

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

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

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In re:

BERGENFIELD SENIOR HOUSING, LLC,

Debtor.

FILED
JAMES J. WALDRON, CLERK
JUL 24 2013
U.S. BANKRUPTCY COURT
NEWARK, N.J.
BY *[Signature]* DEPUTY

Case No.: 13-19703

Chapter 11

Judge: Hon. Morris Stern, U.S.B.J.

**THIRD INTERIM ORDER (A) AUTHORIZING THE
DEBTOR, WITH THE CONSENT AND LICENSE OF BOILING
SPRINGS SAVINGS BANK, TO USE RENTS OF EXISTING SECURED
CREDITORS AND GRANTING ADEQUATE PROTECTION FOR USE AND (B)
SCHEDULING HEARING, IF NEEDED, REGARDING FURTHER USE OF RENTS**

The relief set forth on the following pages, numbered two (2) through twenty-five (25), is hereby **ORDERED**.

[Handwritten signature]
7/24/13

[Handwritten signature]

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THIS MATTER having been opened to the Court by above-captioned debtor and debtor-in-possession, Bergenfield Senior Housing, LLC (the “Debtor”), through its counsel, McElroy, Deutsch, Mulvaney & Carpenter, LLP, upon Motion for Entry of an Order (A) Authorizing the Debtor to Use Cash Collateral of Existing Secured Creditors and Granting Adequate Protection for Use and (B) Prescribing the Form and Manner of Notice and Setting the Time for the Final Hearing (the “Motion”)¹; and the Court finding that (a) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A); and (c) notice of the Motion was good and sufficient under the circumstances; and the court having considered the moving papers, the objections thereto, if any, and the arguments of counsel, if any; and good and sufficient notice of the Motion having been provided to all parties in interest as set forth in the Certificate of Service filed with the Court, and good cause appearing for the entry of this Order (the “Third Interim Use of Rents Order”), the Court hereby makes the following findings of facts and conclusions of law:

A. Adequate and sufficient notice of the Motion and the Interim Hearing has been provided to all persons entitled thereto pursuant to Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure. No further notice of this Motion is necessary.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334.

C. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

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- D. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
- E. On the Petition Date, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court.
- F. The Debtor is operating its business as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

The Pre-Petition Secured Debt

G. The Debtor acknowledges that its primary secured creditor is Boiling Springs Savings Bank (“Boiling Springs”). The Debtor acknowledges it is indebted to Boiling Springs on account of two promissory notes, as follows:

1. An Adjustable Rate Note, dated April 9, 2010, in the principal amount of \$12,500,000.00, with a remaining principal balance of 12,021,560.54² (the “Mortgage Note”); and
2. An Adjustable Rate Note, dated April 9, 2010, in the principal amount of \$600,000, given by Nicholas Rotonda and Rosemarie Rotonda with a remaining principal balance of \$574,891.49 (the “Rotonda

² All dollar amounts, including those in this paragraph G(1), G(2), H(1) and H(2), are subject to verification and audit by Boiling Springs, and may be adjusted, as necessary to reflect the amounts due on Boiling Springs’ books and records.

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Note”)³ (both notes are collectively hereinafter referred to as the “Notes”).

The Debtor is a guarantor with respect to the Rotonda Note.

H. The Debtor acknowledges the Notes are secured by mortgages (the “Mortgages”) on the real property and improvements owned by the Debtor, located at 47 Legion Drive, Bergenfield, New Jersey 07621, Block 161, lots 1, 4 and 13 (hereinafter the “Mortgaged Premises”). The Debtor acknowledges that the Mortgages are properly perfected first- and second-position mortgages on the Mortgaged Premises, as follows:

1. A first-position mortgage, dated April 9, 2010, duly recorded on April 19, 2010, at book 410, page 176, secures indebtedness in the total amount of \$12,021,560.54 (the “First-Position Mortgage Debt”).⁴

2. A second-position mortgage dated April 9, 2010, duly recorded on April 19, 2010, at book 410, page 205, secures indebtedness in the total amount of \$574,891.49, collateralizing the Rotonda Note (the “Second-Position Mortgage Debt”).⁵ The First-Position Mortgage Debt and Second-Position Mortgage Debt are hereinafter collectively referred to as the “Boiling Springs Secured Debt”).

³ The Rotonda Note, although given by the Debtor’s principals, is included as it is cross-collateralized by a mortgage on the Mortgaged Premises, as further described below.

⁴ This mortgage is also cross collateralized by a second position mortgage on commercial property owned by the Rotondas, located at 756 Greely Avenue, Fairview, New Jersey 07022.

⁵ This indebtedness is also cross-collateralized by a first position mortgage on the commercial property owned by the Rotondas, located at 756 Greely Avenue, Fairview, New Jersey 07022.

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I. In addition to the foregoing, Nicholas and Rosemarie Rotonda have executed and delivered a personal guarantee of the First-Position Mortgage Debt, dated April 9, 2010.

J. In addition to the Mortgages, and in further consideration for the First-Position Secured Debt, the Debtor has absolutely assigned to Boiling Springs all income derived from the Mortgaged Premises, including, without limitation, all rents from tenants (collectively referred to as the "Rents") by reason of an ASSIGNMENT OF LEASES AND RENTS, dated April 9, 2010 and recorded on April 19, 2010 (the "Assignment").

K. Pursuant to Sections 2.1 and 3.1 of the Assignment, Boiling Springs has licensed to the Debtor the use of the Rents and other income assigned and transferred to Boiling Springs pursuant to the Assignment.

L. Substantially all of the Debtor's cash is derived from the collection of Rents from the Mortgaged Premises, and the Debtor acknowledges the cash is therefore owned by Boiling Springs pursuant to the Assignment.

M. The Debtor and Boiling Springs have agreed to enter into this stipulation and order, which provides, among other things, for the Debtor's limited use of Rents solely on the terms and conditions set forth herein.

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The Debtor's Need to Use Rents⁶

N. The Debtor has an immediate need to use the Rents and income on an interim basis through the date of expiration of this Interim Order to, among other things, pay its personnel, taxes, insurance and pay other operating and maintenance expenses, in accordance with the Budget attached hereto as Exhibit A.

O. Good cause has been shown for entry of this Interim Order, as an immediate and critical need exists for the Debtor to be permitted access to funds to continue to operate its business.

P. The record adequately demonstrates that without the use of Rents, the Debtor's estate would be immediately and irreparably harmed.

Q. The Debtor seeks to use the Rents from the date of entry of this Third Interim Use of Rents Order until October 31, 2013 (the "Third Interim Period") for the purposes and in the amounts set forth in the Budget.

R. Subject to compliance with the terms of this Interim Order, the Debtor is authorized to use the Rents during the Third Interim Period and in the amounts set forth herein.

S. All conclusions of law that are or may be deemed to be findings of fact are hereby incorporated as findings of fact.

⁶ This Order relates to a motion filed under the provisions of the Bankruptcy Code for the use of Cash Collateral under Code Section 363, and Fed. R. Bankr. Pro. 4001. However, the Debtor acknowledges that the reference in the motion as one being for use of cash collateral is used strictly as a term of convenience and is not meant to imply that the Debtor disputes that ownership of Boiling Springs of the Rents, as that term is defined herein.

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T. On May 8, 2013, the Court entered the Interim Order (A) Authorizing the Debtor, With the Consent and License of Boiling Springs Savings Bank, to Use Rents of Existing Secured Creditors and Granting Adequate Protection for Use and (B) Prescribing Form and Manner of Notice and Setting Final Hearing (the “First Interim Use of Rents Order”). Pursuant to the First Interim Use of Rents Order, any party objecting to the relief sought in the Motion was required to object with respect thereto by May 17, 2013 at 4:00 p.m. (ET). No such objections were received.

U. The First Interim Use of Rents Order was served on the parties identified on page 24 thereof by the Debtor, and such service was adequate and sufficient.

V. On May 21, 2013, the Court entered the Second Interim Order (A) Authorizing the Debtor, With the Consent and License of Boiling Springs Savings Bank, to Use Rents of Existing Secured Creditors and Granting Adequate Protection for Use and (B) Scheduling Hearing, If Needed, Regarding Further Use of Rents (the “Second Interim Use of Rents Order”)

W. The Second Interim Use of Rents Order was served on the parties identified on page 25 thereof by the Debtor, and such service was adequate and sufficient.

X. This Third Interim Use of Rents Order is entered pursuant to, and shall be construed and be consistent with sections 361, 363 and, as applicable to the use of the license specified under the Assignment, section 365, of the Bankruptcy Code and Fed. Rule Bankr. P. 4001(b).

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ACCORDINGLY, THE COURT HEREBY CONCLUDES AS FOLLOWS:

1. Good cause has been shown for the entry of this Interim Order and the authorizations herein. Among other things, the entry of this Interim Order will enable the Debtor to continue operating, avoid immediate and irreparable harm to the Debtor's estate and otherwise is in the best interests of the Debtor, its creditors and its estate.

2. This Stipulation and Order shall continue up to the earliest to occur (such date being referred to herein as the "Termination Date") of (a) October 31, 2013, or (b) the occurrence of a Termination Event (as defined below). The Debtor and Boiling Springs may (but shall not be required to), by written agreement and without further order of the Court, agree to extend the Termination Date, it being the intent of the Debtor and Boiling Springs to enter into successive agreements providing for the use of the Rents during the course of the Debtor's bankruptcy case, but Boiling Springs will not be required to agree to any such extension, and any such agreement shall be at Boiling Springs' sole discretion.

3. The Debtor shall not use, lease, sell or expend, directly or indirectly, the Rents, except as expressly provided for in this Stipulation and Order.

4. At any time as may be required by Boiling Springs, the Debtor shall (a) arrange with Boiling Springs to open by such date a debtor-in-possession lockbox account (the "Lockbox Account"), pursuant to a deposit account agreement in form and substance satisfactory to Boiling Springs and the Debtor, at an approved banking institution (as approved by the Office of the United States Trustee and Boiling Springs

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and, if approved by the Office of the United States Trustee, at Boiling Springs) in which all Rent proceeds shall be deposited and (b) notify all of the tenants of the Mortgaged Premises who pay by mail, and all commercial tenants of the Debtor, if any, at the Mortgaged Premises to pay Rents directly to the Lockbox Account. If the Debtor receives any Rent payments from any tenant, the Debtor shall promptly, and in any event within three (3) days of its receipt thereof remit such payments over to the Lockbox Account and will verify the same by furnishing to Boiling Springs copies of such check or checks so remitted. The Lockbox Account shall not constitute property of the estate of the Debtor and shall be under the exclusive control of Boiling Springs and funds on deposit in the Lockbox Account shall be disbursed solely as provided herein. Boiling Springs shall be authorized to automatically deduct the monthly payments provided for in paragraph 6 hereof from the Lockbox Account, Boiling Springs shall withdraw from the Lockbox Account and disburse to the Debtor remaining Rent proceeds in the Lockbox Account solely in accordance with the Budget and the terms of this Stipulation and Order, and the balance shall be held in the Lockbox Account subject to further order of the Court. Boiling Springs agrees to withdraw funds on deposit in the Lockbox Account (after Boiling Springs's deduction of the monthly payments provided for in paragraph 6 hereof) and disburse such funds to the Debtor for payment of expenses set forth in the Budget, provided, however, that Boiling Springs retains the right to independently review and audit the Budget so as to ascertain the extent and validity of the expenses stated therein as being consistent with operations of the Debtor and Boiling Springs reserves the

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rights to modify its agreement with respect to individual Budget line items upon appropriate review as aforesaid. The amounts specified in the Budget shall be transferred by wire or electronic transfer to the Debtor's operating account and/or payroll accounts, respectively, in accordance with the Debtor's direction, with all related transaction fees to be charged to the Debtor.

5. Subject to the provisions and limitations set forth in this Stipulation and Order, the Debtor may use the Rents derived from the Mortgaged Premises solely for the purposes and in the amounts set forth in the annexed budget (the "Budget"). The Budget shall be adhered to by the Debtor on a line-by-line basis, without change or reallocation of amounts, other than that the Debtor may exceed a particular line item in an applicable period by not more than 10%, provided that the total expenditures allowed through the budget for such period, in the aggregate, may not be exceeded by more than 5%. In an emergency situation such as one concerning the safety of a tenant or the Mortgaged Premises itself, oral approval of an expenditure by Boiling Springs or Boiling Springs's counsel shall be obtained in advance if reasonably practicable and will be deemed consent for the expenditure only to the extent necessary to resolve the emergency nature of the problem; provided, however, that if such oral consent cannot be obtained, the reasonable and necessary funds to resolve the emergency may be expended and accounted for in writing. Such consent shall not be unreasonably withheld.

6. The Debtor shall continue making monthly payments to Boiling Springs of all accrued interest and principal under the Notes at the respective non-default contract

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rate provided for in the Loan Documents, together with monthly real estate tax escrow payments in the amount required to be paid under the Loan Documents. Each monthly payment shall be made on the due dates required under the Boiling Springs Secured Debt, but in no event later than the 10th day of the month for which they are due; provided that, if the funds on deposit in the Lockbox Account are insufficient to pay each such monthly payment, the Debtor may use funds on deposit in its operating account to pay the difference (it being understood that the Debtor may contact the bank at which the Lockbox Account is maintained to determine the amount on deposit therein from time to time). The Debtor acknowledges and agrees that Boiling Springs reserves the right to seek to recover interest from the Debtor under the Loan Documents at the Default Rate from and after the date on which an Event of Default (as defined in the Loan Documents) first occurred, and nothing contained in this Stipulation and Order shall be deemed to be a waiver of Boiling Springs's right to seek to recover interest at the Default Rate. Boiling Springs acknowledges that the Debtor reserves all of its rights, remedies and privileges to challenge Boiling Springs's assertion of any right to collect the default rate of interest, or any other penalties, or charges under the Loan Documents. The Lockbox Account, if required by Boiling Springs, shall be maintained at Boiling Springs, pursuant to an agreement acceptable to Boiling Springs, in its sole discretion.

7. The Debtor and Boiling Springs acknowledge payments made on account of the Boiling Springs Secured Debt of non-default interest pursuant to the terms hereof

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are without prejudice to Boiling Springs's right to seek to recover interest at the Default Rate.

8. All security deposits delivered by tenants at the Mortgaged Premises to the Debtor prior to, on and after the Petition Date shall be held and/or disbursed by the Debtor solely in accordance with the applicable lease agreements pertaining thereto.

9. By the second business day of each week, the Debtor shall deliver to Boiling Springs and its attorneys, an itemized report listing all expenses paid by the Debtor during the preceding week.

10. By the 10th day of each month, the Debtor shall deliver an accounting to Boiling Springs of the Rents collected by the Debtor for the preceding month, which may be received in its offices.

11. By the 20th day of each month, the Debtor shall deliver to Boiling Springs and its counsel copies of operating reports for the preceding month, which reports shall include:

(a) an income and expense statement on a cash flow basis together with (i) a variance report with explanations of the difference between the income and expense statement and the Budget for that particular month and (ii) a fully detailed accounts payable report;

(b) the projected overruns, if any, for the next month's budget and a comparison of such projections to the applicable budget for such month;

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(c) copies of all financial and operational reports filed with the Bankruptcy Court;

(d) monthly rent rolls;

(e) any other financial or operating reports compiled by the Debtor on a monthly basis in the ordinary course of its operations; and

(f) such other documentation as may be reasonably requested by Boiling Springs.

12. The Debtor shall provide to Boiling Springs within a reasonable period of time all reasonable information and documents requested by Boiling Springs or its attorneys or agents, subject to any order of the Bankruptcy Court limiting the documents or information to be produced by the Debtor.

13. The Debtor shall at all times during the pendency of this bankruptcy case maintain in full force and effect all insurance on the Mortgaged Premises required to be maintained by it under the Loan Documents, which policies shall name the existing mortgagees as loss payee and mortgagee. The Debtor shall, within three (3) days of the date of this Stipulation and Order, provide to Boiling Springs proof that such insurance is in place and shall further provide, not less than thirty (30) days prior to the expiration of such insurance, satisfactory proof that such policy or policies have been extended for an additional term of not less than twelve (12) months. In the event that any change occurs in the insurance coverage, the Debtor shall deliver to Boiling Springs, within five (5)

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days of the Debtor's receipt of notice of such change, a replacement certificate of insurance reflecting the revised coverage.

14. The Debtor shall not permit the condition of the Mortgaged Premises to deteriorate, normal wear and tear excepted. Any and all applicable building code or other municipal violations of any nature shall be promptly remedied and Debtor shall furnish to Boiling Spring proof of such remediation.

15. Boiling Springs shall have the right to obtain an appraisal of the value of the Mortgaged Premises, at its own cost and expense, and the Debtor shall permit an appraiser retained by Boiling Springs or its counsel to enter the Mortgaged Premises during ordinary business hours for the purposes of conducting such appraisal.

16. As adequate protection for the Debtor's use of the Rents, and subject only to the Carve-Out provided in paragraph 35 herein, the Debtor agrees that, in addition to the monthly payments to Boiling Springs as provided in paragraph 6 above:

(a) Boiling Springs is hereby granted, to the extent, if any, not encompassed by the liens and security interests granted to Boiling Springs pursuant to the Loan Documents, replacement liens on and security interests in any and all assets in addition to Rents (it being expressly acknowledged by the Debtor that Rents are not property of the Estate) arising after the Petition Date and any and all proprietary and commercial leases and occupancy agreements, and any and all amendments, modifications, extensions, renewals and restatements of prepetition leases and occupancy agreements affecting the Mortgaged Premises, which the Debtor enters into after the

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Petition Date. Boiling Springs's replacement liens pursuant to the foregoing sentence shall have the same priority as Boiling Springs's existing liens.

(b) Boiling Springs's replacement liens are, and for all purposes shall, subject to the extent of the validity, enforceability and perfection of the liens evidenced by the Loan Documents, be deemed to be, valid, enforceable and duly perfected, and no filing or recordation or other act in accordance with any applicable local, state, federal or common law, rule or regulation shall be necessary to create or perfect such mortgages, liens and security interests.

(c) To the extent that the Debtor uses any of the Rents for purposes not permitted by this Stipulation and Order or in the event the "adequate protection" granted under this Stipulation and Order is inadequate, Boiling Springs, in addition to any other right, remedy or claim that it may have as a result of such use, shall have an administrative claim therefor solely for use of any Rents for purposes not permitted hereunder, subject to Court approval as to amount, which claim shall have priority over all other administrative expenses allowable under Code §507(a)(1), subject to the Carve-Out as described in paragraph 35 for the fees of the Debtor's attorneys and fees owed to the U.S. Trustee under 28 U.S.C. §1930, all as provided by Code §507(b). Nothing herein shall preclude an appropriate application for a carveout for professional fees in this, either by motion or on the consent of the parties, and all parties reserve their respective rights in connection with any such application.

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(d) The foregoing replacement liens shall not extend to any causes of action under Chapter 5 of the Bankruptcy Code nor any proceeds thereof.

17. To the extent any other interested party may assert an interest in the Rents or other cash of the Debtor, in addition to Boiling Springs, such interested party, if any, shall be provided, solely to the extent and validity of such assertion, replacement liens as provided in paragraph 16 hereof, to the extent of any diminution in the value thereof on account of the Debtor's use of the Rents or other cash of the Debtor, and in the order of their priority as existed as of the Petition Date.

18. The terms and provisions of this Stipulation and Order shall not prohibit Boiling Springs or the Debtor from seeking any relief available to them under the Loan Documents (except as otherwise set forth in this Stipulation and Order), under the Code, or under any other applicable law.

19. Except as otherwise expressly provided in this Stipulation and Order, the terms and conditions of all the Loan Documents shall remain in full force and effect, and the Debtor and Boiling Springs shall retain all of their respective rights and remedies thereunder, subject to the provisions of the Code. This Stipulation and Order is not and shall not be deemed to be, or to constitute, a waiver of any default under the Loan Documents, or a waiver by Boiling Springs of the right to pursue any remedy it deems appropriate in this bankruptcy case, or a waiver by the Debtor of any of its rights, remedies or privileges, all of which are expressly reserved.

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20. The Debtor reserves the right to seek allowance and payment of fees and expenses incurred by its counsel and accountants, including seeking payment to be made from Rents.

21. Notwithstanding anything to the contrary contained herein, the Debtor's authority to use in any way and to any extent the Rents shall immediately terminate, upon the occurrence of any of the following events (each a "Termination Event"):

(a) The entry of an order by the Bankruptcy Court submitted by Boiling Springs in accordance with paragraph 24 hereof that identifies the Debtor's failure to comply with any of the terms and conditions contained in this Stipulation and Order;

(b) The entry of an order by the Bankruptcy Court dismissing this case or converting this case to one under Chapter 7 of the Code;

(c) The effective date of a plan of reorganization of the Debtor confirmed by this Court;

(d) Entry of an Order by the Court approving or authorizing the appointment of a Chapter 11 Trustee or Chapter 7 Trustee in this case; or

(e) Other than as expressly provided herein, when the Court shall enter an Order granting relief from the automatic stay under Section 362 of the Code to the holder of any security interest in or lien on any of the Debtor's assets including, without limitation, the Mortgaged Premises.

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22. Upon the occurrence of a Termination Event, Boiling Springs may settle an order on not less than three (3) business days' notice to the Debtor and the Debtor's counsel that identifies the applicable Termination Event and provides, among other things, that: (a) the automatic stay under Section 362(a) of the Code shall be deemed lifted, vacated, modified and terminated with respect to Boiling Springs; and (b) Boiling Springs shall be authorized to exercise any and all rights and remedies available to it with respect to the Mortgaged Premises.

23. Nothing herein contained shall be deemed to constitute consent by Boiling Springs to the Debtor's use of the Rents for any purposes and for any period of time other than as expressly set forth herein.

24. Statutory Rights Under Section 507(b). To the extent the adequate protection provided for hereby proves insufficient to protect Boiling Springs's interest in and to the Rents, Boiling Springs shall have a superpriority administrative expense claim, subject only to the Carve-Out provided in paragraph 35 herein, pursuant to Section 507(b) of the Bankruptcy Code, senior to any and all claims against the Debtor under Section 507(a) of the Bankruptcy Code, whether in this proceeding or in any superseding proceeding.

25. Default Hearing. In the event Debtor defaults or violates this Order, Boiling Springs is entitled to request a hearing within fourteen (14) days (or if immediate and irreparable injury, loss or damage may occur, an emergency hearing within 48 hours).

Debtor: BERGENFIELD SENIOR HOUSING, LLC
Case No. 13-19703 (MS)
Caption of Order: **THIRD INTERIM ORDER (A) AUTHORIZING THE DEBTOR, SUBJECT TO THE CONSENT AND LICENSE OF BOILING SPRINGS SAVINGS BANK, TO USE RENTS OF EXISTING SECURED CREDITORS AND GRANTING ADEQUATE PROTECTION FOR USE AND (B) SCHEDULING HEARING, IF NEEDED, REGARDING FURTHER USE OF RENTS**

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26. Interlocutory Order and No Modification of Creditor's Adequate Protection. This is an interlocutory order. Nothing contained herein shall be deemed or construed to (a) limit the Secured Creditor to the relief granted herein: (b) bar Boiling Springs from seeking other and further relief (including without limitation relief from the terms of this Order) for cause shown on appropriate notice to the Debtor and other parties-in-interest entitled to notice of same: or (c) require Boiling Springs to make any advances to the Debtor. The Order may be modified for cause shown by the Debtor, Boiling Springs or any other party-in-interest on due notice. No such modification, however, shall deprive Boiling Springs of its interest in Debtor's property or the Rents, as the case may be (pre-petition and post-petition).

27. All notices, requests and other communications required to be sent by the terms of this Stipulation and Order shall be in writing and shall be sent to the persons at the addresses listed below, or as otherwise designated, by reputable overnight courier, telecopy or hand delivery and E-mail, as indicated.

If to the Debtor:

Bergenfield Senior Housing, LLC
One Castlehill Court
Upper Saddle River
New Jersey 07458

Debtor: BERGENFIELD SENIOR HOUSING, LLC
Case No. 13-19703 (MS)
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and to

Barry D. Kleban
Partner
McElroy, Deutsch, Mulvaney & Carpenter, LLP
1 Penn Cntr. -Suburban Station
1617 JFK Blvd., Suite 1500
Philadelphia, PA 19103-1815
Fax: (215) 557-2990
bkleban@mdmc-law.com

If to Boiling Springs:

Elyse D. Beidner Esq.
Senior Vice President and Chief Legal Officer
Boiling Springs Savings Bank
25 Orient Way
Rutherford, NJ 07070
Phone: (201) 507-3216
eheidner@bssbank.com
(via e-mail and regular mail)

and to

Douglas T. Tabachnik, Esq.
Law Offices of Douglas T. Tabachnik, PC
63 West Main Street, Suite C
Freehold, New Jersey 07728
Fax No.: (732) 792-2761
E-mail: dtabachnik@dttlaw.com

Notwithstanding the foregoing, the Debtor's managing agent or agents may communicate in writing with a designated officer of Boiling Springs and vice versa, for the purposes of administering to the day to day affairs and budgetary issues referenced by this Stipulation and Order.

Debtor: BERGENFIELD SENIOR HOUSING, LLC
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28. Except as set forth herein, no delay or failure by Boiling Springs in exercising any right, power or privilege under this Stipulation and Order and no single or partial exercise thereof or any abandonment or discontinuance of steps to enforce such right, power or privilege shall affect or impair such right, power or privilege of Boiling Springs.

29. Boiling Springs shall not be deemed to be in control of the operations of the Debtor or to be acting as a “responsible person” or “owner” or “operator” with respect to the operations or management of the Debtor by virtue of its agreeing to the Debtor’s use of the Rents or by virtue of Boiling Springs’s conduct and activities authorized by this Stipulation and Order.

30. Any obligations or duties of the Debtor set forth in this Stipulation and Order shall be binding upon and enforceable against any agent retained by the Debtor or any officer appointed by the court to perform such obligations or duties; provided, however, that neither the retention by the Debtor of an agent for the purpose of performing any such obligations or duties nor the failure of any such agent punctually and faithfully to perform any such obligations or duties shall relieve or discharge the Debtor from the punctual and faithful performance thereof.

31. Boiling Springs does not consent to the incurrence by the Debtor, the Debtor’s counsel or any other person, party or entity of any of the costs, expenses, fees or charges contemplated under Code §506(c), and no such consent shall be implied from any action, inaction or acquiescence by Boiling Springs.

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32. The provisions of this Stipulation and Order shall be binding upon, and inure to the benefit of Boiling Springs, the Debtor, and their respective successors and assigns, including but not limited to, any trustee or other fiduciary appointed as a legal representative of the Debtor whether under Chapter 11 of the Code or any subsequent Chapter 7 case or in connection with any other state or federal proceeding.

33. The automatic stay imposed by Section 362 of the Code shall be, and hereby is, lifted and vacated to the extent necessary to implement and effectuate the terms and conditions of this Stipulation and Order. Except to the extent otherwise provided in this Stipulation and Order or by other Order of the Court, the automatic stay imposed by Section 362 of the Code, in all other respects, shall remain in effect during the pendency of this case.

34. This Stipulation and Order may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

35. Boiling Springs has agreed to except from the terms of its asserted and acknowledged ownership of the Rents, and the other liens securing the Debtor's obligations to Boiling Springs as described herein, the sum of \$200,000.00, as more fully described below, and in accordance therewith, Boiling Springs shall be provided Replacement Liens equal to such amount on the Debtor's real property. Said replacement liens shall be subject to and subordinate to: (i) allowed professional fees and expenses incurred by the Debtor's counsel, in an aggregate amount not to exceed \$200,000 (and

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subject to entry of Orders approving same) of the attorneys retained by the Debtor; and (ii) fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930 and the Clerk of the Bankruptcy Court (collectively, the “Carve-Out”). The Carve-Out provided for herein shall survive dismissal or conversion of the Debtor’s bankruptcy case, or the confirmation date or effective date of any confirmed plan. Nothing herein shall alter the requirements for Court approval and allowance of professional fees or the rights of any party-in-interest to object to the award of professional fees in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of the Bankruptcy Court, or, if applicable, any order of this Court relating to the approval of professional fees and objections thereto.

36. Other parties-in-interest shall have forty-five (45) days from the entry of the First Interim Use of Rents Order to investigate and challenge the liens of Boiling Springs Bank.

37. A further hearing on the relief requested in the Motion shall be held on October 29, 2013 at 12:00 p.m. (ET) (the “Continued Hearing”). If no objections are set forth in the manner set forth in paragraph 38, below, the Debtor shall file a certificate of no objection with respect thereto, no appearances shall be required at such hearing and a further interim order or final order may be submitted, if agreed to between the Debtor and Boiling Springs. Nothing herein shall be deemed to require either Boiling Springs or the Debtor to agree to any further extensions of this Order or to any further Interim or Final Orders with regard to the Motion.

Debtor: BERGENFIELD SENIOR HOUSING, LLC
Case No. 13-19703 (MS)
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38. Any party objecting to the relief sought at the Continued Hearing shall serve and file a written objection upon: (a) counsel for the Debtors, McElroy, Deutsch, Mulvaney & Carpenter, LLP, Attn: Aaron S. Applebaum, 300 Delaware Avenue, Suite 770, Wilmington, Delaware 19801; (b) the Office of the United States Trustee for the District of New Jersey; (c) counsel for Boiling Springs, Law Offices of Douglas T. Tabachnik, P.C., Woodhull House, 63 West Main Street, Suite C, Freehold, New Jersey 07728. All such objections shall be filed with the Clerk of the United States Bankruptcy Court for the District of New Jersey, in each case to allow actual receipt by the foregoing notice parties no later than October 22, 2013, at 4:00 p.m. (ET) (the "Objection Deadline").

39. This Third Interim use of Rents Order shall be fully effective upon its entry.

NOTICE ORDER

IT IS FURTHER ORDERED that the Debtor serve a copy of this Third Interim Use of Rents Order and Notice by first class mail and/or electronic mail as to electronic filers within two (2) business days from the date hereof, on (1) the United States Trustee, (2) the District Director of the Internal Revenue Service, (3) the New Jersey Division of Taxation, (4) all known purported secured creditors of the Debtor and (5) all parties filing requests for notices pursuant to Fed. R. Bankr. P. 2002. The Debtor shall promptly file with the Clerk a Certificate of Service of said mailing.

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Approved in Advance:

Bergenfield Senior Housing, LLC, Debtor:

By: McElroy, Deutsch, Mulvaney & Carpenter, LLP

/s/ Aaron S. Applebaum, Esq.

Secured Creditor: Boiling Springs Savings Bank

By: Law Offices of Douglas T. Tabachnik, P.C.

/s/ Douglas T. Tabachnik, Esq.

Bergenfield Senior Housing, LLC
Third Interim Rents Order Budget

	Aug-13	Sep-13	Oct-13
INCOME			
Rents	\$115,000	\$115,000	\$115,000
TOTAL INCOME	\$115,000	\$115,000	\$115,000
EXPENSES			
Boiling Springs Mortgage 1 *	\$44,758	\$44,758	\$44,758
Boiling Springs Mortgage 2 *	\$3,792	\$3,792	\$3,792
Real Estate Taxes	\$75,000	\$0	\$0
Electric	\$5,000	\$5,000	\$5,000
Water	\$2,400	\$2,400	\$2,400
Elevator Maintenance	\$400	\$400	\$400
Trash	\$594	\$594	\$594
Alarm System & Sprinklers	\$600	\$600	\$600
Emergency Phone Lines	\$144	\$144	\$144
Office & Cell Phone and Internet	\$500	\$500	\$500
Auto Leases	\$876	\$876	\$876
Fuel/Tolls	\$250	\$250	\$250
Auto Insurance	\$220	\$220	\$220
Door/Lock Services	\$250	\$250	\$250
Personnel	\$4,300	\$4,300	\$4,300
Management/Bookkeeper	\$6,000	\$6,000	\$6,000
Office Supplies	\$300	\$300	\$300
Building Supplies	\$2,000	\$2,000	\$2,000
Landscape/Grounds	\$400	\$400	\$400
Miscellaneous (Building Repairs)	\$5,000	\$5,000	\$5,000
Insurance	\$2,700	\$2,700	\$2,700
Inspections	\$300	\$300	\$300
Payroll Service	\$128	\$128	\$128
Employer Withholding	\$454	\$454	\$454
US Trustee Quarterly Fees (Accrual)	\$0	\$1,625	\$0
TOTAL EXPENSES	\$156,366	\$82,991	\$81,366
NET CASH FLOW	(\$41,366)	\$32,009	\$33,634
CUMULATIVE NET CASH FLOW	(\$8,983)	\$23,026	\$56,660

*-BSSB reserves the right to accrue interest at the rate of 6% per annum. BSSB's acceptance of the payments set forth herein shall not be deemed a waiver of its rights in this regard, and the Debtor reserves all of its rights as well.