

1 DOWNEY BRAND LLP
R. DALE GINTER (Bar No. 100784)
2 KELLY L. POPE (Bar No. 235284)
621 Capitol Mall, 18th Floor
3 Sacramento, CA 95814-4731
Telephone: (916) 444-1000
4 Facsimile: (916) 444-2100
dginter@downeybrand.com
5 kpoppe@downeybrand.com

6 Attorneys for Creditor
SPCP GROUP V, LLC

8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA

11 THE BEST UNION, LLC, a Corporation
12 Debtor.

Case No. 12-32503-PC

Chapter Number: 11

13 **SECOND CASH COLLATERAL**
14 **STIPULATION BETWEEN DEBTOR AND**
15 **SPCP GROUP V, LLC**

16
17 Debtor The Best Union, LLC (“Debtor”) and Secured Creditor SPCP Group V, LLC
18 (“Secured Creditor”), by and through their attorneys of record, hereby enter into this Second Cash
19 Collateral Stipulation based upon the following facts:

- 20 1. Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code on or
21 about June 28, 2012 (“Petition Date”). The Debtor continues to manage and operate the estate as
22 a Debtor-in -Possession.
- 23 2. The Debtor owns and rents the property located at 3656 W. Shaw Avenue, Fresno,
24 CA (“Property”).
- 25 3. Secured Creditor holds certain documents and agreements, including without
26 limitation an Allonge, Promissory Note Secured by Deed of Trust, and a Deed of Trust,
27 Assignment of Rents, Security Agreement and Fixture Filing (collectively, the “Loan
28 Documents”), executed by Debtor and evidencing a loan in the original principal amount of

1 \$2,400,000 (the "Loan"). Pursuant to the Loan Documents, the Loan is secured by among other
2 things, the Property and all rents, issues, income, revenues, royalties, profits, proceeds and
3 earnings now or hereafter payable with respect to or otherwise derived from the ownership, use,
4 management, operation, leasing or occupancy of the Property (the "Collateral").

5 4. A portion of the Collateral also constitutes "Cash Collateral" as that term is
6 defined in 11 U.S.C. §363(a).

7 5. The Debtor does not dispute that Secured Creditor has a fully perfected lien
8 against the Cash Collateral.

9 6. The Debtor represents that no consensual liens or encumbrances senior to those of
10 Secured Creditor exist against the Collateral and acknowledges that Secured Creditor has
11 specifically relied on this representation in its consent to this Stipulation. Invalidity of this
12 representation is a specific event of default under this Stipulation, giving rise to the Secured
13 Creditor's remedies set forth below.

14 7. The Debtor needs to use the Cash Collateral to operate the Property.

15 8. Secured Creditor has agreed to the use of its Cash Collateral subject to Debtor's
16 compliance with the terms set forth herein.

17 *NOW THEREFORE*, the Debtor and Secured Creditor enter into the following agreement
18 to use Cash Collateral on the following terms:

19 1. The term "Cash Collateral" shall have the same meaning as provided by 11 U.S.C.
20 §363(a).

21 2. Except as modified by this Stipulation, all terms, conditions and provisions of the
22 Loan Documents shall remain in full force and effect. This Stipulation or any other document
23 executed by Debtor in favor of Secured Creditor in connection with this bankruptcy case shall be
24 considered to supplement and not replace any agreement previously existing between Secured
25 Creditor and the Debtor.

26 3. The Debtor acknowledges that it is not presently aware of any grounds to
27 challenge the validity, enforceability, or priority of the Secured Creditor's pre-petition claims or
28 liens against the Collateral.

1 4. Terms and Conditions for the Use of Cash Collateral.

2 A. Subject to the terms and conditions herein, the Debtor shall be entitled to
3 use the Cash Collateral and to pay certain of the Debtor's actual and necessary operating expenses
4 incurred after the Petition Date as set forth in Exhibit 1 (the "Budget") through the term of this
5 Stipulation. The Debtor acknowledges that the line item in the Budget for Rents from leasing
6 vacant 5,348 SF is only an estimate of anticipated rents for this space, and that the Debtor is not
7 currently receiving any rental income from the vacant 5,348 SF located at the Property.

8 B. All Cash Collateral heretofore collected and in the possession or under the
9 control of the Debtor, and all Cash Collateral hereafter collected by the Debtor, shall be deposited
10 into a debtor-in-possession bank account (the "Cash Collateral Account") and kept separate from
11 any other funds of the Debtor.

12 C. From the Cash Collateral Account, the Debtor may transfer to its general
13 account and pay those actual expenses set forth in the Budget which are incurred in the ordinary
14 course of the Debtor's business and which are consistent with the terms of this Stipulation.

15 D. Without the written consent of Secured Creditor, the total payments for
16 monthly expenses shall not exceed ten percent (10.0%) of each line item contained in the budget,
17 or ten percent (10%) of the aggregate of all line items included on the Budget in any one month.
18 No other payments or expenditures shall be made except as the Secured Creditor may specifically
19 authorize in writing. Any unused sum remaining in any one category of expense may not be
20 rolled over to a subsequent month, unless such rollover is because payment of an expense
21 category was not yet due or made in such prior month but such expense was nonetheless incurred.

22 5. Adequate Protection Payments. The Debtor shall make the payments to Secured
23 Creditor required by the Loan Documents pursuant to the terms of the Loan Documents (the
24 "Adequate Protection Payments"). The Adequate Protection Payments are reflected in the
25 attached Budget in the line item titled "MORTGAGE – SPCP Group V, LLC."

26 All payments should be delivered to Secured Creditor as follows:

27 SPCP Group V, LLC
28 2 Greenwich Plaza, 1st Floor
Greenwich, CT 06830

1 6. Debtor further agrees that any turnover to Secured Creditor of the Cash Collateral
2 pursuant to this Stipulation is voluntarily made. The Debtor further agrees that any turnover to
3 Secured Creditor of the Cash Collateral shall not constitute a cure of any default or a waiver of
4 Secured Creditor's right to exercise any of its rights or remedies under the Loan Documents.
5 Nothing herein shall constitute a waiver by Secured Creditor of its right to collect the actual
6 amount of interest that is due and payable under the Loan Documents, including without
7 limitation the default rate of interest provided for therein.

8 7. Post-Petition Liens; Adequate Protection.

9 A. By virtue of, among other things, the provisions of the Loan Documents,
10 Secured Creditor asserts that it holds a valid, duly perfected, enforceable and non-avoidable
11 senior security interest in the Cash Collateral. As further partial adequate protection for the
12 continued use by the Debtor of the Cash Collateral as provided for under this Stipulation, Secured
13 Creditor shall be granted a valid, duly perfected, enforceable and non-avoidable replacement lien
14 and security interest of the same priority in all post-petition Cash Collateral and other personal
15 property of the Debtor to the extent such property is covered by the Loan Documents
16 (collectively, the "Post-Petition Collateral"). The Debtor shall execute such documents as
17 Secured Creditor may require to perfect its security interest hereunder, but entry of the Court's
18 order approving this Stipulation shall constitute a validly perfected first lien and security interest
19 upon the Post-Petition Collateral generated after the Petition Date and no filing, recordation or
20 other act in accordance with any applicable local, state or federal law shall be necessary to create
21 or perfect such lien and security interest.

22 B. The post-petition liens in favor of Secured Creditor shall secure repayment
23 to Secured Creditor of the difference between the actual amount of Cash Collateral spent by the
24 Debtor from and after the Petition Date and the Cash Collateral unspent for the same time period.
25 The post-petition liens granted hereby shall not in any way reduce, eliminate or supersede any
26 security interest previously granted to Secured Creditor, but shall instead be a continuation
27 thereof, from and after the Petition Date.

28 8. Reporting Requirements. The Debtor shall prepare and maintain and upon

1 reasonable notice provide to Secured Creditor for examination the following records:

2 A. All records required to be kept or maintained by the Debtor, including
3 those required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the rules of
4 this Court and the United States Trustee.

5 B. All records required to be kept or maintained by the terms and conditions
6 of this Stipulation, and any other agreement executed by the Debtor in favor of Secured Creditor.

7 C. In addition, the Debtor shall provide to Secured Creditor the following
8 reports in a timely manner.

9 1. On or before execution of this Stipulation, the Debtor shall provide
10 Secured Creditor with copies of all non-confidential documents filed by the Debtor with the
11 Office of the U.S. Trustee.

12 2. No later than the 20th day of each month commencing August 20,
13 2012, Debtor shall provide to Secured Creditor an accounting of all receipts, disbursements and
14 accruals for the prior month, with sufficient detail that Secured Creditor can determine the source
15 and use of such receipts, disbursements and accruals, together with a monthly cash flow statement
16 and profit and loss statement.

17 3. The Debtor shall also provide Secured Creditor in a timely and
18 prompt fashion all reports or other information required by the Loan Documents and any other
19 agreement executed by the Debtor in favor of Secured Creditor or any other agreement which
20 may in the future be executed by the Debtor in favor of Secured Creditor.

21 4. No later than the 20th day of each month commencing August 20,
22 2012, the Debtor shall also provide to Secured Creditor with detailed accounts payable agings and
23 detailed accounts receivable agings containing the identity of the payee or account debtor, the
24 amount of the payable or receivable, and the date on which such payment is due.

25 D. Inspection Rights. Secured Creditor is authorized, in its discretion, to
26 reasonably audit the Debtor's books and records, and to inspect the Collateral. Secured Creditor
27 or its designated representative or agent shall be entitled on reasonable notice to inspect the books
28 and records of the Debtor at any time during normal business hours.

1 E. In addition to the foregoing inspection rights, Secured Creditor shall have
2 and be entitled to all inspections or other information required by the Loan Documents or any
3 other agreement which may in the future be executed by the Debtor in favor of Secured Creditor.

4 F. Insurance. The Debtor shall maintain insurance at all times for the
5 Collateral and shall provide evidence of the same to Secured Creditor.

6 9. Default; Remedies Upon Default.

7 A. Any failure of the Debtor to perform fully or satisfy the promises, duties,
8 covenants, provisions or terms of this Stipulation, the Loan Documents, or any breach of a
9 representation or warranty therein, shall be an event of default under this Stipulation unless timely
10 cured. Any such default under this Stipulation or any other agreement between the parties shall
11 constitute a default under all agreements between the parties.

12 B. In the event of a default, Secured Creditor may provide the Debtor with
13 written notice stating that a default has occurred (which notice may be given by facsimile
14 transmission and/or email to counsel for the Debtor). Upon the failure of the Debtor to cure such
15 default by 5:00 p.m. on the tenth day following the day on which such notice is given, then:

16 (i) The Debtor's right under this stipulation to use Cash Collateral shall
17 terminate.

18 (ii) Unless the Court orders otherwise, the Debtor shall immediately stop
19 using the Cash Collateral and the Debtor shall immediately sequester all Cash Collateral received,
20 i.e., no deductions for the expenses identified in the Budget.

21 (iii) Secured Creditor shall be entitled to move for ex parte relief from the
22 automatic stay upon filing a declaration of default with the Court and the Debtor may only object
23 to such relief by providing evidence that such default has been cured or does not otherwise exist.

24 10. Bankruptcy Court Approval. The Debtor shall immediately seek Bankruptcy
25 Court Approval of this Stipulation.

26 11. Term. Upon the entry of an order by this Court approving the terms of this
27 Stipulation, the Debtor's right to use Secured Creditor's Cash Collateral shall become effective as
28 of the Petition Date and shall continue in effect until the sooner of (a) June 30, 2013, (b) an event

1 of default, or (c) further order of the Court. The term of this Stipulation may be extended by
2 written agreement of the Debtor and Secured Creditor.

3 12. Reservation of Rights. Secured Creditor shall have the right to waive any of the
4 rights, remedies or powers granted herein, and shall have no obligation or duty to any other
5 person or party with respect to the exercise of said rights, remedies or duties. Delay in or failure
6 to exercise any rights, remedies or duties shall not subject Secured Creditor to any liability to any
7 other person or party, nor shall any other person or party rely upon, or in any way assert as a
8 defense to any obligation owing to Secured Creditor such delay or failure. All of Secured
9 Creditor's rights and remedies in law and equity are specifically reserved.

10 13. Nothing contained in this Stipulation or the order approving this Stipulation shall
11 be deemed or construed to waive, reduce or otherwise diminish the rights of Secured Creditor to
12 seek additional or different adequate protection of its interest under the Loan Documents, or to
13 take any other action in this Chapter 11 case including seeking relief from stay at an earlier date.
14 Nothing contained in this Stipulation or the order approving this Stipulation shall be deemed or
15 construed to be an admission that Secured Creditor is adequately protected.

16 *NOW THEREFORE*, the parties stipulate to the foregoing use of Cash Collateral from the
17 Petition date through the term of this Stipulation as provided for herein.

18 DATED: February 1, 2013

DOWNEY BRAND LLP

19
20 By: /s/ Kelly Pope

KELLY POPE
Attorney for Creditor
SPCP GROUP V, LLC

21
22
23 DATED: February 1, 2013

SABARATNAM & ASSOCIATES

24
25 By: /s/ Mufthiha Sabaratnam

MUFTHIHA SABARATNAM
Attorney for Debtor
THE BEST UNION, LLC

