



**SO ORDERED.**

**SIGNED this 16 day of February, 2011.**

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.  
PLEASE SEE DOCKET FOR ENTRY DATE.**

**Marcia Phillips Parsons  
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE**

<b>In re:</b>	)	
	)	<b>Case No. <u>10-53097</u></b>
<b>GARY PHILLIPS CONSTRUCTION, LLC</b>	)	<b>Chapter 11</b>
<b>Debtor.</b>	)	

**AMENDED AGREED ORDER FOR INTERIM  
USE OF CASH COLLATERAL THROUGH MARCH 18, 2011**

Upon the motion (the "Motion") and the Supplemental Motion of Gary Phillips Construction, LLC (the "Debtor"), for an order pursuant to 11 U.S.C. §105, §361, §363 and §364 and Fed. R. Bankr. P. 4001 granting the Debtor authority to use property in the nature of cash collateral on an interim basis through February 18, 2011, and it appearing that the relief requested in the Motion is in the best interest of the Debtor, its estate and creditors; and it appearing that due and sufficient notice of the relief requested has been given; and after due deliberation and sufficient cause appearing thereof.

**THE COURT HEREBY FINDS:**

A. On December 3, 2010 (the "Petition Date") the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is now operating its business and managing its properties as debtor-in-possession pursuant to

Sections §363, §1107 and §1108 of the Bankruptcy Code. A Notice Of Appointment Of Committee Of Unsecured Creditors (the "Committee") was filed by the U.S. Trustee's Office on January 12, 2011 and the Committee filed on January 14, 2011 an Application for Authority to Employ Dean B. Farmer and the firm of Hodges, Doughty & Carson, PLLC as its attorneys.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1134. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2). Venue of this case and the Motion in this District is proper pursuant to 28 U.S.C. §1408 and §1409.

C. Good cause has been shown for the entry of this Order. Among other things, entry of this Order will minimize disruption of Debtor's business and operations and permit it to meet operating expenses. The cash collateral use arrangement authorized hereunder is vital to avoid immediate and irreparable harm to the Debtor's estate. Absent the use of cash collateral, the Debtor's estate would not have any funds to satisfy any obligations. Therefore allowing the use of such cash collateral is in the best interest of Debtor's estate.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. Use of Cash Collateral. The Debtor is hereby authorized to use Cash Collateral (as hereinafter defined) during the interim period subject to provisions set forth in Interim Budget as attached as Exhibit A. Notwithstanding the foregoing, Debtor shall not be permitted to use Commercial Bank's specific Cash Collateral account which is designated as savings account XXXXX6614 without further Order of the Court.

2. Interim Budget. The Debtor is hereby authorized to pay the estimated expenses that are necessary to prevent immediate and irreparable harm to the Debtor's

estate during the interim period. Debtor's estimated income and expenses are identified in the income and expense budget attached to this order as Exhibit A and incorporated herein by reference (the "Interim Budget"). Any variance in the expense figures set forth in the Interim Budget in excess of 10% shall require approval by the Court.

3. Remittance of Cash Collateral. From and after the date of entry of this Order, the Debtor shall maintain all cash, cash equivalents, and Cash Collateral as defined in Bankruptcy Code Section 363(a) in its possession or control arising from or constituting proceeds of the Prepetition Collateral (the "Cash Collateral") in the account as designated in the Interim Budget. The Debtor is authorized to use Cash Collateral during the interim period based on a pro-rata distribution of the rents and sale proceeds received from each property in which the Secured Creditors have an interest.

4. Adequate Protection. As adequate protection, in accordance with Section §361, §362 and §363 of the Bankruptcy Code, of Citizens Bank, Commercial Bank, First Bank & Trust, First Tennessee Bank, Regions Bank, Tri-Summit Bank, TruPoint Bank, Delta Gypsum, Preston, McNees's and Probuild Company, LLC (hereinafter the "Secured Creditors") interest in and to the Prepetition Collateral, including interim adequate protection against the diminution of the value of the Prepetition Collateral resulting from the Debtor's use, sale, or lease of the Prepetition Collateral and the Cash Collateral, resulting from the imposition of the stay arising under Section §362 of the Bankruptcy Code, or resulting from the pendency of this case (the "Adequate Protection Obligations"), the Secured Creditors are hereby granted interim replacement liens in and to all assets of the estate that are within the collateral descriptions of the Secured Creditors' loan, lien, and security documents to the extent of any diminution through use

of Cash Collateral, including but not limited to cash collateral, upon which the Secured Creditors are determined to hold a valid prepetition lien whether existing on or arising after the petition date, limited to the same extent, priority, validity, and scope as the Secured Creditors' prepetition liens. Such interim replacement liens shall be deemed perfected without any other action by the Secured Creditors subject to approval of the United States Trustee. The interim liens created hereby shall: (i) secure the return to the Secured Creditors of all cash and non-cash collateral utilized by the Debtor pursuant to this Agreement; (ii) constitute a separate lien on the Collateral of each of the respective Secured Creditors; and (iii) be subordinate only to the enforceable and perfected liens and security interests in existence at the time the case was commenced, to the extent perfected pre-petition, with priority of the security interest in favor of the respective Secured Creditors. The Debtor in its Motion avers that the values of the collateral securing the Secured Creditors' loans and liens are in excess of the balances due under specific loans and liens. Nothing herein shall prohibit or otherwise restrict the Secured Creditors from asserting that they are entitled to other or additional adequate protection. With respect to the sale of Property identified in the Agreed Order Authorizing the Sale of Property, Citizens Bank, Regions Bank, TruPoint Bank, Delta Gypsum, Preston, McNees and ProBuild Company, LLC are each granted replacement liens against the funds in the Cash Collateral Account up to the amount of the proceeds retained by the Debtor in accordance with the respective Property to be sold, subject to further order of the Court with respect to any escrowed amounts identified in the Agreed Order Authorizing Sale of Property. In addition, Citizens Bank will receive a payment of \$5037.50 monthly from the rental proceeds of Coldwater Cove same to be applied to the allowed secured claim of Citizens

Bank. The first payment for January 2011 is to be made from the savings account of Phillips Construction held at Citizens Bank thereby closing the said account. Citizens shall internally transfer the funds no later than February 21, 2011 from the savings account #xxxxx-1840 and shall deliver a receipt to the Debtor for the credited payment. The February and March 2011 payments in the amounts of \$5037.50 each shall be made from the cash collateral account of the Debtor no later than February 21, 2011 and March 15, 2011 respectively. Such interim liens shall be deemed perfected without any other action by the Secured Creditors subject to approval of the U.S. Trustee's office.

5. §363(c)(1) Ordinary Course of Business. Subject to the restrictions of use of Cash Collateral set forth herein, the Debtor is authorized hereunder to operate its building, development and rental business and may enter into transactions including the lease of property of the estate in the ordinary course of business, and may use property of the estate in the ordinary course of business.

6. The Automatic Stay. The automatic stay extant under Section §362(a) of the Bankruptcy Code shall be, and it hereby is, modified in accordance with the terms and provisions of this Order. Nothing herein shall prohibit or otherwise restrict the Secured Creditors from asserting that they are entitled to relief from the automatic stay.

7. Hearings and Objections. Pursuant to Federal Rules of Bankruptcy Procedure 4001(b), an adjourned preliminary hearing on the Debtor's continued use of Cash Collateral will be held on March 15, 2011 at 9:00 a.m. in the Bankruptcy Courtroom, James H. Quillen U.S. Courthouse, 220 West Depot Street, Greeneville, Tennessee.

8. Successors. The provisions of this Order shall be binding upon and inure to the benefit of the Secured Creditors and the Debtor and their respective successors and assigns (including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtor or with respect to the properties of the estate of the Debtor).

9. Insurance. That the Debtor shall maintain insurance coverage on all property of the estate, Workmen's Compensation Insurance and General Commercial Liability Insurance in a form and amount acceptable to the Banks and the US Trustee.

10. That the United States Trustee and the IRS reserve the right to object to the claim and/or any security interest of the Secured Creditors and further reserve any and all other rights the United States Trustee and the IRS may have as provided by the United States Bankruptcy Code. The Secured Creditors reserve all rights and remedies on the issue of cash collateral to them, notwithstanding the entry of this Order.

11. That this Order for Use of Cash Collateral shall expire at 5:00 p.m. on March 18, 2011, pending any further Orders from the Court continuing the effectiveness of this Order.

12. That the Debtor shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 4001 on the date of the entry of this Order and shall so certify to the Court.

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APPROVED FOR ENTRY:

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Gary Phillips Construction LLC  
 Budget thru 3/15/11  
 Exhibit A

Case Number: 10-53097

Estimated Income from Ordinary Course Sales

Description	Sale Price	Real Estate Commission	Secured Creditor	Cash Collateral	Close Date
Coldwater Cove Land	\$ 365,000.00	8%, \$29,200.00	Citizens Bank \$308,300 (money accepted for partial release)	\$15,000.00 (less Misc. Closing Costs)	1/21/2011
Allison Hills, Lot 44 - 482 Government	\$ 200,000.00	5%, \$10,000.00	Regions Bank - \$114,313.52 (Bank payoff as of 1-24-11, per diem is \$13.99)	\$75,686.48 (less Misc. Closing Costs)	2/15/2011
Cardinal Forest, Lot 4 - 77 Duntham	\$ 179,900.00	5%, \$8995.00	TruPoint Bank - \$159,920.00 (estimated payoff)	\$1,985 (less Misc. Closing Costs)	1/28/2011
Allison Ridge, Lot 9, 992 Allison Road	\$ 164,000.00	5%, \$8200.00	TriSummit Bank - \$4000 (Closing cost credit to buyer)	\$3800 (less Misc. Closing Costs)	3/31/2011
Allison Ridge, Lot 15, 952 Allison Road	\$ 302,398.00	5%, \$15,119.90	TriSummit Bank - \$247,200 (estimated payoff)	\$20,078.10 (less Misc. Closing Costs)	4/30/2011
				\$ 116,549.58	

\$ 116,549.58

All funds deposited to CASH COLLATERAL ACCOUNT

Estimated Income from Rentals

Amount	Description	Bank
\$ 6,100.00	Rental Income- Villas st. the Old Mill	First Bank and Trust
\$ 10,075.00	Rental Income- Coldwater Cove	Citizens Bank
\$ 625.00	Rental Income-518D Pilgrim Court	Bank of Tennessee
\$ 1,500.00	984 Allison Road	TriSummit Bank
\$ 18,300.00	Total Rental Income	
\$ 18,300.00		

All funds deposited to CASH COLLATERAL ACCOUNT

Summary of CASH COLLATERAL ACCOUNT-  
 From sales above

\$ 116,549.58



AR8- Trim	\$	1,300.00	
AR8- Hardware	\$	900.00	
AR8- Carpet	\$	1,003.04	
AR8- Hardwood material	\$	2,480.00	
AR8- Hardwood labor	\$	1,300.00	
Total	\$	8,883.04	
Plus 10% miscellaneous	\$	888.30	
AR8- Total	\$	9,771.34	
Total Subcontractor/Supplier (post filing)	\$	49,552.98	
Payment to Citizens Bank as adequate assurance payment to be applied to allowed secured claim of Citizens - Coldwater Cove Condos	\$	5,037.50	
Total Monthly Expenses	\$	77,909.80	
Estimated Income - In CASH COLLATERAL ACCOUNT	\$	56,939.78	