



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 22, 2016

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

FOUR DIA, LLC,

Debtor.

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§

Chapter 11

Case No. 16-33459-bjh-11

AGREED FINAL CASH COLLATERAL ORDER

On December 21, 2016, the Court considered the *Emergency Motion of the Debtor for the Entry of Interim and Final Orders Authorizing the Use of Cash Collateral, and Granting Adequate Protection Pursuant to Section 363 of the Bankruptcy Code and Fed. R. Bankr. P. 4001(b)* (Dkt. No. 4, the “Cash Collateral Motion”) filed by Four Dia, LLC (the “Debtor”), the debtor and debtor in possession in the above-referenced chapter 11 bankruptcy case. After reviewing the record and considering the agreement of the parties, as evidenced by the signatures of their respective counsel below, the Court finds that the Cash Collateral Motion should be granted on an interim basis as set forth in this Agreed Final Cash Collateral Order (the “Final Order”).

THE COURT HEREBY FINDS AS FOLLOWS:

1. Disposition. The Debtor's request to use Cash Collateral is granted on the terms set forth in this Final Order. This Final Order shall be a valid, binding obligation on all parties-in-interest and fully effective immediately upon its entry.

2. Jurisdiction; Core Proceeding. This is a "core proceeding" as defined in 28 U.S.C. § 157(b)(2)(A)(D) and (M). This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b).

3. Prepetition Capital Structure. CapitalSpring SBLC, LLC ("CapitalSpring") asserts that (a) as of September 2, 2016 (the "Petition Date"), the Debtor was indebted and liable to CapitalSpring under that certain Note dated November 24, 2014, in the original principal amount of \$4,925,000.00 executed by the Debtor and payable to the order of CapitalSpring (the "Note"), which is secured by liens, assignments, and security interests in the property described in the Deed of Trust, Security Agreement and Assignment of Rents dated November 24, 2014 executed by the Debtor for the benefit of CapitalSpring and recorded as instrument no. 201415729 in the Official Public Records of Real Property of Tom Green County, Texas (the "Deed of Trust") (the Note, Deed of Trust, Security Agreement and all related documents will be collectively referred to herein as the "Loan Documents").

4. All Property (which term shall include all descriptions of collateral as used in the Loan Documents and may include the description of Property as defined in the Deed of Trust) that existed as of the Petition Date and all prepetition and post-petition proceeds thereof in which CapitalSpring held a valid, enforceable, and unavoidable lien shall hereafter be referred to as the "Prepetition Collateral."

5. CapitalSpring accelerated the entire outstanding balance of the Note on July 15, 2016. That amount, together with additional costs and fees that CapitalSpring is entitled to collect

under the Loan Documents and the Bankruptcy Code shall be hereinafter referred to as the “Prepetition Indebtedness.”

6. Cash Collateral. For purposes of this Final Order, “Cash Collateral” shall be deemed to include, without limitation, all “cash collateral” as defined in section 363(a) of the Bankruptcy Code, and all deposits, rents and cash arising from the collection or conversion into cash of property of the Debtor in which CapitalSpring holds valid and perfected prepetition security interests, liens or mortgages, if any.

7. The Court finds that good cause exists to enter this Interim Order and that the use of Cash Collateral authorized herein is necessary to avoid immediate and irreparable harm to the Debtor’s bankruptcy estate.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED THAT:

A. Cause Shown. Good cause has been shown for the entry of this Final Order. Among other things, entry of this Final Order is intended to maximize the value of the Debtor’s assets and is in the best interests of the Debtor, its estate, and its creditors.

B. Cash Collateral Account. Unless otherwise approved by the United States Trustee, the Debtor shall continue to utilize a cash collateral account (the “Cash Collateral Account”) at a federally insured financial institution approved by the Office of the United States Trustee for chapter 11 debtors. To the extent required by the United States Trustee, the Debtor shall deposit all Cash Collateral, whether received before or after the Petition Date, into the Cash Collateral Account.

C. Budget and Expenditures. The Debtor is hereby authorized to use amounts in the Cash Collateral Account only in accordance with the final budget (the “Final Budget”), attached hereto as Exhibit “A” and pursuant to the budget variance procedures in the next paragraph in a manner consistent with the terms of this Final Order during the Final Period (as defined below);

provided, however, that access to the Cash Collateral shall be made only in conformance with the expense line items in the approved Final Budget and, further, that the Debtor shall be permitted a ten percent (10%) variance for items reflected in the Final Budget. If the Debtor requires use of Cash Collateral on a non-emergency basis for items not permitted above, the Debtor may request such use in writing to CapitalSpring's counsel, and CapitalSpring agrees to respond to any such request within no more than three (3) business days. To the extent that CapitalSpring agrees to such request, such request shall be permitted under this Final Order.

D. Budget Variance. To assist in authorizing future cash use for subsequent budgets, the Debtor may seek approval or a variance by using the procedure set forth in this paragraph. If the Debtor seeks a variance of more than ten percent (10%) from any line item in the Final Budget in any month, the Debtor shall submit to CapitalSpring a proposed monthly budget detailing the proposed increased use of Cash Collateral to pay operating expenses and shall do so at least ten (10) calendar days prior to the beginning of that month (the "Revised Budget"). CapitalSpring shall have a period of five (5) calendar days thereafter to object to the Revised Budget in writing to the Debtor. Such objection is properly perfected by any written communication, including an email, without the necessity to lodge a formal pleading with the Court. Any unresolved objections shall be addressed by the Court upon motion by the Debtor, CapitalSpring or any party. The Debtor shall not have authority to use the increased cash collateral requested under the Revised Budget that has been objected to in accordance with this paragraph unless and until the Court has ruled on such objection in the Debtor's favor and has authorized the Debtor to use the increased cash collateral pursuant to the Revised Budget, or a written agreement is reached but, at all times, Debtor shall have authority to use cash collateral under the Final Budget. If no objections are timely made or if an objection is made but overruled by the Court in accordance with this

paragraph, then the Revised Budget shall become the Final Budget going forward and shall be subject to the terms of this Order as the Final Budget.

E. Waiver of Challenge to Validity and Priority of Liens. The Debtor and parties-in-interest shall have ninety (90) days from the date of the entry of this Order to raise a challenge to the validity and perfection of the security interest claimed in the Deed of Trust and Loan Documents. In the event that the Debtor or parties-in-interest do not file an adversary contesting the claimed liens within ninety (90) days of the entry of this Order, then the Debtor and parties-in-interest shall waive any right to contest the validity, priority of liens or avoidability of liens asserted by CapitalSpring against the Property to the extent it may be either pre-petition collateral or post-petition collateral. This provision shall not be construed as limiting the potential use of Section 1129 to seek a cram down or reallocation of value.

F. Adequate Protection. As adequate protection for Debtor's use of Cash Collateral hereunder and/or any diminution in the value of the Prepetition Collateral from the use of Cash Collateral, in accordance with sections 361(2), 363(e), and 364(d) of the Bankruptcy Code, the Debtor hereby grants the following protection to CapitalSpring:¹

- a. The Debtor shall pay to CapitalSpring the amount agreed upon each month which shall be not less than the amount set forth the Final Budget except with the express written consent of CapitalSpring.
- b. To the extent of (i) any diminution in the value of the Prepetition Collateral on and after the Petition Date and (ii) the net loss of Cash Collateral used by the Debtor pursuant to the terms of this or any future cash collateral order (the "Diminution in Value"), CapitalSpring is hereby granted valid, perfected,

¹ Any obligations arising under this paragraph are referred to as "Adequate Protection Obligations."

and enforceable replacement liens and assignments on and first priority post-petition security interests (the “Replacement Liens”) in all assets of the Debtor upon which CapitalSpring’s liens and security interests granted in the Loan Documents would otherwise attach under applicable non-bankruptcy law and all proceeds, rents, products or profits thereof acquired by the Debtor after the Petition Date (collectively, the “Post-petition Collateral”), which shall at all times be senior to (a) the rights of the Debtor and any successor trustee or estate representative in this chapter 11 case or any subsequent proceedings under the Bankruptcy Code, and (b) any security interest, assignment, or lien of any creditor or other party in interest in this chapter 11 case. The grant of liens herein shall: (i) only act as adequate protection for the diminution in value caused by Debtor’s use of Cash Collateral; (ii) be in the same priority as prepetition to the extent that the prepetition liens, security interests, and mortgages are valid, perfected, enforceable and nonavoidable and shall not prime any prepetition liens or security interests in any property of Debtor’s estate that had priority over CapitalSpring’s prepetition liens and security interests therein; (iii) be subject to valid and perfected liens and security interests of other creditors (including creditors holding ad valorem tax claims) in any specific piece of property and/or proceeds that existed as of the Petition Date and that are senior and prior to any prepetition lien and security interest of CapitalSpring in such property; and (iv) be subject to any fees payable to the United States Trustee pursuant to 28 U.S.C. 1930(a)(6).

- c. The Replacement Liens granted hereby shall be in addition to all security interests, assignments, and liens now existing in favor of CapitalSpring and not in substitution or limitation thereof and shall be effective as of the Petition Date.
- d. This Final Order, subject to any objections to the Cash Collateral Order and/or any objections to the extent, priority, validity or avoidability of the CapitalSpring's prepetition liens filed hereafter, shall be conclusive evidence of the validity, perfection, and priority of the Replacement Liens on the Post-petition Collateral to secure the Adequate Protection Obligations, if any, without the necessity of filing or recording any financing statement or other instrument or document or notification (and, with respect to cash, without having possession of, or dominion and control over, such cash) which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the Replacement Liens in the Post-petition Collateral or to entitle CapitalSpring to the priorities granted herein; *provided*, however, the Debtor may execute, and CapitalSpring may file or record, financing statements or other instruments or provide notice to evidence and perfect the Replacement Liens authorized hereby.
- e. CapitalSpring may (but is not required to) file a copy of this Final Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which the Debtor has real or personal property. This Final Order shall evidence the valid and binding obligations of the Debtor, which obligations shall be enforceable against the Debtor in accordance with their terms.

- f. To the extent that the Replacement Liens are found by the Court to be insufficient to provide CapitalSpring with adequate protection as described herein, CapitalSpring shall hereby be afforded an allowed administrative superpriority expense claim (the “Superpriority Claim”) pursuant to section 364(c)(1) of the Bankruptcy Code solely for the full amount of the Diminution in Value with priority over any and all administrative expenses of the kinds specified in or arising or ordered under sections 105(a), 326, 328, 330, 331, 503(b), 506(c), 507, 546(c), and to the extent permitted by law, 726 and 1114 of the Bankruptcy Code
- g. For the avoidance of doubt, in the event that it is later determined that CapitalSpring’s asserted prepetition liens in the Cash Collateral are invalid or avoidable, all postpetition liens and security interests granted to CapitalSpring as adequate protection herein shall likewise be invalid.

G. Termination. The Debtor’s authorization to use Cash Collateral shall terminate on the occurrence of a Termination Event (as-defined below) (the period between the Final Hearing date and the earlier of those two dates shall hereinafter be referred to as the “Final Period”). The Debtor’s authorization to use Cash Collateral shall immediately and automatically terminate, after five (5) business days’ notice (which must be delivered by electronic mail, facsimile, or hand delivery to the Debtor, its counsel, the U.S. Trustee, and counsel for any committee, if appointed) and opportunity to cure and only after a failure to cure, absent further order of this Court (the “Cure Period”), on the earliest to occur of the following (each, a “Termination Event”):

- a. the Debtor’s failure to comply with any of the terms of this Final Order; or
- b. immediately (without the benefit of the Cure Period) upon entry of an order (i) converting this chapter 11 case to a case under chapter 7 of the Bankruptcy Code;

- (ii) dismissing this chapter 11 case; (iii) appointing a trustee under chapter 7 or chapter 11 of the Bankruptcy Code, or appointing an examiner with expanded powers (powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code); or (iv) reversing or vacating this Final Order; or
- c. any application by the Debtor for entry of an order approving use of Cash Collateral (other than any application related to this Final Order or to approve a Final Cash Collateral Order), or for any financing or loans secured by liens which are senior, pari passu, or junior to CapitalSpring's liens on Prepetition Collateral, without the prior written approval of CapitalSpring; or
- d. the filing of a motion in this chapter 11 case without CapitalSpring's prior written consent (i) to obtain financing under section 364 of the Bankruptcy Code from any person or entity other than CapitalSpring, (ii) to grant any lien or security interest on the Prepetition Collateral senior to or pari passu with CapitalSpring, or (iii) to recover from any portion of the Collateral any costs or expenses of preserving or disposing of Collateral under section 506(c) of the Bankruptcy Code.
- e. in the event that CapitalSpring declares a default and gives the notice required herein, Debtor reserves the right to file a motion with the Court requesting a determination of the existence of a default and/or a valid cure and CapitalSpring will not oppose a request by the Debtor for emergency or expedited hearing on such a motion.

H. Nothing herein should be construed to imply that CapitalSpring agrees to any use of Cash Collateral beyond the Final Period and/or beyond the terms set forth herein. Moreover, notwithstanding anything in the Final Budget or this Final Order to the contrary, CapitalSpring

reserves all rights to object to any motion, application, or other request for relief that relates to the items referred to or covered by the Final Budget. CapitalSpring also expressly reserves the right to (i) request additional adequate protection for Debtor's use of Cash Collateral or otherwise and (ii) object to any further extension of the Debtor's use of Cash Collateral beyond the Final Period and to request additional adequate protection in accordance with applicable law.

I. Enforcement. In addition to all other rights and remedies which CapitalSpring has pursuant to any provision of this Order, including, without limitation, paragraphs F and I of this Order, or applicable law, and subject to the Cure Period, upon the occurrence and continuation of a Termination Event, CapitalSpring shall be entitled, at its option, to request, on an expedited basis, that the Court appoint a chapter 11 trustee and/or to seek stay relief to enforce and foreclose, in accordance with applicable state law, upon (i) the Adequate Protection Obligations granted to CapitalSpring under this Final Order and (ii) the liens, assignments, and security interests granted to CapitalSpring in the Loan Documents and to exercise all rights and remedies provided for therein. Termination of the Debtor's right to use Cash Collateral or termination of the automatic stay pursuant to the provisions of this paragraph shall in no manner affect the validity, enforceability, or priority of the Adequate Protection Obligations, the Replacement Liens, the Superpriority Claim, or other protections afforded to CapitalSpring under this Final Order.

J. Insurance. Debtor shall maintain insurance with respect to all of the Prepetition Collateral and Post-petition Collateral for all the purposes and in the amounts maintained by the Debtor in accordance with the requirements of the Loan Documents. The Debtor shall provide CapitalSpring with notice of any changes to any of those insurance policies and endorsements and copies of documents evidencing the changes within five (5) business days of any such changes.

K. Miscellaneous Provisions.

- a. The Debtor shall deliver to CapitalSpring and its undersigned counsel by the Fifteenth (15th) day of each month a written report accounting for all receipts and expenditures of Cash Collateral for the period of September 2, 2016 through and including September 30, 2016; and thereafter, the Debtor shall provide to CapitalSpring the same reporting for each calendar month due on the 15th day of the following month (*i.e.*, October reporting will be due on November 15th). Upon reasonable written advance notice to Debtor and Debtor's counsel, the Debtor shall immediately make available to CapitalSpring or any of its agents (including CapitalSpring's professionals) supporting documentation for all receipts and expenditures, including but not limited to bank statements, contracts, invoices, copies of checks, and general ledgers. The Debtor shall also provide CapitalSpring (and any professional CapitalSpring retains) on an on-going basis with reasonable access on reasonable notice during normal business hours to (i) the Debtor's premises and (ii) any and all books, records, documents, and information relevant to the Debtor's business operations provided that reasonable written advance notice is given to Debtor and Debtor's counsel.
- b. Nothing included herein shall prejudice, impair, or otherwise affect CapitalSpring's rights to seek any other or supplemental relief in this Court, including but not limited to any right of CapitalSpring to seek entry of an order, upon motion, after notice and a hearing, to contest the granting of any liens on, assignments of, or security interests in all or any part of the Prepetition Collateral, to seek relief from the automatic stay, or to appear and be heard in respect of any other matter arising in or related to this chapter 11 case.

- c. Unless and until the Prepetition Indebtedness has been indefeasibly repaid in full, in cash, the protections afforded to CapitalSpring under this Final Order and any actions taken pursuant thereto shall survive the entry of an order dismissing this chapter 11 case or converting this chapter 11 case into a case under chapter 7 of the Bankruptcy Code, and the Replacement Liens in and to the Postpetition Collateral and the Superpriority Claim shall continue in these proceedings and in any such successor case, and the Replacement Liens and Superpriority Claim shall maintain their priority as provided by this Final Order until the Prepetition Indebtedness has been indefeasibly paid in full in cash.
- d. The failure of CapitalSpring to seek relief or otherwise exercise its rights and remedies under the Loan Documents or this Final Order shall not constitute a waiver of any of its rights thereunder, hereunder, or otherwise.
- e. The provisions of this Final Order shall be binding upon and inure to the benefit of CapitalSpring and the Debtor and each of their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in this chapter 11 case or any chapter 7 case as a legal representative of the Debtor or Debtor's estate.
- f. Based on the recitals and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter modified, amended, or vacated by a subsequent order of this or any other Court, no such modification, amendment or vacatur shall affect the validity, enforceability, or priority of any of the Adequate Protection Obligations, the Replacement Liens, or the Superpriority Claim. Notwithstanding any such modification, amendment, or vacatur by any Court any claim granted to

CapitalSpring hereunder arising prior to the effective date of such modification, amendment, or vacatur shall be governed in all respects by the original provisions of this Final Order, and CapitalSpring shall be entitled to all of the rights, remedies, privileges and benefits, including the Replacement Liens and priorities granted herein, with respect to any such claim, including but not limited to the Superpriority Claim.

- g. The notice given by the Debtor of the Final Hearing was given in accordance with Bankruptcy Rules 2002 and 4001(c)(2) and the local rules of this Court.
- h. This Court retains jurisdiction to enforce all provisions of this Final Order.
- i. The Debtor is to provide CapitalSpring and its agents access to all of Debtor's business premises for up to 1 business day at a time during regular business hours upon reasonable notice of not less than 7 calendar days to the Debtor for the purpose of performing an inventory, appraisal, or inspection of the property, Cash Collateral, and Debtor's books and records. CapitalSpring shall take reasonable steps not to interrupt or interfere with the business operations of the Debtor during any inspection.

End of Order

AGREED:

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and

/s/ Russell W. Mills

Russell W. Mills

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**PROPOSED ATTORNEYS
FOR THE DEBTOR**

and

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ATTORNEYS FOR UNITED STATES TRUSTEE

Four Dia, LLC Monthly Expense Budget

Expense Category	Vendor Description	Estimated Budget
Utilities		
Electric	TXU Energy	\$2,500.00
Cable/Phone	Suddenlink Communications	\$1,800.00
Gas	Atmos Energy	\$400.00
Internet	Rise Broadband	\$900.00
Water Supply	City of San Angelo	\$1,000.00
Trash Removal	Republic Services	\$380.00
Food & Beverage		
Waffle & Donut Provider	Golden Malted	\$180.00
Condiments/Food Supplies	Sam's Club/Walmart	\$1,200.00
Coffee Distributor	Farmer's Brothers Coffee Co.	\$300.00
Paper Goods/Hotel Supplies	Mayfield Paper Supply/Sysco Market	\$400.00
Food Supply	Sysco Market Supply	\$2,500.00
Other Operating Expenses		
Salaries and Wages	Four Dia, LLC/Payroll Taxes	\$22,600.00
Insurance	Texas Commercial	\$1,985.00
Franchise Fee	Wyndham Corporation	\$6,500.00
Guest Supply	Sysco Guest Supply	\$1,000.00
Laundry/Cleaning/Pest Control	Eco-Lab	\$800.00
Pest Control	Eco-Lab	\$180.00
Professional Fees	Reserved for Restructuring Professionals/US Trustee	\$5,000.00
Repair and Maintenance	Chappa Lawn Care/Lowes/Repair Contractors	\$700.00
Mortgage	Capital Springs	\$15,000.00
Elevator Maintenance	ThyssenKrupp Corporation	\$331.00
Travel	Various as needed	\$500.00
Bank Fees	Prosperity Bank	\$50.00
Postage	USPS	\$100.00
Office Supplies	Office Depot	\$250.00
Newspaper Subscriptions	USA Today	\$100.00
Security Expense	Prepaid through 2016	\$150.00
Miscellaneous Expenses	Uniforms/Training/Other Misc. Vendors	\$200.00
Equipment Rental	Eco-Lab/Elavon	\$221.00
Sales and Marketing		
Commissions	Expedia/Booking.com	\$2,250.00
Marketing Analytics	Kriya RevGen	\$995.00
Credit Card Processing Fees	Paymentech/Amex	\$1,800.00
Hotel Occupancy Taxes	City of San Angelo	\$5,000.00
TOTAL		\$77,272.00

EXHIBIT
"A"