

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

In re HAHN HOTELS OF SULPHUR SPRINGS, LLC, et al.¹ <p style="text-align: center;">Debtors.</p>	§ § § § § § § § §	Chapter 11 Case No. 17-40947 Jointly Administered
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**DEBTORS’ MOTION FOR FINAL ORDER AUTHORIZING (1) CONTINUED USE OF
CASH COLLATERAL FOR THIRD BUDGET PERIOD AND (2) CERTAIN
INTERCOMPANY TRANSACTIONS UNDER § 364 OF THE BANKRUPTCY CODE**

NO HEARING WILL BE CONDUCTED ON THIS APPLICATION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS APPLICATION SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING UNLESS IT DETERMINES THAT AN EVIDENTIARY HEARING IS NOT REQUIRED AND THAT THE COURT'S DECISION WOULD NOT BE SIGNIFICANTLY AIDED BY ORAL ARGUMENT. IF YOU FAIL TO APPEAR AT ANY SCHEDULED HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

Hahn Hotels of Sulphur Springs, LLC, Hahn Investments, LLC, Hahn Hotels, LLC, Sleep Inn Property, LLC, SI of Longview, LLC, and Copeland’s of Longview, LLC, each a Texas limited liability company (collectively, the “**Debtors**”), file this *Motion for Final Order*

¹ The Debtors in these chapter 11 cases, including the last four digits of their respective EIN number, are as follows: Hahn Hotels of Sulphur Springs, LLC (2980), Hahn Investments, LLC (0448); Hahn Hotels, LLC (5692), Sleep Inn Property, LLC (6525), SI of Longview, LLC (2196), and Copeland’s of Longview, LLC (6181). The shared mailing address for all Debtors is: 525 Gilmer St., PO Box 113, Sulphur Springs, Texas 75482.

*Authorizing (1) Continued Use of Cash Collateral for Third Budget Period and (2) Certain Intercompany Transactions under § 364 of the Bankruptcy Code (the “**Motion**”).* In support of the Motion, the Debtors respectfully represent as follows:

I. Jurisdiction and Venue

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334(b). This Court can hear and determine this matter in accordance with 28 U.S.C. § 157 and the standing order of reference of bankruptcy cases and proceedings in this District. This matter is a core proceeding, and venue for this Motion is proper in this district under 28 U.S.C. §§ 1408 and 1409.

II. Factual and Procedural Background

2. On May 1, 2017 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief in this Court under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

3. Each of the Debtors remains in possession of its property and is operating its business as debtor-in-possession, pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

4. On June 6, 2017 the Court entered a final order authorizing the Debtors’ use of cash collateral for the first budget period, which ends on July 8, 2017 (Docket No. 118).

5. On June 6, 2017 the Court entered a final order authorizing the Debtors to engage in certain intercompany transactions contemplated in the budget for the first budget period, which ends on July 8, 2017 (Docket No. 119).

6. On June 30, 2017 the Court entered a final order approving the Debtors’ use of cash collateral for the Second Budget Period and approving certain intercompany transactions (Docket No. 144).

7. A detailed description of the Debtors' business, capital structure, and the events leading to these chapter 11 cases, including a brief history of the purpose and necessity for the Debtors' obtaining financing is fully set forth in the First Day Declaration and is incorporated herein by reference.

8. In order to finance their respective property purchases and related construction, the Debtors have entered into a series of promissory notes over the years. On occasion, the Debtors would refinance notes in order to extend the maturity of the obligations and/or secure additional funding or more favorable terms, as more fully described in the declaration of Dante Hahn submitted in support of various first-day motions (incorporated herein by reference).

9. The Prepetition Lenders contend that their debt is secured by liens on substantially all of the assets of Hahn Investments, LLC and its co-debtor subsidiaries and affiliates, including rents from lodging properties, as well as approximately \$67,000 in accounts receivable that existed as of the Petition Date (collectively, the "**Prepetition Collateral**"). The Debtors have an immediate need to use the cash (the "**Cash Collateral**") identified in the budget attached as **Exhibit A** to the proposed order (the "**Budget**") to operate their businesses.

10. The names and addresses of each entity claiming an interest in the Debtors' cash collateral are listed on the attached **Exhibit 1**.

11. The names and addresses of any entity in control or having possession of the cash collateral are listed on the attached **Exhibit 2**.

12. The Debtors obtained these loans as a means of financing their operations. Each of the loans includes the grant of a security interest in the Debtors' properties.

III. Relief Requested and Bases for Relief

13. The Debtors seek authorization under §§ 105, 361, 363, 364, and 507 of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) (i) to use cash collateral under Bankruptcy Code § 363; (ii) to provide adequate protection to the Prepetition Lenders (as defined below) under §§ 361 and 363 of the Bankruptcy Code; and (iii) to engage in certain intercompany transactions under Bankruptcy Code § 364 and in accordance with the Budget.

14. The Debtors’ use of Cash Collateral is of the utmost importance to the preservation and maintenance of the value of the Debtors. The Debtors need to use cash to operate their businesses in order to avoid immediate and irreparable harm to the Debtors and their estates. Cash Collateral provides the general funding for the Debtor’s operations. As of the Petition Date, the Debtors had approximately \$109,220 in cash on hand, much of which is purportedly subject to liens in favor of the Prepetition Lenders. The Debtors’ businesses require access to the rental and ancillary income that the Debtors generate from the operation of the Copeland’s restaurant and the Sleep Inn, Hawthorn Suites, and La Quinta hotels inasmuch as the Debtors have determined, in their business judgment that they will be unable to operate generally, even for a limited period, without use of such Cash Collateral.

15. Ultimately, the use of Cash Collateral will maintain the going-concern value of the Debtors’ businesses and improve the ability of the Debtors to facilitate an effective and timely reorganization. The Debtors will be able to keep their properties insured, safe, and secure, as well as provide the cash needed to sustain ongoing generation of revenues. These are all expenses necessary to preserve the value of the Debtors’ properties. Without such

minimal financial accommodations, the hope of an effective reorganization may be jeopardized.

A. Bankruptcy Code § 363 Allows a Debtor to Use Cash Collateral.

16. Section 363 of the Bankruptcy Code authorizes a debtor to use cash collateral if (i) those having an interest in such cash collateral consent, or (ii) the Court authorizes use of cash collateral. 11 U.S.C §363(c)(2). Even with consent, Rule 4001 functionally requires there be an order approving the parties' agreement to use of cash collateral; accordingly, the Debtors request authority to use Cash Collateral.

17. Use of cash collateral may be prohibited or conditioned, however, upon request by a party having an interest in such cash collateral as is necessary to adequately protect its interest. 11 U.S.C. §363(c)(3). The Court may authorize use of cash collateral upon a showing that those with an interest in the cash collateral are adequately protected. 11 U.S.C. §§363(c)(2)(B) and 363(e). Adequate protection requires consideration of the creditor's aggregate collateral position, not simply protection of its lien on cash or accounts.

B. Bankruptcy Code § 363(e) Requires Lenders to Be Adequately Protected.

18. Section 363(e) of the Bankruptcy Code provides that, “on request of an entity that has an interest in property used . . . or proposed to be used . . . by the [debtor-in-possession], the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). Adequate protection is not expressly defined in the Bankruptcy Code, except by the implications of the examples of adequate protection listed in § 361. *In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994). Section 361 of the Bankruptcy Code contains a non-exhaustive list of acceptable forms of adequate

protection, including a cash payment or periodic cash payments, additional liens, replacement liens, and the “indubitable equivalent of such entity’s interest in such property.” 11 U.S.C. § 361.

19. The determination of adequate protection is fact-specific and made on a “case by case basis.” *Swedeland*, 16 F.3d at 564; *see also In re Mathis*, 64 B.R. 279, 284 (N.D. Tex. 1986) (same). The focus of the adequate protection requirement is to preserve the secured creditor’s position at the time of the bankruptcy filing and protect the secured creditor from diminution in the value of its collateral during the reorganization process. *Id.*; *In re Continental Airlines, Inc.*, 154 B.R. 176, 180-81 (Bankr. D. Del. 1993); *see also In re WorldCom, Inc.*, 304 B.R. 611, 618–19 (Bankr. S.D.N.Y. 2004) (“The legislative history for section 361 of the Bankruptcy Code, which sets forth how adequate protection may be provided under section 363, makes clear that the purpose is to insure that the secured creditor receives the value for which the creditor bargained for prior to the debtor’s bankruptcy.”). “However, neither the legislative history nor the Bankruptcy Code requires the Court to protect a creditor beyond what was bargained for by the parties.” *WorldCom, Inc.*, 304 B.R. at 619; *see also Swedeland*, 16 F.3d at 564.

C. Bankruptcy Code § 364 Allows Affiliated Debtors to Engage in Intercompany Transactions.

20. The Debtors seek approval from this Court for the intercompany transactions contemplated under the Budget in accordance with Bankruptcy Code § 364, which governs post-petition extensions of credit to debtors.

21. Under the terms of the Third Cash Collateral Order, if the Court approves this Motion, the Debtors may engage in the intercompany transactions contemplated in the Budget, on the following terms and conditions:

- a) Intercompany transactions may be made in the form of unsecured extensions of credit by one Debtor to another Debtor to the extent permitted under §364(a) of the Code (each, an “**Intercompany Post-Petition Receivable**”);
- b) Intercompany Post-Petition Receivables payable to each Debtor that provides the extension(s) of unsecured credit are permitted in the aggregate amount provided for in the Budget;
- c) Each Prepetition Lender whose Cash Collateral is used for such extensions of unsecured credit by a Debtor shall have a replacement security interest in the Intercompany Post-Petition Receivable(s) with the same priority and perfected status as the lender’s pre-petition security interest;
- d) Nothing in this Order prohibits Debtors and any Pre-Petition Lender agreeing to an expanded use of such lender’s Cash Collateral for the above purposes, and nothing in the Order prejudices, impairs, or waives the right of any Prepetition Lender to object to intercompany transactions beyond the interim period reflected in this Order.

24. Hahn Investments, LLC is the ultimate parent to each of the other Debtors. Prepetition, from time to time, one Hahn-owned entity would lend another Hahn-owned entity cash on an unsecured basis. Such transactions were documented and accounted for. Post-petition, the Debtors’ financial advisors have determined that additional such transactions likely will need to occur in order to keep all the Debtors’ business operations functioning without interruption. The Debtors believe that such transactions, in the amounts contemplated by the Budget are in the best interest of the Debtors, their respective estates, creditors, and parties-in-interest. The Debtors believe that if such transactions are not approved, the Debtors’ estates will suffer immediate and irreparable harm.

D. The Third Cash Collateral Order Satisfies Bankruptcy Code Requirements.

22. The relevant provisions of the proposed order (the “**Third Cash Collateral Order**”) are as follows:

- a) *Name of Each Entity with Interest in Cash Collateral.* The Debtors’ prepetition lenders consist of the following: Austin Bank; First National Bank of Hughes

Springs; Texas Bank and Trust Company; Texas National Bank; Pilgrim Bank; and the Small Business Association² (the “**Prepetition Lenders**”).

b) Use of Cash Collateral and Budget. The Debtors intend to use the Cash Collateral (as defined below), in accordance with the Budget. The Debtors may use the Cash Collateral in excess of the amount set forth in the Budget for a particular line item so long as the percentage of deviation for all line-items during the budget period does not exceed 10% in the aggregate. The Budget sets forth the particular expenses anticipated to be necessary to be paid from September 3, 2017 through December 2, 2017 (the “**Third Budget Period**”).

c) Adequate Protection. The Debtors recognize that the Prepetition Lenders are entitled, pursuant to §§ 361 and 363(e) of the Bankruptcy Code, to adequate protection of their interests in the Cash Collateral under the Prepetition Agreements to the extent there is a diminution in value of such collateral from the Debtors’ use from and after the Petition Date. To the extent that § 552 of the Bankruptcy Code does not apply to extend post-petition the Prepetition Lenders’ prepetition security interests with respect to a portion of the Cash Collateral, the Debtors grant the Prepetition Lenders replacement liens in property acquired by the Debtors after the Petition Date, which is of the same nature, kind and character as the Prepetition Collateral (defined below), and all proceeds and products thereof solely to secure any diminution in the interests of the Prepetition Lenders resulting from the use of the Cash Collateral; *provided, however*, the replacement liens will not encumber any claims or causes of action arising under chapter 5 of the Bankruptcy Code and all proceeds and products thereof. If and to the extent the adequate protection of the interests of the Prepetition Lenders

² Wells Fargo is the Facilitator on the SBA loan.

under the Third Cash Collateral Order proves insufficient, the Prepetition Lenders will have, among other remedies, if any, determined by the Court, an allowed claim under § 507(b) of the Bankruptcy Code in the amount of any insufficiency.

23. The Debtors believe that the asset value of each property securing the repayment obligations on debt owed to the Prepetition Lenders is greater than the amount of the debt. The Debtors submit that, under the circumstances, the equity cushion in the assets securing the repayment obligations on the Prepetition Lenders' debt adequately protects the Prepetition Lenders from any diminution of their interests in the Cash Collateral resulting from use. Payment of the expenses identified on the Budget is necessary to avoid immediate and irreparable harm to the estate pending opportunity for a final hearing.

24. As is set forth herein, the Debtors respectfully submit that they have satisfied the requirements under § 363 for the use of cash collateral and under § 364 for the proposed intercompany transactions. The relief requested is also appropriate under Bankruptcy Code § 105(a). Section 105(a) vests in the Court the power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). The contemplated intercompany transactions will aid in the efficient administration of these cases.

25. The request for relief is also made in accordance with Bankruptcy Local Rule 4001(c).

WHEREFORE, the Debtors respectfully request entry of the Third Cash Collateral Order: (i) authorizing the Debtors to use Cash Collateral post-petition in a manner consistent with the Budget; (ii) authorizing the intercompany transaction contemplated by the Budget; (iii) decreeing that, notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms

and conditions of the Third Cash Collateral Order shall be immediately effective and enforceable upon its entry; and (iv) granting such other and further relief as is just and proper.

Respectfully submitted: August 4, 2017

By: /s/ Eric Soderlund

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Counsel for Debtors and Debtors in Possession

Certificate of Service

I certify that on August 4, 2017, I served or caused to be served the foregoing document (i) electronically on the Electronic Case Filing System for the United States Bankruptcy Court for the Eastern District of Texas and (ii) by first class mail on the non-debtor/debtor professional parties listed on the most recent Limited Master Service List filed in these chapter 11 cases [Docket No. 161].

/s/ Eric Soderlund
Eric Soderlund

Exhibit 1—Creditors Asserting Interest in Collateral

1. Austin Bank

911 N.W. Loop 281, 100
Longview, TX 75604
East Texas Regional Development Company, Inc.
c/o Kerry Bashaw
3800 Stone Road
Kilgore, TX 75662
kerry.bashaw@etcog.org

Counsel for Austin Bank:

McNally & Patrick, LLP
Michael McNally and Glen Patrick
100 E. Ferguson, Suite 400
Tyler, TX 75702
michaeljmcnally@suddenlinkmail.com
glenepatrick@suddenlinkmail.com

2. First National Bank of Hughes Springs

505 East First Street,
Hughes Springs, TX 75656

Counsel for First National Bank of Hughes Springs:

Searcy & Searcy
Josh Searcy
446 Forest Square
Longview, Texas 75605
joshsearcy@jrsearcylaw.com

3. Pilgrim Bank

1404 South Broadway
Sulphur Springs, TX 75482

Counsel for Pilgrim Bank:

c/o Scott A. Ritcheson
Ritcheson, Lauffer & Vincent, P.C.
821 ESE Loop 323, Suite 530
Tyler, Texas 75701
scottr@rllawfirm.net

- 4. Texas National Bank**
612 E. Hawkins Parkway
Longview, TX 75608
Wells Fargo Bank, NA
NW 6441, PO Box 1450
Minneapolis, MN 55485

Counsel for Texas National Bank:
c/o Michael McNally and Glen Patrick
McNally & Patrick, LLP
100 E. Ferguson, Suite 400
Tyler, TX 75702
michaeljmcnally@suddenlinkmail.com
glenepatrick@suddenlinkmail.com

- 5. Texas Bank and Trust Company**
300 East Whaley
Longview, TX 75601

Counsel for Texas Bank and Trust Company
c/o John F. Bufe
Potter Minton, a Professional Corp.
500 Plaza Tower
110 N. College
Tyler, TX 75702
johnbufe@potterminton.com

- 6. US Small Business Administration**
409 3rd St, SW
Washington, DC 20416

East Texas Regional Development Company, Inc.
c/o Kerry Bashaw
3800 Stone Road
Kilgore, TX 75662
kerry.bashaw@etcog.org

The Debtors' inclusion of parties on this exhibit is solely for the purpose of notice and is not an admission that any party has a valid claim against the Debtors or that any party properly belongs in the designated category or has a claim or legal relationship to the Debtors of the nature described herein.

Exhibit 2—Entities with Control Over Cash Collateral

Applicable Debtor	Bank Information	Account Type	Account Number
Hahn Investments, LLC	Guaranty Bank & Trust 200 W. Hawkins Parkway Longview, Texas 75605	Checking	XXXXXX858
Copeland's of Longview, LLC	Guaranty Bank & Trust 200 W. Hawkins Parkway Longview, Texas 75605	Checking	XXXXXX277
Hahn Hotels, LLC	Guaranty Bank & Trust 200 W. Hawkins Parkway Longview, Texas 75605	Checking	XXXXXX239
Hahn Hotels of Sulphur Springs, LLC	Guaranty Bank & Trust 200 W. Hawkins Parkway Longview, Texas 75605	Checking	XXXXXX251
SI of Longview, LLC	Guaranty Bank & Trust 200 W. Hawkins Parkway Longview, Texas 75605	Checking	XXXXXX244