

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

919 PROSPECT AVE LLC,

Case No. 16-13569 SCC

Debtor.

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**INTERIM ORDER AUTHORIZING THE CHAPTER 11 TRUSTEE TO OBTAIN
ADDITIONAL POST-PETITION FINANCING PURSUANT TO BANKRUPTCY
SECTION 364 (c)(3) AND SCHEDULING A FINAL HEARING**

UPON the Motion (the “Motion”), dated February 28, 2018, of Ian J. Gazes, chapter 11 trustee (“Trustee”) of the bankruptcy estate of 919 Prospect Ave., LLC, (the “Debtor”) for entry of an interim order pursuant to 11 U.S.C. § 364(c)(3) of Title 11 of the United States Code, 11 U.S.C. Sections 101, *et seq.* (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and S.D.N.Y. Bankr. L.R. 4001-2 (the “Local Rules”), authorizing the Trustee, *nunc pro tunc* to February 27, 2018, to enter into an additional post-petition financing agreement with White Oak Profit Sharing Plan (the “Lender”) (the “2nd Credit Facility”) pursuant to the note attached to the Motion as Exhibit “B” (the “2nd Note”); and the matter having come on for a hearing upon notice before the Court on March 6, 2018 at 11:00 a.m. (“Interim Hearing”); and the Trustee having appeared by Ian J. Gazes of Gazes LLC, attorneys for Trustee; the Debtor having appeared by its counsel; and Stroock & Stroock & Lavan LLP having appeared on behalf of certain tenants of the premises located at 919 Prospect Ave (the “Property”); and the Court having heard no objections to the relief sought by the Motion, or said objections having either been withdrawn or otherwise overruled; and the Court having considered the arguments of counsel and the entire record before the Court, and after due deliberation:

IT IS HEREBY FOUND, for the purposes of this Order only, that:

- A. On December 22, 2016 (“Petition Date”), Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in this Court. On January 26, 2017, this Court entered an Order directing the appointment of a Chapter 11 operating trustee. On January 26, 2017, the Trustee was appointed as the operating trustee of Debtor’s case by the Office of the United States Trustee. On January 30, 2017, this Court entered an order approving the appointment of the Trustee which appointment was thereafter accepted.
- B. This Court has jurisdiction to hear the relief requested in this Motion pursuant to 28 U.S.C. §§ 157(b) and 1334, and the Amended Standing Order of Reference of the United States District Court for the Southern District of New York. Consideration of the Motion is a core proceeding 28 U.S.C. § 157 (b) and (d). The statutory and rule predicates for the relief sought are 11 U.S.C. §§ 105(a) and 36(c)(3), Fed. R. Bankr. P. 4001 (c), and LBR 4001-2. Venue of the Chapter 11 case and this Motion in this district is proper pursuant to 28 U.S.C. §1408.
- C. Good cause has been shown for the entry of this order (“Interim Order”). As set forth in the Motion and on the record at the Interim Hearing, the estate, by and through the Trustee, has a significant and immediate need to utilize the 2nd Credit Facility for the purpose of funding the operations, maintenance and repair of the Property. Absent the immediate access to post-petition financing the Trustee cannot continue operations to administer and preserve the value of the estate. The ability to finance the Debtor’s operations, to pay employees, to pay for construction and remediation work, to provide livable and habitable units for tenants of the

Property all require the immediate infusion of capital from the 2nd Credit Facility. Without the ability to immediately access the funds under the 2nd Credit Facility the estate and creditors and the tenants occupying the Property will suffer immediate and irreparable harm and this case will not emerge successfully from Chapter 11.

- D. The relief requested in the Motion is necessary, essential, and appropriate to facilitate payment for estate's obligations and preserve the assets of the estate and the Debtor as a going concern.
- E. Based upon the Motion and the record presented to the Court at the Interim Hearing, the terms of the Trustee's use of the 2nd Credit Facility are fair and reasonable under the circumstances.
- F. Trustee has requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). The immediate access to the 2nd Credit Facility as set forth in the Motion is necessary to avoid immediate and irreparable harm to the estate. The Court concludes that entry of this Interim Order is in the best interests of the Debtor, its estate and creditors.
- G. The 2nd Credit Facility governed by the terms of the 2nd Note (i) are fair and reasonable; (ii) are the best available to the Trustee under the circumstances; (iii) reflect the Trustee's exercise of prudent business judgment consistent with his fiduciary duties; and (iv) are supported by reasonably equivalent value and fair consideration. The 2nd Credit Facility was negotiated in good faith and at arm's length among the Trustee and the Lender. The funds to be advanced under the 2nd Credit Facility shall be deemed to have been allowed, advanced, made, used and/or

extended in good faith, and for valid business purposes and uses, within the meaning of Section 364(e) of the Bankruptcy Code, and the Lender is therefore entitled to the protection and benefits of Section 364(e) of the Bankruptcy Code and this Interim Order.

H. The Trustee has provided notice of the hearing for entry of this Interim Order upon the United States Trustee, the Debtor, Stroock & Lavan LLP, the City of New York, counsel to the Flushing Savings Bank, the first mortgagee of the Property, counsel to the Debtor and Lender on all other parties who have filed a Notice of Appearance or proof of claim in this case.

IT IS HEREBY ORDERED:

1. **Motion.** The Motion for use of the 2nd Credit Facility is granted on an interim basis to the extent set forth herein and pursuant to the terms of the 2nd Note attached to the Motion. All objections to the Motion, to the extent not withdrawn or addressed herein, are hereby overruled without prejudice solely for purposes of this Interim Order.
2. **Authorization.** Subject to the terms and conditions herein, the Trustee is authorized and directed to enter into the 2nd Note and use the 2nd Credit Facility, *nunc pro tunc* to February 27, 2018, until entry of a final order following a final hearing on the Motion. To the extent the Trustee has utilized the 2nd Credit Facility the Lender shall have a perfected secured lien attaching to the Property, subordinate to all Prior Liens, as that term is defined in the 2nd Note.
3. **Term.** Trustee's interim authorization to use the 2nd Credit Facility shall commence *nunc pro tunc* to February 27, 2018, and terminate upon entry of a final order granting the Trustee authorization to use the 2nd Credit Facility ("Final Order"). Should there be an

Event of Default such Event of Default shall not in any manner affect the rights, privileges or other protections afforded by the Parties to the 2nd Note including the validity, priority, enforceability and perfected status of any lien or security interest granted for the benefit of the Lender pursuant to the Note to the extent the Trustee has used the 2nd Credit Facility.

4. Term and Restrictions. Trustee's authorization to use the 2nd Credit Facility shall be subject to the following terms and restrictions:

4.1 From the entry of this Interim Order and continuing until entry of a Final Order or an Event of Default, Lender shall fund the 2nd Credit Facility as provided under the 2nd Note.

4.2 Lender is granted a security interest in and against the Property, junior to all Prior Liens, as that term is defined in and pursuant to the terms of the Note. The Lender, subject to a separate Order of the Court under Bankruptcy Code Section 362, is authorized but not required to file this Note as evidence of Lender's effective and valid junior lien as against the Property. Until all Obligations have been fully satisfied, Lender's security interest in the Property shall continue in full force and effect. Notwithstanding the foregoing, or any failure on the part of Lender to take any of the actions set forth herein, the liens and security interests granted herein shall be deemed valid, enforceable and perfected by entry of this Order. No financing statement, notice of lien, mortgage, deed of trust or similar instrument in any jurisdiction or filing office need to be filed or any other action taken in order to validate and perfect the Liens and security interests granted by or pursuant to the 2nd Note or this Order.

5. Binding Effect. The provisions of this Interim Order shall be binding and inure to the benefit of the Trustee, the estate of the Debtor, the Debtor, the creditors and parties in interest. If any or all of this provisions of this Interim Order are hereafter modified,

amended or vacated by a subsequent order of this Court, no such modification, amended or vacatur shall affect the validity, enforceability or priority of any lien or claim authorized or created hereby. This Court shall retain jurisdiction to interpret and enforce this Interim Order and all matters arising hereunder.

- 6. Binding Effect of Interim Order.** The terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of Trustee, the estate of the Debtor, the Debtor, the Lender, secured parties, any committee that may be appointed in this Chapter 11 case, and all other parties in interest, including any trustee or other fiduciary hereafter appointed in this Chapter 11 case, or upon conversion or dismissal of this Chapter 11 case.

Trustee shall serve a copy of this Interim Order, either by regular first class mail, and, if available, by electronic means upon: (i) the first mortgagee, Flushing Savings Bank, FSB through counsel, Cullen & Dykman LLP Attention Bonnie Pollack, Esq.; (ii) the Office of the United States Trustee Attention Andrea Schwartz, Esq.; (iii) Stroock & Stroock & Lavan LLP, Attention Kenneth Pasquale, Esq.; (iv) any party having filed a notice of appearance in this Chapter 11 case with a demand for service of copies of papers and/or filed a proof of claim; (v) Lender; and (vi) counsel for Debtor, on or before March 8, 2018.

The Trustee shall file an affidavit of service attesting to service of this Interim Order within two (2) business days of service.

Objections, if any, to the relief sought in the Final Order, shall be served upon: (i) Gazes LLC, 151 Hudson Street, New York, New York 10013 Attention Ian J. Gazes, Esq.; (ii) White Oak Profit Sharing Plan, Attention: Seth Miller, 2 West 45th Street, New York, New York 10036; (iii) Law Offices of Avrum J. Rosen, PLLC, 38 New Street, Huntington, New York 11743,

attention: Avrum J. Rosen, Esq.; (iv) the Office of the United States Trustee, 201 Varick Street, Suite 1006, New York, New York 10014 Attention Andrea Schwartz, Esq.; and (v) any party having filed a notice of appearance in this Chapter 11 case with a demand for service of copies of papers and/or filed a proof of claim, and with a copy delivered to the Chambers of the Hon. Shelley C. Chapman, so as to be received in hand not later than March 13, 2018, at 4:00 p.m. Objections must also be filed electronically on the Court's electronic filing system.

Now, therefore, it is hereby:

ORDERED that the Debtor, Lender, and Trustee are hereby authorized to take those steps necessary to give full force and effect to the 2nd Credit Facility; and it is further

ORDERED that this Court shall retain jurisdiction over all matters concerning this Order; and it is further

ORDERED that good and sufficient notice of this Motion has been provided and no further notice hereof is required.

Dated: New York, New York
March 8, 2018

/S/ Shelley C. Chapman
Hon. Shelley C. Chapman
United States Bankruptcy Judge