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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re: POOLIN TECHNOLOGY PTE. LTD., *et al.*,[1] Debtors.	Case No. 26-18325 (EJO) Chapter 11 Judge: Hon. Eamonn J. O'Hagan (Jointly Administered)

OBJECTION OF CES ACQUISITIONS LLC TO THE PROPOSED SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS

CES Acquisitions LLC ("CES"), an affiliate of Crusoe, Inc. (together with its affiliates, "Crusoe"), a party in interest and a Potential Bidder, by and through its undersigned counsel, hereby submits this objection (the "Objection") to the Debtors' proposed sale of substantially all of their assets to Hut 8 Corp. ("Hut 8") pursuant to the Sale Motion [ECF Nos. 12, 30], the

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Poolin Technology Pte. Ltd., a Singapore Private Limited Company; Lonestar Dream Inc. (5105); and Lonestar Taproot LLC (4118). The location of the Debtors' service address for purposes of these Chapter 11 Cases is: c/o Michael DuFrayne, CRO, 2564 US Highway 1, PMB #16884166, Lawrence, NJ 08648.

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Amended Notice of Auction Results [ECF No. 239], and the Supplemental Declaration of Michael DuFrayne [ECF No. 240] (the "Supp. DuFrayne Decl."), and in further support of CES's Limited Joinder [ECF No. 227] (the "Joinder").[2] In support, CES relies on the Certification of Auden Menke (the "Menke Cert.") and the Certification of Bharath Kumar Ravulapati (the "Ravulapati Cert."), each filed contemporaneously herewith, and respectfully states as follows:

PRELIMINARY STATEMENT

1. While CES did not participate in the Auction,[3] it has informed counsel for the Debtors and for the Official Committee of Unsecured Creditors (the "Committee") that it can deliver a higher, better, and safer offer for substantially all of the Debtors' assets than the bids the Debtors have designated as the winning bids of Hut 8. The salient terms of the CES asset purchase agreements attached as Exhibits A and B (the "CES Sale Agreements"), and redlined against the Hut 8 agreements at Exhibit, are these: (a) the CES Sale Agreements provide for a total purchase price of $155 million, against $140 million under the Hut 8 agreements; (b) they provide for a two-tier payment, the first tier of which, $80 million, is not contingent on the ERCOT Batch Zero verification on which the Hut 8 agreements are conditioned; (c) subject to relatively minor contingencies, CES can close and pay the $80 million on or before November 30, 2026, so that even if the ERCOT condition is never met the estate has far more certainty of receiving at least $80 million; and (d) upon the same ERCOT verification the Hut 8 agreements require, CES will pay an additional $75 million, on a window that runs to September 15, 2027, six (6) months past

[2] Capitalized terms not defined in this Objection have the meanings given to them in the Court's order approving bidding procedures [ECF No. 138] (the "Bid Procedures Order") and in the Bidding Procedures attached to that order as Exhibit 1 (the "Bidding Procedures").

[3] CES is an affiliate of Crusoe, Inc. (together with its affiliates, "Crusoe"), an AI infrastructure company with more than 1,000 employees. While the Debtors notified a member of Crusoe's energy team of the sale process in April and August 2026, the executives interested in pursuing the opportunity remained unaware of it until August 31, 2026, eight days before the Bid Deadline. Once they learned of it, they engaged counsel, signed the Debtors' non-disclosure and access agreements on September 2, worked through the data room over Labor Day weekend, and on September 8 asked the Debtors for a short diligence period so that they could bid; they were told that a one-day adjournment was the most that might be available. Menke Cert. ¶¶ 5 to 15. Since the Auction, CES has worked continuously on its offer, informed Debtors' counsel and Committee counsel of it, obtained the support of Crusoe's Investment Committee, and prepared the agreements attached here. *Id.* ¶¶ 15 to 16, 23.

Hut 8's last closing date. Menke Cert. ¶¶ 16 to 21. CES is prepared to proceed on those terms if the Court exercises its equitable powers to allow the Debtors' estates and creditors to achieve the true value of the assets, and it respectfully asks the Court to do equity by reopening the sale process not only to CES but to any other Qualified Bidder.

2. Clearly, based on CES's bid, the sale process has yet to produce the highest or best price for these Assets. The Auction closed on September 10 with a winning bid of $180 million from the Stalking Horse Bidder and a back-up bid of $179 million from Hut 8; the transaction now proposed is $140 million, negotiated with Hut 8 in the nine (9) days after the Auction closed. Supp. DuFrayne Decl. ¶¶ 18, 26 to 33. Moreover, multiple other bidders who participated in the Auction have taken issue with how it was conducted and how the winning bids were chosen. The Stalking Horse Bidder, both Back-Up Bidders, another prospective purchaser, and two (2) creditors have objected to the way that result was reached, and the Stalking Horse Bidder says it may have bid more than $140 million had it been offered the terms on which Hut 8 was selected. Thor Supp. Obj. at 2, ¶¶ 24 to 27 [ECF No. 243]; Digipower Obj. [ECF No. 244]; PID Obj. [ECF No. 248]; AI Obj. [ECF No. 221]; AI Supp. Obj. [ECF No. 250]; Liang Joinder [ECF No. 225]; Leong Joinder [ECF No. 223]. CES will bid more. On that record the highest or otherwise best bid has not been identified, and the market has shown that substantial value remains to be had: a $52 million stalking horse bid became $180 million in twelve hours of bidding, and multiple bidders remain engaged. First Day Decl. ¶ 56 [ECF No. 2]; Supp. DuFrayne Decl. ¶¶ 12, 18. Based upon the present record, the Court cannot and should not approve the Hut 8 bid as the highest and best offer.

3. As the events surrounding this sale process have unfolded, there is no urgency that requires a different answer. Whatever the reasons for the expedited schedule the Debtors proposed in August, there is no melting ice cube. In fact, the transaction before the Court cannot close before December 15, 2026, may be extended by the Debtors to March 15, 2027, and is conditioned on an ERCOT approval the Debtors expect on or about December 10. Hut 8 Tarbush APA §§ II.1, VII.2(e) [ECF No. 247]; Supp. DuFrayne Decl. ¶ 24. If that approval does not come, Hut 8 may

terminate and recover its deposit, and the estate receives nothing. Hut 8 Tarbush APA § VIII.1(c) to (d). The approval is a first-of-its-kind ERCOT process whose schedule has slipped repeatedly since August, and the December 10 date is the planned date of an eligibility report, not the 176 MW confirmation Hut 8 requires, which is not expected before March. Ravulapati Cert. ¶¶ 6 to 16. The Debtors' counsel said as much at the Auction, telling the bidders that if the final power approval comes through "by a date certain, whether it's November 30 or December 10 or whatever the date is," he was "not sure how we would go to closing with you prior to that." Auction Tr. at 68 [ECF No. 240-1]. No transaction on file closes before the Debtors' land option lapses, and nothing about that option turns on whether this sale is approved on September 29. A short reopened sale process, comparatively speaking, costs the estate nothing it has not already given up; approving the lower price costs it the difference. And because a closing under the proposed sale could not realistically occur before the first quarter of 2027, every month between approval and closing adds post-petition claims and costs that diminish any recovery to creditors.

4. The Court has the authority, under its equitable powers found in section 105(a) of the Bankruptcy Code, to decline approval and reopen bidding. Before a sale order is entered, a bankruptcy court has broad discretion to weigh a better offer in hand against the interests of finality, and it may decline to approve a proposed sale in favor of a reopened process even where the offer came late and the procedures were followed. *In re Stanley Eng'g Corp.*, 164 F.2d 316, 318 to 320 (3d Cir. 1947); *In re Penn Cent. Transp. Co.*, 356 F. Supp. 285, 287 (E.D. Pa. 1973); *In re Edwards*, 228 B.R. 552, 561 to 562 (Bankr. E.D. Pa. 1998); *In re Broadmoor Place Invs., L.P.*, 994 F.2d 744, 746 (10th Cir. 1993). That discretion is at its broadest where, as here, no sale order has been entered, the procedures reserved the Debtors' right to reject any bid until one is, the Auction's own result was not adopted, the disparity is substantial, and several bidders stand ready to compete. It is what the Stalking Horse Bidder itself asks for. Thor Supp. Obj. at 7.

5. CES therefore respectfully requests that the Court (i) decline to approve the Hut 8 transaction on the present record; (ii) reopen bidding on a short, defined schedule, with an auction within seven days and CES's agreements, or any other bid the Debtors and the Committee

designate, as the baseline; and (iii) set a Sale Hearing promptly thereafter and in any event before December 10, 2026. In the alternative, CES requests that the Sale Hearing be adjourned for twenty-one (21) days to permit the Debtors and the Committee to evaluate CES's agreements and CES to complete the diligence that would remove its remaining conditions. CES reserves all rights.

STATEMENT OF FACTS

A. CES's Proposed Bid

6. CES submits with this Objection its proposed asset purchase agreements for the Tarbush Assets (the "CES Tarbush APA," Exhibit A) and the Pyote Assets (the "CES Pyote APA," Exhibit B, and together the "CES APAs"), together with redlines of each against the corresponding Hut 8 agreement (Exhibit C). Menke Cert. ¶ 16. The aggregate purchase price is $155,000,000: $40,000,000 in cash at closing for the Pyote Assets, $40,000,000 in cash at closing for the Tarbush Assets (the "Closing Purchase Price"), and $75,000,000 more for the Tarbush Assets (the "Additional Purchase Price"), payable at closing if the approvals in Section VII.4 of the CES Tarbush APA (the "Power Conditions") are satisfied by then, and otherwise within five business days after they are satisfied at any time through September 15, 2027. CES Tarbush APA §§ I.6, VII.4; CES Pyote APA § 1.6; Menke Cert. ¶ 17. The Power Conditions are the same approvals on which Hut 8's entire transaction is conditioned. They do not condition CES's obligation to close or to pay the $80,000,000 due at closing. *Compare* CES Tarbush APA § VII.4 *with* Hut 8 Tarbush APA § VII.2(e) [ECF No. 247].

7. The CES APAs close together on or before November 30, 2026, and CES plans to deliver good faith deposits of 7.5 percent of the aggregate purchase price, $11,625,000, the same percentage Hut 8 posted, in connection with any reopened auction. CES Tarbush APA §§ I.6(a), II.1, VII.2(i); CES Pyote APA §§ 1.6(a), 2.1; Menke Cert. ¶¶ 18 to 19.

8. CES's closing conditions are: a site for the Tarbush load, satisfied either by the parcel adjoining the Tarbush Site on which the Debtors hold a purchase option (the "Adjacent Property"), through an assignment of the Debtors' option rights on the terms Hut 8's agreement provides, or by a ground lease of a proximate parcel that CES is negotiating with its owner, who

has indicated interest, either of which serves CES's purposes; written confirmation from Texas-New Mexico Power ("TNMP") that firm delivery capacity of not less than 46 MW at Tarbush and 54 MW at Pyote is available to the existing load for data center use, free of any condition requiring transmission upgrades or further approval, with acceptance of CES as successor for that load and assignment of the power agreements; and customary conditions as to performance, representations, governmental approvals, third-party consents, title, the absence of a material adverse change, and the absence of any new law or moratorium specifically restricting data center development at the sites. CES Tarbush APA § VII.2; CES Pyote APA § 7.2; Menke Cert. ¶¶ 20 to 21. Neither agreement conditions closing on the Batch Zero eligibility verification. The TNMP confirmation concerns load that is already interconnected and energized, confirms only that a change in the computing behind an existing meter leaves the interconnection intact, and, in Crusoe's recent experience with the same confirmation, takes a few weeks. Ravulapati Cert. ¶ 18. The CES Pyote APA also carries confirmatory real estate conditions relating to zoning, water, environmental matters, easements, and mineral rights that CES could not complete in the three (3) days it had before the Bid Deadline, and the CES Tarbush APA carries a mineral-rights condition for the Adjacent Property; those conditions reflect the requirements of insurers and lenders, which are the same for every buyer of these Assets, the other bidders have likely already conducted the same diligence, and CES anticipates that most, if not all, of those conditions will be eliminated if the process is extended for three (3) weeks. CES Pyote APA § 7.2(m) to (q); CES Tarbush APA § VII.2(e); Menke Cert. ¶ 21. CES does not ask the Debtors to assume or exercise the option for its benefit; whatever the Debtors do with it, CES will close on the better of its two options.

9. The structure differs from the Hut 8 transaction in each scenario. If the Batch Zero verification confirms the 176 MW allocation on the Debtors' expected schedule, the estate receives $155,000,000 from CES against $140,000,000 from Hut 8; if it does so after December 15, 2026 but before March 15, 2027, $155,000,000 against $140,000,000 less Hut 8's extension reductions; if it does so between March 15 and September 15, 2027, $155,000,000 from CES and nothing from Hut 8, which may by then have terminated; and if it never does, Hut 8 recovers its deposit

and the estate keeps CES's $80,000,000. Hut 8 Tarbush APA §§ II.1, VII.2(e), VIII.1; CES Tarbush APA §§ I.6, VII.2, VII.4, VIII.1; CES Pyote APA §§ 1.6, 7.2, 8.1.

10. On September 25, 2026, Crusoe's Investment Committee unanimously expressed its support for pursuing the acquisition on these terms, and Crusoe's executive team has authorized CES to submit this Objection. Menke Cert. ¶ 22. CES's obligations carry no financing condition; CES provided evidence of its financial capability to the Debtors by September 4, 2026, when it became a Potential Bidder; and it will provide further evidence to the Debtors, the Committee, and the Court in camera on request. CES Tarbush APA § IV.9; Bidding Procedures § I.A.3; Menke Cert. ¶¶ 8, 23. CES is prepared to fund the $1,500,000 payment to DBR Land LLC at closing, to assume the purchaser's obligations under the stipulation approved at ECF No. 190, and to participate in any reopened process on the schedule the Court sets, and its declarants will be available at the Sale Hearing. Menke Cert. ¶¶ 24 to 25; Ravulapati Cert. ¶ 19.

B. CES and the Auction

11. Crusoe is a vertically integrated AI infrastructure company founded in 2018 that develops, builds, and operates data centers, with more than one gigawatt of capacity delivered and a 1.2-gigawatt campus under development in Abilene, Texas; on September 17, 2026, it announced the initial closing of a $3.9 billion Series F round. Menke Cert. ¶¶ 3 to 4. CES did not participate in the Auction. The Crusoe executives with authority to pursue an acquisition of this kind learned of the sale on August 31, 2026, eight (8) days before the Bid Deadline, and moved immediately: by September 2 they had signed the Debtors' non-disclosure and access agreements, by September 3 they were in the data room, and over Labor Day weekend they reviewed roughly 300 files, retained bankruptcy counsel, and prepared marked asset purchase agreements. *Id.* ¶¶ 5 to 10. What they could not do in three (3) days was complete the diligence needed to commit to a binding purchase with no diligence period. *Id.* ¶ 11. On September 8, before the Bid Deadline, CES told Debtors' counsel and the Debtors' Chief Restructuring Officer that it was working toward a bid above $100 million for both packages and asked for a short diligence period; it was told that a letter of intent was not of interest and that a one-day adjournment was the most that might be

entertained. *Id.* ¶¶ 12 to 14. CES did not bid on those terms. It resumed work in mid-September, when the Debtors' adjournment request and the objections disclosed that no Notice of Winning Bidder had been filed, and it has since informed Debtors' counsel and Committee counsel of its interest and its proposed terms and prepared the agreements attached here. *Id.* ¶¶ 15 to 16.

12. The Auction, at which the Qualified Bidders were Thor CALAP, LLC ("Thor"), the Stalking Horse Bidder; Hut 8; Pecos Industrial Development, LLC, the Fluidstack Ltd. affiliate that became the Tarbush Back-Up Bidder ("Fluidstack"); Giga Energy, Inc. ("Giga"); and Digipower X Inc. ("Digipower"), closed on September 10, 2026 with Thor as the winning bidder for the Assets as a whole at $180,000,000 and Hut 8 as Back-Up Bidder at $179,000,000. Supp. DuFrayne Decl. ¶ 18; Auction Tr. at 22 to 23, 176 [ECF No. 240-1]. The Debtors did not document that bid. After nine (9) days of negotiation with Hut 8, in which Hut 8 offered either $140,000,000 in cash at closing or a higher overall price with deferred consideration, the Debtors chose $140,000,000, on the stated ground that "the certainty and enforceability of a purchaser's obligation to close are material components of the economic bid," and designated it the Winning Bid in a Notice of Auction Results filed September 22, 2026 [ECF No. 237] (the "Auction Results Notice"), as amended September 23 [ECF No. 239]. *Id.* ¶¶ 20 to 33. Thor, the Pyote and Tarbush Back-Up Bidders, another prospective purchaser, and two (2) creditors have objected; Thor asks the Court to deny the sale and reopen the Auction, and Abbauer Industries, LLC asks the Court to deny the sale, direct the Debtors to exercise the option before September 30, and adjourn the Sale Hearing. [ECF Nos. 221, 223, 225, 243, 244, 248, 250].

C. No Transaction on File Closes Before December 15, 2026

13. The Hut 8 agreements, filed in executed form on September 25, 2026 (the "Hut 8 Tarbush APA" and the "Hut 8 Pyote APA," and together the "Hut 8 APAs"), provide for $103,000,000 for the Tarbush Assets and $37,000,000 for the Pyote Assets, payable at a closing on December 15, 2026, which the Sellers may extend to January 14, February 13, and March 15, 2027 at cumulative price reductions of up to $1,500,000. Hut 8 Tarbush APA §§ I.6, II.1; Hut 8 Pyote APA §§ I.6, II.1 [ECF No. 247]. Hut 8's obligation to close on Tarbush is conditioned on,

among other things, a purchase of the Adjacent Property on terms "reasonably acceptable to Buyer" and receipt of approvals to transfer the power rights and interconnect 176 MW, satisfied by "written confirmation from ERCOT and Texas-New Mexico Power following ERCOT's completion of the ongoing Batch Zero eligibility verification process unconditionally confirming that the project load limit is 176MW as of the Closing Date"; each agreement is conditioned on the other closing; and if the conditions are not satisfied by the Outside Date, either party may terminate and Hut 8 recovers its deposit with interest. Hut 8 Tarbush APA §§ VII.2(c), (e), (i), VIII.1(c) to (d), VIII.2; Hut 8 Pyote APA §§ VII.2(j), VIII.1(c) to (d). The Debtors expect the ERCOT approval "on or about December 10, 2026." Supp. DuFrayne Decl. ¶ 24. The Back-Up Bidders' agreements carry the same condition, and Fluidstack's permits closing as late as May 30, 2027. Fluidstack APA §§ II.7, VII.2(d) [ECF No. 240-4].

14. The Batch Zero eligibility verification is a first-of-its-kind ERCOT process with no binding deadline. ERCOT missed its August 7 and August 31, 2026 targets, paused energization of large loads indefinitely, reclassified projects when it issued conditional classifications on September 3, and withdrew the April 9, 2027 date for studied-load results without replacement. The December 10 date the Debtors cite is the planned date of an eligibility verification report, not the unconditional 176 MW confirmation Hut 8 requires, which is not expected before March 2027. Ravulapati Cert. ¶¶ 5 to 16.

15. Every date in the Hut 8 agreements therefore falls after November 30, 2026, which is the closing deadline in the Bidding Procedures, the date by which the Tarbush sale must close or DBR Land LLC must be paid $1,500,000 for the Debtors' settlement with it to survive, and the date by which the Debtors told the Court the Adjacent Property "must close." Bidding Procedures at 2 [ECF No. 138]; Stipulation and Agreed Order ¶¶ 1 to 2 [ECF No. 190] (the "DBR Stipulation"); DuFrayne Decl. ¶ 19 n.9 [ECF No. 105-1]. CES is prepared to close on or before November 30, 2026, before any of those dates arrives. Menke Cert. ¶¶ 18, 25. The Debtors' stated reason for an expedited schedule, that the Adjacent Property option "expires September 30, 2026, with no possibility of extension," is not a reason to approve this sale on September 29: no

transaction on file closes before the option lapses, and the Hut 8 agreement itself assumes the option will be in force at a December closing. Debtors' Reply ¶ 2 [ECF No. 105]; Hut 8 Tarbush APA § VII.2(d).

ARGUMENT

I. The Debtors Bear the Burden of Proving That the Hut 8 Transaction Is the Highest or Otherwise Best Offer at a Fair Price, and the Record Defeats That Showing

16. A debtor may sell estate property outside the ordinary course only after notice and a hearing, and only on a showing that "(1) there is a sound business purpose for the sale; (2) the proposed sale price is fair; (3) the debtor has provided adequate and reasonable notice; and (4) the buyer has acted in good faith." *In re Exaeris Inc.*, 380 B.R. 741, 744 (Bankr. D. Del. 2008) (citing *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)); *see In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986). The burden is the Debtors'. *Exaeris*, 380 B.R. at 744 to 745 (refusing to approve a sale where the debtor did not establish that the price was fair). A sale of substantially all of a debtor's assets outside a plan is "subject to close scrutiny by creditors and the court," and the Court's role is to find, not to ratify. *Del. & Hudson*, 124 B.R. at 176; *Abbotts Dairies*, 788 F.2d at 149-50 (court authorizing a section 363(b) sale must make its own findings). It is within the court's discretion to determine whether to approve a proposed sale under section 363. *See, e.g., Del. & Hudson*, 124 B.R. at 176 (providing a list of non-exhaustive factors for a court to *consider* when determining whether there is a sound business purpose for approving the proposed sale); *In re Fin. News Network Inc.*, 980 F.2d 165, 169-70 (2d Cir. 1992) ("a bankruptcy judge's broad discretionary power in conducting the sale of a debtor's assets should not be narrowed by technical rules mindlessly followed).

17. The Debtors' procedures adopt the same measure: the Winning Bid is "the highest or otherwise best Qualified Bid," and every party in interest retains the right to object to the sale itself. Bid Procedures Order ¶¶ 16, 26; Bidding Procedures § I.D.3.

18. Here, the record defeats the showing. The only evidence of value is the Auction, and the Auction fixed value at $180,000,000, with a $179,000,000 back-up. Supp. DuFrayne Decl.

¶ 18. The Debtors ask the Court to approve $140,000,000, and their witness attributes the difference not to any change in the Assets but to "the certainty and enforceability of a purchaser's obligation to close." *Id.* ¶¶ 26, 33. The certainty does not exist. Hut 8's obligation to close is conditioned on a Batch Zero confirmation ERCOT has not issued and the Debtors merely expect "on or about December 10, 2026"; on a purchase of the Adjacent Property on terms acceptable to Hut 8; and on an option the Debtors have not exercised. Its closing date is December 15, 2026, extendable to March 15, 2027 with price reductions. If any condition fails, Hut 8 terminates and recovers its deposit. Hut 8 Tarbush APA §§ II.1, VII.2(c) to (e), VIII.1(c) to (d); Supp. DuFrayne Decl. ¶ 24. And the purchasers whose "obligation to close" the Debtors prize are Mesquite Falcon LLC and Raptor Basin LLC, two Delaware limited liability companies formed for the transaction, with no guaranty from Hut 8 Corp. [ECF No. 247]. A $40,000,000 discount for a certainty the agreements do not deliver is not a fair price. The Debtors were also offered, and did not pursue, "an alternative transaction at a higher overall price with cash at closing and deferred consideration." Supp. DuFrayne Decl. ¶ 29. The record contains no appraisal, no valuation, and no explanation of why the estate should accept $40,000,000 less than the market bid on September 10 for a transaction that carries the same regulatory risk the Auction bids carried. And the Stalking Horse Bidder, which won the Auction at $180,000,000, states that it may have bid more than $140,000,000 had it been offered the terms on which Hut 8 was selected. Thor Supp. Obj. at 2, ¶¶ 24 to 27. A finding that $140,000,000 is the highest or otherwise best bid cannot be made on that record.

19. Nor can the finding rest on deference to the Debtors' selection. That deference presupposes an informed choice among the offers available, and CES's offer has not yet been evaluated. CES has asked the Debtors and the Committee to evaluate it and stands ready to do so on whatever schedule the Court sets. A court may not "rubber stamp" an estate representative's proposal; it must satisfy itself that the proposal serves the estate. *See In re Martin*, 91 F.3d 389, 393-95 (3d Cir. 1996).

II. Before a Sale Order Is Entered, the Court Has Broad Discretion to Decline

Approval and Direct a Reopened Sale When a Better Offer Is in Hand, and Every Consideration Favors Exercising It Here

A. The Governing Standard

20. The Third Circuit's rule is settled. A judicial sale "will be confirmed unless (a) there was fraud, unfairness or mistake in the conduct of the sale; or (b) the price brought at the sale was so grossly inadequate as to shock the conscience of the court," and when a court does decline to confirm, "every consideration of fairness" requires that notice be given "so that all might have had an equal opportunity to make or increase their bids." *In re Stanley Eng'g Corp.*, 164 F.2d 316, 318-20 (3d Cir. 1947) (en banc). The rule protects the result of a completed sale. It does not require a court to approve a transaction that was not the product of the sale the court authorized, and it does not permit a court to approve one whose price the proponent cannot show to be adequate. Courts in this Circuit have accordingly declined to approve proposed sales in favor of later, better offers even where the competing offer was "woefully late" and "the equities clearly favor[ed]" the original purchaser, because "in order to justify approval of the transaction proposed by the Trustees, it must appear that the proposed sale price is adequate, and that the proposed sale would be in the best interests of the Debtor's estate." *In re Penn Cent. Transp. Co.*, 356 F. Supp. 285, 287 (E.D. Pa. 1973).

21. How much weight finality receives depends on when the better offer arrives. "[E]mploying a sliding scale approach, the importance of estate enhancement diminishes as an auction participant's reasonable expectations, and the gravity of finality, increase. At some point, such as when the court actually enters an order approving the sale, expectations become sufficiently crystallized so as to render it improper to frustrate anticipated results except in the limited circumstances where there is a grossly inadequate price or fraud." *In re Edwards*, 228 B.R. 552, 561-62 (Bankr. E.D. Pa. 1998) (quoting *In re Food Barn Stores, Inc.*, 107 F.3d 558, 565 (8th Cir. 1997)). Before that point "the court enjoys broader discretion to balance ... estate maximization against ... regularity and finality and the parties' expectations," and entry of a sale order is "the point at which the court loses much of the discretion it otherwise enjoys." *Corp. Assets, Inc. v. Paloian*, 368 F.3d 761, 767-69 (7th Cir. 2004). Where the procedures make every

bid subject to court approval, "justifiable expectations as a purchaser could not have crystalized to the point of certainty prior to the entry of an order approving the sale." *In re Farmland Indus., Inc.*, 289 B.R. 122, 127 (B.A.P. 8th Cir. 2003). A purchase agreement awaiting approval is "but [a] binding bid[]," because "there can be no contract in this situation without Bankruptcy Court approval," and a bankruptcy court "does have the power to disapprove a proposed sale recommended by a trustee or debtor-in-possession if it has an awareness there is another proposal in hand which, from the estate's point of view, is better or more acceptable." *In re Broadmoor Place Invs., L.P.*, 994 F.2d 744, 746 (10th Cir. 1993). Procedures should not be followed with "such a rigid adherence ... as to elevate them over the substance of a bankruptcy court's principal responsibility, which is to secure for the benefit of creditors the best possible bid." *In re Fin. News Network Inc.*, 980 F.2d at 169-70.

B. Application

22. Here, each consideration points the same way.

23. *First*, no sale order has been entered, and no bidder holds an accepted bid. The Bidding Procedures made every bid subject to the Court's approval at the Sale Hearing; reserved the Debtors' right to extend the Bid Deadline "for any reason whatsoever" and to "modify the Bidding Procedures or waive any provision or requirement therein as necessary or appropriate to maximize value"; reserved the Debtors' right to reject any bid "at any time before entry of an order of the Court approving a Winning Bid"; and reserved "all rights of all parties in interest to object" at the Sale Hearing. Bidding Procedures §§ I.C.1, I.D.2(x), II; Bid Procedures Order ¶¶ 3, 26. No expectation of finality could crystallize under procedures written that way. *Farmland*, 289 B.R. at 127; *Paloian*, 368 F.3d at 768 to 769 (reserved rights to reject bids before approval qualify the winner's expectation). The Hut 8 APAs were filed unsigned on September 23 and in executed form only on September 25, four days before the hearing. Supp. DuFrayne Decl. ¶ 31; [ECF No. 247].

24. *Second*, the Debtors themselves set the Auction result aside. Under their own procedures the Auction was to close only when the Debtors identified "the highest or otherwise

best Qualified Bid" and determined "that further bidding is unlikely to result in a higher or otherwise better Qualified Bid." Bidding Procedures § I.D.3. It closed with Thor at $180,000,000, after the Debtors told the bidders they were "bidding cash" and would "turn to the APAs" afterward. Supp. DuFrayne Decl. ¶ 18; Auction Tr. at 19 to 20. The finality *Stanley* protects belongs to the bidder whose bid was struck down at that sale, and the Debtors abandoned it. What they ask the Court to approve is a $140,000,000 transaction reached in nine days of private negotiation with the back-up bidder after the Auction closed, at a price $39,000,000 below that bidder's own final bid. *Id.* ¶¶ 18, 26 to 33. The Debtors' own procedures provided that they "shall not consider any Bids or Overbids submitted after the closing of the Auction"; the $140,000,000 transaction was negotiated in the nine days after it closed, and the Tarbush Back-Up Bidder describes it as "the result of secret post-auction negotiations, which are precluded under the Bidding Procedures." Bidding Procedures § I.D.2(ix); PID Obj. ¶ 7. That provision governs what the Debtors may consider within the Auction they conducted; it does not limit the Court's authority to decline approval and direct a new sale. Bid Procedures Order ¶ 26; Bidding Procedures § II. The Debtors cannot invoke the integrity of an auction whose result they did not honor, and no bidder can claim reliance on an outcome the Debtors renegotiated. Even the decisions most protective of finality tie it to the auction's conclusion, and here the Debtors treated that conclusion as the start of negotiations. *See J.J. Sugarman Co. v. Davis*, 203 F.2d 931, 933-34 (10th Cir. 1953) (finality protection attaches only where a bid "has been accepted"); *Broadmoor*, 994 F.2d at 746. The recent decision in *In re Village Roadshow Entertainment Group USA Inc.*, 676 B.R. 504, 510-11 (Bankr. D. Del. 2025), which declined to disturb an auction result, illustrates the difference: there, the debtors honored the winning bidder and asked the court to approve the bid the auction produced. Here they did neither.

25. *Third*, the disparity is substantial by any measure. CES's $155,000,000 exceeds the Hut 8 price by $15,000,000, or 10.7 percent. Measured against the Auction's own result, the Debtors propose to accept $40,000,000, or 22 percent, less than the market bid for the same Assets on September 10. And the comparison understates the difference, because $80,000,000 of CES's

price is payable at a closing on or before November 30, 2026 that does not wait for the Batch Zero verification, while none of Hut 8's $140,000,000 is payable unless and until that verification issues. CES Tarbush APA §§ 1.6, 2.1; CES Pyote APA §§ 1.6, 2.1; Hut 8 Tarbush APA §§ II.1, VII.2(e). A "highest" bid "is not always the 'highest and best' bid," and the likelihood of a closing is part of the comparison. *In re Bakalis*, 220 B.R. 525, 531-33 (Bankr. E.D.N.Y. 1998) (collecting decisions, including *Broadmoor*, approving a lower unconditional cash bid over a higher contingent one). On that comparison the Hut 8 transaction is neither highest nor best.

26. *Fourth*, the other participants' objections show that the conduct of the sale after the Auction is itself in question, which is the circumstance in which *Stanley* permits a court to decline confirmation. The Stalking Horse Bidder describes "a secret post-auction side auction" in which it "was never given an opportunity to further revise its bid"; the Tarbush Back-Up Bidder describes "secret post-auction negotiations, which are precluded under the Bidding Procedures"; and the Pyote Back-Up Bidder objects that the buyer had not signed when it was designated. Thor Supp. Obj. at 2, ¶¶ 24 to 31; PID Obj. ¶ 7; Digipower Obj. ¶¶ 9 to 10. The docket shows the sequence: no Notice of Winning Bidder by September 11; two adjournments to "confirm the auction bids"; the Auction Results Notice on September 22 without the agreements; and the agreements on September 23, unsigned, and again on September 25, executed. Bid Procedures Order ¶ 17; [ECF Nos. 222, 232, 237, 239, 240, 247]. CES takes no position on the other bidders' characterizations. It notes only that a court asked to give a transaction the finality of a judicial sale may insist that the transaction be the product of the process it approved, and that whether this one was is disputed by every other participant in the Auction.

27. *Fifth*, CES comes to the Court in good faith with an offer the Court can evaluate. It has put its proposed agreements before the Court, plans to fund deposits of $11,625,000, disclosed its terms to the Debtors, the Committee, and the Court, and demonstrated its financial capability to the Debtors when it became a Potential Bidder. Exs. A to D; Menke Cert. ¶¶ 8, 16 to 19, 23. It sought to bid before the Auction and was told that a one-day adjournment was the most it could expect; it sought to present its offer after the Auction and received no response. Menke Cert. ¶¶ 12

to 15. It has been candid with the Court about how it came to the process late.

1. *Sixth*, the remedy CES requests is the one *Stanley* prescribes. CES does not ask the Court to award it the Assets. It asks the Court to decline approval of a transaction the record does not support and to direct a noticed, reopened process in which Hut 8, Thor, Fluidstack, Giga, Digipower, and any other Qualified Bidder may bid against CES's agreements, with the Debtors and the Committee free to designate the baseline and the Court free to set the schedule. That is what *Stanley* requires when a court declines to confirm, on terms "that would secure to the estate whatever advantage it derived from the bids at the first sale," it is what the Stalking Horse Bidder, which won the Auction, itself asks for and the Tarbush Back-Up Bidder reserves the right to seek, and it is what courts have done when a substantially better offer arrives before a sale order. Thor Supp. Obj. at 7; PID Obj. ¶ 10; *Stanley*, 164 F.2d at 320; *Paloian*, 368 F.3d at 769 (second auction). A reopened process costs the estate days; approving the lower price costs it the difference. Testing the market is what a sale hearing is for.

III. Nothing in the Record Requires the Court to Approve a Sale on September 29

2. The only justification the Debtors have offered for their schedule is the option on the Adjacent Property. Debtors' Reply ¶¶ 2, 28; DuFrayne Decl. ¶¶ 19 to 22. Here, that justification has no bearing on the choice before the Court, because no transaction on file closes before the option lapses. The Hut 8 transaction does not close until December 15 at the earliest, and its agreement assumes that the option will be in force at closing, which means it assumes the option will have been dealt with by someone other than Hut 8. Hut 8 Tarbush APA §§ II.1, VII.2(d). The option is the Debtors' asset, held through an assignment agreement they propose to assume and assign, and whatever the Debtors must do to preserve it they must do under every scenario, before any buyer closes, whether the Court approves this sale, reopens bidding, or adjourns. Cure Notice, Ex. A [ECF No. 149]; DuFrayne Decl. ¶ 18. CES does not ask the Court to direct that decision. It notes only that its own bid does not depend on it: CES will close on the Adjacent Property if the option is exercised and assigned to it, and otherwise on a neighboring parcel it is negotiating to lease. Menke Cert. ¶ 20. The Debtors' witness has conceded the rest: the closing extension they

demanded from Thor, and obtained from Hut 8, was "due to an expected energy 'Approval' document ... to be issued by or for ERCOT on or about December 10, 2026." Supp. DuFrayne Decl. ¶ 24. No transaction on file can close before that date. A reopened process completed within three weeks would cost the estate nothing it has not already given up, and it would preserve the one date that still matters, November 30, on which the DBR settlement and the Bidding Procedures' closing deadline depend and on which CES will close. DBR Stipulation ¶¶ 1 to 2; Bidding Procedures at 2; CES Tarbush APA § 2.1.

3. Whatever the reasons for the expedited schedule the Debtors proposed in August, they do not bear on the choice now before the Court. The Sale Hearing has already been adjourned twice, the proposed closing date is fifteen days after the deadline in the Bidding Procedures with extensions into March, and the agreements were completed only this week. [ECF Nos. 222, 232, 247]; Hut 8 Tarbush APA § II.1; Supp. DuFrayne Decl. ¶ 31. A process that reopens bidding this week and concludes before December 10 costs the estate nothing and preserves every date that still matters.

IV. The Relief Requested Is Within the Court's Authority and the Debtors' Own Procedures

4. CES requests that the Court (i) decline to approve the Hut 8 transaction on the present record; (ii) reopen bidding on a defined schedule, with Qualified Bids due within seven days after entry of an order, an auction promptly thereafter, and a Sale Hearing promptly after the auction and in any event before December 10, 2026, and with CES's agreements and deposits as the baseline unless the Debtors and the Committee designate a higher or otherwise better one; and (iii) in the alternative, adjourn the Sale Hearing for twenty-one (21) days to permit the Debtors and the Committee to evaluate CES's agreements and CES to complete the diligence that would remove its remaining conditions. Each form of relief is within the Court's authority under sections 105(a) and 363(b), and each is contemplated by the Bid Procedures Order and the Bidding Procedures, which reserve the Debtors' ability to extend deadlines, modify or waive requirements, and adjourn the Auction and the Sale Hearing, and which reserve to every party in interest the right

to object at the Sale Hearing. Bid Procedures Order ¶¶ 3, 26; Bidding Procedures §§ I.C.1, II.

NOTICE

Copies of this Objection have been provided to the following parties: (i) counsel for the Debtors and Debtors in Possession, Archer & Greiner, P.C.; (ii) counsel for the Official Committee of Unsecured Creditors, Pachulski Stang Ziehl & Jones LLP; (iii) the Office of the United States Trustee for the District of New Jersey, via electronic mail; and (iv) all parties having formally requested notice pursuant to Bankruptcy Rule 2002, electronically via the Court's CM/ECF System.

CONCLUSION

For the reasons stated, CES respectfully requests that the Court decline to approve the proposed sale to Hut 8, reopen bidding on a defined schedule with CES's agreements as the baseline, or in the alternative adjourn the Sale Hearing, and grant such other relief as is just.

Dated: September 25, 2026

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