IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
A123 SYSTEMS, INC., et al.,	:	Case No. 12-_____ (_____)
Debtors.[1]	:	Joint Administration Pending

DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO OBTAIN POST-PETITION SECURED FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362 AND 364; (II) GRANTING LIENS AND SUPER-PRIORITY CLAIMS; AND (III) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001

The above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**" or the "**Company**") hereby move this Court (the **"Motion"**) for entry of an interim order (the "**Interim Order**"),[2] in substantially the form attached hereto as Exhibit A, and a final order (the "**Final Order**") (i) authorizing the Debtors to obtain postpetition financing pursuant to Sections 105, 361, 362, 363, 364, and 507 of Title 11 of the United States Code (the "**Bankruptcy Code**"); (ii) granting liens and super-priority claims; and (iii) scheduling a final hearing pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure (as amended, the "**Bankruptcy Rules**"). In support of the Motion, the Debtors rely upon the *Declaration of David Prystash in Support of Chapter 11 Petitions and First Day Motions*, filed with the Court concurrently herewith and fully incorporated herein (the "**Prystash Declaration**"), the *Declaration of Robert*

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: A123 Systems, Inc. (3876); A123 Securities Corporation (5388); and Grid Storage Holdings LLC (N/A). The above-captioned Debtors' mailing address is c/o A123 Systems, Inc., 200 West Street, Waltham, Massachusetts 02451.

[2] Unless indicated otherwise, capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Interim Order. In the event there is any conflict between the descriptions of the Interim Order and/or the DIP Loan Documents set forth in this Motion and the Interim Order or the DIP Loan Documents, the Interim Order and the DIP Loan Documents shall govern.

Caruso in Support of Debtors' Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. §§ 105, 361, 362 and 364; (II) Granting Liens and Super-Priority Claims; and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001, filed under separate cover and fully incorporated herein (the "**Caruso Declaration**") and the *Declaration of Timothy Pohl in Support of Debtors' Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. §§ 105, 361, 362 and 364; (II) Granting Liens and Super-Priority Claims; and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001*, filed under separate cover and fully incorporated herein (the "**Pohl Declaration**"). In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

Preliminary Statement

1. Prior to the Petition Date (defined below), the Debtors engaged in lengthy discussions with Johnson Controls, Inc. ("**JCI**") about financing these Chapter 11 Cases (defined below). Those discussions culminated with JCI agreeing to provide the Debtors with post-petition financing (the "**DIP Facility**") pursuant to (a) the terms and conditions of the Debtor-In-Possession Loan Agreement, dated as of October 16, 2012, substantially in the form attached as Exhibit B hereto, with JCI acting as administrative agent (in such capacity, the "**DIP Agent**"), for itself and such other lenders as may become party to the DIP Credit Agreement from time to time (collectively, the "**DIP Lenders**") (as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of this Interim Order and, if applicable, any Final Order, the "**DIP Credit Agreement**"), and the other Loan Documents (as

defined in the DIP Credit Agreement and, together with the DIP Credit Agreement, the "**DIP Loan Documents**") and (b) an agreed upon budget (the "**Approved Budget**").[3]

2. The Debtors intend to support the ongoing operations of their business during these cases through the use of the DIP Facility and Cash Collateral. The DIP Facility will consist of a term loan in aggregate principal amount of $72,500,000 made by the DIP Lenders to A123 Systems, Inc. ("**Borrower**") for the benefit of all of the Debtors. Upon the entry of the Interim Order, the Borrower seeks to be permitted to borrow $15,500,000, subject to the terms and conditions contained in the Interim Order and the Approved Budget.

3. Pursuant to the terms of the proposed Interim Order, the DIP Facility would be secured by a lien on the Collateral junior to the liens securing the Debtors' secured debt under the Wanxiang Bridge Loan Facility (as defined below) during the period prior to entry of the Final Order. Upon entry of the Final Order, the principal and interest of such secured debt would be paid in full and all letters of credit issued or backstopped by the Wanxiang Lender (as defined below) would be replaced or cash collateralized. However, in the event that Wanxiang (as defined below) claims entitlement to various penalty fees and liquidated damages clauses in contracts between Wanxiang affiliates and the Debtors, such fees, to the extent payable at all, would remain outstanding and the lien securing the DIP Facility would prime and be senior to any alleged liens securing such fees.

4. The DIP Loan Documents require that the Debtors obtain Court approval to use the cash collateral of the Wanxiang Lender to pay disbursements under the Approved Budget upon entry of a Final Order. Accordingly, contemporaneously with the filing of this Motion, the Debtors have also filed the *Emergency Motion of the Debtors Pursuant to Sections 105(a), 361,*

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[3] A copy of the Approved Budget is attached to the Interim Order as Exhibit A.

362, 363, 364 and 552 of the Bankruptcy Code and Bankruptcy Rule 4001(b) for Entry of a Final Order (A) Authorizing Use of Cash Collateral and (B) Granting Adequate Protection (the "**Cash Collateral Motion**"), which will be heard at the Final Hearing (as defined below). As set forth in the Cash Collateral Motion, prior to the entry of the Final Order, the Debtors are not currently seeking to use the cash collateral of the Wanxiang Lender.

5. The Debtors, at the request of the DIP Agent, have also been working with other potential DIP lenders to refinance the obligations under the DIP Facility prior to the Final Hearing. The Debtors intend to use the time prior to the Final Hearing to attempt to procure replacement financing on better terms if available in the marketplace. To that end, the DIP Agent has agreed, on behalf of itself and the DIP Lenders, to refund and/or waive certain fees otherwise payable under the DIP Loan Documents to the extent such an alternative financing can be accomplished on reasonable economic terms, and by this Motion the Debtors request authority to pay the reasonable fees and expenses of potential sources of refinancing, up to $500,000 in connection with any such lender's due diligence investigation of the Debtors. If and when the DIP Facility is refinanced, the Debtors will file a separate motion seeking the entry of an order approving the alternative financing facility at the Final Hearing. The Debtors and the DIP Agent have agreed that the Debtors are not required to accept any replacement financing unless the pricing and other material terms meet certain requirements, which are superior to the terms of the DIP Facility. The Debtors therefore anticipate that the terms of any such alternative DIP facility, taken as a whole, will not be materially less favorable to the Debtors than the terms of the DIP Facility and will provide for the continued operation of the business, the repayment of principal and interest owed to the Wanxiang Lender and the continued funding of these Chapter 11 Cases and the ongoing sale process.

6. By this Motion and pursuant to Bankruptcy Code Sections 105, 361, 362, 363, 364 and 507, and Bankruptcy Rules 2002, 4001, 6004 and 9014, the Debtors hereby seek entry of two orders (together, the "**DIP Orders**")—an Interim Order in the form annexed hereto as Exhibit A and, following notice of the Motion and the Interim Order and a hearing (the "**Final Hearing**") on the relief requested, a Final Order[4] approving such relief on a final basis—which in each case:

(a) authorizes the Borrower to obtain loans under the DIP Facility, and for certain of the Guarantors (as defined below) to guaranty the Borrower's obligations in connection with the DIP Facility, up to the aggregate principal amount of $15,500,000 million (the "**Interim Amount**") on an interim basis and $72,500,000 on a final basis, from the DIP Agent (as defined below) and the DIP Lenders (as defined below);

(b) approves the terms of, and authorizes the Debtors to execute and perform under, the DIP Credit Agreement and the other DIP Loan Documents and to perform such other and further acts as may be required in connection with the DIP Loan Documents;

(c) on an interim basis, authorizes the Debtors to grant (x) to the DIP Agent, for the benefit of itself and the other DIP Lenders, liens and security interests (the "**DIP Liens**") on all of the Collateral pursuant to Bankruptcy Code Sections 364(c)(2), and 364(c)(3), which DIP Liens shall be junior to the Carve Out (as defined below), any Permitted Prior Liens (as defined below) and the Wanxiang Lien (as defined below), and (y) to the DIP Agent and the DIP Lenders, pursuant to Bankruptcy Code Section 364(c)(1), super-priority administrative claims having recourse to all pre-petition and post-petition property of the Debtors' estates, now owned or hereafter acquired;

(d) on a final basis, authorizes the Debtors to grant (x) to the DIP Agent, for the benefit of itself and the other DIP Lenders, (i) DIP Liens pursuant to Bankruptcy Code Sections 364(c)(2), and 364(c)(3), which DIP Liens shall be junior to the Carve Out and any Permitted Prior Liens, and (ii) priming DIP Liens, pursuant to Bankruptcy Code Section 364(d)(1), which DIP Liens shall be senior to the Wanxiang Lien, and (y) to the DIP Agent and the DIP Lenders, pursuant to Bankruptcy Code Section 364(c)(1), super-priority administrative claims having recourse to all pre-petition and post-petition property of the Debtors' estates, now owned or hereafter acquired, and any Debtors' rights under section 506(c) of the Bankruptcy Code and the proceeds thereof;

[4] A copy of the proposed Final Order shall be filed under separate cover prior to the Final Hearing and shall be in form and substance substantially similar to the Interim Order.

(e) vacates the automatic stay imposed by Bankruptcy Code Section 362 solely to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and the Interim Order; and

(f) waives any applicable stay (including under Bankruptcy Rule 6004) and provides for immediate effectiveness of the DIP Orders.

Jurisdiction

7. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The predicates for the relief requested herein are Bankruptcy Code Sections 105, 361, 362, 363, 364 and 507. Such relief is warranted under Bankruptcy Rules 2002, 4001, 6004 and 9014 and Rule 4001-5 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**").

Background

8. On October 16, 2012 (the "**Petition Date**"), the Debtors filed voluntary petitions in this Court commencing cases for relief under Chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**"). The factual background regarding the Debtors, including their business operations, their capital and debt structures and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the Prystash Declaration, filed on the Petition Date, which is fully incorporated herein.

9. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code Sections 1107 and 1108. No trustee or examiner has been requested in the Chapter 11 Cases and no committees have yet been appointed.

A. Company History and Corporate Structure

10. The Debtors design, develop, manufacture and sell advanced rechargeable lithium-ion batteries and energy storage systems. The Debtors are primarily focused on developing new generations of lithium-ion batteries and battery systems to serve applications and markets outside the historical domain of lithium-ion, such as hybrid electric vehicles ("**HEVs**"), plug-in hybrid electric vehicles ("**PHEVs**") and electric vehicles ("**EVs**"), electrical grid services and industrial and commercial products. The Debtors' products include batteries in various sizes and forms, such as starter batteries and lead acid replacement batteries, as well as packaged modules and multi-megawatt and prismatic battery systems. The platform for battery and battery system development is the Debtors' patented Nanophosphate® material, which can be engineered to meet the requirements of a broad set of applications in the Debtors' target markets.

11. A123 Systems, Inc. ("**A123**") was incorporated in Delaware on October 19, 2001. The Company was founded on a belief that lithium-ion batteries will play an increasingly important role in facilitating a shift toward cleaner forms of energy. Since its founding, the Company has used an innovative approach to materials science and battery engineering, as well as the Company's systems integration and manufacturing capabilities. Moreover, the Company has developed a broad family of high-power lithium-ion batteries and battery systems.

12. In the third quarter of 2005, the Company began commercial production of cathode powder, a cell manufacturing material, and commenced the initial battery production ramp-up. The Company's first commercial batteries began shipping in February 2006. In 2007, the Company commenced construction of two additional plants to be used for powder and new coating production, and signed a lease for a new battery assembly plant in Changzhou, China. In 2009, the Company expanded operations in China to include the assembly of battery packs. The Company thereafter expanded its domestic manufacturing capacity in 2010 by establishing

vertically-integrated plants in the United States that would perform all of the stages of the manufacturing of batteries and battery systems. The first phase of this expansion took place in Livonia, Michigan, with the opening of a new manufacturing facility, where the Company produces prismatic cells and battery pack systems. The Company also built an additional facility in Romulus, Michigan, which qualified for production of coated electrodes in October 2011.

13. A123 is the direct parent of each subsidiary in the Company's corporate structure, and is the main operating entity. A corporate organization chart is attached to the Prystash Declaration as Exhibit A. A123 Securities Corporation is a holding company that holds a large portion of the Company's cash, and a direct wholly owned subsidiary of A123. Grid Storage Holdings LLC is a shell entity formed as a direct subsidiary of A123 for the sole purpose of facilitating certain contemplated grid projects which ultimately were not completed.

14. A123 is also the direct parent of the following wholly owned foreign, non-debtor subsidiaries in the corporate structure: (a) A123 Systems (China) Materials Co., Ltd., which is the Company's main operating entity in China and the largest foreign non-debtor entity in the corporate structure; (b) A123 Systems (Zhenjiang) Co., Ltd, which has historically led the powder manufacturing operation in China but, because of the Company's interest in consolidating its Chinese operations/facilities is currently being closed and is in the process of transferring its assets to A123 Systems (China) Materials Co., Ltd.; (c) A123 Systems GmbH, a foreign non-debtor subsidiary located in Germany and primarily responsible for housing certain sales employees as well as limited research and development activities; (d) A123 Systems UK Ltd., which is located in London and was formed for technical support of a potential expansion of the Company's operations in the United Kingdom; (e) A123 Systems Korea Co., Ltd, which was created as a result of A123's acquisition of Enerland Co., Ltd. in 2008, but is currently

being wound down and its assets and employees are being transferred to Company locations in the United States; (f) A123 Systems China Co., Ltd., which is largely a dormant shell company that is being wound down; and (g) A123 Systems Hong Kong Ltd. which is primarily a holding company for the Company's 49% equity interest in Shanghai Advanced Traction Batter Systems Co., Ltd — a joint venture with SAIC Motor Co., Ltd. Additionally, Suzhou Gaolong Trading Co., Ltd. is a wholly owned subsidiary of A123 Systems (China) Materials Co., Ltd. and was formed for the purpose of eliminating certain trading costs.

B. Overview of the Debtors' Prepetition Secured Debt

15. Prior to the Petition Date, the Debtors entered into various secured financing arrangements. Each of the secured financing facilities and the amounts owed thereunder is described below.

Type of Prepetition Secured Indebtedness	**Approximate Amount of Outstanding Secured Debt as of the Petition Date**[5]
Silicon Valley Bank Loan	$0[6]
Michigan Strategic Fund Loan	$4.0 million
MassCEC Loan	$2.89 million
Wanxiang Bridge Loan Facility	$22.5 million, of which $10 million represents obligations on account of outstanding letters of credit

a. Silicon Valley Bank Loan

16. On September 30, 2011, A123 and A123 Securities Corporation (together the "**SVB Borrowers**"), Silicon Valley Bank, as administrative agent, letter of credit issuer, swingline lender and lender, and the other financial institutions from time to time party thereto as

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[5] These amounts exclude interest, fees and expenses.

[6] Certain letters of credit remain outstanding but have been fully cash collateralized by the Wanxiang Lender under the Wanxiang Bridge Loan Facility.

lenders (collectively with Silicon Valley Bank, the " **SVB Lenders**") entered into a Credit Agreement (as amended or restated, the "**SVB Credit Agreement**"), which provided the SVB Borrowers with a revolving loan facility in an aggregate principal amount of up to the lesser of (i) $40 million and (ii) a Borrowing Base (as defined in the SVB Credit Agreement) established at 80% of certain eligible accounts, 15% of certain eligible foreign accounts and 30% of certain eligible inventory. The SVB Credit Agreement also provided a letter of credit sub-facility in an aggregate principal amount of up to $10 million and a swing-line loan sub-facility in an aggregate principal amount of up to $5 million. Any outstanding obligations under either the letter of credit sub-facility or swing-line sub-facility is deducted from the availability under the $40 million revolving facility. The SVB Credit Agreement additionally provided a discretionary incremental facility in an aggregate principal amount of not less than $10 million and up to $35 million. The funding of the incremental facility was discretionary on the part of the SVB Lenders and depended upon market conditions and other factors.

17. The facilities provided under the SVB Credit Agreement were used to refinance the SVB Borrowers' prior outstanding revolving loan facility with Silicon Valley Bank, dated as of August 2, 2006, and for working capital and general corporate purposes. The maturity date for the revolving cash borrowings under the SVB Credit Agreement was September 30, 2014. All amounts outstanding under the SVB Credit Agreement were secured by a first lien security interest in substantially all of the SVB Borrowers' existing and future assets, except intellectual property and certain other exceptions as set forth in the SVB Credit Agreement and related documentation.

18. All of the SVB Borrowers' obligations under the SVB Credit Agreement have been repaid or, in the case of the outstanding letters of credit, cash collateralized pursuant to that

certain Second Amendment to Credit Agreement dated May 11, 2012 and the Wanxiang Bridge Loan Facility (as defined and discussed below). As of the Petition Date, the SVB Borrowers obligations outstanding under the SVB Credit Agreement, representing letter of credit liabilities which are fully supported by cash collateral provided by the Wanxiang Lender under the Wanxiang Bridge Loan Facility, totaled approximately $8.7 million.

19. On August 16, 2012, the parties agreed to terminate the SVB Credit Agreement and the revolving loan commitments made and security interests granted thereunder. In connection with such termination, the Wanxiang Lender has provided Silicon Valley Bank (for the benefit of the lenders under the SVB Credit Agreement) with standby letters of credit and other credit support in the aggregate amount of $10 million to cover potential amounts owing under letters of credit which were issued under the SVB Credit Agreement and remained outstanding as of August 16, 2012.

b. Michigan Strategic Fund Loan

20. On August 26, 2009, A123 entered into that certain Loan Agreement with the Michigan Strategic Fund, a public body corporate and politic within the Department of Treasury of the State of Michigan, pursuant to which the Michigan Strategic Fund provided A123 a loan in the amount of $4 million (the "**Michigan Loan**") at a per annum interest rate of 1% due August 26, 2019 if not forgiven or prepaid prior to such date. The Michigan Loan is secured by the equipment purchased by A123 using, at least in part, the proceeds of the Michigan Loan as specifically identified by A123 as a condition to the disbursement of such proceeds.

21. The Michigan Loan will be completely forgiven, and the security interest in A123's equipment terminated, if at any time between August 26, 2012 and January 1, 2015, A123 has created greater than or equal to 350 full-time jobs in the state of Michigan. Beginning on August 26, 2012, to the extent A123 did not create the full 350 jobs which would result in

complete forgiveness, the Michigan Loan is forgiven, on a monthly basis, in a pro rata amount reflecting the number of jobs that A123 has created. As of the Petition Date, approximately $4.0 million was outstanding under the Michigan Loan.

c. Massachusetts Clean Energy Technology Center Loan

22. On October 8, 2010, A123 entered into that certain Loan and Security Agreement with the Massachusetts Clean Energy Technology Center ("**MassCEC**"), an independent public instrumentality of The Commonwealth of Massachusetts, pursuant to which MassCEC provided A123 a loan in the amount of $5 million (the "**Massachusetts Loan**") at a fixed annual interest rate equal to 6.0% compounding monthly and due October 8, 2017 if not forgiven prior to such date. The Massachusetts Loan is secured by (a) a first priority lien on and security interest in specific equipment of A123 set forth on a schedule to the Loan and Security Agreement, which schedule may be amended from time to time by mutual agreement of A123 and MassCEC (the "**MassCEC Senior Collateral**"), and (b) a continuing security interest in and to substantially all assets of A123 other than the Senior Collateral (as defined below), A123's intellectual property and certain other specified assets, subordinate and junior to the security interest of any security interest granted by A123 to (i) the United States of America, the Department of Energy, the Federal Finance Bank, and/or any agency, instrumentality or designee of the foregoing, (ii) a bank, financial institution or other commercial lending institution (including without limitation, Silicon Valley Bank), or (iii) any other lender of regional or national reputation. This subordination was memorialized in that certain Subordination Agreement dated October 8, 2010 by and between MassCEC and Silicon Valley Bank.

23. The Massachusetts Loan will be forgiven by MassCEC if A123 achieves certain goals. For example, the greater of $2.5 million and 50% of the Massachusetts Loan will be forgiven on October 8, 2017 if (a) A123 has created 263 jobs in Massachusetts between the

period of January 1, 2010 and December 31, 2014 and (b) maintains a minimum of 513 jobs in Massachusetts during the period from January 1, 2013 through October 8, 2017. To the extent A123 does not create and maintain a sufficient number of jobs to entitle such forgiveness, then, on the Maturity Date, A123 will be entitled to partial forgiveness in a pro rata amount reflecting the number of jobs that A123 was able to create and maintain.

24. Additionally, the Massachusetts Loan provided that on October 8, 2011, the greater of $2.5 million and 50% of the Massachusetts Loan would be forgiven if A123 demonstrated that A123 spent at least $12.5 million in infrastructure and leasehold improvements. On October 18, 2011, A123 and MassCEC entered into Amendment No. 1 to Loan and Security Agreement and Acknowledgement of Partial Loan Forgiveness ("**MassCEC Amendment No. 1**") whereby MassCEC acknowledged that A123 had satisfied the infrastructure and leasehold improvement spending requirements and, as a result, the principal amount of $2.5 million and all accrued interest relating thereto was forgiven. MassCEC Amendment No. 1 also provided for an amendment to the MassCEC Senior Collateral, reducing such collateral in order to match the revised exposure under the Massachusetts Loan following the forgiveness. As of the Petition Date, approximately $2.8 million was outstanding under the Massachusetts Loan.

C. The Wanxiang Bridge Loan Facility

25. As pressures on their liquidity mounted, the Debtors, during the second quarter of 2012, began to consider a broad set of strategic alternatives, including measures to access additional sources of capital. These efforts resulted in the Debtors' announcement on August 16, 2012, that they had entered into definitive documentation (following the parties' earlier announcement of the execution of a memorandum of understanding) with Wanxiang Group Corporation ("**Wanxiang**"), a Chinese-based automotive parts manufacturer, in connection with

a senior secured bridge loan facility, which documentation memorialized Wanxiang's agreement to (a) furnish the Company with a senior secured bridge loan facility in an amount up to $75,000,000 (the "**Wanxiang Bridge Loan Facility**") through its affiliate, Wanxiang America Corporation (the "**Wanxiang Lender**") and (b) purchase, subject to conditions noted below, $200,000,000 in aggregate principal amount of 8.00% Senior Secured Convertible Notes (the "**Wanxiang 8.00% Convertible Notes**") to be issued by the Company in connection with the transaction.

26. Under the Wanxiang Bridge Loan Facility, the Wanxiang Lender agreed to provide the Debtors with an initial cash advance of $12,500,000[7] and a letter of credit facility that would result in approximately $10,000,000 of additional liquidity for the Debtors (collectively, the "**Initial Wanxiang Loan**"). The Debtors received the Initial Wanxiang Loan on or about August 16, 2012 and realized net proceeds of approximately $12,500,000 (although little of that money could be accessed by the Debtors, as discussed below).[8]

27. On or about August 16, 2012, A123 and certain of its subsidiaries entered into a Pledge and Security Agreement with the Wanxiang Lender in its capacity as agent (the "**Wanxiang Pledge and Security Agreement**"), pursuant to which A123 and such subsidiaries granted the Wanxiang Lender, in its capacity as agent, a security interest (the "**Wanxiang Lien**") in substantially all of their respective assets, including cash on hand and cash proceeds of other

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[7] Under the terms of the Bridge Loan Facility an amount equal to $2.5 million was retained by the Lender in reserve until the Debtors obtained a certain subordination to the Lender of a lien securing certain existing indebtedness or elected to repay such indebtedness in full. As of the Petition Date, such subordination had not occurred.

[8] The difference between this net amount received and the nominal initial $25 million loan amount is (a) $10 million of the Initial Wanxiang Loan being utilized to backstop letters of credit issued by Silicon Valley Bank, and (b) $2.5 million of the Initial Wanxiang Loan being reserved by the Wanxiang Lender to pay off remaining amounts outstanding under the Massachusetts Loan should MassCEC not agree to subordinate the remaining outstanding amounts under such equipment loan to the Wanxiang Lender.

assets, to secure the Debtors' obligations under the Wanxiang Bridge Loan Facility and the Wanxiang 8.00% Convertible Notes. The Debtors believe that the Wanxiang Lender has failed to perfect its security interests on the Debtors' assets located outside the U.S. and failed to obtain consents required to have an enforceable security interest on certain assets located inside the U.S.

28. Because certain conditions had not been satisfied as of the Petition Date, the remainder of the Wanxiang Bridge Loan Facility was not funded nor were the Wanxiang 8.00% Convertible Notes issued. As a result, as of the Petition Date, the Debtors owed the Wanxiang Lender only approximately $22,670,000.

29. Section 6.12 of the Wanxiang Bridge Loan Facility provides that the Debtors and its non-Debtor subsidiaries must "maintain on deposit cash in an aggregate amount equal to not less than" $20,000,000. As a result, although as of the Petition Date the Debtors (excluding their non-Debtor subsidiaries) held approximately $19,000,000 in cash, due to the restrictions of the Wanxiang Bridge Loan Facility, the Debtors were unable to access such cash. Thus, the amount owed to the Wanxiang Lender as of the Petition Date less cash on hand was only approximately $3,670,000.

D. The Disputed Wanxiang Fees

30. Wanxiang may claim entitlement to various penalty fees and liquidated damages clauses in contracts between Wanxiang affiliates and the Debtors. However, none of these penalty provisions has yet been triggered, Wanxiang would not be able to collect any of the penalties if its contracts with the Debtors are rejected under section 365 of the Bankruptcy Code, and the penalties are unenforceable under any circumstances. As a result, Wanxiang's claimed fees should, at a minimum, pose no barrier to allowing the Court to preserve the status quo by clarifying that nothing in the proposed Interim Order may be deemed to have triggered any fees or penalties owed to Wanxiang or its affiliates.

31. More specifically, the Debtors expect that Wanxiang may argue that the Debtors' DIP financing, and/or a sale of substantially all of the Debtors assets, will trigger two penalty provisions in the Wanxiang Bridge Loan Facility.

32. First, Wanxiang may argue that it may recover a so-called "alternative financing fee" of $13.75 million (the "**Financing Fee**") provided for in the Wanxiang Bridge Loan Facility. Under the Wanxiang Bridge Loan Facility, obtaining financing from any lender other than Wanxiang Lender or its affiliates (other than certain permitted indebtedness, a category which would exclude the proposed DIP financing) may trigger the Financing Fee.

33. Second, Wanxiang may argue it is owed a so-called "prepayment fee" (the "**Prepayment Fee**"). As noted above, under the Wanxiang Bridge Loan Facility, an alternative financing event that would trigger the Financing Fee would also trigger the Prepayment Fee. The Prepayment Fee is calculated at 10% of (i) the principal amount of the outstanding loans to A123 and (ii) the face amount of the outstanding letters of credit issued to A123 that are backstopped by the Wanxiang Lender, which together are $22.67 million. See Prystash Decl. ¶ 40. Thus, based on the outstanding indebtedness to A123, the Prepayment Fee would total $2.67 million.

34. Third, Wanxiang may argue that it should be paid a so-called termination fee (the "**Termination Fee**" and, together with the Financing Fee and the Prepayment Fee, the "**Penalty Fees**") under the Securities Purchase Agreement dated August 16, 2012 (the "**Wanxiang Purchase Agreement,**" and together with the Wanxiang Bridge Loan Facility, the "**Wanxiang Agreements**") between A123 and Wanxiang Clean Energy USA Corp. ("**Wanxiang Purchaser**"). Under the Wanxiang Purchase Agreement, A123 may trigger the Termination Fee if, among other potential causes, it enters into a merger transaction with, or agrees to be acquired

by, any entity other than a Wanxiang affiliate. The Termination Fee is equal to the excess (if any) of $9,000,000 over any amount previously paid by A123 towards the Financing Fee.

35. In substance, the Penalty Fees effectively award Wanxiang liquidated damages in the event that the Debtors obtain financing from, or engage in a strategic transaction with, any party other than a Wanxiang affiliate. The Penalty Fees thus serve no purpose other than punishing the Debtors for entering into transactions with third parties. As noted above, none of the Penalty Fees has yet been triggered, Wanxiang would not be able to collect any of the Penalty Fees if its contracts with the Debtors are rejected under section 365 of the Bankruptcy Code, and the Penalty Fees are unenforceable under any circumstances. A detailed analysis of why the Penalty Fees are not triggered by the entry of the Interim Order or otherwise payable is set forth in the *Debtors' Supplemental Memorandum of Law in Further Support of Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. §§ 105, 361, 362 and 364; (II) Granting Liens and Super-Priority Claims; and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001, Regarding Potential Claims for Prepetition Fees,* filed concurrently herewith.

Terms and Conditions of the DIP Facility

A. Highlighted Provisions under Bankruptcy Rule 4001 and Local Rule 4001-2

36. The following sets forth the Sections of the DIP Facility and paragraphs of the Interim Order that are required to be identified in accordance with Rule 4001(c)(1)(B)[9] and Local Rule 4001-2(a)(i)[10]:

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[9] Certain provisions referenced in Bankruptcy Rule 4001 are not applicable here: (i) the providing of adequate protection or priority for a claim that arose prior to the commencement of the case, Bankruptcy Rule 4001(c)(1)(B)(ii); (ii) a determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, Bankruptcy Rules 4001(c)(1)(B)(iii); (iii) the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation or entry of a confirmation order, Bankruptcy Rule 4001(c)(1)(B)(vi); (iv) waiver or modification of authority to file a plan, seek

Bankruptcy Code / Local Rule	Term	Summary	Provision in Relevant Document(s)
N/A	Borrower	A123 Systems, Inc.	DIP Credit Agreement: Preamble; Interim Order: Introductory paragraph
N/A	DIP Agent and DIP Lender	Johnson Controls, Inc.	DIP Credit Agreement: Preamble; Interim Order: ¶ 3(a)
N/A	Use of proceeds	The proceeds of the DIP Facility shall be used to enable the Debtors to continue to operate their business and repay certain liquidated obligations owed to the Wanxiang Lender, subject to the terms and conditions in the DIP Orders and the Approved Budget.	DIP Credit Agreement: § 5.08; Interim Order: Finding D(ii), ¶ 3(g)
N/A	Application of proceeds	Proceeds of the DIP Facility will be used solely for (a) funding the operations of the Debtors' businesses, paying other costs and expenses of administration of the Chapter 11 Cases in accordance with the DIP Loan Documents, the DIP Orders and the Approved Budget and (b) upon entry of the Final Order, refinancing the Wanxiang Bridge Loan Facility.	DIP Credit Agreement: § 5.08; Interim Order: Introductory paragraph (vi)
N/A	Amount of loan	The DIP Facility consists of a term loan in aggregate principal amount of $72,500,000. Upon the entry of the Interim Order, the Borrower will be permitted to borrow up to $15,500,000, subject to the terms and conditions contained in the Interim Order and the Approved Budget. Upon entry of the Final Order, the Borrower will be permitted to borrow up to the full amount of the DIP Facility, subject to the terms and conditions contained in the Final Order and the	DIP Credit Agreement: § 2.01; Interim Order: Introductory paragraphs (i) and (vi)

an extension of time in which the debtor has the exclusive right to file a plan, Bankruptcy Rule 4001(c)(i)(B)(v); (v) a release, waiver, or limitation on claim or other cause of action belonging to the estate or the trustee, Bankruptcy Rule 4001(c)(1)(B)(viii); (vi) indemnification of any entity, Bankruptcy Rule 4001(c)(1)(B)(ix); (vii) a release, waiver, or limitation of any right under Bankruptcy Code Section 506(c), Bankruptcy Rule 4001(c)(1)(B)(x); (viii) prepayment premiums, Bankruptcy Rule 4001(c)(i)(B)(x); and (ix) the granting of a lien on any claim or cause of action arising under Bankruptcy Code Sections 544, 545, 547, 548, 549, 553(b), 723(a) or 724(a), Bankruptcy Rule 4001(c)(i)(B)(xi).

[10] Certain provisions referenced in Local Rule 4001-2 are not applicable here: (i) roll-up provisions, Local Rule 4001-2(a)(i)(E); (ii) grant of cross-collateralization protection, Local Rule 4001-2(a)(i)(A).

Bankruptcy Code / Local Rule	Term	Summary	Provision in Relevant Document(s)
		Approved Budget.	
N/A	Interest rate	The DIP Obligations shall bear interest at the rate of 15% per annum. During the occurrence and continuance of an Event of Default, the DIP obligations shall bear interest at 17% per annum.	DIP Credit Agreement: § 2.07; Interim Order: ¶ 3(f)
N/A	Term/ Maturity date	The DIP Facility matures and must be paid in full on the earliest of (a) the date that is fifteen (15) calendar days after the Petition Date unless the Bankruptcy Court has entered (i) the Final Order and (ii) the order establishing the procedures for the sale of the Debtors' transportation business to JCI (the "**Sale Procedures Order**"), (b) the date of consummation of the sale of the Debtors' transportation business to JCI (the "**Sale**"), (c) the date that is thirty-four (34) days after the Petition Date if the auction in respect of the Sale has not been commenced by such date, (d) the date that is thirty-six (36) days after the Petition Date if the auction in respect of the Sale has not been completed by such date, (e) the date that is forty-one (41) days after the Petition Date if an order approving the Sale has not been entered by the Court by such date and (f) December 31, 2012 (the "**Maturity Date**").	DIP Credit Agreement: §§ 1.01 and 2.03
Local Rule 4001-2(a)(ii)	Events of Default	The following shall constitute an event of default under the Interim Order, unless waived in writing by the DIP Agent (the "**Events of Default**"): (a) the occurrence of an "Event of Default" under the DIP Credit Agreement, as set forth therein; (b) the Debtors propose or support of any plan of reorganization or sale of all or substantially all of the Debtors' assets or entry of any confirmation order or sale order that is not conditioned upon the indefeasible payment in full in cash, on the effective date of such plan of reorganization or such sale, of all DIP Obligations; (c) any other breach or default by any of the Debtors of the terms and provisions of the Interim Order.	DIP Credit Agreement: Art. VII; Interim Order: ¶ 11
N/A	Fees	Subject to certain limitations, the Debtors are required under the DIP Loan Documents to pay all fees, costs, expenses (including reasonable and documented out-of-pocket legal and other professional fees and expenses of the DIP Agent) and other charges payable under the terms of the DIP Loan Documents without regard to the amounts set forth with respect thereto in the Approved Budget.	DIP Credit Agreement: § 2.06; Interim Order: ¶ 3(f)

Bankruptcy Code / Local Rule	Term	Summary	Provision in Relevant Document(s)
Bankruptcy Rule 4001 (c)(i)(B)(i) Local Rule 4001-2(a)(i)(G)	Liens/security for DIP Agent and DIP Lenders	As security for the DIP Facility, the DIP Agent, on behalf of the DIP Lenders, will be granted DIP Liens on all Collateral comprised of (a) a perfected, binding, continuing, enforceable and non-avoidable first priority Lien on all unencumbered Collateral, subject only to the Carve-Out and (b) a perfected, binding, continuing, enforceable and non-avoidable junior lien on all Collateral that is subject to any valid, prior, perfected and non-avoidable lien existing immediately prior to the Petition Date or perfected on or after the Petition Date pursuant to section 546(b) of the Bankruptcy Code. Subject to the entry of the Final Order, the DIP Agent, on behalf of the DIP Lenders, will be granted liens pursuant to Section 364(d) senior to those of the Wanxiang Lender.	DIP Credit Agreement: § 3.16; Interim Order: Introductory paragraph (iii), ¶ 3(i)
Local Rule 4001-2(a)(i)(F)	Carve-out Disparate treatment of professionals	"**Carve-Out**" means: (i) all unpaid fees required to be paid in these Chapter 11 Cases to the Clerk of the Court and to the office of the United States Trustee under 28 U.S.C. § 1930 and 31 U.S.C. § 3717, whether arising prior to or after the delivery by the DIP Agent of the Carve-Out Trigger Notice (as defined below); (ii) all reasonable and documented unpaid fees, costs, disbursements and expenses (the "**Debtor Professional Fees**") of professionals retained by the Debtors in these Chapter 11 Cases (collectively, the "**Debtors' Professionals**") that are incurred prior to the first business day after the delivery by the DIP Agent of a Carve-Out Trigger Notice, are allowed by the Court under Bankruptcy Code Sections 105(a), 328, 330 or 331 or otherwise (whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice); (iii) all reasonable and documented unpaid fees and expenses (the "**Committee Professional Fees**" and together with the Debtor Professional Fees, the "**Professional Fees**") of professionals retained by the Committee in these Chapter 11 Cases (collectively, the "**Committee's Professionals**") and all reasonable expenses of any member of the Committee that are incurred and earned prior to the first business day after the delivery by the DIP Agent of a Carve-Out Trigger Notice, are allowed by the Court under Bankruptcy Code Sections 105(a), 330 or 331 or otherwise (whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice); (iv) all reasonable and documented unpaid fees, costs, disbursements and expenses of (x) Latham & Watkins LLP and Richards,	Interim Order: ¶ 5

Bankruptcy Code / Local Rule	Term	Summary	Provision in Relevant Document(s)
		Layton & Finger, P.A. in an aggregate amount not to exceed $1.81 million, less any amount held by such firms on retainer as of the date of delivery of the Carve-Out Trigger Notice, and (y) Alvarez & Marsal North America, LLC in an amount not to exceed $650,000, less any amount held by such firm on retainer as of the date of delivery of the Carve-Out Trigger Notice, and (z) Lazard Frères & Co. LLC in an amount not to exceed $200,000, less any amount held by such firm on retainer as of the date of delivery of the Carve-Out Trigger Notice, that are incurred and earned on or after the first business day after the delivery of a Carve-Out Trigger Notice, that are allowed by the Court under Bankruptcy Code Sections 105(a), 328, 330 or 331 or otherwise ((x), (y) and (z) collectively, the "**Debtor Professional Carve-Out Cap**"); (v) all reasonable and documented unpaid fees, costs, disbursements and expenses of the Committee's Professionals that are incurred and earned on or after the first business day after the delivery of a Carve-Out Trigger Notice, that are allowed by the Court under Bankruptcy Code Sections 105(a), 328, 330 or 331 or otherwise in an aggregate amount not to exceed $400,000, less any amount held by the Committee Professionals as of the date of delivery of the Carve-Out Trigger Notice (the "**Committee Professional Carve-Out Cap**," and referred to collectively with the Debtor Professional Carve-Out Cap as the "**Carve-Out Cap**"); and (vi) in the event of a conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, the payment of fees and expenses incurred by a trustee and any professional retained by such trustee in an aggregate amount not to exceed $100,000 (clauses (i) through (vi), collectively, the "**Carve-Out**"); provided, however, that immediately upon either (A) the delivery of a Carve-Out Trigger Notice or (B) termination of the DIP Facility and the Debtors' authority to use Cash Collateral, but only if such termination occurs prior to the effective date of any plan of liquidation, the Debtors shall immediately fund into a segregated account established by the Debtors (the "**Carve-Out Account**") an amount equal to the aggregate amount accrued under the Carve-Out prior to the delivery of the Carve-Out Trigger Notice, plus the amount of the Carve-Out Cap. If there are insufficient funds on the date the Carve-Out Trigger Notice is delivered to fund the full amount of the	

Bankruptcy Code / Local Rule	Term	Summary	Provision in Relevant Document(s)
		Carve-Out, including the Carve-Out Cap, into the Carve-Out Account, any additional cash proceeds thereafter received by the Debtors, from whatever source, shall be transferred by the Debtors into the Carve-Out Account prior to making any distributions to creditors. All funds in the Carve-Out Account shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out in subsection (a), above, and then, to pay the obligations set forth in clauses (iv) through (v) of the definition of Carve Out set forth in subsection (a), above. All amounts deposited in the Carve-Out Account shall continue to be subject to the DIP Liens such that, upon final payment of all allowed amounts due and owing under the Carve-Out, including the Carve-Out Cap, as determined by further order of the Court, any funds remaining in the Carve-Out Account shall be remitted to the Debtors and governed by the terms of this Interim Order. Notwithstanding anything to the contrary in this Interim Order, all liens and claims granted pursuant to the Interim Order shall be subject to the Carve-Out. The term "**Carve-Out Trigger Notice**" shall mean a written notice delivered by the DIP Agent or its counsel to the Debtors' lead counsel, the U.S. Trustee and lead counsel to the Committee appointed in these Chapter 11 Cases, which notice may be delivered at any time following the occurrence and during the continuation of any Event of Default, expressly stating that it is a Carve-Out Trigger Notice.	
Bankruptcy Rule 4001 (c)(i)(B)(iv)	Waiver or modification of the automatic stay	The automatic stay is waived to permit the DIP Agent to file financing statements, mortgages, security agreements, notices of Liens and other similar documents. The automatic stay is modified pursuant to the terms of the Interim Order to (i) permit the Debtors to grant the DIP Liens and to incur all liabilities and obligations to the DIP Lenders under the DIP Loan Documents, the DIP Facility and the DIP Orders, (ii) authorize the DIP Lenders to retain and apply payments hereunder, and (iii) as otherwise necessary to implement and effectuate the provisions of the DIP Orders. Subject to a five day notice period, the automatic stay otherwise applicable to the DIP Agent and the DIP Lenders is modified, without requiring prior notice to or authorization of the Court, to the extent necessary to	Interim Order ¶¶ 4, 12(b) and (e)

Bankruptcy Code / Local Rule	Term	Summary	Provision in Relevant Document(s)
		permit the DIP Agent to foreclose on all or any portion of the Collateral, collect accounts receivable and apply the proceeds thereof to the DIP Obligations, occupy the Debtors' premises to sell or otherwise dispose of the Collateral or otherwise exercise remedies against the Collateral permitted by applicable non-bankruptcy law.	
Bankruptcy Rule 4001 (c)(i)(B)(vii)	Waiver or modification of applicability of non-bankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien	The Interim Order is sufficient and conclusive evidence of the validity, enforceability, perfection and priority of the DIP Liens without the necessity of (a) filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or (b) taking any other action to validate or perfect the DIP Liens or to entitle the DIP Liens to the priorities granted herein.	Interim Order ¶ 4

B. Summary of Principal Terms of the DIP Facility

37. The terms and conditions of the DIP Facility and the Interim Order were negotiated by the DIP Agent and the Debtors in good faith and at arm's length, and are fair and reasonable under the circumstances. Accordingly, the DIP Agent and the DIP Lenders should be accorded the protections offered by Section 364(e) of the Bankruptcy Code, and the DIP Liens, the DIP Super-Priority Claims and the other DIP Protections shall be entitled to the full protection of Section 364(e) of the Bankruptcy Code.

38. The DIP Facility consists of a term loan in aggregate principal amount equal to $72,500,000. The Debtors agree to use the proceeds of the Interim Amount only in accordance with the terms and conditions of the DIP Loan Documents and the Interim Order, including, without limitation, the Approved Budget. The Debtors further agree that any requests for further

borrowings beyond the Interim Amount will be governed by the terms of the Final Order (if entered) and the DIP Loan Documents.

39. The DIP Obligations shall bear interest at the rate of 15% per annum. Accrued interest will be payable in arrears on (a) the last business day of each month and (b) on the Maturity Date; provided, however, that interest accrued during the occurrence and continuance of an Event of Default shall be payable on demand and, in the event of any repayment or prepayment of any DIP Obligations, accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment or prepayment. During the occurrence and continuance of an Event of Default, the DIP obligations shall bear interest at 17% per annum.

40. Under the terms of the DIP Loan Documents, the Debtors will pay all fees, costs, expenses (including reasonable and documented out-of-pocket legal and other professional fees and expenses of the DIP Agent and the DIP Lenders) and other charges payable under the terms of the DIP Loan Documents, including Refinancing Work Fees, without regard to the amounts set forth with respect thereto in the Approved Budget. Such fees are comprised of the following:

(a) Refinancing Work Fees. The Borrower will reimburse the reasonable fees and expenses incurred prior to the date of the DIP Credit Agreement, and pay and provide a deposit against future reasonable fees and expenses, of Chase (together with any similar fees and expenses that the Debtors elect to pay to other potential refinancing sources).

(b) Upfront Fee. The Borrower will pay the Lender an upfront fee in an amount equal to 2.00% of the amount of the DIP Facility, which Upfront Fee will be fully earned and payable (i) on the date that the DIP Credit Agreement becomes effective, with respect to the Interim Order Amount, and may be offset by the DIP Agent and DIP Lenders against any borrowings on such date, and (ii) on the Subsequent Funding Date (as defined in the DIP Credit Agreement), with respect to the difference between the amount of the DIP Facility and the Interim Order Amount.

(c) Exit Fee. The Borrower will pay to the DIP Agent on behalf of the DIP Lenders an exit fee in an amount equal to 3.00% of the amount of, without duplication, (i) any loans made under the DIP Facility that are repaid or prepaid (whether as a result of the Maturity Date, prepayment,

acceleration or otherwise) and (ii) any reduction in the amount of the DIP Facility (whether as a result of the Maturity Date, prepayment, acceleration, voluntary reduction or otherwise), which Exit Fee will be fully earned and payable on the occurrence of the events described in clause (i) and/or (ii).

(d) Unused Line Fee. The Borrower will pay the DIP Agent on behalf of the DIP Lenders an unused line fee computed at the rate per annum of 2.50% of the undrawn amount of the DIP Facility from the Subsequent Funding Date. The Unused Line Fee will be payable in arrears on (i) the last business day of each month and (ii) on the Maturity Date.

41. The DIP Facility matures and must be paid in full on the earliest of (a) the date that is fifteen (15) calendar days after the Petition Date unless the Bankruptcy Court has entered (i) the Final Order and (ii) the Sale Procedures Order, (b) the date of consummation of the Sale, (c) the date that is thirty-four (34) days after the Petition Date if the auction in respect of the Sale has not been commenced by such date, (d) the date that is thirty-six (36) days after the Petition Date if the auction in respect of the Sale has not been completed by such date, (e) the date that is forty-one (41) days after the Petition Date if an order approving the Sale has not been entered by the Court by such date and (f) December 31, 2012.

42. The provisions above were negotiated and are necessary for the Borrower to procure the financing made available under the DIP Facility in a sufficient amount and on a timely basis. The Debtors believe that the DIP Agent and the DIP Lenders are acting in good faith and are providing to the Debtors' estates with reasonably equivalent value and fair consideration in exchange for the treatment of the DIP Agent and the DIP Lenders pursuant to the Interim Order.

C. Approved Budget

43. Attached as Exhibit A to the Interim Order is the Approved Budget, a thirteen-week cash flow budget that is in form and substance satisfactory to the DIP Agent (and may be amended or restated with the prior written consent of the DIP Agent), which reflects, on a line-

item basis for such thirteen-week period, the Debtors' projected cash receipts and disbursements (including ordinary course operating expenses, bankruptcy-related expenses under these Chapter 11 Cases, capital expenditures and fees and expenses of the DIP Agent and the DIP Lenders (including counsel, financial advisors and other professionals therefor)), and unrestricted cash on hand. The DIP Loan Documents limit the Debtors' disbursements to 110% of the aggregate disbursement amount set forth on the Approved Budget on a cumulative basis. In addition, the amount of the DIP Facility available to be borrowed on a cumulative basis is limited to 105% of the DIP Facility amount set forth in the Approved Budget. The DIP Loan Documents also require the Debtors to maintain $10,000,000 cash on hand at all times.

Basis for Relief

A. Approval Pursuant to Section 364(c) of the Bankruptcy Code

44. The Debtors propose to obtain financing under the DIP Facility by providing security interests and liens as set forth above pursuant to Sections 364(c) and (d) of the Bankruptcy Code. The statutory requirement for obtaining postpetition credit under Section 364(c) is a finding, made after notice and hearing, that a debtor is "unable to obtain unsecured credit allowable under Section 503(b)(1) of the [the Bankruptcy Code] ." 11 U.S.C. § 364(c). Financing pursuant to Section 364(d) of the Bankruptcy Code is appropriate when the trustee or debtor-in-possession is unable to obtain unsecured credit allowable as an ordinary administrative claim. See In re Ames Dep't Stores, Inc., 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990) (debtor must show that it has made reasonable effort to seek other sources of financing under Sections 364(a) and (b) of the Bankruptcy Code); In re Crouse Group, Inc., 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under Section 364(c)(2) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained).

45. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under Section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

(a) the debtor is unable to obtain unsecured credit under Section 364(b), i.e., by allowing a lender only an administrative claim;

(b) the credit transaction is necessary to preserve the assets of the estate; and

(c) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

In re Ames Dep't Stores, 115 B.R. at 37-39; see also In re St. Mary Hospital, 86 B.R. 393, 401-02 (Bankr. E.D. Pa. 1988); In re Crouse Group, Inc., 71 B.R. at 549.

46. Prior to negotiating the DIP Facility, the Debtors considered other sources of postpetition financing to determine whether they could obtain debtor in possession financing on better terms. Based on current capital markets conditions, after consultation with their investment banker, the Debtors determined that postpetition financing on an unsecured basis would be unobtainable. Without postpetition financing, the Debtors would not be able to ensure that they would be able to continue operations without interruption. The failure to continue to operate would significantly impair the value of the Debtors' assets and the Debtors' ability to maximize value through the proposed Sale or any other restructuring. Given the Debtors' circumstances and the volatile conditions and lack of liquidity in the capital markets, the Debtors believe that the terms of the DIP Facility are fair, reasonable and adequate, all as more fully set forth below.

47. In the event that a debtor is unable to obtain unsecured credit, Section 364(c)(3) provides that the debtor may obtain credit that is secured by a junior lien on property of the estate. The DIP Liens sought herein will be junior to (a) any valid, prior perfected and

non-avoidable Lien existing immediately prior to the Petition Date or perfected on or after the Petition Date pursuant to Bankruptcy Code Section 546(b) (collectively, "**Permitted Prior Liens**"), (b) the Wanxiang Liens during the period prior to entry of a Final Order and (c) the Carve-Out.

B. Approval of Priming Liens and Adequate Protection Pursuant to Section 364(d) of the Bankruptcy Code

48. If a debtor is unable to obtain credit under the provisions of Section 364(c) of the Bankruptcy Code, the debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly referred to as a "priming lien." 11 U.S.C. § 364(d).

49. Section 364(d)(1) of the Bankruptcy Code, which governs the incurrence of postpetition debt secured by senior or "priming" liens, provides that the court may, after notice and a hearing, 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 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.

11 U.S.C. § 364(d).

50. The Bankruptcy Code does not explicitly define "adequate protection." Section 361 of the Bankruptcy Code does, however, provide three nonexclusive examples of what may constitute "adequate protection" of an interest of an entity in property under Sections 362, 363 or 364 of the Bankruptcy Code:

> (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the…use…under section 363 of this title, or

any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;

(2) providing to such entity an additional or replacement lien to the extent that such…use…or grant results in a decrease in the value of such entity's interest in such property; or

(3) granting such other relief…as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

11 U.S.C. § 361.

51. Similarly, the Bankruptcy Code does not expressly define the nature and extent of the "interest in property" of which a secured creditor is entitled to adequate protection under Section 361, 363 and 364. However, the Bankruptcy Code plainly contemplates that a qualifying interest demands protection only to the extent that the use of the creditor's collateral will result in a decrease in "the value of such entity's interest in such property." See 11 U.S.C. § 361. Indeed, courts have repeatedly held that the purpose of adequate protection "is to safeguard the secured creditor from diminution in the value of its interest during the Chapter 11 reorganization." In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); see also In re Mosello, 195 B.R. 277, 288 (Bankr. S.D.N.Y. 1996) (same); Bank of New England v. BWL, Inc., 121 B.R. 413, 418 (D. Me. 1990) (same); In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (focus of adequate protection "is protection of the secured creditor from diminution in the value of its collateral during the reorganization process").

52. The determination of adequate protection is a fact-specific inquiry to be decided on a case-by-case basis. See In re Mosello, 195 B.R. 277, 288 (Bankr. S.D.N.Y. 1996). "Its application is left to the vagaries of each case . . . but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process." Id. (quoting In re Beker Indus. Corp., 58 B.R. at 736). The Debtors have concluded that

financing comparable to that provided by the DIP Agent and DIP Lenders under the DIP Facility is currently unobtainable.

53. Pursuant to the terms of the proposed Interim Order, the DIP Facility would be secured by a DIP Lien on the Collateral junior to the Wanxiang Lien during the period prior to entry of a Final Order. Upon entry of the Final Order, the principal and interest of such secured debt would be paid in full and all letters of credit issued or backstopped by the Wanxiang Lender replaced or cash collateralized. However, in the event that Wanxiang claims entitlement to various penalty fees and liquidated damages clauses in contracts between Wanxiang affiliates and the Debtors, such fees, to the extent payable at all, would remain outstanding and the lien securing the DIP Facility would prime and be senior to the liens securing such fees. In accordance with Section 364(d) of the Bankruptcy Code, and consistent with the purposes underlying the provision of adequate protection, the Final Order will provide the Wanxiang Lender with replacement liens on the Collateral. In addition, as more fully set forth in the Cash Collateral Motion, even after being "primed" by the DIP Liens, the Wanxiang Lender's interest in the Collateral is adequately protected by the substantial amount by which the value of the Collateral exceeds such interest.

C. No Comparable Alternative to the DIP Facility is Currently Available

54. A debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by Sections 364(c) and (d) of the Bankruptcy Code. See In re Snowshoe Co., 789 F.2d 1085, 1088 (4th Cir. 1986); see also In re Plabell Rubber Prods., Inc., 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). In the weeks preceding the Petition Date, the Debtors were faced with two important problems that had to be solved. The first problem was that the Debtors lacked liquidity to be able to continue to operate and needed to quickly obtain financing. The second problem was that the Debtors needed to secure a

stalking horse bidder willing to agree to purchase the Debtors' assets (or at least some material portion thereof) to increase the likelihood of a successful auction that would maximize the value of the Debtors' estate for the benefit of their stakeholders. Within a very short timeframe, JCI provided solutions to both problems. JCI was willing to provide a $125,000,000 stalking horse bid for the purchase of the Debtors' transportation business. JCI was also willing to provide the DIP Facility, which was necessary for the Debtors to operate their business through an auction and the closing of the sale. The Debtors also had discussions with the Wanxiang Lender, their existing lender under the Wanxiang Bridge Loan Facility. However, the Wanxiang Lender postpetition financing discussions never got past the term sheet stage, despite Wanxiang having spent months pursuing an out-of-court transaction with the Debtors. More importantly, Wanxiang, as a Chinese company, was not willing to provide a stalking horse bid for the purchase of the Debtors' assets unless such bid was contingent upon receipt of a favorable determination from the Committee of Foreign Investment in the United States ("**CFIUS**"). Prior to the Petition Date, the Debtors had sought a favorable CFIUS determination with respect to the purchase of the Debtors by Wanxiang and CFIUS had elected to consider the matter further. The Debtors determined, after consultation with their investment bankers, that there was no party other than JCI who could offer what JCI could offer in the timeframe available: a debtor-in-possession financing and a material stalking horse bid that was not contingent upon CFIUS approval. Realizing that they would be able to obtain superior debtor-in-possession financing terms only after they had a stalking horse agreement in place, the Debtors determined that, taking all of the facts and circumstances into account, their efforts prior to the Petition Date should be focused on securing the JCI stalking horse agreement rather than searching for alternative lenders. In addition, as negotiations over the JCI stalking horse agreement and DIP Facility

continued, the Debtors and JCI agreed that prior to entry of the Final Order, with the stalking horse agreement finalized and publicly disclosed, the Debtors would work to seek to procure a more favorable financing, if available in the marketplace. Indeed, the Debtors have already begun to do so. Thus, in addition to evidence to be introduced at the Interim Hearing if necessary, the Debtors submit that the requirements of Sections 364(c) and (d) of the Bankruptcy Code that alternative credit on more favorable terms was unavailable to the Debtors is satisfied.

D. The DIP Facility Terms are Fair, Reasonable and Adequate

55. The proposed terms of the DIP Facility are fair, reasonable and adequate given today's market and the facts of these cases. The purpose of the DIP Facility is to provide the Debtors with sufficient working capital and liquidity to bridge the Debtors to consummation of a going-concern sale of their assets pursuant to Section 363 of the Bankruptcy Code.

56. The proposed DIP Facility provides that the security interests and administrative expense claims granted to the DIP Agent and DIP Lenders, and any adequate protection granted to the Wanxiang Lender will be subject to the Carve-Out. In In re Ames Dep't Stores, 115 B.R. 34 (Bankr. S.D.N.Y. 1990), the court found that such "carve-outs" are not only reasonable, but are necessary to ensure that official committees and the debtor's estate will be assured of the assistance of counsel. Id. at 40.

E. Modification of Automatic Stay

57. The DIP Facility contemplates a modification of the automatic stay to the extent applicable and necessary, to permit the parties to implement the terms of the DIP Orders. Provisions of this kind are standard in debtor-in-possession financings and are reasonable under the circumstances.

F. Interim Approval Should Be Granted

58. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to Section 364 of the Bankruptcy Code or to use cash collateral pursuant to Section 363 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 obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

59. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim Order authorizing the Debtors from and after entry of the Interim Order until the Final Hearing to receive the Interim Amount contemplated by the DIP Facility. The Debtors require the Interim Amount during the first fifteen (15) days of these Chapter 11 Cases to be able to continue to operate and pay their administrative expenses. This relief will enable the Debtors to operate their business in a manner that will permit them to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing.

G. Notice Procedures and the Final Hearing

60. Pursuant to Local Rule 4001-2(c), the Final Order may only be entered after notice and a hearing, and a hearing to consider the Final Order is ordinarily not held until at least seven (7) days after the organizational meeting of the creditors' committee. The Debtors shall, within two (2) business days of the entry of the Interim Order by the Court, serve by overnight mail, a copy of the Interim Order and a notice of the Final Hearing (the "**Final Hearing Notice**") to consider entry of the Final Order on the date established by the Court.

61. The Debtors respectfully request that the Court schedule the Final Hearing on this Motion no later than fifteen (15) days after the Petition Date. In light of the Maturity Date, such

relief is necessary in order to maintain ongoing operations and avoid immediate and irreparable harm and prejudice to the Debtors' respective estates.

Notice

62. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware, (b) counsel to the Debtors' postpetition secured lender, (c) counsel to the Debtors' prepetition secured lender, (d) counsel to the Indenture Trustee under the Debtors' prepetition 2012 Senior Convertible Notes (as defined in the Prystash Declaration), (e) counsel to the Indenture Trustee under the Debtors' prepetition 2011 3.75% Convertible Subordinated Notes (as defined in the Prystash Declaration), (f) the Securities and Exchange Commission, (g) counsel to Johnson Controls, Inc., as Stalking Horse Bidder, (h) the U.S. Department of Energy, (i) the U.S. Department of Justice, (j) the Michigan Economic Growth Authority, (k) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors, and (l) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. The Debtors will serve copies of the Motion and any order entered in respect of the Motion as required by Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

WHEREFORE, the Debtors respectfully request that this Court (i) enter the Interim Order, substantially in the form attached hereto as Exhibit A; (ii) after the Final Hearing, enter the Final Order substantially in the form that shall be filed with the Court; and (iii) grant such other and further relief as this Court deems appropriate.

Dated: Wilmington, Delaware
October 16, 2012

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