



**IT IS ORDERED as set forth below:**

**Date: February 27, 2017**

*Mary Grace Diehl*

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**Mary Grace Diehl  
U.S. Bankruptcy Court Judge**

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: ) CHAPTER 11  
 )  
B.C. GRAND, LLC, ) CASE NO. 17-50094-mgd  
 )  
Debtor. )

**FINAL CONSENT ORDER AUTHORIZING  
USE OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION**

B.C. Grand, LLC (“Debtor”) filed a *Motion for Authority to Use Cash Collateral on an Interim and Continuing Basis and to Determine and to Grant Adequate Protection* on January 25, 2017 [Docket No. 22] (the “Motion”). The Court held a hearing on the Motion on February 6, 2017 (the “Hearing”), and found good cause for entry of an Order granting relief requested in the Motion on an interim basis, including the lack of any objection to the Motion, and entered an *Order Authorizing Interim Use of Cash Collateral and Notice of Final Hearing* on February 15, 2017

[Docket No. 30] (the “Interim Cash Collateral Order”). The Interim Cash Collateral set a hearing for February 28, 2017 on Debtor’s request for continued authorization to utilize cash collateral (the “Final Hearing”), and no party in interest having objected thereto at the Final Hearing and those parties who have signed this Consent Order have consented hereto, wherefore it is hereby ORDERED as follows:

### **FINDINGS OF FACT**

The Court makes the following findings of fact (the “Findings of Fact”):

1. On January 2, 2017 (the “Petition Date”), Debtor filed a voluntary petition for relief under Chapter 11 of Title 11, Unites States Code (the “Bankruptcy Code”). Since the Petition Date, Debtor has operated as a debtor-in-possession. No creditors committee has been appointed in this case.

2. The Debtor owns certain real property consisting of a ten (10) story office building in downtown Atlanta, Georgia, located at 44 Broad Street, NW, Atlanta, Georgia 30303, which is commonly known as “The Grant Building” (also referred to herein as the “Property”).

3. The Property is leased to commercial tenants who generally make monthly rent payments to Debtor. Those rent payments may be considered as cash collateral (the “Cash Collateral”).

4. Debtor’s Motion identifies certain secured creditors who may assert an interest in the Cash Collateral, as follows:

- a. First Citizens Bank & Trust Company (“Lender”);
- b. The United States Small Business Administration (the “SBA”);
- c. The Atlanta Development Authority, as agent for the City of Atlanta, Georgia, a municipal corporation (“The Atlanta Development Authority”);

with Lender, the SBA, and The Atlanta Development Authority collectively referred to herein as the “Secured Lenders”).

5. Since the filing of the Motion, no individuals or entities have appeared in this Court to claim an interest in Cash Collateral other than the Secured Lenders. The Court, however, is presently not required to make, or making, any finding of relative priority of security interests.

6. Orderly continuation of Debtor’s business is dependent upon its ability to use the Cash Collateral, and Debtor is without sufficient means to continue operations without the use of the Cash Collateral. Thus, the relief granted in this Order is necessary, essential, and appropriate for the preservation of Debtor’s business and the estate’s assets.

7. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334, this matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (M), and (O) involving matters under, *inter alia*, 11 U.S.C. § 363, and venue is proper in this Court pursuant to 28 U.S.C. § 1409.

8. Adequate notice of the Motion and hearing with respect thereto has been given, including pursuant the Federal Rules of Bankruptcy Procedure 2002 & 9006(c) and 11 U.S.C. § 102.

9. Good and sufficient cause has been shown to justify the granting of the relief requested herein.

NOW, THEREFORE, this Court ORDERS as follows:

1. Debtor is granted the limited use of Cash Collateral as follows:
  - a. Debtor is authorized to use Cash Collateral for the purposes and in the amounts set forth in the budget attached hereto (or any other budget agreed to between the Debtor and Lender and filed with the Court), not to exceed a variance of ten percent (10%) within a

month for all expenses as to disbursements for any single line item of more than \$500 and a variance of twenty percent (20%) within a month for all expenses as to disbursements for any single line item of \$500 or less.

b. The term of this interim Order shall be from entry of this Order until superseded by any other order of this Court, any confirmed Plan of Reorganization, or subject to earlier termination for violations of this Order as provided for herein (the "Use Period"). Debtor's ability to use Cash Collateral hereunder shall terminate at 12:00 midnight on the final day of the Use Period designated immediately above at which time the Debtor shall cease use of Cash Collateral, unless extended by written Order of the Court, or agreement of the Lender, and subject to earlier termination for violations of this Order as provided for herein.

c. All Cash Collateral that Debtor receives after entry of this Order, and all Cash Collateral that Debtor has received prior to entry of this Order which has not been applied to expenses of the Property, shall be deposited in Debtor's DIP account at Wells Fargo on which solely Charles Johnson, Sr. and Linda Miranda may authorize withdrawal of funds. No funds shall be withdrawn by Debtor from the DIP Account except as expressly provided herein, or by written consent of Lender or further Court order.

d. Under no circumstance shall Debtor pay any of the Cash Collateral received since the Petition Date to any attorney, accountant, affiliate, insider, equity holder, or beneficial owner of Debtor or any affiliate or relative of any principal of the Debtor without prior written consent of Lender or upon motion and order of the Court, except as may be set forth on the Budget accompanying this Order.

2. As a condition of Debtor's use of Cash Collateral, the following adequate protection is hereby granted:

a. Secured Lenders shall retain their pre-petition liens in the Property to the same extent as existed on the Petition Date and prior to the Petition Date;

b. To the extent of the validity and priority of the lien granted to Secured Lenders prepetition, Debtor is authorized to grant and by this Order shall be deemed to have granted to Lender a continuing, additional replacement lien and security interest in and to all of the now existing or hereafter arising or after-acquired assets of Debtor to the same extent and priority as Lender's pre-petition lien; provided, however, that by consenting hereto, Lender does not admit that the adequate protection liens provided for in this Order are sufficient to protect its interest in its collateral or Cash Collateral. Nothing herein shall be deemed a waiver or modification of the deeds to secure debt or liens of record held by Secured Lenders. The adequate protection liens shall not extend to the proceeds of any avoidance actions received by Debtor or the estate pursuant to §§ 544, 547, 548, 549 or 550 of the Bankruptcy Code ("Avoidance Actions"). No financing statement or other filing or control agreement by Secured Lenders is required to perfect or continue the security interest granted herein; however, should Secured Lenders desire to make any such filing or execute such agreement, Debtor shall take such actions and execute such documents as may be reasonably required;

c. Debtor shall pay Lender the monthly principal and interest amounts required by the loan agreement(s) between Debtor and Lender at the pre-petition non-default rate, which payments shall be made on a monthly basis and shall continue for so long as this Order is in effect, which payment may be applied by lender to the loan or loans secured by the Property without further Order of the Court being required to lift or modify the automatic stay pursuant to 11 U.S.C. § 362(a), and which may further be applied by Lender to the

aforesaid loan or loans pursuant to 11 U.S.C. § 362(d)(3)(B), by delivery to Post Office Box 63068, Charlotte, NC 28263 by the last business day of each month;

d. All amounts of Cash Collateral not paid to Lender pursuant to the immediately foregoing paragraph, or paid for ordinary and necessary expenses of maintaining and operating the Property pursuant to the accompanying Budget, shall remain in Debtor's DIP account, with those amounts shown on the accompanying Budget which are allocated for payment of real property taxes and insurance on the Property being escrowed in a separate DIP account, unless use of such funds is authorized by Lender or further Order of the Court;

e. The Debtor shall obtain and maintain liability and casualty insurance and provide proof of said insurance, showing the amount of insurance, the premium paid, and the declaration page or certificate of insurance, to Lender within five (5) days of any written request by providing certificates of insurance. Those certificates of insurance shall list Lender as a loss payee and a recipient of notice in the event of lapse or cancellation. A copy of the insurance policy shall be made available to Lender upon request; and

f. Debtor shall diligently market the Property for sale, and shall provide Lender with copies of written offers and letters of intent received from potential buyers of the Property;

g. In the event that Debtor has not filed with the Court a motion seeking authorization to sell the Property pursuant to 11 U.S.C. § 363, within forty-five (45) days of entry of the Interim Cash Collateral Order [Doc. 30, filed on 2-16-17], then Debtor shall promptly engage the services of a broker to market the Property for sale and shall provide to Lender a copy of the executed listing agreement between Debtor and the broker engaged to market the Property for sale, with authorization to retain and to compensate such broker being

subject to Court approval, and Debtor may interview potential brokers prior to the forty-fifth (45<sup>th</sup>) day after entry of the Interim Cash Collateral Order and shall sign a reasonable listing agreement with a broker within ten (10) days of the forty-fifth day of entry of this Order;

h. In the event that Debtor has not filed with the Court a motion seeking authorization to sell the Property pursuant to 11 U.S.C. § 363, within one hundred and twenty (120) days of execution of a listing agreement with a broker, then the Court shall set an evidentiary hearing on Lender's motion for relief from stay or for adequate protection pursuant to 11 U.S.C. § 362, which Lender filed on January 16, 2017 seeking stay relief or adequate protection, at which time the Court may consider further relief or adequate protection for Lender.

3. Debtor shall furnish to counsel for Lender copies of its monthly Operating Reports, as required by the U.S. Trustee's Office, showing Debtor's revenues and expenses, starting February 20, 2017. All such reports may be submitted electronically.
4. Each of the following shall be a material violation of this Order:
  - a. Failure of Debtor to abide by the terms, covenants, and conditions of this Order or the budget accompanying this Order;
  - b. Failure to maintain insurance as provided above, and in an amount of not less than Six Million Five Hundred Thousand Dollars (\$6,500,000) and to provide a certificate of insurance to Lender (a copy of the most recent binder is attached to this Order);
  - c. Failure of Debtor to pay quarterly fees of the U.S. Trustee;
  - d. Appointment of a Chapter 11 trustee;
  - e. Conversion of this case to Chapter 7; or

- f. Failure to escrow real property taxes and insurance premiums in the aforesaid DIP escrow account (in the amount of approximately \$9,000 per month) and failure to pay the taxes and insurance when due.
5. If there is a material violation of this Order (as defined above), Lender may give written notice of said material violation by email to Debtor's counsel, Michael D. Robl, at Robl Law Firm, LLC, 3754 Lavista Road, Suite 250, Tucker, Georgia 30084, and via email to michael@roblgroup.com, and shall include in the subject line of the email the phrase "notice of default concerning cash collateral", with a copy by fax to 404-537-1761. If Debtor fails to cure said material violation within five (5) business days from the date of such notice, Debtor's ability to use Cash Collateral hereunder shall terminate and Lender shall file with the Court notice that it gave to Debtor the notice required by this Paragraph, that the violation remained uncured for five (5) business days, and that Lender invokes the right to terminate the use of cash collateral.
6. Lender shall have the full protection of section 363(m) of the Bankruptcy Code with respect to the debts, obligations, liens, and security interests created or authorized by this Order in the event that this Order or any other authority contained or created herein is vacated, reversed, or modified on appeal or otherwise by any court.
7. If any of the Secured Lenders consents to this Order, its consent shall not constitute a waiver or modification of any rights whatsoever.
8. Nothing contained herein shall be deemed a waiver of the rights of Secured Lenders or any other creditor to:
- a. Consent or decline to consent to any extension of the use of Cash Collateral;
- or



- b. Pursue any other right or remedy available to creditors under the Bankruptcy Code, including, without limitation, any rights on account of unauthorized uses of Cash Collateral.
- c. Additionally, the entry of this Order is without prejudice to the rights of Debtor and/or any lenders claiming Cash Collateral in all respects, including, but not limited to, rights (1) to assert a failure of adequate protection, (2) to contest the validity of pre-petition security interests and liens, (3) to move for relief from the automatic stay, (4) to seek extensions, modifications or alterations of the terms of this Order, (5) to propose and confirm a Plan of Reorganization inconsistent with the terms of this Order, and/or (6) to seek continued or additional use of Cash Collateral.

9. Lender and Debtor have discussed the total amount of Lender's claim, including principal, interest, attorney's fees, late charges and costs. Within the next 30 days, Lender and Debtor's attorneys shall hold at least one conference in an effort to consent to Lender's balance to avoid unnecessary time, expense and litigation. If the parties cannot agree, Lender shall file an appropriate motion in this Court to adjudicate Lender's total claim. The parties shall work in good faith to file a stipulation to save time and use of limited court resources.

10. Notwithstanding Bankruptcy Rule 4001(a)(1), this Order is not stayed and shall be effective upon the date of its entry on the docket.

11. Debtor shall serve a copy of this Order by first-class mail within three (3) business days from the date of entry upon those entities requesting notice or required to be served under

Bankruptcy Rule 4001(d) and all parties in interest in this Bankruptcy Case and certify service to the Court.

[End of Order]

***Proposed Order drafted by:***

ROBL LAW GROUP, LLC

/s/ Michael Robl  
Michael D. Robl  
Georgia Bar No. 610905  
3754 Lavista Road  
Suite 250  
Tucker, Georgia 30084  
(404) 373-5153 (telephone)  
(404) 537-1761 (facsimile)  
michael@roblgroup.com (email)  
*Attorney for Debtor*

***Consented to by:***

/s/ Marion B. Stokes  
Marion B. Stokes  
Georgia Bar No. 683500  
Counsel for Movant  
2018 Powers Ferry Rd., Suite 700  
Atlanta, GA 30339  
(404) 352-1465 Ext. 435  
(404) 274-7777 (Direct Dial)  
[mbs@scelaw.com](mailto:mbs@scelaw.com) (email)  
*Attorney for First Citizens Bank & Trust Co.*

**Final Cash Collateral Budget – BC Grand LLC**  
 Chapter 11 Case No. 17-50094-mgd

<b>Revenue / Expense</b>	<b>Amount</b>
Rent income <sup>1</sup>	\$106,928.00
<b>Total Income</b>	\$106,928.00
Expenses	
Utilities	\$15,889.00
Miscellaneous <sup>2</sup>	\$150.00
Management <sup>3</sup>	\$0.00
Insurance <sup>4</sup>	\$2,069.00
Property taxes <sup>5</sup>	\$7,398.75
Maintenance <sup>6</sup>	\$2,500.00
Janitorial/Concierge <sup>7</sup>	\$24,530.00
Debt service – 1 <sup>st</sup> Citizens <sup>8</sup>	\$14,906.24
Debt service – SBA <sup>9</sup>	\$8,446.92
Debt service – Investa <sup>10</sup>	\$606.00
Common area supplies <sup>11</sup>	\$500.00
U.S. Trustee’s fee <sup>12</sup>	\$650.00
<b>Total expenses<sup>13</sup></b>	\$77,537.58

Notes / Assumptions:

1. Rent income may vary slightly month-to-month, allowing for additional rentals, attrition in tenants, and late payments.
2. Miscellaneous items include office supplies and postage.
3. Debtor is not paying any wages to manage the property.
4. Insurance coverage (casualty and liability) has been bound, and premiums may be paid quarterly; however, Debtor shall escrow funds for the premium expense in months when the premium is not paid, as reflected on this Budget in the amount of one-third of the quarterly premium per month.
5. Property taxes shall be escrowed as reflected on this Budget based on a projected real property tax bill of \$57,723.53 for the City of Atlanta and \$16,264.00 for Fulton County (based on 2016 tax bills) divided by 10 months.
6. Representative maintenance costs include elevator repairs and maintenance, boiler upkeep, etc.
7. Janitorial and concierge costs include 24 hour building security/concierge.
8. The amount paid to First Citizens Bank & Trust Co. in this budget is the same as prepetition monthly payments.
9. The amount paid to the SBA in this budget is the same as prepetition monthly payments.
10. The amount paid to the third mortgage holder in this budget is the same as prepetition monthly payments.
11. Each of the ten floors of Debtor’s building has common area restrooms for which debtor must supply paper products, soap, etc.

The U.S. Trustee’s fee is estimated to be \$1,625.00 per quarter, as disbursements are estimated to

be between \$150,000 and \$224,999.99 quarterly for the initial 6 month period. Total expenses are subject to changes, especially for matters such as utilities and repairs, and Debtor's motion to authorize use of cash collateral proposes a small allowance for normal variances so long as only actual expenses are paid.

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2017-01-26 17:04:37 (GMT)

14045815256 From: Romayne Chrismar



**EVIDENCE OF PROPERTY INSURANCE**

DATE (MM/DD/YYYY)  
1/25/2017

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY The Dillon Agency P.O. Box 2070 Powder Springs GA 30127		COMPANY CINCINNATI INSURANCE COMPANY Attn Commercial Lines Dept P O Box 145496 Cincinnati OH 45250-5496	
PHONE 404-912-1430	TAX ID# 14041410-1430	E-MAIL ADDRESS mdillon@dilloninsllc.com	SUB CODE
AGENCY CUSTOMER ID# 00010794		LOAN NUMBER 991000627	POLICY NUMBER EPP0422280
INSURED B. C. Grand, LLC 44 Broad Street NW Atlanta GA 30303		EFFECTIVE DATE 1/23/2017	EXPIRATION DATE 1/23/2018
		CONTINUED UNTIL TERMINATED IF CHECKED	
THIS REPLACES PRIOR EVIDENCE DATED			

**PROPERTY INFORMATION**

LOCATION/DESCRIPTION  
 Loc# 00001/Bldg# 00001  
 44 Broad Street NW  
 Atlanta, GA 30303

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

**COVERAGE INFORMATION**

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Building, Replacement Cost, Special (Including theft) - Detail	17,000,000	25,000
Loss Loss of Rents, Replacement Cost, Special (Including theft) -	1,000,000	

**REMARKS (Including Special Conditions)**

**CANCELLATION**  
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**ADDITIONAL INTEREST**

(919) 716-8334 First Citizens Bank Mail Code: DAC 20 PO Box 26592 Raleigh, NC 27611	<input type="checkbox"/> MORTGAGEE	<input type="checkbox"/> ADDITIONAL INSURED
	<input type="checkbox"/> LOSS PAYEE	<input checked="" type="checkbox"/> Mortgagee & Loss Payee
LOAN# 991000627		
AUTHORIZED REPRESENTATIVE Michael Dillon/RCHRIS <i>Michael Dillon</i>		

Certificate of Notice Page 14 of 14

United States Bankruptcy Court  
Northern District of Georgia

In re:  
B.C. Grand, LLC  
Debtor

Case No. 17-50094-mgd  
Chapter 11

**CERTIFICATE OF NOTICE**

District/off: 113E-9

User: slaterc  
Form ID: pdf422

Page 1 of 1  
Total Noticed: 4

Date Rcvd: Feb 28, 2017

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Mar 02, 2017.

db	+B.C. Grand, LLC, 44 Broad St. NW, Suite 400, Atlanta, GA 30303-2328
aty	+Marion B. Stokes, Stokes Carmichael & Ernst LLP, Suite 700, 2018 Powers Ferry Road, Atlanta, GA 30339-7200
aty	+Michael D. Robl, The Spears & Robl Law Firm, LLC, Suite 250, 3754 LaVista Road, Tucker, GA 30084-5623

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

ust	+E-mail/Text: ustpregion21.at.ecf@usdoj.gov Feb 28 2017 21:56:24
	Office of the United States Trustee, 362 Richard Russell Building, 75 Ted Turner Drive, SW, Atlanta, GA 30303-3315

TOTAL: 1

\*\*\*\*\* BYPASSED RECIPIENTS \*\*\*\*\*

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

**I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.**

**Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.**

Date: Mar 02, 2017

Signature: /s/Joseph Speetjens

**CM/ECF NOTICE OF ELECTRONIC FILING**

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on February 28, 2017 at the address(es) listed below:

David E. Gordon	on behalf of Creditor	TMC Construction Company, n/k/a Continental Stucco Products, Inc.	david.gordon@dentons.com, pam.matthews@dentons.com
Gary W. Marsh	on behalf of Creditor	TMC Construction Company, n/k/a Continental Stucco Products, Inc.	Gary.Marsh@dentons.com, Kristin.Rohling@dentons.com
James H. Morawetz	on behalf of U.S. Trustee	Office of the United States Trustee	Jim.H.Morawetz@usdoj.gov
Marion B. Stokes	on behalf of Creditor	First-Citizens Bank & Trust Company	mbs@scelaw.com
Michael D. Robl	on behalf of Debtor	B.C. Grand, LLC	mdrobl@tsrlaw.com
Paul J. Morochnik	on behalf of Creditor	Invest Atlanta	paul@wzlegal.com, carol@wzlegal.com
Thomas V. Keough	on behalf of Creditor	First-Citizens Bank & Trust Company	tvk@slclaw.com
			TOTAL: 7