

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

IN RE: : Case No. 06-51848  
: Jointly Administered  
CEP Holdings, LLC, et al., :  
: Chapter 11  
: Debtors. : Judge Marilyn Shea-Stonum

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**APPLICATION OF CARLISLE ENGINEERED PRODUCTS, INC. FOR THE  
ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM**

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Carlisle Engineered Products, Inc. (“Carlisle”), through its undersigned counsel, hereby submits this Application for the Allowance of an Administrative Expense Claim (the “Application”) pursuant to §§ 365(d)(3) and 503(b)(1)(B). In this Application, Carlisle respectfully requests that this Court enter an order granting Carlisle an allowed administrative expense claim in the amount of \$25,483.54, which is the amount of real property taxes incurred by Debtor Creative Engineered Polymer Products, LLC, f.k.a. CEP Acquisition, LLC (“CEPP”) for the leased real property commonly known as 15332 Old State Road, Middlefield, Ohio (the “Property”) from the petition date of September 20, 2006 (the “Petition Date”) through the lease rejection date of March 20, 2007 (the “Rejection Date”). This request is in conjunction with Carlisle’s proof of claim for lease rejection damages in the amount of \$89,153.17, filed April 17, 2007 as Claim No. 15 in Case No. 06-

51847. To the extent that Carlisle's administrative expense claim is allowed, Carlisle will amend Claim No. 15 accordingly.

### **STATEMENT OF FACTS**

CEPP entered into that certain Lease Agreement with Carlisle for the Property on August 1, 2005 (the "Lease"). A copy of the Lease is attached hereto and incorporated by reference as Exhibit A. Pursuant to paragraph 10 of the Lease, CEPP is obligated to pay the real estate taxes and assessments levied on the Property

### **STATEMENT OF LAW**

#### **I. Administrative Claim Pursuant to § 365(d)(3).**

Section 365(d)(3) of the Bankruptcy Code governs the obligations of a debtor-tenant to its landlord during the post-petition, pre-rejection period of a case. See In re Phar-Mor, Inc., 290 B.R. 319, 322 (Bankr. N.D. Ohio 2003). Section 365(d)(3) specifically states:

The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under an unexpired lease of nonresidential real property until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. ...

When a debtor-tenant is obligated under a lease to pay real estate taxes, the estate is responsible for prorated taxes accrued during the post-petition, pre-rejection period and such amount constitutes an administrative expense. See Phar-Mor, 290 B.R., at 328.

The Lease obligates CEPP to pay the real estate taxes for the Property. Pursuant to § 365(d)(3), the real property taxes that accrued from the Petition Date to the Rejection Date are an administrative expense of the bankruptcy estate. Thus, Carlisle is entitled to an administrative expense claim in the amount of \$25,483.54. A detailed accounting of post-petition, pre-rejection taxes is attached hereto and incorporated by reference as Exhibit B.

## II. Administrative Claim Pursuant to § 503(b)(1)(B).

Alternatively, Carlisle is entitled to an administrative expense claim pursuant to § 503(b)(1)(B) of the Bankruptcy Code, which provides that after notice and a hearing, administrative expenses shall be allowed, including “any tax ... incurred by the estate whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8).”<sup>1</sup> 11 U.S.C. § 503(b)(1)(B)(i). For the purposes of § 503(b)(1)(B), property taxes are “incurred” as they accrue and the debtor is liable for the tax. See Phar-Mor, 290, at 328; In re Northeastern Ohio Gen. Hosp. Assn., 126 B.R. 513, 515 (Bankr. N.D. Ohio 1991); and 4 Collier on Bankruptcy ¶ 503.07[2][b] (Alan N. Resnick & Henry J. Sommer eds., 15<sup>th</sup> ed. rev.) (a property tax is incurred at the time the debtor become obligated to pay the tax).

Again, the Lease requires CEPP to pay the real property taxes for the Property. Pursuant to the Lease and § 503(b)(1)(B), Carlisle is entitled to an administrative expense claim in the amount of \$25,483.59 for the real property taxes that accrued post-petition, pre-rejection.

### **CONCLUSION**

By this Application, Carlisle respectfully seeks the allowance of an administrative expense claim in the amount of \$25,483.54, for real property taxes accrued during the period following the Petition Date and preceding the Rejection Date. Carlisle submits that taxes accrued constitute an administrative expense pursuant to §§ 365(d)(3) and 503(d)(3) of the Bankruptcy Code. Carlisle also requests that its allowed administrative claim be paid at such time as deemed appropriate by the Court.

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<sup>1</sup> Bankruptcy Code § 507(a)(8) grants priority to property taxes that are incurred before the commencement of the bankruptcy case.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2007, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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