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

In re:	:	Chapter 11
	:	Case No. 23-90794 (DRJ)
BARRETTS MINERALS INC., *et al.*,[1]	:	**(Joint Administration Requested)**
Debtors.	:	**(Emergency Hearing Requested)**

DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (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

Emergency relief has been requested. Relief is requested not later than 1:30 p.m. (prevailing Central Time) on October 3, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter October 3, 2023 at 1:30 p.m. (prevailing Central Time) in Courtroom 400, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Jones' conference room number is 205691. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Jones's home page. The meeting code is "JudgeJones". Click the settings icon in the upper right corner and enter your name under the personal information setting.

[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.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Jones' home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.

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

RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of an interim order substantially in the form attached hereto (the "**Interim Order**") and a final order (the "**Final Order**" and, together with the Interim Order, the "**DIP Orders**"):[2]

(a) authorizing the Debtors to obtain postpetition financing ("**DIP Financing**") pursuant to a superpriority, senior secured debtor-in-possession term loan credit facility (the "**DIP Facility**") subject to the terms and conditions set forth in that certain *Debtor-in-Possession Term Loan Facility Summary of Terms and Conditions*, which is attached as **Exhibit 1** to the Interim Order (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**DIP Term Sheet**"), and, together with all other agreements, guarantees, pledge, collateral and security agreements, deeds, charges, control agreements, instruments, certificates, notes, any separate fee letter agreements between any of the Debtors, on the one hand, and the DIP Lender (as defined below), on the other hand, and other documents executed, filed and/or delivered in connection therewith (each as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof, together with the DIP Term Sheet, collectively, the "**DIP Documents**"), by and among Barretts Minerals Inc. ("**BMI**" or the "**Borrower**"), as borrower, Barretts Ventures Texas LLC, as guarantor (the "**Guarantor**", and together with BMI and all of the Borrower's and Guarantor's existing and future, direct or indirect, domestic or foreign subsidiaries that become debtors or debtors-in-possession in the Chapter 11 Cases, if any, the "**DIP Loan Parties**"), and JMB Capital Partners Lending, LLC, as the lender (together with its successors and permitted designees or assignees, the "**DIP Lender**") in an aggregate principal amount not to exceed $30,000,000 (the commitments in respect thereof, the "**DIP Commitments**"), consisting of:

[2] Capitalized terms used but not otherwise defined in this section have the meaning ascribed to such terms elsewhere in the Motion or the Interim Order.

(i) $15,000,000 in term loans made available, upon entry of the Interim Order (the "**DIP Interim Loans**"); and

(ii) $15,000,000 in terms loans made available following entry of the Final Order and the satisfaction of certain conditions precedent described in Section 17 of the DIP Term Sheet (the "**DIP Final Loans**" and, together with the DIP Interim Loans, the "**DIP Loans**").

(b) authorizing the DIP Loan Parties to (i) execute, deliver, and perform under the DIP Term Sheet and each of the DIP Documents, (ii) incur all loans, advances, extensions of credit, financial accommodations, indemnification and reimbursement obligations and other obligations, and pay all principal, interest, premiums, fees, costs, expenses, charges and all other amounts payable under the DIP Documents, including without limitation, all DIP Obligations (as defined in the DIP Term Sheet), and (iii) perform such other and further acts as may be necessary, required or desirable to implement and effectuate the terms of the Interim Order, the DIP Documents and the transactions contemplated hereunder and thereunder;

(c) authorizing BMI to incur, and the Guarantor to guarantee loans, advances, extensions of credit, financial accommodations, reimbursement obligations, fees (including, without limitation, commitment fees and any other fees payable pursuant to the DIP Documents), costs, expenses and other liabilities, and all other obligations (including indemnities and similar obligations, whether contingent or absolute) and all other obligations due or payable under the DIP Documents (collectively, the "**DIP Obligations**"), and to perform such other and further acts as may be necessary, desirable or appropriate in connection therewith;

(d) granting to the DIP Lender the DIP Liens (as defined below) on all DIP Collateral (as defined below), as set forth in the Interim Order, subject to the Carve Out and the Prior Permitted Liens (each as defined below) subject to the relative priorities set forth in the Interim Order;

(e) granting to the DIP Lender allowed super-priority administrative expense claims against each of the Debtors, on a joint and several basis, in respect of all DIP Obligations, subject in each case to the Carve Out, as set forth in the Interim Order;

(f) authorizing the Debtors to use the proceeds of the DIP Facility and the DIP Collateral, including Cash Collateral (as defined in the Interim Order), solely in accordance with the terms and conditions set forth in the Interim Order and the DIP Documents, including the Approved Budget (as defined below), subject to any variances expressly permitted in the Interim Order and under the DIP Term Sheet;

(g) subject to and effective upon entry of the Final Order, approving the Debtors' waiver of the right to surcharge the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise;

(h) subject to and effective upon entry of the Final Order, approving the Debtors' waiver of the equitable doctrine of "marshaling" and other similar doctrines with respect to the DIP Collateral;

(i) modifying or vacating the automatic stay imposed by sections 105(a) and 362 of the Bankruptcy Code or otherwise, to the extent necessary, required or desirable to implement and effectuate the terms and provisions of the Interim Order and the DIP Documents, as set forth herein, waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of the Interim Order, providing for the immediate effectiveness of the Interim Order, and granting related relief; and

(j) scheduling a final hearing (the "**Final Hearing**") on the Motion to consider entry of the Final Order authorizing the relief requested in the Motion on a final basis, which order shall be in form and substance and on terms and conditions acceptable in all respects to the DIP Lender.

2. In support of this Motion, the Debtors submit the *Declaration of Leon Szlezinger in Support of the Debtors' Emergency Motion for Entry of Interim and Final Orders (A) Authorizing Debtors to (I) Obtain 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*, filed contemporaneously herewith (the "**Szlezinger Declaration**"); and the *Declaration of William Murphy in Support of the Debtors' Emergency Motion for Entry of Interim and Final Orders (A) Authorizing Debtors to (I) Obtain 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*, filed contemporaneously herewith (the "**Murphy Declaration**"). The Debtors' initial budget reflecting the anticipated disbursements for each calendar week during the period from the Petition Date (as defined below) through and including the end of the thirteenth (13th)

calendar week following the Petition Date is attached as **Exhibit 2** to the Interim Order (as amended, supplemented, modified and/or updated pursuant to the terms of the DIP Term Sheet and the Interim Order, the "**Approved Budget**").

JURISDICTION AND VENUE

3. The United States Bankruptcy Court for the Southern District of Texas (the "**Court**") has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order or judgment by the Court in connection with this Motion.

4. Venue is proper before the Court pursuant to 28 U.S.C. § 1408.

5. The statutory and legal predicates for the relief requested herein are sections 105, 361, 362, 363, 364, 503, 506 and 507 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), Rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "**Bankruptcy Local Rules**"), and the Procedures for Complex Cases in the Southern District of Texas (the "**Complex Case Procedures**").

BACKGROUND

6. On the date hereof (the "**Petition Date**"), the Debtors commenced with the Court voluntary cases (the "**Chapter 11 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. No trustee, examiner, or statutory committee has been appointed in the Chapter 11 Cases.

7. 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 (the "**First Day Declaration**"),[3] filed contemporaneously herewith, and incorporated herein by reference.[4]

PRELIMINARY STATEMENT

8. The Debtors commenced the Chapter 11 Cases to address and comprehensively resolve BMI's liabilities arising from talc. The Debtors intend to achieve this goal by continuing to negotiate—and ultimately confirming—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.

9. As described more fully in the First Day Declaration, BMI's current operations are focused on the mining, beneficiating, processing, and sale of industrial talc.[5] BMI's talc is sold to distributors and third-party manufacturers for use in such parties' products, which are then incorporated into downstream products eventually sold to consumers. As of the Petition Date, BMI and certain Non-Debtor Affiliates have been sued in over 880 cases asserting Talc Claims and seeking damages for alleged exposure to asbestos-containing materials related to products purportedly containing talc sold by BMI. While BMI maintains that its talc is both free from detectable asbestos and safe, that the Talc Claims are entirely without medical or scientific merit, and that exposure to BMI talc has not caused any personal injuries, the substantial increase in alleged talc claims in the last few years, coupled with the current state of the U.S. tort system, has

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[3] Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the First Day Declaration.

[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.

[5] In addition to BMI's talc business, the Debtors manage certain real property holdings that provide a consistent stream of rental income.

led to overwhelming projected litigation costs that BMI cannot sustain in either the immediate or long term.

10. As described more fully in the First Day Declaration, given the mounting litigation costs, prior to the Petition Date, the Debtors and their ultimate parent entity, Minerals Technologies Inc. ("**MTI**") explored strategic alternatives, including a potential sale of BMI's assets and/or Specialty Minerals Inc.'s (BMI's direct parent) equity interest in BMI. To assist in this sale process, the Debtors engaged Jefferies LLC ("**Jefferies**") as investment banker. While running the prepetition sale process, 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 the Chapter 11 Cases to run a postpetition sale process.

11. The Debtors plan to use the proceeds of any such sale to fund the Chapter 11 Cases (including repaying amounts under the DIP Facility) and the section 524(g) trust. However, until the Debtors consummate such sale, the Debtors require the proceeds from the DIP Facility to fund their operations and administer the Chapter 11 Cases. Absent the DIP Facility, the Debtors will have insufficient liquidity to pay their administrative and operating costs during the Chapter 11 Cases. Accordingly, by this Motion, the Debtors seek authorization to access the proposed DIP Facility, which will provide the Debtors with the necessary runway to consummate a value-maximizing sale transaction, fund the Chapter 11 Cases and the Debtors' working capital needs, and avoid value destruction, among other things. The Debtors believe that proposed DIP Facility is the best financing option available at this time, and that approval of the proposed DIP Facility is crucial to their stated objective of swiftly and equitably resolving BMI's talc-related liabilities in a manner that will maximize value for all stakeholders. The Debtors are confident that between the liquidity provided under the DIP Facility, cash flow from continued operations, and the

proceeds from any sale, the Chapter 11 Cases will be adequately financed and that the Debtors will be well-positioned to maximize the value of their estates.

CONCISE STATEMENT PURSUANT TO BANKRUPTCY RULE 4001

12. Pursuant to Bankruptcy Rules 4001 and the Complex Case Procedures the following table provides a concise statement and summary of the proposed material terms of the DIP Documents and DIP Orders:[6]

Summary of Material Terms	
Parties to the Proposed DIP Facility *Fed. R. Bankr. P. 4001(c)(1)(B)*	**Borrower**: Barretts Minerals Inc. **Guarantor**: Barretts Ventures Texas LLC **DIP Lender:** JMB Capital Partners Lending, LLC
Purpose *Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(i)*	The Debtors have an immediate and critical need to obtain the DIP Financing in order to, among other things: (a) permit the orderly continuation of the operation of BMI's talc business pending a sale; (b) maintain business relationships with vendors, suppliers, and customers; (c) make payroll; (d) satisfy other working capital for their business; (e) pay expenses of the Chapter 11 Cases; and (f) for general corporate purposes, in each case, in accordance with and subject to the terms and conditions of this Interim Order and the DIP Documents, including the Approved Budget (subject to permitted variances). In the absence of the proposed DIP Facility, the Debtors' businesses and estates would suffer immediate and irreparable harm. The access of the Debtors to sufficient working capital and liquidity through the incurrence of new indebtedness under the DIP Documents and other financial accommodations provided under the DIP Documents is necessary and vital to the preservation and maintenance of the value of the Debtors and their estates and to a successful sale of all or substantially all of BMI's assets and the confirmation of a chapter 11 plan of reorganization under section 524(g) of the Bankruptcy Code. *See* Interim Order, Section F(ii).
Borrowing Limits *Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule* *4001-2(a)(i)A*	Up to $30,000,000 of DIP Loans, of which: DIP Interim Loans: $15,000,000 shall be available upon entry of the Interim Order; and DIP Final Loans: $15,000,000 shall be available upon entry of the Final Order and satisfaction of other conditions precedent as listed in Section 17 of the DIP Term Sheet; *See* DIP Term Sheet §§ 4-6.
Approved Budget	A copy of the Approved Budget is attached as **Exhibit 2** to the Interim Order.

[6] This statement is qualified in its entirety by reference to the applicable provisions of the DIP Documents and the DIP Orders. To the extent there exists any inconsistency between this concise statement and the provisions of the DIP Documents or the DIP Orders, the provisions of the DIP Documents or the DIP Orders, as applicable, will control. Capitalized terms used but not otherwise defined in this section have the meaning ascribed to such terms in the Proposed DIP Interim Order or the DIP Credit Agreement.

Summary of Material Terms	
Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(iii)	
Interest Rates *Fed. R. Bankr. P. 4001(c)(1)(B)*	14% per annum, payable in cash. All interest is to be paid in cash on the first business day of each calendar month in arrears. At any time an Event of Default has occurred and is continuing, all Loan Obligations shall bear interest at a rate per annum that is the rate that would otherwise be applicable thereto plus 2% from and including the date of such Event of Default to but excluding the date on which such amount is paid (or satisfied) in full (after as well as before judgment). *See* DIP Term Sheet § 9.
Maturity Date *Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(i)*	All DIP Obligations shall be due and payable in full in cash (or such other form of consideration as the DIP Lender and the Borrower may mutually agree) on the earliest of: i. July 1, 2024; ii. 100 days[7] after the Petition Date (unless extended pursuant to an exercise of the Extension Option (as defined below)) (the "**SHPA Deadline**"), unless the Bankruptcy Court has approved Debtors' entry into a stalking horse purchase agreement ("**SHPA**") reasonably acceptable to the DIP Lender or a sale order (a "**Sale Order**") providing for Payment in Full[8] of the DIP Obligations; provided, that, a SHPA shall be reasonably acceptable to the DIP Lender if it, alone or with one or more related transactions, (i) provides for the Payment in Full of the DIP Obligations, (ii) the purchaser has demonstrated the financial wherewithal[9] to consummate the transaction(s), and (iii) the closing shall occur on or prior to the maturity date of the DIP Facility; iii. the effective date of any chapter 11 plan of reorganization with respect to the Borrower (a "Plan"); iv. the consummation of any sale or other disposition of all or substantially all of the assets of the Borrower pursuant to section 363 of the Bankruptcy Code; v. the date of the acceleration of the DIP Loans and the termination of the DIP Commitments following the occurrence and during the continuation of an Event of Default in accordance with the DIP Documents; vi. dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; and vii. 45 days after the Petition Date (or such later date as agreed to by the DIP Lender), unless the Final Order has been entered by the Bankruptcy Court on or prior to such date (such earliest date, the "**DIP Termination Date**"). On or before three (3) business days prior to the SHPA Deadline, the Borrower shall have the authority in its sole discretion to extend the SHPA Deadline by an additional 30 days by providing written notice to the DIP Lender (the "**Extension Option**").

[7] To the extent any deadline herein calculated in "days" would end on a weekend or holiday, such deadline shall be extended to the next business day.

[8] For purposes hereof, the term "**Payment in Full**" means, with respect to the DIP Obligations, the irrevocable and indefeasible payment in full in cash of all DIP Obligations, other than contingent indemnification and expense reimbursement obligations for which no claim or demand has been asserted, and all commitments thereunder shall have irrevocably, permanently and finally expired or shall have been terminated, cancelled and discharged.

[9] As used herein, financial wherewithal shall mean, either (i) cash or cash equivalents in the amount of the purchase price, (ii) a signed commitment to lend from a recognized lender in the amount of the purchase price, or (iii) a combination thereof.

Summary of Material Terms	
	The occurrence of the DIP Termination Date shall terminate the ability of the Borrower to borrow the Draws and shall terminate any further obligation the DIP Lender has to make any DIP Loans under the DIP Documents.
Repayment Features / Roll-Up *Local Rule 4001-2(a)(i)(E) & (O)*	None.
Conditions Precedent to Closing and Lending *Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(i)(E)*	The effectiveness of the DIP Term Sheet and the occurrence of the Closing Date (as defined below) are subject to the satisfaction, or waiver by the DIP Lender, of conditions precedent customary for financings of this type, which are set forth in Section 17 of the DIP Term Sheet. The DIP Lender shall make the DIP Loans available to the Debtors in multiple draws in the following manner (in each case upon the satisfaction of the conditions precedent described below): i. Upon the Court's entry of the Interim Order approving the proposed DIP Facility, the DIP Lender shall make available the DIP Interim Loans to the Debtors (such funding date, the "**Closing Date**"). ii. Upon (i) the Court's entry of the Final Order approving the proposed DIP Facility and (ii) satisfaction of other conditions precedent as listed in Section 17 of the DIP Term Sheet, the DIP Lender shall make available the DIP Final Loans to the Debtors (such funding date, the "**Final Funding Date**"). *See* DIP Term Sheet §§ 6, 7, 16, 17.
Events of Default *Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(i)(M)*	The DIP Term Sheet contains customary events of default for financings of this type, which are set forth in Section 26 of the DIP Term Sheet. *See* DIP Term Sheet § 26.
Carve Out *Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(i)(F)*	Subject to the terms and conditions contained in the Interim Order, each of the DIP Liens (as defined in the Interim Order) and DIP Superpriority Claims (as defined below) shall be subject and subordinate to the Carve Out. As used in the Interim Order, the "**Carve Out**" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under 28 U.S.C. § 1930(a), together with any interest thereon pursuant to 31 U.S.C. § 3717 ("**Statutory Fees**"), which shall not be subject to the Approved Budget; (ii) Court-allowed fees and expenses of a trustee appointed under section 726(b) of the Bankruptcy Code in an amount not to exceed $100,000, (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "**Allowed Professional Fees**") incurred by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the "**Debtor Professionals**"),the Official Committee, if any, pursuant to sections 328 or 1103 of the Bankruptcy Code (the "**Committee Professionals**"), or the FCR (the "**FCR Professionals**" and, together with the Committee Professional and the Debtor Professionals, the "**Professional Persons**"), at any time before or on the first business day following delivery by the DIP Lender of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice (the "**Pre-Trigger Date Fees**"), subject to the Approved Budget and any limits by the Interim Order, provided that Professional Persons may carry forward budgeted but unused disbursements set forth in the Approved Budget for any week for use in any subsequent week; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $3,000,000 incurred after the first calendar day following delivery by the DIP Lender of the Carve Out Trigger Notice (the "**Trigger Date**"), to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth

Summary of Material Terms	
	in this clause (iv) being the "**Post-Carve Out Trigger Notice Cap**" and together with the Pre-Trigger Date Fees, the "**Carve Out Cap**"); *provided*, *however*, that nothing herein shall be construed to impair the ability of the DIP Lender to object to the fees, expenses, reimbursement, or compensation described in clauses (iii) or (iv) above, on any grounds. *See* Interim Order ¶ 19.
Priority of Claims and Liens; Collateral *Fed. R. Bankr. P. 4001(c)(1)(B)(i)*	"**DIP Collateral**" means all property identified below. Subject to the Carve Out, each Loan Party shall grant to the DIP Lender a security interest in and continuing lien on all of such Loan Party's right, title and interest in, to and under all the Loan Parties' assets, including, but not limited to the following, in each case, whether now owned or existing or hereafter acquired, created or arising and wherever located: all assets and property of such Loan Party and its estate, real or personal, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all fee-owned real properties, contracts, contract rights, licenses, general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, chattel paper, letters of credit and letter of credit rights, investment property (including, without limitation, all equity interests of any Debtor owned by a Debtor in its current and future subsidiaries), commercial tort claims, arbitration awards, money, insurance, receivables, receivables records, deposit accounts, collateral support, supporting obligations and instruments, fixtures, all interests in leaseholds and the Real Properties (as defined in the DIP Documents), all patents, copyrights, trademarks, all trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), together with all books and records relating to the foregoing, all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (as such terms are defined in the Uniform Commercial Code as in effect from time to time in the State of New York) and, subject to the entry of a Final Order, (i) proceeds of actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral and (ii) proceeds of any actions under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code. Subject to the "Carve Out": i. *First Priority Liens on Unencumbered Property.* Pursuant to section 364(c)(2) of the Bankruptcy Code, the DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected first priority liens and security interests in all DIP Collateral that is not subject to any liens and security interests that were valid, non-avoidable and properly perfected as of the Petition Date (or that were properly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) (such liens, "**Prior Permitted Liens**"), including, subject to entry of the Final Order, proceeds of actions brought under section 549 and proceeds of Avoidance Actions (collectively, the "**Unencumbered Assets**"), which DIP Liens shall be junior and subordinated only to the Carve Out. ii. *Liens Junior to Certain Other Liens.* Pursuant to section 364(c)(3) of the Bankruptcy Code, the DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected liens and security interests in all DIP Collateral (other than the DIP Collateral described in paragraph 6(c)(i) of the Interim DIP Order, as to which DIP Liens are described in such paragraph), which DIP Liens shall be subject only to the (1) Carve Out and (2) Prior Permitted Liens. *See* Interim Order ¶¶ 6(b), 6(c); DIP Term Sheet § 14.
Adequate Protection / Identity of Each Entity with Interest in Cash Collateral	Not applicable.

Summary of Material Terms	
Fed. R. Bankr. P. 4001(c)(1)(B)(ii); (b)(1)(B)(i), (iv); Local Rule 4001-2(a)(i)(K) & (P)	
Debtors' Stipulations *Fed. R. Bankr. P. 4001(c)(1)(B)(iii); Local Rule 4001-2(a)(i)(B)*	Release. Effective as of entry of the Interim Order, each of the Debtors and its estate, on its own behalf and on behalf of its predecessors, successors and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits the DIP Lender and each of its representatives (in their capacities as such) from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, cross-claims, demands, defenses, objections, challenges, offsets or setoff, debts, accounts, contracts, liabilities, remedies, suits, controversies, actions, causes of action, losses, damages, indemnities, reimbursement obligations, attorneys' fees, costs, expenses or judgments, of every kind or nature whatsoever, whether matured or unmatured, known or unknown, asserted or unasserted, suspected or unsuspected, foreseen or unforeseen, accrued or unaccrued, liquidated or unliquidated, fixed or contingent, pending or threatened, arising in law or equity, upon contract or tort, under the Bankruptcy Code, any state or federal common law, statute, rule, regulation or otherwise, including, without limitation, any claim or cause of action seeking (i) any so-called lender liability, (ii) any and all claims arising under the Bankruptcy Code, whether under chapter 5 of the Bankruptcy Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), or otherwise, (iii) reduction, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), reclassification, disgorgement, disallowance, impairment, marshalling, surcharge or recovery, in each case, that may be asserted by any of the Debtors, their respective estates, predecessors, successors and assigns, in each case, against the DIP Lender or its representatives (in their capacities as such) for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time prior to the date of the Interim Order, in connection with, arising under or related to the Interim Order, the Final Order, the DIP Facility, the DIP Liens, the DIP Obligations, the DIP Collateral, the transactions contemplated thereunder or hereunder, or the negotiation thereof or hereof, including, without limitation, any claim or cause action with respect to the validity, enforceability, priority, scope, extent or perfection of the DIP Liens, the DIP Obligations, or the DIP Documents.. *See* Interim Order ¶ 29.
Waiver or Modification of Automatic Stay *Fed. R. Bankr. P. 4001(c)(1)(B)(iv)*	The automatic stay imposed by section 362(a) of the Bankruptcy Code is hereby vacated and modified, without application to or further order of this Court, to permit: (a) the DIP Loan Parties to grant the DIP Liens and the DIP Superpriority Claims, and to perform such acts as the DIP Lender may request to assure the perfection and priority of the DIP Liens, (b) the DIP Loan Parties to incur all liabilities and obligations to the DIP Lender as contemplated under the Interim Order and the DIP Documents, (c) the DIP Loan Parties to pay all amounts required hereunder and under the DIP Documents, (d) the DIP Lender to retain and apply payments made in accordance with the terms of the Interim Order and the DIP Documents, (e) subject to the Remedies procedures outlined in paragraph 17 of the Interim Order, the DIP Lender to exercise, upon the occurrence of any DIP Termination Event (as defined below), all rights and remedies provided for in the Interim Order, the DIP Documents, or applicable law, (f) the DIP Loan Parties to perform under the Interim Order and the DIP Documents, and to take any and all other actions that may be necessary, required or desirable for the performance by the DIP Loan Parties under the Interim Order and the DIP Documents and the implementation of the transactions contemplated hereunder and thereunder, and (g) the implementation of all of the terms, rights, benefits, privileges, remedies, and provisions of the Interim Order and the DIP Documents. *See* Interim Order ¶ 11.

Summary of Material Terms	
	The DIP Lender shall be able to exercise or enforce its rights and remedies in accordance with the terms and conditions contained in the Interim Order, the Final Order, and DIP Documents. *See* Interim Order ¶ 17; DIP Term Sheet § 15.
Milestones *Fed. R. Bankr. P. 4001(c)(1)(B)(vi); Local Rule 4001-2(i)(a)(H)*	Section 8 of the DIP Term Sheet contains customary maturity and termination provisions. In addition, Section 8 of the DIP Term Sheet contains the following Milestone (the "**SHPA Milestone**"): i. No later than 100 days[10] after the Petition Date (unless extended pursuant to an exercise of the Extension Option (as defined below)), (the "**SHPA Deadline**") the Bankruptcy Court shall have approved Debtors' entry into a stalking horse purchase agreement reasonably acceptable to the DIP Lender or a sale order providing for Payment in Full of the DIP Obligations; provided, that, a SHPA shall be reasonably acceptable to the DIP Lender if it, alone or with one or more related transactions, (a) provides for the Payment in Full of the DIP Obligations, (b) the purchaser has demonstrated the financial wherewithal to consummate the transaction(s), and (c) the closing shall occur on or prior to the maturity date of the DIP Facility. On or before three (3) business days prior to the SHPA Deadline, the Borrower shall have the authority in its sole discretion to extend the SHPA Deadline by an additional 30 days by providing written notice to the DIP Lender (the "**Extension Option**"). *See* DIP Term Sheet § 8.
Indemnification *Fed. R. Bankr. P. 4001(c)(1)(B)(ix)*	The DIP Lender (and its affiliates and respective officers, directors, employees, advisors and agents) (each such person, an "**Indemnitee**") will have no liability for, and will be indemnified and held harmless against, any losses, claims, damages, liabilities, or expenses incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof, except to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to arise from the fraud, gross negligence, bad faith, or willful misconduct of the relevant indemnified person (or any of its affiliates or any of its or its respective officers, directors, employees, advisors or agents). Such indemnity shall not be available (i) to the extent arising from a material breach of any obligation of such Indemnitee under the DIP Documents, (ii) to the extent arising out of any loss, claim, damage, liability, or expense that does not involve an act or omission of a Debtor and that is brought by an Indemnitee against another Indemnitee, or (iii) to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have arisen from the fraud, gross negligence, bad faith, or willful misconduct of the relevant indemnified person. *See* Interim Order ¶ 2(d).
Section 506(c) and Marshaling Waivers *Fed. R. Bankr. P. 4001(c)(1)(B)(x)* *Local Rule 4001-2(a)(i)(C)*	As a material inducement to the DIP Lender's agreement to provide the DIP Facility, and in consideration of (i) the DIP Lender's agreement to subordinate its DIP Liens to the Carve Out, and (ii) the DIP Lender's agreement to fund the expenses of the administration of these Chapter 11 Cases, subject to the Approved Budget (subject to permitted variances) and upon entry of a Final Order, and in accordance with the terms of the DIP Orders and the DIP Documents, (a) the Debtors waive their right to surcharge any costs or expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Lender or the DIP Collateral, whether pursuant to section 506(c) of the Bankruptcy Code or otherwise, and (b) the DIP Lender shall not be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral. *See* Interim Order, Section F(vi).

[10] To the extent any deadline herein calculated in "days" would end on a weekend or holiday, such deadline shall be extended to the next business day.

Summary of Material Terms	
Liens on Avoidance Actions *Fed. R. Bankr. P. 4001(c)(1)(B)(xi)*	Upon entry of the Final Order, DIP Collateral shall include (i) proceeds of actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral and (ii) proceeds of any actions under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code. *See* Interim Order ¶ 6(b).
Fees *Fed. R. Bankr. P. 4001(c)(1);* *Local Rule 4001-2(a)(i)(B)*	i. The Borrowers shall pay to the DIP Lender a commitment fee equal to 2.0% of the total amount of the DIP Commitments (the "**Commitment Fee**"). The Commitment Fee shall be fully earned, non-refundable upon entry of the Interim Order, and shall be payable out of the proceeds of the Initial Draw. ii. The Borrower shall pay to the DIP Lender an exit fee equal to either (a) the sum of 5.0% of the amount of the DIP Commitment or (b) only in the event the Extension Option is validly exercised, 5.5% of the amount of the DIP Commitment, which shall be fully earned and nonrefundable upon the Bankruptcy Court's entry of the Interim Order (the "**Exit Fee**"). The Exit Fee shall be due and payable upon the earlier of (i) the DIP Termination Date or (ii) Payment in Full of the DIP Obligations, provided, however, if the DIP Termination Date has occurred solely as a result of the occurrence and continuation of an Event of Default under the DIP Documents, then the Exit Fee shall not be payable until the DIP Obligations have been accelerated by the DIP Lender. *See* DIP Term Sheet § 10.
Cross-Collateralization *Local Rule 4001-2(a)(i)(N)*	Not applicable.

PREPETITION CAPITAL STRUCTURE

13. The Debtors have no material prepetition secured debt as of the Petition Date. *See* First Day Decl. ¶ 43. BMI was previously (a) a guarantor under that certain Indenture, dated as of June 30, 2020, among MTI, the guarantors from time to time parties thereto and The Bank of New York Mellon Trust Company, N.A., as Trustee (the "**MTI Indenture**"), relating to MTI's 5.000% Senior Notes due 2028, and (b) a direct obligor under that certain Credit Agreement, dated as of May 9, 2014 (as amended by the Refinancing Facility Agreement, dated as of June 23, 2015, the Second Amendment, dated as of February 14, 2017, the Third Amendment and Incremental Facility Amendment, dated as of April 18, 2018 and the Refinancing Facility Agreement, dated as of August 11, 2022, and as otherwise amended, amended and restated, supplemented or otherwise modified prior to the date hereof, the "**MTI Credit Agreement**" and together with the MTI

Indenture, the "**MTI Financing Agreements**"), among MTI, the Borrowing Subsidiaries party thereto, the Lenders party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent, and the other agents party thereto. *Id.* However, as set forth in the Indemnity Agreement (as defined and described in the First Day Declaration), BMI is no longer party to the MTI Financing Agreements. *Id.*

LIQUIDITY NEEDS AND FINANCING EFFORTS

I. THE DEBTORS HAVE AN IMMEDIATE NEED TO ACCESS THE PROPOSED DIP FACILITY

14. As set forth in detail in the First Day Declaration, the Debtors concluded that commencement of the Chapter 11 Cases was the optimal path for resolving BMI's talc-related liabilities in a manner that would maximize value for all stakeholders. *See* First Day Decl. ¶ 14. As part of the Debtors' preparations for the Chapter 11 Cases the Debtors and their management, with the assistance of their advisors, reviewed and analyzed the Debtors' near-term weekly and long-term cash flows forecasts while operating in chapter 11. *See* Murphy Decl. ¶ 11. This analysis considered, among other facts: (a) the effect of the chapter 11 filing on the Debtors' operations and revenue, (b) the fees and interest associated with postpetition financing, (c) professional fees, (d) customer and vendor obligations, and (e) the expected operational performance of the Debtors' businesses. *Id.* Ultimately, the Debtors and their advisors developed and negotiated the Approved Budget. *See* Murphy Decl. ¶ 12 The Debtors believe that the Approved Budget provides an accurate reflection of the Debtors' funding requirements over the thirteen week period following the Petition Date and is reasonable and appropriate under the circumstances. *Id.*

15. As reflected in the Approved Budget, the Debtors do not generate sufficient cash from operations to meet ongoing operating and capital costs, working capital needs, and the

projected costs of the Chapter 11 Cases absent immediate funding. *See* Murphy Decl. ¶ 13. And, the Debtors require immediate access to cash to ensure that the Debtors are able to: (a) preserve relationships with customer, suppliers, vendors, and other business partners; (b) provide working capital for BMI's talc business; (c) fund payments to employees; (d) fund other general corporate expenses; (e) fund the payments authorized by the Court pursuant to the "first-day motions" filed contemporaneously with this Motion; and (f) satisfy the Debtors' administrative costs and expenses incurred in the Chapter 11 Cases. *See* Murphy Decl. ¶ 10. Accordingly, absent authority to enter into and access the proposed DIP Facility, the Debtors would be unable to pay their necessary expenses, causing the value of the Debtors' estates to deteriorate. *See* Murphy Decl. ¶ 13. In contrast, continued access to funding of the Debtors' business will benefit a potential purchaser of BMI's assets and the Debtors' existing stakeholders by ensuring that the Debtors' are able to continue to operate postpetition—thus preserving the value of the Debtors' estates—while the Debtors pursue a sale transaction. *See* Murphy Decl. ¶ 11.

II. THE PROPOSED DIP FACILITY REPRESENTS THE BEST POSTPETITION FINANCING OPTION CURRENTLY AVAILABLE TO THE DEBTORS UNDER THE CIRCUMSTANCES

16. The proposed DIP Facility represents the best postpetition financing option available. Prior to the commencement of these Chapter 11 Cases, the Debtors, with the assistance of Jefferies, launched a marketing process over the summer seeking proposals for debtor-in-possession financing. *See* Szlezinger Decl. ¶ 12. As part of this process, Jefferies contacted 68 well-established and experienced potential third-party capital sources.[11] *See* Szlezinger Decl. ¶ 13. The Debtors entered into non-disclosure agreements with 27 of these parties, which were then

[11] Importantly, following conversations with potential third-party lenders, it became clear that no party was willing to extend unsecured financing to the Debtors, which would be allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. *See* Szlezinger Decl. ¶ 12.

provided confidential information through conversations and access to a virtual data room. *Id.* Of the 27 parties that signed non-disclosure agreements and received confidential information, 11 submitted non-binding indications of interest for proposed financing. *Id.* In addition, the Debtors receive one non-binding indication from a potential purchaser. *Id.* The Debtors also approached MTI, to gauge their interest in providing debtor-in-possession financing. *See* Szlezinger Decl. ¶ 14. The terms of the MTI proposal were comparable to the terms under the third-party financing proposals the Debtors received. *Id.* However, the Debtors did not receive any binding proposal or commitment from MTI. *Id.*

17. Ultimately, the Debtors, in consultation with Jefferies and their other advisors, determined that the proposal from JMB Capital Partners Lending, LLC (together with its successors and permitted assigns, the "**DIP Lender**") was the only actionable proposal, including because the other proposals (each of which were non-binding) were unlikely to provide sufficient liquidity, had various unacceptable or unreasonable terms such as overly aggressive and burdensome milestones and many also required a guarantee from MTI (which MTI was unwilling to give). *See* Szlezinger Decl. ¶ 15. Accordingly, the Debtors focused on negotiating, documenting, and obtaining approval of the DIP Facility with the DIP Lender. *Id.*

18. The proposed DIP Facility provides up to $30 million in new money for the Debtors' estates ($15 million upon entry of the Interim Order, and an additional $15 million upon entry of the Final Order and achievement of the SHPA Milestone[12]). The proposed DIP Facility's

[12] The SHPA Milestone requires either the Bankruptcy Court's approval of (a) the Debtors' entry into a stalking horse purchase agreement reasonably acceptable to the DIP Lender or (b) a sale order providing for Payment in Full of the DIP Obligations; provided, that, a SHPA shall be reasonably acceptable to the DIP Lender if it, alone or with one or more related transactions, (i) provides for the Payment in Full of the DIP Obligations, (ii) the purchaser has demonstrated the financial wherewithal to consummate the transaction(s), and (iii) the closing shall occur on or prior to the maturity date of the DIP Facility. The SHPA Milestone must be achieved within 100 days following the Petition Date, or 130 days following the Petition Date if the Extension Option is exercised.

pricing is the product of arm's-length negotiation and an integral component of the DIP Lender's provision of the proposed DIP Facility. *See* Szlezinger Decl. ¶¶ 19, 23.

19. Execution of the DIP Term Sheet was marked by hard-fought negotiations in an effort to receive the best available terms for the Debtors, and the Debtors were able to receive concessions from the DIP Lender, including, a reduction of the Commitment Fee and the extension of milestone for the Debtors to secure a court order approving entry into a stalking horse purchase agreement reasonably acceptable to the DIP Lender or a sale of substantially all of the Debtors' assets. *See* Szlezinger Decl. ¶ 18. Such negotiations resulted in more beneficial terms under the currently proposed DIP Facility than was initially proposed by the DIP Lender. *Id.* Ultimately, the Debtors and their advisors believe the proposed DIP Facility is reasonable and fair and is thus the best postpetition financing option currently available to the Debtors. *See* Szlezinger Decl. ¶ 24.

BASIS FOR RELIEF REQUESTED

I. THE DEBTORS SHOULD BE AUTHORIZED TO ACCESS THE PROPOSED DIP FACILITY

20. Section 364(c) of the Bankruptcy Code requires a finding, made after notice and a hearing, that a debtor seeking postpetition financing on a secured basis cannot "obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense." 11 U.S.C. § 364(c). In evaluating proposed postpetition financing under section 364(c) of the Bankruptcy Code, courts perform a qualitative analysis and generally consider various factors including whether:

a. unencumbered credit or alternative financing without superpriority status is available to the debtor;

b. the credit transactions are necessary to preserve assets of the estate;

c. the terms of the credit agreement are fair, reasonable, and adequate;

d. the proposed financing agreement was negotiated in good faith and at arm's length and entry thereto is an exercise of sound and reasonable business judgment and in the best interest of the debtors' estate and their creditors; and

e. the proposed financing agreement adequately protects prepetition secured creditors.

See, e.g., In re Aqua Assoc., 123 B.R. 192 (Bankr. E.D. Pa. 1991) (applying the first three factors in making a determination under section 364(c)); *In re Crouse Grp., Inc.*, 71 B.R. 544 (Bankr. E.D. Pa. 1987) (same).

21. Each of these factors have been met. ***First***, during the Debtors' prepetition marketing process, no lender agreed to provide postpetition financing on an unsecured basis, allowable as an administrative expense. *See* Szlezinger Decl. ¶ 12. ***Second***, the Debtors require DIP financing to fund the chapter 11 case. *See* Murphy Decl. ¶ 10. ***Third***, the Debtors believe that the proposed DIP Facility with the DIP Lender is the Debtors' best currently available source for the liquidity needed to navigate the chapter 11 process and the terms of the DIP Facility are fair and reasonable. *See* Szlezinger Decl. ¶ 24. ***Fourth***, the proposed DIP financing was negotiated in good faith and at arm's length. *See* Szlezinger Decl. ¶ 17-19. ***And fifth***, the Debtors don't have any material prepetition secured debt, and the Debtors are not seeking relief to prime any prepetition secured creditors. *See* First Day Decl. ¶ 43.

A. The Debtors Cannot Obtain Postpetition Financing on More Favorable Terms

22. In demonstrating that credit is not available without the protections afforded by section 364(c) of the Bankruptcy Code, a debtor need only make a good faith effort. *See, e.g., In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain less onerous terms where debtor approached four lending institutions, was rejected by two, and selected the least onerous financing option from the remaining two lenders); *see also In re*

Snowshoe Co., 789 F.2d 1085, 1088 (4th Cir. 1986) (holding "[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable"); *In re Phoenix Steel Corp.*, 39 B.R. 218, 222 (D. Del. 1984) (holding the debtor satisfied its burden to show an inability to obtain credit on other terms through its time and effort spent trying to obtain credit on alternative terms and conditions). Moreover, where few lenders likely can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom., Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (holding that bankruptcy court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met).

23. As set forth above and in the Szlezinger Declaration, prior to the Petition Date, the Debtors endeavored to identify potential third-party financing sources, and engaged with numerous parties on potential financing options. *See* Szlezinger Decl. ¶¶ 12-14. The Debtors were unable to secure, let alone identify, any lender willing to provide the financing needed on an unsecured, administrative claim basis. *See* Szlezinger Decl. ¶ 12. Accordingly, the Debtors and their advisors focused on obtaining a secured postpetition financing facility with superpriority administrative expense status. *Id.* Although the Debtors received 11 other proposals for DIP financing, those proposals either failed to materialize or were otherwise unactionable or less competitive, as described above. *See* Szlezinger Decl. ¶ 15. Thus, the proposed DIP Facility is the best currently available option for the Debtors. *See* Szlezinger Decl. ¶ 25. Accordingly, the Debtors believe that the proposed DIP financing presents the most favorable available postpetition financing and that that they would not be able to secure any postpetition funding absent providing

the DIP Superpriority Claims and the DIP Liens on the DIP Collateral, on substantially similar terms as provided herein and in the DIP Documents.

B. The Proposed DIP Facility is Necessary to Preserve the Value of the Debtors' Estate

24. As debtors in possession, the Debtors have a fiduciary duty to protect and maximize the value of their estates. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004).

25. If approved, the proposed DIP Facility will provide critical funding to enable the Debtors to continue satisfying their obligations and operate their businesses while the Debtors seek to sell BMI's assets pursuant to section 363 of the Bankruptcy Code. *See* Murphy Decl. ¶ 10. Without access to the proposed DIP Facility, the Debtors will be harmed because the Debtors' available cash and projected cash generated from operations is insufficient to preserve and maximize the value of BMI's assets. *See* Murphy Decl. ¶ 13. Accordingly, the credit to be provided under the proposed DIP Facility is necessary to preserve the value of the Debtors' estates for the benefit of all stakeholders.

C. The Terms of the Proposed DIP Facility are Fair, Reasonable, and Adequate under the Circumstances

26. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the proposed lender. *In re L.A. Dodgers LLC*, 457 B.R. 308, 312 (Bankr. D. Del. 2011) (stating that approval of DIP financing requires terms that are "fair, reasonable and adequate, given the circumstances of the debtor-borrower and the proposed lender"); *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds). The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See Transcript*

of Record at 740:4-6, *In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009) ("[B]y reason of present market conditions, as disappointing as the [DIP] pricing terms are, I find the provisions [of a DIP that included a roll-up of prepetition secured debt] reasonable here and now.").

27. As described above and in the First Day Declaration, prior to the Petition Date, the Debtors engaged in a thorough evaluation of strategic alternatives. *See* First Day Decl. ¶ 71. And described herein and in the Szlezinger Declaration, the Debtors ran an extensive marketing process for postpetition financing, which yielded only one actionable proposal. *See* Szlezinger Decl. ¶¶ 12 -15. For all the reasons stated herein and in the Szlezinger Declaration, the Debtors believe that the DIP Lender is the best source of financing for these cases.

D. Entry into the DIP Documents Reflects the Debtors' Reasonable Business Judgment

28. A debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del 1994) (noting that the interim loan, receivable facility and asset based facility were approved because they "reflect[ed] sound and prudent business judgment [were] reasonable under the circumstances and in the best interests of TWA and its creditors"); *Ames Dep't Stores, Inc.*, 115 B.R. at 40 ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest."); *Group of Institutional Holdings v. Chicago Mil. St. P. & Pac. Ry.*, 318 U.S. 523, 550 (1943); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985)

("Business judgments should be left to the board room and not to the Court."); *In re Lifeguard Indus., Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983) (same).

29. Bankruptcy courts typically grant considerable deference to a debtor's business judgment on the decision to borrow money unless such decision is arbitrary and capricious. *See In re Trans World Airlines, Inc.*, 163 B.R. at 974; *see also, e.g., In re N Bay Gen. Hosp., Inc.*, No. 08-20368 (Bankr. S.D. Tex. July 11, 2008) (order approving postpetition financing on an interim basis as exercise of debtors' business judgment); *In re Latam Airlines Grp. S.A.*, 2020 WL 5506407 at *27 (Bankr. S.D.N.Y. Sept. 10, 2020) ("Generally, in evaluating the merits of proposed post-petition financing, courts will defer to a debtor's business judgment provided that the financing odes not unduly benefit a party in interest at the expense of the estate."). In fact, "[m]ore exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

30. For the reasons set forth herein as well as the Szlezinger Declaration and the Murphy Declaration, the Debtors submit that the entry into the proposed DIP Facility is a reasonable exercise of their business judgment. The proposed DIP Facility is the best available postpetition financing option, was negotiated at arm's-length, represents fair terms under the circumstances, and is necessary for the Debtors to fund operations and expenses during the Chapter 11 Cases in order to pursue an in-court sale process.

E. The Debtors Should be Authorized to Pay the Fees and Payments Required by the DIP Lender Under the DIP Documents

31. Pursuant to the DIP Documents and the Interim Order, the Debtors have agreed, subject to Court approval, to pay certain fees and other payments to the DIP Lender. In particular,

the Debtors have agreed to pay to the DIP Lender the following fees (the "**DIP Fees**"): (a) a 2% Commitment Fee of the total amount of the DIP Commitments and (b) an Exit Fee of either (x) 5% of the amount of the DIP Commitment, or (y) if the Extension Option is exercised by the Debtors in their sole discretion (which would provide the Debtors with an additional 30 days to meet the SHPA Milestone), 5.5% of the amount of the DIP Commitment. In particular, upon entry of the Interim Order, the Commitment Fee will be fully earned and payable out of the proceeds of the initial funding under the DIP Facility. *See* Szlezinger Decl. ¶ 22. Similarly, the Exit Fee will be fully earned and nonrefundable upon entry of the Interim Order, but will be due and payable upon the earlier of (a) the acceleration of the DIP Loans or maturity of the DIP Facility, or (b) Payment in Full of the DIP Obligations. *Id*.

II. THE DEBTORS SHOULD BE AUTHORIZED TO USE CASH COLLATERAL

32. Under section 363(c)(2) of the Bankruptcy Code, a debtor may not use cash collateral (as defined in section 363 of the Bankruptcy Code) unless "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). Here, the DIP Lender has consented to the use of its cash collateral, subject to the terms of the DIP Documents and Interim Order. In addition, the Debtors' use of cash collateral is in the best interests of the Debtors' estates and a sound exercise of their business judgment for the reasons explained throughout this Motion. Importantly, the Debtors' request for use of cash collateral only applies to the DIP Lender's cash collateral as there is no prepetition secured party. Accordingly, the Debtors' use of cash collateral should be approved, subject to the terms of the DIP Documents and Interim Order.

III. THE DIP LENDER SHOULD BE DEEMED A GOOD-FAITH LENDER

33. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

> The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

34. As explained herein and in the Szlezinger Declaration, the DIP Documents are the result of: (a) the Debtors' reasonable judgment that the DIP Lender provided the best postpetition financing option available under the circumstances; and (b) extended arm's-length, good-faith negotiations between the Debtors and the DIP Lender. *See* Szlezinger Decl. ¶ 25. The Debtors submit that the terms and conditions of the DIP Documents are reasonable under the circumstances, and the proceeds of the proposed DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Accordingly, the Court should find that the DIP Lender is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code and is entitled to all of the protections afforded by that section.

IV. MODIFICATION OF AUTOMATIC STAY

35. The Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent set forth in the Interim Order to the extent necessary to permit the DIP Loan Parties and the DIP Lender to implement and effectuate the terms and provisions of the Interim Order, the DIP Documents and, upon entry, the Final Order

and to deliver any notices of termination as further set forth in the Interim Order. However, as further described in the Interim Order, the DIP Lender must file a motion with the Court on five (5) business days' notice seeking an emergency hearing before exercising or enforcing any rights or remedies in respect of the DIP Collateral (and the Debtors' rights to contest such relief are expressly reserved).

36. Stay modification provisions of this sort are common features of postpetition financing facilities and, in the Debtors' business judgment, are reasonable under the circumstances. Accordingly, the Debtors request that the Court modify the automatic stay solely to the extent contemplated by the DIP Term Sheet and the Interim Order and the Final Order.

V. APPROVAL OF INTERIM RELIEF

37. Bankruptcy Rules 4001(b)(2) and 4001(c)(2) provide that a final hearing on a motion to obtain credit may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the court may conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit on an interim basis "to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2); (c)(2).

38. As described above, the Debtors have an urgent and immediate need for cash in order to maintain business relationships with their vendors, suppliers, customers, and other parties, to make capital expenditures, and to satisfy other working capital and operational needs and otherwise finance operations and the Chapter 11 Cases, whether directly or through reimbursement to MTI. *See* Murphy Decl. ¶ 10. Given the immediate and irreparable harm to be suffered by the Debtor, their estates, and their creditors absent interim relief, the Debtors request that, pending the Final Hearing, the Court schedule an interim hearing that will provide the Court with sufficient time to enter the Interim Order within five business days of the Petition Date, as required by the

DIP Term Sheet, or as soon thereafter as practicable to consider the interim relief requested in this Motion.

VI. REQUEST FOR A FINAL HEARING

39. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, but in no event later than 45 days following the Petition Date, and fix the time and date before the Final Hearing for parties to file objections to this Motion.

EMERGENCY CONSIDERATION

40. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Local Rule 9013-1(i) and Bankruptcy Rule 6003, which authorizes a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." The Debtors believe that an immediate and orderly transition into chapter 11 is critical to the viability of their operations and the success of the Chapter 11 Cases. As discussed above and in the First Day Declaration, any delay in granting the relief requested would severely disrupt the Debtors' operations at this critical juncture. As such, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003, and the Debtors believe that emergency consideration is necessary and respectfully request that this Motion be heard at the Debtors' first day hearing.

WAIVER OF BANKRUPTCY RULE 6004(A) AND (H)

41. To implement the foregoing immediately, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify the finding that the notice requirements

under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and stay apply.

RESERVATION OF RIGHTS

42. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors or the existence of any lien against the Debtors' property; (b) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (f) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the proposed Orders once entered. Nothing contained in the proposed Orders will be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

NOTICE

43. Notice of this Motion will be provided to (a) the Office of the United States Trustee for the Southern District of Texas; (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 10 largest unsecured claims against the Debtors (excluding talc claims); (d) counsel to the prepetition representative for future talc claimants; (e) counsel to the proposed DIP Lender; (f) the United States Attorney's Office for the Southern District of Texas; (g) the Internal Revenue Service; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required or needed under the circumstances.

WHEREFORE, the Debtors respectfully request entry of the Orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: October 2, 2023
Houston, Texas

Respectfully Submitted,
/s/ John F. Higgins

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Proposed Counsel for Debtors and Debtors in Possession

CERTIFICATE OF ACCURACY

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ John F. Higgins
John F. Higgins

CERTIFICATE OF SERVICE

I certify that on October 2, 2023, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ John F. Higgins
John F. Higgins

EXHIBIT A

Interim Order

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

In re:	:	Chapter 11
	:	
	:	Case No. 23-90794 (DRJ)
BARRETTS MINERALS INC., *et al.*,[1]	:	
	:	**(Jointly Administered)**
Debtors.	:	
	:	**Re: Docket No.__**

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

Upon the motion (the "**Motion**")[2] of the above-captioned debtors and debtors in possession (the "**Debtors**"), pursuant to sections 105, 361, 362, 363, 364, 503, 506, and 507 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rules 2002-1, 4001-1(b), 4002-1 and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas and the Procedures for Complex Chapter 11 Bankruptcy Cases (together, the "**Local Bankruptcy Rules**") promulgated by the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Court**"), seeking entry of an interim order (this "**Interim Order**"), among other things:

(a) authorizing the Debtors to obtain postpetition financing on a superpriority senior secured basis (the "**DIP Financing**", and the loans made, advanced or deemed

[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 have the meanings ascribed to such terms in the Motion or DIP Term Sheet (as defined below), as applicable.

advanced thereunder, the "**DIP Loans**") in the form of a non-amortizing super-priority senior secured term loan facility in an aggregate principal amount of up to $30 million (the "**DIP Facility**"), pursuant to which (i) upon entry of this Interim Order and satisfaction of all applicable conditions precedent described in the DIP Term Sheet (as defined below), an aggregate principal amount of $15 million shall be made available (the "**Interim DIP Borrowing**") and the Borrower shall be entitled to make draws of the DIP Loans in accordance with the DIP Term Sheet and the Approved Budget (as defined below) (subject to permitted variances) and (ii) following entry of the Final Order (as defined below) and satisfaction of the conditions precedent set forth in the DIP Documents, the remaining aggregate principal amount under the DIP Facility shall be made available, in one or more borrowings (each such borrowing, including the Interim DIP Borrowing, a "**DIP Borrowing**" and, collectively, the "**DIP Borrowings**") in accordance with and subject to the terms and conditions (including, without limitation, any conditions precedent to each of the DIP Borrowings) set forth in (x) that certain *Debtor-in-Possession Term Loan Facility Summary of Terms and Conditions*, substantially in the form attached to this Interim Order as **Exhibit 1** (as may be amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof, the "**DIP Term Sheet**"), and, together with the Approved Budget all other agreements, guarantees, pledge, collateral and security agreements, deeds, charges, control agreements, instruments, certificates, notes, any separate fee letter agreements between any of the Debtors, on the one hand, and the DIP Lender, on the other hand, and other documents executed, filed and/or delivered in connection therewith (each as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof, together with the DIP Term Sheet, collectively, the "**DIP Documents**"), by and among Barretts Minerals Inc. ("**BMI**" or the "**Borrower**"), as borrower, Barretts Ventures Texas LLC, as guarantor (the "**DIP Guarantor**", and together with BMI and all of the DIP Borrower's and Guarantor's existing and future, direct or indirect, domestic or foreign subsidiaries that become debtors or debtors-in-possession in the Chapter 11 Cases, if any, the "**DIP Loan Parties**"), and JMB Capital Partners Lending, LLC, as the lender (together with its successors and permitted assigns, the "**DIP Lender**"), and (y) this Interim Order;

(b) authorizing the DIP Loan Parties to (i) execute, deliver, and perform under the DIP Term Sheet and each of the DIP Documents, (ii) incur all loans, advances, extensions of credit, financial accommodations, indemnification and reimbursement obligations and other obligations, and pay all principal, interest, premiums, fees, costs, expenses, charges and all other amounts payable under the DIP Documents, including without limitation, all DIP Obligations (as defined in the DIP Term Sheet), and (iii) perform such other and further acts as may be necessary, required or desirable to implement and effectuate the terms of this Interim Order, the DIP Documents, and the transactions contemplated hereunder and thereunder;

(c) authorizing BMI to incur, and the DIP Guarantor to guarantee, all DIP Obligations, in accordance with this Interim Order and the DIP Documents;

(d) granting to the DIP Lender the DIP Liens (as defined below) in all DIP Collateral (as defined in the DIP Term Sheet), as set forth in this Interim Order, subject to the Carve Out and any Prior Permitted Liens (as defined below) subject to the relative priorities set forth in this Interim Order;

(e) granting to the DIP Lender allowed super-priority administrative expense claims against each of the Debtors, on a joint and several basis, in respect of all DIP Obligations, subject in each case to the Carve Out, as set forth in this Interim Order;

(f) authorizing the Debtors to use the proceeds of the DIP Facility and the DIP Collateral, including any cash collateral, as defined in section 363(a) of the Bankruptcy Code ("**Cash Collateral**"), solely in accordance with the terms and conditions set forth in this Interim Order and the DIP Documents, including the Approved Budget (as defined below), subject to any variances expressly permitted herein and under the DIP Documents;

(g) subject to and effective upon entry of a final order (the "**Final Order**"), approving the waiver of the right to surcharge the DIP Collateral pursuant to sections 105(a) and 506(c) of the Bankruptcy Code or otherwise;

(h) subject to and effective upon entry of a Final Order, approving the Debtors' waiver of the equitable doctrine of marshaling and other similar doctrines with respect to the DIP Collateral;

(i) modifying or vacating the automatic stay imposed by sections 105(a) and 362 of the Bankruptcy Code or otherwise, to the extent necessary, required or desirable to implement and effectuate the terms and provisions of this Interim Order and the DIP Documents, as set forth herein, waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of this Interim Order, providing for the immediate effectiveness of this Interim Order, and granting related relief; and

(j) scheduling a final hearing (the "**Final Hearing**") on the Motion to consider entry of a Final Order authorizing the relief requested in the Motion on a final basis, which order shall be in form and substance and on terms and conditions acceptable in all respects to the DIP Lender.

The Court, having considered the Motion, the DIP Documents, the exhibits attached thereto, the evidence submitted and arguments proffered or adduced at the interim hearing held before this Court on [●], 2023 (the "**Interim Hearing**"), and upon the record of the Chapter 11 Cases; and due and proper notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 4001 and 9014 and all applicable Local Bankruptcy Rules; and it appearing that

no other or further notice need be provided; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; the Court having determined that the legal and factual bases set forth in the Motion and at the Interim Hearing established just cause for the relief granted herein; and it appearing to the Court that granting the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, their creditors, and all other parties in interest, represents a sound exercise of the Debtors' business judgment, is necessary for the continued operation of the Debtors' businesses and is necessary to preserve and maximize the value of the Debtors and their estates; and the Debtors having provided notice of the Motion as set forth in the Motion; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. *Petition Date.* On October 2, 2023 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court commencing the Chapter 11 Cases.

B. *Debtors in Possession.* The Debtors continue to manage and operate their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in any of the Chapter 11 Cases.

C. *Committee Formation.* As of the date hereof, the Office of the United States Trustee (the "**U.S. Trustee**") has not appointed any official statutory committee of creditors in the

[3] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (to the extent appointed in the Chapter 11 Cases, any such committee, the "**Official Committee**").

D. *Jurisdiction and Venue*. This Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. This Court's consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for the Chapter 11 Cases and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. § 1408. The predicates for the relief set forth herein are sections 105, 361, 362, 363, 364, 503, 506, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and Local Bankruptcy Rule 4001-2.

E. *Findings Regarding Corporate Authority*. Each of the DIP Loan Parties has all requisite power and authority to execute and deliver the DIP Documents to which it is a party and to perform its obligations thereunder.

F. *Findings Regarding DIP Facility and Use of Cash Collateral.*

(i) *Good Cause*. Good and sufficient cause has been shown for the entry of this Interim Order and for the Debtors to obtain postpetition financing pursuant to the terms hereof and the DIP Documents.

(ii) *Need for Postpetition Financing and Use of Cash Collateral*. The Debtors have an immediate and critical need to obtain the DIP Facility and use Cash Collateral in order to, among other things, (i) permit the orderly continuation and operation of their businesses, (ii) maintain business relationships with customers, vendors, and suppliers, (iii) provide working capital for their businesses, (iv) pay the expenses of the Chapter 11 Cases, and (v) for general corporate purposes, in each case, in accordance with and subject to the terms and conditions of this Interim Order and the DIP Documents, including the Approved Budget (subject to permitted

variances). The Debtors require immediate access to sufficient working capital and liquidity through the incurrence of loans and other financial accommodations under the DIP Facility in order to preserve, maintain, and maximize the Debtors' going concern value and to facilitate an orderly and successful sale of all or substantially all of BMI's assets and the confirmation of a chapter 11 plan of reorganization under section 524(g) of the Bankruptcy Code. Without access to the DIP Facility and the authorized use of Cash Collateral upon the terms set forth herein, the Debtors and their estates will be immediately and irreparably harmed.

(iii) *No Credit Available on More Favorable Terms.* The Debtors are unable to obtain financing or other financial accommodations on more favorable terms from sources other than the DIP Lender. The Debtors are unable to obtain adequate unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtors are also unable to obtain adequate secured credit allowable under section 364(c)(1) of the Bankruptcy Code without granting to the DIP Lender the rights, benefits, remedies, and protections set forth herein and the DIP Documents, including the DIP Liens on all DIP Collateral and the DIP Superpriority Claims (as defined below) upon the terms set forth herein.

(iv) *Use of Proceeds of DIP Facility and Cash Collateral*. As a condition to providing the DIP Facility (including Cash Collateral), the DIP Lender requires, and the Debtors have agreed, that all proceeds of the DIP Loans and any Cash Collateral shall be used and/or applied solely for the purposes expressly permitted in, and in a manner consistent with, the Approved Budget (subject to permitted variances) including (i) to pay the costs of administration of the Chapter 11 Cases, (ii) for general corporate and working capital purposes, (iii) to pay professional fees and expenses in accordance with this Interim Order, and (iv) to pay fees,

expenses, interest, and other amounts payable under the DIP Facility, in each case, subject to the terms and conditions of this Interim Order and the DIP Documents.

(v) *Approved Budget and Variance*. The Debtors have prepared and delivered to the DIP Lender the initial itemized cash flow forecast set forth on **Exhibit 2** attached hereto, which has been approved by the DIP Lender (the "**Initial Budget**", as amended, supplemented or updated by the Debtors, and approved by the DIP Lender, from time to time in accordance with the terms of this Interim Order and the DIP Documents, the "**Approved Budget**"), reflecting, on a line item, cumulative and aggregate basis, (i) the Debtors' projected cash receipts expected to be collected, and necessary disbursements and expenditures expected to be incurred or made, by the Debtors for each calendar week during the period from the calendar week ending on October 6, 2023 through and including the end of the thirteenth (13th) calendar week thereafter, and (ii) the sum of weekly unused availability under the DIP Facility, plus restricted and unrestricted balances of cash on hand, (iii) the weekly outstanding principal balance of amounts outstanding under the DIP Facility, and (iv) a professional fee accrual budget with respect to the anticipated professional fees and expenses to be incurred by the Professional Persons (as defined below) during such period. The Initial Budget is an integral part of this Interim Order, and the DIP Lender is relying, in part, upon the Debtors' agreement to comply with the Approved Budget (subject to permitted variances) in determining to enter into the DIP Facility and to allow the Debtors' use of proceeds of the DIP Facility and any Cash Collateral in accordance with the terms of this Interim Order and the DIP Documents.

(vi) *Section 506(c) and Marshaling Waivers*. As a material inducement to the DIP Lender's agreement to provide the DIP Facility, and in consideration of (i) the DIP Lender's agreement to subordinate its DIP Liens to the Carve Out, and (ii) the DIP Lender's agreement to

pay the expenses of the administration of the Chapter 11 Cases, subject to the Approved Budget (subject to permitted variances) and upon entry of a Final Order, and in accordance with the terms of the Orders and the DIP Documents, (a) the Debtors waive their right to surcharge any costs or expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Lender or the DIP Collateral, whether pursuant to section 506(c) of the Bankruptcy Code or otherwise, and (b) the DIP Lender shall not be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral.

(vii) *Good Faith*. The terms of the DIP Facility and the DIP Documents, and the terms upon which the Debtors may use Cash Collateral pursuant to the terms of this Interim Order and the DIP Documents, were negotiated in good faith and at arm's length among the DIP Loan Parties and the DIP Lender, and their respective representatives, and all of the DIP Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Facility, the DIP Documents and this Interim Order, including, without limitation, all loans, advances, extensions of credit and other financial accommodations made to and guarantees issued by the DIP Loan Parties pursuant to the DIP Documents, shall each be deemed to have been extended by the DIP Lender and each of their respective affiliates, in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and each of the claims, liens and security interests, rights, remedies, benefits, and protections granted to the DIP Lender (and its successors and assigns) pursuant to this Interim Order and the DIP Documents (including, without limitation, the DIP Liens, the DIP Superpriority Claims, and the DIP Obligations) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

(viii) *Proper Exercise of Business Judgment.* Based on the Motion, the record presented to the Court at the Interim Hearing and in the Chapter 11 Cases, the terms of the DIP Facility and the DIP Documents, and the terms upon which the Debtors may use Cash Collateral pursuant to the terms of this Interim Order and the DIP Documents (i) were negotiated in good faith and at arm's length among the DIP Loan Parties and the DIP Lender, (ii) are fair, reasonable, and the best available to the Debtors under the circumstances, (iii) reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and (iv) are supported by reasonably equivalent value and fair consideration.

(ix) *Notice*. Proper, timely, sufficient and appropriate notice of the Motion and the Interim Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules, and no other or further notice of the Motion, the Interim Hearing, or the entry of this Interim Order shall be required.

(x) *Immediate Entry; Relief Essential.* The Debtors have requested, and the Court hereby finds that sufficient cause exists for, the immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Bankruptcy Rules. Unless the relief set forth in this Interim Order is granted, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Facility upon the terms set forth in this Interim Order and the DIP Documents is necessary to preserve and maximize the value of the Debtors' estates, is in the best interests of the Debtors and their estates and is consistent with the Debtors' exercise of their fiduciary duties.

NOW THEREFORE, based upon the foregoing findings and conclusions, the Motion, the evidence adduced at the Interim Hearing and the record before the Court, and after due consideration, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. *Motion Granted.* The DIP Facility and the use of Cash Collateral is hereby authorized and approved, in each case, on an interim basis and upon the terms and conditions set forth in this Interim Order and the DIP Documents. Any objections to any of the relief set forth in this Interim Order that have not been withdrawn, waived, or settled, and all reservations of rights or other statements inconsistent with this Interim Order, are hereby denied and overruled. This Interim Order shall become effective and enforceable immediately upon its entry.

2. *Authorization of DIP Facility and DIP Documents.*

(a) *Authorization of DIP Documents.* The DIP Loan Parties are hereby authorized to (i) execute, deliver, enter into and perform all of their obligations, and to pay all fees, costs, expenses, indemnities, and other amounts contemplated, under the DIP Documents and this Interim Order, and (ii) perform all acts, to make, execute, deliver, enter into and perform under any and all other agreements, instruments, certificates, and other documents (including, without limitation, the execution and/or recordation of any collateral, pledge and security documents, deeds of trust, control agreements, financing statements, or other documents), and to perform all such other and further acts, that may be necessary, required or desirable for the DIP Loan Parties to perform their obligations under the DIP Facility, the DIP Documents, and this Interim Order and to implement the transactions contemplated thereunder and hereunder. All provisions of the DIP Documents are incorporated herein and approved in their entirety, whether explicitly referenced or not.

(b) *Authorization to Borrow.* BMI is hereby authorized to borrow, and the DIP Guarantor is hereby authorized to guarantee the Payment in Full[4] in cash of such borrowing with

[4] For purposes hereof, the term "**Payment in Full**" or "**Paid in Full**" means, with respect to the DIP Obligations, the irrevocable and indefeasible payment in full in cash of all DIP Obligations, other than contingent

respect to, the principal amount of $15 million (plus applicable interest (including interest and other amounts payable-in-kind, and default interest), premiums, payments, fees (including professional fees and expenses and the Commitment Fee and Exit Fee (as defined in the DIP Term Sheet)), costs, expenses, charges, and other amounts to the extent payable under this Interim Order and the DIP Documents in connection with such borrowing), under the DIP Facility, subject to the terms and conditions (including any conditions precedent to such borrowing) set forth in the DIP Documents and this Interim Order. The Debtors are hereby authorized to use the proceeds of the DIP Facility and all Cash Collateral solely in the manner and for the purposes expressly permitted in the Approved Budget (subject to permitted variances), the DIP Documents, and this Interim Order.

(c) *DIP Fees and Expenses; Indemnification.* The DIP Loan Parties are authorized and directed to pay, when due and payable under the DIP Term Sheet and the other DIP Documents, any and all (i) fees, premiums or other payments payable under the DIP Documents including, without limitation, the Commitment Fee, the Exit Fee (each as defined in the DIP Term Sheet), and other payments, fees, or amounts provided therein, (ii) amounts due (or that may become due) to the DIP Lender in respect of the indemnification obligations under this Interim Order and the DIP Documents, and (iii) any other amounts payable in connection with the DIP Facility, including without limitation, the payment of all reasonable, documented out of pocket costs, expenses, and disbursements of the DIP Lender, including, without limitation, the documented fees and expenses of (A) Lowenstein Sandler LLP and local Texas and Montana counsel, if any, retained by the DIP Lender and (B) any other professionals that may be retained

indemnification and expense reimbursement obligations for which no claim or demand has been asserted, and all commitments thereunder shall have irrevocably, permanently and finally expired or shall have been terminated, cancelled and discharged.

by the DIP Lender, with the consent of the Debtors, such consent not to be unreasonably withheld or delayed, which consent of the Debtors shall not be required after the occurrence of a DIP Termination Event (as defined herein), (collectively, the "**DIP Professional Fees and Expenses**"), whether or not the transactions contemplated herein or in the DIP Documents are consummated.

(d) *Indemnification*. The DIP Lender (and its affiliates and respective officers, directors, employees, advisors and agents) (each such person, an "**Indemnitee**") will have no liability for, and will be indemnified and held harmless against, any losses, claims, damages, liabilities, or expenses incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof, except to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to arise from the fraud, gross negligence, bad faith, or willful misconduct of the relevant indemnified person (or any of its affiliates or any of its or its respective officers, directors, employees, advisors or agents). Such indemnity shall not be available (i) to the extent arising from a material breach of any obligation of such Indemnitee under the DIP Documents, (ii) to the extent arising out of any loss, claim, damage, liability, or expense that does not involve an act or omission of a Debtor and that is brought by an Indemnitee against another Indemnitee, or (iii) to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have arisen from the fraud, gross negligence, bad faith, or willful misconduct of the relevant indemnified person.

(e) *Modification of DIP Documents.* The DIP Loan Parties are hereby authorized to execute, deliver and perform under one or more amendments, waivers, consents, or other modifications to and under the DIP Documents, in each case, in accordance with the provisions of the DIP Documents governing amendments thereto, each without further application to or order of the Court; *provided, however,* that any amendment to the DIP Documents shall

require, at a minimum, the prior written consent of the DIP Lender; *provided, further, however*, that any amendment that (i) shortens the maturity of the DIP Facility, (ii) increases the aggregate commitments thereunder, or (iii) increases the rate of interest payable or fees that are payable calculated based on the aggregate commitments thereunder (other than the imposition of the default rate to the extent permitted under such DIP Document) (each, a "**Material DIP Amendment**"), shall be provided (which may be by electronic mail) to the U.S. Trustee, lead restructuring counsel to the Official Committee, and lead restructuring counsel to any Court-appointed legal representative for future claimants (an "**FCR**") and filed with the Court no later than three (3) business days prior to the anticipated date of effectiveness of any such Material DIP Amendment, and if no objection to the Material DIP Amendment is made by the U.S. Trustee, the Official Committee, or the FCR within such three (3) business day period, then, without further application to or order of the Court, such Material DIP Amendment shall automatically be deemed approved and effective; *provided further, however,* if an objection is made by the U.S. Trustee, the Official Committee, or the FCR within such three (3) business day period, then such Material DIP Amendment shall be subject to a hearing and approval of the Court. Updates, modifications, and supplements to the Approved Budget shall not require any further approval of this Court.

(f) *Perfection in Cash*. Subject to the Carve Out, and subject to the Remedies procedures outlined in paragraph 17 of this Interim Order, all financial institutions with which the DIP Loan Parties maintain accounts containing any of the DIP Loan Parties' cash or Cash Collateral are authorized and directed to comply with any request of the DIP Lender to turn over to the DIP Lender all cash or Cash Collateral therein without offset or deduction of any kind upon the occurrence and during the continuation of a DIP Termination Event (as defined below). The DIP Lender shall be entitled to all of the rights and benefits of all deposit account control

agreements, blocked account control agreements, securities account control agreements, and similar agreements to which any of the DIP Loan Parties may be a party, without the need to enter into any such agreements. Notwithstanding (and without limiting) the foregoing, the DIP Loan Parties are authorized to enter into, and cause the financial institutions servicing or maintaining the DIP Loan Parties' deposit accounts (or other accounts) to enter into, such deposit account control agreements and other collateral agreements with the DIP Lender and such financial institutions as the DIP Lender may reasonably request.

3. *DIP Obligations.*

(a) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid, binding, enforceable, and non-avoidable obligations of each of the DIP Loan Parties, and shall be fully enforceable against each of the DIP Loan Parties, their estates, and any successors thereto, including, without limitation, any estate representative or trustee appointed in any of the Chapter 11 Cases or in any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or relating to any of the foregoing, and/or upon the dismissal of any of the Chapter 11 Cases or any such successor cases (collectively, the "**Successor Cases**"), in each case, in accordance with the terms of the DIP Documents and this Interim Order.

(b) Upon execution and delivery of the DIP Documents, the DIP Loan Parties shall be jointly and severally liable for all DIP Obligations, including, without limitation, all loans, advances, indebtedness, obligations, extensions of credit, financial accommodations, principal, interest, payments, premiums or similar amounts, fees (including, without limitation, the Commitment Fee and the Exit Fee), costs, expenses, charges, indemnification and reimbursement obligations (whether contingent or absolute), and all other amounts, whenever the same shall

become due and payable, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, to the DIP Lender under the DIP Documents or this Interim Order. On the DIP Termination Declaration Date, the DIP Obligations shall be due and payable, without further notice or demand, and the use of Cash Collateral shall automatically cease (subject in all respects to the Remedies procedures outlined in paragraph 17 hereof).

(c) All obligations incurred, payments made, and transfers or grants of liens and security interests set forth in this Interim Order and the DIP Documents by the DIP Loan Parties are granted to or for the benefit of the DIP Lender for fair consideration and reasonably equivalent value and are granted contemporaneously with the making of the loans and commitments and other financial accommodations secured thereby. Except as permitted by the Orders, no obligation, payment, transfer, or grant of liens or security interests under this Interim Order or the DIP Documents to the DIP Lender shall be limited, stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law, or subject to any challenge, objection, defense or claim, including, without limitation, avoidance (whether under chapter 5 of the Bankruptcy Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), reclassification, disgorgement, disallowance, impairment, marshaling, surcharge, recovery, or other cause of action of any kind or nature whatsoever, whether arising under the Bankruptcy Code, applicable non-bankruptcy law or otherwise; *provided*, *that* nothing herein shall excuse the DIP Lender from complying with the Remedies procedures set forth in paragraph 17 of this Interim Order.

4. *No Obligation to Extend Credit/Loan Cap.* The DIP Lender shall have no obligation to make any loan or advance available under the DIP Documents unless all of the conditions precedent to the making of such loan or advance by the DIP Lender have been satisfied in full (or waived in the sole discretion of the DIP Lender) in accordance with the terms of the DIP Documents and this Interim Order. Notwithstanding anything contained in this Interim Order or the DIP Documents to the contrary, in no event shall the aggregate principal amount of the DIP Loans advanced under the DIP Facility pursuant to the DIP Documents at any time (after giving effect to all DIP Borrowings previously made or requested) exceed the DIP Commitments (as defined in the DIP Term Sheet), which, subject to paragraph 2(e) above, shall in no event exceed $30,000,000 in principal amount.

5. *No Duty to Monitor Compliance*. The DIP Lender shall not have any obligation or responsibility to monitor the Debtors' use of DIP Collateral or Cash Collateral, and the DIP Lender may rely upon the Debtors' representations that the use of DIP Collateral and Cash Collateral complies with and is in accordance with the requirements of this Interim Order and the DIP Documents.

6. *DIP Liens.*

(a) As security for the prompt and complete payment and performance of all DIP Obligations when due (whether upon stated maturity, prepayment, acceleration, declaration, or otherwise), effective and perfected as of the entry of this Interim Order, and without the necessity of the execution, recordation, or filing by any of the DIP Loan Parties or the DIP Lender of any pledge, collateral or security documents, mortgages, deeds of trust, financing statements, notations of certificates of title, or any similar document or instrument, or the taking of any other action (including, without limitation, entering into any control agreements or taking any other

action to take possession or control of any DIP Collateral), the DIP Lender is hereby granted valid, binding, enforceable, non-avoidable, and automatically and properly perfected liens and security interests (collectively, the "**DIP Liens**") on all DIP Collateral, in each case, subject and subordinate to the Carve Out and the Prior Permitted Liens, and subject to the relative priorities set forth in this Interim Order.

(b) The term "**DIP Collateral**" means, subject to the Carve Out, and except as otherwise provided in this Interim Order each DIP Loan Party's right, title and interest in, to and under all the Loan Parties' assets, including, but not limited to the following, in each case, whether now owned or existing or hereafter acquired, created or arising and wherever located: all assets and property of such DIP Loan Party and its estate, real or personal, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all contracts, contract rights, licenses, general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, chattel paper, letters of credit and letter of credit rights, investment property (including, without limitation, all equity interests of any Debtor owned by a Debtor in its current and future subsidiaries), commercial tort claims, arbitration awards, money, insurance, receivables, receivables records, deposit accounts, collateral support, supporting obligations and instruments, fixtures, all interests in leaseholds and the Real Properties (as defined in the DIP Documents), all patents, copyrights, trademarks, all trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), together with all books and records relating to the foregoing, all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (as such terms are defined in the Uniform Commercial Code as in effect from time to time in the State of New York) and, subject to the entry of a Final Order, (i) proceeds of

actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral, and (ii) proceeds of any actions under sections 544, 545, 547, 548, and 550 of the Bankruptcy Code or applicable law (the "**Avoidance Actions**").

(c) The DIP Liens shall be subject to the following priorities (subject in each case to the Carve Out):

(i) *First Priority Liens on Unencumbered Property.* Pursuant to section 364(c)(2) of the Bankruptcy Code, the DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected first priority liens and security interests in all DIP Collateral that is not subject to any liens and security interests that were valid, non-avoidable and properly perfected as of the Petition Date (or that were properly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) (such liens, "**Prior Permitted Liens**"), including, subject to entry of the Final Order, proceeds of actions brought under section 549 and proceeds of Avoidance Actions (collectively, the "**Unencumbered Assets**"), which DIP Liens shall be junior and subordinated only to the Carve Out.

(ii) *Liens Junior to Certain Other Liens.* Pursuant to section 364(c)(3) of the Bankruptcy Code, the DIP Liens shall be valid, binding, continuing, enforceable, non-avoidable, fully and automatically perfected liens and security interests in all DIP Collateral (other than the DIP Collateral described in paragraph 6(c)(i) hereof, as to which DIP Liens are described in such paragraph), which DIP Liens shall be subject only to the (1) Carve Out and (2) Prior Permitted Liens.

(d) For the avoidance of doubt, none of the liens granted pursuant to this Interim Order shall attach to or encumber, and the DIP Collateral shall not include, the Debtors' non-residential real property leases (or leasehold interest created thereby) that restrict or prohibit the grant of such liens or any security deposits held pursuant to such leases *provided*, that such leases shall not be excluded to the extent that such prohibition would be rendered unenforceable or otherwise deemed ineffective with respect to the creation of the security interest hereunder pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (as defined in the DIP Documents); provided, further that such leases shall be included (and such security interest shall attach)

immediately at such time as the contractual or legal prohibition shall no longer be applicable and to the extent severable, shall attach immediately to any portion of such property not subject to such restrictions and such liens shall attach solely to the proceeds of such leases, as applicable.

(e) To the maximum extent permitted by the Bankruptcy Code, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document or other agreement that requires the consent or approval of one or more landlords, licensors or other parties, or requires the payment of any fees or obligations to any governmental entity, non-governmental entity or any other person or entity, in order for any Debtor to sell, assign, or otherwise transfer any interest therein (including any fee or leasehold interest), any proceeds thereof or other DIP Collateral, shall have no force or effect with respect to the granting of the DIP Liens in any such interest therein or other DIP Collateral, or in the proceeds of any assignment and/or sale thereof by any Debtor in favor of the DIP Lender in accordance with the DIP Documents and this Interim Order.

(f) Other than as set forth herein or in the DIP Documents (including subject to the Prior Permitted Liens and the Carve Out), the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases or any Successor Case, and shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any Successor Case, upon the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Case. The DIP Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any of the Debtors' estates pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

7. *DIP Superpriority Claims.* Subject only to the Carve Out and pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against each of the Debtors, (a) with priority over any and all other claims against the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, any and all other administrative expense claims of the kind specified in or ordered pursuant to sections 105, 326, 327, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, or 1114 of the Bankruptcy Code, or any other provision of the Bankruptcy Code whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, and (b) which shall all times be senior to the claims of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law (the "**DIP Superpriority Claims**"). The DIP Superpriority Claims shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code. The DIP Superpriority Claims shall be payable by each of the Debtors, on a joint and several basis, and shall have recourse to all DIP Collateral, subject only to the Carve Out. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code, including in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

8. *Use of DIP Collateral and Cash Collateral.*

(a) The Debtors are hereby authorized to use the proceeds of the DIP Facility and all Cash Collateral solely to the extent expressly permitted under the Approved Budget (subject to permitted variances) and subject to the terms and conditions set forth in the DIP Documents and this Interim Order.

(b) Without the prior written consent of the DIP Lender, the DIP Loan Parties shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral (or enter into any binding agreement to do so), except as may be expressly permitted by the DIP Documents and this Interim Order; *provided*, *however*, that the Debtors may enter into a sale transaction or transaction(s) that (i) provides for the Payment in Full of the DIP Obligations, (ii) the purchaser/lender has demonstrated the financial wherewithal[5] to consummate the transaction(s), and (iii) the closing shall occur on or prior to the maturity date of the DIP Facility as described in paragraph 8(c) below. All collection and proceeds of the DIP Collateral, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnation, or otherwise, will be deposited and applied as required by this Interim Order and the DIP Documents. No Debtor shall transfer any cash, assets, properties or other DIP Collateral to any Person (as defined in the DIP Documents) other than a Debtor without the prior written consent of the DIP Lender, except as otherwise permitted in the DIP Documents.

(c) Except as may be provided in the DIP Documents, the Debtors are authorized and directed, upon the closing of a sale of any of the DIP Collateral, to immediately pay all net proceeds of any such sale to the DIP Lender to satisfy the DIP Obligations in accordance with this Interim Order and the DIP Documents until Payment in Full, and any order approving the sale of such DIP Collateral shall provide that the sale is conditioned upon payment in cash of such DIP Obligations.

9. *Fees and Expenses; Payments.*

[5] As used herein, financial wherewithal shall mean, either (i) cash or cash equivalents in the amount of the purchase price, (ii) a signed commitment to lend from a recognized lender in the amount of the purchase price, or (iii) a combination thereof.

(a) The payment of all DIP Professional Fees and Expenses hereunder shall not be subject to further application to or approval of the Court, and shall not be subject to allowance or review by the Court or subject to the U.S. Trustee's fee guidelines, and no attorney or advisor to the DIP Lender shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court; *provided, however*, that any time such professionals seek payment of fees and expenses from the Debtors from and after entry of the this Interim Order, but prior to the effective date of any confirmed chapter 11 plan, each such professional shall provide summary copies of its invoices for professional fees and expenses (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of their invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine) to lead restructuring counsel to the Debtors, the U.S. Trustee, lead restructuring counsel to the Official Committee, and lead restructuring counsel to the FCR (collectively, the "**Review Parties**"); *provided, however*, that the U.S. Trustee reserves its rights to reasonably request additional detail regarding the services rendered and expenses incurred by such professionals. Any objections raised by any Review Party with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the affected professional within ten (10) calendar days after delivery of such invoices to the Review Parties (such ten (10) day calendar period, the "**Review Period**"). If no written objection is received prior to the expiration of the Review Period from the Review Parties, the Debtors shall pay such invoices within five (5) business days following the expiration of the Review Period. If an objection is received within the Review Period, the Debtors shall promptly pay the undisputed amount of the

invoice within five (5) business days, and the disputed portion of such invoice shall not be paid until such dispute is resolved by agreement between the affected professional and the objecting party or by order of this Court. Any hearing to consider such an objection to the payment of any fees, costs or expenses set forth in a professional fee invoice hereunder shall be limited to the reasonableness of the fees, costs and expenses that are the subject of such objection.

(b) Notwithstanding anything contained in this paragraph 9 to the contrary, the DIP Loan Parties are authorized and directed to pay the following: upon the Initial Draw (as defined in the DIP Term Sheet), the DIP Loan Parties shall pay in full in cash all unpaid DIP Professional Fees and Expenses arising through and including the Initial Draw, without the need for any professional engaged by or on behalf of the DIP Lender to first deliver a copy of its invoice to any of the Review Parties (other than the DIP Loan Parties).

(c) Notwithstanding anything contained in this Interim Order to the contrary, any and all payments, premiums, fees, costs, expenses, and other amounts paid at any time by any of the DIP Loan Parties to the DIP Lender pursuant to the requirements of this Interim Order or the DIP Documents shall be non-refundable and irrevocable, are hereby approved, and shall not be subject to any challenge, objection, defense, claim or cause of action of any kind or nature whatsoever, including, without limitation, avoidance (whether under chapter 5 of the Bankruptcy Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), reclassification, disgorgement, disallowance, impairment, marshaling, surcharge, or recovery or any other cause of action, whether arising under the Bankruptcy Code, applicable non-

bankruptcy law or otherwise, by any person or entity (subject, solely in the case of the DIP Professional Fees and Expenses, to paragraph 9(a) of this Interim Order).

10. *Reservation of Rights.* Except as otherwise expressly provided herein or in the DIP Documents, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the rights of the DIP Lender to seek any other or supplemental relief in respect of the DIP Loan Parties, (b) the rights of the DIP Lender under the Bankruptcy Code, or applicable non-bankruptcy law, including, without limitation, the right to request modification of the automatic stay of section 362 of the Bankruptcy Code, or (c) any other rights, claims, or privileges (whether legal, equitable or otherwise) of the DIP Lender.

11. *Modification of Automatic Stay.* The automatic stay imposed by section 362(a) of the Bankruptcy Code is hereby vacated and modified, without application to or further order of this Court, to permit: (a) the DIP Loan Parties to grant the DIP Liens and the DIP Superpriority Claims, and to perform such acts as the DIP Lender may request to assure the perfection and priority of the DIP Liens, (b) the DIP Loan Parties to incur all liabilities and obligations to the DIP Lender as contemplated under this Interim Order and the DIP Documents, (c) the DIP Loan Parties to pay all amounts required hereunder and under the DIP Documents, (d) the DIP Lender to retain and apply payments made in accordance with the terms of this Interim Order and the DIP Documents, (e) subject to the Remedies procedures outlined in paragraph 17 of this Interim Order, the DIP Lender to exercise, upon the occurrence of any DIP Termination Event (as defined below), all rights and remedies provided for in this Interim Order, the DIP Documents, or applicable law, (f) the DIP Loan Parties to perform under this Interim Order and the DIP Documents, and to take any and all other actions that may be necessary, required or desirable for the performance by the DIP Loan Parties under this Interim Order and the DIP Documents and the implementation of the

transactions contemplated hereunder and thereunder, and (g) subject to the Remedies procedures in paragraph 17 of this Interim Order, the implementation of all of the terms, rights, benefits, privileges, remedies, and provisions of this Interim Order and the DIP Documents.

12. *Perfection of DIP Liens*.

(a) This Interim Order shall be sufficient and conclusive evidence of the attachment, validity, perfection, and priority of all liens and security interests granted hereunder and under the DIP Documents, including, without limitation, the DIP Liens, without the necessity of the execution, recordation or filing of any pledge, collateral or security agreements, mortgages, deeds of trust, lockbox or control agreements, financing statements, notations of certificates of title for titled goods, or any other document or instrument, or the taking of any other action (including, without limitation, entering into any deposit account control agreement or other act to take possession or control of any DIP Collateral), to attach, validate, perfect or prioritize such liens and security interests, or to entitle the DIP Lender to the priorities granted herein (other than, to the extent applicable, any such filings required under applicable non-U.S. law to attach, validate, perfect or prioritize such liens).

(b) Without in any way limiting the automatically effective perfection of the liens and security interests granted under this Interim Order and the DIP Documents, the DIP Lender is hereby authorized, but not required, in its sole discretion, to execute, file and record (and to execute in the name of the DIP Loan Parties, as their true and lawful attorneys, with full power of submission, to the maximum extent permitted under applicable law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction or take possession or control over cash or securities (consistent with the terms of the Interim Order), or to amend or modify security documents, or to subordinate existing liens and any

other similar action or action in connection therewith, or take any other action in order to validate, perfect, preserve and enforce the liens and security interests granted to it hereunder or under the DIP Documents or to otherwise evidence such liens and security interests in all DIP Collateral (each, a "**Perfection Action**"); *provided, however, that,* whether or not the DIP Lender determines, in its sole discretion, to take any Perfection Action with respect to any liens or security interests granted hereunder, such liens and security interests shall nonetheless be deemed valid, perfected, allowed, enforceable, non-avoidable as of the entry of this Interim Order. Upon the request of the DIP Lender, the DIP Loan Parties, without any further consent of any party, are authorized and directed to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Lender to further validate, perfect, preserve and enforce the DIP Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(c) A certified copy of this Interim Order may, as the DIP Lender may determine in its discretion, be filed with or recorded in filing or recording offices in addition to or in lieu of any financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized and directed to accept such certified copy of this Interim Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code shall be modified to the extent necessary to permit the DIP Lender and DIP Loan Parties to take all actions, as applicable, referenced in this paragraph.

13. *Maintenance of DIP Collateral.* Until such time as all DIP Obligations are Paid in Full (or as otherwise agreed in writing by the DIP Lender), the DIP Loan Parties shall continue to maintain all property, operational, and other insurance as required and as specified in the DIP Documents. Upon the entry of this Interim Order, the DIP Lender shall automatically be deemed

to be named as additional insured and lender loss payee under each insurance policy maintained by the DIP Loan Parties (including all property damage, business interruption and general liability insurance policies of the DIP Loan Parties, whether expired, currently in place, or to be put in place in the future) to the extent of such interests held by such DIP Loan Parties, and shall act as agent for the DIP Lender in the event that the DIP Loan Parties receive any insurance proceeds directly from the insurance company or any other party, shall hold such payments in trust for the DIP Lender and shall immediately distribute to the DIP Lender any such proceeds recovered or received in respect of such interests in any such insurance policies in accordance with the terms of this Interim Order and the DIP Documents for application in accordance with the DIP Term Sheet and this Interim Order.

14. *Payments Held in Trust*. Except as expressly permitted in this Interim Order or the DIP Documents, including in respect of the Carve Out, in the event that any person or entity receives any payment on account of a security interest in the DIP Collateral or receives any DIP Collateral (other than any payment made in accordance with the DIP Budget) or any proceeds of the DIP Collateral prior to Payment in Full of all DIP Obligations under the DIP Documents, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral and shall immediately turn over such proceeds to the DIP Lender, for application in accordance with the DIP Term Sheet and this Interim Order.

15. *Cash Management.* Until such time as all DIP Obligations are Paid in Full, the Debtors shall maintain the cash management system in accordance with the applicable "first day" order and such deposit accounts shall be subject to a control agreement in favor of the DIP Lender as required by the DIP Term Sheet (excluding for the avoidance of doubt, the Carve Out Account). Except for the Carve Out Account, the Debtors shall not open any new deposit or securities account

that is not subject to "control" of the DIP Lender (in which case they shall be subject to the lien priorities and other provisions set forth in this Interim Order).

16. *Reporting.* Without limiting the requirements contained herein or in the DIP Documents, the Debtors and their representatives shall (a) provide the DIP Lender (and its advisors) with (i) all reports, documents, and information required to be delivered under the DIP Documents (contemporaneously when the same is required to be delivered thereunder), and (ii) reasonable access, upon reasonable notice and during regular business hours, to the Debtors' books and records, assets and properties, for purposes of monitoring the Debtors' businesses and operations and the value of the DIP Collateral, and (b) cooperate and consult with, and provide reasonable information reasonably requested by the DIP Lender (and its advisors) concerning the Debtors' businesses, financial condition, properties, business operations and assets, and the Debtors hereby authorize their representatives to cooperate and consult with, and promptly provide to the such parties (in each case, together with their respective advisors) such information, excluding any information subject to attorney client or similar privilege, or where such disclosure would not be permitted by any applicable requirements of law.

17. *DIP Termination Event; Exercise of Remedies.*

(a) *DIP Termination Events.* A "**DIP Termination Event**" shall exist upon the occurrence of any of the events listed in Section 8 of the DIP Term Sheet that triggers the DIP Termination Date (as defined in the DIP Term Sheet).

(b) *Exercise of Remedies*. Upon the occurrence of a DIP Termination Event, without further notice to, hearing of, application to, or order from the Court, the automatic stay provisions of section 362 of the Bankruptcy Code shall be vacated and modified to the extent necessary to permit the DIP Lender to take any of the following actions, at the same or different

time: (i) deliver a written notice (which may be via electronic mail) to counsel for the Debtors, the U.S. Trustee, counsel to the FCR, and counsel for the Official Committee (the "**Remedies Notice**") declaring the occurrence of a DIP Termination Event (such date, the "**DIP Termination Declaration Date**") and/or deliver a Carve Out Trigger Notice (as defined and in the manner described below), (ii) declare the termination, reduction or restriction of the commitments under the DIP Facility (to the extent any such commitment remains), (iii) declare all DIP Obligations to be immediately due and payable, without presentment, demand or protest or other notice of any kind, all of which are expressly waived by the DIP Loan Parties, (iv) declare the termination, restriction or reduction of the DIP Facility and the DIP Documents as to any further liability or obligation thereunder, but without affecting the DIP Liens, the DIP Superpriority Claims, or the DIP Obligations, (v) charge default interest at the default rate set forth in the DIP Term Sheet, and (vi) declare the termination, restriction, or revocation of the ability of the Debtors to use Cash Collateral (subject to the Debtors' rights under the Remedies Notice Period in paragraph 17(c)); *provided, however,* that during the occurrence of a DIP Termination Event, prior to the exercise or enforcement of any rights against DIP Collateral (including the sweeping of all cash or other amounts contained in any accounts controlled by the DIP Lender), the DIP Lender shall be required to deliver a Remedies Notice and thereafter file a motion with the Court on five (5) business days' notice (subject to the Court's availability), which may run concurrently with the Remedies Notice Period (as defined below), seeking an emergency hearing (the "**Stay Relief Hearing**"), and the DIP Loan Parties, the FCR, and the Official Committee shall not object to the shortened notice with respect to such Stay Relief Hearing, *provided further* that at such Stay Relief Hearing, the DIP Lender shall only be required to establish that an uncured Event of Default or other DIP Termination Event exists under the DIP Documents. The Court may fashion any appropriate

remedy at a Stay Relief Hearing, which may include, inter alia, the exercise of any and all rights or remedies available to the DIP Lender under this Interim Order, the DIP Documents or applicable law against the DIP Collateral; *provided that* the rights of the Debtors to contest such relief are expressly preserved.

(c) *Remedies Notice Period.* During the period from and after the DIP Termination Declaration Date through the date of the Stay Relief Hearing (the "**Remedies Notice Period**"), the Debtors shall be permitted to use Cash Collateral solely to fund (i) payroll and other critical operating expenses included in (and subject to) the Approved Budget (with permitted variances) that are critically necessary to keep the Debtors' businesses operating or that have been otherwise consented to by the DIP Lender, and (ii) the Carve Out Account. For the avoidance of doubt, during the Remedies Notice Period, the DIP Lender shall not be obligated to provide any DIP Loans or advance any credit at any time and after the occurrence of a DIP Termination Event.

(d) Leased Premises. Following a DIP Termination Event (subject to the terms of paragraph 17 herein), the DIP Lender shall be entitled to enter upon any leased premises in accordance with (i) a separate agreement with the landlord by and between the DIP Lender and the applicable landlord, (ii) consent of the landlord, (iii) upon entry of an order of this Court, upon notice to the landlord and a hearing, or (iv) in accordance with the rights of the DIP Lender under applicable non-bankruptcy law.

(e) Cooperation. The DIP Loan Parties shall cooperate with the DIP Lender in its efforts to enforce its liens and security interests in the DIP Collateral the DIP Loan Parties shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect such party from enforcing its rights or remedies in the DIP Collateral (in all respects,

without limiting in any way the Debtors' rights under the Remedies procedures set forth in this paragraph 17).

18. *No Waiver by Failure to Seek Relief.* The rights and remedies of the DIP Lender specified herein are cumulative and not exclusive of any rights or remedies that the DIP Lender may have under this Interim Order, the DIP Documents, applicable law, or otherwise. The failure or delay on the part of the DIP Lender to seek relief or otherwise exercise its rights and remedies under this Interim Order, the DIP Documents, or applicable law, as the case may be, shall not constitute a waiver of any of its respective rights hereunder, thereunder, or otherwise. Except as expressly set forth herein, none of the rights or remedies of the DIP Lender under this Interim Order or the DIP Documents shall be deemed to have been amended, modified, suspended, or waived unless such amendment, modification, suspension, or waiver is express, in writing and signed by the DIP Lender. No consents required hereunder by the DIP Lender shall be implied by any inaction or acquiescence by the DIP Lender.

19. *Carve Out.*

(a) *Priority of Carve Out*. The DIP Liens and the DIP Superpriority Claims shall be subject and subordinate to payment of the Carve Out. The Carve Out shall be senior to all claims and liens over all assets of the Debtors, including any DIP Collateral, as set forth in this Interim Order.

(b) *Carve Out*. The term "**Carve Out**" shall mean the sum of (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under 28 U.S.C. § 1930(a), together with any interest thereon pursuant to 31 U.S.C. § 3717 ("**Statutory Fees**"), which shall not be subject to the Approved Budget; (ii) Court-allowed fees and expenses of a trustee appointed under section 726(b) of the Bankruptcy Code in an amount not to exceed $100,000, (iii) to the

extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "**Allowed Professional Fees**") incurred by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the "**Debtor Professionals**"), any Official Committee(s), if any, pursuant to sections 328 or 1103 of the Bankruptcy Code (the "**Committee Professionals**"), or the FCR (the "**FCR Professionals**" and, together with the Committee Professionals and the Debtor Professionals, the "**Professional Persons**"), at any time before or on the first business day following delivery by the DIP Lender of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice (the "**Pre-Trigger Date Fees**"), subject to the Approved Budget and any limits by this Interim Order, provided that Professional Persons may carry forward budgeted but unused disbursements set forth in the Approved Budget for any week for use in any subsequent week; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $3,000,000 incurred after the first calendar day following delivery by the DIP Lender of the Carve Out Trigger Notice (the "**Trigger Date**"), to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "**Post-Carve Out Trigger Notice Cap**" and together with the Pre-Trigger Date Fees, the "**Carve Out Cap**"); *provided*, *however*, that nothing herein shall be construed to impair the ability of the DIP Lender to object to the fees, expenses, reimbursement, or compensation described in clauses (iii) or (iv) above, on any grounds.

(c) For purposes of the foregoing, "**Carve Out Trigger Notice**" shall mean a written notice delivered by email (or other electronic means) by the DIP Lender or its counsel to the Debtors, their counsel, the U.S. Trustee, lead restructuring counsel to any Official Committee, and lead restructuring counsel to the FCR, which notice may be delivered only following the

occurrence and during the continuation of an Event of Default and acceleration of the DIP Loans, stating that the Post-Carve Out Trigger Notice Cap has been invoked. On the day on which a Carve Out Trigger Notice is received by the Debtors, the Carve Out Trigger Notice shall constitute a demand to the Debtors to transfer cash to the Carve Out Account in an amount equal to the Carve Out Cap.

(d) *Carve Out Account*. Immediately upon the delivery of a Carve Out Trigger Notice, and prior to the payment of any DIP Obligations, the Debtors shall be required to deposit cash in the amount of the Carve Out Cap into a segregated account not subject to the control of the DIP Lender (the "**Carve Out Account**"). Notwithstanding anything to the contrary in this Interim Order or the other DIP Documents, following delivery of a Carve Out Trigger Notice, the DIP Lender shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Account has been fully funded as permitted above in an amount equal to all obligations benefitting from the Carve Out. The amounts in the Carve Out Account shall be available only to satisfy amounts included in the Carve Out until such amounts are paid in full. The amount in the Carve Out Account shall be reduced on a dollar-for-dollar basis for amounts included in the Carve Out that are paid after the delivery of the Carve Out Trigger Notice, and the Carve Out Account shall not be replenished for such amounts so paid. The failure of the Carve Out Account to satisfy in full the amount set forth in the Carve Out shall not affect the priority of the Carve Out.

(e) *Carve Out Draw*. Subject to exhaustion of the DIP Commitments, the Debtors shall be permitted to draw on the DIP Facility in the amount of the Carve Out less the amounts contained in the Carve Out Account, notwithstanding any default, Event of Default, or the occurrence of a Trigger Date; *provided, however*, the DIP Lender shall not have any obligation

to fund any Carve Out shortfall beyond what it is obligated to fund under the DIP Commitments. Any Carve Out Trigger Notice shall be deemed a consent by the DIP Lender to the Debtors depositing Cash Collateral or proceeds of the DIP Facility into the Carve Out Account in an amount equal to the sum of the Carve Out Cap and any incurrence or payment of any Carve Out shall not be restricted by the Approved Budget. In no way shall the Carve Out, the Carve Out Account, or any Approved Budget be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors or that may be allowed by the Court at any time (whether by interim order, final order, or otherwise); *provided, however*, following the delivery of a Cave-Out Trigger Notice, the DIP Lender shall have no obligation to fund any Allowed Professional Fees in excess of the Carve Out.

(f) *Payment of Allowed Professional Fees Prior to the Trigger Date*. Any payment or reimbursement made prior to the occurrence of the Trigger Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(g) *No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees*. The DIP Lender shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any of the Professional Persons incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lender in any way to pay compensation to, or to reimburse expenses of, any of the Professional Persons, or to guarantee that the Debtors or their estates has sufficient funds to pay such compensation or reimbursement. Notwithstanding any provision in this paragraph to the contrary, no portion of the Carve Out, any Cash Collateral, any DIP Collateral or any proceeds of the DIP Facility (including any disbursements set forth in the Approved Budget or obligations benefitting from the Carve Out)

shall be utilized for the payment of professional fees and disbursements to the extent restricted under paragraph 19 herein. Nothing herein shall be construed as consent to the allowance of any fees and/or expenses of Professional Persons of any of the Debtors, the FCR, the Official Committee, any other official or unofficial committee in the Chapter 11 Cases or any Successor Cases, or of any other person or entity, or shall affect the right of the DIP Lender to object to the allowance and payment of any such fees and expenses.

20. *Limitations on Use of DIP Collateral, Cash Collateral, Carve Out or Other Funds.* Notwithstanding anything contained in this Interim Order or any other order of the Court to the contrary, no DIP Collateral, DIP Loans, Cash Collateral, proceeds of any of the foregoing, or any portion of the Carve Out may be used (including to pay professional fees) by any of the Debtors, the FCR, the Official Committee, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases or any Successor Cases, or any other party-in-interest (including without limitation any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors in the Chapter 11 Cases or any Successor Cases), directly or indirectly, to:

> (a) investigate (including by way of examinations or discovery proceedings, whether formal or informal), prepare, initiate, commence, support or prosecute (or finance the preparation, initiation, commencement, support or prosecution of) any claim, counterclaim, cross-claim, cause of action, suit, arbitration, application, motion, contested matter, objection, defense, adversary proceeding, litigation or other proceeding of any kind or nature (whether for monetary, injunctive, affirmative relief or otherwise) (i) against the DIP Lender or its representatives (each in their capacities as such), (ii) objecting to, challenging, contesting, or raising any defense to, the amount, validity, enforceability, perfection, priority, extent or scope of the claims, liens and security interests granted under this Interim Order or the DIP Documents, (iii) asserting avoidance (whether under chapter 5 of the Bankruptcy Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), any so-called "lender liability" claims, or any other any claim or cause of action seeking reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), reclassification,

disgorgement, disallowance, impairment, marshaling, surcharging or recovery, in each case, with respect to the DIP Liens, the DIP Obligations, the DIP Documents, or the DIP Collateral, or (iv) any claim or cause of action of any kind or nature whatsoever, whether arising under the Bankruptcy Code or applicable non-bankruptcy law, against the DIP Lender or its representatives;

(b) object to or seek to impair, modify or interfere with any of the rights, remedies, priorities, privileges, protections or benefits granted to the DIP Lender under this Interim Order, the DIP Documents, or applicable law; *provided* that, for the avoidance of doubt, this provision shall not apply to (i) an objection filed in the Court to the relief sought at the Final Hearing and (ii) any challenge to whether a DIP Termination Event has occurred and/or the propriety of the DIP Lender's (A) termination and/or (B) acceleration of the DIP Obligations or calculation of amounts owed thereunder;

(c) object to or seek to prevent, hinder, interfere with or otherwise delay any of the DIP Lender's assertion, enforcement, exercise of remedies or realization upon any DIP Collateral in accordance with this Interim Order the DIP Documents, or applicable law (other than to contest whether a DIP Termination Event has occurred and/or the propriety of the DIP Lender's (i) termination and/or (ii) acceleration of the DIP Obligations or calculation of amounts owed thereunder);

(d) request authorization from the Court to obtain postpetition financing (whether equity or debt) or other financial accommodations pursuant to sections 364(c) or (d) of the Bankruptcy Code or otherwise, unless such financing is sufficient to cause the Payment in Full of all DIP Obligations contemporaneously with the consummation of such financing (or as otherwise agreed in writing by the DIP Lender);

(e) request authorization from the Court to obtain superpriority claims or liens or security interests (other than claims, liens or security interests expressly permitted under this Interim Order) in any portion of the DIP Collateral that are senior to or *pari passu* with the DIP Liens or the DIP Superpriority Claims unless all DIP Obligations have been Paid in Full (or as otherwise agreed in writing by the DIP Lender); or

(f) use, request authorization to use, Cash Collateral or sell or otherwise dispose of DIP Collateral (without the prior written consent of the DIP Lender) other than as expressly permitted in this Interim Order and in the DIP Documents; *provided that* nothing herein shall prohibit Debtors from continuing to pursue a sale transaction or other transaction that (i) provides for the Payment in Full of the DIP Obligations, (ii) the purchaser/lender has demonstrated the financial wherewithal to consummate the transaction(s),

and (iii) the closing shall occur on or prior to the maturity date of the DIP Facility.

21. *Limitation on Charging Expenses*. Subject to and effective upon entry of the Final Order, except to the extent of the Carve Out, no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases (or any future proceedings that may result therefrom) at any time, including, without limitation, any costs and expenses incurred in connection with the preservation, protection, or enhancement of realization by the DIP Lender upon the DIP Collateral shall be charged against or recovered from the DIP Collateral, whether pursuant to section 506(c) of the Bankruptcy Code or other similar legal or equitable doctrine or otherwise, without the prior written consent of the DIP Lender with respect to the DIP Collateral, in its sole discretion, and no such consent shall be implied, directly or indirectly, from anything contained in this Interim Order (including, without limitation, consent to the Carve Out or the approval of any budget hereunder) or from any other action, inaction, or acquiescence by the DIP Lender to any charge, lien, assessment or claim against the DIP Lender to the DIP Collateral, whether under section 506(c) of the Bankruptcy Code or otherwise.

22. *No Marshaling*. Subject to and effective upon entry of the Final Order, in no event shall the DIP Lender be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or the DIP Obligations and all proceeds of DIP Collateral shall be received and applied in accordance with this Interim Order and the DIP Documents.

23. *Right to Credit Bid.* The DIP Lender or its designee (in each case, acting at the instruction of the DIP Lender), shall have the unqualified right to credit bid for all or any portion of the DIP Collateral in accordance with the DIP Documents up to the full amount of any DIP Obligations with respect to the sale of any of the Debtors' assets, whether in a sale under or pursuant to section 363 of the Bankruptcy Code, a chapter 11 plan subject to confirmation under

section 1129(b)(2)(A) of the Bankruptcy Code, a sale or disposition by a chapter 7 trustee for any of the Debtors under section 725 of the Bankruptcy Code, or otherwise. The DIP Lender shall have the absolute right to assign, transfer, sell, or otherwise dispose of its respective rights to credit bid (subject to this Interim Order) to any acquisition vehicle formed in connection with such bid or other designee.

24. *Binding Effect; Successors and Assigns*. Immediately upon entry of this Interim Order, the DIP Documents and this Interim Order, including all findings and conclusions of law herein, shall be binding upon all parties-in-interest in the Chapter 11 Cases and any Successor Cases, including without limitation, the DIP Lender, the Official Committee or any other statutory or non-statutory committee appointed or formed in the Chapter 11 Cases and any Successor Cases, and their respective successors and assigns (including any chapter 11 trustee or chapter 7 trustee or examiner appointed or elected in the Chapter 11 Cases or any Successor Cases, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors), and shall inure to the benefit of each of the Debtors and the DIP Lender, and their respective successors and assigns; *provided, however*, that, for the avoidance of doubt, the DIP Lender shall have no obligation to make any loan, permit the use of DIP Collateral (including Cash Collateral) or extend any financing to any chapter 11 trustee or chapter 7 trustee or similar responsible person appointed for the estate of any Debtor in the Chapter 11 Cases or any Successor Cases.

25. *No Modification of Interim Order.*

(a) The Debtors irrevocably waive the right to seek, and shall not seek or consent to, directly or indirectly, without the prior written consent of the DIP Lender (unless and

until the DIP Obligations have been Paid in Full), (A) any modification, stay, vacatur or amendment to this Interim Order, (B) the allowance of any claim against any Debtor in the Chapter 11 Cases or any Successor Cases equal or superior to the DIP Superpriority Claims (other than the Carve Out), (C) the grant of any lien or security interest on any DIP Collateral with priority equal to or superior to the DIP Liens, except as expressly permitted hereunder or under the DIP Documents or this Interim Order, or (D) the entry of any order authorizing the use of DIP Collateral (including Cash Collateral) that is inconsistent with this Interim Order.

(b) Without limiting the provisions of the immediately preceding paragraph, if at any time prior to the Payment in Full of all DIP Obligations, either the DIP Loan Parties, the DIP Loan Parties' estates, any chapter 11 trustee, chapter 7 trustee or examiner with enlarged powers, or any responsible officer subsequently appointed in any of the Chapter 11 Cases or any Successor Cases, shall obtain credit or incur debt pursuant to sections 364(b), (c), or (d) of the Bankruptcy Code in violation of this Interim Order or the DIP Documents, then, unless otherwise agreed in writing by the DIP Lender, all of the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Lender to be applied to the payment of the DIP Obligations and until such proceeds are turned over, shall be held in trust for the benefit of the DIP Lender.

26. *Preservation of Rights Granted Under Interim Order.*

(a) *Senior to Other Liens.* Other than the Carve Out and Prior Permitted Liens, no claim (including any intercompany claim) or lien having a priority superior to or *pari passu* with those granted by the Interim Order to the DIP Lender shall be permitted while any of the DIP Obligations remain outstanding, and, except as otherwise expressly provided in this Interim Order, (i) the DIP Superpriority Claims shall not be subject or junior to any intercompany or affiliate claims of the Debtors; and (ii) the DIP Liens shall not be: (A) subject or junior to any lien or

security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code; (B) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise; (C) subordinated to or made *pari passu* with any liens arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal, or other governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors; or (D) subject or junior to any intercompany or affiliate liens or security interests of the Debtors.

(b) *Payment in Full.* Until Payment in Full of all DIP Obligations, none of the Debtors shall propose or support any chapter 11 plan or sale of all or substantially all of the Debtors' equity or assets, or any order confirming such plan or approving such sale, that is not conditioned upon the Payment in Full (unless otherwise agreed in writing by the DIP Lender) of all DIP Obligations on or prior to the earlier to occur of the effective date of such chapter 11 plan or sale.

(c) *Dismissal/Conversion.* Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or converting any of the chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code: (i) all of the claims, liens and security interests, rights, priorities, privileges, remedies, benefits and protections granted to the DIP Lender hereunder and under the DIP Documents (including, without limitation, the DIP Superpriority Claims and the DIP Liens), shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations shall have been Paid in Full, and all such claims, liens and security interests, rights, priorities, privileges, remedies, benefits and protections shall, notwithstanding such dismissal or conversion, remain unaffected and shall remain binding on all parties in interest (and any such order shall, in accordance with

sections 105 and 349 of the Bankruptcy Code, so provide), and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal or conversion, for the purposes of enforcing all such claims, liens and security interests, rights, priorities, privileges, remedies, benefits and protections granted to the DIP Lender hereunder and under the DIP Documents.

(d) *Reversal/Modification.* Based on the findings set forth in this Interim Order and the record presented during the Interim Hearing and the Chapter 11 Cases, and in accordance with section 364(e) of the Bankruptcy Code, in the event that any or all of the provisions of this Interim Order or the DIP Documents are hereafter reversed, modified, vacated, or stayed by a subsequent judgment or order of this Court or any other court, any such reversal, stay, modification, or vacatur shall not affect (i) the validity or enforceability of advances previously made hereunder or under the DIP Documents by the DIP Lender to the Debtors, (ii) the validity or enforceability of any obligation, indebtedness or liability incurred under this Interim Order or the DIP Documents (including, without limitation, the DIP Obligations) by the DIP Loan Parties to the DIP Lender, (iii) the validity, enforceability, or perfection of any of the claims, liens, security interests, rights, privileges or benefits granted hereunder or under the DIP Documents to the DIP Lender, or (iv) the payment of any fees, costs, expenses or other amounts to the DIP Lender under this Interim Order and the DIP Documents, in each case, prior to the actual receipt of written notice by any DIP Lender of the effective date of such reversal, stay, modification, or vacatur. Notwithstanding any such reversal, stay, modification, or vacatur, the claims, liens, security interests, rights, privileges, remedies, and benefits set forth in the Interim Order shall be governed in all respects by the original provisions of this Interim Order and the DIP Documents.

(e) *Survival*. Except as expressly provided in this Interim Order or the DIP Documents, until all of the DIP Obligations have been Paid in Full (unless the DIP Lender has

otherwise agreed), all claims, liens and security interests, rights, priorities, privileges, remedies, benefits, and protections granted to the DIP Lender under this Interim Order and the DIP Documents shall survive and shall not be modified, impaired, or discharged by: (i) the entry of an order confirming any chapter 11 plan in any of the Chapter 11 Cases (and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors hereby waive any discharge as to any remaining DIP Obligations), (ii) the entry of an order converting any or all of the Chapter 11 Cases to a case (or cases) under chapter 7 of the Bankruptcy Code, dismissing any or all of the Chapter 11 Cases or terminating the joint administration of the Chapter 11 Cases or by any other act or omission, or (iii) the entry of an order approving the sale or disposition of any DIP Collateral (except to the extent expressly permitted in the DIP Documents).

27. *Proof of Claim.* The DIP Lender shall not be required to file proofs of claim in any of the Chapter 11 Cases or any of the Successor Cases in order to assert claims for payment of the DIP Obligations. The Debtors' acknowledgments and the provisions of this Interim Order, together with the evidence accompanying the Motion and presented at the Interim Hearing, are deemed sufficient to and do constitute timely filed proofs of claim in respect of such claims arising under the DIP Obligations against each of the applicable Debtors. Any order entered by the Court establishing a bar date in any of the Chapter 11 Cases or any Successor Chapter 11 Cases shall not apply to the DIP Lender or the DIP Obligations.

28. *Limitation of Liability.*

(a) Nothing in this Interim Order, the DIP Documents, or any documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender of any liability for any claim arising from, in connection with or related to the prepetition or postpetition activities of the Debtors or their respective affiliates (as defined in

section 101(2) of the Bankruptcy Code) in the operation of their businesses, their restructuring efforts, or the administration of the Chapter 11 Cases.

(b) In determining to make any loan or extension of credit under the DIP Documents, or permit the use of Cash Collateral, or in exercising any rights or remedies under this Interim Order, the DIP Documents, the DIP Lender shall not (i) have any liability to any third party or be deemed to be in control of the operations of any of the Debtors, (ii) owe any fiduciary duty to any of the Debtors, their respective creditors, shareholders, or estates, or (iii) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" with respect to the operation or management of any of the Debtors (as such terms or any similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42, U.S. §§ 9601 *et seq*., as amended, or any other federal or state statute, including the Internal Revenue Code).

(c) The DIP Lender shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency, or other person, and all risk of loss, damage, or destruction of the DIP Collateral shall be borne solely by the Debtors.

29. *Release of DIP Lender*. Effective as of entry of the Interim Order, each Debtor and its estate, on its own behalf and on behalf of its predecessors, successors and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits the DIP Lender and each of its representatives (in their capacities as such) from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, cross-claims, demands, defenses, objections, challenges, offsets or setoff, debts, accounts, contracts, liabilities, remedies, suits, controversies, actions, causes of action, losses,

damages, indemnities, reimbursement obligations, attorneys' fees, costs, expenses or judgments, of every kind or nature whatsoever, whether matured or unmatured, known or unknown, asserted or unasserted, suspected or unsuspected, foreseen or unforeseen, accrued or unaccrued, liquidated or unliquidated, fixed or contingent, pending or threatened, arising in law or equity, upon contract or tort, under the Bankruptcy Code, any state or federal common law, statute, rule, regulation or otherwise, including, without limitation, any claim or cause of action seeking (i) any so-called lender liability, (ii) any and all claims arising under the Bankruptcy Code, whether under chapter 5 of the Bankruptcy Code or under applicable law (including any applicable state law Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law)), or otherwise, (iii) reduction, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), reclassification, disgorgement, disallowance, impairment, marshaling, surcharge or recovery in each case, that may be asserted by any of the Debtors, their respective estates, predecessors, successors and assigns, in each case, against the DIP Lender or its representatives (in their capacities as such) for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time prior to the date of this Interim Order, in connection with, arising under or related to this Interim Order, the DIP Facility, the DIP Liens, the DIP Obligations, the DIP Collateral, the transactions contemplated thereunder or hereunder, or the negotiation thereof or hereof, including, without limitation, any claim or cause action with respect to the validity, enforceability, priority, scope, extent or perfection of the DIP Liens, the DIP Obligations, or the DIP Documents. For the avoidance of doubt, nothing in this release shall relieve the DIP Lender of its obligations under this Interim Order and the DIP Documents.

30. *Payments Free and Clear.* Any and all payments or proceeds required to be remitted to the DIP Lender pursuant to the DIP Documents, this Interim Order, the Final Order (if

and when entered) or any subsequent order of this Court shall be irrevocable (subject, solely in the case of the DIP Professional Fees, only to the procedures set forth in paragraph 9 of this Interim Order), and shall be received free and clear of any claim, charge, assessment or other liability, including without limitation, subject to entry of the Final Order, any claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code (whether asserted or assessed by, through or on behalf of the DIP Loan Parties) or otherwise.

31. *Joint and Several Liability.* Nothing in this Interim Order shall be construed to constitute or authorize a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Debtors shall be jointly and severally liable for all obligations (including all DIP Obligations) under this Interim Order and the DIP Documents.

32. *Third-Party Beneficiary.* Except as expressly set forth herein, no rights are created hereunder for the benefit of any third party, any creditor, equity holders, or any direct, indirect or incidental beneficiary.

33. *Interim Order Controls.* Until such time as an amended interim order (if any) or Final Order shall have been entered, in the event of any conflict or inconsistency between or among the terms or provisions of this Interim Order and any of the DIP Documents, unless such term or provision in this Interim Order is phrased in terms of "defined in" or "as set forth in" the DIP Term Sheet or DIP Documents, or in the event of any conflict or inconsistency between the terms of this Interim Order and any other order of the Court, the terms and provisions of this Interim Order shall govern and control.

34. *Effectiveness.* This Interim Order shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy

Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014, any Local Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

35. *Bankruptcy Rules.* The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

36. *Headings.* Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order. When used in this Interim Order, the word "including" shall not imply limitation.

37. *Necessary Action.* The DIP Loan Parties and the DIP Lender are authorized to take any and all such actions as are necessary, required or appropriate to implement and effectuate the terms of this Interim Order, the DIP Documents, and the transactions contemplated hereunder and thereunder.

38. *Retention of Jurisdiction.* The Court retains jurisdiction to hear, determine and enforce the terms of any and all matters arising from or related to the DIP Facility, the DIP Documents, and this Interim Order, and the Court's jurisdiction shall survive confirmation and consummation of any chapter 11 plan for any of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

39. *Final Hearing.* The Final Hearing shall be held on [●], 2023, at [●] [a/p].m. (prevailing Central Time), and any objections to the final relief sought in the Motion shall be filed with the Court no later than [●], 2023 at 4:00 p.m. (prevailing Central Time).

Dated: _____, 2023
Houston, Texas

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

DIP Term Sheet

Execution Version

October 1, 2023

Barretts Minerals Inc.
$30,000,000
Debtor-in-Possession Term Loan Facility
Summary of Terms and Conditions

This term sheet (together with the exhibits and schedules hereto, the "Term Sheet") sets forth a summary of the terms and conditions with respect to the DIP Facility (as defined below) from and after, and subject to, the entry of the Interim Order (as defined below). This Term Sheet shall be a binding agreement from and after, and subject to, the entry of the Interim Order with respect to the DIP Loans (as defined below) but does not purport to summarize all of the terms, conditions, representations and other provisions with respect to the DIP Facility, which will be set forth in the DIP Documents (as defined below). The obligation of the DIP Lender (as defined below) to provide financing pursuant to this Term Sheet is conditioned upon the execution and delivery of signature pages to this Term Sheet by each of the parties hereto and shall be subject to the conditions precedent and other terms and conditions set forth herein. In the event of any conflict between this Term Sheet and the terms of the Interim Order or the Final Order (as defined below), the terms of the Interim Order or the Final Order (as applicable) shall govern.

1.	***Borrower:***	• Barretts Minerals Inc. (the "**Borrower**").
2.	***Guarantors:***	• Barretts Ventures Texas LLC (the "**Guarantor**" and together with the Borrower, each a "**Loan Party**" and collectively, the "**Loan Parties**"). The Loan Parties shall be debtors and debtors-in-possession in the anticipated chapter 11 cases (the "**Chapter 11 Cases**" (Borrower and Guarantor shall be referred to herein under the Chapter 11 Cases, each as a "**Debtor**" and collectively, the "**Debtors**")) under chapter 11 of title 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**") to be commenced in the United States Bankruptcy Court for the Southern District of Texas (the "**Bankruptcy Court**") on or around October 2, 2023 (the "**Petition Date**"). Loan Parties shall also include all of Borrower's and Guarantor's existing and future, direct or indirect domestic or foreign subsidiaries that become debtors and debtors-in-possession in the Chapter 11 Cases. • The DIP Obligations (as defined below) of the Borrower shall be unconditionally guaranteed, on a joint and several basis, by the Guarantor.
3.	***DIP Lender:***	• JMB Capital Partners Lending, LLC and/or its designees or its assignees.
4.	***Type and Amount of the DIP Facility:***	• A non-amortizing super-priority senior secured term loan facility in an aggregate principal amount not to exceed $30,000,000 consisting of up to $30,000,000 in term loan commitments (the "**DIP Facility**"; the definitive documentation evidencing the DIP Facility, the "**DIP Documents**"; the DIP Lender's commitments under the DIP Facility, the "**DIP Commitments**"; and the loans under the DIP Facility, the "**DIP Loans**").

		• The borrowing of DIP Loans shall permanently decrease the DIP Commitments, and DIP Loans repaid may not be reborrowed. • Loan proceeds to be funded into Borrower's DIP Bank Account maintained at U.S. Bank and Loan Parties shall obtain a satisfactory control agreement in favor of the DIP Lender to be entered into within 15 business days of the entry of the Interim Order subject to a 20 day cure period if the Loan Parties are using commercially reasonable efforts to obtain a satisfactory control agreement; provided that the Carve-Out shall be funded as described in the Interim Order.
5.	***Initial Availability:***	• Upon the Bankruptcy Court's entry of the Interim Order, and satisfaction of all applicable conditions precedent described in Section 16 herein, the DIP Lender shall make available an aggregate amount of $15,000,000 of the DIP Loans and the Borrower shall be entitled to make draws of the DIP Loans as described in Section 7 below immediately upon entry of the Interim Order (the "**Initial Draws**", the date of such first Initial Draw shall be referred to herein as the "**Closing Date**"). The closing of definitive DIP Documents shall occur as soon after the first Initial Draw as reasonably possible but in any event no later than two (2) business days prior to the hearing to consider entry of the Final Order.
6.	***Full Availability:***	• Upon (i) the Bankruptcy Court's entry of the Final Order (as defined below) and (ii) the satisfaction of all applicable conditions precedent described in Section 17 herein, the remaining amount of the DIP Facility totaling an additional $15,000,000 shall be available to the Debtors, subject to compliance with the terms, conditions, and covenants described in the DIP Documents, in additional draws in accordance with Section 7 below (each an "**Other Draw**" and collectively, the "**Other Draws**", and together with the Initial Draws, and each Other Draw, each a "**Draw**" and collectively, the "**Draws**").
7.	***Draws:***	• Subject to satisfaction of the conditions precedent to the Initial Draws or Other Draws, as applicable and availability under the DIP Commitments, the Borrower shall be entitled to make Draws of the DIP Loans in accordance with the Budget (as defined below) and to ensure minimum liquidity of at least $5,000,000 after giving effect to such Draw. • Each Draw shall be made (in an aggregate minimum amount of $1,000,000 and integral multiples of $500,000 thereafter) upon three (3) business days' written notice, up to the aggregate amount of the undrawn DIP Commitments at any time prior to three (3) business days before the DIP Termination Date (as defined below); provided that the first Initial Draw shall be in the amount of $7,000,000 and deemed requested in accordance with the terms of this Term Sheet, and funded within two (2) business days following the entry of the Interim Order and shall not require any further advance written notice but shall require a customary notice of borrowing.

8.	***Maturity and Termination:***	• All DIP Obligations shall be due and payable in full in cash (or such other form of consideration as the DIP Lender and the Borrower may mutually agree) on the earliest of: i. July 1, 2024; ii. 100 days[1] after the Petition Date (unless extended pursuant to an exercise of the Extension Option (as defined below)) (the "**SHPA Deadline**"), unless the Bankruptcy Court has approved Debtors' entry into a stalking horse purchase agreement ("**SHPA**") reasonably acceptable to the DIP Lender or a sale order (a "**Sale Order**") providing for Payment in Full[2] of the DIP Obligations; provided, that, a SHPA shall be reasonably acceptable to the DIP Lender if it, alone or with one or more related transactions, (i) provides for the Payment in Full of the DIP Obligations, (ii) the purchaser has demonstrated the financial wherewithal[3] to consummate the transaction(s), and (iii) the closing shall occur on or prior to the maturity date of the DIP Facility; iii. the effective date of any chapter 11 plan of reorganization with respect to the Borrower (a "**Plan**"); iv. the consummation of any sale or other disposition of all or substantially all of the assets of the Borrower pursuant to section 363 of the Bankruptcy Code; v. the date of the acceleration of the DIP Loans and the termination of the DIP Commitments following the occurrence and during the continuation of an Event of Default in accordance with the DIP Documents; vi. dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code; and vii. 45 days after the Petition Date (or such later date as agreed to by the DIP Lender), unless the Final Order has been entered by the Bankruptcy Court on or prior to such date (such earliest date, the "**DIP Termination Date**").

[1] To the extent any deadline herein calculated in "days" would end on a weekend or holiday, such deadline shall be extended to the next business day.

[2] For purposes hereof, the term "**Payment in Full**" means, with respect to the DIP Obligations, the irrevocable and indefeasible payment in full in cash of all DIP Obligations, other than contingent indemnification and expense reimbursement obligations for which no claim or demand has been asserted, and all commitments thereunder shall have irrevocably, permanently and finally expired or shall have been terminated, cancelled and discharged.

[3] As used herein, financial wherewithal shall mean, either (i) cash or cash equivalents in the amount of the purchase price, (ii) a signed commitment to lend from a recognized lender in the amount of the purchase price, or (iii) a combination thereof.

		• On or before three (3) business days prior to the SHPA Deadline, the Borrower shall have the authority in its sole discretion to extend the SHPA Deadline by an additional 30 days by providing written notice to the DIP Lender (the "**Extension Option**"). • The occurrence of the DIP Termination Date shall terminate the ability of the Borrower to borrow the Draws and shall terminate any further obligation the DIP Lender has to make any DIP Loans under the DIP Documents.
9.	***Interest Rate:***	• The DIP Loans shall bear interest at a per annum rate equal to 14% payable in cash on the first day of each month in arrears (the "**Non-Default Interest**"). • Notwithstanding the foregoing, after the occurrence and during the continuance of an Event of Default (as defined below), the DIP Loans shall bear interest at an additional per annum rate of 2%, in each case payable in cash, together with the Non-Default Interest, on the first day of each month in arrears.
10.	***Commitment & Exit Fee:***	• The Borrowers shall pay to the DIP Lender a commitment fee equal to 2.0% of the total amount of the DIP Commitments (the "**Commitment Fee**"). The Commitment Fee shall be fully earned, non-refundable upon entry of the Interim Order, and shall be payable out of the proceeds of the Initial Draw. • The Borrower shall pay to the DIP Lender an exit fee equal to either (a) the sum of 5.0% of the amount of the DIP Commitment or (b) only in the event the Extension Option is validly exercised, 5.5% of the amount of the DIP Commitment, which shall be fully earned and nonrefundable upon the Bankruptcy Court's entry of the Interim Order (the "**Exit Fee**"). The Exit Fee shall be due and payable upon the earlier of (i) the DIP Termination Date or (ii) Payment in Full of the DIP Obligations, provided, however, if the DIP Termination Date has occurred solely as a result of the occurrence and continuation of an Event of Default under the DIP Documents, then the Exit Fee shall not be payable until the DIP Obligations have been accelerated by the DIP Lender. • The Commitment Fee and the Exit Fee shall be approved by the Bankruptcy Court as part of the Interim Order. If such fees are not approved by the Bankruptcy Court, this Term Sheet shall automatically terminate and be of no further force and effect.
11.	***Use of Proceeds:***	• The proceeds of the DIP Facility shall be used only for the following purposes and, excluding payments pursuant to clauses (ii), (iii), and (iv) below, subject to the Budget and 20% permitted variances as set forth below: i. working capital and other general corporate purposes of the Borrower and the Guarantor, and any other subsidiaries, if applicable if such subsidiaries are Loan Parties under the DIP Documents; ii. professional fees and expenses of administering the Chapter 11 Cases (including fees incurred prior to the

		Closing Date) in accordance with the Bankruptcy Code and any orders of the Bankruptcy Court, as applicable; iii. fees and expenses payable under the DIP Facility, including, without limitation, the Commitment Fee, the Exit Fee and legal expenses of the DIP Lender (including fees incurred prior to the Closing Date); and iv. interest and other amounts payable under the DIP Facility. • Notwithstanding any other provision of this Term Sheet, from and after the Closing Date, no DIP Loans or DIP Collateral (as defined below), or any portion of the Carve-Out, may be used directly or indirectly by any Debtor, any official committee appointed in the Chapter 11 Cases, any Court-appointed legal representative for future claimants, or any trustee appointed in the Chapter 11 Cases or any successor cases, including any chapter 7 cases, or any other person, party or entity: i. in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation a. against the DIP Lender, or its respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, or any action purporting to do the foregoing in respect of the DIP Obligations, DIP Liens (as defined below), or DIP Claims (as defined below), or b. challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the DIP Obligations and/or the liens, claims, rights, or security interests granted under the Orders (as defined below), the DIP Documents, including, in each case, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; ii. to prevent, hinder, or otherwise delay the DIP Lender's enforcement or realization on the DIP Obligations, DIP Collateral, and the liens, claims and rights granted to such parties under the Interim Order or the Final Order, as applicable, each in accordance with the DIP Documents and the Interim Order or the Final Order, as applicable; provided, however, this shall not apply to (x) objections to the Final Order and (y) any challenge to whether a DIP Termination Event has occurred and/or the propriety of the DIP Lender's termination and/or acceleration of the DIP Obligations or calculation of the amounts owed thereunder; iii. to seek to modify any of the rights and remedies granted to the DIP Lender under the Orders (other than with the

		consents contemplated thereunder), or the DIP Documents, as applicable; or iv. to apply to the Bankruptcy Court for authority to approve superpriority claims or grant liens (other than the Carve-Out and liens permitted pursuant to the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Claims, unless permitted under the DIP Documents or unless all DIP Obligations, and claims granted to the DIP Lender under the Interim Order or the Final Order, as applicable, have been refinanced or Paid in Full in cash or otherwise agreed to in writing by the DIP Lender.
12.	***Voluntary Prepayments:***	• Voluntary prepayments of the DIP Loans shall be permitted at any time, subject to (i) payment of the ratable portion of the Exit Fee due thereon, which shall be due and payable on the date of such voluntary prepayment; and (ii) in minimum amounts of at least $1,000,000 of principal.
13.	***Security:***	• As security for the DIP Obligations, subject to the Carve Out, each Loan Party shall grant to the DIP Lender a security interest in and continuing lien on all of such Loan Party's right, title and interest in, to and under all the Loan Parties' assets, including, but not limited to the following, in each case, whether now owned or existing or hereafter acquired, created or arising and wherever located: all assets and property of such Loan Party and its estate, real or personal, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all fee-owned real properties listed on **Schedule 2** hereto, contracts, contract rights, licenses, general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, chattel paper, letters of credit and letter of credit rights, investment property (including, without limitation, all equity interests owned by any Loan Party in its current and future subsidiaries), commercial tort claims, arbitration awards, money, insurance, receivables, receivables records, deposit accounts, collateral support, supporting obligations and instruments, fixtures, all interests in leaseholds and real properties, all patents, copyrights, trademarks, all trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), together with all books and records relating to the foregoing, all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (as such terms are defined in the Uniform Commercial Code as in effect from time to time in the State of New York) and, subject to the entry of a Final Order, (i) proceeds of actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral and (ii) proceeds of actions under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code (collectively, the "**DIP Collateral**")). • Negative pledge on all assets of the Loan Parties subject to permitted liens to be agreed upon.

		• In addition to appropriate orders of the Bankruptcy Court granting and perfecting such liens, the Loan Parties shall take all other commercially reasonable steps (including the execution and filing of UCC financing statements, intellectual property security agreements, and deeds of trust on any real property owned in fee by any Loan Party with a value equal to or in excess of $1,500,000 ("**DOT**") requested by DIP Lender with respect to such security interests and liens, including without limitation, at the DIP Lender's discretion, a DOT or comparable security document in respect of all mining facilities owned by a Loan Party sufficient under applicable law to provide the DIP Lender with a security interest therein and otherwise in form and substance reasonably satisfactory to the DIP Lender ("**Mining Security Documents**"). • No later than 30 days following the entry of the Interim Order, but in all cases, prior to the Bankruptcy Court's entry of the Final Order, the DIP Lender shall receive DOTs in form and substance satisfactory to the DIP Lender executed by the appropriate Loan Party which holds title to the fee-owned real properties listed on **Schedule 2**. • No later than 30 days following the entry of the Final Order (or such later date agreed to by the DIP Lender) and at the DIP Lender's request, the DIP Lender shall have received the Mining Security Documents • The Loan Parties shall cooperate with the DIP Lender's due diligence of the Debtors' fee-owned real properties listed on **Schedule 2** and shall, promptly following the Bankruptcy Court's entry of the Interim Order, provide the DIP Lender with true, correct and complete copies of all existing leases or other occupancy agreements with respect to such fee-owned real properties, their current title policy and survey for such fee-owned real properties, all available plans and specifications for the such properties, and all other documents in their possession or control which describe or otherwise detail the physical, engineering or environmental condition of the owned real properties, including, without limitation, all environmental or engineering studies or reports. The Loan Parties shall provide the DIP Lender and its consultants reasonable access to the fee-owned real properties listed on Schedule 2 (subject to customary prior notice) for diligence purposes.
14.	***Priority and Security:***	• Subject to the Carve-Out, all obligations of the Loan Parties under the DIP Documents, including, without limitation, all principal, accrued interest, costs, fees and premiums provided for therein, and all obligations of the Loan Parties under the DIP Facility (the "**DIP Obligations**") shall be entitled to superpriority claim status pursuant to section 364(c)(1) of the Bankruptcy Code, with priority over any and all administrative expense claims and unsecured claims, of any kind or nature whatsoever, now existing or hereafter arising under the Bankruptcy Code (the "**DIP Claims**"). • Subject to the Carve-Out and the liens and security interests that were valid, non-avoidable and properly perfected as of the Petition Date (or that were properly perfected subsequent to the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) including those

		listed on **Schedule 1** hereto, all DIP Obligations in respect of the DIP Facility shall be: i. pursuant to section 364(c)(1) of the Bankruptcy Code, entitled to superpriority claim status in the Chapter 11 Cases (which claims shall be payable from and have recourse to all DIP Collateral); and ii. secured, pursuant to section 364(c)(2) of the Bankruptcy Code, by a valid, enforceable, fully perfected and automatic first-priority lien on the DIP Collateral. • The liens securing the DIP Facility, including but not limited to the DOTs (the "**DIP Liens**") shall mean the liens described above and in the priority set forth in the Interim Order and Final Order. The DIP Liens described herein shall, to the fullest extent permitted by applicable law, be effected and perfected upon entry of the Interim Order and without the necessity of the execution of mortgages, landlord agreements, security agreements, pledge agreements, control agreements, financing statements or other agreements.
15.	***Remedies***	• Upon the occurrence and during the continuation of an Event of Default under the DIP Documents, all remedies customarily available in the Chapter 11 Cases including, without limitation, those remedies customarily available to a senior secured, administrative expense claim of a debtor-in-possession lender, including, without limitation: i. declare that the DIP Commitments are terminated, reduced or restricted, whereupon the DIP Commitments shall be terminated, reduced, or restricted on account of any further Draws; ii. declare the unpaid amount of the DIP Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties; iii. charge interest at the default rate under the DIP Documents; iv. declare the termination, restriction, or revocation of the ability of the Debtors to use Cash Collateral (as defined in the Orders); or v. take any other action or exercise any other right or remedy (including, without limitation, with respect to the liens in favor of the DIP Lender) permitted under the DIP Documents, or by applicable law. Any exercise of remedies by the DIP Lender shall be subject in all respects to the terms of the Orders.
16.	***Conditions Precedent to Initial Draw***	• entry of the Interim Order within 5 business days of the Petition Date, which order shall not be stayed or subject to appeal;

		• delivery of the Initial Budget acceptable to the DIP Lender in its reasonable discretion; • all out-of-pocket costs, fees and expenses required to be paid to the DIP Lender pursuant to this Term Sheet, the DIP Documents or the Interim Order shall have been paid (provided that the Commitment Fee shall be paid out of the proceeds of the Initial Draw); • the representations and warranties of the Loan Parties under the DIP Documents shall be true and correct in all material respects (or in the case of representations and warranties with a "materiality" qualifier, true and correct in all respects); • no Material Adverse Effect (as defined below) shall have occurred and be continuing; • the Debtors shall be in compliance in all respects with the Interim Order; • no Event of Default shall have occurred and be continuing under this Term Sheet; • no order has been entered reversing, amending, staying, vacating, terminating or otherwise modifying in any manner adverse to the DIP Lender the Interim Order; • the parties shall have amended the Cash Management Agreement (as defined below) as set forth in Section 18 of this Term Sheet; and • the Borrower shall have delivered to the DIP Lender a customary borrowing notice.
17.	***Conditions Precedent to Availability of Other Draws***	• The Bankruptcy Court shall have entered an order approving Debtors' entry into a SHPA reasonably acceptable to the DIP Lender provided, that, a SHPA shall be reasonably acceptable to the DIP Lender if it, alone or with one or more related transactions, (i) provides for the Payment in Full of the DIP Obligations, (ii) the purchaser has demonstrated the financial wherewithal to consummate the transaction(s), and (iii) the closing shall occur on or prior to the maturity date of the DIP Facility; provided that the entry of a Sale Order providing for Payment in Full shall be sufficient to satisfy this condition; and • In addition, the DIP Documents shall contain conditions precedent as are usual and customary in loan documents for similar debtor-in-possession financings and other conditions precedent deemed by the DIP Lender appropriate to the specific transaction, including, without limitation: i. execution and delivery of a credit agreement (the "**DIP Credit Agreement**"), the DOTs, and other DIP Documents evidencing and securing the DIP Facility, in each case, which shall be in form and substance substantially consistent with this Term Sheet and otherwise in form and substance acceptable to the DIP Lender and the Loan Parties;

		ii.	delivery of any Budget subsequent to the Initial Budget, acceptable to the DIP Lender in its reasonable discretion;
		iii.	no trustee, examiner, or receiver shall have been appointed or designated with respect to the Loan Parties' business, properties or assets and no motion shall be pending seeking similar relief or any other relief, which, if granted, would result in a person other than the Loan Parties exercising control over their assets;
		iv.	the representations and warranties of the Loan Parties under the DIP Documents shall be true and correct in all material respects (or in the case of representations and warranties with a "materiality" qualifier, true and correct in all respects);
		v.	the Borrower shall have delivered to the DIP Lender a customary borrowing notice;
		vi.	not later than 45 days following the Petition Date, the Final Order as to the DIP Facility shall have been entered by the Bankruptcy Court, which Final Order shall be in the form of the Interim Order with such changes as are customary for a final order or otherwise are acceptable to the DIP Lender;
		vii.	the Debtors shall be in compliance in all respects with the Final Order and the Loan Parties shall be in compliance in all respects with the DIP Documents;
		viii.	no default or event of default shall have occurred and be continuing under the DIP Documents;
		ix.	no order has been entered reversing, amending, staying, vacating, terminating or otherwise modifying in any manner adverse to the DIP Lender the Interim Order or the Final Order, as applicable;
		x.	since the Petition Date, other than the Chapter 11 Cases, there shall not have occurred or there shall not exist any event, condition, circumstance or contingency that, individually, or in the aggregate, (a) has had or could reasonably be expected to have a material adverse effect on the business, operations, properties, assets, performance or financial condition of the Loan Parties taken as a whole, (b) has resulted in, or could reasonably be expected to result in, a material adverse effect on the validity or enforceability of, or the rights, remedies or benefits available to the DIP Lender, or (c) has had or could reasonably be expected to have, a material adverse effect on the ability of the Loan Parties to perform their obligations under any DIP Document; provided, that for the avoidance of doubt, any claims against a Loan Party related to the use of talc in such Loan Party's products or any final non-appealable court proceedings with respect to such claims shall not,

		individually or in the aggregate constitute a Material Adverse Effect unless such claims or court proceedings is reasonably likely to impair, when compared against the circumstances existing as of the Petition Date, (i) such Loan Party's ability to repay the Obligations in accordance with the terms of the DIP Documents or (ii) the Lender's ability to realize on the DIP Collateral (each of the foregoing being a "**Material Adverse Effect**"); xi. the Debtors shall have all insurance policies maintained by Loan Parties name the DIP Lender as additional insured and lender/mortgagee loss payee, as applicable, and shall use commercially reasonable efforts to cause each of their tenants under leases of the fee-owned real properties listed on Schedule 2 to name the DIP Lender as additional insured and lender/mortgagee loss payee (for the avoidance of doubt, if the Debtors are unable to direct that the tenants name the DIP Lender on such policies as required hereunder, the Debtor shall cooperate with the DIP Lender in order to reach a workaround to ensure that the DIP Lender is adequately protected with respect to these properties); and xii. all costs, fees, expenses (including, without limitation, legal fees and expenses) set forth in the DIP Documents or otherwise to be paid to the DIP Lender shall have been paid when due.
18.	***Documentation***	• Definitive financing documentation (including the Orders) with respect to the DIP Loans shall be reasonably satisfactory to the DIP Lender and the Borrower (the "**DIP Documents**"). • Prior to entry of the Interim Order, the Debtors shall amend that certain Cash Management Agreement, dated as of September 28, 2023 (the "**Cash Management Agreement**") to (a) provide for the DIP Lender to be a third party beneficiary with respect to provisions providing for the maintenance of BMI Funds (as defined in the Cash Management Agreement) held in the Non-BMI Accounts (as defined in the Cash Management Agreement) and (b) contain an acknowledgement that all BMI Funds are owned by Borrower and the agreement of the Service Providers that they do not have an interest in the underlying accounts receivable giving rise to such BMI Funds, and, following the occurrence and during the continuance of an Event of Default under the DIP Facility, upon written request and direction of the DIP Lender, Service Providers shall agree to transmit any such BMI Funds directly to the DIP Lender, and DIP Lender shall apply any such funds towards Payment in Full of the DIP Obligations.
19.	***Representations and Warranties:***	• The DIP Documents shall contain representations and warranties with respect to the Loan Parties as are usual and customary in loan documents for similar debtor-in-possession financings and as acceptable to the DIP Lender and Borrower, including without limitation, due organization and

		authorization, enforceability, financial condition, no material adverse changes, title to properties, liens, litigation, payment of taxes, compliance with laws and regulations, employee benefit liabilities, environmental liabilities, and perfection and priority of liens securing the DIP Facility. • Each Loan Party represents and warrants that none of its assets and properties (including the mines owned by such Loan Party) are subject to any liens, security interests or encumbrances as of the Petition Date and no liens, security interests or encumbrances will be created on or after the Petition Date except, in each case, for liens set forth on Schedule 1 hereto.
20.	***Affirmative Covenants:***	• The DIP Documents shall contain affirmative covenants as are usual and customary with respect to the Loan Parties in loan documents for similar debtor-in-possession financings and as are acceptable to the DIP Lender and the Borrower.
21.	***Negative Covenants:***	• The DIP Documents shall contain negative covenants with respect to the Loan Parties as are usual and customary in loan documents for debtor-in-possession financings and as are acceptable to the DIP Lender and the Borrower; provided that the DIP Documents will permit: (i) the Debtors to continue to pursue a sale process for all or substantially all of the Borrower's assets and consummate any sale or sales related thereto subject to Bankruptcy Court approval and provided that such sale or sales and/or related transactions, when taken in the aggregate, provide for the Payment in Full of the DIP Obligations, (ii) the ability to reject or modify contracts, (iii) post-petition employment arrangements subject to maximum thresholds agreed upon by the DIP Lender and the Borrower, (iv) post-petition capital expenditures subject to maximum thresholds agreed upon by the DIP Lender and the Borrower, and (v) payment of continuing obligations under prepetition affiliate transactions as in effect on the Petition Date and as set forth in Budget.
22.	***DIP Budget / Variance Reporting:***	• The DIP Lender shall receive an extended weekly budget commencing with the week during which the Interim Order is entered, containing line items of sufficient detail to reflect the consolidated operating cash flow of the Debtors for the period from the Petition Date through and including the end of the thirteenth (13th) calendar week thereafter (the "**Initial Budget**") (the Initial Budget, as modified from time to time in accordance herewith, shall be the "**Budget**"). The Budget shall include a monthly reserve in connection with the cash management system maintained by Borrower in amounts agreed to by the Loan Parties and the DIP Lender in the DIP Documents. • The Budget shall be updated and provided to the DIP Lender on the fourth Wednesday following the prior Budget's approval and every fourth Wednesday thereafter, or more frequently at the reasonable discretion of both the Borrower and DIP Lender, with such updated Budget extending the term thereof and the DIP Lender, in its reasonable discretion, shall have the right to approve any such updates (or any amendments) by providing the Borrower specific notice thereof within 5 business days after the delivery by the Borrower of any such update or

		amendment ("**Updated Budget**") and, (ii) to the extent the DIP Lender provides written notice rejecting the updates (or any amendments), the then existing Budget shall continue to constitute the applicable Budget until such time as an update or amendment is approved by the DIP Lender. In the event the DIP Lender does not provide written notice of its rejection of the proposed Updated Budget within such five business day period, such Updated Budget shall become effective as the Budget. • On a weekly basis after the delivery of the first Updated Budget, the Borrower shall deliver to the DIP Lender a variance report for the four-week period ending the prior Friday comparing the difference/variance, expressed as a percentage (each, a "**Budget Variance**"), between actual net operating cash flow for such period to projected net operating cash flow for such period as set forth in the Budget on a cumulative 4 week rolling basis (each a "**Measuring Period**") and explaining in reasonable detail all material variances, it being understood that any Net Operating Variance (as defined below) solely with respect to net operating cash flow that exceeds 20% shall be material and shall constitute an Event of Default under the DIP Documents (each such report, a "**Variance Report**," which shall be in a form reasonably satisfactory to the DIP Lender). For the avoidance of doubt, net operating cash flow shall not include professional fees and restructuring charges (including trustee fees or other statutory fees) related to the Chapter 11 Cases. • For purposes of each Measuring Period, the Borrower shall calculate: the numerical difference between "net operating cash flow" (such terms reflecting those line items illustrated in the Budget) for such period to "net operating cash flow" for such period as set forth in the Budget on a cumulative 4 week rolling basis, and to the extent the difference is a positive number, the percentage such difference is of the cumulative budgeted amount for such period (the "**Net Operating Variance**"). For purposes herein, a "**Permitted Variance**" shall be limited to not greater than 20% for budget variances with respect to the Net Operating Variance, each as set forth in the applicable Variance Report.
23.	***Interim Order:***	• The interim order approving the DIP Facility, which shall be in form and substance acceptable to the DIP Lender and its counsel (the "**Interim Order**"), shall, among other things, authorize and approve: i. the Initial Draws; ii. the making of the DIP Loans; iii. the granting of the superpriority claims and liens against the Debtors and their assets in accordance with this Term Sheet and the DIP Documents with respect to the DIP Collateral; iv. the payment of all fees and expenses (including the fees and expenses of outside counsel and financial advisors) required to be paid to the DIP Lender as described herein under the heading "*Indemnification and Reimbursement of Expenses*" by the Debtors; v. the payment of the Commitment Fee upon the Closing Date and the payment of the Exit Fee as set forth in Section 10

		of this Term Sheet, which Commitment Fee payment shall not be subject to reduction, setoff or recoupment for any reason, and shall be fully earned upon entry of the Interim Order; and vi. upon entry of the Final Order, the Debtors' waiver of (a) any right to surcharge the DIP Collateral pursuant to sections 105(a) and 506(c) of the Bankruptcy Code or otherwise, and (b) the equitable doctrine of marshaling and other similar doctrines, in each case, with respect to the DIP Collateral and the DIP Obligations.
24.	***Final Order:***	• The final order approving the DIP Facility, which shall be substantially in the same form as the Interim Order (with such modifications as are necessary to convert the Interim Order into a final order) and otherwise in form and substance reasonably acceptable to the DIP Lender (the "**Final Order**" and together with the Interim Order, the "**Orders**"), shall, among other things, authorize and approve the DIP Facility on a final basis, the total amount of the DIP Commitments, and the payment of the Exit Fee, which Exit Fee payment shall not be subject to reduction, setoff or recoupment for any reason, and shall be fully earned upon entry of the Final Order.
25.	***Carve Outs:***	• The liens and security interests in the DIP Collateral, and the superpriority administrative claims shall be subject in all respects to the Carve-Out, which shall be defined in the Orders.
26.	***Events of Default:***	• The DIP Documents shall contain events of default (collectively, "**Events of Default**") consistent with this Term Sheet and customary for debtor-in-possession financing facilities of this type, including, without limitation: i. payment, non-compliance with covenants set forth in the DIP Documents, judgements in excess of specified amounts, impairment of security interest in the DIP Collateral and other customary defaults, subject to any applicable grace and/or cure periods to be agreed for non-payment defaults only and as are customary for transactions of this nature; ii. the entry of the Final Order shall have not occurred within 45 days after the Petition Date; iii. the dismissal of any of the Chapter 11 Cases or the conversion of any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code; iv. non-compliance, subject to any applicable grace and/or cure periods, by any Loan Party with the terms of the Interim Order or the Final Order; v. the entry of an order staying, reversing, vacating or otherwise modifying the Interim Order or the Final Order, in each case without the prior written consent of the DIP Lender;

		vi. the entry of an order appointing a trustee, responsible officer, or an examiner having expanded powers (beyond those set forth under sections 1106(a)(3) and (4) of the Bankruptcy Code) under section 1104 of the Bankruptcy Code (other than a fee examiner) in the Chapter 11 Cases, or the Bankruptcy Court shall have entered an order providing for such appointment, in each case without the prior written consent of the DIP Lender in its sole discretion; vii. the entry of an order in any of the Chapter 11 Cases granting relief from any stay or proceeding (including, without limitation, the automatic stay) so as to allow a third party to proceed with foreclosure against any material assets of the Loan Parties to which the fair market value of which exceeds $10,000,000; viii. the entry of an order (a) surcharging any of the DIP Collateral under sections 105, 506(c), or any other section of the Bankruptcy Code, (b) allowing any administrative expense claim having priority over or ranking in parity with the DIP Claims or the rights of the DIP Lender (subject to the Carve-Out), or (c) otherwise adversely impacting the DIP Lender's liens and priority in the DIP Collateral as set forth in this Term Sheet; ix. any action by any Debtor to (a) challenge the rights and remedies of the DIP Lender under the DIP Facility in any of the Chapter 11 Cases or acting in a manner inconsistent with the DIP Documents or (b) avoid or require disgorgement by the DIP Lender of any amounts received in respect of the obligations under the DIP Facility; x. entry of an order without the express written consent of the DIP Lender obtaining additional financing from a party other than the DIP Lender under section 364(d) of the Bankruptcy Code except if such financing contemplates Payment in Full of the DIP Obligations; xi. the making of any material payments in respect of prepetition obligations other than (a) as permitted by the Interim Order or the Final Order, (b) as permitted by any "first day" or "second day" orders reasonably satisfactory to the DIP Lender, (c) as permitted by any other order of the Bankruptcy Court reasonably satisfactory to the DIP Lender, (d) as permitted under the DIP Documents in accordance with the Budget, or (e) as otherwise agreed to by the DIP Lender; xii. entry of an order by the Bankruptcy Court terminating or modifying the exclusive right of any Debtor to file a chapter 11 plan pursuant to section 1121 of the Bankruptcy Code, without the prior written consent of the DIP Lender;

		xiii. the Debtors shall seek to, or support any other person's motion to, (a) disallow in whole or in part the DIP Obligations, (b) challenge the validity and enforceability of the DIP Liens, or (c) contest any material provision of any DIP Document; xiv. the Debtors file a plan of reorganization that is not in form and substance satisfactory to the DIP Lender, it being understood that a plan will be satisfactory to the DIP Lender if it provides for the Payment in Full of the DIP Obligations pursuant to a signed commitment to lend from a recognized lender or another source of funding sufficient to allow for the indefeasible payment in cash of the full amount of the outstanding DIP Obligations; xv. the Debtors file a motion seeking to settle a controversy or claim on account of the DIP Collateral without the prior written consent of the DIP Lender; xvi. the Debtors file a motion for the Bankruptcy Court to approve a sale of the DIP Collateral pursuant to section 363 of the Bankruptcy Code which proposed sale is not reasonably acceptable to the DIP Lender as determined on the same basis that the SHPA shall be deemed reasonably acceptable as set forth in Section 17 of this Term Sheet; xvii. either of the Service Providers (as defined in the Cash Management Agreement) materially breach their payment obligations to Borrower under Sections 1.1 thereunder or any material breach of any provision in which the DIP Lender is a beneficiary thereunder; or xviii. any Debtor shall fail to execute and deliver to the DIP Lender any agreement, financing statement, trademark filing, copyright filing, notices of lien or similar instruments or other documents that the DIP Lender may reasonably request from time to time to more fully evidence, confirm, validate, perfect, preserve and enforce the DIP Liens created in favor of the DIP Lender, subject to the time periods and terms set forth in this Term Sheet which includes a post-closing period for delivery of the mortgages as set forth herein.
27.	***Indemnification and Reimbursement of Expenses:***	• The DIP Documents shall contain customary indemnification provisions for the benefit of the DIP Lender, and its related parties, including, without limitation, indemnification against losses, claims, damages, liabilities or expenses incurred in respect of the financing contemplated by the DIP Documents or the use or the proposed use of proceeds thereof. • Subject to the DIP Documents, all documented out-of-pocket accrued and unpaid fees, costs, disbursements, and expenses of the DIP Lender, including the fees and expenses of Lowenstein Sandler LLP, as counsel to the DIP Lender, and any other local Texas or Montana counsel

		retained in their capacity as counsel to the DIP Lender for real estate, mining and bankruptcy matters, incurred in connection with the DIP Facility and the Chapter 11 Cases shall be paid on a current basis.
28.	***Release:***	• The Orders shall include a customary release of the DIP Lender, with respect to any and all claims and causes of action arising from or related to the DIP Facility.
29.	***Waivers:***	• The Final Order shall include terms and conditions customary for final DIP financing orders and shall be reasonably acceptable to the DIP Lender, including, without limitation, waiver of the automatic stay, credit-bidding rights, "no marshaling" provisions and other similar doctrines, and waivers of the imposition of costs or right to surcharge the DIP Collateral pursuant to sections 105(a) and 506(c) of the Bankruptcy Code or otherwise, in each case, to the extent applicable.
30.	***Governing Law:***	• New York (and to the extent applicable, the Bankruptcy Code).

IN WITNESS WHEREOF, the parties hereto have caused this Term Sheet to be executed as of the date first set forth above.

BARRETTS MINERALS INC., as a Borrower

By: _____
Name: David Gordon
Title: Chief Restructuring Officer

BARRETTS VENTURES TEXAS LLC, as a Guarantor

By: _____
Name: David Gordon
Title: Chief Restructuring Officer

JMB CAPITAL PARTNERS LENDING, LLC

By: _____
Name: Vikas Tandon
Title: Chief Investment Officer

Schedule 1
Permitted Prior Liens

I. Existing Liens

Debtor	Secured Party	Filing Jurisdiction/Office	UCC Filing Number
Barretts Minerals Inc.	HYG Financial Services, Inc.	Delaware Secretary of State	Original: 20144337309 Amendment: 20194114927 Continuation: 20194261884
Barretts Minerals Inc.	Caterpillar Financial Services Corporation	Montana Secretary of State	1709291850702

II. Real Property Encumbrances

a. Easements

i. Regal Mine

1. Barretts Minerals Inc. Road Easement (Easement 1), as reflected in Book 7 of Surveys, Page 2481-BA, prepared on December 7, 2007 by Anderson Engineering, Inc., therein granting to Madison County for an sixty (60) foot wide road easement (thirty feet each side of centerline) across Barretts Minerals Inc. property located in Section 35, Township 7 South, Range 7 West, P.M.M., and Section 2, Township 8 South, Range 7 West, P.M.M., County of Madison, State of Montana, more particularly described as within the Certificate of Survey.

2. Barretts Minerals Inc. By-Pass Easement (Easement 2), as reflected in Book 7 of Surveys, Page 2481-BA prepared on December 7, 2007 by Anderson Engineering, Inc., therein granting to Madison County for an sixty (60) foot wide road easement (thirty feet each side of centerline) across Barretts Minerals Inc. property located in Section 35, Township 7 South, Range 7 West, P.M.M., and Section 2, Township 8 South, Range 7 West, P.M.M., County of Madison, State of Montana, more particularly described as within the Certificate of Survey.

3. Geoduck Land and Cattle Road Easement (Easement 3), as reflected in Book 7 of Surveys, Page 2481-BA prepared on December 7, 2007 by Anderson Engineering, Inc., therein granting to Madison County for an sixty (60) foot wide road easement (thirty feet each side of centerline) across Geoduck Land and Cattle property, now owned by Barretts Minerals, Inc., located in Section 2, Township 8 South, Range 7 West, P.M.M., County of Madison, State of Montana, more particularly described as within the Certificate of Survey.

4. Quit Claim Deed, dated November 29, 2017, by and between Rebish/Konen Livestock Limited Partnership and Barretts Minerals, Inc., recorded on December 7, 2017 with the Clerk and Recorder of Madison County, Montana as Document No. 175678, therein reserving unto Grantor, its successors and assigns, an easement along Hoffman Creek stream relocation corridor sufficient for trailing livestock and incidental to Grantor's ranching operations.

III. Reserved Minerals

b. Regal Mine

i. Warranty Deed, dated February 5, 2018, by and between Geoduck Land & Cattle, LLC and Barretts Minerals, Inc., recorded on May 1, 2018 with the Clerk and Recorder of Madison County, Montana as Document No. 177673, conveying all right, title, and interest in and to the surface of land herein described, but reserving unto Geoduck Land & Cattle, LLC and its successors and assigns:

1. RESERVATION – "any and all of the oil, gas, and other hydrocarbons, geothermal energy, base and precious metals, rock, stone, gravel and all other mineral substances presently in or under the real property" subject to the following restriction:
2. RESTRICTION ON EXTRACTION – "provided, however, that Geoduck reservation shall not extend to or include the right to enter upon the surface of the Property or to explore for, mine, extract, remove, or market the reserved minerals before December 31, 2035, or Barretts Minerals Inc. completion of the reclamation of the Property, whichever occurs first."
3. LEGAL DESCRIPTION: – "a tract of land, said being located in the NE¼ and the SE¼ of Section 34, and in the SW¼ of Section 35, Township 7 South, Range 7 West and in the NE¼ of Section 3 and the NW¼ of Section 2, Township 8 South, Range 7 West, P.M.M., Madison County, Montana, said tract of land being further described as follows:
4. Commencing at the east quarter corner of Section 34, Township 7 South, Range 7 West; thence South 13º40'14" East, a distance of 467.86 feet to a point of the centerline of Sweetwater Road, said point being the most northerly corner of Parcel RM-A of the certificate of survey (COS) filed in Book 7, Page 2470-BA and being the Point of Beginning; thence South 30º53'34" West, on the westerly line of Parcel RM-A, a distance of 961.74 feet; thence South 27º15'15" East, on the westerly line of said Parcel RM-A, a distance of 1539.61 feet; thence South 00º03'07" East, on the westerly line of Parcel RM-A, a distance of 1619.95 feet; thence North 33º57'58" West, a distance of 4322.44 feet; thence North 23º04'02" East, a distance of 912.87 feet, to the centerline of Sweetwater Road; thence South 67º32'39" East, on the centerline of

Sweetwater Road, a distance of 414.97 feet; thence South 72º44'33" East, on the centerline of Sweetwater Road, a distance of 808.41 feet; thence South 71º14'02" East, on the centerline of Sweetwater Road, a distance of 578.99 feet; thence South 79º26'38" East, on the centerline of Sweetwater Road, a distance of 143.26 feet to the Point of Beginning, As shown on Certificate of Survey in Book 7 of Surveys, Page 2481-BA."

5. The described tract contains 105.90 acres, more or less, in Parcel RM-A of COS, Book 7, Page 2470-BA, and is subject to any existing easements.

ii. Quit Claim Deed, dated November 29, 2017, by and between Rebish/Konen Livestock Limited Partnership and Barretts Minerals, Inc., conveying all right, title, and interest in and to the surface of land herein described, but reserving unto Rebish/Konen Livestock Limited Partnership and its successors and assigns:

1. RESERVATION – "all minerals, including but not limited to coal, oil, gas, and other hydrocarbons, not heretofore reserved or conveyed by the United States, the State of Montana, or Grantor's predecessors in interest, together with the right to enter upon the real property described above to explore or prospect for, develop, mine, extract, or remove minerals and to occupy and use so much of the surface of the lands as may be required for all purposes reasonably extending to the exploration for, or the mining, extraction, or removal of, minerals from such real property; provided, however, that Grantor, its successors or assigns, shall make just payment to Grantee, its successors or assigns, for all damage done by reason of such entry and the use and occupancy of the surface thereof."
2. LEGAL DESCRIPTION: – "a tract of land located in the E½SE¼ of Section 34, in the S½ of Section 35, Township 7 South, Range 7 West, P.M.M., and in the N½ of Section 2, Township 8 South, Range 7 West, P.M.M., Madison County, Montana more particularly shown and described as "Parcel RM-A" on Certificate of Survey filed in Book 7 of Surveys page 2470-BA.

Containing 266.67 acres, more or less.

IV. "<u>Permitted Liens</u>" means:

(a) all Liens created by the DIP Documents and the DIP Orders (including the Carve Out, Adequate Protection Liens and Adequate Protection Super-priority Claims, as defined therein);

(b) liens listed in clause (I) above and any renewals, substitutions or extensions thereof; <u>provided</u> that (i) the property or asset covered thereby has not changed, (ii) the outstanding principal amount thereof secured by such property or asset does not increase (unless otherwise permitted pursuant to the terms of the documentation (as in

effect as of the Petition Date) in respect of such Liens), and (iii) the Loan Party liable with respect thereto has not changed;

(c) liens for taxes that are not delinquent or thereafter payable and that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with generally accepted accounting principles as in effect from time to time;

(d) statutory or common law liens of landlords and liens of carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors and suppliers and other liens imposed by law or pursuant to customary reservations or retentions of title arising in the ordinary course of business for amounts not overdue;

(e) (i) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by the Employee Retirement Income Security Act of 1974, and (ii) pledges and deposits of cash securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to any Loan Party;

(f) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(g) without duplication of clause (II) above, easements, rights-of-way, restrictions, encroachments, protrusions and other similar encumbrances and minor title defects affecting real property that, in the aggregate, do not in any case materially detract from the value or use of the property subject thereto, impair the use or operation of the DIP Collateral for the use currently being made thereof or impair Borrower's ability to pay the DIP Obligations in a timely manner or materially interfere with the ordinary conduct of its business;

(h) liens on equipment arising from precautionary UCC financing statements regarding operating leases of equipment;

(i) liens in favor of customs and revenue authorities arising as a matter of law to secure the payment of customs duties in connection with the importation of goods in the ordinary course of business, and consistent with past practice;

(j) receipts of progress payments and advances from customers in the ordinary course of business, and consistent with past practice, to the extent same creates a lien on the related inventory and proceeds thereof;

(k) liens securing judgments for the payment of money (or appeal or other surety bonds relating to such judgments) in existence for less than thirty (30) days after the entry thereof or with respect to which execution has been stayed and which do not constitute an Event of Default;

(l) non-exclusive licenses and sublicenses of intellectual property entered into in the ordinary course of business;

(m) normal and customary rights of setoff upon deposits of cash in favor of banks or other depository institutions incurred in connection with the maintenance of such deposits

in the ordinary course and not arising in connection with the issuance or repayment of indebtedness;

(n) liens that are contractual rights of setoff relating to pooled deposit or sweep accounts of the Loan Parties or their subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Loan Parties;

(o) liens on insurance policies and the proceeds thereof solely securing the financing of the premiums with respect thereto; and

(p) any zoning or similar law or right reserved to or vested in any governmental authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Loan Parties, individually, or taken as a whole.

Schedule 2
Fee-Owned Real Property

23523 US Route 281 N
San Antonio, Texas 78260

6105 Sherwood Way
San Angelo, Texas 76901

Exhibit 2

Initial Budget

Estimated DIP Budget (13-Week)

($'000s, unless stated otherwise)

Forecast Period	Wk1	Wk2	Wk3	Wk4	Wk5	Wk6	Wk7	Wk8	Wk9	Wk10	Wk11	Wk12	Wk13	TOTAL
Receipts:														
Receipts	**$ 1,037**	**$ 622**	**$ 1,059**	**$ 880**	**$ 1,153**	**$ 1,167**	**$ 822**	**$ 822**	**$ 1,321**	**$ 954**	**$ 780**	**$ 746**	**$ 1,180**	**$ 12,545**
Disbursements:														
Compensation	–	(272)	–	(272)	–	(272)	–	(272)	–	(272)	–	(272)	–	(1,632)
Benefits	–	–	–	(198)	–	–	–	(198)	–	–	–	–	(301)	(697)
Operating Expenses	–	–	–	(60)	(10)	(130)	(10)	(70)	(10)	(130)	(10)	(70)	(10)	(510)
Maintenance	–	–	–	–	(80)	(80)	(80)	(80)	(80)	(80)	(80)	(80)	(80)	(721)
Operating Supplies	–	–	–	–	(49)	(49)	(49)	(49)	(49)	(49)	(49)	(49)	(49)	(443)
Utilities	–	–	–	–	(15)	(245)	(165)	(41)	(15)	(245)	(165)	(41)	–	(932)
Crude/Pack	–	–	–	–	(78)	(78)	(78)	(78)	(78)	(78)	(78)	(78)	(78)	(698)
Freight Cost	–	(20)	(20)	(20)	(153)	(136)	(93)	(166)	(84)	(211)	(100)	(130)	(134)	(1,268)
Plant Administration Expense	–	(11)	(11)	(11)	(17)	(17)	(17)	(17)	(17)	(17)	(17)	(17)	(17)	(186)
Shared Services	–	–	–	–	(420)	–	–	–	(420)	–	–	–	–	(840)
Ordinary Course Prof. Fees	–	–	–	(117)	–	–	–	(117)	–	–	–	–	(117)	(351)
Capital Expenditure	–	–	–	–	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(900)
Taxes/Fixed Cost	–	–	–	–	(3)	(429)	(0)	(3)	–	(0)	(168)	–	–	(603)
Total Disbursements	**$ –**	**$ (303)**	**$ (31)**	**$ (678)**	**$ (924)**	**$ (1,536)**	**$ (592)**	**$ (1,191)**	**$ (853)**	**$ (1,182)**	**$ (767)**	**$ (837)**	**$ (886)**	**$ (9,780)**
Net Operating Cash Flow	**$ 1,037**	**$ 319**	**$ 1,028**	**$ 202**	**$ 229**	**$ (369)**	**$ 230**	**$ (368)**	**$ 468**	**$ (227)**	**$ 13**	**$ (91)**	**$ 294**	**$ 2,765**
Restructuring Items:														
Professional Fees	–	–	–	–	–	–	–	(375)	–	–	(3,594)	–	(25)	(3,994)
Critical Vendor Payments	(250)	–	–	–	–	–	–	–	–	–	–	–	–	(250)
Freight/Hauling/Other (Lienholder Motion)	(150)	(130)	(130)	(730)	–	–	–	–	–	–	–	–	–	(1,140)
Utility Deposit - Adequate Assurance	(300)	–	–	–	–	–	–	–	–	–	–	–	–	(300)
MTI Receivable Reserve	(400)	–	–	–	–	–	–	–	–	–	–	–	–	(400)
Working Capital Impact	(1,000)	–	–	–	–	–	–	–	–	–	–	–	–	(1,000)
US Trustee Fees	–	–	–	–	–	–	–	–	–	–	–	–	(142)	(142)
Interest Payment	–	–	–	(66)	–	–	–	(75)	–	–	–	–	(118)	(259)
Other Financing Fees	(600)	–	–	–	–	–	–	–	–	–	–	–	–	(600)
Contingency	(214)	–	–	–	(214)	–	–	–	–	(214)	–	–	–	(643)
Total	**$ (2,914)**	**$ (130)**	**$ (130)**	**$ (796)**	**$ (214)**	**$ –**	**$ –**	**$ (450)**	**$ –**	**$ (214)**	**$ (3,594)**	**$ –**	**$ (285)**	**$ (8,727)**
Beginning Cash	500	5,623	5,812	6,710	6,117	6,131	5,763	5,992	5,173	5,641	5,200	5,119	5,028	500
Net Operating Cash flow	1,037	319	1,028	202	229	(369)	230	(368)	468	(227)	13	(91)	294	2,765
Restructuring Items	(2,914)	(130)	(130)	(796)	(214)	–	–	(450)	–	(214)	(3,594)	–	(285)	(8,727)
DIP Financing	7,000	–	–	–	–	–	–	–	–	–	3,500	–	–	10,500
Ending Cash	**$ 5,623**	**$ 5,812**	**$ 6,710**	**$ 6,117**	**$ 6,131**	**$ 5,763**	**$ 5,992**	**$ 5,173**	**$ 5,641**	**$ 5,200**	**$ 5,119**	**$ 5,028**	**$ 5,038**	**$ 5,038**
Note: Ending cash excludes restricted cash														
Unrestricted Cash	5,623	5,812	6,710	6,117	6,131	5,763	5,992	5,173	5,641	5,200	5,119	5,028	5,038	5,038
MTI Receivable Reserve	400	400	400	400	400	400	400	400	400	400	400	400	400	400
Restricted Cash	300	300	300	300	300	300	300	300	300	300	300	300	300	300
Total Cash	**$ 6,323**	**$ 6,512**	**$ 7,410**	**$ 6,817**	**$ 6,831**	**$ 6,463**	**$ 6,692**	**$ 5,873**	**$ 6,341**	**$ 5,900**	**$ 5,819**	**$ 5,728**	**$ 5,738**	**$ 5,738**
DIP Schedule:														
Unused Availability (Ending)	*8,000*	*8,000*	*8,000*	*8,000*	*8,000*	*8,000*	*8,000*	*8,000*	*8,000*	*8,000*	*4,500*	*4,500*	*4,500*	
DIP Ending Balance	*7,000*	*7,000*	*7,000*	*7,000*	*7,000*	*7,000*	*7,000*	*7,000*	*7,000*	*7,000*	*10,500*	*10,500*	*10,500*	

Note: Full $30.0M availability is assumed after week 14