

IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF ARKANSAS  
LITTLE ROCK, ARKANSAS

IN RE: KINGRIDGE ENTERPRISES INC.  
DEBTOR,

CASE NO. 4:17-bk-13560  
CHAPTER 13

**EMERGENCY MOTION OF DEBTOR FOR INTERIM AND FINAL  
ORDER AUTHORIZING PAYMENT OF (A) POSTPETITION EMPLOYEE  
WAGES, SALARIES AND RELATED ITEMS; (B) POST PETITION EMPLOYEE  
BUSINESS EXPENSES; AND (C) TO PAY ALL COSTS AND EXPENSES INCIDENT  
TO THE OPERATION OF THE BUSINESS; (II) AND FOR AUTHORITY TO USE  
CASH COLLATERAL, IF ANY, TO PAY SUCH OBLIGATION**

Kingridge Enterprises (referred to herein as the "Debtor") hereby moves this Court for an order, authorizing the Debtor to (i) pay: (a) postpetition Employee Wages, Salaries and Related Items; (b) postpetition Employee Business Expenses; (c) To Pay All Costs and Expenses Incident To the Operation of the Business in the ordinary course of business (collectively, the "Postpetition Obligations"), and for (ii) Use of Cash Collateral, if Any, to Pay the ongoing business expenses in the normal course of business. In support of this Motion, the Debtor respectfully states as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

**II. INTRODUCTION**

2. On 6/26/2017, (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code").

Pursuant to section 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to operate its businesses and manage its properties, affairs and assets as debtor- in-possession.

### **III. COMPANY BACKGROUND**

3. The Debtor maintains its corporate headquarters and principal place of business at 2501 So. Broadway, Little Rock, Arkansas. Kingridge Enterprises is a minority commercial construction company primarily engaged in highway construction. The CEO of the Company is Mark Gregory Jackson. The Debtor employs a total of 10 employees with the majority of their employees being based at the Little Rock, Arkansas. The Debtor pays all of such employees on a weekly basis and is able to centrally administrate the payroll and benefits functions for itself and all of its operations. The Debtor's payroll averages \$5,000.00 per week.

### **IV. EVENTS LEADING TO CHAPTER 11 FILING**

4. The Debtor was unable to restructure a debt with one of its creditors that held a lien on all of its assets including its construction equipment and accounts receivables.

5. During the past year, the Debtor's relationship with its primary lender group has deteriorated, ultimately forcing the filing of this Chapter 11 proceeding.

### **IV. RELIEF REQUESTED**

6. By this Motion, the Debtor seeks the entry of an Interim Order and final Order authorizing its use of cash collateral pursuant to 11 U.S.C. §363, Federal Rules of Bankruptcy Procedure 4001(b)(2) and Local Rule 4001-3; setting the time for a hearing and objection deadlines.

7. The Debtor believes that Iberia Bank is the only creditor will assert interest in the Debtor's cash collateral.

8. That Debtor has several construction project underway with the Arkansas State Highway Department and two project that are about to begin for which the Debtor requires the use of cash collateral to continue all necessary business operations and to honor its contractually obligations to complete construction projects with the Arkansas State Highway Department.

9. The Debtor currently employs 10 people (collectively, the "Employees"). These employees are paid hourly and Mark Gregory Jackson is paid \$500.00 per week and the Debtor's payroll averages \$5,000.00 per week.

10. The Debtor believes that it is in the best interests of its estate to honor all of the prepetition and postpetition employees and accrued wages due and owing to Employees to the extent the Debtor deems it practicable and desirable, on a day-to-day basis, in the ordinary course of business.

11. The Debtor intends to pay such obligations using cash that is generated through revenues from its construction projects. The Debtor believes that such cash may represent a perfected security interest in Debtor's accounts receivables by Iberia Bank, and, therefore, may be considered cash collateral pursuant to 11 U.S.C. § 363(a). However, out of an abundance of caution to the extent that such cash does constitute cash collateral, the Debtor also seeks authority to use cash collateral pursuant to section 363(c)(2)(B) of the Bankruptcy Code.

12. In order to maintain the continuity of the Debtor's businesses and to preserve the morale of the Debtor's labor force, it is important that the Debtor be permitted to pay its employees' their wages, unreimbursed expenses, employee benefits, and other payments in the ordinary course of business.

13. It would create a substantial hardship on the employees if they were to lose (or

suffer delay in receiving) their pay or benefits. Moreover, the Debtor's ability to preserve its operations and assets and ultimately reorganize will be affected adversely if it is unable to retain the support and loyalty of their employees and complete the construction contracts on a timely basis.

14. The Debtor does not intend by this Motion to assume any executory obligations, and this Motion should not be deemed an assumption or adoption of any agreements or policies providing for such coverage. Rather, the Debtor simply intends, in its discretion and in the exercise of its business judgment, to maintain its current staff and policies consistent with prior employment and personnel policies pending further business decisions relevant to the Debtor's reorganization.

#### **V. APPLICABLE AUTHORITY**

15. The relief requested herein should be granted under section 105 of the Bankruptcy Code. Numerous bankruptcy courts have invoked the equitable powers of section 105(a) and have authorized the payment of postpetition claims of employees, when, as in this case, the nonpayment or delay in payment of such postpetition claims would damage a debtor's business or its ability to reorganize. *See Burchinal v. Central Washington Bank (In re Adams Apple Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (courts have permitted the payment of employee debts when necessary for rehabilitation); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175-77 (Bankr. S.D.N.Y. 1989) (payment of employees' postpetition claims may be necessary in order to preserve morale and to protect the Debtor's business, thereby enhancing the Debtor's ability to reorganize); *In re Chatcaugay Corp.*, 80 B.R. 279, 287-88 (S.D.N.Y. 1987) (Debtor authorized to pay certain prebankruptcy wages, salaries, employee reimbursement expenses, and benefits, including payment of workers' compensation claims).

16. In addition to the general application of the Court's equitable powers, the relief requested in this Motion is specifically supported by the well-established "necessity of payment" rule. *In re Gulf Air, Inc.*, 112 B.R. 152 (Bankr. W.D. La. 1989); *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176. The "necessity of payment" rule recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor. *In re Ionosphere*, 98 B.R. at 176. The rationale for this rule is consistent with the paramount goal of chapter 11, i.e., "facilitating the continued operation and rehabilitation of the debtor." *Id.* The payment of the above-described compensation, benefit and reimbursement obligations is necessary to prevent the risk of damage to the estates that would adversely affect all parties in interest.

17. In the instant cases, the continued services and cooperation of the Employees is integral and necessary to the Debtor's ongoing operations. If the Debtor is unable to assure its Employees that they will be paid timely, or if Employees are not immediately assured of uninterrupted, critical benefit payments to which they are entitled, the Debtor's operations could suffer immediate and irreparable harm due to employee resentment, resignations, loss of good will and disruption of employee morale. Moreover, replacing Employees who may leave the Debtor's employ if the relief requested herein is not granted would be expensive and disruptive because the employees are skill craft persons to the Debtor's businesses and its reorganization efforts. Payment of employee wages, unreimbursed expenses, and Employee Benefits in this case will have little, if any, impact on the payment of other creditors' claims.

18. However, in abundance of caution and to the extent that the Debtor's cash constitutes cash collateral of the Lender, Iberia Bank, the Debtor requests authorization to use such cash collateral (the "Cash Collateral") pursuant to Bankruptcy Code § 363(c)(2).

19. Debtor is without adequate funds, absent access to the Cash Collateral, with which to operate until a final hearing on this Motion can be held pursuant to Rule 4001. The Debtor thus requests emergency, interim authorization to use Cash Collateral in the amount of \$35,000.00 for the limited purpose of paying employee obligations and expenses of operation. The Debtor requires the interim use of Cash Collateral to meet its postpetition payroll obligations and salaries and for costs of operations. The Debtor's failure to timely pay such items would result in immediate and irreparable harm to its estate.

20. Because the Debtor's request for interim authorization seeks the use of only that amount of Cash Collateral as is necessary to avoid immediate and irreparable harm to its estate pending a final hearing, its request complies with Rule 4001 (b)(2).

21. Section 361(2) of the Bankruptcy Code expressly provides that the granting of a replacement lien constitutes a means of providing adequate protection. 11 U.S.C. §361(2). In the instant case, granting Iberia a replacement lien on post-petition collateral to the extent its prepetition collateral is diminished by the Debtor's use of cash collateral provides Iberia with adequate protection. See e.g. *O'Connor*, 808 F. 2d 1393, 59 B.R. 164, 167 (Bankr. M.D. Ga 1986); *In re Dixie-Shamrock Oil & Gas, Inc.*, 39 B.R. 115, 118 (Bankr. M.D. Tenn. 1984)

22. It is well established that a bankruptcy court, where possible, should resolve issues in favor of preserving the business of the debtor has a going concern. *In re George Ruggiere Chrysler-Plymouth, Inc.*, 727 F. 2d 1017, 1019 (11<sup>th</sup> Cir. 1984).

23. That the Debtor will use the collateral during the interim cash collateral period to pay employees, utilities and otherwise maintain and protect the assets of the debtors and continue its obligation to complete construction contracts. Without the ability to use cash to meet daily operating expenses, the congressional policy favoring rehabilitation over economic failure would

be frustrated.

24. Moreover, the Debtor will continue to properly maintain all the encumbered real and personal property, and it will continue to maintain casualty insurance on such property and other insurable portions of the collateral.

25. The Debtor believes that the approval of this Motion is in the best interest of the Debtor, its creditors and its estate because it will enable the Debtor to (1) continue the orderly operation of its business and avoid an immediate shutdown of operations will result in a breach of contract with the Arkansas State Highway Department; (2) meet its obligations for necessary ordinary course expenditures, and other operating expenses; and (iii) make payments authorized under other orders entered by this Court, thereby avoiding immediate and irreparable harm to the Debtor's estate.

26. For all of these reasons, the Debtor submits that it should be permitted to use Cash Collateral, if any, as set forth herein.

#### **VI. NOTICE**

27. No trustee, examiner, or creditors' committee has been appointed in this case. A copy of this Motion has been delivered via electronic mail, or the Court's Electronic Notification system to the United States Trustee and Geoffrey B. Treece and Mary-Tipton Thalheimer attorneys for Iberia Bank. In light of the nature of the relief requested, the Debtor submits that no other or further notice need be given. In an abundance of caution, the 20 largest unsecured creditors and all secured creditors have been notified by regular mail or by the Court's Electronic Notification.

#### **VII. CONCLUSION**

28. In order to maintain the continuity of the Debtor's businesses and to preserve the morale of their Employees, the Debtor must be able to pay and honor any accrued and unpaid

wages, vacation pay, and other benefits in the ordinary course of business. Approval of the payments sought herein is in the best interest of the Debtor's estate and its creditors in order to avoid hardship to the employees and to maintain the viability of the Debtor's ongoing businesses.

**WHEREFORE**, based upon the foregoing, the Debtor respectfully requests that the Court enter an order (a) granting the relief requested herein; and (b) granting such other and further relief as the Court may deem just and proper.

Dated: 7/24/17

Respectfully submitted,

Sheila F. Campbell  
Attorney at Law  
P.O. Box 34007  
Little Rock, Ar 72203  
(501) 374-0700

/s/Sheila F. Campbell  
Sheila F. Campbell  
Ark. Bar # 83-239

**AFFIDAVIT**

I, Mark Gregory Jackson, having been duly sworn, hereby state under oath:

1. That I am the CEO of Kingridge Enterprises, Inc., and I am familiar with its financial information and operation of its business.

2. That I have read the foregoing Emergency Motion of Debtor For Interim and Final Order Authorizing Payment of (A) PostPetition Employee Wages, Salaries and Related Items; (B) Postpetition Employee Business Expenses; And (C) To Pay All Costs And Expenses Incident To the Operation of the Business; (II) And For Authority To Use Cash Collateral, If Any, To Pay Such Obligation.

3. I believe that irreparable harm will result in business disruption of the Debtor-in-Possession if it is not permitted to use the Cash Collateral for the purposes stated in the foregoing Emergency Motion For Authority To Use Cash Collateral.

IN WITNESS HEREOF, I HEREUNTO SET MY HAND AND SEAL on this 21st day of July, 2017

/s/Mark Gregory Jackson  
Mark Gregory Jackson  
CEO Kingridge Enterprises, Inc.

STATE OF ARKANSAS)  
                                  )SS  
COUNTY OF PULASKI)

SUBSCRIBED AND SWORN TO BEFORE ME A NOTARY PUBLIC in the above and foregoing County and State on this 21st day of July, 2017.

/s/ Tamara Jackson  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

February 14, 2023

**CERTIFICATE OF SERVICE**

I, Sheila F. Campbell, hereby certify that I have served a copy of the foregoing pleading on the following creditors, attorneys and interested parties through the electronic filing systems of the Court and by depositing same in the in the United States mail with sufficient postage affixed on this this 24<sup>th</sup> day of July, 2017:

Mr. Charles Tucker  
Assistant U.S. Trustee  
200 West Capitol Avenue, Suite 1200  
Little Rock, AR 72201

Geoffrey B. Treece  
Mary-Tipton Thalheimer  
Quattlebaum, Grooms & Tulls PLLC  
111 Center Street, Suite 1900  
Little Rock, AR 72201

Charles T. Coleman  
**WRIGHT, LINDSEY & JENNINGS, LLP**  
200 W. Capitol Ave., Suite 2200  
Little Rock, AR 72201-3627

Rosaline M. Mouser  
Simmons First National Bank  
P.O. Box 7009  
Pine Bluff, AR 71611-7009

Roger D. Rowe  
**LAX, VAUGHAN, FORTSON, ROWE &  
THREET**  
11300 Cantrell Road, Suite 201  
Little Rock, AR 72201-3699

Ralph D. Scott  
Lax, Vaughan, Fortson, Rowe & Threet, PA  
11300 Cantrell Road, Suite 201  
Little Rock, AR 72201-3699

And all creditors whose names appear below:

Arkansas Dept. of Environmental  
Quality  
5301 N. Shore Dr.  
North Little Rock, AR 72118

Cardwell Parish Police Jury  
201 Main St., #5  
Columbia, LA 71418

Cat Financial  
P.O. Box 978595  
Dallas, TX 75397

Caterpillar Financial  
P.O. Box 730681  
Dallas, TX 75373

Caterpillar Financial  
P.O. box 34001  
Nashville, TN 37302-0010

Central Arkansas Contractor  
P.O. Box 1664895  
Little Rock, AR 72216

Dept. of Finance & Admin.  
P.O. Box 919  
Little Rock, AR 72203

Dept. of Workforce Services  
P.O. Box 8007  
Little Rock, AR 72203

Helena Chemical Co.  
c/o Attorney Ralph Scott  
11300 Cantrell Rd., Ste 201  
Little Rock, AR 72212

Iberia Bank  
c/o Attorney Geoffrey Treece  
111 Center Street, Suite 1900  
Little Rock, AR 72201

Mid-America International  
Truck, LLC  
c/o Attorney Steven Davis

1900 N. Main Street, Ste 221  
North Little Rock, AR 72114

Phi Financial, Inc.  
c/o Attorney Christopher Low  
2536 73<sup>rd</sup> St.  
Urbandale, IA 50322

Phoenix Loss Control  
P.O. Box 271504  
Littleton, CO 80127

Relyance Bank  
P.O. Box 7878  
Pine Bluff, AR 71611

Simmons Bank  
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208 S. Arkard  
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/s/Sheila F. Campbell  
Sheila F. Campbell