

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

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In re	:	Chapter 11
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Richmond Valley Plaza LLC, <i>et al.</i> , <sup>1</sup>	:	Case No. 13-44040-CEC
	:	(Jointly Administered)
	:	
	:	
Debtors.	:	
-----	x	Refers to ECF Nos. 51 & 53

**ORDER FURTHER EXTENDING TIME OF T.M. REAL ESTATE HOLDING LLC TO  
FILE A PLAN OF REORGANIZATION OR MOTION TO APPROVE DEBTOR-IN-  
POSSESSION OR REPLACEMENT FINANCING**

*WHEREAS*, these cases were commenced by the filing of voluntary petitions for relief under Chapter 11 of title 11 of United States Code (the “**Bankruptcy Code**”) on June 28, 2013 (the “**Petition Date**”); and

*WHEREAS*, the Debtors are operating their businesses and managing their affairs as debtors-in-possession pursuant to Bankruptcy Code Section 1107 and 1108, and each of the Debtors owns a parcel of single asset real estate as such term is defined by Section 101(51B) of the Bankruptcy Code; and

*WHEREAS*, on July 22, 2013, TD Bank, N.A., successor by merger to Commerce Bank/North (“**TD Bank**”), filed a Motion to (i) Dismiss the Debtor’s Chapter 11 Case; or in the alternative, (ii) Grant Relief from the Automatic Stay; or in the alternative, (iii) Condition Continuation of the Automatic Stay Upon Adequate Protection of Its Interest in Property of the Estate and Designate the Debtor as a Single Asset Real Estate Entity in the T.M.

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<sup>1</sup> The Debtors in this case are Richmond Valley Plaza, LLC (“**RVP**”), A.E.T. Realty Holding Corp. (“**AET**”), and (**CEC**) E.B. Realty Holding Corp. (“**EB**”), and T.M. Real Estate Holding LLC a/k/a T.M. Realty Holding Corp. (“**TM**”). The Debtors' cases are being jointly administered pursuant to an order of this Court, dated August 8, 2013 [ECF No. 25].

Real Estate Holding LLC a/k/a T.M. Realty Holding Corp. (“**TM**”) case<sup>2</sup> (“**TD Bank’s Motion to Dismiss**”) [Case No. 13-44046 (CEC) ECF No. 15]; and

*WHEREAS*, the Debtors filed an Objection to TD Bank’s Motion to Dismiss [Case No. 13-44046 (CEC) ECF No. 20]; and

*WHEREAS*, on August 12, 2013, TD Bank filed a Reply to the Debtors’ Objection to TD Bank’s Motion to Dismiss [Case No. 13-44046 (CEC) ECF No. 24]; and

*WHEREAS*, the Debtors and TD Bank each filed cross-motions, and attendant objections, for authority to use cash collateral [See ECF Nos. 15, 18, 21, 22 and 27] (together, the “**Cash Collateral Motions**”); and

*WHEREAS*, on August 14, 2013, a hearing was held before this Court on TD Bank’s Motion to Dismiss, the Debtors’ Objection and the Cash Collateral Motions; and

*WHEREAS*, on September 11, 2013, the Court entered *issued* (CEC) an Order Granting Relief on Use of Cash Collateral (the “**Cash Collateral Order**”)<sup>3</sup>, which provided, *in relevant part*,

“[i]n the event, upon further consideration, that the Court finds that there is an ‘equity cushion’ in the value of Lot 80, pursuant to Bankruptcy Code sections 361 and 363(e) and for purposes of Bankruptcy Code Section 507(b), as adequate protection to TD Bank for the Debtor TM’s use of Lot 80, (a) TD Bank will accrue interest on the Lot 80 Judgment at the *per*

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<sup>2</sup> TM’s case is currently pending under Case No. 13-44046 (CEC), which is being jointly administered under the above heading. The motions and objections filed with respect to this issue were initially filed on the docket for Case No. 13-44046 (CEC).

<sup>3</sup> Any reference to a defined term shall have the meaning attributed to it in the Cash Collateral Order. The Cash Collateral Order, specifically Paragraphs 1 through 8, should be incorporated herein and referred to directly. Pursuant to the Cash Collateral Order, as adequate protection for its interest in RVP, TD Bank is authorized to collect and deposit the Cash Collateral post-petition rents collected from the tenants of Lots 1, 3 & 5 and will pay itself post-petition interest, at a rate of \$1,585.00 *per diem* from the Post-Petition Cash Collateral Account, and will remit to the Shopping Center Debtors any funds remaining in the Post-Petition Cash Collateral Account after payment of such post-petition interest. See Cash Collateral Order, at ¶ 3. Under the Cash Collateral Order, TD Bank is also granted a post-petition replacement lien and security interest in all property, assets and interests in property of the Shopping Center Debtors and the Debtor TM, other than actions under the Bankruptcy Code. *See* Cash Collateral Order, at ¶¶ 6-7.

*diem* rate of \$2,549.55 (the “**Lot 80 Post Petition Interest**”) as of the Petition Date; or **in the alternative**, (b) TD Bank is hereby granted a post-petition replacement lien and security interest in all property, assets and interests in property of the Shopping Center Debtors, other than actions under Bankruptcy Code Chapter 5, whether existing on the Petition Date or acquired or arising thereafter, solely to the extent of any diminution of the value of Lot 80, which replacement lien and security interest shall be junior only to (a) all valid, enforceable and perfected prior liens in existence as of the Petition Date or duly perfected after the Petition Date under the Bankruptcy Code section 546(b), and (b) any liens arising during the chapter 11 cases that have priority as a matter of law.”

(See Cash Collateral Order, at ¶ 8); and

**WHEREAS**, the Cash Collateral Order further provided, *in relevant part*, that, “Debtor TM is a SARE entity, therefore on or before **September 28, 2013**, Debtor TM shall file a plan of reorganization, motion to approve debtor-in-possession financing, or such other relief as is appropriate to meet the Debtor TM’s obligations under 11 U.S.C. § 362(d)(3), in the absence of which, the Court shall consider granting relief pursuant to TD Bank’s Motion to Dismiss,” (See Cash Collateral Order, at ¶ 14); and

**WHEREAS**, on September 27, 2013, the Debtors and TD Bank entered into a Stipulation By and Between Debtors and T.D. Bank, N.A. to Extend Debtors Time to File a Chapter 11 Plan or Motion to Approve Financing until October 9, 2013, which was so-ordered by this Court on October 10, 2013 [ECF No. 52]; and

**WHEREAS**, on October 9, 2013, the Debtors filed a Motion Pursuant to Bankruptcy Code Section 362(d)(3) and Fed. R. Bank. P. 9006(b), for an Order Extending T.M. Real Estate Holding LLC’s Time to File a Plan of Reorganization or a Motion to Approve Debtor-in-Possession or Replacement Financing (the “**Debtors’ Motion to Extend Time**”) [ECF No. 51]; and

**WHEREAS**, on October 11, 2013, TD Bank filed its opposition to the Debtors' Motion to Extend Time; and

**WHEREAS**, on October 16, 2013, the parties appeared at a hearing before this Court on the Debtors' Motion to Extend Time, wherein the Court directed a second hearing and status conference to be held on October 23, 2013 (the "**Hearing**"); and

**WHEREAS**, the Debtors made certain representations and agreed to certain terms, as detailed below, and as a result, the Court conditioned the automatic stay upon the terms of this Order;

Now, therefore, it is hereby ORDERED, as follows:

1. The continuation of the automatic stay under Section 362(a) of the Bankruptcy Code with respect to Debtor TM is conditioned upon the following payments, to be made ~~on or before~~ **within two business days after (CEC)** entry of this Order by the Debtors' principals or a third party on behalf of the Debtors and not as a loan to the Debtors:

- a) Payment to TD Bank in the amount of \$76,486.50, representing 30 days of Lot 80 Post-Petition Interest on the Lot 80 Judgment at the *per diem* rate of \$2,549.55, as provided in Paragraph 8 of the Cash Collateral Order, covering the period October 24, 2013, through November 22, 2013. In the event that the parties have not otherwise resolved their pending disputes prior to November 22, 2013, on or before November 23, 2013, the Debtors shall be required to make a second payment to TD Bank in the same amount and in the same manner, for the period November 23, 2013 through December 23, 2013.
- b) Payment of \$118,424.90, into an escrow account to be held by Reed Smith LLP, for payment of post-petition real estate taxes on account of Lot 80 that

will become due on January 1, 2013 ~~2013~~ **2014 (CEC)**. The funds in this escrow account shall be released and paid in their entirety to the New York City Department of Finance on account of the semi-annual installment of real estate taxes due on January 1, 2014. The payment of these funds from escrow shall be made to the New York City Department of Finance on January 1, 2014, if, at the time such payment is due, TD Bank's secured claim against Lot 80 has not been paid ~~or resolved~~ **(CEC)** in full, **unless TD Bank agrees otherwise (CEC)**. If TD Bank's secured claim against Lot 80 has been paid ~~or resolved~~ **(CEC)** in full prior to the taxes coming due on January 1, 2014, then any monies held in an escrow account by Reed Smith LLP on account of Debtor TM's post-petition real estate taxes will be returned to the Debtors, upon written instruction to Reed Smith LLP.

2. If any payment required pursuant to paragraph 1 of this Order is not made on or before the time set forth above (any such, a "**Missing Payment**"), then TD Bank shall serve the Debtor and the U.S. Trustee with, and thereafter file with the Court, written notice of non-compliance (the "**Notice**"). The automatic stay under Section 362(a) of the Bankruptcy Code with respect to Debtor TM shall terminate without further action by, or order of, this Court unless the Missing Payment is received by the third business day after the date that the Notice is filed on the docket of these cases. **If the Missing Payment is not received by the third business day after the Notice is filed with the Court, then TD Bank shall file an affidavit of non-compliance with the Court. (CEC)**

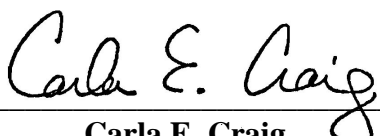
3. Any payments required by this order shall be made by wire transfer in accordance with written instructions to be provided by the payee.

4. A further hearing on TD Bank's Motion to Dismiss, the Debtor's Motion to Extend Time, and all related matters and proceedings, shall be held on **December 11, 2013** at **3:00 p.m.**

5. The Court shall retain jurisdiction over the parties with respect to the enforcement and interpretation of this Order.

**Dated: Brooklyn, New York  
November 14, 2013**



  
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**Carla E. Craig**  
**United States Bankruptcy Judge**