

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>IN RE:</b>	§	<b>CHAPTER 11</b>
	§	
<b>D &amp; N Electric, A Carter Brothers Company</b>	§	<b>CASE NO. 16-72113-CRM</b>
	§	
<b>Debtor.</b>	§	

**EMERGENCY MOTION TO PAY PRE-PETITION CLAIM TO CRITICAL VENDOR  
AND FOR AN ORDER SHORTENING NOTICE  
AND SCHEDULING EXPEDITED HEARING ON MOTION**

**COMES NOW**, D & N Electric, a Carter Brothers Company, debtor and debtor-in-possession (the "Debtor") in the above styled case (the "Case"), by and through its undersigned counsel, and files this Motion, respectfully showing the Court as follows:

**BACKGROUND**

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

2. The statutory predicates for the relief sought herein are section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rule 9006(c)(1) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 9013-4 of the Local Rules of Practice for the United States Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Local Rules").

3. On December 11 2016 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The

Debtor continues to operate its business as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee or examiner has been appointed in these bankruptcy cases. No request has been made for the appointment of a trustee or examiner. No Committee has been appointed in this Case.

5. Filed contemporaneously with this Motion and in support hereof is the Declaration of Rockney Carter (“Carter Declaration”). As set forth in the Carter Declaration, the Debtor is an Atlanta based electrical contractor serving owners, developers and general contractors in the Southeast with its principal place of business located at 3015 RN Martin Street, East Point, Georgia 30344. At present, the Debtor has approximately 170 employees.

6. The Debtor was founded in 1970, and acquired by Carter Brothers in 2014. The Debtor is one of the largest minority-owned electrical installation providers in the Southeast.

7. Although the Debtor has a long and successful history of operations, two business problems have led to the filing of this Chapter 11 Case. First, as noted above, the Debtor was acquired by Carter Brothers in 2014. The Debtor has, or intends to, assert claims against the prior owners of the Debtor for fraud and breach of contract in connection with that acquisition. In particular, the Debtor believes that there were material misstatements and omissions in the Debtor’s financial records and that it is entitled to significant damages from the prior owners. Certain of these claims are already the subject of pending litigation. The Debtor believes that its damages arising from these claims are at least \$3 Million (the “Litigation Claims”).

8. Second, the Debtor has certain contracts which have proven to be unprofitable. The Debtor is carefully reviewing all of its contracts to determine whether to accept or reject

such contracts and has already decided to reject one contract with Waldbridge Aldinger Company which will be the subject of a separate Motion to Reject.

9. The vast majority of the contracts in which the Debtor has entered, require that the Debtor use union labor. The Debtor has contracted with Local 613 of the International Brotherhood of Electrical Workers (“IBEW”) to provide this labor. The IBEW is one the most important, if not the most important, vendor to the Debtor.

10. As part of its agreements with IBEW, the Debtor not only pays wages to the skilled laborers provided by the IBEW but also makes payments to the IBEW and several of its affiliates for union dues, defined pension plan contributions and health insurance funds. Further, the Debtor also makes payments to fund bonds to secure the payment of these obligations. These payments are made on a monthly basis to IBEW based on the usage of skilled laborers from the prior month. The vast majority of these funds are ultimately directed by the union to separately administered funds established to provide health and pension benefits for both active union members and retirees. These funds (the “IBEW Funds”) have separate counsel from the IBEW Local 613.

11. The Debtor currently owes IBEW and the IBEW Funds the sum of \$428,501 due for the month of November and is due to be paid in December. The Debtor has advised IBEW and the IBEW Funds that it intends to seek Court permission to pay this amount and to approve assumption of the IBEW agreements as part of its reorganization process. The Debtor has a thirty-day period to file appropriate motions with the Bankruptcy Court and to seek this relief in the ordinary course of business.

12. The IBEW Funds, through counsel, has advised the Debtor that it will make claims on outstanding bonds commencing January 2, 2017, if the Debtor does not pay the amounts due. The IBEW Funds have refused to provide any accommodation or grace period to

the Debtor to address this issue in a more orderly manner with this Court. It should be noted that IBEW Local 613 itself has not taken this position and that the need to make the immediate payment stems from the need to make payments to the separate health and pension funds by December 30, 2016 including, but not limited to, the IBEW Local 613 Contributing Employee Family Health Fund, IBEW Local 613 Contribution Employee Health Fund for Retirees and the IBEW Local 613 Defined Contribution Pension Fund (the "IBEW Funds"). The vast majority of the amount owed, \$428,501, is owed to the IBEW Funds for health insurance and pension benefits for union workers.

13. If IBEW Funds make and pursues claims against the outstanding bonds, existing bonds will be cancelled and the Debtor will be required to obtain new bonds. If the Debtor cannot obtain new bonds, the Debtor will not be able to employ skilled union labor and will have to cease operations. IBEW Funds have advised the Debtor, through counsel, that if it does not have bonds in place, IBEW Local 613 will not provide skilled labor for the Debtor. The Debtor believes it will be difficult, if not impossible, for the Debtor, to obtain new bonds both due the existence of these claims and the pendency of this Bankruptcy Case. The management of the Debtor has concluded that it must pay the pre-petition claims owed to the IBEW Local 613 and the IBEW Funds in order to maintain its access to skilled, union labor during this Chapter 11 Case, including the payment of pre-petition amounts owed to the IBEW Local 613 and the IBEW Funds. If the Debtor cannot continue to have access to this source of labor, it will have to cease operations and terminate its other non-union employees and cease operations.

14. IBEW Local 613 and the IBEW Funds are a critical vendor of the Debtor and the Debtor requests permission to pay this critical vendor pre-petition amounts owed to it. The Debtor requests relief on an emergency basis since these amounts must be paid by December 30, 2016.

### REQUEST FOR HEARING ON SHORTENED NOTICE

15. The Debtor submits this Motion pursuant to section 105(a) of the Bankruptcy Code, Bankruptcy Rule 9006(c)(1), and Bankruptcy Local Rule 9013-4 for the entry of an order shortening applicable notice periods and scheduling a hearing on an expedited basis to consider this Motion.

16. The need for an expedited hearing on this Motion arises from the fact that the Debtor must make a payment in the amount of \$428,501 on or before December 30, 2016. The Debtor has requested additional time to obtain court permission to make this payment, but this request has been rejected by the IBEW Funds.

17. The Debtor respectfully submits that if it is unable to make the payment requested herein, the Debtor have to cease all business operations.

18. The Debtor requests that, should the Court grant the Motion to Expedite the Hearing on this Motion, the Court approve service of the Motion and the Order Shortening Notice and Scheduling Expedited Hearing (the "Order Scheduling Expedited Hearing") upon counsel for the Debtors, the Office of the United States Trustee, counsel for the Union, and to the top 20 Unsecured Creditors via email or facsimile. The Debtor shows that the only secured creditor in this Case with an interest in the cash proceeds to make the payment to IBEW Local 613 is Bank of America ("BofA") and that BofA has already appeared through counsel in this case and has been advised of this request. The Debtor respectfully submits that the proposed service is sufficient notice with respect to the Refinance Motion.

19. Bankruptcy Local Rule 9013-4 provides that "[u]pon written motion and for good cause shown, the Bankruptcy Court may shorten the time for notice and hearing with regard to an emergency matter requiring immediate attention or a matter requiring expedited consideration." B.L.R. 9013-4. The Debtor requests that this Court shorten applicable notice

periods for this in order to permit it to make the payment to IBEW Local 613 by December 30, 2016 should the Court approve the payment of this pre-petition claim.

20. The Debtor believes that the relief requested in this Motion is in the best interests of the Estates and creditors and will not unduly prejudice the rights of any party in interest in these cases. Conversely, to deny the request to consider the Refinance Motion on an expedited basis would likely result in the failure of this Case. Given these circumstances, good cause exists for both an emergency hearing and granting permission to the Debtor to pay this critical vendor its pre-petition claim.

21. Accordingly, the Debtor respectfully requests an order from this Court shortening applicable notice periods and scheduling a hearing on an expedited basis and granting the Debtor the authority to pay the pre-petition claims of IBEW Local 613.

**WHEREFORE**, the Debtor respectfully requests:

1. That this Court shorten Notice of the hearing on this Motion and enter the Order and Notice of Hearing attached hereto as Exhibit "A";
2. That this Court authorize the Debtor to pay the pre-petition claims of IBEW Local 613; and
3. For such other and further relief as this Court deems just and proper.

This 23<sup>rd</sup> day of December, 2016.

LAW OFFICES OF HENRY F. SEWELL JR., LLC

*/s/ Henry F. Sewell, Jr.*  
Henry F. Sewell, Jr.  
Georgia Bar No. 636265  
Proposed Counsel for the Debtor

Law Offices of Henry F. Sewell, Jr., LLC

Suite 200, 3343 Peachtree Road NE  
Atlanta, GA 30326  
(404) 926-0053

**EXHIBIT A**

**Proposed Form of Order and Notice of Hearing**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**IN RE:** § **CHAPTER 11**  
§  
**D & N Electric, A Carter Brothers** § **CASE NO. 16-72113-CRM**  
**Company** §  
§  
**Debtor.** §

**ORDER SHORTENING NOTICE AND SCHEDULING EXPEDITED HEARING**

Upon consideration of the *Emergency Motion for an Order Shortening Notice and Scheduling Expedited Hearing* (the "Motion")<sup>1</sup> of the Debtor, and it appearing that the Court has jurisdiction to consider the Motion and grant the relief requested therein; and consideration of the Motion and the relief requested therein being a core proceeding; and venue being proper before

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<sup>1</sup> Capitalized terms used in this Order shall have the meanings ascribed to them in the Motion.

this Court; and due and proper notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be given; and the Court having determined that the relief sought in the Motion is necessary and is in the best interests of the estates, creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation thereon and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Motion is GRANTED.
2. **A hearing will be held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016 at \_\_\_\_\_:\_\_\_\_\_ .m. in Courtroom \_\_\_\_\_, United States Courthouse, 75 Ted Turner Drive S.W., Atlanta, Georgia, 30303 for the Court to consider the *Emergency Motion for Authority to Refinance Real Property and to Incur Post-Petition Secured Debt* (the "Refinance Motion"), filed on September 23, 2016.**
3. Counsel to the Debtor is directed to serve a copy of this order and the Refinance Motion for these cases as follows:
  - a. via overnight delivery upon counsel for the Lender, the Office of the United States Trustee, and the scheduled unsecured creditors in this Case; and
  - b. via the United States Bankruptcy Court for the Northern District of Georgia's Electronic Case Filing System;
4. Counsel to the Debtor shall file a certificate of service with the Clerk of the Court certifying the above-outlined service.

5. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

**END OF TEXT**

Prepared and presented by:

**HERBER C. BROADFOOT II, PC**

By: /s/ Herbert C. Broadfoot II

Herbert C. Broadfoot II

Georgia Bar No. 083750

3343 Peachtree Road, Suite 200

Atlanta, Georgia 30326

Telephone: (404) 926-0058

*Counsel for the Debtor*