

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
Tampa Division  
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IN RE: Chapter 11  
FLORIDA DIRT SOURCE, LLC, Case No.: 8:18-bk-02352-MGW

Debtor.  
\_\_\_\_\_ /

FDS TRUCKING, LLC, Case No.: 8:18-bk-02422-MGW  
Debtor. Jointly administered under  
\_\_\_\_\_ / Case #8:18-bk-02352-MGW

**DEBTORS' AMENDED  
MOTION FOR EMERGENCY AND/OR INTERIM AND FINAL ORDERS  
AUTHORIZING THE DEBTORS TO (I) ASSUME EXECUTORY  
CONTRACTS PURSUANT TO 11 U.S.C. SECTION 365, (II) ENTER INTO A POST-  
PETITION INVOICE PURCHASE/SALE AGREEMENTS WITH LSQ FUNDING  
GROUP, L.C., PURSUANT TO 11 U.S.C. SECTIONS 364(c) and (d), (III) SELL  
CERTAIN ACCOUNTS RECEIVABLES PURSUANT TO 11 U.S.C. SECTIONS 363(b)  
AND (f), (IV) GRANTING SECURITY INTERESTS TO LSQ, (V) USE CASH  
COLLATERAL PURSUANT TO 11 U.S.C. SECTION 363(c)(2); (VI) MODIFY THE  
AUTOMATIC STAY; AND FOR RELATED RELIEF**

COMES NOW, FLORIDA DIRT SOURCE, LLC, a Florida limited liability company (“Florida Dirt”) and FDS TRUCKING, LLC, a Florida limited liability company (“FDS”), collectively, the Jointly Administered “Debtors”), by and through undersigned counsel, files this Amended Motion<sup>1</sup> [the “Motion”] for entry of an emergency and/or interim and final orders authorizing the Debtors to **(I)** assume certain executory contracts with Centennial Bank pursuant to 11 U.S.C. §365 of Title 11 of the United States Code (the “Bankruptcy Code”), **(II)** enter into a Post-petition Invoice Purchase/Sale Agreement and related documents, as hereafter described (the “Post Petition Invoice Purchase/Sale Agreements”) and security agreement, together with certain

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<sup>1</sup>Amends the Motion filed as Doc. No. 67.

related documents (collectively, the “Post Petition Invoice Purchase/Sale Arrangement”) with LSQ Funding Group, L.C. (“LSQ”), pursuant to §§364(c) and (d) of the Bankruptcy Code, **(III)** sell certain accounts receivable to LSQ free and clear of liens and interests pursuant to §§363(b) and (f) of Title the Bankruptcy Code, **(IV)** and to grant security interests to LSQ pursuant to §§364(c) and (d) of the Bankruptcy Code, and **(V)** use cash collateral pursuant to §363(d)(2) of the Bankruptcy Code, and **(VI)** modify the automatic stay. In support thereof, Debtors respectfully represent as follows:

### **Jurisdiction and Venue**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Middle District of Florida. The statutory predicates for the relief sought herein are §§363(b) and (f) and 364(c) of the Bankruptcy Code, and Bankruptcy Rules 2002, 4001, 6004 and 9014. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §1409.

### **Background**

2. On March 27, 2018, FLORIDA DIRT SOURCE, LLC filed its voluntary petition under Chapter 11 of the Bankruptcy Code and pursuant to Bankruptcy Code §§1107(a) and 1108, is operating its business and managing its affairs as a Debtor-in-possession.

3. On March 28, 2018, FDS TRUCKING, LLC filed for protection under Chapter 11 of the Bankruptcy Code and pursuant to Bankruptcy Code §§1107(a) and 1108, is operating its business and managing its affairs as a Debtor-in-possession.

4. On April 11, 2018, this Court entered an Order Granting Motion for Joint

Administration And/or Procedural Consolidation (**Docket #55**) jointly administering both Debtors' cases under the lead case, *In re: Florida Dirt Source, LLC*.

5. No committee or trustee has been appointed in the case.

#### **Description of the Debtor**

6. Each of the Debtors is a Florida limited liability corporation having its headquarters located at 5130 Broad Street, Brooksville, Florida 34601. The Debtors have two (2) additional locations at 4585 CR 141, Wildwood, Florida and 6061 Hamilton Road, Ft. Myers, Florida.

7. Each Debtor is engaged in the ownership and operation of a company specializing in aggregate sales and transportation services more particularly described as follows:

#### **Operations of the Debtor**

- a. Debtors are customer-focused aggregates service companies with an in-house fleet of over 200 tractors and trailers. As a leading supplier in the transportation industry, Debtors offer, tri-axle and trailer dumps, frameless, flat beds, step-decks, bulk tankers and can supply a wide variety of bulk aggregates for commercial and industrial projects. Debtors also provide services in the manufacturing, construction and agricultural sectors for a wide variety of municipal and private clients.
- b. With several locations in key Florida markets, Debtors supply materials for large and small projects efficiently with GPS-tracked trucks to anywhere in Florida and Southern Georgia.
- c. Debtors specialize in hauling rip-rap (limerock or granite) in sizes ranging from 3" up to huge boulders, as well as limerock base, gravel, sand, millings, stone, rock, shell, fill, clay, and any DOT material required for projects, big or small.
- d. Debtors' project portfolio includes heavy/highway construction, pipeline construction, bridges, marine construction, beach re-nourishment, water/sewer/utility construction, landfills, roadway repair and expansions, airports, demolition hauling, site development projects, (i.e., retail shopping centers, residential single-family communities, mixed use developments, business and industrial parks), throughout Florida and Georgia.

**Primary Services of Florida Dirt Source, LLC**

- e. Florida Dirt Source is a supplier of bulk aggregates and transportation services throughout the state of Florida and Southern Georgia. FDS supplies DOT approved materials, crushed concrete and a wide variety of limerock and granite aggregates, crushed stone, sand and shell, for use in the construction of highways and other infrastructure projects, as well as in the domestic commercial and residential construction industries. Aggregates products are also used in the railroad, environmental and agricultural sectors. These aggregates products, along with fill dirt, landscape materials and road paving materials, are sold and shipped from our network of mines and distribution yards located throughout the state of Florida and Southern Georgia.

**The Debtors' Pre-Petition Relationship with Centennial Bank**

8. Prior to filing their Chapter 11 Cases, the Florida Dirt Source and Centennial Bank entered into a BusinessManager Agreement with Businesses and Professionals [the "Pre-petition Invoice Purchase and Sale Agreement"]. A copy of the Pre-petition Invoice Purchase and Sale Agreement is attached hereto as *Exhibit "A"* and incorporated herein by reference.

9. Pursuant to the Pre-petition Purchase and Sale Agreement, Centennial agreed to provide accounts purchase financing (i.e. accounts were sold to Centennial Bank pursuant to a factoring arrangement). The pre-petition accounts purchase financing was for an amount of \$4,000,000.00. On the date of the filing of the Petition, Centennial had outstanding funding of approximately \$2,411,334.98 with credit available of \$1,588,665.02. There was \$318,531.58 held in the Reserve Account at the time of the filing of the Petition. The Debtors have \$2,591,267.14 in total receivables with approximately \$1,900,000.00 in current receivables [within thirty (30) days as of March 29, 2018]. Debtors request that the Court authorize Debtors to assume the executory contracts with Centennial Bank and enter into the modification thereof with LSQ as provided herein.

10. LSQ has a referral relationship with Centennial Bank and was referred to the Debtors

as a Post-Petition funding source for purchasing account receivables. The LSQ factoring arrangement was initially planned as a refinancing of the Centennial Bank factoring arrangement, with Centennial Bank being paid off at closing, but because there were junior security interests in the accounts (as hereafter discussed), the transaction was restructured as a purchase of Centennial Bank's rights so as to preserve Centennial Bank's priority.

11. LSQ is finalizing negotiations with Centennial Bank to acquire the pre-petition fully secured position of Centennial Bank subject to LSQ paying a purchase price to Centennial Bank equal to the full outstanding balance of all outstanding monetary obligations the Florida Dirt Source owes to Centennial Bank and approval by this Court. As of April 11, 2018, 1:55 p.m., the amount required for payment to Centennial Bank of the purchase price is \$1,842,682.05 ("Purchase Price") which is based on the total amount owed of \$2,408,397.45 less Centennial Bank retaining the reserve which total's \$565,715.40 which Purchase Price may increase by any amounts disbursed thereafter from the cash collateral account or decrease by any sums thereafter collected from outstanding accounts and which Purchase Price excludes expenses that will be quantified and payable prior to closing consisting of attorney's fees and out-of-pocket costs.

12. LSQ and the Debtor would agree to continue the Post-Petition accounts receivable purchase/sale arrangement (the "Post-Petition Invoice Purchase/Sale Arrangement") similar to the arrangement that existed between the Florida Dirt Source and Centennial Bank pre-petition, based on amended terms, as described herein and in the proposed agreements which are still being negotiated, the most recent drafts of which are attached hereto as *Composite Exhibit "B"* together with certain other related documents and certain guaranties of the Debtors' principal and affiliates, including a guaranty by FDS Trucking secured by all of its assets (together called the "Post-Petition

Invoice Purchase/Sale Agreements”). The fees and charges to be paid by Debtors to LSQ are calculated differently from those in the Centennial Bank Pre-petition Invoice Purchase and Sale Agreement, but the Debtors believe that the overall financing will cost approximately 40 basis points more than Centennial Bank charged in its Pre-petition Invoice Purchase and Sale Agreement.

13. In order to continue the Debtors’ invoice purchase and sale arrangement with LSQ, the Debtors require Court authority under §§ 363 and 364 of the Code and other relief requested herein.

14. The Debtors have negotiated to the best of their ability a Post-Petition Invoice Purchase/Sale Arrangement with LSQ on substantially the same terms as the Pre-Petition Invoice Purchase and Sale documents with Centennial Bank.

#### **Post Petition Financing**

15. In order to preserve its ongoing business and going concern, the Debtors require post-petition financing or factoring of its accounts receivable. LSQ would agree pursuant to the terms and conditions of the Post-Petition Invoice Purchase/Sale Agreements to purchase accounts and make post-petition advances against same to the Debtors in an amount not to exceed \$5 million, pursuant to §§ 363(b) and (f), and 364(c) and (d) of the Bankruptcy Code and Bankruptcy Rules 2002, 4001 and 9014. This Motion requests that the Court grant emergency relief and schedule further interim and/or final hearings to consider approval of the Post-Petition Invoice Purchase/Sale Arrangement on a further interim and/or final basis.

#### **Continuation of the Invoice Purchase/Sale Arrangement**

16. The Debtors have no unencumbered funds or credit available to fund their business operations. LSQ has agreed to continue to fund the Debtors’ operations under a Post-Petition

Invoice Purchase/Sale Arrangement through the purchase of the Debtors' accounts receivable. Without the funding from LSQ pursuant to the Post-Petition Invoice Purchase/Sale Arrangement, the Debtors' operations will be irreparably harmed. Therefore, it is imperative that the Debtors be authorized to continue their account purchase/sale arrangements with LSQ under the Post-Petition Invoice Purchase/Sale Arrangement in order to preserve the business.

17. To continue their business operations, the Debtors must be able to provide comfort to its clients, personnel and vendors that it will be able to pay in the ordinary course for all post-petition purposes including aggregates, fuel, insurances, and wages. Continuing the invoice purchase/sale arrangement with LSQ will provide the Debtors with the cash liquidity necessary to operate their business and to pay the wages, salaries, fuel, utilities, aggregates, insurances, and other expenses associated with running the Debtors' business.

18. In order to avoid immediate and irreparable harm to the Debtors pending the final hearing, the Debtors ask the Court to allow them to continue the invoice purchase/sale arrangement with LSQ under the Post-Petition Invoice Purchase/Sale Arrangement immediately.

19. Accordingly, the Debtors seek entry of an order, in the form attached hereto as *Exhibit "C"* (the "Proposed Order"), authorizing it to enter into the Post-Petition Invoice Purchase/Sale Agreements, and sell its accounts receivable with LSQ under the Post-Petition Invoice Purchase/Sale Agreements, which provide in pertinent part, as follows:

- a. Subject to the terms of the Post-Petition Invoice Purchase/Sale Agreements, LSQ shall continue to advance ninety (90%) percent of the face amount of the account receivable purchased and remit that balance upon collection of the invoice, subject to chargebacks by the account debtor and LSQ's fees, which include without limitation a Daily Rate Fee of .0420% of the Face Amount of each Account from the date of the Invoice.

- b. All accounts receivable sold or otherwise transferred from the Debtors to LSQ under the Post-Petition Invoice Purchase/Sale Agreement shall be the sole property of LSQ and shall be transferred free and clear of all liens, claims and encumbrances, pursuant to §363(f) of the Bankruptcy Code, subject to recourse as provided in the Post-Petition Invoice Purchase/Sale Agreements. The automatic stay will be modified to enable LSQ to purchase the accounts from the Debtors, collect the accounts, apply the proceeds in accordance with the Post-Petition Invoice Purchase/Sale Agreements, and to otherwise administer the Post-Petition Invoice Purchase/Sale Agreements without further order of the Court.
- c. To secure all of the Debtors' obligations to LSQ under the Post-Petition Invoice Purchase/Sale Agreements, LSQ shall be granted, pursuant to §364 (c) and (d) of the Bankruptcy Code, a valid, perfected and enforceable security interest in and lien on all of the Debtors' accounts and other collateral described in the Post-Petition Invoice Purchase/Sale Agreements, together with all proceeds and profits derived therefrom, which shall constitute a first lien on the accounts and the proceeds collected on or from the accounts sold to LSQ (which shall have priority over all existing liens on the accounts). LSQ will also receive a security interest in the Debtors' other assets pursuant to §364(c)(2) or (3), as the case may be.
- d. Fees and expenses incurred by LSQ in connection with the Post-Petition Invoice Purchase/Sale arrangement shall be charged by LSQ and paid by Debtors as provided in the Post-Petition Invoice Purchase/Sale Agreements without further order of the Court.
- e. The Debtors' respective Plans of Reorganization in this bankruptcy shall provide that LSQ's rights are not impaired.
- f. On behalf of the bankruptcy estate, Debtors and any subsequent successor-in-interest to Debtors irrevocably waives any avoidance actions it may have against Centennial Bank or LSQ as a result of the pre-petition dealings, transfers, or obligations.
- g. Debtors' administrative expenses for fees and costs will be paid by Debtors from the sale proceeds of post-petition invoices purchased by LSQ, subject to the approval by the Bankruptcy Court of the administrative expenses, and counsel shall file its disclosure with the Court of any payments under Rule 2016(b). To the extent that the Court orders that other creditors holding an interest in cash collateral



are entitled to adequate protection as a result of any relief granted by the Court, the Debtors would propose that the said adequate protection take the form of adequate protection payments, which Debtors will pay either from unencumbered funds or from the proceeds which it receives of the sale of accounts to LSQ free and clear of liens.

- h. The Debtors will pay Centennial Bank's and LSQ's attorney's fees and expenses incurred in connection with the transactions, as provided below.

20. The Debtors respectfully submit that the foregoing invoice purchase/sale arrangement is in the best interest of the estate and its creditors and should be approved.

21. Section 363(b) of the Bankruptcy Code provides that the Debtors, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. §363(b). Section 363(f) of the Bankruptcy Code permits the Debtors to sell property under §363(b) free and clear of liens and claims of other entities if such entities consent. Here, the requirements of section 363(f) are satisfied inasmuch as LSQ and Centennial Bank are the only entities with an interest in the accounts receivable and they have consented to the relief requested.

22. Section 364 of the Bankruptcy Code, provides in relevant part:

(c) If the trustee 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 a priority over any or 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 is

subject to a lien.

23. Commercial Credit Group, Inc. (“CCG”), may claim an interest in the Debtors’ cash collateral, but if so, its interest, if any, is in any event junior to that of Centennial Bank, whose rights LSQ is acquiring. The Court has already approved an adequate protection agreement with CCG. The Debtors will make the adequate protection payments to CCG from unencumbered funds or from funds obtained by it from the sale of its accounts to LSQ pursuant to the Post-Petition Invoice Purchase/Sale Agreements. In any event, the accounts sold to LSQ will be sold free and clear of any interest of CCG, the liens of LSQ in the accounts sold to LSQ and proceeds of collection will take priority over those of CCG, and the security interests of CCG will not continue to attach to post-petition collateral.

24. CT Corporation System, as representative (“CT”), may claim an interest in the Debtors’ cash collateral pursuant to the Financing Statement, a copy of which is attached hereto as *Exhibit “D,”* or otherwise, but if so, its interest, if any, is in any event junior to that of Centennial Bank, whose rights LSQ is acquiring. If the Court orders adequate protection to CT, Debtors will make the adequate protection payments from unencumbered funds or from funds obtained by it from the sale of its accounts to LSQ pursuant to the Post-Petition Invoice Purchase/Sale Agreements. In any event, the accounts sold to LSQ will be sold free and clear of any interest of CT, the liens of LSQ in the accounts sold to LSQ and proceeds of collection will take priority over those of CT, and the security interests of CT will not continue to attach to post-petition collateral.

25. Corporation Service Company, as representative (“CSC”), may claim an interest in the Debtors’ cash collateral pursuant to the Financing Statement, a copy of which is attached hereto as *Exhibit “E,”* or otherwise, but if so, its interest, if any, is in any event junior to that of Centennial

Bank, whose rights LSQ is acquiring. If the Court orders adequate protection to CSC, Debtors will make the adequate protection payments from unencumbered funds or from funds obtained by it from the sale of its accounts to LSQ pursuant to the Post-Petition Invoice Purchase/Sale Agreements. In any event, the accounts sold to LSQ will be sold free and clear of any interest of CSC, the liens of LSQ in the accounts sold to LSQ and proceeds of collection will take priority over those of CSC, and the security interests of CSC will not continue to attach to post-petition collateral

26. Daimler Trust and/or Mercedes-Benz Financial Services USA LLC (“Mercedes”), may claim an interest in the Debtors’ cash collateral pursuant to the Financing Statement, a copy of which is attached hereto as *Exhibit “F,”* or otherwise, but if so, its interest, if any, is in any event junior to that of Centennial Bank, whose rights LSQ is acquiring. If the Court orders adequate protection to Mercedes, Debtors will make the adequate protection payments from unencumbered funds or from funds obtained by it from the sale of its accounts to LSQ pursuant to the Post-Petition Invoice Purchase/Sale Agreements. In any event, the accounts sold to LSQ will be sold free and clear of any interest of Mercedes, the liens of LSQ in the accounts sold to LSQ and proceeds of collection will take priority over those of Mercedes, and the security interests of Mercedes will not continue to attach to post-petition collateral

**Request for Authority To Use Cash Collateral**

27. The Debtors further submit this Motion pursuant to Bankruptcy Code §363(c)(2)(B), and §§361 and 362, and Bankruptcy Rule 4001(b) with respect to the Debtors’ request for authority to use the proceeds paid to the Debtors by LSQ from the sale of accounts to LSQ pursuant to the Post Petition Invoice Purchase/Sale Agreements and other cash collateral (“Cash Collateral”) (but not the accounts or collections of the accounts, which shall be the sole property of LSQ),

substantially in accordance with the terms and conditions set forth in the Order. Except as described above, LSQ will be the only party that may have a perfected security interest in the Debtors' property which may constitute, *inter alia*, Cash Collateral. The Debtors have already used some of the cash collateral pursuant to Interim Cash Collateral Order (**Doc. No. 39**). The cash collateral already used by the Debtors will be treated as advances already received by Debtors from LSQ for the purchase of post-petition accounts, which will reduce the purchase price of such accounts if and when LSQ purchases them after approval of this arrangement by the Court.

28. The Order grants the Debtors, *inter alia*, the authority to use the Cash Collateral pursuant to Bankruptcy Code §§363 (c)(1) and (2) and Bankruptcy Rule 4001(c) to the extent necessary to continue the operation of its business and to preserve the value of its estate during the course of the Chapter 11 case, subject to the Budget.

29. Section 363(a) of the Bankruptcy Code states as follows:

"In this section, "cash collateral" means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of properties subject to a security interest as provided in Section 552(b) of this title, whether existing before or after the commencement of a case under this title."

30. Section 363(c)(1) of the Bankruptcy Code provides as follows:

"(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1304, 1203, or 1204 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."

31. Section 363(d) of the Bankruptcy Code provides as follows:

"(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section only to the extent not inconsistent with any relief granted under section 362(c), 362(e), or 362(f) of this title".

32. Accordingly, pursuant to § 363(c)(2) of the Bankruptcy Code, the consent of the Secured Creditors or authority from this Court is required to use Collateral in which they hold perfected security interests.

### **Adequate Protection**

33. The purpose of adequate protection is to ensure that the secured creditor receives the value for which it bargained pre-bankruptcy. *In re Swedeland Development Group, Inc.*, 16 F.3d 552 (3rd Cir. 1994); *In re Dunes Casino Hotel*, 69 B.R. 784, 793 (Bankr. D.N.J. 1986), citing *In re Coors of the Cumberland*, 19 B.R. 313 (Bankr. M.D. Tenn. 1982). See also, *In re 495 Central Park Ave. Corp.*, 136 B.R. 626 (Bankr. S.D.N.Y. 1992). Adequate protection is designed to safeguard the secured creditor from diminution in the value of its interest during the Chapter 11 reorganization. *In re Nice*, 355 B.R. 554, 563 (Bankr. N.D. Va. 2006) (“adequate protection is solely a function of preserving the value of the creditor’s secured claim as of the petition date due to a debtor’s continued use of the collateral”).

34. Because the term “adequate protection” is not defined in the Bankruptcy Code, the precise contours of the concept are necessarily determined on a case-by-case basis. *MBank Dallas, N.A. v. O’Connor (In re O’Connor)*, 808 F.2d 1393 (10th Cir. 1987). *In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1086); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); *In re Beker Industries Corp.*, 58 B.R. 725 (Bankr. S.D.N.Y. 1986); see also *In re JKJ Chevrolet, Inc.* 190 B.R. 542, 545 (Bankr. E.D.Va. 1995) (adequate protection is a flexible concept that is determined by considering the facts of each case).

35. The Order provides that, as adequate protection for the Debtors' use of Cash Collateral and the sale of accounts to LSQ free and clear of interests, as well as the imposition of senior liens in favor of LSQ, any adequate protection payments ordered by the Court to any creditor that has an interest in Cash Collateral will be paid from the Debtors' unencumbered assets, or from the proceeds received by the Debtors from the sale of accounts to LSQ, and that LSQ's interest in the accounts and collections from the accounts shall remain unencumbered by the liens of any pre-petition creditors, which shall in any event no longer attach to the said accounts and collections sold to LSQ. All liens of pre-petition creditors on Cash Collateral shall cease attaching to post-petition account accounts and collections from them, and such creditors shall not be entitled to replacement liens on such accounts and the collections therefrom, but shall be relegated to seeking adequate protection payments as provided above.

36. The Debtors submit that, in order to preserve the Debtors' estate(s) and ensure the viability of the Debtors' business during the Chapter 11 case, LSQ should be granted the post-petition liens and other relief described herein.

#### **The Budget**

37. The Debtors propose to use proceeds or advances from the sale of accounts by Debtors to LSQ only for ordinary and necessary limited operating expenses in connection with the ordinary operation of the Debtors' business substantially in accordance with the operating budget annexed hereto as *Exhibit "G"* (the "Budget"). The Debtors believe that the Budget includes all reasonable, necessary and foreseeable expenses to be incurred in the ordinary course of operating the Debtors' business for the period set forth in the Budget. The Debtors believe that the use of the proceeds from the sale of accounts to LSQ in accordance with the Budget will provide the Debtors

with adequate liquidity to pay ordinary course payable administrative expenses as they become due and payable during the period covered by the Budget without any significant diminution in value of the Collateral.

38. All accounts will be collected in the manner provided in the Post-Petition Invoice Purchase/Sale Agreement and LSQ will be the owner of the accounts, as provided therein. The proceeds of the accounts sold to LSQ that are paid by account debtors will be delivered to LSQ as provided in such Post-Petition Invoice Purchase/Sale Agreements without further order of the court. The Debtors and LSQ will apply the sums collected to the amounts due LSQ, including without limitation the Daily Rate Fee, chargebacks, discounts, fees, and other charges described in the Post-Petition Invoice Purchase/Sale Agreements, transfer all accounts receivable, and otherwise administer the Post-Petition Invoice Purchase/Sale Agreements in the ordinary course of business pursuant to the terms of such agreements, without further order of the court. Because the executory contracts have been assumed by Debtors and the transaction is in other respects a post-petition transaction, the automatic stay is modified to permit LSQ to enforce its rights and remedies without further order of the court.

**PROCEDURAL BASIS FOR RELIEF REQUESTED**

39. Typically, a motion for authority to use cash collateral and other relief requested herein may commence no earlier than 14 days after service of the motion pursuant to Bankruptcy Rule 4001. However, that same rule provides that the court may conduct a preliminary hearing before such 14 day period expires under certain circumstances.

40. Federal Rule of Bankruptcy Procedure 9006(c) provides as follows:

(c) *Reduction.*

(1) *In General.* Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

(2) *Reduction Not Permitted.* The court may not reduce the time for taking action under Rules 2002 (a)(4) and (a)(8), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 8002, and 9033(b).

41. Thus, the Federal Rules of Bankruptcy Procedure specifically authorize the Court to hear an application such as the Application herein on shortened notice, for cause shown.

42. The Debtors respectfully submit that sufficient cause exists for scheduling a preliminary hearing on shortened notice to consider the Application and refers the Court to the Declaration of Buddy D. Ford, Esq. pursuant to Local Bankruptcy Rule 9077-1(a) in support of an order scheduling hearing on shortened notice, submitted herewith.

#### **Request For Waiver Of Stay**

43. The Debtors further seek a waiver of the stay of the effectiveness of the Order that may be imposed by any applicable Bankruptcy Rule. As set forth above, the use of Collateral is essential to prevent potentially irreparable damage to the Debtors' value and ability to reorganize. Accordingly, the Debtors submit that sufficient cause exists to justify a waiver of any stay imposed by the Bankruptcy Rules, to the extent applicable.

#### **Notice**

44. This Motion is being served on notice to the Secured Creditors, all other parties asserting secured claims against the Debtors, the United States Trustee and all other parties entitled to notice pursuant to Bankruptcy Rule 4001(c) and (d), including but not limited to the Debtors'



twenty (20) largest unsecured creditors.

**WHEREFORE**, FLORIDA DIRT SOURCE, LLC and FDS TRUCKING, LLC, the Jointly Administered Debtors, respectfully request that this Honorable Court authorize the Debtors to: (1) assume the executory contracts with Centennial Bank; (2) enter into the Post-Petition Invoice Purchase/Sale Agreements (including the post-petition liens) with LSQ and sell its accounts to LSQ thereunder free and clear of interests, and grant security interests in favor of LSQ, as requested above; and (3) use the cash collateral, all in accordance with the terms of the attached proposed Order and this Application, that the automatic stay be modified to permit LSQ to enforce its rights under the Post-Petition Invoice Purchase/Sale Agreements; and for such other and further relief as is just and proper.

**RESPECTFULLY SUBMITTED**, on this 23rd day of April, 2018.

BUDDY D. FORD, P.A.,

/s/ Buddy D. Ford

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Attorney for Debtor

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 23rd day of April, 2018, a true and correct copy of the foregoing was sent by ■ CM/ECF Electronic Mail to:

Denise E Barnett on behalf of U.S. Trustee United States Trustee - TPA  
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and, by ■ U.S. Mail to:

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Florida Dirt Source, LLC & FDS Trucking, LLC, Attn: G. William Rousseau, Managing  
Member, 5130 Broad Street, Brooksville, FL 34601  
Twenty (20) Largest Unsecured Creditors.

/s/ Buddy D. Ford  
Buddy D. Ford, Esquire (FBN: 0654711)  
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