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11 **UNITED STATES BANKRUPTCY COURT**
CENTRAL DISTRICT OF CALIFORNIA
12 **LOS ANGELES DIVISION**

13 In re:

14 HASSEN REAL ESTATE PARTNERSHIP,
a California limited partnership,

15 EASTLAND TOWER PARTNERSHIP,
16 a California limited partnership,

17 Debtors.

18 Tax I.D. Nos. 95-3970215 and 95-3970217

) Case No.: 2:11-bk-25499-ER

) Chapter 11

) (Motion For Joint Administration With Case
) No. 2:11-bk-25500-ER Pending)

) **EMERGENCY MOTION OF DEBTORS IN**
) **POSSESSION FOR ORDERS:**
) **(1) AUTHORIZING INTERIM USE OF**
) **CASH COLLATERAL; (2) SCHEDULING,**
) **AND ESTABLISHING DEADLINES**
) **RELATING TO, A FINAL HEARING ON**
) **CONTINUED USE OF CASH**
) **COLLATERAL; (3) AUTHORIZING**
) **CONTINUED USE OF CASH**
) **COLLATERAL; AND (4) COMPELLING**
) **RELEASE OF ESTATE FUNDS FROM**
) **DEBTORS' PREPETITION DEPOSIT**
) **ACCOUNTS; MEMORANDUM OF POINTS**
) **AND AUTHORITIES**

24 Hearing

25 Date: [To Be Set By Court]

26 Time: [To Be Set By Court]

27 Place: Courtroom 1568

28 255 East Temple Street

Los Angeles, California 90012

TABLE OF CONTENTS

	<u>Page(s)</u>
MEMORANDUM OF POINTS AND AUTHORITIES	5
I. STATEMENT OF FACTS	5
A. Petition Date And Jurisdiction.....	5
B. General Background.....	5
C. The Secured Loans.....	6
D. Events Leading To The Bankruptcy Filing.....	7
E. The Lenders' Claims And Collateral, And Lenders' Lack Of Consent To The Debtors' Use Of Cash Collateral.....	9
F. The Cash Needs Of The Debtors.....	10
II. BANKRUPTCY RULE 4001 AND LOCAL BANKRUPTCY RULE 4001-2 DISCLOSURES.....	13
III. ARGUMENT	14
A. The Lenders' Liens Are Adequately Protected.....	15
1. The Lenders' Liens Are Adequately Protected By The Preservation Of The Debtors' Going Concern Value.....	15
2. The Lenders' Liens Are Adequately Protected By Replacement Liens.....	18
3. The Lenders' Liens Are Protected By The Provision Of Periodic Reports.....	19
B. The Debtors Should Be Authorized To Use Cash Collateral Because The Costs And Expenses Of Operating and Maintaining The Collateral Are Chargeable To The Collateral Under Bankruptcy Code Section 506(c).....	19
C. The Funds Currently Being Held At KeyBank Should Be Turned Over Because The Reserve Accounts Are Not Properly Collateralized And The Lenders May Not Have Properly Perfected Security Interests In The Funds.....	21
IV. CONCLUSION.....	23

TABLE OF AUTHORITIES

CASES

In re 495 Central Park Ave. Corp.,
136 B.R. 626 (Bankr. S.D.N.Y. 1992).....17

In re AFCO Enters., Inc.,
35 B.R. 512 (Bankr. D. Utah 1983).....20

Bankers Life Ins. Co. v. Alyucan Interstate Corp. (In re Alyucan Interstate Corp.),
12 B.R. 803 (Bankr. D. Utah 1981).....15

In re Cann & Saul Steel Co.,
76 B.R. 479 (Bankr. E.D. Pa. 1987)17

Chrysler Credit Corp. v. Ruggiere (In re George Ruggiere Chrysler-Plymouth, Inc.),
727 F.2d 1017 (11th Cir. 1984)13

In re Coody,
59 B.R. 164 (Bankr. M.D. Ga. 1986).....18

In re Dynaco Corp.,
162 B.R. 389 (Bankr. D.N.H. 1993)16, 17

Equitable Gas Co. v. Equibank N.A. (In re McKeesport Steel Castings Co.),
799 F.2d 91 (3d Cir. 1986).....20

Federal Nat'l Mortgage Assoc. v. Dacon Bolingbrook Assoc. Ltd. Partnership,
153 B.R. 204 (Bankr. N.D. Ill. 1993)17, 20

First Nat'l Bank v. Shockley Forest Indus. (In re Shockley Forest Indus.),
5 B.R. 160 (Bankr. N.D. Ga. 1980)16

Ford Motor Credit Co. v. Jim Kelly Ford, Ltd. (In re Jim Kelly Ford, Ltd.),
14 B.R. 812 (N.D. Ill. 1980)20

In re Glasstream Boats, Inc.,
110 B.R. 611 (Bankr. M.D. Ga. 1990).....16

In re Heatron Inc.,
6 B.R. 493 (Bankr. W.D. Mo. 1980).....16

In re Ledgemere Land Corp.,
125 B.R. 58 (Bankr. D. Mass. 1991)17, 18

Mbank Dallas, N.A. v. O'Connor (In re O'Connor),
808 F.2d 1393 (10th Cir. 1987)16

1	<i>McCombs Properties VI, Ltd. v. First Tex. Sav. Ass'n (In re McCombs Properties VI, Ltd.),</i>	
2	88 B.R. 261 (Bankr. C.D. Cal. 1988).....	15, 17
3	<i>Mutual Benefit Life Ins. Co. v. Stanley Station Assocs., L.P. (In re Stanley Station Assocs., L.P.),</i>	
4	140 B.R. 806 (D. Kan. 1992).....	19
5	<i>Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc.),</i>	
6	54 F.3d 722 (11th Cir. 1995).....	17
7	<i>Sec. Leasing Partners, LP v. ProAlert, LLC (In re ProAlert, LLC),</i>	
8	314 B.R. 436 (B.A.P. 9th Cir. 2004).....	14, 16, 21
9	<i>In re Senior Care Properties, Inc.,</i>	
10	137 B.R. 527 (Bankr. M.D. Fla. 1992).....	19
11	<i>Stein v. United States Farmers Home Admin. (In re Stein),</i>	
12	19 B.R. 458 (Bankr. E.D. Pa. 1982).....	16
13	<i>Sumitomo Trust & Banking Co. v. Holly's, Inc. (In re Holly's, Inc.),</i>	
14	140 B.R. 643 (Bankr. W.D. Mich. 1992).....	19
15	<i>Travelers Ins. Co. v. River Oaks Ltd. Partnership (In re River Oaks Ltd. Partnership),</i>	
16	166 B.R. 94 (E.D. Mich. 1994).....	21
17	<i>United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.,</i>	
18	484 U.S. 365, 108 S. Ct. 626 (1988).....	15
19	<i>Westchase I Assoc. L.P. v. Lincoln Nat'l Life Ins. Co.,</i>	
20	126 B.R. 692 (Bankr. D.N.C. 1991).....	17
21	STATUTES	
22	11 U.S.C. § 361.....	15, 18
23	11 U.S.C. § 363.....	19
24	11 U.S.C. § 363(a).....	2
25	11 U.S.C. § 363(c).....	21
26	11 U.S.C. § 363(e).....	15
27	11 U.S.C. § 363(p).....	<i>passim</i>
28	11 U.S.C. § 506(c).....	20, 21
	11 U.S.C. § 1107(a).....	5

1	11 U.S.C. § 1108.....	5
2	28 U.S.C. § 157(b).....	5
3	28 U.S.C. § 1334.....	5
4	28 U.S.C. § 1408.....	5
5	28 U.S.C. § 1409.....	5
6	H.R. 5116, 103rd Cong., 2d Sess., 140 Cong. Rec. H10768.....	20

7
8 **RULES**

8	Local Rule 9075-1.....	3, 4
9	Local Rule 2081-1(a)(9)	3

10
11 **OTHER AUTHORITIES**

12	<i>Collier Bankruptcy Manual</i> , ¶ 552.02[5][a] (3rd ed. Rev. 2010).....	20
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1 Hassen Real Estate Partnership ("**HREP**") and Eastland Tower Partnership ("**ETP**"),
2 the debtors and debtors in possession in the above-captioned cases (together, the "**Debtors**"), hereby
3 move (the "**Motion**") the Court for the entry of an interim order, substantially in the form annexed
4 hereto as **Exhibit 2** (the "**Interim Order**"), approving the use of cash collateral for approximately
5 twenty days following the Petition Date, and, following a final hearing (the "**Final Hearing**"), the
6 entry of a final order authorizing the use of cash collateral through June 30, 2011, or such later date
7 as the Court may allow at the Final Hearing, pursuant to supplemental budgets that the Debtors may
8 present to the Court prior to the Final Hearing. By the Motion, the Debtors also request that the
9 Court order that certain reserve account funds held by the Debtors' secured creditor be turned over to
10 authorized and fully insured debtor-in-possession accounts as required by the Bankruptcy Code and
11 the United States Trustee Guidelines.

12 HREP and ETP each are engaged in the business of commercial real estate
13 development and operation in West Covina, California. HREP owns and operates a retail/office
14 center known as the West Covina Village Shopping Center (the "**Shopping Center**"), while ETP
15 owns and operates an office tower known as the Wells Fargo Bank Tower (the "**Tower**"). Each of
16 HREP and ETP is a borrower under one of two promissory notes (the "**HREP Note**" and the "**ETP**
17 **Note**" respectively and together the "**Notes**"), both dated November 21, 2006 and each in the
18 principal amount of \$41 million, which are secured by deeds of trust. Each Note is secured by
19 substantially all of the respective Debtors' assets (the "**Collateral**"). The Debtors' obligations under
20 the Notes are cross-collateralized, and documents related to the Notes contain cross-default
21 provisions as between the Notes.

22 It is the Debtors' understanding that the HREP Note and ETP Note are now held by
23 CSMC 2006-C5 Azusa Avenue Limited Partnership (the "**Azusa Partnership**") and CSMC 2006-
24 C5 Barranca Street Limited Partnership (the "**Barranca Partnership**" and, together with Azusa
25 Partnership, the "**Lenders**"), respectively, and LNR Partners, LLC ("**LNR**") acts as the "Special
26 Asset Manager" for both these Partnerships. As of the Petition Date, Azusa Partnership contends
27 that HREP owes approximately \$48.6 million on account of the HREP Note, and Barranca
28 Partnership contends that ETP owes approximately \$50.5 million on account of the ETP Note.

1 Pursuant to the applicable loan documents, various reserve accounts (the "Reserve
2 Accounts"), were established. On the Petition Date, the Reserve Account for ETP totaled
3 approximately \$4,517,000 and the Reserve Account for HREP totaled approximately \$463,000. The
4 these funds are currently being held at certain bank accounts established at KeyBank Real Estate
5 Capital, which is not listed as an authorized depository on the Unites States Trustee's most recent list
6 of approved depositories for Region 16, dated February 17, 2011. Moreover, the Lenders have
7 provided no evidence to the Debtors that the Reserve Accounts or the Debtors' other prepetition
8 accounts held KeyBank Real Estate Capital were re-opened as "debtor in possession" accounts.

9 As of the commencement of these cases, the Debtors are operating on a cash flow
10 positive basis, but the positive margin is insufficient to cure the delinquencies under the respective
11 loans.

12 By the Motion, the Debtors request that the Court enter orders:

13 a. authorizing the Debtors to use cash, negotiable instruments, deposit accounts,
14 and other cash equivalents within the scope of section 363(a) of the Bankruptcy Code, whenever
15 acquired, and wherever located, including cash and cash equivalents in escrow or held in reserve
16 accounts, in which the Debtors' estates and an entity other than the Estates have an interest,
17 including, without limitation, the proceeds, products, offspring, rents, and profits of property related
18 to or arising from the Collateral ("Cash Collateral"), on an interim basis for the period through the
19 period that is approximately 30 days following the Petition Date, to enable the Debtors to operate
20 their business so as to avoid immediate and irreparable harm pending the Final Hearing;

21 b. establishing the schedule, notice procedure, and response procedure for the
22 Final Hearing to consider the continued use of Cash Collateral;

23 c. following the Final Hearing, authorizing the Debtors to use Cash Collateral in
24 the ordinary course of their business initially through June 30, 2011, pursuant to the budgets (the
25 "Budgets") that are attached hereto as Exhibit 1, and as Exhibit "1" to the Alhassen Cash Collateral
26 Declaration (as defined below), which the Debtors may update before the Final Hearing, and
27 thereafter through such a later date as the Court may allow at the Final Hearing (pursuant to
28 supplemental budgets that the Debtors may present to the Court prior to the Final Hearing); and

1 d. specifically ordering that the Lenders turnover the funds in the Reserve
2 Accounts, any other of the Debtors' accounts at KeyBank Real Estate Capital to the Debtors' debtor-
3 in-possession accounts, and any funds that the Lenders may collect from and after entry of the
4 Interim Order (as hereinafter defined) and that the Cash Collateral that the Debtors may use includes
5 funds held in the Reserve Accounts and any other accounts at KeyBank Real Estate Capital.

6 The foregoing relief is necessary for the Debtors to preserve and maintain the value of
7 the Collateral. The expenses associated with maintaining and protecting the Shopping Center and
8 the Tower, such as employee expenses, utilities, management and maintenance, must be paid to
9 provide essential and bargained for services to tenants. The payment of these necessary expenses
10 itself constitutes adequate protection in that the only means of preserving the present value of the
11 Collateral is to continue operating the properties and generating rents. Indeed, the Debtors' proposed
12 use of Cash Collateral will generate additional rents during these cases of at least equivalent value to
13 the rents being used. The grant of the requested relief is the only practical means of preserving the
14 value of the Collateral.

15 The Debtors request, pursuant to Local Bankruptcy Rules (the "**Local Rules**"), 2081-
16 1(a)(9) and 9075-1(a), that the Court schedule a hearing on the Motion at the earliest possible time,
17 but in no case later than 2 court days from the date of the filing of the Motion, of which 24-hour
18 notice by telephone, hand delivery or overnight mail shall be given to the Office of the United States
19 Trustee, the twenty largest unsecured creditors of each Debtor, LNR on behalf of the Lenders, and
20 other interested parties, if any (collectively, the "**Interested Parties**"). A copy of the Motion was
21 served, concurrent with the filing hereof with the Court, on the Interested Parties by courier or
22 overnight delivery. The Debtors, upon being informed by the Court of the time and date of the
23 hearing on the Motion, will provide telephonic notice,¹ to the extent possible, of the emergency
24 hearing and the substance of the Motion to the Interested Parties in accordance with Local Rule
25 9075-1.

26
27 ¹ In the event that certain Interested Parties cannot be reached by telephone, the Debtors will
28 attempt to contact such parties by facsimile, overnight service, or electronic mail.

1 The Motion is based on the Memorandum of Points and Authorities below, the
2 evidence contained in the "Declaration Of Tarek Alhassen In Support Of First Day Motions" filed on
3 April 10, 2011, and the evidence contained in the "Declaration Of Ziad Alhassen In Support Of
4 Debtors': (1) Emergency Motion Authorizing Interim Use Of Cash Collateral, Etc.; And (2)
5 Emergency Motion For Order Deeming Utilities Adequately Assured Of Future Performance; Etc."
6 (the "Alhassen Cash Collateral Declaration") filed concurrently herewith, the record in these
7 cases, and the arguments, evidence and representations that may be presented at or prior to the
8 hearing on the Motion.

9 **PLEASE TAKE NOTICE that any response, written or oral, to the Motion**
10 **may be presented at the time of the hearing on the Motion. See LBR 9075-1(a)(7).**

11 **WHEREFORE**, the Debtors respectfully request that the Court enter the Interim
12 Order, in substantially the form attached hereto as Exhibit 2: (i) authorizing the use of Cash
13 Collateral; (ii) instructing that the Reserve Accounts be turned over to authorized and fully insured
14 debtor-in-possession accounts maintained and controlled by the Debtors as required by the
15 Bankruptcy Code and the United States Trustee Guidelines; (iii) following the Final Hearing,
16 entering a final order authorizing such use; and (iv) granting such other and further relief as the
17 Court deems to be just and necessary.

18
19 Date: April 14, 2011

Respectfully submitted,

20
21 /s/ MARINA FINEMAN
22 THEODORE B. STOLMAN,
23 MARINA FINEMAN, and
24 CHRISTINE M. PAJAK, Members of
25 STUTMAN, TREISTER & GLATT
26 PROFESSIONAL CORPORATION
27 [Proposed] Reorganization Counsel for
28 Debtors and Debtors in Possession

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 STATEMENT OF FACTS

4 A. **Petition Date And Jurisdiction.**

5 On April 10, 2011 (the "**Petition Date**"), the Debtors commenced the above-
6 captioned cases by filing voluntary petitions under chapter 11 of title 11 of the United States Code
7 (the "**Bankruptcy Code**"). The Debtors' *ex parte* motion seeking to have their cases jointly
8 administered is currently pending before the Court.

9 Pursuant to Bankruptcy Code sections 1107(a) and 1108, the Debtors are continuing
10 to operate their respective businesses and managing their respective financial affairs as debtors in
11 possession. No creditors' committee has yet been appointed in these cases.

12 The Court has jurisdiction over these chapter 11 cases and the Motion pursuant to
13 28 U.S.C. §§ 1334 and 157(b), and venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and
14 1409.

15 B. **General Background.**

16 HREP and ETP are "sister" California limited liability partnerships with a common
17 limited partner, related general partners, a common guarantor, and a number of common creditors.

18 HREP and ETP each are engaged in the business of commercial real estate
19 development and operation in West Covina, California. HREP owns and operates a retail/office
20 center known as the West Covina Village Shopping Center (the "**Shopping Center**"), while ETP
21 owns and operates an office tower known as the Wells Fargo Bank Tower (the "**Tower**" and,
22 together with the Shopping Center, the "**Properties**").

23 The Property has been managed by an affiliate of the Debtors, Hassen Development
24 Corporation ("**HDC**") (as successor to Hassen Development Company), for approximately twenty-
25 eight years. HDC manages the development and leasing of the Properties.

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1 **C. The Secured Loans.²**

2 HREP and ETP are each a borrower under one of two promissory notes (the "**HREP**
3 **Note**" and the "**ETP Note**" respectively and together the "**Notes**"), both dated November 21, 2006
4 and each in the principal amount of \$41 million. The Notes and various documents directly related
5 thereto, including two documents titled "Deed of Trust, Assignment of Rents, Security Agreement
6 and Fixture Filing" (each a "**Deed of Trust**") between Column Financial, Inc. ("**Column**") and
7 HREP and ETP, respectively, are collectively referred to as the "**Loan Documents**" herein. The
8 Debtors' obligations under the Notes are cross-collateralized, and the Loan Documents with respect
9 to each contain cross-default provisions. HREP's obligations under the HREP Note are secured by a
10 first priority lien on the Shopping Center and ETP's obligations under the ETP Note are secured by a
11 first priority lien on the Tower. Both Notes are further secured by substantially all of the Debtors'
12 property, including the Properties, cash, leases and rents (the "**Collateral**").

13 The lender under both Notes, Column Financial, Inc., sold the loans to Credit Suisse
14 First Boston Mortgage Securities Corp. ("**Credit Suisse**"). As explained in the accompanying
15 "Declaration Of Ziad Alhassen In Support Of Debtors' Emergency Motion For Use of Cash
16 Collateral" (the "**Alhassen Cash Collateral Declaration**"), it is the Debtors' understanding that
17 Credit Suisse then "securitized" both loans and a pool of loans to other borrowers via the Credit
18 Suisse Commercial Mortgage Trust 2006-C5 (the "**Securitization Trust**"). The representatives of
19 the Securitization Trust are KeyCorp Real Estate Capital Markets, Inc. d/b/a KeyBank Real Estate
20

21 ² The Debtors have not completed analyzing the validity, perfection, avoidability, amount, extent,
22 or priority of the Lenders' claims or liens. Solely for the purposes of the Motion, the Debtors
23 assume, without conceding, that the Lenders hold allowable claims not subject to subordination,
24 and validly perfected and unavoidable security interests in the assets described in the Motion.
25 However, the Debtors reserve all rights and defenses with respect to the Lenders' claims, liens,
26 and interests, and nothing contained in the Motion is intended or should be construed as: (a) an
27 admission by the Debtors as to the nature, extent, amount, validity, perfection, or priority of the
28 claims or liens of the Lenders; (b) a waiver by the Debtors of any rights, claims (including claims
to avoid any such interests), and defenses they have or may have with respect to the claims, liens,
and interests of the Lenders, whether arising under the Bankruptcy Code or otherwise; or (c) a
modification or reallocation of the burdens of proof assigned by Bankruptcy Code section
363(p).

1 Capital ("**KeyCorp**") as "Master Servicer," LNR Partners, Inc. ("**LNR, Inc.**") as "Special Servicer,"
2 and Wells Fargo Bank, N.A. as trustee.

3 It is the Debtors' further understanding that the HREP Note and ETP Note are now
4 held by CSMC 2006-C5 Azusa Avenue Limited Partnership (the "**Azusa Partnership**") and CSMC
5 2006-C5 Barranca Street Limited Partnership (the "**Barranca Partnership**" and, together with
6 Azusa Partnership, the "**Lenders**"), respectively, and that LNR Partners, LLC ("**LNR**") acts as the
7 "Special Asset Manager" for both these Partnerships.

8 The Loan Documents established various reserve accounts ("**Reserve Accounts**"),
9 which were funded by the Debtors. Most significantly, the ETP Deed of Trust established a
10 \$4,250,000 reserve that was funded by ETP on or about November 21, 2006 (the "**Earnout**
11 **Reserve**"). ETP contends that the Securitization Trust and its representatives wrongfully refused to
12 release \$3.5 million of the funds in the Earnout Reserve, in face of ETP's satisfaction of all
13 conditions precedent to such release. The total amount of all of the Debtors' funds currently held in
14 the Reserve Accounts is almost \$5.1 million, consisting of \$4,564,668.32 of ETP funds and
15 \$531,271.40 of HREP funds.

16 Prior to the Petition Date, ETP satisfied all conditions to the release of \$3.5 million of
17 the Earnout Reserve, and KeyCorp approved release of such funds to ETP; however, KeyCorp's
18 approval was subsequently overturned by LNR, Inc.. During the same period, the poor condition of
19 the general economy began to affect the Debtors as certain tenants became delinquent on their rent.
20 Additionally, ETP was compelled by LNR to make significant deposits into tenant improvements,
21 tax and other impound accounts during the period December 2008 through April 2009. As a result,
22 ETP was unable to make its April 2009 payment on the ETP Note, and ETP's default automatically
23 triggered the default of HREP's Note.

24 **D. Events Leading To The Bankruptcy Filing.**

25 The Debtors, subsequently, entered into a series of forbearance agreements with the
26 Lenders and, in connection therewith, entered into a further agreement that required all cash flow
27 from the Properties (i.e., monthly tenant payments from the Shopping Center and Tower) to be
28 deposited directly into an Excess Cash Flow Account established at KeyBank, which is, upon

1 information and belief, affiliated with the Master Servicer, KeyCorp. Each month, the Lenders
2 would disburse sufficient funds to the Debtors to pay the operating and maintenance expenses of the
3 Properties, pursuant to an agreed upon budget.

4 As of the Petition Date, the Excess Cash Flow Account and the Reserve Accounts
5 remain at KeyBank Real Estate Capital, which was not listed as an authorized depository on the
6 Unites States Trustee's most recent list of approved depositories for Region 16, which list is dated as
7 of February 17, 2011. The Lenders have also provided no evidence to the Debtors that these
8 respective accounts were closed and re-opened as "debtor in possession" accounts at the bank.
9 Moreover, the Debtors believe that it is possible that the monies that the Debtors' tenants have sent
10 directly to KeyBank Real Estate Capital (per the Debtors' and Lenders' most recent prepetition
11 agreement) have been commingled. Additionally, the Debtors believe that their monies may have
12 potentially been commingled with the monies of other bank clients and borrowers who are entirely
13 unrelated to the Debtors.

14 As of the Petition Date, the Debtors are operating on a cash flow positive basis, but
15 the positive margin is insufficient to cure the delinquencies under the Loan Documents. During the
16 forbearance period, the Lenders and Debtors discussed refinancing the Notes. After months of
17 negotiations with representatives of the Lenders, the Debtors have not been able to reach a
18 consensual loan modification. As a result of this impasse, the Lenders informed the Debtors that
19 they would not postpone the foreclosure sale of the Properties that was scheduled for April 11, 2011.
20 The Debtors were therefore left with no choice but to file these chapter 11 cases to reorganize and
21 preserve the Debtors' operating business to maximize value for the Debtors' creditors.

1 **E. The Lenders' Claims And Collateral, And Lenders' Lack Of Consent To The Debtors'**
2 **Use Of Cash Collateral.**³

3 The Lenders contend that, as of the close of business on the day before the Petition
4 Date, the Debtors were indebted to the Lenders under the HREP Note in an amount that exceeds
5 approximately \$48.6 million and under the ETP Note in an amount that exceeds approximately
6 \$50.5 million. As security for the HREP Note, the Lenders assert a first priority lien on, *inter alia*,
7 the Shopping Center, all personal property used at the Shopping Center and the rents and revenues
8 generated by the Shopping Center, all as more particularly described in the applicable Loan
9 Documents. As security for the ETP Note, the Lenders assert a first priority lien, *inter alia*, on the
10 Tower, the personal property used at the Tower and the rents and revenues generated by the Tower,
11 all as more particularly described in the applicable Loan Documents.

12 On April 11, 2011, the Lenders filed a "Notice of: (1) Perfection of Security Interest
13 and Absolute Assignment of Rents, Issues, Profits, Income and Proceeds; (2) Demand for
14 Sequestration of Rents, Issues, Profits, Income, and Proceeds; and (3) Objection to Debtor's Use of
15 Cash Collateral" [ETP Docket No. 4; HREP Docket No. 5], indicating, among other things, their
16 lack of consent to the Debtors' use of Cash Collateral.

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21 ³ The Debtors have not completed analyzing the validity, perfection, avoidability, amount, extent,
22 or priority of the Lenders' claims or liens. Solely for the purposes of the Motion, the Debtors
23 assume, without conceding, that the Lenders hold allowable claims not subject to subordination,
24 and validly perfected and unavoidable security interests in the assets described in the Motion.
25 However, the Debtors reserve all rights and defenses with respect to the Lenders' claims, liens,
26 and interests, and nothing contained in the Motion is intended or should be construed as: (a) an
27 admission by the Debtors as to the nature, extent, amount, validity, perfection, or priority of the
28 claims or liens of the Lenders; (b) a waiver by the Debtors of any rights, claims (including claims
to avoid any such interests), and defenses they have or may have with respect to the claims, liens,
and interests of the Lenders, whether arising under the Bankruptcy Code or otherwise; or (c) a
modification or reallocation of the burdens of proof assigned by Bankruptcy Code section
363(p).

1 **F. The Cash Needs Of The Debtors.**

2 As set forth in the Alhassen Cash Collateral Declaration, ETP proposes to use
3 approximately \$176,700⁴ during the approximately twenty (20) days following the Petition Date for
4 operating and other expenses, which include, among other things, the following expenditures for:

5 Utilities – \$47,500

6 Repairs & Maintenance – \$16,500

7 ETP Building-Specific Payroll (paid to HDP)⁵ – \$31,500

8 ETP Building-Specific Payroll Taxes (paid to HDP) – \$2,410

9 Salaries & Wages Expense (paid to HDP) – \$42,000

10 Group Ins. & Workers' Comp (paid to HDP) – \$9,500

11 Management Fees – \$12,000

12 HREP proposes to use approximately \$71,980⁶ during the approximately twenty (20)
13 days following the Petition Date for operating and other expenses, which include, among other
14 things, the following expenditures for:

15 Utilities – \$8,900

16 Repairs & Maintenance – \$10,535

17 Salaries & Wages Expense (paid to HDP) – \$27,890

18 Group Ins. & Workers' Comp. (paid to HDP) – \$7,850

19 Management Fees – \$8,785

20 These expenditures are necessary for the continued operation of the Debtors'
21 businesses. For the period from the Petition Date through approximately 20 days following the

22 ⁴ This amount is based on the April 2011 budget (but excludes amounts to be paid to
23 professionals) so some expenses may have already been paid prior to the Petition Date.

24 ⁵ The payments related to payroll, salary and wages are passed through by HDP to the Debtors,
25 such that the Debtors reimburse HDP for all such payments that HDP disburses to the employees
26 for services rendered to the Debtors. A detailed explanation of the kinds of services provided by
HDP's employees and the value of such services to the Debtors' estates and businesses is set forth
in the Alhassen Cash Collateral Declaration.

27 ⁶ This amount is based on the April 2011 budget (but excludes amounts to be paid to
28 professionals) so some expenses may have already been paid prior to the Petition Date.

1 Petition Date, these combined expenditures total approximately \$248,680.⁷ However, during that
2 period, it is anticipated that the Debtors' gross revenue will be approximately \$592,650, which will
3 allow the Debtors to continue to generate revenue from existing tenants and enhance revenue by
4 leasing to new tenants. In addition to reimbursement of actual costs, the Debtors propose to pay a
5 reduced management fee to HDC, equivalent to the minimum amount necessary to continue
6 receiving management services. The \$20,785 per month payment budgeted for both Debtors is less
7 than what HDC would otherwise be entitled to receive.

8 In addition, the Debtors require approximately \$68,454 to fund two escrow accounts
9 in favor of their utilities (each, a "Utilities Reserve Account"), which sum represents a one average
10 month of the Debtors' collective payments to all of their utilities. The Debtors believe that the
11 proposed deposits constitutes adequate assurance of future payment within the meaning of
12 Bankruptcy Code section 366 without need for additional deposits or other security from the
13 Debtors, and have filed a motion seeking such determination by the Court.⁸

14 Accordingly, the Debtors seek to use cash, negotiable instruments, deposit accounts,
15 and other cash equivalents within the scope of section 363(a) of the Bankruptcy Code, whenever
16 acquired, and wherever located, including cash and cash equivalents in escrow or held in Reserve
17 Accounts, in which the Debtors' estates (the "Estates") and an entity other than the Estates have an
18 interest, including, without limitation, the proceeds, products, offspring, rents, and profits of
19 property related to or arising from the Collateral ("Cash Collateral").

20
21
22 ⁷ The Debtors have been using monthly budgets, which have been approved by the Lenders, for
23 more than ten months. Instead of trying to allocate the budget between the pre- and post-petition
24 periods, the Debtors have submitted to the Court the same budget for April as it had previously
25 submitted to, and was approved by, the Lenders. While the budget may include certain expenses
that accrued prior to the Petition Date, the Debtors will not make any payments thereon unless
they receive Court approval.

26 ⁸ Concurrently with the Motion, the Debtors have filed their "Emergency Motion For Order: (I)
27 Deeming Utilities Adequately Assured Of Future Performance; And (ii) Establishing Procedures
28 For Determining Requests For Additional Assurance Pursuant To Bankruptcy Code Section 366;
Memorandum Of Points And Authorities In Support Thereof".

1 As of the Petition Date, each Debtor has opened a new debtor in possession operating
2 bank account at Wells Fargo Bank. All monies collected from the tenants at the Properties, and any
3 monies that may be forwarded by the Lenders to the Debtors from tenant collections going forward,
4 will be deposited into the respective Debtor accounts at Wells Fargo Bank. All direct obligations of
5 each of the Properties will be paid from the respective Wells Fargo Bank debtor in possession
6 operating accounts. Upon approval of this Motion, the Debtors will provide notice to their tenants
7 that payments should no longer be made in accordance with the most recent procedures established
8 by the Lenders and the Debtors prepetition. Instead, the Debtors will direct all of their tenants to
9 commence making rent payments directly to the Debtors, which will be deposited in their respective
10 Wells Fargo Bank operating accounts. Because this transition may take several months, in addition
11 to the turnover of the funds currently being held at KeyBank Real Estate Capital, the Debtors also
12 hereby seek an order directing the Lenders to turnover, within five (5) days of receipt, any and all
13 monies that KeyCorp/KeyBank Real Estate Capital may receive from tenants beginning in May
14 2011. In addition to the operating account, each Debtor will open a separate debtor in possession
15 reserve bank account at Wells Fargo Bank, into which each Debtor will deposit any amounts that
16 may be turned over to the Debtors, by the Lenders, from the Reserve Accounts in accordance with
17 the Court's order. Finally, each Debtor will open a Utilities Reserve Account at Wells Fargo Bank.

18 Bankruptcy Rule 4001(b) and Bankruptcy Code section 363(c)(3) provide for the
19 Bankruptcy Court to hold a preliminary hearing on a motion to use cash collateral "scheduled in
20 accordance with the needs of the debtor" and to authorize the use of cash collateral as needed "to
21 avoid immediate and irreparable harm to the estate pending a final hearing."

22 The Debtors would suffer immediate and irreparable harm absent the interim relief
23 requested by the Motion. By continuing to pay operating expenses, the Debtors will be able to
24 preserve the value of the Properties and their businesses. If the Debtors' operations are interrupted,
25 the Debtors' overall enterprise value will decline. Thus, the immediate issue is whether the
26 Properties should be kept in operation or whether they should be shut down. The latter course is in
27 no one's interest. The only cash available to pursue the former course is the cash currently on hand
28 and revenue generated from the Properties in the future.

1 Therefore, as with most debtors whose primary assets are subject to liens, the Debtors
2 in the present cases have an exigent and compelling need to use cash collateral. As noted by the
3 court in *Chrysler Credit Corp. v. Ruggiere (In re George Ruggiere Chrysler-Plymouth, Inc.)*, 727
4 F.2d 1017 (11th Cir. 1984):

5 A debtor, attempting to reorganize a business under Chapter 11,
6 clearly has a compelling need to use "cash collateral" in its effort to
7 rebuild. Without the availability of cash to meet daily operating
8 expenses such as rent, payroll, utilities, etc., the congressional policy
9 favoring rehabilitation over economic failure would be frustrated.

10 Id. at 1019 (citation omitted) (upholding lower court's finding that, where secured lender's collateral
11 was worth less than the amount of the secured lender's claims, lender would nevertheless be
12 adequately protected even if debtor used gross profits obtained in the sale of debtor's vehicles for the
13 operation of its business so long as debtor remitted the wholesale value of the vehicles to the lender,
14 as the wholesale value is the amount lender would receive in an orderly disposition of its collateral).

15 As set forth above, the Debtors operate on a sound, cash flow positive basis. To
16 permit the Debtors to use Cash Collateral will not result in any diminution of the value of the
17 Lenders' interests in the Collateral.

18 II.

19 **BANKRUPTCY RULE 4001 AND LOCAL BANKRUPTCY RULE 4001-2 DISCLOSURES**

20 The Debtors make the following disclosures regarding the proposed use of cash
21 collateral:

- 22 1. The name of each entity known by the Debtors with an interest in the Cash
23 Collateral: the Lenders and LNR.
- 24 2. The purpose of the use of the Cash Collateral: to make the minimum
25 expenditures required to maintain the value of the Properties, as set forth in the line items of the
26 Budgets.
- 27 3. The terms, including duration, of the use of Cash Collateral: the Debtors seek
28 authority to use Cash Collateral in accordance with the Budgets for a period of approximately twenty
(20) days; and, after a final hearing, approximately thirteen weeks in accordance with the Budgets,
as may be amended or updated prior to the Final Hearing.

1 4. Adequate protection to be provided to the Lenders: the Lenders will receive
2 (i) the maintenance and preservation of the going concern value of the Collateral, as described and
3 discussed in section III-A-1 below; (ii) replacement liens, subject to the same defenses and rights of
4 avoidance as their lien in Cash Collateral, on any cash, receivables, or other rights created
5 postpetition relating to the Properties, including all postpetition improvements to the Collateral,
6 which replacement liens will be limited to any decrease in value caused by the Debtors' use of Cash
7 Collateral, as discussed in section III-A-2 below.; and (iii) the provision of information to the
8 Lenders, as discussed in section III-A-3 below.

9 **III.**

10 **ARGUMENT**

11 A debtor's use of estate property is governed by Bankruptcy Code section 363.
12 Section 363(c)(2) permits a debtor to use, sell, or lease cash collateral only if the entity with an
13 interest in the cash collateral consents or the Court authorizes such use. The Lenders have not
14 consented to the Debtors' use of Cash Collateral. However, because the liens of the Lenders are
15 adequately protected, the use of Cash Collateral should be permitted. *See, e.g., Sec. Leasing*
16 *Partners, LP v. ProAlert, LLC (In re ProAlert, LLC)*, 314 B.R. 436, 444 (B.A.P. 9th Cir. 2004)
17 ("The plain language of § 363 allows a debtor to use cash collateral if the secured creditor's interest
18 is adequately protected . . ."). As described below, the liens of the Lenders are more than
19 adequately protected.

20 The Lenders are adequately protected in at least each of the following ways:

- 21 • The use of Cash Collateral will preserve the Debtors' going concern value, which
22 will inure to the benefit of all parties in interest, including the Lenders.
23 • The Debtors will provide the Lenders with replacement liens, as described in the
24 Interim Order.
25 • The Debtors will provide information allowing the Lenders to monitor, through its
26 agent, the financial and operational performance of the Debtors, so that it can seek
27 relief if it believes that its Collateral is in jeopardy at any point during the relevant
28 period.

1 **A. The Lenders' Liens Are Adequately Protected.**

2 **1. The Lenders' Liens Are Adequately Protected By The Preservation Of The**
3 **Debtors' Going Concern Value.**

4 Section 361 of the Bankruptcy Code sets forth three nonexclusive examples of
5 adequate protection. Neither section 361 nor any other provision of the Bankruptcy Code defines the
6 nature and extent of the "interest in property" for which a secured creditor is entitled to adequate
7 protection. However, an interest is entitled to protection only to the extent that the use of collateral
8 will result in a decrease in "the value of such entity's interest in such property." 11 U.S.C. §§ 361,
9 363(e); *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 372, 108 S. Ct.
10 626 (1988).⁹

11 The use of Cash Collateral for continued cash positive operations maintains and
12 increases the value of the Collateral. In short, allowing the use of Cash Collateral itself provides
13 adequate protection.

14 It is well established that a Bankruptcy Court, where possible, should resolve issues
15 in favor of reorganization:

16 Because the ultimate benefit to be achieved by a successful
17 reorganization inures to all the creditors of the estate, a fair
18 opportunity must be given to the Debtors to achieve that end. Thus,
19 while interests of the secured creditor . . . are of concern to the court,
the interests of all other creditors also have bearing upon the question
of whether use of Cash Collateral shall be permitted during the early
stages of administration.

20 ⁹ The Bankruptcy Code protects a secured creditor only to the extent that the use of collateral
21 decreases "the value of such entity's interest in such property." 11 U.S.C. § 361; *Timbers*, 484
22 U.S. at 368-69. Secured creditors are not entitled to adequate protection against diminution of
23 any equity cushion. Thus, in *Bankers Life Ins. Co. v. Alyucan Interstate Corp. (In re Alyucan*
24 *Interstate Corp.)*, 12 B.R. 803, 810-11 (Bankr. D. Utah 1981), Judge Mabey ruled that, because a
25 secured creditor is only entitled to protection against a decline in the value of its lien, the
26 existence of a value cushion (the value of the collateral above the lien) is not a necessary
27 component of adequate protection. *See also McCombs Properties VI, Ltd. v. First Tex. Sav.*
28 *Ass'n (In re McCombs Properties VI, Ltd.)*, 88 B.R. 261, 266-68 (Bankr. C.D. Cal. 1988)
(secured creditor has no right to the equity cushion in its collateral; it only has a right to look to
the collateral for payment of its claim "upon completion of the reorganization."). (quoting
Timbers, 484 U.S. at 377); *In re Senior Care Properties, Inc.*, 137 B.R. 527, 529 (Bankr. M.D.
Fla. 1992) (secured creditor has no right to adequate protection of the value cushion).

1 The first effort of the court must be to insure the value of the
2 collateral will be preserved. Yet, prior to confirmation of a plan of
3 reorganization, the test of that protection is not by the same
4 measurements applied to the treatment of a secured creditor in a
proposed plan. In order to encourage the Debtors' efforts in the
formative period prior to the proposal of a reorganization, the court
must be flexible in applying the adequate protection standard.

5 *Mbank Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1397-98 (10th Cir. 1987) (citation
6 omitted); accord *In re Dynaco Corp.*, 162 B.R. 389, 395 (Bankr. D.N.H. 1993) ("When the issue is
7 raised early in the reorganization proceeding[, t]he Court will generally permit the business
8 operation to continue, at least to the point of plan formulation"); *In re Heatron Inc.*, 6 B.R. 493,
9 496 (Bankr. W.D. Mo. 1980) ("The policy of the Code, as was that of the predecessor statutes, is to
10 encourage reorganization if there is a reasonable possibility of success."). As the *Heatron* court
11 noted in granting a debtor's motion to use cash collateral, "[a]t the beginning of the reorganization
12 process, the Court must work with less evidence than might be desirable and should resolve issues in
13 favor of the reorganization, where the evidence is conflicting." *Id.* at 496.

14 Additionally, in the early stages of a chapter 11 case, courts will give great deference
15 to the debtor's prospects for a successful reorganization. See *In re Glasstream Boats, Inc.*, 110 B.R.
16 611, 613-14 (Bankr. M.D. Ga. 1990) (debtor should be allowed to use cash collateral as long as the
17 value of the creditor's interest does not decrease); *First Nat'l Bank v. Shockley Forest Indus. (In re*
18 *Shockley Forest Indus.)*, 5 B.R. 160, 162 (Bankr. N.D. Ga. 1980) ("Chapter 11 is designed for the
19 purpose of preventing the unnecessary dissolution of an otherwise viable corporation. A court should
20 not precipitously sound the death knell for a debtor by prematurely determining that the debtor's
21 prospects for economic revival are poor."); *In re ProAlert, LLC*, 314 B.R. at 442 ("The ethos of
22 chapter 11 is that the public at large benefits when a salvageable business is saved and that the assets
23 of a going business should not be liquidated, at least until a prognosis as to salvageability is made.")

24 Courts have routinely allowed the use of cash collateral to enhance or preserve the
25 debtor's going concern value, even where the secured creditor was undersecured. For example, in
26 *Stein v. United States Farmers Home Admin. (In re Stein)*, 19 B.R. 458, 460 (Bankr. E.D. Pa. 1982),
27 the court allowed a debtor to use cash collateral where the secured party was undersecured, finding
28

1 that the use of cash collateral was necessary to the debtor's continued operations and the creditor's
2 "secured position can only be enhanced by the continued operation of the [the debtors' business]";
3 *see also In re Dynaco Corp.*, 162 B.R. at 396 (finding that the alternative to the debtor's use of cash
4 collateral, termination of its business, would doom reorganization and any chance to maximize value
5 for all creditors); *In re Cann & Saul Steel Co.*, 76 B.R. 479, 487 (Bankr. E.D. Pa. 1987) (debtor
6 entitled to use cash collateral even though the creditor was undersecured and there was no value
7 cushion because there was "cautious optimism that the Debtor will be able to present a confirmable
8 Plan which will result in a betterment of the financial status of all of its creditors . . .").¹⁰

9 Moreover, if the value of a secured creditor's collateral is expected to remain
10 relatively constant, the secured creditor is deemed to be adequately protected. *See, e.g., Orix Credit*
11 *Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc.)*, 54 F.3d 722, 730 (11th Cir.
12 1995) (payment of "interest" not required); *Federal Nat'l Mortgage Assoc. v. Dacon Bolingbrook*
13 *Assoc. Ltd. Partnership*, 153 B.R. 204, 210 (Bankr. N.D. Ill. 1993) (upholding bankruptcy court's
14 allowance of use of cash collateral despite findings that the "small amount of oversecurity, which
15 was not 'obviously not enough in itself to provide any adequate protection for any substantial decline
16 in the value of the property'", where the bankruptcy court determined that the property value of
17 debtor's apartment building would not further decline during period in question); *Westchase I Assoc.*
18 *L.P. v. Lincoln Nat'l Life Ins. Co.*, 126 B.R. 692, 694 (Bankr. D.N.C. 1991). This proposition of law
19 is no less true where the collateral to be used by the debtor in possession is comprised of cash or
20 other "soft" assets. *See, e.g., Dynaco*, 162 B.R. at 394; *In re McCombs Properties VI, Ltd.*, 88 B.R.
21 261, 267 (Bankr. C.D. Cal. 1988). It is especially true in the context of commercial real estate with

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23 ¹⁰ Similarly, courts will allow a lienor to be primed by postpetition financing where such financing
24 serves to preserve, maintain, and enhance collateral value. *See, e.g., In re 495 Central Park Ave.*
25 *Corp.*, 136 B.R. 626, 631-32 (Bankr. S.D.N.Y. 1992) ("In the instant case, Hancock will be
26 adequately protected because the infusion of approximately \$600,000 in improvements from the
27 borrowed proceeds will enhance the value of the property secured by Hancock's mortgage by at
28 least the amount of the borrowed proceeds."); *In re Ledgemere Land Corp.*, 125 B.R. 58, 62-64
(Bankr. D. Mass. 1991) (authorizing priming liens to complete construction, even though the
debtor had no equity in the property, where completion of construction would preserve fair
market values).

1 existing tenants such as those at the Properties. *See, e.g., id.* at 267-68 (authorizing use of cash
2 collateral for making necessary repairs and renovations to debtor's apartment units, and noting that
3 such authorization would likely be granted even if no equity cushion existed, where gross rents
4 would likely not diminish over the foreseeable future, which is the only risk that would need to be
5 protected).

6 Given the possibility, inherent in the operation of commercial real estate premises,
7 that extraordinary costs will arise, the Debtors must also be granted access to the Reserve Accounts.
8 Initially, the Debtors will require approximately \$68,454 to fund the Utilities Reserve. Thereafter,
9 the most likely and significant extraordinary cost that could arise during the pendency of these cases
10 is the cost of accommodating a new tenant on the Properties. Preparing space for such a tenant
11 might well require the expenditure of Cash Collateral, and the improvement in the leased space
12 would inure to the benefit of the Lenders. Put in the alternative, if the Debtors are unable to make
13 improvements for new tenants, possible future revenue will be lost. While both Debtors operate on a
14 cash flow positive basis, it is likely that the positive margin will be insufficient to fund possible
15 extraordinary costs that must be paid to protect and enhance the value of the Collateral.

16 Where, as in the present case, the continuation of a debtor's business achieves the
17 realization of the full value of the collateral, and in deference to the presumption in favor of
18 reorganization, the debtor's continued operations constitute adequate protection of the secured
19 creditor's interests in that collateral. *See, e.g., In re Coody*, 59 B.R. 164, 167 (Bankr. M.D. Ga.
20 1986) ("Debtor needs the use of the cash collateral to plan his 1986 cotton, peanut, and silage crops.
21 Because the cotton and peanut crops generate income for Debtor, and the silage is needed to feed
22 Debtor's dairy cattle, the Court is persuaded that the three crops are necessary for Debtor to have a
23 chance to reorganize under Chapter 11 of the Bankruptcy Code."). Continuation of the Debtors'
24 businesses in these cases will certainly require the expenditure of normal operating expenses, and
25 may require occasional extraordinary expenses.

26 **2. The Lenders' Liens Are Adequately Protected By Replacement Liens.**

27 Bankruptcy Code section 361(2) specifically contemplates that adequate protection
28 may be provided by way of additional or replacement liens to the extent that the use of property

1 results in a decrease in the value of an entity's interest. Replacement liens are a judicially recognized
2 form of adequate protection. *See, e.g., In re Senior Care Props., Inc.*, 137 B.R. 527, 530 (Bankr.
3 N.D. Fla. 1992) ("The replacement lien on all of the furniture, fixtures, and equipment at the facility
4 is sufficient protection of NBD's interests.").

5 In the present cases, and as reflected in the Interim Order, the Debtors propose that
6 the Lenders be granted replacement liens, subject to the same defenses and rights of avoidance as
7 their liens in Cash Collateral, on any cash, receivables, or other rights created postpetition relating to
8 the Properties, including all postpetition improvements to the Collateral, which replacement liens
9 will be limited to any decrease in value caused by the Debtors' use of Cash Collateral. This grant of
10 replacement liens is without prejudice to the Debtors' ability to seek to use any Cash Collateral
11 subject to such replacement liens, or to surcharge such collateral under Bankruptcy Code
12 section 506(c). The Lenders are not automatically entitled to liens on such improvements and
13 proceeds.

14 **3. The Lenders' Liens Are Protected By The Provision Of Periodic Reports.**

15 The Debtors will provide the representatives of the Lenders with information
16 regarding the Debtors' financial and operating performance. This information will enable the
17 Lenders to monitor their interests in the Collateral; such financial reporting has been held to
18 constitute adequate protection. *See, e.g., Mutual Benefit Life Ins. Co. v. Stanley Station Assocs., L.P.*
19 (*In re Stanley Station Assocs., L.P.*), 140 B.R. 806, 809 (D. Kan. 1992) ("In addition, we believe the
20 request by MBL for 'timely filing of proper monthly operating reports . . .' falls within the ambit of
21 adequate protection . . ."); *cf. Sumitomo Trust & Banking Co. v. Holly's, Inc. (In re Holly's, Inc.)*,
22 140 B.R. 643, 706 (Bankr. W.D. Mich. 1992) (reports required as part of adequate protection).

23 **B. The Debtors Should Be Authorized To Use Cash Collateral Because The Costs And**
24 **Expenses Of Operating and Maintaining The Collateral Are Chargeable To The**
Collateral Under Bankruptcy Code Section 506(c).

25 The costs and expenses associated with operating the Properties are absolutely
26 necessary to preserve the value of the Collateral for the Lenders. Therefore, independent of their
27 right to use Cash Collateral under Bankruptcy Code section 363, the Debtors should be entitled
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1 under Bankruptcy Code section 506(c) to use Cash Collateral to pay the costs of operating the
2 Debtors' businesses.

3 Section 506(c) provides that a debtor "may recover from property securing an
4 allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of,
5 such property to the extent of any benefit to the holder of such claim." This is true "even if the
6 trustee's use of collateral results in a diminution in value of the collateral." *2-552 Collier Bankruptcy*
7 *Manual*, ¶ 552.02[5][a] (3rd ed. Rev. 2010).

8 The legislative history of section 506(c) demonstrates that Congress specifically
9 intended that a debtor may use cash collateral to pay the operating expenses incident to improving
10 and disposing of a secured creditor's collateral: "[T]he reference to section 506(c) permits broad
11 categories of operating expenses – such as the cost of cleaning and repair services, utilities,
12 employee payroll and the like – to be charged against pledged revenues." H.R. 5116, 103rd Cong.,
13 2d Sess., 140 Cong. Rec. H10768 (daily ed. Oct. 4, 1994).

14 Courts have authorized the use of cash collateral for a wide variety of direct or
15 indirect expenses under section 506(c). *See, e.g., Federal Nat'l Mortgage Assoc. v. Dacon*
16 *Bolingbrook Assoc. Ltd. Partnership*, 153 B.R. 204, 214 (Bankr. N.D. Ill. 1993) (expenses of
17 operation, maintenance and repair of apartment complex authorized to be paid from rents collected,
18 despite debtor's inability to provide adequate protection for the rents); *Equitable Gas Co. v.*
19 *Equibank N.A. (In re McKeesport Steel Castings Co.)*, 799 F.2d 91, 94 (3d Cir. 1986) (payment to
20 utility for postpetition gas services was an expense of preserving going concern value that directly
21 benefited secured creditor whose collateral was surcharged); *In re AFCO Enters., Inc.*, 35 B.R. 512,
22 515 (Bankr. D. Utah 1983) (expenses of maintaining a resort property authorized to be paid from the
23 receipts generated on that property because preserving the resort's going-concern value benefited the
24 secured creditor); *Ford Motor Credit Co. v. Jim Kelly Ford, Ltd. (In re Jim Kelly Ford, Ltd.)*, 14
25 B.R. 812, 816-817 (N.D. Ill. 1980) (overhead and operating expenses recoverable from proceeds of
26 creditor's collateral because the expenses facilitated sale of the inventory).

27 The Debtors' use of Cash Collateral to pay the costs of managing and maintaining the
28 Properties preserves the going concern value of the Collateral. If the Debtors were unable to pay

1 these expenses on a regular, uninterrupted basis, then the panoply of functions performed by HDC,
2 which has managed the Properties for 28 years, would have to be fulfilled by another person, no
3 doubt at an increased cost and with significant disruption that might diminish revenue. The Debtors'
4 use of Cash Collateral benefits the Collateral by not only preserving, but increasing the value of the
5 Collateral as the Properties will continue to increase in value with time if they are properly
6 maintained, marketed and leased. This is particularly the case with extraordinary expenses related to
7 preparing space for a new tenant. The Debtors are therefore entitled to recover expenses of such
8 development under Bankruptcy Code section 506(c) without regard to whether the Debtors can
9 otherwise use Cash Collateral under section 363(c)(2). *See, e.g., Travelers Ins. Co. v. River Oaks*
10 *Ltd. Partnership (In re River Oaks Ltd. Partnership)*, 166 B.R. 94, 100 (E.D. Mich. 1994) (a debtor
11 may use cash collateral under section 506(c) even though the debtor failed to meet its burden under
12 section 363); *cf. In re ProAlert*, 314 B.R. at 444-45 (a debtor may use cash collateral to pay
13 professional fees if the secured creditor is adequately protected, without regard to the requirements
14 of section 506(c)).

15 This Motion has been served by courier or overnight delivery on the Interested
16 Parties, and additionally, where an electronic mail address was available, by electronic mail for
17 immediate delivery. The Debtors, upon being informed by the Court of the time and date of the
18 hearing on the Motion, will provide telephonic notice,¹¹ to the extent possible, of the emergency
19 hearing and the substance of the Motion to the Interested Parties in accordance with Local Rule
20 9075-1(a). The Debtors respectfully submit that such service and notice is sufficient under the
21 circumstances and that no other or further notice need be provided.

22 **C. The Funds Currently Being Held At KeyBank Should Be Turned Over Because The**
23 **Reserve Accounts Are Not Properly Collateralized And The Lenders May Not Have**
24 **Properly Perfected Security Interests In The Funds.**

25 As of the Petition Date, the Excess Cash Flow Account and the Reserve Accounts
26 remain at KeyBank Real Estate Capital, which was not listed as an authorized depository on the

27 ¹¹ In the event that is impossible to contact certain Interested Parties by telephone, the Debtors will
28 attempt to contact such parties by facsimile, overnight service, or electronic mail.

1 Unites States Trustee's most recent list of approved depositories for Region 16, which list is dated as
2 of February 17, 2011. Moreover, the Lenders have provided no evidence to the Debtors that these
3 respective accounts were closed and re-opened as "debtor in possession" accounts at the bank. The
4 Debtors believe that the funds should be turned over to the Debtors and deposited into the Debtors'
5 newly opened debtor-in-possession accounts at Wells Fargo Bank, which is a United States Trustee
6 approved depository for Region 16. Continuing to keep the Debtors' money in uncollateralized
7 accounts in an unauthorized depository unnecessarily places the Debtors' funds at risk, and violates
8 the applicable guidelines imposed by the United States Trustee for this Region 16.

9 Moreover, the Debtors believe that it is possible that the rent monies that the
10 Debtors' tenants have sent directly to KeyBank Real Estate Capital (per the parties' most recent
11 agreement) have been commingled, and that these funds may have also potentially been commingled
12 with the monies of other bank clients and borrowers who are entirely unrelated to the Debtors. The
13 Debtors are currently in the process of investigating the manner in which their funds have held at
14 KeyBank Real Estate Capital. This raises concerns regarding the perfection of the Lenders' security
15 interests in the monies on deposit.

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IV.

CONCLUSION

WHEREFORE, based on the arguments and authorities set forth above, the Debtors respectfully request that the Court enter the Interim Order, substantially in the form attached hereto as Exhibit 2: (i) authorizing the use of Cash Collateral; (ii) instructing that the monies in the Reserve Accounts, the monies held at any of other of the Debtors' accounts at KeyBank Real Estate Capital, and any monies received by the Lenders from tenants on and after the date of the Interim Order, be turned over to authorized and fully insured debtor-in-possession accounts maintained and controlled by the Debtors as required by the Bankruptcy Code and the United States Trustee Guidelines; (iii) following the Final Hearing, entering a final order authorizing such use through the period that the Court shall determine at the Final Hearing is appropriate; and (iv) granting such other and further relief as the Court deems to be just and necessary.

Date: April 14, 2011

Respectfully submitted,

/s/ MARINA FINEMAN
THEODORE B. STOLMAN,
MARINA FINEMAN, and
CHRISTINE M. PAJAK,
Members of
STUTMAN, TREISTER & GLATT
PROFESSIONAL CORPORATION

[Proposed] Reorganization Counsel for
Debtors and Debtors in Possession

**EASTLAND TOWER PARTNERSHIP
OPERATING BUDGET**

		Apr-11	May-11	Jun-11
<u>INCOME</u>	Total			
Collected Rental Income	1,024,932	341,644	341,644	341,644
Operating Income	-	-	-	-
Interest Income	-	-	-	-
Other Income	-	-	-	-
Misc. 7F Tenants	-	-	-	-
TOTAL INCOME	1,024,932	341,644	341,644	341,644
<u>BUILDING OPERATING EXP.</u>				
Property Taxes	-	-	-	-
Insurance-Property & Liability	-	-	-	-
Utilities	146,000	47,500	48,500	50,000
Maintenance & Repairs	49,500	16,500	16,500	16,500
Payroll	94,500	31,500	31,500	31,500
Payroll Taxes	7,230	2,410	2,410	2,410
Other	4,500	1,500	1,500	1,500
TOTAL BUILDING OPERATING EXP.	301,730	99,410	100,410	101,910
<u>G&A EXP.</u>				
Salaries & Wages	115,900	42,000	36,950	36,950
Group Ins. & Workers' Comp.	28,500	9,500	9,500	9,500
Payroll Taxes	17,740	12,040	2,850	2,850
Professional Services	3,000	1,000	1,000	1,000
Management Fees	36,000	12,000	12,000	12,000
Bank Charges	2,250	750	750	750
TOTAL G&A EXP.	203,390	77,290	63,050	63,050
<u>LEASING & CAPITAL COSTS</u>				
Tenants Improvements	-	-	-	-
Leasing Commision	-	-	-	-
TOTAL LEASING & CAPITAL COSTS	-	-	-	-
Professional Fees	75,000	25,000	25,000	25,000
TOTAL EXPENSES	580,120	201,700	188,460	189,960
CASH FLOW BEFORE INTEREST PAYMENT	444,812	139,944	153,184	151,684
Interest Expenses	-	-	-	-
CASH FLOW BALANCE	444,812	139,944	153,184	151,684

**HASSEN REAL ESTATE PARTNERSHIP
OPERATING BUDGET**

	Total	Apr-11	May-11	Jun-11
POTENTIAL GROSS REVENUE				
Collected Base Rental Revenue	753,018	251,006	251,006	251,006
Cam Charges Revenue	-			
Scheduled Base Rental Revenue	753,018	251,006	251,006	251,006
CPI & Other Adjustment Revenue	-			
TOTAL POTENTIAL GROSS REVENUE	753,018	251,006	251,006	251,006
OPERATING EXPENSES				
Real Estate Taxes	-	-	-	-
Direct Assessments	-	-	-	-
Insurance	-	-	-	-
Utilities	28,400	8,900	9,500	10,000
Repairs/Maint	31,605	10,535	10,535	10,535
Grounds	-	-	-	-
Management	-	-	-	-
Reserves	-	-	-	-
TOTAL OPERATING EXPENSES	60,005	19,435	20,035	20,535
G&A EXP.				
Salaries & Wages	73,670	27,890	22,890	22,890
Group Ins. & Workers' Comp.	23,550	7,850	7,850	7,850
Payroll Taxes	10,000	6,500	1,750	1,750
Professional Services	4,500	1,500	1,500	1,500
Management Fees	26,355	8,785	8,785	8,785
Bank Charges	60	20	20	20
TOTAL G&A EXP.	138,135	52,545	42,795	42,795
LEASING & CAPITAL COSTS				
Tenant Improvements	-			
Leasing Commissions	-			
TOTAL LEASING & CAPITAL COSTS	-	-	-	-
Professional Fees	75,000	25,000	25,000	25,000
TOTAL EXPENSES	273,140	96,980	87,830	88,330
CASH FLOW BEFORE INTEREST PAYMENT	479,878	154,026	163,176	162,676
Interest Expenses	-	-	-	-
CASH FLOW BALANCE	479,878	154,026	163,176	162,676

Exhibit "2"

1 THEODORE B. STOLMAN (State Bar No. 52099),
MARINA FINEMAN (State Bar No. 193065),
2 CHRISTINE M. PAJAK (State Bar No. 217173), and
H. ALEXANDER FISCH (State Bar No. 223211), Members of
3 STUTMAN, TREISTER & GLATT PROFESSIONAL CORPORATION
1901 Avenue of the Stars, 12th Floor
4 Los Angeles, CA 90067
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5 Facsimile: (310) 228-5788
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6 cpajak@stutman.com; afisch@stutman.com

7 [Proposed] Reorganization Counsel for Debtors
and Debtors in Possession

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9 Debtors' Mailing Address
100 North Barranca Street, Suite 900
10 West Covina, California 91791

11 UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
12 LOS ANGELES DIVISION

13 In re:) Case No.: 2:11-bk-25499-ER
14 HASSEN REAL ESTATE PARTNERSHIP,)
a California limited partnership,) Chapter 11
15 EASTLAND TOWER PARTNERSHIP,) (Motion For Joint Administration With Case
16 a California limited partnership,) No. 2:11-bk-25500-ER Pending)
17 Debtors.) **[Proposed] ORDER: (1) AUTHORIZING**
18) **INTERIM USE OF CASH COLLATERAL;**
19 Tax I.D. Nos. 95-3970215 and 95-3970217) **(2) SCHEDULING, AND ESTABLISHING**
20) **DEADLINES RELATING TO, A FINAL**
21) **HEARING ON CONTINUED USE OF CASH**
22) **COLLATERAL; (3) AUTHORIZING**
23) **CONTINUED USE OF CASH**
24) **COLLATERAL; AND (4) COMPELLING**
25) **RELEASE OF ESTATE FUNDS FROM**
26) **DEBTORS' PREPETITION DEPOSIT**
27) **ACCOUNTS;**

Hearing

Date: [To Be Set By Court]
Time: [To Be Set By Court]
Place: Courtroom 1568
255 East Temple Street
Los Angeles, California 90012

Exhibit "2"

1 Upon review and consideration of the "Emergency Motion of Debtors in Possession
2 for Orders: (1) Authorizing Interim Use of Cash Collateral; (2) Scheduling, and Establishing
3 Deadlines Relating To A Final Hearing on Continued Use of Cash Collateral; and (4) Compelling
4 Release of Estate Funds from Reserve Accounts " (the "**Motion**"),¹ filed by Hassen Real Estate
5 Partnership ("**HREP**") and Eastland Tower Partnership ("**ETP**"), the debtors and debtors in
6 possession in the above-captioned cases (together, the "**Debtors**"), and the "Declaration Of Ziad
7 Alhassen In Support Of Debtors': (1) Emergency Motion Authorizing Interim Use Of Cash
8 Collateral, Etc.; And (2) Emergency Motion For Order Deeming Utilities Adequately Assured Of
9 Future Performance; Etc." filed with the Motion, and any opposition to the Motion, the record in
10 these cases, and any admissible evidence presented to the Court at or prior to the hearing on the
11 Motion, the Court hereby finds that notice was appropriate under the circumstances; and good cause
12 exists for the relief requested in the Motion.

13 THEREFORE, IT IS HEREBY ORDERED THAT:

- 14 1. The Motion is granted.
- 15 2. With respect to all parties claiming an interest in the Cash Collateral, during
16 the period up to and including _____, 2011, the Debtors may use the cash and cash
17 equivalents that may constitute the Cash Collateral, including cash held in Reserve Accounts, in the
18 ordinary course of their businesses to pay the expenses identified in the Budgets (attached as **Exhibit**
19 **1** to the Motion) pending a final hearing.
- 20 3. The Lenders shall turnover all funds in the Reserve Accounts any other of the
21 Debtors' accounts at KeyBank Real Estate Capital to the authorized and fully insured debtor-in-
22 possession account designated by the respective Debtors, by no later than five (5) days from the date
23 of the entry of this Order.
- 24 4. From and after the date of the entry of this Order, the Lenders shall turnover
25 all funds the Lenders may collect on behalf of the Debtors pursuant to the prepetition procedures that
26

27 ¹ Terms not otherwise defined herein should have the same meanings ascribed to them in the
28 Motion.

Exhibit "2"

1 were implemented between the parties, to the authorized and fully insured debtor-in-possession
2 accounts designated by the respective Debtors, within five (5) days of receipt of each such payment.

3 5. To the extent that, despite the application of Bankruptcy Code section 506(c),
4 the Debtors' use of Cash Collateral were to devalue the Lenders' interests in its collateral, the
5 Debtors shall provide further adequate protection by granting to the Lenders replacement liens on
6 any cash, receivables, or other rights created postpetition relating to the Properties, including all
7 postpetition improvements to the Collateral, which replacement liens will be limited to any decrease
8 in value caused by the Debtors' use of Cash Collateral.

9 6. The final hearing on the Motion is scheduled for _____, 2011, at
10 _____m., and the Debtors shall give notice of this hearing to all entities claiming an interest in
11 what may be Cash Collateral, to the creditors on the creditors committee, if one has been appointed,
12 or, if no creditors committee has been appointed, to the twenty largest creditors of each of the
13 Debtors.

14 7. Any further response to the Motion to be considered at the final hearing must
15 conform to the requirements of Local Bankruptcy Rule 9013-1 and must be filed with the Court and
16 served on counsel for the Debtors so that they are filed with the Court and received by counsel for
17 the Debtors no later than _____, 2011.

18 8. Any reply by the Debtors to the response papers shall be filed with the Court
19 and served on counsel for those parties filing response papers (either in connection with the
20 preliminary hearing or the final hearing) so that they are filed with the Court and received by such
21 parties no later than _____, 2011.

22 9. Nothing in this order shall constitute a determination that: (a) any assets of
23 the Debtors constitute cash collateral under 11 U.S.C. § 363(a); (b) any amounts paid are subject to
24 11 U.S.C. § 506(c); (c) any liens on the assets of the Debtors as of the date of the filing of the
25 chapter 11 petitions are valid or not subject to avoidance; or (d) any assets are or are not property of
26 the estates; and each of the Debtors and the entities asserting claims and interests with respect to the
27 Debtors reserve all rights, claims and positions with respect to these issues.

28

Exhibit "2"

1 10. This Court shall retain jurisdiction to hear and determine all matters arising
2 from the implementation of this Order.

3 PRESENTED BY:

4 /s/ MARINA FINEMAN
5 THEODORE B. STOLMAN,
6 MARINA FINEMAN, and
7 CHRISTINE M. PAJAK, , Members of
8 STUTMAN, TREISTER & GLATT
9 PROFESSIONAL CORPORATION
10 [Proposed] Reorganization Counsel for
11 Debtors and Debtors in Possession
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