



SO ORDERED.

SIGNED this 24 day of April, 2009.

A. Thomas Small
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN THE MATTER OF:

Anderson Homes, Inc., et al
Debtors

Case No. 09-02062-8
Consolidated for Administration
Chapter 11

Second Order Authorizing Continued Use of Cash Collateral and
Providing Notice of Further Hearing

This matter came before the Court after due notice and hearing to consider the “Motion for Authorization to Use Cash Collateral” (the “Motion”) filed by Anderson Homes, Inc. (“Anderson”), Bridgewater Land Resource, LLC (“Bridgewater”), Land Resource Group of Raleigh, Inc. (“LRG”), and Vanguard Homes, Inc. (“Vanguard” and together with Anderson, Bridgewater, and LRG, the “Debtors”) pursuant to §363 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure.

Objections to the Motion were filed by a number of parties, an initial hearing was held on March 23, 2009, and an interim order (the “Initial Order”) was entered March 27, 2009 which provided notice of a final hearing to be held on April 15, 2009.

After considering the matters set forth in the Motion, the evidence presented, the objections filed and the comments of parties in interest, the Court makes the following findings, conclusions and orders:

1 On March 16, 2009 (the “Petition Date”), the Debtors filed voluntary petitions seeking relief under Chapter 11 of the Bankruptcy Code, and operate as debtors-in-possession.

2 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3 The Debtors are engaged in the development, construction and sale of residential properties in the form of single-family homes, townhomes and condominiums. Such properties are held for sale to the public and constitute the Debtors' inventory, which the Debtors sell in the ordinary course of business.

4 As more particularly set forth in the schedules, the Debtors own, construct improvements on, and sell (i) single-family houses and townhomes in subdivisions known and referred to as Edgewater, Bridgewater, Bridgewater West, Cobblestone, Haw Village, Ridgefield, Amberlynn Valley, Cane Creek, Muirfield Village, Pine Valley, Quail Meadows, Thornton Commons Place, Willow Ridge, Creekside at Landon Farms, Keystone Crossing, Sterling Ridge, Jeffries Creek, Briar Chapel, and Villas at Forest Hills, and (ii) condominiums known as Blount Street Commons (collectively, the "Sale Properties").

5 In conjunction with the acquisition and development of the Sale Properties, the Debtors arranged financing with a number of lenders (the "Construction Lenders"), each of whom hold deeds of trust to secure the funds advanced to complete the improvements. The Debtors are informed and believe that the Construction Lenders, the amounts outstanding at the Petition Date, and their respective liens on certain Sale Properties are as follows:

- a. Bank of America ("BofA") is owed approximately \$253,000 pursuant to a loan agreement which reduced the line of credit to such amount, secured by first mortgage liens upon two properties having an aggregate value of approximately \$355,000.
- b. Capital Bank ("Capital") is owed approximately \$2.6 million pursuant to a non-revolving line of credit in the amount of \$6 million, secured by first mortgage liens upon properties known as the Blount Street Commons condominium project, having an aggregate present value of approximately \$3.5 million.
- c. KeySource Bank ("KeySource") is owed approximately \$1.1 million pursuant to a promissory note in the amount of \$2.5 million, secured by first mortgage liens upon a number of properties in Bridgewater, Cobblestone, Edgewater, and Haw Village having an aggregate value of approximately \$1.3 million.

- d. Paragon Commercial Bank (“Paragon”) is owed approximately \$4.3 million pursuant to (i) an A&D revolving line of credit in the amount of \$3.8 million, (ii) an A&D non-revolving line of credit in the amount of \$1.3 million, and (iii) a Guidance line of credit in the amount of \$5 million, all secured by first mortgage liens upon a number of properties in Briar Chapel, Bridgewater and Bridgewater West, having an aggregate value of approximately \$6.3 million.
- e. RBC Centura Bank (“RBC”) is owed approximately \$2 million pursuant to (i) a residential construction line of credit in the amount of \$5 million and (ii) promissory notes in the amounts of \$302,432, \$104,250, \$228,750, \$915,000, \$1,020,975, and \$101,550, all secured by first mortgage liens upon a number of properties in Cobblestone, Ridgefield, and Villas at Forest Hills, having an aggregate value of approximately \$2.4 million.
- f. Regions Bank (“Regions”) is owed approximately \$4.9 million pursuant to a builder line of credit in the amount of \$15 million, secured by first mortgage liens upon a number of properties in Amberlynn Valley, Bridgewater, Cane Creek, Cobblestone, Edgewater, Haw Village, Muirfield Village, Pine Valley, Quail Meadows, Thornton Commons, and Willow Ridge, having an aggregate value of approximately \$5.8 million.
- g. Wachovia Bank (“Wachovia”) is owed approximately \$4.8 million pursuant to a construction line of credit in the amount of \$8.5 million secured by first mortgage liens upon a number of properties in Amberlynn Valley, Briar Chapel, Creekside at Landon Farms, Keystone Crossing, Edgewater, Quail Meadows, Ridgefield, and Sterling Ridge, having an aggregate value of approximately \$5.5 million.

6 In addition to the foregoing, the Debtors are informed and believe that other creditors hold deeds of trust on certain Sale Properties, as follows:

- a. James D. Goldston and William Goldston (“Goldston”) are owed approximately \$568,000 pursuant to a promissory note secured by a second mortgage lien upon a number of properties in Bridgewater and Bridgewater West, having an aggregate value of approximately \$3 million, subject to the prior lien of Paragon.
- b. Stock Building Supply, Inc. (“Stock”) is the holder of a promissory note, loan agreement, and several deeds of trust recorded with ninety (90) days prepetition to

secure antecedent debt in the stated amount of \$1,562,942.89. In many but not all instances, the Stock deed of trust is junior to liens of one or more of the Construction Lenders.

7 The Debtors contracted with various suppliers, contractors or other parties (the "Lien Claimants") to supply materials and/or provide labor for the purpose of constructing the improvements located on and thus an affixed part of the Sale Properties. The Debtors acknowledge that the Lien Claimants have the right to file liens upon such Sale Properties to the extent of any outstanding amount due to the Lien Claimants with respect to the Sale Properties, respectively, notwithstanding the automatic stay in these cases. The Lien Claimants have now formed a committee (the "Committee") and are represented by counsel.

8 Neither the Debtors nor the Committee have had sufficient time to review the documentation which evidences the indebtedness or perfects the liens reference above. Accordingly, it is appropriate to (i) require the Construction Lenders to file proofs of claim sufficient to evidence their liens upon property of the Debtors' respective estates, as a condition of such Construction Lenders receiving adequate protection payments as set forth below, and (ii) establish a deadline by which date the Debtors, the Committee and any other party in interest must object to or seek to avoid or subordinate any of the Construction Lenders' claims, liens, security interests or rights of setoff or be barred thereafter from bringing any such challenge.

9 By separate motion the Debtors have sought, and in the future will file similar motions and continue to seek Orders (i) approving sale contracts, (ii) authorizing the Debtors to convey such properties and pay certain closing costs, including broker's commissions, from the sale proceeds, and (iii) transferring all actual or potential liens to the proceeds of such sales.

10 In each instance, the net proceeds from the sale and transfer of the Sale Properties would constitute "Cash Collateral" as that term is defined in the Bankruptcy Code, the use of which is subject to the restrictions set forth in § 363.

11 The Debtors are informed and believe that the Sale Properties are subject to liens in favor of the Construction Lenders, in each instance securing indebtedness which in the aggregate is greater than the value of the individual property, either by means of blanket deeds of trust which secure the promissory notes without allocation among particular properties (notwithstanding that the availability of advances may be determined on a lot-by-lot basis) or by means of notes and deeds of trust which are expressly cross-collateralized.

12 The Debtors contend that the Stock deeds of trust are subject to avoidance under § 547 and/or § 548 of the Bankruptcy Code, and are thus subject to bona fide dispute. The Stock deed of trust is a first lien on Lots 440-453, 455-461, and 524-530, inclusive, Edgewater Townhomes (collectively, the "Adequate Protection Lots"), having a value of approximately \$1 million and vested in LRG. There are no other liens or encumbrances on such lots.

13 The Debtors contend that the liens asserted by Goldston are junior to the liens of the Construction Lenders and are likely to be deemed unsecured within the meaning of § 506(d) of the Bankruptcy Code, and the Goldston liens are thus subject to bona fide dispute.

14 The Debtors contend that the actual or potential liens of the Lien Claimants are unliquidated, unknown in amount and relative priority, and likely to be deemed unsecured within the meaning of § 506(d) of the Bankruptcy Code, and the actual or potential liens of the Lien Claimants are thus subject to bona fide dispute.

15 The Debtors are dependent upon continued and uninterrupted use of the proceeds from such sales in the ordinary course of business for revenue. While the Debtors have unrestricted cash in their accounts as of the Petition Date, the Debtors will need to receive and use the proceeds of sales to pay on-going costs of operating, insuring, preserving, and protecting the business and property of the estate. If not permitted to use Cash Collateral to pay ordinary operating expenses, the Debtors will have to close down operations forthwith. Such precipitous action, if required, would render reorganization impossible and severely reduce the fair market value of the estate, resulting in financial loss to all parties in interest.

Based upon the foregoing, the Court concludes that continued use of Cash Collateral is necessary and that an Order granting such relief is necessary, appropriate, and in the best interests of the Debtors' estates, and for good and sufficient reasons appearing it is hereby ORDERED as follows:

1 The Debtor may continue to use Cash Collateral on an interim basis (i) generally in accordance with the attached budget, (ii) subject to the terms, conditions and limitations set forth below, and (iii) as may otherwise be permitted by this Court after further notice and hearing.

2 On or before May 15, 2009, or such later date as may be set by the Court after notice and hearing, the Construction Lenders shall file proofs of claim sufficient to evidence their liens upon property of the Debtors' respective estates, as a condition of such Construction Lenders receiving adequate protection payments as set forth below.

3 On or before June 15, 2009, or such later date as may be set by the Court after notice and hearing, the Debtors, the Committee and any other party in interest must object to or seek to avoid or subordinate any of the Construction Lenders' claims, liens, security interests or rights of setoff or be barred thereafter from bringing any such challenge.

4 As adequate protection for the use of Cash Collateral, the Debtors shall provide the following, subject to further orders of the Court after notice and hearing:

- a. The Debtors will pay the Construction Lenders interest accruing post-petition on the outstanding indebtedness at the contract rate, monthly in arrears.
- b. At each closing of a Sale Property, the Debtors shall apply the gross sale proceeds (after credit for the purchaser's deposit if received prepetition) to:
 - i. Seller concessions as provided in the contract of sale.
 - ii. Seller closing costs.
 - iii. Where applicable, co-broker's commissions.
 - iv. In-house commissions payable to Builders Choice Real Estate.
 - v. The principal amount the respective Construction Lender has advanced to fund the acquisition and development of such property, plus interest on such amount at the contract rate.
- c. From the proceeds payable to Seller at closing, the Debtors shall apply such amount to:
 - i. Costs to complete the improvements, whether advanced by the Construction Lender or the Debtors.
 - ii. In-house commissions payable to the Debtors' employees.
- d. The remaining proceeds (the "Net Sale Proceeds") shall be disbursed or held as follows:
 - i. As adequate protection payments to each of the Construction Lenders upon closing of a Sale Property which is subject to their first priority lien and except as provided below, an amount equal to twenty-five percent (25%) of the Net Sale Proceeds.
 - ii. The adequate protection payment to Wachovia, pending resolution of the letters of credit issued by Wachovia on behalf of the Debtors, shall be fifty percent (50%) of the Net Sale Proceeds.

- iii. The adequate protection payment to Capital Bank upon the sale of a condominium unit in Blount Street Commons shall be such amount as the parties may agree or as may be ordered by the Court after further notice and hearing.
 - iv. The application of such adequate protection payments to principal, interest or attorneys' fees and costs shall be made on an interim basis and without prejudice to a later determination of whether such Construction Lender was over-secured.
 - v. The remainder of the Net Sale Proceeds shall be paid to the Debtors.
 - vi. Any amounts escrowed at a closing shall, upon disbursement from escrow to the Debtors, be held subject to the lien of the Construction Lender or any other party holding a lien upon such sale proceeds at closing, pending further orders of the Court.
 - vii. If (i) the actual "Costs to Complete" amount exceeds the amount shown in the Schedule of Sales attached to the respective Sale Motion by more than 20% of the projected amount, or (ii) the Net Sale Proceeds are insufficient to pay the Construction Lender the full amount of the funds so advanced plus any outstanding interest thereon, then the sale cannot proceed without the consent of the respective Construction Lender.
- e. The Debtors shall provide the Construction Lenders and to any other party having an interest in Cash Collateral:
- i. If and when the Stock deeds of trust upon the Adequate Protection Lots are avoided, a continuing post-petition lien and security interest, *pari passu*, in the Adequate Protection Lots and the proceeds thereof (the "Post-petition Collateral"), equivalent to a lien granted under Section 364(c)(2) (and Section 364(c)(3) if there is an intervening lien) of the Bankruptcy Code, but only to the extent of their respective Cash Collateral used. The validity, enforceability, and perfection of the aforesaid post-petition liens on the Post-Petition Collateral shall not depend upon filing, recordation, or any other act required under applicable state or federal law, rule, or regulation.

ii. A super-priority administrative expense claim pursuant to Section 507(b) to the extent the use of their respective Cash Collateral, after application of the proceeds of the Post-Petition Collateral, results in a decrease in the value of such entity's interest in such property.

f. The Debtors shall provide the respective Construction Lenders and the Committee with (i) reports as to the closed sales, with copies of the HUD-1 closing statements, and (ii) such other financial reports in form and frequency as may be reasonably requested by the Construction Lenders and the Committee.

5 To the extent that a Construction Lender or the Committee has an objection to the items paid or provided for as set forth in the monthly reports or other reports of operations filed or furnished to said party, or objects to a proposed budget or to a specific manner in which Cash Collateral is being used, then such party may, upon ten (10) days notice to the Debtors and opportunity to cure: (i) seek an order of the Bankruptcy Court restraining such payments or usage as not being in conformity with this Order; or (ii) seek an Order terminating further authority to use Cash Collateral altogether.

6 Notwithstanding any suspension or termination of the right to use Cash Collateral (a "Termination Date"), the Debtors shall be permitted to carve out from Cash Collateral or any replacement collateral and use an aggregate amount necessary to pay all Permitted Trailing Expenses. As used herein, the term "Permitted Trailing Expenses" shall mean, on the Termination Date, the following expenses to the extent incurred post-petition and prior to such Termination Date but in an aggregate amount not to exceed the aggregate expenditures set forth in the approved budget through such Termination Date:

- a. Unpaid salary or other employee benefits accrued through such Termination Date and all related payroll taxes.
- b. Any amounts deducted or to be deducted from an employee's wages that accrued on or before such Termination Date, but only the extent that the Debtors have not paid over or contributed such deducted amounts to the appropriate recipient.
- c. Quarterly fees to the United States Bankruptcy Administrator pursuant to 28 U.S.C. § 1930(a)(7).

d. Professional fees and expenses for professionals for the Debtors, the Committee and any other official committee (if formed), so long as such fees and expenses are ultimately awarded by a final order of the Court.

7 The terms of this Order shall be binding upon any other official committee (if formed), and upon any trustee subsequently appointed, including but not limited to a Chapter 7 trustee upon conversion of this case to a case under Chapter 7 of the Bankruptcy Code.

8 A further hearing (which may be a final hearing) on this Motion will be held at 2:00 o'clock p.m. on May 13, 2009, in the U.S. Bankruptcy Court, Raleigh, N.C., at which time the Court will further consider the Motion for Authorization To Use Cash Collateral.

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Cash Forecast (Q2 Update)
Updated: 3/31/2009

	3/17-4/30/09	May	June	July	August	September	October	November	December
Beginning Cash Balance	\$ 850,000	\$ 825,232	\$ 751,775	\$ 903,224	\$ 911,186	\$ 931,148	\$ 963,110	\$ 1,010,341	\$ 1,057,573
Sources of Cash									
Gross Sales Price	\$ 2,743,740	\$ 1,099,880	\$ 1,068,497	\$ 1,068,497	\$ 1,068,497	\$ 1,068,497	\$ 1,068,497	\$ 1,068,497	\$ 1,068,497
Less:									
Cost to complete	\$ 12,338	\$ 8,025	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
Co-Broker Commissions	\$ 45,243	\$ 23,873	\$ 23,507	\$ 23,507	\$ 23,507	\$ 23,507	\$ 23,507	\$ 23,507	\$ 23,507
Internal Sales Commissions	\$ 50,295	\$ 24,747	\$ 15,493	\$ 15,493	\$ 15,493	\$ 15,493	\$ 15,493	\$ 15,493	\$ 15,493
Closing costs/Seller concessions	\$ 70,422	\$ 18,758	\$ 37,504	\$ 37,504	\$ 37,504	\$ 37,504	\$ 37,504	\$ 37,504	\$ 37,504
Total Deductions	\$ 178,298	\$ 75,403	\$ 81,504	\$ 81,504	\$ 81,504	\$ 81,504	\$ 81,504	\$ 81,504	\$ 81,504
Net Sale Proceeds	\$ 2,065,442	\$ 1,024,477	\$ 986,993	\$ 986,993	\$ 986,993	\$ 986,993	\$ 986,993	\$ 986,993	\$ 986,993
Other cash:									
Earnest Money received	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Income	\$ -	\$ -	\$ 12,000	\$ 12,000	\$ 24,000	\$ 36,000	\$ 51,000	\$ 51,000	\$ 51,000
Total Sources of Cash	\$ 2,065,442	\$ 1,024,477	\$ 998,993	\$ 998,993	\$ 1,010,993	\$ 1,022,993	\$ 1,037,993	\$ 1,037,993	\$ 1,037,993
Uses of Cash									
Adequate Protection Payment, greater of 75% of Net Sale Proceeds or amount advanced on property	\$ 1,865,950	\$ 911,190	\$ 665,847	\$ 809,334	\$ 809,334	\$ 809,334	\$ 809,334	\$ 809,334	\$ 809,334
WIP Costs (LD, etc.)	\$ 12,000								
Construction Field/Services	\$ 26,046	\$ 26,046	\$ 26,046	\$ 26,046	\$ 26,046	\$ 26,046	\$ 26,046	\$ 26,046	\$ 26,046
Construction Closed Jobs	\$ 3,366	\$ 1,650	\$ 1,603	\$ 1,603	\$ 1,603	\$ 1,603	\$ 1,603	\$ 1,603	\$ 1,603
Warranty	\$ 5,630	\$ 5,630	\$ 5,630	\$ 5,630	\$ 5,630	\$ 5,630	\$ 5,630	\$ 5,630	\$ 5,630
Interest to Lenders	\$ 60,000	\$ 52,000	\$ 47,000	\$ 47,000	\$ 47,000	\$ 47,000	\$ 47,000	\$ 47,000	\$ 47,000
Sales & Marketing	\$ 27,186	\$ 26,586	\$ 26,586	\$ 26,586	\$ 26,586	\$ 26,586	\$ 26,586	\$ 26,586	\$ 26,586
General & Administrative (less Depr.)	\$ 90,032	\$ 74,832	\$ 74,832	\$ 74,832	\$ 74,832	\$ 74,832	\$ 74,532	\$ 74,532	\$ 75,832
Total Uses of Cash	\$ 2,090,210	\$ 1,097,933	\$ 847,544	\$ 991,031	\$ 991,031	\$ 991,031	\$ 990,761	\$ 990,761	\$ 992,061
Net Cash Flow	\$ (24,768)	\$ (73,457)	\$ 151,449	\$ 7,962	\$ 19,962	\$ 31,962	\$ 47,732	\$ 47,232	\$ 45,932
Ending Balance	\$ 825,232	\$ 751,775	\$ 903,224	\$ 911,186	\$ 931,148	\$ 963,110	\$ 1,010,341	\$ 1,057,573	\$ 1,103,505