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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
Central Division
Central Division**

In re: THE KIRK LLC Debtor.	Bankruptcy No. 16-26470 (Chapter 11) Honorable Kevin R. Anderson [filed electronically]
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**MOTION FOR FINAL APPROVAL TO
USE CASH COLLATERAL FROM NOVEMBER 1, 2016 TO JANUARY 31, 2017**

Pursuant to Bankruptcy Rule 4001, The Kirk LLC (the “**Debtor** ”), hereby moves for an interim and final order approving its use of cash collateral for the time period of November 1, 2016 to January 31, 2017, in amounts consistent with the monthly budget attached hereto as Exhibit A. Grounds for this motion are as follows:

1. The Debtor commenced this Chapter 11 case on July 26, 2016.

2. The Debtor owns and operates a combination hotel/apartment building in Tooele, Utah, comprised of 35 rental apartments (including studio, one, and two bedroom furnished apartments) and seven hotel rooms, located at 57 W. Vine St., Tooele, Utah (the **“Property”**)..

3. The Debtor contracts with two full-time onsite managers and other independent contractors as needed; additionally, the Debtor has contracted with a part-time chief restructuring officer.

4. The part-time CRO has requested that the Company acquire a Directors and Officers’ insurance policy to protect him and the Company from any inadvertent wrongdoing.

5. The Debtor has gross monthly revenues of approximately \$23,500.00.

6. Tooele County’s tax assessed value of the Property is \$2,076,441.00. See Exhibit B attached.

7. The Debtor has two creditors who might have valid liens in its cash collateral: MRZ Investments, LLC (**“MRZ”**) and ForwardLine Financial, LLC (**“ForwardLine”**). The Debtor believes MRZ is in first position with a debt that is in dispute but asserted by MRZ at approximately \$240,000; ForwardLine is in second position with a claim of less than \$10,000. Tooele County may also have a tax lien on the property in the amount of \$28,992.69.

8. Other than routine month-to-month turnover, all of the Debtor’s livable apartment units are occupied.

9. In the first three months of the bankruptcy case (July-September), the Debtor has generated net cash flows totaling \$30,835.66. The Debtor believes it will continue to

generate positive cash flows, although annual property taxes coming due in November 2016 (in the amount of \$15,633.43) will lead to a negative cash flow in November 2016.

10. The Debtor is requesting more liberal authority than previously requested, in the hopes of anticipating unforeseen expenses and minimizing the legal costs from seeking consent to modify the approved budget when such issues may arise.

11. The Debtor has not yet been able to obtain a professional appraisal.

12. Nevertheless, the Debtor believes the tax value alone is sufficient evidence to demonstrate that MRZ and ForwardLine are adequately protected. Based on the tax valuation of the Property, there is an equity cushion of at least \$1,700,000 adequately protecting the secured creditors, with a loan-to-value ratio of approximately 15%.

13. The Debtor has prepared the attached operating budget to demonstrate its expected cash needs (see Exhibit A). The Debtor requests Court authority to use cash collateral consistent with the disclosed budget.

14. The Property is currently insured. Proof of insurance has been provided previously, and is available upon request.

15. Beginning in October 2016, the Debtor began making monthly adequate protection payments to MRZ and ForwardLine in the respective amounts of \$2,000.00 and \$300.00.

16. This motion does not propose any extraordinary relief as defined in L.B.R. 4001-2(a)(1).

ARGUMENT

The Debtor proposes to use the cash collateral under the terms of the proposed budget to keep the hotel/apartment rental operation viable in the bankruptcy. The operation generates a positive cash flow, which will likely create some of the resources necessary to eventually fund a plan and post-confirmation plan payments. MRZ and ForwardLine will not be adversely affected by the use of cash collateral. The value of the Real Property is certainly sufficient to ensure that one way or another, secured creditors will be paid in full in this case.

WHEREFORE, the Debtor respectfully requests it be authorized on a final basis to use cash collateral for the time period of November 1, 2016 to January 31, 2017.

DATED this 19th day of October, 2016.

PRINCE, YEATES & GELDZAHLER

/s/ T. Edward Cundick

T. Edward Cundick

Attorneys for The Kirk LLC

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **MOTION FOR FINAL APPROVAL TO USE CASH COLLATERAL FROM NOVEMBER 1, 2016 TO JANUARY 31, 2017** this 19th day of October, 2016, with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users:

- **Adam S. Affleck** asa@pyglaw.com,
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- **Quinn A. Sperry** Quinn@morrissperry.com, sydney@morrissperry.com
- **United States Trustee** USTPRegion19.SK.ECF@usdoj.gov

I further certify that on this date I mailed a copy of the same, via U.S. Mail, postage prepaid, and email, to the following creditors:

ForwardLine
21700 Oxnard Street
Woodland Hills, CA 91367-7581
Molly.c@forwardline.com

American Express
P.O. Box 650448
Dallas, TX 75265-0448

Beehive Broadband
P.O. Box 1169
Tooele, UT 84074

Christensen Law Office
340 East 400 South
Salt Lake City, UT 84111

/s/ T. Edward Cundick

Income	November Budget	December Budget	January Budget
Apartments	\$22,000.00	\$22,000.00	\$22,000.00
Hotel	\$1,500.00	\$1,500.00	\$1,500.00
Revenue reversals			
Total	\$23,500.00	\$23,500.00	\$23,500.00
Expenses			
Management	\$2,000.00	\$2,000.00	\$2,000.00
Electricity	\$1,800.00	\$1,800.00	\$1,800.00
Gas	\$850.00	\$1,000.00	\$1,000.00
Water	\$650.00	\$650.00	\$650.00
DirecTV	\$490.00	\$490.00	\$490.00
Beehive (WIFI)	\$1,015.74	\$360.00	\$360.00
Mercury (WIFI)	\$154.17	\$154.17	\$154.17
Trash-Republic Svcs	\$265.65	\$265.65	\$265.65
Office Phone	\$15.00	\$15.00	\$15.00
Maintenance/Supplies	\$2,400.00	\$2,000.00	\$2,000.00
Marketing	\$500.00	\$500.00	\$500.00
CC Servicing	\$300.00	\$300.00	\$300.00
Insurance	\$818.87	\$818.87	\$818.87
Appraisal	\$0.00	\$0.00	\$0.00
Hotel Room Taxes			
Bank Fees	\$150.00	\$150.00	\$150.00
D&O Insurance	\$2,000.00	\$2,000.00	\$2,000.00
Coal	\$2,000.00	\$0.00	\$0.00
CRO Compensation	\$2,000.00	\$2,000.00	\$2,000.00
Property Taxes	\$15,633.43	\$0.00	\$0.00
Lease Deposit Returns	\$1,500.00	\$1,500.00	\$1,500.00
US Trustee Fees			\$650.00
Adequate Protection Pmts			
MRZ	\$2,000.00	\$2,000.00	\$2,000.00
ForwardLine	\$300.00	\$300.00	\$300.00
Professional fees (as apvd. by ct.)	\$2,000.00	\$2,000.00	\$2,000.00
Miscellaneous	\$1,000.00	\$1,000.00	\$1,000.00
Total	\$39,842.86	\$21,303.69	\$21,953.69

*Debtor requests authority to exceed any of these line items by 10% without further order of the Court