

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In Re:	:	Chapter 11
	:	
Cyn Restaurants, LLC	:	Case No.: 18-30185
Debtor	:	
	:	
	:	Re: ECF No. 4
Cyn Restaurants, LLC	:	
Movant	:	
	:	
v.	:	
	:	
Webster Bank	:	
Community Investment Corp.	:	
Respondents	:	

TENTH PRELIMINARY ORDER AUTHORIZING THE DEBTOR TO USE CASH COLLATERAL, GRANTING ADEQUATE PROTECTION AND SCHEDULING FURTHER HEARINGS WITH RESPECT THERETO

UPON CONSIDERATION of the motion (the "Motion") of Cyn Restaurants, LLC, debtor and debtor in possession ("Debtor"), for an order authorizing Debtor to use cash collateral on a Preliminary basis and to schedule a final hearing thereon; and the Court having authority under 11 U.S.C. §§ 363 and 552 and Fed. R. Bankr. P. 4001 to authorize the Debtor to use cash collateral on a preliminary basis to the extent necessary to avoid immediate and irreparable harm to Debtor and to grant adequate protection to such creditors as may be necessary to Debtor's secured creditors; and upon notice to Webster Bank and Community Investment Corp. and after due notice and a hearing having been held; and the Court having considered this matter and the exigent circumstances herein; it is Found That

A. On February 5, 2018 (the "Petition Date"), the Debtor filed a voluntary petition for reorganization under Chapter 11 of Title 11 of the United States Code (the

Bankruptcy Code) in the District of Connecticut. The Debtor has retained possession of its assets and is authorized to continue the operation and management of its business and properties as Debtor and Debtor-in-Possession, pursuant to §§1107 and 1108 of the Bankruptcy Code.

B. Consideration of the motion constitutes a core proceeding as defined in 28 U.S.C. §§ 157 (b)(2)(A) and (M) and, therefore, the Court has jurisdiction over this proceeding and the property affected hereby.

C. Debtor is engaged in the business of the operation of a restaurant known as Stone's Throw located at 337 Roosevelt Drive, Seymour, CT.

D. Prior to the Petition Date, the Debtor and Webster Bank and also Community Investment Corp. were parties to Loans and Security Agreements pursuant to which, among other things, Webster Bank and Community Investment Corp. provided the Debtor with a loans and credit facilities (the "Loan Facilities") secured by liens and/or security interests in substantially all of the Debtor's assets (the "Pre-Petition Collateral"). As of the Petition Date, the Debtor was indebted to Webster Bank in the amount of \$382,175.82 and was also indebted to Community Investment Corp. in the amount of \$208,000.00.

E. Substantially all of the Debtor's revenue is derived from sales of food and beverages which are deposited into its bank account and used to fund operations.

F. The Debtor has represented that it has an immediate and continuing need for the use of the pre-petition collateral and the proceeds thereof constituting "Cash Collateral" as such term is defined in 11 U.S.C. §363(a) ("Cash Collateral") in order to continue the operation of, and avoid immediate and irreparable harm to its business,

and to maintain and preserve going concern value. Accordingly, without the ability to use the Pre-Petition Collateral and the Cash Collateral, the Debtor submits that it will be unable to pay ongoing management, payroll, raw material, insurance, utilities and other necessary expenses related to the continued operation of the Debtor's business, to generate cash flow, and to maintain the value of Debtor's assets. In that event, its employees will be terminated.

G. The Debtor represents that it is in the best interest of all secured creditors holding valid, perfected, enforceable liens that the use by it of the Pre-Petition Collateral and the Cash Collateral on the terms and conditions set forth herein be approved and ordered by the Court; and therefore,

Based upon the foregoing, the representations of counsel, and the arguments presented,

IT IS THEREFORE ORDERED THAT:

1. Subject to the terms and conditions of this Order, the Debtor is authorized, pursuant to 11 U.S.C. § 363(c)(2), to collect and use the Pre-Petition Collateral including without limitation the Cash Collateral from the Order for relief through the next 14 days (the "Preliminary Period") to continue the usual and ordinary operations of the Debtor in the ordinary course of its business by paying those budgeted expenditures (the "Expenditures") set forth on the budget, annexed hereto as **Exhibit A** (the "Budget"), provided, however, that the Expenditures shall not be used for any other purpose, except the expense of administration of the Debtor's estate or otherwise, and no amount or expenses shall be paid, transferred or expended by the Debtor, except as set forth in the Budget or except as may be due pursuant to 28 U.S.C. 1930, or by

further order of this Court. The Debtor shall be allowed a 8% variance per line item for expenses and to that extent, it may transfer between line items but in no event shall the aggregate Expenditures for any Budget period exceed the total amount of Expenditures for such Budget period set forth on the Budget.

2. As adequate protection for any post-petition diminution in value of the Pre-Petition Collateral Post-Petition Collateral and the Cash Collateral arising out of the Debtor's use thereof and/or the continuance of the automatic stay, pursuant to 11 U.S.C. §§ 361, 362 and 363, Webster Bank and Community Investment Corp. are granted post-petition claims against the Debtor's estate (the "Adequate Protection Claim"), which shall have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtor and over all administrative expenses or charges against property of the kind specified in 11 U.S.C. §§ 503(b), 507(a) and (b). As security for the Adequate Protection Claim, pursuant to 11 U.S.C. §§ 361, 362 and 363, the Debtor hereby grants to Webster Bank and Community Investment Corp. enforceable and perfected replacement liens and/or security interests (the "Replacement Liens") in the post-petition assets of the Debtor's estate equivalent in nature, priority and extent to the liens and/or security interests of Webster Bank and Community Investment Corp., in the Pre-Petition Collateral and the proceeds and products thereof (the "Post-Petition Collateral"). The Replacement Lien shall be deemed valid and perfected without the necessity for the execution, delivery and filing or recordation of any further documentation otherwise required under non-bankruptcy law for the perfection of security interests and recordation of liens, with such perfection being binding upon any subsequently appointed Trustee, either in

Chapter 11 or under any other Chapter of the Bankruptcy Code, and upon all creditors of the Debtor who have extended, or may hereafter extend, secured or unsecured credit to the Debtor; provided, however, that Webster Bank and Community Investment Corp. may, in their sole discretion, file such financing statements as they may require with respect to the Replacement Liens.

a. Notwithstanding same, causes of action and recoveries under Chap. 5 of the Bankr. Code are excluded from the replacement liens.

b. Additionally the debtor will pay Webster Bank \$1,360.00 as adequate protection for October, 2018.

3. The Debtor shall, and is hereby authorized to, collect and deposit such Cash Collateral in a segregated DIP bank account, subject to the replacement lien granted in this Order.

4. The entry of this Order does not constitute an admission or concession by any party effected by it and all parties reserve all claims, rights and defenses.

Except as otherwise specifically provided herein and under the Bankruptcy Code, nothing in this Order shall be deemed to be a waiver of any rights any party may have under the Webster or Community Investment Facility. The rights and obligations of the Debtor and the rights and security interests of the lien creditors arising under this Order are in addition to, and not intended as a waiver or substitution for any right, remedy, lien or security interest they previously had.

5. Regardless of the date and time that this Preliminary Order is entered by the Clerk of the Court, the Order shall take affect and is binding upon the parties as of the Petition Date with respect to transactions on and after that time.

6. The Debtor's authority pursuant to this Order to use Cash Collateral, shall expire on October 31, 2018.

7. The Debtor shall continue to keep the Collateral fully insured against all loss, peril and hazard and make Webster Bank and Community Investment Corp. loss payees as their interests appear under such policies.

8. The terms and provisions of this Order, as well as the priorities, liens, security interests and assignments created hereunder, shall continue in this or any superseding case under the Bankruptcy Code, and such liens, security interests and assignments shall maintain their priority provided for by this Order until satisfied and discharged in full.

9. On the date this Interim Order is signed by the Court, the Debtor shall mail fax or email copies of this Interim Order to the U.S. Trustee, the Respondents, the Debtor's twenty largest unsecured creditors, and all parties who have requested notice in this case pursuant to Fed. R. Bankr. P. 2002.

10. This Interim Order shall expire by its terms at 5:00 P.M. on October 31, 2018.

11. Any objection to the continued use of cash collateral must be filed and served no later than October 24, 2018 at 5:00 p.m.

12. A further hearing on the continued use of Cash Collateral shall be held on October 31, 2018, at 10:00 a.m. at the United States Bankruptcy Court, 157 Church Street, New Haven, Connecticut.

Dated at New Haven, Connecticut this 2nd day of October, 2018.

Ann M. Nevins
United States Bankruptcy Judge
District of Connecticut

EXHIBIT A

OCTOBER

Sales	
Sales Discounts	-4431
Food	66,345.00
Beverage	30,020.00
Uber Eats	350
Other	14
Grand Total	92,298.00
Cost Of Goods Sold Food	22,400.00
Cost Of Goods Sold Beverage	9,200.00
Paper Chemical	200
Advertising/Promo	2,500.00
Bank Service Charge	115
Decorating	200
Uniform/Linen	1,400.00
Equipment Rentals	
Exterminator	58
Insurance - Flood	2,100.00
Insurance - Umbrella	4,075.00
Insurance- WC	860
Kitchen Equipment	200
Marketing	208
Music & Entertainment	2,875.00
POS	199
Owner Draw	4,800.00
Repair & Maintenance	500
Taxes- Property	1,200.00
Merchant Service	1,160.00
Licenses	
Legal & Professional	
Landscaping	150
Office Expenses	100
Payroll	13,500.00
Webster Mortgage	1,360.00
SBA Mortgage	1500
Rubbish	326
Cable/Phone	497
Electricity	1,600.00
Propane	1,800.00
Water	390
Septic	500
Trustee Expense	1,500.00
Total Expense	77,473.00
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Total Profit	14,825.00