

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

**MOTION TO AUTHORIZE USE OF CASH COLLATERAL IN THE ORDINARY
COURSE OF BUSINESS**

COMES NOW Debtor CIP Investment Properties, LLC, by and through its undersigned counsel and for its Emergency Motion to Authorize Use of Cash Collateral in the Ordinary Course of Business pursuant to 11 U.S.C. §§363(c) and 364 (the “Motion”), states:

1. On the 28th day of September, 2018, (the “**Petition Date**”) the Debtor filed a Voluntary Petition under Chapter 11 of Title 11, the United States Bankruptcy Code.
2. Debtor continues to be in possession of its property and operates and manages its business as Debtor-in-Possession pursuant to 11 U.S.C. §§ 1107 and 1108.
3. An Official Committee of Unsecured Creditors has not been appointed.
4. This is a core proceeding pursuant to 28 U.S.C. § 157(2)(A).
5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.
6. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

BACKGROUND

7. The Debtor is a Delaware Limited Liability Company that was formed in 1998 to acquire an ownership interest in the Thorn Building located at 8200 and 8300 East Thorn Drive, Wichita, Kansas 67226 (the “Property”). Debtor has a secured loan on the Property with 5400

Holdings, LLC (the “Lender”). The Lender is further secured in all of Debtor’s assets including cash, inventory and accounts receivable. In 2012, Debtor and Lender were at odds regarding the status of the loan and payments. This occurred due in no small part to a dispute between Debtor and the largest tenant of the Property, Via Christi Health System, Inc. Negotiations between Debtor and Lender were unsuccessful and on July 17, 2012, Debtor filed a Chapter 11 Bankruptcy, Case No. 12-21952-rdb11 (“2012 Bankruptcy”).

8. Debtor litigated the 2012 Bankruptcy to completion and on July 26, 2013, this Court entered an Order Confirming the Debtor’s Chapter 11 Plan. This Order is reflected as Docket 190 in the 2012 Bankruptcy.

9. Debtor’s Plan proposed payment to 6 separate classes of Creditors including Lender which was designated as Class 3. Lender’s secured claim was restructured into a claim with a principal balance of \$15,400,000.00 and an interest rate of 4.50%. The claim was for 60 months with a 30-year amortization schedule. Additionally, Debtor and Lender contracted for a Lockbox Agreement where all rents payable to Debtor were deposited into a Lockbox at Intrust Bank. Lender was allowed to deduct its principal and interest due along with taxes and insurance on a monthly basis. After this deduction, Lender would transfer the remaining funds to Debtor for its use in its general business operations.

10. The 60-month term of the reorganized claim is due to mature on September 30, 2018.

11. Since the implementation of the Plan, Debtor has abided by all terms of the Plan. It has also remained current with Lender throughout the 60-month term and has abided by the Lockbox Agreement. Through the Lockbox facility the Debtor has paid the Lender over \$3,000,00.00 in associated interest payments and reduced the principle amount by \$1,431,302.00

12. The Debtor has made substantial payments to other major claimants in the 2012 Bankruptcy including eliminating a second mortgage claim of \$3,300,000.00 owed to LNV and a priority property tax claim to Sedgwick County of approximately \$2,900,000.00. In total, the Debtor has reduced its obligations by \$7.6 Million during the 60-month term approved by the Court.

13. At the time of approval of the Plan, it was, and still remains, Debtor's intent to continue to hold and operate its principle assets in order to have time to pay its creditors in full, and to then either sell the Property or re-finance it to pay Lender's claim. Debtor has several potential purchasers of the Property who are in various stages of due diligence. Debtor was not able to complete the sale prior to the maturity date of September 30, 2018. Accordingly, the Debtor has filed the instant Bankruptcy September 28, 2018.

14. The Property is currently approximately 73.19% leased. At this occupancy rate, Debtor has sufficient income to cover utility payments, Adequate Protection payments to its Lender, Property Taxes, Insurance, and all other ordinary Operating Expenses. The Debtor believes that given sufficient time, it can successfully reorganize its business. There is a current balance in the Lockbox account of \$218,814.55 which is sufficient to pay adequate protection to the Lender and to fund all obligations scheduled in Debtor's proposed Cash Collateral Budget, including Utilities.

5400 HOLDINGS LLC SECURED DEBT

15. As stated above, Debtor has a secured debt to Lender that matured on September 30, 2018.

16. Upon information and belief, Lender has perfected its loan by filing various security agreements with the Secretary of State's Office in Kansas.

17. Upon information and belief, the current amount due to Lender is approximately 13,900,000.00.

18. Upon information and belief, Lender is oversecured. The total assets pledged to Lender has a total value of approximately \$18,000,000.00.

19. Debtor believes on a going forward basis, before servicing the monthly secured debt, that its joint operation of business is cash-flow positive.

20. Debtor is proposing to make a monthly payment to Lender for the period of time from filing up to confirmation of the Plan. Debtor is proposing a payment of \$78,029.54 per month to Lender due on the first of each month. This amount is the same as the Debtor has been paying for the last 60-months under the terms of the restructured note. Debtor requests that the payment be made according to the current Lockbox Agreement.

RELIEF REQUESTED

21. By this Motion, Debtor seeks use of cash collateral to fund its business operations pursuant to 11 U.S.C. §363(c)(2)(B) and 11 U.S.C. §363(c)(1), which provides that a debtor operating pursuant to 11 U.S.C. §1108 “may enter into transactions. . . in the ordinary course of business, without notice and a hearing, and may use property of the estate in the ordinary course of business without notice and a hearing.”

22. Pursuant to 11 U.S.C. §552(b)(2), Lender maintains a security interest in the post-petition income of the Debtor.

23. To adequately protect the value of Lender’s security interest in Debtor’s assets and their collateral, the Debtor must be allowed to operate and continue its business throughout the pendency of this Chapter 11 case.

24. Debtor respectfully requests that the Court authorize the use of cash collateral in the ordinary course of business as outlined in the attached Exhibit "A." Debtor anticipates that its expenses will not vary more than ten percent (10%) from the figures provided for the October budget as attached. Debtor requests the use of cash collateral for no purpose at this time other than to preserve the value of the collateral through continued operations.

25. In exchange for the use of cash collateral in the ordinary course of business, Debtor proposes that Lender be allowed replacement liens on all of Debtor's right, title and interest in, to and under the collateral, notwithstanding the limits on pre-petition liens provided under 11 U.S.C. §552(a).

26. Debtor requests that the current Lockbox Agreement continue as the standard operating procedure for Debtor and Lender throughout the Bankruptcy.

27. In accordance with U.S.C. §363(c)(3), Debtor request that Court schedule a hearing on the use of cash collateral and such request will be included in Debtor's Motion to Expedite the First Day Motions.

WHEREFORE, based upon the foregoing, Debtor respectfully requests that the Court authorize use of cash collateral in the ordinary course of business and on the terms stated herein, allow 5400 Holdings, LLC replacement liens on the collateral to the extent there are obligations remaining, and for such other and further relief as the Court deems just and proper.

Dated: October 1, 2018

THE SADER LAW FIRM

By: /s/ Bradley D. McCormack

Bradley D. McCormack, KS 21527
2345 Grand Boulevard, Suite 2150
Kansas City, Missouri 64108-2663
816-561-1818/ Fax: 816-561-0818
Direct Dial: 816-595-1802
bmccormack@saderlawfirm.com
COUNSEL FOR DEBTOR

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon all appropriate parties electronically, as well as via first class mail, postage prepaid, to the Matrix, on this 4th day of October 2018.

/s/ *Bradley D. McCormack*

Bradley D. McCormack, Attorney

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CIP INVESTMENT PROPERTIES, LLC
8200/8300 Thorn Drive
October 2018 Cash Collateral Budget - Proposed

October 2018
Chapter 11
Monthly Budget
Through 10/31/2018

PROFIT & LOSS STATEMENT

	October
Rental Income - Projected Base	\$200,753.25
Rental Income - Other	
Income - 2018 Expense Stop Billed	\$17,418.25
After Hrs Energy Income	\$2,500.00
Income Vending Machine	\$60.00
Tenant Buyouts	
Income - Tenant Repairs/Maint/Phone	
Income-Late Charges	
Income-Phone System Maint	
Interest Income	
Misc Income	
Income - 2018 Exp Stop Prepayments	
Total Income:	\$220,731.50

Expenses	October
Costs-Unsuccessful Bids Potential Leases	\$0.00
Fees & Permits	\$500.00
Survey	\$0.00
Advertising	\$0.00
DH Management Services Maintenance Payroll	\$10,166.20
DH Management Services Management Fee	\$8,829.26
DH Management Services Payroll	\$8,266.00
Electric Exp	\$27,268.58
Repairs & Maintenance - Bldg Equipment	\$500.00
Electric Repairs	\$3,250.00
Elevator Maint.	\$400.00
Exterminating	\$175.00
Gas	\$6,166.91
Roof Repairs & Maint	\$2,700.00
HVAC Repair	\$9,016.75
Building Supplies	\$500.00
Janitorial Supplies	\$2,083.00
Janitorial Services	\$7,000.00
Landscaping	\$2,475.00
Lighting Contract	\$500.00
Locks & Keys	\$100.00
Maintenance-Other	\$250.00
Painting	\$0.00
Parking Lot Maintenance	\$0.00
Plumbing Repair	\$500.00
Signage	\$0.00
Signage Repair	\$0.00
Fire System Repairs & Maint	\$13,750.00
System Monitoring Services	\$125.00
Steam Cleaning	\$0.00
Trash Removal	\$325.00
Water - CAM	\$7,534.49
Window Cleaning / Exterior Restoration	\$0.00
Legal Fees	\$0.00
United States Trustee Fees	\$325.00
Misc. Professional Fees	\$0.00
Travel & Entertainment	\$0.00
Furn. & Equip <1,000	\$0.00
Software Purchase <1,000	\$0.00
Courier/Delivery	\$200.00

Postage	\$25.00
Telephone	\$800.00
Miscellaneous	\$500.00
	<u>\$114,231.19</u>

Franchise Taxes	\$0.00
Insurance	\$6,500.00
License & Fees	\$250.00
Other Taxes	\$0.00
Property Taxes	\$10,000.00
	<u>\$16,750.00</u>

Subtotal:	\$130,981.19
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	OCTOBER
Cash Collateral Budget - Montly	\$130,981.19

5400 Holdings - Adequate Protection	\$78,029.54
TOTAL - Adequate Protection Payments	\$78,029.54

Grand Total:	\$209,010.73
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Estimated Revenue	\$220,731.50
Free Cash Flow	\$11,720.77