

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re : Chapter 11 Case No.
EXTENDED STAY INC., et al. : 09-13764 (JMP)
Debtors. : (Jointly Administered)
-----X

**ORDER (A) AUTHORIZING USE OF CASH COLLATERAL
BY ESA UD PROPERTIES L.L.C. AND ESA OPERATING LESSEE INC.,
(B) GRANTING ADEQUATE PROTECTION, AND
(C) MODIFYING THE AUTOMATIC STAY**

Upon the Motion, dated October 22, 2009 (the "Motion") of Extended Stay Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the "Debtors"), for an order pursuant to sections 105, 361, 362, 363, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), seeking entry of an Order (this "Order") providing for the following relief:

- (a) authorizing Debtor ESA UD Properties L.L.C. ("UD Properties") and ESA Operating Lessee Inc. ("Operating Lessee," and, together with UD Properties, the "UD Debtors") to use "cash collateral" (the "Cash Collateral"), as such term is defined in section 363(a) of the Bankruptcy Code, of Bank of America, N.A. ("B of A");
- (b) providing adequate protection for, and solely to the extent of, any diminution in value of B of A's interests in the Prepetition Collateral (as defined herein), including the Cash Collateral; and
- (c) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Order;

all as more fully described in the Motion; and the hearing on the Motion having been held before this Court on November 12, 2009 (the "Hearing") to consider entry of this Order; and notice of the Hearing having been given in accordance with Bankruptcy Rule 2002, 4001(b) and (d), and 9014 and it appearing that no other or further notice need be provided; and the relief requested being within the guidelines for requests for the use of cash collateral set forth Local Rule 4001-2; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion, and the evidence submitted or adduced and the arguments of counsel made at the Hearing; and the appearances of all interested parties having been noted in the record of the Hearing; and the 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 upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF
FACT AND CONCLUSIONS OF LAW:**

A. Commencement Date. On June 15, 2009 (the "Commencement Date"), each of the Debtors, including the UD 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 June 16, 2009, this Court entered an order approving the joint administration of these chapter 11 cases (the "Chapter 11 Cases").

B. Debtors in Possession. The Debtors are continuing in the management and operation of their business and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11

Cases; however, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) has filed a motion seeking the appointment of an examiner.

C. Jurisdiction and Venue. This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over these proceedings and over the persons and property affected hereby. Venue for the Chapter 11 Cases is proper in this district pursuant to 28 U.S.C. § 1408. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

D. Statutory Committee. On June 19, 2009, the U.S. Trustee appointed an official committee of unsecured creditors (the “Creditors’ Committee”) in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

E. Debtors’ Stipulations. Without prejudice to the rights of parties in interest (but subject to the limitations thereon contained in paragraphs 15 and 16 of this Order), the Debtors admit, stipulate and agree that (collectively, paragraphs E(a) through E(g) below are referred to herein as the “Debtors’ Stipulations”):

a. Mortgage Loan Agreement. UD Properties is a borrower under that certain Loan Agreement, dated as of February 14, 2008 (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “Mortgage Loan Agreement”), by and among UD Properties, Operating Lessee, and B of A. Pursuant to the Mortgage Loan Agreement and the other documents executed in connection therewith (the “Loan Documents,”¹ and together with the Mortgage Loan Agreement, the “Mortgage Loan Documents”), B of A extended financing in the principal aggregate amount of \$8.5 million to UD Properties (the “B of

¹ “Loan Documents” shall mean, collectively, the Mortgage Loan Agreement, the Promissory Note, the Absolute Assignments of Leases, Rents Income and Profits, the Security Agreements, the Guaranty Agreement, the Assignment and Subordination of Management Agreements, the Absolute Assignments of Contracts, Leases and Other Agreements, the Assignments and Subordination of Franchise Agreements and any and all other documents executed and or filed in connection with the Mortgage Loan Agreement.

A Mortgage Debt”). As of the Commencement Date, the principal amount of approximately \$8.5 million was outstanding under the Mortgage Loan Agreement. Extended Stay Inc. (“ESI”) is the guarantor of certain payment and performance provisions of the Mortgage Loan Documents.

b. Prepetition Mortgages and Prepetition Collateral. The B of A Mortgage Debt is secured by all of the interests of the UD Debtors in (1) the real property located at (i) 1067 Highway 315 Plains Township, Pennsylvania and (ii) 2355 Tiffin Avenue, Findlay, Ohio (together, the “Mortgaged Properties”) and (2) all of the personal property and assets of the UD Debtors (hotel personalty, all proceeds and products and all supporting or ancillary obligations (including but not limited to all revenue, credit card receipts from guests and other users of the hotels, trademark and software)), (3) plans, licenses, permits and agreements (including the franchise agreements) and (4) all other assets on which B of A was granted liens and security interests pursuant to the Loan Documents (collectively the “Pre-Petition Collateral”).

c. Validity and Perfection of Prepetition Mortgages and B of A Mortgage Debt. Subject to the provisions of paragraphs 15 and 16 of this Order, the Debtors acknowledge and agree that: (i) as of the Commencement Date, the Prepetition Mortgages on the Prepetition Collateral were valid, binding, enforceable, non-avoidable and properly perfected; (ii) the B of A Mortgage Debt constituted a legal, valid, binding, and non-avoidable obligation of UD Properties ; (iii) no portion of the Prepetition Mortgages or the B of A Mortgage Debt is subject to avoidance, recharacterization, disallowance, disgorgement, recovery or subordination under the Bankruptcy Code or applicable non-bankruptcy law; and (iv) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action,

including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code, against B of A or any of its affiliates, agents, attorneys, advisors, professionals, officers, managers, members, directors and employees arising out of, based upon or related to the B of A Mortgage Debt.

d. Cash Collateral. The UD Debtors and the other Debtors represent that all of the UD Debtors' cash generated from the Mortgaged Properties, wherever located, whether as original collateral or profits, rents or proceeds of the Mortgaged Properties or other Prepetition Collateral, constitutes Cash Collateral. B of A consents to use of its Cash Collateral only on the terms and conditions of this Order.

e. Default by the Debtors. The Debtors acknowledge and stipulate that the UD Debtors are in default of their debts and obligations under the Mortgage Loan Documents, which defaults include, without limitation, the defaults set forth in the letter dated March 17, 2009 from B or A to UD Properties and Operating Lessee.

F. Adequate Protection. B of A is entitled to receive, pursuant to sections 361 and 363(e) of the Bankruptcy Code, adequate protection for, and solely to the extent of, any diminution in the value of B of A's interest in the Prepetition Collateral from and after the Commencement Date resulting from (a) the use of the Cash Collateral, (b) the use, sale or lease of the Prepetition Collateral, and/or (c) as a result of the imposition of the automatic stay under Section 362(a) of the Bankruptcy Code (the amount of any such diminution being referred to hereinafter as the "Adequate Protection Obligations"); provided, however, any Adequate Protection Payments (as defined below) made to B of A or its professionals pursuant to this Order on account of paying or reimbursing outstanding principal, interest, fees, costs and/or expenses with respect to the B of A Mortgage Debt shall not constitute diminution in value of B

of A's interest in such Prepetition Collateral. Pursuant to sections 361, 363, and 507(b) of the Bankruptcy Code, as adequate protection for the Adequate Protection Obligations, the UD Debtors have agreed to provide B of A with: (a) the Adequate Protection Liens, (b) the Adequate Protection Superpriority Claims; and (c) the Adequate Protection Payments (each as defined below).

G. Section 506(c) and 552(b). B of A is entitled to and hereby granted: (a) a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy Code and (b) a waiver of the provisions of section 506(c) of the Bankruptcy Code.

H. Necessity of Relief Requested. The UD Debtors require the continued use of Cash Collateral in order to operate their business and to finance their operations, absent which immediate and irreparable harm will result to the Debtors, their estates and creditors, and the prospects for a successful conclusion of the Chapter 11 Cases. In the absence of the continued use of Cash Collateral, it would be impossible for the Debtors to continue to operate the Mortgaged Properties, even for a limited period of time, and serious and irreparable harm to the Debtors, their estates and their creditors would occur. The UD Debtors do not have sufficient available sources of working capital and financing to operate the Mortgaged Properties in the ordinary course of business or to maintain the Mortgaged Properties without the continued use of Cash Collateral. The relief requested in the Motion is, therefore, of the utmost significance and importance to the preservation and maintenance of the going concern value of the Debtors. B of A and the Debtors have negotiated at arms' length and in good faith regarding the UD Debtors' continued use of Cash Collateral to fund its continued operations for the period through the Termination Declaration Date (as defined below), all subject to the Budget (as defined below) and the terms and conditions set forth in this Order, including, without limitation, the protection

afforded an entity acting in “good faith” under section 363(m) of the Bankruptcy Code. Based on the record presented to the Court at the Hearing, the terms of the proposed adequate protection arrangements and the continued use of the Cash Collateral are fair and reasonable under the circumstances, reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration. Entry of this Order is in the best interests of the Debtors and their estates.

I. Notice. Notice of the Motion has been provided by the Debtors in accordance with the order entered on July 17, 2009 governing case management and administrative procedures for these Chapter 11 Cases [Docket No. 176], on: (a) the U.S. Trustee, (b) any party which has filed a request for notices with this Court; and (c) the respective counsel for the Creditors’ Committee and the Special Servicer. Such notice is good and sufficient to permit the relief set forth in this Order, and no other or further notice is or shall be required.

Based upon the foregoing findings and conclusions, the Motion and the record before this Court with respect to the Motion, and good and sufficient cause appearing therefor, **NOW, THEREFORE, IT IS HEREBY ORDERED** that:

1. Motion Granted. The Motion is granted, and the use of Cash Collateral is authorized, subject to the terms and conditions set forth in this Order.

2. Objections to Entry of Order Overruled. All objections to the entry of this Order, to the extent not withdrawn or resolved, are hereby overruled.

3. Authorization to Use Cash Collateral.

a. Budget. Subject to the terms and conditions of this Order, pursuant to sections 363(c)(2) of the Bankruptcy Code, the UD Debtors are authorized to use Cash Collateral solely in accordance with and as set forth in the budget, attached hereto as

“Exhibit A” (as may be amended in accordance with paragraph 4 hereof, the “Budget”) during the period from the date hereof through the Termination Declaration Date (the “Specified Period”). Except as otherwise expressly provided herein, Cash Collateral may be used during the Specified Period solely in accordance with the Budget, and with actual cumulative expenses for (a) Property Controllable Expenses, (b) Property Non-Controllable Expenses (except real estate taxes and property insurance), and (c) Management Fees, Trademark License Fees, and Reservation Costs and Travel Agent Commissions (collectively, the “Operational Expense Categories”), in the aggregate, for each monthly period, not to exceed 115% of the amounts set forth in the Budget. In addition, the UD Debtors are authorized to use Cash Collateral (i) to pay real estate taxes and property insurance premiums as same become due and (ii) for capital expenditures, not to exceed 5% of revenues on a rolling twelve (12) month basis.

Notwithstanding the foregoing, but subject to paragraph 4 below, if B of A in its sole discretion in writing permits the use of its Cash Collateral in excess of any terms and conditions set forth in this Order (including, without limitation, the Budget), such uses shall be entitled to and governed by the rights, priorities, benefits and protections of this Order.

b. Use of Cash Collateral After Default. During the Remedies Notice Period (as defined herein), the UD Debtors may continue to use Cash Collateral (i) for the payment of any unpaid post-petition administrative expenses incurred in accordance with the Budget and this Order so long as such expenses existed and were actually incurred prior to the Termination Declaration Date and (ii) in accordance with the terms and provisions of the Budget solely to meet payroll obligations and to pay expenses critical to the preservation of the UD Debtors and their estates incurred during the Remedies Notice Period. Absent further order of the Court or except as expressly provided in this Order, the UD Debtors shall no longer be

authorized pursuant to this Order to use Cash Collateral at the expiration of the Specified Period without the written consent of B of A, regardless of whether they have expended the entire amount of Cash Collateral permitted by the Budget. Nothing in this Order shall, or shall be deemed to, authorize any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Order without the prior written consent of B of A, and in accordance with the Budget. The Budget is an integral part of this Order and has been relied upon by B of A in deciding to consent to entry of this Order.

c. Segregation of Funds. The UD Debtors shall, pursuant to section 363(c)(4) of the Bankruptcy Code, account for all Cash Collateral which has been, is now, and which may hereafter be, in their possession, custody or control, and shall not, without further order of this Court or as contained in the Budget, transfer any of such Cash Collateral to any of their non-Debtor affiliates or subsidiaries or to any of the other Debtors. Notwithstanding the foregoing, the UD Debtors and Operating Lessee shall be authorized to pay HVM L.L.C. ("HVM"), or reimburse the Debtors for payments made to HVM on behalf of the UD Debtors, for the UD Debtors' allocable share of the overhead expenses incurred by HVM or the Debtors, including, without limitation, HVM Management Fees and Reservation Costs and Travel Agent Commissions; provided, however, that all such payments or reimbursements shall be consistent with the Budget.

4. Budget Maintenance. The Debtors shall provide B of A, the Special Servicer, and the Creditors' Committee with a 2010 monthly budget in accordance with the requirements set forth in the Loan Documents for submission of an annual budget update which shall serve as the Budget for 2010. Thereafter, the UD Debtors may elect to submit updates or revisions to the budget on or before 20 calendar days after the end of each calendar quarter. The

Budget and any modifications to, or extensions, amendments or updates of, the Budget shall be (i) in form and substance acceptable to and approved in writing by B of A, which consent shall not be unreasonably withheld, and (ii) provided to the counsel for the Special Servicer (as defined in the Final Order (A) Authorizing Use of Cash Collateral, (B) Granting Adequate Protection, and (C) Modifying the Automatic Stay, dated July 23, 2009 (the “Final Cash Collateral Order”), and the Creditors’ Committee on not less than three (3) business days’ advance notice and provided further that the Special Servicer and the Creditors’ Committee shall have the right to object to any such modifications, extensions, amendments or updates, including without limitation the filing of a pleading with the Bankruptcy Court on shortened notice. B of A may assume the Debtors will comply with this Order and the Budget and shall not be obligated to pay (directly or indirectly from the Collateral) any expenses incurred or authorized to be incurred pursuant to this Order or to ensure or monitor that sufficient Cash Collateral exists to pay any expenses incurred or authorized to be incurred pursuant to the this Order.

5. Adequate Protection Liens.

a. Subject to paragraph 33 below, to the extent of any Adequate Protection Obligations, B of A is hereby granted (effective and perfected as of the Commencement Date and without the necessity of the execution by the UD Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements) a valid and perfected replacement security interest in, and lien on (the “Adequate Protection Liens”), all of the right, title and interest of the UD Debtors in, to and under all present and after-acquired property and assets of the UD Debtors of any nature whatsoever, whether real or personal, tangible or intangible, wherever located, including, without limitation, all cash and Cash Collateral of the UD Debtors (whether maintained with B of A or any other financial

institution) and any investment of such cash and Cash Collateral, goods, cash-in-advance deposits, contracts, causes of action, general intangibles, accounts receivable, and other rights to payment, whether arising before or after the Commencement Date, chattel paper, documents, instruments, interests in leaseholds, real properties, plants, machinery, equipment, patents, copyrights, trademarks, trade names or other intellectual property, licenses, insurance proceeds, and tort claims, and any and all of the proceeds, products, offspring, rents and profits thereof, rights under letters of credit, capital stock and other equity or ownership interests held by the UD Debtors, including equity interests in subsidiaries and all other investment property, and the proceeds of all of the foregoing, whether now existing or hereafter acquired (collectively, the “Collateral”), provided, however, that the Collateral shall not include the claims and causes of action of the UD Debtors under section 544, 545, 547, 548, or 550 of the Bankruptcy Code (collectively, the “Avoidance Actions”) or the proceeds of the Avoidance Actions (the “Avoidance Actions Proceeds”); provided further, that the Collateral shall include avoidance actions under section 549 and related proceeds and recoveries under section 550 of the Bankruptcy Code in respect of the Prepetition Collateral. Notwithstanding anything to the contrary set forth in the Final Cash Collateral Order, the Adequate Protection Liens shall be (i) first priority perfected liens on all of the Collateral that is not otherwise encumbered by a Prior Lien (as defined below), (ii) first priority perfected liens on all of the Collateral as to which B of A had a valid and perfected first priority lien as of the Commencement Date, even if such Collateral is subject to a validly perfected lien that is junior to the lien of B of A, and (iii) junior perfected liens on all Collateral that is subject to a Prior Lien. As used herein, the term “Prior Liens” means only valid, enforceable, and non-avoidable liens and security interests in the Collateral that were perfected prior to the Commencement Date (or perfected on or after the

Commencement Date to the extent permitted by Section 546(b) of the Bankruptcy Code), which are not subject to avoidance, disallowance, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law and which are senior in priority to B of A's liens as of the Commencement Date, in each case under applicable law and after giving effect to any lien release, subordination or inter-creditor agreements. For the avoidance of doubt, the term "Prior Liens" shall not include any adequate protection liens granted to the Mortgage Debt Parties (as defined in the Final Cash Collateral Order) on the property of the UD Debtors, which liens are expressly subordinate to the Adequate Protection Liens granted in this Order.

b. Subject to paragraph 33 below, the Adequate Protection Liens shall be enforceable against the UD Debtors, their estates and any successors thereto, including without limitation, any trustee or other estate representative appointed in the Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of either of their Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). Except as provided herein, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Chapter 11 Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Cases or any Successor Cases, or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The Adequate Protection Liens shall not be subject to sections 506(c), 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any estate pursuant to section 551 of the Bankruptcy Code shall be made or rank in priority *pari passu* with or senior to the Adequate Protection Liens. The Adequate Protection Liens shall be deemed

legal, valid, binding, enforceable, and perfected liens, not subject to subordination, impairment or avoidance, for all purposes in the Chapter 11 Cases and any Successor Case.

6. Adequate Protection Superpriority Claim.

a. General. Subject to paragraph 33 below, as adequate protection for any Adequate Protection Obligations, B of A is hereby granted as and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code allowed superpriority administrative expense claims in the Chapter 11 Cases of the UD Debtors or any cases under chapter 7 of the Bankruptcy Code or upon the conversion of the Chapter 11 Cases of the UD Debtors or in any other proceedings superseding or related to any of the foregoing (collectively, the “Successor Case”) in the amount of the Adequate Protection Obligations (the “Adequate Protection Superpriority Claim”). The Adequate Protection Superpriority Claim shall be payable from, and shall have recourse to, any and all assets and property of the UD Debtors.

b. Priority of Adequate Protection Superpriority Claim. Subject to paragraph 33 below and notwithstanding section 7(b) of the Final Cash Collateral Order, the Adequate Protection Superpriority Claim shall have priority over all administrative expense claims and unsecured claims against the UD Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code and the superpriority claims granted under section 7(b) of the Final Cash Collateral Order to the Mortgage Debt Parties (as defined therein).

7. Adequate Protection Payments. As additional adequate protection for any Adequate Protection Obligations, and for so long as the Mortgaged Properties have positive Cash

Flow (as hereinafter defined) on a trailing 12-month basis equal to or in excess of interest due at the non-default contract rate of interest for the same period, the UD Debtors shall make adequate protection payments to B of A (the “Adequate Protection Payments”) in the form of the following and regardless of whether such amounts are included in the Budget: (i) payments payable monthly on the same date as provided in the Mortgage Loan Documents, in an amount equal to the interest at the non-default contract rate that is payable to B of A in connection with the B of A Mortgage Debt; (ii) payments promptly so as not to incur any late fees, interest, penalties, or similar costs and charges of or with respect to (A) taxes as required by the applicable states and municipalities on or before the day first due and payable, (B) insurance and maintenance costs with respect to the Collateral required by the Mortgage Loan Documents, and (C) all required ground lease rent payments; and (iii) ongoing payment of the reasonable fees, costs and expenses of Sills, Cummis & Gross P.C. (“Sills Cummis”), in accordance with the Mortgage Loan Documents that are incurred in connection with matters relating to the Mortgage Loan Documents or to which they are otherwise entitled to under the Mortgage Loan Documents. In any month in which the Mortgaged Properties have Cash Flow on a trailing 12 month basis less than the interest due at the non-default contract rate of interest for the same period, instead of the payment otherwise required pursuant to paragraph 7(i) of this Order, the UD Debtors shall make an adequate protection payment equal to the amount of Cash Flow, if any, in excess of payments previously made pursuant to paragraph 7(i) of this Order. The difference between the payments otherwise due pursuant to paragraph 7(i) of this Order and the payments actually made shall be accrued and added to the amount owed by the UD Debtors in respect of the Mortgage Debt. Notwithstanding that the monthly amounts to be paid pursuant to clause (i) of the preceding sentence will be based on the non-default contract rate of interest,

interest shall accrue on the Mortgage Loan for the period subsequent to the Commencement Date at the default rate of interest set forth in the Mortgage Loan Agreement. The difference between the amount of the accrued interest at such default rate and the amount paid as adequate protection payments (the “Incremental Interest”) shall be added to the amount owed by UD Properties in respect of the Mortgage Debt; provided, however, that the interest accruing on the Mortgage Debt as provided above shall be calculated without taking into account the Incremental Interest. The Debtors and the Creditors’ Committee reserve the right to contend that the allowable claim in respect of the Mortgage Debt should not include the Incremental Interest. Cash Flow shall be measured each month as actual property EBITDA, less capitalized costs, less Management Fees, less Trademark License Fees, less Reservation Costs and Travel Agent Commissions, and less costs in (C)(iii) above in this paragraph. The UD Debtors are authorized and directed, promptly and no later than five (5) business days after the expiration of the applicable Professional Fee Objection Period (as defined below), to pay the undisputed and reasonable fees, costs and charges set forth in such invoice (with a copy to counsel for the Creditors’ Committee) that are incurred in connection with the Mortgage Loan Documents, or to which they are otherwise entitled under the Mortgage Loan Documents. None of the fees, costs and expenses payable to Sills Cummins pursuant to this paragraph shall be subject to separate approval by this Court or U.S. Trustee guidelines; provided, that each such professional shall submit copies of its professional fee invoices to respective counsel to the Debtors and the Creditors’ Committee. Such invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine. The Debtors

and the Creditors' Committee may object to the reasonableness of the fees, costs and expenses included in any such professional fee invoice; provided that, any such objection shall be forever waived and barred unless (i) it is filed with this Court and served on the respective professional no later than ten (10) days after the objecting party's receipt of the applicable professional fee invoice (the "Professional Fee Objection Period") and (ii) it describes with particularity the items or categories of fees, costs and expenses that are the subject of the objection and provides the specific basis for the objection to each such item or category of fees, costs and expenses. If an objection to a professional's invoice is timely filed and received, the UD Debtors shall only be required to pay the undisputed amount of the applicable invoice, and any such objection shall be resolved by the agreement of the objecting party and the affected professional or by the Court, with the payment, if any, of the disputed amount only occurring after such resolution. Sills Cummins shall not be required to file any interim or final fee application with respect thereto. If the fees and expenses of Sills Cummins are not promptly paid or reimbursed by the UD Debtors as provided in this paragraph, then such fees and expenses may be paid by B of A, with the amount of such fees and expenses added to the amount of the B of A Mortgage Debt.

8. Modification of Automatic Stay. The automatic stay under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Order, including, without limitation, to: (a) permit the UD Debtors to grant the Adequate Protection Liens and the Adequate Protection Superpriority Claims; (b) permit the UD Debtors and B of A to perform such acts as B of A may request or desire to take in its sole discretion to assure the perfection and priority of the liens granted herein; and (c) authorize the UD Debtors to pay, and B of A to retain and apply for its benefit, payments made in accordance with the terms

of this Order, provided, however, any stay relief with respect to the exercise of remedies shall be in accordance with paragraph 13 below or as otherwise ordered by the Court.

9. Preservation of Value. To provide B of A with further adequate protection, the UD Debtors' continued use of Cash Collateral shall be conditioned upon the UD Debtors' observance of and timely performance with the material terms, provisions, covenants, and agreements specified in the Mortgage Loan Documents pertaining to the maintenance, preservation and inspection of the Prepetition Collateral, except as otherwise provided in any prior or future order of the Court.

10. The UD Debtors' Obligations. The UD Debtors shall:

a. Cause all revenue, income, rents, royalties and similar funds from the Mortgaged Properties to be deposited in separate accounts of UD Properties or Operating Lessee, consistent with past practices and ensure that the funds shall remain therein and shall not be "upstreamed" or commingled with funds of any of the other Debtors or other entity, other than in the ordinary course of business as reflected in the Budget;

b. Utilize Cash Collateral to pay the expenses of the operation of their business solely as provided in the Budget;

c. Deliver to B of A, the Special Servicer and the Creditors' Committee on or before the close of business on 20th day after the end of each month a (i) comparison for the prior month of actual results of all items contained in the Budget to the amounts originally contained in the Budget and (ii) cumulative comparison for the period from the Commencement Date through the end of the prior month of the actual results of all items contained in the Budget to the amounts originally contained in the Budget, in each case along with such supporting information as B of A may request;

d. Provide B of A, the Special Servicer, and the Creditors' Committee with financial reports in content and form identical to those previously provided by the UD Debtors to B of A prior to the Commencement Date and in accordance with the Mortgage Loan Documents;

11. Disposition of Collateral.

(a) The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Collateral without the prior written consent of B of A except (i) in the ordinary course of business or (ii) pursuant to an order of the Bankruptcy Court.

(b) For the avoidance of doubt, nothing in this Order is, or shall be deemed to be, the consent or approval of B of A to any such sale, transfer, lease, encumbrance or disposition and nothing in this Order shall preclude B of A from (i) filing and prosecuting an objection to any such proposed sale, transfer, lease, encumbrance or disposition and/or (ii) terminating the consensual use of Cash Collateral in response to or in connection with such proposed sale, transfer, lease, encumbrance or disposition; provided that such termination shall only occur after notice and a hearing in accordance with the Bankruptcy Code and Bankruptcy Rules; provided further that the rights and objections of the Debtors, the Special Servicer, the Creditors' Committee and all other parties-in-interest are reserved in connection with such proposed termination. The process described in this sub-paragraph (b) is defined as the "Reservation of Rights and Termination Process" and such defined term is used in paragraph 15 of this Order to apply to certain proposed actions of the UD Debtors in addition to the sale, transfer, lease, encumbrance or disposition of assets.

12. Events of Default. The occurrence of any of the following events, unless waived in writing by B of A, shall constitute an event of default (collectively, the “Events of Default”):

a. the failure by the UD Debtors to (i) make any Adequate Protection Payments as set forth in this Order or the Budget; (ii) comply with the Budget and any variance permitted hereunder for any applicable measurement period as described in paragraph 3 above; or (iii) perform, in any material respect, any other terms, provisions, conditions, covenants, or obligations under this Order;

b. the Debtors’ obtaining of credit or the incurring of indebtedness that is (i) secured by a security interest, mortgage or other lien on all or any portion of the Collateral which is equal or senior to any security interest, mortgage or other lien of B of A (whether for adequate protection or otherwise), (ii) entitled to priority administrative status which is equal or senior to that granted to B of A (whether for adequate protection or otherwise), or in each case any Debtor applies for, consents to, or acquiesces in, any such relief or (iii) in material violation of the terms and conditions of the Mortgage Loan Documents other than any such violation that was in existence as of the Commencement Date;

c. any lien or security interest purported to be created under the Mortgage Loan Documents shall cease to be, or shall be asserted by any Debtor not to be, a valid and perfected lien on or security interest in any Collateral, with the priority required by the Mortgage Loan Documents or herein;

d. the entry of an order by the Court granting, or any Debtor applies for, consents to, or acquiesces in, relief from or modifying the automatic stay of section 362 of the Bankruptcy Code (i) to allow any creditor to execute upon or enforce a lien on or security

interest in any Collateral having a value in excess of \$50,000, or (ii) with respect to any lien of or the granting of any lien on any Collateral to any state or local environmental or regulatory agency or authority, which in either case would have a material adverse effect on the business, operations, property, assets, or condition, financial or otherwise, of the UD Debtors;

e. reversal, vacatur, or modification (other than a modification with the express prior written consent of B of A) of this Order or any UD Debtor applies for, consents to, or acquiesces in, any such relief;

f. with respect to the UD Debtors, dismissal of their Chapter 11 Cases, or conversion of either or both of their Chapter 11 Cases to a chapter 7 case, or appointment of a chapter 11 trustee or examiner with enlarged powers or other responsible person, or the UD Debtors apply for, consent to, or acquiesce in, any such relief;

g. any misrepresentation of a material fact made after the Commencement Date by any of the Debtors or their agents to B of A about (i) the financial condition of the UD Debtors, or any of them, (ii) the nature, extent, location or quality of any Collateral, or (iii) the disposition or use of any Collateral, including Cash Collateral, subject in each case to a grace period of five (5) business days after delivery to the Debtors, with a copy to counsel for the Special Servicer and counsel for the Creditors' Committee, of a notice of such misrepresentation; or

h. a default by any of the UD Debtors in reporting financial information as and when required under this Order, subject to a grace period of five (5) business days after delivery to the Debtors, with a copy to counsel for the Special Servicer and counsel for the Creditors' Committee, of a notice of a failure to provide such information.

13. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, B of A may declare a termination, reduction or restriction of the ability of the UD Debtors to use Cash Collateral on the consensual basis provided in this Order, except for the limited use of Cash Collateral provided in paragraph 3 hereof (any such declaration, shall be referred to herein as a “Termination Declaration”). The Termination Declaration shall be given by facsimile (or other electronic means) to counsel to the Debtors, counsel to the Special Servicer, counsel to the Creditors’ Committee, and the U.S. Trustee (the earliest date any such Termination Declaration is made shall be referred to herein as the “Termination Declaration Date”). On the Termination Declaration Date, the UD Debtors’ right to use Cash Collateral on the consensual basis provided in this Order shall automatically cease, except as provided in paragraph 3 hereof. During the five (5) business days after the Termination Declaration Date (the “Remedies Notice Period”), the Debtors, the Special Servicer and/or the Creditors’ Committee shall be entitled to seek an emergency hearing with the Court seeking a determination of whether an Event of Default has occurred and/or any other appropriate relief related to the UD Debtors’ continued use of Cash Collateral on a non-consensual basis, with the rights and objections of all parties reserved with respect thereto. Unless the Court determines otherwise during the Remedies Notice Period, the automatic stay shall, subject to paragraph 33 below, automatically be terminated at the end of the Remedies Notice Period without further notice to or order of the Court, and the UD Debtors shall no longer have the right to use or seek to use Cash Collateral and B of A shall be permitted to exercise any and all remedies set forth herein, in the Mortgage Loan Documents, as applicable, and as otherwise available at law against the Collateral, without further order of or notice, application or motion to the Court, and without restriction or restraint by any stay under sections 362 or 105 of

the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interest in the Collateral or any other rights and remedies granted to B of A with respect thereto pursuant to the Mortgage Loan Documents, or this Order, as applicable.

14. Limitations on Use of Cash Collateral. The Cash Collateral may not be used: (a) in connection with or to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type (or the preparation of any such action, suit, arbitration, proceeding, application, motion or other litigation) against B of A.

15. Reservation of Certain Third Party Rights and Bar of Challenges and Claims. Nothing in this Order shall prejudice the rights of the Special Servicer, the Creditors' Committee and any other party in interest granted standing by the Court (other than the Debtors), to seek to object to or to challenge the Debtors' Stipulations, including, but not limited to those in relation to: (a) the validity, extent, priority, or perfection of the mortgage, security interests, and liens of B of A; or (b) the validity, allowability, priority, or amount of the Prepetition Mortgages or the B of A Mortgage Debt. A party, including the Creditors' Committee, must commence, as appropriate, a contested matter or adversary proceeding raising such objection, claim, cause of action or challenge (which Challenge may also include a request for standing), including, without limitation, any claim against B of A in the nature of a setoff, counterclaim or defense to the applicable B of A Mortgage Debt (each, a "Challenge") by the date that is no later than thirty (30) days from the filing of the report by Ralph R. Mabey, the examiner appointed in these chapter 11 cases, or any subsequent date that may be ordered by the Court for cause shown before the expiration of the applicable period (the "Challenge Period"); provided, however, that a Challenge shall not include a Reapplication Challenge (as defined below). The applicable Challenge Period may only be extended for cause shown on motion and hearing brought prior to

its expiration or by written consent of B of A. Upon either the expiration of the Challenge Period (the “Challenge Period Termination Date”) without the filing of a Challenge or, in the event that a Challenge is timely filed, the Court rules against the party asserting such Challenge: (A) any and all such Challenges by any party (including, without limitation, any Creditors’ Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed in these Chapter 11 Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed in any Successor Case), shall be deemed to be forever waived, released and barred, and (B) all of the Debtors’ Stipulations, waivers, releases, affirmations and other stipulations as to the perfection, priority, extent, and validity as to B of A’s claims, liens, and interests shall be of full force and effect and forever binding upon the Debtors, the Debtors’ bankruptcy estates and all creditors, interest holders, and other parties in interest in these Chapter 11 Cases and any Successor Cases. Notwithstanding anything to the contrary herein, if any such Challenge is properly and timely commenced, the Debtors’ Stipulations shall nonetheless remain binding on all parties-in-interest and preclusive as provided above except to the extent that such Debtors’ Stipulations are contested or disputed in such Challenge and a final non-appealable order is entered by the Court upholding such Challenge. Nothing in this Order vests or confers on any Entity (as defined in the Bankruptcy Code), including the Creditors’ Committee or any other statutory committee appointed in the Chapter 11 Cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including any Challenge with respect to the Mortgage Loan Agreement or the B of A Mortgage Debt; provided, however, in the event that the Creditors’ Committee files a motion with the Court seeking standing to bring a Challenge (the “Standing Action”) prior to the expiration of the Challenge Period Termination Date and the Creditors’ Committee, at all times from such filing, diligently and in good faith

pursues the entry of a final order regarding such Standing Action, then the Challenge Period Termination Date with respect to the Creditors' Committee only (and no other entity) will be tolled until ten (10) days after the date on which the Court enters a final order granting or denying the Standing Action.

16. Reapplication of Adequate Protection Payments. Upon entry of a final non-appealable order by the Court determining B of A to be undersecured, payment of interest or fees to B of A under this Order may be reapplied, recharacterized or disallowed as the Court so orders (a "Reapplication Challenge").

17. No Third Party Rights. Except as explicitly provided for herein, this Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

18. Waiver of Section 506(c) Claims. No costs or expenses of administration which have been or may be incurred in any of the Chapter 11 Cases or any Successor Case at any time shall be charged against B of A or any of its claims or the Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent of B of A, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders.

19. No Liability to Third Parties. In consenting to the UD Debtors' use of Cash Collateral under the terms set forth herein or in taking any other actions authorized by this Order, B of A (i) shall have no liability to any third party and shall not be deemed to be in control of the operations of any Debtors or to be acting as a "controlling person," "responsible person" or "owner or operator" with respect to the operation or management of any Debtors (as such term, or any similar terms, are used in the Internal Revenue Code, the United States

Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar Federal or state statute), and (ii) shall not owe any fiduciary duty to the Debtors, their creditors or their estates. B of A's relationship with any Debtor shall not constitute or be deemed to constitute a joint venture or partnership with any Debtor.

20. No Marshaling/Application of Proceeds. B of A shall not be subject to the equitable doctrine of "marshaling", "election of remedies" or any other similar doctrine with respect to any of the Collateral, as the case may be, and proceeds shall be received and applied in accordance with this Order notwithstanding any other agreement or provision to the contrary.

21. Section 552(b). B of A shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to B of A with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

22. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) B of A's right to seek any other or supplemental relief in respect of the UD Debtors, including the right to seek additional adequate protection (without prejudice to any other person's right to object to or otherwise oppose such additional adequate protection); or (b) any of the rights of B of A under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Chapter 11 Cases or a Successor Case, conversion of any of the Chapter 11 Cases to cases under chapter 7, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans. This Order shall not be nor be

deemed to be an amendment, modification, waiver, or any similar action of or with respect to any term or provision of the Mortgage Loan Documents. Except as specifically set forth herein regarding the continued use of Cash Collateral, nothing contained in the Interim Order or this Order shall be in lieu of, or limit, prejudice or otherwise affect, any rights, claims, liens, security interests or priorities of B of A under the Mortgage Loan Documents and/or applicable law. All such rights, claims, liens, security interests and priorities are reserved.

23. Section 507(b) Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to B of A hereunder is insufficient to compensate for any Adequate Protection Obligations. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgement by B of A, that the adequate protection granted herein does in fact adequately protect B of A against any diminution in value of its interest in the Prepetition Collateral (including Cash Collateral).

24. No Waiver by Failure to Seek Relief. The delay or failure of B of A to seek relief or otherwise exercise its rights and remedies under this Order or applicable law, as the case may be, shall not constitute a waiver of any rights hereunder, thereunder, or otherwise of B of A. The failure, at any time or times hereafter, of B of A to require strict performance by the Debtors of any provision of the this Order shall not waive, affect or diminish any right of B of A to demand strict compliance and performance therewith. None of the rights or remedies of any party under this Order shall be deemed to have been amended, modified, suspended or waived unless such amendment, modification, suspension or waiver is in writing and signed by the party against whom such amendment, modification, suspension or waiver is sought.

25. Proofs of Claim. B of A will not be required to file a proof of claim in the Chapter 11 Cases or Successor Cases relating to UD Properties for the claims relating to the B of A Mortgage Debt to be allowed, and the Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim. Any order entered by the Court in relation to the establishment of a bar date for any claim (including, without limitation, administrative claims) in any Chapter 11 Cases or any Successor Cases shall not apply to B of A with respect to the B of A Mortgage Debt.

26. Good Faith. B of A has acted in good faith in connection with this Order and its reliance on this Order is in good faith.

27. Binding Effect of This Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Order shall become valid and binding upon and inure to the benefit of the Debtors, B of A, all other creditors of any of the Debtors, the Special Servicer, the Creditors' Committee, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases, any Successor Cases, or upon dismissal of any Chapter 11 Case or Successor Case. In the event of any inconsistency between the provisions of this Order and any other order of the Court, the provisions of this Order shall govern and control to the extent of any such inconsistency. Any payments to be made under any order shall be made in accordance with and subject to this Order and the Budget.

28. Modification, Amendment or Vacatur of This Order. In the event any or all of the provisions of this Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, such modification, amendment or vacatur shall not affect the validity, perfection, priority, allowability, enforceability or non-availability of any advances,

payments or uses of Cash Collateral whether previously or hereunder, or lien, claim or priority reaffirmed, authorized or created hereby or under this Order. Any liens or claims granted to B of A or reaffirmed hereunder that exist or arise prior to the date that B of A actually receives written notice of the effective date of any such modification, amendment or vacatur of this Order shall be governed in all respects by the original provisions of this Order, including, without limitation, entitlement to all rights, remedies, privileges and benefits granted or reaffirmed herein.

29. Survival. The provisions of this Order and any actions taken pursuant hereto shall survive the Termination Declaration Date and/or entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases unless and to the extent that the applicable confirmation order or confirmed plan of reorganization expressly provides otherwise and such confirmation order has become a final order and the effective date has occurred under such confirmed plan of reorganization; (b) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases or Successor Cases. The terms and provisions of this Order, including the claims, liens, security interests and other protections granted to B of A pursuant to this Order, notwithstanding the Termination Declaration Date and/or entry of any such order, shall continue in the Chapter 11 Cases, in any Successor Cases, or following dismissal of the Chapter 11 Cases or any Successor Cases, and shall maintain their priority, validity and perfection as provided by this Order until the Adequate Protection Obligations (if any) have been satisfied in accordance with the Bankruptcy Code.

30. No Lien Alteration. The receipt by the UD Debtors of any Cash Collateral or other proceeds of Collateral shall not, and shall not be nor be deemed to, affect, alter or otherwise modify the validity, priority or perfection of any liens in and/or claims against such Cash Collateral or other proceeds and such liens and claims shall continue to exist in and against such Cash Collateral or other proceeds in the possession of the UD Debtors, in each case with the same validity, priority and perfection as existed immediately prior to such receipt by the UD Debtors.

31. Effect of this Order. This Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable *nunc pro tunc* to the Commencement Date immediately upon execution thereof. Notwithstanding anything to the contrary contained in this Order, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and the Adequate Protection Payments granted to B of A pursuant to this Order shall be granted for the period from the Commencement Date through the date that the UD Debtors ceases using the Cash Collateral; provided that the terms and provisions of this Order, including the claims, liens, security interests and other protections granted to B of A pursuant to this Order, shall continue in the Chapter 11 Cases and in any Successor Cases, and shall maintain their respective priority, validity and perfection as provided by this Order, until the Adequate Protection Obligations (if any) have been satisfied in accordance with the Bankruptcy Code. Unless otherwise specified or the context requires otherwise, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply to this Order.

32. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Order according to its terms.

33. No Claims or Liens Against Certain Other Debtors. Notwithstanding anything in this Order to the contrary, nothing in this Order grants, or shall be deemed to grant, any claim, security interest or lien, whether for adequate protection or otherwise, or any other rights or remedies in favor of B of A against any of the Mortgage Borrowers (as defined in the Final Cash Collateral Order) or against any of the Prepetition Collateral (as defined in the Final Cash Collateral Order) or the proceeds thereof, whenever arising or generated.

34. No Amendment, Modification or Waiver of Mortgage Loan Documents. This Order shall not be nor be deemed to be an amendment, modification or waiver of or any similar action with respect to any term or provision of the mortgage loan documents pursuant to which financing in the original principal amount of \$4.1 billion was extended to the Mortgage Borrowers (as defined in the Final Cash Collateral Order).

Dated: November __, 2009
New York, New York

UNITED STATES BANKRUPTCY JUDGE