

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

	)		)	Chapter 11
In re:	)		)	
	)	Case No. 19-10702 (MFW)	)	
SOUTHCROSS ENERGY PARTNERS, L.P.,	)		)	
<i>et al.</i> ,	)	(Jointly Administered)	)	
	)		)	
Debtors. <sup>1</sup>	)	Hearing Date: June 12, 2019 at 11:30 a.m. (ET)	)	
	)	Objection Deadline: June 5, 2019 at 4:00 p.m. (ET)	)	

**MOTION OF DEBTORS FOR ENTRY OF ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR SALE OF DEBTORS’ ASSETS, (B) AUTHORIZING THE SELECTION OF A STALKING HORSE BIDDER, (C) APPROVING BID PROTECTIONS, (D) SCHEDULING AUCTION FOR, AND HEARING TO APPROVE, SALE OF DEBTORS’ ASSETS, (E) APPROVING FORM AND MANNER OF NOTICES OF SALE, AUCTION, AND SALE HEARING, (F) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (G) GRANTING RELATED RELIEF AND (II)(A) APPROVING SALE OF DEBTORS’ ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (B) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF**

Southcross Energy Partners, L.P. (“**Southcross**”), Southcross Energy Partners GP, LLC, and Southcross’s wholly owned direct and indirect subsidiaries, each of which is a debtor and debtor in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this *Motion of Debtors for Entry of Orders*

<sup>1</sup> The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors’ mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.



*(i)(a) Approving Bidding Procedures for Sale of Debtors' Assets, (b) Authorizing the Selection of a Stalking Horse Bidder, (c) Approving Bid Protections, (d) Scheduling Auction for, and Hearing To Approve, Sale of Debtors' Assets, (e) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing, (f) Approving Assumption and Assignment Procedures, and (g) Granting Related Relief and (ii)(a) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (b) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (c) Granting Related Relief (this "Motion").*

This Motion is supported by (i) the *Declaration of Stephen Hannan in Support of the Motion of Debtors for Entry of Orders (i)(a) Approving Bidding Procedures for Sale of Debtors' Assets, (b) Authorizing the Selection of a Stalking Horse Bidder, (c) Approving Bid Protections, (d) Scheduling Auction for, and Hearing to Approve, Sale of Debtors' Assets, (e) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing, (f) Approving Assumption and Assignment Procedures, and (g) Granting Related Relief and (ii)(a) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (b) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (c) Granting Related Relief (the "Hannan Declaration")*, which is attached hereto as Exhibit A and incorporated by reference herein, and (ii) the entire record of the Chapter 11 Cases. In further support of this Motion, the Debtors respectfully state as follows:

**Relief Requested**

1. By this Motion, pursuant to sections 105(a), 363, 365, 503, and 507 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), the Debtors request entry of the following:

- a. an order, substantially in the form attached hereto as Exhibit B (the “**Bidding Procedures Order**”),
  - i. authorizing and approving the bidding procedures, substantially in the form attached to the Bidding Procedures Order as Exhibit 1 thereto (the “**Bidding Procedures**”), in connection with the sale of the Bid Assets (as defined herein)<sup>2</sup> (the “**Sale Transaction**”<sup>3</sup>);
  - ii. authorizing, but not obligating, the Debtors to select a Stalking Horse Bidder (as defined herein) in consultation with the DIP Secured Parties and each of the Prepetition Agents;
  - iii. approving the Bid Protections for Stalking Horse Bidder(s), if any, in accordance with the terms and conditions set forth in the Bidding Procedures;
  - iv. scheduling an auction of the Bid Assets (the “**Auction**”) to be held on July 29, 2019 at 10:00 a.m. (prevailing Eastern Time);
  - v. scheduling a hearing (the “**Sale Hearing**”) to consider approval of the proposed Sale Transaction to be held on August 12, 2019 at 11:00 a.m. (prevailing Eastern Time);
  - vi. authorizing and approving the (A) notice of the sale of the Bid Assets, the Potential Bidder Deadline, the Bid Deadline, and the Auction and Sale Hearing, substantially in the form attached to the Bidding Procedures Order as Exhibit 2 (the “**Sale Notice**”), (B) notice to each relevant non-Debtor counterparty (each, a “**Counterparty**”) to an executory contract or unexpired lease listed on the Potential Assumed Contracts Schedule (as defined below) (collectively, the “**Contracts and Leases**” and each an “**Assumed Contract**” or “**Assumed Lease**”) regarding the Debtors’ potential assumption and assignment of such Counterparty’s Assumed Contracts or Assumed Leases (collectively, the “**Potential Assumed Contracts**”) and the amount necessary to cure any defaults thereunder (the “**Cure Costs**”), substantially in the form attached to the Bidding

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<sup>2</sup> Notwithstanding the Debtors’ request for authorization and approval of the Bidding Procedures, the Debtors reserve the right to seek by separate motion, in the exercise of their sound business judgment and fiduciary duties (in consultation with the DIP Secured Parties and each of the Prepetition Agents (each as defined herein)), the authority to sell assets of the Debtors’ estates (that do not constitute all or substantially all of the Debtors’ assets) pursuant to section 363 of the Bankruptcy Code.

<sup>3</sup> As described below, the Bidding Procedures provide that there may be one or several Sale Transactions. To the extent that this Motion refers to the Sale Transaction, or terms related thereto, in the singular it shall include the plural, and vice versa.

Procedures Order as Exhibit 3 (the “**Potential Assumption and Assignment Notice**”), and (C) notice to each Counterparty listed on the Proposed Assumed Contracts Schedule (as defined herein), substantially in the form attached to the Bidding Procedures Order as Exhibit 4 (the “**Proposed Assumption and Assignment Notice**”);

- vii. authorizing and approving procedures for the assumption and assignment of the Contracts and Leases and the determination of Cure Costs with respect thereto (collectively, the “**Assumption and Assignment Procedures**”); and
  - viii. granting related relief.
- b. an order (the “**Sale Order**”) authorizing and approving the following:
- i. the sale of the Bid Assets free and clear of all liens, claims, interests, and encumbrances, except certain permitted encumbrances as determined by the Debtors and any purchaser of the Bid Assets;
  - ii. the assumption and assignment of the proposed Assumed Contracts and Assumed Leases (collectively, the “**Proposed Assumed Contracts**”) in connection with the proposed Sale Transaction; and
  - iii. granting related relief.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012.

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and, pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Background**

5. On April 1, 2019 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued in possession of their property and have continued to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request has been made for the appointment of a trustee or examiner, and no statutory committee has been appointed in the Chapter 11 Cases.

7. Additional information about the Debtors’ businesses and affairs, capital structure and prepetition indebtedness, and the events leading up to the Petition Date, can be found in the *Declaration of Michael B. Howe in Support of Debtors’ Chapter 11 Proceedings and First Day Pleadings* [D.I. 2] (the “**Howe Declaration**”), which is incorporated herein by reference.

8. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [D.I. 48] entered by the Court on April 2, 2019 in each of the Chapter 11 Cases.

### **The Bid Assets**

9. The Debtors have commenced the Chapter 11 Cases in order to pursue the consummation of one or more sale transactions that will maximize the value of their estates and the recoveries for their stakeholders. The Debtors’ businesses consist of providing midstream services to natural gas producers and customers, including natural gas gathering, processing, treatment, and compression and access to natural gas liquid (“**NGL**”) fractionation and transportation services, as well as purchasing and selling natural gas and NGLs.

10. As described more fully in the Howe Declaration, the Debtors’ assets and

operations (collectively, the “**Bid Assets**”) are concentrated in and near the resource-rich Eagle Ford Shale region of South Texas. The South Texas catchment area for the Debtors’ pipeline network includes multiple active and prospective production zones and its South Texas systems benefit from access to the large industrial market for natural gas and NGLs in and around Corpus Christi, Texas. The Debtors’ key Bid Assets in South Texas include, but are not limited to, the following:

- a. Approximately 2,016 miles of pipeline ranging in diameter from 2" to 24". Most of these pipelines feed rich gas from multiple producing fields, including the Eagle Ford Shale, to the Debtors’ processing and NGL fractionation facilities at Lone Star, Woodsboro, and Bonnie View. The residue gas pipelines from the Debtors’ processing plants and the remaining pipelines in lean gas service are used to serve multiple industrial and electric generation customers and to deliver gas to other intrastate and interstate pipelines. Additionally, these pipelines connect to approximately 805 miles of pipeline owned by Southcross Holdings LP and its non-Debtor subsidiaries (collectively, “**Holdings**”).
- b. The Lone Star processing plant is a cryogenic processing plant located in Bee County, Texas, with a capacity of 300 million cubic feet per day. The Debtors acquired Lone Star from Southcross TS Midstream Services, LP (at the time, a subsidiary of Holdings) in August 2014. This plant is interconnected with other South Texas rich gas supply basins and with Woodsboro via the Bee Line pipeline, which was placed in service in 2013. The Debtors also own an electric generation plant that serves the Lone Star processor.
- c. The Woodsboro processing plant is a cryogenic processing plant located in Refugio County, Texas, with a capacity of 200 million cubic feet per day.
- d. The Bonnie View NGL fractionation plant is also in Refugio County and has a capacity of 22,500 barrels per day. The Debtors own a system of NGL pipelines, which includes a (i) propane pipeline from the Bonnie View fractionator to the Robstown fractionator formerly owned by a Holdings subsidiary and (ii) pipeline for Y-grade NGLs (i.e., a mixture of ethane, propane, isobutane, butane, and natural gasoline meeting certain specifications) that connects the Woodsboro plant to Robstown.
- e. The Valley Wells system comprises gathering and treating facilities and has sour gas treating capacity of approximately 100 million cubic feet per day and is supported by a minimum volume commitment from Holdings for gathering and treating services. The Valley Wells system is also

connected to the Debtors' rich gas system for transport and processing services.

- f. 20 natural gas compression stations.
- g. Joint venture interests (partnered with affiliates of Targa Resources Corp.) in non-Debtor entities T2 Eagle Ford Gathering Company LLC and T2 LaSalle Gathering Company LLC, which operate pipelines.

11. The Debtors are also a leading midstream service provider in the areas of Mississippi and Alabama in which they operate. The Debtors' pipelines provide critical supply to industrial, commercial, and power generation customers and to wholesale markets via intrastate and interstate pipeline interconnects. In particular, several of the large gas-fired power plants across the southern portion of Mississippi access their primary source of natural gas through the Debtors' system of pipelines. Key Bid Assets in these regions include, but are not limited to, the following:

- a. Approximately 611 miles of pipeline in southern Mississippi, ranging in diameter from 2" to 20" and with an estimated design capacity of 345 million cubic feet per day. This pipeline network can receive natural gas from three unaffiliated interstate pipelines—Southeast Supply Header, Southern Natural Gas Company, and Texas Eastern Company—to supplement supply on the Mississippi intrastate system or to market gas off the system.
- b. Two treating plants in Mississippi.
- c. Approximately 490 miles of pipeline in northwest and central Alabama, ranging in diameter from 2" to 16" and with an estimated design capacity of 375 million cubic feet per day. The primary gas supply to the system is coal bed methane gas from the Black Warrior Basin with other volumes gathered from conventional gas wells. The Alabama system receives natural gas from unaffiliated interstate pipelines and services markets along the system.

### **Marketing and Sale Process**

12. In mid-2018, Southcross engaged an investment banker to market its assets—either for a sale of the whole company or a sale of certain non-core assets in Mississippi and

Alabama. This process led to discussions of a whole-company sale with a potential strategic purchaser that continued through March 2019. Ultimately, however, Southcross concluded, in consultation with certain of Southcross's lenders, that the potential purchaser's offer for an out-of-court transaction was unattractive.

13. On March 12, 2019 Southcross formally retained Evercore Group L.L.C. ("**Evercore**") to run an extensive marketing process for the Bid Assets. After being retained, Evercore began reaching out to potential purchasers to explore a sale of the Bid Assets. Over the course of the months that followed, Evercore contacted over 65 potential purchasers, and the Debtors executed non-disclosure agreements with over 35 of such parties with respect to a sale of all or some of the Bid Assets. Evercore provided additional details to these parties, including access to confidential diligence materials.

14. In May 2019, the Debtors received, in accordance with the case milestones set forth in that certain Senior Secured Superpriority Priming Debtor-In-Possession Credit Agreement, dated as of April 3, 2019 (as may be amended, supplemented, or otherwise modified from time to time, the "**DIP Credit Agreement**"), non-binding indications of interest from 21 parties for all or some of the Bid Assets. After evaluating the non-binding indications of interest with Evercore and their other advisors, the Debtors and the Required Lenders (as defined in the DIP Credit Agreement, unless otherwise specified) determined that the continuation of the marketing and sale process would maximize the realizable value of the Bid Assets and recoveries for the benefit of the Debtors' estates and stakeholders. In doing so, the Debtors and Evercore arranged for such parties to meet with management and provided such parties with additional data room access and opportunities to make diligence requests.



15. To ensure that the recovery for stakeholders is in fact the highest or otherwise best offer for the purchase of the Bid Assets, the Debtors have developed the Bidding Procedures to govern the sale of the Bid Assets. The Bidding Procedures allow interested parties to submit bids for all of the Bid Assets, or particular lots of the Bid Assets, in each case, subject to the terms and provisions of the Bidding Procedures.

16. The Debtors believe that the process and time periods set forth in the Bidding Procedures are reasonable and will provide parties with sufficient time and information necessary to formulate bids to purchase the Bid Assets. In formulating the Bidding Procedures and time periods contained therein, the Debtors balanced the need to provide adequate and appropriate notice to parties in interest and to potential purchasers with the need to quickly and efficiently sell the Bid Assets to maximize realizable value. As described above and more fully in the Hannan Declaration, the Bid Assets have been extensively marketed by Evercore over approximately a few months to a broad group of strategic and financial buyers and substantial information regarding the Bid Assets has been made available during the marketing process. Accordingly, the Debtors believe that numerous parties that may have an interest in bidding at the Auction are already familiar with the Bid Assets for the purposes of formulating their bids. Furthermore, potential bidders will have access to updated information prepared by the Debtors and Evercore and a substantial body of information that resides in the Debtors' data room. Moreover, speed is critical in light of the Debtors' strained liquidity situation and obligations under the DIP Credit Agreement. In the event that the sale process is delayed or becomes protracted, the Debtors may well run out of cash and/or breach their obligations under the DIP Credit Agreement. Without sufficient funds to operate the Debtors' businesses, the Debtors may

be left with no choice but to cease operations and liquidate their assets for a much reduced value, to the detriment of all parties in interest.

17. Completion of the sale process in a timely manner will maximize the value of the Bid Assets. The time periods set forth in the Bidding Procedures are prudent and consistent with the case milestones set forth in the DIP Credit Agreement, and failure to adhere to such time periods could jeopardize the closing of a Sale Transaction. Thus, the Debtors (in consultation with the Required Lenders) have determined that pursuing a Sale Transaction in the manner and within the time periods prescribed in the Bidding Procedures is in the best interest of the Debtors' estates and will provide interested parties with sufficient opportunity to participate.

#### **The Stalking Horse Bidder and Bid Protections**

18. The Debtors believe that having the maximum flexibility to run the sale process will produce the highest recovery for all stakeholders. Accordingly, the Debtors seek authorization, but no obligation, to exercise their business judgment (in consultation with the DIP Secured Parties and each of the Prepetition Agents (each as defined in the DIP Order<sup>4</sup>)) to agree with any Qualified Bidder (as defined herein) that (a) such Qualified Bidder's Qualified Bid (as defined herein) shall serve as the minimum bid for the Bid Assets or any lot thereof (such Qualified Bidder, a "**Stalking Horse Bidder**" and, such Qualified Bid, a "**Stalking Horse Bid**") and (b) the Debtors will enter into the transaction(s) contemplated in such Stalking Horse Bid unless a higher or otherwise better Qualified Bid is submitted with respect to such Bid Assets or lot thereof, as determined by the Debtors (in consultation with the DIP Secured Parties) in

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<sup>4</sup> See *Final Order, Pursuant to 11 U.S.C. Sections 105, 361, 362, 363, 364, 503, 506, and 507, (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Post-Petition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief* [D.I. 200] (the "**DIP Order**").

accordance with the Bidding Procedures. In order to incentivize prospective purchasers to agree to become a Stalking Horse Bidder, the Debtors seek authorization, but no obligation, to exercise their business judgment (in consultation with the DIP Secured Parties and each of the Prepetition Agents) to offer the following bid protections to such Stalking Horse Bidder(s), payable if the Debtors consummate a sale pursuant to a Qualified Bid other than the Stalking Horse Bid (if the assets subject to such sale include those to which such Stalking Horse Bid relates): (a) payment of a break-up fee in an amount not to exceed three percent of the purchase price set forth in the Stalking Horse Bid (the “**Break-Up Fee**”) and (b) reimbursement of the reasonable and documented fees and expenses of the Stalking Horse Bidder (the “**Expense Reimbursement**”) and, together with the Break-Up Fee, the “**Bid Protections**”) in an amount up to \$1,000,000; *provided, however*, that (i) the payment of such Break-Up Fee and/or Expense Reimbursement shall be subject to the terms and conditions of the definitive agreement(s) executed between the Debtors and such Stalking Horse Bidder(s) and the Stalking Horse Order (as defined herein), (ii) any Breakup Fee or Expense Reimbursement will not be binding on the Debtors until entry of the Stalking Horse Order and the Sale Order, and (iii) no Break-Up Fee shall be paid to a credit bidder or insider of the Debtors. For the avoidance of doubt, the Debtors will provide the Expense Reimbursement only to the Stalking Horse Bidder(s) and such expenses must be reasonable, documented, and subject to review by the Debtors. To the extent payable, any Bid Protections would be paid out of the proceeds of the sale to which they relate.

19. By this Motion, the Debtors seek authorization to exercise their business judgment to enter into a definitive agreement with a Stalking Horse Bidder providing for Bid Protections in an amount not exceeding, in the aggregate, three percent of the proposed purchase price for the Bid Assets (or lot thereof) *plus* an amount up to \$1,000,000 for reasonable and

documented fees and expenses; *provided that* (a) the Debtors notify the Required Lenders, the U.S. Trustee, each of the Prepetition Agents, and the DIP Agent of the foregoing and (b) neither the Required Lenders nor the U.S. Trustee object to the submission of an order to the Court under certification of counsel that approves entry into such definitive agreement and granting such Bid Protections to such Stalking Horse Bidder (the “**Stalking Horse Order**”). However, in the event that the Required Lenders or the U.S. Trustee object to the Debtors’ entry into such definitive agreement with a Stalking Horse Bidder, the proposed Bid Protections, or the form of Stalking Horse Order, the Debtors shall file a notice seeking an expedited hearing (the “**Stalking Horse Hearing**”) on not less than five days’ notice for the authorization to enter into such definitive agreement with the Stalking Horse Bidder and any Bid Protections included therein. All parties in interest will have the right at such Stalking Horse Hearing to object to the designation of the Stalking Horse Bidder, the provision of Bid Protections to such Stalking Horse Bidder, and the terms and conditions under which such Bid Protections would be payable to the Stalking Horse Bidder.

20. If the Court enters a Stalking Horse Order, the Debtors propose to promptly serve it on each Potential Bidder (as defined herein). Further, until paid, the Debtors submit that any Break-Up Fee or Expense Reimbursement provided pursuant to the Stalking Horse Order shall constitute allowed superpriority administrative expense claims arising in the Chapter 11 Cases under sections 503(b), 507(a)(2), and 507(b) of the Bankruptcy Code; *provided, however*, that such superpriority claims shall be subject to the Carve-Out (as defined in the DIP Order) and the Wind-Down Budget, and shall in no circumstance be *pari passu* or senior to the claims granted to the DIP Secured Parties or the Prepetition Secured Parties.

21. The Debtors anticipate that, to the extent that the Debtors select a Stalking Horse Bidder, any definitive agreement memorializing the Stalking Horse Bid will include various customary representations, warranties, and covenants by and from the Debtors and the Stalking Horse Bidder, including certain conditions to closing the contemplated Sale Transaction and rights of termination related to the Chapter 11 Cases.

**The Bidding Procedures**

**A. Overview**

22. The Bidding Procedures are designed to promote a competitive and expedient sale process. If approved, the Bidding Procedures will allow the Debtors to solicit and identify bids from potential buyers that constitute the highest or otherwise best offer for the Bid Assets on a schedule consistent with the milestones in the DIP Credit Agreement and the Debtors’ chapter 11 strategy.

23. As the Bidding Procedures are attached to the Bidding Procedures Order, they are not herein restated in their entirety. Pursuant to Local Rule 6004-1(c)(i), certain of the key terms of the Bidding Procedures are highlighted in the chart below.<sup>5</sup>

<b>MATERIAL TERMS OF THE BIDDING PROCEDURES</b>	
<p><b>Provisions Governing Qualification of Bidders and Qualified Bids</b> Local Rule 6004-1(c)(i)(A)-(B)</p>	<p><b>Parts 1 and 2 of the Bidding Procedures set forth the Qualified Bid and Qualified Bidder requirements.</b></p> <p><b>A. Indications of Interest.</b></p> <p>1. <u>Required Information.</u> Interested Parties must deliver the following items to Evercore so as to be received no later than 5:00 p.m. (prevailing Eastern Time) on July 1, 2019:</p> <p style="margin-left: 20px;">a. an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors;</p>

<sup>5</sup> To the extent that there is any inconsistency between the terms of the Bidding Procedures and the summary of such terms in this Motion, the terms of the Bidding Procedures shall control. Capitalized terms used but not otherwise defined in this summary shall have the meanings ascribed to such terms in the Bidding Procedures.

**MATERIAL TERMS OF THE BIDDING PROCEDURES**

- b. a statement and other factual support demonstrating, to the Debtors' satisfaction, that the Interested Party has a *bona fide* interest in purchasing some or all of the Bid Assets;
- c. a description of the nature and extent of any due diligence the Interested Party wishes to conduct and the date in advance of the Bid Deadline (as defined below) by which such due diligence will be completed; and
- d. sufficient information, as defined by the Debtors, to allow the Debtors to determine that the Interested Party has the financial wherewithal and any required internal corporate, legal, or other authorizations to close the sale transaction, including, but not limited to, current audited financial statements of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in their discretion) or, if the Interested Party is an entity formed for the purpose of acquiring some or all of the Bid Assets, (i) current audited financial statements of the equity holder(s) (the "**Sponsor(s)**") of the Interested Party or such other form of financial disclosure acceptable to the Debtors in their discretion, (ii) a written commitment acceptable to the Debtors and their advisors that the Sponsor(s) are responsible for the Interested Party's obligations in connection with the Bidding Process, and (iii) copies of any documents evidencing any financing commitments necessary to consummate the transaction.

If the Debtors determine in their discretion (in consultation with the DIP Secured Parties), after receipt of the items identified above, that an Interested Party has a *bona fide* interest in purchasing any or all of the Bid Assets, such Interested Party will be deemed a "**Potential Bidder**" and the Debtors will deliver to such Potential Bidder access to the Debtors' confidential electronic data room concerning the Bid Assets (the "**Data Room**"), which shall include a form of Sale Order.

- B. Due Diligence.** In addition to Data Room access, Debtors may, in their sole discretion, grant additional due diligence access reasonably requested by Potential Bidders. Unless otherwise determined by the Debtors, the availability of due diligence to a Potential Bidder will cease if the Potential Bidder does not become a Qualified Bidder or the Bidding Process is terminated in accordance with its terms.
- C. Bid Deadline** – July 24, 2019 at 6:00 p.m. (prevailing Eastern Time)
- D. Qualified Bid Requirements.**
  - 1. Required Bid Documents. A Qualified Bid must be accompanied by the following documents:
    - a. a letter stating that the bidder's offer is irrevocable until consummation of a transaction involving the Bid Assets (or lot thereof) identified in such offer;
    - b. a duly authorized and executed asset purchase agreement, which purchase agreement must be based on the form of purchase agreement provided by Evercore, marked to show any revisions, including, among other things, the purchase price for the Bid Assets (or lot thereof, as applicable), together with all exhibits and schedules and any proposed revisions to the proposed form of Sale Order;
    - c. written evidence acceptable to the Debtors in their discretion (in consultation with the DIP Secured Parties) demonstrating financial wherewithal, operational ability, and corporate authorization to

## MATERIAL TERMS OF THE BIDDING PROCEDURES

- consummate the proposed transaction; and
- d. written evidence of a firm commitment for financing to consummate the proposed transaction, or other evidence of ability to consummate the proposed transaction without financing, that is satisfactory to the Debtors in their discretion (in consultation with the DIP Secured Parties).
2. Identity of Purchaser. Full disclosure of the legal identity of the purchaser and related parties participating in Auction.
  3. Bid Assets; Consideration.
    - a. Identification of Bid Assets (or lot thereof) to be purchased and the Contracts and Leases to be assumed.
    - b. Sets forth the consideration for the Bid Assets (or lot thereof) to be purchased and the Contracts and Leases to be assumed; *provided, however*, that, upon entry of a Stalking Horse Order, the consideration must be at least equal to the following: (i) the consideration set forth in the Stalking Horse Bid; *plus* (ii) the aggregate amount of any Bid Protections set forth in the Stalking Horse Order; *plus* (iii) \$1,000,000 (the “**Minimum Overbid**”).
    - c. Clearly states which liabilities of the Debtors or the Bid Assets will be assumed.
  4. No Financing/Diligence Contingency. No condition on the obtainment of financing or on the outcome of unperformed due diligence.
  5. Regulatory Approvals. Includes a description of all governmental, licensing, regulatory, or other approvals or consents that are required to consummate the proposed transaction (including any antitrust approval related to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended), together with evidence satisfactory to the Debtors of the ability to obtain such approvals or consents in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such approvals or consents.
  6. Good Faith Deposit. Delivery of a cash deposit by wire transfer to a Deposit Agent in an amount equal to ten percent of the proposed purchase price.
  7. Authorized Representatives. A list setting forth the representatives authorized to appear and act for the bidder in connection with the proposed transaction.
  8. No Bid Protections. Statement that the bidder will not seek any transaction or break-up fee, expense reimbursement, or similar type of payment (other than if such bid is selected to be a Stalking Horse Bid and subject to the provisions of the Bidding Procedures relating thereto).
  9. Adequate Assurance. Evidence supporting the bidder’s ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including the provision of adequate assurance of such bidder’s ability to perform under any Contracts and Leases to be assumed by the bidder in connection with the proposed transaction.
- E. Designation of Qualified Bids; Cure of Non-Qualifying Bids.** The Debtors in their discretion (in consultation with the DIP Secured Parties and each of the Prepetition Agents) shall have the right to deem a bid a Qualified Bid. If the Debtors receive a bid prior to the Bid Deadline that is not a Qualified Bid, the

<b>MATERIAL TERMS OF THE BIDDING PROCEDURES</b>	
	<p>Debtors may provide the bidder with the opportunity to remedy any deficiencies following the Bid Deadline. If any bid is determined by the Debtors not to be a Qualified Bid, and the applicable bidder fails to remedy such bid in accordance with these Bidding Procedures, the Debtors shall promptly instruct the Deposit Agent to return such bidder’s Good Faith Deposit.</p> <p><b>F. Deemed Acknowledgments and Representations.</b> Each Qualified Bidder shall be deemed to acknowledge and represent that such bidder:</p> <ol style="list-style-type: none"> <li>1. had an opportunity to conduct any and all due diligence regarding the Bid Assets that are the subject of the Auction prior to making any such bids;</li> <li>2. relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the assets in making its bid; and</li> <li>3. did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Bid Assets (or lot thereof), or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures or, as to the Successful Bidder(s) (as defined below), the asset purchase agreement(s) with such Successful Bidder(s).</li> </ol>
<p style="text-align: center;"><b>Provisions Governing Credit Bidding</b> Local Rule 6004-1(c)(i)(A)-(B)</p>	<p><b>Part 3 of the Bidding Procedures sets forth the provisions governing Credit Bidding</b></p> <p>Pursuant to section 363(k) of the Bankruptcy Code and subject to the terms and conditions set forth in the DIP Order:</p> <ol style="list-style-type: none"> <li>1. the DIP Agent (as defined in the DIP Order), on behalf of the DIP Secured Parties, but solely at the prior written direction of the Required Lenders (as defined in the DIP Credit Agreement, unless otherwise specified), shall have the right to credit bid up to the full amount of the DIP Obligations (as defined in the DIP Order) in any bulk or piecemeal sale of all, or any portion of, the Bid Assets constituting DIP Collateral (as defined in the DIP Order); and</li> <li>2. (a) the Prepetition Term Agent (as defined in the DIP Order), on behalf of the Prepetition Secured Parties (as defined in the DIP Order), but solely at the prior written direction of the Required Lenders (as defined in the Prepetition Term Loan Credit Agreement (as defined in the DIP Order)), and (b) the Prepetition Revolving Agent (as defined in the DIP Order), on behalf of and as directed by the Prepetition Revolving Secured Parties (as defined in the DIP Order), in each case, shall have the right to credit bid, subject to the Intercreditor Agreement (as defined in the DIP Order), up to the full amount of the applicable Prepetition Secured Debt (as defined in the DIP Order) in any bulk or piecemeal sale of all, or any portion of, the Bid Assets constituting Prepetition Collateral (as defined in the DIP Order).</li> </ol> <p>If the DIP Agent and/or any of the Prepetition Agents submit a credit bid in accordance with the foregoing, and such bid is received by the Bid Deadline, such bidder shall be deemed to be a Qualified Bidder and any such credit bid shall be deemed to be a Qualified Bid.</p>
<p style="text-align: center;"><b>Provisions Ensuring Funding of the Wind-Down Budget</b> Local Rule 6004-</p>	<p><b>Part 4 of the Bidding Procedures sets forth the provisions governing the Wind-Down Budget</b></p> <p>Any bid (including a credit bid) shall be subject to the following:</p>



<b>MATERIAL TERMS OF THE BIDDING PROCEDURES</b>	
1(c)(i)(A)-(B)	<p>1. the Debtors having sufficient cash at the consummation of a sale of all or substantially all the Bid Assets to satisfy the reasonable wind-down budget negotiated in good faith (the “<b>Wind-Down Budget</b>”) to pay all allowed,</p> <ol style="list-style-type: none"> <li>a. post-petition claims,</li> <li>b. administrative expense and priority claims, and</li> <li>c. professional fees and expenses necessary to wind-down the Debtors’ estates in a reasonable and appropriate timeline; and</li> </ol> <p>2. the requirement that the net proceeds of any sale pursuant to the Bidding Procedures shall first satisfy the Wind-Down Budget before repayment of any DIP Obligations, Adequate Protection Obligations, 507(b) Claims, Prepetition Secured Debt, or any other claims against the Debtors (each as defined in the DIP Order).</p> <p>At the closing of a Sale Transaction, the Debtors shall deposit into a segregated account held by the Debtors an amount either (a) agreed to by the Required Lenders and the Debtors or (b) as otherwise determined by the Court. The Debtors shall not distribute any proceeds of the Sale Transaction prior to the funding of the Wind-Down Budget.</p>
<p><b>Provisions Outlining Terms of Selecting a Stalking Horse Bidder and Providing Bid Protections</b> Local Rule 6004-1(c)(i)(C)</p>	<p><b>Part 5 of the Bidding Procedures outlines the terms of selecting a Stalking Horse Bidder and providing Bid Protections.</b></p> <p><b>A. Selection of the Stalking Horse Bidder.</b> The Debtors shall be fully authorized, but not obligated, in an exercise of their business judgment (in consultation with the DIP Secured Parties and each of the Prepetition Agents), subject to the entry of a Stalking Horse Order, to agree with any Qualified Bidder that:</p> <ol style="list-style-type: none"> <li>1. such Qualified Bidder’s Qualified Bid shall serve as the minimum bid for the Bid Assets or any lot thereof (such Qualified Bidder, a “<b>Stalking Horse Bidder</b>” and, such Qualified Bid, a “<b>Stalking Horse Bid</b>”); and</li> <li>2. that the Debtors will enter into the transaction(s) contemplated in such Stalking Horse Bid unless a higher or otherwise better Qualified Bid is submitted with respect to such Bid Assets or lot thereof, as determined by the Debtors in accordance with these Bidding Procedures.</li> </ol> <p><b>B. Bid Protections.</b> In the event that the Debtors select one or more Stalking Horse Bidder(s) in accordance with the Bidding Procedures, the Debtors shall be fully authorized, but not obligated, in an exercise of their business judgment (in consultation with the DIP Secured Parties and each of the Prepetition Agents) to offer the following bid protections to such Stalking Horse Bidder(s), payable if the Debtors consummate a sale pursuant to a Qualified Bid other than the Stalking Horse Bid (if the assets subject to such sale include those to which such Stalking Horse Bid relates) paid out of the proceeds of the sale to which they relate:</p> <ol style="list-style-type: none"> <li>1. payment of a break-up fee in an amount not to exceed three percent of the purchase price set forth in the Stalking Horse Bid (the “<b>Break-Up Fee</b>”); and</li> <li>2. reimbursement of the reasonable and documented fees and expenses of the Stalking Horse Bidder (the “<b>Expense Reimbursement</b>” and, together with the Break-Up Fee, the “<b>Bid Protections</b>”) in an amount up to \$1,000,000;</li> </ol> <p><i>provided, however, that</i></p>

<b>MATERIAL TERMS OF THE BIDDING PROCEDURES</b>	
	<p>a. the payment of such Break-Up Fee and/or Expense Reimbursement shall be subject to the terms and conditions of the definitive agreement(s) executed between the Debtors and such Stalking Horse Bidder(s) and the Stalking Horse Order,</p> <p>b. any Breakup Fee or Expense Reimbursement will not be binding on the Debtors until entry of the Stalking Horse Order and the Sale Order, and</p> <p>c. no Break-Up Fee shall be paid to a credit bidder or insider of the Debtors.</p> <p><b>C. Stalking Horse Order.</b> The Debtors are authorized to exercise their business judgment to enter into a definitive agreement with a Stalking Horse Bidder providing for Bid Protections in an amount not exceeding, in the aggregate, three percent of the proposed purchase price for the Bid Asset (or lot thereof) <i>plus an</i> amount up to \$1,000,000 for reasonable and documented fees and expenses, <i>provided that</i> (a) the Debtors notify the Required Lenders, the U.S. Trustee, each of the Prepetition Agents, and the DIP Agent of the foregoing <u>and</u> (b) neither the Required Lenders nor the U.S. Trustee object to the submission of the Stalking Horse Order under certificate of counsel. However, in the event that the Required Lenders or the U.S. Trustee object to the Debtors' entry into such definitive agreement with a Stalking Horse Bidder, the proposed Bid Protections, or the form of Stalking Horse Order, the Debtors shall file a notice seeking a Stalking Horse Hearing on an expedited basis, but on not less than five days' notice, for the authorization to enter into such definitive agreement with the Stalking Horse Bidder and any Bid Protections included therein. All parties in interest will have the right at such Stalking Horse Hearing to object to the designation of the Stalking Horse Bidder, the provision of Bid Protections to such Stalking Horse Bidder, and the terms and conditions under which such Bid Protections would be payable to the Stalking Horse Bidder.</p> <p>If the Court enters a Stalking Horse Order, the Debtors propose to promptly serve it on each Potential Bidder. Further, until paid, any Break-Up Fee or Expense Reimbursement provided pursuant to the Bidding Procedures Order shall constitute allowed superpriority administrative expense claims arising in the Chapter 11 Cases under sections 503(b), 507(a)(2), and 507(b) of the Bankruptcy Code; <i>provided, however,</i> that such superpriority claims shall be subject to the Carve-Out (as defined in the DIP Order) and the Wind-Down Budget, and shall in no circumstance be <i>pari passu</i> or senior to the claims granted to the DIP Secured Parties or the Prepetition Secured Parties.</p>
<p style="text-align: center;"><b>Provisions Governing the Auction and Permitting the Modification of Bidding and Auction Procedures</b> Local Rules 6004-1(c)(ii) and 6004-1(c)(i)(D)</p>	<p><b>Part 6 of the Bidding Procedures sets forth the procedures governing the Auction.</b></p> <p><b>A. Date, Time, and Location.</b> The Auction shall be conducted at the offices of Davis Polk &amp; Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 on July 29, 2019 at 10:00 a.m. (prevailing Eastern Time) or such later time on such day or such other place as the Debtors shall notify all Qualified Bidders (including the Stalking Horse Bidder, if any)</p> <p><b>B. Participants and Attendees.</b></p> <ol style="list-style-type: none"> <li>1. Attendance will be limited to the representatives or agents (including legal and financial advisors) of (a) the Debtors, (b) any Qualified Bidder that has submitted a Qualified Bid, (c) the DIP Secured Parties, and (d) the Prepetition Secured Parties.</li> <li>2. Each Qualified Bidder must confirm on record that it (a) has not engaged in any</li> </ol>

## MATERIAL TERMS OF THE BIDDING PROCEDURES

collusion with respect to the bidding or the sale of any of the Bid Assets, (b) has reviewed, understands, and accepts the Bidding Procedures, (c) has consented to the jurisdiction of the Court, and (d) intends to consummate its Qualified Bid if it is selected as the Successful Bid.

### C. Auction Procedures.

1. Notice of Qualification. At least one day prior to the Auction, the Debtors will (a) notify each Qualified Bidder that has timely submitted a Qualified Bid that its bid is a Qualified Bid and (b) provide all Qualified Bidders with (i) copies of the Qualified Bid or combination of Qualified Bids that the Debtors believe is the highest or otherwise best offer (the “**Starting Bid**”), (ii) an explanation of how the Debtors value the Starting Bid, and (iii) a list identifying all of the Qualified Bidders and their respective Qualified Bids.
2. Starting Bid. The first round of bidding at the Auction shall commence at the Starting Bid.
3. Subsequent Bids. Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding in the presence of all parties at the Auction, so long as during each round at least one subsequent bid (a “**Subsequent Bid**”) is submitted by a Qualified Bidder that (a) improves upon such Qualified Bidder’s immediately prior Qualified Bid and (b) the Debtors determine in their discretion (in consultation with the DIP Secured Parties) that such Subsequent Bid is (i) with respect to the first round, a higher or otherwise better offer than the Starting Bid and (ii) with respect to subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below), in each case taking into account other Qualified Bids for other Bid Assets.
4. Minimum Bid Increments. In each subsequent round after the first round, the Debtors in their discretion (in consultation with the DIP Secured Parties and each of the Prepetition Agents) may determine appropriate minimum bid increments or requirements for each round of bidding.
5. Highest or Best Offer. After the first round of bidding and between each subsequent round of bidding, as applicable, the Debtors will determine in their discretion (in consultation with the DIP Secured Parties and each of the Prepetition Agents) and announce the bid or bids that they believe to be the highest or otherwise best offer or combination of offers (the “**Leading Bid**”). Additional consideration in excess of the amount set forth in the Starting Bid may include cash and/or non-cash consideration; *provided, however*, that the value for such non-cash consideration shall be determined by the Debtors in their discretion (in consultation with the DIP Secured Parties).
6. Partial Bids. If any of the Qualified Bids submitted by the Bid Deadline are structured as a purchase of less than all or substantially all of the Bid Assets (each such bid, a “**Partial Bid**”), the Debtors may conduct separate auctions at the Auction for each lot of assets (each, an “**Auction Lot**”) subject to a Partial Bid. The Debtors may designate each Auction Lot at any time prior to the Auction.
7. Recording. The bidding at the Auction will be transcribed or videotaped.

**Part 6 of the Bidding Procedures sets forth provisions permitting the modification of bidding and auction procedures.**

<b>MATERIAL TERMS OF THE BIDDING PROCEDURES</b>	
	<p>The Debtors may (in consultation with the DIP Secured Parties) employ and announce at the Auction additional procedural rules for conducting the Auction (<i>e.g.</i>, the amount of time allotted to submit Subsequent Bids), <i>provided, however</i>, that such rules shall (a) not be inconsistent with the Bankruptcy Code, the Bidding Procedures Order, or any other order of the Court entered in connection herewith and (b) be disclosed to all Qualified Bidders.</p> <p><b>Part 7 of the Bidding Procedures sets forth procedures by which the Debtors shall select the Successful Bid(s) and Alternate Bid(s).</b></p> <p><b>A. Selection of Successful Bids.</b> Prior to the conclusion of the Auction, the Debtors shall (in consultation with the DIP Secured Parties and each of the Prepetition Agents) (i) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale transaction, (ii) determine and identify the highest or otherwise best offer or collection of offers (the “<b>Successful Bid(s)</b>”), (iii) determine and identify the next highest or otherwise best offer or collection of offers (the “<b>Alternate Bid(s)</b>”), and (iv) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of (A) the identity of the party or parties that submitted the Successful Bid(s) (the “<b>Successful Bidder(s)</b>”), (B) the amount and other material terms of the Successful Bid(s), (C) the identity of the party or parties that submitted the Alternate Bid(s) (the “<b>Alternate Bidder(s)</b>”), and (D) the amount and other material terms of the Alternate Bid(s).</p> <p>Each Qualified Bidder shall agree and be deemed to agree to be the Alternate Bidder if so designated. Notwithstanding anything in the Bidding Procedures to the contrary, any Qualified Bid submitted by the DIP Agent or the Prepetition Term Agent shall not be required to serve as an Alternate Bid absent consent of the DIP Agent or Prepetition Term Agent (as applicable).</p> <p><b>B. Execution of Definitive Documentation.</b> As soon as reasonably practicable after the completion of the Auction, the Successful Bidder(s) and the applicable Debtors shall complete and execute all agreements, instruments, and other documents necessary to consummate the applicable sale or other transaction(s) contemplated by the applicable Successful Bid(s). Promptly following the selection of the Successful Bid(s) and Alternate Bid(s), the Debtors shall file a notice of the Successful Bid(s) and Alternate Bid(s) with the Court, together with a proposed Sale Order.</p>
<p><b>Provisions Regarding Closing with Successful Bidders and Alternative Bidders</b> Local Rule 6004-1(c)(i)(E)</p>	<p><b>Part 8 of the Bidding Procedures sets forth procedures regarding closing with Successful Bidder(s) or Alternative Bidder(s).</b></p> <p>The Debtors’ presentation to the Court of the Successful Bid(s) and Alternate Bid(s) will not constitute the Debtors’ acceptance of such bid(s), which acceptance will only occur upon approval of such bid(s) by the Court. Following the Court’s entry of the Sale Order, the Debtors and the Successful Bidder(s) shall proceed to consummate the transaction(s) contemplated by the Successful Bid(s). If the Debtors and the Successful Bidder(s) fail to consummate the proposed transaction(s), then the Debtors shall file a notice with the Court advising of such failure. Upon the filing of such notice with the Court, the Alternate Bid(s) will be deemed to be the Successful Bid(s) and the Debtors will be authorized, but not directed, to effectuate the transaction(s) with the Alternate Bidder(s) subject to the terms of the Alternate Bid(s) of such Alternate Bidder(s) without further order of the Court.</p>

## B. Key Dates and Deadlines

24. Consistent with the Debtors' need to consummate a sale of their Bid Assets as quickly and efficiently as practicable, the Debtors propose the following key dates and deadlines for the sale process, certain of which dates and deadlines may be subject to extension in accordance with the Bidding Procedures:

<b>June 12, 2019 at 11:00 a.m.</b>	Hearing to consider approval of the Bidding Procedures and entry of the Bidding Procedures Order
<b>June 14, 2019</b>	Target date for the Debtors to file Potential Assumed Contracts Schedule
<b>July 1, 2019 at 5:00 p.m. (prevailing Eastern Time)</b>	Potential Bidder deadline
<b>July 11, 2019 at 4:00 p.m. (prevailing Eastern Time)</b>	Cure Objection Deadline
<b>July 17, 2019</b>	Deadline to designate Stalking Horse Bidder(s) (if any)
<b>July 24, 2019 at 6:00 p.m. (prevailing Eastern Time)</b>	Bid Deadline
<b>On or before July 26, 2019</b>	Target date for the Debtors to notify Potential Bidders of their status as Qualified Bidders
<b>July 29, 2019 at 10:00 a.m. (prevailing Eastern Time)</b>	Auction to be held at the offices of Davis Polk & Wardwell LLP (if necessary)
<b>On or before July 31, 2019</b>	Target date for the Debtors to file with the Court the Notice of Auction Results
<b>August 5, 2019 at 4:00 p.m. (prevailing Eastern Time)</b>	Deadline to object to the Sale Transaction to the Successful Bidder; and the Assumption and Assignment Objection Deadline
<b>August 12, 2019 at 11:00 a.m. (prevailing Eastern Time)</b>	Hearing to consider approval of the Sale Transaction(s) and entry of the Sale Order(s)

## C. Noticing Procedures

25. The Debtors propose the following “**Noticing Procedures**”:

- a. **Sale Notice and Publication.** As soon as reasonably practicable after entry of the Bidding Procedures Order, the Debtors shall serve the Sale Notice by first class or overnight mail upon the following: (i) the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”); (ii) counsel for any official committee appointed in the Chapter 11 Cases; (iii) counsel to the DIP Secured Parties; (iv) Counsel to the Prepetition Secured Parties; (v) Counterparties to Contracts and Leases; (vi) the Internal Revenue Service; (vii) all applicable state and local taxing

authorities; (xiii) the Securities & Exchange Commission; (ix) the U.S. Environmental Protection Agency; (x) the United States Attorney’s Office for the District of Delaware; (xi) the United States Attorney General/Antitrust Division of the Department of Justice; (xii) the offices of the attorneys general for the states in which the Debtors operate; (xiii) all potential buyers previously identified or solicited by the Debtors or their advisors and any additional parties who have previously expressed an interest to the Debtors or their advisors in potentially acquiring the Debtors’ assets; (xiv) all such other entities as may be required by applicable Bankruptcy Rules or Local Rules; and (xv) all other known parties with any interest in the Bid Assets (collectively, the “**Sale Notice Parties**”). The Debtors will publish the Sale Notice once in *The Wall Street Journal* national edition as soon as practicable following entry of the Bidding Procedures Order.

- b. **Notice of Determination of Qualified Bids.** The Debtors (in consultation with the DIP Secured Parties and each of the Prepetition Agents) will make a determination regarding which bids qualify as a Qualified Bid and will notify Potential Bidders whether they have been selected as Qualified Bidders by no later than one day prior to the Auction. At least one day prior to the Auction, the Debtors will (i) notify each Qualified Bidder that has timely submitted a Qualified Bid that its bid is a Qualified Bid and (ii) provide all Qualified Bidders with (A) a copy of the Starting Bid, (B) an explanation of how the Debtors value the Starting Bid, and (C) a list identifying all of the Qualified Bidders and their respective Qualified Bids.
- c. **Notice of Hearing if Auction Not Held.** If (a) no Qualified Bids are submitted by the Bid Deadline other than a Stalking Horse Bid, (b) only one Qualified Bid that is not a Stalking Horse Bid is submitted by the Bid Deadline, or (c) only one or more Partial Bids are submitted by the Bid Deadline for non-overlapping lots of the Bid Assets, the Debtors may, in their discretion (in consultation with the DIP Secured Parties and each of the Prepetition Agents) elect to cancel the Auction, seek approval of the transactions contemplated in the Stalking Horse Bid, the Qualified Bid which is not a Stalking Horse Bid, or the transactions in respect of the such Partial Bids, at the Sale Hearing. If no Auction is to be conducted, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Debtors’ case information website located at <http://www.kccllc.net/southcrossenergy> (the “**Case Information Website**”) a notice (i) indicating that the Auction for the Bid Assets has been canceled, (ii) indicating that the Stalking Horse Bid, the Qualified Bid that is not a Stalking Horse Bid, or Partial Bid(s) (as applicable) is the Successful Bid with respect to the Bid Assets, and (iii) setting forth the date and time of the Sale Hearing.

- d. **Notice of Auction Results.** Promptly following the selection of the Successful Bid(s) and Alternate Bid(s), the Debtors shall file a notice of the Successful Bid(s) and Alternate Bid(s) (the “**Notice of Auction Results**”) with the Court and cause the Notice of Auction Results to be published on the Case Information Website.

26. The Noticing Procedures constitute adequate and reasonable notice of the key dates and deadlines for the sale process, including, among other things, the objection deadline, the Bid Deadline, and the times and locations of the Auction and Sale Hearing. Accordingly, the Debtors request that the Court find that the Noticing Procedures are adequate and appropriate under the circumstances and comply with the requirements of Bankruptcy Rule 2002 and Local Rule 2002-1.

#### **Assumption and Assignment Procedures**

27. In connection with the Sale Transaction, the Debtors anticipate that they will assume and assign to the Successful Bidder (or its designated assignee(s)) all or certain of the Assumed Contracts and Assumed Leases pursuant to section 365(b) of the Bankruptcy Code. Accordingly, the Debtors hereby seek approval of the proposed Assumption and Assignment Procedures set forth herein, which are designed to, among other things, (a) outline the process by which the Debtors will serve notice to all Counterparties regarding the potential assumption and assignment, related Cure Costs, if any, and information regarding the Successful Bidder’s adequate assurance of future performance and (b) establish objection and other relevant deadlines and the manner for resolving disputes relating to assumption and assignment of the Assumed Contracts and Assumed Leases. Specifically, the Assumption and Assignment Procedures are as follows:

- a. **Potential Assumed Contracts Schedule.** As soon as reasonably practicable following entry of the Bidding Procedures Order, the Debtors shall file with the Court, and cause to be published on the Case Information Website, the Potential Assumption and Assignment Notice and a list of the Potential Assumed Contracts (the “**Potential Assumed**

**Contracts Schedule”)** that specifies (i) each of the Contracts and Leases that potentially could be assumed and assigned in connection with the sale of the Bid Assets, including the name of each Counterparty and (ii) the proposed Cure Cost with respect to each Potential Assumed Contract.

- b. **Potential Assumption and Assignment Notice.** The Debtors shall, as soon as reasonably practicable after entry of the Bidding Procedures Order (but in any event, so as to provide sufficient notice such that any required responses from any Counterparties are due prior to the scheduled date of the Auction as specified in the Bidding Procedures), serve on each relevant Counterparty the Potential Assumption and Assignment Notice, which shall (i) identify the Potential Assumed Contracts, (ii) list the Debtors’ good faith calculation of the Cure Costs with respect to the Potential Assumed Contracts identified on the Potential Assumption and Assignment Notice, (iii) expressly state that assumption or assignment of an Assumed Contract or Assumed Lease is not guaranteed and is subject to Court approval, (iv) prominently display the deadline to file an Assumption and Assignment Objection (as defined herein), and (v) prominently display the date, time, and location of the Sale Hearing. The Debtors shall serve on all parties requesting notice pursuant to Bankruptcy Rule 2002, via first class mail, a modified version of the Potential Assumption and Assignment Notice, without the Potential Assumed Contracts Schedule, which will include instructions regarding how to view the Potential Assumed Contracts Schedule on the Case Information Website.
- c. **Proposed Assumption and Assignment Notice.** The Debtors shall, in conjunction with the filing of the Notice of Auction Results, file and serve on each relevant Counterparty the Proposed Assumption and Assignment Notice, which shall (i) identify the Proposed Assumed Contracts, (ii) expressly state that assumption or assignment of an Assumed Contract or Assumed Lease is not guaranteed and is subject to Court approval, (iii) prominently display the deadline to file an Assumption and Assignment Objection, and (iv) prominently display the date, time, and location of the Sale Hearing. The Debtors shall serve on all parties requesting notice pursuant to Bankruptcy Rule 2002, via first class mail, a modified version of the Proposed Assumption and Assignment Notice, without the schedule of Proposed Assumed Contracts (the “**Proposed Assumed Contracts Schedule**”), which will include instructions regarding how to view the Proposed Assumed Contracts Schedule on the Case Information Website.
- d. **Assumption and Assignment Objections.**
  - i. **Objection Deadlines.** Any Counterparty may object to the potential or proposed assumption or assignment of its Assumed Contract or Assumed Lease, the Debtors’ proposed Cure Costs, if any, or the



ability of a Successful Bidder to provide adequate assurance of future performance (an “**Assumption and Assignment Objection**”). All Assumption and Assignment Objections must (A) be in writing, (B) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (C) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Costs the Counterparty believes is required to cure defaults under the relevant Assumed Contract or Assumed Lease, (D) (1) for objections relating to proposed Cure Costs, be filed no later than **July 11, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the “**Cure Objection Deadline**”) and (2) for all other objections, **August 5, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the “**Assumption and Assignment Objection Deadline**”), and (E) be served on (1) counsel for the Debtors, (x) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner, Darren S. Klein, Steven Z. Szanzer, and Benjamin M. Schak and (y) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney, Andrew R. Remming, Joseph C. Barsalona II, and Eric W. Moats; (2) counsel to Wells Fargo Bank, N.A., the administrative agent under Southcross’s prepetition secured revolving credit facility, Vinson & Elkins LLP, Trammell Crow Center, 2001 Ross Avenue, Suite 3900, Dallas, Texas 75201-2975, Attn: William Wallander, Bradley Foxman, and Matthew Pyeatt; (4) counsel to Wilmington Trust, N.A., the administrative agent under Southcross’s prepetition secured term loan facility and post-petition credit facility (x) Arnold & Porter Kaye Scholer LLP, 250 West 55th Street New York, NY 10019-9710, Attn: Alan Glantz and Arnold & Porter Kaye Scholer LLP 70 West Madison Street Suite 4200 Chicago, Illinois 60602-4231, Attn: Seth J. Kleinman and (y) Duane Morris LLP, 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801-1659, Attn: Christopher M. Winter; (5) counsel to the post-petition lenders and an ad hoc group of prepetition lenders, (x) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019-6099, Attn: Joseph G. Minias, Paul V. Shalhoub, and Debra C. McElligott and (y) Young Conaway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Edmon L. Morton and Matthew B. Lunn; (6) counsel for any official committee appointed in the Chapter 11 Cases; and (7) The U.S. Trustee 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801 (collectively, the “**Assumption and Assignment Objection Notice Parties**”).

- ii. Resolution of Assumption and Assignment Objections. If a Counterparty files a timely Assumption and Assignment Objection, such objection shall be heard at the Sale Hearing or such later date

that the Debtors, in consultation with the Successful Bidder, shall determine in their discretion (subject to the Court's calendar). If such objection has not been resolved prior to the closing of the Sale Transaction (whether by an order of the Court or by agreement with the Counterparty), the Successful Bidder(s) may elect, in their sole and absolute discretion, one of the following options: (A) treat such Counterparty's contract or lease as property excluded from the Bid Assets (an "**Excluded Contract**" or "**Excluded Lease**", respectively); or (B) temporarily treat the Proposed Assumed Contract as an Excluded Contract or Excluded Lease, as applicable (a "**Designated Agreement**"), proceed to the closing of the Sale Transaction with respect to all other Bid Assets, and determine whether to treat the Designated Agreement as an Assumed Contract or Assumed Lease, as applicable, or an Excluded Contract or Excluded Lease, as applicable, within ten business days after resolution of such objection (whether by the Court's order or by agreement of the Counterparty, the Debtors, and the Successful Bidder).

- iii. Failure To File Timely Assumption and Assignment Objection. If a Counterparty fails to file with the Court and serve on the Assumption and Assignment Objection Notice Parties a timely Assumption and Assignment Objection, the Counterparty shall be forever barred from asserting any such objection with regard to the assumption or assignment of its Assumed Contract or Assumed Lease. Notwithstanding anything to the contrary in the Assumed Contract or Assumed Lease, or any other document, the Cure Costs set forth in the Potential Assumption and Assignment Notice or the Supplemental Assumption and Assignment Notice (as defined herein) shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Assumed Contract or Assumed Lease under section 365(b) of the Bankruptcy Code arising out of or related to any events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, due or to become due, accrued, absolute, contingent, or otherwise, and the Counterparty shall be forever barred from asserting any additional cure or other amounts with respect to such Assumed Contract or Assumed Lease against the Debtors, the Successful Bidder, or the property of any of them.

e. **Modification of Potential Assumed Contracts Schedule or Proposed Assumed Contracts Schedule.**

- i. In addition to a Successful Bidder's rights described above with respect to an Assumption and Assignment Objection, at or prior to

the closing of the Sale Transaction, a Successful Bidder may elect, in its sole and absolute discretion, to (A) exclude any contract or lease on the Potential Assumed Contracts Schedule as an Assumed Contract or Assumed Lease, as applicable (in which case it shall become an Excluded Contract or Excluded Lease, as applicable), or (B) include on the Proposed Assumed Contracts Schedule any contract or lease listed on the Potential Assumed Contracts Schedule, by providing to the Debtors written notice of its election to exclude or include such contract or lease, as applicable.

- ii. If the Debtors or any Successful Bidder identify during the pendency of the Chapter 11 Cases (before or after the closing of the Sale Transaction) any contract or lease that is not listed on the Proposed Assumed Contracts Schedule, and such contract or lease has not been rejected by the Debtors, the Successful Bidder may in its sole and absolute discretion elect by written notice to the Debtors to treat such contract or lease as an Assumed Contract or Assumed Lease, as applicable, and the Debtors shall seek to assume and assign such Assumed Contract or Assumed Lease in accordance with the Bidding Procedures.
- iii. Following the conclusion of the Auction, if any, and the selection of the Successful Bidder(s), the Debtors reserve the right, but only in accordance with the applicable Asset Purchase Agreement, or as otherwise agreed by the Debtors and the Successful Bidder(s), at any time before the closing of the Sale Transaction, to modify the previously-stated Cure Costs associated with any Proposed Assumed Contract.
- iv. In the event that any contract or lease is added to the Potential Assumed Contracts Schedule or Proposed Assumed Contracts Schedule or previously-stated Cure Costs are modified, in accordance with the applicable Asset Purchase Agreement, or the procedures set forth in this Motion, the Debtors will promptly serve a supplemental assumption and assignment notice, by first class mail, on the applicable Counterparty (each, a “**Supplemental Assumption and Assignment Notice**”). Each Supplemental Assumption and Assignment Notice will include the same information with respect to the applicable Assumed Contract or Assumed Lease as is required to be included in the Potential Assumption and Assignment Notice.
- v. Any Counterparty listed on a Supplemental Assumption and Assignment Notice whose contract or lease is proposed to be assumed and assigned may object to the proposed assumption or assignment of its Assumed Contract or Assumed Lease, the Debtors’ proposed Cure Costs (to the extent modified from the

previously-stated amount), or the ability of a Successful Bidder to provide adequate assurance of future performance (a “**Supplemental Assumption and Assignment Objection**”). All Supplemental Assumption and Assignment Objections must (A) be in writing, (B) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (C) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Costs the Counterparty believes is required to cure defaults under the relevant Assumed Contract or Assumed Lease, and (D) **no later than 14 days from the date of service of such Supplemental Assumption and Assignment Notice**, (1) be filed with the Court and (2) be served on the Assumption and Assignment Objection Notice Parties. Each Supplemental Assumption and Assignment Objection, if any, shall be resolved in the same manner as an Assumption and Assignment Objection.

- f. **Reservation of Rights.** The inclusion of an Assumed Contract, Assumed Lease, or Cure Costs with respect thereto on a Potential Assumption and Assignment Notice, a Proposed Assumption and Assignment Notice, the Potential Assumed Contracts Schedule, the Proposed Assumed Contracts Schedule, or a Supplemental Assumption and Assignment Notice shall not constitute or be deemed a determination or admission by the Debtors, the Successful Bidder(s), or any other party in interest that such contract or lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code. The Debtors reserve all of their rights, claims, and causes of action with respect to each Assumed Contract and Assumed Lease listed on a Potential Assumption and Assignment Notice, Proposed Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice, the Potential Assumed Contracts Schedule, and the Proposed Assumed Contracts Schedule. The Debtors’ inclusion of any Assumed Contract or Assumed Lease on the Potential Assumption and Assignment Notice, Proposed Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice, the Potential Assumed Contracts Schedule, and/or the Proposed Assumed Contracts Schedule shall not be a guarantee that such Assumed Contract or Assumed Lease ultimately will be assumed or assumed and assigned.

**Approval of the Relief Requested Is Warranted  
and in the Best Interests of the Debtors and Their Economic Stakeholders**

**A. The Bidding Procedures are Fair and Appropriate and Should Be Approved**

28. The Bidding Procedures are specifically designed to promote what courts have deemed to be the paramount goal of any proposed sale of property of a debtor’s estate: maximizing the value of sale proceeds received by the estate. *See Burtch et al. v. Ganz, et al. (In*

*re Mushroom Co.*), 382 F.3d 325, 339 (3d Cir. 2004) (finding that a debtor had a fiduciary duty to maximize and protect the value of the estate's assets); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (recognizing that main goal of any proposed sale of property of a debtor's estate is to maximize value). Courts uniformly recognize that procedures established for the purpose of enhancing competitive bidding are consistent with the fundamental goal of maximizing value of a debtor's estate. See *Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re O'Brien Env'tl. Energy, Inc.)*, 181 F.3d 527, 537 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide a benefit to a debtor's estate); *Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (observing that sale procedures "encourage bidding and . . . maximize the value of the debtor's assets").

29. The Bidding Procedures provide for an orderly, uniform, and appropriately competitive process through which interested parties may submit offers to purchase the Bid Assets. Given the time constraints, the Debtors, with the assistance of their advisors, have structured the Bidding Procedures to promote active bidding by interested parties and to confirm the highest or otherwise best offer reasonably available for the Bid Assets. Additionally, the Bidding Procedures will allow the Debtors to conduct the Auction in a fair and transparent manner that will encourage participation by financially capable bidders with demonstrated ability to consummate a timely Sale Transaction. Finally, the Bidding Procedures explicitly provide that any Successful Bid (even a credit bid) shall be subject to (a) the Debtors having sufficient cash at the consummation of a sale of all or substantially all the Bid Assets to satisfy the Wind-Down Budget to pay all allowed, (i) post-petition claims, (ii) administrative expense and priority claims, and (iii) professional fees and expenses necessary to wind-down the Debtors' estates in a

reasonable and appropriate timeline, and (b) the requirement that the net proceeds of any sale pursuant to the Bidding Procedures shall first satisfy the Wind-Down Budget before repayment of any DIP Obligations, Adequate Protection Obligations, 507(b) Claims, Prepetition Secured Debt, or any other claims against the Debtors. As a result, the Debtors would have sufficient cash to administer the wind-down of the Debtors' estates subsequent to the closing of a Sale Transaction. Moreover, at the closing of a Sale Transaction, the Debtors intend to deposit into a segregated account held by the Debtors an amount either (y) agreed to by the Required Lenders and the Debtors or (z) as otherwise determined by the Court. The Debtors shall not distribute any proceeds of the Sale Transaction prior to the funding of the Wind-Down Budget.

30. Courts in this district have approved procedures similar to the proposed Bidding Procedures in connection with chapter 11 asset sales. *See, e.g., In re Promise Healthcare Group, LLC*, Case No. 18-12491 (CSS) (Bankr. D. Del. Feb. 1, 2019); *In re TerraVia Holdings, Inc.* Case No. 17-11655 (CSS) (Bankr. D. Del. Aug. 22, 2017); *In re BPS US Holdings Inc.*, Case No. 16-12373 (KJC) (Bankr. D. Del. Nov. 30, 2016); *In re SFX Entertainment, Inc.*, Case No. 16-10238 (MFW) (Bankr. D. Del. Mar. 23, 2016); *In re Sundevil Power Holdings, LLC*, Case No. 16-10369 (KJC) (Bankr. D. Del. Mar. 3, 2016); *In re Fresh & Easy Neighborhood Market Inc.*, Case No. 13-12569 (KJC) (Bankr. D. Del. Oct. 24, 2013); *In re AI23 Systems, Inc.*, Case No. 12-12859 (KJC) (Bankr. D. Del. Nov. 8, 2012). Accordingly, the Bidding Procedures should be approved because, under the circumstances, they are reasonable, appropriate, and in the best interests of the Debtors, their estates, and all parties in interest.

**B. The Selection of the Stalking Horse Bidder and the Bid Protections Have Sound Business Purposes and Should Be Approved**

31. As noted above, the Bidding Procedures allow (but do not require) the Debtors, in the exercise of their business judgment (in consultation with the DIP Secured Parties and each of

the Prepetition Agents), subject to entry of the Stalking Horse Order, to (a) agree with a Qualified Bidder that its Qualified Bid will serve as the minimum bid for the Bid Assets, and constitute a Stalking Horse Bid<sup>6</sup> and (b) offer the Bid Protections to such Stalking Horse Bidder. The Debtors believe that their ability to offer the Bid Protections to a prospective Stalking Horse Bidder is necessary to set a floor for the value of the Bid Assets and attract other potential buyers to bid for such assets, thereby maximizing the realizable value of the Bid Assets for the benefit of the Debtors' estates, their creditors, and all other parties in interest. By this Motion, the Debtors seek authorization to exercise their business judgment to enter into a definitive agreement with a Stalking Horse Bidder providing for Bid Protections in an amount not exceeding, in the aggregate, three percent of the proposed purchase price for the Bid Assets (or lot thereof) *plus* an amount up to \$1,000,000 for reasonable and documented fees and expenses; *provided* that (a) the Debtors notify the Required Lenders, the U.S. Trustee, each of the Prepetition Agents, and the DIP Agent of the foregoing and (b) neither the Required Lenders nor the U.S. Trustee object to the submission of the Stalking Horse Order to the Court under certification of counsel. However, in the event that the Required Lenders or the U.S. Trustee object to the Debtors' entry into such definitive agreement with a Stalking Horse Bidder, the proposed Bid Protections, or the form of Stalking Horse Order, the Debtors shall file a notice seeking a Stalking Horse Hearing on not less than five days' notice for the authorization to enter into such definitive agreement with the Stalking Horse Bidder and approval of any Bid Protections included therein. All parties in interest will have the right at such Stalking Horse Hearing to object to the designation of the Stalking Horse Bidder, the provision of Bid

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<sup>6</sup> In the case multiple bids for non-overlapping lots of the Bid Assets, the Bidding Procedures allow the possibility of multiple Stalking Horse Bids.

Protections to such Stalking Horse Bidder, and the terms and conditions under which such Bid Protections would be payable to the Stalking Horse Bidder. For the avoidance of doubt, notwithstanding entry of the Stalking Horse Order, the Bid Protections shall (x) remain subject to the terms and conditions of the definitive agreement(s) executed between the Debtors and such Stalking Horse Bidder(s), (y) will not be binding on the Debtors until entry of the Sale Order, and (z) not be paid to a credit bidder or insider of the Debtors.

32. Approval of the Bid Protections is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. Courts have identified at least two instances in which bid protections may benefit the estate. First, a break-up fee or expense reimbursement may be necessary to preserve the value of a debtor's estate if assurance of the fee "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *In re O'Brien Envtl. Energy, Inc.*, 181 F.3d at 533. Second, if the availability of break-up fees and expense reimbursements were to induce a bidder to research the value of the debtor and convert the value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. *See id.*; *see also In re Reliant Energy Channel View LP*, 594 F.3d 200, 206-08 (3d Cir. 2010) (reasoning that a break-up fee should be approved if it is necessary to entice a party to make the first bid or if it would induce a stalking horse bidder to remain committed to a purchase).

33. In *O'Brien*, the Third Circuit reviewed the following nine factors set forth by the lower court as relevant in deciding whether to award a break-up fee:

- a. the presence of self-dealing or manipulation in negotiating the break-up fee;
- b. whether the fee harms, rather than encourages, bidding;



- c. the reasonableness of the break-up fee relative to the purchase price;
- d. whether the unsuccessful bidder placed the estate property in a “sale configuration mode” to attract other bidders to the auction;
- e. the ability of the request for a break-up fee to serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders or attract additional bidders;
- f. the correlation of the fee to a maximum value of the debtor’s estate;
- g. the support of the principal secured creditors and creditors’ committees of the break-up fee;
- h. the benefits of the safeguards to the debtor’s estate; and
- i. the substantial adverse impact of the break-up fee on unsecured creditors, where such creditors are in opposition to the break-up fee.

*See In re O’Brien Envtl. Energy, Inc.*, 181 F.3d at 536.

34. Here, the Bid Protections contemplated by the Bidding Procedures squarely satisfy the *O’Brien* Factors. The Break-Up Fee would enable the Debtors to secure an adequate floor for the Bid Assets and insist that competing bids be materially higher or otherwise better than the Stalking Horse Bid – a clear benefit to the Debtors’ estates. Moreover, it is likely that a prospective Stalking Horse Bidder would not agree to act as a stalking horse without the Bid Protections. Without the Court authorizing the Debtors to offer the Bid Protections, the Debtors might lose the opportunity to obtain the highest or otherwise best offer for the Bid Assets and would certainly lose the downside protection that could be afforded by the existence of a Stalking Horse Bidder.

35. The Break-Up Fee and Expense Reimbursement are reasonable and appropriate in light of the size and nature of the transaction and the efforts that will necessarily have been expended by a Stalking Horse Bidder (to the extent the Debtors’ choose a Qualified Bid to be a Stalking Horse Bid). Moreover, the Bid Protections will only be offered to the extent that the Debtors believe, in the exercise of their business judgment, and consistent with their fiduciary

duties, that offering these protections will enhance the ultimate recovery to be received by all stakeholders. As set forth in the Hannan Declaration, any likely combined Break-Up Fee and Expense Reimbursement will represent only a small percentage of any reasonable price that might be offered by a Stalking Horse Bidder. *See* Hannan Decl. at ¶ 23. Additionally, both the Break-Up Fee and the Expense Reimbursement will be subject to (a) consultation with the DIP Secured Parties and each of the Prepetition Agents and the negotiation and execution of a definitive agreement between the Debtors and the Stalking Horse Bidder and (b) the process outlined for obtaining entry of a Stalking Horse Order. In sum, the Debtors' ability to offer the Bid Protections will enable them to ensure the sale of the Bid Assets at a price they believe to be fair, while, at the same time, providing the Debtors with the potential to achieve an even greater benefit to the Debtors' estates in the form of a higher or otherwise better offer for the Bid Assets.

36. This Court has approved protections similar to the proposed Break-Up Fee and Expense Reimbursement as reasonable, and consistent with the type and range of bidding protections typically approved, and also has granted superpriority administrative expense status to break-up fees that become due under the terms of a stalking horse purchase agreement. *See, e.g., In re Promise Healthcare Group, LLC*, Case No. 18-12491 (CSS) (Bankr. D. Del. Feb. 1, 2019) (approving a break-up fee of up to 3% of the purchase price and expense reimbursement of up to 1.5% of the purchase price); *In re CIBER, Inc.*, Case No. 17-10772 (BJS) (Bankr. D. Del. May 2, 2017) (approving a break-up fee and expense reimbursement that in the aggregate represented approximately 3.0% of the consideration); *In re American Apparel, LLC*, Case No. 16-12551 (BLS) (Bankr. D. Del. Dec. 5, 2016) (approving a break-up of 3.0% in connection with a \$66 million sale of assets); *In re BPS US Holdings Inc.*, Case No. 16-12373 (KJC) (Bankr. D. Del. Nov. 30, 2016) (approving a break-up fee of 3.5% in connection with a \$575 million sale of

assets); *In re SynCardia Systems, Inc.*, Case No. 16-11599 (MFW) (Bankr D. Del. Aug. 5, 2016) (approving a break-up fee of 3.0% in connection with a \$19 million sale of assets).

37. Accordingly, the Debtors submit that the Bid Protections reflect a sound business purpose, are fair and appropriate under the circumstances, and should be approved.

**C. The Proposed Sale Transactions Satisfy the Requirements of Section 363 of the Bankruptcy Code**

38. Ample authority exists for approval of the potential Sale Transaction contemplated by this Motion. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of a debtor’s estate, courts have approved the authorization of a sale of a debtor’s assets if such sale is based upon the sound business judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephen Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

39. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was provided to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. *See In re Decora Indus., Inc.*, 2002 WL 32332749, at \*2 (D. Del. May 20, 2002) (citing *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)). Where a debtor demonstrates a valid business justification for a decision, it is presumed

that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.”

*In re Integrated Res., Inc.*, 147 B.R. at 656 (quoting *Van Gorkcom*, 488 A.2d at 872).

**1. *The Debtors Have Demonstrated a Sound Business Justification for the Potential Sale Transaction***

40. A sound business purpose for the sale of a debtor’s assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d at 1063; *In re Food Barn Stores, Inc.*, 107 F.3d at 564-65 (recognizing the paramount goal of any proposed sale of property of the estate is to maximize value).

41. As set forth above and in the Hannan Declaration, a strong business justification exists for the sale of the Bid Assets as described herein. An orderly but expeditious sale of the Bid Assets is critical to maximizing the value of the Debtors’ estates and recoveries for the Debtors’ economic stakeholders. Moreover, the timely consummation of the potential Sale Transaction is required under the express terms of the DIP Credit Agreement.

**2. *The Noticing Procedures Are Reasonable and Appropriate***

42. The Noticing Procedures described above are reasonably calculated to provide all of the Debtors’ known creditors and all other parties in interest with adequate, timely notice of, among other things, the potential Sale Transaction, Bidding Procedures, Auction, and Sale Hearing.

**3. *The Proposed Sale Transactions Will Produce a Fair and Reasonable Purchase Price for the Assets***

43. As set forth above, the Debtors believe that a consummated Sale Transaction will produce fair and reasonable purchase prices for the Bid Assets. To the extent that the Debtors

agree to make a certain Qualified Bid a Stalking Horse Bid, such Stalking Horse Bid will be for a price that the Debtors, with the advice of their advisors and in consultation with the DIP Secured Parties and each of the Prepetition Agents, have determined to be fair and reasonable.

Accordingly, to the extent that the Debtors agree to a Stalking Horse Bid, which benefits from the Bid Protections, such Stalking Horse Bid will serve as a floor for Qualified Bids for the Bid Assets and will ensure that the sale process will culminate in the Debtors' obtaining the highest or otherwise best value for the Bid Assets.

44. In addition, the Bidding Procedures were carefully designed to facilitate a flexible, robust, and competitive bidding process. The Debtors are poised to capitalize on the progress made during the prepetition and post-petition phases of their sale process (*e.g.*, the outreach by Evercore to 67 strategic and financial parties and the dissemination of confidential diligence information to 36 of those parties) to maximize the value of the Bid Assets sold at the Auction. The Bidding Procedures provide an appropriate framework for the Debtors to review, analyze, and compare all bids received to determine which bids are in the best interests of the Debtors' estates and their economic stakeholders. Sale Transactions governed by the Bidding Procedures undoubtedly will serve the important objectives of obtaining not only a fair and reasonable purchase price for the Bid Assets, but also the highest or otherwise best value for the Bid Assets, which will inure to the benefit of all parties in interest in the Chapter 11 Cases.

**4. *The Successful Bidder Should Be Entitled to the Protections of Section 363(m) of the Bankruptcy Code***

45. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from a debtor notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, section 363(m) of the Bankruptcy Code states the following:

The reversal or modification on appeal of an authorization under [section 363(b) of the Bankruptcy Code] . . . does not affect the validity of a sale . . . to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) of the Bankruptcy Code fosters the “policy of not only affording finality to the judgment of the [B]ankruptcy [C]ourt, but particularly to give finality to those orders and judgments upon which third parties rely.” *Reloeb Co. v. LTV Corp (In re Chateaugay Corp.*, No. 92 Civ. 7054 (PKL), 1993 U.S. Dist. Lexis 6130, at \*9 (S.D.N.Y. May 10, 1993) (quoting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d at 147). *See also Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal.”).

46. While the Bankruptcy Code does not define “good faith,” the Third Circuit has held that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value.’” *In re Abbotts Diaries*, 788 F.2d at 147 (to constitute lack of good faith, a party’s conduct in connection with the sale must usually amount to fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders); *see also In re Bedford Springs Hotel, Inc.*, 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *In re Perona Bros., Inc.*, 186 B.R. 833, 839 (D.N.J. 1995).

47. In other words, a party would have to show fraud or collusion between the buyer and the debtor in possession, the trustee, or other bidders to demonstrate a lack of good faith. *See Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) (“Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or

the trustee, or an attempt to take grossly unfair advantage of other bidders.”). Due to the absence of a bright-line test for good faith, the determination is based on the facts of each case, with a focus on the “integrity of [a bidder’s] conduct in the course of the sale proceedings.” *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

48. The Debtors submit that a Successful Bidder under the Bidding Procedures (whether or not a Stalking Horse Bidder) would be a “good faith purchaser” within the meaning of section 363(m) of the Bankruptcy Code. It is expected that, as is customary, Qualified Bidders will engage separate counsel and other professional advisors to represent their respective interests in determining the terms of their Qualified Bids and with respect to the sale process generally. To the best of the Debtors’ knowledge, information, and belief, no party has engaged in any conduct that would cause or permit a Sale Transaction to be set aside under section 363(m) of the Bankruptcy Code.

49. Further, as set forth above, the Bidding Procedures are designed to produce a fair and transparent competitive bidding process. Each Qualified Bidder participating in the Auction must confirm that it has not engaged in any collusion with respect to the bidding or the sale of any of the Bid Assets. *See* Bidding Procedures § 6. Any asset purchase agreement with a Successful Bidder executed by the Debtors will be negotiated at arm’s length and in good faith. Accordingly, the Debtors seek a finding that any Successful Bidder under the Bidding Procedures (whether or not a Stalking Horse Bidder) is a good faith purchaser and is entitled to the full protections afforded by section 363(m) of the Bankruptcy Code.

50. Based on the foregoing, the Debtors submit that they have demonstrated that the Debtors' entrance into a Sale Transaction pursuant to the Bidding Procedures is a sound exercise of the Debtors' business judgment and should be approved as a good faith transaction.

**D. The Bid Assets Should Be Sold Free and Clear of Liens, Claims, Interests, and Encumbrances Under Section 363(f) of the Bankruptcy Code**

51. In the interest of attracting the best offers, the Bid Assets should be sold free and clear of any and all liens, claims, interests, and other encumbrances, in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, interests, and encumbrances attaching to the proceeds of the applicable sale. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances of an entity other than the estate if any one of the following conditions is satisfied:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see also In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

52. Section 363(f) of the Bankruptcy Code is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment



that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a); *see also Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of claims] is within the court’s equitable powers when necessary to carry out the provisions of [the Bankruptcy Code].”).

53. The Debtors submit that the sale of the Bid Assets free and clear of liens, claims, interests, and encumbrances will satisfy one or more of the requirements under section 363(f) of the Bankruptcy Code. For example, to the extent a party objects to the Sale Transaction on the basis that it holds a prepetition lien or encumbrance on the Bid Assets, the Debtors believe that any such party could be compelled to accept a monetary satisfaction of such claims, under section 363(f)(5) of the Bankruptcy Code, or that such lien is in bona fide dispute, under section 363(f)(4) of the Bankruptcy Code.

54. Moreover, the Debtors have sent or will send the Sale Notice to any purported prepetition lienholders. If such lienholders do not object to the proposed Sale Transaction, then their consent should reasonably be presumed. Accordingly, the Debtors request that, unless a party asserting a prepetition lien, claim, interest, or encumbrance on any of the Bid Assets (other than with respect to any liabilities or liens explicitly assumed under any Asset Purchase Agreement) timely objects to this Motion, such party shall be deemed to have consented to any Sale Transaction approved at the Sale Hearing. *See Hargave v. Twp. of Pemberton*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to a sale motion, a creditor is deemed to consent to the relief requested therein).

55. The purpose of a sale order purporting to authorize the transfer of assets free and clear of all claims, liens, interests, and encumbrances would be defeated if claimants could

thereafter use the transfer as a basis to assert claims against a purchaser arising from a seller's pre-sale conduct. Moreover, without such assurances, potential bidders may choose not to participate in the Auction, or may submit reduced bid amounts, to the detriment of the Debtors' economic stakeholders. Accordingly, the Debtors request that the Court authorize the sale of the Bid Assets free and clear of any liens, claims, interests, and encumbrances (with the exception of any liability or liens explicitly assumed under any Asset Purchase Agreement) in accordance with section 363(f) of the Bankruptcy Code, subject to such liens, claims, interests, and encumbrances (including all DIP Liens, DIP Superpriority Claims, the Prepetition Secured Debt, the Prepetition Liens and other Primed Liens (as each is defined in the DIP Order)) attaching to the proceeds thereof in the same order of relative priority and with the same validity, force, and effect as prior to such sale.

**E. The Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Authorized**

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

or rejection of an executory contract or unexpired lease benefits the estate. *See Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989).

57. Any assumption of the Proposed Assumed Contracts is an exercise of the Debtors' sound business judgment because the transfer of such Contracts and Leases is necessary to the Debtors' ability to obtain the best value for their Bid Assets. The assumption and assignment of Proposed Assumed Contracts is a critical component of the value of the Bid Assets. Given that consummation of a Sale Transaction is critical to the Debtors' efforts to maximize value for their estates and stakeholders, the Debtors' assumption of Proposed Assumed Contracts is an exercise of sound business judgment and, therefore, should be approved.

58. The consummation of any Sale Transaction involving the assignment of a Proposed Assumed Contract will be contingent upon the Debtors' compliance with the applicable requirements of section 365 of the Bankruptcy Code. Section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Contracts and Leases to be assumed be cured and that the Debtors provide adequate assurance that such defaults will be promptly cured. The Debtors' assumption and assignment of Proposed Assumed Contracts will be contingent upon payment of the Cure Costs and effective only upon the closing of an applicable Sale Transaction or any later applicable effective date. As set forth above, the Debtors propose to file with the Court and serve on each Counterparty a Potential Assumption and Assignment Notice, which will set forth the Debtors' good faith calculations of Cure Costs with respect to each Contract and Lease listed on such Potential Assumption and Assignment Notice and Proposed Assumption and Assignment Notice. As a result, Counterparties will have

a meaningful opportunity to raise any objections to the proposed assumption of their respective Contracts and Leases in advance of the applicable Sale Hearing.

59. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract if “adequate assurance of future performance by the assignee of such contract or lease is provided.” The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (citation omitted); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean an absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (finding that, “[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”). Among other things, adequate assurance may be provided by evidencing the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when the prospective assignee of a lease has financial resources and has expressed willingness to devote sufficient funding to the business to give it a strong likelihood of succeeding).

60. As set forth above and in the Bidding Procedures, for a bid to qualify as a Qualified Bid, a Potential Bidder must include with its bid information regarding its ability (and the ability of its designated assignee, if applicable) to perform under applicable Proposed Assumed Contracts. Each affected Counterparty will have an opportunity to object to the ability of the Successful Bidder to provide adequate assurance as provided in the Bidding Procedures

Order. Further, the Debtors propose to file with the Court a Proposed Assumption and Assignment Notice, which will set forth a list of the Proposed Assumed Contracts, in advance of the Sale Hearing. To the extent necessary, the Debtors will present facts at the Sale Hearing to show the financial wherewithal, willingness, and ability of the Successful Bidder to perform under the Proposed Assumed Contracts.

61. In addition, to facilitate the assumption and assignment of Proposed Assumed Contracts, the Debtors further request that the Court find that all anti-assignment provisions contained therein, whether such provisions expressly prohibit or have the effect of restricting or limiting assignment of such Assumed Contract or Assumed Lease, are unenforceable and prohibited pursuant to section 365(f) of the Bankruptcy Code.<sup>7</sup>

**Waiver of Bankruptcy Rules 6004(a), 6004(h), and 6006(d)**

62. The Debtors request that the Court (a) find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances and (b) waive the 14-day stay requirements under Bankruptcy Rules 6004(h) and 6006(d). In light of the Debtors' current financial condition and their obligation to comply with the milestones set forth in the DIP Credit Agreement, a proposed Sale Transaction contemplated herein should be consummated as soon as practicable to allow the Debtors to maximize value for their estates and stakeholders.

Accordingly, the Debtors request that the Bidding Procedures Order, the Sale Order, and any

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<sup>7</sup> Section 365(f)(1) of the Bankruptcy Code provides in part that, "notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease . . . ." 11 U.S.C. § 365(f)(1). Section 365(f)(3) of the Bankruptcy Code further provides that, "[n]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee." 11 U.S.C. § 365(f)(3)

order authorizing the assumption and assignment of a Proposed Assumed Contract in connection with a Sale Transaction be effective immediately upon entry and that the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) be waived.

**Notice**

63. Notice of this Motion will be provided to the following parties or, in lieu thereof, their counsel, if known: (a) the U.S. Trustee; (b) each of the Debtors' 20 largest unsecured creditors on a consolidated basis; (c) Vinson & Elkins LLP, as counsel to Wells Fargo Bank, N.A., the administrative agent under Southcross's prepetition secured revolving credit facility; (d) (i) Arnold & Porter Kaye Scholer LLP and (ii) Duane Morris LLP, as counsel to Wilmington Trust, N.A., the administrative agent under Southcross's prepetition secured term loan facility and post-petition credit facility; (e) (i) Willkie Farr & Gallagher LLP and (ii) Young Conaway Stargatt & Taylor, LLP, as counsel to the post-petition lenders and an ad hoc group of prepetition lenders; (f) Debevoise & Plimpton LLP, as counsel to Southcross Holdings LP; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; (i) the United States Attorney's Office for the District of Delaware; and (j) any party that has requested to be provided notice under Bankruptcy Rule 2002 (collectively, the "**Notice Parties**").

64. A copy of this Motion and any order approving it will also be made available on the Case Information Website located at <http://www.kccllc.net/southcrossenergy>. Based on the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice is required.

**No Prior Request**

65. The Debtors have not previously sought the relief requested herein from the Court or any other court.

WHEREFORE the Debtors respectfully request that the Court enter the Bidding Procedures Order and, after the Sale Hearing, the Sale Order, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: May 22, 2019  
Wilmington, Delaware

Respectfully submitted,  
MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Robert J. Dehney  
Robert J. Dehney (No. 3578)  
Andrew R. Remming (No. 5120)  
Joseph C. Barsalona II (No. 6102)  
Eric W. Moats (No. 6441)  
1201 North Market Street, 16th Floor  
P.O. Box 1347  
Wilmington, Delaware 19899-1347  
Tel.: (302) 658-9200  
Fax: (302) 658-3989  
rdehney@mnat.com  
aremming@mnat.com  
jbarsalona@mnat.com  
emoats@mnat.com

-and-

DAVIS POLK & WARDWELL LLP  
Marshall S. Huebner (admitted *pro hac vice*)  
Darren S. Klein (admitted *pro hac vice*)  
Steven Z. Szanzer (admitted *pro hac vice*)  
Benjamin M. Schak (admitted *pro hac vice*)  
450 Lexington Avenue  
New York, New York 10017  
Tel.: (212) 450-4000  
Fax: (212) 701-5800  
marshall.huebner@davispolk.com  
darren.klein@davispolk.com  
steven.szanzer@davispolk.com  
benjamin.schak@davispolk.com  
*Counsel to the Debtors and Debtors in Possession*



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

In re:

SOUTHCROSS ENERGY PARTNERS, L.P.,  
*et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 19-10702 (MFW)

Jointly Administered

Hearing Date: June 12, 2019 at 11:30 (ET)

Obj. Deadline: June 5, 2019 at 4:00 p.m. (ET)

**NOTICE OF MOTION OF DEBTORS FOR ENTRY OF ORDERS (I)(A)  
APPROVING BIDDING PROCEDURES FOR SALE OF DEBTORS' ASSETS, (B)  
AUTHORIZING THE SELECTION OF A STALKING HORSE BIDDER, (C)  
APPROVING BID PROTECTIONS, (D) SCHEDULING AUCTION FOR, AND  
HEARING TO APPROVE, SALE OF DEBTORS' ASSETS, (E) APPROVING  
FORM AND MANNER OF NOTICES OF SALE, AUCTION, AND SALE  
HEARING, (F) APPROVING ASSUMPTION AND ASSIGNMENT  
PROCEDURES, AND (G) GRANTING RELATED RELIEF AND (II)(A)  
APPROVING SALE OF DEBTORS' ASSETS FREE AND CLEAR OF LIENS,  
CLAIMS, INTERESTS, AND ENCUMBRANCES, (B) AUTHORIZING  
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that today, the above-captioned debtors and debtors-in-possession (the "Debtors") filed the **Motion of Debtors for Entry of Orders (i)(a) Approving Bidding Procedures for Sale of Debtors' Assets, (b) Authorizing the Selection of a Stalking Horse Bidder, (c) Approving Bid Protections, (d) Scheduling Auction for, and Hearing To Approve, Sale of Debtors' Assets, (e) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing, (f) Approving Assumption and Assignment Procedures, and (g) Granting Related Relief and (ii)(a) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (b) Authorizing Assumption and Assignment**

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<sup>1</sup> The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors' mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.

**of Executory Contracts and Unexpired Leases, and (c) Granting Related Relief (the “Motion”).**

PLEASE TAKE FURTHER NOTICE that objections, if any, to approval of the relief sought in the Motion must be (a) in writing and served on or before **June 5, 2019 at 4:00 p.m. (ET)** (the “Objection Deadline”); (b) filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801; and (c) served as to be received on or before the Objection Deadline by the undersigned counsel.

PLEASE TAKE FURTHER NOTICE THAT only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON **JUNE 12, 2019 AT 11:30 A.M. (ET)** BEFORE THE HONORABLE MARY F. WALRATH, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM #4, WILMINGTON, DELAWARE 19801.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: May 22, 2019  
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Robert J. Dehney

Robert J. Dehney (No. 3578)  
Andrew R. Remming (No. 5120)  
Joseph C. Barsalona II (No. 6102)  
Eric W. Moats (No. 6441)  
1201 North Market Street, 16th Floor  
P.O. Box 1347  
Wilmington, Delaware 19899-1347  
Tel.: (302) 658-9200  
Fax: (302) 658-3989  
rdehney@mnat.com  
aremming@mnat.com  
jbarsalona@mnat.com  
emoats@mnat.com

-and-

DAVIS POLK & WARDWELL LLP

Marshall S. Huebner (admitted *pro hac vice*)  
Darren S. Klein (admitted *pro hac vice*)  
Steven Z. Szanzer (admitted *pro hac vice*)  
Benjamin M. Schak (admitted *pro hac vice*)  
450 Lexington Avenue  
New York, New York 10017  
Tel.: (212) 450-4000  
Fax: (212) 701-5800  
marshall.huebner@davispolk.com  
darren.klein@davispolk.com  
steven.szanzer@davispolk.com  
benjamin.schak@davispolk.com

*Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Hannan Declaration**

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

In re:	)	
	)	Chapter 11
SOUTHCROSS ENERGY PARTNERS, L.P.,	)	Case No. 19-10702 (MFW)
et al.,	)	
	)	(Jointly Administered)
Debtors. <sup>1</sup>	)	
	)	

**DECLARATION OF STEPHEN HANNAN IN SUPPORT OF MOTION OF DEBTORS FOR ENTRY OF ORDERS (D)(A) APPROVING BIDDING PROCEDURES FOR SALE OF DEBTORS’ ASSETS, (B) AUTHORIZING THE SELECTION OF A STALKING HORSE BIDDER, (C) APPROVING BID PROTECTIONS, (D) SCHEDULING AUCTION FOR, AND HEARING TO APPROVE, SALE OF DEBTORS’ ASSETS, (E) APPROVING FORM AND MANNER OF NOTICES OF SALE, AUCTION, AND SALE HEARING, (F) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (G) GRANTING RELATED RELIEF AND (II)(A) APPROVING SALE OF DEBTORS’ ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (B) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF**

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<sup>1</sup> The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors’ mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.

I, Stephen Hannan, declare as follows:

1. I am a Senior Managing Director at Evercore Group L.L.C. (“**Evercore**”), an investment banking advisory and investment management firm. Evercore has extensive experience in providing high quality investment banking services in financially distressed situations, including advising debtors, creditors, and other constituents in chapter 11 cases and out-of-court restructurings. Evercore is the investment banker to the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”).

2. I submit this declaration (this “**Declaration**”) in support of the *Motion of Debtors for Entry of Orders (i)(a) Approving Bidding Procedures for Sale of Debtors’ Assets, (b) Authorizing the Selection of a Stalking Horse Bidder, (c) Approving Bid Protections, (d) Scheduling Auction for, and Hearing To Approve, Sale of Debtors’ Assets, (e) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing, (f) Approving Assumption and Assignment Procedures, and (g) Granting Related Relief and (ii)(a) Approving Sale of Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (b) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (c) Granting Related Relief* (the “**Motion**”).<sup>2</sup> In particular, I submit this Declaration as evidence supporting my opinion that the Debtors’ sale and marketing process is sufficient to identify all potential bidders for the Bid Assets (as defined below), and that entry into a transaction pursuant to the Bidding Procedures presents the best means to maximize the value of the Debtors’ estates.

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, my opinion, my experience as an

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<sup>2</sup> Capitalized terms used but not defined otherwise herein shall have the meanings ascribed to them in the Motion.

investment banker, or my conversations with the Debtors' employees or my colleagues at Evercore. If called on to testify, I could and would testify to the facts set forth herein. I am authorized to submit this Declaration on behalf of the Debtors.

### **Qualifications**

4. Established in 1996, Evercore is a leading independent investment banking advisory and investment management firm. Evercore's investment banking business includes its advisory business, which provides a range of financial advisory services to multinational corporations on mergers and acquisitions, divestitures, special committee assignments, recapitalizations, restructurings, and other strategic transactions. Evercore and its affiliates serve a diverse set of clients around the world from offices in New York, Boston, Chicago, Los Angeles, Washington D.C., San Francisco, Houston, Minneapolis, Palo Alto, Menlo Park, West Palm Beach, Tampa, Wilmington, Atlanta, Dallas, Toronto, Hong Kong, Frankfurt, Madrid, Beijing, Dubai, Tokyo, Singapore, London, Aberdeen, Mexico City, and Monterrey. Since its founding, Evercore's corporate advisory and restructuring advisory groups have advised on over \$3.0 trillion of transactions.

5. I am a Senior Managing Director in Evercore's corporate advisory business. I am a leading advisor to companies, creditors, and other constituencies on various restructuring assignments, including refinancings, exchange offers, consent solicitations, amendments, out-of-court restructurings, chapter 11 bankruptcy reorganizations, distressed mergers and acquisitions, asset sales under section 363 of the Bankruptcy Code, and cross-border restructuring issues.

6. I joined Evercore in 2009. Since then, I have advised a number of clients in the gaming, shipping, media, and oil and gas industries, amongst others. Major clients include MGM Mirage, M Resort, TORM, Danaos, Overseas Shipholding Group, HiT Entertainment,

C&J Energy Services, Clipper Group, GulfMark Offshore, Enduro Resource Partners, and Delta Petroleum.

7. Prior to joining Evercore, I served as a Managing Director and Chief Credit Officer of Black Diamond Capital Management. Before that, I was a senior credit officer at Lehman Brothers and Morgan Stanley where I was responsible for approving and managing each firm's high yield credit exposures, including heading the respective principal risk restructuring groups.

8. I received a B.S. from Fairfield University and an M.B.A from Columbia University.

#### **The Marketing of the Bid Assets**

9. Based on information provided to me by the Debtors, I understand that, in mid-2018, Southcross engaged an investment banker to market its assets—either for a sale of the whole company or a sale of certain non-core assets in Mississippi and Alabama. This process led to discussions of a whole-company sale with a potential strategic purchaser that continued through March 2019. Ultimately, however, Southcross concluded, in consultation with certain of Southcross's lenders, that the potential purchaser's offer for an out-of-court transaction was unworkable.

10. Evercore was engaged by the Debtors on March 12, 2019 to serve as an investment banker and to run, among other things, an extensive marketing process for a potential sale of all or substantially all of the Debtors' assets (the "**Bid Assets**"). During the course of this engagement, Evercore has worked closely with the Debtors' management and other retained professionals and has become well-acquainted with the Debtors' business operations and capital structure.



11. Since being retained, Evercore began reaching out to potential purchasers to explore a sale of the Bid Assets. Evercore has contacted 67 potential purchasers, and the Debtors executed non-disclosure agreements with 36 of such parties with respect to a sale of all or some of the Bid Assets. Evercore provided additional details to these parties, including access to confidential diligence materials.

12. In May 2019, the Debtors received, in accordance with the case milestones set forth in that certain Senior Secured Superpriority Priming Debtor-In-Possession Credit Agreement, dated as of April 3, 2019 (as may be amended, supplemented, or otherwise modified from time to time, the “**DIP Credit Agreement**”), non-binding indications of interest from 21 parties for all or some of the Bid Assets. After evaluating the non-binding indications of interest with Evercore and their other advisors, the Debtors and the Required Lenders (as defined in the DIP Credit Agreement) determined that the continuation of the marketing and sale process would maximize the realizable value of the Bid Assets and recoveries for the benefit of the Debtors’ estates and stakeholders. In doing so, the Debtors and Evercore arranged for such parties to meet with management and provided such parties with additional data room access and opportunities to make diligence requests.

13. Following the approval of the proposed Bidding Procedures, the Debtors, with the aid of Evercore, will continue to market the Bid Assets to potential buyers, including, without limitation, those potential buyers approached by Evercore and/or expressing inbound interest earlier in the marketing process, by (a) engaging potential buyers and investors that may have an interest in bidding for the Bid Assets, (b) delivering updated materials to such interested parties, (c) providing access to a data room of confidential information on the Bid Assets to interested parties, and (d) providing customized information packets to potential purchasers as appropriate.

In this way, the Debtors, with the assistance of Evercore, intend to maximize the number of participants that may participate as buyers at the Auction and, thereby, maximize the value of the Bid Assets to be achieved through the sale process.

**The Reasonableness of the Bidding Procedures**

14. The proposed Bidding Procedures are designed to maximize the value received for the Bid Assets by facilitating a competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids within a time frame that will allow the Debtors to consummate a sale transaction prior to exhausting their liquidity. The Bidding Procedures provide for an orderly, uniform, and appropriately competitive process through which interested parties may submit offers to purchase the Bid Assets. Given the time constraints, the Debtors, with the assistance of Evercore and their other advisors, have structured the Bidding Procedures to promote active bidding by interested parties and to confirm the highest or otherwise best offer reasonably available for the Bid Assets. Additionally, the Bidding Procedures will allow the Debtors, with the assistance of Evercore and their other advisors, to conduct the Auction in a fair and transparent manner that will encourage participation by financially capable bidders with demonstrated ability to consummate a timely Sale Transaction. Finally, the Bidding Procedures also explicitly provide that any Successful Bid (even a credit bid) shall be subject to (a) the Debtors having sufficient cash at the consummation of a sale of all or substantially all the Bid Assets to satisfy the Wind-Down Budget to pay all allowed (i) post-petition claims, (ii) administrative expense and priority claims, and (iii) professional fees and expenses necessary to wind-down the Debtors' estates in a reasonable and appropriate timeline, and (b) the requirement that the net proceeds of any sale pursuant to the Bidding Procedures shall first satisfy the Wind-Down Budget before repayment of any DIP Obligations, Adequate

Protection Obligations, 507(b) Claims, Prepetition Secured Debt, or any other claims against the Debtors. As a result, the Debtors would have sufficient cash to administer the wind-down of the Debtors' estates subsequent to the closing of a Sale Transaction. At the closing of a Sale Transaction, the Debtors intend to deposit into a segregated account held by the Debtors an amount either (y) agreed to by the Required Lenders and the Debtors or (z) as otherwise determined by the Court. The Debtors shall not distribute any proceeds of the Sale Transaction prior to the funding of the Wind-Down Budget.

15. The proposed Bid Deadline requires bids for the purchase of the Bid Assets to be delivered no later than 6:00 p.m. (prevailing Eastern Time) on July 24, 2019 which will ensure that the Sale Transaction is completed in a timely manner. The Bid Deadline provides parties with sufficient time to obtain information and formulate and submit a timely and informed bid to purchase the Bid Assets, taking into account the time that a number of the most likely interested parties have already invested in due diligence earlier in the process.

16. As described above, the Bid Assets are being extensively marketed to a broad group of strategic and financial buyers and substantial information regarding the Debtors' businesses has been made available during the marketing process. Accordingly, numerous parties that may have an interest in bidding at the Auction have an existing base of knowledge and familiarity with the Bid Assets, and in many cases have already conducted significant due diligence that will assist them in formulating potential bids. Given the length and breadth of the Debtors' marketing process, it is my opinion that the proposed sale process is unlikely to have a negative impact on the Debtors' ability to achieve a value-maximizing transaction.

17. In addition, potential bidders will have access to updated information prepared by the Debtors and Evercore and a substantial body of information, inclusive of management

presentations, financial projections, and an extensive data room, including information gathered specifically based upon the due diligence requests of potential buyers.

18. Accordingly, based on the extensive marketing efforts of the Debtors and their advisors, including Evercore, and the level of preparedness at the outset of the marketing process, the time contained in the Bidding Procedures for the Debtors to further market the Bid Assets is reasonable.

19. In my opinion, there is a strong business justification for the sale of the Bid Assets pursuant to the proposed Bidding Procedures. The Bidding Procedures are designed to effect an orderly but expeditious sale of the Bid Assets, and the terms, conditions, and procedures set forth therein are fair and reasonable and will ensure that the Debtors will receive the highest or otherwise best offer for the Bid Assets.

**Selecting a Stalking Horse Bidder and Offering the Bid Protections**

20. The proposed Bidding Procedures contemplate, but do not require, the Debtors' selection of a Stalking Horse Bidder (or multiple Stalking Horse Bidders, to the extent such Stalking Horse Bids relate to particular lots of the Bid Assets, rather than all of the Bid Assets). It is my opinion that structuring the Bidding Procedures to allow the Debtors the flexibility to determine in the exercise of their business judgment (in consultation with the DIP Secured Parties and each of the Prepetition Agents) whether or not to select a Stalking Horse Bidder is the best way to maximize the value of the Debtors' estates.

21. If the Debtors select a Stalking Horse Bidder, the Bidding Procedures would authorize, but do not require, the Debtors to offer the Stalking Horse Bidder Bid Protections consisting of a Break-Up Fee, not to exceed three percent of the purchase price set forth in the Stalking Horse Bid, and Expense Reimbursement in an amount up to \$1,000,000 (subject to the

entry of a Stalking Horse Order). Furthermore, the Bidding Procedures require that, upon entry of a Stalking Horse Order, a Qualified Bid must provide consideration that is at least equal to the following: (a) the consideration set forth in the Stalking Horse Bid; *plus* (b) the aggregate amount of any Bid Protections set forth in the Stalking Horse Order; *plus* (c) \$1,000,000.

22. It is my opinion that the Bid Protections will enable the Debtors to secure an adequate floor for the Bid Assets and insist that competing bids be materially higher or otherwise better than the Stalking Horse Bid – a clear benefit to the Debtors’ estates. Moreover, it is likely that a prospective Stalking Horse Bidder would not agree to act as a stalking horse without the Bid Protections. Without the Court authorizing the Debtors to offer the Bid Protections, the Debtors might lose the opportunity to obtain the highest or otherwise best offer for the Bid Assets and would certainly lose the downside protection that could be afforded by the existence of a Stalking Horse Bidder.

#### **The Reasonableness of the Proposed Bid Protections**

23. The Break-Up Fee and Expense Reimbursement are reasonable and appropriate in light of the size and nature of the contemplated transaction and the efforts that will necessarily have been expended by a Stalking Horse Bidder (to the extent the Debtors’ choose a Qualified Bid to be a Stalking Horse Bid). Moreover, the Bid Protections, which will represent only a small percentage of any reasonable price that might be offered by a Stalking Horse Bidder, will only be offered to the extent that the Debtors believe, in the exercise of their business judgment, and consistent with their fiduciary duties, that offering these protections will enhance the ultimate recovery to be received by all stakeholders. Additionally, both the Break-Up Fee and the Expense Reimbursement will be subject to (a) consultation with the DIP Secured Parties and each of the Prepetition Agents and the negotiation and execution of a definitive agreement

between the Debtors and the Stalking Horse Bidder and (b) the process outlined in the Motion for obtaining entry of a Stalking Horse Order. In sum, the Debtors' ability to offer the Bid Protections will enable them to ensure the sale of the Bid Assets at a price they believe to be fair, while, at the same time, providing the Debtors with the potential to achieve an even greater benefit to the Debtors' estates in the form of a higher or otherwise better offer for the Bid Assets.

24. In light of these circumstances, the Break-Up Fee and Expense Reimbursement Amount are (a) commensurate to the real and substantial benefits that would be conferred upon the Debtors' estates by a Stalking Horse Bidder, (b) reasonable and appropriate in light of the size and nature of the proposed Sale Transaction and comparable transactions, and the efforts that would have to be expended by a Stalking Horse Bidder, and (c) necessary to induce a Qualified Bidder to agree to become a Stalking Horse Bidder.

25. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 22, 2019

/s/ Stephen Hannan  
Stephen Hannan  
Senior Managing Director  
Evercore Group L.L.C.

**Exhibit B**

**Bidding Procedures Order**

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

In re:	)	
	)	Chapter 11
SOUTHCROSS ENERGY PARTNERS, L.P.,	)	Case No. 19-10702 (MFW)
<i>et al.</i> ,	)	
	)	(Jointly Administered)
Debtors. <sup>1</sup>	)	
	)	

**ORDER (I) APPROVING BIDDING PROCEDURES FOR SALE OF DEBTORS’ ASSETS, (II) AUTHORIZING THE SELECTION OF A STALKING HORSE BIDDER, (III) APPROVING BID PROTECTIONS, (IV) SCHEDULING AUCTION FOR, AND HEARING TO APPROVE, SALE OF DEBTORS’ ASSETS, (V) APPROVING FORM AND MANNER OF NOTICES OF SALE, AUCTION AND SALE HEARING, (VI) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (VI) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of Southcross Energy Partners, L.P. (“**Southcross**”), Southcross Energy Partners GP, LLC, and Southcross’s wholly owned direct and indirect subsidiaries, each of which is a debtor and debtor in possession in the Chapter 11 Cases (collectively, the “**Debtors**”), for entry of an order, pursuant to sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014 and Local Rules

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<sup>1</sup> The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors’ mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Bidding Procedures, as applicable.



2002-1, 6004-1 and 9006-1, (i)(a) approving Bidding Procedures for the sale of the Debtors' assets, (b) authorizing the selection of a Stalking Horse Bidder, (c) approving Bid Protections, (d) scheduling an Auction for, and a hearing to approve, the sale of the Debtors' assets, (e) approving the Noticing Procedures, (f) approving Assumption and Assignment Procedures, and (g) granting related relief, and (ii)(a) approving the sale of the Debtors' assets free and clear of liens, claims, interests, and encumbrances, (b) authorizing the assumption and assignment of Contracts and Leases, and (c) granting related relief, in each case, as more fully described in the Motion; and the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the Hannan Declaration; and the Court having held a hearing on the Motion (the "**Bidding Procedures Hearing**"); and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

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

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings

of fact constitute conclusions of law, and to the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. The Debtors' proposed notice of the Motion, the Bidding Procedures, the Bidding Procedures Hearing, and the proposed entry of the Bidding Procedures Order is (i) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (ii) in compliance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and (iii) adequate and sufficient under the circumstances of the Chapter 11 Cases, and no other or further notice is required. A reasonable opportunity to object or be heard regarding the relief requested in the Motion (including, without limitation, with respect to the Bidding Procedures and Bid Protections) has been afforded to all interested persons and entities, including, but not limited to, the Notice Parties.

C. The Bidding Procedures in the form attached hereto as Exhibit 1 are fair, reasonable, and appropriate, are designed to maximize recoveries from a sale of the Bid Assets, and permit the Debtors to comply with their obligations under the DIP Credit Agreement and DIP Order (as each is defined in the Motion).

D. The Debtors have demonstrated a compelling and sound business justification for the Court to enter this Order and, thereby, (i) approve the Bidding Procedures, (ii) authorize the selection of a Stalking Horse Bidder (if any), under the terms and conditions set forth in the Bidding Procedures, (iii) authorize the Bid Protections, under the terms and conditions set forth in the Bidding Procedures and subject to the entry of the Stalking Horse Order, (iv) set the dates of the Bid Deadline, Auction (if needed), Sale Hearing, and other deadlines set forth in the Bidding Procedures, (v) approve the Noticing Procedures and the forms of notice, and (vi) approve the Assumption and Assignment Procedures and the forms of relevant notice. Such

compelling and sound business justification, which was set forth in the Motion and on the record at the Bidding Procedures Hearing, are incorporated herein by reference and, among other things, forms the basis for the findings of fact and conclusions of law set forth herein.

E. The Bid Protections, as approved by this Order, are fair and reasonable and provide a benefit to the Debtors' estates and stakeholders.

F. The payment of the Break-Up Fee and Expense Reimbursement, which constitute the Bid Protections, upon the terms and conditions set forth in the Bidding Procedures, and pursuant to the terms of a definitive agreement between the Debtors and such Stalking Horse Bidder reflective of the terms set forth in the Bidding Procedures (for the avoidance of doubt, subject to the entry of a Stalking Horse Order (as defined herein)), are (i) an actual and necessary cost of preserving the Debtors' estates, within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code, (ii) reasonably tailored to encourage, rather than hamper, bidding for the Bid Assets, by providing a baseline of value, increasing the likelihood of competitive bidding at the Auction, and facilitating participation of other bidders in the sale process, thereby increasing the likelihood that the Debtors will receive the best possible price and terms for the Bid Assets, (iii) of substantial benefit to the Debtors' estates and stakeholders and all parties in interest herein, (iv) reasonable and appropriate, (v) a material inducement for, and condition necessary to, the successful selection of, the reaching of a definitive agreement with, a Stalking Horse Bidder (if any) who will pursue its purchase of the Bid Assets, and (vi) reasonable in relation to the magnitude of effort that will be required of such Stalking Horse Bidder, the magnitude of the Sale Transaction, and the loss of opportunities such Stalking Horse Bidder would suffer as a result of the time spent pursuing the Sale Transaction. Without the Bid Protections, no Qualified Bidder would agree to become a Stalking Horse Bidder and remain obligated to consummate the

Sale Transaction (including, without limitation, the obligation to maintain its committed offer while such offer is subject to higher or better offers, as contemplated by the Bidding Procedures).

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

H. The form and manner of notice to be delivered pursuant to the Noticing Procedures and the Assumption and Assignment Procedures (including the Sale Notice attached hereto as Exhibit 2, the Potential Assumption and Assignment Notice attached hereto as Exhibit 3, and the Proposed Assumption and Assignment Notice attached hereto as Exhibit 4) are reasonably calculated to provide each Counterparty to the Potential Assumed Contracts and the Proposed Assumed Contracts with (i) proper notice of the potential assumption and assignment of such Potential Assumed Contracts and Proposed Assumed Contracts by the Successful Bidder(s) (including the Stalking Horse Bidder, if any) or any of their known proposed assignees (if different from the Successful Bidder), and (ii) the requirement that each such Counterparty assert any objection to the proposed Cure Costs or otherwise be barred from asserting claims arising from events occurring prior to the closing of the Sale Transaction or any later applicable effective date following assumption and assignment of such Proposed Assumed Contracts.

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The relief requested in the Motion is hereby granted as set forth herein.
2. Any objections to the Motion or the relief requested therein that have not been adjourned, withdrawn, or resolved are overruled in all respects on the merits.
3. The Bidding Procedures, in substantially the form attached hereto as Exhibit 1, are approved and fully incorporated into this Order and the Debtors are authorized, but not

directed, to act in accordance therewith. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provision.

4. Nothing herein shall prejudice the rights of the Debtors to seek by separate motion, in the exercise of their sound business judgment and fiduciary duties (in consultation with the DIP Secured Parties and each of the Prepetition Agents (each as defined in the DIP Order)), the authority to sell assets of the Debtors' estates (that do not constitute all or substantially all of the Debtors' assets) pursuant to section 363 of the Bankruptcy Code.

5. Subject to the entry of a Stalking Horse Order and final Court approval at the Sale Hearing, the Debtors are authorized, but not obligated, in an exercise of their business judgment (in consultation with the DIP Secured Parties and each of the Prepetition Agents), to agree with any Qualified Bidder(s) that such Qualified Bidder(s) shall be the Stalking Horse Bidder(s) and that the Debtors will enter into a definitive agreement with such Stalking Horse Bidder(s) in accordance with the terms and conditions set forth in the Bidding Procedures.

6. Subject to the entry of a Stalking Horse Order and final Court approval at the Sale Hearing, the Debtors are authorized to enter into a definitive agreement with the Stalking Horse Bidder for the Sale Transaction.

7. Bid Deadline. As further described in the Bidding Procedures, the Bid Deadline shall be at **6:00 p.m. (prevailing Eastern Time) on July 24, 2019.**

8. Auction. In the event the Debtors receive, on or before the Bid Deadline, one or more Qualified Bids (whether or not any Stalking Horse Bidder is selected), an Auction shall be conducted at the offices of Davis Polk & Wardwell LLP, 450 Lexington Ave., New York, New York 10017 at **10:00 a.m. (prevailing Eastern Time) on July 29, 2019** or such later time on

such day or such other place as the Debtors shall notify all Qualified Bidders (including the Stalking Horse Bidder, if any). The Debtors are authorized to conduct the Auction in accordance with the Bidding Procedures.

9. If (a) no Qualified Bids are submitted by the Bid Deadline other than a Stalking Horse Bid, (b) only one Qualified Bid which is not a Stalking Horse Bid is submitted by the Bid Deadline, or (c) only one or more Partial Bids are submitted by the Bid Deadline for non-overlapping lots of the Bid Assets, the Debtors may in their discretion (in consultation with the DIP Secured Parties and each of the Prepetition Agents) elect to cancel the Auction, seek approval of the transactions contemplated in the Stalking Horse Bid, the Qualified Bid which is not a Stalking Horse Bid, or the transactions in respect of the such Partial Bids at the Sale Hearing.

10. The form of Sale Notice attached hereto as Exhibit 2 is hereby approved.

11. As soon as reasonably practicable after entry of this Order, the Debtors shall serve the Sale Notice by first class or overnight mail upon the following: (a) the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”); (b) counsel for any official committee appointed in the Chapter 11 Cases; (c) counsel to each of the DIP Secured Parties; (d) counsel to each of the Prepetition Secured Parties; (e) Counterparties to Contracts and Leases; (f) the Internal Revenue Service; (g) all applicable state and local taxing authorities; (h) the Securities & Exchange Commission; (i) the U.S. Environmental Protection Agency; (j) the United States Attorney’s Office for the District of Delaware; (k) the United States Attorney General/Antitrust Division of the Department of Justice; (l) the offices of the attorneys general for the states in which the Debtors operate; (m) all potential buyers previously identified or solicited by the Debtors or their advisors and any additional parties who have previously

expressed an interest to the Debtors or their advisors in potentially acquiring the Debtors' assets;  
(n) all such other entities as may be required by applicable Bankruptcy Rules or Local Rules; and  
(o) all other known parties with any interest in the Bid Assets (collectively, the "**Sale Notice Parties**"). On or about the same date, the Debtors will publish the Sale Notice once in *The Wall Street Journal* national edition.

12. Service of the Sale Notice on the Sale Notice Parties in the manner described in this Order constitutes good and sufficient notice of the Auction and the Sale Hearing. No other or further notice is required.

13. Promptly after the conclusion of the Auction and the selection of the Successful Bid(s) and Alternate Bid(s), the Debtors shall file and post on the Case Information Website a notice identifying such Successful Bid(s) and Alternate Bid(s) with the Court.

14. Sale Objections. Objections to the relief sought in the Sale Order must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, (d) be filed with the Court no later than **4:00 p.m. (prevailing Eastern Time) on August 5, 2019** and (e) be served on (1) counsel for the Debtors, (x) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner, Darren S. Klein, Steven Z. Szanzer, and Benjamin M. Schak and (y) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney, Andrew R. Remming, Joseph C. Barsalona II, and Eric W. Moats; (2) counsel to Wells Fargo Bank, N.A., the administrative agent under Southcross's prepetition secured revolving credit facility, Vinson & Elkins LLP, Trammell Crow Center, 2001 Ross Avenue, Suite 3900, Dallas, TX 75201-2975, Attn: William Wallander, Bradley Foxman, and Matthew Pyeatt; (4) counsel to Wilmington Trust, N.A., the

administrative agent under Southcross's prepetition secured term loan facility and post-petition credit facility (x) Arnold & Porter Kaye Scholer LLP, 250 West 55th Street New York, NY 10019-9710, Attn: Alan Glantz and Arnold & Porter Kaye Scholer LLP 70 West Madison Street Suite 4200 Chicago, Illinois 60602-4231, Attn: Seth J. Kleinman and (y) Duane Morris LLP, 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801-1659, Attn: Christopher M. Winter; (5) counsel to the post-petition lenders and an ad hoc group of prepetition lenders, (x) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019-6099, Attn: Joseph G. Minias, Paul V. Shalhoub, and Debra C. McElligott and (y) Young Conaway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Edmon L. Morton and Matthew B. Lunn; (6) counsel for any official committee appointed in the Chapter 11 Cases; and (7) The U.S. Trustee 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801 (collectively, the "**Objection Notice Parties**").

15. Sale Hearing. The Sale Hearing shall be held in the United States Bankruptcy Court for the District of Delaware, Wilmington, Delaware 19801, on **August 12, 2019 at 11:00 a.m. (prevailing Eastern Time)** or such other date and time that the Court may later direct; provided, however, that the Sale Hearing may be adjourned by the Debtors (with the consent of the Required Lenders) by announcement of the adjournment in open court or on the Court's docket.

16. As soon as reasonably practicable after the completion of the Auction, the Debtors shall file a final form of order approving the Sale Transaction(s) as agreed upon between the Debtors (in consultation with the DIP Secured Parties and each of the Prepetition Agents) and the Successful Bidder(s).



17. Bid Protections. In accordance with the Bid Procedures, at any time on or before **July 17, 2019** the Debtors may enter into a definitive agreement with any Potential Bidder to designate such Potential Bidder as a Stalking Horse Bidder, subject to higher or otherwise better offers at the Auction. Pursuant to sections 105, 363, 364, 503, and 507 of the Bankruptcy Code, the Debtors are authorized to offer and pay the Break-Up Fee and Expense Reimbursement to a Stalking Horse Bidder (if any) in accordance with the terms and conditions set forth in the Bidding Procedures and a definitive agreement reached between the Debtors and such Stalking Horse Bidder consistent therewith (subject to the entry of a Stalking Horse Order and the Sale Order). The Break-Up Fee and Expense Reimbursement (if any) shall be allowed as administrative expense claims in the Chapter 11 Cases under sections 503(b), 507(a)(2), and 507(b) of the Bankruptcy Code. The Debtors' obligation to pay the Bid Protections shall be the joint and several obligations of the Debtors and shall survive termination of any definitive agreement reached between the Debtors and such Stalking Horse Bidder, dismissal or conversion of any of the Chapter 11 Cases, and confirmation of any plan of reorganization or liquidation.

18. The Debtors are authorized to exercise their business judgment to enter into a definitive agreement with a Stalking Horse Bidder providing for Bid Protections in an amount not exceeding, in the aggregate, three percent of the proposed purchase price for the Bid Asset (or lot thereof) *plus* an amount up to \$1,000,000 for reasonable and documented fees and expenses; *provided* that (a) the Debtors notify the Required Lenders, the U.S. Trustee, each of the Prepetition Agents, and the DIP Agent (as defined in the DIP Order) of the foregoing and (b) neither the Required Lenders nor the U.S. Trustee object to the submission of an order to the Court under certification of counsel that approves granting such Bid Protections to such Stalking Horse Bidder (the "**Stalking Horse Order**"). However, in the event that the Required Lenders

or the U.S. Trustee object to the Debtors' entry into such definitive agreement with a Stalking Horse Bidder, the proposed Bid Protections, or the form of Stalking Horse Order, the Debtors shall file a notice seeking an expedited hearing (the "**Stalking Horse Hearing**") on not less than five days' notice for the authorization to enter into such definitive agreement with the Stalking Horse Bidder and any Bid Protections included therein. All parties in interest will have the right at such Stalking Horse Hearing to object to the designation of the Stalking Horse Bidder, the provision of Bid Protections to such Stalking Horse Bidder, and the terms and conditions under which such Bid Protections would be payable to the Stalking Horse Bidder.

19. If the Court enters a Stalking Horse Order, the Debtors shall promptly serve it on each Potential Bidder. Further, until paid, any Break-Up Fee or Expense Reimbursement provided pursuant to the Stalking Horse Order shall constitute allowed superpriority administrative expense claims arising in the Chapter 11 Cases under sections 503(b), 507(a)(2), and 507(b) of the Bankruptcy Code; *provided, however*, that such superpriority claims shall be subject to the Carve-Out (as defined in the DIP Order) and the Wind-Down Budget, and shall in no circumstance be *pari passu* or senior to the claims granted to the DIP Secured Parties or the Prepetition Secured Parties.

20. To ensure the funding of the Chapter 11 cases, each bid (including a credit bid) shall be subject to (a) the Debtors having sufficient cash at the consummation of a sale of all or substantially all the Bid Assets to satisfy the reasonable wind-down budget negotiated in good faith (the "**Wind-Down Budget**") to pay all allowed (i) post-petition claims, (ii) administrative expense and priority claims, and (iii) professional fees and expenses necessary to wind-down the Debtors' estates in a reasonable and appropriate timeline, and (b) the requirement that the net proceeds of any sale pursuant to the Bidding Procedures shall first satisfy the Wind-Down

Budget before repayment of any DIP Obligations, Adequate Protection Obligations, 507(b) Claims, Prepetition Secured Debt, or any other claims against the Debtors. At the closing of a Sale Transaction, the Debtors shall deposit into a segregated account held by the Debtors an amount either (y) agreed to by the Required Lenders and the Debtors or (z) as otherwise determined by the Court. The Debtors shall not distribute any proceeds of the Sale Transaction prior to the funding of the Wind-Down Budget.

21. Assumption and Assignment Procedures. The assumption and assignment procedures set forth in the Motion (the “**Assumption and Assignment Procedures**”) are hereby approved.

22. As soon as reasonably practicable following entry of this Order, the Debtors shall file with the Court, and cause to be published on the Case Information Website, the Potential Assumption and Assignment Notice and a list of the Potential Assumed Contracts (the “**Potential Assumed Contracts Schedule**”) that specifies (a) each of the Contracts and Leases that potentially could be assumed and assigned in connection with the sale of the Bid Assets, including the name of each Counterparty and (b) the proposed Cure Cost with respect to each Potential Assumed Contract.

23. Potential Assumption and Assignment Notice. The Debtors shall, as soon as reasonably practicable after entry of this Order (but in any event, so as to provide sufficient notice such that any required responses from any Counterparties are due prior to the scheduled date of the Auction as specified in the Bidding Procedures), serve on each relevant Counterparty the Potential Assumption and Assignment Notice, which shall (a) identify the Potential Assumed Contracts, (b) list the Debtors’ good faith calculation of the Cure Costs with respect to the Potential Assumed Contracts identified on the Potential Assumption and Assignment Notice,

(c) expressly state that assumption or assignment of an Assumed Contract or Assumed Lease is not guaranteed and is subject to Court approval, (d) prominently display the deadline to file an Assumption and Assignment Objection (as hereinafter defined), and (e) prominently display the date, time, and location of the Sale Hearing. The Debtors shall serve on all parties requesting notice pursuant to Bankruptcy Rule 2002, via first class mail, a modified version of the Potential Assumption and Assignment Notice, without the Potential Assumed Contracts Schedule, which will include instructions regarding how to view the Potential Assumed Contracts Schedule on the Case Information Website.

24. Proposed Assumption and Assignment Notice. The Debtors shall, in conjunction with the filing of the Notice of Auction Results, file and serve on each relevant Counterparty the Proposed Assumption and Assignment Notice, which shall (a) identify the Proposed Assumed Contracts, (b) expressly state that assumption or assignment of an Assumed Contract or Assumed Lease is not guaranteed and is subject to Court approval, (c) prominently display the deadline to file an Assumption and Assignment Objection, and (d) prominently display the date, time, and location of the Sale Hearing. The Debtors shall serve on all parties requesting notice pursuant to Bankruptcy Rule 2002, via first class mail, a modified version of the Proposed Assumption and Assignment Notice, without the schedule of Proposed Assumed Contracts (the “**Proposed Assumed Contracts Schedule**”), which will include instructions regarding how to view the Proposed Assumed Contracts Schedule on the Case Information Website.

25. Objection Deadlines. Any Counterparty may object to the potential or proposed assumption or assignment of its Assumed Contract or Assumed Lease, the Debtors’ proposed Cure Costs, if any, or the ability of a Successful Bidder to provide adequate assurance of future performance (an “**Assumption and Assignment Objection**”). All Assumption and Assignment

Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Costs the Counterparty believes is required to cure defaults under the relevant Assumed Contract or Assumed Lease, (d) (1) for objections relating to proposed Cure Costs, be filed with the Court no later than **July 11, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the “**Cure Objection Deadline**”) and (2) for all other objections, **August 5, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the “**Assumption and Assignment Objection Deadline**”), and (e) be served on the Objection Notice Parties.

26. Resolution of Assumption and Assignment Objections. If a Counterparty files a timely Assumption and Assignment Objection, such objection shall be heard at the Sale Hearing or such later date that the Debtors, in consultation with the Successful Bidder, shall determine in their discretion (subject to the Court’s calendar). If such objection has not been resolved prior to the closing of the Sale Transaction (whether by an order of the Court or by agreement with the Counterparty), the Successful Bidder(s) may elect, in their sole and absolute discretion, one of the following options: (a) treat such Counterparty’s contract or lease as property excluded from the Bid Assets (an “**Excluded Contract**” or “**Excluded Lease**”, respectively); or (b) temporarily treat the Proposed Assumed Contract as an Excluded Contract or Excluded Lease, as applicable (a “**Designated Agreement**”), proceed to the closing of the Sale Transaction with respect to all other Bid Assets, and determine whether to treat the Designated Agreement as an Assumed Contract or Assumed Lease, as applicable, or an Excluded Contract or Excluded Lease, as applicable, within ten business days after resolution of such objection (whether by the Court’s order or by agreement of the Counterparty, the Debtors, and the Successful Bidder).

27. Failure To File Timely Assumption and Assignment Objection. If a Counterparty fails to file with the Court and serve on the Assumption and Assignment Objection Notice Parties a timely Assumption and Assignment Objection, the Counterparty shall be forever barred from asserting any such objection with regard to the assumption or assignment of its Assumed Contract or Assumed Lease. Notwithstanding anything to the contrary in the Assumed Contract or Assumed Lease, or any other document, the Cure Costs set forth in the Potential Assumption and Assignment Notice or the Supplemental Assumption and Assignment Notice (as defined below) shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Assumed Contract or Assumed Lease under section 365(b) of the Bankruptcy Code arising out of or related to any events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, due or to become due, accrued, absolute, contingent, or otherwise, and the Counterparty shall be forever barred from asserting any additional cure or other amounts with respect to such Assumed Contract or Assumed Lease against the Debtors, the Successful Bidder, or the property of any of them.

28. Modification of Potential Assumed Contracts Schedule or Proposed Assumed Contracts Schedule. In addition to a Successful Bidder's rights described above with respect to an Assumption and Assignment Objection, at or prior to the closing of the Sale Transaction, a Successful Bidder may elect, in its sole and absolute discretion, to (a) exclude any contract or lease on the Potential Assumed Contracts Schedule as an Assumed Contract or Assumed Lease, as applicable (in which case it shall become an Excluded Contract or Excluded Lease, as applicable), or (b) include on the Proposed Assumed Contracts Schedule any contract or lease

listed on the Potential Assumed Contracts Schedule, by providing to the Debtors written notice of its election to exclude or include such contract or lease, as applicable.

29. If the Debtors or any Successful Bidder identify during the pendency of the Chapter 11 Cases (before or after the closing of the Sale Transaction) any contract or lease that is not listed on the Proposed Assumed Contracts Schedule, and such contract or lease has not been rejected by the Debtors, the Successful Bidder may in its sole and absolute discretion elect by written notice to the Debtors to treat such contract or lease as an Assumed Contract or Assumed Lease, as applicable, and the Debtors shall seek to assume and assign such Assumed Contract or Assumed Lease in accordance with the Bidding Procedures.

30. Following the conclusion of the Auction, if any, and the selection of the Successful Bidder(s), the Debtors reserve the right, but only in accordance with the applicable Asset Purchase Agreement, or as otherwise agreed by the Debtors and the Successful Bidder(s), at any time before the closing of the Sale Transaction, to modify the previously-stated Cure Costs associated with any Proposed Assumed Contract.

31. In the event that any contract or lease is added to the Potential Assumed Contracts Schedule or Proposed Assumed Contracts Schedule or previously-stated Cure Costs are modified, in accordance with the applicable Asset Purchase Agreement, or the procedures set forth in this Motion, the Debtors will promptly serve a supplemental assumption and assignment notice, by first class mail, on the applicable Counterparty (each, a “**Supplemental Assumption and Assignment Notice**”). Each Supplemental Assumption and Assignment Notice will include the same information with respect to the applicable Assumed Contract or Assumed Lease as is required to be included in the Potential Assumption and Assignment Notice.

32. Any Counterparty listed on a Supplemental Assumption and Assignment Notice whose contract or lease is proposed to be assumed and assigned may object to the proposed assumption or assignment of its Assumed Contract or Assumed Lease, the Debtors' proposed Cure Costs (to the extent modified from the previously-stated amount), or the ability of a Successful Bidder to provide adequate assurance of future performance (a "**Supplemental Assumption and Assignment Objection**"). All Supplemental Assumption and Assignment Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Costs the Counterparty believes is required to cure defaults under the relevant Assumed Contract or Assumed Lease, (d) no later than **14 days from the date of service of such Supplemental Assumption and Assignment Notice**, (i) be filed with the Court and (ii) be served on the Assumption and Assignment Objection Notice Parties. Each Supplemental Assumption and Assignment Objection, if any, shall be resolved in the same manner as an Assumption and Assignment Objection.

33. Reservation of Rights. The inclusion of an Assumed Contract, Assumed Lease, or Cure Costs with respect thereto on a Potential Assumption and Assignment Notice, a Proposed Assumption and Assignment Notice, the Potential Assumed Contracts Schedule, the Proposed Assumed Contracts Schedule, or a Supplemental Assumption and Assignment Notice shall not constitute or be deemed a determination or admission by the Debtors, the Successful Bidder(s), or any other party in interest that such contract or lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code. The Debtors reserve all of their rights, claims, and causes of action with respect to each Assumed Contract and Assumed Lease listed on a Potential Assumption and Assignment Notice, Proposed Assumption and Assignment



Notice, Supplemental Assumption and Assignment Notice, the Potential Assumed Contracts Schedule, and the Proposed Assumed Contracts Schedule. The Debtors' inclusion of any Assumed Contract or Assumed Lease on the Potential Assumption and Assignment Notice, Proposed Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice, Potential Assumed Contracts Schedule, and/or Proposed Assumed Contracts Schedule shall not be a guarantee that such Assumed Contract or Assumed Lease ultimately will be assumed or assumed and assigned.

34. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

35. This Order shall be binding on the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

36. Any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(a), 6004(h), 6006(d), or 9014) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

37. The requirements of Bankruptcy Rule 6003 are satisfied by the contents of the Motion.

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

39. Proper, timely, adequate and sufficient notice of the Motion has been provided in accordance with and satisfaction of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules and no other or further notice of the Motion or the entry of this Order shall be required.

40. To the extent any provisions of this Order shall be inconsistent with the Motion, the terms of this Order shall control.

41. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or relating to the implementation, interpretation, or enforcement of this Order.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

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MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Proposed Bidding Procedures**

## **BIDDING PROCEDURES**

The bidding procedures set forth below (these “**Bidding Procedures**”) detail the process by which Southcross Energy Partners, L.P. (“**Southcross**”) and its affiliated debtors (collectively with Southcross, the “**Debtors**”) are authorized by the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) to conduct a sale of all or substantially all of the Debtors’ assets in one or more lots (collectively, the “**Bid Assets**”).<sup>1</sup>

**Any interested bidder should contact, as soon as practicable:**

### **EVERCORE GROUP L.L.C.<sup>2</sup>**

55 East 52<sup>nd</sup> Street

New York, NY 10055

Attn.: Robert A. Pacha, Stephen Hannan

Pacha@evercore.com

Hannan@evercore.com

(tel.) +1 (713) 403-2441

(tel.) +1 (212) 857-7423

These Bidding Procedures describe, among other things, (i) the Bid Assets offered for sale, (ii) the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined below), respectively, (iii) the conduct of the Auction (as defined below), if necessary, (iv) the selection of the Successful Bidder(s) (as defined below), (v) the process for seeking authorization for the selection of a Stalking Horse Bidder and Bid Protections (if any, each as defined below), and (vi) the approval by the Bankruptcy Court of the sale of the Bid Assets to the Successful Bidder(s).

## **1. PARTICIPATION REQUIREMENTS**

### **(a) Interested Parties**

Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the bidding process described herein (the “**Bidding Process**”), each interested person or entity (each, an “**Interested Party**”) must deliver the following items (unless previously delivered) to Evercore so as to be received no later than 5:00 p.m. (prevailing Eastern Time) on July 1, 2019:

- i. an executed confidentiality agreement in form and substance satisfactory to the Debtors;

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<sup>1</sup> These bidding procedures were approved by the Bankruptcy Court on [●], 2019 [D.I. [●]] (the “**Bidding Procedures Order**”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Order or the DIP Order (as defined below), as applicable.

<sup>2</sup> Evercore Group, L.L.C., in its capacity as financial advisor the Debtors, is referred to herein as “**Evercore**.”

- ii. a statement and other factual support demonstrating, to the Debtors' satisfaction, that the Interested Party has a *bona fide* interest in purchasing some or all of the Bid Assets;
- iii. a description of the nature and extent of any due diligence the Interested Party wishes to conduct and the date in advance of the Bid Deadline (as defined below) by which such due diligence will be completed; and
- iv. sufficient information, as defined by the Debtors, to allow the Debtors to determine that the Interested Party has the financial wherewithal and any required internal corporate, legal, or other authorizations to close a sale transaction pursuant to these Bidding Procedures, including, but not limited to, current audited financial statements of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in their discretion) or, if the Interested Party is an entity formed for the purpose of acquiring some or all of the Bid Assets, (A) current audited financial statements of the equity holder(s) (the "**Sponsor(s)**") of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in their discretion), (B) a written commitment acceptable to the Debtors and their advisors that the Sponsor(s) are responsible for the Interested Party's obligations in connection with the Bidding Process, and (C) copies of any documents evidencing any financing commitments necessary to consummate the transaction.

If the Debtors determine in their discretion (in consultation with the DIP Secured Parties (as defined below)), after receipt of the items identified above, that an Interested Party has a *bona fide* interest in purchasing some or all of the Bid Assets, such Interested Party will be deemed a "**Potential Bidder**" and the Debtors will deliver to such Potential Bidder access to the Debtors' confidential electronic data room concerning the Bid Assets (the "**Data Room**"), which shall include a form of Sale Order (as defined below).

**(b) Due Diligence**

Until the Bid Deadline, in addition to granting access to the Data Room, the Debtors will provide Potential Bidders with due diligence access and additional information, as may be requested by a Potential Bidder, to the extent that the Debtors determine, in their sole discretion, that such requests are reasonable and appropriate under the circumstances. All due diligence requests shall be directed to Evercore. The Debtors, with the assistance of Evercore, will coordinate all reasonable requests for additional information and due diligence access from Potential Bidders.

Unless otherwise determined by the Debtors, the availability of due diligence to a Potential Bidder will cease if (i) the Potential Bidder does not become a Qualified Bidder or (ii) the Bidding Process is terminated in accordance with its terms.

## 2. QUALIFIED BIDS

Each offer, solicitation, or proposal by a Potential Bidder must satisfy each of the following conditions in order for such offer, solicitation, or proposal to be deemed a “**Qualified Bid**” and for such Potential Bidder to be deemed a “**Qualified Bidder**,” unless any such conditions that are not satisfied are waived by the Debtors in their discretion (in consultation with the DIP Secured Parties and each of the Prepetition Agents (as defined in the DIP Order (as defined below))):

### (a) Bid Deadline

A Potential Bidder who desires to be deemed a Qualified Bidder must deliver to Evercore, with copies to Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 (Attn: Marshall S. Huebner, Darren S. Klein, Steven Z. Szanzer, and Benjamin M. Schak), the Required Bid Documents (as defined below) so as to be received no later than 6:00 p.m. (prevailing Eastern Time) on July 24, 2019 (the “**Bid Deadline**”). The Debtors, with the consent of the Required Lenders (unless otherwise specified, as defined in that Senior Secured Superpriority Priming Debtor-in-Possession Credit Agreement, dated as of April 3, 2019 (the “**DIP Credit Agreement**”)) and with notice to each of the Prepetition Agents and the DIP Agent (as defined below), but without the need for further Bankruptcy Court approval, may extend the Bid Deadline by a reasonable period of time if the Debtors and the Required Lenders believe that such extension would further the goal of attaining the highest or otherwise best offer for the Debtors’ assets. If the Debtors extend the Bid Deadline, the Debtors will promptly notify all Potential Bidders of such extension.

### (b) Bid Requirements

All bids must include the following items (collectively, the “**Required Bid Documents**”):

- a letter stating that the bidder’s offer is irrevocable until consummation of a transaction involving the Bid Assets (or lot thereof) identified in such offer;
- a duly authorized and executed purchase agreement satisfactory to the Debtors, based on the form purchase agreement provided by Evercore, marked to show any revisions, including, among other things, the purchase price for the Bid Assets (or lot thereof, as applicable), together with all exhibits and schedules, including, among other things, a proposed form of order approving the transaction(s) contemplated in such purchase agreement (such executed purchase agreement, an “**Asset Purchase Agreement**”);
- written evidence acceptable to the Debtors in their discretion (in consultation with the DIP Secured Parties)

demonstrating financial wherewithal, operational ability, and corporate authorization to consummate the proposed transaction; and

- written evidence of a firm commitment for financing to consummate the proposed transaction, or other evidence of ability to consummate the proposed transaction without financing, in either case which is satisfactory to the Debtors in their discretion (in consultation with the DIP Secured Parties).

A bid will be considered only if the bid:

- identifies the legal name of the purchaser (including any Sponsor(s), if the purchaser is an entity formed for the purpose of consummating the proposed transaction);
- identifies the Bid Assets (or lot thereof) to be purchased and the contracts and leases to be assumed;
- identifies the liabilities of the Debtors or the Bid Assets to be assumed;
- sets forth the consideration for the Bid Assets (or lot thereof) to be purchased and the Contracts and Leases to be assumed; *provided, however*, that, upon entry of a Stalking Horse Order, the consideration must be at least equal to the following: (i) the consideration set forth in the Stalking Horse Bid; *plus* (ii) the aggregate amount of any Bid Protections set forth in the Stalking Horse Order; *plus* (iii) \$1,000,000 (the “**Minimum Overbid**”);
- is not conditioned on (i) obtaining financing or (ii) the outcome of unperformed due diligence;
- includes a description of all governmental, licensing, regulatory, or other approvals or consents that are required to consummate the proposed transaction (including any antitrust approval related to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended), together with evidence satisfactory to the Debtors of the ability to obtain such approvals or consents in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such approvals or consents;

- is accompanied by a cash deposit by wire transfer to an escrow agent selected by the Debtors (the “**Deposit Agent**”) in an amount equal to ten percent of the consideration set forth in connection with such bid (any such deposit, a “**Good Faith Deposit**”);
- sets forth the representatives that are authorized to appear and act on behalf of the bidder in connection with the proposed transaction;
- indicates that the bidder will not seek any transaction or break-up fee, expense reimbursement, or similar type of payment (other than if such bid is selected to be a Stalking Horse Bid and subject to the provisions of Section 5 below);
- includes evidence of the bidder’s ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such bidder’s ability to perform in the future the contracts and leases proposed in its bid to be assumed by the Debtors and assigned to the bidder, in a form that will permit the Debtors to disseminate immediately such evidence to the non-Debtor counterparties to such contracts and leases; and
- is received on or before the Bid Deadline (as such deadline may be extended in accordance with these Bidding Procedures).

A bid received from a Potential Bidder will constitute a Qualified Bid only if it includes all of the Required Bid Documents and meets all of the above requirements (other than a credit bid described in Section 3 below). The Debtors shall have the right to deem a bid a Qualified Bid even if such bid does not conform to one or more of the requirements above or does not include one or more Required Bid Documents. If the Debtors receive a bid prior to the Bid Deadline that is not a Qualified Bid, the Debtors may provide the bidder with the opportunity to remedy any deficiencies following the Bid Deadline. If any bid is determined by the Debtors not to be a Qualified Bid, and the applicable bidder fails to remedy such bid in accordance with these Bidding Procedures, the Debtors shall promptly instruct the Deposit Agent to return such bidder’s Good Faith Deposit.

All Qualified Bids will be considered by the Debtors; bids other than Qualified Bids will not be considered. Notwithstanding any other provision of these Bidding Procedures, the Debtors may in their discretion (in consultation with the DIP Secured Parties and each of the Prepetition Agents) evaluate bids on any grounds, including, but not limited to, (i) the amount of the purchase price, including non-cash consideration, set forth in the bid, (ii) the value to be provided to the Debtors under the bid, including the net economic effect upon the Debtors’ estates (including, without limitation, the ability to fund the Wind-Down Budget (as defined



below)), (iii) any benefit to the Debtors' estates from any assumption of liabilities or waiver of liabilities, including the release or replacement of letters of credit, (iv) the transaction structure and execution risk, including conditions to and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approvals, (v) the anticipated timing to closing and whether such timing is consistent with the Debtors' adherence to the Approved Budget (as defined in the DIP Credit Agreement), (vi) the impact on employees and employee claims against the Debtors, (vii) the presence of any governmental, licensing, regulatory, or other approvals or consents in a bid, and the anticipated timing or likelihood of obtaining such approvals or consents, (viii) the impact on trade and other creditors, and (ix) any other factors the Debtors may reasonably deem relevant consistent with their fiduciary duties. For the avoidance of doubt, the presence of any governmental, licensing, regulatory, or other approvals or consents in a bid, and the anticipated timing or likelihood of obtaining such approvals or consents, may be grounds for the Debtors in their discretion (in consultation with the DIP Secured Parties and each of the Prepetition Agents) to determine that such bid (i) is not a Qualified Bid or (ii) is not higher or otherwise better than any other Qualified Bid.

By submission of its bid, each Qualified Bidder shall be deemed to acknowledge and represent that it (i) has had an opportunity to conduct any and all due diligence regarding the Bid Assets that are the subject of the Auction prior to making any such bids, (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the assets in making its bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Bid Assets (or lots thereof), or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures or, as to the Successful Bidder(s), the Asset Purchase Agreement(s) with such Successful Bidder(s). Without the written consent of the Debtors (in consultation with the DIP Secured Parties and each of the Prepetition Agents) a Qualified Bidder may not amend, modify, or withdraw its Qualified Bid, except for proposed amendments to increase the amount or otherwise improve the terms of its Qualified Bid, during the period that such Qualified Bid is required to remain irrevocable.

### **3. CREDIT BID**

Pursuant to section 363(k) of the Bankruptcy Code and subject to the terms and conditions set forth in the *Final Order, Pursuant to 11 U.S.C. Sections 105, 361, 362, 363, 364, 503, 506, and 507, (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Post-Petition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief* [D.I. 200] (the "**DIP Order**") (a) the DIP Agent (as defined in the DIP Order), on behalf of the DIP Secured Parties (as defined in the DIP Order), but solely at the prior written direction of the Required Lenders, shall have the right to credit bid up to the full amount of the DIP Obligations in any bulk or piecemeal sale of all, or any portion of, the Bid Assets constituting DIP Collateral, and (b) (i) the Prepetition Term Agent (as defined in the DIP Order), on behalf of the Prepetition Secured Parties (as defined in the DIP Order), but solely at the prior written direction of the Required Lenders (as defined in the Prepetition Term Loan Credit Agreement (as defined in the DIP Order)), and (ii) the Prepetition

Revolving Agent, on behalf of and as directed by the Prepetition Revolving Secured Parties (as defined in the DIP Order), in each case, shall have the right to credit bid, subject to the Intercreditor Agreement (as defined in the DIP Order), up to the full amount of the applicable Prepetition Secured Debt (as defined in the DIP Order) in any bulk or piecemeal sale of all, or any portion of, the Bid Assets constituting Prepetition Collateral (as defined in the DIP Order). If the DIP Agent and/or any of the Prepetition Agents, as applicable, submit a credit bid in accordance with the foregoing, and such bid is received by the Bid Deadline, such bidder shall be deemed to be a Qualified Bidder and any such credit bid shall be deemed to be a Qualified Bid.

#### 4. WIND-DOWN BUDGET

Notwithstanding anything contained in these Bidding Procedures, any bid (including a credit bid) shall be subject to (a) the Debtors having sufficient cash at the consummation of a sale of all or substantially all the Bid Assets to satisfy the reasonable wind-down budget negotiated in good faith (the “**Wind-Down Budget**”) to pay all allowed (i) post-petition claims, (ii) administrative expense and priority claims, and (iii) professional fees and expenses necessary to wind-down the Debtors’ estates in a reasonable and appropriate timeline, and (b) the requirement that the net proceeds of any sale pursuant to these Bidding Procedures shall first satisfy the Wind-Down Budget before repayment of any DIP Obligations, Adequate Protection Obligations, 507(b) Claims, Prepetition Secured Debt, or any other claims against the Debtors. At the closing of a Sale Transaction, the Debtors shall deposit into a segregated account held by the Debtors an amount either (y) agreed to by the Required Lenders and the Debtors or (z) as otherwise determined by the Court. The Debtors shall not distribute any proceeds of the Sale Transaction prior to the funding of the Wind-Down Budget.

#### 5. STALKING HORSE BIDDER AND BID PROTECTIONS

The Debtors are authorized, but not obligated, to exercise their business judgment (in consultation with the DIP Secured Parties and each of the Prepetition Agents), subject to the entry of a Stalking Horse Order (as defined below), to agree with any Qualified Bidder that (a) such Qualified Bidder’s Qualified Bid shall serve as the minimum bid for the Bid Assets or any lot thereof (such Qualified Bidder, a “**Stalking Horse Bidder**” and, such Qualified Bid, a “**Stalking Horse Bid**”) and (b) the Debtors will enter into the transaction(s) contemplated in such Stalking Horse Bid unless a higher or otherwise better Qualified Bid is submitted with respect to such Bid Assets or lot thereof, as determined by the Debtors (in consultation with the DIP Secured Parties) in accordance with the Bidding Procedures. In order to incentivize prospective purchasers to agree to become a Stalking Horse Bidder, the Debtors are authorized, but not obligated, to exercise their business judgment (in consultation with the DIP Secured Parties and each of the Prepetition Agents) to offer the following bid protections to such Stalking Horse Bidder(s), payable if the Debtors consummate a sale pursuant to a Qualified Bid other than the Stalking Horse Bid (if the assets subject to such sale include those to which such Stalking Horse Bid relates): (a) payment of a break-up fee in an amount not to exceed three percent of the purchase price set forth in the Stalking Horse Bid (the “**Break-Up Fee**”) and (b) reimbursement of the reasonable and documented fees and expenses of the Stalking Horse Bidder (the “**Expense Reimbursement**” and, together with the Break-Up Fee, the “**Bid Protections**”) in an amount up to \$1,000,000; *provided, however*, that (i) the payment of such Break-Up Fee and/or Expense Reimbursement shall be subject to the terms and conditions of the definitive agreement(s)

executed between the Debtors and such Stalking Horse Bidder(s), (ii) any Breakup Fee or Expense Reimbursement will not be binding on the Debtors until entry of the Stalking Horse Order (as defined below) and the Sale Order, and (iii) no Break-Up Fee shall be paid to a credit bidder or insider of the Debtors. For the avoidance of doubt, the Debtors will provide Expense Reimbursement only to the Stalking Horse Bidder(s) and such expenses must be reasonable, documented, and subject to review by the Debtors. To the extent payable, any Bid Protections would be paid out of the proceeds of the sale to which they relate.

The Debtors are authorized to exercise their business judgment to enter into a definitive agreement with a Stalking Horse Bidder providing for Bid Protections in an amount not exceeding, in the aggregate, three percent of the proposed purchase price for the Bid Assets (or lot thereof) plus an amount up to \$1,000,000 for reasonable and documented fees and expenses; *provided* that (a) the Debtors notify the Required Lenders, the U.S. Trustee, each of the Prepetition Agents, and the DIP Agent of the foregoing and (b) neither the Required Lenders nor the U.S. Trustee object to the submission of an order to the Court under certification of counsel that approves entry into such definitive agreement and granting such Bid Protections to such Stalking Horse Bidder (the “**Stalking Horse Order**”). However, in the event that the Required Lenders or the U.S. Trustee object to the Debtors’ entry into such definitive agreement with a Stalking Horse Bidder, the proposed Bid Protections, or the form of Stalking Horse Order, the Debtors shall file a notice seeking an expedited hearing (the “**Stalking Horse Hearing**”) on not less than five days’ notice for the authorization to enter into such definitive agreement with the Stalking Horse Bidder and any Bid Protections included therein. All parties in interest will have the right at such Stalking Horse Hearing to object to the designation of the Stalking Horse Bidder, the provision of Bid Protections to such Stalking Horse Bidder, and the terms and conditions under which such Bid Protections would be payable to the Stalking Horse Bidder.

If the Court enters a Stalking Horse Order, the Debtors propose to promptly serve it on each Potential Bidder. Further, until paid, any Break-Up Fee or Expense Reimbursement provided pursuant to the Stalking Horse Order shall constitute allowed superpriority administrative expense claims arising in the Chapter 11 Cases under sections 503(b), 507(a)(2), and 507(b) of the Bankruptcy Code; *provided, however*, that such superpriority claims shall be subject to the Carve-Out (as defined in the DIP Order) and the Wind-Down Budget, and shall in no circumstance be *pari passu* or senior to the claims granted to the DIP Secured Parties or the Prepetition Secured Parties.

## 6. AUCTION

In the event that the Debtors timely receive more than one Qualified Bid, the Debtors shall conduct an auction (the “**Auction**”) for the Bid Assets. The Auction shall be in accordance with these Bidding Procedures and upon notice to all Qualified Bidders that have submitted Qualified Bids. The Auction shall be conducted at the offices of Davis Polk & Wardwell LLP, 450 Lexington Ave., New York, New York 10017 on July 29, 2019 at 10:00 a.m. (prevailing Eastern Time) or such later time on such day or such other place as the Debtors shall notify all Qualified Bidders (including the Stalking Horse Bidder, if any). If (a) no Qualified Bids are submitted by the Bid Deadline other than a Stalking Horse Bid, (b) only one Qualified Bid that is not a Stalking Horse Bid is submitted by the Bid Deadline, or (c) only one or more Partial Bids (as defined below) are submitted by the Bid Deadline for non-overlapping lots of the Bid Assets,

the Debtors may in their discretion (in consultation with the DIP Secured Parties and each of the Prepetition Agents) elect to cancel the Auction, seek approval of the transactions contemplated in the Stalking Horse Bid, the Qualified Bid which is not a Stalking Horse Bid, or the transactions in respect of the such Partial Bids at the Sale Hearing (as defined below).

If any of the Qualified Bids submitted by the Bid Deadline are structured as a purchase of less than all or substantially all of the Debtors' assets (each such bid, a "**Partial Bid**"), the Debtors may conduct separate auctions at the Auction for each lot of assets (each, an "**Auction Lot**") subject to a Partial Bid. The Debtors may designate each Auction Lot at any time prior to the Auction.

Only representatives or agents of the Debtors, the DIP Secured Parties, the Prepetition Secured Parties, and Qualified Bidders (and the legal and financial advisors to each of the foregoing) will be entitled to attend the Auction, and only Qualified Bidders will be entitled to make any Subsequent Bids at the Auction. Each Qualified Bidder participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or the sale of any of the Bid Assets as described herein, (b) has reviewed, understands, and accepts these Bidding Procedures, (c) has consented to the jurisdiction of the Bankruptcy Court, and (d) intends to consummate its Qualified Bid if it is selected as the Successful Bid.

At least one day prior to the Auction, the Debtors will (a) notify each Qualified Bidder that has timely submitted a Qualified Bid that its bid is a Qualified Bid and (b) provide all Qualified Bidders with (i) copies of the Qualified Bid or combination of Qualified Bids that the Debtors believe is the highest or otherwise best offer (the "**Starting Bid**"), (ii) an explanation of how the Debtors value the Starting Bid, and (iii) a list identifying all of the Qualified Bidders and their respective Qualified Bids.

The Debtors may (in consultation with the DIP Secured Parties) employ and announce at the Auction additional procedural rules for conducting the Auction (*e.g.*, the amount of time allotted to submit Subsequent Bids), *provided, however*, that such rules shall (a) not be inconsistent with the Bankruptcy Code, the Bidding Procedures Order, or any other order of the Bankruptcy Court entered in connection herewith and (b) be disclosed to all Qualified Bidders.

Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding in the presence of all parties at the Auction, so long as during each round at least one subsequent bid (a "**Subsequent Bid**") is submitted by a Qualified Bidder that (a) improves upon such Qualified Bidder's immediately prior Qualified Bid and (b) the Debtors determine in their discretion (in consultation with the DIP Secured Parties and each of the Prepetition Agents) that such Subsequent Bid is (i) with respect to the first round, a higher or otherwise better offer than the Starting Bid and (ii) with respect to subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below), in each case taking into account other Qualified Bids for other Bid Assets; *provided, however*, that with respect to the first round, if a Stalking Horse Bidder has been authorized pursuant to a Stalking Horse Order, any Qualified Bid must provide consideration at least equal to the Minimum Overbid. In each subsequent round after the first round, the Debtors in their discretion (in consultation with the DIP Secured Parties and each of the Prepetition Agents) may determine appropriate minimum bid increments or requirements for each round of bidding.

After the first round of bidding and between each subsequent round of bidding, as applicable, the Debtors will determine in their discretion (in consultation with the DIP Secured Parties and each of the Prepetition Agents) and announce the bid or bids that they believe to be the highest or otherwise best offer or combination of offers (the “**Leading Bid**”). Additional consideration in excess of the amount set forth in the Starting Bid may include cash and/or non-cash consideration; *provided, however*, that the value for such non-cash consideration shall be determined by the Debtors in their discretion (in consultation with the DIP Secured Parties).

A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge and written confirmation of the Leading Bid.

For the purpose of evaluating Subsequent Bids, the Debtors may require a Qualified Bidder submitting a Subsequent Bid to submit, as part of its Subsequent Bid, additional evidence (in the form of financial disclosure or credit-quality support information or enhancement acceptable to the Debtors in their discretion (in consultation with the DIP Secured Parties) demonstrating such Qualified Bidder’s ability to close the proposed transaction.

The Debtors shall maintain a transcript of all bids made and announced at the Auction, including the Starting Bid(s), all Subsequent Bid(s), the Leading Bid(s), the Alternative Bid(s) (as defined below), and the Successful Bid(s).

If a Qualified Bidder increases its bid at the Auction and is the Successful Bidder or Alternate Bidder (as defined below), such bidder must increase its Good Faith Deposit to an amount equal to ten percent of the proposed purchase price submitted at the Auction within two days after the Auction.

## **7. SELECTION OF SUCCESSFUL BID(S) AND ALTERNATE BID(S)**

Prior to the conclusion of the Auction, the Debtors shall (in consultation with the DIP Secured Parties and each of the Prepetition Agents) (a) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale transaction, (b) determine and identify the highest or otherwise best offer or collection of offers (the “**Successful Bid(s)**”), (c) determine and identify the next highest or otherwise best offer or collection of offers (the “**Alternate Bid(s)**”), and (d) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of (i) the identity of the party or parties that submitted the Successful Bid(s) (the “**Successful Bidder(s)**”), (ii) the amount and other material terms of the Successful Bid(s), (iii) the identity of the party or parties that submitted the Alternate Bid(s) (the “**Alternate Bidder(s)**”), and (iv) the amount and other material terms of the Alternate Bid(s). Each Qualified Bidder shall agree and be deemed to agree to be the Alternate Bidder if so designated. Notwithstanding anything in the Bidding Procedures to the contrary, any Qualified Bid submitted by the DIP Agent or the Prepetition Term Agent shall not be required to serve as an Alternate Bid absent consent of the DIP Agent or Prepetition Term Agent (as applicable). As soon as reasonably practicable after the completion of the Auction, the Successful Bidder(s) and the applicable Debtors shall complete and execute all agreements, instruments, and other documents necessary to consummate the applicable sale or other

transaction(s) contemplated by the applicable Successful Bid(s). Promptly following the selection of the Successful Bid(s) and Alternate Bid(s), the Debtors shall file a notice of the Successful Bid(s) and Alternate Bid(s) with the Bankruptcy Court, together with a proposed order approving the transaction(s) contemplated therein (the “**Sale Order**”).

## **8. THE SALE HEARING**

The hearing to consider the proposed Sale Order (the “**Sale Hearing**”) will be held on August 12, 2019 at: 11:00 a.m. (prevailing Eastern time) before the Honorable Judge Mary F. Walrath, in the United States Bankruptcy Court for the District of Delaware, 824 N. Market St., Wilmington, Delaware 19801. The Sale Hearing may be adjourned by the Debtors (with the consent of the Required Lenders) by an announcement of the adjourned date at a hearing before the Bankruptcy Court or by filing a notice on the Bankruptcy Court’s docket. At the Sale Hearing, the Debtors will seek the Bankruptcy Court’s approval of the Successful Bid(s) and, at the Debtors’ election (in consultation with the DIP Secured Parties and each of the Prepetition Agents), the Alternate Bid(s).

The Debtors’ presentation to the Bankruptcy Court of the Successful Bid(s) and Alternate Bid(s) will not constitute the Debtors’ acceptance of such bid(s), which acceptance will only occur upon approval of such bid(s) by the Bankruptcy Court. Following the Bankruptcy Court’s entry of the Sale Order, the Debtors and the Successful Bidder(s) shall proceed to consummate the transaction(s) contemplated by the Successful Bid(s). If the Debtors and the Successful Bidder(s) fail to consummate the proposed transaction(s), then the Debtors shall file a notice with the Bankruptcy Court advising of such failure. Upon the filing of such notice with the Bankruptcy Court, the Alternate Bid(s) will be deemed to be the Successful Bid(s) and the Debtors will be authorized, but not directed, to effectuate the transaction(s) with the Alternate Bidder(s) subject to the terms of the Alternate Bid(s) of such Alternate Bidder(s) without further order of the Bankruptcy Court. If the failure to consummate the transaction(s) contemplated by the Successful Bid(s) is the result of a breach by the Successful Bidder(s) (the “**Breaching Bidder(s)**”) of its (their) Asset Purchase Agreement(s), the Debtors reserve the right to seek all available remedies from such Breaching Bidder(s), subject to the terms of the applicable Asset Purchase Agreement.

## **9. RETURN OF GOOD FAITH DEPOSIT**

The Good Faith Deposits of all Qualified Bidders will be held in escrow by the Deposit Agent and will not become property of the Debtors’ bankruptcy estates unless released from escrow pursuant to terms of the applicable escrow agreement or pursuant to further order of the Bankruptcy Court. The Deposit Agent will retain the Good Faith Deposits of the Successful Bidder(s) and the Alternate Bidder(s) until the consummation of the transaction(s) contemplated by the Successful Bid(s) or the Alternate Bid(s), as applicable, in accordance with Section 7 above, except as otherwise ordered by the Bankruptcy Court. The Good Faith Deposits (and all interest accrued thereon) of the other Qualified Bidders will be returned within four business days after the entry of the Sale Order. At the closing of the transaction contemplated by the Successful Bid(s), the Successful Bidder(s) will receive a credit in the amount of its Good Faith Deposit (plus all interest accrued thereon). All remaining Good Faith Deposits (and all interest accrued thereon) held by the Deposit Agent will be released by the Deposit Agent four business

days after the consummation of the transaction(s) contemplated by the Successful Bid(s); provided, however, that the Deposit Agent will retain the Good Faith Deposit of a Breaching Bidder pending a ruling by the Bankruptcy Court as to the amount of damages owed, if any, by such Breaching Bidder to the Debtors.

**10. AS IS, WHERE IS**

The sale of the Bid Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by the Debtors, their agents, or their estates, except as provided in an Asset Purchase Agreement, as approved by the Bankruptcy Court.

**11. FREE AND CLEAR OF ANY AND ALL INTERESTS**

Except as otherwise provided in a Successful Bidder(s)’s Asset Purchase Agreement, all of the Debtors’ right, title and interest in and to the Bid Assets subject thereto shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon (collectively, the “**Interests**”) to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Bid Assets with the same validity and priority as such Interests applied against the Bid Assets.

**12. RESERVATION OF RIGHTS OF THE DEBTORS**

Except as otherwise provided in these Bidding Procedures or the Bidding Procedures Order, the Debtors reserve the right in their discretion (in consultation with the DIP Secured Parties and each of the Prepetition Agents) to:

- determine which Interested Parties are Potential Bidders;
- determine which bidders are Qualified Bidders;
- determine which bids are Qualified Bids;
- determine which Qualified Bid is the Starting Bid;
- determine which Qualified Bid is the highest or otherwise best offer for the Bid Assets and which is the next highest or otherwise best offer;
- reject any bid that the Debtors deem to be (a) inadequate or insufficient, (b) not in conformity with the requirements of these Bidding Procedures or the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules, or (c) contrary to the best interests of the Debtors and their estates;
- impose additional terms and conditions with respect to all Potential Bidders;

- designate a Stalking Horse Bidder;
- cancel the Auction;
- extend the deadlines set forth herein; and
- modify these Bidding Procedures and implement additional procedural rules that the Debtors determine, in their discretion (in consultation with the DIP Secured Parties), will better promote the goals of the Bidding Process and discharge the Debtors' fiduciary duties.

Nothing in these Bidding Procedures shall require the Debtors' board of directors to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent that the Debtors' board of directors determines, or based on the advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary duties under applicable law.

### **13. RELEVANT DATES**

<b>June 12, 2019 at 11:00 a.m.</b>	Hearing to consider approval of the Bidding Procedures and entry of the Bidding Procedures Order
<b>June 14, 2019</b>	Target date for the Debtors to file Potential Assumed Contracts Schedule
<b>July 1, 2019 at 5:00 p.m. (prevailing Eastern Time)</b>	Potential Bidder deadline
<b>July 11, 2019 at 4:00 p.m. (prevailing Eastern Time)</b>	Cure Objection Deadline
<b>July 17, 2019</b>	Deadline to designate Stalking Horse Bidder(s) (if any)
<b>July 24, 2019 at 6:00 p.m. (prevailing Eastern Time)</b>	Bid Deadline
<b>On or before July 26, 2019</b>	Target date for the Debtors to notify Potential Bidders of their status as Qualified Bidders
<b>July 29, 2019 at 10:00 a.m. (prevailing Eastern Time)</b>	Auction to be held at the offices of Davis Polk & Wardwell LLP (if necessary)
<b>On or before July 31, 2019</b>	Target date for the Debtors to file with the Court the Notice of Auction Results
<b>August 5, 2019 at 4:00 p.m. (prevailing Eastern Time)</b>	Deadline to object to the Sale Transaction to the Successful Bidder; and the Assumption and Assignment Objection Deadline
<b>August 12, 2019 at 11:00 a.m. (prevailing Eastern Time)</b>	Hearing to consider approval of the Sale Transaction(s) and entry of the Sale Order(s)



**Exhibit 2**

**Form of Sale Notice**

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

	)	
In re:	)	Chapter 11
	)	
SOUTHCROSS ENERGY PARTNERS, L.P.,	)	Case No. 19-10702 (MFW)
<i>et al.</i> ,	)	
	)	(Jointly Administered)
Debtors. <sup>1</sup>	)	
	)	

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

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “**Court**”) on April 1, 2019.

**PLEASE TAKE FURTHER NOTICE** that, on May 22, 2019 the Debtors filed a motion (the “**Bidding Procedures Motion**”) <sup>2</sup> with the Court seeking entry of orders, among other things, approving (a) procedures for the solicitation of bids in connection with the proposed sale (the “**Sale Transaction**”) of all or substantially all of the Debtors’ assets (collectively, the “**Bid Assets**”), subject to an auction process (the “**Auction**”) that may include the selection of one or more stalking horse bidders (the “**Stalking Horse Bidder(s)**”), (b) the form and manner of notice related to the Sale Transaction, and (c) procedures for the assumption and assignment of contracts and leases in connection with the Sale Transaction.

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<sup>1</sup> The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors’ mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.

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

**PLEASE TAKE FURTHER NOTICE** that, on [●], 2019 the Court entered an order (the “**Bidding Procedures Order**”) approving, among other things, the Bidding Procedures, which establish the key dates and times related to the Sale Transaction and the Auction. All parties interested in bidding should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.<sup>3</sup>

**Contact Persons for Parties Interest in Submitting a Bid**

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

**Any interested bidder should contact, as soon as practicable:**

**EVERCORE GROUP L.L.C.<sup>4</sup>**

55 East 52<sup>nd</sup> Street

New York, NY 10055

Attn.: Robert A. Pacha, Stephen Hannan

Pacha@evercore.com

Hannan@evercore.com

(tel.) +1 (713) 403-2441

(tel.) +1 (212) 857-7423

**Obtaining Additional Information**

Copies of the Bidding Procedures Motion and the Bidding Procedures Order, as well as all related exhibits (including the Bidding Procedures) and all other documents filed with the Court, are available free of charge on the Debtors’ case information website, located at <http://www.kccllc.net/southcrossenergy> or can be requested by email at [SouthcrossInfo@kccllc.com](mailto:SouthcrossInfo@kccllc.com).

**Important Dates and Deadlines<sup>5</sup>**

1. **Potential Bidder Deadline.** The deadline for interested parties to furnish information to Evercore to be considered a Potential Bidder in accordance with the Bidding Procedures is **July 1, 2019 at 5:00 p.m. (prevailing Eastern Time)**.

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

<sup>4</sup> Evercore Group L.L.C., in its capacity as financial advisor the Debtors, is referred to herein as “**Evercore**.”

<sup>5</sup> The following dates and deadlines may be extended by the Debtors or the Court pursuant to the terms of the Bidding Procedures and the Bidding Procedures Order.

2. **Bid Deadline.** The deadline to submit a Qualified Bid is **July 24, 2019 at 6:00 p.m. (prevailing Eastern Time)**.
3. **Auction.** In the event that the Debtors timely receive more than one Qualified Bid (whether or not there is a Stalking Horse Bid), and subject to the satisfaction of any further conditions set forth in the Bidding Procedures, the Debtors intend to conduct an Auction for the Bid Assets. The Auction, if one is held, will commence on **July 29, 2019 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017.
4. **Auction and Sale Objections Deadline.** The deadline to file an objection with the Court to the Sale Order, the conduct of the Auction, or the Sale Transaction (including objections relating to the Stalking Horse Bidder(s), if any) (collectively, the “**Sale Objections**”) is **August 5, 2019 at 4:00 pm. (prevailing Eastern Time)** (the “**Sale Objection Deadline**”).
5. **Sale Hearing.** A hearing (the “**Sale Hearing**”) to consider the proposed Sale Transaction will be held before the Court on, **August 12, 2019 at 11:00 a.m. (prevailing Eastern Time)** or such other date as determined by the Court, at 824 North Market Street, Wilmington, Delaware 19801.

#### **Filing Objections**

Sale Objections, if any, must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (d) be filed with the Court no later than the Sale Objection Deadline, and (e) no later than the Sale Objection deadline, be served on (1) counsel for the Debtors, (A) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner, Darren S. Klein, Steven Z. Szanzer, and Benjamin M. Schak and (B) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney, Andrew R. Remming, Joseph C. Barsalona II, and Eric W. Moats; (2) counsel to Wells Fargo Bank, N.A., the administrative agent under Southcross’s prepetition secured revolving credit facility, Vinson & Elkins LLP, Trammell Crow Center, 2001 Ross Avenue, Suite 3900, Dallas, Texas 75201-2975, Attn: William Wallander, Bradley Foxman, and Matthew Pyeatt; (3) counsel to Wilmington Trust, N.A., the administrative agent under Southcross’s prepetition secured term loan facility and post-petition credit facility (A) Arnold & Porter Kaye Scholer LLP, 250 West 55th Street New York, New York 10019-9710, Attn: Alan Glantz and Arnold & Porter Kaye Scholer LLP 70 West Madison Street Suite 4200 Chicago, Illinois 60602-4231, Attn: Seth J. Kleinman and (B) Duane Morris LLP, 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801-1659, Attn: Christopher M. Winter; (4) counsel to the post-petition lenders and an ad hoc group of prepetition lenders, (A) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019-6099, Attn: Joseph G. Minias, Paul V. Shalhoub, and Debra C. McElligott and (B) Young Conaway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Edmon L. Morton and Matthew B. Lunn; (5) counsel for any official committee appointed in the Chapter 11 Cases; and (6) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801.

**CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION**

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

**NO SUCCESSOR LIABILITY**

*The Debtors provide midstream services to natural gas producers and customers, including natural gas gathering, processing, treatment, and compression and access to natural gas liquid (“NGL”) fractionation and transportation services and also purchase and sell natural gas and NGLs. For more information on the Debtors’ businesses or their products, refer to the Declaration of Michael B. Howe in Support of Debtors’ Chapter 11 Proceedings and First Day Pleadings [D.I. 2] (the “Howe Declaration”). The Sale Transaction will be free and clear of, among other things, any claim arising from any conduct of the Debtors prior to the closing of the Sale Transaction, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent, or otherwise, so long as such claim arises out of or relates to events occurring prior to the closing of the Sale Transaction. Accordingly, as a result of the Sale Transaction, the Successful Bidder (whether or not a Stalking Horse Bidder) will not be a successor to any of the Debtors by reason of any theory of law or equity, and will have no liability, except as expressly provided in a definitive agreement reached between the Debtors and Successful Bidder approved by the Court, for any liens, claims, encumbrances, and other interests against or in any of the Debtors under any theory of law, including successor liability theories.*

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Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

Respectfully submitted,  
MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ DRAFT

Robert J. Dehney (No. 3578)  
Andrew R. Remming (No. 5120)  
Joseph C. Barsalona II (No. 6102)  
Eric W. Moats (No. 6441)  
1201 North Market Street, 16th Floor  
P.O. Box 1347  
Wilmington, Delaware 19899-1347  
Tel.: (302) 658-9200  
Fax: (302) 658-3989  
rdehney@mnat.com  
aremming@mnat.com  
jbarsalona@mnat.com  
emoats@mnat.com

-and-

DAVIS POLK & WARDWELL LLP

Marshall S. Huebner (admitted *pro hac vice*)  
Darren S. Klein (admitted *pro hac vice*)  
Steven Z. Szanzer (admitted *pro hac vice*)  
Benjamin M. Schak (admitted *pro hac vice*)  
450 Lexington Avenue  
New York, New York 10017  
Tel.: (212) 450-4000  
Fax: (212) 701-5800  
marshall.huebner@davispolk.com  
darren.klein@davispolk.com  
steven.szanzer@davispolk.com  
benjamin.schak@davispolk.com

*Counsel to the Debtors and Debtors in Possession*

**Exhibit 3**

**Form of Potential Assumption and Assignment Notice**

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

In re:	)	
	)	Chapter 11
SOUTHCROSS ENERGY PARTNERS, L.P.,	)	Case No. 19-10702 (MFW)
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	

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

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”) on April 1, 2019.

PLEASE TAKE FURTHER NOTICE that, on May 22, 2019 the above-captioned debtors and debtor in possession (collectively, the “**Debtors**”) filed a motion (the “**Bidding Procedures Motion**”)<sup>2</sup> with the Court seeking entry of orders, among other things, approving (a) procedures for the solicitation of bids in connection with the potential sale (the “**Sale Transaction**”) of all or substantially all of the Debtors’ assets (collectively, the “**Bid Assets**”), subject to an auction process (the “**Auction**”) that may include the selection of one or more stalking horse bidders (the “**Stalking Horse Bidder(s)**”), (b) the form and manner of notice related to the Sale Transaction, and (c) procedures for the assumption and assignment of contracts and leases in connection with the Sale Transaction (the “**Assumption and Assignment Procedures**”).

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<sup>1</sup> The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors’ mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.

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



**PLEASE TAKE FURTHER NOTICE** that, on [●], 2019 the Court entered an order (the “**Bidding Procedures Order**”) approving, among other things, the Bidding Procedures, which establish the key dates and times related to the Sale Transaction, the Auction, and the Assumption and Assignment Procedures.

**PLEASE TAKE FURTHER NOTICE** that, upon the closing of the Sale Transaction, the Debtors intend to assume and assign to the Successful Bidder(s) (whether or not a Stalking Horse Bidder) the Potential Assumed Contracts. A schedule listing the Potential Assumed Contracts (the “**Potential Assumed Contracts Schedule**”) is attached hereto and may also be accessed free of charge on the Debtors’ case information website, located at <http://www.kccllc.net/southcrossenergy> or can be requested by email at [SouthcrossInfo@kccllc.com](mailto:SouthcrossInfo@kccllc.com). In addition, the “**Cure Costs**,” if any, necessary for the assumption and assignment of the Potential Assumed Contracts are set forth on the Potential Assumed Contracts Schedule. *Each Cure Cost listed on the Potential Assumed Contracts Schedule represents all liabilities of any nature of the Debtors arising under an Assumed Contract or Assumed Lease prior to the closing of the Sale Transaction, or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent, or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective.*

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A POTENTIAL ASSUMED CONTRACT.** Under the terms of the Assumption and Assignment Procedures, (a) at or prior to the closing of the Sale Transaction, a Successful Bidder may elect, in its sole and absolute discretion, (i) to exclude any contract or lease on the Potential Assumed Contracts Schedule as an Assumed Contract or Assumed Lease, as applicable (in which case it shall become an Excluded Contract or Excluded Lease, as applicable), or (ii) to include on the Proposed Assumed Contracts Schedule any contract or lease listed on the Potential Assumed Contracts Schedule, by providing to the Debtors written notice of its election to exclude or include such contract or lease, as applicable, (b) if the Debtors or any Successful Bidder identify during the pendency of the Chapter 11 Cases (before or after the closing of the Sale Transaction) any contract or lease that is not listed on the Proposed Assumed Contracts Schedule, and such contract or lease has not been rejected by the Debtors, the Successful Bidder may in its sole and absolute discretion elect by written notice to the Debtors to treat such contract or lease as an Assumed Contract or Assumed Lease, as applicable, and the Debtors shall seek to assume and assign such Assumed Contract or Assumed Lease in accordance with the Bidding Procedures, and (c) following the Auction, the Debtors may, in accordance with the applicable Asset Purchase Agreement, or as otherwise agreed by the Debtors and the Successful Bidder(s), at any time before the closing of the Sale Transaction, modify the previously-stated Cure Costs associated with any Proposed Assumed Contract. The Assumption and Assignment Procedures further provide that any Counterparty whose previously-stated Cure Cost is modified will receive notice thereof and an opportunity to file a Supplemental Assignment Objection. **The assumption and assignment of the Contracts and Leases on the Potential Assumed**

**Contracts Schedule is not guaranteed and is subject to approval by the Court and the Debtors' or Successful Bidder's right to remove an Assumed Contract or Assumed Lease from the Potential Assumed Contracts Schedule and Proposed Assumed Contracts Schedule.**

**Obtaining Additional Information**

Copies of the Bidding Procedures Motion and the Bidding Procedures Order, as well as all related exhibits (including the Bidding Procedures) and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at <http://www.kccllc.net/southcrossenergy> or can be requested by email at [SouthcrossInfo@kccllc.com](mailto:SouthcrossInfo@kccllc.com).

**Filing Assumption and Assignment Objections**

Pursuant to the Assumption and Assignment Procedures, objections to the potential assumption and assignment of an Assumed Contract or Assumed Lease (an “**Assumption and Assignment Objection**”) with respect to the ability of a Successful Bidder to provide adequate assurance of future performance, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Cost that the Counterparty believes is required to cure defaults under the relevant Assumed Contract or Assumed Lease, (d) by no later than **August 5, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the “**Assumption and Assignment Objection Deadline**”), (i) be filed with the Court and (ii) be served on (A) counsel for the Debtors, (1) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner, Darren S. Klein, Steven Z. Szanzer, and Benjamin M. Schak and (2) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney, Andrew R. Remming, Joseph C. Barsalona II, and Eric W. Moats; (B) counsel to Wells Fargo Bank, N.A., the administrative agent under Southcross's prepetition secured revolving credit facility, Vinson & Elkins LLP, Trammell Crow Center, 2001 Ross Avenue, Suite 3900, Dallas, Texas 75201-2975, Attn: William Wallander, Bradley Foxman, and Matthew Pyeatt; (C) counsel to Wilmington Trust, N.A., the administrative agent under Southcross's prepetition secured term loan facility and post-petition credit facility (1) Arnold & Porter Kaye Scholer LLP, 250 West 55th Street New York, New York 10019-9710, Attn: Alan Glantz and Arnold & Porter Kaye Scholer LLP 70 West Madison Street Suite 4200 Chicago, Illinois 60602-4231, Attn: Seth J. Kleinman and (2) Duane Morris LLP, 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801-1659, Attn: Christopher M. Winter; (D) counsel to the post-petition lenders and an ad hoc group of prepetition lenders, (1) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019-6099, Attn: Joseph G. Minias, Paul V. Shalhoub, and Debra C. McElligott and (2) Young Conaway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Edmon L. Morton and Matthew B. Lunn; (E) counsel for any official committee appointed in the Chapter 11 Cases; and (F) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801 (collectively, the “**Objection Notice Parties**”).

Pursuant to the Assumption and Assignment Procedures, an Assumption and Assignment Objection relating to proposed Cure Cost (a **“Cure Objection”**), must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Cost that the Counterparty believes is required to cure defaults under the relevant Assumed Contract or Assumed Lease, and (d) by no later than **July 11, 2019 at 4:00 p.m. (the “Cure Objection Deadline”)**, (1) be filed with the Court and (2) be served on the Objection Notice Parties.

Pursuant to the Assumption and Assignment Procedures, objections to the potential assumption and assignment of an Assumed Contract or Assumed Lease by a party whose contract or lease is listed on a Supplemental Assumption and Assignment Notice (a **“Supplemental Assumption and Assignment Objection”**) with respect to the ability of a Successful Bidder to provide adequate assurance of future performance or relating to the Cure Costs (to the extent modified from the previously-stated amount) must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, and (d) by no later than **14 days from the date of service of such Supplemental Assumption and Assignment Notice**, (1) be filed with the Court and (2) be served on the Assumption and Assignment Objection Notice Parties.

Objections to the Sale Order, the conduct of the Auction or the Sale Transaction (collectively, the **“Sale Objections”**), must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (d) **August 5, 2019 at 4:00 p.m. (prevailing Eastern Time)** by (the **“Sale Objection Deadline”**) be (1) filed with the Court and (2) served on the Objection Notice Parties.

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

*Any Counterparty to a contract or lease who fails to timely make an objection to the potential assumption and assignment of such contract or lease on or before the Assumption and Assignment Objection Deadline in accordance with the Assumption and Assignment Procedures, the Bidding Procedures Order, and this Notice (or in the case of a Supplemental Assumption and Assignment Objection, by 14 days from the date of service of such Supplemental Assumption and Assignment Notice) shall be deemed to have consented to the assumption and assignment of such contract or lease, including the Cure Costs (if any), set forth in the Potential Assumption and Assignment Notice or Supplemental Assumption and Assignment Notice, and shall be forever barred from asserting any objection or claims against the Debtors, the Successful Bidder (whether or not a Stalking Horse Bidder), or the property of any such parties, relating to the assumption and assignment of such contract or lease, including asserting additional Cure Costs with respect to such contract or lease.*

*Notwithstanding anything to the contrary in such contract or lease, or any other document, the Cure Costs set forth in the Potential Assumption and Assignment Notice or Supplemental Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Assumed Contract or Assumed Lease under section 365(b) of the Bankruptcy Code arising out of or related to any events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent, or otherwise, so long as such liabilities arise out*

*of or relate to events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective.*

**Other Important Dates and Deadlines**<sup>3</sup>

In addition to the dates and deadlines described above with respect to filing Assumption and Assignment Objections, Cure Objections, and Supplemental Assumption and Assignment Objections, note the following important dates and deadlines:

1. **Auction.** In the event that the Debtors timely receive more than one Qualified Bid (whether or not there is a Stalking Horse Bidder) and subject to the satisfaction of any further conditions set forth in the Bidding Procedures, the Debtors intend to conduct an Auction for the Bid Assets. The Auction, if one is held, will commence on **July 29, 2019 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017.
2. **Sale Hearing.** A hearing (the “**Sale Hearing**”) to consider the proposed Sale Transaction will be held before the Court on **August 12, 2019 at 11:00 a.m. (prevailing Eastern Time)** or such other date as determined by the Court at 824 North Market Street, Wilmington, Delaware 19801.

*[Remainder of This Page Intentionally Left Blank]*

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<sup>3</sup> The following dates and deadlines may be extended by the Debtors or the Court pursuant to the terms of the Bidding Procedures and the Bidding Procedures Order.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

Respectfully submitted,  
MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ DRAFT

Robert J. Dehney (No. 3578)  
Andrew R. Remming (No. 5120)  
Joseph C. Barsalona II (No. 6102)  
Eric W. Moats (No. 6441)  
1201 North Market Street, 16th Floor  
P.O. Box 1347  
Wilmington, Delaware 19899-1347  
Tel.: (302) 658-9200  
Fax: (302) 658-3989  
rdehney@mnat.com  
aremming@mnat.com  
jbarsalona@mnat.com  
emoats@mnat.com

-and-

DAVIS POLK & WARDWELL LLP  
Marshall S. Huebner (admitted pro hac vice)  
Darren S. Klein (admitted pro hac vice)  
Steven Z. Szanzer (admitted pro hac vice)  
Benjamin M. Schak (admitted pro hac vice)  
450 Lexington Avenue  
New York, New York 10017  
Tel.: (212) 450-4000  
Fax: (212) 701-5800  
marshall.huebner@davispolk.com  
darren.klein@davispolk.com  
steven.szanzer@davispolk.com  
benjamin.schak@davispolk.com

*Counsel to the Debtors and Debtors in Possession*

**Exhibit 4**

**Form of Proposed Assumption and Assignment Notice**

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

In re:	)	
	)	Chapter 11
SOUTHCROSS ENERGY PARTNERS, L.P.,	)	Case No. 19-10702 (MFW)
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	

**NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS OR UNEXPIRED LEASES AND CURE AMOUNT**

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”) on April 1, 2019.

**PLEASE TAKE FURTHER NOTICE** that, on May 22, 2019 the above-captioned debtors and debtor in possession (collectively, the “**Debtors**”) filed a motion (the “**Bidding Procedures Motion**”)² with the Court seeking entry of orders, among other things, approving (a) procedures for the solicitation of bids in connection with the potential sale (the “**Sale Transaction**”) of all or substantially all of the Debtors’ assets (collectively, the “**Bid Assets**”), subject to an auction process (the “**Auction**”) that may include the selection of one or more stalking horse bidders (the “**Stalking Horse Bidder(s)**”), (b) the form and manner of notice related to the Sale Transaction, and (c) procedures for the assumption and assignment of contracts and leases in connection with the Sale Transaction (the “**Assumption and Assignment Procedures**”).

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<sup>1</sup> The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors’ mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.

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

**PLEASE TAKE FURTHER NOTICE** that, on [●], 2019 the Court entered an order (the “**Bidding Procedures Order**”) approving, among other things, the Bidding Procedures, which establish the key dates and times related to the Sale Transaction, the Auction, and the Assumption and Assignment Procedures.

**PLEASE TAKE FURTHER NOTICE** that, on **July 29, 2019 at 10:00 a.m. (prevailing Eastern Time)** the Debtors held an Auction at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017.

**PLEASE TAKE FURTHER NOTICE** that, upon the closing of the Sale Transaction, the Debtors intend to assume and assign to the Successful Bidder(s) (whether or not a Stalking Horse Bidder) the Proposed Assumed Contracts. A schedule listing the Proposed Assumed Contracts (the “**Proposed Assumed Contracts Schedule**”) is attached hereto and may also be accessed free of charge on the Debtors’ case information website, located at <http://www.kccllc.net/southcrossenergy> or can be requested by e-mail at [SouthcrossInfo@kccllc.com](mailto:SouthcrossInfo@kccllc.com). In addition, the “**Cure Costs**,” if any, necessary for the assumption and assignment of the Proposed Assumed Contracts are set forth on the Proposed Assumed Contracts Schedule. *Each Cure Cost listed on the Proposed Assumed Contracts Schedule represents all liabilities of any nature of the Debtors arising under an Assumed Contract or Assumed Lease prior to the closing of the Sale Transaction, or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent, or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective.*

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A PROPOSED ASSUMED CONTRACT.** Under the terms of the Assumption and Assignment Procedures, (a) at or prior to the closing of the Sale Transaction, a Successful Bidder may elect, in its sole and absolute discretion, (i) to exclude any contract or lease on the Proposed Assumed Contracts Schedule as an Assumed Contract or Assumed Lease, as applicable (in which case it shall become an Excluded Contract or Excluded Lease, as applicable), or (ii) to include on the Proposed Assumed Contracts Schedule any contract or lease listed on the Potential Assumed Contracts Schedule, by providing to the Debtors written notice of its election to exclude or include such contract or lease, as applicable (b) if the Debtors or any Successful Bidder identify during the pendency of the Chapter 11 Cases (before or after the closing of the Sale Transaction) any contract or lease that is not listed on the Proposed Assumed Contracts Schedule, and such contract or lease has not been rejected by the Debtors, the Successful Bidder may in its sole and absolute discretion elect by written notice to the Debtors to treat such contract or lease as an Assumed Contract or Assumed Lease, as applicable, and the Debtors shall seek to assume and assign such Assumed Contract or Assumed Lease in accordance with the Bidding Procedures, and (c) following the Auction, the Debtors may, in accordance with the applicable Asset Purchase Agreement, or as otherwise agreed by the Debtors and the Successful Bidder(s), at any time before the closing of the Sale Transaction, modify the previously-stated Cure Costs associated with any Proposed Assumed Contract. The Assumption and Assignment Procedures further provide that any Counterparty



whose previously-stated Cure Cost is modified will receive notice thereof and an opportunity to file a Supplemental Assumption and Assignment Objection. **The assumption and assignment of the Contracts and Leases on the Proposed Assumed Contracts Schedule is not guaranteed and is subject to approval by the Court and the Debtors' or Successful Bidder's right to remove an Assumed Contract or Assumed Lease from the Proposed Assumed Contracts Schedule.**

### **Obtaining Additional Information**

Copies of the Bidding Procedures Motion and the Bidding Procedures Order, as well as all related exhibits (including the Bidding Procedures) and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at <http://www.kccllc.net/southcrossenergy> or can be requested by e-mail at [SouthcrossInfo@kccllc.com](mailto:SouthcrossInfo@kccllc.com).

### **Filing Assumption and Assignment Objections**

Pursuant to the Assumption and Assignment Procedures, objections to the proposed assumption and assignment of an Assumed Contract or Assumed Lease (an “**Assumption and Assignment Objection**”) with respect to the ability of a Successful Bidder to provide adequate assurance of future performance, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Cost that the Counterparty believes is required to cure defaults under the relevant Assumed Contract or Assumed Lease, (d) by no later than **August 5, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the “**Assumption and Assignment Objection Deadline**”), (i) be filed with the Court and (ii) be served on (A) counsel for the Debtors, (1) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner, Darren S. Klein, Steven Z. Szanzer, and Benjamin M. Schak and (2) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney, Andrew R. Remming, Joseph C. Barsalona II, and Eric W. Moats; (B) counsel to Wells Fargo Bank, N.A., the administrative agent under Southcross's prepetition secured revolving credit facility, Vinson & Elkins LLP, Trammell Crow Center, 2001 Ross Avenue, Suite 3900, Dallas, Texas 75201-2975, Attn: William Wallander, Bradley Foxman, and Matthew Pyeatt; (C) counsel to Wilmington Trust, N.A., the administrative agent under Southcross's prepetition secured term loan facility and post-petition credit facility (1) Arnold & Porter Kaye Scholer LLP, 250 West 55th Street New York, New York 10019-9710, Attn: Alan Glantz and Arnold & Porter Kaye Scholer LLP 70 West Madison Street Suite 4200 Chicago, Illinois 60602-4231, Attn: Seth J. Kleinman and (2) Duane Morris LLP, 222 Delaware Avenue, Suite 1600, Wilmington, Delaware 19801-1659, Attn: Christopher M. Winter; (D) counsel to the post-petition lenders and an ad hoc group of prepetition lenders, (1) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019-6099, Attn: Joseph G. Minias, Paul V. Shalhoub, and Debra C. McElligott and (2) Young Conaway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Edmon L. Morton and Matthew B. Lunn; (E) counsel for any official committee appointed in the Chapter 11 Cases; and (F) the Office of the United States

Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801 (collectively, the “**Objection Notice Parties**”).

**Sale Objections** (as defined below), if any, must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (d) by **August 5, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the “**Sale Objection Deadline**”) (1) be filed with the Court and (2) be served on the Objection Notice Parties.

**CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION**

*Any Counterparty to an Assumed Contract or Assumed Lease who fails to timely make an objection to the proposed assumption and assignment of such contract or lease on or before the Assumption and Assignment Objection Deadline in accordance with the Assumption and Assignment Procedures, the Bidding Procedures Order and this Notice shall be deemed to have consented with respect to the ability of a Successful Bidder to provide adequate assurance of future performance (and the Debtors’ proposed Cure Costs, to the extent modified from the previously-stated amount) and shall be forever barred from asserting any objection or claims against the Debtors, the Successful Bidder (whether or not a Stalking Horse Bidder), or the property of any such parties, relating to the assumption and assignment of such contract or lease, (including asserting additional Cure Costs with respect to such contract or lease). Notwithstanding anything to the contrary in such contract or lease, or any other document, the Cure Costs set forth in the Potential Assumption and Assignment Notice, Proposed Assumption and Assignment Notice, or Supplemental Assumption and Assignment Notice (as applicable), shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Assumed Contract or Assumed Lease under section 365(b) of the Bankruptcy Code arising out of or related to any events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective.*

**Other Important Dates and Deadlines**<sup>3</sup>

In addition to the dates and deadlines described above with respect to filing Assumption and Assignment Objections, note the following important dates and deadlines:

1. **Auction and Sale Objections Deadline.** The deadline to file an objection with the Court to the Sale Order, the conduct of the Auction or the Sale Transaction (including objections relating to the Stalking Horse Bidder(s), if any, or the Proposed Assumed Contacts Schedule) (collectively, the “**Sale Objections**”) is the **Sale Objection Deadline**.
2. **Sale Hearing.** A hearing (the “**Sale Hearing**”) to consider the proposed Sale Transaction will be held before the Court on, **August 12, 2019 at 11:00 a.m. (prevailing Eastern Time)** or such other date as determined by the Court at 824 North Market Street, Wilmington, Delaware 19801.

*[Remainder of This Page Intentionally Left Blank]*

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<sup>3</sup> The following dates and deadlines may be extended by the Debtors or the Court pursuant to the terms of the Bidding Procedures and the Bidding Procedures Order.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

Respectfully submitted,

MORRIS, NICHOLS, ARSHT & TUNNELL  
LLP

*/s/ Draft*

\_\_\_\_\_  
Robert J. Dehney (No. 3578)  
Andrew R. Remming (No. 5120)  
Joseph C. Barsalona II (No. 6102)  
Eric W. Moats (No. 6441)  
1201 North Market Street, 16th Floor  
P.O. Box 1347  
Wilmington, Delaware 19899-1347  
Tel.: (302) 658-9200  
Fax: (302) 658-3989  
rdehney@mnat.com  
aremming@mnat.com  
jbarsalona@mnat.com  
emoats@mnat.com

-and-

DAVIS POLK & WARDWELL LLP  
Marshall S. Huebner (admitted pro hac vice)  
Darren S. Klein (admitted pro hac vice)  
Steven Z. Szanzer (admitted pro hac vice)  
Benjamin M. Schak (admitted pro hac vice)  
450 Lexington Avenue  
New York, New York 10017  
Tel.: (212) 450-4000  
Fax: (212) 701-5800  
marshall.huebner@davispolk.com  
darren.klein@davispolk.com  
steven.szanzer@davispolk.com  
benjamin.schak@davispolk.com

*Counsel to the Debtors and Debtors in  
Possession*