Guidelines regarding Motions to Use Cash Collateral
or to obtain Credit, or Stipulation regarding the Same

The following guidelines apply to motions or agreements to use cash collateral or obtain postpetition credit or financing. LBR 4001-1(a)(9), (b)(7) and (c), require that both interim and final motions contain a statement of whether or not the motion proposes to grant, or whether the agreement of the parties includes, any provision contained in subsection (b) of these guidelines, and, if so, that the provision be clearly identified.

(a) **Provisions Normally Approved**.

The court will normally approve, or may require, inclusion of the following provisions:

(1) Withdrawal of consent to use cash collateral or termination of further financing, upon occurrence of a default or conversion to chapter 7;

(2) Securing any postpetition diminution in the value of the secured party's collateral with a lien on postpetition collateral of the same type as the secured party had prepetition;

(3) Reservation of rights under § 507(b), unless that provision also calls for modification pursuant to § 726(b);

(4) Reasonable financial and other appropriate reporting requirements;

(5) Reasonable requirements for proof of insurance;

(6) Reasonable requirements for access to property for inspection and appraisal;

(7) Reasonable budgets and use restrictions; and

(8) Expiration date for the order.

(b) **Other Provisions.**

The following provisions are approved, rarely, if ever, on an interim basis. Approval following final hearing is dependent on adequate notice and cause having been shown. Inclusion of any of these provisions will be scrutinized by the court even in the absence of an objection by a party in interest.

(1) Cross-collateralization clauses that secure prepetition debt by postpetition assets in which the secured party would not otherwise have a security interest by virtue of its prepetition security agreement.

(2) Provisions or findings of fact that bind the estate or all parties in interest, other than the debtor with respect to the validity, perfection or amount of the secured party's lien or debt.

(3) Provisions or findings of fact that bind the estate or all parties in interest, other than the debtor, with respect to the relative priorities of the secured party's lien and liens held by persons who are not party to the agreement.

(4) Provisions securing new advances or value diminution with a lien on postpetition collateral not the same type that the secured party had prepetition.

(5) Provisions that prime the liens and/or security interests of secured creditors who are not parties to the agreement, unless consented to by the affected creditor.

(6) Provisions that waive Bankruptcy Code § 506(c) except to the extent effective only during the period in which the debtor in possession or trustee is authorized to use cash collateral or obtain credit.

(7) Provisions that preclude a future trustee with a duty to care for, preserve, and/or liquidate collateral from recovering the expenses of administration.

(8) Provisions that characterize any postpetition payments as payments of interest, fees, or costs

on prepetition obligations.

(9) Provisions that operate specifically or as a practical matter to divest the debtor, or any other party in interest, of any discretion in the formulation of a plan or administration of the estate, or limit access to the court to seek any relief under applicable provisions of law.

(10) Releases of liability for the creditor's prepetition torts, breaches of contract, or lender liability, as well as releases of prepetition or postpetition defenses and/or counterclaims.

(11) Provisions that waive causes of action.

(12) Provisions granting a security interest or lien in causes of action or recoveries arising under the Bankruptcy Code.

(13) Relief from the automatic stay of Bankruptcy Code § 362(a) upon default, conversion to chapter 7, or the appointment of a trustee, without notice.

(14) Provisions that waive the right to move for a court order under Bankruptcy Code 363(c)(2)(B) or § 364 (c) and (d) authorizing the use of cash collateral in the absence of the secured party's consent.

(15) Provisions that carve out administrative expenses that do not treat all such expenses equally or on a pro rata basis.

(16) Provisions that create an unreasonably short period of limitations for any party in interest (including a successor trustee) to bring claims or causes of action against the lender or secured creditor.

(17) Provisions that waive the procedural requirements for foreclosure or repossession mandated under applicable non-bankruptcy law.

(18) Provisions applicable in the event of a dispute under the order or agreement that place jurisdiction or venue in another court.

(19) Provisions applicable in the event of a dispute or default under the agreement wherein the debtor waives service of process, the doctrine of forum non conveniens, notice and hearing, or the right to a jury trial.

(20) Findings of fact on matters extraneous to the approval process or without testimony or evidence.