

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

In re: CAPMARK FINANCIAL GROUP, INC., <i>et al.</i> , Debtors.	Chapter 11 Case No. 09-13684 (CSS) (Jointly Administered)
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**STIPULATION AND ORDER GOVERNING PRODUCTION
OF CONFIDENTIAL INFORMATION**

Pursuant to Federal Rule of Civil Procedure 26(c) and Federal Rule of Bankruptcy Procedure 7026, and subject to the approval of this Court, (i) the Official Committee of Unsecured Creditors (the “Committee”) of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”); (ii) Citibank N.A. (“Citibank”), as the administrative agent under the Debtors’ pre-petition senior credit facility and the collateral agent under the Debtors’ pre-petition secured credit facility; and (iii) Citicorp North America, Inc. (“Citicorp,” and together with Citibank, the “Producing Parties”), as the administrative agent under both the Debtors’ pre-petition bridge loan and the Debtors’ pre-petition secured credit facility, hereby stipulate to the following Stipulation and Order Governing Production of Confidential Information (“Protective Order”) to govern and facilitate discovery between them.

1. All documents, deposition testimony, deposition exhibits, interrogatory responses, admissions, or any other information or material produced to the Committee by the Producing Parties (“Discovery Material”) shall be used by the Committee solely for purposes of the Committee’s investigation (the “Investigation”) of potential claims and objections relating to the Debtors’ affairs including the pre-petition secured credit facility and may not be used for any other purpose whatsoever, including but not limited to any business or commercial purpose, for

dissemination to the media or the public, or in connection with any other judicial, administrative, or arbitral proceeding.

2. A Producing Party may designate Discovery Material produced by it as “Confidential” or “Highly Confidential” under the terms of this Protective Order if the Producing Party believes in good faith that such Discovery Material contains or reflects non-public confidential, personal, financial, proprietary, or commercially sensitive information.

3. “Confidential” Discovery Material includes all non-public information, including but not limited to materials consisting of or containing information reflecting or relating to business plans or strategies; actual or proposed transactions or business combinations; partnerships or joint ventures; financial data; competitive analyses; fees for services; and other confidential commercial information that, if disclosed to persons other than those permitted under Paragraph 7, could cause competitive or other injury.

4. “Highly Confidential” Discovery Material includes all materials that the Producing Party in good faith believes to be proprietary or sensitive client information; trade secrets or other confidential research, development, business or financial information; or other confidential commercial information that, if disclosed to persons other than those permitted under Paragraph 8, could cause competitive or other injury.

5. All information derived from Confidential and Highly Confidential Discovery Material, including but not limited to extracts, summaries, and descriptions of such material, shall be treated in accordance with the provisions of this Protective Order. The Committee may object to such designation and request the removal of such designation, initially by contacting the Producing Party and thereafter by Court intervention under the procedures set forth in Paragraph 16 of this Protective Order.

6. The designation of Discovery Material as “Confidential” or “Highly Confidential” for purposes of this Protective Order shall be made in the following manner:

- a. In the case of documents (apart from depositions or other pretrial testimony): by affixing the legend “Confidential” or “Highly Confidential” to each page containing any Confidential or Highly Confidential Discovery Material; provided, however, that if a Producing Party inadvertently produces Discovery Material that it considers to be “Confidential” or “Highly Confidential” without such designation, the Producing Party may designate such Discovery Material as “Confidential” or “Highly Confidential” by delivering written notice of such designation and properly designated copies of such Discovery Material promptly after discovering that the information was inadvertently produced, with the effect that such Discovery Material will thereafter be subject to the protections afforded by this Protective Order to Confidential or Highly Confidential Discovery Material;
- b. In the case of depositions or other pretrial testimony: (i) by a statement on the record, by counsel, at the time of such disclosure; or (ii) by written notice, sent to the Committee within ten business days after receiving a copy of the transcript thereof; and in both of the foregoing instances, by directing the court reporter that the appropriate confidentiality legend be affixed to the first page and all portions of the original and all copies of the transcript containing any Confidential or Highly Confidential Discovery Material. All deposition transcripts or other pretrial testimony shall be treated as Highly Confidential Discovery Material until the expiration of the tenth business day after receipt by counsel of a copy of the

transcript thereof. Thereafter, only those portions of the transcripts designated as “Confidential” or “Highly Confidential” shall be deemed as such. The Committee and a Producing Party may modify this procedure for any particular deposition, through agreement on the record at such deposition, without further order of the Court.

7. The Committee may disclose, summarize, describe, characterize, or otherwise communicate or make available Confidential Discovery Material in whole or in part only to the following persons:

- a. Outside or in-house counsel who represent the Committee, and the regular and temporary employees and service vendors of such counsel (including outside copying services and outside litigation support services) provided, however, that such disclosure may solely be for use in accordance with this Protective Order;
- b. Subject to Paragraph 10 hereof, experts or consultants and their employees and staff members engaged to assist the Committee or counsel for the Committee in connection with the Investigation;
- c. Witnesses or deponents and their counsel, during the course of or, to the extent necessary in preparation for, depositions, testimony, or trial related to the Investigation;
- d. The employees or other affiliates of the Debtors or of members of the Committee who appear as witnesses, or who are assisting the Committee with matters related to the Investigation;
- e. The Court, pursuant to Paragraphs 11 and 12 of this Protective Order;
- f. Court reporters employed in connection with the Investigation; and

g. Any other person only upon order of the Court or upon stipulation of the Producing Party.

8. The Committee may disclose, summarize, describe, characterize, or otherwise communicate or make available Highly Confidential Discovery Material in whole or in part only to the persons described in Paragraph 7(a)(b)(e)(f) and (g); provided, however, that the Committee may use Highly Confidential Discovery Materials at depositions with such portions of the depositions designated as “Highly Confidential” or at trial subject to appropriate confidentiality restrictions as set forth herein.

9. Every person given access to Confidential or Highly Confidential Discovery Material or information contained therein:

- a. Shall not make copies, duplicates, extracts, summaries or descriptions of such material, or any portion thereof except for use solely and directly in connection with the Investigation, and each such copy is to be treated in accordance with the provisions of this Protective Order; and
- b. Shall be advised by the Committee that the information is being disclosed pursuant and subject to the terms of this Protective Order and may not be disclosed other than pursuant to the terms hereof.

10. Confidential or Highly Confidential Discovery Material may be provided to persons listed in Paragraph 7(b) above to the extent necessary for such expert or consultant to prepare a written opinion, to prepare to testify, or to assist counsel in the prosecution or defense of matters relating to the Investigation, provided that such expert or consultant uses such Confidential or Highly Confidential Discovery Material solely and directly in connection with

the Investigation, and provided further that such expert or consultant signs an undertaking in the form attached as Exhibit A hereto.

11. In the event that counsel for the Committee determines to file with the Court any document or other material treated as Confidential or Highly Confidential subject to the provisions of this Protective Order, such document shall be submitted in a sealed envelope, clearly designated as "Confidential Pursuant to Court Order Dated _____, 20___" or "Highly Confidential Pursuant to Court Order Dated _____, 20___. Only those documents or portions of documents containing Confidential or Highly Confidential Discovery Material shall be filed in a sealed envelope as set forth herein. Nothing in this Protective Order shall preclude a Producing Party from applying to the Court for any further protective order relating to any document.

12. Any document designated as "Confidential" or "Highly Confidential" may be used in any proceeding relating to the Investigation, including, if otherwise permissible, as evidence at any hearing or trial, or on appeal, without violation of this Protective Order, but Confidential or Highly Confidential Discovery Material shall not lose its status as such through this use. Nothing in this Protective Order, however, shall preclude a Producing Party from seeking an appropriate protective order from the Court, should that Producing Party seek to maintain the confidentiality of material used in open court.

13. Entering into or agreeing to this Protective Order, and producing or receiving Confidential or Highly Confidential Discovery Material or otherwise complying with the terms of this Protective Order, shall not:

- a. Operate as an admission by the Committee that any particular Discovery Material designated as Confidential or Highly Confidential by the Producing Party is appropriately designated as such;
- b. Prejudice in any way the rights of a Producing Party to object to the production of documents or information it considers not subject to discovery or to object to the authenticity or admissibility into evidence of any document, testimony, or other evidence subject to this Protective Order;
- c. Prejudice in any way the rights of a Producing Party to petition the Court for a further protective order relating to any material designated as Confidential or Highly Confidential Discovery Material; or
- d. Prevent the Committee and Producing Parties from agreeing to alter or waive the provisions or protections provided for herein with respect to any particular Discovery Material.

14. Nothing in this Protective Order shall bar or otherwise restrict counsel for the Committee from rendering advice to their clients with respect to the Investigation and, in the course thereof, from relying on their review of Confidential or Highly Confidential Discovery Material; provided, however, that in rendering such advice, and in otherwise communicating with their clients, counsel shall not disclose the contents of Confidential or Highly Confidential Discovery Material except in accordance with the terms of this Protective Order.

15. If any document or information protected from discovery by the attorney-client privilege, work-product doctrine, the exemption for trial preparation material, or on any other ground is nevertheless inadvertently produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege, work product, or

other ground for withholding production to which the Producing Party would otherwise be entitled, provided that, promptly after discovering that the document or information was inadvertently produced, the Producing Party requests in writing (a “Return Request”) that the Committee return all Discovery Material as to which the claim of inadvertent production has been made and destroy all copies or other material derived therefrom. All Discovery Material covered by a Return Request shall be returned or destroyed as requested within five business days of receipt of the Return Request unless the Return Request is objected to. If the Committee objects to the Return Request, The Committee must file a motion under seal with the Court challenging the protected status of the subject Discovery Material within 10 business days of receipt of the Return Request. The Committee shall not use the Discovery Material covered by the Return Request (or any material derived therefrom) for any purpose pending the Court’s final decision on such motion.

16. The Committee is not obliged to challenge the designation of any Discovery Material as “Confidential” or “Highly Confidential” at the time of receipt, disclosure, or designation thereof, and a failure to do so shall not preclude a subsequent challenge thereto. In the event that the Committee wishes to challenge the designation of any Discovery Material as “Confidential” or “Highly Confidential,” the Committee shall give written notice to counsel for the Producing Party that the “Confidential” or “Highly Confidential” designation is being challenged. The Producing Party shall deliver to the Committee’s counsel, within ten business days after the Producing Party receives the notice of challenge, a written response in which the Producing Party states its agreement or refusal to withdraw the challenged designation. If the Producing Party does not respond to any notice of challenge within that ten-day period, the Discovery Material shall not be deemed to constitute Confidential or Highly Confidential

Discovery Material after the expiration of that ten-day period. If the Producing Party does respond within that ten-day period and refuses to withdraw the challenged designation, then, within ten business days thereafter, the Committee shall waive any such challenge unless the Committee applies to the Court for an order or ruling holding that the challenged Discovery Material should not be deemed “Confidential” or “Highly Confidential.” Any Discovery Material as to which such an application is made shall continue to be treated as Confidential or Highly Confidential Discovery Material until the Court’s decision on such an application is issued. The Producing Party designating Discovery Material as Confidential or Highly Confidential shall have the burden of proof that such designation is appropriate.

17. The provisions of this Protective Order shall, absent written permission of the Producing Party or further order of the Court, continue to be binding throughout and after the conclusion of any matters relating to the Investigation. Within 30 business days after receiving notice of entry of an order, judgment, or decree finally ending all matters relating to the Investigation, including but not limited to any appeals therefrom, all persons having received Confidential or Highly Confidential Discovery Material shall either make a good faith effort to return such material and all copies thereof (including summaries and excerpts) to counsel for the Producing Party of such Confidential or Highly Confidential Discovery Material or destroy all such Confidential or Highly Confidential Discovery Material and certify that fact to counsel for the Producing Party. Outside counsel for the Committee shall be entitled to retain court papers, deposition and trial transcripts, and attorney work product (including discovery material containing Confidential or Highly Confidential Discovery Material); provided, however, that such outside counsel, and employees of such outside counsel, shall maintain the confidentiality thereof pursuant to the terms of this Protective Order.

18. If the Committee or any agent or other affiliate thereof (the “Receiver”) is subpoenaed in another action or proceeding or served with a document demand or other similar legal process in another proceeding (including any proceeding before any other court, arbitral panel, regulatory agency, law enforcement or administrative body), and such subpoena or document demand seeks Confidential or Highly Confidential Discovery Material received from a Producing Party, the Receiver (i) shall give written notice, as promptly as possible and to the extent reasonably practicable, by hand or facsimile transmission, to counsel for the Producing Party; and (ii) shall object to the production of such Confidential or Highly Confidential Discovery Material on the grounds of the existence of this Protective Order. The burden of opposing the enforcement of the subpoena or document demand shall fall upon the Producing Party that designated the Discovery Material as “Confidential” or “Highly Confidential.” Nothing herein shall be construed as requiring the Receiver to challenge or appeal any order requiring production of Confidential or Highly Confidential Discovery Material covered by this Protective Order, or to subject himself or itself to any penalties for non-compliance with any legal process or order, or to seek any relief from this Court.

19. This Protective Order has no effect upon, and shall not apply to, a Producing Party’s use of its own Confidential or Highly Confidential Discovery Material for any purpose. Nothing contained herein (i) shall impose any restrictions on the use or disclosure by the Committee of any Confidential or Highly Confidential Discovery Material obtained lawfully by the Committee independent of the discovery addressed by this Protective Order, or (ii) prevent the Committee from disclosing Confidential or Highly Confidential Discovery Material to any individual to whom the Producing Party previously provided the Confidential or Highly Confidential Discovery Material.

20. Nothing herein is intended to or shall have the effect of altering any of the terms and conditions pursuant to which documents and information were shared among the Committee and the Producing Parties and their representatives or agents prior to the discovery addressed by this Protective Order.

21. It is the present intention of the Committee and the Producing Parties that the provisions of this Protective Order shall govern discovery relating to the Investigation. Nonetheless, the Producing Parties and the Committee shall be entitled to seek modification of this Protective Order by application to the Court on notice to the other Parties hereto for good cause.

22. The Committee and the Producing Parties agree to be bound by the terms of this Protective Order pending the entry by the Court of this Protective Order, or an alternative thereto which is satisfactory to the Committee, the Producing Parties, and the Court, and any violation of the terms of this 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. Any violation of the terms of this Protective Order shall be punishable by relief deemed appropriate by the Court.

Dated: July 13, 2010
Wilmington, Delaware

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EXHIBIT A

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I hereby certify (i) my understanding that Confidential and/or Highly Confidential Discovery Material is being provided to me pursuant to the terms and restrictions of the Stipulation and Order Governing Production of Confidential Information (“Protective Order”), and (ii) that I have read the Protective Order. I understand the terms of the Protective Order, and I agree to be fully bound by those terms. Upon the conclusion of proceedings and any appeals related to the Debtors’ pre-petition secured credit facility, or when I no longer have any reason to possess the Confidential or Highly Confidential Discovery Material, whichever shall first occur, I hereby agree to return all copies of information designated as “Confidential” or “Highly Confidential” to the party who furnished the same to me or certify that the same has been destroyed.

Dated: _____

Signature: _____