

SO ORDERED



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

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

**CONSENT ORDER AUTHORIZING USE OF
CASH COLLATERAL AND PROVIDING ADEQUATE PROTECTION**

This matter having come before the Court on the Debtor’s Motion for Authority to Use Cash Collateral and after notice and opportunity for hearing, and it appearing that the parties have agreed to resolve all issues in dispute therein,

THE COURT HEREBY FINDS:

A. The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on October 27, 2016, (the “Petition Date”) and is presently operating as a debtor-in-possession in accordance with §§1107 and 1108 of the Bankruptcy Code.

B. PHG McHenry, LLC (hereinafter “PHG”) is the holder of a promissory note and Deed of Trust (collectively the “Loan Documents”) securing a loan having an unpaid balance of approximately two million six hundred thousand dollars (\$2,600,000.00). Pursuant to the Loan Documents, the Debtor bound itself to pay to PHG all sums due thereunder according to the terms and conditions contained in the Loan Documents.

C. The obligations of the Debtor to PHG under the Loan Documents are secured by, among other things: (1) a first priority deed of trust April 17, 2008 (the “Mortgage”) on the Debtor’s real 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.

D. “Cash Collateral” as defined by Section 363(a) of the Bankruptcy Code includes post-petition proceeds, products, offspring, rents or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in Section 552(b) and as the term “proceeds” is described in UCC Section 9-306.

E. The Debtor lacks sufficient unencumbered cash or other assets with which to continue to operate its business in Chapter 11. The Debtor requires continued authority to use Cash Collateral pending a final hearing or entry of a final order to continue to operate its business without interruption toward the objective of formulating an effective plan of reorganization.

F. The Debtor has provided PHG with a detailed budget, attached hereto as Exhibit A, setting forth an itemization of the Debtor’s monthly cash needs for the period from October 27, 2016 through January 31, 2017 (the “Interim Budget”).

IT IS HEREBY ADJUDGED AND ORDERED THAT:

1. Relief Granted. The Debtor shall be authorized to use PHG’s Cash

Collateral on an interim basis subject to the terms and conditions of this Stipulation and Order.

2. Use of Cash Collateral. So long as the Debtor is in compliance with the terms of this Order, the Debtor is authorized, for the period beginning on the Petition Date and continuing through January 31, 2017 , to use Cash Collateral in the ordinary course of its business, and to meet the Debtor's ordinary cash needs, in accordance with the Interim Budget for (a) the maintenance and preservation of the Debtor's assets; and (b) the continued operation of the Debtor's business, including but not limited to adequate protection payments to PHG on account of its secured claim. The Debtor is prohibited from using cash collateral to the extent that expenses on the Budget are not actually incurred.

3. Adequate Protection. As adequate protection for the Debtor's use of Cash Collateral from and after the Petition Date, and any diminution of the value of the Cash Collateral arising on account of the Debtor's use thereof, PHG is GRANTED:

a. Adequate Protection Payments. The Debtor shall pay to PHG the sum of thirteen thousand dollars (\$13,000.00), which sum is equal to, or exceeds, the interest at the non-default contract rate of interest on the value of interest in the Property for the months of November 2016 through January 2017. The payment for November 2016 shall be paid within three (3) business days of the entry of this Order, and the payments for December 2016 and January 2017 by the tenth day of December 2016 and January 10, 2017 respectively, as adequate protection of the interests of PHG.

b. Replacement Lien. PHG shall each have, in the same priority as

existed pre-petition, a continuing, valid, binding, enforceable perfected post-petition security interest under Bankruptcy Code Section 361(2), *nunc pro tunc* to the Petition Date, in and to all cash collateral of the Debtor, of any kind or nature whatsoever, whether now existing or hereafter acquired, and the proceeds of the foregoing. The validity, perfection and priority of such replacement lien shall not be affected by the automatic stay of Bankruptcy Code Section 362(a) or subject to the “equities of the case” exception of Bankruptcy Code Section 552(b)(1) and (2). The replacement lien granted herein shall be subject to and subordinate to an administrative “carve-out,” not to exceed the aggregate sum of ten thousand dollars (\$10,000.00) for: (1) unpaid fees and expenses allowed by an Order of the Court and incurred by counsel for the Debtor; (2) statutory fees payable to the United States Trustee; and (3) any fees payable to the clerk of the Bankruptcy Court (the “Carve-Out”). The Carve-Out shall apply only to the extent there are no unencumbered funds (including any retainers held by professionals as of the commencement of this case) to pay the subject fees and expenses. The granting of the Carve-Out is without prejudice to right to object to the allowance and payment of any professional fees in this case.

c. Deemed Perfected. The replacement lien and security interest granted herein is automatically deemed perfected upon entry of this Order without the necessity of PHG taking possession, filing financing statements, mortgages or other documents. Although not required, upon request by PHG, the Debtor shall execute and deliver to PHG any and all UCC Financing Statements, UCC Continuation Statements, Certificates of Title or other instruments or documents to be necessary in order to perfect

the security interests and liens in the Debtor's post-petition cash collateral and proceeds granted by this Order, and PHG is authorized to receive, file and record the foregoing, which actions shall not be deemed a violation of the automatic stay. Pursuant to Local Rule 4001-5(a)(2)(B), all parties in interest shall have seventy-five (75) days from the date of entry of this Order and any creditors' committee, if formed, shall have sixty (60) days from the date of its formation to investigate the validity, perfection, or amount of PHG's pre-petition lien.

d. Statutory Rights under Section 507(b). INTENTIONALLY DELETED

e. Periodic Accountings. For so long as this Order or any extension hereof is in effect, the Debtor shall provide to PHG and the United States Trustee's Office with a monthly accounting (including the line-item comparison of actual and budgeted disbursements) within twenty (20) days after the last day of each month, beginning with the period ending November 30, 2016. Upon reasonable request, the Debtor will provide detailed information pertaining to items contained in the above reports.

f. Creditor's Rights of Inspection and Audit. Upon reasonable notice by PHG, and at PHG's expense, Debtor shall permit PHG and any of its agents reasonable and free access to the Debtor's records and place of business during normal business hours to: (a) verify the existence, condition and location of collateral in which said creditor holds a security interest; (b) to conduct an appraisal(s) of any such collateral; (c) to inspect, audit and make copies of the Debtor's books and records; and

(d) to conduct environmental testing with respect to the Debtor's real property. In conjunction therewith, the Debtor shall not be entitled to seek reimbursement from PHG for incidental expenses such as time expended by Debtor's employees, rent, or similar other expenses. The Debtor shall deposit all Cash Collateral into a Debtor-In-Possession bank account(s) in the name of the Debtor, as Debtor-in-Possession or such other account(s) as is authorized by an Order of the Bankruptcy Court on notice to creditors and the United States Trustee. The Debtor shall furnish PHG with copies of all monthly account statements within five (5) business days after the Debtor's receipt of same from the banking institution at which such account(s) is maintained, together with a copy of all check registers corresponding to such account(s). In addition, the Debtor shall furnish to PHG upon request, copies of any checks or other items referred to or enclosed in such account statements.

g. Insurance. The Debtor shall at all times maintain insurance in the form and to the extent required under the Loan Documents.

4. Default Hearing/Expiration of Authority to Use Cash Collateral. In the event the Debtor defaults under or violates this Order and such default continues for five (5) business days following written notice to Debtor and Debtor's counsel of such default or violation, Debtor is prohibited from using cash collateral until further Order of this Court. Irrespective of whether the Debtor defaults under or violates this Order, this Order will automatically expire on January 31, 2017, unless it is extended with the written consent of PHG or an Order of the Bankruptcy Court.

5. No Effect on Creditor's Rights against Non-Debtors and Non-Estate

Property. Nothing contained herein shall be deemed or construed to limit PHG's rights against any non-bankrupt co-borrower or guarantor of the Debtor or with respect to any property that is not property of the Debtor's estate.

6. Interlocutory Order and No Modification of Creditor's Adequate

Protection. This is an interlocutory order. Nothing contained herein shall be deemed or construed to: (a) limit PHG to the relief granted herein; (b) bar PHG from seeking other and further relief (including without limitation relief from the terms of this Order) for cause shown on appropriate notice to the Debtor and other parties-in-interest entitled to notice of same; (c) require PHG to make any further loans or advances to the Debtor; (d) constitute a waiver of any default under the Loan Documents or the reinstatement of any Loan Document; or (e) require PHG to consent or decline to consent to any extension of the use of cash collateral. The Order may be modified for cause shown by the Debtor, PHG or any other party-in-interest on due notice. No such modification, however, shall deprive PHG of its interest in Debtor's property (pre-petition and post-petition).

7. Notwithstanding F.R.B.P. 4001(a)(1), this Order is not stayed and shall be effective upon entry by this Court.

SEEN AND CONSENTED TO:

COHEN BALDINGER & GREENFELD, LLC

By /s/ Steven H. Greenfeld
Steven H. Greenfeld, Esq.
2600 Tower Oaks Boulevard, Suite 103
Bethesda, MD 20852
(301) 881-8300

Counsel for the Debtor-in-Possession

(signatures continued on following page)

MORRIS, MANNING & MARTIN, LLP

By: /s/ Lisa Wolgast
Lisa Wolgast, Esq. (admitted pro hac vice)
1600 Atlanta Financial Center
3343 Peachtree Road NE
Atlanta, GA 30326
(404) 233-7000
Counsel for PHG McHenry, LLC

I HEREBY CERTIFY that the terms of the copy of the consent order submitted to the Court are identical to those set forth in the original consent order; and the signatures represented by /s/ on this copy reference the signatures of consenting parties on the original consent order.

/s/ Steven H. Greenfeld
Steven H. Greenfeld

Copies to:
Steven H. Greenfeld, Esq.
Lisa Wolgast, Esq.
Office of the U.S. Trustee- Jeanne M. Crouse, Esq.

END OF ORDER