

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

IN RE: ) Case No. 17 -22394  
)  
Market Square Hospitality, LLC, ) Chapter 11  
)  
Debtor-in-Possession. ) Judge Baer

**NOTICE OF MOTION**

To: See service list attached.

PLEASE TAKE NOTICE that on the 31<sup>st</sup> day of July, 2017, at 10:00 a.m., or as soon as counsel may be heard, I shall appear before the Honorable Timothy A. Barnes in Room 744 of the United States Bankruptcy Court, 219 S. Dearborn Street, Chicago, Illinois, 60604, and shall then and there present **Motion of Debtor-in-Possession for Entry of Interim and Final Orders Authorizing it to Use Cash Collateral; Granting Adequate Protection; and Scheduling a Final Hearing**, a copy of which is hereby served upon you.

By: /s/ Abraham E. Brustein  
One of its attorneys

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**CERTIFICATE OF SERVICE**

The undersigned, a non-attorney, hereby certifies that by 6:00 p.m. on the 27<sup>th</sup> day of July, 2017, she caused to be served upon the persons list listed below, via the court's CM/ECF system, via Facsimile, via Email and Via First Class Mail, a copy of **Motion of Debtor-in-Possession for Entry of Interim and Final Orders Authorizing it to Use Cash Collateral; Granting Adequate Protection; and Scheduling a Final Hearing**, and this Notice.

/s/ Jenna Jarke

**Service List**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
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IN RE: ) Case No. 17 -22394  
)  
Market Square Hospitality, LLC, ) Chapter 11  
)  
Debtor-in-Possession. ) Judge Baer

**MOTION OF DEBTOR-IN-POSSESSION FOR ENTRY OF INTERIM AND FINAL  
ORDERS AUTHROZING IT TO USE CASH COLLATERAL; GRANTING ADEQUATE  
PROTECTION; AND SCHEDULING A FINAL HEARING**

Market Square Hospitality, LLC, (õMSHö)(õDebtorö) by its attorneys, Abraham Brustein and Julia Jensen Smolka, bring this motion (õMotionö) for entry of an order (i) authorizing it to use case collateral of Thomas A. Olson (õOlsonö), and United States Small Business Administration (õSBAö) (collectively, õSecured Partiesö) on an interim or preliminarily basis, (ii) setting further hearings on the Motion for entry of a final order authorizing it to use cash collateral of Secured Parties; (iii) granting Secured Parties adequate protection; and (iv) providing such other relief as may be appropriate under the circumstances. In support of this Motion, the Debtor states the following:

**Introduction**

1. The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on July 27, 2017 (õPetition Dateö). The Debtor is a limited liability company organized under the laws of the State of Colorado.

2. No trustee has been appointed to this case. Debtor continues to operate its business as Debtor-in-Possession pursuant to the provisions of Sections 1107 and 1108 of the Bankruptcy Code. No committee has been appointed as of the date of this Motion.

3. Debtor is in the business of owning and operating a hotel that includes related business activities described below, and also the leasing of retail space to tenants within the the Debtor's hotel property. The Debtor's business is commonly known as The Inn at Market Square and operates from 2723 Sheridan Road, Zion, Illinois.

4. The hotel has eighty-four (84) guest rooms for daily rental. The Debtor provides integrated hospitality services for its guests and others, including the operation of a restaurant and gift shop known as Callie's. At the hotel premises, the Debtor also offers a 220-seat banquet facility with a Debtor operated catering service for special events. The hotel's amenities include a business center, meeting and training rooms, a workout facility, and a spa. For purposes of this Motion the Debtor's integrated business operation is referred to as the "Hotel Business".

5. In this Motion, Debtor seeks entry of an order authorizing it to use cash collateral of Olson and SBA on an interim or emergency basis and to schedule such hearings as may be appropriate to consider entry of a final order authorizing it to use cash collateral of Secured Parties. Debtor also seeks authority to grant to Secured Parties adequate protection for their interim or emergency use of cash collateral by (i) granting them replacement liens upon the same property on which they had liens prior to the Petition Date including, rents, profits, income or other proceeds derived from the operation of the Hotel Business, and the collection of rents from Debtor's tenants, to the same extent and with the same priority as existed on the Petition Date; and (ii) limiting its use of the Secured Parties cash collateral to expenditures set forth in a budget to be incorporated into the order authorizing use of cash collateral.

6. At the initial presentation of this Motion, Debtor seeks authorization to use cash collateral on a short-term basis in accordance with the budget attached to this motion and to set

further hearings on use of cash collateral on a preliminary and final basis, after notice and hearing, in accordance with the provisions of Bankruptcy Rule 4001(b), or if applicable, Bankruptcy Rule 4001(d).

7. This court has subject matter jurisdiction to grant the relief requested in this motion as a core proceeding pursuant to 28 U.S.C §§1334(b) and 157(b)(2)(M).

8. This court is authorized to grant the relief requested by the Debtor pursuant to Section 105 and 363(c) of the Bankruptcy Code and Bankruptcy Rule 4001.

### **History of Debtor**

9. The Debtor acquired the site from which it now operates its business in 2009. The City of Zion provided economic incentives and tax increment financing to Zion Sheridan Partners, LLC, the Debtor's predecessor in interest for the acquisition of the property and the construction of the hotel on the property.

10. Preferred Capital Services Corporation (PCSC) provided construction financing to the Debtor for the construction of a new hotel on the Debtor's site. On information and belief, Olson is an owner or manager of PCSC.

11. Hotel operations began in or around June 2011, when construction of the hotel was substantially completed.

12. In a transaction that closed in or around August 2012, permanent financing replaced the construction financing that had been provided by PCSC. St. Charles Bank & Trust provided first mortgage financing in an original principal amount of \$6,762,500.00, secured by, among other things, a first mortgage, assignment of rents and a security interest in all of the

Debtor's personal property. The SBA provided financing in the amount of \$3,197,000.00 secured by a junior mortgage on the Debtor's real estate and a junior security interest in the Debtor's equipment and fixtures.

### **Olson's Secured Claim**

13. On June 27, 2017, Olson purchased the loan documents then held by St. Charles Bank as described in ¶ 12. The loan is evidenced by a Promissory Note dated August 1, 2012 in the original principal amount of \$6,762,500.00 that had a maturity date of July 31, 2022. The obligations of the Debtor under this note are secured by a mortgage, security agreement, assignment of rents and fixture filing dated August 1, 2012. Those instruments were recorded with the Lake County Recorder of Deeds on September 21, 2012, as document numbers 6900337 and 6900338. St. Charles Bank filed a UCC Financing Statement and a Continuation Statement with the Colorado Secretary of State on September 5, 2011 and on April 4, 2017. They are document numbers 20122047557 and 20172031155. The assignment of the security interest to Olson is noted in a UCC-3 Amendment filed with the Colorado Secretary of State on July 11, 2017 as document number 20172064570. Olson claims that the outstanding balance due under the note and related loan documents is \$6,425,174.21 as of June 27, 2017.

### **SBA's Secured Claim**

14. The SBA extended a loan to the Debtor evidenced by a Promissory Note dated August 24, 2012 in the original principal amount of \$3,197,000.00. The obligations of the Debtor under this note are secured by a mortgage, assignment of rents, security agreement and financing statement dated August 24, 2012. These instruments were recorded with the Lake County Recorder of Deeds on September 7, 2012, as document numbers 6893901 and 6893902

respectively. Debtor believes the outstanding balance due is \$2,605,039.55. The SBA filed a UCC-1 Financing Statement on August 31, 2012 with the Illinois Secretary of State as document number 17564609.

### **Secured Parties Interest in Cash Collateral**

15. Debtor believes that Olson claims an interest in cash collateral derived from Debtor's operation of the Hotel Business by virtue of the security agreement dated August 1, 2012, the UCC filings made with the Colorado Secretary of State. Additionally, § 552(b)(2) of the Bankruptcy Code, provides that a prepetition security interest in rents, fees, charges and other payments for occupancy of rooms at hotels, extends to such rents, fees, charges, accounts and other payments acquired by the estate after the Petition Date.

16. Under applicable Illinois law, an assignment of rents creates a lien upon rental income derived from real estate which is perfected when the assignment of rents is recorded. *In re Randall Plaza Center Associates, LP*, 326 B.R. 133, 139-40 (Bankr. N.D. Ill. 2005). Therefore, Debtor believes the rent which it receives from its tenants at the hotel premises are cash collateral in which both Olson and the SBA have an interest within the meaning of section 363(a) of the Bankruptcy Code.

### **Debtor's Proposed Use of Cash Collateral**

17. Debtor proposes to use Olson's and SBA's cash collateral to pay for the necessary expenses related to the operation of the hotel and maintenance, upkeep, and preservation of the Property for purposes of the first interim cash collateral order. These expenses, which are itemized in the budget which is attached to this Motion as **Exhibit A**, are for payroll for the Debtor's 31 employees, associated payroll taxes, the purchase of supplies and merchandise for



the Hotel Business and similar necessary expenses. The Debtor will also request the right to spend up to \$450 for emergencies or contingencies during the period of the first interim order without further order of court.

18. The Debtor will be unable to operate the Hotel Business without the ability to use cash collateral as requested in this Motion. In that case, it would have to cease business operations and layoff its employees.

19. As of the date this motion is filed, the Debtor has bank balances of \$30,000.00. For the period beginning July 28, 2017 through July 31, 2017, Debtor projects cash receipts of \$28,163.00. For the month of August, Debtor projects cash receipts of \$132,000.00. These projections were developed by Debtor's controller and its Manager, based on historical data for receipts from rooms not occupied by the Cancer Treatment Center of America "CTCA" and the current level of CTCA room occupancy.

20. As of the date of the filing of this Motion, neither Olson nor the SBA has formally consented to the uses of cash collateral as set forth in the proposed budget.

21. In subsequent and final cash collateral requests, Debtor intends to seek authority to use cash collateral to make payments which go on beyond basic operation of the Hotel Business, including the direct maintenance and preservation of the real property from which the Hotel Business is operated. Those requests may include payments for fees due under 28 U.S.C. § 1930 improvements, repairs, marketing, the administrative expenses of this case and payment of principal and/or interest on the underlying indebtedness to the extent permissible or required under Sections 506 and 363 of the Bankruptcy Code.

### **Proposed Adequate Protection**

22. As adequate protection for use of Olson's and SBA's cash collateral to the limited extent sought at the initial presentation of this Motion, the Debtor proposes to grant to Olson and SBA a lien upon all property acquired by Debtor from and after the Petition Date which in any way relates to or arises from its ownership of Property, to the same extent Olson and SBA held a pre-Petition valid, perfected, security interests in the same type of category of property of the Debtor immediately prior to filing of its bankruptcy petition.

### **Notice**

23. Debtor has provided notice of the presentation of this Motion to the Secured Parties, the taxing authorities, governmental units holding claims against the Debtor, and holders of the twenty (20) largest unsecured claims. To parties not capable of being served through the court's CM/ECF system, notice was provided by facsimile. Notice was given on July 27, 2017.

Respectfully submitted,

Market Square Hospitality, LLC

By: /s/ Abraham E. Brustein  
One of its attorneys

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