

**IT IS SO ORDERED.**

**Dated: 09:18 AM October 18 2013**



**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**In re:**

**EMPIRE DIE CASTING CO., INC.,  
Debtor.**

**Cases No. 13-52996**

**Chapter 11**

**Judge Shea-Stonum**

**INTERIM ORDER UNDER 11 U.S.C. §§ 105(a), 361, 362, 363 AND 364 AND  
FEDERAL BANKRUPTCY RULES 2002, 4001, 6004, 9006, AND 9014: (I)  
AUTHORIZING DEBTOR TO OBTAIN SECURED POST-PETITION  
FINANCING AND USE CASH COLLATERAL; (II) GRANTING ADEQUATE  
PROTECTION; (III) MODIFYING THE AUTOMATIC STAY; (IV) SETTING  
FINAL HEARING; AND (V) GRANTING RELATED RELIEF**

This matter came before the Court for hearing on October 17, 2013 at 10:00 A.M. (the "**Interim Hearing**") on the Emergency Motion of the Debtor for Interim and Final Orders: (1) Authorizing the Debtor to Obtain Secured Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1) and 364(e) and Federal Bankruptcy Rules 2002, 4001, 6004, 9006, and 9014; (2) Granting Adequate Protection; (3) Modifying the Automatic Stay; (4) Scheduling and Approving the Form and Method of Notice of Final Hearing; and (5)

Granting Related Relief (the “**Motion**”), filed by Empire Die Casting Co., Inc., debtor and debtor-in-possession (the “**Debtor**”) in the above-captioned chapter 11 case (the “**Case**”); the Debtor having filed a voluntary petition for reorganization pursuant to chapter 11 of title 11, United States Code (the “**Bankruptcy Code**”), on October 16, 2013 (the “**Petition Date**”), and having requested in the Motion entry of interim and final orders:

(1) authorizing and approving, pursuant to section 364(c) and (d) of the Bankruptcy Code, the Debtor to obtain debtor-in-possession financing from the DIP Lender (as defined herein) pursuant to the terms and conditions of (a) this Interim Order and any Final Order (as defined herein), (b) the Debtor in Possession Credit Agreement dated October 16, 2013, by and among the Debtor, and the lenders referenced therein (the “**DIP Loan Agreement**”) and all ancillary documents, instruments, agreements and writings referred to in this Interim Order, the DIP Loan Agreement or any final order and/or required to be executed by the Debtor in connection therewith (collectively, the “**DIP Financing Documents**”), and (c) the budget annexed as Exhibit A hereto (the “**Budget**”) (collectively, the “**DIP Credit Facility**”);

(2) authorizing and approving, pursuant to sections 361 and 363(c) of the Bankruptcy Code, the Debtor’s use of Cash Collateral (as defined herein) of the Pre-Petition Lender (as defined herein) in accordance with the provisions of this Interim Order;

(3) granting the Pre-Petition Lender (as defined herein) adequate protection, including, without limitation, adequate protection against the diminution in the value or amount of the Pre-Petition Collateral (as defined herein), (b) Replacement Liens (as defined herein), and (c) a superpriority administrative expense claims under sections 503 and 507(b) of the Bankruptcy Code, such Replacement Liens and sections 503 and 507(b) superpriority administrative expense claims to be subject to the Carve-Out (as defined herein) and the liens,

security interests and superpriority treatment granted to the DIP Lender, as more particularly set forth herein;

(4) Authorizing the Debtor, subject to the Carve-Out, and only effective upon entry of the Final Order granting such relief, to prohibit surcharging of Collateral pursuant to section 506(c) of the Bankruptcy Code;

(5) Vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy code to the extent necessary to implement the provisions of the DIP Financing Documents and this Interim Order; and

(6) Granting any further and related relief as the Court deems just and equitable.

Upon the record of the Case and the record of the Interim Hearing, good and sufficient cause appearing therefor, and it appearing to be in the best interests of the Debtor's estate and creditors;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW ON AN INTERIM BASIS FOR PURPOSES OF ENTERING THIS INTERIM ORDER:

A. On the Petition Date, the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Ohio (the "**Bankruptcy Court**"). The Debtor is continuing in the management and possession of its business and properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. Consideration of the Motion constitutes a "core proceeding" as defined in 28 U.S.C. §§ 157(b)(2)(A), (D), (G), (K), (M) and (O). This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334.

C. Sufficient and adequate notice of the Motion has been provided under the urgent circumstances present and based upon the notice sent to the Interim Noticed Parties (defined below), pursuant to Bankruptcy Rules 2002, 4001(b), (c) and (d), 6004, and 9014 and section 102(1) of the Bankruptcy Code, as required by sections 363(b), 364(c) and 364(d) of the Bankruptcy Code, and no further notice of, or interim or preliminary hearing on, the Motion or this Interim Order is necessary or required.

D. FirstMerit Bank, N.A. (in its capacity as lender under the DIP Credit Facility, and together with any other entities that may hereafter become a lender thereunder, the “**DIP Lender**”) is willing to advance monies to the Debtor, and the Pre-Petition Lender is willing to consent to the use of Cash Collateral, only upon the terms and conditions contained in this Interim Order.

E. The Debtor is unable to obtain sufficient levels of unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code to maintain and conduct its business.

F. The Debtor is unable to obtain the necessary financing as unsecured credit allowable under section 364(a), (b) or (c)(1) of the Bankruptcy Code or as secured credit pursuant only to section 364(c)(2) and (3). Additionally, the Debtor is unable to procure the necessary financing on more favorable terms than those offered by the DIP Lender or provided in this Interim Order.

G. The credit and financial accommodations to be extended under the DIP Credit Facility are being extended by the DIP Lender in good faith; the conditions required by the Pre-Petition Lender in connection with the use of Cash Collateral are made in good faith; the Debtor, the DIP Lender and the Pre-Petition Lender (collectively, the “**Lenders**”) have negotiated the

terms and conditions contained in this Interim Order in an arms' length, open and honest fashion; and the Lenders are entitled to the protection of section 364(e) of the Bankruptcy Code.

H. It is in the best interests of the Debtor's creditors and estate that it be allowed to finance its operations under the terms and conditions set forth herein.

I. Notice of the relief sought by the Motion, and the Interim Hearing with respect thereto, pursuant to Bankruptcy Rules 2002 and 4001(b), (c) and (d) and Bankruptcy Code section 102(1), as required by Bankruptcy Code sections 363(b), 364(c) and (d), has been given to the following parties in interest: the United States Trustee; the DIP Lender, the Pre-Petition Lender, the creditors holding the twenty (20) largest unsecured claims against the Debtor's estate; the Internal Revenue Service; and all state and local taxing authorities concerning the Debtor (collectively, the "**Interim Noticed Parties**").

J. After consultation with their counsel and financial advisors, but without prejudice to the rights of parties in interest as set forth in paragraph 13 below, the Debtor admits, stipulates, acknowledges and agrees that (collectively, paragraphs J(i) through J(v) hereof shall be referred to herein as the "**Debtor's Stipulations**"):

(i) **Pre-Petition Obligations.**

(a) Obligations under the Pre-Petition Credit Agreement. As of the Petition Date, the Debtor was party to a certain Amended and Restated Loan and Security Agreement, dated as of January 12, 2011, as the same may be amended, amended and restated or modified from time to time by the Forbearance Agreements (defined below) or otherwise (the "**Pre-Petition Credit Agreement**")<sup>11</sup>, among the Debtor, as borrower (the "**Borrower**"), and

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<sup>11</sup> The Pre-Petition Credit Agreement amended and restated that certain Loan and Security Agreement dated as of September 27, 2007, among the Debtor as borrower and Citizens Bank as lender.

FirstMerit Bank, N.A., as successor to Citizens Bank (“**FirstMerit**”), as lender (the “**Pre-Petition Lender**”). Pursuant to the Pre-Petition Credit Agreement, the Pre-Petition Lender provided Debtor with a revolving credit facility (the “**Revolving Facility**”) in the aggregate principal amount of up to \$4,500,000. As of October 15, 2013, the outstanding unpaid balance under the Revolving Facility was at least \$4,948,165.41, which includes an Overadvance (as defined in the Pre-Petition Credit Agreement) of \$950,000. Also pursuant to the Pre-Petition Credit Agreement, the Pre-Petition Lender provided Debtor with a term loan (the “**Term Facility**”) on January 12, 2011 in the amount of \$447,499.87. As of October 15, 2013, the outstanding unpaid balance under the Term Facility was at least \$139,843.84. Also pursuant to the Pre-Petition Credit Agreement, the Pre-Petition Lender provided Debtor with a real estate term loan (the “**Real Estate Term Facility**”) on January 12, 2011 in the amount of \$4,500,000. As of October 15, 2013, the outstanding balance under the Real Estate Term Facility was at least \$3,688,208.57. Also pursuant to the Pre-Petition Credit Agreement, the Pre-Petition Lender provided Debtor with a capital expenditure loan (the “**CapEx Loan**”) on January 12, 2011 in the amount of \$500,000. The CapEx Loan was terminated in its entirety and cancelled as part of Fifth Amendment to Forbearance Agreement dated October 14, 2012. There is no balance owing on the CapEx Loan.

(b) Forbearance Agreements. As a result of certain defaults under the Pre-Petition Credit Agreement, Debtor and the Pre-Petition Lender entered into a forbearance agreement dated effective as of December 28, 2011, as amended by a First Letter Amendment to Forbearance Agreement dated February 7, 2012, a Second Amendment to Forbearance Agreement dated April 30, 2012, a Third Amendment to Forbearance Agreement dated August 31, 2012, a Fourth Letter Amendment to Forbearance Agreement dated September 28, 2012, a Fifth Amendment to Forbearance Agreement dated October 14, 2012, a Sixth Amendment to

Forbearance Agreement dated April 30, 2013, a Seventh Amendment to Forbearance Agreement dated May 31, 2013, an Eighth Amendment to Forbearance Agreement dated June 30, 2013, a Ninth Amendment to Forbearance Agreement dated July 31, 2013, a Tenth Amendment to Forbearance Agreement dated August 2, 2013, an Eleventh Amendment to Forbearance Agreement dated August 31, 2013, and a Twelfth Amendment to Forbearance Agreement dated October 11, 2013, providing in part for the Pre-Petition Lender's agreement to forbear from exercising its rights and remedies under the Loan Documents under the terms and conditions more fully set forth therein (collectively, the **"Forbearance Agreements"**).

(ii) **Security**. Pursuant to the Pre-Petition Credit Agreement and other collateral documents and agreements, Debtor granted to the Pre-Petition Lender to secure the prompt payment and performance of the Obligations (as defined in the Pre-Petition Credit Agreement), a first-priority valid, perfected and enforceable lien on and continuing security interest in the Collateral (as defined in the Pre-Petition Credit Agreement) (the **"Pre-Petition Collateral"**). The Pre-Petition Collateral consists of all of the Debtor's assets, tangible and intangible, and real and personal. Pursuant to that certain Open-End Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of January 12, 2011 (the **"Pre-Petition Mortgage"**), from Debtor in favor of the Pre-Petition Lender, Debtor has mortgaged to the Pre-Petition Lender all of its respective right, title and interest in and to the Mortgaged Property (as defined in the Pre-Petition Mortgage). The Pre-Petition Mortgage secures the performance of the covenants and agreements contained in the Pre-Petition Mortgage, the Pre-Petition Credit Agreement and the other Loan Documents (as defined in the Pre-Petition Credit Agreement) and secures the payment when due of (a) the obligations of the Borrower under the Pre-Petition Credit Agreement and the Notes (as defined in the Pre-Petition Credit Agreement), together with applicable interest, (b) all amounts expended or advanced by the Pre-Petition Lender pursuant to

any Loan Document and (c) all unpaid advances made by the Pre-Petition Lender, with respect to the Mortgaged Property, for the payment of taxes, assessments, insurance premiums and all other liabilities and indebtedness owing by Borrower to the Pre-Petition Lender. The liens, security interests and/or mortgages granted by the Borrowers to the Pre-Petition Lender prior to Petition Date, including, without limitation the liens, security interests and mortgages granted in the Pre-Petition Credit Agreement and the Pre-Petition Mortgage, are referred to herein as the “**Pre-Petition Liens.**”

(iii) **Non-Debtor Guaranties.** Richard P. Rogel executed and delivered that certain Limited Guaranty Agreement, dated as of December 28, 2011 (as amended, restated, modified or supplemented from time to time, the “**Over-Advance Guaranty Agreement**”).

(iv) **Validity and Priority of Pre-Petition Liens and Pre-Petition Obligations.** (a) The Pre-Petition Liens are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or otherwise. The Debtor’s indebtedness and other obligations, as of the Petition Date, to the Pre-Petition Lender, including, without limitation, the Obligations under the Pre-Petition Credit Agreement and the obligations under the Loan Documents (as defined in the Pre-Petition Credit Agreement) (collectively, the “**Pre-Petition Obligations**”), constitute legal, valid, binding and non-avoidable obligations of the Debtor that, except for the stay of enforcement arising from section 362 of the Bankruptcy Code, are enforceable in accordance with the terms of the Loan Documents, as defined in the Pre-Petition Credit Agreement and including the Forbearance Agreements, and the other related agreements, documents and instruments executed and delivered in connection therewith (collectively, the “**Pre-Petition Loan Documents**”). No offsets, defenses, challenges, claims, or counterclaims of any kind or nature to any of the Pre-Petition Obligations exist, and no portion of the Pre-Petition Obligations is subject to avoidance, reduction, disallowance, disgorgement,



counterclaim, recharacterization, surcharge, or subordination pursuant to the Bankruptcy Code or otherwise. The Debtor and its estate have no offsets, defenses, claims, objections, challenges, causes of action, and/or choses in action, including, without limitation, claims under chapter 5 of the Bankruptcy Code, against the Pre-Petition Lender and/or its respective affiliates, agents, attorneys, advisors, professionals, officers, directors or employees, whether arising under applicable state or federal law.

(v) **Cash Collateral**. All of the Debtor's cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents, whether original collateral or proceeds, products, rents or profits of other Pre-Petition Collateral or the proceeds thereof (the "**Cash Collateral**"), constitute "cash collateral," as such term is defined in Bankruptcy Code section 363(a), of the Pre-Petition Lender.

K. The Debtor represents, based upon the pleadings and proceedings of record, as follows:

(i) that without the use of Cash Collateral and the financing proposed by the Motion, the Debtor will not have the funds necessary to pay post-petition payroll, payroll taxes, trade vendors, suppliers, overhead and other expenses necessary for the continued operation of the Debtor's business and the management and preservation of the Debtor's assets and properties. The Debtor has requested that pursuant to this Interim Order, the Pre-Petition Lender make available to the Debtor Cash Collateral, and pursuant to the DIP Credit Facility, the DIP Lender make loans and advances and provide other financial accommodations to the Debtor, to be used by the Debtor solely for the purposes set forth in the Budget. The ability of the Debtor to continue its business and reorganize under chapter 11 of the Bankruptcy Code depends upon the Debtor obtaining such financing from the Pre-Petition Lender and the DIP Lender. The Pre-Petition Lender is willing to make the Cash Collateral available, and the DIP Lender is willing to

make such loans and advances and provide such other financial accommodations on a secured basis, as more particularly described herein, solely in accordance with this Interim Order and pursuant to the terms and conditions of the DIP Credit Facility. Accordingly, the relief requested in the Motion is necessary, essential and appropriate for the continued operation of the Debtor's business, the management and preservation of its assets and properties, and is in the best interests of the Debtor, its estate and creditors. In addition, the use of Cash Collateral and the financing proposed by the Motion will permit the Debtor to preserve the enterprise value of its business while it effectively markets such business and/or its various assets to determine the propriety of the sale thereof;

(ii) that they are unable to obtain the necessary financing as unsecured credit allowable under section 364(a), (b) or (c)(1) of the Bankruptcy Code or as secured credit pursuant only to section 364(c)(2) and (3), and that they are unable to procure the necessary financing on more favorable terms than those offered by the DIP Lender or provided in this Interim Order;

(iii) that the terms and conditions contained in this Interim Order governing the use of Cash Collateral and the DIP Credit Facility, pursuant to which the post-petition loans, advances, and other credit and financial accommodations will be made or provided to the Debtor by the DIP Lender, have been negotiated honestly, openly and at arms' length and in good faith, and, thus, in "good faith," as that term is used in section 364(e) of the Bankruptcy Code, and are in the best interests of the Debtor, its estate and creditors. The Debtor further represents that the DIP Lender is extending financing to the Debtor in good faith and the DIP Lender is entitled to the benefits of the provisions of section 364(e) of the Bankruptcy Code; and

(iv) that the relief requested by the Motion is necessary to avoid immediate and irreparable harm to its estate.

L. The Pre-Petition Lender has consented to (i) the financing arrangements contemplated by this Interim Order and the DIP Credit Facility and (ii) the Debtor's proposed use of Cash Collateral, on the terms and conditions, set forth in the Interim Order and the DIP Financing Documents.

M. The adequate protection provided to the Pre-Petition Lender for any diminution in the value of its Pre-Petition Collateral from and after the Petition Date pursuant to the provisions of this Interim Order is consistent with and authorized by the Bankruptcy Code and is offered by the Debtor to protect the Pre-Petition Lender's interests in the Pre-Petition Collateral in accordance with sections 361, 362, and 363 of the Bankruptcy Code.

N. The Debtor stipulates and the Bankruptcy Court finds that in making decisions to advance loans to the Debtor and in permitting use of its Cash Collateral, or in taking any other action permitted under this Interim Order, the DIP Financing Documents, or the Budget, the DIP Lender shall not be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor.

O. Good, adequate and sufficient cause has been shown to justify the granting of the relief requested in the Motion, and the immediate entry of this Interim Order, and such entry is necessary to prevent irreparable harm to the Debtor's estate. To the extent any objections were made to the relief sought in the Motion and the entry of this Interim Order (and not withdrawn prior to the entry of this Interim Order) such objections are hereby overruled.

P. In light of the subordination of their liens and super-priority administrative claims (i) in the case of the DIP Lender to the Carve-Out and the Permitted Liens (as defined in the DIP Loan Agreement), and (ii) in the case of the Pre-Petition Lender to the Carve-Out, the DIP Liens, and the Permitted Liens, the DIP Lender and the Pre-Petition Lender are each entitled to all of

the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception shall not apply.

Q. As of the date hereof, the Office of the United States Trustee has not appointed an official committee of unsecured creditors (a “**Committee**”) under section 1102 of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Motion Granted. The Motion is GRANTED as set forth herein.
2. Authorization to Obtain Debtor-in-Possession Financing. The Debtor is hereby authorized and empowered to immediately borrow and obtain Revolving Loans (as defined in the DIP Loan Agreement) and to incur indebtedness and obligations to the DIP Lender pursuant to the terms and conditions of this Interim Order and the DIP Financing Documents. The Debtor is hereby authorized and directed to enter into, execute, deliver, perform and comply with all of the terms, conditions and covenants of the DIP Loan Agreement, the other DIP Financing Documents, the Pre-Petition Loan Documents, and all other agreements, documents and instruments executed and/or delivered in connection with or related to the DIP Loan Agreement and the Pre-Petition Loan Documents; *provided, however*, that to the extent that the Pre-Petition Loan Documents require the Debtor to make payments on account of obligations that arose prior to the Petition Date (other than (a) payments in respect of the Pre-Petition Obligations in accordance with the DIP Loan Agreement, and (b) payments that the Debtor is obligated to make by law, taking into account applicable bankruptcy law) in order to be in compliance therewith, the Debtor is not required to make any such payments and shall not make any such payments absent an order of this Court permitting such payments. The DIP Loan Agreement and the other DIP Financing Documents and each term, condition and covenant set forth therein are approved and shall be deemed to be incorporated into the terms and conditions of this Interim

Order. All of such terms, conditions, and covenants shall be sufficient and conclusive evidence of the borrowing arrangements by and among the Debtor and the DIP Lender and of the Debtor's assumption and adoption of all of the terms, conditions, and covenants of the DIP Financing Documents for all purposes, including, without limitation, to the extent applicable, the payment of all Pre-Petition Obligations and Post-Petition Obligations (as defined herein) arising thereunder, including, without limitation, all principal, interest, fees and expenses, including, without limitation, all of the DIP Lender's reasonable attorneys' fees and legal expenses, as more fully set forth in the DIP Loan Agreement. All unpaid fees, costs, and expenses of the DIP Lender shall be secured by the Post-Petition Collateral (defined below) and afforded all of the protections and priorities afforded to the Post-Petition Obligations under this Interim Order and the DIP Financing Documents. The rate of interest to be charged for the DIP Loans and other extensions of credit to the Debtor pursuant to the DIP Loan Agreement shall be the rates set forth in the DIP Loan Agreement and shall be payable at the time set forth in the DIP Loan Agreement.

3. Amendment. Subject to the terms and conditions of the DIP Loan Agreement and the other DIP Financing Documents, the Lenders and the Debtor may amend, modify, supplement, or waive any provision of the DIP Loan Agreement (an "**Amendment**") without further approval or order of the Court so long as (a) such Amendment is not material (for purposes hereof, a "material" Amendment shall mean any Amendment that operates to increase the rate of interest other than as currently provided in the DIP Loan Agreement, adds specific new events of default or enlarges the nature and extent of default remedies available to the Lenders following an event of default, or otherwise modifies any terms or conditions in any DIP Financing Document in a manner materially less favorable to the Debtor and in the good faith judgment of the Lenders and Debtors), (b) the Debtor provides at least three business days' prior

written notice of the Amendment (the “**Amendment Notice**”) to the United States Trustee and counsel for any Committee and file the Amendment Notice with the Court, and (c) no objection to the Amendment is filed with the Court within two (2) business days after the date the Amendment Notice is filed with the Court. Any material Amendment to the DIP Loan Agreement must be approved by the Court to be effective.

4. Payment of Pre-Petition Debt. The Debtor is authorized to pay the Pre-Petition Lender on account of the Pre-Petition Obligations in accordance with the DIP Financing Documents and the provisions of this Interim Order. The Debtor is authorized and directed to make all payments and transfers of property to the Lenders as provided, permitted, or required under the DIP Financing Documents, which payments and transfers shall not be avoidable or recoverable from the Lenders or give rise to any other claim, charge, assessment, or other liability, whether by application of the Bankruptcy Code, other law, or otherwise, unless such payments or transfers are on account of Pre-Petition Obligations and successfully challenged in accordance with paragraph 13 below; *provided, however* that the roll-up of a portion of the Pre-Petition Obligations as authorized under this Interim Order shall not, in and of itself, create a basis upon which a claim, cause of action or objection may be made under paragraph 13 hereof or otherwise. The Lenders shall apply the proceeds of the Collateral (as defined below), including all net proceeds received by the Debtor or the Lenders at or after the closing of the 363 Sale Transaction (as defined in Exhibit B hereto) (the “**363 Sale Proceeds**”), or any other amounts or payments received by the Lenders in respect of the Post-Petition Obligations or Pre-Petition Obligations in accordance with the DIP Financing Documents, including, without limitation, applying all payments, proceeds and other amounts first to the Pre-Petition Obligations, until such Pre-Petition Obligations are indefeasibly paid in full and completely satisfied, and then to the Post-Petition Obligations. Without limiting the generality of the

foregoing, the Debtor is authorized and directed, without further order of this Court, to pay or reimburse the Lenders when due for all present and future costs and expenses, including, without limitation, all reasonable professional fees and reasonable legal expenses, paid or incurred by the Lenders in connection with the financing transactions as provided in this Interim Order and the DIP Financing Documents, all of which shall be and are included as part of the principal amount of the Obligations, and shall be secured by the Collateral.

5. Continuation of Pre-Petition Procedures. All pre-petition practices and procedures for the payment and collection of proceeds of the Pre-Petition Collateral, the turnover of cash, and delivery of property to the Lenders, and the funding pursuant to the DIP Financing Documents, are hereby approved and shall continue without interruption after the commencement of the Case.

6. Authorization to Use Cash Collateral. The Debtor is hereby authorized to use Cash Collateral, in accordance with the terms and conditions of this Interim Order, until the occurrence of the Maturity Date (as defined in the DIP Loan Agreement), or upon the occurrence of a Termination Event and the giving of the Remedies Notice (each as defined herein), subject to the provisions of paragraph 20(b) below.

7. Budget Limitations on Revolving Loans and Cash Collateral Usage. Subject to the terms and conditions set forth herein and in the DIP Financing Documents, the Debtor is authorized to borrow and obtain Revolving Loans and use Cash Collateral up to the amounts set forth in the Budget attached hereto as Exhibit A (the “**Original Budget**”), which the DIP Lender has approved, subject to the provisions of the DIP Financing Documents and this Interim Order, through the earliest to occur of (the “**Interim Period**”): (a) the date of entry of the Final Order, and (b) the occurrence of a Termination Event (as defined below). The Original Budget reflects on a line-item ten (10) week rolling-basis the Debtor’s anticipated aggregate cash receipts and

aggregate necessary and required expenses for each week covered by the Original Budget. For each four-week period covered by the Original Budget and any subsequent budget, the aggregate actual disbursements by the Debtor during such four-week period of determination must be no greater than 110% of the aggregate amount of projected disbursements for such period as set forth in the Original Budget or any subsequent budget. The Debtor shall provide the DIP Lender, Pre-Petition Lender, the U.S. Trustee, and any Committee, so as to actually be received by 5:00 p.m. (Eastern Time) on Wednesday following the end of each week, with a rolling, updated 10-week budget (the “**Rolling Budget**”) (in substantially the same form as the Original Budget), which Rolling Budget shall be satisfactory in form and substance to the DIP Lender. The Debtor shall also provide the DIP Lender, Pre-Petition Lender, the U.S. Trustee, and any Committee, so as to actually be received by 5:00 p.m. (Eastern Time) on Wednesday of each week, with a line-by-line variance report for the immediately preceding one-week period and on a cumulative basis from the Petition Date to the report date (each a “**Variance Report**”) showing the actual amounts attributable to each line item in the Original Budget or Rolling Budget, as the case may be, for such “look back” period together with an explanation for such variance, which Variance Report shall be satisfactory in form and substance to the DIP Lender. The Original Budget and each subsequent Rolling Budget may be amended from time to time without further notice to any parties in interest in this Case or further order of this Court upon the prior written agreement of the Debtor and DIP Lender, and the amended budget shall become the Original Budget or applicable Rolling Budget under the DIP Financing Documents and this Interim Order.

8. DIP Lender’s Superpriority Claim. For any and all obligations of the Debtor to the DIP Lender under and pursuant to the DIP Credit Facility (the “**Post-Petition Obligations**”), and in addition to the rights granted below, subject to the Carve-Out, the DIP Lender is hereby granted an allowed superpriority administrative claim (the “**DIP Superpriority Claims**”) in



accordance with section 364(c)(1) of the Bankruptcy Code, having a priority in right of payment over any and all other obligations, liabilities and indebtedness of the Debtor (including, but not limited to, the Pre-Petition Obligations, which for avoidance of doubt are not entitled to treatment as an ordinary or superpriority administrative claim except to the extent of any Adequate Protection Claim, as defined below, for diminution in value or as adequate protection for priming by the DIP Credit Facility), now in existence or hereafter incurred by the Debtor and over any and all administrative expenses or priority claims of any kind including as specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726(b) (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code, whether arising in the Case or in any superseding chapter 7 case concerning the Debtor (“**Successor Case**”). The DIP Superpriority Claims shall be payable from and have recourse to all pre-petition and post-petition property of the Debtor and all proceeds thereof.

9. Post-Petition DIP Liens. As security for the Post-Petition Obligations, immediately effective and perfected upon the date of this Interim Order and without the necessity of the execution, recordation of filings of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, the DIP Liens set forth below (the “**DIP Liens**”) are hereby granted to the DIP Lender on all of the following property, whether existing on the Petition Date or thereafter acquired, as more fully set forth in the DIP Financing Documents (collectively, the “Collateral”):

- (i) the Pre-Petition Collateral;
- (ii) all instruments and documents evidencing any of the Pre-Petition Collateral;
- (iii) all cash and Cash Collateral of the Debtor and any investment of such cash and Cash Collateral;

- (iv) all supporting obligations and payment intangibles in respect of any of the foregoing;
- (v) all books and records pertaining to any of the foregoing;
- (vi) all proceeds and products of any of the foregoing;
- (viii) all collateral, security and guarantees given by any person or entity with respect to any of the foregoing;
- (ix) to the extent not included above, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, chattel paper, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, all property purportedly assigned or pledged as collateral by the Debtor (or on behalf of the Debtor) to secure any intercompany obligations to the extent any such assignment or pledge shall not have been duly perfected as of the Petition Date and the proceeds and products of all the foregoing; and
- (x) all other pre-petition and post-petition property and assets as set forth in the DIP Financing Documents, the Pre-Petition Credit Agreement or otherwise, whether existing on the Petition Date or thereafter acquired, *provided, however*, that Collateral shall not include Avoidance Actions (as defined in the DIP Loan Agreement) or the proceeds of Avoidance Actions.

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, the DIP Lender is hereby granted and shall have a valid, binding, continuing,

enforceable, fully-perfected first priority senior security interest in and lien upon any and all Collateral that is not subject to valid, perfected, non-avoidable and enforceable liens in existence as of the Petition Date or valid liens in existence as of the Petition Date that are perfected subsequent to such date to the extent permitted by section 546(b) of the Bankruptcy Code.

(b) Priming Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, the DIP Lender is hereby granted and shall have a valid, binding, continuing, enforceable, fully-perfected first priority, priming senior security interest in and lien upon all Collateral that is subject to the Pre-Petition Liens securing the Pre-Petition Obligations and all other security interests and liens on the Collateral (other than the DIP Liens of the DIP Lender), except with respect to any valid, perfected and unavoidable interests in such property arising out of liens to which the holders of pre-petition liens become subject subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

(c) Liens Senior to Certain Other Liens. The DIP Liens granted to the DIP Lender shall be senior to and shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code or (ii) subject to applicable law, any liens arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtor other than as expressly permitted under the DIP Financing Documents. The DIP Liens are subject only to the Carve-Out. The Pre-Petition Collateral and the Post-Petition Collateral are collectively referred to herein as the “**Collateral**”.

10. Adequate Protection of Pre-Petition Lender’s Interests. In this Interim Order, the term “**Replacement Lien**” shall mean that, subject to the terms and conditions set forth in this Interim Order, the Pre-Petition Lender shall have and is hereby granted (effective upon the date

of this Interim Order and without the necessity of the Debtor or the Pre-Petition Lender's execution of mortgages, deeds of trust, security agreements, pledge agreements, control agreements, financing statements or otherwise), valid and perfected, security interests in, and liens upon the Collateral, in the same priority and to the same extent, priority, enforceability, unavailability and validity applicable to the Pre-Petition Liens in the Pre-Petition Collateral, which Replacement Liens shall have the priority set forth herein. The Pre-Petition Lender is granted the following adequate protection post-petition claims for any diminution in the value of its respective interests in the Pre-Petition Collateral from the Petition Date resulting from (a) the use, sale, lease, disposition, shrinkage, decline in market value, consumption or physical deterioration of the Pre-Petition Collateral by the Debtor, and (b) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (collectively, the "**Adequate Protection Claim**"):

(i) The Pre-Petition Lender shall have and is hereby granted the Replacement Liens subject to (a) unavoidable, duly perfected liens existing as of the Petition Date, and (b) the priorities set forth in this subsection. Subject to the foregoing, the Replacement Liens granted to the Pre-Petition Lender pursuant to this Interim Order shall be (x) *prior and senior* to all liens and encumbrances (other than fees arising under 28. U.S.C. §1930) of all other secured creditors in and to such property granted, or arising, subsequent to the date of this Interim Order, and (ii) any security interest or lien that is avoided or otherwise preserved for the benefit of the Debtor's estate pursuant to section 551 of the Bankruptcy Code, and (y) junior and subordinate to the Carve-Out and the DIP Liens granted to the DIP Lender, to which the Replacement liens shall be immediately junior and subordinate;

(ii) Subject to the priorities set forth below in this subsection, pursuant to section 364(c)(1) of the Bankruptcy Code, the claims of the Pre-Petition Lender for any diminution in

the value of its interests in the Pre-Petition Collateral from the Petition Date resulting from (a) the use, sale, lease, disposition, shrinkage, decline in market value, consumption or physical deterioration of the Pre-Petition Collateral by the Debtor, and (b) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code shall constitute allowed claims against the Debtor with priority over all administrative expenses (other than any fees arising under 28 U.C.S. §1930), diminution claims and all other claims against the Debtor, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (collectively, the “**Pre-Petition Lender Superpriority Claims**”), whether or not such expenses or claims may become secured by judgment lien or other non-consensual lien, levy, or attachment or otherwise, which allowed Pre-Petition Lender Superpriority Claims shall be payable from and have recourse to all pre-petition and post-petition property of the Debtor and all proceeds thereof; provided, however, that the Pre-Petition Lender Superpriority Claims granted to Pre-Petition Lender shall be junior and subordinate to the Carve-Out and the DIP Superpriority Claims;

(iii) Notwithstanding any provision of this Interim Order or the Pre-Petition Loan Documents to the contrary, the Pre-Petition Lender reserves, and this Interim Order is without prejudice to, its rights to, among other things, seek additional adequate protection; provided that any adequate protection provided hereafter shall be junior and subordinate to the DIP Liens, the Carve-Out and DIP Superpriority Claims;

(iv) As further adequate protection and subject to entry of a Final Order, the Debtor is hereby directed to immediately transfer to the Pre-Petition Lender the 363 Sale Proceeds, whether received by the Debtor at closing of the 363 Sale Transaction or thereafter; and

(v) Subject to and in accordance with the Original Budget or Rolling Budget, as the case may be, the Pre-Petition Lender shall receive payment of interest on the Pre-Petition Obligations.

11. Carve-Out. Notwithstanding any contrary provision of this Interim Order, upon the occurrence (the “**Carve-Out Event**”) of the earlier of (a) the Debtor’s receipt of a Remedies Notice (as such term is defined below) and (b) the Maturity Date (as defined in the DIP Loan Agreement), to the extent unencumbered funds are not available to pay administrative expenses in full, the DIP Liens, DIP Superpriority Claims, Adequate Protection Claim, Pre-Petition Lender Superpriority Claims, and Replacement Lien, shall be subject to the payment of (a) the aggregate amount of any budgeted and unpaid fees, costs and expenses that were accrued or incurred prior to the Carve-Out Event by the professionals retained by the Debtor and any professional retained by the Committee that are in accordance with the Original Budget or applicable Rolling Budget (collectively, the “**Professionals**”) to the extent allowed by an order of this Court (the “**Budgeted Professional Fees**”), plus (b) those fees, costs and expenses incurred by the Professionals after the Carve-Out Event and subsequently allowed by order of this Court, subject to the Original Budget or applicable Rolling Budget, in an amount not to exceed \$100,000 in the aggregate, plus (c) fees required to be paid to the Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930 (collectively, the “**Carve-Out**”); provided that, in no event shall the total Carve-Out exceed \$765,000 and provided further that, to the extent that the fees, costs and expenses accrued or incurred for any Professional line item in the Original Budget or applicable Rolling Budget as of the date on which a Carve-Out Event has occurred are less than the Budgeted Professional Fees for such Professional(s) (the amount of any such excess for any such Professional is referred to herein as an “Excess Carve-Out”), all other Professionals (in addition to their right to payment in clause (a) above) will share pro-rata in each such Excess

Carve-Out; provided, further, that in no event shall the fees, costs and expenses payable to the Committee's Professionals pursuant to this paragraph 11 at any time exceed \$80,000.00 in the aggregate; provided further that following a Carve-Out Event any amounts actually paid to Professionals by any means will reduce the Carve-Out on a dollar-for-dollar basis; and provided, further, that no portion of the Carve-Out, DIP Credit Facility, Collateral, Pre-Petition Collateral or Cash Collateral shall include, apply to, or be available for any fees, costs or expenses incurred by any party, including the Debtor or any Committee, in connection with (i) the initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation against any DIP Lender or the Pre-Petition Lender, including, without limitation, (a) challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the Post-Petition Obligations, DIP Superpriority Claims or DIP Liens, in respect thereof, (b) challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the Pre-Petition Obligations, Pre-Petition Lender Superpriority Claims, Replacement Liens, or Pre-Petition Liens in respect thereof or (ii) asserting any claims or causes of action, including, without limitation, claims or actions to hinder or delay the DIP Lender's assertion, enforcement or realization on the Collateral in accordance with the DIP Financing Documents or this Interim Order; provided, further, however, that no more than \$20,000 of the proceeds of the DIP Credit Facility or any proceeds of the Collateral may be used to fund a reasonable investigation by the Committee into the existence of any causes of action or other type of litigation against the Pre-Petition Lender with respect to the Pre-Petition Obligations. In the event of a liquidation of the Debtor's estate, an amount equal to the Carve-Out shall be reserved from the proceeds of such liquidation, or from cash held in the estate at such time, with such proceeds or cash to be held in a segregated account, prior to the making of any distributions. Nothing contained herein is intended to constitute, nor should be construed as

consent to, the allowance of any Professional's fees, costs or expenses by any party and shall not affect the right of the Debtor, the DIP Lender, the Pre-Petition Lender, the Committee, the U.S. Trustee, or any other party-in-interest to object to the allowance and payment or any amounts incurred or requested. Furthermore, none of the Carve-Out, Collateral, Pre-Petition Collateral, Cash Collateral or any proceeds of the DIP Credit Facility shall be used to prevent, hinder or delay the DIP Lender from enforcing or realizing upon the Collateral once an Event of Default has been determined by the Court to have occurred and to be continuing under the DIP Financing Documents or this Interim Order.

12. No Surcharge or Marshaling. Subject to approval at the Final Hearing, neither the Collateral nor the Lenders shall be subject to surcharge, pursuant to section 506(c) of the Bankruptcy Code or otherwise, by the Debtor or any other party in interest without the prior written consent of the Lenders, and no such consent shall be implied from any other action, inaction, or acquiescence by any party, including but not limited to funding of the Debtor's ongoing operations by the Lenders. Subject to approval at the Final Hearing, the Lenders shall not be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral.

13. Reservation of Certain Third Party Rights and Bar of Challenges and Claims. Nothing in this Interim Order shall prejudice the rights of any party in interest other than the Debtor to object to or challenge the Debtor's Stipulations; *provided however*, that unless such other party in interest obtains proper standing, except that any Committee shall be deemed to have proper standing for this purpose, and commences a contested matter or adversary proceeding raising such objection or challenge, including, without limitation, any claim or cause of action against the Pre-Petition Lender objecting to the Pre-Petition Liens or in the nature of a setoff, counterclaim or defense to the Pre-Petition Obligations (including, but not limited to,



those under sections 506, 544, 547, 548, 550 and/or 552 of the Bankruptcy Code or by way of suit against the Pre-Petition Lender) within 45 days after the entry of the Final Order (the “**Challenge Period**”, in the event that no contested matter or adversary proceeding is commenced during the Challenge Period shall be referred to as the “**Challenge Period Termination Date**”), then, upon the Challenge Period Termination Date, any and all such challenges and objections by any party (including, without limitation, any chapter 11 or chapter 7 trustee appointed in the Case or in any Successor Case) shall be deemed to be forever waived, barred and discharged and the Debtor’s Stipulations shall be binding on all persons, entities, creditors, interest holders and parties in interest in the Case or any Successor Case, and upon the Challenge Termination Period the Pre-Petition Obligations and Pre-Petition Liens shall be deemed to be fully and finally allowed under the Bankruptcy Code for all purposes in connection with the Case and any Successor Case. Only those parties in interest that have properly and with requisite standing initiated an adversary proceeding or contested matter challenging the Debtor’s Stipulations prior to the Challenge Period Termination Date shall be permitted to prosecute such adversary proceeding or contested matter, except that any Committee shall be deemed to have proper standing for this purpose. If any such Challenge is timely commenced within the Challenge Period, the agreements, stipulations and findings contained in this Interim Order shall nonetheless remain binding and preclusive on the Debtor and its estate and its creditors, the Committee, if any, equity holders, and all other parties in interest in this Case, except to the extent that such findings or admissions are expressly and successfully challenged and the Court enters a final order with respect thereto.

14. Limitation on Other Authorization for Cash Collateral Use, Obtaining Credit, Granting of Liens. So long as there are any Post-Petition Obligations outstanding to the DIP Lender under the DIP Credit Facility and until the Adequate Protection Claim is satisfied

indefeasibly in full, unless the Lenders shall have given their prior written consent, or this Court enters an order, upon proper notice to the Lenders and after hearing, requiring that all the Debtor's obligations to the DIP Lender and the Adequate Protection Claim be immediately satisfied in full, the Debtor shall neither seek any further orders in the Case, nor support any applications therefor, which authorize: (a) under Bankruptcy Code section 363, the use of Cash Collateral or the sale, use, or lease, other than in the ordinary course of business, of other property of the Debtor in which the DIP Lender or the Pre-Petition Lender have an interest; or (b) the obtaining of credit or the incurring of indebtedness pursuant to Bankruptcy Code section 364(c) or (d), or any other grant of rights against the Debtor and/or its estates secured by a lien, mortgage or security interest in the Pre-Petition Collateral or the Post-Petition Collateral or entitled to priority administrative status which is equal or superior to that granted to the DIP Lender or Pre-Petition Lender (with respect to the Replacement Liens,) herein.

15. Insurance; Governmental Charges. The Debtor, at its expense, shall (a) continue to at all times keep the Collateral fully insured against all loss, peril and hazard and make the DIP Lender and the Pre-Petition Lender co-insured and loss payee as their interests appear under such policies, and (b) pay any and all post-petition taxes, assessments and governmental charges with respect to the Collateral, whether or not the Debtor is obligated to do so under the Pre-Petition Loan Documents, and will provide the DIP Lender or the Pre-Petition Lender with proof thereof upon written demand and will give the DIP Lender and the Pre-Petition Lender access to its records in this regard.

16. Modification of Automatic Stay. The automatic stay provisions of Bankruptcy Code section 362 are hereby vacated and modified to permit (a) the Debtor to implement the terms of the DIP Credit Facility, (b) the Debtor to grant the Replacement Liens as adequate protection to the Pre-Petition Lender, and (c) the Debtor to create, and the DIP Lender or the Pre-Petition

Lender as the case may be, to perfect, any and all liens, mortgages and security interests granted to them hereunder; *provided, however*, that neither the DIP Lender nor the Pre-Petition Lender shall be required to file UCC financing statements or other instruments with any other filing authority to perfect any lien, mortgage or security interest granted by this Interim Order or take any other action to perfect such liens, mortgages and security interests, and such liens, mortgages and security interests are hereby deemed perfected; *provided, however*, that if the DIP Lender or the Pre-Petition Lender, as the case may be, shall, in its sole discretion, elect for any reason to file, record or serve any such financing statements or other documents with respect to such liens and security interests, the Debtor shall execute the same upon request, without any further notice to or consent of any party or this Court, and the filing, recording or service thereof (as the case may be) shall be deemed to have been made at the time and on the date required to implement the priority of such liens and security interests as provided in this Interim Order. A certified copy of this Interim Order may be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized and directed to accept such certified copy of this Interim Order for filing and recording.

17. Section 552(b). Subject to entry of the Final Order, the DIP Lender and the Pre-Petition Lender is entitled to all of the rights and benefits of section 552(b)(1) of the Bankruptcy Code and the “equities of the case” exception therein shall not apply.

18. No Impairment by Plan. The time of payment of any and all Post-Petition Obligations of the Debtor arising out of or incurred pursuant to the DIP Credit Facility shall not be altered, extended or impaired by any plan or plans of reorganization that may hereafter be accepted or confirmed or any further orders of the Court which may hereafter be entered.

19. Termination Events. The occurrence of any one or more of the following events shall constitute a “**Termination Event**” under this Interim Order:

(a) the Case is either dismissed or converted to a case under chapter 7 of the Bankruptcy Code;

(b) a trustee or an examiner with expanded powers is appointed in the Case;

(c) any plan(s) of reorganization of the Debtor is filed which does not provide for the payment in full in cash of the Post-Petition Obligations upon the effective date of the plan(s);

(d) the Debtor ceases operation of its business or take any material action for the purpose of effecting such cessation without the prior written consent of the Lenders;

(e) this Interim Order is reversed, vacated, stayed, amended, supplemented or otherwise modified in a manner which shall materially adversely affect the rights of either of the Lenders hereunder or shall materially and adversely affect the priority of any or all of either of the Lenders’ claims, liens or security interests and which is not acceptable to the Lenders, in their discretion;

(f) the final order approving debtor-in-possession financing from the DIP Lender and/or the use of Cash Collateral, which final order shall be in form and substance satisfactory in all respects to the Lenders (the “**Final Order**”), is not entered on or before thirty (30) days after the Petition Date;

(g) the Debtor’s failure to comply with or perform, in any material respect, the terms and provisions of this Interim Order or any DIP Financing Document, including, without limitation, using Revolving Loans or Cash Collateral other than in accordance with the provisions of this Interim Order;

(h) any sale or other disposition of Collateral or Cash Collateral is approved without the consent of the DIP Lender or the Pre-Petition Lender;

(i) any superpriority claim or lien equal or superior in priority to that granted to the DIP Lender or the Pre-Petition Lender pursuant to this Interim Order or permitted hereunder shall be granted;

(j) the automatic stay of Bankruptcy Code section 362 is lifted so as to allow a party other than the Lenders to proceed against any material asset of the Debtor;

(k) the Debtor shall have filed, or the Court shall have entered an order confirming, a plan of reorganization, which plan is not in form and substance acceptable to the DIP Lender or the Pre-Petition Lender;

(l) the Milestones set forth in the attached Exhibit B shall not have been met within the period specified therefor, as the same may be extended in the sole discretion of the Lenders; or

(m) the asset purchase agreement with the stalking horse bidder (to be defined in the Sale Motion contemplated in Exhibit B) shall have been terminated other than by reason of the Court's approval of a 363 Sale Transaction to a purchaser other than the stalking horse bidder under the asset purchase agreement.

20. Remedies Upon Maturity/Termination.

Upon the occurrence of the Maturity Date, or upon the occurrence of a Termination Event and the giving of the Remedies Notice (as defined below):

(a) any and all Post-Petition Obligations shall be immediately due and payable, any obligation of the DIP Lender to make Revolving Loans or other financial accommodations under the DIP Credit Facility shall terminate, and the Debtor's authorization to

use Cash Collateral, including any amounts in any and all deposit accounts maintained by the Debtor, shall terminate), subject to paragraph 20(b) below;

(b) the Debtor shall immediately segregate all Cash Collateral, and shall not be permitted to use Cash Collateral unless the Lenders shall have given their prior written consent or the Court shall have entered an order, after a hearing upon notice to the Lenders, authorizing such use; and

(c) the Lenders shall have the right, free of the restrictions of Bankruptcy Code section 362, (i) to take immediate reasonable action to protect and preserve the Collateral, and (ii) after giving five (5) business days' prior written notice of a Termination Event to the Debtor, the Office of the United States Trustee, and the Committee (the "**Remedies Notice**"), to exercise their rights and remedies pursuant to the DIP Financing Documents, the Pre-Petition Loan Documents and/or applicable law, including, without limitation, to foreclose on all or any portion of the Collateral, collect accounts receivable and other monies owing to the Debtor and apply the proceeds thereof in satisfaction of the Post-Petition Obligations and the Pre-Petition Obligations unless, prior to the passage of such five (5) business days, the Court shall have entered an order, after a hearing upon notice to the Lenders, limiting or restraining the Lenders from exercising any or all such rights and remedies.

21. No Limitation on Further Relief. Nothing in this Interim Order shall limit the rights of the Lenders to seek further relief (including additional adequate protection), or modification or termination of the automatic stay in accordance with Bankruptcy Code section 362(d).

22. No Limitation on Assignment of Rights. Nothing in this Interim Order shall limit the rights of the Lenders to assign any or all of their rights, claims and obligations under the DIP Financing Documents or the Pre-Petition Loan Documents (as applicable).

23. Books and Records. The Debtor is directed to keep their books and records of original entry current and updated, so that all business activity is posted to them in the ordinary course of the Debtor's business.

24. Good Faith. Pursuant to, and to the extent of, the provisions of Bankruptcy Code section 364(e), the validity of the Post-Petition Obligations and the validity or priority of the liens, mortgages and security interests authorized or granted by this Interim Order shall be binding on the Debtor, its estate and its successors and assigns even if this Interim Order is reversed or modified on appeal.

25. Additional Documents. The Debtor is hereby authorized to do and perform all acts and to make, execute and deliver all instruments and documents which may be required or necessary for the performance of their obligations hereunder and under the DIP Credit Facility.

26. Immediate Effect. As permitted by Bankruptcy Rule 6004(h), the Court hereby orders that this Interim Order shall become effective immediately.

27. Survival After Confirmation, Conversion or Dismissal. The provisions of this Interim Order and any actions taken pursuant thereto shall survive entry of any orders which may be entered confirming any plan of reorganization or which may be entered converting the Case from chapter 11 to chapter 7 of the Bankruptcy Code; *provided, further,* that the terms and provisions of this Interim Order, as well as the liens, mortgages and security interests granted thereunder, shall continue in the Cases or any Successor Case and such liens, mortgages and security interests and the Adequate Protection Claim shall maintain their priority as provided by this Interim Order.

28. No Limitation of Modification of Order. Nothing in this Interim Order shall limit the Lenders' rights to seek modification of this Interim Order.

29. No Prejudice of Rights Against Third Parties. Nothing in this Interim Order shall in any way prejudice or compromise any rights that the Lenders may have against parties other than the Debtor.

30. Service of this Order. Within three (3) Business Days after the entry of this Interim Order, the Debtor shall serve a copy on: (a) the Office of the United States Trustee; (b) the Internal Revenue Service; (c) all state and local taxing authorities concerning the Debtor; (d) counsel to any Committee, if any; (e) the creditors holding the twenty (20) largest unsecured claims against the Debtor's estate; and (f) counsel to the Lenders.

31. Objection. Any objection to the relief requested in the Motion on a permanent basis must: (a) be filed in accordance with the Court's CM/ECF procedures or in writing with the Clerk of the Court, at 455 U.S. Courthouse, 2 South Main Street, Akron, OH 44308, by 4:00 p.m. (Eastern Time) on the date that is ten (10) days prior to the date of the Final Hearing (the "**Objection Deadline**"), and (b) served so as to be actually received by the following parties by the Objection Deadline: (i) the United States Trustee, Howard M. Metzenbaum U.S. Courthouse, 201 Superior Ave., East - Suite 441, Cleveland, OH 44114; (ii) counsel to the Debtors, BROUSE McDOWELL, 388 South Main Street, Suite 500, Akron, OH 44311, Attn: Marc B. Merklin; (iii) counsel to the Lenders, McDONALD HOPKINS, 600 Superior Ave. E, #2100, Cleveland, Ohio 44114, Attn: Scott Opincar; and (iv) counsel to any Committee then appointed in the Case. The final hearing on the Motion (the "**Final Hearing**") shall be on November 5, 2013 at 8:30 A.M., Eastern Time. This Interim Order shall remain in effect until November 6, 2013.

32. Binding Effect. The provisions of this Interim Order shall be binding upon and inure to the benefit of the Lenders, the Debtor, the Debtor's estate, and all creditors and parties in interest, and their respective successors and assigns (including any trustee appointed as a representative of the Debtor's estate or in any Successor Case).



33. Controlling Effect. To the extent that any provision of this Interim Order conflicts with any provision of any of the Pre-Petition Loan Documents or any of the DIP Financing Documents, this Interim Order is deemed to control and shall supersede the conflicting provision(s).

# # #

SUBMITTED BY:

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*Counsel for the Debtor  
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AND

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*Counsel for FirstMerit Bank, N.A.*

[869263]

## **EXHIBIT A**

**[Budget]**

EMPIRE DIE CASTING COMPANY, INC.  
DEBTOR-IN-POSSESSION PROFESSIONAL & OTHER FEES  
(\$,000's)

	Week Ending:																DIP Bal to 20-Dec	
	POST-FILING - DIP FINANCING																	
	Actual	Actual	Actual	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst		
27-Sep	4-Oct	16-Oct	18-Oct	25-Oct	1-Nov	8-Nov	15-Nov	22-Nov	29-Nov	6-Dec	13-Dec	20-Dec						
Professional Fees	\$ -	\$ -	\$ 45	\$ 25	\$ 25	\$ 25	\$ 45	\$ 45	\$ 50	\$ 10	\$ 35	\$ 20	\$ 20	\$ 300				
	26	47	102	35	35	25	25	35	35	20	35	30	35	\$ 310				
	To Be Paid out of Sale Proceeds																	
	-	-	-	-	5	5	5	-	-	-	5	5	5	\$ -				
	-	-	-	-	-	-	-	-	-	-	-	-	-	\$ 30				
	-	-	-	-	-	-	-	-	-	-	-	-	-	\$ 30				
Sub-total	\$ 26	\$ 47	\$ 147	\$ 60	\$ 65	\$ 55	\$ 75	\$ 80	\$ 85	\$ 30	\$ 75	\$ 55	\$ 90					
Creditor's Committee																		
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20	\$ 20	\$ 10	\$ 10	\$ 10	\$ 10	\$ 80				
	-	-	-	-	-	-	-	-	-	-	-	-	15	\$ 15				
Sub-total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20	\$ 20	\$ 10	\$ 10	\$ 10	\$ 25					
Total Professional & Other Fees	\$ 26	\$ 47	\$ 147	\$ 60	\$ 65	\$ 55	\$ 75	\$ 100	\$ 105	\$ 40	\$ 85	\$ 65	\$ 115					
Cumulative Carve Out				\$ 60	\$ 125	\$ 180	\$ 255	\$ 355	\$ 460	\$ 500	\$ 585	\$ 650	\$ 765					

Empire DIP Forecast 101613 - For use in 1st Cash Collateral Order

EMPIRE DIE CASTING COMPANY, INC.  
DEBTOR-IN-POSSESSION CASH REQUIREMENTS  
(\$,000's)

Week Ending:													
POST-FILING - DIP FINANCING													
	Actual	Actual	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst
	27-Sep	4-Oct	16-Oct	18-Oct	25-Oct	1-Nov	8-Nov	15-Nov	22-Nov	29-Nov	6-Dec	13-Dec	20-Dec
Cash Receipts													
Opening Cash Balance	\$ (576)												
Advances / Use of Cash Collateral	778	661	1,162	585	507	567	565	576	610	726	557	561	584
Total Cash Receipts	\$ 202	\$ 661	\$ 1,162	\$ 585	\$ 507	\$ 567	\$ 565	\$ 576	\$ 610	\$ 726	\$ 557	\$ 561	\$ 584
Cost of Sales													
Material	\$ 306	\$ 89	\$ 266	\$ 128	\$ 187	\$ 143	\$ 227	\$ 227	\$ 235	\$ 255	\$ 227	\$ 227	\$ 227
Freight	6	-	-	2	3	4	4	4	4	5	-	4	4
Labor	223	145	352	69	172	263	160	260	184	260	172	260	149
Manufacturing Burden	84	52	-	37	47	64	56	56	188	71	64	56	186
Total Cost of Sales	\$ 619	\$ 286	\$ 618	\$ 236	\$ 410	\$ 475	\$ 446	\$ 547	\$ 612	\$ 590	\$ 463	\$ 547	\$ 566
SG&A	15	20	25	25	-	40	-	-	25	40	-	-	25
Funding of Operating Expenses	\$ 633	\$ 306	\$ 643	\$ 261	\$ 410	\$ 515	\$ 446	\$ 547	\$ 637	\$ 630	\$ 463	\$ 547	\$ 591
Other Cash Items													
Interest	-	35	-	-	-	-	35	-	-	-	40	-	16
Existing Notes Principal Pmts.	-	42	-	-	-	-	-	-	-	-	-	-	-
Professional Fees - Gross	26	47	147	60	65	55	75	100	105	40	85	65	115
Adjust for Carve-out	-	-	-	(60)	(65)	(55)	(75)	(100)	(105)	(40)	(85)	(65)	(115)
Lender Fees	-	-	20	80	-	7	-	-	-	7	-	-	-
Lender Professional Fees	-	-	-	-	-	-	-	-	-	60	-	-	30
Capital Expenditures	-	-	-	10	10	10	10	10	10	10	10	10	10
Utility Deposits	-	-	-	-	130	-	-	-	-	-	-	-	-
Contingency & Other	113	(34)	4	60	60	50	50	30	-	-	-	-	-
Weekly Funding Requirements	\$ 773	\$ 396	\$ 857	\$ 411	\$ 610	\$ 582	\$ 541	\$ 587	\$ 647	\$ 707	\$ 513	\$ 557	\$ 647
Ending Cash Balance / (Deficit)	(571)	(305)	(0)	174	71	56	80	70	34	52	96	101	38

EMPIRE DIE CASTING COMPANY, INC.  
DEBTOR-IN-POSSESSION COLLATERAL & LOC ROLL-FWD  
(\$,000's)

	Actual 27-Sep	Actual 4-Oct	Actual 16-Oct	Fcst 18-Oct	Fcst 25-Oct	Fcst 1-Nov	Fcst 8-Nov	Fcst 15-Nov	Fcst 22-Nov	Fcst 29-Nov	Fcst 6-Dec	Fcst 13-Dec	Fcst 20-Dec
POST-FILING (PRE-DIP LINE OF CREDIT)													
EXISTING LOC ACTIVITY													
Accounts Receivable													
Beginning Eligible Receivables	\$ 3,868	\$ 4,052	\$ 4,215	\$ 3,970	\$ 3,424	\$ 2,698	\$ 2,119	\$ 1,577	\$ 964	\$ 276	\$ 0	\$ 0	\$ 0
plus: Sales	789	715	719	-	-	-	-	-	-	-	-	-	-
less: Col. of A/R	(604)	(522)	(924)	(537)	(713)	(569)	(531)	(602)	(676)	(264)	-	-	-
less: Adjustments	(1)	(31)	(40)	(10)	(12)	(10)	(11)	(11)	(12)	(12)	-	-	-
Ending Eligible Receivables	\$ 4,052	\$ 4,215	\$ 3,970	\$ 3,424	\$ 2,698	\$ 2,119	\$ 1,577	\$ 964	\$ 276	\$ 0	\$ 0	\$ 0	\$ 0
Advance Rate	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%
Accounts Receivable Collateral	\$ 3,444	\$ 3,583	\$ 3,375	\$ 2,910	\$ 2,294	\$ 1,801	\$ 1,340	\$ 819	\$ 235	\$ 0	\$ 0	\$ 0	\$ 0
Production Inventory													
Beginning Eligible Inventory	\$ 1,275	\$ 1,275	\$ 1,275	\$ 1,019	\$ 1,019	\$ 869	\$ 719	\$ 569	\$ 419	\$ 269	\$ 119	\$ 0	\$ 0
plus: Inventory Changes	-	-	44	-	(150)	(150)	(150)	(150)	(150)	(150)	(119)	-	-
Ending Production Inventory	\$ 1,275	\$ 1,275	\$ 1,319	\$ 1,019	\$ 869	\$ 719	\$ 569	\$ 419	\$ 269	\$ 119	\$ 0	\$ 0	\$ 0
Advance Rate	60%	60%	60%	60%	60%	60%	60%	60%	60%	60%	60%	60%	60%
Production Inventory Collateral	\$ 765	\$ 765	\$ 791	\$ 611	\$ 521	\$ 431	\$ 341	\$ 251	\$ 161	\$ 71	\$ 0	\$ 0	\$ 0
Total Collateral													
Accounts Receivable	\$ 3,444	\$ 3,583	\$ 3,375	\$ 2,910	\$ 2,294	\$ 1,801	\$ 1,340	\$ 819	\$ 235	\$ 0	\$ 0	\$ 0	\$ 0
Inventory	765	765	791	611	521	431	341	251	161	71	0	0	0
Carve-Outs	-	-	-	-	-	-	-	-	-	-	-	-	-
Other - Tooling Inventory	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Collateral	\$ 4,209	\$ 4,348	\$ 4,166	\$ 3,521	\$ 2,815	\$ 2,232	\$ 1,682	\$ 1,071	\$ 396	\$ 71	\$ 0	\$ 0	\$ 0
Line of Credit													
Beginning Balance	\$ 4,554	\$ 4,728	\$ 4,867	\$ 5,105	\$ 4,569	\$ 3,807	\$ 3,188	\$ 2,608	\$ 1,958	\$ 1,243	\$ 553	\$ 37	\$ 0
less: Collections of A/R	(604)	(522)	(924)	(537)	(713)	(569)	(531)	(602)	(676)	(264)	-	-	-
less: Collections of ineligible A/R	-	-	-	-	(49)	(49)	(49)	(49)	(39)	(426)	(516)	(37)	-
less: Pay Down on Inv Conversion	-	-	-	-	-	-	-	-	-	-	-	-	-
less: Sale of Inventory	-	-	-	-	-	-	-	-	-	-	-	-	-
plus: Advances	778	661	1,162	-	-	-	-	-	-	-	-	-	-
Ending LOC Balance	\$ 4,728	\$ 4,867	\$ 5,105	\$ 4,569	\$ 3,807	\$ 3,188	\$ 2,608	\$ 1,958	\$ 1,243	\$ 553	\$ 37	\$ 0	\$ 0
Out-of-Formula Funding Required	519	520	939	1,047	992	956	927	887	847	481	37	-	-
In-Formula Line of Credit Outstanding	\$ 4,209	\$ 4,348	\$ 4,166	\$ 3,521	\$ 2,815	\$ 2,232	\$ 1,682	\$ 1,071	\$ 396	\$ 71	\$ 0	\$ 0	\$ 0

Empire DIP Forecast 101613 - For use in 1st Cash Collateral Order

EMPIRE DIE CASTING COMPANY, INC.  
DEBTOR-IN-POSSESSION COLLATERAL & LOC ROLL-FWD  
(\$,000's)

	Week Ending:												
	Actual 27-Sep	Actual 4-Oct	Actual 16-Oct	Fcst 18-Oct	Fcst 25-Oct	Fcst 1-Nov	Fcst 8-Nov	Fcst 15-Nov	Fcst 22-Nov	Fcst 29-Nov	Fcst 6-Dec	Fcst 13-Dec	Fcst 20-Dec
DIP LOC ACTIVITY													

DIP LOC ACTIVITY

POST-FILING (DIP LINE OF CREDIT)													
<u>Accounts Receivable</u>													
Beginning Eligible Receivables	\$ -	\$ -	\$ -	\$ -	\$ 273	\$ 698	\$ 1,217	\$ 1,742	\$ 2,267	\$ 2,832	\$ 3,150	\$ 3,199	\$ 3,221
plus: Sales	-	-	-	273	474	568	574	574	604	744	574	574	574
less: Collections of A/R - General	-	-	-	-	(49)	(49)	(49)	(49)	(39)	(426)	(516)	(542)	(696)
less: Adjustments	-	-	-	-	-	-	-	-	-	-	(10)	(9)	(10)
Ending Eligible Receivables	\$ -	\$ -	\$ -	\$ 273	\$ 698	\$ 1,217	\$ 1,742	\$ 2,267	\$ 2,832	\$ 3,150	\$ 3,199	\$ 3,221	\$ 3,089
Advance Rate	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%
<b>Accounts Receivable Collateral</b>	\$ -	\$ -	\$ -	\$ 232	\$ 594	\$ 1,035	\$ 1,481	\$ 1,927	\$ 2,407	\$ 2,678	\$ 2,719	\$ 2,738	\$ 2,626
<u>Production Inventory</u>													
Beginning Inventory	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 150	\$ 300	\$ 450	\$ 600	\$ 750	\$ 900	\$ 1,019	\$ 1,019
plus: Inventory Changes	-	-	-	-	-	150	150	150	150	150	119	-	-
Ending Production Inventory	\$ -	\$ -	\$ -	\$ -	\$ 150	\$ 300	\$ 450	\$ 600	\$ 750	\$ 900	\$ 1,019	\$ 1,019	\$ 1,019
Advance Rate	60%	60%	60%	60%	60%	60%	60%	60%	60%	60%	60%	60%	60%
<b>Production Inventory Collateral</b>	\$ -	\$ -	\$ -	\$ -	\$ 90	\$ 180	\$ 270	\$ 360	\$ 450	\$ 540	\$ 611	\$ 611	\$ 611
<b>Total Collateral</b>	\$ -	\$ -	\$ -	\$ -	\$ 232	\$ 1,215	\$ 1,751	\$ 2,287	\$ 2,857	\$ 3,218	\$ 3,330	\$ 3,349	\$ 3,237
<u>Line of Credit</u>													
Beginning Balance	\$ -	\$ -	\$ -	\$ -	\$ 585	\$ 1,092	\$ 1,659	\$ 2,224	\$ 2,800	\$ 3,410	\$ 4,136	\$ 4,693	\$ 4,749
less: Collections of A/R	-	-	-	-	(49)	(49)	(49)	(49)	(39)	(426)	(516)	(542)	(696)
less: Collections of ineligible A/R	-	-	-	-	-	-	-	-	-	-	-	-	-
less: Pay Down on Inv Conversion	-	-	-	-	-	-	-	-	-	-	-	-	-
less: Sale of Inventory	-	-	-	-	-	-	-	-	-	-	-	-	-
plus: Advances	-	-	-	-	585	507	567	576	610	726	557	561	584
<b>Ending Post-Petition LOC Balance</b>	\$ -	\$ -	\$ -	\$ 585	\$ 1,092	\$ 1,659	\$ 2,224	\$ 2,800	\$ 3,410	\$ 4,136	\$ 4,693	\$ 4,749	\$ 4,637
<b>Out-of-Formula Funding Required</b>	-	-	-	-	353	408	444	473	553	919	1,363	1,400	1,400
<b>In-formula Line of Credit Outstanding</b>	\$ -	\$ -	\$ -	\$ 232	\$ 684	\$ 1,215	\$ 1,751	\$ 2,287	\$ 2,857	\$ 3,218	\$ 3,330	\$ 3,349	\$ 3,237
Combined Out-of-Formula Funding	519	520	939	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400

Empire DIP Forecast 101613 - For use in 1st Cash Collateral Order

EMPIRE DIE CASTING COMPANY, INC.  
DEBTOR-IN-POSSESSION COLLATERAL & LOC ROLL-FWD  
(\$,000's)

Week Ending:													
	Actual	Actual	Actual	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst
	27-Sep	4-Oct	16-Oct	18-Oct	25-Oct	1-Nov	8-Nov	15-Nov	22-Nov	29-Nov	6-Dec	13-Dec	20-Dec
	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst
FIRST MERIT COLLATERAL POSITION ANALYSIS													
Collateral	27-Sep	4-Oct	16-Oct	18-Oct	25-Oct	1-Nov	8-Nov	15-Nov	22-Nov	29-Nov	6-Dec	13-Dec	20-Dec
M&E at OLV (net of costs)	3,433	3,433	3,433	3,433	3,433	3,433	3,433	3,433	3,433	3,433	3,433	3,433	\$ 3,433
Real Estate at OLV	4,845	4,845	4,845	4,845	4,845	4,845	4,845	4,845	4,845	4,845	4,845	4,845	4,845
Gross Eligible A/R	4,052	4,215	3,970	3,697	3,397	3,336	3,319	3,231	3,108	3,151	3,199	3,221	3,090
Gross Eligible Inventory	1,275	1,275	1,319	1,019	1,019	1,019	1,019	1,019	1,019	1,019	1,019	1,019	1,019
Cash on Hand	(571)	(305)	(0)	174	71	56	80	70	34	52	96	101	38
Cash in Escrow for Professional Fees	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Collateral	\$ 13,034	\$ 13,463	\$ 13,567	\$ 13,167	\$ 12,764	\$ 12,689	\$ 12,696	\$ 12,598	\$ 12,438	\$ 12,499	\$ 12,591	\$ 12,618	\$ 12,424
Debt Secured by Collateral													
First Merit Exist. LOC Balance	(4,728)	(4,867)	(5,105)	(4,569)	(3,807)	(3,188)	(2,608)	(1,958)	(1,243)	(553)	(37)	0	0
First Merit DIP LOC Balance	0	0	0	(585)	(1,092)	(1,659)	(2,224)	(2,800)	(3,410)	(4,136)	(4,693)	(4,749)	(4,637)
Secured M&E Loan Balance	(778)	(724)	(724)	(724)	(724)	(724)	(724)	(724)	(724)	(724)	(724)	(724)	(724)
Secured Mortgage Loan Balance	(3,708)	(3,690)	(3,690)	(3,690)	(3,690)	(3,690)	(3,690)	(3,690)	(3,690)	(3,690)	(3,690)	(3,690)	(3,690)
Carve Out for Prof. Fees	0	0	0	(60)	(125)	(180)	(255)	(355)	(460)	(500)	(585)	(650)	(765)
Total Debt Secured by Collateral	\$ 9,215	\$ 9,282	\$ 9,520	\$ 9,628	\$ 9,438	\$ 9,442	\$ 9,502	\$ 9,527	\$ 9,528	\$ 9,604	\$ 9,730	\$ 9,814	\$ 9,817
Excess Collateral Balance	\$ 3,820	\$ 4,181	\$ 4,047	\$ 3,539	\$ 3,326	\$ 3,248	\$ 3,194	\$ 3,070	\$ 2,911	\$ 2,895	\$ 2,862	\$ 2,805	\$ 2,607

## EXHIBIT B

### Section 363 Sale Milestones

- (1) On or before October 21, 2013, the Debtor shall file a motion for authority to sell all or substantially all of its assets and to approve bid procedures (the “**Sale Motion**”) under Section 363 of the Bankruptcy Code (the “**363 Sale Transaction**”);
- (2) On or before November 15, 2013, the Bankruptcy Court shall have entered an order (the “**Bid Procedures Order**”), in form and substance satisfactory to the Lender, approving the Debtor’s proposed bid and sale procedures which provides, among other things, for any competing, qualified bid to submitted on or before December 16, 2013 (a “**Qualified Bid**”);
- (2) If a Qualified Bid has been received in accordance with the bid procedures approved by the Bid Procedures Order, then, on or before December 19, 2013, the Debtor shall have conducted an auction pursuant to the terms of the Bid Procedures Order;
- (3) On or before December 27, 2013, the Bankruptcy Court shall have entered an order (the “**Sale Order**”), in form and substance satisfactory to the Lender, approving the 363 Sale Transaction contemplated under the Bid Procedures Order; and
- (4) On or before December 31, 2013, the 363 Sale Transaction approved by the Sale Order shall have been substantially consummated.

With respect to each of the 363 Sale Transaction milestones (each a “**Milestone**”) referred to in this Exhibit B, the period within which each Milestone is to be completed may be extended in the sole discretion of the Lender.