

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

IN RE:

ASPEN VILLAGE AT LOST MOUNTAIN  
ASSISTED LIVING, LLC

**Debtor.**

ASPEN VILLAGE AT LOST MOUNTAIN  
ASSISTED LIVING, LLC

**Movant,**

v.

MIDCAP FUNDING INVESTMENT IV  
LLC,

**Respondents.**

CHAPTER 11

CASE NO. 19-40262-BEM

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

COMES NOW Aspen Village at Lost Mountain Assisted Living, LLC (“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 February 5, 2019 (the “Petition Date”), the 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 and as its business, Debtor owns a senior housing development located at 135 Hillside Trace, Dallas, Georgia (the “Business” or sometimes the “Assisted Living Facility”). The Assisted Living Facility is licensed as a Personal Care Home and for a capacity of 95 residents. Canopy Lifestyles, LLC serves as the manager of the Assisted Living Facility<sup>1</sup>.

4. Pursuant to the Budget attached hereto as Exhibit “A”, Debtor budgets the Business will generate income of approximately \$272,150.00 per month in the month of February 2019.

5. 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.

6. In order to effectively reorganize, Debtor must have access to cash to pay the operating expenses of the Business. If Debtor does not have the authority to use its available cash to pay operating expenses of the Business, including insurance, rent, taxes and payroll of the Business, the going concern value will be significantly harmed and the estate and creditors will be negatively affected. Moreover, Debtor’s customers will be unfairly impacted.

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<sup>1</sup> On the Petition Date, Debtor’s affiliated entity, Aspen Village at Lost Mountain Memory Care, LLC (“Aspen Village Memory Care”), additionally filed a Chapter 11 Voluntary Petition. Aspen Village Memory Care is in its construction phase and is adjacent to Debtor. The original idea was that these two businesses would operate side by side as a community.

### **Liens**

7. Upon information and belief, MidCap Funding Investment IV LLC (“MidCap”) asserts a first priority lien upon and security interest in Debtor’s assets including all accounts and other assets as more particularly described in the UCC Financing Statement number 038-2016-001638 filed on February 8, 2016 in the records of the Superior Court of Coweta County, Georgia. The UCC Financing Statement was assigned on May 31, 2016 from MidCap Financial Trust, as agent to MidCap Funding VIII Trust. The UCC Financing Statement was assigned on August 31, 2018 from MidCap Funding VIII Trust to MidCap Financial Trust. The UCC Financing Statement was assigned twice on September 4, 2018- the first time from MidCap Financial Trust to MidCap XXXI Trust, and then from MidCap XXXI Trust to MidCap Funding Investment IV LLC. Debtor is not aware of any other liens or security interests in Cash Collateral.

### **Relief Requested**

8. By this Motion, Debtor requests that the Court enter an order authorizing Debtor’s use of cash collateral based on the Budget attached hereto as Exhibit “A”. Debtor requests the court hold an expedited interim hearing on this Motion on or before Monday, February 11, 2019 to prevent any harm to Debtor’s ongoing business operations as Debtor must have the ability to continue operating in the ordinary course of business.

### **Basis for Relief**

9. 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 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.

10. Debtor requests the Court enter an Order authorizing Debtor to use Cash Collateral generated from the Business and otherwise: (a) in accordance with the budget attached hereto as Exhibit "A", the line items of which Debtor may modify by no more than fifteen percent (15%) and Debtor may carry over any unused budgeted amount, (b) for payment of U.S. Trustee fees and (c) or for other matters pursuant to orders entered by this Court after appropriate notice and hearing, except further provided that: (i) Debtor may pay the actual amount owed or deposit required to any utility, taxing authority, the United States Trustee or insurance company and (ii) Debtor shall be authorized to operate in the ordinary course of business in Debtor's business judgment.

11. 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 customers which are necessary to the continuity of Debtor's operations and effective reorganization.

12. 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.

13. 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 creditors.

14. Debtor requests that the Court approve the expenditures listed in Exhibit "A" which are reasonably necessary for the continued operation of Debtor's business affairs. Debtor has included a propose Interim Cash Collateral Order as Exhibit "B" hereto.

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 as detailed on Exhibit "A" and in this Motion;
- b) schedule an expedited interim hearing on this Motion on or before Monday, February 11, 2018; and schedule a final hearing on this motion; and
- c) grant the Debtor such other and further relief as may be just and equitable.

RESPECTFULLY SUBMITTED this 5th day of February, 2019.

**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

**Exhibit "A"**  
**Monthly Budget**

**ASPEN VILLAGE ASSISTED LIVING AND MEMORY CARE  
MONTHLY BUDGET**

AVAILABLE	SOLD	INCOME BY RENTAL UNIT	AVG RENT	FEB	MAR	APR	MAY	JUN	JUL
				2019	2019	2019	2019	2019	2019
10	7	AL Studio	2,625.00	\$18,375.00	\$18,375.00	\$18,375.00	\$18,375.00	\$18,375.00	\$18,375.00
46	38	1 BR	3,545.00	\$134,710.00	\$134,710.00	\$134,710.00	\$134,710.00	\$134,710.00	\$134,710.00
5	4	1 BR Large	3,930.00	\$15,720.00	\$15,720.00	\$15,720.00	\$15,720.00	\$15,720.00	\$15,720.00
7	5	2 BR	4,895.00	\$24,475.00	\$24,475.00	\$24,475.00	\$24,475.00	\$24,475.00	\$24,475.00
20	14	ALZ/MC Studio	3,900.00	\$54,600.00	\$54,600.00	\$54,600.00	\$54,600.00	\$54,600.00	\$54,600.00
0	0	Concessions	-3,000.00	-\$3,000.00	-\$3,000.00	-\$3,000.00	-\$3,000.00	-\$3,000.00	-\$3,000.00
88	68	<b>TOTAL RENTAL INCOME</b>		<b>\$244,880.00</b>	<b>\$244,880.00</b>	<b>\$244,880.00</b>	<b>\$244,880.00</b>	<b>\$244,880.00</b>	<b>\$244,880.00</b>
		<b>OTHER INCOME</b>	<b>AVG AMT</b>						
2		New Resident Fees	2,000.00	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00
3		Second Resident Fees	900.00	\$2,700.00	\$2,700.00	\$2,700.00	\$2,700.00	\$2,700.00	\$2,700.00
8		Respite Stay	150.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00
10		Adult Day Care	75.00	\$750.00	\$750.00	\$750.00	\$750.00	\$750.00	\$750.00
23		Care Level One	375.00	\$8,625.00	\$8,625.00	\$8,625.00	\$8,625.00	\$8,625.00	\$8,625.00
10		Care Level Two	775.00	\$7,750.00	\$7,750.00	\$7,750.00	\$7,750.00	\$7,750.00	\$7,750.00
1		Care Level Three	975.00	\$975.00	\$975.00	\$975.00	\$975.00	\$975.00	\$975.00
1		Incontinence Mgmt.	150.00	\$150.00	\$150.00	\$150.00	\$150.00	\$150.00	\$150.00
1		Salon Billing	1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
10		Guest Meals	7.00	\$70.00	\$70.00	\$70.00	\$70.00	\$70.00	\$70.00
1		Misc/Other Income	50.00	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
		<b>TOTAL OTHER INCOME</b>		<b>\$27,270.00</b>	<b>\$27,270.00</b>	<b>\$27,270.00</b>	<b>\$27,270.00</b>	<b>\$27,270.00</b>	<b>\$27,270.00</b>
		<b>TOTAL ALL MTHLY INCOME</b>		<b>\$272,150.00</b>	<b>\$272,150.00</b>	<b>\$272,150.00</b>	<b>\$272,150.00</b>	<b>\$272,150.00</b>	<b>\$272,150.00</b>
		<b>OPERATIONAL EXPENSES</b>							
		Senior Living/Assisted Living Care		\$4,500.00	\$4,500.00	\$4,500.00	\$4,500.00	\$4,500.00	\$4,500.00
		Culinary Services		\$17,500.00	\$17,500.00	\$17,500.00	\$17,500.00	\$17,500.00	\$17,500.00
		General and Administrative		\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00
		Sales and Marketing		\$8,500.00	\$8,500.00	\$8,500.00	\$8,500.00	\$8,500.00	\$8,500.00
		Maintenance/Hskpg/Bldg/Grounds		\$7,500.00	\$7,500.00	\$7,500.00	\$7,500.00	\$7,500.00	\$7,500.00
		Payroll and Related Costs		\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00	\$125,000.00
		Utilities/Cable/Telephone/Water/Gas		\$17,450.00	\$17,450.00	\$17,450.00	\$17,450.00	\$17,450.00	\$17,450.00
		Property Management and Related Expenses		\$17,500.00	\$17,500.00	\$17,500.00	\$17,500.00	\$17,500.00	\$17,500.00
		Bank Service Charges		\$850.00	\$850.00	\$850.00	\$850.00	\$850.00	\$850.00
		Equipment Leases		\$775.00	\$775.00	\$775.00	\$775.00	\$775.00	\$775.00
		Insurance Costs		\$12,500.00	\$12,500.00	\$12,500.00	\$12,500.00	\$12,500.00	\$12,500.00
		Security and IT Agreements		\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00
		Accounting and Professional Services		\$7,500.00	\$7,500.00	\$7,500.00	\$7,500.00	\$7,500.00	\$7,500.00
		Senior Activity Entertainment Fees		\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
		Current Year Property Tax Accruals		\$11,000.00	\$11,000.00	\$11,000.00	\$11,000.00	\$11,000.00	\$11,000.00
		Aspen Bus Vehicle Expenses		\$900.00	\$900.00	\$900.00	\$900.00	\$900.00	\$900.00
		Capital Reserve/Emergency Accrual		\$15,000.00	\$15,000.00	\$7,500.00	\$7,500.00	\$7,500.00	\$7,500.00
		<b>TOTAL OPERATIONAL EXPENSES</b>		<b>\$252,225.00</b>	<b>\$252,225.00</b>	<b>\$244,725.00</b>	<b>\$244,725.00</b>	<b>\$244,725.00</b>	<b>\$244,725.00</b>
		<b>Net Income/Loss From Operations</b>		<b>\$19,925.00</b>	<b>\$19,925.00</b>	<b>\$27,425.00</b>	<b>\$27,425.00</b>	<b>\$27,425.00</b>	<b>\$27,425.00</b>

**Exhibit "B"**  
**Proposed Interim Cash Collateral Order**



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

**IN RE:**

**ASPEN VILLAGE AT LOST MOUNTAIN  
ASSISTED LIVING, LLC**

**Debtor.**

**ASPEN VILLAGE AT LOST MOUNTAIN  
ASSISTED LIVING, LLC**

**Movant,**

**v.**

**MIDCAP FUNDING INVESTMENT IV  
LLC,**

**Respondents**

**CHAPTER 11**

**CASE NO. 19-40262-BEM**

**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 the Debtor's Motion Requesting Entry of Order Authorizing the Use of Cash Collateral filed on February 5, 2019 (the "Motion"). The

Court, having considered the Motion, the Budget filed by the Debtor and attached hereto as Exhibit “A” and all other matters of record, finds as follows:

A. On February 5, 2019 (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, Rome 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 and as its business, Debtor owns a senior housing development located at 135 Hillside Trace, Dallas, Georgia (the “Business” or sometimes the “Assisted Living Facility”). The Assisted Living Facility is licensed as a Personal Care Home and for a capacity of 95 residents. Canopy Lifestyles, LLC serves as the manager of the Assisted Living Facility<sup>1</sup>.

D. Upon information and belief, MidCap Funding Investment IV, LLC (“Respondent”) asserts 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.

E. Debtor shows that it requires the use of Cash Collateral to pay its payroll and pay its other operating expenses.

F. 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

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<sup>1</sup> On the Petition Date, Debtor’s affiliated entity, Aspen Village at Lost Mountain Memory Care, LLC (“Aspen Village Memory Care”), additionally filed a Chapter 11 Voluntary Petition. Aspen Village Memory Care is in its construction phase and is adjacent to Debtor. The original idea was that these two businesses would operate side by side as a community.

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 F 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. EDT 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 required in Debtor's business judgment in accordance with the Budget (the line items of which Debtor may modify by no more than fifteen percent (15%) and Debtor may carry over any unused budgeted amount) and for other amounts allowed or awarded pursuant to orders entered by this Court after appropriate notice and hearing. Notwithstanding anything to the contrary herein, Debtor may use Cash Collateral to pay the actual amount owed or deposit required to any utility, taxing authority (for post-petition taxes), the United States Trustee or insurance company as actually due and needed in Debtor's business judgment.

4. For purposes of providing adequate protection to Respondent's for the Debtor's use of Cash Collateral, without limiting any security interests or liens in the post-petition Collateral that are granted or extended to Respondent pursuant to 11 U.S.C. § 552, Respondent is hereby granted a security interest in, and lien upon all of the post-petition cash collateral to the same extent, validity, amount, and priority as Respondent's pre-petition security interests and

lien upon such cash collateral (the "Replacement Liens") to secure against any diminution in value of any prepetition cash collateral in which Respondent holds a valid, enforceable and perfected security interest resulting from the Debtor's use of Cash Collateral.

5. This Order is without any prejudice to Respondent's right to dispute at any time the Debtor's continued use of the Cash Collateral, seek relief from the stay or dismissal of this Case, and 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 Respondent to support or accept final use of 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 Respondent's asserted claim(s). To the extent Respondent disputes the Debtor's continued use of cash collateral, the Court may hear such motion on an emergency basis at the Court's earliest availability.

6. This Order is entered without prejudice to the rights of Respondent or other creditors to seek additional adequate protection or other relief available under the Bankruptcy Code, other applicable law or applicable loan documents. Nothing herein shall be construed or interpreted as consent by Respondent to entry of a final order authorizing the use of Cash Collateral. Entry of this Order is without prejudice to the rights of Respondent, creditors or any party in interest to challenge or otherwise contest entry of a final order authorizing the use of Cash Collateral.

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 Respondent; and (B) Respondent 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.

9. 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 March 6, 2019<sup>2</sup> (“Objection Deadline”):

Clerk, U.S. Bankruptcy Court  
600 East First Street  
Room 339  
Rome, GA, 30161-3187

- 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 will be held on the **13th day of March, 2019 at 9:25 am in Courtroom 342, U.S. Courthouse, 600 East First Street, Rome, GA 30161**. 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

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<sup>2</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.

the relief granted herein shall thereupon stand APPROVED on a final basis without further notice or hearing.

**[End of Order]**

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

/s/ Leslie M. Pineyro  
Leslie M. Pineyro  
Georgia 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, N.E., Atlanta, Georgia 30309

Office of the United States Trustee, Suite 362, Richard B. Russell Building, 75 Ted Turner Drive, S.W., Atlanta, Georgia 30303