



ORDERED in the Southern District of Florida on May 3, 2012.

**Robert A. Mark, Judge
United States Bankruptcy Court**

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
www.flsb.uscourts.gov

In re:

17315 COLLINS AVENUE, LLC,¹

Case No. 12-10631-RAM
Chapter 11

Debtor.

**THIRD INTERIM ORDER GRANTING DEBTOR’S EMERGENCY MOTION
PURSUANT TO 11 U.S.C. §§ 361, 362, 363, 542 AND 552 AND
FED. R. BANKR. P. 4001, 6003 AND 9014 FOR AN ORDER (I) AUTHORIZING
USE OF CASH COLLATERAL AND (II) GRANTING ADEQUATE PROTECTION**

THIS MATTER came before the court on April 24, 2012 at 2:00 p.m. to consider the Debtor’s further use of cash collateral in accordance with the Debtors’ Emergency Motion Pursuant to 11 U.S.C. §§ 361, 362, 363, 542 and 552 and Fed. R. Bankr. P. 4001, 6003, and

¹ The Debtor’s current mailing address is 17315 Collins Avenue, Sunny Isles Beach, FL 33160. The last four digits of the Debtor’s EIN is 9143.

9014, for an Order (i) Authorizing Use of Cash Collateral;² and (ii) Granting Adequate Protection [ECF No. 10] (the “*Motion*”). The Court having reviewed the Motion, and the previous orders entered by the Court approving the use of cash collateral through and including April 30, 2012 [ECF No. 25 and 57] (respectively, the “*First and Second Interim Orders*”); having heard the statements of counsel in support of the relief requested in the Motion at the hearing before the Court (the “*Hearing*”); and the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) venue is proper before this Court pursuant to 28 U.S.C. § 1408; (c) this matter is core pursuant to 28 U.S.C. § 157(b)(2); (d) notice of the Motion and the Hearing was sufficient under the circumstances; (e) the Court having been advised at the Hearing of the agreement reached between the parties regarding the relief requested in the Motion on a further interim basis; and (f) the Court having determined, therefore, that just cause exists to grant the relief requested in the Motion on an interim basis as set forth herein. It is accordingly:

ORDERED AND ADJUDGED as follows:

1. The Motion is **GRANTED** as set forth herein.
2. Use of Cash Collateral. The Debtor is authorized, through and including June 30, 2012 (the “*Interim Period*”), to use cash collateral as defined in Section 363(a) of the Bankruptcy Code to pay for the operating expenses and costs of administration incurred by the Debtor in accordance with the budget attached hereto as Exhibit A (the “*Budget*”).³ The Debtor shall not exceed any line item on the Budget by an amount exceeding five percent (5%) of each such line item; *provided, however*, that the Debtor may make payments up to ten percent (10%)

² All capitalized terms utilized but not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

³ 17315 CAM has not yet approved the payment of any expenses reflected on the Budget beyond June 30, 2012, and the inclusion of the additional budget information has no legal effect.

in excess of the total budgeted expenses for that month in the Budget so long as actual disbursements do not exceed one hundred and ten percent (110%) of the budgeted total expenses for such month of the Budget (collectively, the “*Allowed Variance*”); *provided further, however*, that the Allowed Variance shall not apply to the three (3) director-level salaries included in the Budget or to the management fee or any other sums payable to any "insiders" or affiliates of the Debtor. In the event that an expense arises which is not within any of the approved line items in the Budget, or the Debtor anticipates that any line item will need to be exceeded by more than the Allowed Variance, the Debtor shall request approval from 17315 CAM and 17315 CAM shall have three (3) business days within which to provide consent or object. In the event that 17315 CAM does not consent, the Debtor shall file a motion with the Court seeking amendment of the Budget and approval of the additional expense, which relief may be sought on an emergency basis.

3. Replacement Liens as Adequate Protection to Secured Creditor 17315 CAM: Notwithstanding the provisions of Section 552(a) of the Bankruptcy Code, and in addition to the security interests preserved by Section 552(b) of the Bankruptcy Code, the Debtor grants, in favor of 17315 CAM and as security for all indebtedness that is owed by the Debtor to 17315 CAM, under its loan documentation, but only to the extent that 17315 CAM’s collateral is diminished by virtue of the Debtor’s use of its cash collateral, a first priority post-petition security interest and lien in, to and against all of the Debtor’s assets, to the same priority, validity and extent that 17315 CAM held a properly perfected pre-petition security interest in such assets, which are or have been acquired, generated or received by the Debtor subsequent to the Petition Date (the “*Postpetition Collateral*”), including Debtor funds in any debtor-in-possession bank accounts or any other bank accounts that may contain funds of the Debtor. Under no

circumstance shall 17315 CAM have a lien on any of the Debtor's assets upon which it did not have a right to pre-petition. The security interests granted in this Order are deemed perfected without the necessity for filing or execution of documents which might otherwise be required under non-bankruptcy law for the perfection of said security interests. The Postpetition Collateral excludes all proceeds of property recovered or transfers avoided by or on behalf of the Debtor, its estate or any subsequently appointed trustee, pursuant to sections 544 through 550, inclusive, of the Bankruptcy Code.

4. Notwithstanding anything to the Contrary in this Order, (i) fees payable to the Clerk of the Court or United States Trustee pursuant to 28 U.S.C. § 1930 in this bankruptcy case; (ii) professional fees and expenses allowed by the Court of the Debtor's counsel, Meland Russin & Budwick, P.A.; (iii) professional fees and expenses allowed by the Court of the Debtor's special litigation counsel, RiesbergLaw; and (iv) professional fees and expenses allowed by the Court of the Debtor's financial advisors, Marcum LLP (collectively, the "*Carve-Out*") shall be paid out of the Cash Collateral, and such amounts have been included in the approved Budget; *provided, however,* that the Carve-Out as to RiesbergLaw shall not exceed \$25,000.00, and the Carve-Out for Meland Russin & Budwick, P.A. and Marcum LLP shall not exceed \$110,000 in the aggregate for the time period from the Petition Date through June 30, 2012. The fees pursuant to 28 U.S.C. § 1930(a)(6) can be paid even if the amount is higher than the line item in the Budget as approved by 17315 CAM.

5. Notwithstanding anything to the Contrary in this Order, no Debtor's Professionals' Carveout payments (including but not limited to Debtor's attorneys' fees and Debtor's accountant fees, should an accountant be retained during the Interim Period) shall be made without prior notice, hearing, and approval of this Court.

6. For the Interim Period, 17315 CAM is deemed to be adequately protected by the granting of a replacement lien as set forth in this Order, in addition to any additional security it may have with respect to the indebtedness owed to it; provided, however, that, to the extent that the foregoing is not sufficient to adequately protect 17315 CAM, it is entitled to a priority claim for such shortfall in accordance with Section 507(b), except that such claim shall not be payable from proceeds of property recovered or transfers avoided by or on behalf of the Debtor, its estate or any subsequently appointed trustee, pursuant to sections 544 through 550, inclusive, of the Bankruptcy Code.

7. Notwithstanding the above or anything to the contrary on this Order, the finding that 17315 CAM's interests are adequately protected for the Interim Period is without prejudice to the rights of 17315 CAM to seek modification of the adequate protection provided in this Order (and without prejudice to the rights of the Debtor or any party in interest to contest any such modification), and without prejudice to any other matter pertaining to the claims and liens of 17315 CAM.

8. Reporting. On or before each of May 20, 2012 and June 20, 2012, the Debtor shall deliver to 17315 CAM the following:

a. Monthly Operating Report for the preceding month ("**MOR**") with all information and exhibits included for each of the Debtor, OTO173 Management LLC ("**OTO**"), and the Sole Condominium Association (the "**Association**"), with sufficient detail to understand any deficit the Debtor is funding for the benefit of the Association;

b. Profit and loss statements for the Debtor, OTO, and the Association for the preceding month;

c. Balance sheets for the Debtor, OTO, and the Association for the preceding month;

d. General ledgers for the Debtor, OTO, and the Association for the preceding month;

- e. Comparison of cash collateral budget to actual MOR (i) for January through April 2012 on or before May 20, 2012 and (ii) for May 2012 on or before June 20, 2012;
- f. Check registers for all bank accounts for OTO, Debtor, and the Association for the preceding month;
- g. Occupancy/rent roll summary for hotel business for the preceding month;
- h. Copies of bank statements and related enclosures (cancelled checks or images, wire transfer advices, etc.) for the Debtor, OTO, and the Association, and copies of all bank reconciliations for all bank accounts for the Debtor, OTO, and the Association, for the preceding month;
- i. Payroll registers for the Debtor, OTO, and the Association for the preceding month;
- j. Detailed accounts payable aging;
- k. Schedule of external wire transfers for the preceding month;
- l. Schedule of voided checks for the preceding month;
- m. Delinquencies by unit owner as of April 15, 2012 and May 15, 2012, respectively;
- n. Copies of the following documents to the extent new or updated information exists since the last reporting period:
 - i. Any new or amended rental management agreements;
 - ii. Updated list of average daily room rates for each unit in the hotel rental program;
 - iii. Updated schedule of booked upcoming group sales or events for 2012;
 - iv. A list of any new known building issues which would either require a special assessment or be paid at the Debtor's expense, including any notices received from any governmental agency; and
 - v. If a credit card is used to pay expenses of the Debtor or attributable to the Debtor, copies of any credit card statements for the Debtor, OTO, and the Association; *provided, however*, that such statements may be redacted to disclose only those expenses that were incurred on behalf of the Debtor, OTO, or the Association.

9. The foregoing documentation set forth in paragraph 8 above shall be provided to 17315 CAM wherever possible or practicable in Excel format. Should 17315 CAM require clarification as to any item produced in connection with paragraph 8, it may, upon written request to the Debtor, request copies of invoices or other reasonable back-up, with the reasonable cost of copying such additional information to be paid by 17315 CAM. Moreover, any information provided by the Debtor in connection with this paragraph or paragraph 8 above shall not be construed as an adjudication, admission or finding on any issue regarding the relationship between the Debtor, OTO and the Association. Debtor's financial advisors shall reasonably cooperate with the financial advisors for 17315 CAM as to documentation submitted pursuant to this Order.

10. Transfer of Net Income. On or before the thirtieth (30th) of each month, OTO shall transfer to the Debtor's debtor-in-possession operating account (the "*DIP Account*") cash in an amount equal to the net income due to the Debtor from the prior month's operations (which amount shall include both the net income due to the Debtor from hotel operations as well as the net income due to the Debtor for its ownership of unsold units), unless 17315 CAM agrees in writing to a different amount. In accordance with this agreement, the sum of \$521,000 has already been transferred to the DIP Account for net income due to the Debtor from the Petition Date through March 31, 2012. 17315 CAM shall have the same lien and adequate protection rights in said funds in the DIP Account as provided in paragraph 3 of this Order.

11. Set up of Reserve Account. The Debtor shall set up a separate account separate from its operating account (the "*FF&E Account*") into which the Debtor shall transfer the budgeted amounts for the "FF&E Operating Reserve" as described in the attached Budget. 17315 CAM shall have a lien on the FF&E Account in accordance with paragraph 3 above only

to the extent that the funds in the FF&E Account are property of the Debtor; provided, however, that the Debtor may expend the funds in the FF&E Account in accordance with the Budget and applicable Rental Management Agreement without further approval or consent of 17315 CAM. Notably, the Debtor asserts that none of the funds to be deposited into the FF&E Reserve are property of the Debtor and expressly reserves the right to contest any such assertion by 17315 CAM.

12. Plan of Reorganization. On or before May 31, 2012, the Debtor agrees to file with the Court its proposed plan of reorganization and accompanying disclosure statement. The Debtor shall provide a draft of the plan and disclosure statement to 17315 CAM reasonably in advance of the foregoing filing deadline; provided, however, the Debtor may file the same notwithstanding any objection or lack of consent from 17315 CAM and 17315 CAM reserves all rights as to any objections thereto.

13. Condo Furnishings. On or before May 15, the Debtor shall submit to 17315 CAM a reasonably detailed statement with its position and supporting rationale as why the Debtor does or does not own the furnishings in the residential condominium units, and to the extent it does own the same, reasonably describe such furnishings and the units in which they are located.

14. Inspection. Upon no less than two (2) business days' written notice, and at such reasonable time during normal business hours and otherwise as may reasonably be requested by the Debtor so as not to interfere with the conduct of the Debtor's business, the Debtor shall permit 17315 CAM, once per month during the term of this Order, to enter the Project and inspect any or all of the 48 units and the common areas portion of the Collateral; *provided, however,* that 17315 CAM shall only be permitted to inspect those units that are not occupied at the time of inspection.

15. Limited restriction on Use of Debtor Owned Units. The Debtor agrees that, during the Interim Period, the Debtor shall not permit use of the Debtor-owned units on a complimentary basis unless approved by 17315 CAM.

16. Sale of Debtor Owned Units. The Debtor agrees that, during the Interim Period, the Debtor shall not sell any of the Debtor-owned units absent approval of the Court. Moreover, prior to filing any motion to sell any of the Debtor-owned units or to approve a listing agreement for the same, the Debtor agrees to provide drafts of such motions to 17315 CAM reasonably in advance of their filing; provided, however, the Debtor may file the same notwithstanding any objection or lack of consent from 17315 CAM and 17315 CAM reserves all rights as to any objections thereto.

17. No Novation: This Order shall not cause a novation of any of 17315 CAM's secured documentation.

18. Creditor Not Deemed Owner or Operator: Solely by agreeing to the use of cash collateral by the Debtor, 17315 CAM shall not be deemed to have assumed any liability to any third person, and shall not be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor or of its assets.

19. Non-Waiver of Rights and Remedies: This Order is not intended to and shall not prejudice, alter, affect or waive any rights and/or remedies of the Debtor or 17315 CAM (with respect to liens, claims, value determinations, and all other matters) under the Bankruptcy Code or applicable non-bankruptcy law (including, but not limited to, all matters pertaining to cash and other collateral) and does not bind any subsequently appointed trustee or committee.

20. Duration: The provisions of this Order shall remain in effect until the earlier of June 30, 2012, entry of any order dismissing this case, the granting of stay relief in favor of 17315 CAM, or by consent and agreement of 17315 CAM, or the entry of any order by the Court extending the use of cash collateral.

21. Further Hearing: This Court shall hold a further hearing on the Debtor's use of cash collateral on June 28, 2012, at 2:00 p.m. at the United States Bankruptcy Courthouse, Claude Pepper Federal Building, 51 SW First Ave, Courtroom 1410, Miami, FL 33130.

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Submitted By:

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Copies Furnished To:

Joshua W. Dobin, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

17315 Collins Avenue
Cash Collateral Budget

	Actual			Projected				
	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug-12
Hotel Operations Revenue								
Total Income	\$ 442,067	730,922	923,383	755,151	627,070	594,823	746,418	696,104
Operating Expenses								
Advertising	-	3,315	3,380	4,033	5,033	8,283	4,033	4,533
Bank Charges	42	24	293	300	300	300	300	300
Contract Labor	10,564	46,120	47,085	40,392	35,263	35,040	53,100	48,760
Fixed Asset Payments	-	20,740	3,092	2,517	2,517	3,017	2,517	2,517
Insurance	-	10,510	12,911	22,758	12,482	11,682	11,682	11,682
Inventory Payments								
Leases								
Manufacturing Supplies								
Office Supplies	510	969	11,228	1,992	1,992	2,950	1,992	1,992
Payroll - Net	42,445	44,994	44,989	45,845	97,702	48,284	48,389	48,389
Rent								
Repairs & Maintenance	-	4,544	6,492	6,134	7,104	7,600	7,104	7,500
Secured Creditor Payments								
Taxes Paid - Payroll	15,695	5,731	5,299	13,294	19,682	13,244	16,034	15,368
Taxes Paid - Sales & Use	29,821	38,369	43,192	61,016	40,414	36,128	31,353	43,329
Taxes Paid - Other	23,616	29,922	32,931	45,897	30,186	26,534	22,674	31,201
Telephone	-	535	511	535	535	535	535	535
Travel & Entertainment	223	65	-	1,370	-	1,370	1,370	1,370
Utilities	312	3,285	8,701	9,385	9,230	9,450	9,530	8,480
Vehicle Expense								
Laundry	9,270	23,802	41,227	24,814	23,787	23,680	32,388	30,295
Music	250	1,100	900	2,000	1,500	2,000	1,700	2,000
Decorations	491	1,258	982	1,225	1,225	1,225	1,225	1,225
Guest Supplies	503	16,635	21,455	22,450	21,239	26,775	25,299	19,350
Food & Beverage	6,611	5,571	11,209	5,049	5,838	4,481	7,459	5,710
Petty Cash Reconciliation			5,458					
Credit Card Fees	21,340	15,989	19,684	17,320	15,483	13,437	18,570	17,188
Outsourced Catering	16,566	26,185	43,640	45,400	42,000	46,000	46,000	47,000
Travel Agents Commissions	2,856	19,585	14,152	13,230	12,660	12,600	17,438	16,275
Gift Shop Expense		1,285	1,228	1,250	1,250	1,250	1,250	1,250
Licenses & Permits		241	1,870	1,695	42,667	1,695	1,695	1,695
Management Fees		30,000	15,000	15,000	15,000	15,000	15,000	15,000
FPL Deposits		1,551						
Rental Proceeds to Unit Owners		51,631	88,661	309,521	224,372	196,353	168,151	207,506
Security		856	700	1,700	1,700	1,700	1,700	1,700
Supplies		436	10,181	12,800	9,800	12,800	7,809	12,800
Valet Service		3,315	8,456	7,000	7,000	7,000	7,000	7,000
Public Relations		5,500		5,500	5,500	5,500	5,500	5,500
Uniforms			739	1,050	217	217	217	217
Total Operating Expenses	\$ 181,114	414,062	505,647	742,470	693,675	576,130	569,012	617,666
Non-Operating Outflow								
Professional Fees (Accounting & Legal)	-	-	-			(50,000)	(25,000)	
U.S. Trustee Quarterly Fee	-	-	-	(6,500)			(6,500)	
Sole COA Subsidy	(35,939)	(64,762)	(73,992)	(65,000)	(65,000)	(65,000)	(65,000)	(65,000)
FF&E Operating Reserve			(17,433)	(11,547)	(10,322)	(8,958)	(12,380)	(11,459)
	\$ (35,939)	\$ (64,762)	\$ (91,425)	\$ (83,047)	\$ (75,322)	\$ (123,958)	\$ (108,880)	\$ (76,459)
Estimated Beginning Cash Balance	\$ 170	225,184	477,281	803,592	211,535	50,051	(5,166)	52,271
Net Cash Flow	225,014	252,097	326,311	(70,366)	(141,927)	(105,265)	68,526	1,980
Transfers (to)/from DIP Account				(521,691)	(19,556)	50,048	(11,089)	(27,611)
Ending Cash Balance	\$ 225,184	477,281	803,592	211,535	50,051	(5,166)	52,271	26,640

17315 Collins Avenue
Cash Collateral Budget

	Actual			Projected				
	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug-12
DIP Account								
Transfers from Hotel Operations				\$ 426,096	19,556	(50,048)	11,089	27,611
Transfers from Unsold Units				95,595	72,773	37,010	18,876	6,342
Ending Cash Balance				\$ 521,691	614,020	600,982	630,947	664,899

17315 Collins Avenue
Cash Collateral Budget

- Note 1 Cash Receipts includes amounts collected for sales and use tax and amounts collected for outside catering. These amounts were previously netted against the disbursement.
- Note 2 Payroll expenses include a bonus to be paid in May to Martin Mehnert of \$52,000 for sales from April 1, 2011 to March 31, 2012.
- Note 3 Licenses & Permits includes the permanent Occupancy License fee scheduled for May.
- Note 4 The actual cash disbursements for RMA to Unit Owners prior to April has been net of amounts credited to the Sole Condominium Association dues. Starting with April's RMA, OTO will transfer to the condo association the gross RMA amount due to unit owners. The condo association will then deduct COA dues and FPL bills and credit the unit owner accounts and remit net funds to the DIP for the Debtor owned accounts.
- Note 5 The FF&E operating reserve is held for purchase of room linens and other replacement items. These funds will be deposited into a separate bank account and disbursed as necessary for the purchase of fixed assets for the condo units used in the RMA program.
- Note 6 Net income has been estimated and is shown transferred to the DIP account. In some months, working capital will need to be transferred back to the operating account.
- Note 7 As room revenue declines in the summer season, the decrease in costs associated with less occupancy is reflected in the outlays in the following month in RMA Paid to Unit Owners, sales and occupancy taxes, and other operating items.