

SO ORDERED



James F. Schneider
JAMES F. SCHNEIDER
U.S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)

In re: *
BAIA, LLC. * Case No: 16-26941-DER
Debtor * (Chapter 11)
* * * * *

**ORDER GRANTING MOTION FOR AN ORDER
(I) AUTHORIZING USE OF CASH COLLATERAL THROUGH
JANUARY 31, 2017 AND (II) GRANTING ADEQUATE PROTECTION**

Upon consideration of the Motion for an Order (I) Authorizing Use of Cash Collateral through January 31, 2017 and (II) Granting Adequate Protection (the “Motion”) filed by BAIA, LLC, the debtor and debtor in possession herein (the “Debtor”), and the consent herein of SF IV BRIDGE IV, LP (the “Lender”), and it appearing that the Debtor and the Lender, by their undersigned counsel, have agreed to the terms and conditions of this Consent Order authorizing the Debtor’s interim and limited use of cash collateral and for adequate protection (this “Interim Cash Collateral Order”).

FACTUAL BACKGROUND

A. The Debtor commenced this case (the “Case”) by filing a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on December 30, 2016 (the “Petition Date”). Since the Petition Date, the Debtor has continued in the management and possession of its business and properties as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

B. An Official Committee of Unsecured Creditors has not been appointed in this Case, and no trustee has been appointed in this Case.

C. The Debtor is a limited liability company organized and existing under the laws of the State of Maryland, and is engaged in the business of owning and leasing commercial real property located in Carroll County, Maryland.

THE LOAN DOCUMENTS

D. The Lender asserts that the Indebtedness (as defined below) is valid, existing, and legally enforceable and is evidenced by certain documents executed and delivered by the Debtor to the Lender including, without limitation (i) that certain Promissory Note dated March 15, 2016 in the original principal amount of \$12,800,000 (the “Note”) from the Debtor and Ridgeville Plaza, Inc. (the “Co-Debtor”;¹ collectively, the Co-Debtor and the Debtor shall be referred to hereinafter as the Debtors”) to the Lender; (ii) that certain Loan Agreement dated March 15, 2016, by and between the Lender and the Debtors (the “Loan Agreement”) and (iii) that certain Subordination Agreement dated March 15, 2016, by and between the Lender, ARG365, LLC (“ARG”), the Debtors and certain guarantors (the “ARG Subordination Agreement”) and (iv) that certain Subordination Agreement by and between the Lender, the Debtors, certain guarantors and United Bank, Inc. (“United Bank”), dated March 15, 2016, which is recorded in the Land Records of Carroll County, Maryland at Liber 8269, folio 94 (the “United Bank Subordination Agreement”).

E. The Lender asserts that the Indebtedness is valid, existing, and legally enforceable and is secured by certain documents executed and delivered by the Debtor to the Lender including, without limitation: (i) a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing from the Debtors to trustees for the benefit of the Lender dated March 15, 2016, and recorded in the Land Records of Carroll County, Maryland at Liber 8269, folio 039, encumbering certain real property and personal property more particularly identified therein (the “Deed of Trust”); (ii) a Security Agreement dated March 15, 2016, from the Debtors to the Lender encumbering certain personal property identified therein (the “Security

¹ The Co-Debtor is a debtor in a companion bankruptcy filing (Case No.: 16-26944) (the “Co-Debtor’s Case”).

Agreement”) and (iii) an Assignment of Rents and Leases encumbering the Properties (as defined herein) dated March 15, 2016, from the Debtors, which is recorded in the Land Records of Carroll County, Maryland at Liber 826, folio 077 (the “Assignment of Rents”; collectively, the Note, the Loan Agreement, the ARG Subordination Agreement, the United Bank Subordination Agreement, the Deed of Trust, the Security Agreement, the Assignment of Rents and any other documents executed in connection therewith, whether referenced herein or not, shall be referred to as the “Loan Documents”).

F. As set forth above, the Lender asserts that the Indebtedness evidenced by the Loan Documents is secured by, among other things, duly recorded (a) first priority liens on 1311 S. Main Street, Mt. Airy, Maryland 21771 and 1401 S. Main Street, Mt. Airy, Maryland 21771 (collectively, the “Properties”) (except any unpaid accrued amounts owed to taxing authorities), together with the income, rents and profits from the Properties, as provided for in the Loan Documents; and (b) asserts that any and all other collateral set forth in the Loan Documents is properly perfected as of the Petition Date (collectively, the “Pre-Petition Collateral”). The Lender asserts that the Lender’s liens and security interests in the Pre-Petition Collateral were granted pursuant to the Loan Documents.

LENDER’S CLAIM

G. The Lender asserts that it holds valid, enforceable, and allowable claims against Debtor, as defined in Section 101 of the Bankruptcy Code, as of the Petition Date, pursuant to the Loan Documents and applicable law (the “Pre-Petition Claim”), in an approximate aggregate amount equal to \$15,129,310.98 in unpaid principal, interest and attorneys’ fees. The Lender reserves the right to amend the foregoing sum. For the purposes of this Interim Cash Collateral Order, the Pre-Petition Indebtedness, together with any and all of the Debtor’s other obligations to the Lender, of whatever nature and whenever arising, including without limitation the obligations under the Loan Documents and further including, without limitation, interest, late

fees, reasonable costs, attorneys' fees, and any and all other amounts permitted by the Bankruptcy Code (whether pre-petition or post-petition) and applicable law are collectively defined as the "Indebtedness."

H. The Lender and the Debtor assert that the agreements and arrangements authorized in this Interim Cash Collateral Order have been negotiated at arms-length, are fair and equitable under the circumstances, and are enforceable pursuant to their terms. The Lender and the Debtor assert that they have acted in good faith (including, without limitation, as that term is used in Section 363 of the Bankruptcy Code and otherwise) in the negotiation and preparation of this Interim Cash Collateral Order, have been represented by counsel, and intend to be and are bound by the terms of this Interim Cash Collateral Order.

CASH COLLATERAL

I. The Lender asserts that all rents, royalties, income, proceeds, profits, and revenues of the Pre-Petition Collateral that are in the Debtor's (or persons in privity with the Debtor) possession, custody or control, or in which the Debtor will obtain an interest during the pendency of the Case and all other "cash collateral" within the meaning of Section 363(a) of the Bankruptcy Code (collectively, the "Cash Collateral") are the Cash Collateral of the Lender. The Lender asserts that the Lender has first priority perfected liens upon and security interests in the Cash Collateral pursuant to the applicable provisions of the Loan Documents, and Sections 363(a) and 552(b) of the Bankruptcy Code and this Interim Cash Collateral Order.

J. The Lender does not consent to the Debtor's use of Cash Collateral except in strict accordance with the terms and conditions contained in this Interim Cash Collateral Order, including the budget, attached hereto as **Exhibit 1** (the "Budget"). The Debtor may not revise or alter the Budget without the prior written consent of the Lender, provided, however, the Debtor shall be entitled to a ten (10%) line-item variance which shall not carry over to the next Budget period.

K. The Debtor has requested that the Lender permit the use of Cash Collateral to provide funds to be used solely for such purposes set forth in the Budget in order to avoid immediate and irreparable harm to the Debtor's estate which will occur if this Interim Cash Collateral Order is not approved. Without the use of Cash Collateral, the Debtor asserts that it will be unable to retain or pay employees, maintain its assets, provide financial information, or perform any of the tasks which the Debtor believes are necessary to maximize the value of its assets.

L. Good, adequate, and sufficient cause has been shown to justify the granting of the relief requested herein. The use of Cash Collateral by the Debtor is necessary to preserve the estate, and will avoid immediate and irreparable harm to the Debtor, its estate and assets, prior to the expiration of the period specified herein.

IT IS THEREFORE ORDERED THAT:

1. The Motion is hereby GRANTED as modified below.
2. Use of Cash Collateral. The Debtor is authorized on a limited basis to use the Lender's Cash Collateral in the ordinary course for the purposes of paying the Debtor's necessary expenses set forth in the Budget for the period from December 30, 2016 through the date that either (i) this Interim Cash Collateral Order becomes a final order, or (ii) the Court holds a final hearing on the Motion (the "Interim Period"), but in any event no later than January 31, 2017, and only for so long as there is no Event of Default (as defined below). In the event the Debtor's actual expenditures for any specified purpose in the Budget is less than the amount set forth in the Budget, the difference between the actual expenditure and the amount set forth in the Budget may not be used by the Debtor for any other purpose without the Lender's prior written consent.

3. The Lender is permitted to deposit any and all rental payments related to the Properties and the Co-Debtor's properties encumbered by the Deed of Trust and currently in the Lender's possession, in the amount of \$54,375.06, which rental payments were paid to the Lender pursuant its pre-petition exercise of its rights under the Loan Documents. The Lender shall credit the foregoing sum against the January 2017 adequate protection payment due the Lender in the Budget and the budget attached to the Proposed Cash Collateral Consent Order filed by the Lender and the Co-Debtor in the Co-Debtor's Case.

4. Information Regarding Cash on Hand, Income, Expenses and Collateral. The Debtor must file all monthly operating reports on or before the 20th day of every month. Each monthly report must demonstrate that the Debtor is only using the Cash Collateral to pay authorized expenses.

5. Deposit of Cash Collateral. At such time as the debtor-in-possession account is established, time of the essence, the Debtor shall deposit all Cash Collateral into its debtor-in-possession account. The foregoing notwithstanding, Per & Associate, CPA, shall be permitted to collect and process rental payments related to the Properties and due the Debtor.

6. Reporting Requirement. As additional adequate protection, the Debtor, shall deliver to the Lender copies of the following financial statements related to operations at the Properties: (a) monthly operating reports as required by and compliant with the requirements of the Office of the United States Trustee, (b) cash flow statements, and (c) profit and loss statements. All subsequent reports shall be provided to the Lender by the 20th day of each month and report the financials of the prior month).

7. Grant of Replacement Liens. As adequate protection for the use of Cash Collateral, effective as of the Petition Date and pursuant to 11 U.S.C. § 361, the Debtor shall grant the Lender replacement liens upon and security interests in all of the properties and assets of the Debtor, including but not limited to, the Pre-Petition Collateral, collateral acquired by the

Debtor postpetition, and the collateral described in the Loan Documents and this Interim Cash Collateral Order (the "Collateral"): (i) only to the extent the Lender's Cash Collateral is used by the Debtor and such use results in a diminution of the value of its Cash Collateral; and (iii) with the same priority in the postpetition collateral and proceeds thereof of the Debtor that the Lender held in the Pre-Petition Collateral as of the Petition Date; provided, however, that the Collateral shall expressly exclude litigation claims or other cause of action of the estate, including but not limited to claims under Chapter 5 of the Bankruptcy Code and other collateral on which it may be determined that the Lender did not have a properly perfected lien as of the Petition Date. Any such replacement liens shall at all times be subordinate to the compensation and expense reimbursement (excluding professional fees) allowed to any trustee hereafter appointed in this case.

8. Perfection of Replacement Liens. The security interests granted by the Debtor in favor of the Lender will be deemed perfected without the necessity for the filing or execution of documents which otherwise might be required under non-bankruptcy law for the perfection of security interests if the Lender's security interests were perfected under applicable state law before the bankruptcy filing.

9. Administrative Priority Claim. In the event and to the extent that the Lender's interest in the Collateral is diminished as a result of the Debtor's use of the Cash Collateral during the Interim Period or thereafter if this Interim Cash Collateral Order becomes a Final Cash Collateral Order, the Lender shall be granted, pursuant to Section 507(b) of the Bankruptcy Code, an administrative claim against the Debtor and the Debtor's bankruptcy estate.

10. The Debtor shall continue to maintain, with financially sound and reputable insurance companies, insurance in accordance with the Loan Documents (covering such risks in amounts as shall be satisfactory to the Lender and shall name the Lender as loss payee thereunder) including, without limitation, insurance covering the Collateral, and such other

collateral of the Lender, if any, as the Lender may from time to time reasonably request and, at the Lender's request, deliver to the Lender evidence of the maintenance of such insurance.

11. The Debtor shall make any and all payments necessary to keep the Properties in good repair and condition and not permit or commit any waste thereof, and shall pay all expenses associated with the Properties as required by this Interim Cash Collateral Order.

12. Except as specifically set forth in this Interim Cash Collateral Order, the Debtor shall not sell, transfer, lease, encumber, or otherwise dispose of any of the Collateral, outside the ordinary course of business, including the Properties, without an Order of the Court after notice and hearing.

13. Reservation of Rights. The Lender's consent hereto is made without prejudice and with full reservation of its rights to object to the Debtor's use of Cash Collateral subsequent to the Interim Period, including objections related to, without limitation, the following: (i) the payment of adequate protection to creditors, including without limitation, United Bank and ARG, that subordinated their debt to the Indebtedness; (ii) the employment of ARG as property manager of the Properties (iii) and ARG's leases with the Debtor. Further, nothing contained herein shall be construed as a waiver of the Lender's rights to object to any procedural deficiency related to the Motion.

EVENTS OF DEFAULT

14. The occurrence of any of the following shall constitute an event of default under this Interim Cash Collateral Order: (a) any default, violation or breach of any of the terms of this Interim Cash Collateral Order, including the failure of the Debtor to use the Cash Collateral in strict compliance with this Interim Cash Collateral Order and Budget attached hereto, (b) the failure of the Debtor to file timely monthly operating reports in this Bankruptcy Case, which are the maturity, termination, expiration, or non-renewal of this Interim Cash

Collateral Order as provided for herein, (c) conversion of the Case to a case under Chapter 7 of the Bankruptcy Code, (d) the appointment of a Chapter 11 trustee in the Case, (e) the appointment of an examiner in the Case, (f) the dismissal of the Case, (g) the discontinuation of the Debtor's business or the issuance of an Order for the Debtor to discontinue its business, or (h) the payment of any prepetition unsecured trade debt, credit card debt, or other debt (any of the foregoing events of default being referred to in this Interim Cash Collateral Order, individually, as an "Event of Default" and, collectively, as "Events of Defaults"). Upon an Event of Default, the Lender shall deliver written notice to the Debtor, with a copy to Debtor's counsel of such default. The Debtor shall have ten business days thereafter to cure the alleged default. In the event the Debtor does not cure the default as required hereby, the Lender may file a notice with the Court declaring such Event of Default ("Default Notice").

15. Adequate Protection. The terms of this Order do not constitute conclusive or presumptive evidence concerning the issue of adequate protection if any party raises such issue in the Debtor's bankruptcy case.

16. Delay Not Waiver. Any failure or delay by the Lender to insist upon strict performance of any one or more of the provisions of this Order or to exercise any right, power, or remedy upon default under or breach of this Order shall not constitute a waiver of, or preclude the Lender from exercising, any right, power or remedy. The Lender specifically reserves all of its rights, remedies and recourse against the Debtor under the loan documents, applicable law and otherwise.

17. Miscellaneous. The parties acknowledge and agree that this Order shall only be binding upon the parties hereto if this Order, in its entirety, and without addendum or modification not otherwise approved, in writing, by the Lender and the Debtor, shall be approved by an order of the court in these proceedings and, upon such approval, shall be effective as of the bankruptcy filing, unless otherwise agreed to, in writing, by the parties.

18. Reliance on Order. The Lender and the Debtor may rely on the provisions of this Order in all respects and may conduct themselves in accordance therewith unless and until otherwise ordered by the court. If this Order is later modified for any reason, the rights of the Lender and the Debtor as provided for herein shall not be affected, impaired, modified or terminated in any manner for the period of time from the date of entry of this Order until modification thereof.

19. Notices. Any notices required or permitted by this Order shall be in writing and shall be deemed delivered if hand-delivered or delivered by first-class mail, postage prepaid, by express mail, or by telecopy or by e-mail as follows, unless such address is changed by written notice under this Order:

If to the Debtor: Steven L. Goldberg, Esquire
James M. Greenan, Esquire
McNamee, Hosea, Jernigan, Kim, Greenan &
Lynch, P.A.
6411 Ivy Lane, Suite 200
Greenbelt, Maryland 20770
sgoldberg@mhlawyers.com

If to the Lender: Douglas S. Walker, Esquire
Adam M. Lynn, Esquire
McAllister, DeTar, Showalter & Walker
100 N. West Street.
Easton, Maryland 21601
alynn@mdswlaw.com

The effective date of notice shall be the day of delivery in the case of hand delivery, telecopy or e-mail, the next business day after delivery in the case of express mail, and three business days after delivery in the case of first-class mail.

20. Effective Date. This Order constitutes the court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052, and shall take effect immediately and be fully enforceable immediately upon entry. There shall be no stay of

execution or effectiveness of this Order notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062, 9014 or any other applicable rule.

21. Hearing on Further Use of Cash Collateral. The Court has scheduled a further hearing on use of cash collateral on **'January 48, 2017, at '33:00 a.m.,** at which the court will consider entry of a further order approving the use of cash collateral. The Debtor shall give notice of this Order and the further hearing pursuant to Bankruptcy Rules 2002 and 4001.

22. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

CONSENTED TO:

/s/ Steven L. Goldberg
Steven L. Goldberg, 28089
James M. Greenan, 08623
McNamee, Hosea, Jernigan, Kim, Greenan &
Lynch, P.A.
6411 Ivy Lane, Suite 200
Greenbelt, Maryland 20770
sgoldberg@mhlawyers.com
Counsel for Debtor

/s/ Adam M. Lynn
Douglas S. Walker, 27024
Adam M. Lynn, 29254
McAllister, DeTar, Showalter & Walker
100 N. West Street.
Easton, Maryland 21601
alynn@mdswlaw.com
Counsel for Lender

I HEREBY CERTIFY that the terms of the copy of the Consent Order submitted to the Court are identical to those set forth in the original; and the signatures represented by the /s/ on this copy reference the signatures of consenting parties on the original consent order.

 /s/
Steven L. Goldberg

cc:

Office of the United States Trustee
101 W. Lombard Street, Suite 2625
Baltimore, Maryland 21201

Doug Walker
Adam Lynn
McAllister Detar Showalter & Walker, LLC
100 North West Street
Easton, Maryland 21601

James M. Greenan
Steven L. Goldberg
McNamee Hosea et al.
6411 Ivy Lane
Suite 200
Greenbelt, Maryland 20770

Christopher S. Young
Business & Technology Law Group
6310 Hillside Court
Suite 160
Columbia, Maryland 21046

END OF ORDER

BAIA, LLC
Budget

January - February 2017

	Jan 2017	Feb 2017
Income		
Electric Income	2,940.00	2,940.00
Building 1 INCOME		
CAM Income Bldg 1	9,193.18	9,193.18
R.E.Tax Collect Bldg 1	5,961.20	5,961.20
Rent Income Bldg 1	63,931.33	63,931.33
Total Building 1 INCOME	\$ 82,025.71	\$ 82,025.71
Building 2 INCOME		
CAM Income Bldg 2	1,995.34	1,995.34
R.E. Tax Collect Bldg 2	2,098.56	2,098.56
Rent Income Bldg 2	19,435.15	19,435.15
Total Building 2 INCOME	\$ 23,529.05	\$ 23,529.05
Total Income	\$ 105,554.76	\$ 105,554.76
Management Fees ARG 365 LLC 3%	4,193.00	4,193.00
Cintas	126.72	126.72
Restroom Clean Supply	225.00	225.00
Building interior cleaning	2,042.04	2,042.04
Building Supply	350.00	350.00
Fire Prevention		
Trash Removal	847.00	847.00
Music	56.00	56.00
Electric Potomac Edison	4,500.00	3,700.00
BGE Gas	3,000.00	2,500.00
Pump Maintenance		750.00

Comcast Phone Emergency Service		\$250.00		\$250.00
Water/Sewer				
Parking Lot Clean	\$	680.00	\$	680.00
Window Cleaning			\$	1,166.00
Landscape			\$	4,500.00
Snow Removal		11,000.00		5,000.00
Maryland Fire Extinguisher Service		200.00		
Fire Prevention		134.00		134.00
Press Wash sidewalk and dumpster pads				
Quarterly Sprinkler Inspections	\$	650.00		
Affordable Elevator Inspection		225.00		
Elevator Maintenance				
Emergency Generator		900.00		
Outdoor Lights Repair		200.00		200.00
Insurance	\$	4,000.00	\$	2,000.00
Per & Associate CPA Accountant		\$700.00		\$700.00
Total Expense		\$34,543.76		\$29,684.76
Net Income Before Notes	\$	71,011.00	\$	75,870.00
2016/17 R E Tax	\$	21,000.00	\$	21,000.00
Stabilis Interest Only		43,333.00		43,333.00
United States Trustee Fees	\$	1,625.00	\$	1,625.00
Legal Fees		0.00		2,000.00
Reserve Account	\$	5,053.00	\$	7,912.00