

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

Case No. 17-40082-nhl

2200 PITKIN REALTY LLC,

Chapter 11

Debtor.

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**STIPULATED ORDER BY AND BETWEEN THE DEBTOR AND  
BAYVIEW LOAN SERVICING, RESOLVING THE DEBTOR’S REQUEST  
FOR USE OF CASH COLLATERAL PURSUANT TO  
SECTIONS 361, 363(c)(2) AND 541 OF THE BANKRUPTCY CODE**

This Stipulated Order is entered into by and between 2200 Pitkin Realty, LLC (the “Debtor”) and Bayview Loan Servicing (“BAYVIEW”), by their respective undersigned counsel, with respect to the Debtor’s request for use of Bayview’s cash collateral pursuant to 11 U.S.C. §§ 361, 363(c)(2) and 541.

**WHEREAS**, 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 Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court” or the “Court”); and

**WHEREAS**, the Debtor’s Chapter 11 case is a single asset real estate case; and

**WHEREAS**, the Debtor is the owner of the real property known as and located at 2200 Pitkin Avenue, Brooklyn NY 11207 (the “Property”); and

**WHEREAS**, BAYVIEW is the holder of the note secured by the Property (the “Note”), and a secured creditor of the Debtor; and

**WHEREAS**, as of the Petition Date, the Debtor is indebted to BAYVIEW in the approximate amount, subject to certain dispute on amount, of \$1,218,633 (the “Debt”); and

**WHEREAS**, the Debt is secured by first mortgage liens upon the Property, and first security interests in, the rents, issues and profits (the “Rents”) derived from the Property; and

**WHEREAS**, the Debtor’s monthly rent roll with respect to the Property is approximately \$6,650 per month; and

**WHEREAS**, the parties agree that BAYVIEW’s liens and security interests constitute valid, perfected and enforceable first mortgage liens and first priority security interests in the Property and the Rents; and

**WHEREAS**, the Debtor has requested to use BAYVIEW’s cash collateral pursuant to Bankruptcy Code §§ 361, 363(c)(2), and 541 (the “Cash Collateral Request”); and

**WHEREAS**, the Rents constitute BAYVIEW’s “cash collateral” pursuant to Bankruptcy Code § 363(a); and

**WHEREAS**, Debtor has remained in possession of the Property, is managing the Property and collecting rents; and

**WHEREAS**, the amount of \$21,914.47 in post-petition Rents (the “Escrowed Rents”) is currently being held in Debtor-in-Possession Bank Account; and

**WHEREAS**, the Debtor and BAYVIEW are prepared to resolve the Cash Collateral Request whereby, *inter alia*:

- (i) a budget agreed to by the Debtor and BAYVIEW shall be put into place;
- (ii) Debtor shall continue to manage the Property and pay all budgeted expenditures from the Cash Collateral;
- (iii) the amount of \$3,000, representing the adequate protection payment due each month, shall be paid to BAYVIEW until further order of the Court, which payments BAYVIEW shall accept without prejudice and with a full reservation of rights; and

- (iv) all monies in excess of the expenditures and payment listed in (ii), and (iii) above shall be held by Debtor pending acceptance of a Chapter 11 Plan in the herein case, or the conclusion of the Debtor's use of BAYVIEW's cash collateral, whichever is earlier; these monies may be used by Debtor for any purpose outlined herein or in the Chapter 11 Plan approved by the Court, and for any purpose as may be agreed to by BAYVIEW or its counsel, but for no other purpose.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE PARTIES, as follows:**

1. The Debtor's Cash Collateral Request be, and the same hereby is, resolved in accordance with the provisions of this Stipulated Order.
2. The "whereas" clauses are fully incorporated herein by reference and made a critical part herein.
3. Debtor shall adhere substantially to the budget (the "Budget") annexed hereto as **Exhibit "A"** and shall be authorized to make and incur expenditures scheduled thereon, or to pay, when due, any amounts under 28 U.S.C. § 1930(a)(6) and 31 U.S.C. § 3717, without the prior approval of BAYVIEW, subject to the following limitations:
  - (i) Debtor shall provide one business days' notice to BAYVIEW of any expenditure that would cause any single line item to exceed 15% of the monthly budgeted amount; and
  - (ii) Notwithstanding subparagraph (a) above, Debtor shall be authorized to make and incur expenditures of an emergent nature and/or otherwise required by federal, state, and/or municipal law, regulation, code and/or directive, without receiving prior authorization from BAYVIEW for such expenditure. Debtor shall provide notice to BAYVIEW as soon thereafter as is practicable under the circumstances.

4. By the twentieth (20) day of each calendar month, Debtor shall provide a report of the income and expenditures of the Property for the prior calendar month, substantially in the form required by the Office of the United States Trustee (the “UST”) for monthly reporting by an operating debtor-in-possession. Such monthly report shall be provided to the UST and BAYVIEW and shall be electronically filed on the Court’s ECF docket.

5. No later than the fifteenth (15) day of each calendar month, Debtor shall pay to BAYVIEW, \$3,000 (the “Monthly BAYVIEW Payment”). Any monies collected by Debtor in excess of the Monthly BAYVIEW Payment and the line-item expenses contemplated in the Budget or this Stipulated Order, shall be held by Debtor in its Debtor-in-Possession operating account (the “DIP Account”). Debtor shall not dispose of such excess monies except as expressly provided in this Stipulated Order or the Chapter 11 Plan.

6. BAYVIEW shall accept the Monthly BAYVIEW Payment described in Paragraph 5 above without prejudice and with a full reservation of rights. Such payment shall be applied to the principal and interest on the Note according to the Note’s amortization schedule at the time of its making (i.e., as if each monthly payment had been made timely, and no additional monies tendered).

7. The Debtor expressly agrees that it shall not pay itself or any insider or affiliate any management fee, and all Rents shall be immediately deposited in the DIP Account and used only for Debtor’s regular management of the property as provided in this Stipulated Order and the Budget.

8. Notwithstanding anything contained herein to the contrary, the Replacement Lien and Super-Priority Claims are subject to a carve-out (the “Carve-Out”) for (a) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the U.S. Trustee pursuant to 28

U.S.C. § 1930(a)(6) and 31 U.S.C. § 3717; (b) the reasonable fees and expenses of a chapter 7 trustee and his or her professionals not to exceed \$5,000.00.

9. No further filings or recordings by BAYVIEW are necessary or required in order to perfect the liens granted by this Stipulated Order.

10. “Notice to the Debtor” and “Notice to BAYVIEW” shall be made via e-mail upon their respective counsel, as follows:

**To the Debtor:**

Rashmi Attri, Esq.  
E WATERS & ASSOCIATES P.C.  
89-36 Sutphin Boulevard  
Suite 301-304  
Jamaica, NY 11435  
Tel. 914-686-4300  
rattri@ewaterslaw.com

**To BAYVIEW:**

Seung Woo Lee, Esq.  
Rosicki, Rosicki & Associates, P.C.  
51 E. Bethpage Road  
Plainview, New York 11803  
Tel.: 516-741-2585  
Slee@rosicki.com

11. This Stipulated Order is not intended and shall not be deemed to be a waiver of any rights or remedies under applicable law or documentation that BAYVIEW possesses, including without limitation, to its right to request additional adequate protection, to seek relief from the automatic stay, and/or to take any other action that it may deem necessary or appropriate in its opinion to protect its interest in the Property.

12. The Debtor’s use of BAYVIEW’s cash collateral shall terminate upon the earlier of: (i) the date that an order of the Court granting BAYVIEW relief from the automatic stay with respect to the Property, or (ii) one-hundred-eighty (180) days from the date of this Stipulated Order, unless further extended by an order of this Court.

13. Notwithstanding paragraph 12 hereof, BAYVIEW may settle, on seven (7) days' notice to the Debtor and the UST, and all parties in interest via the Court's ECF Docket, a proposed order terminating use of cash collateral if: (i) in ninety (90) days after entry of this Stipulated Order the Debtor does not propose a good faith reasonable offer to satisfy BAYVIEW's secured claim as well as prepare a term sheet showing how other claims against the Debtor (including, but not limited to, tax claims) will be satisfied, (ii) the Debtor makes a payment which is not authorized by this Stipulated Order, or (iii) the Debtor's counsel receives written notice from BAYVIEW of a violation of any other provision of this Stipulated Order and such violation is not cured within ten (10) days after receipt of such notice.

14. BAYVIEW's cash collateral shall not be used to pay professional fees except as expressly provided for in the Budget, Chapter 11 Plan or the Carve-Out. This Stipulated Order may be signed in one or more counterparts by facsimile, scanned document or electronic signature with the same force and effect as if a single, original document.

15. The portions of this Stipulated Order authorizing the Debtor to use Cash Collateral shall be effective *nunc pro tunc* to the date of April 1, 2017.

Dated: July 19, 2017  
Queens, New York

*/s/ Rashmi Attri*

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Rashmi Attri, Esq.  
E WATERS & ASSOCIATES P.C.  
Attorneys for the Debtor  
89-36 Sutphin Boulevard  
Suite 301-304  
Jamaica, NY 11435  
Tel. 914-686-4300  
rattri@ewaterslaw.com

Dated: July 19, 2017  
Plainview, New York

*/s/ Seung Woo Lee*

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Seung Woo Lee, Esq.  
Rosicki, Rosicki & Associates, P.C.  
Attorneys for Bayview Loan Servicing  
51 E. Bethpage Road  
Plainview, New York 11803  
Tel.: 516-741-2585  
Slee@rosicki.com

**SO ORDERED:**

**Dated: July 24, 2017  
Brooklyn, New York**



*Nancy Hershey Lord*  
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**Nancy Hershey Lord  
United States Bankruptcy Judge**