

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

CHAPTER 11

**CARRINGTON FARMS CONDOMINIUM
OWNERS' ASSOCIATION**

Case No. 17-10137-BAH

Debtor

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

Upon the Debtor's Motion for Order Authorizing Use of Cash Collateral and Provision of Adequate Protection ("this Order" and the "Motion") and having reviewed the Motion, including the Exhibits and Incorporated Exhibits, and the record of this case to date, it is hereby ordered, adjudged and decreed pursuant to Bankruptcy Code Section 363, Bankruptcy Rule 4001(b) and Local Bankruptcy Rule 4001-2 that:

1. Except as otherwise defined herein, all words, terms and phrases used in the Motion shall have and be given the same meaning when used in this Order.
2. Subject to the further provisions hereof, the Motion shall be, and hereby is granted.
3. This Order shall expire on **July 31, 2017** unless extended by an order entered before such date.
4. The Debtor may use and expend up to **\$99,704.10** in Cash Collateral to pay the costs and expenses incurred by the Debtor in the ordinary course of business to the extent provided for in the Budget attached as Exhibit A during the period from **June 1, 2017** through **July 31, 2017** (the "Use Period").
5. The Security Agreement entered into by and between Granite Bank, formerly known as First Colebrook Bank (the "Bank") and the Debtor, dated February 6, 2014 (the

“Security Agreement”) granted the Bank the following collateral as security for the payment of the claim asserted by the Bank in the amount of \$395,408.47 plus interest, late charges and attorney fees and expenses, all of which continue to accrue (the “Bank Collateral” and “Bank Claim”):

- a. All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts held at the Bank;
- b. An assignment of the right to assess and collect condominium fees; and
- c. All proceeds and products of the collateral described in clauses (a) and (b) above.

6. The Debtor shall deposit all funds received during this case in a deposit account maintained at the Bank.

7. As adequate protection for the interest of the Bank in the Bank Collateral (including the Cash Collateral) on account of the Debtor’s use of Cash Collateral and any decline in value arising out of the automatic stay, the Debtor’s use, sale, depreciation, or disposition of the Bank Collateral or any other reason during this case, the Debtor shall grant the Bank the Replacement Liens (defined below) and pay the Bank:

- a. **\$854.80** within two (2) business days of the entry of this Order.
- b. **\$5,342.55** on each of July 15, 2017 and July 6, 2017.
- c. **\$11,539.90** of the Bank's attorneys' fees and costs, as provided for in the Stipulated Order Granting Debtor's First Motion for Order Authorizing Use of Cash Collateral and Provision of Adequate Protection [Doc. 54] (the “Previous Order”), plus such additional amount as may be agreeable to the parties or determined to be fair and reasonable by this Court.

8. This Order grants, and shall be deemed to grant the Bank additional and replacement security interests and liens (the “Replacement Liens”) in, to and 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, which Replacement Liens granted hereby shall be deemed valid and perfected notwithstanding the requirements of non-bankruptcy law. The Replacement Liens shall be senior to any security interests, liens or allowed superpriority claim subsequently granted to any other person or entity.

9. Nothing in this Order shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided hereunder is insufficient to compensate for the diminution in value of the Bank's interest in the Bank Collateral during this case.

10. Notwithstanding any other provision of this Order, no replacement lien shall attach to any Chapter 5 action that the Debtor holds or may hold against any person or entity, including the Bank.

11. The Debtor shall provide to the Bank each of the following, certified by a member of the board of directors of the Debtor:

a. Weekly Cash Flow Statements: A weekly report showing all deposits to and disbursements from the Debtor's deposit accounts during the preceding week not later than Wednesday of the following week.

b. Monthly Variance Reports: Not later than the fifteenth (15th) calendar day of each fiscal month, a report showing the variance of cash inflows and disbursements from the corresponding budgeted amounts for the immediately preceding fiscal month.

12. The Debtor shall provide Granite Bank and the Office of the United States Trustee with a genuine, complete and true copy of the NH Core Properties, LLC management contract to on or before **June 15, 2017**.

13. Bank's Attorneys' Fees. The Bank may from time to time request the Debtor to reimburse it for attorneys' fees and expenses reasonably incurred in connection with this Case in

accordance with the following procedure. A request shall be made by serving a detailed invoice on the Debtor and the United States Trustee which provides as much detail as reasonably necessary to permit the Debtor and the UST to determine if the invoice is reasonable. Such invoice shall be payable in full absent written objection within 10 days of service. If any portion of the monthly invoice is subject to objection, the undisputed portion shall be paid and the parties shall confer in good faith to resolve any remaining objections. If the parties cannot agree, the dispute shall be submitted to this Court for resolution as a contested matter.

14. The Debtor and any official committee (a “Committee”) appointed in this case may challenge or contest the nature and extent, validity, enforceability, priority or perfection of the liens claimed by the Bank on or before **June 5, 2017**. If the Debtor and/or any Committee fail to challenge or contest the nature and extent, validity, enforceability, priority or perfection of the liens claimed by the Bank within such period, the liens shall automatically be deemed to be first-priority, valid, enforceable and perfected.

15. If the Debtor shall fail to comply with any provision of this Order, the Bank shall have the right to move this Court for an order (i) terminating the use of Cash Collateral and/or (ii) providing relief from the automatic stay by filing an affidavit of default (an “Affidavit”) with the Court certifying the nature of the default under this Order, with service on the Debtor's counsel and the United States Trustee. The Debtor shall then have ten (10) business days after the filing of the Affidavit to contest the Affidavit which objection shall be limited to an assertion that the default has been cured. If an objection is filed, the Court will hold a hearing within five (5) days of the filing of the objection or as soon thereafter as the Court calendar permits. If no objection is filed, the Bank shall file a certificate of no objection and the Debtor's authorization to use Cash Collateral shall automatically terminate as of the tenth (10th) business day after the filing of the Affidavit.

16. If, during the term of this Order, the Debtor commences an adversary proceeding

against the Bank that seeks to invalidate any lien of or payment to the Bank, or otherwise formerly challenges any asserted lien of or payment to the Bank, the Bank may withdraw its consent to the continued use of Cash Collateral upon 10 days' written notice to the Debtor, and may seek an expedited hearing on the Debtor's continued use of Cash Collateral in accordance with the provisions set forth in Paragraph 17 below.

17. If the Bank withdraws its consent to the continued use of Cash Collateral in accordance with its rights as set forth herein, or if the Debtor otherwise fails to comply with the terms of this Order, the Bank shall be entitled to a hearing on the Motion and on the Debtor's right to continued use of Cash Collateral on 10 days' notice, subject to the Court's calendar, but the Bank may seek an earlier hearing in the case of a bona fide emergency; *provided, that*, the Debtor may continue to use Cash Collateral in accordance with the Budget pending such hearing or further order of the Court, and any withdrawal by the Bank of its consent to the continued use of Cash Collateral shall be without prejudice to the Debtor's right to seek continued use of Cash Collateral.

18. This Order is without prejudice to the right of the Bank to seek relief from the automatic stay or contest the further use of Cash Collateral, its agreement hereto being a temporary accommodation.

19. Notwithstanding any other provision of this Order, all adequate protection payments made pursuant to this Order shall be subject to characterization or re-characterization as principal, interest or expense payments at any time during this case.

20. The provisions of this Order are subject to a "winding down" proviso under which the Court reserves the right to enter such further orders as may be necessary regarding the use of cash collateral to provide for payment of any administrative claims for wage and trade creditors who have supplied goods or services to the Debtor during the period of operation under this Order which remain unpaid at the time of termination of authorized cash collateral usage, and

which goods or services have created additional collateral for the secured claimant.

21. The Debtor shall file a further application for on-going usage of Cash Collateral on or before **July 12, 2017**.

22. Any objections to the application for on-going usage of Cash Collateral shall be filed on or before **July 19, 2017**.

23. A hearing on the further motion for permission to use Cash Collateral shall be held on **July 26, 2017 at 1:30 p.m.**

24. This Order shall become effective immediately.

Dated: June 09, 2017

/s/ Bruce A. Harwood

Bruce A. Harwood
Chief Bankruptcy Judge

EXHIBIT

A

Carrington Farms Condominium Owners' Association							
Case # 17-10137-BAH		Cash Collateral Budget					
		Use Period: June 1, 2017 through July 31, 2017					
		June		July		TOTALS	
Beginning Cash	\$150,000.00	Approx estimate as of 5/4/17					
Cash In							
Condo Fees		\$ 50,844.35		\$ 50,844.35			
Laundry Proceeds		\$ 1,500.00		\$ 1,500.00			
Pool Key Fee		\$ 1,500.00		\$ 500.00			
Interest Bank Account							
Interest on Late Payment		\$ 525.00		\$ 525.00			
Legal Bill Charge Back							
Fines/Violations							
Misc Income		\$ 525.00		\$ 525.00			
Total Revenues		\$ 54,894.35		\$ 53,894.35		\$ 108,788.70	
Expenses							
Management Fees		\$ 4,630.00		\$ 4,630.00			
Administration Fee		\$ 800.00					
Insurance		\$ 6,300.00		\$ 6,300.00			
Electricity		\$ 2,600.00		\$ 2,600.00			
Water		\$ 5,750.00					
Trash Removal		\$ 2,300.00		\$ 2,300.00			
Phones Lines/Monitoring		\$ 1,100.00		\$ 1,100.00			
Gas Heat+Hot Water		\$ 6,500.00		\$ 5,400.00			
Bank Service Charges							
Renovation Loan Interest							
Interest							
Legal		\$ -		\$ -			
Accounting/Taxes		\$ -					
Condo Fee Booklet							
Landscaping		\$ 3,900.00		\$ 3,900.00			
Irrigation				\$ 700.00			
Snowplowing							
Snow Removal-Roofs							
Rent							
Janitorial-Trash Patrol		\$ 750.00		\$ 650.00			
Bldg Repirs/Maintenance							
Repairs/Maintenance Supplies							
Repairs/Maintenance Heating							
Contingency							
Extermination/Pest Control		\$ 191.00		\$ 191.00			
Halfway Cleaning		\$ 840.00		\$ 840.00			
Carpet Cleaning							
Repair/Maintenance Fire Alarm		\$ 200.00		\$ 200.00			
Pool Expense		\$ 2,200.00		\$ 1,100.00			
Quarterly BK Fees							
Granite Bank Adequate Protection Payment		\$ 5,342.55		\$ 5,342.55			
Granite Bank Legal Fees (\$11,539.90 Plus)		\$ 11,539.90					
Reserve for Remainder of Granite Bank Legal Fees [Total \$21,047.00]		\$ 9,507.10					
Reimbursement of Granite Bank's ongoing legal expenses							
Total Expenses		\$ 64,450.55		\$ 35,253.55		\$ 99,704.10	
Net Monthly Cash Flow		\$ (9,556.20)		\$ 18,640.80			
<i>Cumulative Cash Balance</i>		\$140,443.80		\$159,084.60			
Reserve Account Cash Balance		\$ 82,030.29		\$ 82,030.29			
Cumulative Operating Account Cash Balance		\$ 58,413.51		\$ 77,054.31			