

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION**

In re: Eternal Enterprise, Inc. Debtor	:	CHAPTER 11
	:	
	:	Case No. 14-20292
	:	
Eternal Enterprise, Inc. Movant	:	
	:	
v. Hartford Holdings, LLC	:	RE: ECF No. 630
	:	

**ORDER AUTHORIZING USE OF CASH
COLLATERAL AND PROVIDING ADEQUATE
PROTECTION PURSUANT TO 11 U.S.C. SECTION 363 (c) (2) (B)
FOR PERIOD OF DECEMBER 1, 2016 THROUGH DECEMBER 31 , 2016**

THIS MATTER came before the Court upon the Debtor's Emergency Motion for Interim Authority to Use Cash Collateral, ECF No. 630, the Court having considered arguments of counsel and all interested parties present before the Court, with Hartford Holdings LLC reserving its rights, and there being due and sufficient notice therefor for use of cash collateral, the Court makes the following findings and conclusions:

1. On February 19, 2014 Eternal Enterprise, Inc. (the "Debtor"), filed a voluntary petition for the relief afforded by Chapter 11, Title 11, U.S.C. Section 1101, et seq., in this Court. In accordance with Section 1107 and Section 1108 of the Bankruptcy Code, the Debtor was authorized to continue to operate and manage its

business as a Debtor-In-Possession. No trustee or examiner has been appointed in these proceedings.

2. It is essential to the Debtor's business and operations to use cash generated from rents so as to continue to pay ordinary course operating expenses including maintaining the property. Without court authority to use the cash collateral, the Debtor will suffer harm and be forced to terminate operations.

3. Secured creditor Hartford Holdings, LLC, successor in interest to Astoria Federal Mortgage Corporation has a duly perfected non-avoidable security interest in the Debtor's rents.

4. Hartford Holdings, LLC has reserved its rights with respect to whether a "replacement lien" on rents is adequate protection for the Debtor's use of its cash collateral, but recognizes the need to preserve the assets of the Debtor.

5. This Court finds that it is in the best interest of the Debtor, the secured creditor and all creditors and parties in interest, and to avoid harm to the Debtor, that the use by the Debtor of the secured creditor's cash collateral on the terms and conditions set forth herein, be approved, and the court hereby concludes and orders as follows:

a. Pursuant to 11 U.S.C. Section 363(c)(2)(B), and subject to the further terms and conditions set forth herein, the Debtor is hereby authorized to use cash collateral on an interim basis, which cash collateral the Debtor concedes is subject to the security interests of Hartford Holdings, LLC as successor to the interests of Astoria Federal Mortgage Corporation. The Debtor may use cash collateral for maintaining its properties and U.S. Trustee's statutory fees. The use of cash collateral is necessary to continue operations for the benefit of the estate.

b. In exchange for use of cash collateral by the Debtor said secured creditor is hereby granted replacement liens as provided in 11 U.S.C. Section 361(2) in all after-acquired property of the Debtor from this property, and that said liens shall be of equal extent and priority to that which the Astoria Federal Mortgage Corporation enjoyed with regard to the said property at the time the Debtor filed its Chapter 11 petition. This grant of a replacement lien is without prejudice to the claim of Hartford Holdings, LLC that such grant may not constitute adequate protection.

c. Hartford Holdings, LLC is authorized and is hereby granted relief from the automatic stay to take whatever steps are necessary under applicable law to perfect any replacement liens granted under this Order. However, it shall not be necessary for it to take any steps to perfect such replacement lien, which will be deemed perfected pursuant to this order.

d. The term for use of cash collateral shall be from December 1, 2016 thru and including December 31, 2016, pursuant to the Debtor's Budget, Exhibit A, annexed hereto and incorporated herein. Hartford Holdings, LLC has reserved its rights with respect to this budget but has agreed to its use for the purpose of this Order.

e. Notwithstanding anything to the contrary herein, the following limited expenses of the Debtor's estate shall be deemed to have a prior right to satisfaction from all Cash Collateral generated post-petition and from all other assets of the Debtor: (i) fees and expenses owed under 20 U.S.C Sec 1930.

f. The Debtor shall not make any payment on any loans from insiders or officers.

g. For the thirty-one day period covered by this Order, Debtor is authorized to use up to \$120,000.00 of cash collateral and make a reduced adequate

protection payment of \$353.00 to Hartford Holdings, LLC. Accordingly, the Debtor shall pay the following “make up payments” for this period upon receipt of payment for lost income from the Debtor insurance policy:

For the difference between the \$353.00 payment provided herein and the sum of \$35,000.00 previously used to establish adequate protection payments, Eternal Enterprises will pay Hartford Holdings the sum of \$34,647.00;

The failure of Hartford Holdings LLC to object to this order due to any failure of past adequate protection payment is not a waiver of any kind.

h. The Debtor shall deposit the sum of \$12,000 into its Adequate Protection Escrow Account, to reflect an escrow for future insurance premium expense, or other order of this Court.

i. The Debtor shall make a direct monthly payment to the City of Hartford, the sum of \$29,000, to be applied to the real estate tax obligations for the Debtor’s several properties located in the City of Hartford (excluding 360 Laurel Street) on a *pro rata* basis.

j. To the extent that the adequate protection ordered and provided for herein turns out to be inadequate, Hartford Holdings, LLC shall be entitled to a superpriority administrative expense claim pursuant to the provisions of Code Sec. 507(b).

k. Pursuant to the prior Order of this Court (ECF #606) dated July 19, 2016, and based on the representations of the Debtor, the Debtor has now consolidated its Adequate Protection Account (#5605) and Insurance Escrow Account (#2297) into one account, identified as the Adequate Protection Account. There should be no separate “Real Estate Tax Escrow Account”, since the Debtor is now making direct, monthly tax payments to the City of Hartford. If the Debtor has any account which has on deposit

any funds previously identified solely as real estate tax escrow funds, such funds shall be transferred to the Adequate Protection Account, and such real estate tax escrow account (if any) shall be closed.

l. Omitted.

m. A continued hearing on use of cash collateral shall be held on Wednesday, January 4, 2017, at 11:00 a.m., at the United States Bankruptcy Court, 157 Church Street, 18th Floor Courtroom, New Haven, Connecticut.

Dated on this 5th day of December, 2016 at New Haven, Connecticut.

Ann M. Nevins
United States Bankruptcy Judge
District of Connecticut



EXHIBIT A

Eternal Enterprise, Inc.
Budget

	12/1/16 to <u>12/31/16</u>
Ordinary Income/Expense	
Rental Income	120,000
Laundry Income	1,000
Total Income	<u>121,000</u>
Gross Profit	
Expense	
6000 · General & Administrative Expens	
6560 · Payroll Expenses	
5160 · Wages - Gross (5 pay-weeks)	23,000
6562 · Payroll taxes	2,500
6196 · Workers Comp Insurance	500
6561 · Payroll Processing Fees	300
6560 · 401K	75
Total 6560 · Payroll Expenses	<u>26,375</u>
6370 · Meals & Entertainment	-
6565 · Accounting	3,000
6180 · Insurance	
62001 · Health Insurance	3,743
6185 · Key Man Insurance	1,000
6040 · Office Supplies & Expenses	2,500
Total 6000 · General & Administrative Expens	<u>36,618</u>
5000 · Property Operating Costs	
6281 · Legal Fees - Eviction	600
61901 · Advertising	-
6710 · Property Insurance (escrowed)	12,000
6610 · Taxes property	29,219
6390 · Utilities	20,000
6300 · Repairs & Maintenance	
5130 · Exterminator	260
5140 · Building Supplies	1,500
5150 · Snow Removal / Landscaping	1,000
6310 · Building Repairs & Maintenance	3,500
6330 · Equipment Repairs	50
6300 · Maintenance contract	12,950
Total 6300 · Repairs & Maintenance	<u>19,260</u>
5110 · Trash Collector	1,950
Total 5000 · Property Operating Costs	<u>83,029</u>
Trustee fees	-
Total Expense	<u>119,647</u>
Rental Income	120,000
Less: Max paid out per court order (\$120,000)	<u>(119,647)</u>
Estimated HH adequate protection payment	<u>353</u>