

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:)	Chapter 11
)	
PIKE NURSERY HOLDING LLC,)	Case No. 07-79129-mgd
)	
Debtor.)	
)	

**EMERGENCY MOTION FOR AUTHORITY TO INCUR POST
PETITION SECURED AND SUPER-PRIORITY INDEBTEDNESS**

Pike Nursery Holding LLC (the “Debtor”) hereby moves this Court, pursuant to Sections 105, 361, 362, 363 and 364 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, as amended (the “Bankruptcy Code”), and Rules 2002, 4001(b)(2) and 4001(c)(2) and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for the entry of an order, *inter alia*:¹

(a) authorizing the Debtor to obtain credit and incur debt secured by liens (as defined in Section 101(37) of Title 11 of the United States Code, as amended (the “Bankruptcy Code”), on certain property of the Debtor’s estate pursuant to Sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code and with priority, as to administrative expenses, as provided in Section 364(c)(1) of the Bankruptcy Code;

(b) authorizing the Debtor to establish that certain financing arrangement (the “PNC DIP Facility”) with PNC Bank, National Association (“PNC”), with offices at 4720 Piedmont Row Drive, Suite 300, Charlotte, North Carolina 28210, as agent (in such capacity, the “DIP Agent”) for a syndicate of lenders (collectively, the “DIP Lenders”), and the DIP Lenders, which is contemplated by that certain Revolving Credit and Security Agreement (the “DIP

¹ Capitalized terms which are not defined herein shall have the meaning ascribed to such terms in the DIP Loan Agreement.

Agreement”), substantially in the form annexed to the Motion as Exhibit A, and incur the obligations as provided for in the DIP Agreement (the “Post-petition Obligations”);

(c) authorizing the Debtor to provide the DIP Agent (for the ratable benefit of the DIP Agent and the DIP Lenders) with liens upon the Debtor’s property as provided in and as contemplated by the DIP Agreement, and as supplemented by this Order (the DIP Agreement and all such instruments and documents as may be executed and delivered in connection therewith or which relate thereto being referred to hereinafter, collectively, as the “DIP Loan Documents”) including priming liens pursuant to Section 364(d) of the Bankruptcy Code);

(d) providing adequate protection to certain pre-petition lenders to the Debtor, as more fully set forth herein;

(e) authorizing the Debtor to grant the DIP Agent (for the ratable benefit of the DIP Agent and the DIP Lenders) a Super-Priority Claim (defined below) over any and all administrative expenses other than as set forth in Paragraph 10(g), below;

(f) scheduling a final hearing (“Final Hearing”) for approval of the PNC DIP Facility and entry of a final order (“Final Order”) approving the PNC DIP Facility; and

(g) granting related relief, including, without limitation, modification of the automatic stay pursuant to Section 362 of the Bankruptcy Code.

In support of this motion (the “DIP Motion”), the Debtor respectfully represents as follows:

Background

1. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code. The Debtor is authorized to operate its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. The Debtor has continued in the management and operation of its businesses and properties as debtor-in-possession pursuant to Bankruptcy Code Sections 1107 and 1108. No trustee or examiner has been appointed in this case, and no official creditors' committee has been formed as of the date hereof.

3. The Debtor's principal pre-petition creditors include: (i) PNC Bank, National Association as the administrative agent and a lender under the Pre-Petition Agreement (defined below) (collectively the agent and the lenders under the Pre-Petition Agreement are referred to as the "Pre-Petition Lenders"); (ii) Bank of America, N.A. ("Bank of America") as a lender with a lien on certain specified real property and certain personal property related to such real property; and (iii) the Debtor's trade vendors and suppliers of goods and services.

4. Pursuant to that certain Revolving Credit and Security Agreement dated as of May 17, 2004 (the "Pre-Petition Agreement"), the Pre-Petition Lenders made certain loans and advances to the Debtor (collectively, the "Pre-Petition Facility").

5. Without prejudice to the rights of any other party, the Debtor admits that as of the Petition Date the aggregate principal amount of approximately \$7,123,300 was outstanding in respect of loans made by the Pre-Petition Lenders to the Debtor pursuant to the Pre-Petition Agreement, plus interest thereon and fees and expenses incurred in connection therewith as provided in the Pre-Petition Agreement and all related documents (collectively, all amounts of any kind due to the Pre-Petition Lenders and the Pre-Petition Agent under the Pre-Petition Agreement are referred to as the "Pre-Petition Indebtedness").

6. The Debtor represents that to secure the Pre-Petition Indebtedness, the Debtor granted to PNC, in its capacity as agent for the Pre-Petition Lenders (the "Pre-Petition Agent"), pursuant to the Pre-Petition Agreement and various other agreements, first priority pledges, liens

and security interests (collectively, the “Pre-Petition Liens”) in substantially all of their personal property, wherever located, then owned or thereafter acquired or arising, and the proceeds of the foregoing (collectively, the “Pre-Petition Collateral”).

7. The Debtor acknowledges that the Pre-Petition Liens constitute valid and perfected first priority liens subject only to liens described in or otherwise permitted by the Pre-Petition Agreement, and are not subject to avoidance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Debtor acknowledges that the Pre-Petition Indebtedness constitutes legal, valid and binding obligations of the Debtor, enforceable in accordance with its terms (other than in respect of the stay of enforcement arising from Bankruptcy Code Section 362), no offsets, defenses or claims or counterclaims to the Pre-Petition Indebtedness exist, and no portion of the Pre-Petition Indebtedness is subject to avoidance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Debtor acknowledges that the claim of the Pre-Petition Lenders is an allowed secured claim within the meaning of Bankruptcy Code Section 506 in an amount that is approximately \$7,123,300, exclusive of contingent claims, interest, fees and costs. The Debtor believes that the value of the Pre-Petition Collateral exceeds the amount of the claims secured by the Pre-Petition Liens. Substantially all monies generated in connection with the operation of the Debtor’s businesses constitute proceeds of the Pre-Petition Collateral and, therefore, constitute cash collateral within the purview of Section 363 of the Bankruptcy Code (the “Cash Collateral”).

8. Additional information about the Debtor’s business and the events leading up to the Petition Date can be found in the Declaration of Scott Schnell in Support of First Day Applications and Motions (the “Schnell Declaration”) which is incorporated herein by reference.

Relief Requested

9. By this Motion, the Debtor seeks the authority to obtain the PNC DIP Facility and use of cash collateral under the terms set forth in the Proposed Interim Order.

10. The principal terms and conditions of the PNC DIP Facility are summarized below:²

- a. **Borrower.** The Debtor, as set forth in paragraph one of this Motion (the “Borrower”).
- b. **Amount of PNC DIP Facility.** The DIP Loan Documents provide that the Borrower may obtain DIP loans (“DIP Loans”) in an aggregate principal amount of up to 9,750,000.00 subject to a borrowing base availability.
- c. **Use of Proceeds.** The proceeds of the PNC DIP Facility may be used (i) to pay operating expenses described (and in the amount provided for) in the Budget; (ii) to pay fees required to be paid to the Office of the United States Trustee; (iii) subject to entry of a final order approving the Motion, to pay the Pre-Petition Debt; and (iv) to pay other expenses authorized by the Court.
- d. **Interest Rate.** The Base Rate on the date hereof is 7.5% per annum and, therefore, the rate of interest in effect hereunder on the date hereof, expressed in simple interest terms, is 8.0%. Interest accrued on the Loans shall be due and payable on the first calendar day of each month (for the immediately preceding month), computed through the last calendar day of the preceding month. Accrued interest shall also be paid by Borrower on the Commitment Termination Date.
- e. **Term of Loan.** All Advances (as defined in the DIP Loan Documents) and all other outstanding amounts will be immediately due and payable in full in cash, if not earlier in accordance with the terms of the DIP Loan Agreement and the Financing Orders, on the date that is the soonest to occur of: (i) July 15, 2008 (unless extended by mutual written agreement of the DIP Agent, the DIP Lenders and the Debtor and approved by order of this Court); (ii) the date the DIP Agreement is otherwise terminated for any reason whatsoever pursuant to the terms of the DIP Loan Agreement; or (iii) the effective date of any plan of reorganization for the Debtor in this Chapter 11 case.
- f. **DIP Liens.** DIP Lenders will receive a security interest in and lien upon all of Debtor’s pre-petition and post-petition assets (other than real property, the Professional Fee Reserve (as defined herein) and certain other Excluded Assets),

² This is only a summary of certain terms of the PNC DIP Facility and shall not be deemed to modify the terms thereof. In the event of any inconsistency between this summary and the terms of the DIP Loan Documents, the terms of the DIP Loan Documents shall control.

including, without limitation, all of Debtor's cash, accounts, inventory, equipment, fixtures, general intangibles, documents, instruments, chattel paper, deposit accounts, letter-of-credit rights, commercial tort claims, investment property, proceeds of leasehold interests, and books and records relating to any assets of Debtor and all proceeds, of the foregoing, whether now in existence or hereafter created, acquired or arising and wherever located (all such property, and the proceeds thereof, being collectively referred to herein as the "Collateral"), and that such liens have the priority hereinafter set forth; provided, however, the DIP Liens shall not attach to any claims pursuant to Sections 502(d), 544, 547, 548, 549, 550, 551 or 553 of the Bankruptcy Code (the "Avoidance Claims") or any proceeds or property recovered in connection with the successful prosecution or settlement of Avoidance Claims ("Avoidance Proceeds"):

- (i) pursuant to Section 364(c)(2) of the Bankruptcy Code, perfected first priority senior security interests in and liens upon all Collateral that, as of the Petition Date, is not subject to other valid, perfected and non-avoidable liens or to valid and unavoidable liens in existence on the Petition Date that are perfected thereafter (with a priority that relates back to a date prior to the Petition Date) as permitted by Section 546(b) of the Bankruptcy Code;
 - (ii) pursuant to Section 364(c)(3) of the Bankruptcy Code, perfected junior security interests in and liens upon all Collateral that is subject to valid, perfected and non-avoidable liens in existence on the Petition Date or to valid and unavoidable liens in existence on the Petition Date that are perfected thereafter (with a priority that relates back to a date prior to the Petition Date) as permitted by Section 546(b) of the Bankruptcy Code; and
 - (iii) pursuant to Section 364(d) of the Bankruptcy Code, the DIP Liens shall be senior in priority to the liens and security interests in favor of Pre-Petition Lenders that secure the Pre-Petition Debt.
- g. **Superpriority Claim.** The DIP Lenders will be deemed to have an allowed superpriority administrative expense claim (the "Superpriority Claim") pursuant to Section 364(c)(1) of the Bankruptcy Code over all other administrative expenses in the Chapter 11 case of the kind specified or arising or ordered pursuant to Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (upon entry of a final order with respect to the DIP Motion), 507(a), 507(b), 726 or 1114 of the Bankruptcy Code. The Superpriority Claim shall not attach to any Avoidance Claims or any Avoidance Proceeds.
- h. **Section 506(c) Waiver.** Subject to entry of a final order with respect to the DIP Motion, in no event shall any costs or expenses of administration be imposed upon Lenders or any of the Collateral pursuant to Section 506(c) of the Bankruptcy Code or otherwise without the prior written consent of Lenders and no such consent shall be implied from any action, inaction or acquiescence by Lenders.

i. **Modification of Automatic Stay.** The automatic stay provisions of Section 362 of the Bankruptcy Code will be lifted and terminated as to the DIP Lenders to the extent necessary to implement the provisions of the Proposed Interim Order and the PNC DIP Facility Documents, thereby permitting DIP Lenders, inter alia, to receive collections of Collateral for application to the Pre-Petition Debt and the DIP Obligations as provided in the Proposed Interim Order, to file or record any UCC-1 financing statements, mortgages, deeds of trust, security deeds and other instruments and documents evidencing or validating the perfection of the DIP Liens and to enforce the DIP Liens upon default subject to the prior notice provisions of the Proposed Interim Order; and

j. **Carve-Out.**

The DIP Liens and Superpriority Claim conferred upon DIP Lenders, and all liens in favor of the Pre-Petition Lenders, shall be subject and subordinate to the payment of the following (to the extent there are not sufficient, unencumbered funds in Debtor's estate): (a) fees required to be paid to the Clerk of the Court; (b) quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6); and (the amounts described in the preceding clauses (a) and (b) are collectively called the "Carve-Out"). In addition, the PNC DIP Facility Documents provide for the deposit of amounts budgeted for the payment of the fees and expenses of professionals retained by the Debtor and any statutory committee appointed in this case into an escrow account maintained by counsel for the Debtor (the "Professional Fee Reserve") and that amounts deposited into the Professional Fee Reserve shall be Excluded Assets and shall not be subject to the liens and claims granted hereunder.

Basis for Relief Requested

B. The PNC DIP Facility is Supported by the Debtor's Business Judgment.

11. The Debtor represents that: (i) an immediate and critical need exists for the Debtor to obtain funds in order to continue the operation of its business; (ii) without such funds, the Debtor will not be able to pay its payroll and other direct operating expenses and obtain inventory and services needed to carry on its business during this sensitive period in a manner that will avoid irreparable harm to the Debtor's estate and permit a successful reorganization; and (iii) at this time, the ability of the Debtor to finance its operations, and the availability to it of sufficient working capital and liquidity through the incurrence of new indebtedness for borrowed money and other financial accommodations are vital to restore the confidence of the Debtor's

trade vendors and suppliers of other goods and services, to its customers and to the preservation and maintenance of the going concern value of the Debtor's estate.

12. The Debtor is unable to obtain the required funds in the form of unsecured credit or unsecured debt allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense pursuant to Section 364(a) or (b) of the Bankruptcy Code, unsecured debt having the priority afforded by Section 364(c)(1) or debt secured as described in Section 364(c)(2) or (3).

13. The Debtor represents that: (i) substantially all of the Debtor's personal property assets are subject to the Pre-Petition Liens; (ii) the cash generated by the Debtor's operations will be insufficient, at times, to meet the cash requirements to operate their businesses, requiring additional cash infusions from a lending source; and (iii) the Pre-Petition Lenders have not consented to the use by the Debtor of the Pre-Petition Collateral, including Cash Collateral, except for certain emergency requirements for the time period subsequent to the Petition Date and prior to the Interim Hearing.

14. The Debtor is also unable to obtain secured credit (other than the \$2,000,000 secured loan to be provided by PDIP LLC), allowable only under Bankruptcy Code Sections 364(c)(2) or 364(c)(3), except under the terms and conditions provided in the DIP Agreement. The Debtor is unable to obtain credit for borrowed money from the DIP Lenders without the Debtor granting to the DIP Agent (for the ratable benefit of the DIP Agent and the DIP Lenders) (i) liens in substantially all of the personal property assets, as more particularly described in the DIP Agreement ("Post-petition Collateral"), of the Debtor pursuant to Bankruptcy Code Sections 364(c)(2), (c)(3), and (d) ("Post-petition Liens"), and (ii) a super-priority administrative expense claim status pursuant to Sections 364(c)(1) of the Bankruptcy Code and as provided by this

Interim Order. Notwithstanding anything to the contrary contained in the DIP Loan Documents, the Post-petition Collateral shall not include any real property of the Debtor or proceeds of any real property of the Debtor (other than the proceeds of certain leases under which the Debtor is a lessee).

15. The DIP Agent and the DIP Lenders have indicated a willingness to consent and agree to the Debtor entering into the financing arrangements contemplated by the DIP Agreement, and the DIP Agent and DIP Lenders are willing to provide the additional financing contemplated thereby, upon approval of the terms and subject to the conditions set forth herein and in the DIP Loan Documents and a finding by the Court that the PNC DIP Facility is essential to the Debtor's estate and is being provided in good faith, and that the DIP Agent's and the DIP Lenders' security interests, liens, claims, super-priority claims and other protections granted pursuant to this Order and the DIP Agreement will not be affected by any subsequent renewal or modification of the DIP Agreement or any other order, as provided in Section 364(e) of the Bankruptcy Code.

16. Section 364(c) of the Bankruptcy Code provides, *inter alia*, that if a debtor is unable to obtain unsecured credit allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code, then the Court may authorize the debtor to obtain credit or incur debt: (i) with priority over any or all administrative expenses as specified in Sections 503(b) or 507(b) of the Bankruptcy Code, (ii) secured by a lien on property of the estate that is not otherwise subject to a lien, or (iii) secured by a junior lien on property of the estate that is subject to a lien.

17. In addition, Section 364(d)(1) of the Bankruptcy Code provides that the Court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien if: (i) the trustee is

unable to obtain such credit otherwise, and (ii) 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).

18. The evidence at the interim hearing on the DIP Motion (the “Interim Hearing”) will show that a working capital facility of the type and magnitude needed in this case could not have been obtained on an unsecured basis. Prior to the Petition Date, the Debtor contacted a number of lending institutions, seeking alternative financing sources. The PNC DIP Facility proposed by the DIP Lenders represents the best alternative available to the Debtor. Indeed, with the exception of the DIP Lender, potential sources of the proposed PNC DIP Facility for the Debtor, obtainable on an expedited basis and on reasonable terms, were nonexistent.

19. In such circumstances, “[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” Bray v. Shenandoah Fed. Sav. and Loan Ass’n. (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986). Instead, a debtor need only demonstrate “by a good faith effort that credit was not available without” the protections of Section 364(c) and (d) of the Bankruptcy Code. Id.; see also In re Plabell Rubber Prods., Inc., 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). Where there are few lenders likely to be able and/or willing to extend the necessary credit to the debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct an exhaustive search for financing.” In re Sky Valley, Inc., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), aff’d sub nom Anchor Sav. Bank FSB v. Sky Valley, Inc., 99 B.R. 1997, 120 N.4 (N.D. Ga. 1989). Thus, the evidence introduced at the Interim Hearing will satisfy the requirements of Sections 364(c) and (d) of the Bankruptcy Code that credit was unavailable to the Debtor on terms other than those set forth herein.

20. Moreover, bankruptcy courts routinely defer to the Debtor's business judgment on most business decisions, including the decision to borrow money. See Group of Inst. Investors v. Chicago Mil. St. P. & Pac. Ry., 318 U.S. 523, 550 (1943); In re Simasko Prod. Co., 47 B.R. 444, 449 (D. Colo. 1985) ("Business judgments should be left to the board room and not to this Court."); In re Lifeguard Indus., Inc. 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983) (same). "More exacting scrutiny would slow the administration of the Debtor's estate and increase its costs, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1311 (5th Cir. 1985).

21. In general, a bankruptcy court should defer to a debtor-in-possession's business judgment regarding the need for and the proposed use of funds, unless such decision is arbitrary and capricious. In re Curlew Valley Assoc., 14 B.R. 506, 511-13 (Bankr. D. Utah 1981). Courts generally will not second-guess a debtor-in-possession's business decisions when those decisions involve "a business judgment made in good faith, upon a reasonable basis, and within the scope of [its] authority under the Code." Id. at 513-14 (footnotes omitted).

22. In this case, the Debtor has exercised sound business judgment in determining that a post-petition credit facility is appropriate and has satisfied the legal prerequisites to borrow under the PNC DIP Facility. Without the liquidity provided by the PNC DIP Facility, the Debtor will be unable to pay vendors, employees and other constituencies that are essential to the orderly operation of its business.

23. The relief requested in the Motion is necessary, essential and appropriate for the continued operation of the Debtor's business and the management and preservation of its property.

24. It is in the best interest of Debtor's estate to be allowed to establish the PNC DIP Facility contemplated by the DIP Loan Documents.

25. In addition, the proposed terms of the PNC DIP Facility, including those which provide for the payment of interest to, and fees of, the DIP Agent and the DIP Lenders at the times and in the manner provided under the PNC DIP Facility, are fair, reasonable and adequate in that the terms neither: (a) tilt the conduct of this case and prejudice the powers and rights that the Bankruptcy Code confers for the benefit of all creditors, nor (b) prevent motions by parties in interest from being decided on their merits. The purpose of the PNC DIP Facility is to enable the Debtor to meet ongoing operational expenses.

26. The DIP Agreement was negotiated in good faith and at arms length between the Debtor, on the one hand, and the DIP Agent and the DIP Lenders, on the other. Credit to be extended under the PNC DIP Facility will be so extended in good faith, in consequence of which the DIP Agent and the DIP Lenders are entitled to the protection and benefits of Bankruptcy Code Section 364(e).

27. The Prepetition Lenders, pursuant to Sections 361 and 363 of the Bankruptcy Code, are entitled to adequate protection of their interests in the Pre-Petition Collateral from any diminution resulting from the use, sale or lease of the Prepetition Collateral.

28. The proposed PNC DIP Facility also provides that the security interests and administrative expense claims granted to the DIP Lenders are subject to the Carve-Out and the Professional Fee Reserve. In the case of In re Ames Dep't Stores, Inc., 115 B.R. 34 (Bankr. S.D.N.Y. 1990), the bankruptcy court found that such "carve-outs" are not only reasonable, but are necessary to insure that official committees and the Debtor's estate will be assured of the assistance of counsel. Id. at 40.

29. Accordingly, the Debtor should be granted authority to enter into the DIP Agreement and borrow funds from the Post-Petition Lenders on the secured, administrative, superpriority basis described above, pursuant to Sections 364(c) and (d) of the Bankruptcy Code, and take the other actions contemplated by the DIP Loan Agreement and as requested herein.

C. The Proposed Adequate Protection is Appropriate.

30. The proposed PNC DIP Facility Agreement contemplates, among other things, (a) the granting of priming liens and security interests in the Pre-Petition Lenders Collateral pursuant to Section 364(d) of the Bankruptcy Code, and (b) the use of Cash Collateral pursuant to Section 363(c) of the Bankruptcy Code. The Pre-Petition Lenders are therefore entitled to adequate protection pursuant to Sections 364(d) and 363(c) of the Bankruptcy Code.

31. Accordingly, the Debtor requests that effective upon entry of the Proposed Interim Order and without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements, or otherwise, the Pre-Petition Lenders be granted valid, duly perfected, and non-avoidable replacement security interests and liens (the “Adequate Protection Liens”) in and to all of the Collateral as partial adequate protection.

32. To the extent the Adequate Protection Liens are not adequate to protect Pre-Petition Lenders against the diminution in value of the Pre-Petition Lenders Collateral, the Debtor seeks to provide the Pre-Petition Lenders with a superpriority adequate protection claim having priority over all other administrative expenses in the Chapter 11 case of the kind specified in or arising or ordered pursuant to Sections 105(a), 326, 328, 330, 331, 503(a), 503(b), 506(e) (upon entry of final order with respect to the DIP Motion), 507(a), 507(b), 546(c), 726 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, attachment or otherwise, subject to the Superpriority Claim granted to the DIP Lenders.

D. Immediate Interim Relief Is Appropriate.

33. Pending the Final Hearing, the Debtor requires immediate use of cash collateral and financing for, among other things, maintenance of its businesses and other working capital needs. It is essential that the Debtor immediately stabilize its operations and resume paying for ordinary, post-petition operating expenses, as well as the pre-petition expenses approved in the first day orders, to minimize the damage occasioned by its cash flow problems.

34. Bankruptcy Rules 4001(b) and 4001(c) permit a court to approve a Debtor's request for financing during the fifteen (15) day period following the filing of a motion requesting authorization to obtain post-petition financing, "to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Bankruptcy Rule 4001(c)(2). In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. See, e.g. In re Simasko Prod. Co., 47 B.R. at 449; see also Ames Dep't Stores, 115 B.R. at 38.

35. No party in interest can seriously contend that the Debtor does not need immediate access to a working capital facility. The Debtor has significant cash needs. Particularly critical in this case is that it is impossible to forecast collections of accounts receivable for a business in a Chapter 11 proceeding. Accordingly, access to substantial credit is necessary to meet the substantial day-to-day costs associated with maintaining business relationships with the Debtor's employees and vendors and otherwise financing its operations. Access to sufficient cash is therefore critical to the Debtor. The Debtor's need for access to the PNC DIP Facility therefore is immediate, and the interim relief that is requested is appropriate.

Notice

36. Pursuant to Sections 102(1), 363(c) and 364(c) of the Bankruptcy Code and Bankruptcy Rules 2002, 4001(b) and 4001(c), notice of this Motion has been provided via

facsimile, overnight delivery service, electronic transmission or same-day messenger service to: the Office of the United States Trustee, counsel for the Debtor's pre-petition senior secured lenders, counsel to the Debtor's proposed debtor-in-possession lenders, known holders of pre-petition liens against the Debtor's property, and the Debtor's twenty (20) largest unsecured creditors. Notice of the Final Hearing shall be given to: the Office of the United States Trustee, counsel for the Debtor's pre-petition senior secured lenders, counsel for PDIP LLC, counsel to the Debtor's proposed debtor-in-possession lenders, known holders of pre-petition liens against the Debtor's property, state and local taxing authorities, and any other party which theretofore has filed in the Chapter 11 Case a request for special notice with this Court and served such upon Debtor's counsel, and the Debtor's twenty (20) largest unsecured creditors, and other parties as directed by the Court.

Conclusion

WHEREFORE, the Debtor respectfully requests that this Court:

- (a) enter an order granting the relief requested herein; and
- (b) grant the Debtor such other and further relief as is just and proper.

This 14th day of November, 2007.

Respectfully submitted,

SCROGGINS & WILLIAMSON

/s/ J. Robert Williamson

J. ROBERT WILLIAMSON

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EXHIBIT "A"

PNC DIP FACILITY AGREEMENT

[To be provided at or before the Hearing.]