

**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

**AMENDED INTERIM STIPULATION AND AGREED ENTRY OF PLATINUM
PROPERTIES, LLC AND ARBOR HOMES, 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 "Cash Collateral Motion"). The 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. Platinum and Arbor Homes, LLC ("Lender") have agreed to an adequate protection agreement in lieu of, or to take the place of, the Interim Order (this "Stipulation and Agreed Entry"). Accordingly, Platinum and the Lender stipulate and agree (the "Stipulation") as follows:

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

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

"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 Cash Collateral Motion was given in accordance with Federal Rule of Bankruptcy Procedure 4001 and Southern District of Indiana Local Rule B-9013-3.

4. Platinum and Lender are parties to a Lot Purchase Agreement, dated as of November 2, 2006 (the "Lot Purchase Agreement") pursuant to which Lender has agreed to purchase certain lots in the Sonoma subdivision which is part of the Maple Knoll project.

5. Platinum is indebted to Lender pursuant to and under (i) that certain Loan Agreement, dated September 23, 2010, with Lender (as amended by the First Amendment to Loan Agreement, dated February 28, 2011, the "Loan Agreement"), and (ii) that certain Amended and Restated Senior Secured Promissory Note from Debtor in favor of Lender dated February 28, 2011 in the principal amount of \$1,084,000 (the "Note"), in connection with the development of the lots in Sonoma Section 5.

6. Lender asserts, and Platinum preliminarily agrees, that Lender has a valid and enforceable first priority properly perfected security interest in and lien on, *inter alia*, certain real estate, fixtures and personal property relating to Sonoma Section 5 of its Maple Knoll project (collectively, the "Sonoma 5 Collateral") pursuant to and as more fully defined and described in that certain Real Estate Mortgage and Security Agreement (And Fixture Filing), dated February 28, 2011, and recorded on March 4, 2011 as Instrument No. 2011012618 in the Office of the Recorder of Hamilton County, Indiana ("the "Mortgage" and with the Lot Purchase Agreement,

the Loan Agreement, the Note, and all documents, instruments, and agreements delivered in connection with the foregoing, as amended, supplemented, renewed, or otherwise modified, collectively, the "Loan Documents").

7. Platinum's cash and cash equivalents that constitute proceeds of the sale of Sonoma 5 Collateral on and after the Petition Date securing Platinum's obligations to Lender, among other things, constitute "cash collateral" (as that term is defined in § 363(a) of the Bankruptcy Code) ("Sonoma 5 Cash Collateral"). The Lender asserts, and Platinum preliminarily agrees, that Lender has a valid and enforceable first priority properly perfected security interest in and lien on the Sonoma 5 Cash Collateral.

8. The indebtedness owed to Lender by Platinum under the Loan Documents as of the Petition Date is approximately \$666,341 in principal, plus accrued interest, costs, fees, charges and expenses.

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 interim authority to use the Sonoma 5 Cash Collateral in order to continue its operations without interruption and allow it to achieve a successful reorganization.

11. Platinum will use the Sonoma 5 Cash Collateral 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 5 of the Maple Knoll project and maintaining the Sonoma 5 Collateral.

12. Platinum has offered Lender the following as adequate protection (collectively the "Adequate Protection Provisions") for use of the Sonoma 5 Cash Collateral:

- a. Platinum agrees to maintain insurance on the Sonoma 5 Collateral;
- b. Platinum will use the Sonoma 5 Cash Collateral for the operation, maintenance and upkeep of the Sonoma 5 Collateral and for expenses incurred in the ordinary course of business; using the Sonoma 5 Cash Collateral for the operation, maintenance and upkeep of the Maple Knoll project in the ordinary course of business will protect the interests of Lender in the Sonoma 5 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 Sonoma 5 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 Maple Knoll lots in Sonoma Section 5 to Lender, the amount of the purchase price for such lot payable by Lender to Platinum pursuant to the Lot Purchase Agreement shall be reduced by \$32,000 (such amount, as adjusted with respect to the final three lots as described below, being the "Credit"). The amount of the Credit shall be deemed to constitute a payment on the Note under the terms thereof. The Credit for the final three lots shall be adjusted by agreement of Platinum and Lender, such that the Note is fully repaid with the aggregate credit amount applicable to those lots. Lender shall pay to Platinum the amount of the purchase price set forth in the Lot Purchase Agreement minus the Credit. Platinum shall pay five percent (5%) of the net sales price of the residential lot or parcel in Sonoma Section 5 in the Maple Knoll project (such net sales price being the gross sales price (including the Credit) less customary broker commissions and closing costs) (collectively, the "Subordinated Creditors Lot Sale Proceeds") to MK Investment Group, LLC and after MK Investment Group, LLC is fully repaid, then to Christel DeHaan, as Trustee of the Christel DeHaan Revocable Trust, dated December 31, 1992 (collectively, the "Subordinated Creditors"). Platinum may use two-thirds ($2/3$) of the balance of the purchase price remaining after the Credit and Subordinated Creditors Lot Sale Proceeds as Sonoma 5 Cash Collateral (the "Operating Proceeds"), and Platinum shall deposit one-third ($1/3$) of the balance of the purchase price remaining after the Credit and Subordinated Creditors Lot Sale Proceeds (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");

- f. Platinum anticipates that other Project Lenders will enter 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 the 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. The 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; and
- g. Pursuant to 11 U.S.C. § 552(b), Platinum agrees that Lender's pre-petition liens on the Sonoma 5 Collateral continue post-petition as first priority, properly perfected post-petition liens on and attach to the Sonoma 5 Collateral and any proceeds, products or profits from the Sonoma 5 Collateral including, but not limited to, the sale or other disposition of the Sonoma 5 Collateral.

13. Platinum's use of the Sonoma 5 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 must contest the validity, enforceability, priority and perfection of the Lender's security interests and liens by filing an adversary proceeding contesting such on or before June 30, 2011 (the "Lien Validity Period").

15. This Stipulation and Agreed Order does not foreclose the right of the Debtors, or any party authorized to act on behalf of the Debtors or their estates, to challenge the granting of the Mortgage as a transfer avoidable as a preference pursuant to § 547 of the Bankruptcy Code, which rights are expressly preserved, are independent of, and shall survive the expiration of the Lien Validity Period (the "Avoidance Rights").

16. Any committee(s) appointed in this bankruptcy case must contest the validity, enforceability, priority and perfection of the Lender's security interests and liens by filing an adversary proceeding contesting such on or before the sixtieth (60th) day from the committee's appointment. The failure of a committee to commence an adversary proceeding within the time allotted shall have no affect on the Avoidance Rights, which will continue to survive and be preserved.

17. This Stipulation and Agreed Order applies only to the sale of any of the Maple Knoll lots in Sonoma Section 5 to Lender pursuant to the Lot Purchase Agreement (as it may amended, modified and/or restated from time to time).

18. 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 stipulations and agreements of Platinum and the Lender, and good and sufficient cause appearing therefor, the Court hereby approves the Stipulation and the Adequate Protection Provisions. Accordingly,

IT IS HEREBY ORDERED THAT:

A. The foregoing Stipulation of Platinum and Lender is hereby incorporated into this Stipulation and Agreed Entry as if set forth in full herein.

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

C. Platinum is authorized to use the Sonoma 5 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 Sonoma 5 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 Sonoma 5 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 subtract the Credit from the purchase price set forth in the Lot Purchase Agreement, and directly pay to Platinum (i) the Professional Fee Proceeds, which Platinum shall deposit into the Professional Fee Account and (ii) the Operating Proceeds.

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 Sonoma 5 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 Sonoma 5 Cash Collateral and the right of Lender to oppose Platinum's further use of Sonoma 5 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 the automatic stay under 11 U.S.C. § 362(a) with respect to

Lender as to the Sonoma 5 Collateral including, but not limited to, the Sonoma 5 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 Sonoma 5 Collateral which is equal to or superior to Lender's pre-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 Stipulation and Agreed Entry, any of its interests in the Sonoma 5 Collateral including, but not limited to the Sonoma 5 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. 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, the Lender's interest in the Sonoma 5 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 Sonoma 5 Collateral including, but not limited to, the Sonoma 5 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 Sonoma 5 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 the Lender and other contributing Project Lenders in the same proportion that the Lender and Project Lenders contributed to the Professional Fee Account and (ii) in no event shall any part of the Professional Fee Proceeds or any Sonoma 5 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 the 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, 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.

STIPULATED AND AGREED TO:

/s/ Jay Jaffe

Jay Jaffe

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