

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

In re:	§	
	§	
BHFS I, LLC, <i>et. al.</i> ,	§	Case No. 12-41581
	§	(Chapter 11)
Debtors.	§	Jointly Administered
	§	

THIRD INTERIM ORDER AUTHORIZING DEBTORS' USAGE OF CASH COLLATERAL

CAME ON FOR CONSIDERATION the *Debtors' Motion for Interim and Final Usage of Cash Collateral* (the "Motion"), filed by BHFS I, LLC, BHFS II, LLC, BHFS III, LLC, BHFS IV, LLC, BHFS Theater, LLC, and Behringer Harvard Frisco Square, LP (collectively, the "Debtors"), the debtors-in-possession in the above styled and numbered jointly administered bankruptcy case (the "Bankruptcy Case").

On June 15, 2012, the Court entered its *Interim Order Authorizing Debtors' Usage of Cash Collateral* (the "First Interim Order"), by which it authorized the Debtors' usage of cash collateral through June 25, 2012. Capitalized terms used in this Order and not defined in this Order shall have the meanings assigned to them in the First Interim Order.

On June 27, 2012, the Court entered its *Second Interim Order Authorizing Debtors' Usage of Cash Collateral* [docket no. 54] (the "Second Interim Order"), by which it authorized the Debtors' usage of cash collateral through July 31, 2012.

Now, finding that the Debtors, the Lenders, and the City of Frisco, Texas agree to the entry of this Third Interim Order, on the provisions and protections hereof, and without prejudice to all of their rights, defenses, issues, liens, claims, and arguments concerning the final hearing

on the Motion, and for convenience such that they may finalize their review and presentation of all relevant issues for the final hearing on the Motion, it is hereby:

ORDERED that a final hearing to consider the Motion is hereby set for **September 14, 2012 at 2:00 p.m.**; it is further

ORDERED that the Debtors shall provide and serve notice of said hearing, as is otherwise appropriate, within three (3) days of the entry of this Order; it is further

ORDERED that the Debtors are authorized to use Cash Collateral (as defined in section 363(a) of the Bankruptcy Code) from August 1, 2012 through to August 31, 2012 (the "Third Interim Period"), only for the purposes referenced in, and up to the amounts specified by, the budget attached to this Order as Exhibit "A" (the "Interim Budget") covering said Third Interim Period, and only to pay actual, necessary, and due and payable expenditures up to the lesser of the amounts of such expenditures or the amounts budgeted (but subject to the variances provided for in this Order), with the following additional requirements, notwithstanding anything to the contrary in the Interim Budget:

- (i) no Cash Collateral may be spent on "Reorganization Services" line item on the Interim Budget during the Third Interim Period, except that the Debtors may fund a retainer of up to \$20,000.00 for the purpose of retaining an appraiser as otherwise provided for in the Second Interim Order if not funded during the period of said order, even though such funding may not be until the Third Interim Period, but in no event may the Debtors fund such retainer twice;
- (ii) all payments under the "Personnel" line item on the Interim Budget during the Third Interim Period shall be limited such that any such payment shall be substantially the same as was paid to personnel prior to the filing of the

- Bankruptcy Case, under the same compensation or reimbursement terms applicable at such time, with no postpetition increases, bonuses, or enhancements;
- (iii) all payments under the “TI/LC Reserves” line item on the Interim Budget during the Third Interim Period shall be limited to actual and necessary expenditures falling within such line item during the Third Interim Period and as approved in connection with any approved leases;
 - (iv) all payments under the “CAPEX Reserves” line item on the Interim Budget during the Third Interim Period shall be limited to actual and necessary expenditures falling within such line item during the Third Interim Period and, additionally, the Debtors shall provide at least twenty-four (24) hour notice to the Lenders, through their respective counsel, of any such intended expenditure (including amount, purpose, and payee), except to the extent such expenditure is immediately necessary to avoid immediate and irreparable injury; and
 - (v) the “Asset Management Fee” shall not be paid during the Third Interim Period; it is further

ORDERED that, during the Third Interim Period, the Debtors may exceed the budgeted amount for any line item in the Interim Budget by no more than ten (10) percent, unless the Lenders or Bank of America, as applicable, agrees to a greater variance in writing, and the Debtors may exceed the entire budgeted amount for the Interim Period by no more than five (5) percent, unless the Lenders or Bank of America, as applicable, agrees to a greater variance in writing; it is further

ORDERED that Bank of America and the Lenders, as applicable, shall have all of the protections provided in the First Interim Order for and on account of the Debtors’ usage of Cash

Collateral during the Third Interim Period, including all provisions of the First Interim Order providing for replacement liens to the extent of any diminution in the value of collateral, and further including all provisions of the First Interim Order providing for super-priority administrative claim pursuant to section 507(b) of the Bankruptcy Code in the event of a failure of adequate protection, all automatically and without need for further Order, the same as though the First Interim Order had applied to the Third Interim Period; it is further

ORDERED that nothing in this Order or the Interim Budget shall be construed as authorizing Cash Collateral of the Four Borrower Debtors to be used by or for the benefit of the Theater Debtor or authorizing Cash Collateral of the Theater Debtor to be used by or for the benefit of the Four Borrower Debtors; it is further

ORDERED that upon the Lenders' or Bank of America's reasonable request for access to the collateral or the Debtors' books and records related to the collateral or the Cash Collateral, the Debtors shall give the Agent and/or Bank of America, their representatives and consultants, reasonable access to the Debtors' property, offices, books and records (which in no event shall include privileged information) during normal business hours at a mutually agreeable time to enable such parties to, among other things observe the Debtors' compliance with the terms and conditions of this Interim Order, and inspect the collateral and the Debtors' books and records; it is further

ORDERED that the Debtors shall prepare and serve on the Lenders a report reconciling actual versus budgeted Cash Collateral usage on both a consolidated basis and on a Debtor-by-Debtor basis, the first of which reports, covering the postpetition period of June, 2012, shall be due on or before August 10, 2012 and, for each subsequent calendar month during which the

Debtors use Cash Collateral, or any portion of such month, on or before the 20th day of the next calendar month; it is further

ORDERED that any replacement liens provided to Bank of America and/or the Lenders, as applicable, with respect to the real property of the Debtors, shall be of the same priority as its or their respective prepetition liens, and nothing contained in this order shall prejudice the rights of any of the parties or the City of Frisco as to any disputes concerning the relative priorities of any liens affecting the real property of the Debtors; it is further

ORDERED that, in the event either of the Lenders, or the Debtors, intend to introduce expert or appraiser evidence of the value of any the Lenders' physical collateral at the final hearing on the Motion, the party so intending shall: (i) provide to the party(ies) such expert report or appraisal within three (3) business days of the party's receipt of the final version thereof, and in no event later than August 31, 2012; and (ii) make the party's expert or appraiser available for deposition by any of the other parties at a reasonable location during the week of September 3, 2012 (or other date, but only if the Lenders and the Debtors agree to any other date); it is further

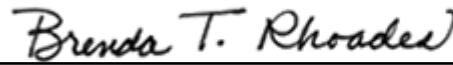
ORDERED that nothing in this Order shall be construed as consent by the Lenders or Bank of America, as applicable, to any charge, assessment, or claim against the Cash Collateral under Section 506(c) of the Bankruptcy Code or otherwise; it is further

ORDERED that entry of this order is without prejudice to any arguments the Lenders may later have or assert as to: (i) any proposed use of cash collateral by the Debtors at the final hearing, or (ii) any later request by the Debtors seeking substantive consolidation of any or all of the Debtors in the Bankruptcy Case; it is further

ORDERED that the Court shall maintain jurisdiction to interpret and enforce this Order to the maximum extent possible notwithstanding any potential dismissal of the Bankruptcy Case.

SO ORDERED.

Signed on 7/25/2012



SR

HONORABLE BRENDA T. RHOADES,
CHIEF UNITED STATES BANKRUPTCY JUDGE

AGREED AS TO SUBSTANCE AND FORM:

MUNSCH HARDT KOPF & HARR P.C.

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EXHIBIT "A" – INTERIM BUDGET

BHFS I, LLC et al.

Debtor in Possession Cash Collateral Budget

Consolidated

	Month 3
	<u>8/1/2012 to</u>
	<u>8/31/2012</u>
Opening Balance	
Income	
Rental Income (after bad debt)	369,730
Recovery Income	71,213
Other Income	0
New Tenant Income (after bad debt)	0
Total Income	<hr/> 440,943
Expenses	
Personnel	(40,400)
Utilities	(65,550)
General & Administrative	(55,173)
Repairs & Maintenance	(45,848)
Advertising & Marketing	(6,083)
Insurance	0
Property Management Fees	(19,842)
Asset Management Fees	0
Total Expenses	<hr/> (232,896)
Cash Surplus / (Deficit)	208,047
Accruals	
TI/LC Reserves	(32,656)
CAPEX Reserves	(17,200)
Franchise Tax	(3,300)
Reorganization Services	0
US Trustee's Fees	(7,500)
Total Accrued Expenses	<hr/> 0 <hr/>
Cash Surplus / (Deficit) after Accruals	147,391