

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 11
)
BAY CIRCLE PROPERTIES, LLC, *et al.*¹) Case No.: 15-58440-wlh
) (Jointly Administered)
)
Debtor.)
)

DEBTORS' MOTION TO AUTHORIZE
CONTINUED USE OF CASH COLLATERAL

COME NOW Bay Circle Properties, LLC, DCT Systems Group, LLC, Sugarloaf Centre, LLC, and Nilhan Developers, LLC (the "Debtors"), and pursuant to the provisions of 11 U.S.C. § 363(c)(2) and Bankruptcy Rule 4001(b), move this Court to extend the Debtors' use of cash collateral pursuant to the Final Order Allowing Use of Cash Collateral by Debtors [Docket No. 242] and Order Amending Final Order Allowing Use of Cash Collateral by Debtors-In-Possession [Docket No. 421] to permit the Debtors to use the income collected from the operation of their properties, which income is claimed as cash collateral by Bay Point Capital Partners, LP ("Bay Point") and SIMBA Global PTY Ltd. ("SIMBA

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are Bay Circle Properties, LLC (1578), DCT Systems Group, LLC (6978), Sugarloaf Centre, LLC (2467), Nilhan Developers, LLC (6335), and NRCT, LLC (1649).

Global”), for the purposes of meeting current operating expenses, pursuant to the proposed Budgets attached hereto as **Exhibit A** for the period of January through April 2017. In support of the Motion, the Debtors state as follows:

1.

On May 4, 2015 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code.

2.

On June 8, 2015, this Court entered an order that the cases be jointly administered under Case No. 15-58440.

3.

The Debtors own 12 different real properties in the Atlanta metropolitan area (the “Properties”). The Properties include office/warehouse buildings, retail shopping centers and free standing single tenant buildings.

4.

Normal operating expenses of the Properties include alarm services, landscaping, accounting services, insurance, utilities, taxes, and other expenses incidental to maintaining the Properties. The proposed Budgets attached hereto as **Exhibit A** set forth the normal operating expenses of the Debtors from January through April 2017.

5.

Payment of expenses are due and payable upon receipt of the goods or services, thereby making it essential that Debtors have access to funds to pay for these goods and services.

6.

The proposed Budgets attached as Exhibit A also include part of the fees of the Examiner and the Examiner's professionals awarded in their second interim fee applications [Docket Nos. 498, 499, 500].² The Court directed the Debtors to provide for these fees to be paid in the cash collateral budgets by March 31, 2017.

7.

On May 29, 2015, the Debtors filed motions seeking authority for interim and final use of cash collateral (the "Cash Collateral Motions"). On June 10, 2015, after hearing upon notice the Court entered an Order Allowing Interim Use of Cash Collateral as to Debtors [Doc. No. 44]. On July 16, 2015, the Court entered a Second Order Allowing Interim Use of Cash Collateral as to Debtors [Doc. No. 138]. On August 5, 2015, the Court entered a Third Order Allowing Interim Use of Cash Collateral as to Debtors [Doc. No. 155]. After a final hearing on the Cash

² NRCT, LLC is filing a separate Motion to Authorize Use of Cash Collateral requesting leave to pay \$20,000 of the fees awarded to the Examiner and her professionals in the second interim awards.

Collateral Motions, the Court entered the Final Order Allowing Use of Cash Collateral by Debtors entered by Court on October 20, 2015 [Docket No. 242] (the “Final Cash Collateral Order”).

8.

The Debtors and Wells Fargo Bank, N.A., agreed to extend the Final Cash Collateral Order pursuant to the Joint Stipulation for the Debtors’ Continued Use of Cash Collateral through May 31, 2016 [Docket No. 315].

9.

On July 6, 2016, the Debtors filed Debtors’ Motion To Authorize Continued Use Of Cash Collateral [Docket No. 398] seeking leave to extend the use of cash collateral from June through December 31, 2016 (“First Continuation Motion”). On July 15, 2016, the Court entered the Consent Order Amending Final Order Allowing Use of Cash Collateral by Debtors-In-Possession [Docket No. 410] authorizing the continued use of cash collateral through July 31, 2016. On August 9, 2016, the Court entered the Order Amending Final Order Allowing Use of Cash Collateral by Debtors-In-Possession [Docket No. 421] authorizing the continued use of cash collateral by the Debtors through December 31, 2016 (“Amended Cash Collateral Order”).

10.

Wells Fargo Bank, N.A. transferred its security interest in the Debtors' assets to Bay Point in May 2016.

11.

Pursuant to the Final Cash Collateral Order and Amended Cash Collateral Order, the Debtors have paid the expenses of the Properties and made monthly adequate protection payments to Wells Fargo Bank and Bay Point in excess of \$1,028,466.72 since the Petition Date in addition to the \$7.5 million paid to Bay Point on December 31, 2016.

12.

On October 28, 2016, the Court entered the Order Granting Debtor's Motion to Obtain Post Petition Financing Pursuant to 11 U.S.C. § 364 [Docket No. 454] (the "Financing Order") which authorized Sugarloaf Center to obtain post petition financing of \$7.5 million from SIMBA Global using Sugarloaf Centre's properties as collateral. Sugarloaf Center closed the loan on October 31, 2016 and paid Bay Point \$7.5 million and Bay Point released its lien on Sugarloaf Centre's properties. Pursuant to the Financing Order, Sugarloaf Center has to remit cash collateral in the amount of \$23,000 to Bay Point on January 25, 2017. The budget for Sugarloaf Centre provides for this payment to Bay Point.

13.

Debtors provided proposed budgets to Bay Point's counsel and SIMBA Global's counsel on December 9, 2016 and requested to extend the use of cash collateral through April 2017. To date, the secured creditors have not responded to the request.

14.

Section 363 of the Bankruptcy Code provides that cash collateral may be used upon Court order or consent of each entity having an interest in the cash collateral.

15.

Despite their request, the Debtors have not yet obtained the consent of secured creditors to the continued use of cash collateral.

16.

Pursuant to the provisions of 11 U.S.C. § 363, Debtors hereby apply for an order allowing them to continue to use cash collateral pursuant to the Final Cash Collateral Order, Amended Cash Collateral Order and the Budgets attached hereto as **Exhibit A**.

WHEREFORE, Debtor moves this Court for an order authorizing the continued use of cash collateral pursuant to the terms of the Final Cash Collateral

Order, Amended Cash Collateral Order and the Budgets attached hereto as **Exhibit**

A.

This 12th day of December, 2016.

/s/ John A. Christy
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EXHIBIT A

DCT Systems Group LLC
Cash Collateral Budget
January 1, 2017 through April 30, 2017

		January 01/01/17-01/31/17	February 02/01/17-02/28/17	March 03/01/17-03/31/17	April 04/01/17-04/30/17
Rents collected from tenants & deposited into DIP operating account					
Tenant Name	Tenant Unit#	Amount	Amount	Amount	Amount
NCO-TSI Real Estate	5100-NCO	22,143.00	22,143.00	22,143.00	22,143.00
Perimeter Reprographics	5150-100 (Tenant does not pay rent)	-	-	-	-
Total rents collected from tenants & deposited into DIP operating account		22,143.00	22,143.00	22,143.00	22,143.00
Checks and other disbursements from DIP operating account					
Vendor/Payee	Type of Expense				
Akerman Security	Fire Monitoring	77.85	77.85	77.85	77.85
DCT Systems Group LLC	Transfer to DIP Escrow for Real Estate Taxes (1/12 of @\$105k)	8,785.00	8,785.00	8,785.00	8,785.00
Chubb Group/Lee F Murphy	Policy #3602-53-52 Niloy Inc insured party - debtor does not reimb affiliate	-	-	-	-
Fifth Third Bank	Service charge on DIP operating account	35.00	35.00	35.00	35.00
Fifth Third Bank	Service charge on DIP escrow account	11.00	11.00	11.00	11.00
Georgia Power Company	Account #42026-39007	300.00	300.00	300.00	300.00
Georgia Power Company	Account #44255-36003	200.00	200.00	200.00	200.00
Gwinnett County Department of Water	Account #20623459	110.00	110.00	110.00	110.00
Northwoods Atlanta Inc	Property Owners Association Dues billed Quarterly Jan/Apr/Jul/Oct	1,399.00	-	-	1,399.00
Outsource Accounting & Tax LLC	Professional fees for MOR preparation	375.00	375.00	375.00	375.00
Russell Landscape	Landscape Maintenance	500.00	500.00	500.00	500.00
Selective Insurance	Policy #091-424-982 Installment Payment on \$8,759 annual premium exp 4/17	518.00	518.00	518.00	1,080.00
Stone & Baxter LLP	Examiner's Attorney Fees	602.80	602.80	602.80	-
Jessica Talley Peterson	Examiner's Fees	1,207.00	1,207.00	1,207.00	-
HDI Advisors	Examiner's Financial Advisor's Fees	500.00	500.00	500.00	-
US Trustee	Quarterly Fees	650.00	-	-	650.00
Total Checks and other disbursements from DIP operating account		15,269.65	13,221.65	13,221.65	13,522.85
Estimated Remaining Cash Collateral available for Adequate Protection Payment		6,873.35	8,921.35	8,921.35	8,620.15

Bay Circle Properties LLC
Cash Collateral Budget
January 1, 2017 through April 30, 2017

		January 01/01/17-01/31/17	February 02/01/17-02/28/17	March 03/01/17-03/31/17	April 04/01/17-04/30/17
Rents collected from tenants & deposited into DIP operating account					
Tenant Name	Tenant Unit#	Amount	Amount	Amount	Amount
Custom Graphics	6600-A	23,666.35	23,666.35	23,666.35	23,666.35
		-	-	-	-
Total rents collected from tenants & deposited into DIP operating account		23,666.35	23,666.35	23,666.35	23,666.35
Checks and other disbursements from DIP operating account					
Vendor/Payee	Type of Expense				
AT&T	Sprinkler System Telephone Line	237.40	237.40	237.40	237.40
Atlanta Alarm Services	Security System Quarterly Monitoring (Jan/Apr/Jul/Oct)	120.00	-	-	120.00
Bay Circle Properties LLC	Transfer to DIP Escrow for Real Estate Taxes (1/12 of \$84,300)	7,025.00	7,025.00	7,025.00	7,025.00
Chubb Group-Lee F. Murphy	Policy #3602-53-62 Nilov Inc insured party - debtor does not reimb affiliate	-	-	-	-
Fifth Third Bank	Service charge on DIP operating account	35.00	35.00	35.00	35.00
Fifth Third Bank	Service charge on DIP escrow account	11.00	11.00	11.00	11.00
Georgia Backflow	Backflow Testing based on past history	305.00	-	-	305.00
Georgia Power Company	Account #84833-50043 Vacant Space	650.00	650.00	650.00	650.00
Georgia Power Company	Account #51630-16014 Vacant Space	600.00	600.00	600.00	600.00
Georgia Power Company	Account #14298-55024 6610 House Meter	1,000.00	1,000.00	1,000.00	1,000.00
Georgia Power Company	Account #14088-55006 6600 House Meter	400.00	400.00	400.00	400.00
Gwinnett County Department of Water	Account #20619106	600.00	600.00	600.00	600.00
Gwinnett County Department of Water	Account #20620161	52.50	52.50	52.50	52.50
HDH Advisors	Examiner's Financial Advisor's Fees	500.00	500.00	500.00	-
Jessica Talley Peterson	Examiner's fees	1,500.00	1,500.00	1,500.00	-
Outsource Accounting & Tax LLC	Professional fees for MOR preparation	375.00	375.00	375.00	375.00
Russell Landscape	Landscape Maintenance	500.00	500.00	500.00	500.00
Stone & Baxter LLP	Examiner's Attorney Fees	602.80	602.80	602.80	-
US Trustee	Quarterly Fees	1,625.00	-	-	975.00
		-	-	-	-
Total Checks and other disbursements from DIP operating account		16,138.70	14,088.70	14,088.70	12,885.90
Estimated Remaining Cash Collateral available for Adequate Protection Payment		7,527.65	9,577.65	9,577.65	10,780.45

Nilhan Developers LLC
Cash Collateral Budget
January 1, 2017 through April 30, 2017

		January 01/01/17-01/31/17	February 02/01/17-02/28/17	March 03/01/17-03/31/17	April 04/01/17-04/30/17
Rents collected from tenants & deposited into DIP operating account					
Tenant Name	Tenant Unit#	Amount	Amount	Amount	Amount
Paradise Health Inc	2810-112	903.94	903.94	903.94	903.94
Colobiox LLC	2812-210	5,500.00	5,500.00	5,500.00	5,500.00
Colobiox LLC	2812-210 Utility	2,000.00	2,000.00	2,000.00	2,000.00
Precision Pipette Inc	2814-103	1,701.00	1,701.00	1,701.00	1,701.00
Executive Transport	2814-111	209.00	209.00	209.00	209.00
Dentistry at Vining PC	2814-126	5,019.21	5,019.21	5,019.21	5,019.21
Skin Deep, Kimberly Gude	2814-201	250.00	250.00	250.00	250.00
UCAC	2814-206	1,130.00	1,130.00	1,130.00	1,130.00
Xtravagant Transportation	2814-209	550.00	550.00	550.00	550.00
David Totten	2814-310B	175.00	175.00	175.00	175.00
Ten Stack USA LLC	2814-310D	173.75	173.75	173.75	173.75
C hinn Chinn	A&B - Retail	5,775.00	5,775.00	5,775.00	5,775.00
Shahzad Pirani	D - Retail	1,525.00	1,525.00	1,525.00	1,525.00
Malincho Inc	E - Retail	3,941.03	3,941.03	3,941.03	3,941.03
Ronetta E Powell DDS	F - Retail	2,818.17	2,818.17	2,818.17	2,818.17
Total rents collected from tenants & deposited into DIP operating account		31,671.10	31,671.10	31,671.10	31,671.10
Capital Contribution		12,700	17,900	11,100	12,700
Checks and other disbursements from DIP operating account					
Vendor/Payee	Type of Expense				
AT&T	Elevator Telephone Line	110.00	110.00	110.00	110.00
City of Smyrna Utilities	Account #0051-1810200-5 Sanitation & Stormwater fee	850.00	850.00	850.00	850.00
Cobb County Water	Account #000404433-01 Water & Sewer	1,750.00	1,750.00	1,750.00	1,750.00
EMC Insurance	Policy #5D42492-17 Installment Plan (renews 02/01/17)	342.75	1,271.55	342.75	342.75
Fifth Third Bank	Service Charge on DIP operating account (can be waived based on activity)	35.00	35.00	35.00	35.00
Fifth Third Bank	Service Charge on DIP escrow account (can be waived based on activity)	11.00	11.00	11.00	11.00
Georgia Power Company	Account #22599-20040 Electricity	20,000.00	20,000.00	20,000.00	20,000.00
Georgia Power Company	Account #24489-20038 Electricity	200.00	200.00	200.00	200.00
Georgia Power Company	Account #23649-20036 Electricity	25.00	25.00	25.00	25.00
Georgia Power Company	Account #30999-20094 Electricity	25.00	25.00	25.00	25.00
Georgia Power Company	Account #20170-41022 Electricity	200.00	200.00	200.00	200.00
IPFS Corporation Lee F Murphy Inc	Policy w/Hudson Specialty Premium Financing (renews 02/01/17)	2,684.50	8,557.50	2,684.50	2,684.50
Johnny Davis	General Repairs & Maintenance based on past history	500.00	500.00	500.00	500.00
Nilhan Developers LLC	Transfer to DIP Escrow for Real Estate Taxes (1/12 of \$93k)	7,750.00	7,750.00	7,750.00	7,750.00
Outsource Accounting & Tax LLC	Professional fees for MOR preparation	375.00	375.00	375.00	375.00
Peachtree Pest Control	Pest Control Contract	261.00	261.00	261.00	261.00
Phoenix Elevator Service	Elevator Maintenance Contract	470.00	470.00	470.00	470.00
Russell Landscape	Landscape Maintenance Contract	800.00	800.00	800.00	800.00
ServiceMaster	Janitorial Contract & Supplies	4,800.00	4,800.00	4,800.00	4,800.00
Shunato Mechanical	HVAC Repair estimates based on past history	1,500.00	1,500.00	1,500.00	1,500.00
US Trustee	Quarterly Fees	1,625.00	-	-	1,625.00
Total Checks and other disbursements from DIP operating account		44,314.25	49,491.05	42,689.25	44,314.25
Estimated Remaining Cash Collateral available for Adequate Protection Payment		56.85	80.05	81.85	56.85

Sugarloaf Centre LLC
Cash Collateral Budget
January 1, 2017 through April 30, 2017

		January 01/01/17-01/31/17	February 02/01/17-02/28/17	March 03/01/17-03/31/17	April 04/01/17-04/30/17
Rents collected from tenants & deposited into DIP operating account					
Tenant Name	Tenant Unit#	Amount	Amount	Amount	Amount
State Bank & Trust Company	Bank	24,239.17	24,239.17	24,239.17	24,239.17
Subit It Up LLC	Retail Bldg A	4,977.22	4,977.22	4,977.22	4,977.22
Corner Bar Partners One	Retail Suite 100	11,003.68	11,003.68	11,003.68	11,003.68
Total rents collected from tenants & deposited into DIP operating account		40,220.07	40,220.07	40,220.07	40,220.07
Capital Contribution		5,500.00	-	-	-
Checks and other disbursements from DIP operating account					
Vendor/Payee	Type of Expense				
All-Star Fire	Annual Inspection (March)	-	-	415.00	-
AT&T	678-584-0048	144.84	144.84	144.84	144.84
Auto-Owners Insurance	Policy #08519580/#4634311601 Installment Agreement	397.47	397.47	397.47	397.47
Delta Community Credit	Annual Retaining Wall maintenance (April)	-	-	-	1,200.00
Electronic Sales Company	Quarterly Monitoring billed Jan/Apr/Jul/Oct	89.85	-	-	89.85
Fifth Third Bank	Service charge on DIP operating account	35.00	35.00	35.00	35.00
Fifth Third Bank	Service charge on DIP escrow account	11.00	11.00	11.00	11.00
Georgia Power Company	Account #01670-62044	450.00	450.00	450.00	450.00
Georgia Power Company	Account #02832-96042	100.00	100.00	100.00	100.00
Gwinnett County Department of Water	Meter #60528699	1,500.00	1,500.00	1,500.00	1,500.00
Outsource Accounting & Tax LLC	Professional fees for MOR preparation	375.00	375.00	375.00	375.00
Republic Services	Account #3-0800-4026792	1,000.00	1,000.00	1,000.00	1,000.00
Republic Services	Account #3-0800-4027355	700.00	700.00	700.00	700.00
Russell Landscape	Landscape Maintenance	593.75	593.75	593.75	593.75
Sugarloaf Center LLC	Transfer to DIP Escrow for Real Estate Taxes (1/12 of @\$74k)	6,170.00	6,170.00	6,170.00	6,170.00
Sugarloaf Centre COA Inc	Commercial Owners Association Dues billed Quarterly Jan/Apr/Jul/Oct (Vacant Lots)	4,992.00	-	-	4,992.00
Sugarloaf Centre COA Inc	Commercial Owners Association Dues billed Quarterly Jan/Apr/Jul/Oct (Occupied Lots)	4,153.00	-	-	4,153.00
Sugarloaf Centre COA Inc	Monthly Reimbursement for Common Area Electricity Bill - GA Power	1,025.00	1,025.00	1,025.00	1,025.00
Jessica Talley Peterson	Examiner's Fees	-	1,500.00	1,500.00	-
HDH Advisors	Examiner's Financial Advisor's Fees	-	767.50	767.50	-
Stone & Baxter LLP	Examiner's Counsel's Fees	-	1,000.00	1,000.00	-
US Trustee	Quarterly Fees	975.00	-	-	975.00
Bay Point	Per Court Order	23,000.00	-	-	-
Total Checks and other disbursements from DIP operating account		45,711.91	15,769.56	16,184.56	23,911.91
Estimated Remaining Cash Collateral available for Adequate Protection Payment		8.16	24,450.51	24,035.51	16,308.16

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the within and foregoing DEBTOR'S MOTION TO AUTHORIZE CONTINUED USE OF CASH COLLATERAL via ECF or by placing a copy of the same in the United States Mail, with sufficient postage thereon to ensure delivery on the Master Service list attached hereto.

This 12th day of December, 2016.

/s/ J. Carole Thompson Hord
J. Carole Thompson Hord

MASTER SERVICE LIST

<p>Anne P. Caiola, Esq. – VIA ECF Elizabeth B. Rose, Esq. – VIA ECF SLOTKIN & CAIOLA, LLC 118 E. Maple Street Decatur, GA 30030</p>	<p>AT&T PO Box 105262 ATLANTA, GA 30348</p>
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NORCROSS HOSPITALITY 5100 PEACHTREE INDUSTRIAL BLVD NORCROSS, GA 30071	PHOENIX ELEVATOR SERVICE 591 THORNTON ROAD, SUITE S LITHIA SPRINGS, GA 30122-1546
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