

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:

DELTAVILLE BOATYARD, LLC, *et al.*,¹

Debtors

Case No.

16-35974-KLP

Chapter

11

**ORDER AUTHORIZING POST-PETITION
FINANCING PURSUANT TO 11 U.S.C. § 364**

This matter came before the Court upon the motion of the above-captioned debtors and debtors-in-possession (the “Debtors”) for Entry of an Order Authorizing Post-Petition Financing Pursuant to 11 U.S.C. § 364(c) (the “Motion”). It appearing to the Court that the Debtors and the Lender have reached an agreement pursuant to which Lender may provide certain post-petition financing (the “Post-Petition Financing”) to the Debtors to be secured by a first-priority, senior security interest in and lien upon the cash received in payment of the Grants pursuant to § 364 of the Bankruptcy Code, with the consent of SummitBridge solely to the extent contained in this Order (and notwithstanding that SummitBridge claims (and the Debtors dispute said claim) a first priority lien in and to the Grants and all proceeds thereof and without prejudice to the Debtors and SummitBridge's positions in all respects concerning those liens and claims) and having reviewed the Motion and having heard the statements of counsel in support of the relief

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Boatyard Rentals, LLC (1032), Deltaville Marina, LLC (8245), and Deltaville Boatyard, LLC (6818).

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requested in the Motion at a hearing before the Court (the “Hearing”); and the Court being fully advised in the premises and having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; it is hereby

FOUND, DETERMINED, ORDERED, AND ADJUDGED, that:

1. The Motion is GRANTED to the extent set forth herein.
2. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.
3. The Debtors are authorized to enter into the Post-Petition Financing in accordance with the terms provided in the Motion, provided, however that the liens granted pursuant to the Motion shall only extend to cash received in payment of the Grants. To the extent any document is executed to evidence the Post-Petition Financing, the same shall be in form and substance reasonably satisfactory to SummitBridge to reflect the foregoing. Upon receipt of payments from the Grants, the Debtors shall immediately forward such sums to the Lender to the extent necessary to satisfy the Post-Petition Financing.
4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2) and (c) notice of this Motion and the Hearing was sufficient under the circumstances.
5. The Post-Petition Financing is necessary to allow the Debtors manage and maximize the value of their assets in the pursuit of a reorganization in accordance with Chapter 11 of the Bankruptcy Code. Without the relief requested, the Debtors will not be able to pay for the construction of the docks and other improvements on the real property of the Yard and

Marina. Interruption of the construction will significantly harm the Debtors' estates and fundamentally undermine their reorganization efforts.

6. A financing facility is not available to the Debtors except in accordance with the terms of this Order. Neither this Order nor the granting of the Motion shall constitute a finding or otherwise be interpreted to admit or otherwise be construed as an indication, that SummitBridge has, or does not have, a first priority lien on the Grants and all proceeds thereof. Except as expressly provided herein as it relates to the lien upon the cash received in payment of the Grants, nothing contained in this Order shall impair or modify any rights, claims or defenses available in law or equity to SummitBridge and/or any of the Debtors.

7. The Lender shall have a perfected first-priority security interest solely in the cash received by the Debtors in payment of the Grants.

8. The Post-Petition Financing has been negotiated in good faith and at arms' length between the Debtors and the Lender. The terms of the Post-Petition Financing are fair and reasonable under the circumstances, reflect the Debtors exercise of sound business judgment, and are supported by reasonably equivalent value and fair consideration. Thus, any loans made to the Debtors by the Lender shall be deemed to have been extended in good faith, as that term is used in Bankruptcy Code § 364(e), and shall be entitled to the protections of § 364 in the event of the modification or reversal on appeal of the authorization granted by this Order to enter into the Post-Petition Financing.

9. This Order shall constitute valid, binding obligations of the Debtors enforceable against the Debtors in accordance with their terms.

10. The Debtors are authorized and directed to do and perform all acts, to make, execute, and deliver all instruments and documents, and to pay fees, which may be required or necessary. However, the provisions of this Order shall be self-executing. Neither the Lender nor the Debtors shall be required to take any action or obtain any additional Orders to enjoy the benefits and/or protections of this Order.

11. The provisions of this Order shall be binding upon the Lender and the Debtors and their respective successors and assigns (including any Trustee hereinafter appointed for the estate of the Debtors) and inure to the benefit of the Lender and the Debtors and their respective successors and assigns.

12. The notice given by the Debtors of the Motion constitutes due and sufficient notice in accordance with the Bankruptcy Rules and the Local Rules of this Court.

13. Upon entry the Clerk shall serve copies of this Order on: the Office of the United States Trustee, the Debtors' counsel, the Debtors' twenty largest unsecured creditors as identified in their chapter 11 petitions, the Debtors' known secured creditors, any known legal counsel for the secured creditors.

Entered: Feb 16 2018

/s/ Keith L. Phillips

UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: Feb 16 2018

I ask for this:

/s/ Paula S. Beran

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CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order was served upon all necessary parties.

/s/ Paula S. Beran

Counsel

Service List for Entered Order:

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