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7 **UNITED STATES BANKRUPTCY COURT**
8 **DISTRICT OF ARIZONA**
9

10 In re
11 SWA BASELINE, LLC,
12 EIN: 20-2519231
13 Debtor.

Chapter 11

Case No.: 4:14-bk-001418-BMW

**DEBTOR'S MOTION FOR USE OF
CASH COLLATERAL**

14 SWA Baseline, LLC, an Arizona limited liability company and the debtor and debtor-in-
15 possession in the above captioned bankruptcy case ("Debtor"), hereby moves, pursuant to 11 U.S.C. §
16 363(c), Bankruptcy Rule 4001(b) and Local Rule 9013-1(h), for the entry of an order authorizing the
17 interim and continuing use of cash collateral. The relief requested in this motion ("Motion") is
18 summarized as follows:
19

20 **Debtor, its Business and Need for Use of Cash Collateral**

- 21
- 22 • Debtor owns a developed 14.53 acre business campus located at 708 West
23 Baseline Road in Mesa, Arizona (the "Campus") including four buildings
constructed in 2006 and comprising more than 120,000 square feet of improved
space.
 - 24 • Debtor intends to continue its business and restructure its secured and
25 unsecured obligations through the chapter 11 reorganization process. Debtor
26 requires the use of cash to meet ordinary and necessary business expenses that
27 will be incurred in maintaining and preserving the Campus.

- Debtor must have the ability to use funds encumbered by its senior lender, Alliance Bank of Arizona (“Alliance”) in or to fund the ordinary and necessary post-petition expenses to preserve the Campus pending its proposal and approval of a chapter 11 plan of reorganization.
- This Motion requests approval of budgeted expenses for the period of February through April, 2014, as set forth in the budget attached hereto as **Exhibit “A”** (the “Budget”).

Encumbrances to Cash Collateral

- Alliance Bank is the holder of a secured promissory note under which Debtor is the obligor and pursuant to which Debtor has granted Alliance a senior security interest in the Campus (the “Alliance Loan”).
- Alliance claims that all rents and proceeds generated by the Campus constitute Alliance’s cash collateral (collectively, the “Cash Collateral”).
- On information and belief, Alliance currently claims to be owed approximately \$16.6 million under the terms of the Alliance Loan.

Proposed Terms For Use of Cash Collateral

- Debtor proposes to use the Cash Collateral in accordance with the Budget. The Budget provides, first and foremost, for the payment of expenses that are reasonable and necessary to maintain and preserve the Campus. Such expenses include, without limitation, utility, security, and maintenance expenses for the Campus and its related structures.
- Through this Motion, Debtor seeks authority to use Cash Collateral on an interim basis pursuant to the Budget. Debtor’s use of Cash Collateral will allow Debtor to maintain the Campus and protect the interests of Alliance in the Campus.

Adequate Protection of Lenders’ Interests

- Based on a 2013 appraisal of the Campus obtained by Alliance, Debtor is informed and believes that there is equity in the Campus sufficient to adequately protect Alliance’s interests.
- The value of the Campus is stable and improving. Moreover, the Campus is being well-maintained by Debtor as provided in the Budget.
- Debtor reasonably anticipates additional income of more than \$320,000 during the first half of 2014.

This Motion is supported by the following Memorandum of Points and Authorities, the exhibits attached hereto, the “Declaration of Andrew J. Briefer in Support of Chapter 11 Bankruptcy Petition” (the “Briefer Declaration”) previously filed in this matter at Docket No. 15, and the papers

1 and pleadings on file in this chapter 11 proceeding, all of which are incorporated herein by this
2 reference.

3
4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. FACTUAL AND PROCEDURAL BACKGROUND.**

6 **A. Parties and Jurisdiction.**

7 1. On February 5, 2014 (the “Petition Date”), Debtor filed its petition for relief under
8 chapter 11 of the Bankruptcy Code. Debtor is administering its estate as debtor-in-possession
9 pursuant to 11 U.S.C. §§ 1107 and 1108.¹ Debtor has substantially all of the rights and powers of a
10 trustee in bankruptcy pursuant to § 1107(a).

11 2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1334(a) and 157(a). This is a
12 “core” matter pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (M).

13 3. The Court is authorized to grant the relief requested in this Motion pursuant to 11
14 U.S.C. § 363(c) and Federal Rule of Bankruptcy Procedure (“Bankruptcy Rule”) 4001(b).

15
16 **B. Background Of Debtor’s Business Operations.**

17 4. Debtor is an Arizona limited liability company with its principal place of business in
18 Tuscon, Arizona.

19 5. Debtor owns and operates the Campus.

20 6. Debtor acquired the Campus as raw land in approximately 2005 in order to develop a
21 build-to-suit, state-of-the-art corporate headquarters, operations center, and maintenance facility for
22 Southwest Ambulance, a division of Rural Metro Corporation (“Rural Metro”).

23 7. Debtor developed the Campus in 2006 by constructing four structures and related
24 parking on the Campus (the “Building Improvements”) including:

25
26
27 ¹ Unless otherwise noted, all references to statutory provisions are intended as references to provisions of the Bankruptcy Code.

1 A. A 13,686, square foot class-A executive and administrative offices building on the
2 Southwest Corner of the Campus (the “Executive Building”);

3 B. A 19,989 square foot class-A training and operations center on the Southeast corner of
4 the Campus (the “Training Facility”);

5 C. A 36,237 square foot flexible warehouse/office building on the Northeast corner of the
6 Campus (“Warehouse/Office Building); and

7 D. A 50,758 square foot state-of-the-art maintenance/warehouse facility on the Northwest
8 corner of the Campus (“Maintenance Facility”).

9
10 **C. Events Leading To Filing of Bankruptcy Petition.**

11 8. On August 4, 2013, Rural Metro and its affiliated entities filed for bankruptcy relief
12 under chapter 11.

13 9. In approximately October 2013, Debtor was approached by Rural Metro to renegotiate
14 the terms of the Rural Metro Lease. Despite Debtor’s good faith efforts to negotiate an amended
15 lease with Rural Metro, Rural Metro ultimately elected to reject the Rural Metro Lease in December
16 2013 and vacated the Campus as of December 31, 2013.

17 10. On approximately December 2, 2013, in an effort to proactively address the financial
18 impact of the Rural Metro Lease rejection on Debtor, Debtor and its representatives met with senior
19 lender, Alliance Bank of Arizona (“Alliance”) and advised Alliance of the Rural Metro Lease
20 rejection and of Debtor’s plans and immediate efforts to mitigate the impact of the rejection,
21 including, among other things, Debtor’s retention of Jones Lang LaSalle to act as its commercial real
22 estate broker and market the Campus for sale and lease and Debtor’s efforts to raise capital from its
23 members to support the Campus during a marketing period.

24 11. Debtor timely made its scheduled monthly payments for December 2013 and January
25 2014 anticipating that Alliance would cooperate with Debtor’s efforts and provide Debtor with some
26 limited relief to facilitate Debtor’s marketing of the Campus and the acquisition of replacement
27 tenants.

1 12. Debtor has since retained Jones Lang LaSalle as its broker and has marketed the
2 Campus as available for approximately 30 days since Rural Metro vacated the Campus. Debtor has
3 also undertaken certain improvements at the Campus to ensure that the Campus is attractive and
4 maintained to prospective interested parties.

5 13. The Debtor's efforts in this limited time have already been fruitful as Debtor is
6 currently in negotiations to lease the Maintenance Facility to a Fortune 500 tenant and multiple
7 potential tenants have toured and expressed interest in the remaining Building Improvements.

8 14. However, despite Debtor's best efforts and despite the lack of any monetary default by
9 Debtor, on January 13, 2014, Debtor received a notice from Alliance advising that Debtor was in
10 breach of its covenant in the Alliance Loan documents requiring that a 75% loan to value ratio be
11 maintained and (presumably based in large part on the liquidation value in the Alliance 2013
12 Appraisal) demanding that Debtor and the Guarantors pay Alliance \$6,977,963.77 on or before
13 February 12, 2014 in order to avoid a default under the terms of the Alliance Loan.

14 15. Debtor filed this chapter 11 proceeding prior to any default under the terms of the
15 Alliance Loan in order to protect its equity holders from the precipitous loss of their nearly \$4.0
16 million in equity as a result of a foreclosure or other premature enforcement actions by Alliance and
17 to provide Debtor with an opportunity to mitigate the impact of the Rural Metro Lease rejection and
18 maximize the value of the Campus.

19
20 **D. Alliance's Claims and Security Interests**

21 16. The Campus was original developed with an equity investment of approximately \$3.9
22 million from Debtor's members and a construction loan and subsequent term loan that were
23 ultimately refinanced by the Alliance Loan in the original principal amount of \$18.6 million in
24 approximately June of 2011.

25 17. At the time, Alliance obtained an appraisal indicating that the Campus was valued at
26 more than \$26 million (the "Alliance 2011 Appraisal"). A true and correct copy of the Alliance 2011
27 Appraisal is attached to the Briefer Declaration as Exhibit 2.

1 18. As of the Petition Date, Debtor’s balance due to Alliance on account of the Alliance
2 Loan is approximately \$16.6 million.

3 19. The Alliance Loan is structured as a 10-year term loan with non-default interest
4 currently accruing at a rate of 5.75 percent and with principal and interest payments amortized over a
5 period of 15 years. The Alliance Loan is also structured to provide Debtor with an 11 month period
6 of interest only payments mid-term, at the expiration of the Rural Metro Lease and in the event that
7 Rural Metro elected not to renew the Rural Metro Lease at the expiration of its initial 10-year term.

8 20. Alliance claims a security interest in and to the Campus and of the personal and real
9 property improvements located thereon as collateral to secure the repayment of the Alliance Loan.

10 21. Alliance also asserts a security interest in and to the rents and income derived from the
11 Campus (the “Cash Collateral”).

12 22. In addition to its interest in the Campus, Debtor is holding approximately \$78,000 of
13 Cash Collateral in its operating accounts and Alliance is currently holding approximately \$500,000 in
14 a Debtor account that also comprises Cash Collateral and is reserved for tenant improvements and
15 related expenses at the Campus under the terms of the Alliance Loan (the “Reserve Funds”).

16 23. According to an updated appraisal obtained by Alliance and dated as of
17 December 23, 2013, the Campus has a stabilized (single tenant) value of ranging between \$12.7 and
18 \$17.3 million (the “Alliance 2013 Appraisal”). Debtor believes that the Campus has a current value
19 of at least \$16.9 million. A true and correct copy of the Alliance 2013 Appraisal is attached to the
20 Briefer Declaration as Exhibit 3.

21 24. Debtor believes that the Campus has a current value of at least \$16.9 million.

22 25. In addition to the security interests pledged to Alliance by Debtor, certain of Debtor’s
23 members have guaranteed a portion Debtor’s obligations under the Alliance Loan (the “Guarantors”).
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1 **E. Debtor's Use of Cash Collateral**

2 26. As of the Petition Date, Debtor held approximately \$78,000 of Cash Collateral on
3 deposit in its operating account.¹

4 27. Debtor has prepared the Budget, which reflects anticipated income and average
5 expenses for the coming 90 days (the "Budget Period").

6 28. Debtor asserts that Alliance's interests in the Cash Collateral will be adequately
7 protected by the equity that exists in Debtor's assets, and by the ongoing funding of necessary
8 maintenance and security at the Campus as proposed in the Budget.

9 29. In order to continue operating, Debtor must make the above budgeted payments from
10 the revenues to be generated from the Cash Collateral.

11
12 **II. AUTHORITIES SUPPORTING USE OF CASH COLLATERAL**

13 Bankruptcy Code § 363(c) authorizes a debtor-in-possession to use cash collateral in the
14 ordinary course of business, as long as any party asserting an interest in the cash collateral is
15 adequately protected. *See also* 11 U.S.C. § 363(e). As the Ninth Circuit BAP has recognized, "In
16 many chapter 11 cases, use of cash collateral is vital to a successful reorganization." *In re Proalert,*
17 *LLC*, 314 B.R. 436, 442 (9th Cir. BAP 2004). Accordingly, it is not necessary for a debtor-in-
18 possession to prove that every proposed use of cash collateral is reasonable and necessary and will
19 provide a quantifiable benefit to the estate, as would be necessary to surcharge a secured creditor's
20 collateral. Rather, when a debtor-in-possession seeks authority to use cash collateral, the secured
21 creditor's only entitlement is to adequate protection of its interest. *Id.*

22 In this case, Alliance asserts a security interest in the Campus and Cash Collateral. Debtor
23 proposes the use of Cash Collateral pursuant to the Budget. Continuation of the ordinary operation
24 and maintenance of the Campus as proposed in the Budget will provide Alliance with adequate
25

26 ¹ In addition to the monies held by Debtor in its operating account, Debtor maintains a reserve account at
27 Alliance that is established to fund tenant improvements and broker commissions incurred at the Campus. As
of the Petition Date, Debtor estimates that the balance of such reserve was more than \$503,000. Debtor does
not request use of such funds at this time but expressly reserves the right to do so hereafter.

1 protection. Debtor's ongoing funding of its utilities, routine maintenance and security will ensure that
2 the Campus is preserved in its current state (or better) during the pendency of this chapter 11
3 proceeding. Further, the value of the Campus is stable and, Debtor is informed and believes, is
4 improving with the general upturn currently being experienced in the Arizona real estate marketplace.
5 By contrast, if Debtor is not authorized to maintain the Campus using Cash Collateral, Alliance risks
6 deterioration at the Campus that could impair the value of the Campus and Alliance's collateral. Such
7 a result would harm the interests of both Alliance and the estate.

8 The Cash Collateral held by Debtor is sufficient to pay the operating expenses in the Budget.
9 Debtor further anticipates that it will receive additional revenues in the first half of 2014 as it collects
10 on claims it holds in the Rural Metro bankruptcy proceedings. Such claims are anticipated to result in
11 revenue to Debtor of more than \$320,000. Accordingly, authorization of Debtor's use of Cash
12 Collateral in accordance with the Budget attached hereto is appropriate under 11 U.S.C. §§ 363(c)
13 and (e).

14
15 **III. CONCLUSION**

16 For the reasons set forth herein, Debtor requests that the Court authorize use of the Cash
17 Collateral as set forth in this Motion, and grant such further relief as the Court deems appropriate.

18 **DATED** this 11th day of February, 2014.

19 **ENGELMAN BERGER, P.C.**

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27 **SWA BASELINE, LLC**

By /s/ Andrew J. Briefer
Andrew J. Briefer, Designated Representative

1 **COPY** of the foregoing e-mailed
2 this 11th day of February, 2014, to:

3 Elizabeth C. Amorosi
4 Office of the U.S. Trustee
5 230 North First Avenue, Suite 204
6 Phoenix, Arizona 85003-1706
7 **Via Email: USTPRegion14.PX.ECF@USDOJ.GOV**

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13 /s/ Kristine L. Mitchell

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EXHIBIT A

**90 DAY 2014
PROPOSED BUDGET FOR SWA BASELINE LLC**

	FEBRUARY	MARCH	APRIL
INCOME	\$ -	\$ -	\$ 67,940.00
TOTAL INCOME	\$ -	\$ -	\$ 67,940.00
EXPENSES			
Utilities	\$ -	\$ -	\$ -
SRP Utility Deposits-Building 1	\$ 850.00	\$ -	\$ -
SRP Utility Deposits-Building 2	\$ 1,300.00	\$ -	\$ -
SRP Utility Deposits-Building 3	\$ 650.00	\$ -	\$ -
SRP Utility Deposits-Building 4	\$ 900.00	\$ -	\$ -
SRP -Building 1	\$ -	\$ 850.00	\$ 850.00
SRP-Building 2	\$ -	\$ 1,300.00	\$ 1,300.00
SRP-Building 3	\$ -	\$ 650.00	\$ 650.00
SRP-Building 4	\$ -	\$ 900.00	\$ 900.00
City of Mesa Water-Building 1*	\$ 350.00	\$ 350.00	\$ 350.00
City of Mesa Water-Building 2*	\$ 350.00	\$ 350.00	\$ 350.00
City of Mesa Water-Building 3*	\$ 350.00	\$ 350.00	\$ 350.00
City of Mesa Water-Building 4*	\$ 350.00	\$ 350.00	\$ 350.00
Amer-x Fire Alarm Monitoring	\$ -	\$ 420.00	\$ 420.00
Century Link-phone lines	\$ 400.00	\$ 400.00	\$ 400.00
Maintenance/Repairs	\$ -	\$ -	\$ -
Landscape	\$ -	\$ 2,000.00	\$ 2,000.00
Security	\$ 4,425.00	\$ 4,425.00	\$ 4,425.00
Management/Bookkeeping/ Accounting	\$ -	\$ -	\$ -
Management Fees	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00
Bookkeeping Fees	\$ 750.00	\$ 750.00	\$ 750.00
Tax Return Preparation	\$ -	\$ -	\$ 4,500.00
TOTAL EXPENSES	\$ 12,175.00	\$ 14,595.00	\$ 14,595.00