

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

NOT FOR PUBLICATION

GOLDEN SEAHORSE LLC,
dba Holiday Inn Manhattan Financial District,

Chapter 11

Case No. 22-11582 (PB)

Debtor.
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**MODIFIED POST-TRIAL BENCH RULING ON DEBTOR’S MOTION
FOR APPROVAL OF AGREEMENT WITH NEW YORK CITY
HEALTH & HOSPITALS CORPORATION**

The Debtor owns and operates a hotel (the “Hotel”) located at 99 Washington Street in Lower Manhattan, known as the Holiday Inn Manhattan Financial District. The Hotel has 492 guest rooms and, at 50 stories tall, is billed as the tallest Holiday Inn in the world. Following the onset of the COVID-19 pandemic, the Hotel’s performance suffered, and eventually the Debtor’s inability to continue to pay interest on \$137 million of senior secured debt resulted in its November 2022 bankruptcy filing.

In January 2023, the Debtor entered into an agreement with the New York City Health & Hospitals Corporation (“HHC”), under which, for a term of up to 15 months, HHC will use the Hotel to house approximately 1,000 asylum seekers, out of the more than 28,000 such migrants currently in the City’s care. Although the agreement is expected to boost the Debtor’s net revenues by more than \$10 million, the Debtor’s senior secured lenders have strenuously objected to the Court’s approval of the agreement. They contend that the agreement’s benefits are outweighed by a host of downsides, including potential physical damage to the premises, difficulties the Hotel may have resuming normal operations after the contract ends, and possible impairment of the Debtor’s ability to sell or refinance the Hotel. As a result, they claim, the agreement will gravely

harm the value of the Hotel — their collateral — thereby depriving them of the adequate protection to which they are entitled under Bankruptcy Code § 363.

On January 27, 2023, the Court held an almost seven-hour trial on the Debtor’s motion for approval of the agreement. Three days later, the Court granted the motion for reasons set forth in a lengthy bench ruling. At bottom, the Court found, the lenders had failed to prove that the possible harms they identified were likely to occur, much less to result in damages in an amount approaching the agreement’s undisputed financial benefits. Moreover, the evidence presented by the Debtor — in particular, the testimony of a top HHC official concerning that agency’s experience housing about 7,000 asylum seekers at other New York City hotels over the prior four months — suggested that any physical harm to the Hotel was likely to be modest.

The Court explained that it might subsequently issue a revised decision correcting and clarifying its bench ruling in a limited number of respects. The Court has now done so, and its revised bench ruling is attached as Exhibit A. The revised ruling corrects the transcript not only for transcription errors but also, in some instances, to make the ruling clearer or more readable. No changes have been made to the substance of the ruling.

Dated: New York, New York
March 10, 2023

/s/ Philip Bentley
Honorable Philip Bentley
United States Bankruptcy Judge

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-11582-pb

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5 In the Matter of:

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7 GOLDEN SEAHORSE LLC,

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9 Debtor.

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12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004-1408

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16 Monday, January 30, 2023

17 10:03 AM

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21 B E F O R E :

22 HON PHILIP BENTLEY

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

1 HEARING re Conference re: Bench Ruling on Debtor's Motion
2 for Authority to Enter into an Agreement with New York City
3 Health and Hospitals Corporation

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: I'm going to rule from the bench this
3 morning on the Debtor's motion for approval of its agreement
4 with the New York City Health and Hospitals Corporation.

5 I'm ruling today from the bench in light of the
6 Debtor's need for a prompt ruling. I may subsequently issue
7 a written decision memorializing this bench ruling and
8 perhaps clarifying and amplifying it in a few respects. I
9 want to start by thanking counsel for their efforts at the
10 hearing on Friday as well as in their briefing. Counsel for
11 both sides did an excellent job of presenting some quite
12 complicated issues in a very compressed timeframe.

13 My ruling covers a fair amount of factual detail,
14 and I don't want to keep the parties in suspense about the
15 outcome. So I'm going to start with a summary of my
16 conclusions, and I guess also I should warn the parties, in
17 terms of budgeting for time, that my guess is it may take me
18 as much as two hours to read the entire bench ruling into
19 the record. I don't like to do that. I don't like to take
20 up that much time of the parties. But I think it's
21 important to have a comprehensive ruling and, as is very
22 clear in the circumstances, it's very important that the
23 ruling be entered today rather than postponing it until I
24 can issue a full written decision.

25 Let me start with a summary of my conclusions.

1 It's undisputed that the Agreement that is before me today
2 provides the Debtor with enhanced cash flow compared to its
3 projections. If the Agreement runs its full term, which
4 appears to be likely, it will generate more than \$10 million
5 of additional net income for the Debtor.

6 The Debtor's secured Lenders have challenged the
7 Debtor's business judgment in entering into the Agreement
8 and have argued that the Agreement fails to adequately
9 protect their collateral because it exposes the Debtor to a
10 host of risks, including physical harm to the Hotel and a
11 variety of other business and financial risks.

12 I agree with the Lenders that the Agreement does
13 involve a variety of risks. The risks are real and I
14 certainly am not able to say with confidence that none of
15 the possible harms they identify will ultimately come to
16 pass. My job though is not to claim to have a crystal ball
17 -- fortunately, because I don't. My job is to evaluate the
18 evidence that's been presented and, based on that evidence,
19 to make a judgment as to the likely outcomes, the benefits
20 of the Agreement and the likely harms. Based on the
21 evidence that was presented to me on Friday, I find that the
22 undisputed benefits of the Agreement, the \$10-plus million
23 that I mentioned, outweigh any harms that are likely to
24 result.

25 For that reason, along with others that I will

1 explain in my ruling, I'm going to grant the Debtor's
2 motion. I will also grant the Lenders' cross-motion, to
3 which the Debtor has agreed.

4 Let me now turn to some background facts. The
5 Debtor owns and operates a hotel known as the Holiday Inn
6 Manhattan Financial District located at 99 Washington Street
7 in Lower Manhattan. The Hotel is 50 stories tall. It's
8 billed as the tallest Holiday Inn in the world, and it has
9 492 rooms. It's been open for business since 2014, about
10 nine years. From the outset, the Debtor has operated the
11 Hotel pursuant to two key Agreements: a license agreement -
12 - essentially a franchise agreement with InterContinental
13 Hotels Group, or IHG, to operate the Hotel under the Holiday
14 Inn flag, and a management agreement with Crescent Hotels
15 and Resorts.

16 Crescent is a leading hotel property manager, and
17 the Debtor's expert, Mr. Alan Tantleff, has testified that
18 he holds Crescent in high regard.

19 In 2018, the Debtor obtained a loan in the amount
20 of \$137 million. The loan is currently held by the Lenders.
21 It has a 10-year term, running until 2028, with a fixed
22 interest rate of about 5.25 percent. No appraisal of the
23 Hotel has been offered in the bankruptcy, and it's therefore
24 uncertain whether the Lenders are oversecured or
25 undersecured.

1 The loan is secured by substantially all of the
2 Debtor's assets, principally the Hotel and the revenues it
3 generates. Prior to the onset of the COVID pandemic, the
4 Debtor was current on its debt. After the onset of COVID,
5 the Debtor defaulted on its payment obligations and the
6 Lenders commenced foreclosure proceedings. On November 29,
7 2022, with a receiver about to be appointed, the Debtor
8 filed this Chapter 11 case.

9 At the outset of the case, the Debtor presented an
10 agreement that it had reached with the Lenders on the terms
11 of a consensual cash collateral order, including a budget,
12 and the Court approved that Agreement. With the use of the
13 Lenders' cash collateral, the Debtor has not needed to seek
14 DIP financing.

15 Turning to the events that are more specifically
16 relevant to the motion before me, the Debtor was approached
17 in mid-December, 2022, by the New York City Health and
18 Hospitals Corporation, or HHC, about potentially entering
19 into a contract to house asylum seekers.

20 Let me give some very brief context about HHC and
21 the services it provides to asylum seekers. More than
22 40,000 asylum seekers have arrived in New York City since
23 last spring, according to the testimony at the hearing on
24 this matter, and more than 28,000 are currently in the
25 City's care. HHC oversees the provision of housing and

1 other social services to this population. HHC is the
2 largest municipal hospital system in the country. Its
3 current annual budget is in the vicinity of \$10 billion. I
4 mention that because some questions were raised at the
5 hearing about HHC's ability to cover its financial
6 obligations under the Agreement.

7 For the past four months, HHC has been providing
8 temporary housing for asylum seekers at a total of four
9 Manhattan hotels plus other housing in certain other
10 locations. The four I mentioned are not including the
11 Debtor's Hotel. Two of the four hotels are currently being
12 provided for families of asylum seekers with children. The
13 other two are being provided for an adults-only population
14 consisting of what HHC calls adult families, meaning adult
15 couples traveling without children, and single adult women,
16 by which the HHC means women traveling alone regardless of
17 their marital status. Single men are being housed in
18 separate facilities, not one of the four hotels. The total
19 of asylum seekers who are currently housed in these four
20 hotels is approximately 7,000 individuals.

21 The Debtor and HHC, after the initial contact in
22 mid-December, proceeded to negotiate the terms of the
23 Agreement that is now before me. I will summarize the
24 principal terms of the Agreement as it came to rest in final
25 form. It covers the entire Hotel -- all 492 rooms. The

1 Hotel will be used to house asylum seekers placed by HHC for
2 the next 15 months. However, HHC has the option of
3 terminating the Agreement at any point after the first 180
4 days, provided that it gives two months' advance notice of
5 termination. The daily rate under the contract is \$190 per
6 room for all of the rooms -- that is per room, per day.
7 That is substantially higher than the average RevPAR, or
8 revenue per available room, that the Debtor achieved in
9 2022. It also results in substantial cost savings for the
10 Debtor. Among other things, the Debtor will save about \$2
11 million in commissions that it won't have to pay, about
12 \$900,000 in credit card fees that it won't have to pay, and
13 other additional savings.

14 HHC has said that it intends to put an average of
15 two people in each room, and that it will use the Hotel to
16 house only adults; that is, either a combination of adult
17 couples without children and what HHC refers to as single
18 adult women. There will be no children nor single men. HHC
19 is not contractually bound to adhere to this population
20 profile. But its representative, Mr. Chris Keeley, who I
21 found to be very credible as I'll explain in more detail a
22 bit later, testified that HHC intends and expects that it
23 will limit the population at the Debtor's Hotel to that
24 population and to the average of two people per room, which
25 is consistent with the average number of people it houses at

1 the two other adults-only hotels that it's currently using
2 for asylum seekers.

3 It's worth noting that the Debtor negotiated this
4 contract vigorously. The eventual contract terms, the ones
5 I just summarized, were significantly better for the Debtor
6 in a number of ways than the deal HHC had initially offered.
7 I'm going to mention a few of the more salient points. HHC
8 had initially offered to only take 100 rooms, a small
9 portion of the Hotel, which would have resulted in a mixed
10 use of the Hotel, i.e., asylum seekers plus regular guests.
11 And HHC initially offered to pay a rate of only \$175 per
12 room/per day. The Debtor demanded that this be increased to
13 all 492 of the Hotel's rooms at a rate of \$190 per room/per
14 day. HHC also agreed at the Debtor's insistence to extend
15 the Agreement's term from 12 months to 15 months, and HHC
16 further agreed to extend the notice required for early
17 termination from 30 to 60 days.

18 The Debtor also demanded, and HHC agreed, to a
19 hefty penalty that HHC will be required to pay if any guest
20 is still remaining in the Hotel at the end of the contract
21 term. The penalty amounts to \$750 per room, per day for
22 each guest who overstays. That penalty gives HHC a
23 significant incentive to ensure that it removes all guests
24 from the Hotel by the end of the Agreement.

25 A number of other provisions of the Agreement

1 provide important protections to the Debtor and address a
2 number of the concerns that the Lenders have raised. I will
3 not mention all of them, but I will address some of the more
4 salient ones. HHC is responsible for any damage to the
5 rooms beyond normal wear and tear, and the Agreement
6 provides for periodic inspections to identify any such
7 damage and to arrange for HHC to pay or otherwise take care
8 of the damage. To minimize the risk of fire, the use of hot
9 plates or any other cooking equipment is strictly
10 prohibited. In addition, Mr. Keeley has testified that
11 while it's not contractually required, HHC intends to
12 provide regular meals to all guests and to provide at least
13 one microwave and one refrigerator, maybe two, on each of
14 the Hotel's floors that house guests, which is close to 50
15 floors.

16 The Agreement also provides that the Hotel will
17 continue to employ its housekeeping staff, and that the
18 staff will be permitted to clean the rooms every three days
19 compared to the current average of every two days. As a
20 result, they will be able to report to the Debtor any
21 problems or any damage to the rooms. In addition, there
22 will be security staff, both security supplied by the Hotel
23 and security supplied by HHC, that will be onsite 24/7. Mr.
24 Keeley testified that more than two dozen security guards
25 will be onsite at all times. Finally, only registered

1 guests, that is, the asylum seekers who are staying at the
2 Hotel (not friends or others they might want to invite) will
3 be permitted to enter the Hotel.

4 The Debtor filed a motion to approve the Agreement
5 with HHC on January 17, 2023, along with a motion to shorten
6 time given the exigent circumstances. I agreed to hear the
7 motion on a compressed schedule, and I held an evidentiary
8 hearing that lasted almost seven hours on Friday, January
9 27, 2023. The Lenders are the only parties that have
10 objected to the motion.

11 One other party filed a response, namely IHG, the
12 Debtor's franchisor, which operates the Holiday Inn brand.
13 IHG consented to the motion on two conditions: first, that
14 the Court finds the contract to be outside the Debtor's
15 ordinary course of business and I do so find, as I'll
16 explain a little bit later. And second, that the Debtor
17 enter into a temporary closure agreement with IHG, under
18 which the Debtor will continue to pay IHG its license fee
19 throughout the term of the Agreement and will adhere to
20 certain other conditions. The upshot of this agreement is
21 that IHG remains in place as the Debtor's franchisor, and
22 both the Debtor and IHG expect that at the conclusion of the
23 Agreement, whenever that happens to be, the Debtor will
24 resume normal operations with IHG continuing to be its
25 franchisor. The Debtor has said they believe that is a very

1 important thing to maintain, which sounds right to me. I
2 find that the temporary closure agreement that the Debtor
3 has entered into with IHG is reasonable and is in the best
4 interests of the estate.

5 I will briefly mention the accusations that the
6 Debtor and the Lenders have exchanged about each other's
7 motivations. The Lenders claim that part of the Debtor's
8 motivation in entering into this contract is to enhance its
9 cash flow, even if that entails taking undue risks, so that
10 the Debtor might be in a position to pay off the arrears on
11 its loan and reinstate the loan at the favorable 5.25
12 percent interest rate.

13 The Debtor acknowledges that they hope the
14 Agreement might enable them to do this -- to reinstate the
15 loan. The Debtor fires back that the reason for the
16 Lenders' objection, in their view, is not a genuine concern
17 about possible harms to the Hotel. They argue that the
18 Lenders instead wish to prevent the Debtor from reinstating
19 the loan, which would be financially less advantageous to
20 the Lenders than if the Debtor was unable to do so. I make
21 no findings today about either party's motivations.

22 I should say that I do find it very plausible that
23 each side is motivated in part by the reinstatement issue.
24 Each side has a big financial stake in that issue. However,
25 I do not need to reach the issue of the parties' motivations

1 today to rule on this motion. Instead, my ruling rests
2 entirely on my findings about whether the Agreement is in
3 the best interests of the Debtor's estate.

4 Let me turn to the record that was presented at
5 the hearing. Each side offered into evidence a number of
6 exhibits, and in addition, three witnesses were presented --
7 two for the Debtor, one for the Lenders. The Debtor's first
8 witness was Mr. Chris Keeley, a top executive at HHC, who in
9 recent months has been overseeing HHC's provision of
10 services to the 40,000-plus asylum seekers who are currently
11 in New York City.

12 The Debtor's second witness was Jianfeng Qin. Mr.
13 Qin is an employee at Crescent who has been serving for the
14 past seven years as the Debtor's assistant general manager.
15 Among other things, Mr. Qin oversees the Debtor's daily
16 operations and prepares its projections and budgets.

17 The Lenders presented a single witness, an expert
18 witness, Mr. Alan Tantleff, who is a senior managing
19 director at FTI Consulting. Mr. Tantleff is a well-regarded
20 restructuring professional who has deep experience in the
21 hotel industry.

22 As I'll discuss further at appropriate points in
23 my ruling, I found both Mr. Keeley's and Mr. Qin's testimony
24 to be credible and persuasive. To start with Mr. Keeley, he
25 appears to be a capable and dedicated municipal manager. I

1 also found him to be very knowledgeable about HHC's asylum
2 seekers' program, the program he oversees, and I found him
3 to be consistently careful and precise in his testimony
4 about that program and about the contract that's before me
5 today. He also appears, and this is significant, to be
6 committed to ensuring that any disputes that may arise
7 between HHC and the Debtor under the Agreement are resolved
8 amicably and consensually to the extent possible, rather
9 than through litigation.

10 As for Mr. Qin, he also appears to be a capable
11 manager. I found his testimony to be well supported and
12 credible.

13 My reaction to Mr. Tantleff's testimony is a bit
14 more complicated. As I mentioned, I consider Mr. Tantleff
15 to be very well regarded and very capable and experienced.
16 The problem I had with his testimony is that he was less
17 familiar than either of the other two witnesses with many of
18 the relevant details concerning this Debtor, this Hotel, the
19 asylum seekers program that the Agreement implements and the
20 specific provisions of the Agreement. So as a result, the
21 opinions he offered at Friday's hearing were given at a
22 relatively high level of generality which did not grapple
23 extensively with the specifics of the transaction before me.
24 For this reason, I found Mr. Tantleff's opinions to be of
25 less value in assessing the likely experience of the Hotel

1 under the Agreement.

2 I will now turn to the legal standards. I'm going
3 to be brief about these standards because I don't think
4 there's any dispute between the parties as to the operative
5 legal standards, but instead simply over the facts and how
6 to apply the legal standards to those facts.

7 The Debtor has asked me to find that they are
8 entering into the Agreement in the ordinary course of
9 business; therefore, I don't need to approve the Agreement
10 under Section 363(b)(1) of the Bankruptcy Code. I do not
11 agree with that contention.

12 I find that the Agreement is clearly outside of
13 the Debtor's ordinary course of business for several
14 reasons. The Agreement commits all of the Debtor's rooms
15 for a specific use for a period of up to 15 months. That in
16 itself is unusual. In addition, the population that will be
17 housed pursuant to the Agreement for these 15 months does
18 not consist of typical hotel guests, but rather is a
19 specific and quite different population consisting of asylum
20 seekers. The combination of these two factors results in a
21 transaction that's very different from the Debtor's usual
22 business operations and has a very different risk and reward
23 profile.

24 I find that, as a result, the transaction does not
25 satisfy either of the two tests that courts usually apply to

1 determine whether a contract or other transaction is in the
2 Debtor's ordinary course of business. Those are usually
3 referred to as the horizontal test and the vertical test. I
4 find that neither test is met and that the Agreement is
5 outside of the Debtor's ordinary course of business.
6 Therefore, it requires approval under Section 363(b)(1).

7 I will now address the standards under that
8 provision. Again, the parties agree on what those standards
9 are. They agree that the standard for approval under
10 363(b)(1) is a business judgment standard, and that the
11 Lenders bear a very high burden of challenging the Debtor's
12 exercise of business judgment. The Lenders acknowledge at
13 Page 13 of their objection that the leading Second Circuit
14 case holds that the business judgment standard is satisfied
15 if the Debtor presents "some articulated business
16 justification." *Comm. of Equity Sec. Holders v. Lionel*
17 *Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir.
18 1983). The Lenders do not and could not seriously dispute
19 that the Debtor has satisfied that standard. I think
20 there's no question the Debtor has, and I so find.

21 I will now address the final legal standard that
22 applies, and all of my factual findings are going to
23 principally relate to that standard. The standard is set
24 forth in Bankruptcy Code Section 363(e), which provides that
25 the Court shall deny the use of collateral, including cash

1 collateral, if the Lender is not adequately protected with
2 respect to that use.

3 The main dispute before me today is whether the
4 Agreement denies the Lenders adequate protection. I'm going
5 to mention very briefly the burden of proof on that issue,
6 which is a shifting burden of proof standard. However, my
7 decision does not ultimately hinge on the burden of proof.

8 Some courts have held that a party objecting to
9 the debtor's use of collateral on adequate protection
10 grounds bears the initial burden, the burden of making out a
11 prima facie case. See *In re Elmira Litho, Inc.*, 174 B.R.
12 892, 905 (Bankr. S.D.N.Y. 1994). Although Section 363(p)
13 provides that the debtor has the burden of proof on the
14 issue of adequate protection, courts have noted the
15 distinction between the ultimate burden of persuasion and
16 the initial burden of going forward. *Id.* at 900. Arguably,
17 a lender invoking 363(e) relief needs to make a prima facie
18 case not only as to the validity of its liens, but also that
19 its collateral is declining in value. See *id.* at 902
20 (finding that, in the context of Sections 362(d) and (g),
21 the secured creditor must prove that its collateral is
22 declining in value); but see *Wilmington Trust Co. v. AMR*
23 *Corp. (In re AMR Corp.)*, 490 B.R. 470 (S.D.N.Y. 2013)
24 (holding that the debtor bears the initial burden of proof
25 as to adequate protection pursuant to Section 363(p)). If

1 the lender bears that prima facie case and satisfies it, the
2 burden then shifts to the debtor to disprove that showing or
3 alternatively to show that the lender is adequately
4 protected despite a decline in the value of its collateral.

5 Here, I don't need to address other means of
6 adequate protection such as an equity cushion, replacement
7 liens, or other payments. The question is just whether the
8 value of the collateral is declining. The parties have not
9 addressed whether the Lenders have satisfied their prima
10 facie case on that issue, to the extent the Lenders have the
11 burden of so proving.

12 It is arguable that the Lenders have not met that
13 burden. The Lenders have put forward evidence that the
14 Agreement may harm their collateral in a variety of ways,
15 but not evidence that any of those harms are likely.
16 They've also put forward no evidence as to whether the
17 Hotel's value is increasing or declining for reasons
18 independent of the proposed contract. For those reasons,
19 it's possible that the Lenders have failed to make out a
20 prima facie case. However, I don't need to decide this
21 issue, and I am not deciding it, because I find that even if
22 the Lenders have established a prima facie case, the Debtor
23 has met their ultimate burden of rebutting it by showing
24 that the proposed agreement will not cause the Lenders'
25 collateral to decline in value.

1 I will address one final legal issue before I turn
2 to the evidence. One argument the Lenders have made is that
3 the proposed contract violates the use restrictions of the
4 prepetition loan agreement, and I should reject the contract
5 on that ground. However, the Lenders have made no attempt
6 to show that in bankruptcy, a debtor is bound by use
7 restrictions contained in its prepetition secured debt. The
8 Debtor argues that it is only required to provide adequate
9 protection to its secured lender, and it cites a case with
10 similar facts from the Western District of Pennsylvania, In
11 re Shubh Hotels Pittsburgh, 439 B.R. 637, 645-46 (Bankr.
12 W.D. Pa. 2010). In that case, the court found that even
13 though loan documents gave the lender veto power over the
14 debtor's entry into a franchise agreement with a different
15 hotel chain, because the debtor was in bankruptcy, this
16 provision of the loan document could be modified. Id. The
17 Lenders have made no attempt to challenge this conclusion.

18 Next, I will address the evidence before me. I'm
19 going to spend most of my time discussing the Lenders'
20 arguments about the possible downsides of the proposed
21 Agreement. But I will start with a topic that is not in
22 dispute, and that is the benefits of the Agreement. How
23 much benefit the Debtor will derive from the Agreement
24 depends on whether the contract runs for the full 15-month
25 term or instead is terminated by HHC after six months, or

1 some other earlier date as the contract permits.

2 At a minimum, if HHC terminates after six months,
3 the Debtor has testified that the Agreement would yield
4 approximately \$2.8 million of additional net income - that
5 is, net income above the amount projected in the Debtor's
6 budget. The Lenders don't dispute this. They also don't
7 dispute the reasonableness of the cash flow projections
8 reflected in the Debtor's budget, other than to say that if
9 the Agreement were to result in additional costs, those
10 would need to be considered. I'm going to put those
11 additional costs aside until I turn to those later in this
12 ruling.

13 At the other end of the spectrum, if the Agreement
14 runs the entire 15-month term, the Debtor projects that it
15 will receive approximately \$10.5 million of additional net
16 income beyond what it would receive under its projections.
17 This too is undisputed.

18 As for the question how long the Agreement is
19 likely to run - will it run its full term or be terminated
20 at some earlier date - the only testimony offered on that
21 point was by Mr. Keeley, the HHC representative, who
22 testified that he fully expects that HHC will use the
23 Agreement for the entire term, and it may even ask the
24 Debtor to renew the Agreement and extend it for a second
25 term. He based this opinion on the City's expected need for

1 housing for asylum seekers in 2023, 2024, and beyond. This
2 is an issue that Mr. Keeley is perhaps closer to than anyone
3 else, and I found his testimony on this point credible and
4 persuasive.

5 It's notable that the Lenders chose not to cross-
6 examine Mr. Keeley on this point or to offer any rebuttal
7 testimony. Therefore, I find that the likeliest outcome
8 with respect to the term of the Agreement is that it runs
9 for a full 15 months, and that it yields a net benefit to
10 the Debtor - before considering incremental costs caused by
11 the Agreement that I will address later in this decision -
12 of \$10.5 million. In addition, the benefit to the Debtor
13 under the Agreement could be even greater than \$10.5
14 million. It's widely expected, or widely believed, that the
15 macroeconomic environment in which the Hotel is operating
16 faces a number of downside risks, including a possible
17 recession and also a possible financial or economic crisis
18 if Congress were to fail to agree on an increase in the debt
19 ceiling. Adverse events of that sort could have an adverse
20 effect on the Debtor's financial performance absent this
21 Agreement. However, the Agreement provides the Debtor with
22 a guaranteed revenue stream. Even if the hotel market were
23 to take a serious downturn, the payments under the Agreement
24 would continue without any reduction. That, too, is a
25 significant benefit to the Debtor - the floor it provides on

1 the amount of revenue the Debtor will be receiving.

2 I will now put those facts into the legal
3 framework before me. The upshot is that to prevail on its
4 adequate protection challenge to the Agreement, the Lenders
5 need to show that the downsides from the Agreement are
6 likely to result in total harm in excess of the benefits I
7 just described. One could debate whether we should set that
8 hurdle at \$10.5 million since it's likely that will be the
9 benefit, or at some lower amount to reflect the possibility
10 that there might be a termination earlier. But either way,
11 even if that amount is reduced somewhat to account for that
12 uncertainty, I find that the Lenders have not come close to
13 showing that the likely harm arising under the Agreement
14 will exceed the amount of the benefit.

15 I will now address the possible downsides that the
16 Lenders have identified, and I'm going to group them into
17 two broad categories. First, harms that the Lenders say may
18 result from the specific proposed use of the Hotel, that is,
19 the use of the Hotel to house asylum seekers. Second, other
20 harms - harms that the Lenders attribute not to the specific
21 proposed use, but simply to the fact that the Agreement
22 would take the Hotel out of normal operation. The Hotel
23 would be devoted to a non-traditional use for a period of up
24 to 15 months. The Lenders say that putting aside the asylum
25 seeker issue, just taking the Hotel out of its traditional

1 use could impair the Debtor's ability to sell or finance the
2 Hotel. The Lenders state that this non-traditional use also
3 could impair the Hotel's ability at the end of the Agreement
4 to ramp back up to a normal, stabilized level of operations.

5 I will address these arguments in turn. I'm going
6 to start with the possible harms to the Hotel from using it
7 to house asylum seekers. Most of those potential harms
8 involve physical damage, so I'm going to start with those.
9 The Lenders argue that housing asylum seekers in the Hotel
10 may result in a substantial increase in damage to the rooms
11 and the other premises, as well as an increased risk of
12 fire, and that neither the Agreement with HHC nor the
13 Debtor's existing insurance will adequately protect the
14 Debtor from these harms. However, the Lenders have failed
15 to back up these arguments with persuasive evidence.

16 I will begin with potential damages to the rooms,
17 and the alleged fire risk. On that issue, the Lenders have
18 presented barely any evidence at all. The Lenders started
19 by filing the expert report of their expert, Mr. Tantleff,
20 which did cite certain evidence on these issues. But
21 ultimately, the Debtor didn't put that report into evidence.
22 The Debtor couldn't put the report into evidence because
23 it's hearsay, and Mr. Tantleff's testimony didn't cover
24 these points. So, the points I'm about to mention that are
25 in Mr. Tantleff's report are not part of the record.

1 However, I will address them at the outset.

2 The expert report cited several hearsay sources
3 which Mr. Tantleff claimed supported his conclusion - his
4 opinion in his report, which he did not address at the
5 hearing on Friday. These sources purportedly show that
6 increased room damage and an increased fire risk might
7 result. For example, the report cited to an article about
8 housing for the homeless that said a lot of damage to the
9 rooms resulted. He didn't make any attempt to address
10 whether the homeless population involves a different risk
11 profile than the specific population that will be housed at
12 the Hotel. His report also cited two short news pieces
13 published online by local TV stations about perceived
14 damages and fire risks at a single hotel that houses asylum
15 seekers rather than homeless -- specifically, The Row Hotel,
16 previously the Milford Plaza, near Times Square.

17 Mr. Tantleff's decision not to put into evidence
18 his opinion based on these sources was a wise decision
19 because these sources, in my view, are not reliable sources
20 that an expert should rely on to support an expert opinion
21 that there's likely to be significant harm and fire risk at
22 this Hotel. Hearsay reports in a local news channel's
23 website based on two or three employees, most of whom are
24 anonymous and who may have private agendas of their own, are
25 reports that I find highly unreliable and not something any

1 expert should be relying upon. I'm glad that at the end of
2 the day Mr. Tantleff did not claim that those stories are
3 entitled to any weight. I would also note that Mr. Tantleff
4 does not claim to have any experience with housing for
5 asylum seekers, and he has very limited experience with
6 housing for the homeless. That's an additional reason why
7 he would not have been in a position to give persuasive
8 testimony on this issue.

9 In any event, as I noted previously, he chose not
10 to opine on this issue; and therefore, there's no evidence
11 in the record, none at all, indicating that the Agreement
12 will lead to an increased risk of damage to the rooms or the
13 other premises at the Hotel. The only evidence on this
14 issue suggests exactly the opposite. That evidence is the
15 testimony of Mr. Keeley, who testified that in the four
16 hotels that HHC has been using to house asylum seekers since
17 October, there's been only a single claim for damage, out of
18 a population of about 7,000 asylum seekers, over a period of
19 four months.

20 If one were to do the math and say how many asylum
21 seeker-months would that be -- which I recognize is an
22 awkward phrase -- 7,000 guests times four months is 28,000.
23 If you compare that to the 1,000 guests that are expected to
24 be at the Debtor's Hotel, times a period of 15 months, that
25 equates to 15,000. The experience of the guests at the four

1 other hotels, by that sort of math, is almost double the
2 expected guest-months at this Hotel. The fact that there
3 has only been a single accident at the four other hotels
4 over this period is pretty significant evidence that there
5 are not likely to be many damage claims at the Debtor's
6 Hotel.

7 The evidence on this point is even more meaningful
8 when one considers that the risks at the Debtor's Hotel
9 appear to be lower than the risks at some of these other
10 hotels. Mr. Keeley testified, as I mentioned, that two of
11 the four hotels have been housing families with children.
12 His intention and expectation is that the Debtor's Hotel
13 will house only adult asylum seekers. As a parent, I think
14 I can take judicial notice that adults are less likely than
15 children to cause damage to the rooms. In addition, as I
16 described earlier, the Hotel has put in place stringent
17 policies, more stringent than at the four other hotels, to
18 minimize harms. For all of these reasons, the evidence in
19 the record that damages to the rooms will be modest and
20 perhaps minimal is significant.

21 I will now address what the evidence shows about
22 whether there will be an increased risk of fire at the
23 Hotel. Mr. Keeley acknowledged, I believe both on cross and
24 in response to questions from the Court, that hot plates
25 could pose a risk. He acknowledged that hot plates are

1 discovered and confiscated with some regularity at the four
2 hotels that he testified about, even though HHC provides
3 regular meals for all guests and has a strict rule against
4 the use of hot plates. He testified, however, that the use
5 of hot plates has been far lower at the two hotels that have
6 an adults-only population than at the two other hotels which
7 house families with children. His testimony is consistent
8 with common sense -- that the risks at the adults-only
9 hotels would be lower, and that the families at those hotels
10 would feel less of a need to break the rules and sneak in
11 hot plates because they feel they have to cook.

12 Notably, there has been not a single fire, as far
13 as the record indicates, at any of the four hotels over the
14 four-month period. That, too, is a meaningful indication
15 that the risk we're talking about, while not nonexistent,
16 does not appear to be a huge risk. This brings us to the
17 next question: If a fire does occur, even though that seems
18 unlikely, or if there are other damages, to what extent will
19 the Debtor be protected by HHC's obligation to repair the
20 damages and cover any resulting costs, as well as by its
21 insurance policy?

22 As discussed earlier, the Agreement makes HHC
23 responsible for any damages beyond normal wear and tear, and
24 it contains several specific provisions that should help
25 ensure that damages are discovered and brought to HHC's

1 attention for repair in timely fashion. The Lenders have
2 argued that HHC could potentially dispute the claim and
3 force the Debtor to litigate. This argument is an example
4 of the Lenders identifying things that might possibly
5 happen, worst case scenarios, without presenting any
6 evidence that there's a meaningful likelihood of this
7 actually happening. The Lenders have presented no evidence
8 that HHC is likely to dispute claims and require litigation,
9 and Mr. Keeley's testimony supports the opposite conclusion.

10 Mr. Keeley emphasized his strong desire to
11 maintain a positive, non-adversarial relationship with the
12 Debtor, and with each of the other hotels that he uses to
13 house asylum seekers, and to resolve any disputes
14 consensually. I found this testimony to be credible. Among
15 other things, it's consistent with the fact that HHC has a
16 huge stake in maintaining positive, non-adversarial
17 relationships with hotels in which it's housing asylum
18 seekers, since, as Mr. Keeley testified, the City expects
19 that it will be needing to use hotels for this purpose in
20 the years to come. Gaining a reputation of being
21 adversarial and litigious would be contrary to HHC's and the
22 City's interest in that regard.

23 In any event, even if HHC turned out to be
24 litigious, contrary to all indications, the Agreement
25 contains a provision that allows the Debtor to bring to this

1 Court any dispute with HHC about damages. As a result, I'm
2 not very concerned about the possibility that there might be
3 some litigation on this front because the Court can, and
4 will, resolve any of that litigation quickly and
5 efficiently. For all of these reasons, I find that the
6 chances that the cost of damages at the Hotel will not be
7 covered by HHC are low.

8 The Lenders' final argument on damages is that
9 repairing damage is one thing, but bringing the premises
10 back up to brand standards is another. The Lenders assert
11 that it may cost more to do this than to merely repair
12 damage. That's a fair point. However, the question is how
13 much more will that cost. The Lenders have made no attempt
14 to quantify the likely incremental cost, and in addition,
15 it's quite relevant to this point that this is not a luxury
16 hotel. It's not operating under the Ritz Carlton flag.
17 It's operating as a Holiday Inn. I think it's fair to say
18 that the Holiday Inn doesn't hold itself out as a luxury
19 hotel. It promises clean and comfortable rooms, but not in
20 the sort of immaculate, pristine state that one would find
21 at a luxury hotel. That has a significant bearing on how
22 much it will cost to bring the Hotel back to brand
23 standards, to the extent repairs need to be made.

24 For these reasons, I find that with respect to
25 the costs that the Lenders are pointing to -- the possible

1 costs on this front -- they've made no showing that those
2 costs are likely to be substantial, certainly nothing
3 remotely in the magnitude of the millions of dollars that
4 they would need to show in order for the costs to come close
5 to the benefits to the Debtor under the Agreement.

6 I will next address the Debtor's insurance because
7 it is always possible that catastrophic damage might occur.
8 In this case, fire damage is what the parties have focused
9 on. If for some reason HHC were not required to cover loss
10 of that sort, the question is whether it be covered by the
11 Debtor's insurance. The Lenders have said the Debtor may
12 have difficulty maintaining insurance coverage. I don't
13 find the evidence they've presented to support that claim to
14 be persuasive. I find it's essentially just speculation,
15 not real evidence.

16 Mr. Qin, the Debtor's assistant manager, addressed
17 this issue directly, and the testimony he gave on this point
18 I found to be persuasive. He testified that the Hotel
19 currently has insurance in place with Zurich, and that he
20 has no reason to believe that Zurich has any concerns about
21 the proposed contract. He also testified that the Hotel's
22 insurance is not handled by him; rather, it's handled by a
23 dedicated insurance team at Crescent. Crescent is a highly
24 regarded property manager. It manages about 100 hotels
25 across the U.S. and Canada, of which Mr. Qin testified most

1 have insurance. And Crescent has a dedicated insurance team
2 that handles insurance for all of those hotels. Mr. Qin
3 testified he believes that insurance team is capable, and he
4 has no reason to doubt that they would take all steps needed
5 to make sure that the insurance for this property remains in
6 place. He also testified that Zurich is not likely to start
7 challenging any claims that might be made under the policy.

8 Finally, I will address one last issue relating to
9 physical harm, and that is the Lenders' argument that the
10 Debtor might have to take some or all portions of the Hotel
11 out of service at the end of the Agreement in order to
12 refurbish the premises. While this may be possible, the
13 Lenders have made no showing that this is likely. They also
14 have made very little showing of how big a problem this
15 would be if it came to pass.

16 The evidence that has been presented indicates
17 that it is unlikely that any portion of the Hotel, or at
18 least substantial large portions of the Hotel, will need to
19 be taken out of service at the end of the Agreement. This
20 is so for a number of reasons. First, the Agreement
21 requires HHC to undertake any needed repairs on an ongoing
22 basis. Mr. Keeley's testimony gives me no reason to expect
23 that HHC will not comply with this obligation. Second, the
24 Debtor has testified that IHG intends to inspect the
25 premises before the end of the Agreement to make sure that

1 when it goes back into operation as a Holiday Inn, it meets
2 brand standards.

3 In addition, the Debtor has committed to allow the
4 Lenders to inspect the premises on demand, and it seems
5 likely they will take the Debtor up on that offer. Both of
6 these inspections should provide useful fail safes in the
7 event any need for repairs or for refurbishing has not
8 otherwise been discovered. These inspections can be done
9 well in advance of the end of the Agreement so that the
10 Debtor has time to begin to repair and hopefully finish all
11 repairs by the time the Agreement ends, or very shortly
12 thereafter.

13 Finally, Mr. Keeley testified that he commits that
14 HHC will work with the Debtor to ensure that the Hotel is
15 left in the best possible condition at the end of the
16 contract. I found that testimony to be credible and to be
17 consistent with the large incentive that, as I mentioned
18 earlier, HHC has to maintain positive relationships and a
19 good reputation with the Hotels that it's using to house
20 asylum seekers.

21 I will now address any potential non-physical
22 harms. Again, the Lenders have offered little beyond
23 speculation. They've pointed to two principal problems.
24 They've mentioned a number of other possible problems as
25 well, and I'm not going to go down the full list. Suffice

1 it to say, the two that I'm going to mention, I find not to
2 be supported. With respect to the ones that I don't
3 mention, I find them to be even less supported. I've
4 considered those other contentions and found them to lack
5 merit.

6 First, the Lenders express concern that it's
7 conceivable that the Debtor might lose its certificate of
8 occupancy because its current certificate of occupancy may
9 not apply to the expected use of the Hotel under the
10 Agreement. It appears to be agreed among the parties that
11 the latter point is true; that is, the expected use under
12 the Agreement may not comply with the Debtor's current
13 certificate of occupancy. However, both Mr. Keeley and Mr.
14 Tantleff testified that they think it is unlikely that the
15 City would take any action to shut down or penalize the
16 Hotel on this ground. I agree with them. It's just not
17 plausible to expect that the City would take action to
18 undercut its own asylum seeker housing program by doing
19 something like that.

20 Second, the Lenders express a fear that guests
21 might take the Hotel to New York City Housing Court and
22 resist relocation from the Hotel at the end of the Agreement
23 on the ground that under New York law they qualify as
24 tenants and therefore cannot be evicted without a judgment
25 of the New York City Housing Court. Once again, this

1 strikes me as a claim that has some theoretical validity,
2 but is just not realistic. While it may be true that these
3 guests at the Hotel qualify as tenants under New York City
4 housing laws, is it plausible to expect that any of them are
5 going to seek to enforce such a right? I don't think it is
6 for a number of reasons.

7 First, Mr. Keeley testified that this has not
8 happened at any of the four other hotels over the past four
9 months. Again, that's a pretty substantial experience. No
10 tenant has made such a claim. Second, and more important,
11 the Agreement provides a \$750 per room, per day penalty for
12 any guest who has not vacated the Hotel by the end of the
13 contract. This gives HHC a very strong incentive to make
14 sure to relocate any remaining guests, even if it costs
15 significant money to do that. It seems highly likely that
16 they will avoid paying this penalty by offering all guests
17 other accommodations at other HHC facilities rather than
18 risk litigation and a prolonged holdover.

19 Is there any reasonable chance that the guests at
20 the Debtor's Hotel will refuse to take the City up on that
21 offer and say, no, we're going to sue you and refuse to
22 leave this Hotel? That doesn't strike me as plausible. For
23 one thing, HHC is providing not only housing, but other
24 social services to the asylum seekers as well, as Mr. Keeley
25 testified. The notion that the guests will bite the hand

1 that feeds them by refusing to let them be relocated to
2 another hotel which presumably will be equally attractive,
3 and perhaps more attractive given HHC's incentives, is just
4 not plausible.

5 Finally, I will address the second of the broad
6 categories that I mentioned earlier. Namely, are there
7 harms that may be caused by the fact that the Agreement
8 takes the Hotel out of circulation by devoting the Hotel to
9 a non-traditional use? The Lenders claim that this may
10 cause two different sorts of harms. First, they say that
11 when the Agreement ends, it's going to take time for the
12 Hotel to return to a normal level of business, a stabilized
13 level of occupancy and room rates. The starting point for
14 looking at this issue is, what does the Debtor project? The
15 projections that the Debtor supplied in connection with the
16 \$10.5 million figure that I discussed previously do show a
17 ramp-up period. This is a period of time for the Debtor to
18 return gradually to a normal level of operations at the end
19 of the Agreement. Those projections show that it will take
20 several months for the Hotel to do that.

21 Mr. Qin testified that he prepared those
22 projections and believes them to be accurate. The Lenders
23 made no meaningful attempt in their cross-examination of Mr.
24 Qin to challenge those conclusions. Instead, the Lenders
25 offered the opinion of Mr. Tantleff that in his experience,

1 it usually takes a hotel somewhere in the vicinity of 6 to
2 12 months to ramp up to a stabilized level of operations.

3 It was unclear to me whether Mr. Tantleff was
4 referring to a hotel that has been temporarily out of
5 traditional use, as this Hotel will be, or instead a hotel
6 that was commencing business for the first time -- a hotel
7 that had just been built, for example. While we don't yet
8 have a transcript, and therefore I've not been able to go
9 back and double-check this, my notes of his testimony
10 indicate that he was not clear which of the two he was
11 referring to. That is a meaningful distinction because it
12 stands to reason that at the outset of its operations, a
13 hotel is likely to take a meaningful amount of time, maybe 6
14 to 12 months, or maybe some other period, to ramp up to a
15 stabilized level of operations.

16 Whether the timeframe is likely to be the same in
17 a situation like the one we're facing -- namely a hotel that
18 will be devoted to non-traditional uses for a relatively
19 short period of time, between 6 and 15 months, and then will
20 return to normal operations -- is not clear to me. Mr.
21 Tantleff, to the best of my recollection, did not directly
22 address whether the ramp-up period will be the same or
23 instead perhaps a lot shorter. That gives me pause in
24 giving weight to his testimony on this point.

25 Also, Mr. Tantleff didn't address the fact that

1 the Hotel operates under the Holiday Inn flag, and Holiday
2 Inn operates at least two other hotels quite near this Hotel
3 in the downtown Manhattan area, as well as many other hotels
4 in Manhattan and the rest of New York City. In my mind,
5 there's a real question whether that could also contribute
6 to a more prompt ramp-up period than the 6 to 12 month-
7 period that Mr. Tantleff mentioned. That did not come up in
8 Mr. Tantleff's testimony, and it's not clear to me whether
9 his 6- to 12-month conclusion took that issue into account.

10 For those reasons, I find Mr. Tantleff's opinion
11 on this point to be entitled to less weight than the opinion
12 of the Debtor's assistant general manager, Mr. Qin. It's
13 also significant that Mr. Qin prepared his projections based
14 on a lot of information that Mr. Tantleff didn't have access
15 to. I understand that given the compressed timeframe here,
16 it may not have been possible for the Lenders to obtain that
17 information and for Mr. Tantleff to review it. I'm not
18 faulting Mr. Tantleff for that. But Mr. Tantleff himself
19 acknowledged that in order to be confident about his 6- to
20 12-month conclusion, he would want to see that information.
21 In other words, he acknowledged that he does not have a
22 particularly high level of confidence about his own
23 conclusion.

24 For all of those reasons, including the fact that
25 the Debtor made little attempt to challenge Mr. Qin's

1 conclusions by cross-examining him, I find that Mr. Qin's
2 conclusions about the likely ramp-up period at the end of
3 the Agreement are more likely to turn out to be reality
4 than the alternative scenario presented by Mr. Tantleff.

5 The final issue is the Lenders' contention that
6 the Agreement will impair the Debtor's ability to sell or
7 refinance the Hotel. The Lenders offered the opinion of Mr.
8 Tantleff in support of his argument, and I believe Mr.
9 Tantleff gave two separate -- related but separate --
10 opinions on this point. First, he testified that in his
11 view, some buyers and Lenders may be unwilling to buy or to
12 lend, as the case may be, to a hotel that is not currently
13 operating as a traditional hotel. In other words, the fact
14 that the Hotel would be under contract with HHC at the time
15 of the sale could impair the price. Second, he testified
16 that some buyers and Lenders may be put off by a different
17 but related fact -- specifically, buyers and lenders are
18 sometimes reluctant to buy or lend to a hotel that does not
19 have at least two to three years of normal historical
20 operating performance.

21 I find these opinions and the argument that the
22 Lenders make based on them to be unpersuasive for a number
23 of reasons. First, it's unclear whether the issues on which
24 Mr. Tantleff opined are even relevant, because there has
25 been no showing that the Hotel in fact will need to be sold

1 or refinanced during the term of the Agreement or, for that
2 matter, at any time in the next few years.

3 The Debtor has said their intention, and their
4 hope, is to reinstate their loan. No evidence has been
5 presented by either side as to whether the Debtor is likely
6 to succeed in doing that. But if it does succeed, the
7 Debtor will not be selling the Hotel. In that scenario, I
8 don't think there's any relevance to whether the Agreement
9 might impair a sale price, because there's simply not going
10 to be a sale during the term that is relevant to this
11 Agreement.

12 Second, let's assume that the Debtor does need to
13 sell the Hotel. In that event, we need to consider Mr.
14 Tantleff's two alternative opinions, and I don't find either
15 of them very persuasive. Mr. Tantleff's first opinion was
16 that some buyers and sellers may be put off by the fact that
17 the Hotel is not currently operating as a traditional hotel.
18 Mr. Tantleff offered little specific support for that
19 opinion. He said that that's consistent with his
20 experience, but he didn't support that conclusion with any
21 sort of quantitative analysis, or cite any authoritative
22 source in support. I don't believe he offered even a single
23 example of any buyer that has refused to buy, or any lender
24 that has refused to lend, on this ground.

25 Mr. Tantleff's second opinion was that buyers and

1 lenders may be put off by the Hotel's lack of two to three
2 years of operating performance. But this does not appear to
3 be relevant to the situation that is facing the Debtor, even
4 if the Debtor needs to sell the Hotel in the near term. If
5 the Debtor is unable to reinstate its loan and needs to sell
6 or refinance the Hotel, it's going to have to do that in the
7 bankruptcy case, and that will probably occur relatively
8 soon. For one thing, the Debtor's exclusive period to file
9 a plan of reorganization expires in two months -- at the end
10 of March.

11 As a result, the Debtor is going to be under some
12 pressure to either sell the Hotel or provide some other
13 basis to support a reorganization sometime soon. If they do
14 so, there's not going to be any meaningful amount of future
15 operating results available to a potential buyer, whether I
16 approve this Agreement or not. Suppose I deny the Agreement
17 and the Hotel continues to operate in typical fashion. How
18 many additional months of operating results will that yield,
19 which a bidder will be able to take into account in
20 determining what sort of bid to make? Very few, if any.

21 Right now, the Hotel does not have close to two to
22 three years of normal historical operating performance
23 because of COVID. The pandemic massively disrupted the
24 Hotel's business in 2020, and adversely affected it in a big
25 way in 2021 and to some degree for most of 2022. Even if

1 2022 was a normal operating year, at best that would be one
2 year of historical operating results. So it is hard to see
3 how any buyer's or lender's preference for two to three
4 years of historical operating results has much bearing on
5 whether I should approve or deny this Agreement.

6 Finally, even if one somehow got past those
7 problems, it's still unclear how much Mr. Tantleff's opinion
8 would matter because, at bottom, his opinion is merely that
9 some potential buyers might decline to bid for the Hotel.
10 He did mention a number of different types of institutional
11 buyers that he thinks would be put off by the circumstances,
12 and it certainly seems plausible that this could shrink the
13 universe of potential buyers and thereby have an adverse
14 impact on price. But Mr. Tantleff admitted he cannot
15 quantify the impact. He can't say how big or small it would
16 be. He was candid in saying he has not done that analysis.

17 In addition, Mr. Qin testified that the Debtor has
18 received expressions of interest from about five potential
19 buyers and that all of those buyers have asked for the
20 Debtor's projections and appear to be focused on the go-
21 forward projections instead of the Hotel's historical
22 performance. There was no cross-examination of any
23 meaningful sort of Mr. Qin on this point. For that reason
24 as well, I find that the Lenders have failed to prove that
25 approval of the Agreement is likely to have the adverse

1 effects they claim.

2 I mentioned earlier that there are a number of
3 factual arguments the Lenders have made that I've not
4 addressed in this ruling, but I have considered all of them
5 and rejected them. There may also be a few legal arguments
6 that the Lenders have made that I have not addressed in my
7 ruling. However, I have carefully reviewed every argument,
8 factual or legal, that the Lenders have made, and I have
9 rejected any arguments they've made that I have not
10 mentioned.

11 For all of those reasons, I find that the Debtor's
12 motion has merit, and I'm prepared to grant it. I'm also
13 prepared to grant the Lenders' cross-motion, which the
14 Debtor has agreed to.

15 Thank you, everybody, and I look forward to
16 getting the order.

17 MR. MARKOWITZ: Thank you, Your Honor. Have a
18 good rest of the day.

19 MR. VANACORE: Thank you for your time today.

20 MR. MARKOWITZ: Okay.

21 MR. VANACORE: Thank you, Your Honor.

22 MR. LERNER: Thank you very much, Your Honor.

23 (Whereupon these proceedings were concluded)

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I N D E X

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I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: February 28, 2023