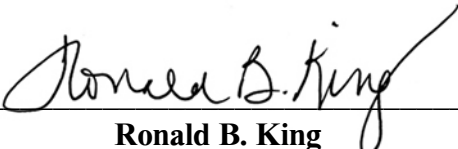




The relief described hereinbelow is SO ORDERED.

Signed November 03, 2017.



Ronald B. King
Chief United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

IN RE: §
OMNI LION’S RUN, L.P. § LEAD CASE NO. 17-60329
OMNI LOOKOUT RIDGE, L.P. § 2d CASE NO. 17-60447
Jointly Administered §
Debtors-in-Possession § CHAPTER 11
§ (Jointly Administered
Under 17-60329)

**AGREED FINAL ORDER ON SUPPLEMENT TO MOTION PURSUANT TO 11 U.S.C.
§363 FOR AUTHORITY TO USE, SELL, OR LEASE CASH COLLATERAL IN THE
ORDINARY COURSE, PROVIDE ADEQUATE PROTECTION AND FOR
PRELIMINARY AND FINAL HEARINGS**

[relates to Doc#141]

On October 17, 2017, the Court held a preliminary hearing on the Debtor’s *Supplement to Motion Pursuant to 11 U.S.C. § 363 for Authority to Use, Sell, or Lease Cash Collateral in the Ordinary Course, Provide Adequate Protection and for Preliminary and Final Hearings* (the “*Cash Collateral Motion*” or the “*Motion*”) filed by Debtor Omni Lookout Ridge, L.P. (“*Debtor*”). The Cash Collateral Motion seeks entry of an interim order (i) authorizing the Debtor to use cash collateral (as defined in the Bankruptcy Code) of LB-UBS 2007-C2 Lookout

Ridge Blvd, LLC (“**Lender**”) on an interim basis for the period of October 1, 2017, through the hearing on confirmation of the Debtor’s joint plan pursuant to § 363(c) of the Bankruptcy Code and Fed. R. Bankr. P. 4001(b)(2), in accordance with Debtor’s monthly expenses as set forth in the budget attached hereto as **Exhibit A** (the “**Budget**”); and (ii) granting liens and security of the same extent, priority, and validity as the existing prepetition liens.

The Court has considered the Cash Collateral Motion, the arguments of counsel, and having been advised that the Debtor and Lender have agreed to the final use of the cash collateral on the terms and conditions set forth in this Final Cash Collateral Order and, after due deliberation and consideration,

THE COURT HEREBY FINDS AND CONCLUDES:

A. The Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The Motion is a “core” proceeding as defined in 28 U.S.C. § 157(b). Venue of this case and the Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Debtor gave sufficient notice of the Motion. Such notice complies with Bankruptcy Rule 4001(c).

C. Debtor requires the use of Cash Collateral to continue its business operations. Debtor and its estate will receive substantial direct and indirect benefits by reason of the authorization to use Cash Collateral solely as set forth herein and such authorization is in the best interest of Debtor’s estate.

D. Lender asserts that it is the holder of security interests, liens and mortgages in all or substantially all of the Debtor’s property, including, but not limited to: (i) the Debtor’s real property and improvements thereon; (ii) all of the Debtor’s rights, title and interests in all accounts, escrow funds, deposits and reserves that relate to, are derived from or are used in

connection with the property of the Debtor; (iii) all of the Debtor's rights, title and interests in all machinery, equipment, fittings, furniture, furnishings, and fixtures; and (iv) all contracts, leases, documents and agreements to which the Debtor is a party (collectively the "*Collateral*"). Lender asserts that all of the Debtor's proceeds from the Collateral are cash collateral (the "*Cash Collateral*") of Lender within the meaning of section 363(a) of the Bankruptcy Code. By the Motion and this Cash Collateral Order, Lender will receive replacement liens on all post-petition proceeds and cash generated by the party and the right to copy and inspect the Debtor's books and records.

E. Lender has agreed to the use of its Cash Collateral upon the terms and conditions contained in this Cash Collateral Order. The Cash Collateral shall be used, and such use is so conditioned upon the following mandatory actions: (i) Debtor shall use its best efforts to conduct its business profitably; (ii) Debtor shall report on or before November 20, 2017, to Lender that the Debtor is in compliance with the Budget through the preceding month; (iii) Debtor shall report to Lender on or before the 20th of each month thereafter that the Debtor is in compliance with the Budget through the preceding month; (iv) Debtor shall serve upon Lender, Debtor's monthly operating reports on or about the dates they are due to be filed; and (v), Debtor shall use its best efforts to preserve estate assets and comply with the terms of this Cash Collateral Order.

F. Debtor does not have consent to use or spend Cash Collateral without the protections, terms, and conditions provided in this Cash Collateral Order. Lender is entitled, pursuant to §§ 361 and 363(e) of the Bankruptcy Code, to adequate protection of its interest in the Pre-Petition Collateral and the Post-Petition Collateral to the extent of any diminution in value thereof caused by the Debtor's (i) use of the Cash Collateral, (ii) use, sale, lease or other diminution in value of the Pre-Petition Collateral and Post-Petition Collateral, or (iii) the imposition of the automatic stay.

G. Good cause has been shown for the entry of this Cash Collateral Order.

H. The use of Cash Collateral authorized herein has been negotiated in good faith and at arm's length between Debtor and Lender, and the terms and conditions for the use of Cash Collateral are fair and reasonable and reflect the exercise of the Debtor's prudent business judgment consistent with the fiduciary duties of a debtor in possession.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

1. The Cash Collateral Motion is hereby granted on a final basis as to the Debtor for the period of October 1, 2017, through the hearing on confirmation of the Debtor's plan, as set forth in the Budget. Any and all objections to the Cash Collateral Motion that have not previously been withdrawn or resolved are hereby overruled.

2. Debtor is hereby authorized to use Cash Collateral as authorized herein; *provided, however*, expenses of the Debtor shall not exceed the budgeted amount, as detailed in the Budget, by more than 10% per line item, and 5% in the aggregate, absent the advance written consent of Lender; *provided further, however*, that the Debtor is authorized to incur obligations and advance payments to the extent expressly provided for in paragraph 5.

3. Debtor shall not make any payments from Lender's Cash Collateral or incur any obligations other than those allowed herein and as set forth in the Budget. For the avoidance of doubt, the funds reserved in the Budget for "Capital Replacement" shall not authorize the spending of funds on capital expenditures and shall represent only the accumulation of funds for capital replacement, the spending of which shall require the Lender's consent, except as provided by paragraph 5 below.

4. Debtor shall deliver to Lender a monthly cash flow report on or before the 20th of each month (i) detailing what payments were made during the preceding month and (ii) providing a comparison of actual payments to the Budget line items for such period. Debtor

may not, unless otherwise authorized by Lender in writing (including electronic writing), advance or pay funds for any item, expense, or category of items not included in the Budget.

5. Notwithstanding any other provision of this Cash Collateral Order, the Debtor may pay any amounts needed to maintain the habitability of one or more occupied units of the Debtor's apartment complex (an "***Emergency Repair***"), including for example, HVAC, boiler repair, or other health and safety-related issues that affect the habitability of an occupied unit. The Debtor shall provide a report to Lender within five (5) business days after the incurrance of any obligation or payment of any funds for any such Emergency Repair.

6. Unless extended by written agreement between the Debtor and Lender or otherwise ordered by the Court, the Debtor's authorization to use Cash Collateral shall terminate on the earlier of (a) the effective date of a confirmed plan, (b) foreclosure of the Lookout Ridge Apartment Complex by Lender, (c) the fifth (5th) calendar day after the Debtor receives notice of any default, breach or violation of this Cash Collateral Order if such default, breach or violation remains uncured at that date, or (d) the expiration of December 31, 2017.

7. For the avoidance of doubt, the authorization to use Lender's Cash Collateral shall terminate immediately upon the conversion of the Debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code.

8. In accordance with the provisions of § 363(e) of the Bankruptcy Code, Lender is hereby granted valid, perfected, and enforceable replacement security interests in, and liens and mortgages upon, all categories of property of the Debtor and its estate, whether now existing or hereafter acquired or arising, upon which Lender held valid, perfected and enforceable pre-petition liens, security interests, and mortgages, and all proceeds, rents, products, or profits thereof, including, without limitation, the Collateral owned by the Debtor as of the Petition Date (collectively, the "***Post-Petition Collateral***").

9. The security interests, liens and mortgages herein granted (i) are and shall be in addition to all security interests, liens, mortgages, and rights to set off existing in favor of Lender on the Petition Date; (ii) in the same priority as pre-petition to the extent that pre-petition liens, security interests, and mortgages are valid, perfected, enforceable and nonavoidable; and (iii) are and shall be valid, perfected, enforceable, and effective as of the Petition Date without any further action by the Debtor or Lender and without the execution, filing, or recordation of any financing statements, security agreements, mortgages, or other documents.

10. Nothing in this Cash Collateral Order shall in any way restrict the scope of Lender's pre-petition liens, security interests, mortgages, rights of set-off or claims with respect to its Collateral, and all liens, security interests, and mortgages on Lender's Collateral shall extend to the fullest extent permitted by Bankruptcy Code section 552(b). Lender shall not be afforded a lien in any chapter 5 causes of action. To the extent that the replacement liens are insufficient to adequately protect any interest of Lender, Lender is hereby granted a superpriority administrative expense claim and all of the benefits and protections allowable under Bankruptcy Code section 507(b). To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment or perfection of the replacement liens, or otherwise would impose filing or registration requirements with respect to replacement liens, such law is hereby preempted to the maximum extent permitted by the Bankruptcy Code, other applicable federal law, and the judicial power of the Bankruptcy Court.

11. The liens on the Post-Petition Collateral are subordinated to fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6).

12. Nothing contained in this Cash Collateral Order shall be deemed a finding with respect to the adequate protection (as that term is defined in Bankruptcy Code section 361) of the interest of Lender. Without limiting the foregoing in any respect, Lender may, at any time,

request the Court to increase the payments to, or other protections for, the benefit of Lender as a condition to the continued use by the Debtor of the Cash Collateral. Moreover, nothing herein shall prejudice Lender's right to seek relief from the automatic stay or as a dismissal of the Debtor's bankruptcy case.

13. The provisions of this Cash Collateral Order shall be binding upon and inure to the benefit of Lender and Debtor and their successors and assigns (including any chapter 7 or chapter 11 trustee hereafter appointed or elected for Debtor's estate, any examiner appointed pursuant to § 1104 of the Bankruptcy Code, and any other fiduciary hereafter appointed as a legal representative of Debtor or with respect to the property of Debtor's estate).

14. Within five (5) business days from entry of this Cash Collateral Order, Debtor shall serve by CM/ECF or United States mail, first class postage prepaid, copies of this Cash Collateral Order on the Notice Parties.

15. This Cash Collateral Order shall take effect immediately upon entry hereof, notwithstanding the possible or potential application of Federal Rules of Bankruptcy Procedure 6004(g), 7062, 9014, or otherwise, and the Clerk of the Court is hereby directed to enter this order on the Court's docket in this case.

16. This Cash Collateral Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

17. Notwithstanding any other provision of this Cash Collateral Order, the Debtor reserves any and all rights to contest the validity and extent of the Lender's liens.

18. Nothing in the Cash Collateral Order acknowledges or grants liens that prime the statutory priority of ad valorem property tax liens. Any liens arising in favor of ad valorem tax authorities, postpetition, have priority over Lender's liens.

###END OF ORDER###

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