spano CBRM Claim	100%	100%	0%	0%

VII. The Objections

35. On August 26, 2025, formal objections were filed by Ms. Bacon and the City of Pittsburgh. On August 28, 2025, a formal objection was filed by the U.S. Trustee. To the extent the Debtors are unable to consensually resolve such Objections prior to the Combined Hearing Date, the Debtors request that the Court overrule such Objections. A summary of the arguments

in the Objections and a summary of the Debtors' responses as to why they should be overruled are in the chart attached hereto as **Exhibit A**.

Argument

36. For the reasons set forth herein, the Debtors respectfully request that the Court overrule the remaining Objections and (a) approve the adequacy of the Disclosure Statement on a final basis and (b) confirm the Plan.

I. The Disclosure Statement Contains "Adequate Information" as Required by Section 1125 of the Bankruptcy Code, and the Debtors Complied with the Applicable Notice Requirements

A. The Disclosure Statement Contains Adequate Information

37. The purpose of a disclosure statement is to provide "adequate information" that allows parties entitled to vote on a proposed plan to make an informed decision as to whether to vote to accept or reject the plan.[54] "Adequate information" is a flexible standard, based on the facts and circumstances of each case.[55] Courts within the Third Circuit and elsewhere

[54] *See, e.g.*, *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp.*, 337 F.3d 314, 321–22 (3d Cir. 2003) (providing that a disclosure statement must contain "adequate information to enable a creditor to make an informed judgment about the Plan" (internal quotations omitted)); *Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) ("[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote."); *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985) ("The primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan."); *In re Phx. Petroleum, Co.*, 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001) ("[T]he general purpose of the disclosure statement is to provide 'adequate information' to enable 'impaired' classes of creditors and interest holders to make an informed judgment about the proposed plan and determine whether to vote in favor of or against that plan."); *In re Unichem Corp.*, 72 B.R. 95, 97 (Bankr. N.D. Ill. 1987) ("The primary purpose of a disclosure statement is to provide all material information which creditors and equity security holders affected by the plan need in order to make an intelligent decision whether to vote for or against the plan.").

[55] 11 U.S.C. § 1125(a)(1) ("'adequate information' means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records"); *see also Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) ("From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case."); S. Rep. No. 95-989, at 121 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5907 ("the information required will necessarily be governed by the circumstances of the case").

acknowledge that determining what constitutes "adequate information" for the purpose of satisfying section 1125 of the Bankruptcy Code resides within the broad discretion of the court.[56]

38. Courts look for certain information when evaluating the adequacy of the disclosures in a proposed disclosure statement, including:

a. the events which led to the filing of a bankruptcy petition;

b. the relationship of a debtor with its affiliates;

c. a description of the available assets and their value;

d. the anticipated future of the company;

e. the source of information stated in the disclosure statement;

f. the present condition of a debtor wile in chapter 11;

g. the claims asserted against a debtor;

h. the estimated return to creditors under a chapter 7 liquidation;

i. the future management of a debtor;

j. the chapter 11 plan or a summary thereof;

k. the financial information, valuations, and projections relevant to the claimants' decision to accept or reject the chapter 11 plan;

l. the information relevant to the risks posed to claimants under the plan;

m. the actual or projected realizable value from recovery of preferential or otherwise voidable transfers;

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[56] *See, e.g.*, *Lisanti v. Lubetkin (In re Lisanti Foods, Inc.)*, 329 B.R. 491, 507 (Bankr. D.N.J. 2005) ("The information required will necessarily be governed by the circumstances of the case."); *Kirk v. Texaco, Inc.*, 82 B.R. 678, 682 (S.D.N.Y. 1988) ("The legislative history could hardly be more clear in granting broad discretion to bankruptcy judges under § 1125(a): 'Precisely what constitutes adequate information in any particular instance will develop on a case-by-case basis. Courts will take a practical approach as to what is necessary under the circumstances of each case.'" (quoting H.R. Rep. No. 595, at 408–09 (1977))); *see also In re River Vill. Assoc.*, 181 B.R. 795, 804 (E.D. Pa. 1995) ("[T]he Bankruptcy Court is thus given substantial discretion in considering the adequacy of a disclosure statement."); *In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988) ("The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court."); *In re Phx. Petroleum Co.*, 278 B.R. at 393 (same).

n. the litigation likely to arise in a nonbankruptcy context; and

o. the tax attributes of a debtor.[57]

39. The Disclosure Statement, which was previously approved on a conditional basis, contains adequate information.[58] The Disclosure Statement contains descriptions and summaries of, among other things: (a) the Debtors' business operations and capital structure;[59] (b) certain events preceding the commencement of these Chapter 11 Cases;[60] (c) key events in these chapter 11 cases;[61] (d) the Debtors' sale efforts;[62] (e) an overview of the Plan;[63] (f) a description of the Debtor Release, the Third-Party Release and related opt-in, and exculpation provisions in the Plan;[64] (g) risk factors affecting the Plan;[65] (i) the Liquidation Analysis, which sets forth the estimated return that holders of Claims and Interests would receive in a hypothetical chapter 7 liquidation;[66] and (j) federal tax law consequences of the Plan.[67]

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[57] *In re U.S. Brass Corp.*, 194 B.R. 420, 424–25 (Bankr. E.D. Tex. 1996) (listing factors courts have considered in determining the adequacy of information provided in a disclosure statement); *Westland Oil Dev. Corp. v. MCorp Mgmt. Sols., Inc.*, 157 B.R. 100, 102 (S.D. Tex. 1993) (same); *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988) (same); *In re Metrocraft Publ'g Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (same). Disclosure regarding all topics "is not necessary in every case." *In re U.S. Brass Corp.*, 194 B.R. at 425; *see also In re Phx. Petroleum*, 278 B.R. at 393 ("[C]ertain categories of information which may be necessary in one case may be omitted in another . . . .").

[58] *See* Disclosure Statement Art. V.

[59] *See* Disclosure Statement Art. V.

[60] *See* Disclosure Statement Art. V.

[61] *See* Disclosure Statement Art. VI.

[62] *See* Disclosure Statement Art. VII.

[63] *See* Disclosure Statement Art. VII.

[64] *See* Disclosure Statement Art. VIII.

[65] *See* Disclosure Statement Art. X.

[66] *See* Disclosure Statement Ex. C.

[67] *See* Disclosure Statement Art. IX.

40. As discussed above, section 1125(a) requires only "adequate information" sufficient for parties entitled to vote on a proposed plan to make an informed decision about whether to vote to accept or reject the plan. Accordingly, the Disclosure Statement contains adequate information within the meaning of section 1125(a) of the Bankruptcy Code and should be approved on a final basis.

B. The Disclosure Statement Complied with the Applicable Notice and Solicitation Requirements

41. In addition to conditionally approving the adequacy of the Disclosure Statement, the Disclosure Statement Order granted final relief regarding solicitation and noticing procedures and materials including, among other things: (a) approving the Solicitation and Voting Procedures; (b) approving the Ballots; (c) approving the Notice of Non-Voting Status; (d) approving the Cover Letter; (e) approving the Combined Hearing Notice; (f) approving the Plan Supplement Notice; (g) approving the Assumption Notice; (h) approving the manner and form of the Solicitation Packages and the materials contained therein; and (i) scheduling the dates and deadlines related thereto. The Debtors have complied with the procedures approved by the Disclosure Statement Order and the timeline approved therein. No objections to compliance with respect to any dates and deadlines set forth in the Disclosure Statement Order were filed or received by the Debtors.

C. Solicitation of the Plan Complied with the Bankruptcy Code and Was in Good Faith

42. Section 1125(e) of the Bankruptcy Code provides that "a person that solicits acceptance or rejection of a plan, in good faith and in compliance with the applicable provisions

of this title . . . is not liable" on account of such solicitation for violation of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan.[68]

43. As set forth in the Disclosure Statement and Disclosure Statement Motion, and as demonstrated by the Debtors' compliance with the Disclosure Statement Order, the Debtors at all times took appropriate actions in connection with the solicitation of the Plan in compliance with section 1125 of the Bankruptcy Code. Therefore, the Debtors request that the Court grant the parties the protections provided under section 1125(e) of the Bankruptcy Code.

44. For the foregoing reasons, the Court should enter an order approving the Disclosure Statement on a final basis.

II. The Plan Satisfies Each Requirement for Confirmation

45. To confirm the Plan, the Court must find that the Debtors have satisfied the requirements of section 1129 of the Bankruptcy Code.[69] As described in detail below, the Plan complies with all relevant provisions of the Bankruptcy Code and all other applicable law.

A. The Plan Complies with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(1))

46. Under section 1129(a)(1) of the Bankruptcy Code, a plan must "compl[y] with the applicable provisions of [the Bankruptcy Code]."[70] The legislative history of section 1129(a)(1) of the Bankruptcy Code explains that this provision also encompasses and incorporates the

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[68] 11 U.S.C. § 1125(e).

[69] *See In re Premier Int'l Holdings, Inc.*, No. 09-12019 (CSS), 2010 WL 2745964, at *4 (Bankr. D. Del. Apr. 29, 2010) (holding that the plan proponent must prove each element of section 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence); *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 148 (Bankr. D.N.J. 2010) ("The plan proponent bears the burden to show by a preponderance of the evidence that the proposed Chapter 11 'plan has a reasonable probability of success,' and is more than a 'visionary scheme [].'") (citing *Wiersma v. Bank of the West (In re Wiersma)*, 227 F. App'x 603, 606 (9th Cir. 2007)) (internal quotation marks omitted).

[70] 11 U.S.C. § 1129(a)(1).

requirements of sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and the contents of a plan, respectively.[71] As explained below, the Plan complies with the requirements of sections 1122 and 1123 in all respects.

1. The Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code

47. The classification requirement of section 1122(a) of the Bankruptcy Code provides, in pertinent part, as follows:

> Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.[72]

48. Courts in this jurisdiction and others have recognized that plan proponents have significant flexibility in placing similar claims into different classes, provided there is a rational basis to do so.[73] Moreover, the requirement of substantial similarity does not mean that claims or

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[71] S. Rep. No. 95-989, at 126, *reprinted in* 1978 U.S.C. C.A.N. 5787, 5912 (1978); H.R. Rep. No. 95-595, at 412, *reprinted in* 1978 U.S.C. C.A.N. 5963, 6368 (1977); *In re S & W Enter.*, 37 B.R. 153, 158 (Bankr. N.D. Ill. 1984) ("An examination of the Legislative History of [section 1129(a)(1)] reveals that although its scope is certainly broad, the provisions it was most directly aimed at were [s]ections 1122 and 1123."); *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 824 (Bankr. D. Del. 2008) ("As confirmed by legislative history, 11 U.S.C. § 1129(a)(1), which provides that the plan must 'compl[y] with the applicable provisions of this title,' requires that a plan comply with 11 U.S.C. §§ 1122 and 1123.").

[72] 11 U.S.C. § 1122(a).

[73] *See, e.g.*, *In re Rochem, Ltd.*, 58 B.R. 641, 642 (Bankr. D.N.J. 1985) ("Although Section 1122(a) of the Code requires that claims be substantially similar within a particular class, there is no requirement within Section 1122 or elsewhere in the Code that all substantially similar claims be included within a particular class."). Courts have identified grounds justifying separate classification, including: (a) where members of a class possess different legal rights, and (b) where there are good business reasons for separate classification. *See John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs. (In re Route 37 Bus. Park Assocs.)*, 987 F.2d 154, 158–59 (3d Cir. 1993) (holding that, as long as each class represents a voting interest that is "sufficiently distinct and weighty to merit separate voice in the decision whether the proposed reorganization should proceed," the classification is proper); *In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1061 (3d Cir. 1987) (recognizing that separate classes of claims must be reasonable and allowing a plan proponent to group similar claims in different classes); *see also Frito-Lay, Inc. v. LTV Steel Co. (In re Chateaugay Corp.)*, 10 F.3d 944, 956–57 (2d Cir. 1993) (finding separate classification appropriate because classification scheme had a rational basis related to the bankruptcy court-approved settlement); *In re Heritage Org., L.L.C.*, 375 B.R. 230, 303 (Bankr. N.D. Tex. 2007) (explaining that "the only express prohibition on separate classification is that it may not be done to gerrymander an affirmative vote on a reorganization plan"); *In re 500 Fifth Ave. Assocs.*, 148 B.R. 1010, 1018 (Bankr. S.D.N.Y. 1993) (holding that, although discretion is not unlimited, "the proponent of a plan of reorganization has considerable

interests within a particular class must be identical or that all similarly situated claims must receive the same treatment under a plan.[74]

49. The Plan's classification of Claims and Interests satisfies the requirements of section 1122 of the Bankruptcy Code because the Plan places Claims and Interests into nine separate Classes, with Claims and Interests in each Class differing from the Claims and Interests in each other Class in a legal or factual way or based on other relevant criteria.[75] Specifically, the Plan provides for the separate classification of Claims and Interests into the following Classes:

Class 1: Other Priority Claims

Class 2: Other Secured Claims

Class 3: Kelly Hamilton Go-Forward Trade Claims

Class 4: Other Kelly Hamilton Unsecured Claims

Class 5A: CBRM Unsecured Claims

Class 5B: Spano CBRM Claim

Class 6: Intercompany Claims

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discretion to classify claims and interests according to the facts and circumstances of the case") (internal quotations omitted), *aff'd*, No. 93 CIV. 844 (LJF), 1993 WL 316183 (S.D.N.Y. May 21, 1993); *In re Drexel Burnham Lambert Grp. Inc.*, 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992) ("Courts have found that the Bankruptcy Code only prohibits the identical classification of dissimilar claims. It does not require that similar classes be grouped together.").

[74] *See, e.g.*, *In re Greate Bay Hotel & Casino, Inc.*, 251 B.R. 213, 224 (Bankr. D.N.J. 2000) ("Separate classification of similar claims has been found to be permissible where the classification is offered in good faith, does not foster an abuse of the classification system, and promotes the rehabilitative goals of Chapter 11."); *In re Nickels Midway Pier, LLC*, No. 03-49462 (GMB), 2010 WL 2034542, at *7 (Bankr. D.N.J. May 21, 2010) (proffering just one rule regarding classification of separate classification of similar classes under section 1122, which is that "thou shalt not classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan").

[75] *See* Plan Art. III.

Class 7: Intercompany Interests

Class 8: CBRM Interests

Class 9: Section 510(b) Claims

50. Except for General Administrative Claims, Professional Compensation Claims, Kelly Hamilton DIP Claims, and Priority Tax Claims, which need not be designated as Classes under the Plan, the Plan's classification scheme is rational and was not proposed to create a consenting impaired Class and thereby manipulate voting. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Interests. The Plan also provides for the separate classification of Claims against and Interests in each Debtor based upon the differences in legal nature and/or priority of such Claims and Interests.

51. Accordingly, the Claims or Interests assigned to each particular Class described above are substantially similar to the other Claims or Interests in each such Class, and the distinctions among Classes are based on valid business, factual, and legal distinctions. The Debtors submit that the Plan fully complies with and satisfies section 1122 of the Bankruptcy Code, and no party has asserted otherwise.

2. The Plan Satisfies the Mandatory Plan Requirements of Section 1123(a) of the Bankruptcy Code

52. Section 1123(a) of the Bankruptcy Code sets forth seven criteria that every chapter 11 plan must satisfy.[76] The Plan satisfies each of these requirements.[77]

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[76] 11 U.S.C. § 1123(a)(1)–(7).

[77] *See* 11 U.S.C. § 1123(a)(1)–(8). Section 1123(a)(8) of the Bankruptcy Code is only applicable to individual debtors.

ii. Designation of Classes of Claims and Equity Interests: § 1123(a)(1)

53. For the reasons set forth above, Article III of the Plan properly designates Classes of Claims, other than Claims of the type described in sections 507(a)(2), 507(a)(3), and 507(a)(8) of the Bankruptcy Code, and Classes of Interests, as required by section 1123(a)(1), and thus satisfies the requirement of section 1122 of the Bankruptcy Code.

ii. Specification of Unimpaired Classes: § 1123(a)(2)

54. Section 1123(a)(2) of the Bankruptcy Code requires that the Plan "specify any class of claims or interests that is not impaired under the plan." The Plan meets this requirement by identifying each Class in Article III that is Unimpaired.

iii. Treatment of Impaired Classes: § 1123(a)(3)

55. Section 1123(a)(3) of the Bankruptcy Code requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the plan." The Plan meets this requirement by setting forth the treatment of each Class in Article III that is Impaired.

iv. Equal Treatment Within Classes: § 1123(a)(4)

56. Section 1123(a)(4) of the Bankruptcy Code requires that the Plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."[78] The Plan meets this requirement because the treatment of each Claim or Interest in each particular Class is the same as the treatment of each other Claim or Interest in such Class (except as otherwise agreed to by a Holder of a particular Claim or Interest). Stated another way, all Holders of Allowed Claims

[78] 11 U.S.C. § 1123(a)(4).

or Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Interests within such Holders' respective Class.

v. Means for Implementation: § 1123(a)(5)

57. Section 1123(a)(5) of the Bankruptcy Code requires that the Plan provide "adequate means" for its implementation. The Plan satisfies this requirement because Article IV of the Plan, as well as other provisions thereof, provide for the means by which the Plan will be implemented. Among other things, Article IV of the Plan provides for: (i) consummation of the Kelly Hamilton Sale Transaction;[79] (ii) identification of the sources of consideration for Distributions under the Plan;[80] (iii) appointment of the Wind-Down Officer;[81] (iv) establishment of the Creditor Recovery Trust for the benefit of the beneficiaries of the Creditor Recovery Trust (the "**Trust Beneficiaries**");[82] (v) appointment of the Creditor Recovery Trustee;[83] and (vi) funding and vesting of the Creditor Recovery Trust with the Creditor Recovery Trust Assets.[84] The definitive terms governing the implementation of these transactions are set forth in the Plan and in the applicable agreements, instruments, and documents included in the Plan Supplement. Collectively, these measures establish the structure necessary to consummate the Plan, facilitate the orderly wind-down of the Debtors' Estates, and maximize recoveries for creditors in accordance with the Bankruptcy Code.

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79 *See* Plan Art. IV.A.

80 *Id*.

81 *See* Plan Art. IV.C.

82 *See* Plan Art. IV.D.

83 *Id*.

84 *See* Plan Art. IV.L.

58. The terms governing the execution of these transactions are set forth in greater detail in the Plan and the Plan Supplement, as applicable. Thus, the Plan satisfies section 1123(a)(5).

B. The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(2))

59. The principal purpose of section 1129(a)(2) is to ensure that a plan proponent has complied with the requirements of the Bankruptcy Code regarding solicitation of acceptances of a plan.[85] The legislative history to section 1129(a)(2) provides that section 1129(a)(2) is intended to encompass the disclosure and solicitation requirements set forth in section 1125 and the plan acceptance requirements set forth in section 1126 of the Bankruptcy Code.[86] As discussed in more detail in Section III herein, and as set forth below, the Debtors have complied with these provisions, including sections 1125 and 1126 of the Bankruptcy Code, as well as Bankruptcy Rules 3017 and 3018, by distributing the Disclosure Statement and soliciting acceptances of the Plan through their Claims and Noticing Agent in accordance with the Disclosure Statement Order.

1. The Debtors Have Complied with the Disclosure and Solicitation Requirements of Section 1125

60. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice

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[85] *See In re TCI 2 Holdings, LLC*, 428 B.R. at 170 ("Section 1129(a)(2) requires that '[t]he proponent of the plan compl[y] with the applicable provisions of this title.'") (citing 11 U.S.C. § 1129(a)(2)); *In re PWS Holding Corp.*, 228 F.3d 224, 248 (3d Cir. 2000) ("§ 1129(a)(2) requires that the plan proponent comply with the adequate disclosure requirements of § 1125").

[86] *See In re TCI 2 Holdings*, 428 B.R at 170; H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 412 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5936; S. Rep. No. 95-989, 95th Cong., 2d Sess. 126 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787 (collectively, the legislative history refers to section 1125, regarding disclosure, as an example of one of those "applicable provisions").

and a hearing, by the court as containing adequate information."[87] Section 1125 ensures that parties in interest are fully informed regarding the debtor's condition so that they may make an informed decision whether to approve or reject the plan.[88]

61. Section 1125 is satisfied here. Before the Debtors solicited votes on the Plan, the Court conditionally approved the Disclosure Statement.[89] The Court also approved the Solicitation Packages provided to Holders of Claims entitled to vote on the Plan, the non-voting materials provided to parties not entitled to vote on the Plan, and the relevant dates for voting on the Plan and objecting to the Plan and the Disclosure Statement.[90] As stated in the Voting Report, the Debtors, through the Claims and Noticing Agent, complied with the content and delivery requirements of the Disclosure Statement Order, satisfying sections 1125(a) and 1125(b) of the Bankruptcy Code.[91] The Debtors also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular Class.

62. Based on the foregoing, the Debtors submit that they have complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order, and no party has asserted otherwise.

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87 11 U.S.C. § 1125(b).

88 *See In re Union Cnty. Wholesale Tobacco & Candy Co., Inc.*, 8 B.R. 442, 443 (Bankr. D.N.J. 1981) (holding that the standards of section 1125 "essentially require information sufficient to enable a hypothetical reasonable investor to make an informed judgment re acceptance or rejection of the plan").

89 *See* Disclosure Statement Order.

90 *See generally* Discourse Statement Order.

91 *See* Voting Report at 3-6.

2. The Debtors Have Satisfied the Plan Acceptance Requirements of Section 1126

63. Section 1126 of the Bankruptcy Code provides that only holders of allowed claims and equity interests in impaired classes that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject a plan.[92] The Debtors did not solicit votes on the Plan from the following Classes:

- Classes 1 and 2, which are not impaired under the Plan and, therefore, are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.[93]

- Classes 6, 7, 8, and 9 which pursuant to section 1126(g) of the Bankruptcy are deemed to have rejected the Plan.[94]

64. Accordingly, the Debtors solicited votes only from Holders of Allowed Claims in the Voting Classes—Class 3, 4, 5A and Class 5B—because these Classes are Impaired and entitled to receive a distribution under the Plan.[95] With respect to the Voting Classes of Claims, section 1126(c) of the Bankruptcy Code provides that:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of [section 1126], that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of [section 1126], that have accepted or rejected such plan.[96]

65. The Voting Report, summarized above, demonstrates that the Plan has been accepted by the Voting Classes in accordance with section 1126 of the Bankruptcy Code.[97] Based

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92 *See* 11 U.S.C. § 1126.

93 *See* Plan Art. III.

94 *See id.*

95 *See id.*

96 11 U.S.C. § 1126(c).

97 *See generally* Voting Report.

on the foregoing, the Debtors submit that they have satisfied the requirements of section 1129(a)(2), and no party has asserted otherwise.

C. The Debtors Proposed the Plan in Good Faith and Not by Any Means Forbidden by Law (Section 1129(a)(3))

66. Section 1129(a)(3) of the Bankruptcy Code requires that a chapter 11 plan be "proposed in good faith and not by any means forbidden by law."[98] Where a plan satisfies the purposes of the Bankruptcy Code and has a good chance of succeeding, the good faith requirement of section 1129(a)(3) of the Bankruptcy Code is satisfied.[99] To determine whether a plan seeks relief consistent with the Bankruptcy Code, courts consider the totality of the circumstances surrounding the development of the Plan.[100]

67. The Plan was proposed with integrity, good intentions, and with the goal of maximizing stakeholder recoveries. The Plan is the product of extensive, arm's-length negotiations among the Debtors, the Ad Hoc Group of Holders of Crown Capital Notes, the Kelly Hamilton Purchaser, Spano, and other key stakeholders. These negotiations resulted in a consensual framework that resolved competing creditor interests and provided a clear path to maximize value through the Kelly Hamilton Sale Transaction and the Wind-Down of the Debtors' Estates following consummation of the Kelly Hamilton Sale Transaction, including the creation of a Creditor Recovery Trust. The Debtors worked constructively with their stakeholders

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98 11 U.S.C. § 1129(a)(3); *see also In re Diocese of Camden, New Jersey*, 653 B.R. 309, 350 (Bankr. D.N.J. Aug. 29, 2023) (citing *In re PWS Holding Corp.*, 228 F.3d at 242); *In re TCI 2 Holdings*, 428 B.R. at 134.

99 *See, e.g.*, *In re PWS Holding Corp.*, 228 F.3d at 242 (quoting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 150 n.5 (3d Cir. 1986)); *In re Century Glove, Inc.*, No. Civ. A. 90-400 (SLR), 1993 WL 239489, at *4 (D. Del. Feb. 10, 1993); *In re NII Holdings, Inc.*, 288 B.R. 356, 362 (Bankr. D. Del. 2002).

100 *See, e.g.*, *Fin. Sec. Assurance Inc. v. T-H New Orleans Ltd. P'Ship (In re T-H New Orleans Ltd. P'ship)*, 116 F.3d 790, 802 (5th Cir. 1997); *In re W.R. Grace & Co.*, 475 B.R. 34, 87 (D. Del. 2012), aff'd, 729 F.3d 311 (3d Cir. 2013); *In re Century Glove*, 1993 WL 239489, at *4.

throughout the process, incorporating their comments into both the Plan and the Confirmation Order. The overwhelming support for the Plan by the creditors that voted in favor of it is strong evidence that the Plan has a proper purpose and enjoys broad stakeholder support.

68. Importantly, the Plan reflects hard-fought but constructive compromises. For example, it provides for the release of certain Released Parties in exchange for substantial contributions that facilitated the Plan's implementation, while at the same time preserving other causes of action to be pursued for the benefit of unsecured creditors through the Creditor Recovery Trust. The Plan also equitably balances the treatment of creditor groups by, among other things, providing the Trust Beneficiaries with access to monetized litigation recoveries through the Creditor Recovery Trust and ensuring that Wind-Down Claims are reconciled and satisfied under the Wind-Down structure. These features demonstrate that the Plan was designed not only to maximize recoveries, but also to ensure fairness and transparency in the treatment of claims.

69. In exchange for the releases granted under the Plan, the Released Parties made meaningful and valuable contributions to these Chapter 11 Cases, including by providing financing, support, and concessions that were critical to enabling the consummation of the Kelly Hamilton Sale Transaction. Without these efforts, creditors likely would have faced the lower recoveries of a piecemeal liquidation under chapter 7. As a result, the Plan will provide Holders of Allowed Unsecured Claims with materially greater recoveries than they would receive in any alternative restructuring scenario.

70. The overwhelming acceptance of the Plan by the Holders of Claims that voted on the Plan and the support of the Plan further reflects the Plan's fairness and the good faith efforts of the parties to achieve the objectives of chapter 11. Accordingly, the Debtors have acted in good

faith and with the best intentions for creditors in proposing the Plan, in accordance with section 1129(a)(3) of the Bankruptcy Code.[101]

D. The Plan Provides That the Debtors' Payment of Professional Fees and Expenses Are Subject to Bankruptcy Court Approval (Section 1129(a)(4))

71. Section 1129(a)(4) of the Bankruptcy Code requires that certain fees and expenses paid by the plan proponent, by the debtor, or by a person receiving distributions of property under the plan, be subject to approval by the Court as reasonable.[102] Courts in this district and elsewhere have construed this section to require that all payments of professional fees paid out of estate assets be subject to review and approval by the Court as to their reasonableness.[103]

72. The Plan satisfies section 1129(a)(4) of the Bankruptcy Code. The Plan provides that all Professional Compensation Claims must be approved by the Court pursuant to final fee applications in accordance with section 1129(a)(4) of the Bankruptcy Code. Further, the Plan provides that the Court shall retain jurisdiction to hear and determine all Professional Compensation Claims. Therefore, it is my understanding that the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code with respect to the Debtors' professionals.

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[101] For further support that the Plan was proposed in good faith, see *infra* ¶¶ 188-192.

[102] 11 U.S.C. § 1129(a)(4).

[103] *In re Lisanti Foods, Inc.*, 329 B.R. at 503 ("Pursuant to § 1129(a)(4), a [p]lan should not be confirmed unless fees and expenses related to the [p]lan have been approved, or are subject to the approval, of the Bankruptcy Court."), *aff'd*, 241 F. App'x 1 (3d Cir. 2007); *In re Future Energy Corp.*, 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988); *In re Chapel Gate Apartments, Ltd.*, 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986) (noting that before a plan may be confirmed, "there must be a provision for review by the Court of any professional compensation").

E. The Plan Does Not Require Additional Disclosures Regarding Directors, Officers, and Insiders (§ 1129(a)(5))

73. The Bankruptcy Code requires the plan proponent to disclose the affiliation of any individual proposed to serve as a director or officer of the debtor or a successor to the debtor under the plan.[104] Section 1129(a)(5)(A)(ii) further requires that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy.[105]

74. In accordance with section 1129(a)(5) of the Bankruptcy Code, the identity of the Creditor Recovery Trustee was disclosed in the Plan Supplement, which is incorporated into the Plan. If the Plan is confirmed, the Creditor Recovery Trustee will be RLA Consulting LLC. Article IV.D. of the Plan provides that, on the Effective Date, the Creditor Recovery Trust shall be automatically appointed as a representative of the Debtors' Estates.[106] The Creditor Recovery Trust will be governed by the Creditor Recovery Trustee pursuant to the terms of the Creditor Recovery Trust Agreement and under the oversight of the Advisory Committee.[107] Pursuant to the terms of the Creditor Recovery Trust Agreement, the Creditor Recovery Trustee will have authority to, among other things, (a) hold, manage, protect, and monetize the Creditor Recovery Trust Assets; (b) carry out the provisions of the Plan relating to the Creditor Recovery Trust, including commencing, prosecuting, and settling all Creditor Recovery Trust Causes of Action and Insurance Causes of Action; and (c) perform all actions and execute all agreements, instruments and other documents necessary to effectuate the purpose of the Creditor Recovery

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[104] 11 U.S.C. § 1129(a)(5)(A)(i).

[105] 11 U.S.C. § 1129(a)(5)(A)(ii).

[106] *See* Plan Art. IV.D.

[107] *Id*. Art. IV.D.6- IV.D.7.

Trust.[108] RLA Consulting LLC is well qualified to fulfil these responsibilities, maximize the value of the Creditor Recovery Trust Assets, and ensure that distributions to the Trust Beneficiaries are made in a fair, transparent, and efficient manner consistent with the Plan.

75. The Plan further provides that, on the Effective Date, the Wind-Down Officer shall be appointed by the Debtors to conduct the Wind-Down and shall succeed to the powers and privileges as would have been applicable to the Debtors' officers, directors, and shareholders, and the Debtors.[109] From and after the Effective Date, the Wind-Down Officer shall act for the Debtors in the same fiduciary capacity as applicable to a board of directors or managers and officers, subject to the provisions of the Plan. The Wind-Down Officer will have authority to, among other things, (a) implement the Wind-Down as expeditiously as reasonably possible and administer the liquidation of the post-Effective Date Debtors and their Estates and of any assets held by the post-Effective Date Debtors and their Estates after consummation of the Kelly Hamilton Sale Transaction, (b) resolve any Disputed Wind-Down Claims and undertake a good faith effort to reconcile and settle Disputed Wind-Down Claims, (c) make distributions on account of Allowed Wind-Down Claims in accordance with the Plan, (d) file appropriate tax returns, and (e) otherwise administer the Plan, in each case to the extent set forth in the Wind-Down Agreement.[110] Upon completion of the Wind-Down, the Debtors shall be dissolved by the Wind-Down Officer. Unless otherwise disclosed in the Plan Supplement, if the Plan is confirmed, the Wind-Down Officer will be the Creditor Recovery Trustee—RLA Consulting LLC. RLA Consulting LLC is well qualified to oversee the Wind-Down, manage the orderly dissolution of the Debtors, and ensure that all

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[108] *Id*. Art. IV.D.6.

[109] *Id*. Art. IV.C.

[110] *Id*. Art. IV.C.1.

remaining claims administration, reporting, and distribution obligations are carried out in accordance with the Plan.

76. Therefore, the requirements under section 1129(a)(5) of the Bankruptcy Code are satisfied, and no party has asserted otherwise.

F. The Plan Does Not Require Governmental Regulatory Approval (§ 1129(a)(6))

77. Section 1129(a)(6) of the Bankruptcy Code permits confirmation only if any regulatory commission that has or will have jurisdiction over a debtor after confirmation has approved any rate change provided for in the plan. The Plan does not provide for any rate changes and the Debtors are not subject to any such regulation. Section 1129(a)(6) of the Bankruptcy Code is inapplicable to these Chapter 11 Cases, and no party has asserted otherwise.

G. The Plan Is in the Best Interests of All the Debtors' Creditors (§ 1129(a)(7))

78. The "best interests test" of section 1129(a)(7) of the Bankruptcy Code requires that, with respect to each impaired class of claims or interests, each individual holder of a claim or interest has either accepted the plan or will receive or retain property having a present value, as of the effective date of the plan, of not less than that which such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code at that time. The best interests test is satisfied where the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation are less than or equal to the estimated recoveries for a holder of an impaired claim or interest under the debtor's chapter 11 plan that rejects the plan.[111]

[111] *See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 441 n.13 (1999) ("The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan."); *In re Cypresswood Land Partners, I*, 409 B.R. 396, 428 (Bankr. S.D. Tex. 2009) ("This provision is known as the 'best-interest-of-creditors-test' because it ensures that reorganization is in the best interest of individual claimholders who have not voted in favor of the plan.").

79. To determine whether the Plan satisfies the best interests of creditors test, the Debtors, with the assistance of IslandDundon, prepared the Liquidation Analysis. The Liquidation Analysis represents a good-faith estimate of what creditors would recover in a hypothetical liquidation under chapter 7 of the Bankruptcy Code. The analysis, methodology, and assumptions applied as part of the Liquidation Analysis are set out in greater detail therein.

80. For all of the reasons set forth in the Liquidation Analysis, and subject to the limitations and assumptions contained therein, the Liquidation Analysis demonstrates that the Plan will provide each Holder of an Allowed Claim or Interest in an impaired class an amount that is not less than what such Holder would otherwise receive or retain through a liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

81. The Liquidation Analysis represents a good-faith estimate of recoveries in a hypothetical chapter 7 case, taking into account the limited assets of the Debtors, primarily consisting of the Kelly Hamilton Property, as well as remaining cash on hand. The analysis assumes that a chapter 7 trustee would be appointed shortly after conversion of the cases, that the trustee would conduct a sale of the Kelly Hamilton Property, and that the chapter 7 estates would incur additional administrative expenses, including trustee fees and professional costs, in connection with such process.

82. As set forth in the Liquidation Analysis, recoveries for Holders of Claims in a hypothetical chapter 7 liquidation are projected to be materially lower than under the Plan. In particular, Holders of Allowed Other Kelly Hamilton Unsecured Claims, CBRM Unsecured Claims, and the Spano CBRM Claim would receive no recovery in a chapter 7 scenario, as compared to potential recoveries of up to 100% under the Plan.

83. The estimates regarding the Debtors' assets and liabilities that are incorporated into the Liquidation Analysis are based upon the knowledge and familiarity of the Debtors' advisors with the Debtors' business and their relevant experience in chapter 11 proceedings. As such, the Debtors' Liquidation Analysis is reasonable and should be afforded deference.

84. Based on the Liquidation Analysis, no Holder of Claims or Interests would receive more in a hypothetical chapter 7 liquidation than it would receive under the Plan. Accordingly, the Plan satisfies the requirements of the best interests of creditors test under section 1129(a)(7) of the Bankruptcy Code.

H. The Bankruptcy Code's Voting Requirements of Section 1129(a)(8) of the Bankruptcy Code

85. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept a plan or be unimpaired under a plan.[112] If any class of claims or interests rejects the plan, the plan must satisfy the "cramdown" requirements with respect to the claims or interests in that class.[113]

86. As set forth in the Voting Report, Holders of Claims in Classes 1 and 2 are not impaired under the Plan and, therefore, are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code, and Holders of Claims in Classes 6, 7, 8, and 9 are impaired and deemed to reject the Plan. Additionally, as evidenced by the Voting Report, the Plan has been accepted by well in excess of two-thirds in amount and one-half in number of Holders of Kelly Hamilton Go-Forward Trade Claims, CBRM Unsecured Claims, and the Spano CBRM Claim entitled to vote and who voted on the Plan.

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[112] 11 U.S.C. § 1129(a)(8).

[113] 11 U.S.C. § 1129(b).

87. However, the Plan has not been accepted by the requisite number of Holders of Claims in Class 4 (Other Kelly Hamilton Unsecured Claims). As to Class 4, the Plan may be confirmed over their dissent under the "cram down" provisions of section 1129(b) of the Bankruptcy Code. Accordingly, the Debtors will seek confirmation under section 1129(b) of the Bankruptcy Code, rather than section 1129(a)(8). For the reasons set forth below, the Plan does not discriminate unfairly and is fair and equitable. Therefore, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code and is confirmable.

I. The Plan Provides for Payment in Full of All Allowed Priority Claims (§ 1129(a)(9))

88. Section 1129(a)(9) of the Bankruptcy Code requires that certain priority claims be paid in full on the effective date of a plan and that the holders of certain other priority claims receive deferred cash payments.[114] In particular, pursuant to section 1129(a)(9)(A) of the Bankruptcy Code, holders of claims of a kind specified in section 507(a)(2) of the Bankruptcy Code—administrative claims allowed under section 503(b) of the Bankruptcy Code—must receive on the effective date cash equal to the allowed amount of such claims.[115] Section 1129(a)(9)(B) of the Bankruptcy Code requires that each holder of a claim of a kind specified in section 507(a)(1) or (4) through (7) of the Bankruptcy Code—generally wage, employee benefit, and deposit claims entitled to priority—must receive deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim (if such class has accepted the plan), or cash of a value equal to the allowed amount of such claim on the effective date of the plan (if such class has not accepted the plan). Finally, section 1129(a)(9)(C) of the Bankruptcy Code provides that the

[114] 11 U.S.C. § 1129(a)(9).

[115] 11 U.S.C. § 1129(a)(9)(A).

holder of a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code—*i.e.*, priority tax claims—must receive cash payments over a period not to exceed five years from the petition date, the present value of which equals the allowed amount of the claim. The Plan satisfies all of these requirements.

89. The Plan provides that, unless otherwise agreed to by the Holder of an Allowed General Administrative Claim and the Debtors, each Holder of an Allowed General Administrative Claim will receive, in full and final satisfaction of, and, in exchange for such General Administrative Claim, treatment as is consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code or an amount of Cash equal to the unpaid amount of such Allowed General Administrative Claims in accordance with the following: (a) if such General Administrative Claim is Allowed as of the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed General Administrative Claim is due or as soon as reasonably practicable thereafter); (b) if such General Administrative Claim is not Allowed as of the Effective Date, no later than sixty (60) days after the date on which an order Allowing such General Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (c) if such Allowed General Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed General Administrative Claim without any further action by the Holder of such Allowed General Administrative Claim, when such Allowed General Administrative Claim is due or as soon as reasonably practicable thereafter; or (d) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

90. Moreover, the Plan provides that, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the Holder of an Allowed Priority Tax Claim and the Debtors, prior to the Effective Date, each Holder of an Allowed Priority Tax Claim will receive, at the option of the Debtor, in full and final satisfaction of, and in exchange for, its Allowed Priority Tax Claim, (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim or (b) Cash in an aggregate amount of such Allowed Priority Tax Claim payable in instalment payments over a period of time not to exceed five (5) years after the Petition Date, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code. Accordingly, the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

J. At Least One Impaired Class of Claims Has Accepted the Plan (Section 1129(a)(10))

91. Section 1129(a)(10) of the Bankruptcy Code provides that, to the extent there is an impaired class of claims, at least one impaired class of claims must accept the plan, "without including any acceptance of the plan by any insider," as an alternative to the requirement under section 1129(a)(8) of the Bankruptcy Code that each class of claims or interests must either accept the plan or be unimpaired under the plan.[116]

92. As set forth in the Voting Report, Classes 3, 5A, and 5B are entitled to vote on the Plan, are Impaired, and have accepted the Plan, without including the acceptance of the Plan by any Insiders in such Class. Accordingly, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

[116] 11 U.S.C. § 1129(a)(10).

K. The Plan Is Feasible and Is Not Likely to Be Followed by the Need for Further Financial Reorganization (Section 1129(a)(11))

93. Section 1129(a)(11) of the Bankruptcy Code requires that the Court determine, in relevant part, that confirmation is not likely to be followed by the liquidation or further financial reorganization of the Debtors (or any successor thereto), unless such liquidation or reorganization is proposed in the Plan. The debtor bears the burden of demonstrating the feasibility of the plan by a preponderance of the evidence.[117] The Court need not require a guarantee of success to find the Plan feasible.[118] Instead, the Court must find that the "plan offers a reasonable expectation of success.[119]

94. In determining standards of feasibility, courts have identified the following probative factors:

- the adequacy of the capital structure;
- the earning power of the business;
- the economic conditions;
- the ability of management;
- the probability of the continuation of the same management; and

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[117] *See, e.g., In re Prussia Assocs.,* 322 B.R. at 584 (quoting approvingly that "[t]he Code does not require the debtor to prove that success is inevitable, and a relatively low threshold of proof will satisfy § 1129(a)(11) so long as adequate evidence supports a finding of feasibility.") (internal citations omitted); *Berkley Fed. Bank & Tr. v. Sea Garden Motel & Apartments (In re Sea Garden Motel & Apartments),* 195 B.R. 294, 305 (D.N.J. 1996); *In re Tribune Co.,* 464 B.R. 126, 185 (Bankr. D. Del. 2011), *overruled in part on other grounds,* 464 B.R. 208 (Bankr. D. Del. 2011).

[118] *Crestar Bank v. Walker (In re Walker),* 165 B.R. 994, 1004 (E.D. Va. 1994) (noting that the "plan [must] present a workable scheme of reorganization and operation from which there may be a reasonable expectation of success").

[119] *See In re G–I Holdings Inc.,* 420 B.R. 216, 267 (D.N.J. 2009) ("[The] key element of feasibility is whether there is a reasonable probability the provisions of the Plan can be performed.").

- any other related matter which determines the prospects of a sufficiently successful operation to enable performance of the provisions of the plan.[120]

95. The Plan proposes the consummation of the Kelly Hamilton Sale Transaction and an orderly wind-down of the Debtors' remaining affairs. The Plan's means of implementation authorize all actions necessary to effectuate the Kelly Hamilton Sale Transaction and related transactions, and identifies sources of cash for distribution—namely, Sale Proceeds, Creditor Recovery Trust Assets, and Wind-Down Assets.

96. To carry out this wind-down, the Plan establishes a Wind-Down Officer, who is empowered to (a) liquidate any remaining assets after the Kelly Hamilton Sale Transaction, (b) resolve disputed wind-down claims, (c) make Plan distributions, (d) file final tax returns, and (e) oversee the ultimate dissolution of the Debtors. This centralized post-Effective Date administration provides a clear path to promptly conclude the Estates.[121] Thus, the Plan satisfies the feasibility requirement under section 1129(a)(11) of the Bankruptcy Code.

97. In sum, the Plan's implementation provisions, funding sources, wind-down framework, and distribution mechanics establish that confirmation will not be followed by the need for further reorganization. Instead, the Plan provides a practical, fully articulated path to consummate the Kelly Hamilton Sale Transaction, administer and distribute the remaining assets (including through the Creditor Recovery Trust), and promptly close these cases.

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[120] *See In re Aleris Int'l, Inc.*, No. 09-10478 (BLS), 2010 WL 3492664, at *28 (Bankr. D. Del. May 13, 2010) (internal citations omitted).

[121] *See* Dundon Declaration.

L. The Plan Provides for the Payment of All Fees Under 28 U.S.C. § 1930 (Section 1129(a)(12))

98. Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under section 1930 of title 28 [of the United States Code], as determined by the court at the hearing on confirmation of the plan." Section 507(a)(2) of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930 of] chapter 123 of title 28" are afforded priority as administrative expenses. The Plan satisfies section 1129(a)(12) of the Bankruptcy Code because the Debtors have paid all chapter 11 statutory and operating fees required to be paid during these Chapter 11 Cases. Further, pursuant to the Plan, all Quarterly Fees payable on or before the Effective Date shall be paid by the Debtors in full in Cash on the Effective Date. After the Effective Date, the Debtors, the Creditor Recovery Trust, the Creditor Recovery Trustee, and the Wind-Down Officer shall pay any and all Quarterly Fees in full in cash when due in each Chapter 11 Case for each quarter (including any fraction thereof) until the earliest of such Chapter 11 Case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. Accordingly, the Plan satisfies section 1129(a)(12) of the Bankruptcy Code.

M. Sections 1129(a)(13) Through 1129(a)(16) of the Bankruptcy Code Do Not Apply to the Plan

99. Several of the Bankruptcy Code's confirmation requirements are inapplicable to the Plan. Section 1129(a)(13) requires that all retiree benefits continue post-effective date at any levels established in accordance with section 1114 of the Bankruptcy Code.[122] The Debtors do not

[122] 11 U.S.C. § 1129(a)(13). Section 1114(a) of the Bankruptcy Code defines "retiree benefits" as: "[P]ayments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under this title." 11 U.S.C. § 1114(a).

have any remaining obligations to pay retiree benefits (as defined in section 1114 of the Bankruptcy Code) or will not have any such obligations as of the Effective Date. Section 1129(a)(14) of the Bankruptcy Code is inapplicable to the Plan because the Debtors are not subject to any domestic support obligations.[123] Section 1129(a)(15) of the Bankruptcy Code is inapplicable to the Plan because none of the Debtors are "individuals" as that term is defined in the Bankruptcy Code.[124] Section 1129(a)(16) of the Bankruptcy Code is also inapplicable because the Plan does not provide for any property transfers by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.[125]

N. The Plan Satisfies the Cramdown Requirements (Section 1129(b))

100. Section 1129(b)(1) of the Bankruptcy Code provides that, if all applicable requirements of section 1129(a) of the Bankruptcy Code are met other than section 1129(a)(8) of the Bankruptcy Code, a plan may be confirmed so long as the requirements set forth in section 1129(b) of the Bankruptcy Code are satisfied. To confirm a plan that has not been accepted by all impaired classes (thereby failing to satisfy section 1129(a)(8) of the Bankruptcy Code), the plan proponent must show that the plan does not "discriminate unfairly" and is "fair and equitable" with respect to the non-accepting impaired classes.[126]

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123 11 U.S.C. § 1129(a)(14).

124 11 U.S.C. § 1129(a)(15).

125 11 U.S.C. § 1129(a)(16).

126 *John Hancock Mut. Life Ins. Co.*, 987 F.2d at 157 n.5 ; *In re S B Bldg. Assocs. Ltd. P'ship*, 621 B.R. 330, 375 (Bankr. D.N.J. 2020) (holding that a plan must be "'fair and equitable' and may not unfair[ly] discriminat[e] [under the] requirements of section 1129(b)").

101. As set forth above, Classes 6, 7, 8, and 9 are deemed to reject the Plan, and Class 4 voted to reject the Plan. As set forth below, the Plan satisfies the requirements under section 1129(b) of the Bankruptcy Code, and no party has asserted otherwise.

1. The Plan Is Fair and Equitable (§ 1129(b)(2)(B)(ii))

102. A plan is "fair and equitable" with respect to an impaired class of claims or interests that rejects a plan (or is deemed to reject a plan) if it follows the "absolute priority" rule.[127] This requires that an impaired rejecting class of claims or interests either be paid in full or that a class junior to the impaired accepting class not receive any distribution under a plan on account of its junior claim or interest.[128] The Plan satisfies section 1129(b) of the Bankruptcy Code. Notwithstanding the fact that Classes 6, 7, 8, and 9 are deemed to have rejected the Plan and that Class 4 rejected the Plan, the Plan is confirmable.

103. Pursuant to section 1129(b)(2) of the Bankruptcy Code, the Plan distributes value to Holders of Claims and Interests pursuant to the priority scheme set forth in the Bankruptcy Code, and, with respect to Classes 6, 7, 8, and 9 (each of which is deemed to have rejected the Plan), and Class 4, which has rejected the Plan, no Holder of a Claim or Interest in a class junior to such Impaired Classes will receive or retain any property under the Plan on account of such junior Claim or Interest. Accordingly, the Plan may still be confirmed under section 1129(b) of the Bankruptcy Code.

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[127] *Bank of Am. Nat. Trust & Sav. Ass'n*, 526 U.S. at 441–42 ("As to a dissenting class of impaired unsecured creditors, such a plan may be found to be 'fair and equitable' only if the allowed value of the claim is to be paid in full, § 1129(b)(2)(B)(i), or, in the alternative, if 'the holder of any claim or interest that is junior to the claims of such [impaired unsecured] class will not receive or retain under the plan on account of such junior claim or interest any property,' § 1129(b)(2)(B)(ii). That latter condition is the core of what is known as the 'absolute priority rule.'").

[128] 11 U.S.C. § 1129(b)(2)(B)(ii).

2. The Plan Does Not Unfairly Discriminate with Respect to the Impaired Classes That Have Not Voted to Accept the Plan (§ 1129(b)(1))

104. Unlike the concept of "fair and equitable," which is defined under the Bankruptcy Code, the Bankruptcy Code does not provide a standard for determining when "unfair discrimination" exists. Courts typically examine the facts and circumstances of the particular case to make the determination.[129] In general, courts have held that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if it provides materially different treatment for creditors and interest holders with similar legal rights without compelling justifications for doing so.[130] A threshold inquiry to assessing whether a proposed chapter 11 plan unfairly discriminates against a dissenting class is whether the dissenting class is equally situated to a class allegedly receiving more favorable treatment.[131]

105. Class 4 includes all unsecured claims against Debtors Kelly Hamilton or Kelly Hamilton Apts MM LLC that are not held by creditors that will continue to provide goods and services to such Debtor entities following the consummation of the Kelly Hamilton Sale Transaction. Class 6 includes all claims held by a Debtor or an Affiliate against another Debtor or Affiliate. Class 7 encompasses any Interests held by one Debtor in another Debtor. Class 8, by

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[129] *See In re TCI 2 Holdings,* 428 B.R. at 157 (neglecting to apply a set standard or test to ascertain whether a plan unfairly discriminates, instead opting to consider "various standards" for a general analysis of unfair discrimination including whether the discrimination is "supported by a reasonable basis" and is "proposed in good faith"); *In re S B Bldg. Assocs.,* 621 B.R. at 375-77 (considering the unique factual circumstances to determine whether the requirements of section 1129(b) are satisfied).

[130] *See In re Ocean View Motel, LLC,* No. 20-21165-ABA, 2022 WL 243213, at *1 (Bankr. D.N.J. Jan. 25, 2022) (stating that "[u]nder 1129(b)(1), a plan unfairly discriminates when it treats similarly situated classes differently without a reasonable basis for the disparate treatment") (internal citations omitted).

[131] *See Aleris Int'l*, 2010 WL 3492664, at *31 (citing *In re Armstrong World Indus.*, 348 B.R. 111, 121 (Bankr. D. Del. 2006)).

contrast, only includes the equity interests of Mark Silber in Debtor CBRM. Finally, Class 9 includes all Section 510(b) Claims subject to subordination pursuant to the Bankruptcy Code.

106. The Plan's treatment of Classes 4, 6, 7, 8, and 9 is proper and does not represent unfair discrimination because no similarly situated Class of Claims or Interests will receive more favourable treatment under the Plan. Specifically, the Plan classifies all similarly-situated Holders of Claims and Interests together and all similarly-situated Holders of Claims and Interests will receive the same treatment. In fact, there are no similarly situated Classes or Interests pursuant to the Plan, so the Plan does not discriminate unfairly.

O. The Plan Complies with the Other Provisions of Section 1129 of the Bankruptcy Code (Sections 1129(c)–(e))

107. The Plan satisfies the remaining provisions of section 1129 of the Bankruptcy Code. ***First,*** section 1129(c) of the Bankruptcy Code, which prohibits confirmation of multiple plans, is not implicated because there is only one proposed plan. ***Second,*** the purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933. Moreover, no governmental unit or any other party has requested that the Court decline to confirm the Plan on such grounds. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code. ***Finally,*** section 1129(e) of the Bankruptcy Code is inapplicable because none of the Debtors' chapter 11 cases is a "small business case." Accordingly, the Plan satisfies the requirements of section 1129(c), (d), and (e) of the Bankruptcy Code, and no party has asserted otherwise.

III. The Plan Complies with the Discretionary Provisions of Section 1123(b) of the Bankruptcy Code

108. Finally, the Plan contains provisions implementing certain releases and exculpations, compromising claims and interests, and enjoining certain causes of action. These

provisions are substantially consistent with those approved by the Court in precedent chapter 11 plans.[132] Each of these provisions is appropriate because, as applicable, they (a) are the product of arm's-length negotiations, (b) were critical to obtaining the support of the various constituencies for the Plan, (c) are given for valuable consideration, (d) are fair and equitable and in the best interests of the Debtors, their Estates, and these Chapter 11 Cases, and (e) are consistent with the relevant provisions of the Bankruptcy Code and Third Circuit law. Such provisions are discussed in turn below, but, in summary, satisfy the requirements of section 1123(b).

A. The Plan Complies with Section 1123(d) of the Bankruptcy Code

109. Section 1123(d) of the Bankruptcy Code provides that "if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and nonbankruptcy law."[133] With respect to the Debtors' Executory Contracts or Unexpired Leases, the Plan provides for the assumption or rejection by the Debtors or the assumption and assignment thereof to the Kelly Hamilton Purchaser in accordance with the Kelly Hamilton Purchase Agreement, which satisfies section 1123(b)(2) of the Bankruptcy Code. Further, as contemplated by section 1123(d) of the Bankruptcy Code, the Debtors filed and served certain notices of cure costs and potential assumption and assignment of Executory Contracts and Unexpired Leases, which set forth a list of Executory Contracts and Unexpired Leases that may be assumed and assigned to the Kelly Hamilton Purchaser in connection with the Kelly Hamilton Sale Transaction.[134]

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[132] *See, e.g.*, *In re BlockFi Inc.*, No-22-19361 (MBK) (Bankr. D.N.J. Oct. 3, 2023) (confirming liquidating chapter 11 plan with third party and debtor releases substantially consistent with those in the Plan); *In re Bed Bath & Beyond Inc.*, No. 23-13359-VFP (MBK) (Bankr. D.N.J. Sept. 14, 2023) (same); *In re Revel AC, Inc.*, No. 14-22654 (MBK) (Bankr. D.N.J. June 30, 2014) (same).

[133] 11 U.S.C. § 1123(d).

[134] *See* [Docket Nos. 344, 362].

110. Accordingly, the Plan satisfies the requirements of section 1123(d) of the Bankruptcy Code, and no party has asserted otherwise.

B. The Plan Appropriately Incorporates Settlements of Certain Claims and Interests

111. The Bankruptcy Code states that a plan may "provide for . . . the settlement or adjustment of any claim or interest belonging to the debtor or to the estate."[135] The Plan provides for a settlement of certain Claims and Interests to the extent provided for by the Bankruptcy Code.

112. Settlements are favored in chapter 11 because they minimize litigation and expedite the administration of the bankruptcy case.[136] Settlements are considered a "normal part of the process of reorganization" and a "desirable and wise method[] of bringing to a close proceedings" that would otherwise be "lengthy, complicated, and costly."[137] Ultimately, approval of a compromise is within the "sound discretion" of the Court.[138]

113. The standards for approval of a settlement under section 1123 of the Bankruptcy Code are generally the same as those under Bankruptcy Rule 9019.[139] Generally, courts in the Third Circuit will approve a settlement by the debtors if the settlement "exceed[s] the lowest point

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135 11 U.S.C. § 1123(b)(3)(A).

136 *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) ("To minimize litigation and expedite the administration of a bankruptcy estate, [c]ompromises are favored in bankruptcy.") (internal quotations omitted).

137 *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980).

138 *See Matter of AWECO, Inc.*, 725 F.2d 293, 297–98 (5th Cir. 1984) ("The decision of whether to approve a particular compromise lies within the discretion of the trial judge . . . The term 'discretion' denotes the absence of a hard and fast rule. When invoked as a guide to judicial action, it means a sound discretion, that is to say, a discretion exercised not arbitrarily or willfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the reason and conscience of the judge to a just result.") (citations omitted); *see also In re Jackson Brewing Co.*, 624 F.2d at 602–03 (same).

139 *See In re S B Bldg. Assocs.*, 621 B.R. at 380 ("The standards for approving a settlement are the same under both Bankruptcy Rule 9019 and section 1123(b)(3).").

in the range of reasonableness."[140] The Third Circuit has provided the following four criteria that a Court should consider when approving a settlement pursuant to Bankruptcy Rule 9019: (a) the probability of success in litigation; (b) the likely difficulties in collection; (c) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (d) the paramount interest of creditors.[141] In addition, the court must determine whether the proposed settlement is fair and equitable, and in the best interests of the estate.[142]

114. The Plan incorporates the settlement or adjustment of certain Claims or Interests belonging to the Debtors or to the Estates in consideration for the classification, Distributions, releases, and other benefits provided under the Plan. The settlements embodied in the Plan are fair and equitable and consistent with the Bankruptcy Code.

115. Accordingly, the Plan's discretionary general settlement provisions satisfy the requirements of section 1123 of the Bankruptcy Code and no party is asserting otherwise.

C. The Plan Provides for the Sale of Estate Assets

116. Section 1123(b)(4) provides that a plan may provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests.[143] As permitted by section 1123(b)(4) of the Bankruptcy Code, the Plan provides for the consummation of the Kelly Hamilton Sale Transaction pursuant to

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[140] *In re TCI 2 Holdings*, 428 B.R. at 136 (citation omitted); *Will v. Nw. Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006) ("Settlements are favored, but the unique nature of the bankruptcy process means that judges must carefully examine settlements before approving them.").

[141] *See In re WebSci Techs., Inc.*, 234 Fed. Appx. 26, 29 (3d Cir. 2007) (quoting *In re Martin*, 91 F.3d at 393).

[142] *See In re Nutraquest, Inc.*, 434 F.3d at 645 ("Under the 'fair and equitable' standard, [the court looks] to the fairness of the settlement to other parties, *i.e.*, the parties who did not settle.").

[143] 11 U.S.C. § 1123(b)(4).

the Kelly Hamilton Purchase Agreement, which will effectuate a value-maximizing sale of the Debtors' Kelly Hamilton Property.

117. The Plan seeks approval of a value-maximizing sale of the Debtors' Kelly Hamilton Property to the Kelly Hamilton Purchaser, as more fully set forth in the Plan. As discussed in the Disclosure Statement, during these Chapter 11 Cases, the Debtors pursued a Court-approved, public, and transparent process for a value-maximizing sale transaction. The Debtor cast a wide net to prospective purchasers and conducted a fair auction process in accordance with the Bankruptcy Court-approved Bidding Procedures. The Kelly Hamilton Sale Transaction effectuated through the Plan is the result of those immense efforts.

118. The Kelly Hamilton Sale Transaction effectuated through the Kelly Hamilton Purchaser's credit bid represents a sound exercise of the Debtors' business judgment. The Kelly Hamilton Sale Transaction is effectuated in good faith, and results from a heavily negotiated, arm's length bargaining process. As set forth more fully in the Dundon Declaration, the Kelly Hamilton Sale Transaction is in good faith and appropriate under the circumstances. Accordingly, the Plan is consistent with Bankruptcy Code section 1123(b)(4).

D. Modifications of Rights of Holders of Claims and Interests

119. Section 1123(b)(5) of the Bankruptcy Code provides that a plan may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holder of unsecured claims, or leave unaffected the rights of holders of any class of claims."[144]

[144] 11 U.S.C. § 1123(b)(5).

120. As permitted by section 1123(b)(5) of the Bankruptcy Code, the Plan modifies, or may modify, the rights of Holders of Claims and Interests in Classes 3, 4, 5A, 5B, 6, 7, 8, and 9, and leaves unaffected the rights of Holders of Claims in Classes 1 and 2.

E. The Plan's Release, Exculpation, and Injunction Provisions Satisfy Section 1123(b) of the Bankruptcy Code

121. The Plan includes consensual and customary releases of Claims held by the Debtors and parties in interest, an exculpation provision, and an injunction provision. These provisions are the product of good-faith, arm's-length negotiations among the Debtors and their key stakeholders, informed by the extensive investigation and review undertaken by the Independent Fiduciary and the Debtors' professionals. The releases are narrowly tailored, supported by valuable consideration provided by the Released Parties—including their efforts to negotiate and implement the Plan and their contributions that enabled the Kelly Hamilton Sale Transaction and establishment of the Creditor Recovery Trust—and are critical to achieving the settlements embodied in the Plan. Moreover, the overwhelming approval of the Plan by the Debtors' stakeholders strongly supports the conclusion that these Plan provisions are appropriate. The Debtors and their stakeholders believe these provisions are fair, reasonable, and in the best interests of creditors, and they are consistent with the Bankruptcy Code.

1. The Release by Holders of Claims and Interests Is Appropriate

122. The Plan provides for certain consensual third-party releases granted by Releasing Parties. The Disclosure Statement and solicitation materials clearly disclosed the third-party release in conspicuous terms and explained the consent mechanics.

123. Courts in the Third Circuit routinely approve such release provisions if, as here, they are consensual and appropriately tailored.[145] Here, all parties in interest will be given ample opportunity to evaluate and opt into the Third-Party Release. Holders of Claims or Interests were afforded the opportunity to affirmatively consent to the third-party release through their Ballots or opt-in forms; only those parties who provided affirmative consent are treated as Releasing Parties under the Plan. Specifically, a Holder of a Claim in Class 3, Class 4, Class 5A, or Class 5B affirmatively consented to grant the third-party release set forth in Article VIII.D of the Plan if the Holder either (a) voted to accept the Plan, or (b) abstained or did not affirmatively vote to accept the Plan but checked the box on the Holder's Ballot indicating that the Holder opts to grant the release. Holders of Claims or Interests in Class 1, Class 2, Class 6, Class 7, Class 8, and Class 9, which were not entitled to vote, could affirmatively consent to grant the release by submitting a completed Opt-In Form and checking the box on the form indicating their consent.

124. Furthermore, all voting stakeholders and non-voting stakeholders were be asked to certify that they read and understood the election they were making in the Opt-In Form and will receive notice and instructions for doing so.

125. In addition to being consensual, the third-party release is (a) specific in scope, (b) a key inducement for stakeholder concessions, and (c) supported by valuable consideration of all of the Released Parties that will allow the Debtors to consummate the Kelly Hamilton Sale

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[145] *See, e.g.*, *In re Indianapolis Downs*, 486 B.R. 286, 304–06 (Bankr. D. Del. 2013) (approving third-party release that applied to unimpaired holders of claims deemed to accept the plan as consensual); *U.S. Bank Nat'l Ass'n v. Wilmington Trust Co. (In re Spansion, Inc.)*, 426 B.R. 114, 144 (Bankr. D. Del. 2010) (same); *In re Wash. Mut.*, 442 B.R. 314, 352 (Bankr. D. Del. 2011) (observing that consensual third-party releases are permissible); *In re Zenith Elecs. Corp.*, 241 B.R. 92, 105, 111 (Bankr. D. Del. 1999) (approving non-debtor releases for creditors that voted in favor of the plan); *In re Mallinckrodt PLC*, 639 B.R. 837, 877-81 (Bankr. D. Del. 2022) (approving third-party release that applied to shareholders deemed to reject the plan and unsecured creditors who were unimpaired or who did not return a ballot with the opt out box checked or otherwise submit an opt out form as consensual).

Transaction, establish the Creditor Recovery Trust, and facilitate the orderly wind-down of the Debtors' affairs. The consensual third-party release provides a substantial level of finality that is fair, reasonable, and appropriate.

2. The Debtor Release is Appropriate

126. The Plan includes consensual and customary releases of Claims held by the Debtors and parties in interest, an exculpation provision, and an injunction provision. These provisions are the product of good-faith, arm's-length negotiations among the Debtors and their key stakeholders, informed by the extensive investigation and review undertaken by the Independent Fiduciary and the Debtors' professionals. The releases are narrowly tailored, supported by valuable consideration provided by the Released Parties—including their efforts to negotiate and implement the Plan and their contributions that enabled the Kelly Hamilton Sale Transaction and establishment of the Creditor Recovery Trust—and are critical to achieving the settlements embodied in the Plan. Moreover, the overwhelming approval of the Plan by the Debtors' stakeholders strongly supports the conclusion that these Plan provisions are appropriate. The Debtors and their stakeholders believe these provisions are fair, reasonable, and in the best interests of creditors, and they are consistent with the Bankruptcy Code.

127. These releases are limited in scope and supported by consideration, including the Released Parties' support for the Plan, the Kelly Hamilton Sale Transaction, and the creation and funding of the Creditor Recovery Trust. The Released Parties include: (a) the Independent Fiduciary; (b) the Kelly Hamilton Purchaser; (c) the Asset Manager; (d) the Property Manager; (e) the Kelly Hamilton DIP Lender; (f) the Ad Hoc Group of Holders of Crown Capital Notes and each of its members; (g) with respect to each of the foregoing entities in clauses (b) through (f), such Entity's current and former subsidiaries, officers, directors, managers, principals, members,

employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals; and (h) with respect to the Debtors and the Debtors' non-Debtor subsidiaries, White & Case LLP as counsel, IslandDundon LLC as financial advisor, Ken Rosen Advisors PC as New Jersey counsel and co-counsel, and the Claims and Noticing Agent.

128. Section 1123(b)(3)(A) of the Bankruptcy Code provides that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate."[146] A debtor may release claims under section 1123(b)(3)(A) "if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate."[147]

129. Courts in this jurisdiction and elsewhere generally analyze five factors when determining the propriety of a debtor release, commonly known as the *Zenith* or *Master Mortgage* factors.[148] The analysis includes an inquiry into whether there is: (1) identity of interest between the debtor and non-debtor; (2) contribution to the plan by the non-debtor; (3) the necessity of the release to the plan; (4) overwhelming acceptance of the plan and release by creditors and interest

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[146] 11 U.S.C. § 1123(b)(3)(A); *See In re S B Bldg. Assocs.*, 621 B.R. at 380 ("The standards for approving a settlement are the same under both Bankruptcy Rule 9019 and section 1123(b)(3)."); *In re Nutraquest, Inc.*, 434 F.3d at 644 ("Settlements are favored, but the unique nature of the bankruptcy process means that judges must carefully examine settlements before approving them."). *See also In re WebSci Techs., Inc.*, 234 Fed. Appx. at 29 (holding that to approve a settlement pursuant to Rule 9019, the court must balance "'(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.'") ((quoting *In re Martin*, 91 F.3d at 393).

[147] *In re Spansion, Inc.*, 426 B.R. at 143; *see also In re Wash. Mut., Inc.*, 442 B.R. at 327 ("In making its evaluation [whether to approve a settlement], the court must determine whether the compromise is fair, reasonable, and in the best interest of the estate.") (internal citations omitted).

[148] *See In re Indianapolis Downs*, 486 B.R. at 303 (citing *In re Zenith Elecs. Corp.*, 241 B.R. at 110); *In re Master Mortg. Inv. Fund, Inc.*, 168 B.R. 930, 937 (Bankr. W.D. Mo. 1994). The *Master Mortgage* factors have been adopted by the Third Circuit, including application by the Bankruptcy Court of the District of New Jersey as "neither exclusive nor conjunctive requirements, but . . . guidance in the Court's determination of fairness." *See In re 710 Long Ridge Rd. Operating Co., II, LLC*, No. 13-13653 (DHS), 2014 WL 886433, at *14 (Bankr. D.N.J. Mar. 5, 2014) (citing *In re Wash. Mut.*, 442 B.R. at 346).

holders; and (5) payment of all or substantially all of the claims of the creditors and interest holders.[149] These factors are "neither exclusive nor conjunctive requirements" but rather serve as guidance to courts in determining fairness of a debtor's releases.[150] The Debtor Releases easily meet the applicable standard and should be approved.[151]

130. ***First***, an identity of interest exists between the Debtors and the proposed Released Parties. All of the Debtors' Released Parties engaged as crucial participants in the Plan process and share a common goal with the Debtors in seeing the Plan succeed. The Released Parties seek to confirm the Plan and implement the transactions contemplated thereunder, and that each Released Party has worked constructively with the Debtors to promote their wind-down efforts, both prior to and following the Petition Date.

131. Specifically, since September 26, 2024, the Independent Fiduciary has acted in a fiduciary capacity for the Debtors and other non-debtor entities owned by Debtors CBRM Realty Inc. and Crown Capital Holdings LLC.[152] Prior to the Petition Date, the Independent Fiduciary took steps to revitalize the Debtors' portfolio, including by ensuring that each property owned by the portfolio had sufficient staffing and other resources, with the goal of ensuring that residents had safe, clean homes, as well as providing periodic updates to the Noteholders. Since the Petition Date, the Independent Fiduciary has engaged with the Debtors' professionals and stakeholders to promote the Debtors' restructuring efforts, including by directing and overseeing the negotiation

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[149] *See In re Wash. Mut.*, 442 B.R. at 346 (citing *In re Zenith Elecs. Corp.*, 241 B.R. at 110; *In re Master Mortg.*, 168 B.R. at 937).

[150] *Id.* (citing *In re Master Mortg.*, 168 B.R. at 935).

[151] A further discussion of the Debtor Releases, including the facts and circumstances leading up to these Chapter 11 Cases which warrant the approval of such releases, is set forth below in Section IV.F herein.

[152] *See* First Day Declaration.

and execution of the Kelly Hamilton Purchase Agreement, the marketing of the Kelly Hamilton Property, and the proposed Plan.

132. Similarly, the Kelly Hamilton DIP Lender and the Kelly Hamilton Purchaser are active participants in these Chapter 11 Cases, providing both the debtor-in-possession financing needed to reach confirmation and the successful bid for the Kelly Hamilton Property. Accordingly, the Kelly Hamilton DIP Lender and the Kelly Hamilton Purchaser maintain a strong interest in seeing the Plan confirmed and the Kelly Hamilton Sale Transaction contemplated therein be consummated. Moreover, as set forth in the in the Kelly Hamilton Final DIP Order, the Debtors may be required to indemnify the Kelly Hamilton DIP Lender for certain claims. Where such indemnification obligations exist, there is an identity of interest between the indemnitor and the indemnitee.

133. The Noteholders also played a crucial role in the Plan process. As stakeholders, the Noteholders share the common goal of confirming the Plan, which includes the creation of the Creditor Recovery Trust for the benefit of, among others, Noteholders with Allowed Unsecured Claims. In the absence of an official unsecured creditors' committee, the Noteholders served as the primary voice and coordinating constituency for unsecured creditors in these Chapter 11 Cases.

134. Finally, as explained in greater detail below, the Debtors' Asset Manager and Property Manager were also integral parties to the Plan process, including the negotiation and execution of the Plan. Indeed, the services provided by these parties were necessary to preserve the value of the Kelly Hamilton Property, which is central to the Debtors' restructuring efforts. Accordingly, these parties share the common goal of ensuring the Plan's success and consummation.

135. ***Second***, the Released Parties have each made a substantial contribution to the Debtors' Estates, as each Released Party played an integral role in the formulation of the Plan and the administration of these Chapter 11 Cases. As courts in this jurisdiction have recognized, a wide variety of acts may illustrate a substantial contribution to a debtor's bankruptcy efforts.[153] As explained above, the Independent Fiduciary has negotiated with critical stakeholders, overseen the administration of these Chapter 11 Cases, and managed the negotiation, drafting, and execution of the Plan, including the Kelly Hamilton Sale Transaction pursuant to the terms of the Kelly Hamilton Purchase Agreement. Moreover, the Independent Fiduciary has agreed to forego payment of certain fees that arose prior to the Petition Date and/or may be forced to forego payment of certain fees and expenses incurred postpetition in exchange for the releases contemplated in the Plan. As a result, the Independent Fiduciary has provided substantial monetary and non-monetary contributions to the Debtors' wind-down efforts.

136. Moreover, the Kelly Hamilton DIP Lender and the Kelly Hamilton Purchaser have affirmatively contributed value that was necessary to consummate the Plan. Indeed, as set forth above, the Kelly Hamilton DIP Lender provided the financing needed to fund these Chapter 11 Cases, including to market, auction, and sell the Kelly Hamilton Property, and the Kelly Hamilton Purchaser invested the time and resources to negotiate the Kelly Hamilton Purchase Agreement, and agreed to serve as the "stalking horse bidder" for the sale of the Kelly Hamilton Property, thus

[153] *See, e.g.*, *In re Zenith Elecs. Corp.*, 241 B.R. 92, 111 (Bankr. D. Del. 1999) (finding non-debtor parties had substantially contributed where (a) officers and directors made substantial contributions by designing and implementing the operational restructuring and negotiating the financial restructuring, (b) plan sponsor funded the plan and agreed to compromise its claim, and (c) a committee negotiated the plan and assisted in the solicitation of its constituents); *In re Tribune Co.*, 464 B.R. 126, 189 (Bankr. D. Del. 2011) (finding non-debtor party had substantially contributed where non-debtor parties entered into a settlement where non-debtor parties agreed to reduce their claim); *In re Long Ridge Road*, 2014 WL 886433, at *15 (finding that the non-debtor party had substantially contributed by providing financial support, without which the plan would not be feasible).

setting a baseline bid for the sale of the Kelly Hamilton Property and promoting a competitive bidding process.[154] Accordingly, the Kelly Hamilton DIP Lender and the Kelly Hamilton Purchaser have made substantial contributions to the Debtors' wind-down efforts.

137. The Noteholders also provided substantial contributions to the Debtors and their Estates and were instrumental in negotiating the terms of the Plan on behalf of a key group of Holders of Unsecured Claims. Indeed, certain of the Noteholders have agreed to serve on the Advisory Committee (as defined in the Creditor Recovery Trust Agreement), which will ensure that the Creditor Recovery Trust is managed by a body with a fiduciary responsibility to its beneficiaries.

138. The Debtors' professionals have made significant contributions to the Debtors' efforts in these Chapter 11 Cases. With respect to Debtors' counsel, White & Case LLP played an instrumental role in the Debtors' bankruptcy proceedings, including by (i) facilitating the commencement of the chapter 11 cases through the filing of the Debtors' voluntary petitions, (ii) securing, revising, and filing motions that, among other things, secured the necessary postpetition financing needed to administer these Chapter 11 Cases, and (iii) negotiating and filing the proposed Plan and Disclosure Statement.[155] Similarly, the Debtors' New Jersey counsel, Ken Rosen Advisors PC, has provided vital contributions to the Debtors throughout these Chapter 11 Cases,

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[154] *See In re Midway Gold US, Inc.*, 575 B.R. 475, 510 (Bankr. D. Colo. 2017) (finding that without the contributions of the third parties being granted releases by the debtors, which include the provision of financing for the chapter 11 cases and consent to the use of their cash collateral by the debtors, the chapter 11 cases would not likely have reached confirmation); *In re Premier Int'l Holdings, Inc.*, 2010 WL 2745964, at *10 ("[T]he releases are an integral part of the agreement with the [non-debtor parties] to finance the chapter 11 cases and to fund the [p]lan.").

[155] *See Attorney Monthly Fee Statement for the Period May 19, 2025 Through May 31, 2025* [Docket No. 369]; *Attorney Monthly Fee Statement for the Period June 1, 2025 Through June 30, 2025* [Docket No. 403].

including by assisting the Debtors as New Jersey counsel with respect to matters and proceedings in the Chapter 11 Cases.

139. IslandDundon has similarly made substantial contributions to the Debtors' bankruptcy efforts. Indeed, as set forth above and in the Bidding Procedures Declaration, IslandDundon advised the Debtors in connection with the Kelly Hamilton DIP Lender's proposed terms to purchase the Kelly Hamilton Property, the "stalking horse bid" submitted by the Kelly Hamilton Purchaser, and the parallel process by which the Debtors pursued a marketing process to ensure no higher or better offers were available for the Kelly Hamilton Property.

140. The Debtors' Claims and Noticing Agent provided valuable services that have allowed the Debtors to propose and seek to confirm the Plan. For example, the Claims and Noticing Agent solicited votes from each class of creditors entitled to vote on the Plan, tabulated these votes, and published the Voting Report setting forth the results of the vote, along with ensuring that the Disclosure Statement and Plan were properly noticed.

141. In addition to the Independent Fiduciary, the Debtors' professionals, including White & Case LLP, IslandDundon LLC, Ken Rosen Advisors PC, and Kurtzman Carson Consultants, LLC dba Verita Global, have agreed to forego payment of certain fees that arose prior to the Petition Date and/or may be forced to forego payment of certain fees and expenses incurred postpetition, in exchange for the releases contemplated in the Plan.

142. As explained above, the Kelly Hamilton Sale Transaction is a crucial cornerstone of the proposed Plan. The Debtors' Property Manager was charged with day-to-day operations, tenant relations, staffing, and maintenance of the Debtors' properties, including the Kelly Hamilton Property, while the Asset Manager's duties included contracting with professionals, including property managers and contractors, and monitoring their performance, managing and disbursing

funds, establishing reserves, and recommending cash resource investment strategies, reviewing and monitoring the property manager's operations, preparing strategic asset and marketing plans, recommending and overseeing major repairs, replacements, and critical improvements at the Debtors' properties, and providing information for annual financial statements and tax returns.[156] These services helped obtain the highest and best bid for the Kelly Hamilton Property and kept the Debtors operational during the course of these Chapter 11 Cases. Accordingly, the Asset Manager and Property Manager and the Claims and Noticing Agent provided substantial value to the Debtors, and thus the Debtor Releases are appropriate with respect to these parties.

143. ***Third***, the Debtor Releases are essential to the success of the Debtors' Plan because they constitute an integral term of the Plan. Absent the Debtor Releases, it is highly unlikely that the Released Parties would have agreed to support the Plan. As described above, each Released Party contributed substantial value to these Chapter 11 Cases and did so with the understanding that they would receive releases from the Debtors. In the absence of the Released Parties' support, the Debtors would not be in a position to confirm the Plan, implement the Plan, and maximize value for creditors. The Debtor Releases, therefore, are essential to the Debtors' Restructuring Transactions.

144. For example, the Kelly Hamilton DIP Lender insisted on these Debtor Releases during the negotiation of the Kelly Hamilton DIP Credit Agreement, as evidenced by that certain Binding Term Sheet for Senior Secured, Superpriority Debtor-in-Possession Financing dated May 26, 2025.[157]

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[156] *See Debtors' Motion for Entry of an Order Authorizing the Debtors to Assume Certain Amended and Restated Property Management and Asset Management Agreements* [Docket No. 128].

[157] *See* Kelly Hamilton Final DIP Order, Ex. A.

145. Importantly, the Debtor Releases are the product of arm's-length negotiations between the Debtors and their key stakeholders, all of which was overseen by the Debtors' Independent Fiduciary. In consideration for the Debtor Releases, the Debtors and their Estates will receive mutual releases from potential each of the Releasing Parties, along with the substantial contributions by each Released Party as set forth above. The Debtor Releases provide finality, underpins the settlement and compromise of issues achieved by the Plan, and avoids significant delay in consummating the Plan. Therefore, the inclusion of the Debtor Releases are appropriate and inures to the benefit of all the Debtors' stakeholders.

146. ***Fourth***, a substantial majority of a debtor's creditors voted to accept the plan with the proposed releases. Here, as shown in the Voting Report, all but one of the classes entitled to vote on the Plan all voted to accept the Plan. Further, apart from the U.S. Trustee—who is not an affected creditor under the Plan—no party has objected specifically to the Debtor Releases. Accordingly, there is overwhelming support of the Debtor Releases by the parties affected by such releases.

3. The Exculpation Provision Is Appropriate

147. Article VIII.E of the Plan provides that each Exculpated Party shall be released and exculpated from any Cause of Action for acts or omissions in connection with these Chapter 11 Cases, the Plan, and related transactions, except for acts or omissions determined by Final Order to constitute actual fraud, willful misconduct, or gross negligence. The exculpation is narrowly tailored in time and scope.

148. Courts evaluate the appropriateness of exculpation provisions based on a number of factors, including whether the plan was proposed in good faith, whether liability is limited, and

whether the exculpation provision was necessary for plan negotiations.[158] Exculpation provisions that are limited to claims not involving a criminal act, actual fraud, willful misconduct, or gross negligence, are customary and generally approved in this district under appropriate circumstances.[159] Unlike third-party releases, exculpation provisions do not affect the liability of third parties *per se* but rather set a standard of care of gross negligence or willful misconduct in future litigation by a non-releasing party against an "Exculpated Party" for acts arising out of the Debtors' restructuring.[160] Exculpation for parties participating in the Plan process is appropriate where Plan negotiations could not have occurred without protection from liability.[161]

149. The Exculpated Parties have participated in good faith in formulating and negotiating the Plan as it relates to the Debtors, and they should be entitled to protection from exposure to any lawsuits related to this chapter 11 process filed by unsatisfied parties. Moreover, the Exculpation provision and the liability standard it sets represent a conclusion of law that flows logically from certain findings of fact that the Court must reach in confirming the Plan as it relates to the Debtors. As discussed above, this Court must find, under section 1129(a)(2), that the

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158 *See In re Congoleum Corp.*, 362 B.R. 167, 195–97 (Bankr. D.N.J. 2007) (evaluating the appropriateness of the plan's exculpation provisions based on whether the parties played a significant role in the negotiations that led to the plan and whether the exculpation is necessary to the plan).

159 *See In re Wash. Mut., Inc.*, 442 B.R. at 351 (holding that an exculpation clause that encompassed "the fiduciaries who have served during the chapter 11 proceeding: estate professionals, the [c]ommittees and their members, and the [d]ebtors' directors and officers" was appropriate); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Oct. 3, 2023) (confirming plan where exculpation provision covered the debtors and wind down debtors, the creditors' committee, and related parties, including current and former control persons and professionals); *In re Bed Bath & Beyond Inc.*, No. 23-13359-VFP (MBK) (Bankr. D.N.J. Sept. 14, 2023) (same).

160 *See In re PWS Holding Corp.*, 228 F.3d at 245 (finding that an exculpation provision "is apparently a commonplace provision in Chapter 11 plans, [and] does not affect the liability of these parties, but rather states the standard of liability under the Code"); *see also In re Premier Int'l Holdings, Inc.*, 2010 WL 2745964, at *10 (approving a similar exculpation provision as that provided for under the Plan); *In re Spansion, Inc.*, No. 09-10690 (KJC), 2010 WL 2905001, at *16 (Bankr. D. Del. 2010) (same).

161 *In re Aegean Marine Petroleum Network, Inc.*, 599 B.R. 717, 721 (Bankr. S.D.N.Y. 2019) ("I believe that an appropriate exculpation provision should say that it bars claims against the exculpated parties based on the negotiation, execution, and implementation of agreements and transactions that were approved by the Court.").

Debtors have complied with the applicable provisions of the Bankruptcy Code. Additionally, this Court must find, under section 1129(a)(3), that the Plan has been proposed in good faith and not by any means forbidden by law. These findings apply to the Debtors and, by extension, their Related Parties. Further, these findings imply that the Plan was negotiated at arm's-length and in good faith.

150. Here, the estate fiduciaries and professionals who acted in good faith and in reliance on the Bankruptcy Code and orders of the Court, and it is consistent with sections 105, 1125, and 1129(a)(1) of the Bankruptcy Code. The exculpation provision is an integral component of the Plan and supports an efficient conclusion of these Chapter 11 Cases while preserving accountability for wrongful conduct.

4. The Injunction Provision Is Appropriate

151. Article VIII.F of the Plan implements the Plan's release and exculpation provisions by permanently enjoining all Persons and Entities who have held, hold, or may hold Claims or Interests that are fully satisfied pursuant to the Plan or any Claim or Interest that is subject to the releases and exculpations set forth in the Plan from enforcing, pursuing, or seeking any setoff or relief with respect to such Claims or Interests, except for the receipt of the payments or Distributions that are contemplated by the Plan. Thus, the Injunction Provision is a necessary part of the Plan precisely because it enforces the discharge, release, and exculpation provisions that are centrally important to the Plan.[162] Further, the injunction provided for in the Plan is narrowly tailored to achieve its purpose.

[162] *See SEC v. Drexel Burnham Lambert Grp. (In re Drexel Burnham Lambert Grp.)*, 960 F.2d 285, 293 (2d Cir. 1992) (holding that a court may approve an injunction provision where such provision "plays an important part in the debtor's reorganization plan").

IV. The Remaining Objections to Confirmation of the Plan and Final Approval of the Adequacy of the Disclosure Statement Should be Overruled

152. The Debtors received three objections: the Bacon Objection, the City Objection and the U.S. Trustee Objection. To the extent the Debtors are unable to consensually resolve such Objections prior to the Confirmation Hearing, the Debtors request that the Court overrule such Objections for the reason set forth herein.

A. The Court Should Overrule the Bacon and City Objections to the Kelly Hamilton Sale Transaction

1. The Bacon and City Objections Are Impermissible Collateral Attacks on This Court's Final Orders

153. Both Ms. Bacon and the City (together, the "**Objectors**") seek to rehash issues already decided by this Court. Specifically, the Objectors raise various issues with respect to the Kelly Hamilton Sale Transaction, asserting that (i) the stalking horse bid submitted by the Kelly Hamilton Purchaser was impermissible, (ii) the Debtors' marketing of the Kelly Hamilton Property was flawed, and (iii) the parties to the Kelly Hamilton Purchase Agreement are insiders. The Objectors also attack the postpetition financing approved by this Court, objecting to (i) the allocation of proceeds under the Kelly Hamilton DIP Facility, and (ii) the identity of the Kelly Hamilton DIP Lender as an insider. The objections lodged by the City and Ms. Bacon are not confirmation objections but rather attempts to re-litigate issues already resolved by the Court in prior final orders.

154. With respect to the proposed sale of the Kelly Hamilton Property, the Kelly Hamilton Sale Transaction is the product of a transparent, Court-approved process that represents the only viable path to maximize value for creditors and preserve affordable housing for tenants. The Debtors, under the oversight of their Independent Fiduciary and with the assistance of their advisors, marketed the Kelly Hamilton Property consistent with the Bidding Procedures Order.

Despite broad outreach, no other qualified bids were submitted. The stalking horse bid of the Kelly Hamilton Purchaser was therefore properly designated as the highest and best offer.

155. Similarly, these objections disregard the record and both of the Kelly Hamilton Interim DIP Order and Kelly Hamilton Final DIP Order, which are now final and non-appealable. As the record reflects, the Debtors pursued multiple financing alternatives, but all proved unworkable, leaving the Kelly Hamilton DIP Facility as the only viable option. That facility—including its sources and uses—was fully disclosed, subjected to notice and hearing, and approved only after this Court found that the Debtors could not obtain credit on more favorable terms, that the financing was negotiated in good faith and at arm's length, and that it was essential to preserve tenant welfare and estate value.[163] The Objectors' present challenges are nothing more than impermissible collateral attacks on those final orders and should be rejected.

i. The Bidding Procedures Order Is A Final Order Not Subject to Collateral Attack

156. Federal Rule of Bankruptcy Procedure 8002(a) provides that a "notice of appeal must be filed with the bankruptcy clerk within 14 days after the judgment, order, or decree to be appealed is entered." Upon entry of a final order by the Bankruptcy Court, any party who fails to appeal such an order or otherwise seeks an extension of time to do so will be bound by the terms of that order.[164] The period of time to file an appeal may be extended by a bankruptcy court upon a request of a party, but only where such a request is made either: (i) before the time for filing a

[163] *See* Kelly Hamilton Final DIP Order ¶¶ E, F, I.

[164] *See In re Patriot Contr. Corp.*, No. 05-33190 (DHS), 2006 Bankr. LEXIS 4988, at *9 (Bankr. D.N.J. Mar. 28, 2006) (finding that a creditor who never filed an objection to the entry of a cash collateral order and who did not file a timely appeal of that order "cannot now challenge that [o]rder through a subsequent motion.").

notice of appeal has expired, or (ii) within twenty days from the expiration of the time to file a notice of appeal, so long as the movant can show "excusable neglect."[165]

157. Upon expiration of this appeal period, a bankruptcy court's order becomes final and parties who failed to seek appropriate relief will be bound by the terms of that order. As the court in *In re Target Indus., Inc.* explained, "[a]lthough the contours of a bankruptcy case make its somewhat more difficult than in other contexts, the doctrine of *res judicata* is fully applicable to bankruptcy court decisions.[166] Indeed, "*res judicata* is applicable to final orders issued by the bankruptcy court."[167]

158. Because application of *res judicata* in bankruptcy matters present difficulties, the Third Circuit has provided guidance in this area, holding that claim should be barred if the "factual underpinnings, theory of the case, and relief sought . . . are so close to a claim actually litigated in bankruptcy that it would be unreasonable not to have brought them both at the same time in the bankruptcy forum."[168]

159. The issues raised by the Objectors were previously adjudicated by this Court in the Bidding Procedures Order, entered on July 24, 2025.[169] Pursuant to Rule 8002(a), any party wishing to appeal that order was required to file a notice of appeal or a motion to extend the appeal period by August 7, 2025. Under Rule 8002(c), the Objectors had one final opportunity to seek an extension by filing a motion no later than August 27, 2025. Even assuming—though it is not

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165 *See* Fed. R. Bankr. P. 8002(c).

166 *Fox v. Cong. Fin. Corp. (In re Target Indus., Inc.)*, 328 B.R. 99, 115 (Bankr. D. N.J. 2005) (citing *Katchen v. Landy*, 382 U.S. 323, 334 (1966)).

167 *Id*. at 115-16 (citing *In re Mariner Post-Acute Network., Inc.*, 267 B.R. 46, 52-53 (Bankr. D. Del. 2001) (citing numerous cases for the proposition that final orders of a bankruptcy court are given *res judicata* effect).

168 *E. Minerals & Chems. Co. v Mahan*, 225 F.3d 330, 337-38 (3d Cir. 2000).

169 *See* Docket No. 325.

the case—that the current objections could be construed as such a motion, relief under Rule 8002(c) requires a showing that the failure to timely appeal was due to excusable neglect. The Objectors have made no such showing.

160. Importantly, the Objectors—who were parties to these bankruptcy proceedings[170]—received notice of the Bidding Procedures Motion, the supporting declaration, this Court's order setting a July 24, 2025 hearing, and the Bidding Procedures Order itself. Despite this, the Objectors: (a) did not file any formal objections to the proposed relief; (b) did not appear at the July 24 hearing; (c) did not appeal the Bidding Procedures Order; and (d) did not seek an extension of time to file an appeal. The Court should not permit the Objectors to now collaterally attack final orders entered in connection with plan confirmation.

161. The issues raised by the Objectors have already been presented to and ruled upon by the Court. Specifically, the Objectors argue that the credit bid submitted by the Kelly Hamilton Purchaser and the bid protections approved by the Court should not have been authorized, claiming they may have had a chilling effect on bidding.[171] However, in entering the Bidding Procedures Order, the Court expressly authorized the Kelly Hamilton Purchaser to credit bid the amount of the Kelly Hamilton DIP Facility Obligations and the Manager Administrative Expense Claim.[172]

162. In doing so, the Court considered whether the credit bid, along with the proposed procedures, would deter competitive bidding. The Court concluded that no such chilling effect would result. Furthermore, the marketing process failed to produce any alternative bids that were

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[170] The Bacon Memorandum spends much time asserting that the tenants of the Kelly Hamilton Property are parties in interest in these Chapter 11 Cases and thus privy to matters decided in these proceedings. *See* Bacon Memorandum at 5-6.

[171] *See* Bacon Obj. ¶¶ 30-31, 45, 49-51; City Obj. ¶¶ 5, 31, 35.

[172] Bidding Procedures Order at 5, 11.

viable or competitive with the value offered by the Kelly Hamilton Purchaser—whether that bid was structured as a credit bid or otherwise.

163. Ms. Bacon also argues that, due to numerous perceived flaws concerning the timeframe in which the sale occurred, the marketing process for the Kelly Hamilton Property failed to obtain the highest and best price for the property.[173] Specifically, the Bacon Objection argues that the "effort to develop a plan for the Kelly Hamilton portfolio has been hampered by," among other things, the "accelerated timeline for a sale to the [Kelly Hamilton Purchaser]."[174] The Bacon Objection goes on to assert that the "abbreviated timeframe" prevented "other potential buyers from making fair market value bids for the portfolio following due diligence, including the local governmental and nongovernmental stakeholders with whom Ms. Bacon and her counsel have been working for this purpose."[175]

164. These issues have already been resolved by the Court, and Ms. Bacon cannot now challenge the procedures that were previously approved. The Debtors sought, and the Court authorized in the Bidding Procedures Order, a specific timeline for the sale of the Kelly Hamilton Property that balanced the need for thorough marketing with the urgency imposed by the Debtors' financial constraints.

165. The Bidding Procedures Order expressly found that "the Bidding Procedures, the Auction, and the Confirmation and Sale Hearing, and the objection periods associated with each of the foregoing are reasonably calculated to provide notice to any affected party and afford the affected party the opportunity to exercise any rights affected by the" Bidding Procedures

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[173] *See* Bacon Obj. ¶¶ 30, 45, 48, 51.

[174] *Id*. ¶ 31.

[175] *Id*. ¶ 40.

Motion.[176] The Court also determined that the "Confirmation and Sale Notice is appropriate and reasonably calculated to provide all interested parties with timely and proper notice."[177]

166. Further, the Court concluded that such notice was sufficient to inform all interested parties—including known and unknown holders of liens, claims, interests, or other encumbrances—that the proposed Sale Transaction would be free and clear of such interests as to the Debtors, their assets, and their estates.[178]

167. In short, the timeline under which the Debtors completed the Kelly Hamilton Transaction was already reviewed and approved by this Court. Ms. Bacon cannot now raise objections that should have been asserted months ago.

ii. The Kelly Hamilton Final DIP Order Is A Final Order Not Subject to Collateral Attack

168. The Objectors' challenges constitute nothing more than impermissible collateral attacks. Any such arguments could have been raised in response to the Kelly Hamilton DIP Motion—at the interim hearing, the final hearing, or by appeal.[179] Having failed to do so, and with the Kelly Hamilton Final DIP Order now final and non-appealable, the doctrine of *res judicata* squarely bars any attempt to revisit issues already adjudicated by this Court.

169. As noted above, *res judicata* is a judicial doctrine that precludes a party from re-litigating claims that were, or could have been, raised in a prior action.[180] The doctrine applies

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[176] Bidding Procedures Order at 18.

[177] *Id*. at 3.

[178] *Id*. at 4.

[179] Pursuant to Fed. R. Bank. P. 8002(a), a notice of appeal must be filed with the bankruptcy clerk within 14 days after the judgment, order, or decree to be appealed is entered. The Objectors raise objections to the Kelly Hamilton Final DIP Order, which are not only procedurally as they are raised as a confirmation objection but also 55 days too late.

[180] *In re 11 E. 36th LLC*, Case No. 13-11506 (JLG), 2016 WL 152924, at *7 (Bankr. S.D.N.Y. Jan. 12, 2016).

where three elements are satisfied: (1) a final judgment on the merits in a prior proceeding; (2) the same parties or their privies; and (3) a subsequent action based on the same cause of action.[181] *Res judicata* "gives dispositive effect to a prior judgment if a particular issue, although not litigated, could have been raised in the earlier proceeding."[182] In such circumstances, a court "must dismiss . . . any claim that was previously raised, or which could have been raised previously."[183]

170. All three elements are satisfied here. First, the Kelly Hamilton Final DIP Order constitutes a final judgment on the merits of the Debtors' request for postpetition financing and use of proceeds to prepay the Prepetition Kelly Hamilton Loan, entered after appropriate notice and hearings. Second, the Objectors were parties in interest who received notice and an opportunity to be heard in connection with the Kelly Hamilton DIP Motion, and are thus bound by the order. Third, the objections they now raise—challenging the propriety of the "roll-up," the allocation of sale proceeds, and the alleged insider status—arise from the same cause of action, namely the approval and implementation of the Kelly Hamilton DIP Facility. Under *res judicata*, these claims are barred. Courts have consistently applied *res judicata* to final orders entered in bankruptcy cases under similar circumstances.[184]

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[181] *See, e.g., Bd. of Trs. of Trucking Empls. of New Jersey Welfare Fund, Inc.- Pension Fund v. Centra*, 983 F.2d 495, 504 (3d Cir. 1992).

[182] *CoreStates Bank, N.A. v. Huls Am., Inc*., 176 F.3d 187, 194 (3d Cir. 1999) (citing *Bd. of Trs. of Trucking Empls. Welfare Fund, Inc. v. Centra*, 983 F.2d 495, 504 (3d Cir.1992)).

[183] *Roberts v. White*, 698 F. Supp. 2d 457, 460 (D. Del. 2010).

[184] *See, e.g., Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995) (collateral attack in state court of section 105 injunction was not permitted); *Maggio v. Zeitz*, 333 U.S. 56, 68 (1948) (turnover order was final and not subject to collateral attack); *Md. v. Antonelli Creditors' Liquidating Trust*, 123 F.3d 777, 783 (4th Cir. 1997) (confirmation order could not be collaterally attacked). There are also numerous cases where financing orders have been held to be final orders and not subject to collateral attack. *See, e.g., Spartan Mills v. Bank of Am. Ill.*, 112 F.3d 1251, 1256-57 (4th Cir. 1997) (state court suit by creditor asserting superior lien on debtor's assets to that of bank's lien which had been granted by bankruptcy court in a financing order was dismissed on res judicata grounds); *Bensten v. Grant (In re Gloria Mfg. Corp.)*, 65 B.R. 341, 344-45 (E.D. Va. 1985) (financing orders were final and could not be relitigated even if they were wrong); *In re SAI Holdings Ltd*., No. 06-33227, 2012

171. The City's allegations that "Lynd is a potential insider of the Debtors" or that "Lynd may be an insider" fare no better.[185] As further discussed below, the City offers no credible evidence in support of these assertions. In any event, this issue has already been resolved by the Kelly Hamilton Final DIP Order, which expressly provides that the Kelly Hamilton DIP Lender shall not, by virtue of extending DIP financing, "are deemed to be in control of [Kelly Hamilton Apts, LLC, Kelly Hamilton Apts MM LLC, CBRM Realty Inc., and Crown Capital Holdings, LLC] or their properties or operations."[186] The DIP Order further states that the DIP Lender shall not be considered "a control person, insider (as defined in the Bankruptcy Code), 'responsible person,' or managing agent" of those parties.[187] Accordingly, any attempt to relitigate this issue must be rejected.

iii. The Objections Violate the Strong Principles of Finality

172. Finally, the Objectors' challenges to the terms of the Bidding Procedures Order and the Kelly Hamilton DIP Facility contravene the well-established principles of finality that underpin bankruptcy proceedings.[188] Permitting the Objectors to effectively unwind final orders—whether related to bidding procedures or postpetition financing—would jeopardize the reliance interests of

WL 3201893, *6 (Bankr. N.D. Ohio Aug. 3, 2012) (applying *res judicata* to bar claims that proceeds paid to DIP lender in accordance with a DIP financing order were subject to disgorgement).

185 City Obj.¶¶ 19, 29.

186 Kelly Hamilton Final DIP Order at 8.

187 *Id*. (emphasis added).

188 *See, e.g.*, *Taylor v. Freeland & Kronz*, 938 F.2d 420, 425 (3d Cir. 1991), aff'd, 503 U.S. 638 (1992) ("In the bankruptcy context, the need for finality and certainty is especially acute."); *Chrysler Motors Corp. v. Schneiderman*, 940 F.2d 911, 914 (3d Cir. 1991) (same); *Kilbarr Corp. v. Gen. Servs. Admin., Office of Fed. Supply & Servs. (In re Remington Rand Corp.)*, 836 F.2d 825, 833 (3d Cir. 1988) ("finality is particularly important in bankruptcy proceedings."); *see also In re Am. Preferred Prescription, Inc.*, 255 F.3d 87, 94 (2d Cir. 2001) ("'finality interests' of *res judicata* 'are particularly important in the bankruptcy context, where numerous contending claims and interests are gathered, jostle, and are determined and released'") (quoting *Corbett v. MacDonald Moving Serv., Inc.*, 124 F.3d 82, 91 (2d Cir. 1997)).

the Kelly Hamilton DIP Lender, the Kelly Hamilton Purchaser, and other third parties who acted in good faith in accordance with those orders. Such a result would severely undermine the stability and predictability that final bankruptcy court orders are intended to provide.

173. In short, the Objectors had every opportunity to raise these arguments at multiple stages throughout the bankruptcy proceedings. They cannot now seek a second bite at the apple during plan confirmation.

2. The Court Should Overrule the Objections to the Kelly Hamilton Sale Transaction

174. In addition to the alleged chilling effects of the Kelly Hamilton Purchaser's credit bid, Ms. Bacon argues that, due to numerous perceived flaws concerning the timeframe in which the sale occurred, the marketing process for the Kelly Hamilton Property failed to obtain the highest and best price for the property.[189] However, the Kelly Hamilton Property was marketed—and is now proposed to be sold—in accordance with the procedures established by this Court. Accordingly, the Court should overrule the arguments set forth in the Objection.

i. <u>The Debtors Properly Marketed the Kelly Hamilton Property in Order to Obtain the Highest and Best Bid</u>

175. As an initial matter, as set forth above, any objections asserted to the marketing process should be overruled because such objections needed to have been raised at the hearing on the Bidding Procedures Motion. The Bidding Procedures Order, a final order entered by this Court,

[189] *See* Bacon Obj. ¶¶ 30, 45, 48, 51.

approved the proposed marketing and sale timeline, and the Debtors complied with these requirements.

176. In addition to its objection to the marketing of the property, the Bacon Objection also objects to the outcome of the sale, asserting that the price paid by the Kelly Hamilton Purchaser is flawed because the "Debtors have produced no evidence of the fair market value of the portfolio. . ."[190] This point misses the mark. The Debtors and their advisors contacted various interested parties, executed several confidentiality agreements, provided multiple parties with additional information, and ensured that notice of the Bidding Procedures Order and proposed sale was properly distributed. Following a thorough marketing process, the Debtors did not receive any qualifying bids in addition to the bid submitted by the Kelly Hamilton Purchaser. Accordingly, the Kelly Hamilton Purchaser's bid *is* the fair market value for the Kelly Hamilton Property.

177. Under similar facts, the court in *In re Kara Homes, Inc.* approved an asset sale where a creditor submitted a credit bid for the property.[191] As the court explained, barring evidence to the contrary, courts should "accept the amount of a credit bid from a sophisticated business entity, which knowingly had the option to bid more or less, as evidence of the fair market value of the property."[192] Indeed, the court explained that it is "common sense" that a credit bid reflects a creditor's valuation of the purchased assets, and that credit bids represent the "rational justification" that such assets are "equal to, or greater than, that amount."[193] In such instances,

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[190] Bacon Obj. ¶ 51; *see also* Bacon Memorandum at 15.

[191] *In re Kara Homes, Inc.*, No. 06-19626 (MBK), 2012 Bankr. LEXIS 5730, at *8-9 (Bankr. D.N.J. Dec. 11, 2012).

[192] *Id*.

[193] *Id* at *8.

courts should "place greater weight on actual bidding results at a court-approved sale in lieu of 'after the fact' judicial re-creation of fair market value."[194]

178. The record clearly demonstrates that the Kelly Hamilton Property was marketed in good faith and in full compliance with the Bidding Procedures Order. Hilco Real Estate LLC, a nationally recognized and experienced real estate advisory firm, conducted extensive outreach to potential purchasers. In addition, the Debtors published notice of the proposed sale transaction in accordance with the Court's order, and their advisors actively promoted and managed a virtual dataroom to facilitate diligence by interested parties. Despite these comprehensive efforts, no qualified competing bids were received. As a result, the stalking horse bid submitted by the Kelly Hamilton Purchaser was properly designated as the highest and best offer. The lack of competing bids is attributable to the distressed condition of the property and the broader financial and operational context—not any flaw or impropriety in the marketing process. To the contrary, the Kelly Hamilton Purchaser's bid, secured through a robust and Court-supervised process, represents the highest and best value reasonably attainable under the circumstances.

ii. Lynd Is Not an Insider of the Debtors

179. The City's allegation that Lynd[195] is an insider of the Debtors is unsupported. Section 101(31) of the Bankruptcy Code defines an insider as, in relevant part: (i) a director of the debtor, (ii) an officer of the debtor, (iii) a person in control of the debtor, (iv) a partnership in which the debtor is a general partner, (v) general partner of the debtor, or (vi) a relative of a general

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[194] *In re Berley Assocs., Ltd.*, 492 B.R. 433, 440 (Bankr. D.N.J. 2013); *see also In re 126 LLC*, No. 12-35157 (DHS), 2014 Bankr. LEXIS 3059, at *10 (Bankr. D.N.J. July 14, 2014).

[195] The City broadly defines all Lynd entities as "Lynd," arguing that all of these entities are insiders of the Debtors, despite the fact that different Lynd entities serve as the Debtors' property manager and asset manager, and that the Kelly Hamilton DIP Lender is a separate joint venture entity between a Lynd entity and 3650 REIT.

partner, director, officer, or person in control of the debtor. In order to constitute a "person in control" as used in section 101 of the Bankruptcy Code, a party must have "actual control" over the debtor, similar to a director or officer.[196]

180. There are also additional, "non-statutory" insiders. For a party to be a non-statutory insider, "there must be a close relationship with the debtor and some evidence, other than the relationship, that the transaction was not conducted at arm's length."[197] There are ordinarily three factors to determine whether a person is a non-statutory insider of the debtor: (1) the closeness of the relationship between the parties, (2) the degree of influence the non-debtor exerts over the debtor, and (3) whether the subject transaction was arm's length.[198]

181. It is unclear whether the City asserts that Lynd is a statutory or non-statutory insider of the Debtors. The City itself seems unsure in its own arguments, asserting that "Lynd is a *potential* insider of the Debtors" and that "Lynd *may* be an insider."[199] As loose support for this argument, the City sets forth a barebones assertion that "Lynd, as property manager, consultant and DIP Lender, exercises or has exercised, sufficient control or influence over the Debtors. . ."[200] The City also argues that Lynd "exerted at least some degree of control and influence over the Debtors and their operations."[201] This argument misapplies the standard and misconstrues applicable law.

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196 *In re Winstar Communs., Inc.*, 554 F.3d 382, 396 (3d Cir. 2009).

197 *In re Opus East, LLC*, 528 B.R. 30, 93 (Bankr. D. Del. 2015).

198 *Id*. (citing *In re Oakwood Homes Corp.*, 340 B.R. 510, 523-24 (Bankr. D. Del. 2006).

199 City Obj. ¶¶ 19, 29.

200 *Id*. ¶ 29.

201 *Id*. ¶ 19.

182. ***First***, no Lynd entity is a statutory insider of the Debtor. Lynd Management Group LLC and LAGSP, LLC serve as asset and property managers for the Debtors, respectively. The Kelly Hamilton DIP Lender (which is not entirely a Lynd entity) provided much needed postpetition financing to the Debtors. In none of these cases has Lynd served as a director, officer, person in control, or general partner of the Debtors.

183. ***Second***, Lynd has not exercised the requisite degree of control over the Debtors. As set forth in the Property and Asset Management Order, Lynd Management Group LLC and LAGSP, LLC provided services to the Debtors that were both tailored to the Debtors' operational needs and limited in scope. These services include, among other things, preparing and presenting quarterly operating and capital budgets for the Kelly Hamilton Property, preparing quarterly strategic asset planning, procuring tenants for the Kelly Hamilton Property, obtain credit reports for such tenants, and collecting rents.[202] Indeed, as explained above, this Court has already entered an order finding as much.[203]

184. ***Third***, Lynd has received certain protections and benefits in these Chapter 11 Cases that were uncontested by the Objectors on the grounds (or at all) that Lynd is an insider of the Debtors specifically. For example, the Kelly Hamilton Purchaser received certain bid protections from the Court.[204] The Kelly Hamilton Final DIP Order also provides that the Kelly Hamilton DIP Facility was "negotiated in good faith and at arm's length" among the parties, and that all

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[202] *See* Property and Asset Management Order at 9-11, 26-28.

[203] *See* Kelly Hamilton Final DIP Order at 8.

[204] *See* Bidding Procedures Order ¶ D.

obligations were extended in good faith.[205] To the extent the City considered Lynd to be an insider of the Debtors, it should have objected to these protections prior to approval by the Court.

185. ***Fourth***, the City has not presented any evidence beyond Lynd's relationship with the Debtors that the Kelly Hamilton Sale Transaction was not conducted at arm's length. To the contrary, no Lynd entity participated in the selection, evaluation, and consideration of potential bidders. For its part, in support of its argument the City cites to one case, *In re Winstar Communs., Inc.*, 554 F.3d 382 (3d Cir. 2009). That case is easily distinguishable. Contrary to the arguments in the City's objection, the record in *Winstar* was replete with allegations and factual findings of one entity's control and influence over the debtor. Specifically, the *Winstar* court adopted the lower court's finding that the non-debtor entity forced the debtor entity to purchase its goods in order to inflate its quarterly report, coerced debtor employees to perform work for the non-debtor entity, and, in one instance, forced the debtor to pay upwards of $135 million for software goods it did not need.[206] Importantly, the *Winstar* court distinguished that case from a situation where a non-debtor lender simply "compell[ed] payment of debts or other financial concessions" as provided for in the parties' credit agreement.[207] As the court noted, this would not arise to the level of undue influence because "it is well established that the exercise of financial control. . .incident to the creditor-debtor relationship does not make the creditor an insider."[208]

186. Here, the City has not presented any evidence that Lynd is exerting such undue influence on the Debtors comparable to the influence exerted by the insider in *Winstar*. Even

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[205] Kelly Hamilton Final DIP Order at 12-13.

[206] *In re Winstar Communs., Inc.*, 554 F.3d at 397-98.

[207] *Id*. at 399.

[208] *Id*.

assuming that all the allegations in the City's objection are true, the sort of administerial work performed by the Debtors' asset and property managers do not rise to the level of undue influence. Further, the Kelly Hamilton DIP Lender's relationship with the Debtors is the sort of creditor-debtor relationship that the *Winstar* court stated should be free from insider allegations.

187. In short, Lynd's role throughout these Chapter 11 Cases has been fully disclosed and transparent. The fact that Lynd provided financing and management services does not render it an insider; rather, it reflects its willingness to step in when no other party would. Moreover, the City has not presented any evidence beyond this financial and management relationship that Lynd improperly influenced the Kelly Hamilton Sale Transaction. Rather, the City's objection is riddled with wavering statements that Lynd "may" have influenced the Debtors and "may" therefore be an insider. These statements are insufficient to withstand scrutiny.

3. The Plan Was Proposed in Good Faith

188. The Plan was proposed in good faith. The City's assertion that the Debtors "may not" have acted in good faith because the proposed sale "may" have been the product of bid chilling ignores the Court-approved bidding process and lacks any evidentiary support.[209]

189. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." The Third Circuit has held that a plan is proposed in good faith when it "fairly achieve[s] a result consistent with the objectives and purposes of the Bankruptcy Code."[210] Whether a plan satisfies this standard is a fact-specific

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[209] City Obj. ¶ 35.

[210] *In re PWS Hldg. Corp.*, 228 F.3d at 242; *In re AIO US, Inc.*, No. 24-11836 (CTG), 2025 Bankr. LEXIS 2012, at *35 (Bankr. D. Del. Aug. 21, 2025) (finding that "both the means used and the ends sought in proposing a plan need to accord with the purposes of bankruptcy law").

inquiry, requiring the Court to evaluate the totality of the circumstances surrounding the development of the plan.[211]

190. The record in these Chapter 11 Cases demonstrates that the Plan is the product of a transparent, Court-supervised process aimed at maximizing value for creditors while preserving affordable housing for tenants. As described in the Dundon Declaration, the Kelly Hamilton Sale Transaction resulted from arm's-length negotiations conducted pursuant to Court-approved bidding procedures. Interested parties were provided with meaningful diligence access, and the sale timeline and procedures were established by Court order. All parties had a full and fair opportunity to participate. The City's allegation that the Plan was not proposed in good faith due to alleged bid chilling is contrary to both the record and this Court's prior findings approving the bidding procedures.[212]

191. Courts have consistently found good faith even where an auction process yields no competing bids, so long as the process is fair and provides value to creditors.[213] Here, the Plan satisfies those standards: it provides for full payment of, among other Claims, all Allowed Administrative and Priority Tax Claims and establishes a Creditor Recovery Trust to benefit unsecured creditors. The marketing process included outreach to dozens of potential buyers and execution of nineteen confidentiality agreements. The City points to no fraud, collusion, or misconduct. Its speculation that the sale "may have been" chilled, and thus the Plan "may not"

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211 *In re W.R. Grace & Co.*, 475 B.R. at 87.

212 The City's "bid-chilling" narrative is, in substance, an attack on (i) the DIP Facility, (ii) credit-bid rights, (iii) bid protections, and (iv) the sale timeline. As discussed further herein, each was disclosed, noticed, litigated, and approved in this Court's orders. "Bid chilling" requires proof of collusion, concealment, or process manipulation. The City offers none: no declaration from a deterred bidder, no term that barred participation, and no showing that any qualified, financeable bid was suppressed.

213 *See In re Unbreakable Nation Co.*, 437 B.R. 189, 199 (Bankr. E.D. Pa. 2010).

have been proposed in good faith,[214] is pure conjecture. Such unsubstantiated allegations cannot overcome the robust, Court-approved process that led to the Kelly Hamilton Sale Transaction.[215]

192. At bottom, the City's objections appear to reflect a fundamental disagreement with the Plan—particularly the Kelly Hamilton Sale Transaction—rather than any legitimate basis to question the Debtors' good faith. As discussed above, the City's arguments mischaracterize the facts and disregard the Bidding Procedures Order. Mere disagreement with the terms of a plan does not amount to a lack of good faith.[216] The record demonstrates that the Debtors proposed the Plan honestly, with integrity, and in accordance with their fiduciary duties—and therefore in good faith.

4. Delay of Confirmation Would Prejudice Stakeholders and Lead to Liquidation of the Debtors' Estates

193. The Bacon Objection requests a 90-day delay of the Confirmation Hearing to allow local groups additional time to submit a competing bid for the Kelly Hamilton Property.

194. As an initial matter, and as previously discussed, the Objectors are bound by the Bidding Procedures Order, including the bidding procedures attached as Exhibit 1 thereto (the "**Bidding Procedures**"). Under the Bidding Procedures, any interested party seeking to bid on the Kelly Hamilton Property was required to submit a written offer to the Debtors that met specific requirements—including disclosure of the proposed purchaser, the purchase price, standard representations, and various acknowledgments.[217] The Objectors failed to comply with any of

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[214] City Obj. ¶ 35.

[215] *See In re Unbreakable Nation Co.*, 437 B.R. at 200.

[216] *See, e.g.*, *In re Envirodyne Indus., Inc.*, No. 93 B 310, 1993 WL 566565, at *38 (Bankr. N.D. Ill. Dec. 20, 1993) ("A plan has not necessarily been proposed in bad faith simply because a party does not like the treatment of its claims.") (citing *In re Mulberry Phosphates, Inc.*, 149 B.R. 702, 708 (Bankr. M.D. Fla. 1993).

[217] *See* Bidding Procedures at 6-9.

these requirements. On that basis alone, the Court should enforce the Bidding Procedures and deny the request to reopen the auction.

195. Moreover, courts in this Circuit have consistently held that a completed, court-sanctioned sale should not be reopened absent clear evidence of fraud, unfairness, mistake, or a gross inadequacy of price.[218] This principle is particularly strong where the sale was conducted pursuant to Court-approved procedures.[219] Here, the Objectors offer no such evidence. There is no showing of fraud, unfairness, or an inadequate price—indeed, the Objectors have not demonstrated that a viable competing bid even exists.

196. It is also unclear what Ms. Bacon hopes to achieve through a delay. Her memorandum asserts that there is "no evidence that the [Kelly Hamilton Property], in its current condition, could draw $9.7 million on the open market," [220] yet she simultaneously seeks time to allow local governmental, nongovernmental, and philanthropic entities to present "an alternative plan and sale transaction."[221] In essence, Ms. Bacon concedes that any alternative bid would be for *less* consideration than the Kelly Hamilton Purchaser's bid. Granting a delay in the hope of securing a lower bid is neither legally justified nor in the best interests of the Debtors' Estates.

197. Finally, as described in the Dundon Declaration, any delay in confirming the Plan would result in significant and unjustified harm to the Debtors, their creditors, and the tenants of the Kelly Hamilton Property. These Chapter 11 Cases were filed to prevent a sheriff's sale, address

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[218] *In re Ananko*, 89 B.R. 399, 407 (Bankr. D.N.J. 1988) (citing *In re Stanley Eng'g Corp.*, 164 F.2d 316 (3d Cir. 1947).

[219] *See In re Bigler, LP*, 443 B.R. 101, 109 (Bankr. S.D. Tex. 2010) ("[A] bankruptcy court abuses its discretion when, after a properly conducted auction has already been held, it reopens the bidding process and approves a late bid merely because a slightly higher offer has been received after the bidding is closed.") (citing *In re Gil-Bern Indus., Inc.*, 526 F.2d 627, 629 (1st Cir. 1975)).

[220] Bacon Memorandum at 15.

[221] *Id*. at 4.

urgent liquidity challenges, and stabilize the Debtors' operations. The Kelly Hamilton DIP Facility was designed as a short-term bridge—not a long-term financing solution. Delaying confirmation would increase administrative expenses, prolong uncertainty, and deny the Kelly Hamilton Property the stability and investment it urgently requires. Additionally, delay of the Kelly Hamilton Sale Transaction would significantly deplete the Debtors' short-term financing and force the Debtors to liquidate, which would be value-destructive and result in depleted recoveries for all stakeholders. Prompt confirmation, by contrast, will enable the Kelly Hamilton Purchaser—as the new equity owner—to inject capital and pursue long-term rehabilitation for the benefit of both the tenants and the broader community.

5. The Kelly Hamilton Property Does Not Modify or Absolve the Debtors or Kelly Hamilton Purchaser from Complying with Applicable Laws

198. The City objects to the Kelly Hamilton Sale Transaction to the extent that "the sale, or the proposed sale order, modifies or absolves, in any way, the obligations of the Debtors or buyer from complying with applicable laws including codes and ordinances of the City with respect to the [Kelly Hamilton] Property. The sale should also not divest any of the City's tax or municipal liens which are of first priority under applicable law."[222]

199. The Debtors are not proposing—nor has the Kelly Hamilton Purchaser requested—that the Kelly Hamilton Purchaser be absolved from any obligations arising out of its ownership of the Kelly Hamilton Property following the closing of the sale, including compliance with applicable laws, codes, and ordinances of the City. Upon the closing of the Kelly Hamilton Sale

[222] City Obj. ¶ 32.

Transaction, all obligations incurred by the Kelly Hamilton Purchaser arising from its status as owner of the property are not discharged or otherwise affected by the Plan.[223]

200. Tax obligations and municipal liens, if any will be paid in full on or prior to the Effective Date in accordance with the Plan.[224] Thus, because the Debtors are authorized by the Plan, Bankruptcy Code, and Kelly Hamilton Purchase Agreement to either pay the City's claims in full or otherwise sell the Kelly Hamilton Property free and clear of all claims and interests, and because the Plan does not affect the City's enforcement rights against the Kelly Hamilton Purchaser for future liabilities, the City's objection should be overruled.

B. The Court Should Overrule the Bacon and City Objections to the Feasibility of the Plan Under Section 1129(a)(11) of the Bankruptcy Code

201. Ms. Bacon argues that the Plan may not be feasible and thus, cannot satisfy section 1129(a)(11) of the Bankruptcy Code because (i) the Debtors likely cannot attain HUD approvals to consummate the Kelly Hamilton Sale Transaction and (ii) the Kelly Hamilton Purchase will be unable to comply with the HAP Contract[225] and HUD regulations.[226] Neither of the City's proposed conditions undermines the feasibility of the Plan.[227] Both arguments fail as a matter of

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223 *See In re La Paloma Generating, Co.*, No. 16-12700 (CSS), 2017 Bankr. LEXIS 3876, at *22 (Bankr. D. Del. Nov. 9, 2017) ("When you are talking about free and clear of liens, it means you don't take it subject to claims which, in essence, carry with the property. It doesn't absolve you from compliance with the law going forward.") (internal quotation and citation omitted).

224 *See* Plan Art. II.E.

225 As defined in the Kelly Hamilton Purchase Agreement, "**HAP Contract**" means that certain Housing Assistance Payments Contract dated as of October 1, 1982 between Debtor, U.S. Department of Housing and Urban Development and Pennsylvania Housing Finance Agency, as renewed and amended pursuant to that certain Renewal HAP Contract for Section 8 Mark-Up-To-Market Project entered into as of September 1, 2023. Docket No. 411-1.

226 *See* Bacon Obj. ¶¶ 41–54; Bacon Memorandum at 11–15.

227 The City does not raise a specific objection to the Plan's feasibility under section 1129(a)(11). Instead, it requests that the Court condition approval of the sale on (i) the correction of unspecified "problems at the property" prior to closing and (ii) the City's right to inspect both interior and exterior areas of the property before the sale is consummated. This relief is neither required by the Bankruptcy Code nor appropriate based on the current record. Imposing such conditions would improperly introduce a new condition precedent to closing that could interfere

law and fact. Ms. Bacon does not (and cannot) establish that the Debtors' Plan is incapable of being implemented.Section 1129(a)(11) of the Bankruptcy Code requires that the Court determine, in relevant part, that confirmation is not likely to be followed by the liquidation or further financial reorganization of the Debtors (or any successor thereto), unless such liquidation or reorganization is proposed in the Plan.[228] To determine "whether the feasibility standard is met, a court must be satisfied that the plan is workable and has a reasonable likelihood of success."[229] The purpose of the feasibility test is to "protect against visionary or speculative plans."[230]

202. As such, "no guarantee of success is required and the mere potential for failure of the plan is insufficient to disprove feasibility."[231] The "key element of feasibility is whether there is a reasonable probability the provisions of the plan can be performed."[232] A "relatively low threshold of proof" may satisfy the feasibility requirement.[233] Furthermore, near unanimous support of creditors with respect to the plan "weighs heavily" in favor of a finding of feasibility.[234]

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with a HUD-regulated transaction. Indeed, the sale is expressly contingent upon HUD approval. The Debtors, and following closing, the Kelly Hamilton Purchaser, remain committed to cooperating in good faith with the City to facilitate lawful access to the property. However, the City's general interest in oversight cannot be transformed into a de facto approval right or closing condition. Nothing in the Plan, the Confirmation Order, or the Kelly Hamilton Purchase Agreement impairs or limits the City's police and regulatory powers, which remain fully preserved under applicable law.

228 11 § U.S.C. 1129(a)(11).

229 *In re S B Bldg. Assocs. Ltd. P'ship*, 621 B.R. at 354 (citations omitted).

230 *In re Indianapolis Downs, LLC*, 486 B.R. 286, 298 (Bankr. D. Del. 2013).

231 *In re TCI 2 Holdings*, 428 B.R. at 148 (citing *In re Wiersma*, 227 F. App'x 603).

232 *In re G-I Holdings, Inc.*, 420 B.R. 216, 267 (D.N.J. 2009); *In re Prussia Assocs.*, 322 B.R. at 584 (finding that to satisfy section 1129(a)(11), "[t]he Code does not require the debtor to prove that success is inevitable").

233 *In re S B Bldg. Assocs. Ltd. P'ship*, 621 B.R. at 354 (citing *In re TCI 2 Holdings LLC*, 428 B.R. at 148).

234 After considering this "primary factor," additional factors that courts have considered, to the extent applicable, are: (i) the adequacy of the debtor's corporate structure; (ii) the earning power of its business; (iii) economic conditions; (iv) the ability of debtor's management; (v) the probability of continuation of the same management; and (vi) any other related matters which determine the prospects of a sufficiently successful operation to enable performance of the provisions of the plan. *Id.*

203. A chapter 11 plan that implements a sale is feasible if it demonstrates (i) the sale can close as structured, and (ii) the sale will generate sufficient proceeds (together with any other identified sources) to fund distributions in accordance with the Code's priority scheme, while the post-effective-date fiduciary can complete the limited wind-down obligations. As set forth in the Dundon Declaration, that is precisely what this Plan achieves. The Plan provides for the consummation of the Kelly Hamilton Sale Transaction and the orderly wind-down of the Debtors' remaining affairs. The Plan's means of implementation authorize all actions necessary to effectuate the Kelly Hamilton Sale Transaction and related transactions, and it clearly identifies the sources of cash for distribution: namely, the Sale Proceeds, Creditor Recovery Trust Assets, and Wind-Down Assets.

204. The Plan's implementation provisions, funding sources, wind-down framework, and distribution mechanics all support a finding that confirmation will not be followed by the need for further reorganization. Rather, the Plan lays out a clear, practical, and fully articulated path to (i) consummate the Kelly Hamilton Sale Transaction, (ii) administer and distribute remaining assets, including through the Creditor Recovery Trust, and (iii) promptly close these Chapter 11 Cases. Additionally, the Plan has received overwhelming creditor support, which further weighs in favor of a finding of feasibility. Of the seventy-four creditors entitled to vote, only two—one of whom is an Objector—voted to reject the Plan.[235]

[235] *In re S B Bldg. Assocs. Ltd. P'ship*, 621 B.R. at 355 (finding that "there is no better evidence of feasibility than the fact that creditors who have "skin in the game" . . . are willing to support the Debtors' Plan").

1. Conditions Precedent to Consummation of the Kelly Hamilton Sale Transaction Do Not Defeat Feasibility of the Plan

205. Section 1129(a)(11) of the Bankruptcy Code does not require that every third-party consent be in hand on the date of the Confirmation Hearing—it only requires that there is a reasonable assurance that confirmation will not be followed by liquidation or further reorganization, except as proposed by the plan. Ms. Bacon attaches an August 18, 2025 email to the Bacon Objection, noting that HUD had not yet formally approved the HAP assignment and leaps to the conclusion that HUD approval is "far from a foregone conclusion."[236] But Ms. Bacon overlooks that the email shows only that HUD's review was pending on that date, not that approval is unlikely or unattainable.

206. Indeed, bankruptcy courts, including in this District, routinely confirm plans subject to uncertain and contingent future events or external approvals where, as here, the plan includes those approvals as conditions precedent and the record shows a credible path to satisfaction.[237]

207. As set forth in the Utz Declaration,[238] while the Kelly Hamilton Purchase Agreement requires HUD's consent to the assignment of the HAP Contract as a condition to closing, the Debtors are actively advancing through HUD's established process for obtaining that consent and remain confident that it will be secured. The Kelly Hamilton Purchaser has been in

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[236] *See* Bacon Memorandum at 12–13; *id.* at Ex. H.

[237] *See, e.g.*, *In re Indianapolis Downs, LLC*, 486 B.R. 286, 298-99 (Bankr. D. Del. 2013) (finding plan feasible despite being conditioned on regulatory approval to operate a casino); *In re TCI 2 Holdings*, 428 B.R. at 155 (finding plan feasible notwithstanding need to obtain casino regulatory approvals because there was a "reasonable prospect" of obtaining the relevant approvals); *In re Tribune Co.*, 464 B.R. at 185 (finding plan feasible where the record showed no "significant obstacles" to obtaining the requisite regulatory approvals); *In re Wash. Mut. Inc.*, 461 B.R. 200, 252 (Bankr. D. Del. 2011) (finding plan feasible despite lack of regulatory approval for securities exemption).

[238] *See* Utz Declaration.

regular communication with HUD for several weeks, has participated in calls, and has submitted all required documentation for HUD's review. HUD has acknowledged the Court-approved milestones in these Chapter 11 Cases and seems to be coordinating its internal review in accordance with that timeline. The Kelly Hamilton Purchase Agreement includes a scheduled closing date consistent with the expected receipt of HUD's consent.[239] This is precisely the credible, conditioned pathway that section 1129(a)(11) requires. Ms. Bacon offers no contrary evidence—no expert, no agency statement, no regulatory impediment—suggesting that HUD consent is unattainable.

2. The Kelly Hamilton Purchaser Is Capable of Complying with All Regulatory Requirements with Respect to the Kelly Hamilton Property

208. Ms. Bacon argues that the Plan is not feasible because, in her view, it is unclear whether the Kelly Hamilton Purchaser has the financial and operational wherewithal to manage the Kelly Hamilton Property in compliance with the HAP Contract and applicable HUD regulations.[240] This argument overlooks both the governing legal standard for feasibility and the evidentiary record in these cases.

209. Section 1129(a)(11) requires only a reasonable assurance that confirmation will not be followed by liquidation or further reorganization, except as contemplated by the Plan. It does not impose a requirement that the purchaser's future operations be risk-free or optimal in every respect.[241] When a plan contemplates a sale followed by a wind-down, the feasibility inquiry is

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[239] The Kelly Hamilton Purchase Agreement provides that the '"Scheduled Closing Date' shall mean the date ten (10) Business Days following the issuance of the Sale Order, subject to extension as provided in Section 6.4 [of the Kelly Hamilton Purchase Agreement]." Docket No. 411-1 § 1.

[240] *See* Bacon Memorandum at 13–15.

[241] *In re TCI 2 Holdings, LLC*, 428 B.R. at 148 (finding no guarantee of success is required and "that the mere potential for failure of the plan is insufficient to disprove feasibility'") (citing *In re Wiersma*, 227 F. App'x at 606).

correspondingly narrow—focused on whether the Plan can be implemented as written, meaning the sale can close and the wind-down can be administered. As set forth above, the Debtors have satisfied this standard.

210. Even if one were to adopt Ms. Bacon's mistaken framing of feasibility as a test of the purchaser's ability to comply with ongoing regulatory obligations, the record still supports a finding of feasibility. As described in the Utz Declaration, the Kelly Hamilton Purchaser has demonstrated a credible financial position with evidence of funds and financing commitments and is actively working to obtain the required HUD consent to assign the HAP Contract. Ms. Bacon's contrary argument relies on isolated anecdotes concerning operations during the Chapter 11 bridge period, ignoring the difficult circumstances under which the Estates have operated and the regulatory oversight HUD will continue to exercise post-closing. The Independent Fiduciary stepped in amid portfolio-wide turmoil caused by the prior owner's misconduct, incomplete books and records, unpaid vendors, and urgent operational challenges. Despite these constraints and a limited DIP budget, the Estates stabilized essential services and positioned the property for sale. Feasibility does not require resolution of all legacy maintenance issues before confirmation, and ongoing compliance with HUD regulations and the HAP Contract remains firmly within HUD's regulatory authority, as expressly preserved in the Plan.

211. Feasibility demands only reasonable assurance of success—a relatively low evidentiary threshold that the Debtors have met, as demonstrated by the Utz Declaration and Dundon Declaration.[242] Accordingly, the Court should overrule objections based on speculative

[242] *See In re Prussia Assocs.*, 322 B.R. at 584.

concerns regarding (i) the ability to obtain HUD's consent to assign the HAP Contract and (ii) the Kelly Hamilton Purchaser's future operational compliance.

C. The Court Should Overrule Objections to the Kelly Hamilton DIP Facility

212. As explained above, the Objectors seek to relitigate issues already decided by this Court, including the allocation of proceeds under the Kelly Hamilton DIP Facility and the identity of the Kelly Hamilton DIP Lender as an insider. For these reasons, the Court should deny the objections to the Kelly Hamilton DIP Facility. Moreover, in addition to being procedurally improper, the Objections fail on the merits.

1. Section 364(e) of the Bankruptcy Code Protects the Kelly Hamilton DIP Lender and Prepetition Kelly Hamilton Lender

213. Section 364(e) of the Bankruptcy Code precludes the Objectors from effectively seeking reconsideration of the Kelly Hamilton Final DIP Order upon which the Kelly Hamilton DIP Lender and Prepetition Kelly Hamilton Lender has relied.[243] Section 364(e) provides that:

> The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

214. Although Section 364(e) refers to appeals, its protections have been extended to challenges to a financing order in the bankruptcy court.[244] Having found that the Debtors, Kelly

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[243] *See In re Verity Health Sys. of Cal.*, 814 Fed. Appx. 275, 278 (9th Cir. 2020) (finding prepetition secured creditors are also entitled to section 364(e) protections); *see also In re Cooper Commons, L.L.C.*, 430 F.3d 1215, 1219-20 (9th Cir. 2005) (holding an amended credit provision precluding payment of certain already accrued administrative expenses was protected by section 364(e)).

[244] *See In re Ellingsen MacLean Oil Co., Inc*., 834 F.2d 599, 603-04 (6th Cir. 1987) (by prohibiting any challenges to validity of creditor's already existing liens, as incentive for extension of post-petition credit, the financing order was protected under Section 364(e) of the Bankruptcy Code providing that post-petition credit would not be

Hamilton DIP Lender, and Prepetition Kelly Hamilton Lender negotiated and extended post-petition financing in good faith for purposes of Section 364(e) in the Kelly Hamilton Final DIP Order,[245] Section 364(e) applies in this instance to protect the Kelly Hamilton DIP Lender and Prepetition Kelly Hamilton Lender under the Kelly Hamilton Final DIP Order.

2. The Objectors' Specific Challenges Are Misplaced and Contradicted by the Record

215. Although the Kelly Hamilton Final DIP Order is a final and non-appealable order, even if the Court were to consider the Objectors' arguments, those arguments are misplaced and contradicted by the record. The Objectors claim that the prepayment of the Prepetition Kelly Hamilton Loan constituted an improper and hidden "roll-up" of insider debt.[246] The record, however, tells a different story. The prepayment was explicitly disclosed in Exhibit A to the DIP Term Sheet, incorporated by reference into the Kelly Hamilton DIP Motion, and reflected in the Approved Budget attached to both the Kelly Hamilton Interim and Final DIP Orders. This Court authorized the prepayment as an approved use of the Kelly Hamilton DIP Facility proceeds.[247] Far from being concealed, the prepayment was transparent, fully discussed during the hearings, and affirmatively approved by this Court.

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affected by reversal of authorization on appeal); *see also In re Fleetwood Enters., Inc*., 427 B.R. 852, 859 (Bankr. C.D. Cal. 2010) (Section 364(e) applies when a financing order is challenged in the bankruptcy court after the lender has relied on the order's protections), *aff'd*, 471 B.R. 319 (B.A.P. 9th Cir. 2012). Indeed, Section 364(e) would offer little incentive to lenders if its protection was limited only to appeals since the bankruptcy court's modification of its own orders "poses the same risks as does reversal on appeal." *Id*. at 860 (quoting *Kham & Nate's Shoes No. 2, Inc. v. First Bank of Whiting (In re Kham & Nate's Shoes No. 2, Inc.)*, 908 F.2d 1351, 1355 (7th Cir. 1990)) ("A bankruptcy court's modification of its own orders poses the same risks as does reversal on appeal. Accordingly, although Section 364(e) does not apply by its own terms, its principle applies through the law of the case.").

[245] *See* Kelly Hamilton Final DIP Order ¶¶ I and 23.

[246] *See* Bacon Obj. ¶¶ 27, 46; City Obj. ¶¶ 2, 4–5, 27–28.

[247] Kelly Hamilton Final DIP Order ¶ 15 ("[T]he Kelly Hamilton DIP Loan Parties shall be and are hereby authorized to use Cash Collateral in accordance with, and solely and exclusively for the disbursement set forth in the Approved Budget attached [as] Exhibit C to this Final Order.").

216. Furthermore, as reflected in the First Day Declaration, Kelly Hamilton DIP Motion, DIP Declaration, and stipulations in the Kelly Hamilton Interim and Final DIP Orders, the Prepetition Kelly Hamilton Loan was a secured obligation extended in September 2024 at a moment when Mr. Silber's plea and governance breakdown had rendered the portfolio "unbankable." In that environment, Lynd was the only party willing to provide urgently needed working capital to stabilize the property. When it later became clear that a court-supervised restructuring was the only viable path forward, the Debtors explored both a Noteholder DIP Proposal and a revised proposal from Lynd and its financing partner, 3650 REIT. Although the Noteholders Proposal expressed willingness to fund, the proposal depended on a non-consensual priming lien that would have embroiled the estates in costly litigation and was therefore not a feasible option. By contrast, Lynd and 3650 REIT together formed the Kelly Hamilton DIP Lender, which provided the only confirmable and practical source of postpetition financing. As a condition of that financing, the Kelly Hamilton DIP Lender required that the outstanding secured Prepetition Loan be prepaid at closing to ensure a first-priority lien on the Kelly Hamilton Property.

217. The Objectors also attack the allocation of Kelly Hamilton DIP Facility proceeds, arguing that too little was directed to capital expenditures and working capital, and too much to prepayment of the Kelly Hamilton Prepetition Loan and professional fees.[248] These arguments fail for two reasons. First, the Kelly Hamilton Interim and Final DIP Orders approved the budget after notice and hearing and expressly found that (i) no more favorable financing was available, (ii) the DIP was negotiated in good faith and was fair and reasonable, and (iii) the financing was necessary

[248] *See* Bacon Obj. ¶¶ 27, 46; City Obj. ¶ 26.

to prevent immediate and irreparable harm to hundreds of HUD-subsidized tenants.[249] Second, the allocation of proceeds reflects sound business judgment and the realities of these Chapter 11 Cases.[250] The prepayment of the Prepetition Kelly Hamilton Loan was a bargained-for condition of new money; professional and administrative costs are inherent in stabilizing estates and preserving value; and the capex/working-capital lines were designed to address urgent needs.

218. The City's complaint about asset-management fees is equally misplaced. Asset management is a portfolio-level service—strategic oversight, capital planning, lender/agency interface, and reporting—that is distinct from on-site property management.[251] As such, the fee the City attacks is not a Kelly-Hamilton-only expense. The asset manager's scope spans several properties in the Crown Capital Portfolio, not just one.[252] Dividing the fee by only one property managed by asset manager grossly distorts the analysis. When properly spread across the portfolio, the fee is proportionate and reasonable. Notwithstanding, the Kelly Hamilton Final DIP Order already found the Approved Budget, including this line item, to be fair, reasonable, and necessary.[253]

219. Indeed, as this Court has already found, the Debtors were "unable to obtain financing… on terms more favorable," the DIP Facility "represent[ed] the best source of debtor-in-possession financing available," and it was "negotiated in good faith and at arm's length."[254] The Objectors' attempt to conflate the prepayment of a secured prepetition loan with a prohibited

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[249] *See* Kelly Hamilton Final DIP Order ¶¶ E, F, I, 23.

[250] *See* Kelly Hamilton Final DIP Order ¶ F.

[251] *See generally* Property and Asset Management Order.

[252] *See* Property and Asset Management Order.

[253] Kelly Hamilton Final DIP Order ¶ 15.

[254] Kelly Hamilton Final DIP Order ¶¶ F, I.

roll-up—and their effort to relitigate budget allocations already approved—mischaracterizes both the record and the Court's binding findings.

220. The City also suggests the prepayment of the Prepetition Kelly Hamilton Loan improperly benefitted Lynd as an "insider" and chilled the sale process.[255] The record shows otherwise. Lynd was neither an officer, director, nor equityholder of the Debtors; it held no controlling stake. It was retained as property manager for Kelly Hamilton and as asset manager across the broader portfolio shortly before the filings, and continued postpetition on disclosed, Court-approved terms.[256]

221. In sum, the Objectors' challenges to the Kelly Hamilton DIP Facility are untimely, meritless, and foreclosed by this Court's binding orders. The Kelly Hamilton Final DIP Order expressly authorized the prepayment of the Prepetition Kelly Hamilton Loan, approved the budget allocations now attacked, and found that the Kelly Hamilton DIP Facility was the product of good-faith, arm's-length negotiations that provided the Debtors with the best and only practical source of financing.[257] Principles of *res judicata* and finality, as well as the statutory protections of section 364(e), preclude the Objectors from relitigating those findings. Their objections mischaracterize the record, rest on flawed assumptions, and attempt to unwind orders upon which the Debtors, the Kelly Hamilton DIP Lender, and other parties have already relied. For all of these reasons, the Court should overrule the objections in their entirety.

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[255] *See* City Obj. ¶¶ 2, 4–5.

[256] *See* Property and Asset Management Order.

[257] *See* Kelly Hamilton Final DIP Order ¶¶ E, F, G, I, 15, 23.

D. The Court Should Reject the Request to Appoint an Examiner Under Section 1104(c)(1) of the Bankruptcy Code

222. In the City Objection, which was filed a little over one week prior to the Confirmation Hearing, the City requests the appointment of an examiner pursuant to section 1104(c)(1) of the Bankruptcy Code.[258] Such relief is untimely, inappropriate, and should be denied.

1. The City's Request for Appointment of an Examiner Is Untimely

223. Section 1104(c) authorizes the appointment of an examiner only "before confirmation of a plan" and "after notice and a hearing." Similarly, Local Bankruptcy Rule 9013-2(b) requires 21 days' notice for motions, unless shortened pursuant to Local Bankruptcy Rule 9013-2(c), which requires a showing of exigency.[259] Here, the City failed to serve a motion 21 days before the hearing, did not seek an order shortening time under Local Bankruptcy Rule 9013-2(c), and provided no justification for suspending the Local Bankruptcy Rules. With the Confirmation Hearing scheduled for September 4, 2025, the Court cannot appoint an examiner pre-confirmation in compliance with both section 1104(c) and the Local Bankruptcy Rules. Any appointment after confirmation would contravene the statute's express "before confirmation" requirement.[260] On these grounds alone, the City's request should be denied.[261]

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[258] City Obj. ¶¶ 36–37.

[259] Local Bankruptcy Rule 9013-2(b) ("Unless specified elsewhere in these Rules, a motion must be filed and served under Bankruptcy Rule 7004 not later than 21 days before the hearing date.").

[260] 11 U.S.C. § 1104(c) (providing that "at any time *before the confirmation of a plan*, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of an examiner.") (emphasis added).

[261] *See Six W. Retail Acquisition, Inc. v. Loews Cineplex Entm't Corp.*, 286 B.R. 239, 249 (S.D.N.Y. 2002) ("[T]he examiner can only be appointed before confirmation, and a creditor cannot wait until the confirmation hearing to seek an examiner and expect one the be appointed at that time"); *In re Schepps Food Stores, Inc.*, 148 B.R. 27, 30 (S.D. Tex. 1992) (finding waiver where party waited three months, until eve of plan confirmation hearing); Collier on Bankruptcy ¶ 1104.03 ("Failure to make a timely request for the appointment of an examiner may provide the court with a basis for denying the request on the ground of laches."); *compare with In re FTX Trading*

2. The City Did Not Meet Its Burden Under 11 U.S.C. § 1104(c)(1) [262]

224. Even if the City's request was timely (it is not), under section 1104(c)(1) of the Bankruptcy Code, the provision pursuant to which the City moves for relief, the appointment of an examiner is discretionary, and the movant bears the burden[263] to show that "such appointment is in the interests of creditors, any equity security holders, and other interests of the estate."[264] A single creditor group "cannot justify the appointment of an . . . examiner simply by alleging that it would be in its interests."[265] A request to appoint an examiner "must be substantiated with factual support"—not speculation.[266]

Ltd., 91 F.4th 148, 156 (3d Cir. 2024) (appointing examiner when "[w]ithin weeks of the filing of the bankruptcy petitions, the United States Trustee moved for the appointment of an examiner pursuant to 11 U.S.C. § 1104(c)").

[262] The City exclusively requests "the appointment of an examiner pursuant to 11 U.S.C. § 1104(c)(1)." City Obj. ¶¶ 36–37. The Court should not consider the request under section 1104(c)(2) because that section does not apply unless it is specifically raised by a party. *See* 7 Collier on Bankruptcy ¶ 1104.03 ("[W]here the parties do not seek mandatory appointment under section 1104(c)(2) but rather discretionary appointment under section 1104(c)(1), appointment is not mandatory."); *In re Dewey & Leboeuf LLP*, 478 B.R. 627, 636 (Bankr. S.D.N.Y. 2012) ("Section 1104(c)(2) only applies upon a request by a party in interest"). Section 1104(c)(2) is not referenced once in the City's objection. *See generally* City Obj. Accordingly, any request under section 1104(c)(2) is waived and should not be considered by the Court. *See Falcone v. Dickstein*, No. 22-921, 2024 U.S. Dist. LEXIS 210879, *11 (D.N.J. Nov. 20, 2024) ("[A] party forfeits an argument by failing to raise and support it"); *Clermont v. Nat'l Tenant Network, Inc. & Lcij, Inc.*, No. 23-03545, 2024 U.S. Dist. LEXIS 210525, at *5 n.5 (D.N.J. Oct. 3, 2024) (declining to consider argument raised on reply since failure to raise an argument in one's opening brief forfeits it); *see also MZM Constr. Co., Inc. v. New Jersey Bldg. Laborers Statewide Benefit Funds*, 974 F.3d 386, 406 n.13 (3d Cir. 2020) (concluding that when a party first raised an issue at oral argument, it is too late for the court to consider it, and the argument must be forfeited).

[263] *See In re Mondee Holdings Inc.*, No. 25-10047 (JKS) Feb. 27, 2025 Hr'g Tr. at 8:15-17; *In re Allied Nevada Gold*, No. 15-10503 (MFW) Sept. 11, 2025 Hr'g Tr. at 90:8-12.

[264] 11 U.S.C. § 1104(c)(1). Section 1104(c)(1) of the Bankruptcy Code provides that "at any time before confirmation of the plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of an examiner to conduct such an investigation of the debtor as is appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor of or by current or former management of the debtor, *if . . . such appointment is in the interests of creditors, any equity security holders, and other interests of the estate*." 11 U.S.C. § 1104(c)(1) (emphasis added).

[265] *In re Sletteland*, 260 B.R. 657, 672 (Bankr. S.D.N.Y. 2001) (citations omitted).

[266] *In re Gliatech, Inc.*, 305 B.R. 832, 835– 36 (Bankr. N.D. Ohio 2004); *Allied Nevada Gold*, No. 15-10503 (MFW) (Bankr. D. Del. Sept. 11, 2015) Hr'g Tr. 90:6–91:25 (denying examiner motion when much of the "purported evidence [wa]s obviously subject to a lot of different interpretations, and [was] in large part . . . spurious").

225. Here, as described in the Dundon Declaration, the appointment of an examiner would consume scarce resources and is neither warranted by the statute nor supported by the circumstances of these Chapter 11 Cases. The proposed examination would duplicate the Independent Fiduciary's efforts or efforts that will be performed by the Creditor Recovery Trust.[267] The Independent Fiduciary has overseen these Chapter 11 Cases and under the Plan, all potential claims against the Excluded Parties, including Mr. Silber, are preserved and transferred to the Creditor Recovery Trust.[268] Courts routinely reject examiner motions under these circumstances as duplicative, inefficient, and costly.[269]

226. Moreover, section 1104(c) only authorizes "an investigation of the debtor as is appropriate." It does not provide for a roving inquiry into non-debtors or a vehicle to manufacture challenges to final court orders. The City's proposed investigation scope—an open-ended investigation into "any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity" by "current or former management," coupled with probes into "the relationship between Lynd and the Debtors and/or Silber" and whether there is a basis to

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[267] *See In re Silvergate*, No. 24-12158 (KBO) (Bankr. D. Del.), Dec. 19, 2024 Hr'g Tr. at 47:8-12 ("A wide-ranging investigation into current and former director[s], D&Os, and related parties, as requested . . . is inappropriate, given the existence of the debtors' investigation committee and the scope of its current investigation [and] would be unreasonably duplicative").

[268] The statute also cabins an examiner to "an investigation of the debtor," not third parties. 11 U.S.C. § 1104(c).

[269] *See In re Mondee Holdings Inc*., No. 25-10047 (JKS), Feb. 27, 2025 Hr'g Tr. at 11:1-9, 18-24 ("[A]ppointing an examiner to re-investigate the issues being investigated by the independent Restructuring Committee or to oversee that process would be duplicative, inefficient, and costly."); *In re Allied Nevada Gold*, No. 15-10503 (MFW), Sept. 11, 2015 Hr'g Tr. 90:6–91:25; *In re Residential Cap., LLC*, 474 B.R. 112, 121 (Bankr. S.D.N.Y. 2012). The absence of any joinder from other stakeholders further underscores that the relief is not "in the interests" of the estate. *See In re Silvergate*, No. 24-12158 (KBO) Dec. 19, 2024 Hr'g Tr. at 47:24-48:5 ("I see no reason to shift costs of this adversarial process onto the estate and its stakeholders, especially where it is currently very much unclear whether [movant] and other similarly situated common shareholders are even entitled to a distribution in this case and no other priority creditor has joined in their efforts today"); *In re Gliatech Inc*., 305 B.R. 832, 836 (Bankr. N.D. Ohio 2004) (consideration of whether other parties had joined movant's request for an examiner was appropriate in determining the propriety of an examiner's investigation).

"vacate, amend or annul" prior orders—targets non-debtor conduct and invites an impermissible collateral attack on the Court's orders.[270] Thus, the City's request falls outside of section 1104(c), duplicates work preserved for and to be pursued by the Creditor Recovery Trust, and should be denied.[271]

3. If the Court Appoints an Examiner, the Scope Should Be Narrow

227. If, notwithstanding the foregoing, the Court were to appoint an examiner (which it should not), the appointment should be narrow in scope and duration and subject to a limited budget. The Court "retains broad discretion to direct the examiner's investigation, including its scope, degree, duration, and cost."[272] The examiner's appointment should not interfere with the September 24, 2025 outside date for closing the Kelly Hamilton Sale Transaction, and the examiner's total budget should be capped at $20,000 or a *de minimis* amount, with no variance absent further order of the Court. Confirmation and closing of the Kelly Hamilton Sale Transaction should proceed on the existing timetable without awaiting the examiner's report.[273]

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[270] City Obj. ¶ 36.

[271] *In re Mallinckrodt,* No. 20-12522 (JTD) Nov. 22, 2021 Hr'g Tr. at 45:20-46:3 ("[A]ppointing an examiner to investigate these matters would be improper [since] Section 1104(c) very clearly provides for the appointment of an examiner to conduct an investigation of the debtor."); *see also In re Am. Bulk Transport Co.*, 8 B.R. 337, 341 (Bankr. D. Kan. 1980) ("The examiner's primary duty is to investigate and report on the financial position of the debtor, the operation of the debtor's business, and the desirability of the continuance of the business.").

[272] *In re FTX Trading Ltd.*, 91 F.4th at 156 (internal quotations omitted) (citation omitted); *see also Spansion, Inc.*, 426 B.R. at 126 ("[I]t is well-established that the bankruptcy court has considerable discretion in designing an examiner's role.") (citation omitted)).

[273] *In re FTX Trading Ltd.*, 91 F.4th at 156 ("By setting the investigation's parameters, the bankruptcy court can ensure that the examiner is not duplicating the other parties' efforts and the investigation is not unnecessarily disrupting the reorganization process"); *In re Spansion*, 426 B.R. at 126 (explaining that section 1104(c) "was not intended and should not be relied on to permit blatant interference with the chapter 11 case or the plan confirmation process").

E. The Court Should Reject the Request for Class Certification Under Federal Rule of Civil Procedure 23

228. Ms. Bacon asks this Court to certify a class of claimants comprised of tenants of the Kelly Hamilton Property.[274] That request should be denied. It is both procedurally improper and substantively deficient under the governing standards for class certification.

229. Class certification in bankruptcy is governed by Bankruptcy Rule 7023, which incorporates Federal Rule of Civil Procedure 23 ("**Rule 23**").[275] Rule 23, however, does not apply automatically in a main bankruptcy proceeding.[276] Instead, a party may seek class certification only by commencing an adversary proceeding, or, in limited circumstances, by filing a motion under Bankruptcy Rule 9014 to invoke Rule 7023 in a contested matter.[277] Whether to apply Rule 23 rests within the Court's discretion, and courts consistently observe that class claims are disfavored in bankruptcy because "[t]he superiority and efficiency of the bankruptcy claims resolution process over class litigation is well established."[278]

230. When a party seeks class certification in the main case through a contested matter, the Court must first determine whether Rule 23 should apply at all.[279] In making this threshold

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[274] *See* Bacon Obj. ¶¶ 33-39; Bacon Memorandum at 6-11.

[275] Fed. R. Bankr. P. 7023.

[276] *See In re Musicland Holding Corp.*, 362 B.R. 644, 650 (Bankr. S.D.N.Y. 2007) ("Federal Civil Rule 23 does not apply automatically to contested matters"); Fed. R. Bankr. P. 9014(c) (listing which rules apply to bankruptcy contested matters).

[277] *See* 10 Collier on Bankruptcy ¶ 7023.01 (16th ed. 2025).

[278] *Gentry v. Cir. City Stores, Inc.*, 439 B.R. 652, 658 (E.D. Va. 2010); *In re Ephedra Prods. Liability Litig.*, 329 B.R. 1, 9 (S.D.N.Y. 2005) ("superiority of the class action vanishes when the 'other available method' is bankruptcy, which consolidates all claims in one forum and allows claimants to file proofs of claim without counsel and at virtually no cost."); *In re Bally Total Fitness of Greater N.Y.*, 411 B.R. 142, 145 (S.D.N.Y. 2009) ("many of the perceived advantages of class treatment drop away" in a bankruptcy proceeding).

[279] *In re Cir. City Stores, Inc.*, Case No. 08-35653, 2010 Bankr. LEXIS 1774, at *13 (Bankr. E.D. Va. May 28, 2010) ("In order for Bankruptcy Rule 7023 to become applicable, the Court must direct that Bankruptcy Rule 7023 shall apply to the claims filing and objection process.").

determination, courts typically consider three factors: "(1) whether the class was certified prepetition, (2) whether the members of the putative class received notice of the bar date, and (3) whether class certification will adversely affect the administration of the case, especially if the proposed litigation would cause undue delay."[280] Particularly relevant to this analysis are (a) the timing of the certification motion and (b) whether a plan has already been filed, voted on, or confirmed.[281]

231. Ms. Bacon fails to satisfy any of the Musicland Factors. Accordingly, the Court need not reach Rule 23's substantive requirements. First, Ms. Bacon never sought—nor was she ever appointed—as a class representative prepetition. Second, the tenants' Ms. Bacon purports to represent all received notice of the Bar Date Order and had the opportunity to file their own claims. Class claims are disfavored where members received notice of the bar date, because allowing them would effectively nullify that deadline absent a showing of excusable neglect.[282] Permitting tenants to rely on Ms. Bacon's objection as a substitute would undermine the finality of the bar date and circumvent this strict standard. Moreover, no class proof of claim was filed before the bar date. Because the bar date operates as a statute of limitations, any claim now asserted on behalf of a putative class would be untimely and must be disallowed.[283] Third, Ms. Bacon's request

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[280] *In re Musicland Holding Corp.*, 362 B.R. at 654 (the "**Musicland Factors**") (emphasis added); *In re TWL Corp.*, 712 F.3d 886, 893 (5th Cir. 2013); *In re Pac. Sunwear of Cal., Inc.*, No. 16-10882, 2016 Bankr. LEXIS 2579, at *15 (Bankr. D. Del. June 22, 2016). Courts have also emphasized that, although the Bankruptcy Code and Rules provide no express standard, a "pervasive theme is avoiding undue delay in the administration of the case." *In re Motors Liquidation Co.*, 447 B.R. 150, 157, 166 (Bankr. S.D.N.Y. 2011).

[281] *Id*.

[282] *See In re W.R. Grace & Co.*, 398 B.R. 368, 378 (D. Del. 2008) (denying certification because "[a] class action would nullify the bar date without showing excusable neglect").

[283] *In re Grand Union Co.*, 204 B.R. 864, 871 (Bankr. D. Del. 1997) ("[T]he claims bar date operates as a federally created statute of limitations, after which the claimant loses all of her right to bring an action against the debtor."); In re New Century TRS Holdings, Inc., 465 B.R. 38, 52 (Bankr. D. Del. 2012) ("Following passage of the bar

would prejudice the administration of the Debtors' estates. Class litigation in bankruptcy carries the inherent risk of delay, which runs counter to the "pervasive theme" of the Bankruptcy Code: avoiding undue delay in the administration of the estate.[284] Delay is especially prejudicial once a plan is near or post-confirmation.[285]

232. Even if the Court were to find Ms. Bacon's request procedurally proper and warranting a review of Rule 23, it still fails on the merits. Rule 23 permits class certification only if the proponent demonstrates: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims and defenses of the class representative are typical of those of the class; and (4) the representative will fairly and adequately protect the interests of the class.[286] The party seeking class certification bears the burden of establishing that certification is warranted under the circumstances.[287] Ms. Bacon has not carried that burden.

233. First, Ms. Bacon has demonstrated no basis for numerosity. The Kelly Hamilton Property contains 110 units, yet Ms. Bacon is the only tenant to object to the Plan or file proofs of claim. Every tenant received notice of the bar date and had an opportunity to be heard. Indeed,

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date, the debtor should reasonably be able to assume that all claimants needing to be dealt with in the plan have come forward to vindicate their rights").

[284] *In re Pac. Sunwear of Cal., Inc.*, 2016 Bankr. LEXIS 2579, at *14; *see also In re Motors Liquidation Co.*, 447 B.R. at 157.

[285] *Rodriguez v. Tarragon Corp. (In re Tarragon Corp.)*, No. 09-10555 (DHS), 2010 Bankr. LEXIS 3410, at *12 (Bankr. D.N.J. Sep. 24, 2010) ("As [a case] moves toward its conclusion, it is more likely that a delay in resolving the certification issue will interfere with the administration of the estate…[further delaying this request post-confirmation would] "wholly disrupt and undercut the expeditious execution of the Plan").

[286] *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011); *CC Inv'rs Corp. v. Raytheon Co.*, No. 03-114-JJF, 2005 U.S. Dist. LEXIS 6893, at *4 (D. Del. Apr. 22, 2005).

[287] *CC Inv'rs Corp. v. Raytheon Co.*, 2005 U.S. Dist. LEXIS 6893, at *3-4.

tenant claims where only one proof of claim was filed "can be conveniently and expeditiously managed by following normal bankruptcy procedures."[288]

234. Second, Ms. Bacon has failed to establish commonality or typicality. Her objection raises grievances unique to her unit and her personal disputes with management.[289] She has provided no evidence that other tenants experienced the same issues of fact or law. Without such evidence, the claims and defenses she asserts cannot be considered typical of the proposed class. Notably, no other tenant has joined her objection or filed one of their own despite proper notice. The absence of any corroborating filings underscores that her claims are individual, not representative.

235. In short, Ms. Bacon cannot satisfy the requirements of Rule 23. She has failed to establish numerosity, commonality, or typicality, and she is plainly inadequate to represent the interests of other tenants who have not come forward. For these reasons, the Court should deny her request for class certification.

F. The Court Should Overrule the U.S. Trustee's Objection to the Debtor Releases Under the Plan

236. While the Debtors and the U.S. Trustee have resolved several informal objections to the Plan, the U.S. Trustee objects to the releases granted by the Debtors and their Estates pursuant to Article VIII.C of the Plan.[290] Specifically, the U.S. Trustee argues that: (i) it is inappropriate for estate fiduciaries to receive both an exculpation and a release, (ii) the Plan does not establish that each of the Releasing Parties are providing adequate consideration in exchange

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[288] *In re Woodmoor Corp.*, 4 B.R. 186, 189 (Bankr. D. Colo. 1980).

[289] *See* Bacon Obj. ¶¶ 1, 21; Bacon Memorandum Exs. D, E.

[290] *See* U.S. Trustee Objection.

for receiving such releases, and (iii) there are "many individuals and entities included in n the definition of Released Parties that are unknown parties."[291] For the following reasons, the U.S. Trustee Objection should be overruled.

1. Estate Fiduciaries are Entitled to Receive a Release in Addition to an Exculpation

237. The U.S. Trustee takes issue with the estate fiduciaries receiving the Debtor Releases when they "are being exculpated for their actions or inactions between the Petition Date and the Effective Date" under the Plan.[292] As an initial matter, the U.S. Trustee offers no support for this argument. In fact, courts within the Third Circuit have approved releases in favor of exculpated parties—even where such releases were contested.[293] Although some courts have questioned, in dicta, whether it is necessary for fiduciaries to receive both a release and exculpation, those courts have granted both where the record demonstrated that the releases were necessary and the result of substantial contributions.[294]

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[291] U.S. Trustee Obj. ¶ 33.

[292] U.S. Trustee Obj. ¶¶ 26, 33.

[293] *See, e.g.*, *In re BL Santa Fe, LLC*, Case No. 21-11190 [Docket No. 162] (Bankr. D. Del. 2021) (approving uncontested debtor releases defining "released parties" to include, among others, "exculpated parties"); *In re MEA RemainCo Holdings, LLC*, Case No. 20-12088 [Docket No. 508] (Bankr. D. Del. 2021) (same); *In re Chaparral Energy, Inc.*, Case No. 16-11144 [Docket No. 958] (Bankr. D. Del. 2017) (same). This Court has even approved plans that include exculpated parties in the definition of released parties in cases where the U.S. Trustee has objected to the proposed releases. *See, e.g.*, *In re InMarketing Group, Inc.*, Case No. 19-25754 (SLM) [Docket No. 212] (Bankr. D.N.J. 2019) (approving contested debtor releases in favor of exculpated parties where debtors agreed to limit releases to certain of the exculpated parties and filed a revised plan reflecting such compromise); *In re MRPC Christiana LLC*, 18-26567 (SLM) [Docket No. 345] (Bankr. D.N.J. 2018) (approving contested debtor releases defining "exculpated parties" identically with "released parties" where debtors did not file an amended plan or other pleading evidencing a compromise)

[294] *See, e.g.*, *In re Wash. Mut., Inc.*, 442 B.R. at 350 (holding that proposed releases to exculpated debtor professionals did not satisfy *Zenith* factors absent evidence that such parties contributed to debtors' reorganization or that releases were necessary); *In re PWM Property Management LLC*, Case No. 21-11445 (MFW) (Bankr. D. Del. Oct. 31, 2021) (granting debtor releases to estate fiduciaries upon evidence at confirmation hearing that such releases were necessary and the product of substantial contributions). In *PWM*, at the confirmation hearing, the court requested that the debtors remove exculpated professionals from the definition of released parties, stating that it did not "think there's any reason to grant a release that's coterminous with the typical exculpation." Aug. 30, 2022 Hr'g Tr., 35:20-24 [Docket No. 993]. Ultimately, however, upon representations by the plan sponsor

238. Here, it is appropriate for the estate fiduciaries to receive a release, as each party has contributed to the Plan process and waived significant prepetition claims.[295] Further, the estate fiduciaries would not have been willing to take on this matter but for the assurance of obtaining the Debtor Releases given the unique circumstances that led to these Chapter 11 Cases.[296]

239. These Chapter 11 Cases were filed to restructure the Crown Capital Portfolio following Mr. Silber's fraud and conviction. Since September 2024, estate professionals have worked diligently to revitalize the Crown Capital Portfolio—a challenging endeavor due to the severe mismanagement and neglect attributable to Mr. Silber and his co-conspirator.[297] As a result of this history, it is particularly appropriate for the estate fiduciaries to be granted a release as well as an exculpation. In accordance with applicable law, the exculpations provided under the Plan apply to conduct throughout these Chapter 11 Cases.[298] However, the estate fiduciaries and professionals have been working on this matter before the Petition Date and were appointed in the midst of extreme turmoil. The Debtor Releases are therefore necessary to protect the Released Parties from potential claims arising prior to the Petition Date that stem from no fault of their own, but rather from Mr. Silber's misconduct. Without these releases, fiduciaries and professionals who played no role in the fraud could nonetheless face ongoing litigation related to Mr. Silber's actions. Accordingly, the Debtor Releases should be approved as to these parties.

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that such debtor releases were necessary and the product of substantial contributions, the court granted the releases to estate fiduciaries but explicitly noted that its confirmation order was not to be used as persuasive authority. *Id.* at 39:1-5.

295 *See supra* § III.E.2

296 *Id.*

297 *See* First Day Declaration at 5.

298 *See In re Wash. Mutual*, 442. B.R. at 348.

2. Estate Fiduciaries are Entitled to Receive a Release in Addition to an Exculpation

240. As explained above in Section III.E.2 herein, all estate fiduciaries and professionals are entitled to the Debtor Releases because (1) an identity of interest between the parties exists; (2) each party has made a substantial contribution to the plan; (3) the Debtor Releases are necessary to the reorganization; and (4) the Plan and Debtor Releases have received overwhelming acceptance by creditors and interest holders.

3. The Scope of Debtor Releases is Appropriate

241. The U.S. Trustee briefly notes that the Debtor Releases are improper to the extent that "unknown parties" are included in the definition of Released Parties.[299] But that is not the case. Instead, the releases extend only to narrowly defined categories of parties affiliated with the primary Released Parties—namely, current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals. The U.S. Trustee offers no additional support or explanation for its objection. This Court has previously approved plans that included debtor releases in favor of similarly situated parties.[300]

242. Further, the unique facts and circumstances leading up to the Chapter 11 Cases, discussed above (*see supra* at ¶¶ 3-11), support the inclusion of related parties of the Kelly Hamilton Purchaser, the Asset Manager, the Property Manager, the Kelly Hamilton DIP Lender,

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[299] U.S. Trustee Obj. ¶ 26.

[300] *See, e.g.*, *In re InMarketing Group, Inc.*, Case No. 19-25754 (SLM) [Docket No. 212] (Bankr. D.N.J. 2019) (approving contested debtor releases and resolution of similar objection by the U.S. Trustee where debtors agreed to limit releases to certain parties); *id.* [Docket No. 207] (such revised releases were limited to "Alan Traiger, David Weiss (the two Holders of Equity Interests) (collectively, the "Principals"), the DIP Lenders, the 2018 Lenders, the Creditors' Committee, each member of the Creditors' Committee, ***and their respective financial advisors, attorneys, and other professionals***.") (emphasis added).

and the Noteholders (such named parties, the "**Primary Released Parties**"), including their "representatives" and "other professionals" for purposes of the Debtor Releases.[301] As described above (*see supra* ¶¶ 129–146), each Primary Released Party is entitled to the Debtor Releases under the standard set forth in *Zenith*. Each has worked constructively with the Debtors to facilitate their efforts during these cases, both before and after the Petition Date, and has made substantial contributions to the Debtors' Estates—whether through their roles in financing these Chapter 11 Cases, waiving certain claims against the Debtors, advancing the Plan process, supporting the Kelly Hamilton Sale Transaction, or assisting in the overall administration of the cases. These critical efforts would not have been possible without the support of their respective representatives, professionals, and other related parties. Without the inclusion of these related parties in the Debtor Release, the Primary Released Parties would not have agreed to support the Plan. Accordingly, the *Zenith* analysis justifying the Debtor Releases for each Primary Released Party likewise supports extending those releases to their affiliated representatives, professionals, and related parties. For the reasons set forth above, the Debtor Releases should extend to all Released Parties, including the estate fiduciaries, their respective representatives, professionals, and other related parties identified therein.

Reservation of Rights

243. The Debtors reserve all rights with respect to the subject matter of this Response, including, without limitation, the right to amend or supplement this response or the arguments made herein at the Confirmation Hearing. The Debtors also reserve all rights, claims and causes of action against the Objectors, including in connection with the matters set forth herein.

[301] *See* Plan Art. I.A.114 (defining "Released Party").

Conclusion

244. For the reasons set forth herein, the Debtors respectfully request that the Court overrule the Objections, provide final approval of the Disclosure Statement, and confirm the Plan for Debtors CBRM Realty Inc., Kelly Hamilton Apts LLC, and Kelly Hamilton Apts MM LLC.

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Dated: September 2, 2025
New York, New York

Respectfully submitted,

/s/ *Andrew Zatz*

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Exhibit A

Objection Summary Chart

***In re CBRM Realty Inc., et al.*, No. 25-15343 (MBK)**

Objection Summary Chart[1]

The chart contained in this Exhibit summarizes each objection filed and the Debtors' response to such objection. The objections have been categorized by the issues raised. The Debtors are simultaneously negotiating with the Objectors in good faith to resolve many of the objections consensually and are also evaluating whether any objections can be narrowed.

Issue Description	Objecting Party	Objection Summary	Debtors' Response
1. The Kelly Hamilton Purchaser's Credit Bid	Chardell Bacon [Docket No. 453]	The Kelly Hamilton Purchaser's credit bid authorized by the Kelly Hamilton Purchase Agreement improperly chilled bids for the Kelly Hamilton Property. ¶¶ 30-31; 45, 49, 50-51.	The "bid-chilling" argument is, in substance, an attack on (i) the DIP Facility, (ii) credit-bid rights, (iii) bid protections, and (iv) the bidding process and sale timeline. Each was disclosed, noticed, litigated, and approved in this Court's Kelly Hamilton Final DIP Order and Bidding Procedures Order. Thus, this argument is an impermissible collateral attack on final, non-appealable orders of this Court. *See* § IV.A. There is no evidence of collusion, concealment, or process manipulation. To the contrary, the Debtors properly marketed the Kelly Hamilton Property in order to obtain the highest and best offer in good faith and in accordance with the Bidding Procedures Order. *See* § IV.A.
	City of Pittsburgh [Docket No. 455]	The Kelly Hamilton Purchaser's credit bid authorized by the Kelly Hamilton Purchase Agreement improperly chilled bids for the Kelly	The "bid-chilling" argument is, in substance, an attack on (i) the DIP Facility, (ii) credit-bid rights, (iii) bid protections, and (iv) the bidding process and

[1] Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Memorandum, the *Amended Joint Chapter 11 Plan of CBRM Realty Inc. and Certain of Its Debtor Affiliates* [Docket No. 469] (including all exhibits and supplements thereto and as may be modified, amended, or supplemented from time to time, the "**Plan**"), the *Disclosure Statement for the Joint Chapter 11 Plan of CBRM Realty Inc. and Certain of Its Debtor Affiliates* [Docket No. 360, Ex. A] (including all exhibits thereto and as may be modified, amended, or supplemented from time to time, the "**Disclosure Statement**"), or the *Order (I) Conditionally Approving the Adequacy of the Information Contained in the Disclosure Statement, (II) Approving the Solicitation and Voting Procedures with Respect to Confirmation of the Plan, (III) Approving the Form of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates with Respect Thereto, and (V) Granting Related Relief* [Docket No. 347] (the "**Disclosure Statement Order**"), as applicable.

Issue Description	Objecting Party	Objection Summary	Debtors' Response
		Hamilton Property. ¶¶ 5, 25, 31, 35.	sale timeline. Each was disclosed, noticed, litigated, and approved in this Court's Kelly Hamilton Final DIP Order and Bidding Procedures Order. Thus, this argument is an impermissible collateral attack on final, non-appealable orders of this Court. *See* § IV.A. There is no evidence of collusion, concealment, or process manipulation. To the contrary, the Debtors properly marketed the Kelly Hamilton Property in order to obtain the highest and best offer in good faith and in accordance with the Bidding Procedures Order. *See* § IV.A.
2. Uses of the Kelly Hamilton DIP Facility	Chardell Bacon [Docket No. 453]	The Kelly Hamilton DIP Facility was improperly used for purposes other than to service and maintain the Kelly Hamilton Property, including to pay prepetition loans incurred by the Kelly Hamilton Debtor. ¶¶ 27, 46.	The sources and uses of proceeds from the Kelly Hamilton DIP Facility were approved by the Court after notice and a hearing in the Kelly Hamilton Final DIP Order. In the Kelly Hamilton Final DIP Order, the Court expressly found that (i) no more favorable financing was available, (ii) the DIP Facility was negotiated in good faith and was fair and reasonable, and (iii) the financing was necessary to prevent immediate and irreparable harm to hundreds of HUD-subsidized tenants. *See* § IV.C. In any event, the allocation of proceeds reflected the Debtors' sound business judgment and the realities of these Chapter 11 Cases. The prepayment of the Prepetition Kelly Hamilton Loan was a bargained-for condition of obtaining new money; professional and administrative expenses were necessary to stabilize the estates and preserve value; and the capital expenditures were tailored to address urgent operational needs. *See* § IV.C.

Issue Description	Objecting Party	Objection Summary	Debtors' Response
	City of Pittsburgh [Docket No. 455]	The Kelly Hamilton DIP Facility was improperly used for purposes other than to service and maintain the Kelly Hamilton Property, including to pay professional fees. ¶¶ 25-26.	The sources and uses of proceeds from the Kelly Hamilton DIP Facility were approved by the Court after notice and hearing, and the Court expressly found that (i) no more favorable financing was available, (ii) the DIP Facility was negotiated in good faith and was fair and reasonable, and (iii) the financing was necessary to prevent immediate and irreparable harm to hundreds of HUD-subsidized tenants. *See* § IV.C. In any event, the allocation of proceeds reflected the Debtors' sound business judgment and the realities of these Chapter 11 Cases. The prepayment of the Prepetition Kelly Hamilton Loan was a bargained-for condition of obtaining new money; professional and administrative expenses were necessary to stabilize the Estates and preserve value; and the capital expenditures were tailored to address urgent operational needs. *See* § IV.C.
	City of Pittsburgh [Docket No. 455]	The use of proceeds from the Kelly Hamilton DIP Facility to pay the Prepetition Kelly Hamilton Loan was an improper roll-up and not adequately disclosed to the Court. ¶¶ 2, 4-5, 27-28, 31, 35.	The use of proceeds from the Kelly Hamilton DIP Facility to pay the Prepetition Kelly Hamilton Loan was approved by the Court after notice and a hearing. Thus, this is an impermissible, collateral attack on the Final DIP Order. *See* § IV.C. In any event, the sources and uses of the Kelly Hamilton DIP Facility was expressly disclosed in the Kelly Hamilton DIP Motion and Approved Budget attached to the Kelly Hamilton Interim DIP Order and Kelly Hamilton Final DIP Order. Furthermore, the prepayment of the Prepetition Kelly Hamilton Loan was not a "roll-up," which typically involves converting prepetition unsecured claims into postpetition superpriority debt. Rather, it

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			was the prepayment of an existing secured loan, negotiated at arm's length and expressly authorized by this Court as part of the best available financing for the Debtors. The identity of the Prepetition Kelly Hamilton Lender was not concealed and was made transparent in the record, discussed at the hearings, and approved by this Court. *See* § IV.C.
3. The Kelly Hamilton Sale Transaction	City of Pittsburgh [Docket No. 455]	The Plan may not have been proposed in good faith under section 1129(a)(3) because it includes the Kelly Hamilton Sale Transaction which may have been the result of impermissible bid chilling. ¶¶ 5, 25, 31, 35.	The City ignores the Court-approved bidding process and lacks any evidentiary support. In accordance with section 1129(a)(3) of the Bankruptcy Code, the Debtors' Plan is a culmination of a transparent, Court-supervised process designed to maximize value for creditors while preserving affordable housing for tenants. As described in the Dundon Declaration, the Kelly Hamilton Sale Transaction resulted from arms' length negotiations conducted pursuant to Court-approved bidding procedures. Interested parties were provided with meaningful diligence access; and the sale timeline and procedures were established by the Court order. All parties had a full and fair opportunity to participate. The City's allegation that the Plan was not proposed in good faith due to alleged bid chilling is contrary to both the record and this Court's prior findings approving the bidding procedures. *See* § IV.A.
	City of Pittsburgh [Docket No. 455]	To the extent the Kelly Hamilton Sale Transaction is approved, the City requests that it be conditioned upon the Debtors and the property manager correcting the problems at the Kelly Hamilton Property and satisfying a city inspection. ¶¶ 7, 32, 33, 34	The City's requested relief is neither required by the Bankruptcy Code nor appropriate on this record, and if granted, would improperly inject a new condition precedent that risks derailing a HUD-regulated transaction that the Plan already conditions on HUD approval.

Issue Description	Objecting Party	Objection Summary	Debtors' Response
			The Debtors and, after closing, the Kelly Hamilton Purchaser are willing to cooperate in good faith to facilitate lawful access to the Kelly Hamilton Property, but the City's ability to inspect cannot be converted into an inappropriate closing condition or approval right. Nothing in the Plan, Confirmation Order, or Kelly Hamilton Purchase Agreement impairs the City's police and regulatory powers, which remain fully preserved under applicable law. *See* § IV.A.
	City of Pittsburgh [Docket No. 455]	Lynd is an insider of the Debtors as there is an indication that Lynd exerted at least some degree of control and influence over the Debtors and their operations and the Court should therefore scrutinize the sale. ¶¶ 19, 29.	This issue has already been resolved by the Kelly Hamilton Final DIP Order and any attempt to relitigate this issue must be rejected. In any event, the City's allegation that Lynd[2] is an insider of the Debtors is unsupported. First, Lynd has not served as a director, officer, person in control, or general partner of the Debtors and thus, Lynd is not a statutory insider under section 101(31) of the Bankruptcy Code. Second, Lynd has not exercised the requisite degree of control over the Debtors to constitute a non-statutory insider. The fact that Lynd provided financing and management services does not render it an insider. *See* § IV.A, IV.C.
	Chardell Bacon [Docket No. 453]	The Plan provides that neither the Kelly Hamilton Purchaser nor any of its Affiliates shall be deemed to be a successor to the Debtors but that provision ignores that the Stalking Horse Bidder will act, in all respects, as successor to the Kelly Hamilton Debtors for the purposes of	Although the Kelly Hamilton Purchaser intends to purchase the Kelly Hamilton Property, the Kelly Hamilton Purchaser is not a successor to, continuation of, or alter ego of the Debtors. The Kelly Hamilton Purchaser will not acquire all assets and business of the Debtors, nor assume any

[2] The City broadly defines all Lynd entities as "Lynd," arguing that all of these entities are insiders of the Debtors, despite the fact that different Lynd entities serve as the Debtors' property manager and asset manager, and that the Kelly Hamilton DIP Lender is a separate joint venture entity between a Lynd entity and 3650 REIT.

Issue Description	Objecting Party	Objection Summary	Debtors' Response
		assuming the HAP Contract and managing the portfolio. ¶ 42.	liabilities of the Debtors other than those expressly designated in the Kelly Hamilton Purchase Agreement. The Kelly Hamilton Purchaser will also not hold itself out to be the continuation of the Debtors' business. *See* § IV.A.
	Chardell Bacon [Docket No. 453]	The Court should delay confirmation of the Plan for ninety days in order to allow Ms. Bacon, along with other interested parties, to submit a competing bid for the Kelly Hamilton Property. ¶ 31.	As set forth in the Dundon Declaration, a three-month delay in confirming the Plan would be catastrophic and value-destructive to the Debtors' estates and to creditors' recoveries. Delay of confirmation would violate the milestones set forth in the Kelly Hamilton Final DIP Order, jeopardize financing and estate liquidity, and risk termination of the Kelly Hamilton Purchase Agreement and conversion to chapter 7. No party has offered financing that could bridge the Debtors to a later confirmation date. *See* § IV.A.
4. Debtor Releases	United States Trustee [Docket No. 460]	The Debtors have not established that each of the proposed Released Parties are providing adequate consideration in exchange for receiving a release and the *Zenith* factors do not support the Debtor Releases. ¶¶ 25–32.	For the reasons set forth in the Dundon Declaration, the *Zenith* factors support approval of the Debtor Releases for each of the Released Parties. The Debtor Releases are fair, reasonable, narrowly tailored, supported by the requisite amount of creditors, and in the best interests of the Debtors' Estates. The Debtors' agreement to provide the Debtor Releases as an exercise of the Debtors' business judgment is in the best interests of all stakeholders and is an integral part of the Plan. *See* § IV.F.
	United States Trustee [Docket No. 460]	The Debtors' estate fiduciaries should only be granted an exculpation and not a release from the Debtors. ¶ 33.	The Debtor Releases and exculpation provisions are appropriate and well-supported. It is appropriate for estate fiduciaries to be released because, among other things, each has provided critical contributions to the plan process and waived significant prepetition claims. The Debtor Releases for estate fiduciaries is especially appropriate in these Chapter

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			11 Cases given the change of control that occurred following Mr. Silber's conviction. *See* § IV.F.
5. Feasibility of the Plan	Chardell Bacon [Docket No. 453]	The Plan is not feasible under section 1129(a)(11) of the Bankruptcy Code because (i) the Debtors likely cannot attain HUD approvals to consummate the Kelly Hamilton Sale Transaction and (ii) the Kelly Hamilton Purchase will be unable to comply with the HAP Contract and HUD regulations. ¶¶ 41, 43-45, 47-48, 51-52, 54.	Section 1129(a)(11) of the Bankruptcy Code does not require that every third-party consent be in hand on the date of the Confirmation Hearing or that the purchaser's future operations be risk-free or optimal in every respect—it only requires that there is a reasonable assurance that confirmation will not be followed by liquidation or further reorganization, except as proposed by the plan. The Debtors have satisfied this "relatively low threshold of proof." *See In re Prussia Assocs.*, 322 B.R. 572, 584 (Bankr. E.D. Pa. 2005). *See* § IV.B. The Plan's implementation provisions, funding sources, wind-down framework, and distribution mechanics all support a finding that confirmation will not be followed by the need for further reorganization. Rather, the Plan lays out a clear, practical, and fully articulated path to (i) consummate the Kelly Hamilton Sale Transaction, (ii) administer and distribute remaining assets, including through the Creditor Recovery Trust), and (iii) promptly close these Chapter 11 Cases. *See* § IV.B.
6. Class Certification	Chardell Bacon [Docket No. 453]	Tenants of the Kelly Hamilton Property should be allowed to form a class for purposes of objecting to the Plan because Ms. Bacon and similarly-situated tenants satisfy the class certification requirements of Federal Rule of Civil Procedure 23, applicable to these proceedings via Federal Rules of Bankruptcy Procedure 9014(c) and 7023. ¶¶ 32-29.	Ms. Bacon's request for class certification should be denied. It is both procedurally improper and substantively deficient under the governing standards. Class certification in bankruptcy is governed by Bankruptcy Rule 7023, which incorporates Federal Rule of Civil Procedure 23, but Rule 23 does not automatically apply in contested matters under Bankruptcy Rule 9014. A party may invoke Rule 7023 only with leave of the Court, and

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			courts consistently caution that class claims are disfavored in bankruptcy given the efficiency and finality of the claims resolution process. *See* § IV.E. Even if the Court applied Rule 23 (it should not), Ms. Bacon has not met the substantive prerequisites for certification. She has failed to demonstrate numerosity, as she is the only tenant who filed a proof of claim or objected to the Plan despite notice to all tenants. Nor has she shown commonality or typicality, since her allegations concern grievances specific to her unit and personal disputes with management rather than issues common to other tenants. In short, Ms. Bacon has not satisfied Rule 23's requirements, and her request for class certification must be denied. *See* § IV.E.
7. Examiner Appointment	City of Pittsburgh [Docket No. 455]	An examiner should be appointed in these Chapter 11 Cases pursuant to section 1104(c)(1) of the Bankruptcy Code. ¶¶ 36-37.	Appointment of an examiner now is unnecessary and counterproductive: these Chapter 11 Cases have been run under the supervision of an Independent Fiduciary (in addition to the U.S. Trustee and this Court) through a transparent, court-approved sale and confirmation process. The Plan also carves out Excluded Parties from the releases and channels preserved claims to the Creditor Recovery Trust, providing a proper post-Effective Date vehicle for any investigation or pursuit of Causes of Action that are not released under the Plan without the cost and delay of an examiner. Finally, there are no available funds to pay an examiner under the Approved Budget attached to the Kelly Hamilton Interim DIP Order and Kelly Hamilton Final DIP Order. Imposing an examiner to potentially serve after confirmation of the Plan

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			would only serve to erode creditor recoveries and should be denied. *See* § IV.D.