

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

**945 LITTLE EAST NECK ROAD LLC, ET. AL.**

Case No. 16-74897

Case No. 16-74898

Case No. 16-74896

Debtors

Jointly Administered

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**NOTICE OF MOTION BY DEBTORS FOR AN ORDER  
APPROVING CASH COLLATERAL STIPULATION  
WITH BANK OF HOPE**

**PLEASE TAKE NOTICE**, that on **Thursday, February 16, 2017 at 11:00 a.m.** or as soon thereafter as counsel can be heard, debtors **945 Little East Neck Road, LLC** ("945 LENR"), **956 Little East Neck Road, LLC** ("956 LENR"), and **1041 Little East Neck Road, LLC** ("1041 LENR") (hereinafter referred to as the "Debtors"), by and through their attorneys, the Law Offices of Craig D. Robins, will move before the Honorable Louis A. Scarcella, United States Bankruptcy Judge, United States Bankruptcy Court, 290 Federal Plaza, Courtroom 970, Central Islip, New York, seeking the entry of an Order as required by 11 U.S.C. §363(c)(2), approving a stipulation authorizing the Debtors to use cash collateral, and for such other and further relief as this Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE**, objections to the Plaintiffs' application shall be filed as follows: (a) (i) through the Bankruptcy Court's electronic filing system which may be accessed through the Internet at the Bankruptcy Court's website: [www.nyeb.uscourts.gov](http://www.nyeb.uscourts.gov), using Netscape Navigator software version 3.0 or higher, and (ii) in portable document format (PDF) using Adobe Exchange software for conversion; or (b) if a party is unable to file electronically such party shall submit the objection in PDF format

on a diskette in an envelope with the case name, case number, type and title of document, document number of the document to which the objection refers, and the file name on the outside of the envelope; or (c) if a party is unable to file electronically or use PDF format, such party shall submit the objection on a diskette in either Word, WordPerfect, or DOS text (ASCII) format. An objection filed by a party with no legal representation shall comply with section (b) or (c) as set forth in this paragraph. A hard copy of the objection, whether filed pursuant to section (a), (b) or (c), as set forth in this paragraph, shall be hand-delivered directly to the Chambers of the Honorable Louis A. Scarcella, and a hard copy shall be served upon the Plaintiffs' counsel, Law Offices of Craig D. Robins, 35 Pinelawn Road, Suite 218-E, Melville, New York, the Office of the United States Trustee, 560 Federal Plaza, Central Islip, New York, and filed with the Clerk of the Bankruptcy Court, with a copy to chambers at least seven days before the scheduled hearing date.

**PLEASE TAKE NOTICE** that exhibits to this motion may be examined at the office of the Clerk of the Bankruptcy Court or by contacting Debtors' attorney at the number below.

**PLEASE TAKE FURTHER NOTICE** that annexed hereto is a copy of the proposed Order and application reciting the grounds for the relief requested.

Dated: Melville, New York  
January 9, 2017

s/ Craig D. Robins  
**CRAIG D. ROBINS, ESQ.**  
Attorney for Debtors  
35 Pinelawn Rd., Suite 218-E  
Melville, NY 11747  
(516) 496-0800

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**DEBTORS' MOTION FOR AN ORDER  
APPROVING CASH COLLATERAL STIPULATION  
WITH BANK OF HOPE**

TO: THE HONORABLE LOUIS A SCARCELLA  
UNITED STATES BANKRUPTCY JUDGE

**945 Little East Neck Road, LLC** ("945 LENR"), and its affiliates, **956 Little East Neck Road, LLC** ("956 LENR"), and **1041 Little East Neck Road, LLC** ("1041 LENR"), as debtors and debtors in possession (collectively "Debtors") by their attorney, Craig D. Robins, Esq., respectfully represent as follows:

**RELIEF REQUESTED**

1. The Debtors have cash collateral that they must use to continue to operate their businesses and maintain their ability to restructure expeditiously. The Debtors entered into a Cash Collateral Stipulation dated January 6, 2016 (the "Cash Collateral Stipulation") with their sole secured creditor, Bank of Hope.

("Secured Creditor").

2. The Cash Collateral Stipulation provides for the use of cash collateral and the granting of adequate protection to the Secured Creditor. The Debtors and the Secured Creditor now seek to have this Court approve the Cash Collateral Stipulation. Being able to utilize cash collateral will enable the Debtors to fund their operations during the course of these Chapter 11 cases as they preserve and maximize the value of their estates for the benefits of all parties in interest.

### **PROCEDURAL HISTORY**

3. On October 20, 2016 ("Petition Date"), Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code").
4. The Debtors are each small businesses as defined by Bankruptcy Code § 101(51D).
5. The Debtors intend to continue in possession of their respective properties and the management of their respective businesses as debtors in possession, pursuant to §§1107 and 1108 of the Bankruptcy Code.
6. The United States Trustee's Office has not appointed an official committee of unsecured creditors in any of the Debtors' cases.

### **BACKGROUND**

7. The Debtors are New York limited liability companies, each engaged in the

business of operating a different gasoline service station along a stretch of Little East Neck Road, West Babylon, New York. The Debtors have owned these businesses since 2005. Each gas station primarily sells gas, but like most gas stations today, each also sells convenience store items such as beverages, cigarettes, snacks and lottery tickets. In addition, one of the gas stations, 956 Little East Neck Road, has mechanic bays which that Debtor rents out.

8. While each of the Debtor companies are separate entities, the Debtors are owned by the same three members, conduct essentially the same business operations, and share several creditors and vendors.
9. The Debtors purchased the gas station businesses in early 2005 using financing provide by Nara Bank, which thereafter became BBCN Bank, and is currently known as Bank of Hope. The amount of the original financing was approximately \$650,000. The Debtors refinanced the loan several times, often in yearly intervals, most recently on or about June 30, 2016 (the "Loan Agreement"). The Loan Agreement gives Bank of Hope a security interest in all of the Debtors' assets. The loan currently has a maturity date of May 28, 2017. It is anticipated that the Debtors will refinance the loan again in or about May 2017. The pay-off amount of the loan as of the date of filing on October 20, 2016 was \$294,965.46. Counsel for Bank of Hope has advised me that the Debtors are current with payments on the loan.
10. As a result of lost business from Superstorm Sandy, and also as a result of lost business revenues because the Debtors' gas supplier improperly

withdrew premium, nationally-advertised branding, the Debtors incurred serious financial cash flow problems, which led to these bankruptcy filings.

11. As a result of the financial pressures, the Debtors previously filed for Chapter 11 relief on December 1, 2014 in this Court to afford them with the opportunity to restructure their debts in a way that would permit it to pay its creditors and continue to operate its businesses. Prior Counsel in the Prior Cases failed to timely submit orders granting an extension of time to confirm a plan. Consequently, the Debtors were incapable of confirming plans of reorganization in the Prior Cases rendering those cases futile and ineffective. Prior Counsel brought motions seeking to dismiss the Prior Cases for this reason. The Court granted those motions and dismissed the Prior Cases on or about September 20, 2016. There was a clear understanding that the Debtors would re-file their cases to obtain the Chapter 11 relief they initially sought in the Prior Cases.
12. The Debtors re-filed the instant cases on October 20, 2016.
13. This Court entered an order dated October 25, 2016, administratively consolidating these cases.
14. In the prior cases, the Debtors did not enter into a cash collateral stipulation, but instead, brought an application to use cash collateral, which this Court granted.
15. All of the factual statements set forth above concerning the Debtor's prior history were described in the Debtors' narrative affidavit dated October 19, 2016, and executed by Muhammet Ozen, a managing member of the

Debtors, which affidavit was previously filed with the Court pursuant to Local Bankruptcy Rule 1007-4.

### **JURISDICTION AND VENUE**

16. This Court has jurisdiction over this application pursuant to 28 U.S.C. § 157(b). Venue of these cases and the within application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### **DISCUSSION**

17. As the Loan Agreement gives the Secured Creditor a security interest in all of the Debtors' assets including cash, bank accounts and receivables, these assets constitute cash collateral. Prior to filing, Debtors' counsel reached an understanding with counsel for Bank of Hope that upon filing, Debtors would informally be permitted to use cash collateral for a limited period of time, pending the parties' good faith efforts to formalize a cash collateral stipulation. The parties did indeed reach an agreement as to use of cash collateral which they formalized in the form of a stipulation dated January 6, 2017 (the "Cash Collateral Stipulation"), a copy of which is attached hereto as **Exhibit "A"**. That stipulation is subject to Court Approval and through this application, the parties now seek Court approval of the Cash Collateral Stipulation.
18. The terms of the Cash Collateral Stipulation essentially provide that the Debtors can use cash collateral in the ordinary course of business for

payment of ordinary business expenses as well as fees and expenses required in the bankruptcy cases. In exchange, the Debtors are granting the Secured Creditor, as adequate protection to secure any loss, decrease or decline in the value of its collateral, a continuing post-petition security interest in all of the Debtors' assets ("Adequate Protection Lien"). This lien will not extend to any avoidance power recoveries available to the estate.

19. The Cash Collateral Stipulation further provides that the Adequate Protection Lien shall be deemed a valid, enforceable and perfected lien; and such lien shall remain valid and perfected in the event of dismissal or conversion of the bankruptcy proceedings, or release of any property of the estate, without the necessity that the Secured Creditor make any filings or recordings or otherwise perfect its lien under applicable law.
20. As additional consideration for the Secured Creditor's consent to the use of cash collateral and, as additional adequate protection for such use of cash collateral, the Debtors have agreed to make monthly adequate protection payments in the total monthly amount of \$6,440.11 to the Secured Creditor ("Adequate Protection Payments") until the maturity of the loan on May 28, 2017, or such time as each of the Debtors' cases has resulted in confirmation of a Chapter 11 Plan, dismissal, or conversion to a case under Chapter 7, whichever is earlier. These payments are the exact monthly payments the Debtors would have made pursuant to the payment schedule associated with the loan. Thus, the Debtors would not be paying any more per month for Adequate Protection Payments than they are contractually obligated to by the

original terms as set forth in the Loan Agreement.

21. Bankruptcy Code § 363(c) governs a debtor's use of a secured creditor's cash collateral. Specifically, that provision provides, in pertinent part, that:

The trustee may not use, sell, or lease cash collateral . . . unless—

- (A) each entity that has an interest in such cash collateral consents; or
- (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section [363].

11 U.S.C. § 363(c)(2). Further, section 363(e) provides that “on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e).

22. It is respectfully submitted that the Debtors have satisfied the requirements of sections 363(c)(2) and (e), and should be authorized to use the Cash Collateral. First, as explained above, the Secured Creditor has consented to the use of their Cash Collateral. Second, as described above, the Debtors have agreed to make Adequate Protection Payments in an amount agreeable to the Secured Creditor. The interests of the Secured Creditor are thus adequately protected. Accordingly, the Court should authorize the Debtors to use the Cash Collateral under section 363(c)(2) of the Bankruptcy Code.

**NOTICE**

23. Debtors have provided notice of this motion to the Secured Creditor and its

counsel, all creditors, the Office of the United States Trustee for the Eastern District of New York, and all parties who filed notices of appearance.

**PROCEDURE**

24. As this motion presents no novel issues of law, the Debtors request that the Court dispense with the requirements of Local Bankruptcy Rule 9013-1(b), which requires the filing of a memorandum of law.
25. No previous motion for the relief requested has been made to this or any other Court.
26. A copy of a proposed order is attached hereto.

**WHEREFORE**, Debtors respectfully request that the Court enter an Order approving the Cash Collateral Stipulation.

Dated: Melville, New York  
January 9, 2017

s/ Craig D. Robins  
**CRAIG D. ROBINS, ESQ.**  
Attorney for Debtors  
35 Pinelawn Rd., Suite 218-E  
Melville, NY 11747  
(516) 496-0800

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CERTIFICATE OF SERVICE

I, **CRAIG D. ROBINS, ESQ.**, affirm:

I am not a party to this action. I reside in Suffolk County. On January 9, 2017, I served a true copy of the within DEBTORS' MOTION FOR ORDER APPROVING CASH COLLATERAL STIPULATION WITH BANK OF HOPE, by:

Sending a copy by U.S.P.S. first class mail to the recipients listed below by mailing it in a postpaid wrapper and placing it in an official U.S.P.S. mail box to:

All Creditors on the attached Service List

s/ Craig D. Robins  
CRAIG D. ROBINS, ESQ.

UNITED STATES BANKRUPTCY COURT  
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**ORDER APPROVING CASH COLLATERAL  
STIPULATION WITH BANK OF HOPE**

Upon the motion dated January 9, 2017(the "Motion") filed by 945 Little East Neck Road, LLC, 956 Little East Neck Road, LLC, and 1041 Little East Neck Road, LLC, as debtors and debtors-in-possession (collectively, the "Debtors"), pursuant to Bankruptcy Code § 363(c)(2) seeking the approval of a stipulation dated January 6, 2017 between the Debtors and Bank of Hope ("Cash Collateral Stipulation"); and the Court having jurisdiction to consider the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the relief requested therein being a core proceeding as defined in 28 U.S.C. § 157(b)(2); and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their respective estates and creditors; and upon the proceedings before the Court; and good and sufficient cause appearing therefor, and after due deliberation by this Court; it is hereby

**ORDERED**, that the Debtors are authorized to use cash collateral pursuant to the terms set forth in the Cash Collateral Stipulation, and the Court approves the

other terms set forth in the Cash Collateral Stipulation; and it is

**ORDERED**, that the herein Order is effective, *nunc pro tunc*, to the date of the filing of the Debtors' petitions.