



**ORDERED** in the Southern District of Florida on October 1, 2018.

ERIC K. O'CONNELL, Judge  
UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

In re:

RIO MALL, LLC,

Case No. 18-17840-EPK

Debtor.

Chapter 11

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**FIRST EXTENSION OF INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL**

**THIS MATTER** came before the Court for hearing on September 26, 2018 upon the *Expedited Motion for Authority to Use Cash Collateral* [ECF No. 9] (the “**Motion**”) filed by Rio Mall, LLC (the “**Debtor**”) for authority to use Cash Collateral on an interim basis pursuant to Bankruptcy Rule 4001(b) and 11 U.S.C. §363(c)(2)(B). Previously, the Court hear the Motion and entered its *Interim Order Authorizing Use of Cash Collateral* [ECF No. 50] (the “**Interim Order**”), and the Court adopts and incorporates its Findings from the Interim Order herein. Unless otherwise stated, all capitalized terms referenced in this Order shall have the meaning ascribed to them in the Interim Order.

For the reasons stated on the record, given the Findings the Court has adopted and incorporated herein, and being otherwise fully advised in the premises, it is **ORDERED AND ADJUDGED** that:

1. Use of Cash Collateral. The Motion [ECF No. 9] is **GRANTED** on an interim basis in accordance with the terms of the Interim Order (which are incorporated herein by reference) and this First Extension of Interim Order. The Debtor is authorized, for the period ending on December 15, 2018, to use Cash Collateral for each line item identified in the Cash Collateral Budget attached hereto as Exhibit A, plus a variance not to exceed ten per cent (10%) of each line item expense category so long as the total of all amounts in excess of all line items for the Cash Collateral Budget do not exceed ten (10%) percent in the aggregate of the total Cash Collateral Budget, for the following purposes:

- a. maintenance and preservation of its assets;
- b. the continued operation of its business, including but not limited to real estate taxes, maintenance and insurance expenses; and
- c. accrual and payment of quarterly fees to the Office of the United States Trustee.

Investors Bank (the “**Bank**”) may consent in writing to further uses of Cash Collateral by the Debtor for unforeseen expenses and any use of Cash Collateral pursuant to any such consent shall be otherwise be subject to this Interim Order. Debtor may also seek emergent approval from the Court for additional use of Cash Collateral and Bank shall have the right to object to any such application to the Court.

2. Reporting

a. By the tenth (10<sup>th</sup>) day of each calendar month, the Debtor shall provide a report to the Bank, with a copy to the U.S. Trustee, showing actual disbursements in comparison to the Cash Collateral Budget for the immediately preceding calendar month. The monthly report shall also show the opening balance of accounts receivable (identified by tenant) as of the

1<sup>st</sup> day of the calendar month and the amounts of accounts receivable (identified by tenant) during the calendar month.

b. The Debtor shall provide to the Bank all other reports required by the Pre-Petition Loan Agreements and any other reports reasonably required by the Bank, as well as copies of the Debtor's monthly United States Trustee operating reports, which shall be delivered to the Bank simultaneously with transmittal to the U.S. Trustee.

c. At the next interim hearing scheduled by this First Extension of Interim Order, Debtor shall present the Court with an itemization of those disbursements of Cash Collateral that it paid during the period of the Cash Collateral Budget through the return date.

d. Upon appointment of a Creditor's Committee, the Debtor shall submit a copy of the monthly United States Trustee operating reports and all reports remitted to the Bank as required by this Interim Order to counsel to said committee if counsel has been appointed, and until counsel is retained, to the chairman of said committee.

3. Adequate Protection. As adequate protection for use of Cash Collateral from the Petition Date:

a. Replacement Lien. Notwithstanding the provisions of §552(a) of the Bankruptcy Code, and in addition to the security interests preserved by §552(b) of the Bankruptcy Code, the Bank is hereby GRANTED a replacement perfected security interest under §361(2) of the Bankruptcy Code to the extent the Bank's Cash Collateral has been or is used by the Debtor, to the extent and with the same priority in the Debtor's post-petition collateral (and proceeds thereof) that the Bank held in the Debtor's Pre-Petition Collateral;

b. Statutory Rights Under §507(b). To the extent the adequate protection provided for hereby proves insufficient to protect the Bank's interest in and to the Cash

Collateral, the Bank shall have an administrative expense claim, pursuant to §507(b) of the Bankruptcy Code.

c. Deemed Perfected. The replacement lien and security interest granted herein is automatically deemed perfected upon entry of this Interim Order without the necessity of the Bank taking possession, filing financing statements, mortgages or other documents. Although not required, upon request by the Bank, Debtor shall execute and deliver to the Bank any and all UCC Financing Statements, UCC Continuation Statements, Certificates of Title or other instruments or documents considered by the Bank to be necessary in order to perfect the security interests and liens in the Debtor's post-petition collateral and proceeds granted by this Interim Order, and the Bank is authorized to receive, file and record the foregoing at the Bank's own expense, which actions shall not be deemed a violation of the automatic stay.

d. Adequate Protection Payments: The entry of this Interim Order is without prejudice to the right of the Bank to seek adequate protection if Debtor seeks to extend use of Bank's Cash Collateral beyond December 15, 2018 or if there is a change in the financial condition of the Debtor.

f. Credit Bids. The Debtor acknowledges and agrees that the Bank shall have the right to credit bid the Bank Debt under the Pre-Petition Loan Agreements, in whole or in part, in connection with any sale or disposition of assets of the Debtor (whether or not such asset sale or disposition is undertaken or proposed under or pursuant to the terms of any consensual or nonconsensual (including under §1129(b)(2)(A)(i), (ii) and/or (iii) of the Bankruptcy Code) Chapter 11 plan of reorganization or liquidation of or for the Debtor, whether proposed by the Debtor, the Creditor's Committee or any other party, by motion under

Section 363 of the Bankruptcy Code, or otherwise under applicable law) and the Debtor hereby waives all rights to oppose such credit bid rights of the Bank. This paragraph does not bind any party other than the Debtor.

4. Creditor's Rights of Inspection and Audit. Upon reasonable notice by the Bank, Debtor shall permit the Bank and any of its agents reasonable and free access to the Debtor's records to verify the existence, condition and location of collateral in which the Bank holds a security interest and to audit Debtor's cash receipts and disbursements.

5. Interlocutory Order and No Modification of Creditor's Adequate Protection. This is an interlocutory order. Nothing contained herein shall be deemed or construed to (a) limit the Bank to the relief granted herein; (b) bar the Bank from seeking relief from the automatic stay, dismissal or conversion of this Case, transfer of this Case to another venue or other relief; (c) bar the Bank from seeking relief from the terms of this First Extension of Interim Order for cause shown on appropriate notice to the Debtor and other parties-in-interest entitled to notice of same; (d) require the Bank to make any further loans or advances to the Debtor; or (e) limit or preclude the Bank from contesting the Debtor's continued use of Cash Collateral beyond the duration of this First Extension of Interim Order. Modification of this First Extension of Interim Order may be sought for cause shown by the Debtor, the Bank or any other party-in-interest on due notice. No such modification, however, shall modify, amend, or deprive the Bank of its interest in Debtor's property (pre-Petition and post-Petition) and the Bank's rights under Paragraph 3 of the Interim Order and Paragraph 3 of this First Extension of Interim Order unless expressly agreed by the Bank.

6. Termination Events.

a. The Debtor's authority to use Cash Collateral is terminated upon the first occurrence of any of the following subject to subparagraph 6.b.:

- i. the conversion of this case to a Chapter 7 of the Bankruptcy Code;
- ii. the appointment of a Chapter 11 Trustee;
- iii. the failure to make adequate protection payments to Bank;
- iv. violation of any of the terms in this Interim Order; or
- v. the absence or lapse of any liability or property and casualty insurance

policies currently held by Debtor.

b. If a Termination Event or default occurs, the authority to use Cash Collateral shall terminate upon five (5) days' notice to the Debtor, U.S. Trustee, Chapter 11 Trustee if any, and Creditors' Committee if one exists. Notwithstanding the foregoing, in the event Debtor defaults or violates this First Extension of Interim Order, the Bank is entitled to request a hearing on short notice as provided by section 7 below.

7. Bank's Right to Request a Hearing on Short Notice. Bank shall have the right to request a hearing, on short notice, on the Debtor's continued use of Cash Collateral in the event of any Termination Event as defined in Paragraph 6 with notice to be provided to the Debtor, the U.S. Trustee, and the Creditor's Committee if in existence or if not in existence, the top 20 creditors of the Debtor as scheduled in this Case.

8. **INTERIM HEARING ORDER.** Another interim hearing in accordance with Bankruptcy Rule 4001(b)(2) shall be held at **1:30 p.m. on the December 12, 2018** at the United States Bankruptcy Courthouse, Flagler Waterview Building, 1515 North Flagler Drive, 8<sup>th</sup> Floor, Courtroom B, West Palm Beach, Florida 33401, at which time the Court shall consider Debtor's request for continued use of Cash Collateral, and any objection, answer or other

responsive pleading to the aforesaid Motion shall be filed with the Clerk of the Bankruptcy Court on or before December 5, 2018, and simultaneously served upon counsel for Debtor and counsel for the Bank (Dilworth Paxson LLP, attention Harold G. Cohen, LibertyView Suite 700 457 Haddonfield Road, Cherry Hill, NJ 08002 and Gary M. Freedman, P.A., BROAD AND CASSEL LLP, One Biscayne Tower, 21<sup>st</sup> Floor, 2 S. Biscayne Boulevard, Miami, Florida 33131. No later than December 1, 2018, Debtor shall provide to the identified counsel for the Bank and to the United States Trustee a Cash Collateral budget for the 90-day period commencing December 16, 2018.

10. Notice. The Debtor serve a copy of this First Extension of Interim Order and Notice by first class mail within one (1) business day from the date hereof, on (1) the United States Trustee; (2) the District Director of the Internal Revenue Service; and (3) counsel to any committee appointed under §1102 of the Bankruptcy Code, if one has been appointed and if not, to Debtor's twenty (20) largest Rule 1007(d) creditors. Debtor shall immediately file with the Clerk a Certificate of Service of said mailing.

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Submitted by:

Eric Pendergraft, Esq.  
Counsel for the Debtor  
2385 N.W. Executive Center Drive, Suite 300  
Boca Raton, Florida 33431  
Telephone: (561) 443-0800  
Direct Line: (561) 433-0818  
Facsimile: (561) 998-0047

Copy to: Eric Pendergraft.

*Eric Pendergraft is directed to serve a copy of this Order upon all interested parties and to file a certificate of service.*

# Exhibit A



**RIO MALL, LLC****Statement of Projected Income and Expenses- Cash Basis  
For The Period September 26, 2018 through December 31, 2018**

	9/26/18-9/30/18	October	November	December	
<b>Revenue:</b>					
Rent - Theatre	\$ -	\$ 35,489.00	\$ 35,489.00	\$ 35,489.00	
Rent - Konsole Gaming	600.00	600.00	600.00	600.00	
Rent - Save A Lot	-	3,131.00	3,131.00	3,131.00	
Rent - Rent A Center	-	9,365.00	9,365.00	9,365.00	
Rent - Kmart	0.00	0.00	0.00	0.00	
Total rent collected	<b>600.00</b>	<b>48,585.00</b>	<b>48,585.00</b>	<b>48,585.00</b>	
<b>Occupancy</b>					
RE Taxes & Assessments	0.00	0.00	50,135.30	0.00	taxes paid quarterly.on 11/1
Licenses & Permits	0.00	0.00	0.00	0.00	
	0.00	0.00	50,135.30	0.00	
<b>Utilities</b>					
Gas & Electric	0.00	1,800.00	1,800.00	1,800.00	
Water	0.00	1,810.00	1,810.00	1,810.00	
	0.00	3,610.00	3,610.00	3,610.00	
<b>Security</b>					
Fire Alarm Security	0.00	0.00	0.00	0.00	
	0.00	0.00	0.00	0.00	
<b>Maintenance</b>					
Landscape Maintenance	1,015.36	2,100.00	2,100.00	2,100.00	
<b>Repairs</b>	240.00	240.00	240.00	240.00	
	240.00	240.00	240.00	240.00	
<b>Insurance</b>					
General Liability	7,489.13	10,000.00	10,000.00	10,000.00	
Property	4,452.95	4,000.00	4,000.00	4,000.00	
	11,942.08	14,000.00	14,000.00	14,000.00	
<b>General &amp; Administrative</b>					
United States Trustee fee	975.00	0.00	0.00	975.00	
	975.00	0.00	0.00	975.00	
<b>Total Costs &amp; Expenses</b>	<b>14,172.44</b>	<b>19,950.00</b>	<b>70,085.30</b>	<b>20,925.00</b>	
<b>Earnings (loss) from operations</b>	<b>\$ (13,572.44)</b>	<b>\$ 28,635.00</b>	<b>\$ (21,500.30)</b>	<b>\$ 27,660.00</b>	
DIP Account balance - beginning of period	\$ 100,179.81	\$ 86,607.37	\$ 115,242.37	\$ 93,742.07	
Transfer of operating account cash to DIP account	-	-	-	-	
DIP Account balance - end of month	\$ 86,607.37	\$ 115,242.37	\$ 93,742.07	\$ 121,402.07	