

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

In re

BENNU TITAN LLC (F/K/A ATP TITAN LLC),<sup>1</sup>

Debtor.

Chapter 11

Case No. 16-11870 (LSS)

Hearing Date: December 22, 2016 at 2:00 p.m. (EST)

Objections Deadline: The Hearing Date

**EMERGENCY MOTION FOR AN ORDER (I) AUTHORIZING THE CHAPTER 11 TRUSTEE TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 364(c) AND 364(d), (II) AUTHORIZING THE CHAPTER 11 TRUSTEE’S USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363(c); (III) GRANTING ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. § 361; AND (IV) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(c)**

**NOW INTO COURT**, through undersigned counsel, comes Gerald H. Schiff (the “Chapter 11 Trustee” or “Trustee”), not individually, but in his capacity as Chapter 11 Trustee of the bankruptcy estate (the “Estate”) of Bennu Titan LLC (f/k/a ATP Titan LLC) ( “Bennu Titan” or the “Debtor”), who hereby moves (this “Motion”) this Court for entry of interim and final orders pursuant to sections 361, 362, 363 and 364 of title 11 of the United States Code (11 U.S.C. §§ 101 et seq., as amended, the “Bankruptcy Code”), Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Del. Bankr. L.R. 4001-2: (i) authorizing the Chapter 11 Trustee to obtain post-petition financing; (ii) authorizing the Chapter 11 Trustee to use cash collateral on the terms and conditions set forth herein; (iii) granting adequate protection; (iv) scheduling and approving the method of notice of the final hearing on the Motion (the “Final”

<sup>1</sup> The last four digits of Bennu Titan LLC’s federal taxpayer identification number are 5187.

Hearing”); and (v) providing related relief. In further support of this Motion, the Chapter 11 Trustee respectfully states as follows:

**JURISDICTION AND PROCEDURAL BACKGROUND**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Pursuant to Del. Bankr. L.R. 9013–1(f), the Chapter 11 Trustee consents to the entry of a final order by this Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory and legal predicates for the relief requested herein are sections 361, 362, 363 and 364 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, and 6004 and Del. Bankr. L.R. 4001-2.

5. On August 11, 2016, Beal Bank USA (“Beal Bank”) and CLMG Corp. (“CLMG” and with Beal Bank, the “Secured Parties”) filed an involuntary chapter 11 petition against the Debtor. The Court entered an order for relief on September 9, 2016. (D.I. 7).

6. On September 15, 2016, the Secured Parties filed the Emergency Motion of the Secured Parties for an Order Directing the Appointment of a Chapter 11 Trustee (the “Trustee Motion”). (D.I. 8). After a hearing on November 1, 2016 at 10:00 a.m. Eastern Time, this Court granted the Trustee Motion. (D.I. 87).

7. Accordingly, on November 21, 2016, the United States Trustee nominated Gerald H. Schiff to serve as the Chapter 11 Trustee and moved for an order approving the appointment of Gerald H. Schiff as the Chapter 11 Trustee. (D.I. 102). On November 23, 2016, this Court entered

an Order approving the appointment of Gerald H. Schiff as the Chapter 11 Trustee. (D.I. 103).

8. As of the date of this Motion, no official committee of unsecured creditors has been appointed.

**CONCISE STATEMENT PURSUANT TO BANKRUPTCY RULE 4001(c)**

9. The Chapter 11 Trustee seeks entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the “Interim Order”), and a final order (the “Final Order,” and, together with the Interim Order, the “DIP Orders”):

- authorizing the Chapter 11 Trustee to enter into the Postpetition Credit Agreement<sup>2</sup> to obtain cash advances and other extensions of credit in an aggregate principal amount not to exceed \$25,000,000, including up to \$1,000,000 on an interim basis, on the terms and conditions of the Postpetition Credit Agreement;
- granting superpriority administrative claim status under section 364(c)(1) of the Bankruptcy Code to the DIP Obligations<sup>3</sup> and determining that the DIP Obligations are secured under sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code by valid, enforceable, non-avoidable, and fully perfected liens on and security interests in all DIP Collateral;
- approving the adequate protection to be provided to the Prepetition Lender; and
- modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Facility Documents.

10. The Chapter 11 Trustee seeks an interim hearing (the “Interim Hearing”) to consider entry of the Interim Order within two (2) business days of the filing of the Motion to the

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<sup>2</sup> “Postpetition Credit Agreement” means the Senior Secured SuperPriority Postpetition Credit Agreement dated as of December [ \* ], 2016, substantially in the form attached hereto as **Exhibit B** (as amended, restated, or otherwise modified from time to time in accordance with the terms thereof, the “Postpetition Credit Agreement,” and, together with the DIP Orders and any and all documents, agreements, and instruments delivered pursuant thereto or executed or filed in connection therewith, as may be amended hereafter from time to time, including, without limitation, the Approved Budget, collectively, the “Postpetition Facility Documents”).

<sup>3</sup> “DIP Obligations” means all obligations of the Chapter 11 Trustee incurred in connection with the DIP Facility Documents, on behalf of the Estate.

extent practicable. The Chapter 11 Trustee further seeks, pursuant to Bankruptcy Rule 4001(c)(2), a hearing (the “Final Hearing”) to consider entry of the Final Order.

11. The following is a summary of the material terms of the Interim Order:

<b><u>Summary and Material Terms</u></b> <sup>4</sup>	
<b>Borrower:</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	Gerald H. Schiff, not individually, but in his capacity as Chapter 11 Trustee of the bankruptcy estate of Bennu Titan LLC (f/k/a ATP Titan LLC)  <i>See Interim Order at 1.</i>
<b>Lender:</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	Beal Bank USA  <i>See Interim Order.</i>
<b>Agent:</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	CLMG Corp.  <i>See Interim Order.</i>
<b>Postpetition Facility:</b> <i>Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(ii)</i>	A multiple-draw, non-revolving term loan.  <i>See Interim Order; Postpetition Credit Agreement § 2.04.</i>
<b>Availability:</b> <i>Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(ii)</i>	\$1,000,000 on an interim basis and \$25,000,000 on a final basis.  <i>See Interim Order.</i>
<b>Maturity Date:</b> <i>Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(ii)</i>	The earliest to occur of (i) the 30 <sup>th</sup> day after entry by the Bankruptcy Court of the Interim Order, if the Bankruptcy Court has not entered the Final Order approving the Postpetition Facility, (ii) September 15, 2017, (iii) the effective date of a chapter 11 plan in the Chapter 11 Case, which chapter 1 plan is confirmed by an order of the Bankruptcy Court, (iv) the date of termination of the Commitment of the Lender and its obligations to make Loans pursuant to the exercise of remedies as a result of the occurrence of an Event of Default which is continuing, and (v) the date of the closing of a Sale pursuant to an Acceptable Sale Process.  <i>See Postpetition Credit Agreement § 1.01 (definition of “Maturity Date”).</i>

<sup>4</sup> This summary is qualified, in its entirety, by the provisions of the Postpetition Credit Agreement and the Interim Order.

<p><b>Stipulations:</b>  <i>Bankruptcy Rule 4001(c)(1)(B)(iii);</i>  <i>Local Rule 4001-2(a)(i)(B)</i></p>	<p>The Chapter 11 Trustee, on behalf of the Debtor’s estate, shall stipulate as to the validity, enforceability, priority and amount of the Prepetition Secured Obligations, the Prepetition Loan Documents and the Prepetition Liens.</p> <p><i>See Interim Order ¶ F.</i></p>
<p><b>Use of Postpetition Facility:</b>  <i>Bankruptcy Rule 4001(c)(1)(B);</i>  <i>Local Rule 4001-2(a)(ii)</i></p>	<p>To pay fees and expenses related to the administration of the Chapter 11 Case, including the marketing of the Debtor’s assets, as set forth in the Approved Budget.</p> <p><i>See Interim Order ¶ I; Postpetition Credit Agreement §§ 5.11; 6.05.</i></p>
<p><b>Conditions of Borrowing:</b>  <i>Bankruptcy Rule 4001(c)(1)(B);</i>  <i>Local Rule 4001-2(a)(ii)</i></p>	<p>With respect to the Initial Loan, in addition to customary conditions precedent: (a) receipt by the Agent and the Lender of payment of professional fees; (b) receipt by the Agent of certificates of the appropriate state agency in the jurisdictions of formation with respect to the existence, qualification and good standing of the Debtor; (c) receipt by the Agent of evidence that the Properties are being and will be operated in compliance with Prudent Industry Practice; (d) receipt by the Agent of copies of all contracts, Permits, approvals, bonds and other documentation whether relating to a Governmental Authority or a third party, relating to the ownership, use and operation of the Properties; (e) receipt by the Agent of a certificate of insurance coverage; (f) entry by the Bankruptcy Court of the Interim Order; and (g) receipt of an initial Approved Budget.</p> <p>With respect to any Additional Loan, (a) receipt by the Lender and the Agent of a borrowing request, (b) the Interim Order or Final Order, as applicable, shall be in full force and effect, (c) no Default or Event of Default shall have occurred and be continuing; and (d) receipt by the Agent of supplemental Approved Budgets with written explanations of material variances and compliance with the Approved Budget.</p> <p><i>See Interim Order ¶ 2(c); Postpetition Credit Agreement §§ 3.01; 3.02.</i></p>
<p><b>Interest Rate:</b>  <i>Bankruptcy Rule 4001(c)(1)(B);</i>  <i>Local Rule 4001-2(a)(ii)</i></p>	<p>The greater of (a) 0.75% and (b) the rate on Reuters Screen LIBOR01 Page (the “LIBO Rate”), plus eight percent (8.00%) per annum. During an Event of Default, interest shall accrue at the LIBOR Rate, plus 2.00% per annum. Interest rate is computed on a year of 360 days for actual days elapsed.</p> <p><i>See Postpetition Credit Agreement § 2.06.</i></p>

<p><b>Budget:</b>  <i>Bankruptcy Rule 4001(c)(1)(B);  Local Rule 4001-2(a)(ii)</i></p>	<p>Postpetition Facility proceeds must be used pursuant to a thirteen (13)-week rolling cash flow forecast budget, subject to a monthly variance for total expenditures not to exceed 5% in the aggregate or 10% for any line item (the “<u>Approved Budget</u>”), attached as <u>Exhibit C</u> hereto.</p> <p><i>See Interim Order ¶ I; Postpetition Credit Agreement § 6.05(f).</i></p>
<p><b>Postpetition Liens and Priorities:</b>  <i>Bankruptcy Rule 4001(c)(i)(B)(i);  Local Rule 4001-2(a)(i)(A)</i></p>	<p>The proposed Postpetition Facility and all other liabilities and obligations of the Borrower under the Loan Documents shall be entitled to superpriority administrative claim status pursuant to section 364(c)(1) of the Bankruptcy Code, and shall also be secured: (1) pursuant to section 364(c)(2) of the Bankruptcy Code, by a lien on all assets of the Postpetition Borrower, now owned or after acquired, whether real or personal, tangible or intangible, that was not otherwise subject to any valid, enforceable, perfected and non-avoidable lien as of Petition Date, (2) pursuant to section 364(c)(3) of the Bankruptcy Code, by a junior lien on all assets of the Postpetition Borrower, now owned or after acquired, whether real or personal, tangible or intangible, subject to a valid, enforceable, perfected and non-avoidable lien as of Petition Date (other than liens securing the Credit Agreement, dated as of September 24, 2010, between the Debtor, as borrower, Beal Bank USA, as lender and CLMG Corp., as agent (as amended, the “<u>Prepetition Credit Agreement</u>”) that was permitted by the terms of the Prepetition Credit Agreement, and (3) pursuant to section 364(d) of the Bankruptcy Code, by a senior priming lien on all assets of the Postpetition Borrower, now owned or after acquired, whether real or personal, tangible or intangible, which Priming Lien shall prime all liens securing the Prepetition Credit Agreement and any liens that are <i>pari passu</i> or junior thereto, and shall also be senior to any liens arising after the Petition Date in respect of any liens to which the Priming Lien is senior.</p> <p>The assets described in (1), (2) and (3) above constitute collateral (the “<u>Collateral</u>.”) All documentation relating to the foregoing security and priority shall be in form and substance satisfactory to the Lender.</p> <p><i>See Interim Order ¶¶ 2(e), 2(g); Postpetition Credit Agreement §2.14(a).</i></p>
<p><b>Adequate Protection:</b>  <i>Bankruptcy Rule 4001(c)(1)(B)(ii)</i></p>	<p>As adequate protection for the interests of the Prepetition Secured Parties in the Prepetition Collateral (including Cash Collateral), the Prepetition Agent, for the benefit of the Prepetition Secured parties shall receive replacement liens, superpriority claims and cash payment of (x) all accrued and unpaid interest on the Prepetition Secured Obligations, and all</p>

	<p>other accrued and unpaid fees and disbursements owing to the Prepetition Secured Parties under the Prepetition Loan Documents and incurred prior to the Petition Date, (y) when due, all principal amortization payments, accrued but unpaid interest on the Prepetition Secured Obligations, and all letter of credit, unused commitment and other fees owing by the Debtor under the Prepetition Loan Documents and (z) to the extent allowed by the Bankruptcy Code, all reasonable professional and advisory fees, costs and expenses of the Prepetition Secured Parties incurred in connection with the administration and monitoring of the Prepetition Loan Documents and/or the Postpetition Facility subject to the notice and objection provisions contained in the Interim Order.</p> <p><i>See Interim Order ¶ 4.</i></p>
<p><b>Events of Default:</b>  <i>Bankruptcy Rule 4001(c)(1)(B)(vi);                  Local Rule 4001-2(a)(ii)</i></p>	<p>Along with other customary Events of Default (including compliance with the Approved Budget subject to the permitted variance), it shall be an Event of Default if the Borrower does not comply with the following milestones:</p> <p>By no later than January 31, 2017, the Borrower shall have filed a motion seeking an order setting a bar date in the Chapter 11 Case;</p> <p>The bar date having occurred in the Chapter 11 Case by no later than March 15, 2017;</p> <p>By no later than 30 days after entry of the Interim Order, the Borrower shall obtain Bankruptcy Court approval and entry of the Bid Procedures Order;</p> <p>By no later than Twenty (20) days after entry of the Bid Procedures Order, the Borrower shall have engaged an Acceptable Broker, satisfactory to the Secured Parties, in their sole and absolute discretion, for the marketing of the Titan Platform and related assets in accordance with the bid procedures contemplated by the Sale Motion and the Bid Procedures Motion;</p> <p>By no later than One Hundred Eighty (180) days after entry of the Bid Procedures Order, the Borrower shall complete the process of soliciting binding bids to acquire all or substantially all of the assets and properties of the Borrower pursuant to the Bid Procedures Order;</p> <p>By no later than Two Hundred Forty (240) days after entry of the Bid Procedures Order, the Borrower shall commence and complete, subject to the supervision of the Bankruptcy Court and, in accordance with the Bid Procedures, the Auction, if any, and, in accordance with the Bid Procedures, select the successful bid for subsequent approval by the Bankruptcy Court</p>

	<p>pursuant to the Sale Order;</p> <p>By no later than 5 Business Days after the scheduled conclusion of the Auction, the Borrower shall obtain approval of a Sale to a buyer on the terms of the successful bid (the “<u>Approved Sale</u>”) pursuant to a sale order in form and substance reasonably acceptable to Agent and the Prepetition Agent (the “<u>Sale Order</u>”); and</p> <p>The Borrower shall consummate the Approved Sale pursuant to the Sale Order by no later than Twenty (20) days after entry of the Sale Order.</p> <p><i>See</i> Postpetition Credit Agreement §§ 5.14, 7.01.</p>
<p><b>Carve Out:</b> <i>Bankruptcy Rule 4001(c)(1)(B); Local Rule 4001-2(a)(ii)</i></p>	<p>The sum of amounts owed at the time of the Carve-Out Trigger Notice, plus Two Hundred Thousand and No/100ths Dollars (\$200,000) (the “<u>Default Carve-Out Amount</u>”)</p> <p><i>See</i> Interim Order ¶ 7.</p>
<p><b>Waiver/Modification of the Automatic Stay:</b> <i>Bankruptcy Rule 4001(c)(1)(B)(v)</i></p>	<p>Automatic stay is modified according to the Postpetition Documents to (i) permit the Borrower to grant the Postpetition Liens and incur all Postpetition Obligations and liabilities under the Loan Documents, and (ii) authorize the Lender to retain and apply payments and enforce rights and remedies under the Loan Documents. The Agent may exercise remedies under the Loan Documents after five days’ notice of an Event of Default to Borrower, regardless of the automatic stay.</p> <p><i>See</i> Interim Order ¶¶ 5; 13</p>
<p><b>Waiver/Modification of Applicability of Nonbankruptcy Law Relating to Perfection or Enforceability of Liens:</b> <i>Bankruptcy Rule 4001(c)(1)(B)(vii)</i></p>	<p>The Interim Order establishes the validity, perfection and priority of the Postpetition Liens regardless of what is required under the law of another jurisdiction.</p> <p><i>See</i> Interim Order ¶ 5.</p>
<p><b>Indemnification:</b> <i>Bankruptcy Rule 4001(c)(1)(B)(ix)</i></p>	<p>The Borrower shall indemnify the Postpetition Secured Parties for any claim or liability related in any way to the Postpetition Facility.</p> <p><i>See</i> Interim Order ¶ F(iv); Postpetition Credit Agreement § 9.03(b).</p>
<p><b>Liens on Avoidance Actions:</b> <i>Bankruptcy Rule 4001(c)(1)(B)(xi); Local Rule 4001-2(a)(i)(D)</i></p>	<p>Subject to entry of the Final Order, the Postpetition Lenders will be granted a lien on proceeds of Avoidance Actions to pay administrative claims of the Prepetition Secured Parties in respect of the Postpetition Facility.</p>



	<i>See</i> Interim Order ¶ 2(d); Postpetition Credit Agreement § 2.14(a).
<b>506(c) Waiver:</b> <i>Bankruptcy Rule 4001(c)(1)(B)(x);</i> <i>Local Rule 4001-2(a)(i)(C)</i>	Subject to entry of the Final Order, the Borrower shall deemed to have waived any rights, benefits or causes of actions under section 506(c) of the Bankruptcy Code as they may relate to or be asserted against the Postpetition Secured Parties, the Postpetition Liens, the Postpetition Collateral, the Prepetition Secured Parties, the Adequate Protection Liens, the Prepetition Liens or the Prepetition Collateral.  <i>See</i> Interim Order ¶ 9.
<b>552(b) Waiver:</b> <i>Local Rule 4001-2(a)(i)(H)</i>	Subject to entry of the Final Order, the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Postpetition Secured Parties or the Prepetition Secured Parties with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral or the Postpetition Collateral  <i>See</i> Interim Order ¶ 15(f).

## STATEMENT OF FACTS

### A. Business Overview

12. Benu Titan (formerly known as ATP Titan LLC) is part of a business enterprise engaged in the acquisition, exploration, development, and production of oil and natural gas properties in the Gulf of Mexico. It is a limited liability company formed in May 2010 as a special purpose vehicle with one member, Benu Titan Holdco LLC (“Benu Holdco”). Benu Holdco has one member, Benu Oil & Gas, LLC (“Benu O&G”); and Benu O&G has one member, Benu Holdings, LLC (“Benu Holdings”).

13. Benu Titan owns a multi-column, deep draft, floating drilling and production platform commonly known as Titan (the “Platform”) as well as two oil and gas export pipelines and related rights of way. Benu O&G owns the leasehold interest in the Outer Continental Shelf lease over which the Platform is moored and is the designated operator of the Platform. Through

an Offshore Platform Use Agreement (the “PUA”) with Bennu Titan, Bennu O&G had the sole and exclusive right to, among other things, use and operate the Platform for the processing and transportation of oil, gas, and other hydrocarbons in exchange for a monthly use fee of \$5,000,000. Under the PUA, Bennu O&G had full dominion over, control of, and responsibility for the use, operation, and maintenance of the Platform and related assets, and satisfied all expenses of the Platforms operations. It also provided administrative services to Bennu Titan pursuant to a General and Administrative Services Agreement.

14. In February 2016, due to tightening liquidity, Bennu O&G stopped servicing its own secured debt and likewise lacked the liquidity necessary to pay the PUA’s monthly use fee to Bennu Titan. Because it is no longer receiving the monthly use fee, Bennu Titan has been unable to service its own secured obligations owed to Beal Bank under the Term Loan Agreement dated as of September 24, 2010 (as amended or otherwise modified, the “Term Loan”).

15. On August 11, 2016, the Secured Parties filed an involuntary petition against Bennu Titan, commencing this chapter 11 proceeding (the “Case”). The Court entered the unopposed order for relief on September 9, 2016.

16. On November 30, 2016, Bennu O&G filed a voluntary chapter 7 petition in the United States Bankruptcy Court for the Southern District of Texas (the “Chapter 7 Case”). Upon the filing of the Chapter 7 Case, Bennu O&G filed a motion in the Case to reject the PUA. While the chapter 7 trustee has not intervened in connection with Bennu O&G’s rejection motion, she cannot perform the PUA, and in fact has consented to transfer the Chapter 7 Case to this Court. Subsequently, the Department of Interior ordered Statoil ASA (“Statoil”) to take over control of and responsibility for the use, operation, and maintenance of the Platform.

**B. Secured Financing Loan Structure**

17. The Debtor, as borrower, Beal Bank USA, as lender (the “Prepetition Lender”), and CLMG, as agent (in such capacity, the “Prepetition Agent”) are parties to that certain Credit Agreement, dated as of September 24, 2010 (as amended, the “Prepetition Credit Agreement” and, together with each of the Loan Documents (as defined therein), the “Prepetition Loan Documents”). The Prepetition Credit Agreement provided for a \$350,000,000 term loan credit facility (the “Prepetition Facility”). Pursuant to the Prepetition Loan Documents, the Secured Parties were granted first priority liens on, and security interests in substantially all of the Debtor’s assets, and the equity interests in the Debtor, subject to certain Permitted Liens (as defined in the Prepetition Credit Agreement).

18. As of the Petition Date, the Debtor was indebted and liable to the Secured Parties under the Prepetition Loan Documents, in the aggregate principal amount of not less than \$180,415,444.79 with respect to the Prepetition Facility plus accrued (both before and after the Petition Date) and unpaid interest thereon, and fees, expenses and all other obligations payable under the Prepetition Loan Documents, including any attorneys’, accountants’, consultants’, appraisers’ and financial and other advisors’ fees that are chargeable or reimbursable under the Prepetition Loan Documents (collectively, the “Prepetition Secured Obligations”).

19. The liens and security interests (collectively, the “Prepetition Liens”) granted by the Debtor under the Prepetition Loan Documents to or for the benefit of the Prepetition Secured Parties as security for the Prepetition Secured Obligations encumber substantially all of the Debtor’s assets (all such assets, as the same existed on or at any time prior to the Petition Date, including all cash and non-cash proceeds thereof, collectively, the “Prepetition Collateral”). The Prepetition Liens have been properly recorded and perfected under applicable non-bankruptcy law,

and are legal, valid, enforceable, non-avoidable, and not subject to contest, avoidance, attack, offset, re-characterization, subordination or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise. As of the Petition Date, and without giving effect to this Interim Order, the Chapter 11 Trustee is not aware, after making due inquiry, of any liens or security interests having priority over the Prepetition Liens, except the liens and security interests of Third Party Lienholders which were valid, enforceable, perfected and non-avoidable as of the Petition Date and were permitted by the terms of the Prepetition Loan Documents (the “Senior Third Party Liens”), if any. The Prepetition Liens were granted to or for the benefit of the Prepetition Secured Parties for fair consideration and reasonably equivalent value, and were granted contemporaneously with the making of the loans and/or commitments and other financial accommodations secured thereby.

20. Senior Third Party Liens that have not been made of record under the Louisiana Oil Well Lien Act could exist without having been made of record that precede the perfection of the Prepetition Liens though the Trustee has no knowledge of such.

**C. Immediate Need for Post-Petition Financing and Use Cash Collateral**

21. An immediate need exists for the Chapter 11 Trustee to obtain funds and liquidity in order to satisfy in full the costs and expenses of administering the Case and to preserve the value of the Estate pending a sale of all or substantially all of the Debtor’s assets and property. Specifically, immediate funding is necessary for the Trustee to make insurance payments related to the assets of the Estate. The ability of the Chapter 11 Trustee to preserve and maintain the value of the Debtor’s assets and to maximize the return for all creditors requires the availability of the Postpetition Facility and the use of Cash Collateral. In the absence of the availability of such funds and liquidity in accordance with the terms hereof, the continued preservation and maintenance of

the value of the Debtor's assets and property would not be possible, and serious and irreparable harm to the Debtor and its Estate and creditors would occur. Thus, the ability of the Chapter 11 Trustee to preserve and maintain the value of the Debtor's assets and property and maximize the return for the Estate requires the availability of funding from the Postpetition Facility.

22. On October 26, 2016, Beal Bank filed a *Motion of Bennu Titan LLC for an Order Authorizing Certain Relief Related to the Continuation and Renewal of Insurance Programs* (ECF Doc. 78) seeking authorization to maintain the Debtor's insurance programs and pay installments under a premium finance agreement ("PFA"). This Court approved the motion on November 15, 2016 (ECF Doc. 98). However the Trustee has no funds with which to make payments under the premium financing agreement without approval of the funding requested herein.

23. Maintaining the Debtor's insurance program is an absolute necessity for the Chapter 11 Trustee and the Estate lacks the necessary liquidity to satisfy the insurance payment(s) coming due prior to January 1, 2017, including the payment due December 23, 2016. If the Chapter 11 Trustee does not pay the required installments due under the PFA, Aon Risk Services Southwest, among other things, "may immediately cancel the policy(ies) and collect any unearned premiums or other amounts payable under said Policies."

24. The Chapter 11 trustee believes that this Estate will be immediately and irreparably harmed absent approval of the Interim Order and the granting of access to the Postpetition Facility and Cash Collateral. The Debtor simply has no ability to operate or restructure absent approval of the relief requested herein.

25. The Chapter 11 Trustee intends to use the proceeds of the Postpetition Facility to fund the payment of operating expenses after entry of the Final Order, but only seeks approval on an interim basis for authority to borrow sufficient funds for the making of the insurance payment(s)

as they come due prior to January 1, 2017. Given the indisputable need for post-petition financing and the need to seek immediate relief under the Bankruptcy Code in order to protect the going concern value of the Estate's business and assets, the Chapter 11 Trustee has determined in the exercise of his sound business judgment that the Estate needs the Postpetition Facility.

26. The Estate is without sufficient funds to make the required insurance payments for fourteen (14) or more days until a final hearing on this Motion can be held. Because the Chapter 11 Trustee's request for interim authorization seeks the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the value of their assets pending a final hearing, his request complies with Bankruptcy Rules 4001(b)(2) and 6003.

**D. Lender's Requirements of Priming Liens and Superpriority Administrative Expenses, and Chapter 11 Trustee's Other Efforts to Find Other Sources of Postpetition Financing**

27. CLMG Corp., as administrative agent and as collateral agent (in such capacities, collectively, the "Postpetition Agent"), and Beal Bank USA and the other lenders from time to time party thereto, as lenders (in such capacities, collectively, the "Postpetition Lender") has offered to provide postpetition financing, and has only agreed to do so on the terms set forth in the Postpetition Credit Agreement and the Interim Order, which include conditioning the provision of such Postpetition Facility upon obtaining a superpriority administrative expense against the Estate and a superpriority prior senior lien against all assets of the Estate (other than Senior Third Party Liens), including postpetition assets and proceeds of avoidance actions. Postpetition Lender will not provide the Postpetition Facility without such priming liens and superpriority administrative expenses.

28. In addition to the Postpetition Lender, the Chapter 11 trustee also reviewed other potential debtor-in-possession financing sources; however, none of the other sources were willing

to provide financing without priming liens and superpriority administrative expenses against the Estate. The Chapter 11 Trustee has received a proposal from Statoil, who is subject to the authority of the Bureau of Safety and Environmental Enforcement (“BSEE”) with respect to certain offshore oil, gas and mineral leases, including the lease on which the Bennu Titan platform is affixed as an appurtenance. Statoil has been determined by BSEE to be a party responsible for at least certain of the offshore leases under which affiliates of this Debtor was/were lessee(s). As such, Statoil has been directed by BSEE to take over maintenance of the Bennu Titan platform, which BSEE considers a component or appurtenance to a lease for which Statoil has been determined to be responsible (as a consequence of the filing of chapter 7 cases by Bennu Titan’s affiliates). The proposal from Statoil did not include funding for required insurance, and it appears that Statoil’s position is that its responsibility for the Bennu Titan platform would not extend to providing such insurance. Also, the outline proposal from Statoil would require a first priority security position ahead of and in priority to the security position of the Prepetition Secured Parties, to which these parties have voiced opposition. The Chapter 11 Trustee explained to these sources that Postpetition Lender was the first lienholder, and that there likely would be a priming fight if the other sources were willing to lend new monies to the Estate. Given the current evaluation of the Chapter 11 Trustee, (including information that the value of the Bennu Titan platform is less than the amount of the Prepetition Secured Obligations, and given the willingness of the Postpetition Secured Parties to make the funding available under the Postpetition Facility, the Chapter 11 Trustee has determined that it is in the best interest of the Estate to seek approval of the Postpetition Facility under the terms hereof.

29. Based on this information, these other sources indicated that they were not interested in providing such financing under such circumstances. Accordingly, the Chapter 11 Trustee was unable to find an alternative debtor-in-possession lender to Postpetition Lender.

**RELIEF REQUESTED**

30. The Chapter 11 Trustee respectfully requests that the Court enter interim and final orders pursuant to Bankruptcy Code Sections 361 and 363 and Bankruptcy Rule 4001(b) (1) authorizing the Chapter 11 Trustee to use cash collateral to pay overhead, operating expenses, and ordinary course obligations necessary to maintain and preserve the going-concern value of the Debtor's assets and business, and to administer the Estate, including, but not limited to, using cash collateral to pay (i) the postpetition operations of the Debtor's business, and (ii) all costs and expenses arising in connection with the administration of this Estate, and (b) granting adequate protection to the Postpetition Lenders.

**BASIS FOR RELIEF**

**A. Approval Pursuant to Section 364(c) of the Bankruptcy Code.**

31. Approval of the Postpetition Facility and Postpetition Credit Agreement terms will provide the Chapter 11 Trustee with immediate and ongoing access to borrowing availability to pay its current and ongoing operating expenses, including insurance premiums. Unless these expenditures are made, the Estate will be forced to cease operations, which could result in irreparable harm to its business and substantial going concern value being destroyed. This availability of credit will provide the Chapter 11 Trustee with liquidity to afford cash terms to a certain extent. Accordingly, the timely approval of the relief requested herein is imperative.

32. Section 364(c) of the Bankruptcy Code provides, among other things, that if a trustee is unable to obtain unsecured credit allowable as an administrative expense under section



503(b)(1) of the Bankruptcy Code, the court may authorize the trustee to obtain credit or incur debt (a) with priority over any and all administrative expenses as specified in sections 503(b) or 507(b) of the Bankruptcy Code, (b) secured by a lien on property of the estate that is not otherwise subject to a lien, or (c) secured by a junior lien on property of the estate that is subject to a lien. 11 U.S.C. § 364.

33. Section 364(d)(1) of the Bankruptcy Code provides that the Court may authorize a trustee to incur debt secured by a senior or equal lien on property of the estate that is subject to a lien only if (a) the trustee is unable to obtain such credit otherwise, and (b) there is adequate protection of the interest of the holder of the lien on which such senior or equal lien is to be granted. Here, the requirements of section 364(d) are either met or are not applicable, as the Prepetition Lenders are the senior lenders. The Chapter 11 Trustee proposes to obtain the financing set forth in the Postpetition Facility and Postpetition Credit Agreement by providing, *inter alia*, superpriority claims, security interests, and liens pursuant to sections 364(c)(1), (2) and (3) of the Bankruptcy Code with the consent of the Prepetition lenders

34. The Estate's liquidity needs can be satisfied only if the Chapter 11 Trustee is authorized to borrow funds under the Postpetition Facility and to use such proceeds to fund operations. The Chapter 11 Trustee has been unable to procure sufficient financing in the form of unsecured credit allowable under section 503(b)(1), as an administrative expense under section 364(a) or (b), in exchange solely for the grant of a superpriority administrative expense claim pursuant to section 364(c)(1). The Chapter 11 Trustee has also been unable to obtain post-petition financing or other financial accommodations from any alternative prospective lender or group of lenders on more favorable terms and conditions than those for which approval is sought herein that did not require a priming fight with the Prepetition Lenders.

35. Section 364(c) “imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *see also In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988) (“It would be unrealistic and unnecessary to require Debtor to conduct such an exhaustive search for financing . . . . [I]t is clear that Debtor suffers some financial stress and has little or no unencumbered property.”); *In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987) (“Given the ‘time is of the essence’ nature of this type of financing, we would not require this or any debtor to contact a seemingly infinite number of possible lenders.”).

36. Having determined that financing is available only under section 364(c) of the Bankruptcy Code, the Chapter 11 Trustee negotiated with the Prepetition Lenders at arm’s length. Provided that a trustee’s business judgment does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance therewith. *See, e.g., Snowshoe*, 789 F.2d at 1088; *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“cases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest”); *Trans World Airlines, Inc. v. Travelers Int’l AG (In re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because the facility “reflect[ed] sound and prudent business judgment”); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985).

37. As described herein, the Chapter 11 Trustee been unable to procure the required funding absent the proposed claims and liens to be granted under the Postpetition Facility. The

terms and conditions of the Postpetition Facility were negotiated extensively by well-represented parties in good faith and at arm's length. A bankruptcy court must judge the terms and conditions of debtor-in-possession financing by taking into account the debtor's financial circumstances and alternatives. *In re W. Pac. Airlines, Inc.*, 223 B.R. 567, 572 (Bankr. D. Colo. 1997) (approving financing facility because it fairly reflected the debtor's "situation and the market in which the [d]ebtor is forced to participate as a result of its financial circumstances and the deadlines it faces"). The terms of the Postpetition Facility are entirely fair and reasonable under the circumstances.

38. Accordingly, the Chapter 11 Trustee submits that the circumstances of this case requires the Estate to obtain financing under sections 364(c) and to the extent applicable 364(d) of the Bankruptcy Code, and accordingly, the Postpetition Facility reflects the exercise of sound business judgment.

**B. The Chapter 11 Trustee's Request to Use Cash Collateral and the Proposed Adequate Protection are Appropriate.**

39. Pursuant to Section 363(c)(2) of the Bankruptcy Code, a trustee may not use cash collateral without the consent of the secured party or approval from the Court.<sup>5</sup> Here, the Prepetition Lenders have consented to the Chapter 11 Trustee's use of cash collateral in conformity with this Motion and subject to the terms and limitations set forth in the Interim Order. Further, section 363(e) provides that "on request of an entity that has an interest in property...proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or

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<sup>5</sup> Section 363(c) provides, in relevant part:

- (2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless –
  - (A) each entity that has an interest in such cash collateral consents; or
  - (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c).

condition such use, sale, or lease as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). The Chapter 11 Trustee has satisfied the requirements of sections 363(c)(2) and (e), and should be authorized to use the cash collateral.

40. Although the Bankruptcy Code does not provide an all-encompassing definition of what constitutes adequate protection, section 361 provides a non-exhaustive list of factors that may constitute adequate protection. A determination of adequate protection is decided on a case-by-case basis, and involves a consideration of the “nature of the creditor’s interest in the property, [and] the potential harm to the creditor as a result of the property’s decline in value of the method of protection.” *In re Braniff Airways, Inc.*, 783 F.2d 1283, 1286 (5th Cir. 1986).

41. For the use of the cash collateral, the Estate is granting the Prepetition Lenders Postpetition Liens on Postpetition Collateral, with such Postpetition Collateral as well to be collateral for post-petition advances, in accordance with the Postpetition Facility and Postpetition Credit Agreement. The Chapter 11 Trustee anticipates that the aforementioned replacement liens and security interests will adequately protect the Lenders from any diminution in the value of their interest in their collateral resulting from the use of the Cash Collateral. *In re First Douth Sav., Ass’n*, 820 F.2d 700, 710 (5th Cir. 1987) (granting a creditor replacement liens to the extent of diminution in the value of their security interest constitutes adequate protection under section 361).

42. The Chapter 11 Trustee will also provide the Prepetition Lenders with required weekly reporting of financial information relating to projected revenues and expenses, actual revenue and expenses, and variances from the Approved Budget, as applicable, as well as reasonable access to, among other things, the Debtor’s management, books, and records, including the reporting required under the Postpetition Facility and Postpetition Credit Agreement. *See, e.g., Mutual Benefit Life Ins. Co. v. Stanley Station Assocs., L.P. (In re Stanley Station Assocs.,*

*L.P.*), 140 B.R. 806, 809 (D. Kan. 1992) (“In addition, we believe the request of MBL for ‘timely filing of proper monthly operating reports...’ falls within the ambit of adequate protection...”); *Sumitomo Trust & Banking Co. v. Holly's, Inc. (In re Holly's, Inc.)*, 140 B.R. 643, 706 (Bankr. W.D. Mich. 1992) (reports required as part of adequate protection).

43. The Chapter 11 Trustee submits that the replacement liens and the provision of timely financial reporting will adequately protect the Lenders. Thus, the Lenders’ interests are adequately protected, and the requirements for adequate protection under Bankruptcy Code §§ 361 and 363 have been satisfied.

**C. The Automatic Stay should be Modified on a Limited Basis.**

44. The proposed Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to allow the Lenders to file any financing statements, security agreements, notices of liens, and other similar instruments and documents to validate and perfect the liens and security interests granted to them under the Interim Order. The proposed Interim Order further provides that the automatic stay is modified as necessary to permit the Chapter 11 Trustee to grant the Postpetition Liens to the Lenders and to incur all liabilities and obligations set forth in the Interim Order. Finally, the proposed Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agent to exercise, upon the occurrence and during the continuation of any Event of Default, all rights and remedies provided for in the Postpetition Facility Documents, and to take various actions without further order of or application to the Court. However, the DIP Agent must provide the Chapter 11 Trustee and any official committee, with five (5) business days written notice to seek an injunction prior to exercising any enforcement rights or remedies in respect of the collateral or upon a shorter period of time after notice and a

hearing. Therefore the Chapter 11 Trustee and any official committees reserve the right to seek injunctive relief to maintain non-consensual use of cash collateral following a termination event (but not to force continued lending).

45. Stay modification provisions of this sort are ordinary and usual features of DIP financing facilities and, in the Chapter 11 Trustee's business judgment, are reasonable under the present circumstances. Accordingly, the Court should modify the automatic stay to the extent contemplated by the Postpetition Credit Agreement, the Postpetition Facility Documents and the proposed Orders.

**D. Failure to Obtain Immediate Interim Access to the DIP Facility and Cash Collateral would cause Immediate and Irreparable Harm.**

46. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the Bankruptcy Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. The Chapter 11 trustee requests that the Bankruptcy Court conduct an expedited Interim Hearing on the Motion and authorize the Chapter 11 Trustee to use the Cash Collateral for the 3-week period detailed within the Interim Budget and in accordance with the terms of the Interim Order and the Approved Budget (with allowance of a 10% variance as to each line item contained within the Approved Budget).

47. The Approved Budget itemizes the sources and uses of cash and provides a weekly projection of cash receipts and expenditures, and provides a list of reasonable and necessary business expenses that must be paid in order to continue the Debtor's business until a final hearing on the Motion can be held. The terms and conditions of the Approved Budget and the proposed

Interim Order are fair and reasonable, and reflect the exercise of the Chapter 11 Trustee's prudent business judgment consistent with the fiduciary duties of a debtor-in-possession.

48. The Chapter 11 trustee has an immediate need to use the Cash Collateral, including cash proceeds, to continue to operate the business. Without those funds, the Chapter 11 Trustee will not be able to make cash expenditures for necessary costs incurred during the reorganization, including expenses that arise in the administration of the bankruptcy case and in the ordinary course of the Debtor's business. The Estate has little to no unencumbered cash with which to operate the business—accordingly, if the Chapter 11 Trustee is unable to use the Cash Collateral, the Estate will be forced to immediately cease business operations, which will negatively impact the value of the assets, cause irreparable harm to the Estate, and eliminate the prospect of unsecured creditors receiving a distribution on account of their claims.

49. The Cash Collateral that the Chapter 11 Trustee proposes to spend in the Approved Budget will be in an amount necessary to prevent the Estate from suffering "immediate and irreparable harm." Accordingly, the Chapter 11 Trustee requests immediate entry of the Interim Order, pursuant to Bankruptcy Code §§ 363 and 364 and Bankruptcy Rule 4001(b)(2) and (c)(2).

50. To implement the foregoing successfully, the Chapter 11 Trustee seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

### **NOTICE**

51. Notice of this Motion has been served on (a) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), (b) counsel to the Prepetition Agent, (c) all other parties asserting a lien on or a security interest in the assets of the Debtor to the extent reasonably known to the Debtor, (d) the Office of the United States Attorney General for the District of

Delaware, (e) the Internal Revenue Service, (f) counsel for the Department of the Interior, Bureaus of Safety & Environmental Enforcement (“BSEE”) and Ocean Energy Management, (g) counsel to Bennu Oil & Gas, LLC, (h) the creditors listed on the Debtor’s schedules of assets and liabilities, and (i) all parties that have requested notice pursuant to Bankruptcy Rule 2002 (the “Notice Parties”). In light of the nature of the relief requested herein, the Chapter 11 Trustee submits that no other or further notice is necessary.

**CONCLUSION**

52. The Chapter 11 Trustee respectfully requests that this Bankruptcy Court enter an order: (i) authorizing the Chapter 11 Trustee, on behalf of the Estate, to obtain postpetition financing as detailed herein pursuant to 11 U.S.C. §§ 364(c) and to the extent applicable 364(d); (ii) authorizing the Chapter 11 Trustee, on behalf of the Estate, to use the Cash Collateral pursuant to 11 U.S.C. § 363(c) on an interim basis in accordance with the terms and conditions set forth within this Motion, the Approved Budget, and the Interim Order; (iii) granting adequate protection pursuant to 11 U.S.C. § 361 as contemplated by this Motion; (iv) scheduling a final hearing on the Motion on a date that is not earlier than 15 days following the filing of this Motion; and (v) granting such other and further relief as is just and proper.

Respectfully submitted,

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**EXHIBIT A**

INTERIM ORDER