



ORDERED in the Southern District of Florida on January 9, 2017.

A handwritten signature in black ink, appearing to read "Erik P. Kimball".

Erik P. Kimball, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

In re:

Tuscany Energy, LLC,

Chapter 11

Debtor.

Case No.: 16-10398-EPK

**THIRTEENTH ORDER GRANTING DEBTOR'S *EXPEDITED* MOTION FOR
AUTHORITY TO USE CASH COLLATERAL PURSUANT TO 11 U.S.C.
§ 363 AND FINAL HEARING AND SCHEDULING INTERIM HEARING**

THIS MATTER came before the Court for hearing on January 4, 2017 upon Tuscany Energy, LLC's (the "Debtor") *Expedited Motion for Authority to Use Cash Collateral Pursuant to 11 U.S.C. § 363 and Final Hearing* (the "Motion") [ECF No. 11] and the *Twelfth Order Granting Debtor's Expedited Motion for Authority to Use Cash Collateral Pursuant to 11 U.S.C.*

§ 363 and Final Hearing and Scheduling Final Hearing (the “Twelfth Cash Collateral Order”) [ECF No. 193]. The Court, having considered the Motion, the argument of counsel, and the record in this case, hereby

ORDERS AND ADJUDGES as follows:

1. The Motion is **GRANTED** on an interim basis subject to a final hearing.
2. The objections raised by Armstrong Bank (the “Bank”) in the *Objection to Debtor’s Expedited Motion for Authority to Use Cash Collateral* [ECF No. 17], to the extent not otherwise addressed below, are overruled. This Court shall hold an interim hearing on cash collateral on **February 8, 2017 at 2:00 p.m.** at the United States Bankruptcy Courthouse, Flagler Waterview Building, 1515 North Flagler Drive, 8th Floor, West Palm Beach, Florida 33401 (the “Interim Hearing”).
3. The use of cash collateral provisions in this Interim Order shall remain in effect through February 10, 2017 or until otherwise ordered by the Court.
4. Subject to the terms and conditions set forth in this Order, Debtor is hereby authorized to use Cash Collateral in accordance with the terms and conditions of this Interim Order and in the amounts consistent with the Budget¹ attached hereto as **EXHIBIT A** to pay those actual and necessary ordinary course operating expenses pursuant to the terms of this Interim Order. Unless otherwise approved by the Court upon a duly entered order, disbursements during the term of this Interim Order shall not exceed the gross amount of the total stated in the Budget subject to a ten percent (10%) variance for the total budgeted, provided however, that the specific line items in the Budget shall not be finding or constitute a restriction upon use of Cash Collateral. No claims held by the Bank shall be paid with proceeds of Cash Collateral without further order of the Court. With respect to the management fee set forth in the Budget, Donald

¹ Capitalized terms not defined herein shall have the meanings provided for in the Motion.

Sider (“Mr. Sider”) is entitled to accrue the \$15,000 management fee during the period of this Interim Order; however, the Debtor shall only provide Mr. Sider with a payment of an amount up to \$10,000 during the period of this Interim Order; provided that, such amount leaves the Debtor in a \$500 positive cash flow position at the end of the period of this Interim Order.

5. As security of the use of Cash Collateral and to provide the Bank with adequate protection with respect to any decrease in the value of the Bank’s interest in Prepetition Collateral or Cash Collateral such that the value thereof is less than the amount of the Prepetition Claim, Debtor hereby grants in favor of the Bank replacement liens to the same extent and priority that Armstrong held a properly perfected pre-petition security interest; provided that, however, under no circumstances shall Armstrong have a lien on any causes of action arising under 11 U.S.C. § 542 *et seq.*, 547, 548, 549, 550, 551, or any of the Debtor’s assets that it did not have a right to pre-petition (the “Replacement Liens”).

6. All postpetition funds received by Debtor in any manner derived or related to the Prepetition Collateral, including but not limited to the Cash Collateral, shall be deposited into Debtor’s debtor-in-possession account and used only for purposes of Debtor making those payments authorized by this Interim Order.

7. As additional adequate protection, subject to a reduction for the Holiday Bonuses,² the Debtor shall maintain the dollar value of \$141,000.00 in cash and \$76,000.00 in accounts receivable so that on the date of the Interim Hearing, the Debtor shall have at least a total of \$217,000.00 in cash on hand and accounts receivable (collectively, the “Cash Collateral Pool”); provided that, with respect to the amount attributable to the \$76,000 in accounts receivable, the Debtor is permitted a 25% deviation so that it is required to have no less than a

² As set forth Twelfth Cash Collateral Order, the Bank previously consented to the Debtor using funds from the Cash Collateral Pool to provide end of year cash bonuses to its employees in a total amount not to exceed \$3,250.00.

total of \$198,000 in the Cash Collateral Pool at any time prior to and on the date of the Interim Hearing. Thus, for example, it is acceptable for the Debtor to have, on the date of the Interim Hearing, \$150,000.00 in cash and \$48,000.00 in accounts receivable as the total of both meets the minimum requirement of \$198,000.00 for the Cash Collateral Pool.

8. Debtor shall cooperate and comply with any reasonable request by the Bank to monitor Debtor's compliance with the terms of this Interim Order. The Debtor shall transmit by email to counsel for the Bank on Monday of each week commencing with February 15, 2016 a check ledger and pumper's reports that include field notes and gauge receipts sheets.

9. Nothing in this Interim Order, including the grant of Replacement Liens in favor of the Bank shall in any way increase the value of any of the Bank's collateral as of the Petition Date. For the avoidance of doubt, the liens and rights granted to the Bank in this Interim Order shall be limited to the extent of the aggregate diminution of the value of the Prepetition Collateral after the Petition Date, whether by depreciation, use, sale, loss, decline in value or otherwise including such diminution as may arise from the use or application of the Prepetition Collateral (including Cash Collateral) in accordance with this Interim Order including by reason of the Replacement Liens granted to the Bank ("Diminution Claim").

10. Upon entry of this Interim Order, the security interests and liens granted to the Bank by virtue of this Interim Order shall be valid, perfected and enforceable against all entities and parties, without regard to applicable federal, state or local filing requirements or statutes calling for filing or recording to the same extent that Armstrong had on the Petition Date. The Bank shall not be required to file financing statements or any other instruments or documents in any jurisdiction, or take any other action in order to validate or perfect the security interests and liens granted to the Bank by this Interim Order. This Interim Order shall be the means of, and

sufficient evidence of, such validation and perfection. If the Bank shall, in its own discretion, choose to file such financing statements, mortgages, or otherwise confirm perfection of such security interest and liens: (a) the Bank is authorized to effect such filings and recordings, and any such financing statement regardless of the time of actual filing or recording, shall be deemed to have been filed or recorded at the time and date and simultaneously with the Petition Date; and (b) Debtor is authorized and directed to execute and deliver such agreements, instruments and other documents, including (without limitation) pledges and UCC financing statements. Such filing or recording made to confirm perfection of such security interest and lien shall not be deemed to be a violation of the automatic stay imposed by 11 U.S.C. Section 362(a), and the automatic stay is modified to permit such filings and recording to the extent applicable.

11. As additional adequate protection to the Bank, Debtor shall continue to maintain, with financially sound and reputable insurance companies, insurance coverage in amounts and against risks as reasonable required by the Bank with such insurance policies reflecting the Bank as loss payee and the US Trustee as a notice party.

12. Debtor shall, as partial means of providing the Bank with adequate protection, provide the Bank with copies of all documents that the Bank may reasonably request concerning the revenues, assets, costs and liabilities of Debtor, including copies of all monthly operating reports filed by Debtor in this bankruptcy case.

13. The occurrence of any of the following shall constitute an event of default under this Interim Order: (i) any material default, violation or breach of any of the terms of this Interim Order by Debtor, (ii) conversion of Debtor's case to one under Chapter 7 of the United States Bankruptcy Code, (iii) the appointment of a trustee, (iv) the dismissal of this bankruptcy case, or (v) the failure to timely file all required state and federal tax returns and timely pay any taxes

reported due therein (nothing in this clause prohibits the Debtor from requesting an allowed extension to file a return). (“Events of Default”). The Debtor shall have forty-eight (48) hours to cure any default upon receipt of notice of an Event of Default.

14. Upon the occurrence of an Event of Default, then after giving at least 5 days’ notice in writing delivered via this Court’s CM/ECF system to the other parties requesting notice herein: (i) Debtor’s authority to use Cash Collateral and any all obligations of the Bank under this Interim Order shall terminate, (ii) the Bank shall not be obligated to take title to any Prepetition Collateral in the pursuit of its rights and remedies, and (iii) the Bank shall not be obligated to, but may, in its sole discretion, and only upon its written consent, allow the use of Cash Collateral. Consent of the Bank allowing Debtor to use Cash Collateral after an Event of Default shall not constitute a waiver, limitation, or modification of the Bank’s rights and remedies pursuant to this Interim Order and applicable law. All of the protections granted to the Bank under this Interim Order shall be available upon any use of Cash Collateral by Debtor without regard to whether there has been an Event of Default or the Bank has approved such use. After an Event of Default, Debtor may seek additional authority to use Cash Collateral on 3 days’ notice.

15. Consistent with the terms of this Interim Order and the Budget, Debtor shall (a) make any and all payments necessary to keep its property operating and in good repair and condition and shall not permit or commit any waste thereof, (b) maintain all of its property in good condition and repair, not commit any waste thereof and make all necessary replacements thereof, and operate the same properly and efficiently, and (c) preserve and maintain all patents, licenses, privileges, franchises, certificates and the like necessary for the operation of its

business. Nothing in this paragraph prevents the Debtor from periodically shutting down wells that it believes, in its business judgment, makes economic sense to shut down.

16. This Interim Order and the entry thereof shall not affect or establish the validity or enforceability of the Bank's prepetition liens and security interest in the Prepetition Collateral.

17. The entry of this Interim Order shall not prejudice or limit the rights of the Bank or any other party to seek protection or relief with respect to Cash Collateral or to file and pursue a motion to modify the automatic stay in order to foreclose on Prepetition Collateral or take other actions in this bankruptcy case. Moreover, the entry of this order shall be deemed consent to any use of cash collateral beyond the terms of this order nor shall the same be construed as a waiver or concession of any position, argument or claim of the Bank in this case.

18. Nothing in this Interim Order shall in any way restrict or limit the scope of prepetition liens, security interest or claims or otherwise adversely affect the Perfection Documents.

19. To the extent permitted by law, the provisions of this Interim Order shall be binding upon and inure to the benefit of the Bank, Debtor, their respective successors and assigns including any trustee hereinafter appointed as a representative of the estate herein, or of the estate in any subsequent proceedings under the Bankruptcy Code, and all creditors of Debtor and other parties in interest.

20. If any or all of the provisions of this Interim Order are hereafter modified, vacated, or stayed, such modification, vacation, or stay shall not affect (a) the validity of any obligation, indebtedness, or liability incurred by Debtor to the Bank before the effective date of such modification, vacation, or stay, (b) the validity or enforceability of any security interest, mortgage, lien, priority or other protection authorized or created hereby. Notwithstanding any

such modification, vacation, or stay, the Cash Collateral actually used by Debtor before the effective date of such modification, vacation, or stay shall be governed in all respects by the original provisions of this Interim Order, and the Bank shall be entitled to all the rights, remedies, privileges, and benefits granted herein.

21. The Bank may request the Court to provide other protections for the benefit of the Bank as a condition to the continued use by Debtor of the Cash Collateral.

22. The automatic stay under 11 U.S.C. Section 362 is vacated and modified to the extent necessary to permit the Bank and Debtor to implement the provisions of the Interim Order.

23. The 14-day stay contemplated by F.R.Bankr.P. 4001(a)(3) and 6004(h) is hereby waived.

24. This Court hereby expressly retains jurisdiction over all persons and entities, co-extensive with the powers granted to this Court under the Bankruptcy Code and jurisdictional laws of the United States, to enforce the terms of this Interim Order and to adjudicate any and all disputes in connection therewith.

25. Debtor is hereby authorized and directed to perform all acts, take any action, and execute and comply with the terms of such other documents, instruments, and agreements, as the Bank may reasonable require as evidence of and for the protection of the Prepetition Collateral, Cash Collateral and the Postpetition Collateral, or that maybe otherwise deemed necessary by the Bank to effect the term and conditions of this Interim Order.

26. This Interim Order has been entered on an expedited basis as an interim order pursuant to F.R.Bankr.P. 4001(b)(2) and all relief granted herein, including but not limited to the granting of any and all liens is expressly subject to final approval at a hearing to be held as

provided herein below. The entry of this Interim Order shall not prejudice or limit the rights of any other party to seek relief or otherwise dispute the nature, extent and validity of the relief granted herein or the Bank's prepetition security interest and liens or claims secured thereby or any liens or claims granted herein until such time as this Interim Order shall become a final order as provided below. Upon entry of a final order, all liens or claims granted the Bank herein shall be binding and enforceable as to all parties to this case.

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Submitted by:

Bernice Lee
Counsel for the Debtor
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Copy to: Bernice Lee, Esq., 2385 N.W. Executive Center Dr., Suite 300, Boca Raton, Florida 33431. [Attorney Lee is directed to serve a copy of this Order upon all interested parties.]

EXHIBIT A

TUSCANY ENERGY, LLC
CASH OPERATING PLAN
JANUARY 11 TO FEBRUARY 10, 2017

		PLAN
CRUDE OIL RECEIPTS	\$ 57,443	
TUSCANY ROYALTIES EARNED	2,000	
NATURAL GAS RECEIPTS	5,000	
SALT WATER DISPOSAL REVENUES	500	
NET REVENUES		64,943
WORKING INTEREST OWNER PAYMENTS		(1,200)
LEASE OPERATING EXPENSES:		
FIELD WAGES	(21,750)	
VENDORS:		
WELL, VEHICLE & EQUIPMENT, PARTS, SERVICES & SERVICING	(19,723)	
UTILITIES	(4,435)	
RENT	(1,225)	
INSURANCE	(4,500)	
TOTAL LEASE OPERATING EXPENSE		(51,633)
CASH FLOW FROM OPERATIONS		12,110
ADMINISTRATIVE EXPENSE:		
OFFICER'S MANAGEMENT FEE	(4,600)	
ACCOUNTING FEES	(5,000)	
BANKING AND OTHER FEES	(350)	
TRUSTEE FEES	(1,650)	
TOTAL ADMINISTRATIVE EXPENSE		(11,600)
NET CASH FLOW		\$ 510

Notes: The average NYMEX price for the crude oil receipts is assumed to be \$52.50

The Officer's Management Fee is being reduced, each month, per the Agreed Order on Cash Collateral, so that although the Manager will accrue a Management Fee of \$15,000 per month, the Company will only actually pay (until final hearing on the Cash Collateral Motion) as much as will leave the Company at least \$500 positive cash flow for the month.