UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-2(c) **WASSERMAN, JURISTA & STOLZ, P.C.** 110 Allen Road, Suite 304 Basking Ridge, New Jersey 07920 Phone: (973) 467-2700 Fax: (973) 467-8126 *Proposed Counsel for Debtor-in-Possession,* **DANIEL M. STOLZ, ESQ.** **DONALD W. CLARKE, ESQ.**	
In Re: A-1 INTERNATIONAL, INC., Debtor-in-Possession.	Chapter 11 Case No. 18-28512 Hearing Date: Honorable Stacey L. Meisel

DEBTOR'S MOTION FOR THE ENTRY OF INTERIM ORDERS UNDER SECTIONS 361 AND 363 OF THE BANKRUPTCY CODE AUTHORIZING THE USE OF CASH COLLATERAL, GRANTING ADEQUATE PROTECTION, GRANTING RELATED RELIEF AND SCHEDULING A FURTHER INTERIM HEARING

TO: HONORABLE STACEY L. MEISEL
UNITED STATES BANKRUPTCY JUDGE
FOR THE DISTRICT OF NEW JERSEY

A-1 International, Inc., (hereinafter, the "Debtor" or "A-1") by and through its proposed undersigned Counsel, hereby submits this Motion (the "Motion") for entry of an Interim Order (the "Interim Cash Collateral Order"), substantially in the form attached hereto, as Exhibit "A" and after a further interim hearing on the Motion (the "Further Interim Hearing"), the entry of a Further Interim Order (the "Further Interim Cash Collateral Order"), (a) authorizing the Debtor to use cash collateral subject to the lien of TD Bank, N.A. (hereinafter, "BANK"), (b) granting adequate protection to the BANK with respect to such use of cash collateral and any diminution in value of BANK's interests in the pre-petition collateral (c) prescribing the form and manner of notice setting the time for the Further Interim Hearing and (d) granting certain related relief. In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. §§1408 and 1409.

2. The statutory basis and legal predicates for the relief sought herein are 11 U.S.C. §§105(a), 361, 362, 363 and Rules 2002, 4001, 6003 and 9014(a) of the Federal Rule of Bankruptcy Procedure and D.N.J. LBR 4001-4.

GENERAL BACKGROUND

3. For general background detail, the Debtor references Ronald DeSena's *Certification in Support of First Day Motions*, filed contemporaneously herewith.

THE BANK AGREEMENT

4. On or about November 7, 2014, the pre-petition Debtor entered into an Agreement (hereinafter, "Agreement") with BANK.

5. Pursuant to the Agreement, the Bank extended a line of credit facility to the pre-petition Debtor in the maximum principal amount of $2,000,000.00, subject to conformity with advance criteria.

6. At the time of the filing of the within Chapter 11 Petition, the Debtor was indebted to BANK in the amount of $1,560,579.82 principal, plus accrued interest, fees and costs.

7. To secure the obligations due to BANK, BANK was granted a lien on the existing and future assets of the prepetition Debtor, including but not limited to its accounts, inventory, equipment, general intangibles, instruments and documents which security interests were perfected by the filing of a UCC-1 financing statement with the New Jersey Department of the

Treasury on March 1, 2005 as document 22859259, as subsequently continued through the present date.

PROPOSED USE OF CASH COLLATERAL AND ADEQUATE PROTECTION

8. The Debtor proposes to continue operating post-petition pursuant to the terms of the Cash Collateral Order to be entered, which proposed Order accompanies this Motion.

9. From and after the entry of an Order, the Debtor shall: (a) continue all reporting to the BANK as required under the Agreement, except that all such reporting shall be done on a weekly basis; (b) continue payment of interest to BANK, on a weekly basis, at the rate payable under the Agreement; and (c) confer with the BANK and designate, on a weekly basis, excess cash not required for Debtor's operations in the upcoming week, which excess cash shall be unconditionally paid by the Debtor to the BANK on a weekly basis as further adequate protection for the use of the BANK's cash collateral, to be applied against the obligations due from the Debtor to the BANK.

10. The Debtor proposes to grant BANK a replacement lien on all post-petition assets, including Debtor's deposit accounts, to further secure the obligations of the Debtor to the BANK, and to provide further adequate protection to BANK for the use of its cash collateral.

11. The BANK has consented to a Carve-Out from its security interests in an amount not to exceed $100,000.00 subject to allowance by final order of the Court for: (a) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) (6) and 28 U.S.C. §156(b); and (b), the Debtor's retained Professionals.

RELIEF REQUESTED AND BASIS THEREFOR

12. The Debtor requests authorization to use cash collateral to meet the ordinary cash needs of the Debtor for the payment of actual expenses of the Debtor necessary to (a) maintain and preserve the assets, and (b) continue operation of its business, for a period of two (2) weeks, during which time Debtor will seek to schedule a hearing on Debtor's Application under Sections 363 and 365 in connection with the sale of certain business assets and the assignment and assumption of certain leases, being filed simultaneously herewith.

13. The Bankruptcy Code provides chapter 11 debtors-in-possession with the right to use cash collateral to operate their businesses upon satisfaction of certain prerequisite(s). Pursuant to section 363(c)(2) of the Bankruptcy Code.

> The trustee [or debtor-in-possession] may not use, sell, or lease cash collateral under paragraph 1 of this subsection, 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).

14. The "provisions of this section" referred to in section 363(c)(2)(B) quoted above includes section 363(e), which provides:

> Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest.

11 U.S.C. § 363(e). That is, to the extent necessary, adequate protection is to be provided to a party with an interest in property sought to be used by a debtor to balance a debtor's required use of cash collateral and the rights of parties holding an interest in that cash collateral. The Debtors respectfully submit that the Court should order the relief requested herein under section

363(c)(2)(B) of the Bankruptcy Code given the adequate protection being provided under sections 361 and 363(e) of the Bankruptcy Code as set forth herein.

15. While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by case basis. *See In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *In re Swedeland Dcv. Grp.*, Inc., 16 F.3d 552, 564 (3d Cir. 1994); *In re N.J. Affordable Homes Corp.*, 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006); *see also In re Mosello,* 195 BR. 277, 289 (Bankr. S.D.N.Y. 1996); *In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy § 361.01[1] at 361-66 (15th ed. 1993)) (explaining that what constitutes adequate protection is not defined, and "must be determined based upon equitable considerations arising from the particular facts of each proceeding").

16. Pursuant to section 361 of the Bankruptcy Code, a debtor may provide adequate protection by providing it with a replacement lien. A secured lender is only entitled to adequate protection up to the value of the collateral supporting its secured claim; it is not entitled to adequate protection for lost opportunity costs. *Gallegos Research Group.*, 193 B.R. at 584-85 (citing *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988)); *Cann & Saul Steel Co.*, 76 B.R. 479, 483 (Bankr. E. D. Pa. 1987).

17. Courts have consistently held that replacement liens are sufficient adequate protection. *See In re Mt. Olive Hospitality, LLC*, 2014 WL 1309953, at *3, n. 6 (D.N.J. March 31, 2014).

18. The Debtor respectfully submits that the protections proposed herein are appropriate to adequately protect the BANK’s interests. It is anticipated that the BANK’s collateral will decline in value during the period covered by the Budget.

WAIVER OF MEMORANDUM OF LAW

19. Because the legal basis upon which the Debtor relies is incorporated herein and the Motion does not raise any novel issues of law, the Debtor respectfully requests that the Court waive the requirement to file a separate memorandum of law pursuant to Local Rule 9013-1(a)(3).

WAIVER OF BANKRUPTCY RULES 6004(a) AND 6004(h)

20. The Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and a waiver of any stay of the order proposed herein, including under Bankruptcy Rules 4001(a)(3) and 6004(h).

NOTICE

21. ***In accordance with Section 363(c)(3), the Debtor hereby requests that this Court conduct an interim hearing authorizing the Debtor's use of cash collateral, and schedule a further interim hearing within fourteen (14) days, as permitted by F.R.B.P. 4001, at which time any objections, if any, to the Debtor's continued use of cash collateral can be heard***.

22. By separate application filed simultaneously herewith, the Debtor has requested that the Court shorten the notice period and grant an expedited interim hearing on this Motion and other "first day motions" so that the Debtor has sufficient funds to continue operations. Pursuant to Bankruptcy Rules 4001(b)(2), the Debtors request that the Court set a date for the further interim hearing that is as soon as practicable, and fix the time and date prior to the further interim hearing for parties to file objections to the Motion.

23. The Debtor seeks the requested interim relief and proposes to serve the Debtor's twenty (20) largest creditors; the Office of the United States Trustee, the New Jersey and Federal Tax Authorities and counsel to the Debtor's pre-petition secured creditor and all parties who have

filed a Notice of Appearance. The Debtor respectfully submits that such service will constitute good and sufficient service.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order authorizing the Debtor's interim use of cash collateral pursuant to Sections 363 of the Bankruptcy Code and F.R.B.P. 4001, and scheduling a further interim hearing, and to grant such other and further relief as this Court may deem just and proper.

Respectfully yours,

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