

Below is the Order of the Court.



Brian D. Lynch

Brian D. Lynch
U.S. Bankruptcy Judge
(Dated as of Entered on Docket date above)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

In re

Gateway Medical Center II, LLC,

Debtor.

Case No. 17-41780-BDL

INTERIM ORDER AUTHORIZING USE OF
CASH COLLATERAL

This matter came before the Court upon Debtor's Motion for Interim Order (1) Authorizing Use of Cash Collateral; (2) Authorizing Grant of Adequate Protection; and (3) Setting Hearing for Final Authority to Use Cash Collateral (the "Motion"). The court having considered the Motion, arguments of counsel, files and records herein, and being fully advised of the premises; now, therefore,

The Court finds as follows:

A. On May 4, 2017 (the "Petition Date"), Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Code"). No trustee has been requested or appointed. Debtor is currently operating its business and managing its property as a debtor-in-possession under Sections 1107 and 1108 of the Code.

1 B. The Court has jurisdiction over this case under 28 U.S.C. §§ 157 and
2 1334. Venue of this case is properly in this District under 28 U.S.C. §§ 1408 and 1409. This
3 matter is a core proceeding under 28 U.S.C. §157(b), 11 U.S.C. §§ 105(a) and 363 of the Code
4 and FRBP 4001 and LBR 4001-3.

5 C. Gateway Medical Center II, LLC (“Debtor”) is a Washington limited
6 liability company formed on March 28, 2004. It owns a medical office building located at 2621
7 NE 134th St., Vancouver, Washington (the “Building”). The Building was constructed in 2001
8 and has 32,041 rentable square feet on a 1.56 acre site. It is adjacent to a medical office building
9 located at 2501 NE 134th St., Vancouver, Washington (the “Adjacent Building”). The Adjacent
10 Building is owned by affiliate Gateway Medical Center, LLC (“Gateway”), which filed a chapter
11 11 bankruptcy proceeding on May 4, 2017 as well under case number 17-41779-BDL. Debtor
12 and Gateway are seeking to administratively consolidate their chapter 11 bankruptcy
13 proceedings.

14 D. Debtor and Opus Bank entered into a certain Promissory Note, Trust Deed
15 and Security Agreement (respectively, “Note,” “Trust Deed” and “Security Agreement”). By
16 virtue of the Trust Deed, Security Agreement and UCC-1 Financing Statement recorded on
17 August 28, 2015, Opus Bank asserts that it holds a security interest and lien in Debtor’s assets
18 including, but not limited to, the Debtor’s real property, rents, accounts receivable, cash, goods,
19 equipment, fixtures, general intangibles, instruments, chattel paper, and certain intellectual
20 property (the “Assets”), and all products, proceeds, rents and profits of the Assets (collectively,
21 the “Cash Collateral”). The Cash Collateral meets the definition of “cash collateral” set out in 11
22 USC § 363(a). More particularly, on or about August 28, 2015, Opus Bank (“Opus Bank”)
23 loaned Gateway Medical Center, LLC (the “Debtor”) the sum of \$5,200,000. The loan was
24 evidenced by a Promissory Note dated August 28, 2015, in the original principal face amount of
25 \$5,200,000 (the “Note”). The Debtor’s obligations under the Note were further memorialized by
26 that certain Loan Agreement dated August 28, 2015.

1 E. Opus Bank asserts that the Debtor's obligations under the Note are
2 secured by that certain Deed of Trust and Fixture Filing (with Assignment of Leases and Rents
3 and Security Agreement), ("Deed of Trust") recorded on August 28, 2015 under No. 5208617,
4 records of Clark County, Washington.

5 F. Opus Bank asserts that the Debtor's obligations under the Note were
6 further secured by that certain Pledge and Security Agreement dated August 28, 2015 and that
7 Opus Bank perfected its lien on the personal property which was the subject of the Pledge and
8 Security Agreement by filing a UCC-1 financing statement on September 3, 2015.

9 G. Opus Bank asserts that the Debtor's obligations under the Note were
10 further secured by that certain Assignment and Subordination of Management Agreement dated
11 August 28, 2015.

12 H. Opus Bank asserts that the Debtor's obligations under the Note were
13 unconditionally guaranteed under a written Guaranty Agreement dated August 28, 2015.
14 Collectively, the Note, Deed of Trust, Loan Agreement, Guaranty Agreement, Assignment and
15 Subordination of Management Agreement and Pledge and Security Agreement are referred to as
16 the "Loan Documents."

17 I. Opus Bank asserts that the Deed of Trust encumbers certain real and
18 personal property located at 2501 NE 134th St., Vancouver, WA 98686. The real property is
19 legally described in Exhibit A to the Deed of Trust. This real property along with all leases,
20 rents, issues, and profits of such real property, along with accrued proceeds and profits,
21 constitute the "Property."

22 J. Opus Bank asserts that it is the current holder of the Note and is the
23 current party in interest to the Loan Documents.

24 K. Opus Bank asserts that the Debtor has defaulted under the Note and Deed
25 of Trust. Opus Bank asserts that it accelerated the loan on October 4, 2016.

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1 L. The Debtor is affiliated with Gateway Medical Center II, LLC (“Gateway
2 II”), which also has a loan agreement with Opus Bank. Opus asserts that both the Gateway and
3 Gateway II loan agreements contain provisions cross defaulting and cross collateralizing the two
4 loans, authorizing Opus Bank to remedy any defaults under either loan with recourse to the
5 assets secured by the other loan.

6 M. Opus asserts that as of May 4, 2017, the balance on the Note was
7 \$5,518,338.20.

8 N. Opus Bank initiated a nonjudicial foreclosure of the real property securing
9 the Loan. A Notice of Trustee’s sale was recorded setting the foreclosure sale date for May 5,
10 2017.

11 O. Debtor and Maxim Commercial Capital, LLC(“Maxim”) entered into a
12 Promissory Note, Trust Deed and Security Agreement (respectively, “Maxim Note”, “Maxim
13 Trust Deed,” and “Maxim Security Agreement”). By virtue of the Maxim Trust Deed, Maxim
14 Security Agreement and UCC-1 Financing Statement recorded on November 25, 2015, Maxim
15 asserts that it holds a second priority security interest and lien in Debtor’s assets including, but
16 not limited to, the Debtor’s real property, rents, accounts receivable, cash, goods, equipment,
17 fixtures, general intangibles, instruments, chattel paper, and certain intellectual property (the
18 “Assets”), and all products, proceeds, rents and profits of the Assets (collectively, the “Cash
19 Collateral”). The Cash Collateral meets the definition of “cash collateral” set out in 11 USC §
20 363(a).

21 P. On December 30, 2017, Kidder Matthews (“KM”) was appointed as a
22 custodial receiver on the motion of Opus Bank pursuant to an order entered in the Clark County
23 Superior Court, case no. 16-2-02503-3. The Custodial Receiver has been managing and
24 operating the business of the Debtor from December 30, 2016 to the Petition Date. The Receiver
25 has prepared a budget (the "Budget"), a copy of which is attached hereto as Exhibit A, which sets
26 forth the estimated cash needs for the Property for the period from May 4, 2017 to June 30, 2017

(the "Interim Budget Period"). KM has information regarding the rents collected and expenses paid for the Receivership Period. The Receiver's budget is based upon KM's control of the Property during the Receivership Period.

Q. The Debtor requests authority for the Receiver to use Opus Bank's and Maxim's Cash Collateral to assure the continued operation of the business. Without the use of Cash Collateral, the Receiver will be unable to meet the current working capital needs of the Estate; retain the services necessary to conduct its business, purchase sufficient goods and services needed for operations; pay utilities, meet tenant obligations; attract potential tenants and retain current tenants.

R. The Estate will suffer immediate and irreparable harm if the Receiver is not permitted to use Cash Collateral on an interim basis, consistent with the Budget, to meet the necessary and ordinary course post-petition operating expenses prior to the time prescribed by FRBP 4001(b)(2) for a final hearing for authority to use Cash Collateral.

S. This Order does not contain any of the "discouraged provisions" listed in LBR, Appendix A -- Guidelines for Cash Collateral and Financing Stipulations.

T. Allowing the Receiver to use Cash Collateral in the amounts and for the purposes detailed in the Budget until a final hearing on use of Cash Collateral ("Final Hearing") is reasonable.

NOW, THEREFORE, it is ORDERED as follows:

A. Authorization for Use of Cash Collateral.

1. The Receiver is authorized to use Cash Collateral for the purposes specified in the Receiver's Budget through the date of the Final Hearing in accordance with the provisions of this Order.

2. Receiver's authority to use the Cash Collateral is limited to the amounts and uses of Cash Collateral as set forth in each line item of the Interim Budget, provided such amounts may exceed in each line item and in aggregate up to 15% on a monthly basis. The

Receiver shall not, without the prior written consent of Opus Bank, pay any expenses at any time before the period for which such expense is budgeted.

B. Adequate Protection – 11 USC §§ 361(2), 363(c)(1) - (2).

1. Opus Bank and Maxim (collectively “Lenders”) are hereby each granted replacement security interests and liens upon all property acquired by the Debtor after the Petition Date of the same type, kind, character and description as the property in which they held a lien or security interest on the Petition Date, with the same validity and priority and to the same extent that they had valid, enforceable liens and security interests prior to the Petition Date (the “Replacement Liens”) in and to the following (collectively the “Postpetition Collateral”): (a) all proceeds from the disposition of all or any portion of the Prepetition Collateral, (b) all property of the Debtors and the Debtors’ estates of the same kind, type and nature as the Prepetition Collateral that is acquired after the Petition Date, and (c) all proceeds of the foregoing. The Replacement Liens are and shall be in addition to the prepetition liens evidenced by the Security Agreements, and shall remain in full force and effect notwithstanding any subsequent conversion or dismissal of this case. The Replacement Liens granted to Lenders shall have the same priority position as existed in the Prepetition Collateral prior to the Petition Date and shall be valid and enforceable as of the Petition Date. No other lien of any type or nature shall become prior to the Replacement Liens granted herein as to the Prepetition Collateral or Postpetition Collateral. The granting of such Replacement Liens shall be in addition to Lender’s rights in the Prepetition Collateral, and nothing contained herein shall constitute a waiver of Lenders’ rights and priority in the Prepetition Collateral. The Replacement Liens shall secure the prepetition obligations owed to Opus Bank and Maxim respectively and adequately protect them from any diminution in value of their interests in property of the Debtor’s estate as a result of the use of the Cash Collateral by the Receiver as authorized by this Order.

2. This Order shall be deemed to constitute a security agreement under the applicable provisions of the Uniform Commercial Code (“UCC”) in effect in states where the

1 Debtor (a) is domiciled, (b) operates its business, and (c) maintains its principal place of
2 business. The Replacement Liens granted hereby shall be valid, perfected and enforceable
3 security interests and liens on the property of the Debtor and the Debtor's estates without further
4 filing or recording of any document or instrument or any other action, but only to the extent of
5 the enforceability of Lender's security interests in the Prepetition Collateral. Notwithstanding
6 the foregoing, the Debtors are authorized and directed to execute and deliver to Lenders such
7 financing statements, mortgages, instruments and other documents as Lenders may deem
8 necessary or desirable from time to time. To the extent necessary, the automatic stay in effect
9 pursuant to 11 U.S.C. § 362 is hereby modified and lifted to permit the granting of the
10 Replacement Liens as set forth herein.

11 3. Lenders reserve the right to assert administrative claims under 11 U.S.C.
12 § 507(b) with respect to the adequate protection obligations of the Debtor to the extent that the
13 Replacement Liens do not adequately protect the diminution in value of the interests of Lenders
14 in their respective prepetition collateral and further reserve the right to assert that such
15 administrative claims be considered junior and subordinate only to any superpriority claim of the
16 kind ordered by the Court and specified in § 364 of the Bankruptcy Code and that the
17 administrative claims be payable from and have recourse to all prepetition and postpetition
18 property of the Debtor and all proceeds thereof.

19 4. This Order shall not constitute a waiver by Lenders of any of their rights
20 under their respective loan documents, the Bankruptcy Code or other applicable law, including,
21 without limitation (a) their right to later assert that, notwithstanding the terms and provisions of
22 this Order, any of their interests in the prepetition or postpetition Collateral lack adequate
23 protection within the meaning of 11 U.S.C. §§ 362(d)(1) or 363(e); or (b) their right to later
24 assert a claim under 11 U.S.C. § 507(b). Lenders' failure, at any time or times hereafter, to
25 require strict performance by the Debtors of any provision of this Order shall not waive, affect or
26 diminish any right of Lenders thereafter to demand strict compliance and performance therewith.

1 5. Nothing contained in this Order shall constitute a determination as to the
2 amount, validity or priority of any obligation, security interest or lien. The rights of all parties in
3 interest (including the Debtor) to claim that a lien or security interest in Debtor's property is
4 unperfected, unenforceable, invalid or voidable, is reserved. Furthermore, nothing in this Order
5 shall be construed to convert any pre-petition obligations into post-petition obligations or require
6 payment of any obligations on confirmation of a plan of reorganization.

7 6. The Receiver shall continue in exclusive possession, custody and control
8 over all Cash Collateral.

9 C. Effectiveness.

10 1. This Order shall be effective retroactive to the Petition Date.

11 2. Unless earlier terminated or extended by further Court order, the
12 Receiver's authorization to use Cash Collateral pursuant to this Order shall expire on the close of
13 business on the date set for the Final Hearing; provided, however, that all rights and interests
14 created or preserved hereunder shall survive such termination.

15 3. If any or all of the provisions of this Order are hereafter modified, vacated,
16 terminated, amended or stayed by subsequent order of this Court or any other court, such
17 occurrence shall not affect: (a) the validity of any obligation to Opus Bank or Maxim incurred or
18 payment made pursuant to this Order; or (b) the validity or enforceability of any lien or priority
19 authorized hereby with respect to Opus Bank or Maxim. Notwithstanding any such
20 modification, vacation, termination, amendment, or stay any indebtedness, obligation or liability
21 incurred by the Debtors to Lenders pursuant to this Order prior to the effective date of such
22 modification, vacation, termination, amendment, or stay shall be governed in all respects by the
23 original provisions of this Order, and Lenders shall be entitled to all the rights, remedies,
24 privileges and benefits, including, without limitation, the security interests and liens granted
25 herein.

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1 D. Final Hearing.

2 1. A hearing on Debtor's motion for final authority to use cash collateral
3 shall be held at the Tacoma Federal Courthouse, 1717 Pacific Avenue, Suite 2100, Courtroom I,
4 Tacoma, Washington 98402, on June 28, 2017, at 10:00 a.m., or as soon thereafter as may be
5 heard.

6 2. Objections, if any, to the relief requested in the motion shall be in writing,
7 shall state the name of the objecting party and the nature of the claim or interest of such party,
8 shall state with particularity the reasons for the objections to the relief requested, and shall be
9 served upon (A) counsel for the Debtor, Farleigh Wada Witt, Attn: Tara J. Schleicher, 121 S.W.
10 Morrison Street, Suite 600, Portland, Oregon, 97204, (B) counsel for Opus Bank, K&L Gates,
11 Attn: Michael Gearin, 925 Fourth Avenue, Suite 2900, Seattle, Washington 98104; and (C)
12 counsel for Maxim Commercial Capital, Schweet Linde & Coulson, PLLC, Attn: Laurin
13 Schweet, 575 S. Michigan Street, Seattle, WA 98108.

14 /// End of Order ///

15 Submitted by:

16 FARLEIGH WADA WITT

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