

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

)	Chapter 11
)	
IN RE:)	The Honorable Anthony J. Metz III
)	
PHEASANT RUN APARTMENTS, L.P.,)	Case No. 10 B 03060
)	
Debtor.)	Hearing Date: _____
)	At: _____ .m.
)	

DEBTOR'S FIRST DAY MOTION FOR AUTHORITY TO USE CASH COLLATERAL

Pheasant Run Apartments, L.P., as debtor and debtor in possession, (the "**Debtor**"), by and through its attorneys, moves this Court for the entry of an order granting it authority to use cash collateral, pursuant to § 363 of Title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 4001(b) and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 4001-2 of the Local Rules of this Court (the "**Local Rules**"). In support of this Motion, the Debtor states as follows:

JURISDICTION, VENUE AND AUTHORITY

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §1334 and the District Court's reference of this case to this Court pursuant to 28 U.S.C. §157(a). Consideration of this Application is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A).
2. Venue is proper in this District pursuant to 28 U.S.C. §1408 and §1409.
3. This matter constitutes a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (M), and (O).
4. This Motion is a First Day Motion in accordance with S.D. Indiana B-9013-3.

Prior to filing this Motion, the Debtor has conferred with and provided copies of the motion to the United States Trustee and Republic Bank, its secured lender.

5. The statutory predicates for the relief requested in this Motion are § 363 of the Bankruptcy Code, Bankruptcy Rule 4001(b), and Local Rule B-4001-2.

INTRODUCTION

6. On March 10, 2010 (the “**Petition Date**”), the Debtor commenced this case under Chapter 11 of the Bankruptcy Code.

7. The Debtor continues to operate its business as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

8. No creditors committee, trustee, examiner or ombudsperson has been appointed in this Chapter 11 case.

9. The Debtor operates a twenty-acre, 184 unit apartment complex (the “**Complex**”). While the Complex has historically generated a positive cash flow in the ordinary course of business, recently it has been faced with some extraordinary expenses which it cannot pay, in full, from its liquid assets.

10. Specifically, the local real estate taxing authority, the Marion County Treasurer, has informed the Debtor that it intends to collect two years worth of real estate taxes within the next annual tax cycle. Through no fault of the Debtor, the County fell behind on sending out its real estate tax bills. Now the County will seek full payment of both taxes which would have been due this year, as well as the taxes it delayed billing. Since the main asset of the Debtor is real estate, these taxes are a huge burden on cash flow.

11. Also, on or about December 18, 2009, a judgment in the amount of \$245,828.00 was entered against the Debtor in State Court in favor of Flaherty & Collins Construction, Inc.

The Debtor has filed notice of appeal of that judgment and disputes the merit of the claim. Nevertheless, the judgment, coupled with the real estate taxes, render the Debtor in need of this Court's protection to restructure its obligations.

12. The Debtor intends to file a Plan of Reorganization shortly after the Petition Date, which would allow for the repayment of the creditors over time from the proceeds of the residential leases of units in the apartment complex.

RELIEF REQUESTED

13. By this Motion, the Debtor requests that this Court authorize it to use certain cash and cash equivalents that allegedly serve as collateral for claims asserted against the Debtor and its property by Republic Bank (the "**Bank**").

14. The source of the Debtor's income is the rents it collects from its tenants. The Bank may be asserting an interest in the Debtor's rent receivables as cash collateral. The Bank asserts claims, also purportedly secured by all moneys, credits or other property now or hereafter held by the Bank on deposit or otherwise belonging to the Debtor and by all proceeds or rents derived from the Complex, pursuant to a certain Note from the Debtor in favor of the Bank in the original principal amount of \$9,920,000.00 (the "**Note**") and Commercial Mortgage, Security Agreement and Assignment of Leases and Rents (the "**Security Agreement**") each dated March 3, 2008.

15. As of the commencement of this Chapter 11 case, the Debtor had approximately \$44,409.00 in cash deposited in an account at the Bank. The monthly rents the Debtor collects from its tenants are routinely deposited in the account at the Bank.

16. In order for the Debtor to continue to operate its business, and effectuate an effective reorganization, it is essential that the Debtor be authorized to use cash collateral for, among other things, the following purposes:

- (a) Property management fee (which includes management company's payroll and health insurance for its employees who perform work at the Complex);
- (b) Insurance;
- (c) Utilities;
- (d) Advertising;
- (e) Postage;
- (f) Legal and professional expenses;
- (g) Maintenance and cleaning;
- (h) Leasing commissions;
- (i) Office supplies and computers;
- (j) Credit checks;
- (k) Purchase of supplies and materials; and
- (l) Other miscellaneous items needed in the ordinary course of business.

Attached to this Motion as **Exhibit A** are the Debtor's monthly cash flow projections for the period beginning March 11, 2010 through April 10, 2010 (the "**Budget**"). This Budget itemizes the Debtor's cash needs during the relevant period.

17. Use of cash collateral to pay the actual, necessary, and ordinary expenses to maintain the Debtor's business, as set forth in the Budget, will preserve the value of the Debtor's assets and business and thereby ensure that the interests of creditors that have or may assert an

interest in both cash collateral and the Debtor's other assets are adequately protected within the meaning of §§ 362, 362, and 363 of the Bankruptcy Code.

18. The Debtor proposes, subject to approval of this Court, to use cash collateral in which the Bank may assert an interest. The Debtor's proposal will permit the Debtor to sustain its business operations and reorganize its financial affairs through the implementation of a successful plan of reorganization. Furthermore, the Debtor's proposal will adequately protect the purported secured interests of the Bank.

19. Unless the Debtor is authorized to use cash collateral in which the Bank may assert an interest, the Debtor will be unable to continue to operate, thereby eliminating any reasonable prospect for a successful reorganization. The cessation of normal business operations by the Debtor will cause irreparable harm to the Debtor, its tenants, its creditors, and this estate.

20. The Debtor proposes to use cash collateral and provide adequate protection to the Bank upon the following terms and conditions:

- a. The Debtor will permit the Bank to inspect, upon reasonable notice, within reasonable hours, the Debtor's books and records;
- b. The Debtor shall maintain and pay premiums for insurance to cover all of its assets from fire, theft, and water damage;
- c. The Debtor shall, upon reasonable request, make available to the Bank evidence of that which purportedly constitutes its collateral or proceeds;
- d. The Bank shall be granted valid, perfected, enforceable, security interests in and to the Debtor's post-petition assets which are not or hereafter become property of the estate, to the extent of its alleged pre-petition liens, if valid, and to the extent of the Debtor's use of cash collateral; and

- e. The Debtor shall execute any documents that may be reasonably required by the Bank to evidence the post-petition liens granted in paragraph d above.

21. Further cash flow budgets, when necessary, will be submitted to this Court pursuant to this Motion. The Debtor will be limited to making the expenditures stated on Exhibit A to this Motion plus no more than 10% of the total proposed expense payments, unless otherwise agreed by the Bank or upon further Order of this Court.

22. The Debtor requests, pursuant to Rule 4001(b)(2) of the Bankruptcy Rules, that this Court conduct a preliminary hearing to authorize the Debtor's interim use of cash collateral pending a final hearing on this Motion.

23. The Debtor believes that it is in the best interest of the Debtor, its creditors, its tenants, and this estate to authorize it to use that portion of its assets herein requested, all or a portion of which may constitute cash collateral, in that, without the limited use of those assets as herein requested, the Debtor will be unable to pay and satisfy its current operating expenses thereby resulting in immediate and irreparable harm and loss to the estate.

24. For the reasons set forth herein, this Court should grant the relief requested in this Motion.

25. Nothing herein shall be deemed as an acknowledgement of the validity or perfection of the Bank's security interest in cash collateral. The Debtor reserves all rights to contest or object to the validity and enforceability of the Bank's security interest in the alleged cash collateral.

WHEREFORE, the Debtor respectfully requests that this Court enter an Order in (a) authorizing the Debtor to use cash collateral in which the Bank may assert liens, upon the terms and conditions set forth in this Motion; (b) preliminarily authorizing the Debtor to use rent proceeds (cash collateral) through and including April 10, 2010; (c) setting a final hearing on this Motion and the date by which the Debtor may object to the Bank's liens; and (d) granting such other further relief as this Court may deem appropriate under the circumstances.

Dated: March 11, 2010

PHEASANT RUN APARTMENTS, L.P.

/s/ Scott N. Schreiber

One of its attorneys

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Pheasant Run Apts.

Revised: 3/9/2010 (2)

30-day budget 3/11/2010 to 4/10/2010

Income:

Cash on Hand	\$	50,111		
Anticipated Collections 3/11 to 3/31/2010	\$	12,451		
Anticipated Collections 4/1 to 4/10/2010	\$	104,893		
	\$	167,455	\$	167,455

Expenses:

Mgmt. Fees	\$	6,100		
Payroll	\$	11,900		
Health Insurance	\$	790		
Court Filings	\$	450		
Water & Sewer	\$	3,700		
Electric	\$	3,200		
Advertising	\$	3,000		
Maintenance & Cleaning	\$	12,400		
Leasing Commisions	\$	250		
Insurance	\$	1,900		
Legal and professional fees	\$	5,000		
Credit Checks	\$	250		
Internet & Phone	\$	550		
Miscellaneous Expenses	\$	1,500		
Office Supplies, Postage Printing	\$	450		
Office Eqpt. & Computers	\$	165		
	\$	51,605		
Mortgage Payment March 12th	\$	49,544		
Mortgage Payment April 5th (@ 4.5% rate)	\$	36,750		
	\$	137,899	\$	137,899
2008/2009 RE Tax Payment 1/60th of Approx. \$390,000	\$		\$	6,500
Utility security deposit	\$		\$	3,800
Set Aside 1/12th of 2010 due 2011 payment (estimated \$260k)	\$		\$	21,667
	\$	169,866	\$	169,866

