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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In re:

Chapter 11

Case No. 17-40082-NHL

2200 PITKIN REALTY LLC

Debtor.

**DEBTOR'S APPLICATION FOR AN ORDER (A) AUTHORIZING DEBTOR'S INTERIM
AND FINAL USE OF CASH COLLATERAL PURSUANT TO 11 U.S.C. § 361 AND 363
AND GRANTING ADEQUATE PROTECTION AND (B) SCHEDULING FINAL HEARING
PURSUANT TO 11 U.S.C. § 363(c)(2) AND FED. R. BANKR. P. 4001**

**TO: THE HONORABLE NANCY HERSHEY LORD,
UNITED STATES BANKRUPTCY JUDGE:**

The above captioned debtor and debtor-in-possession (the "Debtor") by its attorneys, E Waters & Associates, PC, files this application (the "Application"), for entry of an order authorizing the Debtor to utilize the Cash Collateral pursuant to 11 U.S.C. §363. In support of this Motion, the Debtor respectfully states and represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b) (2).

2. Venue of this proceeding and the within Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The predicates for relief requested herein are section 363 of the Bankruptcy Code and Rules 4001 and 6004 of the Bankruptcy Rules.

BACKGROUND

4. On January 9, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Bankruptcy Code, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “Bankruptcy Code”) (the “Chapter 11 Case”).

5. Thereafter the instant proceeding was referred to your Honor for administration under the Code.

6. The Debtor is a Single Asset Real Estate entity located in Brooklyn, New York.

7. The Debtor remains in possession of its assets and continue to manage its operation as a debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

8. No Trustee, examiner or Creditors' Committee has been appointed in this proceeding.

9. The Debtor owns a certain property located at 2200 Pitkin Avenue, Brooklyn NY 11207 (the “Property”). The Property has three commercial and three residential units. The tenants’ payment yields the Debtor \$6,650 per month.

10. Due to the non-paying tenants, the Property ended up in a foreclosure action pending in the Kings County Supreme Court titled *Bayview Loan Servicing, LLC v. 2200 Pitkin Realty LLC, et al., Index No. 500312/2012*, where a judgment was entered. The auction and sale

of the Property was stayed by the Chapter 11 filing.

11. The Property has an approximate fair market value of \$755,000 based upon recent appraisal and has a first priority secured Mortgage and Security Agreement, (the “Mortgage”) in the approximate outstanding amount, subject to certain dispute on amount, of \$1,218,633.00 held by Bayview Loan Servicing (“Bayview”)

12. 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 Bayview’s debt pending a refinance, sale or confirmation of a Plan of Reorganization within a reasonable amount of time.

13. The Debtor is fully occupied, and is in a position to reorganize the Bayview 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 Bayview pending the contemplated Plan of Reorganization.

THE PRE-PETITION SECURED DEBT

14. As stated above, the Property is subject to a first priority secured Mortgage executed in favor of Interbay Funding LLC by virtue of a certain Mortgage and Security Agreement dated as of December 29, 2006, recorded with the Office of the City Register of the City of New York on March 22, 2007 as CRFN 2007000152318, which was thereafter assigned to Bayview as evidenced by a certain Assignment of Mortgage dated May 4, 2007, and recorded with the Office of the City Register of the City of New York on June 5, 2007 as CRFN 2007000289943. Copies of the aforementioned are annexed hereto as Exhibits “C” and “D”, respectively. The current outstanding balance is approximately \$1,218,633.00.

15. The Bayview Loan is secured by a blanket lien on and security interest in the Property (the “the Pre-Petition Bayview Collateral”) which Pre-Petition Bayview Collateral secures Bayview’s claims, pursuant to and in accordance with the Mortgage.

ADEQUATE PROTECTION OF LENDER(S)

16. Section 361(2) of the Bankruptcy Code provides that adequate protection may be provided by granting a replacement lien in post-petition assets to protect a secured creditor from diminution of its collateral during the bankruptcy proceeding.

17. As detailed in the Interim Order, to protect against Diminution in Value, if any, resulting from the Debtor’s use of the Cash Collateral, the Debtor proposes to provide the Lender(s), to the extent of the Diminution in Value, the Adequate Protection Liens.

18. Courts have utilized Section 361(2) of the Bankruptcy Code in fashioning adequate protection and permitting a debtor to use cash collateral under similar circumstances. *See, e.g., In re Prichard Plaza Associates Limited Partnership*, 84 B.R. 289, 302 (Bankr. D. Mass. 1988) (“If the proceeds stream is likely to remain stable through the collection of new accounts receivable or the sale of new inventory, adequate protection is often ensured by a replacement lien on post-petition accounts and inventory and their proceeds and by some provision for monitoring the use of proceeds.”); *In re Airport Inn Associates, Ltd.*, 132 B.R. 951, 960 (Bankr. D. Col. 1990) (“The court could order a lien in post-petition accounts receivable as adequate protection if that relief was requested....”); and *In re International Design & Display Group, Inc.*, 154 B.R. 362, 364 (Bankr. S.D. Fla. 1993) (court authorized debtor to use cash collateral and, as adequate protection, granted secured creditor replacement lien on all post-petition accounts receivable, inventory and contracts to the extent the creditor’s collateral was depleted).

19. Granting the Lender(s) replacement liens on its prepetition collateral generated therefore adequately protects the Lender(s)' interests. In reaching this conclusion the Debtor considered chiefly the going concern value of its assets and the relative priority of each of the Lender(s) in relation to Bayview.

20. Additionally, the Debtor believes its projected operations will be sufficient to continue operations and insulate each of the Lender(s) from Diminution in Value, if any, and enable the Debtor to maintain the going concern value of the Lender(s)' collateral. Given the current market conditions for the sale of the Debtor's Single Asset Real Estate, the continuation of the Debtor's operations likely presents the best opportunity for the Lender(s) to receive the greatest recovery on account of their claims. The Debtor's Single Asset Real Estate, as a going concern, has a value far in excess of any value that might be obtained in a chapter 7 liquidation.

21. Based on the foregoing, the Debtor submits that use of the Cash Collateral will allow the Debtor to continue its operations and thereby protect the Lenders' interests. Courts have consistently recognized that the preservation of the going concern value of secured lender(s)' collateral constitutes adequate protection of such creditors' interest in the collateral. *See, e.g., In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 713, 716 (Bankr. D. Del. 1996) (holding that if there is no actual diminution of value of collateral and the debtor can operate profitably post-petition, then the secured creditor is adequately protected); *In re 499 W. Warren St. Assocs., Ltd. P'ship*, 142 B.R. 53, 56 (Bankr. N.D.N.Y. 1992) (finding a secured creditor's interest in collateral adequately protected when cash collateral was applied to normal operating and maintenance expenditures on the collateral property); *In re Stein*, 19 B.R. 458, 460 (Bankr. E.D. Pa. 1982) (creditors' secured position would be enhanced by the continued operation of the debtors' business); *In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991) ("The

important question, in determining whether the protection to a creditor's secured interest is adequate, is whether that interest, whatever it is, is being unjustifiably jeopardized.”) (citation omitted).

22. As additional adequate protection, the Debtor will provide the Lender(s), within 20 days following the end of each prior month, a monthly report containing the following information: (a) all receipts and disbursements of the Debtor; and (b) a reconciliation of actual receipts and disbursements with those set forth in the Budget on a line-by-line basis showing any variance to the proposed corresponding line item of the Budget.

23. The Debtor respectfully submits that the adequate protection described above is sufficient and warrants entry of an interim (and ultimately final) Order approving the use of the Lender(s)' cash collateral in accordance with the Budget.

RELIEF REQUESTED AND THE BASIS THEREOF

24. By this Motion, the Debtor requests entry of the Order pursuant to Section 363 of Title 11, United States Code (the “Bankruptcy Code”) and Rules 4001 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) granting:

- a) Authorization under section 363 of the Bankruptcy Code and Rules 4001 (b) and 6004 of the Bankruptcy Rules for the Debtor to use any Cash Collateral (as defined in section 363 (a) of the Bankruptcy Code, “Cash Collateral”) in which liens and security interests are asserted by those lenders who advanced funds to the Debtor prepetition, and the proceeds from the DIP Facility, for general working capital purposes and to preserve the value of its estate during the course of the Chapter 11 case and the costs and expenses associated with this chapter 11 Case including fees of professionals, all in accordance with the terms of the Debtor’s proposed budget (the

“Budget”), the initial copy of which is annexed hereto as Exhibit A;

25. As discussed more fully below, the use of Cash Collateral is critical and vital to the Debtor’s ability to fund its post-petition operating requirements while preserving and maintaining the value of its assets. Having adequate financing in place also will provide the Debtor’s service providers with the comfort of knowing that during this bankruptcy proceedings, the Debtor will have the financial ability to pay its post-petition obligations as they become due

The Budget

26. 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 “A”** (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 ENTRY OF EMERGENCY INTERIM ORDER

27. Bankruptcy Rule 4001(b)(2) requires that a hearing on an application for use of cash collateral be served at least fourteen (14) days after service of the Application unless necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

28. Unless the Debtor is authorized to use the Lender(s)’ cash collateral, the Debtor’s ability to reorganize will be materially impaired and jeopardized consequently visiting immediate and irreparable harm to the Debtor, its estates and its creditors.

29. Based on the foregoing, the Debtor respectfully submits that entry of an Order authorizing the interim use of cash collateral and scheduling a final hearing to approve the use of cash collateral is necessary and appropriate.

REQUEST FOR FINAL HEARING

30. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor requests that the Court schedule a Final Hearing on the Motion as soon as practicable, but in no event later than 45 days following the entry of the Interim Cash Collateral Order, and fix the time and date for parties to file objections to the motion in advance of such Final Hearing.

NO PRIOR REQUEST

31. No prior request for the relief sought herein has been made to this or any other court.

WHEREFORE the Debtor respectfully requests entry that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: Jamaica, NY
May 3, 2017

By: /s/ Rashmi Attri

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