

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

In re HAHN HOTELS OF SULPHUR SPRINGS, LLC, <i>et al.</i>¹ <p style="text-align: center;">Debtors.</p>	§ § § § § § § § §	Chapter 11 Case No. 17-40947 Jointly Administered
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**DEBTORS’ MOTION FOR AUTHORIZATION TO USE CASH COLLATERAL
FROM THE SALE OF TALL PINES CENTER**

A HEARING WILL BE CONDUCTED ON THIS MATTER ON SEPTEMBER 28, 2017 AT 10:00 A.M. (PCT) IN THE UNITED STATES BANKRUPTCY COURTROOM LOCATED AT 660 NORTH CENTRAL EXPRESSWAY, SUITE 300B, PLANO, TEXAS 75074.

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

Hahn Hotels of Sulphur Springs, LLC, Hahn Investments, LLC, Hahn Hotels, LLC, Sleep Inn Property, LLC, SI of Longview, LLC, and Copeland’s of Longview, LLC, each a Texas limited

¹ The Debtors in these chapter 11 cases are, including the last four digits of their respective EIN number, as follows: Hahn Hotels of Sulphur Springs, LLC (2980), Hahn Investments, LLC (0448); Hahn Hotels, LLC (5692), Sleep Inn Property, LLC (6525), SI of Longview, LLC (2196), and Copeland’s of Longview, LLC (6181). The shared mailing address for all Debtors is: 525 Gilmer St., PO Box 113, Sulphur Springs, Texas 75482.

liability company (collectively, the “**Debtors**”), file this *Motion for Authorization to Use Cash Collateral from the Sale of Tall Pines Center* (the “**Motion**”), and respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334(b). This Court can hear and determine this matter in accordance with 28 U.S.C. § 157 and the standing order of reference of bankruptcy cases and proceedings in this District. This matter is a core proceeding, and venue for this Motion is proper in this district under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

A. General Background

2. On May 1, 2017 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief in this Court under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

3. Each of the Debtors remains in possession of its property and is operating its business as debtor-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed and no official committee of creditors or equity interest holders has been established in these chapter 11 cases.

4. A detailed description of the Debtors’ businesses, capital structure, and the events leading to these chapter 11 cases is fully set forth in the *Declaration of Dante E. Hahn in Support of First Day Motions and Applications*, dated May 1, 2017 [Docket No. 7], which is incorporated herein by reference.

B. Tall Pines Center

5. Debtor Hahn Investments, LLC (“**Hahn Investments**”) owns and maintains several commercial and residential properties for rental. One such property is the Tall Pines Center (“**Tall Pines**”), an 8-unit commercial property located at 100 Tall Pines Avenue, Longview, Texas 75605.

6. In early 2017, prior to its bankruptcy filing, Hahn Investments entered into a contract with Mockingbird Sulphur Springs Properties, LLC for the sale of Tall Pines to Mockingbird (the “**Tall Pines Contract**”).

C. Tall Pines Contract Assumption Motion

7. Concurrently with this Motion, the Debtors have filed a motion (the “**Assumption Motion**”) requesting an order authorizing but not directing Hahn Investments to assume the Tall Pines Contract and sell Tall Pines in accordance with the terms of the Tall Pines Contract, conditioned on the Debtors receiving authority to use certain of the sale proceeds, all as set out more fully in the Assumption Motion.

D. Proceeds from Sale of Tall Pines

8. When Hahn Investments purchased Tall Pines in 2014, the purchase was financed through a loan from Texas National Bank, who then became and is currently the first-lien noteholder on Tall Pines. Approximately \$1.2 million is currently outstanding under that note (the “**TNB Note**”). While it did not loan funds to Hahn Investments with respect to Tall Pines specifically, Texas Bank and Trust holds a second lien on Tall Pines, which was pledged in 2016 as additional collateral for Hahn Investment loan obligations related to the City Center property (defined and discussed more fully below). Texas Bank and Trust is also the first-lien holder on the City Center.

9. Without admitting that any party has a valid claim against the Debtors or that any party has a valid and perfected lien on any assets of the Debtors, the Debtors represent that it is currently believed that any proceeds of the sale of Tall Pines (the “**Tall Pines Proceeds**”) would be the cash collateral of Texas National Bank or Texas Bank and Trust, respectively. Those parties’ contact information is provided on **Exhibit A** to the Motion. After payment of the TNB Note, the Debtors anticipate that there will be over \$600,000 in Tall Pines Proceeds remaining.

10. While Hahn Investments does not currently have control over the cash collateral that is the subject of this Motion, once the sale proceeds from the Tall Pines sale are received, they will be initially placed in Hahn Investments’ debtor-in-possession account at Guaranty Bank & Trust, 200 W. Hawkins Parkway, Longview, Texas 75605.

E. City Center Property

11. Hahn Investments’ most recent construction project is a mixed-use development (the “**City Center**”), located in Longview, Texas. Once completed, the three-story development will include 12 retail spaces on the first floor and 50 apartment residences on the upper floors. While Hahn Investments started construction on the City Center in 2013, the original contractor, Leinart Construction, substantially underestimated the number of man-hours and materials that they would need to complete the project. This led to significant delays and additional costs. Hahn Investments hired a replacement contractor, B. L. Duszik Construction Co., to finish the project, but the delays and additional costs resulted in Hahn Investments not having sufficient funds to finish the project.

12. Further, Leinart Construction and several of its subcontractors (and subsequently B. L. Duszik Construction Co. and several of its contractors) filed mechanics and materialman’s liens against the City Center property. While the Debtors entered into prepetition settlement

negotiations with these lienholders with the goal of removing those encumbrances from the City Center property, they do not currently have the cash necessary to fund the settlement.

13. The Debtors are obtaining proposals on the cost of completing construction on the City Center. Currently, 24 of the 50 apartment residences are complete, and most of those apartments have been leased to tenants. However, none of the 12 retail spaces have been completed. According to the most recent appraisal of the City Center, the property will be worth approximately \$5.16 million when complete and \$6.37 million when stabilized. The amount outstanding on the Texas Bank and Trust note relating to the City Center is approximately \$3.8 million.

RELIEF REQUESTED

14. The Debtors seek the entry of an order authorizing the Debtors to use any proceeds remaining from the sale of Tall Pines pursuant to the Assumption Motion, after payment of the TNB Note, to complete portions of the City Center property, address certain lien issues, and support the Debtors' businesses in accordance with the budget attached as **Exhibit B** to this Motion.²

BASIS FOR RELIEF

A. Bankruptcy Code § 363 Provides the Means for a Debtor to Use Cash Collateral.

15. Section 363 of the Bankruptcy Code authorizes a debtor to use cash collateral if (i) those having an interest in such cash collateral consent or (ii) the Court authorizes use of cash collateral. 11 U.S.C §363(c)(2). Even with consent, Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") functionally requires there be an order approving the parties'

²The Debtors anticipate submitting a more-detailed budget to the Court once they are able to receive and review additional City Center construction budget and lien information.

agreement to use of cash collateral. Accordingly, the Debtors request authority to use cash collateral.

16. While use of cash collateral may be prohibited or conditioned, upon request by a party having an interest in such cash collateral, as is necessary to adequately protect such party's interest, in such case, the Court may authorize use of cash collateral upon a showing that those with an interest in the cash collateral are adequately protected. 11 U.S.C. §§363(c)(2)(B)-(c)(3) and 363(e).

B. Bankruptcy Code § 363(e) Requires Lenders to Be Adequately Protected.

17. Section 363(e) of the Bankruptcy Code provides that, “on request of an entity that has an interest in property used . . . or proposed to be used . . . by the [debtor-in-possession], the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). The determination of adequate protection is fact-specific and made on a “case by case basis.” *In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994).; *see also In re Mathis*, 64 B.R. 279, 284 (N.D. Tex. 1986) (same). The focus of the adequate protection requirement is to preserve the secured creditor's position at the time of the bankruptcy filing and protect the secured creditor from diminution in the value of its collateral during the reorganization process. *Id.*; *In re Continental Airlines, Inc.*, 154 B.R. 176, 180-81 (Bankr. D. Del. 1993); *see also In re WorldCom, Inc.*, 304 B.R. 611, 618-19 (Bankr. S.D.N.Y. 2004) (“The legislative history for section 361 of the Bankruptcy Code, which sets forth how adequate protection may be provided under section 363, makes clear that the purpose is to ensure that the secured creditor receives the value for which the creditor bargained for prior to the debtor's bankruptcy.”). “However, neither the legislative history nor the Bankruptcy Code requires the Court to protect a creditor beyond what was bargained for by the parties.” *WorldCom, Inc.*, 304 B.R. at 619; *see also Swedeland*, 16 F.3d at 564.

C. Use of the Tall Pines Proceeds in Accordance with the Proposed Budget is Appropriate under §§ 363 and 105 of the Bankruptcy Code.

18. As is set forth herein, the Debtors respectfully submit that they have satisfied the requirements under § 363 for the use of cash collateral. The Debtors' main issue leading to and during these chapter 11 cases with respect to their financial obligations and business operations has been the lack of liquidity. The above-described, delays, additional costs, and other issues relating to the construction of the City Center have left the Debtors without the funds necessary to complete that project or to meet their collective loan obligations. The sale of Tall Pines pursuant to the Assumption Motion and the ability to use the proceeds as described herein would allow the Debtors to take significant steps towards addressing these concerns, providing a means stabilizing and increasing monthly cash flow, and forming a path towards reorganization.

19. The Debtors recognize that Texas Bank and Trust, as the second-lien holder on Tall Pines, is entitled pursuant to §§ 361 and 363(e) of the Bankruptcy Code to adequate protection of its interests in the Tall Pines Proceeds to the extent there is a diminution in value of such collateral from the Debtors' use of the collateral. However, the Debtors' proposed use for the Tall Pines Proceeds will increase the value of the City Center and, through rental of additional completed spaces, increase the rental income of that property in which Texas Bank and Trust claims an interest. Similarly, addressing certain lien issues on the property and providing working capital to the Debtors for use either at the City Center or with regard to businesses physically neighboring the City Center protects and enhances Texas Bank and Trust's secured position, instead of weakening it. For this reason, the Debtors believe that the proposed use of the Tall Pines Proceeds is appropriate, that Texas Bank and Trust's interests are adequately protected, and that the Debtors' creditors and estates will benefit from the relief requested herein.

20. Further, if and to the extent the adequate protection of Texas Bank and Trust’s interests with regard to the Tall Pines Proceeds proves insufficient, the Texas Bank and Trust will have, among other remedies, if any, determined by the Court, an allowed claim under § 507(b) of the Bankruptcy Code in the amount of any insufficiency. Finally, because use of the Tall Pines Proceeds in the manner requested herein shall ultimately benefit Texas Bank and Trust, the Debtors’ other secured lenders and creditors, and the Debtors in their reorganization pursuits, the relief requested in this Motion is also appropriate under Bankruptcy Code § 105(a), which vests in the Court the power to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

WHEREFORE, the Debtors respectfully request entry of an order authorizing the Debtors to use Tall Pines Proceeds in accordance with the budget attached as **Exhibit B** to this Motion, as may be amended or supplemented, and granting such other and further relief as is just and proper.

Respectfully submitted: September 1, 2017

By: /s/ Judith W. Ross

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**COUNSEL FOR DEBTORS AND
DEBTORS IN POSSESSION**

CERTIFICATE OF SERVICE

I certify that on September 1, 2017, a copy of the foregoing document, as well as the accompanying proposed order, was served electronically on the Electronic Case Filing System for the United States Bankruptcy Court for the Eastern District of Texas and by first class mail on the non-debtor/debtor-professional parties listed on the most recent Limited Master Service List filed in these cases [Docket No. 196], including the parties listed on **Exhibit A**.

/s/ Jessica Lewis

Jessica Lewis

EXHIBIT A

Creditors Asserting Interest in Collateral

- 1. Texas National Bank**
612 E. Hawkins Parkway
Longview, TX 75608
Wells Fargo Bank, NA
NW 6441, PO Box 1450
Minneapolis, MN 55485

Counsel for Texas National Bank:
c/o Michael McNally and Glen Patrick
McNally & Patrick, LLP
100 E. Ferguson, Suite 400
Tyler, TX 75702
michaeljmcnally@suddenlinkmail.com
glenepatrick@suddenlinkmail.com

- 2. Texas Bank and Trust Company**
300 East Whaley
Longview, TX 75601

Counsel for Texas Bank and Trust Company
c/o John F. Bufe
Potter Minton, a Professional Corp.
500 Plaza Tower
110 N. College
Tyler, TX 75702
johnbufe@potterminton.com

The Debtors' inclusion of parties on this exhibit is solely for the purpose of notice and is not an admission that any party has a valid claim against the Debtors or that any party properly belongs in the designated category or has a claim or legal relationship to the Debtors of the nature described herein.

EXHIBIT B

Propose Budget for Use of Tall Pines Proceeds¹

TNB Note (approximate balance):	\$ 1,200,000
City Center Construction:	\$ 375,000
City Center Lien Removal/Working Capital:	\$ 275,000

¹ The Debtors anticipate submitting a more-detailed budget to the Court once they are able to receive and review additional City Center construction budget and lien information.