

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
Fleming Companies, Inc., et al.,¹) Case No. 03-10945 (MFW)
) (Jointly Administered)
Debtors.)

**EMERGENCY MOTION PURSUANT TO
11 U.S.C. §§ 361, 362 363 AND 364 FED. R. BANKR. P. 4001(b) AND 9014,
AND DEL. BANKR. LR 4001-2, (A) FOR INTERIM AND FINAL ORDER
AUTHORIZING THE USE OF CASH COLLATERAL AND GRANT OF
ADEQUATE PROTECTION NUNC PRO TUNC TO THE PETITION DATE,
AND (B) APPROVING POST-PETITION FINANCING AND RELATED RELIEF**

The above-captioned debtors and debtors-in-possession (“Debtors”) file this emergency motion (this “Emergency Motion”) to hereby move the Court:

- (i) for authorization, pursuant to section 361 and 363(c)(2) of title 11 of the United States Code (the “Bankruptcy Code”), for the use of Cash Collateral (as defined herein), nunc pro tunc to April 1, 2003 (the “Filing Date”), and for the provision of adequate protection to the Pre-Petition Lenders with respect to such Cash Collateral on the terms set forth in the stipulation and order attached hereto as Exhibit A (the “Cash Collateral Stipulation and Order”);
- (ii) for authority on an interim basis, pursuant to sections 105, 362, 363 and 364 of the Bankruptcy Code, and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for the Borrower to obtain emergency post-petition loans under a post-petition financing bridge loan in an amount not to exceed the aggregate principal sum of \$50

¹ The Debtors are the following entities: Core-Mark International, Inc.; Fleming Companies, Inc.; ABCO Food Group, Inc.; ABCO Markets, Inc.; ABCO Realty Corp.; ASI Office Automation, Inc.; C/M Products, Inc.; Core-Mark Interrelated Companies, Inc.; Core-Mark Mid-Continent, Inc.; Dunigan Fuels, Inc.; Favar Concepts, Ltd.; Fleming Foods Management Co., L.L.C.; Fleming Foods of Texas, L.P.; Fleming International, Ltd.; Fleming Supermarkets of Florida, Inc.; Fleming Transportation Service, Inc.; Food 4 Less Beverage Company, Inc.; Fuelserv, Inc.; General Acceptance Corporation; Head Distributing Company; Marquise Ventures Company, Inc.; Minter-Weisman Co.; Piggly Wiggly Company; Progressive Realty, Inc.; Rainbow Food Group, Inc.; Retail Investments, Inc.; Retail Supermarkets, Inc.; RFS Marketing Services, Inc.; and Richmar Foods, Inc.

million (the "Bridge Loan") on the terms and conditions set forth in the order attached hereto as Exhibit B (the "Bridge Financing Order").

- (iii) for the scheduling of the Final Hearing (as defined herein) to consider the Court's approval of the Cash Collateral Stipulation and Order, nunc pro tunc to the Filing Date, and the Bridge Financing Order.

In support of this Emergency Motion, the Debtors respectfully state as follows:

Jurisdiction

1. This Court has jurisdiction to consider this Emergency Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 363(b) of title 11 of the United States Code (the "Bankruptcy Code").

Background

3. On the Filing Date, the Debtors filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code (the "Petitions"). Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtors have retained possession of their respective assets and are authorized, as debtors-in-possession, to continue the operation and management of their respective businesses.

4. The facts and circumstances leading to the Debtors' filing for protection under Chapter 11 of the Bankruptcy Code include (1) Borrower's default under that certain Credit Agreement, dated as of June 18, 2002 (as amended, supplemented or otherwise modified prior to the filing of these Petitions, the "Pre-Petition Loan Agreement") among Fleming Companies, Inc. ("Borrower"), the lenders listed on the attached Exhibit C, (the "Pre-Petition

Lenders”), Deutsche Bank Trust Company Americas, as Administrative Agent (“DBTCA”), JPMorgan Chase Bank, in its capacity as Collateral Agent and provider of Treasury Services (“JPMC”) and together with Citicorp North America, Inc., as Syndication Agents, Lehman Commercial Paper Inc. and Wachovia Bank, National Association, as Documentation Agents, Deutsche Bank Securities Inc. and J.P. Morgan Securities Inc., as Joint Book Managers and Deutsche Bank Securities Inc., J.P. Morgan Securities Inc. and Salomon Smith Barney Inc., as Joint Lead Arrangers (collectively with DBTCA, the “Agents”) and (2) the inability of borrower’s to access additional loans to resolve its current short term liquidity needs.

5. As of the Filing Date and pursuant to the Pre-Petition Loan Agreement and the other loan documents executed in connection therewith (collectively, the “Pre-Petition Loan Documents”), the Pre-Petition Lenders made loans and advances to the Borrower, issued or caused to be issued letters of credit on the Borrower’s behalf and incurred obligations in connection with Treasury Services. Pursuant to the Pre-Petition Loan Documents, the entities listed on Exhibit A to the Bridge Financing Order (the “Guarantors”) guaranteed the Pre-Petition Indebtedness and, together with the Borrower, secured the Pre-Petition Indebtedness with first-priority security interests and liens on all of the then existing and after acquired accounts receivable, inventory, instruments and chattel paper evidencing accounts receivable or into which any accounts receivable have been, or hereafter are, converted, securities, limited liability company interests, partnership interests, security entitlements, financial assets and investment property, and all proceeds and products of any and all of the foregoing (the “Pre-Petition Collateral”).

6. As of the Filing Date, Borrower's entire obligation to the lenders under the Pre-Petition Loan Agreement totals approximately \$604 million. Of this entire obligation, \$219 million remains outstanding under the revolving loan, \$239 million remains outstanding under the term loan, and \$146 million remains outstanding under certain letters of credit issued on the Borrower's account, together with interest accrued thereon, plus costs, fees and expenses pursuant to Section 9.03 of the Pre-Petition Credit Agreement as well as any obligations incurred in connection with the Treasury Services not to exceed \$50,000,000 (collectively, the "Pre-Petition Indebtedness").

7. The Debtors do not have sufficient available sources of post-petition financing. The ability of the Debtors to maintain business relationships with their vendors and suppliers, to purchase new inventory and otherwise to finance their operations is essential to the Debtors' continued viability. Therefore, an immediate need exists for the Debtors to obtain additional funds in order to continue the operation of their businesses. Without such funds, there would be no reasonable prospect that the Debtors would be able to reorganize successfully in these Chapter 11 cases. Debtors are in the process of negotiating a larger and more permanent debtor-in-possession loan facility, and expect to file a motion within the next week for approval of that facility, to provide additional necessary liquidity.

8. Debtors are filing this Emergency Motion for an order approving a cash collateral stipulation (the "Cash Collateral Stipulation") with the Pre-Petition Lenders on the terms as set forth in the Cash Collateral Stipulation and Order, and for an order approving a

Bridge Loan in the amount of \$50 million on the terms as set forth in the Bridge Financing Order.

9. The facts and circumstances supporting this Emergency Motion are further set forth in the Affidavit of Peter W. Willmott, interim Chief Executive Officer and President of Fleming Companies, Inc., in Support of Certain First Day Motions, filed contemporaneously herewith.

B. Existing Credit Facilities

10. The Debtors historically have generated some of the cash necessary to finance operations through incurring certain debt obligations primarily through bank loans and through the issuance of indentures from time to time.

1. Pre-Petition Credit Agreement

11. The Pre-Petition Credit Agreement, discussed above, is a significant source of funds relied upon by the Borrower and the Debtors to fund its operations.

12. On March 27, 2003, Borrower was unable to obtain certain waivers and amendments to the Pre-Petition Loan Agreement, and Borrower subsequently entered into default under the credit facility. As of the Filing Date, the Borrower is currently in default under this credit facility in the amount of approximately \$604 million, together with interest accrued thereon, plus costs, fees and expenses pursuant to Section 9.03 of the Pre-Petition Credit Agreement as well as any obligations incurred in connection with the Treasury Services not to exceed \$50,000,000. All of Borrower's outstanding obligations are immediately due and payable to the Pre-Petition Lenders in the amount of Pre-Petition Indebtedness.

2. Indentures

13. Borrower has relied on a series of indentures to raise necessary funds to fund the operation of the business. These indentures are as follows:

(i) Borrower entered into that certain Indenture, dated as of March 15, 2001, in which Borrower issued 10 1/8% senior notes due in 2008 and Borrower received \$355 million from the sale of these indentures. These notes are unsecured senior notes guaranteed by the Debtors. Presently, the Borrower is obligated to pay interest on these indentures on April 1 and October 1 of each year.

(ii) Borrower entered into that certain Indenture, dated as of June 18, 2002, in which Borrower issued 9 1/4% senior notes due in 2010 and Borrower received \$200 million from the sale of these indentures. These notes are unsecured senior notes guaranteed by the Debtors. Presently, the Borrower is obligated to pay interest on these indentures on June 15 and December 15 of each year.

(iii) Borrower entered into that certain Indenture, dated as of October 15, 2001, in which Borrower issued two series of 10 5/8% senior subordinated notes due in 2007. Borrower received an aggregate total of \$400 million in exchange for these notes. These notes are unsecured senior notes guaranteed by the Debtors. Presently, the Borrower is obligated to pay interest on these indentures January 31 and July 31 of each year.

(iv) Borrower entered into that certain Indenture, dated as of March 15, 2001, in which Borrower issued 5 1/4% convertible senior subordinated notes due in 2009 and Borrower received \$150 million in exchange for these notes. The holders of these notes may elect to convert these notes into the common stock of the Borrower at an initial conversion price of \$30.27 per share, subject to adjustment under certain circumstances as described in the Indenture. These notes are unsecured senior notes guaranteed by the Debtors. Presently, the Borrower is obligated to pay interest on these

indentures March 15 and September 15 of each year.

(v) Borrower entered into that certain Indenture, dated as of April 15, 2002, in which Debtor issued 9 7/8% senior subordinated notes due in 2012 and Borrower received \$260 million in exchange for these notes. These notes are unsecured senior notes guaranteed by the Debtors. Presently, the Borrower is obligated to pay interest on these indentures May 1 and November 1 of each year.

3. Trade Debt

14. By the nature of their business, the existence of trade debt is a necessity for the Debtors (the "Trade Debt"). Specifically, the vast majority of the Debtors' business stems from purchasing goods from third party vendors. While the Debtors manufacture certain of their own products, such manufactured products make up a small portion of the Debtors' operation and still entail the purchasing of certain goods to create a completed product.

15. In addition to their purchased products, the Trade Debt is further comprised of monies owed to transportation vendors (collectively, the "Shippers") to support their core business of distributing food and consumer products from their warehouses across the country to their customers in some 45,000 retail locations.

16. In addition to the Merchandise Suppliers and the Shippers, the Debtors rely on other vendors to support their core business functions by way of administrative and ancillary support. The Debtors estimate that, as of the Petition Date, their Trade Debt is approximately \$675 million.

Relief Requested

17. By this Emergency Motion, the Debtors seek, inter alia, the Court's entry of interim and final orders pursuant to sections 361, 362 and 363 of the Bankruptcy Code and Bankruptcy Rules 4001(b) and 9014, (a) authorizing the Debtors' use of Cash Collateral nunc pro tunc to the Filing Date, and providing the Pre-Petition Lenders with adequate protection from any diminution of their interests therein pending a Final Hearing, (b) authorizing the Borrower to obtain, and for the Debtors to guaranty, the Bridge Loan in an amount not to exceed \$50 million, and (c) scheduling the Final Hearing and establishing notice and objection procedures in respect thereof.Summary of Cash Collateral Stipulation and Order

18. The following is a general summary of some of the major terms contained in the Cash Collateral Stipulation and Order, and if any conflict arises as to the interpretation of the provisions contained below, the Cash Collateral Stipulation and Order, incorporated by reference as if set forth in full herein, shall control.

Bridge Financing Order The Pre-Petition Lenders' consent to the use of the Cash Collateral is conditioned upon the Court's approval of the order authorizing the Bridge Financing Order.

Authorization The Cash Collateral Stipulation and Order is approved nunc pro tunc to the Petition Date and the Emergency Cash Collateral Use shall be deemed to be covered by the provisions of the Cash Collateral Stipulation and Order.

The Debtors will be authorized by the Court to use the Cash Collateral in the operation of their business in accordance with the Budget (the "Budget") attached to such order as Exhibit B and the financial covenants set forth therein up to and until the authorization terminates on April 18, 2003.

The Debtors will be authorized by the Court to use the Cash Collateral prior to the entry of the Final Order to pay the April 1, 2003 net payroll to the Debtors' employees in an amount not to exceed \$8 million as well as, on April 2, 2003, to purchase goods for inventory in an amount not to exceed \$50 million.

**Replacement Liens;
Stay Relief**

The Agents and the Pre-Petition Lenders will be granted: (i) first priority liens and security interests on all assets of the Debtors (whether acquired Pre- or Post-Petition) not otherwise encumbered by validly perfected and unavoidable liens or security interests as of the Petition Date, subject only to the Carve-Out and any liens granted under the Bridge Financing Order; and (ii) junior liens and security interests on all assets encumbered as of the Petition Date by any valid and perfected senior liens, if any, junior and subordinate to the liens and security interests of the holders of such senior liens, subject only to the Carve-Out and any liens granted under the Bridge Financing Order; (collectively, the "Replacement Liens" and the collateral securing the Replacement Liens, the "Post-Petition Replacement Collateral").

Superpriority Claims

The Agents and the Pre-Petition Lenders will be granted a superpriority administrative expense claim under section 507(b) of the Bankruptcy Code to the extent of any diminution in value of the Pre-Petition Lenders' interests in the Pre-Petition Collateral, subject to the Carve-Out.

Carve-Out

The security interests and liens held by the Agents and the Pre-Petition Lenders in the Pre-Petition Collateral, the Replacement Liens and the Superpriority Claims granted to the Agents and the Pre-Petition Lenders are subordinate in priority to and subject to a carve-out for (x) in the event of the occurrence and during the continuance of a Termination Event, the payment of allowed and unpaid professional fees and disbursements incurred by the Debtors and any statutory committee appointed in the Chapter 11 Cases in an aggregate amount not in excess of \$1 million (plus all unpaid professional fees and disbursements incurred prior

to the occurrence of a Termination Event to the extent allowed by the Bankruptcy Court at any time) and (y) the payment of all unpaid fees payable pursuant to 28 U.S.C. § 1930(a)(6) and all unpaid fees payable to the Clerk of this Court or the United States Trustee (collectively, the “Carve-Out”).

Cash Management

The Debtors will remit payments for goods and services provided by the Debtors, or for inventory or other property of the estates of the Debtors sold by the Debtors, to an account or accounts previously established with JPMC (each, a “Collection Account”).

Each Debtor will remit to JPMC, and as directed by JPMC, for deposit in a Collection Account, all funds and other property in its possession or payable to such Debtor (other than advances of Cash Collateral made pursuant to the Cash Collateral Stipulation and Order and proceeds of loans made to the Debtor pursuant to the Bridge Financing Order), from and after the Petition Date, representing the proceeds of all of the Pre-Petition Collateral or the Post-Petition Replacement Collateral.

All payments or proceeds remitted, or deemed to be remitted, to JPMC pursuant to the Cash Collateral Stipulation and Order shall be received free and clear of any claim, charge, assessment or other liability including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) or 552(b) of the Bankruptcy Code, all of which are waived by the debtors in the Cash Collateral Stipulation and Order.²

Reporting Requirements

The Debtors will submit to the Administrative Agent and JPMC a weekly report in a form satisfactory to the Administrative Agent and JPMC,

² In accordance with Del.Bankr.LR 4001-2(a)(i), the Debtors have bolded in this Emergency Motion, and in the Cash Collateral Stipulation and Order, the provisions relating to the waiver of Debtors’ rights under section 506(c) of the Bankruptcy Code to recover the reasonable and necessary costs and expenses associated with preserving or disposing property securing an allowed secured claim.

which report includes (i) a cash flow summary of receipts and disbursements during the previous week, (ii) a report on collections of any amounts received as a result of asset sales outside the ordinary course of Debtors' business, (iii) an accounts payable analysis, (iv) a reconciliation of individual receipts and disbursements by line item to the Budget, (v) any non-privileged information in the Debtors' possession or within their control regarding the operation of their business, the Pre-Petition Collateral and/or the Post-Petition Replacement Collateral, as the Administrative Agent and JPMC reasonably requests, and (vi) a certificate of an authorized officer of each Debtor certifying that such Debtor is in full compliance with the provisions of the Cash Collateral Stipulation and Order.

Adequate Protection Payments

As additional adequate protection, the Debtor will: (i) within three (3) business days after the approval of the Cash Collateral Stipulation and Order, pay to the Administrative Agent all accrued and unpaid interest due under the Pre-Petition Loan Agreement; (ii) from the Petition Date through the Expiration Date, make timely payments of all interest due as set forth in the Pre-Petition Loan Agreement; and,

Debtor will reimburse the Agents and the Pre-Petition Lenders (i) for all reasonable costs and expenses incurred both before and after the Petition Date, in connection with (a) the Agents' and the Pre-Petition Lenders' claims and liens, and (b) actions to preserve, protect and/or enforce their rights and remedies under, and to administer, the Pre-Petition Loan Agreement and/or the other Pre-Petition Loan Documents, including reasonable counsel fees and disbursements, filing fees, audit expenses, field examination expenses and reasonable fees and disbursements of accountants and financial advisors, and (b) any expense or fees incurred in connection with the Treasury Services.

Termination Events

Debtors' right to use the Cash Collateral will cease upon the occurrence of one of the following "Termination Events.":

(i) any of the Chapter 11 Cases is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; or a Chapter 11 trustee, or an examiner with expanded powers, is appointed any of in the Chapter 11 Cases;

(ii) an order or orders are entered by the Bankruptcy Court or any other court approving any claims for recovery of amounts under Section 506(c) of the Bankruptcy Code with respect to the Pre-Petition Collateral;

(iii) the Bankruptcy Court or any other court enters an order granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest (other than the security interests of the Agents and the Pre-Petition Lenders to the extent granted in the Cash Collateral Stipulation and Order) in any assets of any Debtor allowing such holder or holders to foreclose or otherwise realize upon any such security interests which assets have an aggregate value in excess of \$100,000;

(iv) an order of the Bankruptcy Court or any other court is entered amending, supplementing, staying, vacating, reversing, revoking, rescinding or otherwise modifying the Cash Collateral Stipulation and Order; provided that no Termination Event will occur to the extent that any such amendment, supplement or other modification is not adverse, in the reason-able judgment of the Administrative Agent, to the rights and interests of the Pre-Petition Lenders under the Cash Collateral Stipulation and Order;

(v) an order of the Bankruptcy Court or any other court is entered granting any lien or security interest in any property of the Debtors in favor of any party other than the Agents and the Pre-Petition Lenders pursuant to the Cash Collateral Stipulation and Order (other than the Carve-Out and any lien granted in connection with the Bridge Financing Order), or granting a claim (other than the Carve-Out and any super-priority claim granted in connection with the Bridge Financing Order) to any

party other than the Agents and the Pre-Petition Lenders that is pari passu with or senior to the Superpriority Claims granted to the Agents and the Pre-Petition Lenders pursuant to the Cash Collateral Stipulation and Order;

(vi) any Debtor files any pleading seeking, or otherwise consenting to, or supports or acquiesces in any other Person's motion as to, any of the matters set forth in paragraphs (i) through (v) above, or the Court grants any such motion filed by any other Person;

(vii) the Cash Collateral Stipulation and Order ceases to be in full force and effect and the Final Order is not entered or deemed to have been entered prior to such cessation, or the entry of the Final Order does not occur within 30 days after the Petition Date, or the Final Order ceases to be in full force and effect, or the Debtors' authority to use Cash Collateral in the Cash Collateral Stipulation and Order is otherwise terminated;

(viii) any Debtor makes any payment (including "adequate protection" payments) on or in respect of any pre-Petition Date indebtedness or obligations other than (a) the obligations owed to the Agents and the Pre-Petition Lenders, (b) as permitted under the Cash Collateral Stipulation and Order, (c) sales taxes and employee withholding taxes which have been collected by such Debtor but not yet paid, and (d) as required under Section 365(b) of the Bankruptcy Code in connection with the assumption of leases and contracts, provided that the Required Lenders consent to such assumption;

(ix) any Debtor fails to comply with the terms of the Cash Collateral Stipulation and Order;

(x) the Debtors' cash expenditures exceed those permitted in accordance with the Budget;

(xi) this Court abstains from hearing any Chapter 11 Case, or any Debtor moves or support any motion brought by any third party seeking such relief;

(xii) any Debtor seeks to, or supports (in any such case by way of, inter alia, any motion or other pleading filed with this Court or any other writing to another party-in-interest executed by or on behalf of a Debtor) any other Person's motion to disallow or subordinate any Pre-Petition Lender's claims in respect of the Pre-Petition Indebtedness or the obligations owed to such Pre-Petition Lender or to challenge the validity, enforceability, perfection or priority of the liens in favor of any Agent or any Pre-Petition Lender (including, without limitation, the Liens securing the obligations owed to such Agent or Pre-Petition Lender);

(xiii) except to the extent specifically provided for in the Cash Collateral Stipulation and Order, the filing of any motion to obtain credit from any party other than the Agents and the Pre-Petition Lenders unless the terms of any such facility, or any motion and/or order to approve such facility, are acceptable to the Agents and the Pre-Petition Lenders in all respects, or, in connection therewith, all the obligations owed to the Agents and the Pre-Petition Lenders are first paid indefeasibly in full in cash (including the cash collateralization of Letters of Credit);

(xiv) any affiliate of any Debtor files for bankruptcy under Chapter 7 or Chapter 11 (or an order for relief shall be issued in connection with an involuntary case commenced against any affiliate of any Debtor) and fails to become a party to the Cash Collateral Stipulation and Order within five (5) business days from the date of the entry of an order for relief with respect to such affiliate;

(xv) any order is entered limiting or otherwise impairing the Agents' and the Pre-Petition Lenders' rights under Section 552 of the Bankruptcy Code, or any Debtor files a pleading seeking to modify such rights, or any Debtor fails to object or in any way acquiesces to any pleading seeking to limit such rights filed by any other party; or

(xvi) the occurrence of a termination event under the Bridge Financing Order.

Remedies

Upon the occurrence of any of the Termination Events, the Debtors' right to use the Cash Collateral automatically terminates, and the Administrative Agent and the Pre-Petition Lenders may exercise all rights and remedies and take all or any of the following actions without further modification of the automatic stay pursuant to Section 362 of the Bankruptcy Code: (a) terminate all further advances or financial accommodations; (b) declare the principal of and accrued interest on the Pre-Petition Indebtedness, together with all fees and other liabilities constituting the obligations owed to the Agents and the Pre-Petition Lenders, to be immediately due and payable; (c) set off or seize and apply to the obligations owed to the Agents and the Pre-Petition Lenders the Pre-Petition Indebtedness amounts contained in any Collection Account or any other account maintained with or under the control of the Agents and the Pre-Petition Lenders; and/or (d) take any other action or exercise any other right or remedy permitted to the Agents and the Pre-Petition Lenders under the Pre-Petition Loan Documents, the Cash Collateral Stipulation and Order or by applicable law.

No Surcharge

The Debtor waives any right to assert a claim under Section 506(c) of the Bankruptcy Code for any costs and expenses incurred in connection with the preservation, protection, disposition or enhancement of, or realization by any party in interest on, the Pre-Petition Collateral or the Post-Petition Replacement Collateral.

Effectiveness

This Cash Collateral Stipulation and Order shall constitute findings of fact and conclusions of law and (other than the Emergency Cash Collateral Use) shall take effect and be fully enforceable immediately upon the later of (a) the entry of this Cash Collateral Stipulation and Order by this Court and (b) entry of the Bridge Financing Order. Except as otherwise provided herein, the terms of this Cash Collateral Stipulation and Order shall be valid and binding upon the Debtors, all creditors of the Debtors, any statutory committee appointed in these cases all other parties in interest from and

after the execution of this Cash Collateral Stipulation and Order by this Court.

Notice

Within three (3) business days following entry of the Cash Collateral Stipulation and Order, Debtor will provide adequate notice to the appropriate parties and in the manner as set forth in the Cash Collateral Stipulation and Order.

C. Summary of Bridge Financing Order

19. The following is a general summary of some of the major terms contained in the Bridge Financial Order, and if any conflict arises as to the interpretation of the provisions contained below, the Bridge Financial Order, incorporated by reference as if set forth in full herein, shall control.

Principal; Interest; Fees

The Debtors are authorized to borrow money from DBTCA, JPMC and participating lenders (the "Bridge Lenders") in the form of a revolving loan facility drawable on the date of entry of this Bridge Financing Order by the Court (the "Closing Date") and thereafter until the earliest of (i) April 18, 2003, (ii) the occurrence of an Event of Default (defined below), or (iii) the closing of a subsequent post-petition loan facility (the "Bridge Termination Date").

The Bridge Lenders will make a revolving loan facility available to the Debtors, jointly and severally, in the principal amount of \$50,000,000.

Interest on each Bridge Loan is payable on the Bridge Termination Date at a rate of two percent (2%) above the greater of (i) the Prime Rate (as defined in the Bridge Financing Order) and (ii) the Federal Funds Rate (as defined in the Bridge Financing Order) plus fifty (50) basis points per annum.

In the event that any principal of each Bridge Loan is not paid when due, the unpaid principal amount of each Bridge Loan will be payable in cash on demand and bear interest at a rate of four percent

(4%) above the greater of (i) the Prime Rate and (ii) the Federal Funds Rate plus fifty (50) basis points per annum.

Debtor will pay (i) to each of DBTCA and JPMC a work fee of \$750,000 for services rendered in connection with the arrangement of each Bridge Loan and efforts in connection with the Cash Collateral Stipulation; (ii) a 2% fee calculated on the full amount of each Bridge Loan, to DBTCA and JPMC as a facility fee; (iii) other fees at market rates in connection with the syndication of each Bridge Loan as these fees apply up to a maximum aggregate amount of \$50 million in drawn funds; and (iv) all reasonable costs and expenses incurred by either DBTCA and JPMC both before and after the Filing Date, in connection with due diligence negotiation and documentation of each Bridge Loan.

Conditions Precedent

the Bridge Lenders' obligation to make each Bridge Loan are subject to the following conditions precedent:

(i) the Bridge Lenders must have received: (a) a certified copy of the Bridge Financing Order, which shall be in full force and effect and shall not have been vacated, reversed, modified or amended; (b) all financing statements and other security documents reasonably requested by the Bridge Lenders; and (c) other documents as the Bridge Lenders reasonably request;

(ii) no Event of Default has occurred and is continuing;

(iii) other than in connection with the Cash Collateral Stipulation, the Court has not entered any order in these cases in favor of a third party authorizing post-petition financing secured by superpriority liens;

(iv) the Cash Collateral Stipulation and Order shall have been entered by this Court; and

(v) at the time of each Bridge Loan and immediately after, the Debtors do not hold

unrestricted cash and cash equivalents in an aggregate amount on hand in excess of \$10 million.

Budget

Debtors agree (i) to use the proceeds of each Bridge Loan only as described in the budget and in the Bridge Financing Order; and (ii) not to permit to exist any lien, security interest, encumbrance or claim pari passu or senior to the claims and liens of the Bridge Lenders, and none of the Debtors paid any Pre-Petition Indebtedness (as defined in the Bridge Financing Order) or other liabilities prior to the Filing Date except as provided by the Court.

Events of Default

(i) any of the Chapter 11 cases is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; or a Chapter 11 trustee, or an examiner with expanded powers, is appointed in any of the Chapter 11 cases; or

(ii) an order is be entered by the Bankruptcy Court or any other court approving any claims for recovery of amounts under Section 506(c) of the Bankruptcy Code with respect to the Post-Petition Bridge Collateral (as defined below); or

(iii) the Bankruptcy Court or any other court enters an order granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest (other than the security interests of the Bridge Lenders to the extent granted in this Bridge Financing Order) in any assets of any Debtor allowing such holder or holders to realize any security interests which assets have an aggregate value in excess of \$100,000; or

(iv) an order of the Bankruptcy Court or any other court is entered amending, supplementing, staying, vacating, reversing, revoking, rescinding or otherwise modifying the Bridge Financing Order; provided that no Event of Default shall occur under this clause (iv) to the extent that any such amendment, supplement or other modification is not adverse in the judgment of the Bridge Lenders, to the rights and interests of the Bridge Lenders under this Bridge Financing Order; or

(v) an order of the Bankruptcy Court or any other court is entered granting any lien or security interest in any property of the Debtors in favor of any party other than the Bridge Lenders pursuant to this Bridge Financing Order (other than the Bridge Carve-Out and any lien granted in connection with the Cash Collateral Stipulation and Order) or granting a claim (other than the Bridge Carve-Out and any super-priority claim granted in connection with the Cash Collateral Stipulation and Order) to any party other than the Bridge Lenders that is pari passu with or senior to the superpriority claims granted to the Bridge Lenders pursuant to this Bridge Financing Order; or

(vi) any Debtor files any pleading seeking any of the matters set forth in paragraphs (i) through (v) above, or the Court grants any such motion filed by any other Person; or

(vii) the Bridge Financing Order ceases to be in full force and effect, or the Debtors' authority to borrow funds is otherwise terminated; or

(viii) any Debtor makes any payment (including "adequate protection" payments) on or in respect of any pre-Filing Date indebtedness or obligations other than (i) the obligations owed to the Agents and the Pre-Petition Lenders, (ii) as permitted under this Bridge Financing Order, or such other orders of the Bankruptcy Court acceptable to the Bridge Lenders, (iii) sales taxes and employee withholding taxes which have been collected by such Debtor but not yet paid, and (iv) as required under Section 365(b) of the Bankruptcy Code in connection with the assumption of leases and contracts, provided that the Bridge Lenders consent to such assumption; or

(ix) any Debtor fails to comply with the terms of the Bridge Financing Order; or

(x) the Debtors' cash expenditures exceed those permitted in accordance with the Budget; or

(xi) this Court abstains from hearing any Chapter 11 case, or any Debtor shall so move or support any

motion brought by any third party seeking such relief; or

(xii) any Debtor seeks to, or supports any other person's motion to disallow or subordinate in whole or in part any Bridge Lender's claims in respect of the Post-Petition Bridge Indebtedness or the obligations owed to such Bridge Lender or to challenge the validity, enforceability, perfection or priority of the liens in favor of any Bridge Lender (including, without limitation, the Liens securing the obligations owed to such Bridge Lender); or

(xiii) except to the extent specifically provided for in the Bridge Financing Order, the filing of any motion to obtain credit from any party other than the Bridge Lenders unless the terms of any such facility, or any motion and/or order to approve such facility, are acceptable to the Bridge Lenders in all respects, or, in connection therewith, all the obligations owed to the Bridge Lenders shall first be paid indefeasibly in full in cash; or

(xiv) any affiliate of any Debtor files for bankruptcy under Chapter 7 or Chapter 11 (or an order for relief is issued in connection with an involuntary case commenced against any affiliate of any Debtor) and fails to become a party to this Bridge Financing Order within five (5) business days from the date of the entry of an order for relief with respect to such affiliate; or

(xv) any order entered which limits or otherwise impairs the Bridge Lenders' rights under Section 552 of the Bankruptcy Code, or any Debtor files a pleading seeking to modify such rights, or any Debtor fails to object or in any way acquiesces to any pleading seeking to limit such rights filed by any other party; or

(xvi) the occurrence of a termination event under the Cash Collateral Stipulation and Order; or

(xvii) Debtors fail to pay the principal of, or interest on, each Bridge Loan when due, or any fees or expenses payable by the Debtors under the

Bridge Financing Order or any other Post-Petition Loan Document; or

(xviii) failure of any material provision of any Post-Petition Loan Document other than the Bridge Financing Order to be valid and binding on the Debtors or a breach of any material provision of any Post-Petition Loan Document by any Debtor.

Upon the occurrence of any Event of Default the Debtors' right to borrow funds automatically terminates, and the Bridge Lenders holding 51% or more of the Post-Petition Bridge Loan Commitment will be entitled to (a) terminate all further advances; (b) declare the principal of and accrued interest on the Post-Petition Bridge Indebtedness, together with all fees and other liabilities constituting the obligations owed to the Bridge Lenders, immediately due and payable; (c) set off or seize and apply to the obligations owed to the Bridge Lenders under the Post-Petition Bridge Indebtedness amounts contained in any Collection Account (as defined below) or any other account maintained with or under the control of the Bridge Lenders; and/or (d) take any other action permitted to the Bridge Lenders under the Bridge Financing Order or by applicable law.

Surcharges

The Surcharge provisions of Section 506(c) of the Bankruptcy Code and the enhancement of collateral provisions of Section 552 of the Bankruptcy Code will not be imposed upon the Bridge Lenders or their collateral.

Collateral

All Post-Petition Bridge Indebtedness owing by the Debtors to the Bridge Lenders are secured by first, paramount and perfected liens upon, and security interests in, all property of the Debtors. The liens shall prime the Pre-Petition Financing Liens (but will not prime valid, enforceable, unavoidable and perfected liens and security interests held by parties-in-interest other than the Agents and the Pre-Petition Lenders which were properly perfected prior to the Filing Date and will be subject to the Bridge Carve-Out), including the "Post-Petition

Bridge Collateral” set for in the Bridge Financing Order

The security interests and liens granted to the Bridge Lenders by virtue of this Bridge Financing Order are first, valid and perfected as against all third parties, including the Agents and the Pre-Petition Lenders (but will not prime valid, enforceable, unavoidable and perfected liens and security interests held by parties-in-interest other than the Agents and the Pre-Petition Lenders which were properly perfected prior to the Filing Date and will be subject to the Bridge Carve-Out).

All Post-Petition Indebtedness owing by the Debtors to the Bridge Lenders, and the liens and security interests of the Bridge Lenders in the Post-Petition Bridge Collateral, have priority under the provisions of Sections 364(c)(1) and 364(c)(2) of the Bankruptcy Code over all administrative expenses incurred in these Chapter 11 cases of the kind specified in Sections 503(b), 507(b) and 726(b) of the Bankruptcy Code and are senior to the rights of the Debtors in this proceeding under the Bankruptcy Code and have priority over any and all secured, unsecured and priority claims or costs and expenses in this case, except that, the security interests and liens held by the Bridge Lenders in the Post-Petition Bridge Collateral and the superpriority claims granted to the Bridge Lenders pursuant to this Bridge Financing Order shall be subordinate in priority to and subject to a carve-out for (x) in the event of the occurrence and during the continuance of an Event of Default, the payment of allowed and unpaid professional fees and disbursements incurred by the Debtors and any statutory committee appointed in the Chapter 11 cases in an aggregate amount not in excess of \$1 million (plus all unpaid professional fees and disbursements incurred prior to the occurrence of an Event of Default to the extent allowed by the Bankruptcy Court at any time) and (y) the payment of all unpaid fees payable pursuant to 28 U.S.C. § 1930(a)(6) and all unpaid fees payable to the Clerk of this Court or the United States Trustee (collectively, the “Bridge Carve-Out”).

Liens or security interests granted by the Court to others pursuant to Section 364(d) or any other provision of the Bankruptcy Code, which liens or security interests are senior or equal to the liens or security interests of the Bridge Lenders, then any proceeds of loans or extensions of credit secured by such senior or equal liens or security interests will be applied first to payment of the Post-Petition Bridge Indebtedness, including all accrued interest, fees, reasonable attorneys' fees, costs and expenses, and the Bridge Lenders shall retain all liens and security interests held by it until all of the Post-Petition Bridge Indebtedness is paid in full.

Further Evidence

As set forth in the Bridge Financing Order, Debtors are to execute and deliver to the Bridge Lenders certain documents that evidence the Post-Petition Indebtedness, the creation of the Bridge Lenders' security interests in and liens upon the Post-Petition Bridge Collateral.

Ongoing Obligations

The Debtors are directed to remit, at the conclusion of each business day, any and all unrestricted cash and cash equivalents on hand in excess of \$10 million (the "Excess Cash Payments") to JPMC for the benefit of the Bridge Lenders and to reduce any outstanding under the Bridge Loan (without a corresponding reduction in the Post-Petition Bridge Loan Commitment).

The Debtors will submit weekly reports to DBTCA and JPMC which include (i) a cash flow summary of receipts and disbursements during the previous week, (ii) a report on collections of any amounts received as a result of asset sales outside of the ordinary course of the Debtors' businesses, (iii) an accounts payable analysis, (iv) any non-privileged information in the Debtors' possession or within their control regarding the operation of their business and the Post-Petition Bridge Collateral, as DBTCA and JPMC shall reasonably request, (v) a reconciliation of individual receipts and disbursements by line item to the Budget and (vi) a certificate of an authorized officer of each Debtor, in form and substance satisfactory to the DBTCA and JPMC, certifying that such Debtor is in full

compliance with the provisions of this Bridge Financing Order.

Expiration

The Post-Petition Bridge Loan Commitment expires and all of the Post-Petition Bridge Indebtedness becomes immediately due and payable on April 18, 2003, unless this Bridge Financing Order is extended by further order of the Court upon the agreement of the Bridge Lenders and the Debtors.

Basis For Relief

20. As discussed above, all of the Debtors' Pre-Petition Collateral are encumbered pursuant to the Pre-Petition Loan Agreement with the Pre-Petition Lenders and Agents.

21. The Debtors have an urgent and immediate need for cash to continue to operate their business and to seek relief of this Court through the procurement of debtor-in-possession financing sufficient to meet the Debtors' operating expenses, and to pay critical vendors, professional fees and expenses, and other expenditures. Without immediate (and ongoing) access to the cash in the Debtors' operating accounts and the cash to be collected after the Petition Date, and without the Court's approval and entry of the Bridge Financing Order, the Debtors cannot pay current and ongoing operating expenses, including, without limitation, post-petition wages and salaries and necessary vendor products and services. Consequently, the Debtors will suffer irreparable harm, thereby jeopardizing any prospects for success in these cases. Debtors are in the process of negotiating a larger and more permanent debtor-in-possession loan facility, and expect to file a motion within the next week for approval of that facility, to provide additional necessary liquidity.

22. The entry of the Cash Collateral Stipulation and Order and the Bridge Financing Order will help maintain employee, vendor and supplier confidence in the Debtors' ability to pay for goods sold and delivered and services rendered (including the extension of credit terms for the payments of goods and services). The Debtors' use of the Cash Collateral and the proceeds of the Bridge Loan are limited to amounts set forth in the corresponding budgets as set forth in each of these orders, providing additional safeguards for all creditors of the Debtors' estates. Accordingly, the Debtors request that the Court authorize, on an interim and final basis, (a) the Debtors' use of Cash Collateral and approve the provisions regarding adequate protection of the Pre-Petition Lenders' interests set forth in the proposed Interim Cash Collateral Stipulation and Order and, thereafter, the Final Cash Collateral Stipulation and Order; and (b) the Debtors' ability to draw on funds available under the Bridge Loan.

Applicable Authority

A. Cash Collateral Stipulation and Motion

23. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor-in-possession may not use cash collateral without the consent of the secured party or court approval. See 11 U.S.C. § 363(c)(2). Here, the Pre-Petition Lenders have consented to the use of their Cash Collateral and other property as described herein.

24. Section 363(e) of the Bankruptcy Code provides that, upon request of an entity that has an interest in property to be used by a debtor, the Court "shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e). What constitutes adequate protection is determined on a case-by-case basis. See In re

O'Connor, 808 F.2d. 1393, 1396-97 (10th Cir. 1987). Adequate protection can be provided in a number of ways (see, e.g., 11 U.S.C. § 361), with the focus being to protect a secured creditor from diminution in value of its interest in the collateral during the period of use. See In re Kain, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); Delbridge v. Production Credit Ass'n & Fed. Land Bank, 104 B.R. 824, 827-28 (E.D. Mich. 1989); In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1956).

25. Pursuant to Section 361 of the Bankruptcy Code, the Debtors may provide adequate protection by making “a cash payment or periodic cash payments to [an] entity, to the extent that the stay under Section 362 of this title, use, sale, or lease under Section 363 of this title . . . results in a decrease in the value of such entity’s interest in such property.” 11 U.S.C. § 361(1). Adequate protection may be further afforded by “providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity’s interest in such property.” 11 U.S.C. § 361(2).

26. As discussed herein and set forth more fully in the Interim Cash Collateral Stipulation and Order, the Debtors and the Pre-Petition Lenders have agreed to an adequate protection arrangement which (a) was negotiated in good faith and at arm’s length among the parties, (b) reflects the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties as debtors-in-possession and (c) each party believes is fair and reasonable under the circumstances and will be sufficient to protect the Secured Parties from any diminution in value of their interests in the Prepetition Collateral and/or Cash Collateral during the period it is use by the Debtors. See Kain, 86 B.R. at 513; Beker Indus. Corp., 58 B.R. at 736.

27. In addition, to the extent that other creditors hold valid, perfected prior liens with respect to property constituting Cash Collateral that is to be used by the Debtors after the Petition Date, such liens are adequately protected by the terms of the proposed Interim Cash Collateral Stipulation and Order which, among other things, preserves the going-concern value of the Debtors' business and facilities. Such preservation of the Debtors' operations on a going-concern basis will maintain the value and any equity cushion associated with any such miscellaneous creditor liens and otherwise avoid any abrupt discontinuation of the Debtors' operations. See, e.g., In re Aqua Assocs., 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991) ("The important question, in determination of whether the protection to a creditor's secured interest is adequate, is whether that interest, whatever it is, is being unjustifiably jeopardized."); In re Grant Broadcasting, 71 B.R. 376, 386-89 (Bankr. E.D. Pa.), aff'd, 75 B.R. 819 (E.D. Pa. 1987); In re Alyucan Interstate Corp., 12 B.R. 803, 809-12 (Bankr. B. Utah 1981).

B. Bridge Financing Order

1. Legal Standard

28. The Bridge Loan requested in this Motion is authorized by section 364 of the Bankruptcy Code. Pursuant to section 364(c) of the Bankruptcy Code, a debtor may, in the exercise of its business judgment, incur secured debt if the debtor has been unable to obtain unsecured credit and the borrowing is in the best interests of the estate. See, e.g., In re Simasko Production Co., 47 B.R. 444, 448-9 (D. Colo. 1985) (authorizing interim financing agreement where Debtors' best business judgment indicated financing was necessary and reasonable for benefit of estate); In re Ames Dept. Stores, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (with respect

to postpetition credit, courts “permit Debtor in possession to exercise their basic business judgment consistent with their fiduciary duties.”); See also 3 Collier on Bankruptcy ¶ 364.03, at 364-7-18 (15th ed. rev. 1999).

Section 364(c) of the Bankruptcy Code provides, in pertinent part, that:

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

(1) with priority over any and all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

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

(3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

29. Section 364(d)(1) of the Bankruptcy Code governs the incurrence of senior secured debt or “priming” liens. Pursuant to section 364(d)(1), the Court may, after notice and a hearing,

(d) authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien only if--

(1) the trustee is unable to obtain such credit otherwise; and

(2) 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)(1).

30. As set forth in more detail in the Background section of this Motion, the Debtors satisfy the requirements of Bankruptcy Code § 364(d) because (i) they are unable to obtain credit from an alternative source and (ii) the interests of the Pre-petition Lenders are adequately protected pursuant to the negotiated terms set forth in both the Cash Collateral Stipulation Order and the Bridge Financing Order.

2. The Debtors Were Unable to Obtain Credit on More Favorable Terms

31. In satisfying the standards of section 364 of the Bankruptcy Code, a debtor need not seek credit from every available source but should make a reasonable effort to seek other sources of credit available of the type set forth in Bankruptcy Code §§ 364(a) and (b). See, e.g., In re Snowshoe Co., 789 F.2d 1085, 1088 (4th Cir. 1986) (trustee had demonstrated by good faith effort that credit was not available without senior lien by unsuccessfully contacting other financial institutions in immediate geographic area; “the statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable”); Ames, 115 B.R. at 40 (finding that debtors demonstrated the unavailability of unsecured financing where debtors approached several lending institutions).

32. As set forth above, the Debtors considered new financing to replace or supplement the financing provided by the Pre-petition Lenders. Prior to the Petition Date, the Debtors considered other lenders but were not able to secure post-petition financing on as competitive a basis as provided by the Lenders within the short time frame and on terms required by the Debtors. Accordingly, the Debtors believe that the financing arrangements proposed by the Lenders represent the best available to it at this time.

3. The Debtors Satisfy the Requirements for Obtaining Credit and Use of Cash Collateral

33. The Debtors satisfy the legal requirements to use cash collateral of the Pre-petition Lenders. As a threshold matter, use of property of the bankruptcy estate is governed by section 363 of the Bankruptcy Code. Section 363(c)(1) provides in pertinent part that:

If the business of the debtor is authorized to be operated under section...1108...of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).

34. A debtor in possession has all of the rights and powers of a trustee with respect to property of the estate, including the right to use property of the estate in compliance with section 363 of the Bankruptcy Code. See 11 U.S.C. § 1107(a).

35. Section 363(c)(2) of the Bankruptcy Code establishes a special requirement with respect to “cash collateral,” by providing that the trustee or debtor in possession may not use, sell or lease “cash collateral” under subsection (c)(1) unless:

(i) each entity that has an interest in such collateral consents;

or

(ii) (B) the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c)(2).

36. “Cash collateral” is defined as, “cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents in which the estate and an entity other than the estate have an interest.” 11 U.S.C. § 363(a).

37. Pursuant to section 363 (c)(2) of the Bankruptcy Code, the Court may authorize a debtor to use cash collateral as long as the secured creditor is adequately protected.

In re Mellor, 734 F. 2d. 1396, 1400 (9th Cir. 1984).

4. The Prepetition Lenders Are Adequately Protected

38. Although adequate protection is not defined in the Bankruptcy Code, section 361 provides the following three nonexclusive examples of what may constitute adequate protection:

- (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...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...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.

39. Neither section 361 of the Bankruptcy Code nor any other provision of the Bankruptcy Code defines the nature and extent of the "interest in property" of which a secured creditor is entitled to adequate protection under section 363 of the Bankruptcy Code. However, the statute plainly provides that a qualifying interest demands protection where the use of the creditor's collateral will result in a decrease in "the value of such entity's interest in such property." 11 U.S.C. §§ 361, 363(e). United Savings Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988). See also In re Kain,

86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); General Elec. Mortgage Corp. v. South Village, Inc., 25 B.R. 987, 989-90 & n.4 (Bankr. D. Utah 1982); and O'Toole, Adequate Protection and Postpetition Interest in Chapter 11 Proceedings, 56 AM. B.R. L. J. 251, 263 (1982).

40. Timbers holds that the prepetition lenders are entitled to “adequate protection” when there is diminution in an interest in their collateral by reason of the use of cash collateral and the priming liens. In this case there is a possibility that the granting of priming liens and Debtors’ use of the Pre-petition Lenders’ cash collateral will result in a diminution of the value of the Pre-petition Lenders’ collateral.

41. Based upon the foregoing, this Court should authorize the Debtors to use the cash collateral for the purposes outlined in the proposed Cash Collateral Stipulation and Order and the Bridge Financing Order so long as the interests claimed by the Pre-petition Lenders in that cash are adequately protected. The foregoing legal requirements for using cash collateral are satisfied in these Chapter 11 Cases by (i) the Pre-petition Lenders’ unanimous consent to the use of Cash Collateral (such consent being conditional upon the adequate protections set forth in the proposed Cash Collateral Stipulation and Order and the Bridge Financing Order); (ii) the fact that ongoing operations, funded by the Bridge Loan, will preserve the value of the Pre-petition Lenders’ cash collateral; (iii) the grant of the replacement liens; (iv) the adequate protection payments to the Pre-Petition Lenders under the Cash Collateral and Stipulation Order; and (v) other elements of the adequate protection package that are set forth in the proposed form of order.

42. The Debtors and the Pre-Petition Lenders have agreed to an adequate protection arrangement which involves both the use of cash collateral by the Debtor and the use of funds under the proposed Bridge Loan to enable the Debtors to continue operations. The proposed Cash Collateral Stipulation and Order, and the proposed Bridge Financing Order (a) were negotiated in good faith and at arm's length among the parties, (b) reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties as debtors-in-possession and (c) each party believes is fair and reasonable under the circumstances and will be sufficient to protect the secured parties from any diminution in value of their interests in the Pre-petition Collateral and/or Cash Collateral during the period it is use by the Debtors. See Kain, 86 B.R. at 513; Beker Indus. Corp., 58 B.R. at 736.

43. Accordingly, under the circumstances of these Chapter 11 Cases, the granting of the relief requested in the Emergency Motion is warranted.

Final Hearing And Notice

44. Pursuant to Bankruptcy Rule 4001(b), a final hearing on this Emergency Motion to use cash collateral pursuant to Section 363 of the Bankruptcy Code, and to borrow funds under a post-petition financing arrangement, may not be commenced earlier than fifteen days after the service of such motion. Upon request, however, a bankruptcy court is empowered to conduct a preliminary expedited hearing on such motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to the debtor's estate. See Bankruptcy Rule 4001(b)(2).

45. The Debtors request that the Court (a) conduct an expedited hearing with respect to the Emergency Motion (as described herein) and (b) schedule the Final Hearing at the earliest possible date in accordance with Bankruptcy Rule 4001(b) but no later than forty-five (45) days from the entry of the Interim Cash Collateral Stipulation and Order.

46. Notice of this Emergency Motion has been given to (a) the United States Trustee; (b) counsel to the Secured Lenders; (c) counsel to the Indenture Trustees; and (d) the top 20 creditors holding the largest unsecured claims for each Debtor. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

47. The Debtors respectfully submit that, except as described above, no other or further notice need be provided.

No Prior Motion

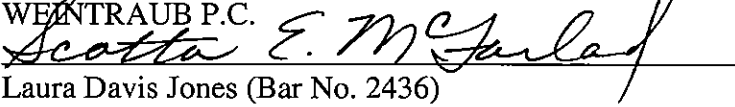
48. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that this Emergency Motion be granted and that this Court grant any such further relief as is necessary.

Dated: April 2, 2003

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[Proposed] Counsel for the Debtors and Debtors in Possession

**The Orders will be
filed and served shortly**

EXHIBIT A

[CASH COLLATERAL STIPULATION AND ORDER]

Exhibit B

[BRIDGE FINANCING ORDER]

Exhibit C

Pre-Petition Lenders

DB TRUST AMERICAS	EATON VANCE SR DEBT PORT
ABBEY NAT TREASURY SERV(US BR)	EATON VANCE VT FLOATING
ALLFST BK	FIRST DOMINION FDG I
AMEX - CENTURION VI	FIRST DOMINION FDG II
AMEX - CERTIFICATE CO	FLEET BK
AMEX - IDS LIFE INS	FORTIS CAPITAL (MEESPIERSON)
AMEX - KZH CYPRESSTREE-1	FRANKLIN CLO I LTD
AMEX - KZH ING-2 LLC	FRANKLIN CLO II LTD
AMEX - KZH STERLING LLC	FRANKLIN CLO III, LTD
AMEX - SEQUILS - CENTURION V	FRANKLIN FLOAT RATE TRUST
ANTARES - MARINER CDO 2002	GE CAPITAL
BARCLAYS - VENTURE CDO 2002	GENRE - KZH WATERSIDE
BARCLAYS - VENTURE II CDO 2002	GOLDMAN SACHS CR PTNRS L.P.
BK AMER	GUARANTY FEDERAL BK
BLACK DIAMOND	HARCH CLO I
BLUE SQUARE FUNDING	HIGHLAND - CALPERS
BNP PARIBAS	HIGHLAND - ELF
CARLYLE HY PARTNERS IV	HIGHLAND - EMERALD ORCHARD LTD
CIT BUS CR	HIGHLAND - GLENEAGLES
CITI - LONG LANE MASTER II	HIGHLAND - KZH HIGHLAND-2
COMERICA BK	HIGHLAND - LOAN FUND V
CONSECO - WINGED FOOT	HIGHLAND - RESTORATION
CONSECO-JUPITER LN FUNDING	HIGHLAND LEGACY
CONTINENTAL CASUALTY	INDOSUEZ - RIVIERA
CSAM - ATRIUM CDO	INDOSUEZ CAPITAL FDG IIA
CSAM FUNDING I	ING INV-PILGRIM CLO 1999-1
CSAM FUNDING II	ING INV-PILGRIM HIGH INCOME
DEERFIELD - BRYN MAWR CLO	ING INV-PILGRIM ML CLO XII
DEERFIELD - ROSEMONT	ING INV-PILGRIM SEQUILS
DEERFIELD-MUIRFIELD TRAD	ING INV-PRIME RATE TRUST
DEERFIELD-OLYMPIC FDG 1999-1	ING INV-SNR INCOME FUND
DEERFIELD-SEQUILS CUMBERLAND	JP MORGAN CHASE
DENALI - DENALI CAP CLO I	LEHMAN CP
DENALI CAPITAL CLO II, LTD.	LONG LANE
EATON VANCE - BIG SKY	MANUF & TRADERS
EATON VANCE CDO III	MASS MUTUAL - MAPLEWOOD
EATON VANCE CDO IV, LTD	MASS MUTUAL - SUFFIELD CLO LTD
EATON VANCE CDO V, LTD	MASS MUTUAL LIFE
EATON VANCE GRAYSON & CO	MIZUHO CORP BK LTD (FUJI)
EATON VANCE INST'L SENIOR	MORGAN STANLEY PRIME INCOME TR

EATON VANCE OXFORD
EATON VANCE SNR INC TRT
NATEXIS BQES POP
NATIONWIDE LIFE INSURANCE
NATIONWIDE MUTUAL INSURANCE CO
NATL CITY BK CLEVELAND
NOMURA BOND & LOAN FUND
NOMURA-CLYDESDALE CLO 2001-I
OPPENHEIMER - HARBOURVIEW V
OPPENHEIMER HARBOURVIEW CLO IV
OPPENHEIMER SR FLTG RTE FD
PACIFICA PARTNERS I, L.P.
PAM CAPITAL (PROTECTIVE)
PROMETHEUS INV NO.1
RZB
SAI - GALAXY
SAI - KZH SOLEIL
SAI - KZH SOLEIL-2
SANKATY - CASTLE HILL II
SANKATY - G.P. CLO 1999-1 LTD
SANKATY - HARBOUR TOWN LLC
SANKATY - RACE POINT
SANKATY HIGH YIELD PRT III
SIEMENS FINANCIAL
SUMITOMO TR
SUNAMERICA LIFE
TCW - KZH CNC LLC
TRANSAMERICA BUSINESS CAPITAL
TRAVELERS COLUMBUS LOAN FUND
TRAVELERS CORP LOAN FUND
TRAVELERS INS
TRIMARAN - APEX (TRIMARAN)
VKM CLO II
VKM PRIME RATE INCOME
VKM SENIOR FLOAT RATE
VKM SNR INC TRT
WACHOVIA BANK, NATIONAL ASSOC

MOUNTAIN CAP CLO 1
MOUNTAIN CLO TRUST II