

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

IN RE PAGOSA PARTNERS II, INC.)	CASE NO. 16-17905
)	CHAPTER 11
DEBTOR.)	
)	
)	

**STIPULATION AND AGREED ORDER REGARDING USE OF CASH COLLATERAL
AND PROVIDING ADEQUATE PROTECTION**

This Agreed Order ("Order") is entered into by and between Pagosa Partners II, Inc. (the "Debtor") and NBH Bank (the "Bank") with reference to the following:

1. On August 10, 2016 (the "Commencement Date") in the District of Colorado, Pagosa Partners II, Inc. (the "Debtor") commenced the above-captioned Chapter 11 bankruptcy case. The Debtor had previously commenced a Chapter 11 bankruptcy case in this district, case No. 12-14727 (the "Prior Case").

2. Prior to the Commencement Date, the Debtor executed the documents attached to Proof of Claim No. 1 in favor of the Bank and its predecessors in interest (these documents together with any other documents related to these documents and the loans referenced therein are collectively hereinafter referred to as the "Loan Documents").

3. The Deed of Trust encumbers real property that constitutes a two-story strip center and a pad site together with personal property, and other property more particularly described in the Loan Documents and located in Pagosa Springs, Colorado (collectively the "Collateral"). In addition, based on the Deed of Trust and the Assignment of Rents and Leases, the Bank's lien and security interest encumbers the income, leases, rents, revenues, and cash received from and as a result of the Collateral as well as all cash on hand as of the Commencement Date (collectively the "Cash Collateral").

4. As of August 9, 2016, the Bank contends that the amount owing under the Loan

Documents by the Debtor to the Bank is \$2,384,405.95 plus interest accruing thereafter, attorneys' fees from and after the Commencement Date to the extent permitted under applicable law, and costs (collectively the "Indebtedness").

5. The Bank is the owner and holder of the Loan Documents and is the party to whom the Indebtedness is owed.

6. The Debtor and the Bank agree that the Debtor's use of the Cash Collateral is governed by 11 U.S.C. §§ 363 and 552(b), and therefore, the Debtor must obtain the Bank's consent or a court order to use the Cash Collateral.

7. The Debtor has an obligation to provide adequate protection to the Bank for the use of the Cash Collateral pursuant to 11 U.S.C. §§ 361 and 363.

8. Proper notice of this Order was provided to the United States Trustee and all parties in interest pursuant to Bankruptcy Rule 4001.

9. In the Prior case, the Court entered an order on October 31, 2013 confirming the Debtor's plan of reorganization (Prior Case ECF Doc. 206).

10. The Debtor defaulted under the Prior Case plan, and a foreclosure sale of the Bank's Collateral was scheduled by the Public Trustee of Archuleta County, Colorado for August 11, 2016, the day after the Commencement Date.

11. The Court ruled in the Prior Case that the Debtor was a a single asset real estate debtor within the meaning of 11 U.S.C. §§ 362(d)(3). In this case, the Debtor agrees, and the Court hereby finds and directs, that the Debtor is a single asset real estate debtor within the meaning of 11 U.S.C. §§ 101(51B) and 362(d)(3).

Based on the foregoing, and intending to be legally bound, the parties hereto do hereby agree, and the Court **ORDERS** as follows:

12. **Deposit of Cash.** All Cash Collateral shall be placed and deposited immediately in Debtor's debtor-in-possession bank account number ending in 4317 at Wells Fargo Bank, N.A. (the "Cash Collateral Account").

13. **Expenditure of Cash.** Debtor may spend Cash Collateral only for the purposes and in the amounts set forth in the budget attached hereto as Exhibit A ("the Budget") and pursuant to the terms of this Order. The Debtor shall not, during any particular month, exceed the budgeted amount for any particular line item of operating expenses by more than five percent (5%), or the aggregate budgeted amount of operating expenses for any particular month by more than five percent (5%), without prior written approval of the Bank, or as otherwise authorized pursuant to a separate order of the Court; *provided, however*, that expenses budgeted for prior months but not paid during the month budgeted may be paid in a subsequent month. The Bank shall retain a security interest in and lien on any and all Cash Collateral, including Cash deposited in the Cash Collateral Account prior to any right of setoff of the depository institution. All Cash Collateral not spent on the Budget shall remain in the Cash Collateral Account subject to the terms of this Order.

14. **Adequate Protection - Replacement Liens.** As adequate protection for the post-petition use of Cash Collateral as set forth herein, the Court hereby grants, ratifies and confirms the grant to the Bank of a valid and duly perfected security interest in and lien on and against the Collateral and the types of property constituting the Collateral and any proceeds therefrom, whether presently owned or hereafter acquired, and wherever located. Such adequate protection shall secure the diminution in the value of the Collateral in which the Bank has a valid and perfected lien and security interest as of the Commencement Date that may occur during this case and the use of Cash, Collateral. To the extent the adequate protection granted herein proves

to be inadequate, the Bank shall be afforded a super-priority claim pursuant to and as set forth in 11 U.S.C. § 507(b).

15. **Adequate Protection - Payments to the Bank.** As additional adequate protection of the Bank's interest, and the use of the Cash Collateral, the Debtor shall make the following payments to the Bank: (a) upon entry of this order, the sum of \$7,529.58 equal to the cash on hand on the Commencement Date; and (b) on the first business day of each month beginning September 1, 2016 the Debtor the sum of \$5,000.00. Amounts paid to the Bank under this Order shall be applied by the Bank to its claim in its sole discretion. Nothing contained in this Order, however, shall be deemed to constitute a determination by the Court of the propriety of any such application, and the Debtor reserves the right to challenge the propriety of any such application made by the Bank.

16. **Reports.** On the 15th day of each month beginning September 15, 2016, the Debtor shall deliver to the Bank a report showing: (a) A summary of all checks written and other funds expended from the Cash Collateral Account; and (b) during the period of time covered by the Budget, a monthly reconciliation of budgeted to actual expenses for the previous month.

17. **Access to Records.** At reasonable intervals and upon reasonable request by the Bank, the Debtor shall grant the Bank and its representatives access to, any and all non-privileged information in Debtor's possession or control regarding the operation of its business, including, without limitation, their books, records, operations and assets.

18. **Court Approval.** To the extent required by the Bankruptcy Rules, Debtor shall immediately obtain approval of this order pursuant to the requirements of Fed. R. Bankr. P. 4001.

19. **Term and Termination of this Order.** This Order shall continue in effect until

the earlier of November 30, 2016 and the breach of any provision contained herein by the Debtor. Upon a breach of any provision contained in this Order by the Debtor, Lender shall provide notice, including electronic notice to Debtor and Debtor's counsel, of such default to Debtor with a copy to the Office of the United States Trustee. Debtor shall have a period of five business days from mailing (including electronic mailing) of the notice of such default to cure or request a hearing before the Court to determine whether a default has indeed occurred. If either a request for a hearing or cure does not occur within the stated five business days, Debtor's right under this Agreement to use the Cash Collateral shall terminate (unless Debtor has otherwise obtained an Order authorizing use of Cash Collateral) the automatic stay of 11 U.S.C. § 362 shall be deemed modified and lifted without further order of the Court to permit the Bank to enforce its rights and remedies in any property in which it asserts a security interest and lien. In addition, this Order will terminate upon further order of the Court. Upon termination of this Order, Debtor may not use any Cash Collateral except as provided in any subsequent agreement that the Bank and the Debtor may enter into, or except as provided in any order of the Court. Notwithstanding termination of this Order, the Bank shall be entitled to retain, receive, and continue to receive, the adequate protection provided for hereunder. The parties may extend this order by agreement evidenced by a notice of such extension filed with the Court.

20. **Modification of this Order.** Any modification of this Order shall be made only upon prior written consent of the Bank and the Debtor or as otherwise modified pursuant to a separate order of the Court.

21. **Reservation of Rights.** Except as otherwise provided in this Order, nothing contained herein shall be construed as a waiver of any rights or remedies that any party hereto has under any documents, the Bankruptcy Code, or applicable law, including the Bank's right at

any time to seek relief from the automatic stay of 11 U.S.C. § 362 with respect to all or any of the Collateral and Cash Collateral.

IN WITNESS WHEREOF, the attorneys for the parties hereto have entered into this Order on behalf of their clients as of the day and year first above written.

AGREED:

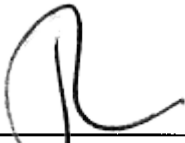
STINSON LEONARD STREET LLP

KUTNER BRINEN, P.C.

BY: /s/ Mark Shaiken
Mark Shaiken, # 49361
6400 S. Fiddlers Green Circle, Suite 1900
Greenwood Village, CO 80111
Phone: (303) 376-8422
Fax: (816) 412-8197
Email: mark.shaiken@stinson.com
ATTORNEYS FOR NBH BANK

/s/ Jeffrey S. Brinen
Jeffrey S. Brinen #20565
1660 Lincoln St.
Ste. 1850
Denver, CO 80264
Phone: (303) 832-2400
Fax: (303) 832-1510
Email: jsb@kutnerlaw.com
ATTORNEYS FOR THE DEBTOR

So Ordered: _____


United States Bankruptcy Judge
Joseph G. Rosania, Jr.

Dated: September 27, 2016.

Four Week Cash Actual - PAGOSA PARTNERS II, INC.				
Week Beginning	16-Aug	23-Aug	30-Aug	6-Sep
Opening Balance	\$11,329.58	\$14,529.58	\$7,000.00	\$7,000.00
Rent Receivables	\$3,200.00			
Utilities				
Insurance				(\$548.00)
CAM				(\$150.00)
Maintenance				
Adequate Protection		(\$7,529.58)		
Ending Balance	\$14,529.58	\$7,000.00	\$7,000.00	\$6,302.00

September 7 to 31 Cash Budget - PAGOSA PARTNERS II, INC.	
Opening Balance	\$6,302.00
Rent Receivalbes	\$6,790.00
Utilities	(\$350.00)
Insurance	(\$200.00)
CAM	(\$150.00)
Maintenance	(\$500.00)
Adequate Protection	(\$5,000.00)
Repairs	(\$500.00)
Ending Balance	\$6,392.00

October Cash Budget - PAGOSA PARTNERS II, INC.	
Opening Balance	\$4,892.00
Rent Receivalbes	\$6,445.00
Utilities	(\$350.00)
Insurance	(\$200.00)
CAM	(\$150.00)
Maintenance	(\$500.00)
Adequate Protection	(\$5,000.00)
Repairs	(\$500.00)
US Trustee	(\$325.00)
Ending Balance	\$4,312.00

November Cash Budget - PAGOSA PARTNERS II, INC.	
Opening Balance	\$2,812.00
Rent Receivalbes	\$6,445.00
Utilities	(\$350.00)
Insurance	(\$200.00)
CAM	(\$150.00)
Maintenance	(\$500.00)
Adequate Protection	(\$5,000.00)
Repairs	(\$500.00)
US Trustee	
Ending Balance	\$2,557.00