IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re: Carolina Hotel Investors— Crabtree, LLC, a North Carolina limited liability company, Debtor.	Case No. 18–30414 Chapter 11

DEBTOR'S MOTION, WITH THE SECURED LENDER'S CONSENT, FOR AUTHORIZATION TO USE CASH COLLATERAL AND TO PROVIDE REGIONS BANK WITH ADEQUATE PROTECTION

PURSUANT TO 11 U.S.C. § 363 and Fed. R. Bankr. P. 4001(b), debtor Carolina Hotel Investors—Crabtree, LLC, a North Carolina limited liability company (**Crabtree**), with the consent of Regions Bank, the secured creditor with a perfected security interest in cash collateral, respectfully requests that the Court enter an order authorizing Crabtree to use cash collateral on the terms set forth below.

JURISDICTION AND VENUE

1. This motion for the use of cash collateral is governed by 11 U.S.C. § 363 and Fed. R. Bankr. P. 4001(b). The Court has jurisdiction over this Chapter 11 case and this matter. Venue is proper in this Court because Crabtree's principal place of business is in Mecklenburg County, North Carolina.

2. A request to use cash collateral is a core matter under 28 U.S.C. § 157(b).

THE DEBTOR AND ITS PROPOSED USE OF CASH COLLATERAL

3. The debtor needs to use cash collateral to fund day-to-day operations at its primary asset, the Holiday Inn, Raleigh (Crabtree Valley Mall), located at 4100 Glenwood Ave, Raleigh, North Carolina 27612 (the **Hotel**).

4. Before the commencement of this case, Crabtree borrowed $9,800,000 from

Regions Bank. The loan matures, and is immediately due and payable, on March 20, 2018.

5. Crabtree's obligations to Regions Bank are secured pursuant to a Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement Securing Financial Advances, which was recorded with the Wake County, North Carolina, Register of Deeds on September 21, 2015, at Book 016157, Pages 02152–02179 (the **Deed of Trust**).

6. The Deed of Trust grants Regions Bank a security interest in or lien on, among other assets, all of debtor's rights and interests in and to:

> All fees, charges, accounts, and/or other payments for the use or occupancy of rooms and other public facilities on the Land and the Improvements, together with the right to receive such fees, charges, accounts or other payments, and including fees, charges, accounts, and/or other payments arising from the following whether before or after the commencement of any bankruptcy or insolvency affecting Grantor: (a) sale of food and beverages at the Hotel, whether in a restaurant, through "room service" dining, through the bar, or through banquets, catering facilities and similar services; (b) sales of food and beverages from mini-bar facilities in guest rooms; (c) laundry, vending machine, and telecommunication receipts, whether billed to a Hotel guest or collected in cash; (d) use, rental, occupancy or licensing of hotel rooms, hotel suites, conference rooms, meeting rooms, ballrooms, and other rooms and facilities; (e) operation of health club, personal care, and other facilities located in, on or at the Hotel, (f) incidental charges to Hotel guests or other users or customers; (g) any other charges of any kind, for the direct or indirect benefit of Grantor or Atma Hotel Group, Inc., a North Carolina Corporation and the manager of the Hotel ("Manager"), that appear on any bill or statement rendered to any Hotel guest or other user or customer of the Hotel or are otherwise collected from or paid by any such person; (h) any payments of any kind from credit card companies, travel agents, or reservation systems or services relating to the Hotel; and (i) charges for parking of cars (whether "selfparking" or "valet parking") at or near the Hotel….[1]

7. In addition to recording the Deed of Trust with the Wake County Registry, Regions Bank filed a UCC-1 security interest with the North Carolina Secretary of State on September 23, 2015 (File Number 20150091402F).

8. The security interest of Regions Bank extends to the revenues generated at the Hotel on and after the petition date under 11 U.S.C. § 552(b)(2).

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[1] Capitalized terms used in the foregoing paragraph have the meanings assigned in the Deed of Trust.

9. Based on the public records review performed by the undersigned proposed counsel for Crabtree, it appears that Regions Bank is the only entity that may have a security interest in, or lien on or against, cash that may constitute cash collateral, as such term is defined at 11 U.S.C. § 363(a).

10. Before the commencement of this case, Crabtree negotiated with Regions Bank regarding the proposed use of cash collateral. The parties agreed to the following terms (which are incorporated in the form of the proposed order filed with this motion), as indicated by the signature of Regions Bank's counsel, below:

A. The debtor may use cash collateral for the payment of ordinary third-party expenses (i.e., not for capital expenditures or for payments to insiders or affiliates of the debtor) during this bankruptcy case, subject to the debtor's and Regions Bank's respective rights to request that the Court vacate or modify this Order, in accordance with the budget attached as **Exhibit 1** to this motion (the **Budget**). Without limiting the generality of the foregoing, the debtor may not spend more than 110% of any individual line item on the Budget, or more than 105% of the total amount budgeted for such month, during any month without Regions Bank's written consent.

B. The debtor may use cash collateral for the payment of capital expenditures after the written approval of Regions Bank. If such expenditures are, in Regions Bank's material discretion determined to be material, Regions Bank may require the debtor to obtain approval of this Court before paying for such capital expenditures. The foregoing, however, shall not preclude the debtor from incurring capital expenditures or paying for such capital expenditures to the extent that they are emergent and are material to the Hotel's operations or for the health and safety of guests or employees of the Hotel.

C. The debtor may not assert any claim under 11 U.S.C. § 506(c) against Regions Bank or any of Regions Bank's collateral after the petition date.

D. The debtor shall not use cash collateral to pay any pre-petition expense due and outstanding as of the petition date unless and except to the extent that, before the petition date, the debtor or the management company engaged to manage the Hotel had issued a check in payment of such pre-petition expense and payment under such check was pending on the petition date.

E. Regions Bank shall have replacement liens on such of the debtor's post-petition assets that Regions Bank had before the commencement of these cases, including but not limited to cash and any receivables generated by post-petition operations of the Hotel. If the Court subsequently determines that there is a defect in the perfection or priority of Regions Bank's pre-petition liens and interests, the replacement liens granted in this Paragraph 5 shall remain subject to the challenge by the debtor or any other party in interest.

F. Without limiting the foregoing paragraph E, the debtor shall pay Regions Bank monthly interest payments, paid in arrears (the first monthly payment shall be pro-rated, with interest beginning to accrue on the petition date), as adequate protection for the debtor's use of Regions Bank's cash collateral. Such payments shall be subject to avoidance if (i) the Court subsequently determines that Regions Bank did not have a first priority, perfected security interest in the cash collateral and (ii) the case is converted to a Chapter 7 proceeding or a trustee is appointed under 11 U.S.C. § 1104(a).

G. The Court shall retain jurisdiction to enforce the cash collateral order and to adjudicate all matters arising from or related to its interpretation or implementation.

11. Crabtree's equity owners, in their reasonable business judgment, have agreed to the foregoing terms and conditions.

12. The undersigned certifies that the foregoing terms and conditions are consistent with the limitations and guidelines of Appendix A to the Local Bankruptcy Rules.

WHEREFORE, Crabtree respectfully requests that the Court:

A. Grant this motion for the use of Regions Bank's cash collateral;

B. Enter a cash collateral order substantially similar in form and substance to the forms attached hereto as **Exhibit B**;

C. Conduct a preliminary hearing on this motion, pursuant to Fed. R. Bankr. P. 4001(b)(2), and authorize Crabtree's use of cash collateral in an amount as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing; and

D. Grant Crabtree such additional relief as the Court deems reasonable and just.

March 15, 2018

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Proposed Counsel for Carolina Hotel Investors—Crabtree, LLC

EXHIBIT A

Cash Collateral Budget

Description	March	April	May	June	July
Rooms Payroll	$49,800	$49,100	$51,900	$39,500	$35,200
Rooms Expenses (Supplies, Linens, etc.)	$26,500	$26,600	$29,600	$17,100	$17,600
Food & Beverage Payroll (Wages, Payroll Taxes and Employer Contributions)	$33,500	$33,000	$33,500	$32,200	$24,900
Food & Beverage Cost of Sales	$11,000	$11,000	$10,500	$7,600	$7,300
Food & Beverage Other Supplies (e.g., glassware, cleaning supplies)	$4,100	$4,200	$4,000	$2,500	$2,600
Other Department Expenses	$1,300	$1,300	$1,300	$1,300	$1,300
Administrative & Gen'l Expenses	$32,200	$33,200	$32,900	$36,200	$28,100
Information and Telecomms	$7,900	$7,900	$7,900	$7,900	$7,900
Sales & Marketing	$53,100	$53,100	$57,300	$53,700	$40,400
Property Operations and Maintenance	$17,800	$17,700	$18,400	$17,700	$17,600
Utilities	$16,800	$16,800	$18,800	$9,800	$10,100
Property Taxes (accrual)	$10,900	$10,900	$10,900	$10,900	$10,900
Insurance (Accrual)	$4,155	$4,155	$4,155	$4,155	$4,155
TOTALS	$269,055	$268,955	$281,155	$240,555	$208,055

EXHIBIT B

Form of proposed

Cash collateral order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re: Carolina Hotel Investors— Crabtree, LLC, a North Carolina limited liability company, Debtor.	Case No. 18-30414 Chapter 11

**ORDER AUTHORIZING USE OF CASH COLLATERAL
AND PROVIDING REGIONS BANK WITH ADEQUATE PROTECTION**

THIS MATTER came on for hearing on March ___, 2018. Based upon the evidence presented and arguments of counsel, and the consent and agreement of Carolina Hotel Investors—Crabtree, LLC, the debtor, and Regions Bank, the secured creditor with a perfected security interest in cash collateral, and the lack of objection of the Bankruptcy Administrator, the Court hereby makes the following findings of fact and conclusions of law:

A. It appears that Regions Bank is the only entity that may have a security interest in, or lien on or against, cash that may constitute cash collateral, as such term is defined at 11 U.S.C.

§ 363(a). The Court does not make any finding regarding the perfection or priority of any security interest or lien that Regions Bank may have in respect of any of the debtor's assets. As a result, the use of the term "cash collateral" refers to (i) cash in any bank account owned by or in which the debtor has a legal or equitable interest, (ii) any cash on hand, and (iii) cash (including without limitation funds from credit card transactions) derived from the debtor's post-petition operations.

B. On or about September 21, 2015, Regions Bank extended a loan in the original principal amount of $9,800,000 to the debtor. The debtor's obligations to Regions Bank are secured pursuant to a Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement Securing Financial Advances, which was recorded with the Wake County, North Carolina, Register of Deeds on September 21, 2015, at Book 016157, Pages 02152–02179 (the "Deed of Trust").

C. The Deed of Trust grants Regions Bank a security interest in or lien on, among other assets, all of debtor's rights and interests in and to:

> All fees, charges, accounts, and/or other payments for the use or occupancy of rooms and other public facilities on the Land and the Improvements, together with the right to receive such fees, charges, accounts or other payments, and including fees, charges, accounts, and/or other payments arising from the following whether before or after the commencement of any bankruptcy or insolvency affecting Granter: (a) sale of food and beverages at the Hotel, whether in a restaurant, through "room service" dining, through the bar, or through banquets, catering facilities and similar services; (b) sales of food and beverages from mini-bar facilities in guest rooms; (c) laundry, vending machine, and telecommunication receipts, whether billed to a Hotel guest or collected in cash; (d) use, rental, occupancy or licensing of hotel rooms, hotel suites, conference rooms, meeting rooms, ballrooms, and other rooms and facilities; (e) operation of health club, personal care, and other facilities located in, on or at the Hotel, (f) incidental charges to Hotel guests or other users or customers; (g) any other charges of any kind, for the direct or indirect benefit of Grantor or Atma Hotel Group, Inc., a North Carolina Corporation and the manager of the Hotel ("Manager"), that appear on any bill or statement rendered to any Hotel guest or other user or customer of the Hotel or are otherwise collected from or paid by any such person; (h) any payments of any kind from credit card companies, travel agents, or reservation systems or services relating to the

Hotel; and (i) charges for parking of cars (whether "selfparking" or "valet parking") at or near the Hotel;[2]

D. In addition to recording the Deed of Trust with the Wake County Registry, Regions Bank filed a UCC-1 security interest with the North Carolina Secretary of State on September 23, 2015 (File Number 20150091402F).

E. It thus appears that the security interest of Regions Bank extends to the revenues generated at the Hotel on and after the petition date under 11 U.S.C. § 552(b)(2).

F. It further appears that Regions Bank is entitled to adequate protection, as such term is used in 11 U.S.C. § 361, for the debtor's use of the post-petition revenues generated by the Hotel's operations.

G. Regions Bank has consented to the debtor's use of cash collateral on the terms set forth in this Order.

H. The debtor needs to use cash collateral to fund day-to-day operations at its primary asset, the Holiday Inn, Raleigh (Crabtree Valley Mall), located at 4100 Glenwood Ave, Raleigh, North Carolina 27612 (the **Hotel**).

I. The debtor has waived all 11 U.S.C. § 506(c) claims against Regions Bank.

J. Good cause exists for the entry of this Order.

WHEREFORE, the debtor's motion to use cash collateral and to grant Regions Bank adequate protection is GRANTED, subject to the terms, conditions and restrictions set forth below:

1. The debtor may use cash collateral for the payment of ordinary third-party expenses (i.e., not for capital expenditures or for payments to insiders or affiliates of the debtor) during this

[2] Capitalized terms used in the foregoing paragraph have the meanings assigned in the Deed of Trust.

bankruptcy case, subject to the debtor's and Regions Bank's respective rights to request that the Court vacate or modify this Order, in accordance with the budget attached as **Exhibit 1** to the Motion (the **Budget**; the Budget is incorporated in this Order by reference). Without limiting the generality of the foregoing, the debtor may not spend more than 110% of any individual line item on the Budget, or more than 105% of the total, during any month without Regions Bank's written consent.

2. The debtor may use cash collateral for the payment of capital expenditures after the written approval of Regions Bank. If such expenditures are, in Regions Bank's material discretion determined to be material, Regions Bank may require the debtor to obtain approval of this Court before paying for such capital expenditures. The foregoing, however, shall not preclude the debtor from incurring capital expenditures or paying for such capital expenditures to the extent that they are emergent and are material to the Hotel's operations or for the health and safety of guests or employees of the Hotel.

3. The debtor may not assert any claim under 11 U.S.C. § 506(c) against Regions Bank or any of Regions Bank's collateral after the petition date.

4. The debtor shall not use cash collateral to pay any pre-petition expense due and outstanding as of the petition date unless and except to the extent that, before the petition date, the debtor or the management company engaged to manage the Hotel had issued a check in payment of such pre-petition expense and payment under such check was pending on the petition date.

5. Regions Bank shall have replacement liens on such of the debtor's post-petition assets that Regions Bank had before the commencement of these cases, including but not limited

to cash and any receivables generated by post-petition operations of the Hotel. If the Court subsequently determines that there is a defect in the perfection or priority of Regions Bank's pre-petition liens and interests, the replacement liens granted in this Paragraph 5 shall remain subject to the challenge by the debtor or any other party in interest.

6. Without limiting the foregoing paragraph 5, the debtor shall pay Regions Bank monthly interest payments, paid in arrears (the first monthly payment shall be pro-rated, with interest beginning to accrue on the petition date), as adequate protection for the debtor's use of Regions Bank's cash collateral. Such payments shall be subject to avoidance if (i) the Court subsequently determines that Regions Bank did not have a first priority, perfected security interest in the cash collateral and (ii) the case is converted to a Chapter 7 proceeding or a trustee is appointed under 11 U.S.C. § 1104(a).

7. The Court retains jurisdiction to enforce this Order and to adjudicate all matters arising from or related to its interpretation or implementation.

SO ORDERED.

This Order has been signed electronically. The Judge's signature and the Court's seal appear at the top of the Order.

UNITED STATES BANKRUPTCY COURT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that that the foregoing document has been served on (I) all parties and parties-in-interest receiving notice pursuant to the Court's electronic filing or case management system (if applicable), and/or (II) the parties identified below or listed on the service matrix attached hereto (if one is so attached) by: (a) hand delivery, if so indicated; (b) depositing a copy of such document with the United States Postal Service, first class United States mail, postage prepaid, at the addresses listed below or on the attached service list; (c) telecopy, at the fax number listed beside each party so identified below; or (d) depositing the foregoing document with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), addressed to the party identified below or on the attached service list, and by obtaining a delivery receipt.

- the Office of the United States Bankruptcy Administrator for the Western District of North Carolina;
- Regions Bank;
- the Internal Revenue Service; and
- the parties included on Crabtree's list of twenty (20) largest unsecured creditors (*see* attached).

March 15, 2018

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Atlanta, GA 30346-2149

ThyssenKrupp Elevator Corp.
PO Box 933004
Atlanta, GA 31193-3004

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

US Foods
7801 Statesville Rd
Charlotte, NC 28269

M3 Accounting & Analytics
1715 N Brown Rd
Bldg A, Ste 200
Lawrenceville, GA 30043

North Carolina Department of
Revenue Bankruptcy Unit
P.O. Box 1168
Raleigh, NC 27602-1168

Experient
2500 E Enterprise Pkwy
Twinsburg, OH 44087

Valley Proteins, Inc.
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Winchester, VA 22604-2586

Wake County Tax Collector
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Raleigh, NC 27601

U.S. Security Associates, Inc.
PO Box 931703
Atlanta, GA 31193-1703

Turf Service Inc.
PO Box 41318
Greensboro, NC 27404-1318

Performance Food Service
543 12th Street Drive NW
Hickory, NC 28601-2947

Tarheel Linen Service
PO Box 15028
Durham, NC 27704

Travelliance
PO Box 74008563
Chicago, IL 60674-8563

Royal Cup
PO Box 206011
Dallas, TX 75320-6011

United Solution
Telecommunications
6334 Cephis Dr
Clemmons, NC 27012

USA Today
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McLean, VA 22108

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7512 Connelly Dr
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PO Box 63240
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