

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' MOTION FOR ORDER APPROVING THE CONTINUED
USE OF CASH COLLATERAL OF REGIONS BANK**

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 Debtors continued use of cash collateral on which REGIONS BANK (the "Lender" and/or "Regions") holds a first priority lien. In support of its motion, the Debtors state:

1. On September 9, 2016, (the "Petition Date") 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. On September 21, 2016, the Debtors filed an Emergency Motion to Use Cash Collateral of Regions Bank [ECF 24] and on September 28, 2016 the Court entered an “*Order Granting Debtor’s Motion to Use Cash Collateral of Regions Bank on an Interim Basis, and Setting Final Hearing*” [ECF 32]. After hearing, on October 25, 2016, the Court entered a *Final Order Granting Debtors’ Motion to Use Cash Collateral of Regions Bank* [ECF 42] through and including February 28, 2017, on a final basis, up to the amounts shown in the Revised Budget approved by Regions Bank.

5. 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. As of the date hereof, no trustee, examiner, or statutory committee has been appointed in these Chapter 11 cases.

6. 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).

7. 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.

8. As of the filing date, the Debtors are indebted to the Lender in the principal amount of \$2,766,918.61 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.

9. 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.

10. In order (i) to adequately protect the Lender in connection with the Debtors' continued 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 continue to pay as adequate protection of the Lender's lien a monthly payment of \$20,000.00 and grant Regions a first priority post-petition lien on all cash of the Debtors generated post-petition. Notwithstanding the foregoing, all liens and claims of Regions

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. Further, any payment to professionals must be sought by filing an application for compensation pursuant to §.330 of the Bankruptcy Code. Regions has the right to object to such application.

11. Notwithstanding the provisions of Section 522(a) of the Bankruptcy Code, and in addition to the security interests preserved by Section 522(b) of the Bankruptcy Code, the Debtors grant in favor of Regions, as security for all indebtedness that is owed by the Debtors to the Secured Creditor, under their respective secured documentation, but only to the extent that Region's cash collateral is used by the Debtors' assets, *nunc pro tunc* to the filing of the Debtors' Chapter 11 cases, to wit: September 7, 2016, to the same extent that Regions held a properly perfected prepetition security interest in such assets, which are or have been acquired, generated or received by the Debtors subsequent to the Petition Date.

12. Pursuant to the terms of the Final Order Granting Debtors' Motion to Use Cash Collateral of Regions Bank [ECF 42], the Debtors shall continue to provide to Regions, on a monthly basis, to be due by the tenth day following the end of the applicable period, by e-mail or facsimile, a reconciliation of the Budget showing actual expenditures and revenues compared to budgeted expenses and revenues for the preceding month, which the Debtors will also file with the Court and will grant Regions Bank and its agents access to the Debtor's premises upon forty-eight (48) hours' notice for inspection or appraisal. The Debtors will continue to keep Regions as a loss payee on its insurance policies.

13. An immediate and critical need exists for the Debtors to be permitted to continue to access the Cash Collateral to operate. Therefore, the Debtors seek a hearing in accordance

with Rule 4001(b)(2) of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”). At the hearing, the Debtors will seek entry of final approval for their continued use of Cash Collateral, subject to and within the limits imposed by the Budget attached hereto.

14. 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”). This approval shall be for the period March 1, 2017 to August 31, 2014.

15. 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.

16. 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.

17. Regions has agreed to the continued use of cash collateral until the hearing date on this Motion.

WHEREFORE, the Debtors respectfully request that this Court enter an order (i) granting the Motion; (ii) authorizing the Debtors’ continued use of the cash collateral in accordance with the attached Budget on a final basis, (iii) providing related adequate protection as described herein, (iv) scheduling a hearing to authorize the Debtors’ continued 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.

RESPECTFULLY SUBMITTED THIS 24th day of February, 2017.

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Consolidated 6 Month ProForma Operating Budget

	MARCH 2017	APRIL 2017	MAY 2017	JUNE 2017	JULY 2017	AUGUST 2017	6 Month Budget	% of SALES
Revenue								
Sales								
Sales - Wireless	\$ 49,000	\$ 49,000	\$ 49,000	\$ 49,000	\$ 64,000	\$ 64,000	\$ 324,000	
Sale - Modifications	245,000	245,000	245,000	245,000	260,000	260,000	1,500,000	
Sales - Modifications	25,000	25,000	25,000	25,000	25,000	25,000	150,000	
Sales - Materials and Parts	16,000	16,000	16,000	16,000	16,000	16,000	96,000	
Sales - Material Handling	15,000	15,000	15,000	15,000	15,000	15,000	90,000	
Total Revenue:	350,000	350,000	350,000	350,000	380,000	380,000	2,160,000	100%
Cost Of Sales								
Direct Costs								
Direct Materials	175,000	175,000	175,000	175,000	190,000	190,000	1,080,000	50.00%
Direct Labor	40,000	40,000	40,000	40,000	44,000	44,000	248,000	11.48%
Freight	26,000	26,000	26,000	26,000	26,000	26,000	156,000	7.22%
Outside Services	5,000	5,000	5,000	5,000	8,000	8,000	36,000	1.67%
Total Direct Costs:	246,000	246,000	246,000	246,000	268,000	268,000	\$ 1,520,000	70.37%
Indirect Costs								
Indirect Labor & Payroll Taxes	16,000	16,000	16,000	16,000	21,000	21,000	106,000.00	4.91%
Utilities	1,700	1,700	1,700	1,700	1,700	1,700	10,200.00	0.47%
Shop Supplies, Gases, Tooling	1,200	1,200	1,200	1,200	1,200	1,200	7,200.00	0.33%
Property Taxes	2,799	2,799	2,799	2,799	2,799	2,799	16,794.00	0.78%
Total Indirect Costs:	21,699	21,699	21,699	21,699	26,699	26,699	140,194	6.49%
Total Cost Of Sales:	267,699	267,699	267,699	267,699	294,699	294,699	1,660,194	76.86%
Gross Profit:	82,301	82,301	82,301	82,301	85,301	85,301	499,806	23.14%
Expenses								
Insurance	10,000	10,000	10,000	10,000	10,000	10,000	60,000	2.78%
Repairs & Maintenance	400	400	400	400	400	400	2,400	0.11%
Selling, General & Administrative	22,000	37,000	37,000	37,000	37,000	37,000	207,000	9.58%
Bank Fees, Postage, Fuel, Misc.	700	700	700	700	700	700	4,200	0.19%
Total Expenses:	33,100	48,100	48,100	48,100	48,100	48,100	180,000	8.33%
Operating Profit:	49,201	34,201	34,201	34,201	37,201	37,201	319,806	14.81%
Other Income and Expense								
Regions Payment	20,000	20,000	20,000	20,000	20,000	20,000	120,000	5.56%
Legal & Professional Expenses	5,000	5,000	5,000	5,000	5,000	5,000	30,000	1.39%
Total Other Income and Expense:	25,000	25,000	25,000	25,000	25,000	25,000	150,000	6.94%
Net Income (Loss):	\$ 24,201	\$ 9,201	\$ 9,201	\$ 9,201	\$ 12,201	\$ 12,201	\$ 169,806	7.86%

PROPOSED ORDER

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

IN RE:
LIBERTY INDUSTRIES, L.C.,

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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

**ORDER GRANTING DEBTORS' MOTION TO
CONTINUE USE CASH COLLATERAL OF REGIONS BANK**

THIS CAUSE came before the Court for hearing on _____ at _____ in West Palm Beach, Florida upon the Debtors' Motion For Order Approving the Continued Use Of Cash Collateral of Regions Bank t [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) of Regions Bank (the Secured Creditor/or Regions Bank”), up to the amounts shown in the Revised Budget attached to this Order as Exhibit “A”, through and including **August 31, 2017**, on a final basis.
3. Any payment to professionals must be sought by filing an application for compensation pursuant to §§330 of the Bankruptcy Code. Regions Bank reserves the right to object to such application.
4. As adequate protection for the use of Cash Collateral, the Debtors will make monthly payments 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.
5. Notwithstanding the provisions of Section 522(a) of the Bankruptcy Code, and in addition to the security interests preserved by Section 522(b) of the Bankruptcy Code, the Debtors grant in favor of the Secured Creditor, as security for all indebtedness that is owed by the Debtors to the Secured Creditor, under their respective secured documentation, but only to the extent that Secured Creditor’s cash collateral is used by the Debtors, a first priority post-petition security interest and lien in, to and against all of the Debtors’ assets, *nunc pro tunc* to the filing of the Debtors’ Chapter 11 cases, to wit: September 7, 2016, to the same extent that the Secured Creditor held a properly perfected prepetition security interest in such assets, which are or have been acquired, generated or received by the Debtors subsequent to the Petition Date.

6. This Order shall not cause a novation of any of Secured Creditor's respective secured documentation.

7. Solely by agreeing to the use of cash collateral by the Debtors, the Secured Creditor shall not be deemed to have assumed any liability to any third person, and shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors or of their assets.

8. The Debtors shall provide to Regions Bank: (i) on a monthly basis, to be due by the tenth day following the end of the applicable period, by e-mail or facsimile, a reconciliation of the Budget showing actual expenditures and revenues compared to budgeted e grant Regions Bank and its agents access to the Debtors' premises upon forty-eight (48) hours' notice for inspection or appraisal; and (iii) the Debtors shall keep Regions Bank as a loss payee on its insurance policies.

9. 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.

10. 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.

11. This Order is without prejudice to Regions Bank moving to terminate the use of cash collateral.

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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.