



ENTERED  
10/13/2010

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**In re:**

**IRH VINTAGE PARK PARTNERS,  
LP, A GEORGIA LIMITED  
PARTNERSHIP**

**CASE NO. 10-37503-H4-11**

**VPI GENERAL PARTNER, LLC A  
DELAWARE LIMITED LIABILITY  
COMPANY**

**CASE NO. 10-37508-H4-11**

**VINTAGE PARK INVESTMENTS, LLC A  
GEORGIA LIMITED LIABILITY  
COMPANY**

**CASE NO. 10-37511-H5-11**

**(Chapter 11)**

**Debtor.**

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**FINAL AGREED ORDER AUTHORIZING  
USE OF CASH COLLATERAL AND PROVIDING ADEQUATE PROTECTION**

On consideration of the Debtors' Emergency Motion for Authority for Use of Cash Collateral [Docket No. 3] (the "Motion") filed by IRH Vintage Park Partners, LP, VPI General Partner, LLC, and Vintage Park Investments, LLC (collectively "Debtors"), requesting that this Court authorize the Debtors' use of cash collateral, as previously authorized under the preliminary order [Docket No. 18] and the second interim order [Docket No. 46]. Capmark Bank, a Utah Industrial Bank, ("Capmark") and the Debtor IRH Vintage Park Partners, L.P. ("IRH Debtor"), have reached a final agreement authorizing the use of cash collateral, and in support of the respective positions of both the IRH Debtor and Capmark, the parties allege the following:

A. Debtors Vintage Park Investments, LLC, VPI General Partner, LLC, and IRH Vintage Park Partners, L.P. filed their voluntary petitions commencing this Chapter 11 case on

September 2, 2010. Debtors remain in possession of their assets as debtors-in-possession in this case. No trustee or examiner has been appointed, and no official committee of unsecured creditors has yet been established.

B. The IRH Debtor is indebted to Capmark on certain promissory notes and security agreements. Specifically, on or about July 9, 2007, IRH Debtor entered into a Loan Agreement with Capmark that provided, among other things, that Capmark loan the IRH Debtor \$41,000,000 (the "Loan") for the purchase of certain property.

C. The Loan is evidenced by two promissory notes of even date executed by IRH Debtor in favor of Capmark. The first note is in the original principal amount of \$37,750,000.00 ("Note A"). The second promissory note is in the original principal amount of \$3,250,000.00 ("Note B").

D. The Loan is secured by, among other things, a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing ("Deed of Trust") of even date for the benefit of Capmark and covering the real and personal property commonly known as Vintage Park Apartments located at 15727 Cutten Road, Houston, Texas 77070 (the "Property"). The Deed of Trust was filed for record on July 10, 2007, and recorded under Instrument No. 20070419276 in the Official Public Records of Harris County, Texas.

E. The IRH Debtor and Capmark subsequently modified the Loan Agreement. IRH Debtor entered into the first modification on or about June 18, 2009. IRH Debtor entered into the second modification agreement on or about January 8, 2010.

F. All cash and cash equivalents of the IRH Debtor as of the petition date, and all post-petition cash and cash equivalents of the IRH Debtor and its estate that are proceeds of pre-petition collateral subject to the security interest and liens of Capmark pursuant to Section 522(b)

of the Bankruptcy Code, constitute Cash (the "Cash Collateral") pursuant to Section 363(a) of the Bankruptcy Code. (The Property and the Cash Collateral shall be referred to hereinafter collectively as the "Collateral.")

G. The relief sought in the Motion is necessary to prevent immediate and irreparable harm to the IRH Debtor's estate, which would otherwise result if the IRH Debtor was prevented from obtaining use of Cash Collateral in order to maintain its operations and preserve and maximize the value of the assets of the estate. Failure to grant the relief sought by the Motion will result in immediate and irreparable harm to the IRH Debtor, its creditors and its estate.

H. Pursuant to Section 363(c)(2) of the Bankruptcy Code, the IRH Debtor may not use Cash Collateral without the consent of Capmark or an order of this Court after notice and a hearing. Capmark consents to the IRH Debtor's use of Cash Collateral, to the extent and subject to the terms and conditions of this Order.

I. Good cause has been shown for entry of this Order. Among other things, this Order will afford the IRH Debtor an opportunity to continue operating as a going concern, which is in the best interest of the IRH Debtor, its creditors and its estate. The terms of this Order are fair and reasonable in the circumstances of this case.

Therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT the Motion is GRANTED, subject to the following terms and conditions:

1. Authority to Use Cash Collateral. The IRH Debtor is authorized to use the Cash Collateral generated by its business on the terms and conditions provided in this Order and for the purposes specified in the budget attached hereto as Exhibit "A" (the "Budget"), until the earliest of: (i) the effective date of a confirmed plan of reorganization in this case; (ii) the appointment of a trustee in this case; (iii) the conversion of this case to a case under Chapter 7 of

the Bankruptcy Code; or (iv) the dismissal of this case. The conversion or dismissal of this case shall not affect the validity, extent, or priority of any lien or security interest held by Capmark, including, but not limited to, liens and security interests granted to Capmark in this Order. The IRH Debtor is permitted to use Cash Collateral solely to pay the expenditures contained in the Budget for the period from the Petition Date through confirmation (the "Termination Date"). The IRH Debtor shall be authorized to make expenditures only for the purposes and in the amounts set forth in the Budget, with expenses for any line item up to but not greater than 110% of the budgeted amount and with total expenses being up to but not greater than 105% of the total budget, unless Lender consents in writing to an additional expense or expenses or the Court approves such additional expense after notice and a hearing. In addition, Debtors are authorized to pay quarterly fees to the United States Trustee.

2. Segregation of Cash Collateral. The IRH Debtor shall establish a debtor in possession account for deposit of all receipts by it after the Petition date and such deposits shall not be used for any purpose not specifically authorized by this Order and shall not be commingled with any other funds. Tenant security deposits shall be maintained in a separate debtor in possession account and such funds shall not be considered Cash Collateral. The IRH Debtor is authorized to pay/return tenant security deposits in the ordinary course of business.

3. Partial Adequate Protection.

(i) Replacement Liens. As partial adequate protection for use by IRH Debtor of the Cash Collateral and for any diminution in the value of the Collateral, Capmark is granted an extension of its pre-petition liens to all post-petition assets of the estate with the same force and effect and in accordance with the priorities of such liens of Capmark that attach to the pre-petition assets. The replacement liens and security interests granted to Capmark are valid,

enforceable and fully perfected, and no filing or recording or other act in accordance with any applicable local, state or federal law, rule or regulation is necessary to create or perfect such liens and security interests. IRH Debtor shall cooperate with Capmark, however, to execute such documents and instruments and do such other things as Capmark requests to evidence and perfect such replacement liens and security interests.

(ii) Adequate Protection Payments.

(a) As further partial adequate protection for use by the IRH Debtor of the Cash Collateral, the IRH Debtor shall deposit with Capmark property tax escrow payments of \$106,120 per month on October 15, November 15, <sup>December</sup> 15, 2010, and January 15, 2011, and such funds shall be held in escrow (together with the \$394,491.18 currently held in property tax escrow by Capmark), for payment of the 2010 property taxes.

(b) As further partial adequate protection for use by the IRH Debtor of the Cash Collateral, beginning on February 15, 2011, and continuing on the 15<sup>th</sup> of each month thereafter through the Termination Date, the IRH Debtor shall deposit with Capmark property tax escrow payment of \$74,000.00, and such funds shall be held in escrow for payment of the 2011 property taxes.

(c) As further partial adequate protection for use by the IRH Debtor of the Cash Collateral, IRH Debtor shall deposit with Capmark, with the first payment to be made to Capmark on or before November 1, 2010, and on the first day of each month thereafter, insurance escrow payments of \$10,915.00, and such funds shall be held in escrow by Capmark (together with the \$5,530.24 currently held in insurance escrow by Capmark) for payment of insurance on the Property.

(d) As further partial adequate protection for use by the IRH Debtor of the Cash Collateral and for any diminution in the value of the Collateral, IRH Debtor will pay to Capmark \$75,000 per month, with the first payment to be made to Capmark on or before November 1, 2010, and on the first day of each month thereafter through the Termination Date. The Debtors and Capmark hereby reserve their rights to a later date to seek a determination with respect to how these \$75,000 per month payments shall be applied to the Capmark indebtedness.

4. Automatic Stay Lifted. The automatic stay imposed by Bankruptcy Code Section 362(a) is hereby modified to permit the IRH Debtor to grant the Replacement Liens and to perform such acts as Capmark may reasonably request to assure the perfection and priority of the Replacement Liens.

5. Reporting Requirements. The IRH Debtor shall provide to Capmark, by and through its counsel, a monthly report of the IRH Debtor's operations no later than the 20th of the following month, which monthly report shall include, without limitation, a current schedule of accounts receivable, an accounting for all cash receipts and cash operating expenses for the previous calendar month and the balances in the debtor in possession account. Such report shall include all other requirements of this Court. An equivalent acceptable report shall be the monthly operating report filed with the Court.

6. Access to Debtor's Business Premises. Capmark has full access during regular business hours, with 48-hour advance notice, to the IRH Debtor's business premises to review all records of the IRH Debtor concerning the IRH Debtor's operations, the receipts and disbursements, the accrual of expenses, and any and all records reasonably relating to the IRH Debtor's business. Capmark shall have full access to IRH Debtor's business for the purposes of

inspection of IRH Debtor's inventory and property.

7. Default. The IRH Debtor will be in default under this Order if it breaches or fails to perform any of its obligations under this Order. In the event IRH Debtor defaults on its obligations, Capmark may revoke its consent to this Order upon five (5) days written notice to IRH Debtor's counsel (additionally IRH Debtor's counsel will be notified by telephone, email or FAX) and such revocation shall be effective five days after the deposit of the written notice by first class, United States mail, unless the default is cured within that time period. Capmark's revocation of consent is sufficient to terminate the IRH Debtor's ability to spend Cash Collateral absent the written consent of Capmark or a further Order of this Court issued in accordance with the Rules of Bankruptcy Procedure. Expenses incurred in the ordinary course of IRH Debtor's business, and in accordance with the terms of this Order, prior to or on the date of receipt of revocation may be paid by the IRH Debtor notwithstanding such revocation.

8. Further Relief. The relief granted in this Order is expressly without prejudice to the rights of either Capmark or IRH Debtor to seek any other relief at any time herein. It is specifically recognized that Capmark may pursue a motion for relief from stay and/or a motion to dismiss this proceeding and exercise other relief available to it, as Capmark determines appropriate.

9. Miscellaneous. Upon any foreclosure of Capmark's liens and security interests, all Cash Collateral under control of the IRH Debtor shall be turned over to Capmark.

10. Reservation of Rights. This Order and the IRH Debtor's payments made under this Order shall not be deemed an admission or a determination of the value of the property upon which Capmark asserts a security interest, or as to the amount or allowance of Capmark's claim or status as a secured, unsecured, or undersecured creditor, all such issues being reserved

pending further orders of this Court. Further, the IRH Debtor does not waive its right to move the court for modification of this Order based on changed circumstances. Further, the consent of Capmark to this Order does not constitute a waiver of any Pre-Petition default under the Pre-Petition Loan Documents.

11. Notice. The IRH Debtor shall give notice of this Order to all creditors and parties in interest by mailing to them a copy of this Order and a separate Notice of Adequate Protection Payments by first class, United States mail, postage prepaid. Such parties shall be notified that they have twenty-one (21) days from the date of mailing of such Notice to object to the entry of this Order and the proposed adequate protection payments, in which case a hearing on the Order will be held. This Order shall be a preliminary Order during such twenty-one (21) day period. If no objections are timely filed and served, this Order shall become a final order without further order of this Court.

SIGNED: \_\_\_\_\_

*October 13, 2010*

  
UNITED STATES BANKRUPTCY JUDGE



AGREED AS TO FORM AND SUBSTANCE:

HOOVER SLOVACEK, L.P.

*/s/ Edward L. Rothberg*

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EDWARD L. ROTHBERG  
5847 San Felipe, Ste 2200  
Houston, Texas 77057  
(713) 977-8686  
(713) 977-5395 (fax)

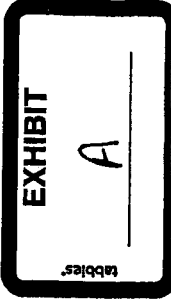
McGLINCHEY STAFFORD

*/s/ Anne Marie Laney Hill  
with permission by Edward L. Rothberg*

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Jennifer L. Davis  
Anne Marie Laney Hill  
1001 McKinney, Suite 1500  
Houston, Texas 77002  
(713) 520-1900  
(713) 520-1025 (fax)

Vintage Park Apartment Homes											
Weekly Budget											
August 16 - December 12, 2010											
	8/22/2010	8/29/2010	9/5/2010	9/12/2010	9/19/2010	9/26/2010	10/3/2010	10/10/2010	10/17/2010	10/24/2010	10/31/2010
	254,400.00	243,091.02	217,964.27	519,212.34	502,510.06	497,976.09	481,479.38	773,672.43	746,175.16	745,431.18	747,061.18
Beginning Cash											
Income											
2000 Rental Income		459,456.00					459,456.00				459,456.00
Concessions		(54,444.00)					(54,444.00)				(54,444.00)
Loss to Old Lease		(44,777.00)					(44,777.00)				(44,777.00)
Vacancy		(20,675.09)					(20,675.09)				(20,675.09)
Other Adjustments		(20,000.00)					(20,000.00)				(20,000.00)
Other Income		19,481.16					19,481.16				19,481.16
<b>Total Income</b>		<b>339,043.07</b>					<b>339,043.07</b>				<b>339,043.07</b>
Expenses											
3000 Expenses											
3100 Taxes & Insurance											
3101 Property Taxes											
3110 Property Insurance											
<b>Total 3100 Taxes &amp; Insurance</b>											
3300 Professional Fees											
3304 Management Fees											
3307 Legal Fees		2,500.00					2,500.00				2,500.00
<b>Total 3300 Professional Fees</b>		<b>2,500.00</b>					<b>2,500.00</b>				<b>2,500.00</b>
3300 Utilities											
3302 Electric - Common Area		8,000.00					8,000.00				8,000.00
3302 Electric - Vacant		1,300.00					1,300.00				1,300.00
3303 Gas - Common Area		400.00					400.00				400.00
3303 Gas - Vacant		2,500.00					2,500.00				2,500.00
3303 Water - Inflation		12,500.00					12,500.00				12,500.00
3307 Water - Common Area		1,900.00					1,900.00				1,900.00
3310 Trash Removal		250.00					250.00				250.00
3311 Cable		24,556.96					24,556.96				24,556.96
<b>Total 3300 Utilities</b>		<b>450.00</b>					<b>450.00</b>				<b>450.00</b>
3400 Repair & Maintenance											
3403 Appliance Parts & Supplies		150.00					150.00				150.00
3406 Butts & Balasts		250.00					250.00				250.00
3410 Carpet Cleaning Supplies		20.00					20.00				20.00
3414 Cleaning Supplies		70.00					70.00				70.00
3418 Paint Purchase		150.00					150.00				150.00
3420 Electrical Supplies		210.00					210.00				210.00
3424 Estimating		450.00					450.00				450.00
3424 Fire & Safety		50.00					50.00				50.00
3427 General Maintenance		125.00					125.00				125.00
3428 HVAC supplies		38.00					38.00				38.00
3428 Keys & Locks		3,108.00					3,108.00				3,108.00
3428 Lease Contract		25.00					25.00				25.00
3428 Paint Supplies		15.00					15.00				15.00
3443 Plumbing Supplies		20.00					20.00				20.00
3443 Hardware/Door/Knobs		260.00					260.00				260.00
3443 Pest supplies		175.00					175.00				175.00
3446 Blinds and shades		200.00					200.00				200.00
3446 Garfurniture Repairs		1,184.00					1,184.00				1,184.00
<b>Total 3400 Repair &amp; Maintenance</b>		<b>4,004.96</b>					<b>4,004.96</b>				<b>4,004.96</b>
3500 Administrative Expenses											
3501 Aids Print & Reproces		400.00					400.00				400.00
3502 Marketing Expense		300.00					300.00				300.00
3511 Aids Help Wanted		75.00					75.00				75.00
3512 Apartment Locator Services		3,185.00					3,185.00				3,185.00
3514 Travel Hotel		800.00					800.00				800.00
3518 Credit Check Fees		950.00					950.00				950.00
3521 Overnight Delivery		50.00					50.00				50.00
3530 Office Equipment Leases		800.00					800.00				800.00
3530 Office Supplies		15.00					15.00				15.00
3531 Postage		44.00					44.00				44.00
3532 Payroll Preparation		250.00					250.00				250.00
3537 Resident Education		75.00					75.00				75.00



Vintage Park Apartment Homes Weekly Budget August 16 - December 12, 2010																	
	8/22/2010	8/29/2010	9/5/2010	9/12/2010	8/19/2010	9/26/2010	10/3/2010	10/10/2010	10/17/2010	10/24/2010	10/31/2010	11/7/2010	11/14/2010	11/21/2010	11/28/2010	12/5/2010	12/12/2010
3540 Alarm Expenses		85.00	50.00								50.00						
3542 Telephone		0.00	1,860.00								1,860.00						
3545 Insurance	750.00																
Total 3500 Administrative Expenses	\$ 750.00	\$ 83.00	\$ 4,644.00	\$ 115.00	\$ 750.00	\$ 4,644.00	\$ 4,644.00	\$ 4,644.00	\$ 884.00	\$ 884.00	\$ 315.00	\$ 115.00	\$ 1,046.00	\$ 315.00	\$ 4,644.00	\$ 115.00	\$ 1,655.00
3600 Payroll Expenses		2,100.00	2,350.00	2,350.00													
3601 Property Manager		1,500.00	1,500.00	1,500.00													
3602 Assistant Manager		1,500.00	1,500.00	1,500.00													
3603 Landscaping Agent		2,450.00	2,450.00	2,450.00													
3604 Maintenance Techs		2,300.00	2,300.00	2,300.00													
3605 Maintenance Supervisor		1,900.00	1,900.00	1,900.00													
3606 Groundskeeper		1,100.00	1,100.00	1,100.00													
3607 Housekeeping		900.00	900.00	900.00													
3608 Overtime		300.00	300.00	300.00													
3610 Accounting		500.00	500.00	500.00													
3611 Charge Person		3,300.00	3,300.00	3,300.00													
3621 Leasing Bonus		1,175.00	1,175.00	1,175.00													
3622 Payroll Taxes		1,175.00	1,175.00	1,175.00													
3623 Worker's Compensation		1,175.00	1,175.00	1,175.00													
3624 Health Insurance		(862.75)	(862.75)	(862.75)													
3625 Life & Disability Insurance		150.00	150.00	150.00													
Total 3600 Payroll Expenses	\$ 7,333.00	\$ 22,996.75	\$ 35,150.00	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25
Total 3000 Expenses	\$ 7,333.00	\$ 22,996.75	\$ 35,150.00	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25	\$ 15,112.25
4000 Debt Service																	
4001 Interest																	
4002 Reserve Replacement																	
Total 4000 Debt Service																	
5000 Capital Improvements																	
5001 Repairs																	
5003 Utility Improvements																	
5004 Floor Coverings																	
5005 HVAC																	
5008 Landscaping-New																	
5011 Computer Software																	
Total 5000 Capital Improvements	\$ 4,375.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00
Total Expenses	\$ 12,308.00	\$ 24,496.75	\$ 37,450.00	\$ 16,702.25	\$ 16,702.25	\$ 16,702.25	\$ 16,702.25	\$ 16,702.25	\$ 16,702.25	\$ 16,702.25	\$ 16,702.25	\$ 16,702.25	\$ 16,702.25	\$ 16,702.25	\$ 16,702.25	\$ 16,702.25	\$ 16,702.25
Net Cash for week	(12,308.00)	(24,496.75)	(37,450.00)	(16,702.25)	(16,702.25)	(16,702.25)	(16,702.25)	(16,702.25)	(16,702.25)	(16,702.25)	(16,702.25)	(16,702.25)	(16,702.25)	(16,702.25)	(16,702.25)	(16,702.25)	(16,702.25)
Net Cash Budget to Date	242,091.42	217,642.27	619,275.24	662,618.09	497,675.09	487,476.36	772,612.43	749,276.18	746,435.19	744,700.18	1,029,344.00	1,001,784.75	897,662.75	1,306,489.67	1,278,698.67	1,267,482.32	