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ATTORNEYS FOR THE  
DEBTOR AND DEBTOR IN POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

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In re:	)	
	)	Chapter 11 Case
	)	
NNN 3500 MAPLE 26, LLC,	)	Case No. 13-30402-hdh-11
	)	
	)	<b>Hearing Date: April 22, 2013</b>
Debtor.	)	<b>Hearing Time: 10:45 a.m.</b>

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**DEBTOR'S MOTION FOR ENTRY OF ORDER (1) AUTHORIZING THE USE OF  
CASH COLLATERAL AND (2) GRANTING ADEQUATE PROTECTION  
TO SECURED LENDER**

TO THE HONORABLE HARLIN D. HALE, UNITED STATES BANKRUPTCY JUDGE:

NNN 3500 Maple 26, LLC ("Debtor"), as debtor in possession, files this motion (the "Motion") pursuant to sections 105(a), 361, and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the "Bankruptcy Code") and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for entry of interim and/or final orders authorizing the use of cash collateral, granting adequate protection to the Debtor's secured

lender, and granting related relief. In support of this Motion, the Debtor respectfully represents as follows:

### **PRELIMINARY STATEMENT**

The Debtor is one of 28 Tenants in Common that own the Property<sup>1</sup>, an 18-story commercial office building. The Trust is the holder of the Note in the original principal amount of \$47,000,000.00 executed by the Debtor as borrower and asserts liens and security interests in the Property and the rents collected therefrom to secure payment of the indebtedness evidenced by the Note. Since December 31, 2010, all income from the Property has been deposited under the terms of a Case Management Agreement into a “lock box” account controlled by CWCAM, the Special Servicer for the Trustee of the Trust. Thus, CWCAM is in complete control of the revenues generated by the Property.

During the pendency of the Debtor’s bankruptcy case, TIC Properties, the property manager for the Property, has submitted itemized lists of the operating expenses relating to the Property to CWCAM and requested funding to pay these expenses. CWCAM has partially approved these funding requests, agreeing to fund only those expenses that it deemed “essential.” However, CWCAM has refused to fund certain operating expenses associated with the Property, including, *inter alia*, TIC Properties’ management fees and leasing commissions. The Debtor believes that all of the expenses reflected on the Budget, including the fees and expenses incurred by TIC Properties as property manager, are essential to the continued operation of the Property and files this Motion to ensure that all of the actual and necessary operating expenses associated with the Property are paid during the pendency of the Debtor’s bankruptcy case.

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<sup>1</sup> Capitalized terms used in the Preliminary Statement shall have the meaning ascribed to them below.

## **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

## **BACKGROUND**

### **a. Nature of the Debtor's Business**

2. The Debtor is one of 28 Tenants in Common, all limited liability companies (the "TIC Owners"), that acquired an 18-story commercial office building situated at and commonly known as 3500 Maple Avenue, Dallas, Texas 75219 (the "Property") as a part of a real estate syndication in or about October 2006. The nature of the TIC Owners' relationship with one another and their rights and responsibilities with respect to the Property are set forth in that certain Tenants in Common Agreement ("TIC Agreement").

3. The syndication was originally sponsored by Triple Net Properties, Inc. ("Triple Net"). Triple Net's successor in interest is Daymark Realty Advisors, Inc. ("Daymark").<sup>2</sup>

### **b. The Property Management Agreement**

4. On or about November 23, 2005, Triple Net entered into that certain Management Agreement (the "Management Agreement") with the TIC Owners, whereby Triple Net was made the manager of the property. In September 2006, the Debtor executed that certain Assignment and Assumption of Tenants in Common Agreement and Management Agreement (the "Assignment Agreement"), whereby NNN 3500 Maple, LLC ("3500 Maple") assigned, and the Debtor assumed, any and all of 3500 Maple's rights and obligations under the TIC Agreement and the Management Agreement with respect to its ownership interest in the Property.

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<sup>2</sup> Nothing herein should be construed as an admission that Daymark is Triple Net's legitimate successor in interest, and the Debtor reserves the right to contest Daymark's status as Triple Net's successor in interest.

5. Subsequently, in December 2010, Triple Net entered into that certain Asset and Property Management Subcontract (the “Subcontract”) with TIC Properties Management, LLC (“TIC Properties”). Pursuant to the Subcontract, TIC Properties currently serves as the property manager of the Property.

**c. The Secured Indebtedness**

6. As a part of the syndication, on or about December 27, 2005, Wachovia Bank, National Association (the “Original Lender”) made a loan in the original principal amount of \$47,000,000.00 to 3500 Maple and NNN 3500 Maple VF 2003, LLC (collectively with 3500 Maple, the “Original Borrowers”), which is evidenced by a Promissory Note (the “Note”). The Note is secured by, *inter alia*, a Deed of Trust, Security Agreement, and Fixture Filing dated December 27, 2005 (the “Deed of Trust”). In addition, the Original Borrowers executed an Assignment of Leases and Rents (“Assignment of Rents”) in favor of the Original Lender dated December 27, 2005.

7. The current holder of the Note is Wachovia Bank Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2006-C23 (the “Trust”). CWC Capital Asset Management LLC (“CWCAM”) is the Special Servicer for U.S. Bank National Association (“Trustee”), which, as successor in interest to Bank of America, N.A., is the Trustee of the Trust.

8. At the insistence of the Trust, after or about December 31, 2010, all income from the Property has been deposited under the terms of a Case Management Agreement into a “lock box” account (the “Lock Box Account”) controlled by CWCAM. Thus, CWCAM is in complete control of the revenues generated by the Property and is responsible for paying the expenses associated with the management and operation thereof, including, *inter alia*, the payment of all

fees and expenses owed to TIC Properties, as Daymark's subcontractor, pursuant to the Management Agreement.

9. Pursuant to the Deed of Trust and the Assignment of Rents, the Trust asserts a security interest in certain cash and cash equivalents in the Lock Box Account as of the Petition Date and in the lease payments that have been or will be collected from the Property post-petition (the "Cash Collateral").

10. CWCAM alleges that the TIC Owners, including the Debtor, are in default under the Note and other loan documents as a result of, *inter alia*, the failure to make the monthly debt service payment due on October 11, 2012. Pursuant to a letter dated October 12, 2012, CWCAM notified the TIC Owners that they were in default and that the Trust had exercised its right to accelerate the Note. The Trust subsequently commenced foreclosure proceedings, and a foreclosure sale was scheduled for December 4, 2012.

**d. The Debtor's Bankruptcy Case**

11. On November 30, 2012 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code<sup>3</sup> in the United States Bankruptcy Court for the Central District of California.

12. On January 17, 2013, the Honorable Scott C. Clarkson, United States Bankruptcy Judge conducted a status conference on the Debtor's case. Following the status conference, Judge Clarkson determined that venue of the Debtor's case should be transferred to the United States Bankruptcy Court for the Northern District of Texas, and on January 23, 2013, he signed an order effectuating the venue transfer (the "Transfer Order").

13. On February 28, 2013, the Debtor filed the Plan of Reorganization Proposed by

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<sup>3</sup> 11 U.S.C. §§ 101–1532.

NNN 3500 Maple 26, LLC (the “Plan”).

**e. CWCAM’s Purported Post-Petition Termination of the Management Agreement**

14. On December 21, 2012, Venable, LLP (“Venable”), acting as counsel for CWCAM, sent written notice (the “Termination Notice”) to Triple Net and the TIC Owners, including the Debtor, purporting to exercise its right under Article 2.26 of the Deed of Trust to remove Triple Net and “any individual, entity, or subcontractor acting as property manager of the Property on [its] behalf” (which would include Triple Net’s successor in interest Daymark and its subcontractor TIC Properties) as manager of the Property effective as of January 23, 2013.

15. Subsequently, on January 22, 2013, Venable, again acting as counsel for CWCAM, sent a letter to Triple Net and the TIC Owners, including the Debtor, stating that, in light of the Trust’s termination of the Management Agreement, as of January 23, 2013, the Trust would no longer pay any management fees, leasing commissions, construction management fees, selling commission, or loan fees due and owing to Triple Net or its subcontractor TIC Properties under the Management Agreement from the Lock Box Account.

16. On or before January 3, 2013, the Debtor informed CWCAM that it was opposed to the change of property manager at this time and that the change of property manager violated the automatic stay. The Debtor requested that CWCAM to cease and desist with its efforts. CWCAM refused to alter its course of action, forcing the Debtor to file a motion to enforce the automatic stay to prevent CWCAM from terminating the Management Agreement.

17. The Court conducted a hearing on the Debtor’s motion to enforce the automatic stay on February 19, 2013, and on February 27, 2013, entered its Order Granting Debtor’s Motion for the Entry of an Order Enforcing the Automatic Stay and Granting Related Relief in Part [Docket No. 96] (the “Stay Enforcement Order”). Pursuant to the Stay Enforcement Order,

the Court held, *inter alia*, that the Debtor's rights under Management Agreement constitute property of the Debtor's estate and CWCAM's purported termination of the Management Agreement by the issuance of the Termination Notice is null and void. However, the issue of the payment of TIC Properties' post-petition management fees, leasing commissions, and other fees and expenses has not yet been addressed by the Court.

18. To date, TIC Properties continues to manage the Property; however, CWCAM has not provided funding for TIC Properties' management fees, leasing commissions, or other fees and expenses since January 2013.

### **RELIEF REQUESTED**

19. By this Motion, the Debtor seeks entry of interim and/or final orders pursuant to sections 105(a), 361, and 363 of the Bankruptcy Code and Rule 4001 of the Bankruptcy Rules authorizing the use of Cash Collateral. A copy of the Debtor's proposed cash collateral budget (the "Budget") for the months of March 2013 through June 2013 is attached hereto as **Exhibit "A"**. Payment of the expenses reflected on the Budget is reasonable and necessary to prevent immediate and irreparable harm to the Debtor's estate. Thus, the Debtor requests that the Court enter an order requiring CWCAM to fund the payment of all of the expenses reflected on the Budget from the Lock Box Account and authorizing the property manager to use Cash Collateral to pay such expenses.

20. In order to ensure that the Trust's interests are adequately protected, the Debtor proposes to grant the Trust adequate protection in the form of replacement liens upon all categories of property of the Debtor, whether now existing or hereafter acquired or arising, upon which the Trust held prepetition liens and security interests and all proceeds, rents, products or profits thereof (collectively, the "Collateral"); *provided, however*, that such liens shall not prime

any pre-existing liens which have priority over the Trust's prepetition liens (e.g., the liens of ad valorem taxing authorities). Moreover, as the Budget reflects, the revenues generated by the Property exceed the operating expenses. The Debtor submits that, in light of the foregoing, the Trust's interests are adequately protected and, therefore, the Court should grant the relief requested herein.

**BASIS FOR RELIEF**

21. Section 363(c) of the Bankruptcy Code provides as follows:

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c)(2).

22. The relief requested herein is necessary to prevent immediate and irreparable harm to the Debtor's chapter 11 estate and should provide sufficient funds to allow for the continued operation of the Property and the preservation of the value thereof. The Debtor asserts that a critical need exists for the use of the Cash Collateral in order to maintain the Property and satisfy the needs of its tenants during the pendency of the Debtor's bankruptcy case. The Debtor asserts that, at this time, the use of Cash Collateral is vital to both the maintenance of its current tenants and the attraction of new tenants and is therefore crucial to the preservation and maintenance of the going concern value of the Property.

23. The TIC Agreement contemplates that the day-to-day management and operation of the Property will be performed by a property manager, not the TIC Owners. Thus, maintaining a property manager is essential to the continued operation of the Property. The



Court has held that CWCAM's purported post-petition termination of the Management Agreement through the issuance of the Termination Notice is null and void; thus, TIC Properties, as Daymark's subcontractor, continues to serve as the property manager. However, as noted above, CWCAM refuses to pay TIC Properties' fees and expenses from the Lock Box Account. It is essential that these fees are paid as otherwise TIC Properties may have no choice but to cease managing the Property. Regardless of whom the property manager is, it is of crucial importance that the property manager's fees and expenses are paid to ensure that the Property is properly managed and all issues with respect to maintenance, upkeep, and tenant relations are addressed promptly.

24. The use of Cash Collateral and the adequate protection proposed herein is fair and reasonable under the circumstances, reflects the Debtor's exercise of prudent business judgment, and is supported by reasonably equivalent value and fair consideration. Also, the adequate protection provided by the proposed order is sufficient to protect the interests of the Trust. As such, the Debtor should be afforded protections equivalent to those provided in section 364(e) of the Bankruptcy Code.

25. A copy of the proposed order granting the use of the Trust's Cash Collateral is attached as **Exhibit "B"**.

### **CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, the Debtor respectfully requests that the Court (1) grant the Motion, (2) enter the proposed order, and (3) grant the Debtor all such other and further relief to which the Debtor may be justly entitled.

Dated: March 28, 2013.

Respectfully submitted,

/s/ Michelle V. Larson

Michelle V. Larson

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ATTORNEYS FOR THE DEBTOR AND  
DEBTOR IN POSSESSION

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was served on all parties receiving ECF Electronic Notice in this proceeding and via United States Mail, First Class postage prepaid on the 28<sup>th</sup> day of March, 2013.

/s/ Michelle V. Larson

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Exhibit "A"

Cash Collateral Budget

Building Name: 3500 Maple Avenue

Income

Code	Description	March	April	May	June	Total
04100	Base Rent	\$429,252	\$430,567	\$430,851	\$430,851	\$1,721,521
04110	Free Rent	\$0	(\$23,958)	(\$23,958)	(\$23,958)	(\$71,875)
04150	Percentage Rent	\$0	\$0	\$0	\$0	\$0
04200	Operating Expense Recovery	\$7,725	\$7,054	\$6,749	\$6,749	\$28,278
04250	Op Exp Recovery (Prior Year)	\$0	\$0	\$0	\$0	\$0
04260	CAM Recovery	\$0	\$0	\$0	\$0	\$0
04270	CAM Recovery (Prior Year)	\$0	\$0	\$0	\$0	\$0
04300	Electricity Recovery	\$44,904	\$44,949	\$43,261	\$44,262	\$177,376
04330	Insurance Recovery	\$0	\$0	\$0	\$0	\$0
04340	Insurance Recovery Prior Year	\$0	\$0	\$0	\$0	\$0
04350	Property Tax Recovery	\$5,809	\$5,809	\$5,809	\$5,809	\$23,234
04360	Property Tax Recovery Prior Year	\$0	\$12,070	\$0	\$0	\$12,070
04400	Parking	\$1,372	\$1,692	\$1,692	\$1,692	\$6,448
04500	Roof Top	\$2,631	\$2,631	\$2,631	\$2,631	\$10,525
04600	Storage	\$0	\$0	\$0	\$0	\$0
04650	Lease Termination	\$0	\$0	\$0	\$0	\$0
04700	Miscellaneous	\$4,540	\$740	\$840	\$190	\$6,310

<b>Total Income</b>	<b>\$496,233</b>	<b>\$481,553</b>	<b>\$467,875</b>	<b>\$468,225</b>	<b>\$1,913,886</b>
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RECOVERABLE EXPENSES

Code	Description					
05000	<b>Cleaning</b>					
05100	Cleaning Contract	\$8,365	\$8,365	\$8,365	\$8,365	\$33,460
05200	Day Porter	\$6,851	\$6,851	\$6,851	\$6,851	\$27,404
05400	Cleaning Supplies	\$0	\$0	\$0	\$0	\$0
05500	Trash Removal	\$3,300	\$3,300	\$3,300	\$3,300	\$13,200
05600	Window Cleaning	\$11,586	\$663	\$411	\$411	\$13,071
05900	Cleaning Miscellaneous	\$552	\$2,052	\$552	\$552	\$3,708
05950	Cleaning Misc. - Bill to Tenants	\$0	\$0	\$0	\$0	\$0
<b>Total Cleaning</b>		<b>\$30,654</b>	<b>\$21,231</b>	<b>\$19,479</b>	<b>\$19,479</b>	<b>\$90,843</b>
06000	<b>Repairs &amp; Maintenance</b>					
06100	Electrical - Bulbs/Ballast	\$2,400	\$1,000	\$2,400	\$1,000	\$6,800
06110	Electrical - R&M Supplies	\$100	\$350	\$1,800	\$25,100	\$27,350
06120	Elevator - Contract	\$5,078	\$5,078	\$5,078	\$5,078	\$20,312
06130	Elevator - Misc.	\$1,400	\$0	\$0	\$0	\$1,400
06200	Exterior R&M	\$9,950	\$2,650	\$2,950	\$1,650	\$17,200
06250	Exterminator	\$170	\$170	\$170	\$170	\$680
06300	Fire & Life Safety	\$1,480	\$34,570	\$480	\$480	\$37,010
06400	Glass Replacement	\$11,000	\$0	\$0	\$0	\$11,000

06500	HVAC - Contract	\$1,335	\$2,255	\$1,335	\$1,335	\$6,260
06510	HVAC - R&M Supplies	\$10,000	\$1,600	\$3,000	\$1,000	\$15,600
06520	HVAC - Water Treatment	\$620	\$620	\$620	\$620	\$2,480
06600	Interior Plantscape	\$623	\$623	\$623	\$623	\$2,492
06610	Interior R&M	\$1,000	\$1,250	\$500	\$1,000	\$3,750
06700	Plumbing - R&M Supplies	\$750	\$1,990	\$750	\$750	\$4,240
06750	Roof	\$0	\$2,500	\$0	\$0	\$2,500
06800	Salaries & Related Costs	\$31,788	\$17,618	\$17,618	\$17,618	\$84,642
06850	Supplies - General	\$900	\$700	\$800	\$200	\$2,600
06855	Uniforms	\$348	\$2,594	\$348	\$348	\$3,638
06900	Miscellaneous	\$0	\$0	\$0	\$0	\$0
06950	Misc - Bill to Tenants	\$0	\$0	\$0	\$0	\$0
<b>Total Repairs &amp; Maintenance</b>		<b>\$78,942</b>	<b>\$75,568</b>	<b>\$38,472</b>	<b>\$56,972</b>	<b>\$249,954</b>
07000	<b>Roads/Grounds/Parking</b>					
07100	Landscaping	\$1,960	\$1,960	\$1,960	\$1,960	\$7,840
07200	Repairs & Maintenance	\$18,050	\$3,250	\$4,300	\$2,800	\$28,400
07300	Snow Removal	\$0	\$0	\$0	\$0	\$0
07490	Miscellaneous	\$20,000	\$0	\$0	\$0	\$20,000
<b>Total Roads/Grounds/Parking</b>		<b>\$40,010</b>	<b>\$5,210</b>	<b>\$6,260</b>	<b>\$4,760</b>	<b>\$56,240</b>
07500	Security Contracts	\$19,240	\$19,240	\$19,240	\$19,240	\$76,960
07900	Security Miscellaneous	\$1,000	\$150	\$150	\$1,000	\$2,300
07950	Security Misc. Bill to Tenants	\$0	\$0	\$0	\$0	\$0
<b>Total Security</b>		<b>\$20,240</b>	<b>\$19,390</b>	<b>\$19,390</b>	<b>\$20,240</b>	<b>\$79,260</b>
08000	<b>Utilities</b>					
08100	Cable	\$255	\$255	\$255	\$255	\$1,020
08200	Chilled Water	\$0	\$0	\$0	\$0	\$0
08300	Electricity	\$44,010	\$46,634	\$50,887	\$51,392	\$633,219
08350	Electricity Bill Back	(\$3,175)	(\$3,175)	(\$3,175)	(\$3,175)	(\$12,700)
08400	Gas	\$0	\$0	\$0	\$0	\$0
08500	Steam	\$0	\$0	\$0	\$0	\$0
08600	Water/Sewer	\$2,876	\$3,072	\$3,029	\$3,906	\$12,884
<b>Total Utilities</b>		<b>\$43,966</b>	<b>\$46,786</b>	<b>\$50,996</b>	<b>\$52,378</b>	<b>\$634,423</b>
<b>Administrative</b>						
09005	Bank Charges	\$1,000	\$1,000	\$1,000	\$1,000	\$4,000
09007	Dues & Subscriptions	\$275	\$275	\$275	\$275	\$1,100
09010	Ground Rent	\$0	\$0	\$0	\$0	\$0
09015	License/Fees/Permits	\$0	\$0	\$0	\$0	\$0
09100	Management Fee	\$19,000	\$19,000	\$19,000	\$19,000	\$76,000
09150	Office Rent	\$3,168	\$3,168	\$3,168	\$3,168	\$12,672
09200	Office Supplies	\$1,000	\$500	\$500	\$500	\$2,500
09250	Postage & Courier	\$270	\$270	\$270	\$270	\$1,080

09300	Professional Fees	\$867	\$303	\$303	\$867	\$2,340
09400	Salaries	\$30,861	\$13,136	\$13,136	\$13,136	\$70,270
09450	Staff Development	\$50	\$1,550	\$50	\$50	\$1,700
09600	Telephone	\$2,585	\$2,585	\$2,585	\$2,585	\$10,340
09650	Tenant Relations	\$0	\$250	\$0	\$0	\$250
09700	Travel - Corporate	\$0	\$0	\$0	\$0	\$0
09750	Travel - Property	\$40	\$40	\$40	\$40	\$160
09790	Miscellaneous	\$0	\$0	\$0	\$0	\$0

<b>Total Administration</b>		<b>\$59,116</b>	<b>\$42,077</b>	<b>\$40,327</b>	<b>\$40,891</b>	<b>\$182,412</b>
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<b>Property Taxes</b>						
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09810	Association Dues	\$0	\$0	\$0	\$0	\$0
09820	Personal Property Tax	\$0	\$0	\$0	\$0	\$0
09830	Property Tax	\$83,367	\$83,367	\$83,367	\$83,367	\$333,468

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<b>Total Property Taxes</b>		<b>\$83,367</b>	<b>\$83,367</b>	<b>\$83,367</b>	<b>\$83,367</b>	<b>\$333,468</b>
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<b>Insurance</b>						
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09910	Property & Liability	\$5,973	\$5,973	\$5,973	\$6,272	\$24,191

<b>Total Insurance</b>		<b>\$5,973</b>	<b>\$5,973</b>	<b>\$5,973</b>	<b>\$6,272</b>	<b>\$24,191</b>
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<b>TOTAL RECOVERABLE OPERATING EXPENSES</b>		<b>\$362,268</b>	<b>\$299,602</b>	<b>\$264,265</b>	<b>\$284,360</b>	<b>\$1,650,791</b>
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19000	<b>Administrative</b>					
19005	Bank Charges	\$0	\$0	\$0	\$0	\$0
19007	Dues & Subscriptions	\$0	\$0	\$0	\$0	\$0
19010	Ground Rent	\$0	\$0	\$0	\$0	\$0
19015	License/Fees/Permits	\$0	\$0	\$0	\$0	\$0
19100	Management Fee	\$0	\$0	\$0	\$0	\$0
19150	Office Rent	\$0	\$0	\$0	\$0	\$0
19200	Office Supplies	\$0	\$0	\$0	\$0	\$0
19250	Postage & Courtier	\$0	\$0	\$0	\$0	\$0
19300	Professional Fees	\$5,000	\$1,500	\$0	\$5,000	\$11,500
19400	Salaries	\$0	\$0	\$0	\$0	\$0
19450	Staff Development	\$0	\$0	\$0	\$0	\$0
19600	Telephone	\$0	\$0	\$0	\$0	\$0
19650	Tenant Relations	\$1,740	\$21,740	\$3,990	\$2,240	\$29,711
19700	Travel - Corporate	\$0	\$0	\$0	\$0	\$0
19750	Travel - Property	\$0	\$0	\$500	\$0	\$500
19790	Miscellaneous	\$0	\$0	\$0	\$0	\$0

<b>Total Administrative</b>		<b>\$6,740</b>	<b>\$23,240</b>	<b>\$4,490</b>	<b>\$7,240</b>	<b>\$41,711</b>
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<b>TOTAL NON-RECOVERABLE OPERATING EXPENSES</b>		<b>\$6,740</b>	<b>\$23,240</b>	<b>\$4,490</b>	<b>\$7,240</b>	<b>\$41,711</b>
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<b>OPERATING INCOME/(LOSS)</b>	<b>\$127,224</b>	<b>\$158,710</b>	<b>\$199,120</b>	<b>\$176,625</b>	<b>\$221,384</b>
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**OWNER INCOME**

71000	Interest Income	\$0	\$0	\$0	\$0	\$0
72000	Wachovia Reserve Interest	\$0	\$0	\$0	\$0	\$0
73000	Dividend Income	\$0	\$0	\$0	\$0	\$0
<b>TOTAL OWNER INCOME</b>		<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**OWNER EXPENSES**

20000	<b>OWNER EXPENSES</b>					
80100	Owner Legal	\$0	\$0	\$0	\$0	\$0
80200	Owner Relations	\$0	\$0	\$625	\$0	\$625
80400	Owner Insurance	\$0	\$0	\$6,945	\$0	\$6,945
81000	Management Fees	\$0	\$0	\$0	\$0	\$0
81100	Debt Service Other	\$0	\$0	\$0	\$0	\$0
81300	Misc Payments	\$0	\$0	\$0	\$0	\$0
81700	Advertising/Marketing	\$0	\$0	\$0	\$0	\$0
81800	Statutory Representation	\$0	\$2,112	\$0	\$0	\$2,112
81825	Annual Report	\$0	\$0	\$8,250	\$0	\$8,250
<b>TOTAL OWNER EXPENSES</b>		<b>\$0</b>	<b>\$2,112</b>	<b>\$15,820</b>	<b>\$0</b>	<b>\$17,932</b>

<b>Subtotal Profit (Loss)</b>	<b>\$127,224</b>	<b>\$156,598</b>	<b>\$183,300</b>	<b>\$176,625</b>	<b>\$203,452</b>
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21000	<b>TI/LC</b>					
82100	Tenant Improvements	\$0	\$0	\$0	\$0	\$0
83100	Leasing Commissions	\$0	\$102,375	\$0	\$0	\$102,375
	TI/LC Reimbursement	\$0	(\$95,417)	\$0	\$0	
<b>Total Noncash Owner Expense</b>		<b>\$0</b>	<b>\$6,958</b>	<b>\$0</b>	<b>\$0</b>	<b>\$102,375</b>

<b>TOTAL PROFIT (LOSS)</b>	<b>\$127,224</b>	<b>\$149,640</b>	<b>\$183,300</b>	<b>\$176,625</b>	<b>\$101,077</b>
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TILC Reserve - BOP	95,417	95,417	0	0
Impounds	\$0	\$0	\$0	\$0
Draws	\$0	(\$95,417)	\$0	\$0
TILC Reserve - EOP	95,417	0	0	0

# **EXHIBIT “B”**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

\_\_\_\_\_  
In re:

NNN 3500 MAPLE 26, LLC,

\_\_\_\_\_  
Debtor.

)  
) Chapter 11 Case  
)  
) Case No. 13-30402-hdh-11  
)  
)  
)

**ORDER AUTHORIZING USE OF CASH COLLATERAL**

Came on for consideration the Motion for Entry Order (1) Authorizing the Use of Cash Collateral and (2) Granting Adequate Protection to Secured Noteholder (the “Motion”)<sup>1</sup> filed by NNN 3500 Maple 26, LLC (the “Debtor”), the debtor and debtor-in-possession in the above-referenced case. The Court, having reviewed the Motion and the evidence presented and having heard the statements of counsel concerning the relief requested, finds that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (c) notice of the Motion and the hearing on the Motion were sufficient under the circumstances; (d) the terms and conditions set forth in this Order are

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.



necessary and appropriate to grant adequate protection to the Trust in connection with the Debtor's use of the Cash Collateral; (e) the provisions hereof are in the best interests of the Debtor, the Debtor's estate, and the Debtor's creditors.

**ORDER**

**Accordingly, it is hereby ORDERED that:**

A. Subject to the provisions and conditions herein, the Debtor is hereby authorized to use Cash Collateral consistent with the budget attached hereto as **Exhibit A** (the "Budget") and this Order through and including July 31, 2013. The secured noteholder Wachovia Bank Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2006-C23 (the "Trust") may agree to continued use of Cash Collateral thereafter without further order of the Court as provided in paragraph K, *infra*.

B. CWCAM, as Special Servicer for the Trustee of the Trust, shall disburse proceeds sufficient to pay the expenses reflected in the Budget to the property manager of the Property on a monthly basis. These disbursements shall be made on the first day of each calendar month commencing May 1, 2013. Disbursements for the months of March 2013 and April 2013 shall be made within three (3) days of the entry of this Order.

C. The Debtor may exceed the budget by no more than 10 percent (10%) each month in the aggregate without the need for further order or consent, and CWCAM shall not refuse to disburse funds from the Lock Box Account to cover operating expenses of the Property so long as the total monthly expenses are, in the aggregate, within 10 percent of the Budget.

D. Neither the Debtor nor the property manager on behalf of the Debtor and the other TIC Owners shall spend or otherwise use Cash Collateral except in strict accordance with the Budget and the provisions of this Order, unless otherwise allowed by order of this Court or in a writing signed by the Trust.

E. As a condition of the Debtor's authorization to use the Cash Collateral, the Debtor and the other TIC Owners shall maintain appropriate insurance on the Property. In the event one or more of the Debtor's insurance policies covering the Property is actually cancelled, lapses, or otherwise terminates, the Debtor's authorization to use Cash Collateral shall immediately terminate, but may be reinstated without further order of the Court and by written consent of the Trust should the Debtor reinstate any insurance coverage for the Property that is cancelled, lapses, or otherwise terminates.

F. As adequate protection to the Trust for the Debtor's use of Cash Collateral and to the extent of any diminution in value of the Trust's Collateral, the Trust shall be and hereby is granted from, on, and after the Petition Date, valid and automatically perfected (without necessity of the execution by the Debtor of additional mortgages, security agreements, pledge agreements, financing statements or other documents) first priority replacement liens and security interests in and upon all of the Collateral, together with the proceeds, products, and offspring of such Collateral, but specifically excluding causes of action and recoveries under Chapter 5 of the Bankruptcy Code (the "Adequate Protection Liens"); *provided, however*, that nothing in this Order or in any prior order shall be construed to acknowledge or grant liens that prime liens securing prepetition and post-petition ad valorem property taxes. The Adequate Protection Liens granted to the Trust shall be of the same priority as its pre-petition liens and security interests. Prepetition and post-petition liens arising in favor of *ad valorem* tax claimants on any asset Debtor acquires, generates, or receives on or after the Petition Date shall have priority over the post-petition liens granted to the Trust in accordance with applicable nonbankruptcy law.

G. The Adequate Protection Liens shall be subject to the payment of any unpaid fees payable pursuant to 28 U.S.C. § 1930 (including, without limitation, fees under 28 U.S.C. § 1930(a)(6)). Notwithstanding any other provision of this Order, the Debtor shall be authorized to use Cash Collateral to pay all quarterly fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6), and CWCAM shall fund the payment of all such quarterly fees from the Lock Box Account.

H. Any consent to the use of Cash Collateral shall not be construed as consent to an extension of exclusivity pursuant to Section 1121 of the Bankruptcy Code or a waiver of the right to seek relief from the automatic stay or any such other and further relief as the Trust may deem appropriate.

I. The entry of this Order shall not prejudice or limit the rights of the Debtor, the Trust or any other party in interest to seek additional relief with respect to the use of Cash Collateral, to seek different or additional adequate protection, or request modification or termination of this Order. This Order shall not limit or otherwise alter the rights of the Debtor or other parties in interest, except to the extent specifically provided for herein.

J. No subsequent stay, modification, termination, failure to extend the terms of, or vacation of this Order shall affect, limit, or modify any claim, right, or lien granted hereunder to the Trust, nor shall any such stay, modification, or vacation limit, affect, or modify the validity, enforceability, or perfection of any security interest, mortgage, lien, or priority granted herein.

K. On or before [July 24, 2013], Debtor shall provide the Trust with a proposed budget for the period of [August 1, 2013, through October 31, 2013] (the “Proposed Extended Budget”). If the Proposed Extended Budget is approved by the Trust, the Debtor shall file a Notice of Agreement Authorizing Continued Use of Cash Collateral (with a copy of the

Proposed Extended Budget attached) and the Debtor shall be authorized to use Cash Collateral and CWCAM shall be required to fund the expenses on the Proposed Extended Budget in accordance with the terms of this Order. In the event the Trust does not agree to the Proposed Extended Budget, the Debtor's authority to use Cash Collateral and the Trust's and CWCAM's obligation to fund operating expenses from the Lock Box Account under the terms of this Order shall expire on [July 31, 2013], unless the Court, upon notice and a hearing, orders otherwise. The Debtor or the Trust may request an expedited hearing on the approval of a Proposed Extended Budget. In the event the Court grants an expedited hearing request on the approval of a Proposed Extended Budget but no hearing can be held until after the expiration of the current Budget period, the Debtor's authority to use Cash Collateral and CWCAM's obligation to fund operating expenses from the Lock Bock Account under this Order shall be automatically extended through and including the date of such hearing.

### End of Order ###

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