

(1) the provision in the budget for the payment of \$325 to the United States Trustee is stricken (because no amount will be owed to the United States Trustee during the period covered by the Order); and

(2) 11 U.S.C. section 552(b)(1) shall apply to the determination of "any diminution in value of the Cash Collateral."

Dated: July 19, 2017.



S. Martin Teel, Jr.  
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLUMBIA

In re:	)	
	)	
MARTIN'S VIEW APARTMENTS, LLC,	)	Case No. 17-00389-SMT
	)	
Debtor in possession.	)	(Chapter 11)
	)	

**ORDER AUTHORIZING DEBTOR'S INTERIUM USE OF CASH  
COLLATERAL AND GRANTING ADEQUATE PROTECTION**

Upon consideration of Martin's View Apartments, LLC's Motion for Interim and Final Orders Authorizing the Use of Cash Collateral and Granting Adequate Protection,<sup>1</sup> (the "Motion"); and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the relief requested in the Motion constituting a core proceeding under 28 U.S.C. §157(b); and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the necessary parties; and it appearing that no other or further notice need be provided; and a hearing having been held on July 19, 2017, to consider the relief requested in the Motion (the "Hearing"); and upon the record of the Hearing and all of the proceedings had before the Court; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its creditors,

<sup>1</sup> All capitalized terms not otherwise defined herein, shall have the meanings given to them in the Motion.

and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just and sufficient cause for the relief granted herein, the Court finds as follows:

A. On July 14, 2017 (the "Petition Date"), Martin's View Apartments, LLC (the "Debtor") commenced this case by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

B. The Debtor has continued in possession of its property and has continued to operate and manage its business as a debtor in possession under Bankruptcy Code sections 1107(a) and 1108.

C. The Court has jurisdiction over the Motion, and over the persons and property affected by the Motion under 28 U.S.C. §§ 157 and 1334. The matters raised in the Motion are core proceedings under 28 U.S.C. § 157(b). Venue for the Debtor's case is proper under 28 U.S.C. §§ 1408 and 1409.

D. The Debtor provided notice of this Motion to (i) the Office of the U.S. Trustee, (ii) the Securities and Exchange Commission; (iii) EagleBank; (iv) and each of the seven junior secured creditors identified in the Motion (the "Junior Secured Creditors") (EagleBank and the Junior Secured Creditors are collectively referred to herein as the "Secured Creditors"); (v) all trade creditors on the creditor matrix; (vi) all taxing authorities; and (vii) any party which has formally appeared in this case and requested service.

E. The Debtor is the owner of a 156-unit residential apartment project located at 200 – 211 Elmira Street, SW, and 4337 – 4363 Martin Luther King, Jr. Avenue, SW, Washington, DC 20032 (the "Property").

F. The Senior Secured Creditor holds a perfected first priority lien on substantially all of the Debtor's assets, including the Property and the rents generated by the Property (the "Rents") pursuant to various loan documents, as set forth in the Motion. As of the Petition Date, the Debtor owed the Senior Secured Creditor approximately \$6,578,000.

G. The Junior Secured Creditor holds a second priority lien on the Property and the Rents pursuant to various promissory notes and a Second Deed of Trust and Security Agreement (the "Second Trust") dated May 11, 2017 and recorded with the District of Columbia Recorder of Deeds on May 24, 2017. As of the Petition Date, the Debtor owed the Junior Secured Creditors a principal balance of \$2,000,000, plus accrued interest of approximately \$30,019.20 as of July 1, 2017.

H. In the ordinary course of business, the Debtor requires cash flow from its operations, including the Rents, to fund its operating costs. All of the Debtor's cash and cash proceeds are subject to the Secured Creditors' security interests and, as such, constitute "cash collateral" of the Secured Creditors (as such term is defined in Bankruptcy Code section 363(a), "Cash Collateral").

I. The Debtor has a need to use its Cash Collateral. Absent use of Cash Collateral, the Debtor will be unable to fund its operating expenses, and its estate and creditors may suffer irreparable harm.

J. Good and sufficient cause has been shown to justify the grant of interim relief requested in the form of this order (the "Interim Order").

K. The terms of the Debtor's use of Cash Collateral, as more fully set forth in this Interim Order, are (i) fair and reasonable, (ii) reflect the Debtor's prudent business judgment consistent with its fiduciary duties, (iii) constitute reasonably equivalent value and fair

consideration; and (iv) are essential and appropriate for the continued operation and management of the Debtor's business and the preservation of the Property. Entry of this Interim Order is in the best interests of the Debtor and its estate and creditors.

L. The adequate protection provided for under this Interim Order is sufficient to protect the Secured Creditors against any diminution in the value of their interests` in the Cash Collateral, and is fair, reasonable, and sufficient to satisfy the requirements of the Bankruptcy Code.

M. At a final hearing on the Motion (the "Final Hearing"), the Debtor will seek approval of the relief requested in the Motion on a final basis. Notice of the Final Hearing will be provided in accordance with the requirements set forth in this Interim Order.

Based upon the foregoing, it is hereby **ORDERED** that:

1. The Motion is GRANTED and the Debtor's use of Cash Collateral is approved on an interim basis, to the extent provided in this Order and the Budget attached hereto as **Exhibit A**.

2. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms as in the Motion.

3. Subject to the terms and conditions of this Order, the Debtor may use Cash Collateral from the date of this Interim Order through (and including) September 25, 2017, as may be extended pursuant to this Interim Order the "Interim Period"). Except as otherwise expressly provided in this Order, Cash Collateral may be used solely (a) during the Specified Period, as may be extended, (b) up to the amounts stated for any line item plus 10% for each line item, during the periods and for the purposes identified in the Budget attached hereto as **Exhibit A**.

4. If Cash Collateral is not used for a particular line item in the Budget during the period for which Cash Collateral usage is authorized for such line item in this Interim Order, or if Cash Collateral is used in an amount less than specified in such line item during the budgeted period, then the Debtor may use the unused balance of such line item in other line items or subsequent periods, to the extent granted. The Debtor may also utilize amounts for miscellaneous items set forth in the Budget for any budgeted expense.

5. As adequate protection for the use and/or diminution of the interests of the Secured Creditors in the Cash Collateral (the "Adequate Protection"), the Debtor shall make monthly payments of \$42,940.68 to EagleBank during the Interim Period (the "Adequate Protection Payment") on or before the 7<sup>th</sup> day of each month. As additional Adequate Protection, the Secured Creditors shall be granted: (a) superpriority administrative claims against the Debtor pursuant to the provisions of Section 507(b) of the Bankruptcy Code, which superpriority administrative claims shall be limited solely to any diminution in value of the Cash Collateral from and after the Petition Date, having priority in right of payment over any and all other obligations, liabilities, and indebtedness of Debtor, whether now in existence or hereafter incurred by Debtor, and over any and all administrative expenses; and (b) pursuant to Section 361 of the Bankruptcy Code, replacement liens on all of the Debtor's post-petition assets, which replacement liens shall be limited solely to any diminution in value of the Cash Collateral from and after the Petition Date which shall be first and senior in priority to all other interests and liens of every kind, nature and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or interests granted in favor of third parties in conjunction with Sections 363, 364 or any other section of the Bankruptcy Code or other applicable law. Notwithstanding the foregoing, (a) the lien and administrative claim granted by this Interim Order

to EagleBank shall be senior in priority to the lien and administrative claim granted by to the Junior Secured Creditors; (b) the liens granted to the Secured Creditors herein shall not attach to any of the Debtor's claims and causes of action under chapter 5 of the Bankruptcy Code (including but not limited to, those under sections 506, 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code), and all rights, recoveries and defenses of Debtor's with respect thereto (collectively, the "Avoidance Actions"); (c) any superpriority claims granted to the Secured Creditors herein shall not be satisfied from the proceeds of any Avoidance Actions; (d) notwithstanding any provision of this order, nothing in this Order shall bar the Debtor or any creditor or party in interest from evaluating or challenging the validity, priority, scope, or perfection of any lien held by the Junior Secured Creditors; and (e) the lien and administrative expense claim granted by this Interim Order to the Junior Secured Creditors shall be deemed avoided and disallowed in the event the Second Trust is subsequently avoided under any provision of chapter 5 of the Bankruptcy Code.

6. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection and priority of any claim or lien granted by this Interim Order with respect to the Adequate Protection without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action to validate or perfect in accordance with applicable non-bankruptcy law any claim or lien granted by this Interim Order with respect to the Adequate Protection, or to entitle the Secured Creditors to the priorities granted herein. Notwithstanding the foregoing, the Secured Creditors are authorized to file, as they deem necessary in their sole discretion, such financing statements, notices of lien and other similar documents to perfect in accordance with applicable non-bankruptcy law any lien granted by this Interim Order with

respect to the Adequate Protection, and all such financing statements, notices of lien and other similar documents shall be deemed to have been filed or recorded as of the Petition Date. The Debtor is authorized and directed to execute and deliver to the Secured Creditors all financing statements, notices of lien, and other documents as the Secured Creditors may reasonably request.

7. Except as otherwise provided herein, the Debtor shall make the Adequate Protection Payment of \$42,940.68 to EagleBank on or before the 7th day of each month. The Debtor may not make any monthly payments for management fees unless and until the Adequate Protection Payment is made in a particular month.

8. The Debtor shall maintain appropriate insurance coverages on the Property.

9. The Debtor shall file a monthly operating report with the Court on or before the 20th day of each succeeding month (or such date thereafter that the Court is open) and shall send a copy of each such report to the Secured Creditors or their counsel within one (1) business day of such filing (by email if possible).

10. The automatic stay provisions of Section 362 of the Bankruptcy Code are modified and vacated to the extent necessary to permit the Secured Creditors to perform any act authorized or permitted under this Interim Order, including, without limitation, to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the Secured Creditors' collateral.

11. In the event any or all of the provisions of this Order are hereafter reversed, stayed, modified, amended, or vacated by a subsequent order of the Court or any other court, such reversal, stay, modification, amendment, or vacation shall not affect the validity of any right or obligation arising under this Interim Order prior to the effective date of such modification,

amendment or vacation, and such right or obligation shall be governed in all respects by the provisions of this Interim Order.

12. This Order and the use of Cash Collateral authorized herein shall become effective immediately upon authorization and approval by the Court. Except with respect to the payment of accrued items set forth in the Budget, the use of Cash Collateral authorized herein shall terminate on September 25, 2017, at 11:59 p.m., subject to the Debtor's right to seek further order of the Court authorizing use of Cash Collateral. Termination of the use of Cash Collateral authorized herein shall not impair the continuing effectiveness and enforceability of all other provisions in this Interim Order.

13. Within two business days after the entry of this Order, the Debtor shall serve a copy of this Order on: (a) the Office of the U.S. Trustee, (b) the Securities and Exchange Commission; (c) the Secured Creditors; (d) all trade creditors on the creditor matrix; (e) all taxing authorities; and (f) any party which has formally appeared in this case and requested service.

14. Any party seeking to object to entry of an order further approving the relief set forth herein on an interim basis, must file a written objection (an "Objection"), stating with particularity the grounds therefore, with the United States Bankruptcy Court for the District of Columbia (the "Court") and serve such Objection on: the Debtor, c/o Stephen E. Leach, and Kristen E. Burgers, Hirschler Fleischer, 8270 Greensboro Drive, Suite 700, Tysons, Virginia 22102; the Senior Secured Creditor, c/o Michael J. Lichtenstein, Esquire, Shulman Rogers, et al., 12505 Park Potomac Avenue, Sixth Floor, Potomac, Maryland 20854; the Junior Secured Creditors as follows: Falling Green Capital, LLC, 3718 Falling Green Way, Mt. Airy, MD 21771; Terence Fitzpatrick, 14520 High Meadow Way, North Potomac, MD 20878; Frances



Keating, 12172 Chancery Station Circle, Reston, VA 20190; Mark Proulx, 20 Brandy Ridge Road, Sparta, NJ 07871; John T. Struck, 4612 Orchard Avenue, San Diego, CA 92107; Brook Thorner, 2910 E. Madison Street, Suite 209, Seattle, WA 98115; and The Trevino Family Trust, 1346 Mallard Court, Carlsbad, CA 92011; and the Office of the United States Trustee, 115 South Union Street, Suite 210 Plaza Level, Alexandria, Virginia 22314; and any party that has entered an appearance in this case and requested service of filings and notices; so that it is received no later than August 9, 2017.

15. A final hearing to consider the Debtor's requested use of Cash Collateral shall be held in this Court on August 16, 2017 at 10:30 a.m.

16. Subject to applicable law, the terms of this Interim Order shall be binding upon and inure to the benefit of the successors and assigns of each party hereto, including any trustee appointed with regard to the Debtor under the Bankruptcy Code, whether in a chapter 7 case or in this chapter 11 case.

17. Nothing in this Order shall prohibit counsel for a subsequently appointed unsecured creditors committee from requesting, as a condition of its employment, that it be provided a retainer from Cash Collateral and said counsel may seek to modify the terms of this Interim Order to obtain said retainer. The rights of all parties in interest, including the Debtor and the Secured Creditors, are hereby preserved with regard to any request for payment of a retainer for committee counsel.

**END OF ORDER**

Copies to:

Stephen E. Leach  
Kristen E. Burgers  
Hirschler Fleischer  
8270 Greensboro Drive, Suite 700  
Tysons, Virginia 22102

Office of the United States Trustee  
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The Trevino Family Trust  
1346 Mallard Court  
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EXHIBIT A

MARTINS VIEW APARTMENTS, LLC CHAPTER 11 BUDGET													
	7/3/2017	7/10/2017	7/17/2017	7/24/2017	7/31/2017	8/7/2017	8/14/2017	8/21/2017	8/28/2017	9/4/2017	9/11/2017	9/18/2017	9/25/2017
Balance Forward	\$ -	\$ (7,840.68)	\$ 45,459.32	\$ 46,434.32	\$ 6,134.32	\$ (706.36)	\$ 52,593.64	\$ 53,893.64	\$ 34,493.64	\$ 5,393.64	\$ 6,552.96	\$ 51,852.96	\$ 34,452.96
Martins View Rent	\$ 48,000.00	\$ 56,000.00	\$ 12,000.00	\$ 10,000.00	\$ 48,000.00	\$ 56,000.00	\$ 12,000.00	\$ 10,000.00	\$ -	\$ 48,000.00	\$ 56,000.00	\$ 12,000.00	\$ 10,000.00
Att reimbursement	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Martins View Income</b>	<b>\$ 48,000.00</b>	<b>\$ 48,159.32</b>	<b>\$ 57,459.32</b>	<b>\$ 56,434.32</b>	<b>\$ 54,134.32</b>	<b>\$ 55,293.64</b>	<b>\$ 64,593.64</b>	<b>\$ 63,893.64</b>	<b>\$ 34,493.64</b>	<b>\$ 53,393.64</b>	<b>\$ 62,552.96</b>	<b>\$ 63,852.96</b>	<b>\$ 44,452.96</b>
<b>Martins View Business Expenses</b>													
Mortgage - Eagle Bank	\$ 42,940.68	\$ -	\$ -	\$ -	\$ 42,940.68	\$ -	\$ -	\$ -	\$ -	\$ 42,940.68	\$ -	\$ -	\$ -
Pepero	\$ -	\$ -	\$ -	\$ 5,000.00	\$ -	\$ -	\$ -	\$ 5,000.00	\$ -	\$ -	\$ -	\$ 5,000.00	\$ -
DC Water	\$ -	\$ -	\$ -	\$ 15,000.00	\$ -	\$ -	\$ -	\$ 15,000.00	\$ -	\$ -	\$ -	\$ 15,000.00	\$ -
Washington Gas	\$ -	\$ -	\$ -	\$ 6,000.00	\$ -	\$ -	\$ -	\$ 6,000.00	\$ -	\$ -	\$ -	\$ 6,000.00	\$ -
Security Deposit Refunds	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Manager	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00
Management Fee	\$ -	\$ -	\$ -	\$ 7,800.00	\$ -	\$ -	\$ -	\$ -	\$ 7,800.00	\$ -	\$ -	\$ -	\$ 7,800.00
Cleaning/Bulk Trash	\$ 1,000.00	\$ -	\$ -	\$ -	\$ 1,000.00	\$ -	\$ -	\$ -	\$ -	\$ 1,000.00	\$ -	\$ -	\$ -
Exterminator	\$ -	\$ -	\$ -	\$ 500.00	\$ -	\$ -	\$ -	\$ -	\$ 500.00	\$ -	\$ -	\$ -	\$ 500.00
Payroll	\$ 8,000.00	\$ -	\$ 8,000.00	\$ -	\$ 8,000.00	\$ -	\$ 8,000.00	\$ -	\$ 8,000.00	\$ -	\$ 8,000.00	\$ -	\$ 8,000.00
Telephone and Internet	\$ -	\$ -	\$ -	\$ 700.00	\$ -	\$ -	\$ -	\$ 700.00	\$ -	\$ -	\$ -	\$ 700.00	\$ -
Plumbing	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Rent Control Compliance	\$ 200.00	\$ -	\$ -	\$ -	\$ 200.00	\$ -	\$ -	\$ -	\$ -	\$ 200.00	\$ -	\$ -	\$ -
Maintenance & Repair	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ -	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00
Insurance	\$ -	\$ -	\$ -	\$ 5,400.00	\$ -	\$ -	\$ -	\$ -	\$ 5,400.00	\$ -	\$ -	\$ -	\$ 5,400.00
Taxes	\$ -	\$ -	\$ -	\$ 6,600.00	\$ -	\$ -	\$ -	\$ -	\$ 6,600.00	\$ -	\$ -	\$ -	\$ 6,600.00
Management Software	\$ -	\$ -	\$ -	\$ 600.00	\$ -	\$ -	\$ -	\$ -	\$ 600.00	\$ -	\$ -	\$ -	\$ 600.00
US Trustee Fees	\$ -	\$ -	\$ 325.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Miscellaneous	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
<b>Total Business Expenses</b>	<b>\$ 55,840.68</b>	<b>\$ 2,700.00</b>	<b>\$ 11,025.00</b>	<b>\$ 50,300.00</b>	<b>\$ 54,840.68</b>	<b>\$ 2,700.00</b>	<b>\$ 10,700.00</b>	<b>\$ 29,400.00</b>	<b>\$ 29,100.00</b>	<b>\$ 46,840.68</b>	<b>\$ 10,700.00</b>	<b>\$ 29,400.00</b>	<b>\$ 31,600.00</b>
<b>Martins View</b>	<b>\$ (7,840.68)</b>	<b>\$ 45,459.32</b>	<b>\$ 46,434.32</b>	<b>\$ 6,134.32</b>	<b>\$ (706.36)</b>	<b>\$ 52,593.64</b>	<b>\$ 53,893.64</b>	<b>\$ 34,493.64</b>	<b>\$ 5,393.64</b>	<b>\$ 6,552.96</b>	<b>\$ 51,852.96</b>	<b>\$ 34,452.96</b>	<b>\$ 12,852.96</b>