



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 15, 2018

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE:

KC7 RANCH, LTD, et al.,

DEBTORS.

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§

Case No. 17-45166-mxm
Chapter 11
(Jointly Administered)

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO USE CASH
COLLATERAL, (II) GRANTING ADEQUATE PROTECTION,
AND (III) GRANTING RELATED RELIEF**

On Motion of KC7 Ranch, Ltd and its above-captioned debtor affiliates (collectively, the “Debtors”) for an Interim Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection, and (III) Granting Related Relief, (the “Motion”) (Docket No. 56, as corrected by Docket No. 61), it is accordingly **ORDERED**:

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334.
2. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
4. Notice of the Motion and of the hearing were adequate under the circumstances.

I. INTERIM APPROVAL OF AGREEMENT FOR USE OF CASH COLLATERAL, ADEQUATE PROTECTION, AND RELATED RELIEF

5. The Motion, as corrected, is **GRANTED** on an interim basis for the agreed use of cash collateral, providing of adequate protection, and related relief on the terms more fully described herein. A Final Hearing shall be set by separate notice.

6. The Debtors require immediate access to cash collateral to fund operating expenses, payroll, and other general corporate purposes arising in the Debtors' ordinary course of business, as necessary for the orderly maintenance and operation of the Debtors' assets and business, and other costs relating to the administration of these Chapter 11 bankruptcy cases, as such expenditures are required to avoid immediate and irreparable harm to and preserve the Debtors' estates and their assets, pending a Final Hearing.

7. It is in the best interest of Debtors' estates that the Debtors be allowed to use the cash collateral of Hitachi Infrastructure Systems (America), LLC ("Hitachi") pursuant to section 363 of the Bankruptcy Code in accordance with the Initial Budget (as hereinafter defined) on an interim basis, and to grant adequate protection to Hitachi on the terms provided herein.

8. Except as noted,¹ Hitachi consents to the use of cash collateral on the terms and to the limited extent specified herein and, accordingly, is hereby GRANTED, as adequate protection, post-petition, replacement liens in its same pre-petition collateral (as described in any and all pertinent, pre-petition loan agreements and perfection documents) to the full extent of any diminution in value of such collateral resulting from the use of such cash collateral pursuant to section 361(2) of the Bankruptcy Code.

9. The adequate protection liens and post-petition replacement liens are deemed to be valid, enforceable, and automatically perfected as of the Petition Dates, and no further notice, filing, or other act shall be required to effect such perfection.

10. If and to the extent that Hitachi's pre-petition collateral and the adequate protection provided in this Interim Order are insufficient to protect Hitachi's allowed security interests from diminution resulting from the Debtors' use of cash collateral or from a diminution in value of the pre-petition collateral, then Hitachi shall have a priority administrative expense claim in these bankruptcy cases in the amount of, and only to the extent of, such shortfall in the diminution in value (as determined by this Court), and such administrative expense claim shall have priority under 11 U.S.C. § 507(b) over all administrative expenses incurred in this Chapter 11 proceeding of the kind specified in 11 U.S.C. § 503(b).

¹ Hitachi does not yet consent to the annual grass lease payment listed in Exhibit "A," relating to Grazing Lease No. 8634, dated Jan. 26, 2011, Amended and Extended Jan. 11, 2016, as further extended to Jan. 26, 2021, wherein KC7 Ranch, Ltd. is lessee and Texas Pacific Land Trust is lessor. The Debtors reserve all rights relating to other and further motions or agreements for the payment of this item and all rights to seek assumption, assignment or other relief relating thereto. Likewise, Hitachi reserves all rights thereto, whether to consent to such payment, object to such payment, or to seek other relief. Accordingly, in the interim, this item will not be paid absent further written agreement, written consent by Hitachi, or Court order. Nonetheless, if and when Hitachi does consent to payment of this item, that item may be paid pursuant to the authorizations herein without the need for other and further motions or orders.

11. Such adequate protection and post-petition replacement liens shall be enforceable to the same extent as Hitachi's pre-petition liens. Hitachi may, in its sole discretion, but shall not be required as a condition of enforceability, to file supplemental documents, including UCC-1s, and require the Debtors to execute such reasonable documents as deemed necessary to Hitachi, reflecting the provisions and additional rights granted in this Interim Order. Although not required, upon request by Hitachi, the Debtors shall execute and deliver such perfection instruments and documents reasonably considered by Hitachi to be necessary in order to perfect the security interests and liens granted by this Interim Order, and Hitachi is authorized to receive, file and record the foregoing at its own expense, which actions shall not be deemed a violation of the automatic stay.

12. The Debtors' initial January and February 2018 cash collateral Initial Budget is attached to the Motion, as corrected by that Corrective Supplement to Motion (Doc. No. 61) as "**Exhibit A**" (hereinafter, the "Initial Budget"). The Debtors' expenditures of cash collateral in each of these months shall be limited, subject to permitted exceptions and adjustments, to this Initial Budget.

13. Notwithstanding the foregoing, the Debtors shall be permitted the following exceptions to and variances from the operative portion of the Initial Budget:

- a. The Debtors may at any time, and without notice to creditors, substitute any vendor, supplier, employee or other provider for another, in Debtors' sole discretion; and,
- b. In any month, the Debtors shall be entitled to a 10% variance on Initial Budgeted items so long as the cumulative excess expenditures for either January or February, 2018 do not in total exceed 10% of the projected uses for such respective month.

14. The foregoing limitations on the uses of cash collateral do not apply to the accrual of indebtedness, but rather to the use of cash collateral to pay expenses.

15. Unless so provided in other and further Orders, the Initial Budget will not provide for the payment of any professional fees, inasmuch as it is anticipated that such fees would be payable upon a refinancing or sale of the ranch property owned by KC7 Ranch, Ltd. in Reeves and Jeff Davis Counties, or upon some similar transaction or event. Notwithstanding the foregoing, nothing herein shall constitute any limitation on the payment of professional fees not otherwise proscribed by the Bankruptcy Code and applicable law. Permitted draws from any professional's pre-petition retainer shall likewise not be included or charged against the Initial Budget.²

16. The terms of the adequate protection provided to Hitachi in this Interim Order, administrative priority claims, and other protections granted herein will not be affected by any subsequent reversal or modification of this Interim Order or any other order, which is applicable to actual use of Hitachi's cash collateral by this Interim Order. The terms of the adequate protection provided to Hitachi herein are necessary in order to induce Hitachi's consent to use of its cash collateral.

17. The Debtors and Hitachi have negotiated the terms of this Interim Order in good faith.

18. Nothing herein shall affect any party's right to object to Hitachi's liens.

² Nothing in this paragraph is to be construed as Hitachi's consent and/or agreement to, *inter alia*, (a) any transaction or proposal with respect to professional fees, (b) application of any pre-petition retainer, and/or (c) any transaction with respect to real property; and all Hitachi's rights with respect thereto are preserved.

II. NOTICE

19. The Debtors shall, within two business days after the entry of this Interim Order, serve by United States mail, copies of the Motion (if not previously served) and this Interim Order on (1) the United States Trustee, (2) all known secured creditors and (3) counsel to any committee appointed under section 1102 of the Bankruptcy Code, if one has been appointed and if not, to Debtors' twenty (20) largest unsecured creditors. Any objections to the Motion shall be filed by no later than February 23, 2018, by 5:00 p.m. Central Time.

20. This Court shall retain jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of the Order.

21. Notwithstanding the applicability of any Bankruptcy Rule or other applicable law, there shall be no stay of execution or effectiveness of this Interim Order.

END OF ORDER

Agreed to by:

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