

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

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In re	:	Chapter 11 Case No.
	:	
EXTENDED STAY INC., <u>et al.</u> ,	:	09-13764 (JMP)
	:	
Debtors.	:	(Jointly Administered)
	:	
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**INTERIM ORDER (A) AUTHORIZING USE OF CASH COLLATERAL,
(B) GRANTING ADEQUATE PROTECTION, (C) MODIFYING
THE AUTOMATIC STAY, AND (D) SCHEDULING A FINAL HEARING**

Upon the Motion, dated June 15, 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 interim order (this “Interim Order”) providing for the following relief:

- (a) authorizing the Debtors’ limited use of “cash collateral” (the “Cash Collateral”), as such term is defined in section 363(a) of the Bankruptcy Code, of the Mortgage Debt Parties (as defined herein);
- (b) providing adequate protection (as defined herein) for any diminution in value of the Trust’s (as defined herein) interests in the proceeds of the Prepetition Collateral (as defined herein), including the Cash Collateral;
- (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 Interim Order; and
- (d) scheduling a final hearing (the “Final Hearing”) to consider the relief requested in the Motion and the entry of a Final Order (as defined herein), and approving the form of notice with respect to the Final Hearing;

all as more fully described in the Motion; and an interim hearing with respect to the Motion having been held on June 16, 2009 (the “Interim Hearing”); and a second interim hearing having been held on June 29, 2009 (the “Second Interim Hearing” and, together with the First Interim Hearing, the “Hearings”); and notice of the First Interim 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 Declaration of Joseph Teichman Pursuant to Rule 1007-2 of the Local Rules of Bankruptcy Procedure for the Southern District of New York in Support of First Day Motions and Applications (the “First Day Declaration”), filed contemporaneously with the Motion, and the evidence submitted or adduced and the arguments of counsel made at the Hearings; and the appearances of all interested parties having been noted in the record of the Hearings; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearings 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 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”). The Mortgage Debt Parties (as defined herein) did not consent to the commencement of 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.

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 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 United States Trustee for the Southern District of New York (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 paragraph 19 of this Interim Order), the Debtors admit, stipulate and agree that (collectively, paragraphs E(a) through E(f) below are referred to herein as the “Debtors’ Stipulations”):

a. Mortgage Loan Agreement. Certain of the Debtors are borrowers¹ (the “Mortgage Borrowers”) under that certain Loan Agreement, dated as of June 11, 2007 (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “Mortgage Loan Agreement”), by and among the Mortgage Borrowers, ESA P Portfolio MD Trust and ESA MD Properties Business Trust (collectively, the “Maryland Owner”), ESA Canada Trustee, Inc. (the “Signatory Trustee”), ESA Canada Properties Trust (the “Canadian Trust”), ESA P Portfolio Operating Lessee Inc., ESA 2005 Operating Lessee Inc., ESA Canada Operating Lessee Inc., and ESA Operating Lessee Inc. (collectively, “Operating Lessee”) and Wachovia Bank, N.A. (“Wachovia”),² Bear Stearns Commercial Mortgage, Inc. (“Bear”), and Bank of America, N.A. (“BofA,” and together with Wachovia and Bear, and their respective successors and assigns, the “Mortgage Lenders”). Pursuant to the Mortgage Loan Agreement and the other documents executed in connection therewith (the “Loan Documents,”³ and

¹ The Mortgage Borrowers are as follows: ESA 2005 Portfolio L.L.C., ESA 2005- San Jose L.L.C., ESA 2005- Waltham L.L.C., ESA Acquisition Properties L.L.C., ESA Alaska L.L.C., ESA Canada Properties Borrower L.L.C., ESA FL Properties L.L.C., ESA MD Borrower L.L.C., ESA MN Properties L.L.C., ESA P Portfolio L.L.C., ESA P Portfolio MD Borrower L.L.C., ESA P Portfolio PA Properties L.L.C., ESA P Portfolio TXNC Properties L.P., ESA PA Properties L.L.C., ESA Properties L.L.C., ESA TX Properties L.P., ESH/Homestead Portfolio L.L.C., ESH/HV Properties L.L.C., ESH/MSTX Property L.P., ESH/TN Properties L.L.C., ESH/TX Properties L.P..

² Wachovia also acts as “Agent” under that certain agreement between the Mortgage Borrowers, the Maryland Owner, the Canadian Owner, the Operating Lessee, HVM L.L.C. Homestead, and the Mortgage Lenders, dated as of June 11, 2007, as may be amended, restated, replaced, supplemented or otherwise modified from time to time (the “Cash Management Agreement”), relating to funds deposited in the Cash Management Account (as defined in the Cash Management Agreement).

³ “Loan Documents” shall mean, collectively, the Note, the Security Instruments, the Environmental Indemnity, the Assignment of Management Agreement, the Assignment of Franchise Agreement, the Subordination of ESA Note, the Guaranty, the Cash Management Agreement, the Interest Rate Cap Agreement, the Assignments of Interest Rate Cap Agreement, the Contribution Agreement, the Canadian Indemnity Guaranty, the Maryland Indemnity Guaranty, the Assignment of ESA Note, Subordination of Aristocrat Notes, the Maryland Beneficiary Pledge Agreement, the Canadian Beneficiary Pledge Agreement, the Security Account Control Agreement, the Trademark Security Agreement (all as defined (cont'd)

together with the Mortgage Loan Agreement, the “Mortgage Loan Documents”), the Mortgage Lenders extended financing in the principal aggregate amount of \$4.1 billion to the Mortgage Borrowers (the “Mortgage Debt”). As of the Commencement Date, the principal amount of approximately \$4.1 billion was outstanding under the Mortgage Loan Agreement. Extended Stay Inc. (“ESI”), Homestead Village L.L.C. (“Homestead”), Lightstone Holdings L.L.C. and David Lichtenstein are the guarantors (collectively, the “Guarantor”) of certain non-recourse carve-out provisions of the Mortgage Loan Documents.

b. Prepetition Mortgages and Prepetition Collateral. The Mortgage Debt is secured by cross-collateralized and cross-defaulted first priority mortgages (the “Prepetition Mortgages”) on 666 properties (collectively, the “Mortgaged Properties”) and the other collateral, as set forth in the Mortgage Loan Documents (the “Prepetition Collateral”), including all cash generated by the Debtors’ hotel and business operations.

c. Validity and Perfection of Prepetition Mortgages and Mortgage Debt. Subject to the provisions of paragraph 19 of this Interim Order, the Debtors and Debtors in Possession 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 Mortgage Debt constitutes a legal, valid, binding, and non-avoidable obligation of the Debtors; (iii) no portion of the Prepetition Mortgages or the 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

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in the Mortgage Loan Agreement) and all other documents executed and/or delivered in connection with the Loan, in each case, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

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 the Mortgage Debt Parties (as defined below) or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, managers, members, directors and employees arising out of, based upon or related to the Mortgage Debt.

d. Securitization. Subsequent to the closing date of the Mortgage Loan Agreement, the Mortgage Lenders sold and assigned their interests in the Mortgage Debt to Wachovia Large Loan, Inc., which in turn, deposited the Mortgage Debt into a trust created under the Trust and Servicing Agreement referred to below (the “Trust”). Wachovia, Bank of America, and Merrill Lynch were the initial purchasers (the “Initial Purchasers”) of the interests in the trust. In turn, certain investors bought the interests held by those Initial Purchasers (the current and future holders of such interests, in such capacities, the “Certificate Holders”), all of whom were then issued certificates (the “Certificates”) representing beneficial interests in the assets held by the Trust. The rights of the Certificate Holders are governed by the Trust and Servicing Agreement., dated as of August 1, 2007 (the “Trust and Servicing Agreement”), originally entered into by and among Wachovia Large Loan, Inc., as depositor, Wachovia, as servicer and special servicer (in such capacity, the “Servicer”), and Wells Fargo Bank, N.A. (as “Trustee”).

e. The Special Servicer and the Mortgage Debt Parties. After the Commencement Date, the special servicing duties with respect to the Mortgage Debt were transferred from the Servicer to Trimont Real Estate Advisors, Inc. (such entity or any successor thereto, the “Special Servicer”). U.S. Bank National Association was appointed the successor trustee (in such capacity, the “Successor Trustee” and together with the Trust, in such capacities,

the “Mortgage Debt Parties”). The Special Servicer is responsible for all servicing and administration of the Mortgage Loan Documents pursuant to the Trust and Servicing Agreement (except for certain limited servicing obligations performed by a master servicer).

f. Cash Collateral. The Debtors represent that all of the 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. The Trust does not consent to any use of Cash Collateral but does not object to the Debtors’ use of Cash Collateral as set forth herein.

g. Default by the Debtors. The Debtors acknowledge and stipulate that the Debtors are in default of their debts and obligations under the Mortgage Loan Documents.

F. Adequate Protection. The Mortgage Debt Parties are entitled to receive adequate protection in respect of the Debtors’ use of the Prepetition Collateral and any decline in the value thereof, resulting from the (a) use of the Cash Collateral, (b) use, sale, lease, or depreciation or other diminution in value of the Prepetition Collateral, 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”). Pursuant to sections 361, 363, and 507(b), as adequate protection for the Adequate Protection Obligations, the Debtors have agreed to provide the Mortgage Debt Parties with: (a) the Adequate Protection Liens; (b) the Adequate Protection Superpriority Claims; and (c) the Adequate Protection Payments (each as defined below).

G. Non-Objection by the Trust. Subject to the adequate protection arrangements provided herein being approved by the Court, the Trust does not object to the Debtors’ limited

use of the Cash Collateral and the adequate protection arrangements contemplated by this Interim Order. The adequate protection and other treatment proposed to be provided by the Debtors pursuant to this Interim Order will minimize disputes and litigation over use of the Cash Collateral and facilitate the Debtors' ability to continue their business operations.

H. Section 506(c) and 552(b). The Mortgage Debt Parties are entitled upon entry of a Final Order (as defined herein) to: (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.

I. Necessity of Relief Requested. The Debtors require the use of Cash Collateral in order 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 use of Cash Collateral, it would be impossible for the Debtors to continue to operate their business, even for a limited period of time, and serious and irreparable harm to the Debtors, their estates and their creditors would occur. The Debtors do not have sufficient available sources of working capital and financing to operate their business in the ordinary course of business or to maintain their properties without the 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. The Trust and the Debtors have negotiated at arms' length and in good faith regarding the Debtors' use of Cash Collateral to fund the continued operations of the Debtors for the period through the Termination Date (as defined below), all subject to the terms and conditions set forth in this Interim Order, including 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 Interim Hearing, the terms

of the proposed adequate protection arrangements and the 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 Interim Order is in the best interests of the Debtors and their estates.

J. Final Hearing. At the Final Hearing, the Debtors will seek final approval of the relief requested in the Motion for the proposed use of Cash Collateral on a final basis pursuant to a final order (the "Final Order"), notice of which Final Hearing will be provided in accordance with this Interim Order.

K. Notice. Notice of the First Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest and those creditors holding the five largest unsecured claims against the Debtors' estates (on a consolidated basis). The parties have made reasonable efforts to afford the best notice possible under the circumstances and such notice is good and sufficient to permit the interim relief set forth in this Interim Order, and no other or further notice is or shall be required.

L. The First Day Declaration. Nothing set forth in the First Day Declaration shall be deemed to alter, modify or prejudice the rights of the Special Servicer and the Mortgage Debt Parties in the Chapter 11 Cases. The Special Servicer and the Mortgage Debt Parties do not admit to the accuracy of any of the statements set forth in the First Day Declaration. For example, the Special Servicer and the Mortgage Debt Parties deny that the "Certificate Holders" (as defined in the First Day Declaration) are "the real parties in interest with respect to the Mortgage Debt." See First Day Declaration ¶ 20. Nothing set forth in the First Day Declaration shall be deemed to alter, modify or prejudice the rights of the Creditors' Committee

in the Chapter 11 Cases. The Creditors' Committee does not admit to the accuracy of any of the statements set forth in the First Day Declaration. The Debtors reserve their rights to contest the positions asserted by the Special Servicer, the Mortgage Debt Parties and/or the Creditors' Committee with respect to the First Day Declaration.

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 on an interim basis is authorized, subject to the terms and conditions set forth in this Interim Order.
2. Objections to Entry of Interim Order Overruled. All objections to the entry of this Interim Order, to the extent not withdrawn or resolved, are hereby overruled, except to the extent that such objections may pertain to the Final Order.
3. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order, pursuant to sections 363(c)(2) of the Bankruptcy Code, the Debtors are authorized to use Cash Collateral as set forth in the 13 week budget, attached hereto as "Exhibit A" (as may be amended in accordance with paragraph 5 hereof, the "Budget") during the period from the Commencement Date through the date on which the Final Hearing concludes (the "Specified Period"). Except as otherwise expressly provided herein, Cash Collateral may be used during the Specified Period strictly in accordance with the Budget, and with budgeted expenses not to exceed 115% of the amounts set forth in the Budget measured weekly for the actual trailing five week period on a cumulative basis; provided, that the first measurement will not be made until thirty (30) days after the Commencement Date. In any case, Professional Fees

will not be included in those Budget expenses which are measured weekly; provided, that during the Remedies Notice Period (as defined herein), the Debtors may use Cash Collateral 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 Debtors and their estates incurred during the Remedies Notice Period, and to pay reasonable and necessary expenses in accordance with the terms and conditions of the Budget incurred prior to the Remedies Notice Period as agreed by the Special Servicer in its reasonable discretion. The Debtors shall provide the Special Servicer and the Creditors' Committee with an updated Budget for the next succeeding thirteen (13) week period within ten (10) business days prior to the end of each calendar month. Absent further order of the Court, the Debtors shall no longer be authorized pursuant to the Interim Order to use Cash Collateral without the consent of the Special Servicer, at the expiration of the Specified Period; provided, however, if the Final Order is not entered by July 17, 2009, then the Debtors shall no longer be authorized to use Cash Collateral after July 21, 2009. Nothing in this Interim Order shall authorize the use, sale, lease, encumbrance, or disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Interim Order or other "First Day" order of the Court (in each case consistent with this Interim Order and the Budget), with the prior written consent of the Special Servicer, and in accordance with the Budget.

4. Upon entry of an order by the Court on or about the date hereof approving the Debtors' motion to use, as modified, the Debtors' centralized cash management system (the "Cash Management Order"), the Banks (as defined in the Cash Management Order) shall, subject to the terms of the Cash Management Order, continue the automatic transfer on a daily

basis of all available funds currently in or received in the Debtors' local bank accounts (the "Local Bank Accounts") to the Cash Management Account (as defined in the Cash Management Order) and Wachovia shall transfer all funds in the Cash Management Account, whether deposited prior or subsequent to the Commencement Date, automatically, on a daily basis (or as often as practicable) into a new bank account at Wachovia, without any setoff or counterclaim (the "Extended Stay DIP Lockbox"), without the necessity to comply with any lockbox or blocked account agreement or any preexisting transfer arrangement concerning such accounts; provided, however, that the Extended Stay DIP Lockbox, along with all other bank accounts, deposit accounts and securities accounts established on or in existence on or after the Commencement Date, shall be subject to any and all security interests and liens granted hereunder.

5. Budget Maintenance. The Budget and any modifications to, or extensions, amendments or updates of, the Budget shall be in form and substance acceptable to and approved in writing by the Special Servicer, which consent shall not be unreasonably withheld.

6. Adequate Protection Liens. As adequate protection against any diminution in value of the interests of the Mortgage Debt Parties in the Prepetition Collateral, the Mortgage Debt Parties are hereby granted (effective and perfected as of the Commencement Date and without the necessity of the execution by the 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 Debtors in, to and under all present and after-acquired property and assets of the Debtors of any nature whatsoever, whether real or personal, tangible or intangible,

wherever located, including, without limitation, all cash and Cash Collateral of the Debtors (whether maintained with the Mortgage Lenders 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 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 Debtors’ claims and causes of action under section 544, 545, 547, 548, 549 or 550 of the Bankruptcy Code (collectively, the “Avoidance Actions”) but, unless the Final Order provides otherwise, the Collateral shall include the proceeds of the Avoidance Actions. Subject to the Carve-Out (as defined below), the Adequate Protection Liens shall be (i) first priority perfected liens on all of the Collateral that is not otherwise encumbered by validly perfected, non-avoidable security interests or liens as of the Commencement Date, (ii) first priority perfected liens on all of the Collateral as to which the Mortgage Lenders’ 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 the Mortgage Lenders, and (iii) junior perfected liens on all Collateral that is subject to a validly perfected lien with priority over the Mortgage Lenders’ liens as of the Commencement Date.

a. The Adequate Protection Liens shall be enforceable against the 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 any of the 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) (effective upon entry of the Final Order), 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 *pari passu* with or senior to the Adequate Protection Liens.

7. Adequate Protection Superpriority Claims. As further adequate protection against any diminution in value of the interests of the Mortgage Debt Parties in the Prepetition Collateral, the Mortgage Debt Parties are each hereby granted as and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code allowed superpriority administrative expenses claims in the Chapter 11 Cases and any Successor Cases in the amount of the Adequate Protection Obligations (the “Adequate Protection Superpriority Claim”).

a. Priority of Adequate Protection Superpriority Claims. The Adequate Protection Superpriority Claims shall be junior only to the Carve Out (as defined herein). Except for the Carve Out, the Adequate Protection Superpriority Claims shall have

priority over all administrative expense claims and unsecured claims against the 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.

8. Adequate Protection Payments. As additional adequate protection to the Mortgage Debt Parties, the Mortgage Debt Parties shall receive adequate protection payments (the “Adequate Protection Payments”) from the Debtors, in the form of: (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 the Trust in connection with the Mortgage Debt, including, without limitation, the payments due in June 2009; provided that with respect to the June 2009 payment, the Creditors’ Committee consents or the Court so orders at the Final Hearing; (ii) payments of (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, in each case promptly so as not to incur any late fees, interest, penalties, or similar costs and charges; and (iii) ongoing payment of the reasonable fees, costs and expenses of McKenna Long & Aldridge LLP (“McKenna”), Latham & Watkins LLP (“Latham”) and any other professional retained by the Mortgage Debt Parties or the Special Servicer, in accordance with the Trust and Servicing Agreement that are incurred in connection with matters relating to the Mortgage Loan Documents and the rights and interests of the Trust and the Special Servicer in connection with the Chapter 11 Cases. 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 and the amount paid as adequate protection payments (the “Incremental Interest”) shall be added to the amount owed by the Debtors in respect of the Mortgage Debt; provided, however, that the interest accruing on the Mortgage Debt shall be calculated without taking into account the Incremental Interest. The Creditors’ Committee reserves the right to contend that the allowable prepetition claim in respect of the Mortgage Debt should not include the Incremental Interest. The fees and expenses of McKenna, Latham and any other professional retained by the Mortgage Debt Parties or the Special Servicer may be paid by the Trust or the master servicer through servicing advances. If such fees and expenses are not paid by the Trust or the master servicer through servicing advances, then the Debtors are authorized and directed, within five (5) business days after the applicable professional submits any invoice to the Debtors, with a copy to counsel for the Creditors’ Committee, to pay all reasonable fees, costs and charges set forth in such invoice, that are incurred in connection with the Mortgage Loan Documents, the rights and interests of the Trust and the Special Servicer in connection with the Chapter 11 Cases, or any matter relating thereto. None of the fees, costs and expenses payable to McKenna, Latham or any other professional retained by the Mortgage Debt Parties or the Special Servicer pursuant to this paragraph shall be subject to separate approval by this Court; provided, however, that the Debtors and the Creditors’ Committee may object to the amount of the fees, costs and expenses requested. Any such objection shall be resolved by the agreement of the Debtors and the Creditors’ Committee or by the Court. Neither McKenna, Latham, nor any other professional

retained by the Mortgage Debt Parties or the Special Servicer shall be required to file any interim or final fee application with respect thereto.

9. 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 Interim Order, including, without limitation, to: (a) permit the Debtors to grant the Adequate Protection Liens and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the Special Servicer may request in its sole discretion to assure the perfection and priority of the liens granted herein; and (c) authorize the Debtors to pay, and the Special Servicer to retain and apply for the benefit of the Trust, payments made in accordance with the terms of this Interim Order, provided, however, any stay relief with respect to the exercise of remedies shall be in accordance with Paragraph 16 below or as otherwise ordered by the Court.

10. Perfection of Adequate Protection Liens. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Adequate Protection Liens, without the necessity of filing or recording any mortgage, financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the Adequate Protection Liens, or to entitle the Mortgage Debt Parties to the priorities granted herein. The Debtors are authorized and directed to execute and deliver promptly to the Special Servicer, on behalf of the Trust, all such financing statements, mortgages, notices and other documents as the Special Servicer may reasonably request. The Special Servicer may file a photocopy of this Interim Order as a financing statement with any

filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statement, notices of lien or similar instrument.

11. [Reserved].

12. Debtors' Obligations. The Debtors shall:

a. Cause all revenue, income, rents, royalties and similar funds from the Mortgaged Properties, as and when received, including, without limitation, all available funds in the Local Bank Accounts to the Cash Management Account and the master servicer shall transfer all funds into the Cash Management Account, on a daily basis (or as often as practicable) to the Extended Stay DIP Lockbox to be used in accordance with this Interim Order and the Budget;

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

c. Deliver to the Special Servicer and the Creditors' Committee on or before the close of business on Tuesday of each week (and if such day is not a business day, then the next succeeding business day) a (i) comparison for the prior week 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 week 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 the Special Servicer may request;

d. Provide the Special Servicer and the Creditors' Committee with monthly, quarterly and annual financial reports, including cash expenditures in relation to the Budget;

e. Provide the Special Servicer and the Creditors' Committee with financial reports in content and form identical to those previously provided by the Debtors to the master servicer prior to the Commencement Date; and

f. Serve the Special Servicer and the Creditors' Committee and their respective counsel with a copy of each monthly report filed by the Debtors in these Cases as required by the Court, the U.S. Trustee or applicable law.

The Trustee may make the information that is provided by the Debtors hereunder available to Certificate Holders to the extent required by, and subject to the provisions of, the Trust and Servicing Agreement. Nothing herein shall prohibit the Debtors from disseminating, in their sole discretion, any information to the Certificate Holders or any other party in interest.

13. Cash Management. The Debtors shall maintain the cash management system set forth in the Cash Management Order (as may be amended or supplemented from time to time) during the period that this Order is in effect, unless otherwise extended by the Court.

14. Disposition of Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Collateral without the prior written consent of the Special Servicer.

15. Events of Default. The occurrence of any of the following events, unless waived by the Special Servicer, shall constitute an event of default (collectively, the "Events of Default"):

a. the failure by the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order, including, without limitation, the failure to make any Adequate Protection Payments;

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 the Mortgage Debt Parties, or (ii) entitled to priority administrative status which is equal or senior to that granted to the Mortgage Debt Parties;

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 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 \$7.5 million, 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 Debtors;

e. reversal, vacatur, or modification (other than a modification acceptable to the Special Servicer in accordance with the Final Order or a modification with the express prior written consent of the Special Servicer) of this Interim Order;

f. dismissal of the Chapter 11 Cases or conversion of the Chapter 11 Cases to chapter 7 cases, or appointment of a chapter 11 trustee or examiner with enlarged powers or other responsible person;

g. any misrepresentation of a material fact made after the Commencement Date by any of the Debtors or their agents to the Special Servicer about the financial conditions of the Debtors, or any of them, the nature, extent, location or quality of any Collateral, or the disposition or use of any Collateral, including Cash Collateral;

h. a default by any of the Debtors in reporting financial information as and when required under this Interim Order;

i. the sale of any material portion of any of the Debtors' assets outside the ordinary course of business without the prior written consent of the Special Servicer in its sole discretion;

j. forty (40) days following the Commencement Date if the Final Order has not been entered by the Court by such date;

k. the filing of a chapter 11 plan in any of the Chapter 11 cases that fails to provide for the payment in full, in cash, of the Mortgage Debt, on the effective date of such plan;

l. the failure to make Adequate Protection Payments or other payments as set forth in the Budget; or

m. the failure to comply with the Budget for any period measured weekly as of the close of business on Wednesday of each following work week, except that with respect to budgeted expenses there shall only be an Event of Default if budgeted expenses exceed 115% of the amounts set forth in the Budget measured weekly for the actual trailing five week period on a cumulative basis.

16. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, the Special Servicer may declare

a termination, reduction or restriction of the ability of the Debtors to use any Cash Collateral, except for the limited use of Cash Collateral provided in Paragraphs 3 and 17 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 any 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 Debtors’ right to use Cash Collateral shall automatically cease, except as provided in Paragraphs 3 and 17 hereof. Within five (5) business days after the Termination Declaration Date (the “Remedies Notice Period”) the Debtors and/or the Creditors’ Committee shall be entitled to seek an emergency hearing with the Court. Unless the Court determines otherwise during the Remedies Notice Period, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period without further notice or order, and the Debtors shall no longer have the right to use or seek to use Cash Collateral and the Mortgage Debt Parties shall be permitted to exercise 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 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 the Mortgage Debt Parties with respect thereto pursuant to the Mortgage Loan Documents, the Trust and Servicing Agreement, or this Interim Order, as applicable. Upon the date that the automatic stay is terminated and the Debtors’ right to use or seek to use Cash Collateral is terminated as set forth in this paragraph, Wachovia, solely in its capacity as Servicer under the Trust and Servicing Agreement, shall be entitled to retain, on behalf of the

Mortgage Debt Parties, all funds that it holds as of such date and all funds it receives thereafter, and shall not be obligated to transfer any such funds to the Extended Stay DIP Lockbox or any other account to which the Debtors may have access, unless the Court orders otherwise.

17. Carve Out.

a. Carve Out. Subject to the terms and conditions contained in this paragraph, the Adequate Protection Liens and the Adequate Protection Superpriority Claims shall be subordinate to the following (collectively, the “Carve-Out”): (i) fees pursuant to 28 U.S.C. § 1930(a)(6); (ii) fees payable to the clerk of the Bankruptcy Court and any agent thereof; (iii) pursuant to section 726(b) of the Bankruptcy Code, reasonable fees and expenses of a trustee that are incurred after the conversion of these Chapter 11 Cases to a case or cases under chapter 7 of the Bankruptcy Code, in an amount not to exceed \$50,000; (iv) reasonable and documented expenses payable to members of the Creditors’ Committee; and (v) professional fees and expenses incurred by professionals retained pursuant to sections 327(a) and 1103 of the Bankruptcy Code by the Debtors and the Creditors’ Committee (collectively, the “Professional Fees”) subsequent to the delivery of a Carve-Out Trigger Notice (as defined below), in an aggregate amount under this paragraph not in excess of \$7.5 million with respect to the Debtors’ professionals and \$500,000 with respect to the Creditors’ Committee’s professionals. The Creditors’ Committee reserves the right to object to the amount and allocation of the Carve-Out at the Final Hearing. Nothing in this paragraph alters the requirements for Court approval and allowance of Professional Fees or reimbursement of the expenses incurred by the members of the Creditors’ Committee or the right of the Debtors, the master servicer, the Special Servicer, the Successor Trustee or any other party-in-interest to object to the award of Professional Fees or allowance of the expenses of the members of the Creditors’ Committee in accordance with any

applicable Bankruptcy Rule or, if applicable, order of the Court relating to the approval of Professional Fees and objections thereto. The Special Servicer, the Successor Trustee and the Certificate Holders shall not be responsible for the direct payment or reimbursement of any Professional Fees incurred in connection with the Cases or any Successor Cases.

b. As used herein, “Carve-Out Trigger Notice” means, upon the occurrence of an Event of Default a written notice delivered by the Special Servicer to counsel for the Debtors expressly stating that the Carve-Out has been invoked, thereby terminating the right of the Debtors to pay Professional Fees incurred after such date outside of the Carve-Out. Upon receipt of the Carve-Out Trigger Notice, the Debtors shall provide immediate notice by facsimile (or other electronic means) to all professionals informing them that a Carve-Out Trigger Notice has been received and further advising them that the Debtors’ ability to pay Professional Fees incurred subsequent to the date thereof is subject to the Carve-Out.

c. Any payments or reimbursements made on or after delivery of the Carve-Out Trigger Notice in respect of any Professional Fees incurred subsequent to delivery of the Carve-Out Trigger Notice shall permanently reduce the Carve-Out on a dollar-for-dollar basis. Any payments or reimbursements made in respect of Professional Fees incurred at any time prior to delivery of the Carve-Out Trigger Notice shall not reduce the Carve-Out.

d. Payment of any obligations within the Carve-Out shall not and shall not be deemed to reduce the Mortgage Debt or the Adequate Protection Obligations and shall not and shall not be deemed to subordinate the Adequate Protection Liens or the Adequate Protection Superpriority Claims to any junior prepetition or postpetition lien, interest, or claim in favor of any other party. Upon any liquidation of the Mortgaged Properties following a Carve-

Out Trigger Notice, net liquidation proceeds shall be set aside in a reserve account to fund the Carve-Out.

18. Limitations on the Cash Collateral and the Carve Out. The Cash Collateral and the Carve Out 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) (i) against the Mortgage Debt Parties or the Certificate Holders or seeking relief that would impair their rights and remedies under the Mortgage Loan Documents, the Trust and Servicing Agreement or this Interim Order, including, without limitation, (A) to assert, commence, or prosecute any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against any of the Mortgage Debt Parties or the Certificate Holders, (B) to prepare or prosecute an objection to, contest in any manner, or raise any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the rights and obligations of the Mortgage Debt Parties or the Certificate Holders or seeking affirmative relief against them, or (C) for the payment of any services rendered by the professionals retained by the Debtors or any Creditors' Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceedings, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment determination, declaration or similar relief that would impair the ability of the Mortgage Debt Parties to recover on the Mortgage Debt, (ii) invalidating, setting aside, avoiding or subordinating, in whole or in part, the Prepetition Mortgages, (iii) for monetary, injunctive or other affirmative relief against any of the Mortgage Debt Parties or its respective collateral that would impair the ability of the Mortgage Debt Parties

to recover on the Mortgage Debt or seeking affirmative relief against such Mortgage Debt Party or any Certificate Holder, or (iv) preventing, hindering or otherwise delaying the exercise by the Mortgage Debt Parties of any rights and/or remedies under this Interim Order, the Mortgage Loan Documents, or applicable law, or the enforcement of realization (whether by foreclosure, credit bid, further order of the Court or otherwise) by the Mortgage Debt Parties upon any of the Collateral; (b) to make any distribution under a plan of reorganization in any of the Cases other than a distribution in respect of the Professional Fees included therein; (c) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body without prior written consent of the Special Servicer, unless otherwise ordered by the Court; (d) to pay any fees or similar amounts to any person who has proposed or may propose to purchase interests in any of the Debtors without the prior written consent of the Special Servicer, (e) subject to the limited use of Cash Collateral set forth in Paragraphs 3 and 17 above, to object, contest, or interfere with in any way the enforcement or realization upon any of the Collateral by the Mortgage Debt Parties once an Event of Default has occurred; (f) to sell or otherwise dispose of Collateral without the prior consent of the Special Servicer; (g) to the extent such Cash Collateral represents insurance proceeds constituting Collateral, without the prior consent of the Special Servicer; (h) to pay indebtedness outside the ordinary course of business without the prior consent of the Special Servicer; or (i) to object to or challenge in any way the claims, liens, or interests (including interests in the Collateral) held by or on behalf of any of the Mortgage Debt Parties. Notwithstanding the foregoing, the Cash Collateral and the Carve Out may be used by any Creditors' Committee to investigate the Prepetition Mortgages with respect to the allowability of claims and the validity and priority of the liens thereunder, and/or a

potential Challenge (as that term is defined herein), provided that no more than \$150,000 in the aggregate may be spent from the aforementioned sources on such investigations.

19. Reservation of Certain Third Party Rights and Bar of Challenges and Claims. Nothing in this Interim Order shall prejudice the rights of a Creditors' Committee and, solely if no Creditors' Committee is appointed, 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 any of the Mortgage Debt Parties; or (b) the validity, allowability, priority, or amount of the Prepetition Mortgages. A party, including any Creditors' Committee, if appointed, must commence, as appropriate, a contested matter or adversary proceeding raising such objection or challenge, including, without limitation, any claim against any of the Mortgage Debt Parties in the nature of a setoff, counterclaim or defense to the applicable Mortgage Debt (each, a "Challenge") within (i) with respect to the Creditors' Committee, seventy five (75) calendar days from the effective date of retention of counsel to any Creditors' Committee, and (ii) with respect to other parties in interest with requisite standing other than the Debtors or any Creditors' Committee, sixty (60) calendar days following the date of entry of the Final Order or any subsequent date that may be ordered by the Court for cause shown before the expiration of such period (together, the "Challenge Period"). The Creditors' Committee reserves the right to seek a longer Challenge Period for itself in connection with entry of the Final Order. 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 the Special Servicer. Upon the expiration of the Challenge Period (the "Challenge Period Termination Date"), without the filing of a 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 priority, extent, and validity as to the Mortgage Debt Parties' 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. Upon entry of a final nonappealable order determining any of the Mortgage Debt Parties to be undersecured, payment of interest or fees to such Mortgage Debt Parties under this Interim Order may be reapplied as the Court so orders. Nothing in this Interim Order vests or confers on any Person (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 Mortgage Debt.

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

21. Section 506(c) Claims. Upon entry of the Final Order, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases at any time shall be charged against any of the Mortgage Debt Parties or any of their respective claims or the Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise,

without the prior written consent of the applicable Mortgage Debt Parties, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders.

22. No Liability to Third Parties. In not objecting to the Debtors' use of Cash Collateral under the terms set forth herein or in taking any other actions related to this Interim Order, the Mortgage Debt Parties and the Special Servicer (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; provided, however, nothing in this Interim Order modifies, amends or waives the obligations and duties, if any, of the Special Servicer under the Trust and Servicing Agreement. The Mortgage Debt Parties' relationship with any Debtor shall not constitute or be deemed to constitute a joint venture or partnership with any Debtor.

23. No Marshaling/Application of Proceeds. Upon entry of the Final Order, the Mortgage Debt Parties shall not be subject to the equitable doctrine of "marshaling" 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 Interim Order notwithstanding any other agreement or provision to the contrary.

24. Section 552(b). Upon entry of the Final Order, the Mortgage Debt Parties shall each 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 any of the Mortgage Debt Parties with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

25. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the Mortgage Debt Parties' right to seek any other or supplemental relief in respect of any Debtor, 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 any of the Mortgage Debt Parties 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 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 Interim Order shall not be deemed to be an amendment or modification to the Mortgage Loan Documents.

26. 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 any of the Mortgage Debt Parties hereunder is insufficient to compensate for any diminution in value of their respective interests in the Prepetition Collateral during the Chapter 11 Cases or any Successor Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgement by the Mortgage Debt Parties, that the adequate protection granted herein does in fact adequately protect the Mortgage Debt Parties against any diminution in value of their respective interest in the Prepetition Collateral (including Cash Collateral).

27. No Waiver by Failure to Seek Relief. The failure of any of the Mortgage Debt Parties to seek relief or otherwise exercise its rights and remedies under this Interim Order or applicable law, as the case may be, shall not constitute a waiver of any rights hereunder, thereunder, or otherwise of the applicable Mortgage Debt Parties.

28. Proofs of Claim. None of the Trust, the Successor Trustee, the Special Servicer, the Mortgage Debt Parties and the master servicer will be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for the claims relating to the 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 Successor Cases shall not apply to the Trust, the Mortgage Debt, or the Mortgage Debt Parties.

29. Good Faith. The Trust, the Successor Trustee, the Special Servicer, the Mortgage Debt Parties and the master servicer each have acted in good faith in connection with this Interim Order and their reliance on this Interim Order is in good faith.

30. Binding Effect of Interim Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, the Agent, the Mortgage Lenders, the Certificate Holders, the Servicer, the Special Servicer, the Trustee, the Successor Trustee, all other creditors of any of the Debtors, any committee appointed in the Chapter 11 Cases, 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 Interim Order and any other order

(including any “First Day” order), the provisions of this Interim Order shall govern and control. Any payments to be made under any order (including any “First Day” order) shall be made in accordance with this Interim Order and the Budget.

31. Modification, Amendment or Vacatur of Interim Order. In the event any or all of the provisions of this Interim 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 use of cash whether previously or hereunder, or lien, claim or priority authorized or created hereby. Any liens or claims granted to the Mortgage Debt Parties hereunder arising prior to the effective date of any such modification, amendment or vacatur of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges and benefits granted herein.

32. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (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 Interim Order, including the claims, liens, security interests and other protections granted to the Mortgage Debt Parties pursuant to this Interim Order, notwithstanding the 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 as provided by this Interim Order until the Mortgage Debt has been indefeasibly paid in full in cash.

33. Final Hearing. The Final Hearing to consider entry of the Final Order is scheduled for July 17, 2009 at 10:00 a.m. (Eastern Time) before the Honorable James M. Peck, United States Bankruptcy Judge, Courtroom 601, at One Bowling Green, New York, the United States Bankruptcy Court for the Southern District of New York. On or before June 30, 2009, the Debtors shall serve, in accordance with the order entered on June 16, 2009 governing case management and administrative procedures for these cases [Docket No. 43], notice of the entry of this Interim Order and of the Final Hearing (the “Final Hearing Notice”), together with a copy of this Interim Order and the Motion on: (a) the U.S. Trustee, (b) any party which has filed prior to such date a request for notices with this Court; and (c) counsel for the Creditors’ Committee. The Final Hearing Notice shall state that any party in interest objecting to the relief requested in the Motion on a final basis shall file written objections with the Clerk of the Court no later than July 13, 2009 at 4:00 p.m. (Prevailing Eastern Time), which objections shall be served so as to be received on or before such date by: (i) counsel to the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York NY 10153, Attn: Marcia L. Goldstein, Esq. and Jacqueline Marcus, Esq.; (ii) McKenna Long & Aldridge LLP, 303 Peachtree Street, Suite 5300, Atlanta, GA 30308, Attn: Gary W. Marsh, Christopher F. Graham and Patrick M. McGeehan (co-counsel to the Successor Trustee); (iii) Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022 Attn: Mitchell A. Seider and Michael J. Riela (co-counsel to the Successor Trustee); (iv) counsel to any Creditors’ Committee; and (v) the Office of the U.S. Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, NY 10004, Attn: Paul Schwartzberg, Esq. On or before July 9, 2009 at 12:00 noon (prevailing Eastern Time) the Debtors shall file and serve the proposed Final Order on (i) the U.S. Trustee, (ii) counsel for the Creditors’

Committee, and (iii) any party which has filed prior to such date a request for notices with the Court.

34. Effect of this Interim Order. This Interim 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 Interim Order, the Adequate Protection Liens, the Adequate Protection Superpriority Claims, and the Adequate Protection Payments granted to the Mortgage Debt Parties pursuant to this Interim Order shall be granted for the period from the Commencement Date through the date that the Debtors cease using the Cash Collateral.

Dated: New York, New York
June 29, 2009

UNITED STATES BANKRUPTCY JUDGE