Docket #0851 Date Filed: 01/23/2020

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

DECLARATION OF ED MOSLEY
IN SUPPORT OF CONFIRMATION OF THE FIRST AMENDED CHAPTER 11 PLAN FOR SOUTHCROSS ENERGY PARTNERS, L.P. AND ITS AFFILIATED DEBTORS

Ed Mosley, in support of confirmation of the *First Amended Chapter 11 Plan for Southcross Energy Partners, L.P. and its Affiliated Debtors* [D.I. 816] (as may be amended or modified from time to time in accordance with its terms and including all exhibits and supplements thereto, the "**Plan**"),[2] declares as follows:

1. I am a Managing Director at Alvarez & Marsal North America, LLC ("**A&M**"). A&M is a leading independent provider of restructuring, financial, and corporate advisory solutions and has been retained by Southcross Energy Partners, L.P. ("**Southcross**"), Southcross Energy Partners GP, LLC, and Southcross's wholly-owned direct and indirect subsidiaries

[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 defined herein shall have the meanings ascribed to them in the Plan.

(collectively, the "**Debtors**") in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"). I am generally familiar with the Debtors' overall day-to-day operations, business and financial affairs, and books and records, as well as the Debtors' restructuring efforts. I have played an active role in the development of the Plan and I am familiar with the Plan's terms, as well as the negotiations that led to its development.

2. I am authorized to submit this declaration (this "**Declaration**") on behalf of the Debtors in support of the Plan.

3. Except as otherwise indicated herein, all facts set forth in this Declaration are based on my personal knowledge of the Debtors' operations and finances, information gathered from my review of relevant documents, my opinion, my experience as a financial advisor, or information supplied to me or my colleagues at A&M by members of the Debtors' management and the Debtors' other advisors. If called upon to testify, I could and would testify to the facts set forth herein on that basis.

4. Neither I nor A&M are being specifically compensated for this testimony, other than compensation to A&M as a professional services firm retained by the Debtors pursuant to the A&M Retention Order (as defined herein).

Qualifications

5. A&M is a preeminent restructuring consulting firm with extensive experience and an excellent reputation for providing high quality, specialized management and restructuring advisory services to debtors and distressed companies. Specifically, A&M's core services include turnaround advisory services, interim and crisis management, revenue enhancement, claims management, and creditor and risk management advisory services. A&M provides a wide range of debtor advisory services targeted at stabilizing and improving a company's financial position, including: developing or validating forecasts, business plans, and related assessments of

strategic position; monitoring and managing cash, cash flow, and supplier relationships; assessing and recommending cost reduction strategies; and designing and negotiating financial restructuring packages. Additionally, A&M provides advice on specific aspects of the turnaround process and helps manage complex constituency relations and communications. A&M is known for its ability to work alongside company management and key constituents during chapter 11 restructurings to develop a feasible and executable plan of reorganization.

6. I have a diverse background in financial restructuring, operational restructuring, and investment banking, as well as finance and operational experience. I hold a bachelor's degree from Harvard University and have been recognized as a Certified Insolvency and Restructuring Advisor by the Association of Insolvency and Restructuring Advisors. With more than 19 years of restructuring experience, I am a seasoned advisor to companies in distressed and bankruptcy situations. I previously have served as an advisor to many distressed companies, including: Exide Technologies (where I served as the Chief Restructuring Officer), Seadrill Limited, White Star Petroleum, Magnum Hunter Resources Corporation, Halcon Resources Corporation, QGOG Constellation S.A., Azure Midstream Partners, LP, Key Energy Services, Inc., Imerys Talc America, Inc., Visteon Corporation, Chesapeake Corporation, Aurora Bank (a non-debtor subsidiary of Lehman Brothers), Amcast Automotive, Cone Mills, Gayley & Lord, Washington Group International, Global Crossing Ltd., Doskocil Manufacturing Co., NCS Healthcare, and ITC Deltacom. I have worked with both private and public companies across various industries, including manufacturing, transportation, automotive, retail, industrial construction, telecommunications, healthcare, and direct selling. In addition, I have advised companies in a variety of sectors and situations, developed business plans, and evaluated

compensation packages for management teams of distressed businesses involving in-court and out-of-court scenarios, including several of the companies mentioned above.

7. On May 6, 2019, the Bankruptcy Court entered the *Order Approving Application of Debtors for Authority To (I) Employ and Retain Alvarez & Marsal North America, LLC as Financial Advisor for the Debtors Nunc Pro Tunc to the Petition Date and (II) Waive Certain Information Disclosure Requirements* [D.I. 193] (the "**A&M Retention Order**"). At the direction of the Debtors, A&M prepared the liquidation analysis (the "**Liquidation Analysis**") and the financial projections (the "**Financial Projections**") included as **Exhibit B** and **Exhibit C**, respectively, to the *Disclosure Statement Supplement for First Amended Chapter 11 Plan for Southcross Energy Partners, L.P. and its Affiliated Debtors*, filed on January 7, 2020 [D.I. 818] (as may be amended or modified from time to time in accordance with its terms, and including all exhibits and supplements thereto, the "**Disclosure Statement Supplement**").

Compliance with the Bankruptcy Code

8. It is my understanding that the Bankruptcy Code sets forth certain requirements that any chapter 11 plan must comply with in order to be confirmed. The following is a recitation of certain features and characteristics of the Plan, organized by the section of the Bankruptcy Code, to which I understand they are relevant for the confirmation of the Plan. To the extent necessary, all remaining requirements of section 1129(a) of the Bankruptcy Code, among other things, will be attested to at the Confirmation Hearing.

I. Classification of Claims (11 U.S.C. §§ 1129(a)(1), 1122, and 1123)

9. Based upon my review of the Plan and the advice of the Debtors' other advisors, I believe that the Plan complies with section 1129(a)(1) of the Bankruptcy Code as follows:[3]

[3] To the extent necessary, additional evidence in support of the belief that the Plan complies with section 1129(a)(1) of the Bankruptcy Code will be provided at the Confirmation Hearing.

- 11 U.S.C. § 1122(a): The Plan provides for the classification of Claims and Interests in eight individual Classes:

Class 1:	Priority Non-Tax Claims
Class 2:	Other Secured Claims
Class 3:	Prepetition Revolving Credit Facility Claims
Class 4:	Prepetition Term Loan Claims
Class 5:	General Unsecured Claims
Class 6:	Sponsor Note Claims
Class 7:	Subordinated Claims
Class 8:	Existing Interests

I believe that such classification complies with section 1122(a) of the Bankruptcy Code because each Class contains only Claims or Interests that are substantially similar to each other.

- 11 U.S.C. § 1123(a)(1): Article IV of the Plan designates Classes of Claims, other than the Claims of the type described in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code.

- 11 U.S.C. § 1123(a)(2): The Plan identifies that Claims in Classes 1 and 2 are Unimpaired.

- 11 U.S.C. § 1123(a)(3): The Plan specifies the treatment of each Impaired Class under the Plan including Classes 3, 4, 5, 6, 7, and 8.

- 11 U.S.C. § 1123(a)(4): Article IV of the Plan provides for the same treatment for each Claim or Interest of each particular Class, unless the holder of a particular Claim or Interest agrees to a less favorable treatment of such particular Claim or Interest.

- 11 U.S.C. § 1123(a)(5): Article VII of the Plan, various other provisions of the Plan, and the various documents and agreements set forth in the Plan Supplement provide adequate means for the Plan's implementation, including, but not limited to, the following:

Plan Consideration

- All consideration necessary to make Plan Distributions will be obtained from, or will be in the form of, (a) Cash, (b) the New Preferred Units, and (c) the New Common Units. (*See* Plan Art. V).

Continued Existence and Vesting of Assets in the Reorganized Debtors

- Vesting of Assets. In the event the Credit Bid Transaction is not implemented and except as otherwise provided in the Plan on or after the Effective Date, all property of the Estates, wherever located, including all claims, rights and Causes of Action, and any property, wherever located, acquired by the Debtors under or in connection with the Plan shall vest in each respective Reorganized Debtor free and clear of all Claims, Liens, charges, other encumbrances and Interests. (*See* Plan § 7.1(b)).

Issuance of New Units

- New Common Units. New Common Units shall be issued on the Effective Date and distributed as soon as practicable thereafter in accordance with the Plan. (*See* Plan § 7.4).

- New Preferred Units. New Preferred Units shall be issued on the Effective Date and shall be distributed on the Effective Date or as soon as practicable thereafter in accordance with the Plan. (*See* Plan § 7.4).

- Intercompany Interests. Notwithstanding anything to the contrary in the Plan except as provided in Section 12.2 of the Plan and subject to the Implementation Memorandum, on or after the Effective Date, any and all Intercompany Interests shall survive the Debtors' restructuring by virtue of such Intercompany Interests being left Unimpaired to maintain the existing organizational structure of the Debtors. (*See* Plan § 2.3(b)).

Amended Constituent Documents

- On the Effective Date, the Amended Constituent Documents and any other applicable amended and restated corporate or other organizational documents of each of the Debtors shall be deemed authorized in all respects. (See Plan § 7.10(b)).

Corporate Action

- Any action under the Plan to be taken by or required of the Debtors as applicable, including the adoption or amendment of certificates of incorporation and by-laws, the issuance of securities and instruments, or the selection of officers or directors, shall be authorized and approved in all respects, without any requirement of further action by any of the Debtors', equity holders, holders of partnership interests, sole members, boards of directors or boards of managers, or similar body, as applicable. (See Plan § 7.10(c)).

Exit Credit Facility

- Exit Credit Facility. On the Effective Date, the Reorganized Debtors (or if the Credit Bid Transaction is implemented, NewCo) shall be authorized to enter into the Exit Credit Facility without the need for any further corporate, limited liability company, or other similar action. The entry of the Confirmation Order shall be deemed approval of the Exit Credit Facility (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors (or if the Credit Bid Transaction is implemented, NewCo) in connection therewith, including the payment of all fees, indemnities, and expenses provided for therein) and authorization for the Reorganized Debtors (or if the Credit Bid Transaction is implemented, NewCo) to enter into and execute the Exit Credit Facility Agreement and such other documents as the lenders under the Exit Credit Facility Agreement may reasonably require, subject to such modifications as the Reorganized Debtors (or if the Credit Bid Transaction is implemented, NewCo) may deem to be reasonably necessary to consummate either agreement. The Reorganized Debtors (or if the Credit Bid Transaction is implemented, NewCo) may use the Exit Credit Facility for any purpose permitted thereunder, including the funding of obligations under the Plan. (*See* Plan § 7.7).

Cancellation of Existing Securities and Agreements

- Except for the purpose of evidencing a right to distribution under the Plan and except as otherwise set forth in the Plan on the Effective Date, all agreements, instruments, and other documents evidencing, related to or connected with any Claim or Interest, other than Intercompany Claims and Intercompany Interests, and any rights of any holder in respect thereof, shall be deemed cancelled, discharged and of no force or effect. (See Plan § 7.8).

Effective Date Transactions

- Employee Protection Plan and STIP. As of the Effective Date, the Reorganized Debtors (or if the Credit Bid Transaction is implemented, NewCo) shall be deemed to have adopted the Employee Protection Plan for all of the Debtors' full-time employees, and the Reorganized Debtors' or NewCo's obligations thereunder shall be deemed incurred as of the Effective Date. For the STIP, the discretionary awards shall be paid on the Effective Date on terms included in Exhibit E of the Plan Supplement [D.I. 830] (the "**Plan Supplement**"). (*See* Plan § 7.2).

In addition, I understand that the holders of 100% of DIP Roll-Up Loans have entered into a cooperation agreement, dated December 12, 2019, which provides, among other things, that each holder of DIP Roll-Up Loans signatory thereto (the "**Consenting Roll-Up DIP Lenders**") (a) consents to the treatment of Allowed Roll-Up DIP Claims set forth in the Plan, which may be

amended in a manner that is reasonably acceptable to the Debtors and the Majority Ad Hoc Group in accordance with Section 14.3 of the Plan; provided, that each holder of an Allowed Roll-Up DIP Claim continues to receive its Pro Rata Share of any such amended treatment, (b) shall, if such Consenting Roll-Up DIP Lender holds any other Claims, including, without limitation, Prepetition Revolving Credit Facility Claims and/or Prepetition Term Loan Claims, timely vote each such claim in favor of the Plan and shall not withdraw, amend, or revoke such vote, and (c) shall not, directly or indirectly, object to, delay, impede, or take any other action to interfere with the acceptance, implementation, confirmation, or consummation of the Original Plan.

- 11 U.S.C. § 1123(a)(6): The New LLC Agreement and other applicable organizational documents contain provisions necessary to prohibit the issuance of nonvoting equity securities as required by section 1123(a)(6) of the Bankruptcy Code.

- 11 U.S.C. § 1123(a)(7): Section 7.9 of the Plan provides that the board of directors of each of the Debtors shall consist of individuals (a) selected by the Debtors and reasonably acceptable to the Debtors and Majority Ad Hoc Group and (b) identified in the Plan Supplement. The members of the board of directors of each Debtor prior to the Effective Date shall have no continuing obligations to the Debtors in their capacities as such on and after the Effective Date, and each such member shall be deemed to have resigned or otherwise cease to be a director of the applicable Debtor on the Effective Date. Commencing on the Effective Date, each of the directors of each of the Debtors shall serve pursuant to the terms of the applicable organizational documents of such Debtor and may be replaced or removed in accordance therewith, as applicable.

II. Solicitation of Votes was Proper (11 U.S.C. § 1129(a)(2))

10. On the basis of my understanding, I believe that the Debtors have complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126 thereof, and the Bankruptcy Rules regarding disclosure and Plan solicitation. I believe that it is undisputed that the Debtors have complied with section 1125 of the Bankruptcy Code in light of this Court's entry of (a) the *Order (I) Approving the Disclosure Statement, (II) Establishing Procedures for the Solicitation and Tabulation of Votes to Accept or Reject the Plan (III) Approving the Form of Ballot and Solicitation Materials, (IV) Establishing the Voting Record Date, (V) Fixing the Date, Time, and Place for the Confirmation Hearing and the Deadline for Filing Objections Thereto, and (VI) Approving Related Notice Procedures* [D.I. 674], dated November 7, 2019, and (b) the *Order (I) Approving the Debtors' Continued Solicitation of the Amended Chapter 11 Plan (II) Approving the Adequacy of the Disclosure Statement Supplement in Connection with the Amended Chapter 11 Plan (III) Establishing Certain Deadlines and Procedures in Connection with Confirmation of the Amended Chapter 11 Plan and (IV) Granting Related Relief* [D.I. 814], dated January 7, 2020.

11. Further, it is my understanding, based upon the *Affidavit of Service of Andrew Henchen, an employee of the Court- approved notice, claims, solicitation, and balloting agent, Kurtzman Carson Consultants LLC* ("**KCC**"), sworn to November 15, 2019 [D.I. 697], and the *Certification of Leanne V. Rehder Scott with Respect to Tabulation of Votes on Chapter 11 Plan for Southcross Energy Partners, L.P. and its Affiliated Debtors*, sworn to [•] [D.I. [•]] (the "**Tabulation Certification**"), that KCC properly solicited and tabulated votes with respect to the Plan. As evidenced by the Tabulation Certification, I understand that the Plan has been accepted

by substantially more than the requisite number of holders of Claims and amount in each Class of Claims entitled to vote on the Plan.

12. Based on the foregoing, I believe that the Plan satisfies the requirements of sections 1125 and 1126 of the Bankruptcy Code. Accordingly, I believe that the Debtors have complied with section 1129(a)(2) of the Bankruptcy Code.

III. Plan was Proposed in Good Faith (11 U.S.C. § 1129(a)(3))

13. On the basis of my understanding, personal knowledge, and the advice of the Debtors' other advisors, I believe the purpose of the Plan is to effectuate a reorganization that maximizes recoveries to all of the Debtors' economic stakeholders. Throughout the Chapter 11 Cases, the Debtors have sought to maximize value for their stakeholders, including through the sale of all or substantially of their assets during the Chapter 11 Cases and, ultimately, through the proposed transaction set forth in the Plan.

IV. Payments Under the Plan Are Subject to Court Approval (11 U.S.C. § 1129(a)(4))

14. Section 3.3(a) of the Plan provides that all requests for payment of Professional Fee Claims incurred prior to the Confirmation Date must be filed with the Bankruptcy Court by the date that is 60 calendar days after the Confirmation Date; provided that if any Professional Person is unable to file its own request with the Bankruptcy Court, such Professional Person may deliver an original, executed copy and an electronic copy to the Debtors' attorneys and the Debtors at least three Business Days before the deadline, and the Debtors' attorneys shall file such request with the Bankruptcy Court. Distributions on account of Allowed Professional Fee Claims shall be made as soon as reasonably practicable after such Claims become Allowed. Thus, based upon my review of the Plan and the advice of the Debtors' other advisors, I believe that the Plan satisfies section 1129(a)(4) of the Bankruptcy Code.

V. Plan Properly Discloses Post-Confirmation Management Services of Certain Individuals (11 U.S.C. § 1129(a)(5))

15. Exhibit C of the Plan Supplement discloses the members of the board of directors and the officers of each of the Reorganized Debtors. The appointment of the proposed directors and officers will allow the Reorganized Debtors to operate smoothly and in accordance with applicable law, and is consistent with the interests of the Debtors' creditors and equity security holders and with public policy. Moreover, the employment agreements included in Exhibit D of the Plan Supplement disclose the nature of compensation for the officers to be employed or retained by the Reorganized Debtors who are "insiders" under section 101(31) of the Bankruptcy Code, thereby satisfying the requirements of section 1129(a)(5)(B) of the Bankruptcy Code.

VI. Plan Does Not Require Regulatory Approval of Rate Changes (11 U.S.C. § 1129(a)(6))

16. The Plan does not provide for any rate changes over which a governmental regulatory commission has jurisdiction.

VII. Plan Satisfies the Best Interests Test (11 U.S.C. § 1129(a)(7))

17. I understand that section 1129(a)(7) of the Bankruptcy Code requires that any chapter 11 plan must satisfy the "best interests of creditors" test, which requires the Bankruptcy Court to find that, with respect to each Impaired Class of Claims or Interests, each holder of a Claim or Interest of such Class either (a) has accepted the Plan or (b) will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would recover if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

18. I believe that the Plan provides a substantially greater recovery than otherwise achievable under a chapter 7 liquidation. In connection with the Plan I, together with the Debtors' management and other A&M personnel, prepared the Liquidation Analysis, which

estimates and compares creditor recovery values and percentages based upon a hypothetical chapter 7 liquidation if a trustee were appointed by the Bankruptcy Court to convert the Debtors' assets into cash. I analyzed recoveries to creditors under each of a "high," a "midpoint," and a "low" recovery scenario to test potential recoveries in a chapter 7 liquidation under a range of different assumptions. To estimate recoveries to creditors in a hypothetical chapter 7 liquidation under the range of different assumptions, I undertook the following process, which is a standard and well-recognized approach for this type of analysis:

19. *First*, I identified the assets available for disposition in a liquidation of the Debtors by reviewing the Debtors' balance sheets, examining the Debtors' businesses for any assets of value that were not reflected on their balance sheets, analyzing the Debtors' financial reports and related detailed supporting information, and conducting interviews with key company personnel and professionals to identify other assets that might not be reflected on the company's financial statements. The Debtors' assets include, among other things, cash and cash equivalents, accounts receivable, prepaid expenses, property, and equipment (including construction in progress, pipeline, plants, compressors, rights of way, and capital leases), the Debtors' investments in joint ventures, and other assets. These assets are described in greater detail in the Liquidation Analysis. To estimate the liquidation values of the assets to be sold, I relied on my own experience and expertise, the expertise of my colleagues at A&M, and discussions with relevant members of the Debtors' management. I first estimated the *pro forma* value of the assets available for disposition. I then discounted these values based on the expected recovery for each asset group in a liquidation scenario. The respective discount for each asset group was based on the estimated risk of selling these assets in a liquidation scenario, the present market conditions for each asset group, and other factors.

20. *Second*, I estimated that liquidation would occur over a period of four months following the Debtors' cessation of operations, and I estimated the costs of a liquidation to the Debtors' Estates under each of the recovery scenarios, which must be applied against the proceeds from a hypothetical liquidation to form an estimate of the assets that would be available to pay Allowed Claims or Allowed Interests. Such costs include, among other things, personnel retention costs, severance, Estate wind-down costs, and Trustee, professional, and other administrative fees. These costs are described in greater detail in the Liquidation Analysis.

21. *Third*, the Debtors and I estimated aggregate claim values under each of the three recovery scenarios, as described in greater detail in the Liquidation Analysis.

22. *Fourth*, I estimated percentage recoveries in each Class of creditors by applying the proceeds of a hypothetical liquidation to each Class of Claims according to its priority at each Debtor.

23. As set forth in the Liquidation Analysis, holders of Allowed Administrative Expense Claims would receive no distribution, even under the "high" recovery scenario, in a hypothetical chapter 7 liquidation. In each of the three recovery scenarios, holders of Remaining DIP Claims (as defined in the Liquidation Analysis) would receive a significantly impaired recovery, and all other classes of Claims and Equity Interests, including Administrative Expense Claims, Priority Tax Claims, Priority Non-Tax Claims, Prepetition Revolving Credit Facility Claims, Prepetition Term Loan Claims, General Unsecured Claims, Sponsor Notes Claims, and Existing Interests, would not receive any distributions.

24. In comparison, I understand that the Plan provides for (a) all holders of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Priority Non-Tax Claims to be paid in full, (b) holders of Other Secured Claims to be paid in full or given such

other treatment that will render such Allowed Other Secured Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code, (c) holders of Allowed Prepetition Revolving Credit Facility Claims to receive their Pro Rata Share of (i) the Prepetition Revolving Credit Facility New Preferred Units Distribution and (ii) the Prepetition Revolving Credit Facility New Common Units Distribution, (d) holders of Allowed Prepetition Term Loan Claims to receive their Pro Rata Share of the Prepetition Term Loan New Common Units Distribution, and (e) holders of Allowed General Unsecured Claims, Sponsor Note Claims, Subordinated Claims, and Existing Interests to neither receive or retain any distribution under the Plan.

25. Therefore, the Liquidation Analysis concludes that holders of Claims against and Interests in the Debtors will receive distributions under the Plan that are equal to or greater than the distributions that each such holder would receive if the Chapter 11 Cases were converted to chapter 7 on such date and the Debtors were subsequently liquidated.[4]

VIII. Plan Provides for Payment of Administrative and Priority Claims (11 U.S.C. § 1129(a)(9))

26. Based on my own understanding, as well as discussions with the Debtors' legal advisors, I believe that the Plan complies with section 1129(a)(9) of the Bankruptcy Code because, except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides for full payment of Allowed Administrative Expense Claims on the applicable Distribution Date or in the ordinary course of business. The Plan also provides for the payment of Allowed Priority Non-Tax Claims on the applicable Distribution Date or as soon as reasonably practicable thereafter. Further, each holder of an Allowed Priority Tax Claim shall receive, on account of such Allowed Priority Tax Claim (a) payment in full in Cash made on or as soon as reasonably practicable after the later of the Effective Date and the

[4] The Liquidation Analysis assumed January 31, 2020 as the estimated Effective Date.

first Distribution Date occurring at least 20 calendar days after the date such Claim is Allowed, (b) regular installment payments in accordance with section 1129(a)(9)(C) of the Bankruptcy Code or (c) such other amounts and in such other manner as may be determined by the Bankruptcy Court to provide the holder of such Allowed Priority Tax Claim deferred Cash payments having a value, as of the Effective Date, equal to such Allowed Priority Tax Claim. Based on the foregoing, I believe that the Plan satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

IX. At Least One Impaired Class of Claims Voted in Favor of Plan (11 U.S.C. § 1129(a)(10))

27. It is my understanding, based upon the Tabulation Certification, that the following Impaired Classes of Claims voted in favor of the Plan without including any acceptance of the Plan by any insider: Class 3 (Prepetition Revolving Credit Facility Claims) and Class 4 (Prepetition Term Loan Claims). Based on the foregoing, I believe that the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

X. Plan is Feasible and Not Likely to be Followed by Further Reorganization or Liquidation (11 U.S.C. § 1129(a)(11))

28. I understand that section 1129(a)(11) of the Bankruptcy Code requires the Bankruptcy Court to determine that the Plan is feasible and that confirmation of the Plan is not likely to be followed by the liquidation or further financial reorganization of the Debtors.

29. I believe that the transactions contemplated by the Plan are reasonably likely to succeed and that the Reorganized Debtors are not likely to require further financial reorganization or a liquidation. The Plan eliminates and restructures the Debtors' prepetition and post-petition funded debt obligations by, among other things, (a) paying holders of approximately $27 million of Allowed New Money DIP Claims in full and in Cash, (b) converting roughly $20.5 million of Allowed Roll-Up DIP Claims to, among other things, New

Series A Preferred Units, (c) converting about $81.3 million of Allowed Prepetition Revolving Credit Facility Claims to, among other things, New Common Units and New Series A Preferred Units, (d) converting approximately $438 million of Allowed Prepetition Term Loan Claims to New Common Units, and (e) extinguishing roughly $17.4 million of Sponsor Note Claims. The Plan further provides the Debtors with (a) the liquidity necessary to fund Plan Distributions and (b) sufficient working capital to fund their ongoing operations, as further set forth in the Financial Projections. Furthermore, the Debtors have obtained exit financing that will be used to fund the distributions contemplated by the Plan and post-emergence working capital needs, including the Exit Credit Facility, in an aggregate principal amount of up to $65 million with a sublimit of up to $35 million for letters of credit. I believe that the exit financing, coupled with the Debtors' cash from operations and asset sales, will be reasonably sufficient to meet the Debtors' working capital needs and obligations under the Plan going forward. The Financial Projections further support the Debtors' expectation to service their post-emergence debt obligations and pay all of their operating expenses in the ordinary course of business.

XI. Plan Provides for Payment of All Fees Under 28 U.S.C. § 1930 (11 U.S.C. § 1129(a)(12))

30. Section 3.4 of the Plan provides that the Debtors shall each pay their respective outstanding U.S. Trustee Fees on an ongoing basis on the date such U.S. Trustee Fees become due, until such time as a final decree is entered closing the applicable Chapter 11 Case, the applicable Chapter 11 Case is converted or dismissed, or the Bankruptcy Court orders otherwise. Accordingly, I believe that the Plan satisfies section 1129(a)(12) of the Bankruptcy Code.

XII. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13))

31. The Debtors are not obligated to pay any retiree benefits, as such term is defined in section 1114 of the Bankruptcy Code, and, therefore, this section of the Bankruptcy Code is inapplicable to the Plan.

XIII. Domestic Support Obligations (11 U.S.C. § 1129(a)(14))

32. The Debtors are not obligated to pay any domestic support obligations and, therefore, this section of the Bankruptcy Code is inapplicable to the Plan.

XIV. Plan of Individual Debtor (11 U.S.C. § 1129(a)(15))

33. The Debtors are not individuals and, therefore, this section of the Bankruptcy Code is inapplicable to the Plan.

XV. Transfers of Property (11 U.S.C. § 1129(a)(16))

34. The Debtors are not corporations or trusts that are not moneyed, business, or commercial corporations or trusts and, therefore, this section of the Bankruptcy Code is inapplicable to the Plan.

XVI. Plan Does Not Discriminate Unfairly Against Rejecting Classes and Provides Fair and Equitable Treatment to Such Classes (11 U.S.C. § 1129(b))

35. I understand that, in the event that less than all Classes of Claims or Interests either accept the Plan or are Unimpaired, section 1129(b) of the Bankruptcy Code provides that the Bankruptcy Court may confirm the Plan if it does not "discriminate unfairly" against, and provides "fair and equitable" treatment to, each rejecting Impaired Class. As described above, I understand that there are Impaired Classes that are not entitled to a distribution under the Plan, and thus, are deemed to reject the Plan. With respect to these Classes, no holder of any Claim or Interest junior in priority will receive any distribution under the Plan.

XVII. One Plan (11 U.S.C. § 1129(c))

36. No plan of reorganization other than the Plan has been filed in the Chapter 11 Cases, and the Plan is the only chapter 11 plan being considered for confirmation at this time. Accordingly, I respectfully submit that the requirements of section 1129(c) of the Bankruptcy Code are satisfied.

XVIII. Principal Purpose of Plan (11 U.S.C. § 1129(d))

37. I believe that the principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act, thereby satisfying the requirements of section 1129(d) of the Bankruptcy Code.

XIX. Not Small Businesses Cases (11 U.S.C. 1129(e))

38. The Chapter 11 Cases are not small business cases and, accordingly, section 1129(e) of the Bankruptcy Code is inapplicable to the Chapter 11 Cases.

XX. Releases, Exculpations, and Injunctions are Appropriate (11 U.S.C. § 1123(b)(3) and other applicable law)

39. Article XII of the Plan provides the following: (a) a release by the Debtors, the Reorganized Debtors, and the Estates of the Released Parties[5] (the "**Debtor Releases**") (*see* Plan

[5] The Released Parties include the following: (a) each member of the Ad Hoc Group; (b) the Prepetition Term Loan Lenders; (c) the Prepetition Revolving Credit Facility Lenders; (d) the Prepetition Term Loan Agent; (e) the Prepetition Revolving Credit Facility Agent; (f) the Debtors (for the avoidance of doubt, including the Reorganized Debtors, as applicable); (g) the DIP Agent and DIP Lenders; (h) if the Credit Bid Transaction is consummated, NewCo, and (i) with respect to each of the foregoing Entities in clauses (a) through (h), such party's current and former affiliates and subsidiaries, and such Entities' and their current and former affiliates' and subsidiaries' current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns, subsidiaries, and each of their respective current and former equity holders, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, managed accounts or funds, management companies, fund advisors, investment bankers, consultants, representatives, and other professionals, each in their capacity as such; provided, (i) that no Person shall be a Released Party if it (a) opts out of the releases provided for in Article XII hereof through a timely submitted Ballot or (b) rejects or is deemed to reject or deemed to accept the Plan; and (ii) that no equity holder of the Debtors, in such capacity, shall be a Released Party (regardless of whether such interests are held directly or indirectly). (*see* Plan § 1.129).

§ 12.6(a)); (b) a release by the Releasing Parties[6] of the Released Parties (the "**Third Party Releases**") (*see* Plan § 12.6(b)); (c) an exculpation provision for the Exculpated Parties[7] (the "**Exculpations**") (*see* Plan § 12.7)); and (d) a customary injunction provision intended to implement the Debtors Releases, Third Party Releases, Exculpations, and discharge provided by the Plan (the "**Injunctions**") (*see* Plan § 12.8). On the basis of my understanding, personal knowledge, and the advice of the Debtors' other advisors, I believe that these provisions are consistent with the Bankruptcy Code, and thus, the requirements of section 1123(b) are satisfied.

40. The Plan also provides for certain settlements of Claims against, and equity Interests in, the Debtors, including through the discharge, release, exculpation, and injunction provisions contained in Article XII of the Plan as well as in Section 7.11 of the Plan, which provides that the provisions of the Plan constitute a good faith compromise and settlement of all Claims and controversies relating to the rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Allowed Interest against the Debtors, the Ad Hoc Group, and those holders of Claims that voted to accept the Plan but did not check the appropriate box on such holder's timely submitted Ballot to indicate that such holder elects to opt out of the releases contained in the Plan or any Plan Distribution on account thereof.

[6] The Releasing Parties include the following: (a) each Released Party described in clauses (a), (d), (e), and (f), and if the Credit Bid Transaction is consummated, (h) of the definition thereof, (b) each holder of a Claim that votes to accept the Plan but does not check the appropriate box on such holder's timely submitted Ballot to indicate that such holder elects to opt out of the release contained in the Plan, and (c) as to each of the foregoing Entities in clauses (a) and (b) each such Entity's predecessors, successors and assigns, subsidiaries, affiliates, managed accounts or funds and their current and former officers, directors, managers, partners, principals, shareholders, members, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors and other professionals (in each case as to the foregoing Entities in clauses (a) and (b) solely in their capacity as such); provided that no equity holder of the Debtors, in such capacity, shall be a Releasing Party (regardless of whether such interests are held directly or indirectly).

[7] Exculpated Parties includes the following: the Debtors, and their respective subsidiaries, affiliates, current and former officers and directors, principals, members, partners, managers, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and all other retained Professional Persons. (*see* Plan § 1.66).

41. In the Chapter 11 Cases, potential estate claims against third parties were evaluated by the Debtors, through their disinterested directors, and it is my understanding that they considered, among other things, (a) the significant amount of the Debtors' secured debt that may not be subject to challenge on any grounds, (b) the liens on proceeds of avoidance actions granted under the DIP Orders, (c) the delay, expense, and risk associated with any challenge litigation, and (d) the limited upside for unsecured creditors even in the event that such challenge litigation were successful. Both the Debtors and Ad Hoc Group were advised by experienced and competent professionals in weighing those considerations. The Debtors and the Ad Hoc Group ultimately concluded that the settlement of claims and controversies set forth in the Plan would be in the best interests of the Debtors and their estates.

42. Regarding the Debtor Releases, each Released Party either participated in (or represented, or was represented by, parties participating in) the negotiation of the Plan or accepted the Plan by affirmative vote (and did not opt out of the Third Party Releases). The Released Parties made significant contributions to the Debtors' reorganization. The members of the Ad Hoc Group participated in the $127.5 million of new money post-petition financing, without which the Debtors could not have operated in chapter 11. The various prepetition secured parties included among the Released Parties (*e.g.*, the Prepetition Agents) consented to the incurrence of such financing, which was secured by priming liens on substantially all of the Debtors' assets. Moreover, the Exit Credit Facility set forth in the Plan will be fully funded by lenders holding Prepetition Revolving Credit Facility Claims and Prepetition Term Loan Claims. The Debtors' directors, officers, and employees expended substantial time and effort specifically in connection with restructuring matters, in addition to their normal day-to-day duties. Without each and every one of these contributions, it is my understanding and belief that the restructuring

contemplated by the Plan would not be possible, and without the Debtor Releases and Third Party Releases, some or all of these contributions may not have been made.

43. I believe that the Debtor Releases are essential to the Plan. The Debtor Releases and Third Party Releases were extensively negotiated by the Debtors and their key stakeholders, including the Ad Hoc Group, the Prepetition Agents, and the DIP Agent, and are critical components of the settlement embodied in the Plan.

44. It is also my understanding that the Third Party Releases are fully consensual as the only stakeholders who may be bound by the Third Party Releases are holders of Claims who affirmatively voted in favor of the Plan. Moreover, even if a holder of a claim in a Voting Class voted to accept the Plan, such holder had the option of opting out of the Third Party Release.

45. Finally, the Injunctions contained in Section 12.8 of the Plan are necessary to effectuate and implement the release provisions in the Plan particularly the Debtors Releases, Third Party Releases, and Exculpations. Moreover, the Injunctions are essential to protect the Debtors, the Reorganized Debtors, and the assets of the Estates from any potential litigation from prepetition creditors after the Effective Date. Any such litigation would hinder the efforts of the Debtors and the Reorganized Debtors to effectively fulfill their responsibilities as contemplated in the Plan and thereby undermine the Debtors' efforts to maximize value for all of its stakeholders.

46. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: January 23, 2020
New York, New York

Respectfully submitted,

/s/ *Ed Mosley*
Ed Mosley Managing Director
Alvarez & Marsal North America, LLC