

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

AFP HOLDING, INC.,

Case No. 17-42642(CEC)

Debtor.
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CONSENT ORDER TO USE CASH COLLATERAL

This matter (the “*Motion*”) having come on before the Court pursuant to a Notice of Presentment by AFP Holding, Inc. (the “*Debtor*”) on notice to all creditors and parties in interest, and upon the subjoined consent of SummitBridge National Investment III LLC (“*SB*”), and the New York Business Development Corp. (“*NYBDC*”) (SB and NYBDC are collectively referred to as the “*Secured Lenders*”) as joint holders of the first mortgage upon the Debtor’s real property; and there being no objections to the relief sought herein, this Court authorizes the Debtor’s use of cash collateral in accordance with the terms of this Order.

Based upon the record before the Court, the Court hereby finds as follows:

A. On May 23, 2017 (the “Petition Date”) an involuntary petition under Chapter 7 of the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. § 101, *et seq.* (the “*Bankruptcy Code*”) was filed against the Debtor by SB and NYBDC as secured creditors holding deficiency claims.

B. A motion to dismiss the involuntary Chapter 7 case was filed by the Debtor and, after an evidentiary hearing, the Court denied the Debtor’s motion to dismiss the involuntary Chapter 7 petition (ECF #31).

C. The Debtor moved to convert the case from Chapter 7 to Chapter 11 (ECF ##32, 34) and by Order, dated and entered March 12, 2018, this Court, on consent of the Secured Lenders,

entered an Order for relief and converted the case to a case under Chapter 11 of the Bankruptcy Code (ECF #50).

D. The Debtor owns certain real and personal property, fixtures and improvements located at 54-14 74th Street, Elmhurst, New York 11373 (the “**Real Property**”). On January 6, 2018, a pipe burst within the Real Property causing extensive damages (the “**Casualty Loss**”)

E. At the time of the Casualty Loss, the Debtor’s Real Property was occupied by three commercial tenants, each of whom has vacated the Real Property and their written leases have been terminated by the Debtor, pursuant to the terms of each lease, and each tenant has acknowledged in writing the termination of its lease. The Debtor is in the process of adjusting its casualty loss claim (the “**Insurance Claim**”) with its insurance company, the Philadelphia Indemnity Insurance Company (the “**Insurance Company**”).

F. In accordance with the guidelines of the United States Trustee (“**UST**”), the Debtor is in the process of converting its account at TD Bank, located at 73-55 Grand Avenue, Maspeth, NY 11378, into a Debtor-in-Possession account (“**DIP Account**”), and upon completion of the process, Debtor will give notice thereof to the Secured Lenders and the United States Trustee.

G. Bank of America, SB’s predecessor in interest as mortgagee of the Real Property, and NYBDC entered into an Intercreditor Agreement, made as of May 7, 2010, which provides that they hold a joint first mortgage upon the Real Property. SB has asserted that its secured claim totals \$2,574,985.45 as of March 1, 2018 plus interest, advances and enforcement costs accruing thereafter and has filed a proof of claim in Debtor’s case in that amount. NYBDC has asserted that its secured claim totals \$2,322,750.17 as of February 28, 2018, plus interest, advances and enforcement costs accruing thereafter. The Plan Agreement referenced in Paragraph “I” below, provides that “SB shall have: (a) an allowed secured claim, as of March 1, 2018, in the amounts

of \$1,545,434.89 for principal, \$692,869.97 for interest at the non-default rate per the note secured by the SB Mortgage, “*Advances*” as that term is defined in the Intercreditor Agreement between SB and NYBDC, in an amount to be agreed upon between SB and NYBDC or as determined by the Court, and “*Enforcement Costs*”, as that term is defined in the Intercreditor Agreement, in an amount to be agreed upon between SB and NYBDC or as determined by the Court, plus interest, Advances, and Enforcement Costs accruing thereafter; and (b) an allowed unsecured claim in the amount of the difference between the amount of its allowed secured claim and (i) the amount paid to SB from the Net Sale Proceeds plus the proceeds of the Insurance Policy (“*Insurance Proceeds*”) not expended to pay the cost of the Repairs, the Adjuster’s compensation, the costs of sale of the Real Property or any other legitimate expense in connection with the Real Property (“*Net Insurance Proceeds*” and together with the Net Sale Proceeds, the “*Net Proceeds*”) or (ii) the amount of its credit bid plus the Net Insurance Proceeds (such credit bid plus the Net Insurance Proceeds being defined as the “*Credit Bid Proceeds*”), whichever is applicable.” The Plan Agreement also provides that “NYBDC shall have: (a) an allowed secured claim, as of March 1, 2018, in the amounts of \$1,437.671.40 for principal, \$646,656.61 for interest at the non-default rate per the note secured by the NYBDC Mortgage, Advances in an amount to be agreed upon between SB and NYBDC or as determined by the Court, and Enforcement Costs in an amount to be agreed upon between SB and NYBDC or as determined by the Court, plus interest, Advances, and Enforcement Costs accruing thereafter; and (b) an allowed unsecured claim in the amount of the difference between the amount of its allowed secured claim and (i) the amount paid to NYBDC from the Net Proceeds or (ii) the amount of its Credit Bid Proceeds, whichever is applicable.” The Plan Agreement further provides that, “To the extent applicable, SB and NYBDC shall be entitled to retain and collect any deficiency on any unsecured claim from any third party obligors. Any

portion of the allowed secured claims not paid from the Net Proceeds shall be deemed an allowed general unsecured claim entitled to such distributions as provided for that class of creditors in a confirmed Chapter 11 plan.”

H. The U.S. Small Business Administration (“*SBA*”) through the Empire State Development Corporation, holds a second priority mortgage lien on the Debtor’s Real Property in the original principal amount of \$1,871,918.13 and has filed a proof of claim in Debtor’s case in the amount of \$2,232,610.73.

I. The Insurance Company has issued a casualty loss advance in the sum of \$250,000(the “*Loss Advance*”) by check made payable to the Debtor, its affiliates, Aldona Fire and A. Electric, Empire State Development Corp., SB, NYBDC, and the Adjuster. The Debtor and all loss payees under the Insurance Policy, including the Secured Lenders, have agreed that the Loss Advance shall be duly endorsed by all payees and the Debtor shall cause the check to be deposited into the Attorney Trust (IOLA) Account (the “*Escrow Account*”) of Debtor’s undersigned counsel (“*Escrowee*”).

J. The Debtor, SB and NYBDC ~~are in the process of finalizing~~ finalized and executed (CEC) an agreement (the “*Plan Agreement*”) which, ~~when executed will be~~ was (CEC) filed with the Court on April 19, 2018 (CEC). The Plan Agreement shall govern the administration of the Chapter 11 case and the terms of a Plan of Reorganization providing for the sale of the Real Property, distribution of the proceeds of sale, the collection of the Insurance Claim, and allocation of the Insurance Proceeds.

Based upon the foregoing and good and sufficient cause appearing therefor, and upon the consent of SB and NYBDC, it is hereby:

ORDERED, ADJUDGED, and DECREED as follows:

1. **Motion Granted.** The Motion is granted as set forth herein.

2. **Use of Cash Collateral.** Subject to the terms of this Order, the Debtor is authorized, to use cash collateral as defined in Section 363(a) of the Bankruptcy Code (“*Cash Collateral*”) to pay for the operating expenses and costs of administration incurred by the Debtor strictly in accordance with the budget attached hereto as Exhibit A (the “*Budget*”), for the period of time (the “*Interim Period*”) from the date hereof until the earliest to occur of (a) the date that this Order ceases to be in full force and effect, or (b) the occurrence of a “*Termination Event*”, as defined below. The Debtor shall not engage any “insider” (as that term is defined in Section 101(31) of the Bankruptcy Code) to perform any services or supply any materials to the Debtor and shall not make any payments to or for the benefit of an insider without the express prior written authorization of SB and NYBDC. The Debtor's authority to use the Cash Collateral shall terminate (A) automatically upon the occurrence of a Termination Event as set forth below in Paragraphs “12(a)” - “(k)” (all such Termination events being referred to as the “*Automatic Termination Events*”) or (B) upon further order from the Court upon the occurrence of any other Termination Event. Notwithstanding anything herein, on the occurrence of a Termination Event, all of the rights, remedies, benefits, and protections provided to the Secured Lenders under this Order shall survive such Termination Event.

3. **Escrow Account.** All funds received by or for the benefit of Debtor during the Interim Period, from the proceeds of the Insurance Claim or otherwise, shall be duly endorsed by all payees and deposited by Debtor into the Escrow Account as and when received. During the Interim Period, no disbursements shall be made from the Escrow Account unless either (a) expressly provided for in Paragraph “4” herein or (b) approved by prior written authorization of the Secured Lenders.

4. **Budget.** The Budget for the Interim Period shall provide for payment of the following costs and expenses in the ordinary course of business:

- “**Building**”);
- (a) electric bills for the building on the Real Property (the
 - (b) water charges for the Building;
 - (c) gas charges for the Building;
 - (d) real estate taxes for the Building as and when they fall due;
 - (e) United States Trustee fees;
 - (f) accounting fees not to exceed \$1,000 for the 2017 calendar year;

and

(g) in addition to the charges set forth above, the Debtor may use its DIP Account to pay the following obligations: accounting fees not to exceed \$1,000 for the 2017 calendar year; and (i) to the extent that the DIP Account does not contain sufficient funds to make the payments described in Paragraphs “4(a)” – “4(f)” above and 9(c)(i), the Debtor may utilize the proceeds of the Loss Advance make such payments, subject to the approval of both SB and NYBDC and pursuant to a budget.

5. **Reporting.** During the Interim Period, in addition to Debtor’s obligation to file monthly operating reports with the Court, Escrowee shall provide Secured Lenders and the undersigned counsel for SB and NYBDC, by e-mail, not less often than every two (2) weeks, commencing two weeks after entry of this Order and continuing on the same day of the week every two weeks thereafter, unless such day shall be a legal holiday, in which case on the next following business day, a report (“***Bi-Weekly Report***”) covering the immediately prior two week period (“***Reporting Period***”) setting forth: (a) all funds received by Debtor during the Reporting Period, identifying the amount, source, and purpose of the payment to Debtor with backup documentation

(b) all deposits made into the Escrow Account during the Reporting Period identifying the amount, source, and purpose thereof together with backup documentation; (c) all disbursements made from the Escrow account during the Reporting Period identifying the payee, amount, and purpose, together with backup documentation; and (d) the balances in the Escrow Account at the start and end of the Reporting Period.

6. **Secured Lenders Access to Debtor's Books and Records.** The Debtor shall allow the Secured Lenders and their professionals' reasonable access to all books and records pertaining to the Real Property and Debtor, and shall provide the Secured Lenders such information and documents as the Secured Lenders may reasonably request upon 24 hours' written notice by e-mail to Debtor's counsel.

7. **No Payment of Pre-Petition Debts.** In no event shall Cash Collateral be used to pay any pre-petition debts or obligations of the Debtor, and, further, unless the Secured Lenders otherwise agrees in writing or as authorized by further order of the Court, in no event shall Cash Collateral be applied or available to pay any administrative expenses of the types specified in Sections 503(b)(2), (3), (4), (5) or (6) of the Bankruptcy Code, subject to the payments and carveouts provided for in Paragraph "16" herein, and provided, however, that nothing in this Paragraph "7" shall prevent the Debtor from paying quarterly fees to the UST.

8. **Non-Waiver of Secured Lenders' Rights.** This Order is not intended to be, nor shall it be construed as, a waiver or limitation in any way by the Secured Lenders of any rights or remedies Secured Lenders may have under the controlling loan documents, the Bankruptcy Code or other applicable law, including, without limitation, the Secured Lenders' right to seek relief from the automatic stay under Section 362 of the Bankruptcy Code or to pursue claims against third parties. This Order shall not be construed as a waiver, concession or admission

by the Secured Lenders or the Debtor that the Debtor has or does not have an interest in any property in which the Debtor asserts an interest; and further, this Order shall not operate to preclude or estop the Secured Lenders from contending, among other things, that any property in which the Debtor may assert an interest (including property addressed by this Order) is not property of Debtor's bankruptcy estate (the "*Estate*"), and further, nothing in this Order shall be construed as a waiver of the Secured Lenders' rights to pursue collection of default interest, premiums, late fees and any other costs and expenses provided for by the loan documents and/or applicable law, subject to the Debtor's right to contest same.

9. **Cooperation.** The Debtor is authorized to execute and deliver such further documents and provide such assurances as the Secured Lenders may reasonably require in connection with the matters discussed herein, and the Debtor shall, subject to the rights of privilege and confidentiality, promptly provide copies of such further documents, reports, certificates and other writings as the Secured Lenders may require to further the purposes of this Order, all of which shall be in form and substance satisfactory to the Secured Lenders.

10. **Replacement Lien.** Notwithstanding the provisions of Bankruptcy Code Section 552(a) and in addition to the Secured Lenders' existing pre-petition liens and security interests, all of which shall continue in full force and effect in the same order, priority and extent as existed prior to the Petition Date, the Secured Lenders are hereby granted, pursuant to Bankruptcy Code Sections 361 and 364, a continued first priority security interest in and lien upon (the "***Replacement Lien***") the Debtor's real and personal property acquired to the same extent, scope and priority as existed pre-petition, covering all rents, escrows, income, profits, fixtures, interests in real property and any improvements thereon, including all cash held in the DIP account or Escrow Account and all payments received and to be received from the Insurance Company as

a result of adjusting the Debtor's Casualty Loss. The Replacement Lien shall be valid, enforceable and perfected without any further action by the Secured Lenders or the necessity of any filing or execution of documents which might otherwise be required under non-bankruptcy law, and upon request by the Secured Lenders, the Debtor shall execute and deliver to the Secured Lenders such financing statements and other documents as shall be reasonably required by the Secured Lenders to perfect the Replacement Lien.

11. **Continuation of Order.** The provisions of this Order, as well as the liens and security interests granted pursuant to this Order, shall continue in this or any superseding case under the Bankruptcy Code, and such liens and security interests shall maintain their priority as provided by this Order until all indebtedness they secure is satisfied, discharged or otherwise resolved by a plan confirmed by the Court under Bankruptcy Code Section 1129. The Debtor's use of Cash Collateral pursuant to this Order shall remain in effect pending further Order of the Court, confirmation of a Chapter 11 plan in this case, the conversion of this case to a case under Chapter 7 of the Bankruptcy Code or the dismissal of this case or the occurrence of a Termination Event as defined in Paragraph "12" herein.

12. **Termination Event.** A Termination Event shall constitute any of the following:

- (a) August 31, 2018_(the "*Outside Date*");
- (b) the Debtor shall fail to make any Adequate Protection payment to the Secured Lenders as provided in Paragraph "17" of this Order;
- (c) any order shall be entered, other than with the consent of the Secured Lenders, reversing, amending, supplementing, staying, vacating, or otherwise modifying this

Order in any material respect or terminating the use of Cash Collateral by the Debtor pursuant to this Order;

(d) an application shall be filed by the Debtor for the approval of any Superpriority Claim or any lien in Debtor's Chapter 11 case (the "*Chapter 11 Case*") which is *pari passu* with or senior to the Adequate Protection Obligations (as defined below) or Adequate Protection Liens (as defined below), or there shall be granted any such *pari passu* or senior Superpriority Claim or lien in each case, except any such Superpriority Claim or lien arising hereunder;

(e) any order shall be entered granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code to the holder or holders of any security interest, lien or right of setoff other than a security interest, lien or right of setoff of the Secured Lenders, to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like), possession, set-off or any similar remedy with respect to any Cash Collateral or any assets of the Debtor necessary to the conduct of its businesses;

(f) the failure of the Debtor to perform in accordance with the terms and conditions of this Order;

(g) except as permitted by any order of this Court and included in the Budget or with the express prior written consent of Secured Lenders, the Debtor or Escrowee shall make any payment in respect of a prepetition claim;

(h) the Chapter 11 Case shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; (ii) the Debtor shall file a motion or other pleading seeking the dismissal of the Chapter 11 Case pursuant to Section 1112 of the Bankruptcy Code or otherwise; or (iii) a trustee under Chapter 11 of the Bankruptcy Code, a responsible officer, or an examiner

with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code shall be appointed or elected in the Chapter 11 Case;

(i) the Debtor (i) fails to maintain, with financially sound and reputable insurance companies (x) insurance in such amounts and against such risks as are customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (y) all insurance required to be maintained pursuant to the Loan Documents, or (ii) fails to furnish to the Secured Lenders, upon reasonable request, information in reasonable detail as to the insurance so maintained;

(j) the Debtor fails to comply with all laws, rules, regulations, and orders of any governmental authority applicable to it, its operations or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a material adverse effect, provided, that the Debtor shall be entitled to contest in good faith any laws, rules, regulations and order of any governmental authority so long as, prior to contesting such matters, the Debtor notifies and obtains written consent of the Secured Lender, which consent shall not be unreasonably withheld; or

(k) other than as provided in subparagraphs (a) through (j) of this Paragraph "12", the Debtor fails to comply with any of the terms or conditions of this Order, provided, however, that the Secured Lenders may waive, in writing, any Termination Event.

13. **Variiances.** The Debtor shall not exceed any line item on the Budget by an amount exceeding five percent (5%) of each such line item; provided, however, that the Debtor may make expenditures up to five percent (5%) in excess of the total budgeted expenses for that

month so long as total expenses for that month do not exceed 105% of the total budget for such month (collectively, the “*Allowed Variance*”).

14. **Requisitions.** On a weekly basis, the Debtor shall submit to the Secured Lenders a requisition for the expenses it intends to pay during such week consistent with the Budget, in the form prescribed by the Secured Lenders prior to the Petition Date, together with a certificate signed by an authorized officer of the Company’s certifying that no Termination Event has occurred.

15. **Additional Advances.** In the event that an expense arises which is not within any of the approved line items in the Budget, or the Debtor anticipates that any line item will need to be exceeded by more than the Allowed Variance, the Debtor shall request approval from the Secured Lenders, together with such back up and documentation as the Secured Lender may reasonably request, and the Secured Lenders shall have three (3) business days after the provision of the request and the required back up and documentation within which to consent or object; provided, however, in the event that the Secured Lenders do not consent or if the requested expenditure presents an immediate threat to the business or property of the Debtor requiring action or remediation before the expiration of three (3) business days, the Debtor may file a motion with the Court seeking amendment of the Budget and approval of the additional expense. Provided, further, however, that prior to making any such application to the Court, the Debtor shall have requested the Secured Lenders make an expedited determination whether to approve the Debtor's proposed expenditure and provided the Secured Lenders with sufficient information and documentation to consider the Debtor's request for approval. The Debtor shall not incur such additional expense absent any such approval by the Secured Lenders or the Court.

16. **Carveout/Professional Fees.** Provided Debtor is not in default under this Order, Secured Lenders agree to a carveout from the Secured Lenders' Cash Collateral as follows: (a) an amount not to exceed \$40,000 for the Chapter 11 administrative fees and disbursements of Debtor's duly retained Chapter 11 counsel, Goldberg Weprin Finkel Goldstein LLP ("***GWFG***"), subject to approval by final order of the Court; (b) administrative fees and disbursements for Debtor's duly retained Adjuster in the amount due pursuant to the retention agreement between Debtor and the Adjustor subject to approval by final order of the Court; (c) administrative fees and disbursements for the duly retained Auctioneer in the amount of his agreed upon compensation as provided in the Order authorizing his retention; and (d) Debtor's Estate, in the following amounts: (1) \$10,000 for gross proceeds of the sale of Debtor's Real Property ("***Gross Sale Proceeds***") and Net Insurance Proceeds of \$3,500,000 or less; (2) one percent (1%) of the gross Sale Proceeds and Net Insurance Proceeds in excess of \$3,500,000 but less than \$4,100,000; and (3) two percent (2%) of the Gross Sale Proceeds and Net Insurance Proceeds in excess of \$4,100,000. Notwithstanding anything to the contrary in this Order, no fees for Debtor's professionals provided for in subparagraphs "(a)" of this Paragraph "16" are budgeted to be paid during the Interim Period, and such payments shall not in any event be made without prior notice, hearing, and approval of this Court. In no event, shall the carveout provided for herein be applicable to any official committee appointed in this case absent agreement with the Secured Lenders directly or Court order.

17. **Adequate Protection.** The Secured Lenders are entitled, under section 363(e) of the Bankruptcy Code, to adequate protection of its interest in the collateral securing the Debtor's obligations under the Loan Documents (the "***Prepetition Obligations***"), including the Cash Collateral (the "***Prepetition Collateral***"), for and equal in amount to the amount of Cash Collateral used from and after the Petition Date, and the aggregate diminution in the value of the

Secured Lenders' interests in the Prepetition Collateral from and after the Petition Date, including any such diminution resulting from (a) the use of Cash Collateral, (b) the sale, lease, or use by the Debtors (or other decline in value) of the Prepetition Collateral, and (c) the imposition of the automatic stay under section 362 of the Bankruptcy Code (the aggregate amount of such diminution, which shall expressly include, among other things, the aggregate amount of the Cash Collateral used by the Debtors from and after the Petition Date (the "*Adequate Protection Obligations*").¹ The Secured Lenders contend that the Debtor has not offered, and cannot offer, adequate protection for its use of Cash Collateral, and the Debtor disputes such contention. The Secured Lenders have, however, consented to the Debtor's use of Cash Collateral, subject to and expressly conditioned upon the granting of protections as provided for in this Order.

18. **Replacement Liens as Adequate Protection to the Secured Lenders.**

Notwithstanding the provisions of Section 552(a) of the Bankruptcy Code, and in addition to the security interests preserved by section 552(b) of the Bankruptcy Code, the Debtor grants, in favor of the Secured Lenders and as security for all indebtedness that is owed by the Debtor to the Secured Lenders, under the Loan Documents, but only to the extent of the Adequate Protection Obligations, a first priority post-petition security interest and lien in, to and against all of the Debtor's assets, to the same priority, validity and extent that the Secured Lenders held a properly perfected pre-petition security interest in such assets, which are or have been acquired, generated or received by the Debtor subsequent to the Petition Date, as well as in all presently owned and hereafter acquired property which is not subject to a prior perfected and enforceable pre-petition

¹ The capitalized terms "Adequate Protection Obligations" and "Adequate Protection Liens" are used in this Order for convenience only, and those terms or any other reference to adequate protection in this Order do not constitute a finding or otherwise imply that the protections and liens granted to the Secured Lenders constitute adequate protection under Sections 361, 362, 363, or 364 of the Bankruptcy Code.

lien or security interest, but excluding any claims or recoveries (the “*Avoidance Recoveries*”) by or on behalf of the Debtor, its estate or any trustee appointed herein arising under Sections 544 through 550, inclusive, of the Bankruptcy Code (collectively, the “*Postpetition Collateral*” and together with the Prepetition Collateral, the “*Collateral*”).

19. **Perfection.** The liens and security interests granted in this Order (the “*Adequate Protection Liens*”) are deemed perfected without the necessity for filing or execution of documents which might otherwise be required under non-bankruptcy law for the perfection of said security interests. Notwithstanding the foregoing sentence, the Secured Lenders is hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take any other action in order to validate and perfect the liens granted to it hereunder. The Debtor shall execute and deliver to the Secured Lenders all such agreements, financing statements, instruments, and other documents as the Secured Lenders may reasonably request to evidence, confirm, validate, or perfect the liens granted pursuant hereto (other than mortgages) and all such financing statements, control agreements, notices of liens, or other similar instruments and documents shall be deemed to have been executed, filed and/or recorded at the time and on the date of the Petition Date. A certified copy of this Order may, in the discretion of the Secured Lenders, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments. Each and every federal, state, and local government agency or department may accept the entry by this Court of this Order as evidence of the validity, enforceability, and perfection on the Petition Date of the Adequate Protection Liens granted herein to or for the benefit of the Secured Lender. The Debtor shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the Collateral without the prior written consent of the Secured

Lenders (and no such consent shall be implied from any other action, inaction, or acquiescence by the Secured Lenders) or an order of this Court.

20. **Superpriority Claim.** The Secured Lenders are hereby granted an allowed, superpriority administrative expense claim (the “*Superpriority Claim*”) under section 507(b) of the Bankruptcy Code with respect to the Adequate Protection Obligations. The Superpriority Claim shall have priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, including, without limitation, those specified in, or ordered pursuant to, Sections 326, 328, 330, 503(b), 506(c), 507(a), 507(b), 546(c), 726, and 1114 of the Bankruptcy Code, or otherwise (whether incurred in the Chapter 11 Case or any conversion thereof to a case under Chapter 7 of the Bankruptcy Code or any other proceeding related hereto or thereto), except statutory fees prescribed by 28 U.S.C. Section 1930, Clerk of the Court fees and postpetition ad valorem taxes which are to be paid in the ordinary course, which Superpriority Claim shall be payable from and have recourse to all prepetition and post-petition property of the Debtor and all proceeds thereof, including the Avoidance Recoveries.

21. **No Surcharge.** No administrative expense claims, including fees and expenses of professionals, that are or have been incurred from the Petition Date through and including the date of any Termination Event shall be charged or assessed against or recovered from the Collateral or attributed to the Secured Lender with respect to its interests in the Collateral pursuant to the provisions of section 506(c) of the Bankruptcy Code or otherwise by, through or on behalf of the Debtor, without the prior written consent of the Secured Lenders, and no such consent shall be implied from any action, inaction, or acquiescence by, either with or without notice to, the Secured Lenders. Except as set forth herein, the Secured Lenders has not consented or agreed to the use of Cash Collateral subsequent to the Petition Date.

22. **Modification of Order.** Notwithstanding the above or anything to the contrary in this Order, the Secured Lenders may seek modification of the adequate protection provided in this Order, without prejudice to the rights of the Debtor or any party in interest to contest any such modification.

23. **No Novation.** This Order shall not cause a novation of any of the Secured Lender's secured documentation or Loan Documents.

24. **Creditor Not Deemed Owner or Operator.** Solely by agreeing to the use of Cash Collateral by the Debtor, the Secured Lenders shall not be deemed to have assumed any liability to any third person, and shall not be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor or of its assets.

25. **Non-Waiver of Rights and Remedies.**

(a) This Order is not intended to and shall not prejudice, alter, affect or waive any rights and/or remedies of the Debtor or the Secured Lenders (with respect to liens, claims, value determinations, and all other matters) under the Bankruptcy Code or applicable non-bankruptcy law (including, but not limited to, all matters pertaining to cash and other Collateral) and does not bind any subsequently appointed trustee or committee.

(b) This Order and the Budget shall constitute valid and binding obligations of the Debtor and the Secured Lenders, enforceable against the Debtor and the Secured Lenders in accordance with their terms. No obligation, payment, transfer, or grant of security under this Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment, or counterclaim.

(c) The failure or delay by the Secured Lenders to exercise its rights and remedies under this Order shall not constitute a waiver of any of the rights of the Secured Lenders hereunder or otherwise, and any single or partial exercise of such rights and remedies against the Debtor or the Collateral shall not be construed to limit any further exercise of such rights and remedies against the other.

(d) Notwithstanding anything herein to the contrary, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair (i) any of the rights of any of the Secured Lenders under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of the Secured Lenders to (A) request termination or modification of the automatic stay of Section 362 of the Bankruptcy Code, (B) request dismissal or conversion to Chapter 7 of the Chapter 11 Case, or appointment of a Chapter 11 trustee or examiner (including with expanded powers), or (C) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans upon the expiration or termination of the Debtor's exclusive period, (ii) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of the Secured Lenders, (iii) the rights of the Debtor to oppose any requests made in accordance with clauses (i)(A), (B) and (C) above, (iv) upon a Termination Event, the right of the Debtor to request approval of this Court for use of Cash Collateral, subject to the right of the Secured Lenders to object and the need for the Debtor to obtain Court approval (and meet all applicable legal standards) prior to any further use of Cash Collateral after the Termination Event, and (v) any right of any party in interest to object to the terms and conditions of any subsequent request by the Debtor for use of cash collateral.

(e) The provisions of this Order shall be binding upon and inure to the benefit of the Secured Lenders, the Debtor and their respective successors and assigns (including

any estate representative, Chapter 7 trustee, or other trustee or fiduciary hereafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors).

26. **No Priming.** The Adequate Protection Liens shall not be (a) subject or junior to any lien that is avoided and preserved for the benefit of the Debtor's Estate under section 551 of the Bankruptcy Code, or (b) subordinated to or made *pari passu* with any other lien, whether under Section 364(d) of the Bankruptcy Code or otherwise. No lien having a priority superior to or *pari passu* with those granted by this Order with respect to the Adequate Protection Obligations shall be granted or allowed until the indefeasible payment in full in cash and satisfaction in the manner provided in this Order of the Adequate Protection Obligations, with the exception of prepetition or post-petition ad valorem taxes that may be owed to the Miami-Dade County Tax Collector. No claim having a priority superior to or *pari passu* with the Superpriority Claims granted by this Order with respect to the Adequate Protection Obligations shall be granted or allowed until the indefeasible payment in full in cash and satisfaction in the manner provided in this Order of the Adequate Protection Obligations.

27. **Further Hearing.** A final hearing or a further interim hearing on the Debtor's continued use of Cash Collateral shall be conducted by the Court at 2:30 p.m. on May 16, 2018, at the United States Bankruptcy Courthouse, 271-C Cadman Plaza East, Brooklyn, NY 11201-1800, Room 3529. The notice of such hearing shall be delivered by the Debtor and state that any party in interest objecting to the entry of the Final Order or interim order, as the case may be, shall file written objections with the Court no later than 12:00 noon on April 30, 2018, which objections shall be served so that the same are received by hand delivery or electronic mail on or before such date and time by: (a) Goldberg Weprin Finkel Goldstein LLP, counsel for Debtor, 1501 Broadway, 22nd Floor, New York, NY 10036, Attn.: Neal M. Rosenbloom, Esq., E-mail:

nrosenbloom@gwfglaw.com; (b) Pryor & Mandelup, L.L.P., counsel for SB, 675 Old Country Road, Westbury, NY 11590, Attn.: A. Scott Mandelup, Esq. , E-mail: asm@pryormandelup.com; and (c) Certilman Balin Adler & Hyman, LLP, counsel for NYBDC, 90 Merrick Avenue, 9th Floor, East Meadow, NY 11554, Attn.: Richard J. McCord, Esq., E-mail: rmccord@certilmanbalin.com.

28. **Service of Order.** Debtor's counsel is directed to serve copies of this Order on all creditors, all persons filing claims in Debtor's case, and the UST, within five (5) business days after entry of this Order, and to file proof of service thereof within two (2) business days after such service is made.

30. **No Admissions or Waivers by Secured Lenders.** Nothing in this Order will be deemed or construed as an admission or waiver by the Secured Lenders as to adequate protection, or any other issue in the case, and this Order will not constitute consent by the Secured Lenders to the use of its Cash Collateral other than for the limited purpose and during the limited period expressly provided herein. In addition, nothing contained in this Order will prejudice the rights of the Secured Lenders to: (i) seek relief from the automatic stay of Section 362(a) of the Bankruptcy Code; (ii) oppose confirmation of any plan of reorganization filed by the Debtor or any other party in interest; (iii) seek allowance of an administrative claim or additional adequate protection in connection with the use of the Secured Lenders' Cash Collateral; or (iv) seek any other relief that the Secured Lenders may deem necessary and appropriate under the circumstances. Moreover, nothing contained in this Order shall waive the Debtor's rights to seek any relief it may deem necessary and appropriate under the circumstances, or to contest the Secured Lenders' claim.

31. **Notice.** Due, proper and adequate notice of the relief granted in this Order has been given to all necessary parties.

32. **Jurisdiction/Venue.** The Court shall retain original and exclusive jurisdiction to interpret, implement, or enforce this Order, including, without limitation, any disputes that may arise between or among the parties to this Order regarding the interpretation, implementation, or enforcement of any terms hereof.

ENTRY OF THE ORDER IS DULY CONSENTED TO:

PRYOR & MANDELUP, L.L.P.
Attorneys for Summitbridge National Investment III LLC
675 Old Country Road, Westbury, New York 11590

By: /s/ A. Scott Mandelup

CERTILMAN BALIN ADLER & HYMAN LLP
Attorneys for New York Business Development Corp.
90 Merrick Avenue – 9th Floor, East Meadow, New York 11554

By: /s/ Richard J. McCord

GOLDBERG WEPRIN FINKEL GOLDSTEIN LLP
Attorneys for AFP Holding, Inc., Debtor and Debtor-in-Possession
1501 Broadway, 22nd Floor, New York, NY 10036

By: /s/ Neal M. Rosenbloom

**Dated: Brooklyn, New York
May 8, 2018**





Carla E. Craig
United States Bankruptcy Judge

EXHIBIT "A"

BUDGET

MONTHLY EXPENSES:

Gas	\$ 500.00
Electric	\$ 500.00
Water	\$ 35.00
Elevator Maintenance Contract	\$ 240.00

NON-RECURRING EXPENSES:

2017 Accounting Fees	\$ 1,000.00
U.S. Trustee Fees	TBD
Real Estate Taxes due June, 2018	\$ 3,500.00
Insurance due June 4, 2018	\$ 10,000.00 per annum (Est.)
Fire Alarm System (if restored)	\$ 500.00 per month
Dedicated Phone Lines for Alarm System	\$ 100.00 per month
Elevator Phone Line	\$ 50.00 per month