

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

<b>In Re:</b>	)	
	)	
<b>REPLOGLE ENTERPRISES, G.P.,</b>	)	<b>Chapter 11</b>
	)	<b>Case No. 17-12173</b>
	)	<b>Judge Croom</b>
<b>Debtor.</b>	)	

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**EXPEDITED MOTION OF DEBTOR FOR ORDER AUTHORIZING DEBTORS TO  
OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 362,  
364(C)(1), 364(C)(2), 364(D) AND 364(E) AND SCHEDULE PRELIMINARY HEARING**

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**COMES NOW**, Replogle Enterprises, G.P. (the “Debtor”), as debtor and debtor-in-possession, and, pursuant to §§ 105, 362, 364(c)(1) and (2), 364(d)(1) and 364(e) of title 11 of the United States Code, 11 U.S.C. §101, *et seq.* (the “Bankruptcy Code”), and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and moves this Court (the “Motion”) to (i) set a preliminary hearing on this Motion for October 26, 2017, and (ii) enter an order approving and authorizing the Debtor to obtain post-petition financing as set forth herein.<sup>1</sup> In support of this Motion, the Debtor states as follows:

**REQUEST FOR EXPEDITED RELIEF**

1. The Debtor requests that this Court reduce the notice period of objection to this

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<sup>1</sup> Substantially similar motions are being filed in the companion cases of Replogle Hardwood Flooring Company, LLC (Case No. 17-12173) and Giles Nathan Replogle and Betty Carroll Replogle (Case No. 17-12183). In order to secure the post-petition financing needed to operate Replogle Hardwood and Replogle Enterprises, the proposed lender requires a super-priority lien as to all assets of all three debtors (excepting the personal residence of Mr. and Mrs. Replogle). Replogle Enterprises and Replogle Hardwood own substantially all equipment used in the businesses, but Mr. and Mrs. Replogle own the real estate from which the businesses operate. Because there are cross-guarantees among the parties regarding the largest secured debts, it is most practical and efficient for all three debtors to file substantially similar motions in order to procure the necessary financing.

Motion, and set an expedited preliminary hearing on the Motion.

2. The Debtor does not have sufficient funds to cover its upcoming post-petition expenses. It is necessary to have this Motion heard on an expedited basis so that the Debtor can obtain the necessary funding to cover its ongoing administrative expenses. Specifically, the Debtor has insufficient funds to make payroll, keep its assets insured, and to order material necessary for normal business operations absent post-petition funding. The Debtor anticipates that it might be insolvent as early as November 1, 2017 absent additional funding.

3. Notice of this Motion was served electronically to all parties consenting to electronic service in this case; by email to Karen Dennis (counsel for the United States Trustee), Paul Nowak (counsel for Tennessee BIDCO), and Stephen Hughes (counsel for Centennial Bank); and by First Class United States Mail to the top twenty unsecured creditors.

4. The Debtor requests that this Court set this matter for an interim hearing on **October 26, 2017**, with the deadline to object to said motion being set for **October 25, 2017**, with any such objection to be served so as to be delivered to the undersigned counsel before 4:00 p.m. central time on that date.

### **JURISDICTION AND VENUE**

5. On September 29, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as a debtor-in-possession pursuant to §§ 1107 and 1108.

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Debtor’s chapter 11 case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is 11 U.S.C. §§ 105, 361, 362, 363(c), 364(c)(1) and (2), 364(d) and 364(e), in addition to Bankruptcy Rules 2002, 4001, and 9014.

### **BACKGROUND**

7. What is now known as Replogle Enterprises was founded in Martin, Tennessee in the 1950’s as a logging and sawmill operation with just Nathan Replogle and two mules. Today, Replogle Enterprises employs 42 full-time employees at its modern facility in Henry, Tennessee. Replogle Enterprises sells many different wood products from its sawmill, including round and square fencing post, shipping pallet materials and mulch, among others. Additionally, Replogle Enterprises supplies Replogle Hardwood Flooring Company, LLC with raw material from which they make hardwood flooring. Collectively, Replogle Enterprises and Replogle Hardwood Flooring Company, LLC are the largest employer in the town of Henry, Tennessee.

8. Over the past few years, the Debtor has suffered financially as a result of a fire that destroyed a portion of the Debtor’s operations and severely interrupted its business, and as a result of financing arrangements with lenders whose obligations have rendered the Debtor incapable of operating successfully.

9. These financial pressures, hastened and amplified by foreclosure proceedings

initiated by one of the Debtor's secured creditors, Tennessee BIDCO, forced the Debtor to file a voluntary petition for relief under chapter 11 of the Bankruptcy Code in an effort to formulate a plan on which it could save the business and the jobs associated with the business.

### **THE PROPOSED FINANCING**

10. Capstan II, LLC (the "Lender")<sup>2</sup> has agreed to the terms of a facility for the Debtor to obtain post-petition financing (the "Financing") in an aggregate principal amount not to exceed \$300,000.00 for Debtor's use during the Chapter 11 proceeding as set forth herein.<sup>3</sup> The Debtor may use such funds solely consistent with a budget that will be presented to the Court at or before the hearing, but which will be restricted to the following uses: fees owed to the United States Trustee; professional fees as approved by the Court; fees associated with the Financing; rent; wages; taxes; insurance premiums; purchase of materials needed in the operation of the Debtor's businesses; upkeep of equipment needed in the operation of the Debtor's businesses; and other expenses typical for the Debtor's business.

11. The Debtor has determined that the Financing is necessary for the Debtor to operate its business in chapter 11, and to preserve the jobs of those employed by the Debtor. Because the Debtor's existing cash on hand is insufficient to cover all ongoing, post-petition expenses, the Debtor has concluded that obtaining a firm commitment for post-petition financing at this time is necessary and in the best interest of the bankruptcy estate.

12. The Debtor has an immediate need to obtain the Financing to, among other things, continue operation of its business, to keep all assets insured, to make payroll and to satisfy other

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<sup>2</sup> The Debtor and its affiliated parties are also in discussions with the Lender about a possible sale of substantially all assets utilized in the businesses to the Lender or a related entity. Those discussions have not reached fruition.

<sup>3</sup> The funds would be used by both Replogle Enterprises and Replogle Hardwood, as reflected on their respective budgets.

working capital and operational needs. The access of the Debtor to sufficient working capital and liquidity through the use of borrowed money is vital to the preservation and maintenance of the going concern values of the Debtor and to a successful reorganization or sale of the Debtor's assets.

13. The Debtor is unable to obtain post-petition financing in the form of unsecured credit allowable as an administrative expense under §503(b)(1) of the Bankruptcy Code, unsecured credit allowable under §§364(a) and (b) of the Bankruptcy Code, or credit secured by liens on estate assets as contemplated by §363(c) of the Bankruptcy Code. Further, the Debtor has been unable to obtain financing secured only by currently unencumbered assets of the estate.

14. The Debtor has therefore determined, in the exercise of its sound business judgment, that the proposal for the Financing provided by the Lender is the most favorable under the circumstances and addresses the Debtor's working capital needs. The Debtor does not believe it could obtain proposals for post-petition financing on terms and conditions more favorable to the Debtor's estate than those offered by the Lender pursuant to the Financing terms set forth herein.

15. Before determining to enter into the Financing upon the terms set forth herein, the Debtor and the Lender engaged in good faith negotiations. The Lender is willing to make the Financing available to the Debtor upon the terms and conditions set forth in the term sheet attached hereto as Exhibit A, and incorporated herein by reference. The pertinent provisions of the Financing are as follows:

- A. Borrower: Replogle Enterprises, G.P., Replogle Hardwood Flooring Company, LLC and Nathan and Betty Replogle
- B. Lender: Capstan II, LLC
- C. Credit Facility: A \$300,000 term loan with a maturity of March 15, 2018
- D. Interest Rate: 8.25% per annum
- E. Fees: 4.5% origination fee and closing fee of \$12,500.00
- F. Security and Priority: Secured by a first priority priming lien on all of the

Debtors' assets (except the individuals' residence) and provided administrative superpriority in the cases, pursuant to 11 U.S.C. §364(d)

- G. Other Requirements: Debtors agree to engage Tortola Advisors (which is an entity related to the Lender) and pay a collateral monitoring fee of \$2500 per month until loan is paid (with the first 4 months (\$10,000) paid from loan proceeds)
- H. Events of Default: Events of default customary for loan transactions of a similar size and nature, including a) conversion to chapter 7 or dismissal of any chapter 11 case, b) stay relief granted to any lender holding collateral upon which Lender has a priming lien, c) an acceptable 363 sale motion (or plan of reorganization) has not been filed by January 15, 2018, d) Nathan Replogle no longer running the company for any reason. Upon the occurrence of any of these events of default, the loan will be due immediately without need for demand/notice.

16. While the terms of the Financing require that the Lender be granted a first priority lien on all assets of the Debtors, it is nonetheless in the best interest of the estate and its creditors. Two creditors, Tennessee BIDCO and Centennial Bank, claim a security interest in substantially all real estate used in the operation of the businesses, all inventory and raw materials, and all equipment owned by the Debtors.<sup>4</sup> To the extent those security interests are perfected, those creditors are undersecured. Absent approval of the Financing, the Debtor's operations will be forced to cease immediately and all assets of the Debtor will be worth a fraction of its value with the Debtor's continued operations. However, with the proceeds from the Financing, the Debtor will be able to order more material with which it can produce inventory to meet orders that it currently cannot meet. Therefore, the Financing will increase the Debtor's inventory, its accounts receivable, and its cash assets, creating value to the estate that is equal to or greater than the amount to be repaid under the terms of the Financing. In this way, any secured interests of creditors are adequately protected.

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<sup>4</sup> The Debtor believes that creditors' financing statements may be flawed; accordingly, it is unclear to the Debtor in what collateral (if any) these two creditors' security interests are perfected, and in what priority. Upon information and belief, both Tennessee BIDCO and Centennial Bank claim a first priority security interest in certain equipment.

### **RELIEF REQUESTED**

17. This Court's immediate approval of the Financing and Debtor's use of cash collateral is essential to the ongoing operation of the Debtor's business and to the success of the Debtor's chapter 11 case. The Debtor's continuing viability and its ability to reorganize hinge on the Financing and the related actions requested herein. If this Financing is not approved, the Debtor will be forced to cease its operations, convert this case to chapter 7, and the secured lenders' collateral will be worth a fraction of what it is worth with the Debtor continuing to operate as a going concern.

#### **A. Approval of Financing:**

18. If a Debtor is unable to obtain unsecured credit allowable as an administrative expense under §503(b)(1) of the Bankruptcy Code, then the Court, after notice and a hearing, may authorize Debtor to obtain credit or incur debt:

- (i) with priority over any and all administrative expenses of the kind specified in §§503(b) or 507(b) of this title;
- (ii) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (iii) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. §364(c).

19. The Debtor has been unable to procure the required funds in the form of unsecured credit or unsecured debt with administrative priority. Accordingly, the Debtor negotiated with the Lender and reached an agreement on the Financing. The terms and provisions of the Financing

are fair and reasonable under the circumstances and reflect the most favorable terms upon which the Debtor could obtain post-petition financing.

20. Further, the Court, after a notice and a hearing, may authorize the Debtor to obtain credit or incur debt that primes the security interest of other creditors if:

- (i) the Debtor is unable obtain such credit otherwise; and
- (ii) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. §364(d)(1).

21. The Debtor has been unable to procure the required funds by pledging only unsecured assets. Accordingly, the Debtor negotiated with the Lender and reached an agreement on the Financing. Because the Financing will produce substantial inventory, accounts receivable, and cash profits that will equal or exceed the amount of the indebtedness, all secured lenders' interests will be adequately protected.

22. The terms and conditions of the Financing are fair and reasonable under the circumstances of this case and were negotiated by the parties in good faith. Accordingly, the Lender should be accorded the benefits of §364(e) of the Bankruptcy Code in respect of the Financing.

23. If the Financing is rejected, then the Debtor's ability to maintain its ongoing business activities will be compromised. On the other hand, if the Financing is approved, the Debtor will be able to reorganize, maintain the continuity of its operations, and preserve, enhance, and maximize the value of its business assets for the benefit of the Debtor's estate and creditors.

**B: Approval Should Be Granted:**



24. Rule 4001(c) of the Federal Rules of Bankruptcy Procedure provides that a final hearing (the “Final Hearing”) on a motion to obtain credit pursuant to §364 may not be commenced earlier than fourteen (14) days after service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to the Debtor’s estate.

25. Pursuant to Rule 4001(c), the Debtor requests that the Court enter an order setting an expedited hearing on the Motion on **October 26, 2017**, and grant the relief requested in this Motion in order to (a) maintain the estate’s ongoing operations and (b) avoid the immediate and irreparable harm and prejudice to the estate and all parties in interest that would otherwise ensue. Debtor further requests that the Court require all objections to the Motion, if any, be due in writing on or before **October 25, 2017** at 4:00 p.m.

26. The Debtor requests that a final hearing be held on **November 9, 2017**.

27. The Lender consents to the relief requested in this Motion.

**WHEREFORE**, the Debtor respectfully requests that the Court set a preliminary hearing for the Motion on October 26, 2017, grant the Financing sought in this Motion, and grant such other and further relief as this Court deems just and appropriate.

DATED: October 19, 2017

Respectfully submitted,

THOMPSON BURTON PLLC

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Counsel to Debtor

**Certificate of Service**

The undersigned hereby certifies that a copy of the preceding pleading was electronically filed and served via the Court's ECF system this 19th day of October, 2017, was served by email on Karen Dennis ([Karen.P.Dennis@usdoj.gov](mailto:Karen.P.Dennis@usdoj.gov)), Paul Nowak ([pnowak@yosrob.com](mailto:pnowak@yosrob.com)), and Stephen Hughes ([shughes@kbhblaw.com](mailto:shughes@kbhblaw.com)) on October 19, 2017, and was served via United States Mail on the parties on the service list attached hereto on October 19th, 2017. Further, counsel for the Debtor telephoned Ms. Dennis, Mr. Nowak and Mr. Hughes to alert them to the filing of this Motion.

/s/ Phillip G. Young, Jr.  
Phillip G. Young, Jr.