

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE

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In re:

CHAPTER 11

**CARRINGTON FARMS CONDOMINIUM  
OWNERS' ASSOCIATION**

Case No. 17-10137-BAH

Debtor

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**DEBTOR'S THIRD MOTION FOR ORDER  
AUTHORIZING CONTINUED USE OF CASH COLLATERAL  
AND PROVISION OF ADEQUATE PROTECTION**

The debtor in possession, **Carrington Farms Condominium Owners' Association** (the "Debtor"), respectfully moves this Court as follows:

**INTRODUCTION AND OTHER PRELIMINARY MATTERS**

1. Pursuant to Code Sections 105, 363 and 361, the Debtor asks this Court to authorize the Debtor to use the proceeds of its accounts and other cash collateral to pay the costs and expenses provided for in the Budget attached as Exhibit A (the "Budget") for the period beginning on **August 1, 2017** and ending on **October 31, 2017** (the "Use Period").

2. The following exhibits are attached hereto and incorporated herein by reference:

a. Exhibit A: Budget for the Use Period.

b. Exhibit B: Budget Analysis.

3. Accompanying this Motion is a proposed Order granting the Debtor the relief requested (the "Order"). The proposed Order:

a. Limits the amount of Cash Collateral which Debtor may spend during the Use Period to **\$159,982.65** (the "Maximum Use");

b. Requires the Debtor to pay Granite Bank the sum of \$5,342.55 on each of August 7, 2017, September 6, 2017 and October 6, 2017 (“Granite Bank” and the “Adequate Protection Payments”).

c. Grants to Granite Bank a replacement lien on the following collateral on which they hold a lien on the date hereof until avoided by an order entered by this Court (the “Bank’s Collateral”):

i. All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts held at the Bank;

ii. An assignment of the right to assess and collect condominium fees; and

iii. All proceeds and products of the collateral described in clauses (a) and (b) above.

d. Reserves to Debtor the right to contest the validity, perfection, enforceability or value of any lien held or claimed by Granite Bank for any reason.

#### **JURISDICTION**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

5. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

#### **PROCEDURAL HISTORY**

6. For the sake of brevity, the Debtor incorporates the Procedural History Section of its Motion for Order Authorizing Use of Cash Collateral and Provision of Adequate Protection With Stipulated Order [Doc. 47] (the “First Cash Collateral Motion”).

7. The Debtor is continuing in possession of its property and is operating and

managing its business as debtor in possession pursuant to sections Code Sections 1107 and 1108 of the Code.

8. The Debtor's income is relatively stable as shown by the Budget which projects the collection during the Use Period of \$52,869.35 each month for the months of August, September and October 2017, respectively. Its ordinary course expenses are also relatively predictable although they are seasonal and vary from month to month. The Debtor's revenues should exceed ordinary course expenses during the Use Period.

### THE PROPOSED BUDGET

9. Attached to this Motion as Exhibit A is the Budget prepared for the Debtor by Thomas Carroll, an officer of NH Core Properties which manages the condominium for the Board of Directors, and reviewed and approved by Gary Woscyna, the Chairman of the Board of Directors ("Mr. Woscyna"). The Budget includes those costs and expenses incurred in the ordinary course of the Debtor's on-going business and the adequate protection payments to be made to the Bank.

10. During this Case, the Debtor sought and received permission to spend a total of \$270,168.10 in cash collateral, but only spent \$210,000. *Ex. B.* The Budgets approved by this Court included \$5,400.00 per month for the months of March, April, May and July 2017 and \$6,500.00 for the month of June 2017 or a total of \$28,100 to pay Liberty Utilities, which was the amount due based on the parties outside of bankruptcy budget plan. The Debtor continues to request \$5,400 per month in keeping with the budget plan even though its actual expense for gas will be lower during the Use Period.<sup>1</sup> The Debtor paid Liberty approximately \$14,000 by a

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<sup>1</sup> Liberty may not offer budget plans at the present time, but the Debtor will account and reserve for this expense on a budget basis because the variation between summer and winter months is large.

check that was not cashed because of the parties' negotiations regarding the payment of the pre-petition Liberty claim in lieu of a larger deposit. Liberty will void the check. The parties have concluded successfully their negotiations as shown by the Debtor's Ex Parte Non-Adversarial Motion for Order Permitting Debtor to Pay Liberty Utilities (New Hampshire)'s Pre-Petition Utility Claim in Lieu of Deposit or, Alternatively, Provide Adequate Protection in the Form of a Deposit Pursuant to 11 U.S.C. § 366 [Doc. 119]. As a result, the Debtor will pay Liberty the sum of \$26,500 during the month of July, 2017 (which will be shown in the July, 2017 MOR), but the payment will come from the money made available by previously entered cash collateral orders.

11. The "Bldg. Repairs/Maintenance" line is higher than the \$6,000 per month accrual number used in previous budgets. The Debtor did not allocate any money for this item in the previous Budget. As a result, the Debtor increased the amount allocated for maintenance.

12. On the Petition Date, the Debtor had cash on hand in the amount of \$147,322.81.

13. The Budget projects the collection of \$158,608.05 in condominium fees and other revenues over the Use Period.

14. The Budget projects the use and expenditure of \$159,982.65 in Cash Collateral during the Use Period. The Budget includes the \$5,342.55 per month to be paid to the Bank as adequate protection payments. As a result, the Debtor will be able to pay all of its current financial liabilities without depleting its cash on hand on the Petition Date.

15. The Budget includes only the Debtor's ordinary course costs and expenses which are reasonably necessary for the continued operation of the Debtor's business in a prudent manner and the proposed adequate protection payments offered the Bank (the "Adequate Protection Payments").

16. The Budget projects and summarizes fairly and accurately the expected results of Debtor's business operation on a cash flow basis during the Use Period based on the information available to the Debtor at this time. The Debtor projects in the Budget, that it will have sufficient cash to pay the budgeted costs and expenses and the adequate protection payments due to the Bank.

17. At the end of the Use Period, the Debtor expects to have \$178,625.40 in cash on hand -- \$31,302.59 more than the amount of the Bank deposits on the Petition Date. Its operating account and reserve accounts should have \$96,595.11 and \$82,030.29, respectively.

#### **THE ADEQUATE PROTECTION PROPOSAL**

18. The Debtor will provide the Bank with a replacement lien on (i) the Bank Collateral with the same perfection and priority that it had in such assets prior to the Petition Date, and (ii) the Debtor's post-petition assets of the same kinds, nature, and types as the Bank Collateral, as well as the proceeds thereof. The Replacement Liens shall be deemed valid and perfected notwithstanding the requirements of non-bankruptcy law and shall be senior to any security interests, liens or allowed superpriority claim subsequently granted to any other person or entity.

19. Under the circumstances, the proposed adequate protection satisfies the requirements of Code Section 361.

#### **THE DEBTOR NEEDS TO USE CASH COLLATERAL TO CONTINUE REORGANIZATION**

20. "Cash Collateral" means and includes for the purposes of this Motion "cash ... deposit accounts or other cash equivalents ... in which the estate and an entity other than the estate have an interest, and includes the proceeds ... of property" of the estate, including

inventory. Under Code Section 363(c)(2), a debtor may not use cash collateral without the consent of each “entity that has an interest in such cash collateral” or the “court ... authorizes such use...”

21. The Debtor valued its Cash Collateral comprised of cash and accounts receivable at \$143,003.58 as of the Petition Date. It currently bills members of the Association \$50,844.35 per month in condominium fees as shown by the Budget.

22. The Debtor cannot continue its operations without the use of Cash Collateral because the Debtor must pay its Manager, insurers, suppliers and vendors as their invoices become due.

23. The Budget projects the amount of projected receipts and disbursements as required by LBR 4001-2(d) and shows that:

a. Between cash on hand and revenue, the Debtor will enjoy positive cash flow during the Use Period.

b. The Debtor will be able to cover its operating costs and expenses during the Use Period.

c. The Debtor’s cash flow will be positive over the Use Period.

24. The use of Cash Collateral is essential to an effective reorganization of the Debtor.

25. The Debtor must pay its ordinary course costs and expenses as they become due. No payment will be made to the Debtor’s Counsel or any other professional without the prior approval of this Court.

26. The Debtor has the ability to reorganize its business and affairs for the benefit of its creditors. At this time, the Debtor expects to be able to propose a confirmable plan.

27. Without the use of Cash Collateral, the reorganization of the Debtor will be impossible. Creditors will be irreparably and unnecessarily harmed. Under the circumstances, this Court should grant the Debtor and its bankruptcy estate the relief requested in this Motion.

**WHEREFORE**, the Debtor respectfully requests this Court to issue and enter the Proposed Order attached hereto and grant the Debtor such further relief as may prove to be equitable, fair and lawful.

Respectfully submitted,

DATED: July 13, 2017

/s/ William S. Gannon  
William S. Gannon, BNH 01222

Proposed Counsel to:

**CARRINGTON FARMS CONDOMINIUM  
OWNERS' ASSOCIATION**

WILLIAM S. GANNON, PLLC  
889 Elm Street, 4th Floor  
Manchester, NH 03101  
PH: (603) 621-0833

### **CERTIFICATE OF SERVICE**

I hereby certify that on this date I served the foregoing pleading on each person and entity named below by causing it to be filed electronically via the CM/ECF filing system or mailed by first-class United States Mail, postage pre-paid, or in such other manner as may be indicated:

All persons and entities named on the CM/ECF Electronic Service List – electronically via CM/ECF

IRS  
Special Procedures  
80 Daniel St., PO Box 9502  
Portsmouth, NH 03802

Internal Revenue Service  
Centralized Insolvency Operations  
P.O. Box 7346  
Philadelphia, PA 19101-7346

State of New Hampshire  
Dept. of Employment Security  
Attn: Arnold Rocklin-Weare  
45 So. Fruit Street  
Concord, NH 03301

### **CASH COLLATERAL RECORD LIENHOLDERS**

Granite Bank f/k/a First Colebrook Bank – to attorney via CM/ECF

### **20 LARGEST UNSECURED CREDITORS**

See attached Service List.

DATED: July 13, 2017

/s/ Beth E. Venuti  
Beth E. Venuti, Paralegal



SERVICE LIST – 20 LARGEST  
UNSECURED CREDITORS  
Carrington Farms Condominium  
Owners' Association  
Case No. 17-10137-BAH

**Belletetes, Inc.**  
80 Northeastern Blvd  
Nashua, NH 03062

**Blue Line Rental**  
901 S. Main Street  
Haverhill, MA 01835

**Builders Installed Products**  
48 King Street  
Auburn, NH 03032

**Cronin & Bisson**  
722 Chestnut St  
Manchester, NH 03104

**Earthlink**  
P.O. Box 78343  
Atlanta, GA 30357

**Fairview Millwork**  
108 Route 101A  
Amherst, NH 03031

**Faulkners Landscape**  
1130 Hooksett Rd  
Hooksett, NH 03106

**Gottesman & Hollis**  
39 East Pearl Street  
Nashua, NH 03060

**Granite Bank f/k/a First Colebrook  
Bank**  
132 Main Street  
Colebrook, NH 03576

**Johnsons Electric**  
100 Factory Street, Unit 1B  
Nashua, NH 03060

**Kamco Locks**  
78 Northeastern Blvd Suite 3  
Nashua, NH 03062

**Lewis Mooney**  
7 Hull Rd  
Bedford, NH 03110

**Liberty Utilities**  
15 Buttrick Rd  
Londonderry, NH 03053

**Nashua Wallpaper**  
129 W. Pearl Street  
Nashua, NH 03060

**Protection One**  
P.O. Box 219044  
Kansas City, MO 64121-9044

**Republic Waste**  
385 Dunstable Rd  
Tyngsboro, MA 01879

**RJG Universal Builders**  
10 Riddle Dr  
Bedford, NH 03110

**Sequel Development & Management,  
Inc.**  
2 Knightsbridge Dr  
Nashua, NH 03063

**Waltham Pest Control**  
P.O. Box 540538  
Waltham, MA 02454