

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re

HPA NORTHRIDGE, LLC,
Debtor.

Case No. 16-13376-smb
Chapter 11

**CONSENT
FINAL ORDER AUTHORIZING USE OF RENTS AND
PROVIDING ADEQUATE PROTECTION**

THIS PROCEEDING, came before the Court upon the Debtor's Application for Authority to Use of Cash Collateral (Doc. No. 9)(the "Cash Collateral Motion") and the Objection to Debtor's Motion to Use Cash Collateral to Prohibit Use of Rents or, in the Alternative, for Adequate Protection (the "Motion to Prohibit" and, with the Cash Collateral Motion, the "Motions") filed by Lawrence D. Johnson, Trustee of the SJ Trust dated November 24, 1999 and ("SJ Trust") and William P. Johnson, Trustee of the DJ Trust dated November 24, 1999 ("DJ Trust" and with SJ Trust, collectively, "Creditor"). Based upon statements of counsel for the Debtor and Creditor, the agreement of the parties and consideration of the Motions and the case record as a whole the Court hereby finds and orders as follows:

1. On December 2, 2016 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is operating its businesses and managing its properties as debtor-in- possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner.

2. This Court has jurisdiction over the Motions pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (G), (M), and (O), involving matters under 11 U.S.C. §§ 361, 362 and 363. Venue is proper in this district pursuant to 28 U.S.C. § 1408.

3. Creditor and the Debtor have previously agreed to the Debtor's interim use of cash in accordance with the terms of an Interim Order pending the entry of this Order. The period between the Petition Date and entry of this Order is referred to as the "Interim Period".

4. This Court has previously entered a Consent Order authorizing the Debtor's interim use of the rents through February 7, 2017 (the "Interim Order").

5. Creditor and the Debtor have previously agreed that, during the Interim Period and after the entry of this Order, the Debtor is entitled to use cash, including the rents received from the Property owned by the Debtor and which Property and the rents therefrom (collectively, the "Rents") are asserted to be subject to liens in favor of Creditor.

6. As adequate protection for the use of the rents, from the entry of this Order until the Termination Date (as defined in paragraph 7 below)(herein, the "Use Period") Creditor and the Debtor have agreed as follows:

a. The Debtor is authorized to use the Rents in accordance with the terms and conditions of the budget attached hereto (the "Budget") which Budget may be amended, modified or supplemented from time-to-time upon the agreement of the parties or by further order of the Court.

b. The Debtor is additionally authorized to use the Rents for payment of amounts payable pursuant to 28 U.S.C § 1930(a)(6).

c. As adequate protection for use of the use of the Rents and to the extent of the use of such Rents by the Debtor during the Interim Period and through and including the Termination Date, Creditor shall be provided with (i) continuing liens and security interests to extent such liens or security interests exist under the Loan Documents¹; and (ii)

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion to Prohibit.

a replacement first priority perfected security interest pursuant to Section 361(2) of the Bankruptcy Code (subject only to a \$10,000 carve out for chapter 7 administration expenses, to the extent necessary) in all Collateral generated after the Petition Date (but excluding, interests in and recoveries realized from all actions brought by any of the Debtors or their predecessors or successors in interest pursuant to sections 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code) (the "Post-Petition Collateral").

d. As additional adequate protection for the use of the Rents, Debtor shall pay to Creditor monthly payments of \$34,747, (which includes 9.5% default interest, amortization and regular escrow payments for tax and insurance escrows) beginning with the month of December 2016 and each month thereafter (the "Adequate Protection Payments") which shall be due on or before the fifteenth (15th) day of each month following entry of this Order. To the extent that the Debtor has already remitted payments to Creditor, Creditor is entitled to accept such payments and to apply such payments to the Prepetition Obligations (as defined in paragraph 9 below) and the automatic stay is modified to the extent necessary to implement the provisions of this subparagraph.

e. As additional adequate protection for the use of the Rents, the Debtor shall provide to Creditor and its counsel periodic reporting, including without limitation, its monthly operating reports filed with the Office of the United States Trustee and such other information as Creditor may reasonably request.

f. As additional adequate protection, Debtor has represented that its only source of revenue is from the Rents derived from the Property and that all such Rents shall be deposited into the Debtor-in-Possession deposit accounts as received and strictly

accounted for and shall not be commingled with any other sources of funds in the debtor-in-possession account. Debtor shall not use Rents for purposes unrelated to operations of the business of Debtor, but shall use the Rents to pay expenses within the Budget necessary to preserve and maintain its property and operate its business in accordance with Section 363(b) of the Bankruptcy Code.

g. As additional adequate protection, Debtor shall at all times maintain insurance on the Property in the amounts and under the terms set forth in the Loan Documents and shall name Creditor as an additional loss payee and provide proof of such insurance to Creditor within 5 days.

h. During the Use Period, Debtor shall not enter into any new lease for any portion of the Property nor terminate, modify or extend any existing lease without the consent of Creditor, which consent will not be unreasonably withheld.

i. As additional adequate protection, Debtor shall pay or cause to be paid all real property taxes and insurance, including, without limitation, the 2016 Mississippi real property taxes. Creditor consents to the Debtor's use of Rents for the purpose of paying the remaining balance of said real property taxes and shall cooperate in paying the funds currently held in escrow for the payment of the 2016 Mississippi real property taxes and insurance coverage.

7. The authorization granted to the Debtor under this Order shall terminate upon the earlier to occur of (a) the ninetieth (90th) day following entry of this Order and (b) the occurrence of an Event of Default (as defined in paragraph 8 below)(herein, the "Termination Date").

8. Each of the following shall constitute an Event of Default and shall automatically terminate the Creditor's consent to the Debtor's authority to use the Rents:

- a. Failure to maintain insurance on the Property;
- b. Failure to pay all real property taxes;
- c. Entry into a new lease or modification or extension of any existing lease without Creditor's consent
- d. Failure to make the required payments set forth in the paragraph 6.d above;
- e. Failure to collect and retain the Rents in a segregated account;
- f. Failure to provide timely and accurate reporting detailing the Rents received and the sources and uses of such Rents;
- g. Failure to adhere to the Budget by exceeding any particular expense item by more than 5% or exceeding all expense items by more than 10% in the aggregate, provided that payment of routine ordinary course property expenses provided by non-insider vendors shall not be an event of default, and provided, further, that in the event of an emergency, the Debtor shall seek the Creditor's consent on such notice as practicable for payment of repairs and services as may be necessary to preserve and protect and the Property, which consent shall not be unreasonably withheld.
- h. Failure by the Debtor to obtain prior to the Termination Date either (i) a contract from a bona fide purchaser with the demonstrated financial ability to close for the sale and purchase of the Property at a purchase price, the net of which after deduction of normal and customary closing costs, will be sufficient to satisfy, in full, the outstanding balance (including costs, interest, fees, attorneys' fees, both pre- and postpetition) owed to Creditor with a closing date of not later than 45 days after the contract date; or (ii) a commitment from a financial institution with a demonstrated ability to close for the refinancing of the Loan in an amount sufficient to satisfy in full the outstanding balance

(including costs, interest, fees, attorneys' fees, both pre- and postpetition) owed to Creditor with a closing date of not later than 45 days after the commitment date. In each instance, such contract or loan commitment is subject to review by Creditor. The 45 days deadline set forth herein shall be subject to extension provided that the Debtor has proceeded diligently in seeking Bankruptcy Court approval of any such sale or financing. Upon the expiration or earlier termination of the Use Period, Debtor's authorization to use the Rents shall immediately terminate and Creditor shall immediately be entitled to an expedited hearing on its Motion to Prohibit.

9. Subject to paragraph 10 of this Stipulation and Order, the Debtor ratifies and acknowledges the existence and the first priority lien evidenced by the Deed of Trust and the Assignment of Rents in the Property and the Rents (the "Prepetition Collateral")

10. All parties in interest, including the Debtor, shall have until thirty (30) days from the date this Order is entered (the "Review Period") to review the validity, perfection, priority and enforceability of the liens on the Prepetition Collateral. If, during the Review Period or any extension thereof, such parties do not file an objection or other pleading with the Court contesting or asserting, as applicable, the validity, perfection, priority, and enforceability of the liens, security interests, and claims of Creditor in and to the Prepetition Collateral, all such parties shall thereafter be forever barred from asserting or contesting any of the foregoing matters. In the event that any Official Committee of Unsecured Creditors is formed prior to the expiration of the Review Period, the Review Period shall be extended, for the benefit of the Committee only, to the date that is thirty (30) days after the appointment of such a Committee.

11. Debtor waives any right to seek to surcharge Creditor's collateral under § 506(c) of the Bankruptcy Code or otherwise.

12. Notwithstanding the provisions of this Order, Creditor may, at any time, file a motion with this Court seeking any such additional protection as it may reasonably require with respect to continued use of Rents by the Debtor or otherwise, including, without limitation, modification or termination of this Order. Nothing herein shall prevent the Debtor or other parties in interest from opposing such a motion. Nothing contained herein shall or shall be deemed to constitute an admission by Creditor that its interest in the Prepetition Collateral or the Postpetition Collateral is adequately protected within the meaning of section 361 of the Bankruptcy Code now or at some future time. Creditor shall retain all rights available pursuant to the Bankruptcy Code or any other applicable law, including its right to seek adequate protection. Entry of this Order is without prejudice to the right of Creditor to assert that the rents and revenues do not constitute cash collateral and property of the instant bankruptcy estate.

13. No subsequent stay, modification, termination, failure to extend the term of, or vacation of this Order shall affect, limit, or modify any claim for the Adequate Protection Payment or any liens granted hereunder by the Debtor to Creditor or any claim incurred pursuant to this Order or otherwise, nor shall any such stay, modification, or vacation limit, affect or modify the validity, enforceability, or perfection of any security interest, mortgage, lien, or priority granted or reaffirmed in connection therewith.

14. This Order shall be effective as of the Petition Date.

15. Nothing contained in this Order shall require or be deemed to require Creditor to make an additional loan or to extend further debt financing or other financial accommodations to or for the benefit of the Debtor.

16. This Order shall not operate to modify, alter, impair, affect, abrogate, amend, restrict, or nullify any rights of Creditor with respect to any person or entity other than the Debtor,

nor to release, alter, impair, affect, or abrogate any debts, claims, demand, actions, and causes of action in law and equity, whether known or unknown, that Creditor may have as to any person or entity other than the Debtor.

17. All agreements, security interests, mortgages, deeds of trust, and liens contemplated or granted by this Order are effective and perfected as of the commencement of the Petition Date without further filing or recording by Creditor in compliance with any state or federal law. Creditor will not be required to file financing statements or other documents in any jurisdiction or take any other actions in order to perfect its security interests and liens granted under or pursuant to this Order.

18. Unless otherwise provided herein, the terms and conditions of this Order relating to the liens and priorities granted to Creditor herein shall be binding upon the Debtor, its creditors, all other parties in interest, and all successors in interest thereof including, without limitation, any chapter 11 trustee that may be appointed in this case or any trustee in a case under chapter 7 of the Bankruptcy Code into which this case may be converted. This binding effect is an integral part of the agreement included in this Order.

19. Except as otherwise specifically provided herein and under the Bankruptcy Code, neither Creditor nor Debtor waive any rights under the prepetition Loan Documents or under the Bankruptcy Code. Entry of this Order is without prejudice to the right of Creditor to assert that the rents and revenues do not constitute cash collateral or property of the instant bankruptcy estate.

20. The automatic stay presently in effect in this reorganization case pursuant to section 362 of the Bankruptcy Code is hereby modified by the terms and conditions of, and to the extent necessary to effect, the provisions of this Final Order.

21. The Debtor is hereby authorized and directed to do and perform all acts and to make, execute and deliver all instruments and documents which may be required or necessary for the performance of the terms of this Order including, without limitation, the delivery to Creditor of the original checks or other forms of remittance received by the Debtor which are the proceeds of the Collateral.

IT IS SO ORDERED.

Dated: New York, New York
February 7th, 2017

/s/ STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE