

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE: : CHAPTER 11  
: :  
DAVID AND VERDA DICORTE :  
REVOCABLE TRUST : CASE NO. 16-60447 MGD  
: :  
: :  
Debtor :

---

**MOTION TO APPROVE THE USE OF CASH COLLATERAL TO PAY  
ADEQUATE PROTECTION PAYMENTS**

COMES NOW DEBTOR David and Verda DiCorte Revocable Trust (“Debtor” or the “Trust”) by and through their undersigned counsel files this Motion to Approve Use of Cash Collateral to Pay Adequate Protection Payments (the “Motion”) pursuant to Fed. Rule Bankr. P. 4001(d), and in support thereof, states as follows:

**GENERAL BACKGROUND**

1. On June 15, 2016, Debtor filed its voluntary petition under Chapter 11 of Title 11 of the United States Code (“Petition Date”).
2. The Debtor is a family trust created by David Vincent DiCorte (the “Grantor”) and accepted by Karen Hope DiCorte Yore (the “Trustee”) pursuant to the laws of the State of Florida for the benefit of Grantors adult children, Billy David DiCorte, Roy Lee DiCorte, Karen Hope DiCorte Yore, and Naomi Lynn DiCorte Carmen (collectively “the Beneficiaries”).
3. No committee has been appointed in the Debtor’s case.

### BACKGROUND FACTS

4. Creditor Greenwich Investors XLIX Trust 2015-1 (“Greenwich”) holds a first priority security interest in the two properties owned by Debtor (the “Properties”). Greenwich’s total claim, as of the Petition Date, was \$1,097,426.13.

5. Debtor and Creditor have agreed on a plan to treat the secured debt in the Chapter 11 Plan of Reorganization, and through a series of monthly payments of adequate protection, equal to \$3,000 per month (each a “Payment”).

6. Because all of Debtor’s revenues come from the operation, leasing, and ownership of the Properties, no creditor will be prejudiced by disbursing the Payment directly to Greenwich.

7. Since the Petition Date, Debtor has increased the revenues from the Properties and can now afford to begin making the Payments directly to Greenwich on a monthly basis.

8. Prior to filing this Motion, Debtor has secured consent or non-opposition from both Greenwich and the United States Trustee.

9. Greenwich and Debtor have reached an Agreement, the terms of which are incorporated into the proposed order attached hereto as *Exhibit A*.

10. Pursuant to the Agreement, Debtor will pay the Payments directly from the revenues derived from the Properties. The feasibility of the Payments is established by the Monthly budget attached to the Proposed Order.

WHEREFORE, Debtor respectfully requests that this Court enter an Order Granting this

Motion to Use Cash Collateral to Pay Adequate Protection Payments, providing for (i) the payment of an immediate payment from cash collateral reflecting sums due from December, 2016 and January, 2017, and (ii) a continuing monthly payment from cash collateral in the amount of \$3,000 per month (paid by the tenth) until such time as the Chapter 11 Plan of reorganization is confirmed.

DATED this the 10th day of February, 2017.

/s/ Howard P. Slomka, Esquire

Howard P. Slomka, Esquire  
***Attorney for Chapter 11 Debtor***  
Georgia Bar Number: 652875  
Slomka Law Firm, PC  
1069 Spring Street NW, Suite #200  
Atlanta, Georgia 30309  
Telephone: 678-732-0001  
Facsimile: 678-666-3980

Exhibit A: Proposed Order

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: : CHAPTER 11  
 :  
 :  
 DAVID AND VERDA DICORTE :  
 REVOCABLE TRUST : CASE NO. 16-60447 MGD  
 :  
 :  
 :  
 Debtor :

---

**NOTICE OF MOTION AND 14-DAY OPPORTUNITY TO RESPOND**

**YOUR RIGHTS MAY BE WAIVED BY FAILURE TO RESPOND**

**PLEASE TAKE NOTICE** that Debtor David and Verda DiCorte Revocable Trust (“Debtor”) has filed a **MOTION TO USE CASH COLLATERAL TO PAY ADEQUATE PROTECTION PAYMENTS**.

**PLEASE TAKE FURTHER NOTICE** that pursuant to Fed. Rule Bankr. Proc. 4001(d)(2), Objections to this Motion are due within 14 days of this notice, unless the Court fixes a different time.

Rule 4001(d)(3) states that “If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. . .”

Your rights may be affected by the court’s ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how, and on whom you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk’s Office is: Clerk, U.S. Bankruptcy Court, Room 1340, 75 Spring Street, Atlanta, GA 30303. You must also mail a copy of your response to the undersigned at the address stated below.

Dated this 10<sup>th</sup> day of February, 2017

Respectfully Submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Howard Slomka, Esq.  
Georgia Bar # 652875  
The Slomka Law Firm, P.C.  
Attorney for Debtor  
1069 Spring Street, NW, 2nd Floor  
Atlanta, GA 30309  
Tel. (678) 732-0001

**EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>IN RE:</b>	)	
	)	<b>Chapter 11</b>
	)	
<b>DAVID AND VERDA DICORTE</b>	)	
<b>REVOCABLE TRUST,</b>	)	
	)	<b>Case No. 16-60447-MGD</b>
<u>Debtor.</u>	)	
<b>DAVID AND VERDA DICORTE,</b>	)	
<b>REVOCABLE TRUST</b>	)	
<b>Movant,</b>	)	<b>CONTESTED MATTER</b>
	)	
<b>v.</b>	)	
	)	
<b>GREENWICH INVESTORS XLIX</b>	)	
<b>TRUST 2015-1,</b>	)	
	)	
<u>Respondent.</u>	)	

**CONSENT ORDER AUTHORIZING USE OF CASH  
COLLATERAL AND PAYMENT OF ADEQUATE PROTECTION  
PURSUANT TO 11 U.S.C. §363 AND NOTICE OF FINAL HEARING**

This matter came before this Court for hearing on \_\_\_\_\_, 2017 (the "Hearing") on the *Debtor's Motion to Use Cash Collateral to Pay Adequate Protection Payments*

[Doc. No. \_\_\_\_] (the "Motion") filed by David and Verda Dicorte Revocable Trust ("Debtor") on February 10, 2017. Pursuant to the Motion, Debtor seeks authority on a final basis to use the proceeds, rents, and other income (the "Cash Collateral") associated with property owned by Debtor constituting commercial real estate commonly known as 6208-6210 Grand Boulevard, New Port Richey, Pasco County, Florida (the "Grand Boulevard Property") and 7780 Little Road, New Port Richey, Pasco County, Florida (the "Little Road Property"; collectively with the Grand Boulevard Property, the "Property"). The parties agreed prior to the hearing to resolve the Motion by consent order and hereby stipulate to the following:

A. **Pre-Petition Liens**

Respondent Greenwich Investors Trust XLIX Trust 2015-1 ("Greenwich" or "Respondent") is the holder of and has the right to repayment of the Loan represented by the following:

- (i) Promissory Note dated September 30, 2010 from Frank J. Yore and Karen Hope Yore (collectively, the "Borrowers") to Wakulla Bank in the original principal amount of \$971,959.20 (the "Note"), as assigned to Greenwich Investors Trust XLIX Trust 2015-1 from CRE Venture 2011-1, LLC, as assignee from the FDIC, as Receiver for Wakulla Bank; and
- (ii) Real Estate Mortgage (the "Mortgage"; together with the Note and other documents evidencing the loan, the "Loan Documents") securing the Note executed by Karen Hope DiCorte Yore, as Trustee of the David and Verda Dicorte Revocable Trust Agreement, as recorded October 15, 2010 in Book 8444, Page 671, Pasco County, Florida granting a security interest in the Property; and
- (iii) Final Judgment of Foreclosure entered in favor of CRE Venture 2011-1, LLC in the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida against Karen Hope Dicorte Yore, as Trustee of The David and Verda DiCorte Revocable Trust Agreement (the "Foreclosure Judgment"), as assigned to Greenwich.

Respondent properly perfected its security title to, security interests in and liens upon the

Property, and has a first-priority security interest in the Cash Collateral.

**B. Pre-Petition Debt**

As of June 15, 2016 (the “Petition Date”), the amount of principal and interest due and owing to Greenwich under the Note was **\$1,097,426.13**, plus additional fees and costs, and attorneys’ fees which are contractually due (the “Greenwich Debt”).

**C. Need for Use of Cash Collateral.** Debtor asserts that it requires the use of Cash Collateral to continue operating its business. Debtor asserts that serious and potentially irreparable harm to Debtor, its creditors and its estate may occur absent authorization for the use of Cash Collateral.

1. The Debtor stipulates that Respondent is entitled to adequate protection of its interests in the Property and other collateral.

2. It appears that the terms associated with Respondent’s consent to the Debtor’s use of Cash Collateral, as embodied in this Order, are fair and reasonable and have been negotiated by the parties in good faith.

3. Based upon the foregoing stipulations, and for cause shown, IT IS HEREBY ORDERED, ADJUDGED, and DECREED THAT:

1. **Grant of Motion.** The Motion is hereby **GRANTED** as hereinafter set forth.

2. **Cash Collateral Period.** Debtor’s authority to use Cash Collateral in accordance with the terms and conditions set forth in this Consent Order shall begin upon entry of this Consent Order and terminate upon the earliest to occur of any of the following: (i) 11:59 p.m. on April 30, 2017 or the effective date of the confirmed Chapter 11 plan of reorganization (the “Plan”) if earlier ; (ii) the date the Debtor fails to make any adequate protection payment to Respondent required under the terms of this Consent Order in a timely manner, or to deliver the



reports required under the terms of this Consent Order in a timely manner; (iii) the date the Debtor fails to discharge any duty or other obligation imposed upon it in this Consent Order or has otherwise violated any requirement or condition to use of Cash Collateral provided in this Consent Order; or (iv) the date this Consent Order is amended, vacated, stayed, reversed, or otherwise modified without prior written consent of Respondent (the "Cash Collateral Period").

3. **Authority to Use Cash Collateral.**

a. Debtor may use Cash Collateral during the Cash Collateral Period in accordance with the budget attached hereto as Exhibit A (the "Budget"). With respect to each line item in the Budget, expenditures of Cash Collateral shall not exceed ten percent (10%) of the amount set forth in the Budget for each line item (except for utilities, insurance and United States Trustee fees, for which Debtor will pay the actual amount due).

b. Without prejudice to Respondent's rights and remedies under the Loan Documents, tenants and occupants of the Property shall pay rents and income to Debtor to be held or used only pursuant to the terms of this Consent Order.

c. Debtor shall not use, sell, or expend, directly or indirectly, Cash Collateral or any proceeds, products or offspring thereof, except as authorized in this Consent Order or by subsequent order of the Court.

d. Until expended by Debtor in compliance with this Order, all Cash Collateral shall remain subject to the asserted liens and claims of Respondent under the Loan Documents.

4. **Adequate Protection Granted to Lender.** During the Cash Collateral Period, Respondent shall be entitled to adequate protection as follows:

a. **Adequate Protection Liens.** As adequate protection for Respondent's interest in the Cash Collateral or the Property, including any diminution resulting from the use of Cash

Collateral on or after the Petition Date pursuant to this Order, Respondent is hereby granted, pursuant to Sections 361, 362, and 363 of the Bankruptcy Code, valid, binding, enforceable, and automatically perfected liens on and security interests in (collectively, the "Adequate Protection Liens") in the Property and Cash Collateral and all other proceeds of the Property, wherever located and whether created, acquired or arising prior to, on, or after the Petition Date to the same extent, validity and priority of Respondent's pre-petition liens or security interests.

b. **Payments to Respondent.** During the Cash Collateral Period, Debtor shall remit to Respondent the sum of \$3,000.00 per month (the "Adequate Protection Payments"). Debtor shall immediately make a lump sum payment of \$6,000.00 representing the Adequate Protection Payments for December 2016 and January 2017. Ongoing Adequate Protection Payments shall be remitted by Debtor so as to be received by Respondent no later than the first (1st) day of each month beginning on February 1, 2017.

5. **Reporting.** On or before the twentieth (20th) day of each month, Debtor shall provide to Respondent and its counsel, (i) a copy of its monthly operating report, (ii) and (ii) such other reports as Respondent may reasonably request. Respondent, through any of its employees or agents, shall have the right at any time or times during Debtor's usual business hours, or during the usual business hours of any third party having control over any of Debtor's records (excluding attorney-client privileged documents), to monitor Debtor's compliance with the terms of this Order or to inspect such records in order to verify the amount or condition of, or any other matter relating to, the Property or Debtor's financial condition. Respondent shall also have the right at any time or times during Debtor's usual business hours, without hindrance or delay, to enter upon their premises, to examine, appraise and inspect the Property, subject to the

rules and regulations of the tenants then in possession, and without interference in the business of said tenants.

6. **Insurance.** Debtor or its tenants shall maintain all necessary insurance, including, without limitation, life, fire, hazard, comprehensive, public liability, and workmen's compensation, and obtain such additional insurance in an amount as is appropriate for the business in which the Debtor is engaged.

7. **Survival of Provisions of This Order.** The provisions of this Consent Order and any action taken pursuant to the terms hereof shall survive the entry of any order dismissing this Chapter 11 case or converting this Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code, and all of the terms and conditions of this Consent Order as well as the liens and security interests granted pursuant hereto shall continue in this or in any superseding case under the Bankruptcy Code, and such liens and security interests shall retain their priorities provided by this Consent Order until satisfied and discharged.

8. **Reservation of Rights.** Nothing in this Consent Order shall constitute or be construed to (i) be an admission by Respondent as to the adequacy of the protection provided herein; (ii) release, impair or alter in any way the obligations and liability of any guarantors of the obligations evidenced by the Loan Documents; or (iii) prejudice the rights of Respondent or any other creditor to seek additional adequate protection or any other relief under the Loan Documents or applicable law. Nor shall entry of this Consent Order constitute a waiver of any prepetition default or any right or remedy of Respondent available under applicable non-bankruptcy law. Furthermore, this Order is not intended and shall not be deemed to be any consent by Respondent to any surcharges, excises, liens or charges of any nature or type pursuant

to §§364, 506(c) and 510 of the Code in this Chapter 11 proceeding or in any subsequent Chapter 7 proceeding, including, without limitation, expenses of administration or liquidation.

9. **Agreement Regarding Plan.** The parties hereby agree to the following:

(a) The Debtor shall submit a Plan and Disclosure Statement (the “Plan”) within thirty (30) days after the Court approves this Agreement providing for Greenwich to have (i) an allowed secured claim in the amount of \$600,000.00 (the “Secured Claim”) to be paid over 36 months at an interest rate of 6.00%, resulting in a monthly payment of \$5,064.00 to Greenwich, plus a balloon payment of the remaining balance on or before the beginning of the 37th month; and (ii) an allowed general unsecured claim in the amount of \$370,000 (the “Unsecured Claim”) which shall be paid at no less than \$500 per month over the life of the Plan.

(b) The Plan shall be subject to the review and approval of Greenwich and other creditors to ensure appropriate security, default remedies, and standard and customary provisions to ensure feasibility and compliance by Debtor.

10. **Service of Order and Notice of Final Hearing.** Debtor shall serve a copy of this Consent Order upon the U.S. Trustee and the 20 largest unsecured creditors immediately after entry and shall promptly file a certificate of service specifying the manner and method of service.

a. **Pursuant to Bankruptcy Rule 4001(d), creditors and parties in interest have fourteen (14) days from the date of service of this Order (“Objection Deadline”) to file objections to the adequate protection provided to Respondents herein. There will be a Final Hearing on the Motion on \_\_\_\_\_ 2017 at \_\_\_\_\_ a.m. in Courtroom 1201 in the U.S. Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia, and the Court will consider any objections to the Motion at that time. In the event no objections are timely filed, the terms**

**and conditions of this Order may become a final Order following the Final Hearing on \_\_\_\_\_ 2017.**

b. If an objection is timely filed and properly served on counsel for Debtor and counsel for Lender at the addresses indicated below, the Court will consider such objection at the Final Hearing schedule for \_\_\_\_\_ 2017 as set forth above.

11. **Objections.** Any party wishing to object to the relief granted herein being granted on a permanent basis:

a. **Must file** a written objection, stating the grounds for such objection, on or before the close of business on the Objection Deadline with:

Clerk, U.S. Bankruptcy Court  
1340 U.S. Courthouse (& Richard B. Russell Building)  
75 Ted Turner Drive, S.W.  
Atlanta, Georgia 30303-3367

b. **Must serve** a copy of said objection on Debtor's proposed counsel:

Howard P. Slomka  
Slomka Law Firm  
2nd Floor  
1069 Spring Street, NW  
Atlanta, GA 30309

and on Respondents' counsel:

Melissa J. Davey  
Stites & Harbison, PLLC  
303 Peachtree Street, NE,  
Suite 2800, 28<sup>th</sup> Floor, SunTrust Plaza  
Atlanta, GA 30308

so that such written objections are actually received by the foregoing on or before the Objection Deadline.

11. **Order Immediately Effective.** Notwithstanding anything to the contrary in the Federal Rules of Bankruptcy Procedure or otherwise, the effectiveness of this Consent Order shall not be stayed, and this Consent Order shall be immediately effective upon entry.

IT IS SO ORDERED.

\*\*\*END OF DOCUMENT\*\*\*

**Consented To:**

**SLOMKA LAW FIRM**

/s/ Howard P. Slomka

Howard P. Slomka

Georgia Bar No. 652875

Slomka Law Firm

2nd Floor

1069 Spring Street, NW

Atlanta, GA 30309

678-732-0001

Fax : 888-259-6137

Email: [howies@slomkalawfirm.com](mailto:howies@slomkalawfirm.com)

*Counsel for Debtor*

-and -

**STITES & HARBISON, PLLC**

/s/ Melissa J. Davey

Melissa J. Davey

Georgia Bar No. 206310

303 Peachtree Street, NE, Suite 2800

Atlanta, GA 30308

(404) 739-8852 Telephone

(404) 739-8870 Facsimile

mdavey@stites.com

*Counsel for Respondent*

*Greenwich Investors XLIX Trust 2015-1*

**Reviewed as to form by:**

GUY G. GEBHARDT

ACTING UNITED STATES TRUSTEE

REGION 21

/s/ Jim Morawetz

Jim Morawetz

*(by Howie Slomka with express permission)*

Georgia Bar No. \_\_\_\_\_

Office of the United States Trustee

362 Richard Russell Building

75 Ted Turner Drive, SW

Atlanta, GA 30303

Tel: (404) 331-4437

Fax: (404) 331-4464

**Distribution List:**

Howie Slomka, Slomka Law Firm, 2nd Floor, 1069 Spring Street, NW, Atlanta, GA 30309

Melissa J. Davey, STITES&HARBISON PLLC, 303 Peachtree Street, N.E., 2800 SunTrust Plaza, Atlanta, GA 30308

Jim Morawetz, Office of the United States Trustee, 75 Ted Turner Drive SW, Room 362, Atlanta, GA 30303

**EXHIBIT "A"**

Anticipated Monthly Rental Income from the Collateral

\$ 1,605 - Grand Boulevard

\$ 3,500 - Little Road

**\$ 5,105 - Total Rent**

Anticipated Monthly Expenses for the Collateral:

\$ 250 - Utilities

\$ 325 - Trustee Fee

\$ 34 – Garbage pickup

\$ 150 – Misc.

\$3,000.00- Adequate Protection Payments to Greenwich

**3,759.00 – Total Expenses including Adequate Protection**

\$1,346 monthly surplus for use of improving property to add storage bays to further increase revenues.



**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:	:	CHAPTER 11
	:	
DAVID AND VERDA DICORTE	:	
REVOCABLE TRUST	:	CASE NO. 16-60447 MGD
	:	
	:	
Debtor	:	

---

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served all interested parties and all creditors listed on the attached matrix in the foregoing matter with a copy of these pleadings by ECF and by depositing in the United States Mail a copy of the same in a properly addressed envelope with certified postage thereon addressed as follows:

SEE ATTACHED FOR ADDITIONAL CREDITORS

Respectfully Submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Howard Slomka, Esq.  
Georgia Bar # 652875  
The Slomka Law Firm, P.C.  
Attorney for Debtor  
1069 Spring Street, NW  
2nd Floor  
Atlanta, GA 30309  
Tel. (678) 732-0001

Label Matrix for local noticing  
113E-1  
Case 16-60447-mgd  
Northern District of Georgia  
Atlanta  
Mon Feb 13 09:13:07 EST 2017

Greenwich Investors XLIC Trust 2015-1  
c/o WMD Asset Management LLC  
6279 Dupont Station Court  
Jacksonville, FL 32217-2567

James E. Morawetz  
Office of U.S. Trustee  
362 Richard Russell Bldg.  
75 Ted Turner Drive, SW  
Atlanta, GA 30303-3330

Pasco County Tax Collector  
PO Box 276  
Dade City, Florida 33526-0276

State of Florida - Department of Revenue  
Post Office Box 6668  
Tallahassee, FL 32314-6668

Melissa J. Davey  
Stites & Harbison, PLLC  
2800 Suntrust Plaza  
303 Peachtree Street, NE  
Atlanta, GA 30308-3201

Internal Revenue Service  
P. O. Box 7346  
Philadelphia, PA 19101-7346

Pasco County Board of County Commissioners  
8731 Citizens Drive  
Pasco County Government Center  
Suite 340  
New Port Richey, FL 34654-5572

Secretary of the Treasury  
15th & Pennsylvania Avenue, NW  
Washington, DC 20200

U. S. Securities and Exchange Commission  
Office of Reorganization  
Suite 900  
950 East Paces Ferry Road, NE  
Atlanta, GA 30326-1382

David and Verda DiCorte Revocable Trust  
931 Monroe Drive  
#A-102319  
Atlanta, GA 30308-1793

Vivieon E. Kelley  
Office of the United States Trustee  
362 Richard Russell Building  
75 Ted Turner Drive, SW  
Atlanta, GA 30303-3315

Pasco County Solid Waster Department  
7536 State Street  
#118  
New Port Richey, Florida 34654-5528

Howard P. Slonka  
Slonka Law Firm  
2nd Floor  
1049 Spring Street, NW  
Atlanta, GA 30309-3817

Karen Hope Yore  
# A-102319  
931 Monroe Drive  
Atlanta, GA 30308-1793