

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:)	
)	Bkcty. 13-22457-JAD
)	
MSI CORPORATION,)	Chapter 11
)	
DEBTOR)	

MSI CORPORATION,)	
)	Doc. # ____
)	
Movant,)	Related Doc. # ____
)	
v.)	Hearing Date:
)	
FIRST COMMONWEALTH BANK,)	Hearing Time:
and THE "M" LINE RAILROAD)	
COMPANY,)	
)	
Respondents.)	
)	

**STIPULATION AND ORDER AUTHORIZING USAGE
OF CASH COLLATERAL**

MSI Corporation, First Commonwealth Bank and The "M" Line Railroad Company, by and through their respective undersigned counsel, hereby file the within stipulation ("Second Cash Collateral Stipulation"), wherein they stipulate and agree as follows:

I. BACKGROUND

1. MSI Corporation ("Debtor") is a Pennsylvania business corporation which commenced this case by filing a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq., on June 7, 2013.

2. The “M” Line Railroad Company (“Railroad Company”) is a non-operational Pennsylvania business corporation which is owned by a principal of Debtor. The Railroad Company is not a debtor.

3. First Commonwealth Bank (“Bank”) is a creditor of the Debtor and is a party in interest in this bankruptcy proceeding.

4. Prior to the commencement of the bankruptcy case, the Bank made a series of loans to, *inter alia*, the Debtor, to wit:

- a. \$1,440,400.00 loan made on or about April 14, 2003;
- b. \$460,000.00 loan made on or about June 16, 2003;
- c. \$2,000,000.00 loan made on or about September 19, 2008;
- d. \$500,000.00 loan made on or about June 14, 2010;
- e. \$1,000,000.00 loan made on or about June 14, 2010; and
- f. \$600,000.00 loan made on or about March 1, 2012.

The above-reference obligations will hereinafter collectively be referred to as the “Loans.”

5. As of the petition date, the Railroad Company was a co-borrower or guarantor in connection with some, but not all, of the Loans.

6. As of June 7, 2013, the Debtor was indebted to the Bank in the aggregate principal and interest balance of \$3,618,694.70 (the “Indebtedness”). The Indebtedness does not include attorneys’ fees and expenses, interest from June 7, 2013, or any other charges which may be due, owing and recoverable under the loan documents.

7. The Loans/Indebtedness are cross-collateralized and secured by, *inter alia*, duly-perfected, first-position liens against all of the Debtor's real estate and business assets, including without limitation, accounts, fixtures, and inventory (the "Collateral").

8. The Loans/Indebtedness are also secured by, *inter alia*, "cash collateral" as that term is defined in § 363(a) of the Bankruptcy Code, including without limitation the revenue generated by the Debtor's operation of its business, which Debtor advises involves specialty metals processing for titanium alloys and other metals (the "Cash Collateral").

9. Under 11 U.S.C. §363(c)(2), the Debtor is, absent permission from the Bank or Order of the Bankruptcy Court, precluded from utilizing the Cash Collateral as that term is defined in 11 U.S.C. §363(a).

10. On July 25, 2013, Debtor and the Bank filed the *Joint Motion to Approve Stipulation Authorizing Usage of Cash Collateral and Request for Expedited Hearing Thereon* (the "Cash Collateral Motion") [Bankr. Dkt. No. 76]. Pursuant to *the Stipulation Authorizing Usage of Cash Collateral* (the "Cash Collateral Stipulation") attached to the Cash Collateral Motion, the Debtor and the Bank agreed to certain terms pursuant to which Debtor was entitled to use Cash Collateral *nunc pro tunc* to the Petition Date through November 1, 2013 (the "Original Term") [Bankr. Dkt. No. 86]. On August 1, 2013, the Court entered an order approving the Cash Collateral Stipulation on an interim basis. The Court entered an order (the "Cash Collateral Order") on August 23, 2013 [Bankr. Dkt. No. 96] approving the Cash Collateral Stipulation on a final basis.

11. On November 1, 2013, the Debtor and the Bank stipulated to the extension of consensual use of cash collateral through November 15, 2013 ("Extension Stipulation"). Since

November 15, 2013, the Debtor and Bank have agreed informally to extend the consensual use of cash collateral in order to finalize this Second Cash Collateral Stipulation.

12. Representatives of the Debtor and the Bank have engaged in ongoing discussions regarding Debtor's usage of the Bank's Cash Collateral to pay ordinary and necessary operating expenses. The parties have reached an agreement pursuant to which the Debtor will be permitted to continue to use the Bank's Cash Collateral, from November 15 through March 1, 2014, subject to the terms and conditions set forth herein.

II. TERMS AND CONDITIONS OF USAGE OF CASH COLLATERAL

13. Term- Subject to the terms and conditions of this Order, the Debtor is authorized to use cash collateral *nunc pro tunc* from November 15, 2013 through March 1, 2014 (the "Term"), pursuant to the terms and conditions of this Order.

14. Cash Collateral to be Used- The Cash Collateral that the Debtor is authorized to use includes without limitation accounts receivable and cash on hand as the same becomes available to the Debtor.

15. Budget- Debtor's usage of Cash Collateral pursuant to this Order is limited to payment of necessary expenses incurred in the ordinary course of the Debtor's business operations. Attached hereto as Exhibit "1" is a detailed operating budget covering the period from November 15, 2013 through March 1, 2014 (the "Budget") that was prepared by the Debtor and its professionals. The Budget represents a projection of revenue and ordinary and necessary operating expenses for the business(s) operated by the Debtor. During the Term of this Order, no advance permission to use Cash Collateral to pay any expenses set forth on the Budget shall be required, provided, however, that during any calendar month the Debtor may not use Cash Collateral in an amount that exceeds 110% of budgeted expenses for that month without the prior

written consent of the Bank, which consent shall not be unreasonably withheld. Furthermore, the inclusion of any expense in the Budget shall not constitute authority to pay any prepetition claim without further Order of Court.

a. The Budget includes a line item for Professional Services, which includes payments to be made to Albert's Capital Services, LLC ("ACS"). The Bank agrees to allow use of its cash collateral to pay the actual and reasonable fees and expenses incurred by ACS in connection with the services it is providing the Debtor up to a cap of \$18,000 per calendar month. ACS shall provide the Bank with its time records detailing the services rendered and expenses incurred on the Monday immediately preceding an upcoming payroll and the Bank shall have until noon on the first Thursday thereafter (3 days later) to object to the reasonableness of any time entries. ACS's time records shall be delivered to the Bank by email to such email address(s) as the Bank may designate in writing. Objections shall be delivered to ACS through Debtor's counsel via email.

i. In the event the Bank objects to any time entries, the Debtor shall pay to Debtor's counsel an amount equal to the asserted value of the disputed time entries to be held in escrow. Counsel for the Debtor shall hold such funds until the Bank and ACS can resolve the disputed time entries or as otherwise ordered by the Bankruptcy Court. If the Bank and ACS are unable to resolve the matter within three (3) business days following the date on which Bank objects, ACS or the Bank may seek resolution of the dispute by filing a motion with the

Bankruptcy Court. Any undisputed amounts can be paid on the same day as the Debtor's payroll is distributed.

ii. In the event that the Bank does not timely object to ACS's time entries, the Bank will be deemed to have waived any such objection and ACS shall be paid on the same day as the Debtor's payroll is distributed.

b. To the extent ACS seeks payment from the Debtor an amount that exceeds \$18,000 in any calendar month, ACS may seek recovery of such excess amount by filing a motion for allowance and payment of an administrative claim and the Bank reserves its right to object to the same.

c. Subsections a. and b. of this Paragraph 13 are meant to dictate the terms pursuant to which the Bank consents to the use of its cash collateral for the payment of ACS and is not intended to supersede any order approving ACS and/or Edward Albert of ACS as the chief restructuring officer of the Debtor. Nothing in this Order should be construed as consent to surcharge the Bank's Collateral or Cash Collateral beyond the agreed-upon terms set forth herein.

16. Payment on Line of Credit. Within three (3) business days of the entry of an order approving this Second Cash Collateral Stipulation becoming a final, non-appealable order, the Debtor shall make a lump-sum payment to the Bank in the amount of \$100,000 (the "LOC Payment"), which the Bank shall apply to the Debtor's overadvanced line of credit (Note Number 89012, hereinafter the "Overadvanced Line of Credit"). Debtor shall make an additional \$25,000 lump-sum payment ("Contingent Supplemental LOC Payment") to the Bank on or before January 20, 2014 if the Debtor does not have the sale of its 1500 ton USI Clearing Press

under agreement and a motion seeking approval of the same filed with the Bankruptcy Court by December 31, 2013. Debtor shall make an additional \$25,000 lump-sum payment (“Supplemental LOC Payment”) to the Bank on account of the Overadvanced Line of Credit on March 1, 2014, provided, however, that the Debtor’s ending cash balance on February 28, 2014 is no less than \$250,000. Both the Supplemental LOC Payment and the Contingent Supplemental LOC Payment shall be applied to the Debtor’s Overadvanced Line of Credit. Bank shall cooperate in good faith with the Debtor’s efforts to secure exit financing, which may include, without limitation, the Bank making available to prospective lenders its appraisals of the Debtor’s assets (including real estate) (“Bank’s Appraisals”) as follows:

- a. Upon payment by Debtor for the amount paid by the Bank for the real estate appraisal, the Bank shall make available Bank’s Appraisals to each prospective lender that executes a Letter Agreement Regarding Confidentiality, a form of which is attached hereto as Exhibit “2.” There shall be no need for prospective lenders to execute separate confidentiality agreements with the Bank to have access to Bank’s Appraisals.

17. Monthly Interest Payments – The Debtor shall make monthly payments to the Bank in the amount needed to make non-default, pre-petition interest only payments (each a “Monthly Interest Payment” and collectively, the “Monthly Interest Payments”). As of October 24, 2013, the aggregate *per diem* interest on the Loans totaled \$516.01, and therefore, assuming a 30-day month, the amount of each Monthly Interest Payment will be \$15,480.30. The precise amount of the Monthly Interest Payment will be subject to change depending on the number of days that have elapsed between Monthly Interest Payments and/or in the event the principal balance owed is reduced. The first Monthly Interest Payment due under this Second Cash

Collateral Stipulation shall be due on or before December 12, 2013 and shall be paid on or before the 12th of each month thereafter during the Term, unless the 12th of the month falls on a weekend or Federal holiday, in which case the Monthly Interest Payment shall be due on the next business day. It is understood and agreed that, in the event usage of Cash Collateral is terminated or not extended beyond the Term, for any reason, both the Debtor and the Bank reserve their respective rights with respect to continued use of cash collateral, including, without limitation, the extent of adequate protection and the prohibition of use of cash collateral.

18. Principal Payments- Commencing December 12, 2013, the Debtor shall make a payment to the Bank in the amount of \$10,000 per month (each a "Monthly Principal Payment" and collectively, the "Monthly Principal Payments"). Provided interest remains current, Monthly Principal Payments, shall be applied to the principal amount due on the Loans. Monthly Principal Payments shall be made on the same terms as the Monthly Interest Payments. Payment of the Monthly Principal Payments shall be in addition to any other payments the Debtor is required to make to the Bank pursuant to the terms hereof.

19. Application of Payments- Except as otherwise provided in this Second Cash Collateral Stipulation, the Bank shall apply all payments received pursuant to this Second Cash Collateral Stipulation to the Indebtedness as the same may be in the best interests of the Bank, as determined by the Bank, provided, however, that Monthly Principal Payments shall be allocated to the principal of the Indebtedness, assuming interest remains current, and provided further that if interest remains current the Bank shall apply the Monthly Principal Payments first to the Overadvanced Line of Credit, until the Overadvanced Line of Credit is no longer overadvanced, and thereafter to the oldest Indebtedness.

20. Payment Remittance- Payment shall be sent by First Class U.S. Mail, postage

prepaid, to: Mr. H. Clayton Soles, Vice President, First Commonwealth Bank, 654 Philadelphia Street, P.O. Box 400, Indiana, PA 15701, or Debtor shall authorize the Bank to debit the Debtor's debtor in possession account(s) to be maintained at the Bank on or in advance of the due dates. All payments to be made pursuant to this Order must be actually received by the Bank by the respective due dates.

21. Adequate Protection Payments to Others- During the term of this Order, the Debtor shall not make any adequate protection payments to any other secured creditors, if any, without the prior written consent of the Bank. Notwithstanding the foregoing, Debtor shall be authorized to make monthly payments to Wells Fargo Equipment Finance, Inc. ("Wells Fargo"), in the amount of \$4,063.00 per month, as reflected on the Budget. Additionally, Debtor shall be authorized to make one additional "catch-up" payment in the amount of \$4,063.00 to Wells Fargo during the week of November 29, 2013.

22. Adherence to Projections- It is understood that the Budget is a projection, and actual revenue and/or expenses may vary from the Budget. However, the Debtor understands and agrees that the Bank's willingness to permit usage of its Cash Collateral pursuant to the terms of this Order is based on the Bank's good faith reliance on the Budget and its accuracy. As such, as a further condition to usage of Cash Collateral, the Debtor's actual collected revenue (as reflected on bi-weekly informational reports described below) for each four-week period must be equal to at least seventy-five percent (75%) of the Debtor's projections as set forth in the Budget for that four-week period (the "Minimum Revenue"). For purposes of clarity, the Minimum Revenue is identified on the Budget as "Total Cash Inflows."

23. DIP Accounts- Debtor shall maintain all post-petition and debtor in possession bank accounts with the Bank, unless otherwise approved by the Bank in writing. Furthermore,

the Debtor shall immediately close any and all other bank accounts that it may have and deposit the entirety of the remaining balances in said account(s) into its debtor in possession accounts to be maintained at the Bank. MSI's customers shall continue to make payments to a "lockbox" account (the "Lockbox") controlled by the Bank. During the Term of this Order the Bank shall sweep the funds held in the Lockbox into the Debtor's Operating Account consistent with the parties' pre-petition practice,¹ which Debtor shall have authority to use to pay its trade vendors and other payables subject to the terms and conditions hereof. Additionally, Debtor shall have the right to transfer funds to its payroll account and/or escrow tax account and pay obligations from those accounts in the ordinary course of Debtor's business and in accordance with the Budget.

24. Inspection Rights- Debtor shall permit representatives of the Bank to inspect all accounting and financial records of Debtor from time to time during normal business hours upon reasonable advance written notice to Debtor and its counsel. As used herein, "reasonable advance notice" shall be no less than 24 hours.

25. Bi-Weekly Informational Reports- The Debtor shall submit written bi-weekly informational reports to the Bank. These bi-weekly reports shall include, at a minimum, the following:

- a. Actual revenue collected;
- b. Itemized list of expenses paid;
- c. Certification that no unauthorized payments were made on account of a prepetition claim owed an unsecured creditor;
- d. Itemized list of accounts receivable (with aging summary);

¹ Notwithstanding the foregoing, the Bank shall be required to sweep the funds from the Lockbox to the Debtor's Operating Account no less than every other business day.

- e. Post-petition accounts payable (with aging summary); and
- f. Total cash.

Additionally, the Debtor or its counsel shall also provide such additional financial or other information concerning the acts, conduct, property, assets, liabilities, operations and financial condition and transactions of the Debtor, or concerning any matter that may affect the administration of the Debtor's estate, as the Bank may reasonably request from time to time. Reports shall be due in accordance with the existing Cash Collateral Stipulation, except that the parties have agreed that the reports are due by 4:00 PM on every other Wednesday and cover the prior two-week period.

The Debtor understands and agrees that the Bank is relying on the accuracy of these bi-weekly informational reports to monitor the Debtor's financial performance in this bankruptcy case, to ensure that the value of the Collateral and the Cash Collateral is not dissipating, and to monitor the Debtor's usage of Cash Collateral.

26. Default and Cure Provisions- In the event the Debtor fails to strictly comply with any of the terms of this Second Cash Collateral Stipulation, the Bank may give written notice of default to the Debtor and its undersigned bankruptcy counsel. Written notice shall be by email addressed to Debtor at hwm@msicorporation, brendam@msicorporation and albertscapital@me.com, with copy (also by email) to the Debtor's undersigned bankruptcy counsel. If Debtor fails to cure any default(s) within three (3) business days following receipt of the notice, Debtor's authority to use Cash Collateral pursuant to this Order will be terminated immediately and without further notice or hearing, unless the Court authorizes usage of cash collateral by separate Order, or the Bank consents, in writing, to continued usage

notwithstanding the default. Notice shall be deemed “received” on the date the notice is transmitted via email if the notice is transmitted before 5:00 p.m. Prevailing Eastern Time. Any notice(s) emailed after 5:00 p.m. Prevailing Eastern Time shall be considered received the following day.

Except as otherwise provided in this Second Cash Collateral Stipulation, all of the rights granted to the Bank hereunder, including without limitation the Replacement Liens (as hereinafter defined), shall remain in full force and effect notwithstanding the expiration or termination of Debtor’s authorization to utilize the Cash Collateral.

27. Replacement Liens- As additional adequate protection for the Bank’s interest in the Cash Collateral, the Bank is hereby granted security interests (“Replacement Liens”) in all of the personal property assets of the Debtor which are or have been acquired, generated, or received by Debtor subsequent to the filing of the above-captioned bankruptcy case, including without limitation all of Debtor’s accounts, chattel paper, deposit accounts, contract rights, documents, equipment, fixtures, general intangibles, goods, instruments, inventory, leasehold improvements, machinery, receivables, and all cash and non-cash proceeds thereof to the extent of the diminution of the value of the Bank’s collateral securing the Indebtedness. The Replacement Liens shall have the same validity, priority and extent (if any) as the lien(s) on Cash Collateral that existed at the time of the commencement of the above-captioned bankruptcy case. The Replacement Liens granted in this Order are deemed perfected without the necessity for filing or execution of documents which might otherwise be required under non-bankruptcy law for the perfection of said security interests. Such security interests and perfection shall be binding upon any subsequently appointed trustee either in Chapter 11 or any other Chapter of the Bankruptcy Code and upon all creditors of the Debtor who have extended or who may hereafter

extend credit to it. Not included among said personal property assets is the Debtor's or the estate's interest in any claim(s) under Chapter 5 of the United States Bankruptcy Code that have not been waived pursuant to this Order.

28. Sales of Non-Essential Equipment- Among the assets of the estate are certain items of equipment that the Debtor has deemed unnecessary to its business operations ("Non-Essential Equipment"). A confidential list of the Non-Essential Equipment has been provided to the Bank. The Non-Essential Equipment is encumbered by the Bank's liens and subject to its security interest. As additional adequate protection for the Bank's interest in the Cash Collateral, the Debtor shall use its best efforts to market and sell Non-Essential Equipment, such best efforts to include, at a minimum, the following:

- a. The Debtor and the Bank have agreed upon certain equipment brokers which the Court has authorized the Debtor to employ for the purpose of marketing the Non-Essential Equipment for sale. The Bank's representatives shall be authorized and permitted to make reasonable requests for information to any such professional concerning the status of marketing efforts, offers received, showings, and related matters as the Bank may deem reasonably necessary; and
- b. Upon receipt of an irrevocable offer in an Acceptable Amount (as hereinafter defined) to both the Debtor and the Bank for the purchase of any item(s) of Non-Essential Equipment, within ten (10) days from the date both the Debtor and Bank agree to accept the offer, Debtor shall file a motion seeking authority of the Court pursuant to section 363 of the Bankruptcy Code to sell the agreed upon piece(s) of Non-Essential Equipment, with any such sale to be subject to higher and better offers.

For purposes of this Stipulation, an "Acceptable Amount" shall be an amount agreed upon in writing by and between the Bank and the Debtor, the parameters of which shall be established in confidence by those parties in consultation with the equipment broker or similar professional to be retained as set forth above. The parties shall confer in good faith and agree on the precise dollar amounts on or before December 1, 2013. The precise dollar amounts are and shall remain

confidential as between the parties. The Debtor, with the Bank's consent, may agree to accept an offer in an amount less than an Acceptable Amount. The Bank, in its sole discretion, shall be entitled to "credit bid" its claims in any such sale.

29. Allocation of Net Proceeds of Sale – Ninety percent (90%) of all net proceeds of sale of any piece(s) of Non-Essential Equipment shall be paid to the Bank immediately at closing on such sale(s) and applied to the principal of the Indebtedness (if the Debtor is current on interest). The payment to the Bank of its portion of the net proceeds from such sales shall be in addition to the Monthly Interest Payments and the Monthly Principal Payments – not in lieu of said payments. Ten percent (10%) of all net proceeds of sale of any pieces of Non-Essential Equipment shall be paid to the Debtor, care of the Debtor's bankruptcy counsel, and such funds shall be treated as a Carveout (defined below) for the Debtor's professionals (notwithstanding any other provision of this Stipulation). Carveout proceeds shall be held in escrow pending the filing of a proper fee application with the Bankruptcy Court, notice to the Bank and an opportunity to be heard, and an Order of Court approving the requested fees/expenses and authorizing payment of the same. In the event the Bank is the winning bidder on any piece of Non-Essential Equipment by virtue of a credit bid, the Bank shall be under no obligation to fund any Carveout in connection with the sale of that piece of Non-Essential Equipment (provided the Bank does not subsequently sell the equipment to those participating in the auction of the same). Nothing herein shall bar estate professionals from seeking, or the Bank approving, additional Carveout for the payment of professional fees in this case nor shall this be construed as a waiver of any surcharge right the Debtor might have under 11 U.S.C. §506. Nothing herein shall bar the Bank from opposing any request for any additional Carveout, or be construed as consent to surcharge the Bank's Collateral and/or Cash Collateral under 11 U.S.C. § 506 or otherwise.

30. Railroad Company Guaranty- As additional adequate protection for the Bank's interest in the Cash Collateral, the Railroad Company shall guaranty all of the Debtor's obligations in connection with the Indebtedness and the Loans, and shall execute such agreements as the Bank may require to document such guaranties.

31. Carve-Out – Subject to the terms and conditions hereof, Debtor's professionals shall be entitled to a "carveout" (the "Carveout") for fees and expenses reasonably incurred in connection with the Debtor's bankruptcy case. The Carveout shall be funded during the Term, by the ten percent (10%) of net proceeds from the sale of Non-Essential Equipment, as explained above, plus \$75,000.00 to be paid by the Debtor to Debtor's counsel on or before December 31, 2013 (after court approval, as discussed below), or such other amount set forth in the Budget as agreed upon by the Debtor and the Bank. The Carveout with respect to each professional shall not be used to pay any fees or expenses incurred by any entity, including the Debtor and any of its employees, agents, and/or professionals, in connection with any litigation, claims or causes of action against the Bank; provided, however, that the Carveout may be used to pay fees or expenses incurred by Debtor's professionals in connection with cash collateral negotiations. Notwithstanding anything contained herein, any professional seeking compensation from the Debtor (or the bankruptcy estate), through the Carveout or otherwise, shall file an application with the Court that complies with all applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, applicable Local Rules, and any applicable Order of Court. The Bank shall have the right and an opportunity to object to any application(s) filed by any professional seeking approval of compensation from the Debtor (or estate) and nothing contained herein shall be deemed a waiver of those rights. Nothing herein shall bar estate professionals from seeking, or the Bank approving, additional Carveout for the payment of professional fees in

this case. Nothing herein shall bar the Bank from opposing any request for any additional Carveout, or be construed as consent to surcharge the Bank's Collateral and/or Cash Collateral under 11 U.S.C. § 506 or otherwise.

32. Post-Petition Interest and Other Charges- All parties reserve their rights to raise, at the appropriate time, issues relating to the accrual of post-petition interest and other charges as provided for under 11 U.S.C. § 506(b).

33. Validity of Liens, Acknowledgment of Debt, and Waiver of Claims- The Debtor acknowledges that:

- a) it was indebted to the Bank in connection with the Indebtedness arising from the Loans as of June 7, 2013 in the aggregate principal and interest sum of \$3,618,694.70 (excluding interest from June 7, 2013, attorneys' fees and costs, and all other amounts due and owing under the terms of the loan documents);
- b) the Indebtedness, the Loans, and all of the associated loan documents are valid, binding, and enforceable;
- c) the Bank is under no obligation to make any further or additional advances to the Debtor (or any other person or entity) in connection with the Loans; and
- d) the Indebtedness is secured by valid, binding, first-position, perfected, enforceable and unavoidable (under Chapter 5 of the Bankruptcy Code or otherwise) pre-petition liens against the Collateral and the Cash Collateral.

The Debtor further agrees that the balances owed the Bank in connection with the Indebtedness are secured claims, and Debtor hereby waives any challenge to the Indebtedness, Loans, loan documents, and liens against the Collateral and/or the Cash Collateral. Debtor further agrees that it will not attempt to reduce the balances owed in connection with the Indebtedness/Loans or reclassify/recharacterize/bifurcate all or any portion of the Indebtedness associated with the Indebtedness as an unsecured claim(s), or attempt to avoid or invalidate any

of the liens against the Collateral and/or Cash Collateral which secure repayment of the Indebtedness, pursuant to 11 U.S.C. § 506(d) or otherwise. The Debtor further agrees that it will not attempt to avoid any of the Bank's liens, or recover any pre-petition transfers it may have made to the Bank, pursuant to 11 U.S.C. § 547, 548, or otherwise. This acknowledgment is binding on all creditors, subsequent chapter 11 or 7 trustees, and any official committee of unsecured creditors that may be appointed. Nothing herein shall be deemed as a waiver of any other right of the Debtor or its estate under the remaining subsections of 11 U.S.C. § 506.

With the exception of the right to enforce this Second Cash Collateral Stipulation, the Debtor and the bankruptcy estate shall and shall be deemed to have forever released, discharged, settled and deemed compromised any and all claims, of any kind or nature whatsoever, whether at law, in equity, or otherwise, known or unknown, that the bankruptcy estate and/or the Debtor have or may have against the Bank that arose from the beginning of time to the date hereof, including but not limited to any claims arising under the United States Bankruptcy Code.

34. Expiration- The Debtor's authority to use Cash Collateral pursuant to this Order of Court shall expire at the end of the day on March 1, 2013, unless extended by stipulation of the parties or further Order of Court.

35. Extension- The term of this Second Cash Collateral Stipulation may be extended by the Debtor and the Bank on the same terms and conditions set forth herein beyond the expiration of this Second Cash Collateral Stipulation without further Order of Court by the filing of a stipulation executed by their respective counsel specifying the term of the extension agreed upon.

36. Insurance- The Debtor shall continue to maintain, with financially sound and reputable insurance companies, insurance of the kind covering the Collateral and/or the Cash

Collateral in accordance with the loan documents, as the same may be acceptable to the Bank and the Office of the United States Trustee.

37. Maintenance and Preservation of Collateral- The Debtor shall make any and all payments necessary to keep the Collateral and/or Cash Collateral in good repair and condition and not permit or commit any waste thereof. To the extent said expenses are not accounted for in the Budget, the Debtor shall seek prior approval of the Bank regarding payment of the same.

38. Timely Payment of Lienable Charges- Any and all real estate tax obligations associated with the Collateral/Cash Collateral shall be paid on or before the last date when such obligations may be paid at “face” value. Any and all other lienable obligations, including without limitation water and sewer charges, shall also be paid as the same become due.

39. Reservation of Rights- The Debtor and the Bank fully reserve all of their respective rights and interests unless explicitly waived herein. Nothing herein, including, without limitation, a breach, default or other termination of this Second Cash Collateral Stipulation, shall be deemed to prohibit or preclude the Debtor from seeking an order from the Court authorizing a non-consensual use of the Cash Collateral, and the Bank reserves all of its rights to seek an Order from the Court to prohibit usage of Cash Collateral and/or to oppose any request by the Debtor to use the Cash Collateral without the Bank’s consent.

40. Stipulation is Binding: Upon approval by the Court, the terms of this Second Cash Collateral Stipulation are binding upon all creditors and parties in interest, including without limitation any trustee who may be appointed (under any Chapter of the Bankruptcy Code), and any appointment of any committee of unsecured creditors or any other committee. The terms of this Second Cash Collateral Stipulation shall survive any conversion or dismissal of the Debtor’s bankruptcy case.

41. TIME IS OF THE ESSENCE- TIME IS OF THE ESSENCE WITH RESPECT
TO ALL OF THE DEBTOR'S DUTIES AND OBLIGATIONS UNDER THIS AGREEMENT.

STIPULATED AND AGREED TO THIS 21st DAY OF NOVEMBER 2013, BY:

<p>McGuireWoods LLP</p> <p>By: <u>/s/ Michael J. Roeschenthaler</u> Michael J. Roeschenthaler, Esquire Pa. ID. # 87647 Scott E. Schuster, Esquire Pa. ID. # 203766 625 Liberty Avenue 23rd Floor Pittsburgh, PA 15222 Telephone: Facsimile: mroeschenthaler@mcguirewoods.com sschuster@mcguirewoods.com Counsel for Debtor</p>	<p>McGRATH McCALL, P.C.</p> <p>By: <u>/s/ Justin L. McCall</u> Justin L. McCall, Esquire Pa. ID. # 90909 Roger P. Poorman, Esquire Pa. ID. # 206562 Three Gateway Center, Suite 1375 401 Liberty Avenue Pittsburgh, Pennsylvania 15222 Telephone 412-281-4333 Facsimile 412-281-2141 jmccall@lenderlaw.com rpoorman@lenderlaw.com Counsel for First Commonwealth Bank</p>
<p>THE "M" LINE RAILROAD COMPANY</p> <p>By: <u>/s/ Henry W. McLaughlin, III</u> Henry W. McLaughlin, III President</p>	

AND APPROVED BY THE COURT

THIS ____ DAY OF _____, 201__:

JEFFERY A. DELLER, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA