

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS**

<b>In Re:</b>	)	
	)	
<b>505 CONGRESS STREET, LLC</b>	)	<b>Chapter 11</b>
	)	<b>Case No. 18-11352-JNF</b>
<b>DEBTOR</b>	)	
	)	

**DEBTOR’S MOTION FOR INTERIM AUTHORIZATION  
TO USE CASH AND NON-CASH COLLATERAL  
AND REQUEST FOR EMERGENCY DETERMINATION**

**(Request for hearing not later than April 18, 2018)**

NOW COMES the debtor and debtor-in-possession, 505 Congress Street, LLC doing business as La Casa De Pedro Tapas and Ceviche Bar (“Debtor” and/or “505 Congress”) and, pursuant to 11 U.S.C § 363(b)(1) and Fed. R. Bankr. P. 4001(b), respectfully moves this Honorable Court for an interim order authorizing the Debtor’s use of cash and non-cash collateral (hereafter “Cash Collateral”) as is necessary for the continuation of its business operations during the course of these Chapter 11 proceedings. In support of this Motion, the Debtor states the following:

1. Debtor filed its petition under Chapter 11 of Title 11 of the United States Code on April 15, 2018, and since such date has continued in possession of its property and operation of its business as Debtor-In-Possession pursuant to 11 U.S.C. §§ 1107 and 1108 of the Bankruptcy Code since the Petition Date.
2. The Debtor is a Massachusetts Limited Liability Company organized pursuant to M.G.L. c. 156(C) organized on May 1, 2015 and opened its restaurant on November 14, 2016. Its principal place of business is located at 505 Congress Street, Boston, Massachusetts.
3. The Debtor is operated by its founder and sole managing member, Pedro Alarcon.

4. The Debtor operates a dining institution serving Latin cuisine which highlights the traditions of Venezuela and broader Latin American food and in addition, offers a late - night bar menu as well as live entertainment on weekend nights.

5. The Debtor's emergency Chapter 11 filing was necessitated by the issuance of a default by the landlord, but prior to the termination of the Lease.

6. A secondary reason for the filing is that the Debtor had experienced cash flow shortages as it had entered into certain lending arrangements with high interest lenders whose agreements provided for sums to be deducted on a daily basis from the Debtor's operating account which also impacted its ability to meet its obligations.

7. The Debtor-In-Possession requests the use of the pre-petition cash and non-cash collateral in order to continue to operate its business and to pay obligations in the ordinary course of business while it undertakes a reorganization of its business affairs.

8. The Debtor-In-Possession requests a preliminary hearing on an emergency basis on this Motion on or by April 18, 2018 in order to be able to pay for the food and liquor delivery's to be received on that date as well as daily going forward, as well as to pay its employee wages and the expenses necessary for the operation of the business. Failure to do so will result in immediate and irreparable harm to the estate.

9. For the purposes of this Motion, and without prejudice to the Debtor's right to obtain further or additional evidence of value, the Debtor has used a cost basis in determining the value of its assets which have an approximate value of \$1,918,530 comprised of as follows: food inventory of approximately \$15,000; liquor, beer and wine inventory with an approximate value of \$30,000; machinery and equipment, with an approximate value of \$700,000; furniture and fixtures with the approximate value of \$448,530; small wares and audiovisual equipment and

security equipment with the approximate value \$225,000; and the liquor license with an approximate value of \$500,000.00 for a total of approximately \$1,918,530.

10. Based upon the information available at the Commonwealth of Massachusetts, Office of the Secretary of State and other information which Leader Bank has provided to the Debtor (which remains subject to confirmation through a review of loan documents), Leader Bank, N.A. ("Leader Bank") holds a first priority perfected lien on all of the Debtor's assets, including its liquor license, securing the following loans in the following total outstanding principal amounts as of on or about the Petition Date:

Loan No. 570021800:	\$1,771,648.24
Loan No. 570021793:	\$1,497,551.85
Loan No. 400001396:	\$ 14,285.00
Loan No. 400001378:	\$ 14,285.00
Loan No. 400001127:	\$ 10,000.00
Loan No. 400001118:	\$ 9,525.00
Overdraft balance:	\$ 15,770.57
Total Leader Bank Claim:	\$3,333,065.66 <sup>1</sup>

The loans are secured by all assets of the Debtor as reflected in the UCC-1 Financing Statement filed on January 26, 2016 and thereafter a security interest and pledge of the liquor license as evidenced by the UCC -1 Financing Statement filed on April 19, 2017. Leader Bank's secured claims are further evidenced in part by Security Agreements, Construction Loan

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<sup>1</sup> The Leader Bank loans are also cross-collateralized with the assets of Debtor's non-debtor affiliate, La Casa De Pedro, Inc., which operates a restaurant in Watertown. Loan Nos. ending 1378 and 1127 are primary obligations of La Casa De Pedro, Inc. Loan No. ending 1118 is a primary obligation of another non-debtor affiliate, Alarcon Family Enterprises, LLC. All other loan obligations are direct and primary obligations of the Debtor. Leader Bank's claims are also secured by a junior mortgage on certain residential property located in Florida owned by Pedro Alarcon, which junior lien position is believed to have little or no value.

Agreement, Collateral Assignment of Leases and Rents, Pledges of Liquor License and related loan documents dated January 25, 2016 as modified on March 31, 2017 (“Leader Bank Pre-Petition Liens”).

11. The U. S. Small Business Administration, c/o Bay Colony Development Corp. has on record a UCC Financing Statement dated April 6, 2017 as evidenced by UCC Filing Number 201735911810. Upon information and belief, there is no obligation owed to U. S. Small Business Administration, c/o Bay Colony Development Corp.

12. Secured Lender Solutions, (hereafter “SLS”) has on record a UCC Financing Statement dated April 27, 2017 as evidenced by UCC Filing Number 201736368190. The Debtor is unable to identify the merchant for which this loan is secured. However, the Debtor believes that there is no remaining obligation to SLS.

13. Argus Funding Solutions, LLC has on record a UCC Financing Statement dated May 18, 2017 as evidenced by UCC Filing Number 201737006460. This Merchant Agreement dated on or about May 18, 2017 provided financing to the Debtor. Thereafter, Argus Capital Funding has on record a UCC Financing Statement dated September 7, 2017 as evidenced by UCC Filing Number 201739527440. Upon information and belief, the obligation of Argus Funding Solutions, LLC was satisfied and the outstanding obligation to Argus Capital Funding is outstanding in the sum of approximately \$260,000 and is secured by but not limited to a security interest in all of the present and future accounts, deposit accounts, personal property, assets, equipment, inventory etc.

14. ACME Company has on record a UCC Financing Statement dated August 23, 2017 as evidenced by UCC Filing Number 201739207090. Upon information provided, the obligation to ACME has been satisfied.

15. Financial Pacific Leasing, Inc. has on record a UCC Financing Statement dated November 21, 2017 as evidenced by UCC Filing Number 201741461280. This UCC secured a Lease Agreement dated on or about November 20, 2017 for equipment and other personal property described in the Lease Agreement.

16. On April 14, 2018, a Notice of Tax Lien was recorded with the Secretary of State for the Commonwealth of Massachusetts. The Debtor seeking additional information as to the nature of the claim or the entity filing the notice of the tax lien and shall supplement the information as obtained.

17. As adequate protection pursuant to Section 361 of the Bankruptcy Code, the Debtor proposes that such secured creditors be granted replacement liens on the Debtor's post-petition cash, receivables and other assets to the same extent, and with the same priority as they held over the Debtor's assets on the Petition Date.

18. In the course of its operations, the Debtor-In-Possession requests the use of the pre-petition cash and non-cash collateral in order to continue to operate its restaurant business. In accordance with the requirements of 11 U.S.C. Section 363(c)(4), the cash proceeds of the debtor's operations will be segregated in a separate bank account until such time as the debtor is authorized to utilize same.

19. Debtor-In-Possession has no source of income other than the proceeds from the operations of its restaurant and bar. If it is not permitted to use such proceeds it will have to close down its operations forthwith without paying its employees, and without replacing any of its inventory and other materials necessary to operate. Debtor-In-Possession requests an emergency and preliminary hearing on this Motion not later than April 18, 2018 in order to be able to purchase inventory as food supplies are delivered on a daily basis and failure to be able to obtain same could

present the possibility of closing down or curtailing operations and the consequent immediate and irreparable harm to the estate which must be avoided.

20. Debtor-In-Possession's payroll, was to be issued on Saturday, April 14, 2018 for the week of April 2 -April 8, 2018 in the sum of \$20,449.95 for the one-week period ending April 8, 2018. Due to the filing, the payroll was not paid. In addition, payroll in the approximate sum of \$20,449.95 is due to be paid to individual employees, for the period of April 9, 2018 through April 15, 2018, inclusive of payroll taxes to the Internal Revenue Services for taxes withheld from such employees, F.I.C.A. withheld from employees, and for the employer's share of such F.I.C.A. for a total of \$40,317.94. The Debtor's payroll is prepared by Restaurant Accounting Services.

21. The Debtor is seeking on an interim and emergency basis, the use of cash collateral through April 30, 2018 in the amount of approximately \$126,500 in accordance with the proposed Budget. The sums requested are based upon historical and projected income and expenses for the prior months of the 1<sup>st</sup> quarter. The proposed budget is annexed here as Exhibit 1.

22. The Debtor shall grant replacement liens on the cash proceeds from restaurant sales and other collateral acquired by the Debtor after the petition date of the same type, nature or description encompassed within their pre-petition security interests with such liens to be of the same priority as their perfected, pre-petition lien.

23. Debtor has no unencumbered assets to fund post-petition operation of its business, pay expenses, purchase inventory or pay its employees. Debtor states that it is unable to obtain, in the ordinary course of business or otherwise, unsecured credit allowable under Section 502(b)(1) of the Bankruptcy Code as an administrative expense.

24. The Debtor believes that its continued operation is in the best interest of the estate in that it will preserve its going concern value, thereby increasing the likelihood of reorganization and minimizing the disruption to its business caused by the Chapter 11 filing.

25. The above noted creditors are adequately protected, as the value of the collateral will not be diminished by the use of the Collateral. In the event that the Debtors assets were to be liquidated, the value of the collateral would be significantly diminished.

26. The Debtor is concurrently filing an Expedited Motion to Pay Pre-Petition Wages and Payroll-Related Tax Obligations. The Debtor-In-Possession's payments, through its payroll service are due to be funded on April 19, 2018. There are 44 employees who are to be paid for the period of April 2, 2018 to April 16, 2018. A detailed explanation of the payroll matters is contained in the Debtor's Emergency Motion to Pay Pre-Petition Wages and Payroll-Related Tax Obligations.

27. The Debtor shall serve this Motion by electronic, fax and/or mail to the secured creditors and to the twenty largest unsecured creditors, taxing authorities and the United States Trustee. In addition, the Debtor has been in discussions with Leader Bank regarding this Motion.

**Emergency Determination Requested**

28. The Debtor requires an emergency hearing on the within Motion for Use of Cash and Non-Cash Collateral as it is unable otherwise to pay for delivery and shipment of its products which are delivered daily on a cash on delivery (COD) basis or to conduct any business whatsoever.

29. In addition, the Debtor requires an immediate hearing on the within Motion to continue to operate the business and to avoid the Debtor ceasing operations which will result in the cessation of business and the layoff of its employees.

30. The obligations to the creditors asserting security are adequately protected as the value of the collateral shall not be diminished as the Debtor continues to operate and is the Debtor intends to offer adequate protection payments pursuant to 11 U.S.C. §361.

**Consent of Leader Bank, N.A. Currently Being Sought**

31. The Debtor proposes to provide Leader Bank, N.A. adequate protection as it is entitled to under §363(e) of the Code, of its interest in the prepetition collateral by granting adequate protection liens, effective and perfected as of the Petition Date and without the necessity of the execution by the Debtor of security agreements, pledge agreements, financing statements or other agreements, a valid and perfected replacement security interest in, and lien on the Collateral (the "Leader Bank Adequate Protection Liens"), which Adequate Protection Liens shall be *pari passu* to the Leader Bank Prepetition Liens, such that Leader Bank shall have a replacement lien on all post-petition Collateral to the same extent, validity, enforceability and priority as its lien on the Debtor's pre-petition assets.

32. For purposes of this Interim Order, the term "Collateral" shall include, without limitation, all prepetition and post-petition assets and properties (tangible, intangible, real, personal, and mixed) of the Debtor of any kind or nature, whether now existing or newly acquired or arising, and wherever located including, without limitation, all Collateral (as such term is defined in the Prepetition Loan Documents), all Cash Collateral (as defined in this Order), and all cash and non-cash proceeds, rents, products, substitutions, accessions and profits of all of the foregoing, provided that in accordance with MLBR 4001-2(c)(3) the Collateral shall not include causes of action brought pursuant to §§ 506(c), 544, 547, 548 and 549 of the Code (the "Avoidance Actions") and recoveries upon such causes of action.



33. The Debtor seeks Leader Bank's consent, on an interim basis to the use of cash and non-cash collateral as set forth in the Budget attached subject to granting Leader Bank Adequate Protection Liens and other rights pursuant to §§ 361, 362, and 363 of the Code with respect to the Debtor's use of Cash Collateral granted under the Prepetition Loan Documents, and in accordance with Rule 4001 (b)(2) and (d)(3) of the Federal Rules of Bankruptcy Procedure (the "Rules") for the period through April 30, 2018, subject to further requests for use of cash and non-cash collateral.

WHEREFORE, the Debtor respectfully requests that the Court enter an order:

- a. Granting this Motion;
- b. Finding that Debtor has given reasonable and adequate notice of this Motion and the hearing thereon to each of the secured creditors, taxing authorities, the United States Trustee and the Debtor's 20 largest unsecured creditors;
- c. Authorizing the Debtor to use cash and non-cash collateral on an interim basis in accordance with the Budget Projections attached hereto, without prejudice to the Debtor's right to seek to modify such order upon proper notice and hearing;
- d. Granting the secured creditors noted herein with replacement liens in the same amount and with the same priority as were enjoyed prior to the Petition Date as more fully set forth above;
- e. Scheduling an emergency hearing for consideration of the Debtor's authorization to use cash collateral.

- f. Granting such additional relief as the Court deems appropriate under the circumstances.

Respectfully submitted,  
505 Congress Street, LLC  
By its attorney,

Dated: April 17, 2018

/s/ Nina M. Parker  
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**EXHIBIT 1**

## Profit &amp; Loss

## BUDGET

	ESTIMATED MONTH	ESTIMATED WEEK	BUDGET WEEK 1	BUDGET WEEK 2
<b>Income</b>				
3000 · Food	\$107,311.60	\$24,764.22	\$25,943.58	\$25,943.58
3100 · Liquor	\$89,927.28	\$20,752.45	\$21,740.76	\$21,740.76
3120 · Beer - Bottled	\$5,616.35	\$1,296.08	\$1,357.81	\$1,357.81
3121 · Beer - Draft	\$6,351.18	\$1,465.66	\$1,535.46	\$1,535.46
3130 · Wine	\$8,430.36	\$1,945.47	\$2,038.12	\$2,038.12
3140 · N/A Beverage	\$3,299.73	\$761.48	\$797.74	\$797.74
3170 · Retail	\$6,562.45	\$1,514.41	\$1,586.53	\$1,586.53
<b>GROSS SALES</b>	<b>\$227,498.95</b>	<b>\$52,499.76</b>	<b>\$55,000.00</b>	<b>\$55,000.00</b>
<b>DISCOUNTS</b>				
3000-01 · Food Waste	(\$118.83)	(\$27.42)		
3100-01 · Liquor Waste	(\$135.00)	(\$31.15)		
3150-01 · Manager Comps	(\$2,682.53)	(\$619.04)		
3151-01 · 10% Neighbor Discount	(\$101.43)	(\$23.41)		
3160-01 · Comps	(\$5,465.56)	(\$1,261.28)		
3161-01 · 20% Promotional Discount	(\$15.25)	(\$3.52)		
3170-01 · Gift Card Comps	(\$294.67)	(\$68.00)		
3171-01 · Retail Discount	(\$90.25)	(\$20.83)		
<b>Total DISCOUNTS</b>	<b>(\$8,903.53)</b>	<b>(\$2,054.66)</b>	<b>(\$2,152.51)</b>	<b>(\$2,152.51)</b>
<b>NET SALES</b>	<b>\$218,595.42</b>	<b>\$50,445.10</b>	<b>\$52,847.49</b>	<b>\$52,847.49</b>
<b>Cost of Goods Sold</b>				
4100 · Food	\$6,684.20	\$1,542.51		
4110 · Meat	\$11,724.39	\$2,705.63		
4115 · Seafood	\$6,179.88	\$1,426.13		
4130 · Produce	\$8,148.45	\$1,880.41		
4140 · Dairy	\$2,229.22	\$514.44		
4150 · Bakery	\$86.63	\$19.99		
<b>FOOD COST</b>	<b>\$35,052.78</b>	<b>\$8,089.10</b>	<b>\$8,474.34</b>	<b>\$8,474.34</b>
4200 · Liquor	\$17,086.26	\$3,942.98		
4210 · Beer - Bottled	\$1,074.99	\$248.07		
4215 · Beer - Draft	\$1,233.33	\$284.61		
4230 · Wine	\$2,191.84	\$505.81		
4250 · Mixers/Soft Drinks	\$1,613.86	\$372.43		
<b>BEVERAGE COST</b>	<b>\$23,200.28</b>	<b>\$5,353.91</b>	<b>\$5,932.83</b>	<b>\$5,932.83</b>
<b>Total COGS</b>	<b>\$58,253.06</b>	<b>\$13,443.01</b>	<b>\$14,407.17</b>	<b>\$14,407.17</b>
<b>Gross Profit</b>	<b>\$160,342.36</b>	<b>\$37,002.08</b>	<b>\$38,440.32</b>	<b>\$38,440.32</b>
<b>Wages</b>				
5002 · FOH Managers	\$14,961.53	\$3,452.66		
5003 · Server	\$3,773.24	\$870.75		
5004 · Bartender	\$4,441.13	\$1,024.88		
5005 · Busser/Runner	\$4,582.02	\$1,057.39		
5006 · Host	\$3,662.49	\$845.19		
5010 · BOH Manager	\$3,615.37	\$834.32		
5011 · Kitchen Reg	\$22,118.03	\$5,104.16		
5013 · Supervisor	\$6,010.89	\$1,387.13		
5014 · Dishwasher	\$4,593.74	\$1,060.09		
5018 · Take Out	\$4,285.91	\$989.06		
5050 · Casual Labor-FOH	\$1,767.24	\$407.82		
5052 · Casual Labor-Training	\$2,179.33	\$502.92		
<b>Total Wages</b>	<b>\$75,990.92</b>	<b>\$17,536.37</b>	<b>\$35,072.73</b>	<b>\$17,536.37</b>
<b>Taxes &amp; Other</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
5120 · FICA	\$7,947.39	\$1,834.01		
5130 · SUTA	\$2,187.07	\$504.71		
5140 · FUTA	\$498.98	\$115.15		
5175 · Worker's Compensation	\$731.17	\$168.73		
<b>Total Taxes &amp; Other</b>	<b>\$11,364.62</b>	<b>\$2,622.60</b>	<b>\$5,245.21</b>	<b>\$2,622.60</b>
<b>TOTAL PAYROLL</b>	<b>\$87,355.53</b>	<b>\$20,158.97</b>	<b>\$40,317.94</b>	<b>\$20,158.97</b>
<b>PRIME COST</b>	<b>\$145,608.60</b>	<b>\$33,601.98</b>	<b>\$54,725.10</b>	<b>\$34,566.14</b>

63.77%

31.88%

9.54%

4.77%

73.31%

36.65%

BUDGET (2)

505 CONCRETE LLC

## Profit &amp; Loss

## BUDGET

	MONTH	WEEK	WEEK 1	WEEK 2
<b>OPERATING EXPENSES</b>				
<b>UTILITIES</b>				
7027 · Telephone	\$326.61	\$75.37	\$75.37	\$75.37
7028 · Cable	\$213.68	\$49.31	\$49.31	\$49.31
7030 · Natural Gas	\$2,217.80	\$511.80	\$511.80	\$511.80
7060 · Waste Removal	\$1,877.01	\$433.16	\$433.16	\$433.16
Total UTILITIES	\$4,635.10	\$1,069.64	\$1,069.64	\$1,069.64
<b>OCCUPANCY</b>				
7015 · RE Taxes	\$4,939.02	\$1,139.77	\$1,139.77	\$1,139.77
7001 · CAM	\$3,292.68	\$759.85	\$759.85	\$759.85
7000 · RENT	\$54,031.66	\$12,468.85		
Total OCCUPANCY	\$62,263.36	\$14,368.47	\$1,899.62	\$1,899.62
6000 · Equip R&M	\$4,329.95	\$999.22	\$0.00	\$0.00
7010 · Repairs and Maint-Facilities	\$226.67	\$52.31	\$0.00	\$0.00
6001 · Cutlery/Knife Sharpening	\$120.00	\$27.69	\$0.00	\$0.00
6030 · Laundry & Linen	\$1,244.90	\$287.28	\$287.28	\$287.28
6032 · Uniforms	\$300.47	\$69.34	\$0.00	\$0.00
6050 · Restaurant Supplies	\$6,256.65	\$1,443.84	\$1,443.84	\$1,443.84
6051 · Paper Supplies	\$72.09	\$16.64	\$16.64	\$16.64
7040 · Cleaning & Janitorial	\$6,801.42	\$1,569.56	\$1,569.56	\$1,569.56
8000 · Advertising	\$188.51	\$43.50	\$43.50	\$43.50
8100 · Security Expense	\$2,183.34	\$503.85	\$503.85	\$503.85
8130 · Music	\$3,066.68	\$707.70	\$707.70	\$707.70
9010 · Office Supplies	\$42.47	\$9.80	\$9.80	\$9.80
9020 · Postage	\$532.93	\$122.98	\$122.98	\$122.98
9038 · Bank Charges / Merchant Fees	\$7,965.20	\$1,838.12	\$1,838.12	\$1,838.12
9051 · Printing	\$396.87	\$91.59	\$91.59	\$91.59
9060 · Insurance Expense	\$5,123.10	\$1,182.25	\$1,182.25	\$1,182.25
9065 · Automobile Expense	\$798.35	\$184.24	\$184.24	\$184.24
9050 · Valet	\$5,563.02	\$1,283.77	\$1,283.77	\$1,283.77
9070 · Legal & Prof Fees	\$2,045.26	\$471.98	\$471.98	\$471.98
9073 · Accounting Fees	\$1,625.00	\$375.00	\$375.00	\$375.00
9074 · Payroll Fees	\$476.77	\$110.02	\$110.02	\$110.02
<b>TOTAL OPERATING EXPENSES</b>	<b>\$116,258.11</b>	<b>\$26,828.80</b>	<b>\$13,211.39</b>	<b>\$13,211.39</b>
Net Ordinary Income	(\$43,271.29)	(\$9,985.68)	(\$15,089.01)	\$5,069.96
Other (Income) / Expense				
<b>CAPITAL CONTRIBUTIONS</b>	\$0.00	\$0.00	(\$16,500.00)	\$0.00
9080 · Interest Expense 1793	\$7,985.02	\$1,842.70		
9082 · Interest Expense 1800	\$9,390.03	\$2,166.93		
9084 · Interest Expense Other	\$463.23	\$106.90	\$106.90	\$106.90
9085 · FINANCE CHARGE	\$53.07	\$12.25	\$12.25	\$12.25
9200 · Officer's Life Insurance	\$3,500.01	\$807.69	\$807.69	\$807.69
Total Other Expense	\$21,391.37	\$4,936.47	(\$15,573.16)	\$926.84
<b>NET INCOME</b>	<b>(\$64,662.66)</b>	<b>(\$14,922.15)</b>	<b>\$484.15</b>	<b>\$4,143.12</b>