

and (II) Granting Related Relief (the “**Motion**”). This Motion is supported by the *Declaration of Michael B. Howe In Support of Motion of Debtors for Entry of an Order (I) Authorizing the (A) Sale of Certain Emission Reduction Credits Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Payment of Related Fees and Commissions and (II) Granting Related Relief* attached hereto as Exhibit C (the “**Howe Declaration**”). In further support of the Motion, the Debtors respectfully state as follows:

Relief Requested

1. By this Motion, and pursuant to sections 363 and 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 6004 and 2002(a)(2) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors seek entry of an order, substantially in the form attached hereto as Exhibit D (the “**Proposed Order**” and, if entered, the “**Order**”), authorizing the Debtors to sell 50.4 tons of certain Emission Reduction Credits (the “**ERCs**”) to various purchasers for purchase prices of [REDACTED] (the “**Threshold Price**”) free and clear of all liens, claims, interests, and encumbrances (the “**363 Sales**”) and (b) pay the brokerage fees and environmental consulting commissions in connection with the 363 Sales.

Jurisdiction and Venue

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

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

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

Background

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

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

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

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

9. On March 12, 2019, Southcross formally retained Evercore Group L.L.C. to run an extensive marketing process for all or substantially all of the Debtors’ assets and operations

(collectively, the “**Going-Concern Assets**”). Shortly thereafter, the Debtors filed a motion with the Court seeking entry of an order approving, among other things, procedures for the solicitation of bids in connection with the proposed sale of the Going-Concern Assets (the “**Bidding Procedures Motion**”). The Court subsequently entered the *Order (I) Approving Bidding Procedures for Sale of Debtors’ Assets, (II) Authorizing the Selection of a Stalking Horse Bidder, (III) Approving Bid Protections, (IV) Scheduling Auction for, and Hearing to Approve, Sale of Debtors’ Assets, (V) Approving Form and Manner of Notices of Sale, Auction and Hearing, (VI) Approving Assumption and Assignment Procedures, and (VII) Granting Related Relief* [D.I. 324] (the “**Bidding Procedures Order**”).

10. On May 6, 2019, the Court entered the *Order Approving Procedures for (I) the Sale of De Minimis Assets Free and Clear Of Liens, Claims, Interests, and Encumbrances and (II) the Abandonment of Certain of the Debtors’ Property* [D.I. 190] (the “**De Minimis Asset Sale Order**”). Pursuant to the De Minimis Asset Sale Order, if the Sale Price (as defined in the De Minimis Asset Sale Order) for the sale of a De Minimis Asset (as defined in the De Minimis Asset Sale Order) that the Debtors believe is arguably outside of the ordinary course of the Debtors’ businesses is greater than \$2,000,000, the Debtors are required to file a motion with the Court requesting approval of the sale pursuant to section 363 of the Bankruptcy Code.

The Sales of ERCs

11. As set forth in the Howe Declaration, in the ordinary course of the Debtors’ business operations in Texas, the Debtors emit certain chemical compounds into the environment in connection with the processing and treatment of natural gas. Howe Decl. ¶ 4. Under Texas state law, in the Houston-Galveston-Brazoria area, the volume of such emissions is capped at levels set forth by the Texas Commission on Environmental Quality (the “**TCEQ**”). *Id.* In order

to emit such compounds into the environment, the Debtors applied for and received air permits from the TCEQ. *Id.*

12. Approximately two years ago, the Debtors closed a natural gas processing plant located in Conroe, Texas (the “**Conroe Plant**”). Howe Decl. ¶ 5. As a result of the Conroe Plant closure, the Debtors no longer had any use for the TCEQ air permits utilized by the former plant. *Id.* In order to monetize their unused TCEQ air permits, the Debtors commenced a certification process with the TCEQ in which the TCEQ granted to the Debtors 50.4 tons of Nitrous Oxide and 10.4 tons of Volatile Organic Compound TCEQ ERCs for the Houston-Galveston-Brazoria area. *Id.*

13. Upon receipt of the ERCs from the TCEQ, the Debtors retained Amerex Brokers LLC, as a brokerage firm (the “**Broker**” and, the brokerage agreement therewith, the “**Brokerage Agreement**”), and Sage ATC Environmental Consulting, LLC, as an environmental consultant (the “**Environmental Consultant**” and, the consulting agreement therewith, the “**Consulting Agreement**”), to conduct a robust marketing process for the ERCs. Howe Decl. ¶ 6. However, as a result of (a) initial indications of interest being lower than anticipated and (b) price fluctuations in the commodities markets, the Debtors were unable to find a suitable purchaser prior to the Petition Date. *Id.* Nonetheless, because the ERCs are set to expire in 2021, the Debtors have continued with the marketing process to monetize the ERCs while they retain some measure of value. *Id.*

14. After months of an ongoing process of working with the Broker and Environmental Consultant, the Debtors believe that they have located fair and reasonable offers for the ERCs and are in the process of trying to negotiate and finalize these transactions. Howe Decl. ¶ 7. In addition, the prospective purchasers have advised the Debtors that they are only

willing to finalize their respective transactions once the Debtors have received Court authority to do so. *Id.* Given the rapidly declining value of the ERCs, the Debtors and their advisors believe, in their business judgment (and in consultation with the prepetition and post-petition lenders), that the finalization and consummation of the sales of the ERCs is in the best interests of the Debtors' estates and their stakeholders. *Id.* Accordingly, as required by the De Minimis Asset Sale Order (and consistent with the Bidding Procedures Order)², the Debtors hereby seek the Court's approval to commence a piecemeal sale of the ERCs. *Id.*

15. Moreover, the Debtors also seek approval of the Brokerage Agreement and the Consulting Agreement. Under the Brokerage Agreement, the Broker will earn a 3.5% commission on all ERC sales. Under the Consulting Agreement, the Environmental Consultant will earn a 5.0% commission on all ERC sales.

Compliance with Local Bankruptcy Rule 6004-1

16. Pursuant to Local Rule 6004-1, (a) copies of the Brokerage Agreement and Consulting Agreement are attached hereto as Exhibit A and Exhibit B respectively and (b) a copy of the Proposed Order is attached hereto as Exhibit D; the following are provisions in the Purchase Agreements that are required to be highlighted.

² The Bidding Procedures Order contemplates the Debtors seeking the sale of discrete assets outside of the formal sale process outlined therein. *See* Bidding Procedures Order at ¶ 4 ("Nothing herein shall prejudice the rights of the Debtors to seek by separate motion, in the exercise of their sound business judgment and fiduciary duties (in consultation with the Debtors' prepetition and post-petition lenders), the authority to sell assets of the Debtors' estates (that do not constitute all or substantially all of the Debtors' assets) pursuant to section 363 of the Bankruptcy Code.").

LOCAL BANKRUPTCY RULE 6004-1 DISCLOSURE	
Sale to an Insider Local Rule 6004-1(b)(iv)(A)	N/A
Agreements With Management Local Rule 6004-1(b)(iv)(B)	N/A
Releases Local Rule 6004-1(b)(iv)(C)	N/A
Private Sale/No Competitive Bidding Local Rule 6004-1(d)(iv)(D)	Based on the marketing process outlined above, the Debtors are seeking approval of private sales without a formal auction process.
Closing and Other Deadlines Local Rule 6004-1(d)(iv)(E)	N/A
Good Faith Deposit Local Rule 6004-1(d)(iv)(F)	N/A
Interim Arrangement With Proposed Buyer Local Rule 6004-1(d)(iv)(G)	N/A
Use of Proceeds 6004-1(d)(iv)(H)	The proceeds will be swept by the DIP Lenders in accordance with section 3.04(b)(ii) of the DIP Credit Agreement (as defined in the <i>Motion of Debtors for Entry of Interim and Final Orders, Pursuant to 11 U.S.C. §§ 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, (VI) Scheduling Final Hearing, and (VII) Granting Related Relief</i> [D.I. 14].
Tax Exemption Local Rule 6004-1(d)(iv)(I)	N/A
Record Retention Local Rule 6004-1(d)(iv)(J)	N/A
Sale of Avoidance	No avoidance claims will be sold.

LOCAL BANKRUPTCY RULE 6004-1 DISCLOSURE	
Actions Local Rule 6004-1(d)(iv)(K)	
Requested Findings as to Successor Liability Local Rule 6004-1(d)(iv)(L)	As a result of the 363 Sales contemplated, no buyer will be a successor to any of the Debtors by reason of any theory of law or equity, and no buyer will have any liability for any lien or claim against or in any of the Debtors as a result of any application of successor liability theories. Proposed Order at ¶ 9.
Sale Free and Clear of Unexpired Leases 6004-1(d)(iv)(M)	N/A
Credit Bid 6004-1(d)(iv)(N)	N/A
Relief From Bankruptcy Rule 6004(h) Local Rule 6004-1(d)(iv)(O)	The Debtors request that, to the extent applicable, the Court waive the stay imposed by Bankruptcy Rule 6004(h). Proposed Order at ¶ 19.

Basis for Relief

17. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of a debtor’s estate, courts have approved the authorization of a sale of a debtor’s assets if such sale is based upon the sound business judgment of the debtor. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephen Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

18. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was provided to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. *See In re Decora Indus., Inc.*, 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)). Where a debtor demonstrates a valid business justification for a decision, it is presumed that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). An analysis of each of these factors demonstrates that the Court should grant the requested relief.

A. A Sound Business Justification Exists for the 363 Sales

19. A sound business justification for the sale of a debtor’s assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d at 1063; *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997) (recognizing the paramount goal of any proposed sale of property of estate is to maximize value).

20. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied “as long as the proposed action *appears* to enhance the debtor’s estate.” *Crystalin, L.L.C. v. Selma Props. Inc. (In re Crystalin, L.L.C.)*, 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003) (quoting *In re Food Barn Stores, Inc.*, 107 F.3d at 564-65 (emphasis in original,

internal alterations and quotations omitted)). Courts require only that the debtors “show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. at 153 (citations omitted); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987); *In re Adelphia Commc’ns Corp.*, Case No. 02-41729, 2003 WL 22316543, at *31 (Bankr. S.D.N.Y. Mar. 4, 2003); *In re Lionel Corp.*, 722 F.2d at 1071.

21. Further, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that “[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task”); *In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (the business judgment standard is “not a difficult standard to satisfy”). Under the business judgment rule, “management of a corporation’s affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the officers’ and directors’ fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code.” *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (citing *In re United Artists Theatre Co.*, 315 F.3d 217, 233 (3d Cir. 2003)); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re Def. Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992)); *In re Food Barn Stores, Inc.*, 107 F.3d at 567 n.16 (citing *Richmond Leasing Co.*, 762 F.2d at 1309) (“Where the [debtor’s] request is not manifestly unreasonable or

made in bad faith, the court should normally grant approval ‘as long as the proposed action appears to enhance the debtor’s estate.’”).

22. Here, the Debtors are seeking authority to finalize and consummate the 363 Sales for the exact purpose of preserving the economic value of the ERCs. Howe Decl. ¶ 9. As noted above, the ERCs are set to expire in 2021; therefore, the Debtors’ ability to monetize such assets is rapidly declining with the passage of time. *Id.* Prompt sales of the ERCs are necessary in order to maximize distributable value for the benefit of the Debtors’ estates and their stakeholders. *Id.* Moreover, the Debtors made the decision to sell the ERCs after consulting with their counsel, financial advisors, and prepetition and post-petition lenders. *Id.* All of the foregoing parties support the relief sought herein. *Id.* Accordingly, a strong business justification exists for granting the relief requested herein.

B. The Notice of the 363 Sales is Reasonable and Appropriate

23. Since the Debtors filed the motion to approve the De Minimis Asset Sale Order and the Bidding Procedures Motion, all parties in interest have been on notice that the ERCs may be sold. Furthermore, the De Minimis Asset Sale Order and the Bidding Procedures Order put all parties in interest on notice that the Debtors may seek authority to sell assets constituting less than all or substantially all of the Going-Concern Assets, outside the process set forth in the Bidding Procedures, by way of motion under section 363 of the Bankruptcy Code.³ Finally, all parties in interest have the opportunity to object to this Motion. The Debtors submit that such notice is (a) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (b) in compliance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and (c) adequate and sufficient under the

³ See *supra*, at fn. 2.

circumstances of the Chapter 11 Cases. Accordingly, the Debtors respectfully submit that no other or further notice is required.

C. The 363 Sales Will Produce a Fair and Reasonable Price for the ERCs

24. Selling the ERCs at or above the Threshold Price will produce fair and reasonable prices for the ERCs. As set forth in the Howe Declaration, the Debtors retained the Broker and Environmental Consultant to conduct a robust marketing process for the ERCs. Howe Decl.

¶ 10. The brokerage fee and environmental consulting commission are calculated based on the amount of the purchase price paid. *Id.* Accordingly, the Broker and Environmental Consultant were incentivized to solicit the highest purchase price. *Id.* Moreover, the Debtors' prepetition and post-petition lenders support the 363 Sales. *Id.* In light of the foregoing, the Threshold Price would be fair and reasonable, and allowing the Debtors to consummate the 363 Sales at or above the Threshold Price would be in the best interests of the Debtors' estates and their economic stakeholders. *Id.*

D. Good faith

25. The decision to sell the ERCs is the product of good faith determinations made by the Debtors in accordance with their fiduciary duties. As set forth in the Howe Declaration, the Debtors hired professionals to conduct an extensive marketing process to assure that the Debtors receive the highest price available for the ERCs, thereby maximizing recoveries for all economic stakeholders. Howe Decl. ¶ 11. Indeed, such professionals are economically incentivized to maximize value given that their compensation is tied to the purchase price paid. *Id.*

Accordingly, the Debtors submit that they have acted in good faith in seeking the relief requested herein.

**The ERCs Should be Sold Free
and Clear of Liens, Claims, Interests, and Encumbrances**

A. Free and Clear of Liens, Claims, Interests, and Encumbrances

26. The Debtors seek the authority to sell the ERCs to potential buyers free and clear of any and all liens, claims, interests, and other encumbrances, in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, interests, and encumbrances attaching to the proceeds of the applicable sale. Howe Decl. ¶ 13. Such authority is critical to finalizing the 363 Sales with prospective purchasers. *Id.* In connection with the negotiations relating to the 363 Sales, various buyers have expressly negotiated for the protection of obtaining the ERCs free and clear of all liens and claims. *Id.* If the 363 Sales did not provide for buyers to receive the ERCs free and clear of all liens and claims, such buyers would offer less consideration than the Threshold Price. *Id.* Alternatively, such buyers may decide not to pursue the 363 Sales. *Id.*

27. As demonstrated below, 363 Sales free and clear of all liens, claims, interests, and encumbrances are both (a) consistent with the Bankruptcy Code and (b) appropriate given the facts of the Chapter 11 Cases. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell property of the estate free and clear of liens, claims, interests, and encumbrances if any one of the following conditions is satisfied:

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

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

28. In addition, section 363(f) of the Bankruptcy Code is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a); *see also Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of claims] is within the court’s equitable powers when necessary to carry out the provisions of [the Bankruptcy Code].”).

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

30. Moreover, the Debtors have sent or will send notice of this Motion to any purported prepetition and post-petition lienholders, thereby affording them the opportunity to object to the Court granting the relief requested herein. If such lienholders do not object to the proposed 363 Sales, then their consent should reasonably be presumed. *See Hargave v. Twp. of*

Pemberton, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to a sale motion, a creditor is deemed to consent to the relief requested therein). Accordingly, the Debtors submit that the proposed 363 Sales satisfy section 363(f)(2) of the Bankruptcy Code.

31. The Debtors further submit that, because the ERCs may be sold free and clear of any liens, claims, interests, or encumbrances pursuant to section 363(f) of the Bankruptcy Code, any such liens, claims, interests, or encumbrances shall be transferred and attached to the net sale proceeds in the same order of priority that such liens, claims, interests, or encumbrances had on the ERCs.

B. The Buyers Should be Entitled to the Protections of Section 363(m) of the Bankruptcy Code

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

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

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

transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal.”).

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

34. In other words, a party would have to show fraud or collusion between the buyer and the debtor in possession, the trustee, or other bidders, in order to demonstrate a lack of good faith. *See Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) (“Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”). Due to the absence of a bright-line test for good faith, the determination is based on the facts of each case, with a focus on the “integrity of [a bidder’s] conduct in the course of the sale proceedings.” *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

35. The Debtors submit that all buyers of the ERCs with whom they are negotiating the 363 Sales are “good faith purchasers” within the meaning of section 363(m) of the Bankruptcy Code. The 363 Sales are being negotiated with such buyers at arm’s length and in good faith. Howe Decl. ¶ 13. To the best of the Debtors’ knowledge, information, and belief,

none of the buyers nor any other party has engaged in any conduct that would cause or permit the 363 Sales to be set aside under section 363(m) of the Bankruptcy Code. *See* Howe Decl. ¶ 13.

C. The Broker's Fee and Environmental Consultant's Commission Should Be Approved

36. As detailed in the Howe Declaration, the Debtors selected the Broker and Environmental Consultant in accordance with their fiduciary duties. Howe Decl. ¶ 19. Indeed, retention of such professionals is both routine and essential in the context of ERC transactions. *Id.* Without the Broker and Environmental Consultant, the Debtors would not have been able to locate suitable buyers for the ERCs, which would harm both the Debtors' estates and stakeholders. *Id.* Further, the Broker and Environmental Consultant were selected in order to minimize costs to the estate while maximizing the proceeds of the sale of the ERCs, as the fees and commissions were the lowest available under the foregoing circumstances and are calculated based on the purchase price paid, thereby incentivizing them to achieve the best result. *Id.* Accordingly, the Debtors respectfully submit that the Court should approve the Broker's fee and the Environmental Consultant's commission.

Waiver of Stay Under Bankruptcy Rule 6004(h)

37. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to maximize the value of the ERCs and recoveries for their economic stakeholders. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay

imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

38. Notice of this Motion will be provided to the following parties or, in lieu thereof, their counsel, if known: (a) the United States Trustee for the District of Delaware; (b) each of the Debtors' 20 largest unsecured creditors on a consolidated basis; (c) (i) Arnold & Porter Kaye Scholer LLP and (ii) Duane Morris LLP, as counsel to Wilmington Trust, N.A., the administrative agent under Southcross's prepetition secured revolving credit facility, prepetition secured term loan facility, and post-petition credit facility; (d) (i) Willkie Farr & Gallagher LLP and (ii) Young Conaway Stargatt & Taylor, LLP, as counsel to the post-petition lenders and an ad hoc group of prepetition lenders; (e) Debevoise & Plimpton LLP, as counsel to Southcross Holdings LP; and (f) those parties who have filed the appropriate notice pursuant to Bankruptcy Rule 2002 requesting notice of all pleadings filed in the Chapter 11 Cases. A copy of this Motion and any order approving it will also be made available on the Debtors' case information website located at <http://www.kccllc.net/southcrossenergy>. The Debtors respectfully submit that no further notice is required.

No Previous Request

39. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as Exhibit D, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: October 18, 2019
Wilmington, Delaware

Respectfully submitted,
MORRIS, NICHOLS ARSHT & TUNNELL LLP

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Counsel to the Debtors and Debtors in Possession

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

In re:

SOUTHCROSS ENERGY PARTNERS,
L.P., *et al.*,
Debtors.¹

Chapter 11

Case No. 19-10702 (MFW)

Jointly Administered

Requested Hearing Date:
October 28, 2019 at 10:30 a.m. (ET)
Requested Obj. Deadline:
October 25, 2019 at 4:00 p.m. (ET)

**NOTICE OF MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I)
AUTHORIZING THE (A) SALES OF CERTAIN EMISSION REDUCTION
CREDITS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND
ENCUMBRANCES AND (B) PAYMENT OF RELATED FEES AND
COMMISSIONS AND (II) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that today, the above-captioned debtors and debtors-in-possession (the “Debtors”) filed the **Motion of Debtors for Entry of an Order (I) Authorizing the (A) Sales of Certain Emission Reduction Credits Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Payment of Related Fees and Commissions and (II) Granting Related Relief** (the “Motion”).

PLEASE TAKE FURTHER NOTICE that, contemporaneously with the filing of the Motion, the Debtors have also filed a motion (the “Motion to Shorten”) requesting that any objections to the relief requested in the Motion be due on or before **October 25, 2019, at 4:00 p.m.**

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.

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

PLEASE TAKE FURTHER NOTICE THAT PURSUANT TO THE MOTION TO SHORTEN, THE DEBTORS HAVE REQUESTED THAT A HEARING ON THE MOTION BE HELD ON **OCTOBER 28, 2019 AT 10:30 A.M. (ET)** BEFORE THE HONORABLE MARY F. WALRATH, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM #4, WILMINGTON, DELAWARE 19801.

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

Dated: October 18, 2019
Wilmington, Delaware

Respectfully submitted,
MORRIS, NICHOLS ARSHT & TUNNELL LLP

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

-and-

DAVIS POLK & WARDWELL LLP

Marshall S. Huebner (admitted *pro hac vice*)

Darren S. Klein (admitted *pro hac vice*)

Steven Z. Szanzer (admitted *pro hac vice*)

450 Lexington Avenue

New York, New York 10017

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Counsel to the Debtors and Debtors in Possession

Exhibit A

Brokerage Agreement

MASTER BROKERAGE SERVICES AGREEMENT

This Master Brokerage Services Agreement (the "Agreement") is made and entered into as of this 18th day of October, 2019 (the "Effective Date"), by and between **Amerex Brokers LLC**, a Delaware limited liability company whose principal place of business is located at One Sugar Creek Center Blvd. # 700, Attn: Senior Counsel, Sugar Land, Texas 77478 (hereinafter "Broker") and **Southcross Energy Partners, L.P.** whose principal place of business is located at Town Centre One, 750 Town & Country Blvd., Suite 950, Houston, Texas 77024 (hereinafter "Customer").

1. Nature of Services and Non-Exclusivity Engagement

Broker hereby agrees to supply the Customer and Customer hereby agrees to engage Broker to provide brokerage services in certain environmental commodities including but not limited to Mass Emission Cap and Trade Program ("MECT") Perpetuities, VOC ERCs, NOx allowances, and NOx ERCs in the Houston-Galveston-Brazoria markets (referred to herein as the "Product(s)"). The scope and price of the brokerage services provided by the Broker under this Agreement shall be agreed to by the Broker and Customer from time to time.

Both Broker and Customer acknowledge that this Agreement grants Broker non-exclusive rights to provide brokerage services on behalf of Customer with respect to the Products. Finally, Customer shall be obligated to pay Broker per Section 3 below on any emissions-related transactions entered into with counterparties introduced to Customer through Broker.

2. Terms of Business/Scope of Work

The Customer will provide Broker with prices, volumes and any other relevant terms and conditions relating to the Products that the Customer would like to place in the market, including but not limited to, terms and conditions relating to purchase/sale, price, quantity, sources, term, and delivery points, and Broker shall use diligent and commercially reasonable efforts to locate counterpart(s) to such transactions. Furthermore, at no additional cost, Broker may perform the services at the request of Customer and as outlined in the attached Exhibit A with respect to the Products (hereinafter collectively referred to as the "Services").

Broker shall have no authority to bind Customer in any transaction for the purchase or sale of the Products, unless authorized, orally or in writing by Customer, its agents, or duly authorized representatives. Broker is responsible for distributing confirmations of each transaction in accordance with the industry standards.

It is recognized and agreed by the parties that Broker does not and cannot act as a principal to, or take title to, the Products and that Broker does not and cannot assess the legal capacity of counterparties to enter into contracts relating to the Products, guarantee delivery of the Products or assess the creditworthiness of counterparties. Further, Broker may be accepting a fee from both parties to any transaction for the sale or purchase of the Products. It is recognized and agreed by the parties that acceptance of a fee from both parties is customary practice in the industry and does not represent a conflict of interest.

The parties agree that Customer and its relevant counterparty will be wholly responsible for the settlement of each transaction between Customer and said counterparty and that Customer will not rely on Broker for any settlement of each transaction. Such transactions will be settled and confirmed by the specific terms of the written confirmation, if any, between Customer and said counterparty and in accordance with the terms and conditions of Customer's agreement then in effect with said counterparty.

3. Charges

Broker charges a brokerage fee for its services (the "Fee") as full compensation and consideration for the performance of work hereunder. The Fee shall be three- and one-half percent (3.5%) of the total notional value of each transaction involving the Products. For other transactions involving any other environmental commodity, the parties may agree on the applicable Fee. The Fee shall be due and payable to Broker within five (5) days of the occurrence of the following: (i) when Customer enters into a Product transaction with a counterparty, and such Product transaction is the direct and proximate result of Broker's Services and (ii) upon settlement of commodity wherein physical transfer of the Products to counterparty and cash payment to applicable counterparty is completed.

Broker shall invoice Customer for the applicable Product transaction(s) for which Broker has acted on behalf of the Customer. All Fees are exclusive of any sales tax for which the Customer shall be additionally liable at the applicable rates from time to time (if applicable).

4. Confidentiality; Recordings

The parties shall keep confidential all information relating to this Agreement (including the Fee), and any other confidential or proprietary information which one party may become aware about the other party, except to the extent that such information has become public knowledge otherwise than in breach of this Agreement or disclosure is required by a court or agency exercising jurisdiction over the subject matter hereto, or by law, rule or regulation, provided that the disclosing party gives prior written notice to the other party.

Broker and Customer each consents to the creation of a tape or electronic recording of all telephone conversations and the preservation of all electronic mail or instant mail messages between them and that any such recording will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement, or in any proceeding or action relating to the transaction between Customer and the relevant counterparty. Each party waives any further notice of such monitoring or recording and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. Each party waives any objections to the introduction of the recorded conversations into evidence to prove or disprove the terms and conditions of any transaction entered into between Customer and the relevant counterparty.

5. Term

This Agreement shall commence on the Effective Date and shall remain in full force and effect until terminated or amended by either party providing the other party notice in writing of its intention to terminate or amend this Agreement of not less than thirty (30) business days. Termination shall not affect the completion of obligations that have already arisen under this Agreement including without limitation the payment of all outstanding Fees by the Customer.

6. Exclusion of Liability and Indemnity

Except to the extent mandated by applicable law, Broker shall not be liable to the Customer by reason of any representation (unless fraudulent) or any implied warranty, condition, or other term, or any duty at common law, or under the express terms of this Agreement, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses, or other claims (caused by negligence or otherwise of Broker or its servants) which arise out of or in connection with the provision of the nature of the services provided by Broker to the Customer and the entire liability of Broker and/or in connection with this Agreement shall not exceed the amount of Broker's Fees for the provision of the applicable transaction in question.

Broker shall not be liable to the Customer or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any obligations in relation to the services provided by Broker, if the delay or failure was due to any cause beyond Broker's reasonable control.

7. General

This Agreement constitutes the entire agreement between the parties and supersedes any previous agreement or understanding with respect to the subject matter hereof and may not be varied except in writing between the parties. All other terms and conditions express or implied by statute or otherwise, are excluded to the full extent permitted by law. Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to the other party to its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the other party giving the notice. If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these conditions and the remainder of the provisions in question shall not be affected.

8. Assignment

Neither party may assign or transfer any of its rights under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld).

9. Governing Law

Any disputes arising between Customer and Broker, and any disputes between the parties involving a counterparty matched or purportedly matched with Customer by Broker shall be resolved pursuant to good faith efforts by such disputing parties. The parties shall first attempt to resolve the dispute by means of negotiations between employees of each party who possess full authority to resolve said dispute. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York.

10. Notices.

All notices required or permitted under this Agreement shall be in writing and shall be deemed given and made (i) if by personal delivery, on the date of such delivery, (ii) if by delivery by facsimile, on the date sent (as evidenced by confirmation of transmission by the transmitting equipment), (iii) if by nationally recognized overnight courier, on the next business day following deposit and (iv) if by certified mail, return receipt requested, postage prepaid, on the third business day following such mailing, in each case addressed at the address or facsimile number shown below for, or such other address as may be designated by notice by, such party:

To Broker:

Amerex Brokers LLC
Attn: Amalia Berrios
1 Sugar Creek Center Blvd
Suite 700
Sugar Land, Texas 77478
Phone: 281-3340-5212
Fax No: 281-569-5212

To Customer:

Southcross Energy Partners, L.P.
Attn: Michael Mayo

Town Centre Once, 750 Town & Country Blv.d
Suite 950
Houston, Texas 77024
Email: Michael.Mayo@southcrossenergy.com
Clayton, MO 63105-3443

Intending to be legally bound hereby, the Customer and Broker have executed this Agreement as of the Effective Date.

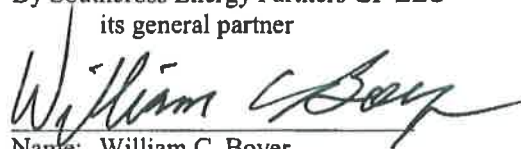
Amerex Brokers LLC


Name: Mark Gaynor
Title: Sr. Managing Director

Date: 10/18/2019

Southcross Energy Partners, L.P.

By Southcross Energy Partners GP LLC
its general partner


Name: William C. Boyer
Title: Chief Operating Officer

Date: 10/18/19

**EXHIBIT A
SCOPE OF WORK**

This Exhibit A shall be incorporated by reference into and become a part of the attached Master Brokerage Services Agreement between Amerex Brokers LLC and Southcross Energy Partners, L.P. Broker's Services offered with respect to the Products enumerated in the Master Brokerage Services Agreement may include the following:

- **Marketing, Broking and Product Hedging:** Any of the following scenarios could apply to Broker's marketing and broking efforts on behalf of Customer: A large single counterparty may be identified for the benefit of Customer; or a pool of multiple buyers or sellers may be strategically assembled by the marketing and broking efforts of Broker. Customer and Amerex will select the optimal course of action for maximizing the value of a purchase or sale of the Products.
- **Structured Transaction Service.** Depending on Customer's financial goals, Amerex can secure a commitment from a qualified buyer or seller for Customer and provide all necessary documentation in that regard as well as advise on the optimal structuring of the applicable Product transaction.
- **Contract Execution and Administration:** Because of our strong experience in the Product transactions, Broker will utilize our in-house counsel to work with these counterparties and Customer's legal department to facilitate the execution of applicable purchase and sale agreements in an expeditious manner.
- **TCEQ Forms and TCEQ Trade Transfer Forms:** Broker may assist in the completion of all applicable TCEQ forms required for the purchase and/or sale of credits and allowances. If applicable, Broker will handle all documentation required to transfer any applicable Products to Customer. This process involves properly and timely completing all documentation required by the TCEQ and communicating with the TCEQ to reduce processing time for the transfer of any applicable Products.

Exhibit B

Environmental Consulting Agreement



July 6, 2016

Mr. Brian Caldronia
Environmental Manager
Southcross Gathering Ltd.
1700 Pacific Avenue, Suite 2900
Dallas, TX 75201

**Re: Proposal - Emission Reduction Credit Generation
Sage ATC Proposal**

Dear Brian:

Sage ATC Environmental Consulting, LLC (Sage ATC) is pleased to present this proposal to assist Southcross Gathering Ltd, (Southcross) with generating Emission Reduction Credits (ERCs) in the Houston-Galveston-Brazoria (HGB) non-attainment area with regard to the Conroe Gas Plant site. The attached proposal provides background information, proposed Scope of Work, estimated costs, project schedule considerations, project team members, and supporting information.

The work is proposed on a time and material budget basis with a 5% success fee once the credits are sold. Other details of our proposal to support Southcross on this effort are provided in the following proposal and contract attachment.

If you have any questions or comments, please call me at (832) 715-3339. We are available to meet with you again concerning this opportunity, and look forward to developing a lasting and mutually beneficial relationship.

Sincerely,
Sage ATC Environmental Consulting, LLC

A handwritten signature in black ink that reads "Randy D. Parmley". The signature is written in a cursive, flowing style.

Randy Parmley, P.E.
Executive Vice President

Enclosures

cc: Stever Probst, Charles Parmley, Daniel Murray, Sage ATC Environmental Consulting, LLC

**Proposal - Emission Reduction Credit Generation
Southcross Gathering Ltd.
Sage ATC Proposal**

Background and Sage ATC's Qualifications

Sage ATC Environmental Consulting, LLC (Sage ATC) is the predominate company in successfully identifying, generating and certifying Emission Reduction Credits (ERCs) in Texas. Over the past three (3) years, Sage ATC has provided the technical consulting services on 70% of the submitted TCEQ ERC applications associated with the Oil and Gas Industry.

Preliminary research indicates Southcross owns and/or operates the Conroe Gas Plant in the Houston-Galveston-Brazoria (HGB) eight (8) county nonattainment area (NA).

Based on our preliminary evaluation, we believe Southcross has viable ERC generation opportunities at the Conroe Gas Plant. As part of this effort, Sage ATC will maximize these opportunities according to eligibility and likelihood criteria and present a business case to Southcross for ERC generation projects. Based on Southcross's feedback and preferences, Sage ATC will then prepare and submit an ERC applications for TCEQ review.

Scope of Work

In order for Sage ATC to pursue and prioritize ERC generation opportunities for the Conroe Gas Plant assets, Sage ATC will first evaluate (a) the environmental history of the assets, (b) the air emission profiles for past, present and future operations and (c) the relative production/economic viability of each asset.

Sage ATC will then assess the environmental history of the assets relative to ERC generation requirements. This includes (a) reviewing specific information on the site and equipment, (b) researching and summarizing permitting records, and (c) evaluating and substantiating the site's emissions profile, both currently and historically.

Sage ATC will work to demonstrate that the Conroe Gas Plant assets were properly represented in the Texas SIP, in either the point source emissions inventory through TCEQ average emissions estimations associated with specified Source Classification Codes (SCC).

Based on the initial evaluation performed on the assets, Sage ATC will prioritize and develop the business case for Southcross' best ERC generation opportunity. Upon receiving feedback on preferences, Sage ATC will then develop up the ERC application. The application will have a specified format which the TCEQ's EBT staff is familiar with, and which has been used in previously successful ERC applications.

This Scope of Work includes interface with the TCEQ for application review, and includes a reasonable amount of time needed to address TCEQ questions and concerns regarding a typical ERC application. Based on our experience, Sage ATC anticipates a significant amount of post

submittal communication with the TCEQ's EBT staff regarding the merits of the Southcross ERC application.

Sage will perform this work on a Time and Materials, Not-to-Exceed basis; **the total time and materials consulting costs to perform the Scope of Work will not exceed \$45,000**, without obtaining prior written authorization from Southcross.

A separate five (5) percent (%) success fee is proposed. With this success fee, Sage becomes a **five (5) percent (%) equity partner** on either (1) the net value of any revenues obtained from selling the resulting ERCs, or (2) the equivalent market value of the ERCs at the time of TCEQ certification, should Southcross prefer to hold or use ERCs rather than trade them.

* Total costs are based on the following assumptions:

- Reasonable amount of "back and forth" communication with the TCEQ regarding the ERC application; costs do not include requested participation in lobbying, legal matters or industry consortium meetings for policy development or ERC application approvals, and no lobby, legal or industry consortium costs will be billed without prior written approval from Southcross.
- If a third-party broker is used in the sale of ERCs, the broker costs are not included in the total costs or success fee; broker costs will not exceed 3.5% without prior written approval from Southcross.
- Any capital costs or engineering design projects necessary to generate emission reductions, such as the design, purchase, installation, or testing of control devices, are specifically excluded from the scope of work.
- Services not set forth above are specifically excluded from the Scope of Work.

Organizational Structure

The Sage ATC project team will include Randy Parmley as Client Guardian and Charles Parmley as the Project Manager for this work. Paul Wier will serve as the technical Quality Assurance/Quality Control (QAQC) Officer on the project. Sage ATC will provide other qualified technical staff to assist if additional help is necessary.

Schedule

Sage ATC will begin these services upon approval from Southcross. The duration of this work is dependent upon the availability and completeness of Southcross' company records, but Sage ATC proposes to initially identify equipment and potential ERC credits within two-weeks of work authorization.

Contractual Terms and Conditions

Sage ATC and Southcross will need to execute a contract specific to these conditions prior to beginning work on these projects. A copy of the Sage ATC proposed contract is attached.

Sage ATC proposes to begin these services upon receipt of your approval and execution of the contract. You may reach Randy Parmley by phone at (832) 715-3339 or by email at randy@sageenvironmental.com.

Acceptance of Proposal and Authorization to Proceed


**Proposal - Emission Reduction Credit Generation
Southcross Gathering Ltd
Sage ATC Proposal**

A written statement or email authorizing us to proceed with this project is required. We are able to commence these services immediately.

AGREED AND ACCEPTED FOR SOUTHCROSS GATHERING LTD



Signature



Date



Printed Name

PO Number

If you have questions regarding the Consulting Services Agreement, please contact Vickie Hall, Contracts Manager, by phone at (225) 622-6025 or by email at vickie@sageenvironmental.com



ATTACHMENT A

QA/QC PROCEDURES

Sage ATC Environmental Consulting, LLC (Sage ATC) specializes in providing a high quality deliverable that meets or exceeds a client-specific, requested scope of work. Adherence to the Project Management Plan and Quality Assurance/Quality Control Plan described below assures a high quality deliverable.

Project Management Plan

Sage ATC completes requested services by using a project team of professionals consisting of a dedicated Client Guardian (CG), Project Manager (PM), Quality Assurance/Quality Control (QA/QC) specialist, and group of project technical staff. This approach is designed to efficiently utilize the technical capabilities of each individual and provide effective project execution. The project management role is discussed in this section.

At Sage ATC, customers are assigned a CG that is responsible for successful execution of the requested scope of services. The CG understands the importance of each project to the customer and Sage ATC, and capitalizes on the opportunity to provide high quality service and achieve project success for the customer.

The CG selects an appropriate PM for the requested scope of services, and works with the PM to build a team of professionals at the time of proposal to best meet the client's objectives. Upon initial work execution, the PM reviews all representations in the proposal to identify additional opportunities to maximize efficiency and quality. The PM leads the internal project kickoff meeting, and requires involvement of the CG, all technical staff, and QA/QC specialist.

The PM is responsible for project costs, project schedules, and successful completion of the contractual requirements. Ongoing involvement in the project to ensure that requirements and deadlines are being met is the responsibility of the PM, and contact with the client is maintained by the PM to ensure that the project meets client expectations regarding work scope, schedule, and budget. The PM also serves as the client's point-of-contact on daily work issues, and provides the coordination and overall direction for the project team.

The CG communicates with the client to understand his or her project goals and requirements. The CG communicates with the Sage ATC PM concerning staff selection and project scope, schedule, and budget issues to ensure successful completion of the client's goals and requirements. Project deliverables are reviewed by the CG prior to client delivery to determine if work products meet Sage ATC quality standards and client expectations. Prior to project completion, the CG discusses client satisfaction and opportunities for continual improvement with the client.



Quality Assurance\Quality Control Plan

The Quality Assurance\Quality Control (QA/QC) Plan is based on the guidelines established by the Professional Engineers in Private Practice Division of the National Society of Professional Engineers. The purpose of the QA/QC plan is to establish and document procedures to ensure that:

- All work is performed in a logical and consistent approach that promotes proper documentation and minimizes opportunity for error;
- All work is reviewed by a senior staff member who is not involved in daily task completion to provide an independent and unbiased review for work product quality;
- Execution of the QA/QC plan is documented with checklist verification of product quality and communication within the project team;
- Client expectations and contractual requirements regarding quality and consistency are met and exceeded; and
- A reputable representation of the client and Sage ATC is provided to regulating agencies and/or other receiving entities.

The primary responsibility for the timely and proper execution of the Sage ATC QA/QC Plan resides with the PM. The CG selects an appropriate Sage ATC staff member to function as the QA/QC Specialist for the project in consultation with the Sage ATC PM. The designated QA/QC Specialist reports directly to the CG regarding any issues of work quality, and work quality improvements are communicated to the PM.

Sage ATC QA/QC procedures are designed to ensure the highest work quality, as follows:

- The designated QA/QC specialist initially participates in the internal project kick-off meeting; the PM communicates at designated times regarding work progress and timing for execution of the QA/QC Plan.
- The PM develops the project QA/QC plan from standardized Sage ATC checklists, and customizes the plan as appropriate for client and project specific elements.
- Sufficient time is allotted in the project schedule to ensure that the QA/QC Specialist does a proper review; the specific timing for the QA/QC review is communicated by the PM as draft products are developed and client deadlines approach to meet the overall project schedule.
- The PM approves completed draft work products, and forwards these to QA/QC specialist for review; sufficient supporting information for detailed QA/QC is provided by the PM along with the appropriate checklists, project-specific issues, and supporting information (such as electronic copies of spreadsheets, specific technical notes, internally documented assumptions, etc.).
- The QA/QC specialist initially reviews the Sage ATC proposal, any subsequent Scope of Work change orders, and internal kickoff meeting notes prior to review of work products.



- The QA/QC specialist reviews work products for accuracy, consistency, logic, approach, organization, representation (proximity of data, ease of understanding, etc.), documentation, and all specific details included on the project QA/QC Plan.
- Comments and improvements from the QA/QC Specialist are provided in writing to the CG and PM and incorporated into work products by the PM and technical staff; issues requiring management involvement for resolution are discussed in group meetings between the CG, PM, QA/QC specialist, and technical staff, as appropriate.
- The comments from the QA/QC specialist and the revised work products are provided to the CG for review prior to delivery of draft work products to the customer.

After work product delivery, the CG addresses work quality with the customer to obtain feedback and document suggestions for continual service improvement.

Exhibit C

Howe Declaration

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

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

**SUPPLEMENTAL DECLARATION OF MICHAEL B. HOWE
IN SUPPORT OF MOTION OF DEBTORS FOR ENTRY
OF AN ORDER (I) AUTHORIZING THE (A) SALES OF CERTAIN EMISSION
REDUCTION CREDITS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS,
AND ENCUMBRANCES AND (B) PAYMENT OF RELATED FEES AND
COMMISSIONS AND (II) GRANTING RELATED RELIEF**

I, Michael B. Howe, declare as follows:

1. I have been Senior Vice President and Chief Financial Officer of each of the above-captioned debtors (collectively, the “**Debtors**” or “**Southcross**”) since January 4, 2019. I most recently served as Chief Financial Officer of the Medical Benevolence Foundation. Prior to that, I was vice president of several departments at Ensco PLC (including strategic planning, finance and accounting, human resources, and treasury) and

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.

held positions at Devon Energy Corporation and Enron Corporation. I hold a master's degree in business administration from the University of Texas at Austin and a bachelor's degree in accounting from Oklahoma State University and am a Certified Public Accountant. I am familiar with Southcross's day-to-day operations, businesses and financial affairs.

2. I submit this declaration (this "**Declaration**") in support of the *Motion of Debtors for Entry of an Order (I) Authorizing the (A) Sale of Certain Emission Reduction Credits Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Payment of Related Fees and Commissions and (II) Granting Related Relief* (the "**Motion**").² In particular, I submit this Declaration as evidence supporting my opinion that the Debtors' sale and marketing process has proved sufficient to identify all potential bidders for the ERCs, and that entry into transactions pursuant to the Purchase Agreements and Proposed Order presents the best means to maximize the value of the Debtors' estates.

3. Except as otherwise indicated, the facts set forth in this Declaration are based upon my personal knowledge, my review of the relevant documents, information provided to me by employees working under my supervision, or my opinion based upon experience, knowledge, and information concerning the operations of Southcross and the oil and gas industry as a whole. If called upon to testify, I would testify competently to the facts set forth in this Declaration. Unless otherwise indicated, the financial information contained herein is unaudited and provided on a consolidated basis.

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

The Sale of ERCs

4. In the ordinary course of the Debtors' business operations in Texas, the Debtors emit certain chemical compounds into the environment in connection with the processing and treatment of natural gas. Under Texas state law, in the Houston-Galveston-Brazoria area, the volume of such emissions is capped at levels set forth by the Texas Commission on Environmental Quality (the "**TCEQ**"). In order to emit such compounds into the environment, the Debtors applied for and received air permits from the TCEQ.

5. Approximately two years ago, the Debtors closed a natural gas processing plant located in Conroe, Texas (the "**Conroe Plant**"). As a result of the Conroe Plant closure, the Debtors no longer had any use for the TCEQ air permits utilized by the former plant. In order to monetize their unused TCEQ air permits, the Debtors commenced a certification process with the TCEQ in which the TCEQ granted to the Debtors 50.4 tons of Nitrous Oxide and 10.4 tons of Volatile Organic Compound TCEQ ERCs for the Houston-Galveston-Brazoria area.

6. Upon receipt of the ERCs from the TCEQ, the Debtors retained Amerex Brokers LLC, as a brokerage firm (the "**Broker**"), and Sage ATC Environmental Consulting, LLC, as an environmental consultant (the "**Environmental Consultant**"), to conduct a robust marketing process for the ERCs. However, as a result of (a) initial indications of interest being lower than anticipated and (b) price fluctuations in the commodities markets, the Debtors were unable to find a suitable purchaser prior to the Petition Date. Nonetheless, because the ERCs are set to expire in 2021, the Debtors have

continued with the marketing process to monetize the ERCs while they retain some measure of value.

7. After months of an ongoing process of working with the Broker and Environmental Consultant, the Debtors believe that they have located fair and reasonable offers for the ERCs and are in the process of trying to negotiate and finalize these transactions. In addition, the prospective purchasers have advised the Debtors that they are only willing to finalize their respective transactions once the Debtors receive Court authority to do so. Given the rapidly declining value of the ERCs, the Debtors and their advisors believe, in their business judgment (and in consultation with the prepetition and post-petition lenders), that the immediate finalization and consummation of the sales of the ERCs is in the best interests of the Debtors' estates and their stakeholders.

Sound Business Purpose

8. I believe that the Debtors have demonstrated good, sufficient, and sound business purposes and justifications for finalization and consummation of the 363 Sales, in accordance with the requirements of section 363(b) of the Bankruptcy Code. The Debtors are seeking authority to finalize and consummate the 363 Sales for the exact purpose of preserving the economic value of the ERCs. As noted above, the ERCs are set to expire in 2021; therefore, the Debtors' ability to monetize such assets is rapidly declining with the passage of time. Prompt sales of the ERCs are necessary in order to maximize distributable value for the benefit of the Debtors' estates and their stakeholders. Moreover, the Debtors made the decision to sell the ERCs after consulting with their counsel, financial advisors, and prepetition and post-petition lenders. All of the

foregoing parties support the relief sought herein. Accordingly, a strong business justification exists for granting the relief requested in the Motion.

9. I believe that approval of the 363 Sales, pursuant to sections 363(b) and 105(a) of the Bankruptcy Code, is necessary to preserve the value of the Debtors' businesses. The Debtors have also determined, in their reasonable business judgment (after consulting with the prepetition and post-petition lenders), that the ERCs will have the greatest value if promptly sold at or above the Threshold Price.

Fair Purchase Price

10. It is my belief that the Threshold Price represents a fair and reasonable price for the ERCs. The Debtors retained the Broker and Environmental Consultant to conduct a robust marketing process for the ERCs. The brokerage fee and environmental consulting commission are calculated based on the amount of the purchase price paid. Accordingly, the Broker and Environmental Consultant were incentivized to solicit the highest purchase price. Moreover, the Debtors' prepetition and post-petition lenders and the Debtors' majority equity holder support the 363 Sales. In light of the foregoing, I believe that the Threshold Price would be fair and reasonable, and allowing the Debtors to consummate the 363 Sales at or above the Threshold Price would be in the best interests of the Debtors' estates and their economic stakeholders.

Good Faith of the Purchasers

11. It is my belief that the 363 Sales are being negotiated with potential buyers at arm's length and in good faith. The good faith of such buyers is evidenced by, among other things, the following facts:

- a. The sale and marketing process conducted by the Debtors, including, without limitation, their solicitation of all known parties with the infrastructure and ability to make full use of the ERCs, was at arm's length, non-collusive, in good faith, and substantively and procedurally fair to all parties. The Debtors evaluated each offer they received for the ERCs prior to determining that the Threshold Price represented a fair and reasonable offer for the ERCs.
- b. To the best of my knowledge, all potential buyers are third party purchasers and are unrelated to any of the Debtors.
- c. The Debtors and the potential buyers have engaged in substantial arm's length negotiations, in good faith. The Threshold Price is the product of this bargaining among the parties.

12. The sales of the ERCs at the Purchase Price and all relief requested in the Motion are part of integrated transactions, meaning that each component is an essential part of every other component and that each transaction can be consummated only if all of its components are consummated.

Sale Free and Clear Required By Potential Purchasers

13. The Debtors seek the authority to sell the ERCs to potential buyers free and clear of any and all liens, claims, interests, and other encumbrances, in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, interests, and encumbrances attaching to the proceeds of the applicable sale. Such authority is critical to finalizing the 363 Sales with prospective purchasers. In connection with the negotiations relating to the 363 Sales, various buyers have expressly negotiated for the

protection of obtaining the ERCs free and clear of all liens and claims. If the 363 Sales did not provide for buyers to receive the ERCs free and clear of all liens and claims, such buyers would offer less consideration than the Threshold Price. Alternatively, such buyers may decide not to pursue the 363 Sales.

Prompt Consummation

14. The Debtors are seeking authority to finalize and consummate the 363 Sales for the exact purpose of preserving the economic value of the ERCs. As noted above, the ERCs are set to expire in 2021; therefore, the Debtors' ability to monetize such assets is rapidly declining with the passage of time. Prompt sales of the ERCs are necessary in order to maximize distributable value for the benefit of the Debtors' estates and their stakeholders. Moreover, the Debtors made the decision to sell the ERCs after consulting with their counsel, financial advisors, and prepetition and post-petition lenders. All of the foregoing parties support the relief sought herein.

Section 363 Sales

15. I believe that the sales of the ERCs at or above the Threshold Price, free and clear of any and all liens and claims, would be in the best interest of the Debtors and their respective estates.

16. 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 offers for all or a portion of the Debtors' businesses (including, without limitation, the ERCs), and the adequacy and fair value of the Threshold Price, I believe that the contemplated sales of the ERCs at or above the Threshold Price constitute a reasonable and sound exercise of the Debtors' business judgment and should be approved in all respects by the Court.

Broker's Fee and Environmental Consultant's Commission

17. The Debtors selected the Broker and Environmental Consultant in accordance with their fiduciary duties. Indeed, retention of such professionals is both routine and essential in the context of ERC transactions. Without the Broker and Environmental Consultant, the Debtors would not be able to locate suitable buyers for the ERCs, which would harm both the estates and the Debtors' stakeholders. Further, the Broker and Environmental Consultant were selected in order minimize costs to the estate while maximizing the proceeds of the sale of the ERCs, as the fees and commissions were the lowest available under the foregoing circumstances and are calculated based on the purchase price paid, thereby incentivizing them to achieve the best result. Under the Brokerage Agreement, the Broker will earn a 3.5% commission on all ERC sales. Under the Consulting Agreement, the Environmental Consultant will earn a 5.0% commission on all ERC sales.

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

Dated: October 18, 2019

/s/ Michael B. Howe
Michael B. Howe
Chief Financial Officer

Exhibit D

Proposed Order

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

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

**ORDER (I) AUTHORIZING THE (A) SALES OF CERTAIN EMISSION
REDUCTION CREDITS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS,
AND ENCUMBRANCES AND (B) PAYMENT OF RELATED FEES AND
COMMISSIONS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of Southcross Energy Partners, L.P. (“**Southcross**”), Southcross Energy Partners GP, LLC, and Southcross’s wholly owned direct and indirect subsidiaries, each of which is a debtor and debtor in possession in the Chapter 11 Cases (collectively, the “**Debtors**”), for entry of an order, pursuant to sections 363 and 105(a) of the Bankruptcy Code, Bankruptcy Rule 6004, and Local Rule 6004-1, authorizing the sale of the ERCs free and clear of liens, claims, interests, and

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 the Motion.

encumbrances; 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 opportunity for a hearing on the Motion having been given to the parties listed therein; and the Court having reviewed and considered the Motion and the Howe Declaration; and the Court having the opportunity to hold a hearing on the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; 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 upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

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. Any 363 Sales with a purchase price at or above the Threshold Price shall be deemed approved in all respects as set forth in this Order.
3. 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.

4. The Debtors are hereby authorized to sell the ERCs at or above the Threshold Price.

5. Pursuant to section 363(b) of the Bankruptcy Code, each of the Debtors is hereby authorized to enter into, perform, consummate, and implement 363 Sales, together with all additional instruments and documents that may be reasonably necessary or desirable to sell the ERCs at or above the Threshold Price, and to take any and all further actions as may be necessary or appropriate to the performance of its obligations as contemplated by this Order, including paying any expenses or costs that are required to be paid in order to consummate the 363 Sales contemplated by this Order or to perform its obligations under any agreement related thereto.

6. Pursuant to sections 363(f) and 105(a) of the Bankruptcy Code, upon the closings of the 363 Sales, the ERCs shall be transferred, sold, and delivered to any and all buyers free and clear of all liens and claims. All other liens and claims that existed against the ERCs prior to the closings of such transactions, 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 Order³), shall attach to the sale proceeds the Debtors receive under the 363 Sales (subject to the terms and conditions set forth in the DIP Order, this Order, or other applicable order of the Court, including without limitation, the Carve-Out (as defined in the DIP Order) and Wind-Down Budget). Those liens and claims will attach to the proceeds of

³ “**DIP Order**” means the *Final Order, Pursuant to 11 U.S.C. §§ 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 363 Sales in the same order of relative priority and with the same validity, force, and effect that the holder of such lien or claim had against the ERCs prior to the closings of the 363 Sales (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 liens or claims are being adequately protected pursuant to the provisions of this Order by having their liens or claims, if any, in each instance against the Debtors, their estates, or any of the ERCs, attach to the proceeds of the 363 Sales ultimately attributable to the ERCs 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 363 Sales, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

7. Pursuant to section 363 of the Bankruptcy Code, the Debtors have exercised sound business judgment in connection with the 363 Sales.

8. The Debtors are hereby authorized to pay the Broker the brokerage fee and the Environmental Consultant the environmental consulting commission, which fee and commission are fair and reasonable.

9. As a result of the 363 Sales contemplated, no purchaser of the ERCs shall be a successor to any of the Debtors by reason of any theory of law or equity, and no purchaser shall have any liability for any lien or claim against or in any of the Debtors as a result of any application of successor liability theories.

10. Without limiting the generality of the immediately preceding paragraph, purchasers of the ERCs shall not be assuming, nor shall they in any way whatsoever be liable or responsible, as successors or otherwise, for any of the following claims or liens:

any claims or liens of the Debtors or any claims or liens in any way whatsoever relating to or arising from the ERCs or the Debtors' operations or use of the ERCs, including, without limitation, any liabilities calculable by reference to the Debtors or their ERCs or operations or relating to continuing conditions existing at or prior to the closings of the 363 Sales, which claims or liens, as against such purchasers, shall be deemed extinguished, without regard to whether the claimant asserting any such claims or liens has delivered to such purchasers a release thereof.

11. No person or entity, including, without limitation, any federal, state, or local governmental agency, department, or instrumentality, shall assert by suit or otherwise against any buyer or its successors in interest any claim or lien that they had, have, or may have against the Debtors, or any claim or lien relating to or arising from the ERCs or the Debtors' operations or use of the ERCs.

12. The terms and provisions of any purchase agreement with respect to the 363 Sales and all related documents necessary to consummate the 363 Sales, together with the terms and provisions of this Order, shall be binding in all respects upon the Debtors, their estates, their creditors, and all parties in interest, including any and all successors and assigns (including, without limitation, any trustee appointed under the Bankruptcy Code).

13. All entities holding liens or claims against the ERCs shall be, and they hereby are, barred from asserting such liens or claims against the buyers and/or the ERCs and all entities holding such liens or claims shall be deemed to have released the ERCs to the buyers and to have limited the assertion of their liens or claims against the ERCs (subject, in all cases, to the priority set forth in the DIP Order, the Carve-Out, and the

Wind-Down Budget) to the sale proceeds the Debtors receive for the sale of the ERCs and any other available property of the Debtors' respective estates that does not constitute the ERCs.

14. The 363 Sales are being negotiated by Debtors, the buyers, 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 finalize and consummate the 363 Sales shall not affect the validity of the 363 Sales or any term of any purchase agreements, and shall not permit the unwinding of the 363 Sales. The buyers shall be deemed good faith purchasers, within the meaning of section 363(m) of the Bankruptcy Code and, as such, are entitled to the full protections of section 363(m) of the Bankruptcy Code.

15. The Threshold Price is fair and reasonable. None of the Debtors nor the potential buyers have engaged in any conduct that would cause the 363 Sales to be avoided, or damages or costs to be imposed, under section 363(n) of the Bankruptcy Code.

16. At the closing of all ERC sales, the sale proceeds shall be applied in accordance with section 3.04(b)(ii) of the DIP Credit Agreement.

17. 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 terms of this Order.

18. 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.

19. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

20. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the 363 Sales.

21. The Debtors are hereby authorized to enter into purchase agreements for sales of ERCs, and such purchase agreements 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.

22. If there is any direct conflict between any purchase agreement and this Order, the terms of this Order shall control.

Dated: Wilmington, Delaware

_____, 2019

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE