

**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: March 8, 2010 at 4:30 p.m. (ET)
	)	Hearing Date: March 11, 2010 at 9:00 a.m. (ET)

NOTICE OF ENTRY OF 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

PLEASE TAKE NOTICE that on February 22, 2010, each of the above-captioned Debtors and Debtors in Possession (collectively, the "Debtors") filed the **Motion for Entry of Interim and Final Orders (A) Authorizing Debtors and 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") [Docket No. 7] with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). A copy of the Motion is attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that, following an initial hearing to consider the Cash Collateral Motion, on February 24, 2010, the Bankruptcy Court entered the **Interim Agreed Order (A) Authorizing Debtors in Possession to Use Cash Collateral, (B) Granting**

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
(continued...)

Replacement Liens to Lender, (C) Granting Adequate Protection, and (D) Scheduling a Final Hearing Thereon [Docket No. 20] (the "Interim Cash Collateral Order"). A copy of the Interim Cash Collateral Order is attached hereto as Exhibit B.

PLEASE TAKE FURTHER NOTICE that a further hearing with respect to the final relief requested in the Cash Collateral Motion will be held on **March 11, 2010 at 9:00 a.m. (Eastern Standard Time)** before The Honorable Brendan L. Shannon at the Bankruptcy Court, 824 North Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that objections or responses to the final relief requested in the Cash Collateral Motion, if any, must be in writing, filed with the Bankruptcy Court, and served so as to be received by the proposed undersigned counsel to the Debtors on or before **March 8, 2010 at 4:30 p.m. (Eastern Standard Time)**.

(...continued)

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.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE FINAL RELIEF REQUESTED IN THE CASH COLLATERAL MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE FINAL RELIEF REQUESTED IN THE CASH COLLATERAL MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: February 24, 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, Esquire²
300 East Lombard Street, 18th Floor
Baltimore, MD 21202-3268
Telephone: (410) 528-5600
Facsimile: (410) 528-5650
Email: summersm@ballardspahr.com

Proposed Counsel for the Debtors and Debtors in Possession

2 Admitted *pro hac vice*.

EXHIBIT A

**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- <u>10528</u> ()
)	
Debtors.	)	(Jointly Administered)

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

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, and 363 of title 11 of the United States Code (the "Bankruptcy Code"), Fed. R. Bankr. P. 4001(b) and 9014, and Del. Bankr. L.R. 4001-2 for approval of orders authorizing the Debtors to use of cash collateral on an interim and final basis, granting replacement liens to Fannie Mae (as hereinafter defined), and granting adequate protection, and, in support of this Motion, the Debtors respectfully state as follows:

I. Preliminary Statement

1. In the ordinary course of business, the Debtors require cash on hand and cash flow from operations to pay routine payables, to provide services to their tenants, to

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.

maintain and operate the apartment buildings they own, and otherwise operate in the ordinary course. In addition, the Debtors require cash on hand to fund these chapter 11 cases and to successfully reorganize.

2. As set forth more fully below, substantially all of the assets of the Apartment LLCs (as hereinafter defined), are subject to security interests and liens in favor of Fannie Mae (as hereinafter defined). Thus, virtually all of the Debtors' cash constitutes Fannie Mae's "Cash Collateral."² Absent immediate authorization to utilize Cash Collateral, the Debtors will not have sufficient liquidity to sustain business operations, which would result in immediate and irreparable harm to the Debtors' creditors and estates, as well as their residential tenants.

3. Accordingly, through this Motion, the Debtors seek entry of an order at a preliminary hearing (the "Interim Hearing"), the form of which is annexed hereto (the "Interim Order"):

- (a) authorizing, pending a final hearing (the "Final Hearing"), the Debtors' use of Cash Collateral to the extent provided in the budget (the "Budget") attached hereto as Exhibit A, subject to certain variances described below, pursuant to section 363 of the Bankruptcy Code and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure;
- (b) granting adequate protection to Fannie Mae (as hereinafter defined), through, among other things, the grant to Fannie Mae of additional and replacement security interests and liens, to the extent there is any diminution in the value of Fannie Mae's interest in Pre-Petition Collateral (as hereinafter defined) resulting from the Debtors' use thereof, on all of the Apartment LLCs' (as hereinafter defined) real

2

The defined term "Cash Collateral" shall have the meaning set forth in section 363(a) of the Bankruptcy Code. Section 363(a) provides that "cash collateral" means "cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest . . ." 11 U.S.C. § 363(a).

and personal property, which shall be first priority liens with respect to collateral that was not subject to valid and perfected liens as of the Petition Date and shall be junior priority liens with respect to collateral that was subject to valid and perfected liens as of the Petition Date;

- (c) scheduling the Final Hearing to consider entry of a final order (the "Final Order" and together with the Interim Order, the "Cash Collateral Orders") granting the relief sought herein on a permanent basis; and
- (d) granting the Debtors such other and further relief as is just and proper.

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. In order to maintain operations, maintain the apartment buildings, and satisfy postpetition obligations, the Debtors must be permitted to pay in the ordinary course, among others, their vendors, suppliers, service providers, management company, and utilities. Absent immediate authorization to use Cash Collateral, the Debtors would be required to cease all operations, resulting in immediate and irreparable harm to the their estates and creditors, as well as the Debtors' tenants.

5. Moreover, the Debtors believe that the adequate protection proposed herein is sufficient to protect Fannie Mae from any diminution in the value of their collateral and is fair and reasonable. Absent the use of Cash Collateral, the Debtors, their estates and creditors will suffer immediate and irreparable harm. In contrast, Fannie Mae is adequately protected and, as a result, will not be prejudiced in any way by the Debtors' use of Cash Collateral.

6. Given these circumstances and the reasons set forth below, the Debtors respectfully submit that the use of Cash Collateral 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

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

8. 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.

9. The statutory bases for the relief requested herein are sections 105, 361, and 363 of the Bankruptcy Code, Rules 4001(b) 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

10. 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.

11. The Debtors own, operate and maintain a portfolio of 796 multi-family residential units divided among eight (8) separate apartment complexes (collectively, the "Apartments") 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%

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.

of the membership interests of eight (8) existing Oklahoma limited liability companies that own the Apartments (collectively, the "Apartment LLCs"). 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").

12. 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.

13. 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.

14. 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

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.

and the appointment of a receiver against all the Apartments. Hearings for the appointment of a receiver with respect to the Apartment LLCs have been scheduled for February 23, 2010.

15. 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, all of which efforts will enable the Debtors to preserve and maximize the value of their business for the benefit of their creditors and other interested parties.

16. 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.

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

IV. The Apartment LLCs' Prepetition Indebtedness

18. Fannie Mae contends that Debtor Brixton Square Apartments, LLC ("Brixton Square"), is indebted to Fannie Mae pursuant to a Multifamily Note (the "Brixton Square Note") dated as of October 2008, in the original principal amount of \$3,040,000.00, and a Multifamily Mortgage, Assignment of Rents and Security Agreement (the "Brixton Square Mortgage") of even date, purporting to grant Fannie Mae a security interest in certain real and personal property of Brixton Square located at the Brixton Square Apartments, 4655 S. Darlington Avenue, Tulsa, Oklahoma.

19. Fannie Mae contends that Debtor CC Apartments, LLC ("CC"), is indebted to Fannie Mae pursuant to a Multifamily Note (the "CC Note") dated as of October 31, 2008, in the original principal amount of \$1,600,000.00, and a Multifamily Mortgage, Assignment of Rents and Security Agreement (the "CC Mortgage") of even date, purporting to grant Fannie Mae a security interest in certain real and personal property of CC located at the Cedar Crest Apartments, 401, 403, 405, 407 South Cedar Street, 401-408 South Dogwood Street, Owasso, Oklahoma. As of the Petition Date, Fannie Mae contends that the principal amount of at least \$1,584,121.41 is due and owing by CC to Fannie Mae.

20. Fannie Mae contends that Debtor Fulton Plaza Apartments, LLC ("Fulton"), is indebted to Fannie Mae pursuant to a Multifamily Note (the "Fulton Note") dated as of June 26, 2008, in the original principal amount of \$2,240,000.00, and a Multifamily Mortgage, Assignment of Rents and Security Agreement of even date, purporting to grant Fannie Mae a security interest in certain real and personal property of Fulton located at 4646 South Fulton Avenue E, Tulsa, Oklahoma. As of the Petition Date, Fannie Mae contends that the principal amount of at least \$2,212,149.82 is due and owing by Fulton to Fannie Mae.

21. Fannie Mae contends that Debtor Magnolia Manor Apartments, LLC ("Magnolia"), is indebted to Fannie Mae pursuant to a Multifamily Note (the "Magnolia Note") dated as of June 26, 2008, in the original principal amount of \$3,040,000.00, and a Multifamily Mortgage, Assignment of Rents, and Security Agreement of even date, purporting to grant Fannie Mae a security interest in certain real and personal property of Magnolia located at 5332 East 47th Place South, Tulsa, Oklahoma. As of the Petition Date, Fannie Mae contends that the principal amount of at least \$3,003,169.30 is due and owing to Fannie Mae.

22. Fannie Mae contends that Debtor Pomeroy Park Apartments, LLC ("Pomeroy"), is indebted to Fannie Mae pursuant to a Multifamily Note (the "Pomeroy Note") dated as of December 12, 2008, in the original principal amount of \$8,000,000.00, and a Multifamily Mortgage, Assignment of Rents and Security Agreement of even date, purporting to grant Fannie Mae a security interest in certain real and personal property located at the Pomeroy Park Apartments, 6805 South Lewis Avenue, Tulsa, Oklahoma 74136. This loan is serviced by Keycorp Real Estate Capital Markets, Inc.

23. Fannie Mae contends that Debtor Salida Apartments, LLC ("Salida"), is indebted to Fannie Mae pursuant to a Multifamily Note (the "Salida Note") dated as of December 2008, in the original principal amount of \$3,700,000.00, and a Multifamily Mortgage, Assignment of Rents and Security Agreement dated as of December 2, 2008, purporting to grant Fannie Mae a security interest in certain real and personal property located at 10149 East 32nd Street, Tulsa, Oklahoma 74146.

24. Fannie Mae contends that Debtor Savannah South Apartments, LLC ("Savannah"), is indebted to Fannie Mae pursuant to a Multifamily Note (the "Savannah Note") dated as of July 24, 2008, in the original principal amount of \$2,187,000.00, and a Multifamily Mortgage, Assignment of Rents and Security Agreement of even date, purporting to grant Fannie Mae a security interest in certain real and personal property located at 4631 South Braden Avenue, Tulsa, Oklahoma. As of the Petition Date, Fannie Mae contends that the principal amount of at least \$2,161,473.82 is due and owing by Savannah to Fannie Mae.

25. Fannie Mae contends that Debtor Southern Hills Villa Apartments, LLC, is indebted to Fannie Mae pursuant to a Multifamily Note, dated as of January 9, 2009, in the original principal amount of \$3,320,000.00, and a Multifamily Mortgage, Assignment of Rents

and Security Agreement of even date, purporting to grant Fannie Mae a security interest in certain real and personal property located at Southern Hills Villas Apartments, 6609 S. Lewis Avenue, Tulsa, Oklahoma 74316.

26. All collateral which is owned by any or all Apartment LLCs and which secures the obligations to Fannie Mae as of the Petition Date (the "Pre-Petition Indebtedness") and all pre- and post-petition proceeds thereof are referred to herein as the "Pre-Petition Collateral."

27. The value of Fannie Mae's Pre-Petition Collateral may be less than the outstanding Pre-Petition Indebtedness. Accordingly, it has not yet been determined whether Fannie Mae is undersecured or fully secured.

V. Proposed Use of Cash Collateral

A. The Critical Need For Postpetition Use of Cash Collateral

28. It is critical to the Debtors' reorganization efforts that they be granted authority to use Cash Collateral on both an interim and final basis. The Debtors require sufficient liquidity to satisfy their ongoing cash requirements to fund ordinary course expenditures, including, without limitation, maintenance costs, fees charged by their service providers and vendors, property management fees, utilities, taxes and other overhead expenditures. The failure to satisfy ordinary course obligations in a prompt and timely manner would result in immediate and irreparable injury to the Debtors' operations and jeopardize the Debtors' chances for a successful reorganization. Thus, the use of Cash Collateral is essential to the Debtors' ability to confirm a plan.

29. Furthermore, authorization to utilize Cash Collateral will assist the Debtors in their efforts to allay concerns of tenants, customers, and suppliers regarding the Debtors' ability to meet post-petition obligations on a timely and regular basis.

30. In the exercise of their business judgment, the Debtors have determined that they can operate post-petition in accordance with the Budget annexed hereto. Importantly, the Debtors believe that, excluding payments due on account of the Pre-Petition Indebtedness, they can operate cash positive during the post-petition period covered by the Budget.

31. The ability to use Cash Collateral will enable the Debtors to preserve and enhance the value of their business and assets for the benefit of all creditors, including Fannie Mae, and will provide the Debtors with the opportunity to pay the day to day expenses associated with operating and maintaining their apartment buildings, preserve the value of the estates' assets, to reorganize and restructure their financial affairs, and to develop and confirm a chapter 11 plan.

B. Summary of Cash Collateral Orders:⁵

32. The following is a summary of the key terms of the Interim Order:

- (a) Use of Cash Collateral pursuant to Budget: The Debtors propose to use Cash Collateral in accordance with the Budget, subject to certain specified variances. See ¶¶ 1 & 2.
- (b) Replacement Liens: Fannie Mae is granted additional and replacement security interests and liens, to the extent there is any diminution in the value of Fannie Mae's interest in Pre-Petition Collateral resulting from the Debtors' use thereof, on all of the Apartment LLCs' real and personal property, which shall be first priority liens with respect to collateral that was not subject to valid and perfected liens as of the Petition Date and shall be junior

⁵ To the extent there is any discrepancy between this summary (or the description of the Cash Collateral Orders in this Motion) and the Cash Collateral Orders, the terms of the Cash Collateral Orders shall govern.

priority liens with respect to collateral that was subject to valid and perfected liens as of the Petition Date. See ¶ 3.

- (c) Reporting: The Debtors propose to provide to Lender, within twenty (20) business days following the end of each prior month, a monthly report summarizing all income received by the Debtors and all expenses paid by the Debtors during the prior month.

IV. Basis for the Relief Requested

A. The Relief Requested is Authorized by Section 363 of the Bankruptcy Code.

33. The Debtors' use of property of their estates is governed by section 363 of the Bankruptcy Code. Section 363(c)(1) provides in pertinent part that:

[i]f the business of the debtor is authorized to be operated under section ... 1108 ... of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).⁶

34. Section 363(c)(2) establishes a special requirement with respect to "cash collateral" by providing that the trustee or debtor-in-possession may not use, sell or lease "cash collateral" under subsection (c)(1) unless:

- (A) each entity that has an interest in such collateral consents; or
- (B) the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c)(1).

35. Section 363(e) of the Bankruptcy Code provides that, upon request of an entity that has an interest in property to be used, sold or leased by a debtor, the court shall

⁶ A debtor in possession has all of the rights and powers of a trustee with respect to property of the estate, including the right to use property of the estate in accordance with section 363 of the Bankruptcy Code. See 11 U.S.C. § 1107(a).

prohibit or condition such use as is necessary to provide adequate protection of such interest. See 11 U.S.C. § 363(e).

36. The debtor's cash "is the life's blood of the business" and the bankruptcy court must assure that such life's blood "is available for use even if to a limited extent." In re Mickler, 9 B.R. 121, 123 (Bankr. M.D. Fla. 1981). Courts typically authorize debtors to use cash collateral to continue their operations as long as the interests asserted by secured parties are adequately protected. See 11 U.S.C. § 363(e).

B. Fannie Mae's Interests in the Apartment LLCs' Property Will Be Adequately Protected.

37. Section 361 of the Bankruptcy Code contains a non-exhaustive list of acceptable forms of adequate protection, including, among other things, additional liens, replacement liens, and the "indubitable equivalent of such entity's interest in such property." 11 U.S.C. § 361. Adequate protection is not expressly defined in the Bankruptcy Code except by the implications of the examples of adequate protection listed in section 361. RTC v. Swedeland Dev. Group, Inc. (In re Swedeland Dev. Group, Inc.), 16 F.3d 552, 564, 566 (3d Cir. 1994)

38. The determination of adequate protection is fact-specific and made on a "case by case basis." Id. The focus of the adequate protection requirement is to preserve the secured creditor's position at the time of the bankruptcy filing and protect the secured creditor from diminution in the value of its collateral during the reorganization process. Id.; In re Continental Airlines, Inc., 154 B.R. 176, 180-81 (Bankr. D. Del. 1993); see also In re WorldCom, Inc., 304 B.R. 611, 618-19 (Bankr. S.D.N.Y. 2004) ("The legislative history for section 361 of the Bankruptcy Code which sets forth how adequate protection may be provided under section 363, makes clear that the purpose is to insure that the secured creditor receives the value for which the creditor bargained for prior to the debtor's bankruptcy.") "However, neither

the legislative history nor the Bankruptcy Code require the Court to protect a creditor beyond what was bargained for by the parties." WorldCom, 304 B.R. at 619; see also Swedeland, 16 F.3d at 564 (same).

39. The Debtors recognize that Fannie Mae is entitled, pursuant to section 361 and 363(e) of the Bankruptcy Code, to adequate protection of their interests in their Cash Collateral to the extent there is diminution in value of such collateral from and after the Petition Date. Accordingly, the Debtors have proposed to provide Fannie Mae with three forms of adequate protection: (i) replacement liens; (ii) use of cash in accordance with the Budget and reporting to Fannie Mae regarding the use of cash collateral; and (iii) preservation of the going concern value of the Debtors' business.

i. Replacement Liens on Post-Petition Assets Will Provide Adequate Protection to Fannie Mae.

40. Consistent with section 361(2) of the Bankruptcy Code, courts routinely recognize that the granting of replacement liens on assets generated during the post-petition period is an acceptable form of adequate protection. See, e.g., Swedeland Dev. Group, 16 F.3d at 566; In re Int'l Design & Display Group, Inc., 154 B.R. 362, 364 (Bankr. S.D. Fla. 1993); In re Karl A Neise, Inc., 16 B.R. 602, 603 (Bankr. S.D. Fla. 1981).

41. In analyzing whether a replacement lien adequately protects a secured creditor, courts examine whether the granting of a replacement lien will protect the creditor from additional loss. See Karl Neise, 16 B.R. at 603. Courts generally conclude that where a secured creditor's interest is being maintained and cash collateral is to be used to meet operating and overhead expenses, a debtor may provide adequate protection for the use of proceeds derived from pre-petition assets by granting a secured creditor a replacement lien on post-petition assets. See Int'l Design, 154 B.R. at 364, Karl Neise, 16 B.R. at 603.

42. Here, the Debtors propose to grant to Fannie Mae replacement liens on all of the Apartment LLCs' real and personal property to the extent their collateral is diminished as a result of the use of Cash Collateral. By granting such replacement liens on the post-petition assets, the value of the assets subject to Fannie Mae's liens will not be diminished during the post-petition period for which the Debtors seek authorization to use Cash Collateral.

ii. Limitations on the Use of Cash Collateral and Reporting Requirements Provide Additional Adequate Protection.

43. The Debtors are limiting their request for authorization to use Cash Collateral to the Budget, plus, as described in the Interim Order, a 10% variance per month and a variance in the event actual expenditures are less than budgeted expenditures in the prior month. This limitation provides adequate assurance to Fannie Mae that the Debtors' use of Cash Collateral will not exceed the Debtors' projections to Fannie Mae's detriment. Further, the proposed Interim Order requires the Debtors to provide Fannie Mae, within twenty (20) days following the end of each prior month, a report summarizing all income received by the Debtors and all expenses paid by the Debtors during the prior month. Reporting requirements and limitations on use of cash collateral are additional forms of additional adequate protection to Fannie Mae. See In re C.F. Simonin's Sons, Inc., 28 B.R. 707, 712 (Bankr. E.D.N.C. 1983).

iii. The Preservation of Going Concern Value of the Debtors' Business and their Assets Also Constitutes Adequate Protection of Fannie Mae's Interest.

44. The proposed use of Cash Collateral will enable the Debtors to continue to operate as a viable going concern and preserve, maintain, and enhance the value of their assets and business as a whole, which also constitutes adequate protection of Fannie Mae's interests in the Apartment LLCs' assets.

45. Courts have recognized that the preservation of the going concern value of a secured lender's collateral constitutes adequate protection of such creditor's interest in the

collateral. See, e.g., In re Pursuit Athletic Footwear, Inc., 193 B.R. 713, 716 (Bankr. D. Del. 1996) (holding that if there is no actual diminution in the value of collateral and the debtor can operate profitably post-petition, then the secured creditor is adequately protected); In re Stein, 19 B.R. 458, 460 (Bankr. E.D. Pa. 1982) (creditor's secured position would be enhanced by the continued operation of the debtor's business); In re Johnson, 47 B.R. 204, 208 (Bankr. W.D. Wis. 1985) (decrease in creditor's protection by the use of cash collateral was offset by preservation of creditor's other collateral); In re Pine Lake Village Apartment Co., 16 B.R. 750, 756 (Bankr. S.D.N.Y. 1982) (cash collateral allowed to be used to "maintain and repair the property so as to prevent further deterioration" which would enhance the value of the property that served as the secured creditor's collateral).

46. The use of Cash Collateral in accordance with the Budget will ensure that the going concern value of the Debtors' business and assets will be maintained and preserved. The Debtors will use Cash Collateral to pay the ordinary and necessary expenses of operating, maintaining and managing their business so as to continue to generate additional revenues. The Debtors have enumerated with specificity their anticipated expenses and projected revenues for the next period included in the Budget. The projected disbursements are ordinary, reasonable, and necessary expenses required to operate their business and without such expenditures, the remaining value of the Debtors' business and assets would rapidly decline in value.

V. **Request for Immediate Use of Cash Collateral to Avoid Irreparable Harm**

47. Section 363(c)(3) of the Bankruptcy Code and Bankruptcy Rule 4001(b)(2) require the Court to schedule a cash collateral hearing in accordance with the needs of the debtor and conduct a preliminary hearing for the purpose of authorizing the use of cash collateral to the extent necessary to avoid irreparable harm to the debtor. Section 363(c)(3)

mandates that "[a]ny hearing [on the use of cash collateral] ... shall be scheduled in accordance with the needs of the debtor." 11 U.S.C. § 363(c)(3).

48. In the present case, emergency use of the Cash Collateral by the Debtors, pending the Final Hearing, is necessary to prevent immediate and irreparable harm to the Debtors and their creditors. Absent such use, the Debtors will have little or no funds from which to conduct their operations, and will be forced to discontinue permanently their business to the detriment of all creditors.

49. On the other hand, Fannie Mae will suffer no harm if interim relief is granted. Fannie Mae's interest in property of the estates is adequately protected by the various provisions of the proposed Interim Order.

WHEREFORE, the Debtors respectfully request (i) immediate entry of the Interim Order (substantially in the form submitted herewith) and the scheduling of the date for the Final Hearing, (ii) at the Final Hearing, entry of the Final Order; and (iii) the granting of such other and further relief as is just and proper.

Dated: February 22, 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, Esquire⁷
300 East Lombard Street, 18th Floor
Baltimore, MD 21202-3268
Telephone: (410) 528-5600
Facsimile: (410) 528-5650
Email: summersm@ballardspahr.com

Proposed Counsel for the Debtors and Debtors in Possession

⁷ Admitted in Maryland. Admission to Delaware pending. A motion seeking *pro hac vice* admission in this case will be filed.

EXHIBIT A

Week Beginning	22-Feb-10	1-Mar-10	8-Mar-10	15-Mar-10	22-Mar-10	29-Mar-10	5-Apr-10	12-Apr-10	19-Apr-10	26-Apr-10	3-May-10	10-May-10	17-May-10
Week Ending	29-Feb-10 Week 1	7-Mar-10 Week 2	14-Mar-10 Week 3	21-Mar-10 Week 4	28-Mar-10 Week 5	4-Apr-10 Week 5	11-Apr-10 Week 1	18-Apr-10 Week 2	25-Apr-10 Week 3	2-May-10 Week 4	8-May-10 Week 5	15-May-10 Week 1	22-May-10 Week 2
BEGINNING CASH BALANCE	7,500	(\$,899)	75,200	75,228	89,165	20,119	89,786	79,520	83,435	16,966	91,095	81,570	67,231
INCOME													
Pomeroy Park	10,213	61,278	20,426	10,213	10,213	62,482	20,821	10,410	10,410	64,976	21,669	10,829	10,829
Cedar Crest	2,080	12,357	4,119	2,080	2,080	12,502	4,167	2,084	2,084	12,762	4,284	2,127	2,127
Southern Hills	5,135	30,812	10,271	5,135	5,135	31,040	10,347	5,173	5,173	31,325	10,442	5,221	5,221
Saukla Creek	6,149	30,885	10,298	6,149	6,149	31,576	10,468	6,229	6,229	31,904	10,635	5,317	5,317
Fulton Plaza	2,959	17,753	5,918	2,959	2,959	17,943	5,981	2,991	2,991	18,146	6,049	3,024	3,024
Magnolia Manor	4,178	25,070	8,357	4,178	4,178	25,370	8,457	4,228	4,228	25,441	8,480	4,240	4,240
Savannah South	3,159	18,953	6,318	3,159	3,159	19,280	6,427	3,213	3,213	19,946	6,649	3,324	3,324
Edison Square	3,161	18,958	6,323	3,161	3,161	19,099	6,386	3,183	3,183	19,233	6,411	3,286	3,286
TOTAL INCOME	38,014	219,098	72,029	36,014	36,014	219,073	73,024	36,512	36,512	223,735	74,578	37,299	37,299
EXPENSES													
Management Property Level Operating Expenses ¹	19,879	91,747	34,993	34,993	34,993	80,266	34,993	34,993	34,993	89,921	34,993	34,993	34,993
Utilities		7,583	7,583	7,583	7,583	7,583	7,583	7,583	7,583	7,583	7,583	7,583	7,583
Maintenance/Supplies/Make-Ready		8,643	2,881	2,881	2,881	8,763	2,921	1,460	1,460	8,949	2,983	1,482	1,482
Management Fee ²	1,441	8,643	2,881	1,441	1,441	8,763	2,921	1,460	1,460	8,949	2,983	1,482	1,482
Office/Administrative Expenses	4,054	4,054	4,054	4,054	4,054	4,054	4,054	4,054	4,054	4,054	4,054	4,054	4,054
TOTAL EXPENSES	25,373	112,027	49,501	13,077	13,077	49,556	110,541	49,587	49,587	110,607	49,603	13,128	49,111
NON-RECURRING CASH EXPENSES		45,000	23,000										
Utility Security Deposit													
Replacement of Pomeroy Hot Water Boiler													
ADMINISTRATIVE EXPENSES													
Debtors Counsel	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000
Accounting Fees - Debtor						4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000
Claims Agent ³	4,000	3,000	2,500	2,500	2,500	1,250	1,250	1,000	1,500	1,500	1,000	2,000	
Creditor Committee Counsel						3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500
US Trustee Fees													10,000
ENDING CASH BALANCE	(\$,899)	75,200	75,228	89,165	20,119	89,786	79,520	83,435	16,966	91,095	81,570	67,231	10,909

1. Payroll, tax and benefits of employees of RC Realty Management, Inc. at each property
2. 4% of Gross Income
3. Inclusive of Retainer in the amount of \$5,000.

EXHIBIT B

**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)

**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**

By Motion (the "Motion") filed on February 22, 2010, RC Sooner Holdings, LLC, and all of its debtor affiliates and subsidiaries listed in footnote 1 (collectively, the "Debtors"), moved this Court for the entry of an interim order (the "Interim Order") and final order (the "Final Order") in their chapter 11 cases (the "Cases") (a) authorizing them to use cash collateral ("Cash Collateral") as that term is defined in section 363 of chapter 11 of title 11 of the United States Code (the "Code"), (b) granting additional security interests and liens to Federal National Mortgage Association (the "Lender") pursuant to section 363(e) of the Code, (c) granting adequate protection, and (d) setting a final hearing on the Motion.

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.

Having reviewed and considered the Motion, and having completed a preliminary hearing on February ___, 2010 and in accordance with section 363 of the Code and Rule 4001 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules"), and based upon the foregoing, the consent of Federal National Mortgage Association ("Fannie Mae") to the entry of this Interim Order and the use of cash collateral in accordance with the Budget during the Interim Period (as hereinafter defined), and other good cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:

A. Filing of Petition. On February 22, 2010 (the "Petition Date"), the Debtors filed voluntary chapter 11 petitions under the Code. By order of this Court, the Cases are jointly administered for procedural purposes only. Pursuant to sections 1107 and 1108 of the Code, the Debtors are authorized to operate their business as debtors in possession. To date, no official committee of unsecured creditors has been appointed in these cases.

B. Jurisdiction: Core Proceeding. Consideration of the Motion constitutes a "core proceeding" as defined in 28 U.S.C. § 157. This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District.

C. The Motion: Notice. Notice of the Motion has been given to (i) the Office of the United States Trustee; (ii) counsel for the Lender; and (iii) each of the Debtors' twenty (20) largest creditors holding unsecured claims as required by Local Rule 9013-1(m)(iii). Such notice is appropriate and adequate under the circumstances set forth herein and presented to this Court, and complies with the provisions of section 363 of the Code and Bankruptcy Rules 2002, 4001 and 9014, and any other applicable law.

D. Need for Funding. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and Local Rule 4001-2(b). The interim 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 otherwise result if the Debtors were prevented from using Cash Collateral on an interim basis in order to maintain their operations, maintain the Debtors' real estate, preserve and maximize the value of the assets of their estates, and provide an opportunity to reorganize the Debtors' affairs.

E. Good Cause. Good and sufficient cause has been shown for the entry of this Interim Order. Among other things, entry of this Interim Order will minimize disruption of the Debtors' business, will preserve and maintain the assets of their estates, including the Debtors' real estate, will increase the possibility of the reorganization of the Debtors, will avoid immediate and irreparable harm to, and is in the best interests of, the Debtors, their creditors and their estates, as well as the Debtors' residential tenants. The terms of the Debtors' proposed use of cash collateral 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. Lender reserves, and does not waive, its right to object to any provision of a Final Order.

F. Negotiations. The agreements and arrangements authorized in this Interim Order have been negotiated at arms-length, are fair and equitable under the circumstances, and are enforceable pursuant to their terms. The Lender and the Debtors have been represented by counsel and intend to be and are bound by the terms of this Interim Order; provided, further that Lender reserves all rights it has or may have regarding the filing of the Debtors' bankruptcy cases.

G. Adequate Protection. The adequate protection provided for under this Interim Order is sufficient to protect the Lender from any diminution in the value of its interest in the Cash Collateral, and is fair, reasonable and sufficient to satisfy the requirements of the Bankruptcy Code.

H. Factual Findings/Legal Conclusions. Each of the foregoing findings by the Court will be deemed a finding of fact if and to the full extent that it makes and contains factual findings and a conclusion of law if and to the full extent that it makes and contains legal conclusions.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Authorization to Use Cash Collateral. The Motion is GRANTED in accordance with the terms of this Interim Order, and the Debtors are hereby AUTHORIZED to use the Cash Collateral on an interim basis to pay expenses incurred by the Debtors in the ordinary course of their business and in the manner set forth in the Budget attached to the Motion beginning on the date on which this Interim Order is entered and continuing through and including the date on which the Final Hearing (as hereinafter defined) is conducted (the "Interim Period"); provided, however, that during the Interim Period, the Debtors will accrue but shall not pay any amounts to Debtors' proposed bankruptcy counsel and payments to the Claims Agent shall be capped at \$3,000.00 during the first week and \$2,500 during the second week of the Interim Period. Nothing in this Interim Order shall be construed as Lender's consent or this Court's approval of the use of Cash Collateral for Debtors' bankruptcy counsel fees.

2. Variance Allowed. Debtors' total cash disbursements at the end of each month shall not exceed one hundred ten percent (110%) of each Debtors' budgeted cash disbursements as set forth in the Administrative Budget for such period (the "Monthly Budget

Cap"); provided, however, that in the event that the Debtors' total cash disbursements for the month immediately prior to the current month were less than the budgeted cash disbursements for such prior month (the "Prior Month Budget Surplus"), the Debtors may exceed the Monthly Budget Cap for the current month by the amount of the Prior Month Budget Surplus.

3. Adequate Protection. As adequate protection for, and to secure against, any diminution in the Lender's collateral resulting from the Debtors' use of Cash Collateral, the Apartment LLCs (as defined in the Motion) hereby grant to the Lender additional and replacement liens in and upon all of their properties which constituted the Lender's Pre-Petition Collateral (as defined in the Motion) to the extent the value of the same is diminished as a result of the Debtors' use of Cash Collateral, which shall be first priority liens with respect to collateral that was not subject to valid and perfected liens as of the Petition Date and shall be junior priority liens with respect to collateral that was subject to valid and perfected liens as of the Petition Date. Notwithstanding anything to the contrary, any lien granted herein shall be deemed valid, perfected, and enforceable to the extent, and only to the extent that any prepetition lien in the Pre-Petition Collateral or the Cash Collateral is found to be valid, perfected, and enforceable, and then only to the extent of the Debtors' use of Cash Collateral.

4. Reporting. The Debtors shall provide to Lender, within twenty (20) days following the end of each prior month, a report summarizing all income received by the Debtors and all expenses paid by the Debtors during the prior month.

5. Order Binding on Successors. The provisions of this Interim Order shall be binding upon and inure to the benefit of the Lender, the Debtors, and their respective successors and assigns (including any trustee or other estate representative appointed as a representative of the Debtors' estates or of any estate in any Successor Case). Except as

otherwise explicitly set forth in this Interim Order, no third parties are intended to be or shall be deemed to be third party beneficiaries of this Interim Order or the Pre-Petition Loan Documents.

6. Subsequent Hearing: Procedure for Objections and Entry of Final Order.

The Motion is set for a final hearing before this Court at 9 a.m. on March 11, 2010 (the "Final Hearing"), at which time any party in interest may present any timely filed objections to the entry of the Final Order approving the use of Cash Collateral. The Debtors shall serve a copy of this Interim Order and notice of the Final Hearing as set forth therein, by regular mail, no later than fourteen (14) days prior to the date of the Final Hearing, upon (i) the Lender, (ii) counsel to the Lender, (iii) the District Counsel for the Internal Revenue Service, (iv) all known secured creditors of the Debtors, (iv) all of the Debtors' landlords, (v) the Office of the United States Trustee; and (vi) any other party which theretofore has filed in these Cases a request for special notice with this Court and served such request upon Debtors' counsel. Objections to the entry of the Final Order on the Motion shall be in writing and shall be filed with the United States Bankruptcy Clerk for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, DE 19801, no later than March 8, 2010, which objections shall be served so that the same are received on or before 4:30 p.m. EST of such date by (i) Tobey M. Daluz and Christopher S. Chow, Ballard Spahr LLP, 919 N. Market Street, 12th Floor, Wilmington, DE 19801, counsel to Debtors, (ii) counsel to Lender, and (iii) the Office of the United States Trustee, Attn. Patrick Tinker, Esquire, J. Caleb Boggs Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801. Any objections by creditors or other parties in interest to any of the provisions of this Interim Order may be deemed waived unless filed and served in accordance with this paragraph.

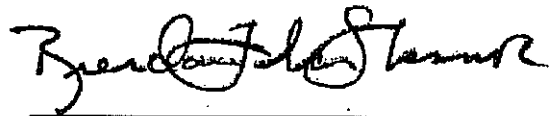
7. Objections Overruled. All objections to the entry of this Interim Order are hereby overruled.

8. Order Effective. This Interim Order shall be effective as of the date of signature by the Court. This Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

9. Final Order. If no timely objections to this Interim Order are filed, this Interim Order shall become a final order without further notice or Order by this Court.

IT IS SO ORDERED.

Dated: February 24, 2010



United States Bankruptcy Judge