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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

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| <b>In Re:</b><br><b>A. H. COOMBS, LLC</b> | <b>Bankruptcy No. 16-25559</b><br><b>Chapter 11</b> |
| <b>Debtor.</b>                            | <b>Judge William T. Thurman</b>                     |

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**EXPEDITED MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING THE  
DEBTOR TO USE CASH COLLATERAL AND/OR PROVIDE ADEQUATE  
PROTECTION TO SECURED CREDITOR GVS HOLDINGS, LLC.**

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The Debtor and Debtor in Possession, A. H. Coombs, LLC (the “Debtor”), hereby moves this Court for interim and final orders authorizing the Debtor to use cash collateral and/or provide adequate protection to secured creditor GVS Holdings, LLC. This Motion is not a request for reconsideration of a prior Motion for Continued Use of Cash Collateral; the present Motion is a new motion based on substantial changes in circumstances of the Debtor in regard to issues and findings by the Court resulting in denial of the prior Motion for Continued Use of Cash Collateral. In support of the present Motion, the Debtor hereby states the following:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion concerns the administration of the estate and, therefore, it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**RELIEF REQUESTED**

3. By this Motion the Debtor seeks permission to use cash collateral pursuant to 11 U.S.C. §§ 361 and 363(c)(2) and/or provide adequate protection to GVS Holdings, LLC (“GVS”).

**Statement of Compliance with Bankruptcy Rule 4001(b)**

4. In compliance with Bankruptcy Rule 4001(b), the Debtor makes the following concise statement about the relief requested herein:

- a. Entity with Interest in Cash Collateral: GVS maintains and alleges that it has an interest in the cash collateral to be authorized for use in this Motion, as evidenced by the Trust Deed, the Security Agreement, and other security documents.
- b. Purpose: The Debtor will provide adequate protection to GVS from diminution of the collateral securing GVS’s interests by the Trust Deed, the Security Agreement, and other security documents. The Debtor rents the real property to affiliate debtor CHC Development Co. Inc. (“CHC”), and Debtor itself has nominal expenses other than payments to GVS pursuant to a workout agreement, the Trust Deed, the Security Agreement, and other security documents. A budget of anticipated income and expenses, including rents to be received from CHC and adequate protection payment for GVS after November 3, 2016, is attached hereto as Exhibit “A”<sup>1</sup> and incorporated herein by reference; the Debtor represents the expenses contained therein are reasonable and necessary;
- c. Term: The Order requested in this Motion, if approved, shall be effective and extend for a period of ninety (90) days from November 3, 2016 or to the date of confirmation whichever is earlier.

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<sup>1</sup> All exhibits referenced herein have been filed with the original motion on file with the Court only and not sent as part of the mailing of the motion.

- d. Adequate Protection: It is the Debtor's position the real property on which GVS holds the Trust Deed is not likely to decline in value at all during this case, and GVS's security interest will either maintain current value or appreciate as real property and the viability of the operational company CHC is improved by interested parties and as the economy continues to strengthen. As adequate protection of GVS's security interests in assets of the Debtor, the Debtor will pay GVS \$25,000.00 per month received in the form of rents from affiliate debtor in possession CHC and will additionally grant GVS a postpetition replacement lien, renewing monthly but not accumulating, on postpetition rents, inventory, accounts, general intangibles, and property acquired postpetition by the Debtor. Payments will be applied as set forth in the loan documents and other agreements between the Parties. If the Court later determines that GVS is undersecured, payments that have been received will be applied to principal.
- e. Budget: It is not anticipated that any amounts will be unused in any line item of the Budget as the sole source of income for the Debtor is the rents received and other than real property taxes payable to Washington County, Utah the Debtor does not anticipate any additional expenses. However, if both income and needs arise, any unused amounts may be used by the Debtor for other expenses. Any amounts unused in any month may be carried over and used by the Debtor in any subsequent time period.
- f. Bankruptcy Court Approval: The use of cash collateral as set forth herein is subject to Bankruptcy Court approval, after appropriate notice and a hearing.

**FACTUAL AND PROCEDURAL HISTORY**

5. Debtor's Account Regarding Its Financial Distress. The Debtor was incorporated in approximately 1976 to own and hold the real property where CHC would operate and do business as the Green Valley Spa & Resort. Due to expansion by CHC in the time prior to the 2008-2009 recession, the Debtor guaranteed secured loans collateralized by its real property with CHC and the Debtor's Principals to fund expansion. The recession caused a decline in revenue due to reduced spending by the public of disposable income. This reduction of CHC's revenue created a financial "crunch" as the debt service on the secured loans was substantially more than revenues, due to high pre-recession values and costs of expansion. Although the market has strengthened in recent years, debt service has continued to burden the recovery of CHC and thereby made payments of the rents to Debtor difficult to maintain. The Debtor and CHC have survived by working and negotiating with their creditors, including GVS, reducing expenses, downsizing operations and receiving capital infusions by personal loans from the Debtor's Principals and their family. The Debtor and CHC are seeking to restructure operations, including management, in order to maximize the value of the estates for all stakeholders. Without the use of the cash collateral, the Debtor would be unable to meet ongoing business operation needs, provide payments to any creditors and would be required to cease operations, layoff its entire workforce, and all turn over all real property to GVS.

6. Loan. The Debtor and Northwest Savings Bank ("Northwest") entered into a Business Loan Agreement in October 2006 in the amount of \$8,100,000 (the "Loan Agreement"). The Debtor executed a promissory note in favor Northwest (the "Note") and secured its repayment of the Note by granting a security interest in substantially all of its assets by a Deed of Trust and Assignment of Rents (the "Trust Deed") on real property owned by the Debtor, a copy of which is attached as Exhibit "B," and a security agreement, a copy of which is attached as Exhibit "C"

(the "Security Agreement"). Northwest recorded the Trust Deed and filed a financing statement with respect to personal property. The Debtor also negatively covenanted not to incur any "Indebtedness" or "Liens" except for trade debt incurred in the ordinary course of business. The Loan Agreement, Note, Trust Deed, Security Agreement and other documents related to the loan will be referred to as the "Loan Documents."

7. Assignment of Loan to GVS and Workout Agreement. In September 2013, GVS purchased from Northwest the loan and the Loan Documents. GVS recorded a Notice of Assignment of Beneficial Interest in the Trust Deed and filed a new financing statement. On or about October 1, 2013, the Debtor and GVS entered into a Workout Agreement, a copy of which is attached as Exhibit "D" (the "Workout Agreement"). Pursuant to the Workout Agreement, the terms, conditions, and enforceability of the Loan Documents remain in full force and effect, but the parties thereto agreed the Debtor could repurchase the Note and satisfy the Loan Documents for \$5,500,000 plus accrued interest within three years of the date on which the Workout Agreement was entered into. The Workout Agreement allows for automatic extension for two additional years if the Debtor is not in default. The Debtor executed and delivered to GVS a deed-in-lieu of foreclosure and authorized GVS to record that deed-in-lieu upon default by the Debtor. Upon default, the full amount due under the Loan Documents becomes immediately due and payable. The Debtor asserts the amounts owing under the Loan Documents are those under the Workout Agreement without a default, as Debtor believes GVS failed to adhere to all of its terms and further failed to adhere to the notice of default provisions by making statements via letters to the Debtor that certain acts once taken avoided default. GVS has indicated its position is the Debtor defaulted on the Workout Agreement pre-petition, despite potential issues of GVS's default by failing to either escrow property tax amounts paid or failing to pay those sums

for property taxes paid to it by the Debtor. Importantly, the issue of whether or not the Debtor or GVS was in default is not before the Court as part of this cash collateral motion and will be addressed in a separate objection to GVS's claim and certain counterclaims to be filed with the Court. The central issue surrounding the Workout Agreement is that by its terms if the Debtor was not in default, the Debtor was entitled to continue the workout payments automatically for a period of two years.

8. Bankruptcy Filing. On June 25, 2016, (the "Petition Date"), the Debtor commenced a bankruptcy case (the "Chapter 11 Case") under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

9. Prior Cash Collateral Agreement. The Debtor and GVS filed a Stipulation and Motion for Temporary Authorization of Use of Cash Collateral (the "Cash Collateral Stipulation"), dkt. No. 26, on August 8, 2016, which was approved by order of the Court on August 24, 2016, dkt. No. 40. The Cash Collateral Stipulation allowed the Debtor to use cash collateral for a period of ninety (90) days from and relating back to the Petition Date with the term expiring on September 23, 2016. A Cash Collateral Stipulation of exactly the same terms was also entered simultaneously with affiliate debtor CHC. Both Cash Collateral Stipulations required the two debtors to (1) pay to GVS the amount of \$12,500.00 (for a total of \$25,000.00) on or before September 15, 2016; (2) provide certain financial documents to GVS for the periods from the Petition Date to the date of the Cash Collateral Stipulation and from January 1, 2016 through the Petition Date; (3) provide copies of their 2015 tax returns, (4) provide detailed weekly financial reports; and (5) seek to recover \$75,000.00 in preferential payments made to relatives of a principal of the Debtor. The Debtors each timely paid the \$12,500.00, twice (for a total of \$50,000.00) submitted 2015 tax returns and one weekly report, as well as contacted the parties

paid the preferential payments to negotiate recovery of the preferential payments but failed to provide the additional historical information. Because of Debtors' failure to timely comply with all of the provisions of the stipulation, GVS asserted in pleadings that it did not consent to the Debtors' continued use of cash collateral, dkt. 66 at ¶4.

10. Prior Motion for Continued Use of Cash Collateral. On September 15, 2016 the Debtor filed a motion for continued use of cash collateral pursuant to the terms in the Cash Collateral Stipulation. A preliminary hearing on the motion was held on September 22, 2016 where the Court set an evidentiary hearing on the motion for October 6, 2016 and extended the stipulated order granting the Debtor the right to use cash collateral through that hearing. On October 6 and 7, 2016 the Court heard evidence related to the requested relief continuing the Cash Collateral Agreement. After both parties rested, the Court scheduled closing arguments for October 20, 2016, and requested supplemental briefing by the parties, again continuing the stipulated order to the date for closing arguments. On October 20, 2016 the Debtor, GVS, the United States Trustee and interested parties Arrived Hospitality, LLC and Kirch & Todd Real Estate, LLC DBA Kirch & Todd Lending argued their respective positions on the Debtor's motion for continued use of cash collateral. The Debtor argued that although not all terms were satisfied with the stipulation the Debtor had made the required payments both on September 15, 2016 and on October 15, 2016 (the time period extended by the Court), provided most of the information requested and was taking steps to ensure future compliance with the reporting requirements via employment of professionals. GVS argued the Debtors' failure to comply with the terms of the stipulation did not entitle it to continued use of cash collateral and the lack of information and transparency did not adequately protect its interests. The United States Trustee expressed concern over the lack of timely reporting but focused comments on the issues of the affiliate debtor CHC's failure to pay

its employee tax withholdings post-petition as well as concerns over increasing payables both being indicated in CHC's monthly reports to the Court. After closing arguments the Court adjured and reconvened later in the day and read its ruling to the parties from the bench. The Court found that the Debtor did not comply with the terms of the original stipulation in its entirety, including failure to commence a cause of action to recover the preferential payments and failing to timely report. Therefore the Court determined the Debtor was not entitled to continued use of cash collateral. The Court also found the affiliate debtor CHC's failure to pay the employee tax withholdings post-petition troubling and a point of concern. The Court denied the both Debtors' motions for continued use of cash collateral pursuant to the terms of the stipulated order, effective November 3, 2016. The Court met with counsel for the parties the next day on October 21, 2016 via conference call to clarify the Court's effective date on the denial meant the Debtor was authorized to continue use of cash collateral under the extended order of the Court until November 3, 2016.

11. GVS Holdings, LLC Motion for Relief from the Automatic Stay.

On October 19, 2016 prior to closing arguments on the Debtor's request for continued cash collateral GVS filed a motion for relief of stay. In its motion, GVS asserts it lacks adequate protection and that Debtor as a single asset real estate debtor should file a plan with a reasonable likelihood of confirmation or commence interest payments at the nondefault contract rate. Debtor has filed an amended plan since it is now aware of GVS position on the proposal.

12. Debtor's Actions after Denial of Continued Use Motion on October 20, 2016. The

Court's denial renders a near fatal blow to the Debtor and affiliate debtor CHC. However, as expressed in the evidentiary hearing and closing arguments, parties have rallied to the Debtor's cause. Arrived Hospitality, LLC and its principals have made substantial efforts to support the



Debtor and affiliate debtor CHC. A declaration of Lyndi Rose, one of the principals of Arrived Hospitality indicating the efforts on behalf of the Debtor is attached as Exhibit "E". With the help of Arrived Hospitality, the Debtor has contacted both the Internal Revenue Service and the Utah State Tax Commission is prepared to make payments in full of the outstanding post-petition withholding taxes upon approval of the DIP lending request discussed hereafter. See Declaration of Lyndi Rose at ¶3. The Debtor has entered into a settlement agreement with Alan H. Coombs, to resolve the \$75,000.00 in avoidable preferential transfers to relatives of the principal, Alan H. Coombs. Additionally, Arrived Hospitality has engaged accountants from Hinton & Burdick CPAs & Advisors ("Hinton & Burdick") to make a complete accounting from the Petition Date through the date of filing of this motion (a requirement of such accounting was ordered in ¶3 of dkt. No. 40). See Declaration of Lyndi Rose at ¶5. Moreover, Hinton & Burdick has been working to rehabilitate all of the bookkeeping needs of the Debtor and affiliate debtor CHC. See Declaration of Lyndi Rose at ¶6. Arrived Hospitality and Hinton & Burdick have engaged a payroll company to issue all future payroll checks and to make all future employee income withholdings automatically without future error or deficiency on the part of CHC. See Declaration of Lyndi Rose at ¶7. The Debtor and affiliate debtor CHC have accepted the resignation of Elizabeth Nostrant, the controller for both Debtors, whose failure as the head of all bookkeeping and records for the Debtors was the primary cause of the failure by both debtors to meet the reporting requirements of the Cash Collateral Stipulation. The proposed debtor in possession ("DIP") lender, Kirch & Todd Real Estate, LLC DBA Kirch & Todd Lending, has agreed to, and prepared an offer of unsecured super-priority DIP financing under section 364(c)(1) of the Bankruptcy Code to address any shortfalls in the operations and the Debtors' need to pay administrative and professionals' expenses. The Debtor will obtain the proposed

\$25,000.00 adequate protection monthly payment from CHC as rents for the real property in which GVS asserts a security interest. A motion for such subordinated DIP financing has been filed concurrently with this Motion. Debtor has prepared and filed an amended Chapter 11 Plan and a Disclosure Statement for the Plan will follow shortly. The Chapter 11 Plan is eminently confirmable. The amended Chapter 11 Plan reinstates all alleged defaults of the Debtor under the Workout Agreement under section 1124(2) of the Bankruptcy Code.

**Use of Cash Collateral and/or Provision of Adequate Protection**

13. The Debtor has filed the present motion as a new request for use of cash collateral and/or adequate protection payments to GVS rather than request a reconsideration of the prior motion for continued use of cash collateral, as the Court determined the Debtor was not entitled to a continued use due to noncompliance. The Debtor needs to use cash collateral and/or provide adequate protection to GVS in order to provide GVS protection against increases in its claims due to accruing interest as both affiliate debtors pursue reorganization. Such adequate protection payments are essential to ensure GVS is not granted relief from the automatic stay whereby it might attempt to record its Quit Claim Deed-in-Lieu of Foreclosure, removing all real property assets from the Debtor and ending all operations of the Debtor and the affiliate debtor CHC. Debtor proposes to pay GVS the amount of \$25,000.00 per month received in form of rents from affiliate debtor in possession CHC and will additionally grant GVS a postpetition lien, renewing monthly, but not accumulating, on such postpetition rents, as well as a postpetition lien on inventory, accounts, general intangibles, and property acquired postpetition by the Debtor. Payments will be applied as set forth in the loan documents and other agreements between the Parties. If the Court later determines that GVS is undersecured, payments that have been received will be deemed to be applied to principal.

**Request for Interim Relief**

14. The Debtor is without adequate funds absent the use of cash collateral consisting of rents from CHC to pay the adequate protection to GVS, for 15 or more days until a final hearing on the Motion can be held pursuant to Bankruptcy Rule 4001. The Court's denial of Debtor's request for an order regarding continued use of cash collateral under the stipulation between the parties is effective on November 3, 2016. Therefore, the Debtor requests emergency, interim authorization to use cash collateral on a budgeted basis as set forth in the Budget attached hereto as Exhibit "A," but only for those budgeted amounts, prior to any final hearing on the Motion. The Debtor requires the interim use of cash collateral to pay the proposed adequate protection to GVS, as well as other nominal post petition obligations and to pay any necessary ongoing operating expenses, general and administrative expenses, and other essential costs and expenses. The Debtor's failure to timely pay such items would result in immediate and irreparable harm to the bankruptcy estate.

15. Because the Debtor's request for interim authorization seeks the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing on its Motion, its request complies with Bankruptcy Rules 4001(b)(2) and 6003.

**Notice and Request for Hearing on Use of Cash Collateral**

16. Pursuant to Bankruptcy Rule 4001, the Debtor will serve a copy of this Motion and the proposed interim order and final order upon the parties listed on the matrix maintained by the Clerk of the Court in this case, GVS and the U.S. Trustee. The Debtor shall also give notice of this requested emergency relief. Such notices shall be provided by or served via fax, electronic mail, U.S. Mail, Federal Express or telephone.

17. The Debtor requests the Court conduct an emergency, interim hearing on this Motion as

soon as possible and that the Court schedule a final hearing on the Motion at least fifteen (15) days from the filing of this Motion.

**PRAYER**

WHEREFORE, the Debtor respectfully requests that this Court enter an order approving the use of cash collateral as set forth in the proposed orders attached hereto as Exhibits "E" on an interim basis and grant to the Debtor such other and further relief as the Court deems just and proper.

Dated: October 26, 2016.

**RED ROCK LEGAL SERVICES, P.L.L.C.**

By: /s/Geoffrey L. Chesnut \_\_\_\_\_  
Geoffrey L. Chesnut  
Attorneys for the Debtor