

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

IN RE:
LIBERTY INDUSTRIES, L.C.,
,
Debtor /

CASE NO. 16-22332-EPK
CHAPTER 11

IN RE:

JOINTLY ADMINISTERED

LIBERTY PROPERTIES AT
NEWBURGH, L.C.,
Debtor /

CASE NO. 16-22333-EPK
CHAPTER 11

**DEBTORS' EMERGENCY MOTION TO USE CASH COLLATERAL
OF REGIONS BANK
(Emergency Hearing Requested)**

Pursuant to Section 363 of title 11, United States Code (the "Bankruptcy Code"), and Rule 4001 of the Federal Rules of Bankruptcy Procedure, LIBERTY INDUSTRIES, L.C. ("Liberty Industries") and LIBERTY PROPERTIES AT NEWBURGH, L.C., ("Liberty Properties") the Debtors and Debtors-in-Possession (the "Debtors"), move the Court for the entry of an order authorizing the Debtor to use cash collateral on which REGIONS BANK of America, N.A. (the "Lender") holds a first priority lien. In support of its motion, the Debtors state:

BASIS FOR EMERGENCY RELIEF

The Debtors require the income which constitutes cash collateral to maintain their day-to-day business operations. Without the use of the income, the Debtors will be unable to remain in business.

1. On September 9, 2016, a Voluntary Petition under Chapter 11 was filed by Liberty Industries under Case No. 16-22332-EPK [ECF #1].

2. On September 9, 2016, a voluntary Petition under Chapter 11 was filed by Liberty Properties under Case No. 16-22333-PGH [ECF #1]. An Order Transferring Case to Judge Kimball was entered on September 8, 2016 [ECF #4].

3. On September 13, 2016, an Order Jointly Administering Chapter 11 Cases was entered [ECF #15].

4. The Debtors have continued to operate their businesses and manage their properties as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. The Debtor Liberty Industries, is a Florida Limited Liability Company which operates its business in Newburgh, Warrick County, Indiana and was formed in March 2006 to manufacture, distribute and sell Cell Phone Towers and related products. The Debtor, Liberty Properties, is a Florida Limited Liability Company which owns three parcels of real property in Newburgh, Warrick County, Indiana and was formed in May, 2006. As of the date hereof, no trustee, examiner, or statutory committee has been appointed in these Chapter 11 cases.

The Loan Transaction

5. On or about November 23, 2013, Lender agreed to provide funds to the Debtors for general operating purposes under an Amended and Restated Promissory Note (the "Note") in the principal sum of Two Million, Three Hundred Seventy Nine, Four Hundred Thirty Five Dollars and 88/100 (\$2,379,435.88).

6. To secure their obligations to the Lender under the Note, the Debtors and the Lender entered into an Amended, Restated Real Estate Mortgage Security Agreement, Assignment of Leases and Rents and Fixtures, and Amended and Restated Security Agreement dated November 23, 2013, and Amendment No. 2 to Loan Agreement pursuant to which the Debtors granted the Lender a lien on all of its assets including, among other things, accounts,

contract rights, chattel paper, instruments, deposit accounts, letter of credit rights, general intangibles, inventory, machinery, furniture, fixtures and other equipment, cash, and the proceeds thereof. Real property, assignment of leases and rents (collectively, the "Collateral"). The security interest is perfected by the filing of a UCC-1 Financing Statement with the Florida Secured Transaction Registry on May 29, 2008 at document #201207964466; and on March 4, 2014 at document #201400862378.

7. As of the filing date, the Debtors are indebted to the Lender in the principal amount of \$2,461,034.68 plus accrued and unpaid interest, costs and fees due pursuant to applicable law (the "Indebtedness"). The collateral that secures this loan is valued at over \$3,700,000 and consists of cash, accounts receivable, inventory and machinery and equipment and three parcels of real property located in Newburgh, Warrick County, Indiana.

8. The cash generated by the Debtors constitute cash collateral within the meaning of § 363(a) of the Bankruptcy Code (the "Cash Collateral"). The Debtors require the use of the Cash Collateral for the continued operation of its business in the ordinary course, including payment of payroll and expenses attendant thereto; and, the Debtors are willing to provide the Lender with adequate protection of its secured interest in the Cash Collateral. Without the use of the Cash Collateral, the Debtors will be forced to discontinue their business operations, including the loss of jobs for 14 employees. The loan documents are available from undersigned counsel upon request.

9. In order (i) to adequately protect the Lender in connection with the Debtors' use of the Cash Collateral, and (ii) to provide the Lender with additional adequate protection in respect to any decrease in the value of its interests in the Collateral resulting from the stay imposed under §362 of the Bankruptcy Code or the use of the Collateral by the Debtors, the

Debtors would offer as adequate protection of the Lender's lien a monthly payment of \$20,000.00 and a first priority post-petition lien on all cash and receivables of the Debtors generated post-petition.

10. An immediate and critical need exists for the Debtors to be permitted to access the Cash Collateral to continue to operate. Therefore, the Debtors seek a preliminary hearing in accordance with Rule 4001(b)(2) of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules"). At the preliminary hearing, the Debtors will seek entry of an interim order in order to preserve the value of their assets so as to avoid immediate and irreparable harm to the estate and to afford the Debtors the opportunity to obtain final approval for their use of Cash Collateral, subject to and within the limits imposed by the Budget attached hereto.

11. Accordingly, it is appropriate for the Court to enter an order authorizing the use of Cash Collateral by the Debtors in accordance with the terms of the budget attached hereto as Exhibit "A" (the "Budget").

12. The terms of the proposed use of the Cash Collateral and adequate protection arrangements are fair and reasonable under the circumstances and reflect the Debtors' exercise of prudent business judgment.

13. The Debtors believe that the relief sought in this Motion is in the best interest of the Debtors, the estate and creditors because it will enable the Debtors to continue the orderly operation of the business and avoid an immediate total shutdown of the operations, will enable the Debtors to meet necessary ordinary course expenditures, including payroll, and other operating expenses, and that the entry of an Interim Order will allow for the continued operation of the Debtors' existing business for the purposes set forth above.

WHEREFORE, the Debtors respectfully request that this Court enter an order (i) granting the Motion; (ii) authorizing the Debtors' use of the cash collateral in accordance with the attached Budget on an interim basis, (iii) providing related adequate protection as described herein, (iv) scheduling an interim hearing to authorize the Debtors' use of cash collateral, and (v) granting such other relief as this Court deems just and proper.

I HEREBY CERTIFY that a true copy of the foregoing will be furnished to all creditors and interested parties with a copy of the Notice of Hearing hereon.

Dated this 21st day of September, 2016.

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Liberty Industries L.C.
6 Month ProForma Operating Budget

	SEPTEMBER 2016	OCTOBER 2016	NOVEMBER 2016	DECEMBER 2016	JANUARY 2017	FEBRUARY 2017	6 Month Budget	% of SALES
Revenue								
Sales								
Sales - Wireless	\$ 149,340	\$ 152,840	\$ 127,500	\$ 122,700	\$ 122,700	\$ 122,700	\$ 797,780	
Sale - Modifications	125,000	150,000	150,000	150,000	150,000	150,000	875,000	
Sales - Design and Analysis	5,000	5,000	5,000	5,000	5,000	5,000	30,000	
Sales - Materials and Parts	110,000	75,000	110,000	50,000	50,000	50,000	445,000	
Sales - Material Handling	25,000	35,000	45,000	45,000	45,000	45,000	240,000	
Total Revenue:	414,340	417,840	437,500	372,700	372,700	372,700	2,387,780	100%
Cost Of Sales								
Direct Costs								
Direct Materials	197,226	198,892	208,250	177,405	177,405	177,405	\$ 1,136,583	47.60%
Direct Labor	34,754	34,750	34,750	34,750	34,750	34,750	\$ 208,504	8.73%
Freight	31,904	32,174	33,688	28,698	28,698	28,698	\$ 183,859	7.70%
Design & Analysis Outside Servic	5,621	16,792	14,088	4,922	4,922	4,922	\$ 51,267	2.15%
Total Direct Costs:	269,505	282,608	290,775	245,775	245,775	245,775	\$ 1,580,213	66.18%
Indirect Costs								
Indirect Labor & Payroll Taxes	16,000	16,000	16,000	16,000	16,000	16,000	\$ 96,000	4.02%
Utilities	1,665	1,665	1,665	1,665	1,665	1,665	\$ 9,990	0.42%
Shop Supplies, Gases, Tooling	1,246	1,246	1,246	1,246	1,246	1,246	\$ 7,476	0.31%
Property Taxes	2,799	2,799	2,799	2,799	2,799	2,799	\$ 16,794	0.70%
Total Indirect Costs:	21,710	21,710	21,710	21,710	21,710	21,710	\$ 130,260	5.46%
Total Cost Of Sales:	291,215	304,318	312,485	267,485	267,485	267,485	\$ 1,710,473	71.63%
Gross Profit:	123,125	113,522	125,015	105,215	105,215	105,215	\$ 677,307	28.37%
Expenses								
Insurance	9,475	9,475	9,475	9,475	9,475	9,475	\$ 56,850	2.38%
Repairs & Maintenance	430	430	430	430	430	430	\$ 2,580	0.11%
Selling, General & Administrative	19,395	19,395	19,395	19,395	19,395	19,395	\$ 116,370	4.87%
Bank Fees, Postage, Fuel, Misc.	700	700	700	700	700	700	\$ 4,200	0.18%
Total Expenses:	30,000	30,000	30,000	30,000	30,000	30,000	\$ 180,000	7.54%
Operating Profit:	93,125	83,522	95,015	75,215	75,215	75,215	\$ 497,307	20.83%
Other Income and Expense								
Interest Expense	10,900	10,900	10,900	10,900	10,900	10,900	\$ 65,400	2.74%
Depreciation	4,726	4,726	4,726	4,726	4,726	4,726	\$ 28,353	1.19%
Legal & Professional Expenses	5,000	5,000	5,000	5,000	5,000	5,000	\$ 30,000	1.26%
Total Other Income and Expense:	20,626	20,626	20,626	20,626	20,626	20,626	\$ 123,753	5.18%
Net Income (Loss):	\$ 72,499	\$ 62,896	\$ 74,389	\$ 54,589	\$ 54,589	\$ 54,589	\$ 373,554	15.64%

EXHIBIT "A"

PROPOSED

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

IN RE:
LIBERTY INDUSTRIES, L.C.,

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IN RE:

JOINTLY ADMINISTERED

LIBERTY PROPERTIES AT
NEWBURGH, L.C.,

_____,
Debtor /

CASE NO. 16-22333-EPK
CHAPTER 11

**ORDER GRANTING DEBTORS' MOTION TO
USE CASH COLLATERAL OF REGIONS BANK
ON AN INTERIM BASIS, AND SETTING FINAL HEARING**

THIS CAUSE came before the Court for hearing on _____, 2016 at _____, in West Palm Beach, Florida upon the Debtors' Emergency Motion to Use Cash Collateral of Regions Bank, [ECF No. ____] (the "**Motion**"). Adequate notice of the hearing was given under the circumstances. The Court having reviewed the record and having heard the argument of counsel, good cause being shown, and being otherwise fully advised in the premises, does hereby

ORDER and ADJUDGE as follows:

1. The Motion is **GRANTED** to the extent set forth herein.

2. The Debtors are hereby authorized to use the Cash Collateral (as defined in the Motion) up to the amounts shown in the budget attached to the Motion, through and including

_____.

3. As adequate protection for the use of Cash Collateral, the Debtor will make a monthly payment of \$20,000.00 to Regions Bank, and grant to Regions Bank a first priority post-petition lien on all cash of the Debtors generated post-petition. Notwithstanding the foregoing, all liens and claims of Regions Bank shall be subject to (a) the payment of any unpaid fees payable pursuant to 28 U.S.C. § 1930 (including, without limitation, fees under 28 U.S.C. § 1930(a)(6)), and (b) the fees due to the Clerk of the Court.

4. The liens and security interest granted to Regions Bank shall be valid and perfected post-petition without the need for execution or filing of any further documents or instruments otherwise required to be filed or be executed or filed under non-bankruptcy law.

5. The Debtors shall forthwith serve a copy of this Order and the Motion on all parties and counsel entitled to notice pursuant to Rule 4001(b) of the Federal Rules of Bankruptcy Procedure.

6. The Court shall conduct a further hearing on the use of cash collateral on _____ **2016 at _____ a.m./p.m.**, at US. Bankruptcy Court, 1515 North Flagler Drive, Room 801, Courtroom B, West Palm Beach, FL.

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Submitted by:

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Robert C. Furr, Esq. is directed to serve a copy of this Order on interested parties and file a Certificate of Service with the Court.