



ORDERED in the Southern District of Florida on July 30, 2017.

Robert A. Mark, Judge  
United States Bankruptcy Court

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

Chapter 11

GFC PROPERTIES, INC.,

Case No. 17-16585-RAM

Debtor.

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**AGREED FINAL ORDER GRANTING DEBTOR'S MOTION TO USE  
CASH COLLATERAL OF VALLEY NATIONAL BANK, N.A. [ECF NO. 17]**

THIS MATTER came before the Court for hearing on July 26, 2017 at 2:00 PM to consider the *Debtor's Motion to Use Cash Collateral of Valley National Bank, N.A.* [ECF No. 17] (the "Motion"), filed by debtor GFC Properties, Inc. (the "Debtor"). In its Motion, Debtor moved this Court for, *inter alia*, the entry of an order authorizing the Debtor's use of the cash collateral of Valley National Bank, a national banking association ("First Mortgage Holder").

The Debtor and First Mortgage Holder have agreed to the entry of this Agreed Final Order. Upon consideration of the Motion and the record of the hearing, it is

**ORDERED** as follows:

1. The Motion is **GRANTED**, subject to the conditions set forth below.
2. The Debtor is authorized *nunc pro tunc* to May 25, 2017 (the "Petition Date") to use the rents, fees, charges, accounts or other payments for the use or occupancy of apartments, or other income (the "Cash Collateral") generated by the Debtor's 26-unit apartment complex located at 111 NW 152<sup>nd</sup> Street, Miami, FL 33169 (the "Property") to pay only ordinary business expenses necessary for the operation of the Property in accordance with the proposed budget ("Budget"), attached hereto as **Exhibit A** and incorporated by reference, except as may otherwise be authorized by First Mortgage Holder in writing or by further Order of the Court. The Debtor may exceed any expense line item in the Budget by an amount equal to 10% of such line item, so long as the total amounts in excess of all expense line items does not exceed 5% of the expense line items in the Budget
3. Debtor shall continue making monthly, interest-only, adequate protection payments of \$5,200.80 to First Mortgage Holder on the twenty eighth (28<sup>th</sup>) day of each month through the earlier of (a) the entry of a confirmation order or, (b) the entry of a dismissal order. Payments shall be made payable to "Shutts & Bowen LLP" by delivering a check or money order, for good and immediately available funds, to VNB's counsel of record, Harris J. Koroglu, Esq., Shutts & Bowen LLP, 200 South Biscayne Blvd., Suite 4100, Miami, Florida 33131.
4. Under no circumstances shall the Debtor pay, transfer, deliver or use any Cash Collateral directly, or indirectly, to or for the benefit of any affiliate or insider of the Debtor, except as explicitly provided for in the Budget.

5. All Cash Collateral shall be deposited in and disbursed through one or more debtor-in-possession bank accounts established by the Debtor (the “DIP Account”). All net income realized from the Debtor’s operations shall be held in the DIP Account and shall not be disbursed without further Order of the Court.

6. Pursuant to 28 U.S.C. § 1930, the Debtor may use Cash Collateral to pay quarterly fees to the U.S. Trustee. First Mortgage Holder agrees to a carve out from the Cash Collateral for all unpaid fees required to be paid to the Clerk of the Bankruptcy Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code, plus interest at the statutory rate.

7. This Order does not impose upon the First Mortgage Holder any obligation (and the First Mortgage Holder’s consent to the entry of this Order does not constitute its actual or implied consent) to pay, whether directly, indirectly by charge against its collateral or otherwise, any pre or post-petition obligation of the Debtor arising from the operation of its business, or in connection with its restructuring efforts including, without limitation, the fees and expenses of attorneys or other professionals retained by the Debtor or a Creditors’ Committee, if formed.

8. The Debtor shall maintain comprehensive property insurance policies covering the Property in compliance with the underlying loan documents, including without limitation (a) general liability insurance, (b) hazard insurance, (c) wind insurance, and (d) floor insurance, each of which names First Mortgage Holder as an additional insured. Debtor shall deliver proof of such insurance to First Mortgage Holder’s counsel of record by no later than August 14, 2017. The Debtor shall also forward or relay to counsel for First Mortgage Holder, within five (5) business day of receipt, all written and electronic communications that are received from tenants at the Property. The Debtor shall not extend, renew, modify or enter into any lease or other

agreement for use of the Property (or any portion thereof) without the prior written consent of First Mortgage Holder. The Debtor shall provide copies of the leases for all current tenants at the Property by no later than August 14, 2017.

9. The authorization for the Debtor to use Cash Collateral pursuant to this Order shall continue until the earlier of: (a) a further Order of the Court concerning the use of Cash Collateral, or (b) termination of the Debtor's authorization to use Cash Collateral pursuant to this Order.

10. In addition to the protections of section 552(b) of the Bankruptcy Code, First Mortgage Holder shall have a replacement lien with the same validity and priority as its pre-petition liens upon all property which would have constituted its collateral but for the commencement of this Chapter 11 bankruptcy case by the Debtor, including, without limitation, any Cash Collateral acquired by the Debtor on or after the Petition Date, provided, however, that such lien shall not extend to avoidance actions or to the proceeds of said avoidance actions of the Debtor's estate arising under §§ 544, 545, 547, 548, 550, and 553 of the Bankruptcy Code.

11. The liens granted under this Order shall be valid, perfected, and enforceable as of the Petition Date without further filing or recording of any document or instrument or taking of any further actions, but shall not be valid and enforceable against any trustee or creditors committee that is subsequently appointed in this case or in any prior or subsequent proceeding affecting the Debtor, including any conversion of this case to a case under Chapter 7 of the Bankruptcy Code unless the subsequently appointed trustee or creditors' committee have failed to raise any objections to same within 60 days of their appointment. Notwithstanding the automatic perfection of the liens granted pursuant to this Order, First Mortgage Holder is authorized, but not required, to file or record financing statements, mortgages, notices of lien and

other similar instruments in any jurisdiction, or to take any other action it deems necessary or appropriate to validate or perfect such liens including filing or recording a copy of this Order.

12. First Mortgage Holder shall have the right to assert a super-priority administrative expense claim under section 507(b) of the Bankruptcy Code.

13. On or before the twenty first (21<sup>st</sup>) day of each month, commencing June 21, 2017, the Debtor shall deliver to counsel for First Mortgage Holder the following information, which may or may not be contained in the Debtor's monthly operating report filed with the Court: (a) an operating statement showing the Debtor's income and expenses during the preceding month and cash balances as of the end of the month, which shall include copies of (i) the Debtor's bank statements, (ii) of all invoices and/or receipts for payment of Property expenses provided for in the Budget and, (iii) checks paid, or received, by the Debtor including, but not limited to, all apartment rental/lease payments and/or occupancy checks; (b) a schedule of all unpaid post-Petition Date payables relating to the Property for the preceding month; and (c) a schedule of all unpaid apartment rental and/or occupancy amounts owed by all tenants at the Property for the preceding month.

14. Upon no less than ten (10) calendar days of notice, the Debtor shall provide First Mortgage Holder, and any of its representatives, agents, advisors and appraisers, with reasonable access to the Property, including without limitation all twenty-six (26) apartments situated therein, during normal business hours for purposes of inspection and appraisal.

15. The Debtor's ability to use Cash Collateral will terminate immediately upon the occurrence of the events described in below subparagraphs (a), (c), (d), (e) or (g), without further action or Order of the Court. With respect to the events described in subparagraphs (b) and (f), the Debtor's ability to use cash collateral will immediately terminate in the event the

noncompliance under subparagraphs (b) or (f) is not cured within 5 calendar days after delivery to the Debtor's counsel by electronic mail of written notice of noncompliance, unless the Debtor is permitted by separate Court Order to continue to use Cash Collateral, notwithstanding the alleged noncompliance:

- (a) the Debtor's authorization to use Cash Collateral is terminated by the Court;
- (b) the Debtor fails to comply in any material respect with any of the terms or conditions of this Order;
- (c) the commencement of any action by the Debtor against First Mortgage Holder to subordinate, invalidate or avoid any of its liens or claims;
- (d) (i) the Debtor shall assert in any pleading filed in any court that any material provision of this Order is not valid and binding for any reason, or  
(ii) any material provision of this Order shall for any reason, other than the consent of First Mortgage Holder, cease to be valid and binding;
- (e) The Debtor shall cease operation or management of the Property;
- (f) The Debtor shall fail to comply with the insurance requirements set forth in the Loan Documents; or
- (g) A Chapter 11 Trustee shall be appointed for the Debtor or this case shall be converted to a case under Chapter 7 of the Bankruptcy Code.

16. The provisions of this Order shall remain in full force and effect unless modified or vacated by subsequent Order of this Court but shall not be binding upon any trustee appointed for the Debtor, whether under Chapter 11 or Chapter 7 of the Bankruptcy unless the subsequently appointed trustee or creditors' committee have failed to raise any objections to same within 60

days of their appointment. If any provision of this Order is hereafter modified, vacated or stayed by an Order of this Court or another court, such stay, modification or vacation shall not affect the validity and enforceability of any lien, security interest or priority granted to First Mortgage Holder prior to the date of such stay, modification or vacation.

17. This Order is without prejudice to the respective rights of the Debtor and First Mortgage Holder to seek a modification of this Order, after notice and hearing, including a hearing noticed on an emergency basis. The Debtor and First Mortgage Holder reserve their respective rights, claims and defenses pursuant to the Bankruptcy Code and applicable non-bankruptcy law.

18. Nothing herein shall impair the rights of First Mortgage Holder in the event that the adequate protection provided to First Mortgage Holder herein is determined at a later date to be insufficient to compensate for any diminution in value of First Mortgage Holder's interests in the Cash Collateral and/or the Property during this case. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by First Mortgage Holder, that the adequate protection granted herein does in fact adequately protect First Mortgage Holder against any diminution in value of First Mortgage Holder's interests in the Cash Collateral and/or the Property.

19. The Debtor, First Mortgage Holder, and their respective attorneys have acted in good faith in negotiating, consenting and agreeing to the Debtor's use of Cash Collateral as contemplated and provided for by this Order.

20. Notwithstanding the provisions of this Order, neither First Mortgage Holder nor any of its respective employees or agents, shall be deemed to be: (a) the owner(s) of the

Property; or (b) responsible or liable to any party or the Debtor's estate for the control, management or operation of the Property.

21. The relief stipulated to by the parties in this Order is necessary, essential, and appropriate for the continued operation of the Debtor's business and the preservation of its estate and going concern value.

22. It is accepted by this Court that the Debtor acknowledges and stipulates with prejudice that as of the Petition Date the aggregate amount outstanding under the loan made by First Mortgage Holder to the Debtor is not less than \$1,209,791.17 (such obligation, together with all interest, fees, charges and expenses accrued or to accrue, and which are payable in accordance with the loan documents, is the "Loan Obligation"). The First Mortgage Holder shall be permitted to assert a higher pre-petition amount and the Debtor shall be permitted to object to any pre-petition amount asserted in excess of the amount stated herein. This shall not affect the Debtor's ability to ask this Court for a determination of valuation of the Property of the Debtor to determine the extent of the First Mortgage Holder's secured status.

23. First Mortgage Holder asserts, and the Debtor acknowledges and agrees, that (i) all of the cash in the possession of the Debtor and all of the cash generated in the operation of the Debtor's businesses is Cash Collateral and is subject to the first priority liens of First Mortgage Holder, (ii) the Debtor's Loan Obligation to First Mortgage Holder constitute legal, valid and binding obligations of the Debtor, enforceable in accordance with the terms of the loan documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), (iii) no offsets, defenses or counterclaims exist with respect to the loan obligation, (iv) no portion of the loan obligation is subject to avoidance pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (v) the senior liens securing the loan

obligations (a) are valid, binding, enforceable and perfected liens on the Property, Cash Collateral and all personal property of the Debtor, (b) were granted to, or for the benefit of, First Mortgage Holder and its predecessors for fair consideration and reasonably equivalent value, and (c) are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

24. The subject of this Final Order is a core proceeding within the meaning of 28 U.S.C. § 157. Notice of the scheduled hearing on the Motion was adequate and appropriate under the circumstances of this Chapter 11 case as contemplated by 11 U.S.C. 102(I) and Bankruptcy Rule 4001(b)(2).

# # #

Submitted by:

Harris J. Koroglu, Esq.  
Shutts & Bowen LLP  
200 S. Biscayne Blvd., Suite 4100  
Miami, FL 33131  
Email: hkoroglu@shutts.com  
*Counsel for Valley National Bank*

Attorney Koroglu shall serve a copy of the signed order on all parties of record and file with the Court a certificate of service conforming with Local Rule 2002-1(F).

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# Exhibit A

**2017 Operating Budget - Six Months**

	<u>Budget</u> Aug-17	<u>Budget</u> Sep-17	<u>Budget</u> Oct-17	<u>Budget</u> Nov-17	<u>Budget</u> Dec-17	<u>Budget</u> Jan-18
<b>SALES</b>						
<b><u>INCOME-- -----</u></b>						
Rents Collected	\$ 13,600.00	\$ 13,600.00	\$ 13,600.00	\$ 13,600.00	\$ 13,600.00	\$ 13,600.00
Total SALES \$	\$ 13,600.00	\$ 13,600.00	\$ 13,600.00	\$ 13,600.00	\$ 13,600.00	\$ 13,600.00
Gross Margin \$	\$ 13,600.00	\$ 13,600.00	\$ 13,600.00	\$ 13,600.00	\$ 13,600.00	\$ 13,600.00
<b><u>EXPENSES -----</u></b>						
<b>Operations Expenses</b>						
Advertising	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Accounting	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00
Eviction Legal Fees and Costs	\$ 1,074.00	\$ 1,074.00	\$ 1,074.00	\$ 1,074.00	\$ 1,074.00	\$ 1,074.00
Bank Charges	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Electricity	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00
Property Taxes	\$ 1,834.00	\$ 1,834.00	\$ 1,834.00	\$ 1,834.00	\$ 1,834.00	\$ 1,834.00
Property Insurance	\$ 1,004.00	\$ 1,004.00	\$ 1,004.00	\$ 1,004.00	\$ 1,004.00	\$ 1,004.00
Janitorial Services	\$ 150.00	\$ 150.00	\$ 150.00	\$ 150.00	\$ 150.00	\$ 150.00
Lawn Services	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00
Licenses & Taxes	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Repairs & Maintenance	\$ 750.00	\$ 750.00	\$ 750.00	\$ 750.00	\$ 750.00	\$ 750.00
Property Management Fee	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00
UST Fee	\$ 208.00	\$ 208.00	\$ 208.00	\$ 208.00	\$ 208.00	\$ 208.00
Valley National Bank Loan "AP"	\$ 5,200.00	\$ 5,200.00	\$ 5,200.00	\$ 5,200.00	\$ 5,200.00	\$ 5,200.00
Water & Sewer	\$ 1,050.00	\$ 1,050.00	\$ 1,050.00	\$ 1,050.00	\$ 1,050.00	\$ 1,050.00
Total Expenses \$	\$ 12,920.00	\$ 12,920.00	\$ 12,920.00	\$ 12,920.00	\$ 12,920.00	\$ 12,920.00
Net Cash from Operations \$	\$ 680.00	\$ 680.00	\$ 680.00	\$ 680.00	\$ 680.00	\$ 680.00