

Dated: November 16, 2016.



S. Martin Teel, Jr.
U.S. Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA**

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| In re: |) | |
| |) | |
| HELLBENDER BREWING COMPANY LLC, |) | Case No. 16-00577 |
| |) | |
| Debtor. |) | (Chapter 11) |
| |) | |
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**ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS
105(a), 361 AND 363 AND BANKRUPTCY RULES 2002 AND 4001 (I)
AUTHORIZING DEBTOR TO USE CASH COLLATERAL, (II)
AUTHORIZING DEBTOR TO PROVIDE ADEQUATE
PROTECTION, AND (III) GRANTING CERTAIN RELATED RELIEF**

Upon consideration of the motion (the "Motion") filed by Hellbender Brewing Company LLC, the debtor and debtor-in-possession herein (the "Debtor"), for entry of an order pursuant to sections 105(a), 361 and 363 of the United States Bankruptcy Code (the "Bankruptcy Code") and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure (the "Rules") authorizing the use of Cash Collateral (as that term is hereinafter defined) and to provide adequate protection to EagleBank ("EagleBank") as a secured creditor in this case; and notice of the Motion together

with notice of the hearing thereon having been sufficiently made under the circumstances; and a hearing on the Motion (the “Hearing”) having been held on November __, 2016; and upon the entire record made at the Hearing, and it appearing that the relief requested by the Motion is in the best interests of the Debtor, its estate and creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefore, it is hereby, by the United States Bankruptcy Court for the District of Columbia (this “Court”):

A. 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).

B. Venue of the Debtor’s chapter 11 case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The Debtor filed its petition under chapter 11 of the Bankruptcy Code on November 1, 2016 (the “Petition Date”) and is presently operating as debtor-in-possession in accordance with sections 1107 and 1108 of the Bankruptcy Code.

D. The Debtor is a Delaware limited liability company. It operates as a brewery in the District of Columbia, where it produces beer for distribution throughout the District of Columbia and portions of Maryland and Virginia, as well as for consumption at the brewery. The Debtor requires the use of cash in order to pay its vendors, employees, and operating costs associated with the performance of its contracts.

E. On March 27, 2014, the Debtor entered into a Loan Agreement with EagleBank (the “Loan Agreement”) pursuant to which EagleBank made a loan to the Debtor in the amount of \$1,150,000 under Section 7(a) of the Small Business Act, as amended (the “SBA Loan”). The Debtor executed a Note dated March 27, 2014 (the “Note”) in accordance with the Loan Agreement, which Note was secured by a Security Agreement – Commercial of even date (the

“Security Agreement”). In addition, Unconditional Guarantees were executed by Benjamin D. Evans and Patrick R. Mullane, the Debtor’s two managing members (collectively, the “Guarantees” and, together with the Loan Agreement, the Note, and the Security Agreement, the “Loan Documents”). Pursuant to the Security Agreement, the Debtor pledged all of its assets to EagleBank as collateral for the Note.

F. In early August, 2016, the Debtor met with representatives of EagleBank and the Small Business Administration in an effort to resolve the Debtor’s cash flow problems. As a result of this meeting, the Debtor was granted a six-month grace period during which time it would be allowed to make interest-only payments under the Note, rather than the amortized payments of both principal and interest that were otherwise due.

F. The Debtor acknowledges that EagleBank has a properly perfected and valid first priority security interest in all of the Debtor’s assets and proceeds thereof (the “Collateral”), that is senior and superior in right to any other liens and security interests in the Collateral.

G. The Debtor further acknowledge that cash on hand, together with all other proceeds of the Collateral, including all amounts received by the Debtor in connection with the Collateral after the Petition Date pursuant to section 552(b)(2) of the Bankruptcy Code, constitutes cash collateral as such term is defined in section 363(a) of the Bankruptcy Code (the “Cash Collateral”).

H. The Debtor requires use of Cash Collateral to continue business operations without interruption and to meet the ordinary cash needs necessary to (a) maintain and preserve its assets, (b) continue the operation of its business, and (c) pay fees and expenses incurred in connection with this bankruptcy case including, but not limited to, professional fees and

quarterly fees due to the Office of the United States Trustee. In the absence of the use of cash collateral, the continued operation of the Debtor's business would not be possible.

I. EagleBank is entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of its interest in the Collateral, including its interest in the Cash Collateral, equal in amount to the degree of diminution in value of EagleBank's interest in the Collateral, including, without limitation, any such diminution resulting from (i) the use by the Debtor or other decline in value of Cash Collateral and any other Collateral and (ii) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.

J. The terms of this Order are fair and reasonable and reflect the Debtor's exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration. EagleBank and the Debtor negotiated in good faith and at arm's length regarding the terms of this Order.

Based on the foregoing findings of fact and conclusions, and upon the record made before this Court by the Debtor at the Hearing, and good and sufficient cause appearing therefor, it is hereby

ORDERED as follows:

1. The Motion is granted, subject to the terms and conditions set forth in this Order.
2. Subject to the terms of this Order, the Debtor is authorized to use the Cash Collateral during the period from the date of this Order through and including January 31, 2017 (the "Expiration Date"), subject to any earlier occurrence of the Termination Date (as defined below). The Expiration Date of this Order may be extended upon the written consent of EagleBank and the Debtor without further order of the Court, and the terms of this Order shall continue in full force and effect with respect to any such extended Expiration Date.

3. Until the earlier of either the Termination Date or the Expiration Date, the Debtor may use Cash Collateral, but only in the amounts and for the purposes set forth in the budget attached hereto as Exhibit "A" (the "Budget"). The Debtor shall not, without the prior written consent of EagleBank or further order of this Court, use Cash Collateral to pay expenses under the Budget to the extent such payment would result in an adverse variance on a cumulative basis commencing on the Petition Date through the applicable date of payment of more than 10% with respect to the applicable category (i.e., individual row) of the Budget. To the extent the Debtor makes cash payments in any period of a lesser amount than the amount set forth in the Budget for the applicable expense category, such excess amount shall be carried forward to the next month and may be disbursed by the Debtor at a future date with respect to any expenses in the same expense category, except that payments to professionals permitted under the Budget may be made at a later date if thereafter approved by the Court. All Net Operating Income, as set forth in the Budget, shall be deposited in the Debtor's debtor-in-possession account, and all funds in the Cash Collateral Account shall be treated as part of the Replacement EagleBank Collateral, as that term is defined herein.

4. No later than the 20th day of each calendar month commencing December, 2016, the Debtor shall prepare and deliver to EagleBank a report for the period ending as of the preceding month, of actual receipts, expenditures, and ending cash compared to the Budget, which shall include a description of any material variances and the reason therefore. The Debtor agrees to provide promptly to EagleBank, through its counsel, such additional information and documents as EagleBank may reasonably request, including but not limited to financial statements, A/R reports, copies of contracts, and bank statements for the Cash Collateral Account.

5. EagleBank is entitled to adequate protection for any diminution in the value of its interest in the EagleBank Collateral, including the Cash Collateral (“Collateral Diminution”). As adequate protection to EagleBank of its interest in the EagleBank Collateral, including the Cash Collateral, EagleBank is hereby granted the following:

- (a) Adequate Protection Lien: EagleBank shall be and is hereby granted valid and perfected security interests and replacement liens pursuant to, *inter alia*, sections 361(2) and 552(a) and (b) of the Bankruptcy Code in all currently owned or hereafter acquired property of the Debtor of any kind or nature, whether real or personal, tangible or intangible, wherever located, and all proceeds, rents, and profits thereof, including without limitation all cash, goods, accounts receivable, inventory, cash-in-advance deposits, real estate, fixtures, investment property, machinery, equipment, vehicles, trademarks, trade names, licenses, causes of action (excluding causes of action arising under chapter 5 of the Bankruptcy Code), insurance proceeds, and tort claims, and all proceeds, rents, and profits of all of the foregoing (collectively, the “Replacement EagleBank Collateral”) to secure any Collateral Diminution to the same extent, and in the same priority, as the Prepetition EagleBank Lien (the “EagleBank Adequate Protection Lien”).
- (b) Adequate Protection Payments: EagleBank shall receive from the Debtor on the first business day of each month adequate protection payments in the amounts set forth in the Budget for “Debt Service” (the “EagleBank Adequate Protection Payments”), which payments are equal to the non-default interest payments currently due EagleBank. The EagleBank Adequate Protection Payments shall constitute allowed administrative expense claims under sections 503(b)(1),

507(a), and 507(b) of the Bankruptcy Code (the “507(b) Claims”) with priority in payment over any and all (i) administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, and (ii) unsecured claims. The 507(b) Claims shall at all times be senior to the rights of the Debtor and any successor trustee or any creditor in this chapter 11 case or any subsequent cases under the Bankruptcy Code. No cost or expense of administration of the estate under sections 105, 503(b), or 507(b) of the Bankruptcy Code or otherwise, including those resulting from or arising upon or after the conversion of these cases pursuant to section 1112 of the Bankruptcy Code, shall be senior to, or *pari passu* with the Section 507(b) Claims of EagleBank. Notwithstanding the foregoing, the Section 507(b) Claims of EagleBank shall be subordinate to (i) the quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6), (ii) any fees payable to the Clerk of the Bankruptcy Court (but not including any bond required to be posted), and (iii) the payment of allowed fees and expenses incurred by professionals retained pursuant to sections 327, 328 or 1103 of the Bankruptcy Code by the Debtor in an aggregate amount not to exceed \$75,000.00.

6. Unless EagleBank has otherwise agreed in writing, the Debtor’s authority to use Cash Collateral shall automatically terminate on the date (the “Termination Date”) that is the earlier of: (i) the Expiration Date; and (ii) the date that is five business days after receipt by the Debtor’s counsel of written notice from EagleBank (which receipt shall be deemed to occur on the date transmitted if by electronic mail or facsimile, or the date received if by hand delivery, overnight courier, or registered mail) that a Termination Event (as defined herein) has occurred and such Termination Event remains uncured after such five business day period. Upon the

Termination Date, the Debtor's right to use Cash Collateral shall immediately terminate, and unless the Debtor within five business days thereafter (i) seeks an extension of, or otherwise contests, the Termination Date, and (ii) requests an expedited hearing before the Bankruptcy Court with respect thereto, the Debtor shall deliver all Cash Collateral to EagleBank, including all cash in the Cash Collateral Account and all Cash Collateral received by the Debtor after the Termination Date. The term "Termination Event" means the occurrence of any of the following: (i) the Debtor fails to make any payment as and when due under this Order; (ii) the Debtor fails to comply in any material respect with the terms of or obligations under this Order, including by making any payments not set forth in the Budget or in an amount not within the permitted variance of the Budget; (iii) the Debtor's chapter 11 case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code; (iv) this Court or another court of competent jurisdiction enters an order reversing, amending, supplementing, staying, vacating, or otherwise modifying this Order or any provision hereof without the consent of EagleBank; or (v) entry of an order appointing a chapter 11 trustee or an examiner with enlarged powers, other than an appointment of a trustee or examiner upon a motion of EagleBank seeking such appointment. Any termination of the Debtor's right to use Cash Collateral pursuant to the terms of this Order shall be without prejudice to the rights of the Debtor, or any successor thereto, to request authority from this Court to use Cash Collateral.

7. The EagleBank Adequate Protection Lien shall be prior and senior to any liens and encumbrances of any other secured creditors on the Replacement EagleBank Collateral granted or arising after the Petition Date. The Debtor shall not cause or permit, or consent to cause or permit, any liens, mortgages or security interests pursuant to section 364 of the Bankruptcy Code having priority equal or senior to any of the security interests or liens of

EagleBank. No expenses of administration of the chapter 11 cases or any future proceedings, including liquidation in bankruptcy, shall be charged against or recovered from the Collateral or the Replacement EagleBank Collateral under section 506(c) of the Bankruptcy Code or any other similar law without the prior written consent of EagleBank, other than (i) the quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6), (ii) any fees payable to the Clerk of the Bankruptcy Court (but not including any bond required to be posted), and (iii) the payment of allowed fees and expenses incurred by professionals retained pursuant to sections 327, 328 or 1103 of the Bankruptcy Code by the Debtor in an aggregate amount not to exceed \$75,000.00.

8. The EagleBank Adequate Protection Lien granted pursuant to this Order shall be deemed created and perfected without the necessity of the execution, filing, or recording of any documents otherwise required under non-bankruptcy law for the creation or perfection of security interests and liens. The validity, enforceability, and priority of the Prepetition EagleBank Lien, the EagleBank Adequate Protection Lien, and the EagleBank Adequate Protection Payments shall not be affected by the occurrence of the Expiration Date or Termination Date, or the conversion, dismissal, or conclusion of the Debtor's bankruptcy case.

9. By accepting or agreeing to payments hereunder, EagleBank is not deemed to have waived any default or event of default that may exist, or any rights or remedies available under the Deed of Trust, other loan documents, or any other applicable law, except to the extent specifically set forth herein or as may be modified by application of the Bankruptcy Code. Nothing herein shall constitute a waiver by EagleBank of any right, claim, or assertion that EagleBank may subsequently make in these proceedings and nothing herein shall be deemed an admission or concession by EagleBank that it regards itself as fully or adequately protected. In addition, nothing in this Order shall limit EagleBank's right to: (i) file a motion to dismiss the

Debtor's bankruptcy case; (ii) file a motion for relief from or modification of the automatic stay; or (iii) file a motion for appointment of a trustee or examiner.

10. The Debtor is authorized and directed to perform all acts, and to execute and deliver such other documents, instruments and agreements as may be necessary and reasonable to effectuate the terms and conditions of this Order.

11. The provisions of this Order shall be binding upon and inure to the benefit of EagleBank, the Debtor, and its respective successors and assigns, including any trustee hereafter appointed under chapter 11 or any other chapter of the Bankruptcy Code.

12. To the extent that any of the provisions of this Order shall conflict with any of the provisions of the Loan Documents, this Order is deemed to control and shall supersede the conflicting provision in such Loan Documents.

13. This Court shall retain exclusive jurisdiction to resolve any dispute arising from or relating to the interpretation or implementation this Order.

Copies to:

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All attorneys who have entered an appearance and who are registered e-files
All entities on the Court's mailing list

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EXHIBIT A

Hellbender Brewing Company. L.L.C.

90-Day Bankruptcy Projections

| | Previous 4-month Avg | November | December | January |
|--|----------------------|---------------|---------------|---------------|
| Volume Sales (in barrels) | | | | |
| Kegs - DC | 90 | 72 | 72 | 72 |
| Kegs - Montgomery County | 18 | 40 | 40 | 40 |
| Cans | 0 | 0 | 0 | 0 |
| Income | | | | |
| Sales | | | | |
| Kegs - Distribution | 13,114 | 11,808 | 11,808 | 11,808 |
| Kegs - Self Distribution (Montgomery Co) | 810 | 6,000 | 6,000 | 6,000 |
| Tasting Room Sales Income | 14,784 | 12,000 | 12,000 | 12,000 |
| Cans | 0 | 0 | 0 | 0 |
| Total Income | 28,708 | 29,808 | 29,808 | 29,808 |
| Canning Costs | 0 | 0 | 0 | 0 |
| Ingredients | 2,913 | 2,913 | 2,913 | 2,913 |
| Keg Rental | 4,500 | 4,500 | 4,500 | 4,500 |
| Tap Handles | 155 | 155 | 155 | 155 |
| Supplies & Materials - COGS | 7,568 | 7,568 | 7,568 | 5,546 |
| Gross Profit | 21,140 | 22,240 | 22,240 | 22,061 |
| Expenses | | 0 | 0 | 0 |
| Advertising/Promotional | 17 | 150 | 150 | 150 |
| Total Advertising/Promotional | 250 | 250 | 250 | 250 |
| Charitable Donations | 0 | 372 | 372 | 372 |
| Commissions & fees | 372 | 372 | 372 | 372 |
| Credit Card Processing Fee | 400 | 300 | 300 | 300 |
| Gasoline - Auto | 0 | 350 | 350 | 350 |
| General & Administrative Expenses | | | | |
| Building Lease | 6,762 | 3,500 | 3,500 | 3,500 |
| Depreciation | 0 | 0 | 0 | 0 |
| Domain/Internet Charges | 0 | 0 | 0 | 0 |
| Dues & Subscriptions | 0 | 0 | 0 | 0 |
| Equipment Rentals | 0 | 0 | 0 | 0 |
| Insurance | | | | |
| Property & Liability | 1,206 | 1,206 | 1,206 | 1,206 |

| | | | | |
|---|----------------|---------------|---------------|---------------|
| Vehicle | 0 | 500 | 500 | 500 |
| Legal & Professional Fees | 23 | 500 | 500 | 500 |
| Meals and Entertainment | 70 | 600 | 600 | 234 |
| Office Expenses | 234 | 234 | 234 | 234 |
| Tasting Room Supplies | 612 | 612 | 612 | 612 |
| Property Tax | 0 | | | |
| Renovation Supplies | 66 | 66 | 66 | 66 |
| Repair & Maintenance | 558 | 558 | 558 | 558 |
| Research & Development | 75 | 75 | 75 | 75 |
| Brewing Supplies | 173 | 129 | 129 | 129 |
| Taxes & Licenses | 1,660 | 1,840 | 1,840 | 1,840 |
| Travel | 0 | 1,841 | 1,841 | 1,841 |
| Utilities | | | | |
| Electricity | 1,771 | 1,500 | 1,500 | 1,400 |
| Natural Gas | 812 | 812 | 812 | 812 |
| Phone, Internet & Cable | 440 | 440 | 440 | 440 |
| Keg Return | 0 | 0 | 0 | 0 |
| Total Marketing and Promotion | 462 | 346 | 346 | 346 |
| Office/General Administrative Expenses | 893 | 669 | 669 | 669 |
| parking | 0 | 0 | 0 | 0 |
| fees | 290 | 311 | 311 | 311 |
| Payroll Fees | 471 | 539 | 539 | 539 |
| Taxes | 539 | 539 | 539 | 509 |
| Wages | 5,830 | 6,800 | 8,800 | 8,800 |
| Pest Control | 434 | 325 | 325 | 325 |
| Shipping and delivery expense | 42 | 42 | 42 | 42 |
| Total General/Admin Expenses | 24,460 | 25,780 | 27,780 | 27,283 |
| Other Expenses | 250 | 250 | 250 | 250 |
| Property Tax (DC) | 0 | 1,724 | 1,724 | 1,724 |
| Property Tax (Landlord) | 0 | 1,333 | 1,333 | 1,333 |
| Bank Loan | 5,515 | 5,515 | 5,515 | 5,515 |
| Bankruptcy Legal Fees | 0 | 0 | 0 | 0 |
| Delivery Vehicle Purchase & maintenance | | 12,000 | 0 | |
| Miscellaneous | 15 | 11 | 11 | 11 |
| Total Other Expenses | 5,780 | 20,833 | 8,833 | 8,833 |
| Total Expenses | 30,240 | 46,613 | 36,613 | 36,117 |
| Insider Loans/New Value | | \$25,000 | \$15,000 | \$15,000 |
| Net Income | (9,100) | 627 | 627 | 945 |