

1 MARC J. WINTHROP– State Bar No. 63218
mwinthrop@winthropcouchot.com
2 PETER W. LIANIDES – State Bar No. 160517
plianides@winthropcouchot.com
3 KAVITA GUPTA – State Bar No. 138505
kgupta@winthropcouchot.com
4 **WINTHROP COUCHOT**
PROFESSIONAL CORPORATION
5 660 Newport Center Drive, Suite 400
Newport Beach, CA 92660
6 Telephone: (949) 720-4100
Facsimile: (949) 720-4111
7

8 [Proposed] General Insolvency Counsel for
Debtors and Debtors-in-Possession
9

10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SANTA ANA DIVISION**
13

14 In re:

15 PRES-LAHAINA SQUARE, LLC,
16 a Hawaii limited liability company
17 VLJ ALOHA, LLC, a Delaware limited
liability company

18
19 Debtors and
Debtors-in-Possession.
20
21
22

Case No. 8:10-bk-18065 TA

Jointly Administered with
Case No. 8:10-bk-18067 TA

Chapter 11 Proceedings

**DEBTORS' EMERGENCY MOTION
FOR ORDER AUTHORIZING USE OF
CASH COLLATERAL;
MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION
IN SUPPORT THEREOF**

DATE: July 1, 2010
TIME: 11:00 A.M.
PLACE: Courtroom 5B
411 West Fourth Street
Santa Ana, CA 92701

26
27
28

1 PRES-Lahaina Square, LLC, a Hawaii limited liability company (“PRES”), and VLJ
2 Aloha, LLC, a Delaware limited liability company (“VLJ”), the jointly administered debtors and
3 debtors-in-possession herein (collectively “the “Debtors”), hereby move (“Motion”) the Court, on
4 an emergency basis, for an order granting the following relief:

5 A) Authorizing the Debtors, on an interim basis, to use any and all “cash
6 collateral,” as that term is defined in 11 U.S.C. § 363(a), now on hand or
7 hereafter collected, in accordance with the budget (“Budget”) attached as
8 Exhibit “1” to the Declaration of David A. Bonaparte (“Bonaparte
9 Declaration”) appended hereto;

10 B) Authorizing the Debtor to make expenditures in amounts not to exceed
11 115% of the aggregate amounts contained in the Budget. Any
12 expenditures in excess of that amount will require the written approval of
13 Square One Lahaina, LLC (“Square One”), or further order of the Court
14 after appropriate notice. Budget savings may be carried over and used by
15 the Debtors in subsequent periods;

16 C) Finding that the interest of the Square One in the cash collateral is
17 adequately protected;

18 D) Granting to Square One a replacement lien in the Debtors’ post-petition
19 cash and accounts receivable and the proceeds thereof, to the same extent,
20 validity, and priority as any lien held by Square One as of the Petition
21 Date (defined below), to the extent cash collateral is actually used by the
22 Debtors; and

23 E) Such further relief as the Court deems just and proper.

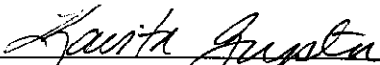
24 This Motion is made on the basis of the appended Bonaparte Declaration, the within
25 points and authorities, and on such other evidence as the Court elects to consider prior to or at the
26 hearing on this matter.

27 **IF YOU DO NOT OPPOSE THE RELIEF REQUESTED BY THE MOTION, YOU**
28 **NEED TAKE NO FURTHER ACTION. HOWEVER, IF YOU OPPOSE THE MOTION,**

1 **OPPOSITION MUST BE FILED AND SERVED AT THE TIME OF THE HEARING ON**
2 **THE MOTION.**

3 DATED: June 30, 2010

WINTHROP COUCHOT
PROFESSIONAL CORPORATION

By: 

Marc J. Winthrop

Peter W. Lianides

Kavita Gupta

[Proposed] General Insolvency Counsel for Debtors
and Debtors-in-Possession

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **SUMMARY OF MOTION AND NEED FOR EMERGENCY RELIEF**

4 The Debtors collectively own, as tenants-in-common, and operate a multi-tenant,
5 neighborhood shopping center located at 840 Wainee Street, Lahaina, Maui, Hawaii (the
6 "Property"). In order to maintain the value of the Property, the Debtors must have the immediate
7 ability to pay certain costs and expenses associated with the operation, and management of the
8 Property. These costs include taxes, utilities, janitorial services, repairs and maintenance and the
9 property management fees charged by the Debtor's third party, non-affiliated management
10 company, Collier Monroe Friedlander ("Collier").

11 The Property is subject to a senior lien held by Square One, which purports to secure a
12 debt in the approximate principal amount of \$10.5 million. Accordingly, Square One contends
13 that the proceeds generated from the lease of the Property constitutes its "cash collateral" as that
14 term is defined in 11 U.S.C. § 363, or Square One's cash collateral.¹ In order to use this source of
15 cash to pay the ordinary and necessary expenses referenced above, the Debtors must obtain an
16 order of this Court authorizing such usage. This relief will not impair the rights of the existing
17 secured creditors. In re Princeton Square Associates, L.P., 201 B.R. 90, 96 (Bankr. S.D.N.Y.
18 1995) ("The use of the rents by a debtor in possession to maintain the property to the same extent
19 that a receiver of rents would use the rents does no economic harm to the lender."). It will merely
20 fund the ordinary and necessary costs associated with the preservation of their collateral.

21 The Debtors are seeking the foregoing relief on an expedited basis for the following
22 reasons: First, in order to preserve the value of the Property, the costs associated with the
23 maintenance and preservation of this asset must be timely paid. Second, pursuant to the lease
24 arrangements in place at the Property, the Debtors are required to pay certain costs. If the Debtors
25 fail to pay these costs, the tenants will be entitled to terminate their leases and vacate the leased

26
27 ¹ The Debtors are in the process of investigating the extent, validity, priority and perfection of Square One's security
28 interest. Accordingly, the Debtors reserve all rights with respect thereto, and nothing contained herein or filing in
connection with this Motion should be construed as an admission with respect to the extent, validity, priority and
perfection of Square One's alleged security interest.

1 premises thereby depriving the estates of critical lease revenues. A detailed list of the expenses
2 that must be timely paid is itemized in the Budget.

3 As the request of Square One's counsel, the Debtors did not file the Motion for one week
4 so that Square One could obtain local counsel in California. Since that time, the Debtors have
5 been trying to obtain a consensual stipulation for the use of cash collateral. As the parties have
6 been unable to do so to date, the Debtors were forced to file the Motion.

7 **II.**

8 **STATEMENT OF FACTS**

9 **A. General Description of the Debtors.**

10 PRES and VLJ were each formed in 2007 to collectively own, as tenants-in-common, and
11 operate the Property. PRES-840 Waianae Street, LLC, a Hawaii limited liability company, is a
12 member and the sole manager of PRES. Vada Lee Jones, as trustee of the Vada Lee Jones Living
13 Trust dated August 20, 1999, is the sole member of VLJ. PRES' executive offices are located at
14 4300 Von Karman Avenue, Newport Beach, California 92660. VLJ's executive offices are
15 located at 9550 SW Inverness Way, Beaverton, Oregon 97007.

16 **B. Events Precipitating Chapter 11 Filing.**

17 The Debtors purchased the Property in 2007. The severe decline in economic conditions
18 experienced both nationally and locally in late 2008, coupled with the near collapse of the national
19 credit markets in late 2008, has resulted in a downturn in construction, tourism and related
20 consumer spending in the Hawaii Islands, which, in turn, has detrimentally affected retailers who
21 are either downsizing, seeking reductions in their rent or closing their businesses. Although the
22 Debtors have made many improvements to the Property, which had been poorly maintained by its
23 prior owner, the loans matured on June 9, 2010, with a balance remaining unpaid. Prior to the
24 Petition Date (defined below), the Debtors attempted to negotiate a discounted payoff of the loans
25 and then to restructure and extend the maturity date of the loans with their senior secured creditor,
26 Square One. However, these efforts were unsuccessful.

27 Square One elected to declare a default under its loan arrangements and to pursue its
28 enforcement remedies. Specifically, on or about May 12, 2010, Square One commenced an action

1 in the Circuit Court of the Second Circuit in Hawaii entitled *Square One Lahaina, LLC v. PRES-*
2 *Lahaina Square, LLC, VLJ Aloha, LLC, Bradley W. Schroth, PRES Property/Asset Management*
3 *et. al* seeking judicial foreclosure and the appointment of a receiver. The hearing for the
4 appointment of a receiver was set for June 15, 2010. This forced the Debtors, PRES and VLJ, to
5 file the present Chapter 11 proceedings on June 15, 2010 (the "Petition Date") in order to obtain a
6 breathing spell within which to reorganize their affairs.

7 **C. Operating Data.**

8 The following financial data detailing the Debtor's operations is attached to the Bonaparte
9 Declaration: (1) the Budget; and (2) Income Statement Variance Report which lists the expenses
10 for the year to date, which are attached to the Bonaparte Declaration as Exhibits "1" and "2."

11 The Budget projects the Debtors' cash needs over the next thirteen weeks. The Budget
12 was prepared on a consolidated basis because the Debtors have historically operated in this
13 manner. This projection was developed by the Debtors' management based upon current
14 operating data and management's best estimate of future cash needs. The operating results
15 detailed in the Budget establish that the Debtors generate positive earnings before interest, taxes,
16 depreciation and amortization ("EBITDA").

17 The expenses provided for in the Budget are ordinary course expenses – e.g., taxes,
18 utilities, janitorial services, repairs and maintenance and the management fees charged by the
19 Debtor's third party, non-affiliated management company - that any custodian or receiver would
20 be compelled to pay sustain the value of these assets. The Debtors' use of cash collateral for this
21 purpose is appropriate and should be authorized since it provides Square One the adequate
22 protection to which it is entitled under the Bankruptcy Code.² Accordingly, Square One's cash
23
24

25 ² Not infrequently a lender will endeavor to drive a debtor out of Chapter 11 by restricting or micromanaging the use
26 of cash collateral to such a degree that reorganization is impossible. This stratagem should be rejected. See *In re*
27 *Princeton Square Associates, L.P.*, 201 B.R. 90, 95 (Bankr.S.D.N.Y.1996) ("Unless the court, on request of a party in
28 interest and after notice and a hearing, orders otherwise, the trustee may operate the debtor's business." The entire
presumption underlying Chapter 11 is that the debtor in possession will continue to operate the debtor's business. The
Lender would like to stand this presumption on its head by denying the Debtor in its capacity as debtor in possession
the ability to operate its business by preventing the use of the rents without the necessity of proving that cause for the
appointment of a trustee exists. See Code § 1104(a).")

1 collateral pool will not be depleted through continued operations. To the contrary, this asset pool
2 will either remain stable or increase through post-petition operations.

3 **D. The Debtor's Debt Structure.**

4 As of the Petition Date, Square One claimed the Debtors owed approximately \$10.5
5 million to Square One, the successor-in-interest to Capmark Bank, a Utah Industrial Bank
6 ("Capmark"). This debt is purportedly secured by liens pursuant to deeds of trust recorded against
7 the Debtors' Property, as well as a UCC-1 filed with the Hawaii Secretary of State on or about
8 May 31, 2007 by Capmark.

9 **E. Adequate Protection Facts.**

10 Square One is adequately protected under Section 363 for the following reasons. First, the
11 Property is well managed and generating positive EBITDA. As evidenced by the Budget, the
12 Property is generating net rents of approximately \$40,000 per month. The Debtors' recent
13 operating results and future projections indicate that this trend will continue and improve over the
14 next year, providing ample adequate protection to Square One's interests. More specifically,
15 during 2009 to the present, the Debtors were able to obtain two new leases, three lease renewals
16 and a letter of intent from a prospective tenant which has increased the occupancy of the Property
17 to approximately 71%.³ The Debtors' property manager, Colliers, is continuing to aggressively
18 market the Property to further increase the occupancy rate.

19 Second, the expenditures proposed in the Budget – e.g., taxes, utilities, janitorial services,
20 repairs and maintenance and the management fees charged by the Debtor's third party, non-
21 affiliated management company - are expenses that must be paid to preserve the value of the
22 Property, in the ordinary course of business. Accordingly, these expenditures do not deplete the
23 value of collateral securing the Loan, since they would have to be paid even if Square One
24 acquired title to the Property.

25 Third, the value of the Property has stabilized and, in fact, there is evidence that its value
26 may increase in the near future as economic conditions improve.

27

28 ³ The Property consists of approximately 50,990 square feet; of that amount, the Debtors have leased 36,350 square feet, or approximately 71.3%.

1 Finally, as additional adequate protection, the Debtors will include the following provisions
2 in the cash collateral order:

3 1. Square One will receive a replacement lien against post-petition
4 cash, accounts, receivable and inventory, and the proceeds of each of the
5 foregoing, to the same extent and priority as any duly perfected and unavoidable
6 liens in cash collateral that Square One held as of the Petition Date, limited to the
7 amount of any cash collateral of Square One as of the Petition Date and to the
8 extent that any cash collateral of Square One is actually used by the Debtors; and

9 2. The Debtors will provide to Square One all monthly operating
10 reports required to be submitted to the Office of the United States Trustee, and
11 monthly cash flow reports, broken down by the expense line items contained in
12 the Budgets, within 15 days after the end of each monthly period after the Petition
13 Date.

14 The foregoing provisions, coupled with the value that will be preserved and generated
15 through the continued operation of the Property, will provide Square One with all the necessary
16 protection required under Section 363.

17 III.

18 **RELIEF IS JUSTIFIED ON AN EMERGENCY BASIS**

19 In section 363(c)(3), Congress recognized that preliminary hearings on cash collateral
20 would frequently be held on an emergency basis by stating therein that such hearing “shall be
21 scheduled in accordance with the needs of the debtor”. 11 U.S.C. § 363(c)(3). The courts have
22 also recognized that emergency relief on the use of cash collateral is necessary after a case is filed.
23 In re Center Wholesale, Inc., 759 F. 2d 1440, 1444 (9th Cir. 1985) (“We realize that ‘in certain
24 circumstances the entire reorganization effort may be thwarted if emergency relief is withheld’
25 and that reorganization under the Bankruptcy Code ‘is a perilous process, seldom more so than at
26 the outset of the proceedings when the debtor is often without sufficient cash flow to fund
27 essential business operations.’ ... It is for this very reason that Congress specified that hearings
28

1 concerning the use of cash collateral ‘shall be scheduled in accordance with the needs of the
2 debtor.’ ”); In re Sullivan Ford Sales, 2 B.R. 350, 355 (Bankr.D.Me.1980).

3 As indicated above, in order to preserve and maintain the Property, the Debtors must have
4 the ability to pay the expenses set forth in the Budget. Without this relief, the Property will decline
5 in value, thereby damaging the interests of all creditors and this reorganization effort. On these
6 facts and circumstances, good cause exists for an expedited hearing on limited notice.

7 **IV.**

8 **THE USE OF THE CASH COLLATERAL SHOULD BE AUTHORIZED IN**
9 **ACCORDANCE WITH THE BUDGET ATTACHED AS EXHIBIT “1”**

10 To obtain court authorization to use cash collateral, a debtor must establish that the
11 “interest” of creditors holding liens on the subject collateral will remain “adequately protected.”
12 11 U.S.C. § 363(e). Pursuant to United States v. Timbers of Inwood Forest, 484 U.S. 365, 108 S.
13 Ct 626 (1988), the “interest in property” entitled to adequate protection under 11 U.S.C. §363(c) is
14 no more or less than the “value of the collateral” that is subject to the secured creditor’s lien.

15 Under the Timbers’ holding, a debtor is merely required to show that the secured creditor’s
16 collateral will not decline in value under the debtor’s proposed usage of cash collateral. Timbers,
17 108 S. Ct at 633; In re Ledgemere Land Corp., 116 B.R. 338, 343 (Bankr. D.Mass. 1990) (So long
18 as the receivables being collected and used by the debtor are being replaced by sufficient new
19 receivables in which the creditor is granted a security interest, the creditor is adequately protected);
20 In re Johnson, 90 B.R. 973, 978 (Bankr. D. Minn. 1988) (Since value of the collateral has not
21 declined, the bank is not impaired and is not entitled to receive adequate protection payments); In
22 re Century Inv. Fund VII, Ltd. Partnership, 96 B.R. 884, 887 (Bankr. E.D. Wis. 1989) (Where
23 value appears to be stable, creditor is not entitled to adequate protection payments); In re Kessler,
24 86 B.R. 134, 136 (Bankr. C.D. Ill. 1988) (under Timbers, the sellers are not entitled to adequate
25 protection payments, as there was no showing the 80-acre tract was depreciating in value); In re
26 Anderson, 88 B.R. 877, 889 (Bankr. N.D. Ind. 1988) (Secured creditor required to show a
27 necessity for adequate protection by showing a decline in asset value from the petition date); In re
28 McCombs Properties VI, Ltd., 88 B.R. 261 (Bankr. C.D. Cal. 1988); In re Elmore, 94 B.R. 670

1 (Bankr. C.D. Cal. 1988). Alternatively, a debtor can make an adequate protection showing even
2 where the collateral is declining in value, as long as the creditor's interest therein is protected by a
3 reasonable equity cushion. See, In re Mellor, 734 F. 2d 1396 (9th Cir. 1984); In re Harrington &
4 Richardson, Inc., 48 B.R. 431 (Bankr. D.Mass. 1985); In re McCombs Properties VI, Ltd., 88 B.R.
5 261 (Bankr. C.D.Cal. 1988).

6 As established herein and in the Bonaparte Declaration, the cash collateral pool securing
7 the liens held by Square One will not decline through the usage proposed by herein. To the
8 contrary, the overall value of the estates will increase through this usage, leaving Square One's
9 interest adequately protected.


10 V.

11 **CONCLUSION**

12 For the foregoing reasons, the Debtors respectively request that the Court grant the relief
13 prayed for herein.

14 DATED: June 30, 2010

**WINTHROP COUCHOT
PROFESSIONAL CORPORATION**

15
16
17 By: 
18 Marc J. Winthrop
19 Peter W. Lianides
20 Kavita Gupta
21 [Proposed] General Insolvency Counsel for
22 Debtors and Debtors-in-Possession
23
24
25
26
27
28

DECLARATION OF DAVID A. BONAPARTE

1
2 I, David A. Bonaparte, hereby declare and state as follows:

3 1. I am a member of PRES-840 Wainee Street, LLC, a Hawaii limited liability
4 company ("PRES-840"),⁴ the Manager of PRES-Lahaina Square, LLC, a California limited
5 liability company ("PRES"). I am also an Authorized Representative of PRES Property/Asset
6 Management, Inc., a California corporation ("PRES Property"), which was retained by PRES and
7 VLJ Aloha, LLC, a Delaware limited liability company ("VLJ"), to manage their sole asset – a
8 shopping center located at 840 Wainee Street, Lahaina, Maui, Hawaii (the "Property"), and
9 maintain their books and records. Based thereon, I have been responsible for overseeing the day-
10 to-day financial operations and financial performance of the Debtors. Consequently, I am
11 involved in supervising all aspects of the Debtors' financial and business affairs.
12

13 2. The facts stated herein are within my personal knowledge, or I have acquired
14 knowledge of these facts in the ordinary course of business through my review and analysis of the
15 Debtors' books and records.
16

17 3. I have a B.A. in Economics from the University of California, Irvine and an
18 M.B.A. in finance from the Yale School of Management. Prior to joining PRES-840, I was the
19 Director of Acquisitions at CNA Enterprises ("CNA") in Century City, California where I
20 oversaw the acquisition and sale of neighborhood retail centers and power centers located
21 throughout the Western U.S. Prior to joining CNA, I was a Senior Associate at Douglas Emmett
22 and worked at the Yale University Investments Office.
23

24 4. I have been actively involved in the acquisition and management of commercial
25 real estate investment property in the Western United States, including Hawaii, for the past twelve
26 years. During this time frame, I have evaluated the investment potential of numerous commercial
27

28 ⁴ Capitalized terms not otherwise defined shall have the same meaning as defined in the Motion.

1 real estate properties, which necessarily includes the determination of the fair market value of
2 such properties.

3 5. PRES and VLJ were each formed in 2007 to collectively own, as tenants-in-
4 common, and operate the Property. PRES-840 Wainee Street, LLC, a Hawaii limited liability
5 company, is a member and the sole manager of PRES. Vada Lee Jones, as trustee of the Vada Lee
6 Jones Living Trust dated August 20, 1999, is the sole member of VLJ. PRES' executive offices
7 are located at 4300 Von Karman Avenue, Newport Beach, California 92660. VLJ's executive
8 offices are located at 9550 SW Inverness Way, Beaverton, Oregon 97007.
9

10 6. The Debtors purchased the Property in 2007. The severe decline in economic
11 conditions experienced both nationally and locally in late 2008, coupled with the near collapse of
12 the national credit markets in late 2008, has resulted in a downturn in construction, tourism and
13 related consumer spending in the Hawaii Islands, which, in turn, has detrimentally affected
14 retailers who are either downsizing, seeking reductions in their rent or closing their businesses.
15 Although the Debtors have made many improvements to the Property, which had been poorly
16 maintained by its prior owner, the loans matured on June 9, 2010, with a balance remaining
17 unpaid. Prior to the Petition Date, the Debtors attempted to negotiate a discounted payoff of the
18 loans and then to restructure and extend the maturity date of the loans with their senior secured
19 creditor, Square One Lahaina, LLC ("Square One"). However, these efforts were unsuccessful.
20

21 7. Square One elected to declare a default under its loan arrangements and to pursue
22 its enforcement remedies. Specifically, on or about May 12, 2010, Square One commenced an
23 action in the Circuit Court of the Second Circuit in Hawaii entitled *Square One Lahaina, LLC v.*
24 *PRES-Lahaina Square, LLC, VLJ Aloha, LLC, Bradley W. Schroth, PRES Property/Asset*
25 *Management et. al* seeking judicial foreclosure and the appointment of a receiver. The hearing for
26 the appointment of a receiver was set for June 15, 2010. This forced the Debtors, PRES and VLJ,
27
28

1 to file the present Chapter 11 proceedings on June 15, 2010 (the "Petition Date") in order to obtain
2 a breathing spell within which to reorganize their affairs.

3 8. The following financial data detailing the Debtor's operations is attached hereto:
4 (1) the Budget; and (2) Income Statement Variance Report which lists the expenses for the year to
5 date, which are attached hereto as Exhibit "1" and "2." The Budget projects the Debtors' cash
6 needs over the next thirteen weeks. The Budget was prepared on a consolidated basis because the
7 Debtors have historically operated in this manner. This projection was developed by the Debtors'
8 management based upon current operating data and management's best estimate of future cash
9 needs. The operating results detailed in the Budget establish that the Debtors generate positive
10 earnings before interest, taxes, depreciation and amortization ("EBITDA").
11

12 9. The expenses provided for in the Budget are ordinary course expenses – e.g., taxes,
13 utilities, janitorial services, repairs and maintenance and the management fees charged by the
14 Debtor's third party, non-affiliated management company - that any custodian or receiver would
15 be compelled to pay sustain the value of these assets. The Debtors' use of cash collateral for this
16 purpose is appropriate and should be authorized since it provides Square One the adequate
17 protection to which it is entitled under the Bankruptcy Code. Accordingly, Square One's cash
18 collateral pool will not be depleted through continued operations. To the contrary, this asset pool
19 will either remain stable or increase through post-petition operations.
20

21 10. As of the Petition Date, Square One claimed the Debtors owed approximately
22 \$10.5 million to Square One, the successor-in-interest to Capmark Bank, a Utah Industrial Bank
23 ("Capmark"). This debt is purportedly secured by liens pursuant to deeds of trust recorded against
24 the Debtors' Property, as well as a UCC-1 filed with the Hawaii Secretary of State on or about
25 May 31, 2007 by Capmark.
26
27
28

1 11. The Property is well-managed and generating positive EBITDA. As evidenced by
2 the Budget, the Property is generating net rents of approximately \$40,000 per month. The
3 Debtors' recent operating results and future projections indicate that this trend will continue and
4 improve over the next year, providing ample adequate protection to Square One's interests. More
5 specifically, during 2009 to the present, the Debtors were able to obtain two new leases, three
6 lease renewals and a letter of intent from a prospective tenant which has increased the occupancy
7 of the Property to approximately 71%.⁵ The Debtors' property manager, Colliers, is continuing to
8 aggressively market the Property to further increase the occupancy rate.
9

10 12. The expenditures proposed in the Budget – e.g., taxes, utilities, janitorial services,
11 repairs and maintenance and the management fees charged by the Debtor's third party, non-
12 affiliated management company - are expenses that must be paid to preserve the value of the
13 Property, in the ordinary course of business. Accordingly, these expenditures do not deplete the
14 value of collateral securing the Loan, since they would have to be paid even if Square One
15 acquired title to the Property.
16

17 13. The value of the Property has stabilized and, in fact, there is evidence that its value
18 may increase in the near future as economic conditions improve.

19 14. The Debtors are seeking relief on an emergency basis because in order to preserve
20 and maintain the Property, the Debtors must have the ability to pay the expenses set forth in the
21 Budget. Without this relief, the Property will decline in value thereby, damaging the interests of
22 all creditors and this reorganization effort.
23

24 15. I declare under the penalty of perjury that the foregoing is true and correct under
25

26 //
27

28 ⁵ The Property consists of approximately 50,990 square feet; of that amount, the Debtors have leased 36,350 square feet, or approximately 71.3%.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

the laws of the State of California and United States of America.

Executed this ___th day of June 2010, in Newport Beach, California


David A. Bonaparte

EXHIBIT “1”

LAHAINA SQUARE SHOPPING CENTER
JUN-SEP 2010 BUDGET

	Week 1 14-Jun	Week 2 21-Jun	Week 3 28-Jun	Week 4 5-Jul	Week 5 12-Jul	Week 6 19-Jul	Week 7 26-Jul	Week 8 2-Aug	Week 9 9-Aug	Week 10 16-Aug	Week 11 23-Aug	Week 12 30-Aug	Week 13 6-Sep
BEGINNING BALANCE	151,872.53	151,872.53	151,325.91	151,326.91	224,434.18	220,343.05	219,797.43	218,280.45	188,280.45	257,398.54	204,248.50	197,508.03	197,508.03
REVENUES													
Scheduled Gross Income	0.00	0.00	0.00	73,778.41	0.00	0.00	0.00	0.00	73,778.41	0.00	0.00	0.00	73,241.41
Vacancy Loss	0.00	0.00	0.00	(22,159.20)	0.00	0.00	0.00	0.00	(22,159.20)	0.00	0.00	0.00	(22,159.20)
Percentage Rent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CAM/Operating Expenses	0.00	0.00	0.00	26,477.24	0.00	0.00	0.00	0.00	27,805.78	0.00	0.00	0.00	28,798.71
Other Income	0.00	0.00	0.00	615.06	0.00	0.00	0.00	0.00	615.06	0.00	0.00	0.00	615.06
Marketing & Promotion Income	0.00	0.00	0.00	247.58	0.00	0.00	0.00	0.00	398.48	0.00	0.00	0.00	571.28
Total Revenue	0.00	0.00	0.00	78,959.09	0.00	0.00	0.00	0.00	80,378.54	0.00	0.00	0.00	81,065.26
OPERATING EXPENSES													
Reimbursable Expenses													
Taxes & Impositions	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	43,000.00	0.00	0.00	0.00
Insurance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Utilities	0.00	0.00	0.00	613.49	3,023.23	0.00	0.00	0.00	1,225.98	6,058.46	0.00	0.00	1,226.98
Security	0.00	0.00	0.00	0.00	0.00	0.00	401.33	0.00	0.00	0.00	802.67	0.00	0.00
Cleaning & Janitorial	0.00	245.62	0.00	1,527.33	983.50	245.62	0.00	0.00	3,055.07	3,935.59	245.62	0.00	3,055.07
Repairs & Maintenance	0.00	309.00	0.00	1,030.91	0.00	390.00	969.94	0.00	1,030.91	0.00	5,400.77	0.00	1,030.91
General Services & Grounds	0.00	0.00	0.00	22.50	78.00	0.00	145.71	0.00	22.50	156.00	291.41	0.00	22.50
Third Party Management Fees and Administration	0.00	0.00	0.00	1,679.74	0.00	0.00	0.00	0.00	2,903.83	0.00	0.00	0.00	3,025.83
Total Reimbursable Expenses	0.00	545.62	0.00	4,874.18	4,091.13	545.62	1,516.98	0.00	8,235.29	53,150.05	6,740.47	0.00	8,361.29
Total Non-Reimbursable Expenses	0.00	0.00	0.00	473.15	0.00	0.00	0.00	0.00	625.62	0.00	0.00	0.00	862.42
Total Operating Expenses	0.00	545.62	0.00	5,347.33	4,091.13	545.62	1,516.98	0.00	8,860.91	53,150.05	6,740.47	0.00	9,223.72
Net Operating Income	0.00	545.62	0.00	73,611.76	4,091.13	545.62	1,516.98	0.00	71,509.62	53,150.05	6,740.47	0.00	71,641.54
Appraisal Fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Legal Fees	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Property Administrative Fees	0.00	0.00	0.00	504.49	0.00	0.00	0.00	0.00	912.53	0.00	0.00	0.00	953.19
Net Income Before Cap Ex/Dep/Amort	0.00	(545.62)	0.00	73,107.27	(4,091.13)	(545.62)	(1,516.98)	(30,000.00)	70,597.09	(53,150.05)	(6,740.47)	0.00	55,888.35
Capital Expenditures	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,479.00	0.00	0.00	0.00	3,960.00
Reorganization Expenses													
U.S. Trustee Fees	0.00	0.00	0.00	0.00	0.00	0.00	325.00	0.00	0.00	0.00	0.00	0.00	0.00
Professional Fees	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Cash Flow	0.00	(545.62)	0.00	73,107.27	(4,091.13)	(545.62)	(1,516.98)	(30,000.00)	69,118.09	(53,150.05)	(6,740.47)	0.00	51,928.35
ENDING BALANCE	151,872.53	151,326.91	151,326.91	224,434.18	220,343.05	219,797.43	218,280.45	188,280.45	257,398.54	204,248.50	197,508.03	197,508.03	246,436.39

EXHIBIT “2”

LAHAINA SQUARE
840 WA NEE STREET
LAHAINA HI 96761

INCOME STATEMENT VARIANCE REPORT - ACCRUAL BASIS
For the 5 Months Ended May 31, 2010

	Current Actual	Current Budget	Current Variance	Percent Variance	YTD Actual	YTD Budget	YTD Variance	Percent Variance
REIMBURSABLE EXPENSES								
TAXES & IMPOSITIONS:								
REAL PROPERTY TAX	<u>6,134.06</u>	<u>6,287.35</u>	<u>153.29</u>	<u>2.4%</u>	<u>35,160.44</u>	<u>31,436.75</u>	<u>(3,723.69)</u>	<u>-11.8%</u>
TOTAL TAXES & IMPOSITIONS	6,134.06	6,287.35	153.29	2.4%	35,160.44	31,436.75	(3,723.69)	-11.8%
INSURANCE:								
ALL RISK INSURANCE	<u>(815.10)</u>	<u>1,878.00</u>	<u>2,693.10</u>	<u>143.4%</u>	<u>9,138.36</u>	<u>9,390.00</u>	<u>251.64</u>	<u>2.7%</u>
TOTAL INSURANCE	(815.10)	1,878.00	2,693.10	143.4%	9,138.36	9,390.00	251.64	2.7%
UTILITIES:								
ELECTRICITY (EXTERIOR - COMMON)	6,928.85	6,058.46	(870.39)	-14.4%	29,703.55	30,292.30	588.75	1.9%
WATER & SEWER	587.00	1,098.83	511.83	46.6%	2,534.36	5,494.15	2,959.79	53.9%
CABLE/TELECOM	135.36	128.15	(7.21)	-5.6%	646.14	640.75	(5.39)	-0.8%
ELECTRICITY - TENANT SPECIFIC	<u>3,025.12</u>	<u>1,298.54</u>	<u>(1,726.58)</u>	<u>-133.0%</u>	<u>14,265.20</u>	<u>6,492.70</u>	<u>(7,772.50)</u>	<u>-119.7%</u>
TOTAL UTILITIES	10,676.33	8,583.98	(2,092.35)	-24.4%	47,149.25	42,919.90	(4,229.35)	-9.9%
SECURITY:								
SECURITY STAFF/SERVICES	983.81	802.67	(181.14)	-22.6%	4,049.79	4,013.35	(36.44)	-0.9%
FIRE PROTECTION SYSTEMS	<u>0.00</u>	<u>42.00</u>	<u>42.00</u>	<u>100.0%</u>	<u>658.85</u>	<u>210.00</u>	<u>(448.85)</u>	<u>-213.7%</u>
TOTAL SECURITY	983.81	844.67	(139.14)	-16.5%	4,708.64	4,223.35	(485.29)	-11.5%
CLANING:								
WASTE REMOVAL	2,633.49	3,055.07	421.58	13.8%	13,790.80	15,275.35	1,484.55	9.7%
CONTRACT JANITORIAL SERVICES	3,373.67	3,935.59	561.92	14.3%	16,863.31	19,677.95	2,814.64	14.3%
RESTROOM & CLEANING SUPPLIES	1,630.07	245.62	(1,384.45)	-563.7%	2,727.55	1,228.10	(1,499.45)	-122.1%
OTHER CLANING EXPENSES	<u>1,395.91</u>	<u>0.00</u>	<u>(1,395.91)</u>	<u>0.0%</u>	<u>1,395.91</u>	<u>0.00</u>	<u>(1,395.91)</u>	<u>0.0%</u>
TOTAL CLEANING	9,033.14	7,236.28	(1,796.86)	-24.8%	34,777.57	36,181.40	1,403.83	3.9%
REPAIRS & MAINTENANCE:								
MAINTENANCE STAFF	1,924.24	1,939.88	15.64	0.8%	9,612.40	9,699.40	87.00	0.9%
RM PARTS & SUPPLIES	442.03	1,030.91	588.88	57.1%	12,717.69	5,154.55	(7,563.14)	-146.7%
HVAC/MECHANICAL	656.24	990.22	333.98	33.7%	2,089.62	4,951.10	2,861.48	57.8%
PLUMBING & DRAIN SERVICES	<u>1,364.57</u>	<u>100.00</u>	<u>(1,264.57)</u>	<u>-1264.6%</u>	<u>1,364.57</u>	<u>500.00</u>	<u>(864.57)</u>	<u>-172.9%</u>
TOTAL REPAIRS & MAINTENANCE	4,387.08	4,061.01	(326.07)	-8.0%	25,784.78	20,305.05	(5,479.73)	-27.0%
GENERAL SERVICES & GROUNDS:								
LANDSCAPE AND GROUNDS	521.00	897.67	376.67	42.0%	3,435.14	4,488.35	1,053.21	23.5%
PEST CONTROL	238.34	156.00	(82.34)	-52.8%	(96.86)	780.00	876.86	112.4%
DIRECTORIES & SIGNAGE	977.01	10.00	(967.01)	-9670.1%	977.01	50.00	(927.01)	-1854.0%
KEYS/LOCKSMITH	0.00	12.50	12.50	100.0%	355.91	62.50	(293.41)	-469.5%
OTHER GENERAL SERVICES	<u>284.90</u>	<u>291.41</u>	<u>6.51</u>	<u>2.2%</u>	<u>1,416.94</u>	<u>1,457.05</u>	<u>40.11</u>	<u>2.8%</u>
TOTAL GENERAL SVC & GROUNDS	2,021.25	1,367.58	(653.67)	-47.8%	6,088.14	6,837.90	749.76	11.0%
ADMINISTRATION:								
MANAGEMENT FEES	2,525.90	2,380.80	(145.10)	-6.1%	12,936.46	11,914.62	(1,021.84)	-8.6%
OTHER ADMINISTRATIVE EXPENSES	<u>234.31</u>	<u>500.00</u>	<u>265.69</u>	<u>53.1%</u>	<u>2,557.44</u>	<u>2,500.00</u>	<u>(57.44)</u>	<u>-2.3%</u>
TOTAL ADMINISTRATION	2,760.21	2,880.80	120.59	4.2%	15,493.90	14,414.62	(1,079.28)	-7.5%
PARKING:								
TOTAL PARKING	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.0%</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.0%</u>
TOTAL REIMBURSABLE EXPENSES	<u>35,180.78</u>	<u>33,139.67</u>	<u>(2,041.11)</u>	<u>-6.2%</u>	<u>178,300.58</u>	<u>165,708.97</u>	<u>(12,591.61)</u>	<u>-7.6%</u>
NON-REIMBURSABLE EXPENSES								
NR OPERATING EXPENSES:								
N/R UTILITIES	181.28	131.14	(50.14)	-38.2%	601.34	655.70	54.36	8.3%
NR REPAIRS & MAINTENANCE	1,528.64	150.00	(1,378.64)	-91.9%	1,866.14	5,950.00	4,083.86	68.6%
NR ADMINISTRATIVE	<u>514.82</u>	<u>10.00</u>	<u>(504.82)</u>	<u>-5048.2%</u>	<u>518.82</u>	<u>50.00</u>	<u>(468.82)</u>	<u>-937.6%</u>
TOTAL NR OPERATING EXPENSES	2,224.74	291.14	(1,933.60)	-664.2%	2,986.30	6,655.70	3,669.40	55.1%

LAHAINA SQUARE
840 WAINEE STREET
LAHAINA HI 96761

INCOME STATEMENT VARIANCE REPORT - ACCRUAL BASIS
For the 5 Months Ended May 31, 2010

	Current Actual	Current Budget	Current Variance	Percent Variance	YTD Actual	YTD Budget	YTD Variance	Percent Variance
<u>MARKETING & LEASING:</u>								
ADVERTISING & PROMOTION	0.00	265.76	265.76	100.0%	0.00	1,328.80	1,328.80	100.0%
TOTAL MARKETING & LEASING	0.00	265.76	265.76	100.0%	0.00	1,328.80	1,328.80	100.0%
<u>BAD DEBT:</u>								
TOTAL BAD DEBT	0.00	0.00	0.00	0.0%	0.00	0.00	0.00	0.0%
TOTAL NON-REIMBURSABLE EXPENSES	<u>2,224.74</u>	<u>556.90</u>	<u>(1,667.84)</u>	<u>-299.5%</u>	<u>2,986.30</u>	<u>7,984.50</u>	<u>4,998.20</u>	<u>62.6%</u>
TOTAL OPERATING EXPENSES	37,405.52	33,696.57	(3,708.95)	-11.0%	181,286.88	173,693.47	(7,593.41)	-4.4%

PROOF OF SERVICE OF DOCUMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 660 Newport Center Drive, 4th Fl., Newport Beach, CA 92660.

A true and correct copy of the foregoing document described as: DEBTORS' EMERGENCY MOTION FOR ORDER AUTHORIZING USE OF CASH COLLATERAL; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION IN SUPPORT THEREOF will be served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On June 30, 2010, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- Nancy S Goldenberg nancy.goldenberg@usdoj.gov
- Kavita Gupta kgupta@winthropcouchot.com
- Katherine C Piper kpiper@steptoe.com
- United States Trustee (SA) ustprejion16.sa.ecf@usdoj.gov
- Marc J Winthrop mwinthrop@winthropcouchot.com, pj@winthropcouchot.com

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served):
On June 30, 2010 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on June 30, 2010 I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

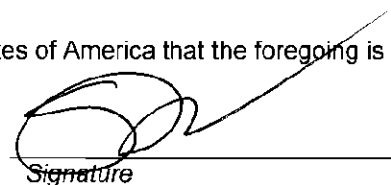
Counsel to Secured Creditor: Rush Moore LLP, Stephen K.C. Mau, Esq. – smau@rmhawaii.com
Counsel to Secured Creditor: Steptoe & Johnson LLP., Katherine C. Piper, Esq. - kpiper@steptoe.com
Debtor: Pres-Lahaina – David Bonaparte – dbonaparte@presusa.com
Michael Sitzer - mikesitzer@gmail.com

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

June 30, 2010
Date

Susan Connor
Type Name


Signature

SERVICE VIA OVERNIGHT DELIVERY OR MAIL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>Pres-Lahaina Square LLC, Attn: John W. Fitzgibbon 4300 Von Karman Ave. Newport Beach, CA 92660</p>	<p>E-mail</p>	<p>Office of the U.S. Trustee Nancy Goldenberg, Esq. 411 W. Fourth St., #9041 Santa Ana, CA 92701-4593</p>	<p>NEF</p>	<p>Lahaina/Alpha SpecialNotice&AllCreditors Document No. 147822</p>
<p>A&B Properties, Inc. Attn: Lance K. Parker, VP 822 Bishop St. Honolulu, HI 96813</p>		<p>Internal Revenue Service Insolvency Grp I MS 5501 24000 Avila Road Laguna Niguel, CA 92677</p>		<p>Maui Waste Services Attn: Corporate Officer P.O. Box 30490 Honolulu, HI 96820-0490</p>
<p>ABM Family of Services Attn: Corporate Officer 320 Hukilike, #41, Kahului, HI 96732</p>		<p>Internal Revenue Service 300 Ala Moana Blvd. Honolulu, HI 96850</p>		<p>National Fire Protection Co. Attn: Corporate Officer 1906 Kahai St. Honolulu, HI 96819</p>
<p>Alexander & Baldwin, Inc. Attn: Charles W. Loomis, Esq. 822 Bishop St. Honolulu, HI 96813</p>		<p>Island Lock & Safe Attn: Corporate Officer P.O. Box 10576 Lahaina, HI 96761</p>		<p>Nicholas C. Dreher, Esq. 1000 Bishop St., #1500 Honolulu, HI 96813</p>
<p>Alpha Executive Security, Inc. Attn: Corporate Officer P.O. Box 709 Haiku, HI 96708</p>		<p>Jeff Wooldridge P.O. Box 390247 Keauhou, HI 96739</p>		<p>Oceanic Time Warner Cable Attn: Corporate Officer P.O. Box 30050 Honolulu, HI 96820-0050</p>
<p>Colliers Monroe Friedlander Mgmt Attn: Corporate Officer P.O. Box 257 Honolulu, HI 96809</p>		<p>Lahaina Ace Hardware Attn: Corporate Officer 2810 Paa St., Bldg. A Honolulu, HI 96819</p>		<p>Orkin Pest Control Attn: Corporate Officer HI Adm Ctr/98-027 Hekaha St., #17 Aiea, HI 96701-4919</p>
<p>Corporation Service Company Attn: Corporate Officer 2711 Centerville Road Wilmington, DE 19808</p>		<p>Law Offices of Michael F. Sitzer Attn: Michael F. Sitzer, Esq. 761 Via Lido Nord Newport Beach, CA 92663</p>	<p>Email</p>	<p>PRES-Kona Coast Attn: Corp Offer c/o Colliers Monroe Friedlander 272 S. King St., #1800 Honolulu, HI 96813</p>
<p>County of Maui/Dept of Wtr Supply Attn: Authorized Agent 200 S. High St. Wailuku, Maui, HI 96793-2155</p>		<p>Let's Go Banners! Attn: Corporate Officer P.O. Box 383645 Waikoloa, HI 96738</p>		<p>PRES-TIC Management Attn: Corporate Officer 4300 Von Karman Newport Beach, CA 92660</p>
<p>Hawaii Building Maintenance Attn: Corporate Officer 1001 Bishop St./ASB Twr, #955 Honolulu, HI 96813</p>		<p>Maui Chemical & Paper Products Attn: Corporate Officer Wailuku Indus. Pk./875 Alua St. Wailuku, HI 96793</p>		<p>Rush Moore, LLP Attn: Stephen K.C. Mau, Esq. 737 Bishop St., #2400 Honolulu, HI 96813</p>

1 Hawaii State Tax Collector Maui Electric Co. S.C. Plumbing, Ltd.
2 Attn: Authorized Agent Attn: Corporate Officer Attn: Managing Member
3 101 Bishop St./ASB Twr, #955 P.O. Box 1670 P.O. Box 12199
Honolulu, HI 96813 Honolulu, HI 96806-1670 Lahaina, HI 96761

4 Square One Lahaina, LLC Sturdevant Refrig. & Air Cond. Terminix
5 Attn: Lance Parker Attn: Corporate Officer Attn: Corporate Officer
6 822 Bishop St. 300 Hoohana St. P.O. Box 742592
Honolulu, HI 96813 Kahului, HI 96732 Cincinnati, OH 45274-2592

7 Stephens, Reidinger & Beller, LLP Suck Em Up Pumping Wes Thomas Associates
8 Attn: Managing Partner Attn: Corporate Officer Attn: Corporate Officer
9 1301 Dove St., #400 P.O. Box 880510 75-5749 Kalawa St.
Newport Beach, CA 92660 Pukalani, HI 96788 Kailua-Kona, HI 96740

10 Counsel to Square One Lahaina LLC Email
11 Robbin Itkin, Esq.
12 Katherine C. Piper, Esq.
13 Steptoe & Johnson LLP
14 2121 Avenue of the Stars, #2800
15 Los Angeles, CA 90067
16
17
18
19
20
21
22
23
24
25
26
27
28