

Joyce W. Lindauer
State Bar No. 21555700
Sarah M. Cox
California State Bar No. 245475
Jamie N. Kirk
State Bar No. 24076485
Jeffrey M. Veteto
State Bar No. 24098548
Joyce W. Lindauer Attorney, PLLC
12720 Hillcrest Road, Suite 625
Dallas, Texas 75230
Telephone: (972) 503-4033
Facsimile: (972) 503-4034
PROPOSED ATTORNEYS FOR DEBTOR

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION**

IN RE:

**GURKARN DIAMOND HOTEL
CORPORATION,**

Debtor.

§
§
§
§
§
§

**CASE NO. 16-70183-rbk
Chapter 11**

DEBTOR’S EMERGENCY MOTION FOR USE OF CASH COLLATERAL

TO THE HONORABLE UNITED STATES BANKRUPTCY COURT:

COMES NOW Gurkarn Diamond Hotel Corporation, the Chapter 11 Debtor in the above-styled and referenced bankruptcy case (the “Debtor”), and files this its *Debtor’s Emergency Motion for Use of Cash Collateral* pursuant to 11 U.S.C. § 363 of the Bankruptcy Code and in support of same would respectfully show the following:

1. On November 14, 2016, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is now operating its business and managing its property as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and no official committee has yet been appointed.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of the Chapter 11 case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Debtor requests the Court to enter an Interim Order for Use of Cash Collateral in the form attached hereto as **Exhibit “A.”**

4. Debtor has an immediate need to use the cash collateral of U.S. Bank NA and its servicer, CWCapital Asset Management LLC, the Debtor’s primary secured creditor (the “Secured Lender”) claiming a lien on, among other things, the Debtor’s room rents. The Debtor can adequately protect the interests of the Secured Lender as set forth in the proposed Interim Order for Use of Cash Collateral by providing the Secured Lender with post-petition liens and a priority claim in the Chapter 11 bankruptcy case. The cash collateral will be used to continue the Debtor’s ongoing operations. The Debtor owns and operates a Quality Suites hotel in Midland, Texas. The Budget attached to the proposed Order permits the payment of ongoing operating expenses of the Debtor in order to allow the Debtor to maintain its operations in Chapter 11. The Debtor intends to reorganize its affairs and needs to continue to operate in order to pay its ongoing expenses, generate additional income and to propose a plan of reorganization in this case.

5. This is an emergency matter since the Debtor has no outside sources of funding available to it and must rely on the use of cash collateral to continue its operations.

6. This motion is supported by the Motion for Setting and Request for Expedited Hearing filed contemporaneously herewith.

WHEREFORE, PREMISES CONSIDERED, Debtor requests that the Court enter the Interim Order for Use of Cash Collateral in the form attached hereto as **Exhibit “A.”** and for such other and further relief to which the Debtor may show itself justly entitled.

DATED: November 21, 2016.

Respectfully submitted,

/s/ Joyce W. Lindauer

Joyce W. Lindauer
State Bar No. 21555700
Sarah M. Cox
California State Bar No. 245475
Jamie N. Kirk
State Bar No. 24076485
Jeffrey M. Veteto
State Bar No. 24098548
Joyce W. Lindauer Attorney, PLLC
12720 Hillcrest Road, Suite 625
Dallas, Texas 75230
Telephone: (972) 503-4033
Facsimile: (972) 503-4034
PROPOSED ATTORNEYS FOR DEBTOR

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2016, a true and correct copy of the foregoing document was served via email by the Court's ECF filing system upon those parties receiving electronic notice in this case listed below.

Joyce W. Lindauer on behalf of Debtor Gurkarn Diamond Hotel Corporation
joyce@joycelindauer.com, dian@joycelindauer.com

John D. Penn on behalf of Creditor CWC Capital Asset Management LLC
jpenn@perkinscoie.com, docketdal@perkinscoie.com; john--penn-1853@ecf.pacerpro.com

John D. Penn on behalf of Creditor U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee for the registered holders
jpenn@perkinscoie.com, docketdal@perkinscoie.com; john--penn-1853@ecf.pacerpro.com

United States Trustee - MD12
USTPRegion07.SN.ECF@usdoj.gov

/s/ Joyce W. Lindauer

Joyce W. Lindauer

EXHIBIT “A”

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION**

IN RE:

**GURKARN DIAMOND HOTEL
CORPORATION,**

Debtor.

§
§
§
§
§
§

**CASE NO. 16-70183-rbk
Chapter 11**

**INTERIM ORDER FOR USE OF CASH COLLATERAL PURSUANT TO
SECTION 363 OF THE BANKRUPTCY CODE AND PROVIDING ADEQUATE
PROTECTION AND GRANTING LIENS AND SECURITY INTERESTS**

Upon the Emergency Motion for Use of Cash Collateral (the “Motion”) pursuant to Sections 105, 361, 363 and 364 of Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) and Federal Rule of Bankruptcy Procedure 4001, Gurkarn Diamond Hotel Corporation (the "Debtor"), subject to the terms and conditions set forth herein, including the (i) grant of mortgages, security interests, liens and claims for the benefit of U.S. Bank NA and its servicer, CWCapital Asset Management, LLC (the “Secured Lender”), Post petition which are co-extensive

with its Pre-petition liens (to the extent of such liens, if any) and (ii) grant of mortgages, security interests, liens and claims in order to provide adequate protection to the Secured Lender as more fully set forth herein, and upon the proceedings held before this Court and good and sufficient cause appearing therefore,

THE COURT HEREBY FINDS:

A. On November 14, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is now operating its business and managing its property as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and no official committee has yet been appointed.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 137(b)(2). Venue of the Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. An immediate and critical need exists for the Debtor to obtain funds in order to continue the operation of its business. Without such funds, the Debtor will not be able to pay its payroll and other direct operating expenses and obtain goods and services needed to carry on its business during this sensitive period in a manner that will avoid irreparable harm to the Debtor’s estate. At this time, the Debtor’s ability to use Cash Collateral is vital to the confidence of the Debtor’s vendors and suppliers of the goods and services, to the customers and to the preservation and maintenance of the going concern value of the Debtor’s estate.

D. Substantially all of the Debtor’s assets are subject to the Prepetition Liens of the Secured Lender, including liens on room rents relevant to this Motion.

E. The Debtor has requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). The permission granted herein to allow the Debtor to obtain the use of Cash Collateral financing is necessary to avoid immediate and irreparable harm to the Debtor. This Court concludes that entry of this Order is in the Debtor's best interest and its estate and creditors as its implementation will, among other things, allow for the continued operation and rehabilitation of the Debtor's existing business. Therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the Debtor be, and hereby is, authorized to enter into all agreements pursuant to the terms of this Order necessary to allow the Debtor to use Cash Collateral subject to the protections and consideration described in this Order in the amounts and for the expenses set forth on the monthly budget attached hereto. The Debtor, without the prior written approval of the Secured Lender, should not incur expenses for any line item for an amount that exceeds the lesser of the amount for such line item in the budget and the actual expenditure for such line item; it is further

ORDERED that the Debtor is authorized to collect and receive payments. The Debtor shall account each month to the Secured Lender for all funds received. For purposes of this Order, "proceeds" of any of the Secured Lender's collateral shall mean Proceeds (as defined in the Uniform Commercial Code) of such collateral security for all Cash Collateral permitted to be used hereunder by the Debtor. The Secured Lender is hereby granted valid, binding, enforceable, and perfected liens (the "Post-petition Liens") co-extensive with the Secured Lender's pre-petition liens in all currently owned or hereafter acquired property and assets of the Debtor, of any kind or nature, whether real or personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising and all proceeds and products, including, without limitation, all accounts

receivable, general intangibles, inventory, and deposit accounts. Nothing herein shall grant a lien on, interest in or claim on Chapter 5 causes of action; it is further

ORDERED that as adequate protection for the interests of the Secured Lender, the Secured Lender is hereby granted first priority replacement liens and security interests, in accordance with Bankruptcy Code Sections 361, 363, 364(c)(2), 364(e), 501(b)(1) and 552, having priority over all other creditors, against the Debtor's room rents originating post-petition and any and all cash or other proceeds from those receivables on a dollar-for-dollar basis for each dollar of pre-petition cash or accounts receivable used by Debtor hereunder, to secure all of the Secured Lender's allowed claims, including post-petition interest and attorneys' fees; it is further

ORDERED that the replacement liens granted to the Secured Lender in this Order are automatically perfected without the need for filing of a UCC-1 financing statement with the Secretary of State's Office or any other such act of perfection; it is further

ORDERED that all cash accounts of Debtor and all accounts receivable collections by Debtor post-petition shall be deposited in a separate cash collateral account, being Debtor's debtor-in-possession account; it is further

ORDERED that the use of cash collateral shall extend to a final hearing on the Motion. The application of the adequate protection payments are subject to further Order of this Court; it is further

ORDERED that from and after the Effective Date, the proceeds of the Pre-petition Collateral and the Post-petition Collateral shall not, directly or indirectly, be used to pay expenses of the Debtor or otherwise disbursed except for those expenses and/or disbursements that are expressly permitted herein and as shown on the Debtor's Budget admitted at the hearing as **Exhibit "1"**. During the pendency of this order, the Debtor will maintain insurance on the Secured

Lender's collateral and pay taxes when due. The automatic stay under Section 362(a) of the Bankruptcy Code shall be, and it hereby is, modified to the extent necessary to permit the Secured Lender to retrieve, collect and apply payments and proceeds in respect of the Pre-petition Collateral and Post-petition Collateral in accordance with the terms and provisions of this Order. The Debtor shall execute and deliver to the Secured Lender all such agreements, financing statements, instruments and other documents as the Secured Lender may reasonably request to evidence, confirm, validate or perfect the liens granted pursuant hereto. The Debtor shall deliver a copy of its Monthly Operating Report to the Secured Lender's counsel by the 20th day of each month for the prior month; it is further

ORDERED that the provisions of this Order shall be binding upon and inure to the benefit of the Secured Lender and the Debtor. However, nothing herein shall prevent the Secured Lender from seeking any form of relief under the Bankruptcy Code. The Debtor's counsel shall, within three business days after entry of this Order serve by U. S. mail, first class postage prepaid, copies of the Motion, this Order, the proposed Final Order and a notice of the hearing (the "Final Hearing Notice") to be held on _____ at _____ before the Honorable Robert B. King, U.S. Bankruptcy Court, 100 East Wall Street, Room P-126, Midland, Texas 79701 to consider entry of the proposed Final Order on (a) the Office of the U. S. Trustee; (b) counsel to U.S. Bank NA; (c) counsel to CWC Capital Asset Management LLC; (d) all creditors in this case on the Matrix and (e) all parties requesting notice in this case. Copies of the Motion, this Order and the proposed Final Order and the Final Hearing Notice shall be served upon all persons requesting service of papers pursuant to Bankruptcy Rule 2002 by U. S. mail, first class postage prepaid, within one business day following the receipt of such request. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written

objections no later than two business days before the Final Hearing, which objections shall be served so that the same are received on or before such date by Joyce W. Lindauer, Joyce W. Lindauer Attorney, PLLC, 12720 Hillcrest Road, Suite 625, Dallas, Texas 75230.

###

Submitted by:

Joyce W. Lindauer
State Bar No. 21555700
Joyce W. Lindauer Attorney, PLLC
12720 Hillcrest Road, Suite 625
Dallas, Texas 75230
Proposed Attorneys for Debtor

EXHIBIT “1”

**QUALITY SUITES MIDLAND TX
ONE-MONTH BUDGET
(November 15 – December 15, 2016)**

Revenues	
Room Rent	\$90,000.00
Expenses:	
Payroll	\$22,000.00
Supplies (Food)	\$ 3,500.00
Advertising	\$749.00
Management Fees	\$2,500.00
Insurance	\$500.00
Elevator Service	\$379.30
Occupancy Taxes	\$12,600.00
Office Expense	\$325.00
Travel Agent Commissions	\$4,600.00
Payroll Taxes	\$2,571.30
Merchant / Bank Fees	\$2,900.00
Pest Control	\$56.00
Franchise Fee	\$9,900.00
Postage & Courier	\$60.00
Worker's Compensation	\$1,100.00
Supplies (Hotel)	\$7,500.00
Telephone & Internet	\$620.00
Utilities	<u>\$7,978.26</u>
Total Expenses:	\$79,838.86
Net Income:	\$10,161.14