

1 BUCKNELL STEHLIK SATO & ORTH, LLP

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JUDGE: Timothy W. Dore  
DATE: March 3, 2017  
TIME: 9:30 a.m.  
CHAPTER: 11  
LOCATION: Seattle  
RESPONSE DATE: February 24, 2017

6 UNITED STATES BANKRUPTCY COURT  
7 WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

8 In re: ) No. 16-15814-TWD  
9 ) (Lead Case)  
10 LODGE HOLDINGS COMPANY, )  
11 ) No. 16-15849-TWD  
12 Mukilteo Lodge, LLC, ) No. 16-15850-TWD  
13 Kirkland Lodge, LLC, ) No. 16-15851-TWD  
14 Stadium Lodge, LLC, ) No. 16-15852-TWD  
15 Downtown Lodge, LLC, ) No. 16-15853-TWD  
16 Mill Creek Lodge, LLC, ) No. 16-15854-TWD  
17 Greenwood Lodge, LLC ) (Jointly Administered Cases)  
18 )  
19 Debtors. ) **SECOND MOTION AND NOTICE**  
20 ) **THEREOF FOR AUTHORITY TO**  
21 ) **USE CASH COLLATERAL**  
22 \_\_\_\_\_ )

23 A. **NOTICE**

24 TO: Clerk of Court; United States Trustee

25 AND TO: U.S. Attorney U.S. Attorney General for Washington  
26 ATTN: Bankruptcy Assistant Bankruptcy and Collections  
27 700 Stewart Street, Room 5220 800 Fifth Avenue, 20<sup>th</sup> Floor  
28 Seattle, WA 98101 Seattle, WA 98104

29 AND TO: CBC Partners I, LLC American Express Bank, FSB  
30 c/o Gregory Fox 4315 South 2700 West  
31 Lane Powell PC Salt Lake City, UT 84184  
32 1420 Fifth Avenue, Suite 4200  
33 Seattle, WA 98111-9402  
34 Email: foxg@lanepowell.com

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35 Second Motion and Notice Thereof for  
36 Authority to Use Cash Collateral - 1

1 Larry B. Feinstein  
2 Vortman & Feinstein  
3 520 Pike Street, Suite 2250  
4 Seattle, WA 98101  
5 Email: [feinstein1947@gmail.com](mailto:feinstein1947@gmail.com)

Kathryn E. Perkins  
Office of U.S. Trustee  
700 Stewart Street, Suite 5103  
Seattle, WA 98101  
Email: [kathryn.e.perkins@usdoj.gov](mailto:kathryn.e.perkins@usdoj.gov)

5 Aditi Paranjpye  
6 Assistant U.S. Attorney  
7 United States Attorney's Office  
8 700 Stewart Street, Suite 5220  
9 Seattle, WA 98101-1271  
10 Email: [aditi@paranjpye.usdoj.gov](mailto:aditi@paranjpye.usdoj.gov)

9 AND TO: All other creditors and parties in interest appearing on the master mailing list

10 PLEASE TAKE NOTICE that the subjoined Second Motion for Authority to Use Cash

11 Collateral ("Motion") is set for hearing as follows:

12 JUDGE: Hon. Timothy W. Dore TIME: 9:30 a.m.  
13 PLACE: Courtroom 8106 DATE: March 3, 2017  
14 700 Stewart St. 8th Floor  
15 Seattle, Washington 98101

16 IF YOU OPPOSE the Motion, you must file your written response with the Clerk's office of  
17 the above-captioned bankruptcy court and deliver copies to the undersigned to be received NOT  
18 LATER THAN THE RESPONSE DATE, which is February 24, 2017. If you file a response you  
19 are also required to appear at the hearing.  
20

21 IF NO RESPONSE IS TIMELY FILED AND SERVED, THE COURT MAY, IN ITS  
22 DISCRETION, GRANT THE MOTION PRIOR TO THE HEARING WITHOUT FURTHER  
23 NOTICE, and strike the hearing.  
24

25

26

27 Second Motion and Notice Thereof for  
28 Authority to Use Cash Collateral - 2

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1           **B.     MOTION**

2           Sheena R. Aebig, the duly-appointed Chapter 11 Trustee for the above-captioned debtors  
3 ["Trustee"], moves for entry of an order authorizing use of cash collateral by the estates of the  
4 debtors as follows. The Trustee asserts that the Court has jurisdiction over this proceeding under 28  
5 U.S.C. § 1334, this proceeding is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(M)  
6 and other applicable law, and the Court has authority to enter an order approving the requested  
7 authority to use cash collateral under 11 U.S.C. §§ 363 and 105, and other applicable law.  
8

9           1.     Entities with an interest in cash collateral: Without conceding the validity,  
10 amount, priority or enforceability of any lien at this time,<sup>1</sup> the entities known to the Trustee who  
11 assert or may assert an interest in cash collateral include: The United States of America on behalf of  
12 the Internal Revenue Service (the "IRS") and on account of federal tax liens, the State of  
13 Washington on account of state tax liens, CBC Partners I, LLC ("CBC"); and American Express  
14 Bank.<sup>2</sup> From incomplete documentation currently available to the Trustee, it is also possible that the  
15 following entities could assert an interest in cash collateral, but the Trustee currently has no  
16 evidence of the perfection of any security interest or lien by these entities: Gregg Chavez (Mill  
17 Creek Lodge, Downtown Lodge, Greenwood Lodge); Honey Locust Holdings, LLC (Greenwood  
18 Lodge); Scott Becker (Greenwood Lodge); Donna and Jerry Louthain (Mukilteo Lodge).  
19  
20

21           2.     Purpose for use of cash collateral: As brief background, debtor Lodge  
22

---

23           <sup>1</sup> The Trustee and its counsel were only appointed recently, and the Trustee's preliminary investigation of the  
24 structure, transactions, and finances of the various debtor entities is not complete. Substantial time has been invested in  
25 accessing bank accounts, an ongoing process of obtaining copies of formation, loan and lease documents, initial review  
26 of initial financial information, and the like

27           <sup>2</sup> The Debtors have contended that American Express Bank has no further enforceable lien rights despite a  
28 UCC-1 financing statement filed against assets of debtor Mukilteo Lodge LLC that, to Trustee's knowledge, has not been

1 Holdings Company is the member in the other, wholly-owned, debtors in the above-captioned cases,  
2 each of whom currently operates a restaurant in Washington State. The related debtors filed Chapter  
3 11 petitions on November 18 and 21, 2016. The cases of Lodge Holdings Company and the  
4 subsidiaries who are debtors have been consolidated for the purpose of joint administration. On  
5 January 6, 2017, the Court appointed Sheena R. Aebig as the Trustee in these cases. To date, the  
6 Trustee has begun investigation of the businesses and financial affairs of the debtors, and has taken  
7 various steps to transition access to and control over funds, address immediate operating issues, and  
8 the like. Pending the Trustee's further investigation into the desirability of continuation of each  
9 debtor's business and the potential avenues to realize the maximum value for creditors from those  
10 businesses, singly or in combination, the businesses have continued to operate with the Trustee's  
11 oversight.  
12

13  
14 The purpose of the proposed use of cash collateral is to fund the continued operation of the  
15 debtors' businesses for so long as the Trustee deems such operation to be advisable; and to fund the  
16 reasonable expenses of administration of these cases, including without limitation the Trustee's  
17 investigation of the debtors' financial affairs and business, and assessment of options for realization  
18 of best value from the assets, to benefit creditors. If the Trustee is not permitted reasonable use of  
19 cash collateral for these purposes, the Trustee believes the shutdown of the businesses will be  
20 necessary as there is no known source to fund operation other than the cash flow generated by the  
21 businesses themselves. A shutdown would result in loss of all going-concern value, leaving only a  
22 prospect for recovery of fire-sale values from the assets and such actual recoveries, if any, as might  
23  
24  
25 \_\_\_\_\_  
26 terminated.

27 Second Motion and Notice Thereof for  
28 Authority to Use Cash Collateral - 4

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1 be made from avoidance or other actions the estates might bring. The Trustee believes such a result  
2 would cause irreparable harm to the estates and their creditors.

3           3.       Material terms for use of cash collateral: The Trustee requests authority to  
4 use cash collateral according to the budget attached hereto as Exhibit 1 (the “Budget”), as the same  
5 may be amended.<sup>3</sup> The duration of such use would be through April 2017, without prejudice to  
6 further orders authorizing use of cash collateral following further notice and hearing. Various  
7 details regarding permitted variance from the Budget, reporting, access to the collateral, and the like  
8 are set forth in the accompanying proposed Order Authorizing Use of Cash Collateral and Adequate  
9 Protection, and incorporated herein by this reference. As noted in the proposed orders  
10 accompanying this Motion, the Trustee on behalf of the Trustee and her professionals requests  
11 subordination of replacement liens of secured creditors in cash collateral, to allowed professional  
12 compensation not to exceed the following estimated amounts. These amounts are not reflected in  
13 the Budget as the Budget, prepared by debtors’ management, is a draft at this time:  
14  
15

	<u>(stub Jan) - Feb 2017</u>	<u>March 2017</u>	<u>April 2017</u>
16 Trustee	\$25,000	\$20,000	\$20,000
17 Trustee’s counsel	\$25,000	\$20,000	\$20,000
18 Trustee’s accountant	\$5,000	\$5,000	\$5,000

21  
22 <sup>3</sup> The Trustee may cause or authorize the filing of Chapter 11 petitions for one or more additional subsidiaries  
23 of Lodge Holdings. In the event of such filing(s), requests to jointly administer such new case(s) with the above-  
24 captioned pending cases, and requests to extend the appointment of the Trustee to such new case(s), the Trustee reserves  
25 the right to amend or supplement this Motion, the Budget, and the proposed Order submitted herewith to request and  
26 authorize use of cash collateral in the new case(s). If such an amendment or supplement is filed, the amendment or  
27 supplement (including revisions to the Budget) will be served upon required creditors and parties in interest as soon as  
28 practicable. Additionally, the Trustee notes that the Budget has been prepared by debtors’ management and has not been  
subject to substantial independent review by the Trustee or professionals in light of time constraints.

1           4.     Adequate Protection: As adequate protection of the interests of CBC and the  
2 IRS, the Trustee proposes to grant CBC and the IRS replacement liens in the same collateral,  
3 including without limitation cash collateral, and proceeds thereof, with the same validity, priority,  
4 enforceability as existed pre-petition, without prejudice to such avoidance powers as the Trustee  
5 may have under Chapter 5, Title 18, U.S.C. Again, additional details regarding adequate protection  
6 are set forth in the accompanying proposed Order, and incorporated herein by this reference.  
7

8           The Trustee believes entry of the accompanying proposed Order, authorizing use of cash  
9 collateral on the terms provided therein, is necessary to permit continued orderly administration of  
10 these cases, preserve as far as possible the values of the debtors' assets, and avoid irreparable harm  
11 through a precipitous shutdown of the businesses. The Trustee therefore requests entry of the  
12 accompanying Order.  
13

14           Respectfully submitted this 30th day of January, 2017.

15   BUCKNELL STEHLIK SATO & ORTH, LLP

16   /s/ Edwin K. Sato

17   Thomas N. Bucknell, WSBA # 1587

18   Edwin K. Sato, WSBA #13633

19   Andrea D. Orth, WSBA # 24355

   Attorneys for Trustee, Sheena R. Aebig

20   VERIFICATION

21   SHEENA R. AEBIG states:

22           1.     I am the duly-appointed Chapter 11 Trustee in the above-captioned cases, of legal age  
23 and competent to testify herein, and state the following based upon my personal knowledge and  
24 belief.  
25  
26

