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5 Proposed Attorneys for the Debtors and Debtors-in-Possession

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

IN RE:) CHAPTER 11
)
GEORGE RODOLFO PAGLIARO DBA) CASE NO: 8:10-BK-15975-TA
PAGLIARO CONSTRUCTION INC. AND)
PAMELA JEAN PAGLIARO D/B/A) DEBTORS IN POSSESSIONS EMERGENCY
13 PAGLIARO CONSTRUCTION INC.,) MOTION FOR ORDER AUTHORIZING USE
) OF CASH COLLATERAL TO OPERATE
14 Debtors.) DEBTORS' BUSINESS; MEMORANDUM
) OF POINTS AND AUTHORITIES;
15) DECLARATION OF DEBTOR IN SUPPORT
16) THEREOF

TO THE HONORABLE THEODOR ALBERT, UNITED STATES BANKRUPTCY
JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND OTHER PARTIES IN-
INTEREST:

GEORGE RODOLFO PAGLIARO D/B/A PAGLIARO CONSTRUCTION INC. AND
PAMELA JEAN PAGLIARO D/B/A PAGLIARO CONSTRUCTION INC., Debtors and Debtors-
In-Possession ("Debtors"), hereby submit their Emergency Motion for Order Authorizing Use of
Cash Collateral to Operate Debtors' Business ("Cash Collateral Motion") and in support of the Cash
Collateral Motion submit the following:

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/ / / /
/ / / /

I.

INTRODUCTION

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3 In connection with its construction business operations, the Debtors have an immediate and
4 ongoing need for use of “cash collateral” as that phrase is used and defined in the Bankruptcy Code.
5 By this Cash Collateral Motion, the Debtors seek a Court Order authorizing the use of cash
6 collateral of Pagliaro Construction, Inc., a California corporation, for an interim period of
7 approximately three (3) weeks and request a final hearing on use of cash collateral in approximately
8 twenty-one (21) days. The Debtors have prepared a cash collateral budget which provides line item
9 detail and anticipated cash needs on a weekly basis. This budget is attached as Exhibit “A” to the
10 Declaration of George Pagliaro (“Pagliaro Declaration”). The emergency budget was prepared by
11 the Debtors. The emergency budget is limited both as to time as to the extent of the funds
12 requested.

13 The Debtors believe that payment of the expenses set forth in the emergency budget is
14 necessary to the successful operation of the Debtors’ business during the next twenty-one (21) days.
15 Use of cash collateral is necessary to operate the Debtors’ business for the benefit of all creditors.
16 If the Debtors are not immediately permitted use of the cash collateral of Pagliaro Construction,
17 Inc., the Debtors will be unable to pay its operating expenses and normal and customary obligations
18 that must be immediately paid if value is to be realized from the Debtors’ assets. The costs and
19 expenses associated with operating the Debtors’ business are necessary to preserve the value of the
20 Debtors’ business. As set forth below, without cash to operate, the Debtors’ business will be
21 irretrievably lost and the Debtors will be completely unable to reorganize. Accordingly, approval of
22 the Cash Collateral Motion is necessary without delay.

23 In summary, for the reasons set forth herein and the Pagliaro Declaration, the Debtors
24 request that this Cash Collateral Motion be granted in its entirety.

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II.

BACKGROUND

A. Case Commencement

The Debtors filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on May 5, 2010 ("Petition Date"). The Debtors are continuing in the operation and management of its business pursuant to Bankruptcy Code Sections 1107 and 1108.

B. Debtors' Background

The Debtors own and operate a construction company called Pagliaro Construction, Inc. Through the company and by Debtors own efforts, they constructed three (3) luxury homes. The homes are located at 5390 Carlsbad Blvd., Carlsbad, California; 496 The Strand, Oceanside, California; and 502 The Strand, Oceanside, California. All of the properties have significant equity. Largely through the relationships developed over many years in the industry, the company and the Debtor enjoy great respect among its customer and supplier base. Despite their recent financial difficulties, the Debtors have been continually support by their suppliers and customers who have advised that notwithstanding financial difficulties and this bankruptcy filing, there is a continued intent to do future business. Indeed, the Debtors are optimistic about the future and believe that successful reorganization is more than possible.

C. Events Leading to the Bankruptcy Filing

In 2008 and 2009 the county saw the largest slump in residential real estate prices in recent history. The Debtors were completing said spec homes at a terrible financial time. Although, many great efforts were made to complete the projects and sell or the homes, the Debtor ran out of time and money on many fronts. In addition, the Debtors faced many civil lawsuits and potential foreclosure proceedings from various creditors.

This has effectively crippled the Debtors and substantially negatively impacted Debtors cash flow. The Debtors believe, however, that they have the authority to use its cash collateral, the Debtors will be able to do business, have customers pay on account, and Debtors will be able to continue operations in a proper fashion.

1 **D. Debtors Current Financial Information**

2 The Debtors Bankruptcy Schedules indicate the Debtors have total assets of \$16,034,644.19.
3 The Debtors have listed total secured claims of \$11,411,287.33, total priority claims of
4 \$118,191.47 and total general unsecured claims of \$378,353.25.

5 The Debtors had gross sales of approximately \$819,846.00 in 2009 and \$1,547,853.00 in
6 2008. The Debtors gross income for the first quarter of 2010 was \$269,436.00.

7 **E. Debtors Post-Petition Operations**

8 As set forth, the Debtors have taken steps to significantly decrease its overhead expenses,
9 including staff, materials, utilities, and the like. With reduced operations, the Debtors believe they
10 can generate monthly profits, sell real property, and reorganize. Issues that will be addressed during
11 the bankruptcy will principally relate to the sale of the spec homes with the equity to benefit all
12 creditors.

13 In its post-petition cash flow budget, the Debtors believe it can generate cash flow over
14 expenses in the approximate amount of \$18,449.50 during the next 3 weeks of this Chapter 11
15 proceeding. Other issues that will be addressed during this case include setting of a bar date for
16 filing claims, formulating a plan of reorganization which will be accepted by creditors and the
17 investigation of possible preferential transfers paid to creditors during the ninety days prior to the
18 bankruptcy filing.

19 The original vision and opportunity for the Debtors business remain as viable as when the
20 Debtors were formed and the Debtors fully expect to emerge from restructuring in a strong and
21 sustainable form which will permit it to meet its early promise. The Debtors do not believe that
22 further adequate protection is required because the value of the real property collateral is not
23 diminishing and creditors will be in the same or better position it enjoyed prior to the Petition Date.

24 **F. Debtor Has an Immediate Need for the Use of Cash Collateral**

25 The Debtor has an immediate need to use cash collateral. The Debtor needs cash to pay
26 operating expenses consistent with an emergency motion filed concurrently, to pay vendors and
27 supplies in the ordinary course of business so that the Debtor can continue to operate its business
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1 and generate revenues to fund its plan of reorganization. Without the ability to use cash collateral it
2 would be impossible for the Debtors to operate its business.

3 The Debtors have prepared a proposed emergency budget on a weekly basis for the next
4 three (3) weeks. The budget was prepared by the Debtors. The emergency budget is limited both
5 as to time and as to the extent of funds requested. The Debtors believe that payment of the
6 expenses set forth in the emergency budget is necessary to the successful operation of the Debtors
7 business during the next few weeks of its bankruptcy case. A true and correct copy of the Debtors
8 proposed budget is attached as **Exhibit "A"**.

9 **III. MEMORANDUM OF POINTS AND AUTHORITIES**

10 **A. The Court May Authorize the Interim Use of Cash Collateral**

11 The Debtors use of property of the estate is governed by Section 363 of the Bankruptcy
12 Code, which provides in part:

13 If the business of the debtor is authorized to be operated under section . . .
14 1108 . . . of this title and unless the court orders otherwise, the trustee may
15 enter into transactions, including the sale or lease of property of the estate, in
16 the ordinary course of business, without notice or a hearing, and may use
17 property of the estate in the ordinary course of business without notice or a
18 hearing.

19 Bankruptcy Code Section 363(c)(1) permits the Debtors to use, sell or lease property in
20 the ordinary course of business. However, Section 363(c)(3) imposes an absolute prohibition on the
21 use, sale or lease of cash collateral unless (1) the creditor with an interest in the collateral consents,
22 or (2) the court authorizes the use after notice and a hearing.

23 Cash collateral is defined in Section 363(a) as "cash, negotiable instruments, documents of
24 title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate
25 and an entity other than the estate have an interest"

26 The Debtors intend to negotiate in good faith with secured creditors to reach a long term
27 consensual use of cash collateral. At this time, the Debtors do not have any agreement with
28 creditors with respect to cash collateral use.

Where use of cash collateral is authorized, it may only be used to pay the actual and
necessary expense of operation. Matter of Plaza Family Partnership, 95 B.R. 166 (E.D. Cal.

1 1989); In re MadCat Two, Inc., 120 B.R. 990 (Bankr E.D. Ark. 1990). The Debtors submit that all
2 of the expenses listed on the emergency budget are necessary to the efficient operation of the
3 Debtors' business. The Debtors need cash to pay operating expenses consistent with an emergency
4 motion filed concurrently, and to pay vendors and supplies in the ordinary course of business so that
5 the Debtors can continue to operate its business and generate revenues to fund its plan of
6 reorganization. The items and amounts contained on the budget are consistent with a business in
7 the Debtors' industry and with a case of the Debtors size and complexity.

8 The use of Cash Collateral pursuant to this Motion is justified in this case because absent the
9 use of the Cash Collateral, the Debtors' business will suffer immediate and irreparable harm and
10 will not survive, all to the injury of the estate's unsecured creditors. The preservation of the going-
11 concern value of the Debtors is of the utmost importance to the Estate. Moreover, the interests of
12 all creditors will be better served by the continued operation of the Debtors' business. Without the
13 benefits being afforded by the use of the Cash Collateral, the Debtors' ability to maintain its
14 business operations, preserve the going-concern value of its business and assets, provide an
15 opportunity for the Debtors to reorganize its business operations or sell all of its real property assets
16 as a going concern under Section 363(b) and (f) of the Bankruptcy Code and maximize the value of
17 the estate's assets, will be destroyed.

18 Pursuant to Federal Rule of Bankruptcy Procedure 400 1(b), the court may grant Debtors'
19 request to use the Cash Collateral on an interim basis subject to a final hearing on the Motion no
20 earlier than fifteen days after the proper service of the Cash Collateral Motion if the Debtors will
21 suffer immediate and irreparable harm pending a final hearing. As noted, the Debtors will be
22 unable to pay the company's operating expenses absent the use of the Cash Collateral.
23 Accordingly, the Debtors believe that it will suffer irreparable and immediate harm if the Cash
24 Collateral Motion is not granted quickly on an interim basis, subject to a final hearing.

25 1. Requests a Final Hearing on the Motion

26 Debtors request that the court set a final hearing on the Cash Collateral Motion
27 approximately twenty-one (21) days after the entry of an the entry of an order by the Court
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1 approving Debtors interim use of the Cash Collateral so that all parties will have the ample notice
2 and opportunity to respond to this Cash Collateral Motion.

3 2. Creditors are Adequately Protected

4 Pursuant to Section 363(e) of the Bankruptcy Code, the Court may condition the use of
5 property, including cash collateral, as necessary to provide adequate protection of an entity's interest
6 in such cash collateral. The question of whether a secured party's interest in collateral is adequately
7 protected, by its nature, must be determined on a case-by-case basis. In re Belco, Inc., 38 B.R.
8 525, 527 (Bankr. W.D. Ok. 1984); City Nat'l Bank v. San Clemente Estates (In re San Clemente
9 Estates), 5 B.R. 605, 609 (Bankr. S.D. Cal. 1980) ("adequate protection must be applied in light of
10 the peculiar facts of each case and upon equitable considerations arising there from.").

11 Adequate protection is intended to accommodate for the risk of "decrease in the value of [the
12 secured creditor's] interest in such property." Generally, adequate protection is sought where the
13 collateral is expected to depreciate during the course of the bankruptcy, either through use or time.
14 In re George Ruggiere Chrysler-Plymouth, Inc., 727 F.2d 1017, 1019 (11th Cir. 1984). Therefore,
15 if there is no diminution in the value of the assets, secured creditors are not entitled to adequate
16 protection. See, United States v. Booth Tow Servs., Inc., 64 B.R. 539, 543 (W.D. Mo. 1985).

17 Here, the Debtors purpose for requesting the use of the Cash Collateral is the preservation of
18 the Estate's assets and the protection against any diminution in their value. The right to use the
19 Cash Collateral for this purpose is well-recognized. See, e.g., In re Marion Street Partnership, 108
20 B.R. 218, 227 (Bankr. D. Minn. 1989) (allowed the debtor to use the cash collateral to pay the
21 ordinary expenses and management fees without requiring further adequate protection); In re
22 Orlando Trout Creek Ranch, 80 B.R. 190, 192 (Bankr. N.D. Cal. 1987); (adequate protection
23 exists when the debtors use cash collateral for its ordinary and necessary operating expenses so
24 long as the value of the underlying collateral is maintained); Stein v. United States Farmers
25 Home Adm. (In re Stein), 19 B.R. 458, 460 (Bankr. E.D. Pa. 1982) (use of cash collateral
26 authorized despite creditor being undersecured when such use was necessary to the continued
27 operations of the debtor); Hartigan v. Pine Lake Village Apartment Co. (In re Pine Lake Village
28 Apartment Co.), 16 B.R. 750, 756-57 (Bankr. S.D.N.Y. 1982) (debtor permitted to use cash

1 collateral generated from rental income to enhance the value of real property which also secured
2 creditor's claim). The Debtors are not proposing to alter the extent, priority or validity of the liens
3 held by secured creditors. The Debtors will continue operations and as a result of such operations,
4 believes that creditor's collateral position will actually increase.

5 Although the term "adequate protection" is not expressly defined in the Bankruptcy
6 Code, section 361 provides three non-exclusive but illustrative examples of what constitutes
7 adequate protection: (1) periodic cash payments equivalent to the decrease in the value of the
8 collateral; (2) an additional or replacement lien to the extent of the collateral's decrease in value; and
9 (3) such other relief as will result in the realization by the creditor of the "indubitable equivalent"
10 of its interest in the property. See, 11 U.S.C. § 361 (2008). To determine whether a secured party's
11 interest in cash collateral is adequately protected the court must determine (1) the value of the cash
12 collateral, and (2) whether the proposed use of the cash collateral threatens such value. George
13 Ruggiere, 727 F.2d at 1020; see also United Savings Association of Texas v. Timbers of Inwood
14 Forest Associates, 484 U.S. 365, 108 S.Ct. 626, 630 (1988). If the collateral in which the creditor
15 has a security interest is worth less than the amount owed to the creditor, the debtor must only
16 provide adequate compensation to the extent that the value of the collateral is decreasing. Timbers,
17 108 S.Ct. at 629; In re McCombs Properties VI, Ltd., 88 B.R. 261, 266 (Bankr. C.D. Cal. 1988)
18 (post-Timbers case; adequate protection must be provided if the value of the collateral is likely to
19 diminish during the time the cash collateral is used).

20 Here, there is ample equity in the Debtors' assets to protect secured creditors. The
21 Debtors are informed that the principal balance due to secured creditors on the Petition Date
22 was approximately \$11,411,287.33. The collateral that secures such obligation is worth
23 approximately \$16,000,290.00 and is not expected to diminish in value during the period
24 covered by the Cash Collateral Motion. As set forth in the emergency budget attached hereto,
25 Debtors will continue to enjoy income from post-petition operations and projects it will have the
26 financial resources to pay the items listed in the budget.

27 The Debtors are also prepared to grant creditors replacement liens and similar protections
28 commonly afforded secured creditors whose cash collateral is being utilized. The combination of

1 equity and replacement liens should be more than sufficient to protect creditors, especially given the
2 broad interpretation of adequate protection. "[A]dequate protection must be determined liberally,
3 permitting debtors maximum flexibility in structuring a proposal for adequate protection."
4 Unsecured Creditors' Comm. v. Jones Truck Lines, Inc. (In re Jones Truck Lines, Inc.), 156 B.R.
5 608, 610 (W.D. Ark. 1992) (citing In re Martin, 761 F.2d 472, 474 (8th Cir. 1985).

6 **B. Alternatively, Debtors are Authorized Under Bankruptcy Code § 506(c) to Use**
7 **the Cash Collateral to Operate its Business**

8 Bankruptcy Code section 506(c) provides an alternative ground for authorizing Debtors use
9 of the Cash Collateral. Section 506(c) states, in relevant part: The trustee may recover from property
10 securing an allowed secured claim, the reasonable, necessary costs and expenses of preserving . . .
11 the property to the extent of any benefit to the holder of such claim. 11 U.S.C. § 506(c) (2008).

12 In interpreting section 506(c), the Ninth Circuit has held that the Code does not "require that the
13 claimant have the best interests of the secured creditor in mind, but only that the expenditures be
14 'reasonable, necessary costs and expenses of preserving,' or disposing of, such property. North
15 County Jeep and Renault v. General Elec. Credit Corp. (In re Palomar Truck Corp.), 951 F.2d 229.
16 232 (9th Cir. 1991). Accordingly, under § 506(c), the trustee or debtor-in-possession may use the
17 cash collateral of a secured creditor to preserve that creditor's collateral. See In re 499 W. Warren
18 Street Assocs., Ltd. Partnership, 142 B.R. 53, 57-58 (Bankr. N.D.N.Y. 1992); In re Cardinal
19 Industries, Inc., 118 B.R. 971, 981 (Bankr. S.D. Ohio 1990); In re Pine Lake Village Apt. 6, 16
20 B.R. 750, 756 (Bankr. S.D. N.Y. 1982) (in each of these cases, the trustee or debtor-in-
21 possession was allowed to deplete cash collateral to operate, maintain, and preserve income
22 producing real property).

23 Given the offer of replacement liens and equity to the secured creditors in this case, the
24 Debtors do not believe application of section 506 is necessary. Moreover, the Debtors intend to
25 move rapidly with their reorganization efforts, to negotiate with creditors for a consensual use of
26 cash collateral, and to repay creditors in full. As such the Debtors do not anticipate that secured
27 creditors will object to the relief requested herein.

1 C. Approving the Use of Cash Collateral for an Interim Period on a Shortened
2 Time Basis is Appropriate

3 The Debtors seek this Court's authorization to use the Cash Collateral on an interim basis
4 and requests that this Court conduct a preliminary hearing on this Cash Collateral Motion as
5 authorized by Federal Rule of Bankruptcy Procedure 4001(b)(2) which provides as
6 follows:

7 (2) Hearing. The court may commence a final hearing on a
8 motion for authorization to use cash collateral no earlier than 15 days
9 after service of the motion. If the motion so requests, the court may
10 conduct a preliminary hearing before such 15 day period expires, but
11 the court may authorize the use of only that amount of cash collateral
12 as is necessary to avoid immediate and irreparable harm to the estate
13 pending a final hearing.

14 The Debtors have an emergency need for use of the Cash Collateral to pay their operational
15 expenses and other costs associated with operation of Debtors' business. The Debtors do not have
16 the luxury of time to wait for the fifteen day notice period to expire as provided under Federal Rule
17 of Bankruptcy Procedure 4001(b)(2). Without immediate use of the Cash Collateral, the Debtors'
18 business will be lost and the Debtors' creditors will suffer.

19 Bankruptcy Code Section 102(1) defines "notice and hearing" to mean such notice as is
20 appropriate in the particular circumstances and opportunity for hearing, but authorizes the Court to
21 enter an order approving the Cash Collateral Motion if there is insufficient time for the
22 regularly prescribed number of days and if appropriate notice is given.

23 Federal Rule of Bankruptcy Procedure 9006(c) provides:

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

Granting the use of the Cash Collateral pursuant to the terms set forth above on an
emergency basis is justified in this case because:

1. If the Debtors are not immediately authorized to use the Cash Collateral, the
Debtors going concern value of the Debtors' business operations will be lost. The Debtors have no

1 other source of funds available to pay its operating expenses.

2 2. Absent the immediate use of the Cash Collateral, the Debtors' business
3 will suffer immediate and irreparable harm and will not survive, all to the injury of the Estate's
4 unsecured creditors. The preservation of the going-concern value of the Debtors is of the utmost
5 importance to the Estate.

6 3. Moreover, the interests of all creditors will be better served by the continued
7 operation of the Debtors' business. Without the benefits being afforded by the use of the
8 Cash Collateral, the Debtors' ability to maintain business operations, preserve the going-
9 concern value of the Debtors business and assets, provide an opportunity to reorganized the
10 Debtors business operations and maximize the value of the Estate's assets, will be destroyed.

11 4. Immediate entry of an order approving the Cash Collateral Motion will minimize
12 disruption of the Debtors business as a going concern, will preserve and maintain the assets of the
13 Debtors' Estate, will increase the possibility of a successful reorganization, will avoid immediate
14 and irreparable harm, and is in the best interest of the Debtors bankruptcy Estate and its creditors.

15 Accordingly, the Debtors seek this Courts authorization to use the Cash Collateral on an
16 interim basis and requests that this Court set a final hearing approximately twenty-one (21) days
17 from entry of the order granting the Cash Collateral Motion.

18
19 **IV. CONCLUSION**

20 For all of the foregoing reasons, the Debtors respectfully submit that good cause exists to
21 grant this Cash Collateral Motion and requests that the Court enter an order as follows:

22 1. Authorizing the Debtors to use Cash Collateral consistent with the emergency budget
23 attached hereto.

24 2. Authorizing the Debtors to grant replacement liens against post-petition revenue as
25 necessary to cover any diminution in creditors' collateral following the Petition Date.

26 3. Setting a final hearing on use of cash collateral for approximately twenty-one (21)
27 days from entry of the order granting the Cash Collateral Motion.

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1 4. Authorizing the Debtors to sign such documents and carry out such actions as are
2 consistent with the purpose of the Cash Collateral Motion.

3 5. And for such other and further relief as the Court deems just and proper.
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5 Dated: June 16, 2010

Respectfully submitted,

6 RENDA LAW OFFICES, P.C.

7 By: /s/ Vincent Renda
8 Vincent Renda, Esq.
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DECLARATION OF GEORGE PAGLIARO

I, George Pagliaro, declare:

1. I am the Debtor and Debtor in Possession, and the President of Pagliaro Construction, Inc., a California corporation. I have personal knowledge of the facts set forth herein and could, if called as a witness, competently testify thereto. I am also personally familiar with, and am custodian of, the records as they pertain to the financial records set forth herein.

2. I am familiar with our bankruptcy proceeding and make this Declaration in support of the Debtors' Motion for Order Authorizing Use of Cash Collateral to Operate the Debtors Business ("Cash Collateral Motion"). Unless otherwise noted, capitalized terms herein have the meaning as set forth in the Cash Collateral Motion.

3. We filed a voluntary petition for relief under Chapter 11 of United States Bankruptcy Code on May 5, 2010 ("Petition Date"). We are continuing in the operation and management of our business.

4. Largely through the relationships we have developed for many years in the industry, we enjoy great respect among our customer base. Despite our recent financial difficulties, we have continually been supported by our customers who have advised that notwithstanding financial difficulties and this bankruptcy filing, customers intend to and will be doing further business with our company. Indeed, we are optimistic about the future and possibilities of reorganization.

5. Our Bankruptcy Schedules indicate we have total assets of \$16,034,644.19. In addition, we have listed total secured claims of \$11,411,287.33, total priority claims of \$118,191.47 and total general unsecured claims of \$378,353.25.

6. As set forth above, we have taken steps to significantly decrease our overhead expenses. With reduced operations, we believe we can generate monthly profits and reorganize. Issues that will be addressed during the bankruptcy will principally relate to the sale of the spec homes listed in our Bankruptcy Petition to the benefit of all creditors.

1 7. We believe, that if we have the authority to use cash collateral as proposed by this
2 Cash Collateral Motion, we will be able to gain customer confidence, customers will pay
3 on account, we will be able to continue operations, and reorganize.

4 8. In our post-petition cash flow budget, we believe we can generate cash flow over
5 expenses in the approximately amount of \$18,449.50 during the next 3 weeks of this Chapter
6 11 proceeding. Further, we believe there will be an increase in creditor's collateral base during this
7 same period.

8 9. Other issues that will be addressed during this case include setting of a bar date
9 for filing claims, formulating a plan of reorganization which will be accepted by creditors and
10 the investigation of possible preferential transfers paid to creditors during the ninety days prior to
11 the bankruptcy filing.

12 10. The original vision and opportunity for our business remains as viable as when we
13 formed and we fully expect to emerge from restructuring in a strong and sustainable form which
14 will permit us to meet our early promise.

15 11. As of the Petition Date, the total amount owing to secured creditors was
16 approximately \$11,411,287.33.

17 12. Based on this, we propose to offer replacement liens where necessary against
18 revenue generated post-petition. In addition, secured creditors will maintain whatever liens they
19 had prior to the Petition Date. We do not believe that further adequate protection is required
20 because the value of the collateral is not diminishing and creditors will be in the same or better
21 position they enjoyed prior to the Petition Date.

22 13. We have an immediate need to use cash which is arguably subject to liens
23 in favor of creditors. We need cash collateral to pay operating expenses and other costs consistent
24 with an emergency motion filed concurrently to pay expenses in the ordinary course of business so
25 that we can continue to operate the business and generate revenues to fund the plan of
26 reorganization and sell real property as requested herein. Without the ability to use cash collateral it
27 would be impossible for us to operate the business.
28

1 14. We have prepared a proposed emergency budget on a weekly basis for the next three
2 (3) weeks. The emergency budget is limited both as to time and as to the extent of funds
3 requested. We believe that payment of the expenses set forth in the emergency budget is necessary
4 for the successful operation of our business during the next few weeks of the bankruptcy case. A
5 true and correct copy of the proposed budget is attached hereto **Exhibit "A"**.

6 I declare under penalty of perjury under the laws of the United States of America that the
7 foregoing is true and correct.

8 Executed at San Clemente, California on June 15, 2010.
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11 By: /s/ George Pagliaro
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EXHIBIT A

Pagliari Construction Inc Case: 10-BK-15975-TA		Filed 5/5/10	Entered 5/5/10
Projected 3-Week Cash Flow			
	<u>Wk of 6/19</u>	<u>Wk of 6/26</u>	<u>Wk of 7/3</u>
Beginning Cash	1,200.00	3,764.00	10,516.00
A/R Collections	2,564.00	28,598.00	52,978.50
Cash on Hand	3,764.00	32,362.00	63,494.50
Material Requirements		14,822.00	27,100.00
Less Inventory on hand			
Material Purchases	0.00	14,822.00	27,100.00
Labor			
Building Rent			
Indirect Materials		2,200.00	
Maintenance & Utilities			
Electricity - add'l deposit			
Other Supplies		600.00	
Rentals		500.00	1,500.00
G & A costs		4,224.00	8,224.00
Excess Property tax			
Excess Payroll Taxes			
Ending Cash	3,764.00	10,516.00	28,170.50

In re: GEORGE RODOLFO PAGLIARO dba PALIGARO CONSTRUCTION INC. and PAMELA JEAM PAGLIARO dba PALIGARO CONSTRUCTION INC, Debtor.	CHAPTER 11 CASE NUMBER 8:10-BK-15975
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NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
40 Crossways Park Drive, Woodbury, NY 11797

A true and correct copy of the foregoing document described as Debtors in Possessions Emergency Motion for Order Authorizing Use of Cash Collateral to Operate Debtors' Business; Memorandum of Points and Authorities; Declaration in Support Thereof will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On 6/16/10, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov
Nancy S. Goldenberg nancy.goldenberg@usdoj.gov

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On 6/16/10 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Honorable Theodor Albert, United States Bankruptcy Court, 411 West Fourth Street, Suite 5085, Santa Ana, CA 92701

Jeffrey S. Kaufman, Esq., 895 Dove Street, Fifth Floor, Newport Beach, CA 92660

Alisa C. Lacey, Esq., Stinson Morrison Hecker, LLP, 1850 N. Central Avenue, Suite 2100, Phoenix, AZ 85004

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served):

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____ I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

6/16/10
Date

Laurie Dillon
Type Name

/s/ Laurie Dillon
Signature