

**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

DEBTOR’S EMERGENCY MOTION PURSUANT TO 11 U.S.C. §§ 105(A), 363 AND 365 AND BANKRUPTCY RULES 2002, 6004 AND 6006 FOR ORDERS (I) (A) APPROVING (i) BIDDING PROCEDURES; (ii) BID PROTECTIONS; (iii) AUCTION PROCEDURES; AND (iv) ASSUMPTION AND ASSIGNMENT PROCEDURES; (B) APPROVING NOTICE PROCEDURES FOR (i) THE SOLICITATION OF BIDS; AND (ii) AN AUCTION; (C) SCHEDULING HEARINGS ON APPROVAL OF A SALE OR SALES OF SUBSTANTIALLY ALL OF DEBTOR’S SHELF PROPERTY ASSETS; AND (D) GRANTING RELATED RELIEF; AND (II) (A) APPROVING THE SALE OR SALES OF SUBSTANTIALLY ALL OF THE DEBTOR’S SHELF PROPERTY ASSETS FREE AND CLEAR OF CLAIMS AND LIENS AND (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES

A HEARING WILL BE CONDUCTED ON THIS MATTER ON JANUARY 24, 2013, AT 1:30 P.M. AT THE U.S. BANKRUPTCY COURT, 515 RUSK AVENUE, HOUSTON, TEXAS 77002.

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST RESPOND IN WRITING AND SEND A COPY TO THE MOVING PARTY. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS MOTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

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 RELIEF OR IF YOU BELIEVE THAT EMERGENCY



CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

ATP Oil & Gas Corporation (the “**Debtor**”) files this *Motion Pursuant to 11 U.S.C. §§ 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006 for Orders (I)(A) Approving (i) Bidding Procedures; (ii) Bid Protections; (iii) Auction Procedures; and (iv) Assumption and Assignment Procedures; (B) Approving Notice Procedures for (i) the Solicitation of Bids; and (ii) an Auction; (C) Scheduling Hearings on Approval of a Sale or Sales of Substantially all of the Debtor’s Shelf Property Assets; and (D) Granting Related Relief; and (II) (A) Approving the Sale or Sales of Substantially all of the Debtor’s Shelf Property Assets Free and Clear of Claims and Liens and (B) Approving the Assumption and Assignment of Contracts and Leases (the “**Motion**”).* In support of the Motion, the Debtor respectfully submits the following:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. 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. The statutory predicates for the relief sought hereby are Sections 105(a) and 363(b), (f), and (m), and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9014 of the Bankruptcy Rules.

BACKGROUND

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 (this “**Court**”). Since the Petition Date, the Debtor has continued to operate and manage its business as a debtor-in-possession pursuant to

Bankruptcy Code §§ 1107(a) and 1108. On August 24, 2012, the U.S. Trustee appointed a committee of unsecured creditors (the “**Creditors’ Committee**”) and on November 6, 2012, the U.S. Trustee appointed a committee of equity holders (the “**Equity Committee**” and, together with the Creditors’ Committee, the “**Committees**”) in this case.

3. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the Declaration of Albert L. Reese, Jr. in Support of First Day Pleadings [Dkt. No. 28] (the “**Reese Declaration**”) filed on the Petition Date and incorporated herein by reference.

The Debtor’s Business

4. The Debtor is a recognized offshore oil and gas exploration and production operator on the Outer Continental Shelf in the Gulf of Mexico, both in shallow water and deep water. As of December 31, 2011, the Debtor directly held leasehold and other interests in the Gulf of Mexico in 38 offshore blocks.

5. The Debtor’s wells are located in the Gulf of Mexico, reporting, as of December 31, 2011, proved reserves of 75.9 MMboe (Million Barrels of Crude Oil Equivalent). The Debtor operates approximately 90% of its total wells in the Gulf of Mexico, and serves as operator on all of its deepwater wells.

6. With respect to its shallow water operations, the Debtor currently holds leasehold and other working interests in 18 blocks (the “**Shelf Properties**”), of which 7 blocks are producing and 11 are non-producing. The Debtor is the operator for the majority of the Shelf Properties and owns various production facilities, pipelines, machinery and production equipment appurtenant to or used in connection with these operations (collectively, the “**Shelf Facilities**”).

7. Although its specific interests in any Shelf Property vary from block to block,¹ the Debtor generally holds high net revenue interests (i.e., in excess of 75%) in the majority of its producing and non-producing Shelf Properties, which, based upon recent (i.e., October 1, 2012) engineering reports, have proved reserves of 2.5MMBoe with additional probable and possible reserves of as much as 544MBoe (Thousand Barrels of Crude Oil Equivalent).

8. In connection with its operations, the Debtor has incurred various statutory or contractual liabilities resulting from of its interests in and operation of the Shelf Properties and Shelf Facilities, including obligations to properly plug and abandon wells and dismantle and decommission various fixtures and production-related equipment on the Shelf Properties (collectively, the “**P&A Liabilities**”). The Debtor estimates that as of the date of the filing of this Motion the total amount of the P&A Liabilities related to the Shelf Assets is approximately \$34 million.

The Debtor-in-Possession Financing Facility and Requirements

9. 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**”).

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

¹ The Shelf Properties and the Debtor’s interests related thereto are more particularly described in the Form Purchase Agreement (as defined below), which the Debtor will promptly supplement with the applicable Exhibits and Schedules thereto.

authorized, among other things, to incur secured borrowings from the DIP Lenders (as defined in the Interim Order) on an interim basis pursuant to the terms of the DIP Term Sheet (as defined in the Interim Order) and the Interim Order. 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 Facility**”).

11. 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, the requirement that the Debtor satisfy certain milestones with regard to the sale of its assets, which 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 twenty (20) days of the Specified Event (*i.e.*, on or about October 29, 2012).

12. After substantial arms-length, good faith negotiations between the Debtor and the DIP Lenders, the parties entered into a second amendment to the DIP Credit Agreement, which was approved by the Court on December 6, 2012 (the “**Second Amendment**”). Among other things, the Second Amendment extended certain sale milestones set forth in the original DIP Credit Agreement and provides for a bifurcated sale process with respect to substantially all of the Debtor’s assets, including its shelf and deepwater properties. With respect to the Debtor’s shelf properties, the

Second Amendment sets forth the following future milestones which must be satisfied to avoid a default under the DIP Credit Agreement:

- a) On or prior to January 8, 2013, the Debtor shall file a motion to sell substantially all of its shelf assets (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 obligations under the DIP Credit Agreement, including committed financing for implementation of such plan (an **“Approved Plan”**)).
- b) On or before January 24, 2013, the Court shall approve bid procedures acceptable to the Required Lenders in respect of the sale motion (unless an Approved Plan has been filed).
- c) On or before February 26, 2013, an auction for the shelf assets shall have commenced.
- d) On or before February 28, 2013, the Court shall have approved a sale of the shelf assets (unless an Approved Plan has been filed and the disclosure statement with respect thereto has been approved).
- e) On or before March 15, 2013, the Debtor shall consummate a sale of the shelf assets with the purchaser or purchasers 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.

THE SALE PROCESS

13. By this Motion, and in compliance with the aforementioned milestones, the Debtor seeks authority to market and sell substantially all of its Shelf Properties, Shelf Facilities and related assets (the **“Shelf Assets”**), which are defined and described in further detail in the Form Asset Purchase Agreement attached hereto as **Exhibit B** (the **“Form Purchase Agreement”**).² The Debtor believes that the procedures proposed herein with respect to the sale

² Capitalized terms used but not defined herein have the meanings ascribed to them in the Form Purchase Agreement. To the extent that there are inconsistencies between any summary description of the Form Purchase Agreement contained herein and the terms and conditions of the Form Purchase Agreement, the terms and conditions of the Form Purchase Agreement shall control.

of the Shelf Assets (the “**Sale**”) is the best way to maximize the value of these assets for the Debtor’s estate for its creditors and stakeholders under the circumstances.

A. The Marketing Process

14. As noted above, pursuant to the Second Amendment, the Debtor has agreed to undertake a comprehensive marketing process with regard to the sale of the Shelf Assets. Recognizing that this undertaking would be a principal component of any amendment following the occurrence of a Specified Event, the Debtor, together with its professionals, commenced preparations for such a Sale in mid-October 2012.

15. As part of this marketing effort, the Debtor, through its investment banker, Jefferies & Company (“**Jefferies**”), has conducted and continues to conduct an extensive marketing process targeting buyers based on a variety of factors, including a potential buyer’s perceived interest in the Shelf Assets, its familiarity with the Debtor’s business operations and the asset class, and its financial and operational resources necessary to consummate a transaction with the Debtor. Towards that end, the Debtor, with the assistance of Jefferies, its attorneys and other representatives, has assembled data and documents to facilitate the diligence process for potential buyers and has prepared business presentations to provide for an organized and efficient transmission of a large amount of data related to the Shelf Assets and the Debtor’s operation thereof.

16. As of the date hereof, the Debtor has not reached an agreement with a purchaser with respect to the Sale of any of the Shelf Assets. Nonetheless, in an effort to maximize the value of the Shelf Assets at auction, the Debtor has completed the Form Purchase Agreement in consultation with counsel to the DIP Lenders and the DIP Agent and will continue to seek a stalking horse bidder or bidders (a “**Stalking Horse Bidder**”) in accordance with the procedures set forth herein.

17. Since the Petition Date, Jefferies has prepared for and commenced an extensive marketing process for the Shelf Assets that has targeted numerous potential purchasers. In connection therewith, Jefferies consulted with the statutory committees in these cases regarding identification of potential purchasers. With respect to the Shelf Assets, Jefferies has contacted sixteen parties to-date and provided each of them with introductory materials regarding the opportunity to purchase some or all of the Shelf Assets. Of those parties contacted, seven have executed confidentiality agreements. In addition to their ability to conduct due diligence with respect to the Shelf Assets by virtue of their access to confidential information through a virtual data room, each of those parties have each been invited to meet with the Debtor's management team and to review additional information regarding the Shelf Assets. Jefferies has and continues to maintain an active dialogue with potential purchasers and with the assistance of the Debtor's management team, has been responding to diligence requests and coordinating further due diligence access in order to facilitate the evaluation and consideration of potential bids with respect to the Shelf Assets.

18. Based on the preparations and diligence completed to date, the Debtor, in consultation with Jefferies and its other professionals, has concluded that: (a) a prompt and open sale of the Shelf Assets in which all interested buyers are encouraged to participate is the best way to maximize value for the estate under the circumstances, and (b) the proposed Bidding Procedures described herein are the most effective method of obtaining the highest and best offer for the Shelf Assets.

B. The Form Purchase Agreement

19. The Debtor has determined that distributing the Form Purchase Agreement to interested parties provides the best available platform for conducting an auction with respect to the Shelf Assets. The Form Purchase Agreement does not contemplate the participation of a

Stalking Horse Bidder for some or all of the Shelf Assets and the procedures discussed more fully below contemplate that interested purchasers will submit executed purchase agreements reflecting any changes from the Form Purchase Agreement. Should the Debtor, with the consent (not to be unreasonably withheld) of the DIP Lenders and the DIP Agent, elect to establish a Stalking Horse Bidder for the sale of all or certain of the Shelf Assets, the Debtor and such Stalking Horse Bidder shall enter into a purchase agreement (each, a “**Stalking Horse Agreement**”) that will be filed and distributed to all known potential bidders in accordance with the proposed Bidding Procedures (as defined below).

C. The Bidding Procedures

20. The Debtor proposes to conduct the Sale of its Shelf Assets through the sale and bidding process described below (the “**Proposed Sale Process**”) to ensure that its estate realizes the maximum value for the Shelf Assets. The Shelf Assets may be sold in the aggregate to a single purchaser or on a block-by-block basis to several purchasers, as may be determined by the Debtor in its business judgment and in consultation with counsel to the DIP Lenders and the DIP Agent.

21. To optimally and expeditiously solicit, receive, and evaluate bids in a fair and accessible manner, the Debtor has developed and proposed bid procedures to govern the Sale (the “**Bidding Procedures**”), which are annexed as Exhibit 1 to the Bidding Procedures Order attached hereto as **Exhibit A** (the “**Bidding Procedures Order**”). The Bidding Procedures are designed to encourage all entities to put their best bids forward and to maximize the value of the Shelf Assets.

22. The Debtor requests that this Court approve the Proposed Sale Process and the Bidding Procedures, the material terms of which are as follows:³

Provisions Governing Qualifications of Bidders and Bids

- Initial Indication of Interest (only if Potential Bidder seeks Work Fee). Any third party interested in submitting any proposal, solicitation or offer for the Shelf Assets (a “**Potential Bidder**”) is invited to submit a non-binding initial indication of interest (an “**Initial Indication**”) to Jefferies on or before **February 5, 2013 at 12:00 p.m. (CST)**. Jefferies will promptly share with counsel to the DIP Lenders and the DIP Agent all Initial Indications that are received. Bona fide Potential Bidders who provide an Initial Indication which contains (1) a preliminary indication of the Shelf Properties (and related Shelf Assets) that the Potential Bidder intends to bid on and the potential bid amount for each Shelf Property (and related Shelf Assets) (with such potential bid amount allocated on a block-by-block basis) and (2) evidence demonstrating financial and operational capability to consummate a transaction, may be reimbursed for their reasonable and documented actual out-of-pocket diligence expenses incurred in connection with a transaction up to a maximum of \$50,000 (a “**Work Fee**”) if the Debtor determines, in its business judgment, that a Work Fee is reasonably necessary in order to induce such Potential Bidder(s) to complete the diligence and documentation necessary to submit a Qualified Bid (as defined below). Only Potential Bidders that submit an Initial Indication will be eligible to receive a Work Fee, but the failure to submit an Initial Indication shall not preclude a Potential Bidder from submitting a Qualified Bid pursuant to the procedures outlined below.
- Qualified Bids. In order to constitute a Qualified Bid (as defined below), any proposal, solicitation or offer for the Shelf Assets (each, a “**Bid**”) submitted by a bidder (each, a “**Bidder**”), whether such Bidder has provided an Initial Indication or not, must (i) be submitted in writing prior to **February 19, 2013 at 12:00 p.m. (CST)** (the “**Bid Deadline**”) and (ii) satisfy the following requirements, as determined by the Debtor in its reasonable business judgment (collectively, the “**Bid Requirements**”):
 - a) Contain a signed definitive asset purchase agreement (together with a copy of the signed agreement that is marked to show changes from

³ This summary is qualified in its entirety by the Bidding Procedures. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meaning ascribed such term in the Bidding Procedures. To the extent there are any conflicts or inconsistencies between this summary and the Bidding Procedures, the terms of the Bidding Procedures shall govern in all respects.

the Form Purchase Agreement⁴) (a “**Qualified APA**”) and shall: (i) identify the Shelf Assets the Bidder seeks to purchase, (ii) contain the consideration to be paid by such Bidder, including the liabilities to be assumed, with such consideration allocated on a block-by-block basis (with respect to hydrocarbon reserves) or an asset by asset basis (with respect to any other Asset(s)), (iii) provide for the assumption of all plugging and abandonment obligations and related bonding requirements with respect to Bureau of Ocean Energy Management regulations and requirements (“**P&A Obligations**”) or a statement and satisfactory evidence from the Bidder that such Bidder is exempt from such bonding requirements, and an indemnity with respect to all plugging and abandonment obligations, associated with such Shelf Assets, (iv) with respect to Shelf Assets covered by a Stalking Horse Agreement, provide for cash consideration in an amount sufficient to pay all Bid Protections amounts related to such Stalking Horse Agreement, except as described below with respect to a credit bid by the DIP Agent, and (v) not be subject to any (a) financing contingency, (b) contingency relating to due diligence after the commencement of the Auction, (c) contingency relating to the approval of the Bidder’s board of directors or other internal approvals or non-governmental third-party consents or approvals, or (d) any conditions precedent to the Bidder’s obligation to purchase the Shelf Assets other than those included in the Form Purchase Agreement.

- b) Be accompanied by the provision of a certified or bank check or wire transfer in the amount of at least 10% of the aggregate consideration proposed in the Qualified APA (including both cash and assumption of any liabilities) as a good faith deposit (the “**Good Faith Deposit**”). The Good Faith Deposit shall be held in escrow and credited to the closing payment if the Bidder is ultimately determined to be the Successful Bidder (as defined below), if any closing payment is due, or to be returned to the Bidder in whole or in part as applicable if the Bidder is not the Successful Bidder or the Backup Successful Bidder. In the event that a Bidder is selected as the Backup Successful Bidder, the Good Faith Deposit shall be returned to the Backup Successful Bidder within three (3) business days following the closing of a Sale to the Successful Bidder therefor. The DIP Agent shall not be required to make a Good Faith Deposit and, in connection with any Stalking Horse Bidder consented to by the DIP Lenders and the DIP Agent, the DIP Lenders and the DIP Agent will undertake to provide a mechanism for satisfaction of such Stalking Horse Bidder's Bid Protections.

⁴ In the event that the Debtor has entered into a Stalking Horse Agreement with respect to any Shelf Assets, any references herein to the “Form Purchase Agreement” shall be deemed to be replaced by the phrase “Stalking Horse Agreement” with respect to any Bid for such Shelf Assets.

- c) Contain a written statement that the Bidder agrees to be bound by the terms of the Bidding Procedures and the Bidding Procedures Order and include a commitment that the Bidder shall (i) commence and complete all filings with respect to necessary government and other approvals within four (4) days following the entry of the Proposed Sale Order (as defined below) with respect to the relevant Shelf Assets and (ii) consummate the purchase of the relevant Shelf Assets within forty-five (45) days following entry of the Proposed Sale Order.
- d) Identify, with particularity, each and every executory contract and unexpired lease it intends to assume; provided, however, that such list of contracts may be later modified to the extent permitted under the Qualified APA.
- e) Be accompanied by evidence satisfactory to the Debtor (in consultation with counsel to the DIP Lenders and the DIP Agent) that the Bidder is willing, authorized (including by such Bidder's board of directors or comparable governing body), capable and qualified financially, operationally, legally and otherwise, of unconditionally performing all obligations under the Qualified APA, including, without limitation, (1) all P&A Obligations in the event that such Bidder is not otherwise exempt (as demonstrated by satisfactory evidence to such effect) with respect to the relevant Shelf Assets and (2) the ability to provide adequate assurance of future performance under contracts and leases to be assumed pursuant to Section 365 of the Bankruptcy Code.
- f) Provide (i) that the Bidder agrees to serve as the Backup Successful Bid (as defined herein) if it is selected as the next highest and best bid for any particular Shelf Assets after the Successful Bid is determined in accordance with the Bidding Procedures and (ii) that the Bidder's Bid shall remain open and irrevocable until at least sixty (60) days after the entry of an order by the Court approving a definitive agreement providing for the Sale of those Shelf Assets.
- g) Fully disclose the identity of each entity that will be bidding in the Auction.
- h) Be submitted to (i) investment banker for the Debtor: Jefferies & Company, Inc., 300 Crescent Court, Suite 500, Dallas, Texas 75201, Attn: Stephen Straty (sstraty@jefferies.com) and (ii) counsel for the Debtor: Mayer Brown LLP, 700 Louisiana Street, Suite 3400, Houston, Texas 77002, Attn: Charles S. Kelley, (CKelley@mayerbrown.com) and Robert F. Gray (RGray@mayerbrown.com) so as to be received not later than the Bid Deadline, **February 19, 2013 at 12:00 p.m. (CST)**. Upon its

receipt of any Bid, the Debtor shall promptly forward all documents related thereto to counsel for the DIP Lenders and DIP Agent. The Debtor (in consultation with counsel to the DIP Lenders and the DIP Agent) may extend the Bid Deadline until the start of the Auction for one or more bidders without further notice, but shall not be obligated to do so.

- Credit Bidding. The DIP Agent shall be entitled to (i) credit bid all or a portion of the aggregate principal amount of the DIP Facility, together with accrued interest and any other claims with respect to the DIP Facility, in accordance with Section 363(k) of the Bankruptcy Code and (ii) reduce or reallocate the amount of the credit bid with respect to any particular Shelf Asset or group of Shelf Assets if the DIP Agent is not the Successful Bidder with respect to such assets.
- Credit Bids and Stalking Horse Bids as Qualified Bidders. Notwithstanding anything herein to the contrary, for purposes of these Bidding Procedures: (i) a Stalking Horse Bidder shall be deemed a Qualified Bidder and a Stalking Horse Agreement shall be deemed to be a Qualified Bid; and (ii) the DIP Agent, acting upon the instructions of the Required Lenders under the DIP Credit Agreement (the “**Required DIP Lenders**”), shall be deemed to be a Qualified Bidder with respect to any “credit bid” pursuant to Section 363(k) of the Bankruptcy Code, and any such credit bid shall be deemed a Qualified Bid.
- Notice of Qualified Bidders. A Bid that satisfies each of the Bid Requirements, as determined in the Debtor’s reasonable business judgment, shall constitute a “**Qualified Bid**,” and such Bidder shall be a “**Qualified Bidder**.” The Debtor shall notify each Qualified Bidder that such party is a Qualified Bidder within three (3) days after the Bid Deadline and will promptly thereafter publish the names of Qualified Bidders on the website maintained by the Debtor’s notice agent, Kurtzman Carson Consultants, Inc. (the “**KCC Website**”).
- Evaluation of Competing Bids. The Bidding Procedures set forth various factors that will be considered by the Debtor in evaluating each Qualified Bid. The Debtor (in consultation with counsel to the DIP Lenders and the DIP Agent) may evaluate competing bids in a manner that will maximize the aggregate value to the estate rather than maximize value from individual block(s) of Shelf Asset(s).
- No Qualified Bids. If the Debtor does not receive any Qualified Bids with respect to any or all of the Shelf Assets, (i) the Auction shall be cancelled and the Debtor shall report the same to the Court, (ii) if the Debtor has executed a Stalking Horse Agreement, the Debtor shall promptly proceed to seek entry of the appropriate orders approving the Stalking Horse Agreement and (iii) if the Debtor has not executed a Stalking Horse

Agreement, the Shelf Assets may be sold pursuant to one or more subsequent sales of certain of the Debtor's assets pursuant to the terms of the Second Amendment. Any party wishing to bid on the Shelf Assets at that point shall comply with the bidding procedures in effect for such sale.

- Selection of a Stalking Horse Bidder. The Debtor, with the consent (not to be unreasonably withheld) of the DIP Lenders and the DIP Agent, may select one or more Stalking Horse Bidder(s) at any time prior to the Bid Deadline by executing a Stalking Horse Agreement. If the Debtor so selects a Stalking Horse Bidder(s), it will file and distribute to all known Potential Bidders and Bidders a copy of the Stalking Horse Agreement(s) at least one (1) day prior to the Bid Deadline. Any Bids received at the Auction must contain a signed definitive asset purchase agreement, together with a copy marked to show changes from such Stalking Horse Agreement. If it does not so establish a Stalking Horse Bidder, the Debtor (in consultation with counsel to the DIP Lenders and the DIP Agent), will evaluate any Qualified Bids and will select the Qualified Bid or Bids that it determines constitutes the highest and best offer for the purchase of the Shelf Assets (the "**Baseline Bid**") on or before the commencement of the Auction.

The Notice Procedures

- Notice of Auction and Sale Hearing. After entry of the Bidding Procedures Order, the Debtor will cause the Notice of Auction and Sale Hearing, substantially in the form attached as Exhibit 2 to the Bidding Procedures Order (the "**Sale Notice**"), to be served by first-class mail, postage prepaid, facsimile, electronic transmission, hand delivery or overnight mail upon: (i) all entities contacted by Jefferies or known by the Debtor to have expressed an interest in a transaction with respect to the Shelf Assets during the past nine (9) months, including all Qualified Bidders; (ii) all state and local taxing authorities or recording offices which have a reasonably known interest in the relief requested; (iii) all insurers; (iv) all non-debtor parties to relevant contracts or leases (executory or otherwise); (v) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Shelf Assets; and (vi) upon all parties set forth in the Debtor's Master Service List maintained in accordance with this Court's Order Establishing Notice Procedures [Dkt. No. 132] (to the extent any party to receive notice thereby has not received notice pursuant to sections (i) through (v) above). In addition, the Debtor shall publish notice of the Motion, the Bidding Procedures Order and the Notice of Auction and Sale Hearing on the KCC Website.

- Publication Notice. In addition to serving the Notice of Auction and Sale Hearing described above, the Debtor will also publish an abbreviated version of the Sale Notice in (a) the Houston Chronicle, (b) the New Orleans Times-Picayune, (c) Platts, and (d) Oil & Gas Journal.
- Assumption and Assignment Notice. Prior to the Sale Hearing, the Debtor will serve the Assumption and Assignment Notice, substantially in the form attached as Exhibit 3 to the Bidding Procedures Order (the “**Assumption and Assignment Notice**”), by first class mail, postage prepaid, facsimile, electronic transmission, hand delivery or overnight mail on (a) each counterparty under each potential Assumed and Assigned Contract (as defined below) (a “**Contract Counterparty**”) and (b) its attorney, if known, in each case, at the last known address available to the Debtor. The Assumption and Assignment Notice shall set forth the following information: (i) the Contract(s) and/or Lease(s) that may be assumed by the Debtor and assigned to the Successful Bidder(s); (ii) the name and address of the Contract Counterparty thereto; (iii) notice of the proposed effective date of the assignment (subject to the right of the Debtor (in consultation with counsel to the DIP Lenders and the DIP Agent) and Purchaser to withdraw such request for assumption and assignment of the Assumed and Assigned Contract(s) prior to the Closing); (iv) the amount, if any, determined by the Debtor to be necessary to be paid to cure any existing default in accordance with Sections 365(b) and 365(f)(2) of the Bankruptcy Code (the “**Cure Amount**”); and (v) the deadlines by which any such Contract Counterparty must file an objection to the proposed assumption and assignment of any Assumed and Assigned Contract, provided, however, that the presence of any Contract or Lease on an Assumption and Assignment Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease. As soon as practicable after the conclusion of the Auction, the Debtor shall file with the Court and serve by facsimile, electronic transmission, hand delivery or overnight mail on the Contract Counterparty (and its attorney, if known) to each Assumed and Assigned Contract a notice: (a) identifying the Successful Bidder(s); (b) stating which Contract(s) and/or Lease(s) will be assumed and assigned thereto; and (c) containing a statement as to the Successful Bidder(s)’ ability to perform the Debtor’s obligations under the applicable Assumed and Assigned Contracts.

The Auction

- Auction. In the event that (i) a Stalking Horse Bidder is selected and the Debtor timely receives one or more additional Qualified Bids or (ii) a Stalking Horse Bidder is not selected and the Debtor timely receives more than one Qualified Bid, then the Debtor will conduct an auction with respect to the Sale of the Shelf Assets (the “**Auction**”), currently proposed to start on **February 26, 2013 at 9:00 a.m. (CST)** at the offices of Mayer Brown LLP, 700 Louisiana Street, Suite 3400, Houston, Texas 77002. In

order to participate in the Auction, each prospective purchaser must be a Qualified Bidder. Each Qualified Bidder must have at least one individual representative with authority to bind the Qualified Bidder attend the Auction in person. Only Qualified Bidders and their legal and financial advisors shall be entitled to attend and/or bid at the Auction; provided, however, that legal and financial representatives of the DIP Agent, the DIP Lenders, the Committees and the Ad Hoc Committee of Second Lien Notes may attend and be heard at the Auction. By attending the Auction, each party present at the Auction agrees to keep the Auction, the Bids at the Auction and all details concerning the Auction confidential. The Auction shall be conducted in the presence of a certified court reporter who shall transcribe the Auction.

If there is no Stalking Horse Bidder, bidding shall commence at the amount of the highest Qualifying Bid submitted by the Qualifying Bidders prior to the Auction. If there is a Stalking Horse Bidder, a Qualified Bidder wishing to submit a higher bid at the Auction must bid an amount equal to or greater than the total consideration contained in the Stalking Horse Bidder's Qualifying Bid plus the amount of the Breakup Fee plus the maximum amount of the Expense Reimbursement (the "**Minimum Overbid**").

Subject to the Minimum Overbid, Qualified Bidders shall submit successive bids in increments to be determined by the Debtor (in consultation with counsel to the DIP Lenders and the DIP Agent) at the Auction (the "**Incremental Bid Amount**") for the purchase of the Shelf Assets for which it is bidding on until there is only one offer that Debtor determines, subject to Bankruptcy Court approval, is the highest and/or best offer for such assets (a "**Successful Bid**" and such Bidder, the "**Successful Bidder**"). The second highest bid shall be deemed to be the backup bid (the "**Backup Successful Bid**" and such Bidder, the "**Backup Successful Bidder**"), provided, however, that the DIP Agent shall not be required to serve as the Backup Successful Bidder in connection with a credit bid. In the event that the DIP Agent makes a determination not to serve as the Backup Successful Bidder (whether before or after submitting any credit bid or other bid), the DIP Agent shall provide notice to the Debtor no later than two (2) business days after the Auction and such third highest bidder shall be deemed to be the Backup Successful Bidder.

When bidding at the Auction, a Stalking Horse Bidder, if any, shall receive a "credit" in the amount of any Breakup Fee and Expense Reimbursement set forth in such bidder's Stalking Horse Agreement.

All Bids made at the Auction shall remain open until the earlier of (i) if the Bidder submits a Successful Bid or is deemed to be the Backup Successful Bidder, sixty (60) days after the entry of an order by the Court approving a definitive agreement providing for the Sale of those Shelf

Assets to which it relates and (ii) if the Qualified Bidder is not selected as a Successful Bidder or the Backup Successful Bidder, four (4) days after the end of the Auction with respect to the relevant Shelf Assets it has bid on. The Debtor shall have the right with the consent (not to be unreasonably withheld) of the DIP Lenders and the DIP Agent to choose the order in which the Shelf Assets or groups of Shelf Assets are put up for Auction.

- Highest and/or Best Bid. At all times during the Proposed Sale Process, the Debtor (in consultation with counsel to the DIP Lenders and the DIP Agent) shall retain full discretion and right to determine which Bid or Bids constitutes the highest or otherwise best offer for the purchase of the Shelf Assets (whether in an aggregate sale to a single buyer or on a block by block basis (with respect to hydrocarbon reserves) or on an asset by asset basis with respect to any other Shelf Asset(s)), and which bid or bids should be selected as the Successful Bid(s), if any, all subject to final approval by the Court pursuant to the provisions of Section 363(b) of the Bankruptcy Code. The Debtor, with the consent (not to be unreasonably withheld) of the DIP Lenders and the DIP Agent, may adopt rules for the Auction that, in its judgment, will better promote the goals of the Auction and that are not inconsistent in any material respect with any of the other material provisions hereof or of any Court order.
- Proceeds. The liens of the DIP Lenders shall attach to the proceeds of the Sale of the Shelf Assets and the cash proceeds of the Sale (net of transaction costs) shall be applied first to permanently repay the DIP Obligations (as defined in the Final DIP Order [Dkt. No. 440]) pursuant to the terms of the DIP Credit Agreement. The liens of the DIP Lenders shall also attach to any amounts returned to the Debtor by the trustee as a result of the sale of any of the relevant Shelf Assets pursuant to that certain Decommissioning Trust Agreement approved by the Court on November 29, 2012 [Dkt. No. 941] and such amounts shall be applied to permanently repay the DIP Obligations pursuant to the terms of the DIP Credit Agreement.
- Reservation of Rights. The Debtor, with the consent (not to be unreasonably withheld) of the DIP Lenders and the DIP Agent, reserves the right to modify these Bidding Procedures at or prior to the Auction, including, without limitation, extending the deadlines set forth herein with respect to any or all Potential Bidders and Bidders, imposing additional terms and conditions with respect to any or all Potential Bidders and Bidders, adjourning or cancelling the Auction at or prior to the Auction and/or adjourning the Sale Hearing.

The Bid Protections

- Breakup Fee & Expense Reimbursement. If one or more Stalking Horse Bidders are chosen, upon the consummation of a Sale of the relevant Shelf Assets to any party other than the Stalking Horse Bidder with respect thereto, the Debtor shall be permitted to pay to such Stalking Horse Bidder from the proceeds of such sale in cash or other immediately available funds an amount up to (a) 3.0% of the total consideration (including both cash and assumption of any liabilities) set forth in the Stalking Horse Agreement as a Breakup Fee and (b) up to 1.5% of the total consideration (including both cash and assumption of any liabilities) set forth in the Stalking Horse Agreement less any Work Fee received, as an Expense Reimbursement for reasonable and documented actual out-of-pocket legal and financial advisory fees and expenses for outside professionals retained by such Stalking Horse Bidder.

The Sale Hearing

- Sale Hearing. The Debtor intends to present the Successful Bid(s) for approval by the Court pursuant to the provisions of Sections 105, 363(b), 363(f), 363(m), 363(n), and 365 of the Bankruptcy Code at the final hearing to approve the Motion (the "Sale Hearing") to be scheduled by the Court and currently proposed to be held on **February 28, 2013 at 1:30 p.m. (CST)**. The Debtor shall be deemed to have accepted a Bid only when the Bid has been approved by the Court at the Sale Hearing. Upon the failure to consummate a Sale of the Shelf Assets after the Sale Hearing because of the occurrence of a breach or default by the proposed purchaser under the terms of the Successful Bid, the Backup Successful Bid shall be deemed the Successful Bid without further order of the Court and the parties shall be authorized to consummate the transaction contemplated by the Backup Successful Bid.
- Sale Implementation. Following the approval of the Successful Bid(s) at the Sale Hearing, the Debtor will be authorized to take any and all actions necessary and appropriate to complete and implement the Sale(s) contemplated by the Successful Bid(s), including, without limitation, seeking entry of one or more orders approving such Sale(s).

RELIEF REQUESTED

A. Summary of Relief Requested

23. By this Motion, the Debtor requests the entry of two orders concerning sales of the Shelf Assets. First, to provide for the orderly sale of the Shelf Assets, the Debtor seeks the immediate entry of the Bidding Procedures Order approving the Bidding Procedures summarized

above. This relief requested by the Debtor is intended to provide for a competitive bidding and auction procedure for the Shelf Assets to maximize value for its estate, creditors and other stakeholders as expeditiously as possible, especially in light of the sale milestones approved by the Court in connection with the Second Amendment.

24. Following the entry of the Bidding Procedures Order, the Debtor will solicit Bids according to the Bidding Procedures in hopes of receiving acceptable offers for the Shelf Assets. In the event more than one Qualified Bid is received prior to the Bid Deadline, the Debtor will hold an Auction at which it (in consultation with counsel to the DIP Lenders and the DIP Agent) will choose the Successful Bidder(s) with the highest and best Bid(s) for the Shelf Assets. As the Shelf Assets may be sold in whole or in blocks, there may be more than one Successful Bidder for the Shelf Assets but only one Successful Bidder for any particular Shelf Asset.

25. Following the Bid Deadline and after the Auction, if any, the Debtor will request the entry of an order substantially in the form of **Exhibit C** hereto (the “**Proposed Sale Order**”) (a) approving the Sale or Sales of the Shelf Assets free and clear of (i) all Liens (as defined in the Purchase Agreement) relating to, accruing, or arising any time prior to the Closing Date, including, without limitation, any such Liens (x) that purport to give to any party a right of setoff or recoupment against, or a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, purchase, or repurchase right or option, or termination of, the Debtor or the Purchaser’s interests in the Purchased Assets (as such terms are defined in the Proposed Sale Order), or any similar rights, or (y) in respect of taxes, restrictions, rights of first refusal, charges of interests of any kind or nature, if any, including, without limitation, any restriction of use, voting, transfer, receipt of income, or other exercise of any attributes of ownership) (with such Liens attaching to the proceeds of the sale or sales) and (ii) all debts

arising under, relating to, or in connection with any act of the Debtor or claims (as that term is defined in Section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of this case, and whether imposed by agreement, understanding, law, equity or otherwise relating to, accruing or arising any time prior to the Closing Date (collectively in this clause (ii), the “**Claims**” and together with the Liens, the “**Claims and Interests**”), with the exception of any Permitted Encumbrances and Assumed Obligations, each as defined in the Purchase Agreement, to the Successful Bidder(s) and (b) authorizing the Debtor to assume and assign the Contracts and Leases to be assumed and assigned to the Successful Bidder(s) (the “**Assumed and Assigned Contracts**”).

B. The Bidding Procedures Order

26. The Debtor desires to receive the greatest value possible for the Shelf Assets. The Bidding Procedures were developed so as to be consistent with the Debtor’s need to expedite the sale process but with the object of promoting active bidding that will result in the highest and best offer (or offers) possible. In addition, these procedures reflect the Debtor’s objective of conducting an Auction in a controlled, but fair and open, manner that promotes interest in the Shelf Assets by financially and operationally capable, motivated bidders who are likely to close a transaction, while simultaneously discouraging offers from persons the Debtor does not believe are sufficiently capable or likely to actually consummate a transaction.

27. In order to facilitate the expedited completion of due diligence and the submission of Qualified Bids, the Debtor seeks authority to pay a Work Fee in an amount not to exceed \$50,000 to each of one or more Potential Bidders that have submitted acceptable Initial Indications if the Debtor determines, in its business judgment, that a Work Fee is reasonably necessary in order to induce such Potential Bidder(s) to complete the diligence and

documentation necessary to submit a Qualified Bid. The payment of a Work Fee will only be considered for those Potential Bidders who have submitted Initial Indications.

28. In the event Qualified Bids are received, the Debtor requests that the Auction of the Shelf Assets be held on **February 26, 2013 at 9:00 a.m. (CST)** at the offices of Mayer Brown LLP, 700 Louisiana Street, Suite 3400, Houston, Texas 77002, or such other location determined by the Debtor, at which Auction the Debtor (in consultation with counsel to the DIP Lenders and the DIP Agent) may select the Successful Bid for any particular Shelf Asset in accordance with the Bidding Procedures. **ALL SALE(S) SHALL BE SUBJECT TO THE APPROVAL OF THE BANKRUPTCY COURT.**

29. On or prior to three (3) days after the Bid Deadline, the Debtor will post the list of Qualified Bidders on the KCC Website.

30. The Stalking Horse Bidder(s) (if any), parties who submit Qualified Bids prior to the Bid Deadline, representatives of the Committees, representatives of the Ad Hoc Committee of Second Lien Notes, representatives of the DIP Lenders and DIP Agent, the Debtor and the professionals of the foregoing shall be entitled to attend and be heard at the Auction. Each Qualified Bidder must have at least one individual representative with authority to bind the Qualified Bidder attend the Auction in person. By attending the Auction, each party present at the Auction agrees to keep the Auction, the Bids at the Auction and all details concerning the Auction confidential. The Auction will be conducted in accordance with the Bidding Procedures.

31. In the event that the Debtor has conducted an Auction or otherwise selected a Successful Bid in connection with the Bidding Procedures described above, the Debtor requests that the Sale Hearing be conducted by the Bankruptcy Court on **February 28, 2013 at 1:30 p.m. (CST)** or at such other time as the Bankruptcy Court permits.

32. Subject to Court approval following the Auction, the Successful Bidder(s) shall purchase the Shelf Assets, free and clear of all Claims and Interests, pursuant to the Motion and the corresponding order of the Court approving the Motion (those persons having so purchased some or all of the Shelf Assets, the “**Purchaser(s)**”).

33. If a Bidder is the Successful Bidder with respect to any of the Shelf Assets at the end of the Auction, the Debtor shall post on the KCC Website the list of the relevant Successful Bidder(s).

34. Any sale of the Shelf Assets shall be without representation or warranties of any kind, nature or description by the Debtor, its agents or its estate, except as expressly provided in the purchase agreement between the Debtor and the Purchaser. All of the Shelf Assets shall be transferred “as is,” “where is” and “with all faults.” **THE DEBTOR EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND MAKE NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE NATURE, QUALITY, VALUE OR CONDITION OF ANY ASSET.**

35. Following the Sale Hearing, if any such Successful Bidder fails to consummate an approved Sale because of a breach or failure to perform on the part of such Successful Bidder, the Shelf Assets shall be sold to the Backup Successful Bidder. In such case, the Successful Bidder’s Good Faith Deposit shall be forfeited to the Debtor in the manner provided in the applicable asset purchase agreement, and the Debtor specifically reserves the right to seek all available damages from the defaulting Successful Bidder or Backup Successful Bidder (if such party shall also breach or fail to perform), as applicable. In the event that the Backup Successful Bidder fails to consummate an approved sale, the Shelf Assets may be sold pursuant to one or more subsequent sales of certain of the Debtor’s assets pursuant to the terms of the Second

Amendment. Any party wishing to bid on the Shelf Assets at that point shall comply with the bidding procedures in effect for such sale.

C. Bid Protections

36. Should a Stalking Horse Bidder be chosen, in recognition of the anticipated expenditure of time, energy, and resources and the benefit to the Debtor's estate of being the Stalking Horse Bidder, the Debtor is requesting the authority to provide to the Stalking Horse Bidder the following: (a) 3.0% of the total consideration (including both cash and assumption of any liabilities) set forth in the Stalking Horse Agreement as a breakup fee (the "**Breakup Fee**") and (b) up to 1.5% of the total consideration set forth in the Stalking Horse Agreement (including both cash and assumption of any liabilities), less any Work Fee monies received, as an Expense Reimbursement for reasonable and documented actual out-of-pocket legal and financial advisory fees and expenses for outside professionals retained by the Stalking Horse Bidder (the "**Expense Reimbursement**") and together with the Breakup Fee, the "**Bid Protections**").

37. The Bid Protections will be a material inducement for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse Agreement. The Debtor believes that the Bid Protections are fair and reasonable in view of, among other things, (a) the intensive analysis, due diligence investigation and negotiations the Stalking Horse Bidder will have undertaken in connection with the Sale and (b) the fact that the efforts of the Stalking Horse Bidder will have increased the chances that the Debtor will receive the highest and best offer for the Shelf Assets by establishing a minimum bid for other bidders, attracting other bidders to the Auction and serving as a catalyst for other potential or actual bidders, all for the benefit of the Debtor, its estate, its creditors and all other parties in interest. The Debtor thus requests that the Court approve and authorize payment of the Bid Protections by entry of the Bidding Procedures Order.

D. Assumption and Assignment of Leases and Contracts

38. In addition, to facilitate the sale, assumption, and assignment of the Leases and Contracts, the Debtor proposes to serve the Assumption and Assignment Notice as soon as practicable after the entry of the Bidding Procedures Order and requests that the Court approve the following procedures for fixing any cure amounts owed on the Leases and Contracts (the “**Assumption and Assignment Procedures**”).

39. All objections to the assumption and assignment of any Lease or Contract, including without limitation any objection to the Debtor’s proposed Cure Amount or the provision of adequate assurance of future performance under any Lease or Contract pursuant to Section 365 of the Bankruptcy Code (“**Adequate Assurance**”), must: (a) comply with the General Objection Procedures (as defined below); (b) identify the Lease or Contract to which the objector is party; (c) describe with particularity any cure the claimant contends is required under Section 365 of the Bankruptcy Code (the “**Cure Claim**”) and identify the basis(es) of the alleged Cure Claim under the Contract or Lease; (d) attach all documents supporting or evidencing the Cure Claim; and (e) if the response contains an objection to Adequate Assurance, state with specificity what the objecting party believes is required to provide Adequate Assurance (collectively with the General Objection Procedures, the “**Assigned Contract Objection Procedures**”).

40. If no objection is timely and properly filed and served in accordance with the Assigned Contract Objection Procedures, (a) the Cure Amount set forth in the Assumption and Assignment Notice shall be controlling notwithstanding anything to the contrary in any Contract or Lease or other document and the non-debtor party to the Contract or Lease shall be forever barred from asserting any other claim arising prior to the assignment against the Debtor or Purchaser as to such Contract or Lease if it is an Assumed and Assigned Contract and (b) the

Purchaser's promise to perform under the Contract or Lease shall be deemed Adequate Assurance under the Contract or Lease. To the extent the Debtor disputes any Cure Claim, such dispute shall be presented to the Court at the Sale Hearing, or such earlier or later date and time as the Debtor and the objector may agree or the Court may order, but such dispute shall not affect in any way the effectiveness of any assumption and assignment of a Contract or Lease. All Cure Amounts shall be paid by the Purchaser.

41. While the Debtor has made a good faith effort to identify all Contracts and Leases to be assumed and assigned in connection with the Sale, it may discover additional Contracts and/or Leases that the Debtor and the Purchaser desire to assume and assign in connection therewith. Accordingly, if at any time after the entry of the Bidding Procedures Order the Debtor identifies additional prepetition executory Contracts and/or Leases to be assumed and assigned to the Purchaser as Assumed and Assigned Contracts (whether before or after closing of any Sale(s) of relevant Shelf Assets), the Debtor shall serve a supplemental Assumption and Assignment Notice by facsimile, electronic transmission, hand delivery or overnight mail on the Contract Counterparty (and its attorney, if known) to each supplemental Assumed and Assigned Contract at the last known address available to the Debtor by no later than ten (10) days before the proposed effective date of the assignment. Each supplemental Assumption and Assignment Notice shall set forth the following information: (i) the name and address of the Contract Counterparty, (ii) notice of the proposed effective date of the assignment (subject to the right of the Debtor (in consultation with counsel to the DIP Lenders and DIP Agent) and Purchaser to withdraw such request for assumption and assignment of the Assumed and Assigned Contract prior to the Closing), (iii) identification of the Assumed and Assigned Contract, and (iv) the Cure Amount, if any.

42. Unless the Contract Counterparty or any other entity properly files an objection to the supplemental Assumption and Assignment Notice in accordance with the General Objection Procedures (as defined below) within ten (10) days of the date of the Assumption and Assignment Notice, the Debtor may assume and assign the Assumed and Assigned Contract, subject to the occurrence of the Closing, without further order or notice of hearing. If an objection is filed and served in accordance with the General Objection Procedures within ten (10) days of the date of the supplemental Assumption and Assignment Notice, and the objection cannot be resolved consensually, then the Debtor will schedule a hearing to consider the objection on the next scheduled omnibus hearing date.

E. Notice

43. The Debtor proposes to give notice, immediately after the entry of the Bidding Procedures Order, of the Bidding Procedures, the Form Purchase Agreement or the Stalking Horse Agreement, as applicable,⁵ the Assumption and Assignment Notice, the time and place of the Auction, the Sale Hearing, and the Objection Deadline. The Debtor further proposes to give notice of the Sale Hearing and the Objection Deadline by sending the Sale Notice to: (i) all entities contacted by Jefferies or known by the Debtor to have expressed an interest in a transaction with respect to the Shelf Assets during the past nine (9) months, including all Qualified Bidders; (ii) all state and local taxing authorities or recording offices which have a reasonably known interest in the relief requested; (iii) all insurers; (iv) all non-debtor parties to relevant contracts or leases (executory or otherwise); (v) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Shelf Assets; and (vi) upon all parties set forth in the Debtor's Master Service List

⁵ If the Debtor does select a Stalking Horse Bidder, it will distribute to all known potential bidders a copy of the Stalking Horse Agreement at least one (1) day prior to the Bid Deadline.

maintained in accordance with this Court's Order Establishing Notice Procedures [Dkt. No. 132] (to the extent any party to receive notice thereby has not received notice pursuant to sections (i) through (v) above). In addition, the Debtor shall post the information contained in this section on the KCC Website.

F. Objections

44. All objections to the Sale of the Shelf Assets, the assumption and assignment of the Assumed and Assigned Contracts, or any relief requested in the Motion other than the relief granted by this Court in the Bidding Procedures Order must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules and the Local Rules; (d) filed with the Clerk of the Bankruptcy Court, 515 Rusk Avenue, Houston, Texas 77002 by no later than **4:00 p.m. (CST) on February 26, 2013** (the "**General Objection Deadline**"), or other applicable deadline as indicated in this Motion; and (e) served in accordance with the Local Rules so as to be received on or before the relevant objection deadline by the following (collectively, the "**Objection Notice Parties**"): on (i) counsel for the Debtor: Mayer Brown LLP, 700 Louisiana Street, Suite 3400, Houston, Texas 77002, Attn: Charles S. Kelley, (CKelley@mayerbrown.com); (ii) investment banker for the Debtor: Jefferies & Company, Inc., 300 Crescent Court, Suite 500, Dallas, Texas 75201, Attn: Stephen Straty (sstraty@jefferies.com); (iii) counsel for the DIP Agent: Cravath, Swaine & Moore LLP, Worldwide Plaza, 825 Eighth Avenue, New York, New York 10019, Attn: Paul H. Zumbro (pzumbro@cravath.com); (iv) counsel to certain DIP Lenders: Bingham McCutchen LLP, 339 Park Avenue, New York, New York 10022, Attn: Ronald J. Silverman (ronald.silverman@bingham.com) and Winstead PC, 500 Winstead Building, 2728 N. Harwood Street, Dallas, Texas 75201, Attn: Phillip Lamberson, (plamberson@winstead.com); (v) counsel to the Creditors' Committee: Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan

Plaza, New York, New York 10005, Attn: Evan R. Fleck (efleck@milbank.com); (vi) counsel to the Equity Committee: Diamond McCarthy LLP, 909 Fannin Street, Suite 1500, Houston, Texas 77010, Attn: Kyung S. Lee (klee@diamondmccarthy.com); (vii) counsel to the Ad Hoc Committee of Second Lien Notes: Wachtell, Lipton, Rosen & Katz LLP, 51 West 52nd Street, New York, New York 10019, Attn: Scott K. Charles (skcharles@wlrk.com); and (viii) Office of the United States Trustee for the Southern District of Texas: 515 Rusk Avenue, Suite 3516, Houston, Texas 77002, Attn: Nancy Lynne Holley (Nancy.Holley@usdoj.gov) (these procedures are collectively referred to as the “**General Objection Procedures**”). Each objection shall state the legal and factual basis of such objection and may be orally supplemented at the relevant hearing.

BASIS FOR RELIEF

A. The Bidding Procedures Are Appropriate Under The Circumstances

45. A debtor may sell, after notice and a hearing, its assets outside the ordinary course of business. 11 U.S.C. § 363. Generally, to obtain approval of a proposed sale of assets, a debtor must demonstrate that the “proffered purchase price is the highest and best offer” under the circumstances of the case. *See e.g., Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (holding that in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand); *In re Integrated Res.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (“It is a well-established principle of bankruptcy law that the . . . Debtors’ duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (quoting *Cello Bay Co. v. Champion Int’l Corn. (In re Atlanta Packaging Prods., Inc.)*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988)).

46. The implementation of competitive bidding procedures to facilitate the sale of a debtor's assets outside of the ordinary course of a debtor's business is routinely approved by bankruptcy courts as a means of ensuring that such sale will generate the highest and best return for a debtor's estate. The Debtor submits that the foregoing bidding procedures and the opportunity for competitive bidding embodied therein are reasonable and designed to maximize the value of the Shelf Assets and should, therefore, be approved by this Court.

47. Given the Debtor's current liquidity constraints and its obligations under the Second Amendment, the Debtor believes that a prompt sale process is the best way to maximize the value of the Shelf Assets for the benefit of the Debtor's estate, creditors and other stakeholders. The Debtor's business operations likely cannot sustain an extended postpetition sale period due to its limited cash resources and the absence of any investors willing to provide the Debtor with additional funds. The Debtor believes that the value of the Shelf Assets and, therefore, the consummation of the Sale or any alternative transaction, will be seriously jeopardized unless it can begin the sale process contemplated herein as expeditiously as possible.

48. Accordingly, in the exercise of its reasonable business judgment, the Debtor has concluded that: (a) a prompt sale of the Shelf Assets is the best way to maximize value for its estate, and (b) the proposed Bidding Procedures described herein are the most effective method of obtaining the highest and best offer for the Shelf Assets.

B. The Bid Protections Should Be Approved⁶

49. The Debtor has formulated a bidding process that it believes will induce prospective competing bidders to expend the time, energy and resources necessary to submit a Qualified Bid, and which the Debtor believes is fair and reasonable in view of the assets to be

⁶ The Bid Protections will only be utilized should the Debtor select one or more Stalking Horse Bidders in accordance with the Bidding Procedures.

sold. The Proposed Sale Process and, in particular, the proposed Bid Protections, are reasonable and supported by applicable case law.

50. The use of Bid Protections such as these has become an established practice in Chapter 11 asset sales involving the sale of significant assets because such bid protections enable a debtor to ensure a sale to a contractually committed bidder at a price the debtor believes is fair, while providing the debtor with the potential of obtaining an enhanced recovery through an auction process. Historically, bankruptcy courts have approved bidding incentives similar to the Bid Protections solely by reference to the “business judgment rule,” which proscribes judicial second-guessing of the actions of a debtor taken in good faith and in the exercise of honest judgment. *See, e.g., In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1992) (holding that bidding incentives may “be legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking”) (citation omitted); *In re Marrose Corp.*, Nos. 89 B 12171-12179 (CB), 1992 WL 33848 at *5 (Bankr. S.D.N.Y. 1992) (“[bidding incentives] are meant to compensate the potential acquirer who serves as a catalyst or ‘stalking horse’ which attracts more favorable offers”). *See also In re Integrated Resources*, 147 B.R. 650, 657-58 (S.D.N.Y. 1992).

51. The Bid Protections are undoubtedly consistent with the “business judgment rule”. The Stalking Horse Bidder likely will not have entered into a Stalking Horse Agreement without this bargained for protection. At the inception of the marketing process, the Debtor provided potential purchasers with a Form Purchase Agreement and they will be afforded an opportunity to submit an asset purchase agreement marked to show changes necessary to consummate a sale which must be acceptable to the Debtor. The proposed Bid Protections are reasonable and consistent with the range of bidding protection typically approved by bankruptcy

courts in this district. *See, e.g., In re Deep Marine Holdings*, Case No. 09-39313 (Bankr. S.D. Tex. April 12, 2010) (Isgur, J.) (approving break up fee of 3% of the proposed purchase price and additional expense reimbursement of \$150,000).

52. Further, the Bid Protections will encourage competitive bidding should a Stalking Horse Bidder be selected. The Bid Protections will “induc[e] a bid that otherwise would not have been made and without which bidding would [be] limited.” Similarly, in the event a Stalking Horse Bidder is selected, a Stalking Horse Bidder’s offer will serve as a minimum or floor bid upon which other bidders will rely, thereby “increasing the likelihood that the price at which the debtor is sold will reflect its true worth.” Finally, the existence of the Bid Protections will permit the Debtor to insist that competing bids for the Debtor’s assets be materially higher or otherwise better than that offered by a Stalking Horse Bidder, a clear benefit to its creditors.

53. Therefore, because the procedures and incentives included in the Sale, including the proposed Breakup Fee and Expense Reimbursement, are fair and reasonable, are reasonably calculated to produce the best and highest offers for the Shelf Assets and thereby confer actual benefits upon the estate herein, and are within the range of incentives customarily approved by courts, such procedures should be approved in this Chapter 11 case.

54. Along the same lines, the Debtor, in the exercise of its business judgment and in consultation with its professionals, believes that the proposed Work Fee will facilitate the Proposed Sale Process and will “provide an incentive for bidders to pursue the diligence and expend the resources necessary to bid” on the Shelf Assets. *See In re Asarco, LLC*, 441 B.R. 813, 820-831 (S.D. Tex. 2010) (affirming approval of a work fee to qualified bidders where the asset in question was unique and required the expenditure of specialized resources because “the Debtor sought to reduce some of the burden of making a bid by providing for limited

reimbursement of documented expenses,” which benefited the debtor’s estate and “could attract additional bidders that otherwise would be deterred by the uniqueness of the asset.”). Indeed, due to the highly specialized nature of the Shelf Assets, the Debtor submits that a limited expense reimbursement would entice potential bidders to undertake the diligence necessary to prepare a bid.

55. Accordingly, as the Fifth Circuit recognized with respect to the work fee in *Asarco*, the Work Fee proposed hereunder is well within the Debtor’s sound business judgment, especially where (as here) a limited expense reimbursement to certain prospective bidders would “increase competition by providing an incentive to potential bidders to undertake the costly, but necessary due diligence” to participate in an auction and increase the potential for a successful sale of a highly specialized asset. *Asarco LLC v. Elliot Management (In re Asarco LLC)*, 650 F.3d 593, 602-03 (5th Cir. 2011).

C. Sale Of The Shelf Assets Is A Product Of The Debtor’s Reasonable Business Judgment

56. Section 363(b)(1) of the Bankruptcy Code provides: “[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.” Section 105(a) of the Bankruptcy Code provides in relevant part: “The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

57. Virtually all courts have held that approval of a proposed sale of substantially all of the assets of a debtor under Section 363 of the Bankruptcy Code outside the ordinary course of business and prior to the confirmation of a plan of reorganization is appropriate if a court finds that the transaction represents a reasonable business judgment on the part of the trustee or debtor-in-possession. See *In re Abbotts Dairies of Pa.*, 788 F.2d 143 (3d Cir. 1986); *In re*

Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991) (holding that the following non-exclusive list of factors may be considered by a court in determining whether there is a sound business purpose for an asset sale: “the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the effect of the proposed disposition of [sic] the future plan of reorganization; the amount of proceeds to be obtained from the sale versus appraised values of the property; and whether the asset is decreasing or increasing in value.”); *In re Stroud Ford, Inc.*, 164 B.R. 730, 732 (Bankr. M.D. Pa 1993); *Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Industrial Valley Refrigeration & Air Conditioning Supplies Inc.*, 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 391 (6th Cir. 1986); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that the elements necessary for approval of a Section 363 sale in a chapter 11 case are “that the proposed sale is fair and equitable, that there is a good business reason for completing the sale and the transaction is in good faith”).

58. The “sound business reason” test requires a trustee or debtor-in-possession to establish four elements: (1) that a sound business purpose justifies the sale of assets outside the ordinary course of business; (2) that accurate and reasonable notice has been provided to interested persons; (3) that the trustee has obtained a fair and reasonable price; and (4) good faith. *In re Titusville Country Club*, 128 B.R. at 399; *In re Sovereign Estates, Ltd.*, 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989); *Phoenix Steel Corp.*, 82 B.R. at 335-36; *see also Stephens Indus.*, 789 F.2d at 390; *In re Lionel Corp.*, 722 F.2d at 1071.

59. Additionally, prior to and after enactment of the Bankruptcy Code, courts have permitted a proposed sale of all or substantially all assets of a debtor outside the ordinary course of business if such a sale is necessary to preserve the value of assets for the estate, its creditors or interest holders. *See In re Abbotts Dairies of Pa., Inc.*, 788 F.2d at 143; *In re Lionel Corp.*, 722 F.2d at 1063 (passim); *In re Equity Funding Corp. of America*, 492 F.2d 793, 794 (9th Cir. 1974) (“Other circuits have recognized the power of the bankruptcy court under Chapter X to authorize a sale of the Debtors’ property under less than emergency conditions where such sale is necessary to avoid deterioration in the value of the assets”).

60. The proposed procedures for sales of the Debtor’s assets meet the “sound business reason” test. First, sound business purposes justify the sales. The Debtor believes that a prompt sale of the Shelf Assets by auction presents the best opportunity to realize the maximum value of the estate’s assets for distribution to creditors and is required under the terms of the Second Amendment. The Debtor further believes that the net benefit to its creditors may be adversely affected absent an immediate sale, as a result of the Debtor’s inability to continue to fund operating losses. Furthermore, the Debtor continues to incur costs that, if a sale is not consummated promptly, likely will erode the proceeds that can be realized for creditors from a sale of the Shelf Assets, including such costs as maintenance, utility charges, [employee wages, salary, benefits], and overhead expenses. *See In re Lionel Corp.*, 722 F.2d at 1071 (of factors for court to evaluate on motion under Section 363(b), “most important perhaps, [is] whether the asset is increasing or decreasing in value”). Indeed, the Shelf Assets include mineral reserves that are subject to continued extraction and are, by their very nature, depleting assets whose prompt sale is entirely justified under the circumstances.

61. The proposed procedures for Sale(s) of the Shelf Assets also meet the other factors of the “sound business reason” test. As part of this Motion, the Debtor has sought to establish procedures for notice to creditors, other prospective bidders, and other parties in interest. Under the circumstances of this case, the Debtor submits that the notice period proposed satisfies the requirements of the Bankruptcy Rules, including Bankruptcy Rule 2002, and provides sufficient time for parties in interest to submit objections to the proposed sale and for bidders to formulate and submit competing proposals.

62. Finally, the Debtor submits that the results of the Auction will be the product of good faith, arm’s length negotiations with respect to the price and other terms of the sales of the Shelf Assets between the Debtor and highest and best bidder at the conclusion of the Auction.

63. As set forth above, the Debtor has determined, in the exercise of its sound business judgment, that the sale of the Shelf Assets to the highest and best bidder at the Auction is appropriate and in the best interests of their estate and creditors. The sale of the Shelf Assets at the Auction will afford the Debtor’s estate an opportunity to maximize the recoveries to creditors. Accordingly, the Debtor requests that the Court approve the proposed procedures for sales of the Shelf Assets to the highest or otherwise best bidder at the Auction and approve the sale presented to the Court at the Sale Hearing.

D. A Stalking Horse Bidder or Successful Bidder Should be Granted the Protection of Bankruptcy Code Section 363(m)

64. As will be set forth in further detail at the Sale Hearing, the Debtor also maintains that a Stalking Horse Bidder or Successful Bidder is and will be entitled to the protections afforded by Bankruptcy Code Section 363(m).

65. Specifically, Bankruptcy Code Section 363(m) provides that:

[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not

affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

66. While the Bankruptcy Code does not define “good faith,” “[t]he requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (citations omitted); *see generally Marin v. Coated Sales, Inc.*, (*In re Coated Sales, Inc.*), Case No. 89-3704 (KMW), 1990 WL 212899 (S.D.N.Y. Dec. 13, 1990) (holding that party, to show lack of good faith, must demonstrate “fraud, collusion, or an attempt to take grossly unfair advantage of other bidders”); *see also In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (quoting *In re Bel Air Assocs., Ltd.*, 706 F.2d 301, 305 (10th Cir. 1983)); *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (examining facts of each case, concentrating on “integrity of [an actor’s] conduct during the sale proceedings” (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978))).

67. As the Debtor will demonstrate at the Sale Hearing, should a Stalking Horse Bidder be selected, the Debtor shall have spent a considerable amount of time and resources negotiating the Stalking Horse Agreement at arm’s length, with give and take on both sides. Similarly, as the Debtor will demonstrate at the Sale Hearing, any Successful Bidder shall have also negotiated and dealt with the Debtor at arm’s length. Under these circumstances, this Court should find in the order approving the sale of the Shelf Assets that such Stalking Horse Bidder or

Successful Bidder, as applicable, is entitled to all of the protections of Bankruptcy Code Section 363(m).

E. A Stalking Horse Agreement or Asset Purchase Agreement of a Successful Bidder is Not the Subject of Collusive Bidding Under Bankruptcy Code Section 363(n)

68. As set forth above, the Debtor may select a Stalking Horse Bidder or Successful Bidder at arm's length and in good faith regarding the sale of the Assets. Moreover, the Debtor does not believe that any such sale will be the result of collusion or other bad faith between bidders or that the sale price under a Stalking Horse Agreement or asset purchase agreement of a Successful Bidder has been or will be controlled by an agreement between potential or actual bidders within the meaning of Bankruptcy Code Section 363(n).

69. As the Debtor will demonstrate at the Sale Hearing, a Stalking Horse Agreement or asset purchase agreement of a Successful Bidder will be negotiated, proposed, and entered into by the Debtor and such Stalking Horse Bidder or Successful Bidder, as applicable, without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtor nor a Stalking Horse Bidder or Successful Bidder will have engaged in any conduct that would cause or permit a Stalking Horse Agreement or asset purchase agreement of a Successful Bidder, as applicable, to be avoided under Bankruptcy Code Section 363(n).

F. Sale Of The Shelf Assets Does Not Require the Appointment of a Consumer Privacy Ombudsman

70. Under Section 363(b)(1) of the Bankruptcy Code, if the sale of a consumer customer list containing personal information relating to individual persons is inconsistent with the Debtor's consumer privacy policy, Section 332 governs the appointment of a consumer privacy ombudsman. 11 U.S.C. § 363(b)(1). Here, none of the Debtor's customers that are subject to the sale of the Shelf Assets are individuals, and the Debtor does not have a consumer

privacy policy, so Section 363(b)(1) does not apply, and a consumer privacy ombudsman is not required.

G. Sale Of The Shelf Assets Should Be Free And Clear Of Claims and Interests

71. Pursuant to Section 363(f) of the Bankruptcy Code, the Debtor seeks authority to sell and transfer the Shelf Assets to all Purchasers free and clear of all Claims and Interests, with such Claims and Interests to attach to the proceeds of the sale of the Shelf Assets, subject to any rights and defenses of the Debtor and other parties in interest with respect thereto. Section 363(f) of the Bankruptcy Code provides, in pertinent part:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if –

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). *See also In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988) (holding that Section 363(f) written in disjunctive; court may approve sale “free and clear” provided at least one of the requirements is met).

72. A sale free and clear of all Claims and Interests is necessary to maximize the value of the Shelf Assets. A sale subject to Claims and Interests would result in a lower purchase price and be of substantially less benefit to the Debtor’s estate. A sale free and clear of Liens is particularly appropriate under the circumstances because any Lien in, to or against the Shelf

Assets that exists immediately prior to the closing of any sales will attach to the sale proceeds with the same validity, priority, force and effect as it had at such time, subject to the rights and defenses of the Debtor or any party in interest. The Debtor submits that holders of Liens will be adequately protected by the availability of the proceeds of the Sale to satisfy their Liens. Thus, the proposed sales satisfy Sections 363(f) of the Bankruptcy Code. Moreover, any holder of a Claim or Interest that receives notice of the sales and which fails to object to the sales of the Shelf Assets free and clear of Claims and Interests should be deemed to consent to the sales, thereby complying with Section 363(f)(2) of the Bankruptcy Code.

H. Notice Of The Proposed Sale Is Reasonable Under The Circumstances

73. In order to receive the highest and best price in return for the Shelf Assets under the circumstances, the Debtor has filed this Motion seeking to conduct the Auction and hold the Sale Hearing on an accelerated track. The Debtor continues to incur costs associated with preserving the value of the Shelf Assets. In order to yield the greatest possible return for the benefit of creditors and to cut off potential administrative expenses, the Debtor believes that an expedited auction and sale process is warranted and necessary in light of the terms of the Second Amendment.

74. Accordingly, the Debtor submits that the notice to be provided is reasonable and appropriate and will be adequate to ensure that all interested parties have the opportunity to bid for the Shelf Assets, and/or to object to the proposed Sale of the Shelf Assets.

I. The Assumption And Assignment Of Executory Contracts And Unexpired Leases Should Be Authorized

75. Under Bankruptcy Code Section 365(a), a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. §

365(a). Bankruptcy Code Section 365(b)(1), in turn, codifies the requirements for assuming an executory contract of a debtor. This subsection provides:

(b) (1) If there has been a default in an executor contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1). Section 365(f)(2) of the Bankruptcy Code provides, in pertinent part, that:

The trustee may assign an executory contract or unexpired lease of the debtor only if --

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

76. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *EBG Midtown S. Corp. v. McLaren/Hart Envtl. Eng’g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 593 (S.D.N.Y. 1992).

77. Among other things, adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property

assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding adequate assurance of future performance present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

78. To the extent any defaults exist under any Assumed and Assigned Contracts, any such default will be promptly cured or adequate assurance that such default will be cured will be provided prior to the assumption and assignment as set forth in this Motion. If necessary, the Debtor will submit facts prior to or at the Sale Hearing to show the financial capability of the Purchaser and willingness and ability to perform under the Assumed and Assigned Contracts. The Sale Hearing will therefore provide the Court and other interested parties the opportunity to evaluate and, if necessary, challenge the ability of the Purchaser to provide adequate assurance of future performance under the Assumed and Assigned Contracts, as required under Section 365(b)(1)(C) of the Bankruptcy Code.

79. In addition, the Debtor submits that it is an exercise of its sound business judgment to assume and assign the Assumed and Assigned Contracts to the Purchaser in connection with the consummation of the Sale, and the assumption, assignment, and sale of Assumed and Assigned Contracts is in the best interests of the Debtor, its estate, its creditors, and all parties in interest. The Assumed and Assigned Contracts being assigned to the Purchaser are an integral part of the Assets being purchased by Purchaser, and accordingly, such assumption, assignment, and sale of Assumed and Assigned Contracts are reasonable and enhance the value of the Debtor's estate. The Court should therefore authorize the Debtor to assume and assign the Assumed and Assigned Contracts as set forth herein.

J. Waiver of Automatic Fourteen-Day Stay Under Bankruptcy Rules 6004(h) and 6006(d)

80. Pursuant to Bankruptcy Rule 6004(h), unless the Court orders otherwise, all orders authorizing the sale of property pursuant to Section 363 of the Bankruptcy Code are automatically stayed for fourteen days after entry of the order. Similarly, under Bankruptcy Rule 6006(d), unless the Court orders otherwise, all orders authorizing the assignment of contracts or unexpired leases are automatically stayed for fourteen days after entry of the order. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h); Advisory Committee Notes to Fed. R. Bankr. P. 6006(d).

81. Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay period, commentators agree that the 14-day stay period should be eliminated to allow a sale or other transaction to close immediately where there has been no objection to the procedure. *See generally* 10 *Collier on Bankruptcy* ¶ 6004.09 (15th ed. 1999). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time necessary to file such appeal. *Id.*

82. Because of the potentially diminishing value of the Shelf Assets and consistent with prior orders, the Debtor must close this sale promptly after all closing conditions have been met or waived. Thus, waiver of any applicable stays is appropriate in this circumstance.

NOTICE

83. Notice of this Motion has been given in accordance with this Court’s Order Establishing Notice Procedures [Dkt. No. 132]. The Debtor submits that “cause” exists to hear the Motion on an expedited basis (i.e., sixteen days’ rather than twenty-three days’ notice)

because all interested parties to this Chapter 11 proceeding have had more than adequate notice of the proposed hearing with respect to the Motion. Indeed, the date upon which the Motion would be filed and the date of the hearing to approve the relief sought in the Motion were each expressly set forth in the Sale Milestones that were approved by this Court in connection with the Second Amendment on December 6, 2012. Accordingly, as both the pendency of the Motion and the hearing date related thereto have been publicly disclosed and known to all parties to this proceeding for more than a month, the Debtor submits that no other or further notice is necessary or required under the circumstance

WHEREFORE, the Debtor respectfully requests that this Court:

(1) enter an order substantially in the form of the Bidding Procedures Order attached hereto as **Exhibit A**: (a) authorizing and approving the Bidding Procedures attached as Exhibit 1 thereto (to include approving the Bid Protections); (b) approving the form and manner of the Sale Notice; (c) scheduling the Auction and Sale Hearing; (d) approving the Assumption and Assignment Procedures and the Assumption and Assignment Notice; and (e) granting such other and further relief as it deems just and proper; and

(2) at the conclusion of the Sale Hearing, enter an order (or orders) substantially in the form of the Proposed Sale Order attached hereto as **Exhibit C**: (a) approving the Sale(s) of all or substantially all of the Shelf Assets free and clear of all liens, encumbrances, claims and other interests pursuant to one or more Stalking Horse Agreements and/or Qualified APAs; (b) authorizing the assumption and assignment of any Assumed and Assigned Contracts; and (c) granting such other and further relief as it deems just and proper.

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Dated: Houston, Texas
January 8, 2013

Respectfully submitted,

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EXHIBIT A

Bidding Procedures Order

**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 (A) APPROVING (i) BIDDING PROCEDURES; (ii) BID PROTECTIONS; (iii) AUCTION PROCEDURES; AND (iv) ASSUMPTION AND ASSIGNMENT PROCEDURES; (B) APPROVING NOTICE PROCEDURES FOR (i) THE SOLICITATION OF BIDS; AND (ii) AN AUCTION; (C) SCHEDULING HEARINGS ON APPROVAL OF A SALE OR SALES OF SUBSTANTIALLY ALL OF DEBTOR'S SHELF PROPERTY ASSETS; AND (D) GRANTING RELATED RELIEF

Upon the motion of ATP Oil & Gas Corporation (“**ATP**” or the “**Debtor**”) pursuant to 11 U.S.C. §§ 105, 363, and 365 and Bankruptcy Rules 2002, 6004 and 6006 for an Order, *inter alia*, (i) approving bidding procedures; (ii) approving the form and manner of notice of the sale or sales of the Debtor’s shelf property assets (the “**Sale**”); (iii) approving the form and manner of notice of the assumption and assignment, including cure amounts, of executory contracts and unexpired leases; (iv) establishing the date for an auction; (v) establishing dates for a sale hearing; and (vi) granting related relief (the “**Motion**”); and the Court having reviewed the Motion; and notice of the Motion having been adequate and appropriate under the circumstances; and it appearing to the Court that granting the relief requested is in the best interest of the Debtor, its estate, its creditors, and other parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. This Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The statutory bases for the relief requested in the Motion are: (i) Sections 105, 363, 503, and 507 of the Bankruptcy Code and (ii) Rules 2002(a)(2), 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure.

C. Notice of the Motion having been given to (i) all entities contacted by Jefferies or known by the Debtor to have expressed an interest in a transaction with respect to the Shelf Assets during the past nine (9) months, including all Qualified Bidders; (ii) all state and local taxing authorities or recording offices which have a reasonably known interest in the relief requested; (iii) all insurers; (iv) all non-debtor parties to relevant contracts or leases (executory or otherwise); (v) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Shelf Assets; and (vi) upon all parties set forth in the Debtor's Master Service List maintained in accordance with this Court's Order Establishing Notice Procedures [Dkt. No. 132], is sufficient in light of the circumstances and the nature of the relief requested in the Motion.

D. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

E. The Debtor has articulated good and sufficient reasons for this Court to: (i) approve the Bidding Procedures; (ii) set the Auction and Sale Hearing and approve the manner of notice of the Auction and Sale Hearing; (iii) approve the procedures for the assumption and assignment of the Assumed and Assigned Contracts, including notice of proposed Cure Amounts; and (iv) grant certain Bid Protections as provided in the Motion and this Order.

F. The Breakup Fee and the Expense Reimbursement. If one or more Stalking Horse Bidders are chosen, the Court finds that the Breakup Fee and the Expense Reimbursement (collectively, the “**Bid Protections**”) are fair and reasonable, were negotiated by the parties in good faith and at arms length, and are: (a) actual and necessary costs and expenses of preserving the Debtor’s estate, within the meaning of 11 U.S.C. § 503(b), 11 U.S.C. § 507(a)(2) and 11 U.S.C. § 507(b); (b) commensurate to the real and substantial benefit that the Stalking Horse Bidder has conferred upon the Debtor’s estate; (c) reasonable and appropriate, in light of the size and nature of the proposed Sale and comparable transactions, the commitments that have been made, and the efforts that the Stalking Horse Bidder has and will continue to expend; (d) necessary to induce the Stalking Horse Bidder to continue to pursue the Sale and be bound by the Stalking Horse Agreement; and (e) necessary costs of the Sale and a sound and appropriate exercise of the Debtor’s business judgment. Should the Debtor select one or more Stalking Horse Bidders, the Bid Protections have induced the Stalking Horse Bidder(s) to submit a bid that will serve as a minimum bid upon which the Debtor, its creditors, and other bidders can rely. Should the Debtor select one or more Stalking Horse Bidders, the Stalking Horse Bidder has provided a material benefit to the Debtor and its creditors by increasing the likelihood that the best possible purchase price for the Shelf Assets will be received. Accordingly, the attached

Bidding Procedures and the Bid Protections are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtor's estate.

G. Sale Notice. The Sale Notice, substantially in the form attached as **Exhibit 2** to this Order, is reasonably calculated and sufficient to provide interested parties with timely and proper notice of the proposed Sale, including, without limitation: (i) the date, time, and place of the Auction (if one is held); (ii) the Bidding Procedures; (iii) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (iv) reasonably specific identification of the Shelf Assets to be sold; (v) a description of the Sale as being free and clear of liens, claims, encumbrances and other interests (except as set forth in the Form Purchase Agreement or Qualified APA(s) (including any Stalking Horse Agreement), as applicable), with all such liens, claims, encumbrances and other interests attaching with the same validity and priority to the Sale proceeds; (vi) notice of the proposed Assumption and Assignment Procedures, and no other or further notice of the Sale shall be required.

H. Assumption and Assignment Procedures. The Motion, this Order, the Assumption and Assignment Procedures set forth herein, and the Assumption and Assignment Notice substantially in the form attached as **Exhibit 3** to this Order, are reasonably calculated to provide Contract Counterparties to any Contracts and/or Leases to be assumed by the Debtor and assigned to the Successful Bidder(s) with proper notice of the intended assumption and assignment of their Contracts and/or Leases, the procedures in connection therewith, and any Cure Amounts relating thereto.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein. All capitalized terms used herein but otherwise not defined shall have the meanings set forth in the Motion or the Bidding Procedures, as applicable.

2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the hearing on the Motion, are overruled.

I. Important Dates and Deadlines

3. Sale Hearing. The Sale Hearing shall commence on **February 28, 2013, at 1:30 p.m. (CST)** before the Honorable Marvin Isgur in Courtroom 404 in the United States Courthouse, 515 Rusk Street, Houston, Texas 77002, or before any other judge who may be sitting in his place and stead. Upon entry of this Order, the Debtor is authorized to perform any its obligations set forth in the Form Purchase Agreement or other applicable Qualified APA(s) (including any Stalking Horse Agreement, as applicable) that are intended to be performed prior to the Sale Hearing and/or entry of the Sale Order. The Debtor, with the consent (not to be unreasonably withheld) of the DIP Lenders and the DIP Agent, may adjourn the Sale Hearing without further notice other than by announcement in open Court or on the Court's calendar.

4. General Objection Deadline. Objections, if any, to the Sale of the Shelf Assets, the assumption and assignment of the Assumed and Assigned Contracts, or any relief requested in the Motion other than the relief granted by this Court in the Bidding Procedures Order must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules and the Local Rules; (d) filed with the Clerk of the Bankruptcy Court, 515 Rusk Avenue, Houston, Texas 77002 by no later than **4:00 p.m. (CST) on February 26, 2013** (the "**General Objection Deadline**"), or other applicable deadline as indicated in this Motion; and (e) served in accordance with the Local Rules so as to be received on or before the

relevant objection deadline by the following (collectively, the “**Objection Notice Parties**”): on (i) counsel for the Debtor: Mayer Brown LLP, 700 Louisiana Street, Suite 3400, Houston, Texas 77002, Attn: Charles S. Kelley, (CKelley@mayerbrown.com); (ii) investment banker for the Debtor: Jefferies & Company, Inc., 300 Crescent Court, Suite 500, Dallas, Texas 75201, Attn: Stephen Straty (sstraty@jefferies.com); (iii) counsel for the DIP Agent: Cravath, Swaine & Moore LLP, Worldwide Plaza, 825 Eighth Avenue, New York, New York 10019, Attn: Paul H. Zumbro (pzumbro@cravath.com); (iv) counsel to certain DIP Lenders: Bingham McCutchen LLP, 339 Park Avenue, New York, New York 10022, Attn: Ronald J. Silverman (ronald.silverman@bingham.com) and Winstead PC, 500 Winstead Building, 2728 N. Harwood Street, Dallas, Texas 75201, Attn: Phillip Lamberson, (plamberson@winstead.com); (v) counsel to the Creditors’ Committee: Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005, Attn: Evan R. Fleck (efleck@milbank.com); (vi) counsel to the Equity Committee: Diamond McCarthy LLP, 909 Fannin Street, Suite 1500, Houston, Texas 77010, Attn: Kyung S. Lee (klee@diamondmccarthy.com); (vii) counsel to the Ad Hoc Committee of Second Lien Notes: Wachtell, Lipton, Rosen & Katz LLP, 51 West 52nd Street, New York, New York 10019, Attn: Scott K. Charles (skcharles@wlrk.com); and (viii) Office of the United States Trustee for the Southern District of Texas: 515 Rusk Avenue, Suite 3516, Houston, Texas 77002, Attn: Nancy Lynne Holley (Nancy.Holley@usdoj.gov) (these procedures are collectively referred to as the “**General Objection Procedures**”). Each objection shall state the legal and factual basis of such objection and may be orally supplemented at the relevant hearing.

5. Only those objections made in compliance with the General Objection Procedures will be considered by the Court at the Sale Hearing. The failure of any objecting person or entity

to file its objections by the Objection Deadline and in accordance with the General Objection Procedures will be a bar to the assertion, at the Sale Hearing or thereafter, of any objection (including to the Sale of Assets and assumption and assignment of Leases and Contracts free and clear of Liens) and shall be deemed to constitute any such party's consent to the entry of the Sale Order and consummation of the Sale and all transactions related thereto, including, without limitation, such assumption and assignment.

6. Deadline for Initial Indications (Applicable Only if Potential Bidder Seeks Work Fee). All non-binding Initial Indications by any third party interested in submitting any proposal, solicitation or offer for the Shelf Assets must be submitted to Jefferies on or before **February 5, 2013 at 12:00 p.m. (CST)**. The failure to submit an Initial Indication shall not preclude a Potential Bidder from submitting a Qualified Bid.

7. Bid Deadline. All bids by any third party that is interested in acquiring some or all of the Shelf Assets (other than a Stalking Horse Bidder) must be actually received by the parties specified in the Bidding Procedures on or prior to **February 19, 2013 at 12:00 p.m. (CST)** (the "Bid Deadline").

8. Auction. If necessary, an Auction with respect to the Shelf Assets will be held at the offices of the Debtor's counsel: Mayer Brown, LLP, 700 Louisiana Street, Suite 3400, Houston, Texas 77002 on **February 26, 2013 at 9:00 a.m. (CST)**. As set forth more fully in the Bidding Procedures, only Qualified Bidders and their legal and financial advisors shall be entitled to attend and/or bid at the Auction; provided, however, that legal and financial representatives of the DIP Agent, the DIP Lenders, the Committees and the Ad Hoc Committee of Second Lien Notes may attend and be heard at the Auction.

II. Auction, Bidding Procedures, and Related Relief

9. The Bidding Procedures, attached hereto as **Exhibit 1**, are hereby authorized, approved and made part of this Order as if fully set forth herein. The Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to the proposed Sale of the Shelf Assets. Any party desiring to bid on the Shelf Assets shall comply with the Bidding Procedures and this Order. The Debtor is authorized to take any and all actions necessary to implement the Bidding Procedures.

10. As set forth more fully in the Bidding Procedures, a bona fide Potential Bidder who provides an Initial Indication in accordance with the terms of the Bid Procedures may be entitled to a Work Fee up to a maximum of \$50,000 if the Debtor determines, in its business judgment, that a Work Fee is reasonably necessary in order to induce such Potential Bidder to complete the diligence and documentation necessary to submit a Qualified Bid. Only potential Bidders that submit an Initial Indication will be eligible to receive a Work Fee.

11. For the purposes of the Bidding Procedures: (i) a Stalking Horse Bidder shall be deemed a Qualified Bidder and a Stalking Horse Agreement shall be deemed to be a Qualified Bid; and (ii) the DIP Agent, acting upon the instructions of the Required Lenders under the Credit Agreement, shall be deemed to be a Qualified Bidder with respect to any “credit bid” pursuant to Section 363(k) of the Bankruptcy Code, and any such bid shall be deemed to be a Qualified Bid.

12. A Qualified Bidder must confirm that it has not engaged in any collusion with respect to the bidding or the Sale.

13. If the Debtor does not receive any Qualified Bids, the Auction shall be cancelled and the Debtor shall report the same to the Court. In such circumstances, (i) if the Debtor has

executed a Stalking Horse Agreement, the Debtor shall promptly proceed to seek entry of the appropriate orders approving the Stalking Horse Agreement and (ii) if the Debtor has not executed a Stalking Horse Agreement, the Shelf Assets may be sold pursuant to one or more subsequent sales of certain of the Debtor's assets pursuant to the terms of the Second Amendment. Any party wishing to bid on the Shelf Assets at that point shall comply with the bidding procedures in effect for such sale.

14. In the event that the Debtor timely receives one or more Qualified Bids (other than from a Stalking Horse Bidder or Bidders), then the Debtor will conduct the Auction with respect to the Shelf Assets in accordance with the Bidding Procedures.

15. Subject to the final determination of this Court, the Debtor (in consultation with counsel to the DIP Lenders and DIP Agent) is authorized to determine, in its business judgment and pursuant to the Bidding Procedures, the highest or otherwise best Bid(s) and the Successful Bidder(s) or Backup Successful Bidder(s).

III. Bid Protections

16. The Bid Protections are approved on the terms set forth in the Bidding Procedures. If one or more Stalking Horse Bidders are chosen, upon the consummation of a Sale of the relevant Shelf Assets to any party other than the Stalking Horse Bidder with respect thereto, the Debtor shall be permitted to pay to such Stalking Horse Bidder from the proceeds of such Sale in cash or other immediately available funds an amount up to (a) 3.0% of the total consideration (including both cash and assumption of any liabilities) set forth in the Stalking Horse Agreement as a Breakup Fee and (b) up to 1.5% of the total consideration (including both cash and assumption of any liabilities) set forth in the Stalking Horse Agreement, less any Work Fee received, as an Expense Reimbursement for reasonable and documented actual out-of-pocket

legal and financial advisory fees and expenses for outside professionals retained by such Stalking Horse Bidder. Any Stalking Horse Bidder (if one or more is chosen) that becomes entitled to the Bid Protections in accordance with the Bidding Procedures shall be, and hereby is, granted an allowed administrative claim in this Chapter 11 case pursuant to Sections 503(b) and 507(a)(2) of the Bankruptcy Code in an amount equal to the Bid Protections applicable to such Stalking Horse Bidder.

IV. Assumption and Assignment Procedures

17. The following procedures regarding the assumption and assignment of the Contracts and Leases in connection with the Sale are hereby approved to the extent set forth herein, and shall govern the assumption and assignment of all Contracts and/or Leases proposed to be assumed by the Debtor pursuant to Section 365(b) of the Bankruptcy Code and assigned to the Successful Bidder(s) following a Sale or Sales pursuant to Section 365(f) of the Bankruptcy Code (as defined in the Motion, the “**Assumed and Assigned Contracts**”).

18. As soon as practicable, the Debtor shall serve on all Contract Counterparties an Assumption and Assignment Notice substantially in the form attached hereto as **Exhibit 3**, that identifies, to the extent applicable, (i) the Contract(s) and/or Lease(s) that may be assumed by the Debtor and assigned to the Successful Bidder(s); (ii) the name and address of the Contract Counterparty thereto; (iii) notice of the proposed effective date of the assignment (subject to the right of the Debtor (in consultation with counsel to the DIP Lenders and DIP Agent) and Purchaser to withdraw such request for assumption and assignment of the Assumed and Assigned Contract(s) prior to the Closing); (iv) the amount, if any, determined by the Debtor to be necessary to be paid to cure any existing default in accordance with Sections 365(b) and 365(f)(2) of the Bankruptcy Code (the “**Cure Amount**”); and (v) the deadlines by which any

such Contract Counterparty must file an objection to the proposed assumption and assignment of any Assumed and Assigned Contract; provided, however, that the presence of any Contract or Lease on an Assumption and Assignment Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease.

19. As soon as practicable after the conclusion of the Auction, the Debtor shall file with the Court and serve by facsimile, electronic transmission, hand delivery or overnight mail on the Contract Counterparty (and its attorney, if known) to each Assumed and Assigned Contract a notice: (a) identifying the Successful Bidder(s); (b) stating which Contract(s) and/or Lease(s) will be assumed and assigned thereto; and (c) containing a statement as to the Successful Bidder(s)' ability to perform the Debtor's obligations under the applicable Assumed and Assigned Contracts.

20. All objections to the assumption and assignment of any Assumed and Assigned Contract, including, without limitation, any objection to the Debtor's proposed Cure Amount or the provision of adequate assurance of future performance under any Assumed and Assigned Contract pursuant to Section 365 of the Bankruptcy Code ("**Adequate Assurance**") must: (a) comply with the General Objection Procedures; (b) identify the Contract(s) or Lease(s) to which the objector is party; (c) describe with particularity any cure the claimant contends is required under Section 365 of the Bankruptcy Code (the "**Cure Claim**") and identify the basis(es) of the alleged Cure Claim under the Contract or Lease; (d) attach all documents supporting or evidencing the Cure Claim; and (e) if the response contains an objection to Adequate Assurance, state with specificity what the objecting party believes is required to provide Adequate Assurance (collectively with the General Objection Procedures, the "**Assigned Contract Objection Procedures**").

21. If no objection is timely and properly filed and served in accordance with the Assigned Contract Objection Procedures, (a) the Cure Amount set forth in the Assumption and Assignment Notice shall be controlling notwithstanding anything to the contrary in any Assumed and Assigned Contract or other document and the Contract Counterparty thereto shall be forever barred from asserting any other claim against the Debtor or Purchaser with respect to such Assumed and Assigned Contract arising prior to the assignment thereof and (b) the Purchaser's promise to perform under the Assumed and Assigned Contract shall be deemed Adequate Assurance thereunder. To the extent the Debtor disputes any Cure Claim, such dispute shall be presented to the Court at the Sale Hearing, or such later date and time as the Debtor and the objector may agree or the Court may order, but such dispute shall not affect in any way the effectiveness of any assumption and assignment of any Assumed and Assigned Contract.

22. If at any time after the entry of the Bidding Procedures Order the Debtor identifies additional prepetition executory contracts and/or unexpired leases to be assumed and assigned to the Purchaser as Assumed and Assigned Contracts (whether before or after closing of any Sale(s) of relevant Shelf Assets), the Debtor shall serve an supplemental Assumption and Assignment Notice by facsimile, electronic transmission, hand delivery or overnight mail on the Contract Counterparty (and its attorney, if known) to each supplemental Assumed and Assigned Contract at the last known address available to the Debtor by no later than ten (10) calendar days before the proposed effective date of the assignment. A Contract Counterparty receiving any such supplemental Assumption and Assignment Notice shall have until the later of (a) the General Objection Deadline or (b) ten (10) days from service of the supplemental Assumption and Assignment Notice to file an objection to the assumption and assignment of its Contract(s) and/or Lease(s) in accordance with the Assigned Contract Objection Procedures set forth herein.

V. Sale Notice

23. The Sale Notice is hereby approved. On or within three (3) business days following the entry of this Order, the Debtor shall cause the Sale Notice to be served on (i) all entities contacted by Jefferies or known by the Debtor to have expressed an interest in a transaction with respect to the Shelf Assets during the past nine (9) months, including all Qualified Bidders; (ii) all state and local taxing authorities or recording offices which have a reasonably known interest in the relief requested; (iii) all insurers; (iv) all non-debtor parties to relevant contracts or leases (executory or otherwise); (v) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Shelf Assets; and (vi) upon all parties set forth in the Debtor's Master Service List maintained in accordance with this Court's Order Establishing Notice Procedures [Dkt. No. 132].

24. The Debtor shall also publish an abbreviated version of the Sale Notice in (a) the Houston Chronicle, (b) the New Orleans Times-Picayune, (c) Platts and (d) Oil & Gas Journal on or within (3) business days following the entry of this Order.

VI. Miscellaneous

25. The Debtor is authorized to take all actions necessary and appropriate to implement and effectuate the relief granted pursuant to this Order in accordance with the Motion and to expend such sums of money and do other things as may be necessary and appropriate to comply with the requirements established by the Bidding Procedures and this Order.

26. The Debtor is authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

27. In the event of any conflict between this Order and the Form Purchase Agreement or other applicable Qualified APA(s) (including any Stalking Horse Agreement, as applicable), the terms of this Order shall control.

28. Any stay of this Order, whether arising from Rules 6004 and/or 6006 of the Federal Rules of Bankruptcy Procedure or otherwise, is hereby expressly waived and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

29. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

SIGNED this ____ day of January, 2013.

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Bidding Procedures

**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

BIDDING PROCEDURES

On January [•], 2013, the United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) entered the *Order (A) Approving (i) Bidding Procedures; (ii) Bid Protections; (iii) Auction Procedures; and (iv) Assumption and Assignment Procedures; (B) Approving Notice Procedures for (i) the Solicitation of Bids; and (ii) an Auction; (C) Scheduling Hearings on Approval of a Sale or Sales of Substantially all of Debtor’s Shelf Property Assets; and (D) Granting Related Relief* [Docket No. [•]] (the “**Bidding Procedures Order**”), in which the Court approved the following procedures (the “**Bidding Procedures**”) setting forth the process by which ATP Oil & Gas Corporation (the “**Debtor**”) is authorized to conduct a sale or sales (the “**Sale**”) of substantially all of its shelf properties and related assets (the “**Shelf Assets**”).

1. Property to be Sold

The Shelf Assets consist of the Debtor’s leasehold and other interests in 18 blocks located offshore of Texas and Louisiana on the Outer Continental Shelf in the Gulf of Mexico, as well as related assets, including, but not limited to, various production facilities, pipelines, machinery and production equipment appurtenant to or used in connection with these operations.¹ The Shelf Assets will be sold free and clear of all liens, claims, encumbrances and other interests (except as otherwise set forth in the applicable asset purchase agreement).

The Shelf Assets will be offered for sale (i) in individual blocks (each a “**Shelf Block**”), (ii) in one or more combinations of Shelf Blocks, and (iii) as a whole. The Debtor may consider bids for all of the Shelf Assets in a single bid from a single bidder or multiple bids from multiple bidders for the Shelf Assets in any combination of Shelf Blocks. Bids to purchase the Shelf Assets may consist of cash and/or non-cash consideration (including, but not limited to, the assumption of certain liabilities with respect to such Shelf Assets) and the Debtor will consider the aggregate value of all forms of proposed consideration in considering and evaluating any bid.

¹ The Shelf Assets and the Debtor’s interests therein are more particularly described in the Form Purchase Agreement enclosed herein. Any capitalized terms used herein but not defined shall have the meaning given such term in the Form Purchase Agreement.

2. Due Diligence

Subject to execution of a confidentiality agreement on terms reasonably acceptable to the Debtor (a “**Confidentiality Agreement**”), any party willing to submit any proposal, solicitation or offer (each, a “**Bid**”) for the Shelf Assets (such party, a “**Potential Bidder**”) may be granted access to public and non-public information relating to the Shelf Assets to facilitate its consideration of making its Bid. Any confidentiality agreement previously entered into between the Debtor and a Potential Bidder in effect on the date of the entry of the Bid Procedures Order shall be deemed to be a Confidentiality Agreement for the purposes of these Bidding Procedures.

The Debtor shall provide to each Potential Bidder reasonable due diligence information as necessary to enable such Potential Bidder to evaluate the Shelf Assets. Potential Bidders interested in conducting due diligence should contact Jonathan Ernst at Jefferies & Company, Inc., 300 Crescent Court, Suite 500, Dallas, Texas 75201, Tel: (972) 701-3233, Fax: (817) 991-2297, jernst@jefferies.com. The Debtor shall have no obligation to furnish any due diligence information after the Bid Deadline and shall have no obligation to furnish due diligence information requested by one Potential Bidder to the other Potential Bidders.

In connection with the provision of due diligence information to Potential Bidders, the Debtor shall not furnish any confidential information relating to the Shelf Assets, liabilities of the Debtor, or the Sale to any person except a Potential Bidder or such Potential Bidder’s duly-authorized representatives to the extent covered by the applicable Confidentiality Agreement.

The Debtor and its advisors shall coordinate all reasonable requests for additional information and due diligence access from Potential Bidders; provided, however, that the Debtor may decline to provide such information to any Potential Bidder who, in the Debtor’s reasonable business judgment, has not established that such Potential Bidder intends in good faith to, or has the capacity to, consummate a transaction. No conditions relating to the completion of due diligence shall be permitted to exist after the Bid Deadline.

3. Initial Indication of Interest (only if Potential Bidder seeks Work Fee)

Any Potential Bidder is invited to submit a non-binding initial indication of interest (an “**Initial Indication**”) to Jefferies on or before **February 5, 2013 at 12:00 p.m. (CST)**. Jefferies shall promptly share with counsel to the DIP Lenders and the DIP Agent all Initial Indications that are received.

Bona fide Potential Bidders who provide an Initial Indication which contains (1) a preliminary indication of the Shelf Properties and related Shelf Asset(s) that the Potential Bidder intends to bid on and the potential bid amount for each Shelf Property and related Shelf Asset(s) (with such potential bid amount allocated on a block-by-block basis) and (2) evidence demonstrating financial and operational capability to consummate a transaction, may be reimbursed for their reasonable and documented actual out-of-pocket diligence expenses incurred in connection with a transaction up to a maximum of \$50,000 (a “**Work Fee**”) for each Potential Bidder if the Debtor determines, in its business judgment, that a Work Fee is reasonably necessary in order to induce such Potential Bidder(s) to complete the diligence and documentation necessary to submit a Qualified Bid (as defined below). Only Potential Bidders

that submit an Initial Indication will be eligible to receive a Work Fee, but the failure to submit an Initial Indication shall not preclude a Potential Bidder from submitting a Qualified Bid pursuant to the procedures outlined below.

4. “As is, Where is”

Other than as specifically provided in the Form Purchase Agreement² or Qualified APA(s) (as defined below), as applicable, any Sale of the Shelf Assets shall be without representation or warranties of any kind, nature or description by the Debtor, its agents or its estate. All of the Shelf Assets shall be transferred “as is,” “where is” and “with all faults.” **THE DEBTOR EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE NATURE, QUALITY, VALUE OR CONDITION OF ANY SHELF ASSET.** Except as otherwise provided in the Form Purchase Agreement or applicable Qualified APA, all of the Debtor’s right, title, and interest in and to the respective Shelf Assets will be transferred free and clear of all liens, claims, encumbrances and other interests in accordance with Section 363(f) of the Bankruptcy Code.

Each Potential Bidder for any of the Shelf Assets will be deemed to acknowledge and represent that it: (a) has had an opportunity to conduct due diligence regarding the Shelf Assets prior to making its Bid; (b) has relied solely upon its own independent review, investigation, and inspection of any document including, without limitation, executory contracts and unexpired leases, in making its Bid; and (c) did not rely upon or receive any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, with respect to the Shelf Assets, or the completeness of any information provided in connection with the Sale or the Auction.

5. Qualified Bids

In order to constitute a Qualified Bid, any Bid submitted by a bidder (each, a “**Bidder**”), whether such Bidder has provided an Initial Indication or not, must (i) be submitted in writing prior to **February 19, 2013 at 12:00 p.m. (CST)** (the “**Bid Deadline**”) and (ii) satisfy the following requirements as determined by the Debtor, in its reasonable business judgment (collectively, the “**Bid Requirements**”) :

- a) Contain a signed definitive asset purchase agreement (together with a copy of the signed agreement that is marked to show changes from the Form Purchase Agreement) (a “**Qualified APA**”) and shall: (i) identify the Shelf Assets the Bidder seeks to purchase, (ii) contain the consideration to be paid by such Bidder, including the liabilities to be assumed, with such consideration allocated on a block-by-block basis (with respect to hydrocarbon reserves) or an asset by asset basis (with respect to any other Asset(s)), (iii) provide for the assumption of all

² In the event that the Debtor has entered into a Stalking Horse Agreement with respect to any Shelf Assets, any references herein to the “Form Purchase Agreement” shall be deemed to be replaced by the phrase “Stalking Horse Agreement” with respect to any Bid for such Shelf Assets.

plugging and abandonment obligations and related bonding requirements with respect to Bureau of Ocean Energy Management regulations and requirements (“**P&A Obligations**”) or a statement and satisfactory evidence from the Bidder that such Bidder is exempt from such bonding requirements, and an indemnity with respect to all plugging and abandonment obligations, associated with such Shelf Assets, (iv) with respect to Shelf Assets covered by a Stalking Horse Agreement, provide for cash consideration in an amount sufficient to pay all Bid Protections amounts related to such Stalking Horse Agreement, except as described below with respect to a credit bid by the DIP Agent, and (v) not be subject to any (a) financing contingency, (b) contingency relating to due diligence after the commencement of the Auction, (c) contingency relating to the approval of the Bidder’s board of directors or other internal approvals or non-governmental third-party consents or approvals, or (d) any conditions precedent to the Bidder’s obligation to purchase the Shelf Assets other than those included in the Form Purchase Agreement.

- b) Be accompanied by the provision of a certified or bank check or wire transfer in the amount of at least 10% of the aggregate consideration proposed in the Qualified APA (including both cash and assumption of any liabilities) as a good faith deposit (the “**Good Faith Deposit**”). The Good Faith Deposit shall be held in escrow and credited to the closing payment if the Bidder is ultimately determined to be the Successful Bidder (as defined below), if any closing payment is due, or to be returned to the Bidder in whole or in part as applicable if the Bidder is not the Successful Bidder or the Backup Successful Bidder. In the event that a Bidder is selected as the Backup Successful Bidder, the Good Faith Deposit shall be returned to the Backup Successful Bidder within three (3) business days following the closing of a Sale to the Successful Bidder therefor. The DIP Agent shall not be required to make a Good Faith Deposit and, in connection with any Stalking Horse Bidder consented to by the DIP Lenders and the DIP Agent, the DIP Lenders and the DIP Agent will undertake to provide a mechanism for satisfaction of such Stalking Horse Bidder's Bid Protections.
- c) Contain a written statement that the Bidder agrees to be bound by the terms of the Bidding Procedures and the Bidding Procedures Order and include a commitment that the Bidder shall (i) commence and complete all filings with respect to necessary government and other approvals within four (4) days following the entry of the Proposed Sale Order (as defined below) with respect to the relevant Shelf Assets and (ii) consummate the purchase of the relevant Shelf Assets within forty-five (45) days following entry of the Proposed Sale Order.
- d) Identify, with particularity, each and every executory contract and unexpired lease it intends to assume; provided, however, that such list of contracts may be later modified to the extent permitted under the Qualified APA.
- e) Be accompanied by evidence satisfactory to the Debtor (in consultation with counsel to the DIP Lenders and the DIP Agent) that the Bidder is willing, authorized (including by such Bidder’s board of directors or comparable

governing body), capable and qualified financially, operationally, legally and otherwise, of unconditionally performing all obligations under the Qualified APA, including, without limitation, (i) all P&A Obligations in the event that such Bidder is not otherwise exempt (as demonstrated by satisfactory evidence to such effect) with respect to the relevant Shelf Assets and (ii) the ability to provide adequate assurance of future performance under contracts and leases to be assumed pursuant to Section 365 of the Bankruptcy Code.

- f) Provide (i) that the Bidder agrees to serve as the Backup Successful Bid (as defined herein) if it is selected as the next highest and best bid for any particular Shelf Assets after the Successful Bid is determined in accordance with the Bidding Procedures and (ii) that the Bidder's Bid shall remain open and irrevocable until at least sixty (60) days after the entry of an order by the Court approving a definitive agreement providing for the Sale of those Shelf Assets.
- g) Fully disclose the identity of each entity that will be bidding in the Auction.
- h) Be submitted to (i) investment banker for the Debtor: Jefferies & Company, Inc., 300 Crescent Court, Suite 500, Dallas, Texas 75201, Attn: Stephen Straty (sstraty@jefferies.com) and (ii) counsel for the Debtor: Mayer Brown LLP, 700 Louisiana Street, Suite 3400, Houston, Texas 77002, Attn: Charles S. Kelley, (CKelley@mayerbrown.com) and Robert F. Gray (RGray@mayerbrown.com) so as to be received not later than the Bid Deadline, **February 19, 2013 at 12:00 p.m. (CST)**. Upon its receipt of any Bid, the Debtor shall promptly forward all documents related thereto to counsel for the DIP Lenders and DIP Agent. The Debtor (in consultation with counsel to the DIP Lenders and the DIP Agent) may extend the Bid Deadline until the start of the Auction for one or more bidders without further notice, but shall not be obligated to do so.

6. Qualified Bidders

a) A Bid that satisfies each of the Bid Requirements, as determined in the Debtor's reasonable business judgment, shall constitute a "**Qualified Bid**," and such Potential Bidder shall be a "**Qualified Bidder**." The Debtor shall notify each Qualified Bidder that such party is a Qualified Bidder within three (3) days after the Bid Deadline and will promptly thereafter publish the names of Qualified Bidders on the website maintained by the Debtor's notice agent, Kurtzman Carson Consultants, Inc. (the "**KCC Website**").

b) Notwithstanding anything herein to the contrary, for purposes of these Bidding Procedures: (i) a Stalking Horse Bidder shall be deemed a Qualified Bidder and a Stalking Horse Agreement shall be deemed to be a Qualified Bid; and (ii) the DIP Agent, acting upon the instructions of the Required Lenders under the DIP Credit Agreement (the "**Required DIP Lenders**"), shall be deemed to be a Qualified Bidder with respect to any "credit bid" pursuant to Section 363(k) of the Bankruptcy Code, and any such credit bid shall be deemed a Qualified Bid.

c) If any Bid is determined by the Debtor not to be a Qualified Bid, the Debtor shall cause such Bidder to be refunded its Good Faith Deposit and all accumulated interest thereon on or within three (3) business days after the Bid Deadline.

d) Between the date that the Debtor notifies a Potential Bidder that it is a Qualified Bidder and the Auction, the Debtor may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in a Qualified APA, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid without the written consent of the Debtor, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified herein; provided, that any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids herein.

7. Right to Credit Bid

At the Auction, any Qualified Bidder who has a valid, stipulated lien on any Shelf Asset(s) (a “**Credit Bidder**”) shall have the right to credit bid all or a portion of the value of such Credit Bidder’s claims within the meaning of Section 363(k) of the Bankruptcy Code; provided that, a Credit Bidder shall have the right to credit bid its claim only with respect to the collateral by which such Credit Bidder is secured; provided further that, for purposes of its Qualified Bid, the Credit Bidder’s claim shall be deemed to have the value it possesses on the date of the Auction.

Without limiting the generality of the foregoing, the DIP Agent shall be entitled to (i) credit bid all or a portion of the aggregate principal amount of the DIP Facility, together with accrued interest and any other claims with respect to the DIP Facility, in accordance with Section 363(k) of the Bankruptcy Code and (ii) reduce or reallocate the amount of the credit bid with respect to any particular Shelf Asset or group of Shelf Assets if the DIP Agent is not the Successful Bidder with respect to such assets.

8. Stalking Horse Selection

The Debtor, with the consent (not to be unreasonably withheld) of the DIP Lenders and the DIP Agent, may select one or more Stalking Horse Bidder(s) at any time prior to the Bid Deadline by executing a Stalking Horse Agreement. If the Debtor so selects a Stalking Horse Bidder(s), it will file and distribute to all known Potential Bidders and Bidders a copy of the Stalking Horse Agreement(s) at least one (1) day prior to the Bid Deadline. Any Bids received at the Auction must contain a signed definitive asset purchase agreement, together with a copy marked to show changes from such Stalking Horse Agreement. If it does not so establish a Stalking Horse Bidder, the Debtor (in consultation with counsel to the DIP Lenders and the DIP Agent), will evaluate any Qualified Bids and will select the Qualified Bid or Bids that it determines, in its reasonable business judgment, constitutes the highest and best offer for the purchase of the Shelf Assets (the “**Baseline Bid(s)**”) on or before the commencement of the Auction.

9. Notice Procedures

(a) Notice of Auction and Sale Hearing

After entry of the Bidding Procedures Order, the Debtor will cause the Notice of Auction and Sale Hearing, substantially in the form attached as Exhibit 2 to the Bidding Procedures Order (the “**Sale Notice**”), to be served by first-class mail, postage prepaid, facsimile, electronic transmission, hand delivery or overnight mail upon: (i) all entities contacted by Jefferies or known by the Debtor to have expressed an interest in a transaction with respect to the Shelf Assets during the past nine (9) months, including all Qualified Bidders; (ii) all state and local taxing authorities or recording offices which have a reasonably known interest in the relief requested; (iii) all insurers; (iv) all non-debtor parties to relevant contracts or leases (executory or otherwise); (v) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Shelf Assets; and (vi) upon all parties set forth in the Debtor’s Master Service List maintained in accordance with this Court’s Order Establishing Notice Procedures [Dkt. No. 132] (to the extent any party to receive notice thereby has not received notice pursuant to sections (i) through (v) above). In addition, the Debtor shall publish notice of the Motion, the Bidding Procedures Order and the Notice of Auction and Sale Hearing on the KCC Website.

In addition to serving the Notice of Auction and Sale Hearing described above, the Debtor will also publish an abbreviated version of the Sale Notice in (a) the Houston Chronicle, (b) the New Orleans Times-Picayune, (c) Platts and (d) Oil & Gas Journal.

(b) Notice of Assumption and Assignment of Contracts

Prior to the Sale Hearing, the Debtor will serve the Assumption and Assignment Notice, substantially in the form attached as Exhibit 3 to the Bidding Procedures Order (the “**Assumption and Assignment Notice**”), by first class mail, postage prepaid, facsimile, electronic transmission, hand delivery or overnight mail on (a) each counterparty under each potential Assumed and Assigned Contract (as defined below) (a “**Contract Counterparty**”) and (b) its attorney, if known, in each case, at the last known address available to the Debtor.

The Assumption and Assignment Notice shall set forth the following information: (i) the Contract(s) and/or Lease(s) that may be assumed by the Debtor and assigned to the Successful Bidder(s); (ii) the name and address of the Contract Counterparty thereto; (iii) notice of the proposed effective date of the assignment (subject to the right of the Debtor (in consultation with counsel to the DIP Lenders and the DIP Agent) and Purchaser to withdraw such request for assumption and assignment of the Assumed and Assigned Contract(s) prior to the Closing); (iv) the amount, if any, determined by the Debtor to be necessary to be paid to cure any existing default in accordance with Sections 365(b) and 365(f)(2) of the Bankruptcy Code (the “**Cure Amount**”); and (v) the deadlines by which any such Contract Counterparty must file an objection to the proposed assumption and assignment of any Assumed and Assigned Contract, provided, however, that the presence of any Contract or Lease on an Assumption and Assignment Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease. As soon as practicable after the conclusion of the Auction, the Debtor shall file with the Court and serve by facsimile, electronic transmission, hand delivery or

overnight mail on the Contract Counterparty (and its attorney, if known) to each Assumed and Assigned Contract a notice: (a) identifying the Successful Bidder(s); (b) stating which Contract(s) and/or Lease(s) will be assumed and assigned thereto; and (c) containing a statement as to the Successful Bidder(s)' ability to perform the Debtor's obligations under the applicable Assumed and Assigned Contracts.

10. Auction

If the Debtor receives one or more Qualified Bids, the Debtor will conduct the Auction to determine the Successful Bidder(s) with respect to the applicable Shelf Assets. If the Debtor does not receive any Qualified Bids with respect to any or all of the Shelf Assets: (i) the Auction shall be cancelled and the Debtor shall report the same to the Court, (ii) if the Debtor has executed a Stalking Horse Agreement, the Debtor shall promptly proceed to seek entry of the appropriate orders approving the Stalking Horse Agreement and (iii) if the Debtor has not executed a Stalking Horse Agreement, the Shelf Assets may be sold pursuant to one or more subsequent sales of certain of the Debtor's assets pursuant to the terms of the Second Amendment. Any party wishing to bid on the Shelf Assets at that point shall comply with the bidding procedures in effect for such sale.

No later than 1 day prior to the Auction, the Debtor will notify all Qualified Bidders of the Baseline Bid(s) and provide copies of the Bid Documents supporting the Baseline Bid(s) to all Qualified Bidders. The determination of which Qualified Bid(s) constitutes the Baseline Bid(s) and which Qualified Bid(s) constitutes the Successful Bid(s) shall take into account any factors the Debtor reasonably deems relevant to the value of the Qualified Bid(s) to the Debtor's estate, including, among other things: (a) the number, type, and nature of any changes to the Form Purchase Agreement or Stalking Horse Agreement, as applicable, requested by the Qualified Bidder, including the type and amount of Shelf Assets sought and the liabilities of the Debtor to be assumed in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; and (d) the tax consequences of such Qualified Bid (collectively, the "**Bid Assessment Criteria**").³ The Debtor (in consultation with counsel to the DIP Lenders and the DIP Agent) may evaluate competing bids in a manner that will maximize the aggregate value to the estate rather than maximize value from individual block(s) of Shelf Asset(s).

The Auction shall take place at **9:00 a.m. (CST) on February 26, 2013**, at the offices of Mayer Brown LLP, 700 Louisiana Street, Suite 3400, Houston, Texas 77002, or such later date and time as selected by the Debtor. The Auction shall be conducted in a timely fashion according to the following procedures:

(a) The Debtor Shall Conduct the Auction.

The Debtor and its professionals shall direct and preside over the Auction. At the start of the Auction, the Debtor shall describe the terms of the Baseline Bid(s). All incremental Bids

³ For avoidance of doubt, the Bid Assessment Criteria enumerated herein are not exhaustive and are provided for illustrative purposes only and the Debtor, in its sole discretion, may consider any additional criteria that it considers reasonably relevant to the value of any Qualified Bid.

made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtor shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid(s), all Overbids, and the Successful Bid(s).

In order to participate in the Auction, each prospective purchaser must be a Qualified Bidder. Each Qualified Bidder must have at least one individual representative with authority to bind the Qualified Bidder attend the Auction in person. Only Qualified Bidders and their legal and financial advisors shall be entitled to attend and/or bid at the Auction; provided, however, that legal and financial representatives of the DIP Agent, the DIP Lenders, the Committees and the Ad Hoc Committee of Second Lien Notes may attend and be heard at the Auction. By attending the Auction, each party present at the Auction agrees to keep the Auction, the Bids at the Auction and all details concerning the Auction confidential. The Auction shall be conducted in the presence of a certified court reporter who shall transcribe the Auction.

(b) Auction Procedures.

If there is no Stalking Horse Bidder, bidding shall commence at the amount of the Baseline Bid applicable to any block or blocks of Shelf Assets. If there is a Stalking Horse Bidder, a Qualified Bidder wishing to submit a higher bid at the Auction must bid an amount equal to or greater than the total consideration contained in the Stalking Horse Bidder's Qualifying Bid plus the amount of the Breakup Fee plus the maximum amount of the Expense Reimbursement (the "**Minimum Overbid**"). When bidding at the Auction, a Stalking Horse Bidder, if any, shall receive a "credit" in the amount of any Breakup Fee and Expense Reimbursement set forth in such bidder's Stalking Horse Agreement.

Subject to the Minimum Overbid, Qualified Bidders shall submit successive Overbids in increments to be determined by the Debtor (in consultation with counsel to the DIP Lenders and the DIP Agent) at the Auction (the "**Incremental Bid Amount**") for the purchase of the Shelf Assets for which it is bidding (each an "**Overbid**").

During the course of the Auction, the Debtor shall, after the submission of each Overbid, promptly inform each Qualified Bidder which Overbid reflects, in the Debtor's view (in consultation with counsel to the DIP Lenders and DIP Agent), the highest or otherwise best Bid for some or all of the Shelf Assets.

(c) Consideration of Overbids.

The Debtor, with the consent (not to be unreasonably withheld) of the DIP Lenders and the DIP Agent, reserves the right, in its reasonable business judgment, to adjourn the Auction one or more times to, among other things: facilitate discussions between the Debtor and Qualified Bidders; allow Qualified Bidders to consider how they wish to proceed; and provide Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor in its reasonable business judgment may require, that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

(d) Closing the Auction.

- (i) The Auction shall continue until there is only one offer that Debtor determines, subject to Bankruptcy Court approval, is the highest and/or best offer for the purchase of the Shelf Assets (whether in an aggregate sale to a single buyer or on a block by block basis (with respect to reserves) or on an asset by asset basis with respect to any other Shelf Asset(s) (each a “**Successful Bid**” and such Bidder, the “**Successful Bidder**”), at which point, the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then-existing Overbid(s). Such acceptance by the Debtor of the Successful Bid(s) is conditioned upon approval by the Court of the Successful Bid(s). The second highest Bid for such assets shall be deemed to be the backup bid (the “**Backup Successful Bid**” and such Bidder, the “**Backup Successful Bidder**”), provided, however, that the DIP Agent shall not be required to serve as the Backup Successful Bidder in connection with a credit bid. In the event that the DIP Agent makes a determination not to serve as the Backup Successful Bidder (whether before or after submitting any credit bid or other bid), the DIP Agent shall provide notice to the Debtor no later than two (2) business days after the Auction and the third highest bidder shall be deemed to be the Backup Successful Bidder.
- (ii) The identity of the Backup Successful Bidder(s) and the amount and material terms of the Backup Successful Bid(s) shall be announced by the Debtor at the conclusion of the Auction at the same time the Debtor announces the identity of the Successful Bidder(s). The Backup Bidder(s) shall be required to keep its or their Qualified Bid(s) (or if the Backup Bidder(s) submitted one or more Overbids at the Auction, its final Overbid(s)) open and irrevocable until the closing of the transaction with the Successful Bidder(s).
- (iii) For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtor from exercising its fiduciary duties under applicable law.
- (iv) The Debtor shall not consider any Bids or Overbids submitted after the conclusion of the Auction and any and all such Bids and Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
- (v) As soon as reasonably practicable after closing the Auction, the Debtor shall cause the Bid Documents for the Successful Bid(s) and Backup Successful Bid(s) to be filed with the Court.

(e) No Collusion; Good Faith Bona Fide Offer.

Each Qualified Bidder participating at the Auction will be required to confirm on the record that: (i) it has not engaged in any collusion with respect to the bidding; and (ii) its Qualified Bid is a good faith bona fide offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

11. Backup Successful Bidder

If a Successful Bidder fails to consummate an approved transaction contemplated by its Successful Bid, the Debtor may select the applicable Backup Successful Bidder as the Successful Bidder, and such Backup Successful Bidder shall be deemed a Successful Bidder for all purposes. The Debtor will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Successful Bidder without further order of the Court or notice to any party. In such case, the defaulting Successful Bidder's Good Faith Deposit shall be forfeited to the Debtor, and the Debtor specifically reserves the right to seek all available remedies against the defaulting Successful Bidder (or Backup Successful Bidder, if such party shall also breach or fail to perform), as applicable, including with respect to specific performance. In the event that the Backup Successful Bidder fails to consummate an approved Sale, the Shelf Assets may be sold pursuant to one or more subsequent sales of certain of the Debtor's assets pursuant to the terms of the Second Amendment.

12. Highest or Otherwise Best Bid

At all times during the Proposed Sale Process, the Debtor (in consultation with counsel to the DIP Lenders and the DIP Agent) shall retain full discretion and right to determine which Bid or Bids constitutes the highest or otherwise best offer for the purchase of the Shelf Assets (whether in an aggregate sale to a single buyer or on a block by block basis (with respect to hydrocarbon reserves) or on an asset by asset basis with respect to any other Shelf Asset(s)), and which bid or bids should be selected as the Successful Bid(s), if any, all subject to final approval by the Court pursuant to the provisions of Section 363(b) of the Bankruptcy Code. The Debtor, with the consent (not to be unreasonably withheld) of the DIP Lenders and the DIP Agent, may adopt rules for the Auction that, in its judgment, will better promote the goals of the Auction and that are not inconsistent in any material respect with any of the other material provisions hereof or of any Court order.

13. Proceeds

The liens of the DIP Lenders shall attach to the proceeds of the Sale of the Shelf Assets, and the cash proceeds of the Sale (net of transaction costs) shall be applied first to permanently repay the DIP Obligations (as defined in the Final DIP Order entered by the Court [Dkt. No. 440]) pursuant to the terms of the DIP Credit Agreement. The liens of the DIP Lenders shall also attach to any amounts returned to the Debtor by the trustee as a result of the sale of any of the relevant Shelf Assets pursuant to that certain Decommissioning Trust Agreement approved by the Court on November 29, 2012 [Dkt. No. 941] and such amounts shall be applied to permanently repay the DIP Obligations pursuant to the terms of the DIP Credit Agreement.

14. Reservation of Rights

The Debtor, with the consent (not to be unreasonably withheld) of the DIP Lenders and the DIP Agent, reserves the right to modify these Bidding Procedures at or prior to the Auction, including, without limitation, extending the deadlines set forth herein with respect to any or all Potential Bidders, imposing additional terms and conditions with respect to any or all Potential Bidders, adjourning or cancelling the Auction at or prior to the Auction and/or adjourning the Sale Hearing.

15. Consent to Jurisdiction

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the construction and enforcement of these Bidding Procedures, and/or the Confidentiality Agreements, as applicable.

16. Sale Hearing

A hearing to consider approval of the Sale of all or substantially all of the Shelf Assets to the Successful Bidder(s) (or, as applicable, to approve the Stalking Horse Agreement(s) if no Auction is held) (the "**Sale Hearing**") is presently scheduled to take place on **February 28, 2013 at 1:30 p.m. (CST)**, or as soon thereafter as counsel may be heard, before the Honorable Marvin Isgur in Courtroom 404 in the United States Courthouse, 515 Rusk Avenue, Houston, Texas 77002, or before any other judge who may be sitting in his place and stead.

The Sale Hearing may be continued to a later date by the Debtor, with the consent (not to be unreasonably withheld) of the DIP Lenders and DIP Agent, by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party (including any Stalking Horse Bidder(s)).

At the Sale Hearing, the Debtor shall present the Successful Bid(s) to the Court for approval. Following the approval of the Successful Bid(s) at the Sale Hearing, the Debtor will be authorized to take any and all actions necessary and appropriate to complete and implement the Sale(s) contemplated by the Successful Bid(s), including, without limitation, seeking entry of one or more orders approving such Sale(s).

17. Bid Protections

As authorized by the Court in the Bidding Procedures Order, if one or more Stalking Horse Bidders are chosen, upon the consummation of a Sale of the relevant Shelf Assets to any party other than the Stalking Horse Bidder with respect thereto, the Debtor shall be permitted to pay to such Stalking Horse Bidder from the proceeds of such sale in cash or other immediately available funds an amount up to (a) 3.0% of the total consideration (including both cash and assumption of any liabilities) set forth in the Stalking Horse Agreement as a Breakup Fee and (b)

up to 1.5% of the total consideration (including both cash and assumption of any liabilities) set forth in the Stalking Horse Agreement less any Work Fee received, as an Expense Reimbursement for reasonable and documented actual out-of-pocket legal and financial advisory fees and expenses for outside professionals retained by such Stalking Horse Bidder.

18. Return of Good Faith Deposits

The Good Faith Deposit of the Successful Bidder(s) shall be applied to the purchase price of such transaction at closing. The Good Faith Deposits for each Qualified Bidder shall be held in one or more interest-bearing escrow accounts on terms acceptable to the Debtor in its sole discretion and shall be returned (other than with respect to the Stalking Horse Bidder(s), the Successful Bidder(s) and the Backup Successful Bidder(s)) on or within three (3) business days after the Auction. Upon the return of the Good Faith Deposits, their respective owners shall receive any and all interest that will have accrued thereon.

If a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, the Debtor will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, which may be retained by the Debtor as liquidated damages, in addition to any and all rights, remedies, and/or causes of action that may be available to the Debtor, and the Debtor shall be free to consummate the proposed transaction with the applicable Backup Successful Bidder without the need for an additional hearing or order of the Court.

19. No Modification of Bidding Procedures

Except as otherwise provided herein, these Bidding Procedures may not be modified except with the Debtor's consent.

EXHIBIT 2

Sale Notice

**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

**NOTICE OF (I) SOLICITATION OF INITIAL BIDS; (II) BIDDING PROCEDURES;
(III) AUCTION; (IV) SALE HEARING AND (V) RELATED RELIEF AND DATES**

TO ALL CREDITORS AND OTHER PARTIES IN INTEREST:

PLEASE TAKE NOTICE that on August 17, 2012, ATP Oil & Gas Corporation, the debtor and debtors -in-possession in the above-captioned Chapter 11 case (the “**Debtor**”) filed a voluntary petition for relief under Chapter 11 of Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”).

PLEASE TAKE FURTHER NOTICE that on January 8, 2013 the Debtor filed its *Motion Pursuant to 11 U.S.C. §§ 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006 for Orders (I)(A) Approving (i) Bidding Procedures; (ii) Bid Protections; (iii) Auction Procedures; and (iv) Assumption and Assignment Procedures; (B) Approving Notice Procedures for (i) the Solicitation of Bids; and (ii) an Auction; (C) Scheduling Hearings on Approval of a Sale or Sales of Substantially all of the Debtor’s Shelf Property Assets; and (D) Granting Related Relief; and (II) (A) Approving the Sale or Sales of Substantially all of the Debtor’s Shelf Property Assets Free and Clear of Claims and Liens and (B) Approving the Assumption and Assignment of Contracts and Leases* [Dkt. No. [•]] (the “**Motion**”) with clerk of the Bankruptcy Court seeking, among other things, entry of an order (the “**Sale Order**”) authorizing and approving: (a) the sale of substantially all of the Debtor’s Shelf Properties and related assets (the “**Shelf Assets**”) free and clear of liens, claims, encumbrances and other interests, with all such liens, claims, encumbrances and other interests attaching with the same validity and priority to the sale proceeds, to one or more purchasers submitting the highest or otherwise best offers therefor (the “**Sale**”); and (b) procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “**Contracts**”). Please note that all capitalized terms used but not defined herein shall have the meanings set forth in the Motion.

PLEASE TAKE FURTHER NOTICE that Debtor is soliciting offers for the purchase of substantially all of the Shelf Assets and assumption of substantially all of the liabilities of the Debtor with respect thereto consistent with the bidding procedures (the “**Bidding Procedures**”) approved by the Bankruptcy Court by entry of an order dated [•], 2013 [Docket No. [•]] (the “**Bidding Procedures Order**”). **All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order.** To the extent that there are any inconsistencies between this notice and the Bidding Procedures or Bidding

Procedures Order, the Bidding Procedures or Bidding Procedures Order, as applicable, shall govern in all respects.

PLEASE TAKE FURTHER NOTICE that, if the Debtor receives qualified bids within the requirements and time frame specified by the Bidding Procedures, the Debtor will conduct an auction (the “**Auction**”) with respect to the Sale of the Shelf Assets on **February 26, 2012 at 9:00 a.m. (CST)**, at the offices of Mayer Brown LLP, 700 Louisiana Street, Suite 3400, Houston, Texas 77002, or such later date and time as selected by the Debtor. The Auction shall be conducted in a timely fashion according to the Bidding Procedures.

PLEASE TAKE FURTHER NOTICE that a hearing to consider approval of the Sale of all or substantially all of the Shelf Assets to one or more Successful Bidder(s) (the “**Sale Hearing**”) is presently scheduled to take place on **February 28, 2013 at 1:30 p.m. (CST)**, or as soon thereafter as counsel may be heard, before the Honorable Marvin Isgur in Courtroom 404 in the United States Courthouse, 515 Rusk Avenue, Houston, Texas 77002, or before any other judge who may be sitting in his place and stead.

PLEASE TAKE FURTHER NOTICE that, except as otherwise set forth in the Bidding Procedures Order, objections, if any, to the Sale of the Shelf Assets, the assumption and assignment of the Contracts, or any relief requested in the Motion other than the relief granted by this Court in the Bidding Procedures Order **must** be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules and the Local Rules; (d) filed with the Clerk of the Bankruptcy Court, 515 Rusk Avenue, Houston, Texas 77002 by no later than **4:00 p.m. (CST) on February 26, 2013** (the “**General Objection Deadline**”), or other applicable deadline as indicated in this Motion; and (e) served in accordance with the Local Rules so as to be received on or before the relevant objection deadline by the following (collectively, the “**Objection Notice Parties**”): (i) counsel for the Debtor: Mayer Brown LLP, 700 Louisiana Street, Suite 3400, Houston, Texas 77002, Attn: Charles S. Kelley, (CKelley@mayerbrown.com); (ii) investment banker for the Debtor: Jefferies & Company, Inc., 300 Crescent Court, Suite 500, Dallas, Texas 75201, Attn: Stephen Straty (sstraty@jefferies.com); (iii) counsel for the DIP Agent: Cravath, Swaine & Moore LLP, Worldwide Plaza, 825 Eighth Avenue, New York, New York 10019, Attn: Paul H. Zumbro (pzumbro@cravath.com); (iv) counsel to certain DIP Lenders: Bingham McCutchen LLP, 339 Park Avenue, New York, New York 10022, Attn: Ronald J. Silverman (ronald.silverman@bingham.com) and Winstead PC, 500 Winstead Building, 2728 N. Harwood Street, Dallas, Texas 75201, Attn: Phillip Lamberson, (plamberson@winstead.com); (v) counsel to the Creditors’ Committee: Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005, Attn: Evan R. Fleck (efleck@milbank.com); (vi) counsel to the Equity Committee: Diamond McCarthy LLP, 909 Fannin Street, Suite 1500, Houston, Texas 77010, Attn: Kyung S. Lee (klee@diamondmccarthy.com); (vii) counsel to the Ad Hoc Committee of Second Lien Notes: Wachtell, Lipton, Rosen & Katz LLP, 51 West 52nd Street, New York, New York 10019, Attn: Scott K. Charles (skcharles@wlrk.com); and (viii) Office of the United States Trustee for the Southern District of Texas: 515 Rusk Avenue, Suite 3516, Houston, Texas 77002, Attn: Nancy Lynne Holley (Nancy.Holley@usdoj.gov) (these procedures are collectively referred to as the “**General Objection Procedures**”). Each objection shall state the legal and factual basis of such objection and may be orally supplemented at the relevant hearing.

CONSEQUENCES OF FAILING TO TIMELY MAKE AN OBJECTION

ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE ON OR BEFORE THE GENERAL OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE SHELF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS SET FORTH IN THE APPLICABLE ASSET PURCHASE AGREEMENT RELATED THERETO. IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT CERTAIN OF THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

PLEASE TAKE FURTHER NOTICE that copies of the Motion, and any exhibits thereto, including the Bidding Procedures Order, Bidding Procedures, the Form Purchase Agreement, and the proposed Sale Order, are available: (a) upon request to the Debtor's Noticing and Claims Agent, Kurtzman Carson Consultants, LLC ("**KCC**"), by calling (866) 381-9100; (b) at the Debtor's expense by visiting the website maintained by KCC in this Chapter 11 case at <http://www.kcellc.net/atpog> (the "**KCC Website**") or (c) for a fee via PACER by visiting <http://ecf.txsb.uscourts.gov>.

PLEASE TAKE FURTHER NOTICE that you may obtain additional information concerning the above-captioned Chapter 11 case at the KCC Website.

Dated: Houston, Texas
January 24, 2013

Respectfully submitted,

MAYER BROWN LLP

By: /s/ Charles S. Kelley
Charles S. Kelley
Attorney-in-Charge
State Bar No. 11199580
Southern District of Texas Bar No. 15344
700 Louisiana Street, Suite 3400
Houston, TX 77002-2730
Telephone: 713 238-3000
Facsimile: 713 238-4888

EXHIBIT 3

Assumption and Assignment Notice

**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

**NOTICE OF (I) DEBTOR’S REQUEST FOR AUTHORITY TO ASSUME AND ASSIGN
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (II)
DEBTOR’S PROPOSED CURE AMOUNTS**

**TO ALL COUNTERPARTIES TO EXECUTORY CONTRACTS
AND UNEXPIRED LEASES PLEASE TAKE NOTICE THAT:**

PLEASE TAKE NOTICE that on January 8, 2013 the Debtor filed its *Motion Pursuant to 11 U.S.C. §§ 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006 for Orders (I)(A) Approving (i) Bidding Procedures; (ii) Bid Protections; (iii) Auction Procedures; and (iv) Assumption and Assignment Procedures; (B) Approving Notice Procedures for (i) the Solicitation of Bids; and (ii) an Auction; (C) Scheduling Hearings on Approval of a Sale or Sales of Substantially all of the Debtor’s Shelf Property Assets; and (D) Granting Related Relief; and (II) (A) Approving the Sale or Sales of Substantially all of the Debtor’s Shelf Property Assets Free and Clear of Claims and Liens and (B) Approving the Assumption and Assignment of Contracts and Leases* [Dkt. No. [•]] (the “**Motion**”) with clerk of the Bankruptcy Court seeking, among other things, entry of an order (the “**Sale Order**”) authorizing and approving: (a) the sale of substantially all of the Debtor’s Shelf Properties and related assets (the “**Shelf Assets**”) free and clear of liens, claims, encumbrances and other interests, with all such liens, claims, encumbrances and other interests attaching with the same validity and priority to the sale proceeds, to one or more purchasers submitting the highest or otherwise best offers therefor (the “**Sale**”); and (b) procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “**Contracts**”). Please note that all capitalized terms used but not defined herein shall have the meanings set forth in the Motion.

PLEASE TAKE FURTHER NOTICE THAT on [•], 2012, the Court entered an order [Docket No. [•]] (the “**Bidding Procedures Order**”) granting certain of the relief sought in the Motion, including, among other things, approving: (a) the bidding procedures for the Sale of the Shelf Assets (the “**Bidding Procedures**”); and (b) procedures for the assumption and assignment of Contracts (the “**Assumption and Assignment Procedures**”). Copies of the Bidding Procedures Order (which incorporates the Assumption and Assignment Procedures and the Bidding Procedures) are enclosed herein.

PLEASE TAKE FURTHER NOTICE that the Debtor will seek approval of the Sale at a hearing presently scheduled to take place on **February 28, 2013 at 1:30 p.m. (CST)**, or as soon thereafter as counsel may be heard, before the Honorable Marvin Isgur in Courtroom

404 in the United States Courthouse, 515 Rusk Avenue, Houston, Texas 77002, or before any other judge who may be sitting in his place and stead (the “**Sale Hearing**”).

PLEASE TAKE FURTHER NOTICE THAT upon the closing of the Sale of Shelf Assets, the Debtor may seek to assume and assign to one or more Successful Bidder(s) for Shelf Assets at the Auction (as defined in the Bidding Procedures Order) (each an “**Assignee**”) the Contracts and any modifications thereto set forth on **Exhibit A** hereto (collectively, the “**Assumed and Assigned Contracts**”). In addition, the cure amounts, if any, necessary for the assumption and assignment of the Assumed and Assigned Contracts (the “**Cure Amounts**”) are set forth on **Exhibit A**.

PLEASE TAKE FURTHER NOTICE THAT as soon as practicable after the conclusion of the Auction, the Debtor shall file with the Court and serve by facsimile, electronic transmission, hand delivery or overnight mail on the Contract Counterparty (and its attorney, if known) to each Assumed and Assigned Contract a notice: (a) identifying the Successful Bidder(s); (b) stating which Contract(s) will be assumed and assigned thereto; and (c) containing a statement as to the Successful Bidder(s)’ ability to perform the Debtor’s obligations under the applicable Assumed and Assigned Contracts.

PARTIES LISTED ON EXHIBIT A HERETO ARE RECEIVING THIS NOTICE BECAUSE THE DEBTOR, OR OTHER POTENTIAL BIDDER(S), HAS IDENTIFIED THEM AS A POTENTIAL COUNTERPARTY TO AN ASSUMED AND ASSIGNED CONTRACT. Under the terms of the Assumption and Assignment Procedures, if at any time after the entry of the Bidding Procedures Order the Debtor identifies additional prepetition executory Contracts and/or Leases to be assumed and assigned to the Purchaser as Assumed and Assigned Contracts (whether before or after closing of any Sale(s) of relevant Shelf Assets), the Debtor shall serve a supplemental Assumption and Assignment Notice by facsimile, electronic transmission, hand delivery or overnight mail on the Contract Counterparty (and its attorney, if known) to each supplemental Assumed and Assigned Contract at the last known address available to the Debtor by no later than ten (10) days before the proposed effective date of the assignment. Such Contract Counterparty shall have a period of ten (10) days from receipt of the supplemental Assumption and Assignment Notice to file with the Court any objection to the proposed cure amount or the assumption and assignment of such Contract(s), as applicable, as will be set forth in the supplemental Assumption and Assignment Notice.

Obtaining Additional Information

Additional copies of the Motion, the Bidding Procedures Order, the Bidding Procedures and any other related documents are available upon request to the Debtor’s Noticing and Claims Agent, Kurtzman Carson Consultants, LLC at (866) 381-9100, or by visiting the website maintained in this Chapter 11 case at <http://www.kccllc.net/atpog>.

Assumed and Assigned Contract Objection Procedures

Pursuant to the Assumption and Assignment Procedures, all objections to the assumption and assignment of any Lease or Contract, including without limitation any objection to the Debtor’s proposed Cure Amount or the provision of adequate assurance of future performance under any Lease or Contract pursuant to Section 365 of the Bankruptcy Code (“**Adequate**

Assurance”) (other than objections filed in response to any supplemental Assumption and Assignment Notice, as set forth above) **must**: (a) be in writing; (b) be signed by counsel or attested to by the objecting party; (c) be in conformity with the Bankruptcy Rules and the Local Rules; (d) be filed with the Clerk of the Bankruptcy Court, 515 Rusk Avenue, Houston, Texas 77002 by no later than **4:00 p.m. (CST) on February 26, 2013** or other applicable deadline as indicated in the Bidding Procedures Order; (e) be served in accordance with the Local Rules so as to be received on or before the relevant objection deadline by the following: (i) counsel for the Debtor: Mayer Brown LLP, 700 Louisiana Street, Suite 3400, Houston, Texas 77002, Attn: Charles S. Kelley, (CKelley@mayerbrown.com); (ii) investment banker for the Debtor: Jefferies & Company, Inc., 300 Crescent Court, Suite 500, Dallas, Texas 75201, Attn: Stephen Straty (sstraty@jefferies.com); (iii) counsel for the DIP Agent: Cravath, Swaine & Moore LLP, Worldwide Plaza, 825 Eighth Avenue, New York, New York 10019, Attn: Paul H. Zumbro (pzumbro@cravath.com); (iv) counsel to certain DIP Lenders: Bingham McCutchen LLP, 339 Park Avenue, New York, New York 10022, Attn: Ronald J. Silverman (ronald.silverman@bingham.com) and Winstead PC, 500 Winstead Building, 2728 N. Harwood Street, Dallas, Texas 75201, Attn: Phillip Lamberson, (plamberson@winstead.com); (v) counsel to the Creditors’ Committee: Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005, Attn: Evan R. Fleck (efleck@milbank.com); (vi) counsel to the Equity Committee: Diamond McCarthy LLP, 909 Fannin Street, Suite 1500, Houston, Texas 77010, Attn: Kyung S. Lee (klee@diamondmccarthy.com); (vii) counsel to the Ad Hoc Committee of Second Lien Notes: Wachtell, Lipton, Rosen & Katz LLP, 51 West 52nd Street, New York, New York 10019, Attn: Scott K. Charles (skcharles@wlrk.com); and (viii) Office of the United States Trustee for the Southern District of Texas: 515 Rusk Avenue, Suite 3516, Houston, Texas 77002, Attn: Nancy Lynne Holley (Nancy.Holley@usdoj.gov); (f) identify the Lease or Contract to which the objector is party; (g) describe with particularity any cure the claimant contends is required under Section 365 of the Bankruptcy Code (the **“Cure Claim”**) and identify the basis(es) of the alleged Cure Claim under the Contract or Lease; (h) attach all documents supporting or evidencing the Cure Claim; and (i) if the response contains an objection to Adequate Assurance, state with specificity what the objecting party believes is required to provide Adequate Assurance.

CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE AN OBJECTION

ANY COUNTERPARTY TO AN ASSUMED AND ASSIGNED CONTRACT WHO FAILS TO TIMELY FILE AND SERVE AN OBJECTION TO THE PROPOSED ASSUMPTION AND ASSIGNMENT OF AN ASSUMED AND ASSIGNED CONTRACT AND/OR THE CURE AMOUNT SET FORTH ON EXHIBIT A IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER AND THE ASSUMPTION AND ASSIGNMENT PROCEDURES SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE ASSUMPTION AND ASSIGNMENT OF THE ASSUMED AND ASSIGNED CONTRACT AND/OR THE CURE AMOUNT SET FORTH ON EXHIBIT A, INCLUDING ASSERTING ADDITIONAL CURE AMOUNTS WITH RESPECT TO THE ASSUMED AND ASSIGNED CONTRACT RELATING TO ANY PERIOD PRIOR TO THE TIME OF ASSUMPTION AND ASSIGNMENT.

Dated: Houston, Texas
January 24, 2013

Respectfully submitted,

MAYER BROWN LLP

By: /s/ Charles S. Kelley
Charles S. Kelley
Attorney-in-Charge
State Bar No. 11199580
Southern District of Texas Bar No. 15344
700 Louisiana Street, Suite 3400
Houston, TX 77002-2730
Telephone: 713 238-3000
Facsimile: 713 238-4888

EXHIBIT A

Cure Amount Schedule

Contract Counterparty	Description of Contract or Lease	Cure Amount

EXHIBIT B

Form Purchase Agreement

ASSET PURCHASE AGREEMENT

BY AND AMONG

ATP OIL & GAS CORPORATION

AS SELLER

AND

AS BUYER

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”) is made and entered into this ___ day of _____, 2013, by and among ATP Oil & Gas Corporation, a Texas corporation (“**Seller**”), and _____, a _____ (“**Buyer**”). Buyer and Seller are sometimes referred to herein, collectively, as the “**Parties**” and, individually, as a “**Party**.”

W I T N E S S E T H:

WHEREAS, Seller is the owner of certain oil and gas assets located in the Gulf of Mexico;

WHEREAS, Seller is the subject of a case under the Bankruptcy Reform Act of 1978, as codified in title 11 of the United States Code, 11 U.S.C. §§ 101 through 1532, as may have been or are amended from time to time (the “**Bankruptcy Code**”) before the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “**Bankruptcy Court**”) as Case No. 12-36187 (the “**Bankruptcy Case**”), and is subject to the jurisdiction thereof;

WHEREAS, the transactions contemplated hereunder are subject to the authorization and approval of the Bankruptcy Court; and

WHEREAS, Buyer desires to purchase and Seller desires to sell all of the Assets (as hereinafter defined) in accordance with the terms and conditions of this Agreement and the orders of the Bankruptcy Court with respect thereto.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, representations, warranties, covenants, conditions and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

“**Accounting Arbitrator**” shall have the meaning given that term in Section 7.02(e).

“**Adjusted Purchase Price**” shall have the meaning given that term in Section 3.01.

“**AFEs**” shall have the meaning given that term in Section 4.01(o).

“**Affiliate**” shall mean any Person that, directly or indirectly, through one or more entities, controls, is controlled by or is under common control with the Person specified. For the purpose of the immediately preceding sentence, the term “control” and its syntactical variants mean the power, direct or indirect, to direct or cause the direction of the management of such Person, whether through the ownership of voting securities, by Contract, agency or otherwise.

“**Agreement**” shall have the meaning given that term in the preamble.

“**Allocation**” shall have the meaning given that term in Section 3.03.

“**Assets**” shall have the meaning given that term in Section 2.02.

“**Assignment**” shall have the meaning given that term in Section 7.03(a).

“**Assigned Contracts**” shall have the meaning given that term in Section 2.02(f).

“**Assumed Obligations**” shall have the meaning given that term in Section 10.01.

“**Assumed Seller Taxes**” shall mean Non-Income Taxes or Production Taxes attributable to Tax periods ending prior to the Closing Date that have given rise to a Lien reflected on Schedule 1.01C.

“**Auction**” has the meaning ascribed to such term in the Bidding Procedures Order.

“**Bankruptcy Case**” shall have the meaning given that term in the preamble.

“**Bankruptcy Code**” shall have the meaning given that term in the preamble.

“**Bankruptcy Court**” shall have the meaning given that term in the preamble.

“**Bankruptcy Sale Motion**” shall have the meaning given that term in Section 4.01(w).

“**Bidding Procedures Order**” shall have the meaning given that term in Section 4.01(x).

“**BOEM/BSEE**” shall mean United States Department of Interior Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement, and any successor Governmental Authority.

“**BOEM/BSEE Trusts**” shall mean those trusts established pursuant to the Decommissioning Trust Agreements, as amended, supplemented or restated from time to time, effective as of November 15, 2012, among the Seller, JPMorgan Chase Bank, N.A. and The United States of America, acting by and through the BOEM/BSEE, approved by Order of the Bankruptcy Court entered on November 30, 2012.

“**Business Day**” shall mean any day other than a Saturday, a Sunday or a day on which banks in Houston, Texas are authorized or obligated by Law to close.

“**Buyer**” shall have the meaning given that term in the preamble.

“**Buyer Material Adverse Effect**” shall mean any change, effect, state of facts, occurrence, event or circumstance that prevents or materially impedes the consummation by Buyer of the transactions contemplated by this Agreement.

“**Buyer Representatives**” shall mean Buyer and its members, partners, shareholders and Affiliates, and the officers, board of directors and/or managers, employees, agents and representatives of all of the foregoing Persons.

“**Closing**” shall have the meaning given that term in Section 7.01.

“**Closing Date**” shall have the meaning given that term in Section 7.01.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended.

“**Confidentiality Agreement**” shall mean that certain Confidentiality Agreement between Seller and Buyer, dated as of _____, 201__.

“**Contracts**” shall mean all written or oral contracts, leases, subleases, licenses, indentures, agreements, commitments and other legally binding instruments.

“**Contract Cure Amount**” shall mean, with respect to any Assigned Contract, the amounts required to be paid, if any, in connection with the assumption and assignment of such Assigned Contract pursuant to Section 365 of the Bankruptcy Code.

“**Debt Facilities**” shall mean the following, together with all amendments, forbearances and other modifications thereto:

(a) the DIP Credit Agreement, together with all collateral and security documents executed in connection therewith; and

(b) that certain Indenture dated as of April 23, 2010 among Seller, as issuer of those certain 11.875% Senior Second Lien Notes due 2015, and The Bank of New York Mellon Trust Company, N.A., as trustee and collateral agent, together with all collateral or security documents executed in connection therewith by Seller or its Affiliates.

“**Defensible Title**” shall mean such title of Seller that, subject to and except for the Permitted Encumbrances:

(a) with respect to any Well (but limited to any currently producing intervals):

(i) entitles Seller to receive not less than the percentage set forth in Exhibit A—Part 2, as the net revenue interest for such Well of all Hydrocarbons produced and saved from such Well, without reduction of such interest throughout the duration of the life of such Well, except (A) as set forth in Exhibit A—Part 2 and (B) decreases in connection with those operations in which Seller may from and after the date of this Agreement be a non-consenting co-owner;

(ii) obligates Seller to bear not greater than the working interest for such Well (shown in Exhibit A—Part 2), without increase throughout the duration of the life of such Well, except (A) as set forth in Exhibit A—Part 2, (B) increases resulting from contribution requirements with respect to defaulting or non-consenting co-owners under applicable operating agreements, and (C) increases to the extent that they are

accompanied by a proportionate increase in Seller's corresponding net revenue interest (set forth in Exhibit A—Part 2); and

(b) is free and clear of all Liens (other than Permitted Encumbrances).

“Delinquent Cure Amounts” shall have the meaning given that term in Section 7.02(b).

“Delinquent ORRIs/NPIs” shall have the meaning given that term in Section 7.02(b).

“Deposit” shall have the meaning given that term in Section 3.02(a).

“Deposit Escrow Agreement” shall mean the escrow agreement entered into contemporaneously with this Agreement among Buyer, Seller and Escrow Agent related to the Deposit.

“DIP Credit Agreement” shall mean that certain Senior Secured Superpriority Priming Debtor-in-Possession Credit Agreement dated as of August 29, 2012, by and among Seller, as borrower, the lenders from time to time party thereto, and Credit Suisse AG, as administrative agent, together with all collateral or security documents executed in connection therewith by Seller or its Affiliates, as amended, supplemented and modified from time to time.

“Dispute Notice” shall have the meaning given that term in Section 7.02(d).

“DOJ” shall mean the Department of Justice.

“Environmental Laws” shall mean applicable federal and state statutes and regulations and applicable local statutes, regulations and/or ordinances relating to the protection of human health and the environment, including without limitation the Clean Air Act, the Clean Water Act, the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Occupational Safety and Health Act of 1970, the Resource Conservation and Recovery Act of 1976, the Safe Drinking Water Act, the Toxic Substances Control Act and the Oil Pollution Act of 1990. The term **“Environmental Laws”** shall also include all amendments to any of the foregoing that are adopted prior to the date of this Agreement, but shall not include any Law not in effect as of the date of this Agreement.

“Escrow Agent” shall mean [] .

“Excluded Assets” shall have the meaning given that term in Section 2.03.

“Facilities” shall have the meaning given that term in Section 2.02(c).

“Files” shall have the meaning given that term in Section 2.02(g).

“Final Adjustments” shall have the meaning given that term in Section 7.02(d).

“Final Settlement Statement” shall have the meaning given that term in Section 7.02(d).

“FTC” shall mean the Federal Trade Commission.

“**GAAP**” shall mean generally accepted accounting principles in the United States of America as in effect from time to time.

“**Governmental Authority**” shall mean any federal, state, county or municipal government or any court of competent jurisdiction, regulatory or administrative agency, quasi-governmental body, board, bureau, department, commission or other governmental authority that exercises jurisdiction over any of the Assets.

“**HSR Act**” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended from time to time, and the rules and regulations thereunder.

“**Hydrocarbons**” shall mean oil, gas, casinghead gas, condensate, sulfur, and other liquid or gaseous hydrocarbons, or any of them or any combination thereof, and all products and substances extracted, separated, processed and produced therefrom.

“**Imbalance**” shall mean any (i) imbalance at the wellhead between the amount of Hydrocarbons produced from a Well and taken by Seller and allocated to the Assets and the amount of Hydrocarbons produced from a Well and allocable to Seller’s interest therein and (ii) imbalance between the amount of Hydrocarbons delivered by Seller to any pipeline and allocated to the Assets and the amount of Hydrocarbons scheduled to be delivered by Seller with respect to the Assets.

“**Income Taxes**” shall mean Taxes other than Non-Income Taxes, Production Taxes and Transfer Taxes.

“**Indemnified Party**” shall have the meaning given that term in Section 10.02(b).

“**Intellectual Property**” shall mean: (a) all patents, patent applications and invention disclosures worldwide, together with all reissues, continuations, continuations-in-part, divisionals, supplementary protection certificates, extensions and re-examinations thereof; (b) all registered and unregistered trademarks, service marks, trade names, logos, trade dress and slogans, worldwide, and registrations and applications for registration thereof and any and all goodwill associated therewith; (c) all copyrights in copyrightable works, and all other rights of authorship recognized by statute or otherwise, and all applications, registrations and renewals in connection therewith; (d) all mask works and semiconductor chip rights, and all applications, registrations and renewals in connection therewith; (e) all trade secrets and confidential information, including ideas, research and development, know-how, and marketing plans and proposals, confidential inventions, technical information, processes, drawings, technology, research studies, computer programs, marketing studies, and customer lists; (f) domain names and uniform resource locators, and all contractual rights to the foregoing; (g) all seismic and geotechnical data and rights, to the extent the same is assignable without payments of fees or penalties or other liability; and (h) all other intellectual property rights relating to any or all of the foregoing.

“**IRS**” shall mean the Internal Revenue Service.

“**Interim Period**” shall mean that period commencing on the date of the execution of this Agreement and terminating upon the earlier of the Closing or the termination of this Agreement.

“**Knowledge**” shall mean, with respect to Seller, the actual knowledge (without investigation) of the Persons listed on Schedule 1.01A hereto and, with respect to Buyer, the actual knowledge (without investigation) of the Persons listed on Schedule 1.01B hereto.

“**Law**” shall mean any applicable principle of common law, statute, law, rule, regulation, ordinance, order, code, notice to lessee, ruling, writ, injunction, decree or other official act of or by any Governmental Authority.

“**Leases**” shall have the meaning given that term in Section 2.02(a).

“**Liabilities**” shall mean, except as provided in Section 10.06, any and all claims, causes of action, payments, charges, judgments, assessments, liabilities, losses, damages, penalties, fines or costs and expenses, including any attorneys’ fees, legal or other expenses incurred in connection therewith and including liabilities, costs, losses and damages for personal injury or death or property damage.

“**Liens**” shall mean any mortgage, pledge, hypothecation, assignment, deposit arrangement, lien (statutory or otherwise), security interest or other charge or encumbrance, any financing lease having substantially the same economic effect as any of the foregoing, any assignment of the right to receive income, any other type of preferential arrangement, or any right-of-way, easement, encroachment or encumbrance of any kind.

“**Material Adverse Effect**” shall mean (i) any change, effect, state of facts, occurrence, event or circumstance that results, individually or in the aggregate, in a material adverse effect on the use, ownership or operation of the Assets, taken as a whole and as currently operated as of the date of this Agreement, or (ii) any change, effect, state of facts, occurrence, event or circumstance that prevents or materially impedes the consummation by Seller of the transactions contemplated by this Agreement; provided, however, that no change, effect, state of facts, occurrence, event or circumstance, individually or in the aggregate, that arises or results from the following shall be deemed to constitute or be considered in determining whether a Material Adverse Effect has occurred: (a) changes in general economic, capital market, regulatory or political conditions or changes in applicable Law or the interpretation thereof that, in any case, do not materially disproportionately affect the Assets; (b) changes that affect generally the oil and gas industry in the Gulf of Mexico that, in any case, do not materially disproportionately affect the Assets as compared to similarly situated properties in the Gulf of Mexico; (c) the declaration by the United States of a national emergency or acts of war or terrorism or acts of God that, in any case, do not materially disproportionately affect the Assets; (d) the entry into or announcement of the transactions contemplated by this Agreement, or the consummation of the transactions contemplated hereby; (e) changes in Law or GAAP; (f) any changes in commodity prices, including any Hydrocarbons or other commodities relating to the business of Seller or the Assets; (g) any action or omission of Buyer; (h) changes relating to or arising from (x) the filing, pendency or conduct of the Bankruptcy Case, (y) any orders of the Bankruptcy Court or (z) the fact that Seller is operating as a debtor-in-possession under the Bankruptcy Code; or (i) any action or omission of Seller taken in accordance with the terms of this Agreement without the violation thereof or with the prior written consent of Buyer.

“Material Contract” shall mean the following (excluding any Contract executed as part of the Debt Facilities):

(a) any Assigned Contract that (i) can reasonably be expected to result in aggregate payments by Seller with respect to the Assets of more than \$300,000 during the current fiscal year and (ii) cannot be terminated without penalty on 60 days or less notice;

(b) any Assigned Contract that can reasonably be expected to result in aggregate revenues to Seller with respect to the Assets of more than \$300,000 during the current fiscal year;

(c) any Assigned Contract containing any provision that materially limits the ability of Seller to engage in any business activity or compete with any Person;

(d) any purchase and sale, transportation, processing, refining or similar Assigned Contract (in each case) relating to the Assets to which Seller is a party that is not terminable without penalty on 60 days or less notice;

(e) any indenture, mortgage, loan, note, credit, sale-leaseback or similar Assigned Contract (in each case) to which any of the Assets are subject and all related security agreements or similar agreements associated therewith; and

(f) any Assigned Contract between an Affiliate of Seller, on the one hand, and Seller, on the other hand, that will not be terminated on or prior to Closing and that binds the Assets.

“Non-Income Taxes” shall mean ad valorem, property, excise and similar Taxes and shall exclude Production Taxes, Transfer Taxes and Taxes based upon, measured by, or calculated with respect to (i) net income, profits or similar measures or (ii) multiple bases (including corporate franchise, business and occupation, business license or similar Taxes) if one or more of the bases on which such Tax is based, measured or calculated is described in clause (i), in each case together with any interest, penalties, or additions to such Tax.

“Organizational Documents” shall mean the articles of incorporation, certificate of incorporation, certificate of formation, bylaws, operating agreement, certificate of limited partnership, partnership agreement and all other similar documents, instruments or certificates executed, adopted or filed in connection with the creation, formation or organization of a Person, including any amendments thereto.

“Other Parties” shall have the meaning given that term in Section 4.01(n).

“Outside Date” shall mean [], 2013.

“Parties” shall have the meaning given that term in the preamble.

“Permit” means any permit, license, franchise, certificate, approval or authorization from any Governmental Authority.

“**Permitted Encumbrances**” shall mean any of the following:

(a) the terms, conditions, restrictions, exceptions, reservations, limitations and other matters contained in any Assigned Contract or any recorded agreements, instruments and documents that create or reserve to Seller its interests in any of the Assets, including the Leases and assignments thereof, to the extent that such agreements, instruments and documents do not operate to reduce any net revenue interest of Seller (as set forth in Exhibit A—Part 2), increase any working interest of Seller (as set forth in Exhibit A—Part 2) without a proportionate increase in the corresponding net revenue interest of Seller or otherwise, individually or in the aggregate, materially impair the use of the Assets to which they relate as currently used;

(b) any (i) undetermined or inchoate liens or charges constituting or securing the payment of expenses that were incurred incidental to maintenance, development, production or operation of the Assets or for the purpose of developing, producing or processing Hydrocarbons therefrom or therein, and (ii) materialman’s, mechanic’s, repairman’s, vendor’s, construction, employee’s, contractor’s, operator’s or other similar liens or charges for the payment of expenses, in the case of each of (i) or (ii), arising in the ordinary course of business that are not yet delinquent;

(c) any Liens for Taxes or assessments not yet delinquent or that are set forth on Schedule 1.01C;

(d) any Liens in the ordinary course of business created by Law, reserved in oil and gas leases for royalties, bonuses or rentals or created to secure compliance with the terms of the agreements, instruments and documents that create or reserve to Seller its interests in the Assets or govern the operation thereof, that, in each case, (i) do not, individually or in the aggregate, materially impair the use of the Assets to which they relate as currently used, and (ii) if they constitute security for any obligations, such obligations are not yet delinquent or Seller is not in default thereof;

(e) any obligations or duties affecting the Assets to any Governmental Authority with respect to any Permit and all applicable Laws;

(f) any obligations or duties affecting the Assets arising under the BOEM/BSEE Trusts or the underlying trust agreements;

(g) any easements, rights-of-way, servitudes, Permits and other similar rights for the purposes of pipelines, transmission lines, Facilities or other similar fixtures or personalty that do not, individually or in the aggregate, materially impair the use of the Assets to which they relate as currently used;

(g) all lessors’ royalties, overriding royalties, net profits interests, carried interests, production payments, reversionary interests and other burdens on, or deductions from, the proceeds of production that do not operate to reduce any net revenue interest of Seller (as set forth in Exhibit A—Part 2) or increase any working interest of Seller (as set forth in Exhibit A—Part 2) without a proportionate increase in the corresponding net revenue interest of Seller, and any other matters set forth on Exhibit A—Part 2;

(h) preferential rights to purchase, and Third Party consents to assignments or similar agreements set forth on Schedule 4.01(p);

(i) conventional rights of reassignment;

(j) such Title Defects as Buyer may have waived in writing after the date hereof;

(k) Liens arising in the ordinary course of business and other restrictions under all Assigned Contracts, including: all production sales Contracts; division orders; Contracts for sale, purchase, exchange, refining or processing of Hydrocarbons; unitization and pooling designations, declarations, orders and agreements; operating agreements; farmout agreements; agreements of development; area of mutual interest agreements; gas balancing or deferred production agreements; processing agreements; plant agreements; pipeline, gathering and transportation agreements; injection, repressuring and recycling agreements; carbon dioxide purchase or sale agreements; salt water or other disposal agreements; seismic or geophysical permits or agreements; and any and all other agreements that, in each case, (i) do not operate to reduce any net revenue interest of Seller (as set forth in Exhibit A—Part 2), increase any working interest of Seller (as set forth in Exhibit A—Part 2) without a proportionate increase in the corresponding net revenue interest of Seller, (ii) do not, individually or in the aggregate, materially impair the use of the Assets to which they relate as currently used, and (iii) if they constitute security for any obligations, such obligations are not yet delinquent; and

(l) any Liens that will be released on or before the Closing.

“**Person**” shall mean an individual, corporation, partnership, association, trust, limited liability company or any other entity or organization, including government or political subdivisions or an agency, unit or instrumentality thereof.

“**Production Taxes**” shall mean severance, production and similar Taxes based upon or measured by the production of Hydrocarbons.

“**Properties**” shall have the meaning given that term in Section 2.02(b).

“**Purchase Price**” shall have the meaning given that term in Section 3.01.

“**Purchase Price Increases**” shall have the meaning given that term in Section 7.02(a).

“**Purchase Price Reductions**” shall have the meaning given that term in Section 7.02(b).

“**Sale Order**” shall mean an order of the Bankruptcy Court granting the Bankruptcy Sale Motion, approving and authorizing Seller to consummate the transactions contemplated hereby, and authorizing the assumption and assignment of the Assigned Contracts. Without limiting the generality of the foregoing, such order shall provide, among other things, that (i) the Assets sold to Buyer pursuant to this Agreement shall be transferred to Buyer free and clear of any Liens (other than Permitted Encumbrances), (ii) contemporaneously with Closing, all such Liens shall

attach to the proceeds received by Seller from the sale of the purchased Assets with the same validity, force and effect, and in the same order of priority, which such Liens now have against the Assets or their proceeds, subject to any rights, claims and defenses Seller or its estate, as applicable, may possess with respect thereto and (iii) the Parties have acted in good faith within the meaning of Section 363(m) of the Bankruptcy Code.

“**Seller**” shall have the meaning given that term in the preamble.

“**Seller Representatives**” shall mean Seller and its members, partners, shareholders, Affiliates, successors and assigns, and the officers, board of directors and/or managers, employees, agents, and representatives of all of the foregoing Persons.

“**Straddle Period**” shall mean any Tax period beginning before and ending after the Closing Date.

“**Subsidiary**” of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first Person or by another Subsidiary of such first Person.

“**Tax Proceeding**” shall have the meaning set forth in Section 12.01(b).

“**Tax Returns**” shall mean any report, return, information statement, schedule, attachment, payee statement or other information required to be provided to any Taxing Authority with respect to Taxes or any amendment thereof, including any return of an affiliated, combined or unitary group, and any and all work papers relating to any Tax Return.

“**Taxes**” shall mean (a) any taxes, assessments and other governmental charges imposed by any Taxing Authority, including net income, gross income, profits, gross receipts, license, employment, stamp, occupation, premium, alternative or add-on minimum, ad valorem, real property, personal property, transfer, real property transfer, value added, sales, use, environmental (including taxes under Code Section 59A), customs, duties, capital stock, franchise, excise, withholding, social security (or similar), unemployment, disability, payroll, fuel, excess profits, windfall profit, severance, estimated or other tax, including any interest, penalty or addition thereto, whether disputed or not, and any expenses incurred in connection with the determination, settlement or litigation of the Tax liability, (b) any obligations under any agreements or arrangements with respect to Taxes described in clause (a) above, and (c) any transferee liability in respect of Taxes described in clauses (a) and (b) above or payable by reason of assumption, transferee liability, operation of Law, Treasury Regulation Section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under Law) or otherwise.

“**Taxing Authority**” shall mean, with respect to any Tax, a Governmental Authority that imposes such Tax, and the agency (if any) charged with the collection of such Tax for such entity, including, without limitation, any Governmental Authority that imposes, or is charged with collecting, Social Security or similar charges or premiums.

“**Third Party**” shall mean any Person other than a Party to this Agreement or an Affiliate of a Party to this Agreement.

“**Third Party Claim**” shall have the meaning given that term in Section 10.02(b).

“**Title Defect**” shall mean any failure of Seller to have Defensible Title to any Property. Notwithstanding the foregoing, none of the following shall constitute a Title Defect: (a) the loss of or reduction of interest in any Well or other Property following the date hereof due to: (i) any election or decision made by Seller in accordance with applicable joint operating agreements and not made in violation of this Agreement or (ii) the expiration of the term of any Lease; (b) defects based solely on (i) lack of information in Seller’s or its Affiliates’ files but that is otherwise available to Buyer with commercially reasonable efforts, or (ii) references to a document(s) if such document(s) is not in Seller’s or its Affiliates’ files but is otherwise available to Buyer with commercially reasonable efforts by Buyer or Seller; (c) defects arising out of a lack of record evidence of corporate or other entity authorization unless it is reasonably likely that the action was not authorized; (d) defects that have been cured by applicable Laws of limitations or prescription; and/or (e) defects based on failure to record Leases issued by any Governmental Authority, or any assignments of record title or operating rights in such Leases, in the real property, conveyance or other records of the county or parish in which such Property is located so long as such Leases and/or assignments are filed in the records of the Governmental Authority that is the lessor thereunder.

“**Transfer Taxes**” shall have the meaning given that term in Section 12.01(c).

“**Unit Interests**” shall have the meaning given that term in Section 2.02(a).

“**Wells**” shall have the meaning given that term in Section 2.02(b).

Section 1.02 Interpretation. As used in this Agreement, unless the context otherwise requires, the term “includes” and its syntactical variants means “includes but is not limited to.” The headings and captions contained in this Agreement have been inserted for convenience only and shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions hereof. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. All references herein to “Sections” and “Articles” in this Agreement shall refer to the corresponding section and article of this Agreement unless specific reference is made to such sections of another document or instrument. The words “hereof,” “herein” and “hereunder” and words of similar import when used in any agreement or instrument shall refer to such agreement or instrument as a whole and not to any particular provision of such agreement or instrument. “\$” means United States dollars.

ARTICLE II ASSETS

Section 2.01 Agreement to Sell and Purchase. Pursuant to Section 363 and 365 of the Bankruptcy Code, for the consideration hereinafter set forth and subject to the terms and conditions of this Agreement, Buyer agrees to purchase from Seller and Seller agrees to sell,

transfer and assign to Buyer, all of Seller's operating and record right, title and interests in, to and under the Assets as of the Closing.

Section 2.02 Assets. Subject to Section 2.03, the term "**Assets**" shall mean all of Seller's operating and record right, title and interests in, to and under the properties and assets described in subsections (a) through (m) below, less and except the Excluded Assets:

(a) (i) the oil and gas leases set forth on Exhibit A—Part 1 (Seller's interests in such leases, including, subject to and limited by all overriding royalty interests, net profits interests or similar burdens, collectively, the "**Leases**"), and (ii) the interests in any units or pooled or communitized properties arising on account of the Leases having been unitized or pooled into such units or with such lands (Seller's interests therein, the "**Unit Interests**");

(b) all oil and gas wells attributable to the Leases or Unit Interests as set forth on Exhibit A—Part 2 (the "**Wells**"; the Leases, the Unit Interests and the Wells being collectively referred to hereinafter as the "**Properties**");

(c) all production facilities, structures, tubular goods, well equipment, lease equipment, production equipment, pipelines, machinery and all other personal property, fixtures and facilities to the extent appurtenant to or primarily related to the Properties (collectively, the "**Facilities**");

(d) all Permits, servitudes, rights-of-use, easements and rights-of-way (to the extent transferable) described in Exhibit A—Part 3;

(e) the Hydrocarbons produced from or attributable to the Properties from and after the Closing Date and all Hydrocarbons produced from or attributable to the Properties that are (A) stored in tanks and vessels to the bottom of the flange as of the Closing Date or (B) produced into any pipeline or gathering line but not sold as of the Closing Date, and all proceeds attributable thereto;

(f) all Contracts listed in Exhibit A—Part 4, as such Exhibit may be amended in accordance with this Agreement (collectively, the "**Assigned Contracts**");

(g) all of those records, files, maps, data, schedules, reports and logs to the extent primarily relating to the Properties (collectively referred to as the "**Files**");

(h) all claims, asserted or unasserted, contingent or fixed, known or unknown, against Third Parties: (i) relating to the title of the Properties, whether accruing before, on or after the Closing Date, (ii) under insurance policies maintained by or on behalf of Seller attributable to events or omissions occurring or conditions existing with respect to the ownership or operations of the Properties on or after the Closing Date or, to the extent such claims are not assignable, any proceeds attributable to such claims, or (iii) otherwise relating to the Properties to the extent accruing on or after the Closing Date;

(i) all proceeds from the settlements of contract disputes with purchasers of Hydrocarbons from or attributable to the Properties, including settlement of take-or-pay disputes, insofar as said proceeds accrued on or after the Closing Date;

(j) any trade credits, accounts receivable, proceeds or revenues to the extent attributable to the Assets and accruing on or after the Closing Date;

(k) all credits, prepayments, payments, advances, refunds and similar amounts attributable to Non-Income Taxes and Production Taxes to the extent related to the Assets paid by or on behalf of Seller and attributable to Tax periods (or portions thereof) beginning on or after the Closing Date;

(l) all Intellectual Property set forth on Exhibit A—Part 5; and

(m) any Imbalances as of the Closing Date.

Section 2.03 Excluded Assets. The Assets shall not include, and there is excepted, reserved and excluded from the purchase and sale contemplated hereby, the Excluded Assets. The “**Excluded Assets**” shall mean:

(a) all corporate, financial, Tax and legal records of Seller that relate to Seller’s business generally (but excluding any title opinions, lease and land files, surveys, abstracts, and any other title materials specifically relating to the Properties) or to the extent they relate to the other Excluded Assets;

(b) any trade credits, accounts receivable, proceeds or revenues to the extent attributable to the Properties and accruing prior to the Closing Date;

(c) any Contract that is not an Assigned Contract;

(d) all Hydrocarbons produced from or attributable to the Properties with respect to any periods of time prior to the Closing Date, other than Hydrocarbons produced from or attributable to the Properties that are (A) stored in tanks and vessels to the bottom of the flange as of the Closing Date or (B) produced into any pipeline or gathering line but not sold as of the Closing Date, and all proceeds attributable thereto;

(e) all credits, prepayments, payments, advances, refunds and similar amounts attributable to Non-Income Taxes and Production Taxes to the extent related to the Assets paid by or on behalf of Seller (including pursuant to Article XII or by a downward adjustment of the Purchase Price pursuant to Section 7.02) and attributable to Tax periods (or portions thereof) beginning prior to the Closing Date;

(f) all proceeds from the settlements of contract disputes with purchasers of Hydrocarbons from or attributable to the Properties, including settlement of take-or-pay disputes, insofar as said proceeds accrued prior to the Closing Date;

(g) all area-wide Permits or other Permits used in the conduct of Seller’s business generally and not specifically related to the Assets;

(h) all guarantees, letters of credit, comfort letters, surety bonds, support agreements and other credit support and any cash or cash equivalents or other security or collateral provided

therefor by Seller or Seller's Affiliates in support of the obligations of Seller with respect to the Assets;

(i) any and all interests in and to the BOEM/BSEE Trusts, any assets contained therein and any assets released therefrom whether or not directly related to the Assets;

(j) all claims, asserted or unasserted, contingent or fixed, known or unknown, against Third Parties: (i) under insurance policies maintained by or on behalf of Seller attributable to events or omissions occurring or conditions existing with respect to the ownership or operations of the Assets prior to the Closing Date or any proceeds attributable to such claims or (ii) otherwise relating to the Assets (other than relating to title to the Assets) to the extent accruing prior to the Closing Date;

(k) except as set forth on Exhibit A—Part 5, all Intellectual Property of or associated with Seller, its Affiliates or their businesses;

(l) any shares of capital stock or other equity interests of any Affiliate or Subsidiary of Seller;

(m) all privileged attorney-client (i) communications and (ii) other documents (other than title opinions);

(n) all audit rights arising under any of the Assigned Contracts and attributable to any periods of time prior to the Closing Date or to any of the Excluded Assets, except with respect to any Imbalances;

(o) all amounts paid by any Person to Seller or its Affiliates as overhead for periods of time accruing prior to the Closing Date under any joint operating agreements burdening the Assets;

(p) all master service agreements and those Contracts listed in Exhibit B;

(q) all properties and assets set forth on Exhibit C; and

(r) other than any confidentiality agreements relating to the Assets, all materials, information and analyses developed or prepared in connection with marketing Seller, its Affiliates and/or the Assets, including presentations, valuations, bids and bidder lists and all communications with marketing advisors.

ARTICLE III CONSIDERATION

Section 3.01 Purchase Price. The consideration for the sale, transfer and assignment of the Assets by Seller to Buyer is Buyer's payment to Seller of the sum of \$_____ (the "**Purchase Price**"), as adjusted at the Closing pursuant to Section 7.02(c) (the "**Adjusted Purchase Price**"), and Buyer's assumption of the Assumed Obligations. The Adjusted Purchase Price, less the Deposit (and all interest earned thereon), shall be paid by Buyer to Seller at the

Closing by means of a completed wire transfer in immediately available funds to the account of Seller as designated by Seller to Buyer in writing prior to the Closing.

Section 3.02 Deposit.

(a) Contemporaneously with the execution of this Agreement, Buyer shall deposit by wire transfer in immediately available funds with the Escrow Agent the sum of \$_____ (the “**Deposit**”). The Deposit shall be held by the Escrow Agent in a segregated interest-bearing escrow account pursuant to the Deposit Escrow Agreement. If Closing occurs, the Deposit (and all interest earned thereon) shall be applied toward the Purchase Price at the Closing and shall be released to Seller.

(b) If (i) Seller elects to terminate this Agreement pursuant to Section 9.01(c) or (ii) this Agreement is terminated pursuant to Section 9.01(e) and Seller has the right at that time to terminate this Agreement pursuant to Section 9.01(c), and, in either case, Seller has not itself breached in any material respect any of its respective representations, warranties, covenants or agreements contained in this Agreement such that Buyer has the right at that time to terminate this Agreement pursuant to Section 9.01(d), then Seller shall be entitled to receive the Deposit (including all interest earned thereon), free of any claims by Buyer with respect thereto, this being in addition to, and without any limitation of, any other remedy to which Seller is entitled at law or in equity.

(c) If this Agreement is terminated pursuant to any provision of Section 9.01 other than (i) Section 9.01(c) or (ii) Section 9.01(e) at which time Seller has the right to terminate this Agreement pursuant to Section 9.01(c), then Buyer shall be entitled to the prompt return of the Deposit, free of any claims by Seller with respect thereto, including all interest earned thereon.

(d) Seller and Buyer agree to provide a joint instruction notice to the Escrow Agent regarding the disposition of the Deposit (including all interest earned thereon) in accordance with this Section 3.02.

Section 3.03 Allocated Values. For the purposes of the transactions contemplated hereby Buyer and Seller have agreed to an allocation of the Purchase Price and the Assumed Obligations among the Assets as set forth in Exhibit A—Part 2 attached hereto (the “**Allocation**”). Buyer and Seller shall use commercially reasonable efforts to update the Allocation in a manner consistent with the prior Allocation following any adjustment to the Purchase Price pursuant to this Agreement. Buyer and Seller agree (a) that the Allocation, as adjusted, shall be used by Buyer and Seller as the basis for reporting Asset values and other items for purposes of all Tax Returns, including without limitation IRS Form 8594 and (b) that neither they nor their Affiliates will take positions inconsistent with such Allocation in notices to Governmental Authorities, in audit or other proceedings with respect to Taxes, in notices to preferential purchase right holders or in other documents or notices relating to the transactions contemplated by this Agreement unless otherwise required by applicable Law or with the consent of the other Party. Seller and Buyer shall confer and cooperate with one another in the preparation and filing of IRS Forms 8594 and the making of any revisions to the Allocation, including reporting any matters that require updating.

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES**

Section 4.01 Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows:

(a) Organization. Seller is duly formed, validly existing and (to the extent applicable) in good standing under the Laws of the State of Texas and has the requisite organizational power and authority to carry on its business as presently being conducted and to own, lease and operate its properties where such properties are now owned, leased or operated.

(b) Qualification. Seller is duly qualified to do business and is in good standing in each jurisdiction in which the nature of its business as now conducted or the property owned, leased or operated by it makes such qualification necessary, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Material Adverse Effect.

(c) Authorization. Subject to such authorization as is required by the Bankruptcy Court, the execution and delivery by Seller of this Agreement, the performance of its obligations hereunder and the consummation of the transactions hereunder have been duly and validly authorized by all requisite action by Seller's board of directors (or other comparable governing body) and under its Organizational Documents. Subject to the entry of the Sale Order by the Bankruptcy Court, Seller has the requisite organizational power and authority to execute and deliver this Agreement, perform its obligations hereunder and consummate the transactions hereunder.

(d) Enforceability. Subject to the entry of the Sale Order by the Bankruptcy Court, this Agreement has been duly executed and delivered by Seller and constitutes the valid and legally binding obligation of Seller, enforceable in accordance with its terms and conditions except insofar as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar Laws affecting the enforcement of creditors' rights generally and by general principles of equity, regardless of whether such principles are considered in a proceeding at law or in equity.

(e) Noncontravention. Except as described on Schedule 4.01(e) or Schedule 4.01(p), neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, by Seller will (i) conflict with, result in a violation, default, acceleration or breach of the terms of (with or without notice or passage of time), or create in any party the right to accelerate, terminate, modify or cancel (A) the Organizational Documents of Seller, or (B) any Material Contract, (ii) result in the creation or imposition of any Lien (other than Permitted Encumbrances) on any of the Assets, or (iii) assuming compliance with the HSR Act (if applicable) and the matters described on Schedule 4.01(e), conflict with or result in a violation or breach of any Law applicable to Seller or the Assets, other than, in the case of clauses (i)(B), (ii) and (iii), any such items that, individually or in the aggregate, would not have a Material Adverse Effect.

(f) Governmental Approvals. Subject to entry of a Sale Order by the Bankruptcy Court, and except (i) as described on Schedule 4.01(f), and (ii) for compliance with the HSR Act (if applicable), no consent, approval, order or authorization of, or filing or registration with, or notification to any Governmental Authority is required to be obtained by Seller in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions hereunder.

(g) Litigation. As of the date of this Agreement, except for (i) the matters described on Schedule 4.01(g) and (ii) the Bankruptcy Case, there are no (A) suits, actions, investigations, proceedings or litigation before or by any Governmental Authority that are pending or, to Seller's Knowledge, threatened, or (B) judgments, orders or decrees outstanding, in each case of subparts (A) and (B) of this Section 4.01(g), against Seller that are attributable to Seller's ownership or operation of any of the Assets and that, individually or in the aggregate, would have a Material Adverse Effect.

(h) Brokers' and Other Fees. Except as disclosed on Schedule 4.01(h), Seller does not have any Liability to pay any fees or commissions to any broker, finder, agent, lawyer or any other Person with respect to the execution and delivery of this Agreement or the consummation of the transactions contemplated by this Agreement for which Buyer will be liable.

(i) Taxes. Except as disclosed on Schedule 4.01(i):

(i) Seller has (A) duly and timely filed or caused to be duly and timely filed all Tax Returns required to be filed with respect to the Assets with the appropriate Taxing Authority, and each such Tax Return is true, complete and correct, in all material respects, (B) paid all material Taxes with respect to the Assets, and (C) made all material withholdings and deposits of Taxes required by it with respect to the Assets.

(ii) There are no currently proposed or pending adjustments by any Taxing Authority in connection with any Tax Returns relating to the Assets, and no waiver or extension of any statute of limitations as to any Tax matter relating to the Assets has been given or requested with respect to any Tax year. No Tax audits or administrative or judicial proceedings are being conducted, pending or, to the Knowledge of Seller, threatened with respect to Seller. No claim has ever been made by an authority in a jurisdiction where Seller does not file a Tax Return that it is or may be subject to taxation in that jurisdiction.

(j) Royalty Payments. Except as described on Schedule 4.01(j), all shut-in royalties, overriding royalties and other royalties, net profits interests or similar burdens on production with respect to the Leases that have become due and payable have been duly paid as of the Closing Date (other than royalties, net profits interests or similar burdens held in escrow or in suspense as permitted by applicable Law or the terms of the applicable Lease).

(k) Hydrocarbon Sales. Except as described on Schedule 4.01(k), (i) Seller is not obligated by virtue of: (A) a prepayment arrangement under any Assigned Contract for the sale of Hydrocarbons that contains a "take or pay" provision, (B) a production payment, or (C) any

other arrangement, other than gas balancing arrangements, to deliver Hydrocarbons produced from the Assets at some future time without then or thereafter receiving payment for the production commensurate with Seller's ownership in and to the Assets, and (ii) Seller is not subject to any penalties or other payments under any gas transportation or other agreement as a result of the delivery of quantities of gas from the Assets in excess of the Assigned Contract requirements.

(l) Environmental Matters. Except as described on Schedule 4.01(l) and except as would not, individually or in the aggregate, have a Material Adverse Effect, as of the date of this Agreement: Seller has not received any written notice of any outstanding violation of, claim under, or allegation of any liability under any Environmental Laws relating to the Assets, and the Assets are, to the Knowledge of Seller, in material compliance with all applicable Environmental Laws. This Section 4.01(l) is the sole and exclusive representation by Seller or its Affiliates with respect to any Environmental Law or environmental matter.

(m) Compliance with Laws. Except as described on Schedule 4.01(m) and as would not, individually or in the aggregate, have a Material Adverse Effect, Seller's operation of the Assets is in compliance with all Laws of all Governmental Authorities having jurisdiction relating to the ownership and operation thereof, including the production of all Hydrocarbons attributable thereto. Except as described on Schedule 4.01(m) and as would not, individually or in the aggregate, have a Material Adverse Effect, (i) all necessary Permits or other authorizations with regard to Seller's ownership or operation of the Assets have been obtained and are held by Seller, (ii) no violations exist in respect of such Permits or other authorizations, and Seller has not received any written notice of any such violation, and (iii) to Seller's Knowledge, no investigation or review by any Governmental Authority with respect to a violation by Seller of any such Permits or other authorizations or of applicable Law is pending or threatened in writing. Notwithstanding the foregoing, Seller makes no representation or warranty in this Section 4.01(m) with respect to any matters relating to the environment or Environmental Law.

(n) Material Contracts. Exhibit A—Part 4 lists all Material Contracts as of the date of this Agreement. Seller has made available to Buyer accurate and complete copies of all such Material Contracts as of the date of this Agreement. Seller is not nor, to the Knowledge of Seller, are any of the other parties (the "**Other Parties**") to any such Material Contract in breach, violation or default, and no event has occurred which with notice or lapse of time or both would constitute a breach, violation or default by Seller or, to the Knowledge of Seller, permit termination, modification, or acceleration by the Other Parties, under such Material Contract, except (A) for breaches, violations or defaults which would not, individually or in the aggregate, have a Material Adverse Effect, (B) that, in order to avoid a default, violation or breach under any such Material Contract, the consent of the Other Parties may be required in connection with the transactions contemplated hereby, or (C) for defaults that will be cured in accordance with the Sale Order (or that need not be cured under the Bankruptcy Code to permit the assumption and assignment of the Material Contracts).

(o) AFEs. Schedule 4.01(o) contains a true and correct list as of the date of this Agreement of all material authorizations for expenditures (collectively, "**AFEs**") to drill or rework Wells or for capital expenditures with respect to the Assets that have been proposed by any Person having authority to do so other than internal AFEs of Seller not delivered to Third

Parties. For the purposes of this Section 4.01(o), an AFE shall be material if, net to Seller's interest, such AFE exceeds \$100,000 and such AFE is valid and outstanding.

(p) Preferential Purchase Rights. Schedule 4.01(p) sets forth those preferential rights to purchase, consents to assignment and similar rights with respect to the Leases and Material Contracts that are applicable to the transactions contemplated hereby.

(q) Payout Balances. To Seller's Knowledge, Schedule 4.01(q) contains a list of the estimated status of any "payout" balance (on a gross working interest basis for all working interest owners affected thereby), as of _____, 201[2][3], for each Property that is subject to a reversion or other adjustment at some level of cost recovery or payout.

(r) Reserve Report. Seller has made available to Buyer a true and correct copy of the oil and gas reserve report dated _____, 2012, prepared by _____.

(s) Absence of Certain Changes. Except as described on Schedule 4.01(s) or as ordered by the Bankruptcy Court or as otherwise relates to the filing or pendency of the Bankruptcy Case, since the date of this Agreement, there has not been a Material Adverse Effect.

(t) Title Matters. Except as described on Schedule 4.01(t), Seller has Defensible Title to the Properties, free of any Title Defect. Except for the Liens described on Schedule 4.01(t), Seller has good and valid title to all material tangible personal property included in the Assets (other than the Wells and any material tangible personal property disposed of in the ordinary course of business), free and clear of any Liens other than Permitted Encumbrances.

(u) Confidentiality Restrictions. Schedule 4.01(u) sets forth a complete and accurate list of the material materials and/or documents to which Buyer may not have access on account of Third Party confidentiality restrictions.

(v) Insurance. Schedule 4.01(v) sets forth a list of all policies of insurance owned, held by or maintained by Seller or any of its Affiliates related to the Assets as of the date of this Agreement, including the type of policy, the limits of the coverage and the deductible with respect thereto. Except as would not, individually or in the aggregate, have a Material Adverse Effect, such policies of insurance are in full force and effect and satisfy all requirements of applicable Law. Except as set forth in Schedule 4.01(v), (i) during the period commencing on January 1, 2012 up to the date of this Agreement, Seller has not, with respect to the Assets, received any written notice from the insurer under any insurance policy applicable to the Assets disclaiming coverage with respect to a particular claim or such policy in general (other than a reservation of rights notice) or canceling or amending any such policy and (ii) Seller has not made any material claim under such policies relating to the Assets during period commencing on January 1, 2012 up to the date of this Agreement.

(w) Bankruptcy Sale Motion. Seller filed with the Bankruptcy Court, on [] , 2013, a motion seeking approval of the Bidding Procedures Order and Sale Order (the "**Bankruptcy Sale Motion**").

(x) Bidding Procedures. The bidding procedures employed with respect to the Auction process were in all material respects those reflected in the bidding procedures order,

which order is attached as Exhibit E and which order was entered on [] , 2013 (the “**Bidding Procedures Order**”).

(y) Intellectual Property. To the Knowledge of Seller, none of the registrations, issuances or applications pertaining to the Intellectual Property set forth on Exhibit A—Part 5 have expired or been cancelled, abandoned or otherwise terminated, and payment of all material renewal and maintenance fees, costs and expenses in respect thereof, and all material filings related thereto, have been duly made as of the date of this Agreement. To the Knowledge of Seller, no Person is infringing or otherwise violating any of the Intellectual Property set forth on set forth on Exhibit A—Part 5.

Section 4.02 Representations and Warranties of Buyer. Buyer represents and warrants to Seller as follows:

(a) Organization. Buyer is duly formed, validly existing and (to the extent applicable) in good standing under the Laws of the jurisdiction of its formation and has the requisite organizational power and authority to carry on its business as presently being conducted and to own, lease and operate its properties where such properties are now owned, leased or operated.

(b) Qualification. Buyer is duly qualified to do business and is in good standing in each jurisdiction in which the nature of its business as now conducted or the property owned, leased or operated by it makes such qualification necessary, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Buyer Material Adverse Effect. Buyer is duly qualified under any applicable BOEM/BSEE outer continental shelf regulations and is fully bonded or exempt from BOEM/BSEE bonding requirements with respect to the Assets, with no outstanding notices of violation from any Governmental Authority with respect to operations on the outer continental shelf.

(c) Authorization. The execution and delivery by Buyer of this Agreement, the performance of its obligations hereunder and the consummation of the transactions hereunder have been duly and validly authorized by all requisite action by Buyer’s board of directors (or other comparable governing body) and under its Organizational Documents. Buyer has the requisite organizational power and authority to execute and deliver this Agreement, perform its obligations hereunder and consummate the transactions hereunder.

(d) Enforceability. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and legally binding obligation of Buyer, enforceable in accordance with its terms and conditions except insofar as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar Laws affecting the enforcement of creditors’ rights generally and by general principles of equity, regardless of whether such principles are considered in a proceeding at law or in equity.

(e) Noncontravention. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, by Buyer will (i) conflict with, result in a violation, default, acceleration or breach of the terms of (with or without notice or passage of time), or create in any party the right to accelerate, terminate, modify or cancel (A) the

Organizational Documents of Buyer, or (B) any Contract of Buyer, or (ii) assuming compliance with the HSR Act (if applicable), conflict with or result in a violation or breach of any Law applicable to Buyer, other than, in the case of clauses (i)(B) and (ii), any such items that would not, individually or in the aggregate, have a Buyer Material Adverse Effect.

(f) Governmental Approvals. Subject to entry of a Sale Order by the Bankruptcy Court, and except (i) as described on Schedule 4.02(f), and (ii) for compliance with the HSR Act (if applicable), no consent, approval, order or authorization of, or filing or registration with, or notification to any Governmental Authority is required to be obtained by Buyer in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions hereunder.

(g) Litigation. As of the date of this Agreement, there are no (i) suits, actions, investigations, proceedings or litigation before or by any Governmental Authority that are pending or, to Buyer's Knowledge, threatened, or (ii) judgments, orders or decrees outstanding, in each case of subparts (i) and (ii) of this paragraph, against Buyer or any Affiliate of Buyer that, individually or in the aggregate, would have a Buyer Material Adverse Effect.

(h) Brokers' and Other Fees. Except as disclosed on Schedule 4.02(h), Buyer has no Liability to pay any fees or commissions to any broker, finder, agent, lawyer or any other Person with respect to the execution and delivery of this Agreement or the consummation of the transactions contemplated by this Agreement for which Seller will be liable or obligated.

(i) Financing. Buyer has (and at the Closing will have) sufficient cash, available lines of credit or other sources of immediately available funds (in United States dollars) to enable Buyer to pay the Adjusted Purchase Price to Seller at the Closing and to otherwise consummate the transactions contemplated by this Agreement. [True and complete copies of the documentation for Buyer's sources of debt or equity financing have been provided to Seller. Buyer does not have any reason to believe that the financing required to consummate the transactions contemplated by this Agreement will not be available to Buyer on a timely basis to consummate the transactions contemplated by this Agreement.]¹

(j) Adequate Assurances Regarding Contracts. Buyer is and will be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to the Assigned Contracts.

(k) Investment. Buyer is an experienced and knowledgeable investor in the oil and gas business and can bear the economic risk of its investment in the Assets. Prior to entering into this Agreement, Buyer was advised by and has relied solely on its own legal, tax and other professional counsel and advisors concerning this Agreement, the Assets and the value thereof. In making the decision to enter into this Agreement and consummate the transactions contemplated hereby, Buyer has relied solely on the basis of its own independent valuation and due diligence investigation of the Assets.

¹ NTD: Representations and covenants related to financing TBD.

**ARTICLE V
CERTAIN COVENANTS**

Section 5.01 Interim Operations. Except for matters (w) set forth in Schedule 5.01, (x) expressly agreed to in writing by Buyer (such consent not to be unreasonably withheld, conditioned or delayed), (y) ordered by the Bankruptcy Court or as otherwise relates to the Bankruptcy Case or (z) otherwise contemplated by the terms of this Agreement, during the Interim Period, Seller shall operate the Assets in all material respects in the ordinary course in a manner substantially consistent with past practice. In addition, except as (x) set forth in Schedule 5.01, (y) ordered by the Bankruptcy Court or as otherwise relates to the Bankruptcy Case or (z) otherwise contemplated by the terms of this Agreement, Seller shall not do any of the following in connection with the Assets without the prior written consent of Buyer (which consent shall not be unreasonably withheld or delayed):

- (a) subject any of the Assets to any Lien (other than Permitted Encumbrances);
- (b) sell, lease, license or otherwise dispose of any material Asset, except Hydrocarbons and sales, leases, licenses and other dispositions in the ordinary course of business;
- (c) terminate or extend, waive, modify, rescind or make any material amendments to any Assigned Contract or waive, release or assign any material rights or claims thereunder, in each case outside of the ordinary course of business;
- (d) initiate, settle or compromise any material action, suit, litigation or other proceeding involving the Assets, other than with respect to trade claims in the ordinary course of business; or
- (e) agree, whether in writing or otherwise, to do any of the foregoing.

Section 5.02 Bankruptcy Actions. Buyer covenants and agrees that it shall cooperate with Seller in connection with furnishing information or documents to Seller to satisfy the requirements of adequate assurance of future performance under Section 365(f)(2)(B) of the Bankruptcy Code.

Section 5.03 Access to Information. Seller shall afford to Buyer and the Buyer Representatives reasonable access, upon reasonable prior notice during normal business hours during the Interim Period, to the Assets and the Files; provided, however, that such access does not unreasonably disrupt the normal operations of Seller. Notwithstanding the foregoing, Seller shall not be required to provide such access where such access would (A) in the reasonable judgment of Seller, result in the disclosure of trade secrets or competitively sensitive information of Third Parties in violation of any obligation of Seller to such Third Party, (B) violate any material obligations to Third Parties with respect to confidentiality or (C) be reasonably likely to result in the loss of any attorney-client privilege of Seller.

Section 5.04 Confidentiality. Buyer acknowledges that, by virtue of its right of access to the Files and the Assets hereunder, Buyer will become privy to confidential and other information of Seller and its Affiliates and that such confidential information shall be held confidential by Buyer and its Affiliates and their respective officers, employees, agents, advisors

or representatives in accordance with the terms of the Confidentiality Agreement. If the Closing should occur, the foregoing confidentiality restriction on Buyer and the Confidentiality Agreement shall terminate as to the Assets.

Section 5.05 Reasonable Best Efforts; HSR Act.

(a) Subject to any applicable order of the Bankruptcy Court, and otherwise on the terms and subject to the conditions of this Agreement, each of Seller and Buyer shall use its reasonable best efforts to cause the Closing to occur as promptly as practicable, and neither Party shall take any action to prevent or delay, or fail to take any action in order to prevent or delay, the Closing from occurring as promptly as practicable. Without limiting the generality of the foregoing, the Parties shall (and shall cause their respective directors, officers and Subsidiaries, and use their reasonable best efforts to cause their respective Affiliates, employees, agents, attorneys, accountants and representatives, to) consult and cooperate with and provide reasonable assistance to each other and otherwise use reasonable best efforts in connection with (i) obtaining all necessary consents, licenses, qualifications or other permission or action by, and giving all necessary notices to and making all necessary filings with and applications and submissions to, any Governmental Authority or other Person with respect to the consummation of the transactions contemplated by this Agreement, and (ii) in general, consummating and making effective the transactions contemplated hereby. Notwithstanding the foregoing, no Party shall be required by this Section 5.05 to pay any consideration, to divest itself of any of, or otherwise rearrange the composition of, its assets or to agree to any conditions or requirements that would, individually or in the aggregate, have a Material Adverse Effect, or a material adverse effect on Buyer, as applicable.

(b) If applicable, within five (5) Business Days following the execution by Buyer and Seller of this Agreement, Buyer and Seller will each prepare and file with the DOJ and the FTC (a) the notification and report form required by the HSR Act for the transactions contemplated by this Agreement and (b) a request for early termination of the waiting period thereunder. Buyer and Seller agree to respond promptly to any inquiries from the DOJ or the FTC concerning such filings and to comply in all material respects with the filing requirements of the HSR Act. Buyer shall bear all costs and expenses of the Parties incurred with respect to such filings. Buyer and Seller shall cooperate with each other and shall promptly furnish all information to the other Party that is necessary in connection with Buyer's and Seller's compliance with the HSR Act. Buyer and Seller shall keep each other fully advised with respect to any requests from or communications with the DOJ or FTC concerning such filings and shall consult with each other with respect to all responses thereto. Each of Seller and Buyer shall use its reasonable best efforts to obtain the expiration of the waiting period under the HSR Act for the consummation of the transactions contemplated by this Agreement.

Section 5.06 Notification of Certain Matters. During the Interim Period, each Party will give prompt written notice to the other Party of any of the following: (a) upon obtaining Knowledge that any of its representations or warranties contained herein are not true and correct such that the condition to Closing set forth in Section 6.01(a) or Section 6.02(a), as applicable, is not reasonably likely to be satisfied on or prior to the Closing Date; (b) receipt of any notice or other communication from any Third Party alleging that the consent of such Third Party is required in connection with the transactions contemplated by this Agreement or that such

transactions otherwise violate the rights of or confer remedies upon such Third Party; or (c) the breach by the other Party of a representation or warranty of such other Party under this Agreement such that the condition to Closing set forth in Section 6.01(a) or Section 6.02(a), as applicable, is not reasonably likely to be satisfied on or prior to the Closing Date.

Section 5.07 Notice of Litigation. During the Interim Period, (a) Buyer, upon learning of the same, will promptly notify Seller of any suit, action, investigation, proceeding or litigation that is commenced or threatened in writing against Buyer that concerns this Agreement or the transactions contemplated hereunder and (b) Seller, upon learning of the same, will promptly notify Buyer of any suit, action, investigation, proceeding or litigation that is commenced or threatened in writing against Seller or any Affiliate thereof, that (i) concerns this Agreement or the transactions contemplated hereunder or (ii) would have been listed in Schedule 4.01(g) as an exception to the representation contained in Section 4.01(g) if such action, suit, investigation, proceeding or litigation had arisen prior to the date hereof.

Section 5.08 Certain Contract Matters.

(a) Seller shall assign to Buyer, and Buyer shall assume, the Assigned Contracts under Section 365 of the Bankruptcy Code pursuant to the Sale Order. Seller shall provide timely and proper written notice of the Bankruptcy Sale Motion to all parties to such Assigned Contracts, and Buyer shall comply with all requirements of Section 365 of the Bankruptcy Code necessary to permit such assumption and assignment. Buyer shall pay all Contract Cure Amounts in connection with the assumption and assignment of such Assigned Contracts. To the extent any such Assigned Contract does not constitute an executory contract subject to assumption and assignment under Section 365 of the Bankruptcy Code, then the rights and obligations under such Assigned Contracts shall be transferred to Buyer as part of the sale of the Assets with such rights and obligations (including all Contract Cure Amounts) being expressly assumed by Buyer.

(b) Seller and Buyer recognize that Exhibit A—Part 4 may not be complete and shall cooperate in the continuing evaluation of the Contracts of Seller that affect the Assets to determine the complete list of Assigned Contracts. Seller shall be permitted to supplement Exhibit A—Part 4 prior to the Closing Date with such additional Contracts as are identified by Seller, which Contracts shall be assumed and assigned as “Assigned Contracts” for all purposes in accordance with this Agreement as if such Contracts were set forth on Exhibit A—Part 4 on the date of this Agreement; provided, however, that the addition of any Contracts to Exhibit A—Part 4 that would have a materially detrimental effect on the business of Buyer and its Affiliates after the Closing shall require the prior written consent of Buyer.

(c) Notwithstanding anything herein to the contrary, to the extent the assignment of any Assigned Contract is, after giving effect to Sections 363 and 365 of the Bankruptcy Code, not permitted by Law or not permitted without the consent of another Person, and such restriction cannot be effectively overridden or canceled by the Sale Order or other related order of the Bankruptcy Court, then (i) this Agreement shall not be deemed to constitute an assignment or attempt to assign such Assigned Contract or any right, interest or obligation thereunder if such consent is not given and (ii) no breach of this Agreement shall have occurred by virtue of the nonassignment; provided, however, that the Parties shall use their commercially reasonable

efforts before Closing to obtain any such consents and Seller shall provide or cause to be provided commercially reasonable assistance to Buyer (not including the payment of any consideration) reasonably requested by Buyer to secure such consent after the Closing or cooperate with Buyer (at Buyer's expense) after the Closing in any lawful and commercially reasonable arrangement reasonably proposed by Buyer under which (i) Buyer shall obtain the economic claims, rights and benefits (net of the amount of any related Tax costs imposed on Seller) under the Assigned Contract with respect to which the consent has not been obtained in accordance with this Agreement and (ii) Buyer shall assume any related economic burden (including the amount of any related Tax costs imposed on Seller) with respect to such Assigned Contract.

Section 5.09 Lease Matters. The Leases listed on Exhibit A—Part 1 are to be transferred to Buyer as part of the sale of the Assets. To the extent any Lease constitutes an executory contract or unexpired lease of real property under Section 365 of the Bankruptcy Code, such Lease shall be assumed by Seller and assigned by Seller to Buyer pursuant to Section 365 of the Bankruptcy Code.

Section 5.10 Appeal. In the event the Bidding Procedures Order or the Sale Order shall be appealed, Seller and Buyer shall use reasonable best efforts to defend such appeal.

ARTICLE VI CONDITIONS TO CLOSING

Section 6.01 Conditions to Seller's Obligations. The obligations of Seller to consummate the transactions provided for herein are subject to the satisfaction of or waiver by Seller on or prior to the Closing Date of each of the following conditions:

(a) Representations. The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all respects on the date hereof and on and as of the Closing Date (other than representations and warranties that are made as of another date, which shall be so true and correct as of such date only); provided, however, that this condition shall be deemed to have been satisfied even if such representations and warranties are not true and correct unless the individual or aggregate impact of all inaccuracies of such representations and warranties has resulted or would reasonably be expected to result in a Buyer Material Adverse Effect.

(b) Performance. Buyer shall have performed or complied with, in all material respects, all obligations, agreements and covenants contained in this Agreement as to which performance or compliance by Buyer is required prior to or at the Closing.

(c) Execution and Delivery of Closing Documents. Buyer shall be ready, willing and able to execute and deliver to Seller all of the documents described in Section 7.04 and Buyer shall be ready, willing and able to deliver to Seller the Adjusted Purchase Price.

(d) Bonding. Buyer shall have (i) replaced all bonds, letters of credit, guarantees and other credit support listed on Schedule 6.01(d) provided by or on behalf of Seller or its Affiliates with bonds, letters of credit, or guarantees from Buyer or other credit support reasonably acceptable to the beneficiary of the applicable credit support, (ii) established to Seller's reasonable satisfaction that Buyer is exempt from or has sufficient exemptions available to, or

has otherwise satisfied all BOEM/BSEE bonding requirements relating to all potential plugging and abandonment and decommissioning liability with respect to the Assets and (iii) received approval of the BOEM/BSEE for the transfer of the Assets contemplated by this Agreement.

Section 6.02 Conditions to Buyer's Obligations. The obligations of Buyer to consummate the transactions provided for herein are subject to the satisfaction of or waiver by Buyer on or prior to the Closing Date of each of the following conditions:

(a) Representations. The representations and warranties of Seller set forth in this Agreement shall be true and correct in all respects on the date hereof and on and as of the Closing Date with the same force and effect as if made on and as of such date (other than representations and warranties that are made as of another date, which shall be so true and correct as of such date only); provided, however, that (i) for purposes of determining the satisfaction of this condition, no effect shall be given to any materiality or Material Adverse Effect exception or qualification set forth in such representations and warranties and (ii) this condition shall be deemed to have been satisfied even if such representations and warranties are not true and correct unless the individual or aggregate impact of all inaccuracies of such representations and warranties has resulted or would reasonably be expected to result in a Material Adverse Effect.

(b) Performance. Seller shall have performed or complied with, in all material respects, all covenants or agreements contained in this Agreement as to which performance or compliance by Seller is required prior to or at the Closing.

(c) Execution and Delivery of Closing Documents. Seller shall be ready, willing and able to execute and deliver to Buyer all of the documents described in Section 7.03.

Section 6.03 Conditions to Buyer and Seller's Obligations. The obligations of each of Buyer and Seller to consummate the transactions provided for herein are subject to the fulfillment or waiver by the Parties (other than the condition contained in Section 6.03(a) below, the fulfillment of which cannot be waived by either Party) on or prior to the Closing Date of each of the following conditions:

(a) Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order.

(b) No Injunctions or Restraints. No applicable Law enacted, entered, promulgated, enforced or issued by any Governmental Authority or other legal restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement shall be in effect.

(c) HSR Act. If applicable, the waiting period under the HSR Act applicable to the consummation of the transactions contemplated hereby shall have expired, notice of early termination shall have been received or a consent order issued (in form and substance satisfactory to each Party) by or from applicable Governmental Authorities.

Section 6.04 Frustration of Closing Conditions. Neither Buyer nor Seller may rely on the failure of any condition set forth in this Article VI to be satisfied if such failure was caused

by such party's failure to use its reasonable best efforts to cause the Closing to occur, as required by Section 5.05.

ARTICLE VII CLOSING

Section 7.01 Time and Place of Closing. The closing of the sale by Seller and the purchase by Buyer of the Assets pursuant to this Agreement (the "**Closing**") shall take place at the offices of Mayer Brown LLP located at 700 Louisiana Street, Houston, Texas 77002, at 10:00 a.m., Houston time on the second Business Day following the satisfaction (or, to the extent permitted, the waiver) of the conditions set forth in Article VI, or at such other place, time and date as may be agreed by Seller and Buyer. The date on which the Closing occurs is referred to in this Agreement as the "**Closing Date**".

Section 7.02 Adjustments to Purchase Price.

(a) At the Closing, the Purchase Price shall be increased, pursuant to Section 7.02(c), by Seller's good faith estimate (as set forth in a statement delivered to Buyer not later than two Business Days prior to Closing) of the following amounts (without duplication) (the "**Purchase Price Increases**"):

(i) all costs, expenses and other amounts (including royalties, Production Taxes, Non-Income Taxes, each as allocated pursuant to Section 12.01, capital expenditures, lease operating expenses and overhead, but excluding Income Taxes) paid by Seller that are (A) attributable to the Assets and (B) attributable to any period of time from and after the Closing Date (excluding any interest or penalties attributable to the failure to make timely payments and amounts paid by Seller to cure any inaccuracy of any of Seller's representations or warranties or any other amounts expended by Seller to consummate the transactions contemplated by this Agreement);

(ii) the value of all Hydrocarbons produced from or attributable to the Properties prior to the Closing Date that are (A) stored in tanks and vessels to the bottom of the flange as of the Closing Date or (B) produced into any pipeline or gathering line but not sold as of the Closing Date, in each case using the monthly average posted price at the sale point for the respective production from the Properties as calculated based on the month preceding the Closing Date; and

(iii) the net amount of any Imbalances as of the Closing Date, if such net amount is positive.

(b) At the Closing, the Purchase Price shall be decreased, pursuant to Section 7.02(c), by Seller's good faith estimate (as set forth in a statement delivered to Buyer not later than two Business Days prior to Closing) of the following amounts (without duplication) (the "**Purchase Price Reductions**"):

(i) an amount equal to all proceeds from sales of Hydrocarbons relating to the Properties and payable to owners of working interests that are held by Seller in suspense as of the Closing Date;

(ii) amounts received by Seller from other working interest owners as joint interest billings under the Assigned Contracts that have not been paid to the vendors who performed work giving rise to the joint interest billing as of the Closing Date;

(iii) the amounts identified in Schedule 4.01(j) (being certain proceeds payable to owners of overriding royalty interests or net profits interests that are attributable to periods of time prior to the Closing Date, which proceeds have not been paid by Seller) (the “**Delinquent ORRIs/NPIs**”);

(iv) any Contract Cure Amounts, cure amounts attributable to any Litigation identified on Schedule 4.01(g), or any other cure amounts that, in each case pursuant to the Sale Order, are payable by Buyer and attributable to periods prior to the Closing Date, and any interest and penalties attributable to the failure to make timely payments of such amounts prior to the Closing (the “**Delinquent Cure Amounts**”);

(v) the Assumed Seller Taxes and any interest and penalties attributable to the failure to make timely payments of such amounts prior to Closing; and

(vi) the net amount of any Imbalances as of the Closing Date, if such net amount is negative.

(c) The Adjusted Purchase Price payable by Buyer at Closing shall be equal to the Purchase Price plus (x) the total amount of the Purchase Price Increases as determined pursuant to Section 7.02(a) minus (y) the total amount of the Purchase Price Reductions as determined pursuant to Section 7.02(b).

(d) On or before ninety (90) days after the Closing, a final settlement statement (the “**Final Settlement Statement**”) will be prepared by Seller, setting forth the actual Purchase Price Increases and Purchase Price Reductions (“**Final Adjustments**”). As soon as practicable, and in any event within thirty (30) days, after receipt of the Final Settlement Statement, Buyer shall return a written report containing any proposed changes to the Final Settlement Statement and an explanation of any such changes and the reasons therefor (the “**Dispute Notice**”). Any Dispute Notice shall include only objections based on (A) mathematical errors in the computation of the Final Adjustments or (B) the Final Adjustments not having been calculated in accordance with this Section 7.02. If Buyer fails to deliver a Dispute Notice within such thirty (30) day period, the Final Settlement Statement and the Final Adjustments shall become final and binding at the end of such period. If the Final Adjustments set forth in the Final Settlement Statement are mutually agreed upon by Seller and Buyer, the Final Settlement Statement and the Final Adjustments shall be final and binding on the Parties.

(e) If the Parties are unable to agree upon the Final Adjustments within thirty (30) days after Seller's receipt of the Dispute Notice, then either Buyer or Seller may elect to refer their remaining differences to [KPMG, LLP ("KPMG")] or, if [KPMG] shall decline to accept such engagement, a nationally recognized firm of independent public accountants selected jointly by Buyer and Seller. If Buyer and Seller are unable to select independent public accountants within two (2) Business Days of [KPMG] declining to accept such engagement, either Buyer or Seller may thereafter request that the American Arbitration Association make such selection (as applicable, [KPMG], the firm selected by Buyer and Seller or the firm selected by the American Arbitration Association is referred to as the "**Accounting Arbitrator**"). The Accounting Arbitrator shall use its office located in Houston, Texas to resolve any dispute and shall be required to adopt the proposed amounts for the Final Adjustments submitted to the Accounting Arbitrator by either Buyer, on the one hand, or Seller, on the other hand. The Accounting Arbitrator shall have no power whatsoever to reach any other result and shall adopt the amount for the Final Adjustments that in its judgment is the closest to being in conformity with the provisions of this Agreement. The Accounting Arbitrator, Buyer and Seller shall use their commercially reasonable efforts to resolve the dispute within thirty (30) days of the engagement of the Accounting Arbitrator. If at any time prior to judgment by the Accounting Arbitrator, the Parties resolve their dispute, then notwithstanding the preceding provisions of this Section 7.01(e), the Accounting Arbitrator's involvement promptly shall be discontinued and the Final Adjustments shall be revised, if necessary, to reflect such resolution and thereupon shall be final and binding on the Parties. All of the costs and expenses of the Accounting Arbitrator shall be borne by one-half by Buyer and one-half by Seller. The determination and decision of the Accounting Arbitrator shall be final and nonappealable and shall be valid and binding upon the Parties hereto and their successors and assigns and may be enforced in any court of competent jurisdiction. The Parties hereto shall make readily available to the Accounting Arbitrator all relevant books and records relating to the Final Adjustments and all other items reasonably requested by the Accounting Arbitrator in connection therewith. The determination of the Accounting Arbitrator shall be binding and final for purposes of this Agreement.

(f) Within five (5) calendar days following either (i) an agreement by the Parties on the Final Adjustments or (ii) a determination by the Accounting Arbitrator as to such Final Adjustments, then:

(i) if the Purchase Price plus (x) the total amount of the Purchase Price Increases included in the Final Adjustments minus (y) the total amount of the Purchase Price Reductions included in the Final Adjustments is greater than the Adjusted Purchase Price, then Buyer shall pay the amount of such excess to Seller; and

(ii) if the Purchase Price plus (x) the total amount of the Purchase Price Increases included in the Final Adjustments minus (y) the total amount of the Purchase Price Reductions included in the Final Adjustments is less than the Adjusted Purchase Price, then Seller shall pay the amount of such shortfall to Buyer.

(iii) All amounts paid pursuant to this Section 7.02(f) shall be delivered in United States currency by wire transfer of immediately available funds to the account specified in writing by the relevant Party.

Section 7.03 Actions of Seller at Closing. At the Closing, Seller shall:

(a) execute and deliver to Buyer an assignment without any warranty whatsoever, express, implied, or statutory, but including rights of subrogation (other than to any Seller or any Affiliate of any Seller) substantially in the form of Exhibit D (the “**Assignment**”) covering the Assets, and such other instruments, in form and substance mutually agreed upon by Buyer and Seller, as may be reasonably necessary to convey ownership, title and possession of the Assets to Buyer as contemplated by this Agreement;

(b) deliver executed statements described in Treasury Regulation §1.1445-2(b)(2) certifying that Seller is not (A) an entity disregarded as separate from its owner for U.S. federal income tax purposes, and (B) is not a “foreign person” as defined in Section 1445 of the Code;

(c) deliver to Buyer a certificate duly executed by an authorized officer of Seller, dated as of Closing Date, certifying on behalf of Seller that the conditions set forth in Sections 6.02(a) and 6.02(b) have been fulfilled;

(d) deliver a certificate from the secretary or a senior officer of Seller certifying and attaching a copy of the resolutions or written consent of the governing body of Seller approving this Agreement and the transactions contemplated hereby; and

(e) execute, acknowledge and deliver any transfer orders, division orders, letters of resignation of Seller as operator, and any other agreements and take any other actions provided for herein or which are reasonably necessary to effectuate the transactions contemplated hereby.

Section 7.04 Actions of Buyer at Closing. At the Closing, Buyer shall:

(a) deliver to Seller the Adjusted Purchase Price, less the Deposit, by wire transfer as set forth in Section 3.01;

(b) deliver to Seller a certificate duly executed by an authorized officer of Buyer, dated as of Closing Date, certifying on behalf of Buyer that the conditions set forth in Sections 6.01(a) and 6.01(b) have been fulfilled;

(c) deliver a certificate from the secretary or a senior officer of Buyer certifying and attaching a copy of the resolutions or written consent of the governing body of Buyer approving this Agreement and the transactions contemplated hereby;

(d) execute, acknowledge and deliver any transfer orders, division orders and any other agreements and take any other actions provided for herein or which are reasonably necessary to effectuate the transactions contemplated hereby; and

(e) deliver, by wire transfer, the Delinquent ORRIs/NPIs amounts to the respective owed Third Parties as set forth in Schedule 4.01(j).

ARTICLE VIII CERTAIN POST-CLOSING OBLIGATIONS

Section 8.01 Operation of the Assets After Closing. It is expressly understood and agreed that neither Seller nor any of its Affiliates shall be obligated to continue operating any of the Assets, or to provide any support services relating thereto, upon and after the Closing.

Section 8.02 Files. To the extent any Files are not located with the Assets, Seller shall make copies of such Files, to the extent related to the Assets, available for pickup by Buyer within ten (10) days after the Closing and Buyer shall pick up such Files on such date or within five (5) days thereafter. Buyer recognizes that certain of the Files may contain information relating to assets or businesses of Seller and its Affiliates other than the Assets and that Seller and its Affiliates may retain copies thereof.

Section 8.03 Further Cooperation. After the Closing, and subject to the terms and conditions of this Agreement, each Party, at the request of the other and without additional consideration, shall execute and deliver, or shall cause to be executed and delivered from time to time, such further instruments of conveyance and transfer and shall take such other action as the other Party may reasonably request to carry out the purposes and intents of this Agreement.

Section 8.04 Reserved. [*Reserved for provisions regarding reversion to Seller of economic benefits of any avoided ORRI/NPIs.*]

ARTICLE IX TERMINATION

Section 9.01 Right of Termination. This Agreement and the transactions contemplated hereby may be completely terminated at any time prior to the Closing:

- (a) by mutual written consent of the Parties;
- (b) by either Party, by written notice to the other Party, if any of the conditions set forth in Section 6.03 are not satisfied, have not been waived by such Party and are incapable of being satisfied by the Outside Date;
- (c) by Seller, by written notice to Buyer, if any of the conditions set forth in Section 6.01 are not satisfied, have not been waived by Seller and are incapable of being satisfied by the Outside Date;
- (d) by Buyer, by written notice to Seller if any of the conditions set forth in Section 6.02 are not satisfied, have not been waived by Buyer and are incapable of being satisfied by the Outside Date;
- (e) by either Party, by written notice to the other Party, if the Closing does not occur on or prior to the Outside Date; provided, however, that the right to terminate this Agreement under Section 9.01(e) shall not be available to any Party whose breach of a representation or warranty in this Agreement or whose action or failure to act in breach of this Agreement has been a principal cause or resulted in the failure of the Closing to occur on or before such date;

(f) by either Party, by written notice to the other Party, if the Bankruptcy Court approves any agreement for a transaction or series of related transactions, other than the transactions to be consummated under this Agreement, pursuant to which all or substantially all of the Assets will be acquired (whether pursuant to an asset sale, merger, stock purchase, a Chapter 11 plan or otherwise); or

(g) by either Party, by written notice to the other Party, if the Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.

Section 9.02 Effect of Termination. In the event that Closing does not occur as a result of either Party exercising its right to terminate this Agreement pursuant to 9.01, then upon such termination, this Agreement shall thereafter be null and void, without any Liability or obligation on the part of any Party under this Agreement, except that the provisions of Section 1.01, Section 1.02, Sections 3.02(b), (c) and (d), Section 5.04, this Section 9.02, Section 10.03, Section 10.04, Section 10.05, Section 10.06, Section 10.07, Section 11.01 and ARTICLE XII (other than Section 12.01 and Section 12.02) shall survive any termination of this Agreement. Nothing in this Section 9.02 shall be deemed to impair the right of any Party to compel specific performance by any other party of its obligations under this Agreement.

ARTICLE X ASSUMPTION

Section 10.01 Assumption. Subject to the terms and conditions of this Agreement, as of the Closing, Buyer assumes and agrees to pay, perform and discharge, or cause to be paid, performed, and discharged, all of the following obligations and Liabilities:

(a) all obligations (whether arising by Law or by Contract) to properly plug and abandon all wells and dismantle, decommission or remove all personal property, fixtures and related equipment attributable to the Properties or other Assets or hereafter attributable thereto regardless of whether such obligations arose prior to, on or after the Closing Date;

(b) all BOEM/BSEE bonding requirements for potential decommissioning liability with respect to the Assets;

(c) all Production Taxes and Non-Income Taxes allocable to Tax periods (or portion thereof) beginning on or after the Closing Date, pursuant to Section 12.01(a);

(d) all Liabilities attributable to the Assets arising from, attributable to, or alleged to be arising from or attributable to, a violation of or the failure to perform any obligation imposed by any Environmental Law, regardless of whether arising prior to, on or after the Closing Date;

(e) all obligations to settle any Imbalances, regardless of whether such Imbalances arose prior to, on or after the Closing Date;

(f) all obligations applicable to the lessee under any of the Leases from and after the Closing Date;

(g) all Contract Cure Amounts with respect to the Assigned Contracts;

(h) all obligations and Liabilities to pay working interests, net profits interests, overriding royalties and other interests, owners revenues or proceeds attributable to sales of Hydrocarbons relating to the Properties that are held in suspense, the Delinquent ORRIs/NPIs and the Delinquent Cure Amounts;

(i) all Transfer Taxes;

(j) the Assumed Seller Taxes; and

(k) all other Liabilities with respect to the Assets (other than (i) Income Taxes attributable to the period prior to and including the Closing Date, (ii) Liabilities related to the Debt Facilities and (iii) Liabilities to any advisors, including financial, engineering, technical, legal and accounting advisors, in connection with the transactions contemplated in this Agreement or in connection with the Bankruptcy Case) arising on or after the Closing Date.

All such assumed obligations and Liabilities described above in this Section 10.01 are collectively referred to herein as the “**Assumed Obligations.**”

Section 10.02 Indemnification by Buyer.

(a) From and after the Closing, Buyer shall indemnify, defend and hold harmless Seller and each of the Seller Representatives from and against any and all Liabilities to the extent arising or resulting from any Assumed Obligations.

(b) Indemnification Procedures.

(i) Procedures Relating to Indemnification of Third Party Claims. If Seller or any Seller Representative (the “**Indemnified Party**”) receives written notice of the commencement of any action or proceeding or the assertion of any claim by a Third Party or the imposition of any penalty or assessment for which indemnity may be sought under Section 10.02(a) (a “**Third Party Claim**”), and such Indemnified Party intends to seek indemnity pursuant to this Section 10.02, the Indemnified Party shall promptly provide Buyer with written notice of such Third Party Claim, stating the nature, basis and the amount thereof, to the extent known, along with copies of the relevant documents evidencing such Third Party Claim and the basis for indemnification sought. Failure of the Indemnified Party to give such notice will not relieve Buyer from liability on account of this indemnification, except if and to the extent that Buyer is actually prejudiced thereby. Buyer will have 45 days from receipt of any such notice of a Third Party Claim to give notice to assume the defense thereof. If notice to the effect set forth in the immediately preceding sentence is given by Buyer, Buyer will have the right to assume the defense of the Indemnified Party against the Third Party Claim with counsel of its choice. So long as Buyer has assumed the defense of the Third Party Claim in accordance herewith, (i) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim, (ii) the Indemnified Party will not file any papers or consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of Buyer and

(iii) Buyer will not (A) admit to any wrongdoing or (B) consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim to the extent such judgment or settlement provides for equitable relief, in each case, without the prior written consent of the Indemnified Party (such written consent will not be withheld or delayed unreasonably). The parties will use reasonable best efforts to minimize Liabilities from Third Party Claims and will act in good faith in responding to, defending against, settling or otherwise dealing with such claims. The parties will also cooperate in any such defense and give each other reasonable access to all information relevant thereto. Whether or not Buyer has assumed the defense, Buyer will not be obligated to indemnify the Indemnified Party hereunder for any settlement entered into or any judgment that was consented to without Buyer's prior written consent.

(ii) Procedures for Non-Third Party Claims. The Indemnified Party will notify Buyer in writing promptly of its discovery of any matter that does not involve a Third Party Claim being asserted against or sought to be collected from the Indemnified Party, giving rise to the claim of indemnity pursuant to this Section 10.02. The failure so to notify Buyer shall not relieve Buyer from liability on account of this indemnification, except only to the extent that Buyer is actually prejudiced thereby. Buyer will have 45 days from receipt of any such notice to give notice of dispute of the claim to the Indemnified Party. The Indemnified Party will reasonably cooperate and assist Buyer in determining the validity of any claim for indemnity by the Indemnified Party and in otherwise resolving such matters.

(iii) Calculation of Indemnity Payments. The amount of any Liability for which indemnification is provided under this Section 10.02 shall be net of any amounts recovered or recoverable by the Indemnified Party under insurance policies with respect to such Liability and shall be (a) increased to take account of any net Tax cost actually incurred by the Indemnified Party arising from the receipt of indemnity payments hereunder (grossed up for such increase) and (b) reduced to take account of any net Tax benefit actually realized by the Indemnified Party arising from the incurrence or payment of any such indemnified amount. In computing the amount of any such Tax cost or Tax benefit, the Indemnified Party shall be deemed to recognize all other items of income, gain, loss, deduction or credit before recognizing any item arising from the receipt of any indemnity payment hereunder or the incurrence or payment of any indemnified amount.

(iv) Tax Treatment of Indemnification. For all Tax purposes, Buyer and Seller agree to treat (and shall cause each of their respective Affiliates to treat) any indemnity payment under this Agreement as an adjustment to the Purchase Price unless a final determination by the IRS or other applicable Taxing Authority provides otherwise.

Section 10.03 Negligence and Fault. THE DEFENSE, RELEASE, INDEMNIFICATION, HOLD HARMLESS, WAIVER AND LIMITATION OF LIABILITY

OBLIGATIONS AND/OR PROVISIONS SET FORTH IN THIS AGREEMENT SHALL ENTITLE THE BENEFICIARY THEREOF TO SUCH DEFENSE, RELEASE, INDEMNIFICATION, HOLD HARMLESS, WAIVER OR LIMITATION OF LIABILITY HEREUNDER IN ACCORDANCE WITH THE TERMS HEREOF, REGARDLESS OF WHETHER THE CLAIM GIVING RISE TO SUCH RIGHT OR OBLIGATION IS THE RESULT OF: (A) STRICT LIABILITY, (B) THE VIOLATION OF ANY LAW BY SUCH BENEFICIARY OR BY A PRE-EXISTING CONDITION, OR (C) THE SOLE, CONCURRENT OR COMPARATIVE NEGLIGENCE OF SUCH BENEFICIARY THEREOF.

Section 10.04 Release.

(a) Except for the rights and obligations of the Parties specifically set forth in this Agreement, effective as of Closing, Buyer, on its own behalf and on behalf of its Affiliates, to the extent permitted by Law, hereby irrevocably and unconditionally releases, remises and forever discharges Seller and its Affiliates and all such parties' past, present and future shareholders, partners, members, board of directors and/or supervisors, managers, officers, employees, agents, representatives and advisors from any and all suits, legal or administrative proceedings, claims, demands, damages, losses, costs, Liabilities, interest or causes of action whatsoever, at Law or in equity, known or unknown, which Buyer or its Affiliates might now or subsequently may have, based on, relating to or arising out of this Agreement, the transactions contemplated hereby, the ownership, use or operation of the Assets or the condition, quality, status or nature of the Assets, including rights to contribution under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, breaches of statutory or implied warranties, nuisance or other tort actions, rights to punitive damages, common law rights of contribution and rights under insurance maintained by Seller or any of its Affiliates.

(b) Except for the rights and obligations of the Parties specifically set forth in this Agreement, effective as of Closing, Seller, on its own behalf and on behalf of its Affiliates, to the extent permitted by Law, hereby irrevocably and unconditionally releases, remises and forever discharges Buyer and its Affiliates and all such parties' past, present and future shareholders, partners, members, board of directors and/or supervisors, managers, officers, employees, agents, representatives and advisors from any and all suits, legal or administrative proceedings, claims, demands, damages, losses, costs, Liabilities, interest or causes of action whatsoever, at Law or in equity, known or unknown, which Seller or its Affiliates might now or subsequently may have, based on, relating to or arising out of this Agreement, the transactions contemplated hereby, the ownership, use or operation of the Assets or the condition, quality, status or nature of the Assets, including rights to contribution under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, breaches of statutory or implied warranties, nuisance or other tort actions, rights to punitive damages, common law rights of contribution and rights under insurance maintained by Buyer or any of its Affiliates.

Section 10.05 Survival. The representations and warranties of the Parties contained herein and in the certificates delivered at Closing shall terminate upon Closing and be of no further force or effect for any purpose. The covenants and other agreements of the Parties

contained herein shall survive the Closing (except to the extent otherwise specifically set forth in the applicable covenant or other agreement contained herein).

Section 10.06 Non-Compensatory Damages. Neither Buyer nor Seller shall be entitled to recover from the other, or their respective Affiliates, any indirect, special, consequential, punitive or exemplary damages, or damages for lost profits of any kind or loss of business opportunity, arising under or in connection with this Agreement or the transactions contemplated hereby, except to the extent any such Party suffers such damages (including costs of defense and reasonable attorneys' fees incurred in connection with defending of such damages) to a Third Party, which damages (including costs of defense and reasonable attorneys' fees incurred in connection with defending against such damages) shall not be excluded by this provision as to recovery hereunder. Subject to the preceding sentence, Buyer, on behalf of itself and each of its Affiliates, and Seller, on behalf of itself and each of its Affiliates, waive any right to recover any indirect, special, consequential, punitive or exemplary damages, or damages for lost profits of any kind or loss of business opportunity, arising in connection with or with respect to this Agreement or the transactions contemplated hereby.

Section 10.07 Specific Performance. Each of the Parties agrees that irreparable damage would occur and that the Parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each of the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which it is entitled at law or in equity.

ARTICLE XI LIMITATIONS ON REPRESENTATIONS AND WARRANTIES

Section 11.01 Disclaimers of Representations and Warranties.

(a) EXCEPT AS AND TO THE EXTENT EXPRESSLY SET FORTH IN SECTION 4.01 OF THIS AGREEMENT, (I) SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, STATUTORY OR IMPLIED AND (II) SELLER EXPRESSLY DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, STATEMENT OR INFORMATION MADE OR COMMUNICATED (ORALLY OR IN WRITING) TO BUYER OR ANY OF ITS AFFILIATES, EMPLOYEES, AGENTS, CONSULTANTS OR REPRESENTATIVES (INCLUDING, WITHOUT LIMITATION, ANY OPINION, INFORMATION, PROJECTION OR ADVICE THAT MAY HAVE BEEN PROVIDED TO BUYER BY SELLER OR ANY OFFICER, DIRECTOR, SUPERVISOR, EMPLOYEE, AGENT, CONSULTANT, REPRESENTATIVE OR ADVISOR OF SELLER OR ANY OF ITS AFFILIATES).

(b) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4.01 OF THIS AGREEMENT, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS, STATUTORY OR IMPLIED, AS TO (I) TITLE TO THE ASSETS, (II) THE CONTENTS, CHARACTER OR NATURE OF ANY REPORT OF ANY PETROLEUM

ENGINEERING CONSULTANT, OR ANY ENGINEERING, GEOLOGICAL OR SEISMIC DATA OR INTERPRETATION, RELATING TO THE ASSETS, (III) THE QUANTITY, QUALITY OR RECOVERABILITY OF HYDROCARBONS IN OR FROM THE ASSETS, (IV) ANY ESTIMATES OF THE VALUE OF THE ASSETS OR FUTURE REVENUES GENERATED BY THE ASSETS, (V) THE PRODUCTION OF HYDROCARBONS FROM THE ASSETS, (VI) THE MAINTENANCE, REPAIR, CONDITION, QUALITY, SUITABILITY, DESIGN OR MARKETABILITY OF THE ASSETS, (VII) THE CONTENT, CHARACTER OR NATURE OF ANY INFORMATION MEMORANDUM, REPORTS, BROCHURES, CHARTS OR STATEMENTS PREPARED BY SELLER OR THIRD PARTIES WITH RESPECT TO THE ASSETS, (VIII) ANY OTHER MATERIALS OR INFORMATION THAT MAY HAVE BEEN MADE AVAILABLE TO BUYER, ITS AFFILIATES OR THEIR EMPLOYEES, AGENTS, CONSULTANTS, REPRESENTATIVES OR ADVISORS IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY DISCUSSION OR PRESENTATION RELATING THERETO, AND (IX) ANY IMPLIED OR EXPRESS WARRANTY OF FREEDOM FROM PATENT OR TRADEMARK INFRINGEMENT.

(c) SELLER EXPRESSLY DISCLAIMS AND NEGATES, AND BUYER HEREBY WAIVES (I) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, (II) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (III) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, (IV) ANY RIGHTS OF PURCHASERS UNDER APPROPRIATE STATUTES TO CLAIM DIMINUTION OF CONSIDERATION, (V) ANY CLAIMS BY BUYER FOR DAMAGES BECAUSE OF REDHIBITORY VICES OR DEFECTS, WHETHER KNOWN OR UNKNOWN AS OF THE DATE OF THIS AGREEMENT OR THE CLOSING DATE, AND (VI) ANY AND ALL IMPLIED WARRANTIES EXISTING UNDER APPLICABLE LAW; IT BEING THE EXPRESS INTENTION OF BOTH BUYER AND SELLER THAT, EXCEPT AS AND TO THE EXTENT EXPRESSLY SET FORTH IN SECTION 4.01 OF THIS AGREEMENT, THE ASSETS SHALL BE CONVEYED TO BUYER IN THEIR PRESENT CONDITION AND STATE OF REPAIR, "AS IS" AND "WHERE IS," WITH ALL FAULTS, AND THAT BUYER HAS MADE OR SHALL MAKE PRIOR TO CLOSING SUCH INSPECTIONS AS BUYER DEEMS APPROPRIATE.

(d) OTHER THAN EXPRESSLY SET FORTH IN SECTION 4.01 OF THIS AGREEMENT, SELLER HAS NOT AND WILL NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING ANY MATTER OR CIRCUMSTANCE RELATING TO ENVIRONMENTAL LAWS, THE RELEASE OF MATERIALS INTO THE ENVIRONMENT, THE PROTECTION OF HUMAN HEALTH, SAFETY, NATURAL RESOURCES OR THE ENVIRONMENT OR ANY OTHER ENVIRONMENTAL CONDITION OF THE ASSETS, AND NOTHING IN THIS AGREEMENT OR OTHERWISE SHALL BE CONSTRUED AS SUCH A REPRESENTATION OR WARRANTY. SUBJECT TO BUYER'S RIGHTS UNDER THIS AGREEMENT, BUYER SHALL BE ACQUIRING THE ASSETS WITH THE RECOGNITION THAT SUCH ACQUISITION IS "AS IS" AND "WHERE IS," WITH ALL FAULTS FOR PURPOSES OF THEIR ENVIRONMENTAL CONDITION, AND BUYER ACKNOWLEDGES IT HAS MADE OR CAUSED TO BE MADE SUCH ENVIRONMENTAL INSPECTIONS AS BUYER DEEMS APPROPRIATE.

(e) SELLER AND BUYER AGREE THAT THE DISCLAIMERS OF CERTAIN WARRANTIES CONTAINED IN THIS SECTION 11.01 ARE “CONSPICUOUS” DISCLAIMERS FOR THE PURPOSES OF ANY APPLICABLE LAW, RULE OR ORDER.

ARTICLE XII MISCELLANEOUS

Section 12.01 Tax Matters.

(a) Tax Allocation. The Non-Income Taxes for which Seller shall be and remain liable is the amount of Non-Income Taxes (other than the Assumed Seller Taxes) assessed with respect to the ownership or operation of the Assets for (i) any Tax period ending prior to the Closing Date and (ii) the Straddle Period multiplied by a fraction, the numerator of which is the number of days in the Straddle Period ending immediately prior to the Closing Date and the denominator of which is the number of days in the entire Straddle Period. The Production Taxes for which Seller shall be and remain liable is the amount of Production Taxes (other than the Assumed Seller Taxes) assessed with respect to the ownership or operation of the Assets for (i) any Tax period ending prior to the Closing Date and (ii) any Straddle Period, the Production Taxes that would be payable with respect to the ownership or operation of the Assets as of the end of the day immediately prior to the Closing Date as if such period were treated as ending as of the end of the day prior to the Closing Date. All Non-Income Taxes and Production Taxes with respect to the ownership or operation of the Assets arising on or after the Closing Date (including all Straddle Period Taxes not apportioned to Seller) shall be allocated to and borne by Buyer. The portion of Non-Income Taxes and Production Taxes to be borne by Seller and not paid by Seller on or prior to Closing shall be satisfied by a downward adjustment to the Consideration pursuant to Section 7.02(b)(v). The portion of Non-Income Taxes and Production Taxes to be borne by Buyer and paid by Seller prior to the Closing shall be satisfied by an upward adjustment to the Consideration pursuant to Section 7.02(a)(i). To the extent the actual amount of any such Non-Income Taxes and Production Taxes is not determinable at Closing, the most recent information available will be used to estimate the Consideration adjustment pursuant to Section 7.02. Upon determination of the actual amount of estimated Production Taxes and Non-Income Taxes, and once no further payments are required under Section 7.02(f), Seller or Buyer, as applicable, shall pay to the other Party any additional amount necessary to satisfy its allocated share of Production Taxes and Non-Income Taxes.

(b) Tax Returns and Cooperation in Tax Proceedings. Notwithstanding anything in the Agreement to the contrary, for 120 days after the Closing Date, Seller shall cooperate with Buyer in connection with the filing of Tax Returns and any audit, litigation or other proceeding (each, a “**Tax Proceeding**”) with respect to Taxes imposed on or with respect to the Assets. Such cooperation shall include the retention and (upon Buyer’s request) the provision of records and information which are reasonably relevant to any such Tax Return or Tax Proceeding and making employees available (at Buyer’s sole expense) on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Seller shall prepare and file (i) all Income Tax Returns for any Tax period of Seller that includes or ends with, respectively, the Closing Date, and (ii) all Non-Income Tax and Production Tax Returns of or in respect of the Assets for any Tax period ending on or prior to the Closing Date, provided however, that any Non-Income Tax or Production Tax Returns for periods on or after the date

hereof (other than any such Tax Returns prepared in the ordinary course and consistent with Seller's normal practice, which shall be made available to Buyer promptly after filing) shall be submitted to Buyer for its review and comments no later than ten (10) Business Days prior to the due date for such Tax Return. Buyer shall prepare and file all Non-Income Tax and Production Tax Returns of or in respect of the Assets for any Tax period that includes, but does not end on, the Closing Date, provided that, any such Tax Return that includes a Straddle Period shall be furnished to Seller for review and comment not later than ten (10) Business Days prior to the due date of such Tax Return.

(c) Transfer Taxes. Buyer shall be responsible for the filing of all Tax Returns and the payment of all state and local transfer, documentary, recording, sales, use, stamp, registration or other similar Taxes (the "**Transfer Taxes**") resulting from the transactions contemplated by this Agreement or any other transaction document and not eliminated through the application of Section 1146(a) of the Bankruptcy Code. Buyer and Seller shall cooperate in good faith to minimize, to the extent permissible under applicable Law, the amount of any such Transfer Taxes.

(d) Tax Contests. If any claim or demand for Non-Income Taxes or Production Taxes in respect of which Seller may be responsible pursuant to Section 12.01(a) is asserted in writing against Buyer, any of Buyer's Affiliates, Buyer shall notify Seller of such claim or demand within 20 days of receipt thereof, and shall give Seller such information with respect thereto as Seller may reasonably request, provided, however, that later notice shall not relieve the responsibility of Seller under this Article XII unless Seller's defense to such claim is materially compromised as a result thereof. Seller may discharge, at any time, any payment obligations under Section 12.01(a) by paying to Buyer the amount payable pursuant to Section 12.01(a), calculated on the date of such payment. Seller may, at its own expense, participate in, and upon notice to Buyer, assume the defense of any such claim, suit, action, litigation, or proceeding (including any Tax audit). If Seller assumes such defense, Seller shall have the sole discretion as to the conduct of such defense and Buyer shall have the right (but not the duty) to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by Seller. No claim may be settled, however, without the written consent of Buyer, not to be unreasonably withheld, conditioned, or delayed, if such claim would adversely affect the Tax liability of Buyer after the Closing Date in any material way. Whether or not Seller chooses to defend or prosecute any claim, all of the Parties hereto shall cooperate in the defense or prosecution thereof. Seller shall not be responsible under Section 12.01(a) for (a) any Non-Income Taxes or Production Taxes, the payment of which was made by Buyer after the Closing without Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, or (b) any settlements (i) effected by Buyer after the Closing without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed, or (ii) resulting from any claim, suit, action, litigation or proceeding with respect to which Seller was not notified pursuant to this Section 12.01(d).

Section 12.02 Names. As soon as reasonably possible after the Closing, but in no event later than 90 days after such Closing, Buyer shall remove the names of Seller and its Affiliates, including "ATP" and all variations thereof, from the Assets.

Section 12.03 Entire Agreement. This Agreement, the documents to be executed pursuant hereto and the exhibits and schedules attached hereto and the Confidentiality Agreement constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties pertaining to the subject matter hereof.

Section 12.04 Publicity. Each Party shall consult with the other Party prior to making any public release concerning this Agreement or the transactions contemplated hereby and, except as required by applicable Law or by any Governmental Authority or stock exchange (in which case the Party required to make such release shall allow the other Party reasonable time to comment on such release in advance of such issuance), no Party shall issue any such release without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

Section 12.05 No Third Party Beneficiaries. Except with respect to the Persons included within the definition of Seller Representatives or Buyer Representatives (and in such cases, only to the extent expressly provided herein) and any permitted successor to Seller, or assignee of Seller, this Agreement is for the sole benefit of the Parties and nothing in this Agreement shall provide any benefit to any Third Party or entitle any Third Party to any claim, cause of action, remedy or right of any kind.

Section 12.06 Assignment. Neither Buyer nor Seller may assign or delegate any of its rights or duties hereunder without the prior written consent of the other Party and any assignment made without such consent shall be void; provided, however, Buyer may assign this Agreement to a wholly owned Subsidiary of Buyer without the consent of Seller; and provided further, however, that Seller may assign any of its rights hereunder to any successor (including a liquidating trustee) or other assignee without the consent of Buyer. Any assignment made by Buyer or Seller as permitted hereby shall not relieve Buyer or Seller, as applicable, from any Liability or obligation hereunder. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

Section 12.07 Governing Law. THIS AGREEMENT AND THE LEGAL RELATIONS AMONG THE PARTIES SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICTS OF LAW RULE OR PRINCIPLE THAT MIGHT REFER CONSTRUCTION OF SUCH PROVISIONS TO THE LAWS OF ANOTHER JURISDICTION, AND THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE.

Section 12.08 Exclusive Jurisdiction. ALL ACTIONS AND PROCEEDINGS WITH RESPECT TO, ARISING DIRECTLY OR INDIRECTLY IN CONNECTION WITH, OUT OF, RELATED TO, OR FROM THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE EXCLUSIVELY LITIGATED, HEARD AND DETERMINED IN THE BANKRUPTCY COURT, AND THE PARTIES HEREBY UNCONDITIONALLY AND IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION AND AUTHORITY OF THE BANKRUPTCY COURT TO HEAR AND DETERMINE ANY SUCH ACTION OR PROCEEDING; PROVIDED, HOWEVER, THAT IF

THE BANKRUPTCY CASE IS CLOSED, THE PARTIES HEREBY UNCONDITIONALLY AND IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS HAVING SITUS IN HOUSTON, HARRIS COUNTY, TEXAS. EACH PARTY HERETO WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

Section 12.09 Notices. Any notice, communication, request, instruction or other document required or permitted hereunder shall be given in writing and delivered in person or sent by United States mail (postage prepaid, return receipt requested), telex, facsimile, telecopy or reliable overnight courier service to the addresses of Seller and Buyer set forth below. Any such notice shall be effective (i) when delivered if delivered by hand or transmitted by facsimile (with acknowledgment received) during normal business hours or, if not delivered during normal business hours, on the next Business Day, (ii) two (2) Business Days after the same are sent if sent by certified or registered mail, postage prepaid, return receipt requested or (iii) one (1) Business Day after the same are sent if sent by a reliable overnight courier service, with acknowledgment of receipt.

Seller: ATP Oil & Gas Corporation
Attention: President
4600 Post Oak Place
Suite 1000
Houston, Texas 77027
Phone (713) 622-3311

Buyer: _____

Attention: _____
Phone: _____
Fax: _____

Either Party may, by written notice so delivered, change its address for notice purposes hereunder.

Section 12.10 Approval of the Bankruptcy Court. Notwithstanding anything herein to the contrary, any and all obligations under this Agreement are subject to approval of the Bankruptcy Court.

Section 12.11 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the

original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

Section 12.12 Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart hereof shall be deemed to be an original instrument, but all such counterparts shall constitute but one instrument. Any signature hereto delivered by a Party by facsimile or electronic transmission shall be deemed an original signature hereto.

Section 12.13 Amendment and Waiver. This Agreement may be amended, supplemented, modified, superseded or canceled and any of the terms, covenants, representations, warranties or conditions hereof may be waived only by an instrument in writing signed by an authorized officer of each of the Parties or, in the case of a waiver, by or on behalf of the Party waiving compliance. No waiver of any of the provisions of this Agreement or rights hereunder shall be deemed or shall constitute a waiver of any other provisions hereof or right hereunder (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

Section 12.14 Expenses. Except as set forth in the Bidding Procedures Order, whether or not the transactions contemplated by this Agreement are consummated, except as otherwise expressly provided herein, each of the Parties shall be responsible for the payment of its own respective costs and expenses incurred in connection with the negotiations leading up to and the performance of its respective obligations pursuant to this Agreement, including the fees of any attorneys, accountants, brokers or advisors employed or retained by or on behalf of such party.

Section 12.15 Schedules and Exhibits. The inclusion of any matter upon any Schedule or any Exhibit attached hereto does not constitute an admission or agreement that such matter is material with respect to the representations and warranties contained herein.

[The remainder of this page is left intentionally blank.]

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date first written above.

SELLER:

ATP OIL & GAS CORPORATION

By: _____
_____, _____

BUYER:

By: _____
_____, _____

Exhibit A-Part 1 – Leases

[TO BE SUPPLEMENTED]

Exhibit A-Part 2 – Wells/Allocated Value

[TO BE SUPPLEMENTED]

Exhibit A–Part 3 – Easements, Rights-of-Way, Surface Fees and Surface Leases

[TO BE SUPPLEMENTED]

Exhibit A-Part 4 – Material Contracts

[TO BE SUPPLEMENTED]

Exhibit A-Part 5 – Intellectual Property

[TO BE SUPPLEMENTED]

Exhibit B – Excluded or Rejected Contracts

[TO BE SUPPLEMENTED]

Exhibit C – Certain Excluded Assets

[TO BE SUPPLEMENTED]

Exhibit D – Form of Assignment

[TO BE SUPPLEMENTED]

Exhibit E – Bidding Procedures

[TO BE SUPPLEMENTED]

Schedule 1.01A—Knowledge (Seller)

[TO BE SUPPLEMENTED]

Schedule 1.01B—Knowledge (Buyer)

[TO BE SUPPLEMENTED]

Schedule 1.01C—Tax Liens

[TO BE SUPPLEMENTED]

Schedule 4.01(e)—Noncontravention

[TO BE SUPPLEMENTED]

Schedule 4.01(g)—Litigation

[TO BE SUPPLEMENTED]

Schedule 4.01(i)—Taxes

[TO BE SUPPLEMENTED]

Schedule 4.01(j)—Royalty Payments

[TO BE SUPPLEMENTED]

Schedule 4.01(k)—Hydrocarbon Sales

[TO BE SUPPLEMENTED]

Schedule 4.01(l)—Environmental Notices

[TO BE SUPPLEMENTED]

Schedule 4.01(m)—Compliance with Laws

[TO BE SUPPLEMENTED]

Schedule 4.01(o)—AFEs

[TO BE SUPPLEMENTED]

Schedule 4.01(p)—Preferential Purchase Rights

[TO BE SUPPLEMENTED]

Schedule 4.01(q)—Payout Balances

[TO BE SUPPLEMENTED]

Schedule 4.01(s)—Absence of Changes

[TO BE SUPPLEMENTED]

Schedule 4.01(t)—Liens

[TO BE SUPPLEMENTED]

Schedule 4.01(u)—Confidentiality Restrictions

[TO BE SUPPLEMENTED]

Schedule 4.01(v)—Insurance

[TO BE SUPPLEMENTED]

Schedule 4.02(f)—Governmental Approvals

[TO BE SUPPLEMENTED]

Schedule 4.02(h)—Brokers' and Other Fees

[TO BE SUPPLEMENTED]

Schedule 5.01 — Interim Operations

[TO BE SUPPLEMENTED]

Schedule 6.01(d)—Bonding

[TO BE SUPPLEMENTED]

EXHIBIT C

Proposed Sale Order

**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 (A) APPROVING THE SALE OF CERTAIN OF THE DEBTOR’S SHELF
PROPERTY ASSETS FREE AND CLEAR OF CLAIMS AND LIENS AND (B)
APPROVING THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND
LEASES**

Upon the Motion (the “**Motion**”) of ATP Oil & Gas Corporation (the “**Debtor**”) pursuant to 11 U.S.C. §§ 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004 and 6006 for an Order (a) approving the sale (the “**Sale**”) of certain of the Debtor’s shelf property assets free and clear of claims and liens (the “**Purchased Assets**”) pursuant to the terms and conditions of the Asset Purchase Agreement attached hereto as **Exhibit 1** (collectively with all exhibits thereto, the “**Purchase Agreement**”), dated as of [•] and executed by and between the Debtor, as seller (the “**Seller**”), and [•], as purchaser (the “**Purchaser**”) and (b) approving the assumption and assignment of certain executory contracts and unexpired leases (collectively, the “**Contracts**”); and the Court having entered the *Order (A) Approving (i) Bidding Procedures; (ii) Bid Protections; (iii) Auction Procedures; and (iv) Assumption and Assignment Procedures; (B) Approving Notice Procedures for (i) the Solicitation of Bids; and (ii) an Auction; (C) Scheduling Hearings on Approval of a Sale or Sales of Substantially all of the Debtor’s Shelf Property Assets; and (D) Granting Related Relief* on [•], 2013 [Dkt. No. [•]] (the “**Bidding Procedures Order**”); and the Debtor having determined, after an extensive marketing process, that the Purchaser has submitted the highest and best bid for the Purchased

Assets; and upon adequate and sufficient notice of the Motion, the Auction (as defined below), the hearing on the Motion held before the Court on [•] (the “**Sale Hearing**”), and any other related transactions having been given in the manner directed by the Court pursuant to the Bidding Procedures Order; and the Court having reviewed and considered (x) the Motion and all relief related thereto, (y) the objections thereto, if any, and (z) the statements of counsel and evidence presented in support of the relief requested by the Debtor at the Sale Hearing; and it appearing that the Court has jurisdiction to consider and determine this matter in accordance with 28 U.S.C. §§ 157 and 1334; and it further appearing that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate and creditors and other parties-in-interest; and upon the record of the Sale Hearing and all other pleadings and proceedings in this Chapter 11 case, including the Motion; and after due deliberation thereon and good and sufficient cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED:

Jurisdiction, Final Order and Statutory Predicates

A. The Court has jurisdiction to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in the Court under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought in the Motion are Sections 105(a), 363(b), (f), and (m) and 365(a), (b) and (f) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014.

C. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made

applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, and expressly directs that this Order be effective immediately upon entry.

Notice of Sale, Auction and the Cure Amounts

D. Actual written notice of the Motion, the auction conducted for the Sale of the Shelf Assets on February 26, 2013 (the “**Auction**”), the Sale Hearing, the Sale of the Shelf Assets, and a reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein, has been afforded to all known interested entities, including, but not limited to the following parties: (i) all entities contacted by Jefferies or known by the Debtor to have expressed an interest in a transaction with respect to the Shelf Assets during the past nine (9) months, including all Qualified Bidders; (ii) all state and local taxing authorities or recording offices which have a reasonably known interest in the relief requested; (iii) all insurers; (iv) all non-debtor parties to relevant contracts or leases (executory or otherwise); (v) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Shelf Assets; and (vi) all parties set forth in the Debtor’s Master Service List maintained in accordance with this Court’s Order Establishing Notice Procedures [Dkt. No. 132] (collectively, the “**Notice Parties**”) and such information was posted by the Debtor on its KCC website. The Debtor caused notice of the Auction, the Sale Hearing, and the Sale to be published in (a) the Houston Chronicle, (b) the New Orleans Times-Picayune, (c) Platts and (d) Oil & Gas Journal, as provided by the Bidding Procedures Order.

E. In accordance with the provisions of the Bidding Procedures Order, the Debtor has served notice upon the Contract Counterparties: (i) that the Debtor seeks to assume and assign to the Purchaser the Contracts on the closing date of the Sale (the “**Closing Date**”); and (ii) of the relevant Cure Amounts (as defined below). The service of such notice was good,

sufficient, and appropriate under the circumstances, and no further notice need be given in respect of establishing a Cure Amount for the Contracts. Each of the Contract Counterparties has had an opportunity to object to the Cure Amounts set forth in the notice and to the assumption and assignment to the Purchaser of the applicable Contract.

F. As evidenced by the affidavits of service and affidavits of publication previously filed with this Court, proper, timely, adequate, and sufficient notice of the Auction, the Motion, the Sale Hearing, the Sale, and the transactions contemplated thereby, including without limitation, the assumption and assignment of the Contracts to the Purchaser, was provided in accordance with the orders previously entered by this Court, Sections 105(a), 363, and 365 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, 6006, 9007, and 9008. The notices described herein were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Auction, the Motion, the Sale Hearing, the Sale, the Closing Date or the assumption and assignment of the Contracts to the Purchaser is or shall be required.

G. The disclosures made by the Debtor concerning the Auction, the Purchase Agreement, the Motion, the Sale Hearing, the Sale, and the assumption and assignment of the Contracts to the Purchaser were good, complete, and adequate.

Good Faith of the Purchaser

H. The Purchase Agreement was negotiated, proposed, and entered into by the Debtor and the Purchaser without collusion, in good faith, and from arms'-length bargaining positions.

I. The Purchaser is not an "insider" or "affiliate" of the Debtor as those terms are defined in Sections 101(31) and 101(2) of the Bankruptcy Code. Neither the Debtor nor the Purchaser has engaged in any conduct that would cause or permit the Purchase Agreement to be avoided under Section 363(n) of the Bankruptcy Code. Specifically, the Purchaser has not

acted in a collusive manner with any person and the aggregate price paid by the Purchaser for the Purchased Assets (the "**Purchase Price**") was not controlled by any agreement among the bidders.

J. The Purchaser is purchasing the Purchased Assets in good faith and is a good faith buyer within the meaning of Section 363(m) of the Bankruptcy Code. The Purchaser proceeded in good faith in connection with all aspects of the Sale, including, but not limited to: (i) complying in all respects with the Bidding Procedures Order; (ii) agreeing to subject its bid to the competitive bidding procedures set forth in the Bidding Procedures Order; (iii) neither inducing nor causing the Debtor's Chapter 11 filing; and (iv) disclosing all payments to be made by the Purchaser in connection with the Sale. Accordingly, the Purchaser is entitled to all of the protections afforded under Section 363(m) of the Bankruptcy Code.

Highest and Best Offer

K. The Debtor conducted an auction process in accordance with, and has otherwise complied in all respects with, the Bidding Procedures Order. The auction process set forth in the Bidding Procedures Order afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Purchased Assets. The Auction was duly noticed and conducted in a non-collusive, fair, and good faith manner and a reasonable opportunity has been given to any interested party to make a higher or otherwise better offer for the Purchased Assets.

L. The Purchase Agreement constitutes the highest and best offer for the Purchased Assets and will provide a greater recovery for the Debtor's estate than would be provided by any other available alternative. The Debtor's determination that the Purchase Agreement constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtor's business judgment.

M. The Purchase Agreement represents a fair and reasonable offer to purchase the Purchased Assets under the circumstances of this Chapter 11 case. No other entity or group of entities has offered to purchase the Purchased Assets for greater overall value to the Debtor's estate than the Purchaser.

N. Approval of the Motion and the Purchase Agreement and the consummation of the transactions contemplated thereby is in the best interests of the Debtor's Chapter 11 estate (taken as a whole), its creditors, and other parties in interest.

No Fraudulent Transfer or Merger

O. The consideration provided by the Purchaser pursuant to the Purchase Agreement (i) is fair and adequate, (ii) is the highest or otherwise best offer for the Purchased Assets, (iii) will provide a greater recovery for the Debtor's estate than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and Section 548 of the Bankruptcy Code) and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. No other person, entity, or group of entities has offered to purchase the Purchased Assets for greater overall value to the Debtor's estate than the Purchaser. The Debtor's determination that the Purchase Agreement constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtor's business judgment. Approval of the Motion and the Purchase Agreement, and the consummation of the transactions contemplated thereby, is in the best interests of the Debtor, its estate, creditors, and other parties in interest.

P. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession, or the District of Columbia. Neither the Debtor nor the

Purchaser is fraudulently entering into the transaction contemplated by the Purchase Agreement.

Q. The Purchaser is not a mere continuation of the Debtor or its estate, and there is no continuity of enterprise between the Purchaser and the Debtor. The Purchaser is not holding itself out to the public as a continuation of the Debtor. The Purchaser is not a successor to the Debtor or its estate and the Sale does not amount to a consolidation, merger, or de facto merger of the Purchaser and the Debtor.

Validity of Transfer

R. The Debtor has, to the extent necessary and applicable, (i) full corporate power and authority to execute and deliver the Purchase Agreement and all other documents contemplated thereby, (ii) all corporate authority necessary to consummate the transactions contemplated by the Purchase Agreement, and (iii) taken all corporate action necessary to authorize and approve the Purchase Agreement and the consummation of the transactions contemplated thereby. The Sale has been duly and validly authorized by all necessary corporate action. No consents or approvals, other than those expressly provided for in the Purchase Agreement, are required for the Debtor to consummate the Sale, execute the Purchase Agreement, or consummate the transactions contemplated thereby.

S. The Debtor has (except to the extent otherwise provided in the Purchase Agreement) title to the Purchased Assets. The transfer of the Purchased Assets to the Purchaser will be, as of the Closing Date (as defined in the Purchase Agreement), a legal, valid, and effective transfer of the Purchased Assets, which transfer vests or will vest the Purchaser with all right, title, and interest of the Debtor to the Purchased Assets free and clear of (i) all Liens (as defined in the Purchase Agreement) relating to, accruing, or arising any time prior to the Closing Date, including, without limitation, any such Liens (x) that purport to give to any party

a right of setoff or recoupment against, or a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, purchase, or repurchase right or option, or termination of, the Debtor or the Purchaser's interests in the Purchased Assets, or any similar rights, or (y) in respect of taxes, restrictions, rights of first refusal, charges of interests of any kind or nature, if any, including, without limitation, any restriction of use, voting, transfer, receipt of income, or other exercise of any attributes of ownership) and (ii) all debts arising under, relating to, or in connection with any act of the Debtor or claims (as that term is defined in Section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of this case, and whether imposed by agreement, understanding, law, equity or otherwise relating to, accruing or arising any time prior to the Closing Date (collectively in this clause (ii), the "**Claims**" and, together with the Liens, the "**Claims and Interests**"), with the exception of any Permitted Encumbrances and Assumed Obligations, each as defined in the Purchase Agreement (the "**Permitted Encumbrances**" and "**Assumed Obligations**").

Section 363(f) is Satisfied

T. The conditions of Section 363(f) of the Bankruptcy Code have been satisfied in full; therefore, the Debtor may sell the Purchased Assets free and clear of any Claims and Interests in the property.

U. The Purchaser would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby if the Sale of the Purchased Assets to the Purchaser, and the assumption and assignment of the Contracts to the Purchaser, were not free and clear of all Claims and Interests of any kind or nature whatsoever (except the Permitted Encumbrances and Assumed Obligations), or if the Purchaser would, or in the future

could, be liable for any of such Claims and Interests.

V. The Debtor may sell the Purchased Assets free and clear of all Claims and Interests against the Debtor, its estate, or any of the Purchased Assets (except the Permitted Encumbrances and Assumed Obligations) because, in each case, one or more of the standards set forth in Section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Those holders of Claims and Interests against the Debtor, its estate, or any of the Purchased Assets, who did not object, or who withdrew their objections to the Sale or the Motion, are deemed to have consented thereto pursuant to Section 363(f)(2) of the Bankruptcy Code. Those holders of such Claims and Interests who did object fall within one or more of the other subsections of Section 363(f) and are adequately protected by having their Claims and Interests if any, in each instance against the Debtor, its estate, or any of the Purchased Assets, attach to the cash proceeds of the Sale ultimately attributable to the Purchased Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force, and effect that such creditor had prior to the Sale, subject to any claims and defenses the Debtor or its estate may possess with respect thereto.

Application of Sale Proceeds

W. The cash proceeds of the Sale (net of transaction costs) shall be applied first to permanently repay the DIP Obligations (as defined in the Final DIP Order [Dkt. No. 440]) pursuant to the terms of the Final DIP Order and the DIP Credit Agreement. The liens of the DIP Lenders under the DIP Credit Agreement shall attach to any amounts returned to the Debtor by the trustee as a result of the sale of any of the Purchased Assets pursuant to that certain Decommissioning Trust Agreement approved by the Court on November 29, 2012 [Dkt. No. 941] and such amounts shall also be applied to permanently repay the DIP Obligations pursuant to the terms of the DIP Credit Agreement.

Assumption and Assignment of the Contracts

X. The assumption and assignment of the Contracts pursuant to the terms of this Order and the Bidding Procedures Order is integral to the Purchase Agreement and is in the best interests of the Debtor, its estate, creditors, and other parties in interest, and represents the Debtor's reasonable exercise of sound and prudent business judgment.

Y. The respective amounts set forth on **Exhibit 2** annexed hereto are the sole amounts necessary under Sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code to cure all monetary defaults and pay all actual pecuniary losses under the Contracts (the "**Cure Amounts**").

Z. The Purchaser has demonstrated adequate assurance of future performance with respect to the Contracts pursuant to Section 365(b)(1)(C) of the Bankruptcy Code.

Compelling Circumstances for an Immediate Sale

AA. The Debtor has demonstrated through the testimony and/or other evidence proffered at the Sale Hearing and the representations of counsel made on the record of the Sale Hearing good and sufficient reasons for approval of the Purchase Agreement and the Sale. The relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and other parties-in-interest. The Debtor has demonstrated (i) good, sufficient, and sound business purposes and justifications for approving the Purchase Agreement and (ii) compelling circumstances for the Sale outside of (a) the ordinary course of business, pursuant to Section 363(b) of the Bankruptcy Code and (b) a Chapter 11 plan, in that, among other things, the immediate consummation of the Sale to the Purchaser is necessary and appropriate to maximize the value of the Debtor's estate and the Sale will provide the means for the Debtor to maximize distributions to its creditors.

BB. To maximize the value of the Purchased Assets and preserve the viability of the

businesses to which they relate, it is essential that the Sale occur within the time constraints set forth in the Purchase Agreement. Time is of the essence in consummating the Sale.

CC. Given all of the circumstances of this Chapter 11 case and the adequacy and fair value of the Purchase Price under the Purchase Agreement, the proposed Sale constitutes a reasonable and sound exercise of the Debtor's business judgment and should be approved.

DD. The Sale does not constitute a *sub rosa* Chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford. The Sale neither impermissibly restructures the rights of the Debtor's creditors nor impermissibly dictates a liquidating Chapter 11 plan for the Debtor.

EE. The consummation of the Sale and the assumption and assignment of the Contracts is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, Sections 105(a), 363(b), 363(f), 363(m), 365(b), and 365(f) of the Bankruptcy Code, and all of the applicable requirements of such Sections have been complied with in respect of the Sale.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

General Provisions

1. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this Chapter 11 case pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. The relief requested in the Motion is granted and approved, and the transactions contemplated thereby and by the Purchase Agreement are approved as set forth in

this Order. All capitalized terms not otherwise defined in this Order have the meanings ascribed to such terms in the Motion or the Purchase Agreement, as applicable.

3. This Court's findings of fact and conclusions of law set forth in the Bidding Procedures Order are incorporated herein by reference.

4. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled by announcement to the Court during the Sale Hearing or by stipulation filed with the Court, including any and all reservations of rights included in such objections or otherwise, are hereby denied and overruled on the merits with prejudice. Those parties who did not object or withdrew their objections to the Motion are deemed to have consented pursuant to Section 363(f)(2) of the Bankruptcy Code.

Approval of the Purchase Agreement

5. The Purchase Agreement and all other documents ancillary thereto, and all of the terms and conditions thereof, are hereby approved.

6. Pursuant to Sections 363(b) and (f) of the Bankruptcy Code, the Debtor is authorized and empowered to take any and all actions necessary or appropriate to (i) consummate the Sale pursuant to and in accordance with the terms and conditions of the Purchase Agreement, (ii) close the Sale as contemplated in the Purchase Agreement and this Order, and (iii) execute and deliver, perform under, consummate, implement, and fully close the Purchase Agreement, including the assumption and assignment of the Contracts to the Purchaser, together with all additional ancillary instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale.

7. This Order shall be binding in all respects upon (a) the Debtor, (b) the Debtor's estate, (c) all creditors of, and holders of equity interests in, the Debtor, (d) all holders of Liens, Claims, encumbrances or other interests (whether known or unknown) in, against, or on all or

any portion of the Purchased Assets, (e) all Contract Counterparties, (f) the Purchaser and all successors and assigns of the Purchaser, (g) the Purchased Assets, and (h) any trustee subsequently appointed in the Debtor's Chapter 11 case, or a Chapter 7 trustee appointed upon a conversion of this case to a case under Chapter 7 under the Bankruptcy Code. This Sale Order and the Purchase Agreement shall inure to the benefit of the Debtor, its estate and creditors, the Purchaser, and the respective successors and assigns of each of the foregoing.

Transfer of the Purchased Assets

8. Pursuant to Sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy Code, the Debtor is authorized to transfer the Purchased Assets to the Purchaser on the Closing Date and such transfer shall (a) constitute a legal, valid, binding, and effective transfer of the Purchased Assets, (b) vest the Purchaser with title to the Purchased Assets, and (c) upon the Debtor's receipt of the Purchase Price, be free and clear of all Claims and Interests (other than Permitted Encumbrances and Assumed Obligations), with such Claims and Interests to attach to the proceeds of the Sale in the order of their priority, with the same validity, force, and effect which they now have as against the Purchased Assets (subject to any claims and defenses the Debtor or its estate may possess with respect thereto). Upon the closing of the Sale, the Purchaser shall take title to and possession of the Purchased Assets subject only to the Permitted Encumbrances and Assumed Obligations.

9. The Debtor is hereby authorized to take any and all actions necessary to consummate the transactions contemplated by the Purchase Agreement, including any actions that otherwise would require further approval by the Debtor's board of directors or board of managers, as the case may be, without the need of obtaining such approvals.

10. The transactions authorized herein shall be of full force and effect, regardless of the Debtor's lack of good standing in any jurisdiction in which it is formed or authorized to

transact business. Upon consummation of the transactions set forth in the Purchase Agreement, the Purchaser shall be authorized to file termination statements or lien terminations in any required jurisdiction to remove any record, notice filing, or financing statement recorded to attach, perfect, or otherwise notice any lien or encumbrance, with respect to the Purchased Assets, that is extinguished or otherwise released pursuant to this Order under Section 363 and the related provisions of the Bankruptcy Code.

11. Subject to the terms, conditions, and provisions of this Order, all entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtor to sell and transfer the Purchased Assets to the Purchaser in accordance with the terms of this Purchase Agreement and this Order.

12. Subject to the terms, conditions, and provisions of this Order, all entities that are in possession of some or all of the Purchased Assets on the Closing Date are directed to surrender possession of such Purchased Assets to the Purchaser or its assignee at the closing of the Sale.

13. The transfer of the Purchased Assets to the Purchaser pursuant to the Purchase Agreement does not require any consents other than as specifically provided for in the Purchase Agreement.

14. A certified copy of this Order may be filed with the appropriate clerk and/or recorded with the recorder of any state, county, or local authority to act to cancel any of the Claims and Interests of record except the Permitted Encumbrances and Assumed Obligations.

15. If any person or entity which has filed statements or other documents evidencing Claims and Interests on, or in, all or any portion of the Purchased Assets (other than statements or documents with respect to Permitted Encumbrances or Assumed Obligations) shall not have delivered to the Debtor prior to the Closing Date, in proper form for filing and executed by the

appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all liens or interests which the person or entity has or may assert with respect to all or any portion of the Purchased Assets, the Debtor is hereby authorized and directed, and the Purchaser is hereby authorized, on behalf of the Debtor and each of its creditors, to execute and file such statements, instruments, releases, and other documents on behalf of such person or entity with respect to the Purchased Assets.

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 Debtor's interests in the Purchased Assets. This Order is and shall be effective as a determination that, on the Closing Date, all Claims and Interests and any other interest of any kind or nature whatsoever existing as to the Purchased Assets prior to the Closing Date, other than the Permitted Encumbrances and Assumed Obligations, shall have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected; provided, however, that such Claims and Interests shall attach to the proceeds of the Sale in the order of their priority, with the same validity, force, and effect which they now have as against the Purchased Assets.

17. This Order is and shall be binding upon and govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any

lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

18. To the greatest extent available under applicable law, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of the Debtor with respect to the Purchased Assets, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, deemed to be transferred to the Purchaser as of the Closing Date.

19. In accordance with Section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of the Debtor's Chapter 11 case or the consummation of the transactions contemplated by the Purchase Agreement.

Application of Sale Proceeds

20. The cash proceeds of the Sale (net of transaction costs) shall be applied first to permanently repay the DIP Obligations pursuant to the terms of the Final DIP Order and the DIP Credit Agreement. The liens of the DIP Lenders under the DIP Credit Agreement shall attach to any amounts returned to the Debtor by the trustee as a result of the sale of any of the Purchased Assets pursuant to that certain Decommissioning Trust Agreement approved by the Court on November 29, 2012 [Dkt. No. 941] and such amounts shall also be applied to permanently repay the DIP Obligations pursuant to the terms of the DIP Credit Agreement.

Prohibition of Actions Against the Purchaser

21. Except for the Permitted Encumbrances and Assumed Obligations, or as otherwise expressly provided for in this Order or the Purchase Agreement, the Purchaser shall not have any liability or other obligation of the Debtor arising under or related to any of the Purchased Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the Purchase Agreement, the Purchaser shall not be liable for any Claims and Interests against the Debtor, or any of its predecessors or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, under any theory of antitrust, environmental, successor or transferee liability, labor law, de facto merger, mere continuation, or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether asserted or unasserted, whether legal or equitable, whether liquidated or unliquidated, including, but not limited to, liabilities on account of warranties, intercompany loans and receivables between the Debtor and any non-debtor subsidiary or affiliate, liabilities relating to or arising from any Environmental Laws (as defined in the Purchase Agreement), and any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of any of the Purchased Assets prior to the Closing Date.

22. Except with respect to Permitted Encumbrances and Assumed Obligations, or as otherwise permitted by the Purchase Agreement or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants, and other creditors, holding Claims and Interests or other interests of any kind or nature whatsoever against or in all or any portion of the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or

subordinate), arising under or out of, in connection with, or in any way relating to the Debtor, the operation of the Debtor's business prior to the Closing Date, or the transfer of the Purchased Assets to the Purchaser, hereby are forever barred, estopped, and permanently enjoined from asserting against the Purchaser, any of its affiliates, any of the foregoing's successors, assigns, or properties, or the Purchased Assets, such persons' or entities' Claims and Interests or any other interests in and to the Purchased Assets, including, without limitation, the following actions: (a) commencing or continuing in any manner any action or other proceeding against the Purchaser, any of its affiliates or any of the foregoing's successors, assigns, or properties, or the Purchased Assets; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Purchaser, any of its affiliates or any of the foregoing's successors, assigns, or properties, or the Purchased Assets; (c) creating, perfecting, or enforcing any Claims and Interests against the Purchaser, any of its affiliates or any of the foregoing's successors, assigns, or properties, or the Purchased Assets; (d) asserting any setoff, right of subrogation or recoupment of any kind against any obligation due the Purchaser, any of its affiliates, or any of the foregoing's successors, assigns, or properties or the Purchased Assets; (e) commencing or continuing any action, in any manner or place, that does not comply with or is inconsistent with the provisions of this Order, other orders of the Court, or the Purchase Agreement or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to transfer or renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with the Purchased Assets.

23. On the Closing Date, or as soon as possible thereafter, each creditor is authorized and directed, and the Purchaser is hereby authorized, on behalf of each of the Debtor's creditors, to execute such documents and take all other actions as may be necessary to

release any Claims and Interests and other interests in or on the Purchased Assets (except Permitted Encumbrances and Assumed Obligations), if any, as provided for herein, as such Claims and Interests may have been recorded or may otherwise exist.

24. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of any of the Debtor to sell and transfer the Purchased Assets to the Purchaser in accordance with the terms of the Purchase Agreement and this Order.

25. The Purchaser has given substantial consideration under the Purchase Agreement for the benefit of the Debtor, its estate, and creditors. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential Claims and Interests pursuant to this Order, which releases shall be deemed to have been given in favor of the Purchaser by all holders of Claims and Interests against the Debtor or any of the Purchased Assets, other than holders of Claims and Interests relating to the Permitted Encumbrances or Assumed Obligations. The consideration provided by the Purchaser for the Purchased Assets under the Purchase Agreement is fair and reasonable and accordingly the Sale may not be avoided under Section 363(n) of the Bankruptcy Code.

26. Effective as of the closing of the Sale, the Purchaser, its successors and assigns, shall be designated and appointed the Debtor's true and lawful attorney and attorneys, with full power of substitution, in the Debtor's name and stead, on behalf of and for the benefit of the Purchaser, its successors and assigns, for any purpose as provided in the Purchase Agreement, including for the following purposes: (i) to demand and receive any and all of the Purchased Assets and to give receipts and releases for and in respect of the Purchased Assets, or any part thereof, (ii) from time to time to institute and prosecute in the Debtor's name, for the benefit of the Purchaser, its successors and assigns, any and all proceedings at law, in equity or otherwise,

which the Purchaser, its successors and assigns, may deem proper for the collection or reduction to possession of any of the Purchased Assets, and (iii) to do all acts and things with respect to the Purchased Assets which the Purchaser, its successors and assigns, shall deem desirable.

Assumption and Assignment of Contracts

27. Pursuant to Sections 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon the closing of the Sale, the Debtor's assumption and assignment to the Purchaser, and the Purchaser's assumption on the terms set forth in the Purchase Agreement, of the Contracts is hereby approved, and the requirements of Section 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

28. The Debtor is hereby authorized and directed in accordance with Sections 105(a), 363, and 365 of the Bankruptcy Code to (a) assume and assign to the Purchaser, effective upon the Closing Date, the Contracts free and clear of all Claims and Interests or other interests of any kind or nature whatsoever and (b) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Contracts to the Purchaser.

29. The Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Contract (including those of the type described in Sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to Section 365(k) of the Bankruptcy Code, the Debtor shall be relieved from any further liability with respect to the Contracts after such assignment to and assumption by the Purchaser, except as provided in the Purchase Agreement.

30. All defaults or other obligations of the Debtor under the Contracts arising or accruing prior to the Closing Date (without giving effect to any acceleration clauses or any default provisions of the kind specified in Section 365(b)(2) of the Bankruptcy Code), whether monetary or non-monetary, shall be cured pursuant to the terms of the Purchase Agreement on the Closing Date or as soon thereafter as reasonably practicable.

31. To the extent a Contract Counterparty to a Contract failed to timely object to a Cure Amount, such Cure Amount shall be deemed to be finally determined and any such Contract Counterparty shall be prohibited from challenging, objecting to, or denying the validity and finality of the Cure Amount at any time, and such Cure Amount, when paid, shall completely revive any Contract to which it relates. No sections or provisions of any Contract that purport to provide for additional payments, penalties, charges, or other financial accommodations in favor of the Contract Counterparty to the Contracts shall have any force and effect with respect to the Sale and assignments authorized by this Order, and such provisions constitute unenforceable anti-assignment provisions under Section 365(f) of the Bankruptcy Code and are otherwise unenforceable under Section 365(e) of the Bankruptcy Code. No assignment of any Contract pursuant to the terms of the Purchase Agreement shall in any respect constitute a default under any Contract. The Contract Counterparty to each Contract shall be deemed to have consented to such assignment under Section 365(c)(1)(B) of the Bankruptcy Code, and the Purchaser shall enjoy all of the Debtor's rights and benefits under each such Contract as of the applicable date of assumption without the necessity of obtaining such Contract Counterparty's written consent to the assumption or assignment thereof.

32. All Contract Counterparties shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Purchaser, and shall not charge the Debtor or the Purchaser for any instruments, applications, consents, or other documents which may be

required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers of the Contracts in connection with the Sale.

33. With respect to objections to any Cure Amounts that remain unresolved as of the Sale Hearing, such objections shall be resolved in accordance with the procedures approved in the Bidding Procedures Order.

34. Nothing in this Order, the Motion, or in any notice or any other document is or shall be deemed an admission by the Debtor that any contract or Contract is an executory contract or unexpired lease or must be assumed and assigned pursuant to the Purchase Agreement or in order to consummate the Sale.

35. The failure of the Debtor or the Purchaser to enforce at any time one or more terms or conditions of any Contract shall not be a waiver of such term(s) or condition(s) or of the Debtor's and Purchaser's rights to enforce every term and condition of such Contract.

36. All Contract Counterparties are forever barred and enjoined from raising or asserting against the Purchaser any assignment fee, default, breach, Claim, pecuniary loss, or condition to assignment arising under or related to the Contracts existing as of the Closing Date or arising by reason of the closing of the Sale, except for any amounts that are Assumed Obligations.

Other Provisions

37. This Order, the Purchase Agreement, and all documents ancillary thereto shall be binding in all respects upon all of the Debtor's creditors and equity-holders, all Contract Counterparties, all successors and assigns of the Debtor, and any of their respective affiliates and subsidiaries, any trustees, examiners, "responsible persons," or other fiduciaries appointed in the Debtor's Chapter 11 case or upon a conversion of such case to a case under Chapter 7 of

the Bankruptcy Code. The Purchase Agreement and any documents ancillary thereto shall not be subject to rejection or avoidance under any circumstances.

38. The Purchase Agreement and all documents ancillary thereto may be modified, amended, or supplemented by the parties thereto in a writing signed by the parties, in accordance with the terms thereof, and in consultation with counsel to the DIP Lenders and DIP Agent upon three days' notice, without further order of the Court; provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtor's estate.

39. The consideration provided by the Purchaser to the Debtor pursuant to the Purchase Agreement for the Purchased Assets constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and under the laws of the United States, any state, territory, possession, or the District of Columbia.

40. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser without collusion and in good faith, as that term is defined in Section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale, unless such authorization and such Sale are duly stayed pending such appeal. The Purchaser is a good faith buyer within the meaning of Section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of Section 363(m) of the Bankruptcy Code.

41. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) this Chapter 11 case, (b) any subsequent Chapter 7 case into which this Chapter 11 case may be converted, or (c) any related proceeding subsequent to entry of this Order, shall conflict with or derogate from the provisions of the Purchase Agreement or the

terms of this Order.

42. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Sale.

43. The failure to specifically include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety; provided, however, that this Order shall govern if there is any inconsistency between the Purchase Agreement (including all documents ancillary thereto) and this Order. Likewise, all of the provisions of this Order are non-severable and mutually dependent.

44. The Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, all amendments thereto, and any waivers and consents thereunder, and each ancillary document executed in connection therewith to which the Debtor is a party or which has been assigned by the Debtor to the Purchaser, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Purchaser, (b) interpret, implement, and enforce the provisions of this Order, (c) protect the Purchaser against any Claims and Interests or any other interest in or against the Debtor or the Purchased Assets of any kind or nature whatsoever attaching to the proceeds of the Sale, and (d) enter any orders under Section 363 or 365 of the Bankruptcy Code with respect to the Contracts.

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

46. This Order shall take effect immediately and shall not be stayed pursuant to Bankruptcy Rules 6004(g), 6004(h), 6006(d), 7062, 9014, or otherwise. The Debtor and the Purchaser are authorized to close the Sale immediately upon entry of this Order.

47. To the extent that this Order is inconsistent with the Purchase Agreement or any prior order or pleading with respect to the Motion in this Chapter 11 case, the terms of this Order shall govern.

SIGNED this ____ day of February, 2013.

MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Purchase Agreement

EXHIBIT 2

Cure Amounts