

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Chapter 11
Case No. 18-41983
Hon. Phillip J. Shefferly

In re: 4411 ENGLE RIDGE DRIVE, LLC,
Debtor.

**COVER SHEET FOR FIRST DAY MOTION TO USE CASH
COLLATERAL OR TO OBTAIN CREDIT**

The Debtor, 4411 ENGLE RIDGE DRIVE, LLC, has filed a motion to use cash collateral or to obtain postpetition financing, which is attached to this Cover Sheet. In accordance with LBR 4001-2(b) (E.D.M.), the debtor has identified below, by page and paragraph number, the location in the proposed order accompanying the motion of each of the following provisions:

Provision	Contained in	Location in Proposed Order
(1) Provisions that grant liens on the estate's claims and causes of action arising under Chapter 5 of the Code.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ ____
(2) Provisions that grant cross-collateralization protection to the prepetition secured creditor (i.e., clauses that secure prepetition debt with categories of collateral that were not covered by the secured party's lien prepetition) other than liens granted solely as adequate protection against diminution in value of a prepetition creditor's collateral.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ ____
(3) Provisions that establish a procedure or conditions for relief from the automatic stay.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ ____

(4) Provisions regarding the validity or perfection of a secured creditor's prepetition liens or that release claims against a secured creditor.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page _____, ¶ _____
(5) Provisions that prime any lien without that lienholder's consent.	<input type="checkbox"/> Yes	Page _____, ¶
(6) Provisions that relate to a sale of substantially all of the debtor's assets.	<input type="checkbox"/> Yes	Page _____, ¶
(7) Provisions for the payment of professional fees of the debtor or any committees, including any	<input type="checkbox"/> Yes	Page _____, ¶
(8) Provisions for the payment of prepetition debt.	<input checked="" type="checkbox"/> Yes	Page 4, ¶ 16-17
(9) Provisions that waive the debtor's exclusive right to file or solicit acceptances of a plan during	<input type="checkbox"/> Yes	Page _____, ¶
(10) Provisions that require the debtor's plan to be on terms acceptable to the secured creditor.	<input type="checkbox"/> Yes	Page _____, ¶
(11) Provisions that require or prohibit specific terms in the debtor's plan.	<input type="checkbox"/> Yes	Page _____, ¶
(12) Provisions establishing that proposing a plan inconsistent with the order constitutes a default.	<input type="checkbox"/> Yes	Page _____, ¶
(13) Provisions that waive surcharge under 11 U.S.C. § 506(c).	<input type="checkbox"/> Yes	Page _____, ¶
(14) Provisions that address the rights and obligations of guarantors or co-obligors.	<input type="checkbox"/> Yes	Page _____, ¶
(15) Provisions that prohibit the debtor from seeking approval to use cash collateral without the	<input type="checkbox"/> Yes	Page _____, ¶

(16) Provisions that purport to bind a subsequent trustee.	_____ Yes	Page _____, ¶
(17) Provisions that obligate the debtor to pay any of a secured creditor's professional fees.	_____ Yes	Page _____, ¶

February 20, 2018

Respectfully submitted,

/s/ Don Darnell

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FIRST DAY MOTION TO USE CASH COLLATERAL

4411 Engle Ridge Drive, LLC, debtor in possession, by its proposed counsel, represents as follows:

1. On February 16, 2018, the Debtor 4411 Engle Ridge Drive, LLC filed a voluntary petition initiating this Chapter 11 case and is now operating its business as a debtor-in-possession.
2. Debtor brings this motion for determination of cash collateral under 11 U.S.C. 363(c)(2) in accordance with F.R.Bankr.P. 4001(a)(b) and L.B.R., 4001-2. Debtor seeks a determination of the Court that Debtor's revenues are not subject to liens of secured creditors. A proposed Order is attached as Exhibit A.
3. The Debtor is a Michigan corporation formed on August 20, 2013. The Debtor is the corporate structure for property owned and managed at 4411 Engle Ridge Drive, Fort Wayne, Indiana.

4. 4411 Engle Ridge Drive, LLC is a single asset real estate case, with its only asset being the real property and improvements commonly known as 4411 Engle Ridge Drive, Fort Wayne, Indiana.
5. As of the date of this motion, no Creditor's Committee has been formed.
6. Upon information and belief, Old National Bank has a perfected secured interests in Debtor's cash collateral. Debtor is in possession of a copies of a Business Loan Agreement dated 06/21/2016 which references a "Security Agreement" of which Debtor does not possess a copy. Upon information and belief, the Security Agreement is likely to contain an assignments of rents. Furthermore, Old National Bank is the mortgagee to a mortgage dated October 8, 2013, recorded October 15, 2013, which references a loan in the amount of \$165,200 and additional mortgage dated October 8, 2013, recorded in Allen County, Indiana on October 28, 2013, which references a line of credit in the amount of \$75,000. The Business Loan Agreement, and mortgages are attached as Exhibit B.
7. As of the Petition Date, the principal amount of the owed to Old National Bank by Debtor, exclusive of accrued but unpaid interest, costs, fees, and expenses, was approximately \$170,000.
8. Pursuant to various Security Agreements by and between Old National Bank

and Debtor, and the other applicable pre-petition credit documents to include three forbearance agreement (attached as Exhibit C), the Debtor granted to Old National Bank a continuing lien and security interest to secure the indebtedness.

9. The Second Amended Forbearance Agreement with Old National Bank has interest rate of 9%.
10. Cash collateral is defined by the Bankruptcy Code as:

...cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the *proceeds*, products, offsprings, rents or profits of property....whether existing *before* or *after* the commencement of a case under this title.
11 U.S.C. § 363(a) (*emphasis added*)
11. Cash payments generated by the Debtor are primarily from rents of 4411 Engle Ridge Drive in the amount of \$3,600 monthly. 11 U.S.C. § 363(a) provides that rents are "cash collateral."
12. 4411 Engle Ridge Drive has a minimum value of \$198,500 according to the Allen County 2017 assessment. (See Exhibit D).
13. Debtor's expenses related to the property are:
 - a. \$600 for property management;
 - b. \$780 monthly in property taxes (annual tax of \$9,358.55);

- c. interest payments to Old National Bank; and
 - d. ordinary maintenance of an average of \$300.
14. Adequate protection must be provided only where the security is decreasing in value or being consumed during the stay. *In re Shriver*, 33 B.R. 176 (Bankr. N.D. Ohio 1983).
 15. An equity cushion in property has been held to constitute adequate protection by itself depending upon the amount of debt, the amount of equity cushion, the nature of collateral, and the rate at which the equity cushion is increasing or decreasing. *In re Nichols* 440 F.3d 850 (6th Cir. 2006). *In re Buttermilk Towne Center, LLC*, 442 B.R. 558 (Cir. BAP 2010). Old National Bank's equity cushion in 4411 Engle Ridge Drive is a minimum of \$28,500. Said Creditor has adequate protection in the equity cushion alone.
 16. Debtor proposes by way of further adequate protection interest payments at the rate set forth in the Second Amended Forbearance Agreement of 9% on the principle balance of \$170,000, resulting in monthly payments of \$1275 to Old National Bank during the pendency of the case.
 17. Debtor proposes to use cash collateral in the amount up to \$2955, including monthly interest payments of \$1275 to Old National Bank.

Wherefore, Debtor requests that after such notice and hearing as this Court

deems appropriate, this Court enter an order allowing Debtor to use cash collateral in the monthly amount of \$2955.

February 20, 2018

Respectfully submitted,

/s/ Don Darnell

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