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12 UNITED STATES BANKRUPTCY COURT
13 FOR THE DISTRICT OF NEVADA

14 In re:
15 HORIZON VILLAGE SQUARE LLC,
16 Debtor.

Case No.: BK-11-21034-mkn
Chapter 11

Final Cash Collateral Hearing:
Date: September 15, 2011
Time: 1:30 p.m.

17
18 STIPULATION AUTHORIZING USE OF CASH COLLATERAL
AND GRANTING ADEQUATE PROTECTION

19 This Stipulation Authorizing Use Of Cash Collateral And Granting Adequate Protection
20 (the "Stipulation") is made by and between Horizon Village Square LLC, debtor and debtor-in-
21 possession ("Debtor"), and Wells Fargo Bank, N.A., as successor by merger to Wachovia Bank,
22 N.A. ("Lender," and together with Debtor, each a "Party", and collectively the "Parties").
23 Debtor and Lender hereby stipulate and agree to Debtor's use of Cash Collateral and Disputed
24 Cash Collateral (as defined herein) on the terms and subject to the conditions contained herein.

25 This Stipulation is made with respect to the following recitals:

26 ...

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102509-003/1310885_3

RECITALS

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2 1. **Petition Date.** Debtor filed its voluntary Chapter¹ 11 petition on July 13, 2011
3 (the "Petition Date"), thereby commencing the above-captioned bankruptcy case (the
4 "Bankruptcy Case"), pending before the United States Bankruptcy Court for the District of
5 Nevada (the "Bankruptcy Court").

6 2. **Debtor-in-Possession.** Pursuant to Sections 1107 and 1108, Debtor has retained
7 possession of its assets and is authorized, as debtor-in-possession, to continue the operation and
8 management of its business.

9 3. **Jurisdiction.** The Bankruptcy Court's consideration of this Stipulation is a core
10 proceeding as defined in 28 U.S.C. §§ 157(b)(2)(A) and (M). The statutory predicates for the
11 relief sought are Sections 361 and 363, Bankruptcy Rule 4001(b), and LR 4001.

12 4. **The Loan.** On or about February 13, 2008, Debtor entered into a Term Loan
13 Agreement (as amended, supplemented, converted, or otherwise modified from time to time, the
14 "Loan Agreement") with Lender, pursuant to which Lender made a loan in the original
15 principal amount of \$11,350,000 (the "Loan"). Consistent therewith, Debtor executed the
16 Promissory Note (as amended, supplemented, or otherwise modified from time to time, the
17 "Note") in the amount of the Loan, together with accruing interest. As of the Petition Date,
18 Debtor's obligation outstanding under the Note was \$11,064,272 on account of principal and
19 contract interest (this amount, together with any accrued and unpaid default interest, fees, costs,
20 and expenses authorized under the Note, the "Prepetition Secured Debt"). The Parties reserve
21 all rights to assert and object to all amounts included in the Prepetition Secured Debt that are not
22 specifically enumerated in this Stipulation.

23 ...
24 ...
25 ...

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27 ¹ Unless otherwise stated herein, all Chapter and Section references are to Title 11 of the U.S. Code (the
28 "Bankruptcy Code"), all Bankruptcy Rule references are to the Federal Rules of Bankruptcy Procedure (the
"Bankruptcy Rules"), and all references to LR are to the Local Rules of Bankruptcy Practice for the U.S. District
Court for the District of Nevada (the "Local Rules").

5. **The Security Agreements Relating to Debtor’s Real and Personal Property.**

The Prepetition Secured Debt is secured in part by that certain Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing made by Debtor (as amended, supplemented, or otherwise modified from time to time, the “Deed of Trust”),² recorded on February 13, 2008 as Document No. 20080213-0003061 of the Office of the County Recorder of Clark County, Nevada, thereby granting Lender, as more fully set forth in the Deed of Trust, a first priority lien upon Debtor’s real property, all building structures, and other improvements located on the real property, all appurtenances, all rents,³ issues, income, revenues, royalties, and profits, all inventory, equipment, fixtures, and other goods, and all accounts, general intangibles, and deposit accounts (collectively, the “Collateral”).

6. **Perfection Of Security Interest In Encumbered Personal Property; Reservation Of Rights With Respect To Cash And Cash Equivalents.** Lender has filed a

financing statement with the Nevada Secretary of State. Lender asserts that the following represents Lender’s cash collateral (as defined by Section 363): (i) Debtor’s cash and cash equivalents located on Debtor’s premises as of the Petition Date (the “Cash on Hand”); (ii) Debtor’s bank accounts as of the Petition Date (the “Deposit Accounts”); and (iii) cash generated or received by Debtor from and after the Petition Date (the “Postpetition Cash,” and together with Cash on Hand and Deposit Accounts, the “Debtor’s Cash”).

Debtor disputes Lender’s claim to Debtor’s Cash as cash collateral (as defined in Section 363) only as to the cash held on the Petition Date in Debtor’s bank accounts: (1) ending in XXXX4848, in the sum of \$67,811.24; and (2) ending in XXXX2707, in the amount of

² The Loan Agreement, the Note, the Deed of Trust, and all amendments, supplements, or other modifications to the foregoing, as well as all additional documents pertaining thereto, shall be referred to herein as the “Loan Documents.” True and correct copies of the Loan Documents are attached as Exhibits “2” through “7” to the *Omnibus Declaration of Todd Nigro in Support of Debtor’s First Day Motions* [Dkt. No. 6].

³ The Deed of Trust asserts an “absolute assignment of rents.” Debtor contends and reserves all right to assert that pursuant to Chapter 107A of the Nevada Revised Statutes, the alleged absolute assignment of all rents solely provides a security interest to Lender and not the enhanced rights that an absolute assignment would have compelled. Lender reserves all rights to challenge the application and interpretation of Chapter 107A of the Nevada Revised Statutes.

1 \$977,969.32 (collectively, the "Disputed Cash Collateral").⁴ Subject to the terms of this
2 Stipulation, the Parties preserve all rights to seek the approval of the Bankruptcy Court to use all
3 of the Cash Collateral and Disputed Cash Collateral, or to object to the use thereof.

4 7. **Reservation of Rights.** Except as set forth herein, the Parties reserve any and all
5 rights and remedies with respect to the Disputed Cash Collateral and Cash Collateral. Nothing
6 herein shall prejudice the rights of the Parties in the event this Stipulation is terminated for any
7 reason whatsoever or with respect to any matters which remain in dispute notwithstanding the
8 Parties' agreement pursuant to this Stipulation and entry of the Final Order (as defined herein).

9 8. **Acknowledgements Regarding the Prepetition Secured Debt.** Debtor
10 acknowledges and agrees solely on its behalf and not on behalf of any third parties-in-interest,
11 and subject to the Investigation and Challenge Period as defined in paragraph n hereof, that: (i)
12 the liens granted pursuant to the Loan Documents are valid, enforceable, and duly-perfected first
13 liens and security interest in the Collateral, provided, however, that Debtor does not admit that
14 Lender has a perfected security interest in the Disputed Cash Collateral and all rights of Lender
15 to assert an interest in the Disputed Cash Collateral and Debtor to dispute such asserted interest
16 are hereby reserved; and (ii) that the principal amount of the Note and contract interest thereon as
17 of the Petition Date are valid and due and owing from Debtor to Lender.

18 9. **Debtor's Need For Use of Disputed Cash Collateral and Cash Collateral.**
19 Debtor cannot meet its ongoing postpetition obligations unless it uses Disputed Cash Collateral
20 and Cash Collateral. The ability of Debtor to finance its operations requires the immediate use
21 of Disputed Cash Collateral and Cash Collateral. Debtor asserts that in the absence of such use,
22 immediate and irreparable harm will result to Debtor, its estate, and its creditors, and the inability
23 to use such Disputed Cash Collateral and Cash Collateral will render impossible an effective and
24 orderly reorganization of Debtor's business. Subject to the terms of this Stipulation and the Final
25 Order, Lender consents to Debtor's use of both Disputed Cash Collateral and Cash Collateral
26 solely on the terms and conditions set forth herein. The relief provided through the approval of
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28 ⁴ The term "Cash Collateral" shall mean and include all of Debtor's Cash that is not Disputed Cash Collateral.

1 this Stipulation is therefore necessary, essential, and appropriate for the continued operation of
2 Debtor's business and the preservation of its estate.

3 10. **Effective Date.** This Stipulation shall be effective upon entry of an order (the
4 "Final Order") of the Bankruptcy Court approving the Stipulation (the "Effective Date"). Except
5 as otherwise provided herein, the terms of this Stipulation shall be valid and binding upon
6 Debtor, all successors-in-interest to Debtor, all creditors of Debtor, any statutory committee
7 appointed in the Bankruptcy Case (an "Official Committee"), any trustee appointed in the
8 Bankruptcy Case, and all other parties-in-interest from and after the Petition Date.

9 NOW, THEREFORE, in consideration of the foregoing recitals, Debtor and Lender
10 hereby stipulate and agree as follows:

11 **STIPULATION**

12 a. **Incorporation of Recitals.** The Parties hereby represent that the Recitals in this
13 Stipulation are incorporated herein by reference and shall be deemed to be true and correct
14 representations of the Parties with respect to such statements as such statements apply to each
15 such Party.

16 b. **Consent to Use of Cash Collateral and Disputed Cash Collateral Through the**
17 **Termination Date.** Lender hereby consents to Debtor's use of Cash Collateral and Disputed
18 Cash Collateral on the terms and conditions set forth in this Stipulation from the Effective Date
19 to and through the date (the "Termination Date") that is the first to occur of: (i) five (5) calendar
20 days following notice to Debtor that an Event of Default (as defined below) has occurred and is
21 otherwise continuing or otherwise unresolved for which notice is required to be given; (ii) an
22 Event of Default (as defined herein) has occurred for which no notice is required to be given; or
23 (iii) the effective date of a confirmed plan of reorganization.

24 c. **Postpetition Accounts.** Debtor will maintain an accounting of the Disputed Cash
25 Collateral. The Disputed Cash Collateral will be segregated from the Cash Collateral. Neither
26 Party shall be entitled to argue that because the Disputed Cash Collateral and the Cash Collateral
27 are segregated that either has lost its character.

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1 d. **Budget.** Debtor may use Cash Collateral and Disputed Cash Collateral collected
2 from its operation of its property to pay expenses related to the operation, preservation, and
3 maintenance of the Debtor's properties, including but not limited to utility charges, trade
4 payables, insurance, governmental fees and taxes, maintenance capital expenditures, and Chapter
5 11 administrative and other related costs, fees, and expenses attendant thereto (subject to
6 paragraph g below), expressly including quarterly fees required to be paid to the Office of the
7 United States Trustee pursuant to 28 U.S.C. § 1930(a)(6), solely in amounts not to exceed,
8 except as otherwise provided herein, the line item expenses provided in the Budget (as defined
9 herein) on a monthly calendar basis.

10 As used herein, "Budget" shall mean the monthly itemized cash-based operating budgets
11 for Debtor, the first of which is attached hereto as **Exhibit "1,"** together with any modifications,
12 amendments, extensions, or supplements as approved by Debtor and Lender. Four (4) weeks
13 prior to the termination of the current Budget, Debtor will provide Lender with a new Budget for
14 the following four (4) month period.

15 Within two (2) weeks of Lender's receipt of the new Budget, Lender shall provide Debtor
16 with a written itemization of any objections thereto. Lender and Debtor agree to use their best
17 efforts to negotiate a good faith resolution of any objection. If a consensual resolution cannot be
18 reached prior to one (1) week before the end of the current Budget period, Lender hereby
19 consents to an order shortening time for Debtor to bring a motion seeking authorization to use
20 Cash Collateral and Disputed Cash Collateral to the Bankruptcy Court. If Lender does not
21 timely object to the new Budget, it shall be deemed accepted by Lender.

22 Unless otherwise authorized in writing by Lender, Debtor's actual cumulative Total
23 Operating Expenses (as defined in the Budget) may exceed the projected monthly Total
24 Operating Expenses enumerated in the Budget by no more than fifteen percent (15%) for each
25 month.

26 e. **Monthly Operating Reports.** Debtor shall timely file all monthly operating
27 reports and provide copies to Lender and its counsel at the time such reports are filed.

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1 f. **Cash Payment.** As adequate protection of Lender's interests in the Cash
2 Collateral, and Debtor's use of such Cash Collateral, Debtor shall pay the sum of \$18,500 per
3 month to Lender (the "Cash Payments"). Within three (3) business days of the Effective Date,
4 Debtor shall tender any outstanding Cash Payments that have not yet been paid. Commencing
5 on September 30, 2011 and continuing on the last business day of each subsequent month, as
6 additional adequate protection of Lender's interests in the Cash Collateral, and Debtor's use of
7 such Cash Collateral, Debtor shall pay by wire transfer the monthly Cash Payments to Lender.

8 The ultimate application of the Cash Payments to the Prepetition Secured Debt shall be
9 determined by written agreement of the Parties and/or entry of a final order of the Bankruptcy
10 Court. To the extent necessary and applicable, the automatic stay contained in Section 362 is
11 hereby modified solely to the limited extent necessary to permit Lender to receive and apply the
12 Cash Payments to the Prepetition Secured Debt described in this Stipulation.

13 g. **Carve Out.** Notwithstanding anything to the contrary herein, all Cash Collateral
14 and Disputed Cash Collateral that is determined to be Cash Collateral, shall be subject to a carve
15 out for the payment of all allowed and unpaid professional fees and disbursements of Debtor
16 incurred from the Petition Date until the Termination Date allowed and payable under Sections
17 330 and 331 in an aggregate amount not to exceed the aggregate of: (i) all sums held in pre-
18 petition retainer by Gordon Silver; and (ii) \$50,000, to the extent that such fees and
19 disbursements are allowed by the Bankruptcy Court (the "Carve Out"); provided, however,
20 subject to the Parties' respective reservations of rights set forth in this Stipulation, that: (i) such
21 amounts shall not be used to pay any fees or disbursements of Debtor relating to any contested
22 matter, dispute, or adversary proceeding seeking to challenge, invalidate, avoid, or frustrate the
23 security interests or liens of Lender in and on the Collateral or the claims⁵ asserted by Lender
24 and any analysis, research, or investigation in furtherance thereof; and (ii) quarterly fees required
25 to be paid pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable to the Clerk of the

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27 ⁵ For the avoidance of doubt, subject to the other terms of this Stipulation, the inclusion of Lender's "claims" does
28 not preclude the carve out from being used to pay fees or disbursements relating to Debtor's defense of any motion
seeking stay relief, confirmation of Debtor's plan of reorganization, and/or Debtor's reserved rights with regard to
the Disputed Cash Collateral and those set forth in paragraph 7 of this Stipulation.

1 Bankruptcy Court. Subject to the terms of this Stipulation and the preservation of Lender's
2 rights to object to any application of professional fees, as long as no Event of Default shall have
3 occurred and be continuing, Debtor shall be permitted to pay all compensation and
4 reimbursement of expenses, allowed and payable under Sections 330 and 331, and any amounts
5 so paid shall not reduce the amount that may be incurred subsequent to an Event of Default
6 having occurred and be continuing. Notwithstanding the foregoing, to the extent that the
7 Bankruptcy Court determines that the Disputed Cash Collateral is not part of Lender's Cash
8 Collateral, all allowed compensation and reimbursement of expenses allowed under Sections 330
9 and 331 shall be paid first from the Disputed Cash Collateral and then from the Cash Collateral.

10 h. **Tax and Insurance Covenant.** In accordance with the Budget, Debtor shall pay
11 all undisputed postpetition taxes when they come due in respect of the Debtor's property
12 (including any and all property taxes, sales taxes, occupancy taxes, and any other taxes related to
13 the operation of such property) and maintain insurance as required by the Loan Documents.

14 i. **Replacement Liens.** Against any diminution in value as a result of the use, sale,
15 or lease thereof, and/or the imposition of the automatic stay, notwithstanding anything in Section
16 552(a) to the contrary and except for causes of action under Chapter 5, in addition to its
17 liens and security interests under the existing Loan Documents, Lender shall have and is hereby
18 granted (effective and continuing without the necessity of the execution, filing, and/or
19 recordation of mortgages, deeds of trust, security agreements, control agreements, pledge
20 agreements, financing statement, or otherwise), a valid and perfected security interest and lien
21 (the "Replacement Lien") in all of Debtor's now-owned or after-acquired real and personal
22 property of all types (collectively, the "Replacement Collateral"), including, debtor-in-possession
23 bank accounts, and all replacements, supporting obligations, offspring, products, and proceeds of
24 the existing Collateral and the Replacement Collateral to the same extent and priority as Lender's
25 pre-petition security interest and liens. The Replacement Lien shall be evidenced by the existing
26 Loan Documents and the Final Order. Lender shall retain all of its existing liens and security
27 interests in all of the Collateral, including, without limitation, the liens and security interests
28 described above and any rights of setoff. The Replacement Lien shall be senior to all other

1 security interests, liens, and rights of setoff. The Replacement Lien in the Replacement
2 Collateral granted hereby shall be valid, perfected, enforceable, and effective against Debtor and
3 its successors and assigns, including any trustee or other receiver or custodian of the estate in this
4 or any superseding case, without any further action by Debtor or Lender and without the
5 execution, delivery, filing, or recordation of any mortgages, deeds of trust, security agreements,
6 control agreements, pledge agreements, financing statement, or otherwise. Debtor acknowledges
7 that Lender may, but is not required to, file any financing statement to perfect the Replacement
8 Lien granted herein. The automatic stay under Section 362 is hereby modified to permit Lender,
9 in its sole discretion, to file the Final Order or any of the foregoing documents to give notice of
10 such liens and security interests.

11 j. **No Other Liens.** Except as otherwise agreed to in writing by Lender or
12 otherwise ordered by the Bankruptcy Court, during the term of this Stipulation, Debtor shall be
13 prohibited from granting any mortgages, security interests, or liens, including liens created under
14 Section 364(d), which are senior to or on a parity with Lender's prepetition security interests or
15 liens in the Collateral. For the avoidance of doubt, the prohibition in this paragraph shall not
16 apply to the perfection of liens after the Petition Date that are excepted from the automatic stay
17 pursuant to Sections 362(b) and 546(b); provided, however, that nothing contained in this
18 Stipulation shall be nor shall it be deemed to be consent by Lender to any further or additional
19 mortgages, security interests, or liens of any kind.

20 k. **Other Liens.** Notwithstanding anything to the contrary herein, nothing in this
21 Stipulation shall alter the priority of any lien or security interest granted to or claimed by: (i) any
22 mechanics' lien claimants, provided that the validity, perfection, and priority of such lien or
23 security interest is determined by court order in accordance with applicable law; (ii) any tax liens
24 arising in favor of any applicable authority pursuant to NRS § 361.450, or other law in the
25 applicable jurisdiction, to secure *ad valorem* real and personal property taxes assessed; or (iii)
26 any liens arising in favor of any applicable authority pursuant to NRS § 318.192, or other law in
27 the applicable jurisdiction, to secure water or sewer service, inspection, and/or related fees and
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1 nothing contained in this Stipulation shall affect the rights of Lender or Debtor to challenge any
2 such liens or security interests.

3 1. **Events of Default.** Notwithstanding any other provision contained herein, the
4 occurrence of any of the following events, unless waived in writing by Lender, shall constitute
5 an “Event of Default” hereunder:

- 6 i) Entry of an order by the Bankruptcy Court converting or dismissing the
7 Bankruptcy Case;
- 8 ii) Entry of an order by the Bankruptcy Court appointing a Chapter 11 trustee
9 in the Bankruptcy Case;
- 10 iii) Filing by Debtor of a motion or commencement of an action by Debtor
11 challenging the extent, validity, or priority of Lender’s liens (subject to the
12 Parties’ respective reservation of rights set forth in this Stipulation with
13 regard to the Disputed Cash Collateral), a motion or commencement of an
14 action by Debtor challenging the extent, validity, or priority of Lender’s
15 claims.⁶
- 16 iv) The filing of any motion by Debtor to obtain debtor-in-possession
17 financing without Lender’s consent; and
- 18 v) Noncompliance by Debtor with any of the express terms or provisions of
19 this Stipulation, including, but not limited to, failure of Debtor to timely
20 provide Lender with updated and additional Budgets.

21 m. **Remedies.** Except in the case of Events of Default in subparagraphs (i) through
22 (iv) for which no prior notice from Lender shall be required, upon the occurrence of and
23 continuation of any Event of Default enumerated in subparagraph (v) of paragraph 1 of this
24 Stipulation, and following five (5) calendar days’ written notice by Lender to Debtor (the
25 “Remedies Notice Period”), Lender may terminate Debtor’s authorization to use Cash Collateral

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27 ⁶ For the avoidance of doubt, subject to the other terms of this Stipulation, the inclusion of Lender’s “claims” does
28 not preclude Debtor’s defense of any motion seeking stay relief, confirmation of Debtor’s plan of reorganization,
and/or Debtor’s reserved rights with regard to the Disputed Cash Collateral and those set forth in paragraph 4 of this
Stipulation.

1 and Disputed Cash Collateral. In the event of such notice, Lender hereby consents to Debtor
2 obtaining a hearing before the Bankruptcy Court upon shortened time within the Remedies
3 Notice Period (or as soon as the matter can be heard by the Bankruptcy Court) to contest and
4 dispute the extent of Cash Collateral and the right to seek authorization to use Cash Collateral
5 and Disputed Cash Collateral. For the avoidance of doubt, the noticing of an Event of Default
6 does not authorize Lender to take any other acts against Debtor as provided in the Loan
7 Documents or applicable law without further order of the Bankruptcy Court nor does it allow
8 Debtor to continue to use Cash Collateral and Disputed Cash Collateral pending a hearing and
9 further order of the Bankruptcy Court.

10 n. **Investigation and Challenge Period.** Debtor shall have seventy-five (75) days
11 from the Petition Date to bring any adversary proceeding under Sections 544, 545, 547, 548,
12 and/or 550, and similar provisions of the Bankruptcy Code as to payments made prepetition by
13 Debtor to Lender. Any other party-in-interest with the requisite standing shall have seventy-five
14 (75) days from the Petition Date to: (i) challenge the accuracy of any of the contentions
15 contained in the Recitals of this Stipulation; or (ii) bring any avoidance claims under Sections
16 544, 545, 547, 548, 549, and/or 550, and similar provisions of the Bankruptcy Code as to
17 Lender's liens, claims, and Collateral. The time periods set forth in this paragraph shall be
18 referred to herein as the "Investigation and Challenge Period."

19 If Debtor and/or any other party-in-interest with standing does not challenge the accuracy
20 of the contentions contained in the Recitals by the deadlines set forth in the foregoing paragraph,
21 then, subject to the Parties' respective reservations of rights set forth in this Stipulation: (i) the
22 Prepetition Secured Debt shall constitute allowed claims in the amount set forth in Recital 4 of
23 this Stipulation for all purposes in the Bankruptcy Case and any subsequent Chapter 7 case; (ii)
24 Lender's prepetition security interest and lien on the Collateral shall be deemed legal, valid,
25 binding, perfected, and otherwise unavoidable to the extent permitted under applicable law; (iii)
26 the Prepetition Secured Debt in the amounts set forth in Recital 4 of this Stipulation and Lender's
27 prepetition security interest and lien on the Collateral shall not be subject to subordination,
28 avoidance, or any other or further challenge by any party-in-interest seeking to exercise the

1 rights of Debtor's estate, including, without limitation, any successor thereto; and (iv) as a result
2 of the foregoing, the repayment of any postpetition non-default interest to Lender in accordance
3 with the terms of this Stipulation shall constitute an indefeasible payment and shall be final and
4 binding for all purposes.

5 For the avoidance of doubt, the foregoing provision does not: (i) limit or impair the right
6 of Debtor to demand an accounting of all postpetition sums claimed due and owing by Lender;
7 (ii) preclude Debtor from contesting the extent of Lender's lien on the Disputed Cash Collateral
8 within the Investigation and Challenge Period; (iii) preclude Debtor from seeking authorization
9 from the Bankruptcy Court to use Cash Collateral and Disputed Cash Collateral in the event of
10 the termination of this Stipulation or Lender's right to object to or defend against any contest or
11 proposed use of Cash Collateral and Disputed Cash Collateral; (iv) preclude Debtor from seeking
12 to cure and reinstate the Prepetition Secured Debt pursuant to Section 1124 or Lender from
13 objecting to and defending against such cure and reinstatement, or (v) bind any person or entity
14 having guaranteed repayment of the Prepetition Secured Debt in any proceeding other than the
15 Bankruptcy Case.

16 o. **No Surcharge.** Except with respect to the Carveout and except as otherwise
17 expressly provided in this paragraph, no costs or expenses of administration which have been or
18 may be incurred in any of these cases, any conversion of the Debtor's case pursuant to Section
19 1112, or in any future proceeding or case related hereto (i) shall be charged against the Lender,
20 its claims, or the Collateral under Section 506(c) or otherwise, without the prior written consent
21 of Lender, and no such consent shall be implied from any other action, inaction, or acquiescence
22 by Lender; or (ii) shall be senior to or on a parity with the liens and security interests granted to
23 Lender pursuant to this Stipulation. Notwithstanding the foregoing, Debtor may file an
24 application or motion seeking to surcharge the Collateral pursuant to Section 506(c) for the
25 reasonable, necessary costs and expenses of preserving, or disposing of, Collateral, to the extent
26 of any benefit to the Lender (or any other subsequent holder of the Loan Documents). Lender
27 fully reserves the right to object to any such application or motion under Section 506(c), and no
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1 action or inaction shall be deemed to constitute consent to such relief or a waiver of any rights of
2 Lender with respect thereto.

3 p. **No Waiver/Reservation of Rights.** Neither the entry of an order approving this
4 Stipulation nor Lender's acceptance of the Cash Payments shall constitute, or be deemed to be, a
5 waiver of any of Lender's rights or claims under the Loan Documents or applicable law, or a
6 cure of any default by Debtor under the Loan Documents.

7 Except as otherwise set forth herein, both Lender and Debtor reserve all rights that each
8 may have with respect to the Collateral, Cash Collateral, and Disputed Cash Collateral in this
9 Bankruptcy Case. Lender expressly reserves all right to seek, and Debtor expressly reserves all
10 rights to object to and oppose, relief from or modification of the automatic stay, appointment of a
11 trustee, dismissal or conversion of the Bankruptcy Case, additional adequate protection or
12 payments required under Section 362(d)(3), or any other remedies that it may have.

13 q. **Modification and Amendment.** No waiver, modification, or amendment of any
14 of the provisions hereof shall be effective unless it is set forth in writing, signed by the Parties
15 hereto, and approved by the Bankruptcy Court, except Debtor shall have the right to: (i) use Cash
16 Collateral and Disputed Cash Collateral for purposes not specified in the Budget as consented to
17 by Lender in writing; and (ii) operate the Property pursuant to the terms of this Stipulation.

18 r. **Survival.** The provisions of this Stipulation and any actions taken pursuant
19 hereto shall survive entry of any order: (i) converting the Bankruptcy Case to a Chapter 7 case;
20 or (ii) the appointment of a Chapter 11 trustee.

21 Notwithstanding any stay, modification, vacation, or reversal of this Stipulation, any
22 indebtedness, obligation, or liability incurred by Debtor pursuant to this Stipulation arising prior
23 to the later of the effective date of such stay, modification, vacation, or reversal, or Lender's
24 receipt of notice thereof, shall be governed in all respects by the original provisions of this
25 Stipulation, and Lender shall continue to be entitled to all of the rights, remedies, privileges and
26 benefits, including any payments authorized herein, with respect to all such indebtedness,
27 obligations, or liabilities incurred or existing prior to such date, and with respect to Debtor's use
28 of the Cash Collateral prior to such date.

1 s. **Full Force and Effect of the Loan Documents.** Except as otherwise expressly
2 provided in this Stipulation, the terms and conditions of the Loan Documents shall remain in full
3 force and effect and Lender shall have all of its rights and remedies thereunder, subject to the
4 provisions of Bankruptcy Code, the Bankruptcy Rules, the Local Rules, any other applicable
5 law, and any orders of the Bankruptcy Court.

6 t. **Binding Nature.** Except as otherwise provided for herein, this Stipulation shall
7 be binding upon and inure to the benefit of Lender, Debtor, and their respective successors and
8 assigns, including any trustee or other fiduciary hereafter appointed in the Bankruptcy Case or in
9 any superseding Chapter 7 case as a legal representative of Debtor or Debtor's estate.

10 u. **Good Faith and Reasonableness.** The adequate protection arrangements
11 authorized hereunder have been negotiated in good faith and are fair and reasonable under the
12 circumstances and reflect Debtor's exercise of its prudent business judgment.

13 v. **Further Assurances.** The Parties hereby agree to execute all further documents
14 and perform such further acts as may reasonably be required to effectuate the purpose and intent
15 of this Stipulation.

16 w. **Headings.** Headings have been inserted in this Stipulation as a matter of
17 convenience for reference only and it is agreed that such headings are not a part of this
18 Stipulation and shall not be used in interpreting any provision of this Stipulation.

19 x. **Successor and Assigns.** Subject to paragraph m hereof, this Stipulation and any
20 order entered authorizing and approving it, shall be binding upon and shall inure to the benefit of
21 the Parties hereto and their respective heirs, executors, administrators, successors, and assigns.
22 No rights are intended to be created hereunder for the benefit of any third party or creditor or any
23 direct or indirect incidental beneficiary except as specifically provided herein.

24 y. **Notices.** All notices required to or permitted to be given to Debtor under this
25 Stipulation shall be addressed as follows:

26 ...

27 ...

28 ...

1 To: Horizon Village Square LLC
2 Attn: Todd Nigro
3 9115 W. Russell Road, Suite 210
4 Las Vegas, NV 89148
5 Fax No.: 702-247-1917
6 Email: tnigro@nigrodevelopment.net

7 and

8 Copy: Gordon Silver
9 Attn: Gerald M. Gordon, Esq.
10 3960 Howard Hughes Pkwy., 9th Floor
11 Las Vegas, NV 89169
12 Fax No.: 702-369-2666
13 Email: ggordon@gordonsilver.com

14 All notices required to or permitted to be given to Lender under this Stipulation shall be
15 addressed as follows:

16 To: Wells Fargo Bank, N.A.
17 Kyle A. Hunt
18 5080 Spectrum Dr., Ste. 400E
19 Addison, TX 75001
20 Fax No.: 886-494-5027
21 E-mail: kyle.a.hunt@wellsfargo.com

22 and

23 Copy: Bryan Cave LLP
24 Edward M. Zachary, Esq.
25 Two North Central Avenue, Suite 2200
26 Phoenix, AZ 85004-4406
27 Fax No.: 602-364-7070
28 E-mail: edwardzachary@bryancave.com

The above addresses may be changed effective upon receipt of a new address. Any notice required herein or permitted to be given shall be in writing and be personally served or sent by facsimile (upon confirmation of receipt), electronic correspondence, or United States mail and shall be deemed given when sent or, if mailed, when deposited in the United States mail so long as it is properly addressed. All notices and reports required hereunder shall also be sent to counsel for any Official Committee.

z. **Retention of Jurisdiction.** The Bankruptcy Court shall retain exclusive jurisdiction over the subject matter of this Stipulation in order to resolve any dispute in connection with the rights and duties specified hereunder.

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aa. **Counterparts.** This Stipulation may be executed in original, .pdf, or facsimile signature and in counterpart copies, and this Stipulation shall be deemed fully executed and effective when all Parties have executed and possess a counterpart, even if no single counterpart contains all signatures.

IT IS SO STIPULATED.

DATED: September 13, 2011

WELLS FARGO BANK, N.A.
Edward M. Zorich
Kyle A. Hunt
By: _____
Its: A.V.P.

DATED: September __, 2011

with permission
HORIZON VILLAGE SQUARE LLC
By: Nigro Development LLC
Its: Manager

By: Todd Nigro
Its: Manager

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IT IS SO STIPULATED.


DATED: September __, 2011

WELLS FARGO BANK, N.A.

By: _____
Its: _____

DATED: September 7, 2011

HORIZON VILLAGE SQUARE LLC


By: Nigro Development LLC
Its: Manager

By: Todd Nigro
Its: Manager