

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**

*Miami Division*

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In re:

**GOING VENTURES, LLC** d/b/a Going  
Aire, LLC,

**CASE NO. 17-12747-LMI**

Chapter 11

Debtor.

**DEBTOR'S EMERGENCY MOTION FOR ENTRY OF AN INTERIM ORDER:  
AUTHORIZING USE OF CASH COLLATERAL and**

**EMERGENCY HEARING REQUESTED PURSUANT TO L.R. 9075-1**

**As the Debtor requires immediate use of cash collateral to operate its business, the Debtor respectfully requests that this motion be set for hearing as soon as the Court's schedule permits.**

Going Ventures, LLC., d/b/a Going Aire, LLC., the debtor and debtor in possession herein (the "Debtor"), hereby moves on an emergency basis for the entry of an interim order authorizing the Debtor to use certain "Cash Collateral" (as defined in section 363(a) of the United States Bankruptcy Code, 11 U.S.C. §101, *et. seq.* (the "Bankruptcy Code" or the "Code") and hereinafter referred to as "Cash Collateral"), all which Cash Collateral is presently subject to several alleged security interests. In support of the Motion, the Debtor states as follows:

**Jurisdiction**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

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

3. The statutory predicates for the relief requested herein are Sections 105, 361, 362 and 363 of the United States Bankruptcy Code, Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure.

### **Background**

4. On March 7, 2017, ("Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the "Chapter 11" or the "Case").

5. Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to operate its business and manage its financial affairs as debtor-in-possession. No trustee, examiner or statutory committee has been appointed in the Chapter 11 Case.

6. The Debtor is a contractor, generally providing air conditioning installation and repairs in the residential markets of the northern Florida Keys.

### **The Lenders**

7. Due to certain financial woes, in mid to late 2016 the Debtor began borrowing from certain "hard money" lenders, (the "Lenders"). Upon information and belief, these Lenders On Deck Capital, Inc., 1<sup>ST</sup> Merchant Funding, Max Advance, Secure Money Solutions, LLC, Merchant Funding, IT Mantis Funding. The modus operandi of each of the Lenders is similar. The Loans are repaid daily by EFT arrangements, put otherwise, the Lenders take their repayments out of the Debtor's accounts every day.

8. The effective interest rates are as follows:

On Deck -	43% (annualized - 19-month daily sweep)
1st Merchant -	106 % (10-month deal)
Max Advance -	88% (10-month deal)
Merchant Funding -	532% (4-month deal)
IT Mantis -	370% (4-month deal)

9. To avoid the obvious usury problem, virtually all the Lenders, save one, styled their loan documents as the purchase and sale of the Debtor's accounts or accounts receivable. Yet none of them included any information regarding the accounts. The Lenders also all filed UCC-s's, and all of them were filed by the Corporation Service Company, as representative.

10. In addition, all the Lenders are reclusive, and none ever provided a counter signed original of their loan documents nor provided any contact information to the Debtor.

11. Only On Deck styled its loan as a "Business Loan and Security Agreement". The said agreement clearly states that it carries a 36% interest rate, before the calculation in of charges and fees (per Florida law).

12. Ostensibly, all the Lenders would allege a lien on some or all the Debtor's assets, including, as is most relevant here, its cash and other manifestations of ready funds as contemplated in Section 363 of the Code (the "Cash" or "Cash Collateral"). None would be correct.

13. Without agreeing that the Lender in fact has a valid lien on the Cash Collateral, or anything else, the existence of the UCC's suggests that the Debtor should seek the use of its Cash Collateral pursuant to Section 363 of the Code.

14. The Debtor has or will file a "first day motion" seeking the Court's authority to enter into DIP financing (generally, the "DIP") which will supplement the Debtor's revenues in the early stages of the Case.

15. In addition, the Debtor has or will file a "first day motion" seeking the Court's authority to pay certain critical vendors, typically using the DIP financing referenced in the previous paragraph.

### **The Cash Collateral Motion**

16. The Debtor derives revenues from the sale and installation and repair of air conditioning units, generally in residential settings.

17. As indicated in the budget attached hereto, the Debtor's business produces sufficient cash flow to maintain itself with more than sufficient funds to pay its routine bills and obligations.

### **Relief Requested**

18. By this Motion, the Debtor seeks the entry of an interim order ("Interim Order") authorizing the Debtor's use of Cash Collateral under the terms described below and in accordance with the cash collateral budget attached hereto as **Exhibit "A"** (the "Budget")<sup>1</sup>, and the entry of a final order after proper notice and hearing.

### **Basis for Relief**

19. For the purposes of this Motion and the Interim Order, the term "Cash Collateral" means the Debtor's available cash and other charges collected by the Debtor in any manner.

20. An emergency need exists for the Debtor to use Cash Collateral to maintain its business operations. The Debtor requires Cash Collateral for the payment of, *inter alia*, operating expenses, and the payment of its vendors. The payment terms in this or any service based business requires very short time frames. If vendors are not paid timely, they will not continue selling to the Debtor. The Debtor also requires the use of its

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<sup>1</sup> If the Budget is not attached to this Motion, it will be uploaded and circulated to the parties prior to the hearing on the Motion.

Cash to pay taxes, and to meet all other expenses necessary to preserve its assets and continue its operations.

21. The Debtor's business and cash flows are sufficient to provide adequate protection, however, for clarity, no such adequate protection is proposed here.

22. If this Motion is not considered on an expedited basis, and if the Debtor is denied the ability to immediately use the Cash Collateral, there will be a direct and immediate material and adverse impact on the continuing operation of the Debtor's business and on the value of its assets. To achieve a successful reorganization, the Debtor must use the Cash Collateral in its ordinary business operations. The Debtor's inability to pay its ordinary business expenses will require it to discontinue normal operations which will result in immediate and irreparable injury to the Debtor and its chances for reorganization.

23. If allowed to use the Cash Collateral, the Debtor believes that it can maintain its business operations during this Chapter 11 Case as it seeks to propose a plan of reorganization which contemplates payment in full to all creditors.

24. The terms for the use of the Cash Collateral, as detailed below in subsection A, are fair and reasonable, and the proposed adequate protection, detailed in subsection B, will preserve the value of the collateral.

**A. Use of Cash Collateral**

25. Section 363 of the Bankruptcy Code governs a debtor's ability to use, sell, or lease property of the estate. Section 363(c)(2) of the Bankruptcy Code restricts a debtor's ability to use the Cash Collateral and provides, in pertinent part:

The trustee [or debtor in possession] may not use, sell, or lease 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, sale, or lease in accordance with the provision of this section. *Id.*

26. Section 363(a) of the Bankruptcy Code defines cash collateral as, *inter alia*, “the proceeds, products, profits, offspring, rents or profits of property.” 11 U.S.C. § 363(a). As stated above, and for the purposes of this Motion, the Lender’s alleged cash collateral may consist of monies collected by the Debtor or by SE.

27. The Debtor seeks authorization to use Cash Collateral in the amounts set forth on the Budget. Unused budgeted amounts for any month shall roll over to the next month. The Debtor will be allowed to deviate from the Budget in an amount no more than 15% per line item per month to the extent necessary to operate its business through confirmation of the Plan.

#### **B. Adequate Protection**

28. “Adequate protection is a means of preserving a creditor's interest in secured collateral subject to post-petition use by the debtor.” *In re Carpet Center Leasing Co., Inc.*, 991 F.2d 682, 686 (11th Cir. 1993). What constitutes adequate protection is determined on a case-by-case basis. See *MLender Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1396-97 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985). Simply stated, adequate protection is necessary only to the extent the use of the creditor’s collateral will result in a decrease in “the value of such entity’s interest in such property.” 11 U.S.C. §§ 361, 363(e); see *United Savings Ass’n of Texas v. Timbers of*

*Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988) (the “interest in property” entitled to protection is “the value of the collateral” securing the claim).

29. It is in the Lender's interest that the Debtor be allowed to use the Cash Collateral. The Lender's alleged interest in the collateral will be substantially impaired or destroyed if the Debtor halts operations. Also, use of the Cash Collateral allows the Debtor to preserve the status quo and provide the Debtor an opportunity to reorganize for the benefit of all creditors.

30. The Debtor believes that the adequate protection described above is reasonable and in the best interest of its estate. As such, the Debtor requests the Court grant the foregoing adequate protection to the Lender.

31. The Debtor requests that the Court conduct an emergency hearing pursuant to Rule 4001(b)(2), and conduct a final hearing on not less than 14 days' notice after service of the motion.

**Notice of Interim and Final Hearing**

32. The Debtor does not have good contact information for the Lenders and has had no ability to be in contact with them to negotiate or provide notice of this Case. The addresses below are obtained wither from the Lender's documents, or the public record. The Debtor will serve this and all first day motions by overnight delivery to these addresses, with the source of the address(es) contained in the parenthetical.

On Deck Capital- (1400 Broadway 25th Floor, New York, NY 10018) (public record)

1st Merchant Funding, LLC (12000 Biscayne Blvd, Suite 609 Miami, FL 33181)  
(address on website)

Mantis Funding, LLC (64 Beaver Street, Suite 344, New York, NY 10004) (loan document)

Max Advance (4208 18th Ave, Brooklyn, NY 11218) (loan document and FaceBook page)

Merchant Funding Services, LLC: 1 Evertrust Plaza, 14th Floor, Jersey City, NJ 0730; 30 Broad Street 14th Floor, Suite 141082 New York, NY 10004 (both from loan documents); MCA Recovery LLC 17 State Street, Suite 4000, New York, NY 10004 (pursuant to litigation pleadings) and Renata Bukhman, Esq. (same address as MCA)



33. Notice of this Motion shall also be given to: (a) the Office of the United States Trustee (via EM/ECF); (b) the Lenders via overnight mail; (c) to all relevant taxing authorities by US Mail; (d) any other party who has requested notice in the Bankruptcy Case by the means requested) and (d) the list of twenty (20) largest unsecured creditors of the Debtor (the "Service List") (by US Mail). Considering the nature of the relief requested, the Debtor submits that no further notice need be given.

34. The Debtor requests that it be authorized to serve a copy of the signed interim order authorizing the use of the Cash Collateral which fixes the time and date for filing with objections, if any, by overnight mail upon the Lenders at the addresses supra, by first class mail upon the Service List and all other parties that have filed appearances in this case or as otherwise directed by this Court. The Debtor requests that the Court consider such notice of the final hearing to be sufficient notice under Bankruptcy Rule 4001.

### **Conclusion**

**WHEREFORE**, the Debtor respectfully request that the Court enter an order: (a) granting the Motion; (b) authorizing the Debtor's use of Cash Collateral pursuant to the terms of the proposed Interim Order; (c) granting the Lender adequate protection, if necessary, under 11 U.S.C. §§ 361 and 363; and (d) granting such other and further relief as is just and proper.

### **CERTIFICATION**

**I CERTIFY** that on this date, true copies of the foregoing were served on all parties entitled to notice via EM/ECF, and upon all other parties listed by the means indicated above.

DATED: March 7, 2017

**Case No.: 17-12747-LMI**

Debtor's Emergency Motion for Use of Cash Collateral

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/s/ David R. Softness

David R. Softness, Esq.

FBN: 513229

**DAVID R. SOFTNESS P.A.**

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*Proposed Counsel for Debtor*

# EXHIBIT "A"

11:24 AM

03/07/17

Accrual Basis

# GOING AIRE Profit & Loss

January 1 through March 7, 2017

	Jan 1 - Mar 7, 17
Ordinary Income/Expense	
Income	
Rental Income	5,600.00
Sales Revenue	
Appliance Sales & Service	33,475.88
HVAC Construction,Sales & Serv	185,345.12
Key Largo HVAC/Service	5,007.67
Preventative Maintenance Rev	9,424.00
Sales Revenue - Other	172.50
Total Sales Revenue	233,425.17
Total Income	239,025.17
Cost of Goods Sold	
Credit Card Transaction Fees	4,833.12
Delivery Charges	22.50
Labor/Installation Costs	
Appliance/Labor & Installation	5,588.00
HVAC/Labor & Installation Cost	38,730.47
Total Labor/Installation Costs	44,318.47
Materials and Product Purchases	
Appliances Purchases	1,589.17
HVAC Parts & Material Purchase	59,819.99
Materials and Product Purchases - Other	-397.93
Total Materials and Product Purchases	61,011.23
Other Job Costs	
Crane/Equipment Rental	395.00
Gas & Oil	2,099.09
Sales Tax paid on Purchases	147.99
Uniforms Exp	-84.74
Total Other Job Costs	2,557.34
Total COGS	112,742.66
Gross Profit	126,282.51
Expense	
Advertising & Promotions	3,389.80
Ask My Accountant	-1,557.84
Bank Charges	
Finance Charges Credit Cards	518.33
Late Fee Credit Cards	39.00
Bank Charges - Other	-16,550.28
Total Bank Charges	-15,992.95
Car,Truck & Cart Expense	
Insurance-Auto	8,921.46
Car,Truck & Cart Expense - Other	1,817.41
Total Car,Truck & Cart Expense	10,738.87
Dues & Licenses	12,000.00
Insurance	
Medical	1,429.98
Medical Insurance	10,567.70
Insurance - Other	7,952.69
Total Insurance	19,950.37
Labor Costs - Office Staff	19,712.50

11:24 AM

03/07/17

Accrual Basis

**GOING AIRE**  
**Profit & Loss**  
 January 1 through March 7, 2017

	Jan 1 - Mar 7, 17
Legal & Professional Fees	
Accounting Fees	279.56
Total Legal & Professional Fees	279.56
Maintenance & Repairs	4,110.00
Office Expenses	
Bank Charges	280.00
General Office Exp	59.90
Office Supplies	877.18
Postage & Delivery	141.82
Office Expenses - Other	197.38
Total Office Expenses	1,556.28
Payroll Expenses	33,457.41
Rent	21,579.93
Taxes	
Real Property Taxes	5,500.63
Tangible Personal Property	1,140.83
Total Taxes	6,641.46
Telephone Expense	
Cell Phones	2,476.90
Telephone Expense - Other	605.47
Total Telephone Expense	3,082.37
Utilities	
Gas and Electric	451.09
Trash Service	352.48
Total Utilities	803.57
Total Expense	119,751.33
Net Ordinary Income	6,531.18
Net Income	6,531.18

# EXHIBIT "B"

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA**

*Miami Division*

[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

**GOING VENTURES, LLC** d/b/a Going  
Aire, LLC,  
  
Debtor.

**CASE NO. 17-12747-LMI**

Chapter 11

\_\_\_\_\_ /

**INTERIM ORDER GRANTING DEBTOR'S EMERGENCY MOTION  
AUTHORIZING USE OF CERTAIN CASH COLLATERAL**

**and**

**SETTING FINAL HEARING**

**THIS CAUSE**, having come before the Court for hearing on an emergency basis on Thursday, March 9, 2017, at \_\_\_\_\_, upon the motion of the Debtor, Going Ventures, LLC., d/b/a Going Aire, LLC ("Debtor,") entitled "Motion for Entry of an Interim Order: Authorizing Use of Cash Collateral (CP# -\_\_\_\_), (the "Motion").

The Court, having considered the Motion, the record on this matter, having reviewed the file, having heard respectively from counsel for the Debtor, and the Court noting noted the agreement of the parties as set forth herein, and being otherwise fully advised in the premises, it is:

**ORDERED AND ADJUDGED:**

1. The Motion is granted as set forth herein.
2. The Court expressly finds that the alleged liens of the Alleged Lenders, as same are defined in the Motion are adequately protected without the need for further or additional liens or periodic payments.
3. Use of Cash Collateral. Subject to the provisions of this Order, the Debtor is authorized to use cash collateral as defined in Section 363(a) of the Bankruptcy Code to pay in the ordinary course of its business for the purposes contained in the budget attached hereto as Exhibit "A" (the "**Budget**"), as well as applicable United States Trustee fees, through and including \_\_\_\_\_the "**Interim Period**").
4. The respective lien rights of the Alleged Lenders, such as they are, are preserved pending further analysis and Order of the Court.
5. The Debtor may pay all of its post petition expenses in the ordinary course in compliance with the budget attached to the Motion. However, no payments shall exceed the line items on the Budget by an amount exceeding to ten percent (10%) of each such line item.
6. Duration: The provisions of this Order shall remain in effect until the earlier of the entry of an order dismissing this case, or the entry of any order by the



Court extending the use of cash collateral.

7. The relief provided herein, including the Debtor's use of the cash collateral, shall be *nunc pro tunc* to March 7, 2017

8. Further Hearing: A final hearing to consider the relief sought in the Motion shall be held before the Court on \_\_\_\_\_ at \_\_\_\_\_ at the United States Bankruptcy Court, C. Clyde Atkins U.S. Courthouse, 301 North Miami Avenue, Courtroom 8, Miami, Florida 33128.

\* \* \*

Order Submitted by:

David R. Softness, Esq.  
FBN: 513229  
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201 South Biscayne Boulevard  
Suite 2740  
Miami, FL 33131  
Tel: 305-341-3111  
Email: david@softnesslaw.com

Counsel for Debtor

Service:

Attorney David Softness is directed to serve a conformed copy of this Order on all appropriate parties and file a certificate of service in connection therewith.