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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

RLE INDUSTRIES, LLC and
NEI INDUSTRIES, INC.,

Chapter 11
Case Nos. 17-11748 and
11749(MEW)

Debtors.

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**DEBTORS' MOTION, ON SHORTENED NOTICE, FOR AN
ORDER (I) AUTHORIZING THE DEBTORS' USE OF CASH
COLLATERAL PURSUANT TO 11 U.S.C. §363(c)(2) AND
BANKRUPTCY RULE 4001 ON AN INTERIM BASIS, AND
PROVIDING ADEQUATE PROTECTION THEREFOR
PURSUANT TO 11 U.S.C. §§361 AND 362 AND
(IV) SCHEDULING A FINAL HEARING**

RLE Industries, LLC ("RLE") and NEI Industries, Inc. ("NEI"), the above captioned debtors and debtors-in-possession (collectively, where appropriate, the "Debtors"), by their proposed attorneys, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, files this motion (the "Motion") for entry of a preliminary and final order granting the Motion Requesting the Use of Cash Collateral (as defined herein) pursuant to 11 U.S.C. §363(c)(2) and Providing Adequate Protection Therefor Pursuant to 11 U.S.C. §§361 and 362 and requesting the scheduling of preliminary and final hearings on the Motion.. In support of the Motion, the Debtors fully state and represent as follows:

Jurisdiction

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

2. The statutory bases for the relief requested herein are §§ 105(a), 361, 362 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

3. On June 23, 2017, (the “Filing Date”), the Debtors each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors have continued in possession of their property and the management of their business affairs as debtors-in-possession pursuant to §§1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has been appointed.

4. RLE is a New York corporation formed in June of 2000. NEI is a corporation organized under the laws of New Jersey in July of 2000. The Debtors have substantially common ownership. RLE is a manufacturer and fabricator of lighting fixtures and currently operates its business at 232 Madison Avenue, Third Floor, New York, NY 10016. NEI installs the fixtures manufactured and fabricated by NEI and operates at 35 Kulick Road, Fairfield, NJ.

5. Although the Debtors are separate entities with separate books and records, RLE serves as the administrator for both Debtors and the Debtors’ operations are run substantially as a consolidated entity.

6. The reason for the Debtors' Chapter 11 filings relate to historic undercapitalization and lack of adequate working cash flow, which has led to an accumulation of secured and unsecured debt.

7. The Debtors have recently hired outside business consultants to help curtail losses, achieve cost cutting and other efficiencies and help re-build the ongoing concern value of the companies for purposes of rehabilitation, reorganization, and if appropriate, the sale of the companies in Chapter 11.

8. The Debtors intend to utilize the bankruptcy process in order to stabilize the companies while its professionals analyze and evaluate its debt structure and ongoing operations. The protections of the Bankruptcy Court will give the Debtors the protections and breathing room it needs to stabilize its operations, work on increasing its revenues and its operating cash while hopefully restructuring its secured debt and taking advantage of the Bankruptcy Code's reasonable time frame to reorganize its affairs.

9. The Debtors believes that with the help of professionals, that they will be able to restructure their affairs and propose a plan of reorganization that it is in the best interests of their creditors and affords them the greatest recovery possible.

PRE-PETITION SECURED DEBT

10. The Debtor has two (2) creditors that assert a security interest in all or part of the Debtors' assets that may constitute cash collateral ("Cash Collateral"): JP Morgan Chase Bank ("Chase") and Merchant Cash & Capital, LLC d/b/a BizFi Funding ("BizFi") (Chase and BizFi are collectively referred to as the ("Secured Creditors").

11. On or about March 30, 2009 RLE entered into a Line of Credit Note, Security Agreement and related loan agreements in the original principal amount of \$2,000,000 (the

“2009 Chase Loan Agreements”). The obligation was guaranteed by, inter alia, NEI. A copy of the 2009 Chase Loan Agreements is annexed hereto as **Exhibit “A”**¹.

12. On or about November 28, 2016, RLE entered into a Line of Credit Note, Continuing Security Agreement and other related documentation (collectively, the “Chase New Loan Agreements”) with Chase in the original principal amount of \$500,000 at the rate of 3.75% above the then existing primate rate. The Chase Loan Agreements was given in replacement, renewal and extension of the indebtedness under 2009 Chase Loan Agreements. A copy of the Chase New Loan Agreement is annexed hereto as **Exhibit “B”**.

13. Chase has filed a series of UCC-1 financing statements against both of the Debtors in both New York and New Jersey. See **Exhibit “C”**, which financing statements cover all of the Debtor’s personal property which may constitute Cash Collateral. Chase also asserts a perfected security interest in certain “side” collateral of the one of the individual guarantors.

14. Upon information and belief, the Debtors are currently indebted to Chase in the approximate outstanding amount of \$1,400,000.

15. On February 25, 2016, RLE entered into a Merchant Agreement with BizFi, pursuant to which BizFi made advances to RLE against RLE’s accounts in the approximate principal amount of \$150,000. A copy of the February 25, 2016 Merchant Agreement is annexed hereto as **Exhibit “D”**.²

1 The Debtors cannot locate the 2009 Chase Loan Agreements but have requested same from Chase and will file them with the Court upon receipt.

2 The Debtors are still attempting to get a copy of these loan documents. In addition, there may have been other Merchant Agreements entered into with BizFi in 2016 of which the Debtors have requested copies from BizFi and will be filed with the Court upon receipt.

16. On February 23, 2017, RLE entered into a Merchant Agreement with BizFi, pursuant to which BizFi made advances to RLE against RLE's accounts in the principal amount of \$100,000. A copy of the February 23, 2017 Merchant Agreement is annexed hereto as **Exhibit "E"**.

17. On March 7, 2017, RLE entered into a Merchant Agreement with BizFi, pursuant to which BizFi made advances to RLE against RLE's accounts in the principal amount of \$150,000. A copy of the March 7, 2017 Merchant Agreement is annexed hereto as **Exhibit "F"**.

18. Despite the fact that RLE is a New York corporation, BizFi filed its UCC-1 financing statements in New Jersey only. See **Exhibit "G"** annexed hereto. BizFi's security interests may therefore be unperfected as to RLE's assets including Cash Collateral.

19. Upon information and belief, RLE is currently indebted to BizFi in the aggregate outstanding amount of \$360,000.

20. Since Chase's liens and security interests are senior to those of BizFi who, as best holds a security interest only against RLE's accounts, BizFi is likely undersecured pursuant to Section 506(a) in light of RLE's accounts only totaling approximately \$550,000 as of the Petition Date.

Relief Requested

21. The Debtors submit this Motion pursuant to Bankruptcy Code §363(c)(2)(B) and 361 and 362 and Bankruptcy Rule 4001(b) with respect to the Debtors' request for authority to use the Debtors' property which may constitute Cash Collateral in which the Secured Creditors are likely to assert a security interest, substantially in accordance with the terms and conditions set forth in the proposed Interim Order (the "Order") annexed hereto as **Exhibit "H"**. The Debtors believe that the Secured Creditors are the only parties that may assert a perfected

security interest in the Debtors' property which may constitute Cash Collateral.

22. The proposed Order grants the Debtor the authority to use Cash Collateral pursuant to Bankruptcy Code §§363 (c)(1) and (2) and Bankruptcy Rule 4001(c) to the extent necessary to continue the operation of its business and to preserve the value of its estate during the course of the Chapter 11 case.

23. Section 363(a) of the Bankruptcy Code states as follows:

"In this section, "cash collateral" means 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 and includes the proceeds, products, offspring, rents, or profits of properties subject to a security interest as provided in Section 552(b) of this title, whether existing before or after the commencement of a case under this title."

24. Section 363(c)(1) of the Bankruptcy Code provides as follows:

"(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1304, 1203, or 1204 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing".

25. Section 363(d) of the Bankruptcy Code provides as follows:

"(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section only to the extent not inconsistent with any relief granted under section 362(c), 362(e), or 362(f) of this title".

26. Accordingly, pursuant to § 363(c)(2) of the Bankruptcy Code, the consent of the Secured Creditors or authority from this Court is required to use Cash Collateral in which they may have a perfected security interest.

Adequate Protection

27. The purpose of adequate protection is to ensure that the secured creditor receives the value for which it bargained pre-bankruptcy. In re Swedeland Development Group, Inc., 16 F.3d 552 (3rd Cir. 1994); In re Dunes Casino Hotel, 69 B.R. 784, 793 (Bankr. D.N.J. 1986), citing In re Coors of the Cumberland, 19 B.R. 313 (Bankr. M.D. Tenn. 1982). See also, In re 495 Central Park Ave. Corp., 136 B.R. 626 (Bankr. S.D.N.Y. 1992). Adequate protection is designed to safeguard the secured creditor from diminution in the value of its interest during the Chapter 11 reorganization. In re Nice, 355 B.R. 554, 563 (Bankr. N.D. Va. 2006) (“adequate protection is solely a function of preserving the value of the creditor’s secured claim as of the petition date due to a debtor’s continued use of the collateral”).

28. Because the term “adequate protection” is not defined in the Bankruptcy Code, the precise contours of the concept are necessarily determined on a case-by-case basis. MBank Dallas, N.A. v. O’Connor (In re O’Connor), 808 F.2d 1393 (10th Cir. 1987). In re Snowshoe Co., 789 F.2d 1085, 1088 (4th Cir. 1086); In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); In re Beker Industries Corp., 58 B.R. 725 (Bankr. S.D.N.Y. 1986); see also In re JKJ Chevrolet, Inc. 190 B.R. 542, 545 (Bankr. E.D.Va. 1995) (adequate protection is a flexible concept that is determined by considering the facts of each case).

29. The Order provides that, as adequate protection for the Debtors’ use of Cash Collateral, in consideration for the use of the Cash Collateral and for the purpose of adequately protecting them from Collateral Diminution³, the Debtors, as applicable, shall grant the Secured Creditors replacement liens in all of the Debtors’ pre-petition and post-petition assets and proceeds, including Cash Collateral and the proceeds of the foregoing, to the extent that they had

³ For purposes of this Order, “Collateral Diminution” shall mean any diminution in value of the Secured Creditor’s interest in Debtors’ property as of the Filing Date by reason of Debtors’ use of Cash Collateral in accordance with this Order.

valid security interests in said pre-petition assets on the Filing Date and in the continuing order of priority that existed as of the Filing Date (the “Replacement Liens”).

30. The Replacement Liens shall be subject and subordinate only to: (a) United States Trustee fees payable under 28 U.S.C. Section 1930 and 31 U.S.C Section 3717; (b) professional fees of duly retained professionals in these Chapter 11 cases as may be awarded pursuant to Sections 330 or 331 of the Code or pursuant to any monthly fee order entered in the Debtors’ Chapter 11 cases; (c) the fees and expenses of a hypothetical Chapter 7 trustee to the extent of \$10,000; and (d) the recovery of funds or proceeds from the successful prosecution of avoidance actions pursuant to sections 502(d), 544, 545, 547, 548, 549, 550 or 553 (“Avoidance Actions”) of the Bankruptcy Code (collectively, the “Carve-Outs”).

31. The Debtors submit that, in order to preserve the Debtors’ estate and ensure the viability of the Debtors during the Chapter 11 cases, Secured Creditors should be granted Replacement Liens with the same nature, extent and validity of their pre-petition liens, subject to investigation by the Debtors, any creditors or a committee appointed in the Debtors’ Chapter 11 case.

32. In addition to the replacement liens and security interests proposed to be granted to Chase pursuant hereto, the Debtors propose to make the monthly debt service payments to Chase in the amount of interest only at the contract rates provided for in the underlying Chase Loan Agreements and in accordance with the terms set forth therein. Until further order of the Court, the Debtors do not propose to make any monthly interest or debt service payments to BizFi for the reasons set forth above.

33. The Debtors submit that, in order to preserve the Debtors’ estates and ensure the viability of the Debtors during the Chapter 11 cases, it is critical that the Court approve the

proposed adequate protection payment to Chase and the grant to the Secured Creditors of Replacement Liens with the same nature, extent and validity of the Secured Creditors' pre-petition liens, subject to investigation by the Debtors or any creditors or committee appointed in the Debtors' Chapter 11 cases.

The Budget

34. The Debtors propose to use Collateral only for ordinary and necessary operating expenses substantially in accordance with the operating budget annexed hereto as **Exhibit "I"** (the "Budget"). The Debtors believe that the Budget includes all reasonable, necessary and foreseeable expenses to be incurred in the ordinary course of operating the Debtors' businesses for the period set forth in the Budget. The Debtors believe that the use of Cash Collateral in accordance with the Budget will provide the Debtors with adequate liquidity to pay administrative expenses as they become due and payable during the period covered by the Budget.

CONSIDERATION OF THIS MOTION AND REQUEST FOR PRELIMINARY/INTERIM HEARING ON SHORTENED NOTICE AND SCHEDULING A FINAL HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 9077-1

35. The immediate and continued use of Cash Collateral is essential to the operation of the Debtors' businesses, and will not only preserve the estates but will help to maximize its value for the benefit of all creditors.

36. Federal Rule of Bankruptcy Procedure ("Rule(s)") 4001(b) requires that a motion to approve the use of cash collateral on a final basis be heard on no less than fourteen (14) days' notice.

37. However, the Rule 4001(b) further provides that if the motion so requests, the

court may conduct a preliminary hearing before such fourteen (14) day period expires, but the court may authorize the use of only that amount of Cash Collateral as is necessary to avoid immediate and irreparable harm to the estate(s) pending a final hearing.

38. As set forth herein and in the Declaration of Scott Koenig pursuant to Local Bankruptcy Rule 1007 and 9077-1, preliminary/interim consideration of this Motion on shortened notice is reasonable, proper and in the best interests of its creditors in order to preserve the Debtors and their operations pending a final hearing.

39. Without such authority, the Debtors may be forced to cease operations, causing loss of business, damage to their customers (and resulting damage to and claims against the estates) and therefore irreparable harm to the estates

40. Accordingly, the Debtors request that the Court immediately schedule a preliminary, interim hearing on the Debtor's immediate need to use Cash Collateral in order to preserve the estate pending a final hearing.

41. Finally, pursuant to Bankruptcy Rule 4001(d), the Debtors requests that the Court set a date at the Interim Hearing for a final hearing, but in no event later than thirty (30) days after the Filing Date, and fix the time and date prior to the final hearing for parties to file objections to this motion.

Notice

42. This Motion is being served on notice to all of the Debtors' secured creditors and all other parties asserting secured claims against the Debtors' assets, as well as the United States Trustee, the Debtors' taxing authorities, and all other parties entitled to notice pursuant to Bankruptcy Rule 4001(d), including but not limited to the Debtors' twenty (20) largest unsecured creditors.

WHEREFORE, the Debtors respectfully requests the Court approve use of Cash Collateral on an interim and final basis in accordance with this Motion, together with such other and further relief as is just and proper under the circumstances.

Dated: White Plains, New York
June 23, 2017

Respectfully submitted,

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