



Dated: 9/12/2013

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

IN RE:

HOLT DEVELOPMENT CO., LLC,

Debtor.

)
)
) **CASE NO. 3:13-BK-06154**
) **CHAPTER 11**
) **JUDGE MASHBURN**
)

**AGREED INTERIM ORDER GRANTING AUTHORITY
TO USE CASH COLLATERAL, PROVIDING RELIEF FROM
THE STAY, ADEQUATE PROTECTION, AND SCHEDULING AND
ESTABLISHING DEADLINES RELATING TO A FINAL HEARING**

This matter is presently before the Court on the joint motion (“Motion”) filed by Holt Development Co., LLC, the Debtor and Debtor in Possession herein (the “Debtor”), and Heritage Bank, a secured lender herein (the “Lender”), for the entry of an agreed order (the “Order”) granting authority for the Debtor to use cash alleged by Lender to be the Lender’s cash collateral (the “Cash Collateral”) as that term is defined under 11 U.S.C. § 363(a), providing adequate protection and stay relief, and scheduling and establishing deadlines relating to a final hearing. The Motion has been served upon creditors and parties-in-interest herein, which such parties have been allowed adequate and sufficient opportunity to review and oppose the Motion. No objections having been timely filed to the Motion, and good cause for the entry of this Order having been demonstrated herein, the Court finds and concludes as follows:

The Debtor and the Lender stipulate as follows:

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

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B. Debtor's counsel represents and certifies to the Court that, pursuant to Bankruptcy Rule 4001(c)(1), notice of the hearing on the Motion has been given to: (i) the Office of the United States Trustee (the "U.S. Trustee"), (ii) counsel for the Lender, (iii) the twenty largest unsecured creditors of the Debtor, (iv) any other secured creditors, and (v) any other parties requesting such notice (collectively, the "Notice Parties").

C. The terms and conditions set forth herein for use of Cash Collateral and to obtain financing, including adequate protection arrangements, are fair and reasonable under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties and are supported by reasonably equivalent value and fair consideration.

D. On July 16, 2013 (the "Petition Date"), the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to §§ 1107 and 1108 of the Bankruptcy Code, the Debtor retained possession of its assets and continues to operate its businesses as debtor-in-possession. The Debtor is in the business of developing improved and unimproved properties in Cheatham County, Tennessee ("Pleasant View Project").

E. As of the Petition Date, the Lender asserts a valid and allowable claim against the Debtor in the principal amount of not less than \$8,723,286.25, plus interest, fees and expenses (the "Lender's Claim," with all amounts owed by the Debtor to Lender pre-petition and post-petition referred to as the "Indebtedness") arising from loans on which Debtor is an obligor. The loan documents executed in connection with the Indebtedness are referred to collectively as the "Loan Documents." All capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Documents. The Lender asserts that the Loan Documents encumber certain property of the Debtor ("Lender Collateral") as more fully described therein.

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F. Pursuant to, *inter alia*, the Loan Documents, this Order, and 11 U.S.C. § 552(b), the Lender asserts that the Indebtedness is secured by valid, perfected, and allowable, non-avoidable liens on and security interests in the Lender Collateral, including leases, pre-and post-petition rents and proceeds thereof. The asserted liens and security interests securing the Indebtedness extend to cash and cash equivalents of the Debtor's bankruptcy estate generated by the Lender Collateral. The Lender asserts that such cash and cash equivalents of the Debtor's bankruptcy estate constitute Cash Collateral securing the Lender's Claim within the meaning of 11 U.S.C. § 363(a), and that the Debtor has no claims, actions, counterclaims, rights of offset, defenses, or rights of avoidance against the Lender related to or pertaining to the Indebtedness.

G. The Debtor plans to continue operating its business, i.e., the Pleasant View Project, in an uninterrupted fashion, which requires the immediate and continuous use of Cash Collateral. Without the use of Cash Collateral, the Debtor will not have sufficient funds to pay the expenses necessary for the continued operation and management of the Pleasant View Project. The Debtor's ability to use Cash Collateral is vital to the Debtor's continued operation.

H. The Debtor hereby stipulates and agrees that this case is one involving a "single asset real estate" property under 11 U.S.C. § 101(51B), and that the Debtor is subject to the provisions of 11 U.S.C. § 362(d)(3).

I. The Debtor has prepared an interim operating budget attached hereto as Exhibit A (the "Interim Budget," with that budget and any subsequent budget(s) approved hereunder an "Approved Budget"), setting forth, among other things, the Debtor's projected monthly disbursements, receipts, and cash balances, and the Debtor's projected working capital and other cash requirements, for the period covered thereby. The Interim Budget provides for only those expenditures which the Debtor, in the exercise of the Debtor's reasonable business judgment, has

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determined to be necessary to maintain the Debtor's existing operations and to preserve the value of the property of the Debtor's bankruptcy estate.

J. The Debtor has requested immediate entry of this Order pursuant to Bankruptcy Rule 4001. The permission granted herein is necessary to avoid immediate and irreparable harm to the Debtor pending the Final Hearing (hereinafter defined). Entry of this Order is in the best interests of the Debtor and its estate and creditors.

K. The Debtor and the Lender have agreed to the Debtor's use of Cash Collateral pursuant to the terms set forth below and agree to the entry of this Order.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Court, having considered the Motion and otherwise being fully advised, hereby adopts the stipulations of the Debtor and the Lender, as set forth above, as findings of the Court.

2. The Court determines, based upon the foregoing, that this case is one involving a "single asset real estate" property under 11 U.S.C. § 101(51B), and that the Debtor is subject to the provisions of 11 U.S.C. § 362(d)(3).

3. As used herein, the term "Interim Period" shall be the period from the entry of this Order through the date of the Final Hearing unless terminated earlier pursuant to the terms hereof. That period and any such additional period(s) for which Lender or the Court has approved the use of Cash Collateral in accordance with this Order is referred to herein as an "Operating Period."

4. As used herein, the term "Authorized Expenses" shall be those necessary to maintain the Debtor's ordinary operations in a manner consistent with the Debtor's operations during the period immediately preceding the Petition Date. Notwithstanding anything in an

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Approved Budget, Authorized Expenses do not include any professional fees or expenses of the Debtor or anyone else, but do include (or will include) quarterly fees payable to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930.

5. The Motion as it relates to the use of Cash Collateral for the Interim Period is granted subject to the terms and conditions set forth herein. The Debtor is hereby authorized to use Cash Collateral during the Interim Period only for the purposes of paying Authorized Expenses in accordance with the Interim Budget and any other Authorized Expenses approved by the Lender in writing or by the Court. The Debtor is further authorized to use Cash Collateral after the Interim Period for Authorized Expenses and any other Authorized Expenses approved by the Lender in writing on the condition that it submits a proposed budget to Lender that is approved by Lender prior to such use . A proposed budget submitted by the Debtor to the Lender in writing five (5) Business Days before the expiration of an Operating Period shall be an “Approved Budget” only if Lender does not object in a writing delivered to counsel for the Debtor within three (3) Business Days after its receipt of the proposed budget. If Lender does timely object, then the Debtor shall be prohibited from further use of Cash Collateral pending further order of the Court. The Debtor’s authority to use Cash Collateral shall expire on September 3, 2013 unless (a) the Lender consents to an extension in writing prior to such expiration, in which case the Debtor’s authorization to use Cash Collateral shall continue through the agreed upon extended period, or (b) the Court authorizes the use of Cash Collateral.

6. Upon the occurrence of a Default under this Order, including any cure periods as set forth hereinafter, or the institution by the Debtor of any lawsuit, contested matter, or adversary proceeding seeking to challenge the validity or priority of the Lender’s liens on any of

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the Collateral, the Debtor's right to use Cash Collateral shall terminate immediately, unless Lender otherwise agrees in writing, or the Court so orders.

7. There shall be no claims, liens or surcharges granted under section 506 of the Bankruptcy Code against any collateral securing the Indebtedness unless prior to the accrual of such a claim, lien, or surcharge, the party asserting it obtains, after notice and a hearing, an order from the Court approving the expenditure giving rise to the claim, lien, or surcharge as the basis for a claim, lien, or surcharge under section 506 of the Bankruptcy Code.

8. The Debtor shall comply with the following terms and conditions:

(a) **Budget.** Debtor has prepared, and Lender has approved, the Interim Budget. The Interim Budget sets forth the Debtor's budgeted cash revenues and cash expenditures on a monthly basis during Interim Period. During the Interim Period and any Operating Period, and under any Approved Budget, the Debtor shall operate strictly within the Approved Budget, allowing only for a ten percent (10%) variance on any line item expenditure, measured on a cumulative basis during the Operating Period, unless the Lender consents otherwise in writing.

(b) **Bank Accounts.** Debtor shall maintain one post-petition bank account (the "Operating Account"), subject to approval of the United States Trustee. All checks shall be written and transfers of funds shall be made from the Operating Account.

(c) **Financial Reports.** During any Operating Period, by the close of business every other Friday, Debtor shall furnish to Lender a bi-monthly financial report, in form and substance satisfactory to Lender, reflecting: (i) the cash revenues collected and the cash expenditures made by Debtor during the two week period ending the immediately preceding Friday, and comparing such actual revenues and expenditures to

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the budgeted amounts for the same two week period ending the Friday prior to submission; (ii) an aging of accounts receivable and payables; (iii) on a line-item basis the cumulative revenues and expenditures from the date of this Order through the week ending the Friday immediately preceding the Friday of submission comparing such actual cumulative revenues and expenditures to the budgeted amounts for the same cumulative period ending the Friday prior to submission; and (iv) such other information as reasonably requested by Lender.

(d) **Compliance with Laws, Etc.** Debtor will comply with all laws, rules, regulations and requirements of any governmental authority.

(e) **Maintenance of Properties; Insurance.** Debtor will (i) keep and maintain all property material to the conduct of its business in good working order and condition; (ii) maintain with financially sound and reputable insurance companies, insurance acceptable to Lender with respect to its properties and business, against loss or damage of the kinds customarily insured against by companies in the same or similar businesses operating in the same or similar locations. Debtor shall at all times cause Lender to be named as loss payee or additional insured, as the case may be, on all of its casualty and liability policies, and shall keep the Lender's loss payable endorsement delivered at closing in full force and effect.

9. Any of the following events or occurrences shall constitute a default (each a "Default") hereunder:

(a) Any failure to comply with any of the terms of this Order or any agreement executed in connection herewith not cured within five (5) days' written notice to Debtor of such default; or

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(b) The Debtor submits any materially inaccurate information to Lender or to the Court or makes any material misrepresentation to Lender in connection herewith; or.

(c) This case is converted to chapter 7 case, or a trustee is appointed in this case; or

(d) The Debtor seeks to transfer or encumber, without Lender's prior written consent, any property securing the Indebtedness.

10. To secure the use of Cash Collateral, the Lender shall have and is hereby granted, effective on and after the date of this Order, valid and perfected security interests and liens (the "Replacement Liens"), in and upon all of the existing and future assets and properties of Debtor, whether acquired prior to, concurrently with or after the filing of the petition commencing Debtor's Chapter 11 case (collectively, the "Replacement Collateral"), to the same extent that Lender's pre-petition liens and security interests secured the Indebtedness and encumbered the Lender Collateral and/or the Cash Collateral, including, without limitation, and by way of general description, to the extent liens and/or security interests were held pre-petition, all of the Debtor's interests in:

- Accounts and Accounts Receivable;
- Inventory;
- Contract Rights;
- General Intangibles;
- Equipment;
- Fixtures;
- Goods;
- Chattel Paper;
- Farm Products;
- Real property and improvements, rents, and leases;

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- Books, records, and information relating to the Replacement Collateral and/or to the operation of Debtor's business, and all rights of access to such books, records, and information, and all property in which such books, records, and information are stored, recorded, and maintained;
- Instruments, Documents of Title, Documents, policies and certificates of insurance, Securities, deposits, deposit accounts, money, cash, life insurance policies, proceeds payable on account of franchise agreements, distribution agreements and noncompetition agreements, or other property;
- Federal, state, and local tax refunds and/or abatements to which Debtor or the Debtor's estate are or become entitled, no matter how or when arising, including but not limited to any loss carryback tax refunds;
- Insurance proceeds, refunds, and premium rebates, including without limitation, proceeds of fire and credit insurance, whether any of such proceeds, refunds, and premium rebates arise out of any of the foregoing, or otherwise;
- Choses in action, business and commercial tort claims, and unliquidated claims; and
- Liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing including the right of stoppage in transit.

The Replacement Liens shall be first priority security interests and liens to the same extent such security interests and liens were first interests and liens pre-petition, subject only to any lien or security interest having attached and having been perfected as of the Petition Date. Lender shall not be required to take any action to perfect the Replacement Liens, which are perfected by entry of this Order. The Lender, however, is granted stay relief to take whatever steps it chooses to evidence the perfection of the Replacement Liens, and the Debtor is authorized and directed to fully cooperate in any such steps. Notwithstanding anything herein to the contrary, the Lender shall not have any interest in any avoidance actions arising under sections 546-550, inclusive, of the Bankruptcy Code.

11. The security interests and Replacement Liens herein granted:

(a) are and shall be in addition to all security interests, liens and rights of set-off existing in favor of the Lender on the Petition Date;

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(b) are and shall be valid, perfected, enforceable and effective as of the date of the entry of this Order to the same extent such security interests and liens were valid, perfected and enforceable pre-petition, without the necessity of the execution, filing and/or recordation of mortgages, security agreements, patent security agreements, trademarks security agreements, pledge agreements, financing statements, or other documents in any jurisdiction, or any other action in order to validate, perfect or continue the security interests and Replacement Liens;

(c) shall secure the Indebtedness to the same extent that the Indebtedness was secured as of either the Petition Date or the effective date of any confirmed plan of reorganization;

(d) shall continue in full force and effect until the Indebtedness is paid in full or upon further order of the Court.

12. To the extent that the Replacement Liens do not fully secure Lender to the same extent it was secured as of the Petition Date, then Lender may assert a super-priority administrative expense claim under 11 U.S.C. § 507(b) superior to all other administrative claims.

13. Except as expressly modified by the terms of this Order, the terms of the Loan Documents shall continue to apply to Debtor's use and disposition of the Collateral and Cash Collateral and shall continue in full force and effect according to their terms.

14. The Debtor hereby covenants and agrees that it will, from time to time, subject to instruction from counsel, execute and deliver to the Lender any statement, assignment, instrument, document, agreement or other paper and take such action as the Lender may reasonably request to implement the terms of this Order.

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15. Debtor shall provide to the Lender copies of the monthly operating reports that are filed by the Debtor in the Chapter 11 case.

16. Nothing contained in this Order shall require or be deemed to require the Lender to make additional loans or to extend further credit, financing, or other financial accommodations to the Debtor, except as required herein.

17. Based upon the findings of fact and conclusions of law set forth above, the parties have acted in good faith and are entitled to the protections of § 363(m) of the Bankruptcy Code. No subsequent stay, modification, termination or vacation of this Order shall limit, modify or otherwise affect the validity, enforceability, or perfection of any lien or security interest granted or affirmed herein or the priority of any claim granted hereunder.

18. The automatic stay provisions of § 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the parties to implement the terms and conditions of this Order.

19. The terms and conditions of this Order have been negotiated by the parties at arm's length and in good faith and are fair and reasonable under the circumstances.

20. Nothing in this Order shall be deemed to be or be construed as the Lender's acceptance of any plan of reorganization submitted at any time by the Debtor or any other party, and nothing contained herein shall work in derogation of any other rights possessed by the Lender under any and all applicable provisions of Title 11 of the United States Code or other applicable law.

21. Nothing contained in this Order shall work in derogation of any and all contractual rights possessed by the Lender with respect to the Debtor or any co-obligor or guarantor, or any collateral or other property that is not property of the Debtor's estate.

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22. Nothing in this Order shall constitute a waiver of any default or event of default by the Debtor under the Loan Documents or any agreement to forbear by Lender with respect to its rights and remedies under the Loan Documents.

23. Nothing contained herein shall in any manner waive or prejudice (i) the right of the Lender to seek additional adequate protection or a determination that the Lender is not adequately protected, or (ii) any objection that the Lender may make to any of the relief requested by the Motion other than the relief expressly granted in this Order or any additional Cash Collateral orders.

24. This Order is an interim order. Notwithstanding anything to the contrary herein or in the Approved Budget, the Debtor's authority to use Cash Collateral runs only through September 17, 2013, the date on which final hearing shall be held on the Motion, with said hearing to occur on **September 17, 2013, at 9:00 a.m. central time, in Courtroom 1, 2nd Floor, U.S. Bankruptcy Court, 701 Broadway, Nashville, Tennessee 37203.**

This order was signed and entered electronically as indicated at the top of the first page.

**BY SIGNING BELOW, THE PARTIES,
THROUGH THEIR COUNSEL, ACKNOWLEDGE
THEIR AGREEMENT WITH THE TERMS OF THE ORDER.**

/s/Ronald G. Steen, Jr.
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