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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re:

BROWNIE TAXI LLC, *et al.*,¹

Debtors

Chapter 11

Case No. 17-27507 (VFP)

(Joint Administration Pending)

**APPLICATION IN SUPPORT OF MOTION PURSUANT TO 11 U.S.C.
§§ 105, 363(c)(2)(B), 363(e), 507(b), FED. R. BANKR. P. 4001(b), AND
D.N.J. L.B.R. 4001-4 FOR INTERIM AND FINAL ORDERS
AUTHORIZING USE OF CASH COLLATERAL**

TO: THE HONORABLE JUDGES OF THE
UNITED STATES BANKRUPTCY COURT

The above-captioned debtors and debtors in possession Brownie Taxi LLC (“Brownie”); A&J Cab Corp. (“A&J”); Almanac Hacking Corp. (“Almanac”); Avignon Taxi, LLC (“Avignon”); Avit Trans Inc. (“Avit”); Butterscotch Taxi LLC (“Butterscotch”); Portofino Taxi Inc. (“Portofino”); Pupsik Hacking Corp. (“Pupsik”); Smores Taxi LLC (“Smores”); Shurik Taxi Corp. (“Shurik”); and Soly Cab Corp. (“Soly,” each a “Debtor” and collectively with Brownie, A&J, Almanac, Avignon, Avit, Butterscotch, Portofino, Pupsik, Smores, and Shurik, the

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors’ taxpayer identification number are as follows: Brownie Taxi LLC (0603); A&J Cab Corp. (3113); Almanac Hacking Corp. (6977); Avignon Taxi, LLC (9810); Avit Trans Inc. (2144); Butterscotch Taxi LLC (0497); Portofino Taxi Inc. (5635); Pupsik Hacking Corp. (2791); Smores Taxi LLC (0846); Shurik Taxi Corp. (5987); and Soly Cab Corp. (3655).

“Debtors”), by and through their proposed counsel, Trenk, DiPasquale, Della Fera & Sodono, P.C., hereby move (the “Motion”) before this Court for interim and final orders authorizing the Debtors to use cash collateral pursuant to sections 105, 363(c)(2)(B), 363(e), and 507(b) of 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 4001-4 of the District of New Jersey’s Local Bankruptcy Rules (the “Local Bankruptcy Rules”). In support of this Motion, the Debtors submit the *Declaration of Evgeny Freidman in Support of Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”), filed contemporaneously herewith, and respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O).
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein are sections 105, 361, 362, 363 of the Bankruptcy Code, Rule 4001 of the Bankruptcy Rules, and the applicable Local Rules.

BACKGROUND

4. The Debtors each filed a voluntary chapter 11 petition on August 29, 2017 (the “Petition Date”).
5. The Debtors continue to operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or creditors’ committee have been appointed in these cases.
6. The Debtors are in the business of owning, and in most cases, leasing taxicab medallions. Each Debtors’ primary asset are the two medallions (collectively, the “Medallions”)

issued by the New York City Taxi and Limousine Commission (“TLC”). These Medallions permit the Debtors, and/or its lessees and sublessees, to perform taxi services. The Debtors also have possession of or access to certain vehicles that are operated with the permission granted through the Medallions (the “Vehicles”). Upon information and belief, certain Vehicles are owned, at least nominally, by the Debtors while other Vehicles are owned by non-debtor companies (including certain Vehicles that may have been acquired in a Debtors’ name).

7. A more detailed history and description of the Debtor and its operations, together with the reasons for its chapter 11 filings, are set forth in the First Day Declaration, which is incorporated herein as if set forth in its entirety.

Secured Creditors

8. Each of the Debtors entered into a promissory note (collectively, the “Notes”) with BLUSA, as follows:

<u>Debtor Entity</u>	<u>Principal Loan Amount²</u>	<u>Maturity Date</u>	<u>Interest Rate</u>
A&J Cab Corp.	\$1,848,000.00	7/1/17	3.25%
Almanac Hacking Corp.	\$1,848,000.00	7/1/17	3.25%
Avignon Taxi, LLC	\$1,848,000.00	7/1/17	3.25%
Avit Trans Inc.	\$1,848,000.00	7/1/17	3.25%
Brownie Taxi LLC	\$1,848,000.00	7/1/17	3.25%
Butterscotch Taxi LLC	\$1,848,000.00	7/1/17	3.25%
Portofino Taxi Inc.	\$1,848,000.00	7/1/17	3.25%
Pupsik Hacking Corp.	\$1,848,000.00	7/1/17	3.25%
Smores Taxi LLC	\$1,848,000.00	7/1/17	3.25%
Shurik Taxi Corp.	\$1,848,000.00	7/1/17	3.25%
Soly Cab Corp.	\$1,848,000.00	7/1/17	3.25%

² The Debtors dispute the amount of each of the Notes. The principal loan amounts listed herein are based on the face of each Note.

9. The Debtors' indebtedness under each of the Notes is alleged to be secured by a Security Agreement (each a "Security Agreement" and collectively, the "Security Agreements") executed by each respective Debtor for the benefit of BLUSA.

10. BLUSA alleges that it holds the following collateral for each of the respective Notes entered into with the Debtors:

<u>Debtor</u>	<u>Collateral</u>
Brownie Taxi LLC	6V39/6V40
A&J Cab Corp.	8G70/8G72
Almanac Hacking Corp.	3P17/3918
Avignon Taxi, LLC	9V88/9V89
Avit Trans Inc.	7G10/7G50
Butterscotch Taxi LLC	6V27/6V28
Portofino Taxi Inc.	3N21/3N22
Pupsik Hacking Corp.	3L72/3L73
Smores Taxi LLC	6V75/6V76
Shurik Taxi Corp.	2V22/2V23
Soly Cab Corp.	3M53/3M54

(collectively, the "Medallion Collateral").

11. In addition to the Medallion Collateral, BLUSA asserts a blanket lien on all or substantially all of the Debtors' assets (collectively with the Medallion Collateral, the "Collateral"), including proceeds from the Collateral.

12. Moreover, BLUSA alleges that Evgeny Freidman personally guaranteed each of the Debtors' obligations in connection with the Notes (collectively, the "Guarantees").

13. On July 21, 2017, BLUSA sent each of the Debtors written notice of events of defaults under the Notes, alleging that the Debtors failed to make payment on the Notes on or before the maturity date and demanded full payment be made to BLUSA. BLUSA also demanded turnover of the Collateral.

14. On July 26, 2017, BLUSA filed an action captioned *Bank Leumi USA v. A&J Cab Corp, et al.* in the Supreme Court of New York, New York County at Index No. 655036/2017 to enforce the Notes, Guarantees and pledge agreements executed by Mr. Freidman (the “Complaint”).

15. The Complaint alleges that the following amounts remain outstanding on the Notes as of July 21, 2017, including principal and interest:

<u>Debtor Entity</u>	<u>Amount³</u>
A&J Cab Corp.	\$1,837,752.77
Almanac Hacking Corp.	\$1,837,754.02
Avignon Taxi, LLC	\$1,837,914.45
Avit Trans Inc.	\$1,837,913.42
Brownie Taxi LLC	\$1,837,913.42
Butterscotch Taxi LLC	\$1,837,913.42
Portofino Taxi Inc.	\$1,837,913.42
Pupsik Hacking Corp.	\$1,837,913.42
Smores Taxi LLC	\$1,837,913.42
Shurik Taxi Corp.	\$1,837,754.02
Soly Cab Corp.	\$1,837,913.42

16. In connection with the Complaint, BLUSA filed an Order to Show Cause requesting, amongst other things, a temporary restraining order and turnover of the Medallions. The Order to Show Cause was entered on July 27, 2017 and will be heard on September 6, 2017 at 11:00 a.m.

RELIEF REQUESTED AND BASIS THEREFOR

17. By this Motion, the Debtors seek the preliminary and final use, as applicable, of cash collateral to preserve its assets so as to maintain and maximize its value for the benefit of all parties-in-interest. Simultaneously submitted herewith is a proposed interim order.⁴

³ The Debtors reserve the right to dispute the amount of asserted by BLUSA. The amounts due listed herein are based solely on the Complaint.

18. Pursuant to section 363(a) of the Bankruptcy Code, cash collateral is defined as “cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents . . . and the proceeds thereof.” 11 U.S.C. § 363(a).

19. By operation of section 363(c)(2) of the Bankruptcy Code and Bankruptcy Rule 4001(b), a debtor may not use cash collateral unless the entity that has an interest in such cash collateral consents, or until the Court authorizes the use of cash collateral after notice and a hearing and upon a finding that the interest of the secured party is adequately protected.

20. Although “adequate protection” is not defined in the Bankruptcy Code, courts generally describe it as “a balancing of the debtor’s and a creditor’s respective harm,” see In re Carson, 34 B.R. 502, 505 (Bankr. D. Kan. 1983) (citation omitted), and the legislative history of section 361 of the Bankruptcy Code reflects congressional intent to give courts flexibility to fashion adequate protection in light of the facts of each case and general equitable principles. In re 5-Leaf Cover Corp., 6 B.R. 463, 466 (Bankr. S.D. W. Va. 1980).

21. In addition, section 361 of the Bankruptcy Code sets forth three (3) non-exclusive⁵ methods of how an interest in property may be adequately protected, stating as follows:

When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by—

⁴ For purposes of this Motion only, the Debtors will assume BLUSA is perfected in the Medallions, but dispute that the payments the Debtors receive for the use of the Medallions is, in fact, cash collateral. That notwithstanding, the Debtors are prepared to make the “Debt Service Payments,” which corresponds with the amounts the Debtors receive on account of the lease payments, provided BLUSA is agreeable to the terms of the proposed Order included with this Motion. As set out below, the Debtors submit that BLUSA’s interest in the Medallions is adequately protected without any such payment. Should BLUSA refuse to agree to the form of an Order, the Debtors are prepared to demonstrate that BLUSA is adequately protected and seek authority to continue to use the Medallions without any payments during the course of these Chapter 11 cases.

⁵ The adequate protection mechanisms enumerated by Bankruptcy Code section 361 are not exhaustive. See In re Miller, 734 F.2d 1396 (9th Cir. 1984); In re Family Place Partnership, 95 B.R. 166 (Bankr. E.D. Cal. 1989).

(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;

(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or

(3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

11 U.S.C. § 361.

22. The “interest” of a secured creditor which is entitled to be protected is the value of the secured creditor’s allowed secured claim; that is, the amount of the secured creditor’s claim up to the value of the collateral upon which the secured creditor has a lien as of the relevant valuation date. In re Shriver, 33 B.R. 176, 181 (Bankr. N.D. Ohio 1983); In re South Village, Inc., 25 B.R. 987, 994 (Bankr. D. Utah 1982). The alleged secured creditor is only entitled to assurance that the value of its lien will not decrease as a result of the automatic stay and, if it does, that it will receive something as compensation for the decrease. In re Ramco Well Service, Inc., 32 B.R. 525, 531 (Bankr. W.D. Okla. 1983). Therefore, where the value of the collateral is not declining, a debtor need not do anything for the secured creditor as it is adequately protected. Id.; accord In re Price, 40 B.R. 578, 580 (Bankr. N.C. Tex. 1984).

23. In the present matter, the Debtors’ secured creditor will be adequately protected during the pendency of the Debtors’ bankruptcy cases. As set forth in the First Day Declaration, each medallion is valued at approximately \$200,000. Each Debtor owns two medallions, both of

which are alleged to be collateral securing BLUSA's indebtedness. There is nothing to suggest that there will be any diminution in the value of BLUSA's collateral during the reorganization process. The Medallions, unlike most types of collateral, will not depreciate as a result of the use thereof. Finally, BLUSA is also protected by the Guarantees of the Debtors' principal, Evgeny Freidman. Accordingly, BLUSA is adequately protected based on the above.

24. Moreover, although not required as a means to "adequately protect" BLUSA, on a going-forward basis the Debtors are also agreeable to turning over to BLUSA revenues it generates from the leasing of the Medallions. As set forth in the First Day Declaration, the Debtors receive \$1,300 per month per medallion in income. The interim Order proposes to pay \$1,300 per medallion per month to BLUSA in debt service payments while the case is pending, provided BLUSA agrees to the terms of the proposed Order included with this Motion (or such other terms as BLUSA and the Debtors agree). If BLUSA is not agreeable to the terms of the proposed Order, the Debtors are prepared to demonstrate that BLUSA is adequately protected without the debt service payments and that the Debtors' use of the Medallions will not result in any diminution in BLUSA's interest therein.

25. Because BLUSA may, in fact, have a lien on all of the Debtors' Medallions by virtue of the filed UCC-1 financing statements, the Debtors are prepared to enter into the proposed Order accompanying this Motion. By way of summary, the pertinent terms of the proposed Order include the following:

- a. The Debtors shall be authorized to use the Collateral of BLUSA, including the Medallions (as those terms are defined in the Order), subject to the terms of the Order.
- b. As adequate protection for use of the Collateral, BLUSA shall be entitled to the following:

(i) BLUSA is granted a replacement perfected security interest under 11 U.S.C. § 361(2): (i) only to the extent such use results in a diminution of its interest in the Collateral; (ii) only to the extent such pre-petition liens are valid; and (iii) with the same priority in the post-petition collateral and proceeds thereof of the Debtors that BLUSA held in the pre-petition Collateral.

(ii) The replacement lien and security interest granted in the proposed Order is automatically deemed perfected upon entry of the Order without the necessity of BLUSA taking possession of its Collateral or filing financing statements, mortgages or other documents.

(iii) The Debtors shall maintain all necessary insurance as required by the Loan Documents or pursuant to any such rule and regulation of the New York City Taxi & Limousine Commission.

(iv) To the extent that the adequate protection provided through the Order is insufficient to protect BLUSA's interest in the cash collateral, BLUSA shall have a super priority administrative expense claim, pursuant to 11 U.S.C. § 507(b), senior to any and all claims against the Debtors under 11 U.S.C. § 507(a)(2), whether in this proceeding or in any succeeding proceeding, subject only to fees of the United States Trustee.

c. Subject to certain terms and conditions set forth in the Order, on or before the tenth (10th) day of each calendar month (commencing in September 2017), the Debtors shall remit to BLUSA the Debt Service Payments, which Debt Service Payments shall total in the aggregate, with respect to all of the Debtors, \$28,600 per month.

26. The Debtors are prepared to make the Debt Service Payments only if they can reach accord on a proposed form of Order with BLUSA. The Debtors submit that BLUSA's interest in the Medallions is adequately protected even without those payments because, for example, the Debtors' use of the Medallions, in and of itself, does not cause any depreciation in that asset or otherwise result in any diminution in the value thereof. To the extent BLUSA is unwilling to agree with the other terms and conditions associated with the Debt Service Payments, the Debtors will seek authority to use the Medallions over the objection of BLUSA, demonstrating, of course, that BLUSA is otherwise adequately protected. In that regard, the Debtors will not use the lease payments (other than for the required U.S. Trustee quarterly fees) or further Order of the Court. Instead, the Debtors will place the leasing fees received into the Debtors' bank accounts, for use in connection with a plan of reorganization. Again, BLUSA is not entitled to any payments. Here, adequate protection payments are unnecessary because there is no diminution of value of the Medallions as a result of the Debtors' use of the Medallions. In re Energy Future Holdings Corp., 546 B.R. 566, 581 (Bankr. D. Del. 2016) ("The purpose of adequate protection 'is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use by the debtor.'") (citations omitted). Notwithstanding, the Debtors expect to generate revenue streams of \$1,300 per medallion per Debtor and are prepared to turn over that revenue to BLUSA as Debt Service Payments if BLUSA is agreeable to the form of Order included with this Motion (or some other terms that the Debtors and BLUSA may be agreeable to).

27. Due to the way the Debtors' operations are structured, the Debtors have minimal expenses for which cash collateral would need to be utilized. Indeed, as set forth in the First Day Declaration, a majority of the expenses of the Debtors' business are covered by the non-Debtors

that operate the Medallions. Those revenues, to the extent they are cash collateral, will solely be used to pay the Debt Service Payments and U.S. Trustee fees (or as otherwise permitted by the Court). In order to successfully reorganize, the Debtors require the use of the Medallions, but the Debtors use of the Medallions themselves, through leasing them to non-Debtor parties, does not necessarily require “use” of cash collateral. Even still, the Debtors dispute that the amounts received from the leasing of the Medallions constitute cash collateral, but there is no need to litigate that issue now. As noted above, the Debtors are prepared to use the entirety of the lease payment to make payments to BLUSA and for no other purpose (other than as otherwise permitted by the Court and for quarterly fees). In other words, absent consent, and until there is a determination of whether the lease payments are cash collateral, the Debtors will not use the proceeds from the leasing of the Medallions – other than for U.S. Trustee fees and as otherwise approved by the Court if the parties cannot come to terms on the form of a cash collateral Order. They will simply use the collateral, *i.e.*, the Medallions, as to which BLUSA is adequately protected.

28. A denial of the use of that collateral will severely harm the Debtor at a critical time, effectively hindering its ability to reorganize. The Debtors are prepared to discuss with all of its creditors the development of both a financial and operational restructuring plan. The authority to use the Medallions and any alleged cash collateral (in accordance with the Order or as otherwise permitted by this Court) will enable the Debtors to engage in those discussions and accomplish their reorganization, while operating in the ordinary course.

TIMING AND NOTICES

29. The Debtors respectfully seek a two-part hearing process.

30. First, pursuant to Bankruptcy Rule 4001(b)(2), the Debtors seek a preliminary hearing on the use of Cash Collateral on less than fifteen (15) days' notice.

31. Second, the Debtors seek a final hearing on at least fifteen (15) days' notice. At a minimum, the Debtors propose to give notice pursuant to Bankruptcy Rule 4001(b)(1) and (3) to (i) the Office of the United States Trustee for the District of New Jersey; (ii) the Debtors' twenty largest unsecured creditors; (iii) all secured creditors; (iv) any other parties claiming an interest in the Cash Collateral; and (v) those parties who filed a notice of appearance and request for service of pleadings in this chapter 11 case pursuant to Bankruptcy Rule 2002, if any. In light of the nature of the relief requested herein, the Debtors submits that no other or further notice is required.

NO PRIOR REQUEST

32. No prior application for the same or similar relief has been made to this or any other Court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court (i) enter an interim order, substantially in the form submitted herewith, authorizing the use of alleged cash collateral on an interim basis; (ii) enter a final order, substantially in the form submitted herewith, authorizing the use of alleged cash collateral on a final basis; and (iii) grant such other and further relief as the Court deems just and proper.

**TRENK, DiPASQUALE,
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*Proposed Attorneys for Debtors
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By: /s/ Joseph J. DiPasquale
Joseph J. DiPasquale

Dated: August 30, 2017