

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

33 Peck Slip Acquisition LLC, *et al.*

Debtors.<sup>1</sup>

Chapter 11

Case No. 15-12479 (JLG)

(Jointly Administered)

**SECOND INTERIM ORDER FOR 33 PECK SLIP ACQUISITION LLC  
(A) AUTHORIZING USE OF CASH COLLATERAL, (B) AUTHORIZING  
ADEQUATE PROTECTION, INCLUDING MONTHLY PAYMENTS  
TO LENDER, AND (C) GRANTING OTHER RELIEF**

Upon the motion of 33 Peck Slip Acquisition LLC, as debtor and debtor in possession (the “**Debtor**”) on an emergency basis for entry of an Interim Order (1) authorizing the Debtor to use the cash collateral of 33 Peck Slip Hotel Capital LLC (the “**Lender**”), and (2) authorizing adequate protection, including monthly payments to the Lender, and (3) setting a final hearing on the motion (the “**Motion**”)[Case No. 15-12479, Dkt No. 9]<sup>2</sup>; and the Bankruptcy Court having subject matter jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.), as amended by order M-431 dated January 31, 2012 (Preska, C.P.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b) that the Bankruptcy Court may hear and determine; and venue being proper before the Bankruptcy Court pursuant to 28 U.S.C. §§1408 and 1409; and notice of the continued hearing

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: 33 Peck Slip Acquisition LLC (3412), 52 West 13th P, LLC (4970), 36 West 38th Street, LLC (6842), and Gemini 37 West 24th Street MT, LLC (4143).

<sup>2</sup> Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

on the Motion was provided by mail to the Lender, the United States Trustee, all creditors, and parties filing a notice of appearance; the Debtor believes that notice was the best available under the circumstances and that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtor and its Estate and creditors; and the Bankruptcy Court having reviewed the Motion, the record and docket in this case, and having heard the arguments and statements in support of the relief requested therein at a continued hearing before the Bankruptcy Court on October 7, 2015 (the “**Hearing**”); appearances having been made as reflected on the record of the Hearing; and the Bankruptcy Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and finding that the Debtors will suffer immediate and irreparable harm if relief is not granted on a second interim basis, and upon all of the proceedings had before the Bankruptcy Court; and after due deliberation and sufficient cause appearing therefore, the Bankruptcy Court hereby finds that:

1. The relief requested in the Motion is authorized under sections 105, 361, 362, 363, 503, 507 and 552 of the Bankruptcy Code and is within the Guidelines for requests for the use of cash collateral set forth in Local Rule 4001-2.

2. On September 3, 2015, the Debtor and three affiliated entities (collectively, the “**Debtors**”) filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. On September 11, 2015, the Bankruptcy Court entered an order approving the joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

3. On September 11, 2015, the Bankruptcy Court entered an Interim Order (A) Authorizing Use Of Cash Collateral, (B) Authorizing Adequate Protection, Including Monthly

Payments To Lender, And (C) Granting Other Relief [Case No 15-12479, Dkt. 32] (the “**First Interim Order**”).

4. The Debtor is continuing in the management and operation of its business and properties as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case. No official committee of unsecured creditors has been appointed in this chapter 11 case.

5. As a result of the Debtor’s authorization to use cash collateral, the use, sale or lease of the Lender’s prepetition collateral, and the imposition of the automatic stay, the Lender is entitled to receive adequate protection pursuant to sections 361, 362, and 363 of the Bankruptcy Code for and solely to the extent of any decrease in the value, after the Petition Date, of the prepetition collateral (including the cash collateral) resulting from the automatic stay or from the Debtor’s use, sale, lease of the prepetition collateral (including the cash collateral), or otherwise during the case. As adequate protection, the Lender will receive the adequate protection described in the Motion, the First Interim Order and this Second Interim Order. In light of such adequate protection, the Lender has consented to the Debtor’s use of the cash collateral, solely on the terms set forth in the Motion, the First Interim Order, and this Second Interim Order. The adequate protection provided herein and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and are necessary to obtain such consent.

6. The Debtor has an immediate need to use the cash to, among other things, preserve and maximize the value of the Debtor’s assets, absent which immediate and irreparable harm will result to the Debtor, its estate, and its creditors. The preservation and maintenance of the Debtor’s assets and business is necessary to maximize values available for distribution to stakeholders. Absent the Debtor’s ability to use cash collateral, the Debtor would not have

sufficient available sources of working capital or financing and would be unable to pay its operating expenses or maintain its assets, to the detriment of the Debtor's estate and creditors. Accordingly, the relief requested in the Motion and the terms herein are (i) critical to the Debtor's ability to maximize the value of its chapter 11 estate, (ii) in the best interests of the Debtor and its estate, and (iii) necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtor and its assets.

7. Good cause has been shown for entry of this Second Interim Order, and the entry of this Second Interim Order is in the best interests of the Debtor and its estate and stakeholders. Among other things, the relief granted herein will permit the Debtor to preserve and maintain the value of its assets. The terms of the Debtor's use of cash collateral and proposed adequate protection arrangements, as set forth in this Second Interim Order, are fair and reasonable under the circumstances, and reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties.

8. The Debtor's use of cash collateral has been negotiated in good faith and at arms-length among the Debtor and the Lender and the Lender's consent to the Debtor's use of cash collateral shall be deemed to have been made in "good faith."

9. The Lender is entitled to receive adequate protection in respect of the Debtor's use of the prepetition collateral and any decline in the value thereof, resulting from (a) the use of the cash collateral, (b) the use, sale, lease or depreciation or other diminution in the value of the prepetition collateral, or (c) the imposition of the automatic stay under section 362(a) of the Bankruptcy Code. Pursuant to sections 361, 363 and 507(b) of the Bankruptcy Code, the Debtor has agreed to provide the Lender with the following as adequate protection for any such diminution in value: (a) replacement liens; (b) a superpriority administrative expense claim; and

(c) periodic payments set forth in the Budget attached to this Second Interim Order as Exhibit 1 (the “**Budget**”). The Lender has consented to the Debtor providing such adequate protection.

10. The consent of the Lender to the use of cash collateral as set forth in the Motion, the Budget, the First Interim Order, and this Second Interim Order shall not extend to any other use of cash collateral. Furthermore, to the extent that this Bankruptcy Court finds that circumstances have materially changed such that the Lender may be entitled to additional adequate protection of its interest in the prepetition collateral, nothing shall preclude the Lender from seeking additional adequate protection or the Debtor from opposing such request.

11. The Debtor has made reasonable efforts to afford the best notice possible under the circumstances and such notice is good and sufficient to permit the interim relief set forth in this Second Interim Order, and no other or further notice is or shall be required.

Based on the foregoing, it is hereby

**ORDERED THAT:**

- A. The Motion is granted as set forth herein.
- B. The Debtor is authorized to use any cash collateral of the Lender as of the Petition Date in accordance with the Motion, the Budget, the First Interim Order, and this Second Interim Order on an interim basis pending the final hearing on the Motion.
- C. The Debtor is authorized to provide and the Lender is hereby granted adequate protection as follows:
  - (i) continued monthly payments of fixed interest at the non-default rate set forth in the Lender’s Loan Documents,
  - (ii) continued use, maintenance and insurance of the Lender’s Collateral in accordance with the Lender’s Loan Documents,

(iii) to the extent of the use of any of the Lender's cash collateral, the Lender is granted replacement security interests and liens on any postpetition property of the Estate that have the same scope, priority, validity and enforceability as the Lender's prepetition security interests and liens had with respect to the cash collateral that is used by the Debtor but without requiring any additional filing or recordation of statements or documents,

(iv) the Lender shall have a superpriority administrative expense claim under section 507(b) of the Bankruptcy Code to the extent of any diminution of the Lender's cash collateral from the Petition Date, and

(v) the Debtor shall provide the Lender with copies of all pleadings, papers and reports filed with the Bankruptcy Court or submitted to the United States Trustee and any other non-privileged information reasonably requested by the Lender.

D. A final hearing on the Motion shall be held on **October 28, 2015 at 11:00 a.m. (prevailing Eastern time)**, before this Bankruptcy Court (the "**Final Hearing**").

E. Any response to the Motion shall be filed with the Bankruptcy Court and served upon proposed counsel for the Debtors, the United States Trustee, the Lender, counsel for William T. Obeid ("**Obeid**") and any party that has filed a notice of appearance herein, in each case so as to be received no later than **October 20, 2015 at 2:00 p.m. (prevailing Eastern time)**.

F. Any reply to any response to the Motion shall be filed with the Bankruptcy Court and served upon the party that filed the response, proposed counsel for the Debtor, the United States Trustee, the Lender, Obeid, and any party that has filed a

notice of appearance herein, in each case so as to be received no later than **October 23, 2015 at 2:00 p.m. (prevailing Eastern time)**.

G. The Second Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon entry hereof. The fourteen (14) day stay provisions of Bankruptcy Rule 6004(h) are waived and shall not apply to this Second Interim Order.

H. The terms and provisions of this Second Interim Order are valid and binding upon and inure to the benefit of the Debtors, the Lender, all other creditors of the Debtor, any committee appointed in this chapter 11 case, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the chapter 11 case, any successor case, or upon dismissal of this chapter 11 case or successor case.

I. Without prejudice to the rights of all creditors and parties in interest to raise any and all objections to the relief requested by the Debtor at the Final Hearing, all objections to the interim relief granted in this Second Interim Order, to the extent not withdrawn or resolved, are hereby overruled.

J. Subject to the terms and conditions set forth in this Second Interim Order and pursuant to section 363(c)(2) of the Bankruptcy Code, the Debtor is authorized to use cash collateral as set forth in the Budget (as may be amended; provided, however that the Lender shall have the right to consent to any material modifications but such consent shall not be unreasonably withheld or delayed) during the period from the Petition Date through and including the date on which the Final Order is entered (the “**Specified Period**”). Except as otherwise expressly provided herein, cash collateral may be used

during the Specified Period in accordance with the Motion and the Budget to pay expenses totaling \$1,166,680.00, subject to the variances described in the Motion.

K. The Debtor shall not grant any replacement liens that are senior or equal in priority to the replacement lien granted to the Lender as adequate protection pursuant to this Second Interim Order.

L. The Debtor shall not grant any superpriority administrative expense claim that is senior or equal in priority to the superpriority administrative expense claim that is granted to the Lender pursuant to this Second Interim Order.

M. This Second Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the replacement liens, without the necessity of either filing or recording any mortgage, financing statement or other instrument or document which may otherwise be required under the law or regulation or any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the replacement liens, or to entitle the Lender to the priorities granted herein. The Debtor is authorized and directed to execute and deliver promptly to the Lender, or its authorized agent, all such financing statement, mortgages, notices and other documents as may reasonably be requested. The Lender or its authorized agent may file a photocopy of this Second Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

N. If any or all of the provisions of this Second Interim Order are hereafter



reversed, modified, vacated or stayed, such reversal, modification, vacatur or stay shall not affect (i) the validity of any adequate protection granted to the Lender prior to the effective date of such reversal, modification, vacatur or stay, or (ii) the validity, perfection, priority, allowability, or enforceability of any claim, lien, security interest or priority authorized or created hereby with respect to any adequate protection granted to the Lender prior to the effective date of such reversal, modification, vacatur or stay.

Notwithstanding any such reversal, modification, vacatur or stay, any use of cash collateral or the granting of adequate protection to the Lender prior to the effective date of such reversal, modification, vacatur or stay, shall be governed in all respects by the provisions of this Second Interim Order, and the Lender shall be entitled to all of the rights, remedies, protections and benefits granted under this Second Interim Order with respect to all uses of cash collateral and the granting of adequate protection by the Debtors pursuant to this Second Interim Order.

O. The Debtor is authorized to use cash collateral pursuant to this Second Interim Order until the entry of an order in connection with the Final Hearing on the Motion. The Debtor shall not delay the Final Hearing beyond October 28, 2015 at 11:00 a.m. Eastern Time without the consent of the Lender.

P. The Lender will not be required to file proofs of claim in this chapter 11 case for the claims it may have. Any order entered by the Bankruptcy Court in relation to the establishment of a bar date for any claim (including, without limitation, administrative claims) in this chapter 11 case shall not apply to the Lender.

Q. The Bankruptcy Court has and will retain jurisdiction to enforce this Second Interim Order according to its terms upon request by any party in interest.

R. Lender's consent or acquiescence to this Second Interim Order shall not be construed as a waiver of any rights (including, but not limited to, those connected with surcharges, priming or single asset real estate status), title or positions related to any subsequent cash collateral order, or as to whether this chapter 11 case is properly before the Bankruptcy Court.

S. The cash collateral that is the subject of the Lender's consent are those funds currently, or with collections, prospectively, in the actual possession of the Debtor. Nothing herein shall be construed to entitle the Debtor to use any cash collateral held by the Lender in any reserve, escrow or separate pledged collateral account, or to use any monies held in escrow or trust by the Debtor for third parties (except that Debtor is authorized to pay any sales and occupancy taxes in accordance with the Budget). The Debtor has reserved its right to seek to use any cash collateral held by the Lender in any reserve, escrow or separate pledged collateral account or to use any monies held in escrow or trust for the Debtor by a third party. The Lender has reserved its right to object to any such request by the Debtor.

T. To the extent necessary, the automatic stay is modified to permit the Lender to apply to the Lender's mortgage loan the Debtor's periodic payments to the Lender under the Budget.

U. The Debtor shall timely file interim statements and operating reports.

V. The replacement liens and the superpriority administrative expense claim granted to the Lender as adequate protection under this Second Interim Order are subject

to the fees of the United States Trustee pursuant to 28 USC § 1930(a)(6) and any applicable interest thereon.

W. Any material non-compliance with this Second Interim Order by the Debtor shall be an Event of Default. Any party in interest that asserts that an Event of Default has occurred in the Debtor's use of cash collateral pursuant to the Motion, the Budget and this Second Interim Order shall file and serve on the Debtor, the Lender, all parties filing notices of appearance, and the United States Trustee an affidavit of default that describes in detail the alleged Event of Default. The Debtor shall have five (5) days from receipt of the affidavit of default to cure the Event of Default. If any party in interest asserts that the Debtor has not cured the Event of Default, that party shall file and serve a motion, on shortened (but not less than seven (7) days') notice to the Debtor, the Lender, all parties filing notices of appearance, and the United States Trustee requesting a hearing and an Order from the Bankruptcy Court terminating the Debtor's authority to use cash collateral, or other relief.

X. This Second Interim Order is without prejudice to the rights and remedies of the United States Trustee and without prejudice to the rights and remedies of a committee of unsecured creditors that may be appointed in this case to object to any findings of the Bankruptcy Court contained herein.

Y. This Second Interim Order is without prejudice to the rights of Obeid to assert that the automatic stay does not apply or to seek relief from the automatic stay with respect to the prepetition litigation involving the Debtors and Obeid in state or federal court.

Z. With respect to the employee wages, this Second Interim Order is subject to the reservation of rights stated on the record at the hearing on September 9, 2015 by counsel for Obeid regarding any payment to the Debtors' employees for any services performed for Elevation Real Estate.

AA. The replacement liens granted to the Lender pursuant to this Second Interim Order shall not attach to any avoidance actions in this bankruptcy case under chapter 5 of the Bankruptcy Code.

Dated:

New York, New York  
October 16, 2015

/s/ James L. Garrity, Jr.

UNITED STATES BANKRUPTCY JUDGE