

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>IN RE:</b>  <b>HAMKEI GENERATION, INC.</b>  <b>Debtor.</b>	<b>CHAPTER 11</b>  <b>CASE NO. 17-11361</b>
<b>HAMKEI GENERATION, INC.</b>  <b>Movant,</b>  <b>v.</b>  <b>CORNERSTONE BANK, CB&amp;T A DIVISION OF SYNOVUS BANK, AND SYSCO FOOD SERVICES OF ATLANTA, LLC</b>  <b>Respondents.</b>	<b>CONTESTED MATTER</b>

**MOTION REQUESTING ENTRY OF ORDER  
AUTHORIZING THE USE OF CASH COLLATERAL**

COMES NOW Hamkei Generation, Inc. (“Debtor”), and hereby files this “Motion Requesting Entry of Order Authorizing the Use of Cash Collateral” (the “Motion”). In support of the Motion, Debtor shows the Court as follows:

**Jurisdiction**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein is 11 U.S.C. §§ 105(a) and 363.

**Background**

2. On June 26, 2017 (the “Petition Date”), Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (as amended, modified, or supplemented

the “Bankruptcy Code”).

3. Debtor is a Georgia corporation. Debtor operates a gas station and convenience store (collectively the “Store”) located at 505 Vernon Street, Lagrange, Troup County, Georgia 30240 (the “Real Property”). Debtor was formed in 2006 and acquired the Store as an operating business together with the Real Property. Debtor financed the purchase of the Store and Real Property with a Small Business Administration Loan through Cornerstone Bank (“Cornerstone”) in the original principal amount of \$1,270,000.00.

4. Kennin Sato and Joyce Sato each own 50% of the shares in the Debtor. Mr. Sato provides full-time services to the Debtor running the day to day operations and business management of the Store. Debtor currently employs 3 additional employees at the Store.

5. Ms. Sato operates a restaurant on the premises, which leases space from Debtor for monthly rent of \$800.00.

6. Debtor is a lottery dealer and is current on all of its obligations with the Georgia Lottery.

7. Debtor’s monthly income and expenses are detailed on the Budget attached as Exhibit “A” hereto.

8. On the Petition Date, Debtor had approximately \$9,000.00 in available cash, and approximately \$45,000.00 in inventory based on a cost valuation.

9. Pursuant to Bankruptcy Code Sections 1107 and 1108, Debtor continues to operate its business as a debtor-in-possession. Debtor is currently a debtor-in-possession and seeking to restructure and reorganize and is taking any and all actions necessary to preserve, protect, and maximize the value of the estate and effectively reorganize.

10. In order to effectively reorganize, Debtor must have access to cash to pay the operating expenses of the Store including its employees, gas vendors, inventory vendors, and

utilities. If Debtor does not have the authority to use its available cash to pay operating expenses, including insurance, taxes, wages, utilities and supplies, the going concern value will be significantly harmed and the estate and creditors will be negatively affected.

### Liens

11. Upon information and belief, Cornerstone asserts a (i) lien upon and security interest in Debtor's Cash Collateral, inventory and Real Property as further described in (a) the UCC Financing Statement number 141-2006-864 recorded on July 14, 2006 in Troup County and continued on March 14, 2011 and (b) UCC Financing Statement recorded in Deed Book 1347, Page 404 in the Troup County land records on July 14, 2006 and continued in Deed Book 01606, Page 120 on March 15, 2011 and (ii) outstanding indebtedness of approximately \$936,284.48 consisting of principal (\$918,089.58), interest (\$1,147.61) and late fees (\$17,047.29).

12. Upon information and belief, Sysco Food Service of Atlanta, LLC ("Sysco") asserts a junior priority lien on Debtor's Cash Collateral pursuant to the UCC Financing Statement recorded on January 29, 2009 in the records of Cobb County, Georgia and continued on January 13, 2014. **Debtor shows that no indebtedness is outstanding to Sysco.**

13. Upon information and belief, CB&T a division of Synovus Bank, NA ("CB&T") asserts (i) a junior priority lien in Debtor's Cash Collateral pursuant to the UCC Financing Statement recorded on August 13, 2015 in the records of Coweta County, Georgia; and (ii) outstanding indebtedness of approximately \$35,000.00.

14. Debtor is not aware of any other asserted liens or security interest against Debtor's Cash Collateral.

### Relief Requested

15. By this Motion, Debtor requests that the Court enter an order authorizing Debtor's

use of cash collateral. Debtor requires the ability to carry on its regular business activities, including paying for its employee force on Friday, June 30, 2017 and carrying other operating costs such as purchasing weekly inventory and paying vendors for daily supply deliveries. Simultaneously with this Motion, Debtor is filing a Motion for Expedited Hearing, requesting the Court hold an interim hearing on this Motion on or by Tuesday, June 27, 2017.

**Basis for Relief**

16. Section 363(c)(2) provides that a debtor in possession may not use Cash Collateral unless an entity that has an interest in such cash collateral consents or the court approves the use of such cash collateral. Section 363(p) provides that at a hearing on the use of cash collateral, the entity asserting an interest in the cash collateral has the burden of proof on the issue of the validity, priority, or extent of such interest. Rule 4001(b)(2) provides that the Court may not hold a final hearing on a motion to use cash collateral earlier than 14 days after service of the motion, but the Court may authorize the use of cash collateral prior to a final hearing as necessary to avoid immediate and irreparable harm to the estate pending a final hearing. Contemporaneous with this Motion, Debtor is filing a Motion for Expedited Hearing on this Motion seeking an expedited hearing at the first available calendar preferably on Tuesday, June 27, 2017.

17. Debtor requests the Court enter an Order authorizing Debtor to use Cash Collateral generated from the business as required in Debtor's business judgment, provided Debtor shall not pay any amounts unless actually incurred.

18. Debtor has an immediate need to continue the operation of the business and to protect the interests of the estate. Without the use of Cash Collateral and the ability to operate, Debtor will not be able to retain its employees and service its customers which are necessary to the continuity of Debtor's operations and effective reorganization.

19. The entry of an Order granting Debtor's Motion to use Cash Collateral will minimize disruption of the Debtor's business and is in the best interests of Debtor's estate and its creditors. Therefore, it is in the interest of no one for any interruption to occur during Debtor's reorganization.

20. Notice pursuant to Federal Rule of Bankruptcy Procedure 4001(b) is being sent to all parties required by such rule. Specifically, notice of this Motion and any hearing thereon shall be provided to each Respondent, the United States Trustee and Debtor's 20 largest unsecured creditors.

21. A proposed interim cash collateral order is attached hereto as Exhibit "B."

WHEREFORE, for all of the above reasons, Debtor requests that the Court:

- a) authorize the Debtor to pay the expenses and other expenditures reasonably necessary for the continued operation of the Debtor's Business to avoid immediate and irreparable harm to the estate in Debtor's business judgment on the terms in this Motion; and
- b) grant the Debtor such other and further relief as may be just and equitable.

RESPECTFULLY SUBMITTED this 26th day of June, 2017.

**JONES & WALDEN, LLC**

/s/ Leslie M. Pineyro

Leslie M. Pineyro

Georgia Bar No. 969800

Proposed Attorney for Debtor

21 Eighth Street, NE

Atlanta, Georgia 30309

(404) 564-9300

lpineyro@joneswalden.com

**Exhibit “A”**

Vendor	mon	tues	wed	thurs	Friday	bi-weekly	monthly	
Savannah	\$300						\$1,300	
Coke		\$650		\$650			\$5,633	
Pepsi				\$550			\$2,383	
Budweiser			\$1,900				\$8,233	
Jackson				\$600			\$2,600	
Corona					\$400		\$1,733	
Eby Brown					\$5,500		\$23,833	
Gas	\$18,000						\$78,000	
Icee						\$550	\$1,100	
Lil Deb		\$120					\$520	
Frito		\$200			\$200		\$1,733	
Newspapers	\$55		\$50	\$50			\$672	
Dyes Dust						\$80	\$160	
Old Trapper							\$220	
Market Grodery							\$800	
Ghandi							\$700	
GoldenFlake				\$110			\$953	
Bon Appetite			\$45				\$195	
Red Bull					\$170		\$737	
Pest Control							\$50	
Trash							\$170	
Insurance WC							\$150	
Insurance GL							\$628	
Telephone							\$350	
Utilities							\$2,600	
Accounting							\$280	
Sale & Use Tax							\$3,300	
Real Property Escrow							\$625	
Licenses							\$142	
Advertising							\$100	
Bank Fees							\$70	
C.C. Fees							\$2,083	
Payroll (not including Kennin Sato)					\$1,320		\$5,720	
Payroll (Kennin Sato)							\$3,500	
Payroll Taxes Employer					\$756			
Repairs Etc.							\$500	
Misc.							\$100	
US Trustee Fees Estimate Escrow							\$1,617	
<b>Total Expenses</b>	<b>\$18,355</b>	<b>\$970</b>	<b>\$1,995</b>	<b>\$1,960</b>	<b>\$8,346</b>	<b>\$630</b>		<b>\$153,491</b>
<b>Income</b>								
Estimated Monthly Sales							\$149,722	
Rental Income							\$800	
Lottery Commissions (Average Amount Varies)							\$7,250.00	
COAM Commissions (Average Amount Varies)							\$1,700.00	
ATM Commission							\$1,147.00	
Vendor Commission							\$52.17	
Tobacco Commissions							\$2,850.42	
<b>Total Revenues</b>								<b>\$163,522</b>
<b>Profit</b>								<b>\$10,031</b>

Lottery/COAM

Lottery	\$5,000-\$20,000
COAM (video game machines part of lottery)	\$500-\$2000

**Exhibit “B”**



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**IN RE:**

**HAMKEI GENERATION, INC.**

**Debtor.**

**HAMKEI GENERATION, INC.**

**Movant,**

**v.**

**CORNERSTONE BANK, CB&T A  
DIVISION OF SYNOVUS BANK, AND  
SYSCO FOOD SERVICES OF ATLANTA,  
LLC,**

**Respondents.**

**CHAPTER 11**

**CASE NO. 17-11361**

**CONTESTED MATTER**

**INTERIM ORDER GRANTING DEBTOR'S MOTION REQUESTING  
AUTHORIZATION TO USE CASH COLLATERAL AND SCHEDULING  
FINAL HEARING ON THE DEBTOR'S REQUEST TO USE CASH COLLATERAL**

THIS MATTER came before the Court on \_\_\_\_\_ for hearing on the Debtor's "*Motion Requesting Entry of Order Authorizing the Use of Cash Collateral*", filed on June 26, 2017 (the "Motion"). The Court, having considered the Motion, the Budget filed by the Debtor, the presentation of counsel and all other matters of record, finds as follows:

A. On June 26, 2017 (the "Petition Date"), Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Georgia, Newnan Division, commencing this Bankruptcy Case (the "Case").

B. Since the Petition Date, Debtor has operated as a debtor-in-possession under Sections 1107 and 1108 of the Bankruptcy Code.

C. Debtor is a Georgia corporation.

D. Debtor operates a gas station and convenience store (collectively the "Store") located at 505 Vernon Street, Lagrange, Troup County, Georgia 30240 (the "Real Property"). Debtor was formed in 2006 and acquired the Store as an operating business together with the Real Property. Debtor financed the purchase of the Store and Real Property with a Small Business Administration Loan through Cornerstone Bank ("Cornerstone") in the original principal amount of \$1,270,000.00.

E. Upon Debtor's best information and belief, the Respondents may assert an interest in Debtor's Cash Collateral as detailed in the Motion. Debtor asserts that based upon a review of records and financing statements, it does not appear that any other party asserts an interest in Debtor's Cash Collateral.

F. Debtor shows that it requires the use of Cash Collateral to pay its labor force, purchase inventory and pay its other operating expenses.

G. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This case is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Notice has been properly given in light of the circumstances in order to avoid irreparable harm to the Debtor's estate.

For the reasons stated on the record, and the Court being otherwise informed, it is hereby ORDERED that:

1. The aforesaid findings, enumerated in paragraphs A through G above, are hereby incorporated into this Order as if fully set forth herein.

2. For as long as the Debtor faithfully performs its obligations under this Order and until 11:59 p.m. EST on the date of the Final Hearing (as defined herein); or as extended by the Court or consent of the parties, the Debtor shall have the right to use the Cash Collateral on an interim basis, subject to the terms of this Order.

3. Debtor is authorized to use Cash Collateral generated from the Business as reasonably required in the ordinary course of Debtor's business and in Debtor's business judgment and for other amounts allowed or awarded pursuant to orders entered by this Court after appropriate notice and hearing, except further provided that Debtor shall not pay any amounts unless actually incurred.

4. To the extent provided by 11 U.S.C. §361(2), as adequate protection for the Debtor's use of Cash Collateral pursuant to this Order, Respondents shall have a replacement lien and security interest in all property acquired by Debtor after the Filing Date as to which such Respondent held valid and perfected liens or security interests in pre-petition collateral, including Cash Collateral, on the Filing Date consisting of (i) the same type and nature of property or (ii) the proceeds of such Respondent's pre-petition collateral to the extent of any

diminution in value of such pre-petition collateral as a result of the use of Cash Collateral; such liens being to the same validity and priority as the liens that Respondents held on the Filing Date in such pre-petition collateral. Notwithstanding anything to the contrary, the replacement security interest and liens granted herein shall not extend to any recoveries resulting from avoidance actions brought pursuant to the Bankruptcy Code or from settlements of potential avoidance power claims asserted on behalf of the estate.

5. This Order shall constitute an interim order for the authorization to use the Cash Collateral pursuant to Section 363 of the Bankruptcy Code and Fed.R.Bankr.P. 4001(b)(2). Any person who objects to the relief provided herein on a final basis:

- a. **Must file** a written objection, stating the grounds therefor, on or by July 14, 2017<sup>1</sup> (“Objection Deadline”) with the Clerk of Court as follows:

Clerk, U.S. Bankruptcy Court  
18 Greenville Street, 2<sup>nd</sup> Floor  
Newnan, GA 30263

- b. **Must serve** a copy of said objection on Debtor’s counsel so that such written objection is received by Debtor’s counsel by the Objection Deadline at the following address:

Leslie M. Pineyro, Esq.  
Jones & Walden, LLC  
21 Eighth Street, NE  
Atlanta, GA 30309

- c. **Must advocate** the objection at the Final Hearing. If objections are timely filed and served by the Objection Deadline in accordance with this Order, a Final Hearing shall be held on the **19th day of July, 2017 at 10:10 a.m. in 2<sup>nd</sup> Floor Courtroom, Lewis R. Morgan Federal Building, 18 Greenville Street,**

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<sup>1</sup> The deadline for filing objections electronically through the Court’s electronic case filing system shall be 11:59:59 p.m. The deadline for filing objections manually with the Clerk’s office shall be 4:00 p.m.

**Newnan, GA 30263.** Any objection not timely filed, served and advocated at the hearing shall be deemed waived. If no objection is filed as set forth above by the Objection Deadline, this Order and the relief granted herein shall thereupon stand APPROVED on a final basis without further notice or hearing.

6. This Order is without any prejudice to Respondents, including but not limited to their rights to: (i) seek relief from the stay or dismissal of this Case, and (ii) contest the nature, extent, validity or priority of any lien or security interest; and the entry of this Order is not to be interpreted as an agreement by Respondents to support or accept final use of the Cash Collateral, the filing of the Debtor's bankruptcy petition, any plan of reorganization or disposal of assets under Section 363 of the Bankruptcy Code, or any other proposed treatment of Respondents' asserted claim(s).

7. This Order is also entered without prejudice to the claims, rights, and actions that: (A) Debtor may have to challenge the nature, validity, or extent of the liens or debts asserted by Respondents; and (B) Respondents may assert in any action by Debtor to challenge the nature, validity, or extent of the liens or debts it may assert.

8. Notwithstanding anything to the contrary within Bankruptcy Rule 4001(b)(2) or any other rule of similar import, this Order shall be effective immediately upon its entry.

**[End of Order]**

**Prepared and presented by:**  
JONES & WALDEN, LLC

*/s/ Leslie M. Pineyro*  
Leslie M. Pineyro (GA Bar No. 969800)  
21 Eighth Street, NE  
Atlanta, GA 30309  
(404) 564-9300 Telephone  
(404) 564-9301 Facsimile  
*Proposed Counsel for the Debtor*

**Distribution List:**

Leslie, M. Pineyro, Jones & Walden, LLC, 21 Eighth Street, Atlanta, GA 30309

Office of the US Trustee, 362 Richard B. Russell Building, 75 Ted Turner Drive SW, Atlanta, GA 30303