

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS DIVISION**

**In re:**

**Chapter 11**

**EVANS OIL COMPANY LLC  
KCWL, LLC  
LONG EQUIPMENT FINANCE, LLC  
LONG PETROLEUM PRODUCTS, LLC  
LONG RUN, LLC  
OCTANE, LLC  
RML, LLC**

**Case No. 9-11-bk-1515-BSS  
Case No. 9-11-bk-1519-BSS  
Case No. 9-11-bk-1520-BSS  
Case No. 9-11-bk-1521-BSS  
Case No. 9-11-bk-1522-BSS  
Case No. 9-11-bk-1523-BSS  
Case No. 9-11-bk-1524-BSS**

**Debtors.**

**(Jointly Administered Under  
Case No. 9-11-bk-1515-BSS)**

**ORDER GRANTING EMERGENCY JOINT MOTION OF DEBTORS,  
FLORIDA PETROLEUM COMPANY LLC AND FIFTH THIRD BANK  
FOR ENTRY OF AN ORDER (1) VACATING THE COURT'S ORDER DATED  
SEPTEMBER 26, 2012 [DOC. NO. 847], AND (2) APPROVING AMENDMENT  
NO. 1 TO ASSET PURCHASE AGREEMENT DATED AS OF AUGUST 10, 2012**

THIS CASE came on for consideration by the Court upon the Emergency Joint Motion of Debtors, Florida Petroleum Company LLC and Fifth Third Bank for Entry of an Order (1) Vacating the Court's Order Dated September 26, 2012 [Doc. No. 847], and (2) Approving Amendment No. 1 to Asset Purchase Agreement Dated as of August 10, 2012 [Doc. No. 856] (the "Motion"). In connection with the Motion, the Court finds as follows:

(a) This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. § 1408.

(b) Each of Evans Oil Company LLC, KCWL, LLC, Long Equipment Finance, LLC, Long Petroleum Products LLC, Long Run, LLC, and RML, LLC (collectively, the "Selling Debtors") and Florida Petroleum Company LLC ("FPC") are parties to that certain Asset Purchase Agreement

dated as of August 10, 2012 (the "Purchase Agreement"),<sup>1</sup> pursuant to which the Selling Debtors have agreed to sell to FPC, and FPC has agreed to purchase from the Selling Debtors, substantially all of the Assets of the Selling Debtors.

(c) On August 27, 2012, the Court entered its Order (1) Authorizing the Sale of Substantially All of the Debtors' Assets to Florida Petroleum Company LLC, Free and Clear of Liens, Claims, Interests and Encumbrances, Subject to Higher or Better Offers, Pursuant to Bankruptcy Code Sections 363 and 365; (2) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with Such Sale and Determining and Adjudicating Cure Amounts with Respect to Such Contracts and Leases; (3) Waiving the Fourteen-Day Stay Period Provided by Bankruptcy Rules 6004(h) and 6006(d); and (4) Granting Related Relief [Doc. No. 810] (the "Sale Order"), which approved the Purchase Agreement in all respects subject to certain amendments thereto as expressly stated in the Sale Order.

(d) Pursuant to the Sale Order, the offer by FPC to purchase the Assets of the Selling Debtors was approved by the Court as the highest and best offer for the purchase of the Assets.

(e) The Sale Order is a Final Order of the Court.

(f) On September 14, 2012, the Court entered its Order Appointing Soneet Kapila as Chief Restructuring Officer and Interim Manager (the "CRO") in these Chapter 11 cases [Doc. No. 827] (the "CRO Order"). The CRO Order provides that the CRO shall have full and final authority regarding all business and financial matters of the Debtors. The CRO Order is a Final Order of the Court.

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<sup>1</sup> Unless otherwise indicated, capitalized terms used in this Order shall have the meaning ascribed to such terms in the Purchase Agreement.

(g) Pursuant to Section 11.9 of the Purchase Agreement, the Purchase Agreement may be amended by an instrument signed by the Selling Debtors and FPC.

(h) The Selling Debtors, acting through the CRO pursuant to the authority granted to him in the CRO Order, and FPC have agreed to the terms of an Amendment No. 1 to Asset Purchase Agreement (the "Amendment"). In addition, Fifth Third Bank has agreed to execute a Consent and Acknowledgment of Fifth Third Bank in the form included in the Amendment (the "Fifth Third Consent"), which, among other things, provides for Fifth Third Bank's consent to the Amendment. A true and correct copy of the form of the Amendment is attached to the Motion as Exhibit A and incorporated in this Order by this reference thereto.

(i) Upon entry of this Order, the Selling Debtors and FPC will execute and deliver the Amendment and Fifth Third Bank will execute and deliver the Fifth Third Consent, and the sale of the Assets to FPC or its assignees will thereafter close in accordance with the terms and conditions of the Purchase Agreement, as amended by the terms and conditions of the Amendment (hereinafter collectively referred to as the "Amended FPC Purchase Agreement").

(j) On September 26, 2012, the Court entered its Order (I) Approving Bidding Procedures in Connection with the As-Is, Where-Is Sale of Substantially All of the Debtors' Assets, (II) Approving Form and Manner of Notice of Bidding Procedures, (III) Approving As-Is, Where-Is Sales to One or More Successful Bidders, and (IV) Setting Closing Dates for Such As-Is, Where-Is Sales [Doc. No. 847] (the "Sealed Bid Order"). The Sealed Bid Order established a deadline and procedures for the submission of sealed bids for the as-is, where-is purchase of the Selling Debtors' assets. No bids meeting the undisclosed reserve amount (as required by the Sealed Bid Order) were submitted by any

party for the purchase of the Selling Debtors' assets by the deadline set forth in the Sealed Bid Order (See Doc. No. 851). The Sealed Bid Order is not a Final Order of the Court.

(k) The Sealed Bid Order further provided that "the Sale pursuant to this order supersedes the sale approved under the Prior Sale Order . . ." As stated above, no sale of the Selling Debtors' assets will occur pursuant to the procedures set forth in the Sealed Bid Order. Thus, by definition, no superseding sale will occur under any circumstances and there is ample reason to vacate the Sealed Bid Order. Accordingly, the Movants have agreed to seek an order from this Court vacating the Sealed Bid Order so as to allow the sale of the Selling Debtors' Assets to FPC or its assignees to occur pursuant to the terms of the Amended FPC Purchase Agreement and the Sale Order (which remains in place as a Final Order of the Court).

(l) At a telephonic hearing held by the Court on September 28, 2012, at 12:00 p.m. (the "September 28 Hearing"), the Court approved the terms of the Amendment and requested that the Movants (i) file an emergency motion with the Court seeking an order of the Court approving the sale of the Selling Debtors' Assets to FPC or its assignees pursuant to the Amended FPC Purchase Agreement, and (ii) submit an order granting such emergency motion to the Court at the time of the filing of such emergency motion. At the September 28 Hearing, the Court heard oral objections raised by various parties to the Court's approval of the terms of the Amended FPC Purchase Agreement and overruled those objections for the reasons announced on the record at the September 28 Hearing, including but not limited to that the amounts owed to, and secured by the first priority liens and claims of Fifth Third Bank are significantly in excess of any amounts that would have been received by the Selling Debtors under the Purchase Agreement.

The Court specifically finds that notice of the Motion, the form of the Amendment and the relief requested in the Motion were served upon: (i) the Office of the United States Trustee for the Middle District of Florida, (ii) Fifth Third Bank and its counsel, (iii) Naples Lending Group, L.C. and its counsel, (iv) Chevron Products Company and its counsel, (v) all persons and entities who have requested service in these cases pursuant to Bankruptcy Rule 2002, (vi) all parties who are known or reasonably believed to have asserted a Lien in the Assets, (vii) the Internal Revenue Service, (viii) the Florida attorneys general and local environmental enforcement agencies, (ix) all applicable state and local taxing or regulatory authorities, (x) the United States Environmental Protection Agency, (xi) the United States Attorney for the Middle District of Florida, and (xii) all parties set forth on the Local Rule 1007(d) Parties in Interest List for these cases. The Court finds that such notice was adequate and sufficient, such notice complied in all respects with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of this Court and otherwise satisfies the requirements of due process, and no further or other notice is necessary.

The Court considered the Motion, together with the record and the arguments of counsel at the September 28 Hearing, and being otherwise duly advised in the premises, finds that the relief requested in the Motion is necessary and appropriate and is in the best interests of the Debtors, their creditors and estates and all parties in interest, and that the Motion is well taken and shall be granted in accordance with the terms and conditions set forth herein. Accordingly, it is

**ORDERED:**

1. The Motion is GRANTED in all respects.
2. The findings of fact set forth above in this Order be, and the same hereby are, ratified and adopted as findings of this Court and are incorporated herein. To the extent any of the findings of

fact set forth herein are deemed to be conclusions of law, then such findings of fact are hereby confirmed as conclusions of law.

3. The Sealed Bid Order is vacated in all respects.

4. All of the terms of the Amendment (including the release provisions contained therein, the Court finding and ruling that adequate and sufficient consideration is being provided for such releases) and the Amended FPC Purchase Agreement are authorized and approved in all respects.

5. The CRO is authorized and directed to execute and deliver the Amendment and any and all documents required to be executed and delivered by the Selling Debtors under the Amended FPC Purchase Agreement (collectively, with the Amendment, the "Seller Closing Documents"), and the execution of the Seller Closing Documents by the CRO shall be absolutely and irrevocably binding on the Seller Parties (as defined below).

6. This Order incorporates and ratifies all of the terms, conditions, findings and rulings of the Court set forth in the Sale Order including any and all terms, conditions, findings and rulings under Sections 363 and 365 of the Bankruptcy Code in favor of FPC. All such terms, conditions, findings and rulings of the Court set forth in the Sale Order (including any and all terms, conditions, findings and rulings under Sections 363 and 365 of the Bankruptcy Code) shall also be in favor of and apply to any assignees of FPC, including Evans Energy Partners LLC, a Delaware limited liability company, KC Transportation LLC, a Delaware limited liability company, E2 Real Estate LLC, a Delaware limited liability company, and Evans Okeechobee LLC, a Delaware limited liability company (collectively, the "FPC Assignees").

7. The Sale Order shall continue to apply to the sale of the Selling Debtors' Assets to FPC or the FPC Assignees under the Amended FPC Purchase Agreement.

8. The Amended FPC Purchase Agreement and this Order are binding on (A) the Selling Debtors and (a) any Chapter 7 trustee or Chapter 11 trustee appointed for any of the Debtors in these cases or any successors or assigns to the Debtors, (b) the bankruptcy estates of the Debtors, (c) any creditors of the Debtors (including any creditors asserting administrative expense claims in these cases or any subsequent cases under Chapter 7 of the Bankruptcy Code) or other parties in interest in these Chapter 11 cases, (d) the CRO, including pursuant to the authority granted to him in the CRO Order or any other order of the Court, and (e) any officer, director, employee, member, manager, managing member, agent, attorney, or other representative of the Debtors or any professional employed by the Debtors pursuant to an order of the Court (the Selling Debtors and all persons and entities described in subparagraphs (a)-(e) are referred to, collectively, as the "Seller Parties"), (B) FPC and (C) Fifth Third Bank.

9. The Fifth Third Consent is binding on Fifth Third Bank.

10. The 14-day stays set forth in Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure are waived, for good cause shown, and this Order shall be immediately enforceable and the Closing of the Amended FPC Purchase Agreement may occur immediately following the entry of this Order on the docket for these cases.

11. All of the objections to the Amended FPC Purchase Agreement and this Motion as raised on the record at the September 28 Hearing are overruled in all respects.

12. Neither the Selling Debtors nor FPC nor the FPC Assignees have engaged in any conduct that would cause or permit the Amended FPC Purchase Agreement to be avoided under Section 363(n) of the Bankruptcy Code.

13. The Selling Debtors (through the CRO) are authorized and directed to execute and deliver all documents (both before and after the Closing Date) and to take all appropriate actions necessary to evidence and consummate the Closing on the sale of the Assets to FPC or the FPC Assignees and the transactions contemplated thereby.

14. The transfer of the Assets to FPC or the FPC Assignees will be a legal, valid, and effective transfer of the Assets and will vest FPC or the FPC Assignees with all right, title and interest in and to the Assets, free and clear of all Liens of any kind or nature whatsoever, other than the Assumed Liabilities, and to the full extent provided in the Sale Order.

15. The Selling Debtors and FPC and the FPC Assignees have acted in good faith, and the terms and conditions of the Amended FPC Purchase Agreement are fair and reasonable and have been negotiated and agreed upon in good faith on the part of the Selling Debtors and FPC and the FPC Assignees. Each of FPC and the FPC Assignees is an arm's length purchaser which is purchasing the Assets in good faith and is not an insider of the Selling Debtors. The Purchase Price to be received from the sale of the Assets constitutes reasonably equivalent value under the Bankruptcy Code and applicable non-bankruptcy law. Accordingly, FPC and the FPC Assignees shall be, and are, entitled to all of the protections afforded by Section 363(m) of the Bankruptcy Code.

16. On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Assets to FPC and



the FPC Assignees, and a bill of sale transferring good and marketable title in the Assets to FPC and the FPC Assignees, in each case free and clear of all Liens except for the Assumed Liabilities. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Amended FPC Purchase Agreement.

17. FPC and the FPC Assignees shall not be, nor shall they be deemed to be, a successor or successor in interest to the Selling Debtors by reason of any theory of law or equity, and FPC and the FPC Assignees shall not have any successor or transferee liability of any kind or character whatsoever, including as to any Environmental Claims or claims for Taxes.

18. The terms and provisions of this Order shall be binding upon the Debtors and their estates, creditors and stockholders, Fifth Third Bank, Naples Lending Group, L.C., Chevron Products Company, Great Lakes Petroleum, Inc., any Potential Bidder (as defined in the Sale Order), all parties to the Assumed Contracts, all Contract Parties (as defined in the Sale Order), all governmental authorities, and all other parties in interest and the respective successors and assigns of each of the foregoing (all of the foregoing whether known or unknown), including any trustee subsequently appointed for or on behalf of the Debtors under the Bankruptcy Code in these Chapter 11 cases or upon a conversion of any of these cases to a case under Chapter 7 of the Bankruptcy Code.

19. Following the Closing, all account debtors with respect to the Accounts Receivable (as that term is defined in the Amended FPC Purchase Agreement) are authorized and directed to pay the Accounts Receivable directly to FPC or the FPC Assignees.

20. The failure specifically to include any particular provision of the Amended FPC Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it

being the intent of the Court that the Amended FPC Purchase Agreement be authorized and approved in its entirety.


21. This Court shall retain jurisdiction (a) to interpret, implement and enforce the provisions of this Order, and (b) to enforce and implement the terms and provisions of the Amended FPC Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (i) subject to the terms and conditions of the Amended FPC Purchase Agreement, compel delivery of the Assets to FPC or the FPC Assignees or the performance of other obligations of the Selling Debtors under the Amended FPC Purchase Agreement and each of the agreements executed in connection therewith, (ii) resolve any disputes arising under or related to the Amended FPC Purchase Agreement and each of the agreements executed in connection therewith, (iii) resolve any dispute regarding the validity, extent and/or priority of any alleged Lien attaching to the proceeds of the sale of the Assets, and (iv) enforce the release and injunctive provisions set forth in the Amended FPC Purchase Agreement; provided, however, that in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the Amended FPC Purchase Agreement or each of the agreements executed in connection therewith or this Order, such abstention, refusal or lack of jurisdiction shall have no effect upon, and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

22. A copy of this Order shall be sent, by United States first class mail or CM/ECF Transmission, to (i) the Office of the United States Trustee for the Middle District of Florida, (ii) Fifth Third Bank and its counsel, (iii) Naples Lending Group, L.C. and its counsel, (iv) Chevron

Products Company and its counsel, (v) all persons and entities who have requested service in these cases pursuant to Bankruptcy Rule 2002, (vi) all parties who are known or reasonably believed to have asserted a Lien in the Assets, (vii) the Internal Revenue Service, (viii) the Florida attorneys general and local environmental enforcement agencies, (ix) all applicable state and local taxing or regulatory authorities, (x) the United States Environmental Protection Agency, (xi) the United States Attorney for the Middle District of Florida, (xii) all creditors of the Debtors, and (xiii) all parties set forth on the Local Rule 1007(d) Parties in Interest List for these cases. The Court finds that such notice of this Order complies in all respects with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of this Court and otherwise satisfies the requirements of due process, and that no further or other notice is necessary. FPC shall file a certificate of service with the Court within three (3) days following service of this Order.

October 01, 2012

**DONE and ORDERED** in Chambers at Ft. Myers, Florida, on \_\_\_\_\_.



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BARRY S. SCHERMER  
United States Bankruptcy Judge