

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division
www.flsb.uscourts.gov

In re:

AMERIGROW RECYCLING – DELRAY,
LIMITED PARTNERSHIP, et al.¹.

Case No. 09-

Chapter 11
(Jointly Administered)

DEBTORS' AGREED EMERGENCY MOTION FOR ORDER (A) AUTHORIZING THE DEBTORS (1) TO USE CASH COLLATERAL ON AN INTERIM BASIS PURSUANT TO 11 U.S.C. § 363, AND (2) TO PROVIDE ADEQUATE PROTECTION IN CONNECTION THEREWITH PURSUANT TO 11 U.S.C. § 361, AND (B) SETTING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001

(Emergency Hearing Requested On or Before November 4, 2009)

The Debtors seek to continue to operate their business, to preserve the value of the estate, to preserve remaining jobs and to facilitate a successful reorganization. Without the immediate authorization to use cash collateral, the Debtors will not be able to meet payroll obligations or acquire goods and services necessary for their day-to-day operations. The Debtors believe that a hearing on this Motion is needed as soon as possible in order for them to continue to operate their business for this purpose.

Amerigrow Recycling – Delray, Limited Partnership and Amerigrow Recycling Corp., as proposed jointly administered debtors and debtors-in-possession in the above-styled Chapter 11 proceedings (the “**Company**” or the “**Debtors**”), hereby file this Agreed Emergency Motion for an Order (A) Authorizing the Debtors (1) to use Cash Collateral on an Interim Basis Pursuant to 11 U.S.C. § 363 and (2) to Provide Adequate Protection in Connection Therewith Pursuant to 11 U.S.C. §361, and (B) Setting a Final Hearing Pursuant to Bankruptcy Rule 4001 (the “**Motion**”). In support

¹ The jointly administered debtors are: Amerigrow Recycling – Delray, Limited Partnership and its general partner, Amerigrow Recycling Corp.

of the Motion, the Debtors rely on the *Declaration of Janet Tomlinson in Support of Chapter 11 Petitions and First Day Motions* (the “**First Day Declaration**”). In further support of this Motion, the Debtors respectfully represent as follows:

BACKGROUND

A. The Chapter 11 Filing

1. On November 2, 2009, the Debtors each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. No creditors’ committee has yet been appointed in this case. In addition, no trustee or examiner has been appointed.

3. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

4. The statutory predicates for the relief requested herein are Sections 361 and 363 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure.

B. Background and Business Operations

5. The Debtors were founded in 1995, and operate as a full-service organic-recycling facility, accepting organic landscape debris at its convenient drive-thru Delray Beach store and dumping facility. The Company has the largest fleet of high-capacity grapple trucks in South Florida, and offers year-round landscape debris pick-up and disposal services for landscaping companies, golf courses and residential communities.

6. The Company is also a premier manufacturer of various mulch and soil varieties. Using a fully-computerized state-of-the-art European blending system with flow sensors and weight

scales for precise blending, the Company's mulch and soil products meet the strict requirements of the Mulch & Soil Council and the Department of Environmental Protection. The Company's mulch and soil sales are conducted through its retail location in Delray Beach, and the Company also offers mulch delivery and blow-on installation services.

7. The Debtors' business operations are located at 10320 West Atlantic Avenue, Delray Beach, Florida 33446.

8. Further information regarding the Debtors' business, capital structure, and the events leading to these Chapter 11 filings are set forth in the First Day Declaration filed contemporaneously herewith.

CASH COLLATERAL AND THE RELIEF SOUGHT BY THE DEBTORS

9. On August 12, 2008, Amerigrow LP executed a Loan Agreement, Promissory Note, and Security Agreement in favor of Fifth Third Bank evidencing and securing a loan in the original principal amount of \$1,000,000.00 (the "**Fifth Third Loan**"), all of which remains presently due and owing. In connection with the Fifth Third Loan, Amerigrow LP granted Fifth Third a lien on and security interest in its personal property as the collateral for the Fifth Third Loan.

10. On August 28, 2008, Fifth Third Bank filed a UCC-1 Financing Statement in the Florida Secured Transaction Registry, perfecting its security interest in Amerigrow LP's personal property in connection with the Fifth Third Loan.

11. Any cash or cash equivalents, funds or proceeds of or from the collateral securing the obligations of the Debtors to Fifth Third Bank ("**Fifth Third**") may constitute cash collateral within the meaning of Section 363 of the Bankruptcy Code (the "**Cash Collateral**").

12. By this Motion, the Debtors seek the entry of an interim order (the "**Interim Order**") authorizing, on an emergency and limited basis, use of the Cash Collateral. The filing of this Motion

does not constitute an admission by the Debtors that Fifth Third holds valid liens on the Debtors' cash or cash equivalents. The Debtors reserve the right to contest the validity, priority and extent of Fifth Third's alleged liens as well as the amount of Fifth Third's claims.

13. An immediate and critical need exists for the Debtors to be permitted access to Cash Collateral to continue to operate their business. Therefore, the Debtor seeks an emergency interim hearing (the "**Interim Hearing**") in accordance with Rule 4001(b)(2) of the Federal Rules of Bankruptcy Procedures (the "**Bankruptcy Rules**"). At the Interim Hearing, the Debtors will seek entry of a Stipulated Interim Order, a copy of which is attached hereto as **Exhibit "A."** **Undersigned counsel has obtained consent from counsel to Fifth Third that Fifth Third agrees with the relief sought in the Stipulated Interim Order.**

14. The Debtors further seek a final hearing (the "**Final Hearing**") on this Motion, to be held no less than fifteen (15) days from service of a notice of hearing on such Final Hearing, in accordance with Bankruptcy Rule 4001(b)(2) and (3).

15. In connection with the Debtors' use of Cash Collateral hereunder and to provide Fifth Third with adequate protection in respect of the Debtors' use of such Cash Collateral, the Debtors have agreed, subject to approval of this Court, that Fifth Third, shall have, *nunc pro tunc* as of the commencement of the Chapter 11 cases, a replacement lien pursuant to 11 U.S.C. §361(2) on and in all property acquired or generated post petition by the Debtors to the same extent and priority and of the same kind and nature as Fifth Third's respective pre-petition liens and security interests in such property.

16. The Debtors propose to use the Cash Collateral hereto as **Exhibit "B"** (the "**Budget**"). The Budget covers the four-week period from the Petition Date through November 29, 2009. The Debtors also request that they be authorized: (i) to exceed any line item on the Budget by

an amount equal to ten percent (10%) of each such line item; or (ii) to exceed any line item by more than ten percent (10%) so long as the total of all amounts in excess of all line items for the Budget do not exceed ten percent (10%) in the aggregate of the total Budget.

17. As set forth in the Budget, the Debtors assert that Fifth Third's interest in Cash Collateral is fully protected and will not erode or decrease by virtue of the Debtors' use of such Cash Collateral. The adequate protection analysis contained in the Budget evidences that the aggregate value of Cash Collateral increases over the term of the Budget by the amount of \$188,692.

18. The Debtors request that the replacement liens and administrative expense claims granted to Fifth Third pursuant to the terms hereof be at all times subject, subordinate and junior to: (i) the payment of professional fees and expenses allowed by order of the Court under Sections 330 and 331 of the Bankruptcy Code of Genovese Joblove & Battista, P.A. ("GJB"), proposed general counsel to the Debtors, in an amount not to exceed \$50,000 as provided in the Budget (the "Fee Payment"), which Fee Payment shall be paid by the Debtors to the attorneys' trust account of GJB in four equal weekly installments during the period covered by the Budget, and which Fee Payment shall be held in such trust account unless and until the Court enters an order allowing fees and expenses to GJB, at which time the Fee Payment may be used to pay such allowed fees and expenses; (ii) the payment of professional fees and expenses allowed by order of the Court under Sections 330 and 331 of the Bankruptcy Code of professionals engaged by the Debtors, other than GJB, and any official committee of unsecured creditors (the "Committee") whose engagement has been approved by the Bankruptcy Court, but not to exceed \$20,000 in the aggregate during the period covered by the Budget; (iii) the allowed and unpaid professional fees and expenses incurred by professionals engaged by the Debtors and professionals engaged by the Committee pursuant to order of the Court in an aggregate amount not to exceed \$150,000 incurred after the termination or

expiration of the use of Cash Collateral pursuant to this Order or any subsequent interim order or final order entered by the Court, (iv) the fees of the Office of the United States Trustee pursuant to 28 U.S.C. §1930; and (v) any Court costs (collectively, the “**Carve Out**”).

19. Supplemental to the replacement liens provided to Fifth Third hereunder, the Debtors propose (i) to pay Fifth Third regular payments of interest on the Fifth Third Loan during the term of the Budget, and (ii) will furnish Fifth Third with such financial and other information as required by the Loan Documents or other reports as Fifth Third reasonably request.

20. The replacement liens granted to Fifth Third hereunder in connection with the use of the Cash Collateral shall be valid and perfected without the need for the execution or filing of any further documents or instruments.

APPLICABLE AUTHORITY FOR RELIEF REQUESTED

A. The Court Should Approve the Stipulation Authorizing Use of Cash Collateral To The Extent That Fifth Third Consents to Such Use.

21. A debtor's use of estate property is governed by Section 363 of the Bankruptcy Code. Section 363(c)(1) provides that a debtor may use estate property in the ordinary course of business without notice or a hearing. Section 363(c)(2) imposes specific limitations upon property that constitutes cash collateral and provides that a debtor can only use, sell or lease cash collateral either if the entity with an interest in the cash collateral consents or the Court authorizes such use. The Debtors have contacted Fifth Third to explore an agreement regarding the use of Cash Collateral in this case. To the extent that the parties can reach such an agreement, this Court should approve the Debtors' use of Fifth Third's Cash Collateral pursuant to Section 363(c)(2) of the Bankruptcy Code.

B. The Court Should Enter an Order Authorizing the Continued Use of Cash Collateral Because the Debtors Are Providing Fifth Third with Adequate Protection.

22. Pursuant to the terms hereof, the Debtors are providing and will provide adequate

protection to Fifth Third as contemplated and required by Sections 361, 363(c)(2)(B) and 363(e), respectively, and hereby seeks the Court's approval thereof. The Bankruptcy Code does not explicitly define "adequate protection," but does provide a non-exclusive list of the means by which a debtor may provide adequate protection, including "other relief" resulting in the "indubitable equivalent" of the secured creditor's interest in such property. See 11 U.S.C. § 361. What constitutes adequate protection must be evaluated on a case-by-case basis. In re Swedeland Dev. Group Inc., 16 F.3d 552, 564 (3d Cir. 1994) (citing In re O'Connor, 808 F.2d 1393, 1396-97 (10th Cir. 1987)); In re Martin, 761 F.2d 472, 476 (8th Cir. 1985).

23. Adequate protection is meant to ensure that the secured lender receives the value for which it originally bargained. Swedeland, 16 F.3d at 564 (citing O'Connor, 808 F.2d at 1396) ("the whole purpose of adequate protection for a creditor is to ensure that the creditor receives the value for which he bargained pre bankruptcy"). Courts have noted that "the essence of adequate protection is the assurance of the maintenance and continued recoverability of the lien value during the interim between the filing . . . and the confirmation." In re Arriens, 25 B.R. 79, 81 (Bankr. D. Or. 1982). The focus of the requirement is to protect a secured creditor from diminution in value during the use period. See In re Kain, 86 B.R. 506, 513 (Bankr. W.D. Mich.1988); In re Becker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986); In re Ledgmere Land Corp., 116 B.R. 338, 343 (Bankr. D. Mass. 1990).

24. The Debtors' requested use of Cash Collateral and the protections afforded to Fifth Third herein, including but not limited to replacement liens and reporting, in light of the circumstances, are reasonable, appropriate, and sufficient to satisfy the legal standard of "adequate protection" and will serve to maintain the value of Fifth Third's Collateral.

(a) The Use of Cash Collateral Will Preserve the Debtors' Going Concern Value, Which Will Inure to the Benefit of the Estates.

25. The continued operation of the Debtors' business will preserve their going concern value, enable the Debtors to capitalize on that value through a reorganization strategy, and ultimately enable the Debtors to confirm a Chapter 11 plan. However, as discussed above, if the Debtors are not allowed to use Cash Collateral, their business operations will be substantially interrupted and will likely shut down. This would result in a significant diminution in the value of the Debtors' operations to the detriment of the Debtors' creditors and investors, and displacement and other harm to the estates.

26. It is well established that a bankruptcy court, where possible, should resolve issues in favor of preserving the business of the debtor as a going concern:

A debtor, attempting to reorganize a business under Chapter 11, clearly has a compelling need to use "cash collateral" in its effort to rebuild. Without the availability of cash to meet daily operating expenses such as rent, payroll, utilities, etc., the congressional policy favoring rehabilitation over economic failure would be frustrated.

In re George Ruggiere Chrysler-Plymouth, Inc., 727 F.2d 1017, 1019 (11th Cir. 1984).

27. Accordingly, courts authorize the use of cash collateral to enhance or preserve the debtor's going concern value. For example, in In re Stein, 19 B.R. 458 (Bankr. E.D. Pa. 1982), the court allowed a debtor to use cash collateral where the secured party was undersecured, finding that the use of cash collateral was necessary to the debtor's continued operations and the creditor's "secured position can only be enhanced by the continued operation of the [debtor's business]" Id. at 460; see also Federal Nat. Mort. v. Dacon Bolingbrook Assocs., 153 B.R. 204, 214 (N.D. Ill. 1993) (security interest protected to extent debtor reinvested rents in operation and maintenance of the property); In re Constable Plaza Assoc., 125 B.R. 98, 105 (Bankr. S.D.N.Y. 1991) (debtor's reinvestment of rents to maintain and operate office building "will serve to preserve or enhance the value of the building which, in turn, will protect the collateral covered by [the] mortgage"); In re

Dynaco Corp., 162 B.R. 389, 395-96 (Bankr. D.N.H. 1983) (finding that the alternative to the debtor's use of cash collateral, termination of its business, would doom reorganization and any chance to maximize value for all creditors); In re Karl A. Neise, Inc., 16 B.R. 600, 602 (Bankr. S.D. Fla. 1981) (marginally secured creditor adequately protected by lien on postpetition property acquired by debtor; debtors can use cash collateral "in the normal operation of their business").

28. As discussed above, the Debtors will use Cash Collateral in the ordinary course of their business to, among other things, continue to operate and maintain their operations, thereby solidifying the prospects of a successful reorganization. If the Debtors cannot continue to use Cash Collateral, they likely will be forced to cease operations and convert these cases to Chapter 7. This cessation would irreparably damage the Debtors' business by causing, among other things, customer defections, employee attrition, lost revenues, loss of business reputation, and even worse, potentially leaving over 70 employees without jobs. By contrast, granting authority will allow the Debtors to maintain operations and preserve the going concern value of their business, which will inure to the benefit of Fifth Third and all other creditors.

(b) Fifth Third is Adequately Protected by the Grant of Replacement Liens on Post Petition Assets.

29. The Bankruptcy Code expressly provides that "granting a replacement lien is a means of adequate protection." 11 U.S.C. § 361(2). Granting replacement liens provides ample adequate protection of the secured creditor's interest in cash collateral. See, e.g., In re O'Connor, 808 F.2d at 1393; In re Dixie-Shamrock Oil & Gas. Inc., 39 B.R. 115, 118 (Bankr. M.D. Tenn. 1984). The Debtors will adequately protect Fifth Third's interests in Cash Collateral by, among other things, providing post-petition security interests in the Debtors' assets of the same type as Fifth Third held pre-petition to the extent the Debtors' use of Cash Collateral results in a post-petition decrease in the value of the Collateral securing Fifth Third's claims. Such post-petition security interests will be of

the same validity and priority as Fifth Third's pre-petition liens and security interests.

(c) Fifth Third is Adequately Protected by an Equity Cushion in the Collateral

30. The interests of Fifth Third are adequately protected by an equity cushion. The existence of value in collateral in excess of the amount of the secured claim (i.e., an equity cushion) provides the classic form of protection for secured debt and can itself provide sufficient adequate protection. See Pistole v. Mellor (In re Mellor), 734 F.2d 139 (9th Cir. 1984); In re Llewellyn, 27 B.R. 481 (Bankr. M.D. Pa. 1983); Dixie-Shamrock Oil & Gas, Inc., 39 B.R. 115, 117-118 (Bankr. MD. Tenn. 1984) (holding that equity cushion of \$500,000 on \$7.1 million debt provided adequate protection); In re McGowan, 6 B.R. 241, 243 (Bankr. E.D. Pa. 1980) (holding that 10% equity cushion provided adequate protections).

31. In determining the existence and extent of an equity cushion, most courts value the collateral on a going concern basis. See, e.g., In re Winthrop Old Farm Nurseries, Inc., 50 F.3d 72, 74-75 (1st Cir. 1995) (valuing creditor's interest in property to be retained by debtor at its "going-concern or fair market value with no deduction for hypothetical costs of sale"); In re McClurkin, 31 F.3d 401, 405 (6th Cir. 1994); In re Automatic Voting Machines Corp., 26 B.R. 970 (Bankr. W.D.N.Y. 1983).

32. It is particularly appropriate for a bankruptcy court to value collateral on a going concern or fair market basis early in a bankruptcy case so that the debtor is provided an opportunity to reorganize, and any doubt should be resolved in favor of facilitating the debtor's attempt at reorganization. In re A&B Heating & Air Conditioning, Inc., 48 B.R. 493, 496 (Bankr. N.D. Fla. 1985).

33. Here, Fifth Third enjoys an equity cushion because the estimated total value of the Debtor's inventory on a cost-basis is \$913,268.44, the estimated total value of its outstanding

accounts receivable is \$1,300,000, and the value of Fifth Third's secured claim is \$1,000,000.

34. This equity cushion is more than sufficient adequate protection for the use of cash collateral requested herein. See, e.g., In re Monnier, 755 F.2d 1336, 1340 (8th Cir. 1985) (25% equity cushion was adequate); In re Industrial Valley Refrigerating and Air Conditioning Supplies, 77 B.R. 15, 22 (Bankr. E.D. Pa. 1987) (equity cushion of approximately 50% was adequate); In re Boulders on the River, Inc., 164 B.R. 99, 104 (9th Cir. BAP 1994) (11.45% equity cushion was adequate).

35. The Debtors believe that use of Cash Collateral pursuant to the terms and conditions set forth above is fair and reasonable and adequately protects Fifth Third by virtue of the combination of: (i) the Debtors' ability to preserve the going concern value of the business with the use of Cash Collateral; (ii) the post-petition liens granted to Fifth Third; (iii) providing Fifth Third with regular payments of interest on the Fifth Third Loan and the other protections set forth herein, including the availability of financial reporting; and (iv) Fifth Third's equity cushion in its collateral. For all of the reasons stated above, this Court's approval of the Debtors' use of Fifth Third's Cash Collateral is proper herein.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto: (A) authorizing the Debtors (i) to use the Cash Collateral of Fifth Third pursuant to the terms set forth above and in accordance with the Budget, and (ii) to grant the replacement lien set forth above in connection with the use thereof, and (B) setting a final hearing hereon fifteen (15) days after the entry of an interim order on this Motion, and for such other and further relief as the Court deems just and proper.

Respectfully submitted this 2nd day of November, 2009.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-

1(A).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via facsimile, CM/ECF, and/or First Class postage-paid U.S. Mail to all parties on the attached service list this 2nd day of November, 2009.

By: /s/ Heather L. Harmon
Heather L. Harmon, Esq.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division
www.flsb.uscourts.gov

In re:

AMERIGROW RECYCLING – DELRAY,
LIMITED PARTNERSHIP, et al.¹

_____ /

Case No. 09-

Chapter 11
(Jointly Administered)

STIPULATED INTERIM ORDER (A) AUTHORIZING THE DEBTORS (1) TO USE CASH COLLATERAL ON AN INTERIM BASIS PURSUANT TO 11 U.S.C. § 363, AND (2) TO PROVIDE ADEQUATE PROTECTION IN CONNECTION THEREWITH AND PURSUANT TO 11 U.S.C. § 361, AND (B) SETTING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001

THIS CAUSE came before the Court on _____ at _____ upon the Motion (the “Motion”)² of Amerigrow Recycling – Delray, Limited Partnership and Amerigrow Recycling Corp., as jointly administered debtors and debtors-in-possession in the above-styled

¹ The jointly administered debtors are: Amerigrow Recycling – Delray, Limited Partnership and its general partner, Amerigrow Recycling Corp.

² Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Motion.

Chapter 11 proceedings (the “**Company**” or the “**Debtors**”), for entry of an Order (A) Authorizing the Debtors (1) to use Cash Collateral on an Interim Basis Pursuant to 11 U.S.C. § 363, and (2) to Provide Adequate Protection in Connection Therewith Pursuant to 11 U.S.C. §361, and (B) Setting a Final Hearing Pursuant to Bankruptcy Rule 4001. The Court finds (i) that it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. § 157 and 1334, (ii) that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (iii) that the relief requested in the Motion is in the best of interests of the Debtors, their estates and their creditors, including because (A) it provides for the Debtors to continue to operate their businesses and avoid the immediate shutdown of operations, and (B) it provides for the Debtors to meet their obligations for payroll, necessary ordinary course expenditures and other operating expenses, and (iii) that proper and adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary.

Upon the record before the Court and after due deliberation thereon, the Court concludes that good and sufficient cause exists for the granting of the relief requested in the Motion as set forth herein.

Accordingly, it is

ORDERED:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized to use Cash Collateral, as defined in 11 U.S.C. §363(a) and in the Motion, on a interim basis from Petition Date through the date of the final hearing (the “Final Hearing”) set forth below in accordance with the Budget attached to the Motion.
3. The Debtors shall be authorized: (i) to exceed any line item on the Budget by an amount equal to 10% of each such line item; or (ii) to exceed any line item by more than ten (10%) percent so long as the total of all amounts in excess of all line items for the Budget do not exceed ten (10%) percent in the aggregate of the total Budget.

4. As adequate protection for the aggregate diminution of the Cash Collateral resulting from the Debtors' use of Cash Collateral pursuant to the terms of the Motion and this Order, Fifth Third shall have and be granted, *nunc pro tunc* to the Petition Date, a replacement lien pursuant to 11 U.S.C. §361(2) on and in all assets or property of the Debtors acquired or generated after the Petition Date, but solely to the same extent and priority, and of the same kind and nature, as the assets and property of the Debtors securing the prepetition obligations to Fifth Third. For avoidance of doubt, Fifth Third shall not have or be granted a replacement lien on or against any claims or causes of action arising under Sections 542 through 550 of the Bankruptcy Code (the "Avoidance Actions") or on or against the proceeds of the Avoidance Actions.

5. In the event of diminution in the value of Cash Collateral from and after the Petition Date in excess of the value of the replacement liens granted herein, then Fifth Third shall have an administrative claim under section 507(b) of the Bankruptcy Code with priority over all other administrative expense claims, subject to the Carve Out, as hereinafter defined. Notwithstanding anything herein to the contrary, Fifth Third's super-priority administrative expense claim shall not attach to or be paid from the proceeds of the Avoidance Actions.

6. The replacement liens and administrative expense claims granted to Fifth Third pursuant to the terms hereof be at all times subject, subordinate and junior to: (i) the payment of professional fees and expenses allowed by order of the Court under Sections 330 and 331 of the Bankruptcy Code of Genovese Joblove & Battista, P.A. ("GJB"), proposed general counsel to the Debtors, in an amount not to exceed \$50,000 as provided in the Budget (the "Fee Payment"), which Fee Payment shall be paid by the Debtors to the attorneys' trust account of GJB in four equal weekly installments during the period covered by the Budget, and which Fee Payment shall be held in such trust account unless and until the Court enters an order allowing fees and expenses to GJB, at which

time the Fee Payment may be used to pay such allowed fees and expenses; (ii) the payment of professional fees and expenses allowed by order of the Court under Sections 330 and 331 of the Bankruptcy Code of professionals engaged by the Debtors, other than GJB, and any official committee of unsecured creditors (the "Committee") whose engagement has been approved by the Bankruptcy Court, but not to exceed \$20,000 in the aggregate during the period covered by the Budget; (iii) the allowed and unpaid professional fees and expenses incurred by professionals engaged by the Debtors and professionals engaged by the Committee pursuant to order of the Court in an aggregate amount not to exceed \$150,000 incurred after the termination or expiration of the use of Cash Collateral pursuant to this Order or any subsequent interim order or final order entered by the Court, (iv) the fees of the Office of the United States Trustee pursuant to 28 U.S.C. §1930; and (v) any Court costs (collectively, the "Carve Out").

7. The replacement liens granted to Fifth Third herein in connection with the use of Cash Collateral shall be valid and perfected without the need for the execution or filing of any further documents or instruments.

8. This Order, together with the authorization to use Cash Collateral and the granting of replacement liens pursuant hereto, shall be with a full reservation of the rights of the Debtors and the estates to contest the extent, validity and priority of the debt owed, and liens granted to Fifth Third.

9. **A further hearing, which may be a final hearing, on the relief sought hereunder shall be held on _____ at _____ a.m./p.m.** at the United States Bankruptcy Court, Flagler Waterview Building, 1515 North Flagler Drive, 8th Floor, West Palm Beach, FL 33401. The Debtors shall serve copies of this Order upon the U.S. Trustee, all counsel of record, the secured creditors, the top 20 unsecured creditors via U.S. mail immediately upon receipt hereof, which shall constitute good and sufficient notice of the hearing.

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Submitted by:

Paul J. Battista, Esq.
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Copy to: Paul J. Battista, Esq.
(Attorney Battista is directed to serve a conformed copy of this Order on all parties in interest)

AMERIGROW - 4 WEEK CASH COLLATERAL BUDGET

Week Ended	1	2	3	4	TOTAL
	11/8/2009	11/15/2009	11/22/2009	11/29/2009	
CASH INFLOW	\$ 225,000	\$ 250,000	\$ 275,000	\$ 275,000	\$ 1,025,000
INVENTORY PURCHASES - SOIL LINE	\$ 40,000	\$ 40,000	\$ 30,000	\$ 30,000	\$ 140,000
INVENTORY PURCHASES - WOOD	\$ 45,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 195,000
TOTAL PAYROLL AND BENEFITS	\$ 72,500	\$ 82,500	\$ 72,500	\$ 80,500	\$ 308,000
COMMISSIONS - OUTSIDE	\$ -	\$ 4,500	\$ -	\$ 4,500	\$ 9,000
INSURANCE - PROP & CAS.	\$ -	\$ -	\$ 22,600		\$ 22,600
EQUIPMENT MAINT.	\$ 9,000	\$ 11,000	\$ 9,000	\$ 6,000	\$ 35,000
FUEL	\$ 16,000	\$ 16,000	\$ 16,000	\$ 16,000	\$ 64,000
COLORANT	\$ 30,000		\$ -	\$ -	\$ 30,000
BAGGING SUPPLIES	\$ -	\$ 22,500	\$ -	\$ 22,500	\$ 45,000
OTHER EXPENSES	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 40,000
MANAGEMENT FEES	\$ -	\$ 20,000	\$ -	\$ 25,000	\$ 45,000
GENERAL COUNSEL (GJB)	\$ -	\$ -	\$ -	\$ 50,000	\$ 50,000
ACCOUNTANTS (LJKA)	\$ -	\$ -	\$ -	\$ 6,000	\$ 6,000
CORPORATE COUNSEL (BGK)	\$ -	\$ -	\$ -	\$ 7,500	\$ 7,500
SPECIAL COUNSEL (P&T)	\$ -	\$ -	\$ -	\$ 5,000	\$ 5,000
OTHER PROFESSIONAL (COMMITTEE)	\$ -	\$ -	\$ -	\$ 1,500	\$ 1,500
FIFTH THIRD INTEREST ONLY	\$ -	\$ 2,708.33		\$ -	\$ 2,708
TOTAL OPERATING EXPENSES	\$ 222,500	\$ 259,208	\$ 210,100	\$ 314,500	\$ 1,006,308
TOTAL CASH FLOWS FROM OPERATIONS	\$ 2,500	\$ (9,208)	\$ 64,900	\$ (39,500)	\$ 18,692
SALES TAX	\$ -	\$ -	\$ (40,000)		\$ (40,000)
BEGINNING CASH	\$ 150,000	\$ 152,500	\$ 143,292	\$ 168,192	
ENDING CASH	\$ 152,500	\$ 143,292	\$ 168,192	\$ 128,692	
TOTAL NET CASH FLOW	\$ 2,500	\$ (9,208)	\$ 24,900	\$ (39,500)	\$ (21,308)
BEGINNING A/R	\$ 1,650,000	\$ 1,700,000	\$ 1,800,000	\$ 1,900,000	
ENDING A/R	\$ 1,700,000	\$ 1,800,000	\$ 1,900,000	\$ 2,000,000	
NET CHANGE A/R	\$ 50,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 350,000
BEGINNING INVENTORY	\$ 800,000	\$ 765,000	\$ 730,000	\$ 695,000	
ENDING INVENTORY	\$ 765,000	\$ 730,000	\$ 695,000	\$ 660,000	
NET CHANGE INVENTORY	\$ (35,000)	\$ (35,000)	\$ (35,000)	\$ (35,000)	\$ (140,000)
BEGINNING CASH COLLATERAL	\$ 2,600,000	\$ 2,617,500	\$ 2,673,292	\$ 2,763,192	4 wk. change in cash coll.
ENDING CASH COLLATERAL	\$ 2,617,500	\$ 2,673,292	\$ 2,763,192	\$ 2,788,692	
CHANGE IN CASH COLLATERAL	\$ 17,500	\$ 55,792	\$ 89,900	\$ 25,500	

CONSOLIDATED MASTER SERVICE LIST

**AMERIGROW RECYCLING-DELRAY, LIMITED PARTNERSHIP
AMERIGROW RECYCLING CORP.**

DEBTOR

Amerigrow Recycling – Delray, L.P.
10320 West Atlantic Avenue
Delray Beach, FL 33446

Amerigrow Recycling Corp.
10320 West Atlantic Ave.
Delray Beach, FL 33446

GOVERNMENTAL ENTITIES

U. S. Trustee's Office
51 S.W. 1st Avenue, Room #1204
Miami, FL 33130

Palm Beach County Tax Collector
P. O. Box 3715
West Palm Beach, FL 33402-3715

Internal Revenue Service
P.O. Box 21126
Philadelphia, PA 19114

Internal Revenue Service
Insolvency Unit
7850 S.W. 6th Court
Mail Stop 5730
Plantation, FL 33324

State of Florida
Department of Revenue
c/o Frederick F. Rudzik
PO Box 6668
Tallahassee, FL 32314

State of Florida/Dept. of Revenue
Bankruptcy Section
P.O. Box 6668
Tallahassee, FL 32314-6668

SECURED CREDITORS

Alter Moneta
50 Lakefront Blvd.
Buffalo, NY 14240-0517

CITI/GE Capital
1669 Phoenix Pkwy
Phoenix Office Park, Suite 210
College Park, GA 30349

Fifth Third Bank
1560 Sawgrass Corp Parkway, Ste: 220
Sunrise, FL 33323

Ford Motor Credit Company
PO Box 105704
Atlanta, GA 30348

Huntington National
105 East 4th Street
Cincinnati, OH 45270-1096

Komatsu Financial
1701 W Golf Road, Suite I-300
Rolling Meadows, IL 60008

Kubota Credit Corp.
PO Box 0559
Carol Stream, IL 60132-0559

National City Bank
PO Box 1954
West Palm Beach, FL 33402

Turner Trucking
8890 150th St.
Maquoketa, IA 52060

CONSOLIDATED MASTER SERVICE LIST

**AMERIGROW RECYCLING-DELRAY, LIMITED PARTNERSHIP
AMERIGROW RECYCLING CORP.**

Wells Fargo
1540 W. Fountainhead Pkwy
Tempe, AZ 85282

TOP 20 UNSECURED CREDITORS

AmeriMulch
PO Box 75509
Cleveland , OH 44101-4755

La Mousse Acadienne
Case postale 2002
Lameque, NB
E8T 3N3

Manuel Cordero
13945 SW 25 Terrace
Miami, FL 33175

Land And Sea
Petroleum Holdings
6710 NW 15 Way
Fort Lauderdale, FL 33309

Nina Plastics
1903 Cypress Lake Drive
Orlando, FL 32837

Colorbiotics-A Becker
Underwood Company
PO Box 535038
Atlanta, GA 30353-5038

Florida Potting Soils Inc.
6021 Beggs Road
Orlando, FL 32810

Continental Bio-Mass
Industries (CBI)
22 Whittier Street
Newton, NH 03858

Port Consolidated
PO Box 350430
Ft. Lauderdale, FL 33335-0430

Kempfer Sawmill Inc.
6254 Kempfer Road
St. Cloud, FL 34773

GCR Tire Centers
3077 SW 13
Drive-Store 1287
Deerfield Beach, FL 33442

Heavy Equipment
PO Box 1948
Dade City, FL 33526

Tate Transport Corp.
2830 W.SR 84, Ste. 102
Ft. Lauderdale, FL 33312

J-M Trading Corp.
PO Box 1059
Lockport, IL 60441

Go Green Product and Services
1818 Hammock Blvd.
Coconut Creek, FL 33063

Tropical Soil LLC
162 Bella Vista Way
Royal Palm Beach, FL 33411

Martino Tire.
751 S. Congress Ave
West Palm Beach, FL 33406

Unisource Worldwide Inc.
PO Box 409884
Atlanta, GA 30384-9884

Nextran Truck Center
1490 NW 22nd Street
Pompano Beach, FL 33069

CONSOLIDATED MASTER SERVICE LIST

**AMERIGROW RECYCLING-DELRAY, LIMITED PARTNERSHIP
AMERIGROW RECYCLING CORP.**

Florida Power & Light
PO Box 025576
Miami, FL 33102

PARTIES IN INTEREST

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222 Lakeview Avenue
West Palm Beach, Florida 33401

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Ft. Lauderdale, FL 33301