

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

In re CIVIC PARTNERS SIOUX CITY, LLC, Debtor.	Case No. 11-00829 Chapter 11 NOTICE OF MOTION FOR APPROVAL OF A CASH COLLATERAL STIPULATION; MEMORANDUM OF POINTS AND AUTHORITIES; AND STIPULATION AND CONSENT ORDER FOR THE USE OF CASH COLLATERAL AND BAR DATE FOR OBJECTIONS
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TO ALL CREDITORS AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that the Debtor-in-Possession Civic Partners Sioux City, LLC (“Civic”) has filed a Motion for the Court to approve the Stipulation and Consent Order for the Use of Cash Collateral and Providing Post-Petition Liens between Civic and Northwest Bank (“Stipulation”) attached hereto. Any objections to the Motion must be filed on or before February 24, 2017 (14-days after filing of this Motion). Any timely filed objections will come before the Court for hearing on March 23, 2017 at 11:30 a.m. via telephonic conference by using the following information to access the telephone hearing:

1. Call the toll free number: 1-888-684-8852

2. Enter the Participant Access Code : 7148063
3. Enter the Participant Security Code: 0829
4. After the Security code is entered, you will be connected to the conference and you will need to identify yourself.

If no objections are timely filed, the Court may enter the appropriate order without a hearing.

**MOTION FOR APPROVAL
OF CASH COLLATERAL STIPULATION**

This Motion is made pursuant to Federal Rules of Bankruptcy Procedure, Rule 4001 and 11 U.S.C. § 363(c)(2)(B), which provide that the Court may enter an order allowing the debtor-in-possession to use cash collateral.

The grounds for this motion are that the estate will benefit from the use of rent income—which is cash collateral of Northwest Bank (“Bank”) under the Assignment of Rents between Civic and the Bank—to pay trustee fees and insurance, maintenance, management fees, and real estate taxes for the 4th Street Promenade Property all as more specifically provided in the attached Stipulation.

The Bank will be adequately protected by monthly payments of \$31,343.00 from the rental income to the Bank.

In support of this Motion, Civic submits the attached Memorandum of Authorities, as well as such other evidence that may be produced at the time of the

hearing on the Motion in the event an objection is filed to the Motion.

Respectfully submitted,

DATED: February 10, 2017

By: /s/ James D. Stroffe

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and

By: /s/ A. Frank Baron

A. FRANK BARON (#237)
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Attorneys for Debtor
CIVIC PARTNERS SIOUX CITY, LLC

MEMORANDUM OF AUTHORITIES

Civic Partners Sioux City, LLC (“Civic” or “Debtor-in-Possession”) submits this Motion (“Motion”) for Approval of a Cash Collateral Stipulation (“Stipulation”) and Northwest Bank agree as to both the form and content of the Stipulation.

As more fully set forth in the attached Stipulation, rent proceeds (the “Cash Collateral”) derived from the leases of the real estate described in the Mortgage (“Property”) shall be deposited in a Debtor In Possession Account (“DIP Account”) already established at Northwest Bank (“Bank”). Pursuant to the terms of the Stipulation, Debtor would be authorized to use the Cash Collateral for the payment of certain enumerated expenses, actually incurred, to preserve and maintain the Property which forms the subject of this single-asset bankruptcy. Civic would also make monthly adequate protection payments to Bank.

Civic requests that the Court approve the Stipulation because the use of the Cash Collateral as provided therein will benefit the estate.

I. ENTITIES WITH INTEREST IN THE CASH COLLATERAL

The Bank is a secured creditor in this bankruptcy having a mortgage on the Property, together with an Assignment of Rents from the Property. As of the date the bankruptcy was filed, the Bank claimed it was owed the sum of \$6,262,107.63 on a promissory note (“Note”) that is secured by a Real Estate Mortgage, as

modified, an Assignment of Rents, as modified, and Security Agreements dated February 23, 2003 and May 17, 2005 (See Claim 1 filed July 7, 2011) (“Claim”).

The Bank’s address is:

Northwest Bank
Attn: Arlie Freiberg
431 202nd St.
P.O. Box 180
Arnolds Park, IA 51331

II. SOURCE OF CASH COLLATERAL

The cash collateral provided for in the Stipulation derives from the Property’s rent income. After the bankruptcy was dismissed on July 8, 2015, the Bank was collecting rent from the Property’s tenants and applying the rent to the Note, and real estate taxes, but stopped applying rent after August 2016 following the issuance of the Mandate by the US Bankruptcy Appellate Panel for the Eighth Circuit. As of February 9, 2017 the Bank has collected and holds on deposit in a separate escrow account \$432,699.96¹ of rent income derived from the Property. This amount, less the January and February Adequate Protection Payments (see below) will be transferred from the Bank’s escrow account to the DIP Account. All future rents from the Property collected by Civic during the Term of the Stipulation, shall also be deposited in the DIP Account.

¹ This amount excludes \$150,000 in rent proceeds derived from the Property and held by the Bank, which Bank applied to the indebtedness, pursuant to this Court’s November 23, 2016 order.

III. USE OF THE CASH COLLATERAL WILL BENEFIT THE ESTATE

The rental income derived from the Property is the Debtor-in-Possession's sole source of funds for maintaining the Property for the benefit of the estate.

Civic has incurred, and continues to incur, expenses for trustee fees, insurance, maintenance, and management fees, as well as real estate taxes for the fiscal year 2015-16 due and payable September 30, 2016 and March 31, 2017. (Stipulation, ¶11.)

Accordingly, subject to this Court's order approving the Stipulation, Civic would be permitted to use the Cash Collateral, as defined by the Stipulation, to pay those Property expenses (Stipulation, ¶13(c)) all as more specifically set forth in the Stipulation.

The use of the Cash Collateral will benefit the estate by maintaining the value of the Property and preventing senior liens from attaching to the Property.

IV. ADEQUATE PROTECTION PAYMENTS

Rent income from the Property constitutes cash collateral of the Bank under 11 U.S.C. § 363. Accordingly, the Bank is entitled to adequate protection in exchange for use of the cash collateral. (Stipulation, ¶8.)

Under the terms of the Stipulation, Civic would authorize Bank to apply \$62,686.00 from the rent income now on deposit at the Bank to the amounts due the Bank as Civic's January and February Adequate Protection Payments and

thereafter during the Term, Civic will pay the Bank monthly payments of \$31,343.00, as adequate protection commencing on March 10, 2017 (or if the Court enters its order after the tenth day of March, 2017, then within 5 days after entry of the order), and on the tenth day of each successive month thereafter. (Stipulation, ¶13(a)).

V. LIMITED TERM OF CASH COLLATERAL ORDER

The Stipulation with regard to the use of the Cash Collateral shall remain in effect only until the earlier of the closing of the Loan Sale Agreement² or May 30, 2017. Therefore, this Motion seeks a collateral order that ends on the earlier of the closing of the Loan Sale Agreement or May 30, 2017, but that may be extended by the subsequent agreement of the Parties or order of the Court.

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² The term “Loan Sale Agreement” means that certain Loan Sale Agreement by and between Bank and Iowa Holdings, LLC, a California limited liability company, which is pending execution. The Loan Sale Agreement represents a transfer of claim other than for security as to which a Form 2100B will be filed at closing. Because the Loan Sale Agreement also involves the compromise of claims of the estate an appropriate Motion to Approve Compromise of claims will be submitted to this Court for approval.

VI. CONCLUSION

Civic's intended use of cash collateral pursuant to the Stipulation with the Bank will benefit the estate. Accordingly, the Court should approve the attached Stipulation.

Respectfully submitted,

DATED: February 10, 2017

By: /s/ James D. Stroffe

James D. Stroffe (CA SBN # 75100)
FRIEDMAN STROFFE & GERARD, P.C.
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and

By: /s/ A. Frank Baron

A. FRANK BARON (#237)
BARON, SAR, GOODWIN, GILL & LOHR
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Attorneys for Debtor
CIVIC PARTNERS SIOUX CITY, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

In re CIVIC PARTNERS SIOUX CITY, LLC, Debtor.	Case No. 11-00829 Chapter 11
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**STIPULATION AND CONSENT ORDER FOR USE OF
CASH COLLATERAL AND PROVIDING POST-PETITION LIENS**

Civic Partners Sioux City, LLC (“**Debtor**”), the Debtor and Debtor in Possession herein, by and through its attorney, A. Frank Baron, of the law firm of Baron, Sar, Goodwin, Gill, & Lohr, and Northwest Bank, successor by merger to First National Bank, (“**Bank**”) by and through its attorney of record, G. Mark Rice, of the law firm of Whitfield & Eddy, P.L.C., hereby stipulate and agree to the following:

1. On November 18, 2011, the Debtor filed its Voluntary Petition under Chapter 11 of the Bankruptcy Code (the “**Petition Date**”).
2. On July 8, 2015, the Court granted the Bank’s motion to dismiss and dismissed Debtor’s bankruptcy.
3. On July 20, 2015, the Bank opposed and the Court denied Debtor’s motion to stay the dismissal of Debtor’s bankruptcy pending appeal.

4. On July 19, 2016, the 8th Circuit Bankruptcy Appellate Panel (“BAP”) reversed the dismissal of Debtor’s bankruptcy and remanded the case back to this Court.

5. Because of the BAP’s judgment, the Debtor is once again duly acting as a Debtor in Possession pursuant to Bankruptcy Code §§ 1107 and 1108.

6. The Bank is a secured creditor in this bankruptcy and as of the date the bankruptcy was filed, the Bank claimed it was owed the sum of \$6,262,107.63 on a promissory note that is secured by a Real Estate Mortgage, as modified, an Assignment of Rents, as modified, and Security Agreements dated February 23, 2003 and May 17, 2005 (See Claim 1 filed July 7, 2011) (“Claim”).¹

7. After application of the post-petition payments by the Debtor (including \$150,000 paid from Bank’s rental escrow account pursuant to the November 23, 2016 order – the “November Payment”), rent payments received directly from tenants, application of the tenant improvement reserve escrow account, payments on a guaranty (“Guaranty”) from the City of Sioux City (“City”), and advancements for real estate taxes, but excluding additional attorneys’ fees and expenses and further excluding City’s Guaranty payment

¹ This consisted of a principal amount of \$6,171,791.44, default interest to April 14, 2011 of \$19,022.64, attorney fees of \$71,293.55 for a total of \$6,262,107.63. Per diem interest was calculated at \$1,902.26. Collateral value was described as Real Estate valued at \$6,215,000 plus tenant improvement reserve escrow account of \$148,513 for a total of \$6,363,513.

received on or about January 3, 2017 (“City’s January Guaranty Payment”), the total claimed by the Bank as of February 1, 2017, is \$6,140,721.53.

8. Proceeds from the leases of the real estate described in the Mortgage (“Real Estate”), by operation of 11 USC §552(b)(2) constitute cash collateral of the Bank under 11 USC § 363 (the “Cash Collateral”). The Bank is entitled to adequate protection of its interests and, except as provided herein, the Debtor may not use the Cash Collateral for any purpose without the Bank’s consent or upon order of the Court.

9. The Debtor disputes (i) whether the Bank has a properly perfected security interest in Cash Collateral derived following the Petition Date, and (ii) the Bank’s rights with respect to any claims to proceeds from the leases of the Real Estate where the payment obligation accrued prior to the Petition Date. The Parties expressly reserve their rights with respect to these disputes.

10. This Order shall remain in effect from the date of entry of the Order until the earlier of the closing of the Loan Sale Agreement or May 30, 2017², which period shall be referred to as the “Term”. The Term may be extended by the subsequent Agreement of the Parties or order of the Court.

11. The Debtor has incurred, and continues to incur, expenses for trustee

² The term “Loan Sale Agreement” means that certain Loan Sale Agreement by and Between Bank and Iowa Holdings LLC, a California limited liability company.

fees, insurance, maintenance, management fees and real estate taxes for the fiscal year 2015-16 due and payable September 30, 2016 and March 31, 2017.

12. Except for the November Payment there have been no cash collateral payments made to the Bank since the BAP entered its Order on July 19, 2016.

13. The parties agree that upon the entry of an Order approving this Stipulation:

(a) Debtor authorizes the Bank to apply \$62,685.00 from the rental income now on deposit at the Bank to the amounts due the Bank as the Debtor's January, and February 2017 cash collateral payments ("**January & February Payment**") and thereafter during the Term, the Debtor will pay the Bank from the Cash Collateral monthly adequate protection payments of \$31,343.00, ("Adequate Protection") commencing on March 10, 2017 and on the tenth day of each successive month thereafter.

(b) All rent proceeds currently being held by the Bank in a separate escrow account in the amount of \$432,699.96 (as of February 9, 2017) less the January & February Payment, shall be deposited in the Debtor in Possession Account (the "DIP Account") that has been established at the Bank by the Debtor.

(c) Debtor is authorized during the Term, without prior notice or additional approval, to use Cash Collateral for the payment of actual

expenses incurred in the ordinary course of Debtor's business since August 2016 for the following post-petition expenses:

(i) \$200.00 for a monthly management fee to United Management Company, Sioux City, IA.

(ii) Sewer, water and other utility expenses.

(iii) Property taxes.

(iv) Site, casualty and liability insurance premiums.

(v) Project management, maintenance and marketing expenses up to \$1,500.00 per occurrence, but not to exceed \$2,500 in the aggregate in any calendar month, with no carryover for the unused allowance.

(vi) Trustee Fees.

(d) Debtor is specifically authorized and shall immediately pay the first ½ of the 2015-2016 real estate taxes that were due on September 1, 2016, including associated penalties, and shall thereafter pay the second half of the 2015-2016 real estate taxes on or before March 31, 2017 from the DIP Account.

14. The existing rights, liens and interests of the Bank shall attach to the funds deposited into the DIP Account. The Bank's security interest in such funds shall be valid, perfected, enforceable, and non-avoidable without further order of the

Court or the necessity of the Bank taking further action.

15. The Debtor shall not make payments for any other expenses or debt, except upon notice to the Bank and as authorized by the court. Such authorization shall continue until the end of the Term, subject to the following terms and conditions:

(a) All rents collected shall be deposited in the DIP Account. The Debtor's expenses may not exceed the amounts set forth in paragraph 13 without the prior written consent of the Bank. Only the ordinary and usual expenses expressly set forth in paragraph 13 necessary to continue operation of the business and to preserve the Real Estate, incurred after the commencement of the bankruptcy case, plus the Adequate Protection payments due to the Bank, shall be paid from the DIP Account, and other payments as the court shall authorize from time to time.

(b) The Bank shall, at any time, at its own expense, be permitted to conduct a full inspection and appraisal of the Real Estate. Debtor proposes to grant the Bank, its agents and employees, a license to enter upon the Real Estate for such purposes during its regular, customary and ordinary business hours within 5 business days of any written request.

(c) The Real Estate shall be insured to its full value, and Debtor shall otherwise comply with the terms and conditions of the Mortgage

regarding insurance. Evidence of insurance, listing the Bank as insured mortgagee/loss payee, shall be immediately provided to Bank.

(d) Provided Main Street Theatres pays rent required under its lease, if at any time the Debtor fails to make the payments required under this Stipulation, fails or ceases to properly insure the Real Estate, fails to pay any local, state or federal taxes as they become due, fails to pay fees required by the U.S. Trustee or fails to comply with any other term of this Order (“Default”), the Bank shall give the Debtor and its attorney written notice that it has ten (10) business days to cure such default after the mailing of written notice of such default. If the default is not cured, then Debtor’s right to use Cash Collateral as provided herein shall cease until such default is cured.

(e) Unless otherwise notified, all notices hereunder to Debtor and to the Bank shall be sent to the following addresses:

Civic Partners Sioux City, LLC
7777 Center Avenue, Suite 230
Huntington Beach, CA 92647-3059

Northwest Bank
Attn: Arlie Freiberg
431 202nd St
P.O. Box 180
Arnolds Park, IA 51331
afreiborg@bank-northwest.com

with a copy to each respective counsel as follows:

For Debtor:

A. Frank Baron
750 Pierce Street
PO Box 717
Sioux City, IA 51102-0717
abaron@baronsar.com

and

James D. Stroffe
Friedman Stroffe & Gerard, P.C.
19800 MacArthur Boulevard, Suite 1100
Irvine, CA 92612-2440
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For Bank:

G. Mark Rice, Esq.
Whitfield and Eddy, P.L.C.
699 Walnut, Suite 2000
Des Moines, IA 50309-4195
(515) 288-6041
(515) 246-1474 FAX
rice@whitfieldlaw.com

16. All rights of the Bank to seek additional adequate protection for Debtor's use of Cash Collateral, to file for relief from the automatic stay, to dismiss or to assert any other right or cause of action, or any other matter with respect to the Debtor, whether in this bankruptcy case, or otherwise, are expressly reserved. The failure or delay by the Bank to seek relief or otherwise exercise its rights and remedies under this Stipulation or any loan documents shall not constitute a waiver of any of the rights of the Bank.

17. All rights of the Debtor to seek a reduction in adequate protection payments for Debtor's use of Cash Collateral, to oppose a request for relief from the

automatic stay, to dismiss or to assert any other right or cause of action, or any other matter with respect to the Bank, whether in this bankruptcy case, or otherwise, are expressly reserved. The failure or delay by the Debtor to seek relief or otherwise exercise its rights and remedies under this Stipulation or any loan documents shall not constitute a waiver of any of the rights of the Debtor.

18. This Stipulation and any documents and instruments required of Debtor by this Stipulation are, or when executed and delivered, will be valid, binding and enforceable in accordance with their respective terms upon entry of an Order approving this Stipulation.

GOOD CAUSE APPEARING, IT IS SO ORDERED.

Dated this _____ day of February, 2017.

Hon. Thad Collins, U.S. Bankruptcy Judge

Approved as to Form and Content:

/s/ A. Frank Baron

A. Frank Baron

For Debtor

/s/ G. Mark Rice

G. Mark Rice

For Northwest Bank

CERTIFICATE OF SERVICE

I, hereby certify that on February 10, 2017, I electronically filed the foregoing **NOTICE OF MOTION FOR APPROVAL OF A CASH COLLATERAL STIPULATION; MEMORANDUM OF POINTS AND AUTHORITIES; AND STIPULATION AND CONSENT ORDER FOR THE USE OF CASH COLLATERAL AND BAR DATE FOR OBJECTIONS** with the Clerk of the Court for the United States Bankruptcy for the Northern District of Iowa by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Anthony S. Chavez
Anthony S. Chavez