



**IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.**

**Dated: October 12, 2018.**

**CRAIG A. GARGOTTA  
UNITED STATES BANKRUPTCY JUDGE**

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

IN RE: § CASE NO. 18-52054-CAG  
ACME INVESTMENT CORPORATION, §  
DEBTOR(S) § CHAPTER 11

**AGREED INTERIM ORDER AUTHORIZING USE OF IRS CASH COLLATERAL,**

Upon the Emergency Motion for Use of Cash Collateral (the "Motion") pursuant to Sections 105, 361, and 364 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and Federal Rule of Bankruptcy Procedure 4001, ACME INVESTMENT CORPORATION (the "Debtor") and the Internal Revenue Service, ("I.R.S."), subject to the terms and conditions set forth herein, including the (i) grant of mortgages, security interests, liens and claims for the benefit of the Internal Revenue Service which is co-extensive with its Prepetition liens and (ii) grant mortgages, security interest, liens and claims in order to provide adequate protection to the Internal Revenue Service as more fully set forth herein, and upon the proceedings held before this Court and good sufficient cause appearing therefore,

THE COURT HEREBY FINDS:

1. On August 31, 2018, (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is now operating its business and managing its property as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and no official committee has yet been appointed.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §137(b)(2). Venue of the Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§1408 and 1409.

3. Prior to the commencement of the Debtor's Chapter 11 case, the Internal Revenue Service had filed tax liens against the Debtor.

4. An immediate and critical need exists for the Debtor to obtain funds in order to continue the operation of its business. Without such funds, the Debtor will not be able to pay its payroll and other direct operating expenses and obtain goods and services needed to carry on its business during this sensitive period in a manner that will avoid irreparable harm to the Debtor's estate. At this time, the Debtor's ability to use Cash Collateral is vital to the confidence of the Debtor's vendors and suppliers of other goods and services, to the customers and to the preservation and maintenance of the going concern value of the Debtor's estate.

5. Substantially all of the Debtor's assets are subject to the Prepetition Liens of the IRS. The Internal Revenue Service has agreed to an interim use of the Prepetition Collateral by the Debtor, including any and all Cash Collateral, as hereinafter defined, except on the terms of this Order.

6. The Internal Revenue Service has verbally agreed to the use of its Cash Collateral without assurance that the Post-Petition Liens (as hereinafter defined) and the various claims,

superpriority claims and other protections granted pursuant to this Order will not be affected by any subsequent reversal or modification of this Order or any other order except as otherwise provided in other cash collateral orders issued in this case.

7. Pursuant to the Bankruptcy Code and in light of the foregoing, the Debtor is required to provide adequate protection to the Internal Revenue Service in respect of its use of the Prepetition Collateral and granting of the Post-Petition Liens.

8. Notice of the Motion and this Agreed Order has been provided by (and delivery, telecopy, overnight mail or courier) to counsel for the Internal Revenue Service, the United States Trustee, and the twenty (20) largest unsecured creditors of the Debtor and all other creditors for which the Debtor has contact information. In view of the urgency of the relief requested, such notice constitutes sufficient notice under Federal Rule of Bankruptcy Procedure 4001 and no other notice need be given.

9. Good cause has been shown for the entry of this Order. Among other things, entry of this Order will minimize disruption of the Debtor's business operations and permit the Debtor to meet payroll and other immediately necessary operating expenses, obtain needs supplies and retain customer and supplier confidence by demonstrating an ability to maintain normal operations. The use of Cash Collateral authorized hereunder is vital to avoid immediate and irreparable harm to the Debtor's estate. Consummation of this agreement and approval of this Order is in the best interest of the Debtor's estate.

10. The adequate protection arrangements authorized hereunder have been negotiated in good faith and at arm's length between the Debtor and the Internal Revenue Service. The terms of such adequate protection arrangements are fair and reasonable under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties and are

supported by reasonably equivalent value and fair consideration.

11. The Debtor has requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). The permission granted herein to allow the Debtor to obtain the use of Cash Collateral financing is necessary to avoid immediate and irreparable harm to the Debtor. This Court concludes that entry of this Order is in the Debtor's best interest and its estate and creditors as its implementation will, among other things, allow for the continued operation and rehabilitation of the Debtor's existing business.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Debtor be, and hereby is, authorized to enter into all agreements pursuant to the terms of this Order necessary to allow the Debtor to use Cash Collateral subject to the protections and consideration described in this Order. The Debtor is authorized to collect and receive all accounts receivable.

2. For purposes of this Order, "proceeds" of any collateral shall mean Proceeds (as defined in the Uniform commercial Code) of such collateral.

3. The Debtor may use Cash Collateral in accordance, and in a manner not materially inconsistent, with its **Debtor's 90 Day Projected Use of Cash.**

4. The Internal Revenue Service is hereby granted a priority replacement lien on all inventory and accounts receivable acquired by the Debtor since the filing of the petition and is hereby ratified and confirmed in its lien on the Debtor's inventory, accounts and fixtures perfected by the Internal Revenue Service prior to the filing of the Debtor's petition in the cause with such lien and replacement lien to continue until further order of this Court or confirmation of a Plan of Reorganization to the extent necessary to preserve the IRS's statutory lien position. Notwithstanding the foregoing, no determination has been made as to the lien priority of COMPASS BANK versus

the loan priority of the INTERNAL REVENUE SERVICE, or vice versa. Accordingly, the replacement liens granted to COMPASS BANK and to the INTERNAL REVENUE SERVICE are in the same priority as were their respective lien positions prior to the Debtor filing for bankruptcy protection in this case.

5. Debtor shall maintain insurance on all business assets and shall provide written evidence of same to the Internal Revenue Services.

6. Debtor shall remain current on all tax obligations, including but not limited to deposit of employee withholdings for income, Social Security taxes and hospital insurance (Medicare) and employer's contribution for Social Security taxes and deposit of excise tax, if applicable. Debtor shall file all present and future tax returns as they become due.

7. Debtor shall provide Special Procedures Branch, Austin District, at the address shown below, the Monthly Operating Report at the same time that the Report is filed with the Court and provided to the US Trustee. Debtor shall remain current as to all tax obligations, including, but not limited to, depositing employee withholding for income, social security taxes and hospital insurance (Medicare) and employer's contribution to social security taxes and deposit excise tax, if applicable. Debtor shall file all present and future tax returns as they become due. The Form 941 for any tax periods pre-petition for an entity that the Debtor has an ownership or affiliation with are due at the end of any applicable quarter and the Debtor shall be required to file and send those tax forms and reports to the Internal Revenue Service at the address referenced as follows:

Internal Revenue Service  
Special Procedures Branch  
Attn: Keri Templeton  
300 E. 8th St. Stop 5026AUS  
Austin, Texas 78701

8. Debtors shall file its Plan of Reorganization and Disclosure Statement within 120 days of the petition date and the Debtor shall receive confirmation of a Plan within 180 days of Petition date subject to further order of this court.

9. Debtor is required to make its quarterly tax deposits from this day forward on and provide proof of same to the Internal Revenue Service and Gary Wright, Assistant United States Attorney.

10. In the event that Debtor defaults on any of the conditions of this Order, the Service shall notify the Debtor's Attorney of the default. During the term of this Agreed Order, the Debtor may not default on any of the terms. In the event there is default, the Chapter 11 case will be dismissed upon the Service providing a notice of default, without a hearing.

11. The Court having reviewed the above terms finds that they are approved as the Interim Order of this Court. Counsel for the Debtor shall promptly furnish Notice of same to all other parties in interest in these Chapter 11 Proceedings, affording them an opportunity to object. If no sustainable objections are brought within fourteen (14) days of the mailing of such Notice, this Interim Order shall become final.

12. It is further expressly ordered that this Agreed Cash Collateral Order shall apply to all entities owned or controlled by the Debtor-in-Possession. In particular, the requirement that any affiliate entities file federal tax reports or returns in a timely fashion and make all tax deposits, as the case may be, in a timely manner.

13. It is further ORDERED, ADJUDGED AND DECREED that notwithstanding any provision of this Order and any further Order pertaining to Cash Collateral, the ad valorem tax liens held by Bexar County shall neither be primed by nor subordinated to any liens granted herein.

14. It is further ordered that the court has set this matter for final hearing on the Debtor's Motion to Use Internal Revenue Service's Cash Collateral for November 26, 2018 at 10:00 o'clock a.m. in the Courtroom No. 3, 5<sup>th</sup> Floor, 615 E. Houston Street, San Antonio, Texas 78205.

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AGREED:

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## OAK HILLS LANES

**PROJECTED USE OF CASH**  
**September, 2018 to November, 2018**

	Sep '18	Oct '18	Nov '18
<b>Income</b>			
Bowling Sales	90,264	89,233	89,851
Food Sales	33,239	30,419	31,465
Bar Sales	32,138	28,381	29,841
<b>Total Income</b>	<b>155,641</b>	<b>148,033</b>	<b>151,157</b>
<b>Cost of Goods Sold</b>			
Food	13,960	12,776	13,215
Bar	9,320	8,230	8,654
<b>Total COGS</b>	<b>23,280</b>	<b>21,006</b>	<b>21,869</b>
<b>Gross Profit</b>	<b>132,361</b>	<b>127,027</b>	<b>129,288</b>
<b>Expenses</b>			
Advertising	200	200	2,700
Admin Costs	3,000	3,000	3,000
Bowl Pins/Shoes	1,860	790	790
Bank Charges	3,113	2,961	3,023
Dues & Subs	1,868	1,776	1,814
Insurance	2,136	2,136	2,136
Janitorial	1,700	1,700	1,700
Repairs & Maint	7,004	6,661	6,802
Office Expenses	350	350	350
Legal & Professional	12,500	-	-
Linens	778	740	756
Marketing	1,000	1,000	1,000
Miscellaneous	311	296	302
Rent - Equipment	1,500	1,500	1,500
Security Services	-	420	-
Supplies	195	185	189
Taxes - Payroll	4,472	4,253	4,343
Taxes - Liquor	2,153	6,631	1,999
Taxes - Propeerty	4,500	4,500	4,500
Taxes - Franchise	-	-	3,000
Telephone	1,170	1,170	1,170
US Trustee fees	-	-	5,500
Utilities	6,500	6,500	6,500
Contingency Allow	3,113	2,961	3,023
Wages	52,918	50,331	51,393
<b>Total Expense</b>	<b>112,341</b>	<b>100,061</b>	<b>107,490</b>
<b>Income Before Debt Service</b>	<b>20,020</b>	<b>26,966</b>	<b>21,798</b>
<b>Debt Service</b>			
BBVA Compass	8,186	8,186	8,186
BBVA Compass	15,352	15,352	15,352
KLC Financial	2,000	2,000	2,000
Amtec Leasing	603	603	603
<b>Total Debt Service</b>	<b>26,141</b>	<b>26,141</b>	<b>26,141</b>
<b>Net Available</b>	<b>(6,121)</b>	<b>825</b>	<b>(4,343)</b>