

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

In Re:

SERVICE BURY, LLC

Chapter 11
No. 16-14530-FJB

Debtor,

**MOTION OF DEBTOR, SERVICE BURY, LLC., FOR AUTHORIZATION ON AN
INTERIM AND PERMANENT BASIS FOR USE OF CASH
COLLATERAL
(Request for Expedited Determination)**

Now comes Service Bury, LLC. and says as follows:

1. Service Bury, LLC., the Chapter 11 Debtor herein filed this case on November 29, 2016. At present, it is operating as Debtor-in-Possession.
2. The Debtor is the owner of parcel of real estate at 1503 Osgood Street in North Andover, Ma. The Debtor is currently leasing a portion of the property as a gas station to MBM Energy, Inc. The Debtor has no interest in MBM Energy. The lease is for \$10,000.00 per month.
3. East Boston Savings Bank (the "Lender") is the present holder of the sole lien on all of the Debtor's real estate. The principal asset of the Debtor is the real estate at 1503 Osgood Street, North Andover, MA. In addition the Security Agreement contains an assignment of rents. This lien was granted to secure two notes, one a commercial promissory note of \$2,500,000.00, and the second note in the amount \$474,576.00 ("the Notes") on or about September 16, 2010. The Notes had an interest rate of 6 %.
4. The Debtor acknowledges a default under the Notes and Lender has secured a judgment in Suffolk Superior Court against the Debtor and its principals. At the time this Chapter 11 was filed the Lender was foreclosing on the Debtor's property.
5. The Debtor anticipated subdividing its real estate in order to construct storage garages. The subdivision became impossible when water leached from an abutters real estate onto the Debtor's property and expanded the wetlands portion of its real estate so that a

subdivision was no longer approvable by the Town of North Andover. The Debtor has a suit pending against that abutter.

6. The Debtor scheduled the real estate at a value of \$2,200,000.00 in its present condition.
7. The Debtor will shortly be proposing a plan that seeks to use the buildable portion of its real estate without subdivision.
8. The income derived from its tenant, MBM Energy constitutes cash collateral. The Debtor has prepared a budget for the period January 2016 through May 2016. Said budget is attached hereto as Exhibit "A". The Debtor has not used the postpetition rent (December).
9. The Debtor requests the entry of an order by way of this Motion for Authority to Use Cash Collateral in the ordinary course of business to pay the expenses indicated in the budget and for the purpose of providing adequate protection to the lien holder on the Collateral.
10. It is necessary for the Debtor to make use of the income in order to maintain and preserve the value of the Debtor's business. Absent the Debtor's ability to use the cash collateral to maintain the Debtor's business, to pay usual and ordinary operating expenses the value of the Debtor's business is certain to diminish. The Debtor seeks expedited determination since insurance on the property is due in January 2017.
11. The use of cash collateral is necessary in order to preserve the value of the Debtor's bankruptcy estate.
12. The income is necessary for the purposes outlined and the Debtor has no other financing sources at this time that could be used to replace the cash flow from the income from its tenant.
13. As adequate protection, the Debtor proposes the following:
 - a. To maintain insurance on the property. At present, the property is insured;
 - b. To grant to the lien holder a replacement lien on the same types of post-petition property of the estate against which the lienholder held the lien as of November 29, 2016, the Chapter 11 petition date. Said replacement lien shall maintain the same priority, validity and enforceability as the lien holder's pre-petition lien. Said replacement lien shall be recognized only to the extent of the diminution in value of the mortgage holder's pre-petition collateral after the petition date

resulting from the Debtor's use of cash collateral during the pendency of this case;

- c. To continue to make payments consistent with the budget attached in Exhibit A on a monthly basis.

14. The Debtor submits that this proposal adequately protects the interest of the lienholder with regard to its collateral. The Debtor has not formulated its Plan of Reorganization at this juncture given the early stage of this case.

WHEREFORE, the Debtor respectfully requests that this Honorable Court:

1. Grant a hearing on an expedited basis with regard to this Motion;
2. Enter an Order authorizing the Debtor to use cash collateral on a continuing basis in accordance with this Motion;
3. Grant the lien holder a replacement lien on the rents of the property securing its claim;
4. Schedule further hearings with regard to the use of cash collateral as the Court deems necessary to protect the interest of the lien holder;
5. Enter an Order for such other and further relief as is proper and as justice may require.

SERVICE BURY, LLC
1503 OSGOOD STREET, NORTH ANDOVER, MA.
PROFIT AND LOSS PROJECTION 2016-2017
BUDGET PROJECTION

January 3, 2017

Ordinary Income/Expense		Monthly 2017				
		January	February	March	April	May
Income						
Late Fees	0.00					
RE Tax Reimbursements	8,233.50		2,150.00			2,150.00
Rent Income	<u>120,000.00</u>	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00
Total Income	128,233.50	10,000.00	12,150.00	10,000.00	10,000.00	12,150.00
Gross Income	128,233.50	10,000.00	12,150.00	10,000.00	10,000.00	12,150.00
Expenses						
Snow Removal	0.00	0.00	0.00	0.00		
Landscaping/Maintenance Fee	3,000.00	0.00	0.00	500.00	500.00	
Conservation Area Upkeep	1,200.00	0.00	0.00	200.00	200.00	
Amortization Expense						
Bank Service Charge						
Depreciation Expense						
Insurance	713.84	713.84	0.00	0.00	0.00	0.00
Interest Expense						
Management fee	6,000.00	500.00	500.00	500.00	500.00	500.00
UST Fees	1,300.00	0.00	0.00	325.00	0.00	0.00
Property Maintenance Expenses	2,400.00	200.00	200.00	200.00	200.00	200.00
Real Estate Taxes	16,467.00		4,150.00			4,150.00
Repairs	1,000.00	0.00	100.00	100.00	100.00	100.00
Security	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Total Expenses	32,080.84	1,413.84	4,950.00	1,125.00	1,500.00	5,650.00
Net Ordinary Income	96,152.66	8,586.16	7,200.00	8,875.00	8,500.00	6,500.00
Net Income	96,152.66	8,586.16	7,200.00	8,875.00	8,500.00	6,500.00

Exhibit A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

In Re:

Service Bury, Inc.,

Chapter 11

No. 16-14530-FJB

Debtor,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the attached Motion of Debtor, For Authorization On An Interim And Permanent Basis For Use of Cash Collateral has been served in the following manner upon the interested parties:

E:Mail Service: via the Court's CM/ECF system which sent notification of such filing to the following:

Eric K. Bradford on behalf of Assistant U.S. Trustee John Fitzgerald
Eric.K.Bradford@USDOJ.gov

Patrick J. Dolan on behalf of Creditor East Boston Savings Bank
pdolan@pkdlp.com

John Fitzgerald
USTPRegion01.BO.ECF@USDOJ.GOV

Mail Service: via regular, first-class United States mail, postage fully pre-paid, addressed to the parties on the attached service list:

Dated: January 4 2017

[/s/John F. Sommerstein](#)
John F. Sommerstein

Servicebury, LLC
470 Washington Street
Brighton, MA 02135

Community Service Stations, Inc.
c/o Raymond Ewer, Esq.
Tenant & Ewer
29 Crafts Street
Newtonville, MA 02460

Conservation Commission
Town of N. Andover
120 Main St
North Andover, MA 01845

Department of Revenue
Bankruptcy Unit
P.O. Box 9564
Boston, MA 02114

East Boston Savings Bank
Ten Meridian Street
Boston, MA 02128

Internal Revenue Service
P.O. Box 21126
Philadelphia, PA 19114

Mansfield Oil Co.
1025 Airport Parkway, SW
Gainesville, GA 30501

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Town of N. Andover
Tax Collector
120 Main St
North Andover, MA 01845