

SO ORDERED




DAVID E. RICE
U. S. BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND**

In re:

STEIN PROPERTIES, INC.,

Debtor in possession.

Case No. 17-22680-DER

(Chapter 11)

**FINAL CONSENT ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a),
361 AND 363 AND BANKRUPTCY RULES 2002 AND 4001(b) AUTHORIZING
DEBTOR TO USE CASH COLLATERAL, (II) AUTHORIZING DEBTOR TO PROVIDE
ADEQUATE PROTECTION, AND (III) GRANTING CERTAIN RELATED RELIEF**

Upon consideration of the motion (the “Motion”) filed by First National Bank of Pennsylvania (“FNB”) for entry of an order prohibiting the Debtor, Stein Properties, Inc. (“Debtor”), from using cash collateral pursuant to sections 105(a), 361 and 363 of the United States Bankruptcy Code (the “Bankruptcy Code”) and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure (the “Rules”); and the Debtor and FNB having reached an agreement on the terms by which the Debtor is authorized to use Cash Collateral (as that term is hereinafter defined) and by which the Debtor shall provide adequate protection to FNB as a secured creditor in this case; and notice of the Motion together with notice of the hearing thereon having been

sufficiently made under the circumstances; and an initial hearing on the Motion (the “Initial Hearing”) having been held on October 16, 2017, which Initial Hearing was continued to November 6, 2017 (the “Continued Hearing”); and

Following the Initial Hearing, the Court entered the Interim Consent Order Pursuant to Bankruptcy Code Sections 105(A), 361 and 363 and Bankruptcy Rules 2002 and 4001(B) Authorizing Debtor to Use Cash Collateral, (II) Authorizing Debtor to Provide Adequate Protection, and (III) Granting Certain Related Relief [Docket No. 28] on October 19, 2017; and

Notice of the Continued Hearing having been properly provided pursuant to Bankruptcy Rule 4001(b); and upon the entire record made at the Initial Hearing and the Continued Hearing, and it appearing that the agreement reached between the Debtor and FNB is in the best interests of the Debtor, its estate and creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefore, it is hereby, by the United States Bankruptcy Court for the District of Maryland (this “Court”):

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

B. Venue of the Debtor’s chapter 11 case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The Debtor filed its petition under chapter 11 of the Bankruptcy Code on September 22, 2017 (the “Petition Date”) and is presently operating as debtor-in-possession in accordance with sections 1107 and 1108 of the Bankruptcy Code.

D. The Debtor is a Delaware corporation. It owns a 33,583 square foot office building (the “Property”) known as the Columbia Professional Center, located at 10840 Little Patuxent Parkway, Columbia, Maryland. The Debtor leases the Property to third parties, for

which it receives monthly payments of rent. The Debtor requires the use of the rental income in order to pay its trade vendors and other operating costs associated with the maintenance and rental of its Property as well as administrative expenses relating to this chapter 11 case.

E. On December 21, 2012, BankAnnapolis extended a commercial loan to the Debtor, at which time the Debtor entered into a Loan Agreement with BankAnnapolis (the “Loan Agreement”) and a promissory note in the amount of \$5,700,000 (the “Note”). The Note was secured by a Deed of Trust Security Agreement and Assignment of Contracts, Leases and Rents dated December 21, 2012 (the “Deed of Trust”). BankAnnapolis subsequently merged into FNB. At the time the Debtor filed its petition, the Debtor believes there was approximately \$5,203,669 in principal and interest due under the Note.

F. Without prejudice to the rights of any non-Debtor party in interest, the Debtor acknowledges that pursuant to the Deed of Trust, FNB holds a validly perfected first lien on the Property. The Debtor believes that FNB holds a validly perfected second lien on the property to secure a claim in the amount of \$173,360 and that the Columbia Association may have a third lien on the Property for unpaid property taxes in the amount of \$38,941.

G. Without prejudice to the rights of any other non-Debtor party in interest, the Debtor further acknowledge that the rents, revenues, income and profits arising from the use of the Property constitute “cash collateral” as that term is defined by 11 U.S.C. § 363(a) (the “Cash Collateral”) and that FNB has a validly perfected lien on such Cash Collateral (collectively with its lien on the Property, the “Prepetition FNB Lien”).

H. The Debtor requires use of Cash Collateral to continue business operations without interruption and to meet the ordinary cash needs necessary to (a) maintain and preserve the Property, (b) continue the operation of its business, and (c) pay fees and expenses incurred in

connection with this bankruptcy case including, but not limited to, professional fees and quarterly fees due to the Office of the United States Trustee. In the absence of the use of cash collateral, the continued operation of the Debtor's business would not be possible.

I. FNB is entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of its interest in the Property and the Cash Collateral (collectively, the "FNB Collateral") equal in amount to the degree of diminution in value of FNB's interest in the FNB Collateral, including, without limitation, any such diminution resulting from (i) the use by the Debtor or other decline in value of Cash Collateral and any other FNB Collateral and (ii) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.

J. The Debtor and FNB have stipulated that the terms of this Order are fair and reasonable and reflect the Debtor's exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration. FNB and the Debtor negotiated in good faith and at arm's length regarding the terms of this Order.

Based on the foregoing findings of fact and conclusions, and upon the record made before this Court by the Debtor at the Initial Hearing and the Continued Hearing, and good and sufficient cause appearing therefor, it is hereby
ORDERED as follows:

1. Subject to the terms of this Order, the Debtor is authorized to use the Cash Collateral during the period from the date of this Order through and including February 28, 2018 (the "Expiration Date"), subject to any earlier occurrence of the Termination Date (as defined below). The Expiration Date of this Order may be extended upon notice pursuant to Bankruptcy Rule 4001(b) and approval of such extension of the Expiration Date by further order of the Court.

2. Until the earlier of either the Termination Date or the Expiration Date, the Debtor may use Cash Collateral, but only in the amounts and for the purposes set forth in the budget attached hereto as Exhibit “A” (the “Budget”). The Debtor shall not, without the prior written consent of FNB or further order of this Court, use Cash Collateral to pay expenses under the Budget to the extent such payment would result in an adverse variance on a cumulative basis commencing on the Petition Date through the applicable date of payment of more than 10% with respect to the applicable category (i.e., individual row) of the Budget. To the extent the Debtor makes cash payments in any period of a lesser amount than the amount set forth in the Budget for the applicable expense category, such excess amount shall be carried forward to the next month and may be disbursed by the Debtor at a future date with respect to any expenses in the same expense category, except that payments to professionals permitted under the Budget may be made at a later date if thereafter approved by the Court. All income shall be deposited in the Debtor’s debtor-in-possession account.

3. No later than the 20th day of each calendar month commencing November, 2017, the Debtor shall prepare and deliver to FNB a report for the period ending as of the preceding month, of actual receipts, expenditures, and ending cash compared to the Budget, which shall include a description of any material variances and the reason therefore. The Debtor agrees to provide promptly to FNB, through its counsel, such additional information and documents as FNB may reasonably request including, but not limited to, financial statements, A/R reports, copies of contracts, and bank statements for the Debtor’s debtor-in-possession account.

4. FNB is entitled to adequate protection for any diminution in the value of its interest in the FNB Collateral, including the Cash Collateral (“Collateral Diminution”). As

adequate protection to FNB of its interest in the FNB Collateral, FNB is hereby granted the following:

- (a) Adequate Protection Lien: FNB shall be and is hereby granted valid and perfected security interests and replacement liens pursuant to, *inter alia*, sections 361(2) and 552(a) and (b) of the Bankruptcy Code in all currently owned or hereafter acquired property of the Debtor of any kind or nature, whether real or personal, tangible or intangible, wherever located, and all proceeds, rents, and profits thereof, including without limitation all personal property and fixtures (excluding causes of action arising under chapter 5 of the Bankruptcy Code) (collectively, the “Replacement FNB Collateral”) to secure any Collateral Diminution to the same extent, and in the same priority, as FNB’s lien on the FNB Collateral (the “FNB Adequate Protection Lien”).
- (b) Adequate Protection Payments: FNB shall receive from the Debtor on the first business day of each month adequate protection payments in the amounts set forth in the Budget for “Bank Payments” (the “FNB Adequate Protection Payments”), which payments are agreed adequate protection payments to FNB for the interim payments due under the Note and under FNB’s second deed of trust note.
- (c) The FNB Adequate Protection Payments shall constitute allowed administrative expense claims under sections 503(b)(1), 507(a), and 507(b) of the Bankruptcy Code (the “507(b) Claims”) with priority in payment over any and all (i) administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, and (ii) unsecured claims. The 507(b) Claims shall at all times be senior to the rights of the Debtor and any successor trustee or

any creditor in this chapter 11 case or any subsequent cases under the Bankruptcy Code. No cost or expense of administration of the estate under sections 105, 503(b), or 507(b) of the Bankruptcy Code or otherwise, including those resulting from or arising upon or after the conversion of these cases pursuant to section 1112 of the Bankruptcy Code, shall be senior to, or *pari passu* with the Section 507(b) Claims of FNB. Notwithstanding the foregoing, the Section 507(b) Claims of FNB shall be subordinate to (i) the quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6), (ii) any fees payable to the Clerk of the Bankruptcy Court (but not including any bond required to be posted), and (iii) the payment of allowed fees and expenses incurred by professionals retained pursuant to sections 327, 328 or 1103 of the Bankruptcy Code by the Debtor in an aggregate amount not to exceed \$35,000.00.

5. Unless FNB has otherwise agreed in writing, the Debtor's authority to use Cash Collateral shall automatically terminate on the date (the "Termination Date") that is the earlier of: (i) the Expiration Date; and (ii) the date that is five business days after receipt by the Debtor's counsel of written notice from FNB (which receipt shall be deemed to occur on the date transmitted if by electronic mail or facsimile, or the date received if by hand delivery, overnight courier, or registered mail) that a Termination Event (as defined herein) has occurred and such Termination Event remains uncured after such five business day period. Upon the Termination Date, the Debtor's right to use Cash Collateral shall immediately terminate, and unless the Debtor within five business days thereafter (i) seeks an extension of, or otherwise contests, the Termination Date, and (ii) requests an expedited hearing before the Bankruptcy Court with respect thereto, the Debtor shall deliver all Cash Collateral to FNB. The term "Termination

Event” means the occurrence of any of the following: (i) the Debtor fails to make any payment as and when due under this Order; (ii) the Debtor fails to comply in any material respect with the terms of or obligations under this Order, including by making any payments not set forth in the Budget or in an amount not within the permitted variance of the Budget; (iii) the Debtor’s chapter 11 case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code; or (iv) entry of an order appointing a chapter 11 trustee or an examiner with enlarged powers, other than an appointment of a trustee or examiner upon a motion of FNB seeking such appointment. Any termination of the Debtor’s right to use Cash Collateral pursuant to the terms of this Order shall be without prejudice to the rights of the Debtor, or any successor thereto, to request authority from this Court to use Cash Collateral.

6. Unless the Court determines that a party other than FNB holds a validly perfected lien that is senior to the FNB Prepetition Lien, The FNB Adequate Protection Lien shall be prior and senior to any liens and encumbrances of any other secured creditors on the Replacement FNB Collateral granted or arising after the Petition Date. The Debtor shall not cause or permit, or consent to cause or permit, any liens, mortgages or security interests pursuant to section 364 of the Bankruptcy Code having priority equal or senior to any of the security interests or liens of FNB. Based on the consideration received by the Debtor pursuant to this Order, as agreed to by FNB, the Debtor has agreed, and it is hereby ordered, that no expenses of administration of the chapter 11 cases or any future proceedings, including liquidation in bankruptcy, shall be charged against or recovered from the Collateral or the Replacement FNB Collateral under section 506(c) of the Bankruptcy Code or any other similar law without the prior written consent of FNB, other than (i) the quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6), (ii) any fees payable to the Clerk of the Bankruptcy Court (but not including any bond required to be posted),

and (iii) the payment of allowed fees and expenses incurred by professionals retained pursuant to sections 327, 328 or 1103 of the Bankruptcy Code by the Debtor in an aggregate amount not to exceed \$35,000.00.

7. Notwithstanding any other provision in this Order, any party in interest shall have the right to object to the validity, perfection or amount of the FNB Prepetition Lien or to the waiver of the Debtor's right to a section 506(c) surcharge as provided in paragraph 6 herein, provided such objection is filed within seventy-five (75) days from the entry of this Order. In the event a creditors' committee is formed in this case, such committee shall have sixty (60) days from the date of its formation within which to file any such objection.

8. The FNB Adequate Protection Lien granted pursuant to this Order shall be deemed created and perfected without the necessity of the execution, filing, or recording of any documents otherwise required under non-bankruptcy law for the creation or perfection of security interests and liens. The validity, enforceability, and priority of the Prepetition FNB Lien, the FNB Adequate Protection Lien, and the FNB Adequate Protection Payments shall not be affected by the occurrence of the Expiration Date or Termination Date, or the conversion, dismissal, or conclusion of the Debtor's bankruptcy case.

9. By accepting or agreeing to payments hereunder, FNB is not deemed to have waived any default or event of default that may exist, or any rights or remedies available under the Deed of Trust, other loan documents, or any other applicable law, except to the extent specifically set forth herein or as may be modified by application of the Bankruptcy Code. Nothing herein shall constitute a waiver by FNB of any right, claim, or assertion that FNB may subsequently make in these proceedings and nothing herein shall be deemed an admission or concession by FNB that it regards itself as fully or adequately protected. In addition, nothing in

this Order shall limit FNB's right to: (i) file a motion to dismiss the Debtor's bankruptcy case; (ii) file a motion for relief from or modification of the automatic stay; or (iii) file a motion for appointment of a trustee or examiner.

10. The Debtor is authorized and directed to perform all acts, and to execute and deliver such other documents, instruments and agreements as may be necessary and reasonable to effectuate the terms and conditions of this Order.

11. Subject to the entry of any subsequent Order, the provisions of this Order shall be binding upon and inure to the benefit of FNB and the Debtor.

12. To the extent that any of the provisions of this Order shall conflict with any of the provisions of the Loan Documents, this Order is deemed to control and shall supersede the conflicting provision in such Loan Documents.

13. This Court shall retain exclusive jurisdiction to resolve any dispute arising from or relating to the interpretation or implementation this Order.

WE ASK FOR THIS:

/s/ Lawrence A. Katz
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Creditors holding an interest in the cash collateral
Creditors holding the twenty largest unsecured claims
All attorneys who have entered an appearance and who are registered e-files

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13 week budget

Principal	5,309,634.64
Interest Rate adjusted for 360/365	5.00%
	265,481.73
	22,123.48