

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
LEXINGTON DIVISION

IN RE:

LEXINGTON HOSPITALITY GROUP LLC

CASE NO. 17-51568  
CHAPTER 11

DEBTOR IN POSSESSION

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**DEBTOR'S EXPEDITED MOTION FOR  
INTERIM USE OF CASH COLLATERAL  
AND TO SCHEDULE FINAL HEARING**

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Comes Lexington Hospitality Group LLC, as a debtor and debtor in possession (the "Debtor"), by counsel, and pursuant to 11 U.S.C. § 363, Fed. R. Bankr. P. 4001, and other applicable law, and hereby moves the Court for the entry of an Order for Interim Use of Cash Collateral (the "Interim Order") and for authority to use cash collateral as set forth on the budget attached hereto as Exhibit A (the "Budget") for an interim period, until a final hearing for continued use can be held, and to provide adequate protection as set forth herein. The Debtor states that entry of the Interim Order is necessary to ensure continued going-concern operations and to protect and preserve the value of the Debtor's assets and ongoing operations. In support of the Motion, the Debtor states as follows:

**RULE 4001(b) STATEMENT:**

- (a) Name of Each Entity That May Claim an Interest in Cash Collateral (also referred to as the "Cash Collateral Creditor"): PCG Credit Partners, LLC ("PCG") may claim an interest in cash collateral pursuant to a UCC-1 financing statement filed of record with the Kentucky Secretary of State that encumbers inventory, equipment, and accounts amongst other property.
- (b) Purposes for the Use of Cash Collateral: As set forth in more detail in the Budget attached hereto as Exhibit A, the Debtor proposes to use Cash Collateral to meet its postpetition obligations and to pay its expenses, general and administrative operating expenses, and other necessary costs and expenses of operating the hotel, including taxes and insurance and other expenses incurred during the pendency of the bankruptcy case.

- (c) Terms and Duration: The Debtor seeks authority to use cash collateral in the amounts as set forth on the Budget for the interim period through any final hearing date, and in addition to or pursuant to subsequent proposed budgets to be filed with the Court. There are no payments to insiders other than the salary of Kenneth Moore who earns \$1,799 biweekly. Expenses are related to preservation of the hotel. The Debtor seeks to use Cash Collateral as set forth on the Budget; provided, however, that the Debtor does not exceed the total Budget amount by more than twenty percent (20%). Any expenditure which would cause the Debtor to exceed the total Budget by more than twenty percent (20%) shall require the approval of the Court or consent of its Cash Collateral Creditor.
- (d) Adequate Protection: In consideration of the Cash Collateral Creditor's consent to the use of the Cash Collateral by the Debtor and as part of the adequate protection for any diminution in the value of the Cash Collateral Creditor's interests in the prepetition collateral, pursuant to 11 U.S.C. §§ 361 and 363, the Debtor proposes to grant to the Cash Collateral Creditor a replacement lien upon all property of the Debtor of the same type and description as the prepetition collateral as of the Petition Date (the "Replacement Lien"). As further adequate protection, Debtor shall pay a \$5,000 adequate protection payment during the interim period to the Cash Collateral Creditor and continue to account for all cash use, and the proposed cash use is being incurred to preserve property of the Estate.

### **JURISDICTION AND VENUE**

1. On August 3, 2017 (the "Petition Date"), the Debtor filed a voluntary petition for relief with this Court under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code"). The Debtor is operating its business as a debtor and debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

2. This Court has jurisdiction over this Chapter 11 case under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A).

3. The Debtor is a Kentucky limited liability company which maintains its principal assets in Fayette County, Kentucky. Accordingly, venue for the Debtor's Chapter 11 case is proper in this District under 28 U.S.C. § 1408 and 1409.

4. No trustee or examiner has been appointed in this Chapter 11 case, and no creditors' committee or other official committee has been appointed.

**BACKGROUND**

5. The Debtor, a Kentucky limited liability corporation, is the owner and operator of the Clarion Hotel and Conference Center, located at 5532 Athens Boonesboro Road, Lexington, Kentucky. The Debtor began to experience financial difficulties due to a previous management company which made no effort to maintain or increase hotel revenues causing a significant decline in revenue. The Debtor has implemented new business model changes to increase revenue including hiring a new management company and opening a restaurant. Due to the impact of periods of declining revenue, Debtor has been unable to fully service its debts outside of bankruptcy including debt owed to its primary secured creditor. The Debtor seeks a “breathing spell” to reorganize its business under Chapter 11 of the Bankruptcy Code in order to restructure its debts, reorganize as a going concern, and maximize value for the benefit of the creditors of its Estate.

**RELIEF REQUESTED**

6. PCG (the “Cash Collateral Creditor”) may claim an interest in cash collateral pursuant to a UCC-1 filed of record with the Kentucky Secretary of State that encumbers inventory, equipment and accounts amongst other property. The debt to PCG is evidenced by that certain Secured Promissory Note dated September 28, 2015, in the original principal amount of \$6,150,000.00 with a maturity date of December 28, 2016 ; that certain Loan Agreement dated September 28, 2015; that certain Mortgage and Security Agreement, dated September 28, 2015, and recorded in Book 8397, Page 41, Fayette County, Kentucky public records (as amended or assigned), encumbering certain real property as described in the Mortgage; and that certain All-Assets Security Agreement dated September 28, 2015. The Debtor requests herein the authority to use Cash Collateral on an interim basis and to set a final hearing for continued cash use. As

used herein, "Cash Collateral" shall mean (i) all cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents derived from any secured creditor's collateral; and (ii) proceeds, rents, or profits of any secured creditor's collateral, including without limitation all amounts (A) received by the Debtor in the collection of the Debtor's prepetition account receivables and received by either the Debtor or its assignees, and (B) generated by the Debtor's operations, both prepetition and postpetition, and received by the Debtor or its assignees. Upon information and belief, the value of the collateral exceeds the Cash Collateral Creditor's interests as the hotel as previously appraised for in excess of \$9,000,000.

7. The Debtor's need to use Cash Collateral is essential to continuation of these Chapter 11 proceedings and to ensure continued going-concern operations to maximize the recovery to all creditors. Without the use of Cash Collateral as a means of providing working capital, the Debtor cannot meet its ongoing obligations incurred in the ordinary course of business. In short, the Debtor is unable to operate the hotel without the use of Cash Collateral and the entry of an Interim Order is necessary to avoid immediate and irreparable harm to the Debtor's operations, its creditors, and other parties in interest.

8. To preserve the value of the Debtor's assets, the Debtor requires the interim use of Cash Collateral, and without such use, the value of the Debtor's assets will immediately and substantially diminish and the Debtor would be forced to cease its operations.

9. Section 363(c)(2) of the Bankruptcy Code provides that a debtor "may not use, sell or lease cash collateral . . . unless (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of this section."

10. The Debtor is unable to otherwise obtain funds, either unsecured or secured, in an amount necessary for the maintenance and preservation of the Debtor's assets from sources other than as provided by the use of Cash Collateral pursuant to the terms of the Interim Order or such other interim order as the Court may approve.

11. Good cause has been shown for the entry of the Interim Order. Among other things, entry of the Interim Order will allow the Debtor to maintain its operations and preserve its assets and to maximize recovery to all creditors. Further, the use of Cash Collateral will allow the Debtor to pay insurance and other expenses necessary to maintain the Debtor's ongoing operations.

12. Additionally, this Motion is without prejudice to a "carve-out" of Cash Collateral for legal fees for Debtor's counsel or other professional fees (if any such applications are filed) and U.S. Trustee fees. The "carve-out" is essential for the Debtor to pay its attorneys or other professionals in this Chapter 11 proceeding. If a Committee is appointed in this case, the Debtor will seek permission for a carve-out to pay fees associated with the operation of a Committee.

13. The Debtor proposes entry of the Interim Order pursuant to the Budget. The Debtor proposes using Cash Collateral pursuant to the Budget, subject to the ability to exceed the Budget by up to a total of twenty percent (20%) of projected expenses. As adequate protection for any diminution in the value of the Cash Collateral Creditor's interests in the Cash Collateral, pursuant to 11 U.S.C. §§ 361 and 363, the Debtor proposes to grant it the Replacement Lien, subject only to any valid and enforceable, perfected, and non-avoidable liens of other secured creditors. The Debtor is willing to negotiate adequate protection payments with its Cash Collateral Creditor and has proposed an interim payment of \$5,000. As further adequate

protection, the Debtor shall continue to account for all cash use, and the proposed cash use is being incurred to preserve property of the Estate.

14. The proposed interim use of Cash Collateral is for the time period until such date as the Court may set a final hearing on this Motion, which final hearing date is likewise being requested hereby.

WHEREFORE, the Debtor respectfully requests entry of an Order for Interim Use of Cash Collateral.

**NOTICE**

Notice is hereby given that the foregoing shall be brought on for hearing before the United States Bankruptcy Court for the Eastern District of Kentucky, 100 East Vine Street, Second Floor, Lexington, Kentucky, on August 7, 2017, at the hour of 1:00 p.m. (ET), or as soon thereafter as counsel may be heard.

Respectfully submitted,

DELCOTTO LAW GROUP PLLC

/s/ Jamie L. Harris  
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COUNSEL FOR DEBTOR  
AND DEBTOR IN POSSESSION  
(UNDER PENDING APPLICATION)

**CERTIFICATE OF SERVICE**

In addition to the parties who will be served electronically by the Court's ECF System, the undersigned certifies that a true and accurate copy of the foregoing was served by electronic mail or

first-class U.S. mail, postage prepaid, on August 4, 2017 on all non-ECF creditors as listed on the proposed Master Service List in this case.

/s/ Jamie L. Harris, Esq.  
COUNSEL FOR DEBTOR  
AND DEBTOR IN POSSESSION  
(UNDER PENDING APPLICATION)

# **EXHIBIT “A”**



Lexington Hospitality Group  
Budget for August 2017

**SUMMARY**

REVENUE	
ROOM REVENUE	136,969.00
FOOD REVENUE	4,500.00
BEVERAGE REVENUE	0.00
TELEPHONE REVENUE	0.00
OTHER INCOME	13,283.00
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TOTAL REVENUE	154,752.00
OPERATING DEPARTMENT EXPENSES	
ROOMS DEPARTMENT	56,979.00 (this includes payroll of \$33,708)
FOOD DEPARTMENT	3,232.00
BEVERAGE DEPARTMENT	1,365.00
TELEPHONE DEPARTMENT	799.00
OTHER INCOME DEPARTMENT	150.00
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TOTAL OPERATING DEPT. EXPENSES	62,525.00
OPERATING DEPARTMENT PROFITS	
ROOMS PROFIT	94,990.00
FOOD PROFIT	1,268.00
BEVERAGE PROFIT	-1,365.00
TELEPHONE PROFIT	-799.00
OTHER INCOME PROFIT	13,133.00
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GROSS OPERATING INCOME	92,227.00
UNDISTRIBUTED DEPARTMENTAL EXPENSES	
ADMINISTRATIVE & GENERAL	14,389.00
SALES & MARKETING	22,242.00
PROPERTY OPERATIONS & MAINTENANCE	16,582.00
ENERGY	18,983.00
FRANCHISE FEES	6,839.00
MANAGEMENT FEES	5,008.00
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TOTAL UNDISTRIBUTED EXPENSES	84,043.00
GROSS OPERATING PROFIT	8,184.00
FIXED EXPENSES	
INSURANCE	3,000.00
PROPERTY & OTHER TAXES	2,532.30
OWNER EXPENSES	0.00
LEASES	0.00
TOTAL FIXED EXPENSES	5,532.30