

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

In re:

PITTSBURGH ATHLETIC ASSOCIATION, *et al*¹

Debtors,

PITTSBURGH ATHLETIC ASSOCIATION, *et al*,
Movant,

v.

PITT AA, LLC, AS SUCCESSOR TO
ALLEGHENY VALLEY BANK OF
PITTSBURGH, AND OAKLAND FIFTH
AVENUE HOTEL ASSOCIATES, LP,
Respondents.

Jointly Administered at:
Case No. 17-22222-JAD

Bankruptcy Case Nos:
17-22222-JAD, and
17-22223-JAD

Chapter 11

Related Doc. Nos.: 344

**ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364 AND 507, FED. R.
BANKR. P. 2002, 4001 AND 9014 AND LOCAL RULE 4001-2 (I)
AUTHORIZING DEBTOR AND DEBTOR IN POSSESSION TO OBTAIN
ADDITIONAL POST-PETITION FINANCING ON FIRST PRIORITY AND
PRIMING BASIS, (II) GRANTING LIENS AND SUPER-PRIORITY CLAIMS,
AND (III) GRANTING RELATED RELIEF**

THIS MATTER came before the Court upon the above captioned Debtors' Expedited Motion pursuant to 11 U.S.C. §§105, 361, 362, 364 and 507 and Fed. R. Bankr. P. 2002, 4001 and 9014 and Local Rule 4001-2 for entry of an Order (I) authorizing Debtors to obtain additional post-petition financing on a first priority and priming basis, (II) granting liens and super-priority claims, and (III) granting such other related relief as agreed to by and among the Debtors and Rollover Fund, LLC, affiliate of JDI Loans, LLC (the "Second DIP Motion")².

WHEREAS, on the Petition Date, the Debtors filed a Expedited Motion (the "Initial DIP Motion") seeking approval of Interim DIP Financing in the amount of \$200,000 (the "Interim DIP Loan"). See Document No. 20.

¹ The Debtors have the following case pending Pittsburgh Athletic Association, Case No. 17-22222-JAD and the Pittsburgh Athletic Association Land Company, Case No. 17-22223-JAD, both cases are being jointly administered under Case No. 17-22222-JAD (the "Cases").

² Capitalized terms not otherwise defined in this Order shall have the meaning given to them in the Motion.

WHEREAS, this Court held a hearing on June 2, 2017 to consider interim approval of the Debtors' Initial DIP Financing Motion (the "Interim DIP Hearing").

WHEREAS, on June 7, 2017, this Court entered an Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 364 and 507, Fed. R. Bankr. P. 2002, 4001 and 9014 and Local Rule 4001-2: (I) Authorizing Debtors and Debtors-in-Possession to Obtain First Priority and Priming Post-Petition Financing; (II) Granting Liens and Super-Priority Claims; (III) Scheduling a Final Hearing; and (IV) Granting Related Relief as filed by Debtors on May 31, 2017 [Document No. 89] (the "Interim DIP Order").

WHEREAS, pursuant to the Interim DIP Order this Court scheduled a hearing to consider final approval of the Motion for July 11, 2017 (the "Final Hearing").

WHEREAS, on June 22, 2017, this Court approved the Joint Stipulation and Consent Order by and Between the Official Committee of Unsecured Creditors of Pittsburgh Athletic Association and Pittsburgh Athletic Association Land Company, Allegheny Valley Bank of Pittsburgh Pennsylvania and Oakland Fifth Avenue Hotel Associates, LP regarding the Interim DIP Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 364 and 507, Fed. R. Bankr. P. 2002, 4001 and 9014 and Local Rule 4001-2: (I) Authorizing Debtors and Debtors-in-Possession to Obtain First Priority and Priming Post-Petition Financing; (II) Granting Liens and Super-Priority Claims; (III) Scheduling a Final Hearing; and (IV) Granting Related Relief as filed by Debtors on May 31, 2017 Document No. 109] (the "Joint Stipulation").

WHEREAS, on July 11, 2017, this Court held the Final Hearing to consider the Initial DIP Motion.

WHEREAS, on August 3, 2017, after conclusion of the Final Hearing, the Court entered an Order granting the Initial DIP Motion (the "Final DIP Order") [Document No. 218], authorizing the Debtor to obtain DIP financing in the amount of \$750,000 (the "Initial DIP Loan").

WHEREAS, the Final DIP Order, provided, *inter alia*, that

10. Further Requests for DIP Financing. The Debtors shall be permitted to request under Section 364 of the Bankruptcy Code, and/or other applicable provisions of the Bankruptcy Code and Bankruptcy Rules, that this Court approve additional debtor-in-possession financing/credit with all parties' rights reserved, including the DIP Lender's, regarding such request. Any request by the Debtors for additional debtor-in-possession financing/credit shall not constitute a default under the DIP Loan Documents. DIP Lender shall have the right of first offer to provide terms and conditions for additional financing to the Debtors in the event that the Debtors require same. Upon receipt of DIP Lender's offer to provide additional financing, any party may provide an alternate offer for terms of additional financing to be considered by the Debtors. Any additional financing remains subject to Bankruptcy Court approval.

See Document No. 218 at ¶ 10.

WHEREAS, In accordance with the terms of the Interim DIP Order, the Debtors executed a Note, an Open-End Mortgage and Security Agreement (the "**DIP Mortgage**") against Debtors' real property and improvements thereon located at 4215 Fifth Avenue, Pittsburgh, Pennsylvania and 5126 5130 Bigelow Boulevard, Pittsburgh Pennsylvania (the "**DIP Collateral**"), an Assignment of Rents and Leases on the DIP Collateral (the "**DIP Assignment**"), and an Environmental Indemnity Agreement each dated and effective as of June 16, 2017 (collectively, the "**Interim DIP Loan Documents**"). The DIP Mortgage is an open ended mortgage up to the aggregate amount of \$1,500,000, and will secure subsequent DIP loans. The DIP Mortgage and the DIP Assignment were each recorded on June 20, 2017.

WHEREAS, upon entry of the Final DIP Order, the Debtors executed an Affirmation of an Amendment to Loan Documents, amending the DIP Loan Documents (the "**First DIP Loan Amendment**") and together with the Interim DIP Loan Documents, the "**Initial DIP Loan Documents**"). The First DIP Loan Amendment was recorded on August 9, 2017.

WHEREAS, on October 2, 2017, the Debtors filed the Second DIP Motion seeking approval of the Affirmation of and Second Amendment to Loan Documents attached as Exhibit "A" hereto (the

“**Second DIP Loan Amendment**”) and authorizing the Debtors to obtain post-petition financing in the form of a term loan in the amount of \$750,000, and approving the Additional Interest and Fee Advance, as set forth in the Second DIP Loan Amendment (the “**Second DIP Loan**”), by and between the Debtors and the DIP Lender, of which Debtors shall pay the DIP Lender’s Fees as identified in the Second DIP Loan Amendment;

AND NOW, this 5th day of October, 2017, this Honorable Court, having jurisdiction to consider the Second DIP Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that adequate and sufficient notice of the Second DIP Motion having been given, and that no other or further notice need be given; and the Court having reviewed the Initial DIP Motion; the Declaration of James A. Sheehan filed with the Initial DIP Motion, and the Second DIP Motion and the record of the hearings on the Initial DIP Motion and the Second DIP Motion; and the Court having determined that the legal and factual bases set forth in the Second DIP Motion establish just cause for the relief granted therein; and it appearing that the relief requested in the Second DIP Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and after due deliberation appearing therefore this Court enters this order (the “**Second DIP Order**”) and makes the following Findings of Fact and Conclusions of Law, relative to the Second DIP Motion:

A. Petition Date. On May 30, 2017 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Pennsylvania (the “Court”).

B. Debtors in Possession. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. Jurisdiction and Venue. This Court has jurisdiction over the Cases, the Motion, the parties and property affected hereby pursuant to 28 U.S.C. §§157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Notice. Proper, timely and adequate notice of the Second DIP Motion has been provided in accordance with all applicable Bankruptcy Code sections, the Bankruptcy Rules and the Local Rules.

E. Pre-Petition Obligations. Subject to the provisions of Paragraph 12 below:

(i) PITT AA, LLC, as successor to Allegheny Valley Bank of Pennsylvania ("AVB"): the Debtors are indebted to PITT AA, LLC, pursuant to the August 24, 2017 assignment of rights under the AVB Loan Documents from AVB to PITT AA, LLC, in the amount of \$2,163,201.56, as of the Petition Date.

(ii) Oakland Fifth Avenue Hotel Associates, LP ("OFAHA"): the Debtors are indebted to Oakland Fifth pursuant to the OFAHA Loan Documents in the amount of \$2,034,763.68, as of the Petition Date.

F. Alternatives to DIP Financing Unavailable. The Debtors were unable to obtain unsecured financing, alternative post-petition financing through credit allowable as an administrative expense or secured by liens on assets junior to or *pari-passu* to those of the Pre-Petition Secured Lenders.

G. Second DIP Financing. The Second DIP Loan, as outlined in the Second DIP Motion, is critical to the Debtors' maintaining and preserving their businesses and properties. Debtors engaged in good faith, arms-length negotiations with Rollover Fund, LLC, an affiliate of JDI Loans, LLC, (the "DIP Lender") to negotiate the Second DIP Loan. The Second DIP Loan is being made in good faith as that term is used in 11 U.S.C. § 364(e).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Motion and the record before the court and after due consideration and good and sufficient cause,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. Second DIP Financing Approved. The Second DIP Motion is granted and the Second DIP Loan as set forth in the Second DIP Motion is authorized and approved, , subject to the terms and

conditions set forth in the Second DIP Loan Amendment, the Interim DIP Order, the Joint Stipulation and the Final DIP Order.

2. All objections to the Second DIP Motion to the extent not withdrawn, waived, settled or resolved are hereby denied and overruled.

3. DIP Obligations. The Initial DIP Loan Documents, the Second DIP Loan Amendment, the Interim DIP Order, the Joint Stipulation, the Final DIP Order, and this Second DIP Order shall constitute and evidence of the validity and binding effect of the Debtors' DIP Obligations, which shall be enforceable against the Debtors, their estates and any successors thereto.

4. DIP Lien. Effective immediately upon entry of this Second DIP Order, pursuant to sections 361, 362, 364(c) and 364(d) of the Bankruptcy Code, the DIP Lender shall have a first position priority lien (the "DIP Lien") on certain real estate and improvements thereon owned by Pittsburgh Athletic Association Land Company located at 4215 Fifth Avenue, Pittsburgh, Pennsylvania and 5126 - 5130 Bigelow Boulevard, Pittsburgh, Pennsylvania all leases and rents as to any leases executed by the Debtors after the Petition Date and as more fully described in the Initial DIP Loan Documents and the Second DIP Loan Amendment (the "**DIP Collateral**"). The Debtors are authorized to execute any and all documents to effectuate the DIP Lien in and upon the DIP Collateral.

5. DIP Lien Priority. Subject to Paragraph 7 below, the DIP Lien is valid, non-avoidable, senior in priority and superior to any security, mortgage, collateral interest, lien or claim held on or against the DIP Collateral. *The rights of the Debtors, the DIP Lender and OFAHA with respect to the Ground Lease are reserved and preserved. Nothing the Interim DIP Order, the Final DIP Order and/or the Second DIP Order shall constitute a determination of any issue with respect to such rights of the Debtors, the DIP Lender and OFAHA with respect to the Ground Lease; provided however, the DIP Lender acknowledges and agrees that the DIP Lien shall not be superior or prior to the Ground Lease, the Parking Lot Easement, and any recorded amendments thereto, or other property interests conveyed of record prior to the Petition Date related to the Pittsburgh Athletic Association Land Company's real property located at 4215 Fifth Avenue and 5130 Bigelow Boulevard, Pittsburgh, Pennsylvania (i.e.*

leasehold interests, easements, etc.). However, the DIP Lender does not contest issues related to the right to receive rents under the Ground Lease at this time for the purposes of the relief granted by way of this Second DIP Order, and the DIP Lender has consented to proceed to have the within Second DIP Order entered and to fund the Second DIP Loan.

6. Super-priority Claim. Subject to Paragraph 7 below, upon entry of this Second DIP Order, the DIP Lender is hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed super-priority administrative expense claim in each of the Cases for all unpaid DIP Obligations owed under the Initial DIP Loan and the Second DIP Loan (the “Super-Priority Administrative Claim”).

7. Chapter 5 Actions Excluded. Any and all claims and/or causes of action arising under Chapter 5 of the Bankruptcy Code in each of the Cases and any and all proceeds and/or recovery thereunder (the “Chapter 5 Actions”), are excluded from the DIP Lien and the DIP Lien shall not attach to and/or otherwise encumber the Chapter 5 Actions. Further, the Super-Priority Administrative Claim of the DIP Lender shall not be paid from, attach to and/or otherwise encumber Chapter 5 Actions.

8. Use of Proceeds of Second DIP Loan. From and after the Petition Date, the Debtors shall use the proceeds of the Second DIP Loan in accordance with the Budget attached hereto as Exhibit B.

9. Modification of the Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of the Interim DIP Order, the Final DIP Order, and this Second DIP Order. Notwithstanding anything in the Initial DIP Loan Documents or Second DIP Loan Amendment to the contrary, upon any default of the Interim DIP Order, the Final DIP Order, the Second DIP Order and/or the Initial DIP Loan Documents or the Second DIP Loan Amendment, the DIP Lender shall be entitled to file an expedited motion for relief from the automatic stay seeking relief from stay to enforce its rights under the Interim DIP Order, the Final DIP Order, the Second DIP Order, the Initial DIP Loan Documents, and/or the Second DIP Loan Amendment. All parties’ rights are reserved in respect of any defense, challenge, contest and/or objection relative to said motion for relief from stay as applicable under the Bankruptcy Code and Bankruptcy Rules, including contest, objection, and/or challenge as to whether a default has occurred.

10. Further Requests for DIP Financing. Notwithstanding anything in the Second DIP Loan Amendment to the contrary, the Debtor shall be permitted to request under Section 364 of the Bankruptcy Code, and/or other applicable provisions of the Bankruptcy Code and Bankruptcy Rules, that this Court approve additional debtor-in-possession financing/credit outside of the ordinary course of business, with all parties' rights reserved, including the DIP Lender's, regarding such request. Any request by the Debtors for additional debtor-in-possession financing/credit shall not constitute a default under the Initial DIP Loan Documents or the Second DIP Loan Amendment.

11. Default. Notwithstanding anything in the Initial DIP Loan Documents or the Second DIP Loan Amendment to the contrary, the Debtors': (i) actions in marketing themselves and/or their assets, including the DIP Collateral, for sale, investment, joint venture and/or other similar transaction; and/or (ii) efforts in regard to, and the actual filing of, a restructuring and/or liquidation plan in these Cases, shall not constitute a default under the Initial DIP Loan Documents or the Second DIP Loan Amendment, and all parties rights are reserved relative to any sale, restructuring and/or liquidation plan.

12. Rights of Creditors and Interested Parties, Including the Committee. The Findings of Fact and Conclusions of Law set forth above in Paragraph (E)(i) and (ii), or any agreement by and between the Debtors, PITT AA, LLC, as successor to AVB, and/or OFAHA, shall be without prejudice to the rights of the Debtors, creditors and/or parties-in interest, including the Official Committee of Unsecured Creditors of Pittsburgh Athletic Association and Pittsburgh Athletic Association Land Company (the "Committee"), to investigate, file and to prosecute, if necessary: (i) any contest, dispute, claim, cause of action (including Chapter 5 Actions), objection and/or similar proceeding relating to the validity, priority, amount and/or extent of any claims and/or liens of AVB and/or PITT AA, LLC, as successor to AVB, and OFAHA against the Debtors and/or its assets (the "Claim Challenge"). The Debtors, creditors and/or parties-in-interest, including the Committee, shall commence any such action against AVB, PITT AA, LLC, as successor to AVB, and/or OFAHA under this paragraph 12 on or before ninety (90) days from the date of entry of the Final DIP Order (the "Claim Challenge Period"). By entry of the Final DIP Order and this Second DIP Order, and after discussion on the record held during the

Final Hearing, the Committee is hereby granted standing, when applicable and in the event that the Debtors chose not to pursue such Claim Challenge, to pursue any Claim Challenge on behalf of the Debtors and their bankruptcy estates. If no Claim Challenge is brought within the Claim Challenge Period, the Findings of Fact and Conclusion of Law contained in Paragraph (E)(i) and (ii) above shall become binding upon the Debtors, creditors and/or parties-in-interest, including the Committee. The Debtors and/or the Committee may seek to extend the Claim Challenge Period by the filing of a motion with this Court on or before the Claim Challenge Period deadline (the "Motion to Extend Claim Challenge Period"). Upon the filing of the Motion to Extend Claim Challenge Period, the Claim Challenge Period is extended until such time as the Motion to Extend Claim Challenge Period has been heard and resolved by this Court.

13. Inconsistencies. To the extent there are any inconsistencies by and between this Second DIP Order, the Second DIP Loan Amendment, the Initial DIP Loan Documents, the Interim DIP Order and/or the Final DIP Order, this Second DIP Order shall control in all respects.

14. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce the terms of, any and all matters arising from or related to the Second DIP Order and/or the Interim DIP Order and/or the Final DIP Order.

15. Prepetition Assignment of Leases and Rents. Nothing in the Interim DIP Order, the Final DIP Order, or this Second DIP Order, the Initial DIP Loan Documents, the Second DIP Loan Amendment, the Initial DIP Motion, or Second DIP Motion shall effect the rights of AVB, or PITT AA, LLC, as successor to AVB, under its Assignment of Leases and Rents, or its pre-petition exercise thereof. OFAHA shall continue to pay PITT AA, LLC rent as due according to the terms of the Ground Lease and AVB's Assignment of Leases and Rents, and any assignment thereof to PITT AA, LLC.

SO ORDERED by the Court on this 5th, day of October, 2017.



JEFFERY A. DELLER
Chief U.S. Bankruptcy Judge

FILED
10/6/17 11:15 am
CLERK
U.S. BANKRUPTCY
COURT - WDPA