

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

| | | |
|--|---|------------------------------|
| IN RE: |) | |
| |) | Case No. 13-20283 |
| T-L Cherokee South LLC, a Delaware limited |) | Chapter 11 |
| liability company, |) | Judge J. Philip Klingeberger |
| |) | |
| _____ |) | Debtor/Debtor-in-Possession. |

**FIFTH ORDER AUTHORIZING INTERIM USE OF
CASH COLLATERAL AND GRANTING RELATED RELIEF**

THIS MATTER COMING TO BE HEARD upon the Motion of T-L CHEROKEE SOUTH LLC, a Delaware limited liability company, Debtor/Debtor-in-Possession herein (the "Debtor"), For Authority to Use Cash Collateral And For Related Relief pursuant to Section 363 of the Bankruptcy Code (the "Motion"); proper notice as required by Rule 4001(b) of the Federal Rules of Bankruptcy Procedure having been provided to all parties entitled thereto; all such parties having been afforded such opportunity for hearing as is appropriate under the circumstances of this case; no objections having been interposed to the entry of this Order or any such objections having been withdrawn or overruled; this Court having determined that the Debtor's use of cash collateral to pay the expenses set forth on the budget attached hereto as Exhibit A (the "Budget") is necessary to avoid immediate and irreparable harm to the Debtor's estate pending a final hearing on the Motion; and this Court being fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- A) The Debtor is hereby authorized to use the cash collateral of Cole Taylor Bank (the "Lender") through and including the first to occur of September 30, 2013 or

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the occurrence of an Event of Default (as defined below), pursuant to the Budget and to the terms of this Order.

B) In return for agreeing to the Debtor's interim use of cash collateral, Lender is granted adequate protection as follows:

1. The Debtor stipulates for itself, without binding any creditor other than the Lender, that (a) the Lender holds a valid and perfected mortgage on the Debtor's real property, and a valid and perfected lien on, and security interest in, the Debtor's personal property (collectively, the "Property" or the "Pre-Petition Collateral") including, without limitation, cash collateral, as that term is defined in section 363(a) of the Bankruptcy Code, 11 U.S.C. §§ 101 – 1532 (the "Code"), pursuant to the terms of various loan documents executed by the Debtor before February 1, 2013 (the "Petition Date"); (b) the loan and other financial accommodations (collectively, the "Pre-Petition Loan" or "Lender's Pre-Petition Claim") which the Lender provided to the Debtor before the Petition Date (i) constitutes a valid and binding obligation of the Debtor, enforceable in accordance with its terms (except to the extent that such enforcement is stayed pursuant to section 362(a) of the Code), and (ii) neither the Pre-Petition Claim nor any mortgage, lien or security granted by the Debtor to the Lender in connection with the Pre-Petition Loan, is subject to any defenses, offsets, counterclaims, recoupment, subordination, avoidance or re-characterization, under either the Code or state law; (c) as of the Petition Date, the Debtor owed Lender the principal amount of \$14,392,500.00 and

\$92,280.87 in interest and fees, as set forth on Lender's Proof of Claim filed in this case on March 19, 2013 (Claim No. 3) ("Proof of Claim"); and (d) Lender has reserved its right to amend the Proof of Claim to include any additional post-petition interest, reasonable fees, costs and charges allowed under the documents evidencing the Pre-Petition Loan, as contemplated by section 506(b) of the Code; provided, however, that the Debtor may file a written objection to only those amended amounts of Lender's claim, on or before 5:00 p.m. prevailing central time fourteen (14) days after the Lender's filing and service of any such amended Proof of Claim;

2. The Debtor shall timely pay in full premiums for all insurance policies required under the terms of the Pre-Petition Loan Documents covering the Property, and shall cause the Lender to be named as an additional insured and loss payee on all such insurance policies;
3. The Debtor shall maintain and fully fund its existing real estate tax escrow account, and shall pay in full all pre- and post-petition real estate taxes on the Property on or before the date when such taxes are first due without penalty;
4. The Debtor shall, upon reasonable request, make available to the Lender (a) financial statements, (b) rent rolls, and (c) evidence of (i) the existence and condition of the Pre-Petition Collateral and the proceeds thereof, and (ii) Debtor's compliance with the terms of this Order;

5. No later than the twentieth (20th) calendar day following the end of each month, or the first day thereafter if said twentieth (20th) day is not a business banking day, the Lender shall have received from the Debtor with respect to the preceding month (a) an operating statement, (b) a rent roll, (c) a delinquency report, and (d) a report comparing actual revenues and expenses to budgeted revenues and expenses.
6. The Debtor will properly maintain, manage protect and preserve the Property;
7. The Lender is hereby granted valid, perfected, and enforceable liens, mortgages and security interests in and on the Debtor's post-petition assets, including, without limitation, (a) all proceeds and products of the Pre-Petition Collateral, (b) depository accounts, (c) insurance premium refunds, (d) insurance payments regarding the Pre-Petition Collateral, (e) escrow accounts, and (f) tangible and intangible assets, to the same extent, and with the same validity and priority, as the Lender's mortgage, security interest, and liens on the Lender's Pre-Petition Collateral;
8. Following reasonable notice, the Debtor will permit the Lender or its agents to inspect the Debtor's books and records during regular business hours; and
9. As soon as practicable after the United States Trustee for the Northern District of Indiana approves the Lender as a depository for the Debtor's funds, the Debtor shall (a) open and thereafter maintain all of its debtor-in-possession bank accounts at the Lender, (b) transfer to said bank accounts

all funds presently held in the Debtor's bank accounts at other financial institutions, and (c) promptly thereafter close all bank accounts previously maintained at any financial institution other than the Lender.

- C) The Debtor is authorized to make the expenditures set forth on the Budget plus no more than 5% of the amount reflected in each line item of that Budget, unless otherwise agreed by the Lender or upon further Order of this Court, provided, however, that payments for management fees may vary from amounts budgeted for such fees only if and to the extent that there is a change in the actual amount of total adjusted net income on which the said fees are based.
- D) Any expense on Exhibit A hereto that is budgeted for payment in one month but is not paid in such month shall be carried over for payment by the Debtor in a subsequent month.
- E) Any creditor shall be barred from (1) contesting (either in an objection or in an adversary proceeding) the validity enforceability or perfection of the Lender's mortgage of the Debtor's real property, (2) contesting (either by an objection or in an adversary proceeding) the validity, enforceability or perfection of the Lender's security interest in the Debtor's personal property; (3) contesting (either in an objection or in an adversary proceeding) either the validity, amount or enforceability of the Pre-Petition Loan or any claim which the Lender files in this case; (4) seeking an order or judgment subordinating or re-characterizing the Lender's Pre-Petition Claim; or (5) filing an adversary proceeding seeking to avoid or recover, under either (a) any one or more of sections 544-550 of the Code or (b) any state law, any one or more of (i) the Pre-Petition Claim, (ii) any

mortgage, security interest or lien in or on the Pre-Petition Collateral granted to the Lender by the Debtor, or (iii) any payment by the Debtor to the Lender before the Petition Date, unless an objection or adversary proceeding seeking such relief is filed and served upon counsel for the Lender on or before 5:00 p.m. prevailing central time on May 15, 2013.

- F) The Debtor's failure either to fulfill any one or more of the obligations described above in paragraphs B(1)-(9) above, or to use the Lender's cash collateral in accordance with the Budget and with the terms of this Order, shall constitute an event of default (an "Event of Default"), and the Debtor's right to use cash collateral shall cease immediately, if the Debtor fails to cure an event of default within 5 calendar days after receipt from the Lender of written notice (which may be given by email, or by facsimile) identifying such event of default; provided, however, that the occurrence of an Event of Default shall not bar the Debtor from thereafter seeking an order authorizing it to use the Lender's cash collateral.
- G) A final hearing on the Motion is scheduled before this Court on September 26, 2013, at 1:00 p.m. prevailing central time. That hearing will be telephonic if, by that date, the parties report that they have agreed to a further extension.
- H) The Debtor further stipulates to its designation as a single asset real estate debtor, with such designation effective as of the Petition Date.

SEP 04 2013

DEBTOR'S COUNSEL:
David K. Welch, Esq.

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ENTER: _____

J. Philip Klingelberger JS 104

(Atty. No. 06183621)
Arthur G. Simon, Esq.
(Atty. No. 03124481)
Jeffrey C. Dan, Esq.
(Atty. No. 06242750)
Crane, Heyman, Simon, Welch & Clar
135 South LaSalle Street, Suite 3705
Chicago, IL 60603
TEL: (312) 641-6777
FAX: (312) 641-7114

EXHIBIT A

CHEROKEE SOUTH #2037
2013 CASH BASIS BUDGET
CASH COLLATERAL BUDGET

| ACCT # | ACCOUNT | AUG | SEPT | Comments |
|------------------------------|--|----------------|----------------|---|
| INCOME: | | | | |
| 400000 | Fixed Minimum Rent | 110,766 | 111,207 | |
| OTHER INCOME: | | | | |
| 441000 | Common Area Maintenance | 16,646 | 16,646 | |
| 441001 | Common Area Settlement | - | - | |
| 441200 | CAM Admin | 1,796 | 1,796 | |
| 441201 | Admin Settlement | - | - | |
| 451000 | Store HVAC Income | - | - | |
| 461000 | Real Estate Tax Income | 16,993 | 16,993 | |
| 461100 | RET Settlement | - | - | |
| 471000 | Insurance Income | - | - | |
| 471100 | Insurance Settlement | - | - | |
| 481000 | Percentage Rent | 1,994 | 1,889 | |
| | Other Income (late fees, lease admin, etc) | - | - | |
| 990137 | Less Rent Abatements | (11,135) | (5,373) | |
| | Less Prepaid Rents | | | |
| | Total Other Income | 26,294 | 31,951 | |
| 486000 | Collection Allowance at 6% | (8,224) | (8,589) | |
| | TOTAL INCOME | 128,836 | 134,569 | |
| OPERATING EXPENSES: | | | | |
| LANDLORD EXPENSES: | | | | |
| 501400 | HVAC Repairs | 5,100 | 4,500 | \$9,000 in Aug/Sept for repairs/replacement for Hallmark, Fashionista and vacancies. |
| 501600 | Electrical Repairs | | 500 | |
| 501800 | Plumbing Repairs | 1,000 | | |
| 502000 | Other Repairs | - | - | |
| 502400 | Sign Expense | 900 | 1,500 | \$900 in Aug to replace posters in display boxes, \$1,500 in Sept to replace leasing signs. |
| 521000 | Vacant Gas | 199 | 170 | |
| 521200 | Vacant Electric | 1,571 | 112 | |
| 521400 | Vacant Water | 132 | 132 | |
| 542400 | Management Fees | 5,856 | 5,869 | |
| 542800 | CAM Admin | 1,796 | 1,796 | |
| 543000 | Bank Fees | 200 | 200 | |
| 560000 | Landlord Misc | 250 | 250 | |
| 560100 | Copies, Faxes, & Postage | 133 | 133 | |
| 580000 | Contracted Services Reimbursement | (675) | (675) | |
| 580500 | Field Maintenance - Cell Phones | 125 | 125 | |
| 581000 | Field Maintenance - Uniforms | 225 | 225 | |
| 581500 | Maintenance Shop | 350 | 250 | \$100 in Aug to cover unfavorable variance in July. |
| 581700 | CAM Delivery | 75 | 75 | |
| 582000 | CAM Miscellaneous | 133 | 133 | |
| 590000 | Bankruptcy Fees | - | - | |
| 590169 | Leasing Expenses | 1,900 | 2,000 | |
| | Total Landlord Expenses | 19,270 | 17,295 | |
| RET EXPENSE | | | | |
| 611000 | Real Estate Tax Reserve | 36,071 | 36,071 | |
| 611200 | Personal Property Taxes | - | - | |
| 612000 | Contestation Fees | - | - | |
| | Total RET Expense | 36,071 | 36,071 | |
| 665000 | Property & Liability Insurance | 1,790 | - | |
| COMMON AREA EXPENSES: | | | | |
| 711200 | Snow Contract | 7,817 | - | To cover open invoices. |
| 711400 | Snow Material | - | - | |
| 721000 | Landscaping | 3,050 | 16,750 | Request \$13,700 in Sept for plant replacements. |
| 721200 | Sweeping | 500 | | |
| 721300 | Scavenger | 1,475 | 1,475 | |
| 721400 | Pest Control | 500 | | |
| 722000 | Contracted Services | 10,396 | 10,396 | |
| 731000 | Electricity | 1,823 | 1,905 | |
| 731100 | Natural Gas | 36 | 36 | |
| 731200 | Water | 2,756 | 2,993 | |
| 732000 | Security Services | 571 | 571 | |
| 741000 | Parking Lot Lights | 500 | | |
| 741200 | Building Lights | | 500 | |
| 741400 | Electrical Repairs | | | |
| 741500 | Roof Repairs | | | |
| 741600 | Canopy Repairs | | | |
| 741700 | Fascia / Column Repairs | 500 | | |
| 741800 | Stain/Paint | | | |
| 742000 | Parking Lot Repairs | | 5,000 | Request \$5,000 for Parking Lot Repairs. |
| 742200 | Sign Repairs | | | |
| 742400 | Concrete Repairs | | | |
| 743000 | Irrigation Repairs | 500 | | |
| 743200 | Other Repairs | | 300 | |
| 751000 | Equipment Expense | 120 | 475 | |

CHEROKEE SOUTH #2037
2013 CASH BASIS BUDGET
CASH COLLATERAL BUDGET

| ACCT # | ACCOUNT | AUG | SEPT | Comments |
|---|--|---------------|---------------|--|
| 751200 | Supplies/Tools | 375 | 375 | |
| Total Common Area Expenses | | 30,919 | 40,776 | |
| TOTAL OPERATING EXPENSES | | 88,050 | 94,142 | |
| NET OPERATING INCOME | | 40,786 | 40,426 | |
| PARTNERSHIP EXPENSES: | | | | |
| 900100 | Ptnsp/Interest Income | - | - | |
| 900500 | Ptnsp/Legal Fees | - | - | |
| 900600 | Ptnsp/Miscellaneous | - | - | |
| 900800 | Ptnsp/Accounting | - | 5,600 | |
| 901900 | Ptnsp/State Income Tax | - | - | |
| Total Partnership Expenses | | - | 5,600 | |
| DEBT SERVICE | | | | |
| 970500 | Interest (Interest Expense)-1st Mortgage | - | - | |
| 970500 | Valley View Interest Expense | - | - | |
| 140500 | Interest Reserve | - | - | |
| 243000 | Principal Payments-Valley View Mortgage | - | - | |
| 971500 | Other Interest | - | - | |
| Total Debt Service | | - | - | |
| CAPITAL EXPENDITURES | | | | |
| 990169 | Leasing - Other | - | - | |
| 990500 | Building and Site Development Costs | - | - | |
| 992100 | Renov/Leasing Commissions | 1,300 | - | Request \$1,300 for Hallmark lease commission. |
| 992842 | Marketing / Promotions | - | - | |
| 994501 | Construction Management Fees | - | - | |
| 996600 | Construction Admin | - | - | |
| 999004 | Permanent Financing Costs | - | - | |
| 999006 | Equity Raise Expense | - | - | |
| 999007 | Loan Guaranty Fee | - | - | |
| | Defer Loan Gnty Fee | - | - | |
| TOTAL CAPITAL EXPENDITURES | | 1,300 | - | |
| TOTAL OTHER EXPENSES | | 1,300 | 5,600 | |
| CASH FLOW AFTER CAPITAL EXPENDITURES | | 39,486 | 34,826 | |
| Beginning Cash | | 353,879 | 429,436 | |
| Cash RET Reserve | | 36,071 | 36,071 | |
| Current Cash Flow | | 39,486 | 34,826 | |
| Ending Balance | | \$ 429,436 | \$ 500,333 | |
| Less: RET Reseve | | \$ (108,213) | \$ (144,284) | |
| Adjusted Cash Balance | | \$ 321,223 | \$ 356,049 | |