

SO ORDERED: June 19, 2012.



Basil H. Lorch III
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

IN RE:) Chapter 11
)
PLATINUM PROPERTIES, LLC, et al.,¹) Case No. 11-05140
)
Debtors.) JOINTLY ADMINISTERED

ORDER APPROVING STIPULATION AND AGREED ENTRY OF PLATINUM PROPERTIES, LLC AND GOLDEN INVESTMENTS III, LLC AUTHORIZING PLATINUM PROPERTIES, LLC'S USE OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION

This matter is before the Court on the *Motion for Order Approving Stipulation and Agreed Entry of Platinum Properties, LLC and Golden Investments III, LLC Authorizing Platinum Properties, LLC's Use of Cash Collateral and Granting Adequate Protection* (the "Motion") (docket #334) filed by Platinum Properties, LLC (the "Debtor"), one of the debtors and debtors in possession in the above-captioned Chapter 11 case. By the Motion, the Debtor seeks entry of an order approving the *Stipulation and Agreed Entry of Platinum Properties, LLC*

¹ The Debtor entities are Platinum Properties, LLC and PPV, LLC.

and Golden Investments III, LLC Authorizing Platinum Properties, LLC's Use of Cash Collateral and Granting Adequate Protection (the "Stipulation and Agreed Entry"). The Stipulation and Agreed Entry provides that the order approving the Stipulation and Agreed Entry shall incorporate the provisions set forth therein. The Stipulation and Agreed Entry is attached hereto as Exhibit A.

The Court, having reviewed the Motion and the Stipulation and Agreed Entry and being otherwise duly advised, now authorizes, grants, and approves the Motion and hereby incorporates by reference the provisions set forth in the Stipulation and Agreed Entry.

Accordingly,

IT IS HEREBY ORDERED that:

1. The Motion is hereby GRANTED, and the Stipulation and Agreed Entry is hereby APPROVED.
2. The provisions of the Stipulation and Agreed Entry are hereby incorporated as if fully set forth herein, ratified, affirmed, and adopted as the order of this Court.
3. Proper and adequate notice of the Motion and the Stipulation and Agreed Entry as required by Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure has been provided, and no further notice shall be required.

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Exhibit A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

IN RE:) Chapter 11
)
PLATINUM PROPERTIES, LLC, et al.,¹) Case No. 11-05140
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Debtors.) JOINTLY ADMINISTERED

**STIPULATION AND AGREED ENTRY OF PLATINUM PROPERTIES, LLC AND
GOLDEN INVESTMENTS III, LLC AUTHORIZING PLATINUM PROPERTIES,
LLC'S USE OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION**

On April 26, 2011, Platinum Properties, LLC ("Platinum") and PPV, LLC ("PPV"; and together with Platinum, the "Debtors") filed their First Day Motion for Authority to Use Cash Collateral (the "First Day Cash Collateral Motion"). The First Day Cash Collateral Motion sought the entry of a general, interim order granting the Debtors authority to use Cash Collateral (the "Interim Order") until such time as the Debtors negotiated a more comprehensive adequate protection agreement with a lender on one of the Debtors' real estate development projects (a "Project Lender"), or further order of the Court. The Court entered the Interim Order on May 18, 2011. On May 31, 2011, the Court entered its Final Order Granting Final Authority to Use Cash Collateral (the "Final Order"). Platinum and Golden Investments III, LLC ("Lender") have agreed to an adequate protection agreement in lieu of, or to take the place of, the Final Order (this "Stipulation and Agreed Entry"). On May 18, 2012, Platinum filed its motion (the "Golden Investments Motion") to approve this Stipulation and Agreed Entry. Accordingly, Platinum and Lender stipulate and agree (the "Stipulation") as follows:

¹ The Debtor entities are Platinum Properties, LLC and PPV, LLC.

1. On April 25, 2011 (the "Petition Date"), the Debtors commenced the cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continue in possession of their property and operate their business as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

2. This Court has jurisdiction over this Stipulation and Agreed Entry pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This proceeding presents a core proceeding under 28 U.S.C. § 157(b)(2).

3. Notice of the Golden Investments Motion was given in accordance with Federal Rule of Bankruptcy Procedure 4001 and Southern District of Indiana Local Rule B-9013-3.

4. Contemporaneously herewith, Platinum has filed a motion seeking the Court's authorization to obtain postpetition financing from Lender (the "DIP Financing Motion"). Upon the Court's entry of an order approving the DIP Financing Motion, Platinum will become indebted to Lender pursuant to and under (i) that certain Note Purchase Agreement by and between Platinum and Lender, substantially in the form of Exhibit B to the DIP Financing Motion (the "Note Purchase Agreement") and (ii) that certain Senior Secured Promissory Note to be executed by Platinum to the order of Lender, in the principal amount of \$1,157,000 substantially in the form of Exhibit 1 to the Note Purchase Agreement (the "Note"). The date on which Platinum executes and delivers to Lender the Note Purchase Agreement and the Note shall be referred to herein as the "Closing Date."

5. Pursuant to the terms of the DIP Financing Motion, Lender will loan to Platinum the sum of \$1,157,000 (the "Golden Investments Loan") which will be secured by a valid and enforceable first priority properly perfected security interest in and lien on, *inter alia*, certain real estate, fixtures and personal property owned by Platinum relating to Section 4B of the Sonoma

subdivision ("Sonoma Section 4B") within Platinum's Maple Knoll project (collectively, the "Golden Investments Collateral") pursuant to and as more fully defined and described in that certain Real Estate Mortgage and Security Agreement (And Fixture Filing), to be executed by Platinum in favor of Lender on the Closing Date, and to be recorded in the Office of the Recorder of Hamilton County, Indiana on or after the Closing Date (the "Mortgage" and together with the Note Purchase Agreement, the Note, and all documents, instruments, and agreements to be delivered in connection with the foregoing, as amended, supplemented, renewed, or otherwise modified, collectively, the "Loan Documents").

6. Platinum and Arbor Homes, LLC ("Arbor") are parties to a Lot Purchase Agreement dated November 2, 2006, as amended by the First Amendment to Lot Purchase Agreement dated August 22, 2011 (as amended, modified, extended, or restated from time to time, the "Lot Purchase Agreement"). Pursuant to the Lot Purchase Agreement, Arbor agrees to purchase all fully developed, non-alley lots in the Debtor's Sonoma subdivision, including Sonoma Section 4B. Contemporaneously herewith, the Debtor is filing a motion for authority to enter into the Second Amendment to Lot Purchase Agreement, which will amend the Lot Purchase Agreement to provide that Arbor will provide a builder deposit in the amount of \$75,000 for the development of Sonoma Section 4B (the "Builder Deposit"). The Builder Deposit will be credited equally to each lot purchase in Sonoma Section 4B.

7. Platinum's cash and cash equivalents that constitute proceeds of the sale of the Golden Investments Collateral securing Platinum's obligations to Lender, among other things, constitute "cash collateral" (as that term is defined in § 363(a) of the Bankruptcy Code) (the "Golden Investments Cash Collateral"). Lender asserts, and Platinum agrees, that Lender has a

valid and enforceable first priority properly perfected security interest in and lien on the Golden Investments Cash Collateral.

8. After the Golden Investments Loan has been fully advanced by Lender to Platinum, the indebtedness owed to Lender by Platinum under the Loan Documents will be \$1,157,000 in principal.

9. Platinum cannot operate its business or manage its property without maintaining its business operations, paying for necessary services, and satisfying its other working capital needs in the ordinary course of business.

10. Platinum must have immediate authority to use the Golden Investments Cash Collateral after the Closing Date in order to continue its operations without interruption and allow it to achieve a successful reorganization.

11. Platinum will use the Golden Investments Cash Collateral to repay the Golden Investments Loan, and for ordinary and necessary operating expenses, including without limitation, the reasonable and customary expenses normally identified on a HUD-1 Settlement Statement, payroll expenses, utility services, payroll taxes, insurance, supplies and equipment, vendor and supplier services, and other expenditures as are necessary for operating the Debtors' businesses, including Sonoma Section 4B and maintaining the Golden Investments Collateral.

12. Platinum has offered Lender the following as adequate protection (collectively the "Adequate Protection Provisions") for use of the Golden Investments Cash Collateral:

- a. Platinum agrees to maintain insurance on the Golden Investments Collateral;
- b. Platinum will use the Golden Investments Cash Collateral to repay the Golden Investments Loan and for the operation, maintenance and upkeep

of the Golden Investments Collateral and for expenses incurred in the ordinary course of business; using the Golden Investments Cash Collateral for the operation, maintenance and upkeep of Sonoma Section 4B in the ordinary course of business will protect the interests of Lender in the Golden Investments Collateral;

- c. In addition to the reports prepared and distributed to Project Lenders prior to the Petition Date, commencing on the first day of the month after Court approval of this Stipulation and Agreed Entry, while Platinum is authorized to use the Golden Investments Cash Collateral, Platinum shall provide Lender a monthly operating report, as agreed to by Platinum and Lender or as ordered by the Court, which shall include an actual cash statement of amounts spent in the previous month;
- d. Platinum shall within two (2) business days of the occurrence of the same, promptly give Lender notice of the occurrence of any event or any matter which has resulted or will result in a material adverse change in the business, assets, operations or financial condition of Platinum;
- e. Upon the sale of any of the lots in Sonoma Section 4B, Platinum shall immediately pay to Lender an amount equal to eighty-five percent (85%) of the net sales price of the residential lot or parcel (after applying the credit to Arbor for the pro-rata return of the Builder Deposit, among other closing deductions, credits and offsets) at Sonoma Section 4B (such net sales price being the gross sales price less the ratable credit of the Builder Deposit, customary broker commissions, and closing costs), to be applied

against the indebtedness owed to Lender by Platinum as provided under the Loan Documents (the "Golden Investments Lot Sale Proceeds"). Platinum may use five percent (5%) of the net sales price as Golden Investments Cash Collateral (the "Operating Proceeds"), and Platinum shall deposit five percent (5%) of the net sales price (the "Professional Fee Account Funding Formula") into a segregated account (the "Professional Fee Account") for the payment of professional fees incurred in the Chapter 11 case (the "Professional Fee Proceeds"). The remaining five percent (5%) of the net sales price (the "Subordinated Creditor Proceeds") shall be paid to MK Investment Group, LLC and the Christel DeHaan Revocable Trust (collectively, the "Subordinated Lenders") pursuant to the provisions of the adequate protection agreement between Platinum and the Subordinated Lenders previously approved by the Court, including any amendments, supplements, or other modifications thereto subsequently approved by the Court;

- f. Other Project Lenders have entered into similar stipulations pursuant to which a portion of lot sale proceeds will be deposited into the Professional Fee Account. In the event that a balance remains in the Professional Fee Account at the conclusion of these bankruptcy cases after all professional fees have been incurred and paid for (the "Excess Balance"), the Excess Balance will be returned to Lender and other Project Lenders in the same proportion as the Lender and other Project Lenders lot sale proceeds were contributed to the Professional Fee Account. Lender shall have a valid

and enforceable first priority properly perfected lien on the Professional Fee Account, pari passu with the liens of other Project Lenders contributing to the Professional Fee Account, without need to file or perfect or any further documentation beyond this Stipulation and Agreed Entry, to secure the return of any Excess Balance.

13. Platinum's use of the Golden Investments Cash Collateral pursuant to the terms and conditions set forth herein is in the best interests of Platinum, its estate, and its creditors in that it allows Platinum to maintain its business and avoids serious irreparable harm to the estate and Platinum's creditors.

14. Platinum and its estate expressly waives and releases all claims it may have contesting the validity, enforceability, priority, or perfection of Lender's security interests and liens granted pursuant to the DIP Financing Motion or the Loan Documents.

15. The Cash Collateral Motion complies with Federal Rule of Bankruptcy Procedure 4001 and Southern District of Indiana Local Rule B-4001-2.

Based upon the foregoing Stipulation of Platinum and Lender, and good and sufficient cause appearing therefore, Platinum and Lender hereby agree that the order approving this Stipulation and Agreed Entry (the "Approval Order") shall provide that:

A. The Stipulation and Agreed Entry of Platinum and Lender shall be incorporated into the Approval Order as if set forth in full therein.

B. The relief provided for in this Stipulation and Agreed Entry is in lieu of, and takes the place of, the Final Order.

C. Platinum is authorized to use the Golden Investments Cash Collateral, subject to the terms and conditions set forth in this Stipulation and Agreed Entry.

D. Lender shall be and is entitled to the Adequate Protection Provisions as adequate protection for Platinum's use of the Golden Investments Cash Collateral.

E. Platinum shall pay when due all taxes, insurance, assessments and governmental and other charges accrued post-petition, including any and all federal and state withholding taxes, and all property taxes related to the Golden Investments Collateral, and shall provide to Lender, on request, copies of depository receipts or other satisfactory evidence of the same.

F. Any title insurers insuring title to the sale of any of the lots are authorized to directly pay to Lender the Golden Investments Lot Sale Proceeds; directly pay to Platinum (i) the Professional Fee Proceeds, which Platinum shall deposit into the Professional Fee Account and (ii) the Operating Proceeds; and directly pay the Subordinated Creditor Proceeds to the Subordinated Lenders.

G. An Event of Default for purposes of this Stipulation and Agreed Entry shall include, but not be limited to: (i) failure of Platinum to comply with any of the Adequate Protection Provisions, reporting or other obligations set forth herein, or (ii) failure by Platinum to comply with any of the terms of this Stipulation and Agreed Entry.

H. Unless extended by the Court upon the written agreement of Lender, Platinum, and any committee(s) appointed in this bankruptcy case, this Stipulation and Agreed Entry and Platinum's authorization to use Golden Investments Cash Collateral pursuant to this Stipulation and Agreed Entry will immediately terminate on the date on which Lender provides, via facsimile and electronic mail, written notice to Platinum's counsel of the occurrence of an Event of Default (as defined above) and the expiration of a three (3) business day cure period (the "Termination Date"). Before the Termination Date, Lender and Platinum shall be entitled to apply to this Court for all appropriate relief, upon such notice as may be appropriate under the

circumstances; provided, however, that: (i) the obligations of Platinum and the rights of Lender with respect to all transactions which have occurred prior to the Termination Date shall remain unimpaired and unaffected, and (ii) Lender and Platinum shall retain all of their respective rights and remedies under the Bankruptcy Code including, without limitation, Platinum's right to request the continued use of Golden Investments Cash Collateral and the right of Lender to oppose Platinum's further use of Golden Investments Cash Collateral and to move for dismissal or relief from the automatic stay.

I. In addition to other rights and remedies provided to Lender pursuant to this Stipulation and Agreed Entry and the Loan Documents, upon the occurrence of an Event of Default (as defined above) and the filing in this Court of an affidavit by a duly authorized representative of Lender specifying the nature of such Event of Default, and request by Lender for relief under the terms hereof, Lender shall be entitled to an expedited hearing before this Court seeking the termination of and/or other relief from the automatic stay under 11 U.S.C. § 362(a) with respect to Lender as to the Golden Investments Collateral including, but not limited to, the Golden Investments Cash Collateral and all other relief available under bankruptcy and other applicable law.

J. Except as modified herein and subject to the other provisions of this Stipulation and Agreed Entry and the Bankruptcy Code, the Loan Documents, and the terms and provisions thereof, are valid and enforceable and shall remain in full force and effect.

K. No order shall be entered in this case authorizing the estate to incur debt secured by a lien on and against the Golden Investments Collateral which is equal to or superior to Lender's post-petition liens or any additional liens granted by this Stipulation and Agreed Entry, without Platinum obtaining Lender's consent to same, or a court order authorizing such debt.

L. This Stipulation and Agreed Entry shall not constitute a waiver by Lender of any of its rights under the Loan Documents, the Bankruptcy Code or other applicable law, including, without limitation: (i) its right to assert that, notwithstanding the terms and provisions of this Agreed Entry, any of its interests in the Golden Investments Collateral including, but not limited to the Golden Investments Cash Collateral, lack adequate protection within the meaning of 11 U.S.C. §§ 362(d) or 363(e); or (ii) its right to assert any claim(s). Lender's failure, at any time or times hereafter, to require strict performance by Platinum of any provision of this Stipulation and Agreed Entry shall not waive, affect or diminish any right of Lender thereafter to demand strict compliance and performance therewith. No delay on the part of Lender in the exercise of any right or remedy under this Stipulation and Agreed Entry shall preclude any other or further exercise of any such right or remedy or the exercise of any other right or remedy. None of the rights or remedies of Lender under this Stipulation and Agreed Entry shall be deemed to have been suspended or waived by Lender unless such suspension or waiver is in writing, signed by a duly authorized officer or agent of Lender, and directed to Platinum specifying such suspension or waiver.

M. Except as otherwise provided herein, this Stipulation and Agreed Entry shall not constitute a waiver by Platinum of any of its rights under the Loan Documents, the Bankruptcy Code, or other applicable law, including without limitation: (i) its right to assert that, notwithstanding the terms of this Stipulation and Agreed Entry, Lender's interest in the Golden Investments Collateral is adequately protected under 11 U.S.C. §§ 362 or 363; or (ii) its right to assert a claim for breach of this Stipulation and Agreed Entry.

N. By taking any actions pursuant to this Stipulation and Agreed Entry, Lender shall not: (i) be deemed to be in control of the operations of the Debtors or their estates, or (ii) be

deemed to be acting as a "responsible person" with respect to the operation or management of the Debtors or their estates.

O. If this Stipulation and Agreed Entry never becomes a final and nonappealable order, if this Stipulation and Agreed Entry is terminated for any reason, or if any or all of the provisions of this Stipulation and Agreed Entry are hereafter modified, vacated or stayed by subsequent order of this Court or any other court, such termination or subsequent order shall not affect the priority, validity, enforceability or effectiveness of any lien, security interest, priority, or other benefit authorized hereby with respect to the Golden Investments Collateral including, but not limited to, the Golden Investments Cash Collateral used prior to the effective date of such subsequent order (and all such liens, security interests, priorities and other benefits shall be governed in all respects by the original provisions of this Stipulation and Agreed Entry).

P. This Stipulation and Agreed Entry shall be and remain in full force and effect notwithstanding conversion of this bankruptcy case or entry of an order appointing a trustee. Without limiting the generality of the foregoing, the liens and security interests granted to Lender shall survive expiration of this Stipulation and Agreed Entry. Furthermore, the terms and provisions of this Stipulation and Agreed Entry shall be binding upon and inure to the benefit of Lender, the Debtors, their estates, and their respective successors and assigns including, without limitation, the Debtors, or other fiduciary who hereafter succeeds to Debtors' estates in these bankruptcy cases.

Q. The authority to use the Golden Investments Cash Collateral granted to Platinum by this Stipulation and Agreed Entry shall expire on the Termination Date, unless otherwise ordered by this Court.

R. Platinum shall escrow the Professional Fee Proceeds upon the sale of each lot, as more fully set forth in paragraphs 12(e) and (f) of the foregoing Stipulation, to be used to pay professional fees incurred, after notice or application by each professional seeking payment of professional fees pursuant to orders entered by this Court, and after due and adequate notice and/or an opportunity for a hearing are provided to Lender and other parties-in-interest as provided by orders entered by this Court; provided, however, (i) in no event shall more than the amount determined in accordance with the Professional Fee Account Funding Formula be used to fund the Professional Fee Account and any Excess Balance remaining in the Professional Fee Account after all approved professional fees are paid in full shall be returned to Lender and other contributing Project Lenders in the same proportion that Lender and Project Lenders contributed to the Professional Fee Account to the extent of any remaining obligation owed to Lender and such Project Lenders and (ii) in no event shall any part of the Professional Fee Proceeds or any Golden Investments Cash Collateral be used to challenge the amount, validity, perfection, priority or enforceability of, or assert any defense, counterclaim or offset with respect to the indebtedness owed to Lender, the Loan Documents or Lender's security interests and liens.

S. Notice of the entry of this Stipulation and Agreed Entry shall be given by the Debtors to the parties upon whom service is required by Federal Rules of Bankruptcy Procedure 2002 and 4001.

T. This Court has and will retain jurisdiction to enforce this Stipulation and Agreed Entry according to its terms.

U. This Stipulation and Agreed Entry shall be sufficient and conclusive evidence of the validity, enforceability, perfection and priority of the liens granted herein, including without limitation the liens to secure return of any Excess Balance from the Professional Fee Account as

granted in paragraph 12(f) of the foregoing Stipulation to the extent of any remaining obligation owed to Lender, without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect the liens granted in this Stipulation and Agreed Entry.

V. The effectiveness of this Stipulation and Agreed Entry is conditioned on this Court's approval of the DIP Financing Motion.

STIPULATED AND AGREED TO:

/s/ Jay Jaffe
Jay Jaffe
Faegre Baker Daniels LLP
600 East 96th Street, Suite 600
Indianapolis, IN 46240

One of the Counsel for the Debtors

/s/ Erick P. Knoblock
Erick P. Knoblock
Dale & Eke, P.C.
9100 Keystone Crossing, Suite 400
Indianapolis, IN 46240

One of the Counsel for Lender