

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In Re:

Carl Weber Green Properties, LLC

Case No.: **17-29110-JKS**

Chapter: 11

Hearing Date: March ____, 2018, 10:00 AM

Judge: Hon. John K. Sherwood

**VERIFIED MOTION OF CARL WEBER GREEN PROPERTIES, LLC FOR THE
ENTRY OF AN ORDER (I) AUTHORIZING DEBTOR-IN POSSESSION FINANCING
SECURED BY A JUNIOR LIEN PURSUANT TO 11 U.S.C. §364(c)(3) AND (II)
SCHEDULING A FINAL HEARING PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 4001**

Carl Weber Green Properties, LLC, the above-captioned debtor and debtor-in-possession (the “Debtor”), by and through counsel, Giordano, Halleran & Ciesla, P.C., respectfully submits this motion for entry of an Order (I) authorizing debtor-in possession financing secured by a junior lien pursuant to 11 U.S.C. §364(c)(3) and (II) scheduling a final hearing pursuant to Federal Rule of Bankruptcy Procedure 4001 (the “Motion”) and respectfully represents as follows:

JURISDICTION

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicate for the relief request in this Motion is 11 U.S.C. § 364(c)(3) and Federal Rule of Bankruptcy Procedure 4001.

BACKGROUND FACTS AND PROCEDURAL HISTORY

4. The Debtor is a limited liability company under the laws of the State of New Jersey with its principal place of business located at 1185 Avenue of the Americas, 18th Floor, New York, NY 10036.
5. The Debtor was formed on October 9, 2012 as a real estate holding company, which owns various parcels of real property located in the State of New Jersey. The Debtor was formed as a special purpose vehicle to hold and monetize real property assets. The assets are all real properties obtained through tax lien foreclosures conducted by members of the Debtor.
6. As of the date of filing, the Debtor owns the following properties (“Real Property Holdings”):
 - a. Lot 3, Block 77.01, 2 Grayrock Rd, Clinton, NJ 08809 (“Grayrock”)
 - b. Lot 10, Block 58, 321 Old Allerton Road, Clinton, NJ 08801 (“Old Allerton”)
 - c. Lot 3, Block 1, Eisenhower Parkway, Roseland, NJ 07068 (“Eisenhower”)
 - d. Lot 53, Block 47, 233 Dover Chester Road, Randolph, NJ 07869 (“Dover Chester”).

7. In addition to the above-referenced real estate holding, the Debtor has an interest in certain other properties that were foreclosed upon (the “Foreclosed Properties”), which the Debtor may recover through an adversary proceeding instituted in this court:

- a. Lot 1, Block 224, 1174 Sussex Tpke, Randolph, NJ 07869 (“Sussex”);
- b. Lot 83, Block 22, 11 Brookside Road, Randolph, NJ 07869 (“Brookside”);¹
- c. Lot 1.02, Block 65, 270 Rte. 31 South, Washington Township, NJ (“270 Route 31”);

8. On or about September 24, 2014, Empire TF6 Jersey Holdings, LLC (“Empire”) or its affiliate purchased Tax Sale Certificate No. 2007 for \$8,265.64 against Sussex and Tax Sale Certificate No. 2008 for \$20,965.88 against Brookside.

9. On or about December 8, 2016, Empire instituted foreclosure proceedings against Sussex and Brookside by filing complaints in the Superior Court of New Jersey, Morris County, Chancery Division (the “Superior Court”) bearing Docket No. F-32726-16 to foreclose on Sussex and Docket No. F-32724-16 to foreclose on Brookside (“Foreclosure Proceedings”).

10. Prior to entry of final judgment, Empire entered into an agreement with the Debtor that it would not seek entry of final judgment in the Foreclosure Proceedings until August 3, 2017 to provide the Debtor and other parties an opportunity to resolve the matter amicably.

11. Notwithstanding that agreement, on June 27, 2017, Empire obtained final judgments in the Foreclosure Proceedings transferring title in the Foreclosed Properties to Empire.

¹ A tax sale foreclosure judgment was entered with respect to Lot G8 on July 17, 2014, four days prior to the Petition Date, which transferred title to Lot G8 to Empire TFI Jersey Holdings, LLC (“Empire”). The Debtor intends on filing a complaint to set void the transfer of Lot G8 as either a fraudulent conveyance or a preferential transfer. The redemption amount of Lot G8 approximated \$1,101,108.13 as of May 12, 2014. The Tax Assessor valued Lot G8 at \$3,606,628. The Debtor further believes that the description of Lot G8 as reflected in the tax sale foreclosure judgment is incorrect and thus Empire did not take title to Lot G8 upon entry of the judgment.

12. A transfer of the Sussex and Brookside properties could have a negative impact on the Debtor's settlement agreement with other creditors, the Berger Parties, which was entered on May 31, 2016. Furthermore, the Debtor determined that the Foreclosure Proceedings could lead to foreclosures with respect to the other properties held by the Debtor. As a result, the Debtor determined that it would be in the best interest of the Debtor and its creditors to file a chapter 11 petition in an effort to retain and pursue a return of the Debtor's assets back to the estate.

13. On September 20, 2017 (the "Petition Date"), the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in order to preserve the value of its assets for the benefit of all of its creditors and other parties in interest.

14. On October 5, 2017, the Debtor commenced an adversary proceeding under Docket No. Adv. Pro. No. 17-01652 (the "Adversary Proceeding") against Empire and others seeking to avoid the foreclosure judgments against the Sussex and Brookside properties as fraudulent transfers under the Bankruptcy Code and New Jersey State law.

15. On October 10, 2017, an alleged interested party, KAB Mt. Freedom II, LLC ("KAB") filed a motion to dismiss the Debtor's bankruptcy filing.

16. On November 29, 2017, though the court denied the motion to dismiss, the court expressed concern that the debtor did not have funds necessary to pay for the debtor's operating expenses going forward.

17. The Debtor has filed applications seeking to retain the law firm of Giordano, Halleran & Ciesla, PC ("GH&C") as general bankruptcy counsel and the law firm of Thompson & Knight, LLP as special counsel.

18. The US Trustee's Office filed limited object to the application for retention of GH&C since the debtor was proposing that its legal counsel and other expenses would be funded directly from non-debtor parties and not the debtor itself.

Immediate Post-Petition Obligations

19. The Debtor is currently not generating revenues necessary to pay the post-petition expenses of the Debtor, including, in particular, the payment of real estate taxes and insurance as well as professional fees and other expenses.

20. The Debtor requires funding from other sources in order to satisfy post-petition expenses, including, real estate taxes and insurance.

Proposed Debtor-in-Possession Financing

21. The principals of the Debtor, M.D. Sass Municipal Finance Partners-II, LP, Municipal Finance Partners-IV, LLC, and Municipal Finance Partners-V, LLC (collectively the "Lenders") will collectively loan the debtor up to \$250,000 pursuant to 11 U.S.C. §364(c)(3) for the purposes of paying post-petition real estate taxes, insurance, administrative expenses and other post-petition obligations as same may arise. The lenders request that the loan be secured by a junior lien on the Real Property Holdings.

RELIEF REQUESTED AND BASIS THEREFORE

22. The debtor respectfully submits that cause exists for entry of an Order authorizing the Debtor to obtain post-petition financing necessary to meet certain expenses of the estate.

23. The Debtor requires financing to pay the carrying costs associated with the Real Property Holdings including real estate taxes and insurance².

² The Debtor's insurance is current as of today's date.

24. Because the Debtor does not currently generate any income to meet its expenses, the Debtor has, understandably, been unable to procure unsecured post-petition financing.

25. The Lenders have agreed to loan an amount not to exceed \$75,000 on an interim basis and ultimately up to \$250,000; provided that the loan is secured by a junior lien against the Real Property Holdings. As part of the terms of such financing, and at its sole discretion, the Lenders shall be authorized to make advances to the Debtor on an as-needed basis. The Lenders propose that the loan will accrue interest at a rate of 5% per annum.

LEGAL ARGUMENT

26. 11 U.S.C. § 364(c)(3) provides in pertinent part:

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt –

* * *

(3) secured by a junior lien property of the estate that is subject to a lien.

11 U.S.C. § 364(c)(3).

27. Recognizing the natural reluctance of lenders to extend credit to a company in bankruptcy, 11 U.S.C. § 364 was designed to provide incentives for creditors to extend post-petition credit. In re Ellingsen MacClean Oil Co., Inc., 834 F.2d 599, 603 (6th Cir. 1987), cert. denied, 488 U.S. 817 (1988).

28. Courts have recognized that in order to successfully obtain financing under 11 U.S.C. § 364(c), the moving party must be able to demonstrate:

They are unable to obtain unsecured credit per 11 U.S.C. § 364(b), *i.e.*, by allowing a lender only an administrative claim per 11 U.S.C. §503(b)(1)(A); (2) The credit transaction is necessary to preserve the assets of the estate; and (3) The

terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

In re Aqua Associates, 123 B.R. 192, 195-96 (Bankr. E.D.Pa. 1991); see also, In re Ames Dep't Stores, Inc., 115 B.R. 34, 37-40 (Bankr. S.D.N.Y. 1990); and In re St. Mary Hospital, 86 B.R. 393, 401-02 (Bankr. E.D.Pa. 1988).

29. Monies to be loaned to the Debtor by the Lenders are necessary to preserve the bankruptcy estate. The Debtor requires funding to pay administrative expenses, including real estate taxes, insurance, legal fees, US Trustee fees and other costs. There is currently no income to satisfy these obligations. The Debtor is unable to pay these expenses without financing and has been unable to procure unsecured financing to cover these obligations.

30. The terms of the financing are clearly reasonable and merely protect and compensate the Lenders for advancing the financing. Given the Debtor's current position, the proposed financing is more reasonable than what the Debtor would otherwise expect to obtain from another entity. See Ames, 115 B.R. at 38 (Courts "recognize that debtors-in-possession generally enjoy little negotiating power with a proposed lender").

31. Because the requested financing is reasonable and necessary to preserve property of the estate, the Debtor submits that the proposed financing from the Lenders is in the best interest of the estate and should be authorized by the Court.

Request for a Final Hearing Pursuant to Rule 4001(c).

32. Federal Rule of Bankruptcy Procedure 4001 provides that the Court "may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14 day period expires, but the court may authorize the obtaining of credit only to the extent

necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” Fed. R. Bankr. P. 4001(c).

33. The Debtor has filed an application, simultaneously herewith, for an expedited hearing on the Motion so the Debtor may obtain this funding as soon as possible. The Debtor seeks an expedited hearing on the Motion in order to secure the financing, pay the post-petition taxes as well as other accruing expenses and prevent the continuing accrual of interest.

34. The Debtor requests that a final hearing be scheduled pursuant to Rule 4001 for entry of an order authorizing and approving the proposed financing.

NOTICE

35. Notice has been provided to (i) the Office of the United States Trustee; (ii) Robert W. Keyser, Esq. counsel of Empire TF6 Jersey Holdings, LLC; (iii) Richard L. Zucker on behalf of KAB Mt. Freedom II, LLC; (iv) Morris S. Bauer, Esq. counsel to S B Building Associates Limited Partnership, SB Milltown Industrial Realty Holdings, LLC, Alsol Corporation, 190 South Street Realty Holdings, L.P., and 199 Realty Corp.; (v) all other creditors and parties’ interest; (iv) the Lenders; and (v) all other persons and entities that have requested notice pursuant to Fed. R. Bankr. P.2002. The Debtor respectfully submits that such service constitutes good and sufficient notice.

36. The movant represents that the facts and circumstances set forth herein do no present novel questions of law, and, as such, respectfully requests that this Bankruptcy Court waive the requirement of the filing of a memorandum of law in accordance with D.N.J. LBR 9013-1(b).

WHEREFORE, the Debtor respectfully requests the entry of the Order, in the form submitted simultaneously herewith, and for such further relief as the Court deems just and proper.

GIORDANO, HALLERAN & CIESLA
A Professional Corporation
Proposed Counsel for Debtor-in-Possession,

By: /s/ Donald F. Campbell, Jr.
DONALD F. CAMPBELL, JR. ESQ.

Dated: February 19, 2018

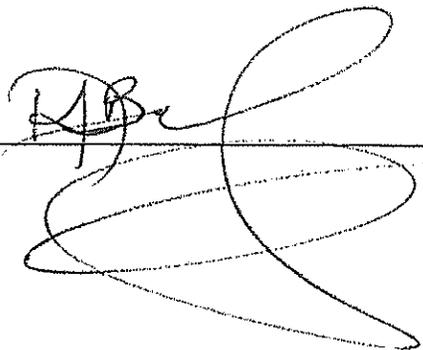
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VERIFICATION

KIRK ALLISON, of full age, hereby certifies and says:

1. I am the manager of Carl Weber Green Properties, LLC, the debtor and debtor-in-possession, and am fully familiar with the facts and circumstances set forth herein.
2. I have reviewed the factual information contained herein, and the same is true and accurate to the best of my knowledge and belief.

I hereby certify that the foregoing statements made by me are true. If any of the foregoing statements made by me are willfully false, I am subject to punishment.



A handwritten signature in black ink, appearing to read 'Kirk Allison', is written over a horizontal line. The signature is stylized and somewhat cursive.

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