

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re :
 : Chapter 11
EMC HOTELS AND RESORTS, LLC, :
 : Case No. 18-22932 (RDD)
Debtor. :
-----X

**FINAL ORDER AUTHORIZING USE OF CASH COLLATERAL
PURSUANT TO 11 U.S.C. § 363(c)(2) AND GRANTING ADEQUATE
PROTECTION PURSUANT TO 11 U.S.C. §§ 362 AND 363(e)**

Upon the motion, dated August 10, 2018 (the “Cash Collateral Motion”) of Fred Stevens, Chapter 11 trustee (the “Trustee”) of EMC Hotels and Resorts LLC (the “Debtor”), pursuant to sections 105, 361, 362, 363, 503, 507 and 552 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, 6004 and 9013 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice for the United States District Court for the Southern District of New York (the “Local Rules”), seeking the entry of this order (the “Final Order”) (i) authorizing the Debtor to continue its use of the cash collateral of Bank Hapoalim B.M. (“BHI”), and (ii) granting adequate protection in connection therewith, and upon this Court’s prior orders, dated August 6, 2018 [ECF No. 39] (the “Emergency Interim Order”), August 21, 2018 [ECF No. 58] (the “Second Interim Order”), and October 1, 2018 [ECF No. 88] (the “Third Interim Order”), authorizing the Trustee’s interim use of BHI’s cash collateral; and interim hearings having been held on the Cash Collateral Motion on August 17, 2018 and September 18, 2018 (the “Interim Hearings”); and notice of the Cash Collateral Motion, the Interim Hearings and the final hearing on October 26, 2018 (the “Final Hearing”) having been given in accordance with Bankruptcy Rules 2002, 4001 and 9013, and no further notice being required under the circumstances; and the proposed Final Order having been filed with the Court on October 17, 2018 [ECF No. 97]; and all objections, if any, to

the relief requested in the Cash Collateral Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that granting the requested relief and entering this Final Order is necessary to avoid immediate and irreparable harm to the Debtor, its creditors and its estate, and otherwise is fair and reasonable and in the best interests of the Debtor, its estate and its creditors, and equity holders, and is essential for the continued operation of the Debtor's business; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE FINAL HEARING, THE COURT TAKES NOTICE AS FOLLOWS:

A. Involuntary Petition Date. On June 18, 2018 (the "Involuntary Petition Date"), Evolve Controls, CJB Asset Management Group LLC and Best Landscape (collectively, the "Petitioning Creditors") filed an involuntary petition [ECF No. 1] for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Court") against the Debtor. On July 15, 2018, the Debtor filed the Motion to Convert. On July 16, 2018 the Court heard the Trustee Motion and the Motion to Convert. On July 20, 2018, the Court entered an order converting the case from a case under Chapter 7 to a case under Chapter 11 [ECF No. 31] and an order (the "Trustee Order") directing the United States Trustee to appoint a Chapter 11 trustee (the "Trustee") for the Debtor and its estate [ECF No. 30]. On July 25, 2018, the United States Trustee appointed Fred Stevens to serve as the Trustee [ECF No. 32] and the Court approved the appointment [ECF No. 34]. On August 6, 2018, this Court entered an order granting relief to the Debtor under Chapter 11 *nunc pro tunc* to July 20, 2018 (the "Relief Date") [ECF No. 40].

B. Jurisdiction and Venue. This Court has jurisdiction over the Debtor's chapter 11 case (this "Case") pursuant to 28 U.S.C. §§ 157 and 1334 and over the persons and property

affected hereby. Consideration of the Cash Collateral Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue of the Debtor's Case is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

C. Notice. Notice of the Final Hearing has been provided by overnight delivery or email to (i) counsel to BHI, Phillips Nizer LLP, 485 Lexington Avenue – 14th Floor, New York, NY 10017, Attn: Marc A. Landis and Jared R. Clark; (ii); the Office of the United States Trustee for the Southern District of New York, Attn: Andrea Schwartz, Trial Attorney, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014, (iii) each of the Debtor's known secured creditors, and (iv) each of the Debtor's twenty (20) largest unsecured creditors (collectively, the "Notice Parties"). The Trustee has made reasonable efforts to afford the best notice possible under the circumstances and such notice is good and sufficient to permit the relief set forth in this Final Order, and no other or further notice is or shall be required.

D. Hotel Manager. As of May 22, 2015, the Debtor entered into a Hotel Management Agreement with HHM Nyack, LLC (the "Manager"), to manage the Debtor's hotel business (the "Hotel"). As per the Trustee Order, the Debtor's business has continued to be managed by the Manager under the Trustee's supervision.

E. Debtors Stipulations. Subject to the challenge rights set forth in paragraph 16 of this Final Order, the Trustee, on behalf of the Debtor and its bankruptcy estate, admits, stipulates and agrees that (collectively, the "Debtor Stipulations"):

(1) Prepetition Obligations. The Debtor is indebted to BHI in the principal sum of not less than \$17,471,379.21 pursuant to a loan (the "Loan") evidenced by (a) that certain Loan Agreement between BHI and the Debtor dated as of June 9, 2016 (the "Loan Agreement"), relating to a loan in the maximum principal amount of up to \$19,000,000.00, (b) that certain Consolidated, Amended and Restated Promissory Note

by the Debtor in favor of BHI dated as of June 9, 2016, (c) that certain Consolidated, Spreader, Amended and Restated Mortgage, Assignment of Leases and Rents, and Security Agreement by the Debtor in favor of BHI dated as of June 9, 2016 (the "Mortgage"), and (d) all other documents evidencing, securing or delivered to BHI in connection with the Loan, including the Loan Documents (as defined at p. 7 of the Loan Agreement, and referred to herein as the "Prepetition Loan Documents") (collectively, the "Prepetition Obligations").

(2) Interest, attorneys' fees and other costs and expenses in connection with the Loan and the Mortgage had accrued as of the Relief Date and continue to accrue (together with the Prepetition Obligations, the "Obligations"). As of July 20, 2018, the Obligations, inclusive of interest and attorneys' fees, totaled approximately \$18,615,000.00. The Obligations, including the amount specified in this subparagraph E(2), constitute the legal, valid and binding obligations of the Debtor, enforceable in accordance with their terms subject to 11 U.S.C. § 506 based on the value of the collateral. The Prepetition Obligations and any amounts previously paid to BHI pursuant to the terms of the Loan Agreement on account thereof or with respect thereto are not subject to avoidance, reduction, disallowance, impairment, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, except as provided in this Final Order.

(3) Prepetition Liens. The Prepetition Obligations are secured by, among other documents, the Mortgage, under which the Debtor granted to BHI a security interest in, among other things, (i) all income, rents, room rates, issues, profits, revenues, deposits and other benefits from the Mortgaged Property (as defined in the granting clause at pages 3 to 5 of the Mortgage) including, without limitation, all revenues and

credit card receipts collected from guest rooms, restaurants, bars, mini-bars, meeting rooms, banquet rooms, recreational facilities and otherwise; all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license concession or other grant of the right of possession, use or occupancy of all or any portion of the Mortgaged Property or personally located thereon, or the rendering of services by the Debtor or any operator or manager of the hotel or the commercial space which is part of the Mortgaged Property or acquired from others including, without limitation, from the rental of any office space, retail space, commercial space, guest rooms or other space, halls stores or offices, including any deposits securing reservations of such space, exhibit or sales space of every kind, license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance relating to the use, enjoyment or occupancy of the Mortgaged Property, and (ii) all Chattel Paper, Accounts, Letter of Credit Rights, Documents, Inventory and Instruments (as such terms are defined in the Mortgage) (together with the liens on other property described in the Mortgage and other Prepetition Loan Documents, the “Prepetition Liens,” and the property subject to the Prepetition Liens, the “Prepetition Collateral”). Subject to the Carve-Out, the Prepetition Liens constitute valid, binding, enforceable, and perfected security interests and “Liens,” as that term is defined in 11 U.S.C. § 101(37), which are not subject to avoidance, recharacterization, recovery, disallowance, impairment, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, except as provided in this Final Order.

(4) Cash Collateral. All of the Debtor's income, rents, room rates, profits and revenues, deposits and other benefits that the Debtor receives from its operations in the form of cash and cash equivalents, including the cash in its deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitute the "cash collateral" of BHI (as such term is defined in section 363(a) of the Bankruptcy Code) (the "Cash Collateral"), and is Prepetition Collateral of BHI.

F. Use of Cash Collateral. BHI is entitled to receive adequate protection to the extent of any diminution in value of its interests in the Prepetition Collateral (including the Cash Collateral) resulting from the use of Cash Collateral, the authorized use, sale or lease of Prepetition Collateral, and the imposition of the automatic stay (collectively, the "Diminution in Value") pursuant to sections 361, 362, and 363 of the Bankruptcy Code. The Trustee has requested that BHI continue its consent to the Debtor's use of the Cash Collateral pursuant to the terms and conditions of this Final Order. Subject to the entry of and continued effectiveness of this Final Order, BHI has consented to the Debtor's use of the Cash Collateral strictly on the terms and conditions set forth herein.

NOW, THEREFORE, on the request of the Trustee and the record before this Court with respect to the continued use of Cash Collateral, and with the consent of the Trustee and BHI to the form and entry of this Final Order, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. The Trustee's request for entry of the Final Order is granted as set forth in the Cash Collateral Motion.

2. The Trustee's authorization, and BHI's consent, to use Cash Collateral shall terminate on the earliest to occur of (the "Termination Date"): (i) the entry of an order of this Court terminating such right; (ii) the dismissal of the Case or the conversion of the Case to a case

under chapter 7 of the Bankruptcy Code; or (iii) the expiration of the Remedies Notice Period following the delivery of a Termination Declaration (each as defined herein) by BHI, according to the procedures set forth in Paragraph 8 below, unless the Court has entered an order during such Period prohibiting the exercise of any of the following actions, rights and remedies of BHI.

3. This Final Order is without prejudice to the rights of BHI to seek a modification of this Final Order, including a request for additional adequate protection or the termination of the Debtor's right to use Cash Collateral, after notice and hearing, including a hearing noticed on an emergency basis. BHI has expressly reserved, and this Final Order is without prejudice to, any and all rights and remedies of BHI, including as to the appropriateness of the adequate protection granted hereunder.

4. The Cash Collateral shall be used by the Debtor in a manner consistent with the terms and conditions of this Final Order and in accordance with the budget attached hereto as Exhibit 1, which will change periodically as set forth herein (the "Budget"), subject to the Permitted Budget Variance (as defined herein). During the period of the Debtor's authority to use Cash Collateral, the Trustee shall provide BHI with its rolling updated 4-week cash flow forecast and Budget together with actual income and expenditures for prior periods within five (5) business days following the end of each two-week period commencing Friday, October 26, 2018. Each Budget shall be in the same format as the Budget attached hereto.

5. The Debtor may use the Cash Collateral solely to pay the ordinary, necessary and reasonable expenses of operating its business exclusively in accordance with and subject to the Budget. The Debtor's actual disbursements for any given month during the Interim Period shall not exceed the sum of (x) 110% of the disbursements projected for the Budget (the "Permitted Budget Variance"). The Budget and any modification to, or extension, amendment or update of the Budget, shall be in a form and substance acceptable to BHI in its sole discretion.

Notwithstanding the foregoing, the Trustee may use Cash Collateral on an interim basis, in an amount not to exceed, in any one month, the sum of \$2,500.00 per month; provided, however, that the Trustee shall notify BHI within 24 hours after any such expenditures are made. The Trustee shall also promptly provide BHI with copies of invoices paid with respect to such emergency expenditures as requested. The Trustee shall obtain BHI's written permission before making or incurring any obligation or making or incurring any expenditures from the Cash Collateral, in excess of the \$2,500 per month allowance. If the Trustee and BHI cannot reach an agreement with respect to whether the Trustee shall be allowed to use Cash Collateral of BHI on an emergency basis, the Trustee may submit the matter to the Court by motion for determination of the issue if BHI fails to respond to a written request within five (5) business days after such written request is received by BHI and the BHI's counsel, or BHI denies a written request within five (5) business days after such written request is received by BHI and BHI's counsel.

6. On account of the Trustee's use of the Cash Collateral, the adequate protection provided to BHI in the Emergency Interim Order and the Second Interim Order, to the extent provided in those orders, shall continue including, but not limited to:

- a. Adequate Protection Liens. Subject to the Carve-Out (as defined below), BHI has additional and replacement valid, binding, enforceable, non-avoidable, and automatically perfected postpetition security interests in and liens (the "Adequate Protection Liens") to secure the Diminution in Value, without the necessity of the execution by the Debtor (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on all property, whether now owned or hereafter acquired or existing and wherever located, of the Debtor and the Debtor's "estate" (as created pursuant to section 541(a) of the Bankruptcy Code), of any kind or nature

whatsoever, real or personal, tangible or intangible, and now existing or hereafter acquired or created, including, without limitation, all cash, accounts, inventory, goods, contract rights, instruments, documents, chattel paper, patents, trademarks, copyrights, and licenses therefor, accounts receivable, receivables and receivables records, general intangibles, payment intangibles, tax or other refunds, insurance proceeds, letters of credit, contracts, owned real estate, real property leaseholds, fixtures, deposit accounts, commercial tort claims, securities accounts, instruments, investment, property, letter-of-credit rights, supporting obligations, machinery and equipment, real property, leases (and proceeds from the disposition thereof), other equity or ownership interests, including equity interests in any subsidiaries and non-wholly owned subsidiaries, money, investment property, and causes of action (including causes of action arising under section 549 of the Bankruptcy Code, but excluding all other avoidance actions under Chapter 5 of the Bankruptcy Code and the proceeds thereof), and all products, proceeds and supporting obligations of the foregoing, whether in existence on the Petition Date or thereafter created, acquired, or arising and wherever located (collectively, the “Postpetition Collateral”), having the priority set forth in Paragraph 9(b).

- b. Priority of the Adequate Protection Liens. The Adequate Protection Liens are junior only to the: (A) the Prepetition Liens, (B) other unavoidable liens, if any, existing as of the Petition Date that are senior in priority to the Prepetition Liens, and (C) the Carve-Out. The Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the Postpetition Collateral (including any lien or security interest that is avoided and preserved for

the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code). Subject to the terms of the Interim Orders and this Final Order, the Adequate Protection Liens shall be enforceable against and binding upon the Debtor, its estate, any subsequently appointed trustee under either Chapter 7 or 11 and any successors thereto.

- c. Superpriority Claim. BHI has an allowed administrative expense claim in the Case ahead of and senior to any and all other administrative expense claims in the Case to the extent of any postpetition Diminution in Value (the “Superpriority Claim”).
- d. Priority of the Superpriority Claim. The Superpriority Claim is not junior to any claims, except those included in the Carve-Out.
- e. Reporting Requirement. In addition to, and without limiting, whatever rights to access BHI has under the Prepetition Loan Documents, upon reasonable notice, at reasonable times during normal business hours, the Trustee shall permit representatives, agents, and employees of BHI to: (i) have access to and inspect the Debtor’s assets; (ii) examine the Debtor’s books and records, and (iii) to discuss the Debtor’s affairs, finances, and condition with the Trustee, the Trustee’s advisors and the Debtor’s managers.

7. The following events shall each constitute an event of default hereunder (collectively, the “Events of Default”):

- a. the violation of or failure by the Trustee to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Final Order (including the Budget);
- b. the proposal of a Budget by the Trustee that is not reasonably acceptable to BHI;

- c. the obtaining of credit or the incurring of indebtedness that is (i) secured by a security interest, mortgage or other lien on all or any portion of the Postpetition Collateral that is equal or senior to any security interest, mortgage or other lien of BHI, except for real estate taxes, or (ii) entitled to priority administrative status that is equal or senior to that granted to BHI herein;
- d. any lien or security interest purported to be created under the Prepetition Loan Documents shall cease to be, or shall be asserted by the Trustee not to be, a valid and perfected lien on or security interest in any Prepetition Collateral, with the priority required by the Prepetition Loan Documents or herein;
- e. the entry of an order by the Court granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (i) to allow any creditor to execute upon or enforce a lien on or security interest in any Postpetition Collateral, or (ii) with respect to any lien of or the granting of any lien on any Postpetition Collateral to any state or local environmental or regulatory agency or authority, which in either case would have a material adverse effect on the business, operations, property, assets, or condition, financial or otherwise, of the Debtor;
- f. the reversal, vacatur, or modification (without the express prior written consent of BHI, in its sole discretion) of this Final Order; dismissal of the Case or conversion of the Case to a case under chapter 7;
- g. the sale of any portion of the Debtor's assets outside the ordinary course of business without the prior written consent of BHI, in its sole discretion, unless the proceeds of such sale satisfies BHI's allowed secured claim;
- h. the granting of any motion providing for reconsideration, stay, or vacatur of this Final Order; or (1) the Trustee shall assert in any pleading filed in any court that

any material provision of this Final Order is not valid and binding for any reason, or (2) any material provision of this Final Order shall, for any reason, cease to be valid and binding without the prior written consent of BHI;

i. the Trustee shall fail to comply with any of the following milestones (collectively, the “Bankruptcy Milestones”), subject to both the Trustee’s and BHI’s right to (a) agree to the extension of the Bankruptcy Milestones, or (b) timely seek the Court’s authority for the continued use of Cash Collateral over BHI’s objection to the extent it does not consent to the extension of any Bankruptcy Milestone:

i. No later than October 19, 2018, the Trustee shall file with the Court an application seeking authority to retain a broker/sale agent (the “Sale Professional” to market the Hotel and related assets, or new equity in the Debtor, as the case may be depending upon the preference of any prospective purchaser (the “Hotel Assets”) for the purpose of selling the Hotel Assets pursuant to section 363 of the Bankruptcy Code (a “363 Sale”) or a plan of reorganization (a “Plan”) (the transfer of the Hotel Assets pursuant to a 363 Sale or pursuant to a Plan is referred to herein as a “Transaction”). The Trustee shall consult BHI in good faith in connection with the selection of the Sale Professional and agreement to the terms of such retention.

ii. No later than November 9, 2018, the Trustee with the Sale Professional will have prepared sales and marketing materials and listed the Hotel Assets for sale

iii. No later than January 18, 2019, the Trustee will require the submission of qualified offers to purchase the Hotel Assets;

- iv. No later than February 1, 2019, the Trustee will select, upon consultation with BHI, the highest and best offer for the Hotel Assets;
 - v. No later than March 29, 2019, the Trustee will have obtained any necessary Court approval for and consummated the Transaction and repaid BHI's allowed secured claim from the proceeds of the Transaction.
 - vi. The Trustee shall provide BHI with a status report and such other updated information relating to all efforts to achieve a Transaction pursuant to the Bankruptcy Milestones as may be reasonably requested by BHI, in form and substance reasonably acceptable to BHI, and shall consult BHI in good faith with respect to the sale process.
- j. the institution of a Challenge (as defined below) after a party in interest has been granted standing by order of the Court;
- k. the Trustee proposing any Transaction that will not produce enough available funds to satisfy BHI's allowed secured claim in full upon consummation of the Transaction unless expressly consented to by BHI; and
- l. the Trustee shall fail to maintain the Debtor's insurance policies, including, without limitation, property, casualty, and liability insurance policies, at historical and commercially appropriate levels.
8. Immediately upon the occurrence and during the continuation of an Event of Default, BHI may declare a termination, reduction or restriction of the ability of the Trustee to use any Cash Collateral (any such declaration shall be referred to herein as a "Termination Declaration"). The Termination Declaration shall be given by e-mail or fax (or other electronic means) contemporaneously to counsel to the Trustee, counsel to any statutory committee of unsecured creditors (the "Committee"), the U.S. Trustee, the Trustee, and the Manager (the

earliest date any such Termination Declaration is made shall be referred to herein as the “Termination Declaration Date”). On the Termination Declaration Date, the Trustee’s right to use Cash Collateral shall automatically cease, except as provided herein. Within five (5) business days after the Termination Declaration Date (the “Remedies Notice Period”), the Trustee shall be entitled to seek an emergency hearing with the Court seeking a determination of whether an Event of Default has occurred, continues and/or any other appropriate relief related to the Trustee’s continued use of Cash Collateral on a non-consensual basis, with the rights and objections of all parties reserved with respect thereto. During the Remedies Notice Period, the parties consent pursuant to Bankruptcy Rule 9006 and Local Rule 9006 to a hearing on any motion challenging the occurrence and/or continuation of an Event of Default or otherwise on shortened time and agree that such matter would be heard on an emergency basis. Unless the Court determines otherwise during the Remedies Notice Period, BHI shall have the right to submit (a) a certificate of non-performance (a “Non-Performance Certificate”) and (b) a proposed order (a “Termination Order”) to the Court terminating the automatic stay at the end of the Remedies Notice Period without further notice, and the Debtor/Trustee shall no longer have the right to use Cash Collateral and, upon entry of the Termination Order, BHI shall be permitted to exercise any and all remedies set forth herein or in the Prepetition Loan Documents, as applicable, and as otherwise available at law against the Postpetition Collateral, without further notice, application or motion to the Court, and without restriction or restraint by any stay under sections 362 or 105 of the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interests in the Postpetition Collateral or any other rights and remedies granted to BHI with respect thereto pursuant to the Prepetition Loan Documents or this Final Order, as applicable.

9. Notwithstanding anything to the contrary set forth in this Final Order, the Cash Collateral may only be used as set forth in the Budget.

10. As a condition to the use of the Cash Collateral, the Trustee shall comply with the Bankruptcy Milestones. For the avoidance of doubt, the failure of the Trustee to comply with any of the Bankruptcy Milestones shall (a) constitute an Event of Default under this Final Order; and (b) subject to the expiration of the Remedies Notice Period and BHI's submission to the Court of a Non-Performance Certificate and a Termination Order, result in the termination of the Trustee's authority to use Cash Collateral under this Final Order.

11. This Final Order shall be binding upon the Trustee, the Debtor, its estate and any successor thereto (including, without limitation, any chapter 7 trustee appointed or elected for the Debtor) under all circumstances and for all purposes.

12. In the event any or all of the provisions of this Final Order are hereafter modified, stayed, amended or vacated by a subsequent order of this or any other Court, the Final Order is entitled to the protections provided in section 364(e) of the Bankruptcy Code and no such modification, stay, amendment or vacatur shall affect the validity and enforceability of any advances made hereunder or the liens or priority authorized or created hereby. Notwithstanding any such modification, amendment or vacatur, any claim or lien granted to BHI hereunder arising prior to the effective date of such modification, amendment or vacatur of any Adequate Protection Liens shall be governed in all respects by the original provisions of this Final Order, and BHI shall be entitled to all of the rights, remedies, privileges and benefits, including the Adequate Protection Liens granted herein, with respect to any such claim or lien.

13. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified pursuant to the extent necessary to implement this Final Order.

14. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to BHI hereunder is insufficient to compensate for any Diminution in Value of its interests in the Prepetition Collateral during the Case. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by BHI, that the adequate protection granted herein does in fact adequately protect BHI against any diminution in value of its interests in the Prepetition Collateral (including the Cash Collateral).

15. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

16. Right to Challenge. The Debtor Stipulations contained in this Final Order with respect to the validity, perfection or amount of the Obligations and the Prepetition Liens shall be binding on the Trustee and Debtor's estate and all parties in interest, provided, however, that the Trustee and any other party in interest shall have seventy-five (75) days (or such longer period as the Court orders for cause shown before the expiration of such period) from the entry of this Final Order to investigate the facts and file a complaint or a motion seeking authority to commence litigation as a representative of the estate challenging the amount, validity or enforceability of the Prepetition Obligations or the perfection or priority of the Prepetition Liens, or otherwise asserting any objections, claims or causes of action on behalf of the Debtor's estate against BHI relating to the Prepetition Obligations or the Prepetition Liens (a "Challenge"). Notwithstanding anything to the contrary herein, if no such Challenge is timely commenced: (i) the Debtor Stipulations with respect to the validity, perfection and amount of the Obligations and the Prepetition Liens shall be binding on the Trustee, the Debtor's estate, any committee appointed by the United States Trustee for unsecured creditors under Section 1102 of the Bankruptcy Code; and (ii) the claims, liens and security interests of BHI shall, without further

order of the Court, be deemed to be finally allowed for all purposes in the Case and any successor case, and shall not be subject to challenge or objection by any party in interest as to validity, priority, amount or otherwise. If a Challenge is timely commenced, any Debtor Stipulations that are not the specific subject of the Challenge(s) shall be binding on the Trustee and the Debtor's estate and all parties in interest; provided, that if and to the extent that a Challenge is withdrawn, denied, or overruled, the Debtor Stipulations specifically challenged in such Challenge also shall be binding on the Trustee, the Debtor's estate and all parties in interest.

17. Carve-Out. As used in this Final Order, the "Carve-Out" means: (i) the quarterly fees and interest thereon required to be paid pursuant to 28 U.S.C. §1930(a)(6); (ii) any fees payable to the Clerk of the Court; (iii) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code in an aggregate amount not to exceed \$25,000; (iv) the accrued and unpaid fees and expenses incurred by the professionals retained by the Trustee and any Creditors' Committee (the "Permitted Professional Fees"); provided, however, that with respect to the foregoing clause (iv), such fees and expenses (A) shall be net of any unused retainers held by the respective professionals; (B) will only be paid to the extent allowed by the Court; (C) will be subject to the rights of BHI and any other party in interest to object to the allowance thereof; (D) will not exceed the collective total of the allowed expense reimbursements for any professionals, plus the agreed percentage fee to the Sale Professional, plus any commissions payable to the Trustee equal to or under the caps imposed by 11 U.S.C. § 326, plus a maximum of \$800,000 to the Trustee's attorneys and financial advisors; (E) will not include more than \$25,000 in charges in connection with the investigation of the Lender, the Prepetition Obligations, the Mortgage, the Prepetition Liens or any Obligations; (F) will not include more than \$50,000 in charges incurred after the issuance of a Termination Declaration

that is later determined to be valid; and (G) will not include any charges in connection with any Challenge.

18. The Trustee, BHI, and their respective advisors and employees have acted in good faith in negotiating, consenting, and agreeing to the Trustee's use of the Cash Collateral as contemplated and provided by this Final Order. The negotiation of the terms and provisions of this Final Order has been conducted at arm's length, and such terms and provisions are fair and reasonable under the circumstances and reflect the Trustee's exercise of reasonable business judgment consistent with the Trustee's fiduciary duties.

19. Nothing in this Final Order shall in any way be construed or interpreted to impose or allow the imposition on BHI or any of its advisors or employees any liability for any claims arising from the prepetition or postpetition activities of the Debtor in the operation of its business, or in connection with its restructuring efforts.

20. This Final Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Relief Date immediately upon entry hereof. To the extent any findings of fact are determined to be conclusions of law, such findings of fact shall be adopted as such; and to the extent that any conclusions of law are determined to be findings of fact, such conclusions of law shall be adopted as such.

21. Subject to Paragraph 16 hereof, BHI shall be entitled to all of the rights and benefits of 11 U.S.C. § 552(b) and the "equities of the case" exception shall not apply.

22. Subject to 11 U.S.C. § 506 based on the value of the collateral, BHI shall be entitled to apply the payments or the proceeds of the Prepetition Collateral in accordance with the provisions of the Prepetition Loan Documents, and in no event shall BHI be subject to the equitable doctrine of "marshalling" or any other similar doctrine with respect to any of the Prepetition Collateral.

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

IT IS SO ORDERED.

Dated: White Plains, New York
October 31, 2018

/s/ Robert D. Drain

HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Time Hotel Nyack

TIME HOTELS®

Projected Cash flow for the weeks-ended August 3, 2018 through November 2, 2018

<i>week-ended</i>	Actual 10/5/2018	Actual 10/12/2018	Actual 10/19/2018	Budget 10/26/2018	Budget 11/02/18	Budget 11/09/18	Budget 11/16/18	Budget 11/23/18	Budget 11/30/18
Opening Balance	\$ 583,097	\$ 617,969	\$ 656,638	\$ 727,985	\$ 727,985	\$ 577,887	\$ 598,929	\$ 588,330	\$ 603,366
<u>Inflows of Cash</u>									
Total Revenue	176,398	136,569	126,461	93,159	84,822	77,314	80,287	78,305	78,564
Other Income	-	-	-	217	217	210	210	210	210
Sales Tax on Revenue	-	-	-	6,614	6,022	5,489	5,700	5,560	5,578
Occupancy tax on Revenue	-	-	-	2,795	2,545	2,319	2,409	2,349	2,357
Restaurant - BV's Grill (placeholder)	-	-	-	-	-	-	-	-	-
Total Projected Cash Receipts	176,398	136,569	126,461	102,785	93,606	85,333	88,606	86,424	86,709
<u>Outflows of Cash</u>									
Room Department Expenses	38,015	66,351	31,095	40,584	46,273	30,466	32,954	29,883	31,000
Information and Technology Department expenses	16,604	505	-	-	4,900	10,500	461	-	-
Administration and General Department expenses	18,650	7,235	5,762	6,845	21,167	6,720	7,020	6,870	6,870
Marketing Department expenses	8,785	5,233	8,627	5,305	16,716	5,555	14,505	7,105	5,305
Energy	28,254	-	-	-	-	-	24,666	-	-
Property Maintenance expenses	9,197	11,739	3,711	4,774	7,916	4,149	6,962	5,099	4,549
Insurance Expenses	6,836	6,837	215	-	-	6,900	-	-	-
Management Fees Expenses	-	-	-	16,737	-	-	-	17,430	-
F&B Supervisory fees	-	-	-	4,617	-	-	-	5,000	-
Equipment Lease	-	-	-	-	1,170	-	-	-	-
Sales Tax (inclusive of pre-petition)	-	-	-	-	-	-	12,637	-	-
Occupancy Tax (inclusive of pre-petition)	-	-	-	-	-	-	-	-	-
Other	15,185	-	5,705	-	25,000	-	-	-	-
Real estate taxes (placeholder)	-	-	-	-	-	-	-	-	-
Critical Vendors (placeholder)	-	-	-	-	85,561	-	-	-	-
Utilities Deposit	-	-	-	-	-	-	-	-	-
US Trustee fees	-	-	-	-	-	-	-	-	-
Consulting Engineers	-	-	-	-	35,000	-	-	-	-
Professional fees (placeholder)	-	-	-	-	-	-	-	-	-
Total Outflow of Cash	141,526	97,900	55,115	78,863	243,703	64,291	99,206	71,388	47,725
Closing Balance	\$ 617,969	\$ 656,638	\$ 727,985	\$ 751,907	\$ 577,887	\$ 598,929	\$ 588,330	\$ 603,366	\$ 642,350