

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re

Chapter 11

HPA Northridge LLC

Case no. 16-13376

Debtor.  
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**NOTICE OF HEARING**

PLEASE TAKE NOTICE, a hearing will be held on January 19, 2017 at 10:00 a.m. (the "Hearing") before the Honorable Stuart M. Bernstein, at the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, NY 10004 to consider the annexed application ("Application") of HPA Northridge LLC, (the "Debtor") for the entry of an order substantially in the form annexed hereto, authorizing the Debtor's use cash collateral under sections 361, and 363(c), of the Bankruptcy Code and Bankruptcy Rules, 4001, and 9014.

PLEASE TAKE FURTHER NOTICE, that objections, if any, must be in writing, served upon the undersigned proposed Debtor's counsel, and filed with the Clerk of the Bankruptcy Court, with a courtesy copy to the Honorable Stuart M. Bernstein's chambers, so as to be received at least seven (7) days prior to the Hearing date.

Dated: New York, New York  
December 28, 2016

BACKENROTH FRANKEL & KRINSKY,  
LLP

By: s/ Mark Frankel  
800 Third Avenue  
New York, New York 10022  
(212) 593-1100

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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**APPLICATION FOR AUTHORITY TO USE OF CASH COLLATERAL**

HPA Northridge LLC, the Debtor and Debtor-in-Possession ("Debtor") by its counsel, Backenroth Frankel & Krinsky LLP, as and for its application for use of cash collateral pursuant to section 363 of the Bankruptcy Code, respectfully represents as follows:

**BACKGROUND**

1. On December 2, 2016, the Debtor filed a Chapter 11 petition under Title 11 of the United States Code, 11 U.S.C. 101 et seq. (the "Bankruptcy Code").
2. The Debtor owns the real property at 2934 No Hill Street, Meridian, MS 39305 the "Property").
3. The property is a strip mall of about 73,000 square feet pictured below:



4. The Property is encumbered by a \$2,579,000 deed of trust lien held by the SJ Trust and DJ Trust (the “Mortgagee”). Based upon a previously received offer, the Property value is about \$4,100,000. The Debtor’s unsecured debt consists of insider loans, tenant obligations and legal fees for a total of about \$66,179.

5. The note matured on August 7, 2015. Since that time, the Debtor has tried to refinance or sell the Property. But the Debtor’s lease to Southern Family Markets, the Property’s anchor tenant, expires in about 9 months, and the tenant has until March 2017 to decide whether to renew. Until the anchor tenant provides notice, it is impossible to refinance. In the meantime, the Debtor has paid the Mortgagee monthly interest plus monthly escrows for real estate taxes and insurance. Earlier this year, at the Mortgagee’s demand, the Debtor increased the interest portion of the monthly debt service to the default rate of interest.

6. The Property has always been cash flow positive, even after paying debt service at the 9.5% default interest rate. But for the gap in time between note maturity and

anchor tenant lease renewal, the Debtor would not have this problem. The anchor tenant grocery store is, upon information and belief, profitable so likely to renew.

7. Post-maturity, the note was sold to the Mortgagee. The Debtor satisfied the new Mortgagee's demands including payment of default interest at 4% over the contract rate. The Mortgagee then engaged in seemingly constructive negotiations, but it was apparently an attempt to lull the Debtor into a false sense of security.

8. With no notice to the Debtor directly– not even a notice posted at the Property – and only the minimum required notice for a non-judicial sale under Mississippi law, (three weeks' notice by publication and a notice posted at the courthouse) the Property was scheduled to be sold on December 5, 2016. Through a chance contact with a local real estate broker, the Debtor found out. The Debtor filed this case to obtain the benefit of the automatic stay to sell the Property in an orderly manner and confirm a Chapter 11 Plan.

9. In the meantime, the Debtor intends to maintain the status quo by using cash collateral to operate the Property, continuing to pay the Mortgagee debt service at the default rate plus monthly escrows for real estate taxes and insurance. The Debtor has and will continue to segregate cash collateral until this Motion is heard, or until the Mortgagee consents to use of cash collateral.

**RELIEF REQUESTED HEREIN**

10. By this application, therefore, the Debtor seeks an order authorizing the Debtor to use of cash collateral, and granting the Mortgagee adequate protection in connection therewith.

11. Section 363(a) of the Bankruptcy Code provides that “cash collateral” includes both cash and cash equivalents in which a debtor and another entity have an interest. Section 363(c)(2), provides that a debtor may use cash collateral if (a) the other entity with an interest in the cash collateral consents, or (b) the Bankruptcy Court, after notice and hearing, authorizes such use.

12. Here, the Property’s rents appear to constitute cash collateral under section 363(a) by the assignment of rents provided for in the Mortgagee’s loan documents. The Debtor proposes to use the Property’s rents to fund the ordinary and necessary operating expenses for the Property, such as utilities, repairs and management, and to pay debt service, real estate tax and insurance escrows to the Mortgagee. If the Debtor cannot use cash collateral, the Property may suffer quick deterioration, jeopardizing the value of the Property and the payment of rent by the tenants, plus the immediate day to day harm to tenants.

13. The Debtor’s use of cash collateral in the ordinary course of business will allow the Debtor to preserve and protect the Property, and thus the Debtor will protect the Mortgagee’s collateral, including cash collateral, so it does not decline in value during this case. As stated in In re Pine Lake Village Apartment Co. 16 B.R. 750, 756 (Bankr. S.D.N.Y. 1982):

The application of rent income solely to maintain and repair the property so as to prevent further deterioration will enhance the value of the property which serves as the collateral for the . . . plaintiff-mortgagee's claim. [The use of such funds] without any diversion ... to the debtor, clearly ensures that the plaintiff-mortgagee's investment is adequately protected.

*Accord, In re 499 W. Warren Street Associates, Ltd. Partnership* 142 B.R. 53 (Bankr. N.D.N.Y.,1992); *In re Constable Plaza Associates, L.P.* 125 B.R. 98, 105 (Bankr. S.D.N.Y. 1991); *In re Cardinal Industries, Inc.* 118 B.R. 971 (Bankr..S.D.Ohio 1990).

14. In summary, subject to further order of this Court, the Debtor will (a) use cash collateral only in the ordinary course of business to preserve and protect the Property, (b) maintain strict records regarding the use of cash collateral, (c) furnish the Mortgagee with monthly operating reports required by the United States Trustee, (d) provide the Mortgagee with a replacement lien on the Debtor's assets for any erosion of the mortgagee's cash collateral because of the Debtor's use of the rents, and (e) pay monthly debt service to reduce the Debtor's Mortgage obligations.

15. Despite the Debtor's best efforts, the Debtor cannot obtain financing from any other source for meeting its expenses.

16. No prior application has been made for the relief sought herein.

### **CONCLUSION**

WHEREFORE, the Debtor respectfully requests that the court enter the annexed order scheduling an interim hearing, that the Court authorize the Debtor to use cash collateral

under the Budget annexed hereto, and that the Court grant such other and further relief as the court deems just and proper.

Dated: New York, New York  
December 28, 2016

HPA Northridge LLC  
Debtor and Debtor in Possession

By: s/ Joel I Beeler

BACKENROTH FRANKEL & KRINSKY, LLP  
Proposed Attorneys for the Debtor

By: s/Mark Frankel  
800 Third Avenue  
New York, New York 10022  
(212) 593-1100

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re

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**ORDER GRANTING DEBTOR'S APPLICATION TO USE OF CASH  
COLLATERAL**

Upon the annexed motion (the "Motion") of HPA Northridge LLC ("Debtor") for an order authorizing the Debtor's use cash collateral under sections 361, and 363(c), of the Bankruptcy Code and Bankruptcy Rules, 4001, and 9014, and after due deliberation and sufficient cause appearing therefor; it is

ORDERED, that the Debtor be, and it hereby is, authorized to use the rents generated by the Debtor at 2934 No Hill Street, Meridian, MS 39305 (the "Property") solely for the purposes of protecting and preserving the Property as set forth in the Application, and for the purpose of making adequate protection payments to SJ Trust and DJ Trust (the "Mortgagee"), as set forth in the Application, provided, however, that the Debtor shall also be entitled to disburse such additional amounts as may be necessary to pay the actual amounts incurred per vendor invoice, and any additional amounts as may be required to pay the fees incurred under 28 U.S.C. §1930 in full and any applicable interest thereon; and it is further



ORDERED, that as adequate protection payments to the Mortgagee, as set forth in the Application, the Debtor shall pay monthly debt service as set forth in Application, together with real estate tax and insurance escrows; and it is further

ORDERED, that as additional adequate protection of the Mortgagee's interests in the Property, the Debtor shall (a) use cash collateral only in the ordinary course of business to preserve and protect the Property, (b) maintain strict records regarding the use of cash collateral, (c) furnish the Mortgagee with monthly operating reports required by the United States Trustee, and (d) provide the Mortgagee with a replacement lien on the Debtor's real property and cash receipts to the extent of any erosion of the Mortgagee's cash collateral because of the Debtor's use of the rents, subject only to a \$10,000 carve out for Chapter 7 administration expenses to the extent necessary. To avoid doubt, any such replacement lien does not extend to Chapter 5 causes of action.

Dated: New York, New York  
January \_\_, 2017

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UNITED STATES BANKRUPTCY JUDGE

Northridge Plaza  
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 Three Month Projections

	Jan - Mar 2017			
	<u>Jan</u>	<u>Feb</u>	<u>March</u>	<u>TOTAL</u>
<b>Income</b>				
Rental Income	45,682	51,682	45,682	143,045
<b>Budget Expense</b>				
Office Expenses		0	0	0
Bank Service Charges		0	0	0
Telephone Expense		0	0	0
Computer and Internet Expenses		0	0	0
Court & Professional Fees	546	546	546	1,638
Payroll Expenses		0	0	0
Payroll Tax Expenses		0	0	0
Repairs & Maintenance	3,300	3,300	3,300	9,900
Supplies	30	30	30	90
Utilities	485	485	485	1,455
Sanitation		0	0	0
Insurance Expense		0	0	0
Taxes - Property		0	0	0
Mortgage Payment	34,747	34,747	34,747	104,240
On-Site Management	1,830	1,830	1,830	5,490
<b>Total Expense</b>	<u>40,937</u>	<u>40,937</u>	<u>40,937</u>	<u>122,812</u>
<b>Net Income</b>	<u>4,744</u>	<u>10,744</u>	<u>4,744</u>	<u>20,232</u>

- 1 February revenues are not typical due to the annual collection of year end billings for CAM, INS and RET as well as Dollar General Percentage rent.
- 2 2 When new tenant Manpower obtains a certificate of occupancy, likely in February, the Debtor must reimburse the tenant approximately \$13,000 for expenses.
- 3 The mortgage payment includes interest at the default rate of 9.5% plus escrows for real estate tax and insurance in the amounts of \$8,466.03 and \$2,247.12.