

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Chapter 11

CARDINAL HOMES, INC.,

Case No. 19-36275-KRH

Debtor.¹

**MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTOR
TO HONOR AND ADMINISTER PRE-PETITION CUSTOMER DEPOSITS**

The above captioned debtor and debtor in possession (the “Debtor”), hereby moves the Court (the “Motion”) for entry of an order, the proposed form of which is attached hereto as **Exhibit A** (the “Order”), pursuant to sections 105(a), 363(b)(1), 503, 507, 1107, and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”); and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) authorizing the Debtor to honor and administer pre-petition Customer Deposits (as defined herein) and (ii) granting related relief. In support of the Motion, the Debtor relies on the *Declaration of Bret A. Berneche, President and Chief Executive Officer of Cardinal Homes, Inc., In Support of Chapter 11 Petition and First*

¹ The Debtor in this Chapter 11 Case and the last four digits of its taxpayer identification number are as follows: Cardinal Homes, Inc. (9112). The Debtor’s headquarters are located at 525 Barnesville Highway, Wylliesburg, VA 23976.

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Debtor in Possession*

Day Motions (the “First Day Declaration”)² concurrently filed herewith. In further support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are sections 105(a), 363(b)(1), 503, 507, 1107, and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

BACKGROUND

3. On November 20, 2019, Alouette Holdings, Inc., the Debtor’s parent company, filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, commencing Case No. 19-36126-KRH.

4. On December 2, 2019 (the “Petition Date”), the Debtor commenced this case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. The Debtor has continued in possession of its property and has continued to operate and manage its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request has been made for the appointment of a trustee or an examiner in this case, and no official committee has yet been appointed by the Office of the United States Trustee.

² Capitalized terms used but not defined herein shall have the meanings ascribed in the First Day Declaration.

7. In the ordinary course of business, the Debtor manufactures and sells certain custom-made modular homes and requires its customers (residential and commercial builders) to place deposits (the “Customer Deposits”) on such orders with the Debtor prior to the Debtor commencing construction. The Debtor retains the Customer Deposits until the customer takes delivery of the home, at which point the Debtor applies the Customer Deposits to the purchase price of the job and recognizes the revenue associated with the sale. As of the Petition Date, the Debtor estimates that it has received approximately \$1,303,000 in Customer Deposits from thirty-nine (39) customers.

8. If the Debtor’s customers fail to receive assurance that their Customer Deposits will be honored and applied, there is a significant risk they may seek to cancel their orders, seek a return of their Customer Deposits, or purchase their homes from another manufacturer. Furthermore, potential customers of custom-made homes will be hesitant to purchase a custom-made home from a chapter 11 debtor that does not provide assurance of its ability to maintain and apply such deposits in the ordinary course. Accordingly, to maintain the Debtor’s revenue stream, the Debtor requests authority to maintain, apply, return, and honor pre-petition Customer Deposits in the ordinary course of business.

RELIEF REQUESTED

9. The Debtor seeks an order (i) authorizing the Debtor to honor and administer pre-petition Customer Deposits in the ordinary course of business consistent with past practices, as necessary and appropriate in the Debtor’s business judgment and (ii) granting related relief.

BASIS FOR RELIEF

10. Under section 363(b)(1) of the Bankruptcy Code, “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of

the estate.” 11 U.S.C. § 363(b)(1). In addition, under section 105(a) of the Bankruptcy Code, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

11. The ability of the Debtor to honor and administer pre-petition Customer Deposits is critical to maintaining the Debtor’s valuable customer relationships and goodwill, which will inure to the benefit of all of the Debtor’s stakeholders.

12. Because honoring Customer Deposits is necessary and critical to the Debtor’s ability to continue its manufacturing operations, and because honoring Customer Deposits will allow the Debtor to avoid any disruption or loss of business arising from uncertainty as to treatment of the Customer Deposits, granting the Debtor authority to honor and administer the Customer Deposits is an appropriate exercise of the Court’s authority under sections 363(b)(1) and 105(a) of the Bankruptcy Code.

IMMEDIATE RELIEF IS NECESSARY

13. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. As set forth throughout this Motion, any delay in providing customers assurance that the Debtor will honor and administer the Customer Deposits would substantially diminish or impair the Debtor’s efforts in this Case to preserve and maximize the value of its estate.

14. For this reason and those set forth above, the Debtor respectfully submits that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtor and its estate.

WAIVER OF ANY APPLICABLE STAY

15. The Debtor also requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtor seeks in this Motion is necessary for the Debtor to operate its business without interruption and to preserve value for its estate. Accordingly, the Debtor respectfully requests that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

NOTICE

16. Notice of this Motion will be given to: (i) the Office of the United States Trustee; (ii) the Office of the United States Attorney for the Eastern District of Virginia, (iii) Internal Revenue Service, (iv) counsel for the DIP Lender; (v) the Debtor’s twenty (20) largest unsecured creditors; (vi) the Debtor’s pre-petition secured lenders and its counsel, if known; (vii) all parties that have filed a financing statement asserting a lien in any of the Debtor’s assets; and (viii) any party that has filed a request for notice with the Court. The Debtor submits that, under the circumstances, no other or further notice of the Motion is required.

NO PRIOR REQUEST

17. No previous motion for the relief sought herein has been made to this or any other court.

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtor respectfully requests that this Court enter an order, substantially in the form attached

hereto as **Exhibit A**, granting the relief requested in the Motion and such other and further relief as is just and proper.

Dated: December 2, 2019

CARDINAL HOMES, INC.

/s/ Michael E. Hastings

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re: Chapter 11
CARDINAL HOMES, INC., Case No. 19-36275-KRH
Debtor.¹

**ORDER AUTHORIZING THE DEBTOR TO HONOR AND
ADMINISTER PRE-PETITION CUSTOMER DEPOSITS**

Upon the Motion (the “Motion”)² of the above-captioned debtor and debtor-in-possession (the “Debtor”) for, among other things, entry of an order pursuant to sections 105(a), 363(b)(1), 503, 507, 1107, and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”); and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) authorizing the Debtor to honor and administer pre-petition Customer Deposits (as defined herein) and (ii) granting related relief; and notice of the Motion having been given to: (i) the Office of the United States Trustee; (ii) the Office of the

¹ The Debtor in this Chapter 11 Case and the last four digits of its taxpayer identification number are as follows: Cardinal Homes, Inc. (9112). The Debtor’s headquarters are located at 525 Barnesville Highway, Wylliesburg, VA 23976.

² Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion.

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United States Attorney for the Eastern District of Virginia, (iii) Internal Revenue Service, (iv) counsel for the DIP Lender; (v) the Debtor's twenty (20) largest unsecured creditors; (vi) the Debtor's pre-petition secured lenders and its counsel, if known; (vii) all parties that have filed a financing statement asserting a lien in any of the Debtor's assets; and (viii) any party that has filed a request for notice with the Court; and the Court having conducted a hearing on December 3, 2019, to consider the relief requested in the Motion (the "First Day Hearing"); and it appearing that granting the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor, and is otherwise fair and reasonable and in the best interest of the Debtor, its estate and its creditors, and is essential for the preservation of the value of the Debtor's assets; and all objections, if any, to the entry of this Order having been withdrawn, resolved or overruled by the Court; and upon the entire record of this case, including any evidence presented or statements of counsel at the First Day Hearing; and after due deliberation thereon; and good and sufficient cause appearing therefor;

It is accordingly hereby **ORDERED, ADJUDGED, AND DECREED** that:

1. The Motion is **GRANTED**, stated herein, on an interim basis pending a final hearing thereon, which is hereby scheduled for December __, 2019 at _:00 p.m. in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, 701 E. Broad Street, Courtroom 5000, Richmond, Virginia 23219 (the "Final Hearing"), with any objections to be filed and served so as to be received on or before December __, 2019. If no objections are filed and served in accordance with this Order, no Final Hearing will be held and the Motion is approved by this Order becoming final, and no further order approving the Motion will be required.

2. The Debtor is authorized, but not directed, pursuant to sections 105(a) and 363 of the Bankruptcy Code to honor and administer pre-petition Customer Deposits in the ordinary

course of business and consistent with past practice, as necessary and appropriate in the Debtor's business judgment.

3. Within two (2) business days following entry of this Order, the Debtor shall serve, by United States mail, first-class postage prepaid, a copy of this Order on: (i) the Office of the United States Trustee; (ii) the Office of the United States Attorney for the Eastern District of Virginia, (iii) Internal Revenue Service, (iv) counsel for the DIP Lender; (v) the Debtor's twenty (20) largest unsecured creditors; (vi) all parties that have filed a financing statement asserting a lien in any of the Debtor's assets; and (viii) any party that has filed a request for notice with the Court.

4. The requirement under Local Rule 9013-1(G) to file a memorandum of law in connection with the Motion is waived.

5. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

6. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

7. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

8. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____

UNITED STATES BANKRUPTCY JUDGE

Entered on Docket _____

WE ASK FOR THIS:

/s/ Michael E. Hastings

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Brandy M. Rapp (Virginia Bar No. 71385)

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Proposed Counsel for the Debtors and Debtors in Possession

Local Rule 9022-1(C) Certification

The foregoing Order was endorsed by and/or served upon all necessary parties pursuant to Local Rule 9022-1(C).

/s/ Michael E. Hastings

Michael E. Hastings