

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
BANKRUPTCY DIVISION

In Re: )  
1098 BLUE HILL AVENUE, LLC ) Chapter 11  
Debtor ) Case No. 17-13836-FJB  
)

MOTION OF DEBTOR FOR AUTHORITY TO USE CASH COLLATERAL  
OF BAYVIEW LOAN SERVING, LLC  
AND REQUEST FOR CONSIDERATION PRIOR TO NOVEMBER 15, 2017

To the Honorable Frank J. Bailey, Bankruptcy Judge:

Pursuant to MLBR 4001-2, the Debtor in the above captioned case (hereinafter the "Debtor") moves for authority to use cash collateral claimed by Bayview Loan Servicing, LLC (hereinafter the "Bank"). In support thereof, the Debtor states the following:

1. The Debtor filed an original petition under Chapter 11 of the United States Bankruptcy Code in this Court on October 17, 2017 (hereinafter the "Filing Date").
2. The Debtor is the owner of commercial real estate, located at 1098-1106 Blue Hill Avenue, Boston, Massachusetts (the "Real Estate").
3. The Bank holds a first mortgage on the Real Estate. As of the Filing Date, the balance due to the Bank is approximately \$750,000.00.
4. The Debtor seeks to collect monthly rental income from the Real Estate as indicated in Exhibit A (the "Rental Income"). The Debtor will value the Real Estate in its Schedules at \$1,725,000.00.
5. The Bank is asserting a security interest in the Rental Income.

6. On the fifteenth day of each calendar month from November 15, 2017 through March 15, 2018, the Debtor seeks authority to pay to the Bank a monthly payment of \$8,500.00 pursuant to the budget for the period of November 15, 2017 through March 15, 2018 which is annexed hereto as Exhibit A, and which payment will be as adequate protection for the Debtor's usage of the monthly Rental Income claimed by the Bank as its collateral pursuant to the loan documentation between the parties. There will be a fifteen (15) day grace period for each monthly payment due hereunder.

7. The Debtor agrees that the Bank is authorized to send monthly statements to the Debtor and that said statements will not be deemed violative of 11 U.S.C. §362.

8. The Debtor will remain current on the taxes for the Real Estate and will continue to pay insurance and necessary operating expenses on the Real Estate.

9. Both the Debtor and the Bank specifically reserve the right to seek an order of this Court vacating the Order due to any changed circumstances.

10. As adequate protection for the position of the Bank, the Debtor seeks authority to grant to the Bank a rollover lien in the Rental Income generated by the Real Estate.

11. In compliance with MLBR 4001-2(a), the Debtor says:

(1) the Debtor requires the use of all its income generated by this Real Estate pursuant to Exhibit A on a monthly basis;

(2) the Rental Proceeds shall be used to pay day to day current operating expenses for the Real Estate including insurance, taxes and water and sewer that are necessary for the preservation of this Real Estate;

(3) The amount of debt owed to the creditor claiming an interest in the collateral is as follows:

(a) Bayview Loan Servicing in the approximate amount of \$750,000.00;

(b) Luc Dumornay in the amount of \$225,000.00.

(5) The value of the collateral in its present condition will be scheduled as \$1,725,000.00.

12. To the best of the knowledge of Counsel to the Debtor, there are no additional consensual liens on the Real Estate.

13. Expedited consideration of this Motion prior to November 15, 2017 is requested since rental income will be paid in early November 2017 and disbursement will need to be made by mid-November, 2017.

WHEREFORE, the Debtor requests that this Court authorize the Debtor to use cash collateral claimed by the Bank regarding this Real Estate for the period of November 15, 2017 through March 15, 2018.

1098 Blue Hill Avenue  
By its Counsel,

Dated: October 27, 2017

/s/Gary W. Cruickshank, Esq.  
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Suite 920  
Boston, MA 02110  
(617) 330-1960  
(BBO107600)  
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CERTIFICATE OF SERVICE

I, Gary W. Cruickshank, hereby certify that on October 27, 2017, I electronically filed with the Clerk of the Bankruptcy Court, the foregoing Motion and served same in the following manner upon the interested parties:

E-mail service: via the Court's CM/ECF system which sent notification of such filing to the following:

- **John Fitzgerald** [USTPRegion01.BO.ECF@USDOJ.GOV](mailto:USTPRegion01.BO.ECF@USDOJ.GOV)

And by regular United States mail, postage prepaid, upon the following:

Bayview Loan Services  
4425 Ponce DeLeon Boulevard  
Coral Gables, FL 33146  
Attn: Legal Department

Luc Dumornay  
7 Colleen Drive  
Brockton MA 02301

/s/Gary W. Cruickshank, Esq.

# EXHIBIT A

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**MONTHLY BUDGET**  
**1098 BLUE HILL AVENUE, LLC**  
**OCTOBER 15, 2017**

**RENT RECEIPTS:**

Unit 1098: Daycare Center	\$ 2,000.00
Unit 1100: Restaurant	2,200.00
Unit 1102: Church	5,000.00
Unit 1104: Hair Salon	2,000.00
Unit 1106: Hardware Store	<u>6,000.00</u>
Total	\$17,200.00

**EXPENSES:**

Cleaning and Maintenance	\$ 500.00
Bookkeeping/Office Support	500.00
Repairs	800.00
Supplies	250.00
Utilities	3,000.00
First Mortgage	8,500.00
Second Mortgage	<u>3,500.00</u>
Total	\$17,050.00