

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**IN RE:**

**SYDELL, INC. D/B/A SPA SYDELL,  
  
Debtor.**

**CHAPTER 11**

**CASE NO. 16-64647-pwb**

**NOTICE OF HEARING ON DEBTOR'S SECOND MOTION TO USE CASH COLLATERAL  
AND TO PROVIDE ADEQUATE PROTECTION THEREFOR**

**PLEASE TAKE NOTICE** that the above-named debtor in possession (the "Debtor") has filed the following Debtor's Second Motion for Authority to Use Cash Collateral and to Provide Adequate Protection Therefor (the "Motion") with the Court seeking an order granting the relief stated therein:

**PLEASE TAKE FURTHER NOTICE THAT** the Court will hold a hearing on this Motion in **Courtroom 1401** of the Richard Russell Federal Building, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303 on **Tuesday, December 6, 2016 at 10:00 a.m.**, to consider the Motion.

Your rights may be affected by the court's ruling on this Motion. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk before the hearing. The address of the Clerk's office is: Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive SW, Atlanta, Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

This 21st day of November, 2016.

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Respectfully submitted,  
/s/ J. Michael Levengood  
JOHN MICHAEL LEVENGOOD  
Georgia Bar No. 447934  
LAW OFFICE OF J. MICHAEL LEVENGOOD, LLC  
*Counsel for the Debtor*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**IN RE:**

**SYDELL, INC. D/B/A SPA SYDELL,  
  
Debtor.**

**CHAPTER 11**

**CASE NO. 16-64647**

**DEBTOR'S SECOND MOTION FOR AUTHORITY TO USE CASH COLLATERAL  
AND TO PROVIDE ADEQUATE PROTECTION THEREFOR**

COMES NOW Sydell, Inc. d/b/a Spa Sydell, debtor and debtor-in-possession (the “Debtor”) in the above-styled case (the “Case”), by and through the undersigned counsel, and files this Motion, respectfully showing the Court as follows:

**Relief Requested**

1.

By this Motion, the Debtor requests entry of an order authorizing the Debtor to use Cash Collateral during the first three months of 2017. For the reasons set forth below, the Debtor requests authority to continue to use Cash Collateral as it is currently doing under the October 18, 2016 Final Order that expires on January 1, 2017.

**Jurisdiction**

2.

This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**Background**

3.

On August 22, 2016, (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtor is authorized to operate its businesses as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

4.

The Debtor previously has been a debtor in possession. The Debtor’s prior bankruptcy case was filed on September 3, 2009 and was assigned Chapter 11 Case No. 09-83407 in this Court. The prior bankruptcy case was assigned to Chief Judge C. Ray Mullins. After confirmation and substantial consummation of a plan of reorganization, the Court entered an Order Granting Application for Final Decree and closed that bankruptcy case on February 17, 2012.

5.

The Court entered a Final Order Approving the Use of Cash Collateral on October 18, 2016 [Docket 104] which will expire by its terms on January 1, 2017.

6.

The Debtor has prepared a proposed Budget for the period from January 1, 2017 through March 31, 2017 and respectfully requests that the Court enter a second Final Order Authorizing the Use of Cash Collateral with the same operative terms as the October 18, 2016 Order except for (i) the carry forward of surpluses in prior budgets, (ii) the extension of the expiration date from January 1, 2017 to April 1, 2017 and (iii) the attachment of the proposed Budget.

7.

The Debtor moves this Court for the entry of a second Order authorizing Debtor’s use of

cash collateral, in accordance with the terms of the proposed Order attached hereto, and for such other and further relief as may be just and proper.

WHEREFORE, the Debtor requests that after notice and a hearing this Court authorize Debtor's continued use of cash collateral for the period of January 1, 2017 through March 31, 2017.

Respectfully submitted,

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/s/ J. Michael Levengood

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*Counsel for the Debtor*

**IN THE UNITED STATES BANKRUPTCY COURT  
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ATLANTA DIVISION**

**IN RE:**

**SYDELL, INC. D/B/A SPA SYDELL,  
  
Debtor.**

**CHAPTER 11**

**CASE NO. 16-64647-pwb**

**FINAL ORDER GRANTING SECOND MOTION  
FOR AUTHORITY TO USE CASH COLLATERAL**

**IT APPEARING TO THIS COURT** that on August 22, 2016, Sydell, Inc. (the “Debtor”), filed its “Motion for Authority to Use Cash Collateral and To Provide Adequate Protection Therefor and Request for Emergency Preliminary Hearing” (the “Motion”); and that the Motion first came before the Court for a preliminary hearing at 9:25 A.M. on August 25, 2016 (the “First Hearing”), and that the Court entered several interim cash collateral orders pending a final hearing; and

**IT FURTHER APPEARING TO THIS COURT** that after a hearing held on October 4, 2016, the Court entered a Final Order Approving Use of Cash Collateral on October 18, 2016; and

**IT FURTHER APPEARING TO THIS COURT** counsel for the Debtor and the United States Trustee have agreed that it is in the best interests of all parties to conclude a final cash collateral order that, among other things, governs the Debtor's use of cash until the termination of this Order, as specified herein, and subject to the right of any creditor or other party in interest to object as provided in paragraph 16 of this Order; and

**IT FURTHER APPEARING TO THIS COURT** that:

A. On August 22, 2016 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in this Court, and is continuing to manage its assets as debtor-in-possession, pursuant to 11 U.S.C. §§ 1107 and 1108.

B. The Debtor owns and operates several personal day spas with retail locations in the metropolitan Atlanta area.

C. Prior to, on and after the Petition Date, the Debtor is entitled to collect the cash proceeds from the use and sale of the Pre-Petition Collateral (the "Cash Collateral"). The Debtor now seeks to use the Cash Collateral to operate its business. The Debtor's post-petition operations generate cash and credit card charges from personal services rendered by its employees and independent contractors that the Debtor submits are not encumbered by any prepetition lien or consensual security interest and as such are not Cash Collateral. The Debtor recognizes that the sale of the Pre-Petition Collateral will result in proceeds which are Cash

Collateral. The Debtor reserves all rights regarding the extent of Pre-Petition Collateral and the value of the use of Pre-Petition Collateral as it pertains to such post-petition personal services.

D. The Debtor asserts that it is in the continued best interest of the estate and its creditors that the Debtor be permitted to use Cash Collateral in the manner provided for herein.

E. Notice of the Motion has been provided to necessary parties in compliance with Federal Rules of Bankruptcy Rule 4001(b)(2).

F. The holders of secured claims against the Debtor who may assert an interest in the Debtor's cash collateral appear to be the Internal Revenue Service based on a series of Federal Tax Liens filed between September 7, 2012 and April 25, 2016 and which has filed a proof of claim in this case holding secured, priority and unsecured claims, in which it claims its secured claim totals \$3,362,238.23; and American Express Bank, FSB based on a UCC-1 financing statement filed on April 7, 2015, which has filed a proof of claim in the amount of \$25,992.82 which it claims is a secured claim. The State of Georgia Department of Labor appears to have filed several Unemployment Contribution Fi. Fas. between May 22, 2014 and June 23, 2014 but the proof of claim filed by that creditor in this case claims only a priority unsecured claim. Also, Merchant Capital Source, LLC appears to have filed a UCC-1 financing Statement on August 25, 2015 listing as collateral "Receivables as defined by contract" but that creditor has not appeared in this case, and the Debtor is unaware of a contract with Merchant Capital Source, LLC that defines the term Receivables. Additionally, Branch Banking & Trust Company which held a secured claim in the Debtor's prior chapter 11 case, does not appear to have filed a continuation statement following the conclusion of that chapter 11 case within the applicable time required under Georgia law for such creditor to hold

a secured claim in this case.

G. The Internal Revenue Service appears to be the holder of the senior Secured Claim in this case and American Express Bank, FSB, appears to be the holder of a junior Secured Claim in this case.

Based upon the foregoing, it is hereby

**ORDERED AND ADJUDGED** as follows:

1. **Usage Period.** Subject to the terms and conditions contained herein, the Debtor is authorized to use Cash Collateral through the date the Debtor's right to use Cash Collateral terminates (the "Termination Date") in accordance with paragraph 14 below (the "Usage Period").
2. **Projected Use of Cash.** Without further Order or unless a senior secured creditor holding a security interest in the cash collateral shall otherwise agree in writing, the amount of Cash Collateral which the Debtor may use during the Usage Period shall not exceed one hundred and ten percent (110%) on a monthly basis of each line item set forth in the budget attached hereto as **Exhibit "A"** (the "Budget"). In the event that the Debtor develops a surplus in regard to any line item from this or a prior budget attached to a prior Order approving the use of cash collateral, the Debtor may apply said surplus to a separate line item where the Debtor anticipates exceeding the line item limitation.
3. **Authorized Disbursements.** The Debtor shall only be authorized to use Cash Collateral for the actual and necessary expenses of operating the Debtor and conducting the Debtor's business affairs pursuant to the Budget, as set forth above. Unless otherwise authorized by order of the Court, the Debtor shall not use Cash Collateral for the payment of any pre-petition indebtedness or obligations of, or pre-petition claims against, the Debtor.



4. **Lien on Post-Petition Collateral.** Pursuant to 11 U.S.C. §§ 361 and 363, to the extent that the Debtor uses Cash Collateral, the Internal Revenue Service and American Express Bank, FSB are granted a continuing valid, attached, choate, enforceable, perfected and continuing security interest in, and lien upon, all post-petition assets of the Debtor of the same type and to the same extent as (i) the collateral securing the Debtor's indebtedness to such creditor prior to the Petition Date (the "Post-Petition Collateral"); provided, however, that the amount of such lien shall be dependent upon a determination by the Court at a later date of (i) value of Pre-Petition Collateral that is sold or collected post-petition; and (ii) the value of the use of Pre-Petition Collateral as it pertains to the Debtor's post-petition personal services that are otherwise unencumbered. The priority of said security interests in, and liens upon, the Post-Petition Collateral shall be the same priority as existed in and upon the Pre-Petition Collateral. The liens and security interests granted by this Order to the Internal Revenue Service and to American Express Bank, FSB, shall, upon entry of this Order, continue to be perfected as of the Petition Date, without regard to applicable federal, state or local filing and recording statutes, and without further action of any party; provided, however, that the described replacement liens shall not attach to claims or causes of action of the Debtor that arise solely under Chapter 5 of the Bankruptcy Code.

5. **American Express.** American Express Travel Related Services Company, Inc. and American Express Bank, FSB (collectively, "American Express") are authorized to withhold but not apply amounts from the Debtor's "American Express" credit card proceeds, to preserve American Express's right to apply after entry of an Order by this Court of such sums as provided in the Business Loan and Security Agreement by and between the Debtor and American Express Bank, FSB and the Card Acceptance Agreement by and between the Debtor

and American Express Travel Related Services Company, Inc. without prejudice to a resolution by this Court of the relative priority of the security interest of American Express and the right of the Debtor, an Official Committee of Unsecured Creditors or other interested party in this bankruptcy case to request that any amount withheld by American Express pursuant to the terms of this paragraph be paid to the estate. American Express Bank, FSB may apply sums it has withheld pursuant to the Interim Order and this Final Order regarding use of cash collateral beginning on the 76<sup>th</sup> day following the entry of this Final Order unless within seventy five (75) days following the entry of this Final Order, the Debtor or another interested party in this Case files a motion seeking a declaration from this Court that sums so withheld should be paid to the estate.

6. **Validity of Collateral Claims.** Nothing herein shall be deemed an admission by the Debtor as to the extent, validity or perfection of any creditor's security interests in the Pre-Petition Collateral, the Post-Petition Collateral or the Cash Collateral. In the event any creditor's security interests in, or lien upon, the Pre-Petition Collateral is reduced or invalidated by order of this Court, then its security interests in, and liens upon, the Post-Petition Collateral granted by this Order shall be reduced or invalidated commensurately.

7. **Deposits of Cash Collateral.** All Cash Collateral shall be deposited in the Debtor's debtor-in-possession Operating Account; provided, however, that credit card charges may continue to be deposited in the Debtor's depository accounts and then be swept into the Debtor's debtor-in-possession Operating Account.

8. **Payment of Employee Taxes.** As a condition to issuing any payroll to employees during the pendency of this Case, Debtor's CEO shall first either pay or deposit in the Debtor's debtor-in-possession Tax Account, all local, state and federal taxes, including withholding taxes,

Social Security taxes and Medicare taxes related to such payroll (the "Related Taxes") and deliver to the United States Trustee a certification under penalty of perjury that the Debtor either (a) has paid all Related Taxes regarding such payroll or (b) has deposited in the Debtor's DIP Tax Checking Account a sum sufficient to pay all Related Taxes regarding such payroll.

9. **Accounting.** The Debtor shall at all times (a) sequester, segregate and account for all Cash Collateral that comes into its possession, custody or control, (b) keep and provide on a periodic basis (no less than monthly) records reasonably sufficient to determine the status of Cash Collateral collections and expenditures, and (c) provide to senior secured lenders with copies of the monthly operating reports filed with this Court and with the Office of the United States Trustee.

10. **Insurance.** To the extent that it remains necessary and appropriate, the Debtor shall insure the Pre-Petition Collateral and the Post-Petition Collateral against all risks to which it may be exposed, including loss, damage, fire, theft and all other such risks, in an amount not less than the fair market value of such collateral, with such insurance providers, and under such policies, and in such form as is appropriate for a business of a type similar to the Debtor using sound business judgment. The Debtor may pay the premiums necessary to reinstate its prepetition insurance.

11. **Carve-out.** Notwithstanding anything to the contrary herein, the Post-Petition Collateral and any security interests and/or liens granted to or acknowledged in favor of the Internal Revenue Service and American Express Bank, FSB, herein shall be subject to: (a) any unpaid fees of the Clerk of this Court; (b) any unpaid fees of the United States Trustee pursuant to 28 U.S.C. § 1930(a) and (b); and (c) a carve-out (the "Carve-out") in an aggregate amount not to exceed \$90,000, for allowed unpaid fees and expenses payable under Bankruptcy Code

sections 330 and 331 to the professionals for the Debtor and if appointed, a Committee or counsel retained by the Committee.

12. **Failure of Adequate Protection.** The terms and conditions of this Order are intended to provide each creditor with a perfected pre-petition security interests with adequate protection for its interests in the property of the Debtor.

13. **Events of Default.** Each of the following shall constitute an “Event of Default” under this Order:

- (a) The occurrence of any material breach, default or non-compliance with the terms of this Order;
- (b) Conversion of this Chapter 11 case to a case under Chapter 7; and
- (c) Appointment of a trustee in this Chapter 11 case.

14. **Termination.** The Debtor’s authority to use cash collateral shall terminate, and shall no longer be subject to the terms of this Final Order,

- (a) Upon payment to such secured creditor of all sums due and owing from the Debtor to such secured creditor, including such attorneys fees, expenses and interest as the parties may agree upon or this Court shall order, pursuant to 11 U.S.C. §§ 503 or 506;
- (b) Upon confirmation by the Debtor of a Plan of Reorganization in this case; or
- (c) April 1, 2017;

Notwithstanding the deadlines set out above, this Order, and all provisions of this Order other than those pertaining to (i) the amount and character of the Debtor’s expenditures; and (ii) the Debtor’s reporting requirements, shall remain in full force and effect.

15. **Effect of Modification, Vacation or Stay.** If any provision of this Order is hereafter modified, vacated or stayed, such modification, vacation or stay shall not (i) affect the validity or authority of the Debtor's use of Cash Collateral under this Final Order prior to such time, or (ii) affect the validity, priority or enforceability of the security interests and liens granted the senior secured lender for such use, prior to the effective date of such modification, vacation or stay.

16. **Reservation of Rights for any Creditor or Other Party in Interest.** The provisions of this Final Order are subject to the right of any creditor or other party in interest to seek modification of, or challenge, the findings herein or the provisions of this Final Order. Except as provided in paragraph 5 above of 17 below which provide longer periods to seek relief, any response or challenge under this paragraph 16 shall be initiated within twenty-one (21) days from the date on which the Court enters this Final Order.

17. **Additional Reservation of Rights for any Official Committee of Unsecured Creditors.** The provisions of this Final Order additionally are subject to the right of any Official Committee of Unsecured Creditors to seek modification of, or challenge, the findings herein or the provisions of this Final Order. Any such response or challenge shall be initiated within forty-five (45) days from the date on which the Court enters this Final Order, absent a showing by the Committee and its counsel that additional time is necessary to conduct its investigation and file such an objection.

**END OF DOCUMENT**

Prepared and presented by:

/s/ J. Michael Levengood  
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Attn: Lynn Brown, Claims Administrator

Beginning JAN, 2017  
Sydell Inc

Exhibit A to Cash Collateral Order

	1/6	1/13	1/21	1/27	2/3	2/10	2/17	2/24	3/3	3/10	3/17	3/24	3/31
Beginning Cash	\$33,984	\$21,989	\$19,889	\$48,973	\$41,603	\$276	\$9,993	\$117,615	\$70,900	\$21,025	\$13,609	\$23,193	\$45,193
Total Receipts	\$65,405	\$87,000	\$90,284	\$62,730	\$61,073	\$106,117	\$175,122	\$70,685	\$72,125	\$90,084	\$82,084	\$95,000	\$76,125
DIP LOAN	\$35,000												(\$7,000)
Cash Available to Spend	\$134,389	\$108,989	\$110,173	\$111,703	\$102,676	\$106,393	\$185,115	\$188,300	\$143,025	\$111,109	\$95,693	\$118,193	\$114,318
Insurance													
Inventory Payments	\$8,000	\$8,000	\$5,000	\$8,000	\$500	\$10,000	\$5,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Leases													
Office Supplies	\$1,200	\$700	\$700	\$700	\$700	\$1,000	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500
Payroll	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000
Professional Fees (Acocunting & Legal)	\$2,000	\$2,000	\$1,000	\$2,000	\$1,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000
Rent	\$43,500	\$25,000			\$43,500	\$25,000			\$43,500	\$25,000			
Repairs & Maintenance	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500
Secured Creditor Payments													
Taxes Paid - Payroll	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000
Taxes Paid - Sales & Use			\$300					\$500				\$500	
Taxes Paid - Other													
Telephone/ Internet/IT	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000
Travel & Entertainment	\$700	\$400	\$700	\$400	\$700	\$400	\$1,000	\$400	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
U.S. Trustee Fees (if applicable)													
Utilities				\$6,000					\$6,000				\$6,000
Vehicle Expenses	\$500		\$500		\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500
Other Operating Expenses, Merchant/bankg fees	\$5,000	\$1,500	\$1,500	\$1,500	\$4,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
ADM FEES								\$45,000					
Total Expenses	\$112,400	\$89,100	\$61,200	\$70,100	\$102,400	\$96,400	\$67,500	\$117,400	\$122,000	\$97,500	\$72,500	\$73,000	\$78,500
Ending Cash	\$21,989	\$19,889	\$48,973	\$41,603	\$276	\$9,993	\$117,615	\$70,900	\$21,025	\$13,609	\$23,193	\$45,193	\$35,818