

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re: § Chapter 11  
ATP Oil & Gas Corporation, §  
Debtor. § Case No.: 12-36187  
§ Hon. Marvin Isgur

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**DEBTOR’S EMERGENCY MOTION FOR ENTRY OF AN  
ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS  
105, 361, 362, 363, 364 AND 507 AUTHORIZING THE DEBTOR  
TO ENTER INTO AMENDMENT NO. 2 TO THE DIP CREDIT AGREEMENT**

**NOTICE UNDER COMPLEX CASE ORDER**

A HEARING WILL BE CONDUCTED ON THIS MATTER ON NOVEMBER 29, 2012, AT 1:30 P.M. AT U.S. BANKRUPTCY COURT, 515 RUSK AVENUE, HOUSTON, TEXAS 77002.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ADDRESSING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-THREE (23) DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIED OF IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

ATP Oil & Gas Corporation (“**ATP**” or the “**Debtor**”) submits this Emergency Motion for Entry of an Order, substantially in the form submitted herewith (the “**Proposed Order**”) Authorizing the Debtor to Enter into Amendment No. 2 to the DIP Credit Agreement (the



**“Motion”**). In support of its Motion, the Debtor respectfully states as follows<sup>1</sup>:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Debtor’s Chapter 11 case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief sought hereby are Sections 105, 361, 362(d), 363(e), 364 and 507 of title 11, United States Code (the **“Bankruptcy Code”**), and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the **“Bankruptcy Rules”**).

**II. PROCEDURAL STATUS**

2. On August 17, 2012 (the **“Petition Date”**), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the **“Court”**).

3. The Debtor continues to operate its business as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

4. On the Petition Date, the Debtor filed the Emergency Motion for Entry of Interim and Final Orders Pursuant to Bankruptcy Code Sections 105, 107(b), 361, 362, 363, 364 and 507 (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection, (5) Modifying Automatic Stay, (6) Authorizing Debtor to File the Fee Letter Under Seal and (7) Scheduling a Final Hearing [Dkt. No. 21] (the **“DIP Motion”**).

5. On August 22, 2012, the Court entered the Interim Order [Dkt. No. 126]

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<sup>1</sup> Except as otherwise defined herein, capitalized terms shall have the meanings ascribed to them in that certain Final Order Pursuant to 11 U.S.C. §§ 105, 107, 362, 363, 364 and 507 (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection, (5) Modifying Automatic Stay and (6) Authorizing Debtor to File the Fee Letter Under Seal [Docket No. 440] entered by the Court on September 20, 2012.

approving the DIP Motion, as supplemented by the Supplemental Order [Dkt. No. 128] on Debtor's DIP Motion (collectively, the "**Interim Order**"), pursuant to which the Debtor was authorized, among other things, to incur secured borrowings from the DIP Lenders on an interim basis pursuant to the terms of the DIP Term Sheet (as defined in the Interim Order) and the Interim Order.

6. On August 24, 2012, the United States Trustee appointed an Official Committee of Unsecured Creditors ("**Creditors' Committee**") [Dkt. No. 194].

7. On August 29, 2012, the Debtor, the lenders party thereto, and Credit Suisse AG, as administrative and collateral agent, executed and delivered the Senior Secured Super Priority Priming Debtor-In-Possession Credit Agreement (the "**DIP Credit Agreement**") [Dkt. No. 239].

8. On September 20, 2012, the Court entered the Order approving the DIP Motion and Amendment No. 1 to the DIP Credit Agreement [Dkt. No. 440], as supplemented to provide adequate protection to the members of the Ad Hoc Second Lien Committee [Dkt. No. 714] (collectively, the "**Final Order**"), pursuant to which the Debtor was authorized, among other things, to incur secured borrowings from the DIP Lenders pursuant to the terms of the DIP Credit Agreement and the Final Order (collectively, the "**DIP Financing**").

9. By this Motion, the Debtor requests authority to enter into Amendment No. 2 to the DIP Credit Agreement ("**Amendment No. 2**") upon the terms and conditions of the term sheet attached as Exhibit A hereto (the "**Term Sheet**").

### **III. REQUESTED RELIEF**

10. As the Court is aware, as a result of an engineering report delivered to the DIP Lenders by their Approved Petroleum Engineer (as defined in the DIP Credit Agreement)

showing PV-10 values at certain wells below levels set forth in the DIP Credit Agreement, a Specified Event (as defined in the DIP Credit Agreement) occurred on or about October 9, 2012. The occurrence of the Specified Event triggered, among other things, (i) the requirement that the Debtor satisfy certain milestones with regard to the sale of its assets, (ii) certain restrictions on the availability of further funding (*e.g.*, the additional \$25 million of liquidity obtained in connection with Amendment No. 1 is conditioned on a Satisfactory APE Report (as defined in the DIP Credit Agreement)), and (iii) certain restrictions on the use of funds. While the occurrence of a Specified Event is not itself a default under the DIP Credit Agreement, the failure to satisfy any milestone would result in a default allowing the DIP Lenders to discontinue access to the Collateral Account and withhold further funding under the DIP Financing. The sales milestones required, among other things, that the Debtor prepare a data room and begin dissemination of an information memorandum with respect to a sale of substantially all of its assets to third parties within 20 days of the Specified Event (*i.e.*, on or about October 29, 2012).

11. In order to avoid certain of the consequences associated with the occurrence of the Specified Event, the Debtor has engaged in protracted discussions with the DIP Lenders on the terms of an amendment to the DIP Credit Agreement. The result of these arms-length, good faith negotiations is Amendment No. 2.

12. The Debtor requests that the Court approve the Motion and authorize and approve the Debtor's execution and delivery of Amendment No. 2. The principal terms of the Amendment are as follows<sup>2</sup>:

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<sup>2</sup> This statement is a summary of certain terms and conditions set forth and defined in the Term Sheet and the Proposed Order. Reference is made to the Term Sheet and the Proposed Order for a full and complete description of Amendment No. 2. To the extent this summary is inconsistent with the Term Sheet and the Proposed Order, the Term Sheet and the Proposed Order shall control. Capitalized terms used but not defined in this summary have the

- I. **Availability of Final DIP Budget Amount, Additional DIP Budget Amount and Additional NM Loans.** Subject to the terms and conditions of Amendment No. 2, including, without limitation, the conditions set forth in paragraph II below, the Final DIP Budget Amount, the Additional DIP Budget Amount, and the Additional NM Loan Amount will be available in accordance with the revised DIP Budget (to be agreed as a condition to Amendment No. 2) notwithstanding that a Satisfactory APE Report or updated NSAI Report was not obtained. The Required Lenders will waive the Satisfactory APE Report and NSAI Report condition requirements and the other conditions to funding such amounts, subject to paragraph II below, as noted herein with respect to the Final DIP Budget Availability Date, the Additional DIP Budget Availability Date, and the date of the Additional NM Loans.
- II. **Availability Deadlines.** Subject to the terms and conditions of Amendment No. 2, and provided that (i) no event shall have occurred and be continuing or would result from the making of such Loan that would constitute a Default, (ii) each of the other the conditions set forth in Section 6.02 of the DIP Credit Agreement are met, and (iii) the price of Brent crude per barrel is no less than \$95 on an average basis for Intercontinental Exchange's then current twelve month forward strip, (a) the Additional DIP Budget Amount shall be available from the date of the effectiveness of Amendment No. 2 through December 14, 2012, (b) up to \$50,000,000 of the Final DIP Budget Amount shall be available from December 15, 2012 through January 2, 2013, so long as the commercial operation of the MC 942 S-Sand well has been achieved by such date, (c) the remaining \$10,000,000 of the Final DIP Budget Amount and, subject to paragraph III below, a portion of \$5,000,000 of the Additional NM Loans may be available from January 15, 2013 through February 15, 2013 and (d) subject to paragraph 3 below, the remaining \$20,000,000 of the Additional NM Loans may be advanced during the period from February 15, 2013 through March 1, 2013, so long as the commercial operation of the Clipper Project has been achieved by such date.
- III. **Additional NM Loans.** Additional NM Loans shall be available so long as the Administrative Agent and the Required Lenders shall have received a certificate from the CRO certifying that (i) the Debtor has determined that the making of such advances will preserve or enhance the value of its business, (ii) in his reasonable judgment, the Debtor has the ability to repay in full in cash such advances (including, without limitation, through a sale or refinancing in connection with a Plan of Reorganization), (iii) the Debtor is performing in accordance with its business plan, and (iv) with respect to the Additional NM Loans made pursuant to clause (d) in paragraph II above, (a) the commercial operation of the Clipper Project has been achieved and (b) the amount of Liquidity at the time of delivery of such certificate, prior to giving effect to such Borrowing, is less than \$20,000,000.
- IV. **Events of Default.** Add as Events of Default (i) failure to achieve commercial operation of the MC 942 S-Sand by January 2, 2013, and (ii) failure to achieve commercial operation of the Clipper Project by March 1, 2013.

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meanings given such terms in the DIP Credit Agreement.

- V. **Request for Borrowings.** Clarify that under Section 2.03 of the DIP Credit Agreement, the Borrower is allowed to request Borrowings (not just withdrawal requests from the Collateral Account, as permitted under Section 2.03(d)), at any time on and after the occurrence of a Specified Event so long as no Default or Event of Default has occurred, to fund amounts set forth in the DIP Budget necessary for the Borrower to continue in operation (including, without limitation, (a) fees, costs and expenditures made in the administration of the Bankruptcy Case and (b) amounts to pay and/or to be set aside in trust to satisfy all applicable plugging and abandonment obligations and bonding requirements); provided that each such Borrowing request shall (i) include a detailed list of all expenditures intended to be funded with the proceeds of such Borrowing and (ii) contain a certification by the Debtor that, to the extent such expenditures relate to the Clipper Project, such expenditures are necessary for the completion of the Clipper Project, could not be avoided or reduced by rejecting or modifying any contracts and that in the absence of such expenditures, the Clipper Project would not be completed on time or on budget.
- VI. **Capital Expenditures.** In Section 9.07(b) of the DIP Credit Agreement, commencing as of December 1, 2012, allow for capital expenditures for project planning (surveys, assessments, geological testing, etc.) with respect to the Gomez #9 Project in an aggregate amount of up to \$1,000,000, and at the reasonable discretion of the Required Lenders, up to an additional aggregate amount of \$1,000,000.
- VII. **Commodity Agreements.** The date that the Debtor shall have entered into Commodity Agreements pursuant to the terms of Section 8.18 of the DIP Credit Agreement, with regards to swaps should be extended to October 26, 2012, and with regard to puts should be extended to December 10, 2012, the reference to "Commodity Arrangement" shall be replaced with "Commodity Agreements", and the term "Net Revenue Interest" in each instance shall be lower case.
- VIII. **Mortgaged Properties.** Revise Section 8.14 of the DIP Credit Agreement to provide that the Mortgaged Properties (those properties subject to a Mortgage) will include (i) all of the Oil and Gas Properties relating to the Telemark Project, the Clipper Project and the Gomez Project and (ii) any other Oil and Gas Properties located in, or in U.S. Federal waters adjacent to, the United States, with respect to this clause (ii), to the extent the Required Lenders determine in their reasonable judgment that the cost of obtaining such mortgages and other documentation in connection therewith is not excessive in relation to the benefit to the Lenders of the security to be afforded thereby.
- IX. **Debt.** A basket for the financing of insurance premiums in the ordinary course of business and scheduled for in the DIP Budget, in an amount of up to \$7,000,000 shall be added to Section 9.02 of the DIP Credit Agreement.
- X. **Financial Covenants.** Schedule 8.19 of the DIP Credit Agreement to be updated in a manner to be agreed to reflect the agreed revised DIP Budget and the consequences of asset sales. The production covenants in Sections 8.19(a) and 8.19(b)(i) of the DIP Credit Agreement to be adjusted pro-rata in the event of any sale(s). For purposes of

Section 8.19(b)(ii) of the DIP Credit Agreement, Liquidity shall include the accounts receivable associated with the initial revenue payments made during the period from February 15, 2013 through March 31, 2013 from the “first party purchasers” associated with the initial period of production from the Clipper Project.

- XI. **Post-Closing Deliverables.** Extend the delivery date for the post-closing deliverables to November 30, 2012.
- XII. **Interest Rate Increase.** The interest rate on all Loans (the principal amount of which, for the avoidance of doubt, shall include all Additional Interest paid in kind by being capitalized and added to the principal amount of such Loans) will be increased by the Additional Interest Rate per annum, such additional interest to be paid in cash or capitalized and added to the principal of the Loans, at the Debtor’s option on each Interest Payment Date. The Additional Interest Rate for each applicable interest period shall mean 2% per annum if capitalized and added to the principal amount of the Loans, and 1% per annum if paid in cash.
- XIII. **Shelf Property Sale.** The Lenders shall agree that the Debtor may sell all of its shelf properties or any portion thereof on a block by block basis, as such allocation of property in relation to such sale may be determined by the Debtor in its business judgment with respect to the applicable purchaser, to one or more unaffiliated third parties on arm’s length terms, so long as such sale includes a release of all corresponding bonding requirements applicable to such shelf properties or each such block, as applicable (or, if less than all corresponding bonding requirements, with the consent of the Required Lenders), and an indemnification from the purchaser with respect to any plugging and abandonment obligations associated with such properties or block, as applicable (or, if less than all corresponding bonding requirements, with the consent of the Required Lenders), and the Required Lenders have approved the reasonableness of the terms of sale, such approval not to be unreasonably withheld. To the extent any such sale is consummated, (i) the Loans shall be prepaid (to the extent funds are actually received by the Debtor) and/or (ii) the Commitments shall be permanently reduced, in either case in an amount equal to the amount of the corresponding plugging and abandonment obligations that have been indemnified and the bonding requirements that have been released, and any such amounts received from or in connection with such sale shall be applied in accordance with Section 3.04(c)(i)(A) of the DIP Credit Agreement; provided that any such prepayments shall be reduced for any projected loss of net revenue from the period commencing on the proposed approval date for such sale through April 30, 2013 (or such earlier date to the extent the Deepwater Properties Sale has been consummated or an Approved Plan has been confirmed), which is estimated to be no more than \$1,625,000 in the aggregate for such period.
- XIV. **Mandatory Prepayments.** Promptly upon the Debtor’s receipt of any distributions, dividends or other amounts from ATP Netherlands in connection with dispositions of assets by ATP Netherlands, including, without limitation, the repayment of intercompany advances, the Debtor shall prepay the Loans and/or permanently reduce

the Commitments in accordance with Section 3.04(c)(iv) of the DIP Credit Agreement to the extent of the amount of such distributions, dividends or other amounts, net of any taxes actually paid or required to be paid in cash as a result of such transfer after giving effect to the utilization of tax attributes.

- XV. **Milestones.** It being understood that a Specified Event has occurred as of October 9, 2012 as a result of a failure to deliver a Satisfactory APE Report with respect to the Telemark, Gomez and Clipper fields, the applicable milestones with respect to the Event of Default under §10.01(o) of the Credit Agreement shall be modified as follows (failure to comply with which would result in an Event of Default):
- A. With respect to the sale of the Debtor's shelf properties and related assets (the "Shelf Properties Sale"):
- a) On or prior to November 26, 2012, the professionals for Agent and the Lenders shall have received (i) an updated offering memorandum with all pending exhibits and slides completed, an offering teaser (if applicable), a process letter, a draft confidentiality agreement and any other introductory materials (collectively, the "Shelf Properties Marketing Materials"), (ii) a list of potential buyers (the "Shelf Properties Potential Buyers"), and (iii) any available internal process schedules or materials, to the extent that they are more detailed than the sale process timeline set forth in the Credit Agreement. The professionals for Agent and the Lenders shall have the right to request revisions to any such Shelf Properties Marketing Materials and other information.
  - b) On or prior to November 30, 2012, the Debtor shall (i) prepare a data room and begin dissemination of the Shelf Properties Marketing Materials to the Shelf Properties Potential Buyers, which Shelf Properties Marketing Materials shall include all revisions and updates thereto that have been requested by the Agent's and Lenders' professionals, and (ii) provide the professionals for Agent and the Lenders an index listing all documents posted in, and access to, such data room.
  - c) On or prior to December 7, 2012, the Debtor shall have provided the Lenders with copies of a draft Asset Purchase Agreement and disclosure schedules thereto (collectively, the "Shelf Properties Purchase Agreement") and a draft Bid Procedures and Sale Motion.
  - d) On or prior to January 8, 2013, the Debtor shall file with the Bankruptcy Court a motion (the "Shelf Properties Sale Motion") to sell substantially all of its shelf properties and related assets, which sale may be structured to include the possibility of sales of separate parcels to different buyers, either to a stalking horse or in an open auction process, in each case on terms reasonably acceptable to the Required Lenders (including, without limitation, any terms to the Shelf Properties Purchase Agreement and Bid Procedures and Sale Motion that have been modified from the drafts initially provided to the Lenders, it being understood that any such Bid Procedures may include provision for a work fee in an amount to be agreed for a limited number of



bona fide qualified bidders), unless by such date the Debtor has filed a plan and disclosure statement for a plan providing for payment in full in cash of the Indebtedness (including committed financing for implementation of such plan) or otherwise approved by the Required Lenders (an “Approved Plan”).

- e) On or before January 24, 2013, the Bankruptcy Court shall approve Bid Procedures acceptable to the Required Lenders in respect of the Shelf Properties Sale Motion (unless an Approved Plan has been filed).
  - f) On or before February 26, 2013, the auction for the Shelf Properties Sale shall have commenced.
  - g) On or before February 28, 2013, the Court shall have approved the Shelf Properties Sale, unless an Approved Plan has been filed and the disclosure statement with respect thereto has been approved. In the event that there is no qualified purchaser or purchasers for certain assets following the auction and the Lenders have not elected to credit bid for such assets, there shall be no Default or Event of Default as a result of failing to satisfy this milestone.
  - h) On or before March 15, 2013, the Debtor shall consummate the Shelf Properties Sale with the purchaser approved by the Court, if any, unless an Approved Plan has been filed and the disclosure statement with respect thereto has been approved; provided that such date may be extended by up to an additional four weeks solely to the extent such extension is necessary to obtain government or other approvals in connection with such sale and all approval of transfer requests and other filings in connection with such approvals have been made on or prior to March 4, 2013.
- B. With respect to the sale of all of the Debtor’s deepwater properties and related assets, which will include, subject to the consummation of the Shelf Properties Sale, the shelf properties to provide an option for a collective sale of all of the Debtor’s properties, and may be structured to include the possibility of sales of separate parcels to separate purchasers (the “Deepwater Properties Sale”):
- a) On or prior to November 27, 2012, the professionals for Administrative Agent and the Lenders shall have received an updated list of information that Jefferies & Co. has requested from Borrower in connection with the preparation of the Deepwater Properties Marketing Materials (as defined below) that includes any additional information such professionals have requested be included in such materials.
  - b) On or prior to December 10, 2012, the professionals for Agent and the Lenders shall have received (i) a confirmation from Borrower that all remaining information in connection with the preparation of the Deepwater Properties Marketing Materials requested by Jefferies & Co., as supplemented by such professionals, has been delivered to Jefferies & Co. and (ii) copies of all such remaining information.
  - c) On or prior to December 12, 2012, the professionals for Agent and the Lenders shall

- have received (i) an updated offering memorandum with all pending exhibits and slides completed, an offering teaser (if applicable), a process letter, a draft confidentiality agreement and any other introductory materials (collectively, the “Deepwater Properties Marketing Materials”), (ii) a list of potential buyers (the “Deepwater Properties Potential Buyers”), and (iii) a sale process timeline as well as any available internal process schedules or materials, to the extent that they are more detailed than the sale process timeline set forth in the Credit Agreement. The professionals for Agent and the Lenders shall have the right to request revisions to any such Deepwater Properties Marketing Materials and other information.
- d) On or prior to December 14, 2012, the Debtor shall (i) prepare a data room and begin dissemination of the Deepwater Properties Marketing Materials to the Deepwater Properties Potential Buyers, which Deepwater Properties Marketing Materials shall include all revisions and updates thereto that have been requested by the Agent’s and Lenders’ professionals, and (ii) provide the professionals for Agent and the Lenders an index listing all documents posted in, and access to, such data room.
  - e) On or prior to December 21, 2012, the Debtor shall have provided the Lenders with a copies of a draft Asset Purchase Agreement and disclosure schedules thereto (collectively, the “Deepwater Properties Purchase Agreement”) and a draft Bid Procedures and Sale Motion.
  - f) On or prior to January 22, 2013, the Debtor shall file with the Bankruptcy Court a motion (the “Deepwater Properties Sale Motion”) to sell substantially all of its deepwater properties and related assets, which sale may be structured to include the possibility of sales of separate parcels to different buyers, either to a stalking horse or in an open auction process, in each case on terms acceptable to the Required Lenders (including, without limitation, any terms to the Deepwater Properties Purchase Agreement and Bid Procedures and Sale Motion that have been modified from the drafts initially provided to the Lenders, it being understood that any such Bid Procedures may include provision for a work fee in an amount to be agreed for a limited number of bona fide qualified bidders), unless by such date the Debtor has filed an Approved Plan.
  - g) On or before February 14, 2013, the Bankruptcy Court shall approve Bid Procedures acceptable to the Required Lenders in respect of the Deepwater Properties Sale Motion (unless an Approved Plan has been filed). To the extent such approved Bid Procedures include a stalking horse that intends to purchase the Debtor’s shelf properties and related assets in addition to the Debtor’s deepwater properties and related assets, the milestones regarding the Shelf Properties Sale shall no longer be applicable.
  - h) On or before March 26, 2013, the auction for the Deepwater Properties Sale shall have commenced.
  - i) On or before March 28, 2013, the Court shall have approved the Deepwater

Properties Sale, unless an Approved Plan has been filed and the disclosure statement with respect thereto has been approved.

- j) On or before April 11, 2013, the Debtor shall consummate the Deepwater Properties Sale, unless an Approved Plan has been filed and the disclosure statement with respect thereto has been approved; provided that such date may be extended by up to an additional four weeks solely to the extent such extension is necessary to obtain government or other approvals in connection with such sale and all approval of transfer requests and other filings in connection with such approvals have been made on or prior to March 18, 2013. Upon consummation of such sale, the Commitments and the Borrower's use of Cash Collateral shall be terminated and the principal of and interest on each Loan and all other amounts payable under the Loan Documents (other than contingent indemnification obligations) shall be due and payable.
  - k) With respect to an Approved Plan:
    - l) On or before February 21, 2013, to the extent an Approved Plan is filed, the Bankruptcy Court shall have approved the disclosure statement for the Approved Plan.
    - m) On or before March 28, 2013, if Debtor has filed an Approved Plan and the disclosure statement therefor has been approved, the Approved Plan shall have been confirmed, and become effective no later than 15 days thereafter.
- XVI. **M&M Liens.** An additional milestone shall be included requiring the Debtor to file with the Court and serve upon all creditors, no later than a date to be agreed, a Lien Identification Process Motion requesting the Court to approve a process requiring all statutory lien claimants to file with the Court a statement of any lien claims for prepetition services along with a statement of, and evidence of, the date to which the claimant asserts that any lien rights relate back.
- XVII. **Conditions to Effectiveness** will include (without limitation):
- A. Execution and delivery of satisfactory definitive documentation.
  - B. Bankruptcy Court approval.
  - C. The Required Lenders' satisfaction in their sole discretion with a revised DIP Budget and Clipper Budget.
  - D. Borrower shall have provided the professionals for Agent and the Lenders (i) all of the information that such professionals have requested from Borrower (other than information that is subject to later delivery in accordance with the milestones set forth above), (ii) a complete list of the information that Jefferies & Co. has requested from Borrower in connection with the preparation of the Shelf Properties Marketing Materials, including any supplements thereto, (iii) at least one day to review such list

and the opportunity to supplement such list by requesting Borrower provide Jefferies & Co. with additional information to be included in the Shelf Properties Marketing Materials, (iv) confirmation that all information requested by Jefferies & Co., as supplemented by such professionals, has been delivered to Jefferies & Co. and (v) copies of all such information.

- E. Payment of an amendment fee to the Lenders, on a pro rata basis, in an amount equal to 1.00% of the sum of the aggregate principal amount of all Loans and unfunded Commitments outstanding at such time, and such fee shall be paid in kind by being capitalized and added to the principal amount of such Loans.
- F. Payment of all accrued fees (including professional fees).

#### **IV. BASIS FOR RELIEF**

13. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under the circumstances specified therein. Provided that an agreement to obtain secured credit does not undermine the policies underlying the Bankruptcy Code, courts grant a debtor considerable deference in the exercise of its sound business judgment in obtaining such credit. *See, e.g., In re Barbara K Enters., Inc.*, Case No. 08-11474, 2008 WL 2439649, at \*14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest"); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[c]ases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest"); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of postpetition financing requires, inter alia, an exercise of "sound and reasonable business judgment").

14. Furthermore, in determining whether the Debtor has exercised sound business judgment, the Court should consider the economic terms of Amendment No. 2 in light of current market conditions. See Hr'g Tr. vol. 3, 734:24735:1, *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Feb. 27, 2009) (recognizing "the terms that are now available for DIP Facility in the current economic environment aren't as desirable" as in the past). Moreover, the Court may appropriately take into consideration non-economic benefits to the Debtor offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the Bankruptcy Court for the Southern District of New York held that:

Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and establishing alliances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

Case No. 09-13125, 2009 WL 2902568, at \*4 (Bankr. S.D.N.Y. July 6, 2009).

15. Amendment No. 2 provides the Debtor and its estate continued access to financing on terms most favorable to the Debtor under the current circumstances (as described above). The Debtor's decision to enter into Amendment No. 2 is the result of an intensive effort by the Debtor and its professionals to negotiate the best terms available from the DIP Lenders.

16. For these reasons, the Debtor submits that entry into Amendment No. 2 is in the best interests of the Debtor's estate, is necessary to preserve the value of estate assets and is an exercise of the Debtor's sound and reasonable business judgment.

V. **BASIS FOR EXPEDITED NOTICE**

17. The Debtor respectfully requests that the Court shorten the notice and objection periods with respect to this Motion and conduct an expedited hearing on the Motion on November 29, 2012 at 1:30 p.m.

18. On November 16, 2012, the Debtor filed its Emergency Motion Pursuant to Fed. R. Bankr. P. 9019 and 11 U.S.C. §§105 and 363 For Order Approving Settlement With the United States Department of the Interior [Dkt. No. 868] (“**Motion to Approve BOEM Settlement**”). As described therein, the BOEM issued an Incident of Noncompliance to the Debtor requiring that by November 15, 2012 the Debtor either (i) provide supplemental bonding or (ii) enter into an alternative proposal for financial assurance acceptable to the BOEM. Failure to satisfy the BOEM on this issue could result in further enforcement actions including the suspension or termination of the Debtor’s access to critical resources. The lack of access to such resources (as further described in the Motion to Approve BOEM Settlement) could potentially result in the end of Debtor’s reorganization efforts.

19. In connection with Debtor’s negotiations and settlement with the BOEM to satisfy these requirements, the BOEM required that the Debtor secure an expedited hearing on the Motion To Approve the BOEM Settlement. The Debtor submits that “cause” clearly exists for a hearing on expedited notice on the Motion to Approve BOEM Settlement.

20. In connection therewith, in order for the Debtor to fund the Idle Iron Settlement Agreement and the Decommissioning Trust Agreements (as defined in the Motion to Approve BOEM Settlement), the Debtor must have access to the additional funding set forth in Amendment No. 2. Specifically, the Debtor is required to deposit an aggregate \$10,827,824 into the Decommissioning Trusts upon approval of the BOEM Settlement. Absent the funding

released pursuant to the terms of Amendment No. 2, the Debtors will be unable to satisfy that critical obligation under the Decommissioning Trust Agreements. Therefore, consideration of the Motion and authorization and approval of the Debtor's execution and delivery of Amendment No. 2 are critical components to the satisfaction of the BOEM Settlement. The relief requested in the Motion is necessary and appropriate under the circumstances and in the best interest of the Debtor's estate and its creditors.

21. Therefore, the Debtor submits that "cause" clearly exists for a hearing on expedited notice on this Motion.

#### **VI. NOTICE**

22. Notice of this Motion has been given in accordance with this Court's Order Establishing Notice Procedures [Dkt. No. 132].

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, The Debtor respectfully requests that the Court enter an Order, substantially in the form of the Proposed Order, granting the relief requested herein.

Dated: November 26, 2012

Respectfully submitted,

**MAYER BROWN LLP**

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**ATTORNEYS TO THE DEBTOR AND  
DEBTOR-IN-POSSESSION**



**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	)	
	)	Chapter 11
ATP OIL & GAS CORPORATION,	)	Case No. 12-36187
Debtor.	)	Hon. Marvin Isgur
	)	

**ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS  
105, 361, 362, 363, 364 AND 507 AUTHORIZING THE DEBTOR  
TO ENTER INTO AMENDMENT NO. 2 TO THE DIP CREDIT AGREEMENT**  
[Relates to Docket No. [ ]]

THIS MATTER having come before the Court upon the Debtor’s *Emergency Motion For Entry Of An Order Pursuant To Bankruptcy Code Sections 105, 361, 362, 363, 364 And 507 Authorizing The Debtor To Enter Into Amendment No. 2 To The DIP Credit Agreement* (the “**Motion**”); and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b), venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409, and proper and adequate notice of the Motion and the hearing thereon having been given; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its estate and its creditors; and the Court having considered the Motion, and all objections, if any, to the Motion having been withdrawn, resolved or overruled by this Court; it is hereby ORDERED THAT:

1. The Motion is granted.

2. Pursuant to Bankruptcy Code Sections 105, 361, 362, 363, 364 And 507 and Bankruptcy Rules 4001 and 9014, the Debtor is authorized to execute and deliver Amendment No. 2 to the DIP Credit Agreement.

3. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

4. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

5. The Court shall retain exclusive jurisdiction to interpret, enforce, and resolve any disputes arising under or related to this Order, and the acceptance by any party of any distribution of funds authorized under this Order shall constitute consent by such party to the exclusive jurisdiction of the Court to hear and determine any such dispute. Any motion or application brought before the Court to resolve any dispute arising under or related to this Order shall be brought on proper notice in accordance with the relevant Bankruptcy Rules and the Local Rules for the Bankruptcy Court for the Southern District of Texas.

Signed: November \_\_, 2012

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Honorable Marvin Isgur  
United States Bankruptcy Judge

**Credit Agreement Amendment and Waiver Terms  
(defined terms as used in the Credit Agreement)**

- 1. Availability of Final DIP Budget Amount, Additional DIP Budget Amount and Additional NM Loans.** Subject to the terms and conditions herein, including, without limitation, the conditions set forth in paragraph 2 below, the Final DIP Budget Amount, the Additional DIP Budget Amount, and the Additional NM Loan Amount will be available in accordance with the revised DIP Budget (to be agreed as a condition to the Amendment) notwithstanding that a Satisfactory APE Report or updated NSAI Report was not obtained. The Required Lenders will waive the Satisfactory APE Report and NSAI Report condition requirements and the other conditions to funding such amounts, subject to paragraph 2 below, as noted herein with respect to the Final DIP Budget Availability Date, the Additional DIP Budget Availability Date, and the date of the Additional NM Loans (pursuant to Section 9.07(b)).
- 2. Availability Deadlines.** Subject to the terms and conditions herein, and provided that (i) no event shall have occurred and be continuing or would result from the making of such Loan that would constitute a Default, (ii) each of the other the conditions set forth in Section 6.02 are met, and (iii) the price of Brent crude per barrel is no less than \$95 on an average basis for Intercontinental Exchange's then current twelve month forward strip, (a) the Additional DIP Budget Amount shall be available from the date of the effectiveness of the Amendment through December 14, 2012, (b) up to \$50,000,000 of the Final DIP Budget Amount shall be available from December 15, 2012 through January 2, 2013, so long as the commercial operation of the MC 942 S-Sand well has been achieved by such date, (c) the remaining \$10,000,000 of the Final DIP Budget Amount and, subject to paragraph 3 below, a portion of \$5,000,000 of the Additional NM Loans may be available from January 15, 2013 through February 15, 2013 and (d) subject to paragraph 3 below, the remaining \$20,000,000 of the Additional NM Loans may be advanced during the period from February 15, 2013 through March 1, 2013, so long as the commercial operation of the Clipper Project has been achieved by such date.
- 3. Additional NM Loans.** Additional NM Loans shall be available to Borrower so long as the Administrative Agent and the Required Lenders shall have received a certificate from the CRO certifying that (i) the Borrower has determined that the making of such advances will preserve or enhance the value of its business, (ii) in his reasonable judgment, the Borrower has the ability to repay in full in cash such advances (including, without limitation, through a sale or refinancing in connection with a Plan of Reorganization), (iii) the Borrower is performing in accordance with its business plan, and (iv) with respect to the Additional NM Loans made pursuant to clause (d) in paragraph 2 above, (a) the commercial operation of the Clipper Project has been achieved and (b) the amount of Liquidity at the time of delivery of such certificate, prior to giving effect to such Borrowing, is less than \$20,000,000.
- 4. Events of Default.** Add as Events of Default (i) failure to achieve commercial operation of the MC 942 S-Sand by January 2, 2013, and (ii) failure to achieve commercial operation of the Clipper Project by March 1, 2013.
- 5. Request for Borrowings.** Clarify that under Section 2.03, the Borrower is also allowed to request Borrowings (not just withdrawal requests from the Collateral Account, as permitted under Section 2.03(d)), at any time on and after the occurrence of a Specified Event so long as no

Default or Event of Default has occurred, to fund amounts set forth in the DIP Budget necessary for the Borrower to continue in operation (including, without limitation, (a) fees, costs and expenditures made in the administration of the Bankruptcy Case and (b) amounts to pay and/or to be set aside in trust to satisfy all applicable plugging and abandonment obligations and bonding requirements); provided that each such Borrowing request shall (i) include a detailed list of all expenditures intended to be funded with the proceeds of such Borrowing and (ii) contain a certification by the Borrower that, to the extent such expenditures relate to the Clipper Project, such expenditures are necessary for the completion of the Clipper Project, could not be avoided or reduced by rejecting or modifying any contracts and that in the absence of such expenditures, the Clipper Project would not be completed on time or on budget.

6. **Capital Expenditures.** In Section 9.07(b), commencing as of December 1, 2012, allow for capital expenditures for project planning (surveys, assessments, geological testing, etc.) with respect to the Gomez #9 Project in an aggregate amount of up to \$1,000,000, and at the reasonable discretion of the Required Lenders, up to an additional aggregate amount of \$1,000,000.

7. **Commodity Agreements.** The date that the Debtor shall have entered into Commodity Agreements pursuant to the terms of Section 8.18 of the Credit Agreement, with regards to swaps should be extended to October 26, 2012, and with regard to puts should be extended to December 10, 2012, the reference to “Commodity Arrangement” shall be replaced with “Commodity Agreements”, and the term “Net Revenue Interest” in each instance shall be lower case.

8. **Mortgaged Properties.** Revise Section 8.14 to provide that the Mortgaged Properties (those properties subject to a Mortgage) will include (i) all of the Oil and Gas Properties relating to the Telemark Project, the Clipper Project and the Gomez Project and (ii) any other Oil and Gas Properties located in, or in U.S. Federal waters adjacent to, the United States, with respect to this clause (ii), to the extent the Required Lenders determine in their reasonable judgment that the cost of obtaining such mortgages and other documentation in connection therewith is not excessive in relation to the benefit to the Lenders of the security to be afforded thereby.

9. **Debt.** A basket for the financing of insurance premiums in the ordinary course of business and scheduled for in the DIP Budget, in an amount of up to \$7,000,000 shall be added to Section 9.02.

10. **Financial Covenants.** Schedule 8.19 to be updated in a manner to be agreed to reflect the agreed revised DIP Budget and the consequences of asset sales. The production covenants in Section 8.19(a) and 8.19(b)(i) to be adjusted pro-rata in the event of any sale(s). For purposes of Section 8.19(b)(ii), Liquidity shall include the accounts receivable associated with the initial revenue payments made during the period from February 15, 2013 through March 31, 2013 from the “first party purchasers” associated with the initial period of production from the Clipper Project.

11. **Form of Withdrawal Notice.** In the Form of Withdrawal Notice, revise the language in clause (i) therein, to read that the amount of the Borrower’s Cash Collateral listed will not

exceed the sum of (i) the amount necessary for the Borrower to fund all capital expenditures as scheduled on the attached Exhibit A, (ii) the amount necessary for the Borrower to continue in operation pursuant to the terms of the DIP Budget (including fees, costs, and administrative expenditures), and (iii) the amount of Liquidity required under Section 8.19(b)(ii). Similar changes to be made to the language in clause (x) of the proviso in Section 2.03(d).

12. **Financial Statements.** Section 8.01(b) will be amended by deleting the first two sentences therein, and amending the third sentence therein by deleting the words “In the event that the Borrower is no longer required to file such reports, documents and information with the SEC pursuant to the Exchange Act,” and capitalize the word “The” therein.

13. **Post-Closing Deliverables.** Extend the delivery date for the post-closing deliverables to November 30, 2012.

14. **Interest Rate Increase.** The interest rate on all Loans (the principal amount of which, for the avoidance of doubt, shall include all Additional Interest paid in kind by being capitalized and added to the principal amount of such Loans) will be increased by the Additional Interest Rate per annum, such additional interest to be paid in cash or capitalized and added to the principal of the Loans, at the Borrower’s option on each Interest Payment Date. The Additional Interest Rate for each applicable interest period shall mean 2% per annum if capitalized and added to the principal amount of the Loans, and 1% per annum if paid in cash.

15. **Shelf Property Sale.** The Lenders agree that the Debtor may sell all of its shelf properties or any portion thereof on a block by block basis, as such allocation of property in relation to such sale may be determined by the Debtor in its business judgment with respect to the applicable purchaser, to one or more unaffiliated third parties on arm’s length terms, so long as such sale includes a release of all corresponding bonding requirements applicable to such shelf properties or each such block, as applicable (or, if less than all corresponding bonding requirements, with the consent of the Required Lenders), and an indemnification from the purchaser with respect to any plugging and abandonment obligations associated with such properties or block, as applicable (or, if less than all corresponding bonding requirements, with the consent of the Required Lenders), and the Required Lenders have approved the reasonableness of the terms of sale, such approval not to be unreasonably withheld. To the extent any such sale is consummated, (i) the Loans shall be prepaid (to the extent funds are actually received by the Debtor) and/or (ii) the Commitments shall be permanently reduced, in either case in an amount equal to the amount of the corresponding plugging and abandonment obligations that have been indemnified and the bonding requirements that have been released, and any such amounts received from or in connection with such sale shall be applied in accordance with Section 3.04(c)(i)(A) of the Credit Agreement; provided that any such prepayments shall be reduced for any projected loss of net revenue from the period commencing on the proposed approval date for such sale through April 30, 2013 (or such earlier date to the extent the Deepwater Properties Sale has been consummated or an Approved Plan has been confirmed), which is estimated to be no more than \$1,625,000 in the aggregate for such period.

16. **Mandatory Prepayments.** Promptly upon the Borrower’s receipt of any distributions, dividends or other amounts from ATP Netherlands in connection with dispositions of assets by

ATP Netherlands, including, without limitation, the repayment of intercompany advances, the Borrower shall prepay the Loans and/or permanently reduce the Commitments in accordance with Section 3.04(c)(iv) of the Credit Agreement to the extent of the amount of such distributions, dividends or other amounts, net of any taxes actually paid or required to be paid in cash as a result of such transfer after giving effect to the utilization of tax attributes.

17. **Other Amendments.** The Credit Agreement shall be amended to include other clean-up and conforming changes.

18. **Milestones.** It being understood that a Specified Event has occurred as of October 9, 2012 as a result of a failure to deliver a Satisfactory APE Report with respect to the Telemark, Gomez and Clipper fields, the applicable milestones with respect to the Event of Default under §10.01(o) of the Credit Agreement shall be modified as follows (failure to comply with which would result in an Event of Default):

A. With respect to the sale of the Debtor's shelf properties and related assets (the "Shelf Properties Sale"):

1. On or prior to November 26, 2012, the professionals for Agent and the Lenders shall have received (i) an updated offering memorandum with all pending exhibits and slides completed, an offering teaser (if applicable), a process letter, a draft confidentiality agreement and any other introductory materials (collectively, the "Shelf Properties Marketing Materials"), (ii) a list of potential buyers (the "Shelf Properties Potential Buyers"), and (iii) any available internal process schedules or materials, to the extent that they are more detailed than the sale process timeline set forth in the Credit Agreement. The professionals for Agent and the Lenders shall have the right to request revisions to any such Shelf Properties Marketing Materials and other information.

2. On or prior to November 30, 2012, the Debtor shall (i) prepare a data room and begin dissemination of the Shelf Properties Marketing Materials to the Shelf Properties Potential Buyers, which Shelf Properties Marketing Materials shall include all revisions and updates thereto that have been requested by the Agent's and Lenders' professionals, and (ii) provide the professionals for Agent and the Lenders an index listing all documents posted in, and access to, such data room.

3. On or prior to December 7, 2012, the Debtor shall have provided the Lenders with copies of a draft Asset Purchase Agreement and disclosure schedules thereto (collectively, the "Shelf Properties Purchase Agreement") and a draft Bid Procedures and Sale Motion.

4. On or prior to January 8, 2013, the Debtor shall file with the Bankruptcy Court a motion (the "Shelf Properties Sale Motion") to sell substantially all of its shelf properties and related assets, which sale may be structured to include the possibility of sales of separate parcels to different buyers, either to a stalking horse or in an open auction process, in each case on terms reasonably acceptable to the Required Lenders (including, without limitation, any terms to the Shelf Properties Purchase Agreement and Bid Procedures and Sale Motion that have been modified from the drafts initially provided to the Lenders, it being understood that any such Bid

Procedures may include provision for a work fee in an amount to be agreed for a limited number of bona fide qualified bidders), unless by such date the Debtor has filed a plan and disclosure statement for a plan providing for payment in full in cash of the Indebtedness (including committed financing for implementation of such plan) or otherwise approved by the Required Lenders (an “Approved Plan”).

5. On or before January 24, 2013, the Bankruptcy Court shall approve Bid Procedures acceptable to the Required Lenders in respect of the Shelf Properties Sale Motion (unless an Approved Plan has been filed).

6. On or before February 26, 2013, the auction for the Shelf Properties Sale shall have commenced.

7. On or before February 28, 2013, the Court shall have approved the Shelf Properties Sale, unless an Approved Plan has been filed and the disclosure statement with respect thereto has been approved. In the event that there is no qualified purchaser or purchasers for certain assets following the auction and the Lenders have not elected to credit bid for such assets, there shall be no Default or Event of Default as a result of failing to satisfy this milestone.

8. On or before March 15, 2013, the Debtor shall consummate the Shelf Properties Sale with the purchaser approved by the Court, if any, unless an Approved Plan has been filed and the disclosure statement with respect thereto has been approved; provided that such date may be extended by up to an additional four weeks solely to the extent such extension is necessary to obtain government or other approvals in connection with such sale and all approval of transfer requests and other filings in connection with such approvals have been made on or prior to March 4, 2013.

B. With respect to the sale of all of the Debtor’s deepwater properties and related assets, which will include, subject to the consummation of the Shelf Properties Sale, the shelf properties to provide an option for a collective sale of all of the Debtor’s properties, and may be structured to include the possibility of sales of separate parcels to separate purchasers (the “Deepwater Properties Sale”):

1. On or prior to November 27, 2012, the professionals for Administrative Agent and the Lenders shall have received an updated list of information that Jefferies & Co. has requested from Borrower in connection with the preparation of the Deepwater Properties Marketing Materials (as defined below) that includes any additional information such professionals have requested be included in such materials.

2. On or prior to December 10, 2012, the professionals for Agent and the Lenders shall have received (i) a confirmation from Borrower that all remaining information in connection with the preparation of the Deepwater Properties Marketing Materials requested by Jefferies & Co., as supplemented by such professionals, has been delivered to Jefferies & Co. and (ii) copies of all such remaining information.

3. On or prior to December 12, 2012, the professionals for Agent and the Lenders shall have received (i) an updated offering memorandum with all pending exhibits and slides completed, an offering teaser (if applicable), a process letter, a draft confidentiality agreement and any other introductory materials (collectively, the "Deepwater Properties Marketing Materials"), (ii) a list of potential buyers (the "Deepwater Properties Potential Buyers"), and (iii) a sale process timeline as well as any available internal process schedules or materials, to the extent that they are more detailed than the sale process timeline set forth in the Credit Agreement. The professionals for Agent and the Lenders shall have the right to request revisions to any such Deepwater Properties Marketing Materials and other information.

4. On or prior to December 14, 2012, the Debtor shall (i) prepare a data room and begin dissemination of the Deepwater Properties Marketing Materials to the Deepwater Properties Potential Buyers, which Deepwater Properties Marketing Materials shall include all revisions and updates thereto that have been requested by the Agent's and Lenders' professionals, and (ii) provide the professionals for Agent and the Lenders an index listing all documents posted in, and access to, such data room.

5. On or prior to December 21, 2012, the Debtor shall have provided the Lenders with a copies of a draft Asset Purchase Agreement and disclosure schedules thereto (collectively, the "Deepwater Properties Purchase Agreement") and a draft Bid Procedures and Sale Motion.

6. On or prior to January 22, 2013, the Debtor shall file with the Bankruptcy Court a motion (the "Deepwater Properties Sale Motion") to sell substantially all of its deepwater properties and related assets, which sale may be structured to include the possibility of sales of separate parcels to different buyers, either to a stalking horse or in an open auction process, in each case on terms acceptable to the Required Lenders (including, without limitation, any terms to the Deepwater Properties Purchase Agreement and Bid Procedures and Sale Motion that have been modified from the drafts initially provided to the Lenders, it being understood that any such Bid Procedures may include provision for a work fee in an amount to be agreed for a limited number of bona fide qualified bidders), unless by such date the Debtor has filed an Approved Plan.

7. On or before February 14, 2013, the Bankruptcy Court shall approve Bid Procedures acceptable to the Required Lenders in respect of the Deepwater Properties Sale Motion (unless an Approved Plan has been filed). To the extent such approved Bid Procedures include a stalking horse that intends to purchase the Debtor's shelf properties and related assets in addition to the Debtor's deepwater properties and related assets, the milestones regarding the Shelf Properties Sale shall no longer be applicable.

8. On or before March 26, 2013, the auction for the Deepwater Properties Sale shall have commenced.

9. On or before March 28, 2013, the Court shall have approved the Deepwater Properties Sale, unless an Approved Plan has been filed and the disclosure statement with respect thereto has been approved.



10. On or before April 11, 2013, the Debtor shall consummate the Deepwater Properties Sale, unless an Approved Plan has been filed and the disclosure statement with respect thereto has been approved; provided that such date may be extended by up to an additional four weeks solely to the extent such extension is necessary to obtain government or other approvals in connection with such sale and all approval of transfer requests and other filings in connection with such approvals have been made on or prior to March 18, 2013. Upon consummation of such sale, the Commitments and the Borrower's use of Cash Collateral shall be terminated and the principal of and interest on each Loan and all other amounts payable under the Loan Documents (other than contingent indemnification obligations) shall be due and payable.

C. With respect to an Approved Plan:

1. On or before February 21, 2013, to the extent an Approved Plan is filed, the Bankruptcy Court shall have approved the disclosure statement for the Approved Plan.

2. On or before March 28, 2013, if Debtor has filed an Approved Plan and the disclosure statement therefor has been approved, the Approved Plan shall have been confirmed, and become effective no later than 15 days thereafter.

19. **M&M Liens.** An additional milestone shall be included requiring the Debtor to file with the Court and serve upon all creditors, no later than a date to be agreed, a Lien Identification Process Motion requesting the Court to approve a process requiring all statutory lien claimants to file with the Court a statement of any lien claims for prepetition services along with a statement of, and evidence of, the date to which the claimant asserts that any lien rights relate back.

20. **Conditions to Effectiveness** will include (without limitation):

- Execution and delivery of satisfactory definitive documentation
- Bankruptcy Court approval
- The Required Lenders' satisfaction in their sole discretion with a revised DIP Budget and Clipper Budget
- Borrower shall have provided the professionals for Agent and the Lenders (i) all of the information that such professionals have requested from Borrower (other than information that is subject to later delivery in accordance with the milestones set forth above), (ii) a complete list of the information that Jefferies & Co. has requested from Borrower in connection with the preparation of the Shelf Properties Marketing Materials, including any supplements thereto, (iii) at least one day to review such list and the opportunity to supplement such list by requesting Borrower provide Jefferies & Co. with additional information to be included in the Shelf Properties Marketing Materials, (iv) confirmation that all information requested by Jefferies & Co., as supplemented by such professionals, has been delivered to Jefferies & Co. and (v) copies of all such information
- Payment of an amendment fee to the Lenders, on a pro rata basis, in an amount equal to 1.00% of the sum of the aggregate principal amount of all Loans and unfunded Commitments outstanding at such time, and such fee shall be paid in kind by being capitalized and added to the principal amount of such Loans
- Payment of all accrued fees (including professional fees)