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Hearing Date: To Be Determined
Time: To Be Determined

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:
HAIMIL REALTY CORP.,

Chapter 11
Case No. 14-11779 (MEW)

Debtor.
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**DEBTOR'S EMERGENCY MOTION FOR AN ORDER AUTHORIZING THE
DEBTOR TO OBTAIN EXIT FINANCING AND GRANTING RELATED RELIEF**

TO THE HONORABLE MICHAEL E. WILES,
UNITED STATES BANKRUPTCY JUDGE:

Haimil Realty Corp., the debtor and debtor-in-possession herein (the "Debtor"), as and for its emergency motion (the "Motion") for entry of an Order, pursuant to §§ 105(a) and 363(b) of title 11 of the United States Code (the "Bankruptcy Code"), authorizing the Debtor to obtain exit financing of \$1,500,000 (the "Exit Financing") from Millbrook Realty Capital, LLC (the "Proposed Lender") upon the terms set forth in a certain executed Term Sheet dated May 17, 2017, a copy of which is attached hereto as *Exhibit "A"* (the "Term Sheet"), and to perform its obligations thereunder, and granting related relief, respectfully represents and alleges as follows:

BACKGROUND

1. On June 11, 2014 (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") with this Court and an Order for Relief was simultaneously entered. As of the Petition Date, the Debtor was authorized to remain in possession of its property and operate its business as a debtor-in-

possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee, custodian or receiver was appointed, and no committee of creditors was formed.

2. On January 17, 2017, an Order was entered pursuant to which, among other things, the Court directed that the Debtor “must confirm a chapter 11 plan of reorganization on or before April 28, 2017, failing which this case will be converted to a case under chapter 7”. By Order entered on April 3, 2017, the Debtor’s *First Amended Disclosure Statement in Connection With Chapter 11 Plan of Reorganization Proposed By the Debtor* (the “Disclosure Statement”) relating to its proposed *First Amended Chapter 11 Plan of Reorganization* (the “Plan”), each dated March 24, 2017, was approved by this Court. By Order entered on April 26, 2017, the Debtor’s time to confirm a chapter 11 plan was extended to May 23, 2017.

3. Briefly, the Plan provides for the full payment of all of the Debtor’s pre and post-Petition Date obligations, with applicable interest, if any. The Plan further provides for Menachem Haimovich’s retention of his equity Interests in the Debtor. The Plan is proposed to be implemented by way of a post-confirmation sale of the commercial condominium unit owned by the Debtor located at 209 East 2nd Street, Unit 1, New York, New York (the “Commercial Unit”) and with the proceeds of certain Exit Financing to be obtained by the Debtor. The Debtor has entered into a Purchase Agreement, subject to this Court’s approval, to sell the Commercial Unit for the sum of \$2,700,000.

4. In furtherance of confirming and consummating the Plan, the Debtor entered into negotiations with the Proposed Lender concerning the Exit Financing required by the Debtor. An initial term sheet was signed on or about March 24, 2017 providing for financing to the Debtor totaling \$1,365,000. Over the course of the ensuing weeks, the Debtor and the Proposed Lender entered into extensive arms-length negotiations with the assistance of independent

counsel concerning final financing terms and mutually agreeable documentation concerning the Exit Financing. As a result of a decrease in the purchase offer accepted by the Debtor with regard to the Commercial Unit, the Debtor subsequently requested that the Proposed Lender increase the financing amount to \$1,500,000. The Proposed Lender agreed and the final Term Sheet attached hereto was signed.¹

5. Without intending to limit the detail provided therein, the material terms of the Exit Financing as stated in the Term Sheet can be summarized as follows:

- (a) The Proposed Lender will advance the sum of \$1,500,000 to the Debtor at closing;
- (b) The outstanding principal balance shall bear interest at the rate of 10% per annum (provided however that should the Debtor effectively exercise its right to extend the initial term of the loan, the interest rate for the extension period shall be the greater of 10% or six (6) percentage points above the Prime Rate as published by Citibank, N.A.);
- (c) The repayment term is twelve (12) months from the date of closing with a right in favor of the Debtor to extend the term for an additional six (6) months upon the payment of a fee of 0.5% of the loan amount;
- (d) The proceeds of the Exit Financing will be used, in the first instance, to satisfy any unpaid portion of the existing mortgage on the residential condominium unit owned by the Debtor located at 209 East 2nd Street, Unit 7, New York, New York (the "Residential Unit"), to pay the Proposed Lender's fee and closing costs, and to set up an interest reserve, with the balance to be used at the Debtor's discretion;
- (e) The Debtor's obligations will be secured by a first priority mortgage on the Residential Unit, a pledge of the outstanding shares of the Debtor, the personal guarantee of Menachem Haimovich and an assignment of leases and rents.;

¹ Counsel to the Debtor and counsel to the Proposed Lender are finalizing the extensive loan and security documents that incorporate the provisions of the Term Sheet and which, if authorized by this Court, will be executed at closing (the "Exit Financing Documents"). The Debtor will endeavor to submit (unsigned) copies of the Exit Financing Documents at or prior to the hearing on this Motion.

- (f) Fees include a 3% “Origination Fee”, a 1% “Exit Fee” and a \$7,500 “Loan Fee”;
- (g) The Exit Financing is contingent on the sale of the Commercial Unit; and
- (h) The Debtor will not be paying any brokerage commission in connection with the Exit Financing.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this case and this Motion pursuant to 28 U.S.C. §§157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper in this district pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for the relief sought herein are §§ 105(a) and 363(b) of the Bankruptcy Code.

REQUEST FOR RELIEF

7. The Debtor respectfully requests the entry of an Order authorizing the Debtor’s to obtain the Exit Financing from the Proposed Lender as provided for under the Term Sheet.

8. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate...” The proposed use, sale or lease of the estate property outside of the ordinary course of business, should generally be approved if the debtor employed its reasonable business judgment in determining the use to be made of the property. *See, e.g., Official Comm. of Unsecured Creditors v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143, 145 (2d Cir. 1992); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F. 2d 1063, 1070 (2d Cir. 1983); *In re Global Crossing Ltd.*, 295 B.R. 726, 744 (Bankr. S.D.N.Y. 2003).

9. To determine whether the business judgment test is met, the court “is required to examine whether a reasonably business person would make a similar decision under similar circumstances.” In re Exide Techs., Inc., 340 B.R. 222, 239 (Bankr. D. Del. 2006), *rev’d on other grounds*, 607 F.3d 957 (3d Cir. 2010). Provided that the debtor’s business judgment does not run afoul of the provisions and policies underlying the Bankruptcy Code, courts grant debtors in possession deference in accordance therewith. *See, e.g., In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (holding that “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”) If the debtor provides a valid business justification for its proposed action, there is a strong presumption “that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” In re Integrated Res., 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992).

10. The Debtor respectfully submits that obtaining Exit Financing on the terms set forth in the Term Sheet represents a sound exercise of business judgment by the Debtor and that consummation thereof would be in the best interests of the estate. The Exit Financing is necessary for the Debtor to successfully emerge from chapter 11 and to have sufficient funding to implement the Plan and, therefore, to maximize the value of its estate for the benefit of its creditors. The Term Sheet (as well as the Exit Financing Documents that will be executed at closing should the Debtor be authorized to do so) are the product of arms-length, good faith negotiations between the Debtor and the Proposed Lender. The Debtor, in consultation with its professionals, believes that the Term Sheet reflects fair and competitive finance market terms and conditions under the circumstances. Accordingly, the Debtor requests authorization to obtain Exit Financing upon the

terms set forth in the Term Sheet and to perform its obligations thereunder. Absent such authorization, the Debtor will be hard-pressed to consummate the Plan and its chapter 11 case will likely be converted to a case under chapter 7.

CONCLUSION

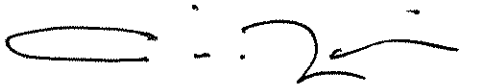
11. Based upon the foregoing, the Debtor respectfully submits that it is in the best interest of the Debtor, its creditors, its estate and all other parties in interest for the Court to authorize the Debtor to obtain the Exit Financing as discussed herein.

WHEREFORE, the Debtor respectfully requests that the Court grant the Motion in its entirety along with such other and further relief as may be just and proper.

Dated: New York, New York
May 18, 2017

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By:



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