

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
SOUTHCROSS ENERGY PARTNERS, L.P., <i>et</i>)	Case No. 19-10702 (MFW)
al.,)	
)	Jointly Administered
Debtors ¹)	
)	Re: D.I. 324, 440, 455 & 471
)	

ORDER (A) APPROVING SALE OF DEBTORS’ CORPUS CHRISTI PIPELINE NETWORK 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

Upon the motion (the “**Motion**”)² of Southcross Energy Partners, L.P.

(“**Southcross**”), Southcross Energy Partners GP, LLC, and certain of 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

¹ 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.

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in that certain Asset Purchase Agreement, dated as of August 30, 2019, between the Debtors and Kinder Morgan Tejas Pipeline LLC (the “**Purchase Agreement**”), a copy of which is attached as Exhibit A to the *Notice of Revised Asset Purchase Agreement* [D.I. 471], the Motion, or the Bidding Procedures Order (as defined herein), as applicable; *provided*, that in the event of any conflict between defined terms in the Purchase Agreement, on the one hand, and the Motion or Bidding Procedures Order, on the other hand, the Purchase Agreement shall control; *provided further*, that in the event of any conflict between defined terms in any of the foregoing and this Order, this Order shall control.



“**Chapter 11 Cases**”), for, inter alia, entry of an order, pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Rules 2002-1, 6004- 1, and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) (a) approving the sale of certain Corpus Christi pipeline network assets (the “**CCPN Assets**”)³ to Kinder Morgan Tejas Pipeline LLC (the “**Buyer**”) free and clear of Encumbrances and Liabilities (other than Permitted Encumbrances and Assumed Liabilities), (b) authorizing the assumption and assignment to the Buyer of the Assigned Contracts, and (c) granting related relief, 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, the Hannan Declaration, the *Supplemental Declaration of Stephen Hannan in Support of (A) 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* [D.I. 589] (the “**Supplemental Hannan Declaration**”), and the

³ CCPN Assets shall have the meaning ascribed to “Assets” in the Purchase Agreement.

Declaration of Eric McCord in Support of Sale of the CCPN Assets to Kinder Morgan Tejas [D.I. 562] (the “**McCord Declaration**”, and together with the Hannan Declaration and the Supplemental Hannan Declaration, the “**Declarations**”) and the Court having held a hearing to consider the Motion on October 22, 2019 (the “**Hearing**”), at which time all interested parties were offered an opportunity to be heard regarding the Motion, the Purchase Agreement and the transactions contemplated by the Purchase Agreement (collectively, the “**Sale Transaction**”); and the Court having found that the relief requested in the Motion being in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and the Court having reviewed and considered any objections to the Motion (collectively, the “**Objections**”); 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:

Background

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. On April 1, 2019 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (this “**Court**”) commencing the Chapter 11 Cases.

C. 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.

D. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

E. As of the date hereof, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) has not appointed an official committee in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

F. As part of the Debtors’ efforts to realize the highest and best value for their businesses, on June 13, 2019, the Debtors obtained an order of the Court [D.I. 324] (the “**Bidding Procedures Order**”) that established bidding procedures for a sale or other transaction involving the Debtors’ businesses and scheduled various dates relating to the Auction. Specifically, the Bidding Procedures Order set July 1, 2019 as the deadline for interested parties to furnish information to be considered a Potential Bidder (as defined in the Bidding Procedures Order), July 24, 2019 as the deadline for the submission of initial bids by interested bidders (the “**Bid Deadline**”), September 3, 2019 as the date for the Auction (if any), and September 18, 2019 as the date on which the Court would hold the Hearing to approve the bidder with the highest or otherwise best bid at the Auction (the “**Successful Bidder**”). The Auction was subsequently adjourned to October 17, 2019, and the Hearing was adjourned to October 22, 2019. *See* D.I. 493.

Compliance with Bidding Procedures and Bidding Procedures Order

G. As demonstrated by the Declarations, the evidence proffered or adduced at the Hearing, and the arguments of counsel made on the record at the Hearing, the

Debtors' marketing and sales process with respect to the CCPN Assets afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the CCPN Assets. The Debtors and their professionals conducted a marketing and sale process with respect to the CCPN Assets in a fair, good faith, and non-collusive manner in accordance with, and have otherwise complied in all respects with, the Bidding Procedures and the Bidding Procedures Order.

H. As demonstrated by the Declarations, the evidence proffered or adduced at the Hearing, and the arguments of counsel made on the record at the Hearing, the Successful Bid, which is memorialized in the Purchase Agreement, constitutes the highest or otherwise best offer for the CCPN Assets, and the Debtors' determination that the Purchase Agreement maximizes value for the benefit of the Debtors' estates, constitutes the highest or otherwise best offer for the CCPN Assets, constitutes a valid and sound exercise of the Debtors' business judgment (exercised in consultation with the DIP Secured Parties, each of the Prepetition Agents, and Southcross Holdings LP (together with its non-debtor subsidiaries, "**Holdings**," and together with the DIP Secured Parties and each of the Prepetition Agents, the "**Consulting Parties**")), and is in accordance and compliance with the Bidding Procedures and the Bidding Procedures Order. The Purchase Agreement provides fair and reasonable terms for the purchase of the CCPN Assets, and reasonable notice and opportunity has been given to any interested party to make a higher or otherwise better offer for the CCPN Assets. Approval of the Motion and the Purchase Agreement, and the prompt consummation of the Sale Transaction, will maximize the value of each of the Debtors' estates and is in the best interests of the Debtors, their chapter 11 estates, their creditors, and other parties in interest.

The Stalking Horse Bidder

I. Pursuant to the Bidding Procedures Order, the Debtors were authorized (but not obligated) to exercise their business judgment (in consultation with the Consulting Parties) to select a Stalking Horse Bidder, subject to entry of a Stalking Horse Order (as defined below). The Buyer was one of the parties to be designated a Potential Bidder under the Bidding Procedures. After extensive, arm's length, good faith negotiations among the Debtors, the Buyer, and their respective advisors, as of August 30, 2019, the Debtors and the Buyer finalized the Purchase Agreement wherein the Debtors and the Buyer agreed that the Buyer would serve as the Stalking Horse Bidder for the CCPN Assets, and the Sale Transaction contemplated by the Purchase Agreement would serve as the Stalking Horse Bid, subject to entry of a Stalking Horse Order (as defined below).

J. On August 24, 2019, the Debtors filed a motion with the Court [D.I. 440] (the "**Stalking Horse Motion**"), with five calendar days' notice of the objection deadline (the "**Stalking Horse Objection Deadline**") to the U.S. Trustee, the DIP Secured Parties, each of the Prepetition Agents, Holdings, and those parties who have filed the appropriate notice pursuant to Bankruptcy Rule 2002 requesting notice of all pleadings filed in the Chapter 11 Cases, seeking entry of an order (the "**Stalking Horse Order**") granting final approval of Bid Protections (as such term is defined in the Stalking Horse Order) to the Buyer in its capacity as the Stalking Horse Bidder and the Debtors' entry into the Purchase Agreement with the Buyer.

K. The Debtors did not receive any objections to the Stalking Horse Motion by the Stalking Horse Objection Deadline and submitted the Stalking Horse Order to the Court under certification of counsel.

L. On August 30, 2019, the Court entered the Stalking Horse Order [D.I. 455] approving, among other things, the Debtors (i) entry into the Purchase Agreement with the Buyer, (ii) designating the Buyer as the Stalking Horse Bidder for the CCPN Assets, and (iii) providing the Bid Protections to the Buyer.

The Auction

M. The Auction for the CCPN Assets was canceled given that the Debtors did not receive any Qualified Bids for the CCPN Assets other than the Stalking Horse Bid. As a result, the Debtors have determined that the Buyer is the Successful Bidder for the CCPN Assets in accordance with the Bidding Procedures Order. The Debtors' determination (in consultation with the Consulting Parties) that the offer reflected in the Purchase Agreement constitutes the highest or otherwise best offer for the CCPN Assets is a valid and sound exercise of the Debtors' business judgment (exercised in consultation with the Consulting Parties). The Buyer has complied in all respects with the Bidding Procedures Order and all other applicable orders of the Court in negotiating and entering into the Purchase Agreement.

Sale Hearing

N. The Court conducted the Hearing on October 22, 2019 at which time the Court considered (i) the Motion, the evidence and testimony presented, and the statements and argument of counsel in support of granting the relief requested in the Motion and (ii) approval of the Purchase Agreement and the Sale Transaction contemplated by the Purchase Agreement.

O. 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, with prejudice.

Sound Business Purpose

P. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for consummation of the Sale Transaction contemplated by the Purchase Agreement in accordance with the requirements of section 363(b) of the Bankruptcy Code. The value of the Debtors' estates will be maximized through a sale of the CCPN Assets on a going concern basis.

Q. A sale pursuant to sections 105(a) and 363(b) of the Bankruptcy Code also may prevent the continued accrual of post-petition administrative expense obligations under various unexpired leases and executory contracts that are not proposed to be acquired by the Buyer under the Purchase Agreement.

R. Approval of the Purchase Agreement pursuant to sections 105(a) and 363 of the Bankruptcy Code is necessary to preserve the value of the Debtors' businesses. The Debtors have determined, in their reasonable business judgment (in consultation with the Consulting Parties), that the CCPN Assets will have the greatest value if promptly sold.

S. As a result, the proposed Sale Transaction pursuant to sections 105(a) and 363 of the Bankruptcy Code, upon the terms and conditions set forth in the Purchase Agreement, is the best alternative available to the Debtors for recovering value for the benefit of the Debtors' estates. The Sale Transaction maximizes the value of the CCPN Assets because the CCPN Assets are being sold as part of a going concern business, and the continuity and remaining goodwill value associated with the CCPN Assets are being preserved.

T. Neither the Purchase Agreement nor the Sale Transaction contemplated thereunder constitute a *sub rosa* chapter 11 plan. The Purchase Agreement does not

specify the terms of, or any distributions under, any subsequent chapter 11 plan by the Debtors (other than provisions that are consistent with the sale of CCPN Assets under the Purchase Agreement and the relief granted hereunder).

Fair Purchase Price

U. The total consideration to be provided by the Buyer under the Purchase Agreement is the highest or otherwise best offer received by the Debtors and constitutes (i) fair value, (ii) fair, full, and adequate consideration, (iii) reasonably equivalent value, and (iv) reasonable market value for the CCPN Assets for purposes of the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and any other applicable laws of the United States, any state, territory, or possession thereof or the District of Columbia.

V. The terms of the Purchase Agreement and the Sale Transaction contemplated therein are fair and reasonable under the circumstances of the Debtors' businesses and the Chapter 11 Cases.

Notice of the Motion

W. As evidenced by the affidavits of service and publication previously filed with this Court [D.I. 232, 338, 339, 340, 353, 355, 373, 399, 435, 437, 442, 458, 462, 501, and 506], and based upon representations of counsel at the Hearing, the notice (the "**Notice**") was adequate and sufficient under the circumstances and provided sufficient notice of the Motion, the Bidding Procedures Order, the Auction, the Hearing, the Purchase Agreement, this Order, and the Sale Transaction. The Notice was provided in accordance with sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 9007, 9008, and 9014, and Local Rules 2002-1 and 6004-1. The Debtors have complied with all obligations to provide notice of the Motion, the Bidding Procedures

Order, the Auction, the Hearing, the Purchase Agreement, this Order, and the Sale Transaction as required by the Bidding Procedures Order. The aforementioned notices are good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the Bidding Procedures Order, the Auction, the Hearing, the Purchase Agreement, this Order, or the Sale Transaction is or shall be required.

Good Faith of the Buyer

X. The Buyer is purchasing the CCPN Assets and has entered into the Purchase Agreement at arm's length and in good faith. Accordingly, the Buyer is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code, and the Buyer is, therefore, entitled to the protections of such provision. The good faith of the Buyer is evidenced by, among other things, the following facts:

- i. The sale process conducted by the Debtors was at arm's length, non-collusive, in good faith, and substantively and procedurally fair to all parties. The Debtors offered other parties the opportunity to top the Stalking Horse Bid, and all other bidders or potential bidders declined to do so. The Debtors evaluated each bid received prior to selecting the Buyer as the Successful Bidder;
- ii. All payments to be made by the Buyer and other agreements or arrangements entered into by the Buyer in connection with the Purchase Agreement have been disclosed.
- iii. The Buyer has not violated the provisions of section 363(n) of the Bankruptcy Code by any action or inaction.
- iv. The Buyer is a third party purchaser and is unrelated to any of the Debtors. Neither the Buyer, nor any of its Affiliates, subsidiaries,

officers, directors, members, partners, principals, or any of their respective representatives, successors, or assigns is an “insider” of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

v. The Debtors and the Buyer have engaged in substantial arm’s length negotiations, in good faith. The Purchase Agreement is the product of this bargaining among the parties.

Y. The sale of the CCPN Assets pursuant to the Purchase Agreement, all covenants in and conditions thereto, and all relief requested in the Motion are an integrated transaction, meaning that each component is an essential part of every other component and that the entire transaction can be consummated only if all of its components are consummated. Accordingly, the entire transaction is subject to, and is protected by, the provisions of section 363(m) of the Bankruptcy Code.

Sale Free and Clear

Z. After the Closing, no entity shall have any Encumbrance or Liability in or against the CCPN Assets other than the Permitted Encumbrances and the Assumed Liabilities (as defined in the Purchase Agreement).

AA. All other Encumbrances and Liabilities that existed against the CCPN Assets prior to the Closing, including, without limitation, the DIP Liens, the Permitted Senior Liens, Prepetition Liens, Adequate Protection Liens, and the liens held by the Local Texas Tax Authorities (each as defined in the DIP Order⁴), shall attach to the sale

⁴ 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”).

proceeds the Debtors receive under the Sale Transaction (subject to the terms and conditions set forth in the DIP Order, Bidding Procedures Order, and this Order, including without limitation, the Carve- Out and Wind-Down Budget). Those Encumbrances and Liabilities will attach to the proceeds of the Sale Transaction in the same order of relative priority and with the same validity, force, and effect that the holder of such Encumbrance or Liability had against the CCPN Assets prior to Closing (including, for the avoidance of doubt, as set forth in the DIP Order), and will be subject to any claims and defenses the Debtors may possess with respect thereto. The interests of the holders of such Encumbrances and Liabilities (including, for the avoidance of doubt, the right of the DIP Lenders to be repaid in full in cash within 30 days of the entry of this Order) are being adequately protected pursuant to the provisions of this Order.

BB. Pursuant to section 363(f) of the Bankruptcy Code, the Debtors are authorized to sell property of its estate free and clear of any Encumbrances and Liabilities if any of the following requirements is satisfied: (i) applicable non-bankruptcy law permits the sale of such property free and clear of such interest (section 363(f)(1) of the Bankruptcy Code); (ii) the entity holding the alleged Encumbrance or Liability consents (section 363(f)(2) of the Bankruptcy Code); (iii) such interest is an Encumbrance or Liability, and the price at which such property is to be sold is greater than the aggregate value of all Encumbrances and Liabilities on such property (section 363(f)(3) of the Bankruptcy Code); (iv) such Encumbrance or Liability is subject to a *bona fide* dispute (section 363(f)(4) of the Bankruptcy Code); or (v) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such Encumbrance or Liability (section 363(f)(5) of the Bankruptcy Code).

CC. For the following reasons, the provisions of section 363(f) of the Bankruptcy Code have been satisfied:

- i. All alleged holders of Encumbrances or Liabilities who did not object or withdrew their objections to the Sale Transaction are deemed to have consented. Alleged holders of Encumbrances or Liabilities who did object either had their objections overruled or resolved or otherwise fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code, including those referenced below.
- ii. The Debtors are not aware of any remaining interests in the CCPN Assets, and, if any such interests exist, they are in *bona fide* dispute as to the extent, validity, perfection, and viability of those interests (see Bankruptcy Code section 363(f)(4)).
- iii. Other parties (if any) could be compelled to accept a money satisfaction of their Encumbrances or Liabilities (see Bankruptcy Code section 363(f)(5)).

DD. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the CCPN Assets will be transferred to the Buyer free and clear of all Encumbrances and Liabilities (other than the Permitted Encumbrances and the Assumed Liabilities) with all other applicable Encumbrances and Liabilities to attach to the proceeds of the sale of the CCPN Assets in the order of their priority, with the validity, force, and effect that they now have as against the CCPN Assets (for the avoidance of doubt, subject to the Carve-Out and Wind-Down Budget), subject to the rights, claims, defenses, and objections, if any, of the Debtors and all interested parties with respect to such Liabilities and Encumbrances and

with the net proceeds from the sale of the CCPN Assets to be available for the benefit of the Debtors' estates.

EE. Accordingly, the Debtors have satisfied the standard set forth in section 363(f) of the Bankruptcy Code for selling the CCPN Assets free and clear of all Encumbrances and Liabilities other than the Permitted Encumbrances and the Assumed Liabilities.

Sale Free and Clear Required by the Buyer

FF. In connection with the Purchase Agreement, the Buyer expressly negotiated for the protection of obtaining the CCPN Assets free and clear of all Encumbrances and Liabilities (including, without limitation, any potential successor liability claims) other than the Permitted Encumbrances and the Assumed Liabilities. The Buyer would have paid substantially less consideration for the CCPN Assets or not purchased the CCPN Assets if the Buyer were not buying the CCPN Assets free and clear of any Encumbrances and Liabilities (other than the Permitted Encumbrances and the Assumed Liabilities), specifically including any successor liability claims.

No Successor Liability

GG. The Buyer is not holding itself out to the public as a continuation of the Debtors and is not an "insider" or "affiliate" of the Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors, or stockholders exists now or has ever existed between the Buyer and the Debtors. Neither the Buyer nor its affiliates, officers, directors, members, partners, and principals or any of their respective representatives, successors, or assigns shall be deemed, as a result of the consummation of the Sale Transaction or otherwise, to (i) be a legal successor, or otherwise be deemed a successor, to the Debtors or the Debtors' estates, (ii) have, *de*

facto or otherwise, merged or consolidated with or into any of the Debtors or any of the Debtors' estates, (iii) be an alter ego, a continuation, or substantial continuation of any of the Debtors or any enterprise of any of the Debtors, or (iv) be liable for any claim based on successor liability, transferee liability, derivative liability, vicarious liability, or any similar theories under applicable state or federal law, or otherwise. To the fullest extent of the law, the Buyer's acquisition of the CCPN Assets shall be free and clear of any "successor liability" claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the Closing. Except as expressly set forth in the Purchase Agreement with respect to the Assumed Liabilities and Permitted Encumbrances, the Buyer shall have no liability or obligation of any of the Debtors and/or their respective estates and the Buyer is not expressly or impliedly agreeing under the terms and conditions of the Purchase Agreement to assume any of the debts or obligations of the Debtors. Any so-called "bulk sales," "bulk transfer," or other similar laws are not applicable, and compliance with any such laws in all necessary jurisdictions is not required, including those relating to taxes. The Buyer would not have acquired the CCPN Assets but for the foregoing protection against potential claims based on "successor liability" theories.

HH. The Buyer and the Debtors are not entering into the Purchase Agreement fraudulently or in order to escape liability for the Debtors' obligations.

Assumption and Assignment of the Assigned Contracts

II. Section 365(a) of the Bankruptcy Code provides that "the [debtor in possession], subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." As set forth in the Motion and the Declarations, and as more fully demonstrated at the Hearing, it is in the best interests of the Debtors and their

respective estates to assume and assign the Assigned Contracts to the Buyer on the effective date of the assumption and assignment of such Assigned Contracts (“**Assumption and Assignment Effective Date**”) in accordance with the terms and conditions of the Purchase Agreement, the Bidding Procedures Order, and this Order. The Debtors’ assumption and assignment of the Assigned Contracts to the Buyer meets the business judgment standard and satisfies the requirements of section 365 of the Bankruptcy Code. The Sale Transaction provides significant benefits to the Debtors’ estates. The Debtors cannot obtain these benefits without the assumption and assignment of the Assigned Contracts, which are a material part of the CCPN Assets and the Sale Transaction. Accordingly, the assumption and assignment of the Assigned Contracts constitutes an exercise of the Debtors’ sound business judgment.

JJ. Section 365(b)(1) of the Bankruptcy Code requires the Debtors to cure any default and provide adequate assurance of future performance in order to assume an unexpired lease or executory contract under which a default has occurred. Subject to the terms and conditions set forth in the Bidding Procedures Order, the Purchase Agreement, and this Order, on the applicable Assumption and Assignment Effective Date (or as otherwise provided in the Bidding Procedures Order, the Purchase Agreement, or this Order), the Buyer shall pay any outstanding Cure Costs, calculated in good faith as of the Petition Date, and due pursuant to the Purchase Agreement, with respect to the Assigned Contracts and, therefore, this requirement has been satisfied.

KK. Pursuant to section 365(f) of the Bankruptcy Code, notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, a debtor in possession may assign such contract or lease if such contract or lease is assumed by the debtor in

possession in accordance with section 365 of the Bankruptcy Code, and the proposed assignee provides “adequate assurance of future performance” of the obligations arising under such contract or lease from and after the date of the assignment. The Debtors have satisfied the requirements necessary to assume the Assigned Contracts. In addition, the Debtors have demonstrated that the Buyer has the resources to perform the obligations under such Assigned Contracts. Accordingly, the requirements for assignment of such contracts and leases to the Buyer under section 365(f) of the Bankruptcy Code have been satisfied. To the extent that any party’s consent to assumption or assignment of any Assigned Contract is required by the Bankruptcy Code and applicable non-bankruptcy law, such party is deemed to have consented by not timely objecting to the Motion.

LL. In accordance with the Bidding Procedures Order, and as evidenced by the Notice, due and proper notice of the proposed assumption and assignment of the Assigned Contracts to the Buyer was provided to the non-Debtor counterparties listed on the Proposed Assumed Contracts Schedule.

No Fraudulent Intent

MM. The Purchase Agreement was not entered into, and the Sale Transaction will not be consummated, for the purpose of hindering, delaying, or defrauding the Debtors’ present or future creditors for purposes of the Bankruptcy Code, any other applicable laws of the United States, and any applicable laws of any state, territory, or possession thereof, or the District of Columbia. Neither the Debtors nor the Buyer is entering into the Purchase Agreement or consummating the Sale Transaction contemplated by the Purchase Agreement with any fraudulent or otherwise improper purpose.

CCPN Assets

NN. The CCPN Assets constitute property of the Debtors' estates and title thereto is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. The Debtors have all title, interest, and/or rights in the CCPN Assets required to transfer and to convey the CCPN Assets to the Buyer, as required by the Purchase Agreement.

Corporate or Limited Liability Company Authority

OO. The Debtors have (i) full power and authority to perform all of their obligations under the Purchase Agreement and the Debtors' prior execution and delivery of, and performance of obligations under, the Purchase Agreement is hereby ratified, (ii) all of the power and authority necessary to consummate the Sale Transaction, and (iii) taken all actions necessary to authorize, approve, execute, and deliver the Purchase Agreement and to consummate the Sale Transaction.

Prompt Consummation

PP. To maximize the value of the CCPN Assets, it is essential that the Sale Transaction occur within the timeframe set forth in the Purchase Agreement. Time is of the essence in consummating the Sale Transaction. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Sale Transaction, including, without limitation, the assumption and assignment of the Assigned Contracts prior to, and outside of, a chapter 11 plan. Accordingly, there is cause to lift the stay established by Bankruptcy Rules 6004 and 6006.

Statutory Predicates

QQ. The statutory authorization for the relief granted herein is found in sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Bankruptcy Rules 2002-1, 6004-1, and 6006-1.

Section 363 Sale

RR. The proposed sale of the CCPN Assets to the Buyer pursuant to the Purchase Agreement constitutes a sale of property of the Debtors' respective estates outside the ordinary course of business within the meaning of section 363(b) of the Bankruptcy Code.

SS. For good and valid reasons, the Court may authorize and approve a sale of the CCPN Assets of a chapter 11 debtor pursuant to section 363(b) of the Bankruptcy Code without the necessity of following the procedures and making the findings required for the confirmation of a chapter 11 plan. Such legitimate and compelling reasons exist in this case. Under the circumstances of the Chapter 11 Cases, the sale of the CCPN Assets to the Buyer pursuant to sections 105(a) and 363(b) and (f) of the Bankruptcy Code is both justified and appropriate.

TT. The sale of the CCPN Assets to the Buyer free and clear of any and all Encumbrances and Liabilities upon the terms and conditions set forth in the Purchase Agreement is in the best interests of the Debtors and their respective estates.

UU. Given the circumstances of the Chapter 11 Cases, including, without limitation, the adequate exposure of the Debtors' businesses to the marketplace, the reasonable opportunity afforded other parties to make competing bids or offers for all or a portion of the Debtors' businesses, and the adequacy and fair value of the consideration being paid by the Buyer under the Purchase Agreement, the proposed sale of the CCPN

Assets to the Buyer constitutes a reasonable and sound exercise of the Debtors' business judgment and is hereby approved in all respects.

Retention of Jurisdiction

VV. It is necessary and appropriate for the Court to retain jurisdiction to, *inter alia*, interpret and enforce the terms and provisions of this Order and the Purchase Agreement, and to adjudicate, if necessary, any and all disputes concerning the assumption and assignment of the Assigned Contracts and any alleged right, title, or property interest, including ownership claims, relating to the CCPN Assets and the proceeds thereof, as well as the extent, validity, perfection, and priority of any alleged Encumbrances or Liabilities relating to the Debtors and/or the CCPN Assets.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. The relief requested in the Motion is granted and approved in all respects as set forth in this Order.
2. The Sale Transaction is hereby approved in all respects as set forth in this Order.
3. The Debtors are hereby authorized and directed to sell the CCPN Assets to the Buyer upon and subject to the terms and conditions set forth in the Purchase Agreement, the provisions of which are incorporated herein by reference as if set forth in full herein.
4. Each of the Debtors is hereby authorized and directed to perform, consummate, and implement the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, and to take any and all further actions as may be necessary or appropriate to the performance of its obligations as contemplated by the Purchase

Agreement or this Order, including paying, whether before or after the Closing, any expenses or costs that are required to be paid in order to consummate the Sale Transaction or to perform its obligations under the Purchase Agreement or any related agreements.

5. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, upon the Closing, the CCPN Assets shall be transferred, sold, and delivered to the Buyer free and clear of all Encumbrances and Liabilities, other than the Permitted Encumbrances and the Assumed Liabilities. All other Encumbrances and Liabilities that existed against the CCPN Assets prior to the Closing, including, without limitation, the DIP Liens, the Permitted Senior Liens, Prepetition Liens, Adequate Protection Liens, and the liens held by the Local Texas Tax Authorities, shall attach to the sale proceeds the Debtors receive under the Sale Transaction (subject to the terms and conditions set forth in the DIP Order, Bidding Procedures Order, and this Order, including without limitation, the Carve-Out and Wind-Down Budget). Those Encumbrances and Liabilities will attach to the proceeds of the Sale Transaction in the same order of relative priority and with the same validity, force, and effect that the holder of such Encumbrance and Liability had against the CCPN Assets prior to Closing (including, for the avoidance of doubt, as set forth in the DIP Order), and will be subject to any claims and defenses the Debtors may possess with respect thereto. The interests of the holders of such Encumbrances and Liabilities (including, for the avoidance of doubt, the right of the DIP Lenders to be repaid in full in cash within 30 days of the entry of this Order) are being adequately protected pursuant to the provisions of this Order by having their Encumbrances and Liabilities, if any, in each instance against the Debtors, their estates, or any of the CCPN Assets, attach to the proceeds of the Sale Transaction ultimately attributable to the CCPN Assets in which

such creditor or interest holder alleges an interest, in the same order of priority and with the same validity, force, and effect that such creditor or interest holder had prior to the Sale Transaction, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

6. Subject to paragraph 45, notwithstanding anything contained herein or in any other document, in accordance with the Purchase Agreement, the Assigned Real Property Interests, which include all fee interests, rights-of-way, easements, real property interests, real rights, licenses, servitudes, permits, privileges, and leases (surface and subsurface) owned or held by the Debtors, or hereinafter acquired by the Debtors prior to the Closing, in each case, in connection with the CCPN Assets, constitute real property or a real property interest, and together with the rights, tenements, appurtenant rights and privileges related thereto (collectively, the “**Real Property Interests**”), shall, in accordance with the Purchase Agreement, be transferred to the Buyer at the Closing notwithstanding any consent rights, anti-assignment provisions, or any other provisions purporting to prohibit or condition the transfer or assignment of such Real Property Interests contained in such Real Property Interests, or in any other document, and all such rights, provisions, prohibitions, and conditions shall be void and of no force and effect with respect to the Sale Transaction; *provided, however*, that, for the purposes of section 365(d)(4) of the Bankruptcy Code, any Real Property Interest that constitutes, or may be deemed to constitute, an unexpired lease of non-residential real property shall be deemed assumed by the Debtors as of the date hereof and assigned to the Buyer on the Assumption and Assignment Effective Date

7. As a result of the Sale Transaction, the Buyer will not be a successor to any of the Debtors by reason of any theory of law or equity, and the Buyer will have no

liability, except as expressly provided in the Purchase Agreement with respect to the Permitted Encumbrances and the Assumed Liabilities, for any Encumbrance or Liability against or in any of the Debtors as a result of any application of successor liability theories.

8. Without limiting the generality of the immediately preceding paragraph, and except as otherwise expressly provided in the Purchase Agreement with respect to the Permitted Encumbrances and the Assumed Liabilities, the Buyer is not, pursuant to the Purchase Agreement or otherwise, assuming, nor shall it in any way whatsoever be liable or responsible, as a successor or otherwise, for any of the following Encumbrances or Liabilities: any Encumbrance or Liability of the Debtors or any Encumbrance or Liability in any way whatsoever relating to or arising from the CCPN Assets or the Debtors' operations or use of the CCPN Assets, including, without limitation, Encumbrance or Liabilities under the Assigned Contracts arising prior to the Closing or the applicable Assumption and Assignment Effective Date, or any liabilities calculable by reference to the Debtors or their CCPN Assets or operations or relating to continuing conditions existing at or prior to the Closing or the applicable Assumption and Assignment Effective Date, as applicable, which Encumbrances or Liabilities, as against the Buyer, are hereby extinguished, without regard to whether the claimant asserting any such Encumbrances or Liabilities has delivered to the Buyer a release thereof.

9. Without limiting the generality of the foregoing, and except as otherwise expressly provided in the Purchase Agreement with respect to the Permitted Encumbrances and the Assumed Liabilities, the Buyer shall not be liable or responsible, as a successor or otherwise, for the Debtors' Encumbrance or Liabilities, whether calculable by reference to the Debtors or their operations or under or in connection with

(a) any employment or labor agreements, (b) any pension, welfare, compensation, fringe benefit, or other employee benefit plans, trust arrangements, agreements, practices, and programs, including, without limitation, any pension plan of the Debtors, any affiliates, or any member of the Debtors' "control group", any medical, welfare, and pension benefits payable after retirement or other termination of employment, or any responsibility as a fiduciary, plan sponsor, or otherwise for making any contribution to, or in respect of the funding, investment, or administration of, any employee benefit plan, arrangement, or agreement (including, without limitation, pension plans) or the termination of or withdrawal from any such plan, arrangement, or agreement, (c) the cessation of the Debtors' operations, dismissal of employees, or termination of employment or labor agreements or pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, obligations that might otherwise arise or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Age Discrimination and Employment Act of 1967, (v) the Federal Rehabilitation Act of 1973, (vi) the National Labor Relations Act, or (vii) the Consolidated Omnibus Budget Reconciliation Act of 1985, (viii) state discrimination laws, (ix) state unemployment compensation laws or any other similar state laws, (x) the Worker Adjustment and Retraining Notification Act, 29 U.S.C §§ 2101 et. seq., or (xi) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors worker's compensation, occupational disease, or unemployment or temporary disability insurance claims, (d) environmental Encumbrances or Liabilities arising from conditions first existing on or prior to the Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or

waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., (e) any bulk sales or similar law, (f) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, (g) any and all claims arising out of violations, or other non-compliance with any law(s), regulation(s), standard(s), guideline(s), enforcement order(s), or any other authority or requirement enforced by, or under the supervision of the Occupational Safety and Health Administration, (h) any litigation, and (i) any products liability, product warranty liability, or similar claims, whether pursuant to any state or federal laws or otherwise.⁵

10. Any and all CCPN Assets in the possession or control of any person or entity, including any vendor, supplier, or employee of the Debtors, shall be transferred to the Buyer free and clear of all Encumbrances and Liabilities, except for Permitted Encumbrances and Assumed Liabilities, and shall be delivered to the Buyer and deemed delivered at the time of Closing (or such other time as provided in the Purchase Agreement).

11. Neither the Buyer nor any of its members, nor their respective affiliates, successors, assigns, or advisors, shall have or incur any liability to, or be subject to any action by, the Debtors, their estates, or any of their predecessors, successors, or assigns, arising out of the negotiation, due diligence in respect of, preparation, execution, or delivery of the Purchase Agreement, and the entry into and consummation of the Sale Transaction, other than (with respect to the Buyer only) the Permitted Encumbrances and the Assumed Liabilities being assumed by the Buyer.

⁵ The recitation in this paragraph 9 of any specific agreements, plans, laws, ordinances or statutes is not intended, and shall not be construed, to limit the generality of the categories of liabilities, debts, or obligations referred to herein.

12. Except as expressly provided herein, or in the Purchase Agreement with respect to the Permitted Encumbrances and the Assumed Liabilities, effective upon the Closing, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, vendors, suppliers, employees, trade creditors, litigation claimants, and other persons holding a Liability or Encumbrance (other than Permitted Encumbrances or Assumed Liabilities) against or in the Debtors or the CCPN Assets (whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of the Chapter 11 Cases, whether imposed by agreement, understanding, law, equity, or otherwise), shall be and hereby are forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such interests against the Buyer, any of its members, or their respective affiliates, agents, advisors, representatives, officers, successors, and assigns, the CCPN Assets, or the interests of the Debtors or the Buyer in such CCPN Assets, including, without limitation, taking any of the following actions with respect to an Encumbrance or Liability (other than, with respect to the Buyer only, the Permitted Encumbrances and the Assumed Liabilities): (a) commencing or continuing in any manner any action or other proceeding against such parties or CCPN Assets; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against such parties or CCPN Assets; (c) creating, perfecting, or enforcing any Encumbrances or Liabilities against such parties or CCPN Assets; (d) asserting a claim as a setoff, right of subrogation or recoupment of any kind against any obligation due the Buyer or its affiliates, agents, advisors, representatives, officers, successors, or assigns; or (e) commencing or continuing any action in any manner or

place that does not comply, or is inconsistent, with the provisions of this Order or the agreements or actions contemplated or taken in respect thereof. All persons are hereby enjoined from taking any action that would interfere with or adversely affect the Debtors' ability to transfer the CCPN Assets in accordance with the terms of the Purchase Agreement and this Order. Following the Closing, no holder of any Encumbrance or Liability (including an "interest" as such term is used in section 363(f) of the Bankruptcy Code), other than holders of Permitted Encumbrances and Assumed Liabilities, against the Debtors shall interfere with the Buyer's title to or use and enjoyment of the CCPN Assets.

13. The terms and provisions of the Purchase Agreement and all related documents necessary to consummate the Sale Transaction, together with the terms and provisions of this Order, shall be binding in all respects upon the Debtors, their estates, their creditors, holders of any equity interests in the Debtors, and all parties in interest, including any and all successors and assigns (including, without limitation, any trustee, examiner, "responsible person," or other fiduciary appointed under the Bankruptcy Code or upon conversion to chapter 7). The Purchase Agreement shall not be subject to rejection or avoidance under any circumstances. If any order under section 1112 of the Bankruptcy Code is entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that this Order, including the rights granted to the Buyer hereunder, shall remain effective and, notwithstanding such conversion or dismissal, shall remain binding on parties in interest. This Order shall not be modified by any chapter 11 plan confirmed in the Chapter 11 Cases or any subsequent order(s) of this Court.

14. Upon the Closing, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of all of the Debtors' right, title, and interest in the CCPN Assets and/or a bill of sale transferring good and marketable title in such CCPN Assets to the Buyer at the Closing pursuant to the terms of the Purchase Agreement, free and clear of all Encumbrances and Liabilities (other than Permitted Encumbrances or Assumed Liabilities).

15. Except as expressly provided in the Purchase Agreement with respect to the Permitted Encumbrances and the Assumed Liabilities, all entities holding Encumbrances or Liabilities against the CCPN Assets shall be, and they hereby are, barred from asserting such Encumbrances or Liabilities against the Buyer and/or the CCPN Assets and all entities holding such Encumbrances or Liabilities shall be deemed to have released the CCPN Assets to the Buyer and to have limited the assertion of their Encumbrances and Liabilities against the CCPN Assets (subject, in all cases, to the priority set forth in the DIP Order, the Carveout, and the Wind-Down Budget) to the sale proceeds the Debtors receive for the sale of the CCPN Assets and any other available property of the Debtors' respective estates that does not constitute the CCPN Assets.

16. The Debtors shall deposit into a segregated account, to be held by the Debtors as adequate protection for the secured claims of the Local Texas Tax Authorities, from proceeds of the Sale Transaction respecting Prepetition Collateral that is (a) located in a Local Texas Tax Authority's jurisdiction and (b) subject to the Primed Liens (as defined in the DIP Order) and the liens of such Local Texas Tax Authority, an amount either (y) agreed to by the DIP Secured Parties, the Local Texas Tax Authorities, and the Debtors or (z) as otherwise determined by the Court. The DIP Liens, the Prepetition Liens, and any valid, senior, perfected, and unavoidable liens (if any) of the Local Texas

Tax Authorities shall attach to these segregated proceeds to the same extent and with the same priority as such liens now held against the property of the Debtors. These segregated funds shall neither constitute the allowance of the claims of the Local Texas Tax Authorities nor a cap on the amounts that they may be entitled to receive.

Furthermore, the claims and liens of the Local Texas Tax Authorities shall remain subject to any objections any party would otherwise be entitled to raise as to the priority, validity, or extent of such liens. These segregated funds may be distributed upon agreement between the Local Texas Tax Authorities, the DIP Secured Parties, and the Debtors or by subsequent order of the Court (duly noticed to the Local Texas Tax Authorities).

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

18. All Encumbrances and Liabilities of record against the CCPN Assets, other than the Permitted Encumbrances and Assumed Liabilities, shall, upon Closing, be terminated as against the CCPN Assets, and all the entities described in the immediately preceding paragraph of this Order are authorized and directed to (a) terminate all recorded Encumbrances and Liabilities against the CCPN Assets from their records, official and otherwise, in each case solely with respect to the CCPN Assets, and

(b) accept for filing or recording all instruments made or delivered by or to any of the Debtors, and all deeds or other documents relating to the conveyance of the CCPN Assets to the Buyer.

19. If any person or entity that has filed statements, documents or agreements evidencing Encumbrances or Liabilities on or in the CCPN Assets shall not have delivered to the Debtors prior to Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of Encumbrances and easements, and any other documents necessary for the purpose of documenting the release of all Encumbrances and Liabilities that the person or entity has or may assert with respect to the CCPN Assets, the Buyer is hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the CCPN Assets. Likewise, the Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Encumbrances and Liabilities against the CCPN Assets other than the Permitted Encumbrances and the Assumed Liabilities. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office.

20. To the extent permitted under applicable law, the Buyer is hereby authorized in connection with the consummation of the Sale Transaction to allocate the CCPN Assets, including the Assigned Contracts, among its affiliates, designees, assigns, and/or successors, in a manner as it (in its sole discretion) deems appropriate, and to assign, lease, sublease, license, sublicense, transfer, or otherwise dispose of any of the CCPN Assets, including the Assigned Contracts, to its affiliates, designees, assignees

and/or successors with all of the rights and protections accorded to the Buyer under this Sale Order and the Purchase Agreement with respect thereto. The Debtors shall cooperate with and take all actions reasonably requested by the Buyer to effectuate any of the foregoing.

21. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing and the resolution of all timely filed Assumption and Assignment Objections, as applicable, the Debtors' assumption and assignment to the Buyer, and the Buyer's assumption, of the Assigned Contracts, on the terms set forth in the Purchase Agreement, is hereby approved and the requirements of section 365(b)(1) with respect thereto are hereby found and deemed to be satisfied.

22. The Debtors are hereby authorized and, unless the Debtors and the Buyer otherwise agree, directed in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code to (a) assume and assign to the Buyer, effective upon the Assumption and Assignment Effective Date, the Assigned Contracts free and clear of all interests (other than the Permitted Encumbrances and the Assumed Liabilities) and (b) execute and deliver to the Buyer such documents or other instruments as Buyer deems may be necessary to assign and transfer the Assigned Contracts to the Buyer; *provided, however*, that, for the purposes of section 365(d)(4) of the Bankruptcy Code, any Assigned Contract that constitutes, or may be deemed to constitute, an unexpired lease of non-residential real property shall be deemed assumed by the Debtors as of the date hereof and assigned to the Buyer on the Assumption and Assignment Effective Date.

23. Subject to the terms and conditions set forth in the Bidding Procedures Order and this Order, (a) to the extent provided in section 365 of the Bankruptcy Code, any provisions in any of the Assigned Contracts that prohibit or condition the assignment

of such Assigned Contracts or allow the party to such Assigned Contracts to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such of the Assigned Contracts, constitute unenforceable anti-assignment provisions which are void and of no force and effect, (b) all other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Buyer of each of the Assigned Contracts have been satisfied, and (c) effective upon the Closing, the Assigned Contracts shall be transferred and assigned to, and from and following the Closing remain in full force and effect for the benefit of, the Buyer, notwithstanding any provision in any of the Assigned Contracts that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Assigned Contracts after such assumption and assignment to the Buyer, except as provided in the Purchase Agreement; *provided, however*, that, for the purposes of section 365(d)(4) of the Bankruptcy Code, any Assigned Contract that constitutes, or may be deemed to constitute, an unexpired lease of non-residential real property shall be deemed assumed by the Debtors as of the date hereof and assigned to the Buyer on the Assumption and Assignment Effective Date.

24. All defaults or other obligations of the Debtors under the Assigned Contracts, arising or accruing prior to the Closing, or required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts, shall be cured by the Debtors or the Buyer, as applicable, to the extent set forth in the Purchase Agreement and this Order. 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 (the

“**Applicable Assumption and Assignment Notice**”), shall constitute the only amounts due to the Counterparty under the Assigned Contracts as of the Petition Date, and no other defaults exist and no other amounts are due on account of any facts occurring prior to the Petition Date, 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 Petition Date.

25. Upon payment of the Cure Costs pursuant to the terms of this Order, the Bidding Procedures Order, and the Purchase Agreement, and the Debtors’ assignment of the Assigned Contracts to the Buyer under the provisions of this Order, no default or other obligations arising or accruing prior to the Petition Date shall exist under any Assigned Contracts, and each Counterparty is forever barred, estopped, and permanently enjoined from (a) declaring a default by the Debtors or the Buyer under any such Assigned Contract based on acts or occurrences arising prior to or existing as of the Petition Date, (b) raising or asserting against the Debtors or the Buyer, or the property of either of them, any assignment fee, default, breach, or claim of pecuniary loss, or condition to assignment, arising under or related to any of the Assigned Contracts based on acts or occurrences arising prior to or existing as of the Petition Date, (c) asserting a claim against the Buyer, or the CCPN Assets, that any additional amounts are due or that any defaults exist under the Assigned Contracts that arose or accrued, or relate to or are attributable to the period before the Closing, whether declared or undeclared, or known or unknown, or (d) taking any other action against the Buyer as a result of any Debtor’s financial condition, bankruptcy, or failure to perform any of its obligations under the relevant Assigned Contracts based on acts or occurrences arising prior to or existing as of the Petition Date. Each Counterparty hereby is also forever barred, estopped, and

permanently enjoined from (y) asserting against the Debtors or the Buyer, or the property of any of them, any default or claim arising out of any indemnity or other obligation or warranties for acts or occurrences arising prior to or existing as of the Petition Date and (z) imposing or charging against Buyer or its affiliates any rent accelerations, assignment fees, increases, or any other fees as a result of the Debtors' assumption and assignment to Buyer of the Assigned Contracts.

26. Subject to the terms and conditions of the Purchase Agreement, and upon the Closing, the Buyer shall have, to the extent necessary, cured or provided adequate assurance of cure of, any default existing prior to the Closing under the Assigned Contracts within the meaning of sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code. The Buyer's obligations to pay the Cure Costs under the Purchase Agreement, and the Buyer's agreement to perform the obligations under the Assigned Contracts in accordance with the terms of the Purchase Agreement, shall constitute adequate assurance of future performance within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code to the extent that any such assurance is required and not waived by the applicable Counterparty.

27. To the furthest extent permitted by law, any party that may have had the right to consent to the assumption or assignment of any of the Assigned Contracts is deemed to have consented to such assumption and assignment for purposes of section 365(e)(2)(A)(ii) of the Bankruptcy Code if such party failed to timely object to the assumption or assignment of such Assigned Contracts in accordance with the Bidding Procedures Order, and the Buyer shall be deemed to have demonstrated adequate assurance of future performance with respect to such Assigned Contracts pursuant to sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. Any Counterparty to

any of the Assigned Contracts designated to be assumed and assigned to the Buyer who has not timely filed and served an objection in accordance with the Bidding Procedures Order shall be barred from objecting, or asserting monetary or non-monetary defaults, with respect to any such Assigned Contracts, and such Assigned Contracts shall be deemed assumed by the Debtors and assigned to the Buyer on the Assumption and Assignment Effective Date.

28. To the extent a Counterparty fails to timely object to the Cure Costs for any Assigned Contract in accordance with the Bidding Procedures Order, such Cure Costs shall be deemed to be finally determined and any such Counterparty shall be prohibited from challenging, objecting to, or denying the validity and finality of the Cure Costs at any time.

29. Upon and as of the Closing, the Buyer shall be deemed to be substituted for the applicable Debtor as a party to the applicable Assigned Contract, and the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assigned Contract.

30. The Counterparties shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Buyer, any instruments, applications, consents, or other documents that may be required or requested by any public authority or other party or entity to effectuate the applicable transfers in connection with the Sale Transaction.

31. From the date of the entry of this Order, the Debtors may, in their sole discretion, settle objections to assumption and assignment of any Assigned Contract, including to proposed Cure Costs, without any further notice to or action by any party or order of the Court (including by paying any agreed Cure Costs); provided that notice to and consent of the Buyer shall be required to the extent the Buyer is liable for such Cure

Costs pursuant to the Purchase Agreement as modified by this Order. Unless the Court orders otherwise and subject to paragraph 35 hereof, contemporaneously with the resolution of any such objection, the executory contract or unexpired lease underlying such objection shall be deemed an Assigned Contract assumed by the Debtors and assigned to the Buyer without the necessity of obtaining any further order of the Court.

32. Notwithstanding anything to the contrary herein, in the Bidding Procedures, or in the Bidding Procedures Order, no executory contract or unexpired lease as to which a Counterparty timely files and serves an objection in accordance with the Assumption and Assignment Procedures shall be considered assumed by the Debtors and assigned to the Buyer under this Order unless and until any timely objection to the assumption and assignment of such executory contract or unexpired lease has been resolved or overruled.

33. Nothing in this Order, the Motion, the Bidding Procedures Order, any Applicable Assumption and Assignment Notice, or any other notice or any other document is or shall be deemed an admission by the Debtors that any contract is an executory contract or must be assumed and assigned pursuant to the Purchase Agreement or in order to consummate the Sale Transaction.

34. All requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Buyer of the Assigned Contracts have been satisfied. Each of the Assigned Contracts shall be deemed to be valid, binding, and in full force and effect and enforceable in accordance with their terms as of the Closing, subject to any amendments or modifications agreed to between a Counterparty and the Buyer. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Buyer shall be fully and irrevocably vested with all right,

title, and interest of the Debtors in and under the Assigned Contracts, and each of the Assigned Contracts shall be fully enforceable by the Buyer in accordance with its respective terms and conditions, except as limited or modified by this Order, the Bidding Procedures Order, or other order of the Court. To the extent provided in the Purchase Agreement, the Debtors shall cooperate with, and take all actions reasonably requested by, the Buyer to effectuate the foregoing.

35. The assumption and assignment of the Assigned Contracts will not be effectuated if the Closing does not occur and the Purchase Agreement is terminated.

36. If the list of Assigned Contracts changes prior to the Closing, then within ten Business Days after the Closing, the Debtors shall file with the Court a list of Assigned Contracts, Excluded Contracts, and Designated Agreements (as applicable) and shall serve a copy of such list upon each non-Debtor Counterparty on the list, and such list shall be updated or supplemented from time to time as necessary or at the request of the Buyer, provided that any updated or supplemental list need only be served upon those non-Debtor Counterparties to such contracts or leases directly affected by such updated or supplemental list.

37. Each non-Debtor counterparty to an Assigned Contract shall be forever barred, estopped, and permanently enjoined from asserting against the Buyer or its property (including, without limitation, the CCPN Assets), any fee, acceleration, default, breach, claim (including any counterclaim, defense, or setoff capable of being asserted against the Debtors), pecuniary loss, or condition to assignment existing or on account of any facts occurring prior to or as a result of the Closing Date.

38. The Debtors are hereby authorized to (a) take such corporate action as may be necessary to implement the provisions of the Purchase Agreement and any other

document executed by the Debtors in connection therewith and (b) execute and file any necessary document with any appropriate secretary of state. This Order shall constitute all approvals and consents, if any, required by the laws of any state necessary to file, record, and accept such documents.

39. To the greatest extent available under applicable law, the Buyer shall be authorized, as of the Closing, to operate under any license, permit, registration, and governmental authorization or approval of the Debtors with respect to the CCPN Assets, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been transferred to the Buyer as of the Closing.

40. The Purchase Agreement has been negotiated and executed, and the Sale Transaction is and has been undertaken, by Debtors, the Buyer, and their respective representatives at arm's length, without collusion and in "good faith," as that term is defined in section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale Transaction shall not affect the validity of the Sale Transaction or any term of the Purchase Agreement, and shall not permit the unwinding of the Sale Transaction. The Buyer is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

41. Neither the Debtors nor the Buyer has engaged in any conduct that would cause or permit the Purchase Agreement or the Sale Transaction to be avoided, or damages or costs to be imposed, under section 363(n) of the Bankruptcy Code. The consideration provided by the Buyer for the CCPN Assets under the Purchase Agreement

is fair and reasonable, and the Sale Transaction may not be avoided under section 363(n) of the Bankruptcy Code.

42. At the Closing, the Debtors shall deposit the sale proceeds from the Sale Transaction into a segregated account held by the Debtors pending the ultimate resolution (either as agreed to by the Required Lenders and the Debtors or as otherwise determined by the Court) and funding of the Wind-Down Budget; *provided, however*, that the Debtors shall be authorized to use a portion of such sale proceeds to pay, in accordance with the Approved Budget (as defined in the DIP Credit Agreement (as defined in the DIP Order)), all allowed (a) post-petition claims, (b) administrative expense and priority claims, and (c) professional fees and expenses necessary to administer the Debtors' estates accrued through the closing of the final Sale Transaction in an amount either (i) agreed to by the Required Lenders and the Debtors or (ii) 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. Upon funding of the Wind-Down Budget, the remaining proceeds shall be applied in accordance with the DIP Order and section 3.04(c) of the DIP Credit Agreement.

43. Nothing contained in any plan of reorganization (or liquidation) confirmed in the Chapter 11 Cases, any order confirming any plan of reorganization (or liquidation), or any other order of any type or kind entered in the Chapter 11 Cases or any related proceeding, including any subsequent chapter 7 case, shall conflict with or derogate from the provisions of the Purchase Agreement or the terms of this Order.

44. The Debtors are authorized to execute, acknowledge, and deliver such deeds, assignments, conveyances, and other assurances, documents, and instruments of transfer, and to take such other actions as may be reasonably necessary to perform the

terms and provisions of the Purchase Agreement and all other agreements related thereto (including any documents relating to the repayment of the DIP Loans (as such term is defined in the DIP Order)), and the Debtors are authorized to take any other action that reasonably may be requested by the Buyer for the purpose of assigning, transferring, granting, and conveying any or all of the CCPN Assets, or by the DIP Secured Parties in connection with evidencing the repayment of the DIP Obligations or the release of any DIP Liens.

45. Notwithstanding any provision in the Motion, this Order, or any implementing sale documents, nothing shall (1) authorize the assumption, sale, assignment or other transfer to the Buyer of any easements, rights of way, licenses, instruments, contracts, leases, agreements or other interests of the federal government, (collectively, “**Federal Interests**”) without compliance with all terms of the Federal Interests and all applicable legal requirements and approvals under non-bankruptcy law; (2) authorize the transfer or assignment of any governmental license, permit, registration, authorization, or approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law; (3) be interpreted to set cure amounts or require the government to novate, approve or otherwise consent to the assumption, sale, assignment or other transfer of any Federal Interests; (4) subject to section 553 of the Bankruptcy Code, affect the government’s rights to assert setoff or recoup any amounts due under, or relating to, the Federal Interests; (5) release or affect any deed restriction or easement in favor of a governmental unit; (6) release, nullify, preclude or enjoin the enforcement of any police or regulatory liability to a governmental unit (including, but not limited to, the Texas Commission on Environmental Quality) that any entity would be subject to as the post-

sale owner or operator of property upon the Closing Date; or (7) divest any tribunal of any jurisdiction it may have with respect to the Federal Interests, or under police or regulatory law, to interpret this Order or to adjudicate any defense asserted under this Order. For the avoidance of doubt, nothing in this Order or documents related thereto shall relieve any party of any obligation under those certain United States Department of Defense, Army Corps of Engineers letters dated April 23, 2018 and September 17, 2019, respectively.

46. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004, 6006, and 7062 and any other applicable Bankruptcy Rules or applicable Local Rules to the contrary, this Order shall be effective immediately upon entry and shall not be subject to any stay in the implementation, enforcement, or realization of the relief granted herein.

47. The Court retains jurisdiction, even after the closing of the Chapter 11 Cases, to do the following:

- (a) interpret, implement, and enforce the terms and provisions of this Order, the Purchase Agreement, and any other agreement executed in connection therewith;
- (b) protect the Buyer, or any of the CCPN Assets, against any Encumbrances or Liabilities, other than the Permitted Encumbrances and the Assumed Liabilities;
- (c) resolve any disputes arising under or related to the Purchase Agreement, the Sale Transaction, or the Buyer's peaceful use and enjoyment of the CCPN Assets, whether or not a plan of

reorganization (or liquidation) has been confirmed in the Chapter 11 Cases and irrespective of the provisions of any such plan or order confirming any such plan;

- (d) adjudicate all issues concerning all Encumbrances and Liabilities in and to the CCPN Assets, including the extent, validity, enforceability, priority, and nature of all such Encumbrances and Liabilities;
- (e) adjudicate any and all issues and/or disputes relating to the Debtors' right, title, or interest in the CCPN Assets and the proceeds thereof, the Motion, and the Purchase Agreement; and
- (f) adjudicate any and all remaining issues concerning the Debtors' right and authority to assume and assign the Assigned Contracts to the Buyer and resolve any objections to Cure Costs or any other objections by non-Debtor counterparties to any additional contracts or leases that the Buyer may elect, in accordance with the Purchase Agreement and the Bidding Procedures Order, to become Assigned Contracts and determine the Buyer's rights and obligations with respect to such assignment and the existence of any default under any Assigned Contract.

48. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale Transaction.

49. The Purchase Agreement and any related agreements, documents, or instruments may be modified, amended, or supplemented by the parties thereto in accordance with the terms thereof, without further order of the Court, so long as any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

50. The failure specifically to include any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the efficacy of such provision, it being the intent of the Court that the Purchase Agreement and each and every provision, term, and condition thereof be authorized and approved in its entirety.

51. The provisions of this Order are nonseverable and mutually dependent.

52. Notwithstanding anything in this Order, any Notice related thereto, or the Purchase Agreement to the contrary, and for the avoidance of doubt, the Employee Benefits Agreements, as identified in the Cigna Objection [D.I. 443] shall not be deemed Assigned Contracts for purposes of this Order, and shall not be assumed and assigned as part of the Sale Transaction.

53. If there is any direct conflict between the Purchase Agreement and this Order, the terms of this Order shall control.

Dated: October 22nd, 2019
Wilmington, Delaware


MARY F. WALRATH
43 UNITED STATES BANKRUPTCY JUDGE