

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

IN RE:)	
)	
IN RE NICHOLS BROTHERS, INC., et al.,¹)	Case No. 18-11123-M
)	Chapter 11
)	
Debtors.)	Jointly Administered
)	

**CORRECTED MOTION FOR AUTHORITY TO SELL
PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS,
CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS
(Sale of Certain Non-Op Interests to Unit Petroleum Company)**

The Debtors in these jointly-administered Chapter 11 cases, by and through counsel, hereby request that the Court enter an order approving NBI Properties, Inc.’s sale of certain “non-op” working interests in oil and gas leases and wells to Unit Petroleum Company (“Unit”) pursuant to 11 U.S.C. § 363(b) and (f) and Federal Rules of Bankruptcy Procedure 2002 and 6004 free and clear of all liens, claims, encumbrances, and other interests, with such liens, claims, encumbrances, and other interests, if any, to attach to the proceeds thereof. As grounds therefore, Debtors will show the Court the following:

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). Reference to the Court of this matter is proper pursuant to 28 U.S.C. § 157(a). This is a core proceeding as contemplated by 28 U.S.C. § 157(b)(2)(A), (M), (N), and (O). In addition, venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors in these jointly administered cases are: NICHOLS BROTHERS, INC., Case No. 18-11123-TLM; NBI PROPERTIES, INC., Case No. 18-11124-M; NBI SERVICES, INC., Case No. 18-11125-M; LADDER COMPANIES, INC., Case No. 18-11126-M; RED WATER RESOURCES, INC.,

Background

2. The Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code on June 1, 2018. Upon filing, the Debtors began operating as debtors-in-possession with all rights, powers, and duties of a trustee in bankruptcy pursuant to §§ 1107 and 1108 of the Bankruptcy Code, and their cases were ordered jointly-administered by the Bankruptcy Court.

3. In the time since, the Debtors have been implementing the repair plan of their oil and gas assets along with efforts to market and sell their assets and related matters. The majority of the Debtors' assets consist of working interests in oil and gas leases and wells. A working interest is a percentage of ownership in an oil and gas lease and/or well granting the owner the right to explore, drill, and produce oil and gas from a tract of property. Working interest owners are obligated to pay a corresponding percentage of the cost of leasing, drilling, and operating a well or wells on the property.

4. For most of their working interests, the Debtors hold the majority of the oil and gas lease and are designated operator of the same. The operator serves as the overall manager and decision maker of a drilling project. Generally, but not always, the operator will have the largest financial stake in the oil and gas lease and well or wells.

5. The Debtors, however, also hold minority working interests in oil and gas leases and wells where a third-party serves as operator, which are sometimes called "non-op interests." This includes certain interests in oil and gas leases and wells for which Unit is the majority owner and operator.

6. On September 20, 2018, Unit offered to purchase certain of these non-op interests from NBI Properties, Inc., in the amount of \$200,000. A copy of Unit's offer is attached hereto as Exhibit "A."

7. The Debtors have negotiated the terms of the offer at arms' length and in good faith with Unit. In addition, Unit and its principals are not related to or affiliated with the Debtors in any way. The Debtors assert that the terms of the offer are fair and reasonable and represent fair market value for such minority interests in the subject oil and gas leases and wells.

Discussion

8. Section 363 of the United States Bankruptcy Code provides that a debtor-in-possession "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1).

9. A sale of a debtor-in-possession's assets under § 363(b) of the Bankruptcy Code is a matter within a court's discretion, giving due consideration to the sound business judgment of the debtor-in-possession. *See In re Lionel Corp.*, 722 F.2d 1063, 1071 (2nd Cir. 1983); *In re Castre, Inc.*, 312 B.R. 426, 428 (Bankr. D. Colo. 2004) (citing *Lionel*). Courts typically consider multiple factors to determine whether to approve such sales, including: (i) whether there is a sound business reason for the sale; (ii) whether there has been adequate notice to interested parties (iii) whether the terms of the sale have been fully disclosed; (iv) whether the debtor-in-possession's relationship with the buyer taints the sale; and (v) whether the buyer is proceeding in good faith. *In re Medical Software Solutions*, 286 B.R. 431, 439-40 (Bankr. D. Utah 2002); *see also Castre, supra*, 312 B.R. at 428.

10. The relevant factors to support a § 363 sale are met in this instance and the sale of NBI Properties, Inc.'s non-op interests listed in Exhibit "A" to Unit should be approved by the Court. The sale is the best opportunity to promptly realize the maximum value for these

non-op interests, which bear the costs of production in addition to receiving revenue attributable to such interests, and to preserve the value of the same for the benefit of creditors and parties-in-interest. The proposed purchase price is fair and reasonable for the minority interests being sold and represents a multiple of approximately 73 times the average 2018 net cash flow measured against a multiple of 40 to 48 times monthly net cash flow as an indicator of fair value. Lastly, the Debtors and Unit negotiated the sale at arm's length and Unit is ready, willing, and able to consummate the deal, and is proceeding in good faith.

11. In addition, the sale to Unit will be free and clear of any and all liens, claims, encumbrances, and other interests, with such liens, claims, encumbrances, and other interests, if any, to attach to the proceeds with the same validity, priority, and extent as they attached to NBI Properties, Inc.'s non-op interests prior to the sale. *See generally In re Lady H Coal Co., Inc.*, 199 B.R. 595, 605 (S.D. W. Va. 1996). A debtor-in-possession may sell the assets of the estate free and clear of liens, claims, encumbrances, and other interests if, among other things, applicable non-bankruptcy law allows such a sale, the interest holder consents, there is a bona fide dispute, or if the interest holder could be compelled to accept a money satisfaction for its interest. See 11 U.S.C. § 363(f).

12. The non-op interests being sold to Unit are encumbered as potential collateral for the use of cash collateral and the DIP loan approved by the Court on August 1, 2018. These non-op interests also serve as collateral for the pre-petition lenders of the Debtors. CrossFirst Bank is the agent for the lenders under both the pre-petition and DIP loan facilities. Based on discussions, the Debtors believe that CrossFirst, for itself and as agent for the other lenders, along with any other secured creditors with an interest in the properties being sold that is listed on Exhibit "A" has consented to the proposed sale. In the event that parties claiming a security

interest do not consent, the Court may nonetheless approve the sale because the secured creditor's asserted interest will either be in a bona fide dispute or such secured creditor could be compelled under applicable law to accept a money satisfaction of their interest in such non-op interests owned by the Debtors.

WHEREFORE, the Debtors move the Court for the entry of an order:

1. Authorizing the sale of the non-op interests listed on Exhibit "A" to Unit free and clear of any and all liens, claims, encumbrances, and other interests, with any such liens, claims, encumbrances, and other interests to attach to the proceeds, and approving and authorizing the Debtors' performance and consummation of the agreement effectuating the sale;
2. Finding that Unit has acted in good faith within the meaning of 11 U.S.C. § 363(m) and, as such, is entitled to the protection afforded by the same;
3. Finding that the sale to Unit was negotiated in good faith; and
4. Such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Chad J. Kutmas

Gary M. McDonald, OBA No. 5960

Chad J. Kutmas, OBA No. 19505

Mary E. Kindelt, OBA No. 21728

MCDONALD & METCAL, LLP

First Place Tower

15 E. Fifth Street, Suite 1400

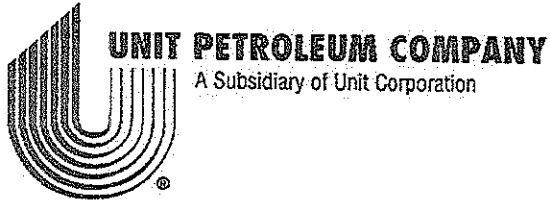
Tulsa, OK 74103

(918) 430-3700

(918) 430-3770 (Fax)

Attorneys for the Debtors

EXHIBIT “A”



September 20, 2018

Chad Briggs
NBI Properties, Inc.
P.O. Box 4470
Tulsa, OK 74159-4470

RE: NBI Properties, Inc.
Latimer and Washita Counties, Oklahoma
Hemphill County, Texas

Gentlemen:

Unit Petroleum Company (Unit) has agreed to purchase and NBI Properties, Inc. (NBI) has agreed to sell the properties listed for \$200,000.00. NBI will sell all right, title, and interest in and to the wells listed effective July 1, 2018 with an anticipated closing date of November 1, 2018. Unit will prepare the Assignments for NBI's review and execution.

September 1, 2018
This transaction is subject to negotiation of a definitive PSA and approval of the Bankruptcy Court.

ljo 10/11/18
If NBI is in agreement with these basic terms, please execute and return a copy of this letter.

Sincerely,

UNIT PETROLEUM COMPANY

Leslie J. Naughton
Leslie J. Naughton
Senior Staff Landman

Enclosures

Accepted and agreed to this _____ day of September, 2018.
NBI Properties, Inc.

Richard J. Nichols
Print Name: _____
Title: _____

8200 South Unit Drive (74132-5300)

PO Box 702500 Tulsa, OK 74170-2500
www.unitcorp.com

918.493.7700

FAX 918.493.7711

Well Name	API #	State/County
Colvard #1-10	35 077 20276	Latimer County, OK
Colvard #2-10	35 077 21374	Latimer County, OK
Colvard #3-10	35 077 21606	Latimer County, OK
Colvard #4-10	35 077 21674	Latimer County, OK
Cox #1-8	35 077 20279	Latimer County, OK
Cox #2-8	35 077 20895	Latimer County, OK
Cox #3-8 (Shay)	35 077 21232	Latimer County, OK
Cox #3-8 (Spiro)	35 077 21232	Latimer County, OK
Cox #4	35 077 21320	Latimer County, OK
Cox #5	35 077 21330	Latimer County, OK
Cox #6	35 077 21442	Latimer County, OK
Cox #7	35 077 21689	Latimer County, OK
Cox #8	35 077 21720	Latimer County, OK
Dear #1	35 077 20472	Latimer County, OK
Golightly #1	35 077 20267	Latimer County, OK
Golightly #2	35 077 21177	Latimer County, OK
Golightly #3	35 077 21189	Latimer County, OK
Golightly #4	35 077 21312	Latimer County, OK
Golightly #5	35 077 21361	Latimer County, OK
Golightly #6	35 077 21532	Latimer County, OK
Golightly #7	35 077 21723	Latimer County, OK
Hawthorne #1-4	35 077 20250	Latimer County, OK
Hawthorne #2	35 077 21553	Latimer County, OK
Hawthorne #3	35 077 21667	Latimer County, OK
Lively #1-6	35 077 20295	Latimer County, OK
Lively #2-6	35 077 20534	Latimer County, OK
Lively #3	35 077 21364	Latimer County, OK
Lively #4	35 077 21466	Latimer County, OK
Lively #5	35 077 21482	Latimer County, OK
Lively #6	35 077 21530	Latimer County, OK
Lively #7	35 077 21567	Latimer County, OK
Maxey #1	35 077 20275	Latimer County, OK
Maxey #2	35 077 21184	Latimer County, OK
Maxey #3	35 077 21475	Latimer County, OK
Maxey #4	35 077 21503	Latimer County, OK
Maxey #5	35 077 21548	Latimer County, OK
Maxey #6	35 077 21683	Latimer County, OK
Maxey #7	35 077 21769	Latimer County, OK
McKee #1-5	35 077 20404	Latimer County, OK
Sallaska #1	35 149 20184	Washita County, OK
Locke #42-2	42 211 30341	Hemphill County, TX
Locke #42-4	42 211 31855	Hemphill County, TX