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 6 Monument Security, Inc.

7
 8 UNITED STATES BANKRUPTCY COURT
 9 EASTERN DISTRICT OF CALIFORNIA

10 In re: 11 Monument Security, Inc. 12 Debtor-in-Possession)))))))	Case No. 2017-20689 Date: June 21, 2017 Time: 10:00 a.m. Dept: D Ctrm: 34 DCN: ET-09
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 16 **DEBTOR'S MOTION FOR APPROVAL OF USE OF**
 17 **CASH COLLATERAL ON AN INTERIM AND FINAL BASIS**

18 TO: HONORABLE ROBERT S. BARDWIL UNITED STATES BANKRUPTCY
 19 JUDGE IN THE ABOVE-CAPTIONED CHAPTER 11 CASE:

20 Monument Security, Inc., as debtor and debtor in possession (the "Debtor") in the above-
 21 captioned case, hereby moves for entry of an order, substantially in the form filed concurrently
 22 with this motion, pursuant to the provisions of Section 363 of the Bankruptcy Code and Rule
 23 4001(b) of the Bankruptcy Rules, for the approval of the Debtor's use of cash collateral, on both
 24 an interim and final basis, to pay expenses necessary to maintain the Debtor's ongoing post-
 25 petition security services business and administer the Debtor's chapter 11 case.
 26

27 1. This case was commenced on February 1, 2017 by the filing of a Voluntary Chapter
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1 11 Petition.

- 2 2. A cash collateral order is already in effect and is set to expire on June 21, 2017.
- 3 3. Debtor seeks a cash collateral order similar to the one already in effect.
- 4 4. Monument Security, Inc. was formed in 1995, and operates a security services
5 business in California, Nevada, Arizona, Colorado, Georgia, Florida, Indiana,
6 Louisiana, Maryland, Missouri, New Jersey, New York, Ohio, Oregon, Texas, Utah,
7 Washington, and Wyoming. Further, Monument Security, Inc., and also subcontracts
8 work to other security providers in Alaska, Arizona, New Mexico, and North
9 Carolina.
- 10
- 11 5. The business had been successfully run by the Scott McDonald for many years, and
12 regularly employs more than 1000 employees..
- 13
- 14 6. Unfortunately, three problems arose with the business that created a perfect storm that
15 resulted in Monument Security, Inc, needing the protections of the automatic stay,
16 and to reorganize: meritless litigations over purported wage and hour cases; a
17 negative judgment arising out of a sexual harassment case; and workers'
18 compensation premium enhancements.
- 19
- 20 7. Litigations Expenses: Beginning in or around 2012, Monument Security, Inc.
21 became the subject of multiple duplicative lawsuits alleging primarily rest and meal
22 break violations. The lawsuits started to increase in frequency in 2015. Monument
23 Security, Inc. has successfully defended every single meal and rest break case that has
24 been litigated, but the costs associated with defending the ongoing claims has become
25 overwhelming. To avoid future lawsuits, Monument Security, Inc., has instituted
26 new procedures for mandating reporting of meal and rest breaks, as well as a zero
27 tolerance for employees that fail to take those breaks. Even though Monument
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1 Security, Inc, believes that all of the litigation is meritless, these changes in policies
2 will hopefully reduce future claims being made that must be defended. Furthermore,
3 Monument Security, Inc., has full time in-house counsel to educate managers and
4 institute proactive measures to reduce exposure to litigation, as well as to reduce
5 some of the future litigation expenses.

6
7 8. Stay Collection: Unlike the wage and hour violations above, Monument Security,
8 Inc., did unfortunately lose a recent case alleging sexual harassment by the employee
9 of a client toward one of Monument Security, Inc.'s employees, and which resulted in
10 a judgment in approximately \$255,485.70. As a result of that decision, Monument
11 Security, Inc., was the subject of a bank levy of over \$47,181.16 and remains subject
12 to immediate levies.

13
14 9. Workers Compensation Modification Rates: Additionally, Monument Security,
15 Inc.'s workers compensation rates have skyrocketed. It is currently operating under a
16 "modification" rate of 202 in California.¹ A modification rate effectively means that
17 the normal rate that would be charged, is increased by that number based on prior loss
18 experiences. However, under the California Regulations applicable to workers'
19 compensation insurance, the experience modification rate can be reduced to the
20 standard 100 if there is new ownership installed, and that there is a 51% turnover of
21 employees within 90 days of the new ownership. Just before this petition was filed,
22 the CEO sold his interest in the business and resigned. The new CEO and owner of
23 the business is Michael Bivians. Furthermore, the business traditionally has a very
24 high employee turnover, and meeting the 51% turnover in employee requirement over
25 the next three months is likely to occur by virtue of natural attrition and migration
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¹ As of June 1, 2017 Debtor's modification rate has increased to 249.

1 within the security business. New policies have also been implemented to reduce
2 workers compensation claims which will also help to reduce the influence on the
3 modification rate.

4 10. Further, the business has eliminated the highest compensated employees over the last
5 several months including the former CEO and the Vice President of loss prevention.
6 The new CEO is the former Vice President of security and is compensated at a lower
7 rate which will assist with cutting costs.
8

9 11. There will be a few administrative positions that will be eliminated as well as the
10 moving of the corporate office to a smaller foot print.

11 12. As part of the reorganization, the new CEO will be reviewing opportunities to
12 automate processes which will dramatically cut costs and reduce exposure to lawsuits
13 for alleged wage and hour issues.
14

15 13. For each of the reasons, the business is in need of reorganization.

16 14. Citibank N.A, has two loans secured by the all of the assets of the Debtor, including
17 cash and receivables. One is a Relationship Ready Line of Credit ("RRC Loan") and
18 the other a business loan guaranteed by the Small Business Administration (the "SBA
19 Loan") Citibank holds security interest in all personal property of the Debtor to
20 secure the SBA Loan in the original amount of \$685,000 and the RRC Loan with an
21 original credit limit of \$250,000. The balance owed on these loans is approximately
22 \$312,346.13 and \$164,500.30.
23

24 15. Debtor has agreed to pay Citibank \$11,701.48 per month constituting principal and
25 interest for the RRC Loan and \$6,361.19 per month for principal and interest on the
26 SBA Loan as adequate protection for Debtor's use of Cash Collateral. The parties
27 entered into a stipulation to use cash collateral, a true and correct copy of which is
28

1 attached to the declaration of Michael Bivians as **Exhibit A**.

2 16. Scott F. McDonald and Monument Investigations are guarantors on the RRC Loan.

3 The RRC Loan is secured by a security interest in all personal property and assets
4 owned by the Debtor and Monument Investigations, Inc. Monument Investigations
5 Inc., is a closely held California corporation formed on or around 2002.² Scott
6 McDonald is the only officer and/or director of that corporation.

7
8 17. The SBA loan is guaranteed by Monument Security Inc., Scott McDonald and
9 Kathryn McDonald.

10 18. Additionally the Internal Revenue Service also has claims for 941 taxes from 2014
11 and 2015 in the approximate amount of \$680,000, and are secured by involuntary
12 blanket liens.

13
14 19. The Debtor entered into a Stipulation for authorization to use cash collateral with the
15 IRS in order to provide the IRS adequate protection until a Plan of Reorganization is
16 confirmed. A true and correct copy of that Stipulation is attached to the declaration
17 of Michael Bivians as **Exhibit B**. Under the terms of that agreement, Debtor is to pay
18 the IRS monthly payments of \$7,500.

19
20 20. The Debtor's current CEO, Michael Bivians, is not a guarantor, or otherwise
21 personally obligated on either of the loans owed to Citibank.

22 21. The total of the liens secured by the cash and receivables of Monument Security, Inc
23 is approximately **\$1,156,846**.

24 22. In contrast, the Debtor has accounts receivables that are less than 90 days old with a
25

26 ² As set forth in the schedules and discussed in more detail at the meeting of creditors with counsel for the U.S.
27 Trustee, Monument Investigations, Inc. is a separate legal entity that was formed by the same person that formed
28 Monument Security, Inc. Unlike Monument Security, Inc., Monument Investigations, Inc is licensed to handle
"investigations". The two businesses are run separately, and are separately owned. However, it was, and is still
not, unusual for one business to refer clients to the other business when services are needed, but outside the scope of
one entity or the other entity's licensing.

1 fair market value of \$2,313,961.00. The Debtor has accounts receivables that are
2 greater than 90 days old with a fair market value of \$45,846.00. The liquid assets
3 described herein total approximately \$2,258,890.00.³

4 23. The equitable cushion between the liquid assets and the security is just over
5 \$1,102,044.00. Furthermore, the IRS's lien is also encumbering the personal
6 residence of the former CEO, and there is believed to be approximately \$400,000 in
7 equity in that residence, after application of the homestead exclusion.
8

9 24. Since the IRS's lien is also encumbering the personal residence of Scott McDonald,
10 Debtor believes that he may be personally responsible for at least some of the tax
11 debt.
12

13 25. Attached to the Declaration of Michael Bivians as **Exhibit C** is a budget for February
14 2017 through December 2017.

15 26. The budget submitted which is attached as **Exhibit C** contains a line item for
16 "Citibank SBA Loan (Principal)" for \$5,848.00 per month and "Citibank CR Loan
17 (Principal)" for \$10,415.00 per month. These represent the principal payment only on
18 the SBA Loan and the RRC Loan. The interest portion of the payments are contained
19 in the "Interest Expense" line item of \$4,571.00 per month. The ongoing interest
20 payments on the loans are subject to change, but it is anticipated that the "Interest
21 Expense" line item contains an adequate cushion to account for fluctuations in
22 payments on the Loans. It is not anticipated that interest on these loans will surpass
23 \$2,300 per month. Debtor has been paying approximately \$877.86 in monthly interest
24 on the Citibank SBA Loan and approximately \$1,289.94 in monthly interest on the
25
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27
28 ³ A reduction of \$100,917.00 was made in calculating liquid assets since at the time of filing of the most recent Monthly Operating Report Debtor's bank accounts had a negative balance since Debtor had just ran payroll and was awaiting payment on some of its larger accounts.

1 Citibank RRC Loan.

2 27. The "Interest Expense" line item in the proposed budget also accounts for interest
3 paid on financing Toyota vehicles.

4 28. Debtor has filed monthly operating reports in for February, March, and April 2017.
5 Some of the discrepancies on the initially filed first Monthly Operating Report for
6 February were a result of transitioning from Bank of America and Citibank to the
7 Debtor in Possession account. Debtor was waiting for checks to clear out of the old
8 accounts. That report was amended and the Amended Monthly Operating Report is
9 now reconciled and Schedule H matches with the Cash Receipts and Disbursements
10 and Balance Sheet. Also the post petition debts on Schedule A has been corrected.

11 29. The Debtor is not aware of any agreements in which Monument Security Inc.,
12 pledged as collateral the cash, accounts receivables, or receipts of the business
13 operations other than to Citibank, N.A, and is not aware of any involuntary liens on
14 those assets either, with the exception of the Internal Revenue Service's lien.
15

16 30. The Debtor proposes to use cash collateral in which Citibank and the Internal
17 Revenue Service may potentially assert interests, namely the cash proceeds and/or
18 accounts receivables to continue to operate the company in its regular and ordinary
19 course of business affairs within the budget attached to the declaration of Michael
20 Bivians (the "Budget"). That Budget includes the on-going non-default monthly
21 payments to Citibank as described above.
22

23 31. The Debtor also proposes to use the cash collateral to pay make the payroll for
24 employees that would normally come due after the bankruptcy is filed.
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26 32. Payment of those on-going expenses is critical to the preservation and value of the
27 estate's business. Without the payment of those expenses, the business would have to
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be shut down, and the value of the business as an on-going entity would be greatly diminished, and over 1000 employee positions would be eliminated.


33. The Debtor seeks a cash collateral order similar to the one already approved by the court.

34. Debtor seeks a cash collateral order to remain in effect through the remainder of the 2017 calendar year based on the budget submitted concurrently with this motion.

Based upon the foregoing, the Debtor respectfully requests that the Court enter order in substantially the same form and the same terms as attached as Exhibit "1," to the proposed order filed concurrently with this motion.

DATED: June 2, 2017

EASON & TAMBORNINI, ALC



Matthew R. Eason

Exhibit "1"

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10 In re:) Case No. 2017-20689
 11 Monument Security, Inc.)
 12 Debtor-in-Possession)
 13) Date: June 21, 2017
 14) Time: 10:00 a.m.
) Dept: D
) Ctrm: 34
) DCN: ET-09

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 16 **INTERIM CASH COLLATERAL ORDER**

17 1. On February 1, 2017, Debtor filed the instant bankruptcy petition under Chapter
 18 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Eastern District of California –
 19 Sacramento Division, and was assigned Case No. 17-20689. The Debtor continues to manage
 20 and operate the estate as Debtor-in -Possession. No Unsecured Creditors Committee has been
 21 appointed in this case.

22 2. Pursuant to the provisions of 11 USC §1107 and 1108 of the United States
 23 Bankruptcy Code, Debtor owns and manages a business commonly known as Monument
 24 Security, Inc.

25 3. On or about June 8, 2009, Debtor via its CEO and Vice President executed a
 26 Promissory Note in the amount of \$658,000.00 made payable to Citibank N.A. (hereinafter
 27 "Citi") and guaranteed by the Small Business Administration (hereinafter "SBA Loan"). Scott F.
 28

1 McDonald, Monument Investigations, Inc., and Kathryn A. McDonald each executed
2 unconditional guarantees of the SBA Loan. This obligation is secured by a Commercial Security
3 Agreement dated June 8, 2009, granting Citi a security interest in all personal property and assets
4 of the Debtor as well as collateral more specifically outlined in the Agreement. Debtor
5 represents that there are no other liens or encumbrances senior to Citi's security interest.

6 4. On or about July 29, 2011, Citi extended a Relationship Ready Line of Credit
7 (hereinafter "RRC Loan") to Debtor with an original limit of \$250,000.00. This credit limit was
8 subsequently increased to \$500,000.00 on or about May 14, 2013. Scott F. McDonald and
9 Monument Investigations are guarantors on the RRC Loan. The RRC Loan is secured by a
10 security interest in all personal property and assets owned by the Debtor and Monument
11 Investigations, Inc. Debtor represents that there are no other liens or encumbrances senior to
12 Citi's security interest.

13 5. Citi holds security interest in all personal property of the Debtor to secure the
14 SBA Loan in the original amount of \$685,000.00 and the RRC Loan with an original credit limit
15 \$250,000.00. The Debtor has an immediate need for the use of this Cash Collateral for the
16 preservation of the bankruptcy estate and the maintenance and continued operation of the
17 business. Debtor has agreed to pay Citi the amount of \$11,701.48 per month on account of the
18 RRC Loan and \$6,361.19 per month on account of the SBA Loan as adequate protection for
19 Debtor's use of the Cash Collateral. These amounts are subject to change per the terms of the
20 underlying terms of the Subject Loans.

21 6. The Internal Revenue Service also has on record two blanket involuntary liens for
22 941 taxes, one recorded April 6, 2015 in the amount of \$618,552.87, and one recorded August
23 14, 2015 in the amount of \$42,530. The Debtor believes the current balance on those two liens
24 is approximately \$680,000.

25 7. The Debtor represents that no consensual liens or encumbrances senior to those of
26 Citibank, N.A., or the Internal Revenue Service exists against the collateral.

27 8. The IRS desires to be adequately protected for the use of the cash collateral until
28

1 such time as a Plan of Reorganization is confirmed. Debtor and the IRS have agreed for the
2 purpose of providing the IRS adequate protection, pursuant to 11 USC §361, to certain terms and
3 conditions as set for below: The Debtor represents that no consensual liens or encumbrances
4 senior to those of Citibank, N.A., nor the Internal Revenue Service exist against the Subject
5 Property.

6 Debtor desires to utilize the cash collateral to continue the operation of its business
7 *NOW THEREFORE*, the Debtor proposes to use Cash Collateral on the following terms:

8 1. Definitions.

9 The term "Cash Collateral" is defined as cash, negotiable instruments, documents of title,
10 securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and
11 an entity other than the estate have an interest and includes the proceeds, products, offspring,
12 rents, or profits of property and the fees, charges, accounts or other payments for the use or
13 occupancy of rooms and other public facilities in hotels, motels, or other lodging properties
14 subject to a security interest as provided in 11 U.S.C. §§ 363 and 552(b), whether existing before
15 or after the commencement of a case under this title.

16 2. Existing Agreements.

17 Except as modified by this Order, all terms, conditions and provisions of the Loan
18 Documents giving rise to Citibank N.A.'s loans shall remain in full force and effect. Any other
19 document executed by Debtor in favor of Citibank N.A. in connection with this bankruptcy case
20 shall be considered to supplement and not replace any agreement previously entered into
21 between Citibank N.A. and the Debtor.

22 3. The Debtor acknowledges that it is not presently aware of any grounds to
23 challenge the validity, enforceability, or priority of the Citibank N.A. or the Internal Revenue
24 Services' pre-petition claims or liens against the Collateral.

25 4. Terms and Conditions for the Use of Cash Collateral.

26 A. Term.

27 The Debtor's authority to use Cash Collateral shall terminate ("Termination Event") on
28

1 the earlier of: (i) December 31, 2017 (ii) the effective date of any confirmed Chapter 11 plan of
2 reorganization: (iii) dismissal of this case; (iv) the Debtor's default and failure to cure the same
3 with respect to any term, provision or condition of this Order; (v) conversion of this case to one
4 under Chapter 7 of the Bankruptcy Code; or (vi) appointment of a Chapter 11 Trustee.

5 B. Budget and Payment of Expenses. From the Cash Collateral derived from Citi's
6 collateral, commencing upon execution of this Order, and continuing on the first day of each
7 month thereafter, Debtor shall reserve the amounts for the expenses outlined in the attached
8 budget¹, as modified by this Order, for the operating of the business and timely pay said
9 expenses when due. Debtor agrees the net proceeds, if any, shall be held in reserve in Debtor's
10 Debtor in Possession ("DIP") account in accordance with paragraph (4F) of this Order to be used
11 solely for the operation of the business and for no other purpose.

12 C. Adequate Protection Payments

13 C.1 Adequate Protection to Citi. Debtor has agreed to pay Citi the amount of
14 \$11,701.48 per month on account of the RRC Loan and \$6,361.19 per month on account of the
15 SBA Loan ("Adequate Protection Payments") for Debtor's use of the Cash Collateral. These
16 amounts are subject to change per the terms of the underlying terms of the Subject Loans. The
17 Adequate Protection Payments shall commence immediately upon execution and court approval
18 of this Order, and continue on the first day of each month thereafter until the Debtor's Chapter
19 11 Plan is confirmed, or the parties enter into a subsequent Order concerning the treatment of
20 Citi's claim.

21 C.2 Adequate Protection to IRS: Adequate protection, under 11 USC § 361, of
22 the IRS interest shall be provided by Debtor making monthly cash payments to the IRS
23

24 _____
25 1 The attached budget contains a line item for 'CitiBank SBA Loan (Principal)' for \$5,848.00 per month, and
26 'CitiBank CR Loan (Principal)' for \$10,415.00 per month. It has been confirmed with Debtor's counsel that these
27 represent the principal payment only on the SBA Loan and RRC Loan, respectively. It has been confirmed with
28 Debtor's counsel that Debtor intends to make all post petition payments on the Loans in full, in accordance with the
terms of the underlying loan documents, and that the interest portion of the payments are contained in the 'Interest
Expense' line item of \$4,571.00 per month. The ongoing payments on the Loans are subject to change, but it is
anticipated that the 'Interest Expense' line item contains an adequate cushion to account for fluctuations in payments
on the Loans. Currently, \$2,163.67 of the monthly payments on the Loans can be attributed to this line item, and it
is not anticipated that this amount will surpass \$2,300.00 per month.

1 as provided in this Order. Debtor will pay to the IRS monthly payments of \$7,500.00 with
2 the first such payment to be made on the latter of March 15, 2017, or upon Court approval of
3 the within Order, and on the 15th day of each month thereafter. Such payments are to
4 continue monthly thereafter until such time as the Bankruptcy Court enters an order
5 confirming the Plan of Reorganization for Debtor or upon further order of the Bankruptcy
6 Court. The monthly payment shall be mailed or delivered to the IRS at the following
7 address:
8

9 Internal Revenue Service
10 Attn: Susan Lathrop
11 211 East 7th Street, Suite 301
12 Eugene OR 97401

13 D. Debtor's Obligations to Provide Documentation

14 D.1 Obligation to Citi: Debtor also agrees to provide Citi with documentation
15 substantiating the above referenced expenses upon reasonable written request, and Debtor further
16 agree to provide Citi's counsel with a copy of any written executory agreements affecting Citi's
17 collateral, as well as provide Citi's counsel with a copy of any renewals of said executory
18 contracts or new contracts within 15 calendar days of Citi's written request for the same.
19

20 D.2 Obligation to IRS: Debtor agrees to provide the IRS with copies of all
21 Monthly financial information which Debtor is required to file with the US Trustee and
22 the bankruptcy Court at the same time that such monthly reports are due to be filed with the
23 US Trustee's Office. The Debtor agrees to make her books and accounts open for inspection by
24 the IRS upon reasonable notice. Debtor shall provide the IRS with evidence of payment of any
25 and all federal income, excise, and employment taxes, and the filing of the required tax returns
26 which become due during the pendency of the within Chapter 11 bankruptcy proceeding.
27
28

1 E. Taxes and Insurance. Debtor agreed to procure and otherwise maintain adequate
2 insurance to protect Citi and IRS's collateral from loss. Debtor has agreed to timely pay any and
3 all tax amounts and insurance premiums when due, and maintain Citi and IRS's collateral in
4 accordance with any requirements set forth in the applicable loan and security documents and
5 agreements. Debtor will provide Citi and IRS (or its counsel) with proof of insurance for Citi's
6 collateral within 15 calendar days of written request by Citi and/or IRS. Further, Debtor shall
7 provide Citi and/or IRS (or its counsel) with proof of payment of taxes upon Citi or IRS's (or its
8 counsel's) written request within 15 calendar days of said request.

9 F. Variance. No payment of any expense set forth in paragraph (4B) above shall
10 exceed the budgeted line item for said expenses by more than ten percent (10%) without the
11 prior written consent of the Citi and IRS.

12 G. Segregated Account; Use Limitation; Operating Reports. Debtor will open and
13 deposit all Cash Collateral from Citi's collateral into a segregated Cash Collateral account (the
14 "Deposited Funds"). The Segregated Account shall be maintained in accordance with 11 U.S.C.
15 § 363(c)(4). The Deposited Funds will not be available for use by the Debtor for personal
16 expenses or any other property of the Debtor's estate, and only as outlined in this Order. Debtor
17 agree to remain current on its monthly operating reports ("MOR") as required per Bankruptcy
18 Local Rule ("BLR") 2015-1.

19
20 H. Replacement Liens. In addition to any pre-petition liens or security interest
21 Citi has in Debtor's property and rights to property of Debtor in existence at the time the
22 bankruptcy petition was filed, Debtor hereby grants Citi and IRS a valid, perfected replacement
23 lien in Debtor's post-petition inventory, accounts, furniture and fixtures, machinery and
24 equipment (including vehicles), cash and cash equivalents, contract rights, general intangibles
25 and all other post-petition personal property of Debtor including proceeds thereof,
26 to the extent that the use of cash collateral resulted in a reduction of a creditor's secured
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1 claim, which replacement lien is perfected by the issuance of this order, no further
2 act of creditors required.

3 I. No Waiver. Nothing contained in this Order or order thereon shall be deemed or
4 construed to waive, reduce, or otherwise diminish the rights and claims of the Citi or IRS against
5 the Debtor, or of any rights, claims or defenses of the Debtor against the Citi or IRS. Citi and
6 IRS expressly reserves its right to bring a Motion for Relief from Stay on any grounds, oppose
7 any valuation concerning the collateral, object to Debtor's Disclosure Statement or Chapter 11
8 Plan of Reorganization, and bring a Motion to Dismiss or Convert Debtor's case or seek
9 appointment of a Chapter 11 Trustee. Further, by executing this Order neither Citi nor the IRS is
10 not agreeing with any proposed valuation of the collateral in any way, or any proposed interest
11 rate on the Subject Loans for Debtor's Chapter 11 Plan. The acceptance by Citi or IRS of a late
12 or partial payment hereunder shall not act as a waiver of Citi or IRS's right to proceed hereunder.

13
14 J. Default:

15 J.1 Default-Internal Revenue Service

16 The occurrence of any one of the following shall constitute an event of default under this
17 Order:

18 a. Debtors default in the performance of any term or covenant of
19 this Order and such default shall continue for a period of ten (10) days after written notice of
20 such default is mailed to Debtor and Debtor's counsel, and any other secured creditor who
21 requests such notice by writing to the IRS at the address in paragraph 4 above and to the office
22 of the US Trustee; or

23 b. The conversion of the captioned case to a proceeding under
24 Chapter 7 of the Bankruptcy Code; or

25 c. If any representation made by Debtor in this Order shall
26 provide to be false or misleading in any material respect; or
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1 d. The granting of relief from the automatic stay under Section
2 362 of the Code by any holder of any other lien or encumbrance on the property of Debtor for
3 the purpose of foreclosing or enforcing such lien or encumbrance; or

4 e. Debtor's failure to timely file any deferral tax returns on their
5 due date, including extensions; or

6 f. Debtor's failure to timely pay any federal tax on its due date; or

7 g. Debtor's failure to timely make any and all required federal tax
8 deposit of federal income tax withholding; FICA (Federal Insurance Contributions Act) tax; or
9

10 h. Debtor's failure to timely make estimated income tax
11 payments in the full amount, which may be required of Debtor, if any.
12

13 9. Upon the occurrence of an event of default and provided notice has been
14 given and the procedures followed as provided below, the automatic stay under 11
15 USC § 362 shall be lifted to provide the IRS with the following rights:

16 a. The IRS shall have the right to proceed against Debtor or its
17 assets to collect any of the pre-petition or pre-confirmation tax liabilities and related interest and
18 penalties accrued to the date of the petition, through use of the administrative or judicial
19 collection procedures available to the IRS under the Internal Revenue Code as if no bankruptcy
20 petition had been filed. Such procedures shall include, but are not limited to, the filing of
21 notices of federal tax liens.
22

23 b. The IRS' failure to act on any default shall not constitute a
24 waiver by the IRS of the right to act on such default.
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26 J.2 Default Citibank N.A.
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1 If the Debtor fails to fully perform any provision, term or condition of this
2 Order in a timely manner, the Debtor shall be in default under this Order. In the event
3 Debtor is in default under this Order, Citi shall provide written notice, via certified mail
4 to Debtor's attorneys of record indicating the nature of default. If Debtor fail to cure the
5 default after passage of thirty (30) calendar days from the date said written notice is
6 placed in the mail, Citi's consent to Debtor's use of Cash Collateral shall automatically
7 terminate without further notice, order or proceeding of the Court. Upon any such
8 default, the Debtor shall thereafter immediately sequester and account for all Cash
9 Collateral produced by and/or derived from Citi's collateral. In the event the Debtor
10 defaults under this Order and Citi forwards a default letter to Debtor, Debtor shall be
11 required to tender \$200.00 for each default letter submitted, in addition to the default
12 amount stated therein, in order to cure the default. Any notice of default that Citi
13 provides Debtor or the guarantors pursuant to this Order shall not be construed as a
14 communication under the Fair Debt Collection Practices Act, 15 U.S.C. §1692. If
15 Debtor fails to cure the default within the 30 day period described above, then Citi may
16 file and serve a declaration under penalty of perjury specifying the default, together with
17 a proposed order Terminating the Automatic Stay, which the Court may grant without
18 further notice or hearing. In the event that Citi is granted relief from the automatic stay,
19 the parties hereby stipulate that the 14-day stay provided by Bankruptcy Rule 4001(a)(3)
20 is waived.

21
22 K. Compensation. Debtor agrees that, during the term of this Order, no principal,
23 officer, director, insider or management employee of Debtor will be paid an increase in salary or
24 compensation to exceed a 2% increase above the principal's officer's, director's insider's, or
25 management employee's average authorized salary for 2017. Compensation is defined as
26 salary, wages, bonuses, or dividends, stock options, stock grants or income of any kind of
27 nature, whether distributed currently or deferred. Debtor further agrees that during the payment
28 period under this Order, no principal, officer, director, insider or management employee of the

1 Debtor will receive, after confirmation of the Debtor’s Plan, an increase in compensation
2 (as defined above) in excess of 2% over the prior year’s compensation during said Plan.

3 L. Loans: Debtor agrees that no loans may be made by Debtor or an officer, director,
4 insider, management employee, or principal during the duration of the payments under this
5 Order.

6 M. Modification. This Order may not be altered, modified, or affected without the
7 prior written consent of Citi, IRS and Debtor. If any or all of the provisions of the Order and
8 related order thereon are hereafter modified, vacated, terminated, amended or stayed, Citi’s and
9 IRS’s consent to Debtor’s use of Cash Collateral shall cease immediately thereupon

10 APPROVED AS TO FORM

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14 _____
Edmund Gee
Attorney for the United States Trustee

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17 _____
Christopher M. McDermott
Attorney for Citibank N.A.

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20 _____
Jeffrey J. Lodge
Assistant United States Attorney

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