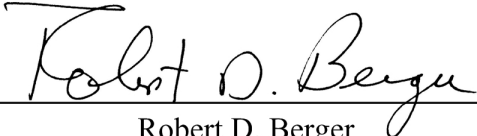




The relief described hereinbelow is SO ORDERED.

SIGNED this 15th day of November, 2018.


Robert D. Berger
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS
KANSAS CITY DIVISION

In re:

CIP Investment Properties, LLC

8200 East Thorn Drive
Wichita, Kansas 67226
Tax ID# 75-2796245

Debtor.

Case No. 18-22039-rdb11
Chapter 11

**INTERIM ORDER (I) AUTHORIZING USE OF CASH COLLATERAL IN THE
ORDINARY COURSE OF BUSINESS THROUGH DECEMBER 31, 2018, (II)
GRANTING ADEQUATE PROTECTION; AND (III) SCHEDULING A HEARING
PURSUANT TO BANKRUPTCY RULE 4001(b)**

On October 26, 2018, the Court took up the Debtor's Motion to Authorize Use of Cash Collateral in the Ordinary Course of Business (the "Debtor's Motion") submitted on behalf of CIP Investment Properties, LLC, Debtor and Debtor-in-possession (collectively, the "Debtor") and

Farm Bureau Life's ("FBL")'s Motion to Prohibit Use of Cash Collateral, and for Recoupment and/or Setoff ("FBL Motion"). Both parties were represented through counsel: Debtor by Bradley D. McCormack of The Sader Law Firm and FBL by Brian M. Holland of Lathrop Gage LLP. The United States Trustee was represented by counsel, Christopher T. Borniger. The Court, having jurisdiction and upon review of the file, pleadings, evidence presented at the hearing and the representations of counsel, hereby **FINDS** as follows:

1. Debtor commenced the above-captioned case by filing its Voluntary Petitions for Relief under Chapter 11 of the United States Bankruptcy Code ("Code"), Code §§ 101 through 1146, on September 28, 2018 (the "Petition Date").

2. This Court has jurisdiction to hear the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a "core proceeding" within the meaning of 28 U.S.C. § 157.

3. Adequate and sufficient notice of the Motion has been provided as the only party with a security interest in cash collateral is FBL. Accordingly, all appropriate parties have been notified pursuant to the provisions of Code § 363 and Bankruptcy Rules 2002 and 4001(d). Under the circumstances, no further notice is required.

4. Debtor continues to operate its affairs as debtor-in-possession pursuant to Code §§ 1107 and 1108.

5. FBL and Debtor are parties to a Promissory Note, Mortgage, Assignment of Rents, Guaranty and an Assignment and Assumption Agreement (collectively, the "Loan Documents").

6. As security for repayment of the Pre-Petition Loan Indebtedness, Debtor granted FBL a security interest in, and liens upon, certain personal property, income and accounts receivables (collectively, including Cash Collateral (as defined below), the "Collateral"), as evidenced by the security instruments filed by FBL.

7. Further, Debtor's cash constitutes proceeds of the Collateral and, therefore, is Cash Collateral of FBL within the meaning of Code § 363(a) ("Cash Collateral").

8. In Debtor's Motion, it seeks authority to use the Cash Collateral. In FBL's Motion it seeks to prohibit Debtor's use of cash collateral

9. Good cause has been shown for the entry of this Order granting Debtor's Motion and denying FBL's Motion. Among other things, the entry of the Order: (i) will enable Debtor to continue the operation of its business and avoid immediate and irreparable harm to Debtor's estate; (ii) will permit Debtor to maintain needed goods and services and pay other necessary and ordinary business expenses; (iii) provide for necessary adequate protection during the Interim Period for the Bank; and (iv) is in the best interests of Debtor, its creditors and its Estate.

NOW, THEREFORE, IT IS HEREBY:

ORDERED that Debtor is granted the use of Cash Collateral on a temporary basis through December 31, 2018 for the expenses listed and in an amount not to exceed the totals listed per the Budget, which is attached hereto as Exhibit A, in and for the time period covered by the Budget and for payment of United States Trustee fees owed pursuant to 28 U.S.C. § 1930(a)(6), unless specifically prohibited by this Order.

IT IS FURTHER ORDERED, that Debtor's interim use of Cash Collateral is expressly conditioned upon the following:

a. Without prior approval of the Court or the express written consent of FBL Debtor shall pay the reasonable amounts which are actual, necessary expenses in the operation of its business; PROVIDED, HOWEVER, that in no event should Cash Collateral in this period be used to pay pre-petition claims or obligations, other secured claims, or obligations to insiders unless specifically authorized by separate Order from this Court;

b. Debtor and FBL shall continue to utilize the existing Lockbox Agreement that was negotiated in Debtor's 2012 Bankruptcy case. Rents shall be deposited into the Lockbox and FBL shall sweep the account for its adequate assurance payment (as detailed below) and necessary funds for the tax and insurance escrow. After the sweep, FBL shall transfer the budgeted amount on Exhibit A to Debtor for its use. Debtor agrees to provide FBL with online access to account to verify accounts and disbursements;

c. As adequate protection for the Cash Collateral used by Debtor from and after the commencement of this bankruptcy case, FBL shall be granted replacement liens, pursuant to 11 U.S.C. §§ 361(2), 363(e) and 552(b), on, and security interest in the DIP Accounts (as defined below) and the Cash Collateral including rents, income, profits, accounts receivable and accounts (subject to the uses as permitted by this Order), which replacement lien and security interest as to existing Cash Collateral categories shall have the same priority, extent and validity as FBL's security interests or other interests in the Cash Collateral used by Debtor. The replacement lien and security interest granted herein are valid, enforceable and fully perfected, and no filing or recordation or any other act in accordance with any applicable local, state or federal law is necessary to create or perfect such lien and security interest; provided, however, that upon request of FBL, Debtor shall execute such security and perfection documentation as may be reasonably required to create or perfect such liens under applicable nonbankruptcy law, including without limitation, UCC-1 financing statements and notices to depository banks. If, notwithstanding the foregoing replacement liens, FBL has a claim arising from the Debtor's use of the Cash Collateral, FBL shall have a claim having priority over all other administrative expenses except post-petition ad valorem taxes and United States Trustee fees, claims by the Clerk of the Bankruptcy Court and unpaid fees and expenses of counsel for the debtor up to \$3,000.00, as provided for under Code § 507(b).

d. As further adequate protection, FBL shall retain \$78,029.54 from the Lockbox on a monthly basis;

e. The adequate protection granted in this Order is without prejudice to FBL seeking further and other adequate protection during the interim period and/or objecting to the continued use of Cash Collateral at a hearing in the future. Further, this Order is without prejudice to (i) FBL seeking the early termination of Debtor's use of Cash Collateral prior to the expiration of this Order for cause, including lack of adequate protection or (ii) Debtor's opposing such early termination;

f. Debtor shall continue to maintain the types and amounts of insurance on all its property and assets as required by the Loan Documents;

g. Except as set forth herein, Debtor shall pay all budgeted expenses when due and FBL shall be notified of any failure or inability to do so, and all Cash Collateral, after payment of such expenses as provided for herein shall be sequestered by the Debtor in the Debtor's post-petition debtor-in-possession operating accounts, subject to any and all of FBL's lien rights in and to such Cash Collateral, and shall not be used by Debtor without FBL's prior written consent or further Order of the Court.

h. The Debtor shall maintain debtor-in-possession accounts in a form by acceptable by the Office of the United States Trustee (the "DIP Accounts") and shall deposit all Cash Collateral into the DIP Accounts. FBL shall have a first priority-perfected lien on all DIP Accounts, and Debtor shall not grant any control agreements to any other party. All Cash Collateral received by the Debtor and not expended pursuant to the authorization granted under this Order shall be retained by the Debtor in the DIP Accounts. The Debtor shall not open or utilize any other accounts without the prior written consent of the Bank and the US Trustee. All

funds in the DIP Accounts shall be subject to FBL's replacement liens provided pursuant to this Order.

- i. Debtor will operate its business in the ordinary course.

IT IS FURTHER ORDERED that this Order shall expire and Debtor's right to use Cash Collateral shall terminate, unless extended by further order of this Court or by express written consent of the Bank, on the earlier of (i) December 31, 2018; (ii) the first business day after the date of the final hearing on Debtor's use of Cash Collateral; (iii) the failure of Debtor to comply with any provision of this Order; (iv) the entry of an order authorizing, or there shall occur, a conversion or dismissal of this case under Code § 1112; (v) the entry of an order appointing a trustee, or appointing an examiner with powers exceeding those set forth in Code § 1106(b); (vi) the closing of a sale of all or a substantial portion of the assets of Debtor; (vii) entry of an order granting, or there shall arise, a security interest, mortgage, lien, claim, charge, or encumbrance which is equal or senior to the Replacement Liens; (viii) the cessation of day-to-day operations of Debtor; (ix) any material provision of this order for any reason ceases to be enforceable, valid, or binding upon the Debtor, or any party so asserts in writing; (x) the stay, modification, amendment, vacating or reversal of any term herein, or any of the rights and acknowledgements conferred hereunder, without the express prior written consent of FBL, in its sole and absolute discretion; (xi) the failure of Debtor to comply with any requirement of this Order, the Bankruptcy Rules or the Bankruptcy Code, including, without limitation, the timely filing of monthly operating reports and other duties imposed on debtors-in-possession under the Bankruptcy Code or Bankruptcy Rules and (xii) the failure of Debtor to timely make a required payment to the Bank under the terms of this Order.

IT IS FURTHER ORDERED that nothing contained in this Order shall be deemed or construed to waive, reduce or otherwise diminish the rights of FBL under the Loan Documents, or

the Bankruptcy Code, including seeking appointment of an examiner and/or trustee, conversion or dismissal of the case, seeking adequate protection payments, or seeking relief from the automatic stay, and that to be effective any waiver by FBL of the provisions of this Order or consent required under this Order must be in writing, which includes electronic mail.

IT IS FURTHER ORDERED that the Loan Documents shall remain in full force and effect, except as modified by this Order and that the Debtors stipulate to (i) the validity and enforceability of the Loan Documents; (ii) the validity, extent and priority of liens granted under the Loan Documents; (iii) the amount of the Pre-Petition Loan Indebtedness owing on the Loan Documents; and (iv) that the liens granted by the Loan Documents are not subject to avoidance or subordination, or defense pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

IT IS FURTHER ORDERED that nothing in this Order shall in any way impose upon FBL any duty or obligation to provide any financing or financial accommodation to the Debtor, or to any other party, to collect, sell, lease or otherwise dispose of any of the Collateral, to proceed against any party, person, individual or entity, to proceed against or exhaust any security held by the Bank or any other party, person, individual or entity, or to otherwise pursue any action, right or remedy whatsoever now in the Bank's power.

IT IS FURTHER ORDERED that the provisions of this Order and the adequate protection granted herein, including the Replacement Liens, shall also extend to any Cash Collateral used by Debtor subsequent to the Petition Date, but prior to entry of this Order.

IT IS FURTHER ORDERED that the provisions of this Order shall be binding upon and inure to the benefit of the Bank, Debtor and its respective successors and assigns (including without limitation, any Chapter 11 or Chapter 7 trustee, examiner, or other fiduciary hereafter appointed for Debtor or with respect to any of Debtor's property).

IT IS FURTHER ORDERED that this Order shall become effective and enforceable upon approval and entry as an Order of the Bankruptcy Court. If any provision of this Order is hereafter modified, vacated or stayed by subsequent Order of this or any other Court for any reason, such modification, vacation, or stay shall not affect the validity of any obligation or liability incurred pursuant to this Order and prior to the later of (a) the effective date of such modification, vacation, or stay, or (b) the entry of the Order pursuant to which such modification, vacation, or stay was established, nor the validity, priority, or enforceability of any lien or claim granted by Debtor to FBL. The liens and claims granted to FBL under this Order, and the priority thereof, and any payments made pursuant to this Order, shall be binding (subject to the terms of this Order) on Debtor, its bankruptcy estate, any subsequent trustee or examiner and all creditors of Debtor.

IT IS FURTHER ORDERED that nothing contained in this Order shall be deemed or construed to be an admission by either party that the Bank is or is not adequately protected.

IT IS FURTHER ORDERED that a Final hearing on Debtor's Cash Collateral Motion shall be heard on **December 13, 2018 at 1:30 p.m.**

IT IS FURTHER ORDERED that Debtor shall, within two (2) business days after the entry of this Order, mail copies of a notice of the entry of this Order, together with a copy of the Motion, on (i) the Office of the United States Trustee; (ii) FBL; (iii) all creditors known to Debtor who have or may assert liens against Debtor's assets; (iv) the 20 largest unsecured creditors of Debtor; and (v) all parties in interest who have filed a notice of appearance or upon whom service must be effected under the Bankruptcy Rules or the Local Rules of District of Kansas. Such notice shall state that objections to the relief being sought in the Motion and to Debtor's use of Cash Collateral shall be in writing and shall be filed with the United States Bankruptcy Clerk for the District of Kansas on or before **seven (7) days prior to the Final Hearing** (the "Objection Deadline"). Any objections by creditors or other parties in interest to the Motion shall be deemed

waived unless filed and served in accordance with this paragraph. Any party who has filed an objection but fails to appear at the hearing shall be deemed to have withdrawn its objection.

IT IS SO ORDERED.

Prepared by:

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