

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
RC SOONER HOLDINGS, LLC, <u>et al.</u> , ¹)	Case No. 10-10528 (BLS)
)	
Debtors.)	(Jointly Administered)
)	
)	Objection Deadline: May 10, 2010 at 12 pm ET
)	Hearing Date: May 12, 2010 at 10:30 am ET

MOTION OF DEBTORS AND DEBTORS IN POSSESSION FOR ENTRY OF INTERIM AND FINAL ORDERS AUTHORIZING POSTPETITION FINANCING, GRANTING SENIOR LIENS, AND APPROVING AGREEMENT WITH ALLSTAR CAPITAL, INC.

RC Sooner Holdings, LLC (“RC Sooner” or the “Company”), and its debtor affiliates and subsidiaries listed in footnote 1 (collectively, the “Debtors”), by their undersigned attorneys, submit this motion (the “Motion”), pursuant to Sections 105, 361, 362, and 364 of title 11 of the United States Code (the “Bankruptcy Code”), Fed. R. Bankr. P. 4001(c) and 9014, and Del. Bankr. L.R. 4001-2, for (i) authorization to obtain post-petition loans, advances and other credit accommodations from AllStar Capital, Inc. (the “Lender”), secured by first priority security interests in and liens upon all present and future property of the Debtors’ estates including, without limitation, all now existing and hereafter acquired real and personal property but expressly excluding the Fannie Mae Collateral (as hereinafter defined); (ii) approval of the terms and conditions of the Financing Agreement (as hereinafter defined) by and between the Lender and the Debtors; (iii) modification of the automatic stay solely to the extent necessary to enter into the

¹ The Debtors and the last four digits of their taxpayer identification numbers are: RC Sooner Holdings, LLC (7904); RC Brixton Square Owner, LLC (8002); RC Cedar Crest Owner, LLC (7914); RC Fulton Plaza Owner, LLC (8011); RC Magnolia Owner, LLC (7998); RC Pomeroy Park Owner, LLC (7939); RC Salida Owner, LLC (7947); RC Savannah South Owner, LLC (7983); RC Southern Hills Owner, LLC (7958); Brixton Square Apartments, LLC (1844); CC Apartments, LLC (1798); Fulton Plaza Apartments, LLC (4344); Magnolia Manor Apartments, LLC (4486); Pomeroy Park Apartments, LLC (1649); Salida Apartments, LLC (1915); Savannah South Apartments, LLC (8586); and Southern Hills Villa Apartments, LLC (1721). The business address for each of the Debtors where notices should be sent is 1515 Broadway, 11th Floor, New York, New York 10036-8901.

proposed financing and effectuate the terms thereof; and (iv) the granting to Lender of super-priority secured claim status pursuant to Section 364(d)(1) of the Bankruptcy Code. In support of this Motion, the Debtors respectfully state as follows:

I. Preliminary Statement

1. The relief sought in the Motion is necessary and in the best interests of the Debtors' estates in order to prevent immediate and irreparable harm to the Debtors' estates which would result in the absence of the proposed financing. The Debtors believe that without the proposed financing, the Debtors will not have the funds necessary (a) to pay overhead and other expenses necessary for the continued operation of the Debtors' business, including the administrative costs associated with the Debtors' bankruptcy cases, (b) to continue the prosecution of certain valuable claims and causes of action, and (c) for the management and preservation of the Debtors' assets and properties. The Debtors have requested that Lender make loans and advances to Debtors in order to provide funds to be used by Debtors for their general operating, working capital and other business purposes in the ordinary course of the Debtors' business.

2. The Lender is willing to make such loans and advances and provide such other credit accommodations on a secured superpriority basis pursuant to Section 364(d)(1) of the Bankruptcy Code and on the terms more particularly described herein and in the Promissory Note and Security Agreement (the "Financing Agreement"), a copy of which is attached hereto as Exhibit A and incorporated herein by reference.² The material terms of the Financing Agreement are set out at the following sections of the Financing Agreement and the proposed Financing Order:

- a. Borrowing Limits. Lender has agreed to provide to the Debtors a secured superpriority line of credit facility in the maximum principal amount of

² Capitalized terms not otherwise defined in this Motion shall have the meanings ascribed to them in the Financing Agreement.

Five Hundred Thousand Dollars (\$500,000.00). Financing Agreement ¶ 1(a).

- b. Interest Rate. The loan to be made pursuant to the Financing Agreement and the Interim Order will bear interest at the rate of twelve percent (12%) per annum. Financing Agreement ¶ 2.
- c. Maturity. The Financing Agreement will mature on December 31, 2010, provided that the maturity date may be extended for six (6) months beyond December 31, 2010, at the sole and absolute discretion of the Lender. Financing Agreement ¶ 1(c).
- d. Events of Default. In the event of the occurrence of any of the following: (a) the failure of Debtors to perform any of their obligations pursuant to the Financing Agreement or the Financing Order, (b) the occurrence of any "Event of Default" under the Financing Agreement, (c) the termination or non-renewal of the Financing Agreement as provided for in the Financing Order, (d) conversion of the Chapter 11 case of the Debtors to a case under Chapter 7 of the Bankruptcy Code, (e) the appointment of a Trustee pursuant to Sections 1104(a)(1) or 1104(a)(2) of the Bankruptcy Code, (f) dismissal of the Debtors' Chapter 11 cases except for dismissal of any or all of the Apartment Debtors' Chapter 11 cases, (g) the entry of any order modifying, reversing, revoking, staying, rescinding, vacating or amending the Financing Order without the express prior written consent of Lender, (h) the filing of a Chapter 11 plan which does not provide for the payment in cash and in full of the Pre-Petition Debt and the Post-Petition Debt upon confirmation, (i) the filing by any Committee of an objection to or complaint challenging the validity, priority, and/or extent of Lender's liens or the amount of indebtedness, or an assertion of a claim of any kind against Lender, (the foregoing being referred to in this Interim Financing Order, individually, as an "Event of Default" and collectively, "Events of Default"); then (unless such Event of Default is specifically waived in writing by Lender), and upon or after the occurrence of any of the foregoing, and at all times thereafter, upon the expiration of five (5) business days after providing notice in writing, served by overnight delivery service or facsimile upon Debtors and Debtors' counsel, counsel to the Committee, if any, a Trustee, if appointed, and the United States Trustee, all of the Indebtedness shall become immediately due and payable and the Lender shall have no obligation to fund and may, in its sole and absolute discretion, terminate financing. Financing Agreement ¶ 5 & Financing Order ¶ 10.
- e. Liens. The Lender shall be granted first priority security interests and priming liens on all assets of the Debtors excluding the Fannie Mae Collateral (as hereinafter defined). Pursuant to Section 364(c)(1) of the Bankruptcy Code, the obligations under the Financing Agreement shall be

entitled to superpriority claim status in the Debtors' bankruptcy cases. Financing Agreement ¶¶ 3 & 4 & Financing Order ¶¶ 3 & 5.

f. Disclosure of Insider Status. The Lender is the sole member of Debtor RC Sooner, a limited liability company organized under the laws of the State of Delaware and the ultimate parent of the other Debtors. Daniel Gordon is the President of the Lender and the sole manager of RC Sooner.

3. The Debtors are unable to obtain unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code, or pursuant to Sections 364(a), (b) and (c) of the Bankruptcy Code. No other source of post-petition financing exists other than from Lender, and no other source of post-petition financing exists on terms more favorable than those offered by Lender which were acceptable to the Debtors.

4. The Debtors respectfully submit that the relief requested herein is critical and vital to their ability to operate as a going concern and to preserve and protect the value of their assets and operations for all creditors.

5. Given these circumstances and the reasons set forth below, the Debtors respectfully submit that approval of the Financing Agreement on the terms and conditions set forth herein is necessary and in the best interests of the Debtors' creditors and estates and should be authorized by this Court.

II. Jurisdiction and Venue

6. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 & 1334.

7. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these chapter 11 cases and this Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The statutory bases for the relief requested herein are Sections 105, 361, 362, and 364 of the Bankruptcy Code, Rules 4001(c) and 9014 of the Federal Rules of Bankruptcy

Procedure (the “Bankruptcy Rules”), and Local Rule 4001-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

III. Factual Background

9. On or about February 22, 2010 (the “Petition Date”), each of the Debtors filed their respective voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors thereafter have continued to manage their business and properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

10. The Debtors own, operate and maintain a portfolio of 796 multi-family residential units divided among eight (8) separate apartment complexes (collectively, the “Apartments” or the “Apartment Complexes”) for lease in Tulsa, Oklahoma. RC Sooner is the direct parent of eight (8) Oklahoma limited liability companies (collectively, the “RC LLCs”³, and together with RC Sooner, the “Purchasers”) that were formed in October 2009 for the purpose of acquiring 100% of the membership interests of eight (8) existing Oklahoma limited liability companies that own the Apartments (collectively, the “Apartment LLCs” or the “Apartment Debtors”⁴). The purchase price of the acquisition included the assumption of approximately \$27 million in outstanding loans and mortgages (the “Loans and Mortgages”) currently held by the Federal National Mortgage Association (“Fannie Mae”).

³ The RC LLCs consist of the following co-debtor subsidiaries of RC Sooner: RC Brixton Square Owner, LLC; RC Cedar Crest Owner, LLC; RC Fulton Plaza Owner, LLC; RC Magnolia Owner, LLC; RC Pomeroy Park Owner, LLC; RC Salida Owner, LLC; RC Savannah South Owner, LLC and RC Southern Hills Owner, LLC. RC Sooner is also the direct parent of non-filing entity RC Old South Owner, LLC, whose real estate assets are not subject to loans held by the Federal National Mortgage Association.

⁴ The Apartment LLCs consist of the following co-debtor indirect subsidiaries of RC Sooner: Brixton Square Apartments, LLC; CC Apartments, LLC; Fulton Plaza Apartments, LLC; Magnolia Manor Apartments, LLC; Pomeroy Park Apartments, LLC; Salida Apartments, LLC; Savannah South Apartments, LLC and Southern Hills Villa Apartments, LLC. RC Sooner is also the ultimate parent of non-filing entity Old South Apartments, LLC, whose loan is not held by the Federal National Mortgage Association.

11. Unbeknownst to the Purchasers, however, the sellers of the Apartment LLCs and their brokers had engaged in a pattern of intentional misconduct and fraudulent misrepresentation from the very outset of negotiations for the sale of the Apartments and the Apartment LLCs, which misrepresentations included the failure to inform the Purchasers that the Loans and Mortgages had been in default since approximately September 2, 2009, and remained in default as of the closing on or about October 29, 2009.

12. Fannie Mae was not informed of the Purchasers' purchase of the Apartment LLCs until late January, 2010, and the Company was not made aware of the existence of the defaults under the Loans and Mortgages until that same time, the sellers having actively concealed such facts from both Fannie Mae and the Company as recently as the final week of January, 2010.

13. Upon learning of the purchase of the Apartment LLCs, Fannie Mae declared a non-monetary default on account of the transfer of the Loans and Mortgages to the Company without Fannie Mae's consent. Fannie Mae subsequently initiated state court actions in Oklahoma against the Apartment LLCs and certain of the sellers petitioning for foreclosure and the appointment of a receiver against all the Apartments. Hearings for the appointment of a receiver with respect to the Apartment LLCs had been scheduled for February 23, 2010.

14. Due to the imminent threat of Fannie Mae's state court actions, the Debtors commenced these cases on the Petition Date in order to provide sufficient time for them to, among other things, pursue claims against the sellers and their brokers and negotiate a resolution of the Loan and Mortgage defaults with Fannie Mae, in order to enable the Debtors to preserve and maximize the value of their business for the benefit of their creditors and other interested parties.

15. Additional factual background regarding the Debtors, including their current and historical business operations and the events precipitating these chapter 11 filings, is set forth in detail in the Affidavit of Daniel Gordon in Support of Chapter 11 Petitions and First Day Pleadings, and is incorporated herein by reference.

16. No trustee, examiner, or committee has been appointed in any of the Debtors' cases.

IV. Procedural History of the Debtors' Bankruptcy Cases

17. On the Petition Date, Fannie Mae had liens on and security interests against, among other things, the Apartment Complexes, the rent derived from the operation of the Apartment Complexes, the leases by and between the Apartment Debtors and the residential tenants who reside therein, and the proceeds thereof, as more particularly described in the mortgages and loan documents by and between the Apartment Debtors and Fannie Mae (except as limited or modified by the Lift Stay Order (as hereinafter defined) the "Fannie Mae Collateral"). As a result, on the Petition Date, all cash of the Debtors constituted cash collateral within the meaning of Section 363(a) of the Bankruptcy Code (the "Cash Collateral"). Accordingly, on the Petition Date, the Debtors filed a Motion for Entry of Interim and Final Orders (A) Authorizing Debtors in Possession to Use Cash Collateral; (B) Granting Replacement Liens to Fannie Mae; (C) Granting Adequate Protection; and (D) Scheduling a Final Hearing Thereon (the "Cash Collateral Motion"), pursuant to which the Debtors sought authority to use Cash Collateral.

18. On February 24, 2010, after conducting a preliminary hearing on the Cash Collateral Motion, this Court entered an Interim Agreed Order (A) Authorizing Debtors in Possession to Use Cash Collateral; (B) Granting Replacement Liens to Fannie Mae; (C) Granting

Adequate Protection; and (D) Scheduling a Final Hearing Thereon whereby, *inter alia*, this Court authorized the Debtors to use Cash Collateral through and including March 11, 2010, set a deadline to object to the Motion of March 8, 2010, and set a final hearing on the Motion for March 11, 2010.

19. On March 11, 2010, this Court entered a Second Interim Agreed Order (A) Authorizing Debtors in Possession to Use Cash Collateral; (B) Granting Replacement Liens to Lender; (C) Granting Adequate Protection; and (D) Scheduling a Final Hearing Thereon whereby, *inter alia*, this Court authorized the Debtors to use Cash Collateral through and including March 18, 2010, extended the deadline for Fannie Mae to object to the Cash Collateral Motion of March 15, 2010, and set a final hearing on the Cash Collateral Motion for March 18, 2010.

20. On March 15, 2010, Fannie Mae filed a Limited Objection to the Cash Collateral Motion (the "Fannie Mae Limited Objection"), in which Fannie Mae stated that it did not object to the use of Cash Collateral for ordinary and necessary operations or for the payment of fees to the Debtors' claims agent but objected solely to the use of Cash Collateral for the payment of other administrative expenses, including, without limitation, the payment of the fees of Debtors' attorneys. No other creditors or parties-in-interest objected to the Cash Collateral Motion or the entry of a Final Order.

21. On March 18, 2010, this Court conducted a further preliminary hearing on the Cash Collateral Motion and the Fannie Mae Limited Objection.

22. On March 19, 2010, this Court entered a Third Interim Agreed Order (A) Authorizing Debtors in Possession to Use Cash Collateral; (B) Granting Replacement Liens to Lender; (C) Granting Adequate Protection; and (D) Scheduling a Final Hearing Thereon (the

whereby, *inter alia*, this Court authorized the Debtors to use Cash Collateral through and including March 30, 2010, and set a final hearing on the Cash Collateral Motion for March 30, 2010.

23. On March 26, 2010, this Court entered a Fourth Interim Agreed Order (A) Authorizing Debtors in Possession to Use Cash Collateral; (B) Granting Replacement Liens to Lender; (C) Granting Adequate Protection; and (D) Scheduling a Final Hearing Thereon whereby, *inter alia*, this Court authorized the Debtors to use Cash Collateral through and including the earlier of April 19, 2010, or the date on which an order granting Fannie Mae relief from the automatic stay is entered, and set a final hearing on the Cash Collateral Motion for April 19, 2010.

24. On March 30, 2010, Fannie Mae filed a Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d) and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Lift Stay Motion”). The Debtors reached an agreement with the Fannie Mae consenting to the relief requested by Fannie Mae in the Lift Stay Motion upon the terms and conditions set forth in a Stipulation and Consent Order Granting the Lift Stay Motion (the “Lift Stay Order”) entered by this Court on April 27, 2010 (Docket No. 146). Pursuant to the Lift Stay Order, among other things, Fannie Mae was granted relief from the automatic stay imposed by Section 362(a) of the Bankruptcy Code to seek the appointment of a receiver by a competent court of the State of Oklahoma to manage and operate the Apartment Complexes and to exercise its other state law rights and remedies against the Apartment Complexes, including, without limitation, foreclosing upon the same.

25. Contemporaneously with the Debtors’ consenting to the Lift Stay Order, Fannie Mae consented to the entry of a Final Agreed Order Authorizing Debtors in Possession to Use

Cash Collateral; Granting Replacement Liens to Lender; and Granting Adequate Protection (the “Final Cash Collateral Order”) pursuant to which Fannie Mae consented to the Debtors’ use of Cash Collateral, on the terms set forth therein, through and including the date on which a receiver is appointed to manage and operate the Apartment Complexes owned by the Apartment Debtors in accordance with the terms set forth in the Lift Stay Order. The Final Cash Collateral Order was entered by this Court on April 27, 2010 (Docket No. 145).

Necessity of Loans to Fund the Debtors Continued Operating Expenses

26. Upon final disposition of the Lift Stay Order and the Final Cash Collateral Order, the Debtors may no longer have the cash necessary to fund operations and the costs and expenses of continuing these cases, including, without limitation, pursuing certain valuable claims and causes of action already commenced against third parties.

27. The relief sought in the Motion is necessary and in the best interests of the Debtors’ estates in order to prevent immediate and irreparable harm to the Debtors’ estates which would result in the absence of the proposed financing. The Debtors believe that without the proposed financing, the Debtors may not have the funds necessary (a) to pay overhead and other expenses necessary for the continued operation of the Debtors’ business, including the administrative costs associated with the Debtors’ bankruptcy cases, (b) to continue the prosecution of certain valuable claims and causes of action, and (c) the management and preservation of the Debtors’ assets and properties. The Debtors have requested that Lender make loans and advances to Debtors in order to provide funds to be used by Debtors for their general operating, working capital and other business purposes in the ordinary course of the Debtors’ business.

28. All loans, advances and other financial accommodations by Lender will benefit the Debtors, their creditors and their estates. The Lender is willing to make such loans and

advances and provide such other credit accommodations on a secured basis pursuant to Section 364(d)(1) of the Bankruptcy Code as more particularly described herein and in the Financing Agreement. Among other things, approval of the proposed financing will minimize disruption of the Debtors' business, will preserve and maintain the assets of their estates, will increase the possibility of the reorganization of the Debtors, and will avoid immediate and irreparable harm to, and is in the best interests of, the Debtors, their creditors and their estates.

29. The Debtors are unable to obtain unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code, or pursuant to Sections 364(a), (b) and (c) of the Bankruptcy Code. No other source of post-petition interim financing exists other than from Lender, and no other source of interim post-petition financing exists on terms more favorable than those offered by Lender which were acceptable to the Debtors.

30. The terms of the Financing Agreement and the proposed Financing Order between the Debtors and Lender pursuant to which post-petition loans, advances and other credit accommodations are proposed to be made or provided to Debtors by Lender were negotiated in good faith and at arms' length within the meaning of Section 364(e) of the Bankruptcy Code, are in the best interests of the Debtors, their creditors and the estates, are fair and equitable under the circumstances, and are enforceable pursuant to their terms.

31. The Debtors submit that the terms of the proposed financing are (i) fair and reasonable; (ii) reflect prudent exercise of business judgment consistent with the Debtors' fiduciary duties; (iii) constitute reasonably equivalent value and fair consideration; and (iv) are essential and appropriate for the continued operation and management of the Debtors' business and the preservation of their assets and properties.

Authority

32. Section 364(c) of the Bankruptcy Code provides, among other things, that if a debtor is unable to obtain unsecured credit allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code, the court may authorize the debtor to obtain credit or incur debt (a) with priority over any or all administrative expenses as specified in Sections 503(b) or 507(b) of the Bankruptcy Code, (b) secured by a lien on property of the estate that is not otherwise subject to a lien, or (c) secured by a junior lien on property of the estate that is subject to a lien. 11 U.S.C. § 364(c).

33. Section 364(d)(1) of the Bankruptcy Code further provides as follows:

The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if-

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

34. The Debtors' liquidity needs can be satisfied only if the Debtors are immediately authorized to borrow up to \$500,000 under the Financing Agreement and to use such funds to fund their operations. The Debtors have been unable to procure sufficient financing in the form of unsecured credit allowable under Section 503(b)(1) of the Bankruptcy Code, as an administrative expense under Section 364(a) or (b) of the Bankruptcy Code, or in exchange for the grant of a superpriority administrative expense claim pursuant to Section 364(c)(1) of the Bankruptcy Code. The Debtors have not been able to obtain postpetition financing or other financial accommodations from any alternative prospective lender or group of lenders on more favorable terms and conditions than those for which approval is sought herein.

35. Having determined that financing is available only under Sections 364(c) and (d) of the Bankruptcy Code, the Debtors negotiated the Financing Agreement. Provided that a debtor's business judgment does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance therewith. *See, e.g., Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("cases consistently reflect that a court's discretion under Section 364 is to be utilized on grounds that permit the reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest"); *see also In re Curlew Valley Assocs.*, 14 B.R. 506-513-14 (Bankr. D. Utah 1981); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985).

36. Furthermore, Section 364 of the Bankruptcy Code does not require that a debtor seek financing from every possible lender; rather, the debtor simply must demonstrate sufficient efforts to obtain financing without the need to grant a senior lien. *In re Snowshoe Co.*, 789 F.2d at 1088 (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re 495 Central Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (debtor testified to numerous failed attempts to procure financing from various sources, explaining that "most lend money only in return for a senior secured position").

37. The Debtors do not believe they would be able to obtain the proposed financing otherwise and the Debtors are not generating sufficient cash flow to pay their obligations incurred in the ordinary course of business. Even if financing were available from third party

lenders, it would not be available on terms as favorable as those set forth in the Financing Agreement.

The Automatic Stay Should be Modified on a Limited Basis

38. The relief requested herein contemplates a modification of the automatic stay (to the extent applicable) to permit the Debtors to (i) grant the security interests, liens, and superpriority claims described above with respect to the Lender and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens and (ii) implement the terms of the proposed interim and final orders.

39. Stay modifications of this kind are ordinary and standard features of postpetition financing facilities and, in the Debtors' business judgment, are reasonable and fair under the present circumstances.

Interim Approval Should be Granted

40. Bankruptcy Rules 4001(c) provides that a final hearing on a motion to obtain credit may not be commenced earlier than fifteen (15) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate pending a final hearing.

41. Pursuant to Bankruptcy Rule 4001(c), this Court has scheduled a preliminary hearing on this Motion for May 12, 2010 at 10:30 a.m. ET, and set a deadline of May 10, 2010 at 12:00 p.m. (noon) ET for creditors and parties-in-interest to object to the Motion.

42. Pursuant to Bankruptcy Rule 4001(c), the Debtors request that this Court authorize the Debtors to draw on the credit facility on an interim basis, pending entry of the final order in order to maintain and finance ongoing operations, avoid immediate and irreparable harm

and prejudice to the Debtors' estates and all parties-in-interest, and schedule a hearing to consider entry of a final order.

43. The interim relief requested herein is critical to preserving and maintaining the value of the Debtors and facilitating their reorganization efforts.

Waiver of Bankruptcy Rules 6004(a) and (h)

44. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen day stay of an order authorizing the use, sale, or lease of property under Bankruptcy rule 6004(h).

Notice

45. No trustee, examiner, or creditors' committee has been appointed in these chapter 11 cases. The Debtors have provided notice of the terms of the Motion and the relief requested to (i) the United States Trustee, (ii) the attorneys for Fannie Mae, (iii) all creditors known to Debtors who may have liens against the Debtors' assets, (iv) the United States Internal Revenue Service, (v) the twenty (20) largest unsecured creditors of the Debtors, and (viii) all other creditors and parties in interest requesting notice under Bankruptcy Rule 2002(i). The Debtors submit that no other or further notice need be provided.

WHEREFORE, the Debtors respectfully request entry of an order, substantially similar to the proposed form of order attached hereto, approving the proposed financing on to the terms described herein and such other and further relief which this Court deems just and proper.

Dated: April 30, 2010
Wilmington, Delaware

Respectfully Submitted,

BALLARD SPAHR LLP

By: /s/ Christopher S. Chow
Tobey M. Daluz, Esquire (No. 3939)
Sean J. Bellew, Esquire (No. 4072)
Christopher S. Chow, Esquire (No. 4172)
919 N. Market Street, 12th Floor
Wilmington, DE 19801
Telephone: (302) 252-4465
Facsimile: (302) 252-4466
Email: daluzt@ballardspahr.com
bellews@ballardspahr.com
chowc@ballardspahr.com

- and -

Matthew G. Summers, Esquire⁵
300 East Lombard Street, 18th Floor
Baltimore, MD 21202-3268
Telephone: (410) 528-5600
Facsimile: (410) 528-5650
Email: summersm@ballardspahr.com

Counsel for the Debtors and Debtors in Possession

⁵ Admitted *pro hac vice*.