**UNITED STATES BANKRUPTCY COURT**
**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

| | | |
|---|---|---|
| In re: | ) | |
| | ) | Chapter 11 |
| MARKPOL DISTRIBUTORS, INC., *et al.*, | ) | |
| | ) | Case No. 18-06105 |
| Debtors.[1] | ) | |
| | ) | (Jointly administered) |
| | ) | |
| | ) | Hon. A. Benjamin Goldgar |
| | ) | |
| | ) | Hearing Date: June 27, 2018 at 10:00 a.m. |

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on June 27, 2018 at 10:00 a.m., the undersigned shall appear before the Honorable A. Benjamin Goldgar in Courtroom 642, or whomever may be sitting in his place and stead, at the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, Illinois and will then and there present the *Motion of Vistula Development, Incorporated and Kozyra Holdings, LLC – 955 Lively LLC for Authority to Use Cash Collateral and for Related Relief*, a copy of which is attached hereto and herewith served upon you.

Dated: June 22, 2018

**MARKPOL DISTRIBUTORS, INC.,**

By: /s/ Shelly A. DeRousse
One of Its Attorneys

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[1] The Debtors in these cases, along with their federal tax identification numbers are: Markpol Distributors, Inc. (20-3579454), Vistula Development, Incorporated (20-8549454), and Kozyra Holdings, LLC – 955 Lively LLC (90-1005740).

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**CERTIFICATE OF SERVICE**

I, Shelly A. DeRousse, an attorney, hereby certify that on June 22, 2018, I caused a true and correct copy of the foregoing *Notice of Motion* and *Motion of Vistula Development, Incorporated and Kozyra Holdings, LLC – 955 Lively LLC for Authority to Use Cash Collateral and for Related Relief,* a copy of which is attached hereto and herewith served upon you.

/s/ Shelly A. DeRousse

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[1] The Debtors in these cases, along with their federal tax identification numbers are: Markpol Distributors, Inc. (20-3579454), Vistula Development, Incorporated (20-8549454), and Kozyra Holdings, LLC – 955 Lively LLC (90-1005740).

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**MOTION OF VISTULA DEVELOPMENT, INCORPORATED AND
KOZYRA HOLDINGS, LLC – 955 LIVELY LLC FOR AUTHORITY TO
USE CASH COLLATERAL AND FOR RELATED RELIEF**

Vistula Development, Incorporated ("*Vistula*"), and Kozyra Holdings, LLC – 955 Lively, LLC ("*955 Lively*," together with Vistula, the "*Affiliated Debtors*"), debtors and debtors-in-possession in the above-captioned bankruptcy cases, move (the "*Motion*") this Court for entry of interim and final orders granting authority for the Affiliated Debtors to use cash collateral and for related relief, pursuant to section 363 of the Title 11 of the United States Code (the "*Bankruptcy Code*"), Rule 4001(b) of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*"), and Rule 4001-2 of the Local Rules of this Court (the "*Local Rules*") and, in support, states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b).

[1] The Debtors in these cases, along with their federal tax identification numbers are: Markpol Distributors, Inc. (20-3579454), Vistula Development, Incorporated (20-8549454), and Kozyra Holdings, LLC – 955 Lively LLC (90-1005740).

2. Venue for these chapter 11 cases and this Motion is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for relief requested herein are section 363 of the Bankruptcy Code, Rule 4001(b) of the Bankruptcy Rules and Rule 4001-2 of the Local Rules.

## FACTUAL BACKGROUND

### I. Procedural History

4. On March 2, 2018, Markpol Distributors, Inc. ("*Markpol*," together with the Affiliated Debtors, the "*Debtors*") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois (the "*Court*").

5. On May 30, 2018, the Affiliated Debtors also filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in this Court.

6. On June 13, 2018, the Court entered an order authorizing the joint administration of the Debtors' bankruptcy cases.

7. The Debtors maintain possession of their property and are operating and managing their business as debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

8. No trustee or examiner has been appointed in the Debtors' chapter 11 bankruptcy cases.

9. 955 Lively owns the real property commonly known as 955 Lively Boulevard, Wood Dale, Illinois 60191 (the "*Lively Property*"), from which Markpol operates its food distribution business. 955 Lively's business operations consist of the ownership and management of the Lively Property.

10. Vistula owns the real property commonly known as 9815 Leland Avenue, Schiller Park, IL 60176 (the "*Schiller Park Property*" and together with the Lively Property, the "*Properties*"). Vistula leases the Schiller Park Property to a third party who has no relationship or affiliation with any of the Debtors other than its lease of the Schiller Park Property. Vistula's business operations consist of the ownership and management of the Schiller Park Property.

## II. Affiliated Debtors' Loans With MB

a. <u>955 Lively Loans</u>

11. On or about July 30, 2013, 955 Lively executed a promissory note in the original principal amount of $1,225,000.00 in favor of American Chartered Bank ("*ACB*"), which was subsequently amended by Change in Terms Agreements increasing the principal loan amount to $1,564,999.05 (the "*955 Lively First Note*").

12. On or about July 30, 2013, 955 Lively executed and delivered a Mortgage (the "*Lively First Mortgage*") and Assignment of Rents dated July 30, 2013 wherein 955 Lively granted ACB a mortgage lien against the Lively Property to secure the indebtedness under the Lively First Note, which Mortgage was modified on March 31, 2016 to increase the indebtedness.

13. On or about July 30, 2013, 955 Lively executed a promissory note in the original principal amount of $980,000.00 in favor of American Chartered Bank ("*ACB*"), which was subsequently amended by Change in Terms Agreements increasing the principal loan amount to $1,315,745.68 (the "*955 Lively Second Note*").

14. On or about July 30, 2013, 955 Lively executed and delivered a Mortgage (the "*Lively Second Mortgage*") and Assignment of Rents dated July 30, 2013 wherein 955 Lively granted ACB a mortgage lien against the Lively Property to secure the indebtedness under the

Lively Second Note, which Mortgage was modified on March 31, 2016 to increase the indebtedness.

b. Vistula Loans

15. On or about September 13, 2013, Vistula entered into a term loan transaction with ACB in which Vistula executed a promissory note (the "*Vistula Note*") in the original principal amount of $932,000.00 in favor of MB with a maturity date of September 13, 2018.

16. To secure the Vistula Note, Vistula executed a Mortgage (the "*Vistula Mortgage*") wherein Vistula granted ACB a mortgage lien against the Schiller Park Property.

c. Cross-Collateralization of Markpol Debts

17. On or about September 13, 2013, Vistula executed and delivered a Mortgage (the "*Vistula Collateral Mortgage*") and Assignment of Rents to ACB for the Schiller Park Property as further security for a $900,000 loan by ACB to Markpol.

18. On or about October 18, 2016, Vistula executed and delivered to MB, as successor to ACB, a Modification of Mortgage dated October 18, 2016 (the "*Vistula Modified Collateral Mortgage*" and together with the Vistula Collateral Mortgage, the "*Mortgages*") on the Schiller Park Property to secure various promissory note obligations of Markpol and 955 Lively.

19. On or about October 18, 2016, 955 Lively executed and delivered to MB a certain Mortgage dated October 18, 2016 (the "*955 Lively Collateral Mortgage*") and Assignment of Rents on the Lively Property to secure obligations of itself and Markpol.

## REQUEST FOR RELIEF

20. By this Motion, the Affiliated Debtors requests entry of interim and final orders authorizing the Affiliated Debtors to use the cash that constitutes the collateral of MB (the "*Cash*

*Collateral*"). In order for the Affiliated Debtors to continue to operate their businesses, manage their financial affairs, and effectuate an effective reorganization, it is essential that the Affiliated Debtors be authorized to use Cash Collateral for, among other things, the following purposes:

A. Payment of wages or compensation to service providers;

B. Insurance;

C. Utilities;

D. Maintenance of the Properties;

E. Payment of professional fees approved by this Court, on an interim or final basis, as an administrative expense; and

E. Other miscellaneous items needed in the ordinary course of business and to administer these bankruptcy cases.

21. Attached to this Motion as **Exhibit 1** is a proposed order granting this Motion and incorporating each of the Debtors' proposed cash flow projections from July 1, 2018 through the week of August 25, 2018 in separately attached budgets (the "*Budgets*"). The Budgets itemize the Debtors' respective cash needs during the relevant period. The proposed order is referred to as the "Ninth Interim Order," as it incorporates Markpol's use of cash collateral as well.

22. Use of cash collateral to pay the actual, necessary and ordinary expenses to maintain the Affiliated Debtors' businesses, as set forth in the Budget, will preserve the value of the Affiliated Debtors' assets and businesses and thereby ensure that the interests of creditors that have or may assert an interest in both Cash Collateral and the Affiliated Debtors' other assets are adequately protected within the meaning of sections 361, 362, and 363 of the Bankruptcy Code.

23. The Affiliated Debtors' proposal will permit them to sustain their business operations and reorganize its financial affairs through the implementation of a successful plan of

reorganization. Furthermore, the Affiliated Debtors' proposal will adequately protect the purported secured interests of MB.

24. Unless the Affiliated Debtors are authorized to use cash collateral in which MB has an interest, the Affiliated Debtors will be unable to maintain the Properties, continue to operate their businesses and manage their financial affairs, thereby eliminating any reasonable prospect for a successful reorganization. The cessation of normal business operations by the Affiliated Debtors will cause irreparable harm to the Affiliated Debtors, their creditors and their estates.

25. Allowing the Affiliated Debtors to use the Cash Collateral will increase the value of MB's collateral and MB will suffer no diminution in value of its collateral and will be adequately protected. The value of each of the Properties is significantly less than the respective Mortgages related to each of the Properties.[2]

26. As additional adequate protection, the Affiliated Debtors propose to use Cash Collateral upon the following terms and conditions:

A. The Affiliated Debtors will permit MB to inspect, upon reasonable notice, within reasonable hours, the Affiliated Debtors' books and records;

B. The Affiliated Debtors shall maintain and pay premiums for insurance to cover all of their assets from fire, theft, and water damage;

C. The Affiliated Debtors shall, upon reasonable request, make available to MB evidence of that which purportedly constitutes its collateral or proceeds;

D. The Affiliated Debtors will properly maintain the collateral and properly manage the collateral; and

E. The Affiliated Debtors will grant a replacement lien to MB to the extent of its pre-petition liens, and attaching to the same assets of the Affiliated Debtors in which MB asserted pre-petition liens.

[2] The Affiliated Debtors reserve all right to challenge the validity of any purported cross-collateralization of the loans.

27. Further cash flow budgets, if necessary, will be submitted to this Court pursuant to this Motion. The Affiliated Debtors will make the expenditures set forth on the Budget attached as Exhibit A to proposed order to this Motion, plus no more than 10% of the total proposed expense payments, unless otherwise agreed to by MB or upon further order of this Court.

28. The Debtor requests, pursuant to Rule 4001(b)(2) of the Bankruptcy Rules, that this Court conduct a preliminary hearing to authorize the Affiliated Debtors' interim use of cash collateral pending a final hearing on this Motion.

29. The Affiliated Debtors believe that it is in the best interests of the Affiliated Debtors, their creditors, and their estate to authorize it to use that portion of its assets herein requested, all or a portion of which may constitute Cash Collateral, in that, without the limited use of those assets as herein requested, the Affiliated Debtors will be unable to pay and satisfy its current operating expenses, thereby resulting in immediate and irreparable harm and loss to the estate.

30. For the reasons set forth herein, this Court should grant the relief requested in this Motion.

WHEREFORE, the Affiliated Debtors request that this Court enter an Order: (i) authorizing the use of collateral in which MB asserts liens, upon the terms and conditions set forth in this Motion, until further order of the Court; (ii) preliminarily authorizing the Affiliated Debtors to use cash collateral pending a final hearing on this Motion; (iii) setting a final hearing on this Motion; and (iv) granting such other and further relief as the Court deems just and proper.

Dated: June 22, 2018

**VISTULA DEVELOPMENT, INCORPORATED AND KOZYRA HOLDINGS, LLC – 955 LIVELY, LLC**

By: _/s/ Shelly A. DeRousse_______________
One of Their Proposed Attorneys

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