

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

IN RE:

WALKER RENAISSANCE  
MANUFACTURING, INC.,  
Debtor.

CASE NO.: 8:17-bk  
Chapter 11

CERTIFICATION OF NECESSITY OF REQUEST FOR EMERGENCY HEARING

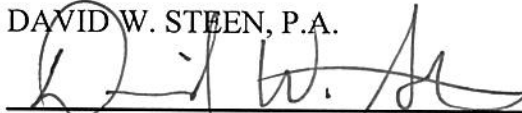
I HEREBY CERTIFY, as a member of the Bar of the Court, that I have carefully examined the matter under consideration and to the best of my knowledge, information and belief formed after reasonable inquiry, all allegations are well grounded in fact and all contentions are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law can be made, that the matter under consideration is not interposed for any improper purpose, such as to harass, to cause delay, or to increase the cost of litigation, and there is just cause to request a consideration of the following pleading on an emergency basis:

**EMERGENCY MOTION TO USE CASH COLLATERAL**

I CERTIFY FURTHER that there is a true necessity for an emergency hearing, specifically, because the Debtor seeks to **use cash collateral** and requires a hearing on an emergency basis for the following reason: **The Debtor requests authority to use cash collateral to pay its expenses of operation.**

I CERTIFY FURTHER that the necessity of this emergency hearing has not been caused by a lack of due diligence on my part, but has been brought about only by circumstances beyond my control or that of my client. I further certify that this motion is filed with full understanding of F.R.B.P. 9011 and the consequences of noncompliance with same.

DAVID W. STEEN, P.A.



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**UNITED STATES BANKRUPTCY COURT  
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**IN RE:**

**WALKER RENAISSANCE  
MANUFACTURING, INC.,  
Debtor.**

**CASE NO.: 8:17-bk-  
Chapter 11**

**DEBTOR'S EXPEDITED MOTION PURSUANT TO 11 U.S.C. §§ 363  
AND/OR 364 FOR INTERIM AND FINAL ORDERS AUTHORIZING (I)  
DEBTOR-IN-POSSESSION FINANCING AND/OR (II) LIMITED USE  
OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION**

Walker Renaissance Manufacturing, Inc. (the "Debtor"), by and through its undersigned counsel, hereby files this expedited motion (the "Motion") requesting entry of an order authorizing Debtor to obtain post-petition financing, through a continuation of Debtor's existing factoring arrangement with FNB Bank d/b/a AdvancedAR Funding ("FNB"), on an interim and final basis, grant security interests and liens and accord super-priority claim status in favor of FNB pursuant to Sections 361, 364(c) and 364(d)(1) of Title 11 of the United States Code (the "Bankruptcy Code") and giving notice of a final hearing pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). In support of this Motion, the Debtor relies on the Expedited Motion to Set Emergency Hearing on First-Day Motions and the Declaration of Debtor's in Support of First Day Motions (the "Debtor's Declaration"), and, further, respectfully represents as follows:

**PROCEDURAL BACKGROUND**

1. On June 21, 2017 (the "Petition Date"), Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, Debtor is continuing to operate its business and manage its properties as

debtor-in-possession. No trustee or examiner has been appointed in the above-captioned case (the "Chapter 11 Case"), nor has any official creditors committee been formed in the Chapter 11 Case.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this judicial 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)(2).

### **RELIEF REQUESTED**

3. By this Motion, Debtor requests authority to obtain post-petition financing, through a continuation of Debtor's existing factoring arrangement, on an interim and final basis and in such amounts as are necessary to, among other things: (i) purchase inventory, materials and supplies; (ii) fund payroll, utilities, and other ongoing working capital, operational and general corporate needs of Debtor; (iii) pay the fees, costs, expenses and disbursements of professionals; and, (iv) pay bankruptcy-related charges, including U.S. Trustee fees.

4. Thus, pursuant to the Motion, Debtor seeks authority from this Court to obtain such a post-petition secured financing pursuant to Bankruptcy Code § 364(d) from FNB. Obtaining secured credit on the terms set forth herein is essential to Debtor's continued business operations.

5. Debtor respectfully requests the Court set an immediate hearing on this Motion and the relief requested herein, and, at such hearing, authorize Debtor to obtain the described post-petition secured financing on an interim basis to avoid irreparable harm to the bankruptcy estate and to Debtor's creditors.

6. Debtor further requests that this Court set a final hearing on this Motion and the relief requested herein within fourteen (14) days and on such notice as the Court may direct.

7. The alternative to the requested relief is the cessation of Debtor's operations as a going concern. Once Debtor's operations cease, it would be costly and time-consuming (if not impossible) to restart Debtor's operations, which would be fatal to Debtor's reorganization efforts. Emergency consideration of this Motion is therefore requested and is supported by the Moore Declaration.

## **BACKGROUND**

### **(Debtor's Operations and Business Events Leading to Bankruptcy Filing)**

Walker Renaissance Manufacturing has been providing customers throughout Florida and the United States with custom designed packaging from plain and printed paperboard since 2004. Since its inception custom printed full color folding cartons have emerged as the primary source of the company's revenue. Prior to 2015 the company outsourced all printing from local commercial print shops. In an attempt to respond to changing market conditions and provide customers with quicker lower cost products the company undertook a project to purchase and install a used Man Rolland 6 color printing press.

All efforts to successfully operate the press and maintain a quality product have failed and resulted in a significant loss of cash and missed commitments. After eighteen (18) months of failed attempts to correct deficiencies with the press, Management has made the decision to cease operation of the press and return to the former business model of relying on local commercial printers for those projects requiring printing.

### **(Pre-Petition Financing)**

18. Prior to the Petition Date, the Debtor and FNB were parties to that certain Trade Credit Outsourcing Agreement dated December 15, 2015 (the "Agreement"). A copy of the Agreement is attached hereto as Exhibit 1. Pursuant to the Agreement, FNB financed Debtor's

accounts receivable. Under the terms of the Agreement, FNB advanced funds to Debtor and took ownership of the accounts receivable. Under this arrangement, Debtor's customers who owed these accounts receivable to Debtor were instructed to send their payments directly to FNB.

19. FNB also holds a security interest in Debtor's assets to secure amounts owed to FNB. FNB filed a UCC-1 financing statement on December 16, 2015, to perfect its security interest in the Debtor's assets. A copy of the UCC-1 financing statement is attached hereto as Exhibit 2.

20. As of the Petition Date, Debtor was indebted to FNB in the amount of approximately \$88,180.35, plus those costs and expenses which FNB incurred prior to the Petition Date, and for which FNB is entitled to recover pursuant to the Agreement. All amounts referred to in this paragraph are collectively referred to herein as the "Pre-Petition Indebtedness." Debtor is obligated to repay the Pre-Petition Indebtedness according to the terms of the Agreement. Debtor does not contest the amount of the Pre-Petition Indebtedness, nor its obligation to pay the Pre-Petition Indebtedness.

21. Certain third parties may have also filed UCC Financing Statements of record against Debtor, listing as collateral personal property, and proceeds thereof (which may include, *inter alia*, accounts, lease proceeds, contract rights and rights to money) and, as such, may claim to have an interest in Debtor's cash collateral. These third parties are being given notice of the motion out of an abundance of caution, but nothing contained herein constitutes an admission of the extent, validity, or priority of any of the foregoing parties' asserted security interests, liens, collateral positions, contracts or claims. Likewise, nothing contained herein is intended to

interrupt the status, validity, priority or extent of the foregoing parties' asserted security interests, liens, collateral positions, contracts or claims.

**(Commencement of This Case and Need for and Terms of Proposed DIP Financing)**

22. Debtor commenced this case to preserve the value of its assets. To continue operations during the course of this case, which continued operations are absolutely required to maximize the value of its assets, Debtor must obtain post-petition financing.

23. Debtor is seeking to incur post-petition debt by continuing the financing arrangement with FNB post-petition, under the same terms and conditions of the Agreement as existed pre-petition (the "DIP Financing"). Without the DIP Financing, the Debtor asserts that it will not have the funds necessary to operate its business, maintain assets, or pay employees, payroll taxes, insurance, utilities, fuel suppliers and other post-petition vendors, overhead, lease expenses and other expenses required for the reorganization of the Debtor's businesses and to maximize the value of the Debtor's estate. Although Debtor generates significant accounts receivable, the ordinary payment term for Debtor's customers is 30 days, during which, absent the DIP Financing, Debtor will not have sufficient cash to fund operations.

24. Attached hereto as Exhibit 3 is Debtor's cash flow budget for the 8-week period from the Petition Date (the "Budget"). If necessary, Debtor will amend the Budget, subject to the consent of FNB, in advance of the final hearing on this Motion. This Budget reflects, among other things, anticipated receipts, disbursements and cash on hand and will be revised on an on-going basis. The Budget is a projection and is subject to change (with the consent of FNB) based on the amount of credit, if any, obtained from vendors, and the level of continued revenues generated.

25. Pursuant to Section 364(a) and 364(b) of the Code, Debtor asserts that it has attempted, and is unable, to obtain either unsecured credit or unsecured credit allowable under Section 503(b)(1) of the Code as an administrative expense in the amounts and on as favorable terms as are being agreed to by FNB.

26. In order to avoid immediate and irreparable harm to the Debtor's estate that Debtor asserts will occur if the DIP Financing is not immediately approved, on an interim basis, FNB has indicated a willingness to continue its financing arrangement with Debtor post-petition, but only under the terms and conditions set forth herein. Debtor believes that, under the circumstances, the terms and conditions provided for herein are a fair and reasonable response to Debtor's request for financial assistance.

28. As security for the payment of all Pre-Petition Indebtedness, Debtor granted to FNB security interests in and liens upon all or substantially all of Debtor's tangible and intangible personal property, including, without limitation, all of Debtor's accounts, inventory, general intangibles, chattel paper, documents, instruments, investment property, letter-of-credit rights, deposit accounts, commercial tort claims, customer contracts, and books and records, as the same existed on the Petition Date, together with all cash and non-cash proceeds thereof (being hereinafter referred to as the "Pre-Petition Collateral"). Debtor stipulates that the security interests and liens granted by Debtor to FNB pursuant to the Agreement (the "Pre-Petition Liens") are legal, valid, enforceable, duly perfected and first priority security interests in and liens upon the Pre-Petition Collateral.

29. Subject to approval by this Court, the material terms and conditions of the agreement between Debtor and FNB are as follows:

- i. Debtor may continue to request Advances and seek other financial accommodations from FNB (collectively, the "Post-Petition Indebtedness") on the terms set forth

herein and in the Agreement. FNB shall be permitted, in FNB's sole discretion, which shall be exercised in a commercially reasonable manner, to make Advances to Debtor. Debtor is authorized to obtain loans and other financial accommodations from FNB. Notwithstanding the foregoing, the maximum principal amount of Advances, including both the total balance at any given time of the Pre-Petition Indebtedness principal and the Post-Petition Indebtedness principal, shall not exceed Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00).

- ii. The Agreement is deemed and agreed to be, and shall be construed and considered to be, agreements by and between the Debtor and FNB with respect to the Post-Petition Indebtedness as well as the Pre-Petition Indebtedness. To the extent not inconsistent with this motion, the terms and conditions of the Agreement are incorporated herein and made a part hereof by this reference, are hereby ratified and approved, shall continue in full force and effect with respect to the Pre-Petition Indebtedness, shall govern the Post-Petition Indebtedness and shall be deemed and held to be valid and enforceable as against the Debtor. Accordingly, to the extent not inconsistent with the terms set forth in this Motion, Debtor shall perform pursuant to, and comply with, the terms of the Agreement with respect to the Post-Petition Indebtedness and shall obtain financial accommodations from FNB as Post-Petition Indebtedness in accordance with the terms and provisions of the Agreement. All Post-Petition Indebtedness and all other advances and other financial accommodations extended to Debtor by FNB, including without limitation, the Pre-Petition Indebtedness, shall be subject to the fee schedule, terms of payment, limitations and other terms and conditions set forth in the Agreement, except as expressly modified hereby.
- iii. No portion of the Post-Petition Indebtedness shall be used to fund fees or expenses incurred by any entity, including the Debtor and professionals retained by Debtor, in: (1) preventing, hindering or delaying FNB's enforcement or realization upon any of FNB's collateral, (2) incurring indebtedness without FNB's consent unless by order of the Court, or (3) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, amount, perfection, priority or enforceability of the Pre-Petition Indebtedness or the Post-Petition Indebtedness, or of any liens or security interests with respect thereto, or any other rights or interests of FNB, from or after the Petition Date, or in asserting any claims or causes of action, including, without limitation, any actions under Chapter 5 of the Code, against FNB. Nothing herein, or in any budget submitted to or approved by FNB, shall be construed as consent to the allowance of any fees, costs or expenses of the professionals retained by Debtor or shall affect the right of FNB to object to the allowance and payment of such fees, costs or expenses.
- iv. All post-petition adequate protection liens granted to other lien holders shall at all times be subordinate to the liens and claims of FNB granted herein and any subsequent agreements between FNB and Debtor, or any order of this Court, or under the Agreement.

- v. Except for avoidance actions or other actions under Chapter 5 of the Code or any proceeds or recoveries therefrom, the liens and security interests granted to FNB by Debtor hereunder shall constitute first, paramount and valid liens upon and security interests in the following assets of Borrower (the "Post-Petition Collateral"):
  - "(a) all Accounts, (h) all Instruments, Documents, Chattel Paper (including Electronic Chattel Paper), General Intangibles (including without limitation, all federal, state, and local income tax refunds, Payment Intangibles, payments in transit, and other rights to payment), Deposit Accounts, Investment Property. Letter-of-Credit Rights, Commercial Tort Claims, and all other forms of obligations owing to the Company with respect to any Account or arising there from, (c) all rights, claims, remedies, and benefits under all factoring or refinancing agreements, security agreements, and other documents, instruments and agreements between the Company and a customer, and all sums now or hereafter owing to the Company from a customer, and all collateral and security thereof and all guarantee thereof, and all of the Company's reserves, balances, sums, and other funds related to the Accounts; (d) all unpaid seller's rights (including rights to rescission, replevin, reclamation or prepossession of Inventory); (e) all guarantees, collateral, supporting obligations and letter of credit rights issued as security for an Account or arising in connection with any Account or any other of the foregoing property; (f) all Inventory, including returned or repossessed Inventory; (g) all books and Records related to the foregoing; (h) insurance policies or other rights relating to any of the foregoing; and (i) all cash and non-cash proceeds of any Account, including, without limitation, all insurance proceeds of the foregoing."
- vi. Nothing contained herein shall be deemed to grant to FNB a lien on any avoidance actions or other actions under Chapter 5 of the Code or any proceeds or recoveries therefrom.
- vii. Proceeds or payments received by FNB with respect to the pre-petition collateral upon which FNB had security interests or liens on the Petition Date shall be applied by FNB as follows:
  - A. first, to Pre-Petition Indebtedness consisting of accrued and accruing, fees, costs and expenses;
  - B. next, to Pre-Petition Indebtedness related to principal; and
  - C. last, to Post-Petition Indebtedness in the following order: all accrued and accruing fees, costs and expenses, then principal reduction of the Post-Petition Indebtedness.
- x. Proceeds or payments received by FNB with respect to the Post-Petition Collateral

arising after the Petition Date shall be applied by FNB to the Post-Petition Indebtedness as follows:

- A. first, to all accrued and accruing interest, attorney fees, costs and expenses;
  - B. last, to reduce the outstanding principal balance of the Post-Petition Indebtedness.
- xi. Upon entry of a Final Order approving the terms of this motion, in consideration for FNB's performance hereunder, the surcharge provisions of Section 506(c) of the Code and the enhancement of collateral provisions of Section 552 of the Code shall not be imposed upon FNB or its collateral, unless prior to incurring the cost or expense FNB provides written waiver for the cost or expense, or prior to incurring the expense the Debtor obtains a separate order permitting the cost or expense to be used as a surcharge against FNB or its collateral. If no objection to the validity, enforceability, extent or priority of FNB's security interests in, and liens upon, Pre-Petition Collateral is made by a party-in-interest prior to the final hearing date for approval of a Final Order approving the terms of this motion, then without the need for either the actual adjudication of the Court or for the entry of any separate order, FNB's security interests in, and liens upon, the Pre-Petition Collateral shall be automatically and conclusively deemed to be first in priority, valid, perfected, enforceable and unavoidable.
- xii. Upon entry of an Order approving this motion, the security interests and liens granted to FNB by virtue of this motion shall be deemed to continue to be first, valid, unavoidable, and perfected as against Debtor and all third parties, without regard to applicable federal, state or local filing and recording statutes, nunc pro tunc to and as of the Petition Date and without further action of any party, including FNB; provided, that FNB may, but need not, take such steps as it deems desirable and applicable to comply with such statutes, and all financing statements which are filed listing Debtor as "debtor" and FNB as "secured party," and all liens and security interests in favor of FNB, shall be deemed to have been filed and the security interests and liens evidenced thereby shall be deemed perfected nunc pro tunc as of the time and date of the filing of the Petition.
- xiii. To further evidence the Post-Petition Indebtedness, the creation and perfection of FNB's security interests in and liens upon the Post-Petition Collateral and the other terms and conditions of the DIP Financing arrangement contemplated hereby, Debtor hereby agrees to execute and deliver to FNB any documents deemed reasonably necessary by FNB to reflect the terms set forth herein and in the Agreement.
- xiv. All Post-Petition Indebtedness owing by Debtor to FNB, and the liens and security interests of FNB in the Post-Petition Collateral, shall at all times be senior to the rights of Debtor in this case under the Code and shall have priority in all respects under the provisions of Sections 364(c)(1) and 364(c)(2) of the Code over all administrative expenses incurred in this case of the kind specified in Section 503(b)

or 507(b) of the Code, whether incurred or arising prior or subsequent to the date of the Petition, the entry of an Order authorizing Debtor to enter into this Stipulation, or a conversion of this case pursuant to Section 1112 of the Code or in any other proceeding related hereto, and whether incurred pursuant to Section 726(b) of the Code or otherwise. No claims, whether incurred during this Chapter 11 case or in any converted case under Chapter 7, shall be prior to or on a parity with the claim of FNB against Debtor arising out of the Post-Petition Indebtedness, or with FNB's security interests in, and liens upon, the Post-Petition Collateral, and no costs or expenses of administration shall be imposed against FNB, its Post-Petition or Pre-Petition Claims or the Post-Petition Collateral. If, in the course of this case, and contrary to the above provisions, this Court grants liens or security interests to others pursuant to Section 364(d) or any other provision of the Code, which liens or security interests are senior or equal to the liens or security interests of FNB described above, then any proceeds of extensions of credit secured by such senior or equal liens or security interests shall be applied to the Post-Petition Indebtedness of Borrower and Debtor to FNB, including all attorneys' fees, costs and expenses, and FNB shall retain all liens and security interests held by it until all of the Post-Petition Indebtedness is paid in full, unless the consent of FNB is obtained.

- xvii. Debtor shall submit monthly Budgets to FNB for approval no later than the twentieth day of every month during the term of this Stipulation, for the following month, which approval shall not be unreasonably withheld. FNB shall have until the thirtieth (30<sup>th</sup>) day of each month to provide Debtor and Debtor's counsel with written objection to any line item contained in the Budget. If no objection is lodged, FNB shall be deemed to have consented to the payment of items set forth in the Budget for the following month. If an objection is lodged by FNB, Debtor shall not be permitted to pay the line item objected to until FNB and the Debtor resolve the issue either by agreement or upon further order of the Court.
- xviii. Debtor shall use the proceeds of the Post-Petition Indebtedness only for payment of the items set forth in the Budgets to be provided per paragraph 1(a) above, within a 10% aggregate variance of the Budget. Payment by Debtor of amounts or expenses other than those specifically set forth in the Budgets (within a 10% aggregate variance of each Budget), other than U.S. Trustee fees and any other expenses approved by the Court that are outside of the Budget (which other court-approved expenses includes the fees or expenses of the Debtor's retained professionals), shall constitute a default unless FNB consents to those changes in writing. Any Budget submitted by the Debtor shall not be an admission of liability or constitute the waiver of any fact, claim, or defense of the Debtor, nor shall it limit the particular recipients of any expenditure. In accepting the Budgets and by taking any other actions pursuant to this Stipulation, FNB shall not have any liability to any third party and shall not be deemed to be in control of the operations of Debtor or to be acting as a "responsible person" with respect to the operation or management of Debtor.

- xx. Debtor may, without further order of the Court, be directed by FNB to, or FNB may directly, instruct all account debtors of existing and future Accounts (whether included in the Pre-Petition or Post-Petition Collateral) to make payments directly to FNB or such lock box or depository account as FNB may designate, and, as hereinabove provided, such proceeds shall be available for application by FNB against the Pre-Petition and Post-Petition Indebtedness of Debtor to FNB. In the event Debtor at any time receives any payments from the sale or disposition of proceeds of accounts or other Pre-Petition Collateral or Post-Petition Collateral, such payments and/or proceeds shall be deemed held in trust for FNB and immediately remitted to FNB.
- xxi. The Agreement shall automatically be deemed terminated and the Post-Petition Indebtedness shall become immediately due and payable upon the earlier of termination of the Agreement in accordance with the terms thereof, a default on the terms set forth in the Order approving this motion, or a conversion of this case under Section 1112 of the Code. If a plan of reorganization is confirmed pursuant to Title 11, Chapter 11, then that confirmed plan shall govern the treatment of the liens and payments. Exercising any default remedies hereunder shall require an order granting relief from the automatic stay of 11 U.S.C. § 362.
- xxii. The Debtor shall without further order of this Court, periodically reimburse FNB for all filing and recording fees and the reasonable attorneys' fees incurred by FNB in connection with the Post-Petition Indebtedness and the handling of the Bankruptcy Case and all matters related thereto on a provisional basis. Subject to FNB's discretion, the reimbursement contemplated hereby may be made by FNB's deducting such amounts from collections or by FNB's adding such amounts to the Post-Petition Indebtedness. However, FNB shall provide Debtor's counsel with copies of the invoices sent by FNB's counsel to FNB (edited to delete any attorney-client or other confidential or privileged information) with respect to the attorneys' fees and related costs and expenses described in this Paragraph. The provisions of this Paragraph shall be without prejudice to the rights of any party with the requisite standing, including but not limited to Debtor, any official committee, and the U.S. Trustee, to object to the reasonableness of any such fees, costs and expenses if efforts to resolve such objection by agreement are unsuccessful; provided, however, that any party so objecting shall file and serve upon FNB an objection describing with particularity the items or categories of fees, costs and expenses that are the subject of the objection and providing the specific basis of the objection to each such item or category of fees, costs and expenses; and provided, further, that unless a party with the requisite standing files and serves its respective objection within thirty (30) days after receiving its copy of such invoice, then the objection of such party failing to so file and serve its objection to the fees and expenses set forth on each such invoice shall be forever waived and barred. Any hearing on objections to the fees and expenses of FNB set forth on any invoice shall be limited to the reasonableness or necessity of the particular items or categories of the fees, costs and expenses which are the subject of such objections.

- xxiii. The signature of those individuals identified above or any other persons authorized by the corporate resolutions referred to above, whether by letter to FNB or appearing on any one or more of the Post-Petition Documents, shall bind Debtor nunc pro tunc as of the date of the filing of the Petition.
- xxiv. Debtor hereby is required to timely deliver to FNB such financial and other information concerning the business, collateral and affairs of Debtor as required pursuant to the Agreement and as FNB shall reasonably request from time to time hereafter.
- xxvi. The foregoing provisions shall be binding upon and inure to the benefit of FNB, Debtor and their respective successors and assigns, including, but not limited to, any Chapter 7 or Chapter 11 Trustee hereinafter appointed as a representative of the estate herein.
- xxvii. To the extent there exists any conflict between the Agreement or the terms set forth in this Motion, this Motion shall govern.
- xxviii. Nothing herein contained shall: (a) affect or impair FNB's right to seek adequate protection of its interests in the Pre-Petition Collateral; (b) be deemed to constitute or constitute a commitment by FNB to continue to make Advances to Debtor or to finance Debtor's Chapter 11 proceeding other than as expressly set forth herein; or (c) be deemed to constitute a waiver of any default by Borrower under the Pre-Petition Loan Documents other than defaults consisting of the filing of the Petition.

### **SUMMARY OF ARGUMENT**

30. Given the high unlikelihood that, based on existing circumstances, Debtor will be unable to obtain financing on an unsecured basis, in the ordinary course of business or otherwise, allowable on par with administrative expense claims as contemplated by § 364(a) and (b), on a priority basis over administrative expenses as contemplated by § 364(c), or upon the grant of a junior lien or a lien on encumbered property of the estate as also contemplated in § 364(c), Debtor is left with no alternative but to seek financing pursuant to § 364(d) and to sell its receivables and obtain credit from FNB secured by a lien on property senior to all prior liens, including pre-petition liens. Without the advances from FNB, Debtor's estate and the protection and maximization of the value of Debtor's assets will be immediately and irreparably harmed.

**ARGUMENT**

**A. Granting the FNB Liens on Collateral to Secure the DIP Financing Is Appropriate.**

31. Generally, courts give broad deference to the business decisions of a debtor in possession. *See, e.g., Richmond Leasing v. Capital Bank*, 762 F.2d 1303, 1309 (5th Cir. 1985). In particular, a bankruptcy court generally will respect a debtor-in-possession's business judgment regarding the need for, and proposed uses of, funds. *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D. N.Y. 1990) (citations omitted).

32. Section 364(d) of the Bankruptcy Code provides:

The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if --(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1). Thus, the Bankruptcy Code specifically contemplates, under certain circumstances, the "priming" of the lien of a pre-petition secured creditor in favor of a senior lien granted to a provider of post-petition financing. The required circumstances are present in these cases and particularly appropriate where FNB seeks only to prime the its own pre-petition lien. *See generally In re CB Holding Corp.*, 447 B.R. 222 (Bankr. D. Del. 2010) (approving post-petition financing extended by pre-petition lenders); *In re Michael Day Enters., Inc.*, Nos. 09-55159, -62, 2009 WL 7195493 (Bankr. N.D. Ohio, Dec. 15, 2009) (approving post-petition extension of credit by pre-petition lenders).

33. As stated in the Debtor's Declaration, the financial condition of Debtor, coupled with existing liens on virtually all assets of Debtor, make it a practical impossibility

for Debtor to obtain financing on any basis other than the granting of priming liens. Debtor has no significant unencumbered property on which to offer a lien against which a lender will lend. Efforts of Debtor to procure financing on any terms other than priming liens in favor of the FNB would be fruitless. Debtor's present financial condition speaks for itself; the unavailability of financing on an unsecured or junior priority basis is not a mere opinion, it is the reality.

34. Under these circumstances, the grant of a super-priority lien to FNB is appropriate, and the other terms of the Agreement are reasonable.

**B. Debtor Should be Authorized to Obtain the DIP Financing in Order to Preserve the Value of Its Business and Facilitate Reorganization.**

35. As supported by the Debtor's Declaration, to preserve the value of its assets, Debtor must have immediate access to the advances from FNB. If the financing is not immediately approved on an interim basis, Debtor undoubtedly will be forced to terminate its operations, which Debtor believes would be fatal to its reorganization efforts.

36. The Agreement and the terms set forth in this motion were negotiated in good faith and at arm's length between Debtor and FNB.

37. Pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2), Debtor requests that the Court hold an interim hearing on an emergency basis to consider authorizing Debtor to obtain, on an interim basis, financing from FNB for purposes specified in Debtor's Budget as may be amended with the consent of the FNB.

38. Debtor certifies that copies of the Motion (together with copies of the Stipulation and proposed Order) will be served by electronic mail, facsimile transmission, hand delivery, overnight courier or first class United States mail upon the United States Trustee,