

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE**

<b>IN RE:</b>	)	
	)	
	)	<b>Bankruptcy Case No.: 17-21641</b>
<b>KIDS FIRST ENRICHMENT CENTER, LLC</b>	)	
	)	<b>Chapter 11</b>
<b>Debtor</b>	)	
	)	
	)	

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**DEBTOR’S MOTION FOR AUTHORITY TO USE CASH COLLATERAL**

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COMES NOW Debtor-in-Possession, Kids First Enrichment Center, LLC (“Debtor”), by and through its undersigned proposed counsel, hereby files its Motion for Authority to Use Cash Collateral Pursuant to 11 U.S.C. § 363, and in support thereof, respectfully states as follows:

**JURISDICTION**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicate for the relief requested in this Motion is 11 U.S.C. §§ 105 and 363 and Rule 4001(d)(1)(D) of the Federal Rules of Bankruptcy Procedure.

**BACKGROUND**

3. On February 23, 2017, Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the “Petition Date”). Pursuant to Bankruptcy Code §§ 1107(a) and 1108, the Debtor is operating its business and managing its affairs as a debtor in possession. As of the date hereof, a trustee and examiner has been appointed but no statutory committee has been appointed in this Chapter 11 case.

4. The Debtor is a Tennessee limited liability company that holds record title to commercial real property in Memphis, Shelby County, Tennessee. Debtor holds title to real property municipally identified as 7130 East Shelby Drive Memphis, TN from which a day care center is operated by Quest Enrichment Center, LLC (“Quest”). Harry L. Smith is the sole member of both Quest and Debtor. Debtor also holds title to real property municipally identified as 3525 Hickory Hill Road Memphis, TN 38115 from which it carries on its daily operations. The Debtor’s primary business involves providing day care services to infants and children.

5. Prior to the Petition Date Debtor has two secured lenders with a lien on cash collateral. Specifically, Bank of Bartlett (“BOB”), held a first priority mortgage secured by the property located on East Shelby Drive. Gulf Coast Bank and Trust Company (“GCB&T”) held a first priority mortgage secured on the Hickory Hill Road property where Debtor carries on its daily operations. Debtor reserves the right to challenge the extent and priority of BOB’s lien and GCB&T’s lien on the real property, cash collateral and any other collateral.

6. Debtor has filed this case to restructure its debt and pursue a traditional chapter 11 reorganization including paying its debts to BOB and GCB&T over time through a plan of reorganization. Debtor filed the Petition when it did to halt foreclosure of the East Shelby Drive property by BOB.

### **RELIEF REQUESTED**

7. By this Motion, the Debtor seeks the entry of an Order authorizing its use of cash collateral pursuant to 11 U.S.C. § 363, Federal Rules of Bankruptcy Procedure 4001(b)(2) and 1. The Debtor believes that BOB and GCB&T will assert an interest in the Debtors cash collateral. The filings by BOB in its foreclosure action are unclear as to the rights retained by BOB. Debtor

is researching and where necessary requesting from BOB and GCB&T the supporting documents for clarification. If appropriate, the Debtor will seek assistance from the Court.

8. Debtor requires the use of cash collateral to fund all necessary operating expenses of the Debtor's business. Debtor will suffer immediate and irreparable harm if it is not authorized to use cash collateral to fund its expenses. Absent such authorization, Debtor will not be able to maintain and protect the Property.

9. The Debtor acknowledges that BOB and GCB&T may have a lien on the cash collateral in accordance with 11 U.S.C §§ 361 and 363. In connection therewith, the Debtor seeks the use of Cash Collateral in the ordinary course of business.

#### **CASH COLLATERAL AND THE RELIEF SOUGHT BY THE DEBTOR**

10. The Debtor's use of property of the estate is governed by section 363 of the Bankruptcy Code, which provides that: "If the business of the debtor is authorized to be operated under section ... 1108 ... of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing. 11 U.S.C. § 363(c)(1)." A debtor in possession has all of the rights and powers of a trustee with respect to property of the estate, including the right to use property of the estate in compliance with Section 363 of the Bankruptcy Code. See 11 U.S.C. § 1107(a).

11. When a Chapter 11 debtor-in-possession is authorized to operate its business, it may use property of estate in ordinary course of business, but is prohibited from using cash collateral absent consent of the secured creditor or court authorization. *In re Kahn*, 86 B.R. 506 Case 11-32532- (Bankr. W.D. Mich. 1988); *In re Westport-Sandpiper Associates Ltd. P'Ship*, 116 B.R.

355 (Bankr. D. Conn. 1990)(debtor may not use cash collateral unless entity that has interest in it consents or debtor proves that interest of the entity is adequately protected).

12. “Cash collateral” is defined by the Bankruptcy Code as, “cash, negotiable instruments, documents of title securities, deposit accounts or other cash equivalents whenever acquired in the which the estate an entity other than the estate have an interest...” 11 U.S.C. § 363(a). Any cash collateral generated by the Debtor may constitute the cash collateral of the alleged secured creditors.

13. Further, the Debtor proposes to use the Cash Collateral in accordance with the terms of the Budget submitted with this Motion. The Debtor also requests that it be authorized: (i) to exceed any line item on the budget by an amount up to ten (10) percent of each such line item; or (ii) to exceed any line item by more than ten (10) percent so long as the total of all amounts in excess of all line items for the Budget do not exceed ten (10) percent in the aggregate of the aggregate of the total budget. Revenues from the Quest Center, LLC operations which are used to cover its own operating expenses as well as pay mortgage indebtedness secured by the real property located on Shelby Drive in Memphis, TN are not included in the budget. Quest will make mortgage payments directly to Bank of Bartlett for the Shelby Drive property. Quest Center, LLC is a co-debtor on the secured mortgage to Bank of Bartlett for the Shelby Drive property.

**APPLICABLE AUTHORITY FOR RELIEF REQUESTED**

- A. The Court Should Enter an Order Authorizing the Continued Use of Cash Collateral Because the Debtor is Providing the Secured Creditor with Adequate Protection.

14. The Bankruptcy Code does not define “adequate protection” but does provide a non-exclusive list of the means by which a debtor may provide adequate protection, including “other relief” resulting in the “indubitable equivalent” of the secured creditors’ interest in such property. See 11 U.S.C. § 361.

15. Adequate protection is to be determined on a case-by-case factual analysis. See *Mbank Dallas, N.A. v. O’Connor (In re O’Connor)*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985). For example, in *O’Connor*, the court held that “[i]n order to encourage the Debtors’ efforts in the formative period prior to the proposal of a reorganization, the court must be flexible in applying the adequate protection standard.” *O’Connor*, 808 F.2d at 1936 (citations omitted). See also *In re Quality Interiors, Inc.*, 127 B.R. 391 (Bankr. N.D. Ohio 1991) (holding that the granting of a replacement lien provided adequate protection).

16. Adequate protection is meant to ensure that the secured creditors receive the value for which they originally bargained pre-bankruptcy. *Swedeland Dev. Group., Inc.*, 16 F.3d 552, 564 (3rd Cir. 1994) (citing *In re O’Connor*, 808 F.2d 393, 1396-97 (10th Cir. 1987)). Courts have noted that the essence of adequate protection is the assurance of the maintenance and continued responsibility of the lien value during the interim between the filing and the confirmation. *In re Arrienes*, 25 B.R. 79, 81 (Bankr. D. Or. 1982). The purpose of adequate protection requirement is to protect secured creditors from diminution of value during the use period. See *In re Kain*, 86

B.R.506, 513 (Bankr. W.D. Mich. 1988); In re Becker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986); In re Ledgmere Land Corp., 116 B.R. 338, 343 (Bankr. D. Mass. 1990).

17. In the instant case, adequate protection provided to BOB and GCNB&T will include monthly payments from Debtor and the Quest Center, LLC as set forth in the attached budget or a replacement lien on the Debtor's receivables and the Debtor's projected positive cash flow.

18. Section 361(2) of the Bankruptcy Code expressly provides that the granting of a replacement lien constitutes a means of providing adequate protection. 11 U.S.C. § 361(2). In the instant case, Debtors monthly payments to BOB and GCNB&T provides adequate protection.

B. The Use of Cash Collateral will Preserve the Debtor's Going Concern Value  
Which will Inure to the Benefit of Creditors.

19. The continued operation of the Debtor's business will preserve its going concern value, enable the Debtor to capitalize on that value through a reorganization strategy, and ultimately facilitate the Debtor's ability to confirm a Chapter 11 plan. If the Debtor is not allowed to use cash collateral, it will be unable to operate and potentially cause harm to the property.

20. The Debtor will use the cash collateral during the interim cash collateral period to pay operating expenses, payroll, property insurance, maintenance, utilities and otherwise maintain and protect the real property.

21. It is well established that a bankruptcy court, where possible, should resolve issues in favor of preserving the business of the debtor has a going concern. A debtor, attempting to reorganize a business under Chapter 11, clearly has a compelling need to use cash collateral in its effort to rebuild. Without the availability of cash to meet daily operating expenses such as rent, payroll, utilities etc., the congressional policy favoring rehabilitation over economic failure

would be frustrated. In re George Ruggiere Chrysler-Plymouth, Inc., 727 F.2d 1017, 1019 (11th Cir. 1984).

22. Accordingly, courts authorize the use of cash collateral to enhance or preserve the debtor's going concern value. For example, in In re Stein, 19 B.R. 458 (Bankr. E.D. Pa. 1982), the Court allowed a debtor to use cash collateral where the secured party was undersecured, finding that the use of cash collateral was necessary to the debtors' continued operations and the creditor's secured position can only be enhanced by the continued operation of the debtor's business. Id. at 460; see also Federal Nat. Mort. v. Dacon Bolingbrook Assoc., 153 B.R. 204, 204 (N.D. Ill. 1993) (security interest protected to extent debtor reinvested rents in operation and maintenance of the property); In re Constable Plaza Assoc., 125 B.R. 98, 105 (Bankr. S.D.N.Y. 1991) (debtor's reinvestment of rents to maintain and operate office building will serve to preserve or enhance the value of the building which, in turn, will protect the collateral covered by [the] mortgage); In re Dynaco Corp., 162 B.R. 389, 395-96 (Bankr. D. N.H. 1983)(finding that the alternative to the debtor's use of cash collateral, termination of its business, would doom reorganization and any chance to maximize value for all creditors); In re Karl A. Neise, Inc., 156 B.R. 600, 602 (Bankr. S.D. Fla. 1981) (marginally secured creditor adequately protected by lien on postpetition property acquired by debtor, debtors can use cash collateral in the normal operation of their business).

23. If the Debtor cannot use cash collateral, it will be forced to cease operations. By contrast, granting authority will allow the Debtor's to maintain operations and preserve the going concern value of its business which will inure to the benefit of any secured creditors and all other creditors.

24. The Debtor believes that use of Cash Collateral pursuant to the terms and conditions set forth above is fair and reasonable and adequately protects the secured creditor in this case. The combination of: (i) the Debtor's ability to preserve the going concern value of the business with the use of cash collateral; and (ii) providing the Secured Lender with the other protections set forth herein, adequately protects its alleged secured position under § 361(2) and (3). For all of the reasons stated above, this Court's approval of the Debtor's use of cash collateral is proper herein.

25. The Debtor believes that the approval of this Motion is in the best interest of the Debtor, its creditors and its estate because it will enable the Debtor to (i) continue the orderly operation of its business and avoid an immediate total shutdown of operations; (ii) meet its obligations for necessary ordinary course expenditures, and other operating expenses; and (iii) make payments authorized under other orders entered by this Court, thereby avoiding immediate and irreparable harm to the Debtor's estate.

26. A proposed order granting the relief requested is attached hereto as Exhibit B and will be uploaded using the Court's ECF system.

WHEREFORE, the Debtor respectfully requests that this Court enter an order (a) authorizing the Debtor's use of cash collateral in accordance with the attached Budget and provide related adequate protection; (b) granting such other and further relief that is just and proper.



**KIDS FIRST ENRICHMENT CENTER, LLC**

**Proposed Monthly Operating Budget 2017**

MONTHLY INCOME:

<u>Item</u>	<u>Amount</u>	
State of Tennessee	\$75,695.30	
Private pay	<u>\$6,000.00</u>	
Total Income		\$81,695.30

MONTHLY EXPENSES:

<u>Item</u>	<u>Amount</u>	
Payroll to employees	\$40,090.08	
Mortgages	\$6,100.00	
Food supplies	\$6,000.00	
Salary to Harry L. Smith	\$6,000.00	
Bus payment	\$3,000.00	
Attorney fees	\$3,000.00	
Utilities	\$2,500.00	
Bus/Auto fuel	\$2,100.00	
Supplies	\$1,800.00	
Insurance	\$1,510.00	
Janitorial services	\$800.00	
Accounting services	\$600.00	
Trustee fees	\$500.00	
Miscellaneous	\$500.00	
Telephone	<u>\$300.00</u>	
Total Expenses		<u>\$74,800.08</u>
Balance		\$6,895.22