

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:

SIDELINE 96TH STREET, LLC

Debtor.

Case No. 18-08111-JJG-11

MOTION TO USE CASH COLLATERAL OF SUTHERLAND WAREHOUSE TRUST II

Sideline 96th Street, LLC, (“Debtor”), by counsel, respectfully represents the following to the Court:

1. On the date hereof, Debtor was the Debtor in Possession in the captioned Bankruptcy proceeding, which was commenced by the filing of a Voluntary Petition under Chapter 11 of title 11 of the United States Code, (the “Bankruptcy Code”), on October 23, 2018 which generated the related Order for Relief herein, (the “Commencement Date”). Debtor continues to operate its business and manage its properties pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. Debtor is engaged in the business of owning, leasing and operating a commercial real estate strip center (the “Company”).

Jurisdiction

3. This Court has jurisdiction to consider this matter pursuant to 28 USC §§ 157 and 1334. This is a core proceeding pursuant to 28 USC §§ 157 (b). Venue is proper before this Court pursuant to 28 USC §§ 1408 and 1409.

Relief Requested

4. By this Motion, Debtor requests authorization to obtain post-petition use of cash collateral pursuant to §§105, 361, 363 and 507 of the Bankruptcy Code; to grant adequate protection pursuant to such sections for the continued use of a pre-petition lending arrangement provided by Sutherland Warehouse Trust II, (“**Sutherland**”), and scheduling of a final hearing pursuant to Bankruptcy Rule 4001. The essential terms and provisions of the lending arrangement with Sutherland are contained in the parties’ pre-petition agreements of various dates, copies of which are attached hereto as follows:

Loan Agreement dated July 21, 2016-**Exhibit “A”**,

Promissory Note in the original principal sum of \$2,130,000.00 dated July 21, 2016-**Exhibit "B"**,
Mortgage, Security Agreement and Financing Statement dated July 21, 2016-**Exhibit "C"**,
Assignment of Rents dated July 21, 2016-**Exhibit "D"**,
Guaranty dated July 21, 2016-**Exhibit "E"**,
Assignment of Mortgage, Security Agreement, and Financing Statement and Assignment of
Rents effective November 20, 2016 -**Exhibit "F"**,
Assignment of Mortgage, Security Agreement, and Financing Statement and Assignment of
Rents effective July 27, 2018-**Exhibit "G"**,
incorporated herein for all purposes, thus creating the "**Sutherland Loan Facilities**";

Pre-Petition Financing of the Debtor's Operations

5. Prior to the Commencement Date, the Debtor's liquidity needs were met primarily through lease payments generated from the daily operation of the business of the Debtor. The Sutherland Loan Facilities are a guaranty by the Debtor of the obligations of the owner of the real estate from which it operates. Cash collateral in this case is limited to the balance in the Debtor's bank account and accounts receivable of approximately \$24,555.13. Sutherland's claim herein is approximately \$2.3m. There is no other creditor with an interest in cash collateral that requires protection under the Bankruptcy Code.

Post-Petition Financing of the Debtor's Company

6. Debtor urgently needs working capital to continue its ordinary course business operations and is unable to obtain post-petition financing from any source other than the collateral secured by the Sutherland Loan Facilities. Debtor's inability to obtain and maintain sufficient operating liquidity to meet its post-petition obligations on a timely basis may result in a permanent and irreplaceable loss of value in its assets and a resultant diminution in the value of the Debtor to the detriment of its creditors. This financing is essentially the use of cash collateral and does not require Sutherland to advance new sums to the Debtor post-petition. The budget that is attached hereto as **Exhibit "H"**, (the "Budget"), indicates that the Debtor can operate its business profitably, so the Debtor believes the proposed financing of its operations in this way is reasonable.

8. Notice of this Motion has been provided to the US Trustee, to all secured creditors and to

the parties on the 20 Largest Unsecured Creditor List herein. Upon notice to all parties in interest, Debtor requests that the Court set a hearing for consideration of final implementation of the use of cash collateral, (the "Final Hearing").

WHEREFORE, the Debtor herein respectfully requests that it be authorized to use cash collateral as described herein, and for all other just and proper relief in the premises.

/s/ Christopher J. McElwee

November 15, 2018

Attorney for the Debtor:
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing was filed using the Court's ECF system and parties will be served via such system. In addition a copy was delivered to the following

by email on the date shown:

Christopher J. McElwee on behalf of Debtor
cmcelwee@mrjalaw.com

Wendy Brewer on behalf of Sutherland
WBrewer@fmdlegal.com

Laura Duvall for the U.S. Trustee
Laura.Duvall@usdoj.gov

/s/ Christopher J. McElwee

November 15, 2018