

(ii) *Current and Former Employees To Proceed with Outstanding Workers' Compensation Claims*, and (iii) *Financial Institutions To Honor and Process Related Checks and Transfers* (this "**Motion**"). This Motion is supported by the *Declaration of Michael B. Howe in Support of Debtors' Chapter 11 Proceedings and First Day Pleadings* (the "**Howe Declaration**") filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

Relief Requested

1. By this Motion, and pursuant to sections 105(a), 362(d), 363(b), 363(c), 507(a)(4), 507(a)(5), and 541 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the Debtors seek entry of interim and final orders (the "**Proposed Orders**" and, if entered, the "**Orders**") (a) authorizing, but not requiring, the Debtors to (i) pay or cause to be paid, in their sole discretion, all or a portion of the amounts owing (and associated costs) under or related to Wages, the Withholding Obligations, the Reimbursement Obligations, the Relocation Obligations, the Health and Welfare Plan Obligations, the COBRA Obligations, the PTO Obligations, the Disability Obligations, the Retirement Obligations, the Workers' Compensation Obligations, the Contingent Workers Obligations, the Non-Insider Severance Obligations, the Non-Insider Retention Obligations, and the Non-Insider STIP Obligations (each as individually defined below and, collectively, the "**Prepetition Employee Obligations**") and (ii) unless otherwise set forth herein, continue, in their sole discretion, their plans, practices, programs, and policies for their current and former Employees (as defined below) (collectively, the "**Employee Programs**"), as applicable, as those Employee Programs were in effect as of the Petition Date and as may be modified, terminated, amended, or supplemented from time to time by the Debtors, and to make payments pursuant to the Employee Programs in the ordinary course of

business, as well as to pay related administrative obligations, (b) permitting current and former Employees holding claims under the Workers' Compensation Program (as defined below) to proceed with such claims in the appropriate judicial or administrative fora, and (c) authorizing the Debtors' financial institutions to receive, process, honor, and pay all checks or wire transfers used by Debtors to pay the foregoing.

2. By seeking the authorization requested herein, it should not be presumed that the Debtors have determined, as of this time, which of the Prepetition Employee Obligations they will pay or honor, nor should any party rely on this Motion as to any specific claim or benefit. Without limiting the foregoing, the Debtors intend to pay all Employees and, where applicable, former Employees, with respect to validly earned Prepetition Employee Obligations that the Debtors would be required to pay in the ordinary course of business.

Jurisdiction and Venue

3. 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.

4. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and, pursuant to Rule 9013-1(f) 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 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.

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

Background

6. 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.

7. 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.

8. 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 Howe Declaration, which is incorporated herein by reference.

Prepetition Employee Obligations

9. The Debtors are a public company that provides a comprehensive package of midstream services to natural gas producers and customers, including natural gas gathering, processing, treating, compression, access to natural gas liquid fractionation, and transportation services. Crucial to their businesses, the Debtors employ a talented and dedicated workforce of approximately 205 employees, who have enabled the Debtors to continue to achieve their high standards of quality, safety, and sustainability for their products and the processes.

Wages, Salaries and Other Compensation

10. As of the Petition Date, the Debtors employ approximately 205 people in active status working in both full-time and part-time positions, including executives, engineers, plant technicians, business managers and analysts, environmental specialists, information technology specialists, administrative support staff, and other personnel (collectively, with current members of the Debtors’ Boards of Directors or similar governing bodies, “**Employees**”). None of the Debtors’ current Employees are represented by a union. The majority of the Debtors’

Employees (approximately 181) works in Texas, where the Debtors' headquarters and principal operations are located. The remaining Employees generally work at one of the Debtors' plants located in Alabama or Mississippi.

11. As described in the *Motion of Debtors for Entry of Interim and Final Orders Authorizing (i) Debtors To Continue To Maintain Existing Cash Management System, Bank Accounts, and Business Forms and (ii) Financial Institutions To Honor and Process Related Checks and Transfers* (the “**Cash Management Motion**”), filed contemporaneously herewith, the Debtors and non-Debtor Southcross Holdings LP (“**Southcross Parent**”) recently memorialized their historic practice of allocating expenses relating to shared services (the “**Shared Services Arrangement**”).² Pursuant to such Shared Services Arrangement, the Debtors and Southcross Parent generally pay their respective allocated pro rata portion of all shared services expenses, including, among other things, general administration, accounting, investor relations, legal and regulatory services, financial and treasury services, technological support, human resources, and labor. Importantly, certain Employees not only perform services on behalf of the Debtors, but also do so for Southcross Parent and certain of Southcross Parent's non-Debtor subsidiaries, for which Southcross Parent pays the Employees for such services.

12. Employees are generally paid bi-weekly, on Fridays, one week in arrears. The Debtors and Southcross Parent fund their respective portions of wages and salaries into a payroll account located at Southcross GP, which in turn funds payroll to Inova Payroll, Inc., a payroll

² The Shared Services Arrangement has been memorialized in that certain Shared Services Agreement attached as an exhibit to *Motion of Debtors for Entry of Interim and Final Orders Authorizing (i) Debtors To Continue to Maintain Existing Cash Management System, Bank Accounts, and Business Forms and (ii) Financial Institutions To Honor and Process Related Checks and Transfers*, filed contemporaneously with this Motion.

administrator,³ on the Thursday immediately prior to the Friday when Employees are paid. The most recent payroll was paid to Employees on March 29, 2019. The Debtors' average gross payroll per payroll period is approximately \$902,000, which is composed of approximately \$820,000 in base compensation and approximately \$82,000 in overtime pay. The Debtors estimate that, as of the Petition Date, they owe approximately \$451,000 in wages and salaries to Employees, which is comprised of approximately \$410,000 in base compensation and \$41,000 in overtime pay ("**Wages**").

13. The Debtors believe that, as of the Petition Date, only one Employee is owed Wages in excess of the \$13,650 statutory cap under section 507(a)(4) of the Bankruptcy Code.⁴

Withholding Obligations

14. Southcross GP, on behalf of the Debtors and Southcross Parent, routinely withholds from Employees' Wages certain amounts that the Debtors and Southcross Parent are required to transmit to third parties for such purposes as Social Security, Medicare, federal, and state income taxes, the Medical and Dental Plans, the vision plan, the 401(k) Plan, contributions and payroll deduction payment programs for various insurance programs, flexible savings accounts, child support payments, and other similar mandatory withholdings (collectively, the "**Withholding Obligations**").

15. The Debtors' average Withholdings Obligations are summarized below:

Withholding Obligation	Estimated Amount Per Payroll Period	Estimated Amount Accrued & Unpaid as of the Petition Date
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³ The Debtors pay Inova Payroll, Inc. approximately \$7,000 every payroll period for providing payroll processing services.

⁴ As a result of the Debtors' ordinary course schedule for the payment of Wages (*i.e.*, bi-weekly, one week in arrears), Southcross's CEO is owed base salary amounts approximately \$5,581 in excess of the \$13,650 statutory cap under section 507(a)(4) of the Bankruptcy Code.

Withholding Obligation	Estimated Amount Per Payroll Period	Estimated Amount Accrued & Unpaid as of the Petition Date
Employee Taxes ⁵	\$180,000	\$90,000
Medical and Dental	\$33,000	\$16,500
Vision	\$1,000	\$500
401(k)	\$60,000	\$30,000
Insurance	\$5,000	\$2,500
Flexible Savings Accounts	\$2,400	\$1,200
Child Support	\$6,000	\$3,000
Total	\$287,400	\$143,700

16. The Debtors believe that the Withholding Obligations, to the extent that they were in the Debtors' possession as of the Petition Date and/or remain in the Debtors' possession, are not property of the Debtors' bankruptcy estates under section 541 of the Bankruptcy Code.

Business Expense Reimbursement

17. The Debtors customarily reimburse Employees who incur business expenses in the ordinary course of performing their business duties on behalf of the Debtors. These reimbursement obligations include, among other things, travel (e.g., airfare, hotel, car rental, gas, cab, business parking, and mileage), business meals and entertainment, and office expenses (collectively, the "**Reimbursement Obligations**").

18. Reimbursement is made directly to the Employee for business expenses paid by such Employee. In 2018, the Reimbursement Obligations averaged approximately \$22,500 per month, based on aggregate annual Reimbursement Obligations of approximately \$270,000. Although it is difficult for the Debtors to determine the exact amount of the Reimbursement Obligations outstanding at any particular time because of the generally unpredictable and irregular nature of Employees seeking payment pursuant to the Reimbursement Obligations, the

⁵ Excludes Employer Taxes, estimated at \$80,000 per payroll period and \$40,000 accrued and unpaid as of the Petition Date.

Debtors estimate that they owe approximately \$22,500 related to Reimbursement Obligations as of the Petition Date.

Relocation Benefits

19. In the ordinary course of business, the Debtors pay or reimburse Employees for relocation expenses incurred at the Debtors' request or for the Debtors' benefit on a case-by-case basis at the Debtors' discretion (collectively, the "**Relocation Obligations**"). The Relocation Obligations generally include amounts incurred for property rental assistance, temporary lodging and housing, moving expenses, travel expenses for housing services and visits, storage, lease termination, and sales and marketing assistance. As of the Petition Date, the Debtors believe that no Relocation Obligations remain outstanding.

Health and Welfare Benefits

20. The Debtors offer several health and welfare benefit plans (collectively, the "**Health and Welfare Plans**") to Employees, including, among other things, coverage for medical, dental, vision, flexible spending accounts, basic and voluntary supplemental life, basic and voluntary supplemental accidental death and dismemberment, short-term and long-term disability, and certain other insurance, employee assistance, and benefit programs (collectively, the "**Health and Welfare Plan Obligations**").

21. The Debtors' medical and dental plans (collectively, the "**Medical and Dental Plans**") require the Debtors to pay for the costs arising under such plans, including claim payments and associated administrative costs. Administrative costs in respect of the Medical and Dental Plans are funded in advance on the 15th of the month for the subsequent month, which averaged approximately \$120,000 per month in 2018 for current Employees. The Medical and Dental Plans are insured by and administered through Cigna Health and Life Insurance Company.

22. In connection with the Medical and Dental Plans, Southcross GP has an imprest bank account at J.P. Morgan Chase Bank, N.A. that is used for employee medical claims. The Debtors maintain a balance of \$300,000 in this account and fund the account at the end of the month. If medical costs exceed \$300,000 for the month, then Cigna covers any excess costs. On average, the Debtors replenish this account with approximately \$240,000 per month.

23. In 2018, payments on account of Health and Welfare Plans totaled approximately \$4,731,000, comprised of (a) \$4,320,000 for payments under the Medical and Dental Plans, (b) \$62,000 for contributions to flexible savings accounts, (c) \$32,000 for payments under the vision plans, (d) \$312,000 for payments under the life and accidental death and dismemberment insurance plans, and (e) \$5,000 for payments under the employee assistance plan (*i.e.*, counseling service for employees).

24. The Debtors did not incur any expenses in 2018 in connection with a third party administrator's management, reporting, and processing of certain obligations to former Employees under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("**COBRA**"). All Employees have the right under COBRA to elect to receive COBRA coverage, which extends medical, dental, and vision benefits to which an Employee was entitled immediately prior to termination for a specified post-termination period of 18 months (collectively, the "**COBRA Obligations**"). Employees who elect to receive COBRA coverage are required to pay 102% of the elected premiums. As of the Petition Date, one former Employee has elected to receive COBRA coverage. COBRA coverage is administered through Tri-Star Benefits Systems Inc.

25. All other Health and Welfare Plans are insured by and administered through Life Insurance Company of North America, which provides life, accidental death and dismemberment, and short-term and long-term disability insurance.

26. Because of the manner in which expenses are incurred and claims are processed under the Health and Welfare Plans, it is difficult for the Debtors to determine the extent of their obligations under the Health and Welfare Plans outstanding at any particular time. Based on historical experience and expected future trends, the Debtors estimate that the cost of the Health and Welfare Plan Obligations (including payments to administrators) is approximately \$390,000 per month.

Paid Time Off

27. Pursuant to the Debtors' paid time off policies ("**PTO**"), eligible Employees are paid their regularly scheduled full-time or part-time Wages for each PTO day, up to the maximum number of days accrued. In accordance with the applicable policy, each Employee may accrue up to 25 PTO days per calendar year. Employees can maintain a balance of up to 250 hours maximum year-to-year. Employees no longer accrue PTO once reaching 250 hours maximum, but will continue to accrue once the balance falls below 250 hours. Employees also have paid time off for a set list of ten holidays. Employees do not receive sick days or personal days—all time off is covered by PTO or holidays. Upon termination of employment, all accrued and unused PTO is paid out. The Debtors have prepetition accrued PTO and holiday obligations for their Employees (collectively, the "**PTO Obligations**"), which they intend to honor in the ordinary course of business.

Disability Benefits

28. The Debtors also offer disability benefits to their Employees, consisting of short-term and long-term disability benefits. In the event that an Employee becomes eligible for

disability benefits, the benefits are provided for up to 26 weeks, after which period certain eligible Employees may receive additional long-term disability benefits. The long-term and short-term disability benefits are administered and insured by Life Insurance Company of North America. In 2018, the Debtors' incurred expenses of approximately \$156,000 on account of the obligations related to the benefits described in this paragraph (collectively, the "**Disability Obligations**") and estimate paying approximately the same amount during calendar year 2019. The Debtors believe that, as of the Petition Date, no Disability Obligations remain outstanding.

Retirement Plans

29. The Debtors maintain a single-employer, 401(k) retirement plan managed by Principal Financial Group (the "**401(k) Plan**"). The Debtors' obligations under the 401(k) Plan, as described below, are referred to collectively herein as the "**Retirement Obligations**."

30. The 401(k) Plan is a qualified defined contribution savings plan. The Debtors generally match an Employee's voluntary contributions dollar-for-dollar up to 6% of the Employee's compensation, subject to limits under the Internal Revenue Code. As of December 31, 2018, 146 of the Debtors' current and former Employees were participating in the 401(k) Plan. In 2018, the Debtors' 401(k) matching contributions averaged approximately \$87,000 per month. The Debtors estimate that, as of the Petition Date, approximately \$22,000 in 401(k) Plan matching obligations remain outstanding.

Workers' Compensation Program

31. Under applicable law, the Debtors are required to maintain a workers' compensation insurance program to cover Employees' workers' compensation claims arising from or related to their employment with the Debtors (the "**Workers' Compensation Program**") and to satisfy the Debtors' obligations arising under or related to the Workers' Compensation Program (collectively, the "**Workers' Compensation Obligations**").

32. For each claim under the Workers' Compensation Program, the Debtors file an injury report with a third party administrator, The Hartford Financial Services Group, Inc. ("**Hartford**"), which performs an independent investigation of whether the claim is eligible for coverage. Hartford administers and pays out eligible claims. The Debtors do not have any additional obligations outside of paying annual premiums to Hartford, which were prepaid in November 2018.

33. As of the Petition Date, the Debtors have outstanding Workers' Compensation Obligations that they believe to be *de minimis* in amount. Likewise, the average monthly cost of Workers' Compensation Obligations paid by the Debtors is \$0, since Hartford fully insures workers' compensation claims.

Contingent Workers

34. From time to time, the Debtors use the personal services of individuals employed by, and provided through, staffing agencies and of individuals providing personal services directly as independent contractors (collectively, the "**Contingent Workers**"). Such services are necessary to the operation of the Debtors' businesses. The Contingent Workers include, but are not limited to, temporary office workers, administrative staff, and information technology specialists. Payments to the Contingent Workers (collectively, the "**Contingent Workers Obligations**") vary according to the terms of the Contingent Workers' individual contracts with the Debtors or according to the terms of the Debtors' contracts with the appropriate staffing agencies. It is difficult for the Debtors to determine total accrued and unpaid prepetition obligations to the Contingent Workers because of the generally unpredictable and irregular nature of such obligations. In 2018, the Debtors paid out approximately \$4,220,000 on account of Contingent Workers Obligations. The Debtors believe that, as of the Petition Date, accrued and unpaid Contingent Workers Obligations total approximately \$450,000.

Severance Program

35. The Debtors have certain obligations (collectively, the “**Severance Obligations**”) arising out of a severance plan maintained by the Debtors for the benefit of all of their Employees (as may be amended, restated, supplemented, or modified from time to time, the “**Severance Program**”), some of whom may be considered insiders of the Debtors (as that term is defined in section 101(31) of the Bankruptcy Code) (collectively, “**Insiders**”). The Severance Program, adopted by the Debtors on March 1, 2017 (*i.e.*, the Employee Protection Plan), provides Employees terminated with cash payments, depending on title and basis for termination, in accordance with the terms thereof and as summarized below:

Qualifying Change of Control Termination Severance Benefits

Title	Base Salary	Bonus Benefit	COBRA-Related Benefit
Vice President	12 months base salary	Prorated target bonus	Amount equal to employee-only monthly COBRA premium multiplied by 12
Division Director	9 months base salary	Prorated target bonus	Amount equal to employee-only monthly COBRA premium multiplied by 9
Manager/Supervisor	6 months base salary	Prorated target bonus	Amount equal to employee-only monthly COBRA premium multiplied by 6
Other Covered Employees	4 months base salary	Prorated target bonus	Amount equal to employee-only monthly COBRA premium multiplied by 4

Qualifying Reduction in Force Termination Severance Benefits

Title	Calculation	Minimum Payment	COBRA-Related
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			Benefit
Vice President	9 months base salary		Amount equal to employee-only monthly COBRA premium multiplied by 9
Division Director	6 months base salary		Amount equal to employee-only monthly COBRA premium multiplied by 6
Other Covered Employees	2 weeks per year of service	12 weeks base salary	Amount equal to employee-only monthly COBRA premium multiplied by the number of whole months used to determine severance benefit

36. In 2018, the Debtors paid approximately \$480,000 on account of Severance Obligations. The Debtors believe that, as of the Petition Date, no payments owed under the Severance Program are outstanding. For the avoidance of doubt, the Debtors are not seeking authority to continue the Severance Program with respect to Employees who are Insiders, but only with respect to all other Employees who are not Insiders and are eligible to receive payments pursuant to the Severance Program (collectively, the “**Eligible Non-Insider Employees**”).⁶ The Debtors believe that having the authority, in their sole discretion, to maintain the Severance Program for Eligible Non-Insider Employees (the “**Non-Insider Severance Obligations**”) is essential to their businesses in order to retain, and provide security to, Eligible Non-Insider Employees. Although it is difficult for the Debtors to estimate the

⁶ The Debtors reserve the right to seek, through another motion, approval of a severance program with respect to Insiders that is consistent with section 503(c) of the Bankruptcy Code. Furthermore, the Debtors reserve all of their rights to contest any claim by an Eligible Non-Insider Employee to payment under the Severance Program.

average monthly cost of the Non-Insider Severance Obligations given the generally unpredictable and irregular nature of such obligations, the Debtors believe that the monthly cost of maintaining the Non-Insider Severance Program for Eligible Non-Insider Employees is negligible in the context of the Debtors' aggregate compensation and benefit obligations.

Retention Programs

37. The Debtors have certain obligations (collectively, the “**Non-Insider Retention Obligations**”) arising out of, among others, a retention program adopted by the Debtors for the benefit of certain designated division directors, managers, and other designated personnel (as may be amended, restated, supplemented, or modified from time to time, the “**Non-Insider Retention Program**”), none of whom are considered Insiders. The Non-Insider Retention Program, adopted by the Debtors on February 11, 2019, provides each Employee with a lump sum payment equal to a percentage of such Employee's base salary if such Employee remains employed by the Debtors until a designated distribution date with no clawback provision.

38. As of the Petition Date, the Debtors have accrued approximately \$2,600,000 in Non-Insider Retention Obligations on account of the Non-Insider Retention Program. By this Motion, the Debtors are seeking authority to pay these Non-Insider Retention Obligations in the following three installments: on June 30, 2019 (25%); September 30, 2019 (25%); and December 31, 2019 (50%). The Non-Insider Retention Program does not contain a change-of-control trigger that would otherwise accelerate payment of such obligations to Eligible Non-Insider Employees. The Debtors believe that having the authority, in their sole discretion, to maintain the Non-Insider Retention Program for Eligible Non-Insider Employees is essential to their businesses in order to retain, and provide security to, Eligible Non-Insider Employees.

39. In addition, in March 2019, the Debtors adopted a separate Retention Program (the “**Insider Retention Program**”) for its Employees who are Insiders, which provided each

such Insider Employee with a cash payment in lieu of any retention or severance obligations under any other program.⁷ The Debtors believed that it was essential to pay such Retention Obligations to the Insider Employees to run the Debtors' business operations and to maximize value on behalf of the Debtors' estates and stakeholders. For the avoidance of doubt, the Debtors are not seeking any form of relief with respect to payments related to the Insider Retention Program.

Non-Insider Incentive Plans

40. The Debtors maintain incentive plans for the Employees. The incentive plans are carefully calibrated to ensure that eligible Employees are rewarded for their efforts toward the Debtors' financial performance and productivity, as well as their contributions to the Debtors' achievement of maximum workplace safety and environmental compliance. Pursuant to this Motion, the Debtors seek authority to continue certain of these incentive plans with respect to Employees who are not Insiders, as detailed below. This Motion does not seek to continue any incentive plans with respect to Insiders, which may be addressed in a subsequent motion to be filed with the Court.⁸

41. In the ordinary course of business, the Debtors offer awards under a Short-Term Incentive Performance Plan (the "**STIP**") to all full-time Employees for the purpose of providing Employees with a direct financial incentive in meeting certain financial goals and other departmental objectives identified by the Debtors. Each Employee's STIP opportunity is based on his or her role and position within the Debtors' businesses and is discretionary at the

⁷ The Debtors filed a Form 8-K with the SEC disclosing the implementation of the Insider Retention Program and the payments made thereunder.

⁸ The Debtors reserve the right to seek, through another motion, approval of incentive plans with respect to Insiders that are consistent with section 503(c) of the Bankruptcy Code.

company-wide and individual employee levels. Indeed, certain minimum performance thresholds must be achieved prior to the payment of any compensation under the STIP.

42. The STIP is earned over the course of a calendar year and paid in March of the following calendar year. The calendar year 2018 STIP that was paid in March of 2019 totaled approximately \$3,550,000. The Debtors seek authority in this Motion to make payments under the STIP to non-Insider Employees (collectively, the “**Non-Insider STIP Obligations**”) for employee performance during the calendar year 2019. The Debtors estimate that the Non-Insider STIP Obligations accrued thus far for the calendar year 2019 STIP paid in March of 2020 will total approximately \$600,000.

43. The Debtors also maintained, in the ordinary course of business, a Long-Term Incentive Performance Plan (the “**LTIP**”). The LTIP was available to approximately 37 Employees (including three Insiders) and provided for a variety of cash-based incentive awards (collectively, “**Awards**”) to individual Employees at the discretion of the Debtors’ Board of Directors. Under the LTIP, the Debtors paid approximately \$450,000 in Awards in 2019. The LTIP has expired in accordance with its terms and no Awards remain outstanding.

Basis for Relief

Cause Exists To Authorize the Debtors To Pay Prepetition Employee Obligations, Maintain Employee Programs, and Pay Related Administrative Obligations

44. Pursuant to sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, an individual’s claims for “wages, salaries, or commissions, including vacation, severance, and sick leave pay” earned within 180 days before the Petition Date, and claims against the Debtors for contributions to employee benefit plans arising from services rendered within 180 days before the Petition Date, are each afforded unsecured priority status for amounts up to \$13,650 per employee. 11 U.S.C. §§ 507(a)(4), (5). Furthermore, section 363(b)(1) of the Bankruptcy Code

provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code further provides, in relevant part, 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).

45. The Debtors believe that many of their Prepetition Employee Obligations constitute priority claims under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. To the extent such Prepetition Employee Obligations constitute priority claims, the Debtors will be required to pay such claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B). Thus, granting the relief sought herein would only cause such Employee claims to be paid in the initial stages of the Chapter 11 Cases, rather than at the plan confirmation stage.

46. 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). Debtors’ decisions to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See, e.g., In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991)); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986) (implicitly adopting the “sound business purpose” test of *Lionel Corp.* and requiring good faith); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (concluding that the Third Circuit adopted the “sound business purpose” test in the *Abbotts Dairies* decision); *see also In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must

find from the evidence presented before him or her a good business reason to grant such application); *In re Glob. Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting the standard for determining a section 363(b) motion is “a good business reason”).

47. 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 *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997) (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.

48. 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.'").

49. Moreover, section 363(c) of the Bankruptcy Code authorizes a debtor in possession operating its business pursuant to section 1108 of the Bankruptcy Code to "enter into transactions . . . in the ordinary course of business without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1).

50. One purpose of section 363 of the Bankruptcy Code is to provide a debtor with the flexibility to engage in the ordinary course transactions required to operate its business without undue supervision by its creditors or the court. *See, e.g., In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) ("Section 363 is designed to strike [a] balance, allowing a business to continue its daily operations without excessive court or creditor oversight and protecting secured creditors and others from dissipation of the estate's assets.") (citations omitted); *In re Vision Metals, Inc.*, 325 B.R. 138, 145 (Bankr. D. Del. 2005) (same). Included within the purview of section 363(c) of the Bankruptcy Code is a debtor's ability to continue "routine transactions"

necessitated by a debtor's business practices. *See, e.g., In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 796 (Bankr. D. Del. 2007) (citations omitted) (noting that courts have shown a reluctance to interfere in a debtor's making of routine, day-to-day business decisions); *In re Vision Metals*, 325 B.R. at 142 (“[W]hen a chapter 11 debtor in possession continues to operate its business, as permitted by section 1108, no court authorization is necessary for the debtor to enter transactions that fall within the ordinary course of its business.”).

51. The Bankruptcy Code does not define “ordinary course of business.” In determining whether a transaction qualifies as “ordinary course,” the Third Circuit has adopted the “horizontal” dimension test (*i.e.*, whether “from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry”) and “vertical” dimension test (*i.e.*, whether the transaction is consistent with the reasonable expectations of “hypothetical creditors”). *In re Roth Am., Inc.*, 975 F.2d at 953. “The touchstone of ‘ordinariness’ is . . . the interested parties’ reasonable expectations of what transactions the debtor in possession is likely to enter in the course of its business.” *Id.* (citing *In re James A. Phillips, Inc.*, 29 B.R. 391, 394 (S.D.N.Y. 1983)); *see also In re Nellson Nutraceutical, Inc.*, 369 B.R. at 797 (“[A] debtor's pre-petition business practices and conduct is the primary focus of the vertical analysis.”); *Sportsman's Warehouse, Inc. v. McGillis/Eckman Invs.-Billings, LLC (In re Sportsman's Warehouse, Inc.)*, Case No. 09-10990 (CSS), 2013 WL 492554, at *9 (Bankr. D. Del. Feb. 7, 2013) (citation omitted) (“In determining whether a transaction is in the ordinary course of business, the Third Circuit has adopted the two-part horizontal and vertical dimension test.”); *In re Blitz U.S.A., Inc.*, 475 B.R. 209, 214 (Bankr. D. Del. 2012) (same).

52. The Debtors submit that, to the extent that the use of property of the estate is implicated here, the relief requested in this Motion represents a sound exercise of the Debtors’

business judgment, is necessary to avoid immediate and irreparable harm, and is justified under section 363 of the Bankruptcy Code. Any delay in paying the Prepetition Employee Obligations or failure to maintain the Employee Programs and pay related administrative obligations will adversely impact the Debtors' relationships with their Employees and could irreparably impair Employees' morale, dedication, confidence, and cooperation. The Debtors' businesses hinge on their relationships with their customers and the ability to deliver superior products and services is vital. The Employees' support for the Debtors' restructuring efforts in the Chapter 11 Cases is critical to the success of those efforts. At this early stage, the Debtors simply cannot risk the substantial damage to their businesses that would inevitably attend any decline in their Employees' morale attributable to the Debtors' failure to pay the Prepetition Employee Obligations.

53. Absent an order granting the relief requested in this Motion, many Employees would undoubtedly suffer hardship and, in many instances, serious financial difficulties, as the amounts in question are needed to enable certain Employees to meet their own personal financial obligations. Without the requested relief, the stability of the Debtors would be undermined, perhaps irreparably, by the possibility that otherwise loyal Employees will seek other employment alternatives. Consequently, all of the Debtors' creditors will benefit if the requested relief is granted.

54. In fact, numerous courts in this jurisdiction have granted relief similar to that requested herein. *See, e.g., In re Pernix Sleep, Inc.*, Case No. 19-10323 (CSS) (Bankr. D. Del. Feb. 21, 2019); *In re TerraVia Holdings, Inc.*, Case No. 17-11655 (CCS) (Bankr. D. Del. Aug. 3, 2017); *In re Bonanza Creek Energy, Inc.*, Case No. 17-10015 (KJC) (Bankr. D. Del. Jan. 26, 2017); *In re Key Energy Serv. Inc.*, Case No. 16-12306 (BLS) (Bankr. D. Del. Nov. 14, 2016)

(same); *In re Basic Energy Serv., Inc.*, Case No. 16-12320 (KJC) (Bankr. D. Del. Oct. 26, 2016) (same); *In re Triangle USA Petroleum Corp.*, Case No. 16-11566 (MFW) (Bankr. D. Del. Aug. 1, 2016) (same); *In re Seventy Seven Fin. Inc.*, Case No. 16-11409 (LSS) (Bankr. D. Del. June 28, 2016) (same); *In re Quicksilver Res. Inc.*, Case No. 15-10585 (LSS) (Bankr. D. Del. Apr. 4, 2015) (same); *In re Magnum Hunter Res. Corp.*, Case No. 15-12533 (KG) (Bankr. D. Del. Mar. 10, 2016) (same); *In re New Gulf Res., LLC*, Case No. 15-12566 (BLS) (Bankr. D. Del. Jan. 15, 2016) (same); *In re Samson Res. Corp.*, Case No. 15-11934 (CSS) (Bankr. D. Del. Nov. 17, 2015) (same); *In re Energy Future Holdings Corp.*, Case No. 14-10979 (CSS) (Bankr. D. Del. June 4, 2014) (same); *In re GSE Envtl., Inc.*, Case No. 14-11126 (MFW) (Bankr. D. Del. May 30, 2014) (same); *In re Dolan Co.*, Case No. 14-10614 (BLS) (Bankr. D. Del. Apr. 15, 2014) (same); *In re Sorenson Commc'ns, Inc.*, Case No. 14-10454 (BLS) (Bankr. D. Del. Mar. 4, 2014) (same); *In re Longview Power, LLC*, Case No. 13-12211 (BLS) (Bankr. D. Del. Sept. 24, 2013) (same). The Debtors submit that the circumstances described herein warrant similar relief.

55. Finally, the Debtors submit that payment of the Prepetition Employee Obligations, maintaining the Employee Programs and paying related administrative expenses is necessary and appropriate and is authorized under section 105(a) of the Bankruptcy Code pursuant to the “necessity of payment” doctrine, which “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).

56. Under section 105(a) of the Bankruptcy Code, the Court has expansive equitable powers to fashion any order or decree that is in the interest of preserving or protecting the value of the Debtors’ assets. *See In re Combustion Eng’g, Inc.*, 391 F.3d 190, 236 (3d Cir. 2004)

(citation omitted) (noting that section 105 of the Bankruptcy Code “has been construed to give a bankruptcy court ‘broad authority’ to provide equitable relief appropriate to assure the orderly conduct of reorganization proceedings”); *In re Nixon*, 404 F. App’x 575, 578 (3d Cir. 2010) (citation omitted) (“It is well settled that the court’s power under § 105(a) is broad.”); *In re Nortel Networks, Inc.*, 532 B.R. 494, 554 (Bankr. D. Del. 2015) (citations omitted) (“The Third Circuit has construed [section 105 of the Bankruptcy Code] to give bankruptcy courts ‘broad authority’ to provide appropriate equitable relief to assure the orderly conduct of reorganization proceedings, and to ‘craft flexible remedies that, while not expressly authorized by the Code, effect the result the Code was designed to obtain.’”); *see also In re Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986) (citation omitted) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”).

57. The Court’s power to utilize the “doctrine of necessity” in the Chapter 11 Cases derives from the Court’s inherent equity powers and its statutory authority to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The United States Supreme Court first articulated the doctrine of necessity more than a century ago, in *Miltenberger v. Logansport Ry. Co.*, 106 U.S. 286 (1882), in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors, and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity of the business in receivership. *See id.* at 309. The modern application of the doctrine of necessity is largely unchanged from the Supreme Court’s reasoning in *Miltenberger*. *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581-82 (3d Cir. 1981) (“[I]n order to justify payment under the ‘necessity of payment’ rule, a real and immediate threat must exist that failure to pay will place the continued

operation of the [debtor] in serious jeopardy.”); *Friedman’s Inc. v. Roth Staffing Cos., L.P. (In re Friedman’s Inc.)*, Case No. 09-10161 (CSS), 2011 WL 5975283, at *3 (Bankr. D. Del. Nov. 30, 2011) (citing *In re Enron Corp.*, 2003 WL 1562202, at *20 (Bankr. S.D.N.Y. Mar. 21, 2003)) (“The ‘doctrine of necessity’ stands for the proposition that a bankruptcy court may allow payment outside of a plan of reorganization on account of a pre-petition obligation where such payment is critical to the reorganization process.”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (D. Del. 1999).

58. The doctrine of necessity “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176; *see also In re Just for Feet, Inc.*, 242 B.R. at 826 (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment); *In re Sharon Steel Corp.*, 159 B.R. 730, 736 (Bankr. W.D. Pa. 1993) (noting that courts grant debtors the authority to pay certain prepetition claims “where the payment is necessary to permit the effectuation of the rehabilitative purposes of the Bankruptcy Code”).

59. The doctrine of necessity is an accepted component of modern bankruptcy jurisprudence. *See In re Ionosphere Clubs, Inc.*, 98 B.R. at 175 (holding that the “ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept”); *In re Just For Feet, Inc.*, 242 B.R. at 826 (approving payment of key inventory suppliers’ prepetition claims when such suppliers could destroy debtor’s business by refusing to deliver new inventory on eve of debtor’s key sales season); *see also Official Comm. of Unsecured Creditors of Motor Coach Indus. Int’l v. Motor Coach Indus. Int’l (In re Motor Coach Indus. Int’l)*, Case No. 09-078-SLR, 2009 WL

330993, at *2 n.5 (D. Del. Feb. 10, 2009); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994). The doctrine is frequently invoked early in a reorganization, particularly in connection with those chapter 11 sections that relate to payment of prepetition claims. The court in *In re StructureLite Plastics Corp.* indicated its accord with “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.’” *In re StructureLite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988). The court stated that a “*per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *Id.* at 932. Accordingly, pursuant to section 105(a) of the Bankruptcy Code, the Court is empowered to grant the relief requested herein.

60. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate, and in the best interests of the Debtors’ estates and stakeholders. Absent this relief, the value of the Debtors’ estates will suffer, possibly precipitously. Consequently, the Debtors’ stakeholders will benefit if the requested relief is granted.

Cause Exists To Authorize the Debtors To Continue to Pay and/or Honor Any and All Workers’ Compensation Obligations and To Authorize Current and Former Employees To Proceed with Outstanding Workers’ Compensation Claims

61. It is imperative that the Debtors be permitted to continue to pay and/or honor any and all Workers’ Compensation Obligations, including all prepetition premiums, claims (including claim settlements), losses, and expenses in connection with the Workers’ Compensation Obligations, and to pay all costs and expenses associated with the Workers’ Compensation Program, including such costs and expenses related to administration, servicing, processing, adjusting, paying, and settling claims and losses under these programs.

62. It is crucial for Employee morale and for the Debtors' operations that the Debtors be able to continue to (a) pay workers' compensation benefits and (b) honor the Workers' Compensation Obligations under the Workers' Compensation Program described herein.

63. Section 362(a) of the Bankruptcy Code operates to stay, among other things:

the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a). Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for "cause."

11 U.S.C. § 362(d)(1).

64. To the extent that any current or former Employees hold claims pursuant to the Workers' Compensation Program, the Debtors seek authorization under section 362(d) of the Bankruptcy Code to permit such current or former Employees, in the Debtors' sole discretion, to proceed with such claims in the appropriate judicial or administrative fora. The Debtors believe that cause exists to grant them authority to modify the automatic stay, where the Debtors deem it appropriate to do so, because staying such claims could have a detrimental effect on the financial and medical well-being and morale of their Employees and lead to the departure of certain Employees. Such departures could cause a severe disruption in the Debtors' businesses, to the detriment of all parties in interest. To this end, the Debtors seek an order granting (a) relief from the automatic stay as it relates to current and former Employee claims under the Workers' Compensation Program and (b) waiver of the corresponding notice requirements under Bankruptcy Rule 4001(d).

65. Pursuant to this Motion, the Debtors do not seek a waiver, termination or modification of the automatic stay with respect to any other claims.

**Applicable Financial Institutions Should Be
Authorized To Honor and Process Related Checks and Transfers**

66. The Debtors also request that all applicable financial institutions be authorized to (a) receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, the claims that the Debtors request authority to pay in this Motion, regardless of whether the checks were presented or fund transfer requests were submitted before, on, or after the Petition Date and (b) rely on the Debtors' designation of any particular check as approved by the Proposed Orders.

Necessity of Immediate Relief

67. Bankruptcy Rule 6003 provides that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” Fed. R. Bankr. P. 6003. If the Debtors are not permitted to continue their ordinary business operations by continuing to pay the Prepetition Employee Obligations as they come due, and to reassure their Employees that authority has been granted to honor all such claims, the Debtors could suffer immediate and irreparable harm. Accordingly, the relief requested herein is consistent with Bankruptcy Rule 6003.

Debtors' Reservation of Rights

68. Nothing contained herein is intended or should be construed as, or deemed to constitute, an agreement or admission as to the validity of any claim against the Debtors on any grounds, a waiver or impairment of the Debtors' rights to dispute any claim on any grounds, or

an assumption or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claims related to the Prepetition Employee Obligations under applicable bankruptcy and non-bankruptcy law. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended, and should not be construed, as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Waiver of Stay Under Bankruptcy Rule 6004(h)

69. 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 operate their businesses without interruption and to preserve value for their estates. 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

70. Notice of this Motion will be provided to (a) the Office of the United States Trustee for the District of Delaware, (b) each of the Debtors' 20 largest unsecured creditors on a consolidated basis, (c) Vinson & Elkins LLP, as counsel to Wells Fargo Bank, N.A., the administrative agent under Southcross's prepetition secured revolving credit facility, (d) (x) Arnold & Porter Kaye Scholer LLP and (y) Young Conaway Stargatt & Taylor, LLP, as counsel to Wilmington Trust, N.A., the administrative agent under Southcross's prepetition secured term loan facility and post-petition credit facility, (e) Willkie Farr & Gallagher LLP, as

counsel to the post-petition lenders and an ad hoc group of prepetition lenders, (f) Debevoise & Plimpton LLP, as counsel to Southcross Holdings LP, (g) the Securities and Exchange Commission, (h) the Internal Revenue Service, and (i) the United States Attorney's Office for the District of Delaware (collectively, the "**Notice Parties**").

71. Notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). 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>. Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice is required.

No Prior Request

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

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Orders substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: April 1, 2019
Wilmington, Delaware

Respectfully submitted,
MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Robert J. Dehney

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

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

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

INTERIM ORDER AUTHORIZING (I) DEBTORS TO (A) PAY PREPETITION EMPLOYEE OBLIGATIONS AND (B) MAINTAIN EMPLOYEE BENEFITS PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS, (II) CURRENT AND FORMER EMPLOYEES TO PROCEED WITH OUTSTANDING WORKERS' COMPENSATION CLAIMS, AND (III) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

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 interim and final orders pursuant to sections 105(a), 362(d), 363(b), 363(c), 507(a)(4), 507(a)(5), and 541 of the Bankruptcy Code and Bankruptcy

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 meanings ascribed to them in the Motion.

Rule 6003, (a) authorizing, but not requiring, the Debtors to (i) pay or cause to be paid, in their sole discretion, all or a portion of the Prepetition Employee Obligations and (ii) unless otherwise set forth herein, continue, in their sole discretion, the Employee Programs, as applicable, as those Employee Programs were in effect as of the Petition Date and as may be modified, terminated, amended, or supplemented from time to time by the Debtors in their sole discretion, and to make payments pursuant to the Employee Programs in the ordinary course of business, as well as to pay related administrative obligations, (b) permitting current and former Employees holding claims under the Workers' Compensation Program to proceed with such claims in the appropriate judicial or administrative fora, and (c) authorizing the Debtors' financial institutions to receive, process, honor, and pay all checks or wire transfers used by Debtors to pay the foregoing, as more fully described in the Motion; and the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the Howe Declaration; and the Court having held a hearing on the Motion (the "**Hearing**"); and the Court having found that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having determined that the relief requested in the Motion being in

the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and the Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby granted on an interim basis as set forth herein.
2. Except as provided otherwise in this interim Order, the Debtors are authorized, but not directed, to (a) pay or cause to be paid, in their sole discretion, all amounts required under or related to the Prepetition Employee Obligations in the ordinary course of business and in accordance with the same practices and procedures as were in effect prior to the Petition Date and (b) continue, in their sole discretion, to pay and honor their obligations arising under or related to the Employee Programs in the ordinary course of business and in accordance with the same practices and procedures as were in effect prior to the Petition Date, as those Employee Programs were in effect as of the Petition Date and as such Employee Programs may be modified, terminated, amended, or supplemented from time to time, in the ordinary course of the Debtors' businesses; *provided, however*, that payments made on account of the following Prepetition Employee Obligations shall not exceed the amounts specified below prior to the entry of a final Order:

Prepetition Employee Obligations	Interim Cash Payments
Wages	\$451,000
Payroll Fee	\$3,000
Reimbursement Obligations	\$22,500
Retirement Obligations	\$22,000
Contingent Workers Obligations	\$450,000

3. Notwithstanding any other provision herein, the Debtors shall not pay Wages to any Employee on account of Prepetition Employee Obligations in excess of the statutory cap pursuant to section 507(a)(4) of the Bankruptcy Code prior to the entry of a final Order.

4. Nothing in this Order authorizes any payment subject to section 503(c) of the Bankruptcy Code.

5. The Debtors are authorized, but not required, to (a) continue, in their sole discretion, utilizing third parties for certain services as described in the Motion and to pay or cause to be paid such claims as and when such obligations are due and (b) pay, in their sole discretion, prepetition amounts owing in the ordinary course of business to third parties in connection with administering and maintaining the Employee Programs.

6. (a) The automatic stay is modified solely to the extent necessary to allow current and former Employees to proceed with claims under the Workers' Compensation Program in the appropriate judicial or administrative fora and (b) the notice requirements under Bankruptcy Rule 4001(d) with respect to (a) above are waived.

7. A final hearing to consider the relief requested in the Motion shall be held on _____, 2019 at [•] (Prevailing Eastern Time) and any objections or responses to the Motion shall be filed and served on the Notice Parties so as to be actually received on or prior to _____, 2019 at 4:00 p.m. (Prevailing Eastern Time).

8. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or automated clearing house transfers evidencing amounts paid by the Debtors under this Order whether presented prior to, on, or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or

authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

9. The Debtors are authorized, but not required, to issue, in their sole discretion, new post-petition checks, or effect new fund transfers, for the Prepetition Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected and to reimburse their Employees or the applicable payee, as the case may be, for any fees or costs incurred by them in connection with a dishonored or voided check or funds transfer.

10. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

11. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

12. Nothing in this Order nor the Debtors' payment of claims pursuant to this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the validity of any claim against the Debtors on any ground, (b) a grant of third party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtors' rights to dispute any claim on any grounds, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

13. Notwithstanding anything to the contrary in this Order, in the event of any inconsistency between the terms of this Order and the terms of any order of this Court approving the debtor-in-possession financing facility and use of cash collateral (the “**DIP Order**”), including, without limitation, any budget in connection therewith, the terms of the DIP Order shall govern.

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

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

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

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

Dated: _____, 2019
Wilmington, Delaware

THE HONORABLE [•]
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

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

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

FINAL ORDER AUTHORIZING (I) DEBTORS TO (A) PAY PREPETITION EMPLOYEE OBLIGATIONS AND (B) MAINTAIN EMPLOYEE BENEFITS PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS, (II) CURRENT AND FORMER EMPLOYEES TO PROCEED WITH OUTSTANDING WORKERS' COMPENSATION CLAIMS, AND (III) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

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 interim and final orders, pursuant to sections 105(a), 362(d), 363(b), 363(c), 507(a)(4), 507(a)(5), and 541 of the Bankruptcy Code, (a) authorizing,

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 meanings ascribed to them in the Motion.

but not requiring, the Debtors to (i) pay or cause to be paid, in their sole discretion, all or a portion of the Prepetition Employee Obligations and (ii) unless otherwise set forth herein, continue, in their sole discretion, the Employee Programs, as applicable, as those Employee Programs were in effect as of the Petition Date and as may be modified, terminated, amended, or supplemented from time to time by the Debtors in their sole discretion, and to make payments pursuant to the Employee Programs in the ordinary course of business, as well as to pay related administrative obligations, (b) permitting current and former Employees holding claims under the Workers' Compensation Program to proceed with such claims in the appropriate judicial or administrative fora, and (c) authorizing the Debtors' financial institutions to receive, process, honor, and pay all checks or wire transfers used by Debtors to pay the foregoing, as more fully described in the Motion; and the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the Howe Declaration; and the Court having held an interim hearing on the Motion; and the Court having granted interim relief on the Motion on _____, 2019 (D.I. [•]); and the Court having held a final hearing on the Motion (the "**Final Hearing**"); and the Court having found that the legal and factual bases set forth in the Motion and at the Final Hearing establish

just cause for the relief granted herein; and the Court having determined 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 THAT:

1. The relief requested in the Motion is hereby granted as set forth herein.
2. The Debtors are authorized, but not directed, to (a) pay or cause to be paid, in their sole discretion, all amounts required under or related to the Prepetition Employee Obligations in the ordinary course of business and in accordance with the same practices and procedures as were in effect prior to the Petition Date and (b) continue, in their sole discretion, to pay and honor their obligations arising under or related to the Employee Programs in the ordinary course of business and in accordance with the same practices and procedures as were in effect prior to the Petition Date, as those Employee Programs were in effect as of the Petition Date and as such Employee Programs may be modified, terminated, amended, or supplemented from time to time, in the ordinary course of the Debtors' businesses.
3. Nothing in this Order authorizes any payment subject to section 503(c) of the Bankruptcy Code.
4. The Debtors are authorized, but not required, to (a) continue, in their sole discretion, utilizing third parties for certain services as described in the Motion and to pay or cause to be paid such claims as and when such obligations are due and (b) pay, in their sole discretion, prepetition amounts owing in the ordinary course of business to third parties in connection with administering and maintaining the Employee Programs.

5. (a) The automatic stay is modified solely to the extent necessary to allow current and former Employees to proceed with claims under the Workers' Compensation Program in the appropriate judicial or administrative fora and (b) the notice requirements under Bankruptcy Rule 4001(d) with respect to (a) above are waived.

6. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or automated clearing house transfers evidencing amounts paid by the Debtors under this Order whether presented prior to, on, or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. The Debtors are authorized, but not required, to issue, in their sole discretion, new post-petition checks, or effect new fund transfers, for the Prepetition Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected and to reimburse their Employees or the applicable payee, as the case may be, for any fees or costs incurred by them in connection with a dishonored or voided check or funds transfer.

8. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

9. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or

enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

10. Nothing in this Order nor the Debtors' payment of claims pursuant to this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the validity of any claim against the Debtors on any ground, (b) a grant of third party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtors' rights to dispute any claim on any grounds, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

11. Notwithstanding anything to the contrary in this Order, in the event of any inconsistency between the terms of this Order and the terms of any order of this Court approving the debtor-in-possession financing facility and use of cash collateral (the "**DIP Order**"), including, without limitation, any budget in connection therewith, the terms of the DIP Order shall govern.

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

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

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

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

Dated: _____, 2019
Wilmington, Delaware

THE HONORABLE [●]
UNITED STATES BANKRUPTCY JUDGE