

**THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

In re:

OUR TOWN ASSOCIATES, LLC,

Case No.: 18-72950-SCS
Chapter 11

Debtor in Possession.

MOTION FOR AUTHORITY TO USE CASH COLLATERAL

Our Town Associates, LLC, a Virginia limited liability company and the above captioned debtor in possession (the “Debtor” or “Our Town”) by counsel, moves the Court for entry of an order authorizing the Debtor to use cash collateral, upon the terms outlined in this Motion, which cash collateral secures obligations to a secured creditor. In support thereof, the Debtor states as follows:

BANKRUPTCY RULE 4001(b)(1)(B) CONCISE STATEMENT

1. By this Motion, the Debtor requests the entry of an order authorizing the Debtor to among other things, (i) to use, pursuant to section 363 of 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), cash collateral of the Debtor’s principal secured creditor, U.S. Bank National Association, as Trustee for the Registered Holders of LB-UBS Commercial Mortgage Trust 2007-C6, Commercial Mortgage Pass-Through Certificate, Series 2007-C6 (“U.S. Bank”), in accordance with the expense budget prepared by the Debtor; and (ii) grant adequate protection to U.S. BANK as necessary and appropriate pursuant to sections 361, 362, and 363 of the Bankruptcy Code.

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Proposed Counsel for the Debtor

2. As the Petition Date, the Debtor estimates that the value of its cash collateral, comprised of cash and accounts receivable to be approximately \$16,000.00 (“Cash Collateral”):

3. The material provisions of the proposed use of cash collateral are summarized as follows:

- a. Name of entity with an interest in the Debtor’s cash collateral: U.S. Bank, pursuant to Deed of Trust and Assignment of Rents; and
- b. Uses of cash collateral: payment of the Debtor’s general operating and administrative expenses during the course of this Case, including management fees, leasing commissions, real estate taxes, insurance, operating expenses of the property, professional fees, and statutory fees to the U.S. Trustee, as further detailed on the budget attached hereto as Exhibit A (“Budget”).
- c. Material terms:
 - i. Debtor is authorized to use up to 100% of cash collateral, subject only to the terms of the order authorizing its use and the adequate protection provided by the Debtor;
 - ii. The Debtor maintains all rights to contest the amount, extent, validity and priority of liens and its secured debts; and
 - iii. Without further authorization from this Court, the Debtor will use Cash Collateral to pay only reasonable and necessary operating and administrative expenses, either incurred in the ordinary course of the Debtor’s business, or approved by the Court as administrative expenses as set forth on the Budget.
- d. Adequate Protection.

- i. In addition to U.S. Bank's security interest in the Cash Collateral, U.S. Bank's claims against the Debtor are also secured by pre-petition interests in or liens upon the real property owned by the Debtor and the rents generated from the Real Property ("Other Collateral").
- ii. The Debtor proposes to offer to provide U.S. Bank with the following adequate protection for the use of pre-petition cash collateral:
 - 1) A replacement lien, pursuant to § 361 of the Bankruptcy Code, in and to all property of the estate of the kind presently securing repayment of U.S. Bank's claims against the Debtor, which shall attach to the Debtor's property to the same extent, validity and priority of the liens that existed on the Petition Date;
 - 2) After receiving rents from tenants in a non-DIP account, promptly transfer any and all cash, checks or monies it collects, receipts or derives from the operation of its business or the use of the Cash Collateral (whether pre- or post-petition) into the Debtor's Debtor-in-Possession bank account (the "Account");
 - 3) Maintenance and preservation of the value of the Property as required under the U.S. Bank loan documents.

Statement of Jurisdiction

4. On August 22, 2018 (the "Petition Date"), Our Town filed a Voluntary Petition for relief under Chapter 11 of Title 11 of the United States Code.

5. Our Town continues to operate its business as a Debtor in Possession pursuant to 11 U.S.C. §§ 1101(1), 1107 and 1108.

6. As of the date of the filing of the instant Motion, the United States Trustee has not appointed a creditors' committee.

7. Jurisdiction to consider this matter is vested in this Court pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409(a).

8. The relief sought by the Debtor is in accordance with the provisions of sections 105, 361, 362 and 363 of the Bankruptcy Court and Rule 4001 of the Federal Rules of Bankruptcy Procedure.

Background

9. Our Town owns a 50,825 square foot shopping center (the "Shopping Center") on a 5.943 acre parcel located just outside of Charlotte, in historic downtown Mooresville, North Carolina (the "Property"). The shopping center is anchored by a Food Lion and is one hundred percent (100%) leased to nine other tenants.

10. The Note matured in August of 2017. Except for the payment due upon maturity and the monthly payment due August 11, 2018, the Debtor has made every monthly payment, including additional funds for taxes, insurance and the other mandated reserves.

11. Prior to the Filing Date, Our Town retained Berkeley Capital Advisors to market the Property for sale. Various parties expressed interest in acquiring the Property but the Debtor was unable to obtain a contract in an amount sufficient for U.S. Bank to release its lien. The last offer for the Property was \$3.45 million which was subject to numerous contingencies.

12. Prior to the Filing Date, Our Town commenced discussions with Food Lion to negotiate an extension of the lease. Food Lion's real estate department is meeting in early September 2018 in order to evaluate and approve an extension of its lease at the Property for an additional 10-year term. The long-term extension of the Food Lion lease is critical for any sale or

restructuring of the debt against the Property since Food Lion leases approximately seventy percent (70%) of the Shopping Center. It is anticipated that a long term lease with Food Lion will be dependent upon certain repairs and upgrades to the Shopping Center. The Debtor desire to preserve cash in order to be in a position to finance the renovations necessary to renewal and extension of the Food Lion lease.

13. Our Town provided continuous and meaningful communication to U.S. Bank about the status of the sale and the status of the Food Lion negotiation. Despite its negotiation and without any advance notice, U.S. Bank filed an emergency motion for appointment of a receiver.

14. Our Town opposed the appointment of the receiver and the hearing on the motion was continued for approximately sixty-days while the parties attempted to determine whether U.S. Bank would allow time in order for the Food Lion lease to be extended so that there could be sale or refinancing of the debt.

15. U.S. Bank has moved for the foreclosure sale of the Property. The continued prosecution by U.S. Bank of the receivership motion and the foreclosure proceeding prompted this Chapter 11 bankruptcy filing.

16. In order to maximize the value of the Property as a going concern, Our Town has sought the protection of this Court to enable it to extend its lease with Food Lion and evaluate the sale and refinancing options without the intervention of a receiver.

Debt Structure of Our Town

17. Our Town executed a Promissory Note dated August 9, 2007 to Lehman Brothers Bank, FSB (the “original Lender”) in the original principal amount of \$3,425,000.00 whereby the Debtor became indebted to the Original Lender (the “Note”).

18. The Note is secured by that certain Deed of Trust, Fixture Filing and Security Agreement from the Debtor to Daniel S. Huffenus, as Trustee, for the benefit of the Original Lender (the “Deed of trust”), which deed of Trust was recorded on August 10, 2007, in Book 1875, Page 1225 of the Iredell County Registry (the “Registry”).

19. The Note is also secured by an Assignment of Rents and Leases from the Debtor to the Original Lender (the “Assignment of Rents”), which Assignment of Rents was recorded on August 10, 20017 in Book 1875, Page 1302 of the Registry.

20. The Note, the Deed of Trust, the Assignment of Rents and related loan documents (the “Loan Documents”) were thereafter assigned by the Original Lender to LaSalle Bank National Association, in its capacity as Trustee for the registered holders of LB-UBS Commercial Mortgage Trust 2007-C6, Commercial Mortgage Pass-Through Certificates, Series 2007-C6.

21. The Loan Documents were thereafter assigned by Bank of America, N.A. (successor by merger to LaSalle Bank National Association) as Trustee for the registered holders of LB-UBS Commercial Mortgage Trust 2007-C6, Commercial Mortgage Pass-Through Certificates, Series 2007-C6 to U.S. Bank.

22. Payment of the Notes was personally guaranteed by Whitney Graham, Jr. and Jon S. Wheeler, but the guarantee obligations were eliminated due to the leasing success of the Property. Mr. Graham and Mr. Wheeler may have liability under a Guaranty of Recourse Obligations of Borrower.

23. U.S. Bank asserts that as of April 20, 2018, its payoff was \$3,360,294.50. As of April 20, 2018, U.S. Bank was holding taxes, insurance and replacement reserves in escrow and reserve accounts totaling approximately amount of \$70,000.00. Since April 20, the Debtor has

paid additional funds would be a principal reduction and has deposited additional monies into the reserve/escrow accounts.

24. Our Town has remained current on its operating expenses through the use of the cash generated by the Shopping Center.

25. The schedules filed by Debtor reflect additional unsecured debt of approximately \$6,000.00 to a law firm that provided pre-petition services to the Debtor, management fees owed to the current management company and approximately \$41,000 reflected on the books as potentially owed to the former management company, Wheeler Real Estate Investment Trust and entities affiliated with it.

Use of Cash Collateral

26. In order to remain in possession of its Property and successfully reorganize its financial affairs, the Debtor must use the Cash Collateral to pay the expenses of the Shopping Center, as well as the administrative expenses of this Chapter 11 case.

27. The Debtor has assessed its immediate funding needs and developed the Budget by taking into account anticipated rents and disbursements through December 31, 2018.

28. The Debtor's most immediate cash needs are (a) to pay insurance premiums and to (2) pay the utilities and operating expenses of the Shopping Center. Insurance premiums are due each month through a premium financing arrangement.

29. The Budget includes a provision for the payment of management fees to Wheeler Real Estate Investment, LLC ("WREI"). WREI is a property management company owned by Jon Wheeler. Mr. Wheeler serves as the manager to the managing member of the Debtor. WREI provides the day to day asset and property management services to the Shopping Center in exchange for a 5% management fee. This fee is consistent with the management fees paid by

similar shopping centers and is consistent with the fee paid by the Debtor for the many years prior to the bankruptcy filing.

30. Although the Debtor's preliminary analysis reflects that U.S. Bank's claims against the Debtor are properly perfected, the factual allegations in the Motion are made without prejudice to the right of any party, including the Debtor, to contest U.S. Bank's claims or its collateral position.

31. In accordance with 11 U.S.C. § 363(c)(2)(B), the Debtor requests that this Court authorize and approve its use of Cash Collateral for the payment of its operating expenses as set forth in the Budget.

32. The proposed use of cash collateral will provide that the Debtor and any committee of unsecured creditors formed in this case will be given a period of time to evaluate the extent, validity and priority of the liens of U.S. Bank against the Collateral.

33. Without the use of Cash Collateral, reorganization efforts of the Debtor could be seriously and irreparably harmed, resulting in significant losses to the Debtor's estate and its creditors.

WHEREFORE, Our Town Associates, LLC respectfully requests entry of a final order authorizing the Debtor to use the Cash Collateral to pay its operating expenses in according with the Budget, as supplemented at the time of the final hearing, and granting the Debtor such other and further relief as may be proper and just.

OUR TOWN ASSOCIATES, LLC

By: /s/ Karen M. Crowley
Of Counsel

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CERTIFICATE OF SERVICE

I certify that on the 23RD day of August 2018, a true copy of the foregoing Motion was sent by first class, postage paid mail to the parties on the attached service list.

/s/ Karen M. Crowley