

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Case No. 17-32006

PREMIER MARINE, INC.,

Chapter 11

Debtor.

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**NOTICE OF HEARING AND MOTION FOR ORDER AUTHORIZING  
USE OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION**

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TO: Entities Specified in Local Rule 9013-3.

1. Premier Marine, Inc. (“Debtor or Premier Marine”), through its undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at **10:15 a.m. on October 18, 2017**, before the Honorable Katherine A. Constantine, Courtroom 2C, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and served not later than **October 13, 2017**, which is five (5) days before the time set for the Final Hearing (including Saturdays, Sundays, and holidays). **Unless a response opposing the motion is timely filed, the Court may grant the relief requested in the motion without a hearing.**

4. This Court has jurisdiction over this motion under 28. U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on June 19, 2017 (the “Petition Date”). This case is now pending before this Court.

5. This motion arises under 11 U.S.C. § 363 and Bankruptcy Rule 4001(b). This motion is filed under Bankruptcy Rules 9014 and Local Rules 4001-2 and 9013. By this motion Debtor seeks authority for use of cash collateral through February 3, 2018 and to grant replacement liens (“Motion”).

### **BUSINESS OF DEBTOR**

6. Premier Marine Inc., a Minnesota corporation (“Debtor”) is a family owned business formed in 1992 by Robert Menne and Eugene Hallberg (“Hallberg”). For 25 years the Debtor has manufactured “Premier” brand pontoon boats in Wyoming, Minnesota. The Debtor sells Premier pontoons through a network of 197 independent dealers located throughout the United States and Canada.

7. The Debtor manufactures and sells approximately 2,000 pontoons a year having generated \$58,405,559 and \$59,584,693 in net sales for the years ending December 31, 2016 and 2015. The Debtor has 150 full time employees and regularly employs up to 20 part time and seasonal employees. The Menne family controls 72.8% of the Debtor equity. Hallberg controls the remaining 27.2% and is the Debtor’s landlord.

8. The need for reorganization in chapter 11 was precipitated by a failed acquisition of another pontoon manufacturer in 2011. The Debtor suffered substantial losses in 2014, 2015 and 2016 attributable to the purchase and manufacture of the Palm Beach and Weeres brands in New Ulm, Minnesota, termination of manufacturing in New Ulm and the transition to manufacturing of the brands at the Debtor’s Wyoming facilities. The Palm Beach and Weeres brands were discontinued in in January 2017.

9. The acquisition losses left the Debtor with inadequate cash to operate efficiently and profitably as it had for more than 20 years. In response to lender and vendor pressures and a growing back log of dealer orders the Menne family solicited prospective buyers, equity partners and subordinate debt lenders. The Debtor secured a \$2,500,000 lending commitment necessary and sufficient to resume normal production.

10. The chapter 11 was filed in response to an eviction action commenced by Hallberg for the nonpayment of rent. The chapter 11 is necessary to attract a new equity partner, reject the Hallberg leases, consolidate manufacturing under a single roof and reorganize the business for the mutual benefit of the Debtor creditors, employees and dealer network.

11. By Order dated July 11, 2017 [Docket No. 85] the Court authorized use of cash collateral through October 28, 2017 and approved a Cash Collateral and Adequate Protection Stipulation dated July 10, 2017 [Docket No. 79], as amended by the First Amendment to Stipulation for use of Cash Collateral dated August 18, 2017 [Docket No. 113] (collectively, the “Stipulation”).

#### **SECURED LENDERS WITH INTEREST IN CASH COLLATERAL**

12. The Debtor is indebted to American Bank of the North (“ABN”) in the approximate total principal amount of \$6,521,648 (“ABN Debt”) as of the Petition Date. The ABN Debt evidenced by two Notes and a revolving credit account is secured by a duly perfected first priority lien in substantially all assets of the Debtor, including inventory, accounts, equipment and general

intangibles. As of the date of this Motion, ABN has not consented to the use of cash collateral. The ABN Debt is over secured.

13. The Debtor is indebted to Trusek, LLC (“Trusek”) in the approximate amount of \$500,000 (“Trusek Debt”) as of the Petition Date. The Trusek Debt evidenced by loan and security documents is secured by a duly perfected lien in substantially all assets of the Debtor, including inventory, accounts, equipment and general intangibles. The Trusek Debt is junior in priority to the lien of ABN. As of the date of this Motion, Trusek has not consented to the use of cash collateral.

14. The Debtor has filed a motion to extend the exclusivity periods by 45 days and intends to file a disclosure statement and plan of reorganization on or before December 8, 2017.

15. The Debtor seeks authority to use cash collateral for the purposes and in the approximate amounts set forth in the budget attached as **Exhibit A** (“Budget”) and to grant adequate protection.

#### **ESTIMATED COLLATERAL VALUE**

16. As of October 28, 2017 and the date of the hearing on this Motion, the Debtor's collateral has the following estimated value:

Cash	\$ 195,000
Accounts Receivable (Liquidation Value)	\$ 597,507
CD Pledged for LOC in Favor of Wells Fargo	\$ 1,000,000
Cash Reserve with NorthPoint Floorplan Lender	\$ 43,816
Inventory (Book Value)	\$ 8,200,000
WIP	\$ 320,625
Equipment	\$ 3,738,363
Web Domains and Other Intellectual Property	<u>\$ 399,000</u>
Total	\$14,494,311

As of February 3, 2018 the Debtor estimates that the Collateral's value, will be:

Cash	\$ 309,453
Accounts Receivable (Liquidation Value)	\$ 674,000
CD Pledged for LOC in Favor of Wells Fargo	\$ 1,000,000
Cash Reserve with NorthPoint Floorplan Lender	\$ 43,816
Inventory (Book Value)	\$ 8,300,000
WIP	\$ 320,625
Equipment	\$ 3,738,363
Web Domains and Other Intellectual Property	<u>\$ 399,000</u>
Total	\$14,785,257

### **ADEQUATE PROTECTION**

17. Pursuant to the requirements of 11 U.S.C. § 363(e), the Debtor proposes as adequate protection for ABN to grant (i) replacement liens in ABN's respective collateral; and (ii) to make monthly cash payments of interest at the contract rate under the prepetition ABN loan each in the amount of \$29,681.00. The interest of ABN is adequately protected by the monthly cash payment of interest.

18. Pursuant to the requirements of 11 U.S.C. § 363(e), the Debtor proposes as adequate protection for Trusek to grant (i) replacement liens in Trusek's respective collateral; and (ii) to make monthly cash payments of interest at the contract rate under the prepetition Trusek loan each in the amount of \$5,000.00. The interest of Trusek is adequately protected by the monthly cash payment of interest.

19. With the continued use of cash collateral the Debtor will operate in the ordinary course through the earlier of the effective date of a confirmed plan of reorganization or February 3, 2018.

20. The Debtor has a need to use cash collateral through February 3, 2018 to pay operating expenses in the amounts identified in the Budget attached as Exhibit A. If the Debtor is not permitted to use cash collateral in the amounts and for the purposes set forth in the Budget from October 28, 2017 through February 3, 2018 the Debtor cannot continue to operate and will suffer immediate and irreparable harm.

21. Prior to the hearing on this Motion the Debtor anticipates that the terms and conditions of the Stipulation will be extended through February 3, 2018 in substantially the form attached as **Exhibit B**. In the event Debtor enters into any such stipulation, Debtor will seek approval of the stipulation without further notice of hearing pursuant to Bankruptcy Rule 4001(d)(4), and **DEBTOR HEREBY GIVES NOTICE OF INTENT TO SEEK APPROVAL OF ANY SUCH STIPULATION.**

22. The Debtor may offer additional evidence in support of this motion, including the testimony of Richard Gallagher, the financial advisor to Debtor, if such is necessary in connection with this Motion.

**WHEREFORE**, the Debtor moves the Court for an order:

1. Authorizing the continued use of cash collateral through February 3, 2018 in accordance with the Budget; and
2. Authorizing the Debtor to grant adequate protection as set forth in the Motion;

Dated: October 4, 2017

RAVICH MEYER KIRKMAN McGRATH  
NAUMAN & TANSEY,  
A PROFESSIONAL ASSOCIATION

By /e/ Michael F. McGrath #168610  
Will R. Tansey #323056

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Facsimile: (612) 332-8302

ATTORNEYS FOR DEBTOR

**VERIFICATION**

I, Lori J. Melbostad, President of Debtor, declare under penalty of perjury that the facts set forth in the foregoing Notice of Hearing and Motion for Order Authorizing Use of Cash Collateral and Granting Adequate Protection, are true and correct.

Executed on: October 4, 2017

  
Lori J. Melbostad



## EXHIBIT A

Premier Marine														
First Amended Cash Collateral Budget	W/E	W/E	W/E	W/E	W/E	W/E	W/E	W/E	W/E	W/E	W/E	W/E	W/E	W/E
	11/4/2017	11/11/2017	11/18/2017	11/25/2017	12/2/2017	12/9/2017	12/16/2017	12/23/2017	12/30/2017	1/6/2018	1/13/2018	1/20/2018	1/27/2018	2/3/2018
300 <b>Beginning Cash Balance</b>														
305 Checking	164,300	73,769	163,154	150,310	88,118	54,639	304,947	357,616	521,578	129,014	119,697	72,944	265,173	174,489
310 Omitted														
315 <b>Total Beginning Cash</b>	164,300	73,769	163,154	150,310	88,118	54,639	304,947	357,616	521,578	129,014	119,697	72,944	265,173	174,489
320														
325 <b>Cash Receipts</b>														
330 Receipts from Sales	718,750	781,250	781,250	812,500	812,500	843,750	843,750	812,500	687,500	625,000	781,250	875,000	875,000	906,250
335 Omitted														
340 Dealer Labor Warranty Credits	(27,493)	(27,493)	(27,493)	(27,493)	(27,493)	(27,493)	(27,493)	(27,493)	(27,493)	(27,493)	(27,493)	(27,493)	(27,493)	(27,493)
345 Omitted														
350 <b>Total Receipts</b>	691,257	753,757	753,757	785,007	785,007	816,257	816,257	785,007	660,007	597,507	753,757	847,507	847,507	878,757
355														
360 <b>Cash Disbursements</b>														
365 Costs of Raw Materials	421,915	521,451	434,118	535,380	420,074	464,423	354,770	512,979	451,121	557,514	463,456	572,742	475,790	587,970
370 Direct Labor (incl Temp Service)	194,176	23,868	216,415	24,345	225,072	24,832	233,729	25,329	190,446	18,997	163,610	19,377	242,385	25,835
345 Sales, Engr & Admin Labor	73,575	-	73,575	-	73,575	-	73,575	-	73,575	-	73,575	-	73,575	-
375 Benefits	-	56,184	-	-	-	3,200	56,184	-	-	3,200	56,184	-	-	3,200
380 Utilities			18,101			-	18,101				18,101	-	56,184	
385 Telecom			735	547		5,780	735	547	5,780		735	547	5,780	
390 Freight & Transportation	15,444	15,753	17,675	18,028	18,389	18,756	19,131	19,514	19,904	20,302	20,709	21,123	21,545	21,976
395 Leases (Real Estate) incl Property Tax	57,696				57,696		-		57,696					57,696
400 Insurance		43,527				43,527			43,527					43,527
405 Omitted														
410 Omitted														
415 Omitted														
420 Repairs & Maintenance	920	828	1,380	1,518	920	828	1,380	1,518	920	828	1,380	1,518	920	828
425 Other Expenses	5,062	2,761	4,602	5,983	2,761	4,602	5,983	2,761	4,602	5,983	2,761	4,602	5,983	2,761
430 US Trustee Fees	13,000												13,000	
435 Professional Fees (Debtor)				125,000					125,000					
440 Professional Fees (Debtor Tax Prep)				18,000										
440 Professional Fees (Other)				60,000					60,000					
445 Equipment Leases														
450 Hallberg Equipment Financing	-	-	-	8,935			-	8,935	-	-			8,935	-
455 Farnum Leasing	-	-	-	12,944			-	12,944	-	-			12,944	-
460 Wells Fargo Trac Lease	-	-	-	1,149			-	1,149	-	-			1,149	-
465 Adequate Protection Payments			-	-	-			-	-	-			-	-
470 American Bank of the North	-	-		29,681		-		29,681	-	-		29,681	-	-
475 Wells Fargo Equipment Finance	-	-		520		-		520	-	-		520	-	-
480 Ford Motor Credit	-	-		169		-		169	-	-		169	-	-
485 TD Auto Finance	-	-				-		-	-	-			-	-
490 Trusek	-	-		5,000		-		5,000	-	-		5,000	-	-
495 Intrest on DIP Financing	-	-	-		20,000		-	-	20,000	-	-		20,000	-
505 <b>Total Cash Disbursements</b>	781,788	664,372	766,601	847,199	818,486	565,948	763,588	621,046	1,052,571	606,824	800,510	655,278	938,190	743,794
510														
515 <b>Net Change (Receipts less Disburs.)</b>	(90,531)	89,385	(12,844)	(62,192)	(33,479)	250,309	52,669	163,961	(392,564)	(9,317)	(46,753)	192,229	(90,683)	134,963
520														
525 <b>Projected Ending Cash</b>	73,769	163,154	150,310	88,118	54,639	304,947	357,616	521,578	129,014	119,697	72,944	265,173	174,489	309,453

**EXHIBIT B**  
UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 11 Case

Premier Marine, Inc.,

Case No. 17-32006

Debtor.

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**STIPULATION FOR USE OF CASH COLLATERAL**

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Premier Marine, Inc. (the “Debtor”) and American Bank of the North (“ABN”) stipulate and agree as of July 10, 2017 to the following use of cash collateral:

**FACTUAL RECITALS**

A. On June 19, 2017 (the “Petition Date”), the Debtor filed with this Court its Petition for Relief under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) commencing the above-referenced bankruptcy case (the “Case”). The Debtor is currently operating its business as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

B. The Debtor was indebted to ABN on the Petition Date with respect to outstanding loans and extensions of credit. The balances due as of the Petition Date, not including fees and expenses, are as follows:

<b>Loan No.</b>	<b>Principal</b>	<b>Accrued Interest</b>
x0714	\$412,371.45	\$257.73
x0715	\$5,761,156.47	\$17,603.98
Credit Card	\$140,142.63	\$1,575.33
Overdrawn Depository Account	\$177,371.11	
Total:	\$6,491,041.66	\$19,437.04

C. “Loan 0714” is evidenced by the following documents and agreements:

- a. Promissory Note executed by the Debtor in favor of ABN dated May 30, 2014, in the original principal amount of \$1,000,000.00.
- b. Commercial Security Agreement executed by the Debtor in favor of ABN dated May 30, 2014, and UCC financing statements filed of record on May 30, 2014, as filing numbers 201436786179 and 947454200020.
- c. Business Loan Agreement executed by the Debtor in favor of ABN dated May 30, 2014.
- d. Business Loan Agreement executed by the Debtor in favor of ABN dated September 29, 2014.
- e. Business Loan Agreement executed by the Debtor in favor of ABN dated August 21, 2015.
- f. Commercial Guaranty executed by B. Menne in favor of ABN dated May 30, 2014.
- g. Commercial Guaranty executed by R. Menne in favor of ABN dated May 30, 2014.
- h. Covenant Waiver executed by the Debtor dated September 29, 2014.
- i. Corporate Resolution to Borrow/Grant Collateral executed by the Debtor dated May 30, 2014.
- j. Corporate Resolution to Borrow/Grant Collateral executed by the Debtor dated September 29, 2014.
- k. Subordination Agreement dated May 30, 2014 executed by the Debtor and Robert J. Menne, Jr. 2012 Irrevocable Grantor Trust.
- l. Subordination Agreement dated May 30, 2014 executed by the Debtor and Betty J. Menne 2012 Irrevocable Grantor Trust.
- m. Intercreditor Agreement dated May 29, 2014 between ABN and GE Commercial Distribution Finance Corporation.
- n. Loan Repayment Agreement dated May 25, 2017 between ABN, the Debtor, R. Menne, and B. Menne.

D. “Loan 0715” is evidenced by the following documents and agreements:

- a. Promissory Note executed by the Debtor in favor of ABN dated May 30, 2014, in the original principal amount of \$4,000,000.00.
- b. Commercial Security Agreement executed by the Debtor in favor of ABN dated May 30, 2014, and UCC financing statement filed of record on May 30, 2014, as filing number 201436786179.
- c. Business Loan Agreement executed by the Debtor in favor of ABN dated May 30, 2014.
- d. Business Loan Agreement executed by the Debtor in favor of ABN dated September 29, 2014.
- e. Business Loan Agreement executed by the Debtor in favor of ABN dated August 21, 2015.
- f. Business Loan Agreement executed by the Debtor in favor of ABN dated July 28, 2016.
- g. Commercial Guaranty executed by B. Menne in favor of ABN dated May 30, 2014.

- h. Commercial Guaranty executed by B. Menne in favor of ABN dated August 21, 2015.
- i. Commercial Guaranty executed by B. Menne in favor of ABN dated January 8, 2016.
- j. Commercial Guaranty executed by B. Menne in favor of ABN dated July 28, 2016.
- k. Commercial Guaranty executed by R. Menne in favor of ABN dated May 30, 2014.
- l. Commercial Guaranty executed by R. Menne in favor of ABN dated August 21, 2015.
- m. Commercial Guaranty executed by R. Menne in favor of ABN dated January 8, 2016.
- n. Commercial Guaranty executed by R. Menne in favor of ABN dated July 28, 2016.
- o. Covenant Waiver executed by the Debtor dated February 11, 2015.
- p. Covenant Waiver executed by the Debtor dated March 1, 2016.
- q. Change in Terms Agreement executed by the Debtor in favor of ABN dated May 26, 2015.
- r. Change in Terms Agreement executed by the Debtor in favor of ABN dated August 21, 2015.
- s. Change in Terms Agreement executed by the Debtor in favor of ABN dated January 8, 2016.
- t. Change in Terms Agreement executed by the Debtor in favor of ABN dated April 25, 2016.
- u. Change in Terms Agreement executed by the Debtor in favor of ABN dated July 28, 2016.
- v. Corporate Resolution to Borrow/Grant Collateral executed by the Debtor dated May 30, 2014.
- w. Corporate Resolution to Borrow/Grant Collateral executed by the Debtor dated September 29, 2014.
- x. Corporate Resolution to Borrow/Grant Collateral executed by the Debtor dated August 21, 2015.
- y. Corporate Resolution to Borrow/Grant Collateral executed by the Debtor dated July 28, 2016.
- z. Subordination Agreement dated May 30, 2014 executed by the Debtor and Robert J. Menne, Jr. 2012 Irrevocable Grantor Trust.
- aa. Subordination Agreement dated May 30, 2014 executed by the Debtor and Betty J. Menne 2012 Irrevocable Grantor Trust.
- bb. Subordination Agreement dated July 28, 2016 executed by the Debtor and Robert J. Menne, III.
- cc. Intercreditor Agreement dated May 29, 2014 between ABN and GE Commercial Distribution Finance Corporation.
- dd. Loan Repayment Agreement dated May 25, 2017 between ABN, the Debtor, R. Menne, and B. Menne.

E. The “Credit Card Loan” is evidenced by the following documents and agreements:

- a. Business Credit Card Application and Agreement dated October 24, 2014.
- b. Full Pay Agreement.
- c. Disclosure.
- d. Loan Repayment Agreement dated May 25, 2017 between ABN, the Debtor, R. Menne, and B. Menne.

F. The “Overdrawn Depository Account Loan” is Debtor’s operating account number ending 4109 (the “Depository Account”) and is evidenced by certain depository agreements and the Loan Documents (as defined below).

G. All of the foregoing documents and agreements, and all other documents and agreements evidencing Loan 0714, Loan 0715, the Credit Card Loan, and the Overdrawn Depository Account Loan (collectively, the “Loans”) not specifically identified above, are collectively referred to as the “Loan Documents.”

H. The Loan Documents are genuine, valid, existing and legally enforceable.

I. Under the Loan Documents and applicable law, ABN holds legal, valid, binding, enforceable and allowable claims against the Debtor as of the Petition Date, which are not subject to any offsets, defenses or counterclaims, in the aggregate principal amount of \$6,491,041.66, accrued but unpaid interest of \$19,437.04, and any and all reasonable fees and other debts and obligations of the Debtor to ABN owing under the Loan Documents and applicable law (the “Prepetition Claims”). Interest, fees and other amounts owed as provided for in the Loan Documents continue to accrue.

J. The Prepetition Claims evidenced by the Loan Documents are secured by perfected, valid, binding, and legally enforceable security interests, which are first priority (other than with respect to the Prior Security Interests (defined below)) and not subject to avoidance or

subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law in substantially all assets of the Debtor and the proceeds and products thereof (the “Prepetition Collateral”) all as more fully described in the Loan Documents, including without limitation, the exhibits and appendixes thereto.

K. The Debtor is in default of its debts and obligations to ABN under the terms and provisions of the Loan Documents. These defaults exist, have not been timely cured and are continuing. The filing of this Case has accelerated the Prepetition Claims for all purposes in this Case and in connection with ABN’s enforcement of its rights and remedies under applicable law. The Prepetition Claims remain due and owing.

#### **AGREEMENT**

NOW THEREFORE, ABN and the Debtor stipulate and agree as follows:

1. All cash collateral as that term is defined in Section 363(a) of the Bankruptcy Code which constitutes or relates to the Prepetition Collateral or Adequate Protection Collateral (defined below) that is now in the Debtor’s possession, custody or control, or in which the Debtor will obtain an interest during the pendency of this Case (collectively, the “Cash Collateral”), shall constitute the Cash Collateral of ABN. ABN has perfected first-priority security interests in the Cash Collateral pursuant to the applicable provisions of the Loan Documents and Bankruptcy Code Sections 363(a) and 552(b).

2. ABN does not consent to the Debtor’s use of its Cash Collateral, except strictly as set forth in this Stipulation and Final Order Authorizing Use of Cash Collateral and Granting Adequate Protection (the “Final Cash Collateral Order”), which is attached as Exhibit A.

3. The Debtor’s use of the Cash Collateral as set forth herein is necessary to avoid immediate and irreparable harm to the Debtor, its business and its creditors.

4. The Debtor is authorized to use Cash Collateral to the extent: (i) such actual expenditures are reasonable, necessary and incurred in the ordinary course of Debtor's business; and (ii) the type and amount of expenditure is authorized in the Budget plus or minus ten percent of any Budget line item (the "Budget") as attached hereto as Exhibit B. Performance to Budget shall be tested weekly commencing the Budget week of July 22, 2017 and measure cumulative actual performance for the trailing three weeks to Budgeted performance for the same period (the "Budget Test"). Notwithstanding the foregoing, the Debtor's authorization to use Cash Collateral shall expire on October 28, 2017 (unless terminated earlier upon a default hereunder), but such expiration date may be extended by a stipulation and an agreed order between the Debtor and ABN.

5. The Debtor shall maintain an accounting of all Cash Collateral used. The Debtor shall provide to ABN: (i) monthly financial statements by the 20<sup>th</sup> of each subsequent month; (ii) each Wednesday following the date of this Stipulation, a report of the prior week ending (a) itemized cash receipts and disbursements, and (b) commencing the week of July 22, 2017, the Budget Test results, (iii) borrowing base certificate on a monthly basis identical in form to the prepetition borrowing base certificate form with a copy of the Debtor's monthly operating report at the time such report is filed with the Court; and (iii) such other financial reports and information reasonably requested by ABN.

6. The Debtor shall provide ABN with access to the Collateral (defined below), including for purposes of collateral inspection.

7. The Debtor shall maintain adequate insurance throughout the Case, including of the Collateral, and shall, upon reasonable request by ABN, deliver to ABN proof of the maintenance of such insurance.

8. As adequate protection for any use or diminution in the value of ABN's interests in the Prepetition Collateral, and the Debtor's use of Cash Collateral, ABN is hereby granted effective as of the Petition Date, valid and perfected replacement first-priority security interests on all post-petition assets of the Debtor (excluding causes of action arising under Chapter 5 of the Bankruptcy Code) and all products and proceeds thereof (including without limitation claims of the Debtor against loss or damage to such property), including all accessions thereto, substitutions and replacements therefor, and wherever located (collectively, the "Adequate Protection Collateral").

9. If and to the extent the adequate protection of the interests of ABN in the Prepetition Collateral and/or the Cash Collateral pursuant to this Stipulation proves insufficient, ABN shall have an allowed claim under Section 507(b) of the Bankruptcy Code in the amount of any such insufficiency.

10. All the liens and security interests of ABN in the Adequate Protection Collateral, shall at all times be senior to the rights of Debtor in this proceeding under the Code, except for the amounts funded for the Professional Fee Carve Out (as provided in the Final Order: (I) Regarding Debtor's Expedited Motion for Post-Petition Financing; and (II) Authorizing Liens and Security Interests Pursuant to 11 U.S.C. § 364(c) (the "Final DIP Order")), and shall be senior to all liens and security interests of any other lender or party, including any and all liens or security interests granted to Trusek, LLC (the "Junior Lender") pursuant to the Final DIP Order or any subsequent order or agreement, except for, if any, Prior Security Interests. In addition, except for the amounts funded for the Professional Fee Carve Out, the administrative claim of ABN shall have priority in all respects over all administrative expenses incurred in this Chapter 11 reorganization proceeding, including any administrative claim granted to the Junior Lender



pursuant to the Final DIP Order or any subsequent order or agreement, or of the kind specified in Section 507(b), 507(a)(2) or 503(b) of the Code, whether incurred or arising prior or subsequent to the date of the Petition, the entry of an Order authorizing Debtor to enter into this Stipulation or a conversion of this case pursuant to Section 1112 of the Code or in any other proceeding related hereto, and whether incurred pursuant to Section 726(b) of the Code or otherwise.

11. The replacement security interests of ABN granted pursuant to the terms of this Stipulation shall not have priority over valid, perfected, enforceable and non-avoidable security interests, if any, that had priority over the interests of ABN in the Prepetition Collateral as of the Petition Date (the “Prior Security Interests”), provided that the foregoing is without prejudice to the rights of the Debtor or any other party in interest, including ABN and the Official Committee of Unsecured Creditors (the “Committee”), to object to the validity, priority, or extent of such Prior Security Interests, or the allowance of such debts secured thereby, or to institute any action or adversary proceedings with respect thereto.

12. The replacement security interests granted to ABN pursuant to this Stipulation shall constitute valid, automatically perfected and unavoidable first-priority security interests, and this Stipulation and the Loan Documents shall be sufficient and conclusive evidence of the first-priority, perfection, attachment and validity of all of the security interests upon the Prepetition Collateral, the Cash Collateral and the Adequate Protection Collateral granted to ABN hereunder (collectively, the “Collateral”), and ABN shall not be required to create, file, record or serve any financing statements, mortgages, notices or other documents which may otherwise be required under federal or state law in any jurisdiction or to take any other action (including, without limitation, the taking of possession) to validate or perfect (a) the security

interests granted to ABN in this Stipulation, or (b) the adequate protection replacement security interests granted herein to ABN for all purposes.

13. As additional adequate protection, the Debtor shall make monthly payments by the 20<sup>th</sup> of each month to ABN in the amount of \$29,681, which shall be applied in the following order: (i) first, to the reasonable fees, costs and expenses of ABN, (ii) next, to accrued or accruing interest on the Loans and (iii) last, to the principal balance of the Loans.

14. The Debtor shall have no right to file a complaint pursuant to Bankruptcy Rule 7001 or other pleading asserting a claim or cause of action challenging the extent, priority, validity, perfection, amount, enforceability or allowability of the Prepetition Claims, the Prepetition Collateral, Adequate Protection Collateral, the Loan Documents, ABN's security interests under the Loan Documents, or any other rights, claims or interests of ABN.

15. Subject to all reservation of rights in this Stipulation, the provisions of this Stipulation shall inure to the benefit of the Debtor and ABN and shall be binding upon the Debtor and ABN and their respective successors and assigns, including any Chapter 11 or Chapter 7 trustee, agent, administrator or other fiduciary hereafter appointed as a legal representative of the Debtor.

16. Notwithstanding any other provision, all parties in interest, including the Committee, other than the Debtor and additional parties identified in the previous paragraph, shall have until September 11, 2017, which date may be extended by written agreement of the Committee and ABN, to object to the extent, priority, validity, perfection, amount, enforceability or allowability of ABN's security interest in, and liens upon, the Collateral and during that time period no admission by the Debtor of any fact, claim, or defense made herein, if any, shall be binding on such parties. If no objection is made thereto by such date, then without the need for

either the actual adjudication by the Court or for the entry of any separate order, ABN's security interests in, and liens upon, the Collateral shall be automatically deemed to be first in priority (except as to Prior Security Interests), valid and enforceable. In the event the Bankruptcy Case converts to Chapter 7 less than sixty (60) days prior to the expiration of September 11, 2017, the Chapter 7 trustee shall have a period of sixty (60) days from the date of appointment to perform the above investigations and object, if appropriate.

17. After September 11, 2017, no portion of the Cash Collateral shall be used to fund fees or expenses incurred by any entity, including the Debtor, any committee of unsecured creditors, any Chapter 11 trustee, any Chapter 7 trustee, or any professionals retained thereby, in objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, amount, perfection, priority, enforceability or allowability of the Prepetition Claims, the Prepetition Collateral, Adequate Protection Collateral, the Loan Documents, ABN's security interests under the Loan Documents, or any other rights, claims, or interests of ABN.

18. If any or all of the provisions of this Stipulation are hereafter modified, vacated or stayed, such modification, vacation or stay shall not affect the validity of any obligation, indebtedness or liability incurred by the Debtor to ABN from the Petition Date through the effective date of such modification, vacation or stay, or the validity or enforceability of any security interest or priority authorized or created hereunder.

19. The Debtor shall comply with the provisions of the Bankruptcy Code and the national and local rules promulgated thereunder.

20. The Debtor acknowledges and agrees that ABN shall not be obligated to make any future or additional advances or credit available to Debtor under the Loans, including the Credit Card Loan.

21. Notwithstanding the automatic stay pursuant to 11 U.S.C. § 362, the Debtor acknowledges and agrees that the Overdrawn Depository Account Loan constitutes a portion of Pre-Petition Claim and the Depository Account shall be closed by ABN.

22. Any one or more of the following shall constitute an event of default: (a) the Debtor fails to perform any of its obligations in strict accordance with the terms of this Stipulation or the Final Cash Collateral Order; (b) any postpetition representation or warranty made by any Debtor in any certificate, report or financial statement delivered to ABN is determined by ABN to be false or misleading in any material respect (including by omission of material information necessary to make such representation, warranty or statement not misleading); (c) the Case is converted to a case under chapter 7 of the Code; (d) a trustee is appointed or elected in the Case, or an examiner with the power to operate the Debtor's business is appointed in the Case; (e) Debtor is in default of the Final DIP Order or any agreement with the Junior Lender; (f) the Court grants or authorizes a lien or administrative expense claim with priority senior to the rights of ABN in this proceeding under the Code, except for the Professional Fee Carve Out; or (g) payment, without the consent of Lender, of any pre-petition payments other than those permitted by court order or allowed pursuant to 11 U.S.C. § 503(b)(9). ABN shall have the exclusive right to waive any event of default.

23. Upon a default under this Stipulation by the Debtor and failure to cure the default within three (3) business days following receipt of written notice of default (with a copy of such written notice simultaneously be provided to the Committee), ABN may immediately and at its option and discretion:

- a. Seek expedited relief from the stay pursuant to 11 U.S.C. § 362 on 5 days' notice.

b. Take such other action as may be available at law or in equity.

24. All representations and statements of the Debtor and all factual recitals contained in this Stipulation are true and correct.

25. Nothing herein contained shall: (a) affect or impair ABN's right to seek adequate protection of its interests; (b) be deemed to constitute or constitute a commitment by ABN to continue to make advances to Debtor or to finance Debtor's Chapter 11 proceeding other than as expressly set forth herein; or (c) be deemed to constitute a waiver of any default by Debtor.

Premier Marine, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

American Bank of the North

By: \_\_\_\_\_

Its: \_\_\_\_\_

61663526

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Case No. 17-32006

PREMIER MARINE, INC.,

Chapter 11

Debtor.

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**MEMORANDUM OF LAW**

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This memorandum of law is submitted in support of the Debtor's Motion for Order Authorizing Use of Cash Collateral and Granting Adequate Protection. A hearing has been scheduled on **October 18, 2017 at 10:15 a.m.**

**FACTS**

The factual basis for this memorandum are set forth in the verified Motion and incorporated herein. All capitalized terms not defined herein have the meaning ascribed in the Motion.

**LEGAL ARGUMENT**

11 U.S.C. §363(c)(2) provides that a debtor may use cash collateral only with the consent of each entity that has an interest in such cash collateral, or if the court, after notice and a hearing, authorizes such use. Use of cash collateral must be restricted or conditioned as is necessary to provide adequate protection to any entity that has an interest in the property which the Debtor proposes to use. 11 U.S.C. §363(e). In this case, the Debtor proposes to use cash collateral through January 31, 2018, to the extent necessary to operate the business in the ordinary course according to the Budget attached to the Motion as Exhibit A. As adequate protection, the Debtor proposes

to provide replacement liens and reporting of information to secured parties. The Debtor also proposes to make certain interest and principal payments to secured parties.

The Eighth Circuit Court of Appeals has stated:

In any given case, the bankruptcy court must necessarily (i) establish the value of the secured creditor's interest, (ii) identify the risk to the secured creditor's value resulting from the debtor's request for use of cash collateral, and (iii) determine whether the debtor's adequate protection proposal protects value as nearly as possible against risks to that value consistent with the concept of indubitable equivalence.

*In re Martin*, 761 F.2d 472, 476-77 (8th Cir. 1985). The adequate protection offered by the Debtor satisfies the Bankruptcy Code requirements for adequate protection.

The Debtor has the right to demand turnover of its property in the possession of third parties pursuant to 11 U.S.C. §542. However, any third party with a possessory or other lien in property of the Debtor in the creditor's possession is entitled to adequate protection of its interest. See *United States v. Whiting Pools, Inc.*, 462 U. S. 198, 207 (1983). Failure of a creditor to turnover property of the estate in the face of a demand constitutes a violation of the automatic stay and entitles the Debtor to damages. *See In re Knaus*, 889 F.2d 773, 774 (8<sup>th</sup> Cir. 1989). The Debtor is not required to commence an adversary proceeding or obtain an order prior to being entitled to turnover of property of the estate. *Id.* Finally, the creditor must return the property to the Debtor before seeking adequate protection. *Id.* Notwithstanding the foregoing, the Debtor intends to offer replacement liens to the Vendors as adequate protection to avoid unnecessary litigation and seeks authority, but not the obligation, to grant adequate protection in the form of replacement liens of the same value, priority and validity to any party in possession of property of the estate as adequate

protection and contends that such offer satisfies the requirements of adequate protection required by *Whiting Pools*.

### **CONCLUSION**

The Debtor respectfully requests that an order be entered granting this Motion authorizing the use of cash collateral in accordance with the terms of the Budget attached to the Motion and authorizing the Debtor to grant replacement liens as adequate protection as set forth in the Motion.

Dated: October 4, 2017

RAVICH MEYER KIRKMAN McGRATH  
NAUMAN & TANSEY,  
A PROFESSIONAL ASSOCIATION

By /e/ Michael F. McGrath #168610  
Will R. Tansey #323056

150 S. Fifth Street, Suite 3450  
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Telephone: (612) 332-8511  
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ATTORNEYS FOR DEBTOR



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Case No. 17-32006

PREMIER MARINE, INC.,

Chapter 11

Debtor.

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**UNSWORN CERTIFICATE OF SERVICE**

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I, Michael F. McGrath, declare under penalty of perjury that on October 4, 2017, copies of the attached:

1. Notice of Hearing and Motion for Order Authorizing Use of Cash Collateral and Granting Adequate Protection;
2. Memorandum of Law; and
3. Proposed Order Authorizing Use of Cash Collateral and Granting Adequate Protection;

were served by sending true and correct copies via ECF, e-mail, or U.S. mail to parties on the attached service list.

- Phillip J. Ashfield phillip.ashfield@stinsonleonard.com, jess.rehbein@stinson.com
- Colin M. Bernardino cbernardino@kilpatricktownsend.com, sagreen@kilpatricktownsend.com;mwilliams@kilpatricktownsend.com
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kboucher@gklaw.com;mfuller@gklaw.com;pbrellenthin@gklaw.com

Executed on: October 4, 2017

/e/ Michael F. McGrath, #168610

**PREMIER MARINE, INC.**  
**CASE NO. 17-32006**

**ELECTRONIC**  
LORI J. MELBOSTAD  
PREMIER MARINE, INC.  
26612 FALLBROOK AVENUE  
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INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY OPERATIONS  
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PHILADELPHIA, PA 19101-7346

MN DEPARTMENT OF REVENUE  
COLLECTION DIV BANKRUPTCY SECTION  
551 BANKRUPTCY SECTION  
PO BOX 64447  
ST. PAUL, MN 55164-0447

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DES MOINES, IA 50309

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P.O. BOX 703  
DETROIT LAKES, MN 56502-0703

**ELECTRONIC**  
LIPPERT COMPONENTS, INC.  
C/O JEFFREY P. NOLAN  
PACHULSKI STANG ZIEHL & JONES  
10100 SANTA MONICA BLVD., 13<sup>TH</sup> FL.  
LOS ANGELES, CA 90067

**ELECTRONIC**  
DOWCO, INC. AND DOWCO PLASTICS, LLC  
C/O CARLA O. ANDRES  
GODFREY & KAHN, S.C.  
200 SOUTH WASHINGTON ST., SUITE 100  
GREEN BAY, WI 54301-4298

**ELECTRONIC**  
SAMUEL, SON & CO.  
C/O MICHAEL J. LOMBARDO  
DUKE HOLZMAN PHOTIADIS & GRESENS LLP  
701 SENECA STREET, SUITE 750  
BUFFALO, NY 14210

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re:

Chapter 11 Case

Premier Marine, Inc.,

Case No. 17-32006

Debtor.

---

**ORDER AUTHORIZING USE OF CASH COLLATERAL AND  
GRANTING ADEQUATE PROTECTION**

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On this date came on for consideration the Stipulation for Use of Cash Collateral (the “Stipulation”) by and between American Bank of the North (“ABN” or “Lender”) and Premier Marine, Inc. (the “Debtor” or “Borrower”) regarding the Debtor’s Motion for Order Authorizing Use of Cash (the “Motion”) in the above-captioned Chapter 11 case (the “Bankruptcy Case”) seeking inter alia, pursuant to Sections 105, 361, and 363 of Title 11 of the United States Code (the “Bankruptcy Code”), and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the entry of an order (the “Cash Collateral Order”) for the Debtor to use cash collateral upon the terms set forth in the Stipulation. Except as otherwise defined herein, all capitalized terms have the meaning ascribed to them in the Stipulation.

**THE COURT, AFTER DUE DELIBERATION THEREON, AND FINDING GOOD AND SUFFICIENT CAUSE APPEARING THEREFORE, AND BASED UPON THE STIPULATION BETWEEN THE DEBTOR AND LENDER, THE EVIDENCE PROFFERED AND PRESENTED AT THE HEARING, THE GROUNDS SET FORTH IN THE MOTION, AS SUPPLEMENTED, AND THE ARGUMENTS OF COUNSEL, HEREBY FINDS AND CONCLUDES AS FOLLOWS:**

**I.**

**JURISDICTION**

1. On June 19, 2017 (the “Petition Date”), Debtor filed a voluntary petition for reorganization under the Bankruptcy Code.

2. The Debtor continues to operate its businesses as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On June 27, 2017, the United States Trustee for the District of Minnesota appointed the Official Committee of Unsecured Creditors (the “Committee”).

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. Consideration of this action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**II.**

**LOAN DOCUMENTS**

4. As of the Petition Date, Debtor was indebted to ABN in the principal amount of \$6,491,041.66, accrued but unpaid interest of \$19,437.04, and any and all reasonable fees and other debts and obligations of the Debtor to ABN owing under the Loan Documents and applicable law (the “Prepetition Claims”).

5. The Prepetition Claims are owing to ABN and are fully due and payable according to the Loan Documents.

### III.

#### USE OF CASH COLLATERAL

6. The Debtor is seeking to use cash collateral as set forth in the Stipulation. To the extent any conflict may exist between the Loan Documents and the Stipulation, the Stipulation controls.

7. The Debtor's use of the cash collateral as set forth in the Stipulation is necessary to avoid immediate and irreparable harm to the Debtor, its business and its creditors. Without use of cash collateral, the Debtor will not have the funds necessary to operate its businesses, maintain assets, or pay employees, payroll taxes, insurance, utilities, and other vendors, overhead, lease expenses and other expenses required for the reorganization of the Debtor's business and to maximize the value of the Debtor's estate.

8. Notice of the Motion was adequately served by giving notice thereof to the Office of the United States Trustee, the Committee, each of the lenders listed therein and their counsel where known, the Debtor's known secured creditors, and the Debtor's twenty (20) largest unsecured creditors by facsimile, email and/or first-class mail, postage prepaid. Accordingly, notice was adequate and sufficient under the circumstances, and pursuant to Bankruptcy Rules 4001(b) and 4001(d)(4), no further or other notice is necessary.

9. Lender has indicated a willingness to consent to the Debtor's use of cash collateral, but only under the terms and conditions set forth in the Stipulation. The terms and conditions of the Stipulation and this Cash Collateral Order are a fair and reasonable response to Debtor's request for use of cash collateral.

10. Entry of this Cash Collateral Order approving the agreements contained in the Stipulation will minimize disruption of Debtor as a "going concern," will increase the

possibilities for a successful reorganization, and, therefore, is in the best interests of the estate and its creditors.

11. The agreements and arrangements contained in the Stipulation authorized in this Cash Collateral Order have been negotiated at arms' length with all parties represented by experienced counsel, are fair and reasonable under the circumstances, are enforceable in accordance with their terms and have been entered into in good faith.

Therefore, it is hereby,

**ORDERED, ADJUDGED AND DECREED THAT:**

12. The Stipulation is hereby approved. The Debtor is authorized to enter into, perform and be bound by the Stipulation. The Debtor is authorized to perform its obligations in accordance with the terms of the Stipulation. The Stipulation is approved and shall be and become obligations of the Debtor and its estate upon entry of this Cash Collateral Order.

13. All cash collateral as that term is defined in Section 363(a) of the Bankruptcy Code which constitutes or relates to the Prepetition Collateral or Adequate Protection Collateral that is now in the Debtor's possession, custody or control, or in which the Debtor will obtain an interest during the pendency of this Bankruptcy Case (collectively, the "Cash Collateral"), shall constitute the Cash Collateral of ABN.

14. The Debtor is authorized to use Cash Collateral to the extent: (i) such actual expenditures are reasonable, necessary and incurred in the ordinary course of Debtor's business; and (ii) the type and amount of expenditure is authorized in the Budget, which is attached to the Stipulation as Exhibit B, plus or minus ten percent of any Budget line item. Performance to Budget shall be tested weekly commencing the Budget week ending November 18, 2017 and measure cumulative actual performance for the trailing three weeks to Budgeted performance for

the same period (the “Budget Test”). Notwithstanding the foregoing, the Debtor’s authorization to use Cash Collateral shall expire on February 3, 2018 (unless terminated earlier upon a default), but such expiration date may be extended by a stipulation and an agreed order between the Debtor and ABN.

15. As adequate protection for any use or diminution in the value of ABN’s interests in the Prepetition Collateral, and the Debtor’s use of Cash Collateral, the Debtor is hereby authorized to grant to ABN effective as of the Petition Date, valid and perfected replacement first-priority security interests on all post-petition assets of the Debtor (excluding causes of action arising under Chapter 5 of the Bankruptcy Code) and all products and proceeds thereof (including without limitation claims of the Debtor against loss or damage to such property), including all accessions thereto, substitutions and replacements therefor, and wherever located (collectively, the “Adequate Protection Collateral”).

16. If and to the extent the adequate protection of the interests of ABN in the Prepetition Collateral and/or the Cash Collateral pursuant to the Stipulation proves insufficient, ABN shall have an allowed claim under Section 507(b) of the Bankruptcy Code in the amount of any such insufficiency.

17. All the liens and security interests of ABN in the Adequate Protection Collateral, shall at all times be senior to the rights of Debtor in this proceeding under the Code, except for the amounts funded for the Professional Fee Carve Out (as provided in the Final Order: (I) Regarding Debtor’s Expedited Motion for Post-Petition Financing; and (II) Authorizing Liens and Security Interests Pursuant to 11 U.S.C. § 364(c) (the “Final DIP Order”)), and shall be senior to all liens and security interests of any other lender or party, including any and all liens or security interests granted to Trusek, LLC (the “Junior Lender”) pursuant to the Final DIP Order



or any subsequent order or agreement, except for, if any, Prior Security Interests. In addition, except for the amounts funded for the Professional Fee Carve Out, the administrative claim of ABN shall have priority in all respects over all administrative expenses incurred in this Chapter 11 reorganization proceeding, including any administrative claim granted to the Junior Lender pursuant to the Final DIP Order or any subsequent order or agreement, or of the kind specified in Section 507(b), 507(a)(2) or 503(b) of the Code, whether incurred or arising prior or subsequent to the date of the Petition, the entry of this Cash Collateral Order authorizing Debtor to enter into the Stipulation or a conversion of this case pursuant to Section 1112 of the Code or in any other proceeding related hereto, and whether incurred pursuant to Section 726(b) of the Code or otherwise.

18. The replacement security interests of ABN granted pursuant to the terms of the Stipulation shall not have priority over valid, perfected, enforceable and non-avoidable security interests, if any, that had priority over the interests of ABN in the Prepetition Collateral as of the Petition Date (the “Prior Security Interests”), provided that the foregoing is without prejudice to the rights of the Debtor or any other party in interest, including ABN and Committee, to object to the validity, priority, or extent of such Prior Security Interests, or the allowance of such debts secured thereby, or to institute any action or adversary proceedings with respect thereto.

19. The replacement security interests granted to ABN pursuant to the Stipulation and this Cash Collateral Order shall constitute valid, automatically perfected and unavoidable first-priority security interests, and the Stipulation, the Loan Documents and this Cash Collateral Order shall be sufficient and conclusive evidence of the first-priority, perfection, attachment and validity of all of the security interests upon the Prepetition Collateral, the Cash Collateral and the Adequate Protection Collateral granted to ABN hereunder (collectively, the “Collateral”), and

ABN shall not be required to create, file, record or serve any financing statements, mortgages, notices or other documents which may otherwise be required under federal or state law in any jurisdiction or to take any other action (including, without limitation, the taking of possession) to validate or perfect (a) the security interests granted to ABN in the Stipulation or this Cash Collateral Order, or (b) the adequate protection replacement security interests granted herein to ABN for all purposes.

20. Notwithstanding any other provision, all parties in interest, including the Committee, other than the Debtor and additional parties identified in the Stipulation, shall have until October 16, 2017, which date may be extended by written agreement of the Committee and ABN, to object to the extent, priority, validity, perfection, amount, enforceability or allowability of ABN's security interest in, and liens upon, the Collateral and during that time period no admission by the Debtor of any fact, claim, or defense made herein, if any, shall be binding on such parties. If no objection is made thereto by such date, then without the need for either the actual adjudication by the Court or for the entry of any separate order, ABN's security interests in, and liens upon, the Collateral shall be automatically deemed to be first in priority (except as to Prior Security Interests), valid and enforceable. In the event the Bankruptcy Case converts to Chapter 7 less than sixty (60) days prior to the expiration of October 16, 2017, the Chapter 7 trustee shall have a period of sixty (60) days from the date of appointment to perform the above investigations and object, if appropriate.

21. After October 16, 2017, no portion of the Cash Collateral shall be used to fund fees or expenses incurred by any entity, including the Debtor, any committee of unsecured creditors, any Chapter 11 trustee, any Chapter 7 trustee, or any professionals retained thereby, in objecting to or contesting in any manner, or in raising any defenses to, the validity, extent,

amount, perfection, priority, enforceability or allowability of the Prepetition Claims, the Prepetition Collateral, Adequate Protection Collateral, the Loan Documents, ABN's security interests under the Loan Documents, or any other rights, claims, or interests of ABN.

22. Upon a default under the Stipulation by the Debtor and failure to cure the default within three (3) business days following receipt of written notice of default (with a copy of such written notice simultaneously be provided to the Committee), ABN may immediately and at its option and discretion:

- a. Seek expedited relief from the stay pursuant to 11 U.S.C. § 362 on 5 days' notice, and
- b. Take such other action as may be available at law or in equity.

23. The Debtor is authorized to grant as further adequate protection to ABN and as adequate protection to the Junior Lender, as follows:

- a. As further adequate protection pursuant to the requirements of 11 U.S.C. § 363(e) to ABN, the Debtor will (i) grant replacement liens as previously provided in this Cash Collateral Order; and (ii) make monthly cash payments of interest at the contract rate under the prepetition ABN loan each in the amount of \$29,681.00; and
- b. As adequate protection pursuant to the requirements of 11 U.S.C. § 363(e) to Junior Lender, the Debtor will (i) grant replacement liens in Junior Lender's respective collateral and any replacement liens granted hereunder shall have the same dignity, priority and effect as the lienholder's prepetition interests; and (ii) make monthly cash payments of interest at the contract rate under the prepetition Junior Lender loan each in the amount of \$5,000.00.

24. Except to the extent specifically set forth herein, all objections to the entry of this Cash Collateral Order are hereby overruled.

Dated:

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Katherine A. Constantine  
United States Bankruptcy Judge

61722093