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8 **Attorney for Danny's Happy Valley, LLC**

9 **IN THE UNITED STATES BANKRUPTCY COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 **In re:) In Proceedings Under Chapter 11**
12 **DANNY'S HAPPY VALLEY, LLC,)**
13 **Debtor.) Case No.: 2:10-bk-02794-EWH**
14 **) EMERGENCY MOTION FOR INTERIM**
15 **) ORDER AUTHORIZING COLLATERAL**
16 **) PURSUANT TO 11 U.S.C. § 363**
17 **) EXPEDITED HEARING REQUESTED**
18 **)**
19 **) Hearing Date: TBD**
20 **) Hearing Time: TBD**
21 **)**

22 DANNY'S HAPPY VALLEY, LLC, the debtor and debtor –in-possession in the above-captioned
23 Chapter 11 case, files this Emergency Motion for Interim Order Authorizing Debtor to Use Cash
24 Collateral Pursuant to 11 U.S.C. § 363 (“Cash Collateral Motion”). Pursuant to 11 U.S.C. §§ 105(a) and
25 363, the Debtor requests that the Court: (a) authorize the Debtor on an interim basis to pay necessary and
essential post-petition operating expenses with certain cash and cash equivalent (“Cash”), in which
various entities have claimed or may claim an interest; and (b) deem that prepetition secured creditors are
adequately protected. The Cash Collateral Motion is supported by the contemporaneously filed
Declaration of Kent Despain in Support of Debtor’s Chapter 11 Case (“Despain Declaration”), the
following memorandum of points and authorities, and all matters of records, all of which are incorporated
herein by this reference.

1 **MEMORANDUM OF POINTS AND AUTHORITES**

2 **I. JURISDICTION AND VENUE**

3 1. This Court has jurisdiction over this case and this matter pursuant to 28 U.S.C. §§ 157 and
4 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).

5 2. Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

6 3. The statutory predicates for the relief requested are 11 U.S.C. §§ 105(a) and 363.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND.**

8 **Background on the Debtor**

9 4. The Debtor is an Arizona limited liability company. Danny’s Family Companies II, LLC,
10 owns a one hundred percent (100%) membership interest in the Debtor. Danny’s Family Companies II,
11 LLC is also the Manager of the Debtor.

12 5. On February 3, 2010 (the “Filing Date”), the Debtor filed a voluntary petition for relief
13 under Chapter 11 of the United States Bankruptcy Code. The Debtor continues in possession of its
14 property and management of its business as debtor-in-possession pursuant to Bankruptcy Code §§ 1107
15 and 1108.

16 **Background Managing Member Danny’s Family Companies II, LLC**

17 6. Danny’s Family Companies II, LLC is a fully integrated, privately held management
18 company operating in Arizona, United States. From its inception, Danny’s Family Companies II, LLC has
19 been a leader in managing mixed use commercial properties, ranging from car washes to convenience
20 stores and fueling stations. Danny’s Family Companies II, LLC has almost a century of experience in the
21 managing field.

22 7. Based in Phoenix, Arizona, Danny’s Family Companies II, LLC currently manages
23 multiple properties in Arizona.

1 **Secured Debt Against Danny's Happy Valley, LLC**

2 8. Apart from some unpaid real estate taxes, Danny's Happy Valley, LLC is encumbered by:
3 (i) a first lien in favor of Marshall & Ilsley Bank ("M&I", which claims an indebtedness in the principal
4 amount of approximately \$3,796,667.00 plus accrued and accruing interest), and (ii) a second lien in favor
5 of Strategic Funding Source, Inc. ("SFS", which claims an indebtedness in the principal amount of
6 approximately \$85,000.00 plus accrued and accruing interest).

7 9. Interest on the M&I debt has been paid through December 14, 2009.

8 10. Interest on the SFS debt has been paid through December 14, 2009.

9 11. The Debtor believes that M&I and SFS ("Secured Creditors") will claim a secured interest
10 in the receivables, cash, and other personal property assets of the Debtor.

11 **Events Leading Up to the Debtor's Chapter 11 Filing**

12 12. Like virtually every car wash and convenience store in the country, the Debtor has suffered
13 significantly as a result of the credit crisis and economic recession that has gripped the nation for at least
14 the past two (2) years. The Debtor's business, ownership and operation of this business, has been
15 particularly hard hit by these difficult economic times. Client losses have impacted negatively the
16 Debtor's cash flow and ability to service debt.

17 13. In February 2010, M&I began receivership proceedings by filing a civil complaint against
18 Danny's Happy Valley, LLC and other partner companies. In order to preserve the equity, the Debtor
19 filed for Chapter 11 relief before the Order to Show Cause hearing on M&I's Order Appointing
20 Temporary Receiver.

21 **Equity in Danny's Happy Valley, LLC**

22 14. According to the Debtor, the debtor has an "as is" value of \$4,000,000.00 and a stabilized
23 value of \$5,670,000.00. Based on the Debtor, there is significant equity and reserves for the Debtor.
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25

1 **III. REQUEST FOR RELIEF.**

2 15. The Debtor earns income by managing a car wash/convenience store/fuel station located at
3 2501 West Happy Valley Road, #43, Phoenix, Arizona 85027. The Debtor does not have sufficient
4 available resources to operate its business without the use of Cash. To protect and preserve the assets of
5 the estate, the Debtor must be permitted to maintain its business relationships by paying certain essential
6 post-petition operating expenses, such as fees for property maintenance, supplies, landscaping, property
7 management, advertising, utilities, and improvements. If the Debtor cannot pay these expenses, the ability
8 of the Debtor to protect and preserve the estate assets is severely limited, and the viability of the Debtor
9 will be compromised.

10 16. The cash sought by the Debtor may be claimed as cash collateral by the Secured Creditor.
11 M&I may claim a lien on Debtor's assets, and SFS may claim a lien subordinate to M&I on the Debtor's
12 assets. As stated below, the interest of the Secured Creditors in this Cash are adequately protected.

13 17. The Debtor requests entry of Interim Order authorizing it to use Cash for the First month
14 on this bankruptcy case in accordance with the post-petition budget for the Debtor ("Budget"), which is
15 attached hereto as Exhibit A. Specifically, the Debtor requests authority to pay its February 2010
16 expenses in the approximate amount of \$387,588.00 ("February 2010 Expenses").

17 18. Notably, the Budget does not provide for payment of security deposit to utilities, as
18 required by Bankruptcy Code § 366. Through the Cash Collateral Motion, the Debtor reserves the right to
19 pay at least one month of security deposits to each of its utilities.

20 19. The Debtor also requests that the Court determine that the interest of the Secured Creditors
21 in the Cash are adequately protected and that the Court hold an emergency hearing on the proposed
22 Interim Order. Through such relief, the Debtor will continue to operate its business in a manner that
23 maximizes value for the benefit of the estate and all parties in interest.
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1 **IV. LEGAL ARGUMENT**

2 **A. The Interest of the Secured Creditors are Adequately Protected.**

3 Under the Bankruptcy Code, the Debtor may use the Cash as long as any other entity claiming an
4 interest in the Cash is “adequately protected”. See 11 U.S.C. § 363(c) and (e). Short of defining the term
5 “adequate protection,” Bankruptcy Code § 361 outlines three non-exclusive ways a debtor might provide
6 adequate protection to a secured creditor; (i) periodic cash payments (or lump sum cash payment); (ii)
7 additional or replacement liens; or (iii) the realization of the “indubitable equivalent” of the creditor’s
8 interest in the property. See 11 U.S.C. § 361; see also United Savs. Ass’n of Tex. V. Timbers of Inwood
9 Forest, 484 U.S. 365, 370 (1988).

10 In this case, the Secured Creditors are the only creditors that might claim a lien on or security
11 interest in the Cash. Pursuant to Bankruptcy Code § 552, the Secured Creditors will be granted
12 replacement liens on and security interests in all existing and hereafter acquired property and assets of the
13 Debtor of Every kind and character, to the extend (if any) and in the same validity, priority, and
14 enforceability that the Secured Creditor held a non-avoidable lien on and security interest in such kind and
15 character of property and assets of the Debtor, as of the commencement of its Chapter 11 case. Therefore,
16 to the extent that the Debtor’s Cash constitutes cash collateral security of the Secured Creditors, the
17 interests of the Secured Creditors will be adequately protected. The Debtor will use the Cash to protect
18 and preserve the Property, which also protects the Secured Creditors.

19 **B. To Preserve the Estate’s Assets, the Debtor Must be Permitted to Use the Cash**

20 As previously stated, the Court must authorize the Debtor to use the Cash to pay certain essential
21 post-petition operating expenses. Absent such authority, the Debtor cannot fund the services necessary to
22 continue operating its business post-petition. If the Debtor must cease operations, valuable estate assets
23 are at risk, and the estate will suffer irreparable harm. Moreover, the Debtor will lose the opportunity to
24 successfully reorganize and to maintain its going concern value.

1 **V. CONCLUSION**

2 WHEREFORE, the Debtor respectfully requests that the Court enter an Interim Oder:

3 A. Granting the Cash Collateral Motion on an interim basis;

4 B. Authorizing the Debtor to use the Cash to pay its February 2010 Expenses in accordance
5 with the Budget;

6 C. Setting a hearing on the Cash Collateral Motion as soon as possible and as is convenient
7 for the Court; and

8 D. Granting such other and further relief as this Court may deem just and proper.

9 DATED this 11th day of February 2010.

11 /s/Bert L. Roos, #006960

12 Bert L. Roos, Esq.
13 Attorney for Debtor

14 Copy of the foregoing mailed
15 this 11th day of February 2010 to:

16 U.S. Trustee
17 OFFICE OF THE U.S. TRUSTEE
18 230 N. First Avenue, Suite 204
19 Phoenix, AZ 85013

20 ISAAC M. GABRIEL
21 QUARLES & BRADY LLP
22 2 N. CENTRAL AVENUE
23 PHOENIX, AZ 85004-2391
24 Attorney for M&I MARSHALL & ILSLEY BANK

25 Strategic Funding Source, Inc.
1501 Broadway, Suite 260
New York, NY 10036

Danny's Happy Valley, LLC
15509 North Scottsdale Road
Scottsdale, AZ 85254
Debtor

By: /s/Bert L. Roos

EXHIBIT "A"
(Budget)

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Danny's Happy Valley

	Budgeted monthly costs	Weekly estimate	Paid to
Payroll	112,138.83	28,000.00	CW Management
Rent	14,167.97	3,550.00	Vestar
Gas settlement shortfall	15,000.00	4,000.00	Settled with Danny's Fuel (est purchases \$820k/mo)
Wash Supplies	5,036.00	1,500.00	Vision Chemical
Oil & Lube Supplies	20,529.00	6,000.00	Exxon, Serv Champ, Pep Boys, Wynn's, Thermo Fluids, Costco
Detail Supplies	3,717.00	1,000.00	Auto Detailing
Window Tint Supplies	859.50	250.00	DH Tinting
Cigarettes	56,880.00	15,000.00	Costco - paid out cash
Grocery	13,766.00	4,000.00	Frito, Costco - paid out cash
Fast Food	3,073.00	1,000.00	Barro's, Costco - pay cash; Fresh Taste/Chef's
Beverage	21,388.00	6,000.00	Coke, Pepsi, Kalil, paid out cash; Red Bull on terms
Fountain	3,579.00	1,200.00	Coke, Pepsi, Kalil, paid out cash
Donuts	852.14	250.00	Paid out cash
Beer/Wine	21,375.00	6,000.00	Drawn from account
Lottery	28,520.36	7,500.00	Drawn from account
Greeting Cards	559.00	250.00	Blue Mountain, Savvy Dist
Taxable Grocery	3,253.00	1,500.00	Costco, Hope Trading, misc other - pay cash
Damages	1,904.44	600.00	Misc body shops, parts, etc
Insurance	4,089.84	1,050.00	Lovitt Touche
Aquarium	275.00	70.00	Reef Fever
Landscape	721.00	175.00	Smart Creations
Trash	705.93	175.00	Allied Waste
Alarm	87.59	25.00	Safeguard
Mats/linen	674.41	175.00	Aramark
Office Supplies	2,683.26	700.00	OPACS; paid cash for misc
Phone	825.44	210.00	Integra Telecom
Electricity	6,826.25	2,000.00	APS
Water	5,867.41	1,500.00	City
Courier	153.82	40.00	Elite Delivery
Cell phone	235.77	60.00	Verizon
Car wash software	282.01	75.00	DRB
Printing	902.93	250.00	Think Graphics
Equipment Repairs/Maint	4,204.79	1,200.00	Danny's Maintenance
Management Fees	22,000.00	5,500.00	Danny's Family Companies
Credit Card Fees	23,674.13	6,000.00	Drawn from account
Bank fees	949.06	240.00	Drawn from account
Operating costs	401,756.88	107,045.00	