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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re

FLO-TECH, INC.

Debtor.

Case No. 2:19-bk-00460-BKM

Chapter 11

**EMERGENCY MOTION FOR
AUTHORIZATION TO USE CASH
COLLATERAL**

Flo-Tech, Inc. (“**Debtor**” or “**Flo-Tech**”), as Debtor and Debtor-in-Possession in the above-entitled Chapter 11 proceeding, by and through undersigned counsel, requests this Court to enter an order pursuant to Bankruptcy Code Section 363 and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure authorizing the use of cash collateral on an interim and final basis. A proposed preliminary budget is attached hereto as Exhibit “A” (the “**Budget**”). This Motion is supported by the entire record before the Court, the *Declaration of Thomas Tedford in Support of Chapter 11 Petition and First Day Accelerated Motions* (the “**Tedford Declaration**”), and the attached Memorandum of Points and Authorities, which is incorporated herein by this reference.

1 **DATED** this 16th day of January, 2019.

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3 **KEERY MCCUE, PLLC**

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5 By: /s/ Patrick F. Keery (#030971)
6 Patrick F. Keery, Esq.
7 *Proposed Attorneys for Debtor*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. JURISDICTION AND VENUE

1. Flo-Tech, an Arizona Corporation, filed a voluntary petition under Chapter 11 of the Bankruptcy Code on January 15, 2019 (“**Petition Date**”).
2. Thomas Tedford (“**Mr. Tedford**”) is the president, director and majority shareholder of the Debtor.
3. Mr. Tedford is operating Debtor and managing Debtor’s assets as debtor-in-possession in accordance with 11 U.S.C. §§ 1107 and 1108. This Court has jurisdiction over this Chapter 11 proceeding under 28 U.S.C. §§ 157 and 1334. These matters constitute core proceedings under 28 U.S.C. § 157(b)(2)(A) and (M).
4. Debtor is an Arizona corporation with its principal place of business located in Phoenix, Maricopa County, Arizona. Accordingly, venue of the Debtor’s Chapter 11 proceeding is proper in this District under 28 U.S.C. §§ 1408 and 1409.
5. The statutory predicates for the relief requested in this Motion are Bankruptcy Code §§ 105(a), 363(a)(4) and 507(a)(5).

II. FACTUAL BACKGROUND

6. Flo-Tech is owned and operated by Mr. Tedford. Mr. Tedford owns 100% of the outstanding shares in Debtor.
7. Flo-Tech is in the business of providing concrete floor repair, restoration and refinishing services.
8. Flo-Tech was formed on or about December 22, 1994. Flo-Tech has nine (9) full-time employees (including Mr. Tedford) and no part-time employees.
9. Mr. Tedford intends to continue to operate Flo-Tech and to reorganize under Chapter 11 of the Bankruptcy Code.
10. The projected post-petition income and expenses of Debtor are identified in the budget (the “**Budget**”) attached hereto and incorporated herein as **Exhibit “A.”**

- 1 11. Tango Capital aka Snap Advances, LLC and Capital Active Funding-Phoenix, Inc.
2 (“**Secured Creditors**”) may claim a security interest in inventory, chattel paper,
3 accounts, equipment and general intangibles of Flo-Tech’s cash collateral pursuant to
4 security agreement and filed UCC-1. The Debtor has not had sufficient time to determine
5 the validity, priority, enforceability, and/or the extent of the claimed liens. In addition,
6 no formal creditors committee has yet to be formed. Accordingly, the Debtor does not
7 take a position regarding those issues as part of this emergency motion, the Debtor
8 assumes all claimed liens are valid and enforceable, but expresses no position as to the
9 priority of such liens. The Secured Creditor has the burden of proof to establish validity
10 of their purported “interests” in cash collateral under §363(p)(2).
11
12 12. Debtor proposes to use revenue from Flo-Tech to pay operating expenses in accordance
13 with its Budget based upon actual operations.
14
15 13. It is crucial for the Debtor to have the use of the cash collateral to continue to provide
16 goods and services to its customers and to pay employees and pay other ordinary and
17 necessary operating expenses to avoid (a) disruption of their work force, (b) maintain
18 customer relations and loyalty, (c) maintain their market presence, and (d) preserve the
19 going concern value of the Debtor and its estate while the Debtor formulates and
20 implements a plan of reorganization.
21
22 14. As and for adequate protection for the limited use of cash collateral as set forth in the
23 Budget, the Debtor offers post-petition replacement liens to the Secured Creditor on its
24 inventory, accounts, and contract rights in accordance with 11 U.S.C. §§361(2) and
25 552(b); (a) to the extent of cash collateral actually expended; (b) on the same assets and
26 in the same order of priority as currently exists between the Debtor and the Secured
27 Creditor; and (c) with the Debtor’s full reservation of rights with respect to the issues set
28 forth above.
15. The Debtor believes that their business operations and reorganization efforts will suffer
immediate and irreparable harm if they are not allowed to use cash collateral.

1 **III. POINTS AND AUTHORITIES**

2 11 U.S.C. §363(c)(2) of the Bankruptcy Code permits the use of cash collateral only upon
3 consent of the party claiming an interest in cash collateral or with court authority after a notice
4 and a hearing. Section 363(e) conditions the use of cash collateral on the Debtor providing
5 adequate protection of the interest at stake.

6 Section 361 of the Bankruptcy Code provides that where adequate protection is required
7 to be furnished, it must protect a secure entity against any use of collateral that results in a
8 decrease in the value of such entity's interest in such collateral. *See United Savs. Ass'n Timbers*
9 *of In-wood Forest Ass'n Ltd.* 44 U.S. 365, 369-73, 108 S. Ct. 626 (1988) (the "interest in
10 property" entitled to protection is "the value of the collateral" that secures such claim); *In re*
11 *Kain*, 96 B.R. 506, 513 (Bankr. W.D. Mich. 1988); *General Elec. Mortgage Corp. v. South*
12 *Village Inc.* (In re South Village), 25 B.R. 987, 989-90 & n.4 (Bankr. D. Utah 1982).

13 The Secured Creditors will be adequately protected as follows:

- 14 A. By the Debtor's continuation and preservation of the on-going concern value of the
15 business. *See e.g., In re Erie Hilton Joint Venture*, 125 B.R. 140, 149 (Bankr. W.D. Pa.
16 1991) ("Preservation of the going-concern value of the business can constitute a benefit
17 to the secured creditor."); *In re Princeton Square Assocs.*, 201 B.R. 90-96 (Bankr.
18 S.D.N.Y. 1996) ("[T]his court concludes that no monetary protection is required to be
19 provided by the debtor in possession to the secured creditor to the extent that the rents are
20 applied for the maintenance of the property in the manner a receiver would apply the
21 rents.").
- 22 B. By the equity cushion in the value of the business. *See in re Mellor*, 734 F.2d 1396, 1400
23 (9th Cir. 1984); *In re Patrician St. Joseph Ltd. Partnership*, 169 B.R. 669, 676 (D. Ariz.
24 1994) (*citing Mellor* and recognizing, "[a] classic method of finding adequate protection
25 is the existence of an equity cushion [and that] an equity cushion standing alone can
26 provide evidence of adequate protection for a secured claim").

1 C. By the replacement lien in Debtor's assets. See *In re Waste Conversion Technologies,*
2 *Inc.*, 205 B.R. 1004 (D. Conn. 1997); *In the Matter of Pursuit Athletic Footwear, Inc.*,
3 193 B.R. 713 (Bankr. Del. 1996); *In re International Design & Display Group, Inc.*, 154
4 B.R. 362 (Bankr. S.D. Fla. 1993).

5 The Secured Creditor is protected by the Debtor's proposed use of cash to maintain the
6 operation of their business. In *McCombs*, supra, the Court held that:

7 Even if there was no equity cushion, I am not convinced that gross
8 rents will diminish over the foreseeable future and this is the risk
9 requiring protection... debtor has committed to use the cash
10 collateral to pay operating expenses and improve and maintain the
11 property with any excess income going to First Texas. By
12 dedicating cash collateral for these purposes, Debtor has
substantially eliminated the risk of diminution of First Texas'
interest in cash collateral. The more likely scenario is that cash
collateral will increase.

13 The Debtor's proposed use of the income to maintain the business by paying for
14 maintenance, repairs, insurance, taxes and the like protects the Secured Creditor's interests and
15 reduces the possibility that the business will decrease in value.

16 Finally, the Debtor is in the best position to operate the business. By allowing the Debtor
17 to use cash collateral to continue and increase the business, the Secured Creditor will have a
18 greater assurance of recovering their claims. Moreover, immediate interim approval of the use of
19 cash collateral under Bankruptcy Rule 4001(a) is appropriate. See *In re Center Wholesale Inc.*,
20 759 F.2d. 1440, 1449 fn, 21 (9th Cir. 1985).

21 In conclusion, because the Debtor will be using cash collateral in the operation of the
22 business, and because the Debtor will be in the best position to increase usage thereby producing
23 income to continue to service debt to the Secured Creditor, the use of cash collateral should be
24 granted in favor of the Debtor.

25 **WHEREFORE**, Debtor respectfully requests:

- 26 1. Entry of an order authorizing its use of cash collateral in accordance with the
27 Budget attached hereto as Exhibit "A" based upon actual operations for the
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interim period, subject to a continuance upon request of the Debtor at or before the hearing on this matter; and entry of an order authorizing use of cash collateral in accordance with the Budget attached hereto as Exhibit "A". (A proposed form of Order is attached hereto as **Exhibit "B"**.)

2. Granting such other relief as the Court deems just and proper.

DATED this 16th day of January, 2019.

KEERY MCCUE, PLLC

By: /s/ Patrick F. Keery SBA 030971

Patrick F. Keery, Esq.

Proposed Attorneys for Debtor

COPY of the foregoing mailed or served
via electronic notification, email* or fax**
or if so marked,
this 16th day of January, 2019 to:

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By: /s/ Mollie Thompson