

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>WEST POINT MARKET OF AKRON,</b>	)	<b>Case No.</b> 18-51253
<b>LLC,</b>	)	
	)	<b>Judge Koschik</b>
<b>Debtor.</b>	)	

**EMERGENCY MOTION OF DEBTOR AND DEBTOR IN POSSESSION FOR  
INTERIM AND FINAL ORDER (I) AUTHORIZING DEBTOR'S USE OF CASH  
COLLATERAL; (II) GRANTING ADEQUATE PROTECTION THEREFOR AND  
RELATED RELIEF AND (III) SETTING A FINAL HEARING TO CONSIDER AND  
APPROVE DEBTOR'S POSTPETITION USE OF CASH COLLATERAL**

West Point Market of Akron, LLC (the "Debtor"), the debtor and debtor in possession in the above-captioned Chapter 11 case (the "Chapter 11 Case"), hereby moves the Court (the "Motion") for the entry of an order (i) authorizing the Debtor's use of cash collateral, (ii) granting adequate protection therefor, and (iii) setting a final hearing to consider and approve the Debtor's postpetition use of cash collateral.

In support of this Motion, the Debtor respectfully represents as follows:

**Background**

1. On the date hereof (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor is continuing in possession of its property and is operating and managing its business, as a debtor in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the Debtor's chapter 11 case and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and

1409. Sections 361 and 363 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) provide the basis for the relief sought herein.

3. The Debtor’s history, business operations, capital and debt structure, and the events leading to the filing of this chapter 11 case is set forth in the Declaration of Richard Vernon, filed contemporaneously with this Motion and fully incorporated herein by reference.

**Relief Requested**

4. According to the Debtor’s books and records the following entity (the “Secured Creditor”) may have a security interest in the Debtor’s property as set forth below:

Creditor	Collateral
On Deck	Accounts, chattel paper, deposit accounts, personal property, assets and fixtures, general intangibles, instruments, equipment, inventory and proceeds, no or hereafter owned or acquired

5. The security interests set forth above may include security interests in all cash and cash equivalents in which the Debtor has an ownership interest, which constitutes cash collateral within the meaning of Bankruptcy Code section 363(a).

6. Pursuant to section 363 of the Bankruptcy Code, the Debtor may not use cash collateral, “unless (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, ... in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2).

7. This Motion seeks authority on an interim basis to use only the cash collateral necessary to prevent immediate and irreparable damage to the Debtor’s business in an amount to be established at the interim hearing on this motion pursuant to sections 363(c)(2)(B) and (c)(3) of the Bankruptcy Code. The continued use of cash collateral will assure that the going-concern value of the Debtor and jobs of the Debtor’s employees are not lost.

8. Under section 361 of the Bankruptcy Code, the Debtor may provide adequate protection by providing to a secured creditor an additional or replacement lien to the extent that the Debtor's use of such collateral during the continuation of the automatic stay results in a diminution in value of the secured creditor's interest or "granting such other relief, ..., 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.

9. The continuation of the Debtor's business operations affords adequate protection to its Secured Creditor. In addition, Debtor requests that the Secured Creditor be granted valid and perfected, replacement security interests in, and liens upon (the "Replacement Liens") all assets of the Debtor's estate to the same extent and priority as existed prior to the Petition Date, excepting avoidance actions and subject to post-petition administrative expenses.

10. As set forth in the Debtor's cash flow projection, attached hereto as EXHIBIT A, the Debtor estimates that the cash requirement for the thirty days following the Petition Date will be approximately \$213,000 (the "Cash Requirement").

11. As further set forth on Exhibit A, the Debtor estimates that income for the thirty days following the Petition Date will be approximately \$213,000. Thus, the cash collateral should not diminish in any material respect.

12. Bankruptcy Rule 4001(b) and (c) provides that a final hearing on a motion to use cash collateral and/or obtain credit may not be commenced earlier than 14 days after service of the motion requesting such relief. Upon request, however, the Court may conduct a preliminary hearing and authorize the use of cash collateral and/or obtaining of credit to the extent necessary to avoid immediate and irreparable harm to the estate pending final hearing.

13. By this Motion, the Debtor requests that the Court conduct an expedited hearing on the Motion (the "Preliminary Hearing") and authorize the Debtor from and after the entry of the interim order, substantially in the form attached hereto as Exhibit B, until the final hearing, to use cash collateral in the manner set forth herein and in the proposed order. Granting such relief will enable the Debtor to continue to operate for the benefit of all parties in interest.

#### **Notice**

14. In light of the Debtor's critical and immediate need for use of cash collateral to avoid immediate and irreparable harm to Debtor and its estate, the Debtor has provided actual notice, either orally or in writing via email to (a) the representative of the Office of the United States Trustee for Region 9; (b) the Secured Creditor and (c) via email or overnight delivery to the Debtor's 20 largest unsecured creditors. The Debtor submits that under the circumstances, no further notice of the Preliminary Hearing is necessary or required.

15. The Debtor respectfully requests that it be authorized to serve a copy of the signed interim order, should the Court grant the relief requested in the Motion, which fixes the time and date for the final hearing and the deadline for filing objections, if any, by first class mail upon (a) the 20 largest unsecured creditors of the Debtor; (b) the representative of the Office of the United States Trustee for Region 9; (c) all parties who have filed requests for notice under Bankruptcy Rule 2002; (d) the Secured Creditor and its attorneys where known, and (e) any other parties as directed by the Court. The Debtor requests that the Court determine such notice of the final hearing to be sufficient notice under Rule 4001.

#### **Conclusion**

WHEREFORE, the Debtor requests entry of an order authorizing Debtor's use of cash collateral pursuant to section 363 of the Bankruptcy Code up to the amount of the Cash

Requirement for a period of thirty days from the Petition Date, granting adequate protection as set forth herein, setting the final hearing for use of cash collateral, and approving the proposed notice and granting such other and further relief as is just and proper.

DATED: May 24, 2018

Respectfully submitted,

/s/ Julie K. Zurn

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Proposed counsel for the Debtor  
and Debtor in Possession

**EXHIBIT A**

## 30 Day Cash Collateral Budget

## WEST POINT MARKET OF AKRON LLC

	PROJ	ACTUAL	PROJ	ACTUAL	PROJ	ACTUAL	PROJ	ACTUAL	PROJ	ACTUAL	PROJ	ACTUAL
	5/27/2018		6/3/2018		6/10/2018		6/17/2018		6/24/2018		7/1/2018	
<b>CASH RECEIVED</b>												
Beginning Cash Balance	\$0		\$8,070		\$573		\$778		\$12,079		\$206	
Receivables Collected												
AR SALES												
Transfer												
Credit Card Sales	\$46,165		\$37,868		\$38,475		\$50,972		\$39,623		\$55,262	
<b>TOTAL CASH AVAILABLE</b>	<b>\$46,165</b>	<b>\$0</b>	<b>\$45,938</b>	<b>\$0</b>	<b>\$39,048</b>	<b>\$0</b>	<b>\$51,749</b>	<b>\$0</b>	<b>\$51,702</b>	<b>\$0</b>	<b>\$55,468</b>	<b>\$0</b>
<b>CASH DISBURSED</b>	<b>5/27/2018</b>		<b>6/3/2018</b>		<b>6/10/2018</b>		<b>6/17/2018</b>		<b>6/24/2018</b>		<b>7/1/2018</b>	
Payroll	\$14,000		\$14,000		\$14,000		\$14,000		\$14,000		\$14,000	
Payroll Taxes	\$1,400		\$1,400		\$1,400		\$1,400		\$1,400		\$1,400	
Purchase Card	\$10,000		\$10,000		\$10,000		\$10,000		\$10,000		\$10,000	
Food Vendors by Check	\$3,000		\$3,000		\$3,000		\$3,000		\$3,000		\$5,000	
Wine Vendors by Check	\$5,000		\$5,000		\$5,000		\$5,000		\$5,000		\$5,000	
Professional Fees	\$1,250		\$1,250		\$1,250		\$1,250		\$1,250		\$1,250	
Utility Deposits									\$2,620			
Rent 33 Shiawassee			\$9,540									
Utilities					\$500		\$1,200		\$700			
Communications					\$500		\$200					
Nationwide Insurance									\$1,100			
Summacare Insurance	\$3,375								\$3,375			
Bureau Workmen's Comp									\$450			
Merchant Fees									\$3,000			
Advanced Systems							\$1,000					
ONE Plus Cleaning	\$0		\$0		\$0		\$0		\$0		\$1,250	
Model Uniforms	\$70		\$70		\$70		\$70		\$70		\$70	
WKSU									\$810			
AMEX							\$2,000					
Connected Payments									\$171			
Ally- Van			\$555									
Akron City Women's Club					\$2,000							
Sales Taxes									\$4,000			
K3 Mechanical			\$550		\$550		\$550		\$550		\$550	
<b>DISBURSEMENTS</b>	<b>\$38,095</b>	<b>\$0</b>	<b>\$45,365</b>	<b>\$0</b>	<b>\$38,270</b>	<b>\$0</b>	<b>\$39,670</b>	<b>\$0</b>	<b>\$51,496</b>	<b>\$0</b>	<b>\$38,520</b>	
<b>BAL BEFORE FIN &amp; ADMIN</b>	<b>\$8,070</b>	<b>\$0</b>	<b>\$573</b>	<b>\$0</b>	<b>\$778</b>	<b>\$0</b>	<b>\$12,079</b>	<b>\$0</b>	<b>\$206</b>	<b>\$0</b>	<b>\$16,948</b>	
Admin Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Finance Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>ENDING CASH BALANCE</b>	<b>\$8,070</b>	<b>\$0</b>	<b>\$573</b>	<b>\$0</b>	<b>\$778</b>	<b>\$0</b>	<b>\$12,079</b>	<b>\$0</b>	<b>\$206</b>	<b>\$0</b>	<b>\$16,948</b>	

**EXHIBIT B**



**UNITED STATES BANKRUPTCY COURT  
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<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>WEST POINT MARKET OF AKRON,</b>	)	<b>Case No.</b>
<b>LLC,</b>	)	
	)	<b>Judge Koschik</b>
<b>Debtor.</b>	)	

**INTERIM ORDER APPROVING (I) USE OF CASH COLLATERAL AND (II)  
PROVIDING ADEQUATE PROTECTION**

This matter is before the Court on the Emergency Motion of Debtor for Interim and Final Orders (I) Authorizing the Debtor's Use of Cash Collateral, (II) Granting Adequate Protection Therefor and Related Relief, and (III) Setting a Final Hearing to Consider and Approve the Debtor's Postpetition Use of Cash Collateral (the "Motion"). The Court having reviewed the Motion; the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) venue of the Debtor's chapter 11 case and this Motion is proper under 28 U.S.C. § 1408 and 1409; (d) service

and notice of the Motion was sufficient under the circumstances; and (e) the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

**IT IS HEREBY ORDERED THAT:**

1. The Motion shall be, and hereby is, GRANTED as to the Debtor's interim use of cash collateral and the request to set a final hearing with respect to the continued use of cash collateral.
2. The Debtor shall have the authority to use such cash collateral as is necessary to prevent immediate and irreparable harm to the Debtor, which use includes the uses set forth on Exhibit A to the Motion.
3. The Secured Creditor is granted Replacement Liens to the same and extent and priority as existed prior to the Petition Date, excepting avoidance actions and subject to post petition administrative expenses.
4. The Deadline for filing an objection to the Debtor's continued use of cash collateral is \_\_\_\_\_.
5. A hearing on the Debtor's continued use of cash collateral shall be held on \_\_\_\_\_ at the Bankruptcy Court in \_\_\_\_\_.
6. The Debtor shall serve a copy of this Interim Order by first class mail as soon as practicable after its entry on the Secured Creditor, the top 20 unsecured creditors, the Office of the U.S. Trustee, and any other party having filed a request for notices in this case.

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