

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. 9004-2(c)

MASELLI WARREN, PC
Paul Maselli, Esq. (pmaselli@maselliwarren.com)
PM 4853
600 Alexander Road
Suite 3-4A
Princeton, New Jersey 08540
Tel: (609) 452-8411 Fax: (609) 452-8422

Attorneys for Debtor, Nassau Tower Realty, LLC



In re:

NASSAU TOWER REALTY, LLC,

Debtor.

Chapter: 11

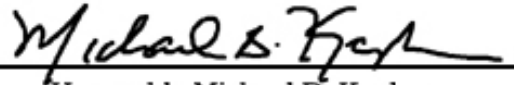
Case No. 13-24984 (MBK)

Honorable Michael B. Kaplan

ORDER APPROVING STIPULATION AND CONSENT ORDER BY AND BETWEEN DEBTOR AND SANTANDER BANK, N.A. (I) RESOLVING SANTANDER BANK, N.A.'S OBJECTION TO DEBTOR'S DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION; (II) PROVIDING ADEQUATE PROTECTION OF SANTANDER BANK N.A.'S SECURITY INTERESTS; (III) APPROVING PLAN SUPPORT AGREEMENT; AND (IV) GRANTING RELATED RELIEF.

The relief set forth on the following pages, numbered two (2) through twelve (12) is hereby **ORDERED**.

DATED: 4/30/2014



Honorable Michael B. Kaplan
United States Bankruptcy Judge

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Nassau Tower Realty, LLC

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Order Approving Stipulation and Consent Order by and between Debtor and Santander Bank, N.A. (I) Resolving Santander Bank, N.A.'s Objection to Debtor's Disclosure Statement and Plan of Reorganization; (II) Providing Adequate Protection of Santander Bank N.A.'s Security Interests; (III) Approving Plan Support Agreement; and (IV) Granting Related Relief.

THIS MATTER having been presented to the Court by Chapter 11 debtor Nassau Tower Realty, LLC's, (the "**Debtor's**") motion for an order pursuant to Fed. R. Bankr. P. 9019 approving stipulation and consent order by and between Debtor and Santander Bank, N.A. ("**Santander**" or the "**Bank**") (i) resolving Santander's objection to Debtor's disclosure statement and plan of reorganization; (ii) providing adequate protection of Santander's security interests; (iii) approving plan support agreement; and (iv) granting related relief (the "**Motion**"), with proper and adequate notice having been given for the Court's entry of the within Order, and the Debtor and Santander (together, the "**Parties**") hereby stipulating (the "**Stipulation**") and agreeing, by and through their respective counsel, as follows:

RECITALS

A. Before July 9, 2013 (the "**Petition Date**"), the Debtor had two separate obligations to Santander. Both obligations are secured by real estate owned by the Debtor and mortgaged to Santander. Both obligations remain outstanding in the combined amount of \$3,154,230.37.

B. As of March 24, 2014, the outstanding balance owed on one obligation (loan number xxxx2015/26&42) is \$2,716,539.72 ("**Secured Debt I**") and the outstanding balance owed on the other obligation (loan number xxxx1918/42) is \$437,690.65 ("**Secured Debt II**", and, together with Secured Debt I, the "**Santander Secured Debt**").

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C. The Secured Debt I matured in 2009. The Secured Debt II matures in 2015.

Debtor has made no adequate protection payments to Santander after the Petition Date.

D. The Secured Debt I is secured by the following real estate owned by the Debtor and mortgaged to Santander (collectively, the “**Mortgaged Property I**”):

Property Address	Appraisal Date	Fair Market Value	Liquidation Value
472 Princeton Avenue, Brick, NJ Block 914, Lot 29	1/29/2014	\$400,000	\$350,000
704 Howe Street, Point Pleasant, NJ Block 275.01, Lot 17	1/29/2014	\$400,000	\$315,000
1108 Ocean Road (a/k/a 1108 Rt. 88) Point Pleasant, NJ Block 162, Lot 18	1/29/2014	\$160,000	\$125,000
74 Fairview Avenue, Brick, NJ Block 864, Lot 1.04	2/10/2014	\$665,000	\$500,000
1215 Johnson Avenue Point Pleasant, NJ Block 163, Lot 3	1/29/2014	\$155,000	\$125,000
1215A Johnson Avenue (a/k/a 1126 Memorial Drive) Point Pleasant, NJ Block 163, Lot 18.01	1/29/2014	\$150,000	\$125,000
Total Value of Mortgaged Property I		\$1.93 million	\$1.54 million
Current Outstanding Balance of Secured Debt I		\$2,716,539.72	

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As of January 29, 2014 and February 10, 2014, Santander obtained appraisals of the properties mentioned in the

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E. The Secured Debt II is secured by real estate located at 1 Robbins Parkway, Toms River, NJ, Block 668, Lot 13 (FMV of \$525,000 and LV of \$430,000 as per an appraisal dated January 29, 2014), which is owned by the Debtor and mortgaged to Santander (the "**Mortgaged Property II**" and, together with the Mortgaged Property I, the "**Santander Collateral**" or the "**Debtor Properties**").

F. The Santander Collateral is encumbered by mortgages, state and county UCC-1 financing statements, UCC-3 continuation statements, and assignments of lease(s), rents, issues & profits, which were all made in favor of Santander as lender and/or secured creditor.

G. On September 27, 2013, Debtor filed a Disclosure Statement. [Dkt. 71] and a Chapter 11 Plan [Dkt. 72]. The Plan proposed to: (i) classify the Santander Secured Debt separately in Class Two; (ii) provide a treatment characterized as "unimpaired"; (iii) permit Santander to retain its mortgage liens on the Santander Collateral and to otherwise be "unaffected" by the Plan.

H. On November 26, 2013, Santander filed an Objection to Debtor's Disclosure Statement and Plan [Dkt. 103] on the basis that: (i) the Disclosure Statement provides inadequate disclosure of how the Santander Secured Debt shall be satisfied; and (ii) the Plan cannot be confirmed as a matter of law because it classifies Santander's rights as unimpaired for the matured Secured Debt I that cannot be cured or reinstated.

Stipulation. All fair market values and liquidation values noted herein are derived from Santander's appraisals.

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Contemporaneous with the filing of the Santander POC, a Transfer of Claim Other Than For Security was filed by Santander, pursuant to Rule 3001(e)(2), Fed. R. Bankr. P., with respect to each proof of claim (four in all) filed by a holder of a tax sale certificate recorded against four parcels of Mortgaged Property I (collectively, the "**Transferred Claims**").² [See Claim 27; see also Dkts.108-111]

I. No party in interest has objected to the Santander POC or the Transferred Claims.

J. On March 3, 2014, Debtor filed a First Modified Disclosure Statement [Dkt. 140] and a First Modified Chapter 11 Plan [Dkt. 141]. The First Modified Disclosure Statement discloses the Parties' agreement as set forth in the Stipulation [See Dkt. 140, pages 12-13]. The First Modified Chapter 11 Plan classifies the Santander Secured Debt separately in Class Two and provides a treatment characterized as "impaired." [See Dkt. 141, page 9].

K. Debtor has no equity in any of Mortgaged Property I and, thus, Santander is substantially undersecured with respect to Secured Debt I. As a result, neither the Debtor nor any creditor of the Debtor's estate has a legitimate basis for sharing in the proceeds of any sale and/or refinance of Mortgaged Property I.

L. Debtor may have equity in Mortgaged Property II (under the FMV appraisal) and,

²

In accordance with its rights under the Loan Documents and in order to protect the priority of its mortgage liens, Santander redeemed said tax sale certificates as of August 15, 2013 -- after the Petition Date and after the respective holder's proof of claim had been filed.

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thus, Santander is arguably oversecured with respect to Secured Debt II. As a result, Santander is entitled only to repayment in full on the Secured Debt II. Santander agrees that excess proceeds, if any, of an insurance recovery, sale and/or refinance of Mortgaged Property II, shall be remitted to Debtor's estate.

NOW, THEREFORE, with proper and adequate notice having been given, and the Court having considered the Motion, the Stipulation, opposition, if any, and arguments of counsel, and effective as of the date (the "**Effective Date**") of the Court's entry of an Order approving the Stipulation (the "**Consent Order**"), and good and sufficient cause appearing for the granting of the relief as set forth herein, **IT IS HEREBY ORDERED** as follows:

1. The Motion is granted and the Stipulation is approved in every respect.
2. Santander's Objection to Debtor's Disclosure Statement and Plan is resolved and withdrawn, without prejudice, based upon entry of the Consent Order with the protections of Santander's security interests as provided herein.

3. The Debtor shall file a proposed (second) modified plan of reorganization, which shall incorporate the terms and conditions of the Consent Order and, provided Debtor complies with and is not in default under the Consent Order or any other Order entered by the Bankruptcy Court in this matter, Santander shall vote in favor of such a proposed (second) modified plan of reorganization that substantially provides the following treatment for Santander with respect to the Santander Collateral:

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- a. 472 Princeton Avenue, Brick, New Jersey (the "472 Princeton Property") is under contract and scheduled to close in March 2014. The net proceeds of approximately \$400,000 will be paid to the Bank at the closing. The proposed HUD-1 will be supplied at least 24 hours prior to closing for the Bank's approval. If a sale does not close within 45 days of the Effective Date, the Bank will be entitled, subject to Paragraph 3.f below, to a release of the Transfer Documents (as defined below) relating to the 472 Princeton Property and record the deed and other recordable documents whereby the Debtor will transfer the property to the Bank for a credit in the amount of \$365,000 minus the aggregate amount of existing liens and costs of environmental remediation.
- b. 704 Howe Street, Point Pleasant, New Jersey (the "704 Howe Street Property") is being refinanced and the proceeds of \$350,000 will be paid to the Bank at the closing. It is expected to close within 60 days of the Effective Date. The proposed HUD-1 will be supplied at least 24 hours prior to closing for the Bank's approval. If a refinance does not close within 90 days of the Effective Date, the Bank will be entitled, subject to Paragraph 3.f below, to a release of the Transfer Documents (as defined below) relating to the 704 Howe Street Property and record the deed and other recordable documents whereby the Debtor will transfer the property to the Bank for a credit in the amount of \$347,500 minus the aggregate amount of existing liens and costs of environmental remediation.
- c. 1108 Ocean Road (a/k/a 1108 Route 88), Point Pleasant, New Jersey (the "1108 Ocean Road Property") mortgage will be bought out by LeChard & Sons for the sum of at least \$160,000 within 60 days of the Effective Date. The proposed HUD-1 will be supplied at least 24 hours prior to closing for the Bank's approval. If a buyout of the mortgage or sale of the property does not close within 60 days of the Effective Date, the Bank will be entitled, subject to Paragraph 3.f below, to a release of the Transfer Documents (as defined below) relating to the 1108 Ocean Road Property and record the deed and other recordable documents whereby the Debtor will transfer the property to the Bank for a credit in the amount of \$132,500 minus the aggregate amount of existing liens and costs of environmental remediation.

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- d. 74 Fairview Avenue, Brick, New Jersey (the "**74 Fairview Property**"), 1215 Johnson Avenue, Point Pleasant, New Jersey (the "**1215 Johnson Avenue Property**") & 1215A Johnson Avenue, Point Pleasant, New Jersey (a/k/a 1126 Memorial Drive)(the "**1215A Johnson Avenue Property**") will be aggressively marketed for sale by the realtor currently involved, as well as attempted to be refinanced. The proposed HUD-1 will be supplied at least 24 hours prior to closing for the Bank's approval. If no sale or refinance is achieved within 90 days of the Effective Date on any of these properties, the Bank will be entitled, subject to Paragraph 3.f below, to a release of the Transfer Documents (as defined below) relating to these properties and to record the deeds and other recordable documents whereby the Debtor will transfer the properties to the Bank for a total credit in the amount of \$830,000 (*i.e.*, \$572,500 for the 74 Fairview Property, \$130,000 for the 1215 Johnson Avenue Property, and \$127,500 for the 1215A Johnson Avenue Property) minus the aggregate amount of existing liens and costs of environmental remediation.
- e. 1 Robbins Parkway, Toms River, New Jersey (the "**1 Robbins Parkway Property**") will likewise be sold or refinanced within 90 days of the Effective Date, and the net proceeds of a sale or refinance, along with the insurance proceeds, will be paid to the Bank. The proposed HUD-1 will be supplied at least 24 hours prior to closing for the Bank's approval. In the event the property cannot be sold or refinanced within 90 days of the Effective Date, the Bank will be entitled, subject to Paragraph 3.f below, to a release of the Transfer Documents (as defined below) relating to the 1 Robbins Parkway Property and to record the deed and other recordable documents whereby the Debtor will transfer the property to the Bank for a credit in the amount of \$467,500 minus the aggregate amount of existing liens and costs of environmental remediation and grant an assignment of the insurance claim (if it has not been resolved and the proceeds already paid to the Bank) within such time frame. In any event, the Bank shall be entitled only to be paid the principal, interest and other costs, including attorneys' fees, provided for in the Loan Documents for the Secured Debt II, with excess proceeds, if any, to be remitted to Debtor.
- f. For each property listed above at Paragraphs 3.a. to 3.e. (each a "**Debtor Property**"), the Bank may elect, in its sole discretion and at the sole cost

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of the non-debtor obligors (the "**Non-Debtor Obligors**") of the Santander Secured Debt, to obtain any and all environmental testing, inspections or reports the Bank reasonably deems necessary to assess the environmental conditions of the Debtor Properties including, but not limited to, Phase I and Phase II inspections, and Debtor hereby grants access for such purposes. The costs of environmental remediation, if any, shall be subject to, and determined by, the final results of any and all environmental testing, inspections or reports, including, but not limited to, Phase I and Phase II inspections, provided to the Bank by its environmental consultant. Upon the Bank's receipt of the final results from its environmental consultant, the Bank has the option, for each Debtor Property, of either: (i) accepting the Transfer Documents as contemplated by Paragraphs 3.a. to 3.e.; or (ii) returning the Transfer Documents to the Debtor, in which event the Bank will retain its mortgage lien and the credit provided in the Consent Order shall be reduced to zero, and deemed null and void.

4. The Debtor shall, and is hereby authorized to, execute such deeds, certificates, affidavits and other transfer and closing documents relating to each of the Debtor Properties described in Paragraphs 3.a to 3.e above as the Bank shall require in order to effectuate the conveyance of title to such properties to the Bank or the Bank's designee(s), including without limitation the documents attached hereto as Exhibit A (collectively, the "**Transfer Documents**"), to be held, recorded and/or released by the Bank in its sole discretion to further effectuate the Parties' intent and to consummate the transactions described in the Consent Order.

5. Within 14 days of the Effective Date, the Debtor shall execute and deliver to the Bank the Transfer Documents. Debtor will from time to time execute such additional documents and take such other actions as the Bank may require in order to implement, carry out or

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otherwise effectuate the purpose and intent of the Consent Order, without further Order of this Court.

6. From and after the Effective Date, Debtor shall keep current all taxes and shall satisfy and redeem any outstanding tax liens or tax sale certificates on the Debtor Properties. The Debtor further agrees that nothing in the Consent Order shall impair Santander's rights to recover against Non-Debtor Obligors all debts, obligations and liabilities owed to Santander and to exercise any other rights or remedies available to Santander under any agreement or other document or under law or in equity. Any and all recording, transfer, documentary and other similar taxes, fees and costs relating to the transfer to the Bank of any of the Debtor Properties shall be the responsibility of Non-Debtor Obligors and, if not paid, shall be added to the debts, liabilities and obligations owed to the Bank by Non-Debtor Obligors.

7. The Consent Order is supplemental to and not in lieu of the respective Loan Documents, the terms of which are incorporated herein by reference (except as modified above). If any plan of reorganization is proposed or confirmed without incorporating the terms and conditions of the Consent Order and the respective Loan Documents (as modified above) and/or the Debtor is in default of the Consent Order or any other Order entered by the Bankruptcy Court in this matter, Santander shall be entitled to object to such plan of reorganization. Except as otherwise expressly modified above, the terms and conditions set forth in the respective Loan

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Documents are hereby reserved and retained and, in the event of any conflict between any such term or condition with any term or condition set forth in a proposed or confirmed plan of reorganization in this matter, the terms and conditions set forth in the Loan Documents shall govern.

8. In the event the Debtor fails to comply with each term and condition in the Consent Order, including, but not limited to, having defaulted upon any obligation herein or any other Order entered by the Bankruptcy Court in this matter, a plan of reorganization is proposed or confirmed without incorporating the terms and conditions of the Consent Order and the Loan Documents (as modified above), and/or this bankruptcy proceeding is converted or dismissed, Santander shall be entitled to demand, enforce, pursue, and recoup all of the terms, conditions and sums set forth in the Loan Documents and remedies, including, without limitation, the provisions relating to the default rate of interest, late fees, prepayment premium, attorneys' fees, expenses and costs. Except as otherwise expressly provided herein, the rights and remedies under the Consent Order shall be cumulative and non-exclusive of any other rights and remedies that Santander may have, including, without limitation, those set forth in the Loan Documents, the Bankruptcy Code, the Uniform Commercial Code, at law, in equity, and by statute; all of which Santander herein expressly reserves and retains.

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9. The Consent Order is binding upon the Debtor, Debtor's creditors, the Office of the United States Trustee and upon any subsequent Chapter 11 or Chapter 7 trustee appointed in this case and the Debtor and Santander are authorized to implement the Consent Order without further Order of this Court.

10. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or relating to the implementation of the Consent Order.

The undersigned hereby consent to the form and entry of the within Consent Order and represent that they are duly authorized by their respective clients to do so.

WOLFF & SAMSON PC
Attorneys for Santander Bank, N.A.

MASELLI WARREN, PC
Attorneys for Debtor, Nassau Tower Realty, LLC

By: /s/ Robert E. Nies _____
Robert E. Nies, Esq.

By: /s/ Paul J. Maselli _____
Paul J. Maselli, Esq.

One Boland Drive
West Orange, New Jersey 07052
Tel: (973) 530-2012
Fax: (973) 530-2212
E-Mail: rnies@wolffsamson.com

600 Alexander Road
Suite 3-4A
Princeton, New Jersey 08540
Tel: (609) 452-8411
Fax: (609) 452-8422
Email: pmaselli@maselliwarren.com

Dated: April 4, 2014

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EXHIBIT A

(Transfer Documents)