

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF MISSISSIPPI
 GULFPORT DIVISION

IN RE:	§	CASE NO. 17-51243
	§	
NATIONAL TRUCK FUNDING, LLC, <i>et al.</i> , ¹	§	CHAPTER 11
	§	
DEBTOR.	§	
	§	

**MOTION FOR INTERIM AND FINAL APPROVAL AND AUTHORIZATION
 OF DEBTOR TO EXECUTE DIP LOAN TERM SHEET AND INCUR
 POST-PETITION SECURED INDEBTEDNESS AND DEBTOR-IN-POSSESSION
 FINANCING WITH POWER LAND, L.L.C., GRANTING SECURITY AND
 ADMINISTRATIVE PRIORITY, MODIFYING THE AUTOMATIC
 STAY, AUTHORIZING EXECUTION OF NECESSARY LOAN
DOCUMENTS, AND TO SET A FINAL HEARING REGARDING SAME**

NOW INTO COURT, through undersigned counsel comes, National Truck Funding, LLC (“*Debtor*”), and pursuant to 11 U.S.C. § 105 and 364(c) of Title 11 of the United States Code (the “*Bankruptcy Code*”) and Rules 2002, 4001(c) and (d), and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), hereby moves for the entry of (1) an Interim Debtor-in-Possession Financing Order (“*Interim Order*”) approving and authorizing the Debtor to (a) execute DIP Loan Term Sheet attached hereto and incorporated herein as Exhibit A (“*DIP Loan Term Sheet*”), (b) incur post-petition secured indebtedness with Power Land, L.L.C. (“*Power Land*”) in the initial interim amount of \$500,000 (“*Interim DIP Loan Amount*”) on the terms described herein below and in the DIP Loan Term Sheet, (c) granting Power Land security interests in certain assets of the Debtor and administrative priority claims pursuant to Section 364(c) and (d) of the Bankruptcy Code, and (d) approving the DIP Breakup Fee (as defined herein below); and (2) a Final Debtor-in-Possession Financing Order (“*Final Order*”) (a)

¹ The last four digits of the taxpayer identification numbers for each of the Debtors are: (i) National Truck Funding, LLC (1371); and (ii) American Truck Group, LLC (1315). The address of the Debtors for notice purposes is: 9140 Canal Road, Ste. 100, Gulfport, MS 39503.

approving and authorizing the Debtor to incur post-petition secured indebtedness with Power Land in the total principal amount of \$1,500,000.00 including the Interim DIP Loan Amount (the “*DIP Loan*”) on the terms and conditions set forth herein below and in the DIP Loan Term Sheet, and (b) granting Power Land security interests in certain assets of the Debtor and administrative priority claims pursuant to Section 364(c) and (d) of the Bankruptcy Code. In support of this Motion, the Debtor respectfully submits as follows:

1. On June 25, 2017, the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. The Debtor has an immediate need for the initial draw of the Interim DIP Loan Amount to be effective within the next few weeks to provide a line of credit for the purchase of class 8 trucks with Lender approval and only in accordance with the Budget (as defined in the DIP Loan Term Sheet), and specifically limited by a Sources and Uses Budget (as defined in the DIP Loan Term Sheet).

3. Specifically, the Debtor is incurring ongoing and increasing expenses repairing older trucks in its fleet and the Debtor has immediate need for the Interim DIP Loan Amount to obtain new class 8 trucks to replace portions of the Debtor’s existing fleet and thereby reduce repair costs incurred by the Debtor.

4. Power Land is willing to make the DIP Loan to the Debtor in the principal amount of up to \$1,500,000.00 on the terms and conditions set forth in the DIP Loan Term Sheet, and subject to executed loan documents, in order to fund the Debtor’s purchase of new class 8 trucks including the initial draw of the Interim DIP Loan Amount.

5. Approval of this Motion and the DIP Loan Term Sheet will create certain obligations by the Debtor to Power Land including, without limitation, the payment of Power Land's costs, fees, and expenses associated with the DIP Loan including reasonable attorneys' fees. Additionally, the proposed DIP Loan is conditioned upon approval of certain other terms and conditions set forth in the proposed Interim DIP Financing Order and Final DIP Financing Order approving same.

6. The proposed Interim DIP Financing Order (a form of which is attached hereto and incorporated herein as Exhibit B) provides that if the Debtor closes any alternative DIP financing transaction, Power Land will be paid a DIP Breakup Fee in the amount of four percent (4%) of the DIP Loan Amount as well as certain reasonable expenses and attorneys' fees.

7. The proposed Interim DIP Financing Order and Final DIP Financing Order (a form of which is attached hereto and incorporated herein as Exhibit C) (the Interim DIP Financing Order and Final DIP Financing Order together, the "*DIP Financing Orders*") also provide, *inter alia*, that the DIP Loan will be on a secured basis, with a first priority and priming security interest and lien in and on all assets of the Debtor, including newly purchased truck collateral but excluding the existing truck collateral.² Additionally, the proposed DIP Financing Orders provide that Power Land will be granted an administrative superpriority pursuant to Section 364(c)(1) of the Bankruptcy Code and secured by a super-priority first lien on all now-owned or hereinafter acquired assets and property of the Debtor's estate pursuant to Sections 362(c)(2), (c)(3), and 364(d) of the Bankruptcy Code excluding the existing truck collateral

² The "existing truck collateral" does not include the rental agreements of the Debtor or any proceeds therefrom and those rental agreements are intended by the Debtor and Power Land to be collateral for the DIP Loan. Therefore, the relief sought herein is contingent upon a favorable ruling of this Court with respect to the pending Motion for Partial Summary Judgment in Adversary Case No. 17-06049 at Docket # 7 with respect to the issue of the enforceability of asserted security interests in the rental agreements of the Debtor. Therefore, the Debtor reserves the right to seek a continuance of any hearing on this motion pending the ruling of this Court on that issue.

against which third parties claim a security interest. Finally, the proposed DIP Financing Orders provide pursuant to Sections 362 and 364(e) of the Bankruptcy Code that all such senior and priming liens and claims granted to Power Land for any and all monies actually advanced by Power Land will remain effective even if those Orders are subsequently vacated, modified, or set aside, and provide for the lifting of the automatic stay.

8. The DIP Loan (and all accrued and unpaid interest thereon) will become due and payable upon the earlier of (i) March 15, 2017; (ii) the confirmation of the Debtor's Plan of Reorganization with such period being extendable by the Power Land in writing at its reasonable discretion; (iii) upon the appointment of a chapter 11 Trustee, (iv) conversion to Chapter 7; or (v) the occurrence of an Event of Default not cured within the applicable cure period.

9. Good cause exists for (i) approval and granting of authority to execute the DIP Loan Term Sheet; and (ii) entry of the proposed DIP Financing Orders. The DIP Loan will enable the Debtor to increase revenues from its fleet by reducing repair costs associated with older trucks in its fleet and to successfully confirm and consummate the proposed plan of reorganization.

10. The DIP Loan Term Sheet and proposed DIP Financing Orders have been negotiated in good faith and at arm's length between the Debtor and Power Land. The Debtor believes in the exercise of its business judgment that approval of the DIP Loan Term Sheet and the DIP Loan is in the best interests of the Debtor, its estate, and all creditors of its estate insofar as it will aid the Debtor in obtaining sufficient funds to pay expenses, make capital improvements, and otherwise successfully reorganize.

11. Finally, it is also imperative that the Debtor be able to execute necessary loan documents and obtain the DIP Loan proceeds as soon as possible, and the Debtor requests that

the Orders granting the authority requested herein not be subject to any stay pursuant to Rule 6004(h).

WHEREFORE, the Debtor respectfully requests that this Court (a) enter the Interim DIP Loan Order in the substantial form of that attached as Exhibit B (i) approving and authorizing the Debtor on an interim basis execute the DIP Loan Term Sheet and any necessary loan documents associated with the DIP Loan to incur post-petition secured indebtedness with Power Land, L.L.C. and receive the initial draw in the Interim DIP Loan Amount, (ii) granting Power Land, L.L.C. security interests in certain assets of the Debtor pursuant to Section 364(d)(1) of the Bankruptcy Code and an administrative priority pursuant to Section 364(c) of the bankruptcy Code securing the Interim DIP Loan Amount, and (iii) finding that the stay pursuant to Rule 6004(h) is inapplicable, and (iv) scheduling a final hearing on this Motion; and after the final hearing on this Motion (b) enter the Final DIP Loan Order approving and authorizing the Debtor on a final basis to execute any necessary loan documents associated with the DIP Loan and to incur post-petition secured indebtedness with Power Land, L.L.C. in the total principal amount of \$1,500,000.00 on the terms and conditions set forth in the DIP Loan Term Sheet; (ii) granting Power Land, L.L.C. security interests in certain assets of the Debtor pursuant to Section 364(d)(1) of the Bankruptcy Code and an administrative priority pursuant to Section 364(c) of the Bankruptcy Code; (iii) finding that the stay pursuant to Rule 6004(h) is inapplicable; and (c) grant to the Debtor such other and further relief as the Court deems just and proper.

Respectfully submitted,

LUGENBUHL, WHEATON, PECK,
RANKIN & HUBBARD

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Motion has been served upon the parties that receive electronic notice via the Court's CM/ECF system and those parties listed on the attached Master Service List via first class mail on this 19th day of December 2017.

/s/ Christopher T. Caplinger