

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

**In Re:**

**North Beaches Pharmacy, Inc.**

**Case No. 3:16-bk-03618  
Chapter 11**

**Debtor.**

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**DEBTOR-IN-POSSESSION’S EMERGENCY MOTION FOR ENTRY OF  
ORDER AUTHORIZING THE USE OF CASH COLLATERAL**

North Beaches Pharmacy, Inc., as Debtor and Debtor-In-Possession (“Debtor”), pursuant to 11 U.S.C. §363(c)(2) and Rules 4001(b) and 9014 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), requests Court authority to use cash collateral, and hereby provides notice of the same to all parties in interest and says:

**Jurisdiction**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.
3. The statutory basis for the relief requested herein are sections 105, 361, 362, and 363 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

**Relief Requested**

4. By this Motion, the Debtor seeks entry of the Cash Collateral Orders granting the following relief, without limitations:

- a. Authorizing the Debtor to use Cash Collateral pursuant to sections 361 and 363 of the Bankruptcy Code;
- b. Approving the form of adequate protection provided to the lender pursuant to 361, 362, and 363 of the Bankruptcy Code;
- c. Scheduling a Final Hearing on the Motion to consider entry of the Final Cash Collateral Order; and
- d. Any other relief deemed appropriate by the Court.

**Background**

5. On September 28, 2016, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues to manage the property and operate its business as debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. No trustee, examiner, or official committee has been appointed in this case.
6. The Debtor owns and operates a pharmacy in Jacksonville Beach, Florida.
7. Prior to the Petition Date the Debtor entered into a line of credit with American Enterprise Bank of Florida which in turn received a blanket lien on all assets of the Debtor including all accounts and receivables.
8. Sometime after entering into the agreement with American Enterprise Bank of Florida, Fidelity Bank acquired American Enterprise Bank of Florida.
9. Pursuant to the loan agreements and the U.C.C., Fidelity Bank has liens on the Debtor's property ("Prepetition Collateral"), including the proceeds thereof.
10. The Debtor prepared a budget and intends on offering cash adequate protection payments as well as replacements liens to Fidelity Bank in order to protect the creditor's interest.
11. The Debtor will work with Fidelity Bank in order to get an agreed order on this Motion.

**Basis for Relief**

12. The Debtor's use of property of their estates is governed by section 363 of the Bankruptcy Code, which provides in pertinent part that:

If the business of the debtor is authorized to be operated under section...1108...of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing. 11 U.S.C. §363(c)(1).

13. Section 363(c)(2)(A) of the Bankruptcy Code permits a debtor-in-possession to use cash collateral with the consent of the secured party. Section 363(e) of the Bankruptcy Code requires that the debtor adequately protect the secured creditors' interest in the property to be used by a debtor against any diminution in value of such interest resulting from the debtor's use of the property during the chapter 11 case.

14. What constitutes sufficient adequate protection is decided on a case-by-case basis. See In re George Ruggiere Chrysler-Plymoth, 727 F.2d 1017 (11<sup>th</sup> Cir. 1984). Adequate Protection can come in various forms, including payment of adequate protection fees, payment of interest, granting of replacement liens and administrative claims.

15. Here, the Debtor proposes to pay \$495.00 payment directly to Fidelity Bank to protect their interest as well as granting replacement liens as necessary. The payment is an interest only payment based upon the full claim amount, believed to be \$111,583.00, with 5% interest. Further agreements will hopefully be reduced to writing shortly and will be filed with the Court.

16. The Debtor believes that the proposed Adequate Protection for the benefit of the lender is necessary and appropriate to ensure that the Debtor can continue to use the cash

collateral. Accordingly, the adequate protection proposed herein is fair and reasonable and sufficient to satisfy the requirements of sections 363(c)(2) and (e) of the Bankruptcy Code.

**Request for Final Hearing**

17. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor requests that the Court set a date for the Final Hearing that is as soon as practicable, but in no event later than 45 days following the entry of the Interim Cash Collateral Order, and fix the time and date prior to the Final Hearing for parties to file objections to the Motion.

**CERTIFICATE OF NECESSITY AND REQUEST FOR EMERGENCY HEARING**

1. North Beaches Pharmacy, Inc., requests that the Court hold an emergency hearing on the Debtor-In-Possession's Emergency Motion for Entry of Order Authorizing the Use of Cash Collateral. An emergency hearing is necessary to avoid immediate and irreparable harm to the estate.
2. The undersigned attorney certifies that this request is being made in good faith and is based solely upon the factual circumstances existing at the time of the filing of the motion.

WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests that the Court enter an order granting the relief requested herein and granting such other and further relief as the Court deems appropriate.

Dated: September 28, 2016

Submitted by: /s/ Jason A. Burgess  
Jason A. Burgess  
1855 Mayport Road  
Atlantic Beach, Florida 32233  
(904) 354-5065  
jason@jasonaburgess.com  
*Counsel for Debtor-In-Possession*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished electronically to the US Trustee via the CM/ECF system on the 28th day of September 2016 in accordance with Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure and by Electronic Mail to Fidelity Bank and all other parties on the attached matrix.

/s/ Jason A. Burgess

Jason A. Burgess

**Exhibit A**  
**Proposed Budget**

## NORTH BEACHES PHARMACY, INC.

## MONTHLY BUDGET

INCOME	ESTIMATED
Net sales	125,000.00
Interest income	
Asset sales (gain/loss)	0.00
<b>Total Income</b>	<b>125,000.00</b>

Cost of Goods Sold	ESTIMATED
COGS - Material and Product	25,000.00
Packaging Supplies & Materials	1,000.00
Freight In	500.00
COGS - Cards	100.00
Discounts & Rebates	(1,500.00)
<b>Total Cost of Goods Sold</b>	<b>25,100.00</b>

PERSONNEL EXPENSES	ESTIMATED
Wages - Salary	31,000.00
Wages - Hourly	14,000.00
Wages-Commission	4,000.00
Employee benefits-Disability Ins.	3,000.00
Payroll Taxes	17,000.00
IRA Contributions	5,500.00
Employee Health Insurance	2,704.00
life Ins	3,000.00
<b>Total Personnel Expenses</b>	<b>80,204.00</b>

OPERATING EXPENSES	ESTIMATED
Advertising	500.00
Printing Materials	500.00
Meals & Entertainment	100.00
Travel & Tolls	50.00
Lodging	0.00
Taxes & Licenses	200.00
Credit Card Processing Fees	1,500.00
Dues and subscriptions	450.00
Training and Certification	200.00
Maintenance and repairs	150.00
Office supplies	500.00
Payroll Processing Fee	200.00
Postage	2,500.00
Rent or mortgage	5,000.00
Sales expenses	0.00
Bad Debt Expense	0.00
Uniform Expense	0.00
General Liability Insurance	1,500.00
Office Expense	1,000.00
Data/IT Costs	500.00
Donations	
Document Destruction	90.00
Pharmacy Supplies	700.00
Equipment Rent	500.00
Pharmacy Product Disposal Fees	100.00
Security & Alarm Fees	50.00
Telephone & Internet	1,000.00
Utilities	1,700.00
Other	0.00
<b>Total Operating Expenses</b>	<b>18,990.00</b>

**Exhibit B**  
**Mailing Matrix**



Label Matrix for local noticing  
113A-3  
Case 3:16-bk-03618  
Middle District of Florida  
Jacksonville  
Wed Sep 28 08:58:46 EDT 2016

North Beaches Pharmacy, Inc.  
1510 Penman Road  
Jacksonville Beach, FL 32250-3744

Alabama Dept. of Revenue  
50 N Ripley Street  
Montgomery, AL 36130-1001

Apothetech, Inc.  
c/o Jennifer A. Kerr, Esq.  
100 Almeria Avenue  
Ste. 340  
Coral Gables, FL 33134-6024

Attix Pharmaceuticals  
822 Chesapeake Drive  
Cambridge, MD 21613-9408

Ben Cvetcovic  
2178 Chandlers Walk Lane  
Jacksonville, FL 32246-8573

Blake Carver  
149 High Street  
Hingham, MA 02043-3338

Brightlink  
13500 Sutton Park Dr. S.  
Suite 105  
Jacksonville, FL 32224-5291

Cheri J. Warwick  
3716 Lade Slipper Lane N.  
Minneapolis, MN 55443-1525

Clever Solutions  
198 Mayport Road  
Suite 7  
Atlantic Beach, FL 32233

Duval County Tax Collector  
231 East Forsyth Street  
Jacksonville, FL 32202-3361

Duval County Tax Collector  
231 Forsyth St. #130  
Jacksonville FL 32202-3380

Dynalabs  
2327 Chouteau Avenue  
Saint Louis, MO 63103-3010

Evan H. Frederick  
1641 Worthington Road  
Suite 100  
West Palm Beach, FL 33409-6706

Fidelity Bank  
10611 Deerwood Park Blvd.  
Jacksonville, FL 32256-0509

Fidelity Bank  
P.O. Box 105075  
Atlanta, GA 30348-5075

Florida Dept. of Revenue  
5050 West Tennessee Street  
Tallahassee, FL 32399-0100

Florida Dept. of Revenue  
Bankruptcy Unit  
P.O. Box 6668  
Tallahassee, FL 32314-6668

Frascogna Curtney, PLLC  
P.O. Box 23126  
Jackson, MS 39225-3126

George Cagna  
149 High Street  
Hingham, MA 02043-3338

Great American Financial  
P.O. Box 660831  
Dallas, TX 75266-0831

Humco Compounding  
7400 Alumax Road  
Texarkana, TX 75501-0282

(p)INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY OPERATIONS  
PO BOX 7346  
PHILADELPHIA PA 19101-7346

Internal Revenue Service  
PO Box 7346  
Philadelphia, PA 19101-7346

John Rhodes  
9536 Princeton Square Blvd S  
Apartment 1215  
Jacksonville, FL 32256-8351

Judy L. Wood  
696 Bonaire Circle  
Jacksonville Beach, FL 32250-3932

LEAF  
P.O. Box 644006  
Cincinnati, OH 45274-0001

Medical Tech. Associate  
6840 Cross Bayou Drive  
Seminole, FL 33777-1619

Modular Document Solutions  
12320 Crystal Commerce Loop  
Fort Myers, FL 33966-1082

NEC Cloud  
24189 Network Place  
Chicago, IL 60673-1241

NEC Univerge Cloud Services  
24189 Network Place  
Chicago, IL 60673-1241

PCCA  
9901 South Wilcrest Drive  
Houston, TX 77099-5132

Pollard PLLC  
401 E. Las Olas Blvd.  
Ste. 1400  
Fort Lauderdale, FL 33301-2218

Proforma North Point  
P.O. Box 640814  
Cincinnati, OH 45264-0814

QS1  
P.O. Box 890898  
Charlotte, NC 28289-0898

RMS  
P.O. Box 361598  
Columbus, OH 43236-1598

Remote Express Business Sol.  
2018 Woodford Green Dr.  
Kingwood, TX 77339-3614

Richardson Kontogouris  
2942 Columbia Street  
Torrance, CA 90503-3806

Robert M. Poland  
2333 Beachcomber Trail  
Atlantic Beach, FL 32233-6608

Safetouch  
9550 Sunbeam Center Drive  
Jacksonville, FL 32257-6184

Secretary of the Treasury  
15th & Pennsylvania Ave., NW  
Washington, DC 20220-0001

Tom Christansen  
149 High Street  
Hingham, MA 02043-3338

U.S. Attorney's Office  
c/o Jason Mehta  
300 N. Hogan Street  
Ste. 700  
Jacksonville, FL 32202-4204

U.S. Dept. of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530-0009

U.S. Securities & Exchange Commission  
Office of Reorganization  
950 East Paces Ferry Road, N.E.  
Suite 900  
Atlanta, GA 30326-1382

United States Attorney  
300 North Hogan St Suite 700  
Jacksonville, FL 32202-4204

cirrusMSP  
3020 Hartley Road  
Ste. 220  
Jacksonville, FL 32257-8206

United States Trustee - JAX 11 +  
Office of the United States Trustee  
George C Young Federal Building  
400 West Washington Street, Suite 1100  
Orlando, FL 32801-2210

Jason A Burgess +  
The Law Offices of Jason A. Burgess, LLC  
1855 Mayport Road  
Atlantic Beach, FL 32233-1919

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Internal Revenue Service  
400 West Bay Street  
Jacksonville, FL 32202

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)Brightlink  
13500 Sutton Park Drive S.  
Ste. 105  
Jacksonville, FL 32224-5291

End of Label Matrix  
Mailable recipients 48  
Bypassed recipients 1  
Total 49