

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI
AT KANSAS CITY**

In re:)
) **Case No. 12-41176-drd**
BLUE SPRINGS FORD SALES, INC.,¹)
) **Chapter 11**
Debtor.)

MOTION OF THE DEBTOR TO AMEND FINAL ORDER (I) AUTHORIZING THE DEBTOR TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. § 364 OF THE BANKRUPTCY CODE, (II) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTY PURSUANT TO SECTIONS 361, 362, 363 AND 364 OF THE BANKRUPTCY CODE, (III) GRANTING LIENS AND SUPERPRIORITY CLAIM, AND (IV) GRANTING OTHER RELIEF (Docket # 59)

The above-captioned debtor and debtor-in-possession (the “**Debtor**”), by and through its proposed undersigned counsel, hereby submits this motion (the “**Motion**”) for the entry of an order amending the previously entered *Final Order (I) Authorizing Debtor to Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Granting Adequate Protection of the Prepetition Secured Party Pursuant to Sections 361, 362, 363, and 364 of the Bankruptcy Code, (III) Granting Liens and Superpriority Claim, and (IV) Granting Other Relief* (Docket #59) (the “**DIP Order**”) providing the Debtor financing by Ford Motor Credit Company (“**FMCC**”), pursuant to a debtor-in-possession financing agreement, consisting of the Pre-Petition Financing Agreement (as defined below) as amended by the DIP Order (collectively, the “**DIP Financing Agreement**”); and further respectfully represents as follows:

¹ The last four digits of the Debtor’s tax identification number are: 5260. The location of the Debtor’s corporate headquarters is 3200 NW South Outer Road, Blue Springs, Missouri 64015-1763.

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief requested herein are sections 105, 361, 362, 363 and 364 of the Bankruptcy Code, Bankruptcy Rules 4001, 6003 and 6004 and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Western District of Missouri (the “**Local Rules**”).

BACKGROUND

A. Introduction

3. On March 21, 2012 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the “**Case**”) in the United States Bankruptcy Court for the District of Delaware.

4. On March 28, 2012, the Delaware Bankruptcy Court entered its Order Granting Motion for Change of Venue, authorizing and directing that this Chapter 11 Case be transferred to the United States Bankruptcy Court for the Western District of Missouri. Notice of docketing the receipt and assignment of the Case to this Court was entered on March 29, 2012.

5. The factual background regarding the Debtor, including its business operations, capital and debt structure, and the events leading to the filing of this Case, is set forth in detail in the First Day Declaration (Docket #11).

6. The Debtor continues to operate its business and manage its business as a debtor in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Case. An official committee of unsecured creditors has not been appointed.

7. The Debtor's Disclosure Statement was approved by the Court on April 12, 2013 (Docket #237) and Debtor is in the process of soliciting votes on its Amended Plan of Reorganization ("**Plan**"). The confirmation hearing on the Debtor's Plan is scheduled for June 5, 2013.

B. The Debtor's Pre-Petition Debt Structure

8. The Debtor, Blue Springs Ford Sales, Inc., is a privately held corporation organized under the law of the State of Delaware.

9. Since 1978, the Debtor has been in the business of selling and servicing new and used Ford vehicles as an authorized and approved dealer for Ford Motor Company.

10. Prior to the Petition Date, FMCC provided a wholesale line of credit and other financial accommodations to the Debtor, pursuant to the terms and conditions set forth in, among other documents: (i) an Automotive Wholesale Plan Application For Wholesale Financing and Security Agreement, dated July 24, 1978; (ii) a Power of Attorney For Wholesale, dated July 24, 1978; (iii) a Security Agreement, dated March 3, 1982; (iv) an Assignment, dated March 3, 1982 (each of the documents between the parties as amended, supplemented or otherwise modified prior to the commencement of this Chapter 11 Case, and all collateral and ancillary documents executed in connection therewith, collectively, referred to in this Order as the "**Pre-Petition Financing Agreement**"). A copy of the Pre-Petition Financing Agreement was attached to the *Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor (A) To Obtain Post-Petition Financing, Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. §§ 362, 363 AND 364; (II) Granting a Superpriority Claim, Pursuant to 11 U.S.C. §364(c)(1); (III) Granting Adequate Protection, Pursuant to 11 U.S.C. §§ 361, 362, 363 AND 364; and (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b)* (Docket #11) (the "**First DIP Motion**") as

Exhibit A. Under the Pre-Petition Financing Agreement, FMCC made advances to or on behalf of the Debtor to finance new and used vehicles and other merchandise.

11. As discussed in the First Day Declaration, as of the Petition Date, the Debtor had outstanding secured debt obligations to FMCC in the aggregate principal amount of approximately \$8 million, arising under the Pre-Petition Financing Agreement (the “**Pre-Petition Obligations**”). In addition, Debtor became obligated to FMCC for certain post-petition extensions of credit as provided in the DIP Order (the “**DIP Obligations**”).

12. The Pre-Petition Obligations are secured by first priority liens on and continuing security interests in all the property described in the Pre-Petition Financing Agreement, including but not limited to the Debtor’s new and used vehicle inventory (“**Merchandise**”) and in the proceeds, in whatever form, of any sale or other disposition thereof, and all amounts that may now or hereafter be payable to the Debtor by the manufacturer, distributor or seller of any of the Merchandise by way of rebate or refund of all or any portion of the purchase price thereof (“**Pre-Petition Collateral**”).

13. The Debtor was not in default under the Pre-Petition Financing Agreement.

C. The Debtor’s Need for Postpetition Financing

14. As an authorized Ford dealer, the Debtor’s financing of Merchandise is done entirely through FMCC, pursuant to the terms and conditions of the Pre-Petition Financing Agreement. As of the Petition Date, the wholesale line of credit available to the Debtor through FMCC provided the debtor access to as much as \$8 million in revolving credit on terms and conditions that the Debtor could not obtain from other sources. This credit facility has permitted the Debtor to continually replenish its floor plan inventory, following the sale of such inventory, through advances made to or for the benefit of the Debtor. The DIP Order also has permitted the Debtor to maintain on a post-petition basis the floor plan financing afforded to it by FMCC on

substantially identical terms as provided for under the Pre-Petition Financing Agreement, as amended by the DIP Order, and to continue to operate as an authorized Ford dealer and ensure its ability to purchase and sell Ford vehicles.

15. The structure of the DIP Financing Agreement approved by the Court in the DIP Order has provided the Debtor with a wholesale line of credit up to the same approximate amount and upon the same terms and conditions of the Pre-Petition Financing Agreement, as amended by the DIP Order.

16. The terms and conditions of the credit facility that were available to the Debtor through FMCC under the Pre-Petition Financing Agreement, and which have continued post-petition as authorized by the DIP Order, are unique to the Debtor's line of business, are favorable to the Debtor, and not otherwise available from other sources. The Debtor could not have obtained alternative postpetition financing in the form of unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code, as an administrative expense under section 364(a) or (b) of the Bankruptcy Code, or in exchange for the grant of an administrative expense priority pursuant to section 364(c)(1) of the Bankruptcy Code, without the grant of liens on Merchandise and proceeds thereof acquired post-petition.

17. Further, the Debtor generates cash from the sale of Merchandise, the proceeds of which are secured under the Pre-Petition Financing Agreement ("**Cash Collateral**"). The Debtor uses Cash Collateral in the ordinary course of its business primarily to pay the expenses directly associated with the sale of Merchandise and to otherwise finance expenses incurred in the ordinary course of its operations. The authority granted to the Debtor under the DIP Order to use Cash Collateral to meet its operating and working capital needs has permitted the Debtor to operate its business without disruption in an orderly manner, maintain business relationships

with vendors, suppliers and customers, and pay employees and satisfy other operational and working capital needs, all of which are necessary to preserve and maximize the Debtor's going concern value for the benefit of all stakeholders.

18. Without financing from FMCC under the DIP Financing Agreement and the ability to use Cash Collateral, it is unlikely that the Debtor would have had sufficient alternative available sources of working capital to remain in business.

D. The Debtor's Need to Amend The DIP Facility To Increase The DIP Facility Cap

19. Under the DIP Order, the aggregate principal amount of requested postpetition advances and any postpetition advances then outstanding, plus the outstanding amount of the Prepetition Indebtedness owed by the Debtor to FMCC, was not to exceed the lesser of: (i) \$8,000,000.00 (the "**Original Cap**"),² or (ii) the "**Advance Formula**". The Advance Formula is defined in the DIP Order as the Original Cap less the outstanding balance of the Prepetition Indebtedness.

20. Since the entry of the DIP Order, particularly in recent months, the Debtor's sales of new and used vehicles have exceeded the Debtor's historical sales performance for a number of same periods in recent prior years. FMCC has fully supported such improved sales by extending credit to the Debtor under the DIP Financing Agreement, approved by the DIP Order, which permitted the Debtor to acquire the inventory necessary to support the corresponding increased vehicle sales. From time to time, the extension of such credit during those periods has caused the outstanding principal amount of the wholesale line of credit to exceed the aggregate principal amount of credit originally authorized under the DIP Order. The Debtor and FMCC

² This amount is defined in the DIP Order as the "Cap". Docket No. 59, pp. 7-8.

informed the Court of this fact at the April 12, 2013 hearing at which the Court approved the Debtor's Amended Disclosure Statement (Docket #237).

21. As of May 1, 2013 the outstanding principal balance due on the Prepetition Indebtedness is \$34,195.08, and the outstanding principal balance due for postpetition advances made by FMCC to the Debtor is \$8,329,395.74.

22. The Debtor is not in default under the DIP Financing Agreement.

23. FMCC and the Debtor are agreed that the DIP Order should be amended to provide that the aggregate principal amount of requested postpetition advances and all other postpetition advances currently outstanding, plus the outstanding amount of the Prepetition Indebtedness owed by the Debtor to FMCC, shall not exceed the lesser of: (i) \$9,000,000.00 (the "New Cap"), or (ii) the Advance Formula (the "Amended DIP Order"). The Advance Formula shall be defined in the Amended DIP Order as the New Cap less the outstanding balance of the Prepetition Indebtedness.

24. No other or further amendments to the DIP Order are requested or proposed by this Motion.

25. The material terms of the previously approved DIP Financing Agreement, together with the amendment proposed in this Motion (the "**Amended DIP Financing Agreement**"), are summarized below in accordance with the disclosure requirements of Bankruptcy Rule 4001 and Local Rule 4001-2 (with changed terms from the First DIP Motion highlighted in bold).

BANKRUPTCY RULE 4001 CONCISE STATEMENT

26. Material provisions of the DIP Facility (as defined and amended below) are set forth and/or in the Amended DIP Order:³

- a. ***Borrower:*** Blue Springs Ford Sales, Inc.
- b. ***Guarantors:*** Robert C. Balderston; Kristine A. Balderston; Stadium Honda, Inc.; and Lee's Summit Subaru, Inc.
- c. ***DIP Lender:*** Ford Motor Credit Company.
- d. ***Structure and Amount of Financing:*** Subject to the terms and conditions of the Amended DIP Order, FMCC agrees to make available a wholesale line of credit, in an aggregate principal amount at any time outstanding up to but not exceeding \$9 million (the "DIP Facility"). DIP Financing Agreement §1 (as amended by the Amended DIP Order).
- e. ***Use of Proceeds:*** The proceeds of the DIP Facility shall be used to be used for the sole purpose of purchasing new and used vehicles, subject to the terms and conditions of the DIP Financing Agreement. DIP Financing Agreement §§1, 3.
- f. ***Interest Rate:*** All advances made by FMCC to or on behalf of the Debtor under the DIP Facility shall bear interest from the date of the advance by FMCC to the date of repayment at the rates established by FMCC from time to time; provided, however, that any amount not paid when due shall bear interest at the rate of 15% per annum or the maximum contract rate permitted under Missouri law. DIP Financing Agreement §2.
- g. ***Service and Insurance Flat Charges:*** In addition to interest on advances by FMCC, such financing shall also be subject to service and insurance flat charges established by FMCC from time to time for the Debtor. DIP Financing Agreement §2.
- h. ***Termination Date:*** The earliest to occur of (a) the termination of the DIP Financing Agreement; or (b) the substantial consummation (as defined in

³ The summaries and descriptions of the terms and conditions of the DIP financing set forth in this Motion are intended solely for informational purposes to provide the Court and the parties in interest with an overview of significant terms thereof and should only be relied upon as such. The summaries and descriptions are qualified in their entirety by any DIP Financing Agreement and the Amended DIP Order. In the event that there is a conflict between this Motion and any DIP Financing Agreement or the Amended DIP Order, the Amended DIP Order shall control in all respects. Capitalized terms used in this summary but not defined herein shall have the meaning ascribed to such terms in any DIP Financing Agreement or the Amended DIP Order, as applicable.

section 1101(2) of the Bankruptcy Code, which for purposes hereof shall be no later than the effective date thereof) of a Reorganization Plan pursuant to an order entered by the Bankruptcy Court. DIP Financing Agreement §11.

- i. **Events of Default:** Events of default under the DIP Facility are identified in Section 9 of the DIP Financing Agreement, as amended by the Amended DIP Order.
- j. **DIP Facility Liens, Adequate Protection Liens, Priority, Exclusion of Avoidance Actions:** To secure the DIP Obligations, the Amended DIP Order provides for the benefit of FMCC postpetition liens as follows:
 - **DIP Facility Liens.** FMCC shall be granted perfected first priority senior security interests in and liens (“**DIP Facility Liens**”) upon all new and used vehicle inventory purchased after the Petition Date, including vehicles received in trade in the normal course of business with respect to all new and used vehicles financed by FMCC, and on all post-petition accounts receivable and other proceeds arising therefrom, to secure the DIP Obligations and to provide adequate protection for FMCC’s interests (excluding actions for preferences, fraudulent conveyances, and other avoidance power claims and any recoveries under sections 542, 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code (collectively “**Avoidance Actions**”)) (all of the foregoing, the “**DIP Facility Collateral**”). The DIP Facility Liens shall, upon entry of the Amended DIP Order approving the Amended DIP Financing Agreement, and without the necessity of obtaining or filing any other instruments or documents, survive the dismissal of this case, the confirmation of any Chapter 11 plan, or the conversion of this case to a case under Chapter 7 or any other Chapter of the Bankruptcy Code, and shall constitute valid, enforceable and perfected liens and security interests therein.
 - **Adequate Protection Liens.** As adequate protection of FMCC’s interests in the Pre-Petition Collateral, FMCC is hereby granted valid, binding, enforceable and perfected additional and replacement liens (the “**Adequate Protection Liens**”) in the DIP Facility Collateral, to the extent of any decrease in the value of FMCC’s interests in the Pre-petition Collateral occurring subsequent to the Petition Date, such diminution resulting from, but not limited to, the granting of priming liens under the Bankruptcy Code, the depreciation, use, sale, loss, decline in market price of the Pre-Petition Collateral, or otherwise. The Adequate Protection Liens shall enjoy the same validity and extent as the liens Lender held on the Petition Date.

- Superpriority Administrative Claim. To the extent of the diminution of value in the DIP Facility Collateral, the DIP Obligations shall have a superpriority administrative expense claim as provided and to the full extent allowed under § 364(c)(1) of the Bankruptcy Code, and shall have priority over all other costs and expenses of administration of any kind, including those specified in, or ordered pursuant to, §§ 105, 326, 330, 331, 503(b), 507(a), 507(b) or 726 or any other provision of the Bankruptcy Code or otherwise (whether incurred in the Chapter 11 case or any successor case), and shall at all times be senior to the rights of the Debtor, any successor trustee or estate representative in the Debtor's Chapter 11 case or any successor cases (the "**Superpriority Claim**"); provided, however, that the Avoidance Actions shall not be subject to the Superpriority Claim.
 - Avoidance Actions Excluded. The Debtor highlights for the Court that the DIP Facility Collateral excludes the Avoidance Actions.
- k. **Information.** The Debtor shall provide FMCC such written financial information or periodic reporting as provided for under Section 8 of the DIP Financing Agreement, as amended by the Amended DIP Order.

RELIEF REQUESTED

27. By this Motion, the Debtor requests entry of the Amended DIP Order authorizing the Debtor to (i) obtain post-petition financing pursuant to sections 105, 361, 362, 364(c)(1), 364(c)(2), and 364(e) of the Bankruptcy Code **(a) in the amount of up to \$9 million under the Amended DIP Financing Agreement;** (ii) continue FMCC's first priority security interests in and liens on all of the DIP Collateral; (iii) use of Cash Collateral; (iv) continue FMCC's Superpriority Administrative Expense Claim for diminution in the value of FMCC's DIP Facility Collateral; and (v) continue the Adequate Protection Liens to FMCC for diminution in the value of FMCC's Pre-Petition Collateral.

28. The Debtor needs the DIP Facility, as amended by the Amended DIP Order, and the use of Cash Collateral in order to permit, among other things, the orderly continuation of the operation of its business, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures and to satisfy other working capital and

operational needs. The Debtor's continued access to a sufficient wholesale line of credit and liquidity under the DIP Facility and through the use of Cash Collateral and other financial accommodations is vital to the preservation and maintenance of the going concern value of the Debtor and to a successful reorganization of the Debtor.

BASIS FOR RELIEF

A. The Debtor Should Be Authorized to Obtain Postpetition Financing Under the Amended DIP Financing Agreement.

(i) Entering into the Amended DIP Financing Agreement Is an Exercise of the Debtor's Sound Business Judgment.

29. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances as described in greater detail below. Provided that an agreement to obtain secured credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance with its sound business judgment in obtaining such credit. *See, e.g., Trans World Airlines, Inc. v. Travellers Int'l AG (In re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition facility and receivables facility because such facility "reflect[ed] sound and prudent business judgment."); *In re Barbara K. Enters., Inc.*, Case No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[c]ases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] 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 a party-in-interest."); *In re*

Farmland Indus., Inc., 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of postpetition financing requires, inter alia, an exercise of “sound and reasonable business judgment.”); *see also Bray v. Shenandoah Fed. Sav. & Loan Assoc. (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (stating that “[t]he statute imposes no duty to seek from every possible lender before concluding that such credit is unavailable”).

30. Specifically, to determine whether the business judgment standard is met, a court is “required to examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor’s business decision when that decision involves “a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor’s] authority under the [Bankruptcy] Code.”) (citation omitted).

31. The Debtor’s execution of the Amended DIP Financing Agreement is an exercise of its sound business judgment that warrants approval by the Court. The terms and conditions of the Amended DIP Financing Agreement are identical to the terms and conditions of the Pre-Petition Financing Agreement and the DIP Financing Agreement, as amended by Amended DIP Order. The Debtor’s projected wholesale line of credit needs for the remainder of this Chapter 11 case are based upon its recent historical wholesale line of credit needs and do not reflect any upward adjustment or increase attributable to the bankruptcy case. The Debtor estimates that it will need up to \$9 million under an amended post-petition line of credit to support its ordinary operational activities. This represents a \$1 million increase above the maximum amount of credit originally authorized under the DIP Order. The need for such increase is entirely

attributable to the Debtor selling more vehicles than anticipated at the time the DIP Order was entered.

32. The fact that the Debtor can obtain the amended post-petition wholesale line of credit it needs upon the same terms and conditions as it had Pre-Petition, and at an increased amount over the Prepetition Financing Agreement, can appropriately be presumed to constitute sound business judgment by the Debtor. This same fact further supports the soundness of the Debtor's judgment that the terms of the DIP Facility as set forth in the Amended DIP Financing Agreement provide a sufficient amount of financing on more favorable terms than any other alternative.

33. Specifically, the DIP Facility will provide the Debtor with access to a line of credit of up to \$9 million, which the Debtor has determined should be sufficient to satisfy its postpetition obligations and support the Debtor's ongoing operations and reorganization activities through the pendency of this Chapter 11 case.

(ii) The Debtor Should Be Authorized to Obtain Amended Postpetition Financing on a Secured Priority Basis.

34. Section 364 of the Bankruptcy Code authorizes a debtor to obtain, in certain circumstances, postpetition financing on a secured or superpriority basis, or both. Specifically, section 364(c) of the Bankruptcy Code provides, in pertinent part, that the court, after notice and a hearing, may authorize a debtor that is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code to obtain credit or incur debt:

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code];
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

- (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

35. To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate “by a good faith effort that credit was not available” to the debtor on an unsecured or administrative expense basis. *Bray v. Shenandoah Fed. Sav’g. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). “The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Id.*; see also *Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense). When few lenders are likely to be able and willing to extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n. 4 (N.D. Ga. 1989).

36. The Debtor submits that even outside of bankruptcy, credit is not available to car dealerships, such as the Debtor, on an unsecured or administrative expense basis. The terms and conditions of the Amended DIP Financing Agreement with FMCC represent the customary and ordinary terms of floor plan financing available from FMCC to franchised Ford dealers who are not in default under their credit facility. The terms and conditions of the Amended DIP Financing Agreement with FMCC are not only the best available to the Debtor, they are identical to the terms and conditions of the same wholesale line of credit that the Debtor had before the Petition Date, subject to any additional requirements of Amended DIP Order and the increase in the available line.

37. The Court should, therefore, grant the Debtor's repayment obligations under the Amended DIP Financing Agreement, secured by the DIP Facility Collateral as provided for in section 364(c)(2) of the Bankruptcy Code.

(iii) The Debtor Should Be Granted a Superpriority Administrative Claim To The Extent of Any Diminution of Value.

38. Further, to the extent of the diminution in value of the DIP Facility Collateral, Section 364(c)(1) of the Bankruptcy Code authorizes the continued grant to FMCC of a superpriority administrative expense claim. The Superpriority Administrative Expense Claim shall have priority over all other costs and expenses of administration of any kind, including those specified in, or ordered pursuant to, §§ 105, 326, 330, 331, 503(b), 507(a), 507(b) or 726 or any other provision of the Bankruptcy Code or otherwise (whether incurred in the Chapter 11 case or any successor case), and shall at all times be senior to the rights of the Debtor, any successor trustee or estate representative in the Debtor's Chapter 11 case or any successor cases (the "**Superpriority Claim**"); provided, however, that the Avoidance Actions shall not be subject to the Superpriority Claim.

B. The Debtor's Request To Use the Cash Collateral, Pursuant to the Terms of the Amended DIP Order, Should Be Approved.

39. The Debtor's use of property of its estate is governed by section 363 of the Bankruptcy Code, which provides in pertinent part that:

If the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).

40. Section 363(c)(2)(A) of the Bankruptcy Code permits a debtor in possession to use cash collateral with the consent of the secured party. Section 363(e) of the Bankruptcy Code requires that the debtor adequately protect the secured creditors' interest in property to be used by a debtor against any diminution in value of such interest resulting from the debtor's use of the property during this Chapter 11 case.

41. What constitutes sufficient adequate protection is decided on a case-by-case basis. *In re Sharon Steel Corp.*, 159 B.R. 165, 169 (Bankr. W.D.Pa. 1993); *In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *see also In re Martin*, 761 F.2d 472 (8th Cir. 1985); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); *In re Sw. Assos.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992). By adequate protection, the Bankruptcy Code seeks to shield a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986); *In re Hubbard Power & Light*, 202 B.R. 680 (Bankr. E.D.N.Y. 1996). Adequate protection can come in various forms, including payment of adequate protection fees, payment of interest, and granting of replacement liens and administrative claims.

42. The Debtor submits that the Superpriority Administrative Claim for the benefit of FMCC represents adequate protection that is necessary and appropriate under the circumstances of this Chapter 11 case to ensure that the Debtor is able to continue using Cash Collateral. Accordingly, the adequate protection to FMCC as authorized by the Amended DIP Order is fair and reasonable and sufficient to satisfy the requirements of sections 363(c)(2) and (e) of the Bankruptcy Code.

WAIVER OF BANKRUPTCY RULE 6004(A) AND 6004(H)

43. To implement the foregoing successfully, the Debtor requests that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtor has established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

NOTICE

44. Notice of this Motion has been given to (i) Office of the United States Trustee for the Western District of Missouri; Attn: Sherri L. Wattenbarger, (ii) the creditors listed on the Debtor's list of 20 Largest Unsecured Creditors; (iii) counsel to Ford Motor Credit Company; (iv) counsel to Ford Motor Company; (v) counsel to Bank Midwest, N.A.; (vi) the Internal Revenue Service; (vii) the Missouri Department of Revenue; (viii) the Securities and Exchange Commission; and (ix) all parties that have requested notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

WHEREFORE, the Debtor respectfully requests entry of the Amended DIP Order granting the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: May 3, 2013

Respectfully Submitted,

POLSINELLI PC

By: /s/ Michael M. Tamburini
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MICHAEL M. TAMBURINI (MO #35033)
ANDREW J. NAZAR (MO #57928)
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ATTORNEYS FOR DEBTOR AND
DEBTOR-IN-POSSESSION

CERTIFICATE OF SERVICE

I, Michael M. Tamburini, hereby certify that on the 3rd day of May, 2013, a true and correct copy of the *Motion of the Debtor to Amend Final Order (I) Authorizing the Debtor to Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 364 of the Bankruptcy Code, (II) Granting Adequate Protection to the Pre-Petition Secured Party Pursuant to Sections 361, 362, 363, and 364 of the Bankruptcy Code, (III) Granting Liens and Superpriority Claim, and (IV) Granting Other Relief (Docket #59)* was served electronically to the U.S. Trustee and the interested parties registered to receive ECF notification from the Court, and served by First-Class United States Mail, postage prepaid, addressed to:

O'Reilly Automotive
P.O. Box 790098
St. Louis, MO 63179-0098

K & M Office Products, Inc.
P.O. Box 1535
Blue Springs, MO 64013-1535

Shawnee Mission Ford
P.O. Box 3179
Shawnee, KS 66203

Auto Color
524 W. 23rd Street
Independence, MO 64055

Lee's Summit Honda
401 NE Colbern Road
Lee's Summit, MO 64086-4707

Molle Chevrolet
411 Mock Avenue
Blue Springs, MO 64015

Factory Motor Parts
Attn: Legal Department
1380 Corporate Center Curve, Suite 200
Eagan, MN 55121

Securities and Exchange Commission
Midwest Regional Office
175 W. Jackson, Suite 900
Chicago, IL 60604

AER
P.O. Box 974180
Dallas, TX 75397

Advanced Auto Parts #7125
306 SW 7th Highway
Blue Springs, MO 64015

County Line Auto Parts, Inc.
641 NW 1801 Road
Kingsville, MO 64061

Truckworks
93 SE Oldham Parkway
Lee's Summit, MO 64081

DR Vinal Enterprises LLC
10211 W. 97th Terrace
Overland Park, KS 66212

City of Blue Springs
903 W. Main Street
Blue Springs, MO 64015-3709

Enterprise Leasing Co. of Kansas LLC
5359 Merriam Drive
Merriam, KS 66203

Jackson County Tow Service
617 SE Industrial Drive
Blue Springs, MO 64014

McCarthy Blue Springs Hyundai
3000 South Outer Road
Blue Springs, MO 64015

Keystone Automotive Industries
15733 Collections Center Drive
Chicago, IL 60693

Thomas M. Byrne
Sutherland Asbill & Brennan LLP
999 Peachtree Street NE
Atlanta, GA 30309-3996

Cable Dahmer Chevrolet
Christine C. Waldschmidt
10641 Wornall Road
Kansas City, MO 64114

Chux Trux Inc.
Stephen D. McGiffert
Payne & Jones, Chartered
11000 King
Overland Park, KS 66210

Internal Revenue Service
Centralized Insolvency Operation
P.O. Box 7346
Philadelphia, PA 19101-7346

/s/ Michael M. Tamburini