

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

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| In re: |) |
| |) Chapter 11 |
| CONDO 64, LLC |) |
| |) |
| Debtor |) Case No. 15-21797 |
| ----- | |
| CONDO 64, LLC, DEBTOR |) |
| |) |
| Movant |) |
| |) Contested Matter Under |
| v. |) Fed. R. Bankr. P. 9014 |
| |) |
| AMERICAN EAGLE FINANCIAL |) |
| CREDIT UNION |) |
| |) RE: ECF No. 16 |
| Respondent |) |
| ----- | |

TWENTY-FIFTH ORDER PROVIDING FOR USE OF CASH COLLATERAL AND PROVIDING ADEQUATE PROTECTION

THIS MATTER came before the Court upon the Motion by Debtor for Order Authorizing the Use of Cash Collateral (the "Motion", ECF No 16) pursuant to 11 U.S.C. § 363(c)(2)(B), brought by the above debtor, as debtor-in-possession (hereafter "Debtor"), for an Order pursuant to 11 U.S.C. § 363(c)(2) and Fed. R. Bankr. P. 4001 and 9014 seeking use of cash collateral and providing adequate protection to American Eagle Financial Credit Union ("Secured Creditor"), and the Court having entered a Preliminary Order Providing for Use of Cash Collateral and Providing Adequate Protection *nunc pro tunc*, dated November 3, 2015, and its Second Preliminary Order Providing for Use of Cash Collateral and Providing Adequate Protection Nunc Pro Tunc, dated December 3, 2015, and subsequent continued hearings having been held on December 21, 2015, January 21, 2016, March 17, 2016, May 19, 2016, July 14,

2016, September 20, 2016, November 22, 2016, January 19, 2017, March 21, 2017, May 22, 2017 June 19, 2017, July 18, 2017, September 14, 2017, November 21, 2017, December 18, 2017, January 18, 2018 February 15, 2018, March 20, 2018, May 17, 2018, July 19, 2018, September 28, 2018, November 29, 2018 and December 21, 2018, there being due and sufficient notice of the hearing to consider the Debtor's request for use of cash collateral, and said notice having been made originally by service on the Secured Creditor, Office of the U.S. Trustee and all persons listed on the Debtor's Matrix and subsequent hearings having been announced in open Court and docketed in this matter, and said notice being due and sufficient, and no objection having been presented, and upon the record of the hearing held before the Court to consider the Motion on December 21, 2018; and after due deliberation and consideration and sufficient cause appearing therefor, the Court finds, based upon representations of Counsel, as follows:

A. On October 16, 2015 (the "Petition Date"), Debtor filed its voluntary petition for relief under Chapter 11, title 11 U.S.C. ("Bankruptcy Code"). In accordance with §§ 1107 and 1108 of the Bankruptcy Code, Debtor is authorized to continue in possession of its property and operate and manage its business as a debtor-in-possession. No trustee or examiner has been appointed in these proceedings. No creditors committee has been formed.

B. Debtor's business is single asset real estate as defined in Bankruptcy Code § 101(51B). The Debtor's property consists of 67 of the 112 condominium units and the leases and rents in connection therewith at the location known as 505-509 Burnside Avenue, East Hartford, Connecticut (the "Property").

C. It is essential to the Debtor's business and operations that it obtains an order to use cash on hand and rental payments from the Debtor's operation of the Property, all of which

are subject to the liens and security interests of Secured Creditor, ("Cash Collateral") to pay ordinary course of business expenses including insurance, property maintenance, employees, repairs, utilities, common interest charges and taxes. Without Court authority for the use of Cash Collateral, the Debtor will suffer irreparable harm. The absence of authority to use Cash Collateral would likely result in termination of operations and the loss of essential services to the Property.

D. Prior to the Petition Date, the Debtor was indebted to Secured Creditor under a certain mortgage loan in the principal amount of \$2,600,000.00 (the "Loan"), evidenced by documents and instruments dated September 30, 2009, and secured by a first priority mortgage and assignment of rents on the Property and a security interest in all of the Debtor's personality (collectively, and with the Cash Collateral, the "Collateral"); On the Petition Date, the Secured Creditor asserts the outstanding principal balance was \$2,489,100.90 with accrued interest of \$276,423.00, together with late charges, attorneys' fees, and such other amounts as may be outstanding under the Loan Documents (as defined in paragraph E below).

E. The documents and instruments evidencing the Loan are collectively referred to as the "Loan Documents." The indebtedness outstanding under the Loan Documents is collectively referred to as the "Obligations." The property of the Debtor which secures the Obligations, including Cash Collateral, is collectively referred to as the "Collateral." The Debtor has stipulated and agreed that it is unconditionally liable to Secured Creditor for the full payment and performance the Obligations, and that the security interests, liens and mortgages created under the Loan Documents are valid and perfected, and that there are no claims, liens or encumbrances prior in right to the mortgages and security interests of Secured Creditor in the

Collateral, except for liens for real estate taxes and inchoate liens for common charges which may be due to Lamplight Condominium Association.

E. This Court finds that it is in the best interest of the Debtor, its estate, and all creditors and parties-in-interest and necessary to avoid irreparable harm to the Debtor, that the preliminary use by the Debtor of Cash Collateral on the terms and conditions set forth herein be approved. Based on the foregoing,

IT IS ORDERED, ADJUDGED AND DECREED:

1. Pursuant to 11 U.S.C. § 363(c)(2)(B), the Debtor is hereby authorized during the period set forth in paragraph 4, to use Cash Collateral in the ordinary course of its business up to the maximum amount of \$47,964, to be disbursed for payment of the expenses set forth on the 30 day budget annexed hereto as Exhibit "A" and incorporated herein, with the Debtor being permitted a variance of ten percent (10%) per line item without consent of Secured Creditor, with any other deviation subject to the written consent of Secured Creditor.

2. Pursuant to 11 U.S.C. §§ 361 and 363(e) and for purposes of 11 U.S.C. § 507(b), as adequate protection to Secured Creditor for the Debtor's use of Cash Collateral and for any diminution in the Collateral, Secured Creditor is hereby granted, nunc pro tunc to the Petition Date, the following ("Replacement Liens"):

a. A continuing post-petition lien and security interest in all pre-petition property of the Debtor as it existed on the Petition Date, of the same type against which Secured Creditor held validly protected liens and security interests as of the Petition Date; and

b. A continuing post-petition lien in all property acquired by the Debtor after the Petition date. The Replacement Liens shall maintain the same priority, validity and enforceability as Secured Creditor's liens on the initial Collateral and shall be recognized only to

the extent of any diminution in the value of the Collateral resulting from the use of Cash Collateral pursuant to this Order. The validity, enforceability, perfection and priority of the Replacement Liens shall not be subject to the equities of the case exception to § 552(b) of the Bankruptcy Code and shall not depend upon filing, recordation, or any other act required under applicable state or federal law, rule or regulation.

c. As further adequate protection to Secured Creditor, the Debtor is authorized to pay to Secured Creditor the sum of seven thousand five hundred dollars per month during the term of this Order, which payment shall satisfy the Debtor's obligation under Section 362(d)(3)(B) of the Bankruptcy Code during the Cash Collateral Usage Period (as defined below).

3. It is the purpose and intent of this Order to allow the Debtor to use its cash and other rental proceeds which constitute Cash Collateral of the Secured Creditor on a revolving basis and to provide the Secured Creditor with a lien upon the pre-petition and post-petition assets so that its interests therein will not be diminished during the pendency of these Chapter 11 proceedings. For the purposes of this Order, the terms "collateral diminution" or "diminution in value" or any similar terms shall mean an amount equal to the aggregate diminution of the value of the Collateral after the Petition Date.

4. The term for the use of cash collateral shall be for the period commencing December 24, 2018 and continuing until the earlier of (i) January 23, 2019 or (ii) the Effective Date (as defined in the Debtor's confirmed First Amended Plan of Reorganization pursuant to Order of the Court dated October 5, 2018, and which date shall be the date the Debtor effectuates its Exit Financing (as defined in the Plan), and the need for a Court order authorizing the use of cash collateral shall no longer be required (the "Cash Collateral Usage Period").

5. The Debtor and its officers and agents are authorized and directed to execute, file, and record any security agreements, financing statements, instruments, or other documents as may be requested by the Secured Creditor to evidence and/or perfect the liens and/or security interests granted herein. The Secured Creditor is hereby authorized to file and/or record any such documents, and the automatic stay pursuant to § 362 of the Bankruptcy Code is hereby modified to allow it to file and record such documents as are necessary to evidence and perfect the replacement liens granted herein. During the pendency of this case, such additional documents and filings shall be at the option of the Secured Creditor, but are not necessary or required for the purposes of or protection granted by this Order.

6. A final hearing ("Final Hearing"), on the Debtor's use of Cash Collateral shall be held on January 29, 2019 at 10:00 a.m. at the United States Bankruptcy Court, District of Connecticut, Hartford Division, 450 Main Street, Hartford, Connecticut to consider and determine any objections by other parties in interest to the Debtor's use of Cash Collateral as requested in the Motion.

7. Notwithstanding anything to the contrary herein, this Order is without prejudice to any party-in-interest other than the Debtor to challenge the Secured Creditor's claim or the validity of its liens and no party-in-interest other than the Debtor shall be deemed to have waived any other rights that they may have in or against the Debtor or its interest in property, which rights are expressly reserved.

8. Nothing herein shall prevent the Secured Creditor from seeking to terminate the use of cash collateral or otherwise to obtain relief from the automatic stay or to assert any other rights, claims, remedies, or defenses available to it.

9. The Debtor shall provide the Secured Creditor with copies of monthly statements reflecting activity in the Debtor-In-Possession accounts, rent roll, copies of leases, and such additional information, statements, and reports concerning its financial condition and its assets at the reasonable requests(s) of the Secured Creditor, including, without limitation, the information required to be provided from the Debtor to the Secured Creditor under the Loan Documents.

10. The Debtor stipulates that Secured Creditor is entitled to all of the rights and benefits of § 552(b) of the Bankruptcy Code and the Debtor waives any right to argue or seek the “equities of the case” exception under § 552(b) of the Bankruptcy Code with respect to proceeds, product, offspring or profits of any of the Collateral provided such waiver is not binding on the Court or any subsequent appointed trustee in this Chapter 11 or any Chapter 7 case.

11. To the extent the Replacement Liens granted to Secured Creditor pursuant to this Order are insufficient to compensate Secured Creditor for any diminution in value of the Collateral, Secured Creditor shall be entitled to a super-priority administrative claim pursuant to 11 U.S.C. § 503(b) of the Bankruptcy Code, and Secured Creditor shall be entitled to the protections of and the priority set forth in 11 U.S.C. § 507(b).

12. Notwithstanding the expiration or termination of this Order, the terms and provisions of this Order with respect to the Replacement Liens, Security Interest, administrative claim and other adequate protection granted to Secured Creditor herein shall continue for the duration of this Chapter 11 Case, for the duration of this case under any other Chapter of the Bankruptcy Code to which it may be converted, and shall survive the dismissal of any such case. The replacement liens, security interests administrative claim and other adequate protection granted to Secured Creditor shall maintain the priorities established by this Order until satisfied and discharged and shall be binding upon and shall inure to the benefit of the successors and

assigns of Secured Creditor, the Debtor and the Debtor's bankruptcy estate, including any Chapter 11 or Chapter 7 Trustee appointed with respect to the Debtor.

13. The liens of the Secured Creditor and any replacement thereof pursuant to this Order, and any priority to which the Secured Creditor may be entitled or becomes entitled under § 507(b) of the Bankruptcy Code, shall be subject to and subordinate to (i) amounts payable by the Debtor under § 1930(a)(6) of Title 28 of the United States Code; (ii) amounts due and owing to the Debtor's employees or contract labor for post-petition wages or services which accrue during the term of this Order, and (iii) for the allowed fees and expenses of Debtor's retained counsel, Halloran & Sage, LLP, Kevin Mason, Esq., and accountants (collectively, "Debtor's Professionals"), in an amount not to exceed seventy-five thousand dollars (\$75,000.00), to be paid from proceeds of Secured Creditor's collateral in the event allowed administrative fees of Debtor's Professionals are not paid or available from cash on hand from the Debtor's operations, or from the sale or refinance of the Debtor's property.

Dated at Hartford, Connecticut this 3rd day of January, 2019.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut

EXHIBIT A

Condo 64, LLC
Operating Budget
December 23, 2018 to January 23, 2019

INCOME

| | |
|-----------------------|-----------------|
| Rental Income-Units | \$52,500 |
| Rental Income-Garages | \$600 |
| TOTAL INCOME | \$53,100 |

EXPENSES

Administrative Expenses

| | |
|--|-----------------|
| Common Fees-Lamplight | \$18,200 |
| Management Fee-NEPG | \$2,655 |
| Legal Services | \$6,500 |
| Property Taxes | \$5,850 |
| Insurance | \$1,859 |
| Printing/Postage | \$100 |
| Accounting Services/Tax Return | \$0 |
| Post-Petition Interest-Property Taxes | \$0 |
| US Trustee Fees | \$1,000 |
| Lender/American Eagle Adequate Protection | \$7,500 |
| Personal Expense Reimbursement to O. Pinkard | \$1,250 |
| Pre-Petition Security Deposit Returns | \$0 |
| <i>Total Administrative</i> | \$44,914 |

Maintenance Expenses

| | |
|------------------------------|----------------|
| Electric | \$50 |
| Maintenance Labor & Supplies | \$3,000 |
| <i>Total Maintenance</i> | \$3,050 |

TOTAL EXPENSES \$47,964