

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA**

In re: BH GRP, LLC

Case No.: 16-10575

Section B

Chapter: 11

Debtor(s)

**DEBTOR'S MOTION PURSUANT TO SECTIONS 105(a), 363(b),(c),(f), 365, 506,
541, 546(b), 1107, and 1108 OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULES 6003, AND 6004(g) FOR AUTHORIZATION TO (I)
ASSUME CERTAIN PREPETITION CONTRACTS AND TO CONTINUE TO
ENTER INTO CONTRACTS TO SELL HOME HOUSES FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS IN THE
ORDINARY COURSE OF BUSINESS, (II) PAY INDEPENDENT SALES AGENTS
THEIR COMMISSIONS AND FEES, AND (III) ESTABLISHING PROCEDURES
FOR THE RESOLUTION AND PAYMENT OF LIEN CLAIMS**

BH GRP, LLC ("**BHG**"), the debtor and debtor-in possession herein in this chapter 11
bankruptcy case respectfully represent:

Background

1. On March 17, 2016 (the "**Petition Date**"), the Debtor filed its voluntary petition under
chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District
of Louisiana.

2. The Debtor continues in possession of its property and assets and operates its business
as debtor-in-possession, pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

Jurisdiction and Venue

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This
is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BHG's Business

5. BHG is a company organized under the laws of the State of Louisiana. BHG is a real estate rehabilitation company.

6. BHG, whose origins date back to March 18, 2014, has no employees; however, it utilizes subcontractors to rehabilitate houses to be placed back into the stream of commerce for sale.

Property-Level Debt

7. Approximately 3 of the Debtors have secured property-level debt in the form of construction loans and workers' liens. As of the Petition Date, there is approximately \$1,327,217.40 in outstanding property-level debt.

Financials

8. As of the Petition Date, BHG, reported approximately \$1,400,834.56 in total assets and approximately \$1,516,506.70¹ in total liabilities. For 2015, BHG reported no revenue. BHG does not have any employees.

Relief Requested

9. The Debtor requests an order, substantially in the form annexed hereto as Exhibit B, pursuant to sections 105(a), 363(b), (c) and (f), 365, 506(b), 541, 546(b), 1107, and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing the Debtor to continue to close on sales of Properties (the "Properties" or "Property") currently under contract and to continue to sell Properties in the ordinary course of business, in each case to

¹ Based on the Debtor's unaudited financial statement as of March 31, 2016.

a single purchaser or affiliated purchasers (other than any affiliate or affiliates of BHG) in a single transaction or series of related transactions (the "Ordinary Course Sales"), in each instance, free and clear of all liens, claims, encumbrances, and other interests, (ii) authorizing the Debtor to assume Prepetition Sales Contracts (as defined below), (iii) authorizing the Debtor to honor certain prepetition contractual obligations to buyers including, where appropriate and consistent with past business practices, to refund deposits, (iv) authorizing, but not directing, the Debtor, in its discretion to pay sales commissions (the "Commissions") earned by any sales agents (the "Sales Agents") in connection with the sale of any Home, (v) authorizing, but not directing, the Debtor, in its discretion, to establish procedures to satisfy liens out of the proceeds of Property sales, including establishing procedures for resolving disputed lien claims, (vi) authorizing the Debtor to utilize the proceeds of the Property sales, subject to the lien procedures, and (vii) directing financial institutions to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing. In support of this motion, the Debtor respectfully states as follows:

Basis for Relief Requested

10. In the ordinary course of its business, the Debtor enters into contracts to sell, which are usually purchased by individual buyers. The Debtor's ability to continue to contract for sale of Properties and transfer title to buyers "free and clear" of liens, is the essence of the Debtor's business and must continue without any interruption if there is any prospect for a successful reorganization.

A. **Contracts to Sell Properties**

11. As of the Petition Date, the Debtor was a party to 1 pending contract to close on the sale of 3809 Constance Street (the "Prepetition Sales Contract(s)"). The Debtor believes that, under the terms of section 363 of the Bankruptcy Code, it is authorized to continue to sell Properties in the ordinary course of business without the need for a court order. Proceeds of the sale of the Property under this Prepetition Sales Contract will afford the Debtor needed liquidity during this chapter 11 case. Out of an abundance of caution and to provide clarity to, among others, the Debtor's brokers, customers, and title insurers, however, the Debtor seeks authority to assume the Prepetition Sales Contract² and close on the sale of Properties, including pursuant to any Prepetition Sales Contracts, once conditions for closing, *i.e.*, inspection, are satisfied.

12. The terms of the Prepetition Sales Contracts, in most instances, require a prospective buyer to provide the Debtor with a deposit on the purchase price (a "Deposit"). If the Debtor is unable to close on the sale of a particular Property, the Debtor may be obligated under the terms of the applicable Prepetition Sales Contract or by law to refund the Deposit. Accordingly, by this motion, the Debtor specifically seeks authority, but not direction, to continue to refund customer Deposits if warranted by the terms of the Prepetition Sales Contracts and future sale contracts as is consistent with the Debtor's ordinary business practices.

13. Because the Debtor anticipates that this chapter 11 case has or may have created some apprehension for current and prospective customers, the Debtor's ability to honor its

² While the Debtor will obtain the benefit of the sale proceeds from the Ordinary Course Sales related to this Prepetition Sales Contract and future Ordinary Course Sales, they will not have any monetary obligation to pay out funds, other than any applicable closing costs, or be required to pay any "cure" costs under section 365 of the Bankruptcy Code due to the assumption of the Prepetition Sales Contract.

Prepetition Sales Contract is critical to its profitability and prospects for successful reorganization. Accordingly, the Debtor seeks authority to honor its prepetition obligations and commitments under the Prepetition Sales Contract, to modify such contracts to address market conditions or negotiate other changes as is necessary without the necessity of individual motions to assume such contracts, or to sell such property.

14. Moreover, the Debtor seeks authority to enter into new contracts for the development and sale of Properties and to close on the sale (or series of related sales) of such Properties in the ordinary course of business without the expense and delay of seeking and obtaining individual court orders for each sale. To continue to close on the sale of Properties, the Debtor must be able to transfer title to buyers free and clear of all liens and interests in such property, all without the necessity of seeking and obtaining a court order for each individual sale.

B. The Commissions

15. As is customary in the real estate industry, in the ordinary course of these Property sales, independent contractor Sales Agents representing either the buyers or the Debtor in the transaction earn Commissions when a Property sale is consummated. The Debtor seeks the authority to pay these Commissions at the Debtor's discretion, in the ordinary course of the Debtor's Property sales with respect to Prepetition Sales Contracts and applicable future sales contracts.

C. The Liens

(i) Mechanics' Liens

16. As part of their real estate rehabilitation business and operations, the Debtor relies

on, and routinely contracts with, a number of third parties, including contractors, subcontractors, and suppliers, who may be able to assert liens against the Debtor's property to secure payment for certain prepetition goods and services or other claims ("Mechanics' Lien Claims"). Specifically, many of the holders of Mechanics' Lien Claims ("Mechanics' Lien Claimants") have rights under applicable state law to assert and perfect tax, construction, materialmen's, mechanics', or any other or similar claims that have given or could give rise to liens against the Debtor's property (the "Mechanics' Liens"), which attach to the Debtor's real and personal property.

17. Pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting Mechanics' Liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay. Under section 546(b) of the Bankruptcy Code, a debtor's lien avoidance powers are "subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection" 11 U.S.C § 546(b)(1)(A). Accordingly, notwithstanding the automatic stay imposed by section 362 of the Bankruptcy Code, Mechanics' Lien Claimants may be entitled to assert and perfect Mechanics' Liens against the Debtor's property during this case.

18. Additionally, title insurance companies and underwriters (collectively, "Title Insurers") will not proceed with Property closings without some assurance that Mechanics' Liens will not impair title to the properties. The Debtor also anticipates that customers and lenders will have similar concerns. Notably, the Debtor rarely had Mechanics' Liens on its Properties. However, in the months leading up to filing this chapter 11 case and once in chapter 11, the

Debtor has had and will continue to have more Mechanics' Lien Claims, and Title Insurers will likely be unwilling to issue title policies without assurance that these Mechanics' Liens will not encumber the Properties. Accordingly, the Debtor requires an order from the Court authorizing it to sell Properties in the ordinary course free and clear of all Mechanics' Liens, whether filed or unfiled, with such liens attaching to the proceeds of each sale in accordance with the proposed procedures set forth below.

(ii) Lender Liens

19. The Debtor's properties are also subject to liens arising from property-level debt. Specifically, the Debtor and certain property-level lenders (the "Property-Level Lenders") are parties to property-level debt agreements that provide for security interests in the form of first priority liens, mortgages, and other security interests (the "Property-Level Liens") in some of the Debtor's real property, including certain unsold properties. Additionally, as is consistent with past ordinary practices, if required by any property-level debt agreements, the Debtor proposes to seek the release of any Property-Level Liens by the Property-Level Lenders that may affect a Property to be sold under the proposed terms of this Motion at the time of that Property's sale.

20. Thus, the Debtor requests authority to sell Properties free and clear of the Lender Liens, with such liens to attach to the sale proceeds. The Debtor reserves the right reasonably to request from the Lenders any documentation evidencing the release of their liens pursuant to the terms of the Prepetition Credit Agreement and the debtor-in-possession financing agreement (if applicable).

D. The Proposed Lien Procedures

21. To protect the rights of Mechanics' Lien Claimants, the Debtor proposes to establish procedures for the resolution and payment of Mechanics' Lien Claims secured by valid and enforceable Mechanics' Liens (as described in more detail below, the "Lien Procedures"). The proposed Lien Procedures will facilitate the Debtor's ability to continue to conduct its business (which is necessary to preserve value in this chapter 11 case) while protecting the interests of all affected parties.

22. Specifically, to help ensure the prompt resolution of lien disputes and satisfaction of valid Mechanics' Liens, the Debtor proposes the following Lien Procedures:

- a. The Debtor shall be authorized to sell Properties to customers, which sales shall be free and clear of all liens, claims, encumbrances, and other interests.
- b. All valid and enforceable Mechanics' Liens on a subject Property shall transfer to and shall attach to the proceeds of the sale of such Property at the time of closing (the "Closing Date"). Claims secured by valid and enforceable Mechanics' Liens shall be deemed secured claims against the Debtor up to the amount of the sale proceeds and with the same priority as the Mechanics' Lien Claimant had against the underlying Property. The Debtor shall be authorized to hold and use the sale proceeds, subject to the procedures set forth herein. For avoidance of doubt, ad valorem and non ad valorem tax claims owed with respect to the Property sold will be satisfied directly from the proceeds of the closing as is customary in the ordinary course of the Debtor's business. No Mechanics' Lien Claimant shall have any claim against the Debtor's Title Insurers with respect to any asserted Lien or other claim arising from services performed for or goods delivered to the Debtor.
- c. For Mechanics' Lien Claims reflected on the Debtor's books and records and as to which the Debtor determines that a

valid Mechanics' Lien exists, the Debtor will satisfy the Mechanics' Lien Claims to the extent of the Mechanics' Lien (not to exceed the amount of the sale proceeds) by making payment within ten (10) business days of such determination.

- d. Any Mechanics' Lien Claimant who believes it has a valid Mechanics' Lien against a particular property owned or sold by the Debtor and who has not been paid or addressed by the Debtor may send to the Debtor a written demand for payment (i) setting forth the location(s) of the property sold, (ii) stating the amount of its asserted claim(s), (iii) describing, with particularity, the reason(s) the Mechanics' Lien Claimant believes it has a valid Mechanics' Lien against the individual property sold, and (iv) attaching documentation (i.e., invoices or purchase orders) or other information sufficient to demonstrate that a valid Mechanics' Lien Claim existed as of the Closing Date with respect to such property (a "Demand")³.
- e. The Demand must be served on (i) the Debtor at the following address: (a) BHG, LLC, 5827 Fluer De Lis Drive, New Orleans, Louisiana 70124, Attn: Janice Bouldin; and (b) Bankruptcy Center of Louisiana, 938 Lafayette Street, Suite 405, New Orleans, Louisiana 70113, Attn: Derek Terrell Russ, Esq.
- f. Unless the parties mutually agree otherwise, the Debtor must respond to each Demand within fifteen (15) business days after receipt of a Demand. If the Debtor determines that a Demand is valid or that litigating resolution of the dispute will be more costly than honoring the Demand, the Debtor may pay the Lien Claim without further order of the Court.
- g. If the Debtor disputes the validity or extent of the claim asserted in the Demand, the parties shall negotiate in good faith to resolve the dispute. If the Debtor resolves the

³ A Mechanics Lien Claimant that makes a Demand as provided herein will not be required to take any steps under applicable non-bankruptcy law to obtain, record, or perfect its lien, and the lien will not be determined to be invalid solely as a result of the Mechanics Lien Claimant's failure to take such steps.

dispute at a lower value than the amount reflected in the Demand, the Debtor may pay such amount without further order of the Court. If the dispute is not resolved within thirty (30) days after receipt of the Demand (the "Demand Resolution Period"), either party may seek a determination from the Court (a "Demand Resolution Proceeding") as to the validity and extent of the underlying Mechanics' Lien. Any Demand Resolution Proceeding shall be heard at the Court's next regularly scheduled omnibus hearing date or as soon thereafter as the Court's schedule will allow; *provided, however*, that if the Debtor determines during the Demand Resolution Period that the Demand is not likely to be resolved, the Debtor may commence a Demand Resolution Proceeding at any time before the expiration of the Resolution Period and may seek an expedited hearing with respect thereto.

- h. Upon a determination by the Court that the Debtor is required to satisfy a Mechanics' Lien, the Debtor shall pay such Mechanics' Lien within ten (10) business days of the date of the order resolving the Demand Resolution Motion.
- i. The Debtor shall not be required to escrow any sale proceeds due to unresolved demands; *provided, however*, that the Debtor maintains cash proceeds on hand in an aggregate amount sufficient to satisfy all Demands against sold properties that have been received but that remain unresolved; *provided, further, however*, that (i) in no event shall the Debtor be required to maintain cash on hand for unresolved Demands in an amount greater than the purchase price for a particular property, and (ii) with respect to any Demand that asserts a Lien applicable to more than one property, the Debtors shall be required to reserve only for the portion of the Mechanics' Lien Claim allocable to the particular property or properties sold pursuant to this motion.

23. The Lien Procedures will provide the Debtor with authority to make payments to the Mechanics' Lien Claimants in the amounts and to the extent necessary to satisfy undisputed

Mechanics' Liens securing undisputed prepetition claims. The Debtor respectfully submits that the materials and services provided by the Mechanics' Lien Claimants are essential to the Debtors' reorganization, and that the need to be able to sell properties free and clear of Mechanics' Liens and to settle demands is of paramount importance to the Debtor's ongoing operations.

**Cause Exists to Authorize the Debtor to Sell Properties
Free and Clear of Liens, Claims and Encumbrances**

A. The Debtor May Assume the Prepetition Sales Contracts.

24. The Debtor submits that it should have the authorization to sell Properties pursuant to the Prepetition Sales Contracts in the ordinary course of business. Nevertheless, section 365 of the Bankruptcy Code allows a debtor in possession to maximize the value of a debtor's estate by assuming and assigning executory contracts or unexpired leases that benefit the estate and rejecting those that do not. *See Lifemark Hosp., Inc. v. Liljeberg Enters. (In re Liljeberg Enters.)*, 304 F.3d 410, 438 (5th Cir. 2002); *Ins. Co. of N Am. v. NGC Settlement Trust (In re Nat 'l Gypsum Co.)*, 208 F.3d 498, 505 (5th Cir. 2000). *Cinicola v. Scharjfenberger*, 248 F.3d 110, 119 (3d Cir. 2001) (quotations omitted); *COR Route 5 Co., LLC v. The Penn Traffic Co. (In re The Penn Traffic Co.)*, 524 F.3d 373, 382 (2d Cir. 2008). A decision to assume or reject an executory contract pursuant to section 365 of the Bankruptcy Code must be based on the debtor's business judgment. *See Richmond Leasing Co. v. Capital Bank, N A.*, 762 F.2d 1303, 1309 (5th Cir. 1985). When assuming an executory contract, section 365(b) of the Bankruptcy Code requires the debtor to cure

defaults under the contract or provide adequate assurance that it will promptly cure such defaults. In addition, if there has been a default, the debtor must provide adequate assurance of future performance under the contract. 11 U.S.C. §365(b)(1)(C).⁴

B. The Debtor May Continue to Sell Properties in the Ordinary Course of Its Business.

25. Additionally, the Debtor's ability to continue to sell Properties is critical to its reorganization efforts and consistent with sections 363(c) and 1108 of the Bankruptcy Code which, together, authorize the continued operation of a business in the ordinary course by chapter 11 debtors. *See* 11 U.S.C. § 363(c)(l) (providing that, so long as "the business of the debtor is authorized to be operated" under section 1108 of the Bankruptcy Code, and "unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing"); 11 U.S.C. § 1108 (debtor in possession, as trustee, may operate the debtor's business unless court orders otherwise). As part of its real estate rehabilitation business, the Debtor sells Properties in the ordinary course of its business, and in connection with the sale of these Properties, the Debtors routinely pays Commissions to the Sales

⁴ "If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee -
(A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;
(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and (C) provides adequate assurance of future performance under such contract or lease."
11 U.S.C. § 365(b)(l).

Agents.

26. Even to the extent the Debtor's continued sale of Properties could possibly be construed as being outside the ordinary course of its business, the Court has the authority to grant the relief requested herein pursuant to section 363(b) of the Bankruptcy Code. Section 363(b)(1).

27. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts have required that such use, sale or lease be based upon the sound business judgment of the debtor. *See Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("for the debtor-in- possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991) (noting that a debtor may sell property outside the ordinary course of business if it can provide "articulated business justification") (internal citations omitted); *Grochocinski v. Zeigler (In re Zeigler)*, 320 B.R. 362, 381 (Bankr. N.D. Ill. 2005) (same); *see also Official Comm. of Unsecured Creditors of LTV Aerospace & Def Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (same); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983) (requiring "some articulated business justification" to approve the use, sale or lease of property outside the ordinary course of business).

28. In this chapter 11 case, it is clear that sufficient business justification exists for the

Debtor to close on the sale of Properties, including to make payments related to prepetition closings, to pay Commissions to Sales Agents, as well as to continue to contract for the development and sale of Properties postpetition in the ordinary course. The Debtor's business is the development and sale of Properties and Debtor's customers, vendors, and other parties in interest will not continue to do business with the Debtor unless they are assured that the Debtor has the authority to conduct such business. Accordingly, the Debtor must retain the authority to continue to conduct Ordinary Course Sales of Properties in order to ensure the continued viability of its business-and the inflow of -during this chapter 11 case.

C. The Court Should Authorize Debtor to Sell Properties Free and Clear of Liens, Claims, Encumbrances, and Other Interests.

29. Pursuant to section 363(f) of the Bankruptcy Code, a debtor may sell property free and clear of liens, claims, encumbrances, and other interests if one of the following conditions is satisfied:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) the lienholder or claimholder consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in *bonafide* dispute; or
- (5) the lienholder or claimholder could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

See 11 U.S.C. § 363(f). Because section 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the proposed sale of Properties. See *Scherer v. Fed Nat'l Mortgage Assoc. (In re Terrace Chalet Apts., Ltd)*, 159 B.R. 821, 827 (Bankr. N.D. Ill. 1993) ("Section 363(f) authorizes a sale free and clear of a lien if one of the five exceptions applies.").

30. Each lien, claim, encumbrance or other interest in the Debtor's Properties satisfies at least one of the five conditions set forth in section 363(f). Specifically, with respect to Mechanics' Lien Claims, section 363(f)(3) and (f)(5) are satisfied, and, in some cases, section 363(f)(4) may also apply. With respect to the Lender Liens, section 363(f)(2) will be satisfied by the consent Property-Level Lenders, if necessary, at the time of the sale.

31. Accordingly, the Debtor requests that the Court authorize the transfer of Properties to customers in the ordinary course free and clear of all liens, claims, encumbrances and other interests, with such liens and interests to attach to the sale proceeds to the extent required by the Lien Procedures or the applicable credit documents.

D. Cause Exits to Authorize Use of Cash Collateral and Adequate Protection.

32. Although section 363(c)(1) of the Bankruptcy Code provides broad authority to the Debtors to operate their businesses and enter into ordinary course transactions, section 363(c)(2) of the Bankruptcy Code restricts the Debtors' ability to use cash collateral. "Cash collateral" is defined in the Bankruptcy Code as, "cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents . . . in which the estate and an entity other than the estate have an interest" 11 U.S.C. § 363(a). Pursuant to section 363(c)(2)

of the Bankruptcy Code, the Court may authorize the Debtors to use cash collateral as long as the applicable secured creditors consent or are adequately protected. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400 (9th Cir. 1984); *In re McCormick*, 354 B.R. 246, 251 (Bankr. C.D. Ill. 2006) (to use the cash collateral of a secured creditor, the debtor must have the consent of the secured creditor or must establish to the Court that the secured creditor's interest in the cash collateral is adequately protected).

33. Appropriate adequate protection is decided on a case-by-case basis. See e.g., *Bray v. Shenandoah Fed Sav. & Loan Assoc. (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *Greives v. Bank of W Indiana (In re Greives)*, 81 B.R. 912, 961 (Bankr. N.D. Ind. 1987); see also *In re JKJ Chevrolet, Inc.*, 190 B.R. 542, 545 (Bankr. E.D. Va. 1995) ("[a]dequate protection is a flexible concept that is determined by considering the facts of each case") (citing *In re O'Connor*, 808 F.2d 1393, 1396-97 (10th Cir. 1987)). Although adequate protection is not defined in the Bankruptcy Code, section 361 of the Bankruptcy Code provides the following three nonexclusive examples of what may constitute adequate protection:

- (1) requiring the debtor to make a cash payment or periodic cash payments to such entity, to the extent that the . . . use . . . under section 363 . . . results in a decrease in the value of such entity's interest in such property;
- (2) providing to such entity an additional or replacement lien to the extent that such . . . use . . . results in a decrease in the value of such entity's interest in such property; or
- (3) granting such other relief . . . as will result in the realization by such entity of the indubitable equivalent of

such entity's interest in such property.

11 U.S.C. § 361.

(iii). The Mechanics' Liens Are Adequately Protected

33. The proposed Lien Procedures provide the Mechanics' Lien Claimants with a replacement lien in the proceeds of the affected Property sale. Because the Lien Procedures require the Debtor to reserve or "block" cash in an amount equal to all unresolved Demands, the Lien Procedures effectively bar the Debtor from using the cash collateral of the Mechanics' Lien Claimants to the extent a Demand has been asserted and remains unresolved.

34. With respect to Demands reflecting Mechanics' Lien Claims spanning multiple Properties, the Lien Procedures require that the Debtor reserves only that portion of the asserted Mechanics' Lien Claim allocable to the Property sold, but the Mechanics' Lien Claimants remain adequately protected by virtue of their Mechanics' Liens on the unsold Properties.

E. Authority Exists to Support the Lien Procedures and Payment of Mechanics' Liens.

35. Courts have generally acknowledged that it is appropriate to authorize the payment (or other special treatment) of prepetition obligations in appropriate circumstances, especially where those payments are entitled to priority in bankruptcy. *See generally In re Enesco Group, Inc.*, No. 07-00565 (ABG) (Bankr. N.D. Ill. Jan. 22, 2007) (authorizing debtors to pay prepetition employee obligations); *In re Glazed Invs., LLC*, No. 06-00932 (PSH) (Bankr. N.D. Ill. Feb. 7, 2006) (authorizing debtors to pay certain prepetition tax obligations).

36. It is also not uncommon for courts to authorize the payment of prepetition claims of shippers, warehousemen, and other lien claimants. *See, e.g., In re Arlington Hospitality, Inc.*, No 05-34885 (ABG) (Bankr. N.D. Ill. Sept. 2, 2005); *In re Jernberg Indus. Corp.*, No. 05-25909 (Bankr. N.D. Ill. July 21, 2005); *In re UAL Corp.*, No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 11, 2002) (authorizing payment to certain contractors in satisfaction of potential or perfected lien claims); *In re Kmart Corp.*, No. 02-02474 (SPS) (Bankr. N.D. Ill. Jan. 25, 2002) (same). In fact, courts have recognized that the relief requested herein is appropriate for large homebuilders or developers in bankruptcy. *See In re Kimball, Inc.*, Case No. 08-10095 (Bankr. N.D. Ill. Apr. 25, 2008); *In re TOUSA, Inc.*, No. 08-10928 (Bankr. S.D. Fla. Jan. 31, 2008); *In re Levitt & Sons, LLC*, No. 07-19845 (Bankr. S.D. Fla. Nov. 14, 2007).

37. Moreover, courts have relied on several legal theories to authorize debtors to sell assets free and clear of liens, including section 363(b) of the Bankruptcy Code, where a sound business purpose exists for doing so. *See, e.g., In re Ionosphere Clubs, Inc.* 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of prepetition wages); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (*In re James A. Phillips, Inc.*), 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential mechanics' lien claimants because the payments were necessary for general contractors to release funds owed to debtors).

38. The relief sought herein is appropriate under each of the foregoing standards. Most of the Mechanics' Lien Claimants provide goods or services that are fundamental to the Debtor's operations. Failure to pay their claims may lead the Mechanics' Lien Claimants to refuse to provide materials and services going forward, which would substantially impede the Debtor's ability to rehabilitate Properties or cause significant expense and delay thereby impeding the Debtor's ability to continue selling Properties and to operate as a going concern.

39. In addition, the relief requested herein is appropriate because it complies with the provisions of the Bankruptcy Code. Specifically, because (and to the extent that) the amount of the Mechanics' Lien Claimants' prepetition claims is likely less than the value of the Properties, Mechanics' Lien Claimants holding lien rights are likely over-secured creditors. In general, under section 506(b) of the Bankruptcy Code, fully secured creditors are entitled to receive (a) payment in full of their prepetition claims under any confirmed plan in this chapter 11 case, and (b) postpetition interest accruing on such claims to the extent that such claims are over-secured. Consequently, approval of the Lien Procedures, which provide a mechanism for the Debtor to pay certain fully secured prepetition obligations, will provide the Mechanics' Lien Claimants with no more than that which they otherwise would be entitled to under a plan and will save the Debtor the interest costs that otherwise might accrue on the Lien Claims during this chapter 11 case.

40. Given the Debtor's dependence on the Mechanics' Lien Claimants and, hence, the Mechanics' Lien Claimants' importance to the preservation of the value of the Debtor's

estate, together with the fundamental need of the Debtor to sell Properties free and clear, payment of the Mechanics' Lien Claims is appropriate under the circumstances and in the best interests of the Debtor, its creditors, and other parties in interest. Moreover, the Lien Procedures provide a mechanism for addressing the various legal rights of all interested parties, and provide for a negotiation period designed to avoid burdening the Court with disputed issues unless circumstances require otherwise. For all of the foregoing reasons, the Debtor requests that the Court approve the Lien Procedures and authorize the Debtor to pay the Mechanics' Lien Claims without further order of the Court.

F. Cause Exists to Direct the Debtor's Financial Institutions to Honor Checks and Electronic Fund Transfers.

41. The Debtor represents that it will have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations, and anticipated access to debtor in possession financing. The Debtor believes or anticipates that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be directed, when requested by the Debtor, to receive, process, honor and pay any and all checks or wire transfer requests in respect of Mechanics' Lien Claims.

Satisfaction of Bankruptcy Rule 6003

42. Pursuant to Bankruptcy Rule 6003, a court may grant relief regarding a motion to pay all or part of a prepetition claim that arose before the Petition Date within 20 days after

the filing of the petition if the relief is necessary to avoid immediate and irreparable harm. As described above, the ability to continue to sell Properties to customers "free and clear," including, where appropriate, to satisfy valid and enforceable Mechanics' Liens, is integral to the Debtor's business operations and necessary to maintain the confidence and good will of the Debtor's customer base, which is critical to facilitate a successful reorganization. Failure to satisfy prepetition obligations to customers and Mechanics' Lien Claimants upon closing Property sales in the ordinary course of business during the first 20 days of these cases will jeopardize the Debtor's ability to bring in money, as well as customer loyalty and trust. Absent entry of the order requested herein, and approval of the Lien Procedures, prospective and current customers may be unwilling to sign contracts to buy Properties or to close Property purchases, and the Debtor's Title Insurers may refuse to continue with Property sale closings. Moreover, there is a substantial risk of negative publicity if the Debtor does not have the requested authorization. In fact, other builder debtors who did not immediately fulfill customer obligations after a chapter 11 filing have experienced such negative publicity. Accordingly, the Debtor submits that they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of prepetition obligations related to the customer contracts and the Lien Procedures.

Waiver of Bankruptcy Rule 6004(g)

43. Rule (g) of the Bankruptcy Rules provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." 11 U.S.C. § 6004(g). The Debtor requests that any order

approving the relief requested herein be effective immediately by providing that the 10-day stay under Bankruptcy Rule 6004(g) is waived.

Reservation of Rights

44. Nothing contained herein is intended or should be construed as an admission as to the validity or priority of any claim against the Debtor, a waiver of the Debtor's rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtor expressly reserves its rights to contest any asserted Mechanics' Lien Claim under applicable non-bankruptcy law. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission to the validity of any claim or a waiver of the Debtor's rights to dispute such claim subsequently.

Notice

45. The Debtors have provided notice of this Motion to: (a) the Office of the Assistant United States Trustee; (b) the entities listed on the List of Creditors Holding the 20 Largest Unsecured Claims filed by the Debtors pursuant to Bankruptcy Rule 1007(d); and (c) all parties known to be affected by this pleading. In light of the nature of the relief requested, the Debtor respectfully submits that no further notice is necessary.

No Prior Request

46. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enters an order, substantially in the form submitted herewith, (i) that the Court grants the relief requested herein; and (ii) grants such other relief as the Court deems just and proper.

Dated: June 22, 2016

BH GRP, LLC

/s/ Janice Bouldin

Janice Bouldin
Managing Member

/s/ Derek Terrell Russ (#29667)

Bankruptcy Center of Louisiana
938 Lafayette Street
Suite 405 New Orleans, LA 70113
504-522-1717 Fax:504-522-1715
derekruss@ruslawfirm.net

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA**

In re: BH GRP, LLC

Case No.: 16-10575

Section B

Chapter: 11

Debtor(s)

CERTIFICATE OF SERVICE

On June 22, 2016, a copy of the following document, described below:

DEBTOR'S MOTION PURSUANT TO SECTIONS 105(a), 363(b),(c),(f), 365, 506, 541, 546(b), 1107, and 1108 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6003, AND 6004(g) FOR AUTHORIZATION TO (I) ASSUME CERTAIN PREPETITION CONTRACTS AND TO CONTINUE TO ENTER INTO CONTRACTS TO SELL HOME HOUSES FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS IN THE ORDINARY COURSE OF BUSINESS, (II) PAY INDEPENDENT SALES AGENTS THEIR COMMISSIONS AND FEES, AND (III) ESTABLISHING PROCEDURES FOR THE RESOLUTION AND PAYMENT OF LIEN CLAIMS

was deposited for delivery by the United States Postal Service, via first class United States Mail, postage prepaid, first class, with sufficient postage thereon and/or was served via ECF to the parties listed on the attached creditor address matrix hereto and incorporated as though fully set forth herein.

The undersigned does hereby declare under penalty or perjury of the laws of the United States that I have served the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my knowledge, information, and belief.

THOMAS MADIGAN, counsel for Exemplar Capital Management, LLC: tmadigan@SHERGARNER.com

MARY LANGSTON, counsel for Office of the U.S. Trustee: Mary.Langston@usdoj.gov

Dated: June 22, 2016

/s/ Derek Terrell Russ (#29667)
Bankruptcy Center of Louisiana
938 Lafayette Street
Suite 405
New Orleans, LA 70113
504-522-1717 Fax:504-522-1715
derekruss@ruslawfirm.net