

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION, AKRON**

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In re: : Case No. 16-52568
 :
TEMPLE SQUARE PROPERTIES, LLC : Chapter 11
 :
 : Judge Alan Koschik
Debtor and :
Debtor-in-Possession. :
 :
(EIN 84-1677835) :
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**DEBTOR’S MOTION FOR AN ORDER (A) AUTHORIZING THE DEBTOR TO (I) USE
CASH COLLATERAL ON AN INTERIM AND FINAL BASIS
PURSUANT TO 11 U.S.C. § 363 AND (II) PROVIDE ADEQUATE PROTECTION
PURSUANT TO 11 U.S.C. §§ 361 AND 363 AND (B) SCHEDULING
A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001**

The above-captioned debtor and debtor in possession (the “Debtor”), hereby submits this motion (the “Motion”) pursuant to sections 361 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 2002, 4001(b), and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for an order (A) authorizing the Debtor to (I) use cash collateral on an interim and final basis pursuant to sections 105(a), 361, 363, 541 and 552 of the Bankruptcy Code and (II) provide adequate protection pursuant to sections 361

and 363 of Bankruptcy Code, and (B) scheduling a final hearing pursuant to Bankruptcy Rule 4001.

In support of this Motion, the Debtor respectfully represents as follows:

I. BACKGROUND

A. Jurisdiction

1. On October 26, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is continuing in possession of its property and is operating and managing its businesses, as debtor in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and reference from the District Court for the Northern District of Ohio pursuant to 28 U.S.C. § 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the Debtor’s chapter 11 cases and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Debtor’s Business

3. The Debtor is the owner and manager of several commercial and residential properties.

4. In 2004, the Debtor’s principal, Mr. Frank Caetta moved back to Ohio to assist his mother because of her poor health. Mr. Caetta found a building in the Temple Square part of Akron to purchase as an investment property and formed Temple Square Properties, LLC for that purpose. The Debtor purchased its first property in 2005. Mr. Caetta’s partner handled much of the financial management for the Debtor’s properties.

C. Events Leading to Bankruptcy

5. At that time much of Temple Square area was run down with many properties offered for sale. Property deals continued to be presented to Mr. Caetta and the Debtor

purchased many properties in the area. When the recession of 2008 occurred, funding for new acquisitions was no longer available. Worse, tenants began going out of business and vacancies in the Debtor's residential and commercial property holdings became very high. Despite these challenges, the Debtor continued in business due to the efforts of Mr. Caetta's partner.

6. In 2014, the Mr. Caetta's partner passed away and Mr. Caetta was left to run the Debtor's business operations. Mr. Caetta, not having been the primary manager of the Debtor's operations, has had difficulty running the Debtor's operations profitably since that time.

7. Mr. Caetta has tried to reduce the Debtor's operations (sell individual properties), but the Debtor's secured lenders have so far refused to partially release their mortgages to allow the Debtor to sell properties. Without the ability to profitably manage the Debtor's operations, and without the ability to reduce the Debtor's holdings outside of bankruptcy, the Debtor's operations are destined to fail. The Debtor's only means of reducing its inventory of real property to a level manageable by Mr. Caetta is through the instant chapter 11 filing.

D. The Debtor's Outstanding Debt to Prepetition Lenders

8. As detailed on Exhibit A¹ hereto, the Debtor entered into certain loan agreements (collectively, the "Loan Agreements") with Westfield Bank, ZB NA d/b/a Zion National Bank, Huntington National Bank, successor by merger to FirstMerit Bank, and Ronald Berry (collectively, the "Prepetition Lenders"). As of the Petition Date, the aggregate balance due and owing to the Prepetition Lenders under the prepetition Loan Agreements was approximately \$1,017,838.00. To secure obligations under the Loan Agreements, the Debtor granted to the Prepetition Lenders security interests in and liens on certain of the Debtor's real estate and, in most instances, the rents generated by such real estate as shown on Exhibit A attached hereto.

¹ The Debtors reserve the right to amend Exhibit A, which is intended for summary purposes only and is not a substitute for the actual Loan Agreements. The Prepetition Lenders' loan agreements and mortgages are voluminous and not attached hereto but are available on request.

II. RELIEF REQUESTED

9. Pursuant to sections 363(a) and 552(b) of the Bankruptcy Code, certain cash and cash equivalents held by the Debtor as of the commencement of its chapter 11 case and the rents or proceeds of the Prepetition Collateral received by the Debtor after the commencement of its case may constitute “cash collateral” within the meaning of section 363(a) of the Bankruptcy Code. Under the Loan Agreements, the Prepetition Lenders may have an interest in such cash collateral (the “Cash Collateral”).

10. The use of Cash Collateral is necessary to permit the Debtor to operate and to develop a plan of reorganization. Absent use of Cash Collateral, the Debtor would be forced to cease operations, the result of which would shut down the business, jeopardize tenants and devalue the Prepetition Collateral.

11. By this Motion, the Debtor respectfully requests the following relief:

- a. that the Court conduct a preliminary hearing to consider the Motion (the “Interim Hearing”) pursuant to Bankruptcy Rule 4001;
- b. that, after the Interim Hearing, the Court enter an interim order, or series of orders (the “Interim Cash Collateral Order”) (i) authorizing the Debtor, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 4001(b), to use Cash Collateral to fund certain of the operating expenses set forth in the 13-week cash flow budget (the “Budget”, a copy of which is attached hereto as Exhibit B) upon the terms and conditions set forth in the attached Interim Cash Collateral Order and (ii) establishing that the Prepetition Lenders’ respective interests will be adequately protected, pursuant to sections 361 and 363(c)(2)(B) of the Bankruptcy Code, to the extent of diminution (if any) in value of the Prepetition Collateral pending a final hearing on this Motion; and
- c. that the Court schedule a final hearing (the “Final Hearing”) to consider any timely filed and served objections to this Motion and Interim Cash Collateral Order and, in the absence of a timely filed and served objection, deem the Interim Cash Collateral Order a final order without further action by the Court.

12. Included in the request to use Cash Collateral, is the authority to use the respective rental incomes generated by the various rental units (collectively, the “Gross Rents”) to pay those expenses necessary to the preservation and operation of the business and to make adequate protection payments to the Prepetition Lenders. As explained in more detail below, the Debtor is not seeking authority to use those rents remaining after payment of those necessary expenses (collectively, the “Net Rents”), except to make postpetition interest payments to the extent possible. As reflected by the Budget, the Debtor anticipates that the Net Rents (after accrual of real estate taxes and payment of interest) will accrue to an approximate aggregate amount of \$2,110.00 each month. Any Net Rents generated shall be set aside, maintained and accounted for in a cash collateral account as additional adequate protection of each Prepetition Lender’s respective claimed interests therein.

13. In addition to the existence of an equity cushion for certain of the Prepetition Lenders, the Debtor will continue grant replacement liens to each Prepetition Lender to the same validity, extent and priority as existed prepetition and will provide periodic financial reporting.

III. BASIS FOR RELIEF

A. The Debtor’s Need Use of Cash Collateral in Order to Maintain Operations During the Chapter 11 Case

14. The immediate use of Cash Collateral is necessary for the Debtor to meet payroll, to pay necessary business expenses, to preserve the Prepetition Collateral, and to continue operations during the pendency of the bankruptcy case. Without immediate access to the Cash Collateral, the Debtor will not be able to pay the ongoing costs of running its business and administering its estate, the result of which will be immediate and irreparable damage to the value of the Debtor and the corresponding diminution in the value of the Prepetition Collateral. Indeed, the Debtor has determined that if it is not allowed the use of the Cash Collateral, it could

not maintain its operations, and the case likely would either be converted to a case under chapter 7 of the Bankruptcy Code or dismissed in relatively short order. If that were to occur, the impact upon the Prepetition Collateral would be severe — each Prepetition Lender would have to obtain and safeguard its respective properties scattered through multiple communities and commence a liquidation of those properties. Apart from the potential harm to the Debtor’s tenants, a mass liquidation and/or foreclosure would lead to a glut of properties for sale in the Temple Square area— in an already depressed market.

15. Access to the Cash Collateral will prevent a disastrous result for the business and provide the Debtor’s tenants and vendors with the requisite security that the Debtor will be able to continue to conduct business in the ordinary course and without interruption. Therefore, it is imperative that the Debtor obtain authority to use Cash Collateral in accordance with the Budget attached hereto as Exhibit B.

B. The Nature of the Prepetition Lenders’ Rights and Interests in the Rents

16. The Prepetition Lenders may have or claim to have an interest in the respective postpetition rents under the terms of the Loan Agreements, which include collateral assignment of rents and/or leases. The Gross Rents are the primary source of the Debtor’s operating cash and are critical to the success of the chapter 11 case.

17. In In re Cardinal Industries, Inc., 118 B.R. 971 (1990), the debtors, who were the owners and mortgagors with respect to various real properties, sought to use certain rents generated by their properties to operate the business in the ordinary course. In that case, the United States Bankruptcy Court for the Southern District of Ohio analyzed: (i) the nature and extent of the lender’s interest in rents generated from the property against which it held an assignment of rents; and (ii) whether the debtor may use the rents generated from their properties and, if so, for what purposes and under what conditions. As discussed below, similar issues were

also analyzed and ruled upon in In re Willow Wood East Apartments of Indianapolis, 114 B.R. 138 (Bankr. S.D. Ohio 1990).

18. In both the Cardinal and Willow Wood cases,² the bankruptcy court determined that the post-petition rents were property of the bankruptcy estate pursuant to section 541(a)(6) of the Bankruptcy Code. Furthermore, based on the security interest in and to the rents in favor of the respective lenders by virtue of the respective assignment of rent provisions, the bankruptcy court found that the lenders had only a possessory right and not an absolute ownership right in and to the postpetition rents, and therefore their respective interests were merely as additional security interests. See Cardinal, 118 B.R. 971; Willow Wood, 114 B.R. 138.³

19. Section 552(a) of the Bankruptcy Code provides that property acquired by a bankruptcy estate post-petition is not subject to a pre-petition security agreement. However, section 552(b) rescinds that provision and carries forward the prepetition liens against assets generated postpetition if the prepetition liens extend to rents of the property. Cardinal, 118 B.R. 971, at 980. Accordingly, the Gross Rents generated from the postpetition operation of the Debtor's residential rental units are property of the estate pursuant to section 541(a)(6) of the Bankruptcy Code and are subject to the Prepetition Lenders' respective asserted security interest in and to those rents.

² In In re Cardinal Industries, 118 B.R. at 980, the debtors contended that the assignment of rents was merely a security agreement which provided the lender with additional security over and above its mortgage interest. In applying Florida law, the bankruptcy court indicated that "as the mortgagees have a possessory interest in those rents and not an absolute ownership interest, the rents are property of the estate. Therefore, this court holds that in these cases, the assignment of rent clauses in the mortgage documents merely create an additional security interest in those rents. As such, the rents are properly characterized as property of the estate of the various debtors' bankruptcy estates."

³ Ohio itself has adopted the "lien theory" of mortgages whereby a "court of equity looks to the real character of the transaction as security, and the mortgagor as the owner of the property." In re Miller, 151 B.R. 800, 803 (Bankr. N.D. Ohio 1992) citing Hunter Savings Association v. Georgetown of Kettering, LTD, 14 B.R. 72, 80 (Bankr. S.D. Ohio 1981). The rulings in those cases are consistent with the majority of cases that consider language in a security agreement granting a mortgagee an alleged absolute assignment of rents have found the true nature of the mortgagee's interest to be no more than security, even in states following the "title theory" of mortgages. See In re Guardian Realty Group, LLC, 205 B.R. 1 (Bankr. D.D.C. 1997).

C. The Nature of the Debtors' Rights and Interests in and to the Rents

20. Notwithstanding any assignment of rent provisions in the Loan Agreements, the Debtor asserts that it has the right to use the Gross Rents generated from the rental units in the ordinary course of its business operations and in accordance with the Budget. Case law adequately supports the Debtor's position. See Cardinal, 118 B.R. 971; Willow Wood, 114 B.R. 138.

21. In In re Willow Wood, 114 B.R. 138 at 143, the bankruptcy court stated that the lender's assignment of rent liens "were not contemplated or intended to require application of the gross rents to reduce debt under the various promissory notes[,]" and that "[t]he [Lender] must have known that some portion of the gross rents would be required to keep the Property operating." Accordingly, the Bankruptcy Court for the Southern District of Ohio held that the lender's "interest in assigned rents effectively extends only to net rents after payment of ordinary, necessary expenses required to maintain and operate the Property to preserve its value." Willow Wood, 114 B.R. 138 at 143. As stated by the Cardinal court, "[s]uch expenditures not only permit the reorganizational process to proceed, but also preserve the value of the Lenders' allowed secured claim." Cardinal, 118 B.R. 971 at 981.

22. Although the Prepetition Lenders may claim a security interest in the Gross Rents, those asserted interests do not preclude the Debtor's use of postpetition rents in the ordinary course of business, as the Prepetition Lenders certainly knew that the respective loans at issue were to an entity or entities whose main assets are income producing real estate, and that use of the Gross Rents would be required to keep the property operating. As a result, the ability of the Debtor to use of Gross Rents, as proposed herein, should not only be allowed, but should be expected by the Prepetition Lenders under these circumstances. Indeed, maintaining high occupancy rates is better for the Prepetition Lenders.

23. The Budget sets forth the Debtor's ordinary and necessary operating expenses over the 13 weeks. The Debtor then allocates such expenses on a pro rata basis in accordance with the number of rental units that service each loan portfolio. The Gross Rents will be used pay for the following ordinary and necessary expenses: (a) utilities, equipment leases, property insurance and similar expenses necessary to operate the property; (b) administration of the properties; (c) ordinary and necessary repair and maintenance expenses; (d) ordinary advertising and marketing expenses; (e) real estate taxes and governmental charges accruing after the bankruptcy filing and attributed to the property; (f) professional fees; and (g) other expenses associated with the upkeep and maintenance of common areas. All funds remaining after payment of expenses are then used to pay a Prepetition Lenders' monthly interest, with the balance (if any) accruing in a cash collateral account.

D. The Prepetition Lenders' Security Interests Are Adequately Protected

24. Section 363 of the Bankruptcy Code and Bankruptcy Rule 4001(b) authorize the Court to order the Debtor to use Cash Collateral on an interim basis. As set forth herein, and as will be demonstrated at the hearing on this Motion, the interests of the Prepetition Lenders in the Cash Collateral will be adequately protected.

25. Pursuant to sections 363(c)(2)(A) and 363(c)(2)(B) of the Bankruptcy Code, a debtor in possession may use cash collateral if (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorized such use, sale, or lease in accordance with the provisions of this section.

26. Additionally, section 363(e) provides that, on request of an entity that has an interest in cash collateral to be used, the court may condition such use as is necessary to provide adequate protection of such interest. Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens,

and other forms of relief. See 11 U.S.C. § 361. What constitutes adequate protection must be decided on a case-by-case basis. See Mbank Dallas, N.A. v. O'Connor (In re O'Connor), 808 F.2d 1393, 1396 (10th Cir. 1987); In re Martin, 761 F.2d 472 (8th Cir. 1985); see also, S. Rep. No. 95-989, 95th Cong., 2d Sess. 54 (1978). The focus of the requirement is to protect a secured creditor from diminution in the value of its collateral during the use period. See In re Gasel Transp. Lines, Inc., 326 B.R. 683, 692 (6th Cir. B.A.P. 2005); Matter of Kain, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); Delbridge v. Production Credit Association and Federal Land Bank (In re Delbridge), 104 B.R. 824 (E.D. Mich. 1989).

27. The test for determining what constitutes adequate protection is “whether the secured party’s interest is protected from diminution or decrease as a result of the proposed use of cash collateral.” In re Carbone Companies, Inc., 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) citing Gasel Transp. Lines, 326 B.R. 683. In other words, if a debtor’s proposed protections adequately preserve the creditor’s interest in the collateral as it existed on the petition date, then that creditor is adequately protected.

E. Courts Consistently Hold that Adequate Protection Can Take Various Forms

28. Adequate protection is typically established by demonstrating that cash is being used to maintain and enhance the value of the underlying income producing property in which the creditor also usually holds a security interest. Other factors are also considered, such as whether or not there is equity in the property, whether the property is declining in value, and whether or not postpetition payments due the creditor are current. See In re The Atrium Development Company, 159 B.R. 464, 471 (Bankr. E.D. Va. 1993).

29. Section 361 of the Bankruptcy Code provides that periodic cash payments, replacement liens, or relief constituting the “indubitable equivalent” of the creditor’s interest may provide adequate protection. See In re Potvin Lumber Company, Inc., 24 B.R. 54 (Bankr.

D. Vt. 1982) (ordering that the Debtors could use cash collateral, and finding that the bank was adequately protected where the total value of the Debtors' personal property exceeded the bank's indebtedness); see also, In re Country Commons Associates, 149 B.R. 109 (Bankr. E.D. Mich. 1992); In re Resolution Trust Company v. Swedeland Development Group, Inc. (In re Swedeland Development Group, Inc.), 16 F.3d 552, 564 (3d Cir. 1995).

30. The Debtor believes that in many instances the Prepetition Lenders are either adequately collateralized or, in some instances, over-collateralized (i.e., the existence of an equity cushion), or undersecured as in the case of Ronald Berry. Out of an abundance of caution, however, and to ensure that the Prepetition Lenders are adequately protected against any diminution in the value of the Prepetition Collateral as a result of Debtor's use of Cash Collateral during the Interim Period, the Debtor has proposed to provide, on a lender-by-lender basis, multiple forms of adequate protection, including: (i) periodic monthly interest payments to each Prepetition Lender; (ii) replacement liens in the same validity, extent and priority as existed prepetition, but only to the extent that Cash Collateral is actually used by the Debtor; (iii) establishing a Net Rent cash reserve⁴; and (iv) periodic financial reporting.

31. Finally, each Prepetition Lender's asserted secured position in and to the respective rental units and Cash Collateral is also adequately protected by and through the payment of operating expenses, maintenance, insurance and preservation of the residential units, and the fact that only Gross Rents will be used by the Debtor.

⁴ The Debtors are opening new debtor in possession bank accounts in accordance with the "Operating Instructions and Reporting Requirement for Chapter 11 Cases" issued by the Office of the United States Trustee.

F. Interim Approval Should Be Granted

32. In order to protect the assets that comprise its estate and to propose a plan of reorganization consistent with the intent and purpose of chapter 11 of the Bankruptcy Code, the Debtor needs a source of cash.

33. Accordingly, the Debtor requests authority to utilize Cash Collateral on an interim basis. All such funds shall be utilized for costs and expenses incurred in the administration of the Debtor's chapter 11 case, and shall be utilized for such other costs and the Debtor believes that in some instances interest only payments will be significantly more than what is required to adequately protect certain Prepetition Lenders against any diminution in the value of their respective Cash Collateral. The Debtor expressly reserves the right to adjust the proposed adequate protection payments in connection with a final order authorizing use of cash collateral. Permitting the Debtor to utilize Cash Collateral will have the dual effect of protecting the value of the Collateral, as well as providing the Debtor with the funds necessary to administer its chapter 11 case. The law fully contemplates a flexible position in evaluating the Debtor's ability to provide adequate protection.

34. The relief requested herein is without prejudice to any further requests by the Debtor to use the Cash Collateral, and the Debtor reserves all of its rights with respect thereto.

35. Bankruptcy Rule 4001(b) provides that if, as here, a debtor seeks to use cash collateral during the 15-day period following the filing of a motion requesting authorization to use such cash collateral, the court may authorize the use of "only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending final hearing." Fed. R. Bankr. P. 4001(b)(2). After the 14-day period, the request for financing is not limited to those amounts necessary to prevent harm of the debtor's business.

36. It is critical to the success of the chapter 11 case that the Debtor be able to use Cash Collateral – including the Gross Rents – immediately. The Debtor will incur ongoing expenses in the ordinary course of business, which it will not be able to pay absent use of cash. Many of these expenses, such as repair and maintenance, insurance and utilities will come due before a final hearing can be held. Any delay in paying such expenses could have a material adverse effect on the Debtor’s business and ability to reorganize by potentially increasing vacancies, making it more difficult to fill vacancies and increasing administrative claims against the estate. The Debtor believes that it will suffer immediate and irreparable harm in the absence of an interim order.

IV. NO PRIOR REQUEST

37. No prior request for the relief sought in this Motion has been made to this or any other court.

V. NOTICE

38. No creditors’ committee has been appointed in this chapter 11 case. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the United States Trustee; (b) the Debtor’s 20 largest unsecured creditors, as identified in its chapter 11 petition; (c) the Prepetition Lenders; and (d) the District Director of Internal Revenue. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

WHEREFORE, the Debtor respectfully requests that the Court: (i) enter an order, substantially in the form attached hereto as Exhibit C, authorizing the Debtor’s immediate use of Cash Collateral in an amount sufficient to avoid immediate and irreparable harm to the Debtor, and scheduling a final hearing on this Motion; (ii) after a final hearing, enter a final order authorizing the use of Cash Collateral in the ordinary course of the Debtor’s business in

accordance with the Budget; and (iii) grant such other and further relief as the Court may deem proper.

Respectfully submitted,

/s/ Anthony J. DeGirolamo

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PROPOSED COUNSEL FOR
THE DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT A

		1/24/2005	10/2/2006	11/2/2007	8/1/2011					
PPN	Property Address	Zions Current Balance: \$272,979.25	Huntington National Bank Successor to FirstMerit Bank Current Balance: \$2,593.00	Ronald W. Berry Current Balance: \$49,700.00	Westfield Bank FSB fka Western Reserve Current Balance: \$692,566.64	Summit County Treasurer	Monthly Rents	Keep or Sell	Caetta's Anticipated Sale Amount	Caetta's Anticipated Sale Time Frame
6702556	767-769 N Main St, Akron OH 44310					\$2,517.94		Keep		
6702561	765 N Main St, Akron OH 44310					\$2,339.43		Keep		
0218601	2655 Oakwood Dr, Cuyahoga Falls OH 44221				X	\$4,935.94	\$1,825.00	Sell	\$150,000.00	4 months
6712368	771 N Main St, Akron OH 44310			X		\$4,291.12		Sell	\$20,000.00	1 year
6724116	929 N Main St, Akron OH 44310				X	\$4,140.88	\$625.00	Sell	\$45,000.00	7 months
6734169	Thayer St, Akron OH 44310					\$1,037.15		Sell	\$2,500.00	1 year
6739978	N Main St, Akron OH 44310	X			X	\$430.33		Keep		
6740110	837 N Main St, Akron OH 44310					\$3,565.02	\$1,290.00	Sell	\$45,000.00	7 months
6801365	Thayer St, Akron OH 44310					\$1,037.15		Sell	\$2,500.00	1 year
6801821	786 N Main St, Akron OH 44310	X			X	\$161.77		Keep		
6806638	132 Cuyahoga Falls Ave, Akron OH 44310	X			X	\$629.69		Keep		
6806639	788-798 N Main St, Akron OH 44310	X	X		X	\$11,106.63	\$12,815.70	Keep		
6813237	818 Berwin St, Akron OH 44310				X	\$2,174.94	\$750.00	Sell	\$45,000.00	7 months
6826917	Cuyahoga Falls Ave, Akron OH 44310	X			X	\$628.87		Keep		
6826918	772 & 776 N Main St, Akron OH 44310				X	\$11,966.11	\$4,680.00	Keep		
6837491	210-212 E Cuyahoga Falls Ave, Akron OH 44310 Parcel includes 824 Thayer St, Akron				X	\$4,120.95	\$1,686.65	Sell	\$75,000.00	8 months
6843099	116 & 116 1/2 E Cuyahoga Falls Ave, Akron OH 44310					\$3,783.84	\$1,120.00	Sell	\$75,000.00	1 year
						\$58,867.76	\$24,792.35		\$460,000.00	

EXHIBIT B

90 Day Monthly Cash Flow

Temple Square Properties LLC

November 1, 2016

	November	December	January
1. Cash On Hand			
[Beginning of month]	\$500.00	\$2,110.00	\$2,620.00
2. Cash Receipts			
Rent Income (Mortgaged Properties)	\$22,340.00	\$22,340.00	\$22,340.00
Rent Income (Unencumbered Properties)	\$2,410.00	\$2,410.00	\$2,410.00
3. Total Cash Receipts			
	\$24,750.00	\$24,750.00	\$24,750.00
4. Total Cash Available			
	\$25,250.00	\$26,860.00	\$27,370.00
5. Cash Paid Out			
Auto/Truck Expenses	\$ 300.00	\$ 300.00	\$ 300.00
Accounting Expense	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
Bank Charges	\$ 50.00	\$ 50.00	\$ 50.00
Chapter 11 Fees	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00
Insurance	\$ 1,900.00	\$ 1,900.00	\$ 1,900.00
Interest-Notes/Mortgages-Zion	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00
interest-Notes/Mortgages-Westfield	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00
Legal Fees	\$ 500.00	\$ 500.00	\$ 500.00
Office Expenses	\$ 100.00	\$ 100.00	\$ 100.00
Utilities/Electric	\$ 1,300.00	\$ 1,300.00	\$ 1,700.00
Utilities/Gas	\$ 600.00	\$ 600.00	\$ 1,000.00
Utilities/Cable	\$ 800.00	\$ 800.00	\$ 800.00
Utilities/Water and Sewer	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
Accrued Real Estate Taxes	\$ 4,140.00	\$ 4,140.00	\$ 4,140.00
Trash Removal	\$ 500.00	\$ 500.00	\$ 500.00
Telephone Expense	\$ 50.00	\$ 50.00	\$ 50.00
Outside Services-Building Management	\$ 2,900.00	\$ 4,000.00	\$ 2,900.00
Repairs Expense	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
(r) Subtotal	\$23,140.00	\$24,240.00	\$23,940.00
6. Total Cash Paid Out			
	\$23,140.00	\$24,240.00	\$23,940.00
7. Cash Position			
	\$2,110.00	\$2,620.00	\$3,430.00

EXPLANATION OF DATA

1. Cash On Hand	
[Beginning of month]	Cash on hand, Cash Position Previous Month
2. Cash Receipts	
(a) Cash Sales	All cash sales. Credit sales only if cash is actually received.
(b) Collections from Credit Accounts	Amount to be expected from all credit accounts.
(c) Loan or Other Cash Injection	Indicate here all cash injections not shown in 2(a) or 2(b) above.
3. Total Cash Receipts	
[2a + 2b + 2c=3]	Self-explanatory
4. Total Cash Available	
[Before cash out] (1 + 3)	Self-explanatory
5. Cash Paid Out	Real Estate Only
(a) Rent	Merchandise for resale or for use in product
(b) Gross Wages (excludes withdrawal)	Base pay plus overtime
(c) Payroll Expenses (Taxes, etc.)	Paid vacations, paid sick leave, health insurance, unemployment insurance, other benefits
(d) Utilities	Water, Heat, Light, Power
(e) Supplies (Office and operating)	Items purchased for use in the business [not for resale]
(f) Repairs and Maintenance	Include periodic large expenditures such as painting, decorating, repair of broken equipment
(g) Advertising	This amount should be adequate to maintain sales volume – include telephone book yellow page cost
(h) Auto, Delivery, and Travel	If personal vehicle is used, charge in this column – include parking
(i) Accounting and Legal	Outside services, including, for example, bookkeeping and tax return preparation
(j) Purchases (Merchandise)	Merchandise for resale or for use in product
(k) Telephone	Self-explanatory
(l) Outside Services	This could include outside labor and/or materials for specialized overflow work, including subcontracting
(m) Insurance	Coverages on business property and products, e.g., fire, liability; also workers' compensation, fidelity, etc. Exclude "executive life [include in "5w"]
(n) Taxes (Real Estate, etc.)	Plus inventory tax – sales tax – excise tax, if applicable
(o) Interest	Remember to add interest on loan as it is injected [See 2(c) above]
(p) Other Expenses [Specify each]	Unexpected expenditures may be included here as a safety factor
	Equipment expenses during the month should be included here [Non-capital equipment]
	When equipment is rented or leased, record payments here
(q) Miscellaneous [Unspecified]	Small expenditures for which separate accounts would not be practical
(r) Subtotal	This subtotal indicates cash out for operating costs
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(t) Capital Purchases [Specify]	Non-expensed [depreciable] expenditures such as equipment, building, vehicle purchases, and leasehold improvements
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(v) Reserve and/or Escrow [Specify]	Example: insurance, tax, or equipment escrow to reduce impact of large periodic payments
(w) Owner's Withdrawal	Should include payment for such things as owner's income tax, social security, health insurance, "executive" life insurance premiums, etc.
6. Total Cash Paid Out	
[Total 5a thru 5w]	Self-explanatory
7. Cash Position	
[End of month] (4 minus 6)	Enter this amount in (1) Cash on Hand following month – See "A" of "Analysis"
Essential Operating Data	This is basic information necessary for proper planning and for proper cash flow projection. In conjunction with this data, the cash flow can be evolved and shown in the above form.
[Non-cash flow information]	
A. Sales Volume [Dollars]	This is a very important figure and should be estimated carefully, taking into account size of facility and employee output as well as realistic anticipated sales [Actual sales performed – not orders received]
B. Accounts Receivable [End of Month]	Previous unpaid credit sales plus current month's credit sales, less amounts received current month [deduct "C" below]
C. Bad Debt [End of Month]	Bad debts should be subtracted from (B) in the month anticipated
D. Inventory on Hand [End of Month]	Last month's inventory plus merchandise received and/or manufactured current month minus amount sold current month
E. Accounts Payable [End of Month]	Previous month's payable plus current month's payable minus amount paid during month
F. Depreciation	Established by your accountant, or value of all your equipment divided by useful life [in months] as allowed by Internal Revenue Service

EXHIBIT C

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION, AKRON**

-----X
In re: : Case No. 16-52568
: :
TEMPLE SQUARE PROPERTIES, LLC : Chapter 11
: :
: Judge Alan Koschik
Debtor and :
Debtor-in-Possession. :
: :
(EIN 84-1677835) :
-----X

**INTERIM ORDER (A) AUTHORIZING THE DEBTOR TO (I) USE CASH
COLLATERAL ON PURSUANT TO 11 U.S.C. § 363 AND (II) PROVIDE ADEQUATE
PROTECTION PURSUANT TO 11 U.S.C. §§ 361 AND 363 AND (B) SCHEDULING
A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001**

This matter coming before the Court on Debtor’s Motion for an Order (A) Authorizing the Debtor’s to Use Cash Collateral on an Interim and Final Basis Pursuant to 11 U.S.C. § 363 and (II) Provide Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363, and (B) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001, Docket No. 7 (the “Motion”), filed by the above-captioned debtor and debtor in possession (collectively, the “Debtor”); the Court having

reviewed the Motion, all of the proceedings before the Court, and the record at the interim hearing (the “Hearing”), and after due deliberation and sufficient cause appearing therefore;

THE COURT FINDS AND CONCLUDES THAT:

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and reference from the District Court for the Northern District of Ohio pursuant to 28 U.S.C. § 157.

B. Venue of the Debtor’s chapter 11 case in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice of the Motion and the Hearing was sufficient under the circumstances, for the purposes of sections 102(1), 105, 361, 363, 541 and 552 of the Bankruptcy Code and Rules 2002, 4001, 9007, 9013 and 9014 of the Federal Rules of Bankruptcy Procedure and other applicable law and rules of the Court.

D. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtor has retained possession of its assets and is authorized to continue the operations and management of its business as debtor in possession.

E. The legal and factual bases set forth in the Motion establish just cause for the relief granted herein.

F. As of the Petition Date, the Debtor and the Prepetition Lenders¹ are parties to various loan agreements (collectively, the “Loan Agreements”), respectively.

G. The Prepetition Lenders claim to be secured by security interests in and liens on the Debtor’s real estate, and in certain instances, the rents generated by that real estate (collectively, the “Prepetition Collateral”).

¹ Capitalized terms used, but not otherwise defined herein, shall have the meanings given to them in the Motion.

H. In the Motion, the Debtor requested authority to use Cash Collateral for payment of ordinary and necessary expenses. Attached to the Motion was a proposed 13-week budget outlining anticipated and estimated ordinary course expenses.

I. The rents in the hands of Debtor as of the Petition Date and postpetition rents generated from the operation of the Debtor's business are property of the estate pursuant to section 541(a)(6) of the Bankruptcy Code.

J. The Debtor asserts that it has the right to use Cash Collateral, including the Gross Rents, in the ordinary course of its business operations and in accordance with the Budget, which assertions certain of the Prepetition Lenders dispute.

K. The Debtor asserts that it is critical to the continued success of this chapter 11 case that the Debtor is able to use Cash Collateral, including but not limited to the Gross Rents, on the terms as set forth in this Interim Order. Any delay in paying the expenses authorized hereby, will have a material adverse effect on the Debtor's businesses and ability to reorganize by potentially increasing vacancies, making it more difficult to fill vacancies, increasing administrative claims against the estates. The Debtor will suffer immediate and irreparable harm in the absence of an Interim Order approving the use of Cash Collateral on the terms authorized hereby.

L. The Debtor asserts that the use of the Prepetition Lenders' Cash Collateral is necessary to the continued viability of the Debtor's business.

M. The Debtor has proposed to provide, on a lender-by-lender basis, some combination of adequate protection, including: (i) periodic monthly payments to each Prepetition Lender; (ii) replacement liens in the same validity, extent and priority as existed prepetition, but only to the extent that Cash Collateral is actually used by the Debtor;

(iii) establishment of a Net Rent cash reserve²; and (iv) periodic financial reporting (as further defined in a final order).

N. The Debtor has requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). Good and sufficient cause has been shown for the entry of this Interim Order. Among other things, entry of this Interim Order is in the best interests of the Debtor, its estate, and its creditors because it will enable the Debtor to (i) continue the orderly operation of its business and avoid an immediate shutdown of its business; (ii) meet its obligations for necessary ordinary course expenditures, and other operating expenses; (iii) pay necessary fees and professional expenses under the Bankruptcy Code and make payments authorized pursuant to other orders entered by this Court; (iv) retain tenant, and vendor confidence by demonstrating that it has the financial ability to maintain normal operations; and (v) maintain adequate cash resources customary and necessary for a business of its size and nature, thereby avoiding immediate and irreparable harm to the Debtor's estate.

O. Attached to this Interim Order as Exhibit 1 is the Budget which, in part, covers the period from the Petition Date through the date of the Final Hearing (the "Interim Period"), and which sets forth certain operating expenses that the Debtor proposes to pay during such Interim Period (the "Budget"). The Court finds and determines that the amounts the Debtor proposes to pay under the Budget during the Interim Period are necessary to avoid immediate and irreparable harm to the Debtor's estate. It is therefore appropriate to authorize the Debtor to expend Cash Collateral during the Interim Period (and subject to the other terms and provisions of this Interim Order), for the purposes enumerated in the Budget.

² The Debtor is opening new debtor in possession bank accounts in accordance with the "Operating Instructions and Reporting Requirement for Chapter 11 Cases" issued by the Office of the United States Trustee.

P. The Debtor has been unable, and lacks the ability, to obtain unsecured credit, and this Court may authorize the Debtor's use of Cash Collateral, subject to certain constraints, pursuant to section 363 of the Bankruptcy Code and Rule 4001 of the Bankruptcy Rules.

Q. The Debtor asserts that it has the right to use the Cash Collateral (including, but not limited to, the Gross Rents) in the ordinary course of business, as such use is required to keep the business operating, which certain of the Prepetition Lenders dispute.

R. The record at the Hearing substantiates the Debtor's request for the payments and other expenditures to be made pursuant to the Budget attached hereto as Exhibit 1 and in accordance with the terms of this Interim Order.

IT IS HEREBY ORDERED THAT:

1. The Motion shall be, and hereby is, GRANTED, on an interim basis, subject to the terms and conditions set forth herein, subject to a full reservation of rights of the Prepetition Lenders to object to the Motion to the use of Cash Collateral by the Debtor, or to the Budget prior to the Final Hearing (as defined below).

2. The Budget attached as Exhibit 1 to this Interim Order, shall be, and hereby is, APPROVED for the Interim Period only.

3. During the Interim Period, the Debtor may use Cash Collateral, as limited by the conditions hereinafter set forth, pursuant to the Budget, or as may otherwise be agreed from time to time after the entry of this Interim Order by the Debtor and the Prepetition Lenders, in writing.

4. The Debtor shall limit its use of Cash Collateral hereunder to the amounts and for the purposes set forth in the Budget. The total amount of Cash Collateral used by the Debtor pursuant to this Interim Order shall not exceed, on a cumulative basis from the date of this Interim Order, 110% of the amounts shown on the Budget for particular line items and for

aggregate expenditures through the end of each applicable period until the Final Hearing (as defined below). The Debtor shall provide the Prepetition Lenders, the United States Trustee, and any official committee appointed in this case with such information as and when any of the Prepetition Lenders, the United States Trustee or a committee may reasonably request, to confirm that the categories and amounts of expenses that the Debtor proposes to pay or that the Debtor has paid are consistent with, and are amounts of such expenses, for and during the applicable time periods set forth in the Budget. The Debtor shall not use or attempt to use any of the Cash Collateral, except in accordance with the terms of this Interim Order.

5. With regard to the use of Cash Collateral, including but not limited to the Gross Rents, as permitted hereby, the Prepetition Lenders are adequately protected during the Interim Period pursuant to 11 U.S.C. § 361 by and through the (i) maintenance and continuation of the Prepetition Lenders' liens upon Gross Rents existing at the Petition Date or that are generated post-petition; (ii) monthly payments; (iii) establishment of the Net Rent account and the deposit of Net Rents therein; (iv) replacement liens in same validity, extent and priority as existed prepetition; and (iv) periodic financial reporting.

6. Notwithstanding the liens and security interests recognized or granted to Prepetition Lenders, Cash Collateral may be used by Debtor to pay the statutory fees of the United States Trustee pursuant to 28 U.S.C. § 1930(a) if funds are not available from the estate to pay the fees.

7. This matter is set for a final hearing at _____ a.m. (prevailing Eastern Time) on _____, 2016 (the "Final Hearing"), in the courtroom usually occupied by this Court in the John F. Seiberling Federal Building and U.S. Courthouse, 2 South Main Street, Akron, Ohio 44308, at which time any party in interest who has timely objected may appear and state its

objections, if any, to the use of Cash Collateral by the Debtor. The Debtor shall, within 1 business day, mail copies of this Interim Order to the following parties: (a) the Office of the United States Trustee; (b) the Prepetition Lenders (or their counsel); (c) counsel for any official committee appointed in the Debtor's chapter 11 case; (d) the Debtor's list of 20 largest unsecured creditors; (e) Director of Internal Revenue; (f) the U.S. Department of Housing and Urban Development; and (g) all parties in interest that have filed notices of appearance in the Debtor's chapter 11 case. Objections shall be in writing and shall be filed with the Clerk of the Bankruptcy Court, with a copy served upon Anthony J. DeGirolamo, Esq., 3930 Fulton Drive NW, Suite 100B, Canton, Ohio 44718, so that such objections are received on or before 4:00 p.m. (prevailing Eastern Time) on _____, 2016; any objections by creditors or other parties-in-interest to any of the provisions of this Interim Order shall be deemed waived unless filed and received in accordance with the Interim Order. Except as otherwise provided in this paragraph, the terms of this Interim Order shall be valid and binding upon the Debtor, the Prepetition Lenders, all creditors of the Debtor, and all other parties-in-interest from and after the date of the entry of this Interim Order by this Court.

8. In the event this Court modifies any of the provisions of this Interim Order following such further hearing, such modifications shall not affect the rights and priorities of the Prepetition Lenders pursuant to this Interim Order with respect to the Cash Collateral, and this Interim Order shall remain in full force and effect except as specifically amended or modified at such Final Hearing until conclusion of the Final Hearing, at which time this Interim Order and the Debtor's use of the Prepetition Lenders' Cash Collateral shall terminate without further Order of the Court..

###

PREPARED BY:

/s/ Anthony J. DeGirolamo
Anthony J. DeGirolamo (0059265)
3930 Fulton Drive NW, Suite 100B
Canton, Ohio 44718
Telephone: 330-305-9700
Facsimile: 330-305-9713
Email: ajdlaw@sbcglobal.net

PROPOSED COUNSEL FOR THE
DEBTOR AND DEBTOR IN
POSSESSION

90 Day Monthly Cash Flow

Temple Square Properties LLC

November 1, 2016

	November	December	January
1. Cash On Hand			
[Beginning of month]	\$500.00	\$2,110.00	\$2,620.00
2. Cash Receipts			
Rent Income (Mortgaged Properties)	\$22,340.00	\$22,340.00	\$22,340.00
Rent Income (Unencumbered Properties)	\$2,410.00	\$2,410.00	\$2,410.00
3. Total Cash Receipts			
	\$24,750.00	\$24,750.00	\$24,750.00
4. Total Cash Available			
	\$25,250.00	\$26,860.00	\$27,370.00
5. Cash Paid Out			
Auto/Truck Expenses	\$ 300.00	\$ 300.00	\$ 300.00
Accounting Expense	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
Bank Charges	\$ 50.00	\$ 50.00	\$ 50.00
Chapter 11 Fees	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00
Insurance	\$ 1,900.00	\$ 1,900.00	\$ 1,900.00
Interest-Notes/Mortgages-Zion	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00
interest-Notes/Mortgages-Westfield	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00
Legal Fees	\$ 500.00	\$ 500.00	\$ 500.00
Office Expenses	\$ 100.00	\$ 100.00	\$ 100.00
Utilities/Electric	\$ 1,300.00	\$ 1,300.00	\$ 1,700.00
Utilities/Gas	\$ 600.00	\$ 600.00	\$ 1,000.00
Utilities/Cable	\$ 800.00	\$ 800.00	\$ 800.00
Utilities/Water and Sewer	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
Accrued Real Estate Taxes	\$ 4,140.00	\$ 4,140.00	\$ 4,140.00
Trash Removal	\$ 500.00	\$ 500.00	\$ 500.00
Telephone Expense	\$ 50.00	\$ 50.00	\$ 50.00
Outside Services-Building Management	\$ 2,900.00	\$ 4,000.00	\$ 2,900.00
Repairs Expense	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
(r) Subtotal	\$23,140.00	\$24,240.00	\$23,940.00
6. Total Cash Paid Out			
	\$23,140.00	\$24,240.00	\$23,940.00
7. Cash Position			
	\$2,110.00	\$2,620.00	\$3,430.00

EXPLANATION OF DATA

1. Cash On Hand	
[Beginning of month]	Cash on hand, Cash Position Previous Month
2. Cash Receipts	
(a) Cash Sales	All cash sales. Credit sales only if cash is actually received.
(b) Collections from Credit Accounts	Amount to be expected from all credit accounts.
(c) Loan or Other Cash Injection	Indicate here all cash injections not shown in 2(a) or 2(b) above.
3. Total Cash Receipts	
[2a + 2b + 2c=3]	Self-explanatory
4. Total Cash Available	
[Before cash out] (1 + 3)	Self-explanatory
5. Cash Paid Out	Real Estate Only
(a) Rent	Merchandise for resale or for use in product
(b) Gross Wages (excludes withdrawal)	Base pay plus overtime
(c) Payroll Expenses (Taxes, etc.)	Paid vacations, paid sick leave, health insurance, unemployment insurance, other benefits
(d) Utilities	Water, Heat, Light, Power
(e) Supplies (Office and operating)	Items purchased for use in the business [not for resale]
(f) Repairs and Maintenance	Include periodic large expenditures such as painting, decorating, repair of broken equipment
(g) Advertising	This amount should be adequate to maintain sales volume – include telephone book yellow page cost
(h) Auto, Delivery, and Travel	If personal vehicle is used, charge in this column – include parking
(i) Accounting and Legal	Outside services, including, for example, bookkeeping and tax return preparation
(j) Purchases (Merchandise)	Merchandise for resale or for use in product
(k) Telephone	Self-explanatory
(l) Outside Services	This could include outside labor and/or materials for specialized overflow work, including subcontracting
(m) Insurance	Coverages on business property and products, e.g., fire, liability; also workers' compensation, fidelity, etc. Exclude "executive life [include in "5w"]
(n) Taxes (Real Estate, etc.)	Plus inventory tax – sales tax – excise tax, if applicable
(o) Interest	Remember to add interest on loan as it is injected [See 2(c) above]
(p) Other Expenses [Specify each]	Unexpected expenditures may be included here as a safety factor
	Equipment expenses during the month should be included here [Non-capital equipment]
	When equipment is rented or leased, record payments here
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