

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

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

**DEBTORS' MOTION PURSUANT TO SECTIONS 105(a), 362(d), 363(b), AND 503(b)(1)
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6003 AND 6004
FOR AUTHORIZATION TO HONOR PREPETITION
OBLIGATIONS TO CUSTOMERS AND OTHERWISE CONTINUE
CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS**

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

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.

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").

Relief Requested

13. Prior to the Commencement Date, in the ordinary course of business and as is customary in the real estate development business, the Debtors instituted and engaged in certain activities to develop and sustain a positive reputation and relationship with their customers. To that end, the Debtors implemented various customer programs and policies (collectively, the "Customer Programs") designed to ensure customer satisfaction, drive sales, meet competitive pressures, develop and sustain customer relationships and loyalty, improve profitability, and generate goodwill for the Debtors and their products and services. The Debtors hereby request, pursuant to sections 105(a), 362(d), 363(b), and 503(b)(1) of the Bankruptcy Code, authorization to continue their Customer Programs in the ordinary course of business and to perform and honor, at the Debtors' sole discretion, their prepetition obligations thereunder.

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

The Customer Programs

14. The Customer Programs are integral to the Debtors' efforts to stabilize their businesses, restore vitality, and ultimately deliver the most value to all stakeholders in the Debtors' chapter 11 cases. The Debtors believe that they must promptly assure customers of their continued ability to satisfy prepetition and postpetition obligations under the Customer Programs to maintain their valuable customer base, and myriad other important benefits derived therefrom, following the commencement of these chapter 11 cases. The Debtors' Customer Programs are summarized below.

A. The Sales Deposit Program

15. Crescent Resources, Crescent Communities N.C., LLC, The Point on Norman, LLC, Falls Cove Development, LLC, Sugarloaf Properties, LLC, 1780, LLC, and Osprey Development, LLC develop various residential and commercial properties for sale. In connection with the development and sale of these properties, the Debtors' customers provide the Debtors with advance payments or deposits (the "Sales Deposit Program").⁴ These types of deposits are common in the real estate sales industry. These deposits are generally, depending upon the terms of the applicable agreement, (i) held in escrow, (ii) applied to construction costs, (iii) applied to general operating costs, or (iv) applied to the purchase prices of the properties being sold. Certain of these deposits are also subject to refund provisions found in the applicable agreements. As of the Commencement Date, the Debtors estimate that there is approximately

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 and (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 honor the application and refund of deposits in connection with the sale of various residential home lots.

\$109,510 outstanding deposits in connection with the Sales Deposit Program and seek authority to continue to apply and refund such deposits in accordance with the terms of the governing agreements.

B. Golf Club Membership Deposit Refund Programs

16. The River Country Club, LLC and May River Golf Club, LLC operate two private golf clubs located in Georgia and South Carolina (the “Golf Clubs”). Prior to the Commencement Date, The River Country Club, LLC, and May River Golf Club, LLC implemented a membership deposit refund program (as further described herein, the “Membership Deposit Refund Program”) designed to ensure customer satisfaction, drive membership sales, meet competitive pressures, develop and sustain relationships and loyalty, and generate goodwill for the Golf Clubs.

17. Each person or entity who desires to become a member of one of the Golf Clubs is required to pay a refundable membership deposit (the “Membership Deposit”),⁵ in addition to monthly dues and other fees associated with a Golf Club membership. Membership Deposits today range from \$35,000 to \$75,000.

18. Pursuant to the Golf Club’s membership agreement and plan, members who have paid their Membership Deposits are eligible to receive a full refund, without interest, if (a) the member remains a member of a Golf Club for thirty or more years and elects to resign their membership or (b) the member elects to resign from the Golf Club prior to thirty years of membership and the membership is resold in accordance with the following procedures.⁶ If a

⁵ Membership Deposits are either paid as a one-time payment or on an installment basis.

⁶ Following resignation, each resigned member is required to pay monthly dues until the earlier of (i) the last day of the twelfth month following the date in which the Gold Club received notice of the member’s resignation, (ii) the membership is resold, or (iii) the Golf Club determines to terminate such use.

member resigns prior to the expiration of the thirty-year period, the member is placed on a resignation waiting list (the “Waiting List”). Membership Deposits are then refunded for every four⁷ memberships sold by the Golf Club on a first-resigned basis, unless the resigning member is a resident of the Golf Club community selling their residence and arranges for the buyer of their residence to acquire the membership within ten (10) days after the closing of the residential property sale. Thus, a resigned member typically is only entitled to a Membership Deposit refund after a Golf Club has signed up four new members. Currently, 20 members are on the Waiting List. The Debtors estimate that there is approximately \$1,050,000 of outstanding deposits in connection with the Membership Deposit Refund Program and seek authority to continue to refund such deposits in accordance with the terms of the governing agreements.

C. The Commercial Deposit Program

19. Crescent Resources, as a landlord, leases various commercial properties. In connection with the lease of these properties, the Debtors’ tenants provide the Debtors with advance payments or deposits, including security deposits and advance rent deposits (the “Commercial Deposit Program”). These types of deposits are common in the landlord-tenant industry. Such deposits and advance rent payments are subject to refund provisions found in the applicable agreements. As of the Commencement Date, the Debtors estimate that there is approximately \$435,370 of outstanding deposits in connection with the Commercial Deposit Program, and seek authority to continue to apply and refund such deposits in accordance with the terms of the governing agreements.

⁷ This number is subject to change at the discretion of the Debtors.

D. The Timber Deposit Program

20. Crescent Resources develops various residential and commercial properties for sale. In connection with the development and sale of these properties, timber companies remit deposits (the “Timber Deposits”) to the Debtors to obtain the right to clear lumber off of the land being developed (the “Timber Deposits Program”). These types of deposits are common in the Debtors’ industry. Pursuant to the terms of the applicable agreements, the Timber Deposits are fully refundable and/or applied to obligations under the applicable agreement so long as the timber company complies with the other terms of the applicable agreement. As of the Commencement Date, the Debtors estimate that there is approximately \$46,500 outstanding deposits in connection with the Timber Deposits Program and seek authority to continue to apply and refund such deposits in accordance with the applicable agreements.

E. The Builder Deposit Program

21. Certain Debtors develop various residential communities (the “Residential Developers”).⁸ In connection with the development and sale of these properties, builders remit deposits (“Builder Deposits”) to various homeowner associations in connection with the right to build in these communities (the “Builder Deposit Program”). Home Builder Deposits are common in the real estate development industry. These Builder Deposits are paid to, and held by, the Residential Developers, but are paid for the benefit of non-Debtor homeowner associations affiliated with the Residential Developers’ developments. Pursuant to the terms of the applicable agreements, the Builder Deposits are fully refundable if the builder complies with the applicable building restrictions and guidelines. As of the Commencement Date, the Debtors estimate that

⁸ The Residential Developers referenced herein are Crescent Resources, Crescent Communities N.C., LLC, StoneWater Bay Properties, LLC, The Point on Norman, LLC, The Farms LLC, Falls Cove Development, LLC, Sugarloaf Properties, LLC, Crescent River, LLC, The Sanctuary at Lake Wylie, LLC, Chapel Cove at Glengate, LLC, Springfield Crescent, LLC, and Hidden Lake Crescent, LLC.

there is approximately \$953,903 outstanding deposits in connection with the Builder Deposit Program and seek authority to continue to apply and refund such deposits in accordance with the applicable agreements.

F. The Inn at Palmetto Bluff Deposit Program

22. Palmetto Bluff Lodge, LLC (the “Lodge”) owns and operates a resort property known as The Inn at Palmetto Bluff. In connection therewith, the Lodge’s customers remit deposits to the Lodge when making room and catering reservations (the “Palmetto Bluff Room Program”). These types of deposits are common in the hotel industry. Pursuant to the Lodge’s policies, in the event a customer cancels a reservation, such deposits are fully refundable or may be applied to future reservations, pursuant to the terms of the applicable agreement. As of the Commencement Date, the Debtors estimate that there is approximately \$802,006 outstanding deposits in connection with the Palmetto Buff Room Program and seek authority to continue to apply and refund such deposits in accordance with the Debtors’ policies.

G. The Palmetto Bluff Spa Gift Certificate Program

23. As noted above, the Lodge owns and operates a resort property known as The Inn at Palmetto Bluff. In connection therewith, certain of the Lodge’s customers purchase gift certificates for use at an on-site spa (the “Palmetto Spa Gift Certificate Program”). These types of gift certificates are common in the spa industry. As of the Commencement Date, the Debtors estimate that there is approximately \$122,587 outstanding deposits in connection with the Palmetto Buff Spa Gift Certificate Program and seek authority to continue apply such gift certificates in accordance with their terms.

H. The Palmetto Bluff House Rental Program

24. The Lodge also serves as a property manager for the rental of homes owned by third parties in the associated development (the “Home Rental Program”). Customers renting these homes provide the Debtors with deposits (the “Home Rental Deposits”). These types of deposits are common in the rental industry. These deposits are fully refundable up until fourteen (14) days before each customer’s arrival date. As of the Commencement Date, the Debtors estimate that there is approximately \$289,953 outstanding in Home Rental Deposits and seek authority to continue apply and refund such deposits in accordance with the Debtors’ policies.

25. The Lodge also collects the rental fees from the customers renting these homes. The Lodge retains a portion of these fees on account of the property management services it provides the third party owners and remits the remaining fees to the third party owners (the “Rental Fees”). These types of fees are customary in the property management industry. As of the Commencement Date, the Debtors estimate that there is approximately \$5,921 outstanding in connection with the Rental Fees and seek authority to continue remit such fees to the third party home owners in accordance with the terms of the governing agreements.

26. Also in connection with the rental of these homes, the third party owners provide the Lodge with deposits to be used by the Lodge for the maintenance of these homes (the “Maintenance Deposits”). These types of deposits are customary in the property management industry. Such deposits are also subject to refund provisions found in the applicable agreements. As of the Commencement Date, the Debtors estimate that there is approximately \$18,080 of outstanding Maintenance Deposits in connection with the Home Rental Program and seek authority to continue apply and refund such deposits in accordance with the terms of the governing agreements.

I. The Boat Slip Lease Program

27. Crescent Communities SC, LLC, 1780, LLC, and Old Wildlife Club, LLC develop boat slips for lease. In connection with the development and lease of these boat slips, the Debtors' customers provide the Debtors with deposits (the "Boat Slip Lease Deposit Program"). These types of deposits are common in the Debtors' industry. These deposits are utilized for purposes determined by Crescent Communities SC, LLC, 1780, LLC, and Old Wildlife Club, LLC, in their sole discretion and ultimately applied to the purchase prices of the boatslips being leased. Such deposits are also subject to refund provisions found in the applicable agreements. As of the Commencement Date, the Debtors estimate that there is approximately \$4,000 outstanding deposits in connection with the Boat Slip Lease Deposit Program and seek authority to continue to apply and refund such deposits in accordance with the terms of the governing agreements.

J. The YMCA Program

28. Falls Cove Development, LLC ("Falls Cove") developed a residential community located in North Carolina. As part of the development, Falls Cove was obligated to provide certain amenities in the development for the benefit of the residents; however, the construction of such amenities has not yet been completed. In lieu thereof, Falls Cove agreed to provide the residents with YMCA memberships (the "YMCA Memberships"). The residents either (i) apply and pay for their YMCA memberships and then submit requests for reimbursements to Falls Cove or (ii) apply for their YMCA memberships and then Falls Cove pays the YMCA directly (the "YMCA Program"). The Debtors estimate that they pay approximately \$15,783.60 per year on account of the YMCA Memberships. As of the

Commencement Date the Debtors estimate that there is approximately \$1,127 outstanding in connection with the YMCA Program, and seek authority to continue the YMCA Program.

**Ample Cause and Support Exists to Authorize
the Debtors to Continue Their Customer Programs**

29. The Debtors believe that the continuation of the Customer Programs constitutes “ordinary course of business” practices, and, therefore, does not require court approval. However, out of an abundance of caution, the Debtors seek authorization, but not direction, pursuant to sections 105(a), 362(a), 363(b), and 503(b)(1) of the Bankruptcy Code to continue, renew, replace, implement, modify, and/or terminate the Customer Programs as they deem appropriate, and to honor their undisputed prepetition obligations in respect thereof, in the ordinary course of business, without interruption, in accordance with prepetition practices.

30. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor in possession to continue to operate its business. 11 U.S.C. §§ 1107(a), 1108. Pursuant to 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). In addition, pursuant to 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). The Debtors believe the use of estate funds to continue the Customer Programs is a necessary cost of preserving the Debtors’ estates. Honoring the Customer Programs will enable the Debtors to retain, maintain, and create valuable relationships which, in turn, will help strengthen the Debtors’ businesses and prospects for a successful reorganization.

31. Furthermore, to supplement the explicit powers described above, section 105(a) of the Bankruptcy Code empowers the 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.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). “Under 11 U.S.C. § 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). The Debtors strongly believe that the honoring of prepetition obligations under the Customer Programs, and the continuation thereof, is imperative to the ongoing operations and viability of the Debtors.

32. The “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to continued operation of the debtor); *Ionosphere Clubs*, 98 B.R. at 176 (authorizing the payment of pre-petition claims while noting that “judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.”). The rationale for the “doctrine of necessity” is consistent with the paramount goal of chapter 11 – “facilitating the continued operation and rehabilitation of the debtor” *Ionosphere Clubs*, 98 B.R. at 176.

33. Moreover, the Court has the power to lift the automatic stay to allow the Debtors to honor their customers’ deposits pursuant to the terms of the respective contracts or customary practice. The automatic stay prevents a creditor from setting off a debt that arose prior

to the commencement date against any claim against the Debtor. 11 U.S.C. § 362(a)(7).

However, pursuant to section 362(d), the Court has the power to lift the automatic stay for cause shown. The Debtors believe sufficient cause exists for the Court to lift the stay to allow the Debtors honor their customers' deposits in accordance with the terms of the Debtors' various Customer Programs. Accordingly, pursuant to sections 105(a), 362(d), and 363(b) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

34. The prepetition obligations owed by the Debtors to their customers further qualify for postpetition payment because if the Debtors do not honor their obligations, the Debtors' goodwill and going concern value will be severely and irreparably harmed. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (noting that one example where the debtor-in-possession can only fulfill its fiduciary duty by preplan satisfaction of a prepetition claim are "prepetition warranty or refund claims of consumer customer which, if not honored, could so harm the debtor's good will as to destroy its going concern value"); *In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (holding that "such a failure to pay and its consequent loss of customer base would impair value of the business on either a going concern or liquidation basis").

35. The continuity, viability, and revitalization of the Debtors' businesses are dependent on the development and maintenance of the loyalty of their customers. Customers are the keystone to the Debtors' businesses and success. It is essential to the Debtors' businesses that the Debtors be permitted to continue the Customer Programs and honor the prepetition obligations relating to deposits thereunder. If the Debtors are unable to do so, their operations, and corresponding prospects for a successful reorganization, will be immediately and irreparably harmed.

36. Further, if the Debtors were not permitted to honor their customers' deposits pursuant to the terms of the respective contracts or customary practice, it would have a deleterious effect on the Debtors' relationships to existing clients and the prospect of obtaining future customers. Present customers would not likely continue to do business with the Debtors, future customers would also be less likely to enter into contractual relationships with the Debtors, fearful that the Debtors may ultimately fail to honor these industry-common deposit Customer Programs. Therefore, there is a serious need for the Debtors to be permitted to honor the prepetition Customer Programs in order to maintain their existing client base and preserve their goodwill on a going-forward basis.

37. The Debtors' ability to continue the Customer Programs, which have proven beneficial, is necessary to reassure customers of the ongoing viability of the Debtors, preserve goodwill, and maintain critical business relationships. The Debtors submit that the resulting benefit of continued customer satisfaction during the pendency of these chapter 11 cases will far exceed the cost of such Customer Programs. Further, the Debtors expect to have sufficient resources available to maintain their Customer Programs, to the extent described herein. Considering the potential for loss of competitiveness, goodwill, and relationships, absent the relief requested herein, and the resulting negative impact on the Debtors' businesses and reorganization efforts, the Debtors submit that the request for authorization to continue the Customer Programs in the ordinary course of business and to perform and honor the prepetition obligations thereunder, as the Debtors deem appropriate in their sole business judgment, without further application to the Court, is in the best interest of the Debtors, their estates, and their creditors, and should be approved in all respects.

38. Courts have granted relief similar to that requested herein in other cases where retaining the loyalty and patronage of customers was critical to a successful chapter 11 reorganization. *See, e.g., In re Pilgrim's Pride Corp.*, 08-45664 (DML) (Bankr. N.D. Tex. Dec. 3, 2008); *In re Keys Fitness Prods., L.P.*, Case No. 08-31790 (HDH) (Bankr. N.D. Tex. Apr. 18, 2008); *see also In re Kimball Hill, Inc.*, Case No. 08-10095 (SPS) (Bankr. N.D. Ill. April 25, 2008); *In re Bombay Co., Inc.*, Case No. 07-44084 (DML) (Bankr. N.D. Tex. Sept. 20, 2008); *In re Steve & Barry's Manhattan LLC, et al.*, Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. July 10, 2008); *In re Sharper Image Corp.*, Case No. 08-10322 (KG) (Bankr. D. Del. Feb. 20, 2008); *In re TOUSA, Inc.*, 08-10928 (Bankr. S.D. Fla. Jan. 31, 2008); *In re New York Racing Association, Inc.*, 06-12618 (JMP) (Bankr. S.D.N.Y. Nov. 3, 2006).⁹

**Request for Authority for Banks to Honor and Pay Checks
Issued and Electronic Funds Transferred on Account of Customer Programs**

39. The Debtors further request that the Court authorize and direct all applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn or electronic funds transferred to pay the Customer Programs, whether such checks were presented prior to or after the Commencement Date; provided, however, that such checks or electronic transfers are identified by the Debtors as relating directly to the authorized payment of the Customer Program claims. The Debtors also seek authority to issue new postpetition checks, or effect new electronic fund transfers, on account of such claims to replace any prepetition checks or electronic fund transfer requests that may be dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

⁹ Because of the voluminous nature of the unreported decisions cited herein, they are not attached to this Motion. Copies of these orders are available upon request of the Debtors' counsel.

The Requested Relief Satisfies Bankruptcy Rule 6003

40. The Debtors submit the facts cited herein and in the Declaration of Kevin H. Lambert in Support of the Debtors' Chapter 11 Petitions and First Day Motions, filed contemporaneously herewith, illustrate that the authority 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.

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

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

Reservation of Rights

42. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any party in interest's rights to dispute any claim, or (iii) an approval or assumption of any agreement, contract, program, policy or lease under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently. Finally, the relief requested herein shall not oblige the Debtors to accept any services, to accept the shipment of goods, or prevent the Debtors from returning or rejecting goods.

Notice

43. 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 that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: June 10, 2009
Austin, Texas

/s/ Eric J. Taube
Eric J. Taube (19679350)
HOHMANN, TAUBE & SUMMERS, L.L.P.
100 Congress Avenue, Suite 1800
Austin, Texas 78701
Telephone: (512) 472-5997
Facsimile: (512) 472-5248

-and-

Martin A. Sosland (18855645)
Lydia T. Protopapas (00797267)
WEIL, GOTSHAL & MANGES LLP
200 Crescent Court, Suite 300
Dallas, Texas 75201
Telephone: (214) 746-7700
Facsimile: (214) 746-7777

-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