



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re	)	Chapter 11
	)	
STERLING ESTATES (DELAWARE), LLC,	)	Case No. 10-22319
	)	Judge Jack B. Schmetterer
Debtor.	)	

STIPULATION AND INTERIM ORDER AUTHORIZING THE DEBTOR'S  
USE OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION  
PURSUANT TO SECTIONS 361 AND 363 OF THE BANKRUPTCY CODE

THIS CAUSE has come to be heard on the Debtor's Motion for Authority to Use Cash Collateral and for Related Relief (the "*Motion*"), and the Objection to the Motion filed by ORIX Capital Markets, LLC, as special servicer (the "*Special Servicer*") for Wells Fargo Bank, N.A., not individually but solely as Trustee for the registered holders of Banc of America Commercial Mortgage Inc., Commercial Mortgage Pass-Through Certificates, Series 2003-2 (the "*Trust*"). The Debtor and the Special Servicer stipulate and agree as follows:

A. Adequate and sufficient notice of the Motion has been provided to all persons entitled thereto under Rule 2002 and 4001 of the Bankruptcy Rules and no further notice of the Motion is necessary.

B. This matter constitutes a "core proceeding" within the meaning of 28 U.S.C. § 157.

C. The Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334 and 157.

D. On May 17, 2010 (the "*Petition Date*"), Sterling Estates (Delaware), LLC, (the "*Debtor*") filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "*Bankruptcy Code*"). Since the *Petition Date*, the Debtor has remained in possession

of its assets and has continued in operation and control of its business as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. This a “single asset real estate” case and the provisions of Section 362(d)(3) of the Bankruptcy Code apply to the Debtor.

E. In the Motion, the Debtor seeks authority to use the proceeds from the collection of rents, pre-petition accounts and other Cash Collateral (as defined below) in which the Trustee has an interest.

F. As of the Petition Date, the Debtor was indebted to Trust under (1) that certain Promissory Note dated April 29, 2003 in the original principal amount of \$40,500,000.00 executed by the Debtor in favor of Bank of America, N.A., as predecessor-in-interest to the Trust (the “*Note*”). The Note is secured by, among other things, the mortgages, liens and security interests granted in that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated April 29, 2003 executed by the Debtor in favor of Bank of America, N.A., as predecessor-in-interest to the Trust (the “*Mortgage*,” and together with the other documents and instruments, including those evidencing the mortgages, liens and security interests of the Trust executed and delivered in connection therewith, being collectively referred to as the “*Pre-Petition Loan Documents*”).

G. The amounts outstanding under the Pre-Petition Loan Documents as of November 1, 2010 are principal of \$36,265,672.15, plus unpaid interest, costs, expenses and other charges thereon as further set forth in the Pre-Petition Loan Documents (the “*Pre-Petition Obligations*”)

H. Under the Pre-Petition Loan Documents, as security for repayment of the Pre-Petition Obligations, the Debtor granted to the a Trust valid, perfected, and enforceable mortgage and first liens upon and security interests in substantially all of its assets, as more particularly set forth in the Pre-Petition Loan Documents, including, without limitation, the real estate more particularly described in the Mortgage, improvements, fixtures, personal property,

leases and rents, accounts, agreements, general intangibles, and proceeds thereof. The properties and assets in which the Debtor granted security interests and liens to the Trust to secure repayment of the Pre-Petition Obligations are referred to herein as the “*Pre-Petition Collateral.*”

I. The liens and security interests of the Trust in the Pre-Petition Collateral have been duly and properly perfected.

J. There are currently existing and continuing one or more events of default under the Pre-Petition Loan Documents, including without limitation, the failure of the Debtor to pay the amounts due under the Pre-Petition Loan Documents at maturity.

K. The liens and security interests of the Trust in the Pre-Petition Collateral are prior and superior to the right, title and interest in such property of all other persons and entities.

L. The Debtor asserts that it requires the use of the Cash Collateral (as defined below) in order to continue to operate. Without the use of the Cash Collateral, the Debtor asserts that its estate may suffer irreparable harm in that the value of the Debtor’s assets may diminish, and the Debtor may not be able to preserve the value of its assets. Accordingly, the Debtor has requested that the Trust allow it continued use of the Cash Collateral.

M. The Trust is willing to permit the Debtor to use the Cash Collateral only in the amounts and on the conditions provided for herein.

N. It is in the best interests of the Debtor’s estate and its creditors that the Debtor be allowed to use the Cash Collateral on the conditions set forth herein.

**BASED ON THE AGREEMENT OF THE PARTIES HERETO, IT IS HEREBY ORDERED:**

1. As used herein, “*Cash Collateral*” shall mean all cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents derived from the Pre-Petition Collateral, including rents and all amounts received by the Debtor in collections on its accounts receivable (including deposits made to the Debtor’s debtor-in-possession account at

Chase Bank) which are subject to the Trust's, mortgage, liens and security interests in the Pre-Petition Collateral.

2. The Cash Collateral presently in the possession, custody or control of the Debtor or hereafter acquired by the Debtor shall be segregated and separately accounted for by the Debtor by deposit into its debtor-in-possession account at Chase Bank ending in 2385 (the "Cash Collateral Account") from which the Debtor may make such disbursements as are authorized by this Stipulation and Interim Order.

3. Subject to the terms and conditions of this Stipulation and Interim Order, the Debtor is hereby authorized to use the Cash Collateral as follows:

(a) to make the payments to the Trust that are required under this Stipulation and Interim Order, and

(b) to pay expenses of the Debtor as set forth below (the "Expenses"),

*that the line items in the budget for sales/leasing payroll, landscaping, lawn care, concrete parking equipment, Bobcat repair, leaf blower, abandoned home rehab, and home purchases*  
4. The Expenses shall not exceed the weekly amounts budgeted for such items in the budget attached hereto and incorporated herein by reference as *Exhibit 1* (the "Budget") by more than 10% per line item. The Debtor shall not expend any funds for any Expenses not included in the Budget without further Order of the Court; *provided, however,* that if the Special Servicer in its sole discretion, approves in writing any additional expenditure not included in the Budget, the Debtor may use the Cash Collateral for such expenditure without further Order of the Court.

5. Pursuant to Section 362(d)(3)(B) of the Bankruptcy Code, the Debtor shall pay to the Trust monthly interest (at the non-default contract rate) on the Pre-Petition Obligations for the prior month on or before the 15th day of each month, and the Budget reflects such payments.

6. In consideration for the Trust's consent to the Debtor's use of the Cash Collateral, and as adequate protection for any diminution in the value of the Trust's interest in the Pre-

*and legal fees for evictions may not be spent,*

Petition Collateral, including the Cash Collateral (such diminution in value being referred to collectively as an "*Adequate Protection Claim*"), pursuant to sections 361 and 363 of the Bankruptcy Code, the Trust shall be, and hereby is, granted a security interest in and replacement lien upon the same property and assets which secured the Pre-Petition Obligations, including property and assets acquired by the Debtor post-petition, and liens and security interests in the proceeds of such property and assets, including proceeds that are deposited in the Cash Collateral Account or deposited and maintained in the Debtor's bank accounts, which liens and security interests shall be of the same validity, perfection and priority as the liens of the Trust that existed prior to the Petition Date; *provided, however*, that such liens and security interests shall not include any causes of action under Chapter 5 of the Bankruptcy Code or the proceeds thereof. Such liens and security interests shall be valid and enforceable without the necessity for filing or execution of documents which might otherwise be required under non-bankruptcy law for the perfection of such liens security interests. The Debtor's assets upon which the Trust is granted post-petition liens and security interests to secure any Adequate Protection Claim shall be referred to herein as the "*Post-Petition Collateral*."

7. To the extent that the value of the Pre-Petition Collateral is diminished as a result of the Debtor's operations or use of the Cash Collateral, the Trust is hereby granted super-priority claims to the extent of any such diminution as of the Petition Date against the Debtor and the estate of the Debtor, having priority over any and all administrative expenses of any kind including, but not limited to, the administrative expenses described in Section 507(b) of the Bankruptcy Code; *provided, however*, that such super-priority claims shall not be paid from any causes of action under Chapter 5 of the Bankruptcy Code or the proceeds thereof.

8. The Debtor shall allow the Special Servicer and its authorized agents reasonable access, during normal business hours, to the Debtor's premises and financial books, records or

information, including, without limitation, accounts receivable, accounts payable, general ledger and other financial documents, including the right to conduct an audit, and to make copies of the same, upon at least forty-eight (48) hours prior notice.

9. As part of this Stipulation and Interim Order, and in consideration of the agreements of the Trust as set forth herein, the Debtor agrees to maintain insurance against fire, theft or other casualty on the insurable Pre-Petition Collateral and the Post-Petition Collateral in amounts acceptable to the Trust and to insure that the Trust is named as loss payee. Evidence of such insurance shall be submitted to the Trust.

10. Until the Trust is paid in full, and in consideration of the agreements of the Trust as set forth herein, the Debtor agrees not to further encumber, whether voluntarily or involuntarily and whether by mortgage, security agreement and financing statement, deed of trust, judgment or lien, or court order, any of the Pre-Petition Collateral or the Post-Petition Collateral, without the prior written consent of the Trust, or unless approved by an order of the Court upon no less than seven (7) days notice to the Trust. The Debtor further agrees that it will not sell or transfer any of its assets outside the ordinary course of business without the consent of the Trust, or unless approved by an order of the Court upon no less than seven (7) days notice to the Trust.

11. The Debtor's right to use the Cash Collateral under this Stipulation and Interim Order shall cease and terminate immediately, and without further notice, upon the earliest of: (a) 11:59 p.m. on December 17, 2010, unless continued by an Order of the Court; (b) entry of an order converting this case to a case under Chapter 7 of the Bankruptcy Code; (c) entry of an order dismissing or suspending this case; (d) entry of an order in this case appointing a trustee

under Section 1104 of the Bankruptcy Code; or (e) entry of an order in this case terminating the Debtor's continued use of Cash Collateral.

12. The Debtor's right to use Cash Collateral under this Stipulation and Interim Order shall cease and terminate, without further order of the Court, at the close of business on the second business day after written notice is delivered by the Trust to the Debtor's counsel and those persons and entities who have requested notice in these proceedings stating that one of the following events has occurred and is continuing: (a) the Debtor's disbursements exceed the amounts permitted under this Stipulation and Interim Order; or (b) the Debtor has failed to make any payments to the Trust when due under this Stipulation and Interim Order; *provided, however,* that prior to the time that the Debtor's use of Cash Collateral would cease and terminate under the provisions of this paragraph (the "*Cure Period*"), the Debtor may cure the condition specified in the Termination Notice; *provided further,* that if the Debtor shall, prior to the expiration of the Cure Period, file a motion with the Court for authority to continue to use Cash Collateral, the Debtor's rights to continue to use Cash Collateral shall be governed by the order entered by the Court in connection with such motion.

13. In the event of a termination of the Debtor's right to use Cash Collateral, the Trust and the Debtor reserve any and all rights afforded them under applicable bankruptcy law as to the use of the Cash Collateral.

14. The Trust reserves all rights, and all legal and factual arguments, including, without limitation, (a) all legal and factual arguments asserted by the Trust in its Objection to the Debtor's Motion for Authority to Use Cash Collateral and for Related Relief (Docket No. 55) (the "*Cash Collateral Objection*") and in its Motion for Relief from the Automatic Stay (Docket No. 69) (the "*Stay Motion*"), and in the evidentiary hearings held before the Court on November 22 and 23, 2010 on the Cash Collateral Objection and the Stay Motion, (b) the right at any time

to assert that the value of the Trust's interests in the Pre-Petition is not adequately protected, (c) the right at any time to request that the Court lift the automatic stay due to the failure by the Debtor to comply with Section 362(d) of the Bankruptcy Code, (d) the right to object to any plan of reorganization and disclosure statement filed by the Debtor, (e) the right to assert that interest under the Pre-Petition Loan Documents is and has been payable at the applicable contractual default rate under the Pre-Petition Loan Documents, (f) the right to seek the appointment of a trustee in this case, the dismissal of this case, or the conversion of this case to a case under chapter 7 of the Bankruptcy Code, (g) all rights against third parties, including Capital Home Sales, LLC ("*Capital Home*") and affiliates of the Debtor, for rent due or payable to Sterling under any lease agreement (written or oral) or under applicable law, and (h) the rights to assert that the filing of the Debtor's voluntary petition in this case was not properly authorized pursuant to the Debtor's Limited Liability Company Agreement or under applicable law.

15. Notwithstanding the provisions of this Stipulation and Interim Order, the obligations of the Debtor and the rights, claims, security interests, liens and priorities of the Trust with respect to all transactions which occurred prior to the termination of the Debtor's right to use the Cash Collateral, including, but not limited to, this Stipulation and Interim Order, shall remain unimpaired and unaffected by any such termination and shall survive any such termination.

16. The rights and obligations of the Debtor and the rights and claims of the Trust arising under this Stipulation and Interim Order are in addition to, and not in lieu or substitution of, the rights, obligations, claims, security interests, liens and priorities existing as of the Petition Date.

17. Upon the entry of an order in this case amending, supplementing, staying, vacating or otherwise modifying this Stipulation and Interim Order without the consent of the



Trust, the consent of the Trust to the Debtor's use of the Cash Collateral shall hereby be deemed to have been withdrawn.

18. As further adequate protection hereunder, the Debtor or its professionals shall submit by telecopy to the Special Servicer, addressed to the attention of John Sanborn of ORIX Capital Markets, LLC, as special servicer, via email at john.sanborn@orix.com, or as otherwise agreed, the following information in form reasonably satisfactory to the Special Servicer, commencing on December 6, 2010 and every Monday thereafter (unless otherwise provided below): (a) weekly cash receipts, (b) weekly accounts receivable (every other Monday beginning on December 6, 2010), (c) weekly Expense disbursements by category, (d) a comparison of actual weekly cash receipts and Expenses for the week preceding the week in which such comparison is being delivered to the projected cash flows for such week as shown in the Budget, (e) weekly rent roll, and (f) documents reflecting activity in all of the Debtor's debtor-in-possession accounts wherever located.

19. Nothing contained in this Stipulation and Interim Order (including the Budget) or in the Trust's consent to the use of the Cash Collateral pursuant to this Stipulation and Interim Order shall constitute a determination or finding by the Court, or an agreement or an acknowledgement by the Trust, (a) that the value of the Trust's interests in the Pre-Petition Collateral are "adequately protected" within the meaning of Sections 361 and 363 of the Bankruptcy Code, (b) that any calculation or assertion by the Debtor of the value of the Pre-Petition Collateral is accurate, (c) that the amounts which the Debtor asserts are due and owing from Capital Home are accurate.

20. Nothing in this Stipulation and Interim Order shall in any way prejudice or compromise any rights or claims the Trust may have against third parties.

21. The provisions of this Stipulation and Interim Order shall be binding upon and inure to the benefit of the Trust and the Debtor, and their respective successors-in-interest and assigns under applicable law.

22. This Stipulation and Interim Order is immediately valid and fully effective upon its entry. The Court shall retain jurisdiction to resolve all disputes and controversies regarding the interpretation or implementation of this Stipulation and Interim Order.

23. This Stipulation and Interim Order shall be governed by, and construed in accordance with, the laws of the State of Illinois and the laws of the United States.

24. In accordance with paragraph 26 of the Stipulation and Interim Order Authorizing the Debtor's Use of Cash Collateral and Granting Adequate Protection Pursuant to Sections 361 and 363 of the Bankruptcy Code, entered by the Court on June 24, 2010 (Docket No. 45), the mortgage, liens and security interests of the Trust are valid and properly perfected as against all third parties, including any subsequently appointed trustee, because no party-in-interest filed a pleading with the Court on or before August 23, 2010 stating a position to the contrary and the grounds therefor.

Date: November <sup>30</sup> \_\_, 2010

~~ENTER:~~  
United States Bankruptcy Judge  
NOV 30 2010

**APPROVED AS TO FORM AND SUBSTANCE:**

**Crane, Heyman, Simon, Welch & Clar**  
Counsel for the Debtor

By:  \_\_\_\_\_

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Counsel for the Special Servicer, as  
aforesaid

By:  \_\_\_\_\_

One of Its Attorneys

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Sterling Estates Manufactured Home Community  
Weekly Cash Budget

	Budget	Budget	Budget	Budget	Totals
	12/6/2010	12/12/2010	12/19/2010	12/26/2010	
Cash Balance	\$662,595	\$544,434	\$226,339	\$87,657	
****Income****					
Rental Income	\$50,000	\$50,000	\$40,000	\$210,000	\$350,000
(Includes Rent, NSF Fees, Late Chgs Water Recovery, Lodge Rental, Misc. Income)					
Total Net Rental Revenue	50,000	50,000	40,000	210,000	350,000
Total Income	50,000	50,000	40,000	210,000	350,000
****Expenses****					
Operating Expenses					
Payroll Expenses (Reimburse to Capital First Realty)					
Salaries, Manager	2,770	0	2,770	0	5,540
Salaries, Office	2,100	0	2,100	0	4,200
Salaries, Maintenance	7,400	0	7,400	0	14,800
Salaries, Sales/Leasing	3,019	0	3,019	0	6,038
Salaries, Security	1,950	0	1,950	0	3,900
ADP Processing Expense	27	0	27	0	54
Payroll Tax Expense	1,500	0	1,500	0	3,000
Total Payroll Expenses	18,766	0	18,766	0	37,532
Other Operating Expenses					
R&M Expense	160	180	160	170	650
Landscaping	0	0	42	0	42
Small Tools	0	0	83	0	83
Snow Removal/Salting	500	0	0	500	1,000
Gasoline	265	285	265	270	1,065
Utilities - Gas	2,200	0	0	0	2,200
Utilities - Electric	2,000	0	0	0	2,000
Utilities - Water & Sewer	0	25,000	0	0	25,000
Scavenger	7,190	0	0	0	7,190
Telephone	0	450	0	450	900
Office Expense	900	900	900	900	3,600
Postage	100	100	100	110	410
Ground Lease (Reimburse to Capital First Realty)	0	0	0	958	958
Advertising	2,750	2,750	2,750	2,750	11,000
Security	0	0	0	310	310
Ambulance/Fire	0	0	0	10,000	10,000
Insurance (Reimburse to Capital First Realty)	0	0	0	4,195	4,195
Real Estate Tax	58,842	0	0	0	58,842
Misc. Taxes & Licenses	0	817	0	0	817
Tenant Relations	0	0	1,500	0	1,500
Bank Charges	0	400	0	800	1,200
Total Other Operating Expense	74,707	30,842	5,800	21,413	132,762
Total Operating Expense	93,473	30,842	24,566	21,413	170,294
Net Operating Income	(43,473)	19,158	15,434	188,587	179,706
Other Expenses					
Landscaping & Other Land Improvements	3,325	3,325	3,325	3,325	13,300
Wolin & Rosen	46,049	0	0	0	46,049
Concrete Paving Equipment	2,007	0	0	0	2,007
Bobcat Repair	7,207	0	0	0	7,207
Leaf Blower	1,100	0	0	0	1,100
Abandoned Home Refurbishment (9 homes)	15,000	20,000	0	0	35,000
*Home Purchases (6 - 28' wide homes)	0	150,000	150,000	0	300,000
Note Payment	0	0	791	0	791
Orix Interest Expense Payment	0	155,016	0	0	155,016
Legal Fees - Evictions	0	5,600	0	0	5,600
Court Filing/Sheriff - Evictions	0	3,312	0	0	3,312
Management Fee (Oct 2 to Dec 31)	0	0	0	37,877	37,877
Total Expenses	74,688	337,253	154,116	41,202	607,259
Net Cash Flow	(\$118,161)	(\$318,095)	(\$138,682)	\$147,385	(\$427,553)
Ending Cash Balance	\$544,434	\$226,339	\$87,657	\$235,042	

\*Includes land improvements, freight, set-up, refurbishment

— may not be spent