

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

**DEBTORS' MOTION PURSUANT TO SECTIONS 105(a),
363(b),(c),(f), 365, 506, 541, 546(b), 1107, and 1108 OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULES 6003,
AND 6004(g) FOR AUTHORIZATION TO (I) ASSUME CERTAIN
PREPETITION CONTRACTS AND TO CONTINUE TO ENTER INTO
CONTRACTS TO 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 AGENTS AND
CERTAIN DEVELOPERS THEIR COMMISSIONS AND FEES,
AND (III) ESTABLISHING PROCEDURES FOR THE
RESOLUTION AND PAYMENT OF LIEN 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

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.

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.

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. The Debtors request an order, substantially in the form annexed hereto as Exhibit B, pursuant to sections 105(a), 363(b), (c) and (f), 365, 506(b), 541, 546(b), 1107, and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing certain Debtors to continue to close on sales of home lots (the "Home Lots"), condominiums (the "Condominiums") and Legacy Land lots (the "Legacy Land Parcels"), and together with the Home Lots and Condominiums, the "Parcels") currently under contract and to continue to sell Parcels in the ordinary course of business, which shall mean any disposition of (a) 10 or less finished Home Lots, (b) 20 or less platted but undeveloped Home Lots, (c) 5 or less Condominiums, or (d) 100 or less acres of Legacy Land Parcels, in each case to a single purchaser or affiliated purchasers (other than any affiliate or affiliates of the Crescent Resources) in a single transaction or series of related transactions (the "Ordinary Course Sales"), in each

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

instance, free and clear of all liens, claims, encumbrances, and other interests, and limited to a \$2.5 million per Parcel sales price, (ii) authorizing the Debtors to assume Prepetition Sales Contracts (as defined below), (iii) authorizing the Debtors to honor certain prepetition contractual obligations to buyers and developers including, where appropriate and consistent with past business practices, to refund deposits, extend seller financing, and provide other customer incentives consistent with the Debtors' business practices and in compliance with the Debtors' postpetition credit agreement (the "DIP Credit Agreement"), if such Agreement is applicable to the subject Debtor, (iv) authorizing, but not directing, the Debtors, in their discretion to pay sales commissions (the "Commissions") earned by any sales agents (the "Sales Agents") or fees (the "Developer Fees") owed to developers or original sellers holding a security interest in the Parcels (the "Secured Developers") in connection with the sale of any Parcels, (v) authorizing, but not directing, the Debtors, in their discretion, to establish procedures to satisfy liens out of the proceeds of Parcel sales, including establishing procedures for resolving disputed lien claims in compliance with the DIP Credit Agreement and any order entered by the Court with respect to the same (the "Cash Collateral/DIP Order"), (vi) authorizing the Debtors to utilize the proceeds of the Parcel sales, subject to the lien procedures and the terms of the Cash Collateral/DIP Order, and (vii) directing financial institutions to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing. In support of this motion, the Debtors respectfully state as follows:

Basis for Relief Requested

14. In the ordinary course of their business, the Debtors' Residential Division enters into certain contracts to sell land or grant options thereon, primarily in the form of finished or platted but undeveloped Home Lots which are purchased either by individual buyers or by homebuilders who purchase groups of Home Lots. Additionally, the Debtors' Residential

Division enters into contracts to sell Condominiums, which are usually purchased by individual buyers. Typically, the Residential Division sells approximately 6 Home Lots each month at an average price of \$635,000 and approximately 2 Condominiums each month at an average price of \$610,000. The Debtors' Land Management Division also enters into certain contracts to sell raw land, or grant options thereon, in the form of Legacy Land Parcels, which are typically purchased by developers, conservation groups, recreational groups, and individuals. In the ordinary course of the Land Management Division's business, 6 to 10 Legacy Land Parcels valued around \$2,000,000 are sold each month. In connection with such sales, the Debtors often provide seller financing to prospective buyers of up to 80% of the purchase price (the "Legacy Land Seller Financing Program") to well-qualified buyers of Legacy Land Parcels. The Legacy Land Seller Financing Program offers a 7.5% interest rate for a 12-month term with the option for a 9-month extension. The Debtors' ability to satisfy their existing contractual obligations to customers and to continue to contract for and complete the development and sale of Parcels, to extend seller financing, and transfer title to buyers "free and clear" of liens, is the essence of the Debtors' business and must continue without any interruption if there is any prospect for a successful reorganization.

A. Contracts to Sell Parcels

15. As of the Commencement Date, the Residential Division was a party to approximately 14 pending contracts to close on the sale of 75 Home Lots, 12 pending contracts to close on the sale of Condominiums, and the Land Management Division was a party to 5 pending contracts to close on the sale of Legacy Land Parcels in the various states in which the Debtors operate (the "Prepetition Sales Contracts"). The Debtors believe that, under the terms of section 363 of the Bankruptcy Code, they are authorized to continue to sell Parcels in the ordinary course of business without the need for a court order. Proceeds of the sales of the

Parcels under these Prepetition Sales Contracts will afford the Debtors needed liquidity during these chapter 11 cases. Out of an abundance of caution and to provide clarity to, among others, the Debtors' brokers, customers, and title insurers; however, the Debtors seek authority to assume the Prepetition Sales Contracts⁴ and close on the sale of Parcels, including pursuant to Prepetition Sales Contracts, once conditions for closing, *i.e.*, inspection, are satisfied.

16. The terms of the Prepetition Sales Contracts vary by community and region. In most instances, the Prepetition Sales Contracts require a prospective buyer to provide the Debtors with a deposit on the purchase price (a "Deposit"). If the Debtors are unable to close on the sale of a particular Parcel, the Debtors may be obligated under the terms of the applicable Prepetition Sales Contract or by law to refund the Deposit. Accordingly, by this motion, the Debtors specifically seek authority, but not direction, to continue to refund customer Deposits if warranted by the terms of the Prepetition Sales Contracts and future sale contracts as is consistent with the Debtors' ordinary business practices.⁵

17. Because the Debtors anticipate that these chapter 11 cases may create some apprehension for current and prospective customers, the Debtors' ability to honor their Prepetition Sales Contracts is critical to their profitability and prospects for successful reorganization. Accordingly, the Debtors seek authority to honor their prepetition obligations and commitments under Prepetition Sales Contracts, to modify such contracts to address market conditions or negotiate other changes as is necessary, and to provide appropriate incentives

⁴ While the Debtors will obtain the benefit of the sale proceeds from the Ordinary Course Sales related to these Prepetition Sales Contracts and future Ordinary Course Sales, they will not have any monetary obligation to pay out funds, other than any applicable closing costs, or be required to pay any "cure" costs under section 365 of the Bankruptcy Code due to the assumption of the Prepetition Sales Contracts.

⁵ Similar relief is requested in the Motion of the Debtors 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.

consistent with ordinary business practices with the necessity of individual motions to assume such contracts, or to sell such property, all subject to the terms of and in compliance with the Debtors' DIP Credit Agreement (if applicable) and the Cash Collateral/DIP Order.

18. Moreover, the Debtors seek authority to enter into new contracts for the development and sale of Parcels and to close on the sale (or series of related sales) of such Parcels priced under \$2.5 million in the ordinary course without the expense and delay of seeking and obtaining individual court orders for each sale. To continue to close on the sale of Parcels, the Debtors must be able to transfer title to buyers free and clear of all liens and interests in such property, all without the necessity of seeking and obtaining a court order for each individual sale. Indeed, requiring the Debtors to seek individual court orders approving the sale of the Parcels would be particularly burdensome for all parties in interest in light of the fact that, on average, the Debtors conduct approximately 12 closings per month in 3 different states.

B. The Commissions and Developer Fees

19. As is customary in the real estate industry, in the ordinary course of these Parcel sales, independent contractor Sales Agents representing either the buyers or the Debtors in the transaction earn Commissions when a Parcel sale is consummated. Additionally, for certain developments, some Secured Developers are paid Developer Fees in connection with the sale of each Parcel, which Developer Fees are secured by a lien on those properties. The Debtors seek the authority to pay these Commissions and Developer Fees, at the Debtors' discretion, in the ordinary course of the Debtors' Parcel sales with respect to Prepetition Sales Contracts and applicable future sales contracts.

C. The Liens

(i) Mechanics' Liens

20. As part of their real estate development business and operations, the Residential Division and the Land Management Division 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 ("Mechanics' Lien Claims"). Specifically, many of the holders of Mechanics' Lien Claims (the "Mechanics' 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' property (the "Mechanics' Liens"),⁶ which attach to the Debtors' Parcels and related real and personal property. In some states, the Mechanics' Liens may attach simply by virtue of the Mechanics' Lien Claimant commencing work, while other states have more stringent notice and perfection requirements. Even more, in many instances the Mechanics' Lien Claimants are entitled to priority because applicable law generally provides that Mechanics' Lien rights take priority over subsequent liens, and, in some cases, prime prior encumbrances.⁷

21. Pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting Mechanics' Liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay. Under section 546(b) of the Bankruptcy Code, a

⁶ "Mechanics' Liens" addressed by this motion include any and all liens that may be asserted against the Debtors' property in connection with operations, including, without limitation, any judgment liens obtained against any of the Debtors and any liens that may be asserted by taxing authorities pursuant to any federal, state, or local statute or regulation. Mechanics' Liens do not include liens arising under the Debtors' prepetition secured financing facilities (the "Lender Liens"), which are addressed separately below.

⁷ See e.g., Tex. Prop. Code § 53.123(a) (mechanic's lien primes "any prior lien, encumbrance, or mortgage on the land on which it is located"); Va. Prop. Code § 43-21; Tenn. Prop. Code § 66-11-107.

debtor's lien avoidance powers are "subject to 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)(1)(A). Accordingly, notwithstanding the automatic stay imposed by section 362 of the Bankruptcy Code, Mechanics' Lien Claimants may be entitled to assert and perfect Mechanics' Liens against the Debtors' property during these cases.

22. Additionally, title insurance companies and underwriters (collectively, "Title Insurers") will not proceed with Parcel closings without some assurance that Mechanics' Liens will not impair title to the properties. The Debtors also anticipate that customers and their lenders will have similar concerns. Notably, the Debtors rarely had Mechanics' Liens on their Parcels. However, in the months leading up to filing these chapter 11 cases and once in chapter 11, the Debtors have had and will continue to have more Mechanics' Lien Claims, and Title Insurers will likely be unwilling to issue title policies without assurance that these Mechanics' Liens will not encumber the Parcels. Accordingly, the Debtors require an order from the Court authorizing them to sell Parcels in the ordinary course free and clear of all Mechanics' Liens, whether filed or unfiled, with such liens attaching to the proceeds of each sale in accordance with the proposed procedures set forth below.

(ii) Lender Liens

23. The Debtors' properties are also subject to liens arising from the Debtors' Prepetition Credit Agreement and certain property-level debt. Specifically, the Debtors and BOA (the "Prepetition Administrative Agent") are parties to that certain Prepetition Credit Agreement that provides for security interests in the form of liens and mortgages (the "BOA Liens") in much of the Debtors' real property, including certain unsold Parcels ("Mortgaged Property"). Additionally, the Debtors and certain property-level lenders (the "Property-Level

Lenders” together with BOA, the “Lenders”) are parties to property-level debt agreements that provide for security interests in the form of first priority liens, mortgages, and other security interests (the “Property-Level Liens”, and together with the BOA Liens, the “Lender Liens”) in some of the Debtors’ real property, including certain unsold Parcels. Additionally, as is consistent with past ordinary practices, if required by any property-level debt agreements, the Debtors propose to seek the release of any Property-Level Liens by the Project-Level Lenders that may affect a Parcel to be sold under the proposed terms of this Motion at the time of that Parcel’s sale.

24. Thus, the Debtors request authority to sell Parcels free and clear of the Lender Liens, with such liens to attach to the sale proceeds. The Debtors reserve the right reasonably to request from the Lenders any documentation evidencing the release of their liens pursuant to the terms of the Prepetition Credit Agreement and the debtor-in-possession financing agreement.

D. The Proposed Lien Procedures

25. To protect the rights of Mechanics’ Lien Claimants, the Debtors propose to establish procedures for the resolution and payment of Mechanics’ Lien Claims secured by valid and enforceable Mechanics’ Liens (as described in more detail below, the “Lien Procedures”).⁸ The proposed Lien Procedures will facilitate the Debtors’ ability to continue to conduct their business (which is necessary to preserve value in these chapter 11 cases) while protecting the interests of all affected parties.

26. Specifically, to help ensure the prompt resolution of lien disputes and satisfaction of valid Mechanics’ Liens, the Debtors propose the following Lien Procedures:

⁸ Similar relief is requested in the Motion of the Debtors Pursuant to Sections 105(a), 363(b), 503(b)(1), and 1107(a) of the Bankruptcy Code 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, filed contemporaneously herewith.

- a. The Debtors shall be authorized to sell Parcels to customers, which sales shall be free and clear of all liens, claims, encumbrances, and other interests.
- b. All valid and enforceable Mechanics' Liens on a subject Parcel shall transfer to and shall attach to the proceeds of the sale of such Parcel at the time of closing (the "Closing Date"). Claims secured by valid and enforceable Mechanics' Liens shall be deemed secured claims against the Debtors up to the amount of the sale proceeds and with the same priority as the Mechanics' Lien Claimant had against the underlying Parcel. The Debtors shall be authorized to hold and use the sale proceeds, subject to the procedures set forth herein. For avoidance of doubt, ad valorem and non ad valorem tax claims owed with respect to the Parcel sold will be satisfied directly from the proceeds of the closing as is customary in the ordinary course of the Debtors' business. No Mechanics' Lien Claimant shall have any claim against the Debtors' Title Insurers with respect to any asserted Lien or other claim arising from services performed for or goods delivered to the Debtors.
- c. For Mechanics' Lien Claims reflected on the Debtors' books and records and as to which the Debtors determine that a valid Mechanics' Lien exists, the Debtors will satisfy the Mechanics' Lien Claims to the extent of the Mechanics' Lien (not to exceed the amount of the sale proceeds) by making payment within ten (10) business days of such determination.
- d. Any Mechanics' Lien Claimant who believes it has a valid Mechanics' Lien against a particular property owned or sold by the Debtors and who has not been paid or addressed by the Debtors may send to the Debtors a written demand for payment (i) setting forth the location(s) of the property sold, (ii) stating the amount of its asserted claim(s), (iii) describing, with particularity, the reason(s) the Mechanics' Lien Claimant believes it has a valid Mechanics' Lien against the individual property sold, and (iv) attaching documentation (i.e., invoices or purchase orders) or other information sufficient to demonstrate that a valid

Mechanics' Lien Claim existed as of the Closing Date with respect to such property (a "Demand").⁹

- e. The Demand must be served on (i) the Debtors at the following addresses: (a) Crescent Resources, LLC, 400 South Tyron Street, Charlotte, North Carolina 28285, Attn: Kevin H. Lambert; (b) Weil, Gotshal & Manges LLP, 200 Crescent Court, Suite 300, Dallas, Texas 75201, Attn: Martin A. Sosland, Esq. and Michelle V. Larson, Esq.; (c) Weil, Gotshal & Manges LLP, 700 Louisiana, Suite 1600, Houston, Texas 77002, Attn: Lydia Protopapas, Esq.; and (d) Hohmann, Taube & Summers, LLP, 100 Congress Ave., Suite 1800, Austin, Texas 78701, Attn: Eric Taube, Esq.; and (ii) the advisors to Prepetition Administrative Agent, Moore and Van Allen PLLC, 100 North Tyron Street, Suite 4700, Charlotte, NC 28202, Attn: Alan W. Pope, Esq.
- f. Unless the parties mutually agree otherwise, the Debtors must respond to each Demand within fifteen (15) business days after receipt of a Demand. If the Debtors determine that a Demand is valid or that litigating resolution of the dispute will be more costly than honoring the Demand, the Debtors may pay the Lien Claim reflected in the Demand after consultation with the BOA without further order of the Court.
- g. If the Debtors dispute the validity or extent of the claim asserted in the Demand, the parties shall negotiate in good faith to resolve the dispute. If the Debtors resolve the dispute at a lower value than the amount reflected in the Demand, the Debtors may pay such amount without further order of the Court. If the dispute is not resolved within thirty (30) days after receipt of the Demand (the "Demand Resolution Period"), either party may seek a determination from the Court (a "Demand Resolution Proceeding") as to the validity and extent of the underlying Mechanics' Lien. Any Demand Resolution Proceeding shall be heard at the Court's next regularly scheduled omnibus hearing date or as soon thereafter as the Court's schedule will allow; *provided, however*, that if the Debtors determine during the Demand Resolution Period that the Demand is not likely to

⁹ An Mechanics Lien Claimant that makes a Demand as provided herein will not be required to take any steps under applicable non-bankruptcy law to obtain, record, or perfect its lien, and the lien will not be determined to be invalid solely as a result of the Mechanics Lien Claimant's failure to take such steps.

be resolved, the Debtors may commence a Demand Resolution Proceeding at any time before the expiration of the Resolution Period and may seek an expedited hearing with respect thereto.

- h. Upon a determination by the Court that the Debtors are required to satisfy an Mechanics' Lien, the Debtors shall pay such Mechanics' Lien within ten (10) business days of the date of the order resolving the Demand Resolution Motion.
- i. The Debtors shall not be required to escrow any sale proceeds due to unresolved demands; *provided, however*, that the Debtors maintain cash proceeds on hand in an aggregate amount sufficient to satisfy all Demands against sold properties that have been received but that remain unresolved; *provided, further, however*, that (i) in no event shall the Debtors be required to maintain cash on hand for unresolved Demands in an amount greater than the purchase price for a particular property, and (ii) with respect to any Demand that asserts a Lien applicable to more than one property, the Debtors shall be required to reserve only for the portion of the Mechanics' Lien Claim allocable to the particular property or properties sold pursuant to this motion.

27. The Lien Procedures will provide the Debtors with authority to make payments to the Mechanics' Lien Claimants in the amounts and to the extent necessary to satisfy undisputed Mechanics' Liens securing undisputed prepetition claims. The Debtors respectfully submit that the materials and services provided by the Mechanics' Lien Claimants are essential to the Debtors' reorganization, and that the need to be able to sell Parcels free and clear of Mechanics' Liens and to settle demands is of paramount importance to the Debtors' ongoing operations.

**Cause Exists to Authorize the Debtors to Sell Parcels
Free and Clear of Liens, Claims and Encumbrances**

A. The Debtors May Assume the Prepetition Sales Contracts.

28. The Debtors submit that they should have the authorization to sell Parcels pursuant to the Prepetition Sales Contracts in the ordinary course of business. Nevertheless,

section 365 of the Bankruptcy Code allows a debtor in possession to maximize the value of a debtor's estate by assuming and assigning executory contracts or unexpired leases that benefit the estate and rejecting those that do not. *See Lifemark Hosp., Inc. v. Liljeberg Enters. (In re Liljeberg Enters.)*, 304 F.3d 410, 438 (5th Cir. 2002); *Ins. Co. of N. Am. v. NGC Settlement Trust (In re Nat'l Gypsum Co.)*, 208 F.3d 498, 505 (5th Cir. 2000). *Cinicola v. Scharffenberger*, 248 F.3d 110, 119 (3d Cir. 2001) (quotations omitted); *COR Route 5 Co., LLC v. The Penn Traffic Co. (In re The Penn Traffic Co.)*, 524 F.3d 373, 382 (2d Cir. 2008). A decision to assume or reject an executory contract pursuant to section 365 of the Bankruptcy Code must be based on the debtor's business judgment. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985). When assuming an executory contract, section 365(b) of the Bankruptcy Code requires the debtor to cure defaults under the contract or provide adequate assurance that it will promptly cure such defaults. In addition, if there has been a default, the debtor must provide adequate assurance of future performance under the contract. 11 U.S.C. § 365(b)(1)(C).¹⁰

29. Should the Court require the Debtors to assume the Prepetition Sales Contracts in order for them to perform thereunder, the Debtors have determined in the exercise of its sound business judgment that assumption of the Prepetition Sales Contracts is in the best interests of their estate and the creditors. Assumption of the Prepetition Sales Contracts will provide additional liquidity to the Debtors during these chapter 11 cases. Simply stated, the Prepetition

¹⁰ "If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee – (A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ; (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and (C) provides adequate assurance of future performance under such contract or lease." 11 U.S.C. § 365(b)(1).

Sales Contracts are beneficial to the Debtors in all respects and will facilitate the successful reorganization of the Debtors.

30. The Debtors have carefully reviewed the economic benefits of assumption of the Prepetition Sales Contracts as set forth herein and believe that their decision to assume these Contracts is within the Debtors' sound business judgment and in compliance with the DIP Credit Agreement. Accordingly, the Debtors request that the Court approve their assumption of the Prepetition Sales Contracts.

B. The Debtors May Continue to Sell Parcels in the Ordinary of their Business.

31. Additionally, the Debtors' ability to continue to sell Parcels is critical to their reorganization efforts and consistent with sections 363(c) and 1108 of the Bankruptcy Code which, together, authorize the continued operation of a business in the ordinary course by chapter 11 debtors. *See* 11 U.S.C. § 363(c)(1) (providing that, so long as "the business of the debtor is authorized to be operated" under section 1108 of the Bankruptcy Code, and "unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing . . ."); 11 U.S.C. § 1108 (debtor in possession, as trustee, may operate the debtor's business unless court orders otherwise). As part of their real estate development business, the Debtors sell Parcels in the ordinary course of their business, and in connection with the sale of these Parcels, the Debtors routinely extend seller financing under the Legacy Land Seller Financing Program and pay Commissions and Developer Fees to the Sales Agents and Secured Developers.

32. Even to the extent the Debtors' continued sale of Parcels could possibly be construed as being outside the ordinary course of their business, the Court has the authority to grant the relief requested herein pursuant to section 363(b) of the Bankruptcy Code. Section

363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate”

11 U.S.C. § 363(b)(1).

33. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts have required that such use, sale or lease be based upon the sound business judgment of the debtor. *See Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“for the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”); *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991) (noting that a debtor may sell property outside the ordinary course of business if it can provide “articulated business justification”) (internal citations omitted); *Grochocinski v. Zeigler (In re Zeigler)*, 320 B.R. 362, 381 (Bankr. N.D. Ill. 2005) (same); *see also Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (same); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983) (requiring “some articulated business justification” to approve the use, sale or lease of property outside the ordinary course of business).

34. In these chapter 11 cases, it is clear that sufficient business justification exists for the Debtors to close on the sale of Parcels, including to make payments related to prepetition closings, to extend seller financing under the Legacy Land Seller Financing Program, to pay Commissions to Sales Agents, to pay Developer Fees to Secured Developers, as well as to

continue to contract for the development and sale of Parcels postpetition in the ordinary course, and in each case in compliance with the DIP Credit Agreement and the Cash Collateral/DIP Order. A significant portion of the Debtors' business is the development and sale of Parcels and the Debtors' customers, vendors, and other parties in interest will not continue to do business with the Debtors unless they are assured that the Debtors have the authority to conduct such business. Accordingly, the Debtors must retain the authority to continue to conduct Ordinary Course Sales of Parcels in order to ensure the continued viability of their business — and the inflow of cash — during these chapter 11 cases.

C. The Court Should Authorize Debtors to Sell Parcels Free and Clear of Liens, Claims, Encumbrances, and Other Interests.

35. Pursuant to section 363(f) of the Bankruptcy Code, a debtor may sell property free and clear of liens, claims, encumbrances, and other interests if one of the following conditions is satisfied:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) the lienholder or claimholder consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in *bona fide* dispute; or
- (5) the lienholder or claimholder could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

See 11 U.S.C. § 363(f). Because section 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the proposed sale of Parcels. *See Scherer v. Fed. Nat'l Mortgage Assoc. (In re Terrace Chalet Apts., Ltd.)*, 159 B.R. 821, 827

(Bankr. N.D. Ill. 1993) (“Section 363(f) authorizes a sale free and clear of a lien if one of the five exceptions applies.”).

36. Each lien, claim, encumbrance or other interest in the Debtors’ Parcels satisfies at least one of the five conditions set forth in section 363(f). Specifically, with respect to Mechanics’ Lien Claims, section 363(f)(3) and (f)(5) are satisfied, and, in some cases, section 363(f)(4) may also apply. With respect to the Lender Liens, section 363(f)(2) will be satisfied by the consent of BOA to the relief requested herein and by the consent Property-Level Lenders, if necessary, at the time of the sale.

37. Accordingly, the Debtors request that the Court authorize the transfer of Parcels to customers in the ordinary course free and clear of all liens, claims, encumbrances and other interests, with such liens and interests to attach to the sale proceeds to the extent required by the Lien Procedures or the applicable credit documents.

D. Cause Exists to Authorize Use of Cash Collateral and Adequate Protection.

38. Although section 363(c)(1) of the Bankruptcy Code provides broad authority to the Debtors to operate their businesses and enter into ordinary course transactions, section 363(c)(2) of the Bankruptcy Code restricts the Debtors’ ability to use cash collateral. “Cash collateral” is defined in the Bankruptcy Code as, “cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents . . . in which the estate and an entity other than the estate have an interest” 11 U.S.C. § 363(a). Pursuant to section 363(c)(2) of the Bankruptcy Code, the Court may authorize the Debtors to use cash collateral as long as the applicable secured creditors consent or are adequately protected. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400 (9th Cir. 1984); *In re McCormick*, 354 B.R. 246, 251 (Bankr. C.D. Ill. 2006) (to use the cash collateral of a secured creditor, the debtor must have the consent of the

secured creditor or must establish to the Court that the secured creditor's interest in the cash collateral is adequately protected).

39. Appropriate adequate protection is decided on a case-by-case basis. *See e.g., Bray v. Shenandoah Fed. Sav. & Loan Assoc. (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *Greives v. Bank of W. Indiana (In re Greives)*, 81 B.R. 912, 961 (Bankr. N.D. Ind. 1987); *see also In re JKJ Chevrolet, Inc.*, 190 B.R. 542, 545 (Bankr. E.D. Va. 1995) (“[a]dequate protection is a flexible concept that is determined by considering the facts of each case”) (citing *In re O'Connor*, 808 F.2d 1393, 1396-97 (10th Cir. 1987)). Although adequate protection is not defined in the Bankruptcy Code, section 361 of the Bankruptcy Code provides the following three nonexclusive examples of what may constitute adequate protection:

- (1) requiring the debtor to make a cash payment or periodic cash payments to such entity, to the extent that the . . . use . . . under section 363 . . . results in a decrease in the value of such entity's interest in such property;
- (2) providing to such entity an additional or replacement lien to the extent that such . . . use . . . results in a decrease in the value of such entity's interest in such property; or
- (3) granting such other relief . . . as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

11 U.S.C. § 361.

(iii) The Mechanics' Liens Are Adequately Protected

40. The proposed Lien Procedures provide the Mechanics' Lien Claimants with a replacement lien in the proceeds of the affected Parcel sale. Because the Lien Procedures require the Debtors to reserve or “block” cash in an amount equal to all unresolved Demands, the Lien Procedures effectively bar the Debtors from using the cash collateral of the Mechanics' Lien Claimants to the extent a Demand has been asserted and remains unresolved.

41. With respect to Demands reflecting Mechanics' Lien Claims spanning multiple Parcels, the Lien Procedures require that the Debtors reserve only that portion of the asserted Mechanics' Lien Claim allocable to the Parcel sold, but the Mechanics' Lien Claimants remain adequately protected by virtue of their Mechanics' Liens on the unsold lots.

(iv) The Lender Liens Are Adequately Protected

42. To the extent adequate protection must be given to the Lenders, it is included within the adequate protection arrangements agreed pursuant to the Debtors' Cash Collateral/DIP Order, as described in the Cash Collateral and DIP Motion and the DIP Credit Agreement, so long as the relief requested herein is in compliance with such Order and Agreement.

E. Authority Exists to Support the Lien Procedures and Payment of Mechanics' Liens.

43. Courts have generally acknowledged that it is appropriate to authorize the payment (or other special treatment) of prepetition obligations in appropriate circumstances, especially where those payments are entitled to priority in bankruptcy. *See generally In re Enesco Group, Inc.*, No. 07-00565 (ABG) (Bankr. N.D. Ill. Jan. 22, 2007) (authorizing debtors to pay prepetition employee obligations); *In re Glazed Invs., LLC*, No. 06-00932 (PSH) (Bankr. N.D. Ill. Feb. 7, 2006) (authorizing debtors to pay certain prepetition tax obligations).

44. It is also not uncommon for courts to authorize the payment of prepetition claims of shippers, warehousemen, and other lien claimants. *See, e.g., In re Arlington Hospitality, Inc.*, No 05-34885 (ABG) (Bankr. N.D. Ill. Sept. 2, 2005); *In re Jernberg Indus. Corp.*, No. 05-25909 (Bankr. N.D. Ill. July 21, 2005); *In re UAL Corp.*, No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 11, 2002) (authorizing payment to certain contractors in satisfaction of potential or perfected lien claims); *In re Kmart Corp.*, No. 02-02474 (SPS) (Bankr. N.D. Ill. Jan. 25, 2002) (same). In fact, courts have recognized that the relief requested herein is appropriate for large homebuilders or developers in bankruptcy. *See In re Kimball, Inc.*, Case No. 08-10095 (Bankr. N.D. Ill. Apr. 25,

2008); *In re TOUSA, Inc.*, No. 08-10928 (Bankr. S.D. Fla. Jan. 31, 2008); *In re Levitt & Sons, LLC*, No. 07-19845 (Bankr. S.D. Fla. Nov. 14, 2007).

45. Moreover, courts have relied on several legal theories to authorize debtors to sell assets free and clear of liens, including section 363(b) of the Bankruptcy Code, where a sound business purpose exists for doing so. *See, e.g., In re Ionosphere Clubs, Inc.* 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of prepetition wages); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc., (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential mechanics' lien claimants because the payments were necessary for general contractors to release funds owed to debtors).

46. The relief sought herein is appropriate under each of the foregoing standards. Most of the Mechanics' Lien Claimants provide goods or services that are fundamental to the Debtors' operations. Failure to pay their claims may lead the Mechanics' Lien Claimants to refuse to provide materials and services going forward, which would substantially impede the Debtors' ability to develop land or cause significant expense and delay thereby impeding the Debtors' ability to continue selling Parcels and to operate as a going concern.

47. In addition, the relief requested herein is appropriate because it complies with the provisions of the Bankruptcy Code. Specifically, because (and to the extent that) the amount of the Mechanics' Lien Claimants' prepetition claims is likely less than the value of the Parcels, Mechanics' Lien Claimants holding lien rights are likely over-secured creditors. In general, under section 506(b) of the Bankruptcy Code, fully secured creditors are entitled to receive (a) payment in full of their prepetition claims under any confirmed plan in these chapter 11 cases, and (b) postpetition interest accruing on such claims to the extent that such claims are over-

secured. Consequently, approval of the Lien Procedures, which provide a mechanism for the Debtors to pay certain fully secured prepetition obligations, will provide the Mechanics' Lien Claimants with no more than that which they otherwise would be entitled to under a plan and will save the Debtors the interest costs that otherwise might accrue on the Lien Claims during these chapter 11 cases.

48. Given the Debtors' dependence on the Mechanics' Lien Claimants and, hence, the Mechanics' Lien Claimants' importance to the preservation of the value of the Debtors' estates, together with the fundamental need of the Debtors to sell Parcels free and clear, payment of the Mechanics' Lien Claims is appropriate under the circumstances and in the best interests of the Debtors, their creditors, and other parties in interest. Moreover, the Lien Procedures provide a mechanism for addressing the various legal rights of all interested parties, and provide for a negotiation period designed to avoid burdening the Court with disputed issues unless circumstances require otherwise. For all of the foregoing reasons, the Debtors request that the Court approve the Lien Procedures and authorize the Debtors to pay the Mechanics' Lien Claims without further order of the Court.

F. Cause Exists to Direct the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.

49. The Debtors represent that they have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves, expected cash flows from ongoing business operations, and anticipated access to debtor in possession financing. The Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be directed, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of Mechanics' Lien Claims.

Satisfaction of Bankruptcy Rule 6003

50. Pursuant to recently revised Bankruptcy Rule 6003, a court may grant relief regarding a motion to pay all or part of a prepetition claim that arose before the Petition Date within 20 days after the filing of the petition if the relief is necessary to avoid immediate and irreparable harm. As described above, the ability to continue to sell Parcels to customers “free and clear,” including, where appropriate, to satisfy valid and enforceable Mechanics’ Liens, is integral to the Debtors’ business operations and necessary to maintain the confidence and good will of the Debtors’ customer base, which is critical to facilitate a successful reorganization. Failure to satisfy prepetition obligations to customers and Mechanics’ Lien Claimants upon closing Parcel sales in the ordinary course of business during the first 20 days of these cases will jeopardize the Debtors’ ability to bring in money, as well as customer loyalty and trust. Absent entry of the order requested herein, and approval of the Lien Procedures, prospective and current customers may be unwilling to sign contracts to buy Parcels or to close Parcel purchases, and the Debtors’ Title Insurers may refuse to continue with Parcel sale closings. Moreover, there is a substantial risk of negative publicity if the Debtors do not have the requested authorization. In fact, other builder debtors who did not immediately fulfill customer obligations after a chapter 11 filing have experienced such negative publicity. Accordingly, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of prepetition obligations related to the customer contracts and the Lien Procedures.

Waiver of Bankruptcy Rule 6004(g)

51. Rule 6004(g) of the Bankruptcy Rules provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.” 11 U.S.C. § 6004(g). The Debtors request that any order

approving the relief requested herein be effective immediately by providing that the 10-day stay under Bankruptcy Rule 6004(g) is waived.

Reservation of Rights

52. Nothing contained herein is intended or should be construed as an admission as to the validity or priority of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any asserted Mechanics' Lien Claim under applicable non-bankruptcy law. 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.

Notice

53. 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
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-and-

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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, <i>et. al.</i> ,	:	Case No. 09-11507-CAG
	:	
Debtors.	:	Joint Administration
	:	Requested
	:	
-----X		

**ORDER AUTHORIZING THE DEBTORS TO (I) ASSUME CERTAIN
PREPETITION CONTRACTS AND TO CONTINUE TO ENTER INTO
CONTRACTS TO 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 AGENTS AND
CERTAIN DEVELOPERS THEIR COMMISSIONS AND FEES, AND (III)
ESTABLISHING PROCEDURES FOR THE RESOLUTION AND
PAYMENT OF LIEN CLAIMS**

Upon the motion (the "Motion") of the above-captioned debtors (collectively, the "Debtors") for entry of an Order pursuant to sections 105(a), 363(b), (c) and (f), 365, 506(b),

541, 546(b), 1107, and 1108 of title 11 of the Bankruptcy Code¹ and Bankruptcy Rule 6004(g), (a) authorizing, but not directing, the Debtors to assume Prepetition Sales Contracts and to conduct, in the ordinary course of the Debtors' business, Ordinary Course Sales of Parcels free and clear of all liens, claims, encumbrances, and other interests, including, without limitation, valid tax, judgment, construction, materialmans', mechanics', or any other similar claims that have given or could give rise to liens against the Debtors' property (the "Mechanics' Liens") and liens arising under the Debtors' prepetition secured financing facilities (the "Lender Liens"), (b) establishing procedures (the "Lien Procedures") for the resolution and payment of prepetition claims (the "Mechanics' Lien Claims") of certain third parties (the "Mechanics' Lien Claimants") who may be entitled under applicable state law to assert and perfect Mechanics' Liens against the property being transferred pursuant to this Order to secure payment of some or all of their claims against the Debtors, and (c) authorizing, but not directing, the Debtors to continue to extend seller financing under the Legacy Land Seller Financing Program in compliance with the DIP Credit Agreement and to pay Commissions and Developer Fees to Sales Agents and Secured Developers; and upon the Declaration of Kevin H. Lambert in the Debtors' Chapter 11 Petitions and First Day Motions; it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; it appearing that failure to grant the relief requested in the Motion immediately will cause immediate and irreparable harm to the Debtors; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; due and proper notice of the

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

Motion having been provided, and it appearing that no other or further notice need be provided except as required herein; and upon the record of the hearing to consider the Motion; after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted; and it is further

ORDERED that, within ten (10) business days of the date of entry of this Order, the Debtors will serve a copy of this Order on all known Mechanics' Lien Claimants; and it is further

ORDERED that, the Debtors are authorized, but not directed, in the exercise of their business judgment (i) to assume Prepetition Sales Contracts, and (ii) to continue to close on the sale of Parcels pursuant to Prepetition Sales Contracts, (iii) to perform all obligations under the Prepetition Sales Contracts, (iv) to take any other reasonable actions that may be necessary to effectuate closings under the Prepetition Sales Contracts, including modification of Prepetition Sales Contracts at or before closing to address market conditions or other negotiation changes, (v) to extend seller financing under the Legacy Land Seller Financing Program, (vi) pay Secured Developers their Developer Fees and Sales Agents their Commissions, each as is consistent with the Debtors' business judgment and past practice and in compliance with the DIP Credit Agreement (if applicable to the subject Debtors) and the Cash Collateral/DIP Order; and it is further

ORDERED that, the Debtors are authorized, but not directed, (i) to enter into contracts to develop or sell Parcels, which are part of Ordinary Course Sales, at a maximum price of \$2.5 million per Parcel, (ii) extend seller financing under the Legacy Land Seller Financing Program and in accordance with the DIP Credit Agreement, (iii) pay Secured Developers their Developer

Fees, and (iv) pay Sales Agents their Commissions in the ordinary course of business; and it is further

ORDERED that, the Debtors and any intermediary financial institution participating in any Parcel closings are authorized to transfer title, deed property, and take any other actions as may be necessary to transfer ownership to the Debtors' buyers; and it is further

ORDERED that, pursuant to section 363(f) of the Bankruptcy Code, all sales of Parcels by the Debtors shall be free and clear of any and all liens, claims, interests, and encumbrances, including, without limitation, all Mechanics' Liens and Lender Liens (in compliance with the Cash Collateral/DIP Order and DIP Credit Agreement), whether asserted or unasserted, known or unknown, with all such liens to attach to the proceeds of each Parcel sale (and in an amount not to exceed the proceeds of such sale), as applicable, in the same force, effect and priority as such liens had immediately prior to the sale, subject to the rights and defenses of the Debtors and any party in interest with respect to any such asserted liens. For the avoidance of doubt, notwithstanding any other provision in this Order, Mechanics' Liens and Lender Liens, whether asserted or unasserted, known or unknown, will transfer to the proceeds of any Parcel sold pursuant to this Order and will no longer attach to the Parcels sold once the sale closes, and ad valorem and non ad valorem tax claims owed with respect to the Parcel sold will be satisfied directly from the proceeds of the closing; and it is further

ORDERED that, the holders of any mortgage or lien under the Debtors' prepetition secured financing facilities are directed to deliver partial releases and other instruments reasonably requested by the Debtors evidencing releases of the Lender Liens upon the request and at the expense of the Debtors as required under the terms of the applicable prepetition

financing agreements to the extent such a request is in accordance with the Cash Collateral/DIP Order and the DIP Credit Agreement; and it is further

ORDERED that, the Debtors' title insurance agents and underwriters are authorized to provide title insurance without exception notwithstanding any statutory requirements requiring a "gap affidavit" or other documentation; and it is further

ORDERED that, title agents and title insurance underwriters may rely upon the filing of a copy of this Order in each county where the Debtors are selling Parcels subject to the Order to issue their title policies on properties located within each such county without exception to the Mechanics' Liens and Lender Liens, whether asserted or unasserted, known or unknown; and it is further

ORDERED that, the Debtors are authorized to hold and use the proceeds of Parcel sales, subject to the terms set forth herein, and any intermediary financial institution or transfer agency participating in the closing of a sale of a Parcel pursuant to this Order is authorized to transfer such proceeds to the Debtors to be held by them; and it is further

ORDERED that, Mechanics' Lien Claims secured by valid and enforceable Mechanics' Liens shall be deemed secured claims against the Debtors to the extent of, and shall attach to, the sale proceeds from the applicable Parcel sale, with the same priority in such sale proceeds as such Mechanics' Lien Claims had against the applicable Parcel; and it is further.

ORDERED that, no Mechanics' Lien Claimant shall have any claim against the Debtors' title insurance agents or underwriters or any purchaser of a Parcel with respect to any asserted Mechanics' Lien or other claim or interest relating to any property sold pursuant to this Order; and it is further

ORDERED that, with respect to each Parcel sale closed, the Debtors will satisfy Mechanics' Lien Claims to the extent of the corresponding Mechanics' Lien within ten (10) business days after determining that such Mechanics' Lien Claims: (i) are reflected in the Debtors' books and records; (ii) relate to prepetition liabilities; and (iii) the Debtors determine are either valid or would be more costly to dispute; provided that ad valorem and non ad valorem tax claims owed with respect to the property sold will be satisfied directly from the proceeds of the closing as is customary in the ordinary course of the Debtors' business; and it is further

ORDERED that, any Mechanics' Lien Claimant which believes it has a valid Mechanics' Lien against a particular property owned or sold by the Debtors and whose asserted lien has not been paid or addressed by the Debtors under the procedures set forth above (an "Incipient Mechanics' Lien Claim") may send a written demand for payment (a) setting forth the location(s) of the property sold, (b) stating the amount of its asserted claim(s), (c) describing, with particularity, the reason(s) the Mechanics' Lien Claimant believes it has a valid Mechanics' Lien against the individual property being sold, and (d) attaching documentation (i.e., invoices or purchase orders) or other information sufficient to demonstrate that a valid Mechanics' Lien Claim exists with respect to such property or existed as of the Closing Date with respect to such property (a "Demand"). If an Mechanics' Lien Claimant exercises its rights under this paragraph and sends a Demand as provided in the paragraphs below, the Mechanics' Lien Claimant is no longer required to take any steps that may be required under applicable non-bankruptcy law to obtain, record or perfect a lien and the lien will not be determined to be invalid solely as a failure to take such steps; and it is further

ORDERED that, the Demand must be mailed to (i) the Debtors at the following addresses: (a) Crescent Resources, LLC, 400 South Tyron Street, Charlotte, North Carolina

28285, Attn: Kevin H. Lambert; (b) Weil, Gotshal & Manges LLP, 200 Crescent Court, Suite 300, Dallas, Texas 75201, Attn: Martin A. Sosland, Esq. and Michelle V. Larson, Esq.; (c) Weil, Gotshal & Manges LLP, 700 Louisiana, Suite 1600, Houston, Texas 77002, Attn: Lydia Protopapas, Esq.; and (d) Hohmann, Taube & Summers, LLP, 100 Congress Avenue, Suite 1800, Austin, Texas, 78701, Attn: Eric Taube, Esq.; and (ii) the advisors to Prepetition Administrative Agent, Moore and Van Allen PLLC, 100 North Tyron Street, Suite 4700, Charlotte, NC 28202, Attn: Alan W. Pope, Esq.; and it is further

ORDERED that, unless the parties mutually agree otherwise, all Demands must be submitted within thirty (30) days from the date on which the Debtors file the “Parcel Sales List” reflecting the sale of a Parcel on which an Incipient Mechanics’ Lien is asserted. The Debtors must respond to each Demand within fifteen (15) business days after receipt of a Demand with a copy to all parties set forth in the paragraph above. If the Debtors determine that a Demand is valid or that disputing the Demand will be more costly than honoring the Demand, the Debtors may pay the Incipient Mechanics’ Lien Claim reflected in the Demand after consultation with the BOA, without further order of the Court; and it is further,

ORDERED that, if the Debtors dispute the validity or extent of the Incipient Mechanics’ Lien Claim asserted in the Demand, the parties shall negotiate in good faith to resolve the dispute. If the Debtors resolve the dispute at a lower value than the amount reflected in the Demand, the Debtors may pay such amount without further order of the Court. If the dispute is not resolved within thirty (30) days after receipt of the Demand (the “Demand Resolution Period”), either party may seek a determination from the Court (a “Demand Resolution Proceeding”) as to the validity and extent of the underlying Lien. Any Demand Resolution Proceeding shall be heard at the Court’s next regularly scheduled omnibus hearing date (in

accordance with any case management procedures, including notice requirements, then in effect), or as agreed by the Debtors and the holder of the Incipient Mechanics' Lien Claim; provided that if the Debtors determine during the Demand Resolution Period that the Demand is not likely to be resolved, the Debtors may commence a Demand Resolution Proceeding at any time before the expiration of the Demand Resolution Period and may seek an expedited hearing with respect thereto; and it is further

ORDERED that, upon entry of a final non-appealable Order that the Debtors are required to satisfy an Incipient Mechanics' Lien Claim asserted in a Demand, the Debtor shall pay such Incipient Mechanics' Lien Claims, to the extent of the proceeds of the sale of the underlying Parcel, within ten (10) business days of the date of entry of such final, non-appealable Order resolving the Demand Resolution Proceeding; and it is further

ORDERED that, subject to the Cash Collateral/DIP Order, the Debtors shall not be required to escrow any sale proceeds due to unresolved Demands; *provided that*, the Debtors maintain cash proceeds in an aggregate amount sufficient to satisfy all Demands against sold properties that have been received but that remain unresolved; *provided further*, that (a) in no event shall the Debtors be required to maintain cash on hand for unresolved Demands in an amount greater than the purchase price for a particular property, and (b) with respect to any Demand that asserts an Incipient Mechanics' Lien applicable to more than one property, the Debtors shall be required to reserve only for the portion of the Mechanics' Lien Claim allocable to the particular property or properties sold pursuant to this Order; and it is further

ORDERED that, the Debtors are authorized to satisfy any Mechanics' Liens from the proceeds of the Parcel sales according to the Lien Procedures set forth in this Order; and it is further

ORDERED that, all Mechanics' Lien Claimants paid pursuant to the terms of this Order are directed, upon receipt of payment and at the request of the Debtors, to provide documentation evidencing the release of their Mechanics' Lien Claims; and it is further

ORDERED that, no payment made pursuant to the terms of this Order is intended or should be construed as an admission to the validity or extent of any Mechanics' Lien Claim against the Debtors or a waiver of any rights of the Debtors or other party in interest to dispute the validity or extent of any Mechanics' Lien Claim as provided in this Order; and it is further

ORDERED that, all financial institutions are directed to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the relief granted in this Order; and it is further

ORDERED that, the authority granted in this Order and the terms and conditions hereof shall be effective as of the Commencement Date; and it is further

ORDERED that, the relief granted herein shall be binding upon any chapter 11 trustee appointed in these chapter 11 cases and upon any chapter 7 trustee appointed in the event of a subsequent conversion of these chapter 11 cases to cases under chapter 7; and it is further

ORDERED that, the requirements set forth in Rule 6003(b) of the Bankruptcy Rules are satisfied by the contents of the Motion or otherwise deemed waived; and it is further

ORDERED that, notwithstanding the possible applicability of Bankruptcy Rule 6004(g), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that, all time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a); and it is further

ORDERED that, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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