

SO ORDERED: April 29, 2009.




James K. Coachys
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
)
RED TOP RENTALS, INC.,) CASE NO.: 09-05229-JKC-11
)
Debtor.)

INTERIM ORDER AUTHORIZING DEBTOR TO OBTAIN POST-PETITION SECURED AND SUPER PRIORITY FINANCING, AUTHORIZING THE DEBTOR TO USE CASH COLLATERAL, PROVIDING ADEQUATE PROTECTION, SCHEDULING A PRELIMINARY HEARING, AND APPROVING FORM AND MANNER OF NOTICE

Upon the Motion (the “Motion”) of Red Top Rentals, Inc., as debtor in possession in the above captioned Chapter 11 case (the “Debtor” or “Red Top”), for the entry of an Interim and a Final Order Authorizing Debtor to Obtain Post-Petition Secured and Super Priority Financing, Authorizing the Debtor to Use Cash Collateral, Providing Adequate Protection, Scheduling a Preliminary Hearing, and Approving Form and Manner of Notice, and the objection thereto (the

“Rudd Objection”) filed by Rudd Equipment Company, Inc. (“Rudd”); and the Court having considered the Motion; and upon completion of a preliminary hearing held on April 23, 2009 pursuant to the Bankruptcy Code and to Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 9013-3 of the United States Bankruptcy Court, Southern District of Indiana; and the Court having heard the arguments of counsel at the hearing on the Motion, and having considered relevant matters in the above captioned bankruptcy case (the “Bankruptcy Case”), and being advised by the parties that an agreement had been reached regarding the Rudd Objection, the terms of which were recited on the record and are incorporated herein, in consideration of which the Rudd Objection was withdrawn in open court, and being otherwise fully advised in the premises, finds as follows:

Background

A. Adequate and sufficient notice of the Motion has been provided to all persons entitled thereto under Rules 2002 and 4001 of the Bankruptcy Rules and no further notice of the Motion is necessary, prior to the entry of this Interim Order.

B. This matter constitutes a “core proceeding” within the meaning of 28 U.S.C. §157.

C. The Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. §1334 and 157.

D. On April 20, 2009 (the “Petition Date”), the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). Since the Petition Date, the Debtor has remained in possession of its assets and has continued in operation and control of its businesses as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

E. No official committee of unsecured creditors (the “Committee”), as provided for under Section 1102 of the Bankruptcy Code, has been appointed as of the date hereof.

The Debtor’s Pre-Petition Financing

F. Historically, the Debtor’s operations have been financed primarily through cash flow from business operations and from financing provided by M&I Marshall & Ilsley Bank in participation with Indiana Bank & Trust (collectively the “Lender”).

G. As of the Petition Date, the Lender has asserted first priority secured claims against the Debtor in the principal amount of not less than \$20,000,000.00 (the “Pre-Petition Obligations”), by virtue of (a) the Loan Agreement executed by the Debtor dated June 28, 2006 as amended from time to time (the “Loan Agreement”); (b) a Note dated June 28, 2006 as amended from time to time in the principal amount of \$30,000,000.00 (the “Equipment Note”); (c) a Note dated June 28, 2006 as amended from time to time in the principal amount of \$3,000,000.00 (the “Operating Note”) (the Equipment Note and the Operating Note are hereinafter referred to collectively as the “Notes”); and (d) a Security Agreement dated June 28, 2006 as amended from time to time (the “Security Agreements”). (The Notes, Security Agreement, the Loan Agreement, and all other instruments and documents evidencing and/or securing the Pre-Petition Obligations, including without limitation this Interim Order, are hereinafter referred to as the “Loan Documents”).

H. Lender has asserted that the Pre-Petition Obligations are secured by a duly perfected first priority security interest and liens (the “Pre-Petition Liens”) in substantially all of the Debtor’s business assets (the “Pre-Petition Collateral”), with priority over all liens, claims, and interests of all other persons and entities including the Debtor; that the Pre-Petition Obligations constitute an allowable claim under Sections 502 and 506 of the Bankruptcy Code; and the Pre-Petition Obligations are due and payable without defense, set off, or counterclaim.

I. Lender maintains that the proceeds of the Pre-Petition Collateral constitute cash collateral as defined in Section 363(a) of the Bankruptcy Code (the “Cash Collateral”). As of the Petition Date, Debtor had cash in the sum of approximately \$172,829.62, accounts receivable in the approximate aggregate sum of \$7,029,280, and inventory in the approximate aggregate sum of \$20,000,000.00¹, which is Cash Collateral within the meaning of 11 U.S.C. §363(c)(2).

The Motion

J. In the Motion, the Debtor seeks authority to obtain post-petition secured and super-priority financing, authorization to use the Cash Collateral, and to provide adequate protection to Lender for the use thereof on an interim and on a final basis.

K. The Debtor asserts that it requires the use of the Cash Collateral in order to continue to operate its business. Without the use of Cash Collateral, the Debtor’s estate will suffer irreparable harm in that the value of the Debtor’s assets will diminish, and the Debtor will not be able to preserve the value of its assets. Accordingly, the Debtor has requested that Lender allow it continued use of Cash Collateral in the operation of its business.

L. In addition, the Debtor requires an extension of credit from Lender in order to continue to operate its business. In particular, the Debtor’s cash flow projection attached as Exhibit “A” (the “Budget”) shows that the Debtor needs to borrow funds in order to operate. If the Debtor is not able to obtain post-petition credit, the Debtor’s estate will suffer irreparable harm in that the Debtor will have insufficient operating capital to operate its business.

M. The Debtor lacks unencumbered assets to operate its business post-petition and is unable to obtain post-petition financing on an unsecured basis.

¹ The Debtor asserts that, as Debtor is in the business of leasing construction equipment, substantially all of Debtor’s construction related equipment constitutes “inventory” pursuant to the Uniform Commercial Code. This assertion is disputed by Rudd.

N. Lender is willing to extend secured credit to the Debtor and to allow the Debtor to use Cash Collateral, subject to the agreed terms, conditions, and limitations set forth in this Interim Order. It is in the best interest of the Debtor, the Debtor's estate, and its creditors for the Debtor to be allowed to obtain secured credit from Lender and to use Lender's Cash Collateral on the conditions set forth herein.

O. The covenants and agreements contained in the Loan Documents shall remain valid and enforceable and are incorporated herein by reference, except to the extent that they are inconsistent with the terms of this Interim Order, in which event the terms of this Interim Order shall control.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. The Debtor is hereby authorized to use the Pre-Petition Collateral, including the Cash Collateral, in conformity with the Budget. The Debtor shall be authorized to expend funds on those categories and for amounts not to exceed those identified in the Budget without further order of the Court; provided, however, that if Lender, in its sole discretion, approves in writing any additional expenditure not included in the Budget, the Debtor may use the Cash Collateral in accordance therewith without further order of the Court.

2. The Debtor is hereby authorized and directed to execute all documents and effect all transactions necessary to obtain secured credit from Lender as provided for herein and to implement the use of Cash Collateral as provided for herein.

3. Until the entry of the Final Order, Lender shall extend post-petition secured credit to the Debtor (the "DIP Loan") in an amount not to exceed \$2,604,846.66, by amending the Loan Documents as set forth below in order to provide the Debtor with additional available credit secured by a first perfected security interest attaching to all pre-petition and post-petition assets

of the Debtor and of the Debtor's estate as set forth below. In particular, the Debtor shall be and is authorized to obtain credit from and incur secured indebtedness to Lender as follows:

(a) Amount. Lender agrees, subject to the terms and conditions of the Loan Documents and this Interim Order, and provided that a Default is not then in existence or would not then be created thereby, to make advances of funds (singularly or collectively herein referred to as an "Advance" and the "Advances") to the Debtor in an aggregate outstanding principal amount not to exceed at any one time Two Million Six Hundred Four Thousand Eight Hundred Forty Six and 66/100 Dollars (\$2,604,846.66) (the "Commitment").

(b) Notes. The terms and conditions of the Notes shall remain in full force and effect except as modified herein. The Commitment shall be made pursuant to the Operating Note. The maximum amount which Lender shall make available to the Debtor pursuant to the Operating Note, including credit extended before and after the Petition Date, shall be to the extent of the Commitment without regard to the Borrowing Base, as set forth in the Loan Documents. No additional sums shall be advanced from Lender to Debtor pursuant to the Equipment Note.

(c) Interest. Interest shall accrue on the DIP Loan at the interest rate equal to the greater of (i) the thirty day London Inter Bank Offer Rate (LIBOR) plus 450 basis points, or (ii) five percent (5%). The Debtor shall pay such interest in arrears on the balance of the DIP Loan outstanding from time to time in accordance with the terms and conditions of the Operating Note. Payments of interest on the DIP Loan shall be due and payable on the first day of each month commencing on May 1, 2009.

(d) Payments. Any payments received by Lender from the Debtor shall be applied by Lender in accordance with the Loan Documents; provided, however, that in the event of any sale of any part of the Collateral (as hereinafter defined) outside the ordinary course of Debtor's

business, (other than the Rudd Machinery as hereinafter defined), any payments received by Lender as a result of such a sale shall be applied by Lender subject to the Carve Out (as hereinafter defined) first to reduce the outstanding amounts due to Lender under the Equipment Note (the "Sale Proceeds Payments"). Proceeds of the sale of the Rudd Machinery shall be deposited in the Escrow Account (as hereinafter defined). To the extent that any Sale Proceeds Payments shall reduce the Operating Note, then the Commitment and availability of Advances pursuant to the DIP Loan shall reduce by an amount equal to such payments.

(e) Advances. The Debtor shall continue their existing cash management system with Lender, which shall include the maintenance of the Cash Collateral Account (as defined in the Loan Documents). All receipts from any source, in the ordinary course of Debtor's business, shall be deposited into the Cash Collateral Account and applied, on a daily basis, to pay down the balance of the Operating Note. Advances pursuant to the DIP Loan shall be deposited into Debtor's operating account maintained with Lender, weekly, after Lender receives the weekly cash flow detail report from Debtor described in paragraph 22, in an amount (if available under Commitment) equal to the expenditures shown on the Budget for that week plus ten percent (10%). Any unspent funds advanced by Lender to Debtor for prior weeks shall be deposited into the Cash Collateral Account on Tuesday of each week.

(f) The DIP Loan shall be governed in all respects by the terms of the Loan Documents, except as expressly modified by the terms of this Interim Order.

4. As security for the DIP Loan and any other indebtedness or obligations, contingent or absolute, which may now or from time to time hereafter be owing by the Debtor to Lender arising therefrom, Lender is hereby granted for the sole benefit of Lender, valid, binding, enforceable and perfected senior liens with priority over all other liens pursuant to 11 U.S.C. §364(d) (the "Post-Petition Liens") attaching to the Pre-Petition Collateral, and all currently owned

or hereafter acquired property and assets of the Debtor or of the estate of any kind or nature, whether real or personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising and all proceeds, products, rents and profits thereof, including without limitation all cash, goods, accounts, inventory, cash-in-advance deposits and/or payments, general intangibles, deposit accounts, Budget expenses transferred or ordered back, fixtures, real estate, machinery, equipment, vehicles, trademarks, trade names, licenses, claims and causes of action, including without limitation commercial tort claims, investment property, and rights to payment including tax refund claims and insurance proceeds, and the proceeds, products, rents and profits of all of the foregoing (specifically excluding any cause of action arising solely under §§ 544, 547, 548, 549 or 550 of the Bankruptcy Code (the “Avoidance Actions”)) (the “Post-Petition Collateral”). (All such Pre-Petition Collateral and Post-Petition Collateral is hereafter referred to, collectively, as the “Collateral”); provided, however, that with respect to the fifteen (15) pieces of machinery identified in the Rudd Objection (the “Rudd Machinery”), the Post-Petition Liens shall attach in the order of priority as determined by final non-appealable order in the adversary proceeding #09-50253, styled Red Top Rentals, Inc. v. Rudd Equipment Co. and M&I Bank or by subsequent written agreement of Rudd, the Debtor, and Lender; and further provided that, as potential adequate protection for the use of the Rudd Machinery, the Debtor shall deposit, into an escrow account (the “Escrow Account”), weekly, amounts based upon the number of hours of use of the Rudd Machinery as follows:

Volvo EC460 BLC Excavators - \$63.00 X number of hours actually used that week;

Volvo A30D Articulated Haulers - \$53.00 X number of hours actually used that week;

Volvo A40D Articulated Haulers - \$67.00 X number of hours actually used that week

The Post-Petition Liens shall attach to funds deposited into the Escrow Account in the order of priority as determined by final non-appealable order in the adversary proceeding #09-50253, styled

Red Top Rentals, Inc. v. Rudd Equipment Co. and M&I Bank or by subsequent written agreement of Rudd and Lender; **Lender will require that the final order approving the DIP Loan shall provide that the Collateral specifically include the Avoidance Actions.** Such Collateral shall necessarily include, without limitation, all property described in the Loan Documents. The purpose of this Paragraph is to grant to Lender a lien on each and every asset of the Debtor to the maximum extent allowed by law.

5. As a condition for the DIP Loan, the Debtor shall make all payments on the Operating Note and the DIP Loan as and when due, as set forth in the Loan Documents, and shall make monthly interest payments on the Equipment Note, on the first day of each month beginning May 1, 2009. All such payments shall be secured by the liens and security interests granted herein, and shall be governed by the terms and conditions of the Loan Documents. Any and all payments or proceeds remitted, or deemed to be remitted, to Lender pursuant to the provisions of this Interim Order and the DIP Loan shall be received, or deemed received, by Lender for the benefit of Lender free and clear of any claim, charge, assessment or other liability including, without limitation, any claim or charge arising out of or based on Sections 506(c) or 552(b) of the Bankruptcy Code, whether directly or indirectly, all of which are hereby waived by the Debtor.

6. In order to provide Lender with adequate protection with respect to any decrease in the value of its interest in the Pre-Petition Collateral, among other things, resulting from the stay imposed under Section 362 of the Bankruptcy Code or the use of such property, including use of Cash Collateral by the Debtor (such decrease in value being referred to as the “Adequate Protection Claim”), and to secure the Adequate Protection Claim, Lender is granted a security interest and lien (the “Replacement Lien”) upon all of the Post Petition Collateral to the same extent and in the same priority that Lender had secured interests in the pre-petition property of the Debtor as of the Petition

Date, which Replacement Lien is in addition to the Pre-Petition Liens and Post-Petition Liens. The Adequate Protection Claim shall also be entitled to an administrative super-priority claim to the extent of the diminution in the value of such interest in Cash Collateral pursuant to 11 U.S.C. §507(b), subject only to the Carve Out defined below.

7. Lender's Replacement Lien granted herein shall constitute a first priority lien and security interest attaching to the Collateral subject only to pre-existing, pre-petition, non-voidable, perfected liens or security interests in favor of third parties that are not otherwise subject to avoidance or subordination. Except as expressly set forth in this Interim Order, the liens and security interests granted to Lender in this Interim Order shall not be subordinated to or made *pari passu* with any other lien under Section 364(d) of the Bankruptcy Code or otherwise. In addition, subject to the Carve Out defined below, the Post Petition Liens and Replacement Liens shall have priority in accordance with the provisions of Section 364(c)(1) of the Bankruptcy Code over all administrative expenses of the kind specified in Sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), or 726 of the Bankruptcy Code (the "Superpriority Claim"). Provided, however, that such Superpriority Claims shall attach to funds deposited into the Escrow Account in the order of priority as determined by final non-appealable order in the adversary proceeding #09-50253, styled Red Top Rentals, Inc. v. Rudd Equipment Co. and M&I Bank or by subsequent written agreement of Rudd and Lender. Subject only to the Carve Out defined below, no costs or administrative expenses which have been or may be incurred in this Chapter 11 Case, or following any conversion of this Chapter 11 Case pursuant to Section 1112 of the Bankruptcy Code, or in any other proceeding related thereto, and no priority claims, including, without limitation, any other superpriority claims, are or will be prior to or on a parity with the claims of Lender against the Debtor arising out of the DIP Loan or any provision of this Interim Order or with the liens and security interests granted herein on, in and to the Collateral.

8. In the event that the protections provided by the liens, security interests and encumbrances herein recognized or created by any means turn out, in retrospect, to have been inadequate, the full amount of any deficiency owed to Lender shall be entitled to the super priority afforded by § 364(c)(1) and § 507(b) of the Bankruptcy Code. Provided, however, that such Superpriority Claims shall attach to funds deposited into the Escrow Account in the order of priority as determined by final non-appealable order in the adversary proceeding #09-50253, styled Red Top Rentals, Inc. v. Rudd Equipment Co. and M&I Bank or by subsequent written agreement of Rudd and Lender.

9. The rights and obligations of the Debtor and the rights, claims, security interests, liens and priorities of Lender arising under this Interim Order and the Post-Petition Financing Documents (as hereinafter defined) are in addition to, and not in lieu or substitution of, the rights, obligations, claims, security interests, liens and priorities existing as of the Petition Date.

10. The extent, validity, perfection and enforceability of the Pre-Petition Obligations, the Loan Documents, and Lender's interest in the Pre-Petition Collateral, as of the Petition Date, are valid and binding agreements and obligations of the Debtor, the liens and security interests of Lender in the Pre-Petition Collateral are valid, perfected, enforceable liens not subject to subordination and otherwise non-avoidable, and the Pre-Petition Obligations are allowable and are valid, enforceable and non-avoidable secured claims pursuant to Sections 506(a) and (b) of the Bankruptcy Code, in the amount set forth in the books and records of Lender, and the Debtor does not possess, and may not assert, any claim, counterclaim, setoff defense, offset or recoupment of any kind or nature, unless a party in interest, within ninety (90) days of the date of this Interim Order, files a complaint, pursuant to Bankruptcy Rule 7001, to invalidate, avoid, modify, reduce or subordinate the Pre-Petition Obligations and Lender's liens on the Pre-Petition

Collateral and/or to object to the extent, validity, enforceability, or perfection of Lender's Pre-Petition Liens, and the Court ultimately rules in favor of the party in interest on such complaint.

11. The Debtor shall execute such notes, security agreements, and other documents as Lender may request, to effectuate this Interim Order, or to evidence, confirm, validate or perfect the liens, security interests, debts and obligations granted pursuant to this Interim Order. (Any and all such documents, along with any post-petition financing statements filed by Lender, are hereafter referred to, collectively, as the "Post-Petition Financing Documents"). Nevertheless, the entry of this Interim Order shall operate to evidence the Debtor's indebtedness to Lender and perfect Lender's security interests in the Collateral without Lender's further act. If Lender chooses to file financing statements or other documents or otherwise confirm perfection of its security interests in the Collateral, all such financing statements or other documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Debtor's bankruptcy case. For purposes of this paragraph, the automatic stay of §362 of the Bankruptcy Code is hereby modified, vacated and lifted as against Lender.

12. In order to permit the orderly administration of this case, Lender has agreed to subordinate its liens on the Collateral and the Superpriority Claim and §507(b) claim to fees payable to the United States Trustee pursuant to 28 U.S.C. §1930 and to certain professional expenses. Specifically, in the event that there are insufficient funds for the Court to satisfy administrative costs and expenses in the Bankruptcy Case, the Superpriority Claim, the §507(b) claim, and the liens of Lender identified this Interim Order shall be subject to a carve out for (i) the payment of unpaid fees pursuant to 28 U.S.C. § 1930; (ii) the payment, in accordance with the Budget, of allowed and unpaid fees and disbursements of professionals retained by the Debtor in this case; provided that, notwithstanding the foregoing, in the event an Event of Default (as defined below) has occurred and Lender has elected to exercise its rights under

paragraph 26 of this Interim Order to no longer extend credit or permit use of Cash Collateral (a “Termination Event”), payments under the Budget for allowed and unpaid fees and disbursements incurred prior to the Termination Event shall be made to the Debtor’s professionals as set forth in the Budget, and payments of allowed and unpaid fees and disbursements to the Debtor’s professionals incurred after the Termination Event shall be limited to the Debtor’s professionals’ pre-petition retainers in the aggregate sum of \$159,909.79; and (iii) payments of allowed and unpaid fees and disbursements of professionals retained by the Committee in this case, if any, in such maximum amounts, and upon such further terms as may be negotiated and agreed to by the Debtor, Lender, and the Committee (collectively, the respective carve outs and the fees payable under 28 U.S.C. §1930 for the Committee and for the Debtor’s professionals, the “Carve Out”).

13. Notwithstanding the foregoing, the Carve Out shall not include any professional fees or disbursements incurred by such professionals in connection with investigating or asserting any claims or causes of action against Lender (including discovery or Bankruptcy Rule 2004 Proceedings in anticipation thereof) and/or investigating, challenging or contesting in any manner the validity, perfection, priority, enforceability, avoidance, extent or amount of any security interest lien or any claim of Lender under the Loan Documents, except for: (i) (a) Red Top Rentals, Inc. v. John Deere Construction & Forestry Company and M&I Marshall & Ilsley Bank; (b) Red Top Rentals, Inc. v. Michigan Tractor and Machinery Company and M&I Marshall & Ilsley Bank; and (c) Red Top Rentals, Inc. v. Rudd Equipment, Inc. and M&I Marshall & Ilsley Bank; each of which having been filed on the Petition Date to determine the priority of liens on certain of the Debtor’s inventory; and (ii) reasonable investigation by professionals retained by the Committee, if any, in such maximum amounts, and upon such further terms as may be negotiated and agreed to by Debtor, Lender, and the Committee.

14. Consistent with the Loan Documents, Debtor shall pay or reimburse Lender within seven (7) days after receipt of invoice for all costs and expenses (including, without limitation, all filing and recording fees and attorneys' and paralegal fees and expenses, and the fees and expenses of Lender's consultants) incurred by Lender before or after the Petition Date: (i) in connection with the preparation of the Motion, this Interim Order, the DIP Loan and related instruments, documents and agreements including the perfection of Lender's security interests; (ii) in the representation of Lender in Debtor's bankruptcy case in connection with any plan of reorganization or otherwise; (iii) in the monitoring of all loans by Lender to the Debtor; (iv) in enforcing Lender's rights and remedies with respect to the Collateral; and (v) in paying any cost or expense for which Debtor would otherwise be obligated under the Loan Documents ("Lender Expenses").

15. Lender may debit any post-petition account of the Debtor with Lender except the Escrow Account, or make Advances pursuant to the DIP Loan, to pay the Lender Expenses as invoiced to Debtor.

16. No consent by Lender to any administrative claims, including fees and expenses of professionals, sought to be assessed against or attributed to Lender or its interests in the Collateral pursuant to the provisions of Section 506(c) of the Bankruptcy Code or otherwise by, through or on behalf of the Debtor shall be implied from any action, inaction or acquiescence by Lender or otherwise. Except as set forth herein, Lender has not consented or agreed to the use of the Cash Collateral, the Collateral, the DIP Loan or their proceeds. **Lender will require that the final order approving the DIP Loan shall provide that no claim pursuant to Section 506(c) of the Bankruptcy Code shall be asserted against Lender or any of the Collateral for any costs and expenses incurred in connection with the preservation, protection, enhancement, or disposal of the Collateral.**

17. The use of Cash Collateral and the DIP Loan shall be governed by the existing

Loan Documents, except to the extent of any conflict with this Interim Order. The advances made by Lender may be used only for the purposes and in the aggregate amounts of each line item described in the Budget attached as Exhibit "A". Notwithstanding the Budget or any other provision of this Interim Order, any Advances made by Lender pursuant to the DIP Loan shall be limited to the credit available under the terms of the Loan Documents. Notwithstanding any term of the Budget to the contrary, during the term of this Interim Order, the Debtor shall continue to timely make all payments due to Lender upon the Pre-Petition Obligations and the DIP Loan, according to the terms of this Interim Order. If any payroll is paid from Advances, the Debtor hereby expressly indemnifies and holds harmless Lender from and against any liabilities, including costs and attorneys' fees, resulting from any claims or demands made by the United States government pursuant to the provisions of the Federal Tax Lien Act of 1966 for withholding and FICA taxes incurred during the operation of Debtor's business.

18. Nothing in this Interim Order, including the Budget, shall constitute or be construed as a consent, acknowledgment or agreement by Lender or constitute a waiver or estoppel with respect to the rights of Lender to dispute the validity or accuracy of the Debtor's calculations or any contentions with respect to collateral values or adequate protection based thereon. In making decisions to permit Advances under the DIP Loan and/or the approval or disapproval of the Budget, Lender shall not be deemed to be in control of the operations of the Debtor by virtue of the interests, rights, and remedies granted to or conferred upon Lender under the Loan Documents, the Post-Petition Financing Documents, and/or this Interim Order.

19. Notwithstanding anything to the contrary contained herein, the funds advanced by Lender pursuant to the DIP Loan cannot be used for services rendered in connection with the assertion or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek any order, judgment,

determination or similar relief invalidating, setting aside, avoiding, subordinating, in whole or in part, the Pre-Petition Obligations, the DIP Loan, or the liens and security interests in any of the Collateral granted in favor of Lender to secure the Pre-Petition Obligations, the Adequate Protection Claim, or the DIP Loan. Lender shall not, by reason of its consent to entry of this Interim Order or otherwise, be deemed to consent to any of Debtor's expenses.

20. Lender shall be entitled to all of the benefits of Section 364(e) of the Bankruptcy Code for all post-petition advances made to the Debtor hereunder and pursuant to the DIP Loan. In the event any or all of the provisions of this Interim Order are hereafter modified, amended, stayed or vacated by a subsequent order of this or any other Court, no such modification, amendment, stay or vacation shall affect the validity and enforceability of any obligation, debt, lien, security interest or priority authorized or created hereby. Notwithstanding any such modification, amendment, stay or vacation, any claim granted to Lender hereunder arising prior to the effective date of such modification, amendment, stay or vacation shall be governed in all respects by the original provisions of this Interim Order and Lender shall be entitled to all of the rights, remedies, privileges and benefits, including the liens and priorities granted herein, with respect to any such claim. Notwithstanding the occurrence of the Termination Date (as defined below) or anything herein to the contrary, all of the rights, remedies, benefits and protections provided to Lender under this Interim Order, the Loan Documents and/or the Post-Petition Financing Documents shall survive the Termination Date.

21. Representatives of Lender may enter upon the premises of the Debtor at any time during the Debtor's business hours, upon reasonable notice to the Debtor and provided that such presence does not unduly interfere with the Debtor's operations. Such representative may observe the Debtor's compliance with the terms and provisions of this Interim Order, the DIP Loan, and the Loan Documents, but shall not in any respect participate in the management of the

day-to-day business operations of the Debtor. The Debtor shall use its best efforts to accommodate Lender with the observation permitted hereby.

22. In addition, the Debtor shall provide to Lender all reports and financial information required by the Loan Documents, and shall in good faith and in a reasonably prompt manner: (i) provide to Lender the financial reports submitted to the United States Trustee's Office, and such other information as Lender may from time to time request; (ii) answer inquiries and requests of Lender and its professionals for information, and/or documentation; (iii) provide full cooperation and information to Lender as to the value and description of the assets of Debtor and the sale or liquidation of those assets; (iv) provide Lender with daily borrowing base certificates; (v) provide Lender with weekly cash flow detail reports by Tuesday of the following week comparing actual performance to the Budget (the "Variance Report"); (vi) provide Lender with a monthly income statement by the 20th of the following month comparing actual performance to the Budget; (vii) provide Lender with an updated balance sheet monthly, by the 20th day of the following month; (viii) provide Lender with a monthly cash flow statement by the 20th day of the following month comparing actual performance to the Budget; and (ix) provide Lender, on June 15, 2009, an updated budget, the terms of which are to be acceptable to Lender in its sole discretion, showing the Debtor's detailed projections for the ensuing thirteen (13) week period. Debtor shall also provide monthly reports to Rudd concerning the Escrow Account and its use of the Rudd Machinery.

23. The Debtor shall maintain and manage its business and operations in the ordinary course under the current circumstances, including without limitation the maintenance of adequate insurance coverage with respect to loss of or damage to the Collateral. The Debtor shall make every reasonable effort to insure the collection of all pre-petition and post-petition accounts and

to preserve, maintain and protect the Pre-Petition Collateral, the Post-Petition Collateral and the proceeds thereof.

24. The terms of this Interim Order will expire on the date (the "Termination Date") that is the earlier of:

- (a) The date first set for the Final Hearing as contemplated in paragraph 34 below;
- (b) the entry of an order by any court modifying, amending, vacating or staying any provision of this Interim Order;
- (c) the voluntary or involuntary dismissal of Debtor's bankruptcy case;
- (d) the appointment of a Chapter 11 Trustee or Examiner;
- (e) the conversion of the case to one under Chapter 7 of the Bankruptcy Code;
- (f) the entry of an Order confirming a Chapter 11 Plan of Reorganization;
- (g) the occurrence of an Event of Default as defined herein; or
- (h) the last date included in the Budget.

Notwithstanding any other term or condition of this Interim Order, or of the DIP Loan or Loan Documents, as of the Termination Date, Lender shall be under no obligation to extend any further credit to the Debtor, or to permit the Debtor to use any Cash Collateral unless, prior to the Termination Date, Lender and the Debtor submit a supplemental agreed order governing such post-petition credit or use of cash collateral, and such agreed order has been entered and approved by the Court. Unless the parties tender a supplemental agreed order extending the terms of the DIP Loan prior to the Termination Date, the DIP Loan shall be fully due and payable to Lender on the Termination Date. All of the liens and security interests granted to Lender herein shall survive the Termination Date.

25. Any of the following shall constitute Events of Default under the terms of this Interim Order:

- (a) Any Event of Default as defined under the Loan Documents, as modified by this Interim Order, first occurring or discovered subsequent to the entry of this Interim Order, and which shall continue after any applicable cure period.
- (b) Any failure by the Debtor to timely make any payment due to Lender including without limitation any payment due under the Loan Documents, this Interim Order or the DIP Loan.
- (c) The Debtor fails to timely provide any of the reports required by Paragraph 22 of this Interim Order, or by the Loan Documents.
- (d) The Debtor makes any payment not set forth in the Budget or not previously approved by Lender.
- (e) The Debtor sells or agrees to sell any of the Debtor's assets, other than sales of inventory made in the ordinary course of business, without Lender's consent.
- (f) The Debtor shall fail to comply with any other term or condition of this Stipulation and Interim Order.
- (g) The difference between (A) Actual Cash Receipts and (B) Actual Cash Disbursements for the period to date as reflected on any Variance Report has a cumulative negative variance of greater than ten percent (10%) from that projected in the Budget.
- (h) The difference between (A) the difference between (i) Actual Cash Receipts and (ii) Actual Cash Disbursements based upon Debtor's actual performance to date and (B) the Debtor's weekly cash forecasts for the remainder of the period covered by the Budget has a negative variance of greater than ten percent (10%) from that projected in the Budget.

26. Upon the occurrence of an Event of Default, as defined above, Lender shall have the right, without further order of the Court or notice to the Debtor, to exercise the rights granted it under this Interim Order and the Loan Documents, as to all or such part of the Collateral as Lender in its sole discretion shall elect, including the right to take possession of and sell the Collateral in accordance with the terms of the Uniform Commercial Code to satisfy the Pre-Petition Obligations and the DIP Loan, and all other rights and remedies at law and equity upon notice to Debtor of Lender's election and on expedited hearing to be conducted by this Court not less than three (3) business days from the date of such notice. For such purpose, the automatic

stay of Section 362 of the Bankruptcy Code is hereby modified and vacated as against Lender. Immediately following the occurrence of an Event of Default, Lender may, in its discretion, sue any party to recover or collect the Collateral. In such event, Lender may sue in the name of Debtor, and counsel for Lender is hereby authorized to act as special counsel for Debtor and Lender, as their interests may appear, for the purpose of recovering or collecting the Collateral if the Debtor does not undertake to do so within ten (10) days after a written request from Lender. Additionally, after an Event of Default, Lender may apply to this Court in the name of Debtor and on its own behalf, for an Order confirming the sale, lease or other disposition of the Collateral upon ten (10) days' notice to parties entitled to notice.

27. Lender, in its sole discretion, shall have the right to forbear from pursuing or enforcing any of the rights, remedies or powers granted herein or in the Loan Documents. Delay in or failure to exercise any rights or remedies shall not constitute a waiver of any such rights, remedies or powers nor shall such forbearance subject Lender to any liability to any other party, nor shall any other party rely upon or in any way seek to assert such delay or failure as a defense to any obligations owing to Lender.

28. Upon the occurrence of the Termination Date, the principal, accrued interest and fees and all other amounts owed to Lender hereunder or under the Loan Documents and the DIP Loan shall be immediately due and payable and Lender shall have all other rights and remedies provided in the Loan Documents, the Post-Petition Financing Documents, and this Interim Order.

29. In no event shall Lender be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Collateral or otherwise.

30. Notwithstanding anything to the contrary herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise

impair: (a) any of the rights of Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of Lender to (i) request additional adequate protection of its interests in Collateral or relief from or modification of the automatic stay under §362 of the Bankruptcy Code, (ii) request conversion of this Chapter 11 Case to Chapter 7, and (iii) propose, subject to the provisions of §1121 of the Bankruptcy Code, a Chapter 11 plan or plans; or (b) any other rights, claims or privileges (whether legal, equitable or otherwise) of Lender. Nothing in this Interim Order shall in any way affect the rights of Lender against third parties. In taking any action reasonably related to the Loan Documents, this Interim Order, or the DIP Loan, Lender shall have no liability to the Debtor or any third party.

31. The provisions of this Interim Order shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, including but not limited to any Trustee who may be appointed in this Chapter 11 case or any superceding case under Chapter 7 of the Bankruptcy Code. The obligations of and liens granted by the Debtor and conferred by this Interim Order with respect to the Pre-Petition Obligations and the DIP Loan shall not be modified or discharged by the entry of an order confirming a plan of reorganization in this case, except as otherwise consented to by Lender.

32. The terms and conditions relating to this Interim Order have been negotiated, agreed to, and the terms thereof promulgated, in good faith and at arms length between the Debtor and Lender (and, where applicable, Rudd), with all parties represented by counsel. This Interim Order and related documents represent good faith transactions which are in the best interests of the Debtor's estate. The security interests and liens and priorities granted under this Interim Order are entitled to the benefits and protections of the Bankruptcy Code.

33. Time is of the essence to the parties' agreement to perform as set forth in this Interim Order.

34. This matter is set for a final hearing at 9:00 o'clock a.m. on May 22, 2009 ("Final Hearing"). At the Final Hearing the Court will rule on the continued effectiveness of this Interim Order, and the relief described herein. Such date may be adjourned or continued by this Court without further notice other than that given in open court. Any party in interest objecting to the provisions of this Interim Order must file and serve its objections in writing so that such objections are received no later than the close of business three (3) business days prior to the date set for the Final Hearing. Any objection or other response to this Interim Order shall be served on: (1) counsel for the Debtor, Jeffrey M. Hester, Tucker Hester, LLC, 429 North Pennsylvania Street, Suite 100, Indianapolis, Indiana 46204; (2) counsel for Lender, George W. Hopper, Hopper Blackwell, P.C., 111 Monument Circle, Suite 452, Indianapolis, Indiana 46204; and (3) the United States Trustee, 101 West Ohio Street, Suite 1000, Indianapolis, Indiana 46204. If a written objection or other response is timely filed and served in accordance with the above, the Court will consider such objection or response at the Final Hearing. The Final Hearing may be adjourned by announcement in open court at the time of the above-scheduled Final Hearing or any subsequently scheduled final hearing; provided, however, the adjournment of the Final Hearing shall not extend or otherwise alter the above-stated time for filing and serving objections or other responses.

35. This Order is being entered this 28th day of April, 2009 as an interim order pending the Final Hearing and shall be effective as of the Petition Date.

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Requested By:

William J. Tucker
Jeffrey M. Hester
Niccole R. Sadowski
TUCKER | HESTER, LLC
429 N. Pennsylvania Street, Suite 100
Indianapolis, Indiana 46204-1816
Phone 317.833.3030
jeff@tucker-hester.com

Red Top Rentals, Inc.**Cash flow budget****For April 4 thru December 31, 2009**

	Week 1	Week 2	Week 3
	4/18/09	4/25/09	5/2/09
	4/24/09	5/1/09	5/8/09
Receipts:			
Cash from Current Receivables	59,547	60,706	92,227
Cash From New Rental's	0	0	0
Equipment Sales	0	0	0
Mining	0	0	0
Other Receipts:			
Rhino Reimbursement for Red Top Employees	0	20,000	0
Total Receipts	59,547	80,706	92,227
Disbursements:			
Future Operating Expenses (COD)	42,754	44,019	85,563
Sales Tax	22,592	0	0
Adequate Protection - Non Bank	0	0	0
Adequate Protection - Bank	0	0	0
Bank Pay down from Equipment Sales	0	0	0
Stockberger Sign, crushed stone, etc.	0	0	0
Reclamation/Critical vendor	0	0	10,000
Total Accounts Payable	65,346	44,019	95,563
Payroll:			
Gross Indiana Hourly (weekly)	16,855	16,855	16,855
Gross Salary (biweekly)			
Indiana	0	44,262	0
Kentucky	0	3,731	0
Ohio	0	0	0
Commissions	6,735	0	0
Travel Expenses	0	1,000	0
Total Payroll	23,590	65,848	16,855
Payroll taxes			
FICA	1,045	4,021	1,045
FUTA	135	519	135
SUTA - IN	788	919	788
SUTA - KY	0	364	0
SUTA - OH	0	0	0
Total Payroll Taxes	1,968	5,822	1,968

Insurance:

Health/Dental	0	28,777	0
Workers comp.	0	0	0
Workers comp. - 2008 Reconciliation	0	0	0
Life	0	164	0
Property	0	0	0
General Liability	0	0	0
Auto	0	0	0
Umbrella	0	0	0
Total Insurance	0	28,942	0

Professional fees:

Vendor			
Simons Bitzer	0	0	0
RMA Advisors	0	0	0
Tucker Hester	0	0	0
Alerding	0	5,000	0
Mike Cobb	0	0	3,250
Corporate Atty/Bank Attorney	0	0	0
Total Professional Fees	0	5,000	3,250

Utility:

Gas	0	1,300	0
Electric	0	1,000	0
Phone	0	1,400	0
Water	0	500	0
Sewer	0	200	0
Total Utility	0	4,400	0

Rent:

Kentucky Ave.	0	3,000	0
Airport Authority	0	600	0
Stock Berger Place	0	3,500	0
Cincinnati	0	0	0
Louisville	0	4,500	0
Total Rent	0	11,600	0

Debt:

M&I Bank - Red Top #1	0	80,000	0
M&I Bank - Red Top #2	0	10,000	0
100 MICHIGAN CATERPILLAR	0	0	0
130 CATERPILLAR FINANCIAL SVC	0	0	0
1448 FCC EQUIPMENT FINANCING, INC	0	5,907	0
1474 GMAC PAYMENT PROCESSING CENTER	0	1,664	0
5th 3rd	0	1,422	0
1551 TFS CAPITAL FUNDING	0	0	0
1918 VOLVO FINANCIAL SERVICES	0	0	0

1949 GE CAPITAL COMMERCIAL INC 2093	0	0	0
1950 GE CAPITAL	0	0	0
196 RUDD EQUIPMENT	0	0	0
446 JOHN DEERE CREDIT	0	0	0
661 WELLS FARGO EQUIPMENT FINANCE	0	0	0
Total Debt	<u>0</u>	<u>98,993</u>	<u>0</u>
Total Disbursement	90,904	264,623	117,636
Beginning Cash Balance	<u>(4,004)</u>	<u>(35,361)</u>	<u>(219,278)</u>
Cash Receipts	59,547	80,706	92,227
Cash Disbursements	<u>90,904</u>	<u>264,623</u>	<u>117,636</u>
Ending Cash Balance	<u>(35,361)</u>	<u>(219,278)</u>	<u>(244,687)</u>
Collateral Base:			
Beginning Estimated Collectable Accounts Receivable	<u>710,264</u>	<u>650,717</u>	<u>1,303,642</u>
Adds:			
Equipment Rental		426,206	
Mining		287,425	
Total Adds:	<u>0</u>	<u>713,631</u>	<u>0</u>
Reductions:			
Current Receivables	59,547	60,706	92,227
Equipment Receivable	0	0	0
Mining	0	0	0
Total Reductions	<u>59,547</u>	<u>60,706</u>	<u>92,227</u>
Ending Account Receivable	<u>650,717</u>	<u>1,303,642</u>	<u>1,211,415</u>
Cash + Account Receivable	615,356	1,084,364	966,728

Week 4 5/9/09 5/15/09	Week 5 5/16/09 5/22/09	Week 6 5/23/09 5/29/09	Week 7 5/30/09 6/5/09	Week 8 6/6/09 6/12/09	Week 9 6/13/09 6/19/09	Week 10 6/20/09 6/26/09	Week 11 6/27/09 7/3/09	Week 12- 15 July
67,283	49,391	124,929	0	0	88,951	0	0	0
202,430	0	106,551	0	0	117,224	0	213,103	436,913
0	0	0	0	0	0	0	0	0
0	0	0	287,425	0	0	0	0	319,361
0	0	0	0	0	0	0	0	0
269,713	49,391	231,480	287,425	0	206,175	0	213,103	756,274
34,044	41,604	34,176	55,759	43,162	38,097	77,661	55,935	220,613
0	22,135	0	0	0	0	11,249	0	0
0	0	0	17,000	0	0	0	0	17,000
0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0
0	10,000	0	0	0	15,000	0	0	0
34,044	73,739	34,176	72,759	43,162	53,097	88,910	55,935	237,613
16,855	16,855	16,855	16,855	16,855	16,855	16,855	16,855	67,422
44,262	0	44,262	0	44,262	0	44,262	0	88,524
3,731	0	3,731	0	3,731	0	3,731	0	7,462
0	0	0	0	0	0	0	0	0
0	0	6,735	0	6,735	0	6,735	0	0
1,000	0	1,000	0	1,000	0	1,000	0	0
65,848	16,855	72,583	16,855	72,583	16,855	72,583	16,855	163,408
4,021	1,045	4,021	1,045	4,021	1,045	4,021	1,045	10,131
519	135	519	135	519	135	519	135	1,307
919	788	919	788	919	788	919	788	3,412
364	0	364	0	364	0	364	0	728
0	0	0	0	0	0	0	0	0
5,822	1,968	5,822	1,968	5,822	1,968	5,822	1,968	15,578

0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0
0	0	90,000	8,993	0	0	0	8,993	93,086
108,964	95,812	299,965	218,824	124,817	75,170	170,565	135,942	610,320
(244,687)	(83,938)	(130,358)	(198,843)	(130,242)	(255,059)	(124,054)	(294,619)	(217,458)
269,713	49,391	231,480	287,425	0	206,175	0	213,103	756,274
108,964	95,812	299,965	218,824	124,817	75,170	170,565	135,942	610,320
(83,938)	(130,358)	(198,843)	(130,242)	(255,059)	(124,054)	(294,619)	(217,458)	(71,504)
1,211,415	941,702	892,310	660,830	1,161,662	1,161,662	955,487	955,487	1,337,188
			468,896				468,896	554,276
			319,361				319,361	383,234
0	0	0	788,257	0	0	0	788,257	937,510
67,283	49,391	124,929	0	0	88,951	0	0	0
202,430	0	106,551	0	0	117,224	0	213,103	436,913
0	0		287,425					319,361
269,713	49,391	231,480	287,425	0	206,175	0	213,103	756,274
941,702	892,310	660,830	1,161,662	1,161,662	955,487	955,487	1,530,642	1,518,424
857,764	761,952	461,987	1,031,420	906,603	831,433	660,869	1,313,184	1,446,920

Week 16 - 19 August	Week 20 - 23 September	Week 24-28 October	Week 29 - 32 November	Week 33 - 37 December
0	0	0	0	0
466,796	509,486	515,890	478,536	437,980
319,361	383,234	383,234	351,297	303,393
<hr/>				
786,157	892,720	899,124	829,833	741,373
220,613	220,613	220,613	220,613	220,613
0	0	0	0	0
17,000	17,000	17,000	17,000	17,000
0	0	0	0	0
0	0	0	0	0
0	0	0	0	0
0	0	0	0	0
237,613	237,613	237,613	237,613	237,613
67,422	67,422	67,422	67,422	67,422
88,524	88,524	88,524	88,524	88,524
7,462	7,462	7,462	7,462	7,462
0	0	0	0	0
0	0	0	0	0
0	0	0	0	0
163,408	163,408	163,408	163,408	163,408
10,131	10,131	10,131	10,131	10,131
1,307	1,307	1,307	1,307	1,307
3,412	3,412	3,412	3,412	3,412
728	728	728	728	728
0	0	0	0	0
15,578	15,578	15,578	15,578	15,578

28,777	28,777	28,777	28,777	28,777
0	11,064	0	0	11,064
0	6,950	0	0	6,950
164	164	164	164	164
0	8,959	0	0	8,959
0	8,475	0	0	8,475
0	6,112	0	0	6,112
0	3,633	0	0	3,633
<hr/>				
28,942	74,135	28,942	28,942	74,135

0	0	0	0	0
0	0	0	0	0
0	0	0	0	0
0	0	0	0	0
13,000	13,000	6,500	6,500	6,500
0	0	0	0	0
<hr/>				
13,000	13,000	6,500	6,500	6,500

1,300	1,300	1,300	1,300	1,300
1,000	1,000	1,000	1,000	1,000
1,400	1,400	1,400	1,400	1,400
500	500	500	500	500
200	200	200	200	200
<hr/>				
4,400	4,400	4,400	4,400	4,400

3,000	3,000	3,000	3,000	3,000
600	600	600	600	600
7,500	7,500	7,500	7,500	7,500
0	0	0	0	0
4,500	4,500	4,500	4,500	4,500
<hr/>				
15,600	15,600	15,600	15,600	15,600

80,000	80,000	80,000	80,000	80,000
10,000	10,000	10,000	10,000	10,000
0	0	0	0	0
0	0	0	0	0
0	0	0	0	0
1,664	1,664	1,664	1,664	1,664
1,422	1,422	1,422	1,422	1,422
0	0	0	0	0
0	0	0	0	0

0	0	0	0	0
0	0	0	0	0
0	0	0	0	0
0	0	0	0	0
0	0	0	0	0
93,086	93,086	93,086	93,086	93,086

571,627 616,820 565,127 565,127 610,320

(71,504)	143,026	418,926	752,924	1,017,630
786,157	892,720	899,124	829,833	741,373
571,627	616,820	565,127	565,127	610,320
143,026	418,926	752,924	1,017,630	1,148,683

1,518,424	1,669,777	1,639,941	1,491,761	1,412,872
554,276	511,586	447,551	447,551	0
383,234	351,297	303,393	303,393	271,457
937,510	862,884	750,944	750,944	271,457
0	0	0	0	0
466,796	509,486	515,890	478,536	437,980
319,361	383,234	383,234	351,297	303,393
786,157	892,720	899,124	829,833	741,373
1,669,777	1,639,941	1,491,761	1,412,872	942,956

1,812,804 2,058,867 2,244,684 2,430,502 2,091,639

