

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

In re:	:	
	:	
SWAGAT HOTELS, LLC	:	Case No. 16-24255-WILL
	:	Chapter 11
Debtor.	:	
_____	:	

CONSENT MOTION TO EXTEND USE
CASH COLLATERAL AND TO PROVIDE ADEQUATE PROTECTION

COMES NOW the Debtor-in-Possession, Swagat Hotels, LLC, by and through counsel, Cohen Baldinger & Greenfeld, LLC, and moves this Court for the authority to use cash collateral and to provide adequate protection and as cause therefore states::

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §1334. This matter is a core proceeding pursuant to 28 U.S.C. §157. Venue for the Motion is proper in this Court pursuant to 28 U.S.C. §1408 and 1409.

2. Swagat Hotels, LLC (the “Debtor”) filed a voluntary petition in this Court pursuant to Chapter 11 of Title 11 of the Bankruptcy Code (the “Bankruptcy Code”) on October 27, 2016 (the “Petition Date”).

3. At all times since the filing of the petition, the Debtor has remained in control of its assets and the management of its affairs as Debtor-in-Possession. The Debtor is a Maryland Limited Liability Company operating a hotel trading as the Quality Inn - McHenry.

4. On January 6, 2017, this Court entered an Order authorizing the Detbor to use cash collateral through January 31, 2017.

5. The Debtor is now requesting authority to use of the Collateral to pay its operating expenses and to maintain the value of the bankruptcy estate through March 31, 2017.

6. The Debtor is able to provide adequate protection in the form of a continuing lien on post-petition cash collateral as well as adequate protection payments for an interim period to allow the Debtor to commence to reorganize the operations of the estate. Accordingly, under the circumstances of this Chapter 11 case, the granting of the relief requested in the Motion is warranted.

7. The Debtor requests that the Court enter the proposed order so that it may use cash collateral with the Lender's consent and approval of the Court.

WHEREFORE, the Debtor respectfully requests that this Court enter an order granting it the authority to use cash collateral, and such other and further relief as is just and proper.

Respectfully submitted,

COHEN BALDINGER & GREENFELD, L.L.C.

By: /s/ Steven H. Greenfeld

Steven H. Greenfeld

Suite 103

2600 Tower Oaks Boulevard

Rockville, MD 20852

(301) 881-8300

Counsel for Debtor-in-Possession

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed, via first-class mail, postage prepaid, and served electronically via the CM/ECF system, this 6th day of March 2017, to the following:

Office of the United States Trustee
Suite 600
6305 Ivy Lane
Greenbelt, MD 20770

Lisa Wolgast, Esq.
1600 Atlanta Financial Center
3343 Peachtree Road NE
Atlanta, GA 30326

/s/ Steven H. Greenfeld
Steven H. Greenfeld

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

In re:)	
)	
SWAGAT HOTELS, LLC)	Case No. 16-24255-WILL
)	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 seven hundred thousand dollars (\$2,700,000.00). 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 Court entered a Consent Order Authorizing Use of Cash Collateral and Providing Adequate Protection [Dkt. No. 43] on January 6, 2017 wherein the Debtor was authorized to use cash collateral through January 31, 2017.

G. 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 February 1, 2017 through March 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 February 1, 2017 and continuing through March 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. On or before the tenth (10th) day of February and March 2017 (the "Payment Due Dates"), the Debtor shall pay to PHG the sum of ten thousand dollars (\$10,000.00)(the "Minimum Monthly Payment"), 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 February 2017 and March 2017. The payment for February 2017 shall be paid within three (3) business days of the entry of this Order, and the March 2017 by the tenth day of March 2017 as adequate protection of the interests of PHG. In addition, to the Minimum Monthly Payment, on each Payment Due Date, the Debtor shall pay PHG the sum of three thousand three hundred fifty-eight dollars (\$3,358.00) (the "Partial Monthly Payment") together with the Minimum Monthly Payment. If, and to the extent that all or any portion of a

Partial Monthly Payments is not made as and when due hereunder, the unpaid portion of the Partial Monthly Payments due hereunder shall be paid by the Debtor to PHG by June 30, 2017.

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.

d. 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.

e. 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.

f. 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 March 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

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