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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In Re:
CHC DEVELOPMENT CO. INC.,

Bankruptcy No. 16-25558
Chapter 11

Debtor.

Judge William T. Thurman

**EXPEDITED MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING THE
DEBTOR TO USE CASH COLLATERAL AND/OR PROVIDE ADEQUATE
PROTECTION TO SECURED CREDITOR GVS HOLDINGS, LLC.**

The Debtor and Debtor in Possession, CHC Development Co., Inc. (the “Debtor”), hereby moves this Court for interim and final orders authorizing the Debtor to use cash collateral and/or provide adequate protection to secured creditor GVS Holdings, LLC. This Motion is not a request for reconsideration of a prior Motion for Continued Use of Cash Collateral, the present Motion is a new motion based on substantial changes in circumstances of the Debtor in regard to issues and findings by the Court resulting in denial of the prior Motion for Continued Use of Cash Collateral. In support of the present Motion, the Debtor hereby states the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion concerns the administration of the estate and, therefore, it is a core proceeding pursuant to 28

U.S.C. § 157(b)(2)(A).

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

3. By this Motion the Debtor seeks permission to use cash collateral pursuant to 11 U.S.C. §§ 361 and 363(c)(2) and/or provide adequate protection to GVS Holdings, LLC (“GVS”).

Statement of Compliance with Bankruptcy Rule 4001(b)

4. In compliance with Bankruptcy Rule 4001(b), the Debtor makes the following concise statement about the relief requested herein:

- a. Entity with Interest in Cash Collateral: GVS maintains an interest in the cash collateral to be authorized for use in this Motion, as evidenced by a UCC-1, Security Agreement, and other security documents.
- b. Purpose: The Debtor will provide adequate protection to GVS from diminution of the collateral securing GVS’s interests by the UCC-1, Security Agreement, and other security documents. The Debtor rents the real property from affiliate debtor A. H. Coombs, LLC (“A. H. Coombs”) and Debtor generates significant monthly income, employs approximately sixty-nine (69) employees and has significant expenses in addition to rent to be paid to A.H. Coombs. The Debtor is a party to agreements with A. H. Coombs and GVS pursuant to a workout agreement. Debtor granted additional security to GVS as part of the Workout Agreement with GVS but did not receive any consideration from A. H. Coombs or GVS for such collateralization of security. A budget of anticipated income and expenses, including rents to be paid to A. H. Coombs

from Debtor after November 3, 2016, which is attached hereto as Exhibit "A"¹ and incorporated herein by reference; the Debtor represents the expenses contained therein are reasonable and necessary;

- c. Term: The Order requested in this Motion, if approved, shall be effective and extend for a period of ninety (90) days from November 3, 2016 or to the date of confirmation whichever is earlier.
- d. Adequate Protection: It is the Debtor's position the personal property on which GVS holds is not likely to decline in value during this case. However, as the viability of the operational company CHC is improved by interested parties and the economy continues to strengthen any potential risk of loss is minimized. As Debtor uses its assets to generate income and pays its rent in the amount of \$25,000.00, such rents will be paid to affiliate debtor A.H. Coombs and thereafter remitted in accordance with the requested cash collateral order and budget filed concurrently in case no. 16-25559. Debtor further will agree to grant GVS a postpetition lien, renewing monthly but not accumulating, on postpetition rents, inventory, accounts, general intangibles, and property acquired postpetition by the Debtor. Payments will be applied as set forth in the loan documents and other agreements between the Parties. If it is later determined by the Court GVS is undersecured, payments that have been received will be applied to principal.
- e. Budget: Any amounts unused in any line item of the Budget may be used by the Debtor

¹ All exhibits referenced herein have been filed with the original motion on file with the Court only and not sent as part of

for other line items. Any amounts unused in any week or month may be carried over and used by the Debtor in any subsequent time period.

- f. Bankruptcy Court Approval: The use of cash collateral as set forth herein is subject to Bankruptcy Court approval, after appropriate notice and a hearing.

FACTUAL AND PROCEDURAL HISTORY

5. Debtor's Account Regarding Its Financial Distress. The Debtor was incorporated in approximately 1976 to operate and do business as the Green Valley Spa Resort on the real property owned/held by A. H. Coombs, LLC. The Debtor expanded prior to the 2008-2009 recession and undertook secured loans to fund this expansion. The recession caused a decline in revenue due to reduced spending by the public of disposable income. This reduction of the Debtor's revenue created a financial "crunch" as the debt service on the secured loans was substantially more than revenues, due to high pre-recession costs of expansion. Although the market has strengthened in recent years debt service has continued to burden the recovery of the Debtor. The Debtor has survived by negotiating with its creditors, including GVS, reducing expenses, downsizing its operations and receiving capital infusions by personal loans from the Debtor's Principals and his family. The Debtor is seeking to restructure its operations, including management in order to maximize the value of the estate for all stakeholders. Without the use of the cash collateral, the Debtor would be unable to meet its ongoing business operation needs, provide payments to any creditors secured or unsecured and would be required to cease operations, layoff its entire workforce and turn over all property to GVS.
6. Assignment of Northwest loan to GVS and Workout Agreement. In September 2013, GVS

purchased from Northwest Savings Bank (“Northwest”) a Business Loan Agreement entered in October 2006 by affiliate debtor A. H. Coombs and had assigned to it the Loan Documents. GVS recorded a Notice of Assignment of Beneficial Interest in the Trust Deed and filed a new financing statement. On or about October 1, 2013, the Debtor and GVS entered into a Workout Agreement, a copy of which is attached as Exhibit “D” (the “Workout Agreement”). Pursuant to the Workout Agreement, the terms, conditions, and enforceability of the Loan Documents remain in full force and effect, but agreed the Debtor would grant additional collateral to GVS on behalf of affiliate debtor A. H. Coombs and that, the now joint and several obligees Debtor and A.H. Coombs, could repurchase the Note and satisfy the Loan Documents for \$5,500,000 plus accrued interest within three years of the date on which the Workout Agreement was entered into. The Workout Agreement allows for automatic extension for two additional years if the Debtor is not in default. The Debtor executed and delivered to GVS a UCC-1 and additional security documents. Upon default, the full amount due under the Loan Documents becomes immediately due and payable. The Debtor asserts the amounts owing under the Loan Documents are those under the Workout Agreement without a default, as Debtor believes GVS failed to adhere to the notice of default provisions or making statements via letters to the Debtor that certain acts once taken avoided default. GVS has indicated its position the Debtor defaulted on the Workout Agreement pre-petition, despite potential issues of GVS’s default by failing to either escrow property tax amounts paid or failing to pay those sums for property taxes paid to it by the Debtor. Importantly, the issue of whether or not the Debtor or GVS was in default is not before the Court as part of this cash collateral motion and will be addressed in a separate objection to GVS’s claim filed with the Court. The central issue surrounding the Workout Agreement is that by its terms if

the Debtor was not in default, the Debtor was entitled to continue the workout payments automatically for a period of two years.

7. Bankruptcy Filing. On June 25, 2016, (the “Petition Date”), Debtor commenced a bankruptcy case (the “Chapter 11 Case”) under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

8. Prior Cash Collateral Agreement. The Debtor and GVS filed a Stipulation and Motion for Temporary Authorization of Use of Cash Collateral (the “Cash Collateral Stipulation”), dkt. No. 27, on August 8, 2016, which was approved by order of the Court on August 24, 2016, dkt. No. 43. The Cash Collateral Stipulation allowed the Debtor to use cash collateral for a period of ninety (90) days from and relating back to the Petition Date with the term expiring on September 23, 2016. A Cash Collateral Stipulation of exactly the same terms was also entered simultaneously with affiliate debtor CHC. Both Cash Collateral Stipulations required the two debtors to (1) pay to GVS the amount of \$12,500.00 (for a total of \$25,000.00) on or before September 15, 2016; (2) provide certain financial documents to GVS for the periods from the Petition Date to the date of the Cash Collateral Stipulation and from January 1, 2016 through the Petition Date; (3) provide copies of their 2015 tax returns, (4) provide detailed weekly financial reports; and (5) seek to recover \$75,000.00 in preferential payments made to relatives of a principal of the Debtor. The Debtors each timely paid the \$12,500.00, twice (for a total of \$50,000.00) submitted 2015 tax returns and one weekly report, as well as contacted the parties paid the preferential payments to negotiate recovery of the preferential payments but failed to provide the additional historical information. Because of Debtors’ failure to timely comply with all of the provisions of the stipulation, GVS asserted in pleadings that it did not consent to the

Debtors' continued use of cash collateral, dkt. 75 at ¶4.

9. Prior Motion for Continued Use of Cash Collateral. On September 15, 2016 the Debtor filed a motion for continued use of cash collateral pursuant to the terms in the Cash Collateral Stipulation *sans* the weekly reporting requirement. A preliminary hearing on the motion was held on September 22, 2016 where the Court set an evidentiary hearing on the motion for October 6, 2016 and extended the stipulated order granting the Debtor the right to use cash collateral though that hearing. On October 6 and 7, 2016 the Court heard evidence related to the requested relief continuing the Cash Collateral Agreement *sans* the weekly reporting. After both parties rested, the Court scheduled closing arguments for October 20, 2016, and requested supplemental briefing by the parties, again continuing the stipulated order to the date for closing arguments. On October 20, 2016 the Debtor, GVS, the United States Trustee and interested parties Arrived Hospitality, LLC and Kirch & Todd Real Estate, LLC DBA Kirch & Todd Lending argued both for and against the Debtor's motion for continued use of cash collateral. The Debtor argued that although not all terms were satisfied with the stipulation the Debtor had made the required payments both on September 15, 2016 and on October 15, 2016 (the time period extended by the Court), provided most of the information requested and was taking steps to ensure future compliance with the reporting requirements via employment of professionals. GVS argued the Debtor's failure to comply with the terms of the stipulation did not entitle it to continued use of cash collateral and the lack of information and transparency did not adequately protect its interests. The United States Trustee expressed concern over the lack of timely reporting but focused comments on the issues of the Debtor's failure to pay its employee tax withholdings post-petition as well as concerns over increasing payables. After closing arguments the Court adjured and reconvened later in the day and

read its ruling to the parties from the bench. The Court found no evidence was presented of a written lease between the Debtor and affiliate debtor A. H. Coombs and only a loose agreement to pay to Debtor an amount equal to the amount required under outstanding loan documents. Additionally, the Court found the Debtor did not comply with the terms of the original stipulation in its entirety and although Debtor attempted to explain the failure it had no excuses. Therefore the Court determined the Debtor was not entitled to a continued use pursuant to the stipulation as the Debtor did not comply with the stipulation on its terms by failing to provide the required information timely to GVS. The Court also found the Debtor's failure to pay the employee tax withholdings post-petition troubling and a point of concern. The Court denied the both Debtors' motions for continued use of cash collateral pursuant to the terms of the stipulated order, effective November 3, 2016. The Court met with counsel for the parties the next day on October 21, 2016 via conference call to clarify the Court's effective date on the denial meant the Debtor was authorized to continue use of cash collateral under the extended order of the Court until November 3, 2016.

10. Debtor's Actions after Denial of Continued Use Motion on October 20, 2016. The Court's denial renders a near fatal blow to the Debtor and affiliate debtor CHC. However, as expressed in the evidentiary hearing and closing arguments, parties have rallied to the Debtor's cause. Arrived Hospitality, LLC and its principals have made substantial efforts to support the Debtor and affiliate debtor A.H. Coombs. A declaration of Lyndi Rose, one of the principals of Arrived Hospitality indicating the efforts on behalf of the Debtor is attached as Exhibit "E". With the help of Arrived Hospitality, the Debtor has contacted both the Internal Revenue Service and the Utah State Tax Commission is prepared to make payments in full of the outstanding post-petition withholding taxes

upon approval of the DIP lending request discussed hereafter. See Declaration of Lyndi Rose at ¶3. The affiliate debtor A. H. Coombs, LLC has entered into a settlement agreement with Alan H. Coombs, to resolve the \$75,000.00 in avoidable preferential transfers to relatives of the principal, Alan H. Coombs. Additionally, Arrived Hospitality has engaged accountants from Hinton & Burdick CPAs & Advisors (“Hinton & Burdick”) to make a complete accounting from the Petition Date through the date of filing of this motion (a requirement of such accounting was ordered in ¶3 of dkt. No. 43). See Declaration of Lyndi Rose at ¶5. Moreover, Hinton & Burdick has been working to rehabilitate all of the bookkeeping needs of the Debtor and affiliate debtor CHC. See Declaration of Lyndi Rose at ¶6. Arrived Hospitality and Hinton & Burdick have engaged a payroll company to issue all future payroll checks and to make all future employee income withholdings automatically without future error or deficiency on the part of CHC. See Declaration of Lyndi Rose at ¶7. The Debtor and affiliate debtor CHC have accepted the resignation of Elizabeth Nostrant, the controller for both Debtors, whose failure as the head of all bookkeeping and records for the Debtors was the primary cause of the failure by both debtors to meet the reporting requirements of the Cash Collateral Stipulation. The proposed debtor in possession (“DIP”) lender, Kirch & Todd Real Estate, LLC DBA Kirch & Todd Lending, has agreed to, and prepared an offer of unsecured super-priority DIP financing under section 364(c)(1) of the Bankruptcy Code to address any shortfalls in the operations and the Debtors’ need to pay administrative and professionals’ expenses. The Debtor will pay rents to affiliate debtor A. H. Coombs, the proposed \$25,000.00 adequate protection monthly payment as rents for the real property in which GVS asserts a security interest. A motion for such subordinated DIP financing has been filed concurrently with this Motion. Debtor has prepared and filed an amended Chapter 11 Plan and a Disclosure Statement for the

Plan will follow shortly. The Chapter 11 Plan is eminently confirmable. The amended Chapter 11 Plan reinstates all alleged defaults of the Debtor under the Workout Agreement under section 1124(2) of the Bankruptcy Code.

11. Use of Cash Collateral and/or Provision of Adequate Protection

12. The Debtor has filed the present motion as a new request for use of cash collateral and/or adequate protection payments to GVS rather than request a reconsideration of the prior motion for continued use of cash collateral, as the Court determined the Debtor was not entitled to a continued use due to noncompliance. The Debtor needs to use cash collateral and/or provide adequate protection to GVS in order to provide GVS protection against loss or diminution of value while Debtor continues to rent the property from A.H. Coombs to be operated as Green Valley Spa & Resort as both affiliate debtors pursue reorganization. Such adequate protection payments are essential to ensure GVS is not granted relief from the automatic stay whereby it would be able to execute its non-bankruptcy state rights, removing all property assets from the Debtor and all real property from affiliate debtor A.H. Coombs and ending all operations of both debtors. Debtor proposes to pay \$25,000.00 in rents per month to affiliate debtor A. H. Coombs which will then be paid to GVS for use of cash collateral given the obligation of the Debtor and affiliate debtor A. H. Coombs security interests arise from a single Workout Agreement, both debtors are jointly and severally liable upon. Moreover, Debtor shall additionally grant GVS a postpetition lien, renewing monthly, but not accumulating, on such postpetition rents, as well as a postpetition lien on inventory, accounts, general intangibles, and property acquired postpetition by the Debtor. Payments will be applied as set forth in the loan documents and other agreements between the Parties. If it is later determined by the Court GVS is undersecured, payments

that have been received will be applied to principal.

Request for Interim Relief

13. The Debtor is without adequate funds, absent the use of cash collateral after the effective date of November 3, 2016 of the Court's denial of the request for continued use of cash collateral under the prior stipulation between the parties to maintain operations after November 3, 2016 until a final hearing on this Motion can be held pursuant to Bankruptcy Rule 4001. Therefore, the Debtor requests emergency, interim authorization to use cash collateral on a budgeted basis as set forth in the Budget attached hereto as Exhibit "A," but only for those budgeted amounts, prior to any final hearing on the Motion. The Debtor requires the interim use of cash collateral to pay the proposed rent payment to A. H. Coombs of \$25,000.00, as well as other post petition obligations and to pay any necessary ongoing operating expenses, general and administrative expenses, and other essential costs and expenses. The Debtor's failure to timely pay such items would result in immediate and irreparable harm to the bankruptcy estate.

14. Because the Debtor's request for interim authorization seeks the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing on its Motion, its request complies with Bankruptcy Rules 4001(b)(2) and 6003.

Notice and Request for Hearing on Use of Cash Collateral

15. Pursuant to Bankruptcy Rule 4001, the Debtor will serve a copy of this Motion and the proposed interim order and final order upon the parties listed on the matrix maintained by the Clerk of the Court in this case, GVS and the U.S. Trustee. The Debtor shall also give notice of this requested emergency relief. Such notices shall be provided by or served via fax, electronic mail, U.S. Mail,

Federal Express or telephone.

16. The Debtor requests the Court conduct an emergency, interim hearing on this Motion as soon as possible and that the Court schedule a final hearing on the Motion at least fifteen (15) days from the filing of this Motion.

PRAYER

WHEREFORE, the Debtor respectfully requests that this Court enter an order approving the use of cash collateral as set forth in the proposed orders attached hereto as Exhibits "E" on an interim basis and grant to the Debtor such other and further relief as the Court deems just and proper.

Dated: October 26, 2016.

RED ROCK LEGAL SERVICES, P.L.L.C.

By: /s/Geoffrey L. Chesnut
Geoffrey L. Chesnut
Attorneys for the Debtor