



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 2, 2016


United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

FOREST PARK REALTY
PARTNERS III, LP, et al

Debtors.

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§

Case No. 15-34814
Chapter 11

(Jointly Administered)

**AGREED FINAL ORDER AUTHORIZING THE DEBTORS
TO USE CASH COLLATERAL**

CAME ON for consideration on this date the *Motion for Interim and Final Orders Authorizing the Debtors to Use Cash Collateral* (the "Motion") filed by Forest Park Realty Partners III, LP ("FPRP") and BT Forest Park Realty Partners, LP ("BTFP" and with FPRP, the "Debtors").

Upon consideration of the Motion, the Court finds that all required parties have been served with notice thereof and that the Motion is well-taken and that the relief sought therein should be, and hereby is, GRANTED. Accordingly, it is hereby found that:

1. On November 30, 2015 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”), commencing the above-styled bankruptcy cases (the “Bankruptcy Cases”).

2. This Court has jurisdiction over this case and the Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

3. Forest Park Medical Center of Dallas (“Forest Park Dallas”) is a state-of-the-art, physician-owned surgical hospital facility that opened in 2009 and is located at the south-east corner of Central Expressway and LBJ Freeway in Dallas, Texas. The Debtors in these bankruptcy cases own the real properties (the “Properties”) that constitute Forest Park Dallas, which includes several hospital buildings, a parking garage, and a vacant lot.

4. The Debtors do not actually operate the medical facility at Forest Park Dallas and instead lease the Properties to a separate operating company (the “Operating Company”) that operates the medical facility in exchange for monthly rent payable to the Debtors.

5. The Debtors continue to operate and manage their businesses as “debtors in possession” pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Bankruptcy Cases under section 1104 of the Bankruptcy Code.

6. As of the Petition Date, the Debtors were indebted to Sabra Texas Holdings, LP (“Sabra”) pursuant to a loan made to the Debtors by Sabra on or about October 22, 2013 in the original principal amount of \$110,000,000.00 (the “Loan”). The Loan is evidenced by, *inter alia*: (i) a *Secured Promissory Note* dated October 22, 2013 in the original principal sum of one hundred ten million and No/Dollars (\$110,000,000.00) executed by the Debtors and payable to Sabra; (ii) a *Loan Agreement* dated October 22, 2013 by and between the Debtors and Sabra; and (iii) a *Deed of Trust, Assignment of Rents and Leases, Security Agreement, and Fixture Filing* by and between the Debtors and Sabra dated October 22, 2013 (collectively, the “Prepetition Loan Documents”). The Loan is secured by various instruments, including the deed of trust and UCC-1 financing statements.¹ The Properties and the rents received from the operation of the Properties are the primary collateral for the Loan.

7. In addition to owning the Properties, the Debtors own several deposit accounts (the “Accounts”) which are used by the Debtors to operate the Properties, including to pay the Debtors’ insurance, property taxes, management fees, utilities, maintenance, and marketing expenses (the “Operational Costs”). In addition, because the Operating Company is no longer able to operate the Forest Park Dallas facility, the Debtors must employ a “transition team” comprised of six people in order to maintain Forest Park Dallas’s operational license and support the safety, maintenance, and stewardship of the Dallas campus to reinforce the sales efforts, process, and operations as necessary.² The Debtors believe that the license adds \$7-\$12 million in value to the Debtors’ Properties.

¹ FPRP asserts that the UCC-1 Financing Statement for FPRP was incorrectly filed against “Forest Park Realty Partners LP” rather than Forest Park Realty Partners III LP” and does not perfect Sabra’s interest in personal property against FPRP. FPRP contends that Sabra does not have a perfected lien in at least \$400,000 of the cash held by FPRP, and the Debtors reserve all rights with respect to this issue.

² The state requires that the Debtors, *inter alia*, employ a Chief Nursing Officer and a hospital CEO in order to keep the hospitals’ various licenses active and to prevent them from being suspended.

8. The Debtor's only source of operating funds is generated by the operation of the Properties.

9. By virtue of the Loan Documents referenced above, Sabra asserts a first lien priority on all of the Debtors' assets, including the rents and the Accounts, which would constitute cash collateral pursuant to Section 363(a) of the Bankruptcy Code (the "Cash Collateral").³

10. The Debtors require the use of Sabra's Cash Collateral to continue the operation of the Properties and will suffer irreparable and immediate harm if they are not granted the relief requested herein. An immediate and critical need exists for the Debtors to obtain funds in order to continue the operation of the Properties, and without such funds, the Debtors will not be able to pay operating expenses and obtain goods and services needed to carry on their business during this sensitive period in a manner that will avoid irreparable harm to the Debtors' estates. The Debtors' ability to use Sabra's Cash Collateral is vital to the confidence of the Debtors' vendors and suppliers of the goods and services and to the preservation and maintenance of the going concern value of the Debtors' estates. After notice and a hearing on January 6, 2016 the Court entered an Agreed Interim Order Authorizing the Debtors to use Cash Collateral [Doc No. 43].

11. Good cause has been shown for the entry of this Order. The Court finds that the notice to the U.S. Trustee, Sabra, and the Debtors' creditors was sufficient under the circumstances. Entry of this Order is justified and appropriate under the circumstance and is in

³ FPRP denies that Sabra has a perfected lien on its Accounts due to, *inter alia*, the incorrectly filed UCC-1 financing statement. In addition, approximately \$400,000 of the funds held in FPRP's account were obtained through the termination of an escrow agreement between FPRP and the purchaser of the medical office building in 2013 when the medical office building was sold, and FPRP asserts that such funds predate and are therefore not encumbered by Sabra's liens notwithstanding the incorrectly filed UCC-1 Financing Statement. FPRP reserves all rights with respect to this issue.

the best interest of the estate.

IT IS THEREFORE ORDERED AND ADJUDGED as follows:

12. **Use of Cash Collateral.** The Debtors are hereby authorized to use Cash Collateral, not to exceed \$50,000 per month,⁴ beginning December 16, 2015 and ending on the earlier of the date of a final hearing on the Debtors' Motion or the Termination Date (as defined infra). The Debtors are authorized to use Cash Collateral only in the amounts and for the expenses and disbursements set forth in the respective month's Budget, and Cash Collateral shall not be used for any other purpose or in any other amount, subject to the Budget Variance as defined below. A budget for the month of January 2016 is attached hereto as Exhibit A. The Debtors shall not incur expenses nor use Cash Collateral in an amount that exceeds by more than ten percent (10%) the total expenses provided in the Budget for the respective month's Budget without first obtaining Sabra's consent. If the budgeted amounts are decreased in future months, such \$50,000 limit on use of cash collateral shall be reduced proportionately. The Debtors have agreed to this limitation.

13. **Debtor's Stipulations.** The Debtors, on each of their own respective behalves and on behalf of each of their respective bankruptcy estates as debtors in possession, after consultation with their attorneys and financial advisors, acknowledges, admits, represents, stipulates and agrees (the "Debtor's Stipulations") that effective upon the entry of this Order and:

- a) As of the Petition Date, the Debtors are liable to Lender in respect of the obligations arising under the Prepetition Loan Documents for (i) aggregate principal indebtedness of not less than \$110,000,000.00; (ii) accrued, deferred and unpaid interest in an aggregate amount of not less than \$5,169,689.58; (iii) unpaid

⁴ In light of the incorrectly filed UCC-1 Financing Statement with respect to FPRP, Sabra acknowledges that it is likely not perfected with respect to the \$400,000 held by FPRP as mentioned in the footnotes above. The \$50,000 monthly cap only applies to monies held by the Debtors that constitute the proceeds from rent and are cash collateral.

late fees in an amount of not less than \$90,000.00; and (iv) attorneys' fees, expenses, disbursements, indemnifications, obligations, costs, charges, and other claims of whatever nature, whether or not contingent, whenever arising, due and owing under the terms of the Prepetition Loan Documents and applicable law (collectively, the "Prepetition Indebtedness").

- b) As of the Petition Date, the Prepetition Indebtedness is due and owing by the Debtors to Lender.
- c) As of the Petition Date, all claims in respect of the Prepetition Indebtedness constitute legal, valid, and binding obligations of the Debtors and are unavoidable obligations under § 547 and § 548 of the Bankruptcy Code and under the Texas Uniform Fraudulent Transfer Act.
- d) The Prepetition Liens constitute valid, binding, enforceable liens, and are unavoidable under § 547 and § 548 of the Bankruptcy Code and under the Texas Uniform Fraudulent Transfer Act, and are properly perfected liens in, on and against the Prepetition Collateral, (subject only to those liens explicitly permitted by the Prepetition Loan Documents, if any, and subject to the perfection issues caused by the incorrectly filed UCC-1 Financing Statement as it pertains to FPRP).

The Debtors' Stipulations shall be binding on and against the Debtor in all circumstances upon the entry of this Order. The Debtors' Stipulation shall be binding on and against any other party in interest, unless such party in interest, including any Chapter 11 Trustee or Chapter 7 Trustee, first, commences, by forty-five (45) calendar days following the date of the entry of this Order, (the "Challenge Period") (A) a contested matter, adversary proceeding, or other action or "claim" (as defined in the Bankruptcy Code") challenging or otherwise objecting to the admissions, stipulations, or findings, included in the Debtors' Stipulations included in this Order, or (B) a contested matter, adversary proceeding, or other action against Lender in connection with or related to (i) the actions or inactions of Lender arising out of or related to the Prepetition Indebtedness, Prepetition Loan Documents, Prepetition Liens, or otherwise and second, such party obtains a final, non-appealable order in favor of such party in interest in any such timely-filed contested matter, adversary proceeding or other action.

14. **Cash Collateral.** For purposes of this Order, the term “Cash Collateral” means and includes all “cash collateral” as such term is described and defined in Bankruptcy Code Section 363, in which Lender holds a lien, security interest or other interest therein (including, without limitation, any adequate protection liens or security interests), in each case whether existing on the Petition Date, arising pursuant to this Order, or otherwise.

15. **Financial Reports.** The Debtors shall supply not later than five (5) business days after the Court’s entry of this Order and thereafter each Monday on a weekly basis: (i) a statement in a form consistent with the Budget, comparing actual receipts and disbursements to the projected receipts and disbursements set forth in the Budget, including a line item breakdown of the amount and corresponding expense category, by not later than the Monday following the end of each week; and (ii) promptly furnish financial information and other information relating to the Debtors’ operation or any of Lender’s collateral as may be requested by Lender.

16. **Adequate Protection.** Sabra is hereby granted as adequate protection for any diminution in the value of its interest in its collateral caused by the use of Cash Collateral, a valid, perfected, and enforceable replacement lien on post-petition income.

17. **No Lien Upon Avoidance Actions.** The Replacement Lien does not extend to the Debtors’ transfer or lien avoidance rights and claims under Sections 544, 545, 547, 548, 549 or 550 of the Code or funds received from same.

18. **Perfection of Liens.** The Replacement Lien is, and shall be, valid, perfected, enforceable and effective as of the Petition Date without the need for any further action by the Debtors, Sabra or the necessity of execution or filing of any instruments or agreements. Notwithstanding, Nothing in this order or any prior order shall be construed to grant or

acknowledge liens that prime pre petition and post petition ad valorem property tax liens.

19. **Carve-out.** The lien on post-petition income is subordinated to fees payable to the United States Trustee pursuant to 28 U.S.C. §1930(a)(6) and up to \$80,000.00 of fees of any professionals retained by the Debtor in accordance with Section 327 of the Bankruptcy Code that are allowed by order of the Bankruptcy Court pursuant to section 330 of the Bankruptcy Code.

20. **Term of Use of Cash Collateral.** The Debtors are authorized to use Sabra's Cash Collateral in accordance with this Order until the earlier of the following (the "Termination Date"): (i) the date of a final hearing on the Debtors' Motion; (ii) five calendar days after notice by Sabra to the Debtors of any "Termination Event" as described below, unless within such five day period the Debtors have cured such Termination Event or unless waived by Sabra, (iii) the date of the dismissal of this case or the conversion of this case to a case under Chapter 7 of the Code, and (iv) the date of appointment of a trustee in this case. Each of the following events constitute a "Termination Event": (i) any material failure of the Debtors to comply with this Order; (ii) the failure by the Debtors to pay when due operating expenses incurred after the Petition Date; (iii) the failure by the Debtors to maintain property, casualty and liability insurance as required in the Loan Documents; (iv) the failure of the Debtors to consummate a sale of the Properties, acceptable to Sabra, by March 31, 2016; (v) the occurrence of the effective date or consummation date of a plan of reorganization for the Debtors; (vi) the entry by this Court or any other court of an order reversing, staying, or vacating this Order or amending, supplementing, or otherwise modifying in any material manner the protections granted to Sabra in this Order; or (vii) the entry by this Court of an order granting relief from the automatic stay imposed by Section 362 of the Code to any entity other than Sabra that permits such entity to exercise foreclosure or disposition rights with respect to the Cash Collateral. Upon the

Termination Date, the Debtors shall cease using Cash Collateral unless the Debtors obtain either written consent of Sabra to further use or an order of the Court after notice and an opportunity for hearing.

21. **Protection of Existing Collateral.** Collateral, including Cash Collateral, shall not be used or sold other than in the ordinary course, unless Sabra consents to such extraordinary use or sale or the Debtors obtain the approval of this Court.

22. **Service of Final Order.** The Debtors shall, within three (3) business days after entry of this Order, serve a copy of this Order via U.S. mail, first-class postage prepaid on: (1) the United States Trustee; (2) Sabra; (3) the Debtor's mailing matrix; and, (4) on any other parties who have filed notices of appearance.

END OF ORDER

**Agreed as to form, Entry,
and substance:**

/s/ Melissa S. Hayward 1/26/16

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**Attorneys for Forest Park Realty Partners III, LP
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Forest Park III Realty Partners III, LP & BT Forest Park Realty Partners, LP
DIP Budget

30 Day Budget	January 2015
FPIII Beginning Cash Balance	\$ 680,737.89
BT Beginning Cash Balance	\$ 301,311.20
Operating Expense (Hospital)	\$ -
<i>Utilities (Basic Utilities Est.)</i>	TBD
<i>Water Chem. Management - ChemCal</i>	\$ 2,000.00
<i>Property Insurance</i>	\$ 3,290.99
<i>Landscaping</i>	\$ 1,600.00
<i>Garbage</i>	\$ 350.00
<i>Transition and Clinical Equipment / Facilities Oversight Team to maintain license and property</i>	\$ 65,000.00
<i>Transition Team Expense Reimbursements</i>	\$ 2,121.00
<i>Data (Internet and Phone line) - AT&T</i>	\$ 1,200.00
<i>Accounting Management (NRG or LNH)</i>	\$ 8,000.00
<i>Asset Management (NRG) Reimbursables</i>	\$ 20,000.00
<i>Asset Management (BT) Reimbursables</i>	\$ 1,000.00
<i>US Trustee fees</i>	\$ 975.00
<i>Facility/Equip maint and janatorial</i>	\$ 6,200.00
<i>Miscellaneous vendor costs</i>	\$ 4,000.00
<i>Legal (Carve Out Only)</i>	\$ 20,000.00
Total Operating	\$ 135,736.99
Ending Cash Balance	\$ 846,312.10