

Thomas J. Salerno (AZ Bar No. 007492) thomas.salerno@ssd.com
Jordan A. Kroop (AZ Bar No. 018825) jordan.kroop@ssd.com
Kelly Singer (AZ Bar No. 022024) kelly.singer@ssd.com
Bradley A. Cosman (AZ Bar No. 026223) bradley.cosman@ssd.com
SQUIRE, SANDERS & DEMPSEY (US) LLP
One East Washington Street, Suite 2700
Phoenix, Arizona 85004
(602) 528-4000

Proposed Counsel to Debtor-In-Possession

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

In re

77 McD L.L.C.

Debtor.

Case No. 2:11-bk-04239-CGC

Chapter 11

**EMERGENCY MOTION FOR
INTERIM AND FINAL ORDERS
AUTHORIZING AND APPROVING
DEBTOR'S USE OF FUNDS CLAIMED
AS CASH COLLATERAL**

77 McD L.L.C., debtor-in-possession in the above-captioned chapter 11 case, moves for entry of **interim and final orders authorizing the Debtor's use of funds claimed as cash collateral**. This Motion seeks immediate entry of an interim order granting the Motion under Bankruptcy Rule 4001(b) and is brought on an emergency basis on expedited notice under Local Bankruptcy Rule 9013-1(h) to avoid immediate and irreparable harm to the Debtor's estate. In compliance with Bankruptcy Rule 4001(b), the Debtor submits the following:

<u>Name of Entity Claiming an Interest in Cash Collateral</u>	Bank of America, N.A
<u>Purpose for Interim Use of Cash Collateral and Term</u>	In accordance with the Budget attached to this Motion as Exhibit B, to meet ordinary operating expenses.
<u>Proposed Adequate Protection Terms</u>	Replacement Liens on account of any diminution in value of Bank of America's collateral; Monthly Payments.

<p>The relief requested in this Motion would (i) authorize the Debtor to use cash collateral of the secured lender in accordance with a budget on an interim basis, (ii) authorize the Debtor to provide the secured lender with certain adequate protection, and (iii) schedule a final hearing to consider the relief requested in this Motion. The basis for the relief requested in this Motion is set forth in paragraphs 20 through 33 below.</p>

This Motion is supported by the entire record before the Court, the *Declaration of Brian Kearney in Support of Chapter 11 Petition and First-Day Motions* filed contemporaneously with this Motion (the “**Kearney Declaration**”), and by the following memorandum of points and authorities.

BACKGROUND

Jurisdiction And Venue

1. The Debtor filed its voluntary petition for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101-1532 (the “**Bankruptcy Code**”) on February 22, 2011 (the “**Petition Date**”).
2. The Debtor continues to operate its businesses and possess its properties as a debtor-in-possession in accordance with Bankruptcy Code §§ 1107 and 1108.
3. This Court has jurisdiction over this chapter 11 proceeding under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2).
4. The Debtor is a limited liability company that owns and operates two apartment buildings in the Phoenix area. Accordingly, the venue of this chapter 11 case is proper in this District under 28 U.S.C. §§ 1408 and 1409.
5. The statutory predicates for the relief requested in this Motion are Bankruptcy Code §§ 105, 361, 363, and 506, Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

Background Facts Concerning The Debtor And Its Properties

6. The Debtor incorporates here by this reference the *Omnibus Statement of Facts in Support of Chapter 11 Petition and First-Day Motions* filed contemporaneously with this Motion.

7. The Debtor's primary business is ownership and management of two urban lifestyle-oriented apartment complexes located in Phoenix, Arizona, commonly referred to as Barossa at the Park ("**Barossa**") and Indigo at the Park ("**Indigo**," and together with Barossa, the "**Properties**"). Kearney Declaration.

8. Barossa is a 273-unit apartment complex located at 7777 W. McDowell Road, Phoenix, Arizona 85035. Indigo is a 306-unit apartment complex located adjacent to Barossa, at 7725 W. McDowell Road, Phoenix, Arizona 85035. Completed in June 2009, the Properties are "Class A" properties that provide residents an impressive list of premium amenities, including 9-foot ceilings, gourmet kitchens, granite countertops, soaking tubs, a 24/7 professional-grade gym, an expansive pool area, and a java bar.

9. Individual units within the Properties range from one to three bedrooms, and the primary target residents are renters seeking an urban lifestyle experience at an affordable price. The Properties' lifestyle-focus and branding support monthly rental rates approximately 20-30% higher than their competitors. Monthly rental rates for the Properties' units range from approximately \$750 to \$950. Kearney Declaration.

10. The lifestyle-focus of the Properties is enhanced by their location. Located in West Phoenix near the I-10 and Loop 101 freeways, the Properties provide residents with easy access to Westgate City Center and professional and college sports venues, including the University of Phoenix Stadium, Jobing.com Arena, and multiple Major League Baseball spring training facilities. Nearby Gateway Pavilion also provides shopping, restaurants and movies.

Kearney Declaration.

11. As new complexes, the Properties are still in their initial “lease-up” stage. As of the Petition Date, occupancy rates were approximately 68% and 75% for Barossa and Indigo, respectively. Since June 2010, collective occupancy rates for the Properties have fluctuated between 71% and 79%. Kearney Declaration.

12. As set forth in the occupancy chart attached as Exhibit A, the Debtor anticipates that its occupancy rates will increase by approximately 10% for each Property over the next few months. As the market for rental units continues to improve, the Debtor believes it will approach stabilized occupancy rates of 90% by the end of 2011. In addition to the increased occupancy numbers, the Debtor’s net operating income increases during the next 90 days of this bankruptcy case. In other words, the Debtor’s operations are cash-flow positive. Kearney Declaration.

The Secured Debt

13. The Debtor financed construction of the Properties through a Construction Loan Agreement, between the Debtor and Bank of America, N.A. (“**BofA**”), dated July 31, 2007, for the maximum principal amount of \$46,791,600.00 (as modified, extended, supplemented, restated, or renewed, the “**Loan Agreement**”). The Loan Agreement is evidenced by the Deed of Trust Note also dated July 31, 2007, executed by the Debtor and payable to BofA (the “**Note**”). The Note is secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Financing Statement, recorded with the Maricopa County Recorder on July 31, 2007 Doc. No. 2007865958 (the “**Deed of Trust**,” and together with the Loan Agreement and the Note, the “**Loan Documents**”). Under the Deed of Trust, BofA was essentially granted a security interest in substantially all the Debtor’s assets. Kearney Declaration.

14. As of the Petition Date, the total outstanding principal balance under the Loan

Documents is approximately \$45,027,904. Of this amount, \$21,767,663 is attributable to Indigo and \$23,260,241 is attributable to Barossa. In addition, there is approximately \$600,000 of total accrued and unpaid interest under the Loan Documents as of the Petition Date. Kearney Declaration.

The Debtor's Management And Operational Expenses

15. Substantially all the Debtor's operations are managed by two entities, Gray Residential, LLC ("**Gray Residential**"), and Gray Services, LLC ("**Gray Services**"). Gray Residential serves as the Debtor's properties manager, which maintains the Properties' common areas and provides tenant maintenance services. As the manager, Gray Residential is also responsible for leasing and oversees rent collection and other tenant-related issues. The relationship between the Debtor and Gray Residential is governed by a standard management agreement common in the apartment industry (the "**Management Agreement**"), under which Gray Residential receives a management fee equal to 4.5% of the Debtor's revenues for each Property in exchange for its management services. There is one Management Agreement for each of the Properties. Gray Residential's management fee typically ranges from a total of \$13,000 to \$16,000 per month for both Properties together. Kearney Declaration.

16. Gray Services, on the other hand, employs all of the employees that operate the Debtor's businesses. The Debtor in fact has no employees of its own and Gray Services pays all employee wages, benefits, withholding taxes, and workers' compensation insurance expenses. The Debtor reimburses Gray Services for these services monthly. Gray Services passes through such employee-related costs and benefits at no mark-up; the monthly cost is approximately \$64,000 for both Properties together. Kearney Declaration.

17. The Debtor does not have any material cash on hand that BofA does not claim as its cash collateral. The Debtor has significant and necessary postpetition expenses that need to be paid, which are critical to continue business operations during these initial stages of this case. The Debtor has prepared the 90-day Budget attached as Exhibit B to govern the use of the Cash Collateral (as defined in this Motion). The Debtor seeks authority to use Cash Collateral over the period covered by the Budget, in amounts that represent the bare minimum that the Debtor must have to operate its businesses. It is in the best interests of the Debtor's estate and all creditors and parties in interest in this case that the Debtor be allowed to maintain its operations and pay postpetition expenses in accordance with the Budget. Kearney Declaration.

RELIEF REQUESTED

18. The Debtor has an urgent need for the immediate use of cash encumbered by security interests under the Loan Documents (the "**Cash Collateral**"). The Cash Collateral consists primarily of rental proceeds from the units currently rented to tenants at the Properties. The Debtor requires use of the Cash Collateral to, among other things, pay present operating expenses, including amounts due to vendors, service providers, and Gray Residential and Gray Services to meet property-management and payroll-related obligations, and refund tenant security deposits where necessary. Use of Cash Collateral is critical to ensure an uninterrupted and smooth transition into bankruptcy for the benefit of the Debtor's tenants, creditors, and all parties in interest in this case. Kearney Declaration.

19. By this Motion, the Debtor seeks entry of an interim order, under sections 361 and 363 of the Bankruptcy Code, (a) authorizing the Debtor to use the Cash Collateral in accordance with the Budget on an interim basis, (b) authorizing the Debtor to provide adequate protection on

account of the proposed use of Cash Collateral, and (c) scheduling a final hearing to consider the relief requested in this Motion.

BASIS FOR RELIEF REQUESTED

20. The Debtor's use of its estate property is governed by Bankruptcy Code § 363(c), which provides in pertinent part that:

If the business of the debtor is authorized to be operated under section ... 1108 ... of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1). Under Bankruptcy Code §§ 363(c)(2) and 363(e), the Court may authorize the Debtor to use cash collateral¹ if the applicable secured creditor consents or if the Court finds it is adequately protected.

The Proposed Adequate Protection

21. As of the Petition Date, the Debtor does not have an agreement with BofA concerning consensual use of Cash Collateral. Regardless of whether or not BofA consents to the Debtor's use of the Cash Collateral, the Court may approve the Debtor's use of the Cash Collateral if the Court determines that sufficient adequate protection exists.

22. As set forth below, the Debtor submits that adequate protection is not necessary because the Debtor's operations are cash-flow positive, and therefore, BofA's interests are enhanced by virtue of Cash Collateral use. To the extent there is diminution in value, the Debtor submits that the following terms set forth below (the "**Adequate Protection Terms**") adequately

¹ "Cash collateral" is defined by the Bankruptcy Code as, "cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest" 11 U.S.C. § 363(a).

protect BofA's interests in the Cash Collateral in accordance with Bankruptcy Code §§ 361 and 363:

- a. The Budget: The Debtor may use the Cash Collateral in accordance with the Budget. The Debtor may not exceed any line item in the Budget by more than 10% during any calendar month.
- b. Replacement Liens On Prepetition Collateral: To the extent of any diminution in the value of BofA's prepetition collateral (including Cash Collateral) from and after the Petition Date, whether as a result of the imposition of the automatic stay, use of the Cash Collateral, or otherwise, BofA is entitled to replacement liens on the same type of collateral after the Petition Date (the "**Replacement Liens**"). The Replacement Liens will secure BofA to the extent necessary to adequately protect it from any diminution in value of its interests in estate property as of the Petition Date as a result of the granting of this Motion and the authorized use of Cash Collateral, and will have the same validity, priority, and enforceability as their non-avoidable liens (if any) on the Debtor's assets as of the Petition Date. The Replacement Liens will not attach to causes of action arising under Chapter 5 of the Bankruptcy Code.
- c. Replacement Liens On Postpetition Estate Property: The Replacement Liens will also encumber estate property that otherwise would be unencumbered in accordance with Bankruptcy Code § 552.
- d. Monthly Payments: On the last day of each month during the Budget, and after payment of all costs incurred during such month and appropriate reserves for expected losses during the following month in accordance with the Budget, the Debtor will remit to BofA once each month all Cash Collateral that exceeds the paid and reserved budgeted costs and expenses (a "**Monthly Payment**"), which BofA will apply in accordance with the Loan Documents. If it is determined by final, non-appealable order that BofA was not entitled to the payment of postpetition interest, fees, and costs under Bankruptcy Code § 506(b) or otherwise, then BofA may retain all such payments but must instead apply those payments so as to reduce the principal balance of the obligations under the Loan Documents.

There Is No Diminution In Value, And BofA Is Adequately Protected In Any Event

23. Bankruptcy Code § 361 provides a non-exclusive definition of "adequate protection" that includes, among other things, periodic cash payments and replacement liens. 11

U.S.C. § 361; *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). The overall purpose of “adequate protection” for a creditor ““is to insure that the creditor receives the value for which he bargained prebankruptcy.”” *In re Mosello*, 195 B.R. 277, 288 (Bankr. S.D.N.Y. 1996) (quoting *Resolution Trust Corp. v. Swedeland Dev. Group (In re Swedeland Dev. Group)*, 16 F.3d 552, 564 (3d Cir. 1994)). Adequate protection is intended to protect secured creditors only from the diminution in the value of their collateral during a bankruptcy case, and not to compensate such creditors for delay in foreclosing on collateral. The Supreme Court and the Ninth Circuit have made this clear. *See In re Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 377 (1988); *In re Weinstein*, 227 B.R. 284, 296 (9th Cir. 1998).

24. Courts determine what constitutes adequate protection on a case-by-case and factual basis. *See Mbank Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1396-97 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985); *see also* S. Rep. No. 95-989, 95th Cong., 2d Sess. 53 (1978). This determination is inherently flexible. For example, in *O'Connor*, the court authorized the debtor to use \$721,000 of cash collateral to drill three new gas wells that were expected to produce revenues with a present value of \$3,674,000. *See O'Connor*, 808 F.2d at 1398. Finding that the secured creditor was adequately protected by the debtor's prospects of success and the potential value of the new revenues, despite the inherent risk of drilling dry holes, the court held that “[i]n order to encourage the Debtor's efforts in the formative period prior to the proposal of a reorganization, the court must be flexible in applying the adequate protection standard.” *Id.* (citations omitted); *see also In re Quality Interiors, Inc.*, 127 BR. 391, 396 (Bankr. N.D. Ohio 1991) (granting of a replacement lien provided adequate protection); *In re 495 Central Park Avenue Corp.*, 136 B.R. 626 (Bankr. S.D.N.Y. 1992) (projected property improvements constituted adequate protection when rental income from lease conditioned on

improvements would increase value of real estate); *In re Sheehan*, 38 B.R. 859 (Bankr. D.S.D. 1984) (court allowed cash collateral to be used in exchange for replacement lien on crops to be grown with the cash).

25. First and foremost, no evidence exists that there is a diminution in value of BofA's collateral. Indeed, the exact opposite is true; the Debtor's operations are cash-flow positive. As set forth in the Budget, the Debtor's rental income increases each month over the next 90 days. Even though certain property taxes fall within the Budget, the Debtor's net operating income likewise increases during the next 90 days. **In other words, rather than having continued operations deteriorate BofA's collateral base, the Debtor's use of Cash Collateral enhances the value of BofA's security interest each and every day. Under these circumstances, there is no diminution in value and the Debtor need not provide BofA adequate protection.** Kearney Declaration; and see *Timbers*, 84 U.S. at 377; *Weinstein*, 227 B.R. at 296.

26. Even if there was a diminution in value (which there is not), the Debtor submits that BofA is adequately protected with respect to any diminution in the value of its collateral, including Cash Collateral. As set forth above, the Adequate Protection Terms include the Replacement Liens and the Monthly Payments, both of which qualify as adequate protection under Bankruptcy Code § 361. As set forth in the Budget, the Monthly Payments will total approximately \$290,000 for both Properties over the first three months of this case. Kearny Declaration.

27. Moreover, the expenses contained in the Budget are the same expenses that BofA or a prospective receiver would have to pay to preserve and protect the value of its collateral, and there can be no dispute that payment of such expenses must occur. In other words, BofA is

receiving exactly what they would receive had the Debtor not commenced this case. *See, e.g., In re Princeton Square Assocs.*, 201 B.R. 90, 96 (Bankr. S.D.N.Y. 1996) (“[T]his court concludes that no monetary protection is required to be provided by the debtor in possession to the secured creditor to the extent that the rents are applied for the maintenance of the property in the manner a receiver would apply the rents”).

28. The Debtor’s use of Cash Collateral is also essential to continuing and preserving the going-concern value of the businesses during the requested period for use of the Cash Collateral, which ultimately benefits BofA. *See, e.g., In re Erie Hilton Joint Venture*, 125 B.R. 140, 149 (Bankr. W.D. Pa. 1991) (“Preservation of the going-concern value of the business can constitute a benefit to the secured creditor”); *In re Hubbard Power & Light*, 202 B.R. 680, 685 (Bankr. E.D. N.Y. 1996); *Federal Natl. Mortgage v. Dacon Bollingsbrook Associates Limited Partnership*, 153 B.R. 204, 214 (N.D. Ill. 1993); *In re Stein*, 19 B.R. 458 (Bankr. E.D. Pa. 1982); *In re Oak Glen R-Vee*, 8 B.R. 213, 216 (Bankr. C.D. Cal. 1981).

29. In *Stein*, the bankruptcy court found that a debtor may generally use cash collateral where such use would enhance or preserve the value of the collateral. In that case, the bankruptcy court allowed the debtor to use cash collateral even though the secured party had no equity cushion for protection. The *Stein* court further determined that the use of cash collateral was necessary to the continued operations of the debtor, and also that the secured creditor’s position could only be enhanced by the continued operation of the debtor’s business. *See also In re McCombs Properties VI, Ltd.*, 88 B.R. 261 (Bankr. C.D. Cal. 1988) (collateral likely enhanced because proposed use of cash collateral comprised payment of operational expenses and repairs that eliminated the risk of diminution in the creditor’s interest).

30. Just like the situations in *Stein* and *McCombs*, the Debtor's proposed use of Cash Collateral will enhance BofA's interests. As set forth in the occupancy charts attached as Exhibit B, the Debtor anticipates that its occupancy rates will increase by approximately 10% for each of the Properties over the next few months. Moreover, as previously mentioned, the Debtor anticipates its Properties will reach stabilized occupancy rates by the end of this year. These higher occupancy rates increase the income derived from rents (the Debtor's primary source of revenue). It is essential that the Debtor obtain immediate authority to use the Cash Collateral to maintain this steady increase in occupancy rates and rental income, which ultimately benefits the entire estate, including BofA. Kearney Declaration.

31. Absent access to the Cash Collateral on an interim basis, the Debtor will be unable to maintain its business relationships with vendors, suppliers, and customers, pay Gray Residential and Gray Services, and satisfy other operational needs. It follows that without the ability to use the Cash Collateral, the Debtor will be unable to preserve its enterprise value on a going-concern basis and the Debtor's case would likely be converted to one under Chapter 7 of the Bankruptcy Code. Thus, the Debtor's continued viability and its ability to reorganize successfully depend heavily on the Court timely approving this Motion on an interim basis. Kearney Declaration.

32. Under these circumstances, the Debtor submits that BofA's interests in the Cash Collateral are adequately protected in accordance with Bankruptcy Code §§ 361 and 363. In this regard, bankruptcy courts defer to a debtor-in-possession's business judgment regarding the need for and the proposed use of funds, unless such decision is arbitrary and capricious. *See In re Curlew Valley Assocs.*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981); *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving interim loan, receivables facility and

asset-based facility based on the debtor's prudent business judgment). Courts generally will not second-guess a debtor-in-possession's business decisions when those decisions involve "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the Code." *Curlew Valley*, 14 B.R. at 513-14 (footnotes omitted).

33. Courts have granted relief similar to the relief sought in this Motion in other recent Chapter 11 cases. *See, e.g., In re ILX Resorts Inc.*, No. 09-03594, Docket No. 43 (Bankr. D. Ariz. Mar. 10, 2009); *In re Touse, Inc.*, No. 08-10928, Docket No. 113 (Bankr. S.D. Fla. Jan. 31, 2008); *see also In re All American Semiconductor, Inc.*, No. 07-12963 (Bankr. S.D. Fla. April 30, 2007) (authorizing the use of cash collateral in accordance with the terms of the DIP credit documents and the approved budget for DIP financing); *In re ITG Vegas, Inc.*, No. 06-16350, Docket No. 20 (Bankr. S.D. Fla. Dec. 7, 2006); *In re Gemini Cargo Logistics, Inc.*, No. 06-10870 (Bankr. S.D. Fla. March 16, 2006).

REQUEST FOR INTERIM HEARING

34. The Debtor requires immediate access to Cash Collateral for, among other things, the continuation of its operations, the funding of payroll, and trade vendor obligations. As set forth in this Motion, it is essential that the Debtor immediately stabilize its operations and minimize its cash flow problems, which will maximize the potential for a successful reorganization. Accordingly, the Debtor requests that the Court schedule an interim hearing as soon as possible to consider the Debtor's request for authorization to use Cash Collateral. Kearney Declaration.

35. Bankruptcy Rule 4001(b) permits a court to approve a debtor's request for a hearing during the 14-day period following the filing of a motion for authorization to use cash collateral, "only to the extent necessary to avoid immediate and irreparable harm to the estate

pending a final hearing.” Bankruptcy Rule 4001(b)(2). As set forth above, the Debtor’s business will be immediately and irreparably damaged without entry an interim order granting it the authority to use the Cash Collateral in accordance with the Budget.

WHEREFORE, the Debtor respectfully requests that the Court enter an interim order: (a) authorizing the Debtor to use the Cash Collateral; (b) authorizing the Debtor to provide BofA the Adequate Protection Terms; (c) scheduling a final hearing to consider the relief requested in this Motion; and (c) granting such other and further relief as is just and proper.

Dated this 22nd day of February, 2011.

SQUIRE, SANDERS & DEMPSEY (US) LLP

By: /s/ Kelly Singer
Thomas J. Salerno
Jordan A. Kroop
Kelly Singer
Bradley A. Cosman
One East Washington Street, Suite 2700
Phoenix, Arizona 85004
(602) 528-4000
Proposed Counsel to Debtor-in-Possession

EXHIBIT A

Occupancy Chart

**Indigo at the Park
February 18, 2011
Occupancy Rates**

	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11
Total Units	306	306	306	306	306	306	306	306	306	306
Occupied Units:										
Beginning Occupied	221	231	234	248	255	257	260	267	271	273
% Total	72.2%	75.5%	76.5%	81.0%	83.3%	84.0%	85.0%	87.3%	88.6%	89.2%
Expiration	14	25	9	22	24	21	16	19	18	18
% Beginning	6.3%	10.8%	3.8%	8.9%	9.4%	8.2%	6.2%	7.1%	6.6%	6.6%
Skips/Evictions	4	4	4	4	4	4	4	5	5	5
% Beginning	1.8%	1.7%	1.7%	1.6%	1.6%	1.6%	1.5%	1.9%	1.8%	1.8%
Renewals	6	9	5	9	8	8	7	8	7	9
% Expiration	42.9%	36.0%	55.6%	40.9%	33.3%	38.1%	43.8%	42.1%	38.9%	50.0%
New (1 Mth Lag)	22	23	22	24	22	20	20	20	18	19
% Beginning	10.0%	10.0%	9.4%	9.7%	8.6%	7.8%	7.7%	7.5%	6.6%	7.0%
Ending Occupied	231	234	248	255	257	260	267	271	273	278
% Total Units	75.5%	76.5%	81.0%	83.3%	84.0%	85.0%	87.3%	88.6%	89.2%	90.8%

Barossa at The Park
February 18, 2011
Occupancy rates

	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11
Total Units	273	273	273	273	273	273	273	273	273	273
Occupied Units:										
Beginning Occupied	185	190	198	205	213	219	214	225	230	232
% Total	67.8%	69.6%	72.5%	75.1%	78.0%	80.2%	78.4%	82.4%	84.2%	85.0%
Expiration	13	8	11	13	13	28	14	17	22	12
% Beginning	7.0%	4.2%	5.6%	6.3%	6.1%	12.8%	6.5%	7.6%	9.6%	5.2%
Skips/Evictions	3	3	3	3	3	3	3	3	3	3
% Beginning	1.6%	1.6%	1.5%	1.5%	1.4%	1.4%	1.4%	1.3%	1.3%	1.3%
Renewals	6	4	5	6	5	12	7	7	9	6
% Expiration	46.2%	50.0%	45.5%	46.2%	38.5%	42.9%	50.0%	41.2%	40.9%	50.0%
New (1 Mth Lag)	15	15	16	18	17	14	21	18	18	18
% Beginning	8.1%	7.9%	8.1%	8.8%	8.0%	6.4%	9.8%	8.0%	7.8%	7.8%
Ending Occupied	190	198	205	213	219	214	225	230	232	241
% Total Units	69.6%	72.5%	75.1%	78.0%	80.2%	78.4%	82.4%	84.2%	85.0%	88.3%

EXHIBIT B

Budget

Indigo at the Park
February 18, 2011
Budget - Cash Basis

	Mar-11	Apr-11	May-11
Total Rent Revenue	\$151,573	\$153,571	\$162,933
Total Other Lease Revenue	\$17,508	\$17,347	\$18,564
Total Gross Revenue	\$169,081	\$170,918	\$181,497
Operating Expenses:			
Maintenance:			
Scheduled Maintenance	\$1,805	\$2,447	\$1,805
Repairs & Replacements	\$5,545	\$7,125	\$6,500
Turnover	\$3,170	\$5,770	\$1,940
Total Maintenance	\$10,520	\$15,342	\$10,245
Total Guest Rentals	\$100	\$100	\$100
Labor & Benefits:			
Salaries & Wages	\$21,110	\$21,110	\$21,110
Taxes	\$2,211	\$2,211	\$2,211
Benefits	\$6,489	\$5,063	\$3,226
Recruitment	\$158	\$396	\$158
Bonuses	\$3,457	\$3,457	\$3,457
T&E	\$725	\$150	\$150
Total Labor & Benefits *	\$34,149	\$32,386	\$30,311
Utilities:			
Operations	\$27,099	\$26,070	\$26,895
Communications	\$2,480	\$2,480	\$2,480
Safety & Security	\$2,138	\$2,138	\$2,138
Total Utilities	\$31,717	\$30,688	\$31,513
Marketing:			
Sales Tools	\$0	\$5,100	\$0
Merchandising	\$0	\$1,750	\$0
Media	\$4,385	\$3,500	\$5,000
Promotion	\$0	\$0	\$2,000
Public Relations	\$0	\$1,000	\$0
Hospitality	\$750	\$750	\$4,750
Total Marketing **	\$5,135	\$12,100	\$11,750
Administration:			
Supplies & Services	\$6,812	\$6,577	\$6,950
Legal Services	\$1,500	\$1,500	\$1,500
Accounting Services	\$1,143	\$1,143	\$1,143
Total Administration	\$9,455	\$9,220	\$9,593
Other Expenses:			
Management Fee ***	\$7,609	\$7,691	\$8,167
Property Taxes	\$0	\$67,421	\$0
Insurance **	\$3,041	\$3,041	\$3,041
Total Other	\$10,650	\$78,153	\$11,208
Total Operating Expenses	\$101,726	\$177,990	\$104,721
% Gross Income	60.2%	104.1%	57.7%
Per Unit	\$332	\$582	\$342
Net Operating Cash Flow	\$67,354	-\$7,072	\$76,776

* Reimbursement to Gray Services under Management Agreement

** Partial or full reimbursement (invoice/cost sharing) to Gray Services under Management Agreement

*** Reimbursement to Gray Residential under Management Agreement

Budgeted Amounts do not include possible deposits for Utilities

Barossa at The Park
February 18, 2011
Budget - Cash Basis

	Mar-11	Apr-11	May-11
Total Rent Revenue	\$136,019	\$142,943	\$149,349
Total Other Lease Revenue	\$16,428	\$17,095	\$18,312
Total Gross Revenue	\$152,447	\$160,039	\$167,661
Operating Expenses:			
Maintenance:			
Scheduled Maintenance	\$2,006	\$2,006	\$2,156
Repairs & Replacements	\$6,530	\$6,170	\$8,680
Turnover	\$3,625	\$2,220	\$3,140
Total Maintenance	\$12,161	\$10,396	\$13,976
Total Guest Rentals	\$0	\$0	\$0
Labor & Benefits:			
Salaries & Wages	\$17,406	\$17,406	\$17,406
Taxes	\$1,821	\$1,821	\$1,821
Benefits	\$3,752	\$4,459	\$2,984
Recruitment	\$158	\$371	\$158
Bonuses	\$2,826	\$2,826	\$2,826
T&E	\$725	\$150	\$150
Total Labor & Benefits *	\$26,687	\$27,032	\$25,344
Utilities:			
Operations	\$17,791	\$18,431	\$19,951
Communications	\$2,400	\$2,400	\$2,400
Safety & Security	\$2,082	\$2,082	\$2,082
Total Utilities	\$22,273	\$22,913	\$24,433
Marketing:			
Merchandising	\$3,600	\$100	\$100
Media	\$1,802	\$1,802	\$1,802
Promotion	\$4,200	\$0	\$0
Public Relations	\$0	\$1,000	\$0
Hospitality	\$1,050	\$1,050	\$3,550
Total Marketing **	\$10,652	\$3,952	\$5,452
Administration:			
Supplies & Services	\$8,015	\$7,941	\$8,477
Legal Services	\$1,400	\$1,400	\$1,400
Accounting Services	\$1,143	\$1,143	\$1,143
Total Administration	\$10,558	\$10,484	\$11,020
Other Expenses:			
Management Fee ***	\$6,860	\$7,202	\$7,545
Property Taxes	\$0	\$59,788	\$0
Insurance **	\$2,933	\$2,933	\$2,933
Furniture	\$0	\$0	\$0
Total Other	\$9,793	\$69,923	\$10,478
Total Operating Expenses	\$92,125	\$144,700	\$90,703
% Gross Income	60.4%	90.4%	54.1%
Per Unit	\$337	\$530	\$332
Net Operating Cash Flow	\$60,322	\$15,338	\$76,958

* Reimbursement to Gray Services under Management Agreement

** Partial or full reimbursement (invoice/cost sharing) to Gray Services under Management Agreement

*** Reimbursement to Gray Residential under Management Agreement

Budgeted Amounts do not include possible deposits for Utilities