

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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In re: :  
: Chapter 11  
CAPMARK FINANCIAL GROUP, INC., *et al.*, : Case No. 09-13684 (CSS)  
: Debtors. : Jointly Administered  
: RE: D.I. \_\_\_\_\_  
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**ORDER APPROVING STIPULATED PROTECTIVE ORDER  
GOVERNING CONFIDENTIAL MATERIAL PRODUCED PURSUANT  
TO AD HOC UNSECURED GROUP SUBPOENAS**

Upon the *Certification of Counsel re: [Proposed] Order Approving Stipulated Protective Order Governing Confidential Material Produced Pursuant to Ad Hoc Unsecured Group Subpoenas*, filed with the Court on September 29, 2010; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The *Stipulated Protective Order Governing Confidential Material Produced Pursuant to Ad Hoc Unsecured Group Subpoenas* (the "Stipulation") attached to this Order as **Exhibit A** is hereby approved in all respects.

2. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order and the Stipulation.

Dated: \_\_\_\_\_, 2010

\_\_\_\_\_  
THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

# **EXHIBIT A**

## **Stipulation**

UNITED STATES BANKRUPTCY COURT  
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In re:	:
	: Chapter 11
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CAPMARK FINANCIAL GROUP, INC., <i>et al.</i> ,	: Case No. 09-13684 (CSS)
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Debtors.	: Jointly Administered
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**STIPULATED PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL  
PRODUCED PURSUANT TO AD HOC UNSECURED GROUP SUBPOENAS**

The Ad Hoc Group of Holders of Capmark's Unsecured Bank Debt (the "Ad Hoc Unsecured Group") and The Bank of Tokyo-Mitsubishi UFJ, Ltd. (the "Bank") find that the production and disclosure of documents, data and other materials and information, and testimony, is anticipated under Rule 45 of the Federal Rules of Civil Procedure as incorporated into this bankruptcy case pursuant to Rule 9016 of the Federal Rules of Bankruptcy Procedure, and that the scope of discovery may encompass the production of documents and provision of testimony that contain(s) certain information that should not be generally available to the public, as specified below. Accordingly, it is hereby agreed that:

1. This agreement and protective order ("Stipulated Protective Order") governs the treatment of all documents and other written, recorded, computerized, electronic or graphic matters, copies, excerpts or summaries of documents, and deposition testimony ("Discovery Material") produced or provided by the Bank or any other entity that both produces Discovery Material pursuant to a subpoena issued by the Ad Hoc Unsecured Group and executes this Stipulated Protective Order (a "Producing Party").
2. Any Producing Party may designate as confidential any Discovery Material that it believes, in good faith, contains personal information, proprietary information of a non-public

nature, trade secrets, non-public research, development or commercial information, or other sensitive information of a non-public nature. All Discovery Material so designated shall be referred to in this Stipulated Protective Order as "Confidential Discovery Material" and shall be handled in strict accordance with its terms.

3. All Confidential Discovery Material in the form of physical objects or documents shall be designated by stamping or affixing the legend "CONFIDENTIAL INFORMATION SUBJECT TO STIPULATED PROTECTIVE ORDER" or "CONFIDENTIAL" on the face of the document and on each page or portion thereof so designated. Any such designation shall subject the document, its contents, or any portion thereof, presumptively to this Stipulated Protective Order without any further act on the part of any Producing Party.

4. All Confidential Discovery Material in the form of deposition testimony shall be designated by a statement on the record, by counsel, at the time of the deposition. Any such designation shall subject the testimony presumptively to this Stipulated Protective Order without any further act on the part of any Producing Party.

5. Confidential Discovery Material or information derived therefrom may be disclosed or made available without written consent from the relevant Producing Party only to the following persons:

- (a) Members of the Ad Hoc Unsecured Group, its employees, its counsel (including attorneys, paralegals, and other employees of such law firms), and its advisors;

- (b) The Official Committee of Unsecured Creditors, the Debtors,<sup>1</sup> Citicorp North America, Inc., as Administrative Agent under the Term Facility Credit and Guaranty Agreement, dated as of May 29, 2009, Citibank, N.A., as collateral agent, and the Ad Hoc Group of Secured Lenders,<sup>2</sup> along with each such party's employees, counsel (including attorneys, paralegals, and other employees of such law firms), and advisors, provided that a representative of each party enumerated in this subparagraph agrees to be bound by the terms of this Stipulated Protective Order through the certification attached hereto as Exhibit A;
- (c) Litigation support personnel and firms retained by or acting under the supervision of the parties described in subparagraphs 5(a) and 5(b) above, such as copying services, imaging services, and coding services, provided such firms have a confidentiality policy in place;
- (d) Experts or consultants retained to assist the parties described in subparagraphs 5(a) and 5(b) above, provided that any such experts or consultants agree in writing to be bound by the confidentiality requirements of this Stipulated Protective Order;
- (e) Potential non-party witnesses in this bankruptcy case and their counsel, if such disclosure is reasonably necessary for the purposes of preparing for any court hearing, factual investigation, depositions or other discovery, provided that any such persons and any such counsel shall not be permitted to retain copies of such Confidential Discovery Material, and provided that any such persons and any such counsel shall be advised of the governance of this Stipulated Protective Order;
- (f) Any person who is indicated on the face of a document to have been an author, addressee, or copy recipient thereof, provided that a person identified solely in this subparagraph shall not be permitted to retain copies of such Confidential Discovery Material; and

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<sup>1</sup> "Debtors" refers to the debtors named in the Chapter 11 case titled In re: Capmark Financial Group, Inc. et al. Case No. 09-13684 (CSS) (U. S. Bankr. Ct. D. Del.), which include: Paramount Managing Member AMBAC II, LLC, Paramount Managing Member AMBAC III, LLC, Paramount Managing Member AMBAC IV, LLC, Paramount Managing Member AMBAC V, LLC, Paramount Managing Member LLC, Paramount Managing Member II, LLC, Paramount Managing Member III, LLC, Paramount Managing Member IV, LLC, Paramount Managing Member V, LLC, Paramount Managing Member VI, LLC, Paramount Managing Member VII, LLC, Paramount Managing Member VIII, LLC, Paramount Managing Member IX, LLC, Paramount Managing Member XI, LLC, Paramount Managing Member XII, LLC, Paramount Managing Member XVIII, LLC, Paramount Managing Member XIV, LLC, Paramount Managing Member XV, LLC, Paramount Managing Member XVI, LLC, Paramount Northeastern Managing Member, LLC, Capmark Affordable Properties Inc., Paramount Managing Member XXIII, LLC, Paramount Managing Member XXIV, LLC, Paramount Managing Member 30, LLC, Paramount Managing Member 31, LLC, Paramount Managing Member 33, LLC, Broadway Street California, L.P., Broadway Street 2001, L.P., Broadway Street XV, L.P., Broadway Street XVI, L.P., Broadway Street XVIII, L.P., Broadway Street Georgia I, LLC, Capmark Managing Member 4.5 LLC, Capmark Affordable Equity Inc., Capmark Investments LP, and Protech Holdings C, LLC.

<sup>2</sup> The Ad Hoc Group of Secured Lenders is a group of investment advisors and managers that are advising and/or managing certain funds that are creditors holding obligations under the Term Facility and Guaranty Agreement, dated as of May 29, 2009.

- (g) The U.S. Bankruptcy Court for the District of Delaware, including its employees and personnel (the "Court"), and subject to the restrictions set forth in paragraph 10 below.

For purposes of this Stipulated Protective Order, any party identified in subparagraphs 5(a) and 5(b) above shall be known as a "Receiving Party."

6. Discovery Material may be used only in connection with this bankruptcy case and shall not be used for any other purpose during or after this bankruptcy case.

7. The inadvertent failure to stamp a document, or a portion thereof, with the "Confidential" designation in no way alters or waives the protected and confidential nature of the document otherwise deserving of such a designation and does not remove it from the scope of this Stipulated Protective Order, provided that the Producing Party gives notice in writing within two (2) days after becoming aware that the document was not properly designated. Such written notice shall identify with specificity the information or documents the Producing Party is then designating to be Confidential, and the Producing Party shall promptly provide a replacement copy of such material with the appropriate designation thereupon. Treatment of inadvertently produced Confidential Discovery Material in a manner inconsistent with this Stipulated Protective Order prior to notice of such inadvertent production is not a breach of this Stipulated Protective Order. All inadvertently produced materials without the "Confidential" designation and any copies thereof shall be returned to the Producing Party.

8. Inadvertent production of privileged or arguably privileged materials shall not be determined to be either: (a) a general waiver of the attorney-client privilege; or (b) a specific waiver of any privilege with respect to the documents being produced or the testimony being given. Notice of any claim of privilege as to any document claimed to have been produced inadvertently shall be given within a reasonable period of time after discovery of the inadvertent

production, and, on request by the Producing Party, all inadvertently produced materials as to which a claim of privilege is properly asserted and any copies thereof shall be returned promptly.

9. If a Receiving Party contends that particular documents or any Confidential Discovery Materials that have been designated by a Producing Party as Confidential should not be so treated, the Receiving Party's counsel shall so notify that Producing Party's counsel in writing and state the basis for its contention. If no agreement between the parties is reached within five (5) business days following receipt of such notice, then any party may submit a motion to the Court requesting a ruling on the dispute. Until a ruling is issued, the Confidential Discovery Material in question shall continue to be treated as Confidential Discovery Material.

10. In the event that a Receiving Party determines to file with the Court any Confidential Discovery Material as part of a pleading or other filing, such Confidential Discovery Material shall be filed under seal in accordance with the Court's electronic filing system (the "CM/ECF System") or such other procedures adopted by the Court. This paragraph shall not prevent a second copy of any such pleading or other filing specifically intended for review by the Court from being hand-delivered to chambers as a courtesy copy to assure prompt attention thereto, as long as reasonable safeguards are observed to maintain the confidentiality of the documents. The Clerk of Court is directed to place and maintain under seal any such pleading or other document filed with or delivered to this Court pursuant to this paragraph and in accordance with this Stipulated Protective Order and the practices of this Court, and in accordance with procedures for filing sealed documents using the Court's CM/ECF System or other procedures adopted by the Court. Only those documents or portions of documents containing Confidential Discovery Material may be filed under seal as set forth herein. Nothing in this Stipulated Protective Order shall preclude a Producing Party from applying to the Court for any further protective order relating to any document.

11. Disclosure of any Confidential Discovery Material in response to subpoena, court order, or other legal process shall not constitute a violation of this Confidentiality Agreement, provided, however, that any Receiving Party that receives a subpoena, court order, or other legal process seeking Confidential Discovery Material shall give written notice within five (5) business days of receipt of such subpoena, court order, or other legal process to the relevant Producing Party so that Producing Party has an opportunity to seek relief it deems appropriate.

12. Any Receiving Party intending to use Confidential Discovery Material at a hearing or trial shall provide notice of no fewer than four (4) business days to the relevant Producing Party so that Producing Party can seek an appropriate protective order from the Court should that Producing Party seek to maintain the confidentiality of material used in open court, provided, however, that nothing in this paragraph shall restrict or preclude a Receiving Party from so using Confidential Discovery Material it receives within eight (8) business days of a hearing or trial if that Receiving Party provides notice to the relevant Producing Party as early as practicable, but no less than one (1) business day prior to use.

13. If the Ad Hoc Unsecured Group agrees to a confidentiality agreement with any other entity that produces Discovery Material that varies in any material respect from this Confidentiality Agreement (a "Subsequent Confidentiality Agreement"), the Ad Hoc Unsecured Group shall provide a copy of that Subsequent Confidentiality Agreement to each Producing Party within two (2) business days and, absent good cause, shall agree to abide by the Subsequent Confidentiality Agreement in lieu of this Confidentiality Agreement with any Producing Party that so requests in writing. Such agreement shall be signified by the execution of the Subsequent Confidentiality Agreement between the Ad Hoc Unsecured Group and the Producing Party (a "Superseding Confidentiality Agreement"), which execution shall cause any and all prior confidentiality agreement(s) between those two parties to terminate absent express



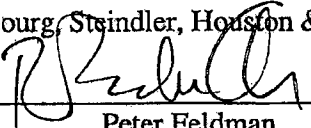
agreement or provision stating otherwise. The Ad Hoc Unsecured Group shall file each Superseding Confidentiality Agreement with the Court for entry, and shall provide a copy thereof to each Receiving Party.

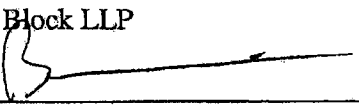
14. Except as otherwise agreed in writing by the parties, within 45 days after the conclusion of this bankruptcy case, all Confidential Discovery Material and all copies thereof (including, without limitation, copies provided to testifying or consulting experts) shall be returned to the relevant Producing Party. This Stipulated Protective Order shall survive the final termination of these bankruptcy cases with respect to any such Confidential Discovery Material.

15. The Ad Hoc Unsecured Group and the Bank agree to be bound by the terms of this Stipulated Protective Order pending the entry by the Court of this Stipulated Protective Order, or an alternative which is satisfactory to the Ad Hoc Unsecured Group, the Bank, and the Court, and any violation of the terms of this Stipulated Protective Order while entry by the Court is pending shall be subject to the same sanctions and penalties as if this Protective Order had been entered by the Court.

Dated: New York, NY  
September \_\_, 2010

Dated: New York, NY  
September 28, 2010

Otterbourg, Steindler, Houston & Rosen P.C.  
By:   
Peter Feldman

Jenner & Block LLP  
By:   
Brian J. Fischer

*Attorneys for  
The Bank of Tokyo-Mitsubishi UFJ, Ltd.*

*Attorneys for The Ad Hoc Group of Holders of  
Capmark's Unsecured Bank Debt*

~~Approved: September \_\_, 2010~~  
~~United States Bankruptcy Judge~~

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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**CERTIFICATION TO BE BOUND BY STIPULATED PROTECTIVE ORDER  
GOVERNING CONFIDENTIAL MATERIAL PRODUCED PURSUANT TO AD HOC  
UNSECURED GROUP SUBPOENAS**

I hereby certify (i) my understanding that Confidential Discovery Material is being provided to me pursuant to the terms and restrictions of the of the Stipulated Protective Order Governing Confidential Material Produced Pursuant to Ad Hoc Unsecured Group Subpoenas (the "Stipulated Protective Order"), and (ii) that I have read the Stipulated Protective Order. I understand the terms of the Stipulated Protective Order, and I agree to be fully bound by those terms.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Party Signed On Behalf Of: \_\_\_\_\_