

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.

A handwritten signature in blue ink, appearing to read "Mary Ann Whipple".

Mary Ann Whipple
United States Bankruptcy Judge

Dated: January 23 2018

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

IN RE: : Case No. 17-30905
: :
BCC Sandusky Permanent, LLC, : Chapter 11 Proceeding
: :
Debtor. : Judge Mary Ann Whipple

**FIFTH AGREED ORDER GRANTING MOTION PURSUANT TO 11 U.S.C. § 363 OF
THE BANKRUPTCY CODE FOR ENTRY OF AN ORDER (I) AUTHORIZING THE USE
OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO
PREPETITION SECURED LENDER PURSUANT TO 11 U.S.C. § 361
AND (III) APPROVING PROPOSED BUDGET**

WHEREAS, Richard D. Nelson, the duly appointed Chapter 11 Trustee ("Trustee") in the above captioned case, previously filed a motion (the "Motion") requesting the entry of an order pursuant to 11 U.S.C. § 363 and Fed. R. Bankr. P. 4001, for the entry of a cash collateral order authorizing the use cash collateral as set forth on the proposed budget attached thereto as Exhibit A (the "First Budget") and to

provide adequate protection to prepetition secured lender as set forth therein (Doc. No. 164); and

WHEREAS, Lender consented to the Cash Collateral Order authorizing the use of the cash collateral as set-forth in the First Budget; and

WHEREAS, on August 18, 2017, this Court approved the Motion and entered the agreed cash collateral order which permitted the use of cash collateral through and including October 31, 2017 (the "Cash Collateral Order") (Doc. No. 170) as outlined in the First Budget; and

WHEREAS, Trustee and Lender agreed to an extension of the Cash Collateral Order (the "Second Cash Collateral Order") subject to the terms and uses outlined in the revised budget attached thereto as Exhibit A and (the "Second Budget") which was approved by this Court and is set to expire on November 26, 2017 (Doc. No. 216); and

WHEREAS, Trustee and Lender agreed to a further extension of the Cash Collateral Order (the "Third Cash Collateral Order") subject to the terms and uses outlined in the revised budget attached thereto as Exhibit A and (the "Third Budget") which was approved by this Court and is set to expire on December 17, 2017 (Doc. No. 227); and

WHEREAS, Trustee and Lender agreed to a further extension of the Cash Collateral Order (the "Fourth Cash Collateral Order") subject to the terms and uses outlined in the revised budget attached thereto as Exhibit A and (the "Fourth Budget") which was approved by this Court and is set to expire on January 28, 2018 (Doc. No. 250); and

WHEREAS, Trustee and Lender have determined and agreed that a further extension of the Fourth Cash Collateral Order is warranted under the circumstances to keep the Property in good repair and to keep this case administratively solvent until same is liquidated subject to the terms and uses outlined in the revised budget attached hereto as Exhibit A and incorporated herein by reference though and including February 25, 2018 (the "Fifth Budget"); and

WHEREAS, the Fourth Cash Collateral Order contemplated an extension to same if it was mutually agreed to by the Lender and the Trustee and in such a case, provided that the parties may upload a further agreed order extending same for the Court's consideration.

NOW THEREFORE, THE PARTIES BEING IN AGREEMENT, IT IS HEREBY FOUND AND DETERMINED THAT:

A. Jurisdiction and Venue: This Court has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Capitalized Terms: Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion;

C. Party with Interest in Cash Collateral: Under the Loan Documents and circumstances set forth in the Motion, the Bank of New York Mellon Trust Company National Association, as trustee for Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 2007 IQ14, formerly known as Bank of New York Trust Company, National Association ("Lender"), claims an interest with respect to the

Debtor's Property as more fully described in the Motion, including an interest in cash collateral as that term is defined under 11 U.S.C. § 363.¹

D. Necessity of Relief Requested: In the event the Trustee was not permitted to use the Cash Collateral, the Trustee would be unable to operate in the ordinary course of business or to maintain its Property. As such, the continued operation of the Debtor's business would not be possible and would likely result in immediate and irreparable harm to the estate and its creditors, and the possibility for a successful outcome in this Chapter 11 case would be gravely jeopardized. The relief requested in the Motion is, therefore, necessary, essential, and appropriate for the continued operation of the Debtor's business, and to facilitate the management and preservation of the Debtor's Property.

E. Lender Consent and No Objections: Lender has consented to the use of the Cash Collateral as set forth in the First Budget, the Second Budget, the Third Budget, the Fourth Budget and the Fifth Budget and no objections have been filed in opposition to the Motion.

F. Adequate Notice: Proper and adequate notice of the Motion has been given under the Bankruptcy Code, the Bankruptcy Rules and the Local Rules of this Court; and that no other or further notice is necessary.

G. Appropriateness of Budget: The Fifth Budget is reasonable and appropriate under the circumstances.

¹ Lender has not agreed that the Rents generated from the Property constitute cash collateral. Lender reserves the right to assert such Rents do not constitute property of the estate because they are subject to an absolute assignment of Rents to the Lender.

H. Appropriateness of Requested Relief: The relief requested in the Motion is in the best interest of the Debtors' estate and its creditors.

After due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein, therefore:

IT IS HEREBY ORDERED ADJUDGED AND DECREED THAT:

1. The Motion shall be and hereby remains, GRANTED in all respects.

2. The Fifth Budget is approved in all respects.

3. The Trustee shall be and hereby is, authorized to use Cash Collateral to pay all ordinary and necessary expenses in the ordinary course of its business including but not limited to:

- a. Maintenance and preservation of the Property;
- b. The continued operation of the Debtor's business, including but not limited to, maintenance fees, management fees and insurance costs for the Property;
- c. Payment of real estate taxes on the Property;
- d. Payment of expenses reasonably incurred in the performance of the responsibilities of the Debtor pursuant to rental agreements between the Debtor and the tenants of the Property;
- e. Payments of professional fees approved by the Court and authorized by the Lender; and
- f. Payment of incidental overhead expenses concerning the property.

For purposes herein, such expenses incurred from January 29, 2018 through and including February 25, 2018 shall conform to the Fifth Budget.

4. As and for adequate protection, Lender shall be entitled to the continued following:

- a. Adequate Protection Lien. Notwithstanding the provisions of § 552(a) of the Bankruptcy Code, and in addition to any security interests preserved by § 552(b) of the Bankruptcy Code, as adequate protection of the Lender's asserted interest in the Debtor's Cash Collateral, subject to the Carve-Out (defined below), the Lender will be granted a replacement lien to the same extent, validity and priority as existed on the Petition Date under the Loan Documents, in Cash Collateral owned as of or acquired after the Petition Date. Lender's interest shall be deemed perfected immediately upon entry of the Order approving this Motion (the "Adequate Protection Lien"). However, under no circumstances shall Lender have a lien on any causes of action arising under §§ 542 *et seq.*, 547, 548, 549, 550, 551 of the Bankruptcy Code or any of the Debtor's assets on which it did not have a lien or security interest pre-Petition Date.
 - b. Superpriority Post-Petition Administrative Claim. Subject to the Carve-Out (defined below), as adequate protection of the Lender's interest in the Debtor's Cash Collateral, the Lender will be granted a superpriority administrative claim pursuant to § 364(c)(1) (the "Superpriority Claim").
 - c. Insurance. The Trustee shall maintain insurance on the Property in an amount that is customarily appropriate to the nature of the Property. Trustee shall make arrangements to have such insurance, or other like insurance, issued in the name of the Debtor, with the Trustee being listed as co-loss payee.
 - d. Taxes. The Trustee shall pay and keep current all real estate taxes which accrue post-Petition Date.
 - e. Distribution to Lender. On a monthly basis, the net-cash flow remaining after payment of all approved expenses set forth in the Fifth Budget shall be paid over to Lender.
 - f. Accounting of Funds. Trustee shall continue to account for all funds.
 - g. Post-Petition Interest and Fees. Lender will continue to accrue post-petition interest at the default rate set forth in the Loan Agreement and all post-petition default interest and costs, including attorneys' fees, will be added to Lender's Claim as is permissible under applicable law.
5. Lender agrees that the Lender's pre-Petition Date liens and security interests in the Debtor's property under the Loan Documents, the Adequate Protection Lien and the Superpriority Claim are expressly subject to (the "Carve-Out") (i) those

professional attorney fees and expenses of Cohen, Todd, Kite & Stanford, LLC and Frost, Brown, Todd, LLC incurred or accrued from the Petition Date through February 25, 2018, provided however, the total amount for such fees and expenses shall not exceed the aggregate limitations for same set forth in the First Budget, the Second Budget, the Third Budget, the Fourth Budget and the Fifth Budget, (ii) the professional fees of property manager NAI Daus from the Petition Date through February 25, 2018, provided however, the total amount for such fees and expenses shall not exceed the aggregate limitations for same set forth in the First Budget, Second Budget, the Third Budget, the Fourth Budget and the Fifth Budget and (iii) fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under Section 1930(a), Title 28, United States Code.

6. The duration of the Trustee's authorization to utilize the Cash Collateral shall expire on February 25, 2018 unless an extension is mutually agreed to by the Lender and the Trustee in such case, the parties may upload a further agreed order extending this Order and the Fifth Budget for the Court's consideration.

7. The authorization of the use of Cash Collateral as outlined in the First Budget, Second Budget, the Third Budget and Fourth Budget remains in full effect and is not altered by this Agreed Order.

8. Nothing in this Order shall be construed as to prejudice or prevent the United States Trustee or Trustee from challenging the secured claim(s) of the Lender under the Loan Documents. Nothing in this Order shall be construed as an admission by the Lender that the Rents constitute cash collateral or that the adequate protection set forth herein is adequate protection for the use of the Lender's collateral.

9. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law constitute findings of fact, they are adopted as such.

10. The Court shall retain jurisdiction as to all matters relating to the interpretation and implementation of this Order.

11. This Order is effective immediately upon entry.

SEEN AND AGREED TO BY:

/s/ Donald W. Mallory
Donald W. Mallory (007875)
Richard D. Nelson (003943)
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Counsel to Chapter 11 Trustee

-and-

/s/ Kim Martin Lewis (per authorization 01/22/2018)
Kim Martin Lewis (OH #0043533)
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Counsel to Lender

IT IS SO ORDERED.

EXHIBIT A

Account	Week Ending	Week Ending	Week Ending	Week Ending
Name	2/4/2018	2/11/2018	2/18/2018	2/25/2018
BCC Sandusky Permanent LLC				
Budget				
Beginning Weekly Cash Balance	21,175	127,165	65,369	29,083
REVENUE				
RENTAL INCOME				
Rent	121,054	18,228	0	0
TOTAL RENTAL INCOME	121,054	18,228	0	0
OTHER INCOME				
CAM Reimbursements	8,942	609	0	0
TOTAL OTHER INCOME	8,942	609	0	0
CAM RECEIPTS				
Passthru Insurance	718	144	0	0
Passthru Property Tax-Bldg	5,639	2,580	0	0
Passthru Water and Sewer	884	39	0	0
TOTAL CAM RECEIPTS	7,241	2,763	0	0
CAM Reserve	40	0	0	0
TOTAL REVENUE	137,277	21,600	0	0
Total Cash Available	158,452	148,765	65,369	29,083
EXPENSES				
REPAIRS AND MAINTENANCE				
Maintenance Man	25	25	25	25
Electrical Repairs	167	167	167	167
Fire Suppression	0	0	0	167
Sweeping	0	650	0	0
HVAC Repairs	0	0	0	0
Landscaping	0	0	0	0
Repairs-Asphalt Concrete	0	0	0	0
Painting	0	0	0	0
Plumb Repairs	0	0	0	0
Roof Repair	0	0	0	0
Snow Removal	0	0	0	2,000
Repair or Maintenance-Unrecoverable	0	100	0	0
TOTAL REPAIRS AND MAINTENANCE	192	942	192	2,359

REIMBURSABLE EXPENSES				
Repair or Maintenance-Recoverable	0	0	0	85
TOTAL REIMBURSABLE EXPENSES	192	942	192	2,444
UTILITIES				
Public Electric	0	1,150	0	0
Vacant Electric	0	200	0	0
Gas-Vacant	0	0	54	0
Water and Sewer	0	1,200	0	0
Dumpster and Trash Removal	0	0	0	1,000
TOTAL UTILITIES	0	2,550	54	1,000
MANAGEMENT FEES				
Management Fees	0	0	0	0
TOTAL MANAGEMENT FEES	0	0	0	0
TAXES AND LICENSES				
Property Tax	0	78,864	0	0
Bank Fees	0	0	0	0
Comm Activity Tax-Ohio	0	0	0	0
TOTAL TAXES AND LICENSES	0	78,864	0	0
INSURANCE				
Insurance	0	0	0	1,175
TOTAL INSURANCE	0	0	0	1,175
TOTAL EXPENSES	192	82,356	246	4,619
TOTAL NOI BEFORE OWNERS EXPENSE	137,085	-60,756	-246	-4,619
OWNERS EXPENSES				
Legal and Accounting	0	0	0	0
Pre-Chapter 11 Trustee Admin/Professional Fees	0	0	0	0
Chapter 11 Trustee Professional Fees	0	0	35,000	0
Postage (Weekly FedEx to Bankruptcy Trustee)	40	40	40	40
Miscellaneous Expense	0	0	0	100
TOTAL OWNERS EXPENSES	40	40	35,040	140
TOTAL NET OPERATING INCOME	137,045	-60,796	-35,286	-4,759
TOTAL NOI AFTER DEBT SERVICE	137,045	-60,796	-35,286	-4,759
SECURITY DEPOSIT RESERVE	30,055			
Legal and Bankruptcy Costs				
US Trustee	1,000	1,000	1,000	1,000
TOTAL DEPRECIATION AMORTIZATION DAUS CODES	1,000	1,000	1,000	1,000

TOTAL WEEKLY INCOME - NET AFTER BANKRUPTCY COSTS	136,045	-61,796	-36,286	-5,759
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DISTRIBUTION TO LENDER PER ORDER				3,324
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WEEKLY CASH FLOW	127,165	65,369	29,083	21,175
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