

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
AMES HOLDING CORP., <i>et al.</i> , <sup>1</sup>	)	Case No. 09-_____ ( )
	)	
Debtors.	)	(Joint Administration Requested)
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**MOTION OF THE DEBTORS FOR AN ORDER (I) AUTHORIZING  
CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM,  
(II) AUTHORIZING CONTINUED USE OF EXISTING BANK ACCOUNTS  
AND FORMS, (III) AUTHORIZING THE CONTINUATION OF CERTAIN  
INTERCOMPANY TRANSACTIONS, (IV) GRANTING AN EXTENSION OF  
TIME TO COMPLY WITH SECTION 345(b) OF THE BANKRUPTCY CODE,  
AND (V) GRANTING ADMINISTRATIVE EXPENSE STATUS TO  
POST-PETITION INTERCOMPANY TRANSACTIONS**

Ames Holding Corp. ("Ames Holding"), Axia Incorporated ("Axia"), TapeTech Tool Co., Inc. ("TapeTech"), and Ames Taping Tool Systems, Inc. ("Ames," along with Ames Holding, Axia and TapeTech, each a "Debtor," collectively, the "Debtors"), pursuant to Sections 105(a) and 363(c) of title 11 of the United States Code (the "Bankruptcy Code"), hereby move the Court (the "Motion") for entry of an Order, substantially in the form attached hereto as Exhibit A (the "Cash Management Order"), (i) authorizing the Debtors' continued use of their existing cash management system, (ii) authorizing the Debtors to continue using their existing bank accounts and business forms, (iii) authorizing the Debtors to continue certain intercompany transactions by and among the Debtors, and by and among the Debtors and a certain non-debtor affiliate, on a post-petition basis, (iv) granting an extension of time to comply with section

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Ames Holding Corp. (6130), Axia Incorporated (5251), TapeTech Tool Co., Inc (7106), and Ames Taping Tool Systems, Inc (6440) The Debtors' corporate offices are located at 3350 Breckinridge Boulevard, Suite 100, Duluth, Georgia 30096

345(b) of the Bankruptcy Code with respect to the Debtors' deposit and investment practices, and (v) granting administrative expense status to post-petition intercompany transactions by and among the Debtors and a certain non-debtor affiliate. The facts and circumstances supporting this Motion are set forth in the filed *Declaration of R. Andrew Garner in Support of Chapter 11 Petitions and First Day Motions* (the "Garner Declaration") being filed concurrently with this Motion. In further support of this Motion, the Debtors state as follows:

### **Jurisdiction and Venue**

1. On December 14, 2009 (the "Petition Date"), the Debtors filed with this Court their petitions for relief under chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtors have retained possession of their respective assets and are authorized to continue the operation and management of their respective businesses as debtors-in-possession.

2. The Court has jurisdiction over this matter and over each Debtor pursuant to 28 U.S.C. §§ 157 and 1334.

3. Venue over these cases is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. This Motion constitutes a core proceeding which may be heard and determined by the Court pursuant to 28 U.S.C. §§ 157(b).

### **Background**

5. The Debtors are the leading designers, manufacturers, marketers and distributors of "automatic taping and finishing" ("ATF") tools used to increase productivity in interior drywall finishing. These ATF tools, invented by Ames beginning in 1939, enable interior

finishing contractors to finish drywall joints substantially faster than less productive hand finishing methods.

6. Axia is a wholly-owned subsidiary of Ames Holding, and Ames and TapeTech are wholly-owned subsidiaries of Axia. Axia manufactures the ATF tools and then either sells or rents these tools to Ames and TapeTech. Axia also provides administrative services to Ames and TapeTech, including accounting services, information technology support, marketing, human resources, and customer service, for which Ames and TapeTech pay a specified fee per month. TapeTech is engaged in the business of selling ATF tools wholesale through a network of independent tool dealers and distributors in the U.S. and internationally. These tools are purchased from Axia and sold under the brand name "TapeTech." Ames is engaged primarily in the business of renting ATF tools directly to interior finishing contractors to finish drywall joints prior to painting, wallpapering or other forms of final treatment. Ames offers these ATF tools through two avenues: (i) stores leased by Ames and (ii) franchises granted principally to drywall suppliers.

7. Prior to the Petition Date, to obtain the funds necessary to operate their respective businesses, Axia entered into that certain Amended and Restated Credit Agreement (the "Credit Agreement") dated as of April 1, 2008, with a group of lenders party thereto, pursuant to which the lenders agreed to extend certain term loans and a revolving line of credit to Axia. Ames Holding, TapeTech and Ames jointly and severally guaranteed full payment of the indebtedness owing by Axia under the Credit Agreement. To secure this indebtedness, each of the Debtors granted the lenders security interests in and liens upon all or substantially all of their personal property of every kind and nature. As of the Petition Date, the principal balance of the Debtors'

indebtedness under the Credit Agreement totaled approximately \$161,000,000. Additional details regarding the Debtors' secured obligations are set forth in the Garner Declaration.

8. The financial viability of the Debtors has been severely impacted by the dramatic decline in commercial and residential construction in the United States, particularly as a result of declines in construction in late 2007. By late 2007, a widespread and dramatic downturn in the commercial and residential markets in the United States was occurring. Commercial and residential construction levels plummeted as a result. This downturn was followed by a severe crisis in United States and global credit markets. This precipitous fall in the commercial and residential construction in the United States led to a significant decrease in the demand for and use of ATF tools and other products sold and rented by the Debtors and has, therefore, materially and adversely impacted the Debtors' revenue streams.

9. Faced with such substantially diminished revenues from sales and rentals of the ATF tools throughout the Debtors' regional markets, the Debtors were unable to generate the funds necessary to cover operating and maintenance costs, including amounts needed to service their secured indebtedness. Confronted by this rapid and dramatic decline in commercial and residential construction and the significantly reduced demand for the Debtors' products, beginning in late 2007, the Debtors pursued a number of actions to reduce fixed costs, including (i) reducing significantly the number of employees and the amount of wages and (ii) closing a number of the Ames' leased locations and negotiating lower monthly rental payments with the landlords for other Ames' locations.

10. Although through these efforts the Debtors were able to reduce their costs significantly, with insufficient revenues, quickly decreasing liquidity and no source of additional

financing, the Debtors had no realistic choice but to file the Petitions to enable them to reorganize their affairs and to preserve the value of their business operations. The Debtors hope to achieve as soft a landing as possible by attempting to manage an orderly transition to a purchaser, through a section 363 sale within the first 90 days of bankruptcy, that is willing and able to purchase substantially all the Debtors' assets. The Debtors intend to file a motion early in these chapter 11 cases to establish and seek approval of bid procedures for a sale of substantially all of their assets in cooperation with the Lenders.

### **Relief Requested**

11. By this Motion, the Debtors seek entry of an interim order and a final order (i) authorizing the Debtors' continued use of their existing cash management system, (ii) authorizing the Debtors to continue using their existing bank accounts and business forms, (iii) authorizing the Debtors to continue certain intercompany transactions by and among the Debtors, and by and among the Debtors and a certain non-debtor affiliate, on a post-petition basis, (iv) waiving the requirements of 11 U.S.C. § 345(b) on an interim basis with respect to the Debtors' deposit and investment practices, and (v) granting administrative expense status to post-petition intercompany transactions by and among the Debtors and a certain non-debtor affiliate.

12. In connection with this relief, the Debtors seek a waiver of the Operating Guidelines and Reporting Requirements for Debtors In Possession and Trustees (the "Operating Guidelines") established by the Office of the United States Trustee (the "U.S. Trustee") that generally require chapter 11 debtors to, among other things, (i) close all existing bank accounts and open new debtor-in-possession bank accounts, (ii) establish separate payroll and tax accounts at a United States Trustee Authorized Depository (as defined in the Operating

Guidelines) for all estate monies required to pay payroll and sales and use taxes, and (iii) obtain checks for all debtor-in-possession accounts which bear the designation “debtor-in-possession.”

### **Basis for Relief**

13. Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). To ensure an orderly transition into chapter 11, the Debtors file this Motion seeking approval of the Centralized Cash Management System (as defined below) and other relief set forth herein.

#### **A. Request for Authority to Continue Using the Debtors’ Existing Cash Management System and to Provide Protection to the Cash Management Banks**

##### **1. Description of the Centralized Cash Management System**

14. In the ordinary course of their businesses, the Debtors use a centralized cash management system to collect funds from their operations and to pay operating and administrative expenses (the “Centralized Cash Management System”). The Centralized Cash Management System is similar to the centralized cash management systems used by other large, diversified companies to collect, transfer, and disburse funds generated by numerous operating units in a cost-effective and efficient manner. Although a non-debtor affiliate of the Debtors, Ames Taping Tools of Canada, Ltd. (“Ames Canada”), has separate bank accounts that are connected to the Centralized Cash Management System, and which do not constitute property of the Debtors’ estates, the Debtors are not seeking authority pursuant to this Motion to transfer any funds to Ames Canada. If Ames Canada needs any funding from the Debtors following the

commencement of these chapter 11 cases, the Debtors will seek authority from this Court before providing such funding.

15. The Centralized Cash Management System is carefully managed through oversight procedures and controls implemented by the Debtors' accounting department. Through their control over the Centralized Cash Management System, the Debtors are able to facilitate cash forecasting and reporting, monitor collections and disbursement of funds, and maintain control over the administration of various bank accounts required to effect the collection, disbursement, and movement of cash. A list of the bank accounts used in connection with the Centralized Cash Management System (the "Bank Accounts") is attached hereto as Exhibit B.

16. The Centralized Cash Management System primarily operates through certain bank accounts maintained by the Debtors at Bank of America, N.A. ("BofA"), Wells Fargo Bank, N.A. ("Wells Fargo"), Fifth Third Bank, PNC Bank ("PNC"), Canadian Imperial Bank of Commerce ("CIBC"), Hancock Bank ("Hancock"), Wachovia Bank, N.A. ("Wachovia"), UBS Investment Bank ("USB"), and Citibank, N.A. ("Citibank"), with one primary concentration account at BofA (the "BofA Concentration Account") acting as the central concentration account for the entire system.

## **2. Summary of Transactions within the Centralized Cash Management System**

17. Of the 76 stores maintained to sell and rent the Debtors' tools and related items, only 22 have bank accounts outside of BofA - one store has an account at Wachovia, six stores have accounts at Fifth Third Bank, one store has an account at Hancock, two stores have accounts at PNC, eight stores have accounts at Wells Fargo, and four stores have accounts at

CIBC. The Debtors periodically review the account balances in these accounts and transfer any funds into the BofA Concentration Account as needed. All funds received or generated by the Debtors, including monies from the corporate office, the remaining 54 stores, and customer collections from a BofA lockbox, are deposited in BofA Account Number XXXXXXXX3669 (the “Main Depository Account”) and transferred into the BofA Concentration Account each business day.

18. The Debtors process and disburse all of their accounts payable and payroll obligations through the BofA Concentration Account. The BofA Concentration Account funds various BofA accounts used by the Debtors for disbursements, including: (i) Account Number XXXXXXXX0249 that funds ACH payments and is used for wires; (ii) Disbursement account number XXXXXXXX6083 for corporate and accounts payable; and (iii) a zero-balance account to fund employee payroll and benefits.

19. Ames Canada has its own cash management system. The Debtors periodically review the account balances in these accounts and transfers any funds into the BofA Concentration Account as needed. A diagram of the Cash Management System is attached hereto as Exhibit C.

**3. Continued Use of the Centralized Cash Management System is in the Best Interests of the Debtors’ Estates and Creditors**

20. The Debtors seek authority to continue using the Centralized Cash Management System on a post-petition basis as described above. It is critical that the Debtors remain able to manage cash and centrally coordinate transfers of funds in order to efficiently and effectively operate their business operations. Disrupting the Debtors’ current cash management procedures would impair the Debtors’ ability to preserve and enhance their respective going concern values.

21. The Centralized Cash Management System utilizes the Bank Accounts to effectively and efficiently collect, transfer, and disburse funds as needed in the Debtors' general business operations. The Centralized Cash Management System provides significant benefits to the Debtors, including the ability to: (i) closely track, and thus control, all corporate funds through the provision of near-continuous status reports on the location and amount of all such funds, (ii) ensure cash availability, and (iii) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information.

22. The Centralized Cash Management System allows the Debtors to centrally manage all of their cash flow needs and includes the necessary accounting controls to enable the Debtors, as well as their creditors and the Court, to trace funds through the system and ensure that all transactions are adequately documented and readily ascertainable. The Debtors will continue to maintain detailed records reflecting all post-petition transfers of funds. Furthermore, the Debtors manage the Centralized Cash Management System in an automated environment using treasury management software and bank account structures to guard against fraud and to protect the integrity of the overall system. Over many years, the Debtors developed their treasury systems to automate reporting and to calculate their cash position, and they continue to invest in such systems. Fraud protection remains a high priority through use of "positive pay" programs, debit blocks, and limited use of direct check issuance and wire transfers by the Debtors' subsidiaries and affiliates. Any changes to the Debtors' bank accounts or their treasury systems that report on account activity and generate wire transfers would be disruptive to the Debtors' business operations and could undermine the effectiveness of such systems.

23. Therefore, it is both essential and in the best interests of the Debtors' respective estates and creditors that the Centralized Cash Management System be maintained. Furthermore, the Debtors' efforts to maximize the value of their estates will be facilitated by preserving the "business as usual" atmosphere and avoiding the distractions that would be associated with disruptions in the Centralized Cash Management System. Accordingly, the Debtors respectfully request that the Court authorize their continued use of the Centralized Cash Management System.

24. This Court has the authority to grant the requested relief pursuant to its equitable powers under section 105(a) of the Bankruptcy Code. Section 105(a) provides, in relevant part, that "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). The relief requested herein is both necessary and appropriate to allow the Debtors to maximize the value of the Debtors' estates.

25. Bankruptcy courts generally grant chapter 11 debtors the authority to continue utilizing their existing cash management systems and treat requests for such authority as a relatively "simple matter." In re Baldwin-United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). This is particularly true where, as here, the chapter 11 cases involve affiliated debtors with complex financial affairs. See, e.g., In re The Charter Co., 778 F.2d 617 (11th Cir, 1985); see also, In re Genesis Health Ventures, Inc., 402 F.3d 416, 424 (3d Cir. 2005).

26. Allowing debtors to continue using their pre-petition cash management systems is entirely consistent with applicable provisions of the Bankruptcy Code. In re Baldwin United States Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987); see also In re The Ormond Shops, Inc.,

Case No. 94-324-HSB (Bankr. D. Del. 1994) (authorizing continued use of cash management system); In re USG Corp., Case No. 93-300 (Bankr. D. Del. Mar. 17, 1993); In re Charter Medical Corp., Case No. 92-709 (Bankr. D. Del. June 2, 1992) (same); In re Trans World Airlines, Inc., Case No. 92-115 (Bankr. D. Del. Jan. 31, 1992) (same).

27. The Eleventh Circuit has specifically held that a debtor's use of its pre-petition "routine cash management system" is "entirely consistent" with the provisions of the Bankruptcy Code. See Charter Co., 778 F.2d at 621. The United States Bankruptcy Court for the District of Delaware has explained that a centralized cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for many different purposes that require cash." In re Columbia Gas Sys., Inc., 136 B.R. 930, 934 (Bankr. D. Del. 1993). The Third Circuit has also stated that a requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient." Columbia Gas Sys., Inc., 997 F.2d at 1061.

28. The Debtors also request that no bank participating in the Cash Management System (the "Cash Management Banks") that honors a prepetition check or other item drawn on any account that is the subject of this Motion (a) at the direction of the Debtors, (b) in a good faith belief that the Court has authorized such pre-petition check or item to be honored, or (c) as a result of an innocent mistake made despite implementation of reasonable handling procedures, be deemed to be liable to the Debtors or to their estates on account of such prepetition check or other item being honored post-petition. The Debtors believe that such protections are necessary in order to induce the Cash Management Banks to continue providing cash management services to the Debtors without additional credit exposure.

**B. Request for Authority to Use Existing Bank Accounts and Business Forms**

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29. The Operating Guidelines require that chapter 11 debtors, among other things: (a) close all existing bank accounts upon filing of their petitions and open new “debtor-in-possession” accounts in certain financial institutions designated as authorized depositories by the U.S. Trustee; (b) establish one debtor-in-possession account for all estate monies required for the payment of taxes; and (c) maintain a separate debtor-in-possession account for cash collateral.

30. The Debtors seek a waiver of the U.S. Trustee requirement that their bank accounts be closed and that new post-petition bank accounts be opened. If enforced in these cases, such requirements would cause enormous disruption in the Debtors’ businesses. As described in detail above, the Bank Accounts comprise an established Centralized Cash Management System that the Debtors need to maintain in order to ensure smooth collections and disbursements in the ordinary course of their businesses. Therefore, to avoid delays in paying debts incurred post-petition, and to ensure as smooth a transition into chapter 11 as possible, the Debtors should be permitted to continue to maintain the existing bank accounts and, if necessary, to open new accounts and close existing accounts in the normal course of their business operations, subject to the terms and conditions set forth in the Credit Agreement. Otherwise, transferring the bank accounts will be disruptive, time consuming, and expensive.

31. Accordingly, the Debtors request that this Court waive the strict enforcement of the requirement that the Debtors open new bank accounts. The Debtors further request that the Bank Accounts be deemed debtor-in-possession accounts and that the Debtors be authorized to maintain and continue using these accounts in the same manner and with the same account numbers, styles and document forms as those employed pre-petition; provided, however, that

upon depletion of the Debtors' business forms stock, the Debtors will obtain new business forms stock reflecting their status as debtors-in-possession.

32. In other cases, courts have waived the strict enforcement of the requirement that all pre-petition accounts be closed and replaced this requirement with alternative procedures that provide the same protection. In re Baldwin-United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). Courts in this jurisdiction have frequently recognized that a bankruptcy court has the discretion to allow the debtor to continue using its pre-petition cash management procedures, existing pre-petition bank accounts, and business forms. See, e.g., In re Filene's Basement, Inc., Case No. 09-11525 (MFW) (Bankr. D. Del. May 5, 2009); In re AbitibiBowater Inc., Case No. 09-11296 (KJC) (Bankr. D. Del. Apr. 17, 2009); In re Sportsman's Warehouse, Inc., Case No. 09-10990 (CSS) (Bankr. D. Del. Mar. 23, 2009); In re The Fairchild Corporation, Case No. 09-10899 (CSS) (Bankr. D. Del. Mar. 20, 2009); In re Masonite Corporation, Case No. 09-10844 (PJW) (Bankr. D. Del. Mar. 17, 2009); In re Robbins Bros. Corporation, Case No. 09-10708 (PJW) (Bankr. D. Del. Mar. 5, 2009); In re Nortel Networks Inc., Case No. 09-10138 (KG) (Bankr. D. Del. Jan. 15, 2009); In re Tribune Company, Case No. 08-13141 (KJC) (Bankr. Dec. 10, 2008); In re Motor Coach Industries International, Inc., Case No. 08-12136 (BLS) (Bankr. D. Del. Sept. 16, 2008); In re Linens Holding Co., Case No. 08-10832 (CSS) (Bankr. D. Del. May 2, 2008); In re Wickes Holdings, LLC, Case No. 08-10212 (KJC) (Bankr. D. Del. Feb. 5, 2008); In re Delta Financial Corp., Case No. 07-11880 (CSS) (Bankr. D. Del. Dec. 19, 2007); In re Pope & Talbot, Inc., Case No. 07-11738 (CSS) (Bankr. D. Del. Nov. 21, 2007); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. June 13, 2007).

33. The Debtors submit that they will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by them prior to the Petition Date, other than those that are specifically authorized by the Court. For example, concurrently with the filing of this Motion, the Debtors are filing motions requesting authority to pay certain pre-petition obligations to employees, taxing authorities, vendors, and other key constituencies in the ordinary course of business. To prevent any inadvertent payment of pre-petition claims, except those otherwise authorized by the Court, the Debtors will immediately advise the Cash Management Banks not to honor pre-petition checks. The Debtors will work closely with the Cash Management Banks to ensure that appropriate procedures are in place to prevent checks issued pre-petition from being honored absent the Court's approval.

34. The Debtors request that they also be authorized to continue to use all correspondence, business forms (including, but not limited to, letterhead, purchase orders, and invoices) and checks without reference to the Debtors' status as debtors in possession. Parties doing business with the Debtors undoubtedly will be aware of the Debtors' status as debtors in possession as a result of the size and publicity surrounding these chapter 11 cases. If the Debtors were required to change their correspondence, business forms and checks, they may be forced to choose standard forms rather than the current forms with which the Debtors' employees, customers, and vendors are familiar. Such a change in operations could potentially create a sense of disruption and confusion within the Debtors' organization and could result in confusion for the Debtors' customers and vendors. The Debtors believe that it would be costly and disruptive to cease using all existing forms and to purchase and begin using new stationery, business forms and checks. The Debtors respectfully submit that to do so would be unnecessary

and that the Debtors can take appropriate care to ensure the proper use of the existing business forms.

35. The Debtors should therefore be authorized to use their existing checks and business forms. The Debtors use a significant number of checks and a wide variety of business forms in the ordinary course of their business operations. To require the Debtors to replace all of their existing checks and business forms would be unduly burdensome and costly, particularly when appropriate care can be taken to ensure the proper usage of the existing forms.

**C. Request for Authority to Continue Certain Intercompany Transactions and for Administrative Expense Status for All Post-Petition Intercompany Transactions**

36. In the normal course of their business operations, the Debtors and Ames Canada, a non-debtor affiliate, engage in various intercompany transactions. As a result, on any given date, there are numerous intercompany claims (the “Intercompany Claims”) that reflect intercompany receivables and payments made in the ordinary course between and among the Debtors and between and among the Debtors and Ames Canada (the “Intercompany Transactions”). These Intercompany Transactions include, but are not limited to:

- (a) Accounts Receivable, Accounts Payable and Payroll. In the ordinary course of business the Debtors contribute cash and process disbursements through the Centralized Cash Management System. The system is so integrated that substantially all receipts are swept into, and substantially all disbursements are paid from, the parent-level accounts maintained by Axia, resulting in a corresponding Intercompany Claim between Axia and the applicable Debtor entity. Also, in the ordinary course of business, Axia collects cash and disburses funds on behalf of the other Debtors. The Debtors’ accounts reflect the net position of both receipts and disbursements received or made on behalf of each Debtor. These types of Intercompany Transactions only occur between and among the Debtors.
- (b) Centrally Billed Expenses. In the ordinary course of business, the Debtors and Ames Canada incur centrally billed expenses, such as employee

medical costs, insurance premiums, accounts payable processing, certain taxes (including real estate, franchise, sales taxes, etc.) and leased equipment. These charges are allocated among the Debtors and Ames Canada and are reflected in the intercompany accounts.

- (c) Corporate Expense Allocation. Charges for corporate expenses provided by Axia to the other Debtors and Ames Canada are allocated among the Debtors and Ames Canada based upon the cost of service provided, directly identifiable costs, and other allocation methods, in addition to a services fee payable to Axia.
- (d) Purchases. In the ordinary course of business, Axia sells products to certain of the other Debtors and Ames Canada, with such sales resulting in a corresponding Intercompany Claim.

37. The Debtors maintain records of all Intercompany Transactions and can ascertain, trace, and account for all Intercompany Transactions between and among the Debtors and between and among the Debtors and Ames Canada. To ensure that each individual Debtor will not fund, at the expense of its creditors, the operations of another entity, the Debtors respectfully request that, pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, all Intercompany Claims against a Debtor by another Debtor or by Ames Canada arising after the Petition Date as a result of an Intercompany Transaction be accorded administrative priority expense status. If all Intercompany Claims are accorded administrative priority expense status, each entity will continue to bear ultimate repayment responsibility for such ordinary course transactions. Administrative expense treatment for intercompany transactions, as requested herein, has been granted in other chapter 11 cases. See, e.g., In re Tribune Company, 08-13141 (KJC) (Bankr. D. Del. Dec. 10, 2008); In re Tropicana Entm't, LLC, Case No. 08-10856 (Bankr. D. Del. May 6, 2008) (KJC); In re Pope & Talbot, Inc., Case No. 07-1 1738 (Bankr. D. Del. Nov. 21, 2007) (CSS); In re Dura Automotive Sys., Case No. 06-11202 (Bankr. D. Del. Oct. 31, 2006) (KJC); In re J.L. French Automotive Castings, Inc., Case No. 06-10119 (Bankr. D. Del. Mar. 9, 2006)

(MFW); In re Pliant Corp., Case No. 06-10001 (Bankr. D. Del. Jan. 4, 2006) (MFW); In re FLYi, Inc., Case No. 05-20011 (Bankr. D. Del. Nov. 8, 2005); In re Federal-Mogul Global, Inc., Case No. 01-10578 (Bankr. D. Del. Oct. 4, 2001); In re NationsRent, Inc., Case No. 01-11628 (Bankr. D. Del. Dec. 18, 2001); In re FFC Holding, Inc., Case No. 01-2399 (Bankr. D. Del. July 18, 2001).

**D. Extension of Time to Comply With Section 345(b)**

38. Section 345 of the Bankruptcy Code governs a debtor's deposit and investment of cash during a chapter 11 case and authorizes deposits or investments of money as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). For deposits or investments that are not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) requires the estate to obtain from the entity with which the money is deposited or invested a bond in favor of the United States that is secured by the undertaking of an adequate corporate surety, unless the Court for cause orders otherwise. Id. § 345(b). In the alternative, the estate may require the entity to deposit securities pursuant to 31 U.S.C. § 9303, which provides that when a person is required by law to give a surety bond, that person, in lieu of a surety bond, may instead provide an eligible obligation, designated by the Secretary of the Treasury as an acceptable substitute for a surety bond. See 31 U.S.C. §§ 9301, 9303.

39. By this Motion, the Debtors seek a sixty (60) day extension of the time to comply with section 345(b) of the Bankruptcy Code. During the extension period, the Debtors propose to engage the Office of the United States Trustee in discussions to determine what modification

to their investment guidelines, if any, would be appropriate under the circumstances. The Debtors believe that the benefits of the requested extensions far outweigh any harm to the estates. See generally, In re Serv. Merchandise Co., Inc., 240 B.R. 894, 896-97 (Bankr. M.D. Tenn. 1999).

40. Strict compliance with the requirements of section 345(b) of the Bankruptcy Code would, in a case such as this, be inconsistent with section 345(a), which permits a debtor in possession to make such investments of money of the estate “as will yield the maximum reasonable net return on such money.” Thus, in 1994, to avoid “needlessly handcuff[ing] larger, more sophisticated debtors,” Congress amended section 345(b) of the Bankruptcy Code to provide that its strict investment requirements may be waived or modified if the Court so orders for cause. H.R. Rep. No. 103-835 (Oct. 4, 1994), 1994 WL 54773.

41. Similar extensions have been granted in other chapter 11 cases in this district. See, e.g., In re Aleris Int’l. Inc., Case No. 09-10478 (BLS) (Docket No. 36) (Bankr. D. Del. Feb. 13, 2009); In re Landsource Comty. Dev. LLC, Case No. 08-11111 (KJC) (Docket No. 29) (Bankr. D. Del. June 10, 2008); In re Sharper Image Corp., Case No. 08-10322 (KG) (Docket No. 43) (Bankr. D. Del. Feb. 20, 2008).

#### **Notice and Prior Motions**

42. Notice of this Motion shall be provided to: (i) counsel to the Debtors’ prepetition secured lenders; (ii) the Office of the United States Trustee for the District of Delaware; (iii) each of the Debtors’ creditors holding the 20 largest unsecured claims against each Debtors’ estates; (iv) the Internal Revenue Service; and (v) each of the Cash Management Banks. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be

served on all parties required by Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

43. No previous request for the relief sought in this Motion has been made to this Court or any other court.

**Waiver of Bankruptcy Rules 6004(a) and (h)**

44. To implement the foregoing expeditiously and successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h), to the extent applicable.

WHEREFORE, the Debtors respectfully request that the Court enter an interim order, in substantially the form attached hereto as Exhibit A, and a final order (i) authorizing the Debtors' continued use of the Centralized Cash Management System, (ii) authorizing the Debtors to continue using their existing bank accounts and business forms, (iii) authorizing the Debtors to continue certain intercompany transactions, by and among the Debtors and by and among the Debtors and Ames Canada, on a post-petition basis and in the ordinary course of business, (iv) granting an extension of time to comply with Section 345(b) of the Bankruptcy Code with respect to the Debtors' deposit and investment practices, (v) granting administrative expense status to intercompany transactions by and between the Debtors and by and between the Debtors and Ames Canada, and (vi) granting such other and further relief as the Court may deem just and proper.

*[Signatures Begin on Following Page]*

Dated: December 15, 2009  
Wilmington, Delaware

Respectfully submitted,



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*Proposed Counsel For the Debtors and Debtors-in-Possession*

**EXHIBIT A**

**Proposed Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
)  
AMES HOLDING CORP., *et al.*,<sup>1</sup> ) Case No. 09-\_\_\_\_\_ (\_\_\_\_)  
)  
) (Joint Administration Requested)  
Debtors. )  
\_\_\_\_\_ )

**ORDER AUTHORIZING DEBTORS' CONTINUED  
USE OF EXISTING BANK ACCOUNTS AND CASH  
MANAGEMENT SYSTEM AND GRANTING RELATED RELIEF**

Pending before the Court is the Motion of the Debtors for an Order (i) Authorizing Continued Use of Existing Cash Management System, (ii) Authorizing Continued Use of Existing Bank Accounts and Forms, (iii) Authorizing the Continuation of Certain Intercompany Transactions, (iv) Granting An Extension of Time to Comply With Section 345(b) of the Bankruptcy Code, and (v) Granting Administrative Expense Status to Post-Petition Intercompany Transactions (the "Motion") filed by the Debtors<sup>2</sup> on December 14, 2009; the Motion having been heard by the Court at a hearing held on December \_\_, 2009 (the "Hearing"); the Court having concluded that (a) it has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b); (b) notice of the Motion was sufficient under the circumstances; (c) the relief requested in the Motion is essential to the smooth and efficient operation of the Debtors' respective businesses

<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Ames Holding Corp (6130), Axia Incorporated (5251), TapeTech Tool Co, Inc. (7106), and Ames Taping Tool Systems, Inc (6440) The Debtors' corporate offices are located at 3350 Breckinridge Boulevard, Suite 100, Duluth, Georgia 30096

<sup>2</sup> Capitalized terms used in this Order, unless otherwise defined herein, shall have the meanings ascribed to such terms in the Motion

and is in the best interests of the Debtors' respective estates and creditors; and (d) sufficient cause supports the relief sought in the Motion; it is

ORDERED that the Motion is GRANTED to the extent provided herein; and it further

ORDERED that each Debtor is authorized and empowered, pursuant to sections 105(a), 345(b), and 363(c)(1) of the Bankruptcy Code, to maintain its existing Cash Management System; and it is further

ORDERED that each Debtor is authorized but not directed, in the exercise of its business judgment, to maintain and continue to use, with the same account numbers, each of the bank accounts listed on Exhibit B to the Motion (the "Bank Accounts"); and it is further

ORDERED that the Debtors are further authorized to (i) use, in their present form, the existing checks relating to the Bank Accounts; provided, however, that upon depletion of the Debtors' business forms stock, the Debtors will obtain new business forms stock reflecting their status as debtors-in-possession and (ii) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors-in-possession; and it is further

ORDERED that the banks listed on Exhibit B to the Motion (the "Banks") are hereby authorized and directed to continue to service and administer each Bank Account as accounts of the Debtors as debtors-in-possession without interruption and in the usual and ordinary course and to honor each Debtor's requests to receive, process, honor and pay any and all checks drawn on the Bank Accounts after December 14, 2009 (the "Petition Date") by the holders or makers thereof, as the case may be; provided, however, that any check drawn or issued by a Debtor before the Petition Date may be honored by a Bank only if authorized by other Order of the Court; and it is further

ORDERED that any Bank may rely on the representations of a Debtor with respect to whether any check or other transfer drawn or issued by such Debtor prior to the Petition Date should be honored pursuant to this Order, and such Bank shall not have any liability to any party for relying on such representations by such Debtor as provided for herein; and it is further

ORDERED that no Debtor shall make any request to the Banks to honor any check or other transfer drawn or issued by any Debtor prior to the Petition Date unless authorized by Order of the Court; and it is further

ORDERED that nothing contained herein shall prevent any Debtor from opening any new bank accounts or closing any existing Bank Accounts as such Debtor may deem necessary and appropriate, subject to the terms and conditions of the Credit Agreement; provided, however, that prior to establishing any new account or closing an existing account, such Debtor must provide at least three (3) days notice to the United States Trustee, to any official committee of unsecured creditors appointed in these chapter 11 cases and counsel to the Debtors' prepetition secured lenders; and it is further.

ORDERED that the Debtors are authorized to continue certain intercompany transactions by and among the Debtors and by and among the Debtors and Ames Canada; and it is further

ORDERED that any Intercompany Claims created subsequent to the Petition Date against any Debtor as a result of Intercompany Transactions between and among the Debtors and between and among the Debtors and Ames Canada are hereby granted administrative priority status pursuant to 11 U.S.C. § 507(a)(2); and it is further

ORDERED that, except as provided herein, each Debtor is authorized to continue to use its existing checks without alteration and without the designation “Debtor in Possession” or “DIP” imprinted upon them; and it is further

ORDERED that the Debtors’ time to comply with section 345(b) of the Bankruptcy Code is hereby extended for a period of sixty (60) days from the date of this Order (the “Extension Period”); provided, however, that such extension is without prejudice to the Debtors’ right to request a further extension of the Extension Period or the waiver of the requirements of section 345(b) in these cases; and it is further

ORDERED that (i), to the extent applicable, the fourteen-day stay under Fed. R. Bankr. P. 6004(h) is hereby waived with respect to this Order and (ii) the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: \_\_\_\_\_, 2009  
Wilmington, Delaware

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**

**Bank Accounts**

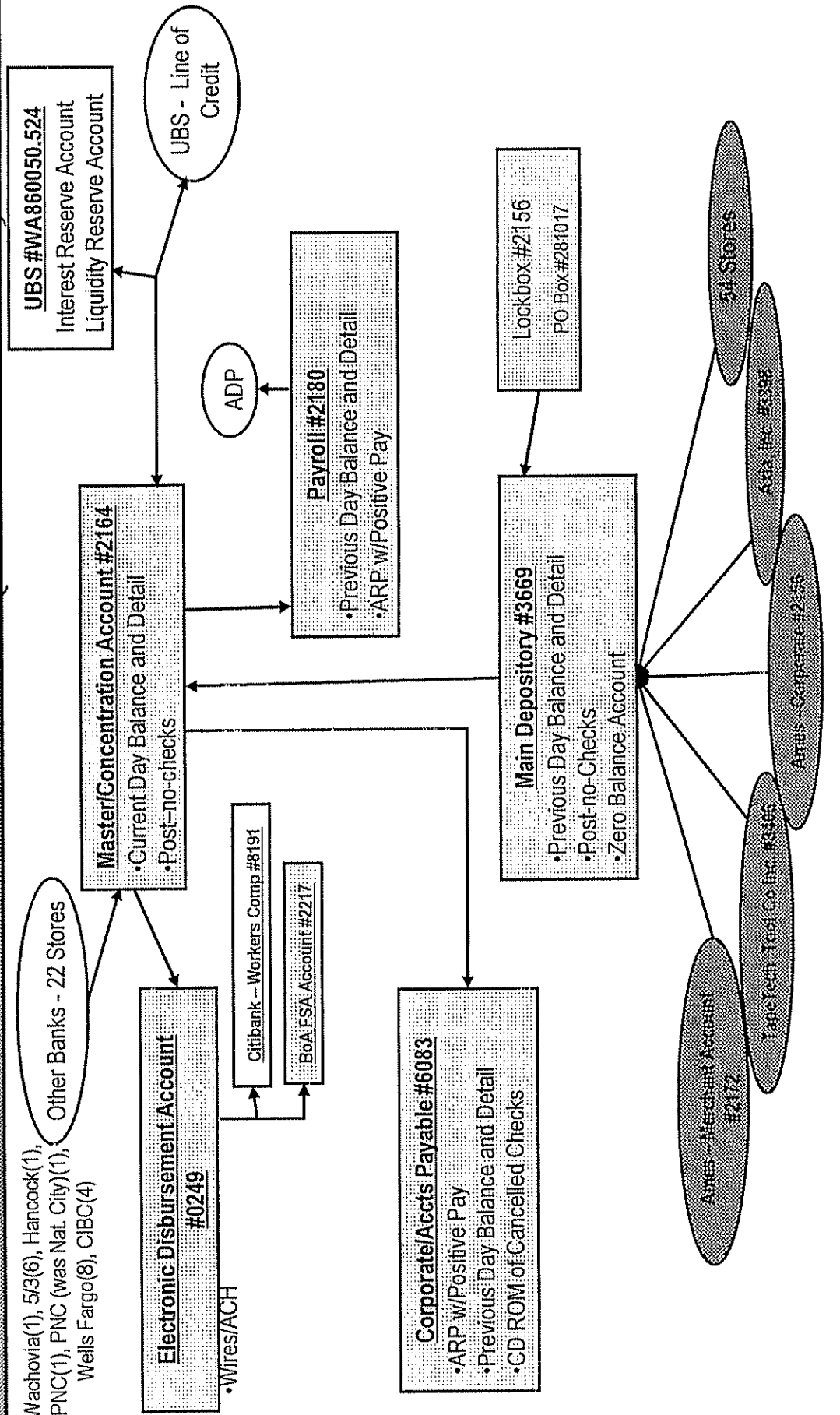
<b>Bank Name</b>	<b>Name on Account</b>	<b>Account #</b>
Wells Fargo	Ames Taping Tool Systems Inc.	XXXXXX0974 XXXXXX1048 (Dep)
Bank of America	Ames Taping Tool Systems Inc.	XXXXXX2164 XXXXXX6083 XXXXXX2180 XXXXXX3669 XXXXXX0249 XXXXXX1225
Fifth Third	AXIA Incorporated c/o Ames Taping Tools Systems	XXXXXX4598
PNC	Axia Inc.	XXXXXX4598
PNC	Ames Taping Tool Systems Inc.	XXXXXX2249
CIBC	Axia Inc. (Ames Taping Tool Syst)	XXXX5118
Wachovia	Ames Taping Tool Systems Co.	XXXXXX1285
Hancock Bank	Ames Taping Tool Systems, Inc.	XXXXXX3382
UBS	Axia Incorporated	Restricted Cash
Bank of America-FSA	United Healthcare Insurance Company Admin Plan for Ames Taping Tool Systems Inc.	XXXXXX2217
Citibank - Workers Comp.	Axia Corporation	XXXX8191

**EXHIBIT C**


**Diagram of Cash Management System**

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# Ames Holding Corp. - Bank Structure (as of December 9, 2009)



Wachovia(1), 5/3(6), Hancock(1), PNC(1), PNC (was Nat. City)(1), Wells Fargo(8), CIBC(4)

 - Bank Of America

**BoA Electronic Routing**  
 • ABA #061000052 ACH  
 • ABA #026009593 Wires