

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

**CONGREGATION ACHPRETVIA TAL
CHAIM SHAR HAYUSHOR, INC.,**

Debtor.

Chapter 11

Case No. 16-10092-MEW

**ORDER (A) AUTHORIZING THE DEBTOR TO OBTAIN POST-
PETITION FINANCING ON A SECURED AND SUPER-PRIORITY
BASIS PURSUANT TO 11 U.S.C. §§ 105, 364(c), AND 364(d) AND FED. R.
BANKR. P. 4001 AND 9014, AND (B) GRANTING RELATED RELIEF**

Upon consideration of the Motion (the "Financing Motion") dated November 29, 2017, filed in the above-captioned bankruptcy case (the "Bankruptcy Case") of Congregation Achpretvia Tal Chaim Shar Hayushor, Inc., the debtor and debtor-in-possession ("Debtor"), (a) Authorizing the Debtor to Obtain Post-Petition Financing on a Secured and Super-Priority basis pursuant to 11 U.S.C. §§ 105, 364(c) and 364(d), and (b) granting related relief; and a hearing having been held on December 14, 2017 (the "Hearing"); and the Court having heard evidence as is reflected in the record of the Hearing and the argument of counsel; after due deliberation and consideration, and for good and sufficient cause appearing therefor:

BASED UPON THE RECORD ESTABLISHED AT THE HEARING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. The Petition Date. On January 15, 2016 (the "Petition Date"), the Debtor commenced this bankruptcy case by filing a petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Court"). Since the Petition Date, the Debtor has remained in possession of its assets and is

a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Bankruptcy Case.

B. Jurisdiction and Venue. This Court has jurisdiction to hear the Financing Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Financing Motion constitutes a core proceeding under 28 U.S.C. § 157(b). Venue for the Bankruptcy Case and proceedings on the Financing Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice. Notice of the Hearing and the relief requested in the Financing Motion has been provided. Under the circumstances, such notice of the Hearing and the relief requested in the Financing Motion constitutes due, sufficient and appropriate notice and complies with section 102(1) of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure (the "Bankruptcy Rules") 4001, and applicable local rules.

D. Need for Post-Petition Financing. An immediate need exists for the Debtor to obtain funds in order to: (i) pay a \$3 million settlement payment to 163 East 69 Realty, LLC ("East 69 Realty"), which will allow the Debtor to resolve the litigation between them, which is pending in the Supreme Court of the State of New York, County of New York, Index No. 161573/2015 (the "State Court Action") and (ii) pay certain fees and reserves charged by the Lender (as hereinafter defined) in connection with the DIP Facility (as hereinafter defined). The resolution of the State Court Action will allow the Debtor to sell its property located at 163 East 69th Street, New York, New York (the "Property") and file a plan to emerge from Chapter 11. The Debtor has no access to funds to pay the \$3 million settlement payment (and corresponding expenses) except through the debtor-in-possession financing transaction described in the loan agreement between the Debtor and 163 E. 69 DIP Lender, LLC ("Lender") that was previously

approved and attached hereto as Exhibit A (the “DIP Agreement”)¹, and the First Amendment to the Revised DIP Financing Loan Agreement attached hereto as Exhibit B (the “Amendment,” together with the DIP Agreement, the “DIP Loan Agreement”). The debtor-in-possession financing transaction described in the DIP Loan Agreement, as modified by this Order (the “Financing Order”), shall hereinafter be referred to as the “DIP Facility.” The DIP Facility and the documents and instruments governing the DIP Facility, including the form of Mortgage as Exhibit C and Amended and Restated Promissory Note as Exhibit D, shall hereinafter be referred to as the “DIP Financing Documents.”

E. No Credit Available on More Favorable Terms. The Debtor has been unable to obtain credit on more favorable terms and conditions than those set forth in the DIP Loan Agreement and this Financing Order.

F. Use of Proceeds of the DIP Facility. Proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Financing Documents) pursuant to this Financing Order shall be used only to make payments to East 69 Realty to settle the State Court Action in a manner consistent with the DIP Loan Agreement, the DIP Financing Documents, and this Financing Order.

G. Business Judgment and Good Faith Pursuant to Section 364(e). The terms and conditions of the DIP Facility, as set forth in the DIP Financing Documents and modified herein, and the fees to be paid thereunder (i) are fair, reasonable, and the best available under the circumstances; (ii) reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties; and (iii) are supported by reasonably equivalent value and consideration. The DIP Facility was negotiated in good faith and at

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the DIP Loan Agreement.

arm's length between the Debtor and Lender. Lender has indicated its willingness to provide financing to the Debtor pursuant to the DIP Financing Documents. The funds to be extended under the DIP Facility will be extended by Lender in good faith, and for valid business purposes and uses by the Debtor, and, as a consequence, Lender is entitled to the protection and benefits afforded by section 364(e) of the Bankruptcy Code. The DIP Superpriority Claim (as defined herein), and other protections granted pursuant to this Financing Order, the DIP Financing Documents and the DIP Facility will not be affected by any subsequent reversal, modification, vacatur or amendment of this Financing Order, as provided in section 364(e) of the Bankruptcy Code.

H. Relief Essential; Best Interests. The relief requested in the Financing Motion (and as provided in this Financing Order) is necessary, essential, and appropriate for the Debtor because it will allow the Debtor to resolve the State Court Action, sell the Property and file a plan to emerge from Chapter 11. It is in the best interest of the Debtor and the bankruptcy estate that the Debtor be allowed to obtain credit pursuant to the DIP Facility and the DIP Financing Documents, including the amounts reserved set forth in paragraph 2(c) below.

I. Entry of Financing Order. For the reasons stated above, the Debtor has requested and is entitled to immediate entry of this Financing Order pursuant to Bankruptcy Rule 4001(c)(2).

J. Priming Lien. The Debtor's Property has a value far in excess of the combined total amount loaned to the Debtor under the DIP Facility and the secured claim filed by Mautner-Glick Corp. Profit Sharing Trust ("M-G Trust") against the Debtor's Property. The M-G Trust is

adequately protected from any post-petition diminution of value of the Property and is not prejudiced by the priming of its lien on the Property by the Lender's proposed mortgage.

NOW, THEREFORE, upon the Financing Motion and the record before this Court with respect to the Financing Motion, including the record made during the Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. **Motion Granted.** The Financing Motion is granted to the extent and in accordance with the terms and conditions set forth in this Financing Order.

2. **DIP Financing Documents.**

(a) **Approval of Entry into the DIP Financing Documents.** Subject to obtaining the necessary consent in paragraph 26 below, the Debtor is expressly and immediately authorized, empowered and directed to execute and deliver the DIP Financing Documents substantially in the form annexed hereto and to incur and to perform in accordance therewith, and to execute and deliver all instruments, certificates, agreements and documents which may be required or necessary for the performance by the Debtor in connection with the DIP Facility described in and provided for by this Financing Order and the DIP Financing Documents; provided, that in the event any provision of such documents is inconsistent with the terms of this Financing Order, the documents shall be deemed to have been modified to conform to the terms of this Financing Order for purposes of the financing authorized hereby. The Debtor is hereby authorized and directed to do and perform all acts, satisfy all obligations, and to pay all principal, interest, fees, expenses and other amounts described in the DIP Financing Documents as such become due with respect to the financing (collectively with all other obligations under and as defined in the DIP Financing Documents and subject to the modifications and limits set forth

herein, the (“DIP Obligations”), which amounts shall not otherwise be subject to further approval of this Court. Upon execution and delivery, the DIP Financing Documents shall represent valid and binding obligations of the Debtor in accordance with their terms enforceable against the Debtor and the bankruptcy estate with respect to the financing.

(b) **Authorization to Borrow.** Subject to, and in accordance with, the terms and conditions of the DIP Financing Documents, the Debtor is immediately authorized to borrow up to an additional \$3,540,000.00 for a total amount of \$7,115,000 (the “DIP Facility Amount”).

(c) **Use of the DIP Facility Amount.** The DIP Facility Amount advanced by Lender to the Debtor thereafter shall be used by the Debtor in the amounts and for the purposes to (i) pay the \$3 million settlement amount; (ii) pay the DIP Facility fees (three points in the amount of \$90,000); and (iii) pay prepaid interest on the money actually borrowed by the Debtor in accordance with the DIP Financing Documents (up to \$450,000).

(d) **Limited Use of Proceeds.** Proceeds of the DIP Facility Amount advanced by Lender to the Debtor shall only be used in the amounts and for the purposes identified in the Financing Motion and this Financing Order.

(e) **DIP Superpriority Claim.** Provided that Lender advances the DIP Facility Amount, effective immediately upon the entry of this Financing Order, and subject to the terms of the DIP Financing Documents, Lender is hereby granted a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code, with respect to the DIP Obligations, superior to any and all administrative expenses in the Bankruptcy Case, including without limitation, any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code, including, but

not limited to, sections 105, 326, 328, 330, 331, 364(c), 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726 and 1114 of the Bankruptcy Code (the “DIP Superpriority Claim”); provided, however, that the DIP Superpriority Claim shall be subject to the payment of fees and expenses and reimbursement of expenses payable to Robinson Brog Leinwand Greene Genovese & Gluck P.C., as counsel to the Debtor, any legal and accounting professionals hired by Debtor, any unpaid fees of the Clerk of the Court and the quarterly fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930 (collectively, the “Carve-Outs”).

(f) **DIP Senior Secured Claim.** To induce the Lender to provide the DIP Facility, the Debtor hereby grants to the Lender, subject to paragraph 26 below and pursuant to the DIP Financing Documents and this Financing Order, the following, whether now owned or hereafter acquired, effective as of the Petition Date, subject to the Carve-Out: (a) pursuant to Bankruptcy Code section 364(c)(2), valid, binding, enforceable and automatically perfected first-priority lien on the Collateral not encumbered as of the Petition Date and (b) pursuant to Bankruptcy Code section 364(d)(1), valid, binding, enforceable and automatically perfected first-priority lien on any Collateral that is encumbered as of the Petition Date that shall be senior to any existing lien on such Collateral; “Collateral” for purposes of this Financing Order shall have the meaning set forth in the Mortgage. The lien granted herein shall be subject to the Carve-Out as set forth in the Amendment and shall secure all obligations incurred by the Debtor to the Lender incurred by the Debtor pursuant to the DIP Financing Documents and this Financing Order, including, without limitation the costs the Lender incurred in connection with negotiating, drafting and reviewing the Financing Motion, the DIP Financing Documents and this Final Financing Order up to a maximum of \$10,000.00.

(g) **Obligation for Points.** The Debtor's Obligation for points under Section 2.4 of the DIP Loan Agreement shall be in the amount of \$90,000.

(h) **Jurisdiction.** This Court shall have sole and exclusive jurisdiction over any disputes arising out of or related to the DIP Loan Agreement, except to the extent that the Court orders otherwise in a future order.

3. **Maturity.** The DIP Facility will mature (the "Maturity Date") one year from the execution of the Amendment. All obligations and liabilities of the Debtor to Lender that remain outstanding or are in existence on the last day of the term of the DIP Facility shall be due and payable on the Maturity Date.

4. **Enforceable Obligations.** The DIP Financing Documents shall constitute and evidence the valid and binding obligations of the Debtor with respect to the DIP Obligations, which obligations shall be enforceable against the Debtor, the bankruptcy estate and any successors thereto and their creditors, in accordance with their terms.

5. **Use of Facility Amount.** From and after the date hereof, the Debtor shall use the DIP Facility only for the purposes specifically set forth in the DIP Financing Documents and this Financing Order.

6. **Conflict.** In the event of a conflict between the DIP Financing Documents and this Financing Order, the terms of this Financing Order shall govern.

7. **Superpriority Administrative Claim Status.** The DIP Obligations, pursuant to section 364(c)(1) of the Bankruptcy Code, shall at all times constitute the DIP Superpriority Claim to secure post-petition advances and extensions of credit under section 364(c)(1). Other than as provided in the DIP Financing Documents and this Financing Order with respect to any Carve-Outs, no costs or expenses of administration, including, without

limitation, professional fees allowed and payable under Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b) 507(a), 507(b), 546(d), 726 and 1114, or otherwise, that have been or may be incurred in these proceedings, or in any successor case, and no priority claims are, or will be, senior to, prior to or on a parity with the DIP Superpriority Claims or the DIP Obligations, or with any other claims of Lender arising hereunder.

8. **Authorization to Use Proceeds of DIP Financing.** Pursuant to the terms and conditions of this Financing Order, the DIP Facility and the DIP Financing Documents, the Debtor is authorized to use the advance under the DIP Financing Documents. The Debtor's rights to use the extensions of credit under the DIP Financing Documents shall terminate upon the earlier of (i) the closing date of the sale of the Property, (ii) the indefeasible payment in full in cash of the obligations owing to the Lender under the DIP Facility, or (iii) upon an Event of Default. Nothing in this Financing Order shall authorize the disposition of any assets of the Debtor or the bankruptcy estate outside the ordinary course of business.

9. **DIP Lender as Loss Payee or Additional Insured.** Lender shall also be deemed to be the loss payee and/or additional insured under the Debtor's insurance policies and shall have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this Financing Order and the other DIP Financing Documents.

10. **Payment of Compensation.** Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtor or shall affect the right of Lender to object to the allowance and payment of such fees and expenses.

11. **Events of Default.** Subject to the provisions of the DIP Financing Documents and this Financing Order, unless and until all DIP Obligations are indefeasibly paid in full in cash (or other arrangements for payment of such amounts satisfactory (in their sole discretion) to Lender have been made), the protections afforded Lender pursuant to this Financing Order and under the other DIP Financing Documents, and any actions taken pursuant thereto, shall survive the entry of any order confirming a chapter 11 plan or converting these Cases into a case under chapter 7, and the DIP Superpriority Claim shall continue in these proceedings and in any Successor Case, and such DIP Superpriority Claim shall maintain their respective priority as provided by this Financing Order.

12. **Rights and Remedies Upon Occurrence of Event(s) of Default.** Upon the occurrence of an Event of Default, and after giving any notice and/or opportunity to cure required by the DIP Loan Agreement, Lender may in its sole discretion cease making advances pursuant to the terms of this Financing Order. Additionally, the Lender may settle an order (the “Default Order”) that identifies the applicable Event of Default and requests, among other things, that the Court enter an order determining that: (a) the automatic stay under section 362(a) of the Bankruptcy Code shall be lifted, vacated, modified and terminated with respect to Lender; and (b) Lender shall be entitled to exercise its rights and remedies in accordance with the DIP Financing Documents, including, without limitation, terminating any obligations of Lender under the DIP Financing Documents. Notwithstanding anything contained in this Financing Order to the contrary, the Debtor shall have the right to continue to utilize the DIP Facility advances if the Court determines that no default has occurred and is continuing. Lender may not exercise remedies (other than by terminating DIP Facility advances) except to the extent authorized by the Court. All

proceeds realized in connection with the exercise of the rights and remedies of Lender shall be applied to the DIP Obligations under, and in accordance with the provisions of, the DIP Financing Documents.

13. **Good Faith Under Section 364(e); No Modification or Stay of this Order.**

Lender is extending credit pursuant to the Order in “good-faith” within the meaning of section 364(e) of the Bankruptcy Code, and the credit extended by Lender pursuant to this Financing Order shall be deemed to be extended in good faith within the meaning of section 364(e) of the Bankruptcy Code and Lender is entitled to the protections afforded by section 364(e) of the Bankruptcy Code and no such appeal, modification, amendment or vacation shall affect the validity and enforceability of any advances made hereunder or the rights, claims, or priority authorized or created hereby. Notwithstanding any such potential modification, amendment or vacation, any rights, claims or priorities granted to Lender hereunder arising prior to the effective date of such modification, amendment or vacation of the DIP Superpriority Claims granted to Lender shall be governed in all respects by the original provisions of this Financing Order, and Lender shall be entitled to all of the rights, priorities remedies, privileges and benefits, including the DIP Superpriority Claims granted herein, with respect to any such claim. Since the loan made pursuant to the DIP Financing Documents are made in reliance on this Financing Order, the obligations owed Lender prior to the effective date of any stay, modification or vacation of this Financing Order shall not, as a result or any subsequent order in the Bankruptcy Case or in any Successor Case, be subordinated, lose their superpriority administrative expense claim status, or be deprived of the benefit of the status of the claims granted to Lender under this Financing Order and/or the DIP Financing Documents.

14. **Fees of Lender.** As provided in the DIP Financing Documents, the Debtor shall pay (i) the Lender's fees and (ii) the points in the maximum amount of \$90,000.

15. **Binding Effect.** The provisions of this Financing Order shall be binding upon and shall inure to the benefit of Lender, the Debtor, the bankruptcy estate and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor) whether in the Bankruptcy Case, in any successor case, or upon dismissal of any such chapter 11 or chapter 7 Case.

16. **No Waiver.** The failure of Lender to seek relief or otherwise exercise its rights and remedies under the DIP Financing Documents, the DIP Facility, this Financing Order or otherwise, as applicable, shall not constitute a waiver of any of Lender's rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Financing Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights or remedies of Lender under the Bankruptcy Code or under non-bankruptcy law.

17. **No Third Party Rights.** Except as explicitly provided for herein, this Financing Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

18. **Amendment.** The DIP Financing Documents may not be modified in any material respect without further order of the Court. Upon entry of this Financing Order, the Debtor and Lender may amend, modify, supplement or waive any provision of the DIP Financing Documents without further approval of the Court, unless such amendment, modification, supplement or waiver (x) increases the interest rate (other than as a result of

the imposition of the default rate), (y) increases the commitments of Lender under the DIP Financing Documents, or (z) changes the Maturity Date (as defined in the DIP Financing Documents). Except as otherwise provided herein, no waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by, or on behalf of, the Debtor and Lender and approved by the Court.

19. **Survival of Financing Order.** The provisions of this Financing Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming a chapter 11 plan in the Bankruptcy Case, (ii) converting the Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code, (iii) to the extent authorized by applicable law, dismissing the Bankruptcy Case; (iv) withdrawing the reference of the Bankruptcy Case from the Court, or (v) providing for abstention from handling or retaining of jurisdiction of the Bankruptcy Case in the Court. The terms and provisions of this Financing Order, including the DIP Superpriority Claims granted pursuant to this Financing Order and the DIP Financing Documents and any protections granted Lender, shall continue in full force and effect notwithstanding the entry of such order, and such DIP Superpriority Claims and protections for Lender shall maintain their priority as provided by this Financing Order until all the DIP Obligations have been indefeasibly paid in full and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms). The DIP Obligations shall not be discharged by the entry of an order confirming a chapter 11 plan the Debtor having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code.

20. **Inconsistency.** In the event of any inconsistency between the terms and conditions of the DIP Financing Documents and of this Financing Order, the provisions of the Financing Order shall govern and control.

21. **Enforceability.** This Financing Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable immediately upon execution hereof

22. **No Waivers or Modification of this Financing Order.** The Debtor irrevocably waives any right to seek any modification or extension of this Financing Order without the prior written consent of Lender and no such consent shall be implied by any other action, inaction or acquiescence of Lender.

23. **Waiver of any Applicable Stay, including Bankruptcy Rule 6004(h).** Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Financing Order.

24. **Service.** On or before December __, 2017, the Debtor shall serve, by United States mail, postage prepaid, notice of entry of this Financing Order on (i) the Office of the United States Trustee for Region 2; (ii) counsel for the Lender (iii) the Internal Revenue Service; (iv) the Attorney General for the State of New York; (v) the Office of the Corporation Counsel of the City of New York; (vi) all parties who have filed appearances in this case and requests for notices; and (vii) all parties that are receiving payment from the DIP Financing pursuant to this Financing Order.

25. **Adequate Protection.** Based on the equity cushion in the Property and the improvements that were made by the Debtor's contractor to the Property, M-G Trust's interest in

the Property is adequately protected from any post-petition diminution in the value of the Property.

26. **Necessary Consent.** Notwithstanding anything to the contrary contained in this Financing Order or within the DIP Financing Documents, the provisions of the Mortgage are hereby subject to and contingent upon the Debtor obtaining the necessary authority to enter into the Mortgage from the Bankruptcy Court, the New York State Attorney General, and/or other court of competent jurisdiction, in accordance with the New York Not-for-Profit Corporation Law §§ 511 or 511-a, and Religious Corporations Law § 12(1). In the event such authorization is not obtained, the failure to provide a Mortgage shall not impair the other provisions of the DIP Financing Documents, which do not require such authorization, or prevent the advances by the Lender authorized pursuant to the terms of this Order.

27. **Retention of Jurisdiction.** The Court has and will retain jurisdiction to enforce this Financing Order according to its terms.

Dated: December 15, 2017

s/Michael E. Wiles
UNITED STATES BANKRUPTCY JUDGE