

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
Forward Foods LLC,	)	Case No. 09-10545 (KJC)
)	
Debtor.)	
	)	Requested Hearing Date: September 30 , 2009 at ____ __.m
	)	Requested Objection Deadline: At the Hearing

**MOTION OF THE DEBTOR FOR (I) INTERIM RELIEF AND (II) FINAL
AUTHORITY TO ENTER INTO FINANCING ARRANGEMENT FOR INSURANCE
PREMIUMS NECESSARY TO MAINTAIN INSURANCE COVERAGE**

Forward Foods LLC (“Forward Foods” or the “Debtor”), the debtor and debtor in possession in the above-captioned chapter 11 case, hereby moves for entry of (i) an interim order (the “Interim Order”), and (ii) a final order (the “Final Order”) pursuant to section 364 of the Bankruptcy Code authorizing the Debtor to enter into a commercial premium finance agreement – promissory note (the “Finance Agreement”) with AFCO Credit Corporation (“AFCO”), pursuant to which AFCO will provide the Debtor with such financing that will allow the Debtor to pay insurance premiums (the “Premiums”) related to various insurance policies (the “Policies”) required to be maintained by the Debtor. A proposed Interim Order is attached hereto as Exhibit A. A proposed Final Order is attached hereto as Exhibit B. In support of the Motion, the Debtor respectfully represents as follows:

Statement Pursuant to Federal Rule of Bankruptcy Procedure 4001

Summary of Terms

Interest Rate for the Finance Agreement: Annual percentage rate of 5.435%. See Exhibit C, Page 1 of 3

Maturity Date of the Finance Agreement: August 31, 2010. See Exhibit C, Page 1 of 3.

Events of Default: Nonpayment of installment payments. See Exhibit C, Page 3 of 3.

Security Interest: Lender is granted a first priority security interest in (i) any and all unearned premiums and dividends which may become payable under the financed insurance policies, (ii) loss payments which reduce the unearned premiums, subject to any mortgage or loss payee interests, and (iii) any interest in any state guarantee fund relating to any financed policy. See Exhibit C, Page 3 of 3.

Adequate Protection: No other lender holds a security interest in the property covered by the Finance Agreement, therefore no adequate protection payments are necessary.

Amount Financed: \$69,000.31. See Exhibit C, Page 1 of 3.

Summary of Relief Requested

Through this Motion, Debtor seeks authority to enter into the Finance Agreement with AFCO in order to finance the payment of insurance premiums for certain insurance policies.

JURISDICTION AND VENUE

1. 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 this case and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is section 364(c) of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”).

BACKGROUND

2. On February 17, 2009 (the “Petition Date”), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtor is continuing to operate its business and manage its property and assets as debtor in possession.

3. Debtor is a manufacturer of high protein, snack, energy and meal replacement bars primarily produced under the Detour brand name. Since the introduction of the original Detour bar in October 2002, Detour has grown into a \$25 million business and is a leading high protein brand in health and fitness stores.

4. Debtor is primarily owned by Emigrant Capital Corporation, a private equity company.

5. Debtor is headquartered in Minden, Nevada and manufactures product in two leased facilities, both located in Minden. Debtor employs 52 individuals and regularly employs 25 temporary workers. In its business Debtor also contracts with 14 brokers who represent its brand with many regional and local retailers. A material portion of the sales of Debtor is made through these brokers.

6. A majority of the volume of the products produced by Debtor are sold directly to club, mass, convenience and grocery stores, drugstores and health and fitness clubs.

The Debtor’s Insurance Coverage

7. Prior to filing its petition under chapter 11 of the Bankruptcy Code, the Debtor, in the ordinary course of its business, maintained various types of insurance coverage including property and casualty policies.

8. Due to the high risk of liability related to the Debtor's operations, it is crucial that the Debtor continue to maintain such insurance during its postpetition operations to protect and maintain the value of the Debtor's assets for the benefit of the Debtor's estate and creditors. Under the Finance Agreement with AFCO, a copy of which is attached hereto as Exhibit C, the Debtor has financed a total of \$108,654 in Premiums for five separate insurance policies (the "Policies") at 5.435% interest. The Debtor is obligated to make seven installments of \$10,036.59 under the Finance Agreement. Non-payment of the respective installment payments is grounds for cancellation of the Policies.

9. The Debtor's obligations under the Finance Agreement are secured by the following: (i) any and all unearned premiums and dividends which may become payable under the financed insurance policies, (ii) loss payments which reduce the unearned premiums, subject to any mortgage or loss payee interests, and (iii) any interest in any state guarantee fund relating to any financed policy.

10. The Debtor's budget does not contain adequate funds that would permit the Debtor to make a cash payment in the amount of \$108,654 to pay the outstanding Premiums under the Policies. The Debtors are unable to obtain unsecured credit to finance the outstanding Premiums due under the Policies.

RELIEF REQUESTED AND BASIS THEREFOR

11. By this Motion, the Debtor seeks entry of (i) an Interim Order and (ii) a Final Order authorizing the Debtor to enter into a Financing Agreement with AFCO pursuant to section 364 of the Bankruptcy Code and Bankruptcy Rule 4001.

12. Section 364(b) of the Bankruptcy Code provides that after notice and a hearing, the Court may authorize the trustee or debtor in possession to obtain unsecured credit or to incur unsecured debt as an administrative expense. 11 U.S.C. § 364(b).

13. Section 364(c) of the Bankruptcy Code further provides:

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

.....

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

14. The United States Trustee’s Operating Guidelines for Chapter 11 Cases (the “Guidelines”) requires the Debtor to maintain insurance coverage throughout the chapter 11 case. *See* Guidelines ¶ 3 (Jan. 26, 2009) (requiring maintenance, as appropriate, of general comprehensive liability, property loss from fire, theft, water or other extended coverage, workers’ compensation, vehicle, products liability, fidelity bonds for employees and such other insurance as is customary in the debtor’s business).

15. Cancellation of the Policies would be in violation of the United States Trustee’s Guidelines mandating the continuation of insurance coverage throughout a chapter 11 case. Cancellation would further place property of the estate at severe risk of loss, therefore continuation of the Policies is in the best interest of the Debtor’s creditors and the estate.

16. Accordingly, the Debtor seeks authorization to obtain insurance financing pursuant to the Finance Agreement, including the payment of all monthly obligations, and to renew or enter into new financing arrangements as may be required as the annual terms of the existing Finance Agreement expire, without further order of this Court, in the ordinary course of business.

17. Because the first installment payment under Finance Agreement is due on or before October 1, 2009, the Debtor seeks entry of an Interim Order authorizing the Debtor to satisfy its obligations under the Finance Agreement until such time as a Final Order is entered. *See* Bankruptcy Rule 4001(c)(2) (permitting court to “authorize the obtaining of credit only to

the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.”). The Debtor’s performance under the Finance Agreement pending entry of a Final Order is necessary to protect the assets of the estate from diminishment due to a lapse in insurance coverage.

CONCLUSION

WHEREFORE, the Debtor respectfully requests entry of an Interim Order and Final Order, in the form annexed hereto, granting the Debtor the authority to enter into under the Finance Agreement with AFCO pursuant to 11 U.S.C. § 364(c) and Bankruptcy Rule 4001, and such other and further relief as is just and proper.

Dated: September 25, 2009
Wilmington, DE

Respectfully submitted,

/s/ Bradford J. Sandler

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*Counsel for Forward Foods LLC,
Debtor and Debtor in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
Forward Foods LLC,	)	Case No. 09-10545 (KJC)
)	
Debtor.	)	Re: Docket No. _____
)	
)	

**INTERIM ORDER GRANTING MOTION OF THE DEBTOR FOR AUTHORITY TO
ENTER INTO FINANCING ARRANGEMENT FOR INSURANCE PREMIUMS
NECESSARY TO MAINTAIN INSURANCE COVERAGE**

Upon consideration of the motion (the “Motion”)¹ of the Debtor for an order, under section 364(c) of the Bankruptcy Code and Bankruptcy Rule 4001, authorizing the Debtor to perform under the terms of a commercial premium finance agreement – promissory note (the “Finance Agreement”) with AFCO Credit Corporation (“AFCO”), including the payment of all monthly obligations, and to renew or enter into new financing arrangements as may be required as the annual terms of the existing Finance Agreement expire, without further order of this Court, in the ordinary course of business; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate, creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

ORDERED that:

1. The Motion is GRANTED to the extent set forth herein.
2. The Debtor is authorized, but not directed, to perform under the Finance Agreement and to pay the Premiums and related charges arising under or in connection with the Policies as such Premiums and charges become due.
3. The Debtor is authorized to pay all outstanding obligations as they become due under the Finance Agreement pending entry of a Final Order.
4. The Court finds and determines that the requirements of Bankruptcy Rule 4001 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.
5. Neither the provisions contained herein, nor any actions or payments made by the Debtor pursuant to this Order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtor may have to subsequently dispute such obligation on any ground that applicable law permits.
6. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: _____, 2009
Wilmington, Delaware

Kevin J. Carey
Chief United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
Forward Foods LLC,	)	Case No. 09-10545 (KJC)
)	
Debtor.	)	Re: Docket No. _____
)	
)	

**FINAL ORDER GRANTING MOTION OF THE DEBTOR FOR AUTHORITY TO
ENTER INTO FINANCING ARRANGEMENT FOR INSURANCE PREMIUMS
NECESSARY TO MAINTAIN INSURANCE COVERAGE**

Upon consideration of the motion (the “Motion”)¹ of the Debtor for an order, under section 364(c) of the Bankruptcy Code and Bankruptcy Rule 4001, authorizing the Debtor to perform under the terms of a commercial premium finance agreement – promissory note (the “Finance Agreement”) with AFCO Credit Corporation (“AFCO”), including the payment of all monthly obligations, and to renew or enter into new financing arrangements as may be required as the annual terms of the existing Finance Agreement expire, without further order of this Court, in the ordinary course of business; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate, creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

ORDERED that:

1. The Motion is GRANTED to the extent set forth herein.
2. The Debtor is authorized, but not directed, to perform under the Finance Agreement and to pay the Premiums and related charges arising under or in connection with the Policies as such Premiums and charges become due.
3. The Debtor is authorized to pay all outstanding obligations due under the Finance Agreement.
4. The Court finds and determines that the requirements of Bankruptcy Rule 4001 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.
5. Neither the provisions contained herein, nor any actions or payments made by the Debtor pursuant to this Order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtor may have to subsequently dispute such obligation on any ground that applicable law permits.
6. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: _____, 2009
Wilmington, Delaware

Kevin J. Carey
United States Bankruptcy Judge



Commercial Premium Finance Agreement - Promissory Note

14 Wall Street, Suite 8A, New York, NY 10005
TEL. NOS. 212-401-4400 800-288-0787

Agent (Name and Address) 10361381
Aon Risk Services Northeast, Inc.
300 Jericho Quadrangle
Jericho, NY 11753
212-441-2216

Insured (Name and Address as shown on the policy)
Forward Foods, LLC
2542 Business Parkway
Minden, NV 89423

Table with 5 columns: A) Total Premiums, B) Down Payment, C) Amount Financed, D) Finance Charge, E) Total Payments, F) Annual Percentage Rate, No. of Payments, Amount of Payments, First Installment Due, Installment Due Dates.

SCHEDULE OF POLICIES

Table with 6 columns: Policy Prefix and Numbers, Effective Date of Policy/Inst., Name of Insurance Company and Name and Address of General or Policy Issuing Agent or Intermediary, Type of Coverage, Months Covered, Premium \$.

(1) DEFINITIONS: The above named Insured is the borrower. AFco Credit Corporation ("AFco") is the lender. "Insurance company" or "company", "insurance policy" or "policy" and "premium" refer to those items listed under the "Schedule of Policies".

NOTICE TO INSURED: 1. Do not sign this agreement before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this agreement at the time you sign. 3. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge. 4. Keep your copy of this agreement to protect your legal rights.

INSURED AGREES TO ALL TERMS SET FORTH ON ALL PAGES OF THIS AGREEMENT AND ANY ADDENDA THERETO.

SIGNATURE OF INSURED(S) OR AUTHORIZED REPRESENTATIVE PRINT NAME TITLE DATE

AGENT OR BROKER REPRESENTATIONS

The undersigned warrants and agrees: (A) The policies are in full force and effect and the information in the Schedule of Policies has been verified and is correct. (B) The Insured authorized this transaction, recognizes the security interest assigned herein and has received a copy of this agreement. (C) To hold in trust for AFco any payments made or credited to the Insured through or to the undersigned, directly or indirectly, actually or constructively by any party and to pay the monies as well as any unearned commissions to AFco promptly to satisfy the outstanding indebtedness of the Insured.

IF THERE ARE ANY EXCEPTIONS TO THE ABOVE STATEMENTS, PLEASE LIST BELOW:

THE UNDERSIGNED FURTHER WARRANTS THAT IT HAS RECEIVED THE DOWN PAYMENT AND ANY OTHER SUMS DUE AS REQUIRED BY THE AGREEMENT AND IS HOLDING SAME OR THEY ARE ATTACHED TO THIS AGREEMENT

AGENT OR BROKER SIGNATURE OF AGENT OR BROKER TITLE DATE



Commercial Premium Finance Agreement - Promissory Note

14 Wall Street, Suite 8A, New York, NY 10005
TEL. NOS. 212-401-4400 800-288-0787

Page 2 of 3

SCHEDULE OF POLICIES

Policy Prefix and Numbers	Effective Date of Policy/Inst.	Name of Insurance Company and Name and Address of General or Policy Issuing Agent or Intermediary	Type of Coverage	Months Covered	Premium \$
35840449	09/01/2009	Federal Insurance Company	PROD	12	29,831.00
BE31163315	09/01/2009	National Union Fire Insurance Co Pittsburgh PA	UMB	12	32,175.00
71710555	09/01/2009	Vigilant Insurance Company Tax	WC TAX	12* Ref	17,262.00 434.00
73542907	09/01/2009	Federal Insurance Company	AUTO	12*	1,851.00
35840448	09/01/2009	Federal Insurance Company	CPAK	12	24,601.00

- (2) **PROMISE OF PAYMENT:** The Insured (i) requests that AFCO pay the premiums in the Schedule of Policies, less the Down Payment and any installments paid prior to acceptance of this Agreement and (ii) promises to pay to AFCO at 110 William Street, New York, NY 10038 (or at any other address it may designate) the amount stated in Block E above according to the payment schedule, subject to the remaining terms of this agreement. No additional authority, acts, approvals or licenses are or will be necessary as a prerequisite to the enforceability of this Agreement. AFCO may, at its option, pay loan proceeds to any agent, broker, general agent, managing general agent or insurer set forth herein. Payments to AFCO are deemed made only upon receipt in good funds. Checks are accepted, subject to collection.
- (3) **SECURITY INTEREST AND POWER OF ATTORNEY:** The Insured assigns and hereby gives a security interest to AFCO as collateral for the total amount payable in this agreement and any other past, present or future extension of credit: (a) any and all unearned premiums or dividends which may become payable for any reason under all insurance policies financed by AFCO, (b) loss payments which reduce the unearned premiums, subject to any mortgagee or loss payee interests and (c) any interest in any state guarantee fund relating to any financed policy. If any circumstances exist in which all premiums related to any policy could become fully earned in the event of any loss, AFCO shall be named a loss-payee with respect to such policy. AFCO at its option may enforce payment of this debt without recourse to the security given to AFCO. The Insured irrevocably appoints AFCO as its attorney in fact with full authority to (i) cancel all insurance financed by AFCO for the reason set forth in paragraph 12, whether pursuant to this or any other agreement, (ii) receive all sums hereby assigned to AFCO and (iii) execute and deliver on the Insured's behalf all documents, instruments of payment, forms and notices of any kind relating to the insurance in furtherance of this agreement.
- (4) **WARRANTY OF ACCURACY:** The Insured (i) warrants that all listed insurance policies have been issued to it and are in full force and effect and that it has not and will not assign any interest in the policies except for the interest of mortgagees and loss payees and (ii) authorizes AFCO to insert or correct on this agreement, if omitted or incorrect, the insurer's name, the policy numbers, and the due date of the first installment and to correct any obvious errors. In the event of any such change, correction or insertion, AFCO will give the Insured written notice thereof.
- (5) **REPRESENTATION OF SOLVENCY:** The Insured represents that it is not insolvent or the subject of any insolvency proceeding.
- (6) **ADDITIONAL PREMIUMS:** The money paid by AFCO is only for the premium as determined at the time the insurance policy is issued. AFCO's payment shall not be applied by the insurance company to pay for any additional premiums owed by the Insured resulting from any type of misclassification of the risk. The Insured shall pay to the insurer any additional premiums or any other sums that become due for any reason. If AFCO assigns the same account number to any additional extension or extensions of credit, (i) this Agreement and any agreement or agreements identified by such account number shall be deemed to comprise a single and indivisible loan transaction, (ii) any default with respect to any component of such transaction shall be deemed a default with respect to all components of such transaction and (iii) any unearned premiums relating to any component of such transaction may be collected and applied by AFCO to the totality of such transaction.
- (7) **SPECIAL INSURANCE POLICIES:** If the insurance policy is auditable or is a reporting form policy or is subject to retrospective rating, then the Insured promises to pay to the insurance company the earned premium computed in accordance with the policy provisions which is in excess of the amount of premium advanced by AFCO which the insurance company retains.
- (8) **NAMED INSURED:** If the insurance policy provides that the first named insured in the policy shall be responsible for payment of premiums and shall act on behalf of all other insureds regarding the policy, then the same shall apply to this Agreement and the Insured represents that it is authorized to sign on behalf of all insureds. If not, then all insureds' names must be shown on this agreement unless a separate agreement appoints an insured to act for the others.
- (9) **FINANCE CHARGE:** The finance charge shown in Block D begins to accrue as of the earliest policy effective date, unless otherwise indicated in the Schedule of Policies, and shall continue to accrue until the balance due AFCO is paid in full or until such other date as required by law, notwithstanding any cancellation of coverage. If AFCO issues a Notice of Cancellation, AFCO may recalculate the total finance charge payable pursuant to this Agreement, and the Insured agrees to pay interest, on the Amount Financed set forth herein, from the first effective date of coverage, at the highest lawful rate of interest. For Arizona Insureds, interest will be calculated on a daily basis and each day shall count as 1/360th of a year.
- (10) **AGREEMENT BECOMES A CONTRACT:** This Agreement becomes a binding contract when AFCO mails the Insured its acceptance and is not a contract until such time. The Insured agrees that (i) this Agreement may be transmitted by facsimile, E-mail or other electronic means to AFCO, (ii) any such transmitted Agreement shall be deemed a fully enforceable duplicate original document and (iii) such Agreement, when accepted by AFCO, shall constitute a valid and enforceable contract.
- (11) **DEFAULT AND DISHONORED CHECK CHARGES:** If the Insured is late in making a loan payment to AFCO by more than the number of days specified by law (5 days in Wisconsin), the Insured will pay to AFCO a delinquency charge equal to the maximum charge permitted by law (5% of any delinquent installment, subject to a minimum default charge of \$1.00, in Wisconsin). If a check is dishonored, the Insured will pay a check processing fee not to exceed the lesser of \$25 or the amount permitted by law.
- (12) **CANCELLATION:** AFCO may cancel all insurance policies financed by AFCO after giving statutory notice and the full balance due to AFCO shall be immediately payable if the Insured does not pay any installment according to the terms of this or any other agreement with AFCO. Payment of unearned premiums shall not be deemed to be payment of installments to AFCO, in full or in part.
- (13) **CANCELLATION CHARGES:** If AFCO cancels any insurance policy in accordance with the terms of this agreement, then the Insured will pay AFCO a cancellation charge, if permitted, up to the limit specified by law (\$15.00 in Wisconsin).
- (14) **MONEY RECEIVED AFTER NOTICE OF CANCELLATION:** Any payments made to AFCO after mailing of AFCO's Notice of Cancellation may be credited to the Insured's account without affecting the acceleration of this agreement and without any liability or obligation to request reinstatement of a canceled policy. Any money AFCO receives from an insurance company shall be credited to the amount due AFCO with any surplus paid over to whomever is entitled to the money. No refund of less than \$1.00 shall be made. In the event that AFCO requests, on the Insured's behalf, reinstatement of the policy, such request does not guarantee that coverage will be reinstated.
- (15) **ATTORNEY FEES - COLLECTION EXPENSE:** If, for collection, this agreement is referred to an attorney and/or other party who is not a salaried employee of AFCO, the Insured agrees to pay any reasonable attorney fees and costs as well as other reasonable collection expenses, as permitted by law or granted by the court (in Wisconsin, statutory attorneys' fees and statutory court costs).
- (16) **REFUND CREDITS:** The Insured will receive a refund of the finance charge if the account is voluntarily prepaid in full before the last installment due date as required or permitted by law (in Wisconsin, calculated according to the Rule of 78s) and AFCO may retain an additional non-refundable service charge of \$10.00. Any minimum or fully earned fees will be deducted as permitted by law.
- (17) **INSURANCE AGENT OR BROKER:** The insurance agent or broker named in this agreement is the Insured's agent, not AFCO's and AFCO is not legally bound by anything the agent or broker represents to the Insured orally or in writing. AFCO has not participated in the choice, placement, acquisition or underwriting of any financed insurance. Any disclosures made by the agent are made in its capacity as the insured's agent and AFCO makes no representations with respect to the accuracy of any such disclosures.
- (18) **NOT A CONDITION OF OBTAINING INSURANCE:** This agreement is not required as a condition for obtaining insurance coverage.
- (19) **SUCCESSORS AND ASSIGNS:** All legal rights given to AFCO shall benefit AFCO's successors and assigns. The Insured will not assign this Agreement and/or the policies without AFCO's written consent except for the interest of mortgagees and loss payees.
- (20) **LIMITATION OF LIABILITY - CLAIMS AGAINST AFCO:** The Insured hereby irrevocably waives and releases AFCO from any claims, lawsuits and causes of action which may be related to any prior loans and/or to any act or failure to act prior to the time that this Agreement becomes a binding contract, pursuant to paragraph 10. AFCO's liability for breach of any of the terms of this agreement or the wrongful exercise of any of its powers shall be limited to the amount of the principal balance outstanding, except in the event of gross negligence or willful misconduct. Any claims against AFCO shall be litigated exclusively in the Supreme Court of the State of New York, County of New York.
- (21) **DISCLOSURE:** The insurance company or companies and their agents, any intermediaries and the insurance agent or broker named in this agreement and their successors are authorized and directed to provide AFCO with full and complete information regarding all financed insurance policy or policies, including, without limitation, the status and calculation of unearned premiums.
- (22) **ENTIRE DOCUMENT - GOVERNING LAW - ENFORCEMENT VENUE:** This document is the entire agreement between AFCO and the Insured and can only be changed in a writing signed by both parties except as stated in paragraph (4). The laws of the state indicated in the Insured's address as set forth herein will govern this agreement (for Wisconsin Insureds, Wisconsin). AFCO may, at its option, prosecute any action to enforce its rights hereunder in the Supreme Court of the State of New York, County of New York, and the Insured (i) waives any objection to such venue and (ii) will honor any order issued by or judgment entered in such Court.
- (23) **WAIVER OF SOVEREIGN IMMUNITY:** The Insured hereby certifies that it is empowered to enter into this agreement without any restrictions and that the individual signing it has been fully empowered to do so. To the extent that the Insured either possesses or claims sovereign immunity for any reason, such sovereign immunity is expressly waived and the Insured agrees to be subject to the jurisdiction of the laws and courts set forth in the preceding paragraphs.

CERTIFICATE OF SERVICE

A copy of the foregoing *Motion of the Debtor for (I) Interim Relief and (II) Final Authority to Enter into Financing Arrangement For Insurance Premiums Necessary To Maintain Insurance Coverage* has been mailed by overnight mail this 25th day of September, 2009 to the parties listed below, and via the Court's ECF noticing system to those parties eligible to receive ECF notices.

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/s/ Bradford J. Sandler