

**IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF MISSOURI,  
SOUTHERN DIVISION**

In re: )  
 )  
CELEBRATION COVE RESORT, LLC ) Case No. 17-30335  
 )  
Debtor. )

**MOTION OF GREAT SOUTHERN BANK TO  
PROHIBIT USE OF CASH COLLATERAL**

**COMES NOW** Movant, Great Southern Bank, by and through its undersigned counsel, and for its Motion to prohibit the Debtor’s Use of Cash Collateral states to the Court as follows:

1. On June 22, 2017, Debtor filed a voluntary Chapter 11 bankruptcy Petition and is now operating its business as a debtor-in-possession.
2. Movant, Great Southern Bank, is a secured creditor in these proceedings.
3. This is a core proceeding pursuant to 28 U.S.C. §157(b).
4. Debtor is obligated to Great Southern Bank under a Promissory Note dated June 6, 2013 in the original principal amount of \$3,300,000.00 as amended by First Allonge and Amendment to Promissory Note with effective date of June 6, 2015 and Second Allonge and Amendment to Promissory Note with effective date of June 6, 2016 (collectively the “Note”). A copy of the Note is attached hereto as **Exhibit “A”** and incorporated by reference herein. The proceeds of the Note were utilized by the Debtor to purchase two promissory notes held by Great Southern Bank from Bluewater Development, LLC (“Bluewater”) together with an Assignment of Rents and Deeds of Trust securing same.

5. Payment of the Note is secured by a Collateral Assignment of Loans and Security Agreement dated June 6, 2013 whereby the Debtor collaterally assigned to Great Southern Bank the Debtor's interest in the following, all of which Debtor acquired from Great Southern Bank:

a. A Promissory Note from Bluewater in the original principal amount of \$5,200,000.00 dated November 13, 2007 and bearing Loan No. xxxx1244, a copy of which is attached hereto as **Exhibit "B"** and incorporated by reference herein;

b. A Promissory Note from Bluewater in the original principal amount of \$946,820.91 dated December 22, 2005 and bearing Loan No. xxxx2177, a copy of which is attached hereto as **Exhibit "C"** and incorporated by reference herein;

c. Assignment of Rents from Bluewater dated January 19, 2006 and recorded in Book 489, at Page 1744 in the office of the Stone County, Missouri Recorder of Deeds;

d. Deed of Trust granted by Bluewater dated June 14, 2005 and recorded June 20, 2005 in the office of the Stone County, Missouri Recorder of Deeds in Book 477, at Page 803, as modified by a Modification of Deed of Trust dated August 3, 2005 and recorded August 29, 2005, in Book 480, at Page 3267;

e. Deed of Trust granted by Bluewater dated December 22, 2005, and recorded December 29, 2005 in the office of the Stone County, Missouri Recorder of Deeds in Book 487, at Page 4551; and

f. Deed of Trust granted by Bluewater dated January 19, 2006, and recorded January 27, 2006 in the office of the Stone County, Missouri Recorder of Deeds in Book 489, at Page 1731, as modified by a Modification of Deed of Trust dated November 13, 2007, and recorded November 14, 2007 in Book 2007, at Page 24229.

The Deeds of Trust referenced in sub-parts d, e and f above may be referred to herein collectively as the “Bluewater Deeds of Trust.” Copies of the Deeds of Trust assigned by the Debtor to Great Southern Bank are attached hereto as **Exhibits “D”, “E” and “F”**, and the Assignment of Rents as **Exhibit “G”** and same are incorporated by reference herein.

6. As of June 22, 2017, after all applicable credits, the Note had an outstanding balance of \$2,934,907.29, consisting of \$2,912,213.68 in principal, \$15,133.31 in interest, and \$7,560.30 in late fees and other charges.

7. On December 12, 2016, Great Southern Bank issued notices to the tenants/occupants of the condominium units which are encumbered by the Bluewater Deeds of Trust and Assignment of Rents directing them to pay any rent otherwise due Bluewater or Celebration Cove to Great Southern Bank. Great Southern Bank further directed the Debtor to immediately surrender any and all rental income it received from tenants of said property to Great Southern Bank. To date, the Debtor has submitted no rental income to Great Southern Bank.


8. Great Southern Bank continues to have a post-petition security interest in all rents payable by any occupant or other user of the real property described within the Bluewater Deeds of Trust pursuant to 11 U.S.C. §552(b).

9. Great Southern Bank has not consented to, and does not consent to, the Debtor’s use of cash collateral. As such, in the absence of an Order of this Court authorizing same, the Debtor is prohibited from utilizing cash collateral which secures payment of the indebtedness owed by Debtor to Great Southern Bank pursuant to 11 U.S.C. §363(e).

10. To the extent the Court enters an Order authorizing Debtor's use of cash collateral, Great Southern Bank is entitled to adequate protection in such form as is necessary to protect its interest.

**WHEREFORE**, Great Southern Bank prays for an Order of this Court prohibiting the Debtor from utilizing cash collateral securing payment of the indebtedness owed to Movant, and to the extent the Court authorizes any use of said cash collateral, Great Southern Bank prays for an Order requiring Debtor to pay Great Southern Bank adequate protection; and for such other and further Orders and relief as the Court deems just in the premises.

Respectfully submitted,  
CARNAHAN, EVANS, CANTWELL  
& BROWN, P.C.

By  \_\_\_\_\_  
Rodney H. Nichols  
Missouri Bar No. 45741

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Attorneys for Great Southern Bank

**CERTIFICATE OF SERVICE**

The undersigned certifies that a complete copy of the foregoing document was served upon the attorneys of record for each party to the above action:

- (X)A. by enclosing same in envelopes addressed to said attorneys at their business addresses as disclosed in the pleadings of record herein, with first class postage fully prepaid, and by depositing said envelopes in a U.S. Post Office mailbox in Springfield, Missouri as set forth below;

Brazeale Law Firm, LLC  
Diana Paige Brazeale  
1484 Highway 248  
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Sherri L. Wattenbarger  
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- ( )B. by leaving same in the business office of said attorneys with a secretary thereof;
- ( )C. by handing same to said attorneys;
- ( )D. hand delivery;
- ( )E. via facsimile transmission; or
- (X)F. via electronic filing with the U.S. Bankruptcy Court, Western Division of Missouri.

on the 7<sup>th</sup> day of July, 2017, by the method checked above.

  
\_\_\_\_\_  
Attorney of Record