

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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In re:	:	Chapter 11
	:	
BARRETTS MINERALS INC., <i>et al.</i> , ¹	:	Case No. 23-90794 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING (I) (A) BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OR ANY PORTION OF THE DEBTORS' ASSETS, (B) PROCEDURES FOR THE DEBTORS' ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (C) THE FORM AND MANNER OF NOTICE OF THE SALE HEARING AND ASSUMPTION PROCEDURES, (D) PROCEDURES FOR SELECTION OF ONE OR MORE STALKING HORSE BIDDERS AND THE PROVISION OF BID PROTECTIONS TO SUCH STALKING HORSE BIDDER(S), AND (E) DATES FOR AN AUCTION AND SALE HEARING, AND (II) (A) THE SALE OF SUBSTANTIALLY ALL OR ANY PORTION OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL CLAIMS, LIENS, LIABILITIES, RIGHTS, INTERESTS AND ENCUMBRANCES, AND (B) THE DEBTORS' ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) RELATED RELIEF

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT [HTTPS://ECF.TXSB.USCOURTS.GOV/](https://ecf.txsb.uscourts.gov/) WITHIN TWENTY-ONE DAYS FROM THE DATE THIS MOTION WAS FILED. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK WITHIN TWENTY-ONE DAYS FROM THE DATE THIS MOTION WAS FILED. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Barretts Minerals Inc. (8715) and Barretts Ventures Texas LLC (0787). The Debtors' address is 5605 North MacArthur Boulevard, Suite 1000, PMB 139, Irving, Texas 75038.

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) respectfully state as follows in support of this motion (the “**Motion**”):

PRELIMINARY STATEMENT

1. Debtor Barretts Minerals Inc. (“**BMI**”) maintains operations that are focused on the mining, beneficiating, processing, and sale of industrial talc. BMI is facing significant potential liability resulting from an increasing number of lawsuits alleging personal injuries caused by exposure to talc allegedly contaminated with asbestos that was mined, beneficiated, processed, and sold by BMI. Prior to the Petition Date, the Debtors explored potential strategic alternatives to manage their asbestos-related liabilities.

2. To assist in this process, the Debtors engaged Jefferies LLC (“**Jefferies**”) as investment banker to carry out a prepetition sale and marketing process. As part of their prepetition efforts, Jefferies contacted over 100 potential purchasers. The Debtors entered into approximately 57 non-disclosure agreements with these potential purchasers and engaged in a detailed diligence process, which included management presentations and site visits. Ultimately, the Debtors received 14 nonbinding indications of interest. However, the Debtors were unable to secure a binding commitment, and it became clear that no purchaser was willing to consummate a sale transaction outside of a chapter 11 proceeding. Accordingly, the Debtors, in consultation with their advisors, determined to commence these chapter 11 cases (the “**Chapter 11 Cases**”) in order to run a postpetition sale process to consummate a value-maximizing sale transaction for the benefit of all stakeholders.

3. By this Motion, the Debtors seek to build upon the momentum from the prepetition process and execute a postpetition marketing and sale process that will enable them to consummate a transaction for the sale of all or substantially all of their assets pursuant to the proposed bidding procedures and use the proceeds of any such sale to fund a plan of reorganization that creates a

trust pursuant to section 524(g) of the Bankruptcy Code for the benefit of current and future talc claimants.

4. The Debtors believe that the proposed bidding procedures are designed to generate the highest or otherwise best available offer for their assets, while also complying with the milestones set forth in the Interim DIP Order.² Though the Debtors are willing to revisit the milestones with the DIP lender in connection with entry of final relief on the DIP motion, there can be no assurance that the DIP lender will entertain any modifications to the milestones. Accordingly, the Debtors are seeking approval of the Bidding Procedures (as defined below) at this time. All rights of any statutory committee or future claimants representative that may be appointed in the Chapter 11 Cases are expressly preserved, and the Debtors intend to work with any statutory committee or future claimants representative that is appointed, as well as any other party in interest, to resolve any comments and concerns with respect to the Bidding Procedures prior to the hearing on this Motion.³

RELIEF REQUESTED

5. By this Motion, the Debtors seek entry of an order (the “**Bidding Procedures Order**”): (a) approving the proposed bidding procedures attached as Annex 1 to the Bidding Procedures Order (the “**Bidding Procedures**”), by which the Debtors will solicit and select the highest or otherwise best offer for the sale of substantially all or any portion or combination of their assets (the “**Assets**”) through one or more sales (each, a “**Transaction**”); (b) establishing procedures for the assumption and assignment of executory contracts and unexpired leases,

² The “**Interim DIP Order**” is the *Interim Order (A) Authorizing the Debtors to (I) Obtain Senior Secured Superpriority Postpetition Financing and (II) Use Cash Collateral; (B) Granting Liens and Providing Claims with Superpriority Administrative Expense Status; (C) Modifying the Automatic Stay; (D) Scheduling a Final Hearing; and (E) Granting Related Relief*, entered at [Docket No. 67].

³ The Debtors will file revised drafts of the Bidding Procedures and/or the proposed Bidding Procedures Order in advance of the hearing on this Motion, as appropriate.

including notice of proposed cure amounts (the “**Assumption and Assignment Procedures**”); (c) scheduling (i) a date for an auction if the Debtors receive one or more timely and acceptable Qualified Bids (as defined below) (the “**Auction**”) and (ii) a final hearing (the “**Sale Hearing**”) to approve one or more Transactions, as necessary; (d) approving the form and manner of notice of (i) the Auction and Sale Hearing (each as defined below) (the “**Sale Notice**”) and (ii) Assumption and Assignment Procedures (the “**Assumption Notice**”); (d) approving the procedures governing Debtors’ selection of one or more stalking horse bidders (each, a “**Stalking Horse Bidder**”), if any, and the provision of Bid Protections (as defined below) to such Stalking Horse Bidder(s), if necessary; and (e) granting related relief; and following the conclusion of the Sale Hearing, an order, the form of which will be filed on the docket of the Chapter 11 Cases prior to the Sale Hearing, authorizing (a) the sale of the Assets free and clear of all claims, liens, liabilities, rights, interests and encumbrances, (b) the assumption and assignment of certain executory contracts and unexpired leases, and (c) related relief (the “**Sale Order**”).

6. By this Motion, the Debtors further request entry of the Bidding Procedures Order establishing the following dates and deadlines, subject to modification as needed:

- a. **Stalking Horse Deadline:** December 11, 2023 at 5:00 p.m. (prevailing Central Time), as the deadline for the Debtors to identify any Stalking Horse Bidder (as defined below) in advance of the Auction;
- b. **Bid Deadline:** December 29, 2023 at 5:00 p.m. (prevailing Central Time), as the deadline by which all binding Bids (as defined below) must be actually received pursuant to the Bidding Procedures (the “**Bid Deadline**”);
- c. **Auction:** January 3, 2024 at 10 a.m. (Eastern Time) / 9 a.m. (prevailing Central Time), as the date and time of the Auction, if one becomes necessary, which will be held at the offices of counsel for the Debtors, Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, or at such other place and time as the Debtors shall notify all parties who have submitted Qualified Bids, the Consultation Parties, and all other parties entitled to attend the Auction;
- d. **Sale Objection Deadline:** [January 5, 2024] at 5:00 p.m. (prevailing

Central Time), as the deadline to object to the sale Transactions and to assumption and assignment of any Selected Designated Contracts (as defined below) on grounds of inadequate assurance of future performance (the “**Sale Objection Deadline**”);

- e. **Reply Deadline**: [January 8, 2024] at 12:00 p.m., (prevailing Central Time), as the deadline for the Debtors to file replies to any objections to the sale Transactions and/or the assumption and assignment of the Selected Designated Contracts and Cure Costs related thereto; and
- f. **Sale Hearing**: [January 9, 2024 2024 at [●] [a.m./p.m.] (prevailing Central Time)] (or such other time based on the Court’s availability) at a time to be announced, before the assigned United States Bankruptcy Judge for the United States Bankruptcy Court for the Southern District of Texas, at 515 Rusk Street, Houston, Texas 77002.

JURISDICTION

7. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The Debtors confirm their consent to the entry of a final order or judgment by the Court in connection with this Motion.

8. Venue is proper pursuant to 28 U.S.C. § 1408.

9. The statutory and legal predicates for the relief requested herein are sections 105(a), 363, 365, 503, 507, and, if applicable, 1146(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006, and 9007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the “**Complex Case Procedures**”).

BACKGROUND

10. On October 2, 2023 (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court commencing these cases under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof,

no trustee or examiner has been appointed in the Chapter 11 Cases, and no committee has been appointed or designated.

11. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the circumstances leading to the commencement of the Chapter 11 Cases, is set forth in detail in the *Declaration of David J. Gordon, Chief Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 13] (the “**First Day Declaration**”),⁴ filed on the Petition Date, and is incorporated herein by reference.

A. Bidding Procedures

12. The Debtors believe the proposed Bidding Procedures summarized below, and attached as Annex 1 to the Bidding Procedures Order, are fair and appropriate. Because the Bidding Procedures are attached as Annex 1 to the Bidding Procedures Order, they are not restated in their entirety herein. The Bidding Procedures provide, among other things, the following:

- a. On or prior to December 1, 2023 at 5:00 p.m. (prevailing Central Time), potential buyers shall be required to submit written non-binding indications of interest (each, an “**Indication of Interest**”) specifying, among other things, (i) the Assets proposed to be acquired, (ii) the amount and type of consideration to be offered for the Assets, (iii) any material conditions or assumptions upon which a Bid (as defined below) by such party will be based, and (iv) any other material terms to be included in a Bid by such party;
- b. On or prior to the Bid Deadline, potential buyers shall be required to submit written, binding bids (each, a “**Bid**”, and Bids satisfying the qualification requirements in the Bidding Procedures, “**Qualified Bids**”);
- c. Qualified Bids may be for substantially all or any portion of the Assets;
- d. Qualified Bids must be accompanied by a deposit equal to 10% of the purchase price;

⁴ The First Day Declaration and other relevant case information is available on the following website maintained by the Debtors’ proposed claims and noticing agent, Stretto, Inc.: <https://cases.stretto.com/BMI>.

- e. Qualified Bids must be based on (i) the form Asset Purchase Agreement to be provided by the Debtors to all potential buyers and filed with the Court prior to the hearing on the Bidding Procedures (the “**APA**”), or (ii) the Stalking Horse Agreement, if applicable, and must include (x) executed transaction documents, signed by an authorized representative of such bidder, and (y) a markup showing the bidder’s changes to the form APA or Stalking Horse Agreement, as applicable;
- f. Qualified Bids must be accompanied by evidence of committed financing or other financial ability to consummate the Transaction in a timely manner. If the bidder is an entity formed for the purpose of the proposed Transaction, the Debtors must be provided evidence of the approval of the Bid by the bidder’s equity holders;
- g. Qualified Bids shall not contain any (i) financing contingencies, (ii) contingencies dependent on the outcome or review of unperformed due diligence (unless otherwise agreed upon by the Debtors in consultation with the Consultation Parties (as defined in the Bidding Procedures)), or (iii) internal approval contingencies to closing on the proposed Transaction;
- h. To the extent a Stalking Horse Bidder is selected prior to the Bid Deadline, each Qualified Bid for any Assets subject to the Stalking Horse Agreement (alone or combined with Bids for other Assets subject to the Stalking Horse Agreement) must exceed the Stalking Horse Bidder’s Bid by the Minimum Overbid (as defined in the Bidding Procedures);
- i. Each subsequent overbid at the Auction must exceed the prior high Bid by the Minimum Overbid (as defined in the Bidding Procedures) plus, in the event that the Debtors have entered into a Stalking Horse Agreement with respect to the Assets to which the overbid relates, the aggregate amount of Bid Protections (including any break-up fees and/or expense reimbursements) under such Stalking Horse Agreement;
- j. At the conclusion of the Auction, the Debtors shall select the overall highest or otherwise best Bid or Bids for their Assets (each such Bid, a “**Successful Bid**”, and the bidder submitting each such Successful Bid, a “**Successful Bidder**”) in accordance with the Bidding Procedures; *provided*, that such Backup Bid shall be subject to Court approval in connection with the Court’s approval of the Successful Bid. The Debtors shall also select the next highest or otherwise best Bid or Bids at the Auction as the “**Backup Bid(s)**”, and the bidder(s) submitting such Backup Bid(s) as the “**Backup Bidder(s)**”, in accordance with the Bidding Procedures. The Backup Bidder(s) shall be required to keep the Backup Bid(s) open and irrevocable until the earlier of 11:59 p.m. (prevailing Central Time) on the date that is 30 days after the earlier of the date of entry of the Sale Order and the closing of the applicable Transaction(s) with the Successful Bidder;
- k. The DIP Lender shall have the right to credit bid all or any portion of its outstanding allowed secured claims at the Auction; *provided*, that such Bid otherwise complies with the Bidding Procedures and the Bankruptcy Code;

- l. The Debtors shall not consider any Bids submitted after the conclusion of the Auction, and any and all such Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid; and
- m. Nothing in the Bidding Procedures will preclude a bidder from submitting a Qualified Bid in form of a plan of reorganization, it being understood that such Bid may be determined by the Debtors to be a Qualified Bid, Stalking Horse Bid, Successful Bid, or Backup Bid.

B. Stalking Horse Bidder(s), Related Bid Protections and Purchase Agreement(s)

13. The Bidding Procedures also provide that the Debtors may enter into one or more stalking horse agreements (each, a “**Stalking Horse Agreement**”) at any time prior to December 11, 2023 and designate a bidder as the stalking horse bidder (the “**Stalking Horse Bidder**”, and the bid thereof, a “**Stalking Horse Bid**”) by filing a notice of such designation with the Court as set forth below. A Stalking Horse Agreement may provide for payment of break-up fees and/or expense reimbursements (the “**Bid Protections**”).

14. The Bidding Procedures provide that, in the event that the Debtors select one or more parties to serve as a Stalking Horse Bidder, upon such selection, the Debtors shall file with the Court and provide to (a) all parties on the Rule 2002 List, (b) counsel for any committee appointed in the Chapter 11 Cases (the “**Committee**”), (c) counsel to the proposed Future Claimants Representative (the “**Proposed FCR**”), (d) counsel to the DIP Lender, (e) all parties then known to have expressed an interest in the Assets as part of the marketing process established by the Bidding Procedures, and (f) all parties holding liens on the Assets, five (5) business days’ notice of and an opportunity to object to the designation of such Stalking Horse Bidder and the Bid Protections set forth in the Stalking Horse Agreement. To the extent an objection is received, the Court will hold a hearing nine days after the deadline for the Debtors to designate a Stalking Horse Bidder. Absent objection, the Debtors may submit an order to the Court under certification

of counsel approving the selection of such Stalking Horse Bidder and the Bid Protections (the “**Stalking Horse Order**”).

C. Sale Notice

15. The Debtors request that the Court approve the form of Sale Notice attached as Annex 2 to the Bidding Procedures Order. The Debtors submit that service of the Sale Notice as set forth below is proper and sufficient to provide notice to of the Auction, the Sale Objection Deadline and the Sale Hearing to all known and unknown parties.

16. The Debtors propose that within five (5) business days after the entry of the Bidding Procedures Order, the Debtors will serve the Sale Notice, the Bidding Procedures Order and the Bidding Procedures by first-class mail, postage prepaid, upon, to the best knowledge of the Debtors’ management, (a) all entities that have expressed written interest in a Transaction with respect to all or substantially all of the Assets within the past six (6) months, (b) all entities known to have asserted any lien, claim, interest, or encumbrance in or upon any of the Assets, (c) counsel for the Committee, (d) counsel to the Proposed FCR, (e) counsel to the DIP Lender, and (f) the U.S. Trustee; *provided, however*, that to the extent email addresses are available for any of the foregoing parties, such parties may be served by email.

17. In addition, the Debtors propose that within five (5) business days after the entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtors will serve the Sale Notice by first-class mail, postage prepaid or, for those parties who have consented to receive notice by the ECF system, by ECF, upon (a) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief granted herein, (b) the United States Attorney’s Office for the Southern District of Texas, (c) the Internal Revenue Service, (d) all parties entitled to notice pursuant to Bankruptcy Local Rule 2002-1(b), and (e) all known creditors of the Debtors, including their contract counterparties.

18. Finally, the Debtors propose to publish the Sale Notice, as modified for publication, in the *Wall Street Journal*, the *Houston Chronicle*, and the *Billings Gazette* on one occasion on the mailing date or as soon as reasonably practicable thereafter. In addition, the Debtors seek this Court's approval to (a) publish the Sale Notice in additional publications as the Debtors deem appropriate and (b) cause the Sale Notice to be posted on the website maintained by the Debtors' proposed claims and noticing agent, Stretto, Inc.: <https://cases.stretto.com/BMI> (the "**Case Website**").

D. Assumption and Assignment Procedures

19. The Debtors also request that the Court approve the form of Assumption Notice attached as Annex 3 to the Bidding Procedures Order. The Debtors submit that service of the Assumption Notice on the Counterparties (as defined below) is proper and sufficient to provide notice to the Counterparties of the Assumption and Assignment Procedures.

20. To facilitate the sale Transactions the Debtors seek authority to assume and assign designated executory contracts and unexpired leases (the "**Designated Contracts**") to the Successful Bidder(s) in accordance with the Assumption and Assignment Procedures. The Assumption and Assignment Procedures are as follows:

- a. On or prior to November 9, 2023 at 5:00 p.m. (prevailing Central Time) (the "**Assumption Notice Deadline**"), the Debtors shall file with the Court, post on the Case Website, and serve on each counterparty (each, a "**Counterparty**," and collectively, the "**Counterparties**") to a Designated Contract, the Assumption Notice.
- b. The Assumption Notice shall include, without limitation, a list of Designated Contracts to be assumed and assigned (the "**Designated Contract List**") and the cure amount (each, a "**Cure Cost**"), if any, that the Debtors believe is required to be paid to the applicable Counterparty under sections 365(b)(1)(A) and (B) of the Bankruptcy Code for each of the Designated Contracts. If a Counterparty objects to its Cure Cost, such Counterparty must file with the Court and serve on the Objection Recipients (as defined below) a written objection (each, a "**Contract Objection**") on or before the Contract Objection Deadline (as defined below).

- c. Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and Bankruptcy Local Rules; (iii) be filed with the Clerk of the Court on or before 5:00 p.m. (prevailing Central Time) on December 11, 2023 (the “**Contract Objection Deadline**”); (iv) be served, so as to be actually received on or before the Contract Objection Deadline, upon the Objection Recipients; and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under sections 365(b)(1)(A) and (B) of the Bankruptcy Code for the applicable Designated Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto.

- d. The “**Objection Recipients**” are as follows: (i) Barretts Minerals Inc., 5605 North MacArthur Boulevard, Suite 1000, PMB 139, Irving, Texas 75038 (Attn: David Gordon); (ii) Latham & Watkins, LLP, 1271 Avenue of the Americas, New York, NY 10020 (Attn: Anu Yerramalli and Liza Burton); (iii) Latham & Watkins, LLP, 355 South Grand Avenue, Suite 100, Los Angeles, CA 90071 (Attn: Jeff Bjork, Kimberly Posin and Shawn Hansen); (iv) Porter & Hedges, L.L.P., 1000 Main St., 36th Floor, Houston, TX 77002 (Attn: John Higgins and Megan Young-John); (v) Jefferies LLC, 520 Madison Avenue, 10th Floor, New York, NY 10022 (Attn: Christoph Hinder, Andriy Stepanyants, and Chad Jennings); (vi) counsel to the DIP Lender, Lowenstein Sandler LLP (Attn: Robert Hirsh, Jordana Renert, and Erica Mannix); (vii) counsel to the Committee, [●] (Attn: [●]); (viii) counsel to the Proposed FCR, [Stutzman, Bromberg, Esserman & Plifka, P.C. (Attn: Sander L. Esserman) and Young Conaway Stargatt & Taylor, LLP (Attn: Robert Brady, Ed Harron, Ryan Bartley)]; and (ix) the Office of the United States Trustee for the Southern District of Texas, 515 Rusk Street, Suite 3516, Houston, TX 77002, (Attn: Vianey Garza and Hector Duran).

- e. Any time after the Assumption Notice Deadline and before the date one (1) business day prior to the Sale Hearing, the Debtors reserve the right, and are authorized, but not directed, to (i) add previously omitted Designated Contracts as contracts to be assumed and assigned to a Successful Bidder in accordance with the definitive agreement for a Transaction, (ii) remove a Designated Contract from the Designated Contract List that a Successful Bidder proposes be assumed and assigned to it in connection with a Transaction, or (iii) modify the previously stated Cure Cost associated with any Designated Contract.

- f. If, after the Assumption Notice Deadline, additional executory contracts or unexpired leases of the Debtors are determined to be Designated Contracts in connection with such Transaction or the Debtors seek to modify the previously stated Cure Cost associated with any Designated Contract, as soon as practicable thereafter and in no event less than one (1) business day before the date of the Sale Hearing, the Debtors shall file with the Court and serve, by overnight delivery, on the applicable Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections not later than (i) the Contract Objection Deadline in

the event that such Assumption Notice was filed and served at least ten (10) days prior to the Contract Objection Deadline, (ii) two (2) days prior to the Sale Hearing in the event that such Assumption Notice was filed and served at least seven (7) days prior to the commencement of the Sale Hearing, and (iii) two (2) hours prior to the commencement of the Sale Hearing in the event that such Assumption Notice was filed and served less than seven (7) days prior to the commencement of the Sale Hearing.

- g. As soon as practicable after the Auction and in no event less than one (1) business day following the conclusion of the Auction, the Debtors shall file with the Court and serve on the Counterparties by overnight delivery a notice substantially in the form attached as Annex 4 to the Bidding Procedures Order (the “**Post-Auction Notice**”) identifying the Successful Bidder(s), and the Counterparties shall file any Contract Objections solely on the basis of adequate assurance of future performance by the Successful Bidder not later than the Sale Objection Deadline.
- h. At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to the Successful Bidder(s) of only those Designated Contracts that have been selected by such Successful Bidder(s) to be assumed and assigned (collectively, the “**Selected Designated Contracts**”). The Debtors and their estates reserve any and all rights with respect to any Designated Contracts that are not ultimately designated as Selected Designated Contracts.
- i. If no Contract Objection is timely received with respect to a Selected Designated Contract: (i) the Counterparty to such Selected Designated Contract shall be deemed to have consented to the assumption by the Debtors and assignment to Successful Bidder of the Selected Designated Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Successful Bidder); (ii) any and all defaults under the Selected Designated Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code upon payment of the Cure Cost set forth in the Assumption Notice for such Selected Designated Contract; and (iii) the Cure Cost set forth in the Assumption Notice for such Selected Designated Contract shall be controlling, notwithstanding anything to the contrary in such Selected Designated Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Cost and shall be forever barred from asserting any other claims related to such Selected Designated Contract against the Debtors and their estates or the Successful Bidder, or the property of any of them, that existed prior to the entry of the order resolving the Contract Objections and the Sale Order.
- j. To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to the applicable Counterparty under sections 365(b)(1)(A) and (B) of the Bankruptcy Code (any such dispute, a “**Cure Dispute**”), such Contract Objection will be

adjudicated at the Sale Hearing or at such other date and time as may be fixed by the Court; *provided, however*, that if the Contract Objection relates solely to a Cure Dispute, the Selected Designated Contract may be assumed by the Debtors and assigned to the Successful Bidder provided that the cure amount the Counterparty asserts is required to be paid under sections 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Debtors pending the Court's adjudication of the Cure Dispute or the parties' consensual resolution of the Cure Dispute.

21. Any party failing to timely file a Contract Objection with respect to the assumption and assignment of any Designated Contract or related Cure Cost specified on an Assumption Notice will be barred from objecting thereto, including asserting any additional cure or other default amounts against the Debtors or any of the Debtors' estates, or the Successful Bidder with respect to such Designated Contract, and shall be deemed to consent to the sale Transactions and the assumption and assignment of such Designated Contract assumed and assigned in connection therewith.

BASIS FOR RELIEF

A. The Bidding Procedures Should Be Approved

22. For the reasons set forth below, the Debtors believe the Bidding Procedures are reasonable and appropriate and should be approved as proposed. "When conducting an asset sale, the ultimate responsibility of the debtor, and the primary focus of the bankruptcy court, is the maximization of the value of the assets sold." John J. Jerome & Robert D. Drain, *Bankruptcy Court Is Newest Arena for M&A Action*, N.Y.L.J., June 3, 1991.

23. Here, the Debtors submit that the Bidding Procedures are fair and appropriate under the circumstances, consistent with procedures routinely approved by courts, and in the best interest of the Debtors' estates. The Debtors also submit that the Bidding Procedures demonstrate a sound exercise of the Debtors' business judgment, as such procedures are designed to maximize the value to be received by the Debtors' estates for the Assets. The Bidding Procedures will provide the

Debtors with an adequate opportunity to consider competing Bids and select the highest and best offer for the Assets.

B. The Procedures and Notice Related to the Selection of Stalking Horse Bidders Should Be Approved

24. The Debtors submit that the proposed procedures and notice for the selection of Stalking Horse Bidder(s), the execution of the Stalking Horse Agreement(s), the provision of Bid Protections to Stalking Horse Bidder(s), and Court approval of the foregoing pursuant to Stalking Horse Order are fair and reasonable under the circumstances. Entry into the Stalking Horse Agreements with Stalking Horse Bidder(s) ensures that the Debtors obtain the highest and best consideration for the Assets by setting a floor price that can be tested in the marketplace, and this Court has previously found that the proposed timeline for objection to designation of a Stalking Horse Bidder is appropriate. *See, e.g., In re Alta Mesa Resources, Inc.*, Case No. 19-35133 (MI) (Oct. 11, 2019).

C. Approval of Bid Protections for Stalking Horse Bidders Is Appropriate

25. To induce Stalking Horse Bidders to enter into Stalking Horse Agreements, setting floor prices for the Assets that may be tested in the marketplace, the Debtors may be required to provide Bid Protections. The terms of any Bid Protections shall be subject to Court approval pursuant to a Stalking Horse Order after five (5) business days' notice to all relevant parties, as set forth in the Bidding Procedures.

26. The Debtors believe that granting Bid Protections to Stalking Horse Bidder(s) is fair and reasonable under the circumstances. Any break-up fee and the expense reimbursement will be negotiated at arms' length and in good faith and will be necessary to secure the Stalking Horse Bidder(s)' participation in the proposed sale Transaction. Courts have acknowledged that the approval of break-up fees and expenses in connection with substantial sales in bankruptcy is

warranted to compensate an unsuccessful acquirer whose initial offer served as the basis and catalyst for higher or better offers. *See Asarco, Inc. v. Elliot Mgmt. (In re Asarco, LLC)*, 650 F.3d 593, 597-98, 601-03 & n.9 (5th Cir. 2011); *In re JW Res., Inc.*, 536 B.R. 193, 195-96 (Bankr. E.D. Ky. 2015); *In re Hupp Industries, Inc.*, 140 B.R. 191, 195 (Bankr. N.D. Ohio 1992). As listed in *Hupp Indus.*, courts consider various factors in determining whether to authorize break-up fees, such as:

- a. whether the fee requested correlates with a maximization of value to the debtor's estate;
- b. whether the transaction in the negotiated agreement is an arms-length transaction between the debtor's estate and the negotiating acquirer;
- c. whether the principal secured creditors are supportive of the concession;
- d. whether the subject break-up fee constitutes a fair and reasonable percentage of the proposed purchase price;
- e. the existence of available safeguards beneficial to the debtor's estate; and
- f. whether there exists a substantial adverse impact upon unsecured creditors, where such creditors are in opposition to the break-up fee.

In re Hupp Indus., 140 B.R. at 194-96; *see also In re JW Res.*, 536 B.R. at 195 (citing with approval *Hupp Industries'* multi-factor test).

27. To warrant court approval of such break-up fees and expenses, the Fifth Circuit in *Asarco* required a showing that the requested fees and expenses must be supported by a sound business justification. *In re Asarco*, 650 F.3d at 602-03 (favoring business judgment standard governing use of assets outside of the ordinary course of business, rather than the standard for administrative expenses, in assessing propriety of fees and expenses incurred by bidders).

28. Here, any Bid Protections to be paid under the circumstances will satisfy the foregoing tests because they will be: (a) actual and necessary costs and expenses of preserving the Debtors' estates within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code;

(b) commensurate to the real and substantial benefit conferred upon the Debtors' estates by the Stalking Horse Bidder(s); (c) reasonable and appropriate, in light of the size and nature of the proposed sale Transaction and comparable transactions, to the commitments that have been made and the efforts that have been and will be expended by the Stalking Horse Bidder(s); (d) necessary to induce the Stalking Horse Bidder(s) to continue to pursue the sale Transaction and to continue to be bound by the APA; and (e) subject to all parties in interests' rights to object and be heard with respect to approval of such Bid Protections. Indeed, the Bid Protections (if any) will enable the Debtors to secure an adequate floor price for the Assets, thereby ensuring that competing Bids would be materially higher or otherwise better than the Bids reflected in any Stalking Horse Agreement(s)—a clear benefit to the Debtors' estates. Moreover, it is unlikely any Stalking Horse Bidder(s) would be willing to agree to act in such capacity without being granted the Bid Protections. Without the Bid Protections, the Debtors may lose the opportunity to obtain the highest and best offer for the Assets and would certainly lose the downside protection that will be afforded by the existence of Stalking Horse Bidder(s).

29. Additionally, any Stalking Horse Bidder(s) will have expended, and will continue to expend, considerable time, money and energy in connection with the Transaction and will engage in extended and lengthy good faith negotiations. In particular, any Stalking Horse Agreement will be the culmination of a marketing effort and part of a process undertaken by the Debtors and the Debtors' professionals to identify and negotiate a Transaction that they believe to be the highest and best proposal for an acquisition of the Assets. For all of the foregoing reasons, the Debtors believe that granting any Bid Protections requested by the Debtors pursuant to any Stalking Horse Order will maximize the value realized for the benefit of the Debtors' estates, their creditors, and other parties in interest.

30. Finally, payment of the Bid Protections in the context of a sale to another purchaser that outbids a Stalking Horse Bidder will not diminish the Debtors' estates to the extent they become payable, as the Bidding Procedures require that any competing Bid must exceed a Stalking Horse Bid by an amount in excess of the break-up fee and expense reimbursement. For the foregoing reasons, the Debtors submit that any Bid Protections will reflect a sound business purpose, be fair and appropriate under the circumstances, and should be approved.

D. The Assumption and Assignment Procedures Are Appropriate and Should Be Approved

31. In connection with the potential assumption and assignment of the Designated Contracts, the Debtors believe it is necessary to establish a process by which (a) the Debtors and the Counterparties can reconcile cure obligations, if any, in accordance with section 365 of the Bankruptcy Code, and (b) such Counterparties can object to the assumption and assignment of executory contracts and unexpired leases and any applicable Cure Costs.

32. As set forth in the Assumption and Assignment Procedures, the Debtors are also requesting that any Counterparty that fails to object to the proposed assumption and assignment of any Designated Contract be deemed to consent to the assumption and assignment of the applicable Designated Contract pursuant to section 365 of the Bankruptcy Code and on the terms set forth in the Sale Order, notwithstanding any anti-alienation provision or other restriction on assignment contained in the applicable contract or lease. *See, e.g., Hargrave v. Township of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (finding that by not objecting to sale motion, creditor was deemed to consent); *Pelican Homestead v. Wooten (In re Gabel)*, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same).

33. The Debtors believe that the Assumption and Assignment Procedures are fair and reasonable, provide sufficient notice to the Counterparties to the Designated Contracts regarding

the potential assumption and assignment of the Designated Contracts, and provide certainty to all parties in interest regarding their obligations and rights in respect thereof. Accordingly, the Debtors request that the Court approve the Assumption and Assignment Procedures.

E. The Form and Manner of the Sale Notice Should Be Approved

34. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide their creditors with 21 days' notice of the Sale Hearing. Pursuant to Bankruptcy Rule 2002(c)(1), such notice must include the time and place of the Auction and the Sale Hearing and the deadline for filing any objections to the relief requested herein.

35. The Debtors submit that notice of this Motion and the related hearing to consider entry of the Bidding Procedures Order, together with service of the Sale Notice as provided for herein, constitutes good and adequate notice of the Auction, the Sale Hearing and the proceedings with respect thereto in compliance with, and in satisfaction of, the applicable requirements of Bankruptcy Rules 2002, 6004, and 6006.

F. Approval of the Sale Is Appropriate and in the Best Interests of the Debtors' Estates

I. The Sale Should Be Approved As an Exercise of the Debtors' Sound Business Judgment

36. Section 363(b) of the Bankruptcy Code provides that a debtor may sell property of the estate outside the ordinary course of business after notice and a hearing. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts have found that a debtor's sale or use of assets outside the ordinary course of business should be approved if the debtor can demonstrate "some articulated business justification," as established by the Second Circuit in *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983), which decision has been adopted in this circuit. *See Institutional Creditors of*

Continental Air Lines, Inc. v. Continental Air Lines, Inc., et al. (In re Continental Air Lines, Inc.), 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or a debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”); *see also In re Asarco*, 650 F.3d at 601; *In re Cowin*, No. 13-30984, 2014 WL 1168714, at *38 (Bankr. S.D. Tex. Mar. 21, 2014); *In re St. Marie Clinic PA*, No. 10-70802, 2013 WL 5221055, at *9 (Bankr. S.D. Tex. Sept. 17, 2013); *In re Particle Drilling Techs., Inc.*, No. 09-33744, 2009 WL 2382030, at *2 (Bankr. S.D. Tex. July 29, 2009); *In re San Jacinto Glass Indus., Inc.*, 93 B.R. 934, 944 (Bankr. S.D. Tex. 1988). Once the Debtors articulate a valid business justification, “[t]he business judgment rule ‘is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” *In re S.N.A. Nut Co.*, 186 B.R. 98 (Bankr. N.D. Ill. 1995); *see also In re Integrated Res., Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992); *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“a presumption of reasonableness attaches to a Debtor’s management decisions”).

37. The Debtors have a sound business justification for selling the Assets pursuant to a competitive bidding process consistent with the Bidding Procedures. Based on the results of their analysis of the Debtors’ ongoing and future business prospects, the Debtors’ management and board concluded that a sale of the Assets pursuant to a competitive bidding process would be the best way to maximize recoveries for creditors in connection with the Debtors’ efforts in the Chapter 11 Cases.

38. Thus, the Debtors submit that the Successful Bid(s) resulting from the Bidding Procedures will constitute the highest and best offer for the Assets and will provide a greater

recovery for the Debtors' estates than would be provided by any other available alternative. As such, the Debtors' determination to sell the Assets pursuant to a competitive bidding process as provided for in the Bidding Procedures is a valid and sound exercise of the Debtors' business judgment. The Debtors believe that they have proposed a fair process for obtaining the highest and best offer and sale of the Assets for the benefit of the Debtors' estates and their creditors, and the fairness and reasonableness of the consideration to be received by the Debtors will be demonstrated by a "market check" through the Auction.

II. Adequate and Reasonable Notice of the Sale Will Be Provided

39. As set forth above, the Sale Notice: (a) will be served in a manner that provides at least 21 days' notice of the date, time and location of any Auction and the Sale Hearing; (b) informs interested parties of the deadlines for objecting to the sale Transaction; and (c) otherwise includes all information relevant to parties interested in or affected by the sale Transaction. Significantly, the form and manner of the Sale Notice will have been approved by this Court pursuant to the Bidding Procedures Order, after notice and a hearing, before it is served on parties in interest, and, as such, the Debtors are confident that the Sale Notice will be properly vetted by the time of service thereof.

III. The Sale Has Been Proposed in Good Faith and Without Collusion, and the Successful Bidder(s) Will Each Be a "Good Faith Buyer"

40. Pursuant to section 363(m) of the Bankruptcy Code, a good-faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *O'Dwyer v. O'Dwyer (In re O'Dwyer)*, 611 Fed. App'x 195, 200 (5th Cir. 2015); *In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 9 (1st Cir. 1993); *In re Willemain v. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985); *In re Congoleum Corp.*, No. 03-51524, 2007 WL 1428477, *2 (Bankr. D.N.J. May 11, 2007); *see also In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (to constitute

lack of good faith, a party's conduct in connection with the sale must usually amount to fraud, collusion between the buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders).

41. In other words, a party would have to show fraud or collusion between the successful bidder(s) and the debtor-in-possession or trustee or other bidders in order to demonstrate a lack of good faith. An appropriate characterization of good faith in a bankruptcy sale is a lack of "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *In re Bleaufontaine, Inc.*, 634 F.2d 1383, 1388 n.7 (5th Cir. 1981) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

42. The Debtors submit that the Successful Bidder(s) arising from the Auction (if any), will be "good faith" purchasers within the meaning of section 363(m) of the Bankruptcy Code and will comply with the Bidding Procedures, and the terms of any APA with any Successful Bidder(s) will be negotiated at arms-length and in good faith without any collusion or fraud.⁵ Accordingly, the Debtors will be prepared to show at the hearing to approve any such sale that the Successful Bidder(s) are entitled to the full protections of section 363(m) of the Bankruptcy Code.

IV. The Sale Should Be Approved "Free and Clear" Under Section 363(f) of the Bankruptcy Code

43. Section 363(f) of the Bankruptcy Code permits the Debtors to sell assets free and clear of all liens, claims, interests, charges and encumbrances (with any such liens, claims,

⁵ Section 363(m) of the Bankruptcy Code provides that:

[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease or property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

See 11 U.S.C. § 363(m).

interests, charges, and encumbrances attaching to the net proceeds of the sale with the same rights and priorities therein as in the sold assets). As section 363(f) of the Bankruptcy Code is stated in the disjunctive, when proceeding pursuant to section 363(f), it is only necessary to meet one of the five conditions of section 363(f). *In re Nature Leisure Times, LLC*, No. 06-41357, 2007 WL 4554276, at *3 (Bankr. E.D. Tex. Dec. 19, 2007) (“The language of § 363(f) is in the disjunctive such that a sale free and clear of an interest can be approved if any one of the aforementioned conditions contained in § 363(f) are satisfied.”). The Debtors believe that they will be able to demonstrate at the Sale Hearing that they have satisfied one or more of these conditions.

V. Assumption and Assignment of Contracts Should Be Approved

44. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or [unexpired] lease of the debtor.” 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor’s decision to assume or reject an executory contract or unexpired lease is whether the debtor’s reasonable business judgment supports assumption or rejection. *Mirant Corp. v. Potomac Electric Power Co. (In re Mirant Corp.)*, 378 F.3d 511, 524-25 & n.5 (5th 2004); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re Gucci*, 193 B.R. 411 (S.D.N.Y. 1996); *In re Pisces Energy, LLC*, 2009 WL 7227880, at *6 (Bankr. S.D. Tex. Dec. 21, 2009). Under the business judgment test, a court should approve a debtor’s proposed assumption of executory contracts if such assumption will benefit the estate. *In re Pisces Energy*, 2009 WL 7227880, at *6; *In re Gunter Hotel Assocs.*, 96 B.R. 696, 698 (Bankr. W.D. Tex. 1988); *In re Food City, Inc.*, 94 B.R. 91, 93-94 (Bankr. W.D. Tex. 1988). Any more exacting scrutiny would slow the administration of a debtor’s estates, increase costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten this Court’s ability to control cases impartially. *See Richmond Leasing*, 762 F.2d 1303 at 1311. Moreover, pursuant

to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the debtor will promptly cure,” any default, including compensation for any “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1).

45. Once an executory contract is assumed, the trustee or debtor in possession may elect to assign such contract. Section 365(f) of the Bankruptcy Code specifically provides that contract provisions seeking to prohibit or limit assignment are unenforceable. *See* 11 U.S.C. § 365(f)(1); *see also In re Amidee Capital Group, Inc.*, No. 10-20041, 2010 WL 5141276, at *5 (Bankr. S.D. Tex. Oct. 7, 2010) (treating such prohibitions or limitations as null and void under section 365(f)); *In re Office Prods. of Am., Inc.*, 140 B.R. 407 (Bankr. W.D. Tex. 1992) (provisions that work as a restriction on assignment of leases should be struck down); *In re Rickel Home Centers, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) (“[t]he code generally favors free assignability as a means to maximize the value of the debtor’s estate”).

46. Section 365(f) of the Bankruptcy Code provides that the “trustee may assign an executory contract . . . only if the trustee assumes such contract . . . and adequate assurance of future performance is provided.” 11 U.S.C. § 365(f)(2). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *In re PRK Enters., Inc.*, 235 B.R. 597, 603 (Bankr. E.D. Tex. 1999) (internal quotations omitted); *see also Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that the debtor will thrive). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *Accord In re PRK Enters.*, 235 B.R. at 603 (“The financial evidence presented by

[assignee] demonstrates the likelihood that it has the financial capacity to perform its future obligations under the lease agreements and that its principal officers are serious in their commitment to rehabilitate this corporation.”); *In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from the debtor has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

47. The terms of the Bidding Procedures ensure that any Successful Bidder will have financial resources that are more than sufficient to perform under any Designated Contracts it seeks to have assumed and assigned by the Debtors. Moreover, if necessary, the Debtors will adduce facts at the Sale Hearing on any objection demonstrating the financial wherewithal of the Successful Bidder(s) and their willingness and ability to perform under the Designated Contracts to be assigned to them. The Sale Hearing therefore will provide this Court and other interested parties ample opportunity to evaluate and, if necessary, challenge, the ability of the Successful Bidder(s) to provide adequate assurance of future performance with respect to the Designated Contracts to be assumed and assigned.

48. The Debtors respectfully submit that the proposed Assumption and Assignment Procedures are appropriate and reasonably tailored to provide adequate notice in the form of the Assumption Notice, including the proposed Cure Costs communicated pursuant thereto. The Counterparties will then be given an opportunity to object to such Cure Costs. If a Contract Objection is timely filed, such objection will be heard at the Sale Hearing or at a later hearing in accordance with the Court’s schedule.

49. Furthermore, to the extent that any monetary defaults exist under any Designated Contracts, the Debtors (or, in certain cases, the buyer, as applicable under the APA) will cure any

such defaults prior to assuming and assigning the Designated Contracts. Accordingly, the Debtors submit that implementation of the proposed Assumption and Assignment Procedures is appropriate in the Chapter 11 Cases. The Debtors therefore request that the Court authorize the Debtors to assume and assign the Designated Contracts as may be set forth in the APA with the Successful Bidder(s).

RESERVATION OF RIGHTS

50. Nothing contained herein is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against any of the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) an impairment or waiver of any Debtor's or any other party in interest's right to dispute any claim against, or interest in, any Debtor, its property, or its estate on any grounds; (c) a promise or requirement to pay any claim; (d) an assumption, adoption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code; (e) an implication or admission that any particular claim is of a type specified or defined in the Motion, or any order granting the relief requested by the Motion; (f) an implication, admission, or finding as to the validity, enforceability, or perfection of any interest or encumbrance on the property of any Debtor or its estate; (g) an impairment or waiver of any claims or causes of action which may exist against any entity; or (h) a waiver of any Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

NOTICE

51. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the Southern District of Texas (the "**U.S. Trustee**"); (b) the firms listed on the Debtors' list of the top 26 law firms with the most significant representations of parties asserting talc claims against the Debtors; (c) the holders of the 30 largest unsecured claims against the Debtors (excluding talc claims); (d) counsel to the DIP Lender; (e) counsel to the Proposed FCR;

(f) counsel to the Committee; (g) the United States Attorney's Office for the Southern District of Texas; (h) the Internal Revenue Service; (i) the United States Securities and Exchange Commission; (j) the state attorneys general for states in which the Debtors conduct business; and (k) all parties that have requested or that are required to receive notice pursuant to Rule 2002 of the Bankruptcy Rules. The Debtors submit that, under the circumstances, no other or further notice is required.

WHEREFORE, the Debtors respectfully request that the Court enter the Bidding Procedures Order granting the relief requested in this Motion and such other and further relief as the Court deems appropriate under the circumstances.

Dated: October 13, 2023
Houston, Texas

Respectfully Submitted,
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Proposed Counsel for Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

	X	
	:	
In re:	:	Chapter 11
	:	
BARRETT'S MINERALS INC., <i>et al.</i> ¹	:	Case No. 23-90794 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

**ORDER ESTABLISHING BIDDING PROCEDURES RELATING
TO THE SALES OF ALL OR A PORTION OF THE DEBTORS' ASSETS**

[Relates to Docket No. _____]

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (this “**Order**”), (a) approving the proposed auction and bidding procedures attached as Annex 1 hereto (the “**Bidding Procedures**”), by which the Debtors will solicit and select the highest or otherwise best offer for the sale of substantially all or any portion or combination of their assets (the “**Assets**”) through one or more sales (each, a “**Transaction**”); (b) establishing procedures for the assumption and assignment of executory contracts and unexpired leases, including notice of proposed cure amounts (the “**Assumption and Assignment Procedures**”); (c) scheduling (i) a date for an auction if the Debtors receive one or more timely and acceptable Qualified Bids (the “**Auction**”) and (ii) a final hearing (the “**Sale Hearing**”) to approve one or more Transactions, as necessary; (d) approving the form and manner

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Barretts Minerals Inc. (8715) and Barretts Ventures Texas LLC (0787). The Debtors’ address is 5605 North MacArthur Boulevard, Suite 1000, PMB 139, Irving, Texas 75038.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion and the Bidding Procedures, as applicable.

of notice of (i) the Auction and Sale Hearing and (ii) Assumption and Assignment Procedures; (e) approving the procedures governing Debtors' selection of one or more stalking horse bidders (each, a "**Stalking Horse Bidder**"), and (f) granting related relief, all as more fully described in the Motion; and the Court having reviewed the Motion and heard the statements in support of the relief requested therein at the hearing on the Motion (the "**Bidding Procedures Hearing**"); and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. § 1408; and the Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for the Bidding Procedures Hearing under the circumstances and that no other or further notice is necessary; and the Court having determined that the legal and factual bases set forth in the Motion and at the Bidding Procedures Hearing establish just cause for the relief granted herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is HEREBY FOUND AND DETERMINED THAT:

A. The predicates for relief granted herein are sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

B. The legal and factual bases set forth in the Motion establish just cause for the relief granted herein. Entry of this Order is in the best interests of the Debtors and their respective estates, creditors, and all other parties in interest.

C. The Debtors' notice of the Motion, the Bidding Procedures Hearing, and the proposed entry of this Order was adequate and sufficient under the circumstances of the Chapter 11 Cases, and such notice complied with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules. Accordingly, no further notice of the Motion, the Bidding Procedures Hearing, or this Order is necessary or required.

D. The Debtors have demonstrated a compelling and sound business justification for the Court to grant the relief requested in the Motion, including, without limitation, to (i) approve the Bidding Procedures, including the procedures for selecting one or more Stalking Horse Bidders and granting Bid Protections (if any); (ii) establish the Assumption and Assignment Procedures; (iii) approve the form and manner of notice of all procedures, protections, schedules, and agreements described in the Motion and attached thereto; (iv) schedule a date for the (a) Auction and (b) Sale Hearing; and (v) grant related relief as set forth herein. Such compelling and sound business justification, which was set forth in the Motion and on the record at the Bidding Procedures Hearing, among other things, forms the basis for the findings of fact and conclusions of law set forth herein.

E. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the Bidding Procedures Hearing or by stipulation filed with the Court are overruled except as otherwise set forth herein.

F. The Bidding Procedures, substantially in the form attached as Annex 1 hereto, are fair, reasonable and appropriate and represent the best method for maximizing the value of the Debtors' estates.

G. The Sale Notice, substantially in the form attached as Annex 2 hereto, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the sale

of Assets, including the sale of the Assets free and clear of all liens, claims and encumbrances, the Transaction(s), the Bidding Procedures, the Auction, and the Sale Hearing, and no other or further notice is required.

H. The Assumption Notice, substantially in the form attached as Annex 3 hereto, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the potential assumption and assignment of the Designated Contracts in connection with the sale of the Assets and the related Cure Costs, and no other or further notice is required.

I. The Post-Auction Notice, substantially in the form attached as Annex 4 hereto, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Successful Bid(s) and Back-Up Bid(s), and no other or further notice is required.

J. The findings of fact and conclusions of law herein constitute the Court's findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

A. Process Timeline

1. The Debtors are authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures in accordance with the following timeline:

Date	Days Following the Petition Date	Event
November 9, 2023 at 5 p.m. (prevailing Central Time)	Petition Date + 38 days	Assumption Notice Deadline
December 1, 2023 at 5 p.m. (prevailing Central Time)	Petition Date + 60 days	Deadline for Indications of Interest
December 11, 2023 at 5 p.m. (prevailing Central Time)	Petition Date +70 days	Deadline for Debtors to Identify Stalking Horse Bidder (if any) and seek Court approval of Bid Protections (if any)
December 11, 2023 at 5 p.m. (prevailing Central Time)	Petition Date +70 days	Contract Objection Deadline
December 18, 2023 at 5 p.m. (prevailing Central Time)	Petition Date + 77 days	Last possible deadline to object to Debtors' designation of the Stalking Horse Bidder and the Bid Protections set forth in the Stalking Horse Agreement
[December 20], 2023 at [●] [a.m. / p.m.] (prevailing Central Time) (or such other time based on the Court's availability)	Petition Date+[79] days	Hearing for objections to the designation of the Stalking Horse Bidder and the Bid Protections set forth in the Stalking Horse Agreement (if any)
December 29, 2023 at 5 p.m. (prevailing Central Time)	Petition Date + 88 days	Bid Deadline
January 3, 2024 at 10 a.m. (prevailing Eastern Time) / 9 a.m. (prevailing Central Time)	Petition Date + 93 days	Auction (if applicable)
[January 5], 2024 at 5 p.m. (prevailing Central Time)	Petition Date+[95] days	Sale Objection Deadline
[January 8], 2024 at 12 p.m. (prevailing Central Time)	Petition Date+[98] days	Sale Reply Deadline
[January 9], 2024 at [●] [a.m./p.m.] (prevailing Central Time) (or such other time based on the Court's availability)	Petition Date+[99] days	Sale Hearing

2. The failure to timely file an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion, entry of the Stalking Horse Order or Sale Order and/or consummation of any Transaction(s), including the assumption and assignment of contracts and leases to the Stalking Horse Bidder or other Successful Bidder pursuant to the applicable Stalking Horse Agreement or APA, and shall be deemed to constitute any such party's consent to

entry of the applicable order and consummation of the Transaction(s) and all other transactions related thereto.

3. The Debtors reserve the right, and are authorized to, modify the above timeline and the Bidding Procedures in accordance with the Bidding Procedures.

B. Bidding Procedures

4. The Bidding Procedures are approved in their entirety. The Debtors are authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures in accordance therewith. The failure to specifically include or reference a particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provision.

5. The process and requirements associated with submitting a Qualified Bid are approved as fair, reasonable, appropriate and designed to maximize recoveries for the benefit of the Debtors' estates, creditors, and other parties in interest. As further described in the Bidding Procedures, the deadline to submit Indications of Interest shall be **December 1, 2023 at 5 p.m. (prevailing Central Time)**.

6. As further described in the Bidding Procedures, the deadline to submit a Bid shall be **December 29, 2023 at 5 p.m. (prevailing Central Time)**. Any disputes or objections, if any, to the selection of Qualified Bid(s), Successful Bid(s), or Backup Bid(s) (each as defined in the Bidding Procedures) shall be resolved by this Court at the Sale Hearing.

7. The Debtors are authorized to conduct the Auction in accordance with the Bidding Procedures. The Auction shall take place on **January 3, 2024 at 10 a.m. (prevailing Eastern Time) / 9 a.m. (prevailing Central Time)** at the offices of counsel for the Debtors, Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, or at such other place and

time as the Debtors shall notify all Qualified Bidders, the Consultation Parties, and all other parties entitled to attend the Auction.

C. Stalking Horse Bidder, Related Bidding Protections and Purchase Agreement

8. In accordance with the Bidding Procedures, the Debtors may enter into a Stalking Horse Agreement, subject to higher or otherwise better offers at the Auction, with any Stalking Horse Bidder that submits a Qualified Bid acceptable to the Debtors to establish a minimum Qualified Bid at the Auction.

9. The Stalking Horse Agreement may provide for payment of break-up fees and/or expense reimbursements (the “**Bid Protections**”), subject to entry of the Stalking Horse Order (defined below).

10. In the event that the Debtors select one or more parties to serve as a Stalking Horse Bidder, upon such selection, the Debtors shall file with the Court and provide to (a) all parties on the Rule 2002 List, (b) counsel for any committee appointed in the Chapter 11 Cases (the “**Committee**”), (c) counsel to the proposed Future Claimants Representative (the “**Proposed FCR**”), (d) counsel to the DIP Lender, (e) all parties then known to have expressed an interest in the Assets as part of the marketing process established by the Bidding Procedures, and (f) all parties holding liens on the Assets, five (5) business days’ notice of and an opportunity to object to the designation of such Stalking Horse Bidder and the Bid Protections set forth in the Stalking Horse Agreement. Absent objection, the Debtors may submit an order to the Court under certification of counsel approving the selection of such Stalking Horse Bidder and the Bid Protections (the “**Stalking Horse Order**”). To the extent necessary, the Debtors’ right to seek this Court’s approval of one or more Stalking Horse Bidders, with notice and a hearing, is hereby preserved.

D. Notice Procedures

11. The form of Sale Notice, substantially in the form attached as Annex 2 hereto, is approved.

12. Within five (5) business days after the entry of this Order, the Debtors shall serve the Sale Notice and this Order, including the Bidding Procedures, by first-class mail, postage prepaid, upon, to the best knowledge of the Debtors' management, (a) all entities that have expressed written interest in a Transaction with respect to all or substantially all of the Assets within the past six (6) months; (b) all entities known to have asserted any lien, claim, interest, or encumbrance in or upon any of the Assets; (c) counsel for any Committee; (d) counsel to the Proposed FCR; (e) counsel to the DIP Lender; and (f) the U.S. Trustee; *provided, however*, that to the extent email addresses are available for any of the foregoing parties, such parties may be served by email.

13. In addition, within five (5) business days after the entry of this Order or as soon as reasonably practicable thereafter, the Debtors shall serve the Sale Notice by first-class mail, postage prepaid or, for those parties who have consented to receive notice by the ECF system, by ECF, upon (a) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief granted herein; (b) the United States Attorney's Office for the Southern District of Texas; (c) the Internal Revenue Service; (d) all parties entitled to notice pursuant to Bankruptcy Local Rule 2002-1(b); and (e) all known creditors of the Debtors, including their contract counterparties.

14. Service of the Sale Notice as described above shall be good and sufficient notice of the Transaction(s) with respect to known interested parties.

15. The Debtors are directed to publish the Sale Notice, as modified for publication, in the *Wall Street Journal*, the *Houston Chronicle*, and the *Billings Gazette* on one occasion on the mailing date or as soon as reasonably practicable thereafter. In addition, the Debtors are authorized, but not directed, to (a) publish the Sale Notice in additional publications as the Debtors deem appropriate and (b) cause the Sale Notice to be posted on their case information website at <https://cases.stretto.com/BMI> (the “**Case Website**”).

16. Service of the Sale Notice as described above shall be good and sufficient notice of the Transaction with respect to all unknown parties.

17. The form of Post-Auction Notice, substantially in the form attached as **Annex 4**, is approved. As soon as reasonably practicable after the conclusion of the Auction, if any, the Debtors shall file the Post-Auction Notice identifying any Successful Bidder(s) on the docket and serve such notice on any non-Debtor party to an executory contract or unexpired lease that is proposed to be assumed and assigned to the Successful Bidder(s) by email, overnight mail or facsimile.

E. Assumption and Assignment Procedures

18. The Assumption and Assignment Procedures, as detailed in the Motion and incorporated herein by reference as if fully set forth in the Order, are approved.

19. The Assumption Notice, substantially in the form attached as **Annex 3**, is approved.

20. On or before **November 9, 2023 at 5 p.m. (prevailing Central Time)** (the “**Assumption Notice Deadline**”), the Debtors shall file with the Court, and post on the Case Website, the Assumption Notice and Designated Contracts List. If no Cure Cost is listed on the Designated Contracts List for a particular Designated Contract, the Debtors’ asserted Cure Cost for such Designated Contract shall be deemed to be \$0.00. On or before the Assumption Notice

Deadline, the Debtors shall serve, via first-class mail, the Assumption Notice that contains (a) the Designated Contracts List, (b) information necessary and appropriate to provide notice of the relevant proposed assumption and assignment of Designated Contract(s) and rights thereunder, (c) Cure Costs, if any, and (d) the procedures for objecting thereto, on all counterparties to the Designated Contracts and all parties on the Rule 2002 Notice List. Service of such Assumption Notice as set forth herein shall be deemed good and sufficient notice of, among other things, the proposed assumption and assignment of the Designated Contracts, the applicable Cure Costs related thereto, and the procedures for objecting thereto, and no other or further notice is necessary.

21. Any objection by a Counterparty to a Designated Contract (a “**Contract Objection**”) must (a) be in writing, (b) comply with the applicable provisions of the Bankruptcy Rules and Bankruptcy Local Rules, (c) be filed with the Clerk of Court on or before **December 11, 2023 at 5 p.m. (prevailing Central Time)** (the “**Contract Objection Deadline**”), (d) be served, so as to be actually received on or before the Contract Objection Deadline, upon the Objection Recipients (as defined below), and (e) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under sections 365(b)(1)(A) and (B) of the Bankruptcy Code for the applicable Designated Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto.

22. Any time after the Assumption Notice Deadline and before the date one (1) business day prior to the Sale Hearing, the Debtors reserve the right, and are authorized, but not directed, to (a) add previously omitted Designated Contracts as contracts to be assumed and assigned to a Successful Bidder in accordance with the definitive agreement for a Transaction, (b) remove a

Designated Contract from the Designated Contract List that a Successful Bidder proposes be assumed and assigned to it in connection with a Transaction, or (c) modify the previously stated Cure Cost associated with any Designated Contract.

23. If, after the Assumption Notice Deadline, additional executory contracts or unexpired leases of the Debtors are determined to be Designated Contracts in connection with such Transaction or the Debtors seek to modify the previously stated Cure Cost associated with any Designated Contract, as soon as practicable thereafter and in no event less than one (1) business day before the date of the Sale Hearing, the Debtors shall file with the Court and serve, by overnight delivery on the applicable counterparties, a revised Assumption Notice (which shall be deemed to amend and restate the prior Assumption Notice with respect to such Designated Contracts and/or Cure Costs), and such counterparties shall file any Contract Objections not later than (a) the Contract Objection Deadline in the event that such revised Assumption Notice was filed and served at least ten (10) days prior to the Contract Objection Deadline, (b) two (2) days prior to the Sale Hearing in the event that such revised Assumption Notice was filed and served at least seven (7) days prior to the commencement of the Sale Hearing, and (c) two (2) hours prior to the commencement of the Sale Hearing in the event that such revised Assumption Notice was filed and served less than seven (7) days prior to the commencement of the Sale Hearing.

24. As soon as practicable after the Auction and in no event more than one (1) business day following the conclusion of the Auction, the Debtors shall file with the Court and serve, by overnight delivery, on the counterparties a notice substantially in the form attached as Annex 4 hereto (the “**Post-Auction Notice**”) identifying the Successful Bidder(s), and the counterparties shall file any Contract Objections solely on the basis of adequate assurance of future performance

not later than **[January 5, 2024] at 5:00 p.m. (prevailing Central Time)** (the “**Sale Objection Deadline**”).

25. At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to the Successful Bidder(s) of only those Designated Contracts that have been selected by such Successful Bidder(s) to be assumed and assigned (collectively, the “**Selected Designated Contracts**”). The inclusion of a Designated Contract on an Assumption Notice will not (a) obligate the Debtors to assume any Designated Contract listed thereon nor the Successful Bidder(s) to take assignment of such Designated Contract or (b) constitute any admission or agreement of the Debtors that such Designated Contract is an executory contract. The Debtors and their estates reserve any and all rights with respect to any Designated Contracts that are not ultimately designated as Selected Designated Contracts.

26. If no Contract Objection is timely received with respect to a Selected Designated Contract: (a) the Counterparty to such Selected Designated Contract shall be deemed to have consented to the assumption by the Debtors and assignment to Successful Bidder of the Selected Designated Contract, and be forever barred from asserting any objection with regard to such assumption and assignment; (b) any and all defaults under the Selected Designated Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code upon payment of the Cure Cost set forth in the Assumption Notice for such Selected Designated Contract; and (c) the Cure Cost set forth in the Assumption Notice for such Selected Designated Contract shall be controlling, notwithstanding anything to the contrary in such Selected Designated Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Cost and shall be forever barred from asserting any other Claims related to such Selected Designated Contract

against the Debtors and their estates or the Successful Bidder, or the property of any of them, that existed prior to the entry of the order resolving the Contract Objections and the Sale Order.

27. To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to the applicable Counterparty under sections 365(b)(1)(A) and (B) of the Bankruptcy Code (any such dispute, a “**Cure Dispute**”), such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be fixed by the Court; *provided, however*, that if the Contract Objection relates solely to a Cure Dispute, the Selected Designated Contract may be assumed by the Debtors and assigned to the Successful Bidder, provided that the cure amount the Counterparty asserts is required to be paid under sections 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Debtors pending the Court’s adjudication of the Cure Dispute or the parties’ consensual resolution of the Cure Dispute.

F. Sale Hearing

28. A Sale Hearing to (a) approve a sale of a portion or substantially all of the Assets to the Successful Bidder(s), (b) approve designation of a Backup Bid and Backup Bidder in accordance with the Bidding Procedures, and (c) authorize the assumption and assignment of certain executory contracts and unexpired leases shall be held on **[January 9, 2024] at [●] [a.m./p.m.] (prevailing Central Time)**, and may be adjourned or rescheduled without further notice. At the Sale Hearing, the Debtors will seek Court approval of the Successful Bid(s) and Backup Bid(s). Unless the Court orders otherwise, any Sale Hearing shall be an evidentiary hearing on matters relating to the Transaction(s) and there will be no further bidding at such hearing. In the event that the Successful Bidder(s) cannot or refuses to consummate the

Transaction(s) because of the breach or failure on the part of such Successful Bidder, the Debtors may, in accordance with the Bidding Procedures, designate the Backup Bid to be the new Successful Bid and the Backup Bidder to be the new Successful Bidder, and the Debtors shall be authorized, but not required, to consummate the applicable transaction with the Backup Bidder without further order of the Court.

29. Any and all objections, if any, to any Transaction (each, a “**Sale Objection**”) must be filed and served on the Objection Recipients and counsel to any Successful Bidder(s), if known, on the Sale Objection Deadline. For the avoidance of doubt, any objections to a Successful Bidder’s proposed form of adequate assurance of future performance will be resolved at the Sale Hearing or Supplemental Designated Contract Hearing, as applicable. All replies to such objections must be filed by [January 8, 2024] at 12:00 p.m. (prevailing Central Time) (the “**Reply Deadline**”).

G. Additional Provisions

30. Except as otherwise provided herein, any objection provided hereunder must be (a) be in writing, (b) comply with the applicable provisions of the Bankruptcy Rules and Bankruptcy Local Rules, (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor, and (d) be filed with this Court and served so actually received no later than the applicable objection deadline by the following parties: (i) the Debtors, Barretts Minerals Inc., 5605 North MacArthur Boulevard, Suite 1000, PMB 139, Irving, Texas 75038 (Attn: David Gordon); (ii) counsel to the Debtors, (A) Latham & Watkins, LLP, 1271 Avenue of the Americas, New York, NY 10020 (Attn: Anu Yerramalli and Liza Burton) and Latham & Watkins, LLP, 355 South Grand Avenue, Suite 100, Los Angeles, CA 90071 (Attn: Jeff Bjork, Kimberly Posin, and Shawn Hansen) and (B) Porter & Hedges, L.L.P., 1000 Main St., 36th Floor,

Houston, TX 77002 (Attn: John Higgins and Megan Young-John); (iii) Jefferies LLC, 520 Madison Avenue, 10th Floor, New York, NY 10022 (Attn: Christoph Hinder, Andriy Stepanyants, and Chad Jennings); (iv) counsel to the DIP Lender, Lowenstein Sandler LLP (Attn: Robert Hirsh, Jordana Renert, and Erica Mannix); (v) counsel to any Committee, [●] (Attn: [●]); (vi) counsel to the Proposed FCR, [Stutzman, Bromberg, Esserman & Plifka, P.C. (Attn: Sander L. Esserman) and Young Conaway Stargatt & Taylor, LLP (Attn: Robert Brady, Ed Harron, Ryan Bartley)]; and (vii) the U.S. Trustee, 515 Rusk Street, Suite 3516, Houston, TX 77002, (Attn: Vianey Garza and Hector Duran) (the “**Objection Recipients**”).

31. The Bidding Procedures and any Bid Protections approved in accordance with the terms of this Order shall apply solely to the assets of the Debtors and their estates and shall not apply to any assets of any non-Debtor entity; *provided*, that nothing contained herein or in the Bidding Procedures shall be deemed to prohibit non-Debtor entities from selling their assets or separately agreeing to provide any bid protections to any Stalking Horse Bidder in connection with any Transaction. If any assets of a non-Debtor entity are sold in conjunction with the Debtors’ assets, this Court may approve any corporate action taken by the Debtors in connection with the sale of such non-Debtor entity’s assets.

32. Any M&A Transaction Fee³ due to Jefferies LLC (“**Jefferies**”) as a result of the closing of any M&A Transaction shall be segregated and escrowed (for the exclusive benefit of Jefferies) from the proceeds of such M&A Transaction (including, without limitation, from the proceeds of any liquidation or other disposition of the Debtors’ assets) and paid in accordance with an order of the Court, as an express carve-out from the collateral of the Debtors’ secured lenders,

³ Capitalized terms used in this paragraph and not otherwise defined in this Order shall have the meanings ascribed to such terms in that certain engagement letter between Jefferies and the Debtors, dated as of July 26, 2023, a copy of which is being filed in connection with the Debtors’ application to retain Jefferies.

prior to any other use or distribution of such proceeds. If any M&A Transaction is the result of a Successful Bid without a cash component sufficient to pay the corresponding M&A Transaction Fee due to Jefferies in full, then any resulting unpaid portion of the M&A Transaction Fee due to Jefferies shall be segregated and escrowed (for the exclusive benefit of Jefferies) at the closing of such M&A Transaction from the available cash of the Debtors, as an express carve-out from the collateral of the Debtors' secured lenders. For the avoidance of doubt, nothing in this Order shall prohibit or be construed to prohibit the use of any unencumbered assets of the Debtors or the proceeds thereof to pay any fees and expenses of Jefferies or the assertion or allowance of an administrative priority claim under sections 503(b)(2) and 507(a)(2) of the Bankruptcy Code, if applicable, on account of any fees or expenses of Jefferies.

33. Nothing in this Order or the Bidding Procedures shall preclude a Bidder from submitting a Bid in the form of a plan of a reorganization and it being understood that such Bid may be determined by the Debtors to be a Qualified Bid, Stalking Horse Bid, Successful Bid, or Backup Bid.

34. Any substantial contribution claims by any Bidder are deemed waived, to the extent based on such Bidder's submission of a Bid in accordance with the Bidding Procedures.

35. The Debtors are authorized and empowered to take such action as may be necessary to implement and effect the terms and requirements established under this Order.

36. This Bidding Procedures Order shall be binding on and inure to the benefit of the Debtors.

37. This Order shall constitute the findings of fact and conclusions of law and, notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or otherwise, this Court, for

good cause shown, orders that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

38. To the extent this Order is inconsistent with any prior order or pleading with respect to the Motion in these cases, the terms of this Order shall govern.

39. To the extent of the deadlines set forth in this Order do not comply with the Bankruptcy Local Rules, such Bankruptcy Local Rules are waived and the terms of this Order shall govern.

40. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b), Bankruptcy Local Rule 9013-1, and the Complex Case Procedures.

41. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

42. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

43. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order, including, but not limited to, any matter, claim, or dispute arising from or relating to the Bidding Procedures, any Stalking Horse Agreement, and the implementation of this Order.

Dated: _____, 2023
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE

Annex 1

Bidding Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

	X	
	:	
In re:	:	Chapter 11
	:	
BARRETT'S MINERALS INC., et al. ¹	:	Case No. 23-90794 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

BIDDING PROCEDURES

These Bidding Procedures have been approved by the United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) in connection with the chapter 11 cases for the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) pursuant to an order dated as of [●], 2023 (the “**Bidding Procedures Order**”).²

These Bidding Procedures set forth the process by which the Debtors are authorized to solicit and select the highest and otherwise best offer for the sale of substantially all of their assets (the “**Assets**”) either through one sale to a Successful Bidder (defined below) or multiple sales to multiple Successful Bidders (each, a “**Transaction**”).

These Bidding Procedures do not prohibit the combining of Bids; *provided*, that any communications regarding the combining of Bids shall be facilitated by the Debtors’ advisors (as described below). Interested parties are encouraged to submit Bids for a sale of all or a portion of the Assets or for an alternative value-maximizing Transaction.

KEY DATES

These Bidding Procedures provide interested parties with the opportunity to complete diligence, to submit competing bids for all or any portion or combination of the Assets, and to

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Barretts Minerals Inc. (8715) and Barretts Ventures Texas LLC (0787). The Debtors’ address is 5605 North MacArthur Boulevard, Suite 1000, PMB 139, Irving, Texas 75038.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Debtors’ Motion for Entry of an Order Approving (I) (A) Bidding Procedures for the Sale of Substantially All or Any Portion of the Debtors’ Assets, (B) Procedures for the Debtors’ Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (C) the Form and Manner of Notice of the Sale Hearing and Assumption Procedures, (D) Procedures for the Selection of One or More Stalking Horse Bidder(s), and (E) Dates for an Auction and Sale Hearing, and (II) (A) the Sale of Substantially All or Any Portion of the Debtors’ Assets Free and Clear of All Claims, Liens, Liabilities, Rights, Interests and Encumbrances, and (B) the Debtors’ Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Related Relief* [Docket. No. [●]].

participate in an auction (the “**Auction**”) to be conducted by the Debtors in consultation with the Consultation Parties (as defined).

The key dates for the sale process are as follows. Such dates may be extended or otherwise modified by: (a) the Debtors, after consultation with the Consultation Parties, by filing a notice of such extension or modification on the Court’s docket, or (b) an order of the Court:

Date	Days Following the Petition Date	Event
November 9, 2023 at 5 p.m. (prevailing Central Time)	Petition Date + 38 days	Assumption Notice Deadline
December 1, 2023 at 5 p.m. (prevailing Central Time)	Petition Date + 60 days	Deadline for Indications of Interest
December 11, 2023 at 5 p.m. (prevailing Central Time)	Petition Date +70 days	Deadline for Debtors to Identify Stalking Horse Bidder (if any) and seek Court approval of Bid Protections (if any)
December 11, 2023 at 5 p.m. (prevailing Central Time)	Petition Date +70 days	Contract Objection Deadline
December 18, 2023 at 5 p.m. (prevailing Central Time)	Petition Date + 77 days	Last possible deadline to object to Debtors’ designation of the Stalking Horse Bidder and the Bid Protections set forth in the Stalking Horse Agreement (if any)
[December 20], 2023 at [●] [a.m. / p.m.] (prevailing Central Time) (or such other time based on the Court’s availability)	Petition Date+[79] days	Hearing for objections to the designation of the Stalking Horse Bidder and the Bid Protections set forth in the Stalking Horse Agreement (if any)
December 29, 2023 at 5 p.m. (prevailing Central Time)	Petition Date + 88 days	Bid Deadline
January 3, 2024 at 10 a.m. (prevailing Eastern Time) / 9 a.m. (prevailing Central Time)	Petition Date + 93 days	Auction (if applicable)
[January 5], 2024 at 5 p.m. (prevailing Central Time)	Petition Date+[95] days	Sale Objection Deadline
[January 8], 2024 at 12 p.m. (prevailing Central Time)	Petition Date+[98] days	Sale Reply Deadline
[January 9], 2024 at [●] [a.m./p.m.] (prevailing Central Time) (or such other time based on the Court’s availability)	Petition Date+[99] days	Sale Hearing

ASSET PURCHASE AGREEMENT

The Debtors have drafted a form of Asset Purchase Agreement (together with all schedules, exhibits, and ancillary documents and agreements, the “**APA**”) for parties interested in acquiring the Assets. The Debtors intend to provide copies of the form of APA to all parties who express interest in submitting a Bid and will also make such form of APA available in the electronic data room established by the Debtors in connection with their sale process.

Pursuant to the form of APA and subject to any exceptions set forth therein, the Successful Bidder shall acquire the Assets free and clear of any and all pledges, liens, security interests, encumbrances, claims, charges, options, and other interests thereon (collectively, the “**Interests**”) to the maximum extent permitted by section 363 of title 11 of the United States Code (the “**Bankruptcy Code**”) subject to certain other conditions, with such Interests to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Interests applied against the Assets.

ACCESS TO DEBTORS’ DILIGENCE MATERIALS

To receive access to due diligence materials and to participate in the bidding process, an interested party (or each member that is part of a consortium of interested parties that is contemplating a joint bid) must submit an executed confidentiality agreement in form and substance satisfactory to the Debtors.

An interested party (or each member that is part of a consortium of interested parties that is contemplating a joint bid) that (a) delivers an executed confidentiality agreement satisfactory to the Debtors, or (b) is party to an existing confidentiality agreement with respect to the sale of the Assets of Barretts Minerals Inc. which existing confidentiality agreement (i) has not terminated pursuant to its own terms and (ii) is satisfactory to the Debtors as of the Petition Date, shall be a “**Diligence Party**.” As promptly as practicable after the Debtors determine that a party is a Diligence Party, the Debtors will deliver to the Diligence Party access to the Debtors’ confidential electronic data room. The Debtors will afford any Diligence Party the time and opportunity to conduct reasonable due diligence before the Bid Deadline (defined below). Notwithstanding the foregoing, the Debtors reserve the right to withhold any diligence materials that the Debtors determine (in their reasonable business judgment and in consultation with the Consultation Parties) are sensitive or otherwise not appropriate for disclosure to a Diligence Party that the Debtors determine (in their reasonable business judgment and in consultation with the Consultation Parties) is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Diligence Party.

All due diligence requests must be directed to: Jefferies LLC, 520 Madison Avenue, New York, New York 10022, (Attn: Christoph Hinder, Andriy Stepanyants, and Chad Jennings; email: chinder@jefferies.com; astepanyants@jefferies.com; cjennings@jefferies.com).

Each Diligence Party and Bidder (defined below) shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Diligence Party and/or Bidder and its contemplated Transaction. Failure by a Diligence Party to

comply with requests for additional information and due diligence access may be a basis for the Debtors to determine, in their reasonable business judgment and after consultation with the Consultation Parties, that such Bidder is not a Qualified Bidder (defined below). Failure by a Qualified Bidder to comply with requests for additional information and due diligence access may be a basis for the Debtors to determine, in consultation with the Consultation Parties, that a Bid made by such Qualified Bidder is not a Qualified Bid (defined below). The Debtors reserve the right, in their discretion (in consultation with the Consultation Parties) to permit a Diligence Party or Qualified Bidder to remedy any such failure to comply.

INDICATIONS OF INTEREST

The Diligence Parties shall submit written indications of interest specifying, among other things, (a) the Assets proposed to be acquired and liabilities to be assumed by such party, including whether such party intends to bid for the Assets of Barretts Minerals Inc., (b) the amount and type of consideration to be offered for any Assets to be purchased on a cash-free, debt-free basis, (c) any material conditions or assumptions upon which a bid by such party will be based, and (d) any other material terms of such bid (an “**Indication of Interest**”) on or before 5 p.m. (prevailing Central Time) on December 1, 2023. Notwithstanding anything to the contrary herein, an Indication of Interest may indicate the submitting party’s interest in bidding in the form of a plan of reorganization (a “**Restructuring Transaction**”), it being understood that the Debtors, in consultation with the Consultation Parties, reserve the right to modify these procedures, including, without limitation, Qualified Bid requirements, as necessary or appropriate to accommodate the submission and the Debtors’ consideration of one or more Bids in the form of a Restructuring Transaction. The Debtors shall promptly provide to counsel to the Consultation Parties copies of any Indications of Interest received.

A Diligence Party that fails to timely submit an Indication of Interest may not, in the Debtors’ discretion (in consultation with the Consultation Parties), be provided further diligence access or be permitted to participate further in the auction process. The Debtors also reserve the right to exclude any Diligence Party (prior to its submission of a Qualified Bid) from continuing in the auction process if the Debtors determine, in consultation with the Consultation Parties (defined below), that the consideration proposed to be paid by such Diligence Party is insufficient.

QUALIFICATION PROCESS

To be eligible to participate in the Auction, each offer, solicitation, or proposal (each, a “**Bid**”), and each party submitting such a Bid (each, a “**Bidder**”) must satisfy each of the conditions set forth below, as determined by the Debtors in consultation with the Consultation Parties. A Bid will not be considered a Qualified Bid for the Auction if such Bid does not satisfy each of the following conditions:

- (a) **Good Faith Deposit.** Each Bid for all or a portion of the Assets must be accompanied by a deposit (a “**Good Faith Deposit**”) submitted by wire transfer of immediately available funds to a segregated account identified by the Debtors. Each Good Faith Deposit must equal, in the case of a Bid for all or a portion of the Assets, the amount of ten percent (10%) of the purchase price contained in the

Modified APA (defined below) or such other amount as the Debtors determine, in consultation with the Consultation Parties.

- (b) Bids for Portions of the Assets. Each Bid must state whether the Bidder is offering to purchase all or substantially all of the Assets, any portion of the Assets, or any combination of the Assets. The Debtors may, in consultation with the Consultation Parties, waive or modify the application of the Qualified Bid conditions in respect of Bids for a portion of the Assets.
- (c) Higher or Better Terms. To the extent a Stalking Horse Bidder (defined below) is selected, each subsequent Bid for any Assets subject to the Stalking Horse Agreement (defined below) (alone or combined with Bids for other Assets subject to the Stalking Horse Agreement) must be on terms that, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties, are higher and better than the terms of the Stalking Horse Agreement, and the aggregate value of such subsequent Bid, as determined by the Debtors in consultation with the Consultation Parties, must exceed the Stalking Horse Bid by the Minimum Overbid (each as defined below).
- (d) Executed Agreement. Each Bid contemplating a Transaction must be based on the APA or Stalking Horse Agreement, if applicable, and must include duly authorized and executed transaction documents, signed by an authorized representative of such Bidder, pursuant to which the Bidder proposes to effectuate a Transaction (the "**Modified APA**"). Each such Bid shall also include a copy of the Modified APA, along with a redline of such Modified APA marked against the APA, to show all changes requested by the Bidder (including those related to purchase price).
- (e) Designation of Contracts and Leases. A Bid must (i) identify with particularity any and all executory contracts and unexpired leases of the Debtors for which assumption and assignment or rejection is required, and (ii) provide for the payment of all cure amounts payable with respect to such assumed or assigned contracts and leases under the Bankruptcy Code.
- (f) Assumed Liabilities. A Bid must identify the liabilities of the Debtors to be assumed by such Bidder (the "**Assumed Liabilities**"), as well as the Assets covered by the Bid.
- (g) Surety Bonds. A Bid must provide for the replacement of the existing reclamation surety bonds, as required by applicable law and regulations, and identify the source of such bonding.
- (h) Corporate Authority. A Bid must include written evidence reasonably acceptable to the Debtors demonstrating appropriate corporate authorization to submit the Bid and consummate the proposed Transaction; *provided*, that, if the Bidder is an entity specially formed for the purpose of effectuating the Transaction, then the Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval

of the submission of the Bid and consummation of the Transaction by equity holder(s) of such Bidder.

- (i) Disclosure of Identity of Bidder. A Bid must fully disclose the identity of each entity and its affiliates that will be bidding for or purchasing the Assets or otherwise participating in connection with such Bid (including any equity holder or other financial backer if the Bidder is an entity specifically formed for the purpose of effectuating the Transaction), and the complete terms of any such participation, including any binding agreements, arrangements, or understandings concerning a collaborative or joint Bid or any other combination concerning the proposed Bid. A Bid must (i) fully disclose what connections the Bidder has (if any) to the Debtors or the Debtors' principals, (ii) include a binding representation by the Bidder (including all persons comprising such Bidder, if a collaborative or joint Bid) that it has not engaged in collusion with any other Bidder or other party regarding the sale of the Assets, and (iii) provide the identity and contact information for the Bidder and full disclosure of any parent companies of the Bidder. Nothing contained herein shall preclude the submission of a collaborative or joint Bid; *provided*, that such collaborative or joint Bid is subject to the Debtors' prior written consent and the disclosure requirements set forth in these Bidding Procedures.
- (j) Proof of Financial Ability to Perform. A Bid must include written evidence that the Debtors reasonably conclude, in consultation with the Consultation Parties, demonstrates that the Bidder has the necessary financial ability to (i) close the Transaction and (ii) provide adequate assurance of future performance under all contracts to be assumed and assigned in such Transaction. Such information must include, *inter alia*, the following:
 1. contact names and telephone numbers for verification of financing sources;
 2. evidence of the Bidder's internal resources and proof of unconditional debt funding commitments from a recognized financial institution and, if applicable, equity commitments in an aggregate amount equal to the cash portion of such Bid (including, if applicable, the Bidder's payment of cure amounts) or the posting of an irrevocable letter of credit from a recognized banking institution issued in favor of the Debtors in such amount, in each case, as are needed to close the Transaction;
 3. evidence that the Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid;
 4. the Bidder's current financial statements (audited if they exist) or other similar financial information reasonably acceptable to the Debtors;
 5. a description of the Bidder's pro forma capital structure; and

6. any such other form of financial disclosure or credit-quality support information or enhancement reasonably requested by the Debtors to demonstrate that such Bidder has the ability to close the Transaction.
- (k) Regulatory and Third-Party Approvals. A Bid must set forth each regulatory and third-party approval required for the Bidder to consummate the Transaction, if any, and the time period within which the Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than thirty (30) days following execution and delivery of the Modified APA, those actions the Bidder will take to ensure receipt of such approval(s) as promptly as possible).
 - (l) Conditions to Closing. Each Bid must identify with particularity each condition to consummating the closing of the Transaction.
 - (m) Contingencies. Each Bid must not be conditioned on: (i) obtaining financing, (ii) any internal approval, (iii) the outcome or review of unperformed due diligence (unless otherwise agreed upon by the Debtors in consultation with the Consultation Parties), it being understood that Bids may be conditioned on the accuracy at closing of specified representations or warranties, or (iv) regulatory contingencies, except as provided under “Regulatory and Third-Party Approvals.”
 - (n) Irrevocable. Each Bid must expressly provide that (i) the Bidder is prepared to consummate the Transaction set forth in the Modified APA promptly following Court approval of the proposed Transaction and satisfaction of the closing conditions (if any) set forth in the Modified APA, and (ii) the offer reflected in such Bid shall remain open and irrevocable until the conclusion of the Auction; *provided*, that if such Bid is accepted as the Successful Bid or the Backup Bid (each as defined herein), such Bid shall continue to remain open and irrevocable as provided under “Closing the Auction; Successful Bidder” and “Backup Bidder” below.
 - (o) Purchase Price. Each Bid (including any Overbid as defined below) must: (i) clearly state which Assets the Bidder is agreeing to purchase and which liabilities the Bidder is agreeing to assume; and (ii) clearly set forth the purchase price to be paid on a cash-free, debt-free basis, including and identifying separately any cash and non-cash components. Notwithstanding the foregoing, no Bid may be chosen as the Successful Bid or the Backup Bid for the purchase of Assets of the Debtors unless there is a binding purchase price to be paid to the Debtors.
 - (p) Jurisdiction. Each Bid must state that the Bidder consents to the jurisdiction of the Court.
 - (q) Independent Review/As-Is, Where-Is. Each Bid shall include a written acknowledgment and representation of the Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its Bid; and (iii) it did not

rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or the physical condition of the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures.

- (r) Bid Representatives. Each Bid shall identify the representatives of the Bidder that are authorized to appear and act on behalf of the Bidder in connection with the proposed Transaction.
- (s) No Break-Up Fee. Each Bid shall indicate that such Bidder will not seek any transaction break-up fee, expense reimbursement, or similar type of payment (other than to the extent such Bid is selected to be a Stalking Horse Bid, and subject to the provisions applicable to “Stalking Horse Bids” below).
- (t) Bid Deadline. Each Bid must be received by each of the following parties, in writing, on or before December 29, 2023 at 5 p.m. (prevailing Central Time), or such other date as may be established pursuant to these Bidding Procedures in accordance with the section titled “Key Dates” above (the “**Bid Deadline**”): (i) Barretts Minerals Inc., 5605 North MacArthur Boulevard, Suite 1000, PMB 139, Irving, Texas 75038 (Attn: David Gordon); (ii) Latham & Watkins, LLP, 1271 Avenue of the Americas, New York, NY 10020 (Attn: Anu Yerramalli and Liza Burton); (iii) Latham & Watkins, LLP, 355 South Grand Avenue, Suite 100, Los Angeles, CA 90071 (Attn: Jeff Bjork, Kimberly Posin and Shawn Hansen); (iv) Porter & Hedges, L.L.P., 1000 Main St., 36th Floor, Houston, TX 77002 (Attn: John Higgins and Megan Young-John); (v) Jefferies LLC, 520 Madison Avenue, 10th Floor, New York, NY 10022 (Attn: Christoph Hinder, Andriy Stepanyants, and Chad Jennings) (with an electronic copy sent to: chinder@jefferies.com; astepanyants@jefferies.com; cjennings@jefferies.com; and project.mountain.core.2023@jefferies.com); (vi) counsel for any committee appointed in the Chapter 11 Cases (the “**Committee**”), [●] (Attn: [●]); (vii) counsel to the proposed Future Claimants Representative (the “**Proposed FCR**”), [Stutzman, Bromberg, Esserman & Plifka, P.C. (Attn: Sander L. Esserman) and Young Conaway Stargatt & Taylor, LLP (Attn: Robert Brady, Ed Harron, Ryan Bartley)]; and (viii) the Office of the United States Trustee for the Southern District of Texas, 515 Rusk Street, Suite 3516, Houston, TX 77002, (Attn: Vianey Garza and Hector Duran). The Debtors will provide to the Consultation Parties copies of Bids received for the Assets promptly after the expiration of the Bid Deadline.

A Bid received from a Bidder on or before the Bid Deadline that meets each of the requirements set forth above, as determined by the Debtors, in consultation with the Consultation Parties, for the applicable Assets shall constitute a “**Qualified Bid**” for such Assets, and such Bidder shall constitute a “**Qualified Bidder**” for such Assets. Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors; *provided, however*, that if the Debtors receive a Bid prior to the Bid Deadline that does not satisfy the requirements of a Qualified Bid, the Debtors may, after consultation with the Consultation Parties, provide such Bidder the opportunity to remedy any deficiencies in such Bid prior to the Auction. For the avoidance of doubt, JMB

Capital Partners Lending, LLC (the “**DIP Lender**”) shall be deemed to be a Qualified Bidder, and the DIP Lender may participate in the Auction in accordance with the terms outlined herein.

Nothing herein shall preclude a Bidder from submitting a Bid in the form of a Restructuring Transaction, it being understood that the Debtors, in consultation with the Consultation Parties, reserve the right to modify these procedures, including, without limitation, Qualified Bid requirements, as necessary or appropriate to reflect the submission and the Debtors’ consideration of one or more Bids in the form of a Restructuring Transaction; *provided*, that, (i) in order for a Bid in the form of a Restructuring Transaction to constitute a Qualified Bid, the Debtors, in consultation with the Consultation Parties, must determine in good faith that such Bid is capable of satisfying the requirements of section 1129 of the Bankruptcy Code and being consummated, and (ii) the failure of any such Bid to satisfy the requirements set forth above in subparagraphs (a) through (t) may be taken into account by the Debtors and the Consultation Parties in evaluating such Bid. Any Bid in the form of a plan of reorganization satisfying the requirements of this paragraph may be determined by the Debtors, in consultation with the Consultation Parties, to be a Qualified Bid, Stalking Horse Bid, Successful Bid, or Backup Bid (each as defined below).

NO COMMUNICATIONS AMONG BIDDERS

There shall be no communications regarding the Debtors’ sale process between and amongst Diligence Parties or Qualified Bidders (including, for the avoidance of doubt, the Stalking Horse Bidder, if any) unless the Debtors have previously authorized such communication in writing. Should any Diligence Party or Qualified Bidder attempt to communicate directly with another Diligence Party or Qualified Bidder, such Diligence Party or Qualified Bidder shall provide written notice of the proposed communication(s) to (a) Debtors’ counsel, Latham & Watkins LLP (“**L&W**”) and Porter Hedges LLP (“**PH**”), and (b) Debtors’ investment bank, Jefferies LLC (“**Jefferies**”), and L&W, PH and Jefferies shall have the option to attend or be copied on any such communication(s) between Diligence Parties or Qualified Bidders. The Debtors reserve the right, in their reasonable business judgment, in consultation with the Consultation Parties, to disqualify any Diligence Parties or Qualified Bidders that have communications between and amongst themselves without the Debtors’ written consent.

CREDIT BIDDING

The DIP Lender is authorized, subject in all respects to the Bankruptcy Code and other applicable law, to submit a credit bid for the purchase of all of the collateral on which such DIP Lender holds a valid, perfected, and unavoidable lien up to the amount of the outstanding balance under the DIP Facility to the extent provided in section 363(k) of the Bankruptcy Code or other applicable law, and in accordance with the applicable provisions of the documents governing such debt obligations.

Notwithstanding anything to the contrary set forth in these Bidding Procedures, the DIP Lender (a) shall be deemed to be a Qualified Bidder and shall not be required to provide or deliver (i) an Indication of Interest, (ii) any asset purchase agreement, (iii) a Good Faith Deposit in connection with the credit bid, or (iv) any other materials as a condition to submission of a Qualified Bid or its participation at the Auction, and (b) may participate in the Auction with respect to the Assets. At any time prior to the Auction or during the Auction, the DIP Lender may make

the determination that it no longer wants to be a Qualified Bidder on all or a subset of Assets by written notice to Debtors' counsel (each a "**Designation**"). Upon such Designation, the DIP Lender shall cease being a Qualified Bidder with respect to Assets subject to the Designation (the "**Designated Assets**") and shall be deemed a Consultation Party in connection with the sale of the Designated Assets.

STALKING HORSE BIDS

Subject to the provisions set forth in the Bidding Procedures and the Bidding Procedures Order, and after consultation with the Consultation Parties, the Debtors may, in the exercise of their business judgment, enter into a stalking horse agreement (a "**Stalking Horse Agreement**"), subject to higher or otherwise better offers at the Auction, with any Bidder to establish a minimum Qualified Bid at the Auction (such Qualified Bidder, a "**Stalking Horse Bidder**", and such Bid, a "**Stalking Horse Bid**"). Notwithstanding anything to the contrary herein, subject to approval by the Court in accordance with the below, a Stalking Horse Agreement may provide for payment of break-up fees and/or expense reimbursements (the "**Bid Protections**"). For the avoidance of doubt, a Stalking Horse Bid may be in the form of a plan of reorganization.

In the event that the Debtors (in consultation with the Consultation Parties) select one or more parties to serve as a Stalking Horse Bidder, upon such selection, the Debtors shall file with the Court and provide, to all parties on the Rule 2002 List, counsel to the Committee, counsel to the Proposed FCR, counsel to the DIP Lender, and all parties then known to have expressed an interest in the Assets as part of the marketing process established by these Bidding Procedures, and all parties holding liens on such Assets, five (5) business days' notice (the "**Stalking Horse Notice**") of and an opportunity to object to the designation of such Stalking Horse Bidder and the Bid Protections set forth in the Stalking Horse Agreement, and absent objection, the Debtors may submit an order to the Court under certification of counsel approving the selection of such Stalking Horse Bidder. To the extent necessary, the Debtors' right to seek the Court's approval of one or more Stalking Horse Bidders, with notice and a hearing, is hereby preserved. The Stalking Horse Bidder and Stalking Horse Agreement, if any, shall be filed with the Court no later than December 11, 2023 at 5 p.m. (prevailing Central Time), or such other date as may be established pursuant to these Bidding Procedures in accordance with the section titled "Key Dates" above.

Immediately upon filing of the Stalking Horse Notice, the Debtors shall share with the DIP Lender the information necessary for the DIP Lender to analyze whether the Stalking Horse Agreement is reasonably acceptable to the DIP Lender as required by the terms of the interim and final orders approving the DIP Facility (the "**DIP Orders**") and the DIP Term Sheet (as defined in the DIP Orders) and the DIP Lender shall file any objections to the Stalking Horse Agreement with the Court in accordance with the Bidding Procedures by no later than December 18, 2023 at 5 p.m. (prevailing Central Time).

Any Stalking Horse Agreement executed by the Debtors and the Transaction(s) contemplated thereby will be deemed a Qualified Bid for all purposes, and any Stalking Horse Bidder party to a Stalking Horse Agreement executed by the Debtors will be deemed to be a Qualified Bidder.

Other than as provided by order of the Court, no party submitting a Bid shall be entitled to a break-up fee or expense reimbursement except for the Bid Protections for any Stalking Horse Bidder. Any substantial contribution claims by any Bidder are deemed waived, to the extent based solely on such Bidder's submission of a Bid hereunder.

HIGHEST OR OTHERWISE BEST BID

Whenever these Bidding Procedures refer to the highest or otherwise best Qualified Bid, such determination shall take into account any factors the Debtors, in consultation with the Consultation Parties, reasonably deem relevant to value of the Qualified Bid to the estates and may include, but are not limited to, the following: (a) the amount and nature of the consideration, including any Assumed Liabilities; (b) the executory contracts and unexpired leases of the Debtors, if any, for which assumption and assignment or rejection is required, and the costs and delay associated with any litigation concerning executory contracts and unexpired leases necessitated by such Qualified Bid; (c) the number, type and nature of any changes to the APA requested by each Qualified Bidder; (d) the extent to which such modifications are likely to delay closing of the sale of the Assets and the cost to the Debtors of such modifications or delay; (e) the likelihood of the Qualified Bidder being able to close the proposed Transaction (including obtaining surety bonding and any required regulatory approvals) and the timing thereof; (f) the net benefit or cost to the Debtors' estates (including, without limitations, any tax implications of the proposed Transaction); and (g) any other factors that the Debtors, after consultation with the Consultation Parties, may deem relevant (collectively, the "**Bid Assessment Criteria**"). Notwithstanding anything to the contrary herein, with respect to any Bid for any Assets of the Debtors, the Bid Assessment Criteria and any other consideration of such Bid shall be evaluated solely with respect to the value thereof, and the effect of such Bid on, the estates of the Debtors.

AUCTION

If two or more Qualified Bids for the same Assets are received by the Bid Deadline, the Debtors will conduct the Auction with respect to such Assets to determine the highest or otherwise best Qualified Bid. If fewer than two Qualified Bids are received by the Bid Deadline with respect to any portion of the Assets, the Debtors shall not conduct the Auction with respect to such Assets. If only one Qualified Bid is received with respect to all or a portion of the Assets, the Debtors may, after consultation with the Consultation Parties, designate such Qualified Bid as the Successful Bid (as defined below). Only Qualified Bidders may participate in the Auction.

PROCEDURES FOR AUCTION

The Auction shall take place on January 3, 2024 at 10:00 a.m. (Eastern Time) / 9 a.m. (prevailing Central Time) at the offices of counsel for the Debtors, Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, or at such other place and time as the Debtors shall notify all Qualified Bidders, the Consultation Parties, and all other parties entitled to attend the Auction. The Auction shall be conducted according to the following procedures:

Only the Debtors, the Consultation Parties, the Stalking Horse Bidder(s) (if any), any other Qualified Bidders, and/or other parties as the Debtors may determine to include in their discretion (in consultation with the Consultation Parties), in each case along with their representatives and

advisors, shall be entitled to attend the Auction, and only Qualified Bidders will be entitled to make any Overbids (defined below) at the Auction. The Qualified Bidders and any other authorized attendees shall appear in person or through duly authorized representatives at the Auction.

The Debtors Shall Conduct the Auction

The Debtors and their advisors shall direct and preside over the Auction, which shall be transcribed. Other than as expressly set forth herein, the Debtors may conduct the Auction in the manner they determine (in consultation with the Consultation Parties) will result in the highest or otherwise best offer for any of the Assets or otherwise maximize the value of the Assets. The Debtors shall, at least twenty-four (24) hours prior to commencement of the Auction, provide the Consultation Parties, each Qualified Bidder participating in the Auction, and any other parties entitled to attend the Auction with a copy of the Modified APA associated with the highest or otherwise best Qualified Bid with respect to the Assets for which such Qualified Bidder is bidding, as determined by the Debtors (in consultation with the Consultation Parties) (such highest or otherwise best Qualified Bid, the “**Starting Bid**”). At the start of the Auction, the Debtors shall describe the material terms of the Starting Bid, and each Qualified Bidder participating in the Auction must confirm that (a) it has not engaged in any collusion with respect to the bidding or sale of any of the Assets described herein, (b) it has reviewed, understands, and accepts the Bidding Procedures, (c) it has consented to the core jurisdiction of the Court (as described more fully below), and (d) its Qualified Bid is a good-faith bona fide offer that it intends to consummate if selected as the Successful Bidder.

Terms of Overbid

An “**Overbid**” is any Bid made at the Auction, in accordance with the requirements set forth herein (as determined by the Debtors after consultation with the Consultation Parties), subsequent to the Debtors’ announcement of the Starting Bid for such Assets. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

- (a) Minimum Overbid. The Debtors will announce the bidding increments for Bids (the “**Minimum Overbid**”) and other Auction rules at the outset of the Auction with respect to the Assets and may change such rules at any time during the Auction. For the purpose of evaluating the value of the consideration provided by additional Bids, the Debtors will consider any Bid Protections that may be payable to a Stalking Horse Bidder under a Stalking Horse Agreement, if necessary. The Debtors reserve the right, in consultation with the Consultation Parties, to announce reductions or increases in the Minimum Overbid at any time during the Auction. Additional consideration in excess of the amount set forth in the respective Starting Bid may include cash and/or non-cash consideration; *provided, however*, that the value for such non-cash consideration shall be determined by the Debtors in their reasonable business judgment in consultation with the Consultation Parties.
- (b) Remaining Terms Are the Same as for Qualified Bids. Except as modified in the Bidding Procedures, an Overbid at the Auction must comply with the conditions for a Qualified Bid set forth above; *provided, however*, that the Bid Deadline shall

not apply. Any Overbid must include, in addition to the amount and the form of consideration of the Overbid, a description of all changes requested by the Bidder to the APA or Modified APA, as the case may be, in connection therewith. For the avoidance of doubt, any Overbid shall be irrevocable and shall remain open and binding on the Bidder in accordance with these Bidding Procedures and the conditions for a Qualified Bidder.

At the Debtors' discretion (in consultation with the Consultation Parties), to the extent not previously provided (which shall be determined by the Debtors in consultation with the Consultation Parties), a Bidder submitting an Overbid at the Auction must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors), as the Debtors, in their reasonable business judgment (in consultation with the Consultation Parties) may request, demonstrating such Bidder's ability to consummate the Transaction proposed by such Overbid.

Announcement and Consideration of Overbids

- (a) Announcement of Overbids. A Bidder submitting an Overbid at the Auction shall announce at the Auction the material terms of such Overbid, including, without limitation, the total amount and type of consideration offered in such Overbid.
- (b) Consideration of Overbids. The Debtors reserve the right, in their reasonable business judgment and after consultation with the Consultation Parties, to make one or more continuances of the Auction to, among other things: (a) facilitate discussions between the Debtors and individual Qualified Bidders; (b) allow individual Qualified Bidders to consider how they wish to proceed; and (c) give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, may require that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed Transaction at the prevailing Overbid amount.

Consent to Jurisdiction As Condition of Bidding

All Qualified Bidders shall be deemed to have consented to the core jurisdiction of the Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors, the Chapter 11 Cases, the Bidding Procedures, the APA, the Auction, or the construction and enforcement of documents relating to any Transaction and shall waive any right to a jury trial in connection with any disputes relating to the Debtors, the Chapter 11 Cases, the Bidding Procedures, the APA, the Auction, or the construction and enforcement of documents relating to any Transaction.

Sale Is As Is/Where Is

Any of the Assets sold pursuant to the Bidding Procedures shall be sold free and clear of all Interests as permitted by section 363(f) of the Bankruptcy Code other than any Assumed Liabilities and conveyed at Closing in their then-present condition, **“AS IS, WHERE IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED”**, except to the extent set forth in the APA for the Successful Bid, if applicable, and as approved by the Court.

Closing the Auction; Successful Bidder

The Auction shall continue until there is only one Qualified Bid or combination of Qualified Bids for each portion of the Assets that the Debtors determine, in their reasonable business judgment and in a manner consistent with their fiduciary duties, in consultation with the Consultation Parties, is the highest or otherwise best Qualified Bid at the Auction for such portion of the Assets, and that further bidding is unlikely to result in higher or otherwise better Qualified Bid(s) that would be acceptable to the Debtors. Thereafter, the Debtors shall select such Qualified Bid(s), in consultation with the Consultation Parties, as the overall highest or otherwise best Qualified Bid(s) (such Bid(s), the **“Successful Bid(s)”**, and the Bidder(s) submitting such Successful Bid, the **“Successful Bidder(s)”**). In making this decision, the Debtors shall consider (in consultation with the Consultation Parties) the Bid Assessment Criteria.

The Auction shall close when the Successful Bidder(s) submits fully executed APA memorializing the terms of the Successful Bid(s).

If an Auction is held, the Debtors shall be deemed to have accepted a Qualified Bid only when (a) such Bid is declared the Successful Bid(s) at the Auction, and (b) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Court of the Successful Bid(s) and the entry of an order approving such Successful Bid(s).

Promptly following the Debtors’ selection of the Successful Bid(s) and the conclusion of the Auction, the Debtors shall announce the Successful Bid(s) and Successful Bidder(s) and shall file with the Court notice of the Successful Bid(s) and Successful Bidder(s).

Neither the Debtors nor the Court shall consider any Bids submitted after the conclusion of the Auction. The Successful Bidder(s) shall be required to keep the Successful Bid(s) open and irrevocable until the closing of the Transactions.

Backup Bidder

Notwithstanding anything in the Bidding Procedures to the contrary, the Qualified Bid that the Debtors determine in their reasonable business judgment, in consultation with the Consultation Parties, is the next highest or otherwise best Qualified Bid at the Auction after the Successful Bid(s), will be designated the **“Backup Bid”**, and the Bidder submitting such Backup Bid, the **“Backup Bidder.”** The Backup Bidder shall be required to keep the Backup Bid open and

irrevocable until the earlier of (a) 11:59 p.m. (prevailing Central Time) on the date that is 30 days after the date of entry of an order of the Court approving the Transactions contemplated therein (the “**Sale Order**”, and such date that is 30 days after the date of entry of the Sale Order, the “**Outside Backup Date**”), and (b) the closing of the Transaction with the Successful Bidder(s).

Following entry of the Sale Order, if the Successful Bidder fails to consummate the Transaction contemplated by the Successful Bid, the Debtors may, in consultation with the Consultation Parties, designate the Backup Bid to be the new Successful Bid and the Backup Bidder to be the new Successful Bidder, and the Debtors will be authorized, but not required, to agree, in consultation with the Consultation Parties, to consummate the Transaction with the Backup Bidder without further order of the Bankruptcy Court; *provided*, that such Backup Bid shall be subject to Court approval in connection with the Court’s approval of the Successful Bid. In such case of a breach or failure to perform on the part of the Successful Bidder and in such other circumstances as may be specified in the definitive documentation governing the Successful Bid, the defaulting Successful Bidder’s deposit shall be forfeited to the Debtors. The Debtors specifically reserve the right to seek all available damages, including specific performance, from any defaulting Successful Bidder (including any Backup Bidder designated as a Successful Bidder) in accordance with the terms of the Bidding Procedures.

True Up of Good Faith Deposit

If an Auction is held, then within three (3) business days following the conclusion of the Auction, the Successful Bidder(s) shall submit by transfer of immediately available funds to an account identified by the Debtors the amount required to increase the Successful Bidder(s)’ Good Faith Deposit(s) to ten percent (10%) of the purchase price contained in the Successful Bid(s), as applicable, or such other amount as the Debtors determine, in consultation with the Consultation Parties.

SALE HEARING

A hearing to consider approval of a Transaction and the transfer of all of the applicable Assets and Assumed Liabilities to the Successful Bidder(s) (the “**Sale Hearing**”) is presently scheduled to take place on [January 9], 2024 at [●] [a.m./p.m.] (prevailing Central Time), or as soon thereafter as counsel may be heard, before the Honorable Judge _____, United States Bankruptcy Judge in Courtroom ___, 4th Floor, 515 Rusk Street, Houston, Texas 77002.

The Sale Hearing may be continued to a later date by the Debtors by sending notice prior to, or making an announcement at, the Sale Hearing, or as may be ordered by the Bankruptcy Court. No further notice of any such continuance will be required to be provided to any party.

At the Sale Hearing, the Debtors shall present the Successful Bid(s) to the Court for approval. The Debtors’ presentation of the Successful Bid(s) to the Court will not constitute the Debtors’ acceptance of such Bid(s), which acceptance will only occur upon approval of such Bid(s) by the Court.

RETURN OF GOOD FAITH DEPOSITS

The Good Faith Deposits of all Qualified Bidders shall be held in one or more segregated accounts by the Debtors, but shall not become property of the Debtors' estates; *provided, however*, that the Good Faith Deposit of any Successful Bidder (including any Backup Bidder that becomes a Successful Bidder) shall be forfeited to the Debtors if the Successful Bidder fails to consummate the Successful Bid or credited towards the purchase price set forth in the Successful Bid if the Successful Bid is consummated. The Good Faith Deposit of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder not later than five (5) days after the conclusion of the Auction. The Good Faith Deposit of the Backup Bidder, if any, shall be returned to the Backup Bidder not later than the earlier of three (3) business days after (a) the closing of the Transaction with the Successful Bidder for the Assets bid upon by the Backup Bidder and (b) the Outside Backup Date; *provided, however*, that if the Backup Bid becomes the Successful Bid as provided herein, any subsequent breach or failure to perform by the Backup Bidder may result in the forfeit of the Good Faith Deposit of the Backup Bidder to the Debtors. Upon the return of the Good Faith Deposits, their respective owners shall receive any and all interest that may have accrued thereon.

CONSULTATION PARTIES

With respect to any Bid that includes any Assets, the Debtors shall consult with the advisors to the Committee and the Proposed FCR (collectively, the "**Consultation Parties**" and each, a "**Consultation Party**"). For the avoidance of doubt, the DIP Lender shall not be a Consultation Party unless and until the DIP Lender provides the Debtors with a Designation of the DIP Lender's determination that the DIP Lender shall not submit a credit bid in accordance with the Bidding Procedures with respect to the Designated Assets; *provided*, that, promptly following delivery of a Designation to the Debtors by the DIP Lender, the DIP Lender shall be deemed a Consultation Party with respect to the Designated Assets. If a Consultation Party submits a Bid or has a Bid submitted on its behalf for so long as such Bid remains open (and, after the Bid Deadline, is deemed to be a Qualified Bid), then such party shall not be deemed a Consultation Party.

To the extent any insider of the Debtors or any of their affiliates, or any person or entity controlled by such insider of the Debtors or any of their affiliates, chooses to submit a Bid, and such Bid is deemed a Qualified Bid, such insider and any person associated with such insider shall be expressly prohibited from participating in any manner in the evaluation of Qualified Bids and the Auction (other than in his or her capacity as a Qualified Bidder).

ADDITIONAL PROCEDURES

The Debtors in the exercise of their fiduciary duties for the purpose of maximizing value for their estates from the sale process, may modify the Bidding Procedures and implement additional procedural rules for conducting the Auction in consultation with the Consultation Parties. Specifically, among other things, the Debtors may determine, in consultation with the Consultation Parties, to select more than one Successful Bid and more than one Successful Bidder (and/or more than one Backup Bid) and more than one Backup Bidder, in which event such Backup Bids may provide for groupings of Assets that are different from the groupings of Assets reflected in the Successful Bid(s) for separate portions of the Assets.

RESERVATION OF RIGHTS OF THE DEBTORS

Except as otherwise provided in the APA, these Bidding Procedures or the Bidding Procedures Order, the Debtors further reserve the right to, in their reasonable business judgment after consultation with the Consultation Parties: (a) determine which Bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) reject, at any time prior to the closing of the Auction or, if no Auction is held, at any time prior to entry of the Sale Order, any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of these Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors and their estates; (d) waive terms and conditions set forth herein with respect to all potential bidders; (e) impose additional terms and conditions with respect to all potential bidders; (f) extend the deadlines set forth herein; (g) continue or cancel the Auction and/or Sale Hearing in open court or by filing a notice on the docket of the Debtors' chapter 11 cases, without further notice; (h) include any other party as an attendee at the Auction; and (i) modify the Bidding Procedures and implement additional procedural rules for conducting the Auction so long as such rules are not inconsistent in any material respect with the Bankruptcy Code, the Bidding Procedures Order, or any other order of the Court.

Annex 2

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

	X	
	:	
In re:	:	Chapter 11
	:	
BARRETTTS MINERALS INC., <i>et al.</i> , ¹	:	Case No. 23-90794 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

**NOTICE OF PROPOSED SALE, BIDDING PROCEDURES, AUCTION,
AND SALE HEARING**

PLEASE TAKE NOTICE that, on October 2, 2023, the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) filed voluntary petitions commencing these cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”).

PLEASE TAKE FURTHER NOTICE that, on [●], 2023, the Debtors filed a motion (the “**Motion**”)² with the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”) seeking, among other things, entry of an order (the “**Bidding Procedures Order**”): (a) approving proposed bidding procedures (the “**Bidding Procedures**”) by which the Debtors will solicit and select the highest or otherwise best offer for the sale of substantially all or a portion of their assets (the “**Assets**”) through one or more sales (each, a “**Transaction**”); (b) establishing procedures for the assumption and assignment of executory contracts and unexpired leases, including notice of proposed cure amounts (the “**Assumption and Assignment Procedures**”); (c) scheduling (i) a date for an auction if the Debtors receive one or more timely and acceptable Qualified Bids (the “**Auction**”) and (ii) a final hearing (the “**Sale Hearing**”) to approve one or more Transactions, as necessary; (d) approving the form and manner of notice of (i) the Auction and Sale Hearing and (ii) Assumption and Assignment Procedures; (e) approving the procedures governing the Debtors’ selection of one or more stalking horse bidders (each, a “**Stalking Horse Bidder**”), if any, and the provision of Bid Protections to such Stalking Horse Bidder(s), if necessary; and (f) granting related relief.

PLEASE TAKE FURTHER NOTICE that, on _____, 2023, the Bankruptcy Court entered the Bidding Procedures Order [Docket No. ____].

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Barretts Minerals Inc. (8715) and Barretts Ventures Texas LLC (0787). The Debtors’ address is 5605 North MacArthur Boulevard, Suite 1000, PMB 139, Irving, Texas 75038.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

PLEASE TAKE FURTHER NOTICE that any party that wishes to take part in the sale process contemplated by the Bidding Procedures Order and submit a Bid for the Assets must submit its Bid in accordance with the terms and conditions of the Bidding Procedures, including the requirements for submitting a Qualified Bid, by December 29, 2023 at 5 p.m. (prevailing Central Time) (the **“Bid Deadline”**).

PLEASE TAKE FURTHER NOTICE that pursuant to the Bidding Procedures Order, if the Debtors receive two or more timely and acceptable Qualified Bids for the same Assets, the Debtors will conduct the Auction on **January 3, 2024 at 10 a.m. (Eastern Time) / 9:00 a.m. (prevailing Central Time)** at the offices of counsel for the Debtors, Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, or at such other place and time as the Debtors shall notify all Qualified Bidders, the Consultation Parties, and all other parties entitled to attend the Auction. Only the Debtors, the Consultation Parties, the Stalking Horse Bidder(s) (if any), any other Qualified Bidder and/or other parties as the Debtors may determine to include in their discretion, in each case along with their representatives and advisors, shall be entitled to attend the Auction (such attendance to be in person), and only Qualified Bidders will be entitled to make Overbids at the Auction. **All interested or potentially affected parties should carefully read the Bidding Procedures and the Bidding Procedures Order.**

PLEASE TAKE FURTHER NOTICE that the Debtors have the right to adjourn or cancel the Auction at or prior to the Auction.

PLEASE TAKE FURTHER NOTICE that pursuant to the Bidding Procedures Order, the Debtors are authorized to enter into one or more agreements (each, a **“Stalking Horse Agreement”**) with one or more Stalking Horse Bidders regarding a Transaction. In the event that the Debtors select one or more parties to serve as a Stalking Horse Bidder, upon such selection, the Debtors shall provide, to (a) all parties on the Rule 2002 List, (b) counsel for any committee appointed in the Chapter 11 Cases (the **“Committee”**), (c) counsel to the proposed Future Claimants Representative (the **“Proposed FCR”**), (d) counsel to the DIP Lender, (e) all parties then known to have expressed an interest in the Assets as part of the marketing process established by the Bidding Procedures, and (f) all parties holding liens on the Assets, five (5) business days’ notice of and an opportunity to object to the designation of such Stalking Horse Bidder and disclosure of the Bid Protections set forth in the Stalking Horse Agreement. Absent objection, the Debtors may submit an order to the Court under certification of counsel approving the selection of such Stalking Horse Bidder and the Bid Protections and the Debtors’ selection of such Stalking Horse Bidder may be deemed approved by the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that the Sale Hearing to consider approval of a Transaction(s) and the transfer of all of the Assumed Liabilities to the Successful Bidder(s), **free and clear of all liens, claims, interests, and encumbrances** in accordance with section 363(f) of the Bankruptcy Code, will be held before the Honorable _____, United States Bankruptcy Judge for the Southern District of Texas, at the Bankruptcy Court, 515 Rusk Street, Courtroom ___, Houston, Texas 77002 on _____, 2024 at _____ (prevailing Central Time). The Sale Hearing may be adjourned from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court or by notice filed on the docket in the Chapter 11 Cases.

PLEASE TAKE FURTHER NOTICE that objections to the Transaction(s), if any, must be filed and served so as to be actually received by the Objection Recipients no later than **[January 4, 2024]**. The Objection Recipients are: (a) the Debtors, Barretts Minerals Inc., 5605 North MacArthur Boulevard, Suite 1000, PMB 139, Irving, TX 75038, Attn: David Gordon; (b) counsel to the Debtors, (i) Latham & Watkins LLP, 355 South Grand Avenue, Suite 100, Los Angeles, CA 90071, Attn: Jeffrey E. Bjork, Kimberly A. Posin and Shawn Hansen, and Latham & Watkins LLP, 1271 Avenues of the Americas, New York, NY 10020, Attn: Anu Yerramalli and Liza Burton, and (ii) Porter Hedges LLP, 1000 Main Street, 36th Floor, Houston, Texas 77002, Attn: John F. Higgins and Megan Young-John; (c) counsel to the DIP Lender, Lowenstein Sandler LLP, 1251 Avenues of the Americas, New York, NY 10020, Attn: Robert Hirsh, Jordana Renert, and Erica Mannix; (d) counsel to the Committee, [●]; (e) counsel to the Proposed FCR, [(i) Stutzman, Bromberg, Esserman & Plifka, P.C. (Attn: Sander L. Esserman) and (ii) Young Conaway Stargatt & Taylor, LLP (Attn: Robert Brady, Ed Harron, Ryan Bartley)]; and (f) the U.S. Trustee, 515 Rusk Street, Suite 3516, Houston, TX 77002, Attn: Vianey Garza.

CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION:

ANY PART OR ENTITY WHO FAILS TO TIMELY FILE AND SERVE A SALE OBJECTION ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE ENTERED BIDDING PROCEDURES ORDER MAY BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE TRANSFERRED ASSETS OF THE DEBTOR ESTATES FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS EFFECTED THEREUNDER.

PLEASE TAKE FURTHER NOTICE that this Notice is subject to the terms and conditions of the Motion and the Bidding Procedures Order, with such Bidding Procedures Order controlling in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety. Parties interested in receiving more information regarding the sale of the Assets and/or copies of any related document, including the Motion or the Bidding Procedures Order, may make a written request to: counsel to the Debtors, Latham & Watkins LLP, Attn: Kimberly A. Posin, Anu Yerramalli and Liza Burton (kim.posin@lw.com, anu.yerramalli@lw.com, and liza.burton@lw.com). In addition, copies of the Motion, the Bidding Procedures Order, and this Notice may be examined by interested parties free of charge at the website established for these chapter 11 cases by the Debtors' Court-approved claims agent, Stretto, Inc.: <https://cases.stretto.com/BMI>.

[Remainder of Page Intentionally Left Blank]

Dated: _____, 2023
Houston, Texas

Respectfully Submitted,

PORTER HEDGES LLP

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Proposed Counsel for Debtors and Debtors in Possession

Annex 3

Assumption Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

	X	
	:	
In re:	:	Chapter 11
	:	
BARRETT'S MINERALS INC., <i>et al.</i> , ¹	:	Case No. 23-90794 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	
	X	

**NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES THAT MAY BE
ASSUMED AND ASSIGNED IN CONNECTION WITH THE SALE OF THE DEBTORS'
ASSETS AND THE PROPOSED CURE COSTS WITH RESPECT THERETO**

YOU ARE RECEIVING THIS NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES THAT MAY BE ASSUMED AND ASSIGNED IN CONNECTION WITH THE SALE OF THE DEBTORS' ASSETS AND THE PROPOSED CURE AMOUNTS WITH RESPECT THERETO (THE "ASSUMPTION NOTICE") BECAUSE YOU MAY BE A COUNTERPARTY TO AN EXECUTORY CONTRACT OR UNEXPIRED LEASE WITH ONE OR MORE OF THE DEBTORS. PLEASE READ THIS NOTICE CAREFULLY AS YOUR RIGHTS MAY BE AFFECTED BY THE TRANSACTIONS DESCRIBED HEREIN.

PLEASE TAKE NOTICE that, on October 2, 2023, the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**") filed voluntary petitions commencing these cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**").

PLEASE TAKE FURTHER NOTICE that, on [●], 2023, the Debtors filed a motion (the "**Motion**")² with the United States Bankruptcy Court for the Southern District of Texas (the "**Bankruptcy Court**") seeking, among other things, entry of an order (the "**Bidding Procedures Order**"):

- (a) approving proposed bidding procedures (the "**Bidding Procedures**") by which the Debtors will solicit and select the highest or otherwise best offer for the sale of substantially all or a portion of their assets (the "**Assets**") through one or more sales (each, a "**Transaction**");
- (b) establishing procedures for the assumption and assignment of executory contracts and unexpired leases, including notice of proposed cure amounts (the "**Assumption and Assignment**").

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Barretts Minerals Inc. (8715) and Barretts Ventures Texas LLC (0787). The Debtors' address is 5605 North MacArthur Boulevard, Suite 1000, PMB 139, Irving, Texas 75038.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Procedures"); (c) scheduling (i) a date for an auction if the Debtors receive one or more timely and acceptable Qualified Bids (the "**Auction**") and (ii) a final hearing (the "**Sale Hearing**") to approve one or more Transactions, as necessary; (d) approving the form and manner of notice of (i) the Auction and Sale Hearing and (ii) the Assumption and Assignment Procedures; (e) approving the procedures governing the Debtors' selection of one or more stalking horse bidders (each, a "**Stalking Horse Bidder**"), if any, and the provision of Bid Protections to such Stalking Horse Bidder(s), if necessary; and (f) granting related relief.

PLEASE TAKE FURTHER NOTICE that, on _____, 2023, the Bankruptcy Court entered the Bidding Procedures Order [Docket No. ____].

PLEASE TAKE FURTHER NOTICE that the Bidding Procedures Order, among other things, established procedures for the assumption and assignment of certain executory contracts and unexpired leases that the Debtors believe they might seek to assume and assign in connection with a Transaction (collectively, the "**Designated Contracts**") to a purchaser and the determination of related Cure Costs (as defined below). The Debtors are parties to numerous Designated Contracts and, in accordance with the Bidding Procedures Order, hereby file this notice identifying (a) the Designated Contracts, which may be assumed and assigned to a Stalking Horse Bidder, if any, or such other Successful Bidder in connection with the Transaction(s), and (b) the proposed amounts, if any, the Debtors believe are owed to the counterparties to the Designated Contracts to cure any defaults or arrears existing under each such Designated Contract (collectively, the "**Cure Costs**"), both as set forth on **Exhibit 1** attached hereto. Other than the Cure Costs listed on **Exhibit 1**, the Debtors are not aware of any amounts due and owing under the Designated Contracts listed therein.

PLEASE TAKE FURTHER NOTICE that the hearing to approve the sale of the Debtor Assets (the "**Sale Hearing**") will be held before the Honorable _____, United States Bankruptcy Judge for the Southern District of Texas, at 515 Rusk Street, Courtroom ___, Houston, Texas 77002 on _____, 2024 at _____ a.m. / p.m. (prevailing Central Time).

PLEASE TAKE FURTHER NOTICE that the listing of a Designated Contract on **Exhibit 1** does not constitute an admission that the Designated Contract is an executory contract or unexpired lease as contemplated by section 365(a) of the Bankruptcy Code or that the Debtors have any liability thereunder, and the Debtors expressly reserve all of their rights, claims, causes of action, and defenses with respect to the Designated Contracts listed on **Exhibit 1**.

PLEASE TAKE FURTHER NOTICE that, to the extent a counterparty to a Designated Contract listed on this Notice of Assumption and Assignment objects to the proposed assumption and assignment of the applicable Designated Contract (other than an Adequate Assurance Objection (as defined below)) or the proposed Cure Costs, if any, such counterparty must file and serve an objection (a "**Contract Objection**"). All Contract Objections must (a) state, with specificity, the legal and factual basis for the objection as well as what Cure Costs are required, if any, (b) include appropriate documentation in support thereof, and (c) be filed and served on the Objection Recipients no later than **December 11, 2023 at 5:00 p.m. (prevailing Central Time)** (the "**Contract Objection Deadline**"), provided, that (a) if you are receiving this notice within ten (10) days prior to the Contract Objection Deadline and seven (7) days prior to the Sale Hearing, your deadline to file Contract Objection shall be 5:00 p.m. (prevailing Central Time) on the date

that is two (2) days prior to the Sale Hearing; and (b) if you are receiving this notice less than seven (7) days prior to the Sale Hearing, your deadline to file a Contract Objection shall be two (2) hours prior to the commencement of the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that Objection Recipients are: (a) the Debtors, Barretts Minerals Inc., 5605 North MacArthur Boulevard, Suite 1000, PMB 139, Irving, TX 75038, Attn: David Gordon; (b) counsel to the Debtors, (i) Latham & Watkins LLP, 355 South Grand Avenue, Suite 100, Los Angeles, CA 90071, Attn: Jeffrey E. Bjork, Kimberly A. Posin and Shawn Hansen, and Latham & Watkins LLP, 1271 Avenues of the Americas, New York, NY 10020, Attn: Anu Yerramalli and Liza Burton, and (ii) Porter Hedges LLP, 1000 Main Street, 36th Floor, Houston, Texas 77002, Attn: John F. Higgins and Megan Young-John; (c) counsel to the DIP Lender, Lowenstein Sandler LLP, 1251 Avenues of the Americas, New York, NY 10020, Attn: Robert Hirsh, Jordana Renert, and Erica Mannix; (d) counsel to the Committee, [●]; (e) counsel to the Proposed Future Claimants Representative, [(i) Stutzman, Bromberg, Esserman & Plifka, P.C. (Attn: Sander L. Esserman) and (ii) Young Conaway Stargatt & Taylor, LLP (Attn: Robert Brady, Ed Harron, Ryan Bartley)]; and (f) the U.S. Trustee, 515 Rusk Street, Suite 3516, Houston, TX 77002, Attn: Vianey Garza.

PLEASE TAKE FURTHER NOTICE THAT IF A COUNTERPARTY TO A DESIGNATED CONTRACT FILES A CONTRACT OBJECTION IN A MANNER THAT IS CONSISTENT WITH THE REQUIREMENTS SET FORTH ABOVE, AND THE PARTIES ARE UNABLE TO CONSENSUALLY RESOLVE THE DISPUTE PRIOR TO THE SALE HEARING, THE AMOUNT TO BE PAID OR RESERVED WITH RESPECT TO SUCH OBJECTION WILL BE DETERMINED AT THE SALE HEARING, SUCH LATER HEARING DATE THAT THE DEBTORS DETERMINE IN THEIR DISCRETION, OR SUCH OTHER DATE DETERMINED BY THE COURT. ALL OTHER OBJECTIONS TO THE PROPOSED ASSUMPTION AND ASSIGNMENT OF THE DEBTORS' RIGHT, TITLE, AND INTEREST IN, TO, AND UNDER THE DESIGNATED CONTRACTS WILL BE HEARD AT THE SALE HEARING.

The identity of the Successful Bidder and Backup Bidder (if any) shall be disclosed in a subsequent notice to be delivered to counterparties to the applicable Designated Contracts following the Auction. Any objections to the ability of the Successful Bidder or Backup Bidder to provide adequate assurance of future performance (each, an “**Adequate Assurance Objection**”) must be filed with the Court no later than _____, 2024 at 5:00 p.m. (prevailing Central Time) (the “**Adequate Assurance Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that if the counterparty to a Designated Contract does not timely file and serve a Contract Objection that is consistent with the requirements set forth above by the Contract Objection Deadline (with respect to all objections other than Adequate Assurance Objections) or the Adequate Assurance Objection Deadline (with respect to Adequate Assurance Objections only), such counterparty will be deemed to have consented to the assumption and assignment of the Designated Contract to a Successful Bidder, notwithstanding any anti-alienation provision or other restriction on assumption or assignment in the Designated Contract, and shall be forever barred from asserting any objection with regard to such assumption and assignment and/or Cure Costs set forth in **Exhibit 1**.

PLEASE TAKE FURTHER NOTICE that although the Debtors have made a good-faith effort to identify all Designated Contracts that might be assumed and assigned in connection with a Transaction, the Debtors may discover certain contracts inadvertently omitted from the Designated Contract list or the Successful Bidder(s) may identify other executory contracts or unexpired leases that they desire to assume and assign in connection with the Transaction. Accordingly, the Debtors have reserved the right, at any time after the Assumption and Assignment Service Date and before the closing of a Transaction, to (a) supplement the list of Designated Contracts on this Notice of Assumption and Assignment with previously omitted Designated Contracts in accordance with the definitive agreement for a Transaction, (b) remove a Designated Contract from the list of contracts ultimately selected as a Designated Contract that a Successful Bidder proposes be assumed and assigned to it in connection with a Sale Transaction, and/or (c) modify the previously stated Cure Cost associated with any Designated Contract.

PLEASE TAKE FURTHER NOTICE that in the event that the Debtors supplement the list of Designated Contracts or modify the previously stated Cure Cost for a particular Designated Contract, the Debtors will promptly file and serve, and in no event less than one (1) business day before the date of the Sale Hearing, a revised Assumption Notice on each counterparty affected. Such counterparties shall file any Contract Objections with respect to the revised Assumption Notice not later than (a) the Contract Objection Deadline in the event that the revised Assumption Notice was filed and served at least ten (10) days prior to the Contract Objection Deadline, (b) two (2) days prior to the Sale Hearing in the event that the revised Assumption Notice was filed and served at least seven (7) days prior to the commencement of the Sale Hearing, and (c) two (2) hours prior to the commencement of the Sale Hearing if such revised Assumption Notice was filed and served fewer than seven (7) days prior to the commencement of the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that this Assumption Notice is subject to the terms and conditions of the Motion and the Bidding Procedures Order, with such Bidding Procedures Order controlling in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety. Parties with questions regarding the Assumption and Assignment Procedures contained herein should contact the Debtors' counsel at the contact information provided herein.

PLEASE TAKE FURTHER NOTICE that the inclusion of a Designated Contract on this Assumption Notice (or a revised Assumption Notice) will not obligate the Debtors to assume any Designated Contract listed thereon or the Successful Bidder(s) to take assignment of such Designated Contract and, as set forth above, the Debtors reserve the right to modify the list of Designated Contracts in accordance with the Bidding Procedures Order, including to remove executory contracts or unexpired leases from such list. Only those Designated Contracts that are included on a schedule of assumed and assigned executory contracts and unexpired leases attached to the final Purchase Agreement with the Successful Bidder(s) will be assumed and assigned to the Successful Bidder(s).

[Remainder of page intentionally left blank]

Dated: _____, 2023
Houston, Texas

Respectfully Submitted,

PORTER HEDGES LLP

John F. Higgins (TX Bar No. 09597500)
Megan Young-John (TX Bar No. 24088700)
Bryan L. Rochelle (TX Bar No. 24107979)
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-and-

LATHAM & WATKINS LLP

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Proposed Counsel for Debtors and Debtors in Possession

Annex 4

Post-Auction Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

	X	
	:	
In re:	:	Chapter 11
	:	
BARRETTTS MINERALS INC., <i>et al.</i> , ¹	:	Case No. 23-90794 (DRJ)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

**NOTICE OF SUCCESSFUL AND BACKUP BIDDERS
WITH RESPECT TO THE AUCTIONS OF THE DEBTORS' ASSETS**

PLEASE TAKE NOTICE that, on October 2, 2023, the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) filed voluntary petitions commencing these cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”).

PLEASE TAKE NOTICE that, on _____, 2023, the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”) entered an order [Docket No. [●]] (the “**Bidding Procedures Order**”) (a) approving proposed bidding procedures (the “**Bidding Procedures**”) by which the Debtors will solicit and select the highest or otherwise best offer for the sale of substantially all or a portion of their assets (the “**Assets**”) through one or more sales (each, a “**Transaction**”); (b) establishing procedures for the assumption and assignment of executory contracts and unexpired leases, including notice of proposed cure amounts (the “**Assumption and Assignment Procedures**”); (c) scheduling (i) a date for an auction if the Debtors receive one or more timely and acceptable Qualified Bids (the “**Auction**”) and (ii) a final hearing (the “**Sale Hearing**”) to approve one or more Transactions, as necessary; (d) approving the form and manner of notice of (i) the Auction and Sale Hearing, and (ii) Assumption and Assignment Procedures; (e) approving the procedures governing the Debtors’ selection of one or more stalking horse bidders (each, a “**Stalking Horse Bidder**”), if any, and the provision of Bid Protections to such Stalking Horse Bidder(s), if necessary; and (f) granting related relief.²

PLEASE TAKE FURTHER NOTICE that on January 3, 2024, pursuant to the Bidding Procedures Orders, the Debtors conducted the Auction with respect to the Assets.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Barretts Minerals Inc. (8715) and Barretts Ventures Texas LLC (0787). The Debtors’ address is 5605 North MacArthur Boulevard, Suite 1000, PMB 139, Irving, Texas 75038.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

PLEASE TAKE FURTHER NOTICE that, at the conclusion of the Auction, the Debtors, in consultation with their professionals and the Consultation Parties, selected the following Successful Bidder(s) and Backup Bidder(s) with respect to the Assets:

Asset(s)	Successful Bidder	Backup Bidder
[●]	[●]	[●]

PLEASE TAKE FURTHER NOTICE that the Debtors entered into an Asset Purchase Agreement (the “APA”), by and between such Debtors and [●] (the “Successful Bidder”), a copy of which is attached hereto as Exhibit 1, pursuant to which the Debtors shall sell substantially all of their Assets to the Successful Bidder.

PLEASE TAKE FURTHER NOTICE THAT THE APA CONTEMPLATES CONSENSUAL, MUTUAL RELEASES BY THE DEBTORS, THEIR ESTATES, AND CERTAIN AFFILIATED PARTIES, ON THE ONE HAND, OF THE SUCCESSFUL BIDDER AND CERTAIN AFFILIATED PARTIES, ON THE OTHER HAND. THE DEBTORS HAVE REQUESTED THAT THE COURT APPROVE SUCH RELEASES IN CONNECTION WITH APPROVAL OF THE PSA AND, UPON APPROVAL OF THE APA AND CONSUMMATION OF THE TRANSACTION CONTEMPLATED THEREBY, SUCH RELEASES SHALL BE BINDING AND EFFECTIVE IN ALL RESPECTS.

PLEASE TAKE FURTHER NOTICE that any objections to the sale of the Assets (including the releases to be effectuated in connection therewith) must be filed and served so as to be actually received by the Objection Notice Parties and counsel to the Successful Bidder (if known) no later than [_____] at 5:00 p.m. (prevailing Central Time).

PLEASE TAKE FURTHER NOTICE that the Sale Hearing to consider approval of (a) the Transaction, (b) transfer of the Assets to the Successful Bidder, **free and clear of all claims, Encumbrances or Liabilities** other than the Assumed Obligations and Permitted Encumbrances, in accordance with section 363(f) of the Bankruptcy Code, and (c) approval of the releases contemplated by the APA, will be held before the Honorable _____, United States Bankruptcy Judge for the Southern District of Texas, at the Bankruptcy Court, 515 Rusk Street, Courtroom ___, Houston, Texas 77002 on [_____] at [__:__ a.m. / p.m.] (prevailing Central Time). The Sale Hearing may be adjourned from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court or by notice filed on the docket in these chapter 11 cases.

PLEASE TAKE FURTHER NOTICE THAT any objections (a) to the manner in which the Auction was conducted, (b) to the identity of the Successful Bidder, and/or (c) based on the ability of the Successful Bidder to provide adequate assurance of future performance to counterparties to executory contracts and unexpired leases contemplated to be assumed and assigned to the Successful Bidder must be filed with the Court [_____] 2024 at 5:00 p.m. (prevailing Central Time) (the “Adequate Assurance Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that, at the Sale Hearing, the Debtors will seek Bankruptcy Court approval of the Successful Bid, and the assumption and assignment of the Selected Designated Contracts (as defined in the Bidding Procedures Order) to the Successful Bidder. Unless the Bankruptcy Court orders otherwise, the Sale Hearing shall be an evidentiary hearing on matters relating to the sale of the Debtors' Assets and there will be no further bidding at the Sale Hearing. In the event that the Successful Bidder cannot or refuses to consummate the Transaction(s) because of a breach or failure on the part of the Successful Bidder, the Backup Bidder will be deemed the new Successful Bidder and the Debtors shall be authorized, but not required, upon approval of the Backup Bid following notice and a hearing, to close with the Backup Bidder on the Backup Bid upon further order of the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that this Notice is subject to the terms and conditions of the Bidding Procedures Orders, with such Bidding Procedures Orders controlling in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety. Parties with questions regarding this Notice should contact the Debtors' counsel at the contact information provided herein.

PLEASE TAKE FURTHER NOTICE that parties interested in receiving more information regarding the contemplated sale and/or copies of any related documents may visit the websites maintained by Stretto, Inc., the Debtors' claims and noticing agent, at <https://cases.stretto.com/BMI>.

Dated: _____, 2023
Houston, Texas

Respectfully Submitted,

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Proposed Counsel for Debtors and Debtors in Possession

Exhibit 1

APA

(To Come)