

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In re:

Chapter 11

METRO FUEL OIL CORP., *et al.*,

Case Nos. 12-46913 (ESS)

12-46914 (ESS)

12-46915 (ESS)

12-46916 (ESS)

12-46917 (ESS)

12-46918 (ESS)

12-46919 (ESS)

12-46920 (ESS)

12-46921 (ESS)

12-46922 (ESS)

Debtors.

Jointly Administered

**SECOND AGREED ORDER AMENDING THE
TERMS OF THE DEBTORS' POST-PETITION FINANCING
FACILITY, TEMPORARILY EXTENDING USE OF CASH COLLATERAL AND
PROVIDING STAY RELIEF TO NEW YORK COMMERCIAL BANK**

This second agreed order (the “***Order***”) is made by and among the debtors and debtors-in-possession in the above-captioned cases (collectively, the “***Debtors***”), Third Avenue Special Situations (Master) Fund, L.P. (“***Third Avenue***”), Zell Credit Opportunities Master Fund, L.P. (“***Zell Credit***”, and together with Third Avenue, the “***New Lenders***”), New York Commercial Bank (“***NYCB***”), Valley National Bank (“***Valley***”), U.S. Bank National Association (“***U.S. Bank***”) and Seedco Financial Services, Inc. (“***Seedco***”, and together with NYCB, Valley and U.S. Bank, the “***Pre-Petition Secured Parties***”, and together with the Debtors and the New Lenders, the “***Parties***”).

WHEREAS, on September 27, 2012, the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court of the Eastern District of New York (the “*Court*”), commencing cases jointly administered under case number 12-46913, and each Debtor continues to operate its businesses and manage its properties as a debtor-in-possession;

WHEREAS, on November 20, 2012, the Court entered an order on a consensual basis approving a senior secured priming post-petition debtor-in-possession financing facility (the “*DIP Facility*”) provided by the New Lenders to the Debtors [Docket No. 187] (the “*DIP Order*”);

WHEREAS, the Debtors conducted an auction for a proposed sale of substantially all of their assets (excluding accounts receivable and certain other assets) (the “*Proposed Sale*”) on February 4 and 5, 2013, and have identified United Refining Energy Corp. or its assignee(s) (the “*Buyer*”) as the highest and best bidder as well as certain backup bidders;

WHEREAS, the Proposed Sale is expected to close within 14 days of entry of an order by the Court approving the Proposed Sale pursuant to section 363 of the Bankruptcy Code;

WHEREAS, on February 8, 2013, the Court entered an order on a consensual basis amending certain terms of the DIP Facility and temporarily extending the Debtors’ use of Cash Collateral [Docket No. 360] (the “*First Agreed Order*”);¹

¹

Capitalized terms used but not defined herein have the meaning ascribed to them in the First Agreed Order.

WHEREAS, pursuant to the First Agreed Order, the maturity date of the DIP Facility was amended to the earliest of (a) March 11, 2013, or (b) the date of closing of all transactions comprising the Proposed Sale (the “*Extended Maturity Date*”);

WHEREAS, pursuant to the First Agreed Order, the Debtors are authorized to use Cash Collateral until February 13, 2013, upon certain terms and conditions as set forth therein;

WHEREAS, the Debtors have requested that the Pre-Petition Secured Parties consent to the continued use of Cash Collateral, if any, in which they have an interest, to enable the Proposed Sale to close; and

WHEREAS, subject to the Court’s approval, the Parties desire to consensually resolve the Debtors’ request on the terms set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Order, and the covenants and conditions contained herein, and subject to entry of this Order, the Parties hereby agree and the Court hereby finds, determines and orders that:

1. The DIP Order is hereby amended to permit the Debtors’ continued use of any Cash Collateral through and including the Extended Maturity Date; provided that the Pre-Petition Secured Parties reserve all rights to contest continued use of Cash Collateral beyond the Extended Maturity Date. For the avoidance of doubt, the Debtors’ authority to use any Cash Collateral (subject to the terms hereof, the DIP Order and the Approved Budget) shall terminate (if not earlier) in any case as of the Extended Maturity Date, which termination shall be automatic and not require any notice or act by any Pre-Petition Secured Party.

2. Upon the occurrence of any Event of Default under the DIP Facility not already in existence as of February 12, 2013 (a “*Further Event of Default*”), and upon the sending of a written notice of the Further Event of Default by the New Lenders in accordance with the DIP Order and the other DIP Documents, the Debtors’ right to use any Cash Collateral (if such right has not been previously terminated) shall cease automatically and without the need for any action on the part of any Pre-Petition Secured Party. A Further Event of Default shall automatically occur if (a) an order approving the Proposed Sale in form and substance satisfactory to the Buyer is not entered on or before February 15, 2013 or (b) the Proposed Sale has not closed on or before the earlier of the Extended Maturity Date and the date that is 17 days after the entry of the order approving the Proposed Sale.

3. An updated Approved Budget for the period through the earliest of (a) March 11, 2013, or (b) the expected date of closing for the Proposed Sale is attached hereto. The Debtors are authorized to use Cash Collateral through the Extended Maturity Date; provided that the Debtors shall adhere to the attached Approved Budget, including as required for all previous Approved Budgets under the DIP Order, and subject to the other terms of this Order. In addition, the results of the Debtors' operations during the week ended February 9, 2013, pursuant to the Approved Budget attached to the First Agreed Order shall be included in testing any potential Further Events of Default under the terms of the DIP Order and the DIP Documents for the period through the Extended Maturity Date. For the avoidance of doubt, the Debtors shall continue to provide the reports required under the DIP Order pending the occurrence of the Extended Maturity Date and the satisfaction of all outstanding DIP Obligations.

4. Upon the occurrence of a Further Event of Default (whether or not any New Lender has noticed or "called" same), NYCB shall be permitted to file a motion to terminate the Debtors' authority to use Cash Collateral, which motion shall be served upon (a) the Debtors, (b) the Creditors' Committee, (c) the New Lenders, (d) the other Pre-Petition Secured Parties, and (e) the Office of the United States Trustee, and which motion shall be heard by the Court three (3) days after notice is given (or as soon thereafter as the Court's calendar permits). In the event NYCB files such a motion, the Debtors will bear the burden of establishing to the Court that the continued use of Cash Collateral is justified and that NYCB will be adequately protected in connection with such Cash Collateral usage. In the event no order is entered approving the continued use of Cash Collateral by the Debtors prior to the expiration of the above-described three-day period following the filing of a motion by NYCB, the Debtors' authority to use Cash Collateral shall terminate automatically and with no further action of NYCB. Nothing in this paragraph will impair the rights of any party to oppose any motion to terminate Cash Collateral usage contemplated by this paragraph, and nothing in this paragraph shall impair the rights of NYCB to seek additional adequate protection, relief from the automatic stay or to terminate Cash Collateral usage at any time prior to the Extended Maturity Date.

5. Upon the closing of the Proposed Sale, and following payment of all outstanding DIP Obligations, in full and in immediately available funds, without deduction or setoff, NYCB shall have relief from the automatic stay of 11 U.S.C. Section 362(a), without any further action on the part of NYCB, the Court or any other party, effective immediately upon such occurrences, to (a) foreclose on, (b) collect, (c) apply, and (d) enforce all rights under non-bankruptcy law in and against (y) all Cash Collateral that does not constitute proceeds of the Proposed Sale (the "***Sale Proceeds***"); and (z) the Debtors' Accounts Receivable² and the proceeds thereof (the "***Stay Relief Collateral***").

²

As used in this paragraph, the term Accounts Receivable means: all of the Debtors' (a) accounts receivable (including all "Accounts," as defined in the Uniform Commercial Code section 9-102), all trade accounts receivable and other rights to payment from customers of any Debtor, all other accounts or notes receivable of any Debtor, all security interests, claims, remedies or other rights related to any other asset described herein; (b) all credit insurance in respect of the assets described in the immediately-preceding clause "a"; (c) all records and documents related to the foregoing, including, but not limited to, all documentation in the Debtors' virtual data room associated with any of the foregoing assets; (d) all rights to the use of the Debtors' names, trademarks, service marks and other intellectual property as

The Debtors hereby irrevocably surrender the Stay Relief Collateral to NYCB, effective upon the closing of the Proposed Sale and following payment of all outstanding DIP Obligations, in full and in immediately available funds, without deduction or setoff. The Debtors acknowledge and agree, (a) that the Debtors are in default under the Security Agreements (as defined in the DIP Order); (b) that the Debtors shall promptly deliver the Stay Relief Collateral upon the surrender thereof described above; (c) that the Debtors and their professionals shall reasonably cooperate with NYCB in connection with NYCB's enforcement and collection of the Accounts Receivable and the turnover, delivery and surrender of the other Stay Relief Collateral to NYCB; and (d) NYCB shall be permitted to use the Debtors' names, trademarks, service marks and other intellectual property for the purpose of collecting and enforcing the Accounts Receivable; provided that the relief granted in subsection (d) of this sentence shall be without prejudice to the rights of the Debtors, the Buyer, Creditors' Committee and NYCB with regard to any asset purchase agreement or any order approving the Proposed Sale. Notwithstanding anything in this paragraph to the contrary, (a) the automatic stay relief granted herein is without prejudice to the rights of professionals with regard to the Carve-Out (as defined in the DIP Order), to the extent of any such rights; and (b) this paragraph shall be without prejudice to the rights of any party in interest (if any) with respect to (i) the allocation of the Sale Proceeds among the Debtors' creditors and (ii) the allocation of the repayment of the DIP Obligations among the Pre-Petition Bank Debt Collateral. Further notwithstanding anything in this paragraph to the contrary, to the extent that NYCB receives amounts as a result of the stay relief granted by this paragraph in excess of the amounts to which it would have been entitled on account of its claims and liens had stay relief not be granted, based on allocation issues, if any, satisfaction of the DIP Obligations or any other issue, if any, all rights of all parties in interest to seek, from NYCB or any other Pre-Petition Secured Party, damages, disgorgement, monetary judgment or any other legal or equitable relief on account of such grounds (if any) are expressly preserved; provided that the foregoing sentence shall not, and shall not be deemed to, extend the Challenge Deadline (as defined in the DIP Order) or establish or create any such rights; and provided further that NYCB's rights to contest any effort to recover any funds from NYCB under any circumstances or otherwise oppose any such claims or causes of action are expressly reserved and preserved.

6. Following entry of this Order, no Cash Collateral may be used to investigate and/or prosecute claims or causes of action against any of the Pre-Petition Secured Parties. Nothing in this paragraph shall limit the use of Cash Collateral for fees and expenses accrued prior to the entry of this Order for the investigation and/or prosecution of claims and causes of action against any of the Pre-Petition Secured Parties.

7. Each of the Pre-Petition Secured Parties has expressly objected, and continues to object, to having its collateral charged with expenses of administration of the Debtors' Chapter 11 cases or any future proceedings that may result from such cases, including liquidation in bankruptcy or other proceedings under the Bankruptcy

necessary or useful to the collection and enforcement of any of the foregoing; and (e) all proceeds and recoveries and distributions, past, present and future, thereto, thereof or therefrom, as applicable.

Code, whether pursuant to section 506(c) or any other provision of the Bankruptcy Code or otherwise, without the prior written consent of such Pre-Petition Secured Parties, and no such consent shall ever be deemed or implied from entry of this Order or any current, prior or future action, inaction or acquiescence by any of any Pre-Petition Secured Parties.

8. This Order does not modify, alter, amend or otherwise affect any of the Parties' or the Creditors' Committee's rights or obligations under the DIP Order or the other DIP Documents except as expressly set forth above. This Order does not modify, alter, amend or otherwise affect any of the Parties' or the Creditors' Committee's rights or obligations under the First Agreed Order. To the maximum extent possible, this Order shall be construed in a manner consistent with the DIP Order and the other DIP Documents (including but not limited to the First Agreed Order). Without limiting the foregoing, all protections afforded to the Pre-Petition Secured Parties for the Debtors' use of, or for any diminution of, Collateral or Cash Collateral under the DIP Order, and other protections therein, shall apply to all occasions of use by the Debtors of, and for any diminution of, any Collateral or any Cash Collateral pursuant to this Order or during the time from the entry of this Order through the Extended Maturity Date.

9. Nothing herein shall prejudice the right of any Pre-Petition Secured Party to seek other or further protection for the use of its Collateral or Cash Collateral, at any time, and the Debtors retain the right to oppose any such request.

10. The DIP Documentation is amended as follows, effective immediately: the "Financial Covenant" set forth on page 7 of the Term Sheet for 90-Day Post-Petition Debtor-in-Possession Financing Facility (as attached to the DIP Order) is amended by substituting the following at "b": "'Net Book Cash Flow Weekly' not more than 15% below the applicable amount in the Approved Budget."

11. The failure of any Party to enforce any of the provisions hereof shall not be construed as a waiver of such provisions or of the right thereafter to enforce such provisions.

12. The Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Order.

13. This Order will be effective upon entry.

**Dated: Brooklyn, New York
February 13, 2013**



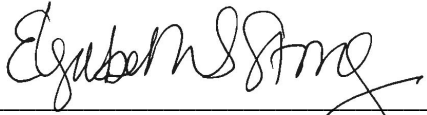

Elizabeth S. Stong
United States Bankruptcy Judge

Exhibit A
Approved Budget