

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
LEXINGTON DIVISION

IN RE:

WHITESBURG REALTY, LLC

DEBTOR IN POSSESSION

CASE NO: 16-50721  
CHAPTER 11

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**ORDER AUTHORIZING CONTINUED USE OF CASH COLLATERAL**

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The Debtor's Motion for Order Authorizing Continued Use of Cash Collateral (the "Motion") having come before this Court, and it appearing that proper notice of the Motion was given, and the Court having reviewed the record and being otherwise sufficiently advised; and having considered same;

**IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Debtor's case and this Motion are proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A).

2. Notice of the Motion has been given via electronic and/or first-class U.S. mail, postage prepaid, as appropriate, to the United States Trustee and all Master Service List creditors. Under the circumstances, the specific relief requested in the Motion complies with the requirements of 11 U.S.C. § 102(1) and Fed.R.Bankr.P.2002 and 4001. Good cause has been shown for entry of this Order. The entry of this Order is in the best interests of the Debtor's creditors and the Estate. The terms of this Order, including the terms of the use of the Case Collateral hereunder, are fair under the circumstances.

3. Good cause has been shown for entry of this Order. The entry of this Order is in the

best interests of the Debtor's creditors and its Estate. The terms of this Order, including the terms of the use of the Cash Collateral<sup>1</sup> and the security interests, liens, rights, and priorities granted hereunder are fair under the circumstances.

4. Subject to the terms contained herein, the Debtor is hereby authorized to use Cash Collateral in accordance with this Order through December 31, 2016. The Debtor's budget attached to the Motion as Exhibit A is approved and incorporated herein by reference (the "Budget"). Further, the Debtor expressly agrees that there will be no distributions, payments, advances, or any other transfer from the Debtor to Jeffrey Ruttenberg, any relative of Jeffrey Ruttenberg, or any entity in which Jeffrey Ruttenberg has an ownership interest during the Debtor's bankruptcy unless expressly authorized by an Order of this Court.

5. There is expressly carved out of Cash Collateral the sums for United States Trustee fees and there shall be no carve-out for Debtor's legal counsel fees and expenses during the Budget period.

6. As additional adequate protection, for any diminution in the value of the Cash Collateral Creditor's interests in the Cash Collateral, pursuant to 11 U.S.C. § 361 and 363, the Cash Collateral Creditor is granted liens (the "Replacement Liens"), in postpetition rents (the Post-petition Collateral) generated by the Debtor's postpetition rental operations, subject only to any valid and enforceable, perfected, and non-avoidable liens of other secured creditors. As further adequate protection, the Debtor shall pay the Cash Collateral Creditor monthly adequate protection payments in the amount of \$15,000 on or before the last day of the month.

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning given to them in the Motion.

7. The Replacement Liens granted by this Order shall be deemed effective, valid and perfected as of the Petition Date without the necessity of the filing or lodging by or with any entity of any documents or instruments otherwise required to be filed or lodged under applicable non-bankruptcy law. This Order shall be deemed to be a security agreement for purposes of creation, attachment and perfection of the Replacement Liens on and the security interests in, to and against Postpetition Collateral.

8. The Replacement Liens granted to the Cash Collateral Creditor under this Order are in addition to, and not in lieu or substitution of, the rights, obligations, claims, security interests, and prepetition liens and priorities granted under the existing agreements between the parties.

9. As additional adequate protection, the Debtor shall continue to account for all cash use, and the proposed cash use as set forth in the Budget is being incurred primarily to preserve property of the Estate.

10. Nothing herein shall act as a judicial determination of the nature, extent, validity, or perfection status of the alleged liens of the Cash Collateral Creditor as it relates to the ability of any party, other than the Debtor, including but not limited to any creditors committee appointed in this case (or a Chapter 7 trustee in the event this case converts to Chapter 7), to challenge the alleged liens of the Cash Collateral Creditor.

11. The Replacement Liens specifically exclude all “Chapter 5” bankruptcy causes of action, including but not limited to excluding the granting of a lien on any claim or cause of action under 11 U.S.C. §§ 544, 545, 547, 548, 549, 553(b), 723(a) or 724(a).

12. The Replacement Liens shall be junior to the Debtor's obligation to pay United States Trustee Fees and shall be junior to allowed administrative expense claims in the event these case converts to a case under Chapter 7.

13. The Debtor is authorized and directed to execute and comply with the terms of this Order and is further authorized to use Cash Collateral under all of the terms and conditions provided in this Order.

Tendered by:

DELCOTTO LAW GROUP PLLC

/s/ Jamie L. Harris  
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COUNSEL FOR DEBTOR AND  
DEBTOR IN POSSESSION

**Pursuant to Local Rule 9022-1(b) Jamie L. Harris, Esq. shall cause a copy of this Order to be served on each of the non-ECF parties listed on the Master Service List and shall file with the Court a certificate of service of the Order upon such parties within seven (7) days hereof.**

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**The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.**



**Signed By:**  
**Gregory R. Schaaf**  
**Bankruptcy Judge**  
**Dated: Monday, December 05, 2016**  
**(grs)**