

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION**

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In re: Chapter 11
HUDSON HOSPITALITY HOLDINGS, LLC Case No.: 17-20717-JJT
Debtor,
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**ORDER (A) AUTHORIZING
DEBTOR TO USE CASH COLLATERAL; (B)
GRANTING ADEQUATE PROTECTION TO PRE-PETITION
SECURED LENDER; AND (C) AUTHORIZING DEBTOR
TO OBTAIN POST-PETITION FINANCING**

Upon the motion of the debtor Hudson Hospitality Holdings, LLC (“**Debtor**”) seeking an order (A) pursuant to 11 U.S.C. §§105(a), 361, 362, 363, and 364(c), Fed. R. Bankr. P. 2002, 4001, and 9014, authorizing the Debtor to use cash collateral subject to the lien and security interest of 9 Whitehall Avenue Lender LLC, the pre-petition secured lender (the “**Lender**”); (B) pursuant to 11 U.S.C. §§361 and 363, granting the Lender adequate protection; (C) authorizing debtor to obtain post-petition financing pursuant to 11 U.S.C. § 364(c); and (D) granting the Debtor such other and further relief as the Court deems proper (the “**Motion**”); and this Court having held a hearing on the Motion and having considered any objections; and the relief requested in the Motion being in the best interests of the Debtor, its estate, and its creditors; and the Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein; and upon all the proceedings before the Court and after due deliberation and sufficient cause appearing therefor.

**THE COURT HEREBY MAKES THE FOLLOWING
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. *Petition Date.* On May 16, 2017 (the “**Petition Date**”), the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Connecticut.

2. *Debtor in Possession.* The Debtor is continuing in the management and operation of its business and properties as debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case.

3. *Jurisdiction and Venue.* This Court has jurisdiction, pursuant to 28 U.S.C. §1157(b) and 1334, over these proceedings and over the persons and property affected hereby. Venue for this case is proper in this district pursuant to 28 U.S.C. §1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

4. *Debtor’s Stipulation.* The Debtor admits, stipulates and agrees that (collectively, Paragraphs 4(a) through (e) below are referred to herein as (the “**Debtor’s Stipulation**”).

(a) as of the Petition Date, the Debtor was indebted and liable to the Lender, without objection, defense, counterclaim or offset of any kind, except as expressly reserved herein, in the aggregate principal Open-End Mortgage Deed and Security amount of \$2,200,000 in respect of the loan made under the Open-End Mortgage Deed and Security Agreement, dated August 27, 2015 by and between the Lender and Debtor (“**Prepetition Security Agreement**”) and related agreements and instruments, including the Mortgage Note (collectively, “**Prepetition Loan Documents**”), together with accrued and unpaid interest, and all other fees and expenses as provided in the Prepetition Loan Document (collectively, the “**Prepetition Obligations**”);

(b) the liens and security interests granted by Debtor to secure the Prepetition Obligations are (i) valid, binding, perfected, enforceable, first priority liens on and security

interests in the personal and real property constituting “Collateral” under, and as defined in, the Prepetition Security Agreement in respect of the Prepetition Obligations (together with the Cash Collateral, the “**Prepetition Collateral**”), (ii) not subject to objection, defense, counterclaim, offset, contest, attachment, avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non bankruptcy law, and (iii) subject and subordinate only to after giving effect to this Order, the Carve Out (as defined in paragraph 5 below) and the liens and security interests granted to secure the Adequate Protection Liens (as defined in paragraph 6 below);

(c) the Prepetition Obligations constitute the legal, valid, and binding obligations of the Debtor, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising under § 362 of the Bankruptcy Code) provided, however, the Debtor reserves the right to challenge the enforceability of the Prepetition Obligations to the extent that include charges for default interest;

(d) (i) no portion of the Prepetition Obligations shall be subject to objection, defense, counterclaim, offset, avoidance, recharacterization, recovery, or subordination pursuant to the Bankruptcy Code or applicable non bankruptcy law, and (ii) the Debtor does not have, and hereby forever releases, any claims, counterclaims, causes of action, defenses, setoff or recoupment rights, whether arising under the Bankruptcy Code or applicable non bankruptcy law, against the Lender, its agents officers, directors, employees, and attorneys; provided however, that the Debtor reserves the right to challenge any charges for default interest and to deduct any such charges as may be determined by the Court, and

(e) the Debtor's cash constitutes proceeds of the Prepetition Collateral and, therefore, is cash collateral of the Lender within the meaning of § 363(a) of the Bankruptcy Code (the "**Cash Collateral**").

5. *Carve Out*. For purposes hereof, the "Carve Out" shall mean all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under § 1930(a) of title 28 of the United States Code.

6. *Adequate Protection Liens*. As adequate protection against any diminution in value of the Lender's interest in the Prepetition Collateral, the Lender is hereby granted (effective and perfected as of the Petition Date and without the necessity of the execution by the Debtor of mortgages, security agreements, pledge agreements, financing statements, or other agreements) a valid and perfected replacement security interest in, and lien on (the "**Adequate Protection Liens**"), all of the rights, titles, and interests of the Debtor in, to, and under all present and after-acquired property and assets of the Debtor of any nature whatsoever, whether real or personal, tangible or intangible, wherever located, including, without limitation, all cash and Cash Collateral of the Debtor and any investment of such cash and Cash Collateral, goods, cash-in-advance deposits, contracts, causes of action, general intangibles, accounts receivable, and other rights to payment, whether arising before or after the Petition Date, chattel paper, documents, instruments, interests in leaseholds, real properties, licenses, insurance proceeds, and tort claims, and any and all of the proceeds, products, offspring, rents and profits thereof, rights under letters of credit, capital stock and other equity or ownership interests held by the Debtor, and the proceeds of all of the foregoing, whether now existing or hereafter acquired (collectively, the "**Collateral**"). Subject to the Carve-Out, the Adequate Protection Liens shall be first-priority perfected liens on all of the Collateral.

7. *Priority of Adequate Protection Liens.* The Adequate Protection Liens shall be enforceable against the Debtor, its estates and any successors thereto, including without limitation, any trustee or other estate representative appointed in this Chapter 11 case, or any case under chapter 7 of the Bankruptcy Code upon the conversion of the Chapter 11 Case, or in any other proceedings superseding or related to any of the foregoing (collectively, a “**Successor Case**”).

8. *Modification of Automatic Stay.* The automatic stay under Bankruptcy Code § 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Order, including, without limitation, to: (a) permit the Debtor to grant the Adequate Protection Liens; and (b) authorize the Debtor to pay, and the Lender to retain and apply, payments made in accordance with the terms of this Order.

9. *Perfection of Adequate Protection Liens.* This Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Adequate Protection Liens, without the necessity of filing or recording any mortgage, financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action to validate or perfect the Adequate Protection Liens, or to entitle the Lender to the priorities granted herein.

10. *The Debtor's Obligations.* The Debtor shall pay to the Lender (a) upon entry of this and Order the sum of \$54,999.99 as accrued interest due under the Prepetition Loan Documents; (b) the sum of \$18,333.33 on September 27, 2017 and on the 27th day of each succeeding month until all obligations due under the Prepetition Loan Documents are paid in full; and (c) all other obligations due under the Prepetition Loan Documents.

11. *Events of Default.* The occurrence of any of the following events, unless waived by the Lender, shall constitute an event of default (collectively, the “**Events of Default**”):

(a) the failure by the Debtor to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order;

(b) any lien or security interest purported to be created under the Loan Documents shall cease to be, or shall be asserted by the Debtor not to be, a valid and perfected lien on or security interest in any Collateral, with the priority required by the Loan Documents or herein;

(c) the entry of an order by the Court granting relief from or modifying the automatic stay of § 362 of the Bankruptcy Code (i) to allow any creditor to execute upon or enforce a lien on or security interest in any Collateral having a value in excess of \$100,000, or (ii) with respect to any lien on or the granting of any lien on any Collateral to any state or local environmental or regulatory agency or authority, which in either case would have a material adverse effect on the business, operations, property, assets, or condition, financial or otherwise, of the Debtor; or

(d) reversal, vacatur, or modification (other than a modification with the express written consent of the Mortgage Lender) of this Order;

12. *Rights and Remedies Upon Event of Default.* Immediately upon the occurrence and during the continuation of an Event of Default, the Lender may declare a termination, reduction or restriction of the ability of the Debtor to use any Cash Collateral (any such declaration, shall be referred to herein as a “**Termination Declaration**”). The Termination Declaration shall be given by email or facsimile (or other electronic means) to the following parties: (i) counsel to the Debtor; (ii) the U.S. Trustee (the earliest date any such Termination Declaration is made shall be referred to herein as the “**Termination Declaration Date**”). Upon the passage of five (5) days from the Termination Declaration Date, the Debtor’s right to use Cash Collateral shall automatically cease

unless the Debtor shall have cured such Event of Default in full prior to the expiration of such five (5) day period, and the Debtor shall no longer have the right to use Cash Collateral.

13. *Debtor is Authorized to Obtain Post-Petition Financing Subordinate to the Prepetition Loan Documents.* The Debtor's request to borrow on a secured basis against all of its assets subject only to the Prepetition Loan Documents and any other valid liens against the Property as of the Petition Date is granted upon the terms set forth in the Motion. This Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the liens granted to secured the borrowing without the necessity of filing or recording any mortgage, financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action to validate or perfect the post-petition date liens.

14. *Rights Preserved.* Notwithstanding anything herein to the contrary, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the Lender's right to be paid in full for all obligations under the Prepetition Loan Documents, including, without limitation, accrued interest, default interest, costs and expenses, including attorney fees; (b) the Lender's right to seek any other or supplemental relief in respect of the Debtor, including the right to seek additional adequate protection; (c) any of the rights of the Lender under the Bankruptcy Code or under non bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of § 362 of the Bankruptcy Code; (ii) request dismissal of the Chapter 11 Case or a Successor Case, conversion of the Chapter 11 Case to a case under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of § 1121 of the Bankruptcy Code, a chapter 11 plan or plans.

15. *Good Faith.* The Lender and Ms. Konigsberg have acted in good faith in connection with this Order, and their reliance on this Order is in good faith.

16. *Retention of Jurisdiction.* The Court has and will retain jurisdiction to enforce this Order according to its terms.

Dated at Hartford, Connecticut this 3rd day of November, 2017.


James J. Tancredi
United States Bankruptcy Judge
District of Connecticut