



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

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In re:

**LAFAYETTE YARD COMMUNITY
DEVELOPMENT CORPORATION,**

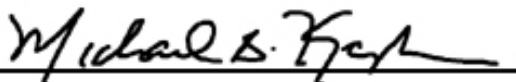
Debtor.

Chapter 11
Case No. 13-30752

INTERIM ORDER ORDER (A) AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING AND GRANTING SENIOR SECURITY INTERESTS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS PURSUANT TO 11 U.S.C. § 364(d); AND (B) SCHEDULING A FINAL HEARING AND ESTABLISHING RELATED NOTICE REQUIREMENTS

The relief set forth on the following pages two (2) through twenty six (26) is hereby **ORDERED**.

DATED: 9/26/2013


Honorable Michael B. Kaplan
United States Bankruptcy Judge

Upon the application, dated September 23, 2013 (the “Motion”), of the above-captioned debtor and debtor-in-possession (the “Debtor”) in the above-captioned bankruptcy case (the “Case”) for interim and final orders under sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507(b) of title 11 of the United States Code, 11 U.S.C. § 101, et seq. (as amended, the “Bankruptcy Code”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”), and the Local Bankruptcy Rules for the District of New Jersey (the “Local Bankruptcy Rules”), *inter alia* an order:

a. authorizing the Debtor, pursuant to sections 105(a) and 364(c) and (d) of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6004 and 9014, to obtain from Racebrook Capital Advisors LLP, (the “DIP Lender”) a senior secured priming and superpriority debtor-in-possession credit facility with a commitment amount equal to \$2,000,000 (the “DIP Facility”), with an interim facility of \$200,000 until entry of a final order approving the DIP Facility (the “Final DIP Order”), in accordance with the DIP Agreement, annexed hereto as Exhibit A. Pursuant to the DIP Facility Agreement (the “DIP Agreement”), the DIP Facility shall be used to operate the Debtor’s business and to pay fees, costs and expenses related to the Case, including, without limitation, payments with respect to the Carve-Out¹, and for such other purposes in accordance with the Budget annexed hereto as Exhibit B, and not otherwise prohibited under the DIP Agreement;

b. authorizing the Debtor to execute and deliver the DIP Agreement and to perform such other and further acts as may be necessary and appropriate in connection therewith, including executing the engagement letter with Sheldon Good & Company as auctioneer (the “Engagement Letter”) – such retention remaining subject to Bankruptcy Court approval – and, on an interim basis, to access the DIP Facility in an amount of up to \$200,000 (the “Maximum Interim Borrowing”), pursuant to the DIP Agreement;

c. entering orders, first at an interim and then at a final hearing, pursuant to sections 364(c)(1), (2), (3) and 364(d) of the Bankruptcy Code, to provide that the obligations of the Debtor to the DIP Lender under the DIP Agreement (the “DIP Obligations”) (i) subject only to the Carve-Out, be secured (a) under section 364(d) of the Bankruptcy Code, by a fully perfected priming first- priority security interest in all existing and after acquired real and personal, tangible and intangible assets of the Debtor, including all cash, cash equivalents, bank accounts, accounts, other receivables, chattel paper, contract rights, inventory,

¹ Capitalized terms not defined herein are as defined in the Motion and DIP Agreement.

instruments, documents, securities (whether or not marketable), equipment, fixtures, real property interests, franchise rights, patents, trade names, trademarks, copyrights, intellectual property, general intangibles, investment property, supporting obligations, letter of credit rights, commercial tort claims, causes of action and all substitutions, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds (collectively, the “Post-Petition Collateral”); (b) under section 364(c)(2) of the Bankruptcy Code, by perfected first priority, senior security interests in and liens on all of the all of the Collateral; and (c) under section 364(c)(3) of the Bankruptcy Code, by a junior priority, perfected security interests in and liens on all of the Debtor’s currently owned and after acquired encumbered property (collectively, the “Post-Petition Liens”), in each case, unless otherwise expressly provided in the DIP Agreement and (ii) be granted an allowed superpriority administrative expense claim against the Debtor (the “Superpriority Claim”) pursuant to section 364(c)(1) of the Bankruptcy Code, having priority over any and all administrative expense claims of any kind asserted against the Debtor, including, but not limited to, the kinds specified in or arising or ordered under sections 105(a), 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 552(b), 726(b), 1113 and 1114 of the Bankruptcy Code, subject only to the Carve-Out (as defined in the DIP Agreement); and

d. scheduling, pursuant to Bankruptcy Rule 4001, a hearing (the “Final Hearing”) to consider entry of a final order (the “Final Order”) authorizing the Debtor to obtain, on a final basis, the DIP Facility, pursuant to the DIP Agreement.

The Debtor having requested in the Motion that pending the Final Hearing on the Motion, a hearing be scheduled on an expedited basis to consider this Interim Order; and notice of such expedited hearing having been given to (a) each of the Debtor’s twenty (20) largest unsecured creditors; (b) the Office of the United States Trustee for the District of New Jersey; (c) counsel to the Pre-Petition Lenders, and (d) all other parties known by the Debtor claiming to have Liens on or security interests in any of the Collateral; and

It appearing that under all of the attendant circumstances and after considering the Debtor’s immediate need for interim financing, no other or further notice need be given; and the DIP Lender having agreed to provide the DIP Facility in accordance with the

Terms and Conditions and this Interim Order; and the Prepetition Lenders having not objected to the subordination and superpriority granted hereby;

NOW, THEREFORE, upon the Motion and after due deliberation and good and sufficient cause appearing therefor, the Court hereby makes the following Findings of Fact and Conclusions of Law:

Based upon the record presented to the Court, it appears that:

A. Filing. On September 23, 2013 (the “Filing Date”), the Debtor filed a voluntary petition for reorganization in this Court under chapter 11 of the Bankruptcy Code. The Debtor has continued in the management and operation of its business and property as a debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee, examiner or official committee of unsecured creditors has been appointed in the Case.

B. Prepetition Capital Structure. In 2001, Debtor obtained tax exempt bond funding to construct the Facility. Debt financing for the construction and acquisition of the hotel was specifically obtained with the issuance by Debtor of bonds in 2000 in the approximate amount of \$31,000,000 (the “Series 2000 Bonds”). The Series 2000 Bonds were subsequently refinanced by bonds issued by LYCDC in 2001 (the “Series 2001 Bonds”). The remaining principal balance of Series 2001 Bonds was refinanced by Hotel/Conference Center Project Revenue Refunding Bonds issued by LYCDC in 2012 (the “Series 2012 Bonds,” and together with the Series 2000 Bonds and the Series 2001 Bonds, the “Bonds”). As of the Petition Date, Wells Fargo Bank, N.A. (“Wells Fargo”) is the indenture trustee (together with any successor indenture trustee, the “Bond

Trustee”) for the Bonds. The Bonds are fully secured by liens on all or substantially all of the Debtor’s property (the “Bond Liens”).

C. As of the Petition Date the Debtor’s books and records also reflect loan obligations to other parties associated with the Facility that may be secured including: (a) a loan in the original principal amount of \$2,000,000 (the “NJEDA Loan”) from the New Jersey Economic Development Authority (“NJEDA”); (b) a loan in the original principal amount of \$500,000 (the “CCRC Loan”) from the Capital City Redevelopment Corporation (the “CCRC”), and (c) a loan in the original principal amount of \$675,000 (the “State Loan,” and together with the Bonds, the “Prepetition Loans”) from the State of New Jersey (“New Jersey”, and together with Wells Fargo, NJEDA, and CCRC, the “Prepetition Lenders”). Any liens, security interests, rights and claims associated with the NJEDA Loan, CCRC Loan or State Loan (the “Subordinate Liens”, and together with the Bond Liens, the “Prepetition Liens”) are subject to and otherwise fully subordinate to the Bond Trustee’s rights, liens and security interests in the Debtor’s assets.

D. Need for Additional Postpetition Financing. The Debtor has an immediate need to obtain the DIP Facility. The Debtor does not have sufficient available sources of working capital and financing to carry on the operation of its business until the contemplated closing (the “Closing”) of the sale of substantially all of its assets (the “Sale”) without the DIP Facility. The ability of the Debtor to pay employees, continue to operate its business, maintain business relationships with vendors, suppliers, and other contract counter-parties and otherwise finance its operations is essential to the Debtor’s continued viability. Without the DIP Facility, the continued orderly operation of the Debtor’s business would not be possible, and serious, immediate and irreparable harm to

the Debtor and its estate, as well as its going concern value would result. The purpose of the DIP Facility will thus be to preserve, maintain and enhance the going concern value of the Debtor, as well as to allow the Debtor to continue to operate its business and to protect its various vendor and business relationships.

E. No Credit Available on More Favorable Terms. Given the Debtor's financial condition, financing arrangements and capital structure, the Debtor does not have sufficient cash collateral to fund its businesses until the Closing and is otherwise unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. Financing on a postpetition basis is not otherwise available without the Debtor granting, pursuant to section 364(c)(1) of the Bankruptcy Code, claims having priority over any and all administrative expenses of the kinds specified in sections 503(b) and 507(b) of the Bankruptcy Code, and securing such indebtedness and obligations with the security interests in and the liens upon the Collateral pursuant to section 364(c) and (d) of the Bankruptcy Code. The Debtor is unable to obtain the necessary postpetition financing that it needs on terms more favorable in the aggregate than those provided by the DIP Agreement.

F. Need to Grant Superpriority Administrative Expense Claim and Priming Liens. The Debtor is unable to obtain adequate unsecured credit financing allowable under section 503(b)(1) of the Bankruptcy Code and must grant to the DIP Lender a Superpriority Administrative Expense Claim as contemplated by section 364(c)(1) of the Bankruptcy Code and liens as contemplated by section 364(c)(2), (c)(3) and (d) of the Bankruptcy Code. The DIP Lender has conditioned all loans and advances to be made under the DIP Agreement upon the grant to the DIP Lender, subject only to the Carve-

Out of: (a) in accordance with sections 364(c)(2), (3) and (d) of the Bankruptcy Code, senior secured liens on and security interests in the Collateral, and (b) a Superpriority Administrative Expense Claim pursuant to section 364(c)(1) of the Bankruptcy Code with priority over any and all expenses of any kind or nature whatsoever specified in sections 503(b) and 507(b) of the Bankruptcy Code. The Prepetition Lenders have not objected to their Prepetition Liens being primed by the DIP Facility Liens and to the grant of superpriority administrative expense claims to the DIP Lender.

G. DIP Facility. Pursuant to the DIP Agreement, the DIP Facility shall be in the form of a post-petition senior secured superpriority loan facility in the maximum principal amount of \$2,000,000.00 in accordance with the DIP Agreement and the Budget. The DIP Facility shall be at all times junior and subordinate to the Carve-Out and senior to and of higher priority than the liens and claims of the Prepetition Lenders and expenses, liens and claims specified in any other section of the Bankruptcy Code, including, without limitation, sections 503(b) and 507(b) of the Bankruptcy Code. Amounts borrowed under the DIP Facility shall be used by the Debtor solely to fund its operation of the business through the Maturity Date and for the purposes described above and in the DIP Agreement.

H. Need to Use Cash Collateral. The Debtors require the ability to use cash and the proceeds of existing accounts receivable and inventory to maintain the operation of its business and preserve its value as a going concern. The Debtor lacks unencumbered cash sufficient to operate its business. The Prepetition Lenders have authorized the use of Cash Collateral on the terms set forth in that certain interim order regarding the use of cash collateral entered contemporaneously herewith, the terms of

which shall not constitute a violation of or default or event of default under the DIP Agreement or this Order.

I. Business Judgment and Good Faith. The terms of the DIP Facility, including as set forth herein, and in the DIP Agreement are at least as favorable to the Debtor as those available from alternative sources. The terms of the DIP Facility, this Interim Order, and the DIP Agreement have been negotiated in good faith and at arm's length between the Debtor and the DIP Lender, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, are fair and reasonable under the circumstances, and are enforceable in accordance with applicable law. The credit extended to the Debtor by the DIP Lender under the terms of the DIP Facility shall be deemed to have been extended in "good faith" as that term is used in section 364(e) of the Bankruptcy Code and, in express reliance upon the protections set forth therein, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

J. Need for Approval. The Debtor has no alternative source of financing to meet its projected obligations, including payroll and other operating expenses, and consequently it is essential that the Court approve the DIP Facility contemplated hereby. Consummation of the DIP Facility in accordance with the terms of this Interim Order and the DIP Agreement is therefore in the best interests of the Debtor's estate, and is consistent with the Debtor's exercise of its fiduciary duties.

K. Jurisdiction and Venue. This Court has jurisdiction over the Case, the Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and

1334. This Interim Order is entered in a “core” proceeding as defined in 28 U.S.C. §§ 157(b)(2)(A),(D), (G), (K) and (M). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105, 361, 362, 363, 364(e)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507(b) of the Bankruptcy Code, and Bankruptcy Rules 2002, 4001, 6004 and 9014.

L. Notice. Notice of the Interim Hearing in the Motion constitutes appropriate, due and sufficient notice thereof, complies with the Bankruptcy Rules and the Local Bankruptcy Rules. Based on the record, the Court finds, pursuant to sections 105 and 364 of the Bankruptcy Code and Bankruptcy Rule 400 1(c), that notice of the Interim Hearing was adequate under all the circumstances set forth herein.

Based upon the foregoing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. Motion Granted. The Motion is granted on an interim basis to the extent provided herein. Any objections to the Motion and entry of the Interim Order that have not been previously withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled.

2. Approval of Documents. The DIP Facility and the DIP Agreement are hereby approved subject to the terms of this Interim Order and the Final Order. The failure to reference or discuss any particular provision of the DIP Agreement shall not affect the validity or enforceability of any such provision.

3. Authorization to Execute and Deliver Documents. The Debtor is hereby authorized and directed to (i) execute the DIP Agreement, including all documents that the DIP Lender deems necessary to implement the transactions contemplated by the DIP

Agreement, including the Engagement Letter; and (ii) perform each of its obligations under the DIP Agreement and this Interim Order, limit its expenditures consistent with the DIP Agreement and Budget, and comply with all of the terms and provisions of the DIP Agreement and this Interim Order. Furthermore, the Debtor is expressly authorized, empowered and directed to do and perform all acts to make, execute, deliver and implement any other document of any kind required to be executed and delivered in connection therewith, and the terms and conditions of the DIP Agreement are made fully enforceable against the Debtor. Upon execution and delivery of the DIP Agreement and any other documents that are required to be executed hereunder, such documents shall constitute valid, binding and non-avoidable obligations of the Debtor, enforceable against the Debtor in accordance with the terms of this Interim Order. No obligation, payment, transfer, or grant of a lien or security under the DIP Agreement or this Interim Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable nonbankruptcy law (including, without limitation, under sections 502(d), 548 or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim. The Debtor is authorized and directed to perform all of its obligations under this Interim Order, the DIP Agreement and the other documents without any further order or approval of the Court.

4. Authorization to Borrow; The Budget. Good and sufficient cause has been shown for the entry of this Interim Order. The Debtor is hereby authorized to incur the

DIP Obligations and close the DIP Facility solely in accordance with and pursuant to the terms and provisions of the Budget, this Interim Order, and the DIP Agreement.

5. Authorization to Use Cash Collateral. The Debtor is hereby authorized to use Cash Collateral solely in accordance with and pursuant to the terms and provisions of the Budget.

6. Amendments. The DIP Lender and the Debtor may amend, modify, supplement or waive any provision of the DIP Agreement if such amendment, modification, supplement or waiver is not material (in the good faith judgment of the DIP Lender and the Debtor), upon 5 business day's prior written notice to the Bond Trustee but otherwise without any need to apply to, or receive further approval from, the Court, subject to providing notice to any appointed committee and the Prepetition Lenders. Any material amendment, modification, supplement or waiver shall be in writing, signed by the parties and approved by the Court on appropriate notice, including to the Office of the United States Trustee, the Bond Trustee, and any appointed official committee.

7. Payment under the DIP Facility. The Debtor shall make payments to the DIP Lender in accordance with the terms of this Interim Order, the DIP Agreement and any related documents in accordance with the procedures herein and therein set forth.

8. Superpriority Administrative Expense Claim; Waiver under Section 506(c). All of the DIP Facility, subject to and junior to only the Carve-Out (as defined below), shall have the status of an allowed superpriority administrative expense claim in the Debtor's Case pursuant to section 364(c)(1) of the Bankruptcy Code, having priority over any and all administrative expenses, adequate protection claims and all other claims against the Debtor, whether heretofore or hereafter incurred, of any kind or nature

whatsoever, including without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code. Other than the Carve-Out, no claim or expense having a priority senior or *pari passu* to the priority granted to the DIP Lender in the Interim Order shall be granted or permitted in the Case, or in any superseding chapter 7 case, while any portion of the DIP Facility remains outstanding.

9. Carve-Out Terms. The liens and superpriority claims granted to the DIP Lender with respect to the DIP Facility shall be subject and subordinate to a carve-out of the DIP Liens in an aggregate amount equal to sum of: (i) the dollar amount of such fees and expenses to the extent (a) incurred or accrued prior to an Event of Default (whether paid or unpaid); (b) provided for under the Budget; and (c) previously or subsequently allowed by court order; plus (ii) \$50,000; plus (iii) the statutory fees of the United States Trustee pursuant to 28 U.S.C. § 1930 and the fees of the Clerk of the Bankruptcy Court , and (iv) the payment of any claim of any subsequently appointed Chapter 7 Trustee to the extent of \$20,000 (collectively, the “Carve-Out”), subject to the rights of the DIP Lender and any other party in interest to object to the award of any such fees and expenses.

10. Payment of Administrative Expenses. Unless a material breach by the Debtor of the DIP Agreement shall have occurred (or would result from such payment),

and subject to the Budget, the Debtor shall be permitted to pay, as the same may become due or authorized and payable, administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code incurred in the ordinary course of its business.

11. Collateral Security. The DIP Lender is hereby granted, pursuant to section 364(c)(2), (3) and (d) of the Bankruptcy Code, senior secured liens on, and security interests in, all of the Collateral, subject only to the Carve-Out (the “DIP Liens”). The term “Collateral” shall have the same meaning as in the DIP Agreement and is incorporated herein, except as that term may be supplemented hereby. Collateral shall, upon entry of a Final Order, include any and all causes of action of the Debtor and its estate under sections 544, 545, 547, 548, 549, 550, 553 and 724 of the Bankruptcy Code and any proceeds thereof and any and all other claims and causes of action of the Debtor and its estate (except for claims and causes of action constituting or relating to the Collateral, including but not limited to collections of accounts receivable and insurance claims). For the avoidance of doubt, the DIP Liens shall prime any and all pre-existing security interests, including the Prepetition Liens.

12. Subordination. The DIP Liens on, and security interests in, the Collateral granted to the DIP Lender under this Interim Order and pursuant to the DIP Agreement shall not be subordinated to, or made *pari passu* with, any other lien or security interest, however and whenever arising, in the Case or any superseding chapter 7 case, other than the Carve-Out.

13. Automatic Perfection of DIP Liens.

(a) The DIP Liens granted to the DIP Lender hereunder and under the DIP Agreement and the Interim Order are valid, binding, continuing, enforceable and fully-perfected with the priorities herein and therein set forth.

(b) The DIP Lender shall not be required to file any financing statements, mortgages, deeds of trust, notices of lien or similar instruments in any jurisdiction or filing office, or to take any other action in order to validate or perfect the DIP Liens granted by or pursuant to this Interim Order and the DIP Agreement.

(c) Should the DIP Lender, in its sole discretion, from time to time, choose to file such financing statements, mortgages, notices of lien or similar instruments, take possession of any Collateral securing the DIP Facility for perfection purposes, or take any other action to protect from infringement or otherwise validate or perfect any DIP Lien, the Debtor and its respective officers, at the DIP Lender's expense (including in respect of any filing or recording costs), are hereby directed to execute any such documents or instruments as the DIP Lender shall reasonably request, and all such documents and instruments shall be deemed to have been filed or recorded at the time and on the date of entry of the Interim Order.

(d) In the discretion of the DIP Lender, a certified copy of this Interim Order may be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby directed to accept such certified copy of the Interim Order for filing and recording, and such certified copy shall be deemed filed and recorded at the time and on the date of entry of this Interim Order, as the case may be.

14. Termination.

(a) Termination Date. Unless extended by the Court upon the written agreement of the DIP Lender, the Debtor's authorization to incur the DIP Facility pursuant to this Order will automatically terminate, and the DIP Lender's commitments shall automatically terminate, upon the Maturity Date (as defined in the DIP Agreement, and which includes acceleration on account of any events of default on the notice required by the DIP Agreement thereunder).

(b) Rights Upon Termination. Upon the Maturity Date, without further notice or order of the Court, and at the DIP Lender's election, (i) the DIP Facility shall be immediately due and payable; (ii) the DIP Lender shall be entitled to apply to or set off against the outstanding balance of the DIP Facility any Collateral in the DIP Lender's possession or control until the DIP Facility is indefeasibly and finally paid in full; and (iii) (x) effective upon entry of a Final Order, at the DIP Lender's election, this Court will conduct a 363 sale on not less than 60 days' notice of all or substantially all of the Collateral, and on terms reasonably acceptable to the DIP Lender, with proceeds to be used to first pay the DIP Facility in the manner set forth in the DIP Agreement (and with the DIP Lender preserving the right to credit bid in such sale, whether conducted under section 363 or pursuant to a plan); (y) unless the Debtor obtains, within five (5) business days of the occurrence of the Maturity Date, an order of this Court to the contrary, on notice to and with an opportunity to be heard by (i) the Lender, (ii) the indenture trustee for the Debtor's Bonds, (iii) the Office of the U.S. Trustee, and (iv) any statutory committee that may be formed in this case, at the DIP Lender's election, without further order of the Court, the DIP Lender shall have automatic and immediate relief from the automatic stay with respect to the Collateral (without regard to the passage of time

provided for in Bankruptcy Rule 4001(a)(3)), and shall be entitled to exercise all rights and remedies available to it under the DIP Agreement, this Order and applicable nonbankruptcy law with respect to the Collateral; and (z) at DIP Lender's election, the Debtor shall cooperate with the DIP Lender in the exercise of its rights and remedies under the DIP Agreement, this Order and applicable nonbankruptcy law with respect to the Collateral; provided that the DIP Lender shall have no obligation to advance the DIP Facility (or any portion thereof) to the Debtor; and solely for purposes of determining if the DIP Facility has been paid in full, the value of any deed in lieu accepted by the DIP Lender shall be determined on the date of acceptance by a certified financial appraiser selected by the DIP Lender, in its sole discretion.

(c) State and Federal Law Restrictions. Effective upon entry of a Final Order providing for such relief (if authorized), and in connection with any exercise of rights and remedies by the DIP Lender with respect to the DIP Agreement, the Debtor hereby expressly waives its rights under any "single action," collateral first, anti-deficiency, or other rules or restrictions under state or federal law, and this Court hereby finds and concludes that any all such rules and restrictions with respect to the DIP Facility are superseded by this Order. If for any reason the waivers, findings and conclusions in this paragraph are invalidated by any court of competent jurisdiction after the entry of this Interim Order, the DIP Lender's covenants and agreements under this paragraph shall immediately cease, and the DIP Lender shall be entitled to exercise its rights and remedies with respect to the DIP Facility in the same manner it would have as if the DIP Lender had never exercised any of its rights and remedies under the DIP Agreement, this Interim Order or applicable nonbankruptcy law.

15. As additional consideration for the extension of the DIP Facility:

(a) Prohibition Against Additional Debt. The Debtor will not incur or seek to incur debt secured by a lien which is equal to or superior to the DIP Liens, or which is given superpriority administrative expense status under § 364(c)(1), unless, in addition to the satisfaction of all requirements of § 364 for the incurrence of such debt (i) the DIP Lender has consented to any order authorizing the incurrence of additional debt; (ii) at the time of the entry of such an order, there are no monies under the DIP Facility outstanding and no obligation of the DIP Lender to extend additional monies under the DIP Agreement; or (iii) such credit or debt is first used to immediately and indefeasibly pay the DIP Facility and Prepetition Secured Claim in cash and in full.

(b) Surcharge. Subject to entry of the Final Order, at no time during the case shall the surcharge provisions of § 506(c), the enhancement of collateral provisions of § 552, or any other legal or equitable doctrine (including unjust enrichment) be imposed upon the DIP Lender or any of the Collateral for the benefit of any party in interest, including the Debtor, any statutory committee, creditors, any of the professionals subject to the Carve-Out, or any trustee.

(c) Plan. Effective upon entry of a final order providing for such relief (if authorized), unless the DIP Lender consents thereto, no order shall be entered confirming a plan in this case unless such order provides for payment in full in cash of all of the DIP Facility on the effective date thereof, together with releases, exculpations, waivers and indemnification acceptable to the DIP Lender, in its sole discretion.

16. Binding Effect of Interim Order; Successors and Assigns; Survival. The DIP Agreement and the provisions of this Interim Order shall, subject to entry of a Final

Order, be binding upon all parties-in-interest in the Case, including without limitation, the DIP Lender, any official committee appointed in the Case, and the Debtor and its respective successors and assigns, any chapter 11 trustee or chapter 7 trustee or similar responsible person hereafter appointed as a representative of the Debtor's estate and any such successors or assigns, without further order of this Court, and shall inure to the benefit of the DIP Lender and the Debtor and their respective successors and assigns. The Debtor and its respective successors and assigns shall be deemed authorized and directed to comply with the provisions of the DIP Agreement; provided, however, that the DIP Lender shall have no obligation to permit the use of the Collateral or extend any financing to any chapter 11 trustee or chapter 7 trustee or similar responsible person appointed for the estate of the Debtor. The provisions of this Interim Order, and any actions taken pursuant to or in reliance upon the terms hereof, shall survive entry of, and govern in the event of any conflict with, any order which may be entered in the Case (i) confirming any chapter 11 plan; (ii) converting the Case to a case under chapter 7; or (iii) solely to the extent authorized by applicable law, dismissing this Case. The terms and provisions of this Interim Order, including the rights granted to the DIP Lender under §§ 364(c) and (d), shall continue in full force and effect until all of the DIP Facility is indefeasibly and finally paid in cash in full and discharged.

17. No Impairment of Liens. The liens, security interests, Superpriority Administrative Expense Claims, DIP Facility and other rights and remedies granted to the DIP Lender under the Interim Order or under the DIP Agreement and any actions taken pursuant hereto or thereto shall survive, and shall not be modified, altered or impaired in any manner by (a) any other financing or extension of credit or incurrence of debt by the

Debtor (under section 364 of the Bankruptcy Code or otherwise), (b) the entry of an order confirming any plan of reorganization, (c) the entry of an order converting the Debtor's Case to chapter 7 or dismissing the chapter 11 case, (d) the maturity of the DIP Facility, or (e) upon the Termination Date. This Interim Order and the DIP Agreement shall continue in force in the Case or any superseding chapter 7 case, and the liens and security interests granted to the DIP Lender and the Superpriority Administrative Expense Claims and payment provisions contained in the DIP Agreement and the Interim Order shall continue in effect until the DIP Facility is indefeasibly satisfied, paid and discharged.

18. Good Faith. Having been found to be extending the DIP Facility to the Debtor in good faith, the DIP Lender is entitled to the full protection of section 364(e) of the Bankruptcy Code with respect to the DIP Facility and the Superpriority Administrative Expense Claims and liens created or authorized by this Interim Order in the event that this Interim Order or any authorization contained herein is stayed, vacated, reversed or modified on appeal. If any provision of this Interim Order is hereafter modified, vacated, reversed or stayed by subsequent order of this or any other court for any reason, such modification, vacation, reversal or stay shall not affect the validity, enforceability and priority of any of the claims, liens and security interests granted to the DIP Lender under this Interim Order, and the DIP Agreement and the validity, enforceability or priority of the claims, liens and security interests of the DIP Lender shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender shall be entitled to all of the rights, privileges and benefits granted herein, including, without limitation, the liens, security interests and priorities granted to the DIP Lender in this Interim Order with respect to all of the DIP Facility.

19. No Marshaling. In no event shall the DIP Lender be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral.

20. No Waiver. The DIP Lender’s failure, at any time or times hereafter, to require strict performance by the Debtor (or by any trustee) of any provision of this Interim Order, the DIP Agreement or any other related documents shall not waive, affect or diminish any right of the DIP Lender, as the case may be, to thereafter demand strict compliance and performance therewith. No delay on the part of the DIP Lender in the exercise of any right or remedy under this Interim Order, the DIP Agreement, the Bankruptcy Code, or applicable nonbankruptcy law shall preclude any other or further exercise of any right or remedy. The DIP Lender shall not be deemed to have suspended or waived any of its rights or remedies under this Order, the DIP Agreement, the Bankruptcy Code, or applicable nonbankruptcy law unless such suspension or waiver is in writing, signed by a duly authorized officer of such party, and directed to the Debtor.

21. Financial Information. The Debtor is hereby directed to deliver to the DIP Lender such financial and other information concerning the business and affairs of the Debtor and any of the Collateral as may be required pursuant to the DIP Agreement and/or as the DIP Lender shall reasonably request from time to time. The Debtor is also directed to allow the DIP Lender access to the Debtor’s business premises in accordance with the terms of the DIP Agreement for the purpose of enabling the DIP Lender to inspect and audit the Collateral and the Debtor’s books and records.

22. Limitation on Charging Expenses Against Collateral. Except as set forth herein, no costs or expenses of administration of the Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the

Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law without the prior written consent of the DIP Lender. No such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender, and nothing contained in this Interim Order shall be deemed to be a consent by the DIP Lender to any charge, lien, assessment or claim against the Collateral under section 506(c) of the Bankruptcy Code or otherwise; and, further provided that the Debtor expressly waives all of its rights to charge any costs or expenses against or recover from the Collateral pursuant to section 506(e) of the Bankruptcy Code or any similar principle of law.

23. Payments Free and Clear. Any and all payments or proceeds remitted to the DIP Lender pursuant to the provisions of this Interim Order or any subsequent order of this Court shall be received free and clear of any claim, charge, assessment or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) (whether asserted or assessed by, through or on behalf of the Debtor) or 552(b) of the Bankruptcy Code.

24. Insurance. The DIP Lender shall be immediately named and added to be the loss payee under the Debtor's insurance policies and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies, first, to the payment in full of the DIP Facility, second to the payment in full of the Prepetition Secured Claims, and third, to the Debtor.

25. Automatic Stay. The automatic stay imposed by virtue of section 362 of the Bankruptcy Code is hereby vacated and modified insofar as necessary to permit the DIP Lender to take any action authorized or contemplated by this Interim Order or the

DIP Agreement and to carry out the terms thereof, subject, however, to the satisfaction of any notice, procedural and other conditions contained in this Interim Order or the DIP Agreement.

26. No Control. By consenting to this Interim Order, by making advances, loans or extending financial accommodations of any type, kind or nature under this Interim Order or by administering the loans made hereunder, the DIP Lender shall not be deemed to be in control of the operations of the Debtor or to be acting as a “responsible person,” “managing agent” or “owner or operator” (as such terms or any similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar Federal or state statute) with respect to the operation or management of the Debtor.

27. Reimbursement of Fees and Expenses. Upon receiving written demand therefor (together with backup documentation supporting such request), the Debtor shall (i) pay or reimburse the DIP Lender for all reasonable out-of-pocket costs and expenses incurred in connection with the negotiation, preparation, execution and delivery of, and any amendment, supplement, waiver or modification to, the DIP Agreement, the Interim Order, the Final Order and any other documents or motions prepared in connection herewith or therewith, its monitoring of and involvement and participation in this chapter 11 case, and the consummation and administration of the transactions (including the reasonable expenses of the DIP Lender’s due diligence investigation including third party appraisers, advisors, consultants, lien and title investigations, and collateral monitoring services) contemplated hereby and thereby, including the reasonable fees and disbursements of advisors and one lead outside counsel firm and one local outside

counsel firm, (ii) pay or reimburse the DIP Lender for all reasonable costs and expenses incurred in connection with the enforcement or preservation of any rights under the DIP Agreement, the Interim Order, or the Final Order, and any such other documents related thereto, including, without limitation, the reasonable fees and disbursements of its advisors and one lead outside counsel firm and one local outside counsel firm (including the fees and disbursements of advisors to counsel but no more than one financial advisor) and the reasonable fees and disbursements incurred in obtaining relief from the automatic stay under the Bankruptcy Code or other stay or injunction restricting DIP Lender's enforcement activities and proceedings, (iii) pay, indemnify and hold harmless the DIP Lender from and against any and all recording and filing taxes, assessments and fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other similar taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, the DIP Agreement, the Interim Order, or the Final Order, and any such other documents related thereto, and (iv) pay, indemnify and hold harmless the DIP Lender (and its directors, trustees, officers, employees, affiliates, controlling persons, agents, attorneys, professionals, advisors, successors and assigns) from and against any and all other actual liabilities, obligations, losses, damages, penalties, actions, judgments, suits, and related reasonable and documented out of pocket costs, expenses or disbursements of any kind or nature whatsoever (other than for Lender's gross negligence or willful misconduct as determined by a final and non-appealable order of the Court), including the reasonable fees and disbursements of one

lead outside counsel firm and one local outside counsel firm (including the reasonable fees and disbursements of advisors to counsel, but no more than one financial advisor) with respect to the execution, delivery, enforcement, performance and administration of the DIP Agreement, the Interim Order, or the Final Order, and any such other documents related thereto (all the foregoing in this clauses (i) through (iv), collectively, the “Indemnified Liabilities”); provided, however, that the Debtor shall not have any obligation hereunder to the DIP Lender with respect to Indemnified Liabilities arising from the fraudulent actions, gross negligence, bad faith or willful misconduct of DIP Lender (or any of its directors, trustees, officers, employees, affiliates, controlling persons, agents, attorneys, professionals, advisors, successors and assigns) as determined by a final and non-appealable order of the Court. To the extent that any payments request submitted pursuant to this Paragraph 27 exceeds the amounts in the Budget (including any allowed variances), Lender shall provide ten (10) days’ notice to the indenture trustee for the Bonds of such payment request. The Office of the US Trustee and any statutory committee that may be formed reserves the rights to request and review Lender’s fees and expenses for reasonableness to the extent the fees and/or expenses exceed the amounts set forth in the budget.

28. Exculpation. Nothing in the Interim Order, the DIP Agreement or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender of any liability for any claims arising from the prepetition or postpetition activities of the Debtor in the operations of its business, or in connection with its restructuring efforts. So long as the DIP Lender complies with its obligations under the DIP Agreement and this Interim Order and its

obligations, if any, under applicable law (including the Bankruptcy Code), (a) the DIP Lender shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and (b) all risk of loss, damage or destruction of the Collateral shall be borne by the Debtor.

29. The United States Trustee, any statutory committee that may be formed, and any party in interest, reserves all rights to object to the retention application of Racebrook Marketing Concepts, LLC, D/B/A Sheldon Good & Company when such retention application is filed. Nothing contained in the Motion or Order shall limit the ability of the United States Trustee, any statutory committee that may be formed, and any party in interest to file such objection, or the grounds contained in the objection.

30. Inconsistency. In the event of any irreconcilable inconsistency between this Interim Order and the DIP Agreement or any other agreement heretofore or hereafter entered into by and between the Debtor and the DIP Lender, the terms of this Interim Order shall govern and control. To the extent that there is any provision not in this Interim Order that is required to be so pursuant to the DIP Agreement, such provisions are hereby deemed incorporated in this Interim Order.

31. Retention of Jurisdiction. The Bankruptcy Court shall retain jurisdiction to enforce the provisions of this Interim Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for the Debtor, notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

32. Immediate Docketing of Interim Order. The Clerk of the Court is hereby directed to forthwith enter this Interim Order on the docket of this Court maintained in regard to the Case.

33. Effectiveness. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order; provided, however, that the Court reserves all rights of any appointed official committee of unsecured creditors to object to the terms of the Final Order.

34. Headings. Section headings used herein are for convenience only and are not to affect the construction of, or to be taken into consideration in interpreting, this Interim Order.

35. Notice of Final Hearing; Objections. The Debtor shall, on or before 10/9 __, 2013 transmit copies of a notice of the entry of this Interim Order, together with a copy of this Interim Order and a copy of the Motion, to the parties having been given notice of the Interim Hearing, to any party which has filed prior to such date a request for notices with this Court and to counsel for the official committee of unsecured creditors, once appointed. The notice of entry of this Interim Order shall state that any party in interest objecting to the DIP Facility on a final basis and the entry of the Final Order shall file written objections with the Clerk of the United States Bankruptcy Court for the District of New Jersey no later than 12:00 p.m. on 10/10 __, 2013 and shall

serve such objections so that the same are received on or before such date by: (a) Debtor's counsel, DelBello Donnellan Weingarten Wise & Wiederkehr, LLP. Rattet Pasternak Bankruptcy Practice Group, One North Lexington Avenue, 11th Floor, White Plains, New York 10601, Attn: Robert Rattet, Esq. and Wong Fleming, 821 Alexander Road, Suite 200 Princeton, New Jersey 08540, Attn: Gregory Johnson, Esq.; (b) DIP Lender's Counsel Morrison Cohen LLP, 909 Third Avenue, 27th Floor, New York NY 10029, Attn: Joseph T. Moldovan, Esq. and Robert K. Dakis, Esq.; and Fox Rothschild LLP, 75 Eisenhower Parkway, Suite 200, Roseland, NJ 07068-1600, Attn: Richard M. Meth (c) the Office of the United States Trustee for the District of New Jersey, and (d) any other party filing notices of appearances or otherwise is entitled to notice.

36. Final Hearing. The Final Hearing will be held before this Court on October 15, 2013 at 11:00 a.m.

Lafayette Yard Hotel and Conference Center
 13-Week Cash Flow
 Forecasted Results

Week Number Week Ending	0 9/22/13	1 9/29/13	2 10/6/13	3 10/13/13	4 10/20/13	5 10/27/13	6 11/3/13	7 11/10/13	8 11/17/13	9 11/24/13	10 12/1/13	11 12/8/13	12 12/15/13	13 12/22/13	Total
Cash Receipts (Sales, AR Collections, Sales and Occupancy Tax Collections)	\$ 32	\$ 35	\$ 48	\$ 42	\$ 49	\$ 36	\$ 36	\$ 42	\$ 40	\$ 33	\$ 35	\$ 33	\$ 34	\$ 498	
Operating Disbursements:															
Payroll & Related		40	45	37	49	43	38	37	37	43	37	38	37	42	524
Utility Costs		-	-	85	15	-	-	85	-	-	-	85	-	-	272
Management Fee		-	-	-	13	-	-	-	-	13	-	-	-	13	40
Operating Expenses		21	21	25	21	21	21	21	21	21	21	21	21	21	276
All other expenses		10	10	10	10	10	10	10	10	10	10	10	10	10	130
Total Operating Disbursements		71	76	158	108	74	69	154	68	87	68	154	68	86	1,241
Rent, Taxes, and Insurance:															
Occupancy/sales taxes		-	-	-	-	6	-	-	-	23	-	-	-	18	47
Insurance payments		-	-	-	-	-	96	-	-	-	-	-	-	-	96
Total Rent, Taxes, and Insurance		-	-	-	-	6	96	-	-	23	-	-	-	18	143
Capital Expenditures															
FF&E Expenditures		-	-	-	-	-	-	-	-	-	-	-	-	-	-
Special Projects/contingency/emergency		5	5	5	5	5	5	5	5	5	5	5	5	5	65
Total Capital Expenditures		5	5	5	5	5	5	5	5	5	5	5	5	5	65
Other Disbursements															
Utility deposits		95	-	-	-	-	-	-	-	-	-	-	-	-	95
Vendor deposits		50	-	-	-	-	-	-	-	-	-	-	-	-	50
Professional Fees (Less: 20% Holdback)		-	-	-	68	-	-	-	-	124	-	-	-	124	316
Trustee Fees		-	1	-	-	-	-	-	-	-	-	-	-	-	1
DIP Lender Counsel		-	-	-	35	-	-	5	-	-	-	5	-	-	45
DIP Fees and Interest		20	-	-	-	-	-	-	-	-	-	-	-	-	20
Total Other Disbursements		165	1	-	103	-	-	5	-	124	-	5	-	124	527
Total Disbursements		241	82	163	216	85	170	164	73	239	73	164	73	233	1,975
DIP Borrowing (Repayment)		200	-	-	500	-	-	500	-	-	-	500	-	-	1,700
Beginning Cash Balance	\$ 182	\$ 173	\$ 127	\$ 12	\$ 339	\$ 304	\$ 170	\$ 542	\$ 511	\$ 312	\$ 272	\$ 643	\$ 603	\$ 182	
Net Cash Flow	(9)	(47)	(114)	326	(35)	(134)	372	(31)	(200)	(40)	371	(40)	(199)	223	
Ending Cash Balance	\$ 182	\$ 173	\$ 127	\$ 12	\$ 339	\$ 304	\$ 170	\$ 542	\$ 511	\$ 312	\$ 272	\$ 643	\$ 603	\$ 404	