

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: )  
 )  
MOUNTAIN BLUE )  
HOTEL GROUP, LLC ) CHAPTER 11  
 ) CASE NO. 17-66051-lrc  
Debtor. )

**MOTION FOR ENTRY OF INTERIM ORDER AUTHORIZING  
USE OF CASH COLLATERAL**

COMES NOW Blue Mountain Hotel Group, LLC (“Debtor”), and respectfully submits this Motion for Entry of Interim Order Authorizing Use of Cash Collateral (the “Motion”) pursuant to 11 U.S.C. §§ 105, 361, 362 & 363, and Rules 4001(b) and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) seeking Court approval and authorization for the immediate interim use of cash collateral. Debtor also requests the Court schedule an expedited hearing on the Motion. The following is offered in support of this Motion:

**SUMMARY OF RELIEF REQUESTED**

1.

The Debtor believes that US National Bank as Trustee to the Beneficial Holders COMM 2013–CCRE12 Mortgage Trust Commercial Pass Through Certificates (“USNB”) may assert a security interest in the revenues of the Debtor

derived from its hotel operations. Debtor requests that immediate interim authorization for use of cash collateral (to the extent cash collateral exists) be given pursuant to Bankruptcy Rule 4001(b)(2) to allow it to use cash on hand and revenues from business operations for ordinary and necessary operating expenses of its business.

2.

This matter must be handled on an expedited basis because the Debtor believes its business operations and reorganization efforts will suffer immediate and irreparable harm if it is not allowed to use cash collateral during the next thirty (30) days (the “Interim Period”). The Debtor cannot meet its daily operating expenses unless it is permitted to use cash.

3.

Notice of this Motion has been served by e-mail to the Office of the U.S. Trustee (Lindsay.P.Kolba@usdoj.gov; Randy.D.Ennever@usdoj.gov) and to USNB (c/o Christopher P. Schueller, Esq., christopher.schueller@bipc.com) in accordance with Fed. R. Bankr. P. 4001(b) and to the parties on the service list attached hereto.

4.

The Debtor requests that the Court grant immediate authority to use cash collateral.

## **INTRODUCTION**

5.

On September 13, 2017 (the “Petition Date”), the Debtor commenced the above-captioned case by filing voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

6.

This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1334. The subject matter of this motion is a “core proceeding” pursuant to 28 U.S.C. § 157(b)(2)(A) and (M). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

## **HISTORY AND BACKGROUND**

7.

The Debtor is a Georgia limited liability company which owns and operates a Hilton branded hotel in Morgantown, West Virginia located at Suncrest Town Centre, 201 Memorial Highway, Morgantown, WV 26505.

8.

Prior to filing for Chapter 11 relief, Debtor obtained a loan from USNB. USNB has asserted a security interest in, *inter alia*, Debtor’s real and personal property, including income derived from the Debtor’s business operations.

9.

According to USNB the original loan was in the original principal amount of \$15,470,000. Assuming for purposes of this Motion only that USNB has a perfected security interest in the Debtor's real and personal property, that collateral is worth at least \$20,000,000. Thus, USNB has a significant equity cushion in its collateral.

### **REQUESTED RELIEF**

10.

By this Motion, Debtor requests interim authorization for use of cash collateral which may be subject to the lien of USNB pursuant to Bankruptcy Rule 4001(b)(2) to allow the use of cash on hand and revenues from retail operations for ordinary and necessary operating expenses of the Debtor. The Debtor also requests that the Court schedule a final hearing on the use of cash collateral in the event any objection is filed.

11.

As previously asserted the Debtor believes a security interest in cash collateral may exist in favor of USNB to the extent of the revenues generated from operations of the Debtor's hotel. The Debtor does not presently take a position as to the validity, priority, enforceability, and/or extent of any lien of USNB and thus, as a part of this Motion, reserves any and all rights with respect thereto. For

purposes of the Motion only, the Debtor assumes that the claimed liens, to the extent that they are claimed, are valid.

12.

In order to continue operations during the course of this case, which continued operations are deemed necessary to maximize the value of the Debtor's assets, Debtor must continue to use cash collateral, which cash collateral is in the control of the Debtor.

13.

In connection with its operations, Debtor incurs expenses which include, but are not limited to, payroll, utilities, taxes, insurance, fees and other operational and capital costs (the "Operating Expenses").

14.

It is crucial for the Debtor to have the use of cash collateral to pay employees and pay other ordinary and necessary operating expenses in order to (a) avoid disruption of its workforce and business operations; (b) maintain community relations and loyalty; (c) maintain its community presence; and (d) preserve the going concern value of the Debtor and its estate while the Debtor formulates and implements a plan of reorganization.

15.

As for adequate protection for the use of cash collateral as set forth in the Budget, the Debtor hereby offers a post-petition replacement lien to USNB on cash pursuant to and in accordance with 11 U.S.C. §§ 361(2) and 552(b): (a) to the extent of cash collateral actually expended; (b) on the same assets and in the same order of priority as currently exists; and (c) with Debtor's full reservation of rights with respect to the issues set forth in paragraph 11 above.

16.

In addition to the expenses listed on the Budget, the Debtor requests that it be permitted to use cash to pay all quarterly fees of the United States Trustee as they come due.

17.

The Debtor is seeking an Order authorizing the immediate interim use of cash collateral pursuant to Bankruptcy Rule 4001(b)(2) pending a final hearing on this Motion. Debtor meets the five-part test for immediate use of cash collateral as set forth in the Committee Note following Bankruptcy Rule 4001: (a) the Emergency Motion, as it may be amended and supplemented, sets forth the amount of cash collateral sought to be used; (b) it sets forth the name and address of the entity Debtor believes to have or claim an interest in and to the cash collateral; (c) it identifies the entity that is in control of the cash collateral; (d) it sets forth the

facts demonstrating the immediate need for the use of cash collateral; and (e) it sets forth the adequate protection being offered to the lender.

18.

By this Motion, the Debtor also requests final approval, following a final hearing, to use cash collateral throughout the course of this case.

WHEREFORE, Debtor respectfully requests the Court schedule an expedited hearing on the Motion and enter an Order authorizing the Debtor's use of cash collateral; grant the Debtor final approval to use cash collateral following a final hearing on this Motion; and grant such other and further relief as is just and appropriate.

Respectfully submitted, this 15th day of September 2017.

/S/

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Counsel for Debtor

CERTIFICATE OF SERVICE

This is to certify that I have caused this day to be served a true and correct copy of the foregoing **MOTION FOR ENTRY OF ORDER AUTHORIZING USE OF CASH COLLATERAL** by depositing same in United States Mail in a properly addressed envelope with adequate postage thereon to:

<p>Office of the U. S. Trustee Room 362 75 Ted Turner Drive, SW Atlanta, GA 30303 Lindsay.P.Kolba@usdoj.gov Randy.D.Ennever@usdoj.gov</p> <p>Christopher P. Schueller, Esquire Buchanan Ingersoll &amp; Rooney PC One Oxford Centre, 20<sup>th</sup> Floor 301 Grant Street Pittsburgh, PA 15219 <i>christopher.schueller@bipc.com</i></p>		
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This 15th day of September 2017.

/S/\_\_\_\_\_  
Scott B. Riddle, Esq.