



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 19, 2016

*Mark X. Mullin*  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

In re:	§	
	§	
FPMC FORT WORTH REALTY	§	Case No. 15-44791-MXM
PARTNERS, LP,	§	Chapter 11
	§	
Debtor.	§	

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

CAME ON for consideration on this date the *Motion for Interim and Final Orders Authorizing the Debtor to Use Cash Collateral* (the "Motion") filed by FPMC Fort Worth Realty Partners, LP ("FPPFW" or the "Debtor").

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 Debtor 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 case (the “Bankruptcy Case”).

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 Fort Worth (“Forest Park FW”) is a state-of-the-art, physician-owned surgical hospital facility located in Fort Worth, Texas that opened in 2014. The Debtor owns the real properties (the “Properties”) that constitute Forest Park FW, which includes, among other things, a hospital building, a medical office building, and a parking garage.

4. The Debtor does not actually operate the medical facility at Forest Park FW and instead leases the hospital to a separate operating company (the “Operating Company”) that operates the hospital in exchange for monthly rent payable to the Debtor. The Debtor also leases the medical office building to various parties and contracts with a third party property management company to assist with the day to day operation of the medical office building.

5. The Debtor continues to operate and manage its business as a “debtor in possession” pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Bankruptcy Case under section 1104 of the Bankruptcy Code.

6. As of the Petition Date, the Debtor was indebted to Sabra Texas Holdings, LP (“Sabra”) pursuant to a loan made to the Debtor by Sabra on or about September 30, 2013 in the original principal amount of \$66,801,286.00 (the “Loan”). The Loan is evidenced by, *inter alia*: (i) an *Amended and Restated Secured Promissory Note* dated September 30, 2013 in the original

principal sum of sixty six million eight hundred one thousand two hundred eighty six dollars (\$66,801,286.00) executed by the Debtor and payable to Sabra Texas Holdings, LP; (ii) an *Amended and Restated Construction Loan Agreement* dated September 30, 2013 by and between the Debtor and Sabra Texas Holdings, LP; and (iii) an *Amended and Restated Deed of Trust, Assignment of Rents and Leases, Security Agreement, Financing Statement and Fixture Filing* by and between the Debtor and Sabra Holdings, LLC dated September 30, 2013 (collectively, the “Loan Documents”). The Loan is secured by substantially all the Debtor’s assets and properties whether then owned or thereafter acquired (the “Prepetition Collateral”) and is more particularly described in the Loan Documents, including the deed of trust and UCC-1 financing statements (“Prepetition Liens”). 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 Debtor owns several deposit accounts (the “Accounts”) which are used by the Debtor to operate the Properties, including to pay the Debtor’s insurance, property taxes, management fees, utilities, maintenance, and marketing expenses (the “Operational Costs”). The Debtor’s only source of operating funds is generated by the operation of the Properties.

8. By virtue of the Loan Documents referenced above, Sabra asserts a first lien priority on all of the Debtor’s assets, to include the rents and the Accounts, which would constitute cash collateral pursuant to Section 363(a) of the Bankruptcy Code (the “Cash Collateral”).

9. The Debtor requires the use of Sabra’s Cash Collateral to continue the operation of the Properties and will suffer irreparable and immediate harm if it is not granted the relief requested herein. An immediate and critical need exists for the Debtor to obtain funds in order to

continue the operation of the Properties, and without such funds, the Debtor will not be able to pay operating expenses and obtain goods and services needed to carry on its business during this sensitive period in a manner that will avoid irreparable harm to the Debtor's estate. The Debtor's ability to use Sabra's Cash Collateral is vital to the confidence of the Debtor's vendors and suppliers of the goods and services and to the preservation and maintenance of the going concern value of the Debtor's estate.

10. 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 Debtor's creditors was sufficient under the circumstances. Entry of this Order is justified and appropriate under the circumstance and is in the best interest of the estate.

IT IS THEREFORE ORDERED AND ADJUDGED as follows:

11. **Use of Cash Collateral.** The Debtor is hereby authorized to use Cash Collateral beginning December 16, 2015 and ending on the earlier of the date of a final hearing on the Debtor's Motion or the Termination Date (as defined infra). The Debtor is 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 December 2015 is attached hereto as Exhibit A. The Debtor 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.

12. **Debtor's Stipulations.** Debtor, on its own behalf and on behalf of the bankruptcy estate as debtor in possession, after consultation with its 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 Debtor is liable to Lender in respect of the obligations arising under the Loan Documents for (i) aggregate principal indebtedness of not less than \$60,818,136.51, (ii) accrued, deferred and unpaid interest in an aggregate amount of not less than \$4,454,776.46, (iii) late fees of not less than \$68,326.96, 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 the Debtor to Lender.
- c) As of the Petition Date, all claims in respect of the Prepetition Indebtedness constitute legal, valid, and binding obligations of the Debtor 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 and 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 are unavoidable under §547 and §548 of the Bankruptcy Code and the Texas Uniform Fraudulent Transfer Act.

The Debtor’s Stipulations shall be binding on and against the debtor in all circumstances upon the entry of this Order. The Debtor’s 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 Debtor’s 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.

13. **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.

14. **Financial Reports.** The Debtor 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 Debtor's operation or any of Lender's collateral as may be requested by Lender.

15. **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 super priority replacement lien on post-petition income.

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

17. **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 Debtor, Sabra or the necessity of execution or filing of any instruments or agreements. 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.

18. **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.

19. **Term of Use of Cash Collateral.** The Debtor is 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 Debtor's Motion; (ii) five calendar days after notice by Sabra to the Debtor of any "Termination Event" as described below, unless within such five day period the Debtor has 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 Debtor to comply with this Order; (ii) the failure by the Debtor to pay when due operating expenses incurred after the Petition Date; (iii) the failure by the Debtor to maintain property, casualty and liability insurance as required in the Loan Documents; (iv) the failure of the Debtor to consummate a sale of the Property, acceptable to Sabra, by March 31, 2016; (v) the occurrence of the effective date or consummation date of a plan of reorganization for the Debtor; (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 Debtor shall cease using Cash Collateral unless the Debtor obtains either written consent of Sabra to further use or an order of the Court after notice and an opportunity for hearing.

20. **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 Debtor obtains the approval of this Court.

**### END OF ORDER ###**

AGREED AS TO FORM, ENTRY,  
AND SUBSTANCE:

/s/ Melissa S. Hayward  
Melissa S. Hayward  
Texas Bar No. 24044908  
MHayward@FranklinHayward.com  
**FRANKLIN HAYWARD LLP**  
10501 N. Central Expy, Ste. 106  
Dallas, Texas 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110  
**ATTORNEYS FOR FOREST PARK REALTY PARTNERS III, LP**  
**AND BT FOREST PARK REALTY PARTNERS, LP**

AND

/s/ Deirdre B. Ruckman  
Deirdre B. Ruckman  
Texas Bar No. 21196500  
DRuckman@Gardere.com  
**GARDERE WYNNE SEWELL LLP**  
3000 Thanksgiving Tower  
1601 Elm Street  
Dallas, Texas 75201  
Tel: (214) 999-4250  
Fax: (214) 999-3250  
**ATTORNEYS FOR SABRA TEXAS HOLDINGS, LP**



Submitted by:

Melissa S. Hayward  
Texas Bar No. 24044908  
[MHayward@FranklinHayward.com](mailto:MHayward@FranklinHayward.com)  
Julian Vasek  
Texas Bar No. 24070790  
[JVasek@FranklinHayward.com](mailto:JVasek@FranklinHayward.com)  
**Franklin Hayward LLP**  
10501 N. Central Expy, Ste. 106  
Dallas, Texas 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

**ATTORNEYS FOR**  
**FPMC FORT WORTH REALTY PARTNERS, LP**