

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

SHIROKIA DEVELOPMENT LLC

Chapter 11
Case No. 16-45568(NHL)

Debtor.

-----X

**STIPULATION AND ORDER AUTHORIZING
DEBTOR’S USE OF CASH COLLATERAL PURSUANT
TO 11 U.S.C. § 363 AND PROVIDING ADEQUATE
PROTECTION THEREFOR PURSUANT TO §§ 361 AND 362**

This Stipulation and Order is hereby entered into by and between Shirokia Development LLC, the above-captioned debtor and debtor-in-possession (the “Debtor”) and W Financial Fund, LP (“Lender”), by their respective counsel, and hereby represent as follows:

RECITALS

WHEREAS, on December 9, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the “Bankruptcy Code”). Pursuant to §§ 1107 and 1108 of the Bankruptcy Code, the Debtor has retained possession of its assets and is authorized thereby, as a Debtor-in-Possession, to continue the operation and management of its business;

WHEREAS, no trustee, examiner or statutory committee has been appointed heretofore;

WHEREAS, the Debtor is a single asset real estate company with its only asset being certain real property identified as 142-28 38th Avenue, Flushing, NY 11354 (the “Property”). The Property consists of 23 non-regulated residential units, 4 commercial units, and 47 parking spaces. According to representations made by the Debtor, none of the residential units are being leased or occupied, and 2 of the commercial units are leased and occupied and generate rental

income.¹ Approximately 12 of the parking spaces are being leased on a month to month basis, generating additional rental income;

WHEREAS, on or about December 23, 2015, Lender entered into certain loan arrangements with Debtor for loans in the sums of \$18,000,000 and \$4,000,000 respectively, and each loan arrangement is more particularly described below;

WHEREAS, on or about December 23, 2015, Lender loaned the Debtor the sum of \$18,000,000 (the “First Loan”);

WHEREAS, the First Loan is evidenced by an Consolidated Amended and Restated Mortgage Note dated December 23, 2015 given by Debtor to Lender (the “First Note”);

WHEREAS, the First Loan is secured by an Consolidated, Amended and Restated Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing in the amount of \$18,000,000 dated as of December 23, 2015 (the “First Mortgage” and together with the First Note, the “First Loan Documents”) given by Debtor to Lender which First Mortgage encumbers the Property;

WHEREAS, the First Mortgage contains, inter alia, an assignment of leases and rents;

WHEREAS, on or about December 23, 2015 the Debtor executed a Gap Note dated December 23, 2015 in favor of Lender in the amount of \$4,000,000 (the “Gap Note”);

WHEREAS, the Gap Note is secured by a Gap Mortgage in the amount of \$4,000,000 dated as of December 23, 2015 (the “Gap Mortgage” and together with the Gap Note, the “Gap Documents”; the First Loan Documents, together with the Gap Documents, collectively, the “Loan Documents”) given by Debtor to Lender which Gap Loan Mortgage encumbers the Property;

¹ A third commercial unit was leased to the Debtor’s insiders; however, the space has not been built out, is not currently occupied and generates no rent as of this time.

WHEREAS, the Gap Note is further secured by, within the Gap Mortgage, an assignment of leases and rents;

WHEREAS, Lender has heretofore alleged, and the Debtor disputes, that the Debtor has failed to comply with the terms and provisions of the First Note, the First Mortgage, the Gap Note and Gap Mortgage, respectively, and sent a notice of default to the Debtor on February 8, 2016 (the “Existing Default”);

WHEREAS, Lender is the owner and holder of the First Note and First Mortgage, Gap Note and Gap Mortgage, respectively;

WHEREAS, Lender commenced a foreclosure action on or about March 17, 2016 seeking to foreclose on the First Mortgage and Gap Mortgage, respectively (the “Foreclosure Action”);

WHEREAS, on or about April 11, 2016, the State Court appointed Joseph Risi, Jr. as receiver for the Property (the “Receiver”), but the Receiver never took possession of the Property;

WHEREAS, the Foreclosure Action was stayed by virtue of the Debtor’s bankruptcy case;

WHEREAS, Lender claims that the Debtor is indebted to the Lender in the aggregate amount of \$19,119,846.02 (the “Prepetition Indebtedness”) as of December 9, 2016. The Debtor disputes the amount owed to Lender.

WHEREAS, Lender has heretofore filed a motion with the Bankruptcy Court seeking, *inter alia*, the appointment of a trustee in the Debtor’s Chapter 11 case (the “Trustee Motion”).

WHEREAS, the Debtor acknowledges that Lender holds a valid, perfected and enforceable first priority blanket lien on, and a security interest in, all or substantially all, of the

Debtor's assets and proceeds therefrom including but not limited to the Property and all rents and accounts collected or generated therefrom (collectively, the "Pre-Petition Collateral"), which Pre-Petition Collateral secures Lender's claims, to the extent allowed, pursuant to and in accordance with the First Note, First Mortgage, Gap Note and Gap Mortgage, respectively;

WHEREAS, the Debtor acknowledges that Lender has properly perfected its first priority liens and security interests in the Pre-Petition Collateral by virtue of the filing and recording of the First Mortgage and Gap Mortgage, which both include an Assignment of Rents, and that its liens in the Pre-Petition Collateral are duly perfected, valid, existing, and legally enforceable;

WHEREAS, the Debtor and Lender agree that all cash equivalents, whether in the form of cash, rents, accounts generated therefrom, security deposits, deposit accounts, or in any other form, whenever acquired, which represent income, proceeds, products, rents, or profits of the Pre-Petition Collateral that are now in the possession, custody or control of the Debtor (or persons in privity with the Debtor), or in which the Debtor will obtain an interest during the pendency of the Chapter 11 case, are and shall be treated as the "cash collateral" in which Lender has asserted a security interest for the purposes, and within the meaning, of Bankruptcy Code § 363(a) (collectively, the "Cash Collateral");

WHEREAS, pursuant to Section 363(c)(3) of the Bankruptcy Code, the Debtor cannot use the Cash Collateral without the consent of Lender or without order of the Bankruptcy Court.

WHEREAS, the Debtor cannot meet its ordinary operating expenses or maintain and preserve its property as a going business without the use of a portion of the Cash Collateral;

WHEREAS, the Debtor reasonably believes that the value of Debtor's estate will be maximized by the continuation of the Debtor as a going business, and the use of a portion of the Cash Collateral is essential to such operation; and

WHEREAS, the Debtor and the Lender have agreed to enter into this Stipulation and Order (this "Stipulation") providing for the Debtor's use of a portion of the Cash Collateral according to the terms and conditions as set forth herein;

IT IS HEREBY STIPULATED, AGREED AND ORDERED as follows:

1. The foregoing recitals are incorporated herein by reference.
2. The terms of this Stipulation and Order, and the effectiveness thereof, are subject to the approval of the Bankruptcy Court.
3. Debtor affirmatively represents that none of the residential units are currently being leased or occupied and affirmatively represents that none of the residential units will be leased or occupied while this Order remains in effect, unless otherwise permitted by the Court.
4. Debtor affirmatively represents that only 2 of the commercial units are leased and occupied and affirmatively represents that no extensions or modifications to any existing commercial unit lease will be made, nor will any new commercial leases be entered into, while this Order remains in effect, unless otherwise consented to by the Lender or permitted by the Court.
5. Within five (5) business days following the entry of this Order, Debtor shall provide Lender and its representatives with access to the Property and each and every unit therein, to allow Lender to both: (i) inspect the Property; and (ii) confirm the representations made by the Debtor concerning the vacancy of the residential and commercial units at the Property. Thereafter, and so long as this Order remains in effect, subject only to further Order of

the Court, upon seventy-two (72) hours' notice, Debtor shall provide Lender and its representatives with access to the Property, and each and every unit therein, for the purpose of allowing Lender to both: (i) inspect the Property; and (ii) confirm that the representations made by the Debtor concerning the vacancy of the residential and commercial units at the Property remain accurate.

6. Neither Debtor, nor any of its member(s), representatives, parents, subsidiaries, affiliates, and/or agents shall not be permitted to collect any management fee from the Cash Collateral.

7. *Nunc pro tunc* as of the Petition Date through and including April 15, 2017, unless the parties hereto extend the terms of this Stipulation and Order or its terms are otherwise extended by order of this Court, the Debtor is hereby authorized to use Cash Collateral on an interim basis: (a) solely in accordance with and pursuant to the terms and provisions of this Interim Order; and (b) only to the extent required to pay those expenses enumerated in the Budget, a copy of which is attached hereto as Exhibit A, as and when such expenses become due and payable. For purposes hereof, "enumerated in the Budget" shall mean, unless otherwise authorized by this Court or agreed upon by the Lender, compliance with the Budget in all respects, including without limitation, the weekly expenditures set forth in each line item thereof; *provided, however*, that the Debtor shall be permitted to (i) carry over any amounts not expended for a particular line item in any week to succeeding weeks, provided that adequate assurance payments are made as described herein and the Debtor fully accounts for any carry over amounts, (ii) expend up to 10% more than the amounts set forth in a particular line item for a specific week in such week so long as the aggregate expenditures during the period covered by this Stipulation and Order do not exceed the total shown on the Budget for such interim period

by more than 10%, and (iii) pay amounts incurred from and after the Petition Date, in addition to or for categories not listed in the Budget with the prior written consent of the Lender; *provided further, however*, that nothing in this Stipulation and Order shall authorize the sale or other disposition of any asset of the Debtor or its estate outside the ordinary course of business or any disbursement of the proceeds resulting therefrom except as expressly permitted hereunder and in accordance with the Budget. *Nunc pro tunc*, commencing January 1, 2017, the Debtor shall pay, from a third party escrow account maintained by Fox Horan & Camerini LLP, all post-petition real estate taxes on an as due basis.

8. No Cash Collateral may be used to compensate services rendered or expenses incurred in connection with, directly or indirectly, (A) the modification, stay, or amendment of this Stipulation and Order without the consent of the Lender, or (B) a violation, breach or default of this Stipulation and Order, including, without limitation, any claim or action the purpose of which is to seek or the result of which would be to obtain any relief (i) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the Pre-petition Indebtedness, or the Lender's liens or security interests in the Property; (ii) preventing, hindering, or otherwise delaying, whether directly or indirectly, the Lender's assertion, enforcement, or realization upon any Pre-petition Collateral as permitted by this Stipulation and Order or such documents; (iii) to attack the validity, priority or enforceability of the Lender's Claim against the Debtor, (iv) to research, review, analyze or investigate with respect to or in connection with any litigation, claim, objection or cause of action of any kind or nature whatsoever against Lender (whether or not arising from or related to prepetition or post petition liens, security interests, acts, omissions or other conduct), or (vi) to file, prosecute or otherwise pursue any litigation, claim, objection or cause of action of any kind or nature whatsoever against the Lender (whether or not arising from

or related to prepetition or post-petition liens, security interests, acts, omissions or other conduct).

9. As adequate protection, the Debtor shall grant replacement liens to the Lender on all property and assets of the Debtor, and all proceeds, rents, or profits thereof, that were subject to the Lender's liens and security interests and, to the extent permissible under existing contracts, on all of the Debtor's intellectual property (the "Replacement Liens"), to secure an amount of the Prepetition Indebtedness equal to the aggregate diminution in the value of the Prepetition Lender's interests in the Prepetition Collateral occurring from and after the Petition Date, including, without limitation, such diminution resulting from use of Cash Collateral or other Prepetition Collateral (whether as a result of physical deterioration, consumption, use, sale, lease, disposition, imposition of the automatic stay, shrinkage, decline in market value or otherwise), subject to: (a) fees payable under 28 U.S.C. Section 1930 and 31 U.S.C Section 3717; (b) professional fees of duly retained professionals in this Chapter 11 case as may be awarded pursuant to Sections 330 or 331 of the Code or pursuant to any monthly fee order entered in the Debtor's Chapter 11 case (with the exception of any duly retained real estate brokers); (c) the fees and expenses of a hypothetical Chapter 7 trustee to the extent of \$20,000; and (d) the recovery of funds or proceeds from the successful prosecution of avoidance actions pursuant to sections 502(d), 544, 545, 547, 548, 549, 550 or 553 ("Avoidance Actions") of the Bankruptcy Code (collectively, the "Carve-Outs"). The Replacement Liens granted herein are automatically deemed perfected upon entry of this Stipulation and Order without the necessity of the Lender taking possession, filing financing statements, or other documents. Although not required, upon request by the Lender, the Debtor shall execute and deliver to the Lender any and all UCC Financing Statements, UCC Continuation Statements, Certificates of Title or other instruments

or documents considered by the Lender to be necessary in order to perfect the Replacement Liens granted by this Stipulation and Order, and the Lender is authorized to receive, file and record the foregoing at the Lender's own expense, which actions shall not be deemed a violation of the automatic stay under Section 362 of the Bankruptcy Code.

10. Subject only to the Carve-Outs, for the period from the Petition Date through and including April 9, 2017, no costs or expenses of administrative which have been or may be incurred in the Debtor's case, any conversion of the Debtor's case pursuant to 11 U.S.C. § 1112, or in any future proceeding or case related hereto: (i) shall be charged against the Lender, its claims, or the Prepetition Collateral under 11 U.S.C. § 506(c) or otherwise, without the prior written consent of Lender, and no such consent shall be implied from any other action, inaction, or acquiescence by Lender; or (ii) shall be senior to or on a parity with the liens and security interests granted to Lender pursuant to this Stipulation and Order. For the avoidance of doubt, no party, including, but not limited to, the Committee may assert a claim under Bankruptcy Code section 506(c) for any costs and expenses incurred through and including April 9, 2017 in connection with the preservation, protection or enhancement of, or realization by the Lender upon the Prepetition Collateral.

11. As additional adequate protection, to the extent that the aggregate diminution in value of the Lender's interests in the Prepetition Collateral from and after the Petition Date, including, without limitation, resulting from the use of Cash Collateral or other Prepetition Collateral reduces the value of the Replacement Liens below the outstanding balance of the Prepetition Indebtedness, then the Lender will be granted, to the extent of the net decrease, superpriority claims under Section 507(b) of the Bankruptcy Code (the "Superpriority Claim"),

and, subject to the Carve-Outs, the Superpriority Claim shall have priority in payment over any and all other administrative expense claims of any kind under the Bankruptcy Code.

12. As additional adequate protection, the Debtor shall make adequate protection payments (the "Adequate Protection Payments") on the 1st of each month, commencing on February 1, 2017, in the amount of \$32,500.00, which shall first be applied to interest at the Default Rate, as that term is defined in the Loan Documents, and thereafter, to reduce the principal amount of the Prepetition Indebtedness. The Adequate Protection Payments shall be without prejudice to the Lender's right to seek all fees, costs and charges allowable under Section 506(b) of the Bankruptcy Code and without prejudice to the estate's right to seek disgorgement of such payment in the event that a final and non-appealable Order is entered pursuant to a timely filed adversary proceeding or contested matter by a party authorized to do so in accordance with this Stipulation and Order.

13. The Lender's liens are valid, properly perfected, enforceable and unavoidable and constitute first priority liens upon the Pre-Petition Collateral and the Debtor's interests in rents and all other personal property. Notwithstanding the foregoing, the Lender reserves its right to recover any and all principal, interest, accruals, advances, fees and costs or other amounts in excess of those sums referenced herein above, which shall be added to the Claim, pursuant to and in accordance with the First Note, First Mortgage, Gap Note and Gap Mortgage, respectively.

14. Nothing contained herein shall constitute an admission or waiver by the Debtor as to its dispute of the amount of the Pre-petition Indebtedness owed Lender, which dispute, to the extent unresolved by the parties, shall be subject to the jurisdiction of and determination by the Bankruptcy Court.

15. Lender shall not be required to file financing statements or other documents in any jurisdiction or take any other action to validate or perfect the liens and security interests granted by this Order.

16. Once every 4 weeks, commencing on February 6, 2017, the Debtor shall provide the Lender with an updated rolling 13-week cash flow statement which shall include a variance report comparing actual cash flow results for all applicable prior periods to the forecasted cash flow results for such periods, a statement of any weekly or cumulative variances in any line item for receipts or disbursements and any necessary amendments to the Budget. The Debtor shall also continue to provide the Lender with the financial reports required to be provided under the Loan Documents on the dates when due thereunder. The Debtor shall provide copies of any amended Budget to the United States Trustee and counsel to the Committee, if any such Committee is appointed. Lender reserves the right to request the Court compel Debtor to provide more frequent updates to the 13-week cash flow statement should the need arise.

17. The Debtor shall file monthly operating reports with the Bankruptcy Court, and serve on the United States Trustee's Office and with counsel for Lender no later than the twentieth (20th) of each successive month and shall separately provide to the Lender copies of receipts for expenditures for the prior month.

18. The Debtor and Lender agree that, except as otherwise provided herein, all of the terms and provisions of the underlying loan documents between the Debtor and the Lender are deemed to be valid, binding and enforceable against the Debtor as if same had been re-executed by the Debtor and Lender, subject to further Order of the Court and subject to all claims and defenses that the Debtor had as of the Filing Date.

19.

- a. On or before February 15, 2017 (subject to the Debtor's right to seek an extension from the Bankruptcy Court for cause, and subject to Lender's right to object to same), the Debtor shall file and serve a plan of reorganization (the "Plan") and disclosure statement (the "Disclosure Statement"), pursuant to which the Debtor shall have until no later than April 15, 2017 to satisfy the allowed secured claims of both Lender and 38th Avenue Mezz, LLC (the "Mezz Lender") in full through a refinance of the Property, and that in the event the Debtor fails to accomplish same on or before April 15, 2017, the Debtor shall have an additional 60 days until June 15, 2017 to enter into a contract of sale for the Property in an amount sufficient to satisfy the allowed secured claims of Lender and the Mezz Lender in full, and that in the event that the Debtor fails to enter into such contract of sale, then, in such even, the Debtor shall execute a contract of sale with Lender and Mezz Lender as the joint stalking horse purchaser at a purchase price equal to the aggregate amount of their claims, subject to higher and better offers to be procured at an auction sale to be held no later than July 15, 2017. The Property will be sold at a price sufficient to pay Lender's and Mezz Lender's allowed claims in full at the auction pursuant to the Plan, in which the Lender and Mezz Lender will have the right to credit bid the full amount of its Claim; and
- b. On or before April 15, 2017, the Court shall enter an Order approving the Disclosure Statement.

20. The Debtor's right to use the Cash Collateral in accordance with the terms of this Stipulation and Order shall terminate upon the earlier of (a) April 15, 2017 (subject to the Debtor's right to seek an extension from the Bankruptcy Court for cause, subject to Lender's right to object to same), (b) an uncured default by the Debtor under any of the provisions of this Stipulation and Order, upon three (3) business days' written notice to cure said default to (i) the Debtor, (ii) DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, attorneys for the Debtor, (iii) the United States Trustee, and (iv) counsel to the Committee (or the 20 largest unsecured creditors of the Debtor as listed on the Debtor's schedules if no committee is appointed under section 1102 of the Bankruptcy Code), (c) entry of an order granting relief from the automatic stay to Lender or to any other creditor or the Debtor in connection with the Property, (d) conversion or dismissal of the chapter 11 case, (e) the filing of any motion or pleading (including a plan of reorganization) by the Debtor (i) seeking an order authorizing non-consensual use of Cash Collateral or debtor in possession financing not otherwise permitted under this Stipulation or (ii) seeking an order, or the entry of an order, challenging or affecting the validity, priority, perfection and/or amount of Lender's liens or claims against Debtor or its assets, or seeking a recovery on any avoidance action, (f) the filing by Debtor of a Notice of Conversion or the entry of any order converting the Debtor's Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code, (g) the appointment of an examiner or trustee in this Chapter 11 case, or (h) the Debtor's failure to comply with the provisions of Paragraph 10 of this Stipulation. Time to cure pursuant to this section shall be deemed to run from the date the any notice of default is sent.

21. The Trustee Motion is hereby adjourned *sine die*.

22. Any notices to be given hereunder shall be given by facsimile transmission or email and by first class mail to the parties listed below, and shall be deemed given when mailed:

If to the Debtor to:

Shirokia Development LLC
142-23 37th Avenue, Unit C
Flushing, New York 11354
Attention: Ms. Hong Qin Jiang

With a copy to:

Dawn Kirby, Esq.
DelBello Donnellan Weingarten Wise & Wiederkehr, LLP
One North Lexington Avenue, 11th Floor
White Plains, New York 10601
Facsimile (914) 684-0288
Email: dkirby@ddw-law.com

If to Lender to:

W Financial Fund, LP
149 Madison Avenue
New York, New York 10016
Attn: David Heiden

With a copy to:

Michael R. Yellin, Esq.
Cole Schotz P.C.
25 Main Street
Hackensack, New Jersey 07601
Fax: (201) 678-6258
Email: myellin@coleschotz.com

23. Upon the Debtor's failure to cure any default hereunder, after proper notice and the expiration of the cure period in accordance with the provisions contained herein, the Debtor shall immediately and without further order of the Court cease using the Cash Collateral and Lender shall have the right to apply to the Bankruptcy Court, upon proper application in accordance with Bankruptcy Rule 4001(a)(1) for an order granting Lender relief from the

automatic stay pursuant to the Bankruptcy Code Section 362(d) in order to proceed with all legal actions to recover the Pre-petition Collateral.

24. To the extent that the terms of this Stipulation and Order conflict with the terms of any of the underlying loan documents, the terms of this Stipulation and Order shall govern.

25. This Stipulation and Order does not and shall not constitute a waiver by Lender or by the Debtor of any rights that they may have with respect to the Cash Collateral including, without limitation, Lender's rights to seek relief from the stay imposed by Section 362(a) of the Bankruptcy Code or the Debtor's right to object to same.

26. Except as otherwise provided herein, this Stipulation does not limit or affect the rights, remedies, or claims of the Lender under the provisions of the Bankruptcy Code, other applicable law or the Loan Documents, all of which are hereby expressly reserved. In particular, and without limiting the foregoing, (i) Lender expressly reserves the right to seek additional adequate protection for the use of its Pre-Petition Collateral, and (ii) Lender expressly reserves the right to seek any appropriate orders of the Court upon notice and hearing, including but not limited to terminating, annulling, modifying or conditioning the automatic stay under Section 362 of the Bankruptcy Code.

27. The Debtor shall not seek to modify, vacate, or amend this Stipulation and Order without the written consent of the Lender. If any or all of the provisions of this Stipulation and Order are hereafter modified, vacated, or stayed by subsequent order of this or any other Court, such stay, modification, or vacation shall not affect the validity of any debt to the Lender (including the adequate protection obligations) incurred pursuant to this Stipulation and Order, or otherwise affect the validity and enforceability of any lien, security interest, or priority authorized hereby.

28. Notwithstanding the foregoing, the Committee or any party-in-interest with standing shall have until 4:00 p.m. (Eastern Standard Time) on the 60th day after the Petition Date or such other date that is ordered by this Court (the “Lien Challenge Deadline”) to dispute or challenge the validity, perfection, extent, amount and priority of Lender’s claims and liens (collectively, a “Lien Challenge”) and/or the right to dispute Lender’s right to any adequate protection payments authorized under this Order. If a Lien Challenge is not timely asserted prior to the Lien Challenge Deadline, the Debtor’s stipulations and waivers in this Stipulation and Order shall be forever and irrevocably binding upon the Committee and all other parties, including a trustee appointed in this or any superseding chapter 7 case, and all claims, defenses and challenge rights with respect to the Lender and the Lender’s liens, claims and interests, and any assertion of claims or defenses as to the Lender shall become automatically, forever and irrevocably terminated and waived as of the end of the lien challenge period.

29. The Lender shall, subject to allowance by the Bankruptcy Court under Section 506(b) of the Bankruptcy Code, be entitled to reimbursement by the Debtor for all reasonable costs and expenses (including, without limitation, all filing and recording fees, attorneys’ and paralegals’ fees and expenses, and out-of-pocket expenses) as provided for in the Loan Documents or otherwise incurred by the Lender in connection with, directly or indirectly, any matters relating to the Debtor’s bankruptcy proceeding, the Prepetition Indebtedness, the Prepetition Collateral or any of the Loan Documents. Any such fees, costs and expenses shall accrue each month and Lender shall be entitled to reimbursement of same in accordance with Section 506(b).

30. The entry of this Stipulation and Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, any of the rights, claims or

privileges of the Lender in the Debtor's bankruptcy proceedings, any subsequent proceedings under the Bankruptcy Code, or otherwise, including, without limitation, the right of the Lender to request additional adequate protection of its interests in the Prepetition Collateral or relief from or modification of the automatic stay under Section 362 of the Bankruptcy Code.

31. The Lender shall not be required to file a proof of claim in this or any successor case with respect to the Prepetition Indebtedness notwithstanding the establishment of any bar date with respect to claims against the Debtor.

32. The subject of this Stipulation and Order is a "core" proceeding as defined in 28 U.S.C. § 157(b)(2)(D). This Stipulation and Order shall be valid and fully effective immediately upon its entry and, upon such entry, shall be binding upon and inure to the benefit of the Lender, the Debtor, its estate, and their respective successors and assigns (including, without limitation, any trustee, examiner, or responsible person hereinafter appointed as a representative of the estate in these or any subsequent proceedings under the Bankruptcy Code), and the terms and provisions of this Stipulation and Order shall continue in these proceedings and any superseding proceedings under the Bankruptcy Code, and such liens and security interests shall maintain their priority as provided by this Stipulation and Order, until satisfied and discharged.

33. The parties hereto are authorized, empowered and directed to execute and deliver all other agreements, instruments and documents and take any and all other actions in order to effectuate the transactions effected hereby. Except as expressly modified herein, all of the terms of the Mortgages shall remain in full force and effect.

34. This Stipulation and Order shall be binding upon any subsequently appointed or elected trustee or examiner in this Chapter 11 case or in a successor case under Chapter 7 of the Bankruptcy Code, as well as upon all creditors and parties in interest in the above captioned case.

35. The Bankruptcy Court shall retain jurisdiction with respect to all matters relating to or pertaining to this Stipulation and Order and the enforcement thereof.

Dated: February __, 2017

DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP
Counsel for the Debtor

By: /s/ Jonathan S. Pasternak
Jonathan S. Pasternak
One North Lexington Avenue
White Plains, New York 10601
(914) 681-0200

COLE SCHOTZ P.C.
Counsel for the Lender

By: /s/ Michael R. Yellin
Michael R. Yellin, Esq.
25 Main Street
Hackensack, New Jersey 07601
(201) 525-6210

**SO ORDERED THIS __ DAY
OF FEBRUARY, 2017**

HONORABLE NANCY H. LORD
UNITED STATES BANKRUPTCY JUDGE