

1 Vincent A. Gorski (263487)
 2 **THE GORSKI FIRM, APC**
 3 309 Truxtun Avenue
 4 Bakersfield, California 93301
 Telephone: (661) 952-9740
 Facsimile: (661) 952-9741
 [PROPOSED] Attorneys for Debtor-in-Possession

5 **UNITED STATES BANKRUPTCY COURT**
 6 **EASTERN DISTRICT OF CALIFORNIA**
 7 **FRESNO DIVISION**

8 In Re:
 9 REAL HOSPITALITY, LLC,
 10 Debtor.

Case Number: 17-14129-B-11

Chapter 11

DCN: TGF-001

**MOTION OF THE DEBTOR TO
 APPROVE USE OF CASH
 COLLATERAL OF MISSION
 NATIONAL BANK AND PROVIDING
 ADEQUATE PROTECTION**

Date: November 9, 2017

Time: 9:30 a.m.

Location: United States Courthouse
 510 19th Street
 Bakersfield, CA 93301

Honorable Judge: R. Lastreto

21 **INTRODUCTION AND SUMMARY OF REQUESTED RELIEF**

22 Debtor-in-possession REAL HOSPITALITY, LLC. (the “Debtor”) in the above-
 23 captioned Chapter 11 case, hereby submit this motion (the “Motion”) for entry of an order
 24 approving its request to use cash collateral of Mission National Bank pursuant to 11 U.S.C.
 25 § 363(c) to pay ongoing operating expenses after approval through preliminary and final
 26 hearings.

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www.TheGorskiFirm.com

1 The Debtor proposes to use cash collateral in normal operations pending the date of
2 a final hearing according to the operating budget (the “Budget”) attached as Exhibit “A” to
3 the Motion. Debtor also requests approval to use cash collateral pursuant to the Budget on
4 a final basis. In support of this Motion, the Debtor respectfully represents:

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. FACTUAL AND PROCEDURAL BACKGROUND**

7 **A. Jurisdiction**

8 1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§
9 157 and 1334.

10 2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

11 3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

12 4. The statutory bases for the relief requested herein are 11 U.S.C. §§ 105(a),
13 363(b), and 507(a); 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”) and Rules 6003 and
14 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

15 **B. Factual Background**

16 5. On October 27, 2017 (the “Petition Date”), the Debtor filed a voluntary
17 petition for relief under Chapter 11 of the Bankruptcy Code.

18 6. The Debtor continues to operate its business properties as a debtor-in-
19 possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

20 7. No trustee, examiner, creditors’ committee, or other official committee has
21 been appointed in the Debtor’s Chapter 11 Case.

22 8. The Debtor operates a bowling alley and entertainment center including a
23 lounge, arcade games, and snack bar. The Debtor’s principal place of business is 820 Real
24 Road, Bakersfield, CA 93309.

25 **C. Relief Requested**

26 9. Mission National Bank is the Debtor’s primary and sole secured creditor,
27 pursuant to a Note and Deed of Trust. The underlying bankruptcy was filed on an
28 emergency basis. Accordingly, Debtor’s principals are continuing to review the Debtors’

1 records to locate a true and correct copy of the Note and Deed of Trust. Upon locating the
2 same, the Debtors will file a supplemental declaration and list of exhibits.

3 10. As of the Petition Date, the principal balance owed by the Debtor under the
4 Note is approximately \$1,600,000.00, with interest accruing at a currently unknown
5 percentage per annum and an unknown maturity date. These items will be supplemented by
6 declaration as soon as they are known.

7 11. Pursuant to the Note and Deed of Trust, Mission National Bank has a
8 perfected first-priority security interest in the real property located at 820 Real Road,
9 Bakersfield, CA 93309 in the county of Kern, State of California (the "Subject Property"),
10 including its "cash collateral" as such term is defined in 11 U.S.C. § 363.

11 12. Debtor's counsel left a voicemail for the Debtors' contact at Mission
12 National Bank, Brian Bray, on October 27, 2017 in attempt to obtain a stipulation to use
13 Mission Bank's cash collateral. The undersigned counsel left a voicemail and e-mailed Mr.
14 Brian Bay on October 27, 2017, proposing that Debtor and Mission Bank enter into a
15 stipulation whereby Debtor would pay the adequate protection payments and pay required
16 insurance and property taxes on the Subject Property to no avail.

17 13. The purposes of the proposed stipulation with Mission National Bank was to
18 permit the Debtor to use cash collateral in the ordinary course of business during this
19 Chapter 11 Case, subject to the Budget and other requirements. Now Debtor seeks the
20 same vis-à-vis pursuant to this Motion.

21 14. On November 2, 2017, the undersigned was contacted by Mr. Andrew
22 Chantry with Mission National Bank. Mr. Chantry notified the undersigned that Mr. Bay
23 was no longer working for Mission National Bank and that the bank was in the process of
24 retaining counsel.

25 15. Debtor seeks approval of the Motion to have authority to use cash collateral
26 pursuant to 11 U.S.C. § 363(c) and the related adequate protection to be provided to
27 Mission National Bank.
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1 **II. INTRODUCTORY STATEMENT/CERTIFICATION REGARDING THE**
2 **PROPOSED USE OF MISSION NATIONAL BANK'S CASH COLLATERAL**

3 Mission National Bank is the sole creditor with an interest in Cash Collateral of the
4 Debtor. The cash collateral is to be used in the ordinary course for operations of the
5 business of the Debtor, which operates a bowling alley and entertainment center in
6 Bakersfield, California. The proposed use of the cash collateral is for operating expenses
7 in the ordinary course so long as monthly adequate protection payments are made to
8 Mission National Bank consistent with the payment amount and due dates set forth herein.
9 Use of cash collateral may continue for six months, and may be renewed in the fifth month.
10 The Debtor proposes the following cash payments and adequate protection for use of the
11 cash collateral:

- 12 1. Mission National Bank shall receive monthly adequate protection payments in
13 the amount of \$6,000.00 monthly.
- 14 2. Debtor will continue to properly manage and operate the Property as follows:
- 15 a. Debtor shall pay (a) taxes accruing against the Property; (b) insurance on the
16 Property; and (c) Debtor must provide evidence of such upon written request
17 within 2 business days.
- 18 b. Debtor shall first seek Mission National Bank's consent for any other
19 expenses, such as capital improvements and tenant improvements but not for
20 general maintenance and operating expenses for the Property, and if Mission
21 National Bank does not consent, Debtor will seek a court order.
- 22 c. Upon Court approval of this Motion, Debtor shall pay Mission National Bank
23 one month's payment toward the debt and as adequate protection for its
24 interest in the Subject Property for the month of November 2017, and
25 continuing on the first day of each month thereafter for the term period of this
26 Motion.
- 27 3. In the event the Debtor fails to meet any of the obligations required by this
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1 Motion and the Cash Collateral Order thereto, Debtor shall be in default. In that event, Mission
2 National Bank shall provide the Debtor with seven (7) days' notice of default and opportunity to
3 cure, by sending a written notice of default and opportunity to cure to Debtor's attorney of
4 record in this bankruptcy case. In the event the Debtor does not timely cure a default (or dispute
5 its existence) in accordance with such notice, then, without any further step required on the part
6 of the Mission National Bank and without any further court order, the right of the Debtor to use
7 the Bank's cash collateral from the Property shall immediately terminate, and the Debtor must
8 sequester all cash collateral absent further court order. In the event there is a dispute as to
9 whether a default exists, the parties agree that the Debtor or Mission National Bank can move
10 the Bankruptcy Court on an *ex parte* basis or on an expedited basis to hear any motion with
11 regard to cash collateral.

- 12 4. This Stipulation will expire by its terms on the earlier of:
- 13 a. April 30, 2018; or
- 14 b. Entry of a final order converting or dismissing this bankruptcy case.

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16 **III. ARGUMENT**

17 **A. The Debtor's Use Of Mission National Bank's Cash Collateral Is Justified**
18 **Because Mission National Bank's Interests are Adequately Protected**

19 11 U.S.C. § 363(a) defines "cash collateral" in relevant part as follows:

20 "[C]ash collateral" means cash, negotiable instruments, documents of title,
21 securities, deposit accounts, or other cash equivalents whenever acquired in
22 which the estate and an entity other than the estate have an interest and
23 includes the proceeds, products, offspring, rents, or profits of property . . .
24 subject to a security interest as provided in section 552(b) of [the Bankruptcy
25 Code], whether existing before or after the commencement of a case under
26 [the Bankruptcy Code].

27 In view of Mission National Bank's security interest in the Subject Property
28 pursuant to the Loan Documents, the cash generated through operating of its business
constitutes "cash collateral" securing the obligations owing to Mission National Bank.

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11 U.S.C. § 363(c)(2) provides in relevant part:

- (2) The trustee may not use . . . cash collateral under paragraph (1) of this subsection unless –
 - (A) each entity that has an interest in such cash collateral consents; or
 - (B) the court, after notice and a hearing, authorizes such use . . . in accordance with the provisions of this section.

As discussed above, the Motion is for Debtor’s use of cash collateral, subject to the terms and conditions therein. Thus, assuming that Mission National Bank appears in response to this motion and consents, the Debtor submits that it may use cash collateral pursuant to 11 U.S.C. § 363(c)(2)(A).

Alternatively, the Court should authorize the Debtor to use cash collateral under 11 U.S.C. § 363(c)(2)(B), in view of Mission National Bank’s interest being adequately protected in accordance with 11 U.S.C. § 361.

11 U.S.C. § 361 provides in relevant part:

When adequate protection is required under Section . . . 363 . . . of [the Bankruptcy Code] of an interest of an entity in property, such adequate protection may be provided by-

- (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that . . . use, sale or lease under Section 363 of [the Bankruptcy Code] . . . results in a decrease in the value of such entity’s interest in such property;
- (2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity’s interest in such property . . .

As discussed above, the Motion provides adequate protection of Mission National Bank’s, including by the Debtor making monthly adequate protection payments in the amount of \$6,000.00 for a fixed period, subject to renewal. Accordingly, the Debtor submits that Mission National Bank’s interest is adequately protected.

B. Interim Approval Of Debtor’s Cash Collateral Use

Bankruptcy Rule 4001(b)(2) permits the Court to authorize the interim use of cash collateral “as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” Fed. R. Bankr. P. 4001(b)(2). As discussed above, the Debtor seeks

1 authority to use Mission National Bank's Cash Collateral to avoid immediate and
2 irreparable harm to pay necessary expenses in normal operations in accordance with the
3 Budget (including employee compensation and benefits, note payments on Subject Property
4 utilized by the Debtor, insurance, and property taxes, pending a final hearing on the
5 Motion, pursuant to Rule 4001(b)(2).

6 **C. Notice**

7 Notice of this Motion has been provided to: (a) the Office of the United States
8 Trustee; (b) Mission National Bank; and (c) the Debtor's twenty largest unsecured
9 creditors. In light of the nature of the relief requested, the Debtor submits that no other or
10 further notice is necessary.

11 **D. No Prior Request**

12 The Debtor has not previously sought the relief requested herein from this or any
13 other court.

14 WHEREFORE, the Debtor prays that the Court enter its Order as follows:

- 15 1. Approving the Motion authorizing the use of cash collateral and adequate
16 protection provided therein on an interim basis pending a final hearing;
- 17 2. Granting the proposed Cash Collateral Order; and
- 18 3. For such other and further relief as the Court deems just and proper.

19 Dated: November 6, 2017

Respectfully Submitted,
20 **THE GORSKI FIRM, APC**

21 By: /s/ Vincent A. Gorski
22 Vincent A. Gorski

REGENCY LANES

BUDGET REAL HOSPITALITY LLC.

	Nov	Dec	Jan	Total
Revenue				
Lanes	\$ 35,000	\$ 40,000	\$ 45,000	\$ 120,000
Food Department	\$ 9,500	\$ 10,500	\$ 11,000	\$ 31,000
Beverage Department	\$ 35,000	\$ 37,500	\$ 40,000	\$ 112,500
Miscellaneous Department	\$ 2,500	\$ 2,500	\$ 2,500	\$ 7,500
				\$ -
				\$ -
				\$ -
Total Revenue	\$ 82,000	\$ 90,500	\$ 98,500	\$ 271,000
				\$ -
				\$ -
Expenses				
				\$ -
				\$ -
Lanes Department	\$ 18,000	\$ 19,000	\$ 20,000	\$ 57,000
Food Department	\$ 7,600	\$ 8,400	\$ 8,800	\$ 24,800
Beverage Department	\$ 19,250	\$ 20,625	\$ 22,000	\$ 61,875
Administrative & General	\$ 19,000	\$ 19,000	\$ 19,000	\$ 57,000
Advertising & Promotions	\$ 1,000	\$ 1,000	\$ 1,000	\$ 3,000
Property Operations	\$ 2,500	\$ 2,750	\$ 3,000	\$ 8,250
Utilities	\$ 7,000	\$ 6,500	\$ 6,250	\$ 19,750
				\$ -
				\$ -
				\$ -
Total Operating Expenses	\$ 74,350	\$ 77,275	\$ 80,050	\$ 231,675
				\$ -
Gross Operating Income	\$ 7,650	\$ 13,225	\$ 18,450	\$ 39,325
				\$ -
Fixed Expenses	\$ 4,000	\$ 4,000	\$ 4,000	\$ 12,000
				\$ -
Income Before Debt	\$ 3,650	\$ 9,225	\$ 14,450	\$ 27,325
				\$ -
Debt Service	\$ 3,000	\$ 4,000	\$ 5,000	\$ 12,000
				\$ -
Total Expenses	\$ 81,350	\$ 85,275	\$ 89,050	\$ 255,675
				\$ -
Net Income	\$ 650	\$ 5,225	\$ 9,450	\$ 15,325

EXHIBIT "A"