



Timothy W. Dore
U.S. Bankruptcy Court
(Dated as of Entered on Docket date above)

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

WEST SEATTLE LODGE, LLC

Debtor.

Bankruptcy No. 17-10842

ORDER AUTHORIZING USE OF CASH
COLLATERAL AND ADEQUATE
PROTECTION PAYMENTS

THIS MATTER having come before this Court upon the motion (the “**Motion**”) of West Seattle Lodge, LLC (“**Debtor**”), the debtor-in-possession herein, pursuant to 11 U.S.C. §§105(a), 363(c)(2), seeking authority to use cash collateral and pay ongoing normal operating expenses (Dkt. 8); the Court having entered an Order authorizing emergency use of cash collateral (Dkt. 34) and having a final hearing on use of cash collateral on March 24, 2017; considered the pleadings and files herein, having heard argument of counsel at the hearing, and being fully advised in the premises; the Court hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On February 27, 2017 (the “**Petition Date**”), Debtor filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code. On or around

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126390.0019/6826506.3

1 November 21, 2016, various associated entities of the Debtor previously filed voluntary
2 petitions pursuant to Chapter 11 of Title 11 of the United States Code.¹

3 This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a
4 “core” proceeding within the meaning of 28 U.S.C. § 157(b)(2)(M), among other provisions,
5 and the Court has authority to enter this Order pursuant to 11 U.S.C. §§ 363 and 105, and
6 other applicable law. The Court finds:

7 1. The Debtor owns and operates a restaurant in Seattle, WA.

8 2. CBC Partners I, LLC (hereinafter referred to as “CBC”) extended a non-
9 revolving credit (the “Loan”) to Debtor on or around June 10, 2016, evidenced, in part, by a
10 Secured Promissory Note dated as of June 10, 2016, in the stated principal amount of Eight
11 Hundred Twenty-Five Thousand Dollars (\$825,000) (as amended from time to time, the
12 “Note”), plus accrued interest at a fixed rate of thirteen and one half percent (13.5%).

13 3. Debtor’s obligations under the Loan are secured by a security interest in favor
14 of CBC in and to all of Debtor’s presently owned and thereafter acquired inventory,
15 accounts, general intangibles, rights to payment, and equipment, together with all products
16 and proceeds of the foregoing (as more fully described in the Agreement, the “Collateral”).

17 4. CBC filed UCC-1 financing statements with the Washington Department of
18 Licensing on June 10, 2016, under file number 2016-162-7346-2, with respect to the
19 Collateral owned by Debtor. The Note and all other documents, instruments, amendments,
20 modifications, and agreements relating to, and expressly referencing the Loan shall
21 collectively be referred to herein as the “Loan Documents.”

22 ¹ *In re Lodge Holdings Company*, Cause No. 16-15814; *In re Mukilteo Lodge, LLC*, Cause No. 16-15849; *In re*
23 *Kirkland Lodge, LLC*, Cause No. 16-15850, *In re Stadium Lodge, LLC*, Cause No. 16-15851; *In re Downtown*
Lodge, LLC, Cause No. 16-15852; *In re Mill Creek Lodge, LLC*, Cause No. 16-15853; and *In re Greenwood*
Lodge, LLC, Cause No. 16-15854

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1 5. Debtor remains indebted to CBC for the unpaid principal balance owing on
2 the Note in the amount of \$825,000, plus interest, attorney's fees, costs, and other expenses
3 owing under the Loan Documents.

4 6. Substantially all of the estate's revenue is derived from proceeds of sale of
5 inventory, which, together with all of the estates' cash on hand as of the date of filing and
6 any post-petition proceeds of CBC's pre-petition collateral, constitute cash collateral (the
7 "Cash Collateral") as defined in 11 U.S.C. § 363(a).

8 7. Debtor's estate has continuing need for the use of the Cash Collateral to avoid
9 immediate and irreparable harm to its businesses and the Collateral. Without the ability to
10 use the Cash Collateral, the estate will be unable to pay ongoing ordinary expenses relating to
11 the continued operation of the businesses.

12 8. Authorization of use of Cash Collateral in accordance with the budget
13 attached hereto as Exhibit 1 (the "Budget"), is in the best interests of the estate and is
14 necessary for the estate to avoid immediate and irreparable harm.

ORDER

15 Based upon the foregoing findings and conclusions, it is hereby ORDERED as
16 follows:

17 1. The Debtor is authorized to use Cash Collateral as set forth in the Budget
18 through May 31, 2017 unless extended by further order of this Court upon notice and
19 hearing.

20 2. Subject to the terms, conditions and limitations of this Order, the Debtor is
21 authorized to incur and timely pay the operating and administrative expenses identified in the
22 Budget, including payroll that became due and payable post-petition even if some the
23 employee hours attributable therein were incurred prepetition; and further shall pay and keep
current all post-petition payroll taxes due to the Internal Revenue Service and sales taxes due

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1 to the State of Washington, when due; and may incur such obligations and make such
2 payments itemized in the Budget, without further approval of CBC or this Court, provided
3 that (a) Debtor shall not use Cash Collateral to pay any pre-petition expense or obligation
4 that became due prior to the filing of this case except as expressly permitted by this Order or
5 further order of the Court, and (b) Debtor shall otherwise only use Cash Collateral to pay
6 post-petition taxes, expenses and obligations directly relating to the preservation and
7 protection of the Collateral and operation of Debtor's business. Nothing herein shall
8 constitute a waiver of the Debtor's right to seek assessment of the reasonable, necessary costs
9 and expenses of preserving, or disposing of, cash collateral or any other collateral of secured
10 creditors under 11 U.S.C. § 506(c), which right is expressly reserved.

11 3. Debtor shall be in compliance with its obligations related to the Budget so
12 long as the actual expenditures paid with Cash Collateral do not exceed the corresponding
13 expense line item set forth in the Budget by more than ten percent (10%), and the total
14 amount of Cash Collateral used does not exceed the total amount set forth in the Budget for
15 all expenses by more than five percent (5%) of the overall Budget on a monthly basis.

16 4. CBC shall retain all of its pre-petition security interests in all pre-petition
17 collateral, including, without limitation, the Cash Collateral. The Debtor is authorized and
18 directed to provide adequate protection of CBC's interest in the Cash Collateral as set forth
19 in this Order, by making a monthly payment, due on the 10th day of each month commencing
20 April 10, 2017, in the amount of \$2,000.00, and by granting, on behalf of the estate of the
21 Debtor, the "Replacement Liens" in the same order and priority as existed pre-petition. ~~On an~~
22 ~~interim basis,~~ The Replacement Liens shall be valid, perfected and enforceable security
23 interests and liens on the Cash Collateral and post-petition proceeds thereof without further
filing or recording of any document or instrument or any other action. No further
documentation shall be necessary to evidence or perfect the lien or to give notice to third
parties of the same. Notwithstanding any other provision in this Order, all rights of the

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1 Debtor or Trustee to object to the validity, perfection, amount, priority, or enforceability of
2 asserted pre-petition liens are reserved pending opportunity for review of such liens.

3 5. On a monthly basis, the Debtor shall provide each of CBC and its counsel
4 with a statement showing payments by budgeted line item and deviations (both positive and
5 negative) from the Budget for the prior monthly period as well as such other information
6 pertaining to the Collateral and Cash Collateral as CBC in its reasonable discretion may
7 reasonably require. The Debtor shall provide CBC with the reporting Debtor is required to
8 provide to the Court pursuant to the Loan Documents, Fed. R. Bankr. P. 2015 and Local
9 Bankruptcy Rule 2015. If the United States Trustee monthly operating report satisfies the
10 above report to CBC, CBC may accept such report in lieu of a separate report.

11 6. During the term of this Order, CBC shall also be entitled to request and
12 receive any and all additional operational or financial information or documents pertaining to
13 the Collateral and Cash Collateral. Debtor shall reasonably cooperate with CBC and its
14 representatives in providing full and reasonable access to the Collateral, the Cash Collateral,
15 the estates' financial condition, assets, and liabilities.

16 7. Debtor to comply, in all respects with the provisions of the Loan Documents
17 to the extent practicable and consistent with the Bankruptcy Code and Bankruptcy Rules.
18 Debtor shall permit CBC free and unfettered reasonable business-hour access, with
19 reasonable advance notice, to all books, records and information relating to the estates' full
20 and timely post-petition compliance with their obligations under the Loan Documents,
21 including, without limitation, access to information and records concerning the maintenance
22 of insurance, reserve accounts for capital expenditures, taxes and insurance and other
23 protection of the Collateral.

24 8. Nothing contained in this Order shall be construed in any form as (i) consent
25 by CBC to any use of Cash Collateral or the Collateral, other than the specific uses
26 authorized and described in this Order, the Budget and only during the duration of this Order;

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1 (ii) a commitment by CBC to provide financing to defray expenses arising during or after the
2 Budget period nor as imposing any liability on CBC to any third party; or (iii) consent by
3 CBC to a carve-out from its Cash Collateral for amounts owing for professional fees and
4 costs incurred by Debtor and their authorized professionals.

5 9. This Order shall take effect upon entry by the Court. Nothing contained in
6 this Order shall prejudice any party's rights to apply for an order prospectively modifying
7 this Order on appropriate grounds and after notice and opportunity for a hearing, or prejudice
8 any party's rights and arguments at the final hearing.

9 10. Except as otherwise specifically provided herein and under the Bankruptcy
10 Code, nothing in this Order shall be deemed a waiver of any rights that CBC may have under
11 applicable law or under the Loan Documents. Any rights granted to CBC in this Order are in
12 addition to, and not intended as a waiver or substitution for, any rights, remedies, liens or
13 security interest granted under the Loan Documents or the right to additional adequate
14 protection under 11 U.S.C. § 363, CBC reserves all claims and defenses with respect to the
15 priority of its security interest, and reserves all rights and remedies against non-debtor
16 parties.

17 11. All notices, request and demands which any party is required or may desire to
18 give to any other party under the provisions of this Order must be in writing and delivered to
19 each party at the following address:

20 If to CBC: Gregory R. Fox
21 Lane Powell PC
22 1420 Fifth Avenue, Suite 4200
23 Seattle, WA 98101-2338
Email: foxg@lanepowell.com

If to the US Trustee: Kathryn E Perkins
Office of the United States Trustee
700 Stewart Street, Suite 5103
Seattle, WA 98101
Email: kathryn.e.perkins@usdoj.gov

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1 If to Lodge ~~Trustee~~ ^{Holdings}
2 **Company Trustee:**

Sheena R. Aebig
1215 Fourth Avenue, Suite 900
Seattle, WA 98161
Email: saebig@ajbr.com

3
4 (with a copy to):

Edwin K. Sato
Bucknell Stehlik Sato & Orth, LLP
2003 Western Avenue, Suite 400
Seattle, WA 98121
Email: esato@bsss-law.com

6 If to Debtor:

Larry B. Feinstein
Vortman & Feinstein
520 Pike Street, Suite 2250
Seattle, WA 98101
Email: feinstein1947@gmail.com

9 or such other address as any party may designate by written notice to all other parties. Each
10 notice, request and demand shall be deemed given or made as follows (a) if sent by e-mail or
11 facsimile transmission, upon receipt; or (b) if sent by mail, upon the earlier of the date of
12 receipt or three (3) business days after deposit in U.S. mail.

13 12. In the event Debtor fails to comply with the terms of this Order, CBC shall
14 thereupon have the right, but not the obligation, to send written notice via facsimile or e-mail
15 transmission to Debtor and Debtor's counsel, and unless such default is cured, CBC may
16 move the Court on ten (10) business days' notice to terminate the Debtor' authorization to
17 use cash collateral as provided hereunder. Notwithstanding the foregoing, CBC's failure or
18 decision not to immediately or otherwise send a notice of default in the event of a default
19 hereunder shall in no way be deemed or construed as a waiver of any rights or remedies
20 granted it hereunder or pursuant to the terms of the Loan Documents, with all such rights and
21 remedies being expressly reserved.

22 ~~13. A hearing on further use of cash collateral shall be set for May 26, 2017 at~~
23 ~~9:30 p.m. or as may be noted by the parties upon regular notice and hearing under the Local~~
~~Rules.~~

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1 // End of Order//

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3 Presented by:
4 VORTMAN & FEINSTEIN

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5 /s/ Larry B Feinstein
6 Larry Feinstein, WSBA #6074
7 Attorneys for Debtor-in-Possession

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LODGE

West Seattle

West Seattle

West Seattle

	Month	March Est	April Est	May Est
Net Sales		135,000.00	140,000.00	140,000.00
Food		70,200.00 52.0%	72,800.00 52.0%	72,800.00 52.0%
Beer		33,750.00 25.0%	35,000.00 25.0%	35,000.00 25.0%
Liquor		18,900.00 14.0%	19,600.00 14.0%	19,600.00 14.0%
Wine		8,775.00 6.5%	9,100.00 6.5%	9,100.00 6.5%
NA Beverage		2,488.25 1.8%	2,488.25 1.8%	2,488.25 1.8%

COST OF GOODS SOLD

Food/NA Bev	23,987.12 33.00%	24,845.12 33.00%	24,845.12 33.00%
FSA Based on 4 wk %			
Charl Produce trip B			
Franz			
Whidbey Misc			
Beer/Wine/Liquor	15,356.25 25.00%	15,925.00 25.00%	15,925.00 25.00%
Columbia Youngs			
Click/Crown			
Odum/ACRS			
Southern			
Misc Brewers/wine			

TOTAL COGS 39,343.37 40,770.12 40,770.12

Gross Profit 95,656.63 99,229.88 99,229.88

CONTROLLABLE EXPENSES

Payroll Expenses

Tips paid	22,950.00 17.0%	23,800.00 17.0%	23,800.00 17.0%
Employee Cks Cashed w/ tips			
Employee Labor w all tax	47,250.00 35.0%	49,000.00 35.0%	49,000.00 35.0%
Est Tax portion of above 941/LNI/SUTA	16,537.50	17,150.00	17,150.00
Health/Dental Ins	1,423.09	1,423.09	1,423.09

Total Payroll 48,673.09 36% 50,423.09 36% 50,423.09 36%

Prime Costs 88,016.46 65% 91,193.21 65% 91,193.21 65%

Direct Operating Expense

Janitorial	2,000.00	2,000.00	2,000.00
Eduardo/Victor Pd	2,000.00	2,000.00	2,000.00
Linen/1st Aid	1,200.00	1,200.00	1,200.00
Aromark	1,200.00	1,200.00	1,200.00
Office Supplies	200.00	200.00	200.00
Costco/Bank Direct	200.00	200.00	200.00
Kitchen Supplies	2,000.00	1,500.00	1,500.00
Supplies-Employee purchase	500.00	500.00	500.00
Capital One/Citi/Cred	1,000.00	500.00	500.00
Bargreen/Costco	500.00	500.00	500.00
Restaurant Supplies	800.00	800.00	800.00
New C02	250.00	250.00	250.00
Tapman Services	250.00	250.00	250.00
Cintas Paper/Sam	300.00	300.00	300.00
Apparel	0.00	0.00	0.00

Total Op Expense 6,200.00 5,700.00 5,700.00

Entertainment

Mood Media	25.00	25.00	25.00
Direct TV	750.00	750.00	750.00

Total Entertainment 775.00 775.00 775.00

Marketing

Donations-Gift C, Exptip etc	500.00	500.00	500.00
Operating Menu Development			
Advertising			

Total Marketing 500.00 500.00 500.00

Utilities

PSE Gas Utilities	1,000.00	1,000.00	1,000.00
PUD Electric Utilities	1,133.00	1,133.00	1,133.00

Total Utilities 2,133.00 2,133.00 2,133.00

Secured Creditor/Adeq. Protection

CBC Court agreed amount	2,000.00	2,000.00	2,000.00
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Total Secured 2,000.00 2,000.00 2,000.00

Administrative & General Expense

Credit Card Fee

EXHIBIT 1

Hartland	2,970.00	22%	3,080.00	22%	3,080.00	22%
Bank Service Charges						
Misc fee	1,000.00		1,000.00		600.00	
Accounting & Bookkeeping						
Danta-RSI-Etc-Kelli	1,000.00		1,000.00		1,000.00	
Legal						
Attorney & UST Qtr Fees BK Fees	4,000.00		4,000.00		4,000.00	
Licensing						
Ins License & Permits						
Garbage	800.00		800.00		800.00	
Misc						
Accent Table/Flowers/Décor	250.00		250.00		250.00	
Baker Commodities	250.00		250.00		250.00	
Nella Knife	140.00		140.00		140.00	
RT Hood/Fire Alarm	200.00		200.00		200.00	
Window Cleaning	75.00		75.00		75.00	
Storage Rent						
Phone & Internet						
DMX/ATT	368.60		368.60		368.60	
Comcast Wave	425.58		425.58		425.58	
Equipment Lease						
Vend/Time Leasing						
Alpine Ice M rent	500.00		500.00		500.00	
Auto Chlor DW rent	800.00		800.00		800.00	

Total Administrative 12,779.18 12,889.18 12,489.18

Maintenance

Repairs & Maintenance						
Misc Materials	1,000.00		1,000.00		1,000.00	
HVAC Etc repair companies	500.00		500.00		500.00	
Building Maintenance						
Bob/Christian/Der/etc	2,000.00		2,000.00		2,000.00	

Total Maintenance 3,500.00 3,500.00 3,500.00

Misc Expense/ Construction Balance

TOTAL CONTROLLABLES 76,560.27 77,920.27 77,520.27

OCCUPANCY COSTS

Lease/NNN	13,259.84		13,259.84		13,259.84	
Building & Op Insurance	210.01		210.01		210.01	
TOTAL OCCUPANCY	13,469.85		13,469.85		13,469.85	

Total Operating Expense	129,373.49	132,160.24	131,760.24
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Net Profit 5,626.51 7,839.76 8,239.76

Profit % 4.2% 5.6% 5.9%

Sales Tax not included in net sales 12,960.00 13,440.00 13,440.00

Total Deposits Sales/Tips/Tax 170,910.00 177,240.00 177,240.00