



Bankruptcy Court should authorize the use of cash collateral as requested in this Motion because the Debtors satisfy the standard in section 363(c)(2)(A) of the Bankruptcy Code: each entity that has an interest in the Debtors' cash collateral has consented, subject to the terms and conditions described in this Motion, including the grant of adequate protection, and subject to the entry of the Orders.

2. The Debtors are about to run out of cash and were not able to obtain credit on comparable or more favorable terms elsewhere. The DIP Credit Agreement is fair and reasonable and provides significant new liquidity for the Debtors. It will thus enable the Debtors to preserve their assets as a going concern, and to pursue and consummate a sale of all or substantially all of their assets pursuant to section 363 of the Bankruptcy Code (the "Sale") or otherwise reorganize. Without the financing provided for in the DIP Credit Agreement, the Debtors – in a matter of a few days or weeks – would not be able to meet their direct operating expenses and would suffer irreparable harm, which would jeopardize their prospects of completing a Sale, and would probably cause them to have to liquidate their assets – a result that would benefit none of the constituents the Bankruptcy Code is designed to protect. Accordingly, the Bankruptcy Court should authorize the Debtors to enter into the DIP Credit Agreement.

3. The Bankruptcy Court should also authorize the Debtors' use of cash collateral as requested in this Motion. The Debtors' prepetition lien holders are Comerica Bank ("Comerica"), with about \$426,000 in potential exposure plus expenses, and the holders (the "Noteholders") of the Debtors' 6.25% notes due 2027 (the "Notes"), with about \$25.75 million in potential exposure, plus interest and other amounts. The Bank of New York Mellon Trust Company, N.A. (formerly known as The Bank of New York Trust Company, N.A.) ("BNYMTC") serves as trustee to and for the benefit of the Noteholders (in such capacity, the "Trustee") and collateral agent on behalf of itself, the Trustee and the Noteholders (in such

capacity, the “Collateral Agent,” and collectively with Comerica, the Trustee and the Noteholders, the “Prepetition Lien Holders”). Comerica is oversecured; the Collateral Agent and Noteholders (collectively with the Trustee, the “Note Parties”) are substantially undersecured – perhaps by \$20 million or more.

4. The Prepetition Lien Holders consent to the Debtors’ use of cash collateral as set forth in the Interim Order. As a condition to obtaining this consent and in satisfaction of section 363(e) of the Bankruptcy Code, the Debtors will adequately protect the Prepetition Lien Holders by giving them superpriority claims under section 507(b) of the Bankruptcy Code (the “Superpriority Claims”), as well as additional and replacement security interests in and liens (“Replacement Liens”) upon all or substantially all of the Debtors’ assets, including cash collateral, as well as currently owned and after-acquired real and personal property, assets and rights, of any kind or nature, wherever located, and the proceeds, products, rents and profits thereof. Accordingly, the Bankruptcy Court should grant the Debtors’ use of cash collateral as requested in this Motion.

**SUMMARY OF RELIEF REQUESTED, BANKRUPTCY RULE 4001  
DISCLOSURES AND LOCAL RULE 4001-2 DISCLOSURES**

5. The Debtors respectfully request the following relief from the Bankruptcy Court (unless otherwise stated, all capitalized terms used but not otherwise defined in the subparagraphs below or earlier in this Motion shall have the meanings ascribed to them later in this Motion):

(a) authorization and approval, for the Debtors to obtain post-petition financing (the “DIP Facility”) up to the aggregate principal amount of \$2,000,000 on the terms and conditions set forth in the DIP Credit Agreement, and any security agreements, control agreements, pledge agreements or other similar documents contemplated thereby (collectively, with the DIP Credit Agreement, the “DIP Documents”), among the Debtors, as borrowers, and Peninsula Master Fund Ltd., Peninsula Technology Fund LP, QVT Fund L.P. and Quintessence Fund L.P., as lenders (collectively, the “DIP Lenders”);

(b) authorization for the Debtors to execute and enter into the DIP Documents and to perform such other and further acts as may be required in connection with the DIP Documents;

(c) authorization, pursuant to sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code, to grant senior first-priority liens (as more fully described in the DIP Documents, the “DIP Liens”) to the DIP Lenders upon all property of the Debtors’ estates, which DIP Liens shall be subject only to the First Prepetition Liens of Comerica, the Replacement Liens of Comerica and the Carve-Out;

(d) authorization, pursuant to section 364(c)(1) of the Bankruptcy Code, to grant Superpriority Claims to the DIP Lenders with priority over all administrative expenses, other than the Superpriority Claims granted to Comerica and the Carve-Out;

(e) authorization for the Debtors to use Cash Collateral (other than Excluded Cash Collateral), in which Comerica and the Note Parties have an interest;

(f) authorization to grant adequate protection, including, among other things, Replacement Liens and Superpriority Claims, to Comerica with respect to, *inter alia*, the DIP Liens and the Debtors’ use of Cash Collateral and all diminution in value of the Prepetition Collateral, which Replacement Liens and Superpriority Claims shall be senior in all respects to the DIP Liens and Superpriority Claims granted to the DIP Lenders and the Replacement Liens and Superpriority Claims granted to the Note Parties;

(g) authorization to grant adequate protection, including, among other things, Replacement Liens and Superpriority Claims, to the Note Parties, whose liens and security interests are being primed by the DIP Lenders pursuant to section 364(d) of the Bankruptcy Code in connection with the DIP Facility and pursuant to the DIP Documents, and with respect to the Debtors’ use of Cash Collateral and all diminution in value of the Prepetition Collateral; the Note Parties’ Replacement Liens and Superpriority Claims shall be junior and subordinate in all respects to the DIP Liens and Superpriority Claims granted to the DIP Lenders and the Replacement Liens and Superpriority Claims granted to Comerica;

(h) authorization subject to, and only effective upon the entry of, the Final Order granting such relief, to limit the Debtors’ right to surcharge against collateral pursuant to section 506(c) of the Bankruptcy Code;

(i) pursuant to Bankruptcy Rule 4001, an interim hearing (the “Interim Hearing”) on the Motion be held before the Bankruptcy Court to consider entry of the Interim Order; and

(j) pursuant to the Interim Order, the Bankruptcy Court schedule a final hearing (the “Final Hearing”) to consider entry of the Final Order.

6. For purposes of this Motion and the Orders, the term “Cash Collateral” shall be deemed to include, without limitation, (a) all “cash collateral” as defined under section 363 of the Bankruptcy Code, and (b) all deposits subject to setoff and cash arising from the

collection or other conversion to cash of property of the Debtors in which the Prepetition Lien Holders assert security interests, liens or mortgages, regardless of (a) whether such security interests, liens, or mortgages existed as of July [ ], 2009 (the “Petition Date”) or arose thereafter pursuant to the Interim Order, and (b) whether the property converted to cash existed as of the Petition Date or arose thereafter; provided, however, that until the Debtors’ obligations to Comerica are discharged in full, the Debtors’ use of Cash Collateral shall exclude the use of approximately \$426,000, which Comerica now holds possession of as cash collateral in a restricted money market account opened at Comerica by the Debtors prepetition (the “Excluded Cash Collateral”).

7. Pursuant to Bankruptcy Rule 4001(c) and Local Bankruptcy Rule 4001-2, the details of the DIP Credit Agreement and the Interim Order related to obtaining credit are as follows<sup>2</sup>:

(a) Bankruptcy Rule 4001(c)(1)(B)(i). Grant of Priority or Lien on Property of Estate under section 364(c) or (d). The DIP Credit Agreement and the Interim Order grant the DIP Lenders a Superpriority Claim and DIP Liens on all estate assets. The Superpriority Claim in favor of the DIP Lenders and the DIP Liens shall be senior to all liens and claims except for the liens and claims of Comerica and the Carve-Out. (DIP Credit Agreement, §§ 5.9, 10; Interim Order, ¶¶ 7, 16, 17, 27, 35, 37, 39.)

(b) Bankruptcy Rule 4001(c)(1)(B)(ii). Adequate Protection or Priority for Prepetition Claims. The Debtors will provide adequate protection to the Prepetition Lien Holders to the extent those liens are being primed by the DIP Liens under section 364(d) of the Bankruptcy Code (Interim Order, ¶ 16(b); DIP Credit Agreement, § 4.1(c), 4.3(b), 5.9), as well as in connection with the use of Cash Collateral (discussed below).

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<sup>2</sup> This summary is qualified in all respects by the terms of the Interim Order and the DIP Credit Agreement (as applicable).

(c) Bankruptcy Rule 4001(c)(1)(B)(iii). Determination of Validity, Enforceability, and Priority of Prepetition Lien. The Interim Order provides that the Prepetition Liens are valid and enforceable against the estates. It also provides that Comerica has First Priority Liens, which are senior to the DIP Liens, and the Note Parties have Second Priority Liens, which are subject to Comerica's First Priority Liens and Replacement Liens, as well as the DIP Liens. (Interim Order, ¶¶ 11(iv), 11(v), 40.)

(d) Bankruptcy Rule 4001(c)(1)(B)(iv). Waiver of Automatic Stay. The Interim Order provides that the Debtors will waive the protections of the automatic stay to permit the DIP Lenders to exercise all rights and remedies under the DIP Documents and to grant the DIP Lenders the liens and security interests contemplated by the DIP Financing Documents. (Interim Order, ¶¶ 18(b), 35(a).) (As discussed below, the stay is also lifted with respect to the Prepetition Lien Holders in connection with the use of Cash Collateral.)

(e) Bankruptcy Rule 4001(c)(1)(B)(v). Wavier of Right to File Plan, Seek Extension of Time to File Plan, Request Use of Cash Collateral or Request Authority to Obtain Credit under Section 364 of the Bankruptcy Code. None.

(f) Bankruptcy Rule 4001(c)(1)(B)(vi). Deadlines for Filing Plan, Approval of Disclosure Statement, Plan Confirmation. None.

(g) Bankruptcy Rule 4001(c)(1)(B)(vii). Waiver or Modification of Applicability of Non-Bankruptcy Law Relating to Prepetition Lien or Foreclosure. None.

(h) Bankruptcy Rule 4001(c)(1)(B)(viii). Release, Waiver or Limitation on Claim or Cause of Action by the Debtors. The DIP Credit Agreement contains the following waivers and releases by the Debtors:

(i) The Debtors waive presentment, demand, diligence, protest, notice of dishonor and any other notice with respect to the DIP Credit Agreement and each note (DIP Credit Agreement, §§ 3.4, 8.1; form of note);

(ii) The Debtors waive the right to discharge the DIP Obligations under section 1141(d) of the Bankruptcy Code (DIP Credit Agreement, § 6.4);

(iii) Electroglas International, as guarantor, waives notice of the creation, renewal, extension or accrual of any obligation and notice of or proof of reliance by the DIP Lenders, as well as diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon Electroglas as borrower or Electroglas International with respect to the DIP Obligations (DIP Credit Agreement, § 9.7);

(iv) The Debtors waive notice and judicial hearing in connection with the DIP Lenders taking possession or the DIP Lenders disposing of any of the Collateral, as well as all damages by taking possession (except resulting from DIP Lenders' gross negligence or willful misconduct), all other requirements as to time, place and terms of the sale, and all rights of redemption, appraisal, valuation, stay, extension or moratorium to prevent or delay the enforcement of the DIP Credit Agreement or the sale of Collateral (DIP Credit Agreement, § 10.4);

(v) The Debtors release and agree jointly and severally to indemnify each DIP Lender from and against all liabilities, losses, damages, penalties, judgments, suits or costs of any kind with respect to any DIP Document or any DIP Loan or other advance (except for a DIP Lender's gross negligence or willful misconduct) (DIP Credit Agreement, § 11.1);

(vi) The Debtors waive any objection to the laying of venue in the state or federal courts of Wilmington, Delaware in connection with the DIP Documents (DIP Credit Agreement, § 11.5(a));

(vii) The Debtors waive the right to a jury trial in any action or proceeding that may relate to the DIP Documents or a related document or transaction (DIP Credit Agreement, § 11.6);

The Interim Order contains the following waivers and releases by the Debtors:

(viii) The Debtors irrevocably waive any right to challenge or contest the Prepetition Liens of the Prepetition Lien Holders on the Prepetition Collateral or the validity of the Prepetition Obligations or Prepetition Debt Documents (Interim Order, ¶ 11(v));

(ix) The Debtors waive any rights under section 1141(d) of the Bankruptcy Code to discharge any DIP Obligations (Interim Order, ¶ 39(d)); and

(x) In connection with the Final Order, at the Final Hearing, the Debtors will seek a waiver of rights under section 506(c) of the Bankruptcy Code (Interim Order, ¶¶ 30, 48).

(i) Bankruptcy Rule 4001(c)(1)(B)(ix). Indemnification of any Entity. As

previously stated (supra, ¶ 8(h)(v)), the Debtors release and agree jointly and severally to

indemnify each DIP Lender from and against all liabilities, losses, damages, penalties, judgments,

suits or costs of any kind with respect to any DIP Document or any DIP Loan or other advance (except for a DIP Lender's gross negligence or willful misconduct) (DIP Credit Agreement, §11.1). In addition, if Electroglas makes any payments to the DIP Lenders on any day other than a scheduled payment date, then Electroglas is required to indemnify and hold each DIP Lender harmless for all funding, breakage and other reasonable losses, costs and expenses (DIP Credit Agreement, § 2.6).

(j) Bankruptcy Rule 4001(c)(1)(B)(x). Release, Waiver or Limitation on 506(c) Rights. As previously stated (supra, 8(h)(xi)), in connection with the Final Order, at the Final Hearing, the Debtors will seek a waiver of rights under section 506(c) of the Bankruptcy Code (Interim Order, ¶¶ 30, 48). Pursuant to Local Bankruptcy Rule 4001-2(a)(i)(C), including this waiver in the Final Order is justified under the circumstances because the DIP Lenders would not enter into the DIP Credit Agreement and fund these estates without it. Accordingly, including this provision in the Interim Order provides a substantial benefit to the estates.

(k) Bankruptcy Rule 4001(c)(1)(B)(xi). Lien on Actions under sections 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a). Subject to entry of the Final Order, the Interim Order provides for liens on the Debtors' claims and causes of action arising under sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code, or any other avoidance actions of any Debtor under the Bankruptcy Code (collectively, "Avoidance Actions"), and any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions (Interim Order, ¶¶ 16(a), 17, 22). Pursuant to Local Bankruptcy Rule 4001-2(a)(i)(D), including this grant of lien in the Final Order is justified under the circumstances because the DIP Lenders would not enter into the DIP Credit Agreement and fund these estates without it. Accordingly, including this provision in the Interim Order provides a substantial benefit to the estates.



8. Pursuant to Bankruptcy Rule 4001(b) and Local Bankruptcy Rule 4001-2, the details of the Interim Order related to use of Cash Collateral are as follows<sup>3</sup>:

(a) Bankruptcy Rule 4001(b)(1)(B)(i). Name of Each Entity with Interest in the Cash Collateral. These entities are: BNYMTC for the benefit of itself as Collateral Agent, the Trustee and the Noteholders (QVT Financial LP, Peninsula Technology Fund, Linden Capital, Radcliffe SPC, Ltd. and UBS O'Connor LLC). Although Comerica is a Prepetition Lien Holder, the Debtors are not seeking to use, as part of the relief requested in this Motion, the Cash Collateral in the compensating account that secures Comerica's security interest (i.e., the Excluded Cash Collateral).

(b) Bankruptcy Rule 4001(b)(1)(B)(ii). Use of the Cash Collateral. The Debtors will use the Cash Collateral specifically in accordance with the Original Budget, and generally to: (i) continue operating their businesses while in chapter 11, including purchasing inventory, paying employees and employee related costs, rent, utilities and other overhead and all other expenses arising in the ordinary course of the Debtors' businesses; and (ii) fund the professional and other fees (including fees payable to the Office of the United States Trustee) associated with administering and protecting these chapter 11 cases and conducting an auction under section 363 of the Bankruptcy Code for the Sale, negotiating and closing the Sale, closing the Debtors' offices in France and Taiwan, and, following the consummation of the Sale, converting the chapter 11 cases to cases under chapter 7 of the Bankruptcy Code (or otherwise winding down and closing the estates).

(c) Bankruptcy Rule 4001(b)(1)(B)(iii) and (iv). Other Material Terms and Adequate Protection. If approved by the Bankruptcy Court:

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<sup>3</sup> This summary is qualified in all respects by the terms of the Interim Order.

(i) Amount. The Debtors will be authorized to use the Cash Collateral in accordance with the Original Budget during the period (the “Interim Period”) between the date of entry of the Interim Order and the earliest to occur of: (a) the date of entry of the Final Order; (b) October 9, 2009; (c) the closing date of any Sale; (d) the effective date of a plan of reorganization of either of the Debtors confirmed pursuant to section 1129 of the Bankruptcy Code; (e) the date that is the Commitment Termination Date (as defined in the DIP Credit Agreement); and (f) the occurrence of an event of default under the DIP Credit Agreement (a “DIP Event of Default”) or a Cash Collateral Event of Default.

(ii) Liens Held by Prepetition Lien Holders. The Prepetition Liens held by the Prepetition Lien Holders shall remain in place during the Interim Period.

(iii) Events of Default. A “Cash Collateral Event of Default” shall occur with respect to the Debtors’ use of Cash Collateral if:

(a) the Debtors fail to perform any of their obligations in accordance with the terms of the Interim Order, including, without limitation, the Debtors’ failure to use Cash Collateral in compliance with the Original Budget or subsequent budgets or failure to provide the information or access required in Paragraphs 32 or 33 of the Interim Order;

(b) any representation or warranty made by the Debtors under the Interim Order or any pleading, certificate, report or financial statement delivered to the Prepetition Lien Holders proves to have been false or misleading in any material respect as of the time made or given (including by omission of material information or fact necessary to make such representation, warranty or statement not misleading);

(c) the appointment of a chapter 11 trustee or examiner with expanded powers;

(d) the chapter 11 cases are converted to cases under chapter 7;

(e) without the prior written consent of Comerica and the Collateral Agent, the Debtors shall purport to grant or file a motion seeking to grant a third party a security interest or lien upon all or part of any property of the Debtors that has a priority which is senior to, or equal with, any of the Prepetition Liens or Replacement Liens granted under the Interim Order in all or any of a portion of such property (other than the DIP Liens); or

(f) a DIP Event of Default shall have occurred.

(iv) Shortening challenge period. None.

(v) Adequate Protection to the Prepetition Lien Holders;

Replacement Liens: As security for payment of any claim of the Prepetition Lien Holders for such diminution in value of their respective prepetition collateral (an “Adequate Protection Claim”), the Debtors have agreed to grant Replacement Liens to the Prepetition Lien Holders upon all of the Prepetition Collateral and all of the Debtors’ now owned or after-acquired real and personal property, assets and rights, of any kind or nature, wherever located, and the proceeds, products, rents and profits thereof;

(vi) Superpriority Claim. The Prepetition Lien Holders will be granted Superpriority Claims as provided for in section 507(b) of the Bankruptcy Code; the Superpriority Claim granted to the Collateral Agent shall be subordinate in priority and right to the Superpriority Claims granted to Comerica;

(vii) Priority of Claims Among the Prepetition Lien Holders.

The Replacement Liens granted to the Collateral Agent shall be subordinate in priority and right to the Replacement Liens granted to Comerica;

(viii) Payment of Fees and Expenses: As additional adequate protection, the Prepetition Lien Holders shall be entitled to the current payment of the reasonable fees and expenses of legal counsel retained by the Prepetition Lien Holders, provided that those payments shall be subject to: (a) the Original Budget; (b) the restrictions and limitations set forth in the Interim Order; and (c) under certain

circumstances set forth in the Interim Order, to recharacterization as payments of principal pursuant to section 506(b) of the Bankruptcy Code; and

(ix) Modification of the Automatic Stay: The automatic stay under section 362(a) of the Bankruptcy Code is modified by the Interim Order as necessary to effectuate all of the terms and provisions of the Interim Order, including without limitation, to: (a) permit the Debtors to grant the adequate protection provided for in the Interim Order; (b) permit the Debtors to perform such acts as the Prepetition Lien Holders may request to assure the perfection and priority of the liens granted in the Interim Order; and (c) permit the Debtors to incur all liabilities and obligations to the Prepetition Lien Holders under the Interim Order. (Interim Order, ¶ 18(b), 24, 25(c), .)

### **JURISDICTION AND VENUE**

9. The Bankruptcy Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

10. The statutory predicates for the relief requested are sections 105, 361, 362, 363 and 364 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001 and 9014 and Local Bankruptcy Rule 4001-2.

### **BACKGROUND**

#### **A. Chapter 11 Cases**

11. On the Petition Date, the Debtors filed the chapter 11 cases. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

12. No creditors' committee has yet been appointed in these chapter 11 cases. No trustee or examiner has been appointed.

## **B. Debtors' Business Operations**

13. The Debtors supply semiconductor manufacturing test equipment and software to the global semiconductor industry, and have been in the semiconductor equipment business for more than 40 years. The Debtors' installed customer base is one of the largest in the industry, as the Debtors have sold to date more than 16,500 units of one of their core products, the "wafer prober" (and its related operating system). The Debtors' other major source of revenue comes from their business of designing, manufacturing, selling and supporting motion control systems for advanced technologies.

14. A full description of the Debtors' business operations, corporate structures, capital structures, and reasons for commencing these chapter 11 cases is set forth in full detail in the Affidavit of Thomas Brunton in Support of Chapter 11 Petitions and First Day Relief (the "Brunton Affidavit"), which was filed contemporaneously with this Motion and which is incorporated in this Motion by reference. Additional facts in support of the specific relief sought in this Motion are set forth below.

## **C. The Debtors' Prepetition Lien Holders**

15. On July 16, 2004, Electroglas entered into a Loan and Security Agreement with Comerica (as amended, the "Senior Loan Agreement"). Thereafter, Electroglas International guaranteed Electroglas's obligations under the Senior Loan Agreement and executed a Third Party Security Agreement, dated March 26, 2007 in favor of Comerica. Under the Senior Loan Agreement, Comerica provided Electroglas with a revolving credit line of \$7,500,000, including a letter of credit sublimit of \$3,500,000.<sup>4</sup> The obligations owed under the

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<sup>4</sup> The Senior Loan Agreement has been amended ten times, most recently on March 5, 2009. Pursuant to Amendment No. 10, the Debtors' ability to borrow was extinguished, except that the existing letters of credit remain outstanding and the Debtors are permitted to request advances under existing corporate credit cards of up to \$25,000 in the aggregate (the Debtors recently canceled this credit card).

Senior Loan Agreement to Comerica are secured by a first priority lien on substantially all of the Debtors' assets.

16. As of the Petition Date, the Debtors have \$401,000 in outstanding letters of credit issued pursuant to the Senior Loan Agreement and a \$25,000 credit line on their corporate credit card account with Comerica (the "Senior Loan Obligations").<sup>5</sup> In addition, as of the Petition Date, Electroglas is liable to Comerica for fees and expenses incurred in connection with the foregoing as provided in the Senior Loan Agreement. The Debtors are required to maintain compensation balances in a deposit account with Comerica to cover these outstanding amounts. As of the Petition Date, the Debtors maintained a deposit account with Comerica in the amount of approximately \$625,000. Of this amount, as previously discussed, \$451,000 is the Excluded Cash Collateral.<sup>6</sup>

17. In March 2007, Electroglas completed a \$25.75 million private placement of the Notes issued under the indenture dated March 26, 2007, pursuant to which BNYMTC is the Trustee (the "Indenture"). The Notes are guaranteed by Electroglas International. In connection with the issuance of the Notes, the Debtors entered into a Security Agreement dated March 26, 2007 (the "Security Agreement"), pursuant to which BNYMTC is the Collateral Agent. Under the Security Agreement, the Debtors granted the Collateral Agent a second priority lien on substantially all of their assets, for the benefit of the Collateral Agent, the Trustee and the Noteholders.

18. Before taking into account claims for make whole or other prepayment premiums or other fees and expenses under the Indenture, Electroglas is truly and justly indebted

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<sup>5</sup> There are two outstanding letters of credit issued under the Senior Loan Agreement. The first letter of credit is in the amount of \$344,000 as security for the Debtors' obligations in connection with its real property lease located at 5729 Fontanoso Way, San Jose, California 95138 and the other letter of credit is in the amount of \$57,000 in favor of PG&E Utility Company.

<sup>6</sup> Comerica has agreed to further reduce the Excluded Cash Collateral securing the \$25,000 credit line as and to the extent Comerica's exposure diminishes in connection with the Debtors' cancellation of the credit card.

and obligated to the Trustee, without defense, counterclaim, avoidance, disallowance, subordination or offset of any kind in the aggregate amount of approximately \$25.75 million in outstanding principal of Notes, plus any accrued and unpaid interest. In addition, as of the Petition Date, Electroglas is liable to the Trustee for fees and expenses incurred in connection therewith as provided in the Indenture (collectively, the “Note Obligations,” and together with the Senior Loan Obligations, the “Prepetition Obligations”).

19. Comerica, the Trustee, the Collateral Agent, Electroglas and Electroglas International are all parties to the Intercreditor and Subordination Agreement, dated as of March 26, 2007 (as amended, modified or supplemented and in effect from time to time, the “Intercreditor Agreement”), which, among other things, sets forth the relative priority of the security interests of the Prepetition Lien Holders.

20. Based upon the foregoing, Comerica asserts, and the Debtors agree, that amounts owed to it under the Senior Loan Agreement are secured by valid, enforceable and perfected first priority liens on and security interests in (collectively, the “First Prepetition Liens”) substantially all of the Debtors’ assets including Cash Collateral (collectively, the “Prepetition Collateral”) and the Collateral Agent asserts, and the Debtors agree, that the Notes are secured by valid, enforceable and perfected second priority liens on and security interests in (the “Second Prepetition Liens” and, together with the First Prepetition Liens, the “Prepetition Liens”) substantially all of the Debtors’ Prepetition Collateral, junior in priority only to the First Prepetition Liens (and, subject to entry of the Interim Order, the DIP Liens and Replacement Liens of Comerica). As a result, the Debtors do not have any unencumbered cash with which to operate their business.

**D. Negotiations with Prepetition Lien Holders**

21. Before the Petition Date, the Debtors and their advisors approached the Prepetition Lien Holders concerning debtor in possession financing and the consensual use of Cash Collateral in the event the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code, and reached agreement on the terms of the Interim Order. As a result of those negotiations, Comerica, the Trustee, the Collateral Agent, Electroglas and Electroglas International entered into the Consent and Release under Intercreditor Agreement, dated as of July 8, 2009 (attached to the Brunton Affidavit as Exhibit C, the “Consent Agreement”).

22. As discussed above, subject to Bankruptcy Court approval, the Debtors expect to conduct an auction and Sale shortly after the Petition Date but within the timeframe proscribed by the Bankruptcy Rules and the Local Rules unless otherwise ordered by the Bankruptcy Court.

**BASIS FOR RELIEF**

**E. The Debtors’ Immediate Need for Liquidity**

23. The Debtors have an immediate need to access the DIP Loan and use collateral, including Cash Collateral (other than Excluded Cash Collateral), to permit, among other things, the orderly continuation of the operation of their businesses and the completion of a Sale, as described in the Brunton Affidavit. The Debtors’ use of the collateral in general and, specifically, their access to the Cash Collateral (other than Excluded Cash Collateral), is necessary to ensure that the Debtors have sufficient working capital and liquidity to preserve and maintain the going concern value of the Debtors’ estates, which, in turn, is integral to maximizing recoveries for the Debtors’ stakeholders.

24. To secure goods, pay employees and ultimately restore vendor confidence, the Debtors must have immediate access to additional financing in the form of the DIP Facility.



The Debtors believe that the financing will enable them to stabilize operations, retain employees and begin restoring critical relationships, trade terms and ultimately cash receipts. Moreover, access to the financing on an interim basis is necessary to avoid immediate and irreparable harm to the Debtors pending the Final Hearing.

**F. The Debtors' Decision to Enter into the DIP Credit Agreement**

25. As noted above and as set forth in the Brunton Affidavit, over the past several years and most recently, over the past few months, the Debtors have struggled in the face of decreasing liquidity, decreasing earnings and low demand for their products and services. In response to these challenges, the Debtors began the process of closing their non-U.S. offices, laying off non-U.S. employees and reducing their U.S. workforce.

26. The Debtors could not obtain any unsecured financing, nor could the Debtors and their advisors locate an entity willing to extend credit in exchange for a loan that would provide sufficient liquidity and was subordinated to the liens of the Prepetition Lien Holders. Nor could the Debtors obtain an additional equity investment from any potential strategic partner.

27. Faced with this situation, the Debtors decided to enter into the DIP Credit Agreement, and conducted arm's-length and good-faith negotiations with the DIP Lenders. The Debtors ultimately determined that the proposal for debtor in possession financing provided by the DIP Lenders was the most favorable under the circumstances, and adequately addressed the Debtors' reasonably foreseeable liquidity needs.

28. In making their decision to seek financing from the DIP Lenders, the Debtors considered many factors. First, the DIP Lenders already held secured priority liens on substantially all of the Debtors' assets, which liens the Debtors believed were valid. Second, the preexisting knowledge of Peninsula Technology Fund LP and QVT Fund Ltd. (two of the four

DIP Lenders) of the Debtors' business and the collateral provide significant benefits, including, but not limited to, the speed with which the DIP Lenders are able to close. Third, in light of the Debtors' inability to obtain alternative postpetition financing proposals from other lenders through credit allowable as an administrative expense under Bankruptcy Code section 503(b)(1), unsecured credit allowable under Bankruptcy Code sections 364(a) and 364(b), or credit secured by liens on the Debtors' assets junior to the liens of the Prepetition Lien Holders, as is contemplated by Bankruptcy Code section 364(c)(3), the Debtors did not believe that any lender would have been willing to loan new money to the Debtors other than on similar or less favorable terms to those contained in the DIP Credit Agreement.

29. In the exercise of their sound business judgment, the Debtors believe that the proposal for the DIP Credit Agreement provided by the DIP Lenders is the most favorable under the circumstances and addresses the Debtors' working capital needs during the pendency of the chapter 11 cases.

30. As set forth in the Brunton Affidavit, entry into the DIP Credit Agreement will afford the Debtors valuable additional time to pursue the Sale while maintaining the going concern value of the Debtors' businesses. Thus, the Debtors determined that entry into the DIP Credit Agreement was in the best interests of their estates, creditors and other parties in interest.

#### **G. Terms of the DIP Credit Agreement**

31. The salient terms of the DIP Credit Agreement are as follows:<sup>7</sup>

Borrower: Electroglas, Inc., as debtor and debtor in possession in a case filed under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

Guarantor: Electroglas International, Inc., as debtor and debtor in possession in a case filed under chapter 11 of the Bankruptcy Code in the

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<sup>7</sup> This summary is qualified in its entirety by reference to the provisions of the DIP Credit Agreement. The DIP Credit Agreement will control in the event of any inconsistency between this Motion and the DIP Credit Agreement. Capitalized terms used in this summary but not otherwise defined in this Motion shall have the meanings ascribed to those terms in the DIP Credit Agreement.

Bankruptcy Court.

Lenders: Peninsula Master Fund Ltd., Peninsula Technology Fund LP, QVT Fund Ltd. and Quintessence Fund LP.

Commitment: Two loans in an aggregate principal amount of not greater than \$2,000,000, broken down as follows: (a) subject to entry of the Interim Order, an initial borrowing not greater than \$1,000,000 in the aggregate from all Lenders; and (b) subject to entry of the Final Order, a second borrowing not greater than \$1,000,000 in the aggregate from all Lenders.

The commitment of each Lender varies, and the aggregate amount of the commitments of all Lenders is \$2,000,000.

Each borrowing of the Loans shall be requested from and made by all Lenders simultaneously, but the Loans from each Lender shall be in an aggregate principal amount up to but not exceeding the commitment of each Lender.

Use of Proceeds: All proceeds of the Loans shall be used solely for working capital purposes of the Borrower in accordance with the Original Budget and any subsequent budgets and Orders.

Application of Proceeds: The Lenders shall apply the proceeds of any collection or sale of Collateral, as well as any Collateral consisting of cash, to the Obligations. It is understood that each Grantor shall remain liable to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Obligations.

Term: The Commitment of each Lender to make a Loan to the Borrower commences on the date of the Interim Order and terminates thirty (30) days after the date of the DIP Credit Agreement.

The Maturity Date is the earlier of (i) October 9, 2009 or (ii) the Consummation Date (e.g., the date on which the consummation of the sale pursuant to Section 363 of the Bankruptcy Code of substantially all of the assets of the Borrower has been confirmed pursuant to an order of the Bankruptcy Court in form and substance satisfactory to the Lenders).

Priority and Liens: Subject to the entry and provisions of the Interim Order and Final Order, the DIP Credit Agreement grants to the Lenders a valid, perfected security interest in substantially all of the property of the Borrower and the Guarantor pursuant to Sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code, including, but not limited to, senior priming liens (other than on the Excluded Cash Collateral, the First Prepetition Liens of Comerica, and the

Replacement Liens granted to Comerica pursuant to the Interim Order or Final Order).

In addition, subject to the entry and provisions of the Interim Order and Final Order, the Lenders shall be granted Superpriority Claim status pursuant to Section 365(c)(1) of the Bankruptcy Code (subject to the Superpriority Claims granted to Comerica pursuant to the Interim Order and Final Order).

Grant of Security Interest:

Subject to the entry and provisions of the Interim Order and Final Order, each Grantor grants to the Lenders (as joint tenants) a security interest in, general lien and mortgage on and right of set-off or, all right, title and interest of such Grantor in all of the following property now owned or at any time hereafter acquired by each Grantor in which either Grantor now has or at any time in the future may acquire any right, title or interest, in each case whether now existing or hereafter arising and whether now owned or hereafter acquired, as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations:

- (1) all Accounts;
- (2) all Chattel Paper;
- (3) all Commercial Tort Claims;
- (4) all computer programs and all Intellectual Property rights therein and all other proprietary information, including but not limited to Domain Names and Trade Secret Rights;
- (5) all Contracts, together with all Contract Rights arising thereunder;
- (6) all Deposit Accounts;
- (7) all Documents;
- (8) all Equipment;
- (9) all General Intangibles;
- (10) all Goods;
- (11) all Instruments;
- (12) all Intellectual Property;
- (13) all Inventory;
- (14) all Investment Property;
- (15) all Letter-of-Credit Rights;
- (16) all money;
- (17) all Permits and Licenses;

- (18) all promissory notes;
- (19) all Real Property and fixtures;
- (20) all Securities Accounts, together with all cash or other sums, securities and other property at any time thereafter on deposit or situate therein, credited thereto or payable thereon and all instruments, documents and other writings evidencing such accounts;
- (21) all software and all software licensing rights, all writings, plans, specifications and schematics, all engineering drawings, customer lists, goodwill and licenses, and all recorded data of any kind or nature, regardless of the medium of recording;
- (22) all Supporting Obligations;
- (23) all books and records (including, without limitation, all customer data, credit files, computer programs, printouts and other computer materials and records) pertaining to the Collateral;
- (24) to the extent not included in the foregoing list, all other personal property;
- (25) all collateral security and guarantees given by any Person with respect to any of the foregoing; and
- (26) all accessions to, substitutions for and all replacements, products and Proceeds of any and all of the foregoing.

The security interests, mortgages and other Liens are granted to each Lender individually and to all Lenders collectively, and may be exercised by any of the Lenders on behalf of all of the Lenders.

Fees:

Whether or not any Loan is made to the Borrower, the Borrower and the Guarantor jointly and severally agree to pay, and to reimburse each Lender upon request for paying, all of the costs and expenses of each Lender in connection with the preparation, negotiation, execution and delivery of the DIP Credit Agreement and each other Loan Document, any amendment or waiver to the DIP Credit Agreement or any other Loan Document, the collection or other enforcement of this Agreement or any other Loan Document, the perfection and priority of any Collateral, and the preservation of any and all rights of each Lender under the DIP Credit Agreement and under the other Loan Documents, including, without limitation, all fees and expenses of all counsels to the Lender in connection with any of the foregoing.

Interest Rate:

12% per annum

Default Interest:

14% per annum

Events of Default:

Each of the following constitutes an Event of Default:

(a) the Borrower or the Guarantor shall fail to pay any principal, interest or other amount when due hereunder or under any Note; or

(b) any representation or warranty made or deemed made, or information supplied or deemed supplied, by the Borrower or the Guarantor in connection with or related to this Agreement or any other Loan Document shall turn out to be incorrect or misleading in any material respect when made or supplied or deemed to have been made or supplied; or

(c) the Borrower or the Guarantor shall fail to perform or observe any term of this Agreement or any other Loan Document; or

(d) the Borrower shall have failed to obtain on or prior to the Commitment Termination Date, entry by the Bankruptcy Court of the Final Order, which shall not have been vacated, stayed, reversed, modified or amended in any respect such that a Lender has reasonably determined the same to be adverse to the interests of the Lenders, without the prior written consent of the Lenders; or

(e) the Interim Order or Final Order (after having been entered by the Bankruptcy Court) (i) shall fail to be in full force and effect or (ii) shall have been stayed, reversed, modified or amended in any respect such that a Lender has reasonably determined the same to be adverse to the interests of the Lenders, without the prior written consent of the Lenders; or

(f) there shall have occurred or be continuing any event or circumstance that has had or could reasonably be expected to have a Material Adverse Effect; or

(g) the Bankruptcy Court shall not have entered an order on or before August 5, 2009, approving bidding and sale procedures in connection with the Sale, which order shall (i) include, among other things, that the Bankruptcy Court shall schedule a hearing to be held on or before August 28, 2009, to consider entry of an order approving the Sale and (ii) be satisfactory to the Lenders in their sole discretion.

Remedies on Event of Default:

Acceleration: Upon the occurrence of an Event of Default, the Lenders may declare all Loans and Notes, all interest thereon and all other amounts payable to be due and payable.

Obtaining the Collateral: During the occurrence and continuance of a Default, the Lenders, in addition to any rights existing under applicable law and under the other provisions of the DIP Credit

Agreement, shall have all rights as a secured party under the Uniform Commercial Code in effect at such time in all relevant jurisdictions, and such additional rights and remedies to which a secured creditor is entitled under the laws in effect in all relevant jurisdictions, and, without limiting the foregoing, in any event may:

- (a) immediately take possession of the Collateral;
- (b) instruct any obligor to make required payments directly to the Lenders;
- (c) instruct banks that have entered into a control agreement to transfer all monies and Investment Property to the Lenders;
- (d) sell, assign, or liquidate the Collateral;
- (e) direct the Grantors to deliver the Collateral to the Lenders;
- (f) license or sublicense any of the intellectual property included in the Collateral;
- (g) apply any monies constituting Collateral or proceeds in accordance with the "Application of Proceeds" section; and
- (h) take any other action as specified in clauses (1) through (5) of section 9-607(a) of the UCC.

Disposition of the Collateral: If a Default has occurred and is continuing, then any Collateral may be sold, assigned, leased or otherwise disposed of under one or more contracts or as an entirety, in such manner and on such terms as the Lenders may, in compliance with any mandatory requirements of applicable law, determine to be commercially reasonable.

Any of the Collateral may be sold, leased or otherwise disposed of in the condition in which the same existed when taken by the Lenders or after any overhaul or repair (which shall be at the joint and several expense of the Grantors) which the Lenders shall determine to be commercially reasonable.

Any such sale, lease or other disposition may be effected publicly or privately, effected in accordance with the applicable requirements (in each case if and to the extent applicable) of Sections 9-610 through 9-613 of the UCC or such other mandatory requirements of applicable law as may apply to the respective disposition.

To the extent permitted by law, any Lender may bid for and become the purchaser (and may pay all or any portion of the purchase price by crediting Obligations against the purchase price) of the Collateral or any item thereof, offered for disposition

without accountability to each Grantor.

### **APPLICABLE AUTHORITY**

32. If a debtor is unable to obtain unsecured credit allowable as an administrative expense under Bankruptcy Code section 503(b)(1), then the Court, after notice and a hearing, may authorize the debtor to obtain credit or incur debt (a) with priority over any or all administrative expenses of the kind specified in Bankruptcy Code section 503(b) or 507(b); or (b) secured by a lien on property of the estate that is not otherwise subject to a lien; or (c) secured by a junior lien on property of the estate that is subject to a lien. See 11 U.S.C. § 364(c).

33. Further, if a debtor is unable to obtain credit under the provisions of Bankruptcy Code section 364(c), the debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly called a “priming lien.” 11 U.S.C. § 364(d).

34. Bankruptcy Rule 4001(c)(2) governs the procedures for obtaining authorization to obtain postpetition financing and provides, in relevant part:

The court may commence a final hearing on a motion for authority to obtain credit no earlier than 15 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 15 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. P. 4001(c)(2).

35. Bankruptcy Rule 4001(d) provides in relevant part that (a) a motion for approval to modify or terminate the automatic stay shall be served on any official creditors’ committee, on the creditors included on the list filed under Bankruptcy Rule 1007(d), and on such other entities as the court may direct, and (b) objections may be filed within 15 days of the mailing of the notice of the motion and the time for filing objections thereto. See Fed. R. Bankr. P. 4001(d)(1)–(2)



## H. The DIP Credit Facility should Be Approved

36. As set forth above, before the Petition Date, the Debtors attempted to identify potential sources of postpetition financing. During that process, the Debtors contacted a debtor in possession loan broker and the Prepetition Lien Holders.

37. Based on discussions with these parties, including the Prepetition Lien Holders, the Debtors determined that it was not possible to obtain comparable or more favorable postpetition financing on an unsecured basis or on a junior priority basis to the Prepetition Lien Holders within the time periods that the Debtors' current liquidity situation permitted.

38. The Debtors negotiated the DIP Credit Agreement with the DIP Lenders at arm's length and pursuant to their business judgment. Provided that this judgment does not run afoul of the provisions of and policies underlying the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance with its business judgment. See, e.g., Brav v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986) (approving debtor in possession financing necessary to sustain seasonal business); In re Ames Department Stores, 115 B.R. 34, 40 (S.D.N.Y. 1990) ("cases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest").

39. The financing under the DIP Credit Agreement provides significant new liquidity to the Debtors and thus will enable the Debtors, inter alia: (a) to minimize disruption to the Debtors' businesses and on-going operations; (b) to preserve and maximize the value of the Debtors' estates for the benefit of all the Debtors' creditors; (c) to avoid immediate and

irreparable harm to the Debtors, their creditors, their businesses, their employees, and their assets; and (d) to permit the Debtors to continue to pursue or consummate a Sale.

40. Such financing is the sole means of preserving and enhancing the Debtors' going concern value. Indeed, without the financing provided for in the DIP Credit Agreement, the Debtors will not be able to meet their direct operating expenses, will suffer irreparable harm, and their entire sale effort will be jeopardized.

41. The terms and conditions of the DIP Credit Agreement are fair and reasonable and were negotiated by the parties in good faith and at arms' length. Accordingly, the DIP Lenders should be accorded the benefits of Bankruptcy Code section 364(e) in respect of the DIP Credit Agreement.

42. Based upon the foregoing, the Debtors respectfully request that the Bankruptcy Court approve the DIP Credit Facility and DIP Credit Agreement in accordance with the terms and conditions set forth in the Interim Order and the DIP Credit Agreement.

#### **I. The Court should Authorize the Use of Cash Collateral**

43. In addition to the need for debtor in possession financing, the Debtors' other pressing concern is the need for immediate use of the Cash Collateral pending a final hearing on this Motion. The Debtors require use of Cash Collateral to be able to pay operating expenses, including payroll, and to pay vendors to ensure a continued supply of goods essential to the Debtors' continued viability.

44. Bankruptcy Code section 363(c)(2) provides that the Debtors may not use, sell or lease cash collateral unless "(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). The Prepetition Lien Holders have consented to the Debtors' use of Cash Collateral on the terms and conditions set

forth in the Interim Order. Comerica's consent is contained in the Consent Agreement, and the consent of the Noteholders is upon information and belief reflected in the majority Noteholder direction to the Trustee as advised by counsel to the Noteholders.

45. The reasons underlying the Debtors' need to use Cash Collateral during the course of these chapter 11 cases are compelling. The Prepetition Lien Holders have a Prepetition Lien on substantially all of the Debtors' assets. Accordingly, the Debtors have no unencumbered cash and the use of Cash Collateral is required to fund day-to-day operating expenses, including payments to employees, and generally to sustain and operate the Debtors' businesses. Unless the Bankruptcy Court authorizes the use of the Cash Collateral, other than the Excluded Cash Collateral, the Debtors will be unable to pay for services and expenses necessary to continue their business operations, pay their employees or to maintain, let alone maximize, the value of their estates. Indeed, absent sufficient funds to support the Debtors' business operations, the Debtors' ability to pursue and consummate the Sale would be imperiled or, at the very least, the consideration the Debtors might receive could be substantially less than if at a sale contemplating anything other than a going concern. Therefore, the authority to use Cash Collateral during the Interim Period, other than the Excluded Cash Collateral, is in the best interests of the Debtors' estates and their creditors.

46. The Debtors have prepared a budget, a copy of which is attached to this Motion as Exhibit C (the "Original Budget"), which shows, inter alia, on a line-item thirteen (13) week rolling-basis the Debtors' anticipated aggregate cash receipts and aggregate necessary and required expenses for each week covered by the Original Budget. (The first page of Exhibit C to this Motion includes the \$1,000,000 initial borrowing only, and the second page includes both the initial and second borrowings.) For each week covered by the Original Budget and any subsequent budget, the aggregate actual disbursements by the Debtors during such week of

determination must be no greater than 115% of the aggregate amount of projected disbursements for such period as set forth in the Original Budget or any subsequent budget. In addition, during each four (4) week period covered by the Original Budget or any subsequent budget, aggregate actual cash receipts collected by the Debtors during such period of determination shall not be less than 85% of the aggregate amount of projected cash receipts for such period as set forth in the Original Budget or any subsequent budget. For the avoidance of doubt, for purposes of the foregoing variance tests, any unused amounts set forth in the Original Budget or any subsequent budget for any period of determination may be carried forward and used during subsequent periods. Pursuant to the Original Budget, the Debtors intend to use Cash Collateral, among other things, to: (a) continue operating their businesses while in chapter 11, including purchasing inventory, paying employees and employee related costs, rent, utilities and other overhead and all other expenses arising in the ordinary course of the Debtors' businesses; and (b) fund the professional and other fees (including fees payable to the Office of the United States Trustee) associated with administering and protecting these chapter 11 cases and conducting an auction under section 363 of the Bankruptcy Code for the Sale, negotiating and closing the Sale, closing the Debtors' offices in France and Taiwan, and, following consummation of the Sale, converting the chapter 11 cases to cases under chapter 7 of the Bankruptcy Code (or otherwise winding down and closing the estates). Without the use of Cash Collateral, the Debtors will likely be forced to cease operations, lay off their employees, and liquidate their assets in a very short timeframe, which would ameliorate any possibility of maximizing the value of the Debtors' assets for the benefit of all creditors.

47. As previously stated, section 363(c)(2) of the Bankruptcy Code provides that a debtor in possession may not use, sell or lease cash collateral unless "(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and a hearing,

authorizes such use, sale or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2). “Cash collateral” is defined as “cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest...” 11 U.S.C. § 363(a). The Debtors require the use of Cash Collateral to fund their day-to-day operations. Absent such relief, the Debtors’ business will be brought to an immediate halt, with significant and damaging consequences for the Debtors, their estates and creditors. The Prepetition Lien Holders have consented to the Debtors’ use of Cash Collateral in accordance with the Original Budget and subject to the terms and conditions of the Interim Order and this Motion. Furthermore, the Prepetition Lien Holders will be protected by the adequate protection discussed in this Motion. Therefore, the Bankruptcy Court should approve the Debtors’ request to use Cash Collateral in the operation of their businesses and administration of the chapter 11 cases during the Interim Period, and, subject to the entry of the Final Order, during the remainder of the chapter 11 cases, as set forth in the Final Order.

**J. The Bankruptcy Court should Authorize the Debtors to Provide Adequate Protection in Connection with the DIP Loans and the Use of Cash Collateral**

48. Section 363(e) of the Bankruptcy Code provides that, “on request of an entity that has an interest in property used ... or proposed to be used ... by [a debtor in possession], the court, with or without a hearing, shall prohibit or condition such use ... as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). Section 364(d) of the Bankruptcy Code requires that adequate protection be provided where the liens of secured creditors are being primed to secure the obligations under a debtor-in-possession financing facility. Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens, and other forms of relief. 11 U.S.C. § 361.

49. According to the legislative history, a finding of adequate protection is “left to case-by-case interpretation and development. It is expected that the courts will apply the concept in light of facts of each case and general equitable principals.” H.R. Rep. No. 595, 95th Cong., 2nd Sess. 339 (1977), reprinted in 1978 U.S.C.C.A.N. 5787, 6295. See In re O’Connor, 808 F.2d 1393, 1396-97 (10th Cir. 1987); In re Nashua Trust Co., 73 B.R. 423, 430-31 (Bankr. D. N.J. 1987). The purpose is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. See In re Swedeland Dev. Group, Inc., 16 F.3d 552, 564 (3d Cir. 1994); In re Pursuit Athletic Footwear, Inc., 193 B.R. 713, 716 (Bankr. D. Del. 1996); In re Planned Sys., Inc., 78 B.R. 852, 861-62 (Bankr. S.D. Ohio 1987).

50. The proposed Adequate Protection Claims, Replacement Liens, Superpriority Claims, and covering related fees and expenses, as discussed above, are sufficient to account for any diminution in the value of the Prepetition Lien Holders’ interests and are fair and reasonable and thus, satisfy the standard in sections 363(c)(2)(B) and 364(d) of the Bankruptcy Code. Furthermore, the terms and conditions on which the Debtors may use Cash Collateral have been carefully designed to meet the goals of sections 361, 363 and 364 of the Bankruptcy Code and to avoid immediate and irreparable harm to the Debtors’ estates during the Interim Period. Accordingly, based upon the foregoing, the Debtors respectfully request that the Bankruptcy Court authorize the Debtors to provide adequate protection to the Prepetition Lien Holders in accordance with the terms set forth in the Interim Order and DIP Documents.

**K. Modification of the Automatic Stay Is Appropriate**

51. Section 362 of the Bankruptcy Code provides for an automatic stay upon the filing of a bankruptcy petition. The proposed DIP Credit Agreement contemplates a modification of the automatic stay (as applicable), to the extent necessary to permit the DIP

Lenders to perform any act authorized or permitted under or by virtue of the Interim Order or the DIP Credit Agreement.

52. Stay modification provisions of this kind are ordinary and standard features of postpetition debtor in possession financing facilities and, in the Debtors' business judgment, are reasonable under the present circumstances. Accordingly, the Debtors respectfully request that the Bankruptcy Court authorize the modification of the automatic stay in accordance with the terms set forth in the Interim Order and DIP Credit Agreement.

**L. The Bankruptcy Court should Grant Interim Approval of the DIP Credit Facility**

53. As stated above, Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use cash collateral pursuant to section 363 of the Bankruptcy Code and to obtain credit under Bankruptcy Code section 364 may not be commenced earlier than 15 days after the service of the motion. Upon request, however, the Bankruptcy Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable to the debtor's estate.

54. The Debtors request that the Bankruptcy Court schedule and conduct a preliminary hearing on the Motion and authorize the Debtors from and after the entry of the Interim Order until the Final Hearing to obtain credit under the terms contained in the DIP Credit Agreement and utilize Cash Collateral (other than the Excluded Cash Collateral). The Prepetition Lenders have consented to the Debtors' use of Cash Collateral as set forth herein and in the Interim Order. However, even with the ability to use Cash Collateral under the Interim Order, pending entry of the Final Order the Debtors will require approximately \$1,000,000 in available financing. Such interim availability will avoid a disruption in the Debtors' operations pending the Final Hearing.

55. Accordingly, based upon the foregoing, the Debtors respectfully request that the Bankruptcy Court grant interim approval of the DIP Credit Facility in accordance with the terms set forth in the Interim Order and the DIP Documents.

**M. Establishing Notice Procedures and Scheduling Final Hearing**

56. Notice of this Motion will be given to: (a) the Office of the United States Trustee; (b) the DIP Lenders; (c) counsel to Comerica; (d) counsel to the Trustee and Collateral Agent; (e) the Debtors' twenty (20) largest unsecured creditors, determined on a consolidated basis; and (f) all other known holders of prepetition liens, encumbrances or security interests against the Debtors' property.

57. The Debtors submit that, under the circumstances, no further notice of the hearing on the interim financing is necessary and request that any further noticed be dispensed with and waived.

58. The Debtors further respectfully request that the Bankruptcy Court schedule the Final Hearing and authorize them to mail copies of the signed Interim Order, which fixes the time, date and manner for the filing of objections, to: (a) the Office of the United States Trustee; (b) the DIP Lenders; (c) counsel to Comerica; (d) counsel to the Trustee and Collateral Agent; (e) the Debtors' twenty (20) largest unsecured creditors, determined on a consolidated basis; (f) all other known holders of prepetition liens, encumbrances or security interests against the Debtors' property. the Initial Notice Parties; (g) any party that has filed prior to such date a request for notices with the Bankruptcy Court; (h) counsel for any official committee(s); (i) the Securities and Exchange Commission; and (j) the Internal Revenue Service. The Debtors request that the Bankruptcy Court consider such notice of the Final Hearing, including without limitation, notice that the Debtors will seek approval at the Final Hearing of (x) a waiver of rights under



section 506(c) of the Bankruptcy Code, and (y) the granting of liens on Avoidance Actions to the DIP Lenders, to be sufficient notice under Bankruptcy Rule 4001 and Local Rule 2002-1.<sup>8</sup>

59. No previous request for the relief sought herein has been made to the Bankruptcy Court or any other court.

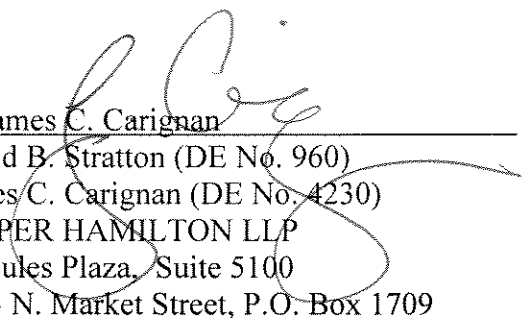
### **CONCLUSION**

WHEREFORE the Debtors respectfully request that the Bankruptcy Court (i) enter an order substantially in the form of the proposed Interim Order; (ii) after the Final Hearing, enter the Final Order substantially in the form that shall be filed with the Bankruptcy Court; and (iii) such other and further relief as is just and proper.

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<sup>8</sup> Local Rule 2002-1(b) provides that “[i]n cases under chapter 11, all motions . . . shall be served only upon counsel for the debtor, the United States Trustee, counsel for all official committees, all parties who file a request for service of notices pursuant to Fed. R. Bankr. P. 2002(i), and on any party whose rights are affected by the motion. If an official unsecured creditors’ committee has not been appointed, service shall be made on the 20 largest unsecured creditors in the case in lieu of the committee.”

Dated: Wilmington, Delaware  
July 9, 2009

  
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