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10 **UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 In re:)
13) No. 2:05-bk-14971-RJH
14 MICHAEL THOMAS HERZOG,) Chapter 13
15)
16 Debtor.) **MOTION FOR INTERIM**
17) **ADEQUATE PROTECTION**

18 WFS Financial, by and through undersigned counsel, hereby moves this Court for
19 an Order Granting Interim Adequate Protection based upon the following grounds.

20 This bankruptcy was converted to a Chapter 13 on August 16, 2005. WFS
21 Financial has a perfected purchase money lien on the following property:

22 1997 Lexus SC-16

23 VIN #JT8CD3Z0V0038199

24 (the "collateral"). It may take several more months before the plan is confirmed; during that
25 period, WFS Financial would go for a long period of time without receiving any payments on the
26 loan while the collateral is depreciating.

27 The parties have agreed that the value of the collateral is \$10,135.00. Both parties should
28 therefore agree that (for the purposes of this motion only) the vehicle is depreciating at the rate
of \$101.00 per month (1% of the approximate value), and that amount should be paid
immediately as interim adequate protection to WFS Financial. Adequate protection payments
should reduce WFS Financial's secured claim by first applying the payment to interest accrued
and then to the principal.

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Section 361(1) of the Bankruptcy Code anticipates situations where the Trustee may be required “to make a cash payment or periodic cash payments” in order to adequately protect an entity, despite the language of § 1326(a)(2). This is a situation where WFS Financial will not be adequately protected if it goes an undetermined number of months without any payment on the account, while the value of its collateral is decreasing at a fairly rapid rate. WFS believes that it is irrevocably entitled to interim adequate protection payments.

WFS Financial recognizes that the Trustee can only disburse funds to WFS Financial which it has received from the debtor. If the debtor has not made plan payments and there are not enough funds on hand (after the percentage set aside for the Trustee’s compensation), then the Trustee should only disburse what is available for WFS Financial. Similarly, if other creditor(s) seek similar adequate protection orders and there is not enough to disburse to all, the Trustee may disburse on a pro rata basis.

If the bankruptcy is converted or dismissed, or if the debtor surrenders the collateral to WFS Financial before confirmation, WFS Financial requests that the Trustee disburse to WFS Financial whatever funds it is holding (if any) as and for WFS Financial’s adequate protection.

Therefore, WFS Financial requests that, upon the Court’s order, the Trustee shall:
(1) disburse all sums due to WFS Financial as adequate protection payments from the funds which the Trustee has received to date; and (2) disburse adequate protection payments to WFS Financial each month from the funds on hand thereafter until WFS Financial begins to receive regular payments on the secured portion of its claim through the plan.

DATED this 28 day of October, 2005.

LAW OFFICES OF PAUL WEICH

By/S/ _____
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1 COPIES of the foregoing
2 mailed this 28 day of
3 October, 2005 to:

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8 Phoenix, AZ 85021
9 Attorney for Debtor

8 Edward J. Maney
9 Chapter 13 Trustee
10 P.O. Box 10434
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12 Trustee

11 By/S/ _____
12 Cynthia Tolle

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