

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

GREAT FOOD GREAT FUN, LLC,
d/b/a WING CITY GRILLE,

Case No.: 17-11557-CLB

Debtor.

- AND -

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

PROFESSIONAL HOSPITALITY, LLC,
d/b/a VILLAGE CASINO RESTAURANT,

Case No.: 17-11558-CLB

Debtor.

**MOTION OF THE DEBTORS SEEKING ENTRY OF ORDERS GRANTING
DEBTORS EMERGENCY, INTERIM AND FINAL AUTHORITY TO USE
CASH COLLATERAL, FIXING ADEQUATE PROTECTION TO BE
PROVIDED TO SECURED CREDITORS AND ESTABLISHING DATES FOR
HEARINGS AND PRESCRIBING APPROPRIATE NOTICE THEREOF**

The Debtors-in-Possession, Great Food Great Fun, LLC (“Great Food Great Fun” or “GFGF”) and Professional Hospitality, LLC (“Professional Hospitality” or “PH”) (collectively, the “Debtors”), by their proposed attorneys, Andreozzi Bluestein LLP, hereby move this Court, pursuant to the Bankruptcy Code Section 363 and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure (the “Motion”), seeking the entry of Emergency, Interim and Final Orders authorizing the Debtors to use cash collateral and fixing the adequate protection which is to be provided to secured creditors U.S. Foods, Inc./U.S. Foodservice, Inc. (“U.S. Foods”), Cosima Corporation (“Cosima”), the Internal Revenue Service (“IRS”), the New York State Department of Taxation and Finance (“NYS Tax”), Snap Advances, LLC (“Snap Advances”), GU Capital

(“GU Capital”), Tango Capital (“Tango Capital”) and Northwest Savings Bank (“Northwest”) (collectively, the “Secured Creditors”), all of which have or claim liens, as set forth more fully below.

The Debtors also request that this Court enter an Order establishing dates for hearings and prescribing appropriate service for this Motion.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion, pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding, pursuant to 28 U.S.C. § 157(b).
3. Venue of Debtors’ Chapter 11 cases and this Motion in this district is proper, pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

4. Debtor Great Food Great Fun is a New York corporation which is doing business as “Wing City Grille” and which operates a restaurant in Fredonia, New York.

5. Debtor Professional Hospitality is a New York corporation which is doing business as “Village Casino Restaurant” and which operates a restaurant and banquet facilities on the waterfront in Bemus Point, New York. The Village Casino Restaurant is seasonal, generally operating only between May 1 and September 30 each year.

6. Both of the Debtors are single member limited liability corporations owned by Andrew C. Carlson, an individual who is not in bankruptcy.

7. Each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on July 24, 2017 (the “Filings”).

8. On July 24, 2017, the Debtors filed a motion seeking joint administration of these cases and that matter is pending at this time.

**REQUEST FOR AUTHORIZATION TO USE CASH COLLATERAL
AND RULE 4001(b)(1)(B) STATEMENT**

9. By this Motion, the Debtors request: (1) entry of an Order, substantially in the form of that being filed and served herewith as Exhibit A, establishing dates for emergency, interim and final hearings on this Motion and prescribing appropriate service for this Motion; (2) entry of Emergency, Interim and Final Orders, substantially in the forms of those being filed and served herewith as Exhibits B, C and D, authorizing the Debtors each to use cash collateral in the ordinary course, in the amount of up to \$16,000.00 for Great Food Great Fun and in the amount of up to \$27,000.00 for Professional Hospitality, on an emergency basis. This Motion also seeks authorization for the Debtors to use cash collateral in the ordinary course, in the amount of up to \$35,000.00 for Great Food Great Fun and in the amount of up to \$58,000.00 for Professional Hospitality, on an interim basis. This Motion also seeks authorization for the Debtors to use cash collateral in the ordinary course on a final basis in accordance with (within 5 percent) those *pro forma* income and expense projections being filed and served herewith as Exhibits E and F; (3) fixing “adequate protection” which is to be provided to Secured Creditors, consistent with those tables set forth at pages 8-9 and 12 of this Motion; and (4) permitting the Debtors each to pay those expenses identified in the Doctrine of Necessity Motion being filed contemporaneously with this Motion, including: (a) all pre-petition and post-petition gross wages, including all related withholding and other taxes thereon and all those other usual and customary deductions therefrom, as well as any wage payments “in float” as of the Filings; and (b) authorizing the Debtors to pay to pay certain employee health insurance and similar benefits.

THE DEBTORS' "CASH COLLATERAL"

10. Pursuant to 11 U.S.C. § 363(a), “cash collateral” is defined to include “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...”

11. As of the Filings of their Chapter 11 cases, however, the Debtors have few assets which would meet the statutory definition of “cash collateral.” As of the Filings, both the operating account of Great Food Great Fun at Community Bank and the operating account of Professional Hospitality at Community Bank had negative bank balances. Those amounts on deposit in their respective payroll accounts at Community Bank as of the Filings in excess of any uncashed payroll checks of employees are believed to be *de minimis*. Additionally, upon information and belief, all amounts on deposit in their respective “tax” accounts at Community Bank are either “trust fund” sales taxes or “trust fund” withholding taxes withheld from employee wages, which are not truly property of the Debtors available to secure claims of Secured Creditors.

12. Furthermore, like most restaurants and/or catering establishments, the Debtors’ businesses are intended to be operated so that payments for goods and services are either provided contemporaneously with or in advance of the customer’s receipt of those goods and services. Neither of the Debtors has material amounts of accounts receivable, with the exception of approximately \$3,000.00 of daily credit card receivables awaiting collection in the case of Great Food Great Fun and approximately \$6,000.00 of daily credit card receivables awaiting collection in the case of Professional Hospitality.

13. Accordingly, no Secured Creditor in either case holds a secured claim which is wholly secured by the Debtors’ cash collateral.

**SUMMARY OF LIENS FILED PRE-PETITION AND
DESCRIPTION OF DEBTORS' PROPOSED ADEQUATE
PROTECTION BEING OFFERED TO SECURED CREDITORS**

14. Prior to the Filings, each of those Secured Creditors identified above filed liens or UCC-1 financing statements against one or both of the Debtors asserting a secured claim against assets of the Debtors which fall within the definition of "cash collateral." As noted above, however, as of the Filings, neither of the Debtors held substantial assets which would be defined as "cash collateral." As is discussed below, however, most of those Secured Creditors identified above also assert liens on other kinds of assets of the Debtors.

SECURED CLAIMS AGAINST GREAT FOOD GREAT FUN

15. On those dates identified below, the following Secured Creditors filed liens or UCC-1 financing statements against Debtor Great Food Great Fun which appear to assert a lien against property of Great Food Great Fun which would include assets which would constitute "cash collateral":

Date Lien or UCC-1 Filed NYS DOS	Creditor	Amount Due (per filed lien)	Collateral Claimed to be Secured By:
9/4/12	Cosima	\$71,066.92	Equipment, inventory, accounts and general intangibles
6/10/13	U.S. Foods	\$54,414.76	Purchase Money Security Interest in all goods, inventory, equipment and fixtures sold to the Debtor by creditor and substantially all other assets
10/17/13	NYS Tax	\$797,000.00	All property
6/25/14	Tango Capital	\$0.00	Accounts, equipment, furniture, fixtures and inventory
12/17/14	NYS Tax	\$27,899.06	All property
7/30/15	GU Capital	\$0.00	Accounts, equipment, furniture, fixtures and inventory
6/30/16	NYS Tax	\$18,669.69	All property
9/30/16	NYS Tax	\$8,743.67	All property
10/10/16	NYS Tax	\$163.99	All property

3/1/17	NYS Tax	\$11,214.06	All property
3/7/17	IRS	\$82,826.49	All property and rights to property; priority lien on accounts and inventory, pursuant to 26 U.S.C. §§6323(c) and (d).
3/8/17	IRS	\$24,046.54	All property and rights to property; priority lien on accounts and inventory, pursuant to 26 U.S.C. §§6323(c) and (d).
5/31/17	NYS Tax	\$8,802.85	All property
6/8/17	IRS	\$29,306.69	All property and rights to property; priority lien on accounts and inventory, pursuant to 26 U.S.C. §§6323(c) and (d).

16. The validity of UCC-1s which were filed by GU Capital and Tango Capital are each being disputed by the Debtors because Debtor Great Food Great Fun does not owe anything to either of those entities at this time, such that they hold no valid secured claims against it.

17. Debtor Great Food Great Fun is still in the process of preparing its bankruptcy Schedules. It estimates that as of the date of its Filing, its assets consisted of credit card receivables of approximately \$3,000.00, office furniture and fixtures with a depreciated book value of approximately \$4,000.00, inventory with book value of approximately \$18,000.00 and restaurant equipment and freezers with a depreciated book value of approximately \$46,500.00, for a combined total of \$71,500.00. Accordingly, it is the Debtors' position that substantial portions of the claims identified above are either partially or wholly unsecured.

18. The secured claims against Great Food Great Fun identified above have been listed in the order of the dates of their lien filings with the New York State Department of State. The dates when these liens were filed, however, are not necessarily determinative of which entity holds a first lien on various assets of Debtor Great Food Great Fun.

19. For example, although Cosima, the landlord of Great Food Great Fun, holds a first filed lien against that Debtor's equipment, inventory, accounts and general intangibles, upon

information and belief, second filed lienholder U.S. Foods holds a first lien purchase money security interest in all goods, inventory, equipment and fixtures which it sold to Great Food Great Fun, which, upon information and belief, includes a substantial portion of that Debtor's goods, inventory, equipment and fixtures.

20. Additionally, although the liens of the IRS on all property and rights to property of Debtor Great Food Great Fun, based upon its Notices of Federal Tax Lien, were filed substantially after the UCC filings by Cosima and U.S. Foods, pursuant to 26 U.S.C. §§6323(c) and (d), the IRS also holds a priority lien which arises on all accounts receivable and inventory acquired 46 or more days after the dates of its filing of its Notices of Federal Tax Lien. Those priority liens will prime earlier filed UCC filings with respect to "commercial transactions financing agreements," within the meaning of 26 U.S.C. §§6323(c)(1) and (2), other than those for the purchase of inventory.

21. Upon information and belief, these priority IRS lien claims appear to hold priority over the security interests of Cosima in accounts and inventory, but likely do not hold priority over the purchase money security interests of U.S. Foods in inventory which it sold to Debtor Great Food Great Fun.

22. Based upon the foregoing, it is the Debtors' position that Cosima, U.S. Foods and the IRS are all partially secured by assets of Great Food Great Fun, however, it also appears that none of these claims is wholly secured.

23. Upon information and belief, the tax warrants of NYS Tax are wholly unsecured, as to assets of Great Food Great Fun, because the combined balances owed to claimants holding prior liens is greater than the value of Great Food Great Fun's assets.

24. The claims of GU Capital and Tango Capital are disputed and wholly unsecured because nothing is owing to them.

25. In the interest of obtaining prompt approval of emergency, interim and final orders regarding the use of cash collateral, the Debtors do not, through this Motion, seek a determination at this time as to the secured status of any of the foregoing claims.

26. Rather than decide those matters at this time, the Debtors' proposed Emergency, Interim and Final Orders would provide for the grant of "rollover replacement liens" to all Secured Creditors, effective as of the Filings of these cases, to the extent of cash collateral actually used and to the extent that the Secured Creditors are ultimately determined to have an interest in such cash collateral.

27. The Debtors are using the above analysis, however, as a part of their basis for proposing the following as "adequate protection" arrangements for the liens of Secured Creditors, in exchange for Great Food Great Fun's continued usage of cash collateral in the ordinary course of its business.

28. As additional adequate protection to Secured Creditors of Great Food Great Fun, the Debtors propose that Great Food Great Fun will make the following payments to Secured Creditors:

Creditor	Summary of Adequate Protection Proposed
Cosima	As adequate protection to GFGF landlord Cosima, current rent will be paid at the rate of \$1,500.00 per week. Additionally, starting on September 1, 2017, GFGF will start making payments of \$1,000.69 per month toward back rental amounts owed by GFGF. To the extent that Cosima has a valid lien on GFGF's cash collateral as of the Filing, Cosima will receive rollover replacement liens, to the extent of cash collateral actually used and not paid down by GFGF.

U.S. Foods	As adequate protection to U.S. Foods, all current purchases will be paid COD upon delivery. Additionally, GFGF will pay \$1,000.00 per week toward arrears owed. To the extent that U.S. Foods has a valid lien on GFGF's cash collateral as of the Filing, U.S. Foods will receive rollover replacement liens, to the extent of cash collateral actually used and not paid down by GFGF.
IRS	As adequate protection to partially secured claims of the IRS, GFGF will make adequate protection payments to the IRS at the rate of \$500.00 per week, starting August 10, 2017. Priority unsecured tax claims due to the IRS will be paid through Debtors' Chapter 11 Plan. To the extent that the IRS has a valid lien on GFGF's cash collateral as of the Filing, the IRS will receive rollover replacement liens, to the extent of cash collateral actually used and not paid down by GFGF.
NYS Tax	NYS Tax is wholly unsecured as to assets of GFGF and will not receive adequate protection payments. Priority unsecured tax claims due to NYS Tax will be paid through Debtors' Chapter 11 Plan. To the extent that NYS Tax is ever determined to have a valid lien on GFGF's cash collateral as of the Filing, NYS Tax will receive rollover replacement liens, to the extent of cash collateral actually used and not paid down by GFGF.
Tango Capital	No amount is due to Tango Capital and Tango Capital holds no secured claim against GFGF. To the extent that Tango Capital is ever determined to have had a valid lien on GFGF's cash collateral as of the Filing, Tango Capital will receive rollover replacement liens, to the extent of cash collateral actually used and not paid down by GFGF.
GU Capital	No amount is due to GU Capital and GU Capital holds no secured claim against GFGF. To the extent that GU Capital is ever determined to have had a valid lien on GFGF's cash collateral as of the Filing, GU Capital will receive rollover replacement liens, to the extent of cash collateral actually used and not paid down by GFGF.

29. Those adequate protection arrangements which are being proposed by Great Food Great Fun for Cosima and for U.S. Foods are based upon payment arrangements which the Debtors had negotiated with those creditors prior to bankruptcy.

SECURED CLAIMS AGAINST PROFESSIONAL HOSPITALITY

30. On those dates identified below, the following Secured Creditors filed liens or UCC-1 financing statements against Debtor Professional Hospitality which appear to assert a lien

against property of Professional Hospitality which would include assets which would constitute “cash collateral”:

Date Lien or UCC-1 Filed NYS DOS	Creditor	Amount Due (per filed lien)	Secured By:
9/19/11	U.S. Foods	\$106,493.10	Purchase Money Security Interest in all goods, inventory, equipment and fixtures sold to the Debtor by creditor and all other assets
4/6/13	Snap Advances	\$0.00	Accounts, equipment, furniture, fixtures and inventory
11/20/13	NYS Tax	\$797,733.66	All property
6/25/14	Tango Capital	\$0.00	Accounts, equipment, furniture, fixtures and inventory
7/25/15	Northwest	\$65,000.00	Substantially all property
6/24/16	NYS Tax	\$1,127.85	All property

31. The validity of UCC-1s which were filed by Snap Advances and Tango Capital are each being disputed by the Debtors because Debtor Professional Hospitality does not owe anything to either of those entities at this time, such that they hold no valid secured claims against it.

32. Debtor Professional Hospitality is still in the process of preparing its bankruptcy Schedules. It estimates that as of the date of its Filing, its assets consisted of credit card receivables of approximately \$6,000.00, office furniture and fixtures with a depreciated book value of approximately \$2,000.00, inventory with book value of approximately \$25,000.00 and restaurant equipment, vehicles and landscaping equipment with a depreciated book value of approximately \$140,000.00, for a combined total of \$167,000.00. Accordingly, it is the Debtors’ position that substantial portions of the claims identified above are either partially or wholly unsecured.

33. The secured claims against Professional Hospitality identified above have been listed in the order of that dates of their lien filings with the New York State Department of State, which, upon information and belief, is the same as the relative lien priorities of these Secured Creditors against Debtor Professional Hospitality.

34. Based upon the foregoing, it is the Debtors' belief that U.S. Foods' claims are fully secured by assets of Professional Hospitality.

35. Upon information and belief, the tax warrants of NYS Tax are partially secured by assets of Professional Hospitality.

36. The claims of GU Capital and Tango Capital are disputed and are wholly unsecured because nothing is owing to them.

37. As was the case in connection with Great Food Great Fun above, Debtor Professional Hospitality is not asking the Court to make a ruling at this time as to the secured status of any of the foregoing claims in the context of this Motion.

38. In the interest of obtaining prompt approval of emergency, interim and final orders regarding the use of cash collateral, the Debtors' proposed Emergency, Interim and Final Orders would provide for the grant of "rollover replacement liens" to all Secured Creditors of Professional Hospitality, effective as of the Filings of these cases, to the extent of cash collateral actually used and to the extent that Secured Creditors are ultimately determined to have an interest in such cash collateral.

39. As additional adequate protection to Secured Creditors of Professional Hospitality, the Debtors propose that Professional Hospitality will make the following payments to Secured Creditors:

Creditor	Summary of Adequate Protection Proposed
U.S. Foods	As adequate protection to U.S. Foods, all current purchases will be paid COD upon delivery. Additionally, PH will pay \$10,000.00 per week toward arrears owed until its seasonal closure on September 30, 2017. To the extent that U.S. Foods has a lien on PH's cash collateral as of the Filing, U.S. Foods will receive rollover replacement liens, to the extent of cash collateral actually used and not paid down by PH.
NYS Tax	As adequate protection to the partially secured claims of NYS Tax, PH will make payments at a rate of \$1,000.00 per week, starting August 10, 2017, until its seasonal closure on September 30, 2017. NYS Tax Priority unsecured tax claims due to NYS Tax will be paid through Debtors' Chapter 11 Plan. To the extent that NYS Tax is ever determined to have had a lien on PH's cash collateral as of the Filing, NYS Tax will receive rollover replacement liens, to the extent of cash collateral actually used and not paid down by PH.
Northwest	Northwest is wholly unsecured, as to PH, and will not receive adequate protection payments from PH. Northwest will continue to receive its usual monthly payments from Andrew Carlson on its mortgage secured by real estate titled in the name of Andrew Carlson located at 828 Fairmount Avenue, Jamestown, NY. To the extent that Northwest is ever determined to have had a lien on PH's cash collateral as of the Filing, Northwest will receive rollover replacement liens, to the extent of cash collateral actually used and not paid down by PH.
Tango Capital	No amount is due to Tango Capital and Tango Capital holds no secured claim against PH. To the extent that Tango Capital is ever determined to have had a lien on PH's cash collateral as of the Filing, Tango Capital will receive rollover replacement liens, to the extent of cash collateral actually used and not paid down by PH.
Snap Advances	No amount is due to Snap Advances and Snap Advances holds no secured claim against PH. To the extent that Snap Advances is ever determined to have had a lien on PH's cash collateral as of the Filing, Snap Advances will receive rollover replacement liens, to the extent of cash collateral actually used and not paid down by PH.

40. Those adequate protection arrangements which are being proposed by Great Food Great Fun for Cosima and for U.S. Foods are based upon payment arrangements which the Debtors had negotiated with those creditors prior to bankruptcy.

41. The Debtors' counsel has not had the opportunity to discuss these adequate protection proposals with counsels for the Secured Creditors prior to the filing of this Motion, such that the positions of the Secured Creditors on this Motion is not known at this time.

42. The Debtors also request that this Court enter an Order establishing dates for emergency, interim and final hearings and prescribing that it will be deemed good and sufficient service of this Motion if the Debtors serve copies of that Order and the Debtors' moving papers upon counsel for the IRS, counsel for NYS Tax, counsel for secured creditors U.S. Foods and Cosima and the Office of the United States Trustee, via e-mail and First Class Mail on July 26, 2017, and upon secured creditors U.S. Foods, Cosima, Snap Advances, GU Capital, Tango Capital and Northwest and each of the Debtors' 20 largest unsecured creditors, via First Class Mail only, on or before July 26, 2017.

WHEREFORE, the Debtors request that the Court grant their Motion and grant to the Debtors such other and further relief as this Court deems just and proper.

Dated: Clarence, New York
July 26, 2017

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