

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)

In re:	:	
	:	
SWAGAT HOTELS, LLC	:	Case No. 16-24255-WILL
	:	Chapter 11
Debtor.	:	
	:	

**CONSENT MOTION FOR AUTHORITY TO USE
CASH COLLATERAL AND TO PROVIDE ADEQUATE PROTECTION**

COMES NOW the Debtor-in-Possession, Swagat Hotels, LLC, by and through counsel, Cohen Baldinger & Greenfeld, LLC, and moves this Court for the authority to use cash collateral and to provide adequate protection and as cause therefore states::

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §1334. This matter is a core proceeding pursuant to 28 U.S.C. §157. Venue for the Motion is proper in this Court pursuant to 28 U.S.C. §1408 and 1409.

2. Swagat Hotels, LLC (the “Debtor”) filed a voluntary petition in this Court pursuant to Chapter 11 of Title 11 of the Bankruptcy Code (the “Bankruptcy Code”) on October 27, 2016 (the “Petition Date”).

3. At all times since the filing of the petition, the Debtor has remained in control of its assets and the management of its affairs as Debtor-in-Possession. The Debtor is a Maryland Limited Liability Company operating a hotel trading as the Quality Inn - McHenry.

4. PHG McHenry, LLC (hereinafter “PHG”) is the holder of a promissory note and Deed of Trust securing a loan having an unpaid balance of approximately two million six hundred thousand dollars (\$2,600,000.00). The Debtor’s obligations to PHG are secured by a first deed of trust against the hotel property located at 2704 Deep Creek Drive, McHenry,

Maryland (the “Property”) whereby the Debtor conveyed an interest in the Property together with all rents, issues and profits which may arise from or be had from the Property.

5. The Debtor is requesting authority to use of the Collateral to pay its operating expenses and to maintain the value of the bankruptcy estate.

6. The Debtor is able to provide adequate protection in the form of a continuing lien on post-petition cash collateral as well as adequate protection payments for an interim period to allow the Debtor to commence to reorganize the operations of the estate.

7. Pursuant to Section 363(c)(2) of the Bankruptcy Code, a Debtor-in-Possession may not use cash collateral without the consent of the secured party or, absent such consent, court approval. 11 U.S.C. § 363(c)(2).

8. Section 363(e) of the Bankruptcy Code provides that, upon request of an entity that has an interest in the property to be used by a Debtor, the Court “shall prohibit or condition such use ... as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). What constitutes adequate protection is determined on a case by case basis. *See In re O’Connor*, 808 F.2d 1393, 1396-97 (10th Cir. 1987). Adequate protection may be provided in a number of ways. *See e.g.* 11 U.S.C. 361; *In re Briggs Transportation Co.*, 780 F. 2d 1339 (8th Cir. 1985). The focus of this process is on the protection of the secured creditor from diminution in value of its interest in the collateral during the period of its use. *See In re Kain*, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988). If the secured party has a substantial equity cushion, the need for any further adequate protection may be obviated.

9. Adequate protection may be further afforded by “providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease or grant results in a decrease in the value of such entity’s interest in such property.” 11 U.S.C. § 361(2).

10. “The important question, in determination of whether the protection to a creditor’s secured interest is adequate, is whether that interest, whatever it is, is being justifiably jeopardized.” *In re Aqua Associates*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991).

11. The Debtor has proposed, and PHG has agreed to accept, a monthly payment of thirteen thousand dollars (\$13,000.00) as additional adequate protection to the Lender.

12. The Debtor believes that the protections outlined in the proposed Cash Collateral Order are fair and reasonable under the circumstances and will be sufficient to protect the interests of the Lender from diminution in value during the period of its use by the Debtor.

13. Accordingly, under the circumstances of this Chapter 11 case, the granting of the relief requested in the Motion is warranted.

14. The Debtor requests that the Court enter the proposed order so that it may use cash collateral with the Lender’s consent and approval of the Court.

WHEREFORE, the Debtor respectfully requests that this Court enter an order granting it the authority to use cash collateral, and such other and further relief as is just and proper.

Respectfully submitted,

COHEN BALDINGER & GREENFELD, L.L.C.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed, via first-class mail, postage prepaid, and served electronically via the CM/ECF system, this 28th day of November 2016, to the following:

Office of the United States Trustee
Suite 600
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/s/ Steven H. Greenfeld
Steven H. Greenfeld