

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

IN RE:

DYNAMIC CONSTRUCTION SERVICES, INC.,

Debtor(s).

Chapter 11

Case No. 17-50566

**MOTION PURSUANT TO 11 U.S.C. §364(c) FOR AUTHORITY TO ENTER INTO
INSURANCE PREMIUM FINANCE AGREEMENT WITH IPFS CORPORATION**

Dynamic Construction Services, Inc. (the “Debtor”) hereby moves, pursuant to 11 U.S.C. §364(c) and Fed.R. Bankr. P. 4001(c) for authority (a) to enter into a Premium Finance Agreement (the “Agreement”) with IPFS Corporation, (“IPFS”) and (b) to grant IPFS a first-priority lien and security interest in all unearned or return premiums and dividends which may become payable under the policies identified in the Agreement, and a lien and security interest in loss payments which reduce the unearned premiums subject only to any mortgagee or loss payee interests, and further requests that any deficiency claim of IPFS remaining in the event that IPFS must proceed against its collateral be afforded administrative expense priority under 11 U.S.C. §364(c)(1). In support of its Motion, the Debtor states as follows:

1. The Debtor commenced this case by the filing of a voluntary petition under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§101 et seq., on June 2, 2017. The Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to 11 U.S.C. §§1107 and 1108.

2. In the ordinary course of business, the Debtor must maintain various insurance policies. The Debtor is, however, unable to pay in the ordinary course of business pursuant to 11 U.S.C. §364(a) the premiums for the insurance policies identified in the Agreement, and has

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been unable, after reasonable efforts, to obtain unsecured credit for such payment pursuant to 11 U.S.C. §364(b).

3. The Debtor has engaged in discussions with various companies in the business of providing insurance premium financing, and has determined that IPFS offers the most advantageous terms for such financing. A copy of the Debtor's proposed Agreement with IPFS is attached hereto as **Exhibit A**.

4. The insurance policies identified in the Agreement are crucial to the operation of the Debtor's business. Thus, the relief sought herein is in the best interest of the estate and its creditors.

5. The Agreement would require the Debtor to make a down payment to IPFS in the amount of \$6,395.95, and to make monthly payments in the amount of \$2,663.18 each over a term of ten (10) months. The annual percentage rate is 8.84% and the total amount financed under the Agreement is \$26,631.80.

6. The Agreement grants IPFS a lien and security interest in any and all unearned or return premiums and dividends which may become payable under the policies identified in the Agreement. This property is not otherwise subject to a lien. The Debtor requests, and the proposed order submitted herewith (the "Order) provides, that IPFS' lien and security interest in such premiums and dividends shall be senior to the rights of the Debtor's estate in this or any subsequent proceeding under the Bankruptcy Code and to the rights of any person claiming a lien or security interest in any assets of the Debtor.

7. The Agreement also assigns to IPFS as security any loss payments under the policies which reduce the unearned premiums. The Debtor requests that IPFS' lien and security interest in such payments shall be senior to the rights of the debtor's estate in this or any subsequent

proceedings under the Bankruptcy Code, but shall be subject to the interest of any mortgagees or other payees.

8. The Debtor requests, and the Order provides, that IPFS' liens and security interests shall be deemed duly perfected without further action by IPFS.

9. In the event of a default by the Debtor in making the monthly payments under the Agreement, but subject to a 10-day notice and cure period, the Agreement allows IPFS to cancel the insurance policies identified in the Agreement and apply to the Debtor's account the unearned or return premiums and dividends and, subject to the rights of mortgagees or other loss payees, any loss payments which reduce the unearned premiums. The Debtor requests that IPFS may exercise its rights under the Agreement in the event of such default without moving for relief from the automatic stay of 11 U.S.C. §362 and without further order of this Court.

10. The Debtor also requests that any sums that remain due after IPFS has exercised its rights after default shall be deemed an administrative expense of this estate, entitled to priority over any and all administrative expenses of the kind specified in 11 U.S.C. §503(b) or 507(b), pursuant to 11 U.S.C. §364(c)(1), whether incurred in Debtor's Chapter 11 case or after conversion of the case to a case under Chapter 7 of the Bankruptcy Code.

11. On October 5, 2017, the Debtor served copies of this Motion, the proposed Order, and the Agreement, together with notice of the hearing thereon, on counsel to the Official Committee of Unsecured Creditors, the Office of the United States Trustee, all parties who have filed appearances and requests for notice in this Chapter 11 case, and all mortgagees and loss payees under the policies identified in the Agreement, all pursuant to Fed.R.Bankr.P. 4001(c).

12. IPFS is extending financing under the Agreement in good faith within the meaning of 11 U.S.C. §364(e).

WHEREFORE, the Debtor prays that the Court, after a hearing, enter the Order, and grant such other and further relief as may appear just.

Date: October 5, 2017

Respectfully submitted,

DYNAMIC CONSTRUCTION SERVICES, INC.

By: /s/ Andrew S. Goldstein
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CERTIFICATE OF SERVICE

I certify that on this 5th day of October, 2017, I electronically filed the original of the foregoing with the United States Bankruptcy Court for the Western District of Virginia which caused electronic copies to be served on the United States Trustee and all other registered users of the ECF system that have filed notices of appearance in this case. I further certify that on this day, I served true copies of the foregoing Motion, the proposed order and the Agreement, together with the notice of the hearing thereon, by first-class mail, postage prepaid, on the parties on the attached Service List.

By: /s/ Andrew S. Goldstein