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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
GARRET MOTION INC, <i>et al.</i> ,)	Case No. 20-12212 (MEW)
Debtors.)	(Jointly Administered)

**MOTION OF JOHN DEERE CONSTRUCTION AND FORESTRY COMPANY FOR
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM
PURSUANT TO 11 U.S.C. §§ 503(b)(1)(A) AND 507(a)(2)**

John Deere Construction and Forestry Company (“Deere”), by and through its counsel, hereby files this Motion of Deere & Company for Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. §§ 503(b)(1)(A) and 507(a)(2) (the “Motion”), for entry of an order, in the form attached hereto, allowing an Administrative Expense Claim for Deere for unpaid post-petition claims and invoices, including but not limited to warranty claims, and directing payment of the Administrative Expense Claim. In support of this Motion, Deere respectfully represents as follows:

BACKGROUND

1. On September 20, 2020 (the “Petition Date”), the above-captioned Debtors filed a voluntary petition for Bankruptcy relief under 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York.



2. As of the Petition Date, Deere and the Debtor were parties to a series of agreements, pursuant to which the Debtor agreed to manufacture on a production basis or rebuild various goods including turbos, turbo components and heat transfer products, which are placed into or replaced in Deere equipment or machines, and service parts therefor (collectively, the “**Products**”), to be sold under or installed in John Deere brand named products.

3. Pursuant to the *Warranty Agreement*, the Debtors agreed to warranted to Deere that the Products shall (i) conform to all specifications applicable for the Products, (ii) be free from defects and/or non-conformance in material or workmanship, (iii) be free from defects and/or non-conformance in design and be fit for the applications specified, (iv) comply with all applicable safety standards and contain adequate warnings, (v) be free of asbestos and (vi) comply with all applicable federal, state, provincial and local statutes, laws, regulations, orders and ordinances, including, without limitation, all environmental and occupational health and safety laws and industry standards that restrict or prohibit certain chemical compounds as constituents of the Products.

4. Pursuant to a *Master Bailment Agreement*, Deere agreed that the Debtors may possess and use subject to the terms and conditions of the Master Bailment Agreement, certain tangible property owned by Deere, including, but not limited to tooling, dies, jigs, machinery, equipment, goods, parts, components, assemblies, products, raw materials, scrap materials and other materials (the “**Property**”). Pursuant to Paragraph 12 of this agreement, the Debtor agreed to bear the risk of loss of the Property at the Debtors’ premises.

5. Pursuant to a *Master Bailment Agreement*, the Debtors also agreed to defend, indemnify and hold Deere and its affiliates and all of their directors, officers, personnel, agents, and their successors and assigns harmless from and against any and all damages, claims, actions,

losses, liabilities and causes of action (including, but not limited to, reasonable attorneys' fees and expenses) arising out of or relating to the Debtors' possession, use, repair or maintenance of the Property.

6. Pursuant to a *Mutual Non-Disclosure Agreement*, the Debtor agreed to use Confidential Information (as defined therein) only as required to carry out the purposes of the agreement. The Debtor agreed not to disclose the Confidential Information to any other person, except to its representatives who have a need to know the Confidential Information to carry out the purposes of the agreement and who are subject to confidentiality duties or obligations to protect the disclosed Confidential Information that are no less restrictive than the terms and conditions of this agreement. The Debtor also agreed to take reasonable measures to protect Confidential Information from misuse and unauthorized disclosure.

7. Deere timely filed Proofs of Claims Nos. 220 and 281 (collectively the “**Deere Claims**”) disclosing the known prepetition warranty claims which existed as of the Petition Date. On May 26, 2021 the Debtors filed its *Notice of Satisfied Claims* (Doc. No. 1232) in which the Debtors allege that each Deere Claim has either been (i) satisfied pursuant to the Final Order (I) Authorizing, But Not Directing, the Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, Prepetition Payroll Taxes and Other Compensation and (B) Maintain Employee Compensation and Benefits Programs and Pay Related Administrative Obligations, (II) Authorizing Applicable Banks and Other Financial Institutions to Honor and Process Related Checks and Transfers and (III) Granting Related Relief (Doc. No. 284) or is duplicative of another Deere Claim and therefore no payment is necessary to satisfy said Deere Claim.

8. In addition to the above known and identified warranty claims, Deere suspects there probably exists latent or inchoate Post Petition warranty claims, of an indeterminate amount, which

have yet to be discovered or disclosed. Similarly, Deere suspects that there may be latent or inchoate indemnity claims under both the Warranty Agreement and the Master Bailment Agreement which also have not been discovered which inure to the benefit of Deere. Other, yet undiscovered, claims may exist due to Debtors' failure to otherwise perform under the Warranty Agreement, Master Bailment Agreement and Mutual Nondisclosure Agreement (collectively the **"Administrative Expense Claim"**)

ARGUMENT

9. Section 503(b)(1)(A) provides, in pertinent part, that claims are allowable as administrative expenses for "the actual, necessary costs and expenses of preserving the estate." Section 507(a)(2) of the Bankruptcy Code provides that administrative expense claims that are allowed under Section 503(b) of the Bankruptcy Code have priority.

10. The Administrative Expense Claim is an administrative expense claim pursuant to Sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code because it was incurred by the Debtors' estates and preserved the Debtors' estates. Further, the goods purchased by Deere, to which the latent or inchoate Post Petition warranty claims may attach, qualify as an "actual and necessary cost" under 11 U.S.C. § 503(b)(1)(A) because those costs arose post-petition and the Debtors received a direct benefit because the purchase of goods from the Debtors by Deere enabled the Debtors to continue their ordinary business operations. Accordingly, Deere requests that the Court allow and direct immediate payment of the Administrative Expense Claim pursuant to Sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code.

RESERVATION OF RIGHTS

11. Deere does not intend and hereby does not waive any rights it may otherwise assert against the Debtors nor with respect to any other rights and/or remedies it may have against the Debtors. Deere reserves the right to amend and/or supplement this Motion.

CONCLUSION

WHEREFORE, John Deere Construction and Forestry Company respectfully requests that this Court enter an order substantially in the form attached hereto allowing its Administrative Expense Claim and ordering immediate payment of such claim, and granting such other and further relief as may be just and proper under the circumstances

Dated: New York, New York
June 1, 2021

GENSBURG CALANDRIELLO & KANTER, P.C.

By: /s/ Matthew T. Gensburg

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*Attorneys for John Deere Construction and
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(Proposed Order)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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GARRET MOTION INC, <i>et al.</i> ,)	Case No. 20-12212 (MEW)
)	(Jointly Administered)
Debtors.)	
)	

**ORDER GRANTING MOTION OF DEERE & COMPANY
FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

Upon consideration of the Motion of John Deere Construction and Forestry Company for Payment of Administrative Expense Claim, (the “**Motion**”), and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED that:

A. The Motion is GRANTED; and

B. John Deere Construction and Forestry Company is hereby allowed an administrative expense claim with respect to any latent or inchoate Post Petition warranty claims, latent or inchoate indemnity claims under either the Warranty Agreement or the Master Bailment Agreement, and such claims which exist due to Debtors’ failure to otherwise perform under the Warranty Agreement, Master Bailment Agreement and Mutual Nondisclosure Agreement (the “**Administrative Expense Claim**”), pursuant to 11 U.S.C. §§ 503(b) and 507(a)(2); and

C. The above captioned Debtors are hereby directed to remit payment of the Administrative Expense Claim to John Deere Construction and Forestry Company; and

D. The Court hereby retains jurisdiction over the implementation and enforcement of this Order.

DATED: New York, New York
June __, 2021

MICHAEL E. WILES

United States Bankruptcy Judge