



11:25 am, 10/2/17

Tim J. Ellis
Clerk of Court

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF WYOMING**

In re:

WESTERN STATES, INC.,

Debtor.

Case No. 17-20041

Chapter 11

**SECOND INTERIM ORDER AUTHORIZING DEBTOR'S USE OF CASH
COLLATERAL AND GRANTING POST-PETITION REPLACEMENT LIENS TO
LENDERS AND OTHER ADEQUATE PROTECTION**

This matter came before the Court pursuant to the *Motion for Interim Order Authorizing Debtor's Use of Cash Collateral and Granting Post-petition Replacement Liens* (the "**Motion**") [Docket No. 47] filed by WESTERN STATES, INC. (the "**Debtor**"), the debtor-in-possession in the above captioned Chapter 11 case (the "**Bankruptcy Case**"). The Debtor, AVANA CAPITAL, L.L.C. ("**AVANA Capital**"), AVANA FUND I, L.L.C. ("**AVANA Fund**"), and together with AVANA Capital, "**AVANA**") and ITRIA VENTURES LLC ("**ITRIA**"), hereby consent and stipulate to permit limited use of cash collateral pursuant to this Interim Order pursuant to 11 U.S.C. §363 as provided herein. Accordingly,

The Court hereby FINDS and CONCLUDES as follows:

1. On January 25, 2017 (the "**Petition Date**"), the Debtor filed a voluntary bankruptcy petition under Chapter 11 of the United States Bankruptcy Code, thereby commencing the Bankruptcy Case.
2. This Court has jurisdiction over this Bankruptcy Case and the Interim Order pursuant to 28 U.S.C. §§157(b) and 1334.
3. The Debtor is in the business of owning and operating a hotel located at 300 West F Street, Casper, Wyoming (the "**Ramada Hotel**").
4. CRU Real Estate Group (the "**Receiver**") was appointed as Receiver prior to the Petition Date pursuant to that certain *Order Granting Default Judgment and Appointment*

of Receiver entered in District Court (the "**Receivership Order**"). The Receiver will remain in place on an interim basis until further order of the Court. Any rights granted to the Debtor herein shall also apply to the Receiver acting in accordance with the Receivership Order and this Order.

A. Secured Interests of AVANA.

5. On or about January 31, 2014, a Loan Agreement was executed between Debtor as borrower and AVANA Capital as Lender (the "**AVANA Loan Agreement**").

6. Pursuant to the Loan Agreement, AVANA Capital loaned to the Debtor \$3,083,000.00, as evidenced by a promissory note that the Debtor executed and delivered to AVANA Capital in the principal amount of \$3,083,000.00 (the "**AVANA Note**").

7. As security for repayment of the Note, the Debtor executed that certain *Mortgage* dated January 25, 2014 (the "**AVANA Mortgage**"), which was properly perfected by recordation in the Natrona County Real Estate Records as Document #965891. On April 23, 2014, AVANA Capital subsequently assigned the Mortgage to AVANA Fund as recorded in the Natrona County Real Estate Records as Document #970439.

8. As further security for repayment of the Note, the Debtor executed and delivered to AVANA Capital that certain *Assignment of Leases and Rents* dated January 31, 2014 (the "**AVANA Assignment of Leases and Rents**"), which was properly perfected by recordation in the Natrona County Real Estate Records as Document #965892.

9. As further security for repayment of the Note, the Debtor executed and delivered to AVANA Capital that certain *Security Agreement* dated January 31, 2014 (the "**AVANA Security Agreement**").

10. AVANA Capital's lien and security interest was properly perfected with respect to the personal property stated therein by filing a UCC financing statement with the Natrona County Clerk on January 31, 2014 (the "**AVANA UCC**").

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11. The AVANA Loan Agreement, the AVANA Note, the AVANA Mortgage, the AVANA Assignment of Leases and Rents, the AVANA Security Agreement, the AVANA UCC, and any and all amendments or modifications to any of the foregoing, as well as all other documents evidencing, securing or relating to the AVANA loan, may be referred to collectively hereinafter as the "**AVANA Loan Documents.**"

12. Pursuant to the terms of the AVANA Loan Documents, the Debtor granted AVANA a valid and perfected lien and security interest in certain real and personal property (the "**AVANA Collateral**"). The AVANA Collateral that constitutes "cash collateral" within the meaning of Bankruptcy Code § 363(a) will be referred to herein as the "**AVANA Cash Collateral.**"

13. The Debtor acknowledges and confirms that as of December 6, 2016, the Debtor was indebted to AVANA pursuant to the AVANA Note in the amount of at least \$2,917,965.47, plus accrued and accruing interest, late charges, attorneys' fees, costs, and all other amounts due and owing under the AVANA Loan Documents and applicable law (the "**AVANA Indebtedness**").

14. The Debtor acknowledges and confirms that, as security for the repayment and performance of the obligations under the Loan Documents, AVANA holds valid, perfected, enforceable, security interests and liens in and upon the AVANA Collateral.

15. The Debtor acknowledges and agrees that (a) all of the amounts owing to AVANA pursuant to the AVANA Loan Documents are legal, binding and enforceable obligations of the Debtor; (b) the AVANA Loan Documents are valid and enforceable against the Debtor in accordance with their terms, and are not subject to avoidance pursuant to applicable state or federal law (including the Bankruptcy Code); and (c) the liens and security interests of AVANA in, to and against all of the AVANA Collateral are valid, enforceable and

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properly perfected, and are not subject to avoidance under applicable state or federal law (including the Bankruptcy Code).

16. With respect to paragraphs 5 through 15, any potential Committee appointed in this Bankruptcy Case, shall have sixty (60) days from the earlier of either the date of the entry of this Order or the date of the appointment of any such Committee to challenge the provisions of paragraphs 5 through 15 and the underlying debt, liens and interest of AVANA (the “**Avana Lookback Period**”). If no such challenge is made by the Committee by the expiration of the Avana Lookback Period, the provisions of paragraphs 15 and 16 shall be acknowledged and agreed to by any Committee, without further order of this Court. Nothing in this paragraph is intended to, nor does it alter in any way, the Debtor’s acknowledgment as set forth in this Order.

B. Secured Interests of ITRIA.

17. On January 13, 2016, the Debtor entered into a Future Receivables Sale Agreement with ITRIA, in which the Debtor agreed to sell \$372,000.00 in receivables to ITRIA in exchange for \$300,000.00 (the “**FRSA**”).

18. Pursuant to the FRSA, Debtor granted ITRIA a valid and perfected lien and security interest in certain personal property namely, all of the Debtor’s present and future accounts, chattel paper, deposit accounts, documents, personal business property, assets and fixtures, general intangibles, instruments, equipment, inventory and proceeds now or hereafter owned or acquired by Debtor wherever located (collectively, the “**ITRIA Collateral**”).

19. ITRIA’s lien and security interest in the ITRIA Collateral was properly perfected by filing a UCC financing statement with the Secretary of State on January 20, 2016 as Document No. 2016-61491237 (the “**ITRIA UCC**”). The ITRIA Collateral that constitutes “cash collateral” within the meaning of Bankruptcy Code § 363(a) will be referred to herein as

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the “**ITRIA Cash Collateral**” and together with the AVANA Cash Collateral, the “**Cash Collateral.**” The FRSA, ITRIA UCC and any and all amendments or modifications thereto, as well as all other documents evidencing, securing or relating to the FRSA may be referred to collectively as the “**ITRIA Documents.**”

20. The Debtor acknowledges that as of the Petition Date, the Debtor was indebted to ITRIA pursuant to the FRSA in the amount of at least \$189,500.00 plus accrued and accruing interest, late charges, attorney’s fees, costs and all other amounts due and owing under the FRSA and applicable law (the “**ITRIA Indebtedness**” and together with the AVANA Indebtedness, the “**Indebtedness**”).

21. ITRIA asserts that, as security for the repayment and performance of the obligations under the ITRIA Documents, ITRIA holds valid, perfected, enforceable, and first priority security interests and liens in and upon the ITRIA Collateral.

22. ITRIA asserts that (a) all of the amounts owing to ITRIA pursuant to the ITRIA Documents are legal, binding and enforceable obligations of the Debtor; (b) the ITRIA Documents are valid and enforceable against the Debtor in accordance with their terms, and are not subject to avoidance pursuant to applicable state or federal law (including the Bankruptcy Code); and (c) the liens and security interests of ITRIA in, to and against all of the ITRIA Collateral are valid, enforceable and properly perfected, and are not subject to avoidance under applicable state or federal law (including the Bankruptcy Code).

23. The Debtor acknowledges and confirms that, as security for the repayment and performance of the obligations under the ITRIA Documents, Itria holds valid, perfected, enforceable, security interests and liens in and upon the ITRIA Collateral.

24. The Debtor acknowledges and agrees that (a) all of the amounts owing to ITRIA pursuant to the ITRIA Documents are legal, binding and enforceable obligations of the Debtor; (b) the ITRIA Documents are valid and enforceable against the Debtor in accordance

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with their terms, and are not subject to avoidance pursuant to applicable state or federal law (including the Bankruptcy Code); and (c) the liens and security interests of ITRIA in, to and against all of the ITRIA Collateral are valid, enforceable and properly perfected, and are not subject to avoidance under applicable state or federal law (including the Bankruptcy Code).

25. With respect to paragraphs 17 through 24, the Debtor and any potential Committee appointed in this Bankruptcy Case, shall have sixty (60) days from the earlier of either the date of the entry of this Order or the appointment of any such Committee, to challenge the provisions of paragraphs 17 through 24 and the underlying debt, liens and interest of Itria (the “**Itria Lookback Period**”). If no such challenge is made by the Debtor or the Committee by the expiration of the Itria Lookback Period, the provisions of paragraphs 22 and 23 shall be acknowledged and agreed to by the Debtor and any Committee, without further order of this Court.

26. The Lenders are willing to allow the Debtor the limited use of Cash Collateral for a limited period, subject to the terms and conditions set forth in this Interim Order.

27. The terms and conditions regarding the use of Cash Collateral set forth in this Interim Order are fair and reasonable, were negotiated by the parties in good faith at arm's-length, and the parties otherwise acted in good faith.

28. Each of the foregoing findings by the Court will be deemed a finding of fact if and to the full extent that it makes and contains factual findings and a conclusion of law if and to the full extent that it makes legal conclusions.

IT IS ORDERED, ADJUDGED, AND DECREED as follows:

A. **Preamble, Findings, and Conclusions.** The paragraphs contained in the foregoing preamble and findings and conclusions are incorporated by reference as operative provisions in this Interim Order and are approved as part of the Court's ruling and decree, and

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the Debtor and Lenders consent and stipulate to the facts contained in such preamble and findings and to the entry of this Interim Order.

B. **Authority to Use Cash Collateral.** The Debtor may use Cash Collateral only as provided in this Interim Order. If the Debtor fails to comply with the terms and conditions of this Interim Order, either Lender objects to any subsequent use of the Cash Collateral and the Debtor's authorization to use the Cash Collateral for any purpose will immediately and automatically terminate by operation of this Interim Order and without further action by the Court. In addition, AVANA is holding, and is in control of an account in the amount of \$401,142.59 (the "Deposit Account"). This Deposit Account was set up in conjunction with the AVANA Loan Documents. To the extent agreed to by AVANA and in compliance with the AVANA Loan Documents, the Debtor and AVANA may agree that a portion of those funds may be used to cure any defaults with respect to the franchise of the Ramada Hotel, and for use by the Receiver to engage legal counsel.

C. **Limitation on Use of Cash Collateral.** A copy of a budget is attached as *Exhibit A* to this Interim Order (the "**Budget**"). The Debtor's use of Cash Collateral is limited to payment of the ordinary and necessary post-petition expenses that are actually incurred, billed to the Debtor, and are included in the Budget (the "**Approved Expenses**"). Except as expressly provided in this Interim Order, the Debtor may not use any Cash Collateral that would cause total payments to exceed any line-item stated in the Budget (with a 5% line-item variance during the interim period covered by this Interim Order). Under no circumstances is the Debtor authorized to pay any pre-Petition Date expenses, even if such expenses are included in the Budget, or any portion of any expenses which are billed after the Petition Date but which relate to goods or services provided to the Debtor prior to the Petition Date, even if such expenses are

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included in the Budget, except as otherwise ordered by the Court or as agreed to by AVANA and ITRIA in writing in their discretion.

D. **Duties of the Receiver.** AVANA, ITRIA and Debtor agree that the Receiver shall have the authority to use Cash Collateral to perform the duties set forth in the Receivership Order during this interim basis until further order of the Court.

E. **Termination of Authority.** Unless extended further with the prior written consent of AVANA and ITRIA (confirmed by the entry of a further order of the Court), the authorization granted to the Debtor to use Cash Collateral under this Interim Order will automatically terminate upon the earliest of:

- (i) Thirty (30) days following entry of this Interim Order, unless AVANA and ITRIA agrees in writing in their sole discretion to a later date;
- (ii) the granting of stay relief to any party that claims an interest in the Collateral or in the Replacement Collateral (defined below); or
- (iii) the filing by the Debtor or any other party in interest of any motion which seeks to grant to a party other than AVANA and ITRIA a lien or security interest equal or senior to the respective liens and security interests held by AVANA and ITRIA in the Collateral and the Replacement Collateral (defined below);

(Any of the forgoing (i) - (iv) shall be referred to as a "**Termination Event**"). Notwithstanding any such Termination Event, the respective rights, claims, security interests, liens and priorities of Lenders with respect to all transactions that occur prior to the occurrence of such Termination Event, including, without limitation, all respective liens and priority claims approved by this Interim Order, will remain unimpaired and unaffected by any such Termination Event, will survive any such Termination Event, and will be binding upon any and all successors-in-interest to the Debtor, including any trustee that may be appointed in the Bankruptcy Case.

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F. **Weekly Reports.** Commencing 5 days after the entry of this order, and submitted on each Wednesday thereafter by no later than 5 p.m., the Debtor will submit, with the cooperation of the Receiver, weekly operating reports to AVANA and ITRIA which shall reflect, in addition to any reporting requirements under the Bankruptcy Code, the following:

- (i) All rents, revenues and other Cash Collateral collected during the previous month;
- (ii) All disbursements made by the Debtor for the previous month;
- (iii) The balances of the bank accounts in which Cash Collateral is held and reconciliation with the balances from the previous week;
- (iv) Accounts payable and accounts receivable aging;
- (v) A comparison of the actual amounts collected and paid during the previous week, with the collections and expenses stated in the Budget; and
- (vi) Payroll reports for all employees of Debtor during the prior week.

A failure to timely file a weekly report may be excused if such failure is due to circumstances below the control of the Debtor.

G. **AVANA Replacement Liens.** Notwithstanding anything in Bankruptcy Code § 552 to the contrary, and in addition to its liens and security interests under the existing AVANA Loan Documents, AVANA shall have and is hereby granted as security for the use of Cash Collateral (effective and continuing without the necessity of the execution, filing and/or recordation of mortgages, deeds of trust, security agreements, control agreements, pledge agreements, financing statements or otherwise), valid and perfected security interests and liens (the “**Avana Replacement Liens**”) in all of the Debtor’s now owned or after acquired property interests of the types and to the same extent and priority as AVANA would be entitled to under the AVANA Loan Documents (whether owned or existing as of the Petition Date or thereafter acquired) (collectively, the “**Avana Replacement Collateral**”). The Avana Replacement Liens

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in the Avana Replacement Collateral will be evidenced by the existing AVANA Loan Documents and this Interim Order. In addition, AVANA will retain all of its existing liens and security interests in all of the AVANA Collateral, including, without limitation, the liens and security interests described above and any rights of setoff.

H. **ITRIA Replacement Liens.** Notwithstanding anything in Bankruptcy Code § 552 to the contrary, and in addition to its liens and security interests under the existing ITRIA Documents, ITRIA shall have and is hereby granted as security for the use of Cash Collateral (effective and continuing without the necessity of the execution, filing and/or recordation of mortgages, deeds of trust, security agreements, control agreements, pledge agreements, financing statements or otherwise), valid and perfected security interests and liens (the “**Itria Replacement Liens**”) in all of the Debtor’s now owned or after acquired property interests of the types and to the same extent and priority as ITRIA would be entitled to under the ITRIA Documents (whether owned or existing as of the Petition Date or thereafter acquired) (collectively, the “**Itria Replacement Collateral**”). The Itria Replacement Liens in the Itria Replacement Collateral will be evidenced by the existing ITRIA Documents and this Interim Order. In addition, ITRIA will retain all of its existing liens and security interests in all of the ITRIA Collateral, including, without limitation, the liens and security interests described above and any rights of setoff

I. **Reservation of Rights.** Lenders reserve their respective rights regarding any matters or issues not specifically addressed in this Interim Order. Nothing in this Interim Order will be deemed or construed as an admission or waiver by either Lender as to adequate protection, or any other issue in the Bankruptcy Case, and this Interim Order will not constitute consent by either Lender to the use of its Cash Collateral other than for the limited purpose and during the limited period expressly provided herein. In addition, nothing contained in this Interim Order will prejudice the rights of either Lender to: (i) seek additional or other adequate

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protection for their respective secured claims; (ii) seek relief from the automatic stay of Section 362(a) of the Bankruptcy Code; (iii) oppose confirmation of any plan of reorganization filed by the Debtor or any other party in interest; (iv) oppose approval of any post-petition financing; (v) seek a dismissal of the Debtor's Bankruptcy Case; (vi) seek allowance of an administrative claim or additional adequate protection in connection with the use of the Cash Collateral; or (vii) seek any other relief that the Lenders may deem necessary and appropriate under the circumstances. Moreover, nothing contained in this Interim Order will be deemed to waive or diminish any rights of either Lender under their respective Loan Documents..

J. **Binding.** The provisions of this Interim Order will be binding upon and inure to the benefit of the Lenders and the Debtor and their respective successors and assigns. The Debtor may not object to, challenge, or seek to avoid the amount, validity, or enforceability of the Indebtedness or the Lenders' respective liens in their respective Collateral. **DUE TO EMERGENCY CIRCUMSTANCES AND THE IMMEDIATE NEED OF THE DEBTOR TO USE CASH COLLATERAL, THE REPLACEMENT LIENS GRANTED IN THIS INTERIM ORDER SHALL CONTINUE NOTWITHSTANDING ANY RECONSIDERATION, MODIFICATION, AMENDMENT OR TERMINATION OF THIS INTERIM ORDER TO THE EXTENT OF THE USE OF CASH COLLATERAL OR THE DIMINUTION IN VALUE OF THE RESPECTIVE LENDER'S COLLATERAL PRIOR TO ANY SUCH RECONSIDERATION, MODIFICATION, AMENDMENT OR TERMINATION OF THIS INTERIM ORDER.**

K. **Modifications.** Any of the requirements of this Interim Order may be waived or modified by both Lenders and the Debtor in writing. Any motion or request by the Debtor or any other party to authorize the use of Cash Collateral, to modify the terms of this Interim Order, or to obtain any other relief that would impair, adversely affect or alter the rights of either Lender under this Interim Order shall only be heard upon at least two (2) business days

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actual notice to both Lender's counsel of record. No subsequent stay, modification, termination, failure to extend the term of or vacation of this Interim Order shall affect, limit or modify the validity, enforceability or perfection of the respective Replacement Liens granted to the Lenders.

L. **Effective Date.** This Interim Order shall be effective immediately upon entry of the order by the Court.

M. **Enforcement.** The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

BY THE COURT:



10/2/2017

HONORABLE CATHLEEN D. PARKER
U.S. Bankruptcy Judge

AGREED TO BY:

PAUL HUNTER - ATTORNEY AT LAW
2616 Central Avenue
Cheyenne, WY 82001

PENCE AND MACMILLAN LLC
501 E. Garfield Street
Laramie, WY 82070

AND

By /s/ Paul Hunter (per email authorization)
Paul Hunter

Lori L. Winkelman (*pro hac vice*)
QUARLES & BRADY LLP
Renaissance One
Two North Central Avenue
Phoenix, AZ 85004

Attorney for the Debtor,
Western States, Inc.

By /s/ Lori L. Winkelman (per email authorization)
Lori L. Winkelman

Attorneys for AVANA Capital, L.L.C. and
AVANA FUND I, LLC

By: /s/ Amy Wallace Potter (per email authorization)

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235 E. Broadway
Jackson, Wyoming 83001

Attorney for ITRIA VENTURES,
LLC

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Exhibit "A"

Ordinary Income	Whitem States Inc	Budget
Income		
40000 • Room Revenue		15958635
40005 • Room charge Tu Exempt		0.00
40040 • Fee		80.00
40050 • Other Room Revenue		4.00
40090 • CLC Mail Processing Fee		189.25
40100 • Banquet/Meeting Room Revenue		358.26
40330 • Long Distance Revenue		0.00
40450 • Vending Income		599.58
40500 • Gift Shop Revenue		1212.36
40510 • Gift Shop Food		444.00
41000 • Restaurant Food Revenue		4875.68
42000 • Lounge Beverage Revenue		13,875.65
42100 • Lounge Food Revenue		4,868.99
44900 • Other Revenue		500.00
50600 • Banquet Service Charge		<u>1,000.00</u>
Total Income		191352.62
Cost of Goods Sold		
48000 • Restaurant Cost of Goods Sold		
46100 • Restaurant Food Purchases		5,748.56
47300 • Restaurant Food		6,985.00
48200 • Restaurant Beverages		<u>13,456.9</u>
Total 46000 • Restaurant Cost of Goods Sold		26,190.46
47000 • Lounge Cost of Goods Sold		
47100 • Liquor Purchases		<u>5,786.54</u>
Total 47000 • Lounge Cost of Goods Sold		5,786.54
48100 • Taxes FICA, MIC		5,325.64
48150 • Taxes FICA, MIC, UI		4,875.98

	Western States B\19het	_____
	• Wages Direct Labor	
	49100 • Hot.I Wages	36,859.68
	49110 • Banquet Service ChatgH Plild Dt	35B8
	49200 • Restaurant Wages	11,458.77
	49300 • Lounge Wages	3,081.70
	49905 • CommInlons	<u>27302</u>
	Total 49000 • Wages • Direct Labor	<u>52,024.55</u>
	 Total COGS	 <u>82,091.96</u>
	 Gross Profit	 109,260.66
	 Expense	
	50050 • Accounting	850.00
	50100 • Advertising & Promotions	800.00
	50500 • Auto • Fuel & Oil	1853
	50900 • Bank Fees & Credit Card Fees	36.75
	51200 • Cable / Satellite TV	4,339.02
	52200 • Dues & Subscriptions	1,350.00
	52201 • Franchise FMS	9,500.00
	53400 • General	9,583.55
	54400 • Internet Services	633.00
	54700 • Laundry & Dry Cleaning	1,438.14
	54900 • Licenses & Permits	1,673.00
	55150 • Meals & Entertainment	237.00
	5900 • Rents	
	5910 • Equipment Rents	<u>5500</u>
	Total 58900 • Rents	55.00
	 57000 • Repair & Maintenance	
	57020 • Pest Control	190.00
	57080 • HVAC Equipment & Repairs	665.85

Western Stateshc Bughet	
57070 • Klitchen Equipment & R99s	0.00
O •Repts & loblntitnace - Other	<u>11,458.58</u>
Tobtl 57000 • R19 lls & Mlhten Ince	12,314.43
51100 • SuppUes	
57770 •Unen	<u>536.27</u>
Total57700 •Supplies	536.27
58900 •Telephone/ Cdl Phones	5,129.93
59500 •Utl1ities	
59510 •Electrfc;ltly	28,742.49
59530 •Waste RemoVII	3,401.23
59500 •Utl1ities - Other	<u>5,559.79</u>
Totll59500 • Utilities	37,703.51
59800 •W1g91 •Overhead	
591120 •Of'lk:eW1ges	<u>9,621.51</u>
Total591100 •Wages -Overhead	<u>9,621.51</u>
TotalExpense	<u>95,983.14</u>
Net Ordinary Income	13,277.52
Other Incom&'&pense	
Other Income	
11110 •Tips Cashed Out- Paychecks	<u>2,226.54</u>
Total Other nc:ome	<u>2,226.54</u>
Net Other Income	<u>2,226.54</u>
Net Income	<u>15,5'-06</u>

