

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No.: 1:04-CV-00417-RAE

TPI DESERT CARMEL, LLC,
a Michigan limited liability company,

Debtor.

**ORDER APPROVING PROCEDURES FOR SALE OF ASSETS
FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES
PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE**

Upon the Motion For Order Approving Procedures For Sale Of Assets Free And Clear Of Liens, Claims And Encumbrances Pursuant To Section 363 Of The Bankruptcy Code (“Motion”) filed by Bruce Kramer in his capacity as Court-appointed receiver over the estate of Trade Partners Gateway Center, LLC, nka TPI Desert Carmel, LLC, a Michigan limited liability company (“Debtor” and “Debtor-in-Possession”) for entry of an order under Sections 105 and 363 of the Bankruptcy Code having come on for hearing on March 10, 2005, Michael J. Quilling, Esq., of the law firm of Quilling, Selander, Cummiskey & Lownds, P.C. appeared on behalf of Debtor. Other appearances are reflected in the Court’s record.¹

By way of the Motion, Debtor sought the approval of this Court of the procedure to be used to sell certain assets free and clear of all liens, claims and interests. Specifically, the Motion seeks to establish the procedures by which such sale shall be documented and brought before this Court

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in Debtor’s Motion For Order Approving Procedures For Sale Of Assets Free And Clear Of Liens, Claims And Interests Pursuant To Section 363 Of The Bankruptcy Code

for approval and the terms of how this will be completed.

The Court read and considered the Motion and the supporting points and authorities, the Notice of Hearing and all of the papers filed in support of the Motion, as well as the objection filed by Burt Hoehne (the "Objection"), the arguments of counsel and all testimonial and documentary evidence presented at or prior to the hearing as well as all matters of which the Court may take judicial notice in the record of Debtor's Chapter 11 case. Based upon the foregoing, the Court makes the following findings conditioned on the Court's findings related to the hearing scheduled for April 12, 2005 as provided in paragraph 16 below:

A. This Court has jurisdiction over this matter and over the property of the Debtor and its bankruptcy estate pursuant to 28 U.S.C. §§ 157(a) and 1334(b).

B. This proceeding is a core proceeding pursuant to Sections 157(b)(2)(A), (M), (N) and (O) of the Bankruptcy Code.

C. The Debtor has articulated good and sufficient notice of the relief sought in the Motion.

D. Notice of the Motion and the hearing thereon was proper, adequate and sufficient under the circumstances and complied with all applicable statutes and rules and no further notice is required.

E. The Debtor has articulated good and sufficient reasons for (i) authorizing and approving the Debtor to seek the orderly sale of the Property; (ii) that approving such sale pursuant to Sections 105 and 363(f) of the Bankruptcy Code is the most expeditious and appropriate method of expediting the recovery to creditors in this case; (iii) that the Bid Procedures contained in the Motion are fair and reasonable under the circumstances; (iv) authorizing and approving the Debtor to conduct the Auction according to the Bid Procedures outlined in the Motion; and (v) scheduling

the Auction and Sale Hearing.

F. The proposed Bid Procedures are reasonable and appropriate and represent the best method for attracting and maintaining the interest of the Purchaser, while at the same time preserving the opportunity to attract higher and better offers, in order to maximize the value of the Property for the benefit of the Debtor's estate.

G. Entry of this Order is therefore in the best interests of the Debtor, its estate, and its creditors.

Based upon the foregoing, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The Motion is granted in its entirety.
2. Notice of the Bid Procedures Hearing was adequate and in accordance with the Bankruptcy Rules and the prior orders of this Court.
3. The Minimum Overbid Protection of One Hundred Thousand Dollars (\$100,000) is approved with bids thereafter taken in increments of One Hundred Thousand Dollars (\$100,000).
4. To be qualified to participate in the Auction, each bidder shall do *all* of the following no later than 5:00 p.m. Central Time on the fifth (5) business day (the "Bid Deadline") in advance of the Sale Hearing:
 - i. demonstrate to Debtor's reasonable satisfaction its ability to perform its bid;
 - ii. deposit with Bruce Kramer by the Bid Deadline against any purchase price offered by such bidder an amount in immediately available funds equal to \$100,000 to be credited against the purchase price in the event such entity is the prevailing bidder (the "Deposit");
 - iii. each Deposit, other than that of the prevailing bidder at a completed Sales

Hearing shall be returned to the party making the Deposit within five (5) business days after the earliest of (i) refusal by the Debtor to proceed with, or denial by the Court of, the Debtor's motion for the Sales Orders; (ii) the acceptance by the Court of a Competing Bid; or (iii) the entry of the Sales Orders;

- iv. submit in writing a bid for the Property subject to the Sale Motion; for this purpose, Bianco Partners, LLC shall be deemed to have made its initial bid upon execution of the Agreement without further action on its part, in the amount of Six Million One Hundred Thirty Thousand Dollars (\$6,130,000) (the "Purchase Price") (as defined in the Agreement), and each other bidder, to qualify, must submit a bid which exceeds the Purchase Price by at least \$100,000 (the "Initial Overbid"). Each bid presented by a bidder other than Bianco Partners, LLC that complies with the immediately preceding clauses (i) through (iv) will be called a "Competitive Bid"; and each entity that complies with this provision is a "Qualified Bidder." Bianco Partners, LLC is deemed to be a Qualified Bidder.
5. The Debtor is authorized to conduct an Auction of the Property on April 13, 2005 at 9:30 A.M. (Eastern Time) at the courtroom of the Honorable Ellen S. Carmody, 110 N. Michigan St., NW, Grand Rapids, Michigan 49503.
6. The Auction shall be conducted in accordance with the terms and provisions set forth in the Bid Procedures.

7. The Debtor, at or before the Auction, may impose such other and additional terms and conditions as it determines to be in the best interests of the Debtor, its estate and creditors so long as such terms are not inconsistent with the terms of this Order and the Agreement.
8. Every person or entity who submits a Competing Bid for the Property shall comply with and be bound by the Bid Procedures.
9. All Competing Bids, including all initial bids and any subsequent written bids, shall remain open and irrevocable pursuant to the terms of the Bid Procedures.
10. The Debtor shall promptly notice Bianco Partners, LLC and the Unsecured Creditors Committee, if any, of any competing bid (each a "Competing Bid") received by the Debtor from any person or entity relating to the acquisition of the Property.
11. This Court shall retain exclusive jurisdiction over any dispute relating to the Auction or the sale of any of the Property.
12. The Auction may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Auction.
13. Notice of the Sale Motion, the Auction, and the Sale Hearing shall be good and sufficient, and any requirements for other or further notice are waived and dispensed with pursuant to Bankruptcy Rules 2002, 6004, and 9014, if creditors, equity holders and parties in interest receive a copy of this Order.
14. Objections to the entry of the Sale Order, if any, must (a) be in writing, (b) conform to the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of the United States Bankruptcy Court for the Western District of Michigan,

(c) set forth the name of objector, the nature of the objector's claims against or interests in the Debtor's estate or property, and the legal and factual basis for the objection, and (d) be filed with the Court and served on (i) counsel to the Debtor, (ii) counsel to Bianco Partners, LLC, Gregory E. Garman, Esq., Gordon & Silver, Ltd., 3960 Howard Hughes Parkway, 9th Floor, Las Vegas, Nevada 89109; (iii) counsel for the Creditors' Committee, if any; and (iv) the Office of the United States Trustee.

15. Notwithstanding anything herein to the contrary, nothing in this Order shall be construed as a ruling on whether the Debtor is authorized to sell the Property. The Court will carry the Objection and treat it as an objection to any motion of the Debtor to sell the Property.
16. The Court will hold a hearing on the Objection and any other objections to the Sale Motion on April 12, 2004 at 9:30 a.m. at the courtroom of the Honorable Ellen S. Carmody, 110 N. Michigan St., NW, Grand Rapids, Michigan 49503; interested parties may file briefs of ten (10) pages or less with the Court on or before March 30, 2005 to address the issues raised in the Objection, the Sale Motion, or any other objection to the Sale Motion; and Mr. Hoehne shall truthfully answer questions from Bianco Partners, LLC's counsel on matters related to the Property and issues raised in the Objection through testimony to be given under oath at the April 12, 2005 hearing.
17. The Debtor is hereby authorized and empowered to take such steps, expend such sums of money, and do such other things as may be necessary or desirable to implement and effect the terms and requirements consistent with this Order.

18. This Court shall issue such further orders as is necessary to effectuate this Order.

IT IS SO ORDERED.

Date: March 18, 2005

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge