

**ORIGINAL**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----X  
:  
**In re:** : **Chapter 11**  
:  
**CAPMARK FINANCIAL GROUP INC., et al.,** : **Case No. 09-13684 (CSS)**  
:  
**Debtors.** : **Jointly Administered**  
:  
: **Re: Docket Nos. 74, 88 and 349**  
-----X

**SECOND EXTENDED INTERIM ORDER (I) AUTHORIZING USE OF CERTAIN  
CASH COLLATERAL POSTPETITION, (II) PROVIDING ADEQUATE  
PROTECTION TO PREPETITION SECURED PARTIES, AND  
(III) SCHEDULING A FINAL HEARING THEREON**

Upon the motion dated October 27, 2009 (the “Motion”), of Capmark Financial Group Inc. (“CFG”) and certain of its direct and indirect subsidiaries and affiliates, each as a debtor and debtor in possession (collectively, the “Debtors”)<sup>1</sup> in the above-captioned chapter 11

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four (4) digits of each Debtor’s federal tax identification number, are: Summit Crest Ventures, LLC (5690), Capmark Financial Group Inc. (2188), Capmark Capital Inc. (6496), Capmark Finance Inc. (3444), Commercial Equity Investments, Inc. (4153), Mortgage Investments, LLC (6319), Net Lease Acquisition LLC (9658), SJM Cap, LLC (0862), Capmark Affordable Equity Holdings Inc. (2379), Capmark REO Holding LLC (3951), Paramount Managing Member AMBAC II, LLC (3934), Paramount Managing Member AMBAC III, LLC (3999), Paramount Managing Member AMBAC IV, LLC (0117), Paramount Managing Member AMBAC V, LLC (3366), Paramount Managing Member LLC (0184), Paramount Managing Member II, LLC (7457), Paramount Managing Member III, LLC (0196), Paramount Managing Member IV, LLC (0199), Paramount Managing Member V, LLC (0201), Paramount Managing Member VI, LLC (5857), Paramount Managing Member VII, LLC (5855), Paramount Managing Member VIII, LLC (5854), Paramount Managing Member IX, LLC (5452), Paramount Managing Member XI, LLC (5455), Paramount Managing Member XII, LLC (5457), Paramount Managing Member XVIII, LLC (3087), Paramount Managing Member XIV, LLC (4194), Paramount Managing Member XV, LLC (4192), Paramount Managing Member XVI, LLC (4186), Paramount Northeastern Managing Member, LLC (3086), Capmark Affordable Properties Inc. (3435), Paramount Managing Member XXIII, LLC (4754), Paramount Managing Member XXIV, LLC (3615), Paramount Managing Member 30, LLC (6824), Paramount Managing Member 31, LLC (6826), Paramount Managing Member 33, LLC (6831), Broadway Street California, L.P. (7722), Broadway Street 2001, L.P. (0187), Broadway Street XV, L.P. (7730), Broadway Street XVI, L.P. (7725), Broadway Street XVIII, L.P. (9799), Broadway Street Georgia I, LLC (9740), Capmark Managing Member 4.5 LLC (8979), and Capmark Affordable Equity Inc. (2381). CFGI’s corporate headquarters is located at 116 Welsh Road, Horsham, Pennsylvania,

cases (collectively, the "Cases") pursuant to sections 105(a), 361, 362, 363 and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 4001-2 and 9013-1(m) of the Local Bankruptcy Rules of the District of Delaware (the "Local Rules"), seeking entry of an interim order (this "Interim Order"):

(i) authorizing the Debtors' use of "cash collateral" (as defined in section 363(a) of the Bankruptcy Code, "Cash Collateral") of the Prepetition Administrative Agent and the Prepetition Secured Lenders (each as defined herein);

(ii) providing adequate protection to the Prepetition Administrative Agent and Prepetition Secured Lenders for any diminution in value of their respective interests in the Cash Collateral;

(iii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order; and

(iv) scheduling a final hearing (the "Final Hearing") to consider the relief requested in the Motion and the entry of a Final Order (as defined herein), and approving the form of notice with respect to the Final Hearing.

The Court (as defined herein) having considered the Motion, the Declaration of Thomas L. Fairfield, Executive Vice President, General Counsel and Secretary of CFGI, in Support of the Debtors' Chapter 11 Petitions and First Day Motions and Applications, sworn to on October 25, 2009, the exhibits attached thereto, and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held on October 29, 2009 (the "Interim

---

19044. The addresses for all of the Debtors are available at the following World Wide Web address: <http://chapter11.epiqsystems.com/capmark>.

Hearing”), as well as the hearings held on November 24, 2009 and December 10, 2009 (the “Subsequent Hearings,” and together with the Interim Hearing, the “Hearings”); and notice of the Hearings having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and 9014; and the Hearings having been held pursuant to Bankruptcy Rule 4001(b)(2) and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and equity holders, and is essential for the continued operation of the Debtors’ businesses; and after due deliberation and consideration, and for good and sufficient cause appearing therefor, it is HEREBY FOUND AND DETERMINED THAT:<sup>2</sup>

A. Commencement Date. On October 25, 2009 (the “Commencement Date”), each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (this “Court”) commencing these Cases.

B. Debtors in Possession. The Debtors are continuing in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

C. Jurisdiction and Venue. This Court has jurisdiction, pursuant to 28 U.S.C. § 1334, over these proceedings, and over the persons and property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases appears proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

---

<sup>2</sup> The findings of fact and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to

D. Statutory Committee. An official committee of unsecured creditors in these Cases was appointed by the United States Trustee (the “U.S. Trustee”) pursuant to section 1102 of the Bankruptcy Code (the “Statutory Committee”) on November 2, 2009.

E. Trustee or Examiner. As of the date hereof, no request has been made for the appointment of a trustee or examiner.

F. Debtors’ Stipulations. Without prejudice to the rights of parties in interest as set forth in Paragraph 11 herein, the Debtors and Debtors in Possession stipulate and agree that (collectively, Paragraphs F(i) through F(vi) below are referred to herein as the “Debtors’ Stipulations,” which are not findings of this Court):

(i) Prepetition Secured Credit Agreement. Pursuant to that certain Term Facility and Guaranty Agreement, dated as of May 29, 2009 (as amended, supplemented or otherwise modified, the “Prepetition Secured Credit Agreement”; together with all other loan, intercreditor and security documents related to, referenced in or executed in connection with the Prepetition Secured Credit Agreement, the “Prepetition Secured Credit Documents”), among CFGI, as Borrower, certain of the Debtors who have provided guarantees under the Prepetition Secured Credit Agreement (the “Guarantors”),<sup>3</sup> CitiCorp North America, Inc. (the “Prepetition Administrative Agent”), as Administrative Agent, Citibank, N.A., as Collateral Agent (the “Collateral Agent,” together with the Administrative Agent, the “Prepetition Agents”), JPMorgan Chase Bank, N.A., as Syndication Agent, and Citigroup Global Markets Inc. and J.P. Morgan Securities, Inc., as Joint Lead Arrangers and Joint Bookrunners, and the lenders that are

---

Bankruptcy Rule 9014.

<sup>3</sup> The Debtor Guarantors are Capmark Finance Inc., Commercial Equity Investments, Inc., Capmark Capital Inc., Net Lease Acquisition LLC, Mortgage Investments, LLC, SJM CAP, LLC, Capmark Affordable Equity Holdings Inc., Capmark REO Holding LLC, and Summit Crest Ventures. In addition, there are two non-Debtor Guarantors, Capmark Investments LP and Crystal Ball Holding of Bermuda Limited.

parties thereto from time to time (collectively, together with the Prepetition Administrative Agent, the “Prepetition Secured Lenders”), the Prepetition Secured Lenders provided credit facilities to CFGI and provided other financial accommodations to or for the benefit of CFGI (collectively the “Prepetition Credit Facility”). The Prepetition Secured Credit Documents shall govern the rights and obligations of the Prepetition Secured Lenders, subject to the provisions of this Order.

(ii) *Prepetition Secured Credit Obligations.* The Prepetition Credit Facility provided the Debtors with \$1.5 billion in aggregate maximum principal amount of term commitments. As of the Commencement Date, the outstanding principal amount of all loans under the Prepetition Secured Credit Agreement was not less than \$1.5 billion (together with any amounts paid, incurred or accrued prior to the Commencement Date in accordance with the Prepetition Secured Credit Documents, principal, accrued and unpaid interest, any fees, expenses, and disbursements (including, without limitation, attorneys’ fees, related expenses and disbursements), reimbursement obligations, indemnification obligations and other charges of whatever nature, whether or not contingent, whenever arising, due or owing in respect thereof to the extent and as provided for in the Prepetition Secured Credit Documents, including any “Obligation” as defined in the Prepetition Secured Credit Agreement, the “Prepetition Secured Credit Obligations”). The Prepetition Secured Credit Obligations are guaranteed by the Guarantors.

(iii) *Prepetition Liens and Prepetition Collateral.* As more fully set forth in the Prepetition Secured Credit Documents, prior to the Commencement Date, the Debtors granted to the Collateral Agent for the ratable benefit of the Prepetition Secured Parties a security interest in and first priority lien upon the Debtors’ property set forth in the Prepetition

Secured Credit Documents (collectively, the “Prepetition Collateral”), including but not limited to, certain Initial Pledged Debt and Mortgage Loan Assets (each as defined in the Prepetition Secured Credit Documents), and the Cash Collateral (as defined and set forth below) (collectively, the “Prepetition Liens”). Specifically, the Initial Pledged Debt and Mortgage Loan Assets are assets owned by CFI, which, pursuant to the terms of the Prepetition Secured Credit Agreement, upstreams cash payments received in connection with such Prepetition Collateral to CFGI, which, in turn, contemporaneously places such funds in the Cash Collateral Account and Sub-Accounts (each as defined below).

(iv) *Cash Collateral.* Each Debtor represents that all of the Debtors’ cash in the Reserve Cash Collateral Sub-Account (as defined in the Motion) (the “Available Cash”) constitutes the Cash Collateral of the Prepetition Administrative Agent and the Prepetition Secured Lenders. The Available Cash may be used by the Debtors subject to the terms and conditions of this Interim Order. For the avoidance of doubt, only the Available Cash may be used by the Debtors and their estates as Cash Collateral and none of the Debtors’ cash in the Cash Collateral Account (other than the Available Cash), including all cash in the Interest Cash Collateral Sub-Account and the Non-Reserve Cash Collateral Sub-Account (each as defined in the Motion) shall constitute Cash Collateral that is available to be used by the Debtors or their estates.

G. Adequate Protection. The Prepetition Administrative Agent, for the benefit of itself and the Prepetition Secured Lenders, is entitled to receive adequate protection to the extent of any diminution in value of its interests in the Cash Collateral resulting from the use of such collateral, the consumption, or shrinkage of the Cash Collateral (collectively the “Diminution in Value”) pursuant to sections 361 and 363 of the Bankruptcy Code. Pursuant to

sections 361, 363, and 507(b) of the Bankruptcy Code, as adequate protection for any Diminution in Value, the Prepetition Administrative Agent, for the benefit of itself and the Prepetition Secured Lenders, will receive the Adequate Protection Liens (as defined herein).

H. Final Hearing. At the Final Hearing, the Debtors will seek final approval of the relief requested in the Motion for the proposed use of Cash Collateral arrangements pursuant to a proposed final order (the "Final Order"), which shall be in form and substance acceptable to each Prepetition Agent, approving such use of Cash Collateral arrangements, notice of which Final Hearing and Final Order will be provided in accordance with this Interim Order.

I. Notice. Notice of the Hearings and the emergency relief requested in the Motion has been provided by the Debtors to (i) the Office of the United States Trustee for the District of Delaware, (ii) Citibank, N.A. and Citicorp North America, Inc., as administrative agents under the Debtors' prepetition senior credit facility, bridge loan agreement and term loan facility, (iii) Deutsche Bank Trust Company Americas, as trustee under the prepetition senior unsecured floating rate note and 5.875% senior unsecured note indentures, (iv) Wilmington Trust FSB, as successor trustee under the prepetition 6.300% senior unsecured note indenture, (v) counsel for the ad hoc committee of prepetition unsecured noteholders of CFGI, (vi) Law Debenture Trust Company of New York, as trustee under CFGI's prepetition floating rate junior subordinated indenture, (vii) any proposed DIP lender, (viii) those creditors holding the thirty (30) largest unsecured claims against the Debtors' estates (on a consolidated basis), (ix) the Federal Deposit Insurance Corporation, and (x) and those parties who have entered their appearance in the case pursuant to Rule 2002. Given the nature of the relief sought the Court concludes that sufficient and adequate notice of the Hearings has been given pursuant to Bankruptcy Rules 2002, 4001(b) and (d) and 9014 and section 102(1) of the Bankruptcy Code as

required by section 361 and 363 of the Bankruptcy Code, and that no further notice of, or hearing on, the relief sought at the Hearings and the relief granted herein is necessary or required.

J. Use of Collateral. Unless otherwise ordered by the Court after notice and a hearing, the Debtors' use of the Cash Collateral shall be solely upon the protections, terms and conditions provided for in this Interim Order.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. Motion Granted. The Motion is granted pursuant to Bankruptcy Code section 363(c)(2)(A) on an interim basis as set forth herein, and the use of Cash Collateral on an interim basis is authorized, subject to the terms of this Interim Order.
2. Objections Overruled. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled are hereby denied and overruled.
3. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order, the Debtors are authorized to use Cash Collateral for the period (the "Specified Period") from the Commencement Date through the date that is the earliest to occur of December 27, 2009 or the occurrence of an Event of Default. During the Specified Period, the Debtors may use only the Cash Collateral that is in the Cash Collateral Reserve Sub-Account and it may be used solely and exclusively for the purposes and in the amounts set forth on Exhibits A, B. and C annexed hereto (collectively, the "Permitted Uses"), the amount of which shall not exceed \$9.9 million in the aggregate during the Specified Period. The Prepetition Administrative Agent's and the Prepetition Secured Lenders' consent to the Permitted Uses is without prejudice



to any argument that additional Available Cash should not be used by the Debtors in any manner.

4. Administrative Expense Claims. Capmark Finance Inc. (“CFI”) shall and is authorized by this Interim Order, pursuant to section 364(b) of the Bankruptcy Code, to grant CFGI a contingent administrative expense claim in an amount equal to the Cash Collateral used postpetition for the Permitted Uses (a “Contingent Administrative Expense Claim”); *provided, however,* that if any Prepetition Lien granted by CFI in favor of the Prepetition Secured Lenders over the Prepetition Collateral is avoided pursuant to sections 544, 545, 547, 548, or 549 of the Bankruptcy Code or any other statute, or diminishes in value for any reason, or it is determined (other than due to a decrease in the value of the Prepetition Collateral) that the claim that can be asserted by the Prepetition Secured Lenders over any of the Prepetition Collateral is less than the amount of the Prepetition Secured Credit Obligations, CFGI’s Contingent Administrative Expense Claim shall become an allowed administrative expense claim (a) in the amount of the Cash Collateral used to preserve or enhance the Prepetition Collateral subject to such avoided Prepetition Lien or (b) to the extent of the Diminution in Value, as applicable (either, an “Allowed Administrative Expense Claim”); *provided further, however,* that if any Prepetition Lien granted by CFGI in favor of the Prepetition Secured Lenders over the Cash Collateral used to preserve or enhance the Prepetition Collateral through the Permitted Uses is avoided pursuant to section 544, 545, 547, 548 or 549 of the Bankruptcy Code, or any other statute, CFGI’s Allowed Administrative Expense Claim and/or Contingent Administrative Expense Claim, as applicable, shall be disallowed in full and not collectible against CFI (a “Disallowed Administrative Expense Claim” and/or a “Disallowed Contingent Administrative Expense Claim,” as applicable).

5. Adequate Protection Liens.

(a) *Adequate Protection Liens.* As adequate protection of the interests of the Prepetition Administrative Agent and the Prepetition Secured Lenders against any Diminution in Value of such interest, pursuant to sections 361 and 363(e) of the Bankruptcy Code, the Debtors are authorized to grant, and upon entry of this Interim Order, shall be deemed to have granted, as of the Commencement Date to the Prepetition Administrative Agent, for the benefit of itself and the Prepetition Secured Lenders, additional and replacement continuing valid, binding, enforceable, non-avoidable, and automatically perfected postpetition security interests in and liens (the "Adequate Protection Liens") on all Cash Collateral, Contingent Administrative Expense Claims and all Allowed Administrative Expense Claims. The Adequate Protection Liens shall have the priority set forth in Paragraph 5(b) below. The Adequate Protection Liens shall secure the payment of the Prepetition Secured Credit Obligations in an amount equal to any Diminution in Value of the applicable Prepetition Agent's interests in the Cash Collateral from and after the Commencement Date.

(b) *Priority of Adequate Protection Liens.* The Adequate Protection Liens of the Prepetition Administrative Agent and the Prepetition Secured Lenders shall be junior only to the permitted prior liens under the terms of the Prepetition Secured Credit Agreement, if any. The Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the Prepetition Collateral. The Adequate Protection Liens shall be enforceable against the Debtors, their estates and any successors thereto, including without limitation, any trustee or other estate representative appointed in the Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, "Successor Cases"). Except as provided herein, the Adequate Protection Liens shall not be made

subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Cases, and the Adequate Protection Liens shall be valid and enforceable upon the dismissal of any of the Cases or Successor Cases. Nothing herein shall prejudice the right of the Prepetition Administrative Agent or the Prepetition Secured Lenders to seek a waiver of section 506(c) of the Bankruptcy Code. No such waiver, however, is being granted by this Order. No lien or interest avoided and preserved for the benefit of any estate pursuant to section 551 of the Bankruptcy Code shall be made *pari passu* with or senior to the Prepetition Liens or the Adequate Protection Liens.

6. Modification of Automatic Stay. The automatic stay imposed under section 362(a) of the Bankruptcy Code is modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtors to grant the Adequate Protection Liens; (b) permit the Debtors to perform such acts as the Prepetition Administrative Agent or Prepetition Secured Lenders may request in their reasonable discretion to assure the perfection and priority of the liens granted herein; and (c) permit the Debtors to incur all liabilities and obligations to the Prepetition Administrative Agent and Prepetition Secured Lenders under this Interim Order; *provided, however*, that any stay of relief with respect to the exercise of remedies shall be in accordance with Paragraph 11 below or as otherwise ordered by this Court.

7. Perfection of Adequate Protection Liens. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Adequate Protection Liens without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of

doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the Adequate Protection Liens, or to entitle the Prepetition Administrative Agent and Prepetition Secured Lenders to the priorities granted herein. Notwithstanding the foregoing, the Prepetition Administrative Agent is authorized to file, as it deems necessary or advisable, such financing statements, mortgages, notices of liens and other instruments or documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the applicable Adequate Protection Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Commencement Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create, evidence or perfect the Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the Prepetition Administrative Agent all such financing statements, mortgages, title insurance policies, notices, instruments and other documents as such Prepetition Administrative Agent or Prepetition Secured Lenders may reasonably request. The Prepetition Agents, each in their sole discretion, may file a copy of this Interim Order as a financing statement or notice with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, mortgages, notices of lien, instrument, or similar document.

8. Events of Default. The occurrence of any of the following events, unless waived in writing by the Prepetition Administrative Agent shall constitute an event of default (collectively, the "Events of Default"):

(a) the obtaining after the Commencement Date of credit or the incurring of indebtedness that is (i) secured by a security interest, mortgage or other lien (in each case, other than Permitted Liens (as referenced in clause (d) of the definition of Permitted Liens

in the Prepetition Secured Documents)) on all or any portion of the Prepetition Collateral which is equal or senior to any security interest, mortgage or other lien of the Prepetition Administrative Agent and the Prepetition Secured Lenders, or (ii) entitled to priority administrative status which is equal or senior to that granted to the Prepetition Administrative Agent and Prepetition Secured Lenders herein;

(b) reversal, vacatur, or modification (without the express prior written consent of the Prepetition Administrative Agent, in its sole discretion) of this Interim Order;

(c) unless requested by the Prepetition Administrative Agent or the Prepetition Secured Lenders, the dismissal of the Cases or conversion of the Cases to cases under chapter 7 of the Bankruptcy Code, or appointment of a chapter 11 trustee or examiner with enlarged powers or other responsible person;

(d) the Debtors' failure to perform, after 5 days written notice from the Prepetition Administrative Agent, in any respect, any of the material terms, provisions, conditions, covenants, or obligations under this Interim Order (other than a failure to perform with respect to Paragraph 3 of this Interim Order); and

(e) the Debtors' failure to perform, after notice from the Prepetition Administrative Agent, in any respect, any of the material terms, provisions, conditions, covenants, or obligations under Paragraph 3 of this Interim Order, which failure shall constitute an Event of Default for which no notice is necessary.

9. Rights and Remedies Upon Event of Default. The Prepetition Administrative Agent and that certain group of lenders that formed an ad hoc committee represented by Kirkland & Ellis LLP (the "Ad Hoc Committee") acting together may jointly, immediately upon the occurrence and during the continuation of an Event of Default, make a

declaration to terminate, reduce or restrict the ability of the Debtors to use Cash Collateral (any such declaration, a "Termination Declaration"). The Termination Declaration shall be given by facsimile or other electronic means to counsel to the Debtors, counsel to any Statutory Committee, counsel to the Ad Hoc Committee (if applicable), counsel to the Prepetition Administrative Agent (if applicable) and the U.S. Trustee (the earliest date any such Termination Declaration is made shall be referred to herein as the "Termination Declaration Date"). Except with respect to Paragraph 8(e) above, during the period that ends five business days after the Termination Declaration Date (the "Remedies Notice Period"), the Debtors may request that this Court order the continued use of the Cash Collateral pursuant to this Interim Order. Immediately upon the end of the Remedies Notice Period unless this Court orders otherwise, the Debtors shall no longer have the right to use or seek to use Cash Collateral.

10. Limitations on the Use of Cash Collateral. Unless otherwise ordered by the Court after notice and a hearing, the Cash Collateral may not be used: (a) in connection with or to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type (i) adverse to the interests of the Prepetition Administrative Agent, the Prepetition Secured Lenders, or their rights and remedies under the Prepetition Secured Credit Documents or this Interim Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Statutory Committee (if any) 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 adverse to the interests of the Prepetition Administrative Agent, the Prepetition Secured Lenders, or their rights and remedies under the Prepetition Secured Credit Documents or

this Interim Order, (ii) invalidating, setting aside, recharacterizing, avoiding or subordinating, in whole or in part, the Prepetition Secured Credit Obligations, (iii) for monetary, injunctive or other affirmative relief against the Prepetition Administrative Agent or any Prepetition Secured Lender, or their respective Collateral that would impair the ability of the Prepetition Administrative Agent or Prepetition Secured Lenders to recover on the Prepetition Secured Credit Obligations or seeking affirmative relief against them, or (iv) preventing, hindering or otherwise delaying the exercise by the Prepetition Administrative Agent or Prepetition Secured Lenders of any rights and/or remedies under this Interim Order, the Prepetition Secured Credit Documents, or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of this Court or otherwise) by the Prepetition Administrative Agent or Prepetition Secured Lenders upon any of the Prepetition Collateral; (b) to object to, contest, or interfere with in any way the enforcement or realization upon any of the Prepetition Collateral once an Event of Default has occurred by the Prepetition Administrative Agent or, subject to the Prepetition Secured Credit Documents, the applicable Prepetition Secured Lenders; (c) other than in accordance with this Interim Order without the consent of the Prepetition Administrative Agent and the Prepetition Secured Lenders; (d) to object to or challenge in any way the claims, liens, or interests (including interests in the Prepetition Collateral) held by or for the benefit of the Prepetition Administrative Agent or Prepetition Secured Lenders; (e) to assert, commence or prosecute any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the Prepetition Administrative Agent or any Prepetition Secured Lender; (f) to prosecute an objection to, contest in any manner, or raise any defenses to, the validity, extent, amount, perfection, priority, characterization or enforceability of any of the Prepetition Secured Credit Obligations or Prepetition Liens or any other rights or

interests of the Prepetition Administrative Agent or Prepetition Secured Lenders; or (g) to prevent, hinder or otherwise delay the exercise by the Prepetition Administrative Agent or any Prepetition Secured Lender of any rights and remedies granted under this Interim Order.

11. Reservation of Certain Statutory Committee and Third Party Rights.

Nothing in this Interim Order shall prejudice the rights of the Debtors, the Statutory Committee or any other party in interest granted standing by this Court to seek to avoid, object to or otherwise challenge (a) the validity, extent, priority, or perfection of the mortgages, security interests, and liens of the Prepetition Administrative Agent or any Prepetition Secured Lender; or (b) the validity, allowability, priority, fully secured status or amount of the Prepetition Secured Credit Obligations.

12. All Acts. The Debtors are authorized to perform all acts and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this Interim Order and the transactions contemplated hereby.

13. Termination. Nothing contained in this Interim Order shall be deemed to terminate, modify in any respect or release any obligations of any of the Guarantors.

14. No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

15. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of: (a) the Prepetition Administrative Agent's or any Prepetition Secured Lender's right to seek any other or supplemental relief in respect of any Debtor, including the right to seek additional adequate protection (without prejudice to any other person's right to object to or otherwise oppose such



additional adequate protection); or (b) any of the rights of the Prepetition Administrative Agent or any Prepetition Secured Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases, conversion of any of the Cases to cases under chapter 7 of the Bankruptcy Code, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans. Other than as expressly set forth in this Interim Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the Prepetition Administrative Agent and Prepetition Secured Lenders are preserved.

16. Section 507(b) Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Administrative Agent and/or any Prepetition Secured Lender hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Cash Collateral during the Cases or any Successor Cases. Nothing contained herein shall be deemed a finding by this Court, or an acknowledgment by the Prepetition Administrative Agent or Prepetition Secured Lenders that the adequate protection granted herein does in fact adequately protect the Prepetition Administrative Agent and Prepetition Secured Lenders against any Diminution in Value of their respective interests in the Cash Collateral.

17. No Waiver by Failure to Seek Relief. The failure of the Prepetition Administrative Agent or any Prepetition Secured Lender to seek relief or otherwise exercise its rights and remedies under this Interim Order, the Prepetition Secured Credit Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder,

thereunder, or otherwise of the Prepetition Administrative Agent or the applicable Prepetition Secured Lender.

18. Good Faith. The Prepetition Administrative Agent and Prepetition Secured Lenders each have acted in good faith in connection with this Interim Order and their reliance on this Interim Order is in good faith.

19. Binding Effect of Interim Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, the Prepetition Administrative Agent, the Prepetition Secured Lenders, all other creditors of any of the Debtors, any Statutory Committee or any other Court-appointed committee appointed in any of the Cases, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Cases.

20. No Modification of Interim Order. Any liens or claims granted to the Prepetition Administrative Agent and the Prepetition Secured Lenders hereunder arising prior to the effective date of any such modification, amendment or vacatur of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges and benefits granted herein.

21. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Cases; (b) converting any of the Cases to cases under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Cases or any Successor Cases; (d) discharging any Debtor; or (e) pursuant to which this Court abstains from hearing any of the Cases or Successor Cases. The terms and provisions of this Interim Order, including, if applicable, the

claims, liens, security interests and other protections granted to the Prepetition Administrative Agent and the Prepetition Secured Lenders pursuant to this Interim Order shall continue in the Cases, in any Successor Cases, or following dismissal of the Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until the indefeasible payment in full of all Prepetition Secured Credit Obligations, notwithstanding the expiration of the Specified Period or any earlier termination of the Debtors' authorization to use Cash Collateral.

22. Final Hearing. The Final Hearing to consider entry of the Final Order is scheduled for **December 18, 2009 at 10:00 a.m.** ~~2:00 p.m.~~ **(Eastern Standard Time)** before The Honorable Christopher S. Sontchi at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5<sup>th</sup> Floor, Courtroom 6, Wilmington, Delaware 19801. On or before December 11, 2009, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with a copy of this Interim Order and the Motion, on: (a) the parties having been given notice of the Interim Hearing; (b) any party which has filed prior to such date a request for notices with this Court; (c) counsel for the Statutory Committee; and (d) the thirty (30) largest unsecured creditors of the Debtors on a consolidated basis. The Final Hearing Notice shall state that any party in interest objecting to entry of the proposed Final Order shall file written objections with the Clerk of the Court no later than on **December 16, 2009 at 4:00 p.m. (Eastern Standard Time)**, which objections shall be served so as to be received on or before such date by: (i) counsel to the Debtors, Dewey & LeBoeuf LLP, attn: Michael P. Kessler, Esq., and Judy G.Z. Liu, Esq., 1301 Avenue of the Americas, New York, New York, 10019; (ii) counsel for the Debtors, Richards, Layton & Finger, P.A., attn: Mark D. Collins, Esq. and Jason M. Madron, Esq., One Rodney Square, 920 North King Street, Wilmington, Delaware,

19801; (iii) counsel to the Statutory Committee, Kramer Levin Naftalis & Frankel LLP, attn: Thomas Moers, Esq. and Joshua K. Brody, Esq., 1177 Avenue of the Americas, New York, New York 10036; (iv) counsel to the Statutory Committee, Bayard, P.A., attn: Neil B. Glassman, Esq. and Jamie Lynne Edmonson, Esq., 222 Delaware Avenue, Wilmington, Delaware 19801; (v) counsel to the Prepetition Administrative Agent, Shearman & Sterling LLP, attn: Fredric Sosnick, Esq. and Jill Frizzley, Esq., 599 Lexington Avenue, New York, New York 10022; (vi) counsel to the Prepetition Administrative Agent, Ashby & Geddes, P.A., attn: Don Beskrone, Esq., 500 Delaware Avenue, P.O. Box 1150, Wilmington, Delaware, 19899; (vii) counsel to the Ad Hoc Committee, Kirkland & Ellis LLP, attn: Edward Sassower, Esq., 601 Lexington Avenue, New York, New York 10022; and (viii) the Office of the United States Trustee for the District of Delaware, attn: Joseph J. McMahon, Jr., Esq., 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801.

23. Retention of Jurisdiction. This Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Dated: December 10, 2009  
Wilmington, Delaware



---

THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE