

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:	§	
	§	Case No. 17-40297
TX. C. C., INC. , et al.	§	(Chapter 11)
	§	(Jointly Administered)
Debtors.	§	

**ORDER PARTIALLY GRANTING (AS TO FRISCO LOCATION)
MOTION FOR ORDER AUTHORIZING (I) SALE(S) OF
SUBSTANTIALLY ALL OF THE ESTATES' ASSETS FREE AND CLEAR
OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS AND
(II) ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE
SALE(S) (RE: DOCKET NO. 355)**

On July 24, 2017 came on for consideration the *Motion for Order Authorizing (I) Sale(s) of Substantially All of the Estates' Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests and (II) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale(s)* (Docket No. 355) (the "363 Motion") filed herein on July 10, 2017 by TX. C.C., Inc. and the related debtors and debtors in possession¹ (collectively the "Debtors"). Having reviewed the 363 Motion and all matters brought to the Court's attention at the hearing, and after due deliberation and consideration, and taking into consideration the resolutions of the objections (Docket Nos. 377, 389, 390, 392, 393, 394, 395, 396, 397, 398, and 399) filed against the 363 Motion and which resolutions were announced on the record at the hearing on the 363 Motion, and no further notice is necessary, and that cause exists to partially grant the relief requested in the 363 Motion to the extent set forth below.

THE COURT HEREBY FINDS AND DETERMINES THAT:

Jurisdiction, Final Order, and Statutory Predicates

A. This Court has jurisdiction to hear and determine the 363 Motion pursuant to 28 U.S.C. §§ 157(b)(I) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. §

¹ The debtors in these Chapter 11 cases (each a "Debtor" and collectively, the "Debtors") are TX. C. C., Inc. (Case No. 17-40297), Texas Land & Cattle of Fairview, LLC (Case No. 17-40300), Lone Star Steakhouse & Saloon of Springfield, Inc. (Case No. 17-40303), Lone Star Steaks, Inc. Case No. 17-40330), Texas Land & Cattle Steakhouse of North Carolina (Case No. 17-40332), TXLC of Arlington II, LLC (Case No. 17-40333), Lone Star Steakhouse & Saloon of Southern Missouri (Case No. 17-40334), Lone Star Steakhouse & Saloon of Florida, Inc. (Case No. 17-40335), TXLC of Missouri, Inc. (Case No. 17-40336), Lone Star Steakhouse & Saloon of Michigan, Inc. (Case No. 17-40339), Lone Star Steakhouse & Saloon of Mississippi, Inc. (Case No. 17-40340), Lone Star Steakhouse & Saloon of Oklahoma, Inc. (Case No. 17-40341), Lone Star Steakhouse & Saloon of Ohio, Inc. (Case No. 17-40342), and Texas LC Liquor Company (Case No. 17-40443).

ORDER PARTIALLY GRANTING (AS TO FRISCO LOCATION) MOTION FOR ORDER AUTHORIZING (I) SALES(S) OF SUBSTANTIALLY ALL OF THE ESTATES' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS AND (II) ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE(S) (RE: DOCKET NO. 355)— Page

157(b)(2)(A), (N) and (O). Venue is proper in this District and in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The predicates for the relief requested in the 363 Motion are Sections 105(a), 363, and 365 of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the “Code”) and Bankruptcy Rules 2002(a)(2), 6004, 6006, 9007, and 9014.

C. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. All findings of fact and conclusions of law announced by the Court at the Sale Hearing² in relation to the 363 Motion are hereby incorporated herein to the extent not inconsistent herewith. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such

D. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order, waives any stay and expressly directs entry of judgment as set forth herein.

Notice of the Sale, Auction, and Cure Relating to Designated Restaurant Leases.

E. Actual written notice of the 363 Motion and the Sale Hearing, and a reasonable opportunity to object or be heard, has been afforded to all known interested entities and parties in accordance with Code §§ 363 and 365 and Bankruptcy Rules 2002, 6004, 6006, 9007, and 9008 (the “Notice Parties”). The notices described herein were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Sale Motion and the Sale Hearing, the Sale, or the Termination of the Frisco Lease (hereinafter defined) is or shall be required.

F. The disclosures made by the Debtors concerning the Sale Motion, the Transaction Documents, the Auction, the Sale Hearing, the Sale, and the Termination of the Frisco Lease were good, complete, and adequate.

G. A reasonable opportunity to object and be heard with respect to the Sale Hearing and the 363 Motion and the relief requested therein (including the assumption and assignment of certain of Restaurant Leases and the Termination of the Frisco Lease), has been afforded to all interested persons and entities, including the Notice Parties.

² All capitalized terms shall have the same meaning as ascribed to such terms in 363 Motion and/or the Bid Procedures Order as applicable.

Highest and Best Offer

H. The Debtors conducted a sale process in accordance with, and have otherwise complied in all material respects with, the Bidding Procedures Order and the Code. The sale process set forth in the Bidding Procedures Order and otherwise conducted by the Debtors afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Assets. The Auction was duly noticed in a noncollusive, fair, and good faith manner, and a reasonable opportunity has been given to any party interested in making a higher and better offer for the Assets.

I. The Qualified Bidders which submitted Qualified Bids, and the Qualified Bidders who were Auction Participants, and the Successful Bidders at the Auction for various groupings of the Restaurant Leases were:

- a. Alamo LS, LLC, a Texas limited liability company, an affiliate of FMP SA Management Group LLC d/b/a Food Management Partners (“Alamo”);
- b. RRG 2011 Investments, LLC, Nevada limited liability company and a wholly owned division of Landry’s Inc. (“RRG”); and
- c. Creative Corporation, a New Mexico corporation (“Creative”).

J. After the initial round of the Auction, BRE Retail Residual Owner 1, LLC (“BRE”) an affiliate of Brixmor Property Group, Inc. (“Brixmor”) was permitted to enhance the bid for Store 7122, Texas Land & Cattle – Frisco, TX (the “Frisco Lease”) which it had submitted on July 14, 2017 for the termination of the Frisco Lease.

K. BRE enhanced its initial bid (the “BRE Offer”) for the termination of the Frisco Lease to a waiver of all claims (post-petition claims not to exceed \$50,000) plus a cash payment of \$50,000.00 to TX. C.C. Inc. (collectively the “Termination Consideration”) A copy of the revised Lease Termination Agreement (“LTA”) is attached hereto as Exhibit “A”

L. The BRE Offer constituted the highest and best offer for the Frisco Lease, and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the BRE Offer constituted the highest and best offers for the Frisco Lease constitutes a valid and sound exercise of the Debtors' business judgment.

M. The BRE Offer represents a fair and reasonable offer for the termination of the Frisco Lease under the circumstances of these Chapter 11 cases. No other entity or group of entities has offered to purchase the Frisco Lease for greater overall value to the Debtors' estates than BRE.

N. Approval of the 363 Motion and the BRE Offer and the consummation of the transaction contemplated thereby is in the best interest of the Debtors' Chapter 11 estates, their creditors, and other parties in interest.

Good Faith of Brixmor

O. Each transaction and set of accompanying transaction documents including the LTA executed by the Brixmor was negotiated, proposed, and entered into by the Debtors and Brixmor without collusion, in good faith, and from arms'-length bargaining positions.

P. Neither the Debtors nor Brixmor have engaged in any conduct that would cause or permit the LTA to be avoided under Code § 363(n). Brixmor has not acted in a collusive manner with any person and the Termination Consideration was not controlled by any agreement among any set of bidders.

Q. Brixmor is paying the Termination Consideration in good faith and is a good faith buyer within the meaning of Code § 363(m). Brixmor has proceeded in good faith in all respects in connection with the Lease termination including, but not limited to: (i) agreeing to subject its bid to the competitive bidding process contemplated in the Bidding Procedures Order in good faith, (ii) complying with the provisions in the Bidding Procedures Order including any waivers or modifications thereof authorized by the Debtors, (iii) neither inducing nor causing the Chapter 11 filings by the Debtors; and (iv) disclosing all payments to be made by Brixmor in connection with the Sale. Brixmor is therefore entitled to all of the protections afforded under Code § 363(m).

No Fraudulent Transfer

R. The consideration provided by Brixmor pursuant to its Final Offer (i) is fair and reasonable, (ii) is the highest or best offer for the Lease termination, and (iii) constitutes reasonably equivalent value (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and Code § 548) and fair consideration under the Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. No other person or entity or group of entities has offered to purchase the Frisco Lease for greater overall value to the Debtors' estates than the Brixmor Termination Consideration. Approval of the 363 Motion and the Final Offer and the consummation of the transaction contemplated thereby is in the best interest of the Debtors, their estates, creditors, and other parties in interest.

Validity of Transfer

S. Each Debtor has, to the extent necessary or applicable, (i) full corporate power and authority to execute and deliver the LTA and all other documents contemplated thereby, (ii) all corporate authority necessary to consummate the transactions contemplated by the LTA, and (iii) taken all corporate or limited liability company action necessary to authorize and approve the LTA and the consummation of the transactions contemplated thereby. The Lease termination

has been duly and validly authorized by all necessary corporate action. No consents or approvals, other than those expressly provided for in the LTA or this Order, are required for the Debtors to consummate the transaction or the transactions contemplated thereby..

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the 363 Motion and the transactions contemplated thereby and by the LTA are approved as set forth in this Order and on the record of the Sale Hearing, which is incorporated herein as if set forth fully in this Order, and the Lease termination contemplated thereby is approved.

2. All objections to the 363 Motion or the relief requested therein that have not been withdrawn, waived, or settled by announcement to the Court during the Sale Hearing or by stipulation filed with the Court, including any and all reservations of rights included in such objections or otherwise, are hereby denied and overruled on the merits with prejudice. Those parties who did not object or withdrew their objections to the 363 Motion are deemed to have consented to the Sale pursuant to Code § 363(f)(2).

3. This Court's findings of fact and conclusions of law set forth in the Bidding Procedures Order are incorporated herein by reference.

4. Debtors' entry into the LTA is hereby approved and Debtors may execute the LTA attached hereto as Exhibit A.

5. The Frisco Lease is deemed rejected and is declared terminated as of the Effective Date set forth therein upon the return of the Premises to the Landlord and the payment by the Landlord of the sum of \$50,000.00 (or such lesser sum as provided in the LTA).

6. Any property remaining in the Premises as of the Effective Date shall be deemed abandoned by the Debtors to the Landlord and the Landlord may use or dispose of same without any further notice or any liability to Debtors or any third party. Notwithstanding the foregoing, Debtors and any third party claiming an interest in any of such property shall be granted fifteen (15) days from the Effective Date to remove any of its property (all such removals to property secure and terminate any connected utility services).

Signed on 7/28/2017

 SR
HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE

APPROVED:

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

By: /s/ Jeff Carruth
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ATTORNEYS FOR TX. C. C., INC., ET AL.,
DEBTORS AND DEBTORS IN POSSESSION

and

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ATTORNEYS FOR BRIXMOR PROPERTY
GROUP, INC.

LEASE TERMINATION AGREEMENT

Exhibit A

THIS LEASE TERMINATION AGREEMENT (this "Agreement") is made as of July ____, 2017, by and between BRE Retail Residual Owner 1, LLC ("Landlord"), and TX. C. C., Inc., as debtor and debtor-in-possession ("Tenant").

WHEREAS, Landlord's predecessor in interest and Tenant entered into a certain lease dated February 16, 2000 (as the same may have been amended from time to time, and together with any and all other agreements affecting the subject premises, the "Lease"), covering certain premises commonly known as Preston Park Village, Frisco, TX (Tenant Store #7122) (the "Premises"); and

WHEREAS, on February 13, 2017, and shortly thereafter, Tenant, along with its affiliated debtors and debtors in possession (collectively, the "Debtors"), filed voluntary petitions for relief pursuant to chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the "Bankruptcy Code"), in the United States Bankruptcy Court for the Southern District of Indiana (the "Bankruptcy Court"); and

WHEREAS, Landlord was the successful bidder for the Lease at an Auction held on July 20, 2017; and

WHEREAS, subject to the conditions set forth herein, the parties desire to terminate the Lease effective as of the Termination Date (as defined below).

NOW, THEREFORE, in consideration of the covenants and the mutual agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby covenant and agree as follows, subject only to Bankruptcy Court approval:

1. Payment of Purchase Price. Landlord shall, on the Termination Date, deliver the amount of any security deposit applicable to the Lease that has not been applied in accordance with the terms of the Lease, and/or in the form of a credit bid. In addition, Landlord does hereby waive those claims held against the Tenant and its bankruptcy estate in Tenant's pending bankruptcy proceeding as set forth below:

(a) Waiver of any and all pre-petition claims for rent and additional rent due pursuant to the terms of the Lease (see attached accounting); and,

(b) Waiver of any claim to which Landlord might be entitled as a result of the termination of the Lease including those damages referenced in, and capped by, Section 502(b)(6) of the Bankruptcy Code; and,

(c) Waiver of the post-petition amounts due under the Lease not to exceed \$50,000.00; and,

(d) In addition, Landlord shall pay to the Tenant the cash component of its bid in the amount of Fifty Thousand (\$50,000.00) Dollars.

2. Termination Date. The "Termination Date" shall be July 30, 2017, or such earlier date that the Premises are surrendered to Landlord.

3. Termination and Surrender.

(a) As of the Termination Date, Tenant hereby surrenders the Premises to Landlord and does hereby give, grant and surrender unto Landlord all of Tenant's right, title and interest in and to the Premises, including, without limitation, all of Tenant's right, title and interest in, to and under the Lease, and Landlord hereby accepts such surrender. Except as otherwise expressly provided herein, each of the parties hereto acknowledges performance of all obligations of the other party under the Lease or otherwise in connection with the Premises through and including the Termination Date. The Lease is hereby agreed to be null and void and of no further force and effect as of the Termination Date. In addition, any and all rights and obligations of the parties that may have arisen in connection with the Premises shall be deemed to have expired and terminated as of the Termination Date, except that nothing herein shall waive any rights of indemnification owed by Tenant to Landlord under the Lease, each of which shall be preserved to the full extent of applicable insurance coverage; provided, however, that Landlord's recourse for any indemnification arising under the Lease shall be strictly limited to applicable insurance proceeds and coverage benefits and in no event shall Landlord have recourse against Tenant or its estate.

(b) As of the Termination Date, except as to the obligations of Tenant and Landlord expressly set forth in this Agreement, including the indemnification obligations set forth in paragraph 3(a) above, Tenant and Landlord hereby mutually and forever release each other and their respective successors and assigns of and from any and all claims, damages, obligations, liabilities, actions and causes of action of every kind and nature whatsoever that may arise under or in connection with the Lease before, on or after the Termination Date, including, without limitation, any claims under Sections 502(b)(6) and 547-550 of the Bankruptcy Code. Such release shall and hereby does extend to all claims, demands, damages, liabilities, obligations or actions, either in law or in equity, of any kind or nature whatsoever, whether known or unknown, direct or indirect, matured or hereafter existing, including claims asserted in Tenant's bankruptcy, arising out of or relating to the Lease, the Premises or Tenant's occupancy of the Premises, or Tenant's initiation of its bankruptcy proceeding. Landlord and Tenant further hereby acknowledge that they may hereafter discover facts different from or in addition to those it knows or believes to be true with respect to claims that are subject of this release and the parties each hereby agree that the release shall be and remain effective in all respects, regardless of such additional or different facts.

(c) To the extent Landlord has filed or files any proofs of claim with respect to the Lease or the Premises, Landlord consents to the expungement of such claims, with prejudice, and hereby affirmatively acknowledges that Landlord shall have no claim against Tenant or its estate in Tenant's pending bankruptcy proceeding or otherwise.

(d) If the Termination Date is on or after July 31, 2017, notwithstanding anything in the Lease or section 365(d)(3) of the Bankruptcy Code to the contrary, Landlord agrees that Tenant shall only be required to pay to Landlord, the *per diem* amounts that come due

under the Lease on or after that date through the Termination Date. Landlord shall be entitled to deduct said *per diem* from the cash payment due hereunder.

4. Bankruptcy Court Approval. This Agreement is contingent upon Tenant obtaining an order of the Bankruptcy Court authorizing Tenant to enter into the Agreement.

5. Further Assurances. At any time and from time to time after the date hereof, without further consideration, (a) at the request of Landlord, Tenant shall execute and deliver such other instruments of sale, transfer, conveyance and termination or consents and take such other action as Landlord may reasonably request as necessary or desirable in order to more effectively transfer, convey and surrender to Landlord all of Tenant's rights to the Premises and under the Lease, and (b) at the request of Tenant, Landlord shall execute and deliver such other instruments of assumption and confirmation and take such other action as Tenant may reasonably request as necessary or desirable in order to more effectively evidence Landlord's acceptance of Tenant's surrender of the Lease.

6. Condition of Premises.

(a) The Premises shall be delivered to Landlord in broom clean condition and as otherwise required by the Lease.

(b) Any furniture, fixtures, equipment or other personal property that remains in or on the Premises following the Termination Date ("Abandoned Personal Property") shall be deemed abandoned by Tenant and Landlord shall have the right to retain or dispose of same in its sole discretion with no liability whatsoever to Tenant or any third party claiming an interest in said Abandoned Personal Property.

(c) Except as otherwise provided in this Paragraph 6, Landlord accepts the Premises in its "as is" condition as of the Termination Date.

7. "As Is, Where Is" Transaction. Landlord hereby acknowledges and agrees that Tenant makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Premises or the Lease. Accordingly, Landlord accepts the Premises "AS IS" and "WHERE IS."

8. No Assignment. Each party represents and warrants that it has not heretofore assigned or transferred or purported to transfer or assign to any person, firm, or corporation, any claim, demand, damages, debt, liability, action, or cause of action herein released. Each party hereto agrees to indemnify and hold harmless the other parties against any claim, demand, damages, debt, liability, action, cause of action, cost or expense including, but not limited to, attorneys' fees and disbursements actually paid or incurred, arising out of or in connection with any such transfer or assignment or purported or claimed transfer or assignment.

9. Brokers. Each party represents and warrants that it dealt with no broker or brokers in connection with the negotiation, execution and delivery of this Agreement. Each party shall, and does hereby, indemnify, defend and save the other parties harmless from and against any losses, damages, penalties, claims or demands of whatsoever nature arising from a breach of

its foregoing representation including, without limitation, reasonable attorneys' fees and expenses. The foregoing indemnity shall survive the termination of this Agreement.

10. Miscellaneous.

(a) This Agreement is binding upon and shall inure to the benefit of Tenant's successors and assigns, including, without limitation, a trustee, if any, subsequently appointed under chapter 7 or chapter 11 of the Bankruptcy Code, and is binding upon and shall inure to the benefit of Landlord's successors and assigns.

(b) Each of Tenant and Landlord warrants and represents that it has the power and authority to enter into this Agreement.

(c) This Agreement and any additional agreements delivered in connection herewith together contain the entire agreement between the parties hereto, and except as otherwise specifically set forth herein, supersede all prior agreements and undertakings between the parties hereto relating to the subject matter hereof.

(d) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument, and presentation of any copy of this Agreement, whether original or facsimile (including in portable document format (pdf)), signed by Tenant and Landlord shall constitute sufficient proof of this Agreement.

(e) This Agreement shall be governed by and construed in accordance with the laws of the state in which the shopping center is located without regard to principles of conflicts of law, and any disputes shall be resolved by the Bankruptcy Court, which shall have exclusive jurisdiction at all times during which Tenant's bankruptcy case is pending.

(f) Any and all sales, transfer and recording taxes, stamp taxes or similar taxes or fees, if any, relating to the termination of the Lease shall be the sole responsibility of Landlord and shall be paid, if applicable, to the proper governing body on the Termination Date.


(g) This Agreement may not be amended orally but rather may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

TENANT: TX. C.C., Inc., Debtor-in-Possession

By: _____
Name:
Title:

LANDLORD: BRE RETAIL RESIDUAL OWNER 1, LLC

By:  _____
Name: Patrick Bennison, Esq.
Title: Staff Counsel
Authorized & Directed