

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	:	Chapter 11
	:	
Wordsworth Academy,	:	Case No. 17-14463 (AMC)
	:	
Debtor.	:	(Joint Administration Requested)
	:	

In re:	:	Chapter 11
	:	
Wordsworth CUA 5, LLC,	:	Case No. 17- 14466 (AMC)
	:	
Debtor.	:	(Joint Administration Requested)
	:	

In re:	:	Chapter 11
	:	
Wordsworth CUA 10, LLC,	:	Case No. 17- 14467 (AMC)
	:	
Debtor. ¹	:	(Joint Administration Requested)
	:	

**MOTION FOR INTERIM AND FINAL ORDERS
(A) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL
OF EXISTING SECURED LENDER AND GRANTING ADEQUATE
PROTECTION FOR USE AND (B) PRESCRIBING FORM AND MANNER
OF NOTICE AND SETTING THE TIME FOR THE FINAL HEARING**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby move this Court, pursuant to this motion (this “Motion”), for the entry of an interim order substantially in the form attached hereto as **Exhibit A** (the “Interim Order”) and a final order (the “Final Order,” and with the Interim Order, the “Cash Collateral Orders”), pursuant to 11 U.S.C. §§ 105, 361, and 363 and Federal Rules of Bankruptcy Procedure 4001 and 9014, (a) authorizing the Debtors to use the cash collateral of the existing secured lender and granting adequate

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are: Wordsworth Academy (9031); Wordsworth CUA 5, LLC (0983); and Wordsworth CUA 10, LLC (5980). Wordsworth Academy has an address at 3300 Henry Ave., Philadelphia, PA 19129.

protection to secured lender and (b) prescribing the form and manner of notice and setting the time for the final hearing on the Motion (the “Final Hearing”). In support of this Motion, the Debtors respectfully represent as follows:

Bankruptcy Rule 4001 and Local Rule 1002-4 Concise Statement

1. Debtors do not believe that any of the matters listed in Local Rule 1002-4(1)-(13) are implicated by the relief requested herein.

2. The provisions described in Bankruptcy Rule 4001(b)(1)(B)(i)-(iv) are set forth at the following sections the Interim Order:

- a. *Name of Entity with Interest in Cash Collateral.* [Interim Order p. 3].
- b. *Purposes of Use of Cash Collateral.* [Interim Order ¶ 1].
- c. *Duration of Use of Cash Collateral.* [Interim Order ¶ 5].
- d. *Liens, Cash Payments or Other Adequate Protection to Be Provided to the Entity with Interest in Cash Collateral.* [Interim Order ¶ 2].

Jurisdiction

3. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections 105, 361 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 1002-4, 2002-1, and 9014-3 of the Local Rules of Bankruptcy Practice and Procedure (the “Local Rules”) of the United States Bankruptcy Court for the Eastern District of Pennsylvania (the “Court”).

Background

A. Procedural History

6. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief with the Court under chapter 11 of title 11 of the Bankruptcy Code.

7. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases (the "Chapter 11 Cases") and, as of the date of the filing of this Motion, no official committees have been appointed or designated.

9. Concurrently with the filing of this Motion, the Debtors have requested joint administration of these Chapter 11 Cases.

10. Debtor Wordsworth Academy ("Wordsworth") is a Pennsylvania non-profit corporation. Its mission is to provide education, behavioral health and child welfare services to children and youth who have emotional, behavioral and academic challenges so that they are empowered to reach their potential and lead productive, fulfilling lives. In addition to other programs, Wordsworth provides services through two Community Umbrella Agencies. Wordsworth is the sole member of Debtors Wordsworth CUA 5, LLC ("CUA 5") and Wordsworth CUA 10, LLC ("CUA 10") (together, the "CUAs"), which are Pennsylvania non-profit limited liability companies.

11. The factual background relating to the Debtors' commencement of these Chapter 11 cases is set forth in detail in the First Day Declaration filed on the Petition Date and incorporated herein by reference.

B. Secured Credit Facilities and Budget

12. The Debtors' only prepetition secured lender with an interest in cash collateral is M&T Bank (the "Secured Lender").

13. The Debtors are parties to that certain Term Note dated April 8, 2015, (the "Prepetition Term Loan") in favor of the Secured Lender and pursuant to which the Secured Lender provided the Debtors with a term loan in the original principal amount of \$6,000,000. As of the Petition Date, the balance of the Prepetition Term Loan was approximately \$4,700,000. Prior to the Petition Date, Debtors made monthly payments of principal and interest on the Prepetition Term Loan in the approximate amount of \$68,000 to \$70,000 (the monthly amount varied pursuant to the terms of the loan agreement).

14. The Debtors are also parties to that certain Third Amended and Restated Daily Adjusting Libor Revolving Line Note dated September 7, 2016 (the "Prepetition LOC") pursuant to which the Secured Lender provided Debtors with access to a revolving line of credit in the amount of \$5,000,000. Prior to the Petition Date, the Secured Lender froze the availability of funds under the Prepetition LOC. The Prepetition LOC had no balance as of the Petition Date.

15. In addition, debtor Wordsworth is party to that certain Agreement for Visa Charge Cards and Card Products (the "Prepetition Credit Card Account," and together with the Prepetition Term Loan and the Prepetition LOC, the "Prepetition Credit Facilities"), pursuant to which Secured Lender issued Debtors with several corporate credit cards. As of the Petition Date, the Prepetition Credit Card Account had no balance and the cards had a credit limit of \$1.

16. To secure the Prepetition Credit Facilities, the Debtors executed: (i) that certain General Security Agreement dated April 8, 2015 in favor of the Secured Lender, which granted

the Secured Lender a first priority security interest in all of the Debtors' personal property, including all accounts, and (ii) that certain Mortgage dated April 8, 2015 in favor of the Secured Creditor in the maximum amount of \$10,000,000 (the "Mortgage") and recorded in the Office of the Recorder of Deeds of Montgomery County, Pennsylvania at instrument number 2015024142 (collectively, the "Prepetition Collateral").

17. The Secured Lender asserts a first position lien on the Debtors' real property (land and improvements) located at 2101 Pennsylvania Avenue, Fort Washington, Pennsylvania 19034 (the "Fort Washington Property").

18. The Fort Washington Property was most recently appraised as of November 24, 2014, when it had a value of 9,350,000. The Debtors submit that the value of the Fort Washington Property has not materially changed since 2014. There are no other liens on the Fort Washington Property.

19. The Prepetition Collateral also includes the Debtors' accounts receivable, which as of the Petition Date had an approximate estimated value of \$8,500,000.

20. The Debtors intend to use cash collateral and DIP financing to operate their business while they explore various restructuring alternatives.

21. The Debtors propose to use cash collateral pursuant to the proposed budget (as amended from time to time, the "Budget") attached to the interim order as **Exhibit 1**. The Secured Lender has reviewed the Budget, but has not yet approved it.

22. Debtors and the Secured Lender reached a pre-petition agreement that, among other things, provides for Debtors' to utilize Debtors' personal property and proceeds of its personal property on which the Secured Lender asserts first priority liens and security interests (the "Cash Collateral"), provided that Debtors continue to honor and make all monthly interest

payments on the Prepetition Term Loan, and subject to approval of the Budget by the Court. The monthly interest payments on the Prepetition Term Loan shall be calculated at the non-default rate.

Relief Requested

23. Pursuant to sections 105, 361 and 363 of the Bankruptcy Code and Bankruptcy Rules 4001 and 9014, the Debtors request that the Court grant the following relief as provided for in the Interim Order and the Final Order:

- a. authorize the Debtors on an interim basis pursuant to section 363(c) of the Bankruptcy Code, to use the Cash Collateral² pursuant to the Budget;
- b. authorize the Debtors on an interim basis, pursuant to sections 361 and 363 of the Bankruptcy Code, to provide the adequate protection described herein to the Secured Lender with respect to any diminution in value of the Secured Lender's interests in the Prepetition Collateral whether from the use of the Cash Collateral or the use, sale, lease, depreciation, decline in market price, or otherwise of the Prepetition Collateral;
- c. schedule the Final Hearing, pursuant to Bankruptcy Rule 4001, no later than twenty (20) days after the entry of the Interim Order, to consider entry of a Final Order authorizing the use of the Cash Collateral and approving the notice procedures in respect of the Final Hearing;
- d. authorize the Debtors on a final basis pursuant to section 363(c) of the Bankruptcy Code, to use the Cash Collateral in accordance with the Budget and any supplementary budgets as approved by the Court after further notice and hearing; and
- e. authorize the Debtors on a final basis, pursuant to sections 361 and 363 of the Bankruptcy Code, to provide the adequate protection described herein to the Secured Lender with respect to any diminution in value of the Secured Lender's interests in the Prepetition Collateral whether from the use of the Cash Collateral or the use, sale, lease, depreciation, decline in market price, or otherwise of the Prepetition Collateral.

Basis for Relief

² The Debtor does not hereby make any admission or consent with respect to the validity, priority, extent or enforceability of the liens asserted by the Secured Lender, and hereby reserves all rights with respect thereto.

A. The Debtors Have an Immediate Need for Use of the Cash Collateral.

24. The Debtors have an urgent need for the immediate use of the Cash Collateral pending the final hearing on this Motion. As of the Petition Date, the Debtors did not have sufficient unencumbered cash to fund their business operations and pay present operating expenses. Accordingly, the Debtors seek to use Cash Collateral existing on or after the Petition Date that may be subject to the Secured Lender's liens.

25. Absent the ability to use Cash Collateral, the Debtors will not be able to pay insurance, wages, rent, utility charges, and other critical operating expenses. Indeed, without access to Cash Collateral, the Debtors will not be able to maintain their business operations and continue their restructuring efforts, and would likely be forced to cease operations and liquidate. Accordingly, the Debtors' estates would be immediately and irreparably harmed absent the relief requested herein.

26. Moreover, if the Debtors are unable to obtain sufficient operating liquidity to meet their post-petition obligations on a timely basis, a permanent and irreplaceable loss of business will occur, causing a loss of value to the detriment of the Debtors and their creditors. This potential loss of revenue and going concern value would be extremely harmful to the Debtors, their estates, and their creditors at this critical juncture.

27. Any disruption of Debtors' operations would also have an immediate and potentially devastating impact on the thousands of children that depend on Debtors for their education, mental health, and housing requirements.

28. The Debtors cannot obtain funds sufficient to administer their estates and operate their business other than by obtaining the relief requested herein pursuant to section 363 of the Bankruptcy Code.

29. The Debtors believe that the use of Cash Collateral will provide the Debtors with adequate liquidity to pay administrative expenses as they become due and payable during these Chapter 11 Cases.

30. The Debtors' management has formulated the Budget for the use of Cash Collateral from the Petition Date through thirteen (13) weeks hereafter. The Debtors believe that the Budget includes all reasonable, necessary, and foreseeable expenses to be incurred in the ordinary course in connection with the operation of their business and its restructuring efforts for the period set forth in the Budget. The Debtors also believe that the use of Cash Collateral in accordance with the Budget will provide the Debtors with adequate liquidity to pay administrative expenses as they become due and payable during the period covered by the Budget.

31. The Debtors' right to use Cash Collateral under the Interim Order shall commence on the date of the entry of the Interim Order and expire on the earlier of (a) the entry of a subsequent interim order, or (b) the entry of the Final Order.

B. The Secured Lender Consents to the Use of Cash Collateral Subject to Approval of the Budget by the Court

32. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor in possession may only use "cash collateral" with the consent of the secured party or pursuant to court approval. *See* 11 U.S.C. § 363(c)(2).

33. As described above, the Secured lender has consented to the Debtors' use of the Cash Collateral provided that Debtors continue to honor and make all monthly interest payments on the Prepetition Term Loan, and subject to the Court's approval of the Budget.

34. Accordingly, the Debtors submit that the relief requested should be granted pursuant to section 363(c)(2) of the Bankruptcy Code.

C. The Interests of the Secured Lender Are Adequately Protected.

34. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor in possession may use “cash collateral” pursuant to court approval. *See* § 363(c)(2). Section 363(e) of the Bankruptcy Code provides that, upon request of an entity that has an interest in cash collateral sought to be used by a debtor, the court shall prohibit or condition such use of cash collateral as is necessary to provide adequate protection of such entity’s interest. See 11 U.S.C. § 363(e).

35. Appropriate adequate protection is decided on a case-by-case basis. See, e.g., In re Snowshoe Co., 789 F.2d 1085, 1088 (4th Cir. 1986); In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); In re Beker Indus. Corp., 58 B.R. 725 (Bankr. S.D.N.Y. 1986); see also In re JKJ Chevrolet, Inc., 190 B.R. 542, 545 (Bankr. E.D. Va. 1995) (adequate protection is a flexible concept that is determined by considering the facts of each case) (citing In re O'Connor, 808 F.2d 1393, 1396-97 (10th Cir. 1987).

36. Although adequate protection is not defined in the Bankruptcy Code, section 361 of the Bankruptcy Code provides the following three (3) nonexclusive examples of what may constitute adequate protection:

- (1) requiring the [debtor] to make a cash payment or periodic cash payments to such entity, to the extent that the . . . use . . . under section 363 . . . results in a decrease in the value of such entity’s interest in such property;
- (2) providing to such entity an additional or replacement lien to the extent that such . . . use . . . results in a decrease in the value of such entity’s interest in such property; or
- (3) 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. Essentially, with the provision of adequate protection, the Bankruptcy Code seeks to shield a secured creditor from diminution in the value of its interest in the particular

collateral during the period of use. See In re Hubbard Power & Light, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996); In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); see also In re Nice, 355 B.R. 554, 563 (Bankr. N.D. Va. 2006) (“[A]dequate protection is solely a function of preserving the value of the creditor’s secured claim as of the petition date due to a debtor’s continued use of collateral”).

37. The Debtors assert that the Secured Lender is adequately protected by way of (and in addition to security provided by Debtors’ continued payment of non-default rate interest on the Prepetition Term Loan) the equity cushion existing in the Prepetition Collateral, the granting of replacement liens (only to the extent its prepetition security interests are perfected and enforceable), and the continuation of the Debtors’ business.

The Secured Lender is Adequately Protected Because it is Over-secured

38. First, the Secured Creditor is significantly over-secured with respect to the Prepetition Term Loan (the Prepetition LOC and Prepetition Credit Card Account do not have a balance).

39. As set forth above, the balance of the Prepetition Term Loan (approximately \$4,700,000) is secured by, among other Prepetition Collateral, the Fort Washington Property, which was valued at approximately \$9,350,000 as of November 24, 2014. There are no other liens on the Fort Washington Property.

40. Further, among other Prepetition Collateral, the Secured Lender is secured by the Debtors’ accounts receivable, which had a value of approximately \$8,500,000 as of the Petition Date.

41. Consequently, the Secured Lender is substantially over-secured and any diminution in the value of the Secured Lender’s interest in cash deposits is immaterial with

respect to its credit risk.

Replacement Liens

42. Second, as additional adequate protection for any diminution in value of the Secured Lender's interests, the Debtors request that the Court grant the Secured Lender security interests ("Replacement Liens") equivalent to a lien granted under section 364(c)(2) and (3) of the Bankruptcy Code, as applicable, in and upon the Debtors' real and personal property and the Cash Collateral, whether such property was acquired before or after the Petition Date, to the extent: (i) that the Secured Lender's prepetition security interests in the Prepetition Collateral are valid and properly perfected, and (ii) of the amount of any diminution in value of the Secured Lender's Prepetition Collateral. If granted, the Replacement Liens will adequately protect the Secured Lender's interests from any potential depreciation and deterioration.

43. The Debtors intend to obtain debtor in possession financing post-petition and reserve the right in connection with such financing to seek modification of the priority of the Secured Lender's collateral.

Continued Operation of the Debtors' Business

44. Last, the Secured Lender is also adequately protected as a result of the continuation of the Debtors' business operations. Without the use of the Cash Collateral, the Debtors' operations would be irreparably harmed. Indeed, absent use of the Cash Collateral, the Debtors likely will be unable to pay their ordinary business expenses, including employee wages. In that event, all operations will cease—employees will be terminated and all assets on which the Secured Lender asserts a lien will be liquidated. Those pledged assets will be worth less in a liquidation than they will be worth as a going concern reorganization. As going concern value exceeds liquidation value, adequate protection is being provided. To be sure, the continuation of the Debtors' operations presents the best opportunity for the Secured Lender to receive the

greatest recovery on account of its claims.

45. Courts have recognized that the preservation of the going concern value of secured lender's collateral constitutes adequate protection of such creditor's interest in the collateral. See, e.g., In re 499 W. Warren Street Assocs., Ltd. P'ship, 142 B.R. 53, 56 (Bankr. N.D.N.Y. 1992) (holding that a secured creditor's interest in collateral was adequately protected when cash collateral was applied to normal operating and maintenance expenditures on the collateral property); In re Stein, 19 B.R. 458, 460 (Bankr. E.D. Pa. 1982) (finding that creditor's secured position would be enhanced by the continued operation of the debtor's business).

46. Accordingly, the Debtors submit that use of the Cash Collateral will allow the Debtors to continue their operations and, thereby, protect the Secured Lender's interests.

47. In summary, the Debtors submit that Secured Lender is adequately protected by its substantial equity cushion, the proposed Replacement Liens, and by maintaining the business of the Debtors as a going concern and thereby preventing any diminution in the value of the Prepetition Collateral.

D. Interim Approval Should Be Granted.

48. The Debtors respectfully request that the Court conduct an expedited preliminary hearing on this Motion and authorize the Debtors (from and after the entry of the Interim Order and pending the final hearing) to obtain use of the Cash Collateral in accordance with the Budget for, among other things, working capital purposes and the payment of certain obligations in accordance with the relief authorized by the Court.

49. Interim access to the Cash Collateral will ensure that the Debtors maintain ongoing operations and avoid immediate and irreparable harm and prejudice to its estate and all parties in interest pending the Final Hearing.

50. The Debtors submit that, for the reasons set forth herein, immediate access to the use of Cash Collateral (first, on an interim basis as requested in this Motion) on the terms set forth in the Budget is necessary to preserve the value of the Debtors' estate for the benefit of all parties in interest.

E. Request for Final Hearing

51. Pursuant to Bankruptcy Rule 4001(b)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, but in no event later than twenty (20) days following the entry of the Interim Order, and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

Notice

52. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the Eastern District of Pennsylvania; (b) the Commonwealth of Pennsylvania, Department of Labor and Industry; (c) the Commonwealth of Pennsylvania, Department of Revenue; (d) the Office of the Attorney General of Pennsylvania; (e) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (f) the Internal Revenue Service; (g) the City of Philadelphia; (h) the banks that process disbursement in the Debtors' cash management system (M&T Bank (One M&T Plaza, Buffalo, NY 14203) and TD Bank, N.A (1701 Route 70 East, Cherry Hill, NJ 08034)); and (i) all parties who have requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

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WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**; and grant such other and further relief as is just and proper.

Dated: June 30, 2017
Philadelphia, Pennsylvania

/s/Anne M. Aaronson

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