

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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**FINAL ORDER AUTHORIZING THE CHAPTER 11 TRUSTEE TO OBTAIN POST-
PETITION FINANCING PURSUANT TO BANKRUPTCY SECTION 364 (c)(3)**

UPON the Motion (the “Motion”) of Ian J. Gazes, chapter 11 trustee (“Trustee”) of the bankruptcy estate of 919 Prospect Ave., LLC, (the “Debtor”) for entry of interim and final orders pursuant to section 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 January 30, 2017, to enter into a post-petition financing agreement with White Oak Profit Sharing Plan (the “Lender”) (as amended, modified, and in effect from time to time, the “Credit Facility”) pursuant to the Note attached to this order as Exhibit “A” (the “Note”); and a hearing having previously been held before the Court on February 17, 2017 (“Interim Hearing”); and the Court having entered an order approving the Credit Facility on an interim basis on February 17, 2017 (the “Interim Order”); and a final hearing having been held before the Court on March 9, 2017 (the “Final Hearing” and, together with the Interim Hearing, the “Hearings”) to consider approval of the Credit Facility on a final basis; and the Court having heard no objections to the relief sought by the Motion, or said objections having either been withdrawn or otherwise overruled; and the Court having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 (“Order”). As set forth in the Motion and on the record at the Hearings, the estate, by and through the Trustee, has a significant need to utilize the Credit Facility for the purpose of funding the operations, maintenance and repair of the Property. Absent access to post-petition financing the Trustee cannot continue operations to administer and preserve the value of the estate. The ability to finance the operations, to pay

employees, to pay for construction and remediation work, to provide livable and habitable units for tenants all requires the infusion of capital from the Credit Facility. Without the ability to access the funds under the Credit Facility the estate and creditors and the tenants occupying the Property will suffer 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 the 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 Hearings, the terms of the Trustee's use of the Credit Facility are fair and reasonable under the circumstances.
- F. Entry into the Credit Facility governed by the terms of the Note (i) is fair and reasonable and (ii) reflects the Trustee's exercise of prudent business judgment consistent with his fiduciary duties. The Credit Facility is the best available to the Trustee under the circumstances and is supported by reasonably equivalent value and fair consideration. The 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 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.
- H. The Trustee has provided notice of the Final Hearing for entry of this Order as

required under the Interim Order.

IT IS HEREBY ORDERED:

- 1. Motion.** The Motion for use of the Credit Facility is granted on a final basis to the extent set forth herein and pursuant to the terms of the Note. All objections to the Motion, to the extent not withdrawn or addressed herein, are hereby overruled.
- 2. Authorization.** Subject to the terms and conditions herein, the Trustee is authorized to enter into the Note and use the Credit Facility, *nunc pro tunc* to January 30, 2017.
- 3. Security Interest** 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, and any post-petition statutory liens. 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 this Note or this Order.
- 4. Binding Effect.** The provisions of this Order shall be binding and inure to the benefit of the Trustee, the estate of the Debtor, the Debtor, the Lender, secured parties,

any committee that may be appointed in this Chapter 11 case, including any trustee or other fiduciary hereafter appointed in this Chapter 11 case, or upon conversion or dismissal of this Chapter 11 case, and all other parties in interest. If any or all of the provisions of this 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 Order and all matters arising hereunder; and it is further

ORDERED that the Debtor, Lender, and Trustee are hereby authorized to take those steps necessary to give full force and effect to the 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 the Motion has been provided and no further notice hereof is required.

Dated: New York, New York
April 13, 2017

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