

Case 10-64467-fra11 Doc 11 Filed 07/26/10
UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re) Case No. _____
)
) NOTICE OF **PRELIMINARY**
) HEARING ON MOTION
) FOR USE OF CASH COLLATERAL
) TO OBTAIN CREDIT
Debtor(s)) (Check One)

YOU ARE NOTIFIED THAT:

1. The undersigned moving party, _____, filed a Motion For Use of Cash Collateral To Obtain Credit (*check one*). A copy of the motion is attached; and it includes BOTH (i) the statement required by [Local Form #541.7](#), and (ii) the following allegations:

a. The immediate and irreparable harm that will come to the estate pending a final hearing is _____.

b. The amount of cash collateral credit (*check one*) necessary to avoid the harm detailed above prior to the final hearing is _____.

2. The name and service address of the moving party's attorney (or moving party, if no attorney) are: _____.

3. A **PRELIMINARY** HEARING on the motion WILL BE HELD ON _____ AT _____ IN _____.

Testimony will be received if offered and admissible.

4. If you WISH TO OBJECT to the motion, YOU MUST DO ONE OR BOTH OF THE FOLLOWING: (1) ATTEND the preliminary hearing; AND/OR (2) FILE with the Clerk of Court (i.e., if the 5-digit portion of the Case No. begins with "3" or "4", mail to 1001 SW 5th Ave. #700, Portland OR 97204; OR if it begins with "6" or "7", mail to 405 E 8th Ave #2600, Eugene OR 97401), BOTH: (a) a written response, which states the facts upon which you will rely, AND (b) a certificate showing a COPY of the response was given DIRECTLY TO the Judge, and served on the U.S. Trustee and the party named in pt. 2 above. See [Local Form #541.51](#) for details.

5. On _____ copies of BOTH this notice AND the motion were served pursuant to FRBP 7004 on the debtor(s); any debtor's attorney; any trustee; any trustee's attorney; members of any committee elected pursuant to 11 U.S.C. §705; any Creditors' Committee Chairperson [or, if none serving, on all creditors listed on the list filed pursuant to FRBP 1007(d)]; any Creditors' Committee attorney; the U.S. Trustee; and all affected lien holders whose names and addresses used for service are as follows:

Signature

(If debtor is movant) Debtor's Address & Taxpayer ID#(s) (last 4 digits)

1 Thomas W. Stilley, OSB No. 883167
 Direct Line: 503-243-1649
 2 E-mail: tom@sussmanshank.com

3 Timothy A. Solomon, OSB No. 072573
 Direct Line: 503-243-1648
 4 E-mail: tsolomon@sussmanshank.com

5 SUSSMAN SHANK LLP
 1000 SW Broadway, Suite 1400
 6 Portland, OR 97205-3089
 Telephone: 503-227-1111
 7 Facsimile: 503-248-0130

8 Attorneys for Debtor and Debtor-in-Possession

9
 10 IN THE UNITED STATES BANKRUPTCY COURT

11 DISTRICT OF OREGON

12 Peter M. Bucklin, an individual, dba PMB Development Co., and dba the Peter M. 13 and Joan B. Bucklin Revocable trust, 14 Debtor. 15 16 _____)))))))	Case No. 10-64467-fra11 MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS AUTHORIZING USE OF CASH COLLATERAL
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17 Pursuant to Section 363(c) of Title 11 of the United States Code (the "Bankruptcy
 18 Code"), Rule 4001(b) of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy
 19 Rules"), and LBR 4001-2, the above-captioned Debtor and Debtor-in-Possession
 20 ("Debtor") moves this Court for (a) entry of the Interim Order Authorizing Use of Cash
 21 Collateral and Granting Adequate Protection attached hereto as Exhibit 1 (the "Interim
 22 Order"); and, (b) after final hearing held pursuant to Bankruptcy Rule 4001(b)(2), entry
 23 of a final order authorizing Debtor to use cash collateral during the pendency of its case.

24 In support of its Motion, Debtor states as follows:

- 25 1. Except as set forth in the following sentence, the Interim Order does not
 26 contain any of the provisions listed in the Court's Guidelines Regarding Motions to Use

1 Cash Collateral or to Obtain Credit (Local Form 541.7). The Interim Order provides that
2 the liens to be granted to Premier West Bank ("Premier West"), Intervest-Mortgage
3 Investment Company ("Intervest"), and Cascade Acceptance Corp. ("Cascade")
4 (collectively the "Lenders") will attach to all non-exempt property of the estate (excluding
5 avoidance rights) in which the Lenders do not already have liens, as adequate
6 protection for the use of postpetition rents in which the Lenders have a security interest
7 (pursuant to Section 552(b)(2) of the Bankruptcy Code). The liens are being granted for
8 adequate protection purposes only, and will not be construed to enhance or improve the
9 Lenders' positions.

10 BACKGROUND

11 2. On July 26, 2010 (the "Petition Date"), Debtor filed a voluntary petition for
12 relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

13 3. Except for the prepetition appointment of a receiver for Premier West's
14 collateral described below, Debtor has continued in possession of his property and is
15 continuing to operate and manage his business as debtor in possession pursuant to
16 Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been
17 appointed in this case.

18 4. The Court has jurisdiction over this matter pursuant to 28 USC §§ 157 and
19 1334. Venue is proper in this district pursuant to 28 USC §§ 1408 and 1409. This is a
20 core proceeding pursuant to 28 USC § 157(b)(2)(M).

21 5. Debtor and Lenders are parties to various loan agreements, security
22 agreements, financing statements, deeds of trust, and other documents, and all
23 amendments thereto (collectively, the "Loan Documents"), pursuant to which the
24 Lenders assert they hold security interests and liens (the "Existing Liens") in various
25 items and parcels of real and personal property of the Debtor as described in the Loan
26

1 Documents, including, without limitation, the following described income-producing
2 properties (collectively the "Commercial Properties"):

- 3 a. Eagle Point Center ("Eagle Point")
4 Hwy 62 and Nick Young
5 Eagle Point, OR
6 Lender: Premier West (1st Trust Deed)
- 7 b. Los Banos Center ("Los Banos")
8 Hwy 152 & Ortigalita Rd.
9 Los Banos, CA
10 Lenders: Intervest (1st Trust Deed), Cascade (2nd Trust Deed)
- 11 c. Berryessa Center ("Berryessa")
12 211 Peabody Lane
13 Vacaville, CA
14 Lenders: Premier West (1st Trust Deed), Cascade (2nd Trust Deed)
- 15 d. 151 Morning Dove Trail ("Morning Dove")
16 Eagle Point, OR
17 Lenders: J.P. Morgan Chase (1st Trust Deed), (Premier West 2nd Trust
18 Deed)
- 19 e. 22262 & 22264 Hwy 62 ("Hwy 62")
20 Shady Cove, OR
21 Lenders: J.P Morgan Chase (1st Trust Deed – Duplex), Premier West
22 (2nd Trust Deed – Duplex, 1st Trust Deed – Trailer)
- 23 f. 33 Broken Stone ("Broken Stone")
24 Eagle Point, OR
25 Lenders: J.P. Morgan Chase (1st Trust Deed), Premier West (2nd Trust
26 Deed)

18 See Declaration of Peter M. Bucklin in Support of Motion for Entry of Interim and Final
19 Orders Authorizing Use of Cash Collateral (the "Bucklin Dec."), at ¶ 3.

20 6. The approximate balances owed to the Lenders as of the Petition Date
21 regarding the Commercial Properties are summarized as follows (neither Debtor nor the
22 Lenders shall be bound by the approximate amounts listed below):

- 23 a. Eagle Point: Premier West - \$3,400,000
- 24 b. Los Banos: Intervest – \$8,300,000
25 Cascade - \$2,200,000

- 1 c. Berryessa: Premier West – \$2,400,000
Cascade - \$365,000
- 2
- 3 d. Morning Dove: J.P. Morgan Chase - \$212,000
Premier West - \$193,000
- 4 e. Hwy 62: J.P. Morgan Chase - \$238,000 (Duplex)
Premier West - \$193,000 (Duplex and Trailer)
- 5
- 6 f. Broken Stone: J.P. Morgan Chase – \$220,000
Premier West - \$267,000

7 See Bucklin Dec. at ¶ 4.

8 7. The approximate values of the Commercial Properties are summarized as
9 follows (neither Debtor nor the Lenders shall be bound by the approximate amounts
10 listed below):

- 11 a. Eagle Point \$2,500,000
- 12 b. Los Banos \$5,500,000
- 13 c. Berryessa \$1,800,000
- 14 d. Morning Dove \$ 260,000
- 15 e. Hwy 62 \$ 180,000 (Duplex)
- 16 \$ 170,000 (Trailer)
- 17 f. Broken Stone \$ 250,000

18 See Bucklin Dec. at ¶ 5.

19 8. Debtor operates the Commercial Properties in partnership with the co-
20 owners of those properties (the “Co-Owners) under the assumed business name PMB
21 Development Co. Ownership of those properties is held in the following percentages:

- 22 a. Eagle Point - Peter & Joan Bucklin 48%
Jeffrey & Catherine Iverson 18%
23 James Ollendick 17%
24 Mike Johnson (unrecorded) 17%
- 25 b. Los Banos - Peter & Joan Bucklin Trust 55%
Robert & Eleanor Rowland 35%
26 Chris Bucklin 10%

1	c.	Berryessa -	Debtor Mike & Katie Hartmann	50% 50%
2	d.	Morning Dove -	Joan Bucklin, Debtor's spouse	100%
3	e.	Hwy 62 -	Peter & Joan Bucklin	100%
4	f.	Broken Stone -	Peter & Joan Bucklin Robert & Eleanor Rowland	50% 50%

6 See Bucklin Dec. at ¶ 6.

7 9. The term "Lenders' Cash Collateral" means cash collateral as defined in
8 Section 363(a) of the Bankruptcy Code and includes, without limitation, all checks,
9 receipts, payments, proceeds, products, offspring, rents, or profits arising from the
10 prepetition or postpetition use, lease, sale, or disposition of the Commercial Properties.

11 10. The Lender's Cash Collateral includes the rents from the Commercial
12 Properties (collectively, the "Rents") described as follows:

- 13 a. Rents in favor of Premier West regarding Eagle Point, Berryessa,
14 Morning Dove, Hwy 62, and Broken Stone;
- 15 b. Rents in favor of Intervest regarding Los Banos; and
- 16 c. Rents in favor of Cascade regarding Los Banos and Berryessa.

17 **RELIEF REQUESTED**

18 11. Debtor seeks to use the Lenders' Cash Collateral pursuant to
19 Sections 105(a) and 363(c)(1) and (2) of the Bankruptcy Code, the Budget attached to
20 the Interim Order, and the terms and conditions of the Interim Order, to pay his
21 continuing operating expenses, including his Chapter 11 administrative expenses.

22 **BASIS FOR RELIEF REQUESTED**

23 12. Debtor requires the use of the Lenders' Cash Collateral, including the
24 Rents, to preserve the value of Debtor's business as a going concern and to preserve
25 and maintain the assets of the bankruptcy estate. Without use of such cash collateral,
26 Debtor will lack sufficient funds to maintain his continuing operations.

1 13. Debtor recognizes that the Lenders' interests in the Lenders' Cash
2 Collateral, including the Rents,¹ are entitled to adequate protection. See 11 USC
3 § 363(e). Among other forms of adequate protection, the Bankruptcy Code lists the
4 provision of additional or replacement liens. 11 USC § 361(2). To provide adequate
5 protection for Debtor's use of the Lenders' Cash Collateral, the Lenders' liens will
6 continue in future Rents from the Commercial Properties as such Rents are received on
7 a monthly basis and will replace the liens in the prior month's Rents that are used in the
8 Debtor's operations. In addition, Debtor will grant the Lenders' security interests in and
9 liens upon Debtor's personal property and certain real property in which Lenders do not
10 already have security interests and liens, as more fully set forth in the Interim Order.
11 See Bucklin Dec. at ¶ 12. The liens and security interests to be granted to the Lenders
12 will be granted for adequate protection purposes only, and will not enhance or improve
13 the Lenders' positions.

14 14. Exactly what constitutes adequate protection must be decided on a case-
15 by-case basis. See *In re Energy Partners, Ltd.*, 409 BR 211, 236 (Bankr SD Tex 2009)
16 (citing *MBank Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F2d 1393, 1396-97 (10th
17 Cir 1987)); *In re Martin*, 761 F2d 472, 476 (8th Cir 1985). The focus of the requirement
18 is to protect a secured creditor from diminution in the value of its interest in collateral
19 during the reorganization process. *Energy Partners*, 409 BR at 236.

20 15. The Lenders will be adequately protected. Although the monthly rents
21 from the Commercial Properties will be partially consumed in the course of Debtor's
22 business, the Lenders will continue to have liens in the next month's Rents and in all
23 future Rents. The Commercial Properties are not declining in value and could actually
24 increase in value as vacant space is rented. The Rents are also not declining and the
25

26 _____
¹ See 11 USC § 363(a) ("cash collateral" includes "rents").

1 liens in each month's Rents will replace the liens in the prior month's Rents, so the
2 replacement liens are of equal value, within the meaning of 11 USC § 361. See, *In re*
3 *Mullen*, 172 BR 473, 476 (Bankr D Mass 1994). Numerous courts have held that such
4 an arrangement adequately protects a mortgagee's security interest. See, e.g., *Mullen*,
5 172 BR at 476; *In re Wrecclesham Grange, Inc.*, 221 BR 978, 981 (Bankr MD Fla 1997)
6 (adequate protection not required where stream of rents is constant because the lien on
7 each month's rents replaces the lien on the prior month's rents, providing a replacement
8 lien of equal value); *In re Barkley 3A Investors, Ltd.*, 175 BR 755, 761 (Bankr D Kan
9 1994) (mortgagee's security interest in real property and rents adequately protected by
10 its extension to future rents).

11 16. Use of the Lenders' Cash Collateral will enable the Debtor to pay the
12 expenses of and perform necessary maintenance on the Commercial Properties,
13 operate his business, and pay the administrative expenses of this Chapter 11 case.²
14 See Bucklin Dec. at ¶ 11. The entry of the Interim Order will minimize disruption of
15 Debtor's business operations, preserve the going concern value of Debtor's business,
16 and is in the best interest of Debtor's estate. Debtor cannot continue to operate his
17 business, or preserve the value of his assets, without the use of the Lenders' Cash
18 Collateral on the terms set forth in the Interim Order. Debtor will face immediate and
19 irreparable harm if the relief requested is not granted.

20 17. It is in the best interests of Debtor, his creditors, and his estate for Debtor
21 to use the Lenders' Cash Collateral because the use of the Lenders' Cash Collateral will
22 allow the continued operation of Debtor's business as a going concern and will
23

24 ² See *In re ProAlert, LLC*, 314 BR 436, 443 (BAP 9th Cir 2004) (Perris, J.) (holding that
25 adequately protected secured creditor's cash collateral may be used to pay professional
26 fees in addition to amounts potentially due under 11 USC § 506(c)); *Wrecclesham*
Grange, 221 BR at 982 (holding that postpetition rents could be used not only to
maintain the property, but also to run debtor's business).

1 maximize the likelihood of reorganization, thereby maximizing the recovery to all
2 creditors. Without use of the Lenders' Cash Collateral, Debtor's business operations
3 will need to immediately cease. See Bucklin Dec. at ¶ 13.

4 WHEREFORE, Debtor prays that this Court (a) enter the Interim Order attached
5 hereto as Exhibit 1; and (b) after final hearing held pursuant to Bankruptcy Rule
6 4001(b)(2), enter a final order authorizing Debtor to use the Lender's Cash Collateral
7 during the pendency of this case.

8 DATED this 26th day of July, 2010.

9 SUSSMAN SHANK LLP

10 */s/ Thomas W. Stilley*

11 By _____
12 Thomas W. Stilley, OSB No. 883167
13 Timothy A. Solomon, OSB No. 072573
14 Attorneys for Debtor and Debtor-in-Possession

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IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

Peter M. Bucklin, an individual, dba PMB Development Co., and dba the Peter M. and Joan B. Bucklin Revocable trust,

Debtor.

) Case No. 10-64467-fra11
)
) INTERIM ORDER AUTHORIZING
) USE OF CASH COLLATERAL
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This matter comes before the Court pursuant to the Debtor's Motion for Entry of Interim and Final Orders Authorizing Use of Cash Collateral ("Motion"). Upon the record before the Court it appearing that there is good and sufficient cause therefor, it is hereby FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over this matter pursuant to 28 USC §§ 157 and 1334. This matter is a core proceeding pursuant to 28 USC § 157(b)(2)(M). The notice which Debtor has provided of the hearing on entry of this Order was sufficient and appropriate under the circumstances of this case, and satisfies the requirement of Federal Rules of Bankruptcy Procedure 4001(d), Local Bankruptcy Rule 4001-1(c), and LBF 541.51.

1 B. On July 23, 2010 (the "Petition Date"), Debtor filed his voluntary petition
2 for relief under Chapter 11 of the United States Bankruptcy Code (the "Code"), 11 USC
3 § 101, et seq. Debtor is currently operating his business and managing his property as
4 a debtor-in-possession pursuant to §§ 1107 and 1108 of the Code. No trustee has
5 been requested or appointed.

6 C. Debtor is in the business of developing, building, and operating
7 commercial real estate properties in Oregon and California.

8 D. Debtor and Premier West Bank ("Premier West"), Cascade Acceptance
9 Corp. ("Cascade"), and Intervest-Mortgage Investment Company ("Intervest")
10 (collectively the "Lenders") are parties to various loan agreements, security agreements,
11 financing statements, deeds of trust, and other documents, and all amendments thereto
12 (collectively, the "Loan Documents"), pursuant to which the Lenders assert they hold
13 security interests and liens (the "Existing Liens") in various items and parcels of real and
14 personal property of the Debtor as described in the Loan Documents, including, without
15 limitation, the following described income-producing properties (collectively the
16 "Commercial Properties"):

- 17 1. Eagle Point Center ("Eagle Point")
18 Hwy 62 and Nick Young
19 Eagle Point, Oregon
Lender: Premier West (1st Trust Deed)
- 20 2. Los Banos Center ("Los Banos")
21 Hwy 152 & Ortigalita Rd.
Los Banos, CA
Lenders: Intervest (1st Trust Deed), Cascade (2nd Trust Deed)
- 22 3. Berryessa Center ("Berryessa")
23 211 Peabody Lane
Vacaville, CA
24 Lenders: Premier West (1st Trust Deed), Cascade (2nd Trust Deed)
- 25 4. 151 Morning Dove Trail ("Morning Dove")
26 Eagle Point, OR
Lenders: J.P. Morgan Chase (1st Trust Deed), (Premier West 2nd Trust
Deed)

- 1 5. 22262 & 22264 Hwy 62 (“Hwy 62”)
 Shady Cove, OR
 Lenders: J.P Morgan Chase (1st Trust Deed – Duplex), Premier West
 (2nd Trust Deed – Duplex, 1st Trust Deed – Trailer)
- 3 6. 33 Broken Stone (“Broken Stone”)
 Eagle Point, OR
 Lenders: J.P. Morgan Chase (1st Trust Deed), Premier West (2nd Trust
 Deed)

6 E. Debtor operates the Commercial Properties in partnership with the co-
 7 owners of those properties (the “Co-Owners) under the assumed business name PMB
 8 Development Company. Ownership of those properties is held in the following
 9 percentages:

10	1.	Eagle Point -	Peter & Joan Bucklin	48%
11			Jeffrey & Catherine Iverson	18%
12			James Ollendick	17%
13			Mike Johnson (unrecorded)	17%
14	2.	Los Banos -	Peter & Joan Bucklin Trust	55%
15			Robert & Eleanor Rowland	35%
16			Chris Bucklin	10%
17	3.	Berryessa -	Debtor	50%
18			Mike & Katie Hartmann	50%
19	4.	Morning Dove -	Joan Bucklin, Debtor’s spouse	100%
20	5.	Hwy 62 -	Peter & Joan Bucklin	100%
21	6.	Broken Stone -	Peter & Joan Bucklin	50%
22			Robert & Eleanor Rowland	50%

23 F. The term “Lenders’ Cash Collateral” means cash collateral as defined in
 24 Section 363(a) of the Bankruptcy Code and includes, without limitation, all checks,
 25 receipts, payments, proceeds, products, offspring, rents, or profits arising from the
 26 prepetition or postpetition use, lease, sale, or disposition of the Commercial Properties.

G. The Lender’s Cash Collateral includes the rents from the Commercial
 Properties (collectively, the “Rents”) described as follows:

- 1. Rents in favor of Premier West regarding Eagle Point, Berryessa,
 Morning Dove, Hwy 62, and Broken Stone;

- 1 2. Rents in favor of Intervest regarding Los Banos; and
- 2 3. Rents in favor of Cascade regarding Los Banos and Berryessa.

3 H. Solely for the purposes of this Order (neither Debtor nor the Lenders shall
 4 be bound by the approximate amounts listed below), the approximate balances owed by
 5 Debtor to the Lenders as of the Petition Date regarding the Commercial Properties are
 6 summarized as follows:

- 7 1. Eagle Point: Premier West - \$3,400,000
- 8 2. Los Banos: Intervest – \$8,300,000
 Cascade - \$2,200,000
- 9 3. Berryessa: Premier West – \$2,400,000
 Cascade - \$365,000
- 10 4. Morning Dove: J.P. Morgan Chase - \$212,000
 Premier West - \$193,000
- 11 5. Hwy 62: J.P. Morgan Chase - \$238,000 (Duplex)
 Premier West - \$193,000 (Duplex and Trailer)
- 12 6. Broken Stone: J.P. Morgan Chase – \$220,000
 Premier West - \$267,000

13 I. Solely for the purposes of this Order (neither Debtor nor the Lenders shall
 14 be bound by the approximate amounts listed below), The approximate values of the
 15 Commercial Properties are summarized as follows:

- 16 1. Eagle Point \$2,500,000
- 17 2. Los Banos \$5,500,000
- 18 3. Berryessa \$1,800,000
- 19 4. Morning Dove \$ 260,000
- 20 5. Hwy 62 \$ 180,000 (Duplex)
 \$ 170,000 (Trailer)
- 21 6. Broken Stone \$ 250,000

22 J. Debtor requires the use of the Lenders' Cash Collateral, including the
 23 Rents, to preserve the value of Debtor's business as a going concern and to preserve
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1 and maintain the assets of the bankruptcy estate. Without use of such cash collateral,
2 Debtor will lack sufficient funds to maintain his continuing operations.

3 K. The entry of this Order will minimize disruption of Debtor's business
4 operations, preserve the going concern value of Debtor's business, and is in the best
5 interest of Debtor's estate.

6 L. To the extent any provision of the Bankruptcy Code, Federal Rules of
7 Bankruptcy Procedure, Local Bankruptcy Rules and Forms, or applicable law requires a
8 finding of "cause" for entry of any provision of this Order, such cause exists.

9 NOW THEREFORE, THE COURT BEING FULLY ADVISED IN THE
10 PREMISES, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:

11 1. **Authorization to Use Cash Collateral.**

12 (a) Debtor is authorized to use the Lenders' Cash Collateral in
13 accordance with the terms and conditions set forth herein.

14 (b) The Lender's Cash Collateral shall be used only for the purposes
15 and up to the amounts listed in the budget attached as Exhibit A (the "Budget");
16 provided, however, that so long as Debtor's total expenditures do not exceed the
17 aggregate budgeted amount, Debtor's expenditures for any line item may exceed the
18 amount budgeted for that line item by no more than ten percent (10%) of the budgeted
19 amount.

20 (c) All Rents and other receipts from each of the Commercial
21 Properties shall be deposited in segregated Debtor-in-Possession Cash Collateral
22 Accounts for each of the Commercial Properties (the "Cash Collateral Accounts").
23 Debtor is authorized to draw upon or transfer funds from each of the Cash Collateral
24 Accounts to its Debtor-In-Possession Operating Account for use in accordance with the
25 terms of this Order.

26

1 2. **Grant of Security Interest.** As adequate protection for the use of the
2 Lenders' Cash Collateral pursuant to Sections 361(2), and 363(c)(1) and (2) of the
3 Bankruptcy Code, the Lenders are hereby granted liens and security interests (as the
4 case may be), on the postpetition Rents, receipts, and other income generated from
5 operation of those Commercial Properties in which they hold valid and perfected pre-
6 petition liens and security interests, with the same priority as existed in such prepetition
7 liens and security interests. In addition, the Lenders are hereby granted liens and
8 security interests in all other property of the estate as defined in Section 541(a) of the
9 Bankruptcy Code (**excluding** property recovered through exercise of the powers
10 granted under Sections 506(c), 544, 545, 547, 548, 549, or 550 of the Code (the
11 "Excluded Property")). Except for the Excluded Property, the property securing the use
12 of the Lenders' Cash Collateral includes, but is not limited to, all existing and after-
13 acquired property of Debtor's estate, whether now existing or hereafter arising, whether
14 real or personal, tangible or intangible, whether any such property is now owned or
15 hereafter acquired or existing, and all records (including computer software) pertaining
16 to the foregoing, and all substitutions for, all proceeds, and all products of all of the
17 foregoing, to the fullest extent permitted by law, including, without limitation, all
18 insurance policies insuring property of Debtor, or any part thereof, and proceeds of said
19 insurance, including unearned premiums (all of the above described property is
20 hereafter referred to collectively as the "Adequate Protection Collateral"). Except for
21 any currently existing senior perfected liens or security interests in the Adequate
22 Protection Collateral (including the liens of the Lenders), or as may otherwise be
23 provided in this Order, the liens and security interests granted to the Lenders herein
24 shall be first and prior perfected liens in the Adequate Protection Collateral and of equal
25 priority between the Lenders (excluding the liens granted in the postpetition Rents and
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Page 6 of 11 – INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL

1 income from the Commercial Properties which shall continue to have the same priority
2 as such Lenders' liens had pre-petition in the same collateral).

3 3. **Order is Security Agreement.** This Order shall be deemed to be and
4 shall constitute a security agreement under the applicable provisions of the Uniform
5 Commercial Code ("UCC") in effect from time to time in the states in which Debtor (a) is
6 domiciled, (b) operates his business, and (c) maintains his principal place of business.
7 Debtor is hereby authorized and directed to execute any trust deeds, UCC-1 financing
8 statements, and supporting documents as may be reasonably requested by any Lender
9 to perfect any adequate protection liens provided and permitted by this Order. Debtor
10 shall cooperate with the Lenders in executing such other documentation as the Lenders
11 deem reasonably necessary to effectuate the terms of this Order.

12 4. **Administrative Expense Claim.** To the extent the adequate protection
13 provided to the Lenders in the form of the security interest and liens granted pursuant to
14 this Order proves to be inadequate, the Lenders shall, pursuant to Section 507(b) of the
15 Bankruptcy Code, be entitled to an administrative expense claim under Sections 503(b)
16 and 507(a)(2) of the Bankruptcy Code.

17 5. **Survival.** The provisions of this Order shall be binding upon and inure to
18 the benefit of Debtor and the Lenders, and their respective successors and assigns.

19 6. **Insurance and Audits.** Debtor shall insure the Commercial Properties
20 and the Adequate Protection Collateral for the full insurable replacement value thereof
21 with insurance companies acceptable to the Lenders. Debtor will provide the Lenders
22 with certificates of insurance evidencing Debtor's compliance with the insurance
23 requirements herein provided and the Lenders may purchase said insurance and
24 charge the expense thereof to Debtor if he fails to obtain and maintain the insurance as
25 herein provided.

26

1 7. **Additional Duties of Debtor.** Debtor is hereby directed to deliver to the
2 Lenders such financial and other information concerning the business and affairs of
3 Debtor and any of the Commercial Properties and Adequate Protection Collateral as
4 Bank shall reasonably request from time to time.

5 8. **Events of Default.** Each of the following shall be an Event of Default
6 under this Order: (a) spending other than as allowed in the Budget and in this Order
7 unless agreed by the Lenders in writing; (b) failure to comply with any of the obligations
8 imposed by this Order; (c) conversion of this case to a case under Chapter 7 of the
9 Code; and (d) dismissal of this case.

10 9. **Termination Date and Enforcement of Event of Default.** Unless
11 terminated earlier, Debtor's authority to use Cash Collateral hereunder shall continue
12 until _____, 2010, pending a final hearing on the Motion. Notwithstanding the
13 foregoing, Debtor's right to use Cash Collateral in the case of an Event of Default
14 specified above in paragraph 8 shall terminate at the end of the third business day
15 following delivery or service in accordance with the ECF rules of this Court by a Lender
16 or Lenders to Debtor, its counsel, the United States Trustee, and counsel to any official
17 committees in the case of a notice of default. Debtor's authority to use the Cash
18 Collateral shall cease without further action unless the Lender or Lenders providing
19 such notice have acknowledged within said three-day period that the specified event of
20 default has been cured or the Court orders otherwise.

21 10. **Validity of Liens.** All liens and priorities granted to the Lenders
22 hereunder shall be valid and enforceable obligations of Debtor against any subsequent
23 Chapter 11 or Chapter 7 trustee. The obligations and rights of Debtor and the Lenders
24 under this Order, and any documents executed pursuant to paragraph 3 hereof, and the
25 priorities, liens and security interests granted herein, shall remain unimpaired and
26 unaffected by any modification, reversal, or vacation of this Order on appeal, or by any

1 termination or any curtailment of lending hereunder. Nothing contained herein,
2 however, shall serve to adjudicate the validity, perfection, attachment, priority, or
3 enforceability, or improve the position of, any of the Commercial Properties
4 Indebtedness under the Loan Documents or the Existing Liens.

5 11. **Amendments.** Nothing herein shall prohibit Debtor and the Lenders from
6 amending the terms of the use of Cash Collateral authorized hereby by mutual
7 agreement and further order of the Court after notice and hearing.

8 12. **Miscellaneous Provisions.**

9 (a) **Modification of Stay.** The automatic stay of Section 362 of the
10 Bankruptcy Code is hereby modified with respect to the Lenders to the extent necessary
11 to effectuate the provisions of this Order.

12 (b) **Financial Information; Insurance.** Debtor is directed to allow the
13 Lenders access to the Commercial Properties and Adequate Protection Collateral for
14 the purpose of enabling them to inspect and audit the collateral and the books and
15 records of Debtor. Such access for such purpose shall be permitted during normal
16 business hours and upon reasonable notice.

17 (c) **No Waiver.** Nothing contained in this Order shall constitute a
18 waiver by the Lenders of any of their rights under the Loan Documents, the Bankruptcy
19 Code, or other applicable law, including, without limitation: (1) their rights to later assert
20 that, notwithstanding the terms and provisions of this Order, any of their interests in the
21 Commercial Properties or the Adequate Protection Collateral lacks adequate protection
22 within the meaning of Sections 362(d) or 363(e) of the Bankruptcy Code or (2) their
23 rights, if any, to assert claims under Sections 503 and 507 of the Bankruptcy Code. The
24 Lenders' failure, at any time or times hereafter, to require strict performance by Debtor
25 (or by any Trustee) of any provision of this Order shall not waive, affect, or diminish any
26 right of the Lenders to demand strict compliance and performance therewith. No delay

1 on the part of the Lenders in the exercise of any right or remedy under this Order shall
2 preclude any other or further exercise of any such right or remedy or the exercise of any
3 other right or remedy. None of the rights or remedies of the Lenders under this Order
4 shall be deemed to have been suspended or waived by the Lenders unless such
5 suspension or waiver is in writing, and directed to Debtor specifying such suspension or
6 waiver. Likewise, nothing contained in this Order shall constitute a waiver by Debtor, or
7 any subsequent Chapter 11 or Chapter 7 trustee, of any of their respective rights under
8 the Loan Documents, the Code, or other applicable law, at law or in equity, including,
9 without limitation, the right to assert any claim, demand, or cause of action, whether in
10 contract, tort, or otherwise, that he had as of the Petition Date, or that Debtor or such
11 trustee now has, or in the future may have, against the Lenders. Debtor's or a trustee's
12 failure, at any time or times hereafter, to require strict performance by the Lenders of
13 any provision of this Order shall not waive, affect, or diminish any right of Debtor or the
14 trustee to demand strict compliance and performance therewith. No delay on the part of
15 Debtor or the trustee in the exercise of any right or remedy under this Order shall
16 preclude any other or further exercise of any such right or remedy or the exercise of any
17 other right or remedy. None of the rights or remedies of Debtor or the trustee under this
18 Order shall be deemed to have been suspended or waived by Debtor or the trustee
19 unless such suspension or waiver is in writing, signed by Debtor or the trustee, as the
20 case may be, directed to the Lenders specifying such suspension or waiver, and
21 approved by the Court.

22 Nothing contained in this Order or in Debtor's or the Lenders' agreement to the
23 terms hereof shall (1) be deemed to be a consent by the Lenders to any extension of
24 the term of this Order or the entry of a final order authorizing the use of cash collateral,
25 or (2) waive any of the Debtor's, a trustee's, or the Lenders' rights or remedies in this
26 case or any superseding case under the Code, including the right to seek conversion or

Page 10 of 11 – INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL

1 dismissal, or (3) impose on Debtor, a trustee, or the Lenders any liability or
2 responsibility to any third party.

3 (d) **Order.** This Order shall be binding on all parties in interest in this case
4 and their respective successors and assigns, including, without limitation, any
5 Chapter 11 or 7 trustee. If any or all of the provisions of this Order are hereafter
6 modified, vacated, or stayed by subsequent order, such action shall not affect the
7 priority, validity, enforceability or effectiveness of any lien, security interest, or priority
8 authorized hereby with respect to the use of Cash Collateral prior to the effective date of
9 such subsequent order (and all such liens, security interests, priorities, and other
10 benefits shall be governed in all respects by the original provisions of this Order).
11 Except as otherwise explicitly set forth in this Order, no third parties are intended to be
12 or shall be deemed to be third party beneficiaries of this Order.

13 # # #

14 PRESENTED BY:

15 SUSSMAN SHANK LLP

16
17 Thomas W. Stilley, OSB No. 883167
18 Timothy A. Solomon, OSB No. 072573
19 Attorneys for Debtor and Debtor-in-Possession

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PETER BUCKLIN CHAPTER 11 CASH COLLATERAL BUDGET

NET OPERATING INCOME

	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11
Rents (Including Triple Net Expenses)							
Eagle Point	11,614	11,614	11,614	11,614	11,636	11,636	11,636
Berryessa 10,000 sf Vacaville	4,965	4,965	4,965	4,965	4,965	4,965	4,965
Los Banos	32,348	32,348	32,348	32,348	32,348	32,348	32,348
485 Ormsby Ln, Petaluma, CA	2,710	2,710	2,710	2,710	2,710	2,710	2,710
151 Morning Dove, Eagle Point, OR	916	916	916	916	916	916	916
22222 Hwy 62, Shady Cove, OR	1,743	1,743	1,743	1,743	1,743	1,743	1,743
33 Broken Stone, Eagle Point, OR	425	425	425	425	425	425	425
.7 Ac Anderson, CA	0	0	0	0	0	0	0
3.8 ac Vacaville Vacant Land	0	0	0	0	0	0	0
94 Pebble Creek, Eagle Point, OR	-391	-391	-391	-391	-391	-391	-391
54 Pebble Creek, Eagle Point, OR	0	0	0	0	0	0	0
426 Petaluma Blvd S., Petaluma, CA	-230	-230	-230	-230	-230	-230	-230
Total Rents	54,330	54,330	54,330	54,330	54,352	54,352	54,352

ADMINISTRATIVE EXPENSES

Salaries, Benefits, Employment Taxes	15,000	15,000	15,000	15,000	15,000	15,000	15,000
Office Expenses	4,000	4,000	4,000	4,000	4,000	4,000	4,000
Professional Fees (Attorneys, Accountants, Appraisers)	20,000	25,000	25,000	25,000	25,000	25,000	25,000
US Trustee Fees			1,625			1,625	
Total Administrative Expenses	39,000	44,000	45,625	44,000	44,000	45,625	44,000
NET INCOME	15,330	10,330	8,705	10,330	10,352	8,727	10,352
CASH BALANCE	15,330	25,660	34,365	44,696	55,048	63,775	74,127

**EAGLE POINT CENTER,
EAGLE POINT, OR**

Jul-10 Aug-10 Sep-10 Oct-10 Nov-10 Dec-10 Jan-11

**INCOME (Including
Triple Net Expenses)**

Antonios	6,000	6,000	6,000	6,000	6,000	6,000	6,000
Essentials	1,704	1,704	1,704	1,704	1,704	1,704	1,704
Adamek, OD	2,850	2,850	2,850	2,850	2,850	2,850	2,850
Extreme Juice	1,600	1,600	1,600	1,600	1,600	1,600	1,600
Anytime Fitness							
Mercy Flights	874	874	874	874	896	896	896
Touch of Sun	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Groomingdaels	2,165	2,165	2,165	2,165	2,165	2,165	2,165
Total	16,193	16,193	16,193	16,193	16,215	16,215	16,215

EXPENSES

Property Taxes	1,245	1,245	1,245	1,245	1,245	1,245	1,245
Insurance	749	749	749	749	749	749	749
Landscape & Sweeping	525	525	525	525	525	525	525
Utilities	1,560	1,560	1,560	1,560	1,560	1,560	1,560
Garbage	300	300	300	300	300	300	300
Irrigation	200	200	200	200	200	200	200
Total	4,579	4,579	4,579	4,579	4,579	4,579	4,579

**NET OPERATING
INCOME**

	11,614	11,614	11,614	11,614	11,636	11,636	11,636
Bucklin's 48% Interest	5,575	5,575	5,575	5,575	5,585	5,585	5,585
Co-Owners' 52% Interest	6,039	6,039	6,039	6,039	6,051	6,051	6,051

LOS BANOS CENTER,
 LOS BANOS, CA

Jul-10 Aug-10 Sep-10 Oct-10 Nov-10 Dec-10 Jan-11

INCOME (Including Triple

Net Expenses)

Tractor Supply	39,488	39,488	39,488	39,488	39,488	39,488	39,488	39,488
Yogurt Shop	0	0	0	0	0	0	0	0
Anytime Fitness	0	0	0	0	0	0	0	0
Total	39,488	39,488	39,488	39,488	39,488	39,488	39,488	39,488

EXPENSES

Property Taxes	5,250	5,250	5,250	5,250	5,250	5,250	5,250	5,250
Insurance	340	340	340	340	340	340	340	340
Landscape & Sweeping	400	400	400	400	400	400	400	400
Parking Lot Lights	750	750	750	750	750	750	750	750
Fire Alarm	100	100	100	100	100	100	100	100
Landscape Water/Sewer	300	300	300	300	300	300	300	300
Total	7,140	7,140	7,140	7,140	7,140	7,140	7,140	7,140

NET OPERATING

INCOME

Bucklin's 55% Interest	17,791	17,791	17,791	17,791	17,791	17,791	17,791	17,791
Co-Owners' 45% Interest	14,557	14,557	14,557	14,557	14,557	14,557	14,557	14,557
Total	32,348	32,348	32,348	32,348	32,348	32,348	32,348	32,348

BERRYESSA 10,000 SF
CENTER, VACAVILLE, CA

Jul-10 Aug-10 Sep-10 Oct-10 Nov-10 Dec-10 Jan-11

INCOME (Including Triple

Net Expenses)

Dream Dinners	3,325	3,325	3,325	3,325	3,325	3,325	3,325
Malys	6,410	6,410	6,410	6,410	6,410	6,410	6,410
Anytime Fitness							
Total	9,735	9,735	9,735	9,735	9,735	9,735	9,735

EXPENSES

Property Taxes	3,452	3,452	3,452	3,452	3,452	3,452	3,452
Insurance	243	243	243	243	243	243	243
Parking Lot Lights	421	421	421	421	421	421	421
Garbage	283	283	283	283	283	283	283
Fire Alarm	104	104	104	104	104	104	104
Landscape Water/Sewer	267	267	267	267	267	267	267
Total	4,770	4,770	4,770	4,770	4,770	4,770	4,770

NET OPERATING INCOME

Bucklin's 50% Interest	2,483	2,483	2,483	2,483	2,483	2,483	2,483
Co-Owner's 50% Interest	2,483	2,483	2,483	2,483	2,483	2,483	2,483
Total	4,965	4,965	4,965	4,965	4,965	4,965	4,965

485 ORMSBY		Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11
INCOME								
Rent		3,500	3,500	3,500	3,500	3,500	3,500	3,500
EXPENSES								
Property Taxes		715	715	715	715	715	715	715
Insurance		75	75	75	75	75	75	75
Total		790	790	790	790	790	790	790
NET OPERATING INCOME		2,710	2,710	2,710	2,710	2,710	2,710	2,710

EX A
 PAGE 5 OF 14

		Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11
151 Morning Dove								
INCOME								
Rent		1,200	1,200	1,200	1,200	1,200	1,200	1,200
EXPENSES								
Property Taxes		227	227	227	227	227	227	227
Insurance		57	57	57	57	57	57	57
Total		284	284	284	284	284	284	284
NET OPERATING INCOME		916	916	916	916	916	916	916

EX A
 PAGE 6 OF 14

22262 Hwy. 62		Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11
INCOME								
Rent		1,950	1,950	1,950	1,950	1,950	1,950	1,950
EXPENSES								
Property Taxes		147	147	147	147	147	147	147
Insurance		60	60	60	60	60	60	60
Total		<u>207</u>	<u>207</u>	<u>207</u>	<u>207</u>	<u>207</u>	<u>207</u>	<u>207</u>
NET OPERATING INCOME		1,743	1,743	1,743	1,743	1,743	1,743	1,743

		Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11
33 Broken Stone								
INCOME								
Rent		550	550	550	550	550	550	550
EXPENSES								
Property Taxes		100	100	100	100	100	100	100
Insurance		25	25	25	25	25	25	25
Total		<u>125</u>	<u>125</u>	<u>125</u>	<u>125</u>	<u>125</u>	<u>125</u>	<u>125</u>
NET OPERATING INCOME								
		425	425	425	425	425	425	425
Bucklin's 50% Interest		213	213	213	213	213	213	213
Co-Owner's 50% Interest		213	213	213	213	213	213	213

.7 Ac Anderson

INCOME
Rent

EXPENSES

Property Taxes
Insurance

	Total							
	273	273	273	273	273	273	273	273
NET OPERATING INCOME	-273	-273	-273	-273	-273	-273	-273	-273

3.8 Ac Vacaville Vacant
Land

INCOME
Rent

EXPENSES
Property Taxes
Insurance

**NET OPERATING
INCOME**

	Total								
	1,349	1,349	1,349	1,349	1,349	1,349	1,349	1,349	1,349
	-1,349	-1,349	-1,349	-1,349	-1,349	-1,349	-1,349	-1,349	-1,349

94 Pebble Creek

INCOME
Rent

EXPENSES

Property Taxes	312	312	312	312	312	312	312
Insurance	79	79	79	79	79	79	79
Total	391	391	391	391	391	391	391

NET OPERATING INCOME

	-391	-391	-391	-391	-391	-391	-391
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54 Pebble Creek

INCOME
Rent

EXPENSES
Property Taxes
Insurance

	Total							
	194	194	194	194	194	194	194	194
NET OPERATING INCOME	-194	-194	-194	-194	-194	-194	-194	-194

426 Petaluma
Blvd

Jul-10 Aug-10 Sep-10 Oct-10 Nov-10 Dec-10 Jan-11

INCOME

EXPENSES

Property Taxes	200	200	200	200	200	200	200
Insurance	30	30	30	30	30	30	30
Total	230	230	230	230	230	230	230

NET OPERATING INCOME	-230	-230	-230	-230	-230	-230	-230
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PETER BUCKLIN SECURED DEBT SCHEDULE

Secured Creditors

	Approx Loan Balance	Est. Property Value	Accrued Taxes	Est. Secured Portion	Est. Unsecured Portion
Premier West (3.8 Ac Eagle Point)	3,400,000	2,500,000	38,918	2,461,082	938,918
Premier West (1st TD - Berryessa 10,000 Sq Ft 211 Peabody Lane)	2,400,000	1,800,000	139,437	1,660,563	739,437
Cascade Acceptance (2nd TD - Berryessa 10,000 Sq Ft 211 Peabody Lane)	365,000			0	365,000
Intervest Bank (1st TD - 4 ac +- Los Banos)	8,300,000	5,500,000	8,586	5,491,414	2,808,586
Cascade Acceptance (2nd TD - 4 Ac Los Banos +-) wrap	2,200,000			0	2,200,000
Cascade Acceptance (1st TD - 30,000sf +- Los Banos)--wrap	2,200,000	500,000		500,000	1,700,000
Stevens Hemingway Stevens 3rd TD 4ac +-Los Banos	800,000			0	800,000
EMC (1st TD - 485 Ormsby)	1,009,794	850,000		850,000	159,794
GMAC (2nd TD - 485 Ormsby)	286,815			0	286,815
Chase (22262 Hwy 62) Duplex	160,000	180,000		160,000	0
Chase (22262 Hwy 62) Duplex 2nd TD	78,000	20,000		20,000	58,000
Premier West (22262 Hwy 62) Duplex 3rd TD wrap	193,000			0	193,000
Premier West (22266 Hwy 62) Trailer 1st TD wrap	193,000	170,000		170,000	23,000
Chase (33 Broken Stone)	220,000	250,000		220,000	0
Premier West (33 Broken Stone) 2nd TD	34,000	30,000		30,000	4,000
Premier West (33 Broken Stone) 3rd TD wrap	235,000			0	235,000
Chase (151 Morning Dove) 1st TD	212,000	260,000	3,128	212,000	0
Premier West (151 Morning Dove) 2nd Wrap	235,000	44,872		44,872	190,128
Premier West (.7 Ac Anderson CA)	312,000	250,000		250,000	62,000
Luther Burbank Svgs (1st TD - 3.8 Ac Vacaville Vacant Land)	2,167,750	2,500,000		2,167,750	0
Richard Joy (2nd TD - 3.8 Ac Vacaville)	1,200,000	332,250		332,250	867,750
Chase (94 Pebble Creek)	592,592	450,000	4,263	445,737	146,855
Premier West (54 Pebble Creek)	236,000	260,000		236,000	0
McAfee, Witter, Mattaei, Rogers, McCoy (426 Petaluma Blvd)	420,000	420,000		420,000	0

Cascade Acceptance Corp
Attn: Barney G. Glaser, RA
31 Oxford
Mill Valley, CA 94941

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5005 SW Meadows Rd Ste 400
Lake Oswego, OR 97035

Intervest Mortgage Investment Co.
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388 State St Ste 420
Salem, OR 97301

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