



ORDERED in the Southern District of Florida on November 2, 2011.

A handwritten signature in black ink, appearing to read "Erik P. Kimball".

Erik P. Kimball, Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
*West Palm Beach Division***

IN RE:

PELICAN ISLES LIMITED PARTNERSHIP,
a Florida Limited Partnership ,

Debtor.

Case No. 11-38544-BKC-EPK

Chapter 11

**INTERIM AGREED ORDER GRANTING MOTION FOR INTERIM AND FINAL
ORDERS (I) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO
SECTION 363 OF BANKRUPTCY CODE, (II) PROVIDING ADEQUATE
PROTECTION TO PRE-PETITION SECURED PARTY PURSUANT TO
SECTIONS 361, 362 AND 363 OF BANKRUPTCY CODE, AND
(III) SCHEDULING FINAL HEARING (ECF #13)**

THIS MATTER came before this Court on an expedited basis, upon the motion ("Motion") (ECF #13) dated October 14, 2011, of PELICAN ISLES LIMITED PARTNERSHIP, as debtor and debtor in possession ("Debtor"), for entry of: (1) this interim Order (this "Order") (a) authorizing the Debtor to use cash collateral (as hereinafter defined) pursuant to Section 363 of Title 11 of the United States Code (the "Bankruptcy Code") on an interim basis pending a final hearing on the Motion (the "Final Hearing"), (b) granting the pre-petition secured party

adequate protection pursuant to Sections 361, 362 and 363 of the Bankruptcy Code with respect to the use of cash collateral, and, (c) in accordance with Rules 4001(b)(2) and (d)(3) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), requesting that this Court schedule a Final Hearing and approve notice with respect thereto; and (2) a final order authorizing the use of cash collateral; and the Court having considered the Motion and the exhibits attached thereto, including, without limitation, the interim budget (the "Budget") attached hereto as Exhibit 1 and the record in this case, having been advised that CDT Mortgage, LLC ("CDT") consents to the relief requested by the Debtor as modified herein, and after due deliberation and consideration and good and sufficient cause appearing therefor,

THE COURT HEREBY FINDS:

A. On October 14, 2011 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. (This "Chapter 11 Case").

B. **Jurisdiction.** Consideration of this Motion constitutes a "core proceeding" as defined in 28 U.S.C. §157(b)(2)(M). This Court has jurisdiction over the Chapter 11 Case, this proceeding and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Notice.** Notice of the relief sought by the Motion and the hearing with respect thereto was delivered on October 20, 2011 via electronic mail, facsimile transmission and/or overnight delivery to the following parties in interest: (a) the United States Trustee for the Southern District of Florida (the "U.S. Trustee"); (b) those parties listed on the List of Creditors Holding the 20 Largest Unsecured Claims Against the Debtor, as identified in the Debtor's Chapter 11 petition; (c) any party asserting a lien (as hereafter defined) against any of the Debtor's assets (collectively, the "Interim Notice Parties"). Given the nature of the relief sought

in the Motion, such notice constitutes sufficient and adequate notice of the Motion, the relief requested therein and this Order pursuant to Bankruptcy Rules 2002, 4001(b) and (d), and 9014 and §102(1) of the Bankruptcy Code, as required by §363(b) of the Bankruptcy Code, and no further notice of the Motion or this Order is necessary or required.

D. **Debtor's Acknowledgement of CDT's Liens for Motion Only.** The Debtor acknowledges, for the purposes of this Motion only, that: (i) pursuant to the Consolidated, Amended and Restated Multifamily Note dated October 31, 2007, in the original principal amount of \$4,650,000.00, given by PELICAN ISLES to MMA Mortgage Investment Corporation ("MMA"), ("Consolidated Note"); the Consolidated, Amended and Restated Multifamily Mortgage, Assignment of Rents, and Security Agreement recorded in Official Records Book 2218, Page 28, Public Records of Indian River County, Florida ("Amended and Restated Mortgage"); UCC-1 Financing Statements ("CDT UCC-1's"), recorded in Official Records Book 2423, Page 350, Public Records of Indian River County, Florida, and the Florida Secured Transaction Registry at File Number 201002609214; and, UCC-3 Financing Statement Amendments ("UCC-3's"), recorded in Official Records Book 2228, Page 2020, Public Records of Indian River County, Florida, and filed with the Florida Secured Transactions Registry at File Number 200706922210, which Consolidated Note, Amended and Restated Mortgage, and UCC-3's were assigned to CDT pursuant to Endorsement of Multifamily Note dated October 31, 2007; Assignment of Loan and Mortgage ("CDT Assignment"), which CDT Assignment was recorded in Official Records Book 2218, Page 77, Public Records of Indian River County, Florida; and UCC-3 Financing Statement Amendment recorded in Official Records Book 2228, Page 2025, Public Records of Indian River County, Florida (collectively the "Pre-Petition Loan Documents"), CDT has a pre-petition lien that is a valid and perfected first-priority pre-petition

lien on the Apartment Complex¹ and pursuant to Section 552 of the Bankruptcy Code, all pre-petition and postpetition rents thereof (collectively including the Apartment Complex "CDT's Collateral") ; and (ii) the Pre-Petition Loan Documents appear facially valid and binding agreements and obligations of the Debtor.

E. CDT claims that the Debtor is indebted to CDT in the principal amount of \$4,539,715.83, plus accrued interest in the amount of \$538,848.23, plus default interest in the amount of \$294,072.72, plus late fees in the amount of \$29,508.50, plus attorneys' fees and costs (the "Indebtedness").

F. **Debtor's Acknowledgement of Pre-Petition Default Under Loan Documents.**

The Debtor stipulates, agrees, and acknowledges that the Debtor defaulted under the Pre-Petition Loan Documents by, *inter alia*, failing to make the full amount of payments due thereunder for March 2010.

G. **Cash Collateral.** For purposes of this Interim Order, "Cash Collateral" shall have the meaning set forth in Section 363(a) of the Bankruptcy Code and shall include: (a) rents collected by the Debtor prior to the Petition Date; (b) rents collected by the Debtor after the Petition Date, (c) and any other earnings, deposit accounts, accounts receivable, royalties, issues, profits and other cash equivalents in which the Debtor has an interest.

H. **Findings Regarding the Use of Cash Collateral.**

(a) Good cause has been shown for the entry of this Interim Order. The Debtor has an immediate and critical need to use the Cash Collateral to continue to attempt to effectuate a reorganization of its financial affairs. In doing so, it must operate the Apartment Complex, manage it, perform repairs, and insure it.

¹ "Apartment Complex" shall mean the real property having the legal descriptions set forth on Exhibit 2 hereto together with all fixtures and appurtenances thereto.

(b) Based on the record presented to the Court at the Interim Hearing, good, adequate and sufficient cause has been shown to justify the immediate grant of the relief requested in the Motion, as modified herein, to avoid irreparable harm to the Debtor's Estate pending a final hearing in this matter.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Motion is **GRANTED in part, as modified by the consent of the Debtor and CDT herein**. Any objections to the relief sought in the Motion that have not been previously resolved or withdrawn are hereby overruled.

2. This Interim Order shall constitute findings of fact and conclusions of law, and shall become effective immediately upon its entry.

3. The Debtor may use the Cash Collateral solely (i) to make payments in accordance with the Budget attached hereto as Exhibit 1, and (ii) to make such other payments, if any, as the Debtor and CDT may expressly agree in writing signed by CDT. With respect to any line item in the Budget, the Debtor is authorized to make payments for such line item up to 110% of the amount set forth in the Budget and the Debtor is further authorized to make total payments for items on the Budget up to 110% of the Budget. The Debtor's right to use Cash Collateral shall remain in effect through and including November 16, 2011. The time period set forth in this paragraph shall not be extended without written consent of CDT or an Order of this Court.

4. In addition to the sums set forth in the Budget the Debtor is authorized to spend the sum of \$5,890 for annual termite prevention treatment to Hulett Environmental Services, in accordance with its proposal to the Debtor.

5. Notwithstanding the items listed in the Budget, absent written consent of CDT or an Order of the Court, the Debtor shall not use the Cash Collateral: (a) to make any prepayments

with respect to services which were not yet rendered, goods that have not been received, or any other item for which payment is not currently due, (b) to pay any increases in salaries or compensation for employees, (c) to pay any part or portion of any pre-petition claims, or (d) to pay any fees for professionals (the "Prohibited Uses"). Without further action by CDT or any other party, the Debtor's right to use cash collateral shall be temporarily suspended pending final hearing in the event the Debtor uses any cash collateral for any Prohibited Uses.

6. As adequate protection for the Debtor's use of the cash collateral, to secure the amount of any diminution in the value of the cash collateral as of the Petition Date, the Court approves of the Debtor's grant to CDT of a lien upon its postpetition rents and revenues from the operation of the Apartment Complex (the "Replacement Liens"), which shall be *pari passu* to CDT's pre-petition liens. No lien or security interest in any property of the Debtor granted or arising on or after the Petition Date shall be created or permitted to be *pari passu* with, or senior to, the liens and security interests of CDT in the CDT Collateral or the Replacement Liens. The grant of Replacement Liens hereunder shall be supplemental to the security interests and liens which CDT possesses pursuant to the Pre-Petition Loan Documents. CDT contends that the Replacement Liens do not constitute adequate protection as it already holds duly perfected liens on the Debtor's postpetition rents and profits pursuant to Section 552 of the Bankruptcy Code. The Court makes no finding as to whether the Replacement Liens constitute any adequate protection for the Debtor's use of the cash collateral and nothing contained herein shall be deemed as a waiver by CDT of any of its rights, claims or defenses, concerning whether the Debtor provided it adequate protection.

7. As additional adequate protection for the Debtor's use of the cash collateral, to secure the amount of any diminution in the value of the cash collateral as of the Petition Date,

the Court approves of the Debtor's grant to CDT of a security interest and liens (the "Additional Liens"), in and to all of its assets whether owned or existing as of the Petition Date or thereafter acquired or arising, and all proceeds, products, rents, revenues, or profits of such property, other than causes of action arising under 11 U.S.C. § 542 *et seq.* The Additional Liens shall be subject only to the liens, security interest, and assignments that were valid and perfected as of the Petition Date and shall be in addition to any security interests, liens, or rights of set-off existing in favor of CDT on the Petition Date and pursuant to Section 552.

8. The Replacement Liens and Additional Liens shall be deemed attached, effective and perfected as of the Petition Date and without the necessity of the Debtor's execution of any mortgages, security agreements, financing statements, or other documents, as to all persons, including without limitation, any subsequently appointed Trustee (appointed under either Chapter 11 or 7 of the Bankruptcy Code). However, the Debtor shall, at CDT's request, execute and deliver any and all documents which may reasonably be required in order to permit such security interests to be filed or recorded with any appropriate agency or official. Any such filing shall be deemed to have been filed or recorded on the date of entry of this Order.

9. As further adequate protection for CDT for the Debtor's use of the cash collateral, CDT shall hold *nunc pro tunc* as of the Petition Date an administrative expense claim pursuant to Sections 507(a)(2) and 503(b) of the Bankruptcy Code in the amount of any diminution in value of the cash collateral as of the Petition Date.

10. The Debtor shall permit any authorized representatives of CDT to inspect its books and records and the Apartment Complex as authorized by the Pre-Petition Loan Documents. Furthermore, the Debtor shall also provide CDT with all documents and disclosures as required by the Pre-Petition Loan Documents.

11. The Debtor shall procure and maintain such insurance as required by the U.S. Trustee. Any such insurance shall at all times name CDT as a loss-payee or additional-insured and the Debtor shall furnish evidence of such insurance promptly to CDT upon request.

12. Nothing in this Order or in any other document or instrument contemplated to be delivered in connection herewith shall in any way be deemed or construed in any manner to affect, impair, or diminish any rights CDT may have against any party obligated to CDT that is not a Debtor.

13. The Debtor shall cease to use the Cash Collateral on November 16, 2011 and shall not be permitted further use of Cash Collateral absent a further Order of this Court.

14. This Interim Order, including the grant of the Replacement Liens and the Additional Liens shall constitute valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with their terms, and binding upon any subsequently appointed Trustee (either in Chapter 11 or 7).

(a) The Replacement Liens granted to CDT pursuant to this Interim Order shall not be discharged by the entry of an order converting this Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code and shall survive conversion of this case to Chapter 7; and

(b) If an order dismissing this Chapter 11 Case or subsequently converted Chapter 7 case is entered, such order shall provide (in accordance with Sections 105 and 349(b) of the Bankruptcy Code) that (i) the Replacement Liens and Additional Liens granted pursuant to this Interim Order and any subsequent order to or for the benefit of CDT shall continue in full force and effect and CDT shall maintain their perfection and priorities as provided in this Interim Order and subsequent orders until all obligations due and owing CDT shall have been indefeasibly paid in full in cash and satisfied in the manner provided in this Interim Order (and

that such claims and liens shall, notwithstanding such dismissal, remain binding on all parties in interest) and (ii) to the extent permitted by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such claims and liens.

13. Notwithstanding anything to the contrary, the Debtor's acknowledgment of the validity and perfection of CDT's claims, liens and Pre-petition Loan Documents is for purposes of this Motion only and the Debtor expressly reserves all rights to investigate and challenge the validity, enforceability, amount and/or extent of CDT's claims and liens and the Pre-Petition Loan Documents, in all respects.

14. CDT is authorized to pay on account of the Debtor from the escrow account for Debtor's insurance maintained by CDT, the insurance premium in the approximate amount of \$62,500 due and owing on or about October 31, 2011, which payment shall not constitute a waiver of any of CDT's rights herein.

15. The Court shall hold a hearing on November 16, 2011, at 1:30 p.m. (the "Final Hearing") to consider entry of a final Order and authorization of the Debtor's use of Cash Collateral on a permanent basis (the "Final Order"). Any objection, if any, to the entry of the Final Order shall be filed with the Court and served on Debtor's counsel and the United States Trustee, so as to be filed and received no later than November 11, 2011.

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Conformed copies to:

Ronald G. Neiworth, Esq.
U.S. Trustee

Mr. Neiworth will serve a confirmed copy of this Order to all parties-in-interest and file a Certificate of Service with the Court
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PELICAN ISLES MONTHLY CASH COLLATERAL BUDGET

EXPENSE ITEMS	OCT – 11	NOV -11	DEC – 11
General Office Expenses and Administration	\$ 2,145	\$ 2,145	\$ 2,145
Office Staffing Charges	\$ 6,260	\$ 6,260	\$ 8,131
Maintenance Staffing Charges	\$ 4,212	\$ 4,212	\$ 4,712
Management Fees	\$ 5,176	\$ 5,176	\$ 5,176
Marketing and Promotion	\$ 725	\$ 725	\$ 725
Utilities	\$ 8,800	\$ 8,800	\$ 8,800
Repairs and Maintenance	\$ 2,500	\$ 2,500	\$ 2,500
Landscaping	\$2,700	\$ 2,700	\$ 2,700
Security	\$ 50	\$ 50	\$ 50
Apartment Preparation	\$ 1,025	\$ 1,025	\$ 1,025
Taxes	\$ 275	\$ 275	\$ 275
Insurance	\$ 62,500	-0-	-0-
Appliances, Carpet, Misc. Replacements and Improvements	\$ 2,500	\$ 2,500	\$ 2,500
Corporate and Partnership Expenses	-0-	-0-	-0-
TOTAL EXPENSES	\$ 98,868	\$ 36,368	\$ 38,739