

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:

JONESBORO HOSPITALITY, LLC,

Debtor.

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**CASE NO. 17-40311-BTR
Chapter 11**

**FINAL ORDER FOR USE OF CASH COLLATERAL PURSUANT TO
SECTION 363 OF THE BANKRUPTCY CODE AND PROVIDING ADEQUATE
PROTECTION AND GRANTING LIENS AND SECURITY INTERESTS**

Upon the Emergency Motion for Use of Cash Collateral (the “Motion”) pursuant to Sections 105, 361, 363 and 364 of Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) and Federal Rule of Bankruptcy Procedure 4001, filed by Jonesboro Hospitality, LLC (“Debtor”), subject to the terms and conditions set forth herein, including the (i) grant of mortgages, security interests, liens and claims for the benefit of Ciena Capital, LLC as servicer (“Ciena”) and the Internal Revenue Service (“IRS”) (collectively, “Secured Creditors”), Post-petition which are co-extensive with their Pre-petition liens (to the extent of such liens, if any) and (ii) grant of mortgages, security interests, liens and claims in order to provide adequate protection to the Secured Creditors as more fully set forth herein, and upon the proceedings held before this Court and good and sufficient cause appearing therefore,

THE COURT HEREBY FINDS:

A. On February 15, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is now operating its business and managing its property as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and no official committee has yet been appointed.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of the Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. A need exists for the Debtor to use cash collateral in order to continue the operation of its business. Without the use of cash collateral the Debtor will not be able to pay its direct operating expenses and obtain goods and services needed to carry on its business during this sensitive period in a manner that will avoid harm to the Debtor's estate. At this time, the Debtor's ability to use Cash Collateral is vital to the confidence of the Debtor's employees, vendors and suppliers of the goods and services, to the customers and to the preservation and maintenance of the going concern value of the Debtor's estate.

D. Secured Creditors may claim that substantially all of the Debtor's assets are subject to the Prepetition Liens of the Secured Creditors including liens on rents relevant to this Motion.

E. The Debtor has requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). The permission granted herein to allow the Debtor to use Cash Collateral is necessary to avoid immediate and irreparable harm to the Debtor. This Court concludes that entry of this Order is in the Debtor's best interest and its estate and creditors as its implementation will, among other things, allow for the continued operation and rehabilitation of the Debtor's existing business.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the Debtor be, and hereby is, authorized to enter into all agreements pursuant to the terms of this Order necessary to allow the Debtor to use Cash Collateral subject to the protections and consideration described in this Order in the amounts and for the expenses set forth on the monthly budget attached hereto. The Debtor, without the prior written approval of the Secured Creditors, should not incur expenses

for any line item for an amount that exceeds the lesser of the amount for such line item in the budget and the actual expenditure for such line item. The Debtor may pay a 10% variance per line item except with respect to compensation for insiders. The Debtor is authorized to collect and receive all cash funds. The Debtor shall account each month to the Secured Creditors for all cash collateral. For purposes of this Order, “proceeds” of any of the Secured Creditors’ collateral shall mean Proceeds (as defined in the Uniform Commercial Code) of such collateral security for all Cash Collateral permitted to be used hereunder by the Debtor. The Secured Creditors are hereby granted valid, binding, enforceable, and perfected liens (the “Post-petition Liens”) co-extensive with the Secured Creditors’ pre-petition liens in all currently owned or hereafter acquired property and assets of the Debtor, of any kind or nature, whether real or personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising and all proceeds and products, including, without limitation, all accounts receivable, general intangibles, inventory, and deposit accounts coextensive with its pre-petition liens. Nothing herein shall grant a lien on, interest in or claim on Chapter 5 causes of action. Nothing herein shall prime the liens of the taxing authorities. The Debtor is permitted to pay U.S. Trustee fees incurred during this case; it is further

ORDERED that as adequate protection for the diminution in value of the interests of the Secured Creditors, the Secured Creditors are hereby granted replacement liens and security interests, in accordance with Bankruptcy Code Sections 361, 363, 364(c)(2), 364(e), and 552, co-extensive with their pre-petition liens; it is further

ORDERED that the replacement liens granted to the Secured Creditors in this Order are automatically perfected without the need for filing of a UCC-1 financing statement with the Secretary of State’s Office or any other such act of perfection; it is further

ORDERED that all cash accounts of Debtor and all accounts receivable collections by Debtor post-petition shall be deposited in a separate cash collateral account, being Debtor's debtor-in-possession account; it is further

ORDERED that as adequate protection in accordance with Section 363(e) of the Bankruptcy Code, the Debtor shall pay to Ciena on the 5th day of the month the amount of \$5,000.00. The application of the adequate protection payments is subject to further Order of this Court; it is further

ORDERED that as to the IRS:

- The Debtor must stay current on payment via EFTPS of all of its post-petition payroll taxes. To be current, the Debtor must make the payment within 3 business days of each payroll period;
- The Debtor must stay current on payment via EFTPS of all of its post-petition payroll deposits. To be current, the Debtor must make the payment within 3 business days of each payroll period;
- The Debtor must timely file all of its post-petition employment tax returns;
- The Debtor must timely file all federal tax returns (subject to a one-time only proper and timely extension filing on the income tax return) and pay all post-petition federal taxes;
- The Debtor must provide proof of Federal Trust Fund Deposits within three (3) days of their deposit to Lorraine Washington at the IRS via facsimile at 888/301-8227 and to Ruth Yeager, Counsel for IRS, via facsimile at 903/590-1436;
- All tax deposits with the IRS shall be made through the IRS' EFTPS system; and
- The Debtor shall allow the inspection of the collateral and the Debtor's books and records at any time upon reasonable notice from the IRS.

- Commencing on May 5, 2017, the Debtor shall pay the IRS **\$1,500** per month as adequate protection for its secured claim. Such payment shall continue each month until (i) termination of this Order by its terms; (ii) further order of this Court; or (iii) confirmation of any plan of reorganization in this proceeding. All payments made under this paragraph shall be sent to the IRS through Lorraine Washington, 1100 Commerce St., MC 5027DAL, Dallas, Texas 75242, and proof of each payment under this paragraph shall also be faxed to Lorraine Washington, IRS, at 888/301-8227 **on the day each payment is due**. All payments made under this paragraph shall be applied toward the payment of the IRS's secured claim.

ORDERED that if the Debtor fails to meet the requirements of this Order as they relate to the IRS, then the IRS will give one written notice of default to Debtor and to Debtor's counsel with opportunity to cure such default by the Debtor, and if the Debtor fails to cure the default within 10 days after notice of default is mailed or transmitted by facsimile, then IRS may file a declaration with the Court as evidence of the default by the Debtor, then Debtor cannot use any further cash collateral without an order from the Court or consent of the IRS.

ORDERED that from and after the Petition Date, the proceeds of the Pre-petition Collateral and the Post-petition Collateral shall not, directly or indirectly, be used to pay expenses of the Debtor or otherwise disbursed except for those expenses or disbursements that are expressly permitted herein and as shown on the Debtor's Budget attached hereto as **Exhibit "1"** plus a 10% variance per line item except with respect to compensation for insiders. During the pendency of this Order, the Debtor will maintain insurance on the Secured Creditors' collateral and pay taxes when due. The automatic stay under Section 362(a) of the Bankruptcy Code shall be, and it hereby is, modified to the extent necessary to permit the Secured Creditors to retrieve, collect and apply payments and proceeds in respect of the Pre-petition Collateral and Post-petition Collateral

in accordance with the terms and provisions of this Order. The Debtor shall execute and deliver to the Secured Creditors all such agreements, financing statements, instruments and other documents as the Secured Creditors may reasonably request to evidence, confirm, validate or perfect the liens granted pursuant hereto. The Debtor shall deliver a copy of its Monthly Operating Report to the Secured Creditors' counsel by the 25th day of each month for the prior month; it is further

ORDERED that the provisions of this Order shall be binding upon and inure to the benefit of the Secured Creditors and the Debtor. However, nothing herein shall prevent the Secured Creditors from seeking any form of relief under the Bankruptcy Code.

SIGNED:

Signed on 5/1/2017

Brenda T. Rhoades

SR

HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE

ONE-MONTH BUDGET**INCOME**

Guest Rooms	\$ 54,089.03
Occupancy Taxes Collected	\$ <u>7,572.47</u>
TOTAL INCOME	\$ 61,661.50

EXPENSES

Insurance	\$ 2,238.80
Office Supplies	\$ 250.00
Postage / Freight	\$ 25.00
Travel Expense	\$ 450.00
Advertising Expense	\$ 25.00
Automobile Expense	\$ 15.00
Payroll	\$ 18,000.00
Payroll Taxes	\$ 5,033.14
Bank Service Charges	\$ 250.00
Merchant Credit Card Fees	\$ 1,830.19
Software/Operating System	\$ 751.24
Accounting/Training	
Consulting	
Repairs - Internet / Telephone / TV	\$ 357.80
Repairs & Maintenance - Pool	\$ 582.14
Repairs & Maintenance – Other	\$ 159.27
Cleaning Supplies	\$ 198.89
Hotel Supplies	\$ 45.46
Office Supplies	\$ 29.00
Office Supplies - Other	\$ 1,500.00
Hotel Banquet Supplies	\$ 2,500.00
Room Supplies	\$ 2,500.00
City & Sales Tax	\$ 11,897.77
Utilities	
Gas	\$ 1,389.24
Internet	\$ 1,654.89
Waste Removal	\$ 590.09
Water/Electric	\$ 4,300.00
Franchise Fees	
TOTAL EXPENSE	\$ <u>56,572.92</u>
NET INCOME	\$ 5,088.58

EXHIBIT "1"