

**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 ()
)	
Debtors.)	(Jointly Administered)

**DEBTORS' MOTION FOR ORDER AUTHORIZING MAINTENANCE
AND UTILIZATION OF CASH MANAGEMENT SYSTEM AND BANK
ACCOUNTS AND CONTINUED USE OF EXISTING BUSINESS FORMS**

RC Sooner Holdings, LLC ("RC Sooner" or the "Company") and the above-captioned debtors and debtors in possession (collectively, the "Debtors"), by this motion (this "Motion"), seek entry of an order under sections 105(a), 345(a), and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") (i) authorizing the Debtors' continued use of their existing cash management system, maintenance of their existing bank accounts and continued use of their existing business forms, and (ii) authorizing the Debtors to utilize their existing bank deposit accounts without the need for the bond or other collateral otherwise required by section 345(b) of the Bankruptcy Code or to seek a waiver for cause of such requirement under section 345(b)(2) of the Bankruptcy Code and Local Rule 2015-2. In support of this Motion, the Debtors

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 to which notices should be sent is 1515 Broadway, 11th Floor, New York, New York 10036-8901.

respectfully submit the Affidavit of Daniel Gordon in Support of Chapter 11 Petitions and First Day Pleadings (the “Gordon Affidavit”) filed contemporaneously herewith, and further state as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. The statutory bases for the relief requested herein are sections 105(a), 345(a), and 363 of the Bankruptcy Code, and Local Rule 2015-2.

Factual Background

4. On or about February 22, 2010 (the “Petition Date”), each of the Debtors filed a voluntary petition 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.

5. 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”², 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

² 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.

the Apartments (collectively, the “Apartment LLCs”³). 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”).

6. 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.

7. 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.

8. 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

³ 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.

9. 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.

10. 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 Gordon Affidavit, and is incorporated herein by reference.

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

Relief Requested

12. By the Motion, the Debtors seek an order (the "Order") (i) authorizing the Debtors' continued use of their existing cash management system, maintenance of the Bank Accounts and continued use of their existing business forms, and (ii) authorizing the Debtors to utilize their existing Bank Accounts without the need for the bond or other collateral otherwise required by section 345(b) of the Bankruptcy Code or to seek a waiver for cause of such requirements under section 345(b)(2) of the Bankruptcy Code and Local Rule 2015-2. Additionally, because the Bank is located outside of the District of Delaware, the Debtors also seek a waiver of the requirement that their bank accounts be held at designated depositories in the District of Delaware.

A. The Debtors Should be Authorized to Continue to Use Their Existing Cash Management System

13. Before the commencement of their bankruptcy cases, the Debtors, in the ordinary course of business, used a cash management system to collect, transfer and disburse funds generated by their operations and to accurately record all such transactions as they were made. Under this cash management system, cash received from the Debtors' tenants is collected by the Debtors' property management company, RC Realty Management, Inc. ("RC Realty"). All costs and expenses of the properties are paid from the tenant funds and the excess cash is forwarded to RC Sooner. A depiction of the Debtors' cash flow is attached as Exhibit A.

14. As part of this cash management system, in the ordinary course of their business, RC Sooner maintains bank accounts. Specifically, RC Sooner currently maintains the following two (2) active bank accounts (collectively, the "Bank Accounts") at JP Morgan Chase Bank, N.A. (the "Bank"):

Asset Holder Name	Account Number	Account Description	Location
JP Morgan Chase Bank, N.A.	000000831173893	Business Account	New York, NY
JP Morgan Chase Bank, N.A.	000000840312748	Business Account	New York, NY

15. None of the other Debtors maintain bank accounts. Each of the Bank Accounts is used in the operation of the Debtors' business, and they collectively play a critical role in the Debtors' existing cash management system.

16. The Debtors' cash management system has been in place since 2009 and provides a substantially unified system for the Debtors that allows for accurate accounting for revenues and expenses to be collected and paid.

17. It is important that the Debtors' existing cash management practices, which are essential to their ability to meet their postpetition obligations in the ordinary course, not be interrupted by implementation of new cash management procedures. The Debtors therefore seek a waiver of the requirement that they open a new set of books and records and new bank accounts as of the Petition Date.

18. The Debtors request authority for the Debtors to maintain and utilize the existing Bank Accounts and the cash management system in accordance with their prepetition practices and procedures. These practices and procedures provide for an effective and economic utilization of funds by the Debtors and their business operations. Moreover, the Debtors' smooth transition into chapter 11, preservation of their assets during the pendency of their bankruptcy cases, and their ability to pursue and consummate a successful reorganization depends in part on their ability to maintain these practices without interruption.

19. Adopting new cash management systems would be prohibitively expensive, would create unnecessary administrative burdens, and would delay and disrupt the Debtors' focus on bringing about an efficient and successful conclusion to their bankruptcy cases. Under such circumstances, it would be a waste of the Debtors' limited resources to require a new cash management system and would distract management from pursuing their reorganization efforts. Consequently, maintenance of the existing cash management system is in the best interests of the Debtors, the Debtors' estates, and all creditors and other parties-in-interest.

20. This Court has routinely granted chapter 11 debtors authority to continue using their existing cash management system in the fashion requested herein. *See, e.g., In re Broadway 401 LLC*, Case No. 10-10070 (KJC) (Bankr. D. Del. January 12, 2010) (Docket No.

22); *In re Nutritional Sourcing Corp.*, Case No. 07-11038 (PJW) (Bankr. D. Del. Aug. 3, 2007) (Docket No. 44); *In re J.L. French Auto. Castings, Inc.*, Case No. 06-10119 (MFW) (Bankr. D. Del. March 3, 2006) (Docket No. 196).

21. Bankruptcy courts treat requests for authority to continue utilizing existing cash management systems as a relatively “simple matter.” *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). In general, an integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticabilities of maintaining separate cash accounts for the many different purposes that require case.” *In re Columbia Gas Sys, Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1993), *aff’d in part and reversed in part*, 997 F.2d 1039 (3d Cir. 1993), *cert. denied sub nom. Official Comm. of Unsecured Creditors v. Columbia Gas Transmission Corp.*, 510 U.S. 1110 (1994). According to the Third Circuit, requiring separate accounts “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (allowing the continued use of pre-petition cash management system allows the debtor “to administer more efficiently and effectively its financial operations and assets”).

22. In addition, this Court may exercise its equitable powers to grant the relief requested herein. Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order ... that is necessary to carry out the provisions of this title.” 11 U.S.C. § 105(a). Allowing the Debtors to continue to utilize the existing cash management system and the Bank Accounts without interruption is important to the efficient, timely, and economic administration of the Debtors’ cases.

23. Accordingly, the Debtors request authority for RC Sooner to maintain and utilize its existing Bank Accounts and cash management system in accordance with its

prepetition practices and procedures as such may be modified from time to time in connection with the Debtors' contemplated use of cash collateral or as otherwise required by the Debtors in the ordinary course of business.

B. The Debtors Should be Granted Authority to Maintain Their Existing Bank Accounts

24. The Office of the U.S. Trustee's "Operating Guidelines and Financial Reporting Requirements in All Cases Under Chapter 11" (the "UST Guidelines") establish certain operating guidelines for debtors in possession in order to supervise the administration of chapter 11 cases. These guidelines require that chapter 11 debtors, among other things: (i) close all existing bank accounts and open new bank accounts; (ii) establish one debtor in possession account for all estate monies required for the payment of taxes, including payroll taxes; (iii) maintain a separate debtor in possession account for cash collateral; and (iv) obtain checks for all debtor in possession accounts which bear the designation "Debtor In Possession," the bankruptcy case number, and the type of accounts.

25. As set forth above, prior to the Petition Date, the Debtors maintained two Bank Accounts to manage cash receipts and disbursements. The Debtors routinely deposit, withdraw, and otherwise transfer funds to, from and among the Bank Accounts by various methods, including check, wire transfer, ACH transfer, internal bank transfer and electronic funds transfer.

26. The Debtors seek a waiver of the U.S. Trustee's requirement that the Bank Accounts be closed and that new postpetition bank accounts be opened. The Bank Accounts are part of the Debtors' carefully-constructed cash management system and allow for the Debtors to fund ongoing operations in a streamlined and cost-efficient manner. In order to avoid delays in payments to administrative creditors and to ensure minimal disruption to operations and a

smooth transition into chapter 11, it is critical that the Debtors be permitted to maintain their existing Bank Accounts.

27. The Debtors further request that the Bank be authorized to (a) continue to administer the Bank Accounts in the manner maintained prior to the Petition Date, without interruption, in the usual and ordinary course, and (b) receive, process and honor and pay any and all checks, drafts, wires or other transfers issued or initiated by the Debtors, and drawn on the Bank Accounts, after the Petition Date by the holders or makers thereof, as the case may be. Except as otherwise set forth herein and in the Order, the Debtors request that the Bank be prohibited and enjoined from honoring or paying any and all checks, drafts, wires or other transfers issued or initiated by the Debtors on or against the Bank Accounts prior to the Petition Date.

28. To effectuate the foregoing, the Debtors request that the Bank be authorized to accept, process, honor and pay any and all checks, drafts, wires or other transfers drawn on or issued on the Bank Accounts prior to the Petition Date that are subject to an order of this Court that specifically authorize their payment, whether present, drawn or issued before or after the Petition Date by the holder or makers thereof; provided, however, that (i) the Debtors shall identify by check number or other appropriate means, the specific checks, drafts, wires or other transfers that are authorized to be paid pursuant to orders of this Court, and (ii) sufficient funds, whether deposited prior or subsequent to the Petition Date, are in the requisite Bank Account, or otherwise available to cover and permit the payment thereof.

29. Permitting the Debtors to maintain and utilize their Bank Accounts in their current form will assist in accomplishing a smooth and orderly transition into chapter 11, thereby

creating a minimum amount of interference with continuing operations.⁴ Accordingly, the Debtors respectfully request that the Bank Accounts be maintained in the ordinary course of business, provided that no pre-petition checks, drafts, wire transfers, or other forms of tender which have not yet cleared the relevant drawee bank as of the Petition Date will be honored unless authorized by separate order of this Court.

30. The Debtors represent that if the relief requested in this Motion is granted, they will not pay, and the Bank at which the Bank Accounts are maintained will be directed not to pay, any debts incurred by the Debtors before the Petition Date other than as authorized by this Court. The Debtors will work with the Bank in order to ensure that appropriate procedures are in place so that checks issued before the Petition Date, but presented after the Petition Date, will not be honored absent approval from this Court.

31. In other cases in this District, it has been recognized that the strict enforcement of bank account closing requirements may not serve the rehabilitative purposes of chapter 11 and so courts have waived such requirements and replaced them with alternative procedures that provide the same protections. *See, e.g., In re Broadway 401 LLC*, Case No. 10-10070 (KJC) (Bankr. D. Del. January 12, 2010) (Docket No. 22); *In re Nutritional Sourcing Corp.*, Case No. 07-11038 (PJW) (Bankr. D. Del. Aug. 3, 2007) (Docket No. 44); *In re J.L. French Auto. Castings, Inc.*, Case No. 06-10119 (MFW) (Bankr. D. Del. March 3, 2006) (Docket No. 196); *In re Nobex Corp.*, Case No. 05-20050 (CSS) (Bankr. D. Del. Dec. 6, 2005) (Docket No. 27).

⁴ After Debtors have exhausted their current supply of checks, Debtors will have new checks printed with the designation "DIP" or "Debtor in Possession."

32. Accordingly, the Debtors request that the Bank Accounts be deemed debtor in possession accounts and that their maintenance and continued use, in the same manner and with the same account numbers, styles and document forms as those employed prior to the Petition Date, be authorized.

C. The Debtors Should be Granted Authority to Continue to Use Their Existing Business Forms and Checks

33. Additionally, the Debtors, in the ordinary course of their business, use business forms, including, but not limited to, invoices, stationery, letterheads, purchase orders, and checks. In order to minimize expenses to the Debtors' estates, the Debtors request that they be authorized to use business forms existing immediately before the Petition Date without reference to the Debtors' status as debtors or debtors in possession.

34. It is anticipated that parties doing business with the Debtors will be aware of their status as debtors and debtors in possession as a result of the notices transmitted by the Debtors and general press coverage.

35. By virtue of the nature and scope of the business in which the Debtors engage, permitting the use of the Debtors' existing business forms without alteration or change is in the best interest of all creditors. A substantial amount of time and expense would be required in order to print new business forms.

36. Courts in this District have routinely granted the same or similar relief to chapter 11 debtors. *See, e.g., In re Broadway 401 LLC*, Case No. 10-10070 (KJC) (Bankr. D. Del. January 12, 2010) (Docket No. 22); *In re Nutritional Sourcing Corp.*, Case No. 07-11038 (PJW) (Bankr. D. Del. Aug. 3, 2007) (Docket No. 44); *In re J.L. French Auto. Castings, Inc.*, Case No. 06-10119 (MFW) (Bankr. D. Del. March 3, 2006) (Docket No. 196); *In re Nobex Corp.*, Case No. 05-20050 (CSS) (Bankr. D. Del. Dec. 6, 2005) (Docket No. 27).

37. Accordingly, the Debtors respectfully request that they be authorized to continue to use their existing business forms without placing the legend “Debtor in Possession” on each.

D. The Debtors Should be Authorized to Continue Using Debit, Wire, and ACH Payments

38. The Debtors should be granted further relief from the UST Guidelines to the extent that they require the Debtors to make all disbursements by check. In particular, the UST Guidelines require that all receipts and all disbursements of estate funds be by check with a notation representing the reason for the disbursement.

39. Considering the relative complexity of the Debtors’ operations, it is necessary for the Debtors to conduct transactions by debit, wire or ACH payments and other similar methods. To deny the Debtors the opportunity to conduct transactions by debit, wire or ACH payments or other similar methods would interfere with the Debtors’ performance of their obligations and unnecessarily disrupt the operations as well as create additional costs.

E. The Debtors Are Not Required to Post the Bond or Collateral Otherwise Required by Bankruptcy Code Section 345(b) or Seek a Waiver

40. Section 345(a) of the Bankruptcy Code governs a debtor’s deposits during its bankruptcy case. Section 345(a) of the Bankruptcy Code authorizes deposits of money of the estates, such as cash, in a manner that will “yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment. 11 U.S.C. § 345(a). For deposits or investments that are not “insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States,” section 345(b) of the Bankruptcy Code provides that the estate must require from the entity with which the money is deposited or invested a bond in favor of the U.S.

secured by the undertaking of an adequate corporate security. To the extent section 345(b) of the Bankruptcy Code is applicable to debtors in possession, a court may, however, relieve them from the restrictions and requirements imposed by section 345(b) of the Bankruptcy Code “for cause.”

41. The Debtors do not maintain any investment accounts or investment funds nor do they invest any amounts in the Bank Accounts in overnight paper or money market accounts. In addition, on the Petition Date, none of the Debtors had in excess of \$250,000 in the aggregate deposited in the Bank Accounts at the Bank and the average balances of the Bank Accounts are far less than \$250,000. As such, the Debtors believe that all amounts in their Bank Accounts are insured (and will remain insured post-petition) by the Federal Deposit Insurance Corporation (the “FDIC”). The FDIC’s standard maximum deposit insurance amount is \$250,000 per depositor, per insured bank, through December 31, 2013. Therefore, the Debtors submit that they are fully in compliance with section 345(a) of the Bankruptcy Code and that section 345(b) is not applicable to them. Accordingly, the Debtors submit that they are not required to comply with the restrictions and requirements imposed by section 345(b) of the Bankruptcy Code, nor are they required to seek a waiver therefrom for “cause” under section 345(b)(2) of the Bankruptcy Code or Local Rule 2105-2.

F. Failure to Maintain the Cash Management System Within Twenty (20) Days of the Petition Date May Cause Immediate and Irreparable Harm

42. Bankruptcy Rule 6003(b) provides that the Court may grant relief regarding a motion to sue, sell, lease or otherwise incur an obligation regarding property of the estate within twenty days after the filing of the petition only if the relief is necessary to avoid immediate and irreparable harm.

43. As described above, the Debtors’ smooth transition into chapter 11 and preservation of their business depends on their ability to maintain the cash management system.

Failure to maintain the cash management system during the first twenty days of the Debtors' cases would be disruptive to the Debtors' business operations and a waste of the Debtors' limited resources. The Debtors submit that maintenance of the Debtors' existing cash management system is in the best interests of all creditors and other parties-in-interest and so Bankruptcy Rule 6003(b) is satisfied.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, authorizing maintenance and utilization of the Debtors' existing cash management system and existing bank accounts, authorizing the Debtors to continue to use existing business forms, and granting such other and further relief as the Court deems appropriate.

Dated: February 22, 2010
Wilmington, Delaware

Respectfully Submitted,

BALLARD SPAHR LLP

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- and -

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Proposed Counsel for the Debtors and Debtors in
Possession

⁵ Admitted in Maryland. Admission to Delaware pending. A motion seeking *pro hac vice* admission in this case will be filed.

EXHIBIT A

TENANTS

Rent



RC Realty Management, Inc.
(as Agent for Apartment LLCs)

Vendor
Payments

Mortgage
Payments

Property
Payroll

Excess
Cash

Management
Fee



**RC Sooner
Holdings, LLC**

Bank Account
JP Morgan Chase
225 5th Avenue
New York, NY 10001

Op Account: 840312649
Payroll Account: 840312755

Bank Account
JP Morgan Chase
225 5th Avenue
New York, NY 10001

Account: 831173893
Account: 840312748