UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

EAST MAIN COMPLEX, LLC,

Debtor.

Chapter 11

Tax ID 16-1539673

No. 1-17-11789-CLB

Hon. Carl L. Bucki

FINAL ORDER AUTHORIZING USE OF CASH COLLATERAL

This matter having come before this Court upon the motion (the "Motion"),[2] of East Main Complex, LLC (the "Debtor"), seeking authority for the Debtor to use the cash collateral in which Manufacturers and Traders Trust Company ("M&T") has or claims a lien or security interest(s), as defined in 11 USC Sec. 363 (the "Cash Collateral"), on an emergency basis pursuant to the Interim Budget previously filed herein (the "Budget") and seeking a determination of this Court that the proposed use of the Cash Collateral will not modify the rights of M&T or M&T's Collateral (the "Collateral") and that M&T is adequately protected,

AND, these matters having come on before this Court on an interim basis, on notice to all creditors, on September 29, 2017 at 2:00 p.m.; and these matters having come on before this Court on a final basis, on notice to all creditors, on October 16, 2017 at 10:00 a.m., subsequently adjourned to December 27, 2017 at 10:00 a.m.; and proper notice, and due deliberation being had thereon; and upon reading said Notice of Motion and Motion with Exhibits and after due deliberation being had thereon, for the reasons stated by the Court on the record, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

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[2] Capitalized terms utilized but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

ORDERED that, the Debtor is hereby authorized and permitted to continue to use Cash Collateral in which M&T has or claims a lien or security interests, to the extent set forth in the Budget, on a final basis until March 31, 2018 at 5:00 p.m.; and it is further

ORDERED, that the Debtor shall present to M&T, on or before March 31, 2018, a definitive and executed contract for the sale of the Debtor's real property in form reasonably acceptable to M&T, or a commitment letter, in form reasonably acceptable to M&T, for a refinance of the indebtedness owing to M&T and the Debtor's failure to comply with this provision shall be grounds for termination by M&T of Debtor's authority to use Cash Collateral; and it is further

ORDERED, that the Debtor shall not deviate from the amounts set forth in the Budget by more than 5% without the prior written consent of M&T, and the Debtor's failure to comply with this provision shall be grounds for termination by M&T of Debtor's authority to use Cash Collateral; and it is further

ORDERED, that as adequate protection to M&T, M&T is hereby granted "rollover" and replacement liens in post-petition assets of the Debtor in the same relative priority and on the same types and kinds of collateral as it possessed prepetition, as the same may ultimately be determined, to the extent of Cash Collateral actually used, effective as of the dates of the filing of this Chapter 11 case, without the necessity of any further public filing or other recordation to perfect such liens or security interests; and it is further

ORDERED, that with the exception of the payment of administrative expenses in the ordinary course of business, and M&T has not consented to the payment of any administrative claims, including the claims for professional fees and expenses, the professional fees of any committee appointed pursuant to Section 1102 of the Bankruptcy Code (a "Committee") or the reimbursement of expenses of the members of a Committee, and is without prejudice to any of the rights or defenses of M&T to object to the payment of said fees; and it is further

ORDERED, that as additional adequate protection to the Secured Creditor, Debtor shall forward the regular monthly mortgage payments, in the amount of $15,196.00 (the Adequate

Protection Payments") on the 1st day of each month, payable to "M&T Bank" and forwarded directly to:

M&T Bank
Attn: Kenneth W. Paulin, Jr.
One Fountain Plaza, 9th Floor
Buffalo, New York 14203

and it is further

ORDERED, that as further adequate protection to M&T, the Debtor will keep casualty and hazard insurance in place on its real and personal property in accordance with the requirements of M&T's loan documents and M&T shall continue as a named loss payee on the Debtor's hazard insurance policy; and it is further

ORDERED, that the proceeds of any sale of the Collateral outside of the ordinary course of business, including, without limitation, the inventory, equipment or accounts receivable, including any insurance proceeds arising from a casualty or other insured loss of Collateral, shall not be available for use by the Debtor as Cash Collateral but shall be delivered to M&T to be applied in permanent reduction of the indebtedness owing to M&T unless otherwise required by applicable law, permitted pursuant to the terms of this Order, authorized by the Court or authorized by M&T; and it is further

ORDERED, that the Debtor shall promptly provide M&T with such additional financial or other information as M&T may reasonably request; and it is further

ORDERED, that nothing contained in this Order shall be deemed to constitute a finding by this Court that the liens to be provided pursuant to this Order are themselves sufficient to adequately protect the Secured Creditor's secured claim(s), and the entry of this Order is without prejudice to M&T's right to oppose further use of cash collateral or, alternatively, asserting that it is entitled to additional adequate protection of its secured claims, and the entry of this Order is without prejudice to the rights of the Debtor or any other party seeking to challenge the secured status of M&T, or to assert that the M&T's claims are less than fully secured, that M&T should be entitled to different protections of its claims; and it is further

ORDERED, that the Debtor's authority to use Cash Collateral pursuant to this Order shall immediately terminate without further order, notice or hearing, upon the occurrence of any of the following events:

i. The conversion of the Debtor's Chapter 11 case to one under Chapter 7 of the Code;
ii. The appointment of any Chapter 11 Trustee;
iii. The dismissal of the Debtor's bankruptcy case;
iv. The cessation of the Debtor's normal business operations or execution by Debtor of any agreement providing for the sale of the Debtor's business or substantially all of its assets, the proceeds of which will not fully repay M&T's outstanding claims;
v. The Debtors failure to make Adequate Protection Payments as provided herein:
vi. Upon March 31, 2018 at 5:00 p.m., in the absence of an Order of this Court further extending the use of Cash Collateral based upon the provisions of a plan of reorganization filed by the Debtor which is found by the Court to have a reasonable prospect of confirmation within the following 60 days, or the issuance by the Court of a binding Order of Confirmation; and it is further

ORDERED, that the occurrence of any of the following shall constitute an event of default by the Debtor in its obligations pursuant to this Order ("Event of Default"):

(a) The Debtor's failure to keep, observe or perform any of its agreements or undertakings under this Order including, but not limited to, the timely payment of the Adequate Protection Payments provided for herein (without having checks returned for insufficient funds) and the timely provision of the Periodic Financial Information, and any other specific conditions set forth herein as a condition to the Debtor's use of Cash Collateral;

(b) The Debtor furnishes or makes any false, inaccurate or incomplete representation, warranty, certificate, report or summary in or under the Order or under any documentation furnished pursuant to the Order; and it is further

ORDERED, that upon occurrence of any Event of Default, M&T may give notice by mail of such an Event of Default to the Debtor and to the Debtor's counsel and the Debtor shall have five (5) business days from the date of such mailing to cure such Event of Default or, if such Event of Default is disputed, to commence a proceeding before the Bankruptcy Court disputing the claimed Event of Default. After any failure of the Debtor to cure such an Event of Default or to commence such a proceeding before the Bankruptcy Court within said five (5) business day period, (a) the Debtor's authority to use Cash Collateral pursuant to this Order shall immediately terminate and (b) M&T shall be entitled to seek termination of the automatic stay imposed by 11 U.S.C. Section 362(a) to exercise all of its rights and remedies pursuant to the Loan Documents and applicable law; and it is further

ORDERED that, unless Ordered otherwise, in the event the Debtor fails (i) to present to M&T such definitive sale contract, (ii.) to present to M&T such commitment letter for a refinance of the indebtedness owing to M&T, or (iii.) obtain a binding Order of Confirmation, prior to March 31, 2018, the automatic stay imposed by Section 362(a) of the Bankruptcy Code shall terminate immediately, without further notice; and it is further

ORDERED, that that nothing contained in this Order shall be deemed to constitute (i) a finding by this Court that the Debtor is or is not a "single asset real estate" Debtor, as defined in 11 U.S.C. §101(51), or (ii) a waiver of the rights or obligations associated therewith, specifically including, but not limited to, those rights pursuant to 11 U.S.C. §362(d)(3).

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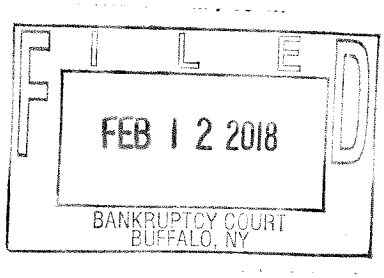
Hon. Carl L. Bucki
U.S. Bankruptcy Judge