

IT IS HEREBY ADJUDGED and
DECREED this is SO ORDERED.

The party obtaining this order is responsible
for noticing it pursuant to Local Rule 9022-1.

Dated: September 13, 2011



Randolph J. Haines

Randolph J. Haines, Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
THE DISTRICT OF ARIZONA

In re:
BATAA/KIERLAND, LLC,
Debtor.

Chapter 11 Proceedings
Case No. 2-11-BK-05850-RJH

**STIPULATED ORDER REGARDING
THE DEBTOR'S CONTINUED USE OF
CASH COLLATERAL**

Upon consideration of the *Emergency Motion for Order Authorizing Debtor's Continued Use of Cash Collateral* (the "Motion") filed by BATAA/KIERLAND, LLC ("Debtor"), the debtor and debtor-in-possession in the above-captioned case;¹ it appearing that JPMCC 2007-CIBC 19 East Greenway, LLC, a claimed secured creditor herein (the "Secured Creditor"), consents to the use of its claimed cash collateral for necessary operating expenses in accordance with the Budget (as defined below), which consent has been provided under the terms of this Order; and good cause appearing therefor, the Court hereby finds as follows:

1. On March 9, 2011 (the "Petition Date"), the Debtor filed a voluntary chapter 11 petition, thereby commencing this case. Since the Petition Date, the Debtor continues to operate and manage its assets as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Pursuant to 28 U.S.C. §§ 157(b)(2)(A) & (M) this is a core proceeding, which the Court may hear.

¹All capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Motion.

1 3. Due to the critical nature of the Motion, this Order may be granted on an emergency
2 basis with notice only to the Secured Creditor, the United States Trustee, and the Debtor's twenty
3 (20) largest unsecured creditors. This Court has authority to enter this Order without notice to
4 general creditors pursuant to 11 U.S.C. § 105(a).

5 4. The Secured Creditor consents to the use of its claimed cash collateral in order to
6 fund only the necessary day-to-day operational expenses in accordance with the Budget attached
7 hereto as Exhibit A (the "Budget").

8 5. The Debtor's creditors will not be prejudiced by the entry of this Order, and the
9 entry of this Order is in the best interest of Debtor, its creditors, and its estate.

10 Accordingly, based on all of the foregoing and good cause appearing therefor,

11 IT IS HEREBY ORDERED as follows:

12 1. Debtor is hereby authorized to use cash collateral to pay for the ordinary and
13 necessary expenses associated with operating and maintaining the Property, in accordance with the
14 terms of the Budget, through and including December 31, 2011, with a 10% variance per category.
15 Secured Creditor reserves the right to object to any other expenditures in the future.

16 2. Any cash collateral received by the Debtor in excess of that required for operations
17 as authorized by this Order shall be held in the Debtor's debtor-in-possession operating account
18 until such time as Secured Creditor consents to, or the Court orders, its use.

19 3. As adequate protection for the use of its cash collateral, the Secured Creditor is
20 granted, pursuant to 11 U.S.C. §§ 361 and 363(e), a valid, perfected, and enforceable first-priority
21 replacement lien ("Replacement Lien") upon all categories of property of the Debtor and its estate,
22 including, but not limited to, post-petition rental income and other income generated by the
23 Property, whether now existing or acquired afterwards or arising, upon which Secured Creditor
24 held valid and enforceable pre-petition liens, security interests, and mortgages to the same extent
25 and priority of Secured Creditor's pre-petition liens. The Replacement Lien is valid, enforceable,
26 attached, and perfected effective as of the Petition Date to the same extent and priority as Secured
27 Creditor's pre-petition liens, without any further act and without regard to any other federal, state or
28 local requirements, or law requiring notice, filing, registration, recording, or possession of the

1 collateral or other act (a “Perfection Act”). In spite of the foregoing, if the Secured Creditor, in its
2 sole discretion, elects for any reason to file, record, or otherwise effectuate any Perfection Act, it is
3 authorized to perform such act that will be deemed to have been accomplished as of the date of
4 entry of this Interim Order, despite the date and time actually accomplished. In lieu of a Perfection
5 Act, the Secured Creditor may choose to file, record, or effectuate a certified copy of this Interim
6 Order in the same manner as a Perfection Act, which will be tantamount to a Perfection Act.
7 Should the Secured Creditor choose and attempt to file, record, or effectuate a Perfection Act, no
8 defect or failure in connection with such attempt will in any way limit, waive, or alter the validity,
9 enforceability, attachment, or perfection of the post-petition Replacement Lien.

10 4. As further adequate protection, the Debtor shall continue to provide the Secured
11 Creditor with weekly financial reports (due by each Friday at 5:00 p.m. Arizona time for the
12 preceding week), prepared on a cash basis, detailing income, accounts receivable and accounts
13 payable, in addition to month-end summaries for actual expenditures versus budgeted expenditures
14 which will be due 15 days after months end. If there is any breach of this Order or the Budget,
15 Secured Creditor shall have the right to seek an emergency hearing and/or emergency relief before
16 this Court.

17 5. The adequate protection granted under paragraphs 3 and 4, above, is without
18 prejudice to Secured Creditor’s right to request any other form of adequate protection.

19 6. Nothing contained in this Order shall be deemed a waiver of any of the Debtor’s or
20 the Secured Creditor’s rights, remedies and arguments in future proceedings regarding the
21 stipulations and issues set forth herein.

22 **DATED AND SIGNED AS INDICATED ABOVE.**
23
24
25
26
27
28

1 APPROVED AS TO FORM AND CONTENT:

2

3 POLSINELLI SHUGHART PC

4

By: *Mary B. Martin*

5

John J. Hébert

6

Mark W. Roth

Philip R. Rudd

7

Mary B. Martin

One E. Washington Street, Suite 1200

8

Phoenix, AZ 85004

Attorneys for the Debtor

9

BALLARD SPAHR LLP

10

11 By: /s/ Ethan B. Minkin (with permission)

12

Ethan B. Minkin

13

Jaclyn D. Foutz

14

Andrew A. Harnisch

15

One E. Washington Street, Suite 2300

16

Phoenix, AZ 85004

17

Attorneys for JPMCC 2007-CIBC 19 East Greenway, LLC

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT A

Bataa/Kierland, LLC

| Desc | Sep-11 | Oct-11 | Nov-11 | Dec-11 |
|--|-------------------|-------------------|-------------------|-------------------|
| Income | | | | |
| Rental | 136,522.39 | 136,522.39 | 136,522.39 | 141,203.23 |
| Parking | 3,830.00 | 3,830.00 | 3,830.00 | 3,830.00 |
| Sales Tax collected | 3,649.16 | 3,649.16 | 3,649.16 | 3,770.86 |
| Total Income | 144,001.55 | 144,001.55 | 144,001.55 | 148,804.09 |
| Expense | | | | |
| Building Repair & Maintenance | 250.00 | 250.00 | 250.00 | 250.00 |
| Electrical Repair & Maintenance | 350.00 | 350.00 | 350.00 | 350.00 |
| Elevator Maintenance | 510.00 | 510.00 | 510.00 | 510.00 |
| Filter Change Out | 950.00 | 950.00 | 950.00 | 950.00 |
| HVAC Repairs | 3,220.00 | 3,220.00 | 3,220.00 | 3,220.00 |
| Lighting Contract & Supplies | 900.00 | 300.00 | 300.00 | 300.00 |
| Locks & Keys Repair & Maintenance | 200.00 | 200.00 | 200.00 | 200.00 |
| Plumbing Repair & Maintenance | 700.00 | 700.00 | 700.00 | 700.00 |
| Total | 7,080.00 | 6,480.00 | 6,480.00 | 6,480.00 |
| Repair & Maintenance Services | | | | |
| Exterior Landscape-Contract | 850.00 | 850.00 | 850.00 | 850.00 |
| Exterior Landscape-Non Contract | 1,760.00 | 500.00 | 500.00 | 500.00 |
| Manitorial | 4,830.00 | 4,830.00 | 4,830.00 | 4,830.00 |
| Pest Control-Contract | 129.00 | 129.00 | 129.00 | 129.00 |
| Refuse | 415.00 | 415.00 | 415.00 | 415.00 |
| Custodial Supplies | 1,900.00 | 1,900.00 | 1,900.00 | 1,900.00 |
| Security & Safety | 175.00 | 175.00 | 175.00 | 175.00 |
| Signage Repair & Maintenance | 100.00 | 100.00 | 100.00 | 100.00 |
| Window & Building Washing | 425.00 | 1,500.00 | 425.00 | 425.00 |
| Total | 10,584.00 | 10,399.00 | 9,324.00 | 9,324.00 |
| Utilities | | | | |
| Electricity | 22,500.00 | 22,500.00 | 20,000.00 | 19,000.00 |
| Telephone | 240.00 | 240.00 | 240.00 | 240.00 |
| Water & Sewer | 1,200.00 | 1,200.00 | 600.00 | 600.00 |
| Total | 23,940.00 | 23,940.00 | 20,840.00 | 19,840.00 |

EXHIBIT A

| | | | | | |
|--|------------------|------------------|------------------|------------------|-----------------|
| General & Administrative | | | | | |
| Property Management Fee | 7,017.62 | 7,017.62 | 7,017.62 | 7,017.62 | 7,251.66 |
| Roofing Engineer | 2,500.00 | 2,500.00 | 2,500.00 | 2,500.00 | 2,500.00 |
| Total | <u>9,517.62</u> | <u>9,517.62</u> | <u>9,517.62</u> | <u>9,517.62</u> | <u>9,751.66</u> |
| | | | | | |
| Taxes, Licenses & Insurance | | | | | |
| Association Dues | | | | | |
| Insurance | | | | | |
| Sales Tax Expense | 3,649.16 | 3,649.16 | 3,649.16 | 3,649.16 | 3,770.86 |
| Total | <u>3,649.16</u> | <u>3,649.16</u> | <u>3,649.16</u> | <u>3,649.16</u> | <u>3,770.86</u> |
| | | | | | |
| Nonrecoverable Expenses | | | | | |
| Miscellaneous | 200.00 | 200.00 | 200.00 | 200.00 | 200.00 |
| Tenant Specific | | | | | |
| Total | <u>200.00</u> | <u>200.00</u> | <u>200.00</u> | <u>200.00</u> | <u>200.00</u> |
| | | | | | |
| Non-Operating Expenses | | | | | |
| Advertising/Marketing | 160.00 | 160.00 | 160.00 | 160.00 | 160.00 |
| Banking | 60.00 | 60.00 | 60.00 | 60.00 | 60.00 |
| Commission | | | | | |
| Legal Fees (non-bankruptcy Counsel) | 1,500.00 | 1,500.00 | 1,500.00 | 1,500.00 | 1,500.00 |
| Miscellaneous | 500.00 | 500.00 | 500.00 | 500.00 | 500.00 |
| Office Expense | 50.00 | 50.00 | 50.00 | 50.00 | 50.00 |
| Parking | 3,830.00 | 3,830.00 | 3,830.00 | 3,830.00 | 3,830.00 |
| Tenant Improvements | 2,500.00 | | | | |
| Trustee fees | 6,175.00 | | | | 1,950.00 |
| Total | <u>14,775.00</u> | <u>6,100.00</u> | <u>6,100.00</u> | <u>6,100.00</u> | <u>8,050.00</u> |
| | | | | | |
| Total Expenses | 69,745.78 | 60,285.78 | 56,110.78 | 57,416.53 | |
| Profit or (Loss) | <u>74,255.77</u> | <u>83,715.77</u> | <u>87,890.77</u> | <u>91,387.57</u> | |