

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE:

THE ALESSI FAMILY LIMITED  
PARTNERSHIP

Debtor

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CASE NO. 16-25093-JKO

CHAPTER 11 PROCEEDING

**DEBTOR'S EMERGENCY MOTION FOR USE OF CASH COLLATERAL AND TO  
SET PRELIMINARY HEARING ON SAME, PURSUANT TO BANKRUPTCY CODE  
§363 AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE;  
EMERGENCY HEARING REQUESTED**

Debtor-in-possession THE ALESSI FAMILY LIMITED PARTNERSHIP (“Debtor”), by and through its undersigned counsel, in accordance with Bankruptcy Code §363 and Rule 4001 of the Federal Rules of Bankruptcy Procedure (“FRBP”), files *Debtor's Emergency Motion for Use of Cash Collateral and to Set Preliminary Hearing on Same, Pursuant to Bankruptcy Code §363 and Rule 4001 of the Federal Rules of Bankruptcy Procedure; Emergency Hearing Requested* (“Motion”), and in support states the following facts:

1. On November 9, 2016, the Debtor filed a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code. Pursuant to Bankruptcy Code §§1107 and 1108, the Debtor was continued in possession and operation of business and property as a debtor-in-possession.

2. The Debtor owns and operates two residential buildings, located at 1941 Washington Street, Hollywood, Florida 33020, (“Washington Property”), and the other located at 1956 Lincoln Street, Hollywood, Florida 33020, (Lincoln Property”), (collectively referred to as the “Properties”). The Washington Property consists of eight separate residential apartments. The Lincoln Property consists of ten separate residential apartments.

3. In the ordinary course of its business, the Debtor collects monies in the form of rents from the tenants that occupy the residential units at the Properties. The Debtor seeks to utilize the

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cash received on an ongoing basis in its deposit account(s) (hereinafter collectively referred to as “Cash Collateral”).

4. Fusion Homes, LLC. (“Fusion”) may claim an interest in this Cash Collateral as it relates to the Washington Property, by virtue of that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated September 29, 2006 (“Washington Mortgage”). The Washington Mortgage was recorded on October 5, 2006, in Official Records Book 42886 at page 1372 of the Public Records of Broward County, Florida. Although the Washington Mortgage was not originally in favor of Fusion, Fusion will claim through a series of assignments, that it holds the Washington Mortgage.

5. Fusion may claim an interest in this Cash Collateral as it relates to the Lincoln Property, by virtue of that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated September 29, 2006 (“Lincoln Mortgage”). The Lincoln Mortgage was recorded on October 5, 2006, in Official Records Book 42886 at page 1283 of the Public Records of Broward County, Florida. Although the Lincoln Mortgage was not originally in favor of Fusion, Fusion will claim through a series of assignments, that it holds the Lincoln Mortgage.

6. As the Debtor has recently commenced this Chapter 11 bankruptcy case on November 9, 2016, a dialog with Fusion has not yet commenced concerning Cash Collateral, in order to work out a mutually agreed upon use of the cash collateral. Notwithstanding same, the Debtor has immediate need to use its cash collateral in its ordinary operations.

7. In that regard, attached to this Motion and made a part hereof, is a separate monthly expense and income budget of the Debtor, indicating the anticipated and expected ordinary expenses and income of the Debtor on a monthly basis for each of the Properties. The Debtor anticipates that the expenses and income for each of the Properties will remain constant. The purpose of this budget

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is to provide temporary relief to the Debtor of its use of Cash Collateral until a final hearing on the Debtor's Motion for use of Cash Collateral can be had. It should be noted here, that the budget reflects that, if Court approved, after the Debtor pays the ordinary expenses for a particular month, there will be an anticipated excess of cash in approximate amount of \$1,636.00 with respect to the Washington Property, as reflected on the budget. After the Debtor pays the ordinary expenses for a particular month, there will be an anticipated excess of cash in approximate amount of \$1,150.00 with respect to the Lincoln Property, as reflected on the budget. The Debtor will hold, and segregate the excess cash pending further order of this Court.

8. Through this Motion, the Debtor requests authorization to use its cash collateral in accordance with the attached budget. If necessary, the Debtor will prepare other expanded budgets for extended use of cash collateral.

9. The expenses reflected on the budget are essential to the operations of the Properties. No payment is budgeted or accounted to any insider of the Debtor.

**EMERGENCY HEARING REQUESTED**

The need for an emergency hearing is that the Debtor must be able to use its cash collateral, at least on a limited basis, in order to keep the Debtor's operations continuing and uninterrupted. In accordance with FRBP 4001(b)(2), the Court may conduct a preliminary hearing on the use of cash collateral in order to avoid immediate and irreparable harm to the Debtor's estate, pending a final hearing. Such request for a preliminary hearing is made herein. Attached to this Motion, in accordance with FRBP 4001(b)(1) is a proposed order that the Debtor intends to submit at the emergency hearing on this Motion.

However, Debtor requires a preliminary hearing in order to seek authorization be able to have limited use of its funds pending a determination of who has a lien on the Cash Collateral and

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negotiating an agreement going forward. Debtor contends that a hearing should be had during the next business day or as soon thereafter as the Court may hear this matter.

**WHEREFORE**, for the foregoing reasons, it is respectfully prayed that this Court (a) enter an Order setting a preliminary hearing on the instant Motion on an expedited bases; (b) authorizing the Debtor to use cash collateral in accordance with the attached budget; ( c ) setting the matter for a final hearing; and (d) for such other and further relief as this Court may deem just and proper under the circumstances.

CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that on **November 14, 2016**, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached service list, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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By S/ Brian S. Behar, Esq.  
BRIAN S. BEHAR  
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**MONTHLY EXPENSES**

1941 WASHINGTON STREET  
HOLLYWOOD, FLORIDA 33020

WATER	\$ 400.00
GARBAGE	193.00
INSURANCE	540.00
TAXES	765.00
ELECTRIC	35.00
GAS	233.00
MONTHLY MAINTENANCE & REPAIR (AVG.)	1,500.00
PROPERTY MANAGEMENT	<u>1,200.00</u>
TOTAL MONTHLY EXPENSES	<u>\$4,866.00</u>

**MONTHLY BUDGET**

1941 WASHINGTON STREET  
HOLLYWOOD, FLORIDA 33020

**RENTS COLLECTED (10 UNITS)**

APT. 1	\$ 866.00
APT. 2	795.00
APT. 3	795.00
APT. 4	866.00
APT. 5	795.00
APT. 6	795.00
APT. 7	795.00
APT. 8	<u>795.00</u>
TOTAL MONTHLY RENT COLLECTED	<u>\$6,502.00</u>

**MONTHLY EXPENSES**

1956 LINCOLN STREET  
HOLLYWOOD, FLORIDA 33020

WATER	\$ 750.00
GARBAGE	175.00
INSURANCE	540.00
TAXES	1,460.00
CABLE TV	235.00
ELECTRIC	140.00
MONTHLY MAINTENANCE & REPAIR (AVG.)	1,500.00
PROPERTY MANAGEMENT	<u>1,200.00</u>
TOTAL MONTHLY EXPENSES	<u>\$6,000.00</u>

**MONTHLY BUDGET**

1956 LINCOLN STREET  
HOLLYWOOD, FLORIDA 33020

**RENTS COLLECTED (10 UNITS)**

APT. 1	\$ 895.00
APT. 2	775.00
APT. 3	795.00
APT. 4	795.00
APT. 5	775.00
APT. 6	775.00
APT. 7	775.00
APT. 8	795.00
APT. 9	775.00
APT. 10	<u>595.00</u>
TOTAL MONTHLY RENT COLLECTED	<u>\$7,750.00</u>



DRAFT

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE:

CASE NO. 16-25093-JKO

THE ALESSI FAMILY LIMITED  
PARTNERSHIP

CHAPTER 11 PROCEEDING

Debtor

\_\_\_\_\_ /

**INTERIM ORDER GRANTING DEBTOR'S EMERGENCY MOTION FOR USE  
OF CASH COLLATERAL AND TO SET PRELIMINARY HEARING ON SAME  
PURSUANT TO BANKRUPTCY CODE §363 AND RULE 4001 OF THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE; EMERGENCY HEARING REQUESTED  
[DE xx]; FURTHER HEARING SET FOR xxxxxx, 2016 AT xx:30 A.M.**

THIS MATTER, came before the Court on xxxxx, 2016 at 9:30 a.m. (the "Hearing"), on the *Debtor's Emergency Motion for Use of Cash Collateral and to Set Preliminary Hearing on Same Pursuant to Bankruptcy Code §363 and Rule 4001 of the Federal Rules of Bankruptcy Procedure [DE xx]* (the "Motion"). The Debtor has specifically reserved all rights concerning the validity and amount of any claimed liens against its assets until a later date and time. The Court heard the arguments of counsel and finding that the Debtor should be given limited interim use of cash collateral, but only in the amounts, and for the purposes set forth in the Budget for an interim period through \_\_\_\_\_, 2016 in order to avoid immediate and irreparable harm to the Debtor's estate, and the Court being fully advised in the premises, it is

**ORDERED** as follows:

1. Pending the Continued Hearing (as defined below), the Debtor is authorized to use Cash Collateral on an interim basis to pay only those amounts specified for the months of \_\_\_\_\_ 2016 through \_\_\_\_\_, 2016 on the attached Budget to the Motion not to exceed a ten percent (10%) variance in amount.

2. The pre-petition indebtedness, which Debtor owes secured creditor, Fusion Homes, LLC, shall be, and hereby is, secured *nunc pro tunc* as of the Petition Date by a continuing, post-petition security interest in and lien on the same categories of Collateral and Cash Collateral which are subject to Fusion Homes, LLC's pre-petition security interest, whether generated or owned prior or subsequent to the Petition Date, and in the same priority as existed pre-petition (the "Replacement Liens "). The Replacement Liens shall be subject to and subordinate in priority only to claims for payment of quarterly U.S. Trustee fees.

3. As adequate protection Fusion Homes, LLC, shall be entitled to assert an administrative claim pursuant to 11 U.S.C. §507(b) for any diminution in the value of its collateral or Cash Collateral pursuant to the continued imposition of the automatic stay.

4. Fusion Homes, LLC's consent to entry of this Order on an interim basis shall not be deemed a consent to the use of cash collateral beyond \_\_\_\_\_, 2016.

5. A final hearing (the "Continued Hearing") on the Debtor's Motion and any objections thereto, shall be heard before this Court on \_\_\_\_\_, 2016 at 9:30 a.m., in the Courtroom located at 299 East Broward Boulevard, Room 303, Fort Lauderdale, Florida 33301.

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Submitted by:  
Brian S. Behar, Esquire  
[bsbs@bgglaw.com](mailto:bsbs@bgglaw.com)

Copies submitted to:  
Attorney Brian S. Behar is directed to mail  
a conformed copy of this Order to all interested  
parties, immediately upon receipt of this Order.

Label Matrix for local noticing  
113C-0  
Case 16-25093-JKO  
Southern District of Florida  
Fort Lauderdale  
Wed Nov 9 17:21:21 EST 2016

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End of Label Matrix  
Mailable recipients 9  
Bypassed recipients 0  
Total 9