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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

470 W 42 STREET GOURMET FOOD,
INC.,

Chapter 11

Debtor.

Case No: 17-12801(SHL)

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**APPLICATION OF THE DEBTOR FOR ENTRY OF AN ORDER APPROVING
INTERIM USE OF CASH COLLATERAL PURSUANT TO
SECTIONS 105(a), 361, 362, 363(c)(2), 363(e) and 507
OF THE BANKRUPTCY CODE**

**TO: HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE**

470 W 42 Street Gourmet Food, Inc., the debtor and debtor in possession herein ("Debtor"), by and through its attorneys, Kurtzman Matera, P.C., respectfully submits this application for entry of an Order pursuant to Federal Rules of Bankruptcy Procedure 4001 and 9014 and Sections 105(a), 361, 362, 363(c)(2), 363(e) and 507 of the United States Bankruptcy Code ("Bankruptcy Code") seeking authorization to: utilize, post petition, the cash collateral of NewBank ("Lender"), pursuant to Sections 105(a), 361, 362, 363(c)(2), 363(e) and 507 of the Bankruptcy Code, and sets forth as follows:

1. The Chapter 11 petition was filed on October 5, 2017 ("Filing Date") with the United States Bankruptcy Court for the Southern District of New York. The Debtor was thereupon

continued in the management and operation of its business as a Debtor in Possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed herein. Moreover, no official committee has been appointment pursuant to Section 1102 of the Bankruptcy Code.

2. This Court has jurisdiction of this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and of the within Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are Sections 105(a), 361, 363 and 364 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 4001(b) and 9014.

3. The Debtor is a supermarket, gourmet foods store, located at 470 West 42nd Street, New York, New York 10036 ("Business"). The Business has recently acquired a sub-tenant which sells wine and pays commission based rent to the Debtor and is referred to as the "wine bar". Moreover, the Debtor is expanding its operations into catering.

4. The Debtor executed certain pre-petition agreements with the Lender inclusive of Agreement of Compliance, Loan Agreement, Borrower's Certification and filed UCC, dated October 28, 2013 and bearing Filing Number 201310286137837(collectively, the "Security Agreements"). The Lender also obtained an Unconditional Guaranty from Treehaus 736 Inc., Seventh Avenue Fine Foods, Corp., 830 Third Ave. Gourmet Food, Inc., 532 Madison Avenue Gourmet Foods, Inc, Michael Park, Individually, and, upon information and belief, hold a second position mortgage on real property located at 30 Regency Place, Weehawken, NJ 07086 ("Real Property Mortgage"). Each of the referred documents is annexed hereto (excluding the Real Property Mortgage) as Exhibit "A".

5. As of the Filing Date, the Debtor was indebted to the Lender in an amount of approximately \$1,585,690.76.

6. The value of the Debtor's collateral ("Collateral") in which the Lender has a security

interest is approximately \$70,000.00.

7. The Collateral is also subject to a disputed and wholly unsecured second position lien with KJY Investment, LLC and a wholly unsecured third position lien with U.S. Foods.

A. Use of Cash Collateral

8. Section 363(a) of the Bankruptcy Code defines cash collateral as “cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents. . . and includes the proceeds, products. . . or profits of property. . .”.

9. The authority to utilize cash collateral is absolutely necessary to avoid irreparable harm and to preserve and to maintain the Debtor’s operation and, hopefully, allow for a reorganization.

10. The Debtor has had discussions with counsel for the Lender and the proposed Order represents a consensual order granting it permission to utilize cash collateral pursuant to its terms and in accordance with the Budget which is annexed hereto as Exhibit “B”.

11. Pursuant to Sections 363(c)(2)(B) of the Bankruptcy Code, a debtor may not use cash collateral absent the consent of any entity with an interest in such cash collateral or an order of the Bankruptcy Court.

B. The Terms for Use of Cash Collateral

12. The Debtor is prepared to grant to the Lender as adequate protection for use of cash collateral under the terms and conditions set forth in the proposed order, replacement liens and security interests for the use of cash collateral in accordance with the Budget, over the Collateral, but excluding causes of action commenced under Chapter 5 of the Bankruptcy Code, a superpriority claim with priority over any and all administrative expenses subject to the Carve-Out, as defined in the Proposed Order, an adequate protection payment, for this interim order, of

\$7,500.00, compliance with the Budget, reporting, access by NewBank and maintenance of the Collateral.

13. The Carve-Out, defined in the proposed order includes, to an unlimited extent, the statutory fees payable to the Office of the United States Trustee and the fees of retained professionals and any future Chapter 7 trustee capped at an aggregate, limited to the interim period, at \$7,500.00.

14. The Lender is entitled, upon the occurrence of an Event of Default, defined in the proposed order, with the giving of written notice to Debtor and to the Office of the United States Trustee, free of the restrictions of Section 362 of the Bankruptcy Code, to take immediate reasonable action to protect the Collateral and, after the giving of five (5) business days notice, exercise its rights unless injunctive relief is obtained.

15. Here, the Debtor has provided a reasonable Budget. At this most early stage of the reorganization process, the Debtor is intent upon reorganizing, most likely by way of increasing revenue given that it is a new and growing business and is expanding its line of products, a wine bar and catering.

16. Reference is made to the proposed Interim Order (i) Authorizing Debtor to Use Cash Collateral, (ii) Granting Adequate Protection to NewBank, and (iii) Granting Related Relief ("Interim Order") for a full and complete recitation of its terms. Nothing herein is intended to alter that set forth Interim Order.

CONCLUSION

17. The use of cash collateral is important to the continued viability of the Debtor, inclusive of payments for wages, rent and utilities as reflected in the Budget.

18. The Debtor has not previously sought the relief requested herein.

19. It is respectfully requested that the filing of a separate Memorandum of Law be waived.

WHEREFORE, it is respectfully requested that the annexed proposed order allowing interim use of cash collateral be approved, a final hearing for use of cash collateral be set and this Court grant such other and further relief as this Court deems just and proper.

Dated: Spring Valley, New York
October 6, 2017

KURTZMAN MATERA, P.C.
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