~~without objection, defense, counterclaim or offset of any kind, and (ii)~~ the mortgage and other liens and security interests granted to the Agent (for the benefit of the Lenders) with respect to the Prepetition Collateral, as security for the Loan Obligations, are valid, enforceable perfected and enforceable liens, mortgages, deeds of trust and security interests in accordance with the terms set forth in the Loan Documents.

c. Agent shall, concurrently with or prior to the filing of its proof of claim against the Debtor and the Estate, serve on counsel for FSG and counsel for those Members (the "**Builder Members**") who signed the Interim Order (as defined herein) approving it as to form and content, an accounting of the prepetition application by the Agent of MI Deposits or the proceeds thereof to principal, interest, reimbursement or payment of the Agent's fees and expenses, or otherwise, and the lapse of the Investigation Period notwithstanding, all parties' rights to contest the amount of the Agent's filed claim are hereby preserved.

## II. SHORT-TERM ADVANCE

2. Amount and Terms of Short-Term Advance.

a. Availability. Pursuant to sections 364(c)(1),(2) and (3) of the Bankruptcy Code, the aggregate amount of up to $510,000, or such lesser amount as may be necessary to satisfy the Outstanding Assessment (as defined herein), will be wire-transferred by the Agent from the Focus MI Deposit Cash Collateral Account into the Trustee's operating account by no later than noon (PST) on the second ($2^{nd}$) business day after the an order is entered approving this Stipulation, which order may be an interim order.

b. Repayment. The Trustee shall repay the Short-Term Advance to the Agent in whole with such sum to be deposited by the Agent into the Focus MI Deposit Cash Collateral Account, and be deemed part of the Focus MI Deposit, from the first dollars received by the Trustee from the Trustee's receipt of LID reimbursement proceeds from the City of Henderson relating to the LID T-18 Projects Nos. (i) ADP-ST-1A, (ii) ADP-ST-1B, (iii) ADP-ST-1C, (iv) ADP-ST-1D, (v) ADP-ST-1F, and (vi) ADP-ST-1I (collectively, the "**April LID Projects**"). Such payments shall be made by wire transfer within five (5) business days of the Trustee's receipt of such proceeds until the Short-Term Advance and all interest thereon is repaid in full. Once repaid, the Trustee shall not have the right to re-use any portion of the Short-Term Advance under the terms of the Stipulation.

c. Assignment. The Agent shall assign its right to receive the proceeds of the April LID Projects to the Trustee so as to permit the City of Henderson to turn over such LID Proceeds directly to the Trustee; however, such assignment shall not serve as a waiver, release or abandonment of the Agent's security interest in the LID proceeds (in accordance with the Assignment of Acquisition Agreement by and between South Edge, LLC and JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent for the Lenders party to the Credit Agreement, dated as of April 27, 2006).

d. Interest Rate. The unpaid principal amount of the Short-Term Advance shall bear interest, for the period from the date of the making of such advance until the date such Short-Term Advance shall be paid in full, at a rate per annum equal to the

interest earned on the Focus MI Deposit Cash Collateral Account during that period (the "**Interest Rate**").

e. Computation of Interest and Fees. Interest on the Short-Term Advance shall be calculated on the basis of a 365/366-day year and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

3. Use of Short-Term Advance Proceeds. The proceeds of the Short-Term Advance shall only be applied to pay outstanding T-18 LID assessments and penalties thereon for the following parcels: (i) 191-23-510-002; (ii) 191-22-710-004; (iii) 191-23-310-003; (iv) 191-23-310-002; and (v) 191-23-310-005 (the "**Outstanding Assessments**"), and for no other purpose.

4. Conditions Precedent to the Making of the Short-Term Advance. The making of the Short-Term Advance, shall not become effective until the date on which each of the following conditions are satisfied (or waived by the Agent (for the benefit of the Lenders) in its sole discretion):

a. Interim Order. An interim order approving the Stipulation shall have been entered by the Court, in form and substance acceptable to the Agent in its sole discretion (the "**Interim Order**").

b. Prepetition Taxes. The Interim Order shall provide the Trustee with the authority to pay all outstanding T-18 LID assessments and penalties concerning the parcels set forth in Section 3 of this Stipulation, to the City of Henderson, including any sums that might have accrued prior to the Petition Date.

c. Pleadings. No order shall have been entered (i) dismissing or converting the ~~Chapter 11~~ Case to a case under ~~Chapter~~chapter 7 of the Bankruptcy Code, (ii) appointing an examiner having enlarged powers relating to the operation of the business of South Edge, (iii) granting a super-priority claim or a Lien *pari passu* or senior to that of the Agent granted pursuant hereto, including pursuant to the Interim Order, (iv) staying, reversing, vacating, or otherwise modifying the Interim Order without the prior written consent of the Agent, or (v) granting relief from the automatic stay (or any other injunction having similar effect) so as to allow a third party to proceed against any material property or assets of South Edge.

5. Reservation of Rights. Notwithstanding the making of the Short-Term Advance or anything else in this Stipulation, (i) the respective rights of the Trustee and ~~Focus~~FSG regarding their claims of ownership in and to the Focus MI Deposit, the Focus MI Deposit Cash Collateral Account and the proceeds of the Short-Term Advance are expressly reserved; (ii) each of the Trustee and ~~Focus~~FSG acknowledge and agree that the Focus MI Deposit is and shall remain subject to the security interest granted to the Agent under the Loan Documents on the terms provided in such Loan Documents, subject to the Trustee's Investigation Period; and (iii) ~~Focus~~FSG expressly reserves and retains the right to contest the extent and nature of such security interest and the permissible uses of the Focus MI Deposit and Focus MI Deposit Cash Collateral Account by the Trustee and the Agent and nothing in this Stipulation shall affect or impair such rights in any manner whatsoever.

6. Focus Adequate Protection. As adequate protection for ~~Focus~~FSG's consent to use the Focus MI Deposit for purposes of making the Short-Term Advance, pending the

repayment of the Short-Term Advance and all Interest due thereon, pursuant to 361, 362(d) and 363(e) of the Bankruptcy Code, subject to the Agent's security interest under the Loan Documents (which is subject to the reservation of rights in paragraph 5 above), and subject and subordinate to the Adequate Protection Lien (as defined herein) (to the extent that the Agent~~'~~'s rights in the Focus MI Deposit are senior to those of ~~Focus~~FSG), notwithstanding anything else in this Stipulation, including, without limitation, paragraph 14 hereof, ~~Focus~~FSG shall have exactly the same rights, claims and interests (whatever those rights, claims and interests may be) in an amount of Cash Collateral equal to any diminution in the Focus MI Deposit resulting from the funding of the Short-Term Advance as ~~Focus~~FSG has in the Focus MI Deposit. The parties agree that the purpose of this provision is to place ~~Focus~~FSG in the exact same position in which it would have been had cash from the Focus MI Deposit Cash Collateral Account not been used to fund the Short-Term Advance. Notwithstanding the foregoing, the Trustee may use the Cash Collateral as otherwise permitted by this Stipulation.

7. Additional Focus Protection. ~~Neither~~During the time in which the Short-Term Advance remains outstanding, neither the Short-Term Advance, nor the Cash Collateral pending the repayment of the Short-Term Advance and all Interest due thereon, nor any other funds from the Focus MI Deposit subsequently advanced to the Trustee, may be utilized by the Trustee to finance in any way any action, suit, arbitration, proceeding, application, motion, or other litigation of any type (or the preparation of any such action, suit, arbitration, proceeding, application, motion, or other litigation of any type) against Focus; provided, however, that notwithstanding the foregoing, nothing in this Stipulation shall preclude the Trustee from commencing against Focus any action, suit, arbitration, proceeding, application, motion, or other litigation of any type (or the preparation of any such action, suit, arbitration, proceeding,

application, motion, or other litigation of any type), including, without limitation, any such action, suit, arbitration, proceeding, application, motion, or other litigation of any type to establish the Trustee's ownership of the Focus MI Deposit.

8. Modification of Automatic Stay. To the extent the Estate has an interest in the Focus MI Deposit, the Trustee consents to the modification of the automatic stay under section 362(a) of the Bankruptcy Code to allow for the making of the Short-Term Advance to be used to satisfy past due LID assessments due and owing to the City of Henderson.

## III. USE OF CASH COLLATERAL

9. As used herein, the term "**Cash Collateral**" shall be limited to the proceeds of the April LID Projects.

10. Term. The Trustee's authorization for use of the Cash Collateral shall remain in effect commencing on the date of the entry of the Interim Order through the earlier of April 29, 2011 or the occurrence and continuation of a Termination Event (such period referred to as the "**Cash Collateral Period**").

11. Use of Cash Collateral. Subject to the conditions and limitations set forth herein, the Trustee may only use the Cash Collateral to satisfy the costs and expenses included in the Budget annexed hereto as Exhibit A (as the same may be amended with the prior written consent of the Agent).

12. Reporting.

a. The Trustee, or any of her retained advisors, shall provide the Agent with a weekly update, either written or oral, summarizing the progress on current LID

segment projects. The update shall include the following information: (1) summary of meetings with representatives from the City of Henderson, (2) expenditures, (3) status of pending approvals from both Gomez Engineering and the City of Henderson for completed projects, (4) any updates on imminent overruns or delays, and (5) the status of the reimbursement on April LID Projects. The Trustee shall provide the Agent with copies of all documents related to the LID segments that it submits to either Gomez Engineering or the City of Henderson in order to have the completed LID projects approved and submitted for reimbursement.

b. On the fifteenth day of each calendar month, the Trustee shall deliver to the Agent a report showing in reasonable detail a comparison of actual receipts and disbursements as contrasted to those projected in the Budget for the prior month (the "**Variance Report**").

c. During the Cash Collateral Period, so long as the Trustee performs in a commercially reasonable manner or otherwise in a manner reasonably consistent with the Budget, then any variance from or in addition to a specific line item in the Budget will not be considered a Termination Event.

13. Limitations on Use of Cash Collateral. Subject to the provisions of this Stipulation, the Cash Collateral may not be used:

a. to reimburse any of the fees and expenses incurred by the Trustee's professionals or the Agent's or the Lenders' professionals during the Cash Collateral Period; provided, however, that payment of the fees and expenses incurred by the

Trustee's professionals and the Agent's professionals shall be provided for by the terms of any subsequent order of the Court governing the consensual use of cash collateral beyond this Cash Collateral Period on terms acceptable to the Agent and the Trustee; provided, further, that the fees and expenses of the Agent, to the extent permitted under the Credit Agreement, are subject to review by the Trustee for reasonableness as provided in paragraph 11(a) below, and any payments on account of the fees and expenses incurred by the Lenders or their professionals shall be on terms to be negotiated by the parties.

b. to finance in any way, the filing and pursuit of any action, suit, arbitration, proceeding, application, motion, or other litigation of any type (or the investigation or preparation of any such action, suit, arbitration, proceeding, application, motion, or other litigation of any type):

i. against the Agent or the Lenders seeking relief that would

1. assert, commence, or prosecute any Avoidance Actions against the Agent or the Lenders,

2. other than engaging in the investigation provided for in Paragraph 1.c of the Stipulation, permit the Trustee to prepare or prosecute an objection to, contest in any manner, or raise any defense to, the validity, extent, perfection, priority, enforceability, or amount (other than the post-Petition Date entitlement to ~~post-petition interest), perfection, priority, or enforceability of~~interest and the amount of post-Petition Date costs and expenses of the Agent, the Lenders, and their professionals allowable and payable under the Credit Agreement and this Stipulation), of the Agent's and the Lenders' claims and liens against the Debtor and the Debtor's real and personal assets, or any of the rights and obligations of the Agent and the Lenders under the Loan Documents, or

3. permit the Trustee to pay for any services rendered by her professionals in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion,

objection, defense, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar relief that would otherwise be prohibited pursuant to this paragraph; or

ii. invalidating, setting aside, avoiding, or subordinating, in whole or in part, the applicable Loan Documents or any payments made thereunder; or

c. to sell, lease, transfer, or otherwise dispose of Collateral without the prior written consent of the Agent or otherwise ordered by the Court; or

d. to pay prepetition indebtedness unless ordered by the Court after notice to the Agent.

14. Adequate Protection for Use of Cash Collateral. As adequate protection for any diminution in the value of the interests of the Agent and the Lenders in the Prepetition Collateral securing obligations owing to it during the Cash Collateral Period resulting from (i) the use of the Cash Collateral pursuant to section 363(c) of the Bankruptcy Code, (ii) the making of the Short-Term Advance; and (iii) the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code (together, the "**Adequate Protection Obligations**"), and effective as of the date of the entry of the Interim Order, without the necessity of the execution by the Trustee of mortgages, security agreements, pledge agreements, financing statements or otherwise:

a. *Agent's Expense Reimbursement.*

i. Under the Credit Agreement, the Administrative Agent is entitled to the reimbursement of its reasonable expenses and the reasonable professional fees incurred by its counsel and financial advisors for the purposes and in accordance with the terms and priorities set forth in the Credit Agreement. The Trustee shall pay or reimburse, following submission of reasonably detailed invoices or statements (redacted as may be necessary to preserve privilege), the reasonable fees and reasonable expenses of the Agent and the Agent's professionals, including, without limitation, any appeals of the Order for Relief and Trustee Order, but excluding the fees and expenses of

Agent's professionals incurred in connection with the investigation, pursuit, assertion or prosecution of claims against third parties, provided, that nothing set forth herein shall preclude the Agent from seeking Court authority for the payment of such amounts. The foregoing shall be collectively referred to herein as the "**Agent's Expense Reimbursement**". Notwithstanding the foregoing~~,~~; (1) the Agent shall not submit and request an Agent's Expense Reimbursement during the Cash Collateral Period; and (2) any payments made hereunder are without prejudice to those payments being recharacterized pursuant to section 506(b) of the Bankruptcy Code.

ii. Each professional referred to in paragraph 14(a)(i) shall ~~submit~~serve copies of its professional fee invoices ~~or statements to~~on the Trustee, the Builder Members, and the U.S. Trustee. Such invoices may be redacted only to the extent reasonably necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential or proprietary information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine. The Trustee, the Builder Members, and the U.S. Trustee may object to the reasonableness of the fees and expenses included in any such professional fee invoices within ten (10) days following the date of service of such invoices or statements by providing notice of such objection to the appropriate professional and to counsel for the Trustee. The Trustee shall pay to the Agent the undisputed amount of such invoice at the conclusion of such ten (10) day objection period or otherwise at the first time the Estate has sufficient cash available to make such payment and be left with reasonable liquidity. The parties will work in good faith to resolve ~~the~~any objection served within ten (10) days ~~of~~following the date of ~~the~~service of such objection. If the parties cannot resolve any such objection within such time period, the Trustee, the Builder Members, or the U.S. Trustee may file a request with the Court seeking resolution. The Trustee ~~only~~ shall ~~be required to pay the undisputed amount of such invoice, unless the parties resolve, or the Court orders, otherwise~~pay to the Agent such portion or all of the disputed amount as is authorized to be paid by the Court or otherwise agreed to by or among the Agent and the objecting party or parties upon such resolution or otherwise at the first time the Estate has sufficient cash available to make such payment and be left with reasonable liquidity. For the avoidance of doubt, professionals retained by the Agent shall not be required to file any interim or final fee application or summaries of fees with respect thereto in connection with the Agent's Expense Reimbursement provided for herein.

b. *Adequate Protection Liens.*

i. The Agent shall have, subject to terms and conditions set forth below, pursuant to sections 361, 362(d) and 363(e) of the Bankruptcy Code,