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

| | |
|---|---|
| In re:<br><br>PetroQuest Energy, Inc., *et al.*,<br><br>Debtors.[1] | Chapter 11<br><br>Case No. 24-12609 (CTG)<br><br>(Jointly Administered)<br><br>**Objection Deadline: December 5, 2024 at 4:00 p.m. (ET)**<br>**Hearing Date: December 12, 2024 at 11:30 a.m. (ET)** |

**DEBTORS' MOTION FOR ENTRY OF (I) AN ORDER (A) AUTHORIZING AND APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF THE DEBTORS' ASSETS, (B) APPROVING CERTAIN BID PROTECTIONS IN CONNECTION WITH THE DEBTORS' ENTRY INTO A STALKING HORSE AGREEMENT, (C) SCHEDULING THE AUCTION AND SALE HEARING, (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (E) GRANTING RELATED RELIEF; AND (II) AN ORDER (A) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES; AND (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

PetroQuest Energy, Inc. ("PetroQuest") and the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") respectfully state as follows in support of this motion (the "Motion"):

## RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of two orders pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 6007, 9007, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: PetroQuest Energy, Inc. (0714), PetroQuest Energy, L.L.C. (2439), PetroQuest Oil & Gas, L.L.C. (1170), and PQ Holdings LLC, (7576). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 400 E. Kaliste Saloom Road, Suite 5200, Lafayette, LA 70508.

States Bankruptcy Court for the District of Delaware (the "Local Rules"). First, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Bidding Procedures Order"), (i) authorizing and approving sale and bidding procedures (the "Bidding Procedures") attached as **Exhibit 1** to the Bidding Procedures Order, pursuant to which the Debtors will solicit and select the highest or otherwise best offer for the sale (the "Sale" or "Sale Transaction") of all or substantially all of the Debtors' Assets (as defined below); (ii) authorizing the Debtors to select a stalking horse bidder and provide bid protections; (iii) authorizing and approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts; (iv) scheduling an auction (the "Auction"), if necessary, and a hearing to approve the Sale (the "Sale Hearing"); (v) approving the form and manner of (1) notice of the Auction and Sale Hearing (the "Sale Notice") attached as **Exhibit 2** to the Bidding Procedures Order, (2) notice to holders of Alleged Consent Rights (as defined herein) attached as **Exhibit 3** to the Bidding Procedures Order, (3) notice of the Assumption Procedures (the "Assumption Notice") attached as **Exhibit 4** to the Bidding Procedures Order, and (4) notice of Successful Bidder and Back-Up Bidder (the "Notice of Successful Bidder") attached as **Exhibit 5** to the Bidding Procedures Order; (vi) establishing dates and deadlines in connection with the Sale, including the Bid Deadline (as defined in the Bidding Procedures), and the Auction, and (vii) granting related relief.

2. Second, by this Motion, the Debtors further request that, at the Sale Hearing, this Court enter one or more orders (each, a "Sale Order"), as applicable, (i) approving the Sale to the Successful Bidder free and clear of all liens, claims, interests and encumbrances (collectively, the "Interests"); (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases; and (iii) granting related relief.

3. In support of the Motion, the Debtors respectfully state as follows:

## INTRODUCTION

4. Although the Debtors' operations are sound and their oil and gas assets are inherently valuable, the value of those assets at any particular time is subject to the prevailing market price of natural gas. Prevailing prices for natural gas have been near historic lows for an extended time, with the result being that the Debtors have been unable to generate revenue sufficient to service their secured debt, much less turn a profit. The Debtors' secured lenders supported the Debtors' continued operations for months, both by allowing interest on their secured claims to accrue in kind (as opposed to being paid in cash), and by providing small cash infusions when they were absolutely critical. However, two events outside of the ordinary course of the Debtors' business drained approximately $20 million of the Debtors' liquidity, which proved an impossible burden for the Debtors to sustain.

5. First, the Debtors have been unable to recoup approximately $8 million they paid to plug and abandon five (5) offshore wells and a structure in West Delta Block 89 in the Gulf of Mexico. Despite the fact that PetroQuest sold the wells and facility to Sanare Energy Partners LLC ("Sanare") (formerly Northstar Offshore Ventures) in 2018, in July 2022 the United States Bureau of Safety and Environmental Enforcement demanded that PetroQuest plug and abandon the wells. PetroQuest did so at a cost of more than $8 million, and then sued Sanare to recoup those costs. Although PetroQuest won a judgment in its favor for $7,854,618.24 that it spent to plug and abandon West Delta Block 89, plus $41,820.56 in regulatory fees and $141,025 in recoverable legal fees, PetroQuest has been unable to collect any portion thereof.

6. Second, in July of 2024, a Texas state court found against PetroQuest in a contract claim that PetroQuest initiated against Patriot Natural Gas LLC ("Patriot") over a failed sale of (largely) the same assets that PetroQuest now seeks to sell. That purchase and sale agreement was

entered into in September 2022 for a purchase price in excess of $100 million. When that purchaser failed to close the sale, PetroQuest sued to keep the $11.5 million earnest money deposit that was being held in escrow. The Texas court not only ruled that PetroQuest did not have a right to the deposit but directed PetroQuest to pay Patriot's out-of-pocket costs and attorneys' fees in an amount in excess of $4 million.

7. In July of 2024, in the wake of both the adverse Patriot litigation outcome and the challenges PetroQuest was facing in collecting from Sanare, the Debtors determined that selling their assets through a bankruptcy process was likely to provide the highest and best value for such assets because they could be sold free and clear of liens, claims and encumbrances. As described in greater detail below, from July through the Petition Date the Debtors worked, with the continued support of their secured lenders, with their oil and gas broker and advisors to market the Assets and otherwise prepare for these Chapter 11 Cases (as defined herein). On the Petition Date, the Debtors commenced these Chapter 11 Cases in furtherance of that strategy with the goal of consummating a section 363 sale of their operating assets to the highest or otherwise best bidder.

## PRELIMINARY STATEMENT

8. By this Motion, the Debtors seek approval of the Bidding Procedures and related relief to facilitate the marketing and sale of the Assets under section 363 of the Bankruptcy Code. The Debtors file this Motion to facilitate the marketing and sale of the Assets through an open process that protects the best interests of the Debtors' estates and creditors and preserves the Debtor's ability to exercise its fiduciary duties throughout the Sale process (the "Sale Process").

9. With the assistance of their proposed oil and gas assets broker, Detring & Associates, LLC ("Detring"), and in consultation with their major stakeholders, the Debtors will continue its marketing process to identify one or more parties interested in pursuing a Sale of the Assets.

10. The Bidding Procedures provide the formal framework for a Sale and have been structured to elicit value-maximizing bids for the Assets. Among other things, the Bidding Procedures: (a) set forth the timeline for the Sale Process that is reasonable and appropriate to produce value-maximizing bids for the Assets and are consistent with the milestones set forth in the DIP Order[2]; (b) establish the basic rules for submitting bids for the purchase of the Debtors' Assets; (c) provide parameters for the selection of a Stalking Horse Bidder; and (d) provide creditor groups with consultation rights at various stages in the process. The proposed Bid Procedures comply with the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and, therefore, should be approved.

11. Consistent with the Debtors' need to consummate a Sale as efficiently as possible, the Debtors propose the following key dates and deadlines for the Sale Process:[3]

| EVENT | PROPOSED DATE |
|---|---|
| Bidding Procedures Objection Deadline | December 5, 2024, at 4:00 p.m. (ET) |
| Bidding Procedures Hearing | December 12, 2024, 11:30 a.m. (ET) |
| Deadline to File and Serve Assumption Notice | December 16, 2024 |
| Deadline to File and Serve Consent Right Holder Notice | December 16, 2024 |
| Deadline to File and Serve Auction and Sale Notice | December 16, 2024 |
| Deadline to Publish Auction and Sale Notice | Seven (7) days after entry of the Bidding Procedures Order |

[2] *Interim Order Pursuant to Sections 105, 361, 362, 363, and 364 of the Bankruptcy Code and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (I) Authorizing the Debtors to (A) Use Cash Collateral, (B) Obtain Senior Secured Superpriority Postpetition Financing and Granting Liens and Superpriority Administrative Claims, and (C) Provide Adequate Protection, (II) Scheduling a Final Hearing, and (III) Granting Related Relief* entered November 15, 2024 [D.I. 46] (as supplanted by any final order, the "DIP Order")

[3] The Debtors, consistent with their fiduciary duties, in the exercise of their business judgment reserve the right to modify these dates consistent with the DIP Order to achieve a value-maximizing Sale.

| EVENT | PROPOSED DATE |
|---|---|
| Designation of Stalking Horse Bidder and Execution of Stalking Horse Agreement | Prior to Bid Deadline |
| Deadline to File and Serve Stalking Horse Objections | Three (3) days after designation of Stalking Horse Bidder |
| Contract Objection Deadline | January 6, 2025, at 4:00 p.m. (ET) |
| Deadline to File Consent Rights Objection | January 6, 2025, at 4:00 p.m. (ET) |
| Bid Deadline | January 15, 2025, at 5:00 p.m. (ET) |
| Deadline to Designate Qualified Bids and File Auction Notice | January 17, 2025, at 12:00 p.m. (ET) |
| Auction | January 21, 2025, at 10:00 a.m. (ET) |
| Deadline to File Notice of Successful Bidder and Back-Up Bidder | January 22, 2025 |
| Deadline to Object to Sale | January 24, 2025, at 4:00 p.m. (ET) |
| Adequate Assurance Objection Deadline | January 24, 2025, at 4:00 p.m. (ET) |
| Sale Hearing | January 27, 2025, at 10:00 a.m. (ET) |

12. In addition, as listed in the key dates above and set forth in more detail below, the Debtors seek to establish certain procedures relating to the assumption, assumption and assignment, or transfer of executory contracts and unexpired leases in connection with the Sale. Accordingly, as discussed in detail herein, the Debtors respectfully request entry of the Bid Procedures Order and, after the Sale Hearing, the Sale Order.

## JURISDICTION AND VENUE

13. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final judgment or order absent consent of the parties.

14. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014 and Local Rule 6004-1.

## BACKGROUND

15. On November 13, 2024 (the "Petition Date"), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the "Chapter 11 Cases") under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have been appointed.

16. The Debtors are an independent oil and gas company headquartered in Lafayette, Louisiana. The Debtors are engaged in the exploration, development, acquisition and operation of oil and gas properties in Texas and Louisiana.

17. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail the *Declaration of Angelle Perret in Support of Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration") [Docket No. 16] filed on the Petition Date.[4]

18. As of the Petition Date, the Debtors' primary operating assets consist of their oil and gas leasehold interests, producing properties, and related assets located in Panola County, Texas. The Debtors' remaining assets include, among other things: (i) a single offshore overriding royalty interest, a single well in Oklahoma, and a processing platform located in Thibodeaux,

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

Louisiana, which either have de minimis value or significant associated liabilities, and (ii) tax refunds, accounts receivable, credits, and unliquidated claims, the amount and timing of receipt, if any, of which is unknown.

19. As explained above, the Debtors commenced these Chapter 11 Cases in a controlled manner, but in the shadow of significant liquidity concerns. Indeed, the Debtors' debtor-in-possession lenders have conditioned the Debtors' DIP financing on a timeline designed to move the Debtors expeditiously through the chapter 11 and sale processes in order to minimize administrative expenses, which requires the Debtors to obtain the Sale Order by January 31, 2025.

20. PetroQuest engaged Detring in February 2024 when PetroQuest was in the preliminary stages of considering its strategic options. Detring was familiar with the PetroQuest and its assets, having already marketed the Assets for sale in connection with the earlier, failed process.

21. Beginning in July 2024, Detring commenced in earnest to market the Assets for sale. Detring circulated a teaser to thousands of potential buyers of upstream oil and gas properties. That target list included public oil and gas companies, private equity-backed oil and gas companies, and family office-backed oil and gas companies. Detring also spoke with creditors and interest holders that have sought to provide input regarding the Sale Process, including suggesting additional potential sale targets. Detring was willing—and continues to be willing—to speak with parties in interest regarding the Debtors' ongoing sale efforts.

22. As of October 10, 2024, PetroQuest, through the Detring marketing process, had executed nondisclosure agreements ("NDAs") with sixty-five (65) interested parties. All entities that executed NDAs were provided access to a virtual data room (the "Data Room") containing, among other things, a detailed management presentation describing the Assets, land and reserve

reports, and operational and geological documentation. Parties that requested additional information were provided access to the Debtors' management, consultants, and counsel.

23. After approximately five (5) weeks of active marketing, initial bids from interested parties were due on August 28, 2024. Seven (7) parties submitted bids by that deadline, while others indicated that they would need additional time to prepare their bids. PetroQuest thus extended the bid deadline to August 30, 2024. As of August 30, 2024, eight (8) total bids had been received for the Assets (the "Initial Bidders").

24. In order to maximize value for the Assets and to continue the competitive bidding process, and in a manner consistent with sale practices in the oil and gas industry, Detring then told the Initial Bidders to submit a second "best and final" bid by September 4, 2024. Three (3) bidders submitted enhanced bids by that date, and one (1) new bidder emerged (collectively, the "Second Round Bidders"). The Debtors and their advisors then engaged in discussions with the Second Round Bidders to determine whether they had any ability to increase their purchase price and whether, to the extent part of their bid package, contingencies could be removed so that such bids would serve as a stalking horse bid for purposes of the Sale Process.

25. On September 20, 2024, the Debtors entered into a Non-Binding Offer to Purchase Assets in Carthage Field, Panola County, Texas (the "LOI") with an interested party (the "Presumptive Stalking Horse"),[5] with the goal of giving the parties time to negotiate and execute a purchase and sale agreement that could serve as a "stalking horse" bid in a bankruptcy sale process. PetroQuest and the Presumptive Stalking Horse extended the termination date of the LOI once to allow themselves more time to negotiate the form of agreement, and for the Presumptive

[5] The Debtors are unable to reveal the name of the Presumptive Stalking Horse at this time but will do so in the event that the Debtors and the Presumptive Stalking Horse execute a Stalking Horse Agreement.

Stalking Horse to clear remaining contingencies. Due to the Debtors' liquidity constraints, however, the Debtors commenced these Chapter 11 Cases prior to any agreement being finalized.

26. Subsequent to the Petition Date, the Debtors (through Detring) renewed their marketing process. All parties that Detring had already contacted were contacted again, informed of the Chapter 11 Cases, and given the opportunity to continue or begin their diligence process in the Data Room.

27. As of the filing of this Motion, the Debtors remain in regular contact with the Presumptive Stalking Horse, who is working diligently to be in a position to execute a stalking horse purchase and sale agreement acceptable to the Debtors. The Debtors also are in contact with other parties that have expressed interest in serving as a Stalking Horse Bidder and continue to work towards securing a Stalking Horse that they believe is in the best interests of their creditors and stakeholders. In the event that the Debtors are unable to secure a Stalking Horse Agreement satisfactory to them, the Debtors are prepared to proceed to auction without a Stalking Horse Bidder and have reason to believe that multiple interested parties will compete at the Auction.

28. With the extensive marketing to date (both before and after the Petition Date), the Debtors submit that a lengthy process in these Chapter 11 Cases will not result in any materially better offers than those the Debtors expect to receive prior to the Bid Deadline. Moreover, the Debtors do not have the liquidity to support a prolonged Sale Process and may be unable to complete a Sale if the timeline herein is not approved, to the detriment of their estates and creditors. The Debtors submit that the proposed timeline is reasonable, allows parties more than sufficient time to conduct diligence and engage in the proposed process while accommodating the constraints imposed by the Debtors' liquidity situation, and should be approved.

## I. The Bidding Procedures, the Auction, and the Sale Hearing

29. The Bidding Procedures seek to maximize the value of the Debtors' estates by facilitating an open and competitive sale of the Assets, while taking into account the pressing need for the Debtors to sell the Assets as quickly as possible. Pursuant to the Bidding Procedures, the Debtors will consider bids to acquire the Assets. The Debtors are seeking approval of the Bidding Procedures to establish an open process for the solicitation, receipt, and evaluation of bids on a timeline that allows the Debtors to consummate a Sale of the Assets in a manner that maximizes value for the estates.

30. If the Debtors select a Stalking Horse Bidder prior to the Bidding Procedures Hearing, the Debtors propose to file with the Court a notice (a "Stalking Horse Notice") (a) identifying the Stalking Horse Bidder, the material terms of the bid by the Stalking Horse Bidder (the "Stalking Horse Bid") (including the purchase price and Assets subject to the Stalking Horse Bid), and the amount and form of any bid protections offered to the Stalking Horse Bidder, and (b) attaching a copy of the relevant agreement (the "Stalking Horse Agreement"), and intend to seek approval of the Stalking Horse Agreement at the Bidding Procedures Hearing.

31. Alternatively, if the Debtors do not secure or choose not to accept a Stalking Horse Bid prior to the Bidding Procedures Hearing, the Debtors request authority to later secure one (after the Bidding Procedures Hearing but prior to the Auction). In connection therewith, the Debtors request that they be authorized to provide certain bidding protections to a prospective Stalking Horse Bidder. Accordingly, if required by a prospective Stalking Horse Bidder as a condition to such Stalking Horse Bidder's execution of a Stalking Horse Agreement, the Debtors request authority to enter into a Stalking Horse Agreement that grants the Stalking Horse Bidder (x) a break-up fee of no more than 4.0% of the total cash consideration payable under such Stalking Horse Agreement (the "Break-Up Fee") plus (y) an expense reimbursement for the Stalking Horse

Bidder's reasonable and actual out-of-pocket costs not to exceed $400,000 (the "Expense Reimbursement" and, together with the Break-Up Fee, the "Bid Protections").

32. If the proposed Stalking Horse Agreement seeks bid protections that do not exceed the Bid Protections, and the Stalking Horse Bidder is not an insider (as defined in section 101(31) of the Bankruptcy Code), the Debtors seek authority to submit an order under certification of counsel approving the designation of the Stalking Horse Bidder and Stalking Horse Agreement as a stalking horse without the need for further hearing; *provided, however*, (i) if an objection to the Stalking Horse Notice is filed or (ii) a Stalking Horse Bidder and Stalking Horse Agreement are designated that exceed the amount of the Bid Protections, the Debtors will schedule a hearing prior to the Auction to consider approval of the designation of the Stalking Horse Bidder and Stalking Horse Agreement as a stalking horse to be held on the first date the Court is available.

33. Having the flexibility to designate a Stalking Horse Bidder and provide certain Bid Protections will provide the Debtors with the ability to maximize the value of the Assets. Given the Debtors' desire to maximize value for creditors and other stakeholders, the ability to designate a Stalking Horse Bidder and offer Bid Protections to such bidder (although the Debtors ultimately may, in the exercise of their business judgment, not designate a Stalking Horse Bidder at all) is a reasonable and sound exercise of the Debtors' business judgment and provides an actual benefit to the Debtors' estates.

34. While all interested bidders should read the Bidding Procedures in their entirety, the following sets forth a summary of the key provisions of the Bidding Procedures, including those provisions required to be highlighted under Local Rule 6004-1:[6]

[6] This summary is qualified in its entirety by the Bidding Procedures. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meaning ascribed such term in the Bidding Procedures.

| MATERIAL TERMS OF THE BIDDING PROCEDURES | |
|---|---|
| **Provisions Governing Qualification of Bidders and Qualified Bids**<br>Local Rule 6004-1(c)(i)(A)-(B) | **A. Bid Deadline** – The Bid Deadline to submit a binding and irrevocable offer to acquire the Assets is **January 15, 2025, at 5:00 p.m. prevailing Eastern Time** (**Bidding Procedures, Section III.a.**).<br><br>**B. Access to Diligence Materials –** To participate in the bidding process and receive due diligence information, including full access to the Debtors' electronic data room (the "Data Room") and additional non-public information regarding the Debtors (the "Diligence Materials"), parties interested in receiving due diligence information to participate in the bidding process (each, an "Interested Party") must deliver or have previously delivered to the Debtors, if determined to be necessary by the Debtors in their sole discretion, the Preliminary Bid Documents (as defined herein) to the following parties (the "Recipient Parties"):<br><br>(i) counsel to the Debtors: Cole Schotz P.C., 1325 Avenue of the Americas, 19th Floor, New York, NY 10019, Attn: Daniel F.X. Geoghan (dgeoghan@coleschotz.com), Jacob S. Frumkin (jfrumkin@coleschotz.com), and Daniel J. Harris (dharris@coleschotz.com); and<br><br>(ii) advisors to the Debtors: Detring & Associates, LLC, 1885 St. James Place, Suite 1200, Houston, TX 77056, Attn: Jonathan Bristal (jonathan@detring.com).<br><br>The "Preliminary Bid Documents" that must be submitted to the Recipient Parties include: (a) an executed confidentiality agreement using the Debtors' form, as may be amended, on terms acceptable to the Debtors, to the extent not already executed (a "Confidentiality Agreement") and (b) a statement and/or other factual support demonstrating to the Debtors' satisfaction in the exercise of their reasonable business judgment that the Interested Party has a *bona fide* interest in purchasing all or any portion of the Assets. Any Interested Party who, in the Debtors' determination, qualifies for access to the Diligence Materials shall be deemed a "Potential Bidder."<br><br>The Debtors will provide any Potential Bidder such due diligence access or additional information as the Debtors deem appropriate, which may include, without limitation, the right to withhold, restrict, or to delay providing any Diligence Materials to a Potential Bidder that the Debtors, in their reasonable discretion, determine are, among other things, business-sensitive, may risk unduly placing the Debtors at a competitive disadvantage, or are otherwise inappropriate for disclosure to such Potential Bidder at such time.<br><br>The Potential Bidder shall return or destroy any non-public information the Debtors or their advisors provided to the Potential Bidder in accordance with the terms of the confidentiality agreement executed by the Debtors and the Potential Bidder. **(Bidding Procedures, Section I.b.)** |

| | |
|---|---|
| | **C. Form of Purchase and Sale Agreement and Sale Approval Order** - A Potential Bidder must submit (a) a proposed asset purchase agreement (a "Purchase and Sale Agreement"), similar in form and substance, as modified, to the purchase and sale agreement to be furnished by the Debtors in the Data Room (the "Form PSA") or the Stalking Horse Agreement, as applicable, accompanied by a comparison of the Purchase and Sale Agreement to the Form PSA or the Stalking Horse Agreement, as applicable, and (b) a proposed Sale Approval Order, similar in form and substance, as modified, to the Sale Approval Order to be furnished by the Debtors in the Data Room (the "Form Sale Approval Order"), accompanied by a comparison of the Sale Approval Order to the Form Sale Approval Order. **(Bidding Procedures, Section II.b.)**<br><br>**D. Qualified Bids** - To be eligible to participate in the Auction and to be eligible for consideration as a Qualified Bidder, a Potential Bidder must deliver a Bid, so as to be received by the Recipient Parties on or before the Bid Deadline, that meets the following requirements (collectively, the "Bid Conditions"):<br><br>• **Purpose and Identity of Assets to be Purchased.** Each Bidder must state that the Bid includes an offer by the Bidder to effectuate a Sale Transaction and identify with specificity which Assets are included in the Bid.<br><br>• **Good Faith Deposit.** Each Bid must be accompanied by a cash deposit (the "Good Faith Deposit") in the form of a wire transfer, certified check, or cash payable to the order of counsel pursuant to instructions to be provided by the Debtors equal to 10% of the Bidder's proposed Purchase Price (as defined herein), which will be held in a non-interest-bearing escrow or trust account.<br><br>• **Purchase Price.** Each Bid must clearly set forth the purchase price (the "Purchase Price") and which liabilities, if any, of the Debtors the Bidder is agreeing to assume (the "Assumed Liabilities"). The Purchase Price must provide for (i) an aggregate amount of cash sufficient to pay all DIP Obligations (as defined in the DIP Order[7]) outstanding at the closing in full, and (ii) the payment of all cure amounts and all other amounts required to effect the assumption and assignment of all applicable executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code. The Purchase Price associated with each Bid may include only cash and/or other consideration acceptable to the Debtors after consultation with the Consultation Parties. If a Stalking Horse Bidder has been selected for all or any |

[7] *Interim Order Pursuant to Sections 105, 361, 362, 363, and 364 of the Bankruptcy Code and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (I) Authorizing the Debtors to (A) Use Cash Collateral, (B) Obtain Senior Secured Superpriority Postpetition Financing and Granting Liens and Superpriority Administrative Claims, and (C) Provide Adequate Protection, (II) Scheduling a Final Hearing, and (III) Granting Related Relief* entered November 15, 2024 [D.I. 46] (as supplanted by any final order, the "DIP Order").

| | |
|---|---|
| | portion of the Assets, the cash offer of any other Qualified Bid with respect to all or any portion of the Assets must be no less than an amount equal to or in excess of the sum of: (i) the Stalking Horse Bid; (ii) the Expense Reimbursement; (iii) the Break-Up Fee; and (iv) the Minimum Increment (as defined herein) (a "Topping Bid").<br><br>• **Binding and Irrevocable.** Each Bid must include a signed writing stating that it is binding and irrevocable until the selection of the Successful Bidder, provided that if such Bidder is selected as the Successful Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale with the Successful Bidder or, as applicable, the Back-Up Bidder (the "Closing").<br><br>• **Contemplated Transaction Documents.** Each Bid must include an executed Purchase and Sale Agreement marked against the Form APA or the Stalking Horse Agreement, as applicable pursuant to which the Qualified Bidder proposes to effectuate the contemplated Sale Transaction including: (i) a redlined copy of the Purchase and Sale Agreement marked to show all changes requested by the Qualified Bidder against the Form PSA or the Stalking Horse Agreement, as applicable; (ii) specification of the proposed Purchase Price allocated, if applicable; and (iii) any changes to any exhibits or schedules to the Purchase and Sale Agreement (collectively, the "Contemplated Transaction Documents"). The terms and conditions of the Contemplated Transaction Documents must be, in the aggregate, not materially more burdensome to the Debtors than the provisions contained in any applicable Stalking Horse Agreement. A Bid must identify with particularity each and every condition to Closing and all executory contracts and unexpired leases the Bidder expects the Debtors to assume and assign to the Bidder (the "Assigned Contracts") pursuant to the Contemplated Transaction Documents. All Bids must provide that all Cure Amounts (as defined herein) will be paid by such Bidder. ***The Contemplated Transaction Documents must include a commitment to close by no later than February 6, 2025***.<br><br>• **Contingencies.** A Bid may not be conditioned on obtaining financing or any internal approval or on the outcome or completion of due diligence, but may be subject to the accuracy in all material respects at Closing of representations and warranties at or before Closing in the Purchase and Sale Agreement. A Bid must disclose any governmental approvals identified by the Potential Bidder other than as set forth in the Contemplated Transaction Documents that may impact the evaluation of such Bid.<br><br>• **No Collusion.** Each Bid must include a representation that the Bidder has not engaged in any collusion with respect to its Bid submission (though Potential Bidders are permitted to make joint bids) and that the Bidder will not engage in any collusion with respect to any Bids, the Auction, or the Sale Process. |

| | |
|---|---|
| | • **Authorization to Bid and Identity of Bidder**. Each Bid must include evidence of authorization and approval from such Potential Bidder's board of directors (or comparable governing body, or a statement as to why such approval is unnecessary) with respect to the submission, execution, delivery, and closing of the Contemplated Transaction Documents. A Bid must also fully disclose the identity of the entity that is submitting the Bid, including the identity of the ultimate beneficial owners of the Bidder and the identity of any person or entity providing debt or equity financing for the Bid.<br><br>• **Financing Sources**. Each Bid must include written evidence that demonstrates the Potential Bidder has the necessary financial ability to close the contemplated Sale Transaction and provide adequate assurance of future performance under all Transferred Contracts. Such information may include, *inter alia*, the following:<br><br>1. the Potential Bidder's current financial statements (audited, if they exist);<br><br>2. contact names, telephone numbers, and e-mail addresses for verification of financing sources;<br><br>3. evidence of the Potential Bidder's internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated Sale Transaction (including confirmation that the funding of such commitments is not subject to any contingency);<br><br>4. proof by the Potential Bidder of its financial capacity to close its proposed Sale Transaction(s), which may include written representations of the Potential Bidder's financial wherewithal or financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring all or any portion of the Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors (including in consultation with their advisors); and<br><br>5. any other form of financial disclosure of credit-quality support information acceptable to the Debtors demonstrating that such Potential Bidder has the ability to close the contemplated Sale Transaction.<br><br>• **Adequate Assurance of Future Performance**. Each Bid must demonstrate, in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, that the potential Bidder can provide adequate assurance of future performance to the applicable counterparty under all Transferred Contracts as required by section 365 of the Bankruptcy Code. |

| | |
|---|---|
| | • **No Fees Payable to Qualified Bidder.** Other than any Stalking Horse Bidder(s), a Bidder may not request any break-up fee, termination fee, expense reimbursement, or any similar type of payment. Moreover, by submitting a Bid, a Bidder shall be deemed to waive the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code relating in any way to the submission of its Bid, compliance with the Bid Procedures, or participation in the Sale Process.<br><br>• **Payment of the Break-Up Fee and Expense Reimbursement.** If a Stalking Horse Bidder has been selected for all or any portion of the Assets that are the subject of a Bid, a Bid must allow for the payment of the Break-Up Fee and Expense Reimbursement to the applicable Stalking Horse Bidder from the first proceeds of the cash portion of the Purchase Price of such Bid upon Closing to the extent the Bid overlaps with the Stalking Horse Bid in regard to the Assets included in such Bid. The applicable Bid Protections will only be earned by the applicable Stalking Horse Bidder if the Successful Bidder has Overbid (as defined herein) the Stalking Horse Bidder on the same Assets included in the applicable Stalking Horse Bid and will only be payable at the Closing of the applicable Sale Transaction to the Successful Bidder.<br><br>• **Non-Reliance.** A Bid must include an acknowledgement and representation of the Potential Bidder that it has had an opportunity to conduct any and all due diligence regarding the Assets (as applicable to its Bid) and Assumed Liabilities prior to making its Bid, that it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely upon any written or oral statements, representations, warranties, or guaranties, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or, as applicable, the physical condition of the Assets, the Assumed Liabilities, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Contemplated Transaction Documents.<br><br>• **As Is, Where Is.** A Bid must include an acknowledgement and representation of the Potential Bidder that it understands that any Sale Transaction shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents, or the estates except to the extent set forth in the Purchase Agreement of the Successful Bidder.<br><br>**(Bidding Procedures, Section III.b.(i)-(xiv))** |

| | |
|---|---|
| **Provisions Providing Bid Protections to "Stalking Horse" or Initial Bidder** Local Rule 6004- 1(c)(i)(C) | The Debtors may, pursuant to these Bid Procedures, after consultation with the Consultation Parties, (i) designate a Qualified Bidder that submits a Qualified Bid for all or any portion of the Assets a stalking horse bidder (the "Stalking Horse Bidder"), whose Qualified Bid shall serve as a stalking horse bid ("Stalking Horse Bid"), and (ii) execute, subject to higher or otherwise better offers, one or more purchase agreements memorializing the proposed transaction set forth in the Stalking Horse Bid (a "Stalking Horse Agreement"), which may include: (x) a break-up fee of no more than 4.0% of the total cash consideration payable under such Stalking Horse Agreement (the "Break-Up Fee") plus (y) an expense reimbursement for the Stalking Horse Bidder's reasonable and actual out-of-pocket costs not to exceed $400,000 (the "Expense Reimbursement" and, together with the Break-Up Fee, the "Bid Protections").<br><br>To the extent the Debtors, consistent with these Bidding Procedures, determine to offer Bid Protections to a Stalking Horse Bidder, the Debtors shall disclose such Bid Protections in a corresponding notice designating such Stalking Horse Bidder (the "Stalking Horse Notice") to be filed with the Court. A Stalking Horse Notice, if filed, shall also include (a) a copy of the Stalking Horse Agreement; (b) an appropriate declaration in support of the proposed Bid Protections (the "Bid Protections Declaration"); and (c) a proposed form of order approving the Bid Protections (the "Stalking Horse Order"). Any objection to (i) the Bid Protections set forth in the Stalking Horse Notice, or (ii) the form of Stalking Horse Order (a "Stalking Horse Objection"), shall be filed **no later than three (3) calendar days after the filing of the Stalking Horse Notice**; *provided*, *however*, any such Stalking Horse Objection shall be limited to whether the Stalking Horse Notice and Stalking Horse Order are consistent with the Bid Protections provided for herein. If a timely Stalking Horse Objection is filed, the Debtors are authorized to file a notice seeking an expedited hearing with respect to the Stalking Horse Objection and such hearing will be set by the Court as it determines necessary. Absent any timely Stalking Horse Objection, the Court may enter the Stalking Horse Order without further hearing.<br><br>**(Bidding Procedures, Section II.a.)** |
| **Provisions Governing the Auction** Local Rule 6004-1(c)(ii) | To the extent the Debtors receive Qualified Bids and determine to proceed to Auction, the Debtors, after consultation with the Consultation Parties, shall determine which Qualified Bid represents the then highest or otherwise best Bid for all or any subset of the Assets, as applicable (the "Baseline Bid"). The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitute the Successful Bid (as defined herein) shall take into account any factors the Debtors, after consultation with the Consultation Parties, reasonably deem relevant to the value of the Qualified Bid to their estates, including, *inter alia*: (a) the amount and nature of the consideration; (b) the certainty of closing; (c) the net economic effect of any changes to the value to be received by the Debtors' creditors from the proposed Sale Transaction; (d) the allocation of the Purchase Price between or among Assets; (e) tax consequences of such Qualified Bid; and (f) any other quantitative or qualitative criteria available to assess such Bid (collectively, the "Bid Assessment Criteria"). If the Debtors, pursuant to these Bidding Procedures, designate a Stalking Horse Bidder, the Baseline Bid, to the extent not the Stalking Horse |

| | |
|---|---|
| | Bid, must be not less than the Purchase Price of the Stalking Horse Bid *plus* (ii) the Break-Up Fee *plus* (iii) the Expense Reimbursement *plus* (iv) the Minimum Increment (as defined herein).<br><br>No later than Noon (prevailing Eastern Time) two (2) days preceding the Auction, the Debtors shall file a notice on the Court's docket (an "Auction Notice") providing (i) notice of the location of the Auction; and (ii) notice of whether the Debtors believe, in the exercise of their business judgment after consultation with the Consultation Parties, that the Auction should be held in two or more parts over multiple days so as to maximize value for the estate.<br><br>Unless otherwise designated by the Debtors, after consultation with the Consultation Parties, the Auction shall commence at ***10:00 a.m. (Eastern Time) on January 21, 2025,*** at a location to be designated in the Auction Notice. In the Debtors' discretion, the Auction may be held by telephonic or video conference.<br><br>The Auction shall be conducted according to the following procedures:<br><br>• **Participation in the Auction.** Only the Stalking Horse Bidder, Qualified Bidders that have submitted Qualified Bids, and the Consultation Parties (through their counsel) are eligible to participate at the Auction. Only the authorized representatives and professional advisors of each of the Qualified Bidders, the Stalking Horse Bidder, the Debtors, the Consultation Parties, the United States Trustee for the District of Delaware, and any other party in interest shall be permitted to attend the Auction.<br><br>Except as otherwise set forth herein, the Debtors, after consultation with the Consultation Parties, may conduct the Auction in the manner they determine will result in the highest or best offer for the Assets in accordance with the Bid Procedures.<br><br>• **The Debtors Shall Conduct the Auction.** The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of any Baseline Bid. All Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Bid shall be fully disclosed to all other Qualified Bidders. The Debtors reserve the right to conduct the Auction, after consultation with the Consultation Parties, in the manner designed to maximize value based upon the nature and extent of the Qualified Bids received in accordance with the Bid Procedures, the Bid Procedures Order, the Bankruptcy Code, and any other order of the Court entered in connection herewith and disclosed to each Qualified Bidder. The Debtors shall maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid. Pursuant to Local Rule 6004-1, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the Sale Process, the Bid Procedures, the Auction, or the proposed Sale Transaction. |

| | |
|---|---|
| | • **Terms of Overbids.** An "Overbid" is any bid made at the Auction by a Qualified Bidder subsequent to the Debtors' announcement of the applicable Baseline Bid that satisfies the following conditions:<br><br>(i) Minimum Increment. During the Auction, bidding shall begin with the Baseline Bid. In consultation with the Consultation Parties, the initial Overbid after the Baseline Bid (the "Initial Overbid") shall be made in an increment announced on the record prior to the start of the Auction (the "Minimum Increment") *plus*, solely in the event the Baseline Bid is a Stalking Horse Bid, (i) the Break-Up Fee *plus* (ii) the Expense Reimbursement. Any Overbids subsequent to the Initial Overbid shall be made in increments of at least the applicable Minimum Increment; *provided, however*, that any Overbids by the Stalking Horse Bidder shall only be required to be equal to the sum of (x)(1) the Baseline Bid or the then existing highest Bid *plus* (2) the Minimum Increment *less* (y) the sum of the amount of the Bid Protections. After setting the Minimum Increment, such amount may be adjusted in response to bidding activity.<br><br>Any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless the Debtors, after consultation with the Consultation Parties, accept a higher Qualified Bid as an Overbid.<br><br>(ii) Consideration of Overbids. The Debtors reserve the right, after consultation with the Consultation Parties, to make one or more adjournments in the Auction to, among other things: facilitate discussions between the Debtors and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed; and give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in the exercise of their business judgment and after consultation with the Consultation Parties, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed Sale Transaction at the prevailing Overbid amount.<br><br>(iii) Evidence of Ability to Close Sale Transactions. To the extent not previously provided on or before the Bid Deadline, a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, evidence reasonably acceptable to the Debtors, after consultation with the Consultation Parties, demonstrating such Qualified Bidder's ability to close the Sale Transaction proposed by such Overbid. |

| | |
|---|---|
| | • **Additional Procedures.** The Debtors, after consultation with the Consultation Parties, may (a) determine which Qualified Bid or Qualified Bids, if any, is the highest or best offer for all or any portion of the Assets, (b) reject at any time before entry of an order of the Court approving a Sale Transaction of all or any portion of the Assets pursuant to a Qualified Bid, any Bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures, or the Bid Procedures Order; or (iii) contrary to the best interest of the Debtors, their estates, and their creditors, (c) modify the Bid Procedures in response to the bidding activity at the Auction.<br><br>• **Consent to Jurisdiction as Condition to Bidding.** All Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Court and to have waived any right to a jury trial in connection with any disputes relating to the Sale process, the Auction, the Bidding Procedures, and the construction and enforcement of each Qualified Bidder's Contemplated Transaction Documents, as applicable.<br><br>• **Closing the Auction.** The Auction shall continue until there is only one Qualified Bid for the Assets that the Debtors determine, in the exercise of their business judgment and after consultation with the Consultation Parties, is the highest or otherwise best Qualified Bid (such Qualified Bid, the "Successful Bid", and such Qualified Bidder, the "Successful Bidder"), and that further bidding is unlikely to result in a higher or otherwise better Qualified Bid, at which point, the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction. In selecting the Successful Bid, the Debtors, after consultation with the Consultation Parties, may consider all factors relevant to the sale of the Assets, including the Bid Assessment Criteria.<br><br>Upon the closing of the Auction, the Debtors, after consultation with the Consultation Parties, shall identify the Successful Bidder and the Successful Bid and the Back-Up Bidder and Back-Up Bid as soon as reasonably practicable which highest or best offer will provide the greatest amount of net value to the Debtors, and advise the Qualified Bidders of such determination.<br><br>The Qualified Bidder with the second highest or otherwise best Bid at the Auction, as determined by the Debtors, after consultation with the Consultation Parties, shall be required to serve as the back-up bidder (the "Back-Up Bidder"). The identity of the Back-Up Bidder and the amount and material terms of the final Bid of the Back-Up Bidder (the "Back-Up Bid") shall be announced by the Debtors at the conclusion of the Auction at the same time the Debtors announce the Successful Bid. Any Back-Up Bidder shall keep its Back-Up Bid open and irrevocable until the Closing of the Sale Transaction with the Successful Bidder, unless otherwise agreed by the Debtors, in consultation with the Consultation Parties. The |

| | |
|---|---|
| | Good Faith Deposit of the Back-Up Bidder shall be returned by the Debtors within three (3) days after Closing.<br><br>Within one (1) business day after the close of the Auction, the Successful Bidder shall supplement the Successful Bidder' Good Faith Deposit such that the Good Faith Deposit shall be equal to an amount that is ten percent (10%) of the Purchase Price of the Successful Bid.<br><br>The Debtors shall not consider any Bids or Overbids submitted after the closing of the Auction and any and all such Bids and Overbids shall be deemed untimely.<br><br>As stated above, the Successful Bid of the Successful Bidder and the Back-Up Bid of the Back-Up Bidder, respectively, must be irrevocable until Closing.<br><br>For the avoidance of doubt, nothing in the Bidding Procedures, including, without limitation, the auction procedures, prevents the Debtors from exercising their respective fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors in consultation with their outside legal counsel).<br><br>**(Bidding Procedures, Section IV.)** |

## II. Form and Manner of Notice

35. As soon as reasonably practicable after entry of the Bidding Procedures Order, the Debtors will serve the Sale Notice, the Bidding Procedures Order, and the Bidding Procedures upon the following parties or their respective counsel, if known (collectively, the "Notice Parties"): (i) the U.S. Trustee; (ii) counsel to the Debtors' prepetition and DIP lenders, Faegre Drinker Biddle & Reath LLP, 1177 Avenue of the Americas, 41st Floor, New York, New York 10036, Attn: James H. Millar (james.millar@faegredrinker.com) and Laura E. Appleby (laura.appleby@faegredrinker.com;) (iii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (iv) the United States Attorney's Office for the District of Delaware; (v) the Internal Revenue Service; (vi) the attorneys general for the states in which the Debtors operate; (vii) any parties known or reasonably believed to have expressed an interest in the Debtors' assets; (viii) all entities known or reasonably believed to have asserted a lien,

encumbrance, claim, or other interest in any of the Debtors' assets; and (ix) any party that has requested notice pursuant to Bankruptcy Rule 2002.

36. Additionally, as soon as practicable after entry of the Bidding Procedures Order, the Debtors shall publish a notice, substantially in the form of the Sale Notice, on one occasion, in the national edition of *USA Today* (or another national publication). This publication notice will provide notice of the sale to any other interested parties whose identities are unknown to the Debtors.

37. The Debtors submit that the Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed sale, including: (a) the date, time, and place of the Auction (if one is held); (b) the Bidding Procedures and the dates and deadlines related thereto; (c) the dates and deadlines related to the Sale Hearing; and (d) instructions for promptly obtaining a copy of the any Stalking Horse Agreement. Accordingly, the Debtors request that the form and manner of the Sale Notice be approved and that the Court determine that no other or further notice of the Auction or Sale Hearing is required.

## III. Specific Notice to Holders of Alleged Consent Rights

38. The Debtors also seek approval of specific notice to holders of alleged approval rights, consent rights, preferential purchase rights, rights of purchase, rights of first refusal, rights of first offer, tag-along rights, or similar rights (the "Alleged Consent Rights"). In order to ensure that all holders of Alleged Consent Rights receive proper notice of the Sale, on or prior to **December 16, 2024**, the Debtors shall serve a notice (the "Consent Right Holder Notice"), in substantially the form attached hereto as **Exhibit 3**, via overnight delivery on all holders of Alleged Consent Rights.

39. The Consent Right Holder Notice makes clear that any person or entity who fails to timely file a Consent Rights Objection by the Consent Rights Objection Deadline shall be forever barred from objecting to the transfer, sale, assumption, and/or assignment of the Debtors' right, title, and interest in, to and under the Assets to be sold, assumed, and/or assigned in connection with the Sale on account of its Alleged Consent Rights. Further, the Consent Right Holder Notices advise holders of Alleged Consent Rights that if any person or entity timely files a Consent Rights Objection in accordance with the Bidding Procedures Order, the Debtors and other parties in interest shall have the opportunity (but are not required) to object to any Alleged Consent Rights asserted by such person or entity in the Consent Rights Objection by filing a response thereto with the Bankruptcy Court (and serving such response on the person or entity that filed the Consent Rights Objection) no later than **January 6, 2025, at 4:00 p.m. (prevailing Eastern Time)**.

40. The Debtors submit that notice to the holders of the Alleged Consent Rights is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale Transaction and the impact of failing to file a Consent Right Objection. Accordingly, the Debtors request that the Consent Right Holder Notice and related procedures be approved and that the Court determine that no other or further notice to holders of Alleged Consent Rights is required.

## IV. Assumption and Assignment of Executory Contracts and Unexpired Leases

41. To facilitate the Sale, the Debtors seek authority to assume and assign Contracts and Leases (the "Assigned Contracts") designated by the successful bidder to the successful bidder. The Debtors seek authority to assume and assign the Assigned Contracts to the successful bidder in accordance with the assumption and assignment procedures set forth below (the "Assumption Procedures"), to govern the assumption and assignment of all of the Debtors' executory contracts and unexpired leases to be assumed and assigned in connection with the Sale,

subject to the payment of any payments necessary to cure any defaults arising under any Assigned Contract (the "Cure Payments"). The Assumption Procedures are as follows:[8]

a. **Contract Assumption Notice.** On or prior to **December 16, 2024**, the Debtors shall file with the Court and serve a notice of contract assumption (the "Assumption Notice"), in substantially the form attached hereto as **Exhibit 4**, via overnight delivery on all counterparties to all potential Assigned Contracts (each, a "Counterparty" and, collectively, the "Counterparties"). The Assumption Notice shall include, without limitation, a list of Assigned Contracts (the "Assigned Contract List") that may be assumed and assigned in connection with the Sale and the Cure Payment, if any, that the Debtors believe is required to be paid to the applicable Counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B) for each of the Assigned Contracts. If no Cure Payment is listed on the Assigned Contracts List for a particular Assigned Contract, the Debtors' asserted Cure Payment for such Assigned Contract shall be deemed to be $0.00. The Assigned Contracts List shall identify each of the potential Assigned Contracts by the name or appropriate description and date of such potential Assigned Contract (if available), the Counterparties and the address of such Counterparties for notice purposes. Service of an Assumption Notice does not constitute an admission that such contract is an executory contract or unexpired lease or that such stated Cure Payment constitutes a claim against the Debtors or a right against the Successful Bidder (all rights with respect thereto being expressly reserved). Further, the inclusion of a contract or lease on the Assumption Notice is not a guarantee that such contract will ultimately be assumed and assigned.

b. **Contract Objections**. Objections, if any, to the proposed assumption and assignment of a contract or lease, including objections to Cure Payments (each, as defined above, a "Contract Objection"), must (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules, and the Local Rules, (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Payment, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court and served by the Objection Notice Parties before the Sale Objection Deadline, except as otherwise set forth below with respect to Subsequently Designated Assigned Contracts. If such Contract Objection has not been resolved prior to the closing of the Sale (whether by an order of the Court or by agreement with the Counterparty), the Successful Bidder may (a) treat such Counterparty's contract or lease as part of assets excluded from the

[8] This summary is qualified in its entirety by the Bidding Procedures Order. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meaning ascribed such term in the Bidding Procedures Order. To the extent there are any conflicts or inconsistencies between this summary and the Bidding Procedures Order, the terms of the Bidding Procedures Order shall govern in all respects.

Sale Transaction or (b) temporarily treat the Counterparty's contract or lease as part of assets excluded from the Sale Transaction (a "Designated Agreement"), proceed to the closing of the Sale with respect to all other Assets, and determine whether to treat the Designated Agreement as an Assigned Contract, or part of assets excluded from the Sale Transaction within ten (10) business days after resolution of such objection (whether by order of the Court or by agreement of the applicable Successful Bidder, the Counterparty, and the Debtors).

c. **Changes to Assigned Contract List and Cure Payments.** At the election of the Successful Bidder, up until two (2) business days prior to the closing of any Sale, the Debtors may file and serve supplements or amendments to the Assigned Contracts List (each, a "Supplemental Assumption Notice") to (i) add previously omitted Assigned Contracts to the Assigned Contracts List as contracts that may be assumed and assigned to a Successful Bidder in accordance with the definitive agreement for the Sale by filing a supplement to the Assigned Contracts List or (ii) modify the Cure Payment for any Assigned Contract (together, "Subsequently Designated Assigned Contracts"). Contract Objections with respect to Subsequently Designated Assigned Contracts shall be filed no later than ten (10) days from service of a Supplemental Assumption Notice identifying the Subsequently Designated Assigned Contracts and served on the Objection Notice Parties (the "Subsequently Designated Assigned Contracts Deadline"). Such objections must (a) be in writing, (b) comply with the applicable provisions of the Bankruptcy Rules, and the Local Rules, (c) state, with specificity, the legal and factual bases thereof, and (d) be filed with the Court and served by the Objection Notice Parties. Any party or entity who fails to timely and properly make an objection with respect to the Subsequently Designated Assigned Contracts on or before the Subsequently Designated Assigned Contracts Deadline shall be forever barred from asserting any objection with respect to the Subsequently Designated Assigned Contracts.

d. **Removal of Contracts from Assigned Contract List.** Up until two (2) business days prior to Closing, the Debtors are authorized, but not directed, if the Purchaser so requests, to remove an Assigned Contract from the Assigned Contract List that a successful bidder proposes be assumed and assigned in connection with the Sale.

e. **Assigned Contracts.** At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to the Successful Bidder of the Assigned Contracts, subject to the dispute resolution procedures set forth in paragraph 17.b in the Bidding Procedures Order; *provided that*, in the event the Successful Bidder is not the Stalking Horse Bidder, objections to adequate assurance of future performance of the Assigned Contracts by such Successful Bidder shall be heard at a subsequent hearing, as set forth in paragraph 17.b in the Bidding Procedures Order. The inclusion of an Assigned Contract on an Assumption Notice will not (a) obligate the

Debtors to assume any Assigned Contract listed thereon nor the Successful Bidder to take assignment of such Assigned Contract or (b) constitute any admission or agreement of the Debtors that such Assigned Contract is an executory contract.

f. **Back-Up Bidder Adequate Assurance Objections.** In the event that a Successful Bidder does not consummate the Sale and a Back-Up Bidder (other than the Stalking Horse Bidder) has been previously identified, the Debtors shall file with the Court and post on the case website, https://cases.stretto.com/PetroQuest/, a Notice of Intent to Proceed with Back-Up Bid, together with a copy of the Back-Up Bidder's proposed purchase agreement and financial and other information regarding adequate assurance of future performance of the Assigned Contracts by the Back-Up Bidder (including the name of the Back-Up Bidder and description of its business), and serve the Notice of Intent to Proceed with Back-Up Bid on the Counterparties by overnight delivery, and the Counterparties shall have seven (7) days to file and serve on the Objection Notice Parties a Contract Objection solely on the basis of adequate assurance of future performance by the Back-Up Bidder. If any objections are filed, the Debtors shall schedule a hearing, which may be expedited, upon reasonable notice under the circumstances (which shall be no less than ten (10) days after the Notice of Intent to Proceed with Back-Up Bid is filed), with respect to such Contract Objections.

g. **Contract Assumption at Closing.** No Assigned Contract shall be deemed assumed and assigned pursuant to section 365 of the Bankruptcy Code until the later of (i) the date the Court has entered an order authorizing the assumption and assignment of such Assigned Contracts or (ii) the date the Sale has closed.

42. Any party failing to timely and properly file an objection to the Cure Payment or the proposed assumption and assignment of an Assigned Contract listed on the Contract Assumption Notice is deemed to have consented to (a) such Cure Payment, (b) the assumption and assignment of such Assigned Contract, (c) the related relief requested in the Motion, and (d) the Sale. Such party shall be forever barred and estopped from objecting to the Cure Payments, the assumption and assignment of the Assigned Contract, adequate assurance of future performance, the relief requested in the Motion, whether applicable law excuses such counterparty from accepting performance by, or rendering performance to, the Successful Bidder for purposes of section 365(c)(1) of the Bankruptcy Code, and from asserting any additional cure or other amounts

against the Debtors and the Successful Bidder, as applicable, with respect to such party's Assigned Contract.

43. To provide the Counterparties with information concerning the Successful Bidder and any Back-Up Bidder who may take assignment of their contracts or leases and enable them to object to such assignment on adequate assurance grounds (to the extent the Successful Bidder/Back-Up Bidder is not a Stalking Horse Bidder), on **January 22, 2025**, the Debtors shall file with the Court and serve on all Counterparties by email (where available) or overnight delivery the Notice of Successful Bidder substantially in the form attached as **Exhibit 5** to the Bidding Procedures Order.

## V. Disclosures Under Local Rule 6004-1(b)

44. Local Rule 6004-1(b) requires, among other things, that any motion to sell property of the estate pursuant to section 363 of the Bankruptcy Code attach "[a] copy of the proposed purchase agreement, or a form of such agreement substantially similar to the one the debtor reasonably believes it will execute in connection with the proposed sale [and a] copy of a proposed form of sale order." Del. Bankr. L. R. 6004-1(b). As set forth above, the Debtors and their professionals have commenced an aggressive marketing of the Assets. Nevertheless, the Debtors do not, as yet, have a signed agreement that it believes it will reasonably execute. Moreover, because the Debtors continue to negotiate with parties in interest, they cannot, as yet, identify, with any reasonable specificity, the terms of the sale of the Assets. Accordingly, the Debtors are unable, at this time to file any agreement or make the disclosures required under Local Rule 6004-1(b). However, in the event the Debtors secure a Stalking Horse Bidder, the Debtors will file the Stalking Horse Agreement and make the requisite disclosures in the Stalking Horse Notice.

## BASIS FOR RELIEF

### I. Approval of the Sale is Appropriate Under Section 363 of the Bankruptcy Code.

45. Section 363 of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . ." 11 U.S.C. § 363(b)(1). A debtor must demonstrate a sound business justification for the sale or use of assets outside the ordinary course of business. *See, e.g.*, *Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *Dai Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175 76 (D. Del. 1991).

46. Once a court determines that a valid business justification exists for a sale outside of the ordinary course of business, courts must determine whether: (a) adequate and reasonable notice of the sale was given to interested parties, (b) the sale will produce a fair and reasonable price for the property, and (c) the parties have acted in good faith. *In re Elpida Memory, Inc.*, No. 12-10947 (CSS), 2012 WL 6090194, at *5 (Bankr. D. Del. Nov. 20, 2012); *In re Exaeris Inc.*, 380 B.R. 741, 744 (Bankr. D. Del. 2008). As described below, the proposed Sale meets each of these requirements.

### II. The Sale Represents a Sound Exercise of Debtors' Business Judgment.

47. Here, a strong business justification exists for the Sale. As described above and in the First Day Declaration, the Debtors have determined, in consultation with their advisors and following a review of their financial alternatives and strategies, that a sale process is the most effective way to maximize value for all stakeholders. As a result, an expeditious sale of the Assets is a reasonable exercise of the Debtors' business judgment and is in the best interests of all of the Debtors' stakeholders.

## III. Bidding Procedures are Fair and Designed to Maximize Value.

48. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Dura Auto. Sys., Inc.,* Case No. 06-11202 (KJC), 2007 WL 7728109, at *90 (Bankr. D. Del. Aug. 16, 2007); *see also In re Mushroom Transp. Co., Inc.,* 382 F.3d 325, 339 (3d Cir. 2004) (debtor-in-possession "had a fiduciary duty to protect and maximize the estate's assets"); *Official Comm. of Unsecured Creditors of Cybergenics Corp., v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (same); *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.),* 107 F.3d 558, 564–65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code is to enhance the value of the estate at hand").

49. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and are appropriate in the context of bankruptcy sales. *See, e.g., See Dura Auto. Sys.*, 2007 WL 7728109, at *90 (citing *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) ("The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate.")).

50. Here, the proposed Bidding Procedures will allow and encourage interested parties to submit competing bids at the Auction, thereby maximizing the value that the Debtors will receive for the Assets. By inviting all potential purchasers to participate in the Auction, the Debtors will be able to determine the highest and best price possible for the Assets. The Bidding Procedures will increase the likelihood that the Debtors will receive the greatest consideration possible for the Assets and will facilitate a competitive and fair bidding process.

51. The proposed Bidding Procedures will allow the Debtors to conduct the Auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction. The Bidding Procedures (a) will encourage,

rather than hinder, bidding for the Assets; (b) are consistent with other procedures previously approved by courts in this district; and (c) are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings.

## IV. The Bid Protections Have a Sound Business Purpose and Should be Approved.

52. The Debtors are also seeking authority pursuant to the Bidding Procedures to designate a Stalking Horse Bidder for any portion of the Assets and offer Bid Protections to such Stalking Horse Bidder. The Debtors seek to utilize such authority only in their discretion if the Debtors determine in their business judgment that such Bid Protections will likely facilitate a competitive bidding and auction process.

53. The use of a stalking horse in a public auction process for sales is a customary practice in chapter 11 cases because the use of a stalking horse bid is, in many circumstances, the best way to maximize value in an auction process by "establish[ing] a framework for competitive bidding and facilitat[ing] a realization of that value." *See Official Comm. Unsecured Creditors v. Interforum Holding LLC*, No. 11-CV-219, 2011 WL 2671254, at*1 n. 1 (E.D. Wis. July 7, 2011). As a result, stalking horse bidders virtually always require break-up fees and, in many cases, other forms of bidding protections as an inducement for "setting the floor at auction, exposing its bid to competing bidders, and providing other bidders with access to the due diligence necessary to enter into an asset purchase agreement." *Id.* (citation omitted). Thus, the use of bidding protections has become an established practice in chapter 11 cases.

54. The Debtors believe that the Bid Protections are necessary to attract and retain a Stalking Horse Bidder. Any Bid Protections will be negotiated through back-and-forth, arm's length negotiations. By inducing a Stalking Horse Bidder to hold its offer open as a baseline from which other potential bidders can submit higher or better offers, the Bid Protections will serve to encourage more competitive bidding, which will likely increase the purchase price of the Assets.

As such, the Bid Protections will, among other things, enable the Debtors to maximize the value of their estates for the benefit of all economic stakeholders in these Chapter 11 Cases.

55. The United States Court of Appeals for the Third Circuit has established standards for determining the propriety of bidding incentives in the bankruptcy context. *See O'Brien Envt'l. Energy, Inc.*, 181 F.3d 527, 533-38 (3d Cir. 1999); *see also In re Reliant Energy Channelview LP*, 594 F.3d 200, 205 (3d Cir. 2010) (noting that *O'Brien* "set forth the controlling legal principles" applicable to bidding incentives). The Court has held that even though bidding incentives, including break-up fees, are measured against a business judgment standard in nonbankruptcy transactions, the administrative expense provisions of section 503(b) of the Bankruptcy Code govern in the bankruptcy context. *See O'Brien Envt'l. Energy*, 181 F.3d at 535. Accordingly, bidding incentives must provide some post-petition benefit to the debtor's estate in order to be approved. *See In re Energy Future Holdings Corp.*, 904 F.3d 298, 314 (3d Cir. 2018); *O'Brien Envt'l. Energy*, 181 F.3d at 533. With respect to break-up fees, the standard is generally satisfied if the bid protections promote a more competitive process, for example. *O'Brien Envt'l. Energy*, 181 F.3d at 537.

56. Moreover, the Bid Protections are necessary to preserve the value of the estate and would likely be necessary to secure a Stalking Horse Bidder's commitment. As such, the Bid Protections provide the Debtors with a platform from which to ensure a value-maximizing transaction for the benefit of their estates, creditors, and stakeholders. Moreover, payment of the Bid Protections is customary and will not diminish the Debtors' estates as the amount of the Bid Protections will be covered in the minimum initial Overbid amount.

57. Courts in this District have routinely authorized a debtor to offer Bid Protections to attract and retain a Stalking Horse Bidder to purchase a debtor's assets under section 363 of the

Bankruptcy Code. *See, e.g., In re Gritstone Bio, Inc.*, Case No. 24-12305 (KBO) (Bankr. D. Del. Nov. 14, 2024) [Docket No. 181] (pre-approving break-up fee and expense reimbursement equal to 5% of purchase price); *In re iSun Inc., et al.*, Case No. 24-11144 (TMH) (Bankr. D. Del. July 10, 2024) [Docket No. 183] (approving break-up fee and expense reimbursement equal to 7.5% of purchase price); *In re Express Inc., et al.*, Case No. 24-10831 (KBO) (Bankr. D. Del. June 6, 2024) (approving break-up fee and expense reimbursement equal to 6% of purchase price) [Docket No. 427]; *In re Plastiq, Inc., et al.*, Case No. 23-10671 (BLS) (Bankr. D. Del. June 21, 2023) [Docket No. 127] (approving break-up fee and expense reimbursement equal to 7% of purchase price); *Am. Virtual Cloud Techs., Inc., et al.*, Case No. 23-10020 (MFW) (Bankr. D. Del. Feb. 24, 2023) [Docket No. 150] (approving break-up fee and expense reimbursement equal to 7% of purchase price).

## V. The Assets Should be Sold Free and Clear of Claims, Liens, and Encumbrances Under Section 363(f) and Successor Liability Claims.

58. The Debtors also submit that the Sale of the Assets should be free and clear of any and all Interests under section 363(f) of the Bankruptcy Code (other than assumed liabilities and permitted encumbrances as provided in the purchase agreement for the Successful Bid or Backup Bid, as applicable). Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of third-party liens, claims, and interests only if:

> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interests; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Since section 363(f) of the Bankruptcy Code is written in the disjunctive; any of the five conditions provides authority to sell free and clear of Interests. *See In re Kellstrom*

*Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002); *In re Collins*, 180 B.R. 447, 450 (Bankr. E.D. Va. 1995); *In re Dundee Equity Corp.*, 1992 WL 53743, at *4 (Bankr. S.D.N.Y. Mar. 6, 1992). The Debtors believe that they will be able to demonstrate at the Sale Hearing that they have satisfied one or more of these conditions.

## VI. The Successful Bidder Should be Entitled to the Protections of Section 363(m) of the Bankruptcy Code.

59. Pursuant to section 363(m) of the Bankruptcy Code, a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *See In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d. Cir. 1986); *see also In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 9 (1st Cir. 1993); *In re Temtechco, Inc.*, 1998 WL 887256, at *5 (Bankr. D. Del. Dec. 18, 1998); *In re Congoleum Corp.*, 2007 WL 1428477, at *2 (Bankr. D.N.J. May 11, 2007).

60. These Chapter 11 Cases and the proposed Bidding Procedures are aimed at further marketing the Assets in an exhaustive, yet efficient fashion. The Debtors diligently formulated the Bidding Procedures to ensure an open, fair process. Of note, the Bidding Procedures provide for the continuation of a sale process that the Debtors pursued prepetition and they permit Bids for the Assets. Pursuant to the Bidding Procedures, the Debtors will consider all Qualified Bids to ensure an arms' length, good faith Sale Process.

61. At the Sale Hearing the Debtors will make a record that any Successful Bidder is a "good faith" purchaser. Accordingly, the Debtors request that the Sale Order include a provision that the Successful Bidder for the Assets is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Debtors maintain that providing the Successful Bidder with such protection will ensure that the maximum price will be received by the Debtors for the Assets.

## VII. Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Authorized.

62. Section 365(a) of the Bankruptcy Code provides that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Courts employ the business judgment standard in determining whether to approve a debtor's decision to assume or reject an executory contract or unexpired lease. *See, e.g.*, *In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (assumption or rejection of lease "will be a matter of business judgment by the bankruptcy court"); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that a debtor's decision to assume or reject executory contract is governed by business judgment standard and may only be overturned if decision is product of bad faith, whim, or caprice). The "business judgment" test in this context only requires that a debtor demonstrate that assumption or rejection of an executory contract or unexpired lease benefits the estate. *See Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989).

63. The Court should approve the decision to assume and assign the executory contracts and unexpired leases in connection with the Sale as a sound exercise of the Debtors' business judgment, consistent with the well-settled standard in this district governing same. The potential Assigned Contracts include those executory contracts and unexpired leases that are necessary to run the Debtors' business. It is unlikely that any purchaser would want to acquire the Debtors' assets on a going-concern basis unless a significant number of the Assigned Contracts needed to conduct the business and manage the day-to-day operations were included in the transaction. As such, making the potential Assigned Contracts available for assignment is essential to inducing the best offer for the Assets.

64. Accordingly, the Debtors submit that the assumption and assignment of the Assigned Contracts by way of the Assumption Procedures should be approved as an exercise of their business judgment.

65. Upon finding that a debtor has exercised its business judgment in determining that assuming an executory contract or unexpired lease is in the best interest of its estate, courts must then evaluate whether the assumption meets the requirements of section 365(b) of the Bankruptcy Code that a debtor (a) cure, or provide adequate assurance of prompt cure of, prepetition defaults in the executory contract, (b) compensate parties for pecuniary losses arising therefrom, and (c) provide adequate assurance of future performance thereunder. 11 U.S.C. § 365. This section "attempts to strike a balance between two sometimes competing interests, the right of the contracting nondebtor to get the performance it bargained for and the right of the debtor's creditors to get the benefit of the debtor's bargain." *Matter of Luce Indus., Inc.*, 8 B.R. 100, 107 (Bankr. S.D.N.Y. 1980).

66. The Debtors submit that the statutory requirements of section 365(b)(1)(A) of the Bankruptcy Code will be promptly satisfied. The proposed Assumption Procedures set forth in the Bidding Procedures Order provide a clear process by which the Debtors will provide notice of the potential assumption and assignment of executory contracts and unexpired leases and the procedures for resolving any objections thereto. The Assumption Procedures afford counterparties a meaningful opportunity to challenge the Debtors' proposed cure amounts and assumption and assignment of any executory contract or unexpired lease. Thus, the Bidding Procedures and Assumption Procedures ensure that all defaults will be cured in connection with the assignment of the Assigned Contracts, as required by section 365(b)(1)(A).

67. Similarly, the Debtors submit that counterparties will receive adequate assurance of future performance under the Assigned Contracts, as required by section 365(b)(1)(C) of the

Bankruptcy Code. "The phrase 'adequate assurance of future performance' adopted from section 2-609(1) of the Uniform Commercial Code, is to be given a practical, pragmatic construction based upon the facts and circumstances of each case." *Matter of U.L. Radio Corp.*, 19 B.R. 537, 542 (Bankr. S.D.N.Y. 1982). Although no single solution will satisfy every case, the required assurance will fall short of an absolute guarantee of performance. Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *Luce Indus.*, 8 B.R. at 107; *see also In re Great Atl. & Pac. Tea Co., Inc.*, 472 B.R. 666, 674 (S.D.N.Y. 2012) ("A debtor need not provide 'an absolute guarantee of performance.'").

68. The Debtors believe that they will demonstrate that the requirements for assumption and assignment of certain Assigned Contracts to a Stalking Horse Bidder (or other successful bidder) will be satisfied. As required by the Bidding Procedures, the Debtors will evaluate the financial wherewithal of potential bidders before designating such party a Qualified Bidder (*e.g.*, financial credibility, willingness, and ability of the interested party to perform under the Assigned Contracts). Further, all Counterparties will be provided with notice of the proposed assumption and assignment and will have adequate time and opportunity to object to the assumption or proposed cure amount or otherwise be heard with respect thereto.

## VIII. The Form and Manner of the Sale Notice, and Notice of Successful Bidder Should Be Approved.

69. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide creditors with 21 days' notice of a proposed sale of the Debtors' assets. As soon as reasonably practicable following entry of the Bidding Procedures Order, the Debtors will cause the Sale Notice, the Bidding Procedures Order, and the Bidding Procedures to be served upon the Notice Parties, which

the Debtors expect to occur in advance of the 21 days' notice period required by Bankruptcy Rule 2002(a).

70. The Sale Notice, which includes information concerning the "free and clear" nature of the Sale, the Bidding Procedures, the Stalking Horse Bid, and other material information, constitutes good and adequate notice of the Auction and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002 and Local Rule 6004-1. Accordingly, no further notice is necessary and the Debtors request that this Court approve the form and manner of the notice of the Sale Notice.

71. In addition, to provide the Counterparties with information concerning the Successful Bidder and any Back-Up Bidder who may take assignment of their contracts or leases and enable them to object to such assignment on adequate assurance grounds (to the extent the Successful Bidder/Back-Up Bidder is not a Stalking Horse Bidder), as soon as practicable after the Auction and in no event later **January 22, 2025**, the Debtors shall file with the Court and serve on all Counterparties the Notice of Successful Bidder. The Debtors submit that such service of the Notice of Successful Bidder is sufficient to timely and properly notice that the Debtors will proceed with assumption and assignment of the Assigned Contracts in connection with the Sale. Accordingly, the Debtors request that this Court approve the form and manner of notice of the Notice of Successful Bidder.

## IV. The Stay of the Sale Order Should be Waived.

72. Pursuant to Bankruptcy Rules 6004(h) and 6006(d), an order authorizing the sale of property or the assignment of an unexpired lease is stayed for fourteen (14) days after the entry of an order unless the Court orders otherwise.

73. If the sale of the Assets cannot be consummated immediately following the Auction and the Sale Hearing, it is uncertain whether the Debtors can generate sufficient cash flow to

operate. Accordingly, the Debtors request that the automatic fourteen (14) day stay under Bankruptcy Rules 6004(h) and 6006(d) be waived.

**NOTICE**

74. Notice of this Motion will be given to: (i) the U.S. Trustee; (ii) counsel to the Debtors' prepetition and DIP lenders, Faegre Drinker Biddle & Reath LLP, 1177 Avenue of the Americas, 41st Floor, New York, New York 10036, Attn: James H. Millar (james.millar@faegredrinker.com) and Laura E. Appleby (laura.appleby@faegredrinker.com); (iii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (iv) the United States Attorney's Office for the District of Delaware; (v) the Internal Revenue Service; (vi) the attorneys general for the states in which the Debtors operate; (vii) any parties known or reasonably believed to have expressed an interest in the Debtors' assets; (viii) all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in any of the Debtors' assets; and (xi) any party that has requested notice pursuant to Bankruptcy Rule 2002

75. A copy of this Motion is available on (i) the Court's website: www.deb.uscourts.gov, and (ii) the website maintained by the Debtors' claims and noticing agent, https://cases.stretto.com/PetroQuest/.

**NO PRIOR REQUEST**

76. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested by this Motion and such further relief as may be just and proper under the circumstances.

Dated: November 21, 2024
Wilmington, Delaware

**COLE SCHOTZ P.C.**

*/s/ Patrick J. Reilley*

Patrick J. Reilley (No. 4451)
Melissa M. Hartlipp (No. 7063)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
preilley@coleschotz.com
mhartlipp@coleschotz.com

-and-

Daniel F.X. Geoghan (admitted *pro hac vice*)
Jacob S. Frumkin (admitted *pro hac vice*)
Daniel J. Harris (admitted *pro hac vice*)
1325 Avenue of the Americas, 19th Floor
New York, NY 10019
Telephone: (212) 752-8000
Facsimile: (212) 752-8393
dgeoghan@coleschotz.com
jfrumkin@coleschotz.com
dharris@coleschotz.com

*Proposed Counsel for Debtors and Debtors-in-Possession*

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

| | |
|---|---|
| In re: | Chapter 11 |
| PetroQuest Energy, Inc., *et al.*, | Case No. 24-12609 (CTG) |
| Debtors.[1] | (Jointly Administered) |
| | **Objection Deadline: December 5, 2024 at 4:00 p.m. (ET)**<br>**Hearing Date: December 12, 2024 at 11:30 a.m. (ET)** |

**NOTICE OF DEBTORS' MOTION FOR ENTRY OF (I) AN ORDER (A) AUTHORIZING AND APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF THE DEBTORS' ASSETS, (B) APPROVING CERTAIN BID PROTECTIONS IN CONNECTION WITH THE DEBTORS' ENTRY INTO A STALKING HORSE AGREEMENT, (C) SCHEDULING THE AUCTION AND SALE HEARING, (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (E) GRANTING RELATED RELIEF; AND (II) AN ORDER (A) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES; AND (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**PLEASE TAKE NOTICE** that on November 21, 2024, the above-captioned debtors and debtors in possession (collectively, the "Debtors"), by and through their undersigned proposed counsel, filed with the United States Bankruptcy Court for the District of Delaware (the "Court") the *Debtors' Motion for Entry of (I) an Order (A) Authorizing and Approving Bidding Procedures in Connection With the Sale of the Debtors' Assets, (B) Approving Certain Bid Protections in Connection With the Debtors' Entry Into a Stalking Horse Agreement, (C) Scheduling the Auction and Sale Hearing, (D) Approving the Form and Manner of Notice Thereof, and (E) Granting Related Relief; and (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of All Encumbrances; and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases* (the "Motion").

**PLEASE TAKE FURTHER NOTICE** that a copy of the Motion is available on (i) the Court's website: www.deb.uscourts.gov and (ii) the website maintained by the Debtors' Claims and Noticing Agent, Stretto: https://cases.stretto.com/PetroQuest.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: PetroQuest Energy, Inc. (0714), PetroQuest Energy, L.L.C. (2439), PetroQuest Oil & Gas, L.L.C. (1170), and PQ Holdings LLC, (7576). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 400 E. Kaliste Saloom Road, Suite 5200, Lafayette, LA 70508.

**PLEASE TAKE FURTHER NOTICE** that a hearing on the Motion will be held on **December 12, 2024, at 11:30 a.m. (ET)** before the Honorable Craig T. Goldblatt, United States Bankruptcy Court for the District of Delaware, 3rd Floor, Courtroom No. 7, 824 North Market Street, Wilmington, Delaware 19801.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to approval of the Motion must be filed on or before **December 5, 2024, at 4:00 p.m. (ET)** (the "Objection Deadline") with the Bankruptcy Court, 824 N. Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon undersigned proposed counsel for the Debtors so as to be actually received by the Objection Deadline. Only those objections made in writing and timely filed in accordance with the above procedures will be considered by the Bankruptcy Court at such hearing.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO PROPERLY FILE AND SERVE A RESPONSE ON OR BEFORE THE OBJECTION DEADLINE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: November 21, 2024
Wilmington, Delaware

**COLE SCHOTZ P.C.**

*/s/ Patrick J. Reilley*
Patrick J. Reilley (No. 4451)
Melissa M. Hartlipp (No. 7063)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
preilley@coleschotz.com
mhartlipp@coleschotz.com

-and-

Daniel F.X. Geoghan (admitted *pro hac vice*)
Jacob S. Frumkin (admitted *pro hac vice*)
Daniel J. Harris (admitted *pro hac vice*)
1325 Avenue of the Americas, 19th Floor
New York, NY 10010
Telephone: (212) 752-8000
Facsimile: (212) 752-8393
dgeoghan@coleschotz.com
jfrumkin@coleschotz.com
dharris@coleschotz.com

*Proposed Counsel for Debtors and Debtors-in-Possession*

**Exhibit A**

**Bidding Procedures Order**

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

| | |
|---|---|
| In re: | Chapter 11 |
| PetroQuest Energy, Inc., *et al.*, | Case No. 24-12609 (CTG) |
| Debtors.[1] | (Jointly Administered) |
| | **Re: Docket No. ___** |

**ORDER (A) AUTHORIZING AND APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF THE DEBTORS' ASSETS, (B) APPROVING CERTAIN BID PROTECTIONS IN CONNECTION WITH THE DEBTORS' ENTRY INTO A STALKING HORSE AGREEMENT, (C) SCHEDULING THE AUCTION AND SALE HEARING, (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (E) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")[2] filed by the above-captioned debtors and debtors in possession (the "Debtors") for entry of an order (this "Order") pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 6007, 9007, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), (i) authorizing and approving sale and bidding procedures (the "Bidding Procedures") attached hereto as **Exhibit 1**, pursuant to which the Debtors will solicit and select the highest or otherwise best offer for the sale (the "Sale" or "Sale Transaction") of all or substantially all of the Debtors' Assets; (ii) authorizing the Debtors to select a stalking horse bidder and provide bid protections; (iii) authorizing and approving

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: PetroQuest Energy, Inc. (0714), PetroQuest Energy, L.L.C. (2439), PetroQuest Oil & Gas, L.L.C. (1170), and PQ Holdings LLC, (7576). The Debtors' corporate headquarters is 400 E. Kaliste Saloom Road, Suite 5200, Lafayette, LA 70508.

[2] Capitalized terms used but not otherwise defined in this Order shall have the meanings given to them in the Motion or Bidding Procedures, as applicable.

procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts; (iv) scheduling an auction (the "Auction"), if necessary, and a hearing to approve the Sale (the "Sale Hearing"); (v) approving the form and manner of (1) notice of the Auction and Sale Hearing (the "Sale Notice") attached hereto as **Exhibit 2**, (2) notice to holders of Alleged Consent Rights (the "Consent Right Holder Notice") attached hereto as **Exhibit 3**, (3) notice of the Assumption Procedures (the "Assumption Notice") attached hereto as **Exhibit 4**, and (4) notice of Successful Bidder and Back-Up Bidder (the "Notice of Successful Bidder") attached hereto **Exhibit 5**; (vi) establishing dates and deadlines in connection with the Sale, including the Bid Deadline (as defined in the Bidding Procedures), and the dates of the Auction; and (vii) granting related relief, all as further described in the Motion; and upon consideration of the First Day Declaration, and the record of these chapter 11 cases; and this Court having found that (a) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, (b) this Court may enter a final order consistent with Article III of the United States Constitution, (c) this is a core proceeding under 28 U.S.C. § 157(b), (d) venue of this proceeding and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (e) the Debtors' notice of the Motion and opportunity for a hearing were adequate and appropriate under the circumstances and no other or further notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court (the "Hearing"); and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration, establish just cause for the relief granted in this Order; and this Court having found and determined that the relief

sought in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates and stakeholders will be served by, the Court scheduling or fixing dates pursuant to this this Order for, among other things, the (i) Bid Deadline; (ii) Sale Objection Deadline; (iii) Auction; and (iv) Sale Hearing, each as defined below.

B. The Bidding Procedures are fair, reasonable, and appropriate and represent the best available method for maximizing value for the benefit of the Debtors' estates.

C. It may be necessary to induce a third-party bidder to serve as Stalking Horse Bidders and provide Bid Protections pursuant to the terms of this Order.

D. The Bidding Procedures were negotiated at arm's length, in good faith, and without collusion. The Bidding Procedures balance the Debtors' interests in consummating a Sale expeditiously while maximizing the purchase price for the Assets for the benefit of the Debtors' estates, their creditors, and other parties in interest.

E. The Sale Notice, Consent Right Holder Notice, Assumption Notice, and Notice of Successful Bidder are reasonably calculated to provide the Sale Notice Parties, the Counterparties, holders of Alleged Consent Rights, and other interested parties with proper notice of the (i) Bidding Procedures; (ii) Auction; (iii) Sale Hearing; and (iv) Sale.

F. The Assumption Procedures are fair, reasonable, and appropriate and represent the best available method for maximizing value for the benefit of the Debtors' estates.

G. The Assumption Notice is reasonably calculated to provide the Counterparties and other interested parties with proper notice of the Assumption Notice Procedures (including the Contract Objection Deadline and Subsequently Designated Assigned Contracts Deadline).

H. The Motion, the Bidding Procedures, and the Assumption Procedures comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

I. Due, sufficient, and adequate notice of the relief granted herein has been given to all parties in interest.

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is granted to the extent set forth in this Order.

2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled prior to or at the Hearing are overruled.

3. The Bidding Procedures, which are attached hereto as **Exhibit 1** and incorporated herein by reference, are hereby approved in all respects and shall govern all Bidders and Bids, including those that may be submitted by Qualified Bidders at the Auction.

4. Bidders seeking to submit Bids for the Assets must do so in accordance with the terms of the Bidding Procedures and this Order.

5. Following entry of this Order, the Debtors shall be authorized, in consultation with the Consultation Parties, but not directed to select a Bidder to act as a stalking horse bidder (a "Stalking Horse Bidder").

6. The Debtors are authorized, in accordance with the Bidding Procedures, to grant the Bid Protections to any Stalking Horse Bidder if the Debtors determine that granting the Bid Protections is in the best interests of the Debtors' estates and stakeholders. To the extent such determination is made to grant the Bid Protections, the Debtors shall disclose such Bid Protections in

the corresponding notice designating a Stalking Horse Bidder (the "Stalking Horse Notice") to be filed pursuant to the Bidding Procedures, and such Bid Protections may be paid without further action or order by the Court in accordance with the Bidding Procedures. The "Bid Protections" may include (x) a break-up fee of no more than 4.0% of the total cash consideration payable under such Stalking Horse Agreement plus (y) an expense reimbursement for the Stalking Horse Bidder's reasonable and actual out-of-pocket costs not to exceed $400,000.

7. Any Bid Protections incurred by the Debtors pursuant to this Order and the Bidding Procedures will be payable to the applicable Stalking Horse Bidder, in the event the Stalking Horse Bidder is not a Successful Bidder, from the proceeds of the cash portion of the Purchase Price of the applicable Successful Bid upon Closing.

8. As set forth in the Bidding Procedures and this Order, the Debtors, in consultation with the Consultation Parties, are authorized, but not directed, to designate a Stalking Horse Bidder at any time after entry of this Order. If the Debtors, in consultation with the Consultation Parties, designate a Stalking Horse Bidder, the Debtors shall, within three (3) calendar days after such determination, file the Stalking Horse Notice. The Stalking Horse Notice, if filed, shall include (a) a copy of the Stalking Horse Agreement; (b) an appropriate declaration in support of the proposed Bid Protections (the "Bid Protections Declaration"); and (c) a proposed form of order approving the Bid Protections (the "Stalking Horse Order").

9. Any objection to (i) the Bid Protections set forth in the Stalking Horse Notice, or (ii) the form of Stalking Horse Order (a "Stalking Horse Objection"), shall be filed **no later than three (3) calendar days after notice of proposed Bid Protections Declaration**; *provided, however*, any such Stalking Horse Objection shall be limited to whether the Stalking Horse Notice and Stalking Horse Order are consistent with the Bid Protections provided for herein. If a timely

Stalking Horse Objection is filed, the Debtors are authorized to file a notice seeking an expedited hearing with respect to the Stalking Horse Objection on **not less than three (3) calendar days' notice**. Absent any timely Stalking Horse Objection, the Court may enter the Stalking Horse Order without further hearing.

10. The deadline for all Potential Bidders to submit a Qualified Bid is **January 15, 2025, at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline"), as set forth in the Bidding Procedures.

11. On or before **January 17, 2025, at 12:00 p.m. (prevailing Eastern Time)**, the Debtors shall file a notice on the Court's docket (an "Auction Notice") providing (i) notice of the location of the Auction; and (ii) notice of whether the Debtors believe, in the exercise of their business judgment and after consultation with the Consultation Parties, that the Auction should be held in two or more parts over multiple days so as to maximize value for the Debtors' estates.

12. As set forth in the Bidding Procedures, if at least two Qualified Bids (inclusive of any Stalking Horse Bid) are received by the Bid Deadline, the Debtors will hold the Auction beginning on **January 21, 2025, at 10:00 a.m. (prevailing Eastern Time)** in accordance with the Bidding Procedures at the location designated by the Debtors in the Auction Notice.

13. The Consent Right Holder Notice in the form attached hereto as **Exhibit 3** is approved in all respects. If any person or entity (other than any Governmental Unit (as defined in 11 U.S.C. § 101(27)) asserts, or seeks to assert, that any Asset constituting real property or a real property interest (collectively, a "Real Property Asset"), including any oil and gas lease, cannot be transferred, sold, assumed and/or assigned in a Sale free and clear of its liens, claims, interests, and encumbrances on account of either (i) the alleged termination of the Debtors' rights in such Real Property Asset or (ii) alleged approval rights, consent rights, preferential purchase rights, rights of

purchase, rights of first refusal, rights of first offer, tag-along rights, or similar rights (collectively, the "Alleged Consent Rights"), then such person or entity shall file with the Bankruptcy Court, by no later than **January 6, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the "Consent Rights Objection Deadline"), an objection identifying: (i) the Real Property Assets (including any oil and gas leases) subject to such Alleged Consent Rights; (ii) the applicable agreement, document, or statute giving rise to such Alleged Consent Rights; and (iii) the portion of the agreement, document, or statute giving rise to such Alleged Consent Rights, including all supporting documentation (a "Consent Rights Objection"). The assertion of a Consent Rights Objection shall not require an exercise of the underlying rights alleged or otherwise asserted.

14. Any person or entity who fails to timely file a Consent Rights Objection by the Consent Rights Objection Deadline shall be forever barred from objecting to the transfer, sale, assumption, and/or assignment of the Debtors' right, title, and interest in, to and under the Assets to be sold, assumed, and/or assigned in connection with the Sale Transaction on account of its Alleged Consent Rights.

15. If any person or entity timely files a Consent Rights Objection in accordance herewith, the Debtors and other parties in interest shall have the opportunity (but are not required) to object to any Alleged Consent Rights asserted by such person or entity in the Consent Rights Objection by filing a response thereto with the Bankruptcy Court (and serving such response on the person or entity that filed the Consent Rights Objection) no later than **January 6, 2025 at 4:00 p.m. (prevailing Eastern Time)**. Upon the filing of such response that disputes such Consent Rights Objection, the Debtors shall be entitled to assert that a bona fide dispute exists as to such asserted rights pursuant to Section 363(f)(4) of the Bankruptcy Code (with the objections, defenses, and responses of all parties reserved in connection therewith). Nothing herein shall be

deemed a waiver of any rights of the Debtors or other parties in interest to contest any rights asserted by any person or entity in Consent Rights Objections at any time, and all such rights are expressly preserved (regardless of whether any objection or response is filed in accordance with the prior sentence).

16. The Assumption Notice substantially in the form attached to this Order as **Exhibit 4** is approved in all respects. No other or further notice of the Assumption Procedures, or relevant objection or other deadlines is required.

17. The following Assumption Procedures are hereby approved:

**a. Contract Assumption Notice.** On or prior to **December 16, 2024**, the Debtors shall file with the Court and serve a notice of contract assumption (the "Assumption Notice"), in substantially the form attached hereto as **Exhibit 4**, via overnight delivery on all counterparties to all potential Assigned Contracts (each, a "Counterparty" and, collectively, the "Counterparties"). The Assumption Notice shall include, without limitation, a list of Assigned Contracts (the "Assigned Contract List") that may be assumed and assigned in connection with the Sale and the Cure Payment, if any, that the Debtors believe is required to be paid to the applicable Counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B) for each of the Assigned Contracts. If no Cure Payment is listed on the Assigned Contracts List for a particular Assigned Contract, the Debtors' asserted Cure Payment for such Assigned Contract shall be deemed to be $0.00. The Assigned Contracts List shall identify each of the potential Assigned Contracts by the name or appropriate description and date of such potential Assigned Contract (if available), the Counterparties and the address of such Counterparties for notice purposes. Service of an Assumption Notice does not constitute an admission that such contract is an executory contract or unexpired lease or that such stated Cure Payment constitutes a claim against the Debtors or a right against the Successful Bidder (all rights with respect thereto being expressly reserved). Further, the inclusion of a contract or lease on the Assumption Notice is not a guarantee that such contract will ultimately be assumed and assigned.

**b. Contract Objections**. Objections, if any, to the Assumption Notice or any proposed assumption and assignment of a contract or lease, including objections to Cure Payments (each, as defined above, a "Contract Objection"), must (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules, and the Local Rules, (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Payment, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court and served by the Objection Notice Parties before the Sale Objection Deadline, except as otherwise set forth below with respect to Subsequently Designated Assigned

Contracts. If a Contract Objection is timely filed by the Contract Objection Deadline and cannot be resolved, to the extent such Contract Objection relates to a Assigned Contract under the Sale Transaction contemplated by these Bid Procedures, a hearing will be held (i) at the Sale Hearing or (ii) on such other date subsequent to the Sale Hearing but before the Closing Date, as the Debtors determine, in their discretion and in consultation with the Successful Bidder and the Consultation Parties (subject to the Court's calendar) (the "Contract Hearing") before the Bankruptcy Court to consider the objection. If such Contract Objection has not been resolved prior to the closing of the Sale (whether by an order of the Court or by agreement with the Counterparty), the Successful Bidder may (a) treat such Counterparty's contract or lease as part of assets excluded from the Sale Transaction or (b) temporarily treat the Counterparty's contract or lease as part of assets excluded from the Sale Transaction (a "Designated Agreement"), proceed to the closing of the Sale with respect to all other Assets, and determine whether to treat the Designated Agreement as an Assigned Contract, or part of assets excluded from the Sale Transaction within ten (10) business days after resolution of such objection (whether by order of the Court or by agreement of the applicable Successful Bidder, the Counterparty, and the Debtors).

**c. Changes to Assigned Contract List and Cure Payments.** At the election of the Successful Bidder, up until two (2) business days prior to the closing of any Sale, the Debtors may file and serve supplements or amendments to the Assigned Contracts List (each, a "Supplemental Assumption Notice") to (i) add previously omitted Assigned Contracts to the Assigned Contracts List as contracts that may be assumed and assigned to a Successful Bidder in accordance with the definitive agreement for the Sale by filing a supplement to the Assigned Contracts List or (ii) modify the Cure Payment for any Assigned Contract (together, "Subsequently Designated Assigned Contracts"). Contract Objections with respect to Subsequently Designated Assigned Contracts shall be filed no later than ten (10) days from service of a Supplemental Assumption Notice identifying the Subsequently Designated Assigned Contracts and served on the Objection Notice Parties (the "Subsequently Designated Assigned Contracts Deadline"). Such objections must (a) be in writing, (b) comply with the applicable provisions of the Bankruptcy Rules, and the Local Rules, (c) state, with specificity, the legal and factual bases thereof, and (d) be filed with the Court and served so as to be actually received by the Objection Notice Parties. Any party or entity who fails to timely and properly make an objection with respect to the Subsequently Designated Assigned Contracts on or before the Subsequently Designated Assigned Contracts Deadline shall be forever barred from asserting any objection with respect to the Subsequently Designated Assigned Contracts.

d. **Removal of Contracts from Assigned Contract List.** Up until two (2) business days prior to Closing, the Debtors are authorized, but not directed, if the Purchaser so requests, to remove an Assigned Contract from the Assigned Contract List that a successful bidder proposes be assumed and assigned in connection with the Sale.

e. **Assigned Contracts.** At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to the Successful Bidder of the Assigned Contracts, subject to the dispute resolution procedures set forth in paragraph (b) hereof; *provided that*, in the event the Successful Bidder is not the Stalking Horse Bidder, objections to adequate assurance of future performance of the Assigned Contracts by such Successful Bidder shall be heard at a subsequent hearing, as set forth in paragraph (b) hereof. The inclusion of an Assigned Contract on an Assumption Notice will not (a) obligate the Debtors to assume any Assigned Contract listed thereon nor the Successful Bidder to take assignment of such Assigned Contract or (b) constitute any admission or agreement of the Debtors that such Assigned Contract is an executory contract.

f. **Back-Up Bidder Adequate Assurance Objections.** In the event that a Successful Bidder does not consummate the Sale and a Back-Up Bidder (other than the Stalking Horse Bidder) has been previously identified, the Debtors shall file with the Court and post on the case website, https://cases.stretto.com/PetroQuest/, a Notice of Intent to Proceed with Back-Up Bid, together with a copy of the Back-Up Bidder's proposed purchase agreement and financial and other information regarding adequate assurance of future performance of the Assigned Contracts by the Back-Up Bidder (including the name of the Back-Up Bidder and description of its business), and serve the Notice of Intent to Proceed with Back-Up Bid on the Counterparties by overnight delivery, and the Counterparties shall have seven (7) days to file and serve on the Objection Notice Parties a Contract Objection solely on the basis of adequate assurance of future performance by the Back-Up Bidder. If any objections are filed, the Debtors shall schedule a hearing, which may be expedited, upon reasonable notice under the circumstances (which shall be no less than ten (10) days after the Notice of Intent to Proceed with Back-Up Bid is filed), with respect to such Contract Objections.

g. **Contract Assumption at Closing.** No Assigned Contract shall be deemed assumed and assigned pursuant to section 365 of the Bankruptcy Code until the later of (i) the date the Court has entered an order authorizing the assumption and assignment of such Assigned Contracts or (ii) the date the Sale has closed.

18. Any party failing to timely and properly file an objection to the Cure Payment or the proposed assumption and assignment of an Assigned Contract listed on the Contract Assumption Notice is deemed to have consented to (a) such Cure Payment, (b) the assumption and assignment of such Assigned Contract, (c) the related relief requested in the Motion, and (d) the Sale. Such party shall be forever barred and estopped from objecting to the Cure Payments, the assumption and assignment of the Assigned Contract, adequate assurance of future performance, the relief requested in the Motion, whether applicable law excuses such Counterparty from

accepting performance by, or rendering performance to, the Successful Bidder for purposes of section 365(c)(1) of the Bankruptcy Code, and from asserting any additional cure or other amounts against the Debtors and the Successful Bidder, as applicable, with respect to such party's Assigned Contract.

19. As soon as practicable after the Auction and in no event later **January 22, 2025**, the Debtors shall file with the Court and post on the case website, https://cases.stretto.com/PetroQuest/, the notice, substantially in the form attached hereto as **Exhibit 5** (the "Notice of Successful Bidder"), identifying any Successful Bidder and Back-Up Bidder, together with a copy of the Successful Bidder's proposed purchase agreement and financial and other information regarding adequate assurance of future performance of the Assigned Contracts, and serve the Notice of Successful Bidder on the Counterparties by email (where available) or overnight delivery, and the Counterparties shall file any Contract Objections solely on the basis of adequate assurance of future performance by the Successful Bidder other than the Stalking Horse Bidder (each, an "Adequate Assurance Objection") not later than **January 24, 2025 at 4:00 p.m. (prevailing Eastern Time)**.

20. Any Secured Party shall be entitled to credit bid some or all of its claims pursuant to section 363(k) of the Bankruptcy Code, subject to inclusion of a cash amount in its bid that is sufficient to satisfy any Bid Protections, DIP Obligations, or other obligations that the Debtors deem appropriate.

21. Following the conclusion of the Auction, the Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing or by filing a notice on the Court's docket. At the Sale Hearing, the Debtors shall present the Successful Bid to the Court for approval.

22. The Sale Notice substantially in the form attached to this Order as **Exhibit 2** is approved in all respects. Other than with respect to the Notice of Successful Bidder, no other or further notice of the Bidding Procedures, the Sale Hearing, relevant objection or other deadlines, or the Sale is required.

23. To be considered, any objection to the Sale must: (a) comply with the Bankruptcy Rules and the Local Rules; (b) be made in writing and filed with the Court; and (c) be filed on or before **January 24, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline").

24. The failure of any objecting person or entity to timely file an objection prior to the Sale Objection Deadline shall be a bar to the assertion at the Sale Hearing or thereafter of any objection to the relief requested by the Debtors, or the consummation and performance of the Sale of the Assets to the Successful Bidder, including the transfer of the Assets free and clear of all Interests (with the same to attach to the cash proceeds of the Sale to the same extent and with the same order of priority, validity, force, and effect which they previously had against the Assets, subject to the rights and defenses of the Debtors and the Debtors' estate with respect thereto), and the Debtors' assumption and assignment or transfer of the Assigned Contracts to the Successful Bidder.

25. No Qualified Bidder or any other person or entity, other than a Stalking Horse Bidder, if any, shall be entitled to any expense reimbursement, break-up fee, termination, or other similar fee or payment in connection with the Sale.

26. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h) or 6006(d), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

27. The Debtors are authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Order.

28. All persons and entities that participate in the Sale Process and/or the Auction shall be deemed to have knowingly and voluntarily submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Bidding Procedures, the Sale Process, and the Auction.

29. To the extent of any inconsistences between the Bidding Procedures and this Order, this Order shall govern.

30. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the Bidding Procedures.

# Exhibit 1

## Bidding Procedures

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

| | |
|---|---|
| In re: | Chapter 11 |
| PetroQuest Energy, Inc., *et al.*, | Case No. 24-12609 (CTG) |
| Debtors.[1] | (Jointly Administered) |

**BIDDING PROCEDURES IN CONNECTION**
**WITH THE SALE OF THE DEBTORS' ASSETS**

On November 13, 2024, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

On [●], 2024, the Debtors filed the *Debtors' Motion for Entry of (I) an Order (A) Authorizing and Approving Bidding Procedures in Connection with the Sale of the Debtors' Assets, (B) Approving Certain Bid Protections in Connection with the Debtors' Entry Into a Potential Stalking Horse Agreement, (C) Scheduling the Auction and Sale Hearing, (D) Approving the Form and manner of Notice Thereof, and (E) Granting Related Relief; and (II) An Order (A) Approving the Sale of the Debtors' Assets Free and Clear of all Encumbrances; and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases* (the "Motion").[2] On [●], 2024, the Bankruptcy Court entered an order [D.I. [●]] (the "Bidding Procedures Order") approving these bidding procedures (the "Bidding Procedures"). The Bidding Procedures set forth the process by which the Debtors will solicit and evaluate higher or otherwise better Bids (as defined below) for the acquisition of the Debtors' Assets (as defined below).

The Debtors seek to consummate a transaction (a "Sale Transaction") for the sale of substantially all of the Debtors' assets located in Panola County, Texas and Cherokee County, Texas (the "Assets") under section 363 and, as applicable, section 365, of the Bankruptcy Code to the extent certain criteria are satisfied as set forth in greater detail below. Any Sale Transaction will be subject to the approval of the Court.

***A hearing for the approval of any Sale Transaction is currently scheduled for January 27, 2025, at 10:00 a.m. (prevailing Eastern Time) (the "Sale Hearing").***

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: PetroQuest Energy, Inc. (0714), PetroQuest Energy, L.L.C. (2439), PetroQuest Oil & Gas, L.L.C. (1170), and PQ Holdings LLC, (7576). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 400 E. Kaliste Saloom Road, Suite 5200, Lafayette, LA 70508.

[2] Capitalized terms not otherwise defined herein have the meanings given to such terms in the Motion.

**Copies of the Bidding Procedures Order, or any other documents in the Debtors' chapter 11 cases are available at https://cases.stretto.com/PetroQuest/**

## OVERVIEW

The Debtors are offering for sale the Assets, and Qualified Bidders (as defined below) may submit bids for the Assets. Except as otherwise provided in a purchase agreement to be executed by a Successful Bidder (as defined below), the sale of the Assets will be free and clear of all liens, claims and encumbrances to the maximum extent permitted by section 363 of the Bankruptcy Code.

The Sale of the Assets shall be subject to a competitive bidding process as set forth herein and approval by the Bankruptcy Court under sections 105(a), 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code"), rules 2002, 6004, 6006, 9007, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure, and rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

## KEY DATES

These Bidding Procedures set forth the terms by which prospective bidders, if any, may qualify for and participate in an Auction, thereby competing to make the highest or otherwise best offer for the Assets. Subject to the Debtors' rights set forth herein, the following table sets forth key dates and deadlines with respect to the Sale process.

| EVENT | PROPOSED DATE |
|---|---|
| Bidding Procedures Objection Deadline | December 5, 2024, at 4:00 p.m. (ET) |
| Bidding Procedures Hearing | December 12, 2024, 11:30 a.m. (ET) |
| Deadline to File and Serve Assumption Notice | December 16, 2024 |
| Deadline to File and Serve Consent Right Holder Notice | December 16, 2024 |
| Deadline to File and Serve Auction and Sale Notice | December 16, 2024 |
| Deadline to Publish Auction and Sale Notice | Seven (7) days after entry of the Bidding Procedures Order |
| Designation of Stalking Horse Bidder and Execution of Stalking Horse Agreement | Prior to Bid Deadline |
| Deadline to File and Serve Stalking Horse Objections | Three (3) days after designation of Stalking Horse Bidder |
| Contract Objection Deadline | January 6, 2025, at 4:00 p.m. (ET) |
| Deadline to File Consent Rights Objection | January 6, 2025, at 4:00 p.m. (ET) |

| EVENT | PROPOSED DATE |
|---|---|
| Bid Deadline | January 15, 2025, at 5:00 p.m. (ET) |
| Deadline to Designate Qualified Bids and File Auction Notice | January 17, 2025, at 12:00 p.m. (ET) |
| Auction | January 21, 2025, at 10:00 a.m. (ET) |
| Deadline to File Notice of Successful Bidder and Back-Up Bidder | January 22, 2025 |
| Deadline to Object to Sale | January 24, 2025, at 4:00 p.m. (ET) |
| Adequate Assurance Objection Deadline | January 24, 2025, at 4:00 p.m. (ET) |
| Sale Hearing | January 27, 2025, at 10:00 a.m. (ET) |

## BID PROCEDURES

### I. General Sale Transaction Information

#### *a. Assets for Sale*

The Debtors are soliciting interest for the consummation of a Sale Transaction with respect to the Assets. All of the Debtors' rights, title, and interest in and to the Assets shall be sold free and clear of any Interests (as defined in the Motion) on an "as is, where is" and "with all faults" basis and without representations, warranties or guarantees, express, implied or statutory, written or oral, of any kind, nature or description, by the Debtors, their affiliates or their respective representatives, except as otherwise provided in the applicable Purchase and Sale Agreement, as defined herein, to the maximum extent permitted by sections 363 and 365 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the Sale Transaction with the same validity and priority as such Interests applied against the respective Assets purchased pursuant to the Bidding Procedures.

The Debtors, in their discretion, exercised in good faith and in consultation with the Consultation Parties[3], will have the right to determine the highest or otherwise best value from the potential offers received. Additionally, the Debtors, in consultation with the Consultation Parties, may accept Bids (as defined below) for any portion or subset of the Assets and pursue a Sale Transaction for the Assets on a piecemeal basis.

**Further information on the Assts being offered for sale pursuant to these Bidding Procedures is available upon request from the Debtors' advisors, Detring & Associates, LLC (Attn: Jonathan Bristal (jonathan@detring.com)) on the terms and conditions set forth below.**

[3] The "Consultation Parties" are, collectively, (x) the DIP Lenders (as defined in the DIP Order (as defined herein)), and (y) the official committee of unsecured creditors (the "Committee"), if one is appointed in these Chapter 11 Cases.

***b. Access to Diligence Materials***

To participate in the bidding process and receive due diligence information, including full access to the Debtors' electronic data room (the "Data Room") and additional non-public information regarding the Debtors (the "Diligence Materials"), parties interested in receiving due diligence information to participate in the bidding process (each, an "Interested Party") must deliver or have previously delivered to the Debtors, if determined to be necessary by the Debtors in their sole discretion, the Preliminary Bid Documents (as defined herein) to the following parties (the "Recipient Parties"):

(i) counsel to the Debtors: Cole Schotz P.C., 1325 Avenue of the Americas, 19th Floor, New York, NY 10019, Attn: Daniel F.X. Geoghan (dgeoghan@coleschotz.com), Jacob S. Frumkin (jfrumkin@coleschotz.com), and Daniel J. Harris (dharris@coleschotz.com); and

(ii) advisors to the Debtors: Detring & Associates, LLC, 1885 St. James Place, Suite 1200, Houston, TX 77056, Attn: Jonathan Bristal (jonathan@detring.com).

The "Preliminary Bid Documents" that must be submitted to the Recipient Parties include: (a) an executed confidentiality agreement using the Debtors' form, as may be amended, on terms acceptable to the Debtors, to the extent not already executed (a "Confidentiality Agreement") and (b) a statement and/or other factual support demonstrating to the Debtors' satisfaction in the exercise of their reasonable business judgment that the Interested Party has a *bona fide* interest in purchasing all or any portion of the Assets. Any Interested Party who, in the Debtors' determination, qualifies for access to the Diligence Materials shall be deemed a "Potential Bidder."

The Debtors will provide any Potential Bidder such due diligence access or additional information as the Debtors deem appropriate, which may include, without limitation, the right to withhold, restrict, or to delay providing any Diligence Materials to a Potential Bidder that the Debtors, in their reasonable discretion, determine are, among other things, business-sensitive, may risk unduly placing the Debtors at a competitive disadvantage, or are otherwise inappropriate for disclosure to such Potential Bidder at such time.

The Potential Bidder shall return or destroy any non-public information the Debtors or their advisors provided to the Potential Bidder in accordance with the terms of the confidentiality agreement executed by the Debtors and the Potential Bidder.

***c. Due Diligence from Potential Bidders***

Each Interested Party, Potential Bidder, and Qualified Bidder (as defined herein) (each, a "Bidder" and, collectively, the "Bidders") shall comply with all requests for additional information and due diligence access by the Debtors or their advisors regarding such Bidder and its contemplated Sale Transaction. Failure by a Potential Bidder to comply with requests for additional information and due diligence access will be a basis for the Debtors to determine that the Potential Bidder is not a Qualified Bidder. Failure by a Qualified Bidder to comply with such requests for additional information and due diligence access will be a basis for the Debtors to determine that a bid made by a Qualified Bidder is not a Qualified Bid.

## II. Auction Qualification Process

### *a. Stalking Horse Bidder*

The Debtors may, pursuant to these Bid Procedures, after consultation with the Consultation Parties, (i) designate a Qualified Bidder that submits a Qualified Bid for all or any portion of the Assets a stalking horse bidder (the "Stalking Horse Bidder"), whose Qualified Bid shall serve as a stalking horse bid ("Stalking Horse Bid"), and (ii) execute, subject to higher or otherwise better offers, one or more purchase agreements memorializing the proposed transaction set forth in the Stalking Horse Bid (a "Stalking Horse Agreement"), which may include: (x) a break-up fee of no more than 4.0% of the total cash consideration payable under such Stalking Horse Agreement (the "Break-Up Fee") plus (y) an expense reimbursement for the Stalking Horse Bidder's reasonable and actual out-of-pocket costs not to exceed $400,000 (the "Expense Reimbursement" and, together with the Break-Up Fee, the "Bid Protections").

To the extent the Debtors, consistent with these Bidding Procedures, determine to offer Bid Protections to a Stalking Horse Bidder, the Debtors shall disclose such Bid Protections in a corresponding notice designating such Stalking Horse Bidder (the "Stalking Horse Notice") to be filed with the Court. A Stalking Horse Notice, if filed, shall also include (a) a copy of the Stalking Horse Agreement; (b) an appropriate declaration in support of the proposed Bid Protections (the "Bid Protections Declaration"); and (c) a proposed form of order approving the Bid Protections (the "Stalking Horse Order"). Any objection to (i) the Bid Protections set forth in the Stalking Horse Notice, or (ii) the form of Stalking Horse Order (a "Stalking Horse Objection"), shall be filed **no later than three (3) calendar days after the filing of the Stalking Horse Notice**; *provided, however*, any such Stalking Horse Objection shall be limited to whether the Stalking Horse Notice and Stalking Horse Order are consistent with the Bid Protections provided for herein. If a timely Stalking Horse Objection is filed, the Debtors are authorized to file a notice seeking an expedited hearing with respect to the Stalking Horse Objection and such hearing will be set by the Court as it determines necessary. Absent any timely Stalking Horse Objection, the Court may enter the Stalking Horse Order without further hearing.

### *b. Form of Purchase and Sale Agreement and Sale Approval Order*

A Potential Bidder must submit (a) a proposed asset purchase agreement (a "Purchase and Sale Agreement"), similar in form and substance, as modified, to the purchase and sale agreement to be furnished by the Debtors in the Data Room (the "Form PSA") or the Stalking Horse Agreement, as applicable, accompanied by a comparison of the Purchase and Sale Agreement to the Form PSA or the Stalking Horse Agreement, as applicable, and (b) a proposed Sale Approval Order, similar in form and substance, as modified, to the Sale Approval Order to be furnished by the Debtors in the Data Room (the "Form Sale Approval Order"), accompanied by a comparison of the Sale Approval Order to the Form Sale Approval Order.

### *c. Designation as Qualified Bidder*

A "Qualified Bidder" is a Potential Bidder, that satisfies the Bid Conditions defined and as described below and otherwise satisfies the requirements of the Bid Procedures Order and the Bid Procedures set forth herein, and that the Debtors, after consultation with the Consultation Parties,

determine is reasonably likely to submit a *bona fide* offer for the Assets and to be able to consummate a Sale Transaction if selected as a Successful Bidder (as defined herein).

The Debtors, after consultation with the Consultation Parties, shall determine and notify any Potential Bidder as to whether such Potential Bidder is a Qualified Bidder no later than ***January 17, 2025, at 12:00 p.m. (prevailing Eastern Time)***.

***d. Right to Credit Bid***

At the Auction, if any, a Qualified Bidder who has a valid and perfected lien on any Assets (a "Secured Party") shall be permitted to submit a credit bid for all or a portion of the assets subject to such lien, up to the amount of such Secured Party's claims (a "Credit Bid"), to the extent permitted under section 363(k) of the Bankruptcy Code; *provided, however,* that any Secured Party that intends to participate in the Auction with a Bid that includes a Credit Bid shall, as a condition to such participation, (i) notify the Debtors at least five (5) calendar days prior to the Bid Deadline that it intends to submit a Credit Bid, (ii) provide all documentation requested by the Debtors to establish the lien, claims, and encumbered assets that will be the subject of the Secured Party's potential Credit Bid, (iii) include in its Credit Bid an amount of cash consideration sufficient for the Debtors to pay from the cash proceeds of such transaction any Bid Protections, DIP Obligations (as defined below) or other obligations that the Debtors deem appropriate.

To the extent that any Secured Party who is a Consultation Party submits a Credit Bid for all or any portion of the Assets, such Secured Party's respective rights as a Consultation Party and any consent rights provided for herein shall be terminated as of such time solely with respect to bids related to the same Assets as that for which the Secured Party submitted a Credit Bid, and the Debtors shall establish reasonable procedures to prevent such Secured Party or its representatives from thereafter being privy to confidential information concerning the bids of other Bidders for such Assets for so long as such Secured Party remains a Bidder; *provided, however,* that (i) any Secured Party who submits a Credit Bid and later withdraws such bid shall immediately resume being treated as a Consultation Party and shall regain any consent rights provided for herein, as applicable for purposes of these Bid Procedures and (ii) any Secured Party who does not submit a Credit Bid shall at all times be a Consultation Party for purposes of these Bid Procedures.

## III. Bidding Procedures

The Debtors and their advisors shall, after consultation with the Consultation Parties: (i) determine whether a Potential Bidder is a Qualified Bidder; (ii) coordinate the efforts of Bidders in conducting their due diligence investigations, as permitted by the provisions hereof; (iii) receive offers from Qualified Bidders; and (iv) negotiate any offers made to purchase all or any portion of the Assets. The Debtors, in consultation with the Consultation Parties, shall have the right to adopt such other rules for the bidding process that are not inconsistent with the Bid Procedures Order or these Bid Procedures that will better promote the goals of such process.

***a. Bid Deadline***

***The Bid Deadline is January 15, 2025, at 5:00 p.m. (prevailing Eastern Time)***. On or before the Bid Deadline, a Qualified Bidder that desires to make a proposal, solicitation, or offer

for a Sale Transaction (each, a "Bid") shall deliver written and electronic copies of its Bid to the Recipient Parties. The Debtors shall promptly (and in no event later than twelve (12) hours after the Debtors' receipt thereof) provide copies of all Bids to counsel for the Consultation Parties.

Subject to consultation with the Consultation Parties, a Bid received after the Bid Deadline shall not constitute a Qualified Bid.

***b. Qualified Bids***

To be eligible to participate in the Auction and to be eligible for consideration as a Qualified Bidder, a Potential Bidder must deliver a Bid, so as to be received by the Recipient Parties on or before the Bid Deadline, that meets the following requirements (collectively, the "Bid Conditions"):

(i) Purpose and Identity of Assets to be Purchased. Each Bidder must state that the Bid includes an offer by the Bidder to effectuate a Sale Transaction and identify with specificity which Assets are included in the Bid.

(ii) Good Faith Deposit. Each Bid must be accompanied by a cash deposit (the "Good Faith Deposit") in the form of a wire transfer, certified check, or cash payable to the order of counsel pursuant to instructions to be provided by the Debtors equal to 10% of the Bidder's proposed Purchase Price (as defined herein), which will be held in a non-interest-bearing escrow or trust account.

(iii) Purchase Price. Each Bid must clearly set forth the purchase price (the "Purchase Price") and which liabilities, if any, of the Debtors the Bidder is agreeing to assume (the "Assumed Liabilities"). The Purchase Price must provide for (i) an aggregate amount of cash sufficient to pay all DIP Obligations (as defined in the DIP Order[4]) outstanding at the closing in full, and (ii) the payment of all cure amounts and all other amounts required to effect the assumption and assignment of all applicable executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code. The Purchase Price associated with each Bid may include only cash and/or other consideration acceptable to the Debtors after consultation with the Consultation Parties. If a Stalking Horse Bidder has been selected for all or any portion of the Assets, the cash offer of any other Qualified Bid with respect to all or any portion of the Assets must be no less than an amount equal to or in excess of the sum of: (i) the Stalking Horse Bid; (ii) the Expense Reimbursement; (iii) the Break-Up Fee; and (iv) the Minimum Increment (as defined herein) (a "Topping Bid").

(iv) Binding and Irrevocable. Each Bid must include a signed writing stating that it is binding and irrevocable until the selection of the Successful Bidder, provided that

[4] *Interim Order Pursuant to Sections 105, 361, 362, 363, and 364 of the Bankruptcy Code and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (I) Authorizing the Debtors to (A) Use Cash Collateral, (B) Obtain Senior Secured Superpriority Postpetition Financing and Granting Liens and Superpriority Administrative Claims, and (C) Provide Adequate Protection, (II) Scheduling a Final Hearing, and (III) Granting Related Relief* entered November 15, 2024 [D.I. 46] (as supplanted by any final order, the "DIP Order").

if such Bidder is selected as the Successful Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale with the Successful Bidder or, as applicable, the Back-Up Bidder (the "Closing").

(v) Contemplated Transaction Documents. Each Bid must include an executed Purchase and Sale Agreement marked against the Form APA or the Stalking Horse Agreement, as applicable pursuant to which the Qualified Bidder proposes to effectuate the contemplated Sale Transaction including: (i) a redlined copy of the Purchase and Sale Agreement marked to show all changes requested by the Qualified Bidder against the Form PSA or the Stalking Horse Agreement, as applicable; (ii) specification of the proposed Purchase Price allocated, if applicable; and (iii) any changes to any exhibits or schedules to the Purchase and Sale Agreement (collectively, the "Contemplated Transaction Documents"). The terms and conditions of the Contemplated Transaction Documents must be, in the aggregate, not materially more burdensome to the Debtors than the provisions contained in any applicable Stalking Horse Agreement. A Bid must identify with particularity each and every condition to Closing and all executory contracts and unexpired leases the Bidder expects the Debtors to assume and assign to the Bidder (the "Assigned Contracts") pursuant to the Contemplated Transaction Documents. All Bids must provide that all Cure Amounts (as defined herein) will be paid by such Bidder. ***The Contemplated Transaction Documents must include a commitment to close by no later than February 6, 2025***.

(vi) Contingencies. A Bid may not be conditioned on obtaining financing or any internal approval or on the outcome or completion of due diligence, but may be subject to the accuracy in all material respects at Closing of representations and warranties at or before Closing in the Purchase and Sale Agreement. A Bid must disclose any governmental approvals identified by the Potential Bidder other than as set forth in the Contemplated Transaction Documents that may impact the evaluation of such Bid.

(vii) No Collusion. Each Bid must include a representation that the Bidder has not engaged in any collusion with respect to its Bid submission (though Potential Bidders are permitted to make joint bids) and that the Bidder will not engage in any collusion with respect to any Bids, the Auction, or the Sale Process.

(viii) Authorization to Bid and Identity of Bidder. Each Bid must include evidence of authorization and approval from such Potential Bidder's board of directors (or comparable governing body, or a statement as to why such approval is unnecessary) with respect to the submission, execution, delivery, and closing of the Contemplated Transaction Documents. A Bid must also fully disclose the identity of the entity that is submitting the Bid, including the identity of the ultimate beneficial owners of the Bidder and the identity of any person or entity providing debt or equity financing for the Bid.

(ix) Financing Sources. Each Bid must include written evidence that demonstrates the Potential Bidder has the necessary financial ability to close the contemplated Sale

Transaction and provide adequate assurance of future performance under all Assigned Contracts. Such information may include, *inter alia*, the following:

1. the Potential Bidder's current financial statements (audited, if they exist);

2. contact names, telephone numbers, and e-mail addresses for verification of financing sources;

3. evidence of the Potential Bidder's internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated Sale Transaction (including confirmation that the funding of such commitments is not subject to any contingency);

4. proof by the Potential Bidder of its financial capacity to close its proposed Sale Transaction, which may include written representations of the Potential Bidder's financial wherewithal or financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring all or any portion of the Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors (including in consultation with their advisors); and

5. any other form of financial disclosure of credit-quality support information acceptable to the Debtors demonstrating that such Potential Bidder has the ability to close the contemplated Sale Transaction.

(x) Adequate Assurance of Future Performance. Each Bid must demonstrate, in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, that the potential Bidder can provide adequate assurance of future performance to the applicable counterparty under all Assigned Contracts as required by section 365 of the Bankruptcy Code.

(xi) No Fees Payable to Qualified Bidder. Other than any Stalking Horse Bidder, a Bidder may not request any break-up fee, termination fee, expense reimbursement, or any similar type of payment. Moreover, by submitting a Bid, a Bidder shall be deemed to waive the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code relating in any way to the submission of its Bid, compliance with the Bid Procedures, or participation in the Sale Process.

(xii) Payment of the Break-Up Fee and Expense Reimbursement. If a Stalking Horse Bidder has been selected for all or any portion of the Assets that are the subject of a Bid, a Bid must allow for the payment of the Break-Up Fee and Expense Reimbursement to the applicable Stalking Horse Bidder from the first proceeds of the cash portion of the Purchase Price of such Bid upon Closing to the extent the Bid overlaps with the Stalking Horse Bid in regard to the Assets included in such Bid. The applicable Bid Protections will only be earned by the applicable Stalking Horse Bidder if the Successful Bidder has Overbid (as defined herein) the Stalking Horse Bidder on the same Assets included in the applicable Stalking Horse Bid and will

only be payable at the Closing of the applicable Sale Transaction to the Successful Bidder.

(xiii) Non-Reliance. A Bid must include an acknowledgement and representation of the Potential Bidder that it has had an opportunity to conduct any and all due diligence regarding the Assets (as applicable to its Bid) and Assumed Liabilities prior to making its Bid, that it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely upon any written or oral statements, representations, warranties, or guaranties, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or, as applicable, the physical condition of the Assets, the Assumed Liabilities, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Contemplated Transaction Documents.

(xiv) As Is, Where Is. A Bid must include an acknowledgement and representation of the Potential Bidder that it understands that any Sale Transaction shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents, or the estates except to the extent set forth in the Purchase and Sale Agreement of the Successful Bidder.

A bid received from a Potential Bidder shall constitute a "Qualified Bid" if the Debtors believe after consultation with the Consultation Parties, that such Bid would be consummated if selected as the Successful Bid. The Debtors shall have the right to reject any and all Bids that it believes, after consultation with the Consultation Parties, do not comply with the Bid Procedures. In the event that any Potential Bidder is determined by the Debtors not to be a Qualified Bidder, the Potential Bidder shall be refunded its Good Faith Deposit.

## IV. Auction

After the receipt and review of all Qualified Bids, the Debtors shall make a determination, after consultation with the Consultation Parties, whether to accept the highest or best Qualified Bid for the Assets.

To the extent the Debtors receive Qualified Bids and determine to proceed to Auction, the Debtors, after consultation with the Consultation Parties, shall determine which Qualified Bid represents the then highest or otherwise best Bid for all or any subset of the Assets, as applicable (the "Baseline Bid"). The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitute the Successful Bid (as defined herein) shall take into account any factors the Debtors, after consultation with the Consultation Parties, reasonably deem relevant to the value of the Qualified Bid to their estates, including, *inter alia*: (a) the amount and nature of the consideration; (b) the certainty of closing; (c) the net economic effect of any changes to the value to be received by the Debtors' creditors from the proposed Sale Transaction; (d) the allocation of the Purchase Price between or among Assets; (e) tax consequences of such Qualified Bid; and (f) any other quantitative or qualitative criteria available to assess such Bid (collectively, the "Bid Assessment Criteria"). If the Debtors, pursuant to these Bidding Procedures, designate a Stalking Horse Bidder, the Baseline Bid, to the extent not the Stalking Horse Bid, must be not less

than the Purchase Price of the Stalking Horse Bid *plus* (ii) the Break-Up Fee *plus* (iii) the Expense Reimbursement *plus* (iv) the Minimum Increment (as defined herein).

No later than Noon (prevailing Eastern Time) two (2) days preceding the Auction, the Debtors shall file a notice on the Court's docket (an "Auction Notice") providing (i) notice of the location of the Auction; and (ii) notice of whether the Debtors believe, in the exercise of their business judgment after consultation with the Consultation Parties, that the Auction should be held in two or more parts over multiple days so as to maximize value for the estate.

Unless otherwise designated by the Debtors, after consultation with the Consultation Parties, the Auction shall commence at ***10:00 a.m. (Eastern Time) on January 21, 2025,*** at a location to be designated in the Auction Notice. In the Debtors' discretion, the Auction may be held by telephonic or video conference.

The Auction shall be conducted according to the following procedures:

***a. Participation in the Auction***

Only the Stalking Horse Bidder, Qualified Bidders that have submitted Qualified Bids, and the Consultation Parties (through their counsel) are eligible to participate at the Auction. Only the authorized representatives and professional advisors of each of the Qualified Bidders, the Stalking Horse Bidder, the Debtors, the Consultation Parties, the United States Trustee for the District of Delaware, and any other party in interest shall be permitted to attend the Auction.

Except as otherwise set forth herein, the Debtors, after consultation with the Consultation Parties, may conduct the Auction in the manner they determine will result in the highest or best offer for the Assets in accordance with the Bid Procedures.

***b. The Debtors Shall Conduct the Auction***

The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of any Baseline Bid. All Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Bid shall be fully disclosed to all other Qualified Bidders. The Debtors reserve the right to conduct the Auction, after consultation with the Consultation Parties, in the manner designed to maximize value based upon the nature and extent of the Qualified Bids received in accordance with the Bidding Procedures, the Bidding Procedures Order, the Bankruptcy Code, and any other order of the Court entered in connection herewith and disclosed to each Qualified Bidder. The Debtors shall maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid. Pursuant to Local Rule 6004-1, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the Sale Process, the Bid Procedures, the Auction, or the proposed Sale Transaction.

***c. Terms of Overbids***

An "Overbid" is any bid made at the Auction by a Qualified Bidder subsequent to the Debtors' announcement of the applicable Baseline Bid that satisfies the following conditions:

(i) Minimum Increment

During the Auction, bidding shall begin with the Baseline Bid. In consultation with the Consultation Parties, the initial Overbid after the Baseline Bid (the "Initial Overbid") shall be made in an increment announced on the record prior to the start of the Auction (the "Minimum Increment") *plus*, solely in the event the Baseline Bid is a Stalking Horse Bid, (i) the Break-Up Fee *plus* (ii) the Expense Reimbursement. Any Overbids subsequent to the Initial Overbid shall be made in increments of at least the applicable Minimum Increment; *provided, however*, that any Overbids by the Stalking Horse Bidder shall only be required to be equal to the sum of (x)(1) the Baseline Bid or the then existing highest Bid *plus* (2) the Minimum Increment *less* (y) the sum of the amount of the Bid Protections. After setting the Minimum Increment, such amount may be adjusted in response to bidding activity.

Any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless the Debtors, after consultation with the Consultation Parties, accept a higher Qualified Bid as an Overbid.

(ii) Consideration of Overbids

The Debtors reserve the right, after consultation with the Consultation Parties, to make one or more adjournments in the Auction to, among other things: facilitate discussions between the Debtors and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed; and give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in the exercise of their business judgment and after consultation with the Consultation Parties, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed Sale Transaction at the prevailing Overbid amount.

(iii) Evidence of Ability to Close Sale Transactions

To the extent not previously provided on or before the Bid Deadline, a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, evidence reasonably acceptable to the Debtors, after consultation with the Consultation Parties, demonstrating such Qualified Bidder's ability to close the Sale Transaction proposed by such Overbid.

***d. Additional Procedures***

The Debtors, after consultation with the Consultation Parties, may (a) determine which Qualified Bid or Qualified Bids, if any, is the highest or best offer for all or any portion of the Assets, (b) reject at any time before entry of an order of the Court approving a Sale Transaction of all or any portion of the Assets pursuant to a Qualified Bid, any Bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures, or the Bid Procedures Order; or (iii) contrary to the best interest of the Debtors, their estates, and their creditors, (c) modify the Bid Procedures in response to the bidding activity at the Auction.

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

All Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Court and to have waived any right to a jury trial in connection with any disputes relating to the Sale process, the Auction, the Bidding Procedures, and the construction and enforcement of each Qualified Bidder's Contemplated Transaction Documents, as applicable.

***f. Closing the Auction***

The Auction shall continue until there is only one Qualified Bid for all of the Assets that the Debtors determine, in the exercise of their business judgment and after consultation with the Consultation Parties, is the highest or otherwise best Qualified Bid (such Qualified Bid, the "Successful Bid", and such Qualified Bidder, the "Successful Bidder"), and that further bidding is unlikely to result in a higher or otherwise better Qualified Bid, at which point, the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction. In selecting the Successful Bid, the Debtors, after consultation with the Consultation Parties, may consider all factors relevant to the sale of the Assets, including the Bid Assessment Criteria.

Upon the closing of the Auction, the Debtors, after consultation with the Consultation Parties, shall identify the Successful Bidder and the Successful Bid and the Back-Up Bidder and Back-Up Bid as soon as reasonably practicable which highest or best offer will provide the greatest amount of net value to the Debtors, and advise the Qualified Bidders of such determination.

The Qualified Bidder with the second highest or otherwise best Bid at the Auction, as determined by the Debtors, after consultation with the Consultation Parties, shall be required to serve as the back-up bidder (the "Back-Up Bidder"). The identity of the Back-Up Bidder and the amount and material terms of the final Bid of the Back-Up Bidder (the "Back-Up Bid") shall be announced by the Debtors at the conclusion of the Auction at the same time the Debtors announce the Successful Bid. Any Back-Up Bidder shall keep its Back-Up Bid open and irrevocable until the Closing of the Sale Transaction with the Successful Bidder, unless otherwise agreed by the Debtors, in consultation with the Consultation Parties. The Good Faith Deposit of the Back-Up Bidder shall be returned by the Debtors within three (3) days after Closing.

Within one (1) business day after the close of the Auction, the Successful Bidder shall supplement the Successful Bidder' Good Faith Deposit such that the Good Faith Deposit shall be equal to an amount that is ten percent (10%) of the Purchase Price of the Successful Bid.

The Debtors shall not consider any Bids or Overbids submitted after the closing of the Auction and any and all such Bids and Overbids shall be deemed untimely.

As stated above, the Successful Bid of the Successful Bidder and the Back-Up Bid of the Back-Up Bidder, respectively, must be irrevocable until Closing.

For the avoidance of doubt, nothing in the Bidding Procedures, including, without limitation, the auction procedures, prevents the Debtors from exercising their respective fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors in consultation with their outside legal counsel).

## V. Notice of Acceptance of Successful Bid

Upon determination of the Successful Bid, the Debtors will file a notice attached to the Bidding Procedures Order as **Exhibit 5** (the "Notice of Successful Bidder") of the Debtors' intent to effectuate a Sale Transaction for the Assets with the Successful Bidder upon the approval of the Successful Bid by the Court at the Sale Hearing.[5] The Debtors' presentation of a particular Successful Bid to the Court for approval does not constitute the Debtors' acceptance of such Successful Bid. The Debtors will be deemed to have accepted a Successful Bid only when such Successful Bid has been approved by the Court at the Sale Hearing.

## VI. Free and Clear of Any and All Interests

Except as otherwise provided in the Purchase and Sale Agreement of the Successful Bidder and subject to the approval of the Court, all of the Debtors' rights, title, and interest in and to the Assets subject thereto shall be sold free and clear of any Interests to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the proceeds of the sale of the applicable Assets with the same validity and priority as such Interests were held against the applicable Assets prior to the Sale Transaction.

## VII. Sale Hearing

***The Sale Hearing will occur on January 27, 2025, at 10:00 a.m. (prevailing Eastern Time)*** before the Hon. Craig T. Goldblatt, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Courtroom 7, Wilmington, Delaware 19801. Any objections to the Sale Transaction requested at the Sale Hearing must be filed and served so as to be received by the Notice Parties or before ***January 24, 2025, at 4:00 p.m. (prevailing Eastern Time).***

At the Sale Hearing, the Debtors will seek entry of the Sale Approval Order authorizing and approving a Sale Transaction to the Successful Bidder. The Sale Hearing may be adjourned or rescheduled without notice or with limited and shortened notice to parties other than the Consultation Parties, including by (i) an announcement of such adjournment at the Sale Hearing or at the Auction or (ii) the filing of a notice of adjournment with the Court prior to the commencement of the Sale Hearing.

If any Successful Bidder fails to consummate an approved Sale Transaction in accordance with its applicable Purchase and Sale Agreement or such Purchase and Sale Agreement is terminated, the Debtors, after consultation with the Consultation Parties, shall be authorized, but not required, to deem the applicable Back-Up Bid, as disclosed at the Sale Hearing, as the Successful Bid, and the Debtors, after consultation with the Consultation Parties, shall be

[5] With respect to any Sale Transaction, a filed Notice of Successful Bidder shall include, as exhibits, (a) a copy of the Purchase and Sale Agreement; (b) a copy of the proposed Sale Approval Order; and (c) identification of the Assigned Contracts with respect to such Sale Transaction; *provided, however*, that a Successful Bidder shall have the right to add or remove Assigned Contracts until the closing of such Sale Transaction and any definitive identification of Assigned Contracts with respect to a Sale Transaction will be made in connection with a notice of closing of such Sale Transaction.

authorized, but not required, to consummate the sale with the Back-Up Bidder submitting the next highest Bid for any Assets without further order of the Court.

## VIII. Return of Good Faith Deposit

The Good Faith Deposit of any Successful Bidder (or any Back-Up Bidder that becomes a Successful Bidder) shall be applied to the Purchase Price of such Sale Transaction at Closing. Counsel to the Debtors will hold the Good Faith Deposits of the Successful Bidder and the Back-Up Bidder in a segregated account until the Closing of the Sale Transaction with the Successful Bidder. Good Faith Deposits of all other Qualified Bidders shall be held in a segregated account, and thereafter returned to the respective Bidders following the conclusion of the Auction. If a Successful Bidder (including any Back-Up Bidder that has become the Successful Bidder) fails to consummate an approved Sale Transaction because of a breach or failure to perform on the part of such Successful Bidder, the Debtors shall be entitled to retain such Successful Bidder's Good Faith Deposit as part of the Debtors' damages resulting from such Successful Bidder's breach or failure to perform, without prejudice to the Debtors' rights to seek additional damages from the Court as appropriate. The retention of the Good Faith Deposit is not, and is not intended to be, liquidated damages.

## IX. Procedures Related to the Assumption and Assignment of Contracts and Leases

As part of a Sale Transaction, the Debtors may assume and assign certain of their executory contracts and unexpired leases (the "Potential Assumed/Assigned Contracts") to one or more Successful Bidders (*i.e.*, the Assigned Contracts). The procedures governing the Debtors' identification of the Potential Assumed/Assigned Contracts and the non-Debtor counterparties' (the "Counterparties") rights and obligations with respect to objecting to such identification, including to the assumability, assignability, or transferability of such Potential Assumed/Assigned Contracts and/or to the amounts the Debtors believe necessary to cure all monetary defaults under such Potential Assumed/Assigned Contracts pursuant to section 365 of the Bankruptcy Code, are governed by the Bid Procedures Order. **All Counterparties should refer to the Bid Procedures Order, which provides for the following relevant dates and deadlines:**

| Date | Event |
|---|---|
| **December 16, 2024** | Deadline to File Contract Assumption Notice |
| **January 6, 2025, at 4:00 p.m. (ET)** | Contract Objection Deadline |
| **January 24, 2025, at 4:00 p.m. (ET)** | Adequate Assurance Objection Deadline |

If a Contract Objection is timely filed by the Contract Objection Deadline and cannot be resolved, to the extent such Contract Objection relates to a Assigned Contract under the Sale Transaction contemplated by these Bid Procedures, a hearing will be held (i) at the Sale Hearing or (ii) on such other date subsequent to the Sale Hearing but before the Closing Date, as the Debtors determine, in their discretion and in consultation with the Successful Bidder and the Consultation Parties (subject to the Court's calendar) (the "Contract Hearing") before the Bankruptcy Court to consider the objection. If such Contract Objection has not been resolved before to two (2) days prior the Closing of the Sale (whether by an order of the Court or by agreement with the Counterparty), the Successful Bidder may (a) treat such Counterparty's contract or lease as part of assets excluded from the Sale Transaction or (b) temporarily treat the Counterparty's contract or lease as part of assets excluded from the Sale Transaction (a "Designated Agreement"), proceed

to the closing of the Sale with respect to all other Assets, and determine whether to treat the Designated Agreement as an Assigned Contract, or part of assets excluded from the Sale Transaction within ten (10) business days after resolution of such objection (whether by order of the Court or by agreement of the applicable Successful Bidder, the Counterparty, and the Debtors).

**For the avoidance of doubt, if no Contract Objections are filed or received with respect to any Potential Assumed/Assigned Contracts identified on the Assumption Notice, then the Cure Amounts set forth in the Assumption Notice for such Potential Assumed/Assigned Contract will be binding upon the Counterparty to such Potential Assumed/Assigned Contract for all purposes and will constitute a final determination of the Cure Amounts required to be paid by the Debtors in connection with the assumption and assignment of such Potential Assumed/Assigned Contract.**

As soon as practicable after the Auction and in no event later than **January 22, 2025**, the Debtors shall file with the Court and post on the case website, https://cases.stretto.com/PetroQuest/, the Notice of Successful Bidder, substantially in the form attached to the Motion as **Exhibit 5**, identifying any Successful Bidder and Back-Up Bidder, together with a copy of the Successful Bidder's proposed purchase agreement and financial and other information regarding adequate assurance of future performance of the Assigned Contracts, and serve the Notice of Successful Bidder on the Counterparties by overnight delivery, and the Counterparties shall file any Contract Objections solely on the basis of adequate assurance of future performance by the Successful Bidder other than the Stalking Horse Bidder (each, an "Adequate Assurance Objection") not later than ***January 24, 2025, at 4:00 p.m. (ET)***.

## X. Modifications.

The Bidding Procedures may be modified by the Debtors, after timely consultation with the Consultation Parties, in any manner that is not inconsistent with or otherwise in contravention of the other terms of these Bidding Procedures or the Bidding Procedures Order, including, without limitation, (a) imposing additional terms and conditions with respect to any or all bidders, (b) extending the deadlines set forth herein or the date for the Auction and/or Sale Hearing (which may occur in open court); or (c) amending the Bidding Procedures as they may determine to be in the best interests of the Debtors' estates; *provided that* all such modifications are disclosed to all Potential Bidders (if applicable) or Qualified Bidders (if applicable) on the record prior to or during the Auction; *provided further that* any actions taken by the Debtors under this Section X shall not be deemed to be waivers of any terms, conditions, defaults or events of default set forth in the DIP Loan Agreement (as defined in the DIP Order), the DIP Order, or a Stalking Horse Agreement (if any), by any of the DIP Lenders (as defined in the DIP Order) or the respective parties to the DIP Loan Agreement or Stalking Horse Agreement (if any). The Bankruptcy Court has exclusive jurisdiction with respect to any dispute that may arise with respect to these Bid Procedures.

## XI. Notice Parties

As used herein, the "Notice Parties" are:

a. counsel to the Debtors: Cole Schotz P.C., 1325 Avenue of the Americas, 19th Floor, New York, NY 10019, Attn: Daniel F.X. Geoghan (dgeoghan@coleschotz.com),

Jacob S. Frumkin (jfrumkin@coleschotz.com), and Daniel J. Harris (dharris@coleschotz.com);

b. counsel to the Debtors' prepetition and DIP Lenders, Faegre Drinker Biddle & Reath LLP, 1177 Avenue of the Americas, 41st Floor, New York, New York 10036, Attn: James H. Millar (james.millar@faegredrinker.com) and Laura E. Appleby (laura.appleby@faegredrinker.com);

c. counsel to the Committee (if any); and

d. the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Benjamin Hackman.

**Exhibit 2**

**Sale Notice**

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

| | |
|---|---|
| In re: | Chapter 11 |
| PetroQuest Energy, Inc., *et al.*, | Case No. 24-12609 (CTG) |
| Debtors.[1] | (Jointly Administered) |

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

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Court") on November 13, 2024 (the "Petition Date").

**PLEASE TAKE FURTHER NOTICE** on [●], 2024, the Debtors filed a motion (the "Motion")[2] with the Court seeking entry of orders, among other things, (a) authorizing the Debtors to designate a Stalking Horse Bidder and to allow related Bid Protections, (b) approving the Debtors' bidding procedures (the "Bidding Procedures") in connection with the sale (the "Sale") of substantially all of the Debtors' assets located in Panola County, Texas and Cherokee County, Texas (the "Assets") and the proposed auction (the "Auction"), (c) approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts (the "Assumption Procedures"), (d) approving the form and manner of notices related to the Sale and Assumption Procedures, and (e) establishing dates and deadlines in connection with the Sale.

**PLEASE TAKE FURTHER NOTICE** that, on [●], 2024, the Court entered an order [Docket No. [●]] (the "Bidding Procedures Order") granting certain of the relief sought in the Motion, including, among other things, approving the (a) Debtors' right to designate a Stalking Horse Bidder and allow related Bid Protections, (b) Bidding Procedures, which establish the key dates and times related to the Sale and the Auction, and (c) Assumption Procedures. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.[3]

---

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: PetroQuest Energy, Inc. (0714), PetroQuest Energy, L.L.C. (2439), PetroQuest Oil & Gas, L.L.C. (1170), and PQ Holdings LLC, (7576). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 400 E. Kaliste Saloom Road, Suite 5200, Lafayette, LA 70508.

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

3 To the extent of any inconsistencies between the Bidding Procedures and the summary descriptions of the Bidding Procedures in this notice, the terms of the Bidding Procedures shall control in all respects.

## CONTACT PERSON FOR PARTIES INTERESTED IN SUBMITTING A BID

The Bidding Procedures set forth the requirements for becoming a Qualified Bidder and submitting a Qualified Bid. Any party interested in making an offer to purchase the Assets must comply strictly with the Bidding Procedures. Only Qualified Bids will be considered by the Debtors, in accordance with the Bidding Procedures.

Any interested bidder should contact, as soon as possible:

(i) counsel to the Debtors: Cole Schotz P.C., 1325 Avenue of the Americas, 19th Floor, New York, NY 10019, Attn: Daniel F.X. Geoghan (dgeoghan@coleschotz.com), Jacob S. Frumkin (jfrumkin@coleschotz.com), and Daniel J. Harris (dharris@coleschotz.com); and

(ii) advisors to the Debtors: Detring & Associates, LLC, 1885 St. James Place, Suite 1200, Houston, TX 77056, Attn: Jonathan Bristal (jonathan@detring.com).

## OBTAINING ADDITIONAL INFORMATION

Copies of the Bidding Procedures Motion, the Bidding Procedures, and the Bidding Procedures Order, as well as all related exhibits and other documents filed with the Court, are available free of charge on the Debtors' case information website, located at https://cases.stretto.com/PetroQuest.

## IMPORTANT DATES AND DEADLINES[4]

**1. Bid Deadline**. The deadline to submit a Qualified Bid is **January 15, 2025, at 5:00 p.m. (prevailing Eastern Time)**.

**2. Auction**. If one or more Qualified Bids is received by the Bid Deadline, the Debtors will conduct the Auction with respect to the Debtors' Assets. The Auction will commence on **January 21, 2025, at 10:00 a.m. (prevailing Eastern Time**), at the offices of [●], telephonically, or by video via Zoom, or such later time or other place as the Debtors will timely notify all Qualified Bidders. Only the Debtors, Qualified Bidders, the Consultation Parties, and/or other parties as the Debtors may determine to include in their discretion, in each case, along with their representatives and advisors, shall be entitled to attend the Auction, and only Qualified Bidders will be entitled to make overbids at the Auction. **All interested or potentially affected parties should carefully review the Bidding Procedures and the Bidding Procedures Order.**

**3. Objection Deadlines**. The deadline to file an objection to the potential assumption or assumption and assignment of the Assigned Contracts and Cure Amounts related thereto (a "Contract Objection") (except as otherwise set forth in the Assumption Procedures) is **January 6, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the "Contract Objections Deadline"). The deadline to file an objection to the Sale, including the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code (a "Sale

[4] The following dates and deadlines may be extended by the Debtors or the Court pursuant to the terms of the Bidding Procedures and the Bidding Procedures Order.

Objection") is **January 24, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline"). The deadline to file any Contract Objections solely on the basis of adequate assurance of future performance by a Successful Bidder and/or Back-Up Bidder (an "Adequate Assurance Objection") is **January 24, 2025, at 4:00 p.m. prevailing Eastern Time** (the "Adequate Assurance Objections Deadline").

**4. Sale Hearing**. A hearing (the "Sale Hearing") to consider approval of the proposed Sale **free and clear of all liens, claims, interests and encumbrances** will be held on **January 27, 2025 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Craig T. Goldblatt Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, at District of Delaware, at 824 Market Street North, 3rd Floor, Court Room 7, Wilmington, Delaware 19801, or at such other place (which may be by video conference) and time as the Debtors shall notify all Qualified Bidders and all other parties entitled to attend the Auction. The Debtors have the right to adjourn or cancel the Auction at or prior to the Auction.

## FILING OBJECTIONS

Sale Objections, Contract Objections, Auction Objections and Adequate Assurance Objections, if any, must (a) be in writing; (b) state, with specificity, the legal and factual bases thereof; (c) be filed with the Court by no later than the applicable deadlines stated above, as applicable; and (d) served by: (i) counsel to the Debtors, Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801, Attn: Daniel F.X. Geoghan (email: dgeoghan@coleschotz.com), Jacob S. Frumkin (jfrumkin@coleschotz.com), and Daniel J. Harris (dharris@coleschotz.com); (ii) counsel to the Debtors' prepetition and DIP lenders, Faegre Drinker Biddle & Reath LLP, 1177 Avenue of the Americas, 41st Floor, New York, New York 10036, Attn: James H. Millar (james.millar@faegredrinker.com) and Laura E. Appleby (laura.appleby@faegredrinker.com); (iii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, (Attn: Benjamin Hackman); and (iv) counsel to any Committee appointed in these cases.

## CONSEQUENCES OF FAILING TO TIMELY AND PROPERLY ASSERT AN OBJECTION

***Any party who fails to make a timely and proper Sale Objection on or before the Sale and Contract Objections Deadline in accordance with the Bidding Procedures Order and this Notice shall be forever barred from asserting any Sale Objection, including with respect to the transfer of the assets free and clear of all liens, claims, encumbrances and other interests.***

***Any party who fails to make a timely and proper Contract Objection on or before the Sale and Contract Objections Deadline in accordance with the Bidding Procedures Order and this Notice shall be forever barred from asserting any Contract Objection, including with respect to the transfer of the assets free and clear of all liens, claims, encumbrances and other interests.***

***Any party who fails to make a timely and proper Adequate Assurance Objection on or before the Auction and Adequate Assurance Objections Deadline in accordance with the Bidding Procedures Order and this Notice shall be forever barred from asserting any Adequate Assurance Objection, including with respect to the transfer of the assets free and clear of all liens, claims, encumbrances and other interests.***

**NO SUCCESSOR LIABILITY**

***The Sale will be free and clear of, among other things, any claim arising from any conduct of the Debtors prior to the closing of the Sale, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such claim arises out of or relates to events occurring prior to the closing of the Sale. Accordingly, as a result of the Sale, the Successful Bidder will not be a successor to any of the Debtors by reason of any theory of law or equity, and the Successful Bidder will have no liability, except as expressly provided in the Successful Bidder's purchase and sale agreement, for any liens, claims, encumbrances and other interests against or in any of the Debtors under any theory of law, including successor liability theories.***

Dated: November [--], 2024
Wilmington, Delaware

**COLE SCHOTZ P.C.**

*/s/ DRAFT*
Patrick J. Reilley (No. 4451)
Melissa M. Hartlipp (No. 7063)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
preilley@coleschotz.com
mhartlipp@coleschotz.com

-and-

Daniel F.X. Geoghan (admitted *pro hac vice*)
Jacob S. Frumkin (admitted *pro hac vice*)
Daniel J. Harris (admitted *pro hac vice*)
1325 Avenue of the Americas, 19th Floor
New York, NY 10019
Telephone: (212) 752-8000
Facsimile: (212) 752-8393
dgeoghan@coleschotz.com
jfrumkin@coleschotz.com
dharris@coleschotz.com

*Proposed Counsel for Debtors and Debtors-in-Possession*

# Exhibit 3

## Consent Right Holder Notice

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

| | |
|---|---|
| In re: | Chapter 11 |
| PetroQuest Energy, Inc., *et al.*, | Case No. 24-12609 (CTG) |
| Debtors.[1] | (Jointly Administered) |

**NOTICE OF SALE TRANSACTION TO**
**HOLDERS OF ALLEGED CONSENT RIGHTS**

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Court") on November 13, 2024 (the "Petition Date").

**PLEASE TAKE FURTHER NOTICE** that, on [●], 2024, the Debtors filed a motion (the "Motion")[2] with the Court seeking entry of orders, among other things, (a) approving the Debtors' right to designate a Stalking Horse Bidder and to allow related Bid Protections, (b) approving the Debtors' bidding procedures (the "Bidding Procedures") in connection with the proposed auction (the "Auction") for the sale (the "Sale") of substantially all of the Debtors' assets located in Panola County, Texas and Cherokee County, Texas (the "Assets"), (c) approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts (the "Assumption Procedures"), (d) approving the form and manner of notices related to the Sale and the Assumption Procedures, and (e) establishing dates and deadlines in connection with the Sale.

**PLEASE TAKE FURTHER NOTICE** that, on [●], 2024, the Court entered an order [Docket No. [●]] (the "Bidding Procedures Order") granting certain of the relief sought in the Motion, including, among other things, approving the (a) Debtors' right to designate a Stalking Horse Bidder and allow related Bid Protections, (b) Bidding Procedures, which establish the key dates and times related to the Sale and the Auction, and (c) Assumption Procedures. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.[3]

---

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: PetroQuest Energy, Inc. (0714), PetroQuest Energy, L.L.C. (2439), PetroQuest Oil & Gas, L.L.C. (1170), and PQ Holdings LLC, (7576). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 400 E. Kaliste Saloom Road, Suite 5200, Lafayette, LA 70508.

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

3 To the extent of any inconsistencies between the Bidding Procedures and the summary descriptions of the Bidding Procedures in this notice, the terms of the Bidding Procedures shall control in all respects.

**PLEASE TAKE FURTHER NOTICE** that a hearing (the "Sale Hearing") to consider approval of the proposed Sale free and clear of all liens, claims, interests and encumbrances will be held on **January 27, 2025 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Craig T. Goldblatt, Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, at District of Delaware, at 824 Market Street North, 3rd Floor, Courtroom 7, Wilmington, Delaware 19801, or at such other place (which may be by video conference) and time as the Debtors shall notify all Qualified Bidders and all other parties entitled to attend the Auction. The Debtors have the right to adjourn or cancel the Auction at or prior to the Auction in accordance with the Bidding Procedures.

**PLEASE TAKE FURTHER NOTICE** that the Bidding Procedures Order, among other things, provides that if any person or entity (other than any Governmental Unit (as defined in 11 U.S.C. § 101(27)) asserts, or seeks to assert, that any acquired Asset constituting real property or a real property interest (collectively, a "Real Property Asset"), including any oil and gas lease, cannot be transferred, sold, assumed and/or assigned in the Sale free and clear of its liens, claims, interests, and encumbrances on account of either (i) the alleged termination of the Debtors' rights in such Real Property Asset or (ii) alleged approval rights, consent rights, preferential purchase rights, rights of purchase, rights of first refusal, rights of first offer, tag-along rights, or similar rights (collectively, the "Consent Rights"), then such person or entity shall file with the Bankruptcy Court, by no later than **January 6, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the "Consent Rights Objection Deadline"), an objection identifying: (i) the Real Property Assets (including any oil and gas leases) subject to such Alleged Consent Rights; (ii) the applicable agreement, document, or statute giving rise to such Alleged Consent Rights; and (iii) the portion of the agreement, document, or statute giving rise to such Alleged Consent Rights, including all supporting documentation (a "Consent Rights Objection"). The assertion of a Consent Rights Objection shall not require an exercise of the underlying rights alleged or otherwise asserted.

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A HOLDER OF AN ALLEGED CONSENT RIGHT**.

## OBTAINING ADDITIONAL INFORMATION

Copies of the Bidding Procedures Motion, the Bidding Procedures, and the Bidding Procedures Order, as well as all related exhibits and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at https://cases.stretto.com/PetroQuest.

## CONSEQUENCES OF *FAILING* TO TIMELY AND PROPERLY ASSERT AN OBJECTION

***Any person or entity who fails to timely file a Consent Rights Objection by the Consent Rights Objection Deadline shall be forever barred from objecting to the transfer, sale, assumption, and/or assignment of the Debtors' right, title, and interest in, to and under the Assets to be sold, assumed, and/or assigned in connection with the Sale Transaction on account of its Alleged Consent Rights.***

**CONSEQUENCES OF TIMELY AND PROPERLY ASSERT AN OBJECTION**

***If any person or entity timely files a Consent Rights Objection in accordance herewith, the Debtors and other parties in interest shall have the opportunity (but are not required) to object to any Alleged Consent Rights asserted by such person or entity in the Consent Rights Objection by filing a response thereto with the Bankruptcy Court (and serving such response on the person or entity that filed the Consent Rights Objection) no later than January 6, 2025, at 4:00 p.m. Upon the filing of such response that disputes such Consent Rights Objection, the Debtors shall be entitled to assert that a bona fide dispute exists as to such asserted rights pursuant to Section 363(f)(4) of the Bankruptcy Code (with the objections, defenses, and responses of all parties reserved in connection therewith). Nothing herein shall be deemed a waiver of any rights of the Debtors or other parties in interest to contest any rights asserted by any person or entity in Consent Rights Objections at any time, and all such rights are expressly preserved (regardless of whether any objection or response is filed in accordance with the prior sentence).***

Dated: November [--], 2024
Wilmington, Delaware

**COLE SCHOTZ P.C.**

*/s/ DRAFT*

Patrick J. Reilley (No. 4451)
Melissa M. Hartlipp (No. 7063)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
preilley@coleschotz.com
mhartlipp@coleschotz.com

-and-

Daniel F.X. Geoghan (admitted *pro hac vice*)
Jacob S. Frumkin (admitted *pro hac vice*)
Daniel J. Harris (admitted *pro hac vice*)
1325 Avenue of the Americas, 19th Floor
New York, NY 10019
Telephone: (212) 752-8000
Facsimile: (212) 752-8393
dgeoghan@coleschotz.com
jfrumkin@coleschotz.com
dharris@coleschotz.com

*Proposed Counsel for Debtors and Debtors-in-Possession*

# Exhibit 4

## Assumption Notice

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

| | |
|---|---|
| In re: | Chapter 11 |
| PetroQuest Energy, Inc., *et al.*, | Case No. 24-12609 (CTG) |
| Debtors.[1] | (Jointly Administered) |

**NOTICE OF POTENTIAL ASSUMPTION OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES AND CURE AMOUNTS**

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Court") on November 13, 2024 (the "Petition Date").

**PLEASE TAKE FURTHER NOTICE** that, on [●], 2024, the Debtors filed a motion (the "Motion")[2] with the Court seeking entry of orders, among other things, (a) approving the Debtors' right to designate a Stalking Horse Bidder and to allow related Bid Protections, (b) approving the Debtors' bidding procedures (the "Bidding Procedures") in connection with the proposed auction (the "Auction") for the sale (the "Sale") of substantially all of the Debtors' assets located in Panola County, Texas and Cherokee County, Texas (the "Assets"), (c) approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts (the "Assumption Procedures"), (d) approving the form and manner of notices related to the Sale and the Assumption Procedures, and (e) establishing dates and deadlines in connection with the Sale.

**PLEASE TAKE FURTHER NOTICE** that, on [●], 2024, the Court entered an order [Docket No. [●]] (the "Bidding Procedures Order") granting certain of the relief sought in the Motion, including, among other things, approving the (a) Debtors' right to designate a Stalking Horse Bidder and allow related Bid Protections, (b) Bidding Procedures, which establish the key dates and times related to the Sale and the Auction, and (c) Assumption Procedures. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.[3]

---

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: PetroQuest Energy, Inc. (0714), PetroQuest Energy, L.L.C. (2439), PetroQuest Oil & Gas, L.L.C. (1170), and PQ Holdings LLC, (7576). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 400 E. Kaliste Saloom Road, Suite 5200, Lafayette, LA 70508.

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

3 To the extent of any inconsistencies between the Bidding Procedures and the summary descriptions of the Bidding Procedures in this notice, the terms of the Bidding Procedures shall control in all respects.

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

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A CONTRACT OR LEASE THAT MAY BE ASSUMED AND ASSIGNED AS PART OF THE SALE**. ***The presence of an Assigned Contract listed on Exhibit 1 attached hereto does not constitute an admission that such Assigned Contract is an executory contract or unexpired lease or that such Assigned Contract will be assumed and assigned as part of the Sale. The Debtors reserve all of their rights, claims and causes of action with respect to the Assigned Contracts listed on Exhibit 1 attached hereto. The assumption and assignment of the contracts and leases on the Assigned Contracts List is not guaranteed and is subject to approval by the Court and the Debtors' or Successful Bidder's right to remove from the Assigned Contracts List.***

Pursuant to the Assumption Procedures, objections to the proposed assumption and assignment of an Assigned Contract (a "Contract Objection"), including any objection relating to the Cure Payment, must (a) be in writing; (b) comply with the Bankruptcy Rules and Bankruptcy Local Rules; (c) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under Bankruptcy Code sections 365(b)(1)(A) and (B) for the applicable Assigned Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto; (d) be served : (i) counsel to the Debtors, Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801, Attn: Daniel F.X. Geoghan (email: dgeoghan@coleschotz.com), Jacob S. Frumkin (jfrumkin@coleschotz.com), and Daniel J. Harris (dharris@coleschotz.com); counsel to the Debtors' prepetition and DIP lenders, Faegre Drinker Biddle & Reath LLP, 1177 Avenue of the Americas, 41st Floor, New York, New York 10036, Attn: James H. Millar (james.millar@faegredrinker.com) and Laura E. Appleby (laura.appleby@faegredrinker.com); (iii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, (Attn: Benjamin Hackman); and (iv) counsel to any Committee appointed in these cases (the parties identified in (i) through (iv), collectively, the "Objection Notice Parties"); and (e) be filed with the Clerk of the Court and served by no later than **January 6, 2025, at 4:00 p.m. (prevailing Eastern Time).**

***If a counterparty to an assigned contract files a Contract Objection in a manner that is consistent with the requirements set forth above, and the parties are unable to***

***consensually resolve the dispute prior to the Sale Hearing, the amount to be paid or reserved with respect to such objection will be determined at the Sale Hearing, such later hearing date that the Debtors determine in their discretion, or such other date determined by the Court and in consultation with the Successful Bidder and the Consultation Parties (subject to the Court's calendar). All other objections to the proposed assumption or proposed assumption and assignment of the Debtors' right, title, and interest in, to, and under the Assigned Contracts will be heard at the Sale Hearing.***

**PLEASE TAKE FURTHER NOTICE** that although the Debtors have made a good-faith effort to identify all Assigned Contracts that might be assumed and assigned in connection with a Sale, the Debtors or the Successful Bidder may identify certain other executory contracts that should be assumed and assigned in connection with a Sale. Accordingly, the Debtors have reserved the right up until two (2) business days prior to the closing of any Sale, to (i) add any previously omitted Assigned Contracts to the Assigned Contracts List as contracts that may be assumed and assigned to a Successful Bidder in accordance with the definitive documentation for the Sale, (ii) modify the previously stated Cure Payment associated with any Assigned Contract; and/or (iii) remove any Assigned Contract from the Assigned Contracts List that a Successful Bidder proposes to be assumed and assigned in connection with the Sale.

## OBTAINING ADDITIONAL INFORMATION

Copies of the Bidding Procedures Motion, the Bidding Procedures, and the Bidding Procedures Order, as well as all related exhibits and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at https://cases.stretto.com/PetroQuest.

## CONSEQUENCES OF FAILING TO TIMELY AND PROPERLY ASSERT AN OBJECTION

***UNLESS YOU FILE AN OBJECTION TO THE CURE AMOUNT AND/OR THE ASSUMPTION OR ASSIGNMENT OF YOUR CONTRACT OR LEASE IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE (A) BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON EXHIBIT 1, (B) ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTOR, A STALKING HORSE BIDDER, OR SUCH OTHER SUCCESSFUL BIDDER THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON EXHIBIT 1, AND (C) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION AND/OR ASSIGNMENT OF YOUR CONTRACT OR LEASE.***

[*Signature on Following Page*]

Dated: November [--], 2024
Wilmington, Delaware

**COLE SCHOTZ P.C.**

*/s/ DRAFT*
Patrick J. Reilley (No. 4451)
Melissa M. Hartlipp (No. 7063)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
preilley@coleschotz.com
mhartlipp@coleschotz.com

-and-

Daniel F.X. Geoghan (admitted *pro hac vice*)
Jacob S. Frumkin (admitted *pro hac vice*)
Daniel J. Harris (admitted *pro hac vice*)
1325 Avenue of the Americas, 19th Floor
New York, NY 10019
Telephone: (212) 752-8000
Facsimile: (212) 752-8393
dgeoghan@coleschotz.com
jfrumkin@coleschotz.com
dharris@coleschotz.com

*Proposed Counsel for Debtors and Debtors-in-Possession*

**Exhibit 5**

**Notice of Successful Bidder**

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

| | |
|---|---|
| In re: | Chapter 11 |
| PetroQuest Energy, Inc., *et al.*, | Case No. 24-12609 (CTG) |
| Debtors.[1] | (Jointly Administered) |

**NOTICE OF SUCCESSFUL BIDDER AND BACK-UP BIDDER WITH RESPECT TO THE AUCTION OF THE DEBTORS' ASSETS**

**PLEASE TAKE FURTHER NOTICE** that, on [●], 2024, the Court entered an order [Docket No. [●]] (the "Bidding Procedures Order") granting certain of the relief sought in the Motion, including, among other things, approving the (a) the Debtors' right to designate a Stalking Horse Bidder and allow related Bid Protections, (b) Bidding Procedures, which establish the key dates and times related to the Sale and the Auction, and (c) Assumption Procedures. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.[2]

**PLEASE TAKE FURTHER NOTICE** that on **January 21, 2025**, pursuant to the Bidding Procedures Order, the Debtors conducted the Auction with respect to the Assets.

**PLEASE TAKE FURTHER NOTICE** that, at the conclusion of the Auction, the Debtors selected the following Successful Bidder and Back-Up Bidder with respect to the Assets:

| Asset(s) | Successful Bidder | Back-Up Bidder |
|---|---|---|
| | | |
| | | |

**PLEASE TAKE FURTHER NOTICE** that the Sale Hearing to consider approval of (i) the Sale, (ii) transfer of the Assets to the Successful Bidder, **free and clear of all liens, claims, interests, and encumbrances**, in accordance with section 363(f) of the Bankruptcy Code, and (iii) approval of the releases contemplated by the asset purchase agreement, will be held before the Honorable Craig T. Goldblatt, Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, at District of Delaware, at 824 Market Street North, 3rd Floor, Courtroom 7, Wilmington, Delaware 19801, or pursuant to the Court's hearing procedures on **January 27, 2025**

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: PetroQuest Energy, Inc. (0714), PetroQuest Energy, L.L.C. (2439), PetroQuest Oil & Gas, L.L.C. (1170), and PQ Holdings LLC, (7576). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 400 E. Kaliste Saloom Road, Suite 5200, Lafayette, LA 70508.

[2] To the extent of any inconsistencies between the Bidding Procedures and the summary descriptions of the Bidding Procedures in this notice, the terms of the Bidding Procedures shall control in all respects.

**at 10:00 a.m. (prevailing Eastern Time)**. The Sale Hearing may be adjourned from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court or by notice filed on the docket in these Chapter 11 Cases.

**PLEASE TAKE FURTHER NOTICE** that any objections (a) to the manner in which the Auction was conducted, (b) to the identity of the Successful Bidder or the Back-Up Bidder, and/or (c) the ability of the Successful Bidder or Back-Up Bidder to provide adequate assurance of future performance to counterparties to executory contracts and unexpired leases contemplated to be assumed and assigned must be filed with the Court and served on the Objection Notice Parties (defined below) so as to be received no later than **January 24, 2025, at 4:00 p.m. prevailing Eastern Time.**

**PLEASE TAKE FURTHER NOTICE** that the "Objection Notice Parties" are: : (i) counsel to the Debtors, Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801, Attn: Daniel F.X. Geoghan (email: dgeoghan@coleschotz.com), Jacob S. Frumkin (jfrumkin@coleschotz.com), and Daniel J. Harris (dharris@coleschotz.com); (ii) counsel to the Debtors' prepetition and DIP lenders, Faegre Drinker Biddle & Reath LLP, 1177 Avenue of the Americas, 41st Floor, New York, New York 10036, Attn: James H. Millar (james.millar@faegredrinker.com) and Laura E. Appleby (laura.appleby@faegredrinker.com); (iii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, (Attn: Benjamin Hackman); and (iv) counsel to any Committee appointed in these cases.

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

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

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

Dated: November [--], 2024
Wilmington, Delaware

**COLE SCHOTZ P.C.**

*/s/ DRAFT*

Patrick J. Reilley (No. 4451)
Melissa M. Hartlipp (No. 7063)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
preilley@coleschotz.com
mhartlipp@coleschotz.com

-and-

Daniel F.X. Geoghan (admitted *pro hac vice*)
Jacob S. Frumkin (admitted *pro hac vice*)
Daniel J. Harris (admitted *pro hac vice*)
1325 Avenue of the Americas, 19th Floor
New York, NY 10019
Telephone: (212) 752-8000
Facsimile: (212) 752-8393
dgeoghan@coleschotz.com
jfrumkin@coleschotz.com
dharris@coleschotz.com

*Proposed Counsel for Debtors and Debtors-in-Possession*