

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at Greenbelt

In Re: *
*
MITE, LLC, * Case No. 18-19966-LSS
* Chapter 11
Debtor. *
*
* * * * *

**CONSENT ORDER APPROVING CONSENT MOTION
FOR AUTHORITY TO USE CASH COLLATERAL
ON AN INTERIM BASIS**

Upon consideration of the foregoing Consent Motion for Authority to Use Cash Collateral on an Interim Basis (the “**Motion**”); and it appearing that due and appropriate notice of the Motion, the relief requested therein, the Interim Hearing (as defined below) (the “**Notice**”) having been served by the Debtor in accordance with Rule 4001(b); the initial hearing on the Motion having been held by this Court on _____ (the “**Hearing**”); and with the consent of Sandy Spring Bank (“**Sandy Spring**”), and upon the record made by the Debtor, Mite, LLC (the “**Debtor**”) and other interested parties at the Hearing, and good and sufficient cause appearing therefore:

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. This case was commenced by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code on July 27, 2018 (the “**Petition Date**”) in the United States Bankruptcy Court for the District of Maryland (the “**Court**”).

B. The Debtor is operating its business and managing its affairs as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. The Court has jurisdiction over the matters raised in the Motion, and over the persons and property affected by the Motion, pursuant to 28 U.S.C. §§ 157 and 1334. The matters raised in the Motion are core proceedings pursuant to 28 U.S.C. § 157(b). Venue for the Debtor’s case is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The Debtor provided notice of this Motion to (a) the Office of the United States Trustee for the District of Maryland; (b) the Debtor’s 20 largest unsecured creditors; and (c) Sandy Spring.

E. Sandy Spring is the current holder and owner of duly perfected first-priority security interest in and liens in, to and against the following assets of the Debtor, which is owned in connection with Mite, LLC’s business, whether owned at the time of the agreement or thereafter acquired, whether then existing or thereafter arising, and wherever located (**the “Collateral”**): All inventory, furniture, fixtures and equipment, accounts (including but not limited to all receivables and accounts constituting as-extracted collateral), chattel paper, instruments, (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money or other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all fixtures; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and

substitutions for all or any part of the foregoing; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether then existing or thereafter arising, whether then owned or thereafter acquired or whether then or thereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.

In addition, the Collateral includes the following, whether then owned or thereafter acquired, whether then existing or thereafter arising and wherever located:

All attachments, accessions, tools, parts, supplies, increases and additions to and all replacements of and substitutions for any property described above.

All products and produce of any of the property described above as Collateral.

All accounts, receivables, contract rights, general intangibles, instruments, monies, payments, and all other rights arising out of a sale, lease or other disposition of any of the property described above as Collateral.

All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described above as Collateral.

All records and data relating to any of the property described above as Collateral, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of the Mite, LLC's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

The lien set forth above is the product of certain loan documents executed by the Debtor

in favor of Sandy Spring (collectively and as more particularly described in the Consent Order, the “**Loan Documents**”).

F. The Loan Documents evidence a \$1,363,877.00 commercial loan (the “**Loan**”) that WashingtonFirst Bank (“**WashingtonFirst**”) extended to the Debtor.

G. The Loan is evidenced by, among other things, that certain (i) Promissory Note, dated March 22, 2017, in the original principal amount of \$1,363,077.00, executed and delivered by the Debtor to the order of WashingtonFirst (the “**Note**”); and (ii) Loan Agreement, dated March 22, 2017, by and between the Debtor and WashingtonFirst (the “**Loan Agreement**”).

H. The Loan is secured by the aforementioned duly perfected first priority security interest in and liens in, to and against the Assets pursuant to and as more particularly described in that certain (i) Commercial Security Agreement, dated March 22, 2017, by and between the Debtor and WashingtonFirst (the “**Security Agreement**”); and (ii) UCC-1 Financing Statement filed by WashingtonFirst with the Maryland Department of Assessments and Taxation on March 24, 2017 at File Number 170324-1118011 (the “**Financing Statement**”).

I. The Note, the Loan Agreement, the Security Agreement, the Financing Statement and all other documents that evidence, secure, guaranty or otherwise document the Loan are collectively referred to herein as the “Loan Documents.”

J. Sandy Spring is the successor in interest to WashingtonFirst Bank under the Loan Documents and is the current holder and owner of the same.

K. In the ordinary course of business, the Debtor requires cash flow from its operations, including the Assets, to fund its operating costs.

L. All of the Debtor's cash and cash proceeds are subject to the properly perfected security interest in favor of Sandy Spring and, as such, constitute "cash collateral" of Sandy Spring (as such term is defined in Bankruptcy Code section 363(a), "**Cash Collateral**").

M. The Debtor has an immediate and urgent need to use its Cash Collateral. Absent the use of Cash Collateral, the Debtor will not be able to fund its operating expenses, and its estate, its creditors will suffer immediate and irreparable harm.

N. Good and sufficient cause has been shown to justify the grant of interim relief requested in the Motion, and the requirements of Rules 4001(c)(2) and 6003(b) of the Federal Rules of Bankruptcy Procedure have been satisfied for the entry of this order (the "**Interim Order**").

O. The terms of the Debtor's use of Cash Collateral, as more fully set forth in this Interim Order, are (i) fair and reasonable, (ii) reflect the Debtor's prudent business judgment consistent with its fiduciary duties, (iii) constitute reasonably equivalent value and fair consideration; and (iv) are essential and appropriate for the continued operation and management of the Debtor's business and the preservation of its assets and property. Entry of this Interim Order is in the best interests of the Debtor and its estate and creditors.

P. The adequate protection provided for under this Interim Order is sufficient to protect Sandy Spring against any diminution in the value of its interest in the Cash Collateral, and is fair, reasonable and sufficient to satisfy the requirements of the Bankruptcy Code.

Q. At a final hearing on the Motion (the "**Final Hearing**"), the Debtor will seek approval of the relief requested in the Motion on a final basis.

Based on the foregoing, it is, by the United States Bankruptcy Court for the District of Maryland, hereby **ORDERED**:

1. That the Motion is GRANTED in accordance with Bankruptcy Rule 4001(b) for the Debtor to use the Cash Collateral, on an interim basis, to the extent provided in this Order.

2. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms as in the Motion.

3. Subject to the terms and conditions of this Order, the Debtor shall be, and hereby is, permitted to use Cash Collateral for the period (the “**Specified Period**”) from the date of this Order through (and including) December 15, 2018, or until an “Event of Default” (as that term is defined below), whichever comes first.

4. Except as otherwise expressly provided in this Order, Cash Collateral may be used solely (a) during the Specified Period, (b) up to the amounts stated for any line item, during the periods and for the purposes identified in the Budget attached hereto as Exhibit A, which is subject to economic and business fluctuations of +/- 10% for estimated income, cost of goods sold, and operating expenses.

5. If Cash Collateral is not used for a particular line item in the Budget during the period for which Cash Collateral usage is authorized for such line item in this Order, or if Cash Collateral is used in an amount less than specified in such line item during the budgeted period, then the Debtor may use the unused balance of such line item in subsequent periods. The Debtor may also utilize amounts for miscellaneous items set forth in the Budget for any budgeted expense.

6. As adequate protection for the use and/or diminution of the interests of Sandy Spring in the Cash Collateral (the “**Adequate Protection**”), (i) Sandy Spring shall receive from the Debtor payments in the aggregate amount of \$10,838.87, payable in monthly installments of \$10,838.87 each on October 22, 2018 and November 22, 2018; and (ii) pursuant to Section 361 of the Bankruptcy Code, and subject to the “carve-out below,” the Debtor hereby grants as security

for all indebtedness owed pursuant to the Loan Documents a valid, perfected, enforceable and non-avoidable first priority replacement lien and post-petition security interest against all Assets of the Debtor to the same extent that Sandy Spring held a pre-petition lien and security interest in such Assets of the Debtor, which replacement liens shall be limited solely to any diminution in value of the Cash Collateral from and after the Petition Date and shall be first and senior in priority to all other interests and liens of every kind, nature and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or interests granted in favor of third parties in conjunction with Sections 363, 364 or any other section of the Bankruptcy Code or other applicable law.

7. As used in this Order, the “Carve Out” means statutory fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6).

8. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection and priority of any claim or lien granted by this Interim Order with respect to the Adequate Protection without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action to validate or perfect in accordance with applicable non-bankruptcy law any claim or lien granted by this Interim Order with respect to the Adequate Protection, or to entitle Sandy Spring to the priorities granted herein. Notwithstanding the foregoing, Sandy Spring is authorized to file, as it deems necessary in its sole discretion, such financing statements, notices of lien and other similar documents to perfect in accordance with applicable non-bankruptcy law any lien granted by this Interim Order with respect to the Adequate Protection, and all such financing statements, notices of lien and other similar documents shall be deemed to have been filed or recorded as of the Petition Date; provided, however, that no such

filing or recordation shall be necessary or required to create or perfect any lien granted by this Interim Order with respect to the Adequate Protection. The Debtor is authorized and directed to execute and deliver to Sandy Spring all financing statements, notices of lien and other documents as Sandy Spring may reasonably request.

9. In the event any or all of the provisions of this Order are hereafter reversed, stayed, modified, amended, or vacated by a subsequent order of the Court or any other court, such reversal, stay, modification, amendment, or vacation shall not affect the validity of any right or obligation arising under this Order prior to the effective date of such modification, amendment or vacation, and such right or obligation shall be governed in all respects by the provisions of this Order.

10. By agreeing to the terms of this Order, Sandy Spring has not waived any defaults existing under the Loan Documents or any of Sandy Spring's rights or remedies under the Loan Documents, applicable law, or otherwise. Furthermore, by agreeing to the terms of this Order, Sandy Spring has not agreed to forbear from exercising or enforcing any of its rights or remedies under the Loan Documents, applicable law, or otherwise, subject, however, to the applicability of the automatic stay of 11 U.S.C. §362. Sandy Spring is deemed to have specifically reserved all of its rights and remedies under the Loan Documents, applicable law, or otherwise including, without limitation, Sandy Spring's right, subject to the applicability of the automatic stay of 11 U.S.C. §362, to immediately assert and enforce all such rights and remedies. Entry of this Order shall not cause and will not be construed as a novation of any Loan Document.

11. It shall be an Event of Default under this Order upon the occurrence of any of the following events: (a) a breach or failure to comply with any term, covenant, representation, warranty or requirement of the Loan Documents (except monetary defaults contained therein); (b) a breach or failure to comply with any term or condition of this Order (including the timely

payment of any Adequate Protection Payments or other payments due by the Debtor to its landlord, 8341 Beechcraft, L.L.C. under the budget approved herein), or any other order of the Court; (c) the granting in favor of any party other than Sandy Spring of a security interest in or lien upon any of the Debtor's Assets or the Debtor's estate, or a claim against the Debtor having priority over the security interests, liens or claims in favor of Sandy Spring except to the extent that such party had a security interest in or lien upon any property of the Debtor on the Petition Date which had priority over the security interests, liens or claims of Sandy Spring existing on the Petition Date; (d) entry of an order converting this Case to a case under chapter 7 of the Bankruptcy Code; (e) entry of an order appointing a trustee or an examiner with the expanded powers in this Case; or (f) any stay, reversal, vacation or rescission of the terms of this Order, or any modification of any terms of this Order that is not acceptable to Sandy Spring in its sole discretion.

12. This Order and the use of Cash Collateral authorized herein shall become effective immediately upon authorization and approval by the Court. Except with respect to the payment of accrued items set forth in the Budget, the use of Cash Collateral authorized herein shall terminate on November 15, 2018, at 12:00 midnight, subject to the Debtor's right to seek further order of the Court authorizing use of Cash Collateral.

13. Within three business days after the entry of this Order, the Debtor shall serve a copy of this Order on: (a) the Office of the United States Trustee; (b) the Debtor's twenty largest unsecured creditors; (c) counsel to Sandy Spring; and (d) those persons who have formally appeared and requested service in these proceedings pursuant to Bankruptcy Rule 2002.

14. Any party seeking to object to entry of an order further approving the relief set forth herein on a final basis, must file a written objection (an "Objection"), stating with particularity the grounds therefore, with the United States Bankruptcy Court for the District of Maryland (the

“Court”) and serve such Objection on: the Debtor, c/o David J. Kaminow, Esquire, Inman Kaminow, P.C., 611 Rockville Pike, Suite 225, Rockville, Maryland 20852, Attorney for the Debtor; Sandy Spring Bank, c/o Michael C. Bolesta, Esquire, Gebhardt & Smith, LLP, One South Street, Suite 2200, Baltimore, Maryland 21202; and the Office of the United States Trustee, c/o Jeanne M. Crouse, Esquire, 6305 Ivy Lane, Suite 600, Greenbelt, Maryland 20770, so that it is received no later than [REDACTED], 2018 at 4:00 p.m.

15. A final hearing to consider the Debtor’s request use of Cash Collateral shall be held on [REDACTED], 2018 at [REDACTED] A.M./ P.M.

16. Subject to applicable law, the terms of this Order shall be binding upon and inure to the benefit of the successors and assigns of each party hereto, including any trustee appointed with regard to the Debtor under the Bankruptcy Code, whether in a chapter 7 or in this chapter 11 case.

AGREED AND CONSENTED TO BY:

/s/ David J. Kaminow
David J. Kaminow, Esquire
Inman Kaminow, P.C.
611 Rockville Pike, Suite 225
Rockville, Maryland 20852
Attorney for the Debtor

/s/ Michael Bolesta
Michael Bolesta
GEBHARDT & SMITH, LLP
One South Street, Suite 2200
Baltimore, MD 21202
Attorneys for Sandy Spring Bank

CONSENT CERTIFICATION

I HEREBY CERTIFY That the terms of the copy of this Consent Order submitted to the Court are identical to those set forth in the original Consent Order, and the signatures represented by the /s/_____ on this copy have been authorized and reference the signatures of the consenting parties on the original Consent Order.

/s/ David J. Kaminow
David J. Kaminow, Esquire

END OF ORDER

cc:

Mite, LLC
8341 Beechcraft Avenue
Gaithersburg, Maryland 20879
Debtor

US Trustee – Greenbelt
6305 Ivy Lane, Suite 600
Greenbelt, Maryland 20770

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