

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

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In re:	:	
	:	Case No. 06-61796
CEP HOLDINGS, LLC, <u>et al.</u> , <sup>1</sup>	:	(Jointly Administered)
	:	
Debtors.	:	Chapter 11
	:	
	:	Honorable Russ Kendig
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**MOTION OF THE DEBTORS AND DEBTORS IN POSSESSION FOR EMERGENCY  
ORDER AUTHORIZING DEBTORS TO: (A) USE CASH COLLATERAL ON AN  
EMERGENCY BASIS; (B) INCUR POSTPETITION DEBT ON AN EMERGENCY  
BASIS; (C) GRANT ADEQUATE PROTECTION AND PROVIDE SECURITY AND  
OTHER RELIEF TO WACHOVIA CAPITAL FINANCE CORPORATION (CENTRAL);  
AND (D) GRANT CERTAIN RELATED RELIEF.**

CEP Holdings, LLC and its affiliated debtors and debtors in possession (each a “**Debtor**” and collectively, the “**Debtors**” or “**CEP**”) in the above-captioned Chapter 11 cases (the “**Cases**”), hereby submit this expedited motion (the “**Motion**”), pursuant to sections 362, 363, 364 and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 4001(b) and (c) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), seeking, *inter alia*, entry of emergency (the “**Emergency Order**”) and final orders (the “**Final Order**”, collectively, with the Emergency Order, the “**Financing Orders**”) authorizing the Debtors to (a) use cash collateral of its secured lender on an emergency basis, (b) incur postpetition secured indebtedness on an emergency basis, (c) grant adequate protection and

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<sup>1</sup> The Debtors include: CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC.

provide and other related relief to its secured lender, (d) granting related relief, and (e) setting final hearing. In support of this Motion, the Debtors refer to and rely upon the Affidavit of Joseph Mallak in Support of Chapter 11 Petitions and First Day Motions (the “**Mallak Affidavit**”), filed contemporaneously herewith, and respectfully represent as follows:

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a), 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 365 of the Bankruptcy Code and Bankruptcy Rules 4001(b) and (c).

### **BACKGROUND**

4. On the date hereof (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors have requested that the Cases be jointly administered for procedural purposes only.

5. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner or official committee of unsecured creditors has been appointed.

#### **A. Summary of Capital Structure and Current Business Operations**

6. Creative Engineered Polymer Products, LLC, (“**CEPP**”) is a limited liability company formed under the laws of the State of Ohio. CEPP is wholly owned by CEP Holdings, LLC (“**Holdings**”), a privately-held limited liability company formed under the laws of the State of Ohio. Holdings is a holding company whose sole asset is its membership interests

in CEPP. CEPP has three subsidiaries: (i) Composite Parts Mexico S.A. de C.V. (the “**CEP Mexico**”), a Mexican corporation which is 99.9% owned by CEPP and .01% owned by non-debtor Reserve Capital Group, Ltd; (ii) Thermoplastics Acquisition, LLC (“**Thermoplastics**”), an Ohio limited liability company which is wholly owned by CEPP and is a debtor in these cases; and (iii) CEP Latin America, LLC (“**CEP LA**”), a non-debtor Ohio limited liability company which is wholly owned by CEPP. CEP LA was never funded and has no operations or debt. The principal place of business of the Debtors is 3560 West Market Street, Suite 340, Akron, Ohio 44333.

7. The Debtors operate 10 manufacturing plants in Ohio, Michigan, Alabama, South Carolina and Mexico, including a plant in Canton, Ohio. CEPP operates six plants in Ohio, Michigan and Alabama. Non-debtor CEP Mexico operates two plants in Mexico. Thermoplastics operates one plant in Ohio and one in South Carolina.

8. CEP and its debtor subsidiaries are custom molders and extruders of rubber and plastic products, primarily for the OEM automotive market. The Debtors have achieved a unique position as preferred suppliers of high quality products to major customers, including General Motors, Delphi Corporation, Visteon, Nissan, Daimler-Chrysler, Honda and GKN Automotive. CEP has maintained this position as a leader in the marketplace through innovative manufacturing techniques and by continuously improving its broad base of material and process technology.

9. Gross sales for the Debtors’ businesses are projected to be approximately \$190 million for fiscal 2006. The Debtors’ approximately 1,100 employees manufacture the Debtors’ products at ten strategically located manufacturing facilities in Ohio, Michigan, South

Carolina, Alabama and Mexico.<sup>2</sup> The Debtors also maintain a Technical Center in Livonia, Michigan which offers design assistance and program management services for the Debtors' businesses.

B. Prepetition Debt Structure

10. The Debtors were formed as part of two separate purchase transactions on August 16, 2005 and December 20, 2005, respectively. As part of the August 16, 2005 transaction, the CEPP and CEP Mexico businesses were purchased from the Carlisle Companies. In conjunction with the transaction, CEP Acquisition LLC n/k/a CEPP entered into a Loan and Security Agreement, dated as of August 16, 2005 (the "**Prepetition CEPP Credit Agreement**") with Wachovia Capital Finance Corporation (Central) ("**WCFC**" or "**Lender**"), as both Agent and Lenders thereunder. The Prepetition CEPP Credit Agreement provided two term loans and a revolving credit facility to CEPP in the maximum amount of \$45 million (collectively, the "**CEPP Prepetition Loan**"). The CEPP Prepetition Loan is secured by substantially all the assets of CEPP, including, without limitation, all accounts, general intangibles, goods, inventory, equipment, real property, accounts receivable, other personal property and proceeds thereof (collectively, the "**Prepetition CEPP Collateral**"). As of the Petition Date, the amount outstanding under the CEPP Prepetition Loan was not less than \$21,693,507.60 (not taking into account pre-petition and post-petition interest, fees and expenses to which Agent may be entitled under the Prepetition CEPP Credit Agreement and applicable law).

11. As part of the December 20, 2005 transaction, CEPP purchased the Thermoplastics business from Parker Hannifan Corporation. In conjunction with the transaction, Thermoplastics entered into a Loan and Security Agreement, dated as of December 21, 2005 (the

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<sup>2</sup> CEP Mexico, a non-debtor, produces high quality plastic products at two factories in Mexico.

**“Prepetition Thermoplastics Credit Agreement”** and together with the Prepetition CEPP Credit Agreement, the **“Prepetition Credit Agreements”**) with WCFC, as both Agent and Lenders. The Prepetition Thermoplastics Credit Agreement provided a term loan and a revolving credit facility to Thermoplastics in the maximum amount of \$5 million (collectively, the **“Thermoplastics Prepetition Loan”** and together with the CEPP Prepetition Loan, the **“Prepetition Loans”**). The Thermoplastics Prepetition Loan is secured by substantially all the assets of Thermoplastics, including, without limitation, all accounts, general intangibles, goods, inventory, equipment, accounts receivable, other personal property and proceeds thereof (collectively, the **“Prepetition Thermoplastics Collateral”** and together with the Prepetition CEPP Collateral, the **“Prepetition Collateral”**). As of the Petition Date, the amount outstanding under the Thermoplastics Prepetition Loan was not less than \$4,219,688.58 (not taking into account pre-petition and post-petition interest, fees and expenses to which Agent may be entitled under the Prepetition Thermoplastics Credit Agreement and applicable law). The Prepetition Credit Agreements are cross-defaulted and cross-collateralized.

12. Prior to the Petition Date, Visteon Corporation, General Motors Corporation and Delphi Corporation (collectively, the **“Customers”**) and WCFC entered into a Subordinated Participation Agreement dated June 30, 2006 and a First Amendment to Subordination Participation Agreement dated August 18, 2006 pursuant to which the Customers purchased subordinated, last out participation interests (the **“Participation Interests”**) in the Prepetition Loan Facilities. The Customers purchased \$2.9 million of Participation Interests, the proceeds of which were used by the Debtors to fund their operations and the building of the Customers’ parts.

C. Events Leading To The Filing Of These Chapter 11 Cases

13. The Debtors and other automotive suppliers and manufacturers have faced a series of unanticipated operational and market challenges that have adversely affected their operations and cash flows. These challenges have impaired both the Debtors' suppliers and customers which in turn have severely affected the Debtors' operations and businesses.

14. With respect to suppliers, the September 2005 hurricanes in the Gulf Coast region have disproportionately damaged manufacturers who rely on plastic resins. Shortly after the hurricanes, the Debtors began experiencing sharp increases in their principal raw materials (plastic resins) which increases were attributable to interrupted refining capacity. With prices already high due to increased global demand, insecurity and supply constraint issues, the hurricanes magnified the rise in the price of crude oil and natural gas. The Debtors have continued to experience significantly higher costs for raw materials.

15. With respect to the Debtors' customers, the Debtors have been unsuccessful in recovering much of these increases in raw material costs from their customers through price increases. The structure of the American automotive industry is such that it is difficult for manufacturers such as the Debtors to pass rising material costs on to customers. Faced with rising costs, the Debtors have expended substantial effort in attempting to source cheaper alternatives (such as recycled materials and alternative formulations) for substitution of higher cost materials. Despite these efforts, most of the Debtors' customers have delayed approving these material substitutions. Although the Debtors are now starting to experience success in receiving approvals of the material substitutions, the damage to the Debtors' liquidity is irreversible outside the protections of the Bankruptcy Code.

16. In addition to increased material costs, the general instability of the industry has directly harmed the Debtors' liquidity. For example, the Debtors have been

impaired by the bankruptcy filing of several large OEM's, including Delphi Corporation, the Debtors' second largest customer. The bankruptcy filing of Delphi in October 2005 alone resulted in a cash loss to the Debtors of nearly \$1.7 million based on the Debtors' unpaid prepetition claim in that case.

17. In addition to bankruptcy filings in the industry, the general credit downgrade has led to delays and increasingly delinquent customer payments for approved tooling programs. These programs are typically managed and paid for by the Debtors for the benefit of a particular customer which subsequently reimburses the Debtors. The increased delays and failure of customers to pay for these programs have decreased the portion of accounts receivable against which Wachovia will lend under the Prepetition Credit Agreements. This, in turn, has further impaired the Debtors' liquidity.

18. The Debtors have further experienced excess capacity at their plants due to decisions by their customers. For example, GM's transfer from the GMT800 platform to the GMT900 platform has led to substantial idling of capacity. In late 2005, GM started phasing out the GMT800 platform, a manufacturing platform in which the Debtors were heavily involved. The Debtors have been harmed by this action because (i) the Debtors have significant up front costs invested in the GMT800 platform and (ii) GM has not provided the Debtors with replacement work in the new GMT900 platform. Thus, the Debtors have not recovered their costs associated with the GMT800 platform and are operating at significantly lower capacity at several manufacturing plants due to a failure to receive work under the GMT900 platform.

D. Prepetition Activities

19. In an attempt to create maximum value for the Debtors' creditors, the Debtors worked with the Customers and WCFC to allow the Debtors to formulate a restructuring plan which would reorganize the Debtors outside of a chapter 11 proceeding. As part of this

plan, in May 2006 the Debtors entered into a series of forbearance, accommodation and access and security agreements with WCFC and the Customers, which agreements provided a 120-day window for the Debtors to effectuate an out-of-court restructuring plan. This window expired September 6, 2006.

20. Given the size and complexity of the Debtors' operations and the continuation of the market circumstances described above, the Customers, WCFC and the Debtors ultimately determined that an out-of-court restructuring was not feasible. Thus, after exploring all options and faced with a severe liquidity crisis, the Debtors have no choice but to commence these cases as the only means of preserving the Debtors as going concerns, and, thus, maximize the value of the Debtors' assets for their creditors.

21. With the aide of this Court and the support of WCFC and the Customers, the Debtors' goal is to stabilize their business operations and financial situation and sell their assets in a manner to maximize value for the Debtors' Creditors. As detailed in this Motion, WCFC and the Customers have agreed to provide post-petition financing and cash infusions to the Debtors which financing and cash infusions will fund the Debtors' costs of operations, wind down, restructuring and liquidation until such time that the Debtors' assets are sold pursuant to Section 363 of the Bankruptcy Code. The Debtors believe that this course of action will maximize the value of their assets for all creditors.

#### **RELIEF REQUESTED**

22. By this Motion, the Debtors request authority to: (a) use cash collateral of Lender on an emergency basis, (b) incur postpetition secured indebtedness (the "**Postpetition Facility**") on an emergency basis, (c) grant adequate protection to Lender and provide and other related relief to Lender, and (d) the setting of a the Final Hearing pursuant to Rule 4001(c) of the



Federal Rules of Bankruptcy Procedure, all as more fully described in the Emergency Order, a the proposed form of which is attached hereto as **Exhibit A**.

23. The following is a summary of the key provisions of the Emergency Order:<sup>3</sup>

**General Terms of Postpetition Financing**

24. Pursuant to the Postpetition Agreement and Emergency Order, the principal terms of the Postpetition Financing generally are:<sup>4</sup>

- a. Borrowers: CEP Holdings, LLC, Creative Engineered Polymer Products, LLC and Thermoplastics Acquisition, LLC
- b. Guarantors: Composite Parts Mexico S.A. DE C.V. and CEP Latin America, LLC
- c. Lender: Wachovia Capital Finance Corporation (Central).
- d. Accommodation Parties: General Motors Corporation, Visteon Corporation, Delphi Automotive Systems, LLC (collectively, the “**Participating Customers**”) are providing accommodations to the Debtors, including Cash Infusions, more fully described in the Emergency Order. The Participating Customers may also purchase Postpetition Interests in the Postpetition Facility as described more fully in the Emergency Order.

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<sup>3</sup> The following is intended as a summary of certain terms of Emergency Order and should not be relied upon as a complete description of the terms of the Emergency Order. All parties are encouraged to review and rely on the terms of the Emergency Order. In case of any inconsistency between the terms of the Postpetition Financing as described in this Motion and the Emergency Order or Postpetition Agreement, the Emergency Order and Postpetition Agreement shall control.

<sup>4</sup> All capitalized terms not otherwise defined in this Motion shall have the meaning ascribed to them in the Emergency Order.

e. Maximum Amount. The maximum principal amount of the Aggregate Debt shall be \$30,880,000, exclusive of Postpetition Charges and Allowable 506(b) Amounts.

f. Use of Proceeds. In accordance with the four month budget attached to the Emergency Order (the “Budget”).

g. DIP Commitment Fee: \$430,000

h. Interest. The Postpetition Debt shall bear interest at a per annum rate equal to the non-default Interest Rate (as defined in the Loan Agreements).

i. Term. The Postpetition Facility shall immediately and automatically terminate (except as Lender may otherwise agree in writing), and all Aggregate Debt (as defined in the Emergency Order) shall be immediately due and payable (except as Lender may otherwise agree in writing) upon the earliest to occur of (such earliest date, the “**Termination Date**”):

- (1) Three business days after the date of the Final Hearing, unless a Final Order has been entered by that date in which case the Final Order shall identify a later applicable termination date, which date shall be the later of (i) the date the last of the Closing Facilities closes or (ii) the date the sale of the last of the Sale Facilities closes;
- (2) if the Emergency Order is modified at the Final Hearing in a manner unacceptable to Lender, the date of the Final Hearing; and
- (3) the date on which Lender provides, via facsimile or overnight mail, written notice to counsel for Debtors, counsel to Participating Customers, and counsel for any Committee of the occurrence of an Event of Default (or, if any cure period is applicable with respect to such Event of Default, the expiration of such cure period), pursuant to which notice Lender has elected to declare the occurrence of the Termination Date.

j. Carve Out. A professional and statutory fee carve out described more particularly in the Emergency Order is included.

### **Cash Collateral**

25. With respect to the Debtors' use of Lender's cash collateral, the Postpetition Agreement and Emergency Order generally provide:

a. Authorization to Use Cash Collateral. Debtors are authorized to use Cash Collateral solely in accordance with and pursuant to the terms and provisions of the Emergency Order.

b. Delivery of Cash Collateral to Lender. Debtors are authorized and directed to deposit all Cash Collateral now or hereafter in their possession or under their control into the existing Blocked Accounts (or to otherwise deliver all such Cash Collateral to Lender in a manner satisfactory to Lender) promptly upon receipt thereof. Lender shall thereafter apply such Cash Collateral in accordance with Paragraph 6(e) of the Emergency Order.

c. Cash Collateral in Lender's Possession. Lender is authorized to collect upon, convert to cash and enforce checks, drafts, instruments and other forms of payment now or hereafter coming into its possession or under its control which constitute Aggregate Collateral or proceeds of Aggregate Collateral.

### **Postpetition Indebtedness and Priority**

26. With respect to the incurrence of postpetition indebtedness by the Debtors, the Postpetition Agreement and Emergency Order generally provide:

a. Postpetition Documents. Debtors seek authorization to: (1) execute the Postpetition Documents, including all documents that Lender finds necessary to implement the transactions contemplated by the Postpetition Documents, and to make immaterial modifications thereto as the parties deem necessary, without further order of this Court; and (2)

perform their obligations under and comply with all of the terms and provisions of the Postpetition Documents and the Emergency Order.

b. Permitted Uses of Postpetition Debt. Debtors seek authority to incur Postpetition Debt: (1) solely in accordance with and pursuant to the terms of the Emergency Order and the Postpetition Documents; and (2) solely to the extent required to pay those expenses enumerated in the Budget as and when such expenses become due and payable.

c. Certain Terms of Postpetition Debt.

- (1) Conditions to Postpetition Advances. At Lender's election, no Postpetition Debt shall be incurred under the Emergency Order until: (A) the Postpetition Agreement has been executed and delivered by Debtors and it has become effective in accordance with Section 5.5 of the Postpetition Agreement; (B) the Participating Customer Participation Agreement has become effective; (C) the Prepetition Guarantors have ratified the Prepetition Guarantees on terms satisfactory to Lender in its sole discretion; and (D) the Postpetition Guarantors have executed and delivered the Postpetition Guarantees.
- (2) Overadvance Sublimits. Subject to the terms of the Postpetition Agreement, Lender shall make "Revolving Loans" under the "Overadvance Sublimits" (as such terms are defined in the Postpetition Agreement) only on the following terms: (A) Unless the involved Participating Customers otherwise agree in writing to a greater amount, the Overadvance Sublimits shall not exceed \$1,500,000 in the aggregate, provided, that upon the written agreement of the Debtors, Lender and Participating Customers, and subject to limitations on the maximum aggregate amount of the Aggregate Debt, the Overadvance Sublimits may be increased from time to time without further Order of the Court; (B) the Overadvance Sublimits (i) shall not be applied by Lender to any of the Aggregate Debt or other charges owing to Lender the Emergency Order, (ii) shall be provided by Lender to Debtors unless the Termination Date has occurred and (iii) shall be used by Debtors according to the Budget, unless otherwise agreed to by the Debtors, Lender and the Participating Customers; (C) Unless otherwise agreed to in writing by the Participating Customers, the Participating Customers shall have no

obligation to purchase Postpetition Participations after the occurrence of an Event of Default (as defined below); and (D) The Overadvance Sublimits shall be used to pay, to the extent Debtors can not fully pay, each Participating Customer's Initial Allocable Percentage and Amended Allocable Percentage, as the case may be, of the charges listed in Paragraph 8(a)(i) through 8(a)(iv) of the Emergency Order for the Sale Facilities only. For each Sale Facility, the Overadvance Sublimits shall be funded only by Postpetition Participations by the Participating Customers who are subject to a no-resource pledge (pursuant to Paragraph 7(d) the Emergency Order) or for those Participating Customers who are not subject to a no-resource pledge but who allow their business to be sold.

d. Affiliate Use Restriction. The Postpetition Debt shall not be used to fund expenses of CEP Mexico and CEP Latin America, LLC.

e. Superpriority Administrative Expense Status; Postpetition Liens.

The Debtors have requested that the Postpetition Debt be granted superpriority administrative expense status under Code § 364(c)(1), with priority over all costs and expenses of administration of the Case that are incurred under any provision of the Code, except for the carve out. In addition, Lender shall be granted the Postpetition Liens to secure the Postpetition Debt. The Postpetition Liens: (1) are and shall be in addition to the Prepetition Liens; (2) pursuant to Code §§ 364(c)(2), (c)(3) and 364(d), are and shall be First Priority Liens (subject only to Permitted Liens) without any further action by Debtors or Lender and without the execution, filing or recordation of any financing statements, security agreements, mortgages or other documents or instruments; (3) shall not be subject to any security interest or lien which is avoided and preserved under Code § 551; and (4) shall remain in full force and effect notwithstanding any subsequent conversion or dismissal of the Case.

#### **Adequate Protection**

27. With respect to adequate protection of Lender's Prepetition Collateral, the Postpetition Agreement and Emergency Order generally provide:

a. Adequate Protection of Interests of Lender in the Prepetition Collateral and the Prepetition Liens/Consideration for Postpetition Debt. As adequate protection of the interests of Lender in the Prepetition Collateral and in consideration of the Postpetition Debt, the Debtors have agreed to the following:

- (1) Sublimit Reductions. The Debtors have agreed to sublimit reductions more fully described in the Emergency Order.
- (2) Priority of Prepetition Liens/Allowance of Lender's Prepetition Claim. Subject to the terms of Paragraph 16(a) of the Emergency Order: (1) the Prepetition Liens shall constitute First Priority Liens, subject only to the Postpetition Liens and the Permitted Liens; (2) the Prepetition Debt constitutes the legal, valid and binding obligation of Debtors, enforceable in accordance with the terms of the Prepetition Documents; (3) the Debtors have agreed that no offsets, defenses or counterclaims to the Prepetition Debt exist, and no portion of the Prepetition Debt is subject to avoidance or subordination pursuant to the Code or applicable nonbankruptcy law; (4) Lender's claim with respect to the Prepetition Debt as of the Petition Date shall for all purposes constitute an allowed secured claim within the meaning of Code § 506 in an amount not less than \$29,330,000 in the aggregate; and (5) Debtors request a authority to release, discharge, and acquit Lender, each of the Participating Customers and their respective officers, directors, principals, attorneys, predecessors in interest, and successors and assigns of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every type as described more fully in the Emergency Order.
- (3) Replacement Liens. Debtors request authority to grant Lender the Replacement Liens as security for payment of the Prepetition Debt.
- (4) Allowed Code § 507(b) Claim. If and to the extent the adequate protection of the interests of Lender in the Prepetition Collateral granted to Lender pursuant to the

Emergency Order proves insufficient, Lender shall have an Allowed Claim under Code § 507(b), subject to the Carve out, in the amount of any such insufficiency, with priority over: (1) all costs and expenses of administration of the Case (other than Lender's claims under Code § 364 that are incurred under any provision of the Code, including Code §§ 503(b), 506(c), 507(a), or 552(b); and (2) the claims of any other party in interest under Code § 507(b).

### **Customer Participation and Accommodations**

28. With respect to customer participation and accommodations, the Postpetition Agreement and Emergency Order generally provide:

a. Participating Customer Accommodations. To induce Lender to enter into the Postpetition Agreement and to advance the Postpetition Debt to Debtors, and in consideration and reliance upon the assumption of the Access and Security Agreement, the Emergency Order provides that the Participating Customers shall continue to provide the following accommodations:

- (1) Accelerated Payment Terms. The Participating Customers will make payment of their respective accounts payable due and owing to Debtors on terms of "net immediate" (approximately 10 day) terms.
- (2) Limitation of Setoffs. Except for certain "Allowed Setoffs" set forth in the Emergency Order, the Participating Customers agree not to exercise at any time any rights of setoff, recoupment or deduction with respect to any bona fide accounts payable to Debtors arising from any Component Parts shipped by Debtors from the Petition Date through the Termination Date.
- (3) Inventory Buy-Back. In order to provide the Debtors' Estate with more certainty, the Participating Customers have agreed to purchase and pay for within the later of (a) seven (7) days of the Inventory Purchase Trigger Date or (b) five (5) days after a Participating Customer takes possession or control of the Subject Inventory (defined below), all raw materials, work in process and finished goods inventory related to the Component Parts that are at such time both "useable" by the Participating Customers

and in a “merchantable” condition (the “**Subject Inventory**”).

- (4) Resourcing Limitation. For each Sale Facility, the Participating Customers that have elected to designate such facility as a Sale Facility shall forbear from resourcing out of such Sale Facility absent (i) an Event of Default; or (ii) the resourcing of other customers at such Sale Facility to the extent that such Sale Facility is no longer viable as a separate going concern business as determined jointly by Debtors’ investment banker and the applicable Participating Customers. Each Participating Customer shall support in good faith the sale efforts of Debtors with respect to the designated Sale Facilities but only to the extent such Participating Customer is purchasing Component Parts from the affected Sale Facility. For clarity, a Participating Customer's designation of a facility as a Sale Facility shall not prevent another Participating Customer from treating such facility as a Closing Facility.

b. Participating Customer Cash Infusions. In order ensure production and ultimately facilitate the liquidation of the Debtors’ assets, the Participating Customers have agreed to certain cash infusion requirements. Specifically:

- (1) Upon approval of the Emergency Order, and thereafter, on or before the first day of each calendar month that a Participating Customer will have production in any Closing Facility or Sale Facility for which it does not support a sale process, such Participating Customer shall pay lump sum Cash Infusions equal to the projected expenses in the Budget (as may be amended from time to time) for the next month (or for the remaining calendar month with respect to the first Cash Infusion, i.e., September, 2006) related to the Closing Facilities (and as to each Participating Customer, its allocable portion of projected expenses for the Sale Facilities of which it does not support a sale process) less Debtors’ projected aggregate “Excess Availability” under and as defined in the Loan Agreements (as modified by the Postpetition Agreement) as set forth in the Budget. In all events, the Participating Customers shall make Cash Infusions sufficient to fund each Participating Customer’s Initial Allocable Percentage and Amended Allocable Percentage, as the case may be, to the extent Debtors do not have Postpetition Debt otherwise sufficient to fully pay:



- (a) The forecast cash burn, pursuant to the Budget, incurred at such facilities that are required to produce the Participating Customers' Component Parts sufficient to meet releases plus manufacture requested part banks subject to Capacity through the Exit Date;
  - (b) The manufacturing and administrative overhead allocable to such facilities' operations through the Exit Date,
  - (c) The Restructuring Charges (which shall be allocated to specific facilities where possible but shall be exclusive of the closing fee of Lender in accordance with this Order) shall be fully payable with the first Cash Infusion according to the Initial Allocable Percentage; and
  - (d) Wind Down Charges.
- (2) The Cash Infusions required each month prior to the Exit Date of Participating Customers pursuant to their respective Initial Allocable Percentage or Amended Allocable Percentage, as the case may be, shall be paid in full into a trust account ("**BBK Trust Account**") maintained by BBK, Ltd ("**BBK**"). All such payments pursuant to the Amended Allocable Percentage for October must be paid on October 21, 2006, and so on. Funds in the BBK Trust Account shall be released by BBK to Debtors or a Carve out Professional, as the case may be, when due pursuant to this Emergency Order, the Budget, the Interim Compensation Order with respect Professional Fees and Disbursements or as approved by the Court.
  - (3) The Participating Customers shall have 10 days from the Petition Date to designate a facility as a Sale Facility. In the event that a Participating Customer decides to designate and support a facility as a Sale Facility, any Cash Infusion already paid by such Participating Customer for that particular facility shall be deemed recharacterized as a Postpetition Participation. Debtors and the Participating Customers agree to execute and deliver such documents or agreements reasonably necessary to document the foregoing recharacterization.
  - (4) An Assisting or Participating Customer's obligation to make Cash Infusions with respect to a given facility shall cease beginning the first day of the calendar month following receipt by counsel for Debtors and counsel for

Lender of a Resourcing Completion Notice regarding such facility, except for its Initial Allocable Percentage or Amended Allocable Percentage, as the case may be, for the month in which a Resourcing Completion Notice is so delivered, provided that an Assisting or Participating Customer shall deliver a Resourcing Completion Notice no later than 7 day prior to the end of the calendar month in which it is delivered.

- (5) Once Resourcing Completion Notices have been delivered by all Assisting or Participating Customers with respect to a facility, it shall be deemed a "Liquidating Facility" and such customers shall have no further responsibility or obligations with respect to such facility. For clarity, this provision does not amend the allocation of costs for such Liquidating Facility as to each Assisting or Participating Customer as such exit the facility.
- (6) As long as any Assisting or Participating Customer is receiving Component Parts from Debtors, it shall be liable for its full Amended Allocable Percentage. For clarity, if only one Assisting or Participating Customer remains at any given facility, its Amended Allocable Percentage shall be 100%.
- (7) Once a facility is deemed a Liquidating Facility, its allocation of costs under Section 8(a)(ii) and (iii) of the Emergency Order shall be reallocated in full going forward to all facilities that are not yet Liquidating Facilities including the Sale Facilities, so that all costs under Section (8)(a)(ii) and (iii) continue to be funded hereunder.
- (8) Subject to Debtors' compliance with the Participating Customers' bank build requirements, the Participating Customers shall resource the production of Component Parts out of a Closing Facility as soon as commercially reasonable but in no event later than the Exit Date; provided, however, that the Exit Date may be extended by the parties up to a date that is no later than 210 days from the Petition Date in the event Debtors have not completed a Participating Customer's bank build by the Exit Date, subject to the parties negotiating in good faith a revised budget as it relates to the particular Closing Facility.

c. Support of Other Customers.

- (1) Immediately upon entry of the Emergency Order, Debtors shall, on a facility by facility basis, including the Mexican facilities, contact all customers representing their top 22 customers by sales revenue for the first six months of 2006 other than the Participating Customers to permit such customers to become an "Assisting Customer" by agreeing to the following accommodations:
  - (a) Net Immediate (approximately 10 day or equivalent) payment terms;
  - (b) Provide Cash Infusions sufficient to fund each Assisting Customer's Initial Allocable Percentage or Amended Allocable Percentage, as the case may be of:
    - (i) The forecast cash burn, pursuant to the Budget, incurred at a Closing Facility, that is required to produce each Assisting Customer's parts sufficient to meet releases plus manufacturing of each Assisting Customer's respective parts bank subject to Capacity through the Exit Date;
    - (ii) The manufacturing and administrative overhead necessary to operate the manufacturing operations through the Exit Date;
    - (iii) Restructuring Charges; and
    - (iv) Wind Down Charges.
  - (c) Agree to a limitation of setoff with terms similar to the covenants of the Participating Customers set forth in Paragraph 7 of this Order and an inventory buy back agreement at 100% of Debtors' actual cost regarding raw material and work in process and 100% of the selling price of finished goods.
- (2) Debtors shall not use any of the Postpetition Debt or Cash Infusions to produce Component Parts for any of their top 22 respective customers who are not Participating Customers or Assisting Customers and who do not opt to become Assisting Customers as of the close of business on the date that is five (5) business days of the date of the filing of the Motion; provided, however, upon consent of the Participating Customers at a subject facility (which consent shall be granted only one time at each facility),

Debtors may continue to produce Component Parts with a positive profit margin for a customer that is not a Participating Customer or Assisting Customer if such other customer resources production away from Debtors without requiring production of a bank build not later than 10 days after the Petition Date; provided further that such other customer agrees to (i) waive all claims for setoff that may exist with respect to accounts owed by such customer to Debtors (other than recoupments or deductions for defective or nonconforming products, quality problems, unordered or unreleased parts returned to Debtors, short shipments, misshipments, premium freight charges, improper invoices, mispricing, duplicate payments or billing errors existing) and (ii) purchase all inventory used in the production of its Component Parts at 100% of Debtors' cost regarding raw material and work in process and 100% of the selling price of finished goods.

- (3) A top 22 customer who has parts produced by the Debtors in multiple facilities may become an Assisting Customer with respect to one, some or all facilities. In which case, it shall only be liable for its Initial Allocable Percentage or Amended Allocable Percentage, as the case may be, for the facilities in which it opts to be an Assisting Customer. An Assisting Customer may not receive parts from any facility in which it is not an Assisting Customer, except as provided below.

### **Sale Covenants**

29. The Emergency Order contains the following sale covenants:

a. Sale Covenants for Sale Facilities. The Participating Customers may amend the facilities listed in the definition of Sale Covenants contained in this Order on or before 10 days of the Petition Date. To effectuate the sale process for each proposed Sale Facility as designated by the Participating Customers pursuant to paragraph 7(d) of this Order the Debtors shall:

- (1) File a sales procedure motion no later than 12 days after the Petition Date to (i) approve a sale process for those facilities agreed to by Debtors, Lender and the Participating Customers; and (ii) retain an investment banker to assist in the sale of the Sale Facilities;

- (2) As to each Sale Facility, obtain court approval no later than December 1, 2006 to close a sale transaction no later than December 19, 2006;
- (3) Produce a parts bank, subject to Capacity and otherwise cooperate with the Participating Customers to orderly resource production after the Termination Date out of a Sale Facility that Debtors are unable to successfully sell (or where an Event of Default has occurred allowing Participating Customer resourcing out of such Sale Facility), or otherwise cooperate in good faith to extend any financing necessary to operate such facility beyond the Termination Date.

b. Sale Covenants for Closing Facilities. The Participating

Customers shall provide Debtors and Lender a list of all Closing Facilities on or before 10 days of the Petition Date. To effectuate the sale process for each proposed Closing Facility the Debtors shall:

- (1) File a sales procedure motion no later than 12 days after the Petition Date to (i) approve a sale process acceptable to Lender; and (ii) retain an auctioneer to assist in the sale of the Closing Facilities; and
- (2) As to each Closing Facility, close one or more transactions to sell substantially all of Debtors' assets at the Closing Facility on terms acceptable to Lender within 14 days of the later of (i) the Exit Date or (ii) the expiration of the Occupancy Period under the Access and Security Agreement if a Right of Access at the Closing Facility is exercised by a Participating Customer.

**Additional Terms**

30. The Emergency Order additionally provide for the following terms:

a. Tooling and Equipment. The Debtors have agreed to certain tooling acknowledgements and equipment purchase options in favor of the Participating Customers described more fully in the Emergency Order.

b. Assumption of Customer Agreements. The Debtors have agreed that the Access and Security Agreement, as amended by the Emergency Order, shall be deemed assumed by the Debtors upon entry of the Emergency Order; provided however, the exercise by a Participating Customer of its Right of Access (as defined in the Access and Security Agreement) after the Exit Date shall obligate it to negotiate in good faith a revised budget for that particular Closing Facility, (ii) the Access and Security Agreement shall apply to, and continue to be enforceable against, CEP Mexico by a Participating Customer, and (iii) that any obligations of Debtors to cure any existing defaults under the Access and Security Agreement as of the date of the Emergency Order shall not be deemed to constitute administrative expenses (i.e. cure claims) against Debtors' estates, but remain prepetition claims of the Participating Customers. Thus, no administrative claim may arise from the assumption of the Access and Security Agreement.

c. Maintain Production; Parts Bank. Debtors shall maintain production at each of their respective facilities pursuant to ordinary releases for the Participating Customers pursuant to the Purchase Orders, and produce parts bank requirements of the Participating Customers and Assisting Customers subject only to Capacity, through earlier of (a) the Exit Date, or such later date on a facility by facility basis as is necessary to allow all Participating Customers to orderly resource its respective production at such facility, or (b) the date which a Participating Customer delivers a Resourcing Completion Notice with respect to a facility. In the event Debtors fail to maintain production and build the requested parts bank subject to Capacity, such failure shall constitute cause for the appointment of a Chapter 11 trustee or a "Default" under the Access and Security Agreement.

d. Events of Default. Events of Default include:

- (1) the occurrence of any Event of Default first arising after the Petition Date under Section 10.1 of the CEP Loan Agreement or Section 10.1 of the Thermoplastics Loan Agreement (other than by reason of Sections 10.1(g) or 10.1(h) of each Loan Agreement with respect to Debtors), as such Loan Agreements are amended and ratified by the Postpetition Agreement;
- (2) any Debtor fails to perform any of its obligations in strict accordance with the terms of the Emergency Order;
- (3) Debtors or Guarantors fail to comply with any of the Sale Covenants or fail to comply with any term of the sales procedures orders entered by the Court in connection therewith;
- (4) any Debtor, without Lender's consent, seeks the use of Cash Collateral other than in accordance with the terms of the Emergency Order;
- (5) any Debtor, without Lender's consent, files a motion to incur debt secured by a lien with priority equal to or superior to the Postpetition Liens or which is given superpriority administrative expense status under Code § 364(c) other than in accordance with the terms of the Emergency Order;
- (6) any Debtor files a motion to conduct a Code § 363 sale of all or part of the Aggregate Collateral on terms unacceptable to Lender;
- (7) commencement of any "Occupancy Period" under and as defined in the Access and Security Agreement;
- (8) any representation or warranty made by Debtors in any certificate, report or financial statement delivered to Lender proves to have been false or misleading in any material respect as of the time when made or given (including by omission of material information necessary to make such representation, warranty or statement not misleading);
- (9) the Case is dismissed or converted to a case under chapter 7 of the Code;
- (10) Glass & Associates, Inc. is no longer serving as financial advisor to Debtors;

- (11) the appointment of a chapter 11 trustee that is not acceptable to Lender; or
- (12) Debtors file a chapter 11 plan that is not acceptable to Lender.

### **Final Order**

31. The Debtors request that the Court enter a Final Order approving the Postpetition Facility on a final basis.

### **APPLICABLE AUTHORITY**

#### **A. The DIP Facility Should Be Approved**

32. Sections 364(c) and (d) of the Bankruptcy Code provide:

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt —

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or, 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

(d) (1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if —

(A) the trustee is unable to obtain such credit otherwise;  
and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.



33. Having determined that financing was available only under sections 364(c) and (d) of the Bankruptcy Code, and having explored other options for secured and unsecured lending, the Debtors have negotiated the terms of the Emergency Order pursuant to its business judgment with the Lender and Customers. Provided that this judgment does not run afoul of the provisions of and policies underlying the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance with its business judgment. *See, e.g., Brav v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (approving debtor in possession financing necessary to sustain seasonal business); *In re Ames Dep't Stores*, 115 B.R. 34, 40 (S.D.N.Y. 1990) ("Cases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest").

34. The Postpetition Facility is for the benefit of the Debtors' estate and creditors. Such financing is the sole means of preserving and enhancing the Debtors' going concern value. With the credit provided by the Postpetition Facility, including the Cash Infusions, the Debtors will be able to obtain goods and services in connection with its operations, pay its employees, and operate its business in order to preserve the ongoing value of its business for the benefit of all parties-in-interest. In addition, the availability of credit under the Postpetition Facility should give the Debtors' vendors and suppliers the necessary confidence to resume ongoing relationships with Debtors, including the extension of credit terms for the payment of goods and services. It will also likely be viewed favorably by the Debtors' employees and customers and thereby help promote the Debtors' successful sale. Indeed, as

previously discussed, without the Postpetition Facility, and related Customer Accommodations, the Debtors will lose their customers, be unable to meet payroll and other direct operating expenses, and a forced liquidation will likely result. Accordingly, this Court should authorize the Debtors to obtain the Postpetition Facility.

35. The terms and conditions of the Postpetition Agreement are fair and reasonable and were negotiated by the parties in good faith and at arm's length. Accordingly, the Lender should be accorded the benefits of section 364(e) of the Bankruptcy Code in respect of the Postpetition Facility.

**B. Debtors Have Met Their Burden For Use Cash Collateral.**

36. Section 363(c)(2) of the Bankruptcy Code provides that a debtor may not use, sell or lease cash collateral unless “(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and hearing, authorizes such use, sale or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2).

37. In addition to the need for debtor in possession financing, Debtors’ other pressing concern is the continuing need for immediate use of the Lender’s Cash Collateral pending a final hearing on this Motion. Debtors require use of the Cash Collateral to pay present operating expenses including payroll and to pay vendors to ensure a continued supply of materials essential to Debtors’ continued viability.

38. A secured creditor is entitled to adequate protection for the use of cash collateral pursuant to section 361 of the Bankruptcy Code. As reflected in the Emergency Order, Debtors propose that the Lender will receive replacement liens pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code as adequate protection against diminution in value of its

Collateral in all post-petition assets of the same type as the existing Collateral, subject only to the Carve Out. The Lender will also receive a monthly payment of \$177,000.

39. The Debtors believe that this proposed adequate protection is fair and reasonable and sufficient to satisfy any diminution in value of the Collateral.

**C. Assumption of the Access and Security Agreement Is Warranted**

40. The Debtors seek authority to assume the Access and Security Agreement under § 365 of the Bankruptcy Code. Assumption of the Access and Security Agreement is an integral part of the proposed Postpetition Financing and the related sale of the Debtors facilities and should be approved by the Court.

41. Section 365(a) of the Bankruptcy Code authorizes a debtor in possession to assume an executory contract or unexpired lease subject to the Court's approval. Section 365(b) of the Bankruptcy Code requires such debtor in possession to satisfy certain requirements at the time of assumption if a default exists under the contract to be assumed.

42. Section 365 of the Bankruptcy Code states in relevant part:

(a) Except as provided in...subsections (b), (c), and (d) of this section, the [debtor in possession), subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

.....

(f)(1) Except as provided in subsection (c) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in

applicable law, that prohibits, restricts, or condition the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection...

(2) The trustee may assign an executory contract or unexpired lease of the debtor only if --

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee or such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. Sec. 365(a), (b)(1), (f). Accordingly, Section 365 of the Bankruptcy Code authorizes the proposed assumption of the Access and Security Agreement. The counterparties to such agreement have waived the required cure of any defaults and do not seek adequate assurance.

43. The standard that is applied by this Court in determining whether an executory contract or unexpired lease should be assumed is the debtor's "business judgment." *See In re Hurricane Elkhorn Coal Corp. II*, 15 B.R. 987, 989 (Bankr. W.D. Ky. 1981) ("we think the business judgment rule to be the preferable standard"); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (describing the business judgment test as traditional); *Phar-Mor, Inc. v. Strouss Bldg. Assocs.*, 204 B.R. 948, 952 (N.D. Ohio 1997) ("Courts should generally defer to a debtor's decision whether to reject an executory contract").

44. Adequate business justifications merit judicial approval to assume the Access and Security Agreement. As noted above, the Debtors have determined that it is in the best interest of their estates to sell their assets. The Participating Customers have agreed to fund, through Cash Infusions and accommodations, this process and to support certain facilities as going concern sales. A prerequisite to this funding by the Participating Customers is the agreement to assume the Access and Security Agreement. Accordingly, based on the foregoing,

and the importance of the assumption of the Access and Security Agreement is a valid exercise of the Debtors' sound business judgment.

**D. Emergency Approval Should Be Granted**

45. Bankruptcy Rule 4001(b) and (c) provide that a final hearing on a motion to use cash collateral pursuant to Code section 363 and to obtain credit pursuant to Code section 364 may not be commenced earlier than fifteen (15) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to the Debtors' estate.

46. The Debtors request that the Court conduct an expedited preliminary hearing on the Motion and authorize Debtors from and after the entry of the Emergency Order until the Final Hearing to utilize the Cash Collateral as provided in the Emergency Order. This will enable the Debtors to maintain ongoing operations and avoid immediate and irreparable harm and prejudice to the estate and all parties in interest pending finalization of debtor in possession financing documents.

**NOTICE**

47. Notice of the Motion has been given to (a) the Office of the United States Trustee for the Northern District of Ohio, (b) the Debtors' secured lender, and (c) the Debtors' fifty (50) largest unsecured creditors on a consolidated basis. The Debtors submit that, under the circumstances, no other or further notice need be given.

**NOTICE OF INTERIM ORDER AND HEARING ON FINAL ORDER**

48. The Debtors also respectfully request that the Court set a final hearing date on the Motion as soon as practicable and permitted by applicable law and an objection deadline

on or before 5:00 p.m. (Prevailing Eastern Time) five (5) business days prior to the date of the final hearing, and authorize Debtors to serve a copy of the signed Emergency Order, which fixes the time and date for the filing of objections, if any, by electronic mail or first class mail upon (1) counsel to any official committee of unsecured creditors appointed in this case; (2) the Office of the United States Trustee; (3) all parties who have filed requests for notice under Bankruptcy Rule 2002 as of the date of service of the Emergency Order; (4) counsel for Lender; and (5) the twenty (20) largest unsecured creditors of each Debtor. The Debtors request that the Court consider such notice of the Emergency Order to be sufficient notice under Bankruptcy Rule 4001.

49. Debtors further request that the Court order that any party in interest objecting to the relief sought at the final hearing on the Interim Order shall file with the Court and serve such written objections, which objections shall be served upon Baker & Hostetler LLP, 3200 National City Center, 1900 East Ninth Street, Cleveland, Ohio 44114, attention Joseph F. Hutchinson, Jr., facsimile (216) 696-0740 and Goldberg Kohn, attention Jeremy Downs, Sears 55 East Monroe, Suite 3700, Chicago, Illinois 60603, facsimile 312.863.7893.

50. No prior motion for the relief requested herein has been made to this or any other court.

Wherefore the Debtors respectfully request that this Court enter the Financing Orders and grant such related relief as is requested herein.

Dated: September 20, 2006  
Cleveland, OH

CEP HOLDINGS, LLC, et al.,  
Debtors and Debtors-in-possession

By: /s/ Joseph F. Hutchinson, Jr.  
One of Their Attorneys

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