

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In Re:

Case No.: 17-21784-AJC
Chapter 11 Proceeding

419 SW 2ND AVENUE, LLC

Debtor-in-Possession.

**DEBTOR'S MOTION PURSUANT TO 11 U.S.C. §§ 361, 362, 363, 542 AND 552 AND
FED. R. BANKR. P. 4001, 6003 AND 9014 FOR AND ORDER (I) AUTHORIZING USE
OF CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION, AND (III)
APPROVING PAYMENTS TO CRITICAL VENDORS AND PARTIES**

(Emergency Hearing Requested)

Basis for Requesting Emergency Hearing

The Debtor respectfully requests that the Court conduct a hearing on this Motion on November 7, 2017, consistent with Local Rule 9013-1(F). The Debtor owns a twenty-two unit building and is currently considered a condemned property by the City of Homestead post hurricane Irma as it has sustained severe damages and poses danger to anyone occupying the premises. The building needs to be boarded up immediately before it becomes an attractive nuisance to general public (children in the neighborhood) and wild life. Absent the ability to use Cash Collateral the Debtor will not be able to board up the property, consequentially the Debtor will incur liabilities in the forms of fines imposed by the City of Homestead and may incur further liabilities if anyone gets injured on the premises. The Debtor respectfully requests that the Court wave the provisions of Local Rule 9075-1(B), which requires an affirmative statement that a *bona fide* effort was made in order to resolve the issues raised in this Motion, as the relief requested herein is urgent in nature and does not lend itself to advance resolution. The Debtor and the Secured Lender have agreed to allow the use of cash collateral solely for the use of boarding up the premises. The Debtor and the Secured Lender have not been able to reach a resolution regarding the usage of cash for other items herein requested; however, the Debtor is hopeful that a resolution can be reached.

419 SW 2ND Avenue, LLC (the "Debtor"), by and through its undersigned counsel, respectfully requests this Court for the entry of an Interim Order in the form attached hereto as

“Exhibit A” (i) authorizing the Debtor to utilize cash collateral, (ii) approving payments to critical vendors, and (iii) scheduling a final hearing, pursuant to 11 U.S.C. §§ 361, 362, 363, 542 and 552, Fed. R. Bankr.P. 4001(b) and (d), 6003 and 9014, and Local Rules 4001-2, 9013-1(F) and (G) and 9075-1. In support of this Motion (the “Motion”), the Debtor respectfully states as follows:

I. JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 §§ 157(b) and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 105 and 361, 362, 363(c)(2), 542 and 552 of 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”) and Rules 4002(b) and (d), 6003 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules 4001-2 and 9013-1(F) and (G).

II. BACKGROUND

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

4. The Debtor continues to manage and operate its business as a Debtor-in-Possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed.

5. The Debtor is a Florida Limited Liability Corporation formed on March 11, 2014 and changed ownership on June 22, 2015. The Debtor owns and manages the present business operation, a twenty-two unit rental building located at 419 SW 2nd Ave, Homestead, FL 33030 .

**III. SUMMARY OF RELIEF REQUESTED
(In accordance with the Court’s Guidelines(CG-7))**

6. Pursuant to the Bankruptcy Rule 4001(b)(1)(B), the Debtor seeks entry of the proposed Interim Order in the form attached hereto as “Exhibit A,” as well as the Final Order, authorizing the Debtor to:

- Use Cash Collateral (as defined below) pursuant to Section 363(c) of the Bankruptcy Code in accordance with the budget attached hereto as “Exhibit B” (the “Budget”), which use shall include professional fee carve-out as detailed below.
- Grant to the Secured Lender various forms of adequate protection liens.

7. In addition, the Debtor requests that the Court schedule interim emergency and final hearings to consider the Motion.

IV. PREPETITION SECURED INDEBTEDNESS

Loan¹

8. On or about June 19, 2015, Hutton Ventures, LLC, a Delaware Limited Liability Company (“**Hutton**”), made a loan to the Debtor in the original principal amount of \$1,050,000.00 (the “**Hutton Loan**”).

9. The Hutton Loan was secured by certain loan documents executed in connection therewith (collectively, the “**Hutton Loan Documents**”), including, but not limited to, that certain Mortgage, Collateral Assignment of Lease, Rents, and Licenses (the “**Hutton Mortgage**”) dated June 19, 2015 by Debtor in favor of Hutton, recorded June 25, 2015 in Official Records Book 29670 at Page 3217, of the Official Records of the Miami-Dade County (the “**Records**”). On the same day, Debtor executed a Collateral Assignment of Leases, Rent and

¹ This information regarding the Loan and the various loan documents and parties is asserted by the Secured Lender, and the Debtor has not completed an analysis of the perfection or validity of the Secured Lender’s interest, or whether any of the claims or security interests of the Secured Lender are subject to avoidance or subordination. Nothing in this Motion is intended or should be construed as an admission by the Debtor as to the nature, validity, extent, or priority of the alleged claims or security interest of the Secured Lender.

Licenses in favor of Hutton and it was recorded June 25, 2019 in Official Records Book 29670 at Page 3231 of the Records.

10. As part of the Loan transaction, Mr. Jose Paradelo (“**Guarantor**”) and Mr. Arthur Seidt, now deceased, executed a Payment Guaranty in favor of Hutton.

VALUE OF PROPERTY

11. The Debtor’s assets, which includes the underlying real estate property, together with personal property, is valued at approximately \$530,000.00 by Miami-Dade tax appraiser, subject to further appraisal by an independent licensed professional.

V. RELIEF REQUESTED

12. The Secured Lender has a first priority, perfected lien on all of Debtor’s cash generated from the operation, sale, disposition or other realization of any assets or property of the Debtor, wherever located, which constitutes cash collateral as defined in Section 363 of the Bankruptcy Code (the “**Cash Collateral**”).² As such, absent the relief requested herein, the Debtor will not have use of the cash necessary to repair the property, to preserve and protect the value of said property, or to operate its business and pay necessary expenses. It is therefore critical that, pending a final hearing on this Motion, the Debtor obtains immediate approval to use Cash Collateral, on an interim basis. Indeed, the success of this Chapter 11 case and the stabilization of the Debtor’s operation and business at the outset depend upon the Debtor’s ability to continue to fund the operation of its business and permit it to immediately repair the property and to meet other operating expenses, as well as the Debtor’s ability to preserve the going concern value of its business.

² At this time, the Debtor has not completed an analysis of the perfection or validity of the Secured Lender’s interest, or whether any of the claims or security interest of the Secured Lender is subject to avoidance or subordination. Nothing in this Motion is intended or should be construed as an admission by the Debtor as to the nature, extent, or priority of the claims or security interest of the Secured Lender. Rather, to the extent that the Secured Lender has an interest in the Cash Collateral, the Debtor proposes to provide the Secured Lender with the adequate protection described herein.

13. Absent the ability to use Cash Collateral, the Debtor won't be able to board up the condemned property and as a result an immediate and irreparable harm will be caused to Debtor and the estate, may incur further liability to individuals, especially children, that become attracted to the nuisance and get injured on the premises and the value of the subject real estate will not be preserved. Moreover, Debtor's operations will come to a halt and parties in interest will be severely prejudiced. In contrast, approval of the use of Cash Collateral on an interim basis will ensure the operation of Debtor's business and allow for an orderly reorganization.

14. 11 U.S.C. § 363(c)(2) permits a Debtor-in-Possession to, among other things, use "cash collateral" if: (A) each entity that has an interest in such cash collateral consent; or (B) the Court, after notice and a hearing, authorizes such use, sale, or lease. If a secured creditor does not consent to the use of its cash collateral, the Court may authorize a Debtor to use cash collateral if it determines that the Debtor has provided "adequate protection" to the secured creditor's interest in the cash collateral.

15. While the Bankruptcy Code does not explicitly define "adequate protection," it does suggest that adequate protection may be provided by: (1) periodic cash payments to the extent that there is a decrease in the lienholder's interest in the property; (b) providing additional or replacement liens; or (c) other relief resulting in the realization of the "indubitable equivalent" of the lien holder's interest in the property. 11 U.S.C. § 361.

16. In view of the foregoing, the immediate relief sought herein is necessary and essential in order for the Debtor to continue to meet its financial obligations to its employees, vendors, and other creditors, and to maintain its operations and property so as to maximize the

value of its estate. For these same reasons, the relief sought herein is in the best interest of the Debtor and its estate.

17. In order to achieve smooth continuity of the Debtor's business operations, the Debtor seeks to implement a cash collateral mechanism similar to the procedures used by the Debtor prepetition. All deposits including business revenues, credit card/wire receipts, and cash/check deposits shall be made into the Debtor In Possession's Operating Account.

18. Specifically, the Debtor seeks to use Cash Collateral for those purposes and in the amounts set forth in the budget which is attached hereto as "Exhibit B." This Budget contains typical prepetition expenditures and encompasses and provides for the complete operation and management of the playground and the attached cafeteria and gift store.

19. The Debtor requests that it be allowed an overall variance of ten percent (10%) with respect to the total budgeted expenses for that month in the Budget (the "Allowed Variance"). Finally,

THIS CAUSE came before the Court upon the Debtor's Non-Individual Debtor in Possession's Application for Employment of Accountant *Nunc Pro Tunc* from July 13, 2017 (the "Application) [ECF ____], and the Affidavit of Stephen Korn, CPA on behalf of Kim Marks CPA, PA, as Proposed Accountant for the Debtor, the ("Affidavit"), attached to the Application as "Exhibit A".

The Application requests entry of an Order approving the Debtor's employment of Stephen Korn, CPA, and Kim Marks CPA, PA to provide accounting services in this Chapter 11 case. The Court has jurisdiction over the matters raised in the Application pursuant to 28 U.S.C. §157(b)(2)(A). the relief requested in the application is in the best interests of the Debtors, their estate, and their creditors. The affidavit makes relevant disclosures as required by Federal Rules

of Bankruptcy Procedure 2014 and 2016 (the “Bankruptcy Rules”). The Affidavit contains a verified statement as required by Bankruptcy Rule 2014 demonstrating that Stephen Korn, CPA and Kim Marks CPA, PA are disinterested as required by 11 U.S.C. §327(a). Pursuant to 11 U.S.C. §327(a), Bankruptcy Rule 2014(a), and Local Rule 2014 demonstrating that Stephen Korn CPA, PA and Kim Marks CPA, PA are disinterested as required by 11 U.S.C. §327(a). Pursuant to 11 U.S.C. §327(a), Bankruptcy Rule 2014(a), and Local Rule 2014-1(A), the Court is authorized to grant the relief requested in the Application. Upon the record herein, and after the deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein.

Accordingly, it is hereby

ORDERED as follows:

1. The Application is **APPROVED**.
2. The Employment of Stephen Korn, CPA and Kim Marks CPA, PA as accountant to the Debtor in this Chapter 11 case is approved pursuant to 11 U.S.C. §327(a), on a final basis.
3. The employment of Stephen Korn, CPA and Kim Marks CPA, PA by the Debtor shall be *nunc pro tunc* to the petition date of July 13, 2017.
4. As compensation for services rendered and costs incurred, Stephen Korn, CPA and Kim Marks CPA, PA shall receive a monthly payment for services related to the filing of the Debtor’s tax returns, the preparation of financial statements, and assisting the Debtor with the preparation of its Monthly Operating Report as follows: (i) the fee for compiling the financial statement will be billed at the rate of \$150.00 per hour for accounting and consulting and \$100 per hour for bookkeeping.

5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

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Order submitted by:

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