

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

In re:)	Case No. 06-20586
)	
UNION STAMPING & ASSEMBLY, INC.,)	Chapter 11
an Ohio corporation,)	
)	
)	Judge Ronald G. Pearson
)	
Debtor.)	
)	
(Employer Tax I.D. No. 20-1449201))	

**DEBTOR’S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS:
AUTHORIZING SECURED POSTPETITION FINANCING PURSUANT TO 11
U.S.C. § 364, AND CONTINUED USE OF CASH COLLATERAL PURSUANT TO 11
U.S.C. § 363; (II) PROVIDING ADEQUATE PROTECTION PURSUANT TO 11 U.S.C.
§§ 361, 363 AND 364; (III) GRANTING LIENS, SECURITY INTERESTS AND
SUPERPRIORITY CLAIMS PURSUANT TO 11 U.S.C. § 364; AND (IV) APPROVING
FORM AND MANNER OF NOTICE OF FINAL HEARING
PURSUANT TO BANKRUPTCY RULE 4001(C)**

The above-captioned debtor and debtor in possession (the “Debtor”) hereby moves the Court for the entry of an order, pursuant to sections 361, 363, 364, 503(b) and 507(b) of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for authority (i) to obtain post-petition financing pursuant to sections 363 and 364 of the Bankruptcy Code from GMAC Commercial Finance LLC (“GMAC/CF”), General Motors Corporation (“GM”), and Freightliner LLC (“Freightliner” and, together with GM, the “Major Customers”), subject to the terms and conditions set forth herein, and to use cash collateral, (ii) to grant mortgages, security interests, liens and superpriority claims to GMAC/CF (including a priority lien pursuant to section 364(c)(1) of the Bankruptcy Code, liens pursuant to sections 364(c)(2) and (3) of the Bankruptcy Code and priming (with respect to the GMAC/CF’s and the

Major Customers' Existing Liens (as defined below)) liens pursuant to section 364(d) of the Bankruptcy Code), subject to the terms and conditions set forth herein, and (iii) to grant mortgages, security interests, liens and superpriority claims in order to provide adequate protection to GMAC/CF and the Major Customers. Finally, the Debtor requests that a final hearing (the "Final Hearing") be scheduled by the Court to consider entry of a final order (the "Final Order") authorizing on a final basis, inter alia, the relief requested in this Motion.

In support of this Motion, the Debtor respectfully states as follows:

I. BACKGROUND

1. On September 20, 2006 (the "Involuntary Date"), an involuntary petition for relief under chapter 11 of the Bankruptcy Code was filed against the Debtor. On October 3, 2006, the Debtor consented to the order for relief.

2. The Debtor is continuing in possession of its property and is operating and managing its business, as debtor in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the Debtor's chapter 11 case and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The factual background relating to the commencement of the Debtor's chapter 11 case is set forth in detail in the Affidavit and Statement of Paul G. Lowe in Support of Chapter 11 Petition and First Day Motions, Docket No. 32.

A. Prepetition Revolving Credit Facility

5. Prior to the Debtor's bankruptcy proceedings, GMAC/CF provided the Debtor with working capital financing pursuant to various loan, security and related agreements, including a Credit Agreement dated as of December 28, 2004 between the Debtor and JPMorgan

Chase Bank, N.A. (“JPMorgan”), GMAC/CF’s predecessor in interest, and related loan and security documents, including a First Amendment to Credit Agreement and a Second Amendment to Credit Agreement between GMAC/CF and the Debtor dated June 12, 2006 (collectively, as amended, the “Loan Documents”). GMAC/CF has filed copies of the relevant Loan Documents with the Court.

6. On or about June 12, 2006, in connection with GMAC/CF’s acquisition of JPMorgan’s loans to the Debtor and all related documents and collateral security, the Major Customers entered into a Subordinated Participation Agreement with GMAC/CF (the “Participation Agreement”) whereby GMAC/CF agreed to sell to the Major Customers \$4,382,472 of undivided, last-out subordinated interests in certain of its loans with the Debtor. Such subordinated interests were allocated 60/40 between GM and Freightliner (the “Participations”). GMAC/CF loaned the Participations to the Debtor as non-formula based working capital loans. GMAC/CF has filed a copy of the Participation Agreement with the Court. To further induce GMAC/CF to provide financing to the Debtor, the Major Customers entered into an agreement that provided to GMAC/CF certain enhancements related to Union’s accounts receivable and inventory (the “Credit Enhancement Agreement”). GMAC/CF has filed a copy of the Credit Enhancement Agreement with the Court.

7. The Debtor owes to GMAC/CF certain amounts, including principal, accrued but unpaid interest, all costs, expenses and fees called for by the Loan Documents (the “Prepetition Obligations”).

8. GMAC/CF has (i) a valid and properly perfected, indefeasible, first priority security interest and lien in all of the Debtor’s accounts, accounts receivable, documents, instruments, contract rights, general intangibles, including all insurance proceeds for all casualty losses, chattel paper and inventory and proceeds and products thereof, regardless of whether the

same are in Debtor's possession (collectively, the "Current Asset Collateral"); and (ii) a valid and properly perfected, indefeasible security interest and lien in all of the Debtor's machinery, equipment, furniture and fixtures that are subordinate to the security interest and lien held by the West Virginia Economic Development Authority (the "EDA") and, to the extent it arises, Park Corporation (collectively, the "Other Secured Creditors") only to the extent the Other Secured Creditors have valid, properly perfected security interests and liens and otherwise allowed secured claims (the "Subordinate Asset Collateral" and, together with the Current Asset Collateral, the "Pre-Petition Collateral").

B. Accommodations with the Major Customers, Postpetition Winddown and Use of Cash Collateral

9. On or about June 12, 2006, the Debtor entered into that certain Accommodation Agreement with GM and Freightliner whereby GM and Freightliner agreed to provide certain accommodations in order for GMAC/CF to assume the Pre-Petition Loan. On or about July 11, 2006, the parties entered into that certain Amended and Restated Accommodation Agreement (the "Accommodation Agreement") whereby GM and Freightliner agreed to: (i) expedite payment of accounts payable; (ii) pay all pre-June 12, 2006 payables; (iii) purchase the Participations in accordance with an agreed-upon budget; and (iv) provided certain releases. In exchange, the Debtor agreed to: (i) participate in an inventory bank build for GM and Freightliner; (ii) provide access to books, records and other financial information; (iii) assign certain tooling contracts; and (iv) cooperate with resourcing of the Major Customers' production.

10. Since the Involuntary Date, the Debtor has financed its operations via the use of cash collateral in accordance with the terms of the Order Authorizing Emergency Use of Cash Collateral, Docket No. 57, and the First Amended Order Authorizing Continuing Use of Cash Collateral and Providing Adequate Protection, Docket No. 79, and the extension, as evidenced by the Notice of Extension of the First Amended Order Authorizing Continued Use of Cash

Collateral and Providing Adequate Protection, Docket No. 150 (collectively, as amended, the “Cash Collateral Orders”). The Debtor’s right to use cash collateral under the Cash Collateral Orders will expire on November 7, 2006, unless extended by written agreement of GMAC/CF.

11. Since the Involuntary Date, the Debtor has continued the winddown of its operations and assisted the Major Customers with the resourcing of their component part production to other suppliers. To facilitate the Major Customers’ efforts to resource production, the Debtor has produced a parts bank in accordance with the Major Customers direction. The Major Customers have purchased the parts banks and other inventory produced by the Debtor on their behalf.

12. To complete an orderly liquidation of its assets, thereby maximizing value for its creditors, the Debtor must continue to have access to financing needed to complete its liquidation and pay for related costs and expenses. Due to the Debtor’s cessation of operations, new accounts and cash collateral will not be generated and there will be no cash collateral to fund the Debtor’s ongoing needs.

C. The Debtor's Financing Needs

13. The Debtor has determined that use of cash collateral would not, in and of itself, be sufficient to fund its current obligations. As a result, the Debtor needs additional financing to meet its needs. The Debtor has attempted to obtain the necessary additional financing from lenders other than GMAC/CF. Despite its good faith efforts, the Debtor was unable to obtain sufficient unsecured credit allowable under sections 503(b)(1) or 364(c)(i) of the Bankruptcy Code as an ordinary administrative expense, unsecured credit allowable under section 364(a) or (b) of the Bankruptcy Code, or secured credit under section 364(c)(1) of the Bankruptcy Code from any source sufficient to enable Debtor to continue its business operations.

14. Moreover, the Debtor is unable to obtain financing without first granting the claims of GMAC/CF priority over administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, in accordance with section 364(c)(1) of the Bankruptcy Code, and second, securing the postpetition obligations with liens on all assets of the Debtor in accordance with section 364(c)(2) of the Bankruptcy Code. GMAC/CF is willing to provide the Debtor with postpetition financing pursuant to the terms of the proposed order attached as Exhibit A to this Motion (the "Interim Order"). The principal terms are summarized below. The proposed Postpetition Loans (defined below) are in the best interests of Debtor and all other parties in interest.

II. SUMMARY OF PROPOSED FINANCING

A. Authority to Borrow

15. In short, GMAC/CF's financing (the "Postpetition Loans") will consist of advances up to \$3,000,000 (the "Maximum Amount") to be funded according to a budget as provided for below. The Postpetition Loans will only be made if and to the extent the Major

Customers purchase 100% participations in such loans pursuant to the terms of the Participation Agreement.

16. Under the terms of the proposed financing, the Debtor would be authorized to borrow funds under the Postpetition Loans on the following terms:

- (i) Interest will accrue on the Postpetition Loans at a rate equal to the "Prime Rate" (as set by JPMorgan Chase Bank, N.A. from time-to-time) plus two percent (2.0%) per annum; and after an Event of Default, the Postpetition Loans will accrue interest at two percent (2.0%) per annum above the otherwise applicable interest rate. Interest shall be added to principal on the first day of each month and will thereafter accrue interest until paid, with all interest calculated based on a 360 day year.
- (ii) Debtor shall pay GMAC/CF a collateral monitoring fee of \$2,000 on the first day of each month until the Postpetition Loans are paid in full.
- (iii) The Debtor will pay GMAC/CF, upon demand, all reasonable fees and out-of-pocket costs and expenses incurred by GMAC/CF in monitoring, administering or providing financing or enforcing its rights and remedies hereunder, or in enforcing rights against any guarantors, including without limitation, attorneys' fees and costs (including costs and fees incurred in preparation of documentation, participation in the bankruptcy proceedings, and the enforcement of any rights and remedies in the Collateral (as defined below), but excluding any internally allocated costs or expenses), costs and fees associated with Bankruptcy Court appearances, all liquidation costs (including a reasonable allocation of internal costs and expenses arising as a result of any liquidation), appraisal fees, recording fees, field audit fees at a rate provided for in the Prepetition Loan Documents, expert witness fees, together with all expenses and fees (including attorneys' fees and costs) incurred in connection with any litigation arising under or in connection with this Order or in connection with or related to the financing being provided hereunder, including in any litigation with or involving any customer of the Debtor (collectively, the "GMAC/CF Expenses").
- (iv) No portion of the Postpetition Loans may be used to object to, contest or raise any defense to the validity, perfection, priority, extent or enforceability of the Cash Collateral Order, Postpetition Loans, the liens securing the Postpetition Loans or the Prepetition Obligations, or any claims, liens and/or security interests in favor of GMAC/CF with respect to the Postpetition Loans, nor to assert any claims, counterclaims, defenses or causes of action against GMAC/CF or the Major Customers;
- (v) Unless otherwise agreed to by the Major Customers, the Postpetition Loans will be made pursuant to budgets acceptable to the Debtor and the

Major Customers (each a “Budget” and collectively, the “Budgets”), provided, however, that the aggregate amount of the Postpetition Loans may not exceed the Maximum Amount. Expenses may only be paid as and when budgeted, although there shall be a permitted variance of up to 5% for each line item in the Budget, provided that aggregate expenses paid in any week do not exceed the amount set forth in the Budget for such week. The Budget for the period ending December 31, 2006, is attached as Exhibit B hereto (the “Initial Budget”).¹ The Debtor will update the Budget at least monthly.

[Interim Order, ¶4]

17. Absent a written extension from GMAC/CF (which extension shall be at GMAC/CF’s sole discretion) the Postpetition Loans will be due on the earliest of: (a) December 31, 2006; (b) the occurrence of an Event of Default (defined below); or (c) the sale of substantially all of Debtor’s assets.

18. In addition, the Debtor will furnish to GMAC/CF and the Major Customers:

- (i) With each request for a Postpetition Loan (which must be received by 11:00 a.m. on the business day an advance is requested), a borrowing request (each, a “Borrowing Request”) in a form acceptable to GMAC/CF along with (i) the corresponding Budget to such Borrowing Request; and (ii) such proof as GMAC/CF may require that the Major Customers have approved the corresponding Budget.
- (ii) All other reports, documents and information that GMAC/CF or the Major Customers may reasonably request.

[Interim Order, ¶ 10]

19. Unless otherwise directed by GMAC/CF, all proceeds and collections on account of the Collateral will be paid to GMAC/CF and used to reduce the Debtor’s obligations to GMAC/CF at GMAC/CF’s discretion. All cash, checks, or funds of any type which come into the possession of the Debtor with respect to the Collateral (including payments of insurance proceeds and proceeds of sales of Collateral under section 363 of the Bankruptcy Code) must be

¹ The Budget remains subject to the review of the parties hereto. To the extent that the Budget is amended, such amended budget will be provided at, or prior to, the hearing on the interim relief requested herein.

segregated and accounted for, held in trust for the benefit of GMAC/CF and delivered to GMAC/CF in the form received with any necessary endorsements. [Interim Order, ¶11]

20. The Postpetition Loans will be subject to the following additional terms and conditions:

- (i) For the purpose of calculating interest, the receipt by GMAC/CF of any wire transfer or electronic funds transfer, check or other item of payment will be deemed to have occurred one business day after the date GMAC/CF actually receives such item of payment. In the event any check or other item of payment is not honored when presented for payment, the Debtor shall be deemed not to have made or received such payment. Notwithstanding anything to the contrary contained in the Interim Order, any wire transfer, electronic funds transfer, check or other item of payment received by GMAC/CF after 11:00 a.m. Eastern time will be deemed to have been received by GMAC/CF as of the opening of business on the immediately following business day.
- (ii) As an administrative convenience to the Debtor to ensure the timely payment of amounts owing by the Debtor to GMAC/CF under the Interim Order, GMAC/CF will advance for the account of the Debtor an amount each month sufficient to pay interest accrued on the principal amount of the Postpetition Indebtedness during the immediately preceding month and amounts from time to time sufficient to pay all GMAC/CF Expenses owing by the Debtor under the Interim Order. All such advances will be treated as Postpetition Loans.

[Interim Order, ¶ 12]

B. Grant of Liens

21. To secure Debtor's obligations on account of the Postpetition Loans, including principal, interest, GMAC/CF Expenses and any and all other costs, expenses and charges (collectively, "Postpetition Indebtedness"), GMAC/CF is hereby granted a perfected lien on and security interest in all property of the estate of Debtor as that term is defined in section 541(a) of the Bankruptcy Code, including:

- (i) Pursuant to section 364(c)(2) of the Bankruptcy Code, a lien and security interest in any and all property of the Debtor's estate arising, created or acquired subsequent to the Involuntary Date (except Prepetition Collateral and proceeds, products, profits or rents of such Prepetition Collateral), including, without limitation, (i) all accounts, accounts receivable, and

general intangibles (including patents, trademarks, patent applications, copyrights and other intellectual property of whatever description, commercial tort claims, royalty payments such as under patent, trademark or other licensing arrangements, proceeds of condemnation awards, proceeds of judgments and proceeds of fire and other property insurance such as business interruption insurance and proceeds of all causes of action); (ii) all inventory including, but not limited to, raw materials, work in process, finished goods and materials used or usable in the manufacturing, processing, packaging or shipping of inventory; (iii) all returned goods and merchandise relating to accounts and accounts receivable; (iv) all equipment including, but not limited to, machinery, fixtures, furniture and all accessories, tools, fittings and parts therefore; (v) all documents, instruments and chattel paper; (vi) all fixtures; (vii) all books and records of the Debtor including books and records evidencing, securing or relating to accounts and accounts receivable; (viii) all securities, stocks, options, and warrants, whether certificated or uncertificated and whether in bearer or registered form, if any; (ix) all tax refunds arising from taxes incurred and paid on or after the date of the Debtor's bankruptcy petition; (x) all real estate or interests in real estate, if any; (xi) all proceeds, products, profits and rents of any of the foregoing arising, created or acquired subsequent to the Involuntary Date (collectively, the "Postpetition Collateral").

- (ii) Pursuant to section 364(c)(3) of the Bankruptcy Code, a lien and security interest, junior in priority and right of payment only to the Existing Liens (defined below), in any and all property of the Debtor arising, created, acquired or existing prior to the Involuntary Date and all proceeds, products, profits and rents of such collateral, including, but not limited to (i) all accounts, accounts receivable, contract rights and general intangibles (including, without limitation, patents, trademarks, patent applications, copyrights and other intellectual property of whatever description, royalty payments such as under patent, trademark or other licensing arrangements, proceeds of condemnation awards, proceeds of judgments and proceeds of fire and other property insurance such as business interruption insurance, proceeds of all causes of action, goodwill and going concern value); (ii) all inventory including, but not limited to, raw materials, work in process or finished goods, materials used or usable in the manufacturing, processing, packaging or shipping of inventory; (iii) all returned goods and merchandise relating to accounts and accounts receivable; (iv) all equipment including, but not limited to, machinery, furniture, fixtures and all accessories, tools, fittings and parts therefore; (v) all documents, instruments and chattel paper; (vi) all fixtures; (vii) all books and records evidencing, securing or relating to accounts, accounts receivable or general intangibles or other prepetition assets; (viii) all real estate and rights in real estate owned by the Debtor; (ix) all securities, stocks, options, and warrants, whether certificated or uncertificated and whether in bearer or registered form, if any; (x) all real estate and interests in real estate, if any; (xi) all tax refunds arising from taxes paid before the

Involuntary Date; and (xii) all products, proceeds, profits or rents thereof (collectively the “Prepetition Collateral” and together with the Postpetition Collateral, the “Collateral”). For purposes of this Motion and the proposed Interim Order, the term “Existing Liens” means any valid, enforceable prepetition liens or security interests in favor of the Other Secured Creditors. For certainty, to the extent any prepetition liens and security interests are not valid and enforceable or are avoided, to the extent provided in section 551 of the Bankruptcy Code, GMAC/CF’s lien under this subparagraph 5(b) shall attach to the Prepetition Collateral and shall not be junior to such unenforceable or avoided prepetition liens or security interests.

[Interim Order, ¶ 6]

22. For clarification, nothing in this Motion should be deemed a request to (a) grant GMAC/CF a lien or security interest in any Collateral that “primes” or is superior to any enforceable, unavoidable, prepetition lien or security interest in favor of the Other Secured Creditors; (b) affect the extent or enforceability of any such lien or security interest in any Collateral to the extent otherwise valid and enforceable; or (c) grant GMAC/CF a lien or security interest in any claims or causes of action arising under Chapter 5 of the Bankruptcy Code.

23. No other claim or lien having a priority superior or *pari passu* with those granted by the Interim Order to GMAC/CF shall be granted while any portion of the obligations arising thereunder remains outstanding. Except as set forth in the Interim Order, none of GMAC/CF’s liens, mortgages or security interests shall be subject or subordinate to (i) any lien or claim under sections 363 or 364 of the Bankruptcy Code or otherwise, (ii) any lien, mortgage or security interest that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code, or (iii) any liens arising after the Involuntary Date (other than as permitted under the Interim Order) including, but not limited to, any liens, mortgages or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtor.

C. Grant of Superpriority Claims

24. Except for the statutory fees of the U.S. Trustee and professional fees set out in the Budget, the Postpetition Indebtedness shall have priority pursuant to section 364(c)(1) of the Bankruptcy Code over any and all costs and expenses of administration or other priority claims in the Debtor's chapter 11 case or any subsequent chapter 7 case, including those described in sections 503(b) and 507(b) of the Bankruptcy Code, and will not be subordinated to any other security interest or lien granted under sections 364 or 105 of the Bankruptcy Code. The Debtor proposes that GMAC/CF will have all the rights and remedies of a secured creditor and mortgagee in connection with the security interests, liens and mortgages granted by the Interim Order, except to the extent that such rights and remedies may be affected by the Bankruptcy Code. [Interim Order, ¶ 9]

D. Termination

25. The proposed financing contemplates that the Debtor would no longer be authorized to borrow funds upon the occurrence of an event of default. The following will be deemed to constitute an event of default (individually, and "Event of Default" and, collectively, "Events of Default"):

- (i) The Debtor materially breaches any of the terms and conditions or covenants of the Interim Order or fails to pay any obligation, including, but not limited to, principal and interest on the Postpetition Loans when due;
- (ii) If any written representation or warranty made by the Debtor after entry of the Interim Order or any certificate, report or financial statement delivered to GMAC/CF by the Debtor pursuant to the Interim Order proves to have been false in any material respect as of the time when made or given;
- (iii) If the Debtor's chapter 11 case is converted to a case under chapter 7 of the Bankruptcy Code;
- (iv) If a chapter 11 trustee is appointed;

- (v) If any modification is made to the Interim Order which materially affects the rights and remedies of GMAC/CF or the Major Customers without the consent of GMAC/CF or the Major Customers;
- (vi) If the Debtor materially defaults on its obligations to GMAC/CF under the Interim Order or with respect to any obligations to any other person arising after the Involuntary Date;
- (vii) If the Debtor pays any obligation that is not set forth in the Budget, or if any payment of a budgeted item exceeds the amount set forth in the Budget by more than the 5% variance permitted thereunder;
- (viii) If the Debtor or any third parties obtain confirmation of a plan of reorganization or liquidation on terms which materially alter rights and remedies of GMAC/CF or the Major Customers under the Interim Order;
- (ix) Excluding the Existing Liens, if any third party is granted a lien or security interest in any of the Collateral without GMAC/CF's prior, written consent;
- (x) Any representation, warranty or statement made by the Debtor in any borrowing base certificate, any other certificate, statement or document delivered pursuant to the terms of the Interim Order, or in connection with the transactions contemplated by the Interim Order should at any time be false or misleading in any material respect;
- (xi) If a sales procedure order reasonably acceptable to the Major Customers is not entered by November 10, 2006; or
- (xii) If an order approving the sale of the Debtor's assets is not entered by December 15, 2006.

[Interim Order, ¶ 16]

26. Upon the occurrence of an Event of Default, GMAC/CF will have the right to declare all Postpetition Indebtedness immediately due and payable. GMAC/CF will thereafter be entitled to file a motion for relief from the automatic stay (a "Stay Motion") and subject to the Court's docket, will be entitled to a hearing on a Stay Motion on two business days' notice to the Debtor, the Unsecured Creditors' Committee, and the Major Customers. At any hearing on a

Stay Motion, the sole issue to be litigated will be whether or not an Event of Default has occurred.

E. Claims Against GMAC/CF and the Major Customers

27. The proposed financing provides that the Debtor waives all rights to pursue any claims against GMAC/CF and the Major Customers. [Interim Order, ¶ J]

III. NECESSITY FOR INTERIM AND FINAL RELIEF

28. The Debtor requires the immediate approval of the entire Postpetition Loans and the ability to borrow up to \$3 million on an interim basis. Such access is required to assure that the Debtor will have sufficient liquidity to meet its obligations.

29. As stated above, the Debtor's assets are already encumbered by the Existing Liens. The Debtor attempted to arrange debtor in possession financing from other sources, but were unsuccessful in its efforts to do so. The Debtor has been unable to obtain financing on an unsecured, junior secured or non-priority basis and does not have access to senior secured postpetition financing except on the terms of the Postpetition Loans or less favorable terms. In the Debtor's business judgment, the terms and conditions of the Postpetition Loans are fair and reasonable and represent the best financing option available under the circumstances. The Debtor has negotiated the Postpetition Loans in good faith and at arms' length. The authority to use cash collateral under the Cash Collateral Orders expires November 7, 2006. Without the availability of the Postpetition Loans, the Debtor will be unable to finance its working capital needs. If the Debtor is unable to borrow on an interim basis, it will suffer immediate and irreparable harm. Based on the foregoing, the Debtor submits that the proposed interim relief is in the best interests of the Debtor, its estate and its creditors, and, therefore, should be approved.

30. The financing and adequate protection arrangements contemplated herein have been negotiated in good faith and at arm's length among the Debtor, GMAC/CF, and the Major

Customers. The terms of such financing and adequate protection arrangements are fair and reasonable under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties and are supported by reasonably equivalent value and fair consideration. As a result, the Debtor, GMAC/CF, and the Major Customers are entitled to the protection provided by section 364(e) of the Bankruptcy Code.

IV. AUTHORITY FOR REQUESTED RELIEF

31. Section 364 of the Bankruptcy Code allows debtor to obtain unsecured credit in the ordinary course of business; to obtain unsecured credit out of the ordinary course of business; and to obtain credit with specialized priority or with security. If a debtor cannot obtain postpetition credit on an unsecured basis, the court may authorize the obtaining of credit or the incurring of debt, repayment of which is entitled to superpriority administrative expense status or is secured by a lien on the debtor's property, or a combination of the foregoing.

32. The Debtor proposes to obtain the Postpetition Loans by providing security interests and liens on substantially all of its assets pursuant to sections 364(c)(2), 364(c)(3), and 364(d)(1) of the Bankruptcy Code in addition to providing the GMAC/CF superpriority claims pursuant to section 364(c)(1) of the Bankruptcy Code. Since the Debtor's working capital assets are already encumbered by the prior liens of GMAC/CF and the Major Customers, and given the Debtor's current financial condition, it was not possible to obtain credit on either an unsecured basis or by granting junior liens. In addition, as stated above, the Debtor was unable to secure senior secured postpetition financing on terms more favorable than the Postpetition Loans. The Debtor believes that the terms of the Postpetition Loans represent the best financial package currently available to the Debtor.

33. The Debtor submits that during the negotiations with GMAC/CF and the Major Customers, they engaged in a reasonable process to identify other potential lending sources and

that no further search is required. See, Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co., Inc.), 789 F.2d 1085 1088 (4th Cir. 1986); In re Ames Dep't. Stores, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (holding that debtor made a reasonable effort to secure financing where it approached four lending institutions, was rejected by two, and selected the least onerous financing option from the remaining two lenders). Where there are a few lenders likely to be able and willing to extend the necessary credit to the debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." In re Sky Valley, Inc., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *affirmed* Anchor Sav. Bank FSB v. Sky Valley, Inc., 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); see also, In re Ames, 115 B.R. at 40.

34. The Debtor believes that the terms of the Postpetition Loans are appropriate and reasonable, and thus, the Debtor submits that its reasonable business judgment should be approved. See, Group of Institutional Investors v. Chicago Mil. St. P. & Pac. Ry., 318 U.S. 523, 550 (1943); In re Lifeguard Indus., Inc., 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983) ("Business judgment should be left to the board room and not to this Court."). See, In re Trans World Airlines, Inc., 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that the interim loan, receivables facility and asset-based facility were approved because they "reflect[ed] sound and prudent business judgment on behalf of TWA . . . [were] reasonable under the circumstances and in the best interest of TWA and its creditors"); In re TM Carlton House Partners, LTD, 91 B.R. 349, 357 (Bankr. E.D. Pa. 1988) (holding that due to the debtor's distinct awareness of its own financial needs, the court would not second-guess its business judgment to put aside cash to effectuate a refinancing of its debts); cf. Group of Institutional Investors v. Chicago Mil. St. P. & Pac. Ry., 318 U.S. 523, 550 (1943) (holding that decisions regarding the rejection or assumption of a lease is left to the business judgment of the debtor); In re Simasko Prod. Co., 47 B.R. 444, 449 (D. Colo. 1985) ("business judgments should be left to the board room and not to this

[c]ourt”); In re Lifeguard Indus., Inc., 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983) (same); In re Curlew Valley Assocs., 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (holding that courts generally will not second-guess a debtor in possession’s business decisions when those decisions involve “a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the Code”).

35. Bankruptcy Rule 4001 also permits a court to approve a debtor’s request for the use of postpetition financing on an interim basis “to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” Fed. R. Bankr. P. 4001. The Debtor submits that the requested interim relief is necessary in order to avoid immediate and potentially irreparable damage to the Debtor’s business and operations, and should be approved. The Debtor further submits that the proposed form and manner of notice described below is sufficient under the circumstances and complies with the provisions of Bankruptcy Rule 4001.

V. FINAL HEARING AND FORM AND MANNER OF NOTICE

36. The Debtor’s request that the Court schedule the date and time of the Final Hearing on this Motion, and approve the form and manner of notice with respect to such hearing.

37. The Debtor proposes to send notice of the Final Hearing to consider this Motion in the form attached hereto as Exhibit C. Pursuant to Bankruptcy Rule 4001, the Debtor proposes to send notice of the Final Hearing to: (a) the Office of the United States Trustee; (b) counsel GMAC/CF; (c) counsel to each of the Major Customers; (d) all secured creditors reflected in public records and of which the Debtor is otherwise aware; and (e) counsel to the Official Committee of Unsecured Creditors. The Debtor submits that such notice is adequate and sufficient.

38. The Debtor further requests that the Court specify that any and all objections to this Motion be in writing and filed and served so that the same are received by the Debtor's counsel no later than five business days prior to the date scheduled for the Final Hearing.

VI. NO PRIOR REQUEST

39. No prior request for the relief sought in this Motion has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter an interim order, (a) authorizing on an interim basis the terms and provisions of the Postpetition Loans to maintain ongoing operations and avoid immediate and irreparable harm to its estate pending a final hearing on the Postpetition Loans, (b) granting the adequate protection, replacement liens, and super-priority claims described herein, (c) scheduling a Final Hearing on this Motion on or about November 14, 2006, and at that time, granting the relief requested herein on a final basis, and (d) granting the Debtor such other and further relief as the Court may deem just and proper.

November 3, 2006

Respectfully submitted,

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