

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

MEYZEN FAMILY REALTY  
ASSOCIATES, LLC

Chapter 11

Case No. 18-23419 (RDD)

Debtor.

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**INTERIM ORDER AUTHORIZING DEBTOR'S USE OF CASH  
PURSUANT TO 11 U.S.C. § 363(c)**

Upon the motion, dated September 24, 2018 (the "Motion") of Meyzen Family Realty Associates, LLC, the above-captioned debtor and debtor in possession (the "Debtor") seeking authority to use cash collateral in which Celtic Bank Corporation ("Celtic Bank") and L&J Smith Investments, LP ("LP") have asserted perfected security interests, pursuant to 11 U.S.C. §§ 363(c)(2) and 361 and Federal Rules of Bankruptcy Procedure 4001; and an interim hearing having been held on October 3, 2018 (the "Interim Hearing"); and all objections to the Motion having been withdrawn, overruled or resolved; and upon the record of the Interim Hearing and all of the pleadings heretofore filed in this case; and, after due deliberation and for the reasons stated by the Court at the Interim Hearing, the Court having determined to grant the Motion as provided herein and otherwise deny it and to make the following findings of fact and conclusions of law:

A. On or about September 13, 2018 (the "Petition Date") the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Code"), and has continued in possession of its property and the management of its business pursuant to Sections 1107 and 1108 of the Code.

B. As of the date hereof, the United States Trustee has not appointed an Official

Creditors' Committee as provided for in Section 1102 of the Code. No trustee or examiner has been heretofore appointed in this proceeding.

C. The Debtor is a single asset real estate company that rents its improved property located at 46 Bedford-Banksville Road, Bedford, NY 10506 (the "Property") to an affiliated restaurant.

D. The Debtor acknowledges, on behalf of itself and not its estate, that on or about September 16, 2013, the Debtor entered into a note, mortgage, UCC-1 fixture filing and assignment of rents (collectively the "Celtic Loan Documents") with Celtic Bank pursuant to which it borrowed \$905,000.

E. The mortgage, UCC-1 fixture filing and assignment of rents were recorded in the Westchester County Clerks office on October 24, 2013.

F. The use of the Debtor's personal property which potentially constitutes collateral of Celtic Bank (the "Cash Collateral" or "Collateral") is essential to the continued preservation and maximization of the Debtor's estate.

G. Continued use of the Cash Collateral on an interim basis pending a final hearing is necessary to prevent immediate and irreparable harm to the Debtor's estate in that without authorization to use the Cash Collateral, the Debtor's ability to meet its current necessary and integral business obligations will be impossible.

H. The value of Debtor's estate will be maximized by the continuation of Debtor and Debtor's affiliated tenant as an on-going business, and the use of the Cash Collateral is essential to such operation.

**BASED UPON THE FOREGOING**, it is hereby ORDERED as follows:

1. Preliminarily, pending a further interim hearing on the Motion on November 9,

2018 at 10:00 a.m. (the “Adjourned Interim Hearing”), the Motion is GRANTED on an interim basis to the extent provided herein and otherwise denied. Effective *nunc pro tunc* as of September 13, 2018 and continuing through and including the Adjourned Interim Hearing date (the “Preliminary Period”), the Debtor is authorized to use the Cash Collateral on an interim basis subject to the terms of this Order and in accordance with the budget attached hereto as **Exhibit A**, or upon further written consent of Celtic Bank or further order of this Court. At the Adjourned Interim Hearing, the Court will consider the Debtor’s request to use Cash Collateral after the Preliminary Period.

2. This Court has jurisdiction over the Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b), and this is a “core” proceeding pursuant to 28 U.S.C. §157. Venue is proper in this Court pursuant to 28 U.S.C. §1408. Notice of the interim relief sought was due and sufficient in the current circumstances of this Chapter 11 case as contemplated by Section 102(1)(A) of the Code and Fed. R. Bankr. P. 4001(b)(2).

3. In addition to the existing rights and interests of Celtic Bank in the Collateral and for the purpose of adequately protecting Celtic Bank from Collateral Diminution,<sup>1</sup> Celtic Bank is hereby granted a replacement lien (“Replacement Lien”), only to the extent that said liens were or deemed valid, perfected and enforceable as of the Petition Date in the continuing order of priority of its prepetition liens without determination herein as to the nature, extent and validity of said prepetition liens, and to the extent Collateral Diminution occurs during the Chapter 11 case, subject to: (i) United States Trustee fees pursuant to 28 U.S.C. § 1930, together with interest, if any, pursuant to 31 U.S.C. § 3717 and any Clerk’s filing fees; (ii) and the fees and commissions of a hypothetical Chapter 7 trustee in an amount not to exceed \$10,000. In

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<sup>1</sup> For purposes of this Order, “Collateral Diminution” shall mean any diminution in value of the Secured Creditors’s interests in Debtor’s property as of the Filing Date to the extent valid and enforceable by reason of Debtor’s use of Cash Collateral in accordance with this Order.

addition, the Replacement Lien granted hereby shall not attach to any recoveries of estate causes of action under Sections 542 through 553 of the Code or the proceeds thereof.

4. As further adequate protection of Celtic Bank's interest, the Debtor shall make, no later than the tenth (10<sup>th</sup>) day of each month, monthly adequate protection payments, commencing October 10, 2018, in the amount of \$6,874.35 to Celtic Bank, to be applied to its allowed secured claim under Section 506 of the Code.

5. The Debtor shall also pay, timely and in full, all real estate property taxes and insurance premium payments, as they come due and within two (2) business days of payment, provide proof of such payment to counsel for Celtic Bank.

6. The Debtor and Celtic Bank agree that, except as otherwise provided herein, all of the terms and provisions of the Celtic Bank's loan documents are deemed to be valid, binding and enforceable against the Debtor as if same had been re-executed by the Debtor and Celtic Bank, subject to further order of the Court as to allowance and avoidability.

7. All of the Debtor's income will be deposited into the Debtor's debtor-in-possession bank accounts and expenditures remitted therefrom. The Debtor shall timely file complete and accurate monthly operating reports in accordance with the reporting requirements of the Office of the United States Trustee's office.

8. The security interest and lien herein granted (i) are and shall be in addition to all security interests, liens and rights of set-off existing in favor of Celtic Bank on the Petition Date, (ii) shall secure the payment of indebtedness to Celtic Bank in an amount equal to the aggregate Diminution, and (iii) shall be deemed to be perfected without the necessity of any further action by Celtic Bank or the Debtor. Without limitation, therefore, Celtic Bank shall not be required to file financing statements or other documents in any jurisdiction or take any other action to

validate or perfect the liens and security interests granted by this Order.

9. Celtic Bank reserves its right to hereafter request additional adequate protection and to object to the adequacy of the adequate protection granted herein.

10. The Debtor shall maintain all necessary insurance, including, without limitation, general liability, property, life, fire, hazard, comprehensive, public liability, and workmen's compensation as required by Celtic Bank under the Celtic Loan Documents and the Office of the United States Trustee. The Debtor shall provide Celtic Bank with proof of all such coverage, as well as prompt notification of any change in such coverage which may hereinafter occur.

11. Notwithstanding anything to the contrary in this Order, the Debtor's authority to use the Cash Collateral pursuant to this Order shall terminate immediately and automatically, (a) upon the fifth (5th) business day following the delivery of written notice to the Debtor, its bankruptcy counsel, counsel to any official committee of unsecured creditors or, if no committee has been appointed, then to the Debtor's 20 largest unsecured creditors, and counsel to the United States Trustee, by Celtic Bank of any breach or default by the Debtor of the terms and provision of this Order or under the respective loan documents, unless the Debtor shall have cured such breach or default within such five (5) business day period, or (b) without notice of any kind upon the entry of an order of the Court providing for the dismissal or conversion of the Chapter 11 case to a Chapter 7 case or appointment of a trustee without the written consent of the Secured Creditor.

12. The provisions of this Order shall remain in full force and effect unless modified or vacated by subsequent order of this Court with the consent of Celtic Bank and the Debtor. If any or all of the provisions of this Order are hereafter modified, vacated, or stayed by subsequent order of this Court or any other court, such stay, modification or vacation shall not affect the

validity and enforceability of any lien, priority or benefit with respect to any indebtedness of the Debtor to Celtic Bank.

13. The findings contained in this Order are binding upon the Debtor and all parties in interest (including but not limited to any statutory committee subsequently appointed in the chapter 11 case), and any application of Collateral under this Order shall be infeasible, unless (a) an adversary proceeding or contested matter challenging the validity, enforceability or priority of the Collateral, the prepetition obligations to Celtic Bank (the “Prepetition Obligations”), the Replacement Lien, or the liens securing the Prepetition Obligations (the “Prepetition Liens”) is properly commenced no later than sixty (60) days from the Petition Date plus such additional time as the Court, for cause shown, authorizes, and (b) a final order is entered in favor of the plaintiff or movant in any such timely and properly filed adversary proceeding or contested matter, the Replacement Liens and the Prepetition Liens shall be deemed legal, valid, binding, perfected, and the Collateral, the Prepetition Obligations, the Replacement Liens, and the Prepetition Liens shall not be subject to avoidance or any other similar challenge by any party in interest seeking to exercise the rights of the Debtor’s estate, including, without limitation, and successor(s) thereto, with the exception of the application of Section 506 of the Code based on the value of the Collateral. If any such proceeding or contested matter is properly commenced, the Bankruptcy Court shall determine the validity, enforceability, and priority of the Collateral, the Prepetition Obligations, the Replacement Liens and the Prepetition Liens, but only with respect to and to the extent of the objections raised in such adversary proceeding or contested matter, and all other matters and objections not raised in such adversary proceeding or contested matter shall be deemed forever waived.

14. The entry of this Order and the payment of adequate protection to Celtic Bank is

without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, any of the rights, claims or privileges of Celtic Bank in this Chapter 11 case, any subsequent case or proceedings under the Code or in State Court.

15. This Order shall be binding upon any subsequently appointed or elected trustee in a successor case under Chapter 7 of the Code.

16. The Bankruptcy Court shall retain jurisdiction with respect to all matters pertaining to this Order.

17. Objections to the further interim relief requested in the Motion shall be made in writing, filed with the Bankruptcy Court at the Court's website [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) (log in and password required), with a copy delivered directly to the chambers of the Honorable Robert D. Drain, and served upon Bronson Law Offices, P.C., 480 Mamaroneck Ave., Harrison, NY 10528, with a copy to the Court's chambers, so as to be received no later than November 1, 2018 at 5:00 p.m.

Dated: White Plains, New York  
October 12, 2018

/s/Robert D. Drain  
HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

# EXHIBIT A



MEYZEN FAMILY REALTY ASSOCIATES LLC	Cash Flow				
18-23419					
Week Ending	9/28/2018	10/5/2018	10/12/2018	10/19/2018	Total
Cash on Hand					
Receipts		\$ 18,532.50			\$ 18,532.50
Expenses					
Celtic Bank Mortgage Payment-secured		\$ 6,874.35			\$ 6,874.35
L&J Smith-secured-\$1,543.29					
Insurance					
Property Taxes		\$ 10,114.86			\$ 10,114.86
US Trustee Fees					
Bank Charges					
Administrative					
<b>Total Expenses</b>		<b>\$ 16,989.21</b>			<b>\$ 16,989.21</b>