

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

Mariner’s Gate LLC,

Case No. 25-12819 (PB)

Debtor.

Related Doc # 8, 17

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**STIPULATION AND ORDER AUTHORIZING INTERIM USE
OF CASH COLLATERAL AND GRANT OF
ADEOUATE PROTECTION TO JPMORGAN CHASE BANK, N.A.**

RECITALS

WHEREAS, on December 16, 2026 (the “Petition Date”), Mariner’s Gate, LLC (the “Debtor”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (“Chapter 11 Case”), 11 U.S.C. § 101 et. seq. (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”); and

WHEREAS, the Debtor has continued in possession and management of its business as debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code; and

WHEREAS, the Debtor is the owner of a six (6) story commercial loft building located at 548 West 28th Street, New York, NY (the “Building”) occupied by approximately fifty (50) tenants; and

WHEREAS, JPMorgan Chase Bank, N.A. (as acquirer of certain assets and liabilities of First Republic Bank from the Federal Deposit Insurance Corporation as Receiver) (the “Lender”) is the holder of a first mortgage lien against the Building and obtained a judgment of foreclosure on October 27, 2025 in the sum of \$40,906,865.06, plus interest and legal fees (the “Judgment Amount”); and

WHEREAS, the Debtor admits, stipulates, agrees, and acknowledges, on behalf of itself and its estate, that the Lender holds a valid, non-avoidable, properly perfected, binding, and

enforceable senior-secured first priority lien on all of the Debtor's assets (the "Collateral"), including the Building, together with a valid assignment of rents covering all income, proceeds and rents derived from the operation of the Building (collectively, the "Rents") to secure a senior secured prepetition claim against the estate arising under the Debtor's obligations under its loan documents with the Lender in an amount not less than the Judgment Amount plus allowed post-petition interest and legal fees; and

WHEREAS, the use, sale, and proceeds of all of the Debtor's assets including the Building, the Debtor's bank accounts, and all cash, rents, and revenues generated by the Building and/or held by the Debtor's estate (including all "cash collateral" as defined Section 363 of the Bankruptcy Code) constitutes collateral of the Lender (the "Cash Collateral"); and

WHEREAS, the Lender sought the appointment of an operating trustee pursuant to 11 U.S.C. Section 1104 [ECF No. 17] (the "Trustee Motion") and the Court having conducted an evidentiary hearing on the Trustee Motion and requested that the parties attempt to agree upon a consensual stipulation and order for use of Cash Collateral to be strictly enforced pending the Debtor's current sale process; and

WHEREAS, the Lender's consent to the Debtor's use of Cash Collateral solely through March 31, 2026 in accordance with the terms of this Stipulation and the Budget shall not be deemed or construed as a waiver of any rights, claims, arguments, or other entitlement to relief requested or asserted by the Lender in any other motion or proceeding, each and all of which is specifically reserved; and

WHEREAS, pursuant to § 363(c)(2) of the Bankruptcy Code, the Debtor acknowledges the Rents constitute Cash Collateral and the Debtor cannot use the Cash Collateral any further without the consent of the Lender or without order of the Bankruptcy Court; and

WHEREAS, the Debtor cannot meet the Building's operating expenses or maintain and preserve the Building pending a sale without the use of Cash Collateral; and

WHEREAS, the Debtor and the Lender hereby stipulate and agree to provide for the use of the Cash Collateral and to provide the Lender with adequate protection therefore as defined in §§ 361 and 363(a) of the Bankruptcy Code solely upon and subject to the terms and conditions as stated below; and

WHEREAS, following the evidentiary hearing and based upon additional negotiations, the Lender consents to the Debtor's use of Cash Collateral as provided below; and

WHEREAS, this Stipulation and Order has been negotiated in good faith and is fair and reasonable under the circumstances.

NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED BY THE UNDERSIGNED PARTIES, AND SO-ORDERED BY THE COURT, that:

1. Incorporation of Recitals. The Recitals set forth above are incorporated herein by reference and shall be deemed to be true and correct as such statements apply to each or all the parties, as applicable. Each of the parties to this Stipulation represents that it has the right and authority to execute this Stipulation and act in accordance with its terms.

2. Use of Cash Collateral. The Debtor is authorized, pursuant to Section 363(c)(2)(B) of the Bankruptcy Code, to use Cash Collateral on an interim basis on the terms hereof in accordance with the Budget (as defined below).

3. Findings Regarding Use of Cash Collateral .

a. Good cause has been shown for the entry of this Stipulation and Order to address the Trustee Motion on an interim basis and to promote a sale process relating to the Building.

b. The Debtor has an immediate need to use Cash Collateral and has requested that the Lender permit the use of Cash Collateral to operate the Building in accordance with the attached budget which is annexed as Exhibit A (the "Budget"). The Budget may not be amended by the Debtor without the written prior consent of the Lender; any such approved amendment shall not require further notice, hearing, or Court order.

c. The Lender is willing to permit the Debtor to use Cash Collateral only upon the terms and conditions contained in this Stipulation and Order and in accordance with the Budget.

d. It is in the best interest of the Debtor's estate that, in exchange for providing adequate protection to the Lender, the Debtor be allowed to utilize Cash Collateral under the terms and conditions set forth herein and in accordance with the Budget.

e. The use of the Cash Collateral has been the subject of extensive negotiations conducted in good faith and at arm's length between the Debtor and the Lender.

4. Access to Books and Records and the Building. The Debtor shall promptly provide to the Lender any and all financial information and other diligence regarding the Debtor's business that is reasonably requested, and shall permit the Lender, upon prior reasonable notice, to review its books and records and make copies thereof during normal business hours. Within three (3) business days of entry of this Stipulation and Order, the Debtor shall provide to the Lender: (i) copies of all written leases associated with the Building; (ii) a complete rent roll; (iii) an arrears report; (iv) a report on any remaining monetary obligations of the Debtor owing to tenants under the leases, including for tenant improvements; (v) copies of all bank account statements at banks other than the Lender for the past twelve (12) months; and (vi) any documentation that exists in regards to the Debtor's intercompany loans to its affiliates and/or any other loans made by the Debtor. The Debtor will provide the Lender with an updated arrears report on a monthly basis. Within ten (10) days of entry of the Stipulation and Order, the Debtor shall provide to the Lender a draft closing settlement statement for the stalking horse purchase. Upon

reasonable notice to Debtor, Debtor shall permit the Lender and its agents reasonable access to the Building.

5. Adequate Protection. The Debtor acknowledges and the Court hereby finds that the Debtor's use of Cash Collateral may potentially result in diminution in value of the Collateral ("Collateral Diminution") and, as a result, the Lender is entitled, pursuant to Sections 361, 363(c)(2), and 363(e) of the Bankruptcy Code, to adequate protection of its interest in the Collateral in an amount equal to the aggregate diminution in value of the Lender's interest in the Collateral, if any, including, without limitation, any such diminution caused by or resulting from (i) the sale, lease, or use by the Debtor (or other decline in value) of the Collateral; and (ii) the imposition of the automatic stay pursuant to Section 362 of the Bankruptcy Code.

a. As adequate protection, to the extent of any Collateral Diminution, the Lender is hereby granted the following post-petition liens and claims:

- (i) Continuing Liens. The Lender is hereby granted a valid, binding, perfected, enforceable, first priority replacement security interest in and a lien upon (collectively, the "Replacement Liens" or "Post-Petition Liens"), effective as of the Petition Date, to the same extent, validity and priority that existed on the Petition Date, on all post-petition property of the Debtor's estate and all proceeds, rents, and profits thereof, including but not limited to accounts receivable. The Replacement Liens shall be enforceable against the Debtor, its estate and any successor thereto, including without limitation, any trustee or other estate representative appointed in this Chapter 11 Case, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of this Chapter 11 Case, or in any other proceedings superseding or related to any of the foregoing.

(ii) Section 507(b) Claim. The Lender is also entitled to a super-priority claim as provided in Section 507(b) of the Bankruptcy Code equal to the amount of Collateral Diminution since the Petition Date (the “AP Superpriority Claim”) and shall have priority in right of payment over any and all other obligations now in existence or hereafter incurred by the Debtor and over any and all administrative expenses or priority claims of any kind including as specified in, or ordered pursuant to any provision of the Bankruptcy Code, including, without limitation, Sections 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), and 726 of the Bankruptcy Code, and shall at all times be senior to the rights of the Debtor, any trustee or any creditor, whether arising in the Debtor’s Chapter 11 Case or in any superseding chapter 7 case or proceeding under the Bankruptcy Code, subject and subordinate only to the Carve-Out, as defined below.

(iii) Adequate Protection Payments. Commencing on February 22, 2026, and continuing on the 22nd day of each month thereafter, the Debtor shall pay to the Lender all excess cash flow from amounts generated from operation of the Building during the previous month, with excess cash flow defined as collected gross Rents less allowed budgeted expenses (hereinafter, “Adequate Protection Payments”).

6. Carve-Out. Notwithstanding anything to the contrary herein, the Debtor’s obligations to the Lender, and the Replacement Liens and super priority claims granted herein shall be subject in all respects and subordinate to the Carve-Out.

a. “Carve Out” shall mean only (i) fees paid to the clerk’s office; (ii) the fees required to be paid to the U.S. Trustee under section 1930(a) of title 28 of the United States Code

plus interest pursuant to Section 3717 of title 31 of the United States Code, and which shall not be subject to any budget; and (iii) all reasonable fees and expenses up to \$25,000 incurred by a Chapter 7 trustee under Section 726(b) of the Bankruptcy Code.

7. The security interests and liens herein granted, including the Replacement Liens (i) are and shall be in addition to, and not in substitution of, all security interests, liens, encumbrances, and rights of set-off existing in favor of the Lender on the Petition Date, or other rights of the Lender currently existing or hereinafter arising and (ii) shall secure, in whole or in part, the payment of indebtedness to the Lender. This Stipulation shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Replacement Liens without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction, or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect with applicable non-bankruptcy law the Replacement Liens or to entitle the Lender to the priorities granted herein. Notwithstanding the foregoing, the Lender is authorized to file, as it deems necessary or advisable in its sole discretion, such financing statements, mortgages, notices of lien, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the applicable Replacement Liens, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date. However, no such filing or recordation shall be necessary or required in order to create or perfect the Replacement Liens. The Debtor is authorized and directed to execute and deliver to the Lender, promptly upon demand, all such financing statements, mortgages, notices, and other documents as the Lender may reasonably request. The Lender may file a photocopy of this Order as a financing statement with any filing

or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien, or similar instrument.

8. The automatic stay imposed by section 362(a) of the Bankruptcy Code is hereby vacated and modified, without application to or further order of this Court, to permit the Debtor (a) to grant the Replacement Liens and AP Superpriority Claim, (b) to perform such acts as the Lender may request to assure the perfection and priority of the Replacement Liens, and (c) to pay the Lender adequate protection payments in accordance with the terms of this Order.

9. The Lender expressly reserves its rights to claim and assert that it is not adequately protected by this Stipulation and Order. The Debtor is hereby estopped from claiming, asserting, or arguing that the Lender's willingness to enter into this Order is evidence of adequate protection under sections 361 or 362 of the Bankruptcy Code.

10. The Debtor's obligations and acknowledgements in connection with the use of Cash Collateral are as follows:

a. The Rents generated from the leasing of the Building are, and for all purposes herein shall be deemed indefeasibly to constitute Cash Collateral in which the Lender has a first lien and security interest under 11 U.S.C. §363(a) and (c)(2).

b. The Debtor can only use Cash Collateral to pay for the agreed monthly operating expenses as set forth in the Budget. Ordinary expenses shall be defined as those items set forth in the Budget and shall be in amounts which do not exceed the amount specified therein for each category of expenses, subject to a monthly variance of five (5%) percent per line item and ten (10%) of the total monthly budget (the "Allowed Variances"). The Debtor shall obtain Lender's written permission (which may be via email) before making or incurring any obligation or making or incurring any expenditures of Cash Collateral in excess of the Allowed Variances. If

such excess expenditure is approved, the Debtor shall also promptly provide the Lender with copies of invoices paid with respect to such additional expenditures; provided, however, that in no event will any funds under this section whatsoever be paid hereunder to any persons or entities who are insiders of the Debtor as that term is defined by 11 U.S.C. §101(31) except as provided in the Budget relating to the salary of Menachem Pastreich, which is allowed. If the Debtor and the Lender cannot reach an agreement with respect to whether the Debtor shall be allowed to use Cash Collateral for expenses not included in the categories included in the Budget, the Debtor may submit the matter to the Bankruptcy Court by motion for determination of the issue if the Lender fails to respond to a written request within five (5) business days after such written request is received by the Lender through its counsel (by email), or the Lender denies a written request within three (3) business days after such written request is received by the Lender, through its counsel. In addition, wages for employees shall not exceed 20% of gross collected Rents.

c. No Cash Collateral shall be used in payment of any kind whatsoever to Debtor's member and manager, Yitzhak ("Jim") Pastreich, except that Jim Pastreich shall be eligible to maintain his group health insurance coverage as paid by the Debtor under the Budget. For the avoidance of doubt, the Debtor may in no circumstance use Cash Collateral for any purpose unrelated to the Building, including transferring funds to the Debtor's principal, affiliates, or other insiders.

d. The Debtor shall maintain property, casualty, and liability insurance coverage in connection with the Building as previously furnished to the Lender.

e. The Debtor shall promptly, in cooperation with the Lender but at the sole expense of the Debtor as set forth in the Budget, open and establish at Chase Bank a lock-box or Deposit

Control Account (the “Lock Box”) with all funds in the Lock Box to remain subject to the Lender’s security liens hereunder. Once the Lock Box is established, the Debtor shall also prepare and issue written notice to all existing tenants at the Building that all rents shall be paid to the Lender for deposit into the Lock Box Account directly or by electronic transfer. To the extent that the Debtor receives any rents after that time, it shall also deposit the same into the Lock Box. Upon collection of Rents into the Lock Box, the Lender shall then transfer disbursements into the Debtor’s current DIP account at Chase Bank in order pay weekly bills in accordance with the Budget. Prior to the establishment of the Lock Box, all Rents shall be deposited into the Debtor’s current DIP account at Chase Bank.

f. The Lender shall account to the Debtor for the collections into the Lock Box, whereupon the Debtor shall report the collection and expenditures of Rents as part of the Debtor’s monthly operating reports (“MORs”), which the Debtor shall file with the Bankruptcy Court in accordance with the guidelines of the United States Trustees no later than the twentieth day of the succeeding month with the next report due on or before February 20, 2026 for the month of January 2026.

g. Sale Process. The Debtor shall proceed to implement a bankruptcy sale process to run concurrently with efforts by the Debtor to confirm a liquidating plan of reorganization based upon the following timeline, all subject to Bankruptcy Court availability and calendar requirements (hereinafter, the “Milestones”):

- (i) File a Bidding Procedures Motion by Wednesday, February 11, 2026 and obtain an Order by no later than March 19, 2026 approving (i) a stalking horse contract subject to competing bids; and/or (ii) a marketing and auction sale of the Building, subject to bid procedures providing for (x) preservation of credit bid

rights of the Lender pursuant to Section 363(k) of the Bankruptcy Court; and (y) fixing a marketing period ending on April 6, 2026 with an auction to be conducted within seven (7) days thereafter;

- (ii) Obtain Bankruptcy Court approval of the auction results at a hearing to be held on or before April 26, 2026;
- (iii) Close on the sale no later than May 26, 2026;
- (iv) File a liquidating plan and accompanying disclosure statement no later than March 1, 2026; and
- (v) Obtain confirmation of the plan on or before April 26, 2026 so that the sale is eligible for the transfer tax exemptions under of 11 U.S.C. Section 1146(a).

11. Disposition of Collateral. The Debtor shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the Lender's Collateral (including the Building) outside of the ordinary course of business without the prior written consent of the Lender.

12. Prohibition on Granting of Additional Liens and Interests. No liens, claims, interests, or priority status having a lien or administrative priority superior to or *pari passu* with that of the Replacement Liens or the AP Superpriority Claim granted by this Order shall be granted without the prior written consent of the Lender.

13. Credit Bidding. The Lender or its designee shall have the right to credit bid on the Building, in accordance with the loan documents between the Lender and the Debtor, up to the full amount of the Debtor's obligations to the Lender thereunder, in connection with any sale or other disposition of all or any portion of the Building, as provided for in section 363(k) of the Bankruptcy Code and shall automatically be deemed a "qualified bidder" with respect to any disposition of Collateral under or pursuant to (a) section 363 of the Bankruptcy Code, (b) a plan

of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code, or (c) a sale or disposition by a chapter 7 trustee for the Debtor under section 725 of the Bankruptcy Code.

14. No Surcharge. No costs or expenses of administration which have been or may be incurred in this Chapter 11 Case at any time by the debtor-in-possession shall be charged against Lender, any of its claims, or its Collateral (including, without limitation, the Building), pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the Lender. This waiver of a surcharge under 11 U.S.C. §506 (c) does not apply to a Chapter 7 trustee or Chapter 11 operating trustee.

15. Non-Consented Uses of Cash Collateral. Among other prohibited uses of Cash Collateral as set forth herein, the Lender does not consent to the use of any of the Cash Collateral other than as set forth herein or to (i) investigate, assert, commence, prosecute or otherwise take any action with respect to (or to support another party in connection with the investigation, assertion, commencement, prosecution, or actions) any claim or alleged claim against Lender, including but not limited to, claims arising under sections 542 through and including 553 of the Bankruptcy Code; (ii) challenge the amount, validity, priority or enforceability of the Judgment of Foreclosure; (iii) seek to subordinate or recharacterize the Judgment of Foreclosure; or (iv) seek the modification, amendment or vacatur of this Stipulation.

16. Events of Default/Termination Date. Unless Lender otherwise agrees in writing, this Stipulation shall terminate (the "Termination Date") upon the earliest of any of the following Events of Default after three (3) days' written notice (the "Remedies Notice Period") from the Lender to the Debtor (which may be via email between counsel), with a copy to the Office of the United States Trustee for the Southern District of New York, with an opportunity to cure solely within the Remedies Notice Period: (a) the Debtor's failure to perform any of the terms,

provisions, and covenants under this Order; (b) default by the Debtor in timely making Adequate Protection Payments or monthly financial reporting as required under this Order and/or the US Trustee guidelines; (c) Failure to meet the Milestones, as determined by the Lender in its sole and absolute discretion; or (d) March 31, 2026. During the Remedies Notice Period, the Debtor shall be permitted to use Cash Collateral solely to fund operating expenses that have been consented to by the Lender in writing (which may be via email). On the Termination Date, (a) Lender's consent to use Cash Collateral shall be deemed withdrawn; (b) the Debtor's authorization to use Cash Collateral for any purpose shall be terminated; and (c) the Lender may move on expedited notice to reschedule the hearing on the Trustee Motion immediately, subject to Bankruptcy Court availability. For the avoidance of doubt, the Lender shall have the right to request an emergency hearing on three (3) business days' notice or other such time as the Bankruptcy Court shall fix pursuant to Bankruptcy Rules 9006(c) and 9007, and Local Rule 9006-1, to seek a modification of this Stipulation and Order, or any additional protections or any other relief.

17. No Liability to Third-Parties. In authorizing the Debtor's use of Cash Collateral under the terms set forth herein in this Stipulation and Order, the Lender (i) shall have no liability to any third-party and shall not be deemed to be in control of the operations of the Debtor or to be acting as a "controlling person," "responsible person" or "owner or operator" with respect to the operation or management of the Debtor (as such term, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar Federal or state statute), and (ii) shall not owe any fiduciary duty to the Debtor, its creditors or its estate. The Lender's

relationship with the Debtor shall not constitute or be deemed to constitute a joint venture or partnership with the Debtor.

18. Prepetition Intercreditor Agreement. Nothing contained in this Order shall alter or modify, or be deemed to alter or modify, the rights of any party under that certain Intercreditor Agreement, dated as of August 31, 2021, by and between First Republic Bank and W Financial REIT, Ltd.

19. Challenge Period. While the Debtor and its principal acknowledge the extent, validity and priority of the Lender's claim under the Debtor's loan documents with the Lender, any creditor, committee or other parties-in-interest with appropriate standing may investigate the facts and file a complaint or an objection to the Lender's claim within ten (10) days from the entry of this Order (the "Challenge Deadline"). Additionally in the event of the appointment of Chapter 7 trustee or the appointment of an operating trustee under section 1104, the ensuing trustee shall have 30 days from his or her appointment to investigate and to challenge the Lender's secured claims. Following the expiration of the Challenge Deadline, (i) the Debtor's obligations under its loan documents with the Lender shall constitute allowed secured claims against the Debtor in this Chapter 11 Case and any successor case; (ii) the liens securing the Lender's prepetition claim and the Replacement Liens shall forever be deemed to be legal, valid, binding, continuing, perfected, and enforceable, as of the Petition Date, against the Debtor in this Chapter 11 Case and any successor case; (iii) the Debtor's prepetition obligations to the Lender, the Lender's prepetition liens, the Replacement Liens, and the Lender's collateral shall not be subject to any other or further challenge, avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), claims, counterclaims, cross-claims, offsets, recoupments, objections, defenses, or any other similar challenge by any party in interest seeking to exercise the rights of the Debtor's estate, including, without limitation, and successor(s) thereto; and (iv) any and all challenges, of any kind or nature whatsoever, whether under the Bankruptcy Code, applicable non-bankruptcy law or otherwise, against the Lender shall be deemed forever waived, released, and barred. Nothing in this Order vests or confers on

any Person (as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in this Chapter 11 Case, standing or authority to pursue any claim or cause of action belonging to the Debtor or its estate, including, without limitation, any challenge described in this paragraph.

20. Binding Effect of Stipulation and Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Stipulation and Order shall become valid and binding upon the Debtor and the Debtor's estate.

21. Retention of Jurisdiction. This Court shall retain jurisdiction to enforce this Stipulation and Order and determine any disputes arising hereunder.

22. Conflicts. To the extent there exists any conflict between provisions of this Stipulation and Order and the terms of the loan documents between the Lender and the Debtor, the provisions of this Stipulation and Order shall govern.

23. Trustee Motion. The hearing on the Trustee Motion is adjourned for 35 days from the prior hearing on February 4, 2026 to **March 17, 2026 at 10:30 a.m.**

Dated: New York, NY
February 11, 2026

/s/ Philip Bentley
Hon. Philip Bentley
United States Bankruptcy Judge