

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:)	Case No. 12-43590-705
)	
ROBERTS HOTELS HOUSTON, LLC,)	
et al)	Jointly Administered
)	Under Chapter 11
Debtors.)	
)	Hearing Date: January 2, 2013
)	Hearing Time: 10:00 a.m.
_____)		

**JOINT MOTION TO MODIFY, INCREASE AND EXTEND POSTPETITION
FINANCING FACILITY AND TO GRANT OTHER RELIEF**

COMES NOW Roberts Hotels Houston, LLC and its affiliated debtors¹ (collectively, the “Debtors”) and the Bank of America, N.A. (the “Bank”) , by and through their undersigned counsel, and submit this *Joint Motion to Modify, Increase and Extend Postpetition Financing Facility and to Grant Other Relief* (the “Motion”). In support of the Motion, the Debtors and the Bank (sometimes collectively referred to as the “Movants”) represent as follows:

INTRODUCTION

1. Each of the Debtors owns a single hotel (collectively, the “Hotels”). Certain of the Hotels are closed and do not conduct ongoing business operations. Other of the Hotels are still open for business and are continuing to operate their business.

2. The Debtors and the Bank seek entry of an order that modifies, increases and extends the Debtors’ authorization to use cash collateral in which the Bank holds an interest (the “Cash Collateral”) and to borrow funds from the Bank pursuant to the terms of the Original DIP Order (as defined) as it is modified hereunder.

¹ The affiliated debtors are Roberts Hotels Houston, LLC, Roberts Hotels Tampa, LLC, Roberts Hotels Atlanta, LLC, Roberts Hotels Houston, LLC, and Roberts Hotels Dallas, LLC.

3. The reasons supporting the need for this Order are compelling. The Debtors need the additional financing to preserve the value of the Hotels that are closed and continue to operate the Hotels that are open. The Debtors' assets are fully encumbered and thus the Debtors need financing on the terms identified herein to obtain the additional funds required.

BACKGROUND

4. This Court previously entered its *Final Order Granting Debtors' Emergency Motion (I) Approving Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection and (V) Modifying Automatic Stay* on August 24, 2012 (Dkt. #118)(the "Original DIP Order").

5. Pursuant to the terms of the Original DIP Order, the Debtors were authorized to use Cash Collateral, to borrow up to \$1,500,000 pursuant to Section 364 of the Bankruptcy Code, and to execute and deliver to the Bank that certain Future Advance, Debtor in Possession Financing and Second Amendment to Loan Agreement, dated as of July 31, 2012 (the "Future Advance Agreement") and that certain Future Advance Note in the amount of \$1,500,000.00, dated as of July 31, 2012 ("Future Advance Note #1") and certain other related documents evidencing the use of Cash Collateral and postpetition financing (the "Original DIP Loan Facility").

6. Under the original DIP Order, the Debtors stipulated to a number of different matters pertaining to the Debtors relationship with the Bank before the filing of these cases and about the nature, extent, and validity of the Bank's claims and liens against the Debtors' assets, including the Hotels (collectively, the "Stipulations"). Although the Stipulations were immediately binding on the Debtor, the Original DIP Order specifically permitting any statutory

creditors committee, successor trustee or any other party in interest with standing to challenge the Standings within seventy-five days after entry of the Original DIP Order (the “Challenge Period”). The Challenge Period passed without any challenge to the Stipulations.

7. The Debtors defaulted on certain their obligations under Original DIP Facility (primarily pertaining to deadlines to sell the Hotels), and in any event all amounts due under the Future Advance Note #1 matured and became due and immediately payable on December 31, 2012.

8. The Bank is willing to modify, increase and extend the terms of the Original DIP Loan Facility on the terms and conditions set forth in this Order and in the First Amendment to the Future Advance Agreement and Future Advance Note #2 and other ancillary documents to evidence such extension (the “Extended DIP Facility”).

9. The terms of the Extended DIP Facility closely track the Original DIP Loan Facility. A summary of the most notable changes in the Extended DIP Facility are listed below

Maturity Date	March 31, 2013
Termination Date	Earliest to occur of (a) March 31, 2013; (b) closing of the sale of the last of the Hotels under Section 363 of the Bankruptcy Code; or (c) the date upon which Bank shall elect to accelerate the Obligations in accordance with the terms of this Agreement.
New Borrowings	Maximum of \$1,000,000 evidenced by a new Future Advance Note in the amount of \$1,000,000 (“ <u>Future Advance Note #2</u> ”)
Sale Process Covenants	Debtors shall comply with the following sales procedures, which shall be reflected in the extension of the listing agreement with CB Richard Ellis (“ <u>CBRE</u> ”) to March 31, 2013:

	<ul style="list-style-type: none"> (i) The CBRE hotel team directed by Kevin Mallory shall runs the Hotel disposition process, partnering with local CBRE offices where the Hotels are located. (ii) The disposition strategy will be Hotel-by-Hotel, not on a portfolio basis. (iii) Diligent efforts will be made to complete closing of the Hotels currently under contract, but the sales effort will generally re-started in January, 2013, with the goal of completing the sale of all Hotels by March 31, 2013. (iv) Drafting and negotiation of sales contracts and closing of sales will be handled by Alston & Bird LLP, including, without limitation, any contract amendments and coordinating receipt of earnest money deposits with the title company. (v) Bank will be authorized to accept or reject contracts. Debtors will cooperate in the execution of contracts and in providing any available information to the buyers. Access to the Hotels shall be coordinated by the Receivers and Approved Property Manager. (vi) CBRE will report to and be directed by Bank although Debtors will be given the opportunity to attend all status calls and discussion
<p>Insurance Claim at Houston Hotel</p>	<p>In the order approving the Extended DIP Facility, the Bank shall be granted relief from the automatic stay for the limited purposes of prosecuting, negotiating, and/or settling the Houston LLC’s insurance claim against Liberty Mutual Insurance Company arising out of water damage at the Houston Hotel (the “<u>Water Damage Claim</u>”). The order granting relief from the stay shall provide that the Houston LLC must (a) immediately provide to Bank copies of all engineering</p>

	<p>reports, estimates and other information received by the Houston LLC concerning the Water Damage Claim and shall further direct Infrastructure Associates or any other professionals or consultants retained in connection with the Water Damage Claim to cooperate with Bank in respect of all aspects of the Water Damage Claim, (b) irrevocably direct Liberty Mutual to negotiate and settle exclusively with Bank and to issue any check for payment or settlement of the Water Damage Claim solely in the name of Bank, (c) appoint Bank as its attorney in fact to prosecute, negotiate and settle the Water Damage Claim, including but not limited to commencing litigation in respect of the Water Damage Claim, settling the Water Damage Claim and endorsing on behalf of Houston LLC any checks issued in connection with the Water Damage Claim. Bank is directed to apply any net proceeds realized from prosecution or settlement of the Water Damage Claim to the Obligations under the Existing Loan Documents or under the Future Advance Loan, at Bank's discretion.</p>
<p>Budget</p>	<p>A new operating budget is attached as Exhibit A.2 Payment of Infrastructure Associates in the amount of \$118,000 for work analyzing the Water Damage Claim shall be a permitted advance under Future Advance Note # 2.</p>

10. The Debtors submit that the approval of the Extended DIP Facility is an exercise of the Debtors' business judgment and is in the best interests of the Debtors, their estates, creditors and parties in interest.

11. Except as expressly modified, all other terms and provisions of the Original DIP Order should remain in full force and effect and shall apply with equal force to the Extended DIP Facility.

² The parties reserve the right to make modifications to the Budget before the hearing, but the maximum amount of the DIP loan during the extension will not in any event exceed \$1 million..

12. The Debtors will provide notice of this Motion to: (i) the United States Trustee for the Eastern District of Missouri; (ii) all parties who have filed a request for service of all pleadings pursuant to Bankruptcy Rule 2002 as of the day prior to the service thereof; and (iii) all those parties designated to receive notice under this Court's Order on Debtors' Motion to Limit Service and Notice in Chapter 11 Case dated August 15, 2012 (Dkt. #112).

13. No previous request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Movants respectfully request this Court to grant the relief described herein and for such other and further relief as is just and equitable.

Respectfully submitted,

THOMPSON COBURN LLP

By: /s/ David A. Warfield
David A. Warfield, #34288MO
One US Bank Plaza, Suite 2600
St. Louis, MO 63101
(314) 552-6000/(314) 552-7000 (fax)
dwarfield@thompsoncoburn.com

Attorneys for Bank of America, N.A.

EXHIBIT A

DIP Budget

Budget January 1, 2013 through March 31, 2013

CASH RECEIPTS

<u>Budgeted cash collections</u>	<u>\$1,425,337</u>
Total Cash Receipts	\$1,425,337

EXPENSES

PAYROLL	\$551,832
TAXES: SALES & USE, OCCUPANCY	\$185,294
TAXES: PROPERTY AND SPECIAL ASSESSMENTS	\$0
FRANCHISE FEES	\$145,257
PROPERTY MGT COMPANY FEES	\$120,552
FEES & EXPENSES: LEGAL - Danna McKittrick, P.C.	\$121,150
FEES & EXPENSES: LEGAL - Credit Card Commissions	\$50,194
UTILITIES, TELEPHONE, CABLE, INTERNET	\$312,994
INSURANCE: PROPERTY AND LIABILITY	\$52,672
SYSCO	\$67,187
AP SUPPLIERS AND SERVICES	\$398,428
<u>AP OTHER</u>	<u>\$115,203</u>
Total Expenses	\$2,120,762

SUMMARY OF DIP BORROWINGS NEEDED

Total Cash Receipts	\$1,425,337
<u>Less: Total Expenses</u>	<u>-\$2,120,762</u>
Operating Deficit	\$695,425

Maximum DIP Availability	\$1,000,000
<u>Anticipated DIP borrowings</u>	<u>\$695,425</u>
Contingency amount available	\$304,575