

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

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>TYSON ENTERPRISES, INC. and</b>	)	<b>CASE NO. 18-66579-PWB</b>
<b>RONALD G. TYSON,</b>	)	<b>CASE NO. 18-66840-PWB</b>
	)	
<b>Debtors.</b>	)	<b>JOINTLY ADMINISTERED</b>
	)	<b>UNDER CASE NO. 18-66579-PWB</b>
<hr/> <b>TYSON ENTERPRISES, INC.,</b>	)	
	)	
<b>Movant,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>HERITAGE SELECT, LLC,</b>	)	
	)	
<hr/> <b>Respondent.</b>	)	

**DEBTOR RONALD G. TYSON AND TYSON ENTERPRISES, INC.’S  
MOTION FOR ENTRY OF INTERIM ORDER AUTHORIZING USE  
OF CASH COLLATERAL**

COME NOW, Ronald G. Tyson and Tyson Enterprises, Inc. (“Debtors”), pursuant to Section 363 of Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and files this Motion for Entry of Interim Order Authorizing Use of Cash Collateral (the “Motion”). In support of the Motion, the Debtors show the Court as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C.

§ 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue of this proceeding is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The relief requested in this Motion is based on Sections §§ 105, 361, and 363 of the Bankruptcy Code and Bankruptcy Rule 4001(b).

### **Background**

3. On October 1, 2018 (the “Petition Date”), the Debtors filed Voluntary Petitions for relief under Chapter 11 of the Bankruptcy Code and have continued in possession of their property and management of their business as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. As of the date of this filing, no official committee of unsecured creditors has been appointed and no request for the appointment of a trustee or examiner has been made.

4. Debtor Ronald G. Tyson is the owner of a 1.053-acre parcel of commercially zoned real property located at 2176 Cobb Pkwy. N., Kennesaw, Georgia, and a 1.042-acre parcel of commercially zoned real property located at 2184 Cobb Pkwy. N., Kennesaw, Georgia (collectively, the “Property”). Debtor Tyson Enterprises, Inc. manages the Property, including rental of several buildings on the Property (the “Business”). Presently, Debtors have five commercial tenants renting portions of the Property, and one commercial tenant leasing billboard space on the Property. Debtors’ operation of the Business is presently generating gross monthly revenue of \$6275.00. Debtors anticipate that monthly gross revenue can be

increased to \$19,225.00 through the leasing of existing available space and without any change in the structure of the Business.

5. Heritage Select, LLC (“Heritage”) asserts a first-priority security interest in the Property.

6. In order to effectively reorganize, Debtors must have access to cash collateral consisting of rent proceeds to pay the operating expenses of the Business. If Debtors do not have the authority to use rent proceeds to pay operating expenses of the Business, including insurance, maintenance and repairs and utilities, the Business will be irrevocably harmed.

### **Relief Requested**

7. The Debtors seek the entry of an order, pursuant to Sections 105, 361, and 363 of the Bankruptcy Code and Bankruptcy Rule 4001(b): (a) authorizing the Debtors to use cash collateral consisting of rent proceeds pursuant to the proposed budget attached to this Motion (the “Budget”); and (b) scheduling a final hearing on the Motion. In accordance with Bankruptcy Rule 4001, the following are the Debtors proposed terms for the use of cash collateral:

- (a) Purpose. Cash collateral will be used to pay operating expenses of the Business, including insurance, landscaping, maintenance and repairs, property taxes, utilities, trash removal and United States Trustee fees.

- (b) Use of Cash Collateral. Cash collateral will be used only pursuant to the terms of the Budget during the period following entry of the Interim Order until the earlier of: (i) the earlier of 90 days following entry of the Interim Order or confirmation of a Chapter 11 Plan; (ii) conversion of the case to Chapter 7 or dismissal of the case; or (iii) the Debtors' violation of the terms of the Interim Order, including failure to comply with the Budget.
  
- (c) Adequate Protection. Debtors maintain that requirement of adequate protection of Heritage's interest in the Property, sufficient to warrant the use of cash collateral, is satisfied here where cash collateral will be used specifically and exclusively for the maintenance and protection of the Property, including the operation of the Business and generation of additional revenue. Cash collateral is required for the payment of all post-petition property taxes on Heritage's collateral, *i.e.*, the Property, insurance on the Property, and maintenance and repairs of the Property. Additionally, Debtors will be paying all access rent revenues to Heritage as further adequate protection. Furthermore, and upon information and belief, all rent payments which were payable in October 2018 were paid directly to and retained by Heritage pursuant to Heritage's pre-petition instructions to Debtors' tenants. Debtors are not seeking to recover any of those payments from Heritage. Finally, Debtors maintain that there is a sufficient equity cushion in the Property such that Heritage is adequately protected. Cash collateral will only be used for items set forth in the Budget attached hereto as Exhibit A.

### **Basis for Relief Requested**

9. The Debtors' use of cash collateral is essential to the continuing operation of the Business and for an effective reorganization. If Debtors do not have the authority to use rent proceeds to pay operating expenses of the Business, the going concern value of the Business will be significantly harmed and the estate and creditors will be negatively affected. The Debtors do not propose to use cash collateral to pay any creditors any amounts due and owing pre-petition.

10. Section 363(c)(2) of the Bankruptcy Code provides that a debtor may

not use, sell or lease cash collateral unless each entity with an interest in such cash collateral consents or the Court authorizes such use, sale or lease. Section 363(e) provides that the Court shall condition such use of cash collateral as is necessary to provide adequate protection of such interests. 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, and the debtor-in-possession has the burden of proof on the issue of adequate protection.

11. The Debtors request authority to use cash collateral for the purposes and amounts set forth in the proposed Budget attached hereto as Exhibit A.

**Request for Expedited Hearing and Immediate Interim Relief**

12. Pending the Final Hearing, the Debtors require immediate use of cash collateral to meet their obligations. It is important that the Debtors maintain consistent operations and resume paying for ordinary, post-petition operating expenses to minimize any damage caused by the filing. Without the use of cash collateral, the Debtors will be unable to pay ongoing operating expenses. Accordingly, if interim relief is not granted, the Debtors assets—including the Property—will be jeopardized to the detriment of the Debtors, the estate, creditors, and other parties in interest.

13. The Debtors request the Court to schedule an Interim Hearing as soon as

practicable to consider the Debtors' request for use of cash collateral. Bankruptcy Rule 4001(b) permits a court to approve a debtor's request for use of cash collateral during the 15 day period following the filing of a motion for use of cash collateral in such amounts as is necessary to avoid irreparable harm to the estate pending a final hearing. In considering requests for interim relief courts apply the same business judgment standard applicable to other business decisions.

14. Debtors are seeking Heritage's consent to the relief sought by this Motion. If the parties can agree, Debtors will notify the Court via the submission of a proposed consent order.

15. For the reasons explained above, the Debtor believes that granting the relief requested is appropriate and in the best interest of the estate.

### **Notice**

16. Notice of this Motion has been provided to the Office of the United States Trustee and Heritage and any other creditors who may have an interest in the cash collateral. In light of the interim nature of the relief requested, the Debtors submit that such notice is adequate under the circumstances.

**WHEREFORE**, the Debtors request that this Court enter an order granting interim use of cash collateral consistent with this Motion; and grant the Debtors such other and further relief as is just and proper.

This 31<sup>st</sup> day of January, 2019.

TAYLOR ENGLISH DUMA, LLP

By: /s/ John K. Rezac

John K. Rezac

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Attorneys for Debtors Tyson Enterprises,  
Inc. and Ronald G. Tyson

Exhibit "A" Budget

<b>January</b>	<b>Expenses</b>
<b>Income</b>	
Rental Income	\$7,275.00
<b>Expenses</b>	
Property Insurance	\$700.00
U.S. Trustee Quarterly Fees	\$225.00
Property Taxes	\$1,650.00
Maintenance	\$250.00
Landscaping	\$300.00
Water	\$375.00
Trash	\$175.00
Total Expenses	\$3,675.00
<b>Adequate Protection Payment</b>	<b>\$3,600.00</b>
<b>February</b>	<b>Expenses</b>
<b>Income</b>	
Rental Income	\$7,275.00
<b>Expenses</b>	
Property Insurance	\$700.00
U.S. Trustee Quarterly Fees	\$225.00
Property Taxes	\$1,650.00
Maintenance	\$250.00
Landscaping	\$300.00
Total Expenses	\$3,125.00
<b>Adequate Protection Payment</b>	<b>\$4,150.00</b>



**CERTIFICATE OF SERVICE**

I hereby certify that a complete copy of the foregoing DEBTOR RONALD G. TYSON AND TYSON ENTERPRISES, INC.'S MOTION FOR ENTRY OF INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL was served this day by First Class, United States Mail, on all persons and entities identified in Attachment 1 hereto, with sufficient postage attached and properly addressed as indicated.

This 31<sup>st</sup> day of January, 2019.

TAYLOR ENGLISH DUMA, LLP

By: /s/ John K. Rezac

John K. Rezac

Georgia Bar No. 601935

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ATTACHMENT 1

AT&T U-verse  
POB 5014  
Carol Stream, IL 60197-5014

Eladio Landscape Service  
7386 Benson Ave  
Douglasville, GA 30134

Amazon Prime Chase  
POB 16123  
Wilmington, DE 19850-5123

Georgia Department of Revenue  
314 E Main St  
Suite 150  
Cartersville, GA 30120-3322

American Bankers Insurance Company  
of Florida  
11222 Quail Roust Dr  
Miami, FL 33157-6596

Gwinnett Community Bank  
2775 Buford Hwy  
Duluth, GA 30096

American Express  
POB 1270  
Newark, NJ 07101-1270

Internal Revenue Service  
Ogden, UT 84201-0038

Belk Card/Synchrony Bank  
POB 530940  
Atlanta, GA 30353-0940

Synchrony Bank  
Valerie Smith  
c/o PRA Receivables Management, LLC  
PO Box 41021  
Norfolk, VA 23541

Central Insurance  
800 S Washington St  
Van Wert, OH 45891-2381

Kroger Visa Card/US Bank  
POB 790408  
St Louis, MO 63179-0408

Cobb County Water  
660 S Cobb Dr. SE  
Marietta, GA 30060

Lowe's Synchrony Bank  
POB 1020  
Dept 806  
Horsham, PA 19044

Wiggam & Geer, LLC  
Will B. Geer  
333 Sandy Springs Circle, NE  
Suite 225  
Atlanta, Georgia 30328

PNC Bank  
POB 5570  
Cleveland, OH 44101-0570

Cobb County, Georgia Tax Assessor  
POB 649  
Marietta, GA 30061-0649

The Insurance Store  
1634 White Circle  
Marietta, GA 30066

Martin P. Ochs  
Office of the U.S. Trustee  
362 Richard Russell Federal Bldg.  
75 Ted Turner Drive, SW  
Atlanta, GA 30303