

THE DEBTOR'S PREPETITION SECURED FINANCING

BASIS FOR RELIEF

A. The Debtor Has an Immediate Need to Use Cash Collateral

17. The rental income from approximately 14 properties is pledged to secure the obligations to the **Lienholders** with mortgages on those properties. The Lienholders who do not hold an assignment of rent do have valid mortgages on the property indicated above, and are entitled to be adequately protected for their interests in the Debtor's property. The ability of the Debtor to maintain his business operations depends on the availability of the Cash Collateral.

18. As Cash Collateral is collected, it will be deposited in the Debtor's account at Berkshire Bank where it will be used in the ordinary course of business, including to pay the regular monthly payments owed to the **Lienholders**.

B. The Interests of the Prepetition Lienholders Are Adequately Protected

19. Pursuant to Section 363(c)(2) of the Bankruptcy Code, a debtor in possession may only use "cash collateral" with the consent of the secured party with an interest therein or court approval. *See* 11 U.S.C. § 363(c)(2).

20. As adequate protection of **Lienholders'** security interest in cash collateral and the properties, the Debtor proposes that he provide **Lienholders** with a roll-over lien, to the same extent, validity and priority as **Lienholders** hold prep-petition, and to make regular payment to the Lienholders.

21. Appropriate adequate protection is decided on a case-by-case basis. *See e.g., In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); *In re Beker Indus. 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) (*citing In re O'Connor*, 808 F.2d 1393, 1396-97 (10th Cir. 1987)).