

# Concurrent Session

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## Debtor's Guide to Drafting and Negotiating Workout Proposals with Secured Lenders

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**CONTENTS**

1. Debtor's Guide to Drafting and Negotiating Workout Proposals with Secured Lenders
  2. Debtor/Senior Lender relationship
  3. Backdrop of economic factors
  4. Manifestations in the lending community
  5. Debtor-Lender workout negotiations
- Exhibit 1 - US change in GDP and unemployment rate
- Exhibit 2 - Business Bankruptcy Filings
- Table 1 - Major US Commercial Banks – 2009 assets, loans, non-performing loans and net charge offs
- Table 2 – charge offs
- Table 3 - US Bank Failures
- Exhibit A: Sample Forbearance Agreement
- Exhibit B: Sample Cash Collateral Stipulation
- Exhibit C: Standing Order Regarding Forbearance Agreements

## **1. Debtor's Guide to Drafting and Negotiating Workout Proposals with Secured Lenders**

This panel will explore what effects the recent economic and financial crises are having on a debtor's prospects for survival and the courses of action it can and should take. We will examine viewpoints from the debtor and lender sides, though particular emphasis will be given to the debtor/senior lender relationship.

## **2. Debtor/Senior Lender relationship**

A debtor experiencing distressed circumstances will have a lot on its plate coping with commercial realities, so if and when it falls foul of its lending covenants it faces a whole new dimension of difficulty it needs to manage. In such circumstances a rational observer might note that the goals of the debtor and senior lender should be aligned – the improvement in performance of the debtor and repair of past damage – however, no surprise to any, the two parties frequently appear to be pulling in opposite directions.

So from the debtor's perspective there's the reality of the economic world and the relationship with its senior lender that it must simultaneously contend with. In dealing with the latter it's vital for the debtor to know what options for action are available to both it and the lender, and just as crucially what economic realities facing the lender may be influencing them.

The ferocity of the recent downturn and the continuing uncertainty of the current economic and financial outlook may thus be playing a greater part than ever in shaping negotiations between distressed debtors and their senior lenders.

## **3. Backdrop of economic factors**

These materials lay out some of the key indicators of the severity of financial and economic conditions that have shaped, and in many respects are still shaping, what options distressed debtors have and how senior lenders may or may not accommodate them.

The weakness in the US economy, with its 2.4% GDP shrinkage in 2009, left industry after industry with massive falls in sales and, perhaps more crucially, lack of visibility as to what the top line will be in coming months/years. Hand in hand has been the rise in unemployment, still above 9%, which can only continue the uncertainty through its weakening of the mainstay of past recoveries, consumer spending.

Exhibit 1 tracks US GDP change and unemployment rates over the last 2 recessionary periods through 2009. The recent severity of the fall in economic activity and rise in unemployment, as shown, is a new experience for many.

Exhibit 2 shows the number of business filings under Chapters 7 and 11 of the Bankruptcy Code over the last 20 years. Numbers of filings have shown a falling trend and the slump in 2001/2002 did little to interrupt this. While that trend may continue as and when the economy rights itself, the recent climb in Ch 11 filings has been overwhelmingly surpassed by Ch 7 filings. This would support the notion that the severity and uncertainty of the markets have reduced opportunities for, or appetite for depending on which side of the fence you're on, business saving solutions.

#### **4. Manifestations in the lending community**

The onset of the financial markets meltdown resulted in a tightening of lending standards and put a severe strain on marketplace liquidity. This coupled with the unprecedented and indiscriminate decline in overall productivity and revenues combined to weaken customer profiles in both the consumer and commercial markets. As demonstrated in Table 2 no product category was spared from climbing losses that have only recently leveled off.

A review of the major US Banks '09 operating results (Table 1) shows that Loan levels are generally down across the board, despite a desire to lend. The increases in non-performing loans and net charge offs suggests that asset quality is still somewhat weak. The lack of a catalyst to spark employment will continue to hamper the speed of the nascent recovery.

The pressures that have hit the banking world are of course evident in the well publicized jump in bank failures, as depicted in table 3.

#### **5. Debtor-Lender workout negotiations**

The current economic downturn and tight credit markets have predictably led to an increase in bankruptcy filings. But, at the same time, changes to the Bankruptcy Code, high administrative costs, and the limited availability of DIP financing have made bankruptcy an increasingly unattractive option for debtors and lenders alike. The challenges of using bankruptcy as a value-maximizing tool have underscored the importance of non-bankruptcy alternatives, especially out-of-court restructurings.

The commencement of workout discussions with a lender can be the first step in a mutually successful restructuring. Yet there are numerous hurdles along the way. In addition to the fundamental economic concerns that drive workout negotiations, there is a myriad of strategic and legal issues. These issues often intersect in the drafting of documents at all stages of the process, from negotiation

protocols to forbearance agreements and, in the event bankruptcy becomes unavoidable, cash collateral agreements. Although lenders, generally speaking, have more leverage than debtors in the preparation of these documents, debtors are not without opportunities to push back on key terms. The attached materials include samples of many provisions that form the basis of debtor-lender workout negotiations.

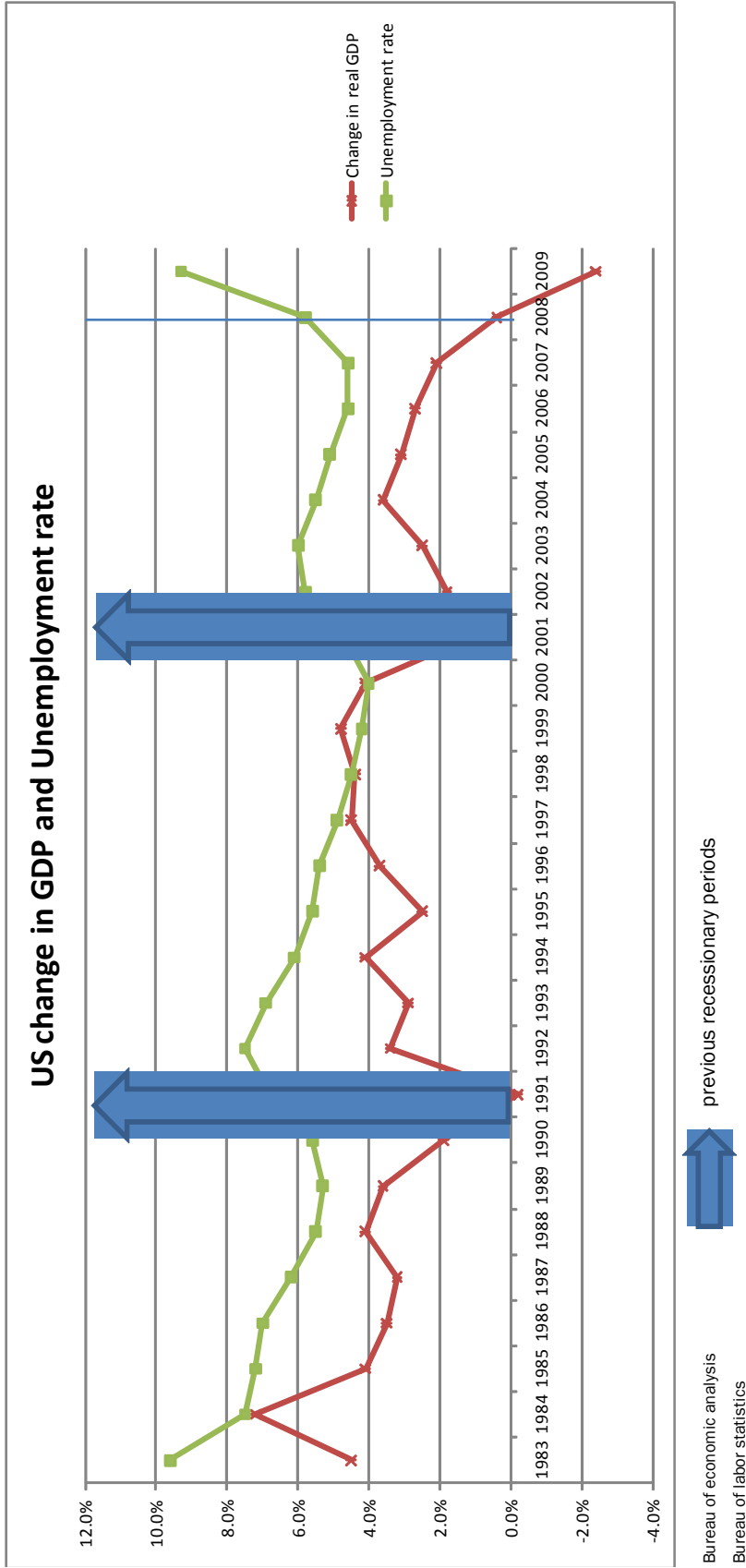
Exhibit A: Sample Forbearance Agreement

Exhibit B: Sample Cash Collateral Stipulation

Exhibit C: Standing Order Regarding Forbearance Agreements

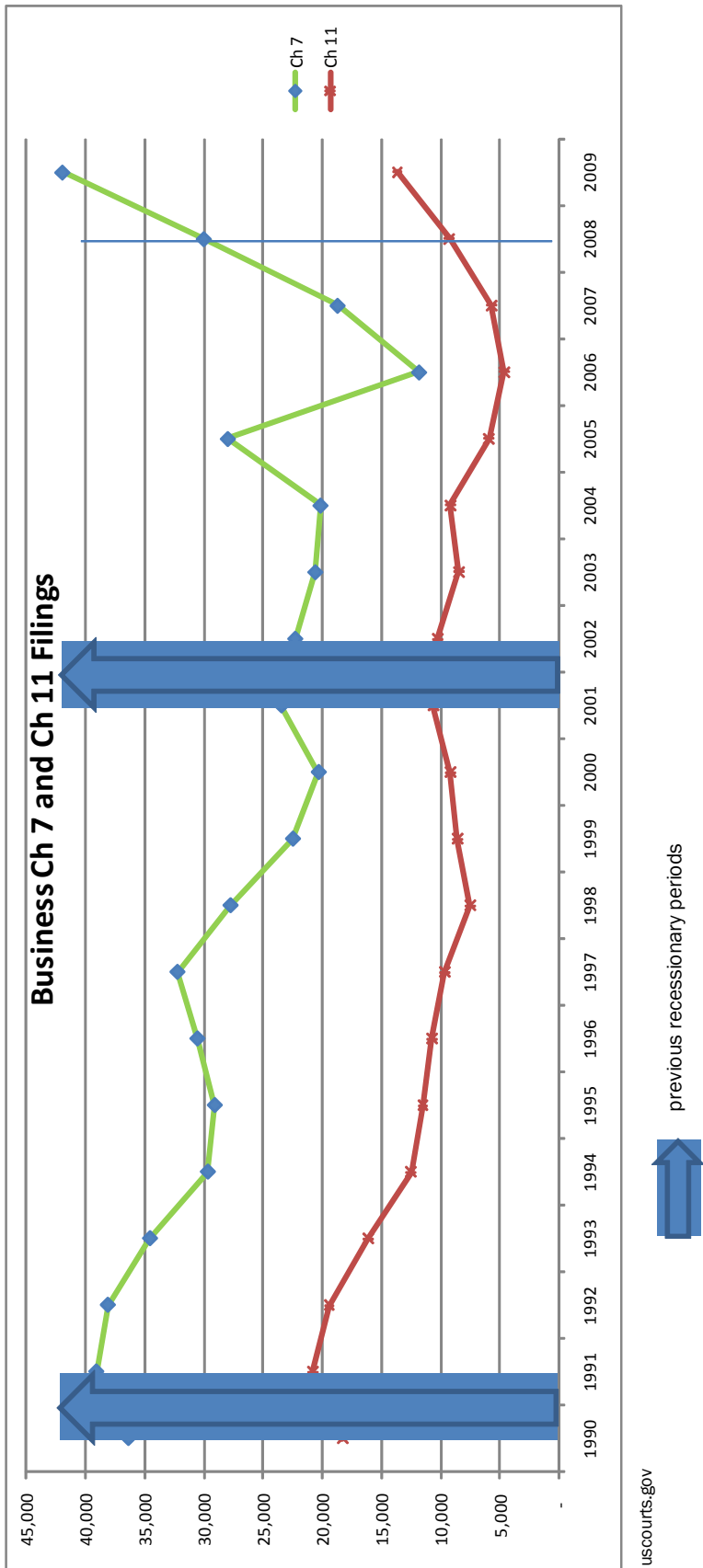
**Exhibit 1 - US change in GDP and unemployment rate**

The fall in GDP and the related rise in unemployment have been on a scale not seen for decades.



**Exhibit 2 - Business Bankruptcy Filings**

The last 18 months displays a dramatic rise in the number of filings, but most significant is the greater increase in Ch 7 vs Ch 11 filings – suggesting the virulence of this last recessionary period strongly curtailed recovery and/or sale options for businesses.



**Table 1 - Major US Commercial Banks – 2009 assets, loans, non-performing loans and net charge offs**

U.S. COMMERCIAL BANKS	YE 09 Assets		Assets Δ (%)		YE 09 Loans		Loans Δ (%)		YE 09 NPL		NPL Δ (%)		NPL Ratio		NCO Δ (%)		NCO Ratio		
	Millions of \$	Assets	Assets	Δ (%)	Loans	Loans	Δ (%)	Δ (%)	NPL	NPL	Δ (%)	Δ (%)	Ratio	Ratio	Δ (%)	Δ (%)	Ratio	Ratio	
BANK OF AMERICA	2,223,299	2,031,989	22.30	(6.58)	900,128	627,218	(3.36)	(13.95)	35,747	19,741	96.28	55.27	3.97%	3.15%	107.55	118.70	3.74%	4.69%	
JPMORGAN CHASE	1,856,646	1,856,646	(4.22)	(4.22)	591,504	591,504	(14.80)	(14.80)	32,184	32,184	44.34	44.34	5.44%	5.44%	61.70	61.70	5.20%	5.20%	
CITIBANK NA/CITIGROUP	1,243,646	1,243,646	(5.04)	(5.04)	782,770	782,770	(9.49)	(9.49)	27,639	27,639	206.79	206.79	3.53%	3.53%	132.92	132.92	2.32%	2.32%	
WELLS FARGO	281,176	281,176	5.74	5.74	195,408	195,408	5.50	5.50	5,907	5,907	125.11	125.11	3.02%	3.02%	116.67	116.67	2.00%	2.00%	
US BANCORP	269,863	269,863	(7.29)	(7.29)	157,543	157,543	(10.23)	(10.23)	6,316	6,316	189.59	189.59	4.01%	4.01%	402.97	402.97	1.72%	1.72%	
PNC BANK	212,224	212,224	(10.65)	(10.65)	36,186	36,186	(15.81)	(15.81)	550	550	88.36	88.36	1.52%	1.52%	214	193.15	0.59%	0.59%	
BANK OF NY MELLON	174,165	174,165	(7.92)	(7.92)	113,675	113,675	(10.49)	(10.49)	6,101	6,101	36.92	36.92	5.37%	5.37%	3397	102.20	2.99%	2.99%	
SUNTRUST BANK	165,764	165,764	9.04	9.04	106,207	106,207	7.64	7.64	4,227	4,227	108.23	108.23	3.98%	3.98%	1,773	108.34	1.67%	1.67%	
BB&T CORP.	169,622	169,622	2.26	2.26	90,619	90,619	(10.29)	(10.29)	1,289	1,289	60.32	60.32	1.42%	1.42%	4,568	31.34	5.04%	5.04%	
CAPITAL ONE	147,681	147,681	(7.66)	(7.66)	95,050	95,050	(14.37)	(14.37)	2,200	2,200	100.00	100.00	2.31%	2.31%	2,300	91.67	2.42%	2.42%	
RBS CITIZENS NA	142,318	142,318	(2.69)	(2.69)	87,560	87,560	(8.40)	(8.40)	5,000	5,000	257.14	257.14	5.71%	5.71%	2,253	45.64	2.57%	2.57%	
REGIONS BANK	114,856	114,856	0.49	0.49	83,391	83,391	(2.85)	(2.85)	3,468	3,468	39.90	39.90	4.16%	4.16%	2,581	(4.76)	3.10%	3.10%	
FIFTH THIRD BANK	99,440	99,440	(4.74)	(4.74)	58,770	58,770	(19.31)	(19.31)	2,510	2,510	71.92	71.92	4.27%	4.27%	2,257	99.56	3.84%	3.84%	
KEYCORP	67,472	67,472	3.59	3.59	50,959	50,959	4.33	4.33	1,426	1,426	66.78	66.78	2.80%	2.80%	514	34.20	1.01%	1.01%	
M&T BANK CORP																			

annual reports

**Table 2 – charge offs**

## Charge-Off Rates

*100 Largest, Insured U.S. Chartered Banks*

	Real Estate Loans		Consumer Loans			Leases		C&I Loans		Agricultural Loans		Total Loans & Leases
	All	Residential	Commercial	Consumer Loans		Leases	C&I Loans	Agricultural Loans	Total Loans & Leases			
				All	Other							
Q1'10	2.55	2.67	2.51	6.86	10.14	2.60	0.81	1.97	2.87	3.30		
Q4'09	3.09	3.04	3.42	5.70	9.42	3.15	1.35	2.59	1.13	3.29		
Q3'09	2.67	2.72	2.78	6.12	10.32	3.33	1.36	2.65	1.00	3.14		
Q2'09	2.48	2.65	2.32	6.05	9.87	3.38	1.29	2.34	0.91	2.91		
Q1'09	1.80	2.06	1.44	5.11	7.65	3.24	0.71	1.81	0.49	2.28		
Q4'08	1.96	1.80	2.45	4.44	6.19	3.23	0.71	1.52	0.36	2.16		
Q3'08	1.49	1.66	1.28	3.68	5.55	2.52	0.52	0.96	0.28	1.64		
Q2'08	1.22	1.32	1.12	3.38	5.39	2.17	0.27	0.80	0.22	1.38		
Q1'08	0.80	0.96	0.52	3.10	4.63	2.10	0.30	0.64	0.08	1.09		

Federal Reserve

**Table 3 - US Bank Failures**

Albeit with major regional variations, the numbers of bank failures in 2009, and 2010 so far, bear witness to the severity of the financial crisis.

	2000	2001	2002	2003	2004	2007	2008	2009	2010	Total
Other states [1]	1	3	5	2	3	2	9	47	30	102
GA			1			1	5	25	8	40
IL	1	1	1				1	21	11	36
FL			2		1		2	14	10	29
CA				1			5	17	5	28
MN							1	6	6	13
TX			1				2	5	1	9
AZ			1					5	2	8
<b>Total</b>	<b>2</b>	<b>4</b>	<b>11</b>	<b>3</b>	<b>4</b>	<b>3</b>	<b>25</b>	<b>140</b>	<b>73</b>	<b>265</b>

FDIC

[1] States with less than 5 failures in 2009

**Exhibit A**

**FORM OF FORBEARANCE AGREEMENT**

THIS FORBEARANCE AGREEMENT made as of [\_\_\_\_\_] (this “**Agreement**”) by and among [\_\_\_\_\_] a [\_\_\_\_\_] with a principal address at [\_\_\_\_\_] (“**Borrower**”), [\_\_\_\_\_] an individual with a principal address at [\_\_\_\_\_] (“**Guarantor**” and collectively with Borrower, the “**Obligors**”), and [\_\_\_\_\_] a [state chartered] [national] bank with offices located at [\_\_\_\_\_] (“**Lender**”). All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Loan Agreement, as defined below.

In consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties hereby agree as follows:

Section 1. Recitals, Acknowledgement, Admission and Stipulation of Facts. The parties hereto hereby stipulate, admit, acknowledge and agree that the following facts are true, correct and accurate:

1.1 Borrower is indebted to Lender under certain loan arrangements with Lender (all such indebtedness, collectively, the “**Obligations**”) evidenced by various documents, including without limitation a loan agreement dated [\_\_\_\_\_] between Borrower and Lender (the “**Loan Agreement**”), and a Promissory Note dated [\_\_\_\_\_] payable by Borrower to Lender in the maximum principal amount of [\$\_\_\_\_\_] (such note, as amended, restated, supplemented or otherwise modified from time to time, the “**Note**”). As of the date hereof, the aggregate amount owing to Lender under the Loan Documents is as follows:

Principal .....  
 Interest Through [\_\_\_\_\_] .....  
 Late Charge Assessed On Unpaid Principal .....  
 Fees Due  
     Under Section [ ] of the Loan Agreement.....  
 Previously Billed Legal Fees  
     For Period [\_\_\_\_\_].....  
  
 Total Due As of [\_\_\_\_\_] .....

Interest is accruing, and will continue to accrue, at the per diem rate of [\$\_\_\_\_\_] , plus any amount of additional interest due as a result of any change in the Prime Rate, as defined in the Note, after the date hereof.

1.2 The Obligations are guaranteed by the Guarantor pursuant to a Guaranty of Guarantor dated [\_\_\_\_\_] (the “**Guaranty**”) and all secured by all personal property assets of Borrower pursuant to the Loan Agreement, the Note, the Guaranty, the Security Agreement, and this Agreement are sometime referred to collectively as the “**Loan Documents**”);

1.3 Each of the Obligors hereby reaffirms that the credit extended by Lender under the Loan Documents was part of a commercial transaction and not primarily for personal, family or household purposes;

1.4 By letter dated [ ] (the “**Default Notice**”) Lender notified Borrower that certain conditions for extension of the maturity date under the Loan Agreement set forth in the Loan Agreement had not been satisfied and that an Event of Default had occurred as a result of Borrower’s failure to pay all Obligations on or before [ ];

1.5 Pursuant to the Default Notice, in reliance on assurances from Borrower of Borrower’s intent to refinance the Obligations, Lender agreed to forbear from exercising Lender’s rights under the Loan Documents until further notice;

1.6 By letter dated [ ], Lender, through its counsel, notified Borrower, and by separate letter dated [ ] also notified Guarantor, that an Event of Default, as defined in the Loan Agreement, had occurred as a result of Borrower’s failure to pay the Obligations in full on or before [ ] and made demand payment in full of all Obligations owing by Borrower to Lender (the “**Demand Letter**”);

1.7 Borrower has advised Lender that Borrower is unable to satisfy Lender’s demands under the Demand Letter and requested that Lender forbear from taking action to collect the repayment in full of the Obligations;

1.8 In order to induce Lender to enter into this Agreement, Obligors have agreed to deliver to Lender, (i) as additional security for the Obligations, a first priority mortgage (the “**Mortgage**”) on property owned by Guarantor known and numbered as [ ] (the “**Property**”), and (ii) a deed to the Property (the “**Deed**”); and

1.9 Each of the Obligors acknowledges, agrees and confirms that except for this Agreement, Lender is not required, bound, or obligated in any way to refrain from exercising its rights and remedies, but Lender has agreed to the forbearance requested in consideration of the covenants, representations, warranties and agreements contained in this Agreement and only upon the terms and conditions outlined herein below; and

1.10 Each of the Obligors acknowledges and confirms Borrower’s liabilities to Lender for repayment of the Obligations pursuant to the Loan Documents, including without limitation all unpaid principal and accrued interest, late charges, fees and other costs of collection (including without limitation reasonable attorney’s fees and expenses) incurred or to be incurred in connection therewith all of which are currently due and owing.

Section 2. Lender's Agreement To Forebear. Lender agrees to forbear from exercising its rights and remedies against the Collateral (but not its right to make demand prior to, for payment on, [ ] (the “**Forbearance Termination Date**”), including, without limitation, foreclosing on any of the existing Collateral or the Mortgage (collectively, the “**Collateral**”),

until the earlier to occur of (i) the Forbearance Termination Date, or the occurrence of any of the following events (collectively, the “Forbearance Termination Events” and individually a “**Forbearance Termination Event**”):

2.1 **Payment Default.** Borrower shall fail to make any payments when due hereunder or under the Loan Documents.

2.2 **Breach of Covenant, Representation, Warranty, Etc.** Any representation or warranty contained herein shall prove to be false or materially misleading, either Obligor shall fail to comply with or perform, or shall breach or violate, any warranty, representation, covenant, agreement, prohibition, restriction or condition set forth in this Agreement, or an Event of Default (other than the payment default referenced in Section 1.7 of this Agreement) shall occur under the Loan Agreement.

2.3 **Failure of Assumptions Underlying Borrower’s Cash Flow Projections.** Any assumption of a future fact underlying Borrower’s cash flow projections delivered pursuant to Section 3.9 below shall not occur and shall result in a materially adverse effect on Borrower’s cash flow.

2.4 **Termination of Agreement.** Upon the occurrence of a Forbearance Termination Event, this Agreement shall terminate as to any matter not already consummated, and Lender may exercise any or all rights and remedies available to it under the Loan Documents, or applicable law. Borrower shall remain responsible to pay all costs and expenses, including reasonable attorney's fees associated with the collection of payments due under this Agreement and the Loan Documents, as provided in Section [ ] of the Loan Agreement.

Section 3. Obligors' Agreements. In consideration of Lender's agreement to forbear its rights and remedies as stated in Section 2 above, each of the Obligors agrees that so long as this Agreement is in effect or any of the Obligations remain outstanding:

3.1 **No Additional Loans; Extension of Payment Date.** Borrower will not request, and Lender will not lend to Borrower, any additional amounts of principal. All Obligations are demandable by Lender at any time prior to the Forbearance Termination Date and shall be due and payable in full without demand on the Forbearance Termination Date.

3.2 **Interest Rate and Interest Reserve Account.** Notwithstanding anything to the contrary contained in the Note or any of the other Loan Documents, Borrower agrees to pay interest on the outstanding principal amount of the Obligations, as and when due under the Note, at a fixed rate per annum equal to [ ] percent ([ ]%), *plus*, in the event of any increase in the Prime Rate, as defined in the Note (“**Prime Rate**”) after the date of this Agreement, the incremental percentage increase in the Prime Rate from and after the effective date of such increase. On or before the date of this Agreement, Borrower shall deposit, or cause to be deposited, in an interest bearing money market account maintained with the Lender (the “**Interest Reserve Account**”), in immediately available funds, an amount equal to [ ] Dollars (\$[ ]). Borrower hereby expressly authorizes Lender to debit the Interest Reserve Account from time to time in the amount of each interest payment as

and when due under the Note. In the event that at any time after the date of this Agreement, an increase in the Prime Rate shall occur, Borrower shall within three Business Days after receipt of notice from Lender deliver to Lender for deposit to the Interest Reserve Account the additional amount specified by Lender as needed to cover Borrower's then remaining interest payments through and including the Forbearance Termination Date.

3.3 ***Fees and Expenses.*** Borrower agrees to pay to Lender on the Forbearance Termination Date, or if earlier, immediately upon the occurrence of a Forbearance Termination Event: a forbearance fee equal to \$[ ] (the "**Forbearance Fee**") which fee shall be fully earned as of the effective date of this Agreement, *plus* (iii) all fees and expenses of the Lender's counsel incurred in connection with the foregoing agreements and this Agreement and the ongoing administration of this Agreement and the credit facility evidenced by the Loan Agreement.

3.4 ***Agreement Regarding Refinancing.*** Borrower agrees to use its best efforts to obtain replacement financing for the Obligations and to keep Lender informed of Borrower's efforts and progress on a weekly basis, or at such lesser intervals as may be necessary to keep Lender appropriately apprised of any material events occurring in connection therewith. Borrower further agrees to provide the Lender with copies of any term sheets and/or commitments received by Borrower promptly upon receipt.

3.5 ***Escrow of Deed.*** Lender shall hold in escrow the Deed. Upon the occurrence of a Forbearance Termination Event, and at any time thereafter so long as any Obligations remain outstanding, Lender may in its sole discretion, release the Deed from escrow and record said deed in the appropriate real estate registry and/or convey all right, title and interest in and to the Property to an entity or person to be designated by Lender in consideration for which the Obligations shall be reduced by an amount equal to seventy percent (70%) of the arithmetic average of the appraised value of the Property set forth in two appraisals that have been prepared by members of the Appraisal Institute selected by Lender at Lender's direction, such reduction being applied to any one or more outstanding Obligations in the amounts and in the order as determined by Lender in its sole discretion notwithstanding any provision to the contrary contained in the Mortgage or any other Loan Document.

3.6 ***Agreement Regarding Interest and Property Taxes.*** Borrower agrees to continue to pay when due all interest on the Obligations, and to pay all amounts due on the obligations and all property taxes due and payable on the Property.

3.7 ***Financial Statements; Tax Returns, Etc..*** Guarantor shall deliver to Lender: (i) on or before [ ], a copy of Guarantor's personal federal and state tax returns for the calendar year ending [ ], in each case as filed with the applicable governmental authority and containing a certification by Guarantor that each such copy is a true and complete copy of said return, and (ii) such other information relating to the business and affairs of Guarantor as and when the Lender may reasonably request.

3.8 ***Acknowledgment of Certain Agreements Regarding the Property.*** Obligors acknowledge the agreements set forth in Sections [ ] and [ ] of the Mortgage, respectively,

to pay when due all taxes, charges, claims, assessments, water rents and sewer charges that may become a lien upon the Property, and to permit Lender, its agents and other representatives access to the Property at any time until the Obligations are paid in full for the purposes of inspecting, marketing, and conducting soil or other testing on the Property.

### 3.9 ***Engagement of Consultant; Cash Flow Report.***

3.9.1 ***Consultant; Cash Flow Report.*** On or before the fifth (5<sup>th</sup>) business day after the date of this Agreement, Borrower shall engage the services of a third party consultant reasonably acceptable to Lender (the “**Consultant**”), as its business consultant. The Consultant shall be retained by Borrower at its own expense in order to aid and assist Borrower in the preparation of the Cash Flow Report, as defined in Section 3.9.2 below. Lender shall continue to retain the Consultant, or some other business consultant reasonably acceptable to Citizens, during the term of this Agreement. Borrower shall provide Lender and its advisors with reasonable access to the Consultant in order to obtain business, financial, and other information from the Consultant on behalf of Borrower. Borrower shall provide Lender, upon reasonable request, with copies of all information provided to or by the Consultant. Borrower hereby authorizes the Consultant to communicate directly with Lender and provide Lender with whatever business, financial, and other information that Lender may request.

3.9.2 ***Cash Flow Report.*** Borrower shall deliver to Lender a rolling forecast of cash flows of Borrower and its Subsidiaries commencing on the first day of each week and ending on the last day of the thirteenth week thereafter, together with a comparison to the actual cash flows of Borrower and its Subsidiaries for the immediately preceding week, and including an explanation for any variances therefrom, all in form and substance satisfactory to Lender and containing such detail as Lender shall request (the “**Cash Flow Report**”). Borrower shall deliver to Lender: (i) on or before the first business day of each week, commencing on the first business day of the third week after the date of this Agreement, a copy of the Cash Flow Report for the thirteen week period ending on Friday of the immediately preceding week, and (ii) such other information relating to the business and affairs of Borrower and its Subsidiaries as and when lender may reasonably request.

Section 4. Representations. Each of the Obligors agrees and acknowledges that Borrower’s obligations to Lender under the Loan Agreement and the Note and Guarantor’s obligations under the Guaranty, except as otherwise expressly modified by this Agreement, are, by the execution of this Agreement, ratified and confirmed in all respects. Each of the Obligors represents and warrants that neither Borrower nor Mortgagor has transferred any property for less than “fair consideration” within the twelve (12) months immediately preceding the date of this Agreement, and that as of the date of this Agreement, and at all times hereafter, the Property is, and shall remain, free of any liens and encumbrances. Each of the Obligors further agrees and acknowledges that (i) the selection of any broker or advisor for the refinancing of the obligations was and/or will be based exclusively on such Obligor’s own independent analysis and evaluation of such broker’s or advisor’s capabilities, (ii) Lender is not assuming any responsibility respect to any such broker or advisor recommended or suggested by Lender, and (iii) Lender shall not be deemed to be a fiduciary for either of the Obligors in connection therewith.

Section 5. Additional Acknowledgments. Each of the Obligors acknowledges and agrees that such Obligor has (a) carefully read and understands the contents of this Agreement and is fully aware of the legal effect of this Agreement, (b) had an opportunity to consult with counsel of choice regarding this Agreement, and (c) acted voluntarily and without duress in connection with the execution and delivery of this Agreement. Each of the Obligors further acknowledges and agrees that neither the provisions of this Agreement nor any alleged ambiguity shall be interpreted or resolved against Lender on the ground that Lender's counsel was the drafter of this Agreement.

Section 6. Release, Indemnity, Waiver. Each of the Obligors hereby releases, covenants not to sue, waives and forever discharges and relieves Lender and its officers, directors, employees, attorneys, representatives, predecessors, successors, and assigns with respect to the Obligations (the "Releasees") of, from, regarding, and/or on account of any and all rights, benefits, interest, liabilities, claims, demands, actions, causes of action, suits, debts, covenants, obligations, accounts due, contracts, rights to payment, damages, lost profits, costs, fees, counterclaims, attorneys' fees, interest penalties, offsets, setoffs, losses, and claims and defenses of every nature and kind whatsoever, whether at common law (contract, tort or other theory) or pursuant to federal, state or local statute, rule, ordinance, or regulation, whether vested or contingent, whether known or unknown, whether liquidated or unliquidated, whether matured or unmatured, whether disputed or undisputed, which such Obligor ever had or may now have against the Releasees, upon or by reason of any matter, cause or thing whatsoever arising from the Loan Documents, or any other document at any time relating to, or evidencing, the Obligations, including, without limitation, all claims relating to the making, validity and enforcement of the Loan Documents, as well as claims arising out of the formation of thereof. Each of the Obligors agrees to indemnify and hold the Lender harmless from and against any and all liabilities, claims, demands, costs and expenses (including, without limitation, reasonable attorneys' fees and litigation expenses), actions or causes of action, arising out of or relating to any breach of any covenant or agreement or the incorrectness or inaccuracy of any representation and warranty of the Obligors or any document delivered to the Lender by the Obligors or any other person on behalf of the Obligors pursuant to the terms of this Agreement.

Section 7. No Modification Or Waiver. None of the terms or provisions of the Loan Agreement or the other Loan Documents or this Agreement may be changed, waived, modified, discharged, or terminated except by instrument in writing executed by the parties hereto, or the party against whom or which enforcement of the change, waiver, modification, discharge or termination is asserted. None of the terms or provisions of the Loan Agreement or any of the other Loan Documents or this Agreement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same. In the event of any inconsistency between Loan Agreement or any other Loan Document and this Agreement, the terms of this Agreement shall prevail.

Section 8. Enforcement of Loan Documents. Except for Lender's agreement to forbear from foreclosing on the Collateral as set forth above, nothing in this Agreement and no action taken pursuant hereto, shall be deemed to prevent, impair or limit the Lender's rights against Borrower under the Loan Documents, and any other security documents, or as otherwise provided by law, at any time, it being expressly understood and agreed that the Lender expressly



with a copy to:

[                    ]  
 Attention:  
 Telephone:  
 Telecopier:

Section 10. Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*, except as otherwise specifically provided therein or therefor.

Section 11. Applicable Law. This Agreement has been negotiated and accepted in, and shall be deemed to have been made in the Commonwealth of Massachusetts and the validity of this Agreement, its construction, interpretation and enforcement, and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the laws (and not the law of conflicts) of the Commonwealth of Massachusetts.

Section 12. Successors And Assigns. The provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the respective successors, assigns, and participants of Lender, and the respective heirs, successors and assigns of each of the Obligors (but such reference is not intended, nor shall it be construed as, a consent to an assignment by either Obligor).

Section 13. Entire Agreement. The Loan Agreement, the Note and the other Loan Documents, as confirmed and amended or otherwise affected by this Agreement or the documents contemplated by Section 17 hereof, constitute the entire agreement between the parties hereto relating to or connected with the loan transactions and other matters contemplated thereby. Any other agreements or understandings related to or connected with such loan transactions or other matters not expressly set forth in Loan Agreement and the other Loan Documents as confirmed or affected hereby, are null and void and superseded in their entirety.

Section 14. Savings Clause. Notwithstanding anything to the contrary contained in this Agreement, any other Loan Document, or in any other document or agreement executed in connection herewith or therewith, all agreements by or between any Obligor and, or in favor of, the Lender, whether now existing or hereafter arising, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity of the Loans or otherwise, shall the amount paid or agreed to be paid to the Lender for the use or the forbearance of the Loans exceed the maximum permissible rate under applicable law (“Maximum Rate”). As used herein, the term “applicable law” shall mean the law in effect as of the date of this Agreement, provided however that in the event there is a change in the applicable

law which results in a higher permissible rate of interest, then this Agreement and each other Loan Document shall be governed by such new law as of its effective date. If due to any circumstance whatsoever, fulfillment of any provisions of this Agreement or any other Loan Document at the time performance of such provision shall be due shall exceed the Maximum Rate, then, automatically, the obligation to be fulfilled shall be modified or reduced to the extent necessary to limit such interest to the Maximum Rate. If the Lender should ever receive anything of value deemed interest by applicable law which would exceed the Maximum Rate, such excess shall be applied to the reduction of principal then outstanding under the Note and not to the payment of interest, or, if such excess exceeds the principal then outstanding, such excess shall be repaid to Borrower.

Section 15. Severability. Each provision of this Agreement shall be severable from every other provision hereof for the purpose of determining the legal enforceability of any specific provision. Except as otherwise specifically provided herein, all obligations, liabilities and responsibilities of each of the Obligor shall survive the consummation of the transaction set forth herein.

Section 16. Ratification. To the extent not otherwise modified herein or by any document contemplated by Section 18 hereof, each of the Obligors hereby ratifies and confirms all of the Loan Documents.

Section 17. Facsimile. Lender and each Obligor further agree that this Agreement and the Loan Documents which have been or may be hereinafter furnished by Borrower and/or Guarantor to Lender may be reproduced by Lender by any photographic, photostatic, microfilm, xerographic or similar process, and any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

Section 18. Conditions to Effectiveness of this Agreement. The Agreement shall become effective upon the receipt by the Lender of each of the following documents and/or the satisfaction by the Borrower (as determined by the Lender) of each of the following conditions:

- (i) this Agreement signed by the Borrower and the Guarantor;
- (ii) the Mortgage, in recordable form, and with all Exhibits referenced therein completed, signed by the owner(s) of the Property for filing in the appropriate Registry of Deeds;
- (iii) ACORD 27 Evidence of Insurance naming the Lender as Mortgagee evidencing “all risk” coverage (replacement cost) and general liability as to the Property;
- (iv) Title Insurance Policy for the Property, or other evidence of title to the Property, acceptable to the Lender;
- (v) an Owner’s Affidavit as to the Property;

- (vi) a Municipal Lien Certificate for the Property issued by the town/city in which the Property is located;
- (vii) a Plot Plan (or Survey) for the Property;
- (viii) a copy of the current deed for the Property;
- (ix) a deed conveying the Property to the Lender signed by the current owner(s) of the Property; and
- (x) satisfaction of any other condition or delivery of any other document reasonably required by the Lender to effect the agreements contemplated hereby.

Section 19. **Waiver of Jury Trial.** EACH OF THE OBLIGORS AND THE LENDER HEREBY IRREVOCABLY WAIVES TRIAL BY JURY AND AGREES THAT NEITHER OF THE OBLIGORS NOR THE LENDER, INCLUDING ANY ASSIGNEE OR SUCCESSOR, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE BASED UPON, OR ARISING OUT OF, THIS AGREEMENT, ANY LOAN DOCUMENT OR ANY OTHER RELATED AGREEMENTS, ANY COLLATERAL OR THE DEALINGS OR THE RELATIONSHIP BETWEEN THE PARTIES OR ANY OF THEM. NEITHER OF THE OBLIGORS NOR THE LENDER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SECTION HAVE BEEN FULLY DISCUSSED BY THE PARTIES AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NEITHER THE UNDERSIGNED NOR THE LENDER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO THE OTHER THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as an instrument under seal as of the date first written above.

BORROWER:

By:

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:  
\_\_\_\_\_

GUARANTOR:

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
an Individual

Name:  
\_\_\_\_\_

LENDER:

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:  
\_\_\_\_\_

**Exhibit B**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)

In re:	)	Chapter 11
	)	
BORROWER,	)	Case No. _____
	)	
Debtor.	)	
	)	

**FINAL CASH COLLATERAL STIPULATION AND ORDER**

Borrower (the Debtor) and Bank (the Lender) hereby stipulate and agree as follows:

**Recitals**

- A. On \_\_\_\_\_, 20\_\_\_\_ (the Petition Date) the Debtor commenced the above-captioned Chapter 11 case (the Chapter 11 Case) in the United States Bankruptcy Court for the District of Massachusetts (the Bankruptcy Court).
- B. The Debtor owns certain real estate, located at \_\_\_\_\_ (together with improvements, ancillary real property interests and proceeds as more fully described in the Mortgage, collectively, the Property).
- C. On or about \_\_\_\_\_, 20\_\_\_\_, Lender made a loan to the Debtor in the original principal amount of \$ \_\_\_\_\_ (the Loan). The Loan is secured by a first-priority mortgage on the Property and assignment of rents.
- D. Lender is party to, and/or the beneficiary of, the following agreements with respect to the Loan, each dated \_\_\_\_\_, 20 \_\_\_\_ (collectively, the Loan Documents):
  - (a) Promissory Note executed by the Debtor in favor of Lender in the original principal amount of \$ \_\_\_\_\_ (the Note); and
  - (b) Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing executed by the Debtor in favor of Lender (the Mortgage).
- E. The Debtor acknowledges that as of the Petition Date, the Debtor owed the Lender at least \$ \_\_\_\_\_ under the terms of the Loan Documents (together with attorneys' fees, costs and other charges due and payable under the terms of the Loan Documents and post-petition interest, fees, charges and expenses, to the extent allowable under 11 U.S.C. §§ 502 or 506(b), the Obligations, secured by a non-avoidable first priority mortgage in the Property.**

F. The Debtor's Schedule A states that the market value of the Property is \$\_\_\_\_\_. Lender does not admit or dispute the Debtor's estimate of value and expressly reserves all of its rights to challenge the same.

G. The Debtor acknowledges and agrees that all rents and other proceeds arising from or relating to the Property are the cash collateral of the Lender (collectively, "Cash Collateral"). There is a risk that the value of the Property is decreasing or will decrease during the Chapter 11 Case, and that the Lender, for that reason and others, is entitled to adequate protection under Sections 361 and 363 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code").

H. The Debtor has agreed to manage and operate the Property in accordance with a budget, attached hereto as Exhibit 1 (the "Budget"). The Debtor believes that the Budget will be adequate to pay all Property-related expenses that may become due and payable during the period covered by the Budget.

I. Lender has indicated to Debtor that it will seek relief from the automatic stay and oppose any further use of Cash Collateral absent an agreement reasonably acceptable to the Lender.

J. This Cash Collateral Stipulation (the "Stipulation") contains the definitive terms of the agreement between the Debtor and the Lender regarding use of Cash Collateral and adequate protection of the Lender's interests. This Stipulation, if and to the extent approved by the Bankruptcy Court, shall supersede the Cash Collateral Order.

NOW THEREFORE, the Debtor and the Lender agree as follows.

1. Incorporation of Recitals. The foregoing recitals are hereby acknowledged by the parties as being true and accurate and are incorporated herein by reference.

2. Definitions; Acknowledgements; Effectiveness of Agreement. Capitalized terms defined in the Loan Documents and not otherwise defined herein are used herein with the meanings so defined.

2.1 Binding Effect of Documents. Without prejudice to the rights of any trustee that may be appointed in this Chapter 11 Case or after conversion of this Chapter 11 Case, the Debtor hereby acknowledges, confirms and agrees that: (a) each of the Loan Documents has been duly executed and delivered and each is in full force and effect as of the date hereof, (b) the agreements and obligations of the Debtor contained in the Loan Documents and in this Stipulation constitute the legal, valid and binding obligations of the Debtor, and (c) **notwithstanding MLBR 4001-2 (c), Lender holds a valid, non-avoidable, fully-perfected first priority security interest in the Property as security for repayment of the Obligations and Debtor warrants and represents that no other security interests whatsoever exist encumbering the Property.**

2.2 No other Waivers; Reservation of Rights. The Lender has not waived, and is not by this Stipulation waiving, any events of default under the Loan Documents ("Events of Default") which may be continuing on the date hereof or any Events of

Default which may occur after the date hereof, and the Lender has not agreed to forbear with respect to any of its rights or remedies concerning any Events of Default or this Chapter 11 Case except as specifically provided herein.

2.3 Conditions Precedent to Effectiveness. The consent of the Lender contained in this Stipulation shall be effective only upon entry of the Final Order (defined below) by the Bankruptcy Court.

3. Use of Cash Collateral.

3.1 Consent to Use of Collateral and Cash Collateral. Subject to all of the terms and conditions of this Stipulation, the Lender hereby consents to the Debtor's use of Cash Collateral to make disbursements as set forth in the Budget from the date hereof through the earlier of (i) the occurrence of a Consent Termination Event or (ii) \_\_\_\_\_, 20\_\_\_\_ (the "Consent Period"). The Debtor agrees that it shall not use, sell or lease cash collateral except (i) in accordance with the Budget, or (ii) as consented to in writing by the Lender. Expenditures shall not exceed the amounts set forth in the Budget in the aggregate and by category measured on a calendar month basis. The Debtor further agrees that it shall keep all Cash Collateral in a segregated bank account, separate and apart from other funds and accounts of the Debtor. The consent given by the Lender hereby is not a consent to the release of liens that attach to the Cash Collateral or the proceeds of any sale of the Property.

4. Adequate Protection. Lender's consent to the Debtor's use of Cash Collateral is expressly conditioned upon Lender's receipt of the adequate protection forth in this Section 4.

4.1 Adequate Protection Payments. Commencing on entry of the Final Order (defined below) and on the tenth (10<sup>th</sup>) business day of each calendar month thereafter, Debtor shall pay to the Lender an adequate protection payment in the amount of \$ \_\_\_\_\_ (the "Monthly Payment"), consisting of an adequate protection payment of \$ \_\_\_\_\_ to be applied to unpaid Obligations under the Loan Documents that accrued prior to the commencement of the Chapter 11 Case ("Pre-Petition Obligations") and \$ \_\_\_\_\_ to be held by Lender for payment of real estate taxes on the Property when they become due. Payments shall be made by wire transfer in accordance with wire transfer instructions provided by Lender. All funds held in the Debtor's segregated Cash Collateral account shall remain the cash collateral of the Lender. To the extent that the funds in the Cash Collateral account exceed the budgeted expenses in any given month, such excess shall be held in the segregated Cash Collateral account subject to the security interest of Lender.

4.2 Replacement Lien. To the extent not already included in the Lender's Cash Collateral, as adequate protection for and to the extent of any diminution in value of the Property and rents and other proceeds arising from or relating to the Property during the Consent Period, the Lender shall be granted a first-priority lien having the same order and priority as the Mortgage (the "Replacement Lien") on all rents and other proceeds received by the Debtor or their agents after the Petition Date arising from or relating to the Property pursuant to Sections 361, 363 and 552 of the Bankruptcy Code. The

Replacement Lien shall be deemed to be held by the Lender and any amounts encumbered by such lien shall be deemed to constitute Cash Collateral. Upon entry of an order of the Bankruptcy Court approving this Stipulation, such order shall be sufficient and conclusive evidence of the validity, perfection, enforceability and priority of the Replacement Lien, without the necessity of filing or recording any financing statement, mortgage, or other instrument or documents which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the Replacement Lien or to entitle the Lender to the priorities created and granted herein and pursuant to such order. Notwithstanding anything in this paragraph to the contrary, the Replacement Lien shall be valid, perfected and enforceable only to the same extent as the Lender's pre-petition Mortgage.

4.3 Superpriority Claim. As further adequate protection for and to the extent of any diminution in value of the Property and rents and other proceeds arising from or relating to the Property during the Consent Period, Lender is hereby granted to the extent provided by section 503(b) and 507(b) of the Bankruptcy Code an allowed superpriority administrative expense in the Chapter 11 Case.

4.4 Proceeds of Sale or Refinancing. Lender shall be entitled to all net proceeds of a sale of the Property or refinancing of the Loan until all of the Obligations are paid in full. Lender retains its right to credit bid at any sale of the Property pursuant to section 363(k) of the Bankruptcy Code.

5. Termination.

5.1 Consent Termination Events. The consent to use cash collateral, given in Section 2, shall terminate on written notice from Lender (the Termination Notice) to the Debtor or his counsel of record in this Chapter 11 Case (with a copy to counsel to the United States Trustee) following the occurrence of any of the following (each a Consent Termination Event):

5.1.1 \_\_\_\_\_, 20\_\_\_\_, absent prior entry of a final order of the Bankruptcy Court approving this Stipulation, in form and substance acceptable to the Lender in its sole discretion (the Final Order);

5.1.2 Debtor's failure to make a timely Monthly Payment as provided in Section 4.1 hereof;

5.1.3 The breach by the Debtor of any term, condition or covenant of this Stipulation or the Final Order;

5.1.4 A deviation of five percent (5%) or more from any line item in the Budget;

5.1.5 The reversal, vacation or modification of the Final Order, whether by appeal or otherwise;

5.1.6 The filing of a motion by any party or the Debtor to authorize the Debtor to obtain credit under Bankruptcy Code section 364 secured in whole or in part by the

Property or the Cash Collateral or to provide liens in, or rights, to the Property or the Cash Collateral as adequate protection to third parties;

5.1.7 The appointment of a trustee or examiner for the Debtor, or the conversion or dismissal of the Chapter 11 Case;

5.1.8 The effective date of any plan of reorganization of the Debtor;

5.1.9 The filing of a motion by any party or the Debtor to sell the Property where the proceeds of such sale are not sufficient to repay the Obligations and that is not otherwise in form and substance reasonably acceptable to the Lender; and

5.1.10 The closing of a sale of the Property.

6. **Modification of Automatic Stay: Notwithstanding MLBR 4001-2(c), upon the occurrence of a Consent Termination Event, the Debtor's right to use cash collateral with Lender's consent shall automatically cease, and the Lender shall be entitled to an expedited hearing in the Bankruptcy Court, on three (3) business days notice, with respect to Lender's motion for relief from the automatic stay in order to exercise its rights and remedies under the Loan Documents and applicable non-bankruptcy law to satisfy the Obligations, including, without limitation, to foreclose upon and sell the Property, credit bid at any such foreclosure sale, and apply the proceeds from such foreclosure sale in payment of the Obligations.**

7. Flash Reports: No later than each Wednesday during the term of this Stipulation, the Debtor will deliver to the Lender and its legal counsel monthly written flash reports (the Flash Reports) showing all expenditures made by the Debtor during the immediately preceding week. If a Flash Report shows a deviation from the Budget in an amount greater than 5% as to any line item, it shall be a Consent Termination Event. Notwithstanding the prior sentence, the Debtor may pay an expenditure that is not included in the Budget without further order of the Court, but only after first obtaining the Lender's written consent. In addition, together with each Flash Report, the Debtor shall provide Lender and its legal counsel monthly updates as to the steps the Debtor is taking to market the Property for sale, obtain refinancing or proceed toward a reorganization under chapter 11.

8. Notice of Offers and Expressions of Interest: The Debtor shall immediately notify Lender of any expressions of interest in the Property or offers to purchase or refinance the Property or the Note. To the extent that such offers or expressions of interest are in writing, Debtor shall provide Lender with copies of same upon receipt.

9. Miscellaneous.

9.1 Further Assurances. The automatic stay shall be modified to permit the Lender to carry out the terms and conditions of this Stipulation and the Final Order. The Debtor is hereby authorized and directed to execute any additional documents, instruments and agreements, including security agreements, financing statements and other recording instruments as may be reasonably required by the Lender to further effectuate and confirm the terms and conditions of this Stipulation.

9.2 Notices. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (i) upon the sending of an electronic mail message; (ii) upon confirmation of facsimile, (iii) one (1) business day following the date sent when sent by overnight delivery and (iv) three (3) business days following the date mailed when mailed by registered or certified mail return receipt requested and postage prepaid, to the following addresses, provided, however, that notice to Debtor's counsel shall constitute notice to the Debtor:

If to the Debtor:

[BORROWER]

Copy to:

[Borrower's Counsel]

If to the Lender:

BANK

Copy to:

[Counsel to the Bank]

Any party hereto may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other parties notice in the manner herein set forth.

9.3 Successors and Assigns. The Lender may freely assign its respective rights and obligations under the Loan Documents and under this Stipulation.

9.4 No Third-Party Beneficiaries. This Stipulation shall not confer any rights or remedies upon any person other than the parties hereto and their respective successors and permitted assigns.

9.5 No Waiver of Lender's Rights and Remedies. All existing rights and remedies of the Lender, including with respect to existing Events of Default and the Chapter 11 Case are expressly preserved (including but not limited to the right to seek allowance and payment under 11 U.S.C. § 506(b), seek stay relief after the occurrence of a Consent Termination Event and to oppose any plan or disclosure statement filed by the Debtor in the Chapter 11 Case). The Loan Documents and all other documents related thereto, the Property, the 507(b) Claim, and all of the security, priorities, benefits, rights and remedies thereunder, are, except as expressly amended by written amendments thereto signed by the Lender, as appropriate, unimpaired by this Stipulation and shall remain in full force and effect.

**9.6 Waiver of Certain Rights of the Debtor. Notwithstanding MLBR 4001-2(c), and in consideration of the Lender's consent to use Cash Collateral to pay expenses related to the Property, the Debtor hereby waives any right to surcharge the Property under 11 U.S.C. § 506(c) or otherwise. The foregoing waiver shall not be binding on any trustee that may be appointed in this Chapter 11 Case or after conversion of this Chapter 11 Case.**

9.7 Amendments; Consents. This Stipulation may not be amended or waived except by a written instrument signed by the Lender and subsequently approved by the Bankruptcy Court, and any such amendment or waiver shall be effective only for the specific purpose given. Any consent by Lender as contemplated hereunder shall be granted or withheld by the Lender as the case may be, in its sole discretion and shall be effective only by a written instrument signed by the consenting parties. No failure or delay by the Lender to exercise any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other right, power or privilege.

9.8 Integration. This Stipulation, together with the Loan Documents, expresses the entire understanding of the parties with respect to the transactions contemplated hereby. This Stipulation and any amendment hereof may be executed in several counterparts, each of which shall be an original, and all of which shall constitute one agreement. In proving this Stipulation, it shall not be necessary to produce more than one such counterpart executed by the party to be charged.

9.9 Jurisdiction: Choice of Law; Waiver of Jury Trial. Each of the parties hereby irrevocably consents to the jurisdiction of the Bankruptcy Court prior to any dismissal or closing of the Chapter 11 Case to hear any dispute arising out of or related to this Stipulation and the transactions contemplated hereby, whether in the nature of an adversary proceeding or a contested matter. Each party irrevocably waives any defense of forum nonconveniens in such action so long as it is brought in such court, waives any argument that any such action is a non-core matter, and hereby consents that such may be tried to, with final judgment entered by, the Bankruptcy Court. This Stipulation shall be governed by the internal laws of The Commonwealth of Massachusetts and the Bankruptcy Code. The parties hereto hereby irrevocably waive the right to trial by jury in any forum.

17TH ANNUAL NORTHEAST BANKRUPTCY CONFERENCE

This Stipulation is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ as an agreement under seal.

DEBTOR:

BORROWER

By: \_\_\_\_\_  
Name:  
Title

LENDER:

BANK

By: \_\_\_\_\_  
Name:  
Title:

**SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Judge

**Exhibit C**

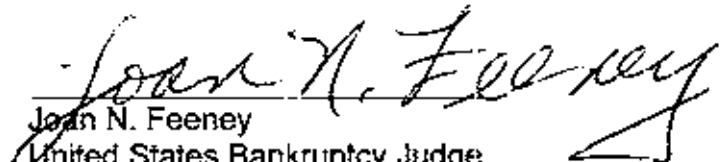
**EMERGENCY STANDING ORDER 10-2**

**Loan Modification and Forbearance Agreements**


Unless conspicuously identified and specifically approved by the court in advance, any provision in a loan modification agreement, forbearance agreement, stipulation relating to a motion for relief from the automatic stay under 11 U.S.C. § 362(a) or similar agreement, which provides that, upon default by the debtor, the benefits of the automatic stay will be waived shall be deemed unenforceable and void.

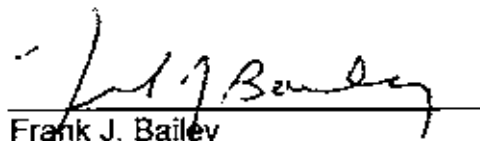
DATED AS OF THIS 2nd DAY OF MARCH, 2010.

  
William C. Hillman  
United States Bankruptcy Judge

  
Joan N. Feeney  
United States Bankruptcy Judge

  
Henry J. Baroff  
United States Bankruptcy Judge

  
Joel B. Rosenthal  
United States Bankruptcy Judge

  
Frank J. Bailey  
United States Bankruptcy Judge