

1 **Samuel A. Schwartz**, Esq.  
Nevada Bar No. 10985  
2 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 North City Parkway, Suite 1600  
3 Las Vegas, Nevada 89106  
Telephone: (702) 802-2207  
4 Facsimile: (702) 382-8135

5 Jeffrey L. Cohen, Esq. (admitted *pro hac vice*)  
Gabriel L. Olivera, Esq. (admitted *pro hac vice*)  
6 LOWENSTEIN SANDLER LLP  
1251 Avenue of the Americas  
7 New York, New York 10020  
Telephone: (212) 262-6700  
8 Facsimile: (212) 262-7402

9 **Proposed Attorneys for the Debtor**

10 **UNITED STATES BANKRUPTCY COURT**  
11 **DISTRICT OF NEVADA**

12 In re:

13 Bakken Resources, Inc.,  
14 Debtor.

Case No.: **18-17254-BTB**

Chapter 11

Hearing Date: February 15, 2019  
Hearing Time: 10:00 a.m.

16 **MOTION FOR ORDER PURSUANT TO SECTIONS 105, 363, AND 365 OF THE**  
17 **BANKRUPTCY CODE AND RULES 2002, 6004 AND 6006 OF THE FEDERAL**  
18 **RULES OF BANKRUPTCY PROCEDURE: (I) APPROVING BID PROCEDURES**  
19 **WITH RESPECT TO SALE OF ASSETS, SETTING THE SALE HEARING**  
20 **DATE, AND APPROVING FORM AND MANNER OF NOTICES, AND (II)**  
21 **APPROVING THE SALE OF ASSETS FREE AND CLEAR OF LIENS,**  
22 **INTERESTS, CLAIMS, AND ENCUMBRANCES, THE ASSUMPTION AND**  
23 **ASSIGNMENT OF CERTAIN RELATED EXECUTORY CONTRACTS,**  
24 **WAIVING THE REQUIREMENTS OF BANKRUPTCY RULES 6004(H)**  
**AND 6006(D), AND GRANTING RELATED RELIEF**

**TABLE OF CONTENTS**

**PAGES**

1

2

3 TABLE OF AUTHORITIES ..... iii

4 I. JURISDICTION AND VENUE .....2

5 II. STATEMENT OF FACTS.....3

6     A. The Debtor’s Business. ....3

7     B. The Decision to Sell the Sale Assets.....4

8     C. The Marketing and Sale Efforts .....6

9 III. RELIEF REQUESTED.....7

10     A. The Bid Procedures Order .....7

11     B. The Sale Order .....10

12     C. Principal Terms of Transaction.....10

13         (1) The Sale Assets Subject to Sale and Purchase Price.....10

14         (2) Excluded Assets .....11

15         (3) Sale of Assets Not Sold at Auction.....11

16         (4) Executory Contracts.....12

17         (5) Court Approval. ....12

18     D. Other Presumptively Material Provisions Pursuant to LR 6004(b)(6). ....13

19         (1) Involvement of Insiders: LR 6004(b)(6)(A). ....13

20         (2) Management/Key Employee Agreements: LR 6004(b)(6)(B). ....13

21         (3) No Waiver or Release of Claims: LR 6004(b)(6)(C).....13

22         (4) Proposed Auction/Limits on Marketing of Property: LR  
6004(b)(6)(D).....13

23         (5) Deadlines For Closing/Conditions to Closing: LR 6004(b)(6)(E).....13

24         (6) Good Faith Deposit and Conditions for Release: LR 6004(b)(6)(F). ....13

1 (7) Interim Agreements: LR 6004(b)(6)(G). .....14

2 (8) Release of Sale Proceeds to Secured Creditor: LR 6004(b)(6)(H). .....14

3 (9) Tax Exemption Requested: LR 6004(b)(6)(I).....15

4 (10) Access to Records Following Sale: LR 6004(b)(6)(J).....15

5 (11) No Sale of Avoidance Actions: LR 6004(b)(6)(K).....15

6 (12) Successor Liability: LR 6004(b)(6)(L). .....15

7 (13) No Free and Clear Relief Re Possessory Leasehold Interests,  
Licenses or Rights: LR 6004(b)(6)(M). .....16

8 (14) Credit Bidding: LR 6004(b)(6)(N).....16

9 (15) Waiver of The Stay Under Bankruptcy Rule 6004(h): LR  
6004(b)(6)(O).....16

10 BASIS FOR RELIEF REQUESTED THE BID PROCEDURES ORDER .....16

11 A. Bid Procedures Reflect Debtor’s Sound Business Judgment and Should be  
12 Approved.....17

13 B. Pursuant to the Bid Procedures Order, the Court Should Set a Hearing to  
14 Approve a Sale of the Sale Assets, and Approve the Form of the Sale  
Notice.....20

15 C. Assumption and Assignment of any Purchased Contracts. ....22

16 D. The Cure Notice of Debtors’ Proposed Purchased Contracts Pursuant to  
the Motion Is Appropriate.....25

17 E. Relief Under Bankruptcy Rule 6004(d) and (h). ....26

18 THE SALE ORDER .....26

19 A. The Sale of the Sale Assets is Authorized Pursuant to Sections 105(a) and  
363(b) of the Bankruptcy Code.....26

20 B. Sale of the Sale Assets Free and Clear of Liens, Claims, and  
21 Encumbrances is Authorized Under Section 363 of the Bankruptcy Code. ....29

22 C. Approval of the Assumption and Assignment of Purchased Contracts.....31

23 D. The Court Should Waive the Stay Under Bankruptcy Rules 6004(h) and  
6006(d).....35

24

1 CONCLUSION.....36

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**TABLE OF AUTHORITIES**

Page(s)

**CASES**

240 North Brand Partners, Ltd. v. Colony GFP Partners (In re 240 North Brand Partners, Ltd.),  
200 B.R. 653 (B.A.P. 9th Cir. 1996).....27

In re Abbotts Dairies of Pennsylvania, Inc.,  
788 F.2d 143 (3rd Cir. 1986) .....20

In re ANC Rental Corp., Inc.,  
277 B.R. 226 (Bankr. D. Del. 2002) .....22

In re Atlanta Packaging Products, Inc.,  
99 B.R. 124 (Bankr. N.D. Ga. 1988) .....19

In re Bakalis,  
220 B.R. 525 (Bankr. E.D. N.Y. 1998).....19

In re Baldwin United Corp.,  
43 B.R. 888 (Bankr. S.D. Ohio 1984).....28

BC Brickyard Assocs. Ltd. v. Ernst Home Ctr., Inc. (In re Ernst Home Ctr., Inc.),  
221 B.R. 243 (9th Cir. BAP 1998).....28

In re Berkshire Chem. Haulers, Inc.,  
20 B.R. 454 (Bankr. D. Mass. 1982) .....33

In re Borders Group, Inc.,  
453 B.R. 477 (Bankr. S.D. N.Y. 2011).....19

Matter of Bronx-Westchester Mack Corp.  
20 B.R. 139 (Bankr S.D.N.Y. 1982).....33

Calpine Corp. v. O’Brien Env’tl. Energy, Inc. (In re O’Brien Env’tl. Energy, Inc.),  
181 F.3d 527 (3d Cir. 1999).....18

Citicorp Homeowners Svcs., Inc. v. Elliot (In re Elliot),  
94 B.R. 343 (Bankr. E.D. Pa. 1988) .....30, 31

1 Citicorp Mortgage, Inc. v. Brooks (In re Ex-Cel Concrete Co.),  
 178 B.R. 198 (B.A.P. 9th Cir. 1995).....30

2 Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.),  
 3 722 F.2d 1063 (2d Cir. 1983).....26, 28, 29

4 In re Congoleum Corp.,  
 2007 WL 1428477 (Bankr. D.N.J. 2007).....31

5 In re Crowthers McCall Pattern, Inc.,  
 6 114 B.R. 877 (Bankr. S.D.N.Y. 1990).....18

7 Diatom, LLC v. Comm of Creditors Holding Unsecured Claims (In re Gentile Family  
Indus.),  
 8 No. BAP CC-13-1563-KiTaD, 2014 WL 4091001 (B.A.P. 9th Cir. Aug. 19, 2014).....31

9 Matter of DiCamillo,  
 206 B.R. 64 (Bankr. D.N.J. 1997) .....34

10 Doehring v. Crown Corp. (In re Crown Corp.),  
 11 679 F.2e 774, 775 (9th Cir. 1982).....18

12 In re Embers 86th Street, Inc.,  
 184 B.R. (Bankr. S.D.N.Y. 1995).....33, 34

13 Matter of Embrace Systems Corp.,  
 178 B.R. 112 (Bankr. W.D. Mich. 1995).....28

14 In re Ewell,  
 15 958 F.2d 276 (9th Cir. 1992) .....20

16 In re Fed. Mogul Global, Inc.,  
 293 B.R. 124 (D. Del. 2003).....17

17 In re Fin. News Network, Inc.,  
 18 126 B.R. 152 (S.D.N.Y. 1991).....19

19 Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.),  
 107 F.3d 558 (8th Cir. 1997) .....18

20 In re Fruehauf Trailer Corp.,  
 21 Case No. 96-LS63 (PJW) (Bankr. D. Del. Feb. 26, 1997).....19

22 Fulton State Bank v. Schipper (In re Schipper),  
 933 F.2d 513 (7th Cir. 1991) .....26

23 Grp. of Institutional Investors v. Chicago, M., St. P. & P. R. Co.,  
 318 U.S. 523 (1943).....31

24

1 Hargrave v. Township of Pemberton (In re Tabone, Inc.),  
 175 B.R. 855 (Bankr. D.N.J. 1994) .....35

2 Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In  
 3 re Continental Air Lines, Inc.),  
 780 F.2d 1223 (6th Cir. 1986) .....18, 28

4 In re Integrated Resources,  
 5 147 B.R. ....19, 28, 29

6 In re Johns-Manville Corp.,  
 60 B.R. 612 (Bankr. S.D.N.Y. 1986) .....28, 29

7 In re King-Wilson,  
 8 1998 WL 737997 (N.D. Cal. 1998) .....20

9 In re Lahijani,  
 325 B.R. 282 (9th Cir. BAP 2005).....18, 19, 28

10 In re Lionel Corp.,  
 11 772 F.2d at 1071 .....28

12 In re Martin Paint Stores,  
 199 B.R. 258 (Bankr. S.D.N.Y. 1996) .....33

13 In re Metropolitan Mortgage & Securities Co.,  
 2007 WL 2277573 (Bankr. E.D. Wash. 2007) .....31

14 In re Montgomery Ward Holding Corp.,  
 15 242 B.R. 147 (D. Del. 1999).....22

16 In re Montgomery Ward Holding Corp.,  
 Case No. 97-1409 (PJW) (Bankr. D. Del. Aug. 6, 1997) .....19

17 Myers v. Martin (In re Martin),  
 18 91 F.3d 389 (3d Cir. 1996).....27

19 In re Natco Indus.,  
 Inc., 54 B.R. 436, 440-441 (Bankr. S.D.N.Y. 1985) .....34

20 Official Creditors Comm v. X10 Wireless Tech., Inc. (In re X10 Wireless Tech., Inc.),  
 21 BAP No. WW-04-1328-PST, 2005 WL 6960205 (B.A.P. 9th Cir. Apr. 5, 2005) .....31, 32, 33

22 In re Pomona Valley Med. Group,  
 476 F.3d at 670 .....22, 28, 31

23 In re PRK Enterprises, Inc.,  
 24 235 B.R. 597 (Bankr. E.D. Tex. 1999) .....33

1 In re R.H. Neil, Inc.,  
 58 B.R. 969 (Bankr. S.D.N.Y. 1986).....33, 34

2 Stephens Indus., Inc. v. McClung,  
 3 789 F.2d 386 (6th Cir. 1986) .....27, 28

4 Summit Land Co. v. Allen (In re Summit Land Co.),  
 13 B.R. 310 (Bankr. D. Utah 1981) .....23

5 In re Tex. Health Enters., Inc.,  
 6 246 B.R. 832 (Bankr. E.D. Tex. 2000) .....33

7 Walter v. Sunwest Bank (In re Walter),  
 83 B.R. 14 (B.A.P. 9th Cir. 1988).....18, 27

8 In re Wilde Horse Enters., Inc.,  
 9 136 B.R. 830 (Bankr. CD. Cal. 1991).....28

10 In re Yellowstone Mountain Club, LLC,  
 Nos. 08-61570-11, 2010 WL 5071354 (D. Mont. Dec. 7, 2010), aff'd, 486 F.  
 11 App’x. 720 (9th Cir. 2012) .....32

12 **STATUTES**

13 11 U.S.C. § 363.....22, 26, 29

14 15 U.S.C. § 781.....3

15 28 U.S.C. §§ 157.....2

16 28 U.S.C. § 1334.....2

17 28 U.S.C. §§ 1408.....2

18 28 U.S.C. §§ 1409.....2

19 **RULES**

20 Bankruptcy Rules 2002..... passim

21 Bankruptcy Rules 2004..... 1

22 Bankruptcy Rule 6004 ..... passim

23 Bankruptcy Rule 6006 ..... passim

24 Bankruptcy Rules 9007.....8

Bankruptcy Rules 9036.....8

1 Local Bankruptcy Rule 1007 .....8  
2 Local Bankruptcy Rule 1001(b)(1).....2  
3 Local Bankruptcy Rule 6004 ..... 1, 10, 13-16  
4 Local Bankruptcy Rule 9014 .....35  
5 Local Bankruptcy Rule 9014.2 .....2

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24



1 Bakken Resources, Inc., as debtor and debtor-in-possession (the “Debtor” or “Bakken” as  
2 applicable), hereby respectfully submits this motion (the “Motion”) for orders pursuant to Sections<sup>1</sup>  
3 105, 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2004, 6004 and 6006, and Local Rule  
4 6004: (1) approving bidding procedures (the “Bid Procedures”) for the sale of certain of the Debtor’s  
5 assets (the “Sale Assets”), setting an auction and sale hearing date; and (2) following the hearing on  
6 the Sale, authorizing and approving the sale of the Sale Assets free and clear of all liens (statutory or  
7 otherwise), claims, interests, and encumbrances of every kind and nature, with the exception of  
8 Assumed Liabilities and Permitted Encumbrances as defined herein, and with all such liens, claims,  
9 interests, and other encumbrances attaching with the same validity and priority to the sale proceeds  
10 (the “Sale”), authorizing and approving the assumption and assignment of related executory contracts  
11 and unexpired leases, waiving of the requirements of Bankruptcy Rules 6004(h) and 6006(d), and  
12 granting related relief.

13 This Motion is based upon the points and authorities herein, the *Declaration of Richard*  
14 *Robbins in Support of Bid Procedures and Sale Motion* (the “Robbins Decl.”) filed concurrently  
15 herewith, the previously filed *Declaration of Richard Robbins in Support of Bankruptcy Filing and*  
16 *First Day Motions* (the “First Day Declaration”) [ECF No. 19], the papers and pleadings on file with  
17 the Court in this bankruptcy case, judicial notice of which are respectfully requested, and any oral  
18 argument presented to the Court at the hearings on this Motion. Further, the following documents  
19 accompany this Motion and are incorporated herein:

20 **Exhibit 1** - the Bid Procedures Order, including **Exhibit A** – the Bid  
21 Procedures; **Exhibit B** – the Sale Notice and the exhibit thereto; **Exhibit**

---

22 <sup>1</sup> Unless otherwise stated, all references to “Section” herein shall be to title 11 of the U.S. Code  
23 (the “Bankruptcy Code”); all references to a “Bankruptcy Rule” shall refer to the Federal Rules  
24 of Bankruptcy Procedure; and all references to a “Local Rule” shall refer to the Local Rules of  
Bankruptcy Practice of the U.S. District Court for the District of Nevada.

**C** - the Cure Amount Notice; and **Exhibit D** - the Notice of Assumption and Assignment;

**Exhibit 2** – the form Asset Purchase Agreement (the “APA”);

**Exhibit 3** - the Sale Order; and

**Exhibit 4** - the List of Sale Assets.

**I. JURISDICTION AND VENUE**

1. On December 7, 2018 (the “Petition Date”), the Debtor commenced a voluntary case under Chapter 11 of the Bankruptcy Code, commencing this chapter 11 case (the “Chapter 11 Case”). The Debtor is authorized to operate its business as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. As of the date of this Motion, no official committees have been appointed in this Chapter 11 Case.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Local Rule 1001(b)(1). Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Local Rule 9014.2, the Debtor consents to entry of a final order or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders for judgment consistent with Article III of the U.S. Constitution.

3. Venue of the Debtor’s chapter 11 case in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory basis for the relief sought herein arises from Sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, Local Rule 6004.

1 **II. STATEMENT OF FACTS**

2 **A. The Debtor's Business.**

3 5. The Debtor is a publicly-traded Nevada corporation (ticker symbol: BKKN) with  
4 securities registered under Section 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. § 781(g).  
5 See First Day Decl., ¶ 8.

6 6. The Debtor's activities are focused on acquiring mineral, royalty, and overriding  
7 royalty interests in oil and gas producing areas throughout the United States. Id. ¶ 9. The Debtor's  
8 primary source of revenue is royalties generated from leasing its mineral acreage. Id. ¶ 12. The  
9 Debtor partners with operators to explore and develop oil and natural gas from its mineral acreage and  
10 has leases with ten contracted oil drilling operators on the various parcels of land that the Debtor  
11 acquired rights to in November 2010 and the additional properties acquired in 2018. Id.

12 7. Since its inception, the Debtor's primary focus has been the Williston Basin in western  
13 North Dakota, where the Debtor owns mineral rights to approximately 7,200 gross acres and 1,600 net  
14 mineral acres of land, and in Colorado, where it owns overriding royalty interests. Id. ¶ 9. The  
15 Debtor also has similar assets in Texas, Oklahoma, Montana, and Louisiana. Id.

16 8. A high-level understanding of the various property rights and interests involved in the  
17 oil and gas industry is necessary for considering this Motion. See Robbins Decl., ¶ 7. A landowner  
18 may sever the right to oil, gas, and other minerals from those to the surface of his land, among other  
19 things, by grant or by reservation in a deed. Id. Once severed, the right to minerals is referred to as  
20 the "mineral estate" and the remainder is the "surface estate." Id. The mineral estate generally  
21 remains a real property interest of equal dignity to that of the surface estate and, as a general rule, all  
22 of the common law and statutory principles applicable to real property, such as conveyancing,  
23 recordation, and the statute of frauds are equally applicable.

1           9.       Although the mineral rights owner may explore and drill for himself, it is far more  
2 common for him to “lease” this right to another entity. Id. ¶ 8. Simply put, the mineral lease is a grant  
3 by the mineral owner (the lessor) to another (the lessee, or more typically a joint enterprise of several  
4 lessees) authorizing the lessee to explore, drill for, and produce oil, gas, and other hydrocarbons at its  
5 own cost and risk, in exchange for consideration, most importantly a fractional royalty on any oil  
6 obtained from the wells drilled. Id. The lease is granted for a primary term during which the lessee  
7 has the right to attempt to drill and obtain production in “commercial” quantities and, if it does so, to  
8 produce the oil and/or gas for as long thereafter as production is maintained, *i.e.*, to produce the well  
9 until oil and/or gas are no longer produced in “commercial” quantities. Id.

10           10.       Overriding royalties interests (“ORRI”) are also common. Id. ¶ 9. These are royalty  
11 interests carved out of a working interest, *i.e.*, a royalty which all or some of the working interest  
12 owners must pay out of their share of the prospect’s production. Id. Like a lessor’s royalty, ORRIs  
13 are generally free of costs, meaning the holder does not contribute to the cost of actually getting the oil  
14 out of the ground. Id.

15           11.       The Sale Assets that the Debtor seeks to sell pursuant to this Motion consist of mineral  
16 rights and ORRIs. As discussed below, a list of such mineral rights and ORRIs (the “List of Sale  
17 Assets”), are attached hereto as Exhibit 4.<sup>2</sup>

18 **B.       The Decision to Sell the Sale Assets.**

19           12.       As discussed in the First Day Declaration, the mineral interests and ORRIs relate to  
20 shale based oil and natural gas wells which realize steep production declines after initial production.  
21 See First Day Decl., ¶ 22. Production from shale wells begins at a very high rate and then declines  
22 very rapidly. Id. In fact, more than 85% of a well’s lifetime production occurs in the first three years  
23

---

24 <sup>2</sup>       The List of Sale Assets will also be attached to the Sale Notice as Exhibit 1 thereto.

1 of production and more than 90% of the well's lifetime production will have occurred during its first  
2 five years. Id.

3 13. The decline characteristics of shale wells are a considerable long-term factor and a  
4 factor that dictates the Debtor's long-term strategy. Id. ¶ 23. As well production decreases, the  
5 Debtor's revenue and cash flow also decrease. Id. The decline curve associated with oil and natural  
6 gas wells is such that to grow revenue and profitability, the Debtor needs to continually add or acquire  
7 new wells to replace the depleted production. Id.

8 14. Throughout much of its history, the Company has relied upon its operators to drill new  
9 wells on its existing mineral acreage to replace depleted production. Id. ¶ 63. However, over the past  
10 couple years, the Company's primary operators have not drilled enough new wells to compensate for  
11 production depletion. Id. While production initially increased in the first three months after a Spring  
12 2018 acquisition made by the Company, oil production subsequently declined by 33% in the three  
13 months thereafter. Id. Since July 2018, the production decline appears to have stabilized at a 10%-  
14 15% annualized rate. Id. As production continued to decline, the lack of sufficient new well drilling  
15 ensured that revenue and cash flow continued to decline. Id.

16 15. As discussed in the First Day Declaration, the Debtor requires continued capital in  
17 order to fund new asset acquisitions which are critical to the Debtor's ability to sustain revenue and  
18 cash flow by replacing depleted production with new production. Id. ¶ 64. The Debtor has been  
19 unable to do so because of (i) the Debtor's history of net operating losses, (ii) the impact of the  
20 Debtor's litigation on its ability to raise capital, and (iii) the disputed claims of ownership of  
21 significant blocks of the Debtor's common stock. Id.

22 16. In the Debtor's business judgment, initiating a sale process will efficiently monetize the  
23 Sale Assets in a manner that maximizes their value to the bankruptcy estate. See Robbins Decl., ¶ 14.

24

1 In order to preserve the most value for the estate and its stakeholders, the Debtor must move quickly to  
2 be in a position to consummate the sale of the Debtor's mineral rights and ORRIs. Id. The Debtor  
3 determined that the only way to ensure maximum value to distribute to the Debtor's creditors and  
4 shareholders is to sell its mineral rights and ORRIs. Id. It is the Debtor's belief that if a meaningful  
5 sale process of the Debtor's Sale Assets can be conducted, all of the unsecured claimholders of the  
6 Debtor will be paid in full and that substantial additional value will be created for the Debtor's  
7 stakeholders, including its equity holders, which will be distributed to the appropriate parties-in-  
8 interest pursuant to the Debtor's Chapter 11 Plan. See First Day Decl., ¶ 70.

9 17. Given all of the aforementioned, the Debtor's decision to sell its mineral rights and  
10 ORRIs is presumed appropriate, as it is the only way to preserve the estate's value, and it is based on  
11 the Debtor's sound business judgment.

### 12 C. The Marketing and Sale Efforts

13 18. As a result of the Debtor's continued losses over recent periods due to its litigation  
14 expenses, its inability to amass the capital necessary to carry out the its business model and the recent  
15 decline of oil prices, the Company engaged Richard Robins and David Hindman, as Vice President of  
16 Restructuring and as Chief Restructuring Officer, to pursue strategic alternatives, including, without  
17 limitation, the marketing of its mineral rights and ORRIs for sale. See Robbins Decl., ¶ 15.

18 19. Mr. Robbins and Mr. Hindman, along with the Debtor's professional advisors, have  
19 analyzed the Debtor's current financial position and business operations, and are currently engaging in  
20 a marketing campaign, approaching over 75 prospective buyers. Id. ¶ 16. They are in the process of  
21 finalizing a digital data room and other means of facilitating potential buyers' due diligence for the sale  
22 of the Sale Assets. Id.

23 20. The Debtor is confident that it will secure the interest of several potential buyers before  
24 the proposed auction date. Id. ¶ 17. Accordingly, the Debtor has filed this Motion, while the

1 marketing process is on-going, to ensure that the asset sale process can be completed expeditiously  
2 and maximum value can be achieved for the Debtor's stakeholders. Id. The Debtor's management  
3 and advisors will be responsible for responding to requests for due diligence from potential bidders  
4 after execution of a confidentiality agreement and any other documents reasonably required. Id.

5 21. Shortly after the filing of this Motion, the Debtor also anticipates working with the  
6 UST, the litigation parties, and other constituencies regarding a proposed chapter 11 plan to finalize  
7 the remainder of the Chapter 11 Case, post-closing of the asset sale, in an orderly and timely fashion.

### 8 **III. RELIEF REQUESTED**

#### 9 **A. The Bid Procedures Order**

10 22. By this Motion, the Debtor requests an order (the "Bid Procedures Order") substantially  
11 in the form annexed hereto as **Exhibit 1**:

- 12 (i) approving bidding procedures annexed thereto as **Exhibit A** (the "Bid Procedures");
- 13 (ii) setting the date and time of the auction (the "Auction") and hearing to approve  
14 the sale of the Sale Assets (the "Sale Hearing") and the various deadlines in  
15 connection therewith;
- 16 (iii) approving the form of notices in connection with the foregoing, including the  
17 form of notice of the auction and sale (the "Sale Notice"), the form of notice of  
18 cure amounts (the "Cure Amount Notice"), and the Notice of Assumption and  
19 Assignment, attached to the Bid Procedures Order as **Exhibit B**, **Exhibit C**, and  
20 **Exhibit D**;
- 21 (iv) approving the form APA annexed hereto as **Exhibit 2**;
- 22 (v) waiving the requirements of Bankruptcy Rules 6004(h) and 6006(d) with  
23 respect to the foregoing; and
- 24 (vi) granting related relief.

25 23. The Debtor believes that the proposed Bid Procedures, summarized below and as set  
26 forth in more detail in Exhibit A, provide a fair, open, and appropriate process for soliciting and

1 selecting bids (each, a “Bid”) from all interested bidders that will culminate with the selection of the  
2 highest and best Bid(s) for the Sale Assets. See Robbins Decl., ¶ 19.

- 3 a. **Form of Sale(s).** The Debtor will consider offers for a sale, in one or a series of  
4 related transactions, of any material portion of the Sale Assets and related  
5 executory contracts and unexpired leases. The Sale shall be pursuant to the  
6 terms and conditions of the APA (as may be amended pursuant to the Bid  
7 Procedures).
- 8 b. **Notice of Sale.** The Debtor will provide notice of the proposed Bid Procedures  
9 and the date and time of the Sale Hearing to (i) parties-in-interest in accordance  
10 with the order entered pursuant to the Debtor’s *Motion for Order Pursuant to  
11 Bankruptcy Code Sections 102, 105; Bankruptcy Rules 2002, 9007, and 9036;  
12 and Local Bankruptcy Rule 1007 Authorizing the Establishment of Certain  
13 Notice Procedures* [ECF No. 22] or as otherwise ordered by the Court; (ii)  
14 every party that has previously expressed any interest in the potential purchase  
15 of the Debtor’s Assets, and (iii) any other party that the Debtor believes might  
16 be interested in a possible purchase of the Sale Assets. The Debtor may provide  
17 additional notice of the Sale by published advertisement.
- 18 c. **Bid Deadline.** The deadline (the “Bid Deadline”) for submission of a final and  
19 binding written proposal for the Sale Assets will be 5:00 p.m. (prevailing  
20 Pacific Time) on April 16, 2019.
- 21 d. **Purchase Price and Consideration of Bids.** All Bids submitted by a bidder  
22 (each, a “Bidder”) must state the total proposed purchase price (the “Purchase  
23 Price”), in U.S. dollars, including any cash to be paid, identify the specific Sale  
24 Assets to be purchased in the Bid and the portion of the Purchase Price allocated  
to each category of Sale Assets to be purchased, and not be subject to any  
further due diligence condition or financing contingencies.
- e. **Deposit.** All Bids must include a deposit of ten percent (10%) of the Purchase  
Price in cash, to be deposited in an escrow or segregated account to be identified  
in the Bid Procedures.
- f. **Content of Bids.** In addition to the Purchase Price and consideration, the Bid  
Procedures require additional documents and information to be submitted with  
the Bid, including, without limitation, the submission of a copy of the APA,  
marked electronically to show any changes, and a clean, executed version of the  
APA (the “Modified APA”) and information, including, without limitation,  
current audited financial statements or such other form of financial disclosure  
acceptable to the Debtor, sufficient to demonstrate to the Debtor’s satisfaction  
that the Bidder has the necessary financial capacity to consummate the Sale.
- g. **Closing Conditions to Bids.** All conditions to closing required by a Bidder  
must be set forth in the Modified APA, provided, however, that no Bid may be



1 subject to any financing, due diligence or other material conditions. To the  
2 extent a Bid relies on one or more third-party financing sources, the Bid must  
3 include a signed, binding and irrevocable commitment letter from such third-  
4 party financing source(s) or comparable commitment from any equity source.  
5 To the extent a Bid relies on financing sources of affiliates of the Bidder, the  
6 Bid must include sufficient evidence of financial capacity to consummate the  
7 Sale and satisfy all obligations and potential obligations pursuant to the  
8 Modified APA. Other than those conditions set forth in the Modified APA,  
9 each Bid shall be irrevocable until and unless the Debtor select a higher or  
10 otherwise better Qualified Bid (defined below) and such Bidder is not selected  
11 as the Back-Up Bidder (defined below).

7 h. **Joint Bids.** The Debtor will be authorized to approve joint Bids on a case by  
8 case basis.

8 i. **Evaluation of Bids.** Each Bid will be evaluated by the Debtor and its advisors  
9 to determine if it fully satisfies the Bid Procedures' requirements (each, a  
10 "Qualified Bid"). The Debtor will inform each Bidder as soon after such  
11 determination is made if such bidder has submitted a Qualified Bid (a  
12 "Qualified Bidder"). In evaluating the Bids, the Debtor will take into  
13 consideration, among other factors, the form and amount of the consideration,  
14 the presence of any closing conditions, the source of financing, the extent of  
15 financial wherewithal to meet all commitments under the Bid, the required  
16 approvals (if any), and the transaction structure and execution risk.

13 j. **Notice of Assumption and Assignment.** Within three (3) business days  
14 following the Bid Deadline, the Debtor will file and serve a Notice of  
15 Assumption and Assignment, which will identify the Purchased Contracts, if  
16 any, proposed to be assumed and assigned to each Qualified Bidder(s), and  
17 provide counterparties to such Purchased Contracts with the Qualified  
18 Bidder(s)' proposed adequate assurance of future performance. To the extent  
19 that such Purchased Contracts were not listed on the Debtor's previously filed  
20 Cure Amount Notice, the Notice of Assumption and Assignment will also set  
21 forth the Proposed Cure Amount for such Purchased Contracts (the "Additional  
22 Proposed Cure Amount").

19 k. **Auction.** The Debtor requests that the Court schedule an Auction on April 23,  
20 2019 at 11:00 a.m. (prevailing Central Time) and Sale Hearing within a week  
21 thereafter. The minimum interval for bidding at the auction (the "Bid  
22 Increment") shall be determined by the Debtor. There are additional provisions  
23 governing the auction in the Bid Procedures which shall be disclosed to  
24 Qualified Bidders, including selection of one or more winning Bids (the  
"Winning Bid" and such bidder, the "Winning Bidder") and one or more back-  
up Bids (the "Back-Up Bid" and such bidder, the "Back-Up Bidder"). The  
Debtor may choose one Qualified Bid as the Winning Bid and/or Back-Up Bid  
or several Qualified Bids, each for different Assets, as the Winning Bids and/or  
Back-Up Bids. If, at any time prior to the Closing Date, the Winning Bidder

1 cannot consummate the Winning Bid, the Debtor may choose to close with the  
2 Back-Up Bidder (as defined in the Bid Procedures) by accepting the Back-Up  
Bid for the relevant Asset(s).

3 **B. The Sale Order**

4 24. The Debtor further seeks, following the Sale Hearing, entry of an order (the “Sale  
5 Order”), substantially in the form annexed hereto as **Exhibit 3**:

- 6 (i) approving the APA;
- 7 (ii) approving the Sale of the Sale Assets to the Winning Bidder(s) at the Auction  
8 free and clear of liens, claims, encumbrances and interests with the exception of  
any Assumed Liabilities or Permitted Encumbrances;<sup>3</sup>
- 9 (iii) approving the assumption, assignment, and sale of any related executory  
contracts or unexpired leases, if any, to the Winning Bidder(s);
- 10 (iv) waiving the requirements of Bankruptcy Rules 6004(h) and 6006(d) with  
11 respect to the foregoing; and
- 12 (v) granting related relief.

13 25. Pursuant to LR 6004(b)(5), the following discussion summarizes the material terms of  
the transaction contemplated by the APA. Section A addresses the principal terms of the transaction.  
14 Section B addresses each of the specific matters identified in Local Rule 6004(b)(6) as presumptively  
15 “material” with respect to a proposed sale transaction, indicating in each instance whether or not such  
16 provision is implicated by the APA.

17 **C. Principal Terms of Transaction.**

18 **(1) The Sale Assets Subject to Sale and Purchase Price.**

19 26. The Sale is memorialized in the APA, attached hereto as Exhibit 2. Set forth below is a  
20 summary of the material terms of the APA, however, this description is intended as a summary of  
21 certain salient terms only, and is qualified in its entirety by reference to the APA. Capitalized terms  
22

---

23 <sup>3</sup> “Assumed Liabilities” and “Permitted Encumbrances” are defined herein as such terms are  
24 defined in the applicable APA or Modified APA with respect to the relevant portion of the Sale  
Assets.

1 used but not defined in this have the meaning given them in the APA. By its terms, the APA is subject  
2 to approval of this Court.

3 27. The Debtor has determined that it is in the best interests of the estate to conduct a sale  
4 (the "Sale") of the Sale Assets, which are set forth on the List of Sale Assets, as well as any property  
5 necessary for the transfer to and/or the operation by a buyer of any of such Sale Assets, subject to the  
6 Debtor's rights, as applicable, to continued use, if necessary.

7 28. With the exception of any Assumed Liabilities or Permitted Encumbrances, there are no  
8 liens on the Sale Assets. See Robbins Decl., ¶ 22.

9 **(2) Excluded Assets**

10 29. The Sale Assets do not include the following (the "Excluded Assets"):

- 11 (i) All office furniture, fixtures, equipment, and computer hardware of the Debtor;
- 12 (ii) All claims (including any litigation or arbitration claims and any refunds and  
13 deposits), rights, rights of offset or causes of action of the Debtor;
- 14 (iii) All causes of action and claims that may be asserted against the Purchaser(s)  
15 and all rights of the Debtor under the APA(s) or any other agreements or  
16 instruments otherwise delivered in connection with the APA(s);
- 17 (iv) Any and all actions which a trustee, debtor-in-possession or other appropriate  
18 party in interest may assert on behalf of the Debtor or its estate under applicable  
19 state statute or Chapter 5 of the Bankruptcy Code, including actions under one  
20 or more provisions of Sections 542, 543, 544, 545, 546, 547, 548, 549, 550, 551  
21 and 553 (the "Avoidance Actions");
- (v) Equity or stock of the Debtor;
- (vi) All cash, cash equivalents, bank accounts and short-term and other investments  
or deposits of the Debtor; and
- (vii) Personnel records or other records of the Debtor that are required by law to  
remain in its possession.

22 **(3) Sale of Assets Not Sold at Auction.**

23 30. To the extent that certain of the Sale Assets are not sold pursuant to the Auction, the  
24 Debtor intends file a motion seeking authority to sell such assets through EnergyNet.com

1 (“EnergyNet”). See Robbins Decl., ¶ 23. EnergyNet is a widely-known and reputable auction website  
2 that specializes in oil and gas property sales. Id. EnergyNet conducts efficient oil and gas auction,  
3 sealed bid, and negotiated sale services that facilitate transactions of producing working interests  
4 (operated and non-operated), ORRIs, royalties, mineral interests, and non-producing leaseholds. Id.  
5 EnergyNet is unique in its approach, as the bulk of its sales solicitations and auctions are conducted  
6 online. Id. EnergyNet’s technological reach presents an oil and gas property portfolio to thousands of  
7 potential buyers with multi-billion-dollar buying power and allows buyers the flexibility and  
8 convenience of conducting their acquisition and divestment activities online. Id. Selling the Debtor’s  
9 remaining mineral rights and ORRIs through EnergyNet is the quickest and most efficient way of  
10 preserving value for the Debtor’s remaining Sale Assets for its stakeholders. Id.

11 **(4) Executory Contracts.**

12 31. The Debtor is seeking to sell the Sale Assets at the Auction in whole to a single Bidder  
13 or in part to multiple Bidders, each a Winning Bidder for the relevant Sale Assets. As of the filing of  
14 this Motion, the Debtor does not anticipate the need to assume and assign any executory contracts or  
15 unexpired leases (collectively, the “Purchased Contracts”, and each individually, a “Purchased  
16 Contract”) to any Winning Bidder(s) in connection with the Sale. See Robbins Decl., ¶ 22. However,  
17 in the event that it may be necessary to assume and assign certain Purchased Contracts related to the  
18 Sale Assets to a Winning Bidder(s) in connection with the Sale, this Motion seeks authority, but not  
19 direction, to assume and assign such Purchased Contracts in connection with any sale of the Sale  
20 Assets. Id.

21 **(5) Court Approval.**

22 32. The Debtor’s ultimate commitment and obligation to transfer the Sale Assets and to  
23 assume and assign Purchased Contracts shall be dependent, among other things, upon the Court  
24 entering the Sale Order.

1 **D. Other Presumptively Material Provisions Pursuant to LR 6004(b)(6).**

2 **(1) Involvement of Insiders: LR 6004(b)(6)(A).**

3 33. At this time, the Debtor anticipates that no Insider will be a party to the APA, nor will  
4 any enter into an employment agreement with a Winning Bidder.

5 **(2) Management/Key Employee Agreements: LR 6004(b)(6)(B).**

6 34. The APA does not contemplate and the Debtor is not aware of any agreements with  
7 management or key employees regarding compensation or future employment.

8 **(3) Waiver or Release of Claims: LR 6004(b)(6)(C).**

9 35. Section 4 of the form APA provides for releases by the Purchaser of the Seller and  
10 related parties, including officers, directors and employees.

11 **(4) Proposed Auction/Limits on Marketing of Property: LR 6004(b)(6)(D).**

12 36. The APA and Bid Procedures sought to be approved by this Motion do not limit the  
13 ability of Debtor to market the Sale Assets. To the contrary, the Bid Procedures and other relief  
14 requested in this Motion contemplate that the Debtor, upon and after entry of the Bid Procedures  
15 Order, will (i) provide notice of the Sale and the opportunity to bid to potentially interested parties, (ii)  
16 facilitate due diligence by qualified parties, and (iii) conduct a sale process and auction aimed at  
17 maximizing value. See Bid Procedures, pp. 2-3.

18 **(5) Deadlines For Closing/Conditions to Closing: LR 6004(b)(6)(E).**

19 37. Subject to the terms and conditions in the APA or a Modified APA, the consummation  
20 of the transactions contemplated by the APA (or a Modified APA, as may be applicable) (the  
21 "Closing") shall take place within thirty (30) days after the entry of the Sale Order.

22 **(6) Good Faith Deposit and Conditions for Release: LR 6004(b)(6)(F).**

23 38. Each Bid must be accompanied by a deposit in the amount of ten percent (10%) of the  
24 Purchase Price in cash to a noninterest- bearing escrow account to be identified and established by the

1 Debtor (the “Good Faith Deposit”). The Good Faith Deposits of all Qualified Bidders shall be held in  
2 one or more noninterest-bearing escrow accounts by the Debtor, but shall not become property of the  
3 Debtor’s estate absent further order of the Bankruptcy Court. In the event that a Bid is determined by  
4 the Debtor not to be a Qualified Bid, the Debtor shall cause the return of such bidder’s Good Faith  
5 Deposit within five (5) business days after the Bid Deadline. Other than with respect to the Winning  
6 Bidder (or the Back-Up Bid(s), if applicable), all other Good Faith Deposits not already returned to the  
7 respective Qualified Bidder shall be returned no later than five (5) business days after the Auction.  
8 See Bid Procedures, p. 5.

9 39. If the Winning Bidder (or the Back-Up Bidder, if necessary) timely closes the  
10 transactions contemplated in the Winning Bid (or the Back-Up Bid, if necessary), such bidder’s Good  
11 Faith Deposit shall be credited towards its cash payment due on Closing. In the event that the  
12 Winning Bidder (or the Back-Up Bidder, if necessary) fails to consummate the Sale because of a  
13 breach or failure to perform on the part of such Winning Bidder (or the Back-Up Bidder, if necessary),  
14 the Debtor will not have any obligation to return such bidder or bidders’ Good Faith Deposit.  
15 Retention of such Good Faith Deposit(s), shall constitute liquidated damages, shall be one of the  
16 Debtor’s remedies at law and in equity against the Winning Bidder (or the Back-Up Bidder, if  
17 necessary), and, upon failure to close by the Winning Bidder, the Debtor shall be free to consummate  
18 the Sale proposed by the Back-Up Bidder (to the extent applicable) without the need for an additional  
19 hearing or order of the Bankruptcy Court.

20 (7) **Interim Agreements: LR 6004(b)(6)(G).**

21 40. None.

22 (8) **Release of Sale Proceeds to Secured Creditor: LR 6004(b)(6)(H).**

23 41. Neither the APA nor this Motion contemplates the release of any sale proceeds to a  
24 secured creditor, given that the Debtor does not have any secured debt.

1           **(9)    Tax Exemption Requested: LR 6004(b)(6)(I).**

2           42.    No tax exemption is requested in the APA which provides that any and all real estate  
3 taxes, ad valorem taxes, transfer taxes or other taxes relating to the Sale shall be the sole responsibility  
4 of the Purchaser. See APA, § 7.

5           **(10)   Access to Records Following Sale: LR 6004(b)(6)(J).**

6           43.    The APA provides that, notwithstanding anything in the APA to the contrary, for a  
7 period of three (3) years after the Closing Date, the Purchaser will give the Debtor and its  
8 representatives reasonable access during the Purchaser's regular hours upon reasonable advance notice  
9 and under reasonable circumstances to any books and records relating to the Purchased Assets or  
10 transferred to the Purchaser thereunder to the extent necessary for the preparation of financial  
11 statements or regulatory filings of the Seller in respect of periods ending on or prior to the Closing  
12 Date or as necessary to enable the Seller to administer its bankruptcy case or to pursue or defend  
13 against any claim (including any litigation or arbitration claims and any refunds and deposits), rights,  
14 rights of offset or causes of action of the Seller. See APA, § 10.

15           **(11)   No Sale of Avoidance Actions: LR 6004(b)(6)(K).**

16           44.    Neither the APA nor the Motion seeks to sell or otherwise limit any rights to pursue  
17 avoidance claims under Chapter 5 of the Bankruptcy Code and such avoidance claims are excluded  
18 from the Sale Assets.

19           **(12)   Successor Liability: LR 6004(b)(6)(L).**

20           45.    The APA provides that, subject in all respects to the Sale Order, the Purchaser  
21 purchases and assumes all liabilities and obligations arising from, relating to or in connection with the  
22 Purchased Assets from and after the closing of the transactions contemplated in the APA. See APA,  
23 § 1(b).

1           **(13) No Free and Clear Relief Re Possessory Leasehold Interests, Licenses or Rights: LR 6004(b)(6)(M).**

2           46. As set forth below, the Debtor requests that, with the exception of any Assumed  
3 Liabilities or Permitted Encumbrances, the Sale Assets will be sold free and clear of all interests, liens,  
4 claims and encumbrances pursuant to Section 363 of the Bankruptcy Code, with all such interests,  
5 liens, claims, and encumbrances to attach to the proceeds of such sale.

6           **(14) Credit Bidding: LR 6004(b)(6)(N).**

7           47. The Bid Procedures provide that no party shall be permitted to credit bid on the Sale  
8 Assets. See Bid Procedures, p. 5.

9           **(15) Waiver of The Stay Under Bankruptcy Rule 6004(h): LR 6004(b)(6)(O).**

10           48. Subject to the conditions of Closing, the Motion requests a waiver of the stay that  
11 otherwise would be applicable to the order approving the proposed Sale of Sale Assets and the  
12 assumption and assignment of executory contracts and unexpired leases, pursuant to Bankruptcy Rules  
13 6004(h) and 6006(d). See Proposed Bid Procedures Order, ¶ 15; Proposed Sale Order, ¶ 24.

14           **BASIS FOR RELIEF REQUESTED THE BID PROCEDURES ORDER**

15           49. The Debtor believes the Bid Procedures discussed herein and attached to the Proposed  
16 Bid Procedures Order as **Exhibit A** are appropriate under the circumstances of this Chapter 11 case,  
17 provide adequate notice to third parties, and will maximize the recovery for the Debtor and its estate.  
18 The Bid Procedures provide the appropriate framework for the sale of the Sale Assets in an orderly  
19 fashion, and will enable the Debtor to review, analyze and compare all bids to determine which bid is  
20 in the best interests of the Debtor and its bankruptcy estate. The Debtor intends for the Bid Procedures  
21 to control the Auction process, subject to the interpretation or application of the Bid Procedures by the  
22 Bankruptcy Court in the event of a dispute.



1           50. Under the Bid Procedures, only qualified bidders (the “Qualified Bidders”) may submit  
2 bids for the Sale Assets or otherwise participate in the Auction and Sale. Qualified Bidders are those  
3 entities who, *inter alia*: (i) deliver to the Debtor, on request, an executed confidentiality agreement  
4 acceptable to the Debtor; (ii) deliver to the Debtor the potential bidder’s financial disclosures,  
5 acceptable to, and as requested by, the Debtor, which demonstrates the financial capability of the  
6 potential bidder to purchase the Sale Assets; (iii) provide evidence that the bidder has the necessary  
7 internal authorizations and approvals necessary to engage in the transaction without the consent of any  
8 entity that has not already been obtained; and (iv) deliver a deposit of ten percent (10%) of the  
9 Purchase Price, all of which is more aptly described in the Bid Procedures attached as **Exhibit A**.

10           51. Each Bid will be evaluated by the Debtor and its advisors to determine if it fully  
11 satisfies the Bid Procedures’ requirements. The Debtor will inform each Bidder as soon after such  
12 determination is made if such bidder has submitted a Qualified Bid and is a Qualified Bidder. In  
13 evaluating the Bids, the Debtor will take into consideration, among other factors, the form and amount  
14 of the consideration, the presence of any closing conditions, the source of financing, the extent of  
15 financial wherewithal to meet all commitments under the Bid, the required approvals (if any), and the  
16 transaction structure and execution risk.

17 **A. Bid Procedures Reflect Debtor’s Sound Business Judgment and Should be Approved.**

18           52. Section 363(b) of the Bankruptcy Code provides that a debtor in possession, “after  
19 notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of  
20 the estate.” 11 U.S.C. § 363(b). A debtor should be authorized to sell assets out of the ordinary course  
21 of business pursuant to Bankruptcy Code § 363 if it demonstrates a sound business purpose for doing  
22 so. See In re Fed. Mogul Global, Inc., 293 B.R. 124, 126 (D. Del. 2003) (finding that “a court should  
23 approve a debtor’s use of assets outside the ordinary course of business if the debtor can demonstrate a  
24 sound business justification for the proposed transaction”). A proposed use or sale of property

1 pursuant to section 363(b) is appropriate if “some articulated business justification” exists for the  
2 transaction. Walter v. Sunwest Bank (In re Walter), 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1988), quoting  
3 Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In re Continental  
4 Air Lines, Inc.), 780 F.2d 1223, 1226 (6th Cir. 1986). The Court’s obligation in determining whether  
5 to approve a Section 363(b) sale is “to assure that optimal value is realized by the estate under the  
6 circumstances.” In re Lahijani, 325 B.R. 282, 288 (9th Cir. BAP 2005).

7 53. The paramount goal in any proposed sale of property of the estate is to maximize the  
8 proceeds received by the estate. See Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores,  
9 Inc.), 107 F.3d 558, 564-65 (8th Cir. 1997) (“a primary objective of the Code [is] to enhance the value  
10 of the estate at hand.”). Applying Bankruptcy Code § 363, bankruptcy courts frequently consider and  
11 approve auction and bidding procedures in advance of a proposed sale of property of the estate.  
12 Doehring v. Crown Corp. (In re Crown Corp.), 679 F.2e 774, 775 (9th Cir. 1982) (noting that the  
13 district court had required specified minimum overbid amounts, deposits, and the form of purchase  
14 agreement to be used by bidders); In re Crowthers McCall Pattern, Inc., 114 B.R. 877, 879 (Bankr.  
15 S.D.N.Y. 1990) (noting that the bankruptcy court had entered an order requiring that overbids be made  
16 in specified minimum increments with deposits).

17 54. Bid procedures are appropriate when they provide a benefit to the estate, by  
18 maximizing the value of its assets, and enhancing competitive bidding. See Calpine Corp. v. O’Brien  
19 Envtl. Energy, Inc. (In re O’Brien Envntl. Energy, Inc.), 181 F.3d 527, 535-37 (3d Cir. 1999). Courts  
20 uniformly recognize that procedures intended to enhance competitive bidding are consistent with the  
21 goal of maximizing the value received by the estate and therefore are appropriate in the context of  
22 bankruptcy sales. See, e.g., In re Montgomery Ward Holding Corp., Case No. 97-1409 (PJW) (Bankr.  
23 D. Del. Aug. 6, 1997); In re Fruehauf Trailer Corp., Case No. 96-LS63 (PJW) (Bankr. D. Del. Feb. 26,

24

1 1997); In re Integrated Resources, 147 B.R. at 659; In re Atlanta Packaging Products, Inc., 99 B.R.  
2 124, 131 (Bankr. N.D. Ga. 1988) (“Competitive bidding yields higher offers and thus benefits the  
3 estate. Therefore, the objective is to ‘maximize the bidding, not to restrict it.’”).

4 55. To that end, courts recognize that establishing Bid Procedures in advance of a sale  
5 hearing itself often facilitates the process and the debtor’s ability to increase the value ultimately  
6 realized by the estate through: (i) creating a well-defined and orderly forum in which potential bidders  
7 are provided a fair opportunity to submit competing offers; (ii) ensuring fair comparability among the  
8 competing bids received; and (iii) encouraging the originally proposed purchaser to proceed with its  
9 proposed transaction by granting certain protections against the risk that party would otherwise bear in  
10 its entirety by having its offer exposed to overbids. In re Fin. News Network, Inc., 126 B.R. 152, 156  
11 (S.D.N.Y. 1991).

12 56. Courts make clear that a debtor’s business judgment is entitled to great deference with  
13 respect to procedures to be used in selling assets of the estate. Official Comm. Of Subordinated  
14 Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656-57 (S.D.N.Y.  
15 1992) (noting that overbid procedures negotiated by the debtor in possession are to be reviewed  
16 according to the deferential “business judgment” standard, under which such procedures and  
17 arrangements are “presumptively valid”). Where bid procedures have been established that yield  
18 discretion to the debtor to determine which bid to accept as the highest and best bid, the debtor is  
19 entitled to great deference as its decision must only be supported by sound business reasons. In re  
20 Lahijani, 325 B.R. at 289; In re Borders Group, Inc., 453 B.R. 477, 482-83 (Bankr. S.D. N.Y. 2011);  
21 In re Bakalis, 220 B.R. 525, 532 (Bankr. E.D. N.Y. 1998).

22 57. Furthermore, the bid procedures and auction process are indicative of the Debtor’s good  
23 faith to maximize the value of the assets being sold. Several courts hold selling assets through an  
24

1 auction process and/or subject to overbids is evidence of good faith. See In re Abbotts Dairies of  
2 Pennsylvania, Inc., 788 F.2d 143 (3rd Cir. 1986) (generally an auction may be sufficient to establish  
3 good faith and value for assets); In re Ewell, 958 F.2d 276 (9th Cir. 1992) (courts generally follow  
4 traditional equitable principles in finding good faith absent showing of fraud, collusion or attempt to  
5 take grossly unfair advantage of other bidders); In re King-Wilson, 1998 WL 737997 (N.D. Cal. 1998)  
6 (finding a sale of three parcels of real property subject to overbids was for fair and adequate  
7 consideration and in the best interests of the bankruptcy estate).

8 58. Here, the Debtor's motivation is to receive the greatest potential value for the Sale  
9 Assets and the Bid Procedures are designed specifically to achieve that goal. Indeed, the Debtor  
10 believes that the Bid Procedures proposed with this Motion balance the Debtor's need to have a  
11 thoughtful sale process, while also promoting a diligence and bidding environment that will yield the  
12 highest and best offer that the market can provide for the Sale Assets. See Robbins Decl., ¶ 20. The  
13 Bid Procedures provide a framework for the Debtor to entertain Bids and to conduct the Auction in a  
14 fair, open, and expeditious fashion that will encourage participation by financially capable bidders and  
15 encourage the sale of the Sale Assets either *in toto* or in a piecemeal fashion that will maximize the  
16 value of all of the Debtor's Assets. Therefore, the Debtor submits that the Court should approve the  
17 form of the Bid Procedures as they represent a sound exercise of Debtor's business judgment to ensure  
18 that all parties have the necessary assurances that the proposed Auction and Sale shall be conducted in  
19 a fair and reasonable manner, which will allow for a duly-approved Sale to the highest and best offer  
20 at the Auction and Sale Hearing.

21 **B. Pursuant to the Bid Procedures Order, the Court Should Set a Hearing to Approve a Sale**  
22 **of the Sale Assets, and Approve the Form of the Sale Notice.**

23 59. The Debtor requests that the Court schedule the Sale Hearing, set deadlines for  
24 objections, if any, to the Sale, and approve the Sale Notice attached to the Proposed Bid Procedures

1 Order as Exhibit B. Specifically, the Debtor requests that all objections, if any, to the Sale, including  
2 an objection to the Cure Amount Notice or an objection to the assumption and assignment of the  
3 Purchased Contracts (other than with respect to adequate assurance of future performance or with  
4 respect to an Additional Proposed Cure Amount) must: (a) be in writing; (b) conform to the applicable  
5 provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and  
6 factual basis for the objection and the specific grounds therefore; and (d) be filed and served so as to  
7 be actually received no later than fourteen (14) days prior to the Sale Hearing (the “Sale Objection  
8 Deadline”).

9 60. Furthermore, the Debtor requests that any objection by a party to a Purchased Contract  
10 (i) to any Qualified Bidder(s)’ proposed adequate assurance of future performance; or (ii) to an  
11 Additional Proposed Cure Amount set forth in the Notice of Assumption and Assignment must: (a) be  
12 in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c)  
13 state with particularity the legal and factual basis for the objection and the specific grounds therefore;  
14 and (d) be filed and served so as to be actually received no later than seven (7) days prior to the Sale  
15 Hearing (“Assumption Objection Deadline”).

16 61. Pursuant to Bankruptcy Rules 2002(a)(2), 2002(c)(1), and 6004(a), a debtor in  
17 possession is required to notify its creditors of any proposed sale of its assets, including a general  
18 description of the assets to be sold and a disclosure of the time and place of an auction, the terms and  
19 conditions of the sale, and the deadline for filing any objections. The Sale Notice fully complies with  
20 Bankruptcy Rules 2002 and 6004, provides adequate and appropriate notice of the relief requested in  
21 this Motion, and sufficient information to enable interested parties to submit Qualified Bids and  
22 participate in the Auction. The Debtor further submits that service of the Sale Notice by first class  
23  
24

1 mail as proposed above will provide adequate and appropriate notice of the proposed Sale, free and  
2 clear of liens, claims, and interests.

3 **C. Assumption and Assignment of any Purchased Contracts.**

4 62. As discussed above, as of the filing of this Motion, the Debtor does not anticipate the  
5 need to assume and assign any Purchased Contracts to the Winning Bidder(s) in connection with the  
6 Sale. See Robbins Decl., ¶ 22. However, in the event that it may be necessary to assume and assign  
7 certain Purchased Contracts related to the Sale Assets to the Winning Bidder(s) in connection with the  
8 Sale, this Motion seeks authority, but not direction, to assume and assign such Purchased Contracts in  
9 connection with any sale of the Sale Assets. Id.

10 63. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, “subject to  
11 the Court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.”  
12 11 U.S.C. § 365(a). By this Motion, the Debtors seek the authority, but not the direction, to assume  
13 and assign, or, alternatively, reject any of the Purchased Contracts as part of a sale transaction for any  
14 of the Sale Assets.

15 64. Similar to Section 363(b)(1), the standard to be applied by a court in determining  
16 whether an executory contract or unexpired lease should be assumed or rejected is the “business  
17 judgment” test, which is premised on the debtor’s business judgment that assumption would be  
18 beneficial to the estate. See In re Pomona Valley Med. Group, 476 F.3d at 670; In re ANC Rental  
19 Corp., Inc., 277 B.R. 226, 238 (Bankr. D. Del. 2002) (“In order to assume ... an executory contract ...  
20 the debtor must establish that the decision is one made in its sound business judgment.”) (citing In re  
21 Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999)). In applying the “business  
22 judgment” standard, courts show substantial deference to the debtor’s business judgment—  
23 assumption or rejection should only be disapproved when the action is so manifestly unreasonable that  
24 it could not be based on sound business judgment, but only on bad faith, whim, or caprice. See

1 Summit Land Co. v. Allen (In re Summit Land Co.), 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent  
2 extraordinary circumstances, court approval of debtor’s decision to assume or reject executory contract  
3 “should be granted as a matter of course”).

4 65. Section 365(b) of the Bankruptcy Code provides that “[i]f there has been a default in an  
5 executory contract or unexpired lease of the debtor, the [debtor-in-possession] may not assume such  
6 contract or lease unless, at the time of assumption of such contract or lease, the [debtor-in-possession]”  
7 unless it:

8 (A) cures, or provides adequate assurance that the [debtor-in-  
9 possession] will promptly cure, such default ...;

10 (B) compensates, or provides adequate assurance that the [debtor-in-  
11 possession] will promptly compensate, a party other than the debtor to  
such contract or lease, for any actual pecuniary loss to such party  
resulting from such default; and

12 (C) provides adequate assurance of future performance under such  
contract or lease.

13 11 U.S.C. § 365(b). Section 365(f)(2) of the Bankruptcy Code provides that a debtor-in-possession  
14 may assign an unexpired executory contract or lease if

15 (A) the trustee assumes such contract or lease in accordance with the  
16 provisions of this section; and

17 (B) adequate assurance of future performance by the assignee of such  
18 contract or lease is provided, whether or not there has been a default in  
such contract or lease.

19 11 U.S.C. § 365(f)(2).

20 66. Pursuant to Section 365(b) and (f), the Debtor requests that the Court approve the form  
21 of the Cure Amount Notice at the hearing on Bid Procedures. In the event that the Debtor identifies  
22 any Purchased Contracts that the Debtor believes may be implicated in the sale of the Sale Assets, the  
23 Debtor will file the Cure Amount Notice identifying such Purchased Contract and the amount the  
24 Debtor believes to be the cure amount based on the Debtor’s books and records (each, a “Proposed

1 Cure Amount”), and serve the Cure Amount Notice on each of the counterparties to the Purchased  
2 Contracts no later than seven (7) days following entry of this Order (or, if such date is not a business  
3 day, the next business day) following the Bid Procedures Hearing.

4 67. The Debtor requests that unless a party to a Purchased Contract files an objection to the  
5 Motion, to the Cure Amount Notice or the Additional Proposed Cure Amount set forth in the Notice of  
6 Assumption and Assignment (a “Cure Objection”), such party should be bound by the Proposed Cure  
7 Amount set forth in the Cure Amount Notice or the Additional Proposed Cure Amount set forth in the  
8 Notice of Assumption and Assignment and barred from asserting any additional cure or other amounts  
9 with respect to its Purchase Contract relating to the period prior to assignment.

10 68. Following the Bid Deadline, to the extent one or more Qualified Bidders seek  
11 assumption and assignment of any Purchased Contract, the Debtor proposes to file and serve upon  
12 counterparties to the Purchased Contracts implied by the Qualified Bid(s) the Notice of Assumption  
13 and Assignment, which will identify the Purchased Contracts proposed to be assumed and assigned to  
14 each Qualified Bidder(s), provide counterparties to such Purchased Contracts with the Qualified  
15 Bidder(s)’ proposed adequate assurance of future performance and, to the extent that such Purchased  
16 Contracts were not listed on the Cure Amount Notice, set forth the Proposed Cure Amount for such  
17 Purchased Contract (the “Additional Proposed Cure Amount”). In the event that no Purchased  
18 Contracts are proposed to be assumed and assigned by any of the Qualified Bidder(s), the Debtor  
19 would not be required to file and serve the Notice of Assumption and Assignment.

20 69. The Debtor submits that the foregoing procedures give the parties to the relevant  
21 Purchased Contracts notice of the assignee and an opportunity to object to adequate assurance, and  
22 satisfy Bankruptcy Rule 6006(f).



1 **D. The Cure Notice of Debtors' Proposed Purchased Contracts Pursuant to the Motion Is**  
2 **Appropriate.**

3 70. The Debtor respectfully requests that it be permitted to serve a single Cure Notice and a  
4 single Notice of Assumption and Assignment pursuant to the Bid Procedures, attaching an  
5 alphabetized list containing the Purchased Contracts, rather than serving multiple notices. Bankruptcy  
6 Rule 6006(e) provides that a

7 [debtor in possession] may seek authority to assume and assign multiple  
8 executory contracts and unexpired leases in one motion unless: (1) all  
9 executory contracts or unexpired leases to be assumed or assigned are  
10 between the same parties or are to be assigned to the same assignee; (2)  
11 [a debtor in possession] seeks to assume, but not assign to more than one  
12 assignee, unexpired leases of real property; or (3) the court otherwise  
13 authorizes the motion to be filed.”

14 See Fed. R. Bankr. P. 6006(e).

15 71. Given that the Purchased Contracts, if any, are proposed to be assumed and assigned to  
16 the same entity, or rejected, as the case may be, that this relief is part and parcel of a larger sale  
17 transaction, and that there is a limited time frame to obtain approval for the transaction, the Debtor  
18 requests that it be permitted to notice the proposed assumption and assignment of the Purchased  
19 Contracts pursuant to this Motion, rather than being required to file separate, additional motions.  
20 Likewise, the Debtor respectfully submits that it should be permitted to attach a single alphabetized  
21 list of the Purchased Contracts to the Cure Notice and the Notice of Assumption and Assignment it  
22 proposes to serve under the Bid Procedures. The Debtor does not believe that parties to the Purchased  
23 Contracts will have any difficulty locating their names on such a list, or that filing and serving  
24 individual Cure Notices or Notices of Assumption and Assignment would provide them any greater  
notice.

1 **E. Relief Under Bankruptcy Rule 6004(d) and (h).**

2 72. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of  
3 property ... is stayed until the expiration of 14 days after entry of the order, unless the court orders  
4 otherwise.” Similarly, Bankruptcy Rule 6006(d) provides that an Order authorizing ... [the assignment  
5 of] an executory contract ... under § 365(f) is stayed until the expiration of 14 days after entry of the  
6 order, unless the court orders otherwise.” Under the facts and circumstances of this case, the Debtor  
7 requests that any order approving the Bid Procedures and any assumption and assignment of any  
8 Purchased Contracts waive the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) and be  
9 effective immediately upon entry given the reality of Debtor’s financial situation and its need to  
10 quickly maximize and realize the value of its assets, as well as to avoid the incurrence of additional  
11 administrative expenses.

12 **THE SALE ORDER**

13 **A. The Sale of the Sale Assets is Authorized Pursuant to Sections 105(a) and 363(b) of the**  
14 **Bankruptcy Code.**

15 73. Section 105(a) of the Bankruptcy Code provides, in relevant part, that “[t]he court may  
16 issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this  
17 title.” 11 U.S.C. § 105(a). Section 363(b) permits a debtor to use, sell, or lease, estate property “other  
18 than in the ordinary course of business” after notice and a hearing. 11 U.S.C. § 363(b)(1). Courts  
19 generally require a debtor to demonstrate that a valid business purpose exists for the use of estate  
20 property in a manner that is not in the ordinary course of business. See Comm. of Equity Sec. Holders  
21 v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070-1071 (2d Cir. 1983) (“The rule we adopt  
22 requires that a judge determining a § 363(b) application expressly find from the evidence presented  
23 before him at the hearing a good business reason to grant such an application.”); Fulton State Bank v.  
24 Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991) (“[D]ebtor in possession can sell property

1 of the estate outside the ordinary course of business if ... he has an ‘articulated business  
2 justification.’”); Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986) (authorizing sale  
3 of debtor’s assets pursuant to section 363 “when a sound business purpose dictates such action”)  
4 (citation omitted); Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996). See also 240  
5 North Brand Partners, Ltd. v. Colony GFP Partners (In re 240 North Brand Partners, Ltd.), 200 B.R.  
6 653, 659 (B.A.P. 9th Cir. 1996) (“debtors who wish to utilize § 363(b) to dispose of property of the  
7 estate must demonstrate that such disposition has a valid business justification”); Walter v. Sunwest  
8 Bank (In re Walter), 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1988) (“there must be some articulated  
9 business justification for using, selling or leasing the property outside the ordinary course of business .  
10 . .”).

11 74. Consistent with the foregoing, bankruptcy courts consider a wide range of factors in  
12 approving sales outside the ordinary course of business, generally including the following:

- 13 (1) Whether a sufficient business reason exists for the sale;
- 14 (2) Whether the proposed sale is in the best interest of the estate, which  
15 considers the following factors:
  - 16 (a) that terms of the sale are fair and reasonable;
  - 17 (b) that the proposed sale has been adequately marketed;
  - 18 (c) that the proposed sales terms have been properly negotiated  
and proposed in good faith; and
  - 19 (d) that the proposed purchaser is involved in an “arms-length”  
transaction with the seller; and
- 20 (3) Whether notice of the sale was sufficient.

21 See Walter, 83 B.R. at 19-20. It is not necessary for the bankruptcy court to consider each factor listed  
22 in the cases, or to use any specific set of factors. See 240 North Brand Partners, 200 B.R. at 659.  
23 Furthermore, there is no necessity that those factors must be given equal weight to determine the  
24

1 outcome. See Matter of Embrace Systems Corp., 178 B.R. 112 (Bankr. W.D. Mich. 1995) (citing In re  
2 Lionel Corp., 772 F.2d at 1071; Stephens Indus., Inc. v. McClung, 789 F.2d 386 (6th Cir. 1986)). A  
3 debtor's showing of sound business judgment need not be unduly exhaustive, rather a debtor is  
4 "simply required to justify the proposed disposition with sound business reasons." In re Baldwin  
5 United Corp., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984).

6 75. Once the debtor has articulated a valid business justification, a presumption arises that  
7 the debtor's decision was made on an informed basis, in good faith, and in the honest belief the action  
8 was in the best interest of the company. See Pomona Valley, 476 F.3d at 670; In re Integrated Res.,  
9 Inc., 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992). Furthermore, once "the debtor articulates a  
10 reasonable basis for its business decisions (as distinct from a decision made arbitrarily or  
11 capriciously), courts will generally not entertain objections to the debtor's conduct." Agarwal v.  
12 Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.), 476 F.3d 665, 670 (9th Cir.  
13 2007); In re Johns-Manville Corp., 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

14 76. Moreover, courts have uniformly held that a debtor's decision to use or sell property of  
15 the estate outside of the ordinary course of business is subject to consideration under the business  
16 judgment rule. See, e.g., Lahijani, 325 B.R. at 288-89 ("Ordinarily, the ... [debtor] is afforded  
17 deference, particularly where business judgment is entailed ..."); BC Brickyard Assocs. Ltd. v. Ernst  
18 Home Ctr., Inc. (In re Ernst Home Ctr., Inc.), 221 B.R. 243, 246 (9th Cir. BAP 1998) (dismissing  
19 appeal of bankruptcy court's decision to approve sale outside of the ordinary course where debtor had  
20 articulated business judgment); Continental Air Lines Inc., 780 F.2d at 1226. In other words, provided  
21 the debtor articulates a business justification for the proposed course of action, generally it is  
22 appropriate for the court to defer to the debtor's judgment. See Stephens Indus., Inc. v. McClung, 789  
23 F.2d 383, 391 (6th Cir. 1986); Lionel, 722 F.2d at 1070; In re Wilde Horse Enters., Inc., 136 B.R. 830,

24

1 841 (Bankr. CD. Cal. 1991) (quoting Lionel, 722 F.2d at 1070). The business judgment rule shields a  
2 debtor's management from judicial second-guessing. See Integrated Res., 147 B.R. at 656; Johns-  
3 Manville, 60 B.R. at 615–16 (noting that “the Code favors the continued operation of a business by a  
4 debtor and a presumption of reasonableness attaches to a debtor's management decisions”). Thus, if a  
5 debtor's actions satisfy the business judgment rule, the actions in question should be approved under  
6 section 363(b)(1).

7 77. The sale of the Sale Assets and assumption and assignment of the Purchased Contracts,  
8 if necessary, pursuant to the APA (or a Modified APA) will result in a significant benefit to the  
9 Debtor's estate. See Robbins Decl., ¶ 24. The Debtor does not believe that access to adequate capital  
10 exists for the Debtor to continue to operate its business and that a quick sale is the only alternative to  
11 preserve value in the assets of its estate. Id. Moreover, the Sale, pursuant to the proposed terms of the  
12 APA, has been proposed in good faith, and will be negotiated at arms' length with the Bidders.  
13 Furthermore, the use of the specified Bid Procedures is necessary for the Debtor to maximize its return  
14 on the Sale Assets. At the Auction, the Debtor will be able to select any higher and better offers that  
15 may arise at the Auction, ensuring that the Debtor in fact receives the best terms possible in exchange  
16 for the Sale Assets. Based upon the foregoing, the Debtor submits that the decision to pursue the Sale  
17 is an exercise of sound business judgment, is in the best interest of Debtor and its estate, and should be  
18 approved in all respects.

19 **B. Sale of the Sale Assets Free and Clear of Liens, Claims, and Encumbrances is Authorized**  
20 **Under Section 363 of the Bankruptcy Code.**

21 78. In accordance with section 363(f) of the Bankruptcy Code, the Debtor requests  
22 approval to sell the Sale Assets on a final “as is” basis, free and clear of any liens, claims, and  
23 encumbrances, with the exception of any Assumed Liabilities or Permitted Encumbrances as may be  
24 defined in the applicable APA or Modified APA. A debtor in possession may sell property under

1 section 363(b) and section 363(f) of the Bankruptcy Code “free and clear of any interest in such  
2 property of an entity other than the estate” if any one of the following conditions is satisfied: (1)  
3 applicable non-bankruptcy law permits sale of such property free and clear of such interest; (2) such  
4 entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater  
5 than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5)  
6 such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of  
7 such interest. 11 U.S.C. § 363(f). Section 363(f) is written in the disjunctive; thus, satisfaction of any  
8 one of the five conditions is sufficient to sell the property free and clear of liens. See Citicorp  
9 Mortgage, Inc. v. Brooks (In re Ex-Cel Concrete Co.), 178 B.R. 198, 203 n.7 (B.A.P. 9th Cir. 1995);  
10 Citicorp Homeowners Svcs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988).

11 79. The Debtor submits that, with the exception of any Assumed Liabilities or Permitted  
12 Encumbrances, there are no liens on the Sale Assets and anticipates that it will be able to satisfy one or  
13 more of the conditions set forth in section 363(f) in connection with any lien or encumbrance a party  
14 may assert against the Sale Assets. See Robbins Decl., ¶ 22. Furthermore, to the extent that any lien  
15 exists on the Sale Assets, the Debtor anticipates that the price at which such Sale Assets are to be sold  
16 will be greater than the aggregate value of all liens on such Sale Assets. Id. The Debtor proposes that  
17 any such liens, claims, and encumbrances be transferred and attached to the proceeds of the Sale, as  
18 applicable, with the same force, effect, and priority as such liens currently have on the Sale Assets,  
19 subject to the same rights, claims, defenses, and objections, if any, of all parties with respect thereto.  
20 To the extent that any objection is received to this Motion on the basis that the Sale cannot be free and  
21 clear of liens, claims and interests pursuant to Section 363(f), the Debtor reserves the right to argue  
22 that any of the other bases for a sale “free and clear” under section 363(f) apply. Consequently, and in  
23 the absence of any such objection, a sale free and clear of the Liens, claims, encumbrances, and  
24

1 interests, with the exception of any Assumed Liabilities or Permitted Encumbrances, satisfies Section  
2 363 of the Bankruptcy Code.

3 80. Finally, to the extent any other secured creditor or lienholder that receives notice, but  
4 does not file a written objection to this Motion, should be deemed to have consented to the sale of the  
5 Sale Assets. See In re Metropolitan Mortgage & Securities Co., 2007 WL 2277573 at \*4 (Bankr. E.D.  
6 Wash. 2007); In re Congoleum Corp., 2007 WL 1428477 at \*1 (Bankr. D.N.J. 2007); In re Elliot, 94  
7 B.R. at 345-46.

8 **C. Approval of the Assumption and Assignment of Purchased Contracts.**

9 81. The Debtor further submits that the assumption and assignment of the Purchased  
10 Contracts, to the extent necessary, is authorized pursuant to section 365(a) of the Bankruptcy Code,  
11 which provides that a debtor in possession “subject to the court’s approval, may assume or reject any  
12 executory contract or unexpired lease of the debtor.” 11 U. S .C. § 365(a).

13 82. Courts apply a business judgment standard in determining whether to approve a  
14 debtor’s request to assume or reject executory contracts and unexpired leases. See Grp. of Institutional  
15 Investors v. Chicago, M., St. P. & P. R. Co., 318 U.S. 523 (1943); Argawal v. Pomona Valley Med.  
16 Grp., Inc. (In re Pomona Valley Med. Grp., Inc.), 476 F.3d 665, 670 (9th Cir. 2007); Diatom, LLC v.  
17 Comm of Creditors Holding Unsecured Claims (In re Gentile Family Indus.), No. BAP CC-13-1563-  
18 KiTaD, 2014 WL 4091001, at \*3 (B.A.P. 9th Cir. Aug. 19, 2014) (citing Official Creditors Comm v.  
19 X10 Wireless Tech., Inc. (In re X10 Wireless Tech., Inc.), BAP No. WW-04-1328-PST, 2005 WL  
20 6960205, at \*3 (B.A.P. 9th Cir. Apr. 5, 2005). While a debtor or trustee, in exercising business  
21 judgment, must demonstrate that assumption will benefit the estate, as long as assumption of a lease  
22 appears to enhance a debtor’s estate, a bankruptcy court should normally grant its approval, unless the  
23 debtor in possession’s judgment is clearly erroneous, too speculative, or contrary to the provisions of  
24

1 the Bankruptcy Code.” X10 Wireless Tech., Inc., 2005 WL 6960205, at \*3 (internal quotation marks  
2 and citations omitted).

3 83. In deciding whether to approve an assumption of an executory contract or unexpired  
4 lease, the Court should presume that the debtor acted prudently, on an informed basis, in good faith,  
5 and in the honest belief that the action taken was in the best interests of the bankruptcy estate. See In  
6 re Yellowstone Mountain Club, LLC, Nos. 08-61570-11, 2010 WL 5071354, at \*2 (D. Mont. Dec. 7,  
7 2010), aff’d, 486 F. App’x. 720 (9th Cir. 2012). The Court should approve the decision to assume the  
8 Purchased Contracts unless it finds that the Debtor’s conclusion that acceptance would be  
9 advantageous is “so manifestly unreasonable that it could not be based on sound business judgment,  
10 but only on bad faith, whim or caprice.” Id.

11 84. Here, the Debtor has determined that the procedures for the Purchased Contracts is a  
12 sound exercise of its business judgment. Assumption and assignment of the Purchased Contracts  
13 selected by the Winning Bidder(s) will enable the Debtor to consummate a sale and generate  
14 substantial value for their estates. In connection with the proposed Sale, the Debtor will assume and  
15 assign only those Purchased Contracts that the Winning Bidder(s) (or Back-Up Bidder(s)) has  
16 designated it wants to assume pursuant to a Modified APA. The Debtor’s assumption and assignment  
17 of the Purchased Contracts will be contingent upon payment of the required Cure Amounts consistent  
18 with the APA, and effective only upon the closing of the Sale.

19 85. Furthermore, section 363(k) of the Bankruptcy Code states that a debtor’s assignment  
20 of a contract or lease “relieves the trustee and the estate from any liability for any breach of such  
21 contract or lease occurring after such assignment.” 11 U.S.C. § 363(k). As a result, following  
22 assumption and assignment of the Purchased Contracts, the Debtor and its estate will be relieved of  
23  
24



1 any and all liability for such Purchased Contracts. As such, the assumption and assignment of the  
2 Purchased Contracts will be a valid exercise of Debtor's sound business judgment.

3 86. To the extent that a counterparty to a Purchased Contract asserts that there is a default  
4 with respect to such Purchased Contract, pursuant to section 365(b)(1) of the Bankruptcy Code, the  
5 Debtor may either cure any defaults or provide "adequate assurance" that existing defaults will  
6 promptly be cured within a reasonable time. "Adequate assurance of a prompt cure requires that there  
7 be a firm commitment to make all payments and at least a reasonably demonstrable capability to do  
8 so." In re Embers 86th Street, Inc., 184 B.R. at 900-01 (Bankr. S.D.N.Y. 1995) (quoting In re R.H.  
9 Neil, Inc., 58 B.R. 969, 971 (Bankr. S.D.N.Y. 1986)).

10 87. Since the Bankruptcy Code does not define "adequate assurance," the nature of the  
11 requisite "adequate assurance of future performance" is left to the court's discretion, and to be  
12 determined under the facts and circumstances of each case. See In re Berkshire Chem. Haulers, Inc.,  
13 20 B.R. 454, 457-459 (Bankr. D. Mass. 1982); Matter of Bronx-Westchester Mack Corp. 20 B.R. 139,  
14 142 (Bankr S.D.N.Y. 1982) (collecting cases). The "adequate assurance" requirement should be given  
15 a "practical, pragmatic construction" based on the circumstances of each case. See In re PRK  
16 Enterprises, Inc., 235 B.R. 597, 603 (Bankr. E.D. Tex. 1999); In re Martin Paint Stores, 199 B.R. 258,  
17 263 (Bankr. S.D.N.Y. 1996).

18 88. The assurance of future performance pursuant to section 365(b)(1) of the  
19 Bankruptcy Code need not rise to the level of an absolute guarantee. "Adequate" assurance can be  
20 demonstrated by showing that the debtor's performance is "likely"--i.e., more probable than not.  
21 See In re PRK Enterps., Inc., 235 B.R. at 603; In re X10 Wireless Tech., Inc., 2005 WL 6960205,  
22 at \*3 n.8 (in analyzing the requirement in section 365(b)(1)(C), noting that "[t]he necessary degree  
23 of assurance 'falls considerably short of an absolute guaranty.')" (quoting In re Tex. Health Enters.,

1 Inc., 246 B.R. 832, 835 (Bankr. E.D. Tex. 2000). Nor does adequate assurance require a guarantee  
2 that the debtor will thrive or make a profit. See In re Natco Indus., Inc., 54 B.R. 436, 440-441  
3 (Bankr. S.D.N.Y. 1985).

4 89. The term “promptly” in section 365(b)(1) of the Bankruptcy Code is not defined, and  
5 whether a cure is prompt must be determined on the facts and circumstances of each case. See  
6 Matter of DiCamillo, 206 B.R. 64, 72 (Bankr. D.N.J. 1997). Not only must a debtor’s cure of  
7 existing defaults be “prompt” in order to support an assumption under section 365(b) of the  
8 Bankruptcy Code, such debtor must also provide, as a prerequisite to assumption, adequate  
9 assurance that it can make the proposed cure payments within the specified period. “Adequate  
10 assurance of a prompt cure requires that there be a firm commitment to make all payments and at  
11 least a reasonably demonstrable capability to do so.” Embers 86th Street, Inc., 184 B.R. at 900-01  
12 (quoting In re R.H. Neil, Inc., 58 B.R. 969, 971 (Bankr. S.D.N.Y. 1986).

13 90. As applied in the case at hand, each Winning Bidder will make available relevant  
14 financial information, subject to any relevant party’s request for such information and the execution of  
15 an appropriate form of confidentiality agreement prior to the sharing of such information. In the  
16 absence of any objection to a Winning Bidder’s offer of adequate assurances of future performance,  
17 the Court should approve the proposed assumption and assignment of the Purchased Contracts.

18 91. Further, the assumption and assignment of the Purchased Contracts satisfy the  
19 requirements of Section 363(f). All relevant parties, including all known parties to the Purchased  
20 Contracts, will have sufficient notice and the ability to object to the transaction. Accordingly, if a  
21 party with an interest in the subject Asset(s) does not timely object to a transaction in accordance with  
22 the proposed procedures, the Debtor submits that such party should be deemed to have consented to  
23 the assumption and assignment within the meaning of section 363(f)(2) of the Bankruptcy Code. See  
24

1 Hargrave v. Township of Pemberton (In re Tabone, Inc.), 175 B.R. 855, 858 (Bankr. D.N.J. 1994)  
2 (failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)),

3 92. The Debtor will be serving the parties to the Purchased Contracts with the Cure Notice  
4 and/or the Notice of Assumption and Assignment, which will explain the procedures for the  
5 assumption and assignment of the Purchased Contracts pursuant to the APA. For each Purchased  
6 Contract, the Cure Notice or the Notice of Assumption and Assignment will specify the dollar amount,  
7 if any, that must be paid in order to cure any and all existing defaults under such contract or lease, and  
8 compensate the counterparty with respect thereto, and the deadline for parties to such Purchased  
9 Contract to lodge any objection to the Proposed Cure Amounts or to assumption and assignment of the  
10 applicable Purchased Contract.

11 93. As Bankruptcy Rules 2002 and 6006 provide that non-debtor parties to executory  
12 contracts and unexpired leases shall receive twenty-eight (28) days notices of a hearing on the  
13 assumption or rejection of executory contracts and unexpired leases, and that pursuant to Local Rule  
14 9014 such parties must object to such relief within fourteen (14) days of the hearing. The Debtor  
15 requests a waiver of Bankruptcy Rules 2002 and 6006 and propose that this Court set the deadline for  
16 non-debtor parties of the Purchased Contracts to submit objections no later than fourteen (14) days  
17 prior to the Sale Hearing in the case of a Proposed Cure Amount and no later than seven (7) days prior  
18 to the Sale Hearing in the case of Additional Proposed Cure Amount.

19 **D. The Court Should Waive the Stay Under Bankruptcy Rules 6004(h) and 6006(d).**

20 94. Pursuant to Bankruptcy Rule 6004(h), unless the court orders otherwise, an order  
21 authorizing the sale of property pursuant to section 363 of the Bankruptcy Code is automatically  
22 stayed for fourteen days after entry of the order. See Fed. R. Bankr. P. 6004(h). Similarly,  
23 Bankruptcy Rule 6006(d) stays all orders authorizing a debtor to assign an executory contract or  
24

1 unexpired lease pursuant to Section 365(f) of the Bankruptcy Code for fourteen days, unless the court  
2 orders otherwise.

3 95. The Debtor submits that a waiver of these stay provisions is justified under the  
4 circumstances. The dates and deadlines proposed for providing notice of the opportunity to bid, notice  
5 of the Sale, notice of the proposed assumption of executory contracts and unexpired leases, and the  
6 Sale Hearing all seek to balance the needs of due process against the possibility that further elongates  
7 the process and exposes the Debtor to further administrative expenses. That same balancing of  
8 interests weighs in favor of providing that the order approving the transaction be immediately  
9 effective.

10 **CONCLUSION**

11 **WHEREFORE** the Debtor respectfully requests entry of (i) the Bid Procedures Order; (ii) the  
12 Sale Order, and (iii) such other and further relief as the Court deems just and proper.

13  
14 Dated this 18th day of January, 2019.

15 /s/ Samuel A. Schwartz  
16 Samuel A. Schwartz, Esq.  
17 Nevada Bar No. 10985  
18 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
19 100 North City Parkway, Suite 1600  
20 Las Vegas, Nevada 89106  
21 Telephone: (702) 802-2207  
22 Facsimile: (702) 382-8135

23 Jeffrey L. Cohen, Esq. (admitted *pro hac vice*)  
24 Gabriel L. Olivera, Esq. (admitted *pro hac vice*)  
LOWENSTEIN SANDLER LLP  
1251 Avenue of the Americas  
New York, New York 10020  
Telephone: (212) 262-6700  
Facsimile: (212) 262-7402

Proposed Attorneys for the Debtor

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**EXHIBIT 1**  
**(Proposed Bid Procedures Order)**

1 Samuel A. Schwartz, Esq.  
Nevada Bar No. 10985  
2 Brownstein Hyatt Farber Schreck, LLP  
100 North City Parkway, Suite 1600  
3 Las Vegas, Nevada 89106  
Telephone: (702) 802-2207  
4 Facsimile: (702) 382-8135

5 Jeffrey L. Cohen, Esq. (admitted *pro hac vice*)  
Gabriel L. Olivera, Esq. (admitted *pro hac vice*)  
6 LOWENSTEIN SANDLER LLP  
1251 Avenue of the Americas  
7 New York, New York 10020  
Telephone: (212) 262-6700  
8 Facsimile: (212) 262-7402

9 *Proposed Attorneys for the Debtor*

10 **UNITED STATES BANKRUPTCY COURT**  
11 **DISTRICT OF NEVADA**

12 In re:

13 Bakken Resources, Inc.,

14 Debtor.

Case No.: 18-17254-BTB

Chapter 11

Sale Hearing:

Hearing Date: February 15, 2019

Hearing Time: 10:00 a.m.

17 **ORDER PURSUANT TO SECTIONS 105, 363, AND 365 OF THE BANKRUPTCY CODE**  
18 **AND RULES 2002, 6004 AND 6006 OF THE FEDERAL RULES OF BANKRUPTCY**  
19 **PROCEDURE APPROVING BID PROCEDURES WITH RESPECT TO SALE OF ASSETS,**  
20 **SETTING THE SALE HEARING DATE, AND GRANTING RELATED RELIEF**

21 Bakken Resources, Inc., as debtor and debtor in possession (the “Debtor”) filed its *Motion for*  
22 *Order Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code and Rules 2002, 6004 and 6006*  
23 *of the Federal Rules of Bankruptcy Procedure: (i) Approving Bid Procedures with Respect to Sale of*  
24 *Assets, Setting the Sale Hearing Date; and Approving Form and Manner of Notices; and (ii)*  
*Approving and Authorizing the Sale of Assets Free and Clear of All Liens, Interests, Claims and*

1 *Encumbrances, the Assumption and Assignment of Certain Related Executory Contracts, Waiving the*  
2 *Requirements of Bankruptcy Rules 6004(h) and 6006(d) and Granting Related Relief* (the “Motion”)  
3 [ECF No. \_\_\_\_] on January 19, 2019, seeking, among other things, entry of an order approving bidding  
4 procedures (the “Bid Procedures”) for the sale of certain of the Debtor’s assets (the “Sale Assets”),  
5 setting a sale hearing date, approving procedures relating the foregoing and granting related relief.<sup>1</sup>

6 The Motion came on for hearing before the above-captioned Court and Debtor appeared by and  
7 through its counsel and all other appearances were noted on the record. The Court reviewed the  
8 Motion and the other pleadings and papers on file and heard and considered the argument of counsel at  
9 the hearing on the Motion. It appearing that notice and an opportunity for a hearing on this Motion  
10 has been given and is appropriate under the circumstances surrounding this Chapter 11 Case and that  
11 no other or further notice need be given; and after due deliberation and sufficient cause appearing  
12 therefor,

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

14 A. The Court has jurisdiction over this matter and over the property of the Debtor and its  
15 estate pursuant to 28 U.S.C. §§ 157(a) and 1334. This matter is a core proceeding pursuant to 28  
16 U.S.C. § 157(b)(2)(A), (N) and (O). The statutory predicates for the relief sought herein are Sections<sup>2</sup>  
17 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014. Venue  
18 of these cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

19 B. The relief granted herein is in the best interests of the Debtor, its estate, its creditors,  
20 and other parties in interest.

21 \_\_\_\_\_  
22 <sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings assigned to them in  
the Motion and BidProcedures.

23 <sup>2</sup> Unless otherwise stated, all references to “Section” herein shall be to title 11 of the U.S. Code  
24 (the “Bankruptcy Code”); all references to a “Bankruptcy Rule” shall refer to the Federal Rules  
of Bankruptcy Procedure; and all references to a “Local Rule” shall refer to the Local Rules of  
Bankruptcy Practice of the U.S. District Court for the District of Nevada.

1 C. The Debtor has provided good and sufficient reasons and has demonstrated a sound  
2 business justification for the Court to: (1) approve the Bid Procedures, (2) set the date of the Auction  
3 and Sale Hearing, (3) approve the form and manner of notice of the Auction and Sale Hearing, the  
4 Cure Amount Notice, and the Notice of Assumption and Assignment.

5 D. The Bid Procedures are reasonable and appropriate, and represent the best method of  
6 maximizing the realizable value of the Debtor's business and assets.

7 **IT IS ORDERED, ADJUDGED, AND DECREED THAT:**

8 **A. Approval of Bid Procedures and Related Notices.**

9 1. The Motion is granted as provided herein.

10 2. All objections filed in response to the relief granted herein, to the extent not resolved as  
11 set forth herein or at the Hearing, are hereby overruled.

12 3. The Bid Procedures, substantially in the form annexed hereto as Exhibit A and  
13 incorporated herein by reference, are hereby approved and shall govern all proceedings related to the  
14 subject thereof, including: (1) the submission and qualification of Bids; (2) the APA and Modified  
15 APA, if any; (3) the Auction; and (4) the Sale. Any party desiring to bid on the Sale Assets must  
16 comply with the Bid Procedures and this Bid Procedures Order. The failure to include or reference a  
17 particular provision of the Bid Procedures specifically in this Order shall not diminish or impair the  
18 effectiveness or enforceability of such a provision.

19 4. The notice of auction and sale (the "Sale Notice") substantially in the form annexed  
20 hereto as Exhibit B, the Cure Amount Notice substantially in the form annexed hereto as Exhibit C,  
21 and the Notice of Assumption and Assignment substantially in the form attached hereto as Exhibit D  
22 are hereby approved.



1 **B. Significant Deadlines.**

2 5. No later than seven (7) days following entry of this Order (or, if such date is not a  
3 business day, the next business day) the Debtor will provide notice of the proposed Sale, the Bid  
4 Procedures, the Sale Objection Deadline and the date and time of the Sale Hearing to (i) parties-in-  
5 interest in accordance with the order entered pursuant to the Debtor's *Motion for Order Pursuant to*  
6 *Bankruptcy Code Sections 102, 105; Bankruptcy Rules 2002, 9007, and 9036; and Local Bankruptcy*  
7 *Rule 1007 Authorizing the Establishment of Certain Notice Procedures* [ECF No. 22]; (ii) every party  
8 that has previously expressed any interest in the potential purchase of the Debtor's Assets, and (iii) any  
9 other party that the Debtor believes might be interested in a possible purchase of the Sale Assets. The  
10 Debtor may provide additional notice of the proposed Sale by published advertisement.

11 6. In the event that the Debtor identifies any Purchased Contracts that the Debtor believes  
12 may be implicated in the sale of the Sale Assets, the Debtor will file the Cure Amount Notice  
13 identifying such Purchased Contracts and the amounts the Debtor believes to be the cure amounts  
14 based on the Debtor's books and records (each, a "Proposed Cure Amount"), and serve the Cure  
15 Amount Notice on each of the counterparties to the Purchased Contracts no later than seven (7) days  
16 following entry of this Order (or, if such date is not a business day, the next business day) following  
17 the Bid Procedures Hearing.

18 7. The deadline for the submission of bids in accordance with the terms described in the  
19 Bid Procedures shall be **April 16, 2019 at 5:00 p.m.** (prevailing Pacific Time) (the "Bid Deadline").

20 8. Within three (3) business days following the Bid Deadline, the Debtor will file and  
21 serve a notice with the Court (the "Notice of Assumption and Assignment"), which will identify the  
22 Purchased Contracts, if any, proposed to be assumed and assigned to each Qualified Bidder(s), and  
23 provide counterparties to such Purchased Contracts with the Qualified Bidder(s)' proposed adequate  
24 assurance of future performance. To the extent that such Purchased Contracts were not listed on the

1 Debtor's previously filed Cure Amount Notice, the Notice of Assumption and Assignment shall also  
2 set forth the amounts the Debtor believes to be the cure amounts based on the Debtor's books and  
3 records for such Purchased Contracts (the "Additional Proposed Cure Amounts"). To the extent that  
4 any party to the Purchased Contracts seeks to object to any Qualified Bidder(s)' proposed adequate  
5 assurance of future performance or an Additional Proposed Cure Amount set forth in the Notice of  
6 Assumption and Assignment, such objection must: (a) be in writing; (b) conform to the applicable  
7 provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and  
8 factual basis for the objection and the specific grounds therefore; and (d) be filed and served so as to  
9 be actually received no later than \_\_\_\_\_, **2019** ("Assumption Objection Deadline"). Unless a  
10 party to an Purchased Contract files an objection to an Additional Proposed Cure Amount set forth in  
11 the Notice of Assumption and Assignment, such party will be bound by the Additional Proposed Cure  
12 Amount set forth in the Notice of Assumption and Assignment and barred from asserting any  
13 additional cure or other amounts with respect to its Purchased Contract relating to the period prior to  
14 assignment. In the event that no Purchased Contracts are proposed to be assumed and assigned by any  
15 of the Qualified Bidder(s), the Debtor shall not be required to file and serve the Notice of Assumption  
16 and Assignment.

17 9. Objections to the assumption and assignment of the Purchased Contracts (other than  
18 with respect to adequate assurance of future performance or with respect to an Additional Proposed  
19 Cure Amount) and all other objections, if any, to the Sale, including an objection to the Cure Amount  
20 Notice (a "Cure Objection"), must: (a) be in writing; (b) conform to the applicable provisions of the  
21 Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual basis for the  
22 objection and the specific grounds therefore; and (d) be filed and served so as to be actually received  
23 no later than \_\_\_\_\_, **2019** (the "Sale Objection Deadline").

1           10. Unless a party to a Purchased Contract files an objection to the Proposed Cure Amount  
2 or other objection to the Motion on or before the Sale Objection Deadline or an objection with respect  
3 to adequate assurance of future performance or to an Additional Proposed Cure Amount on or before  
4 the Assumption Objection Deadline, such party will be bound by the Proposed Cure Amount set forth  
5 in the Cure Amount Notice or the Additional Proposed Cure Amount set forth in the Notice of  
6 Assumption and Assignment, as applicable, and be barred from asserting any additional cure or other  
7 amounts with respect to its Purchased Contract relating to the period prior to assignment.

8           11. If the Debtor receives competing Qualified Bids as determined in the Debtor's sole  
9 discretion, an auction will be conducted on **April 23, 2019 at 11:00 a.m.** (the "Auction") at the offices  
10 of AlixPartners located at 2101 Cedar Springs Rd #1100, Dallas, Texas 75201. The Auction may be  
11 adjourned or continued from time to time by the Debtor by serving notice the prior to the Auction or  
12 by making an announcement at the Auction. No further notice of any such adjournment or  
13 continuance will be required.

14           12. A hearing to approve the Sale to the Winning Bidder(s) and, if applicable, the Back-Up  
15 Bidder(s) (the "Sale Hearing") shall take place on \_\_\_\_\_, **2019** at \_\_:\_\_ \_\_.m. (prevailing  
16 Pacific Time), or as soon thereafter as counsel may be heard, before a United States Bankruptcy Judge,  
17 in the United States Courthouse and Federal Building, 300 Las Vegas Blvd. South, Las Vegas, Nevada  
18 89101. The Sale Hearing may be adjourned or continued from time to time by the Debtor by serving  
19 notice the prior to the Sale Hearing or by making an announcement at the Sale Hearing. No further  
20 notice of any such adjournment or continuance will be required.

21           13. A party's failure to timely file or make an objection in accordance with this Order will  
22 forever bar the assertion of any objection to the Motion, entry of the Sale Order, assumption and  
23  
24

1 assignment of the Purchased Contracts, and/or consummation of the Sale with the Winning Bidder(s)  
2 (or Back-Up Bidder(s), as applicable) pursuant to the applicable Purchase Agreements.

3 **C. Additional Provisions.**

4 14. Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), any stay of this Order  
5 pursuant to Bankruptcy Rules 6004(h) and 6006(d) shall be waived and this Order shall be  
6 immediately effective and enforceable upon its entry.

7 15. This Court retains jurisdiction with respect to all matters arising from or related to the  
8 implementation of this Order.

9 **IT IS SO ORDERED.**

10 Submitted by:

11 By: /s/Samuel A. Schwartz

12 Samuel A. Schwartz, Esq.

13 Nevada Bar No. 10985

Connor H. Shea, Esq.

14 Nevada Bar No. 14616

**BROWNSTEIN HYATT FARBER SCHRECK, LLP**

15 100 North City Parkway, Suite 1600

Las Vegas, Nevada 89106

16 Telephone: (702) 802-2207

Facsimile: (702) 382-8135

17 Jeffrey Cohen, Esq. (admitted *pro hac vice*)

Gabriel L. Olivera, Esq. (admitted *pro hac vice*)

**LOWENSTEIN SANDLER LLP**

18 1251 Avenue of the Americas

New York, New York 10020

19 Telephone: (212) 262-6700

Facsimile: (212) 262-7402

20 *Proposed Attorneys for the Debtors*

**SUBMISSION TO COUNSEL FOR APPROVAL PURSUANT TO LR 9021**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

\_\_\_\_\_ The court has waived the requirement set forth in LR 9021(b)(1).

\_\_\_\_\_ No party appeared at the hearing or filed an objection to the motion.

\_\_\_\_\_ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

\_\_\_\_\_ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of this order.

APPROVED:

DISAPPROVED:

FAILED TO RESPOND:

Submitted by:

Brownstein Hyatt Farber Schreck, LLP

By /s/ Samuel A. Schwartz  
Samuel A. Schwartz, Esq., NBN 10985  
100 North City Parkway, Suite 1600  
Las Vegas, Nevada 89106  
*Proposed Attorneys for the Debtor*

###

**Exhibit A**  
**(Bid Procedures)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 Samuel A. Schwartz, Esq.  
Nevada Bar No. 10985  
2 Brownstein Hyatt Farber Schreck, LLP  
100 North City Parkway, Suite 1600  
3 Las Vegas, Nevada 89106  
Telephone: (702) 802-2207  
4 Facsimile: (702) 382-8135

5 Jeffrey L. Cohen, Esq. (admitted admitted *pro hac vice*)  
Gabriel L. Olivera, Esq. (admitted admitted *pro hac vice*)  
6 LOWENSTEIN SANDLER LLP  
1251 Avenue of the Americas  
7 New York, New York 10020  
Telephone: (212) 262-6700  
8 Facsimile: (212) 262-7402

9 *Proposed Attorneys for the Debtor*

10 **UNITED STATES BANKRUPTCY COURT**  
11 **DISTRICT OF NEVADA**

12 In re:

Case No.: 18-17254-BTB

13 Bakken Resources, Inc.,

Chapter 11

14 Debtor.

Sale Hearing:

Hearing Date: \_\_\_\_\_, 2019

Hearing Time: \_\_\_\_\_ .m.

16 Location: \_\_\_\_\_

17 **BID PROCEDURES FOR SALE OF DEBTOR’S ASSETS**

18 On February \_\_\_\_, 2019, the United States Bankruptcy Court for the District of Nevada (the  
19 “Bankruptcy Court”) entered an order (the “Bid Procedures Order”) granting certain relief requested in  
20 the *Motion for Order Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code and Rules 2002,*  
21 *6004 and 6006 of the Federal Rules of Bankruptcy Procedure: (i) Approving Bid Procedures with*  
22 *Respect to Sale of Assets, Setting the Sale Hearing Date; and Approving Form and Manner of Notices;*  
23 *and (ii) Approving and Authorizing the Sale of Assets Free and Clear of All Liens, Interests, Claims*  
24 *and Encumbrances, the Assumption and Assignment of Certain Related Executory Contracts, Waiving*  
*the Requirements of Bankruptcy Rules 6004(h) and 6006(d) and Granting Related Relief (the*  
*“Motion”) filed by Bakken Resources, Inc. (the “Debtor”), and authorized the Debtor to auction*  
*certain of its assets (the “Sale Assets”) in accordance with the procedures set forth below.*

## I. FORMS OF SALE

Pursuant to these Bid Procedures, the Debtor is soliciting bids for the purchase of certain of its Assets under the terms and conditions set forth in the Sale Motion (the “Sale”).

The Debtor will consider offers for a sale, in one or a series of related transactions, of a material portion of the Sale Assets. The Sale shall be pursuant to the terms and conditions of the APA (as may be modified pursuant to the procedures below), the form of which will be subject to approval by the Bankruptcy Court at the Sale Hearing.

The sale of the Sale Assets will be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtor or its estate, except to the extent expressly set forth in the Motion, these Bid Procedures, the APA, or as specifically accepted or agreed to by the Debtor. Except as otherwise provided in these Bid Procedures, the APA or, with respect to other Qualified Bids (as defined herein), as specifically accepted or agreed to by the Debtor, all of the Debtor’s right, title, and interest in and to the Sale Assets will be transferred free and clear of all liens (statutory or otherwise), encumbrances, liabilities, security interests, interests, restrictions, charges, security agreements, options, rights of recovery and taxes of every kind and nature in accordance with section 363(f) of the Bankruptcy Code.

## II. BID PROCEDURES

### A. Notice of Sale

The Debtor will provide notice of the proposed Sale, the Bid Procedures, the Sale Objection Deadline, the Assumption Objection Deadline, and the date and time of the Sale Hearing to (i) the Office of the United States Trustee, (ii) counsel to any official committee appointed in this Chapter 11 Case, (iii) all parties who are known to assert a security interest, lien, or claim in any of the Sale Assets, (iv) all non-Debtor counterparties to the Purchased Contracts implicated in the Sale, (v) all other applicable parties in interest, including all parties-in-interest in accordance with the order entered pursuant to the *Debtor’s Motion for Order Pursuant to Bankruptcy Code Sections 102, 105; Bankruptcy Rules 2002, 9007, and 9036; and Local Bankruptcy Rule 1007 Authorizing the Establishment of Certain Notice Procedures* [ECF No. 22] (the “Notice Parties”), along with every party that has previously expressed any interest in the potential purchase of the Debtor’s Sale Assets and any other party that the Debtor believes might be interested in a possible purchase of the Sale Assets. The Debtor may provide additional notice of the Auction and Sale by published advertisement.

### B. Diligence Room

The Debtor will make available until the conclusion of the Auction information concerning the Debtor’s Sale Assets to prospective bidders (each, a “Potential Bidder”). The Debtor may require that Potential Bidders execute a confidentiality agreement acceptable to the Debtor in its sole and absolute discretion; provided, however, the Debtor may decline to provide due diligence information to any Potential Bidder who, in the Debtor’s reasonable business judgment, has not established, or who the Debtor has reason to believe does not intend in good faith to consummate a transaction or does not have the capacity to consummate a transaction.



1 By submitting a Bid, each Bidder shall be deemed to acknowledge and represent that it has had  
2 a reasonable opportunity to conduct due diligence on the Debtor's Sale Assets before submitting its  
3 Bid, that in making its Bid, it has relied solely on its own independent review, investigation, and/or  
4 inspection of any documents and/or the Sale Assets in making its Bid, and that in making its Bid, it did  
not rely upon any written or oral statement, representation, promise, warranty or guaranty whatsoever,  
whether express or implied, by operation of law, or otherwise, regarding the Sale Assets, the Debtor,  
or the completeness of any information provided in connection therewith.

5 **C. Bid Deadline and Submission of Bids**

6 The deadline (the "Bid Deadline") for submission of a final and binding written proposal for a  
7 purchase of the Sale Assets (each, a "Bid") is 5:00 p.m. (prevailing Pacific Time) on **April 16, 2019**.  
Bids must be emailed to:

8 Bakken Resources, Inc.  
2101 Cedar Springs Rd #1100  
9 Dallas, Texas 75201  
Attn: Richard Robbins (rrobbins@alixpartners.com)

10 With copies to:

11 LOWENSTEIN SANDLER LLP  
1251 Avenue of the Americas  
12 New York, New York 10020  
Attn: Jeffrey L. Cohen, Esq. (jcohen@lowenstein.com)  
13 Gabriel L. Olivera, Esq. (golivera@lowenstein.com)

14 -AND-

15 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 North City Parkway, Suite 1600  
16 Las Vegas, Nevada 89106  
Attn: Samuel A. Schwartz, Esq. (SASchwartz@bhfs.com)

17  
18 **D. Requirements for Submission of a Qualified Bid**

19 A bidder (each, a "Bidder") submitting a Bid on or before the Bid Deadline for all or any  
20 material part of the Sale Assets which contains the following information will be a "Qualified Bidder"  
(and such Bid, a "Qualified Bid"):<sup>1</sup>

- 21 1. On request, an executed confidentiality agreement acceptable to the Debtor;  
22 2. A bid summary describing the purchase price and structure of the Bid; and

23 \_\_\_\_\_  
24 <sup>1</sup> The Debtor will be authorized to approve joint Bids meeting the requirements set forth above  
on a case-by-case basis.

- 1 3. A complete Bid fulfilling all the following requirements and the requisite deposit as  
2 defined in Section E, below:
- 3 (a) The identity of the Sale Assets that Bidder is seeking to purchase;
  - 4 (b) The total proposed purchase price (the "Purchase Price") in U.S. dollars for the  
5 Sale Assets that the Bidder seeks to purchase, including any cash to be paid and  
6 any liabilities to be assumed. Bidders must identify the portion of the Purchase  
7 Price allocated to each category of the Sale Assets (each an "Asset Category")  
8 that the Bidder seeks to purchase;
  - 9 (c) The identity of each executory contract and unexpired lease (the "Purchased  
10 Contracts") to be assumed by the Debtor and assigned to the Bidder, if any;
  - 11 (d) A statement acknowledging that the Debtor may determine to sell the Sale  
12 Assets in different Asset Categories to multiple Bidders and agreeing either (i)  
13 to purchase the Sale Assets for any of the Asset Categories for which the Bidder  
14 is determined to be the Winning Bidder or Back-Up Bidder; or (ii) to purchase  
15 the Sale Assets only if the Bidder is determined to be the Winning Bidder or  
16 Back-Up Bidder for all of the Sale Assets which the Bidder has proposed to  
17 purchase;
  - 18 (e) A copy of the APA, marked electronically to show any changes, a clean,  
19 executed version of the APA (the "Modified APA"), and a representation that  
20 the Qualified Bidder can execute a further modified version of the Modified  
21 APA reflecting any changes made during the Auction and/or any other changes  
22 that may be agreed upon by such Qualified Bidder and the Debtor promptly  
23 upon being notified of its selection as the Winning Bidder without need for  
24 further approval(s);
  - (f) Disclosure of the regulatory, shareholder or other approvals, consents, or filings  
required to consummate and close the Sale;
  - (g) Details of any agreements or understandings between the Bidder and any third-  
party with respect to the Sale, the Bid, the Debtor's business or with respect to  
any possible or contemplated transaction involving any of the Sale Assets;
  - (h) The identity of any outside advisors, if any, including financial and legal  
advisors, engaged or planned to be engaged to assist the Bidder in the Sale,  
including the names of individuals at such advisors contemplated to be working  
on the Sale, and their contact information;
  - (i) Information, including, without limitation, current audited financial statements  
or such other form of financial disclosure acceptable to the Debtor, sufficient to  
demonstrate to the Debtor's satisfaction that the Bidder has the necessary  
financial capacity to consummate the Sale, as proposed in its Bid, and, if  
applicable, to provide parties to the Purchased Contracts with adequate

1 assurance of future performance under the leases and contracts the Bidder  
2 intends to assume as provided in section 365 of the Bankruptcy Code;

3 (j) The identity of the beneficial owners of the Bidder, if the Bidder is not a  
4 publicly held company; and

5 (k) A statement acknowledging that the Debtor must close the Sale on or before  
6 \_\_\_\_\_, 2019 (with time being of the essence) (the "Closing Date"),  
7 with a representation and warranty that the Bidder knows of no reason why it  
8 cannot close the Sale on or before that date.

9  
10 **E. Deposit**

11 All Bids must include a deposit of ten percent (10%) of the Purchase Price in immediately  
12 available funds, to be paid to [---the Nevada third-party escrow account designated by the Debtor---]  
13 an escrow account at [•] and maintained by [---the Nevada escrow agent designated by the Debtor---]  
14 as escrow agent (the "Escrow Holder"),. Such deposit shall not be subject to the liens or claims of any  
15 creditors of the Debtor and shall not be property of the Debtor's estate.

16 In the event that a Bid is determined by the Debtor not to be a Qualified Bid, the Debtor shall  
17 cause the return of such bidder's deposit within five (5) business days after the Bid Deadline. Other  
18 than with respect to the Winning Bidder (or the Back-Up Bid(s), if applicable), all other Deposits not  
19 already returned to the respective Qualified Bidder shall be returned no later than five (5) business  
20 days after the Auction.

21 If the Winning Bidder (or the Back-Up Bidder, if necessary) timely closes the transactions  
22 contemplated in the Winning Bid (or the Back-Up Bid, if necessary), such bidder's deposit shall be  
23 credited towards its cash payment due on Closing. In the event that the Winning Bidder (or the Back-  
24 Up Bidder, if necessary) fails to consummate the Sale because of a breach or failure to perform on the  
part of such Winning Bidder (or the Back-Up Bidder, if necessary), the Debtor will not have any  
obligation to return such bidder or bidders' deposit. Retention of such deposit(s), shall constitute  
liquidated damages, shall be one of the Debtor's remedies at law and in equity against the Winning  
Bidder (or the Back-Up Bidder, if necessary), and, upon failure to close by the Winning Bidder, the  
Debtor shall be free to consummate the Sale proposed by the Back-Up Bidder (to the extent  
applicable) without the need for an additional hearing or order of the Bankruptcy Court.

19 **F. Credit Bidding**

20 No party shall be permitted to credit bid for the Sale Assets pursuant to 11 U.S.C. § 363(k).

21 **G. Closing Conditions**

22 All conditions to closing required by a Qualified Bidder must be set forth in the APA or  
23 Modified APA, provided, however, that no Bid may be subject to any financing, due diligence or other  
24 material conditions.

If a Bid relies on one or more third-party financing sources, the Bid must include a signed,  
binding and irrevocable commitment letter from such third-party financing source(s) or equity source.

1 If a Bid relies on financing sources of affiliates of the Bidder, the Bid must include sufficient evidence  
2 of financial capacity to consummate the Sale and satisfy all obligations and potential obligations  
3 pursuant to the APA or Modified APA. Other than those conditions set forth in the APA or Modified  
4 APA, each Bid shall be irrevocable until and unless the Debtor select a higher or otherwise better  
5 Qualified Bid and such Bidder is not selected as the Back-Up Bidder.

#### 6 **H. Evaluation of Bids**

7 Each Bid will be evaluated by the Debtor and its advisors to determine, in the Debtor's sole  
8 discretion, if it fully satisfies the Bid Procedures' requirements and to determine if it is a Qualified  
9 Bid. The Debtor will inform each Bidder if such bidder has or has not submitted a Qualified Bid (a  
10 "Qualified Bidder") as soon practicable after such determination is made. To the extent a Bid does not  
11 satisfy the applicable requirements or is determined to not be a Qualified Bid, the Debtor will provide  
12 such bidder with one opportunity to provide any necessary further information, documentation, deposit  
13 or other modification of such bidder's proposed Bid package that would allow the Bid to be a  
14 Qualified Bid. Without the written consent (by letter, email or facsimile) of the Debtor, which consent  
15 may be granted or denied in the Debtor's sole discretion, a bidder that the Debtor determines to be a  
16 Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except as such Bid may be  
17 increased or improved at the Auction.

18 In evaluating the Bids, the Debtor will take into consideration, among other factors, the form  
19 and amount of the consideration, the extent to which the Bid involves some or all of the Sale Assets,  
20 the presence of any closing conditions, the need and availability of financing, the extent of financial  
21 wherewithal to meet all commitments under the bid, the required approvals (if any), and the  
22 transaction structure and execution risk.

23 The Debtor may accept a single Qualified Bid or multiple Qualified Bids for different Asset  
24 Categories. The Debtor also reserves the right to determine that there has not been an adequate  
Qualified Bid for one or more of the Asset Categories and to remove the Sale Assets from such Asset  
Categories from the Auction and Sale.

### 16 **III. AUCTION AND SALE HEARING**

#### 17 **A. Selection of Opening Bid(s) and Conduct of Auction**

18 If the Debtor receives at least two Qualified Bids for an Asset Category or for multiple Asset  
19 Categories, an auction (the "Auction") will be conducted at the offices of AlixPartners located at 2101  
20 Cedar Springs Rd #1100, Dallas, Texas 75201 on **April 23, 2019 at 11:00 a.m.** (prevailing Central  
21 Time) to determine the Winning Bidder(s) and Back-Up Bidder(s) (as defined below). The Auction  
22 may be adjourned or continued from time to time by the Debtor by serving notice the prior to the  
23 Auction or by making an announcement at the Auction. No further notice of any such adjournment or  
24 continuance will be required.

25 No later than **April 19, 2019 at 5:00 p.m.** (prevailing Pacific Time), the Debtor will notify all  
Qualified Bidders of the highest or otherwise best Qualified Bid(s), as determined in the Debtor's  
reasonable business judgment (the "Opening Bid") and provide a summary of the Opening Bid(s) to  
all Qualified Bidders.

1 The minimum interval for bidding at the Auction (the “Bid Increment”) shall be determined by  
2 the Debtor and communicated to Qualified Bidders in advance of the Auction; provided, however, the  
3 Debtor may increase or decrease the Bid Increment at, before or during the Auction, in which case the  
4 Debtor will so inform each of the Qualified Bidders.

5 Only Qualified Bidders and their legal and financial advisors shall be entitled to participate at  
6 the Auction.

7 Each Qualified Bidder participating at the Auction will be required to confirm on the record at  
8 the Auction that (i) it has not engaged in any collusion with respect to the bidding, and (ii) its  
9 Qualified Bid is a good-faith bona fide offer and it intends to consummate the proposed transaction if  
10 selected as the Winning Bidder or the Back-Up Bidder. All Qualified Bidders at the Auction will be  
11 deemed to have consented to the jurisdiction of the Bankruptcy Court and waived any right to a jury  
12 trial in connection with any disputes relating to the Auction, the construction and enforcement of these  
13 Bid Procedures, and/or the Bid, as applicable.

14 **B. Selection of Winning Bid(s) and Back-Up Bid(s)**

15 The Auction shall continue until there is no further bidding in response to the Qualified Bid(s)  
16 (as may be increased at the Auction) for each of the Asset Categories that the Debtor determines, is/are  
17 the highest or otherwise best Qualified Bid (the “Winning Bid”), at which point the Auction will be  
18 closed. The Debtor may choose one Qualified Bid as the Winning Bid and/or Back-Up Bid or several  
19 Qualified Bids, each for different Asset Categories, as the Winning Bids and/or Back-Up Bids.  
20 Acceptance of the Winning Bid (or the Back-Up Bid, if necessary) by the Debtor is conditioned on  
21 approval of the Bankruptcy Court. Use of the singular “Winning Bid” or “Winning Bidder” herein  
22 includes the possibility of multiple Winning Bids and Winning Bidders.

23 If there is an Auction, the Bidder with the Qualified Bid that is the next-highest or best  
24 Qualified Bid (the “Back-Up Bid”), as determined by the Debtor and subject to Bankruptcy Court  
approval, shall be required to be the back-up bidder (the “Back-Up Bidder”) for the relevant Asset  
Categories. Use of the singular “Back-Up Bid” or “Back-Up Bidder” herein includes the possibility of  
multiple Back-Up Bids and Back-Up Bidders.

The Winning Bidder and the Back-Up Bidder shall be required to keep their respective Bids  
open and irrevocable until and including \_\_\_\_\_, 2019; provided, however, if the Sale closes with  
the Winning Bidder, the Back-Up Bidder’s Back-Up Bid may be revoked after such closing.

If, at any time prior to or on \_\_\_\_\_, 2019, the Winning Bidder cannot consummate the  
Sale as proposed in the Winning Bid, the Debtor may choose to close the Sale with the Back-Up  
Bidder by accepting the Back-Up Bid. Notwithstanding anything else herein to the contrary, the  
deposit of the Back-Up Bidder may be held by the Debtor until the later of (i) \_\_\_\_\_, 2019 or  
(ii) the closing of the Sale with the Winning Bidder, at which time the deposit must be refunded.

**C. Sale Hearing**

A hearing to approve the Sale to the Winning Bidder(s) and, if applicable, the Back-Up  
Bidder(s) (the “Sale Hearing”) shall take place on \_\_\_\_\_, 2019, at \_\_\_\_\_ .m. (prevailing  
Pacific Time), or as soon thereafter as counsel may be heard, before a United States Bankruptcy Judge

1 in the United States Courthouse and Federal Building, 300 Las Vegas Blvd. South, Las Vegas, Nevada  
2 89101, or before any other judge who may be designated.

3 The Sale Hearing may be adjourned or continued from time to time by the Debtor by serving  
4 notice the prior to the Sale Hearing or by making an announcement at the Sale Hearing. No further  
5 notice of any such adjournment or continuance will be required.

6 **D. Consummation of the Purchase and Back-Up Purchase**

7 The Winning Bidder(s) shall consummate the Sale contemplated by the Winning Bid(s) on or  
8 before the Closing Date. The Closing Date may be extended at the sole discretion of the Debtor for  
9 the purpose of accommodating approval of the Sale.

10 If a Winning Bidder fails to consummate the Sale on or before the Closing Date, breaches the  
11 respective Modified APA, or otherwise fails to perform, the Debtor shall, without further order of the  
12 Bankruptcy Court, deem such Winning Bidder to be a “Defaulting Buyer,” at which time such  
13 Winning Bid shall be deemed rejected. The Debtor shall be entitled to (i) retain the Good Faith  
14 Deposit as part of its damages resulting from the breach or failure to perform by the Defaulting Buyer,  
15 and (ii) seek all available remedies from such Defaulting Buyer occurring as a result of such  
16 Defaulting Buyer’s failure to perform, including specific performance.

17 Upon a determination by the Debtor that a Winning Bidder is a Defaulting Buyer, the Debtor  
18 shall be entitled to consummate a Sale with the Back-Up Bidder on the terms and conditions of the  
19 Back-Up Bid (the “Back-Up APA”) without further order of the Bankruptcy Court.

20 If a Back-Up Bidder consummates a Back-Up APA, the Good Faith Deposit of such Back-Up  
21 Bidder will be applied to the purchase price in such Sale. In the event that the Debtor seeks to  
22 consummate a Back-Up APA with a Back-Up Bidder and such Back-Up Bidder fails to consummate  
23 the Back-Up APA on or before the Closing Date, breaches the Back-Up APA as the case may be, or  
24 otherwise fails to perform, the Debtor may, in its discretion and without further order of the  
Bankruptcy Court, deem such Back-Up Bidder to be a Defaulting Buyer. The Debtor shall be entitled  
to seek all available remedies from such Defaulting Buyer occurring as a result of such Defaulting  
Buyer’s failure to perform, including specific performance.

**E. Reservation of Rights**

Notwithstanding anything herein to the contrary, the Debtor reserves the right to modify these  
Bid Procedures in a manner which is reasonable under the circumstances at any time, with notice to  
the Qualified Bidders, to facilitate the submission of value-maximizing Bids, to adjourn the Auction  
one or more times for any reason, and/or to terminate these Bid Procedures with respect to all of the  
Sale Assets or any Asset Category at any time to seek approval of a different sale transaction or pursue  
an alternative strategy that maximizes value for the Debtor’s estate.

**Exhibit B**

**(Proposed Sale Notice)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 Samuel A. Schwartz, Esq.  
Nevada Bar No. 10985  
2 Brownstein Hyatt Farber Schreck, LLP  
100 North City Parkway, Suite 1600  
3 Las Vegas, Nevada 89106  
Telephone: (702) 802-2207  
4 Facsimile: (702) 382-8135

5 Jeffrey L. Cohen, Esq. (admitted admitted *pro hac vice*)  
Gabriel L. Olivera, Esq. (admitted admitted *pro hac vice*)  
6 LOWENSTEIN SANDLER LLP  
1251 Avenue of the Americas  
7 New York, New York 10020  
Telephone: (212) 262-6700  
8 Facsimile: (212) 262-7402

9 *Proposed Attorneys for the Debtor*

10 **UNITED STATES BANKRUPTCY COURT**  
11 **DISTRICT OF NEVADA**

12 In re:

Case No.: 18-17254-BTB

13 Bakken Resources, Inc.,

Chapter 11

14 Debtor.

Sale Hearing:

15 Hearing Date: \_\_\_\_\_, 2019

Hearing Time: \_\_\_\_\_ .m.

16 Location: \_\_\_\_\_

17 **NOTICE OF AUCTION AND SALE HEARING**

18 **PLEASE TAKE NOTICE** that on January 18, 2019, Bakken Resources, Inc. (the “Debtor”),  
19 debtor and debtor-in-possession, filed its *Motion for Order Pursuant to Sections 105, 363, and 365 of*  
20 *the Bankruptcy Code and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure:*  
21 *(i) Approving Bid Procedures with Respect to Sale of Assets, Setting the Sale Hearing Date; and*  
22 *Approving Form and Manner of Notices; and (ii) Approving and Authorizing the Sale of Assets Free*  
23 *and Clear of All Liens, Interests, Claims and Encumbrances, the Assumption and Assignment of*  
24 *Certain Related Executory Contracts, Waiving the Requirements of Bankruptcy Rules 6004(h) and*



1 *6006(d) and Granting Related Relief* (the “Motion”) in the United States Bankruptcy Court for the  
2 District of Nevada (the “Court”) seeking, among other things, entry of an order (the “Sale Order”)  
3 authorizing and approving: (i) the sale of certain of the Debtor’s assets (the “Sale Assets”)<sup>1</sup> free and  
4 clear of all liens (statutory or otherwise), claims, interests, and encumbrances of every kind and nature,  
5 with the exception of Assumed Liabilities and Permitted Encumbrances as defined in the Motion, with  
6 all such liens, claims, interests, and other encumbrances attaching with the same validity and priority  
7 to the sale proceeds (the “Sale”); (ii) the assumption and assignment of related executory contracts and  
8 unexpired leases; (iii) waiver of the requirements of Bankruptcy Rules 6004(h) and 06(d); and (iv)  
9 related relief.<sup>2</sup>

10 **PLEASE TAKE FURTHER NOTICE** that the Debtor is soliciting offers for the purchase of  
11 the Sale Assets consistent with the Bid Procedures approved by the Court on February \_\_\_, 2019 [ECF  
12 No. \_\_\_] (the “Bid Procedures Order”). All interested bidders should carefully read the Bid  
13 Procedures and Bid Procedures Order. To the extent that there are any inconsistencies between this  
14 notice and the Bid Procedures or Bid Procedures Order, the Bid Procedures or Bid Procedures Order,  
15 as applicable, govern in all respects.

16 **PLEASE TAKE FURTHER NOTICE** that, if the Debtor receives qualified competing bids  
17 meeting the requirements specified by the Bid Procedures, an auction (the “Auction”) will be  
18 conducted on **April 23, 2019 at 11:00 a.m.** (prevailing Central Time) at the offices of AlixPartners  
19 located at 2101 Cedar Springs Rd #1100, Dallas, Texas 75201.

20 **PLEASE TAKE FURTHER NOTICE** that all oppositions must be filed as follows:  
21  
22

---

23 <sup>1</sup> A list of the Sale Assets is attached hereto as **Exhibit 1**.

24 <sup>2</sup> All capitalized terms used but not defined herein have the meanings set forth in the Sale Motion.

1        Adequate Assurance Objection: Any objection to any Qualified Bidder(s)' proposed adequate  
2 assurance of future performance must: (a) be in writing; (b) conform to the applicable provisions of  
3 the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual basis for the  
4 objection and the specific grounds therefore; and (d) be filed and served so as to be actually received  
5 no later than \_\_\_\_\_, **2019**.

6        Assumption and Assignment Objection: Objections to the assumption and assignment of the  
7 Purchased Contracts (other than with respect to adequate assurance of future performance and  
8 Proposed Cure Amounts) must: (a) be in writing; (b) conform to the applicable provisions of the  
9 Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual basis for the  
10 objection and the specific grounds therefore; and (d) be filed and served so as to be actually received  
11 no later than \_\_\_\_\_, **2019**.

12        All Other Oppositions: All other oppositions to the Motion, including any Cure Objection,  
13 must be filed pursuant to Local Rule 9014(d)(1) and must (a) be in writing; (b) conform to the  
14 applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the  
15 legal and factual basis for the objection and the specific grounds therefore; and (d) be filed and served  
16 so as to be actually received no later than \_\_\_\_\_, 2019 (the "Sale Objection Deadline"). Unless  
17 a party to a Purchased Contract files an objection to the Proposed Cure Amount or other objection to  
18 the Motion on or before the Sale Objection Deadline, such party will be bound by the Proposed Cure  
19 Amount set forth in the Cure Amount Notice (or the Notice of Assumption and Assignment) and  
20 barred from asserting any additional cure or other amounts with respect to its Purchased Contract  
21 relating to the period prior to assignment.

22        If you do not want the court to grant the relief sought in the Motion, or if you want the court to  
23 consider your views on the Motion, then you must file an opposition with the court, and serve a copy  
24

1 on the person making the Motion *no later than the Sale Objection Deadline*, unless an exception  
2 applies (see Local Rule 14(d)(3)). The opposition must state your position, set forth all relevant facts  
3 and legal authority, and be supported by affidavits or declarations that conform to Local Rule 9014(c).

4 **If you object to the relief requested, you must file a WRITTEN response to this pleading**  
5 **with the court. You must also serve your written response on the person who sent you this**  
6 **notice.**

7 **If you do not file a written response with the court, or if you do not serve your written**  
8 **response on the person who sent you this notice, then:**

- 9 • **The court *may refuse to allow you to speak at the scheduled hearing; and***
- 10 • **The court *may rule against you without formally calling the matter at the hearing.***

11 **PLEASE TAKE FURTHER NOTICE** that the hearing on the Motion will be conducted on  
12 \_\_\_\_\_, **2019**, or as soon thereafter as counsel may be heard, before a United States Bankruptcy  
13 Judge in the United States Courthouse and Federal Building, 300 Las Vegas Blvd. South, Las Vegas,  
14 Nevada 89101.

15 Dated: \_\_\_\_\_, 2019

**BROWNSTEIN HYATT FARBER SCHRECK, LLP**

16 By: \_\_\_\_\_  
17 Samuel A. Schwartz, Esq.  
18 100 North City Parkway, Suite 1600  
Las Vegas, Nevada 89106

19 -and-

20 **LOWENSTEIN SANDLER LLP**  
21 Jeffrey L. Cohen, Esq.  
22 Gabriel L. Olivera, Esq.  
1251 Avenue of the Americas  
New York, New York 10020

23 *Proposed Attorneys for the Debtor*

**EXHIBIT 1 TO SALE NOTICE**

**(List of Sale Assets)**

**A. Williston Basin (North Dakota)**

1. All right, title and interest of the Seller as of the Closing Date in, to and under certain mineral rights and royalty interests in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in McKenzie County and Williams County, North Dakota.
2. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**B. DJ Basin (Colorado)**

1. All right, title and interest of the Seller as of the Closing Date in, to and under certain royalty interests in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in Weld County, Colorado.
2. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**C. Anadarko Basin (Oklahoma)**

1. All right, title and interest of the Seller as of the Closing Date in, to and under certain royalty interests in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in Carter County, Oklahoma.
2. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**D. Eagle Ford (DeWitt, Texas)**

1. All right, title and interest of the Seller as of the Closing Date in, to and under certain mineral rights in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in DeWitt County, Texas.
2. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**E. Eagle Ford (Dimmit, Texas)**

1. All right, title and interest of the Seller as of the Closing Date in, to and under certain mineral rights in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in Dimmit County, Texas.
2. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

1 **F. Permian Basin (Texas)**

- 2 1. All right, title and interest of the Seller as of the Closing Date in, to and under certain royalty interests  
3 in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in  
4 Glasscock County, Texas.
- 4 2. All written files, records and information and data exclusively relating to the foregoing lot of Pur-  
5 chased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

5 **G. Haynesville Basin (Louisiana)**

- 6 1. All right, title and interest of the Seller as of the Closing Date in, to and under certain royalty interests  
7 in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in  
8 De Soto Parish, Louisiana.
- 8 2. All written files, records and information and data exclusively relating to the foregoing lot of Pur-  
9 chased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

9 **H. Williston / Alberta Basin (Montana)**

- 10 1. All right, title and interest of the Seller as of the Closing Date in, to and under certain mineral rights in  
11 certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in  
12 Glacier County, Montana.
- 12 2. All written files, records and information and data exclusively relating to the foregoing lot of Pur-  
13 chased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

13 **I. Other Assets**

14 [TBD – based on Purchaser due diligence and mutual agreement of the Parties.]

15

16

17

18

19

20

21

22

23

24

**Exhibit C**

**(Proposed Cure Amount Notice)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 Samuel A. Schwartz, Esq.  
Nevada Bar No. 10985  
2 Brownstein Hyatt Farber Schreck, LLP  
100 North City Parkway, Suite 1600  
3 Las Vegas, Nevada 89106  
Telephone: (702) 802-2207  
4 Facsimile: (702) 382-8135

5 Jeffrey L. Cohen, Esq. (admitted *pro hac vice*)  
Gabriel L. Olivera, Esq. (admitted *pro hac vice*)  
6 LOWENSTEIN SANDLER LLP  
1251 Avenue of the Americas  
7 New York, New York 10020  
Telephone: (212) 262-6700  
8 Facsimile: (212) 262-7402

9 *Proposed Attorneys for the Debtor*

10 **UNITED STATES BANKRUPTCY COURT**  
11 **DISTRICT OF NEVADA**

12 In re:

Case No.: 18-17254-BTB

13 Bakken Resources, Inc.,

Chapter 11

14 Debtor.

Sale Hearing:

15 Hearing Date: \_\_\_\_\_, 2019

Hearing Time: \_\_\_\_\_ .m.

16 Location: \_\_\_\_\_

17 **NOTICE OF PROPOSED CURE AMOUNTS IN CONNECTION**  
18 **WITH SALE OF THE DEBTOR’S ASSETS**

19 **PLEASE TAKE NOTICE** that on February \_\_, 2019, the above-captioned Court entered the  
20 *Order Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code Approving Bid Procedures with*  
21 *Respect to Sale of Assets, Setting Sale Hearing Date, Approving Form and Manner of Notices, and*  
22 *Granting Related Relief* [ECF No. \_\_\_] (the “Bid Procedures Order”) approving bidding procedures for  
23 and scheduling an auction and sale hearing in connection with the sale of certain of the Debtor’s assets  
24 (the “Sale Assets”) free and clear of all liens (statutory or otherwise), claims, interests, and

1 encumbrances of every kind and nature, with the exception of Assumed Liabilities and Permitted  
2 Encumbrances as defined in the Motion, with all such liens, claims, interests, and other encumbrances  
3 attaching with the same validity and priority to the sale proceeds (the “Sale”); and granting related  
4 relief as requested by the Debtor<sup>1</sup> in the *Motion for Order Pursuant to Sections 105, 363, and 365 of*  
5 *the Bankruptcy Code and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure:*  
6 *(i) Approving Bid Procedures with Respect to Sale of Assets, Setting the Sale Hearing Date; and*  
7 *Approving Form and Manner of Notices; and (ii) Approving and Authorizing the Sale of Assets Free*  
8 *and Clear of All Liens, Interests, Claims and Encumbrances, the Assumption and Assignment of*  
9 *Certain Related Executory Contracts, Waiving the Requirements of Bankruptcy Rules 6004(h) and*  
10 *6006(d) and Granting Related Relief [ECF No. \_\_\_] (the “Motion”).*

11 **PLEASE TAKE FURTHER NOTICE** that an auction (the “Auction”) will be held on **April**  
12 **23, 2019 at 11:00 a.m.** (prevailing Central Time) and hearing to approve the sale of the Sale Assets  
13 (the “Sale Hearing”) will be held on \_\_\_\_\_, **2019** at \_\_\_\_:\_\_\_ **.m.** (prevailing Pacific Time)  
14 or as soon thereafter as counsel may be heard, at which the Debtor may seek authority to assume  
15 certain executory contracts and/or unexpired leases relating to the Sale Assets (the “Purchased  
16 Contracts”) identified on the attached **Exhibit 1** and assign them to the one or more Qualified Bidders  
17 designated the Winning Bidder(s) at the Auction.

18 **PLEASE TAKE FURTHER NOTICE** that Exhibit 1 hereto lists the amount the Debtor  
19 believes is required to cure any defaults existing under each Purchased Contract which may be  
20 assumed and assigned (the “Proposed Cure Amount”), which is based on the Debtor’s books and  
21 records.

22  
23 \_\_\_\_\_  
24 <sup>1</sup> All capitalized terms used but not defined herein have the meanings set forth in the Sale Motion.



1           **PLEASE TAKE FURTHER NOTICE** that any objection by a non-debtor party to an  
2 Purchased Contract (the “Non-Debtor Counterparty”) to the Sale, including an objection to the  
3 Proposed Cure Amount, must: (a) be in writing; (b) conform to the applicable provisions of the  
4 Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual basis for the  
5 objection and the specific grounds therefore; and (d) be filed and served so as to be actually received  
6 no later than \_\_\_\_\_, 2019 (the “Sale Objection Deadline”).

7           **PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY**  
8 **FILE AND SERVE AN OBJECTION TO THE ASSUMPTION AND**  
9 **ASSIGNMENT OF THE PURCHASED CONTRACT(S) LISTED ON**  
10 **EXHIBIT A, INCLUDING WITH RESPECT TO THE PROPOSED**  
11 **CURE AMOUNT FOR SUCH PURCHASED CONTRACT(S), THE**  
12 **DEBTOR WILL BE ABLE TO ASSUME, ASSIGN AND SELL SUCH**  
13 **PURCHASED CONTRACT(S) TO THE PURCHASER, AND THE**  
14 **PROPOSED CURE AMOUNT SET FORTH IN THIS NOTICE WILL BE**  
15 **BINDING UPON YOU AS THE NON-DEBTOR CONTRACTING**  
16 **PARTY TO SUCH PURCHASED CONTRACT(S) FOR ALL PURPOSES**  
17 **IN THE DEBTOR’S CHAPTER 11 CASES. IN SUCH EVENT, YOU, AS**  
18 **THE NON-DEBTOR COUNTERPARTY, WILL BE FOREVER**  
19 **BARRED FROM OBJECTING TO THE PROPOSED CURE AMOUNT,**  
20 **INCLUDING, WITHOUT LIMITATION, THE RIGHT TO ASSERT**  
21 **ANY ADDITIONAL CURE OR OTHER AMOUNT WITH RESPECT TO**  
22 **SUCH PURCHASED CONTRACT(S), AS WELL AS OBJECTING TO**  
23 **THE DEBTOR’S ASSUMPTION AND ASSIGNMENT OF SUCH**  
24 **PURCHASED CONTRACT(S) TO THE PURCHASER.**

17           **PLEASE TAKE FURTHER NOTICE** that this Notice is not binding on the Debtor and/or  
18 any Qualified Bidder and does not constitute the final decision to assume and assign the identified  
19 Purchased Contracts.

20           **PLEASE TAKE FURTHER NOTICE** that copies of the Motion, the Bid Procedures Order,  
21 the proposed order approving the Sale, and the form of asset purchase agreement are available at  
22 [www.omnimgt.com/BakkenResources](http://www.omnimgt.com/BakkenResources).

23 Dated: \_\_\_\_\_, 2019

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**BROWNSTEIN HYATT FARBER SCHRECK, LLP**

By: \_\_\_\_\_  
Samuel A. Schwartz, Esq.  
100 North City Parkway, Suite 1600  
Las Vegas, Nevada 89106

-and-

**LOWENSTEIN SANDLER LLP**

Jeffrey L. Cohen, Esq.  
Gabriel L. Olivera, Esq.  
1251 Avenue of the Americas  
New York, New York 10020

*Proposed Attorneys for the Debtor*

**Exhibit D**

**(Proposed Notice of Assumption and Assignment)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 Samuel A. Schwartz, Esq.  
Nevada Bar No. 10985  
2 Brownstein Hyatt Farber Schreck, LLP  
100 North City Parkway, Suite 1600  
3 Las Vegas, Nevada 89106  
Telephone: (702) 802-2207  
4 Facsimile: (702) 382-8135

5 Jeffrey L. Cohen, Esq. (admitted *pro hac vice*)  
Gabriel L. Olivera, Esq. (admitted *pro hac vice*)  
6 LOWENSTEIN SANDLER LLP  
1251 Avenue of the Americas  
7 New York, New York 10020  
Telephone: (212) 262-6700  
8 Facsimile: (212) 262-7402

9 *Proposed Attorneys for the Debtor*

10 **UNITED STATES BANKRUPTCY COURT**  
11 **DISTRICT OF NEVADA**

12 In re:

Case No.: 18-17254-BTB

13 Bakken Resources, Inc.,

Chapter 11

14 Debtor.

Sale Hearing:

Hearing Date: \_\_\_\_\_, 2019

Hearing Time: \_\_\_\_\_ .m.

16 Location: \_\_\_\_\_

17 **NOTICE OF ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS**  
18 **IN CONNECTION WITH SALE OF THE DEBTOR’S ASSETS**

19 **PLEASE TAKE NOTICE** that on \_\_\_\_\_, 2019, the above-captioned Court entered the  
20 *Order Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code Approving Bid Procedures with*  
21 *Respect to Sale of Assets, Setting Sale Hearing Date, Approving Form and Manner of Notices, and*  
22 *Granting Related Relief* [ECF No. \_\_\_] (the “Bid Procedures Order”) approving bidding procedures for  
23 and scheduling an auction and sale hearing in connection with the sale of certain of the Debtor’s assets  
24 (the “Sale Assets”) free and clear of all liens (statutory or otherwise), claims, interests, and

1 encumbrances of every kind and nature, with the exception of Assumed Liabilities and Permitted  
 2 Encumbrances as defined in the Motion, with all such liens, claims, interests, and other encumbrances  
 3 attaching with the same validity and priority to the sale proceeds (the “Sale”); and granting related  
 4 relief as requested by the Debtor<sup>1</sup> in the *Motion for Order Pursuant to Sections 105, 363, and 365 of*  
 5 *the Bankruptcy Code and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure:*  
 6 *(i) Approving Bid Procedures with Respect to Sale of Assets, Setting the Sale Hearing Date; and*  
 7 *Approving Form and Manner of Notices; and (ii) Approving and Authorizing the Sale of Assets Free*  
 8 *and Clear of All Liens, Interests, Claims and Encumbrances, the Assumption and Assignment of*  
 9 *Certain Related Executory Contracts, Waiving the Requirements of Bankruptcy Rules 6004(h) and*  
 10 *6006(d) and Granting Related Relief [ECF No. \_\_\_] (the “Motion”).*

11 **PLEASE TAKE FURTHER NOTICE** that Debtor has received Qualified Bids in accordance  
 12 with the Bid Procedures Order, and each Qualified Bidder has (1) identified certain executory  
 13 contracts and/or unexpired leases related to the Sale Assets (the “Purchased Contracts”) which it  
 14 requires the Debtor to assume and assign to such Qualified Bidder on the Closing Date of the Sale if it  
 15 is determined to be the Winning Bidder at the auction (the “Auction”) scheduled on **April 23, 2019 at**  
 16 **11:00 a.m.** (prevailing Central Time) and (2) proposed adequate assurance of future performance for  
 17 such Purchased Contracts to be assumed (the “Proposed Adequate Assurance”), as described in  
 18 **Exhibit 1** hereto. To the extent that such Purchased Contracts were not listed on the Debtor’s  
 19 previously filed Cure Amount Notice, Exhibit 1 also sets forth the Proposed Cure Amount for such  
 20 Purchased Contracts (the “Additional Proposed Cure Amount”).

21 **PLEASE TAKE FURTHER NOTICE** that the hearing to approve the sale of the Sale Assets  
 22 (the “Sale Hearing”) will be held on \_\_\_\_\_, **2019 at** \_\_\_\_:\_\_\_\_.m. (prevailing Pacific Time) or

23 \_\_\_\_\_  
 24 <sup>1</sup> All capitalized terms used but not defined herein have the meanings set forth in the Sale Motion.

1 as soon thereafter as counsel may be heard, at which the Debtor may seek authority to assume certain  
2 of the Purchased Contracts identified on Exhibit 1 and assign them to the one or more Qualified  
3 Bidders designated the Winning Bidder(s) at the Auction.

4 **PLEASE TAKE FURTHER NOTICE** that if you object to any Qualified Bidder(s)'  
5 proposed adequate assurance of future performance or the Additional Proposed Cure Amount set forth  
6 on Exhibit 1, your objection must: (a) be in writing; (b) conform to the applicable provisions of the  
7 Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual basis for the  
8 objection and the specific grounds therefore; and (d) be filed and served so as to be actually received  
9 no later \_\_\_\_\_, 2019 (the "Assumption Objection Deadline").

10 **PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY**  
11 **FILE AND SERVE AN OBJECTION TO THE ASSUMPTION AND**  
12 **ASSIGNMENT OF THE PURCHASED CONTRACT(S) LISTED ON**  
13 **EXHIBIT 1, INCLUDING WITH RESPECT TO THE ADDITIONAL**  
14 **PROPOSED CURE AMOUNT FOR SUCH PURCHASED**  
15 **CONTRACT(S), THE DEBTOR WILL BE ABLE TO ASSUME, ASSIGN**  
16 **AND SELL SUCH PURCHASED CONTRACT(S) TO THE**  
17 **PURCHASER, AND THE ADDITIONAL PROPOSED CURE AMOUNT**  
18 **SET FORTH IN THIS NOTICE WILL BE BINDING UPON YOU AS**  
19 **THE NON-DEBTOR CONTRACTING PARTY TO SUCH PURCHASED**  
**CONTRACT(S) FOR ALL PURPOSES IN THE DEBTOR'S CHAPTER**  
**11 CASES. IN SUCH EVENT, YOU, AS THE NON-DEBTOR**  
**COUNTERPARTY, WILL BE FOREVER BARRED FROM**  
**OBJECTING TO THE ADDITIONAL PROPOSED CURE AMOUNT,**  
**INCLUDING, WITHOUT LIMITATION, THE RIGHT TO ASSERT**  
**ANY ADDITIONAL CURE OR OTHER AMOUNT WITH RESPECT TO**  
**SUCH PURCHASED CONTRACT(S), AS WELL AS OBJECTING TO**  
**THE DEBTOR'S ASSUMPTION AND ASSIGNMENT OF SUCH**  
**PURCHASED CONTRACT(S) TO THE PURCHASER.**

20 **PLEASE TAKE FURTHER NOTICE** that this Notice of Assumption and Assignment is not  
21 binding on the Debtor and/or any Qualified Bidder and does not constitute the final decision to assume  
22 and assign the identified Purchased Contracts.

1           **PLEASE TAKE FURTHER NOTICE** that copies of the Motion, the Bid Procedures Order,  
2 the proposed order approving the Sale, and the form of asset purchase agreement are available at  
3 [www.omnimgt.com/BakkenResources](http://www.omnimgt.com/BakkenResources).

4 Dated: \_\_\_\_\_, 2019

**BROWNSTEIN HYATT FARBER SCHRECK, LLP**

5 By: \_\_\_\_\_  
6 Samuel A. Schwartz, Esq.  
7 100 North City Parkway, Suite 1600  
8 Las Vegas, Nevada 89106

-and-

9 **LOWENSTEIN SANDLER LLP**  
10 Jeffrey L. Cohen, Esq.  
11 Gabriel L. Olivera, Esq.  
12 1251 Avenue of the Americas  
13 New York, New York 10020

*Proposed Attorneys for the Debtor*

**EXHIBIT 2**

(Proposed Asset Purchase Agreement)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24



## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of [●], 2019, by and between Bakken Resources, Inc., a Nevada corporation (the “Seller”), a debtor and debtor in possession in the Bankruptcy Case (as defined below) and [PURCHASER], (the “Purchaser”). As used in this Agreement, “Party” or “Parties” means, individually or together, the Purchaser and the Seller.

### RECITALS

**WHEREAS**, the Seller is an independent energy company focused on holding non-working interests in oil and natural gas properties in North America (the “Business”);

**WHEREAS**, on December 7, 2018 (the “Petition Date”), the Seller filed a voluntary petition for relief commencing a case under chapter 11 of title 11 of the United States Code, sections 101 et. seq. (as amended from time to time, the “Bankruptcy Code”), which cases are being jointly administered and styled *In re: Bakken Resources, Inc.*, Case No. 18-17254-BTB (the “Bankruptcy Case”) and pending before the United States Bankruptcy Court for the District of Nevada (the “Bankruptcy Court”);

**WHEREAS**, the Seller desires to sell and assign to the Purchaser all of the Purchased Assets (as defined below), free and clear of liens, claims, encumbrances and interests, including, without limitation, security interests, liens assignments, licenses, leases, contract rights, and claims of whatever kind and nature and whenever incurred, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, matured or unmatured, legal or equitable (collectively, “Encumbrances”) (other than Permitted Encumbrances (as defined below)) and all of the Assumed Liabilities (as defined below), and the Purchaser desires to purchase from the Seller all of the Purchased Assets, free and clear of Encumbrances (other than Permitted Encumbrances (as defined below)) and assume all of the Assumed Liabilities, upon the terms and conditions hereinafter set forth;

**WHEREAS**, the Parties intend to effectuate the transactions contemplated by this Agreement pursuant to sections 105, 363 and 365 of the Bankruptcy Code; and

**WHEREAS**, the execution and delivery of this Agreement and the Seller’s ability to consummate the transactions set forth in this Agreement are subject, among other things, to the entry of an order of the Bankruptcy Court in substantially the form and substance attached hereto as Exhibit A, pursuant to, *inter alia*, sections 105, 363 and 365 of the Bankruptcy Code (i) authorizing and approving, *inter alia*, the sale of the Purchased Assets to the Purchaser on the terms and conditions set forth herein and (ii) containing certain findings of facts, including, without limitation, a finding that the Purchaser is a good faith Purchaser pursuant to section 363(m) of the Bankruptcy Code (the “Sale Order”).

**NOW, THEREFORE**, in consideration of the premises and the mutual promises herein made, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Purchase and Sale of Assets; Assignment and Assumption.

(a) Purchased Assets. Upon the terms and subject to the conditions set forth in this Agreement and subject in all respects to the Sale Order, the Seller does hereby sell, transfer, assign, convey and deliver to the Purchaser, free and clear of Encumbrances (other than Permitted Encumbrances (defined below)), all of the Seller’s right, title and interest in, to and under the assets listed on Schedule 1 attached hereto and made a part hereof (the “Purchased Assets”) in accordance with Section 2 hereof.

(b) Assumed Liabilities. Upon the terms and subject to the conditions set forth in this Agreement and subject in all respects to the Sale Order, the Purchaser does hereby purchase and assume, and agrees to satisfy and discharge as the same become due, (i) all liabilities and obligations arising from, relating to or in connection with the Purchased Assets from and after the closing of the transactions contemplated hereby and (ii) without limiting the foregoing, any and all Assumed Taxes (as defined below) (together, collectively, the “Assumed Liabilities”).

(c) Purchase Price. The aggregate purchase price to be paid by the Purchaser to the Seller in exchange for the Purchased Assets is \$[●] (the “Purchase Price”). On or prior to the Closing Date (as defined below), (i) the Purchaser shall deliver an amount equal to \$[●], less the amount of the Good Faith Deposit (as defined below), less the amount of any interest or income (if any) accrued on the Good Faith Deposit as of the date thereof (the “Cash Balance”) via wire transfer of immediately available funds to the account designated by the Seller; and (ii) the Escrow Holder (as defined below) shall pay the Good Faith Deposit (and any interest or income (if any) accrued thereon) over to the Seller and upon such payment, such amount shall be credited and applied toward payment of the Purchase Price. The Purchaser’s allocation of the Purchase Price among the lots of Purchased Assets is set forth on Schedule 2 attached hereto.

(d) Good Faith Deposit. The Purchaser has deposited into an escrow account at [●] and maintained by [●] as escrow agent (the “Escrow Holder”), an amount equal to \$[●] (the “Good Faith Deposit”) in immediately available funds of the United States of America, pursuant to the *Order Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code and Rules 2002, 6004 and 6006 of the Federal Rules Of Bankruptcy Procedure Approving Bid Procedures with Respect to Sale of Assets, Setting the Sale Hearing Date, and Granting Related Relief*, entered by the Bankruptcy Court on [●], 2019 in connection with the Bankruptcy Case.

(e) Additional Documents. Upon request by the Purchaser, the Seller shall execute and deliver to the Purchaser, at the Purchaser’s sole cost and expense, such other conveyancing documents required under applicable laws (in the opinion of counsel of the Purchaser) to transfer title and/or ownership to the Purchased Assets to the Purchaser hereunder free and clear of Encumbrances (other than Permitted Encumbrances (defined below)), each in form and substance reasonably satisfactory to the Purchaser; provided, however, that neither the Seller nor any of its affiliates shall have any obligation to execute any instrument or take any action that would (i) include any warranties, guaranties, promises, inducements or representations, whether express, implied, statutory or otherwise, made by or on behalf of the Seller (with respect to the Purchased Assets or otherwise) or (ii) expand any of the Seller’s obligations under the terms of this Agreement.

2. “AS IS” Transaction. **THE PURCHASER HEREBY EXPRESSLY ACKNOWLEDGES THAT THE SELLER’S RIGHT, TITLE AND INTEREST IN AND TO THE PURCHASED ASSETS ARE BEING CONVEYED TO THE PURCHASER ON AN “AS IS” AND “WHERE IS” BASIS, WITH ALL FAULTS OR DEFECTS (WHETHER KNOWN OR UNKNOWN, LATENT DISCOVERABLE OR UNDISCOVERABLE) AND IN THE CONDITION EXISTING AS OF THE CLOSING DATE (AS DEFINED BELOW), WITHOUT RECOURSE TO THE SELLER, ANY OF ITS AFFILIATES, ANY ADVISOR, EMPLOYEE, OR OTHER REPRESENTATIVE OF THE FOREGOING, OR ANY OTHER PERSON REPRESENTING (OR PURPORTING TO REPRESENT) THE FOREGOING, AND WITHOUT ANY ORAL OR WRITTEN WARRANTIES, GUARANTIES, PROMISES, STATEMENTS, INDUCEMENTS OR REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND THE PURCHASER HEREBY AGREES TO ACCEPT SUCH RIGHT, TITLE AND INTEREST IN AND TO THE PURCHASED ASSETS ON SUCH BASIS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE PARTIES HEREBY AGREE AS FOLLOWS:**

(a) By its execution of this agreement, the Purchaser specifically acknowledges that it has not been induced by, and has not relied upon, whether express, implied, statutory or otherwise, any warranties, guaranties, promises, statements, inducements, representations, or information pertaining to the Purchased Assets or their uses, the physical condition, environmental condition, state of title, income, expenses, or operation of the Purchased Assets, any of the real estate or lands related to the Purchased Assets (the “Subject Properties”), the Assumed Liabilities, or any other matter or thing with respect the Purchased assets, the Assumed Liabilities or the Subject Properties, written or unwritten, whether made by the Seller, any of its affiliates, any advisor, employee, or other representative of the foregoing, or any other person representing (or purporting to represent) the foregoing, including, without limitation, any warranties, guaranties, promises, statements, inducements, representations, or information regarding or relating to:

(i) the Seller’s title to the Purchased Assets;

(ii) the operation of the Purchased Assets or the business, the uses or merchantability or fitness of any portion of the Purchased Assets, the status, accessibility, location, physical condition or safety of the Purchased Assets or the suitability of the Purchased Assets for a particular purpose;

(iii) whether or not any of the Purchased Assets will match the description thereof listed on Schedule 1;

(iv) the contents, character or nature of any report of any petroleum engineering or other consultant, advisor or other third party, or any engineering, geological or seismic data or interpretation relating to the Purchased Assets,

(v) the quantity, quality or recoverability of minerals in or from the Subject Properties, or the production of or ability to produce minerals from the Subject Properties,

(vi) any estimates of the value of the Purchased Assets or future revenues to be generated by the Purchased Assets,

(vii) the content, character or nature of any information memorandum, reports, brochures, charts or statements prepared by or on behalf of the Seller, any of its affiliates or any third parties with respect to the Purchased Assets, or any other materials or information that may have been made available to the Purchaser or its affiliates, or its or their employees, agents, consultants, representatives or advisors in connection with the transactions contemplated by this agreement or any discussion or presentation relating thereto, and/or

(viii) environmental laws, the release of materials into the environment or the protection of human health, safety, natural resources or the environment, or any other environmental condition of the Purchased Assets or the Subject Properties.

(b) By its execution of this Agreement, the Purchaser hereby waives and releases, any implied or statutory warranties or guaranties of merchantability, freedom from latent vices or defects, fitness for a particular purpose or conformity to models or samples of materials of any of the Purchased Assets, rights of the Purchaser under appropriate statutes to claim diminution of consideration or return of the Purchase Price, or any other warranty or guaranty of any kind or nature regarding or relating to the Purchased Assets, the Assumed Liabilities or the Subject Properties; it being expressly understood and agreed by the parties that the Purchaser shall be deemed to be obtaining the Purchased Assets in their present status, condition and state of repair, “AS IS” and “WHERE IS” with all faults or defects (known or unknown, latent, discoverable or undiscoverable);

(c) To the extent required by applicable law to be effective, the disclaimers of representations and warranties contained in this Section 2 are “conspicuous” disclaimers for the purpose of any applicable law; and

(d) The disclaimers and other terms set forth in this Section 2 shall expressly survive the consummation of the transactions contemplated hereby.

3. Further Acknowledgements. The Parties further acknowledge and agree that:

(a) the Purchased Assets remain subject to (i) all of the terms, covenants, conditions, restrictions, limitations and provisions of any valid and subsisting oil, gas and mineral leases or record covering any portion of the Subject Properties or the Purchased Assets, and any assignments thereof, (ii) all royalties, overriding royalties, payments out of production and other lease burdens affecting the Subject Properties or the Purchased Assets, (iii) all encumbrances of record and other contracts and agreements affecting the Subject Properties, and (iv) all terms and conditions of any orders, rules, regulations and ordinances of any federal, state or other governmental entity having jurisdiction over the Subject Properties or the Purchased Assets; and (v) any Assumed Taxes (as defined below), the payment of which Purchaser hereby assumes (together, collectively, the “Permitted Encumbrances”);

(b) the Purchaser has undertaken all such investigations of the Purchased Assets, the Assumed Liabilities and the Subject Properties as Purchaser deems necessary or appropriate under the circumstances as to the status of the Purchased Assets, the Assumed Liabilities and the Subject Properties, and based upon same, Purchaser is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel, and officers; and

(c) the Purchaser is a sophisticated investor and has evaluated the merits and risks of acquiring the Purchased Assets and assuming the Assumed Liabilities, has had an opportunity to discuss the Seller’s business, management, financial affairs and the terms and conditions of this Agreement with the Seller’s management and has had an opportunity to review the Seller’s records related to the Purchased Assets, the Assumed Liabilities and the Subject Properties.

4. Release. To the maximum extent permitted by applicable law, the Purchaser, on behalf of itself and its respective successors and assigns, and on behalf of its principals or affiliates and their respective successors and assigns (each, a “Releasor”), hereby (i) forever releases, acquits and discharges, to the fullest extent permitted by law, the Seller and its affiliates and each of their respective past, present and future principals or affiliates and their respective past, present or future officers, directors, employees, partners, members, managers, principals, equity holders and their successors and assigns (each, a “Releasee”) of, from and against any and all actions, causes of action, losses, expenses, fees, charges, complaints, claims, demands, damages, obligations, promises, controversies, rights, taxes, lis pendens, liabilities, judgments, debts, dues, suits and proceedings of every kind, nature and description whatsoever, known or unknown, past, present or future, suspected or unsuspected, subject to dispute or not, including any claim as defined in section 101(5) of the Bankruptcy Code (collectively, “Claims”), arising from or relating to acts or omissions occurring on or before the date hereof, which such Releasor ever had, now has or may have, including without limitation any and all Claims arising from or relating to the Purchased Assets, the Assumed Liabilities, the Subject Properties or the Seller’s operation of the Business, including, without limitation, the condition, possession, ownership, use, operation, maintenance or repair of the Purchased Assets or any portion thereof and (ii) expressly disclaims any and all liability, and each Releasor forever waives any and all recourse of any kind or character against each Releasee in respect of any and all losses or damages, arising out of or relating to the Purchased Assets, the Assumed Liabilities, the Subject Properties or the Seller’s operation of the Business from and after the Closing Date, including, without limitation, the condition, possession, ownership, use, operation, maintenance or repair of the Purchased

Assets or any portion thereof. The provisions of this Section 4 shall expressly survive the consummation of the Transactions contemplated hereby following the Closing Date.

5. Bankruptcy Court Approval; Closing Date. Notwithstanding anything to the contrary contained in this Agreement, the consummation of the sale of the Purchased Assets and the assumption of the Assumed Liabilities contemplated by this Agreement (together, the "Transaction") is subject to, and shall not occur until, the Sale Order shall have become a final order. After the Sale Order shall have become a final order, the Seller shall give written notice to the Purchaser setting the closing date for the Transaction (the "Closing Date"), which shall be determined by the Seller in its sole and absolute discretion; provided, however, that in no event shall the Closing Date occur prior to the second (2<sup>nd</sup>) business day following the date of delivery of such notice to the Purchaser or later than [●], 2019 (unless the parties mutually agree in writing to a later date), provided, further, however, that irrespective of the Closing Date, all conveyances and transfers of the Purchased Assets shall be deemed effective as of January 1, 2019, at 12:01 A.M. local asset time. The Seller's obligation to close the Transaction shall be conditioned upon, and subject to, the Purchaser's payment of the Cash Balance to the Seller in accordance with this Agreement. The Purchaser shall, at the Purchaser's own cost and expense, cooperate in good faith with the reasonable requests of the Seller regarding the procurement of the Sale Order and with any proceedings in connection therewith or in furtherance thereof, including, without limitation, providing evidence as may be required by the Bankruptcy Court. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree and acknowledge that the Purchaser's obligations under this Agreement are irrevocable; provided, however, the Purchaser may terminate this Agreement by delivering written notice to the Seller if the Sale Order has not become a final order on or before [●], 2019, so long as the Purchaser is not in violation or breach of this Agreement and certifies to the Seller in such notice that the Purchaser otherwise ready, willing and able to close the Transaction and has cash on hand, sufficient to enable it to pay the Cash Balance to the Seller.

6. Representations and Warranties. Each of the Parties represents and warrants to the other Party that: (a) it has the full limited liability company, corporate or partnership power and authority, as the case may be, to execute, deliver and perform its obligations under this Agreement, and consummate the Transaction; (ii) the execution, delivery and performance of this Agreement by such Party, and the consummation of the Transaction, have been duly authorized and approved by all required limited liability company, corporate or partnership action, as the case may be, on the part of such Party, including by such Party's members, managers or directors (or similar governing body) or general partner and does not require any authorization or consent of any shareholders, members or other equity holders of such Party that has not been obtained; and (iii) this Agreement is the legal, valid and binding obligation of such Party enforceable in accordance with its terms.

7. Taxes. Any and all real estate taxes, ad valorem taxes, transfer taxes or other taxes relating to the sale of Purchased Assets or otherwise incurred in connection with the Transaction, as well as any applicable taxes or assessments attributable to the Purchased Assets for the tax year 2019 and all subsequent years (together, collectively, the "Assumed Taxes") shall be the sole responsibility of the Purchaser.

8. Confidential Nature of Information. The Purchaser agrees that it will treat in confidence all documents, materials and other information that it shall have obtained regarding the Seller, its affiliates and the Business during the course of the negotiations leading to the consummation of the Transaction (whether obtained before or after the date of this Agreement) and the preparation of this Agreement. Such documents, materials and information shall not be disclosed or communicated to any third person (other than to the Purchaser's counsel, accountants and financial advisors). The Purchaser shall not use any confidential information referred to in the second immediately preceding sentence in any manner

whatsoever except solely for the enforcement of its rights hereunder; provided, however, that after the Closing Date, the Purchaser may use or disclose confidential information relating exclusively to the Purchased Assets in connection with the performance of its obligations thereunder. The obligation of Purchaser to treat such documents, materials and other information in confidence shall not apply to any information that (i) is or becomes available to the public other than as a result of disclosure by the Purchaser or its agents, or (ii) is required to be disclosed under applicable law or judicial process, including the Bankruptcy Case, but only to the extent it must be disclosed.

9. Non-Contact. Until the Closing Date, except with the prior written consent of the Seller, the Purchaser shall not, and shall cause its affiliates and their respective representatives (including, without limitation, counsel, accountants and financial advisors) not to, initiate or maintain contact with any security-holder, director, officer, employee, employee union, partner, manager, member, agent, advisor, representative, customer, supplier, vendor, independent contractor, affiliate, lender or landlord of the Seller or any of its affiliates with respect to, or relating or referring in any way to the Business, the Purchased Assets or the Assumed Liabilities. The provisions of this Section 9 shall expressly survive the termination of this Agreement.

10. Access to Records. Notwithstanding anything in this Agreement to the contrary, for a period of three (3) years after the Closing Date, the Purchaser will give the Seller and its representatives reasonable access during the Purchaser's regular hours upon reasonable advance notice and under reasonable circumstances to any books and records relating to the Purchased Assets or transferred to the Purchaser hereunder to the extent necessary for the preparation of financial statements or regulatory filings of the Seller in respect of periods ending on or prior to the Closing Date or as necessary to enable the Seller to administer its bankruptcy case or to pursue or defend against any claim (including any litigation or arbitration claims and any refunds and deposits), rights, rights of offset or causes of action of the Seller.

11. Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed in that State.

(b) All actions and proceedings arising out of or relating to this Agreement, including the resolution of any and all disputes hereunder, shall be heard and determined in the Bankruptcy Court, and the Parties hereby irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court in any such action or proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. The Parties hereby consent to service of process by mail (in accordance with Section 19) or any other manner permitted by law.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF THE SELLER, THE PURCHASER, OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

12. Binding Effect; Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns, including, in the case of the Seller, any Bankruptcy Successor (as defined below); provided, however, this Agreement may not assigned by the Purchaser without the prior written consent of the Seller. As used herein, the term "Bankruptcy Successor" shall mean, in addition to any successor by law, such as through merger, any trustee appointed in the Bankruptcy Case, including without limitation any chapter 11 or chapter 7 trustee, any debtor entity in the Bankruptcy Case, and any trustee, plan agent, liquidating agent, liquidating trust,

creditor trust, creditor's committee, or similar entity appointed in the Bankruptcy Case, whether appointed by the Bankruptcy Court or pursuant to a chapter 11 plan confirmed in the Bankruptcy Case, to administer assets of the Seller's estate for the benefit of the holders of claims against the Seller.

13. Entire Agreement; Amendment. This Agreement, including the exhibits attached hereto, together with that certain [Non-Disclosure Agreement, dated [●], by and between the Purchaser and the Seller]<sup>1</sup> (the provisions of which shall expressly survive the termination of this Agreement and the consummation of the Transactions), sets forth all the promises, covenants, agreements, conditions, and understandings between the Parties, and supersedes all prior and contemporaneous agreements, understandings, inducements, or conditions, expressed or implied, oral, written or electronic, except as herein contained. The Parties hereby irrevocably agree that no attempted amendment, modification, termination, discharge, or change of this Agreement shall be valid and effective, unless each of the Parties shall mutually agree in writing thereto.

14. Waivers. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the Party or Parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any Party, it is authorized in writing by an authorized representative of such Party. Except as otherwise provided herein, the failure of any Party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

15. Expenses. Each Party will pay all costs and expenses incident to its negotiation and preparation of this Agreement and to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants. Notwithstanding the foregoing, if any legal proceeding relating to this Agreement, any other agreement to be executed by either Party in connection herewith or the enforcement of any provision of any such documents is brought against any Party by the other Party, the prevailing Party shall be entitled to recover reasonable attorneys' fees, costs and disbursements, in addition to any other relief to which the prevailing Party may be entitled.

16. Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

17. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by and delivered to each of the Parties hereto. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or electronic delivery (i.e., by electronic mail of a PDF signature page) shall be effective as delivery of a manually executed counterpart of this Agreement.

---

<sup>1</sup> Note to Purchaser: To insert reference to Purchaser's Confidentiality Agreement with the Seller.

18. Construction. In the interpretation and construction of this Agreement, the Parties acknowledge that the terms hereof reflect extensive negotiations between the Parties and this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either Party. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) references to this Agreement shall include all Schedules and Exhibits attached hereto (which are incorporated into made a part of this Agreement for all purposes);

(b) the term “include”, “includes” or “including” shall be deemed to be followed by the words “without limitation”;

(c) any reference to a “law” includes all rules and regulations promulgated thereunder and any predecessor or successor statute, rules or regulations, as amended or otherwise modified from time to time; and

(d) any reference to “dollars” or “\$” are to United States dollars.

19. Notices.

(a) All notices or other communications required or permitted hereunder shall be in writing and shall be given or delivered by personal delivery, by facsimile, by electronic mail or by a nationally recognized private overnight courier service addressed as follows:

If to the Purchaser, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn:

Facsimile:

E-mail:

with a copy to (which alone shall not constitute notice):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn:

Facsimile:

E-mail:

If to the Seller, to:

Bakken Resources, Inc.

c/o Alix Partners

2101 Cedar Springs Rd

#1100

Dallas, TX 75201

Attn: Richard Robbins and Vlad Bayer

E-mail: [rrobbs@alixpartners.com](mailto:rrobbs@alixpartners.com); [vbayer@alixpartners.com](mailto:vbayer@alixpartners.com)



with a copy to (which alone shall not constitute notice):

Lowenstein Sandler LLP  
1251 Avenue of Americas  
New York, NY 10020  
Attn: Jeffrey Cohen, Esq. and Steven E. Siesser, Esq.  
Facsimile: (973) 597-2400  
E-mail: [jcohen@lowenstein.com](mailto:jcohen@lowenstein.com) and [ssiesser@lowenstein.com](mailto:ssiesser@lowenstein.com)

or to such other address or facsimile number as such Party may indicate by a notice delivered to the other Party hereto.

(b) Any notice, consent, authorization, direction or other communication delivered as aforesaid shall be deemed to have been effectively delivered and received, if sent by a nationally recognized private overnight courier service, on the date following the date upon which it is delivered for overnight delivery to such courier service, if delivered personally (with written confirmation of receipt), on the date of such delivery or, if sent via facsimile or electronic mail, on the date of the transmission of the facsimile or electronic mail, provided that the sender thereof receives written confirmation that the facsimile or electronic mail, as the case may be, was successfully delivered to the intended recipient.

20. No Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

**[SIGNATURE PAGES FOLLOW]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Asset Purchase Agreement to be executed as of the day and year first above written.

**PURCHASER:**

[•]

By: \_\_\_\_\_  
Name:  
Title:

**SELLER:**

**BAKKEN RESOURCES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 1**

**PURCHASED ASSETS<sup>2</sup>**

**Williston Basin (North Dakota)**

1. All right, title and interest of the Seller as of the Closing Date in, to and under certain mineral rights and royalty interests in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in McKenzie County and Williams County, North Dakota.
2. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**DJ Basin (Colorado)**

1. All right, title and interest of the Seller as of the Closing Date in, to and under certain royalty interests in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in Weld County, Colorado.
2. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**Anadarko Basin (Oklahoma)**

1. All right, title and interest of the Seller as of the Closing Date in, to and under certain royalty interests in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in Carter County, Oklahoma.
2. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**Eagle Ford (DeWitt, Texas)**

1. All right, title and interest of the Seller as of the Closing Date in, to and under certain mineral rights in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in DeWitt County, Texas.
2. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**Eagle Ford (Dimmit, Texas)**

1. All right, title and interest of the Seller as of the Closing Date in, to and under certain mineral rights in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in Dimmit County, Texas.

---

<sup>2</sup> Note to Purchaser: Incorporation of additional details regarding the Purchased Assets subject to mutual agreement between the Parties. Headings are included in Schedule 1 for informational purposes only to identify the locations of the Purchased Assets.

2. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**Permian Basin (Texas)**

1. All right, title and interest of the Seller as of the Closing Date in, to and under certain royalty interests in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in Glasscock County, Texas.
2. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**Haynesville Basin (Louisiana)**

1. All right, title and interest of the Seller as of the Closing Date in, to and under certain royalty interests in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in De Soto Parish, Louisiana.
2. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**Williston / Alberta Basin (Montana)**

1. All right, title and interest of the Seller as of the Closing Date in, to and under certain mineral rights in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in Glacier County, Montana.
2. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**Other Assets**

[TBD – based on Purchaser due diligence and mutual agreement of the Parties.]

**SCHEDULE 2****ALLOCATION OF PURCHASE PRICE<sup>3</sup>**

<b>Lot of Purchased Assets</b>	<b>Purchase Price</b>
Purchased Assets listed under the heading “Williston Basin (North Dakota)” on <u>Schedule 1</u>	\$[●]
Purchased Assets listed under the heading “DJ Basin (Colorado)” on <u>Schedule 1</u>	\$[●]
Purchased Assets listed under the heading “Anadarko Basin (Oklahoma)” on <u>Schedule 1</u>	\$[●]
Purchased Assets listed under the heading “Eagle Ford (DeWitt, Texas)” on <u>Schedule 1</u>	\$[●]
Purchased Assets listed under the heading “Eagle Ford (Dimmit, Texas)” on <u>Schedule 1</u>	\$[●]
Purchased Assets listed under the heading “Permian Basin (Texas)” on <u>Schedule 1</u>	\$[●]
Purchased Assets listed under the heading “Haynesville Basin (Louisiana)” on <u>Schedule 1</u>	\$[●]
Purchased Assets listed under the heading “Williston / Alberta Basin (Montana)” on <u>Schedule 1</u>	\$[●]
[Other Assets]	\$[●]
<b>Aggregate Purchase Price</b>	<b>\$[●]</b>

<sup>3</sup> Note to Purchaser: Indicate allocation of aggregate Purchase Price among the lots of Purchased Assets listed on Schedule 1.

**EXHIBIT A**

**SALE ORDER**

**EXHIBIT 3**

(Proposed Final Sale Order)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 Samuel A. Schwartz, Esq.  
Nevada Bar No. 10985  
2 Brownstein Hyatt Farber Schreck, LLP  
100 North City Parkway, Suite 1600  
3 Las Vegas, Nevada 89106  
Telephone: (702) 802-2207  
4 Facsimile: (702) 382-8135

5 Jeffrey L. Cohen, Esq. (admitted *pro hac vice*)  
Gabriel L. Olivera, Esq. (admitted *pro hac vice*)  
6 LOWENSTEIN SANDLER LLP  
1251 Avenue of the Americas  
7 New York, New York 10020  
Telephone: (212) 262-6700  
8 Facsimile: (212) 262-7402

9 *Proposed Attorneys for the Debtor*

10 **UNITED STATES BANKRUPTCY COURT**  
11 **DISTRICT OF NEVADA**

12 In re:

Case No.: 18-17254-BTB

13 Bakken Resources, Inc.,

Chapter 11

14 Debtor.

Sale Hearing:

15 Hearing Date: \_\_\_\_\_, 2019

Hearing Time: \_\_\_\_\_ .m.

16 Location: \_\_\_\_\_

17 **ORDER PURSUANT TO SECTIONS 105, 363, AND 365 OF THE BANKRUPTCY CODE**  
18 **APPROVING THE SALE OF ASSETS FREE AND CLEAR OF LIENS, INTERESTS,**  
19 **CLAIMS, AND ENCUMBRANCES, THE ASSUMPTION AND ASSIGNMENT OF CERTAIN**  
20 **RELATED EXECUTORY CONTRACTS, WAIVING THE REQUIREMENTS OF**  
21 **BANKRUPTCY RULES 6004(H) AND 6006(D), AND GRANTING RELATED RELIEF**

22 Bakken Resources, Inc. (the, “Debtor”), debtor and debtor-in-possession, filed its *Motion for*  
23 *Order Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code and Rules 2002, 6004 and 6006*  
24 *of the Federal Rules of Bankruptcy Procedure: (i) Approving Bid Procedures with Respect to Sale of*  
*Assets, Setting the Sale Hearing Date; and Approving Form and Manner of Notices; and (ii)*  
*Approving and Authorizing the Sale of Assets Free and Clear of All Liens, Interests, Claims and*



1 *Encumbrances, the Assumption and Assignment of Certain Related Executory Contracts, Waiving the*  
2 *Requirements of Bankruptcy Rules 6004(h) and 6006(d) and Granting Related Relief* (the “Motion”)  
3 [ECF No. \_\_\_\_] on January 18, 2019 seeking, among other things, entry of an order approving the sale  
4 of certain of the Debtor’s assets (the “Sale Assets”) free and clear of liens, claims, and encumbrances,  
5 the assumption and assignment of related executory contracts and unexpired leases, and granting  
6 related relief.<sup>1</sup>

7 On February \_\_\_\_, 2019, the United States Bankruptcy Court for the District of Nevada (the  
8 “Court”) entered an order (the “Bid Procedures Order”) [ECF No. \_\_\_\_] granting certain relief  
9 requested in the Motion.

10 On April 23, 2019, the Debtor conducted the Auction in accordance with the Bid Procedures  
11 Order; and at the conclusion of the Auction, selected \_\_\_\_\_ and \_\_\_\_\_ as the Winning Bidders  
12 (each, a “Winning Bidder” or “Purchaser”) with respect to the respective Sale Assets set forth on  
13 Exhibit A attached hereto and selected \_\_\_\_\_ and \_\_\_\_\_ as Bank-Up Bidders (each, a “Back-Up  
14 Bidder”) with respect to the Sale Assets set forth on Exhibit B attached hereto.

15 The Motion came on for hearing before the above-captioned Court on February 15, 2019 (the  
16 “Bid Procedures Hearing”) and \_\_\_\_\_, 2019 (the “Sale Hearing” and together with the Bid  
17 Procedures Hearing, the “Hearings”), and the Debtor appeared by and through its counsel and all other  
18 appearances were noted on the record. The Court reviewed the Motion and the other pleadings and  
19 papers on file and heard and considered the argument of counsel at the Hearings on the Motion. It  
20 appearing that notice and an opportunity for a hearing on this Motion has been given and is  
21 appropriate under the circumstances surrounding this Chapter 11 Case and that no other or further  
22 notice need be given; and after due deliberation and sufficient cause appearing therefor,

23 \_\_\_\_\_  
24 <sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings assigned to them in  
the Motion and Bid Procedures.

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

2 A. The Court has jurisdiction over this matter and over the property of the Debtor and its  
3 estate pursuant to 28 U.S.C. §§ 157(a) and 1334. Venue of these cases and the Motion is proper  
4 pursuant to 28 U.S.C. §§ 1408 and 1409.

5 B. Approval of the sale and related transactions contemplated in the Motion (the “Sale”)  
6 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). The statutory predicates for  
7 the relief sought herein are 11 U.S.C. §§ 105, 363, and 365 and Bankruptcy Rules 2002, 6004, 6006  
8 and 9014.

9 C. Proper, timely, adequate, and sufficient notice of the Motion, the Sale, and the Sale  
10 Hearing has been provided in accordance with sections 363, 365 and 105(a) of the Bankruptcy Code,  
11 Bankruptcy Rules 2002, 6004 and 6006, and in compliance with the Bid Procedures Order. No other  
12 or further notice is required.

13 D. A reasonable opportunity to object or be heard regarding the relief requested in the  
14 Motion, the Sale has been afforded to all interested persons and entities, including the following: (i)  
15 the Office of the United States Trustee, (ii) counsel to the any official committee appointed in this  
16 Chapter 11 Case, (iii) all parties who are known to assert a security interest, lien, or claim in any of the  
17 Sale Assets, (iv) all non-Debtor counterparties to the Purchased Contracts implicated in the Sale, (v)  
18 parties-in-interest in accordance with the order entered pursuant to the Debtor’s *Motion for Order*  
19 *Pursuant to Bankruptcy Code Sections 102, 105; Bankruptcy Rules 2002, 9007, and 9036; and Local*  
20 *Bankruptcy Rule 1007 Authorizing the Establishment of Certain Notice Procedures* [ECF No. 22]; (vi)  
21 every party that has previously expressed any interest in the potential purchase of the Debtor’s Sale  
22 Assets, and (vii) any other party that the Debtor believes might be interested in a possible purchase of  
23  
24

1 the Sale Assets. Objections, if any, to the Motion or the Sale have been withdrawn, resolved, or  
2 overruled.

3 E. Approval of the APAs and all other documents contemplated thereby or entered into in  
4 connection therewith (collectively, the "Purchase Agreements"), and consummation of the Sale at this  
5 time is in the best interests of the Debtor, its estate, its creditors and all parties in interest.

6 F. The Debtor has marketed the Sale Assets and the Debtor and the Purchasers have  
7 respectively negotiated and undertaken their roles leading to the Sale in a diligent, non-collusive, fair  
8 and good faith manner. As demonstrated by evidence adduced at and prior to the Sale Hearing and the  
9 representations of counsel made on the record at the Sale Hearing; (a) the Debtor conducted an  
10 adequate marketing process; (b) the Purchase Agreements represent the highest and best offers for the  
11 Sale Assets and no other or further marketing or sales process with respect to the Sale Assets is in the  
12 best interests of the Debtor's estate or creditors or is likely to lead to an offer that provides  
13 consideration in excess of the consideration provided in the Purchase Agreements; (c) the  
14 consideration to be provided by Purchasers under the Purchase Agreements provides fair and  
15 reasonable consideration to the Debtor for the sale of all Sale Assets and the assumption of all  
16 Assumed Liabilities, if any, and the performance of the other covenants set forth in the Purchase  
17 Agreements, and will provide a greater recovery for the Debtor's estate than would be provided by any  
18 other available alternative; (d) the Debtor's determination that the Purchase Agreements constitute the  
19 highest and best offers for the Sale Assets is a valid and sound exercise of the Debtor's business  
20 judgment; and (e) there is no legal or equitable reason to delay the Sale.

21 G. The Sale to the Purchasers must be approved and consummated promptly to preserve  
22 and maximize the value of the Debtor's estate. Time is of the essence in consummating the Sale to the  
23  
24

1 Purchaser. Accordingly, cause exists to lift the stay to the extent necessary, as contemplated by  
2 Bankruptcy Rule 6004(h).

3 H. Approval of the Purchase Agreements and the consummation of the Sale is in the best  
4 interests of the Debtor, its estate, creditors, and other parties in interest. Good and sufficient business  
5 justification for consummating the Sale pursuant to sections 363 and 105(a) of the Bankruptcy Code  
6 has been established because, among other things, the Debtor, in its sound business judgment,  
7 determined that the sale of the Sale Assets is necessary to maximize the value of its estate and, unless  
8 a sale to the Purchasers is concluded expeditiously as provided for in the Motion and pursuant to the  
9 Purchase Agreements, the value of the Sale Assets may be diminished.

10 I. A sale of the Sale Assets other than one free and clear of liens, claims, encumbrances  
11 and interests, including, without limitation, security interests, liens assignments, licenses, leases,  
12 contract rights, and claims of whatever kind and nature and whenever incurred, scheduled or  
13 unscheduled, perfected or unperfected, liquidated or unliquidated, matured or unmatured, legal or  
14 equitable (collectively, but excluding Permitted Encumbrances and Assumed Liabilities, the  
15 “Interests”) and without the protections of this Order would impact materially and adversely the  
16 Debtor’s estate and would yield substantially less value, with less certainty than any available  
17 alternatives. But for the protections afforded to the Purchaser under the Bankruptcy Code and this  
18 Order, each Purchaser would have not offered to pay the purchase price for the Sale Assets.

19 J. In addition, each entity with an Interest in the Sale Assets, (i) has consented to the Sale  
20 or is deemed interests, including, without limitation, security interests to have consented to the Sale,  
21 (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest,  
22 or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code, and therefore, in  
23 each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has  
24

1 been satisfied. Those holders of Interests who did not object, or who withdrew their objections, to the  
2 Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Holders  
3 of Interests are adequately protected by having their Interests, if any, attach to the cash proceeds of the  
4 Sale ultimately attributable to the property to which the Interests apply, subject to the terms thereof.  
5 Therefore, approval of the Purchase Agreements and the consummation of the Sale free and clear of  
6 Interests is appropriate pursuant to section 363(f) of the Bankruptcy Code and is in the best interests of  
7 the Debtor's estate, its creditors, and other parties in interest.

8 K. The terms and conditions set forth in the Purchase Agreements are fair and reasonable  
9 under these circumstances and were not entered into for the purpose of, nor do they have the effect of,  
10 hindering, delaying, or defrauding any of the Debtor or its creditors under any applicable laws. The  
11 consideration to be paid by a Purchaser under the respective Purchase Agreements was negotiated at  
12 arm's- length and constitutes reasonably equivalent value and fair and adequate consideration for the  
13 Sale Assets.

14 L. No Purchaser is an "insider" of any of the Debtor, as that term is defined in section  
15 101(31) of the Bankruptcy Code.

16 M. Each Purchaser is a good faith purchaser within the meaning of section 363(m) of the  
17 Bankruptcy Code and is entitled to the protections afforded thereby.

18 N. No transfer or other disposition of the Sale Assets pursuant to the Purchase Agreements  
19 will result in any Purchaser having any liability or responsibility for (i) any Interest (ii) the satisfaction  
20 in any manner of any Interest or (iii) to third parties or the Debtor, except as expressly set forth in the  
21 Purchase Agreements. Without limiting the effect or scope of the foregoing, no transfer or other  
22 disposition of the Sale Assets pursuant to the Purchase Agreements does or will subject any Purchaser  
23 to any liability for Interests against the Debtor or the Debtor's Interests in such Sale Assets by reason  
24

1 of such transfer under any applicable bankruptcy or non-bankruptcy law, including, without limitation,  
2 or any theory of successor or transferee liability, antitrust, product line, de facto merger or substantial  
3 continuity or similar theories. No Purchaser is a continuation of the Debtor or its estate and there is no  
4 continuity between any Purchaser and the Debtor.

5 O. The Debtor (i) has full corporate or other power to execute, deliver and perform its  
6 obligations under the Purchase Agreements, and the Sale of the Debtor's Sale Assets by the Debtor has  
7 been duly and validly authorized by all necessary corporate or similar action, (ii) has all of the  
8 corporate or other power and authority necessary to consummate the Sale, and (iii) has taken all  
9 actions necessary to authorize and approve the Sale and Purchase Agreements.

10 **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:**

11 1. The Motion (except those matters previously determined in the Bid Procedures Order)  
12 is granted as provided herein.

13 2. The objections to the Motion or the relief requested therein that have not been  
14 withdrawn, waived, or settled, and all reservations of rights included in such objections, are overruled  
15 on the merits.

16 3. The Sale and the assignment of any Purchased Contracts to the Purchaser(s) pursuant to  
17 the Purchase Agreements is hereby approved and authorized in accordance with, and under sections  
18 363(b), 363(f), 363(m) and 365(a) of the Bankruptcy Code.

19 4. The terms and conditions of the Purchase Agreements and all payments and  
20 transactions contemplated thereunder are hereby approved in all respects and incorporated herein.

21 **A. Approval of the Sale Free and Clear of Interests.**

22 5. Pursuant to section 363(f) of the Bankruptcy Code, the Sale Assets may be transferred  
23 to the respective Purchaser pursuant to the Sale, free and clear of all Interests. All parties asserting  
24 any Interests, are deemed to have consented to such transfers, free and clear of any Interests. Transfer

1 of the Sale Assets to the respective Purchaser at Closing as provided in the Purchase Agreements will  
2 be legal, valid, and effective.

3 6. Any Interests shall attach to the proceeds of the Sale in the order of their priority, with  
4 the same validity, force and effect which they previously had against the Sale Assets, subject to the  
5 rights and defenses, if any, of the Debtor with respect thereto, and the proceeds of the Sale shall be  
6 allocated and managed in accordance with any applicable Orders of this Court related thereto and in  
7 accordance with the terms of any chapter 11 plan that may be confirmed and effective in this Chapter  
8 11 Case.

9 7. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor is authorized and  
10 directed to execute and deliver, and empowered to fully perform under, consummate, and implement  
11 the Purchase Agreements, together with all additional instruments and documents that may be  
12 reasonably necessary or desirable to implement the Purchase Agreements, and to take all further action  
13 as may reasonably be requested by the Purchaser for the purpose of assigning, transferring, granting,  
14 conveying and conferring the Sale Assets to the Purchaser.

15 8. This Order shall be binding upon and shall govern the acts of all entities, including,  
16 without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages,  
17 recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries  
18 of state, federal, state and local officials, and all other persons and entities who may be required by  
19 operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or  
20 release any documents or instruments, or who may be required to report or insure any title or state of  
21 title in or to the Sale Assets.

22 9. If any person or entity that has filed a financing statement or other document or  
23 agreement evidencing liens on or interests in the Sale Assets has not delivered to the Debtor prior to  
24

1 the Closing Date, in proper form for filing and executed by the appropriate parties, termination  
2 statements, instruments of satisfaction, or releases of such Interests, each such person or entity is  
3 hereby directed to deliver all such statements, instruments and releases and the Debtor and the  
4 respective Purchaser are hereby authorized to execute and file such statements, instruments, releases  
5 and other documents on behalf of the person or entity asserting the same and the respective Purchaser  
6 is authorized to file a copy of this Order which, upon filing, shall be conclusive evidence of the release  
7 and termination of such interest. Each and every federal, state and local governmental unit is hereby  
8 directed to accept any and all documents and instruments necessary or appropriate to give effect to the  
9 Sale and the Purchase Agreements.

10 **B. Approval of Assumption and Assignment.**

11 10. The Debtor is hereby authorized, but not directed, in accordance with sections 105(a),  
12 363 and 365 of the Bankruptcy Code, to: (i) assume and assign and transfer to the respective Purchaser  
13 the Purchased Contracts free and clear of Interests, if any; and (ii) take such actions and execute and  
14 deliver to the respective Purchaser such documents as may be necessary to confirm such assignment  
15 and transfer.

16 11. Except for the cure amounts proposed by the Debtor or negotiated between the Debtor  
17 and the parties to the Purchased Contracts (the "Agreed Cure Amounts"), addressed below, the  
18 requirements of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code are hereby deemed satisfied  
19 with respect to the Purchased Contracts. The Debtor is authorized and directed, in accordance with  
20 sections 105(a), 363, and 365 of the Bankruptcy Code, to: (i) assume and assign and transfer to the  
21 respective Purchaser the assumed Purchased Contracts free and clear of Interests, if any; and (ii) take  
22 such actions and execute and deliver to the respective Purchaser such documents as may be necessary  
23 to confirm such assignment and transfer. In accordance with the Purchase Agreements and Bid  
24 Procedures Order, the Debtor will, by the times set forth in the Purchase Agreements and Bid



1 Procedures Order, cure or provide adequate assurance of cure of any default or breaches required to be  
2 cured under any of the assumed Purchased Contracts through the establishment of a reserve equal to  
3 the Agreed Cure Amounts, in accordance with section 365(b)(1)(A) and (B) of the Bankruptcy Code  
4 (with the respective Purchaser to bear all respective cure costs). The respective Purchaser has  
5 provided adequate assurance of its future performance of and under the assumed Purchased Contracts  
6 within the meaning of section 365(b)(1)(C) and, as applicable, section 365(b)(3) of the Bankruptcy  
7 Code.

8 12. The assumed Purchased Contracts remain valid and binding and in full force and effect  
9 for the benefit of the respective Purchaser in accordance with their respective terms, notwithstanding  
10 any provision in any assumed Purchased Contract (including those of the type described in sections  
11 365(b)(2), (e)(1) and (f)(1) of the Bankruptcy Code) that prohibits, restricts, or conditions assignment  
12 or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Debtor shall be relieved from  
13 any further liability with respect to the assumed Purchased Contract after such assignment to and  
14 assumption by the respective Purchaser. Any provisions in any assumed Purchased Contract that  
15 prohibit or condition the assignment of such Purchased Contract or allow the party to such Purchased  
16 Contract to terminate, recapture, impose any penalty, condition renewal or extension, or modify any  
17 term or condition upon the assignment of such Purchased Contract constitute unenforceable anti-  
18 assignment provisions which are void and shall be of no force or effect. All other requirements and  
19 conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and  
20 assignment to the Purchaser of each Purchased Contract have been satisfied and, pursuant to the  
21 Purchase Agreements, the respective Purchaser shall be fully and irrevocably vested in all right, title  
22 and interest of each Purchased Contract.

1           13.     Upon assignment of the assumed Purchased Contracts to the respective Purchaser and  
2 payment of the Agreed Cure Amount, if any, which shall be made on or prior to the Closing, no  
3 default shall exist under the Purchased Contract and no non-Debtor counterparty shall be permitted to  
4 declare a default by the respective Purchaser under such assumed Purchased Contract or otherwise  
5 take action against the respective Purchaser as a result of any Debtor's financial condition, bankruptcy  
6 or failure to perform any of its obligations under the Purchased Contract, including any failure to pay  
7 any amounts necessary to cure any defaults thereunder. Upon entry of this Order and assumption and  
8 assignment of an assumed Purchased Contract, the respective Purchaser shall be deemed in  
9 compliance with all terms and provisions of such Purchased Contract. Each non-Debtor counterparty  
10 to an assumed Purchased Contract is hereby forever barred from, estopped and permanently enjoined  
11 from asserting against the Debtor or Purchaser (a) any default, arising prior to assignment or  
12 assumption of the relevant Purchased Contract, or (b) any counterclaim, defense, setoff or any other  
13 claim relating to the Debtor's business or the Sale Assets prior to the assignment or assumption of the  
14 relevant Purchased Contract that is asserted or assertable against the Debtor or Purchaser or the  
15 affiliates or successors of either.

16           14.     The Court hereby determines that the Agreed Cure Amounts established pursuant to the  
17 Motion or as otherwise agreed by the non-Debtor counterparties to the assumed Purchased Contracts,  
18 constitute all of the cure amounts that are required to be paid in order to assume and assign the  
19 Purchased Contracts.

20           15.     Except for the right to payment of the Agreed Cure Amounts, pursuant to sections  
21 105(a), 363 and 365 and of the Bankruptcy Code, all parties to the Purchased Contracts are forever  
22 barred and enjoined from raising or asserting against the Debtor and the respective Purchaser any  
23 assignment fee, default, breach or claim or pecuniary loss, or condition to assignment, arising under or  
24

1 related to the Purchased Contracts existing as of the Closing or arising by reason of the Closing. Any  
2 party that may have had the right to consent to an assignment, for purposes of section 365(e)(2)(A)(ii)  
3 of the Bankruptcy Code and otherwise, is deemed to grant such consent if it failed to object to the  
4 assumption and assignment.

5 **C. Good Faith.**

6 16. The Sale is undertaken by the parties thereto in good faith, as that term is used in  
7 section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the  
8 authorization provided herein to consummate the Sale shall not affect the validity of the Sale to any  
9 Purchaser, unless such authorization is duly stayed pending such appeal. Each Purchaser is a good  
10 faith purchaser of the Sale Assets, and is entitled to all of the benefits and protections afforded by  
11 Section 363(m) of the Bankruptcy Code.

12 **D. Consummation of Sale.**

13 17. Each Purchaser shall consummate the Sale contemplated by the respective Purchase  
14 Agreements on or before the Closing Date. The Closing Date may be extended at the sole discretion  
15 of the Debtor for the purpose of accommodating approval of the Sale.

16 18. If a Purchaser fails to consummate the Sale on or before the Closing Date, breaches the  
17 respective Purchase Agreements, or otherwise fails to perform, the Debtor shall, without further order  
18 of the Court, be authorized to deem such Purchaser to be a "Defaulting Buyer," at which time such  
19 Purchaser's Bid shall be deemed rejected. The Debtor shall be entitled to (i) retain the Good Faith  
20 Deposit as part of its damages resulting from the breach or failure to perform by the Defaulting Buyer,  
21 and (ii) seek all available remedies from such Defaulting Buyer occurring as a result of such  
22 Defaulting Buyer's failure to perform, including specific performance.

23 19. Upon a determination by the Debtor that a Purchaser is a Defaulting Buyer, the Debtor  
24 shall be entitled to consummate a Sale with the respective Back-Up Bidder on the terms and

1 conditions of the Back-Up Bid (the “Back-Up Purchase Agreements”) without further order of the  
2 Court. Such Back-Up Bidder shall be deemed to be a Purchaser for all purposes under this Order and  
3 such Back-Up Purchase Agreements shall be deemed to be Purchase Agreements for all purposes  
4 under this Order.

5 **E. Additional Provisions.**

6 20. The Purchase Agreements and related documents may be modified, amended or  
7 supplemented by the parties thereto in accordance with the terms thereof without further order of this  
8 Court, provided that any such modification, amendment or supplement is not material and adverse to  
9 the Debtor.

10 21. This Order and the terms and provisions of the Purchase Agreements shall be binding  
11 on all of the Debtor’s creditors (whether known or unknown), the Debtor, each Purchaser, any affected  
12 third parties including, but not limited to, all persons asserting an interest in the Sale Assets, and their  
13 respective successors and assigns, including any subsequent trustee, party, entity or other fiduciary  
14 under any section of the Bankruptcy Code with respect to the forgoing parties. The provisions of this  
15 Order and the terms and provisions of the Purchase Agreements, and any actions taken pursuant hereto  
16 or thereto shall survive the entry of any order which may be entered confirming or consummating any  
17 plan of the Debtor or converting the Debtor’s case from chapter 11 to chapter 7.

18 22. This Court shall retain jurisdiction (i) to enforce and implement the terms and  
19 provisions of the Purchase Agreements, all amendments thereto, any waivers and consents thereunder,  
20 and of each of the agreements executed in connection therewith, (ii) to resolve any disputes arising  
21 under or related to the Sale, the Purchase Agreements, Interests, and the Sale Assets, (iii) to interpret,  
22 implement and enforce the provisions of this Order and (iv) to protect the Debtor and/or any Purchaser  
23 against any assertions of Interests.

1           23.     The failure to include specifically any particular provision of the Purchase Agreements  
2 in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the  
3 Court that the Purchase Agreements and all of their provisions, payments and transactions, be  
4 authorized and approved in its entirety. Likewise, all of the provisions of this Order are non-severable  
5 and mutually dependent.

6           24.     Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), because  
7 time is of the essence, this Order shall not be stayed for fourteen (14) days after the entry hereof, but  
8 shall be effective and enforceable immediately upon issuance hereof.

9 **IT IS SO ORDERED.**

10 Submitted by:

11 By: /s/Samuel A. Schwartz

12 Samuel A. Schwartz, Esq.

13 Nevada Bar No. 10985

14 Connor H. Shea, Esq.

15 Nevada Bar No. 14616

16 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**

17 100 North City Parkway, Suite 1600

18 Las Vegas, Nevada 89106

19 Telephone: (702) 802-2207

20 Facsimile: (702) 382-8135

21 Jeffrey Cohen, Esq. (admitted *pro hac vice*)

22 Gabriel L. Olivera, Esq. (admitted *pro hac vice*)

23 **LOWENSTEIN SANDLER LLP**

24 1251 Avenue of the Americas

New York, New York 10020

Telephone: (212) 262-6700

Facsimile: (212) 262-7402

*Proposed Attorneys for the Debtors*

**SUBMISSION TO COUNSEL FOR APPROVAL PURSUANT TO LR 9021**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

\_\_\_\_\_ The court has waived the requirement set forth in LR 9021(b)(1).

\_\_\_\_\_ No party appeared at the hearing or filed an objection to the motion.

\_\_\_\_\_ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

\_\_\_\_\_ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of this order.

APPROVED:

DISAPPROVED:

FAILED TO RESPOND:

Submitted by:

Brownstein Hyatt Farber Schreck, LLP

By /s/ Samuel A. Schwartz  
Samuel A. Schwartz, Esq., NBN 10985  
100 North City Parkway, Suite 1600  
Las Vegas, Nevada 89106  
*Proposed Attorneys for the Debtor*

###

**EXHIBIT 4**

**(List of Sale Assets)**

**A. Williston Basin (North Dakota)**

3. All right, title and interest of the Seller as of the Closing Date in, to and under certain mineral rights and royalty interests in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in McKenzie County and Williams County, North Dakota.
4. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**B. DJ Basin (Colorado)**

3. All right, title and interest of the Seller as of the Closing Date in, to and under certain royalty interests in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in Weld County, Colorado.
4. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**C. Anadarko Basin (Oklahoma)**

3. All right, title and interest of the Seller as of the Closing Date in, to and under certain royalty interests in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in Carter County, Oklahoma.
4. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**D. Eagle Ford (DeWitt, Texas)**

3. All right, title and interest of the Seller as of the Closing Date in, to and under certain mineral rights in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in DeWitt County, Texas.
4. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

**E. Eagle Ford (Dimmit, Texas)**

3. All right, title and interest of the Seller as of the Closing Date in, to and under certain mineral rights in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in Dimmit County, Texas.
4. All written files, records and information and data exclusively relating to the foregoing lot of Purchased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

1 **F. Permian Basin (Texas)**

- 2 3. All right, title and interest of the Seller as of the Closing Date in, to and under certain royalty interests  
3 in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in  
4 Glasscock County, Texas.
- 4 4. All written files, records and information and data exclusively relating to the foregoing lot of Pur-  
5 chased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

5 **G. Haynesville Basin (Louisiana)**

- 6 3. All right, title and interest of the Seller as of the Closing Date in, to and under certain royalty interests  
7 in certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in  
8 De Soto Parish, Louisiana.
- 8 4. All written files, records and information and data exclusively relating to the foregoing lot of Pur-  
9 chased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

9 **H. Williston / Alberta Basin (Montana)**

- 10 3. All right, title and interest of the Seller as of the Closing Date in, to and under certain mineral rights in  
11 certain oil and gas leases and/or certain tracts or parcels of land, wells and/or units (as applicable) in  
12 Glacier County, Montana.
- 12 4. All written files, records and information and data exclusively relating to the foregoing lot of Pur-  
13 chased Assets, to the extent that the same are in the Seller's possession as of the Closing Date.

13 **I. Other Assets**

14 [TBD – based on Purchaser due diligence and mutual agreement of the Parties.]

15

16

17

18

19

20

21

22

23

24