

SO ORDERED.

SIGNED this 30th day of July, 2024.



Dale L. Somers

Dale L. Somers
United States Chief Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS (TOPEKA)**

In re:

LODGING ENTERPRISES, LLC,

Debtor.¹

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Chapter 11

Case No. 24-40423

**ORDER AUTHORIZING RETENTION AND APPOINTMENT
OF KROLL RESTRUCTURING ADMINISTRATION LLC AS CLAIMS,
NOTICING AND SOLICITATION AGENT**

Upon the application (the “Application”)² of the above-captioned debtor and debtor in possession (the “Debtor”) for retention and appointment of Kroll Restructuring Administration LLC (“Kroll”) as claims, noticing and solicitation agent (“Claims and Noticing Agent”) pursuant to 28 U.S.C. § 156(c) and section 105(a) of the Bankruptcy Code to, among other things, (i) distribute required notices to parties in interest, (ii) receive, maintain, docket, and otherwise administer the proofs of claim filed in the Debtor’s chapter 11 case and (iii) provide such other administrative services—as required by the Debtor—that would fall within the purview of services to be provided by the Clerk’s office; and upon the First Day Declaration and

¹ The last four digits of the Debtor’s federal tax identification number are 9343. The Debtor’s primary mailing address is 8535 East 21st St. N., Suite 250, Wichita, KS 67206.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Application.

the Steele Declaration submitted in support of the Application; and the Debtor estimating there to be a significant number of creditors and parties in interest in this chapter 11 case, many of which are expected to file proofs of claim; and it appearing that the receiving, docketing, and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; and the Court being authorized under 28 U.S.C. § 156(c) to utilize, at the Debtor's expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy, and transmit proofs of claim; and the Court being satisfied that Kroll has the capability and experience to provide such services and that Kroll does not hold an interest adverse to the Debtor or the estate respecting the matters upon which it is to be engaged; and good and sufficient notice of the Application having been given under the circumstances and no other or further notice being required; and it appearing that the employment of Kroll is in the best interests of the Debtor, its estate and creditors; and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. Notwithstanding the terms of the Engagement Agreement attached to the Application, the Application is approved in part and solely as set forth in this Order. Specifically, the Application is granted only as to the retention of Kroll as claims and noticing agent under 28 U.S.C. § 156(c).

2. The Debtor is authorized to retain Kroll as Claims and Noticing Agent effective *nunc pro tunc* to the Petition Date under the terms of the Engagement Agreement, and Kroll is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in this chapter 11 case, and all related tasks, all as described in the Application and the Engagement Agreement. The Clerk's office shall provide Kroll with ECF credentials that allow Kroll to receive ECF notifications and file certificates of service.

3. Kroll shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in this chapter 11 case and is authorized and directed to maintain an official claims register for the Debtor and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

4. Kroll is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.

5. Kroll is authorized to take such other action to comply with all duties and services set forth in the Application.

6. The Debtor is authorized to compensate Kroll in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by Kroll and the rates charged for each, and to reimburse Kroll for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for Kroll to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. Kroll shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtor, the Office of the United States Trustee, counsel for the Debtor, counsel for any official committee monitoring the expenses of the Debtor, and any party in interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute that may arise relating to the Engagement Agreement or monthly invoices; provided that the parties may seek resolution of the matter from the Court if resolution is not achieved. In the event of a dispute over the fees and/or expenses of Kroll, the amounts in dispute will not be paid until

resolution of the dispute and such payment will be remitted within five (5) business days of the resolution and in the amount provided by such resolution.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the undisputed fees and expenses of Kroll under this Order shall be an administrative expense of the Debtor's estate.

10. The Debtor is hereby authorized to pay Kroll the \$50,000 advance under the Engagement Agreement during the chapter 11 case as security for the payment of fees and expenses incurred under the Engagement Agreement.

11. The Debtor shall indemnify Kroll under the terms of the Engagement Agreement, as modified pursuant to this Order.

12. Kroll shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court.

13. Notwithstanding anything to the contrary in the Application, Kroll's services shall not include those set forth in paragraphs 9(w) and (x) in the Application absent further order of the Court. Additionally, Kroll's retention pursuant to 28 U.S.C. § 156(c) under this Order shall not include performing the services set forth in paragraphs 9(u), (v), and (y) of the Application, provided, however, Kroll may perform these services for the Debtor pursuant to section 363(c) of the Bankruptcy Code.

14. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtor shall have no obligation to indemnify Kroll, or provide contribution or reimbursement to Kroll, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from Kroll's gross negligence, willful misconduct, or fraud; (ii) for

a contractual dispute in which the Debtor alleges the breach of Kroll's contractual obligations if the Court determines that indemnification, contribution, or reimbursement would not be permissible under applicable law; or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which Kroll should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Agreement as modified by this Order.

15. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in this chapter 11 case (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing this chapter 11 case, Kroll believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution, and/or reimbursement obligations under the Engagement Agreement (as modified by this Order), including the advancement of defense costs, Kroll must file an application therefor in this Court, and the Debtor may not pay any such amounts to Kroll before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by Kroll for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtor's obligation to indemnify Kroll. All parties in interest shall retain the right to object to any demand by Kroll for indemnification, contribution, or reimbursement.

16. In the event Kroll is unable to provide the services set out in this order, Kroll will immediately notify the Clerk and the Debtor's attorneys and, upon approval of the Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtor's attorneys.

17. After entry of an order terminating Kroll's services, upon the closing of this case, or for any other reason, Kroll shall be responsible for archiving all proofs of claim with the Federal Archives Record Administration, if applicable, and shall be compensated by the Debtor in connection therewith.

18. Any services Kroll will provide relating to the Debtor's schedules of assets and liabilities and statement of financial affairs shall be limited to administrative and ministerial services primarily related to the gathering and organizing of the information and data for the schedules of assets and liabilities and statement of financial affairs. The Debtor shall remain responsible for the content and accuracy of its schedules of assets and liabilities and statement of financial affairs.

19. The Debtor and Kroll are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

20. Paragraph 3(b) of the Engagement Agreement is modified as follows: "If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, then Kroll will cease providing the services authorized by this Order upon the appointment of a chapter 7 trustee (unless retained by such chapter 7 trustee, and then on the terms set forth in an order by the Court approving such retention), provided, however, Kroll will be entitled to compensation for any necessary services provided (if any) in the interim period between conversion of the chapter 11 case and appointment of a chapter 7 trustee."

21. Paragraph 2(h) of the Engagement Agreement is modified as follows, "Kroll reserves the right to make reasonable increases to the Rate Structure on an annual basis effective on the first business day of each year. For any annual increase to the hourly rates therein, Kroll

shall provide 30 days' notice to the Company and the Office of the United States Trustee of such increases.”

22. Paragraph 6(b) of the Engagement Agreement is deemed of no force or effect with respect to the services to be provided pursuant to this Order. Kroll is not authorized to establish any accounts with financial institutions on behalf of the Debtor absent further order of the Court.

23. Paragraph 10 of the Engagement Agreement is deemed of no force and effect with respect to the services to be provided pursuant to this Order.

24. Notwithstanding any term in the Engagement Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

25. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

26. Kroll shall not cease providing claims processing services during the chapter 11 case for any reason, including nonpayment, without an order of the Court.

27. In the event of any inconsistency between the Engagement Agreement, the Application and the Order, the Order shall govern.

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Dated: July 30, 2024

Respectfully submitted,

/s/ Jonathan A. Margolies

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