



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

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In Re:

NASSAU TOWER REALTY, LLC, A New Jersey
Limited Liability Company,

Debtor.

Case No.: 13-24984

Chapter 11

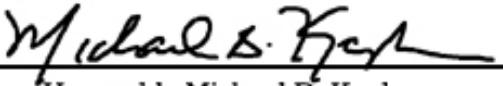
Judge: Michael B. Kaplan

STIPULATION AND ORDER REGARDING USE OF RENTS

The relief set forth on the following pages two (2) through eleven (11), is hereby

ORDERED.

DATED: 8/31/2013



Honorable Michael B. Kaplan
United States Bankruptcy Judge

Debtor: Nassau Tower realty, LLC
Case No.: 13-24984 (MBK)
Caption of Order: Stipulation and Order Regarding Use of Rents

This Stipulation and Order Regarding Use of Rents (the “Stipulation”) is made as of the ____ day of July 2013, by and among Nassau Tower Realty, LLC (the “Debtor”), and TD Bank, N.A. (the “Lender”). The foregoing parties, by and through their authorized counsel of record, hereby stipulate and agree as follows:

A. On or about July 9, 2013 (the “Petition Date”) the Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), commencing the above-captioned Chapter 11 case (the “Bankruptcy Case”), and since that time, has continued to manage its assets and operate its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. As of the Petition Date, Debtor and others were indebted to Lender pursuant to, *inter alia*, a Note and an Amended and Restated Note, each in the original principal amount of \$23,000,000.00 and dated May 10, 2005 and June 21, 2005, respectively, as amended (the “Revolving Note”) and a Construction Loan Note in the original principal amount of \$3,400,000.00 dated May 29, 2007, as amended (the “Construction Loan Note”). The Revolving Note and the Construction Loan Note are collectively referred to as the “Notes”.

C. The Notes are secured by, *inter alia*, mortgages granted in favor of the Lender and assignments of rents as follows:

Nassau Street Property:

a. Mortgage and Security Agreement dated May 10, 2005 and recorded in the Mercer County Clerk’s office in Mortgage Book 9107, page 29, by which the Debtor granted to Lender a first priority mortgage on certain real property and, *inter alia*, the improvements, chattels and intangibles thereon, located at 140-144 Nassau Street,

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Princeton, New Jersey (the “Nassau Street Property”).

b. Assignment of Leases and Rents dated May 10, 2005, and recorded in the Mercer County Clerk’s office in Mortgage Book 9107, Page 056, by which the Debtor transferred and assigned to Lender all of The Debtor’s right, title and interest in and to all leases pertaining to certain real property located at the Nassau Street Property and all rents, income and profits arising from such leases (the “Nassau Street Assignment”).

Lambertville Property

c. Mortgage and Security Agreement dated April 7, 2006, and recorded in the Hunterdon County Clerk’s office in Mortgage Book 3002, Page 447 (as amended, the “Lambertville Mortgage”), by which the Debtor granted to Lender a first priority mortgage on certain real property and, *inter alia*, the improvements, chattels and intangibles thereon, located at 71-75 N. Main Street, Lambertville, New Jersey (the “Lambertville Property”).

d. Assignment of Leases and Rents dated April 7, 2006, and recorded in the Hunterdon County Clerk’s office in Mortgage Book 3002, Page 447, by which the Debtor transferred and assigned to Lender all of its right, title and interest in and to all leases pertaining to the Lambertville Property, and all rents, income and profits arising from such leases (the “Lambertville Assignment”).

Pt. Pleasant (Wallgreens) Property

e. Construction Loan Mortgage and Security Agreement dated March 29, 2007, and recorded by the Ocean County Clerk in Book 13582, Page 1865 (as amended, the “Point Pleasant Mortgage”), by which the Debtor granted to Lender a first priority mortgage on

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certain real property and, *inter alia*, the improvements, chattels and intangibles thereon, located at 1513 Richmond Avenue, Point Pleasant, New Jersey (the “Pt. Pleasant Property”).

f. Assignment of Leases and Rents dated March 29, 2007, and recorded by the Ocean County Clerk in Book 13582, Page 1907, by which the Debtor transferred and assigned to Lender all of The Debtor’s right, title and interest in and to all leases pertaining to certain real property located at 1513 Richmond Avenue, Point Pleasant, New Jersey, and all rents, income and profits arising from such leases (as amended, the “Point Pleasant Assignment”).

Bayville (Berkeley Township) Property

g. Mortgage and Security Agreement dated May 10, 2005 and recorded in the Ocean County Clerk’s office in Mortgage Book 12680, page 836, by which the Debtor granted to Lender a first priority mortgage on certain real property and, *inter alia*, the improvements, chattels and intangibles thereon, located at 1015 Route 9, Berkeley Township, New Jersey (the “Berkeley Township Property”);

h. Assignment of Leases and Rents dated May 10, 2005, and recorded in the Ocean County Clerk’s office in Mortgage Book 12680, Page 0860, by which the Debtor transferred and assigned to Lender all of its right, title and interest in and to all leases pertaining to certain real property located at 1015 Route 9, Berkeley Township, New Jersey, and all rents, income and profits arising from such leases (the “Berkeley Township Assignment”);

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Toms River Property

i. Mortgage and Security Agreement dated March 29, 2007, and recorded in the Ocean County Clerk's office in Mortgage Book 13582, Page 1690, by which the Debtor granted to Lender a first priority mortgage on certain real property and, *inter alia*, the improvements, chattels and intangibles thereon, located at 3245 North Route 35, Toms River, New Jersey (the "Toms River Property").

j. Assignment of Leases and Rents dated March 29, 2007, and recorded in the Ocean County Clerk's office in Mortgage Book 13582, Page 1714, by which the Debtor transferred and assigned to Lender all of its right, title and interest in and to all leases pertaining to the Toms River Property, and all rents, income and profits arising from such leases (the "Toms River Assignment").

Mt. Penn PA Property

k. Open End Mortgage and Security Agreement dated April 7, 2006, and recorded by the Berks County Recorder of Deeds in Book 04850, Page 1611, by which the Debtor granted to lender a first priority mortgage on certain real property and, *inter alia*, the improvements, chattels and intangibles thereon, located at 2457 Pekioman Avenue, and 2456 Grant Street, Mt. Penn, Pennsylvania (the "Mt. Penn Property").

l. Assignment of Leases and Rents dated April 7, 2006, and recorded by the Berks County Record of Deeds in Book 04850, Page 1640, by which the Debtor transferred and assigned to Lender all of it right, title and interest in and to all leases pertaining to certain real property located at the Mt. Penn Property, and all rents, income and profits arising from such leases (the "Mt. Penn Assignment");

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Stroudsburg Property

m. Open End Mortgage and Security Agreement dated May 10, 2005, and recorded by the Monroe County Recorder of Deeds in Book 2235, Page 2676, by which the Debtor granted to lender a first priority mortgage on certain real property and, *inter alia*, the improvements, chattels and intangibles thereon, located at 22 South Sixth Street, Stroudsburg Borough, Pennsylvania (the “Stroudsburg Property”);

n. Assignment of Leases and Rents dated May 10, 2005, and recorded by the Monroe County Record of Deeds in Book 2235, Page 2714, by which the Debtor transferred and assigned to Lender all of it right, title and interest in and to all leases pertaining to certain real property located at the Stroudsburg Property, and all rents, income and profits arising from such leases (the “Stroudsburg Assignment”);

Lower Makefield (Yardley) Property

o. Open End Leasehold Mortgage and Security Agreement dated May 10, 2005, and recorded by the Bucks County Recorder of Deeds in Book 4515, Page 706 by which the Debtor granted to Lender a first priority mortgage on certain leasehold property and, *inter alia*, the improvements, chattels and intangibles thereon located at 1377 Woodside Avenue (incorrectly listed as 1371 Woodside Avenue), Lower Makefield Township, Pennsylvania (the “Lower Makefield Property”);

p. Assignment of Leases and Rents dated May 10, 2005, and recorded by the Bucks County Recorder of Deeds in Book 4515, Page 792 by which the Debtor transferred and assigned to Lender all of its right, title and interest in and to all leases pertaining to certain real property located at the Lower Makefield Township Property, and all rents,

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income and profits arising from such leases (the “Lower Makefield Township Assignment”).

D. The Nassau Street Property, Lambertville Property, Pt. Pleasant Property, Bayville Property, Toms River Property, Mt. Penn Property, Stroudsburg Property and Lower Makefield Property shall be collectively referred to as the “Lender Real Property”.

E. On January 24, 2012, Lender filed a complaint in the Superior Court of New Jersey, Mercer County, Chancery Division, captioned TD Bank, N.A. v. Nassau Tower Realty, L.L.C., et. al., docket no. F-001270-12 (the “NJ Foreclosure Action”), seeking to foreclose the mortgages filed against properties located in New Jersey. On September 19, 2012, an order for Final Judgment (the “NJ Foreclosure Judgment”) was entered by the Court in the NJ Foreclosure Action;

F. As of the Petition Date, the Debtor has represented that the rent roll for the Lender Real Property is:

Property Location	Monthly Rent
Nassau Street Property	Hulits Shoe Store: \$9,000.00 per month ZCR Operation Co.: \$9,282.44 per month
Lambertville Property	MacDonald Kitchen: \$5,000.00 per month Aubuchon (Suite 303): \$1,525.00 per month Poelzmann (Suite 304): \$1,525.00 per month Sullivan (Suite 201): \$2,200.00 per month Cannlstraci (Suite 301): \$1,475.00 per month

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	Allen (Suite 203): \$1,400.00 per month
P. Pleasant Property	Walgreens : \$25,541.67 per month
Bayville Property	Crown Castle: \$307.49 per month
Toms River Property	Beach Authority: \$6,934.00 per month Kupper: \$1,200.00 per month
Mt. Penn Property 2457 Pekioman Ave 2456 Grant Street	Maxwell Resources : \$1,428.00 per month
Stroudsburg Property	Connoisseur Media : \$5,100.00 per month
Lower Makefield (Yardley) Property	Crown Castle: \$307.49 per month

G. As of the Petition Date, the Debtor has represented that a portion of certain rents are pass through obligations (the “Pass Through Charges”) for the payment of real estate taxes and certain other common area expenses (“CAM”). The Pass Through Charges are:

Property Location	Pass Through Charges
Nassau Street Property	Hulits Shoe Store: \$2,001.22 per month ZCR Operation Co.: \$3,711.94 per month
Lambertville Property	MacDonald Kitchen: (\$125) per month (an electric credit)
P. Pleasant Property	Walgreens : \$8,301.04 per month

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Bayville Property	Crown Castle Billed 95% of real estate taxes
Toms River Property	None
Mt. Penn Property 2457 Pekioman Ave 2456 Grant Street	Maxwell Resources : \$60.00 per month
Stroudsburg Property	Connoisseur Media : \$434.14 per month
Lower Makefield (Yardley) Property	Crown Castle: billed 100% of real estate taxes

H. Subject to the terms and conditions of this Stipulation, the Debtor shall be authorized to pay the Pass Through Charges from the rents.

NOW, THEREFORE, subject to Bankruptcy Court approval of this Stipulation, the Debtor and Lender each stipulate and agree as follows:

1. The Lender shall be entitled to receive the Gross Rents from the Lender Real Property each month. Within five (5) days of the entry of this Order, the Debtor shall turnover to Lender all rents received from the tenants on the Lender Real Property since the petition date and shall send a letter to each tenant requesting that all rents be paid to the Bank at the following address: TD Bank, Attn: Kendell Jones, Vice President, 1701 Route 70 East, Cherry Hill, New Jersey 08034.

2. Each month commencing August 2013, the Debtor shall be entitled to make a written request to the Lender for the release of the Pass Through Charges which shall be used by the Debtor to pay the Pass Through Charges.

3. By the fifteenth day of each month commencing August 15, 2103, the Debtor

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shall deliver to Lender a complete accounting of all payments made by the Debtor for the Pass Through Charges for the prior month.

4. Lender shall not be deemed: (i) to be in control of the operations of the Debtor; (ii) to be acting as a “responsible person”, “mortgagee in possession” or “owner operator” with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in, among others, the United States Comprehensive, Environmental Response, Compensation and Liability Act, as amended, or any similar Federal or State environmental statutes or laws); or (iii) to be a “person required to collect, truthfully account for, and pay over” any tax obligations of the Debtor (as such terms, or any similar terms, are used in sections 6671 and 6672 of the Internal Revenue Code, as amended, or any similar Federal, State, or local taxation statutes or laws)..

5 The Automatic Stay is hereby modified to permit Lender and the Debtor to carry out the terms and conditions of this Stipulation, and the Debtor is hereby authorized to execute any additional agreements as may be deemed necessary to further effectuate and confirm the terms and conditions this Stipulation.

6. Nothing in the Stipulation shall be deemed a waiver of the Lender’s rights or remedies, including but not limited to the rights as the assignee of the rents generated from the Lender Real Property. Lender has asserted that the rents from the Lender Real Property are owned by the Lender and nothing in this Stipulation shall be deemed a waiver of the lender’s rights in regards to its ownership position.

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STIPULATED AND AGREED:

STARK & STARK,
A Professional Corporation
Attorneys for TD Bank, N.A.

Masselli Warren, p.c.
Attorneys for Debtor-in-Possession

By: /s/ Timothy P. Duggan
Timothy P. Duggan, Esq.

By: /s/ Paul J. Maselli
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