

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

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In re	:	Chapter 11
	:	
CRESCENT RESOURCES, LLC, et. al.,	:	Case No. 09-11507 (CAG)
	:	
Debtors.	:	Joint Administration
	:	Requested
	:	
-----X		

**MOTION OF THE DEBTORS PURSUANT
TO SECTIONS 105(a), 363(b), 503(b)(1), AND 1107(a) OF
THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6003 AND 6004 FOR
AUTHORIZATION TO PAY, IN THE ORDINARY COURSE OF BUSINESS, (I)
CERTAIN PREPETITION LIEN CLAIMS, (II) CERTAIN ADMINISTRATIVE
EXPENSE CLAIMS, AND (III) CERTAIN OTHER PREPETITION CLAIMS**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Crescent Resources, LLC (“Crescent Resources”), its parent Crescent Holdings, LLC (“Crescent Holdings”) and their affiliated debtors as debtors and debtors in possession (collectively, “Crescent” or the “Debtors”),¹ respectfully represent:

Background

1. On the date hereof (the “Commencement Date”), each of the Debtors filed a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are authorized to continue operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. A motion seeking joint administration of the Debtors’ chapter 11 cases pursuant to Rule 1015(b) of

¹ A list of the Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, is attached hereto as Exhibit A.

the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) is currently pending before this Court.

Jurisdiction And Venue

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

Crescent’s Business

3. Crescent, which is headquartered in Charlotte, North Carolina, is a leading real estate development company that focuses on master-planned communities and commercial, industrial, and residential real estate primarily in the southeast, but also in other regions of the United States. In particular, Crescent has properties located in Arizona, Florida, Georgia, North Carolina, South Carolina, Tennessee, Texas, and Virginia. Although Crescent Resources and its predecessors-in-interest have been in existence since 1969, Crescent Holdings was created in 2006. Crescent Holdings’ equity interests are held 50% by Duke Energy Corporation (“Duke Energy”) and 50% by certain private equity limited partnerships known as Morgan Stanley Real Estate Fund V U.S. and/or its affiliates (“Morgan Stanley”). Throughout its history, Crescent and its predecessors have developed and sold over 20 million square feet of commercial and industrial projects, between 50 and 60 residential communities with a variety of features and amenities, and numerous other master-planned communities.

4. Currently, Crescent Resources has four real estate divisions: residential, commercial, multifamily, and land management. The residential division (the “Residential Division”) is Crescent Resources’ largest division, comprising 54% of the Debtors’ total assets. The Residential Division includes 41 master-planned communities and 4 condominium projects

totaling 53,404 acres of developed land. The commercial property division (the “Commercial Division”) accounts for 19% of Crescent Resources’ total assets. The Commercial Division has 9 active projects, including office, industrial, and retail projects currently under development, as well as 1,822 acres of commercially-zoned undeveloped land. The multifamily division (the “Multifamily Division”) accounts for 6% of Crescent Resources’ total assets. The Multifamily Division includes 4 projects in various stages of development totaling 1,308 units and an additional 195 acres of entitled, but undeveloped land.

5. In the 1960s, Duke Energy acquired approximately 300,000 acres of land in rural areas of North and South Carolina (the “Legacy Land”). Beginning in 1969, Duke Energy contributed the Legacy Land to Crescent Resources’ predecessor-in-interest. Since 2006, the Legacy Land has been managed by Crescent Resources (the “Land Management Division”). As the value of the Legacy Land has increased over time, the Legacy Land has been sold in accordance with a long-term, structured disposition plan, whereby the proceeds from the sales of Legacy Land are invested in commercial property projects in urban areas (the “Legacy Land Sales Plan”). The combined proceeds from the Legacy Land Sales Plan and the Debtors’ other real estate ventures have enabled Crescent to fund and operate its various real estate divisions. The Land Management Division, which manages the Legacy Land, accounts for 21% of Crescent Resources’ total assets.

6. Crescent and its non-debtor affiliates are comprised of various joint ventures and wholly-owned subsidiaries that serve as holding companies, management companies, and project-level operating companies. Crescent Resources operates its business on an integrated basis with centralized administration, leasing, and management functions that enable it to achieve operating efficiencies and revenue enhancements that benefit the overall

enterprise. In 2007, Crescent Resources acquired 100% control of LandMar Group, LLC (“LandMar Group”) and its subsidiaries. The LandMar Group represents a significant part of the Residential Division described above and maintains assets throughout Florida.

Prepetition Debt

7. As of the Commencement Date, certain of the Debtors were parties to the First Amended and Restated Credit Agreement, dated as of June 17, 2008 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Prepetition Credit Agreement”), by and among Crescent Resources, as borrower, Crescent Holdings, the other guarantors identified therein, the lenders party thereto (the “Lenders”), and Bank of America, N.A. (“BOA”), as administrative agent and collateral agent.

8. The Prepetition Credit Agreement provides for (i) a term loan facility (the “Term Loan Facility”) in the principal amount of \$1,225,000,000, (ii) a revolving credit facility (the “Revolving Credit Facility”) in the principal amount of \$300,000,000, which reduces to the principal amount of \$275,000,000 after December 30, 2009, (iii) a swing line facility in the principal amount of \$50,000,000 (which reduces borrowings available under the revolving credit facility), and (iv) a letter of credit facility (the “Letter of Credit Facility”) in the principal amount of \$150,000,000 (which reduces borrowings available under the revolving credit commitment). Obligations arising under the Prepetition Credit Agreement are direct obligations of Crescent Resources. These direct obligations are guaranteed (the “Guaranty”) by (i) Crescent Holdings and (ii) most of the additional Debtors, pursuant to the terms of (A) the Prepetition Credit Agreement, (B) that certain Amended and Restated Joinder Agreement, dated as of June 17, 2008, by and between the entities party thereto and BOA, and (C) that certain Joinder

Agreement, dated as of July 25, 2008, by and between the entities party thereto and BOA (the Joinder Agreements in (B) through (C), collectively, the “Joinder Agreements”).

9. Certain of the Debtors (the “Pledgors”) also entered into a pledge agreement, dated as of September 7, 2006 (the “Pledge Agreement”), by and between the Pledgors and BOA pursuant to which they pledged 100% of the capital stock of substantially all their domestic subsidiaries with certain exceptions.² In addition, certain of the Debtors granted mortgages or deeds of trust on their real properties, except for (x) real property constituting qualified Legacy Land to the extent that the value of such real property is less than or equal to \$500,000, or (y) any real property that, as of the closing date, was encumbered with non-recourse, project-level debt or security interests that prohibited the execution, delivery and recording of such mortgage instruments. Crescent Resources also entered into that certain Account, Security, Pledge, Assignment, and Control Agreement, dated as of August 24, 2007, pursuant to which Crescent Resources granted to BOA control over and a security interest in all deposit accounts opened by Crescent Resources with BOA.

10. The aggregate principal amount of indebtedness owing under the Prepetition Credit Agreement as of the Commencement Date is approximately \$1,487,890,752.

Property-Level Debt

11. Approximately 10 of the Debtors also have secured property-level debt in the form of construction loans, mortgage loans, and seller-financed loans. As of the Commencement Date, there is \$89,110,601 in outstanding property-level debt.

² The Pledgors, include: Crescent Resources; Crescent Holdings; CLT Development, LLC; Crescent Potomac Yard, LLC; Crescent Twin Creeks, LLC; Crescent/Arizona, LLC; Palmetto Bluff Development, LLC; Palmetto Bluff Investments, LLC; Twin Creeks Management, LLC; Twin Creeks Property, Ltd.; LandMar Group, LLC; Hawk’s Haven Joint Development, LLC; and Hawk’s Haven Sponsor, LLC.

Financials

12. As of the Commencement Date, Crescent Resources, as a whole, reported approximately \$2.2 billion³ in total assets and approximately \$1.9 billion in total liabilities, including \$297,244,484 outstanding under the Revolving Credit Facility (including outstanding letters of credit) and \$1,197,000,000 outstanding under the Term Loan Facility. For 2008, Crescent Resources reported consolidated revenue of approximately \$373 million. Crescent Resources employs 247 people. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to these chapter 11 cases is contained in the declaration of Kevin H. Lambert, Chief Financial Officer of Crescent Resources filed concurrently herewith (collectively, the "Declaration").

Preliminary Statement

13. Due to the unique nature of the Debtors' construction and real estate development businesses, any failure to pay lien claims associated with the Debtors' properties and certain other prepetition claims will have a debilitating effect on the Debtors' ability to generate the revenues necessary to satisfy the Debtors' obligations. The Debtors' survival depends upon the continued uninterrupted supply of goods and services, and, as such, payment of these Claims (as defined below) and the satisfaction of the liens described herein will preserve the value of the Debtors' businesses, and ease the administrative burden on the Debtors' estates.

14. Several distinct and compelling reasons support the payment of the Claims. First, payment of the Claims is necessary to the preservation of the Debtors' businesses. Second, approximately 90% of the Claims are on account of liens that may potentially be asserted against the Debtors' property interests irrespective of the initiation of these chapter 11

³ Based on the Debtors unaudited financial statements as of December 31, 2008.

cases. Third, a substantial number of the Claims are entitled to administrative expense priority. Fourth, certain claimants have reclamation rights, which, if exercised, would undermine the Debtors' ability to complete existing development projects, and which, in turn, would undermine the Debtors' ability to generate revenues. Fifth, certain of the Claimants provide goods and services critical to the Debtors' on-going development projects and continued operations. Accordingly, the Debtors should be allowed to satisfy liens and to pay the other Claims, in their discretion, on the terms more specifically described herein.

Relief Requested

Prepetition Lien Claims

15. As part of the Debtors' real estate development business and operations, each of the Debtors' divisions rely on, and routinely contract with, a number of third parties, including contractors, subcontractors, and suppliers, who may be able to assert liens against the Debtors' property to secure payment for certain prepetition goods and services or other claims (including any shippers or warehousemen that may have a state law right to seize goods in their possession as collateral securing their liens) ("Lien Claims"). Specifically, many of the holders of Lien Claims (the "Lien Claimants") have rights under applicable state law to assert and perfect tax, construction, materialmen's, mechanics', or any other or similar claims that have given or could give rise to liens against the Debtors' real and personal property (the "Liens"). In some states, the Liens may attach simply by virtue of the Lien Claimant commencing work, while other states have more stringent notice and perfection requirements. In many instances the Lien Claimants are entitled to priority because applicable law generally provides that Lien rights take priority over subsequent liens, and, in some cases, prime prior encumbrances.

16. By this Motion, and subject to the provisions set forth herein, the Debtors request permission to pay, in the ordinary course of business, and in the Debtors' discretion, the Lien Claims. The Debtors estimate that, as of the Commencement Date, approximately \$9,402,835 is owed to such Lien Claimants. The Debtors believe that the payment of the Lien Claims is necessary to preserve the Debtors' enterprise value and to reorganize successfully. Therefore, the Debtors seek authority to pay, in the exercise of their business judgment and discretion, and based upon the liquidity available to the Debtors at the time such determination is made, up to the entire amount of the Lien Claims estimated in the aggregate to be approximately \$9,402,835.⁴

503(b)(9) Administrative Claims

17. In addition to the Lien Claimants, certain third parties that supply goods necessary to the Debtors' development projects, but do not have lien rights under applicable non-bankruptcy law, may be entitled to claims (the "503(b)(9) Claims") with administrative expense priority under section 503(b)(9) of the Bankruptcy Code (collectively, the "503(b)(9) Claimants"). The Debtors believe that certain of the 503(b)(9) Claimants may refuse to perform under existing agreements with the Debtors until the 503(b)(9) Claims have been satisfied, which would impede the Debtors' on-going development projects and continued operations. The Debtors seek authority to pay, in the exercise of their business judgment and discretion, and based upon the liquidity available to the Debtors at the time such determination is made, up to

⁴ Contemporaneously herewith, the Debtors are filing a Motion for Entry of an Order Authorizing the Debtors to (I) Sell Home Lots, Condominiums, and Certain Parcels of Land Free and Clear of Liens, Claims, Encumbrances, and Other Interests in the Ordinary Course of Business, (II) Pay Independent Sales Brokers and Certain Developers their Commissions and Fees, and (III) Establishing Procedures for the Resolution and Payment of Lien Claims, whereby the Debtors are seeking to pay certain liens, some of which constitute Lien Claims hereunder, encumbering various home lots and parcels of land.

the entire amount of the 503(b)(9) Claims estimated in the aggregate to be approximately \$242,031.

Reclamation Claims

18. Similar to the 503(b)(9) Claimants, certain third parties that supply goods necessary to the Debtors' on-going development projects and continued operations that do not have lien rights under applicable non-bankruptcy law may be entitled to reclamation claims (the "Reclamation Claims") under section 546 of the Bankruptcy Code (collectively, the "Reclamation Claimants"). The Debtors believe that certain of the Reclamation Claimants may refuse to perform under existing agreements with the Debtors until the Reclamation Claims have been satisfied or the goods they have supplied to the Debtors have been returned, which would impede the Debtors' on-going development projects and continued operations. Accordingly, the Debtors seek authority to pay, in the exercise of their business judgment and discretion, and based upon the liquidity available to the Debtors at the time such determination is made, up to the entire amount of the Reclamation Claims estimated in the aggregate to be approximately \$768,538.

Other Prepetition Claims

19. The Debtors also request permission to pay, in the ordinary course of business, and in the Debtors' discretion, the prepetition claims (the "Prepetition Claims", and together with the Lien Claims, 503(b)(9) Claims, and Reclamation Claims, the "Claims") of certain third parties that supply goods and/or services essential and critical to the Debtors' ongoing development projects, continued operations, and ultimate reorganization (the "Prepetition Claimants", and together with the Lien Claimants, 503(b)(9) Claimants, and the Reclamation Claimants, the "Claimants"). The Debtors estimate that, as of the Commencement

Date, approximately \$500,000 is owed to such Prepetition Claimants. The Debtors believe that the payment of these limited Prepetition Claims is necessary to preserve the value of Debtors' estates and to emerge successfully from these chapter 11 cases. Even though \$500,000 is small, the Debtors require such funds to ensure the uninterrupted supply of goods and/or services, such as marketing and listing services; erosion control; and management, operations, and employees for various golf clubs owned by the Debtors. Therefore, the Debtors seek authority to pay, in the exercise of their business judgment and discretion, and based upon the liquidity available to the Debtors at the time such determination is made, up to the entire amount of the Prepetition Claims estimated in the aggregate to be approximately \$500,000.

Proposed Payment Procedures

20. To implement the terms of the authority requested herein, the Debtors propose the following procedures (the "Payment Procedures"):

- (i) Authority to Pay Lien Claims: The Debtors shall have the authority, after consultation with the BOA as agent for the Lenders, to pay Lien Claims when they believe imposition of a Lien would unduly disrupt their business; provided, however, that, with respect to each Lien Claim: (i) the Debtors shall not pay a Lien Claim unless the Lien Claimant has perfected or, in the Debtors' judgment, is presently capable of perfecting or will be capable of perfecting in the future a lien or liens with respect to the claim; (ii) the payment of the Lien Claim shall be made with a full reservation of rights regarding the extent, validity, perfection or possible avoidance of any liens; (iii) the Lien Claim shall be paid by check or wire transfer of funds; and (iv) the Lien Claimant agrees that upon payment of its Lien Claim it will (a) promptly release any filed liens and properly record such release(s), or (b) for liens that have not yet been filed, properly record documentation in accordance with applicable law reflecting full payment and satisfaction of the applicable Lien Claim. In any event, upon payment to a Lien Claimant on account of a Lien Claim, such Lien Claim and the underlying lien shall be forever released, extinguished, and expunged, regardless of whether the Lien Claimant records the release of such lien or Lien Claim or takes any other action regarding such lien or Lien Claim.
- (ii) Authority to Pay 503(b)(9) Claims, Reclamation Claims, and Prepetition Claims: When feasible and appropriate in the Debtors' business judgment, the Debtors are authorized to satisfy a 503(b)(9) Claim, Reclamation

Claim, or Prepetition Claim from available funds on the following conditions: (i) the payment of such claim shall be paid by check or by wire transfer of funds and (ii) the payment of such claim shall be made with a full reservation of rights regarding the extent or validity of such claim. In any event, upon payment to a Claimant on account of a 503(b)(9) Claim, Reclamation Claim, or Prepetition Claim, such claim shall be forever released, extinguished, and expunged, regardless of whether the Claimant takes any other action regarding such claim.

- (iii) Agreed Trade Terms: The Debtors may condition payment of a Claim on the agreement of the Claimant to continue extending credit and supplying materials, equipment, goods and/or services to the Debtors and, such credit must generally be provided on ordinary and acceptable terms and conditions that are at least as favorable or better than those provided to the Debtors one hundred twenty (120) days prior to the Commencement Date (“Customary Trade Terms”). The Debtors also reserve the right to negotiate new trade terms with any Claimant as a condition to payment of any Claim. The Debtors shall have the right, on a case-by-case basis, to request written acknowledgement from a Claimant of the trade terms to which the parties have agreed; provided, however, that the Debtors shall not be required to obtain such written acknowledgement, and the failure to procure such written acknowledgement shall not reflect the absence of Claimants’ agreement to provide Customary Trade Terms.
- (iv) Breach of Agreed Trade Terms: To the extent a Claimant refuses to comply with the agreed trade terms, (i) any payment on a Claim received by such Claimant shall be deemed to be an unauthorized voidable postpetition transfer under section 549 of the Bankruptcy Code and, (ii) upon recovery by the Debtors, any such Claim shall be reinstated as if the payment had not been made, less the Debtors’ reasonable costs in recovering such amounts.
- (v) Order Transmittal: The Debtors shall transmit a copy of the Order to each Claimant receiving any payment permitted hereunder.
- (vi) Order Acceptance: A Claimant’s acceptance of payment for a Claim is deemed acceptance of the terms of the Order.
- (vii) Payment Summaries: The Debtors shall maintain a summary list of all payments to Claimants, and the Debtors shall provide updated copies of such list on a monthly basis to the Office of the United States Trustee for the Western District of Texas, counsel to BOA as agent for the Lenders prepetition senior secured lenders, and any statutory committee appointed in these cases.

21. While the Debtors seek authority to pay the Claims as set forth herein, the Debtors do not propose to pay all amounts outstanding immediately. Instead, the Debtors will determine, in the exercise of their business judgment and discretion, and based upon the liquidity available to the Debtors at the time such determination is made, which and what amount of the Claims will be paid and the schedule for any such payments. The Debtors submit that payment of the Claims will not negatively impact their cash flows because payment of these vendors and completion of the projects they are working on will generate additional revenues from which the Debtors and their creditors will benefit.

22. The Debtors request to be authority, in their discretion, to obtain written verification of trade terms to be supplied by the Claimants before issuing payment hereunder.

23. Moreover, the Debtors' request that the Order shall not, however, be construed to limit, or in any way affect, the Debtors' ability to contest any invoice of a Claimant on any grounds.

24. Finally, the Debtors also request authority for the banks maintaining the Debtors' accounts to honor any checks, drafts or wire transfers dated prior to, on, or after the Commencement Date, upon presentation or receipt thereof in respect of the Claims, and that such banks be authorized to rely upon the representation of the Debtors as to which of such checks, drafts or wire transfers are in payment of the Claims.

Basis for Relief

25. Any failure or delay in the delivery of goods or services needed for a particular project due to the Debtors' non-payment of Claims would: (i) jeopardize the Debtors' subcontractors' willingness to continue to perform under their contracts with the Debtors, (ii) interfere with the Debtors' ability to complete their development projects and earn revenues

therefrom, (iii) interfere with the Debtors' ability to collect the receivables owed to their estates, (iv) cause the Debtors to default on contracts under which the delivery of the goods and performance of services are a necessary precondition to the Debtors' ability to perform, (v) subject the Debtors to various contractual liens and other damage claims, (vi) undermine the Debtors' ability to obtain contracts for new projects, and (vii) cause the third parties to renegotiate and/or terminate the favorable terms the Debtors now enjoy. Moreover, increased costs to the estates and decreased profitability of the Debtors' businesses are likely to occur if the Debtors are required to locate and contract with new subcontractors or vendors, because of an inability to obtain necessary goods and/or services from the Claimants.

Prepetition Liens Claims

26. In addition to the business concerns necessitating the payment of the Claims, approximately 90% of the Claimants are Lien Claimants with mechanics' and materialmen's and/or possessory lien rights for goods and services provided, and/or possessory liens for goods and materials in the Debtors' possession on the Commencement Date. Consequently, a large percentage of the Claimants are actually secured creditors who have, or may have, lien rights against the Debtors' property. The Debtors estimate that, as of the Commencement Date, they owed a total of approximately \$9,402,835 to Lien Claimants holding such statutory lien rights.

27. Of this total amount, \$3,119,216 is attributable to amounts owed to Lien Claimants associated with two apartment complexes being developed by two non-Debtor affiliated entities, Crescent Crosstown Multifamily, LLC ("Crosstown") and Crescent Bartram Park I, LCC ("Bartram").⁵ Crescent Multifamily Construction, LLC ("CMC"), a Debtor, is the

⁵ Crosstown and Bartram are wholly-owned subsidiaries of Crescent Florida Developer, LLC, a non-Debtor and a wholly-owned subsidiary of Crescent Resources.

construction contractor on both of these development projects, and in connection therewith, CMC has entered into agreements with subcontractors (the “CMC Subcontractors”) for the construction of the properties. The CMC Subcontractors invoice CMC directly, and on a monthly basis. CMC in turn invoices Crosstown and Bartram for the services provided by the CMC Subcontractors and other costs incurred by CMC. Crosstown and Bartram then remit funds to CMC, which it uses to pay its obligations under the invoices of the CMC Subcontractors. The CMC Subcontractors have mechanics’ and materialmen’s and/or possessory lien rights for goods and services provided, and/or possessory liens for such goods and materials. Accordingly, the CMC Subcontractors could interfere with CMC’s ability to perform under its contracts with Bartram and Crosstown and could place mechanics’ and materialmen’s and/or possessory liens on property indirectly owned by Crescent Resources.

28. Any failure to pay a Lien Claimant with lien rights may result in such creditor’s valid postpetition assertion of such rights, irrespective of the initiation of these chapter 11 cases pursuant to section 362(b)(3) of the Bankruptcy Code, which provides that the act of perfecting a lien is expressly excluded from the automatic stay if the creditor is otherwise permitted to proceed with such perfection under section 546(b) of the Bankruptcy Code. 11 U.S.C. § 362. Section 546(b) of the Bankruptcy Code expressly excepts from the trustee’s lien avoidance powers “any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection.” 11 U.S.C. § 546(b). Consequently, if, as of the Commencement Date, the holders of statutory lien rights are able to perfect their interests under applicable non-bankruptcy law, then they may proceed to perfect their interests against the Debtors notwithstanding the intervention of the bankruptcy cases. Accordingly, irrespective of the automatic stay, approximately 90% of

the Claimants may be entitled to perfect and assert mechanics' and materialmen's and/or possessory liens against either the Debtors' property or the Debtors' clients' property if such Lien Claims remain unpaid. Such a result would severely disrupt the Debtors' businesses and preclude them from procuring future business.

29. Moreover, by paying the Lien Claims now, the Debtors will eliminate the fees and expenses the Lien Claimants and the Debtors would otherwise incur in filing and/or removing liens, and in prosecuting and defending motions to lift the automatic stay filed by those Lien Claimants which believe they have valid lien rights under applicable law. Accordingly, the Debtors request authority to pay any Lien Claim that the Debtors reasonably believe is secured by statutory or other lien rights.

30. The Debtors do not propose to pay a Lien Claimant holding a lien right unless such Lien Claimant has perfected or, in the Debtors' judgment, is presently or prospectively capable of perfecting, one or more liens in respect of such claim. Any payment by the Debtors to a Lien Claimant with alleged lien rights will be made with a full reservation of the Debtors' rights regarding the extent, validity, perfection, or possible avoidance of any such lien.

503(b)(9) Claims

31. The 503(b)(9) Claims will be entitled to priority status as administrative expenses and likely payment in full pursuant to section 503(b)(9) of the Bankruptcy Code because such claims arise from the delivery of goods to the Debtors, in the ordinary course of business, within the 20-day period preceding the Commencement Date. Section 503(b)(9) provides that:

After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

.....

(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under [title 11] in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

11 U.S.C. § 503(b)(9). The Debtors submit that many of the 503(b)(9) Claims arise from the delivery of goods to the Debtors in the ordinary course of business within the 20-day period preceding the Commencement Date. As such, these 503(b)(9) Claims would likely be entitled to administrative expense status and to payment in full ahead of general unsecured creditors. The Debtors estimate such 503(b)(9) Claims aggregate approximately \$242,032. Therefore, the Debtors submit that they should be permitted to pay the prepetition claims of all 503(b)(9) Claimants who hold claims under section 503(b)(9) of the Bankruptcy Code.

Reclamation Rights

32. The Reclamation Claimants hold claims based on reclamation rights for goods and materials delivered to the Debtors within the forty-five (45) day period preceding the Commencement Date. Consequently, any efforts by the Reclamation Claimants to exercise their rights to reclaim goods delivered to the Debtors within such prepetition period will disrupt the Debtors' ability to serve their customers. As such, the Debtors submit that they should be permitted to pay the prepetition claims of the Reclamation Claimants who hold reclamation rights under section 546(c) of the Bankruptcy Code. The Debtors estimate such reclamation rights aggregated approximately \$768,538 for the forty-five (45) day period prior to the Commencement Date.

33. In addition, of the \$768,538, approximately \$155,586 is attributable to goods provided by Reclamation Claimants to CMC on account of the Bartram and Crosstown development projects. As noted above, Crosstown and Bartram remit funds to CMC to pay its

obligations to these Reclamation Claimants. Failure to pay these Reclamation Claimants could result in a default by CMC under its contracts with Bartram and Crosstown.

Other Prepetition Claims

34. Certain of the Prepetition Claimants provide the Debtors with goods and services that are essential and critical to the Debtors' reorganization, including but not limited to, marketing and listing services; erosion control; and management, operations, and employees for various golf clubs owned by the Debtors. The Debtors estimate that, as of the Commencement Date, they owe a total of approximately \$500,000 outstanding to Prepetition Claimants on account of these types of goods and/or services.

35. In addition, pursuant to certain management agreements, Crescent Resources serves as the property manager for several properties owned by non-Debtor third parties. In connection with performing its obligations under these management agreements, Crescent Resources directly enters into various contracts with vendors, under which these vendors provide services directly to the properties being managed by Crescent Resources. However, Crescent Resources is advanced and/or reimbursed by the respective non-Debtor third party owners for the expenses it incurs on account of these contracts. Consequently, the funds used to pay the obligations owed these vendors are ultimately paid by non-Debtors. If Crescent Resources does not timely perform its obligations under the agreements with the vendors, Crescent Resources could potentially breach the terms of its management agreements. The Debtors estimate that, as of the Commencement Date, they owe a total of approximately \$19,333 outstanding to Prepetition Claimants under such agreements. Failure to pay these Prepetition Claims could result in a disruption of the Debtors' on-going development projects, continued operations, and marketing efforts, severely hampering their reorganization efforts.

**Ample Support Exists to
Authorize the Debtors to Pay the Claims**

36. The Debtors seek authorization pursuant to sections 105(a), 363(b), 503(b)(1), and 1107(a) of the Bankruptcy Code to pay the Claimants and to satisfy their undisputed prepetition obligations in respect thereof as necessary. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor in possession to continue to operate its businesses. 11 U.S.C. §§ 1107(a), 1108.

37. Under section 503(b)(1) of the Bankruptcy Code, a debtor may incur, and the court, after notice and a hearing, shall allow as administrative expenses, among other things, “the actual, necessary costs and expenses of preserving the estate.” *Id.* § 503(b)(1).

38. In addition, under section 363(b) of the Bankruptcy Code, a debtor may, in the exercise of its sound business judgment and after notice and a hearing, use property of the estate outside of the ordinary course of business. *Id.* § 363(b). Courts have relied on section 363(b) to authorize debtors in possession to pay prepetition claims where, as here, the estate will obtain value and avoid harm for the benefit of creditors. *See, e.g., In re Ionosphere, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989); *see also In re Tropical Sportswear Int’l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (“Bankruptcy courts recognize that section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks.”). The Debtors believe the use of estate funds to pay the Claimants is permitted by sections 363(b) and 503(b)(1) as necessary costs of preserving the estates. These payments will prevent interruption in the supplies and services necessary to continuing the Debtors’ businesses, which in turn preserves the value of the Debtors’ estate.

39. Furthermore, to supplement the explicit powers described above, section 105(a) of the Bankruptcy Code authorizes “[t]he court [to] issue any order, process, or judgment

that is necessary or appropriate to carry out the provisions of this title.” *Id.* § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *Ionosphere Clubs*, 98 B.R. at 175. “Under [Section] 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177), *accord*, *In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) (“to invoke the necessity of payment doctrine, a debtor must show that payment of the pre-petition claims is ‘critical to the debtor’s reorganization’”). *See also In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process.”).

40. In a long line of well-established cases, federal courts have consistently permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport, C & S, W.R. Co.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent stoppage of crucial business relations); *In re CoServ, LLC*, 273 B.R. 487, 500 (Bankr. N.D. Tex. 2002) (permitting chapter 11 debtors to pay the claim of a prepetition general unsecured creditor in full because the “[d]ebtors very likely must deal with [such creditor] or risk harm to their estates or their going concern value”); *In re Lehigh Co. & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that “if payment of a claim which arose prior to reorganization is essential to the continued operation of the . . . [business] during reorganization, payment may be authorized even if it is made out of [the] corpus”); *In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power

to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtor's continued operation).

41. Courts also find authority to grant payment of certain prepetition claims under sections 1107(a). Under section 1107(a) some courts have found that the debtor's fiduciary duties to protect and preserve the estate make application of the doctrine of necessity a "necessary or appropriate" action under section 105(a) of the Bankruptcy Code. *See CoServ*, 232 B.R. at 497 ("There are occasions when this duty can only be fulfilled by the preplan satisfaction of a prepetition claim.").

42. In addition, where debtors have shown that the payment of prepetition Lien Claims is critical to the success of a debtor's chapter 11 case, courts have authorized the payment of prepetition lien claims. *See, e.g., In re Philip Servs. Corp.*, Ch. 11 Case No. 03-37718 (WWS) (Bankr. S.D. Tex. August 11, 2003) (authorizing to pay prepetition claimants with lien claims); *see also In re Kimball Hill, Inc.*, Ch. 11 Case No. 08-10095 (SPS) (Bankr. N.D. Ill. April 25, 2008); *In re Dura Auto. Sys., Inc.*, No. 06-911202 (KJC) (Bankr. D. Del. November 21, 2006); *In re Dana Corp.*, No. 06-10354 (BRL) (Bankr. S.D.N.Y. March 3, 2006). Similarly, this Court and other courts have granted similar relief in other large chapter 11 cases where the payment of certain claims was essential to the debtors' continued operation. *See e.g., In re Spectrum Jungle Labs Corp.*, Ch. 11 Case No. 09-50455 (RBK) (Bankr. W.D. Tex. February 6, 2009); *In re Am. Plumbing & Mech. Inc.*, Ch. 11 Case No. 03-55789 (LMC) (Bankr. W.D. Tex. October 22, 2003); *In re Pilgrim's Pride Corp.*, Ch. 11 Case No. 08-45664 (DML) (Bankr. N.D. Tex. December 3, 2008); *In re SemCrude*, Ch. 11 Case No. 08-11525 (BLS) (Bankr. D. Del. July 23, 2008); *In re Syntax-Brilliant Corp.*, Ch. 11 Case No. 08-11407 (BLS) (Bankr. D. Del. July 9, 2008); *In re JHT Holdings, Inc.*, Ch. 11 Case No. 08-11267 (BLS) (Bankr. D. Del. June 25,

2008); *In re American Home Mortgage Holdings, Inc.*, Ch. 11 Case No. 07-11047 (CSS) (Bankr. D. Del. Aug. 7, 2007); *In re Werner Holding Co. (DE) Inc.*, Ch. 11 Case No. 06-10578 (KJC) (Bankr. D. Del. June 13, 2006).

43. The relief requested herein is reasonable and necessary under the circumstances and is narrowly tailored to facilitate the Debtors' chapter 11 reorganization process. The Claimants at issue could cease doing business with the Debtors, or become unable to do business with the Debtors, unless they receive some payment of prepetition debt. Such an outcome would devastate the Debtors' businesses and cost the estates and their creditors far more than the costs associated with paying some portion of the Debtors' prepetition obligations to such vendors. Thus, the Debtors' other creditors will be no worse off, and actually will fare far better, if the Debtors are empowered to make such payments to achieve a smooth transition into bankruptcy with minimal disruption to their operations. Furthermore, without a seamless continuation of the services provided by the Claimants after the Commencement Date, the Debtors will experience significant decreases in revenue and a notable degradation of service quality.

44. Moreover, the uninterrupted provision of services by the Claimants, on customary terms are imperative to the ongoing operations and viability of the Debtors. The Debtors only seek to pay the Claims where nonpayment of such claims would lead to the interruption of the delivery of services or would seriously disrupt the Debtors' operations. The Debtors submit that the sums involved are insignificant in relation to the potential disruption that would occur if relationships with these suppliers were to be terminated.

45. Based on the foregoing, the Debtors submit the relief requested is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects.

The Requested Relief Satisfies Bankruptcy Rule 6003

46. The Debtors submit the facts cited herein, filed contemporaneously herewith, illustrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates. Based on the foregoing, Bankruptcy Rule 6003 has been satisfied.

Request for Waiver of Stay

47. The Debtors request a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, “[an] order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of ten (10) days after entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 6004(h). As set forth above, proposed payment on account of the Claims is essential to prevent irreparable damage to the Debtors’ operations. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the ten (10) day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

Notice

48. No trustee, examiner or statutory creditors’ committee has been appointed in these chapter 11 cases. Notice of this Motion has been provided to: (i) the United States Trustee for the Western District of Texas; (ii) the Debtors’ thirty (30) largest creditors (on a consolidated basis); (iii) counsel to BOA, as agent to the Debtors’ Lenders; and (iv) counsel to the Debtors’ proposed postpetition lenders (collectively, the “Notice Parties”). The Debtors submit that no other or further notice need be provided.

WHEREFORE, the Debtors respectfully request entry of the proposed order (the “Order”) attached hereto as Exhibit B granting the relief requested herein and such other or further relief as is just.

Dated: June 10, 2009
Austin, Texas

/s/ Eric J. Taube
Eric J. Taube (19679350)
HOHMANN, TAUBE & SUMMERS, L.L.P
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-and-

Martin A. Sosland (18855645)
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-and-

Marcia L. Goldstein (*pro hac vice* pending)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

PROPOSED ATTORNEYS FOR
DEBTORS AND DEBTORS IN
POSSESSION

Exhibit A

No.	Name of Debtor:	Taxpayer Id. No.
1.	Crescent 210 Barton Springs, LLC	20-4614379
2.	Cornerstone Plaza, LLC	No EIN applicable
3.	Crescent Holdings, LLC	20-5543626
4.	Crescent Resources, LLC	57-0443582
5.	1780, LLC	20-4402277
6.	223 Developers, LLC	20-5924927
7.	Ballantyne Properties, LLC	56-1921507
8.	Bartram Crescent Development, LLC	20-8954449
9.	Black Forest on Lake James, LLC	20-0151855
10.	Bridgewater Lakeland Developers, LLC	20-2250831
11.	Brooksville East Developers, LLC	No EIN applicable
12.	Camp Lake James, LLC	20-4402407
13.	Carolina Centers, LLC (N.C. entity)	56-1853470
14.	Carolina Centers, LLC (Del. entity)	56-1124729
15.	Chaparral Pines Investors, L.L.C.	86-0781077
16.	Chaparral Pines Management, L.L.C.	86-1026788
17.	Chapel Cove at Glengate, LLC	26-0837243
18.	Citall Development, LLC	20-4153633
19.	Clean Water of NC, LLC	57-0443582
20.	CLT Development, LLC	56-1393851
21.	Club Capital, LLC	56-2107989
22.	Club Enterprises, LLC	56-1943831
23.	Club Villas Developers, LLC	26-2905087
24.	Colbert Lane Commercial, LLC	72-1552983
25.	Crescent Communities N.C., LLC	56-2030306
26.	Crescent Communities Realty, LLC	02-0532410
27.	Crescent Communities SC, LLC	56-2030305
28.	Crescent Lakeway, LLC	20-4613926
29.	Crescent Lakeway Management, LLC	20-4614072
30.	Crescent Land & Timber, LLC	56-1799013
31.	Crescent Multifamily Construction, LLC	26-1242507
32.	Crescent Potomac Greens, LLC	No EIN applicable
33.	Crescent Potomac Plaza, LLC	No EIN applicable
34.	Crescent Potomac Properties, LLC	No EIN applicable
35.	Crescent Potomac Yard Development, LLC	No EIN applicable
36.	Crescent Potomac Yard, LLC	No EIN applicable
37.	Crescent Realty Advisors, LLC	No EIN applicable
38.	Crescent Realty, LLC	26-0034004
39.	Crescent River, LLC	56-2226365
40.	Crescent Rough Hollow, LLC	20-4614882
41.	Crescent Seminole, LLC	58-2558302
42.	Crescent Southeast Club, LLC	56-2255725
43.	Crescent Twin Creeks, LLC	56-2230190

No.	Name of Debtor:	Taxpayer Id. No.
44.	Crescent Yacht Club, LLC	30-0100942
45.	Crescent/Arizona, LLC	57-0443582
46.	Crescent/Florida, LLC	No EIN applicable
47.	Crescent/Georgia, LLC	No EIN applicable
48.	Crescent/RGI Capital, LLC	83-0356151
49.	Falls Cove Development, LLC	20-8132241
50.	FP Real Estate One, L.L.C.	86-0846646
51.	Grand Haven Developers, LLC	59-3641286
52.	Grand Woods Developers, LLC	20-4845005
53.	Green Fields Investments, LLC	57-0443582
54.	Gulf Shores Waterway Development, LLC	20-5566844
55.	Hammock Bay Crescent, LLC	No EIN applicable
56.	Hampton Lakes, LLC	56-2153538
57.	Hampton Ridge Developers, LLC	59-3692235
58.	Hawk's Haven Developers, LLC	20-1091192
59.	Hawk's Haven Golf Course Community Developers, LLC	20-1203562
60.	Hawk's Haven Joint Development, LLC	20-2040337
61.	Hawk's Haven Sponsor, LLC	20-2040376
62.	Headwaters Development Limited Partnership	80-0059149
63.	Hidden Lake Crescent, LLC	20-3694587
64.	Joint Facilities Management, LLC	20-4347638
65.	Lake George Developers, LLC	20-4844965
66.	LandMar Group, LLC	56-2153538
67.	LandMar Management, LLC	56-2153540
68.	Lighthouse Harbor Developers, LLC	20-5741128
69.	May River Forest, LLC	57-1159262
70.	May River Golf Club, LLC	04-3750952
71.	McNinch-Hill Investments, LLC	56-2183378
72.	Milford Estates, LLC	57-0443582
73.	New Riverside, LLC	20-2071349
74.	Nine Corporate Centre Holding Company, LLC	No EIN applicable
75.	North Bank Developers, LLC	20-2687731
76.	North Hampton, LLC	56-2153544
77.	North River, LLC	20-3017701
78.	Old Wildlife Club, LLC	20-4402072
79.	Oldfield, LLC	56-2211481
80.	Osprey Development, LLC	59-3759515
81.	Palmetto Bluff Club, LLC	20-1154599
82.	Palmetto Bluff Development, LLC	56-2211383
83.	Palmetto Bluff Investments, LLC	No EIN applicable
84.	Palmetto Bluff Lodge, LLC	13-4250969
85.	Palmetto Bluff Real Estate Company, LLC	22-3864124

No.	Name of Debtor:	Taxpayer Id. No.
86.	Palmetto Bluff Uplands, LLC	No EIN applicable
87.	Panama City Development, LLC	20-2572207
88.	Park/Marsh, LLC	26-2813331
89.	Parkside Development, LLC	20-2854819
90.	Piedmont Row Development, LLC	20-2960566
91.	Portland Group, LLC	02-1251461
92.	Rim Golf Investors, L.L.C.	86-0894027
93.	River Paradise, LLC	20-2890831
94.	Roberts Road, LLC	20-2568601
95.	Sailview Properties, LLC	56-2053836
96.	Seddon Place Development, LLC	20-4771566
97.	Springfield Crescent, LLC	20-2966970
98.	StoneWater Bay Properties, LLC	56-2183379
99.	Stratford on Howard Development, LLC	20-4147491
100.	Sugarloaf Country Club, LLC	58-2221688
101.	Sugarloaf Properties, LLC	58-2202808
102.	Sugarloaf Realty, LLC	58-2208817
103.	The Farms, LLC	20-0354921
104.	The Oldfield Realty Company, LLC	56-2211481
105.	The Parks at Meadowview, LLC	20-3855366
106.	The Parks of Berkeley, LLC	20-2641670
107.	The Point on Norman, LLC	56-2053958
108.	The Ranch at the Rim, LLC	26-2813378
109.	The Reserve, LLC	20-0742753
110.	The Retreat on Haw River, LLC	26-0674124
111.	The River Club Realty, LLC	02-0595750
112.	The River Country Club, LLC	02-0595742
113.	The Sanctuary at Lake Wylie, LLC	57-0443582
114.	Trout Creek Developers, LLC	82-0560536
115.	Tussahaw Development, LLC	20-3330184
116.	Twin Creeks Holdings, Ltd.	74-2967903
117.	Twin Creeks Management, LLC	56-2230188
118.	Twin Creeks Operating Co., L.P.	20-1262789
119.	Twin Creeks Property, Ltd.	04-3592531
120.	Two Lake Pony Farm, LLC	56-2144680
121.	Winding River, LLC	20-2040280

EXHIBIT B
Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

-----	X	
In re	:	Chapter 11
	:	
CRESCENT RESOURCES, LLC, et. al.,	:	Case No. 09-11507 (CAG)
	:	
Debtors.	:	Joint Administration
	:	Requested
	:	
-----	X	

**ORDER ON THE MOTION OF THE DEBTORS
PURSUANT TO SECTIONS 105(a), 363(b), 503(b)(1), AND 1107(a) OF
THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6003 and 6004 FOR
AUTHORIZATION TO PAY, IN THE ORDINARY COURSE OF BUSINESS, (I)
CERTAIN PREPETITION LIEN CLAIMS, (II) CERTAIN ADMINISTRATIVE
EXPENSE CLAIMS, AND (III) CERTAIN OTHER PREPETITION CLAIMS**

Upon the motion (the "Motion") of Crescent Resources, LLC ("Crescent Resources"), and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors"), for an order pursuant to sections 105(a),

363(b), 503(b)(1), and 1107(a) of the Bankruptcy Code,¹ authorizing the Debtors' payment, in the ordinary course, and in the Debtors' discretion and business judgment, of certain Lien Claims, 503(b)(9) Claims, Reclamation Claims, and Prepetition Claims, in the same manner as in effect prior to the commencement of the Debtors' chapter 11 cases, as more fully set forth in the Motion; and upon consideration of the supporting Declaration of Kevin H. Lambert in Support of the Debtors' Chapter 11 Petitions and First Day Motions; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted; and it is further

ORDERED that, pursuant to sections 105(a), 363(b), 503(b)(1), and 1107(a) of the Bankruptcy Code, the Debtors' are authorized, but not directed, to pay prepetition amounts owed to the Claimants, in the Debtors' discretion and in accordance with the terms of such

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

obligations; provided, however, that the aggregate of such payments pursuant to this Order shall not exceed \$10,500,000; and it is further

ORDERED that the Debtors are authorized to make payments, in their discretion, to Claimants, pursuant to the following Payment Procedures:

- (i) Authority to Pay Lien Claims: The Debtors shall have the authority, after consultation with the BOA as agent for the Lenders, to pay Lien Claims when they believe imposition of a Lien would unduly disrupt their business, provided, however, that, with respect to each Lien Claim: (i) the Debtors shall not pay a Lien Claim unless the Lien Claimant has perfected or, in the Debtors' judgment, is presently capable of perfecting or will be capable of perfecting in the future a lien or liens with respect to the claim; (ii) the payment of the Lien Claim shall be made with a full reservation of rights regarding the extent, validity, perfection or possible avoidance of any liens; (iii) the Lien Claim shall be paid by check or wire transfer of funds; and (iv) the Lien Claimant agrees that upon payment of its Lien Claim it will (a) promptly release any filed liens and properly record such release(s), or (b) for liens that have not yet been filed, properly record documentation in accordance with applicable law reflecting full payment and satisfaction of the applicable Lien Claim. In any event, upon payment to a Lien Claimant on account of a Lien Claim, such Lien Claim and the underlying lien shall be forever released, extinguished, and expunged, regardless of whether the Lien Claimant records the release of such lien or Lien Claim or takes any other action regarding such lien or Lien Claim.
- (ii) Authority to Pay 503(b)(9) Claims, Reclamation Claims, and Prepetition Claims: When feasible and appropriate in the Debtors' business judgment, the Debtors are authorized to satisfy a 503(b)(9) Claim, Reclamation Claim, or Prepetition Claim from available funds on the following conditions: (i) the payment of such claim shall be paid by check or by wire transfer of funds and (ii) the payment of such claim shall be made with a full reservation of rights regarding the extent or validity of such claim. In any event, upon payment to a Claimant on account of a 503(b)(9) Claim, Reclamation Claim, or Prepetition Claim, such claim shall be forever released, extinguished, and expunged, regardless of whether the Claimant takes any other action regarding such claim.
- (iii) Agreed Trade Terms: The Debtors may condition payment of a Claim on the agreement of the Claimant to continue extending credit and supplying goods and/or services to the Debtors on Customary Trade Terms. The Debtors also reserve the right to negotiate new trade terms with any Claimant as a condition to payment of any Claim. The Debtors shall have the right, on a case-by-case basis, to request written acknowledgement from a Claimant of the trade terms to which the parties have agreed;

provided, however, that the Debtors shall not be required to obtain such written acknowledgement, and the failure to procure such written acknowledgement shall not reflect the absence of Claimants' agreement to provide Customary Trade Terms.

- (iv) Breach of Agreed Trade Terms: To the extent a Claimant refuses to comply with the agreed trade terms, (i) any payment on a Claim received by such Claimant shall be deemed to be an unauthorized voidable postpetition transfer under section 549 of the Bankruptcy Code and, (ii) upon recovery by the Debtors, any such Claim shall be reinstated as if the payment had not been made, less the Debtors' reasonable costs in recovering such amounts.
- (v) Order Transmittal: The Debtors shall transmit a copy of this Order to each Claimant receiving any payment permitted hereunder.
- (vi) Order Acceptance: A Claimant's acceptance of payment for a Claim is deemed acceptance of the terms of this Order.
- (vii) Payment Summaries: The Debtors shall maintain a summary list of all payments to Claimants, and the Debtors shall provide updated copies of such list on a monthly basis to the Office of the United States Trustee for the Western District of Texas, counsel to the BOA as agent for the Lenders, and any statutory committee appointed in these cases.

and it is further

ORDERED that the Debtors are authorized to obtain written verification of trade terms to be supplied by the Claimants before issuing payment hereunder; and it is further

ORDERED that, nothing in this Order nor any action taken by the Debtors in furtherance of the implementation thereof shall be deemed an approval of the assumption or rejection of any executory contract pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED that the authorization granted hereby to pay the Claims shall not create any obligation on the part of the Debtors or their officers, directors, attorneys, or agents to pay the Claims, none of the foregoing persons shall have any liability on account of any decision by the Debtors not to pay a Claim, and nothing contained in this Order shall be deemed to

increase, reclassify, elevate to an administrative expense status, or otherwise affect the Claims to the extent they are not paid; and it is further

ORDERED that no claimant who receives payment on account of a Claim is permitted to file or perfect a lien, reclamation claim, or a claim under section 503(b)(9) of the Bankruptcy Code on account of such Claim, and any such claimant shall take at the claimant's expense all necessary action to remove any existing lien or withdraw such reclamation claim or 503(b)(9) claim relating to such Claim, even if the lien, reclamation claim, or 503(b)(9) claim is against property of a non-Debtor; and it is further

ORDERED that all applicable banks and other financial institutions are hereby authorized and required, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under this Order whether presented prior to or after the Commencement Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order; and it is further

ORDERED that, notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person; and it is further

ORDERED that nothing herein shall change the nature or priority of the underlying Claims; and it is further

ORDERED that nothing in this Order shall be deemed either a grant of administrative priority expense status to, or authority to pay, any amounts that are disputed by the Debtors; and it is further

ORDERED that nothing contained in this Order shall constitute a waiver of the Debtors' right to seek damages or other appropriate remedies against any breaching Claimant; and it is further

ORDERED that nothing contained in this Order shall be construed as a waiver by the Debtors of their rights to contest any claim or invoice of a holder of a Claim under applicable law; and it is further

ORDERED that nothing in this Order shall prohibit the Debtors from seeking Court authority to increase the prepetition amounts authorized to be paid hereunder; and it is further

ORDERED that the requirements of Bankruptcy Rule 6003 is satisfied by the contents of the Motion and notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion; and it is further

ORDERED that this Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

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