



ORDERED in the Southern District of Florida on January 4, 2012.

A handwritten signature in cursive script that reads "A Jay Cristol".

A. Jay Cristol, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
www.flsb.uscourts.gov

In re:

3900 BISCAYNE, LLC,
Debtor.

Case No. 11-22948-AJC
Chapter 11

**ORDER GRANTING AGREED *ORE TENUS* MOTION FOR CONTINUED
INTERIM APPROVAL OF THE USE OF CASH COLLATERAL AND
GRANTING ADEQUATE PROTECTION**

THIS CAUSE having come before the court on November 17, 2011 at 11:30 a.m. on the further hearing on Debtor's use of cash collateral pursuant to the Debtor's Motion Pursuant to 11 U.S.C. §§ 361, 362, 363, and 552 and Fed. R. Bankr. P. 4001, 6003, and 9014, for an Order Authorizing the Use of Cash Collateral and Granting Adequate Protection [ECF No. 35] and the Agreed Interim Order on Debtor's Motion Pursuant to 11 U.S.C. §§ 361, 362, 363 and 552 and Fed.R. Bankr. P. 4001, 6003 and 9014 for an Order Authorizing the Use of Cash Collateral and Related Filings (Granting Adequate Protection and Authorizing Use of Cash Collateral for 60

Days) [ECF No. 89], upon the Order Granting Agreed Ore Tenus Motion for Continued Interim Approval of the Use of Cash Collateral and Granting Adequate Protection [ECF No. 109] and upon the Agreed *Ore Tenus* Motion for Continued Interim Approval of the Use of Cash Collateral and Granting Adequate Protection (the "*Motion*"). The Court, having considered the Motion, the record on this matter, having reviewed the file, having heard respectively from counsel for the Debtor and secured lender, Branch Banking and Trust ("*BB&T*"), having noted the agreement of the parties set forth herein, and being otherwise fully advised in the premises, it is:

ORDERED AND ADJUDGED:

1. The Motion is GRANTED as set forth herein.
2. Use of Cash Collateral. The Debtor is authorized to use cash collateral as defined in Section 363(a) of the Bankruptcy Code to pay in the ordinary course of its business for the purposes contained in the budget attached hereto as Exhibit "A" (the "*Budget*") through and including February 21, 2012 (the "*Third Interim Period*"), provided that the Debtor timely tenders the required monthly payments to BB&T as set forth herein. Notwithstanding the above however, the Debtor shall not make any payments for the line item titled "Phase II Tenant Build-Out (\$55,000 in total)" without prior notice and written approval by or on behalf of BB&T. Moreover, no payments shall exceed the line items on the Budget by an amount exceeding to five percent (5%) of each such line item. Upon notice by the Debtor, BB&T shall have three (3) business days within which to provide written consent or object to a request from the Debtor for (1) payments to the line items titled "Operating/Repairs/Maintenance" in excess of \$2,000.00 and/or "Phase II Tenant Build -Out (\$55,000 in total) and/or (2) payments in excess of five percent (5%) for any of the line items contained in the Budget. In the event that BB&T does not

provide written consent, it shall be presumed that BB&T objects, and the Court shall consider the matter upon Motion. 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) shall be made without prior notice, hearing, and approval of this Court. Further, in the event there is a Creditors' Committee appointed in this bankruptcy case, such Creditors' Committee shall negotiate any Professional Fees' Carveout with BB&T directly, as such fees are not included in the Debtor's Professionals' Carveout.

3. Replacement Liens as Adequate Protection to Secured Creditor BB&T: 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 BB&T, as security for all indebtedness that is owed by the Debtor to BB&T, under its loan documentation, but only to the extent that BB&T's cash collateral is used by the Debtor, 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 BB&T 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 "*Post-Petition Collateral*"). Under no circumstance shall BB&T 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 Post-Petition 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. For the Third Interim Period, BB&T is deemed to be adequately protected by the granting of a replacement lien and administrative expense claim as set forth in this Order, in addition to any additional security it may have with respect to the indebtedness owed to it, any equity cushion, and rental income derived from the Property; however to the extent that the foregoing is not sufficient to adequately protect BB&T, it is entitled to a priority claim for such shortfall in accordance with Section 507(b).

Notwithstanding the above or anything to the contrary in this Order, the finding that BB&T's interest is adequately protected for the Third Interim Period is without prejudice to the rights of BB&T 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 shall not prejudice, alter, affect or waive any rights and/or remedies of the Debtor or BB&T (with respect to liens, claims, value determinations, including BB&T's pending Motion to Dismiss this Chapter 11 Proceeding as well as its Motion for Relief from the Automatic Stay and all other matters) under the Bankruptcy Code or applicable non-bankruptcy law (but not limited to, all matters pertaining to cash and other collateral) and does not bind any subsequently appointed trustee or committee.

5. Administrative Expense Claim: BB&T shall be granted an administrative expense claim pursuant to Sections 507 and 503 of the Bankruptcy Code to the extent of the diminution, if any, the value of its interest in the Cash Collateral as of the Petition Date.

6. No Novation: This Order shall not cause a novation of any of BB&T's secured documentation.

7. Creditor Not Deemed Owner or Operator: Solely by agreeing to the use of cash collateral by the Debtor, BB&T 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.

8. Adequate Protection Payments: As additional adequate protection, within five (5) days after the last day of each applicable month, the Debtor shall make monthly payments to BB&T of interest only on the A Note¹ principal of \$10,800,000.00 at the annual rate of 2.7%, *nunc pro tunc* to the Petition Date. BB&T and the Debtor reserve any and all rights as to the pending Motion to Dismiss, pending Motion for Relief from the Automatic Stay, the Answer and Affirmative Defenses in the related adversary proceeding and any other motions which may be filed with this Court.

9. 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 BB&T (with respect to liens, claims, value determinations, including BB&T’s pending Motion to Dismiss this Chapter 11 Proceeding as well its Motion for Relief from Automatic Stay and all other matters) under the Bankruptcy Code or applicable non-bankruptcy law (but not limited to, all matters pertaining to cash and other collateral) and does not bind any subsequently appointed trustee or committee.

10. Duration: The provisions of this Order shall remain in effect until the earlier of February 21, 2012, entry of any order dismissing this case (whether pursuant to BB&T’s pending Motion to dismiss or otherwise), the granting of stay relief in favor of BB&T (whether pursuant to BB&T’s pending Motion for Relief from the Automatic stay or otherwise), or by consent and agreement of BB&T, or the entry of any order by the Court extending the use of cash collateral.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Debtor’s Motion.

11. The relief provided herein, including the Debtor's use of BB&T's cash collateral, shall be *nunc pro tunc* to November 21, 2011.

12. Further Hearing: A final hearing to consider the relief sought in the Motion shall be held before the Court on February 15, 2012 at 2:30 p.m. at the United States Bankruptcy Courthouse, Claude Pepper Bldg 51 SW 1st Ave, Courtroom 1410, Miami, Florida 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.

3900 BISCAYNE, LLC BUDGET

WELLS FARGO - DIP Operating Acct.	\$	369,013.35	\$	408,707.51	\$	443,526.67	\$	484,840.83
REVENUE:		Dec-11		Jan-12		Feb-12		Mar-12
Miami Arts Charter School Rent	\$	70,416.66	\$	70,416.66	\$	70,416.66	\$	70,416.66
TOTAL REVENUE	\$	70,416.66	\$	70,416.66	\$	70,416.66	\$	70,416.66
MONTHLY PAYMENTS:								
VENDOR NAMES								
Building Management (3%)	\$	2,112.50	\$	2,112.50	\$	2,112.50	\$	2,112.50
Accounting fees	\$	1,500.00	\$	1,500.00	\$	1,500.00	\$	1,500.00
Operating/Repairs/Maintenance	\$	2,000.00	\$	2,000.00	\$	2,000.00	\$	2,000.00
Adequate Protection Payment	\$	25,110.00	\$	25,110.00	\$	23,490.00	\$	25,110.00
ONE TIME PAYMENTS:								
Miami Dade County Tax Collector	\$	-	\$	-	\$	-	\$	-
Phase II Tenant Build-Out (\$55,000 in total)	\$	-	\$	-	\$	-	\$	-
QUARTERLY PAYMENTS:								
U.S. Trustee Fees	\$	-	\$	4,875.00	\$	-	\$	-
TOTAL DISBURSEMENTS	\$	30,722.50	\$	35,597.50	\$	29,102.50	\$	30,722.50
MONTHLY NET REVENUE	\$	39,694.16	\$	34,819.16	\$	41,314.16	\$	39,694.16