

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION**

**IN RE:**

**Paws and Claws Pet Inn, LLC  
DEBTOR**

**CHAPTER 11**

**CASE NO. 16-81010**

**MOTION FOR AUTHORITY TO USE CASH COLLATERAL**

Paws and Claws Pet Inn, LLC (the “Debtor” or “Paws and Claws”) moves the Court pursuant to 11 U.S.C. § 363 and Rule 4001 of the Federal Rules of Bankruptcy Procedure as follows:

1. On November 14, 2016 (the “Petition Date”), the Debtor filed a voluntary petition seeking relief under Chapter 11 of the Bankruptcy Code. The Debtor continues in possession of its assets as debtor-in-possession. No official committee of unsecured creditors has been appointed.

2. The Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 151, 157 and 1334 and this is a core proceeding within 28 U.S.C. §157(b)(2). Venue is proper pursuant to 28 U.S.C. §§1408 and 1409.

3. Paws and Claws leases a turn-key pet boarding and grooming facility located at 5725 Normans Road, Rougemont, North Carolina (the “Facility”) to a tenant who operates the Facility.

4. Since filing in November, the Debtor has been engaged in a dispute with its tenant, and as a result the tenant has not paid rent. The parties have entered into a consent order,

however, pursuant to which the tenant will begin to pay rent on the Facility, which will be deposited into the Debtor-in-Possession bank account.

5. On or about December 2, 2003 the Debtor executed a Promissory Note in favor of Cardinal State Bank (“Cardinal State”) in the principal amount of \$461,600.00 secured by a Deed of Trust. The Deed of Trust contained at Paragraph 14 an assignment of leases and rents clause that irrevocably granted Cardinal State as additional security all the right, title and interest in and to any and all leases for the use of the Facility.

6. On or about December 28, 2012 Yadkin Valley Bank, the successor in interest to Cardinal State Bank, assigned the note and Deed of Trust to Swallowtail Pool I LLC. On October 27, 2015 Swallowtail Pool I LLC assigned the note and Deed of Trust to Key Star Capital Fund, L.P. (“Key Star”).

7. On or about February 2, 2007, the Debtor executed a Promissory Note in favor of Self-Help Ventures Fund (“Self-Help”) in the principal amount of \$181,000.00 secured by a Future Advances Deed of Trust. The Future Advances Deed of Trust contains at Paragraph 4 an assignment of leases and rents clause that assigns all rents and profits of the Facility to Self-Help.

8. The lien held by Key Star is superior to the lien held by Self-Help.

9. For the purposes of this Motion, the Debtor acknowledges and does not dispute the validity, priority and enforceability of the liens asserted by Key Star and Self-Help against rents and profits of the lease of the Debtor’s property.

10. The Debtor is not aware of any other liens or security interests against rents or profits from the Facility which would constitute “cash collateral” as that term is defined in the Bankruptcy Code.

11. On or about August 23, 2015 Key Star obtained an appraisal that valued the Facility at \$499,000.00.

12. The present tenant obtained a more recent appraisal on or about November 29, 2016 that values the Facility at \$660,00000.

13. According to its Proof of Claim number 3, the principal amount of Key Star’s claim, which is secured by the Facility, is \$290,019.16, plus post-petition interest, attorneys’ fees and costs to the extent permitted under Section 506(b).

14. The principal amount owed to Self-Help is approximately \$126,563.10, plus post-petition interest, attorneys’ fees and costs to the extent permitted under Section 506(b).

15. The Debtor does not dispute that Key Star holds a valid first priority lien on the Facility, and that Self-Help holds a valid second priority lien on the Facility.

16. The Debtor reserves for itself and any trustee subsequently appointed in this Chapter 11 proceeding or in any subsequent Chapter 7 proceeding, any and all rights to challenge, avoid, object to, set aside or subordinate any claims, liens, security interests or rights of setoff against the Debtor’s property, or the rents, profits and income generated therefrom.

17. The total amount owed to Key Star and Self-Help is \$416,582.26, plus post-petition interest, attorneys’ fees and costs to the extent permitted under Section 506(b).

18. The IRS has filed claim number 2 in the amount of \$65,865.64. Of that amount, \$39,763.31 is listed as secured. Because the IRS attempted to perfect some of its liens post-petition, Debtor contends that the actual allowable secured claim is substantially less.

19. However, even if the claims of Key Star, Self-Help and the IRS are allowed in full, there is still a substantial equity cushion in the collateral. Based on the available appraisals, the value of the Facility is between \$499,000.00 and \$660,000.00. The total amount of secured claims is \$456,345.57, leaving an equity cushion of between approximately \$42,000.00 and \$203,000.00.

20. Additionally, the Debtor proposes to make regular adequate protection payments to Key Star and Self-Help equal to their contract rates of interest, and provide limitations on cash collateral usage to ensure that they are adequately protected.

21. The Debtor is dependent upon use of the cash collateral to pay on-going costs of preserving and maintaining the property, marketing the property and paying the costs of administering this bankruptcy. If not permitted to use the cash collateral to pay these expenses, reorganization would be rendered impossible, , and the fair market value of the estate's assets would be significantly reduced, resulting in financial loss to all parties in interest. Because the Debtor has only one asset and the rent proceeds, beyond what is necessary to maintain the Facility, prepare it for sale and meet administrative expenses, are not needed by the Debtor, the Debtor will hold any remaining funds for the benefit of Key Star and Self-Help.

22. Therefore, the Debtor requests the Court to authorize the use of cash collateral as set forth in this Motion. This would not prejudice the rights of Key Star and Self-Help because: (i) they would continue to maintain the existing liens on all their existing collateral; (ii) any funds not used for operating expenses and reasonable administrative expenses would be held for their benefit; and (iii) the use of cash collateral would preserve the value of the estate for the benefit of Key Star, Self-Help and for all other creditors. The Debtor offers to provide Key Star and Self-Help with adequate protection by:

a. Limiting the use of cash collateral as generally projected in the Budget attached as Exhibit 1, or as may otherwise be approved by the Court after further notice and hearing.

b. Providing Key Star and Self-Help with monthly adequate protection payments in amounts which equal interest payments on their claims at the contract rate, with such payments beginning effective the Petition Date;

c. Providing Key Star and Self-Help and the Bankruptcy Administrator with financial information regarding the Debtor and the collateral in form and frequency reasonably acceptable to such parties.

24. The Debtor seeks authority to use cash collateral through and including the effective date of a confirmed plan of reorganization or liquidation, a sale of substantially all assets of the estate, or the appointment of a trustee or examiner or conversion of the case to Chapter 7, whichever may first occur; provided, however, without further notice and hearing the Debtor may not use cash collateral for any purpose other than (i) operations in the ordinary course of business, (ii) adequate protection payments to secured creditors, or (iii) payment of allowed administrative fees, costs, or expenses.

25. Key Star and Self-Help consent to the use of Cash Collateral as set forth in this Motion.

WHEREFORE, the Debtor respectfully requests that the Court:

1. Enter an order after notice and hearing (i) authorizing the Debtor to use cash collateral in an amount to be determined at the interim hearing based upon the budget attached as Exhibit 1, and (ii) authorizing the Debtor to make payments to Key Star and Self-Help equal to interest at the contract rates, respectively, as set forth herein; and

2. Grant such other relief as the Court may deem necessary and proper.

Dated: February 8, 2017

PARRY TYNDALL WHITE

/s/ James C. White

James C. White, N.C. Bar # 31859

Michelle M. Walker, N.C. Bar # 41664

100 Europa Drive, Ste 401

Chapel Hill, NC 27517

[jwhite@ptwfirm.com](mailto:jwhite@ptwfirm.com)

(919)246-4676

(919) 246-9113 fax

ATTORNEYS FOR DEBTOR PAWS AND  
CLAWS PET INN, LLC