

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

IN RE:)	
)	
GRAND DAKOTA PARTNERS, LLC,)	CASE No. 17 - _____
A DELAWARE LIMITED LIABILITY)	
COMPANY,)	CHAPTER 11
)	
DEBTOR.)	
_____)	

DEBTOR’S MOTION FOR:

- (I) ***EX PARTE* INTERIM ORDER AUTHORIZING INTERIM USE OF CASH COLLATERAL;**
- (II) **AUTHORIZATION TO PAY CERTAIN PRE-PETITION EMPLOYEE SALARIES, WAGES, TAXES AND BENEFITS;**
- (III) **AUTHORIZATION TO PAY CERTAIN PRE-PETITION VENDOR OBLIGATIONS;**
- (IV) **AUTHORIZATION TO HONOR CHECKS AND OTHER PAYMENTS IN TRANSIT; AND**
- (V) **FINAL ORDER AUTHORIZING THE DEBTOR’S USE OF CASH COLLATERAL**

Grand Dakota Partners, LLC, a Delaware limited liability company (“**GDP**”), the debtor in possession in this case, respectfully requests that the Court authorize and approve GDP’s use of cash collateral in this case.

In accordance with Fed. R. Bankr. P. 4001(b)(1)(A), proposed interim and final orders are attached as **Exhibit A**.

- 1. GDP incorporates by reference the verified Declaration of Stephen D. Barker, and the Statement of Jurisdiction and Venue, each filed on this date in both Chapter 11 cases.
- 2. The Court has jurisdiction over this case and this matter. Venue is proper in this Court.
- 3. This is a core matter under 28 U.S.C. § 157(b).

4. GDP requests that the Authorizes the Debtor to use cash collateral in which American Bank Centre (“ABC”), an FDIC insured state bank which is a subsidiary of American Bancor, Ltd., has or asserts an interest because GDP needs to use cash collateral to pay employees and expenses incurred in the conduct of its business as a full-service hotel.

Background Facts

5. GDP owns the Grand Dakota Lodge (the “Hotel”). The Hotel is the only full-service hotel, including a restaurant, bar, meeting and convention facilities, in Dickinson, Stark County, North Dakota; and is the only full-service hotel between Bismarck, North Dakota, and Billings, Montana.

6. GDP’s affiliate, Grand Dakota Hospitality, LLC, a Delaware limited liability company (“GDH”), owns the liquor license used by the bar and restaurant at the Hotel.

7. The Hotel was built as a 149-room hotel in 1979.

8. GDP purchased the Hotel on November 16, 2004.

9. When GDP purchased the Hotel, the hotel’s occupancy rate was averaging 37%, with a net operating loss averaging approximately (\$60,000) per month.

10. GDP stabilized and brought the Hotel to profitability, with net operating income improving to approximately \$500,000 for 2006.

11. GDP later expanded the Hotel, adding a 43-room suite addition. This addition was financed by an \$4,500,000 loan from ABC that closed on or about April 15, 2009.

12. This debt was secured by a Real Estate Mortgage dated April 15, 2009.

13. ABC advanced an additional \$4,000,000 on or about August 24, 2010, pursuant to that certain promissory note and Loan Agreement, each dated August 24, 2010.

14. The August 24, 2010 Loan Agreement states that the debt (as evidenced thereby, the “**Senior Debt**”) is secured by the 2009 mortgage on the Hotel, a “Blanket Commercial UCC-1 filing on Grand Dakota Partners, LLC, & Grand Dakota Hospitality, LLC” and an “Assignment of Ramada Franchise and City of Dickinson Liquor License.”

15. The Senior Debt was payable in 240 approximately equal monthly payments, and

is secured by the April 15, 2009 Real Estate Mortgage (the “**Senior Debt Mortgage**”).

16. On July 16, 2013, ABC, GDP and GDH entered into a Commercial Debt Modification Agreement, which (i) adjusted the interest rate on the Senior Debt and (ii) imposed penalties on GDP if it didn’t pay off the Senior Debt before the maturity date (August 24, 2030).

17. The Commercial Debt Modification Agreement also stated that it was a demand note, notwithstanding the fact that it is not a promissory note.

18. As such, it is possible that the Commercial Debt Modification Agreement constituted a novation of the Senior Debt. GDP reserves all rights with respect to this issue.

19. Notwithstanding the revision to the Senior Debt imposing penalties if the Senior Loan was not repaid, ABC made a new loan to GDP and GDH on or about December 30, 2014, as evidenced by a promissory note, a Commercial Loan Agreement and a mortgage. The debt arising under these documents and instruments is the “**Junior Debt.**”

20. The Junior Debt was secured by its own Mortgage, dated December 30, 2014 (the “**Junior Debt Mortgage**”).

21. GDP has no other secured debt, with the possible exception of: (i) claims for amounts that are not yet due and payable and that could give rise to mechanic’s or materialman’s liens; and (ii) statutory or other liens for ad valorem taxes or assessments.

Events Leading to Bankruptcy

22. As indicated by ABC’s willingness to loan funds to GDP and GDH, North Dakota was flush with oil and gas money earlier this decade.

23. The Hotel was especially well situated to take advantage of the oil and gas boom. Dickinson, North Dakota, is at the southern end of the Bakken oil field, which experienced a dramatic increase in production until 2014.

24. The boom gave North Dakota the fastest growing state economy in the United States. (See <http://www.reuters.com/investigates/special-report/usa-northdakota-bust/>.)

25. Until 2015, North Dakota had the nation’s lowest unemployment rate for 7 straight years, and more than 80,000 people moved to North Dakota. (See *id.*)

26. With the boom in oil and gas production came a boom in the demand for hotel rooms.

27. At its peak, Hotel had a 102% occupancy rate (the rate was greater than 100% due to a policy requiring guests to check in by 6 p.m.). Average room rates rose dramatically, to approximately \$160 to \$170 per night.

28. During the boom, the number of hotel and motel rooms in Dickinson rose to more than 1,770 available rooms. (See <http://www.visitdickinson.com/lodging/>.)

29. In contrast, Dickinson has a population of only 25,000 to 30,000 residents. (See <http://www.dickinsongov.com/>.)

30. This party ended with the oil and gas bust that started in 2014.

31. However, in the last 12 months, the occupancy rate at the Hotel has increased by approximately 40%, and the hotel is generating a net operating profit.

32. This improvement in Hotel's operations would be helped by an improvement in North Dakota's oil and gas business. (See <http://www.startribune.com/north-dakota-oil-industry-shows-signs-of-a-rebound/426170091/>.)

33. Regardless of the upturn in performance at the Hotel or the North Dakota economy, ABC has demanded that Stephen D. Barker pay off the Senior and Junior Debt.

34. In response, Mr. Barker offered ABC a deed in lieu of foreclosure to the Hotel in exchange for a release from his guaranty.

35. ABC refused that offer, and has made no counteroffer.

Identity of Creditor With an Interest in Cash Collateral

36. GDP believes¹ that ABC has a first and second priority liens on the Hotel, subordinate only to tax liens that may have priority under applicable law pursuant to two loans made by ABC to GDP.

¹ GDP reserves its right to challenge the validity and extent of the liens and security interests purportedly held by ABC, whether by and for itself or by and for the account of any other person or entity.

37. The Senior and Junior Mortgages include language granting ABC a security interest in rents and profits. The text of this grant is attached as **Appendix 1**.

38. GDP believes that it owes ABC a total of \$9,396,875.78 (the “**Secured Debt**”), consisting of \$7,011,576.72 due on the Senior Debt and \$2,354,531.77 due on the Junior Debt.

39. Solely for the purpose of this Motion and the relief requested herein, GDP admits that the rents and profits interests purportedly granted to ABC would constitute cash collateral if ABC’s security interests and liens are properly perfected. GDP does not admit that the grant of an interest in GDP’s rents and profits, or any other asset, to ABC is valid or enforceable. Likewise, GDP does not admit to the priority of any interest granted by GDP to ABC.

40. Further, revenues from the Hotel’s catering, restaurant and bar operations are not cash collateral under 11 U.S.C. § 363(a).

41. All revenues from the Hotel’s operations are commingled.

ABC has no Risk of Diminution in Value of the Hotel

42. The 2016 tax value for the Hotel was \$14,333,800.
(<https://report.gisworkshop.com/report.ashx?county=stark&id=41101501000200&type=assessor&subs=true>)

43. In addition, ABC procured a MAI appraisal of the Hotel in 2016 from CBRE. CBRE appraised the Hotel at \$12,100,000.

44. ABC thus is fully secured as of the petition date.

45. Further, the earnings of GDP have increased from a net monthly loss, exclusive of debt service, on a year over year basis from 2016 to 2017.

46. Further, the only foreseeable risk of diminution of the value of the Hotel is due to external events such as the oil price collapse of 2014. (*See, e.g.,* <http://www.economist.com/blogs/economist-explains/2014/12/economist-explains-4>; and <https://www.forbes.com/sites/brucemccain/2015/02/09/the-facts-behind-oils-price-collapse/#6b7ef54941e1>.)

47. GDP is unaware of any other person or entity which may claim an interest in cash

collateral.

Purposes for GDP's Use of Cash Collateral

48. GDP proposes to use the cash collateral for the payment of its usual, ordinary, customary, regular, and necessary post-petition expenses incurred in the ordinary course of GDP's business and for payment of those pre-petition claims authorized by order of this Court.

49. All operating expenses of the Hotel are paid from its revenues pursuant to Sections 2.1 and 13.1 of that certain Management Agreement, dated April 22, 2016, between Grand Dakota Partners and Kinseth Management Company, Inc., an Iowa corporation ("**Kinseth**"). A true copy of the Management Agreement is attached as **Exhibit A**.

50. Kinseth is not an insider or affiliate of Grand Dakota Partners.

51. The Management Agreement is the product of arm's length negotiations.

52. Under the Management Agreement, Kinseth pays the following out of Hotel's revenues:

- The costs of maintaining, operating and supervising the operation of the Hotel;
- Salaries and benefits of all on-site employees at the Hotel; and
- Costs of obtaining sufficient inventory and operating supplies.

(Management Agreement, § 2.1.)

53. In addition, Kinseth obtains insurance for the Hotel and pays the premiums from operating revenues (*id.*, Article 10), and pays all sales and use, property, franchise and other taxes relating to the operation of the Hotel (*id.*, § 13.1).

54. GDP requests that the Court authorize the use of cash collateral for payment of:

- a. Employee wages, salaries, withholding (including without limitation trust fund taxes) and benefits;
- b. Sales and use taxes, property taxes, and all other taxes that are "trust-fund" taxes or that are or may result in a lien on any of GDP's assets;
- c. Utility services (there is a separate motion dealing with the provision of utility services to the Hotel);

- d. Ordinary operating expenses of the Hotel, including the restaurant and bar; and
- e. Upon separate motion and Court approval, capital expenditures.

55. GDP also seeks Court approval to use the cash collateral to pay, in the exercise of GDP's business judgment, certain pre-petition expenses or accruals (e.g., taxes).

56. The foregoing payments, other than deposits to utility companies, would be by and through Kinseth.

57. Because GDP intends to assume the Management Agreement, it will need to cure any pre-petition payment default before assumption. 11 U.S.C. § 365(b)(1).

58. GDP is not requesting the Court to authorize payment of a cure amount to Kinseth now. Rather, GDP requests that the Court authorize GDP to advance sufficient funds to Kinseth to allow Kinseth to pay the items described in paragraph 55(a) through (d).

Legal Standard for Payment of Certain Pre-Petition Debts

59. As a debtor in possession under 11 U.S.C. §§ 1107(a) and 1108, GDP has duties to protect and preserve its estate, including maintaining the going-concern value of its business. *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). As a debtor in possession, necessity may require that GDP fulfill such duties "by the preplan satisfaction of a prepetition claim." *In re CoServ*, 273 B.R. at 497.

60. The Supreme Court recently stated, in *dicta*, that:

one can generally find significant [Bankruptcy] Code-related objectives that the priority-violating [and pre-confirmation] distributions serve. Courts, for example, have approved "first-day" wage orders that allow payment of employees' prepetition wages, "critical vendor" orders that allow payment of essential suppliers' prepetition invoices, and "roll-ups" that allow lenders who continue financing the debtor to be paid first on their prepetition claims.

Czyzewski v. Jevic Holding Corp., ___ U.S. ___, No. 15-649 at 15 (U.S. March 22, 2017)

(https://www.supremecourt.gov/opinions/16pdf/15-649_k53m.pdf).

61. Among the reasons cited by the Supreme Court as justification for the payment of certain pre-petition claims before confirmation are: (i) preservation of the debtor as a going concern; (ii) the creditors receiving such payments are not unjustly or inequitably enriched; (iii) payment promotes the possibility of a confirmable plan; (iv) such payments may help to restore the *status quo ante*; and (v) such payments may protect reliance interests. *Id.*, at ___ U.S. at ___, No. 15-649 at 16.

62. Other courts have applied the “doctrine of necessity” as authority to approve payments where “(1) a vendor is necessary for the successful reorganization of the debtor, (2) the transaction is in the sound business judgment of the debtor, and (3) the favorable treatment of a critical vendor does not prejudice other unsecured creditors.” *See In re Universal Fin., Inc.*, 493 B.R. 735, 738 (Bankr. M.D.N.C. 2013) (citations omitted; holding that the doctrine of necessity did not authorize the debtor to pay BB&T and SunTrust, which weren’t even creditors of the debtor).

63. Section 363(b) of the Bankruptcy Code permits a debtor to use estate property “other than in the ordinary course of business” after notice and a hearing. 11 U.S.C. § 363(b)(1). Courts have authorized relief under section 363(b) where a debtor demonstrates a sound business justification for such relief. *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (“The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application.”); *Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“[T]he debtor must articulate some business justification, other than mere appeasement of major creditors.”).

64. “As generally formulated and applied in corporate litigation the rule is that courts should defer to—should not interfere with—decisions of corporate directors upon matters entrusted to their business judgment except upon a finding of bad faith or gross abuse of their ‘business discretion.’” *Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985). Once a debtor has articulated a valid business justification, “[t]he business

judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.’” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quotation and citation omitted).

65. “Transposed to the bankruptcy context, the [business judgment] rule as applied to a bankrupt’s decision... [must] be accepted by courts unless it is shown that the bankrupt’s decision was one taken in bad faith or in gross abuse of the bankrupt’s retained business discretion. *Lubrizol Enterprises, Inc.*, 756 F.2d at 1047 (discussing a debtor’s decision to reject an executory contract).

66. Thus GDP, in the exercise of its business judgment and with the sole goals of ensuring the continuing business operations of the Hotel and of maximizing the probability of a successful reorganization, should be authorized use cash collateral to pay certain pre-petition expenses so that GDP can fulfill its duties under 11 U.S.C. §§ 1107 and 1108.

67. Employee claims are easy to justify because such claims are entitled to priority under 11 U.S.C. § 507(a)(4). Likewise, employee benefits not expressly covered under subsection (a)(4) are entitled to priority under subsection (a)(5).

68. In this case, the employee claims are especially critical due to the robust job market in North Dakota. North Dakota’s seasonally adjusted unemployment rate for April 2017 (the most recent date available) was 2.7%. (<https://www.bls.gov/eag/eag.nd.htm>). In contrast, North Carolina’s unemployment rate was 4.7%, and Mecklenburg County’s unemployment rate was 4.1%, for April 2017.

69. Missing any payment to an employee, especially an employee who depends on his or her paycheck for day-to-day living expenses, virtually guarantees that this employee will be a former employee.

70. Employee withholdings should also be paid because the withheld funds are “trust funds” under applicable nonbankruptcy law. Failure to timely pay such trust funds, as required

by ERISA or federal or state tax laws, could result in fines, penalties and interest that would have to be paid by GDP.

71. The payment of vendor claims is easy to justify if a vendor refuses to do any further business and does not have a competitor nearby. Dickinson is not a large city, and North Dakota is a sparsely populated state. It may be that there are no competitors which would be willing to sell goods or services to the Hotel.

72. GDP thus requests authority to pay vendors which (i) refuse to do business with the Hotel unless paid for certain prepetition debts and (ii) cannot be readily replaced.

73. GDP has not identified any vendor which may qualify as a “critical vendor.” *Cf. In re Kmart Corp.*, 359 F.3d 866 (7th Cir. 2004) (disapproving a “critical vendor” motion when the debtor identified 54% of its vendors as critical vendors in its first day motion).

74. The payment of tax claims is also easy to justify under 11 U.S.C. §§ 363(b), 1107 and 1108, especially if the failure to timely pay such tax would result in the imposition of penalties and interest.

75. GDP affirms that it will not exercise any authority granted by the Court except in strict compliance with its duties under 11 U.S.C. §§ 1107 and 1108.

Material Terms for the Use of Cash Collateral

76. GDP proposes to use the cash collateral during the pendency of this Chapter 11 case (i.e., until the earliest of confirmation of a Chapter 11 plan, dismissal of this case or conversion of this case), without providing ABC any periodic payments to reduce the principal balances of the Senior Loan or the Junior Loan.

77. GDP requests that it not be required to grant ABC any liens, cash payments, or other adequate protection to ABC because ABC is fully secured.

Request for Interim Relief and Waiver of Stays

78. As contemplated by Fed. R. Bankr. P. 4001(b)(2) and 11 U.S.C. § 363(c)(2)(B) and (3), GDP requests that this Court enter a first-day order authorizing GDP’s immediate use of

cash collateral until the Court can conduct a final hearing on this Motion.

Request for Waiver of Segregation (11 U.S.C. §363(c)(4))

79. Pursuant to 11 U.S.C. § 363(c)(4), GDP requests that the Court waive the requirement that GDP segregate and separately account for cash collateral because, upon information and belief, ABC asserts a security interest in all of GDP's cash. Any segregation thus would be redundant.

Request That the Court Authorize Payment of Checks in Transit

80. As discussed above, Kinseth uses the Hotel's revenues to pay the Hotel's operating expenses and payroll.

81. GDP is aware that Kinseth has issued a number of checks on GDP's bank account that have not yet cleared.

82. GDP thus requests that the Court authorize the payment of these in-transit checks while debtor-in-possession accounts are established and funded.

Other Issues

83. GDP avers that relief is not being requested to frustrate any creditor of either debtor or for any other improper purpose. Further, the requested administrative consolidation will have no preclusive effect with respect to any motion or argument regarding substantive consolidation or veil piercing.

84. Immediately upon entry by the Court of an Order approving this Motion, and pursuant to Fed. R. Bankr. P. 4001(d), a copy of this Motion shall be served on: (i) any committee appointed in this case or, if no committee has been appointed, the twenty (20) largest unsecured creditors; (ii) ABC; (iii) the Bankruptcy Administrator and (iv) the Internal Revenue Service.

85. For the reasons set forth above, GDP submits that it has established that it has a reasonable likelihood that it will prevail at the final hearing.

WHEREFORE, GDP respectfully requests the Court enter an order approving this Motion and for such other and further relief as may be just and equitable under the circumstances.

July 20, 2017.

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CERTIFICATE OF SERVICE

This document was served electronically on parties who receive electronic notice through CM/ECF as listed on CM/ECF's notice of electronic filing. This Motion was also served on counsel for American Bank Center by telecopy, as follows:

Steve Olson
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July 20, 2017.

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APPENDIX 1

EXCERPT FROM MORTGAGE

14. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor [Grand Dakota Partners] assigns, grants, bargains, conveys and mortgages to Lender [ABC] as additional security all the right, title and interest in the following (Property),

- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

EXHIBIT A

FORM OF PROPOSED INTERIM ORDERS

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

In re:)	
)	
Grand Dakota Partners, LLC,)	Case No. 17 - _____
a Delaware limited liability)	
company,)	Chapter 11
)	
Debtor.)	
_____)	

INTERIM ORDER (I) AUTHORIZING USE OF CASH COLLATERAL; (II) AUTHORIZING PAYMENT OF CHECKS IN TRANSIT; AND (III) SCHEDULING A FINAL HEARING

THIS MATTER is before the Court upon the motion for the use of cash collateral (Docket No. __; the “**Motion**”) of GRAND DAKOTA PARTNERS, LLP, a Delaware limited liability company that is the debtor-in-possession in this case (“**GDP**”). In the Motion, GDP requested that this Court enter an interim order (this “**Interim Order**”):

- (a) authorizing the Debtor's use of Cash Collateral;
- (b) authorizing the payment of checks in transit as of the petition date;
- (c) scheduling a final hearing (the "**Final Hearing**") pursuant to Bankruptcy Rule 4001(b)(2) to be held before this Court to consider entry of an order authorizing and granting the relief requested in the Motion on a final basis (the "**Final Order**"); and
- (d) granting certain related relief.

Based on the record before the Court, the Court finds and concludes that the relief granted herein is reasonable, equitable and just, and makes the following specific findings of fact and conclusions of law.

1. Notice of the hearing on GDP's first-day cash collateral motion was given in accordance with Bankruptcy Rules 2002, 4001(b)(c), and (d), and 9014.

2. GDP owns and, as debtor-in-possession under 11 U.S.C. §§ 1107 and 1108, operates the Grand Dakota Lodge, which is a full-service hotel in Dickinson, North Dakota.

3. Granting the interim relief requested is necessary to avoid immediate and irreparable harm to GDP and its estate pending the Final Hearing.

4. GDP has satisfied its burden under 11 U.S.C. § 363(c)(3) that there is a reasonable likelihood that it will prevail at the final hearing under subsection (e) of this section if an objection is filed.

5. It appears that American Bank Center, a North Dakota state bank ("**ABC**"), has a senior and a junior lien and security interest against and in the real and personal property assets of the Grand Dakota Lodge. It appears that these liens are subordinate only to ad valorem and similar taxes and assessments. It further appears that ABC may assert perfected liens against and security interests in GDP's cash, negotiable instruments, documents of title,

securities, deposit accounts, or other cash equivalents whenever acquired in which GDP's estate has an interest, including the 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 (collectively, "**Cash Collateral Assets**").

6. If GDP were prohibited from the use of cash collateral, GDP would not have sufficient available sources of working capital or financing and would be unable to pay its payroll and other operating expenses, or maintain its assets, each in detriment of its estate and creditors. Accordingly, the relief requested in the Motion and the terms herein are critical to the potential successful reorganization of GDP.

7. Granting the interim relief requested is necessary to avoid immediate and irreparable harm to GDP and its estate pending the Final Hearing.

8. GDP has satisfied its burden under 11 U.S.C. § 363(c)(3) that there is a reasonable likelihood that it will prevail at the final hearing under subsection (e) of this section if an objection is filed.

9. There is no need for a separate cash management system.

10. This Court has jurisdiction over this case, this Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334.

11. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

12. The statutory bases for the relief set forth in this Interim Order are sections 105, 361, 362, 363 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001.

13. This is a core matter under 28 U.S.C. § 157(b).

14. Upon the record before this Court, requisite notice of the Motion and the relief requested thereby and this Interim Order has been provided in accordance with Bankruptcy Rules 4001(b) and 4001(c)(1).

15. Based on the Motion and on the record presented to the Court, GDP's proposed use of cash collateral is fair and reasonable and reflects GDP's prudent exercise of business judgment.

16. Based on the Motion and on the record presented to the Court, it appears that the Grand Dakota Lodge is not at risk of losing value.

17. Good cause has been shown for immediate entry of this Interim Order, and the entry of this Interim Order is in the best interests of GDP, its estate, and its creditors.

WHEREFORE, IT IS HEREBY ORDERED THAT:

A. The Motion is GRANTED, to the extent provided herein, on an interim basis. Any objection to the Motion to the extent not withdrawn, waived or resolved is hereby overruled.

B. GDP is authorized to use the Cash Collateral Assets, and the proceeds and profits thereof, for payment of the following:

- a. Payment of the ordinary operating expenses of the Grand Dakota Lodge in the ordinary course of business as conducted immediately before the commencement of this Chapter 11 case;
- b. Payment of amounts otherwise authorized in other first-day motions that the Court may grant; and
- c. Extraordinary expenses only upon notice and motion, which motion may be heard on an *ex parte* basis, in the Court's discretion.

C. Checks in transit may be honored while GDP opens debtor-in-possession account(s);

D. Nothing in this Interim Order shall prejudice the rights of ABC or any creditor from seeking relief; nor shall it prejudice the rights of GDP to contest the perfection and/or priority of any lien or interest that may be asserted by ABC or any other person. This Order does not address the validity, priority or enforceability of any lien or security interest that ABC may have in or against any asset of GDP or the Cash Collateral Assets.

E. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any plan of reorganization, (ii) converting the case to chapter 7, (iii) dismissing this Chapter 11 case or (iv) appointing a Chapter 11 trustee.

F. The terms and conditions of this Interim Order shall be: (i) effective and immediately enforceable upon its entry by the Clerk of the Court notwithstanding any potential application of Fed. R. Bankr. P. 6004(g), 7062, 9014 or otherwise; and (ii) not be stayed absent an application by a party in interest for such stay in conformance with such Fed. R. Bankr. P. 8005, and (b) a hearing upon proper notice.

G. GDP shall not be required to segregate and separately account for cash collateral.

H. A hearing on the Debtors' request for a Final Order approving the Motion is scheduled for _____, 2017, at : ____ m. (prevailing Eastern time). Within three (3) business days after entry of this Interim Order, GDP shall serve, or cause to be served, by first class mail or other authorized method of service, a copy of the Motion (to the extent the Motion was not previously served on a party) and this Interim Order on (i) the Notice Parties, and (ii) counsel to any Committee. Any responses or objections to the Motion shall be made in writing, conform to the applicable Bankruptcy Rules and Local Rules, be filed with the Bankruptcy Court, set forth the name of the objecting party, the basis for the objection, and the specific grounds therefor, and be served so as to be actually received no later than , 2017, at 4:00 p.m. (prevailing Eastern time) by the Bankruptcy Administrator and Bradley E. Pearce,

Pearce Law PLLC, PO Box 31846, Charlotte, NC 28231, fax 704-495-6662, email: brad@bepearcelaw.com.

I. The Court has and will retain jurisdiction to enforce this Interim Order in accordance with its terms and to adjudicate all matters arising from or related to the interpretation or implementation of this Interim Order.

SO ORDERED.

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

UNITED STATES BANKRUPTCY COURT