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Hearing Date: \_\_\_\_\_, 2016 @ \_\_:00 a.m.

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

Q and Q REALTY, LLC,

Chapter 11  
Case No. 16-44044(NHL)

Debtor.

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

Q and Q Realty, LLC, the above captioned debtor and debtor-in-possession (the "Debtor"), by its proposed undersigned attorneys, files this motion (the "Motion") for entry of an Order Authorizing Debtor’s Use of Cash Collateral Pursuant to 11 U.S.C. §363 and Providing Adequate Protection Therefor Pursuant to 11 U.S.C. §§361 and 362, respectfully state and represent as follows:

**Jurisdiction**

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these proceedings and this Motion is proper in this District pursuant to 28 U.S.C. §§1408 and 1409.

2. The statutory bases for the relief requested herein are §§ 105(a), 361, 362 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code"), and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

### **Background**

3. On September 9, 2016 (the “Filing Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor has continued in possession of its property and the management of its business affairs as a debtor-in-possession pursuant to §§1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has been heretofore appointed.

4. The Debtor is a single asset real estate entity that owns real property located at 95-02 04 35<sup>th</sup> Street, Flushing, New York (the “Property”).

5. The Property has an approximate fair market value of \$4,360,000 based upon recent appraisal and has a first priority secured Amended and Restated Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the “Amended Mortgage”) in the approximate outstanding amount, subject to certain dispute on amount, of \$2,619,576.49 held by Stabilis Fund IV, LP (“Stabilis”).

6. Additionally, Eastern Funding, LLC holds alleges to hold a secured claim against the Property in the approximate amount of \$165,000.

7. Additionally, the following creditors have filed Proofs of Claim in the instant Chapter 11 case: (i) the New York City Water Board filed a secured claim in the amount of \$15,440.41 (Claim No.1); (ii) the New York City Department of Finance filed a secured claim in the amount of \$78,686.88 (Claim No. 2); and (iii) the Internal Revenue Service filed a general unsecured claim in the amount of \$29,574.48 (Claim No. 3). Upon information and belief, no other Proofs of Claim have been filed as of the date of this Application.

8. Stabilis called a default for failing to make monthly debt service installments and on or about September 7, 2016, directed the Debtor’s tenants to immediately pay their monthly

rent directly to Stabilis.

9. The Debtor has properly and consistently insured, maintained and managed the Property, and has substantial rent roll from its tenants and has the ability to continue to service Stabilis' debt pending a refinance, sale or confirmation of a Plan of Reorganization within a reasonable amount of time.

10. The Debtor is fully occupied, and is in a position to refinance the Stabilis mortgage if it is given a reasonable additional amount of time in Chapter 11, during which the Debtor can now afford to make adequate protection payments to Stabilis pending the contemplated refinance.

#### **The Pre-Petition Secured Debt**

11. As stated above, the Property is subject to a first priority secured Amended Mortgage held by Stabilis by virtue of a certain Mortgage Consolidation, Modification and Extension Agreement dated as of December 21, 2007, recorded with the Office of the City Register of the City of New York on February 8, 2008 as CRFN 2008000054456, which was thereafter assigned to Stabilis as evidenced by a certain Assignment of Mortgage dated March 2, 2015, and recorded with the Office of the City Register of the City of New York on April 3, 2015 as CRFN 2015000111888. Copies of the aforementioned are annexed hereto as **Exhibits "A" and "B"**, respectively. The current outstanding balance is approximately \$2,619,576.49.

12. The Debtor agrees and acknowledges that Stabilis holds a valid, perfected and enforceable first priority blanket lien on and security interest in the Property (the "Pre-Petition Stabilis Collateral"), which Pre-Petition Stabilis Collateral secures Stabilis' claims, pursuant to and in accordance with the Stabilis Amended Mortgage.

13. The Debtor agrees and acknowledges that Stabilis has properly perfected its first

priority liens and security interests in the Pre-Petition Stabilis Collateral by virtue of the filing and recording of the Mortgage and that its liens in the Pre-Petition Stabilis Collateral are duly perfected, valid, existing, and legally enforceable. Debtor does however reserve its rights to assert defenses, setoffs, counterclaims and other claims against Stabilis.

14. Stabilis is likely to assert 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 Stabilis 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 Stabilis has asserted a security interest for the purposes, and within the meaning, of Bankruptcy Code § 363(a) (collectively, the “Cash Collateral”) and Stabilis has a first priority perfected lien and security interest in the Cash Collateral pursuant to the applicable provisions of the Consolidated Mortgage and in accordance with Bankruptcy Code §§ 361, 363(a) and 552(b).

#### **Relief Requested**

15. The Debtor submits this Motion pursuant to Bankruptcy Code §363(c)(2)(B) and 361 and Bankruptcy Rule 4001(b) with respect to the Debtor’s request for authority to use property which may constitute Cash Collateral in which Stabilis has asserted a security interest in said Cash Collateral, substantially in accordance with the terms and conditions to be set forth in a proposed Order (the “Order”).

16. The proposed Order will grant the Debtor the authority to use Cash Collateral pursuant to Bankruptcy Code §§363 (c)(1) and (2) and Bankruptcy Rule 4001(c) to the extent necessary to continue the operation of its business and to preserve the value of its estate during

the course of the Chapter 11 case.

17. Section 363(a) of the Bankruptcy Code states as follows:

“In this section, “cash collateral” means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of properties subject to a security interest as provided in Section 552(b) of this title, whether existing before or after the commencement of a case under this title.”

18. Section 363(c)(1) of the Bankruptcy Code provides as follows:

"(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1304, 1203, or 1204 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing".

19. Section 363(d) of the Bankruptcy Code provides as follows:

"(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section only to the extent not inconsistent with any relief granted under section 362(c), 362(e), or 362(f) of this title".

20. Accordingly, pursuant to §363(c)(2) of the Bankruptcy Code, the consent of Stabilis or authority from this Court is required to use Cash Collateral in which Stabilis holds a perfected security interests.

### **Adequate Protection**

21. The purpose of adequate protection is to ensure that the secured creditor receives the value for which it bargained pre-bankruptcy. In re Swedeland Development Group, Inc., 16 F.3d 552 (3rd Cir. 1994); In re Dunes Casino Hotel, 69 B.R. 784, 793 (Bankr. D.N.J. 1986), citing In re Coors of the Cumberland, 19 B.R. 313 (Bankr. M.D. Tenn. 1982). See also, In re 495 Central Park Ave. Corp., 136 B.R. 626 (Bankr. S.D.N.Y. 1992). Adequate protection is designed to safeguard the secured creditor from diminution in the value of its interest during the Chapter

11 reorganization. In re Nice, 355 B.R. 554, 563 (Bankr. N.D. Va. 2006) (“adequate protection is solely a function of preserving the value of the creditor’s secured claim as of the petition date due to a debtor’s continued use of the collateral”).

22. Because the term “adequate protection” is not defined in the Bankruptcy Code, the precise contours of the concept are necessarily determined on a case-by-case basis. MBank Dallas, N.A. v. O’Connor (In re O’Connor), 808 F.2d 1393 (10th Cir. 1987). In re Snowshoe Co., 789 F.2d 1085, 1088 (4th Cir. 1086); In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); In re Beker Industries Corp., 58 B.R. 725 (Bankr. S.D.N.Y. 1986); see also In re JKI Chevrolet, Inc. 190 B.R. 542, 545 (Bankr. E.D.Va. 1995) (adequate protection is a flexible concept that is determined by considering the facts of each case).

23. The Order provides that, as adequate protection for the Debtor’s use of Stabilis’ Cash Collateral and in consideration for the use of the Cash Collateral, the Debtor shall grant Stabilis a replacement lien in all of the Debtor’s pre-petition and post-petition assets and proceeds, including the Cash Collateral and the proceeds of the foregoing, to the extent that Stabilis had a valid security interest in said pre-petition assets on the Filing Date and in the continuing order of priority that existed as of the Filing Date (the “Replacement Liens”).

24. The Replacement Liens shall be subject and subordinate 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; (c) the fees and expenses of a hypothetical Chapter 7 trustee to the extent of \$5,000; 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”).

25. The Debtor submits that, in order to preserve the Debtor’s estate and ensure the viability of the Debtor during the Chapter 11 case, Stabilis should be granted a replacement lien with the same nature, extent and validity of its pre-petition lien, subject to investigation by any creditors or committee appointed in the Debtor’s Chapter 11 case.

26. The Debtor believes that Stabilis is substantially oversecured in light of the current equity cushion, or value of the Property being well in excess of the debt owed to Stabilis. Stabilis is therefore entitled to accrue post-petition interest and reasonable fees pursuant to §507(b) of the Bankruptcy Code.

27. In addition to the liens and security interests proposed to be granted pursuant hereto, the Debtor shall make, no later than the tenth (10<sup>th</sup>) day of each month covered hereunder, monthly payments to Stabilis in the amount of \$13,500.00 as set forth in the Stabilis Mortgage, at the non-default, contract rate of interest. Said payment consists of principal, interest.

### **The Budget**

28. The Debtor proposes to use Cash Collateral only for ordinary and necessary operating expenses of the Property substantially in accordance with the operating budget annexed hereto as **Exhibit “C”** (the “Budget”). The Debtor believes that the Budget includes all reasonable, necessary and foreseeable expenses to be incurred in the ordinary course of operating, managing and maintaining the Property for the period set forth in the Budget. The Debtor believes that the use of Cash Collateral in accordance with the Budget will provide the Debtor with adequate liquidity to pay administrative expenses as they become due and payable during the period covered by the Budget.

**Request For Waiver Of Stay**

29. The Debtor further seeks a waiver of the stay of the effectiveness of the Order that may be imposed by any applicable Bankruptcy Rule. As set forth above, the use of Cash Collateral is essential to prevent potentially irreparable damage to the Debtor's operations, value and ability to reorganize. Accordingly, the Debtor submits that sufficient cause exists to justify a waiver of any stay imposed by the Bankruptcy Rules, to the extent applicable.

**Notice**

30. This Motion is being served on notice to Stabilis and all other parties asserting secured claims against the Debtor, as well as the United States Trustee and all other parties entitled to notice pursuant to Bankruptcy Rule 4001(d), including but not limited to the Debtor's twenty (20) largest unsecured creditors.

**Waiver Of Memorandum Of Law**

31. The Debtor respectfully requests that the Court dispense with the requirement of filing a Memorandum of Law in connection with this Motion, in that there are no novel or difficult legal issues presented in the motion and the Motion includes citations to applicable authority.

**WHEREFORE**, the Debtor respectfully requests entry of the Order, together with such other and further relief as is just and proper under the circumstances.

Dated: Suffern, New York  
November 8, 2016

**LAW OFFICE OF ROBERT L. REDA, P.C.**

*Counsel to Debtor*

By: /s/ Robert L. Reda

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