

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

**IN RE: § CASE NO: 17-70485 -M-11
TEXDOM INVESTMENTS, LLC §
DEBTOR § CHAPTER 11 CASE**

**EMERGENCY
MOTION FOR USE OF CASH COLLATERAL, REQUEST FOR TEMPORARY
RELIEF AND REQUESTING A FURTHER HEARING**

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 14 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

AN EMERGENCY HEARING IS BEING REQUESTED ON THIS MATTER FOR DECEMBER 19, 2017 AT 8:30 A.M., MCALLEN DIVISION, 1701 W. BUSINESS HWY. 83, 8TH FLOOR, MCALLEN, TEXAS 78501.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

NOW COMES **TEXDOM INVESTMENTS, LLC**, Debtor-in-Possession (hereinafter “Debtor”), and files this its Emergency Motion for Use of Cash Collateral, Request for

Temporary Relief and Requesting a Further Hearing, pursuant to 11 U.S.C. § 363 (c)(2), and would show unto the Court as follows:

I. INTRODUCTION

- 1.1 Debtor filed its Voluntary Petition for Relief on the 14TH day of December, 2017, initiating this case under Chapter 11 of the Bankruptcy Code. Debtor continues to act as Debtor-in-Possession pursuant to Bankruptcy Code § 1107 and 1108.

II. BACKGROUND

- 2.1 The Debtor owns a 48 room apartment building on the following property:

A 3.016 acre tract of land, more or less, out of Lot 6, Section 7, HIDALGO CANAL COMPANY'S SUBDIVISION, Hidalgo County, Texas, according to the map or plat thereof recorded in Volume "Q", Page 177, Deed Records, Hidalgo County, Texas ("Napa Heights Apartments").
- 2.2 The Debtor owes approximately \$2.9 M to Lone Star National Bank ("Bank") secured by the Napa Heights Apartments. Debtor secured its debt to Bank by a Deed of Trust, Security Agreement, Assignment of Rents and Financing Statement ("Deed of Trust") dated January 14, 2014. The Deed of Trust signed by the Debtor grants Bank a lien on rents, profits and income from the Napa Heights Apartments. The income from the Napa Heights Apartments is therefore likely the cash collateral of Bank.
- 2.3 The Debtor pre-petition engaged Red Door Real Estate Services, LLC ("Red Door") as its management company to collect rents, secure tenants for vacancies, and pay expenses of the apartment complex. The rents are presently deposited Red Door's "rental account". Debtor requests court approval to continue using Red Door's property management services for the period December 15, 2017 to January 15, 2018 or through the date the court sets the next cash collateral

hearing, at the same rates, in the same manner as pre-petition.

- 2.4 The Debtor requires the court's approval and order of the monthly operating budget to keep the Napa Heights Apartments operating post-petition, to prevent interruption of services, and risking losing tenants.
- 2.5 Debtor submits that the operating budget attached hereto as Exhibit "A" is a fair representation of expenses which may be incurred on a monthly basis by the Napa Heights Apartments in the ordinary course of operation of its apartments as described. Debtor submits that if it does not timely pay such ordinary course expenses, the business will lose necessary goods and services it needs to continue profitable operations, constituting immediate and irreparable harm to the estate.
- 2.6 The IRS served a Notice of Levy on Red Door as property manager of Napa Heights Apartments on or about October 23, 2017. Debtor believes Bank's lien on rents is superior to the IRS levy.

III. ARGUMENT AND AUTHORITIES

- 3.1 Pursuant to 11 U.S.C. § 363 (c)(2), the Debtor may not use, sell, or lease cash collateral under Paragraph 1 of this subsection unless:
 - A. Each entity that has an interest in such cash collateral consents; or,
 - B. The Court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.
- 3.2 Debtor's use of cash collateral is required in order to enable Debtor to propose a successful plan of reorganization, to adequately protect Bank and any other secured creditor and to continue in business until successfully reorganized or liquidated.

- 3.3 Debtor's use of cash collateral will provide adequate protection to Bank by maintaining the on-going business of the Debtor and providing operational services to Debtor's tenants, and maintaining the Napa Heights Apartments cash flow of the Debtor. Debtor will provide continuing post-petition liens to the Bank and any other secured party that has valid pre-petition security interests in cash collateral. Debtor will also provide adequate protection by maintaining the Napa Heights Apartments, maintaining insurance, securing needed repairs and replacements, continuing the business and collecting rents, and filling vacancies. Debtor plans to submit a reorganization or liquidating plan to pay Bank and all other secured and unsecured parties.
- 3.4 **Debtor requests an Expedited hearing on this matter because Debtor must use cash collateral in order to pay on-going expenses, maintenance and operations of the Napa Heights Apartments or immediate and irreparable loss to the estate will occur.**
- 3.5 Debtor's request for use of funds is supported by the Affidavit Regarding Cash Collateral of Ramon I Rodriguez, Manager of the Debtor a true and correct copy of which is attached hereto and incorporated herein by reference for all purposes as **Exhibit "B"**.

IV. INTERIM/TEMPORARY RELIEF

- 4.1 Debtor requires an order on the use of Cash Collateral. Pursuant to 11 U.S.C. § 362 (d), the Court shall act promptly on any request made pursuant to 11 U.S.C. § 362 (c)(2). Debtor requires immediate temporary relief authorizing use of cash collateral until such time as a Final Order is entered regarding use of cash

collateral.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, upon notice and hearing, Debtor respectfully requests that:

- 5.1 This Court authorize Debtor's immediate and continued use of cash collateral pursuant to 11 U.S.C. § 363 (c)(2) in accordance with the attached budget;
- 5.2 This Court conduct a hearing on the Expedited Motion for Use of Cash Collateral, wherein the Court authorizes continued use of cash collateral subject to a final hearing after notice to all creditors and parties in interest; and,
- 5.3 To provide such other and further relief, at law and in equity, to which Debtor is justly entitled.
- 5.4 This court shorten the time for any response to 8:30 a.m. December 19, 2017.

Dated this 14th day of December, 2017.

Respectfully Submitted,
Law Office of Kurt Stephen, PLLC

By: /S/KURT STEPHEN

Kurt Stephen
Attorney for Debtor
State Bar No: 19147500
100 South Bicentennial
McAllen, Texas 78501
(956) 631-3381- Telephone
(956) 687-5542- Facsimile

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2017 a true and correct copy of the foregoing was transmitted electronically pursuant to Bankruptcy Local Rule 5005 and the Administrative Procedures for Electronic Filing and or, to those not served electronically, mailed by First Class, United States Mail, postage pre-paid, to all parties as shown on the attached Service List.

The following parties were also served by e-mail:

Via Email: swalsh@ktattorneys.com

Scott A. Walsh
Kittleman Thomas, PLLC
4900-B N. 10th St.
McAllen, Texas 78504
Counsel for Lone Star National Bank

Escobedo@lonestarnationalbank.com

Chris Escobedo

Lopezr@lonestarnationalbank.com

Rodrigo Lopez
Lone Star National Bank
PO Box 1127
Pharr, Texas 78577-1127

Via Email: david.guerra@usdoj.gov

David Guerra
Assistant US Attorney
1701 W Bus. Hwy. 83, Suite 600
McAllen, Texas 78501
Counsel for IRS

Via Email: Stephen.Statham@usdoj.gov

Stephen Statham, Trial Attorney
Office of the US Trustee
515 Rusk., Ste. 3516
Houston, Texas 77002

Via Email: Christine.A.March@usdoj.gov

Christine March, Trial Attorney
Office of the US Trustee
Office of the US Trustee
515 Rusk., Ste. 3516
Houston, Texas 77002

Via Email: Diane.Sanders@publicans.com

Diane Sanders

Via Email: jbanks@pbfc.com

John T Banks

CERTIFICATE FOR ACCURACY
PURSUANT TO LOCAL RULE 9013-1 (i)

The undersigned has knowledge of the matters pleaded on information and belief and makes this certification of the facts stated in the Emergency Motion For Use of Cash Collateral

/S/KURT STEPHEN

Kurt Stephen