

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
BRIDGEPORT DIVISION

<hr/>		X
	:	
In re:	:	CHAPTER 11
	:	
HARBORSIDE ASSOCIATES, LLC,	:	CASE NO. 17-50749 (JAM)
	:	
Debtor.	:	
<hr/>		X
	:	
HARBORSIDE ASSOCIATES, LLC,	:	
	:	
Movant,	:	
	:	
v.	:	
	:	
SIOUX, LLC, TOWN OF STRATFORD,	:	
and THE SALCE COMPANIES, LLC	:	
	:	
Respondents.	:	
<hr/>		X

**MOTION FOR AUTHORITY TO USE CASH COLLATERAL  
AND TO PROVIDE ADEQUATE PROTECTION  
RE: 946 FERRY BOULEVARD, STRATFORD, CONNECTICUT**

Harborside Associates, LLC, the debtor and debtor-in-possession herein (the “Debtor”), by its undersigned attorneys, hereby moves, pursuant to 11 U.S.C. Section 363(c) and Federal Rule of Bankruptcy Procedure 4001, for an order authorizing use of cash collateral and granting adequate protection, and scheduling a final hearing on use of cash collateral, and as grounds therefore, represent upon information and belief as follows:

1. On June 28, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”), and has continued in possession of its assets and the operation of its business pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. To date, no committee of unsecured creditors has been appointed in this case.

3. The Debtor owns real property known as 946 Ferry Boulevard, Stratford, Connecticut (the "Property"). The premises on the Property is a commercial building with a commercial tenant.

4. By Assignment dated December 31, 2014 and recorded on January 2, 2015 in Volume 3841 at Page 99 of the Stratford Land Records, Sioux, LLC ("Secured Creditor") is, upon information and belief, the current owner and holder of a certain mortgage that purports to cover the Property and secures a certain pre-petition loan to the Debtor as evidence by that certain commercial mortgage note in the original principal amount of \$1,987,500 dated December 30, 2005 made by the Debtor originally in favor of Webster Bank, N.A. (the "Note") as modified by the terms of the Debtor's Plan of Reorganization confirmed by Order of the Bankruptcy Court dated October 30, 2013.

5. The indebtedness evidenced by the Note was secured by:

- a. Mortgage dated December 30, 2005 and recorded on January 6, 2006 in Volume 2789 at Page 99 of the Stratford Land Records (the "Mortgage"), assigned to Dakota HRG, LLC by assignment recorded on or about January 6, 2012 in Volume 3537 at Page 326 of the Stratford Land Records, and further assigned to Sioux, LLC by an assignment recorded on or about January 2, 2015 in Volume 3841 at Page 99 of the Stratford Land Records.

- b. Assignment of Rents from Harborside Associates, LLC to Webster Bank, N.A. dated December 30, 2005 and recorded on January 6, 2006 in the Stratford Land Records, as assigned to Sioux, LLC by an assignment recorded on or about December 31, 2014 in Volume 3841 at Page 99 of the Stratford Land Records.

6. The following liens or encumbrances covering the Property are subsequent in right to the Mortgage:

- a. Mortgage Deed from Harborside Associates, LLC to The Salce Companies, LLC in the original principal amount of \$500,000 dated September 6, 2007 and recorded on September 12, 2007 in Volume 3103 at Page 87 of the Stratford Land Records, as modified by document dated February 27, 2008 and recorded on March 5, 2008 in Volume 3164 at Page 120 of the Stratford Land Records and the terms of the Debtor's Plan of Reorganization confirmed by Order of the Bankruptcy Court dated October 30, 2013 .
- b. Lease between Harborside Associates, LLC as landlord, and Riverview Bistro, LLC, as tenant, recorded on January 26, 2015 in Volume 3845 at Page 146 of the Stratford Land Records.

7. There is currently one commercial tenant, Riverview Bistro, LLC, at the Property. The current monthly rental income for the Property is \$18,000.00.

8. To the extent Secured Creditor's liens constitute duly perfected, non-avoidable liens against the rental income arising from the Property, then the Debtor's rent receipts constitute "cash collateral", as such term is defined under Section 363 of the Bankruptcy Code. In order to operate and to preserve its going concern value, the Debtor will be required to use and disburse

certain cash collateral during the period commencing July 18, 2017 through August 31, 2017 (the “Current Period”) in order to avoid immediate harm to the Debtor. A budget reflecting necessary monthly disbursements is attached hereto as Exhibit A (the “Budget”). The Debtor further requests a ten (10%) percent variance from any line item on the Budget.

9. As adequate protection against any post-Petition Date diminution of the Secured Creditor’s cash collateral within the meaning of Bankruptcy Code Sections 361 and 363, the Debtor proposes to grant the Secured Creditor a replacement lien in all after acquired cash collateral to the same extent, priority and validity as existed on the Petition Date subject and subordinate to a carve out of the replacement lien for (i) amounts payable by the Debtor under 28 U.S.C. § 1930(a)(6) and (ii) the approved fees and expenses for the Debtor’s professionals. The Debtor proposes to make regular monthly tax and insurance payments as well as adequate protection payments to the Secured Creditor as set forth in the Budget. In addition, the Debtor proposes to establish an escrow account with Debtor’s counsel to fund an escrow for the Debtor’s professional fees. The Debtor’s professional fees would be paid from this escrow account after approval of such fees by the Court.

10. The relief sought herein is necessary to the continued operation of the Debtor. If the Debtor is not granted the relief sought herein, then the Debtor will suffer irreparable harm in that utility services and insurance coverage for the Property may be jeopardized thereby risking loss of rental income and impairing the value of the Property.

11. Additionally, this Motion requests a final hearing for the authority to use cash collateral.

WHEREFORE, the Debtor respectfully requests that this Court enter an order granting (i) the preliminary relief sought herein; (ii) scheduling a final hearing on use of cash collateral; and (iii) such other and further relief as this Court deems just and proper.

Dated: July 18, 2017  
New Haven, Connecticut

THE DEBTOR,  
HARBORSIDE ASSOCIATES, LLC

By: /s/Douglas S. Skalka  
Douglas S. Skalka (ct00616)  
NEUBERT, PEPE & MONTEITH, P.C.  
195 Church Street, 13<sup>th</sup> Floor  
New Haven, Connecticut 06510  
Telephone 203.821.2000  
dskalka@npmlaw.com

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
BRIDGEPORT DIVISION

<hr/>		X
	:	
In re:	:	CHAPTER 11
	:	
HARBORSIDE ASSOCIATES, LLC,	:	CASE NO. 17-50749 (JAM)
	:	
Debtor.	:	
<hr/>		X
	:	
HARBORSIDE ASSOCIATES, LLC,	:	
	:	
Movant,	:	
	:	
v.	:	
	:	
SIoux, LLC, TOWN OF STRATFORD,	:	
and THE SALCE COMPANIES, LLC	:	
	:	
Respondents.	:	
<hr/>		X

**PRELIMINARY ORDER AUTHORIZING USE OF CASH COLLATERAL AND PROVIDING ADEQUATE PROTECTION TO SECURED CREDITOR**

UPON the Motion (the "Motion") of Harborside Associates, LLC, debtor and debtor-in-possession (the "Debtor") for authority to, *inter alia*, use the cash collateral of Sioux, LLC ("Secured Creditor") on an interim and final basis pursuant to 11 U.S.C. Sections 363(c)(2) and 361 and Federal Rule of Bankruptcy Procedure 4001, and an interim hearing ("Interim Hearing") having been held on \_\_\_\_\_, 2017, and any objections to the Motion having been withdrawn or overruled, and upon the record taken at the Interim Hearing, and all of the pleadings heretofore filed in this proceeding, it is hereby found and determined as follows:

A. On June 28, 2017 (the "Petition Date") the Debtor filed a voluntary petition (the "Petition") for relief under Chapter 11 of Title 11, United States Code, 11 U.S.C. §101 et. seq. the (the "Bankruptcy Code"), and has continued in possession of his property and the management of

his business pursuant to 11 U.S.C. §§1107 and 1108.

B. As of the date hereof, the Office of the United States Trustee has not appointed an Official Committee of Unsecured Creditors as provided for in Section 1102 of the Code. No trustee or examiner has been appointed in this proceeding.

C. As of the Petition Date, the Secured Creditor alleges a first priority secured claim against certain real property owned by the Debtor and located at 946 Ferry Boulevard, Stratford, Connecticut (the "Property"), including the rents arising therefrom.

D. Secured Creditor has asserted that the liens and security interests granted to it (the "Pre-Petition Liens") were duly perfected and are senior in time to all other liens and security interests in the collateral. As more fully set forth in the Motion, there are multiple other liens covering the Property which are subsequent in right to the Mortgage.

E. The use of cash collateral on an interim basis pending a final hearing is necessary to prevent immediate and irreparable harm to the Debtor's estate in that without authorization to use cash collateral, the Debtor's ability to sustain its operations and meet its current necessary and integral business obligations will be impossible.

F. The Court finds that it is in the best interest of the estate, the Secured Creditor and all other creditors and parties-in-interest; and it is necessary to avoid irreparable harm to the Debtor and its estate, that the preliminary use by the Debtor of cash collateral on the terms and conditions set forth herein be approved, and it is hereby

ORDERED, that:

1. Pursuant to 11 U.S.C. § 363(c)(2)(B), the Debtor is hereby authorized to use cash collateral, including rental proceeds, which cash collateral may be subject to the liens of the Secured Creditor. The Debtor may use any cash collateral in accordance with the budget annexed

hereto as Exhibit A (the “Budget”) with a variance of 10% permitted for the period commencing July 18, 2017 through August 31, 2017 (the “Current Period”). The use of cash collateral for the expenses identified in the Budget is necessary to prevent irreparable harm to the estate.

2. In exchange for the preliminary use of cash collateral by the Debtor, and as adequate protection for Secured Creditor’s interests therein, the Secured Creditor is hereby granted replacement and/or substitute liens (subject only to the carve-out in paragraph 6 of this proposed order) as provided in Bankruptcy Code § 361(2) in post-petition cash collateral, and such replacement liens shall have the same validity, extent, and priority that the Secured Creditor possessed as to said liens on the Petition Date.

3. It is the purpose and intent of this Order to allow the Debtor to use rents which may constitute cash collateral of the Secured Creditor and to provide the Secured Creditor with liens upon post-petition assets to the extent the Secured Creditor held valid liens as of the Petition Date, so that its interests therein will not be diminished during the pendency of this Chapter 11 case. The secured position of the Secured Creditor that existed on the Petition Date may not improve by virtue of the granting of the replacement liens as set forth herein.

4. The term for use of cash collateral shall be for the Current Period. The Debtor is authorized and directed to execute, file, and record any security agreements, financing statements, instruments, or other documents as may be requested reasonably by the Secured Creditor to evidence and/or perfect the liens and/or security interests granted herein. The Secured Creditor is hereby authorized to file and/or record any such documents, and the automatic stay pursuant to Bankruptcy Code § 362 is hereby modified to allow them to file and record such documents as are necessary to evidence and perfect the replacement liens granted herein.



5. Notwithstanding any provision of this Order, nothing herein shall be deemed to be an adjudication or a declaration by the Court of rights with respect to the existence, validity, enforceability, subordination or priority of, or any causes of action relating to the liens or security interests granted by the Debtor or possessed by the Secured Creditor prior to the Petition Date. This Order does not provide for cross collateralization. This Order is without prejudice to any party-in-interest challenging the validity of liens of the Secured Creditor. Nothing herein shall be deemed to prevent Secured Creditor from seeking to terminate the use of cash collateral for any breach by the Debtor of the terms hereof or to obtain relief from the automatic stay or to assert any other rights, claims, remedies, or defenses available to them.

6. The liens of the Secured Creditor and any replacement thereof pursuant to this Order, and any priority to which the Secured Creditor may be entitled or become entitled under § 507(b) of the Bankruptcy Code, shall be subject and subordinate to a carve-out of such liens for (i) amounts payable by the Debtor under § 1930(a)(6) of Title 28 of the United States Code and (ii) approved fees and expenses of the Debtor's professionals. The Debtor is authorized to establish an escrow account with the firm of Neubert, Pepe & Monteith, P.C. to maintain the funds set forth in the Budget for payment of the Debtor's professional fees upon approval of such fees and further direction of this Court.

7. A further hearing on the Motion has been scheduled for \_\_\_\_\_, 2017.

# EXHIBIT

## A

EXHIBIT A

**HABORSIDE ASSOCIATES, LLC**  
946 Ferry Boulevard, Stratford, Connecticut  
July 18 - August 31, 2017

<b>Income</b>	
Rental Income	18,000.00
<b>Total Monthly Income</b>	<b>\$18,000.00</b>
<b>Expenses</b>	
Adequate protection	10,000.00
UST fees	500.00 *
Insurance	
RE Taxes	6,000.00
Professional Fees (escrowed)	1,500.00
<b>Total Monthly Expenses</b>	<b>(18,000.00)</b>
<b>Estimated Closing Balance</b>	<b>\$0.00</b>

\*accruing



Service List

**Electronic Mail Notice List**

- Carl T. Gulliver cgulliver@coanlewendon.com
- James M. Nugent jmn@quidproquo.com, talba@harlowadamsfriedman.com
- U. S. Trustee USTPRegion02.NH.ECF@USDOJ.GOV

**Manual Notice List**

Holley L. Claiborn  
Office of The United States Trustee  
The Giaimo Federal Building  
150 Court Street, Room 302  
New Haven, CT 06510

Sioux, LLC  
c/o Jonathan J. Klein, Esq  
1445 Capitol Avenue  
Bridgeport, CT 06604

Sioux, LLC  
Attn: President or Gen Mgr  
1948 Chapel Street  
New Haven, CT 06515

Town of Stratford  
c/o Jackson Law Group CT, LLC  
Two Enterprise Drive, Ste 406  
Shelton, CT 06484

Town of Stratford  
Attn: Tax Collector  
2725 Main Street  
Stratford, CT 06615