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

11 **In re:**) **In Proceedings Under Chapter 11**
12 **DANNY'S RAINTREE & NORTHSIGHT, L.L.C,**) **Case No.: 2:10-bk-02796-CGC**
13 **Debtor.**) **EMERGENCY MOTION FOR INTERIM**
14) **ORDER AUTHORIZING COLLATERAL**
15) **PURSUANT TO 11 U.S.C. § 363**
16) **EXPEDITED HEARING REQUESTED**
17) **Hearing Date: TBD**
18) **Hearing Time: TBD**

19 DANNY'S RAINTREE & NORTHSIGHT, LLC, the debtor and debtor –in-possession in the
20 above-captioned Chapter 11 case, files this Emergency Motion for Interim Order Authorizing Debtor to
21 Use Cash Collateral Pursuant to 11 U.S.C. § 363 (“Cash Collateral Motion”). Pursuant to 11 U.S.C. §§
22 105(a) and 363, the Debtor requests that the Court: (a) authorize the Debtor on an interim basis to pay
23 necessary and essential post-petition operating expenses with certain cash and cash equivalent (“Cash”),
24 in which various entities have claimed or may claim an interest; and (b) deem that prepetition secured
25 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 on 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 **III. REQUEST FOR RELIEF.**

2 15. The Debtor earns income by managing a car wash/convenience store/fuel station located at
3 14717 N. Northsight Blvd. Scottsdale, Arizona 85260. The Debtor does not have sufficient available
4 resources to operate its business without the use of Cash. To protect and preserve the assets of the estate,
5 the Debtor must be permitted to maintain its business relationships by paying certain essential post-
6 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 \$306,927.00 ("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.

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 Raintree & Northsight, LLC
15509 North Scottsdale Road
Scottsdale, AZ 85254
Debtor

By: /s/Bert L. Roos

EXHIBIT "A"
(Budget)

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Danny's Raintree

	Budgeted monthly costs	Weekly estimate	Paid to
Payroll	111,548.52	28,000.00	CW Management
Gas settlement shortfall	40,000.00	10,000.00	Settled with Danny's Fuel (est purchases \$550k/mo)
Wash Supplies	3,235.00	900.00	Vision Chemical
Oil & Lube Supplies	5,553.00	3,000.00	Exxon, Serv Champ, Pep Boys, Wynn's, Thermo Fluids, Costco
Detail Supplies	2,095.00	600.00	Auto Detailing
Window Tint Supplies	1,524.00	400.00	DH Tinting
Cigarettes	26,850.00	7,000.00	Costco - paid out cash
Grocery	8,765.00	2,300.00	Frito, Costco - paid out cash
Fast Food	2,806.00	750.00	Barro's, Costco - pay cash; Fresh Taste/Chef's
Beverage	9,400.00	2,500.00	Coke, Pepsi, Kalil, paid out cash; Red Bull on terms
Fountain	5,527.00	1,500.00	Coke, Pepsi, Kalil, paid out cash
Donuts	859.57	250.00	Paid out cash
Beer/Wine	6,967.00	1,800.00	Drawn from account
Lottery	14,433.56	4,000.00	Drawn from account
Greeting Cards	1,396.00	400.00	Blue Mountain, Savvy Dist
Taxable Grocery	2,140.00	600.00	Costco, Hope Trading, misc other - pay cash
Damages	1,234.91	400.00	Misc body shops, parts, etc
Insurance	2,253.42	570.00	Lovitt Touche
Aquarium	275.00	70.00	Reef Fever
Landscape	721.00	175.00	Smart Creations
Trash	705.93	175.00	Allied Waste
Alarm	86.03	25.00	Safeguard
Mats/linen	47.27	175.00	Aramark
Office Supplies	2,641.10	750.00	OPACS; paid cash for misc
Phone	807.17	210.00	Integra Telecom
Electricity	6,515.33	2,000.00	APS
Water	2,679.58	750.00	City
Courier	153.82	40.00	Elite Delivery
Cell phone	235.77	60.00	Verizon
Car wash software	281.47	75.00	DRB
Printing	902.93	250.00	Think Graphics
Equipment Repairs/Maint	4,636.91	1,200.00	Danny's Maintenance; misc vendors
Management Fees	22,000.00	5,500.00	Danny's Family Companies
Bank fees	1,004.63	250.00	Drawn from account
Credit Card Fees	16,645.86	4,200.00	Drawn from account
Operating costs	306,927.78	80,875.00	