

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

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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

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**AGREED ORDER AMENDING THE TERMS  
OF THE DEBTORS' POST-PETITION FINANCING  
FACILITY AND TEMPORARILY EXTENDING USE OF CASH COLLATERAL**

This 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 October 24, 2012, the Court entered an order on a consensual basis approving bidding and auction procedures for a sale by the Debtors of substantially all of their assets [Docket No. 136] (the “*Sales Procedures Order*”);

**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*”);<sup>1</sup>

**WHEREAS**, pursuant to the DIP Order, the maturity date of the DIP Facility (the “*Maturity Date*”) was set at the earlier of (a) December 31, 2012, and (b) the closing of a sale of all, substantially all, or a material portion of the assets of the Debtors taken as a whole, or of any Debtor individually;

**WHEREAS**, pursuant to the DIP Order, all DIP Obligations are immediately due and payable on the Maturity Date, in full and in immediately available funds, without deduction or setoff;

**WHEREAS**, as set forth in the DIP Order, the Debtors are authorized to use Cash Collateral until the Maturity Date, upon certain terms and conditions as set forth therein;

**WHEREAS**, the Cash Collateral, if any, is subject to certain prepetition and other security interests and liens (including adequate protection) in favor of certain of the Pre-Petition Secured Parties, as set forth in the DIP Order;

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<sup>1</sup> Capitalized terms used but not defined herein have the meaning ascribed to them in the DIP Order.

**WHEREAS**, as set forth in the DIP Order, the Maturity Date was subject to extension until February 9, 2013 at the Debtors' option (the "***Extension Option***");

**WHEREAS**, on November 30, 2012, the Debtors exercised the Extension Option, and filed a related notice on December 7, 2012 [Docket No. 215];

**WHEREAS**, the DIP Order establishes certain Milestones, subject to the exercise of the Extension Option, in connection with the Debtors' sale process, including a requirement to have conducted and concluded an auction, or signed binding agreements that are proposed not to be subject to an auction, for the sale of all or substantially all of the Debtors' assets, on or before January 25, 2013 (the "***Auction Milestone***") and a requirement that such sales have closed on or before February 9, 2013 (the "***Closing Milestone***");

**WHEREAS**, the failure to meet any Milestone is an Event of Default under the DIP Facility;

**WHEREAS**, pursuant to the DIP Order, upon the occurrence and continuance of an Event of Default, all outstanding DIP Obligations incur interest at the Default Interest (as defined in the DIP Term Sheet) rate and the New Lenders are authorized to exercise all rights and remedies upon seven days' written notice (subject to the terms of the DIP Order and the other DIP Documents);

**WHEREAS**, the Debtors have failed to meet the Auction Milestone;

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

**WHEREAS**, a hearing seeking the Court's approval of the Proposed Sale is scheduled for February 13, 2013;

**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**, the Debtors have requested that the New Lenders agree to an extension of the Maturity Date, and 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' requests 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 (i) extend the Maturity Date 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***"), and (ii) to permit the Debtors' continued use of any Cash Collateral through and including February 13, 2013 (the "***Hearing Date***"); provided that the Pre-Petition Secured Parties reserve all rights to contest continued use of Cash Collateral beyond the Hearing Date. For the avoidance of doubt, failure to pay all outstanding DIP Obligations, in full and in immediately available funds, without deduction or setoff, on or before the Extended Maturity Date shall constitute an Event of Default under the DIP Facility. Upon

the occurrence of any Event of Default under the DIP Facility not already in existence and described in the recitals above, including, but not limited to, the Debtors' failure to pay all outstanding DIP Obligations on or before the Extended Maturity Date or to obtain entry of a sale order regarding the Proposed Sale by February 15, 2013, as contemplated below in paragraph 4 hereof (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.

2. Each New Lender shall receive, on the date of entry of this Order, an extension fee of \$75,000.00, which fee shall be fully earned on such date and non-refundable under any circumstances, and which, if paid-in-kind, shall be added to the outstanding balance of the DIP Notes of such New Lender on such date. For the avoidance of doubt, the total of extension fees as described in this paragraph shall not exceed \$150,000.

3. Until and unless a Further Event of Default occurs, the per annum interest rate on all outstanding DIP Obligations shall be 6% as of the date of entry of this Order. Until and unless a Further Event of Default occurs, the New Lenders hereby agree to forbear from exercising any remedies relating to the Debtors' failure to meet the Auction Milestone or any failure to meet the Closing Milestone, including the incurrence of interest on the outstanding DIP Obligations at the Default Interest rate on or after the date of entry of this Order. For the avoidance of doubt, the Default Interest accruing from January 26, 2013 until the date of entry of this Order (to the extent applicable under the DIP Order and the other DIP Documents) shall be paid-in-kind.

4. Failing to have an order approving the Proposed Sale and satisfactory to the Winning Bidder entered on or before February 15, 2013 shall constitute a Further Event of Default under the DIP Facility.

5. Notwithstanding anything to the contrary in the DIP Order or the other DIP Documents, upon entry of this Order, the Default Interest (as defined in the DIP Term Sheet) rate shall be a per annum interest rate of 20%, though such increased Default Interest rate may only apply (if at all) on dates after the entry of this Order.

6. 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 Hearing Date; provided that the Debtors shall adhere to the attached Approved Budget, including as required for all previous Approved Budgets under the DIP Order. 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. 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 last date of the Approved Budget attached hereto, which termination shall be automatic and not require any notice or act by any Pre-Petition Secured Party.

7. 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. To the maximum extent possible, this Order shall be construed in a manner consistent with the DIP Order and the other DIP Documents. 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 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.

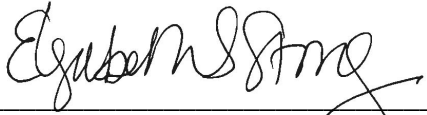
8. The failure of any Party to enforce any of the provisions hereof shall not be construed as a waiver of such provisions or of the right thereafter to enforce such provisions.

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

10. This Order will be effective upon entry.

**Dated: Brooklyn, New York  
February 8, 2013**



  
**Elizabeth S. Stong**  
**United States Bankruptcy Judge**