

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLUMBIA**

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<b>In re:</b>	)	
	)	
<b>MARTIN’S VIEW APARTMENTS, LLC,</b>	)	<b>Case No. 17-00389-SMT</b>
	)	
<b>Debtor in possession.</b>	)	<b>(Chapter 11)</b>
	)	

**DEBTOR’S MOTION FOR INTERIM AND FINAL  
ORDERS AUTHORIZING USE OF CASH COLLATERAL  
AND GRANTING ADEQUATE PROTECTION**

Martin’s View Apartments, LLC, debtor and debtor-in-possession (the “Debtor”) in the above-captioned case, respectfully files this *Motion for Interim and Final Orders Authorizing Use of Cash Collateral and Granting Adequate Protection* (the “Motion”), and in support thereof states as follows:

**Bankruptcy Rule 4001 Introductory Statement**

1. 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, D.C. 20032 (the “Property”). The Debtor anticipates soon filing a motion for the sale of the Property to Stoladi Property Group, or its assigns (the “Buyer”) for the purchase price of approximately \$15,366,000, subject to higher and better offers.<sup>1</sup> Accordingly, the use of cash collateral in the form of existing cash and rents generated from the Property (as outlined below) to maintain the Property through at least the sale of the Property is in the best interests of all creditors, residents, and other parties in interest.

<sup>1</sup> The sale contract was executed on behalf of the Debtor by Sanford Capital, LLC, a member of the Debtor. Sanford Capital, LLC has assigned its rights as seller under the sale contract to the Debtor.

2. By this Motion, the Debtor requests the entry of interim and final orders authorizing the Debtor to, among other things, use the cash collateral of (a) EagleBank, a Maryland banking corporation (“EagleBank”), which holds a first priority perfected lien and security interest on cash collateral, and (b) seven private lenders<sup>2</sup> (collectively, the “Junior Secured Creditors”) who hold a collective Second Deed of Trust and Security Agreement (the “Second Trust”),<sup>3</sup> recorded May 24, 2017<sup>4</sup> with the District of Columbia Recorder of Deeds, securing claims in the aggregate principal amount of \$2,000,000, pursuant to Section 363 of 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), in accordance with the cash collateral budget (the “Budget”) attached hereto as **Exhibit A**. EagleBank and the Junior Secured Creditors are collectively referred to herein as the “Secured Creditors.”

3. The Debtor and EagleBank have agreed to terms for the interim use of cash collateral. The material provisions of the proposed use of the Secured Creditors’ cash collateral (the “Cash Collateral”), are set forth in the following sections of the proposed interim order (the “Interim Order”), attached hereto as **Exhibit B**, granting the relief sought herein:

- a. Debtor. Martin’s View Apartments, LLC.
- b. Secured Creditors. EagleBank and the seven Junior Secured Creditors.
- c. Use of Cash Collateral. EagleBank has consented to the interim use of its Cash Collateral to the extent and in the amounts set forth in the Budget. The Junior Secured Creditors have not affirmatively consented to the use

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<sup>2</sup> The Junior Secured Creditors are (a) Falling Green Capital, LLC; (b) Terrence Fitzpatrick; (c) Frances M. Keating; (d) Mark C. Proulx; (e) John T. Struck; (f) Brooke J. Thorner; and (g) The Trevino Family Trust. Millenium Trust Company is serving as custodian for the benefit of certain of the Junior Secured Creditors.

<sup>3</sup> Each of the Junior Secured Creditors holds a promissory note executed by Southeast DC Affordable Housing VII, LLC, an affiliate of the Debtor. The proceeds of the notes were used by the Debtor for repairs and renovation to the Property.

<sup>4</sup> The Debtor recognizes that the Second Trust may be subject to challenge under provisions of chapter 5 of the Bankruptcy Code. No UCC-1 financing statement has been recorded in connection with the Second Trust.

of Cash Collateral, but are not expected to object to its use under the Budget and the terms of this Motion.

- d. Adequate Protection. The Secured Creditors shall be provided with the following adequate protection under the Interim Order: (i) monthly payments to EagleBank in the amount of \$42,940.68,<sup>5</sup> (ii) a replacement lien on all the post-petition assets of the Debtor pursuant to section 361 of the Bankruptcy Code to the extent of diminution in the value of the Secured Creditors' interest in Cash Collateral; and (iii) administrative priority expense claims pursuant to section 507(b) of the Bankruptcy Code, to the extent there is a diminution in the value of the Secured Creditors' interest in Cash Collateral. The lien and administrative claim provided to EagleBank under the Interim Order shall be senior in priority to the lien and administrative claim provided to the Junior Secured Creditors. The replacement liens and administrative priority claims shall not attach to any causes of action of the Debtor arising under chapter 5 of the Bankruptcy Code. *See* Interim Order at ¶5.
- e. Waiver of Applicable Nonbankruptcy Law Relating to Perfection on Property of the Estate. The Interim Order is deemed to be sufficient and conclusive evidence of the priority, perfection, and validity of the post-petition liens and security interests granted therein, effective as of the Petition Date, without any further act and without regard to any other federal, state, or local requirements or law requiring notice, filing, registration, recording or possession of the subject collateral, or other act to validate or perfect such security interest or lien. *See* Interim Order at ¶ 6.
- f. Relief From Automatic Stay. 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 the 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. *See* Interim Order at ¶ 7.
- g. The lien and administrative claim provided to the Junior Secured Creditors under the Interim Order shall be deemed avoided and ineffective should the Second Trust subsequently be avoided under any provision of chapter 5 of the Bankruptcy Code.

4. As stated above, the Debtor is in the process of pursuing a sale of the Property which the Debtor anticipates will yield sufficient proceeds to pay all creditors in full. As such,

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<sup>5</sup> This amount represents the Debtor's regular monthly payment to EagleBank under the EagleBank loan described in greater detail below.

the Debtor requires the use of cash collateral to operate, preserve, and maintain the Property in the ordinary course of business through completion of the sale.

### **Jurisdiction**

5. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 11 U.S.C § 157(b). Venue of this case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The relief sought by this Motion is based upon sections 105(a), 361, 362, and 363(c) of title 11 of the United States Code (the “Bankruptcy Code”) and Federal Rules of Bankruptcy Procedure 4001 and 9014.

### **The Chapter 11 Proceeding**

7. On July 14, 2017 (the “Petition Date”), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is continuing in possession of its property and the management of its business as a debtor-in-possession under sections 1107 and 1108 of the Bankruptcy Code. No official creditors’ committee has been appointed in this case by the United States Trustee.

### **The Debtor And Its Business Operations**

8. The Debtor is a limited liability company organized under the laws of Delaware. The Debtor is the owner of the Property, a 156-unit residential apartment project located at 200 - 211 Elmira Street SW, and 4337 – 4363 Martin Luther King Jr. Avenue SW, Washington, D.C. 20032.

9. As of the Petition Date, approximately 139 of the 156 units at the Property were occupied pursuant to various rental leases. The aggregate amount of the monthly rents generated from the leases (the “Rents”) is approximately \$127,000.

10. The Debtor intends within the next few weeks to file a motion providing for the sale of the Property to the Buyer for the approximate purchase price of \$15,366,000 (the “Sale Price”), subject to higher and better offers. The Debtor anticipates that the sale will close shortly upon entry of a final order granting the anticipated sale motion.

11. The Sale Price is greater than the debts owed to all of its secured and unsecured creditors (as described below).

### **Prepetition Obligations**

12. The Debtor’s existing pre-petition indebtedness is comprised of loans and deeds of trust and security agreements for the benefit of the Secured Creditors and certain unsecured obligations to other creditors.

*a. Senior Secured Financing.* EagleBank loaned the Debtor \$6,285,500 on December 3, 2013 to finance the Debtor’s purchase of the Property. On January 21, 2016, EagleBank and the Debtor modified the original loan to increase the maximum principal balance to \$7,598,066. The approximate balance due EagleBank as of July 6, 2017, was \$6,578,410.09. The loan is secured by a first priority deed of trust against the Property, an assignment of leases and the rents derived therefrom, and such other collateral as is identified in the EagleBank loan documents.

*b. Junior Secured Financing.* At various times between May 2014 and February 2016, the Junior Secured Creditors loaned the Debtor<sup>6</sup> a total of \$2 million for repairs, renovations, improvements, and carrying costs related to the Property. The Debtor secured these advances through the Second Trust, dated May 11, 2017 and recorded May 24, 2017 with the

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<sup>6</sup> See Note 3, *supra*.

District of Columbia Recorder of Deeds. Interest on the \$2 million principal balance (which as of July 1, 2017 totaled approximately \$30,019.20) is currently accruing and will be paid from the proceeds of a sale of the Property.

- c. Unsecured Obligations.* In addition to the foregoing, there are priority and general unsecured claims against the Debtor existing as of the Petition Date in the approximate total amount of \$180,687.69, including real estate taxes of \$95,530.15.

### **Relief Requested**

13. The Debtor requires the use of the Cash Collateral in order to continue to operate, preserve and maintain the Property. Unless the Debtor is permitted to use Cash Collateral, it will be irreparably harmed because it will be unable to operate and manage its business and preserve and maintain the going concern value of the Property. The Debtor requires the use of Cash Collateral for the payment of, among other things, operating expenses including management fees, utilities expenses, maintenance expenses, and other expenses as more fully set forth in the Budget. The Debtor's use of Cash Collateral to operate its business will protect the value of the Property and the welfare of its residents.

### **Legal Basis for Use of Cash Collateral**

14. Section 363(c)(2) of the Bankruptcy Code provides that a debtor may not use cash collateral unless the entity with an interest in the cash collateral consents or the court authorizes such use. Further, pursuant to section 363(c) of the Bankruptcy Code and Bankruptcy Rule 4001(b), the Court may conduct a preliminary hearing and authorize the use of cash collateral

necessary to avoid immediate and irreparable harm to the estate pending a final hearing on the merits of the Motion.

15. The Debtor seeks the entry of interim and final orders allowing the use of the Cash Collateral to avoid irreparable harm to the estate. The Debtor's liquidity needs can be satisfied only if the Debtor is authorized to continue to use cash collateral in the manner set forth in the proposed Budget and Interim Order. The Debtor's use of Cash Collateral consisting of existing cash and the post-petition Rents from the operation of its business in accordance with the Budget is fair and reasonable, and will enable the Debtor to continue operations and continue to pursue the sale of the Property as a going concern.

**The Proposed Adequate Protection Should be Authorized**

16. Section 363(e) of the Bankruptcy Code provides that, "on request of an entity that has an interest in property used ... or proposed to be used ... by [a debtor in possession], the court, with or without a hearing, shall prohibit or condition such use ... as is necessary to provide adequate protection of such interest." Section 361 of the Bankruptcy Code sets forth the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens, and other forms of relief. 11 U.S.C. § 361. What constitutes adequate protection must be decided on a case-by-case basis. *See In re O'Connor*, 808 F.2d 1393, 139697 (10th Cir. 1987); *In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985); *Shaw Indus. v. First Nat'l Bank (In re Shaw Indus., Inc.)*, 300 B.R. 861, 865-66 (Banks. W.D. Pa. 2003) (*quoting In re Sharon Steel Corp.*, 159 B.R. 165, 169 (Bankr. W.D. Pa. 1993)). The requirement is intended to protect a secured creditor from the diminution of the value of its interest in the particular collateral during the period of use. *See In re Swedeland Bev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (recognizing that new protections might be sufficient for "the whole purpose of adequate protection for a creditor

is to insure that the creditor receives the value for which he bargained prebankruptcy”) (citation omitted).

17. The adequate protection provided under the proposed Interim Order granting (i) a monthly cash payment to EagleBank of \$42,940.68, (ii) replacement liens on all the post-petition assets of the Debtor pursuant to section 361 of the Bankruptcy Code, subject to all pre-existing liens and only to the extent of any diminution in the value of the Secured Creditors’ interest in Cash Collateral, and (iii) administrative priority expense claims pursuant to section 507(b) of the Bankruptcy Code, to the extent there is a diminution in the value of the Secured Creditors’ interest in Cash Collateral, is fair, reasonable, and sufficient to satisfy the requirements of sections 363(c)(2) and 363(e) of the Bankruptcy Code. The Secured Creditors’ replacement liens and administrative priority expense claims will not attach to chapter 5 causes of action or the proceeds of chapter 5 causes of action, and the replacement liens and administrative priority expense claims provided to the Junior Secured Creditors will be deemed avoided should the Second Trust subsequently be avoided under chapter five of the Bankruptcy Code.

18. Additional adequate protection is provided to the collateral of the Secured Creditors by the continued operations of the Property. The Debtor’s failure to continue to operate the Property might result in termination of the occupant leases which would negatively impact the value of the Property. Moreover, the proposed use of the Cash Collateral includes expenses for maintaining the Property, which further protects the value of the Secured Creditors’ collateral and will allow for the Debtor to pursue the potential sale for a sum sufficient to pay all creditors in full. Furthermore, the Secured Creditors may be provided such additional adequate protection under section 362(d)(3) as the Court may determine.



**The Automatic Stay Should Be Modified on a Limited Basis**

19. The relief requested herein contemplates a modification of the automatic stay, to the extent applicable, to permit the Debtor to grant the security interests, liens, and superpriority claims described above with respect to the Secured Creditors and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens.

20. Stay modifications of this kind are ordinary and standard features for the use of cash collateral, and in the Debtor's business judgment, are reasonable and fair under the present circumstances.

**Interim Approval Should Be Granted**

21. Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use cash collateral or obtain credit, respectively, may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary hearing on the motion and authorize the use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate pending a final hearing.

22. Pursuant to Bankruptcy Rules 4001(b) and (c), the Debtor requests that the Court conduct a preliminary hearing on the Motion and (a) authorize the Debtor to use Cash Collateral on an interim basis, pending entry of a final order, in order to maintain and finance the ongoing operations of the Debtor, and avoid immediate and irreparable harm to the Debtor's estate and all parties in interest, and (b) schedule a hearing to consider entry of a final order.

23. Because the Debtor requires the use of its cash and the rents to continue to operate, without authorization from the Court to use Cash Collateral on an interim basis pending a final hearing on the Motion, the Debtor will be immediately and irreparably harmed. The availability of Cash Collateral to the Debtor will provide necessary assurance to the Debtor's

vendors and the Property's tenants of the Debtor's ability to meet its obligations. Failure to meet these obligations and to provide these assurances would have a negative impact on the value of the Property to the detriment of all parties in interest. Accordingly, the interim relief requested is critical to preserving and maintaining the going concern value of the Debtor's Property, facilitating the sale of the Property, and protecting the Property's residents.

**Waiver of Memorandum of Law**

24. The Debtor respectfully requests that this Court treat this Motion as a written memorandum of points and authorities in accordance with Local Bankruptcy Rule 9013-1(b)(2).

**Notice**

25. No trustee, examiner or creditors' committee has been appointed in this Chapter 11 Case. The Debtor is serving notice of this Motion on the following parties and their counsel, if known: (a) the Office of the U.S. Trustee, (b) the Securities and Exchange Commission, (c) the Debtor's secured creditors, (d) all trade creditors on the creditor matrix, (e) all taxing authorities, and (f) all parties requesting notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

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**Conclusion**

WHEREFORE, the Debtor requests that the Court (a) enter an Order authorizing the interim use of Cash Collateral as reflected in the Budget; (b) schedule a final hearing on the Motion; (c) enter an Order authorizing the final use of cash collateral as requested in the Motion; and (d) grant such other and further relief as is just and appropriate under the circumstances.

Dated: July 14, 2017

Respectfully submitted,

/s/ Stephen E. Leach

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*Proposed Counsel to the Debtor*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 14, 2017, a copy of the foregoing Debtor's Motion for Interim and Final Orders Authorizing Use of Cash Collateral and Granting Adequate Protection and proposed Interim Order was served electronically to all parties receiving electronic notices pursuant to the Court's CM/ECF system and by first-class mail, postage prepaid, to the parties on the attached service list.

*/s/ Stephen E. Leach*

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Stephen E. Leach

**SERVICE LIST**

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