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and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>IN RE:</b>	: <b>Chapter 11</b>
	: :
<b>ARCAPITA BANK B.S.C.(c), et al.,</b>	: <b>Case No. 12-11076 (SHL)</b>
	: :
<b>Debtors.</b>	: <b>Jointly Administered</b>
	: :
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**DEBTORS' REPLY TO THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS' OMNIBUS RESPONSE TO DEBTORS'  
MOTIONS AND APPLICATIONS FOR FIRST DAY RELIEF**

Arcapita Bank B.S.C.(c) ("*Arcapita*") and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "*Debtors*" and each, a "*Debtor*") hereby file this reply (the "*Reply*") to the omnibus response of the Official Committee of Unsecured Creditors (the "*Committee*") to the Debtors' motions and retention applications scheduled to be heard by this Court on May 7, 2012 (the "*Opposition*") [Docket No. 114]. In support thereof, the Debtors respectfully represent:

**PRELIMINARY STATEMENT**

Since the Committee's appointment and subsequent retention of its advisors, the Debtors have taken every reasonably practicable step to enable the Committee to fulfill its statutory

mandate. The Debtors and their advisors made available to the Committee (as well as the Provisional Liquidator appointed in the Cayman proceeding) relevant transaction documents, analyses and financial reports regarding Arcapita Group<sup>1</sup> operations. The Debtors have prepared multiple presentations for the Committee’s advisors and the Provisional Liquidator addressing major case initiatives. The Debtors even agreed to delay consideration of the May 7 Motions and Applications<sup>2</sup> from the April 17 hearing to permit Committee members and advisors to acquire the institutional knowledge necessary to adequately analyze said pleadings. None of this is disputed. As the Committee readily admits, the Debtors are fully aware of their duties and responsibilities as debtors in possession under the Bankruptcy Code and have worked tirelessly to fulfill it.

Nevertheless, the Committee now objects to various “first day” motions that seek routine relief, essentially arguing that the Committee is entitled to control over the Debtors’ ordinary course operations. Claiming that such controls exist in “many large chapter 11 cases” — yet, notably, citing not one precedent — the Committee argues that reasonable and proper oversight here includes consent rights over the Debtors’ ability to pay their employees’ postpetition wages and benefits, retain ordinary course professionals, pay foreign creditors without minimum contacts to the United States, and renew insurance policies, among a litany of other things. The Committee’s assertions that these demands are consistent with its statutory mandate directly conflict with Bankruptcy Code provisions governing the creation of official committees — namely, section 1103 of the Bankruptcy Code, which, coupled with section 363 of the Bankruptcy Code, clearly do not give the Committee the consent rights over the Debtors’ ability

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<sup>1</sup> The “*Arcapita Group*” consists of Arcapita and all of its debtor and non-debtor affiliates and portfolio company investments.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Opposition.

to operate in the ordinary course — and relevant case law, and appear to confuse its role as an unsecured creditors' committee with the interests of a secured creditor seeking control of the use of its cash collateral.

The Debtors' efforts to date evince their desire to stabilize operations, maximize value and fulfill their statutory and fiduciary obligations. By contrast, the Committee's efforts — at least as expressed by the Opposition — are at odds with its statutory purpose and, frankly, have no valid purpose other than to micromanage the Debtors' business and second-guess the Debtors' management, which, absent a showing under section 1107 of the Bankruptcy Code, is completely inappropriate. Indeed, the Committee readily concedes that nothing has occurred during the chapter 11 cases to warrant the consent rights it seeks in the Opposition (Opposition ¶¶ 13, 18, and 24). In fact, Committee acknowledges that the Debtors' requested expenditures in respect of prepetition obligations are justified, yet demands consent rights over the Debtors' ordinary course "Postpetition [employee] Payments" over a monetary threshold (Opposition ¶ 26). Worse yet, the Committee demands these unprecedented consent rights despite the Debtors' historic practice of conferring with creditors, the Committee, and the Provisional Liquidator to arrive at a consensual budget governing the Debtors' use of cash. Notably, the Provisional Liquidator has not objected to any of the May 7 Motions and Applications.

Despite the Opposition, the Debtors remain determined to work with the Committee and its advisors throughout these chapter 11 cases. The Debtors are committed to maximizing the value of their estates and fully informing the Committee (and the Provisional Liquidator) to enable creditors' active participation in the direction of the Debtors' reorganization and these chapter 11 cases. Through the budget negotiations, the Committee has approved every dollar the Debtors have spent. Not content with the oversight role that the Debtors have fully supported,

the Committee wants a veto over the Debtors' ordinary course expenditures. This demand is not supported by the Bankruptcy Code or by the Debtors' conduct in these chapter 11 cases and should be rejected by the Court.

### **BACKGROUND**

1. The Debtors filed for chapter 11 relief on March 19, 2012 (the "*Petition Date*") after prepetition negotiations with major unsecured lenders reached an impasse. Within two weeks of the Petition Date, the Debtors filed several motions requesting the type of ordinary relief that is regularly granted in chapter 11 cases to help debtors stabilize their operations, including the Cash Management Motion, the Employee Wage Motion, the Critical/Foreign Vendor Motion, the Insurance Coverage Motion, the Ordinary Course Professionals Motion, and several retention applications.<sup>3</sup> The Committee acknowledges that these pleadings seek relief that is regularly granted in bankruptcy cases. *See e.g.*, Opposition ¶ 11 ("The Committee is, of course, aware that motions in which a debtor seeks authority to continue to use its existing cash management system are granted in many cases.").

2. The Employee Wage Motion, the Critical/Foreign Vendor Motion and the Insurance Coverage Motion were all approved on an interim basis by orders of this Court dated March 30, 2012 [Docket Nos. 39, 40, and 43]. The Cash Management Motion has been approved three times on an interim basis [Docket Nos. 12, 62, 86]. The Debtors negotiated and reached an agreement with creditors appearing at the first day hearing regarding the Debtors' use of cash prior to the formation of the Committee and has continued to negotiate and reach

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<sup>3</sup> By the Opposition, the Committee objects to the Employee Wage Motion, the Critical/Foreign Vendor Motion, the Insurance Coverage Motion, the Ordinary Course Professionals Motion, Alvarez & Marsal Retention Application, and the Application to Retain Linklaters LLP (collectively, the "*Contested Matters*").

agreement with the Committee for each subsequent interim cash management order since the Committee's formation.

3. All but one of the May 7 Motions and Applications were scheduled to be heard at the most recent hearing on April 17, 2012. At the request of Committee counsel, prior to that hearing, the Debtors agreed to adjourn the May 7 Motions and Applications to this hearing. The Committee was appointed on April 5, 2012 and requested the adjournment because it did not have sufficient time and institutional knowledge to adequately analyze the pleadings.<sup>4</sup>

4. In the Opposition, the Committee principally raises the following two arguments:

- First, the Committee asserts that it is entitled to unique relief because Arcapita is a financial institution; and
- Second, the Committee argues that concerns about the transfer of capital between Debtor and non-Debtor affiliates call for the imposition of additional controls on the Debtors.

As discussed in detail below, both of these arguments should be rejected outright as meritless.

### **RELIEF REQUESTED**

5. The Debtors submit this Reply in response to the Committee's unprecedented and unwarranted request for consent rights over the Debtors' ordinary course operations, as set forth in the Opposition. The Committee's requests run contrary to the express language of the Bankruptcy Code, applicable case law, and sound public policy.

6. The Debtors' welcome the reasonable participation of the Committee and the Provisional Liquidator in extraordinary funding decisions and large expenditures. On Monday April 30, the Debtors presented the Committee with a proposed detailed "protocol"

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<sup>4</sup> The Debtors further granted the Committee extensions of the Committee objection deadline for the May 7, 2012 hearing. The Opposition was filed on May 2, 2012. This Reply is being filed less than two days after the filing of the Opposition.

setting forth a system allowing for the Committee's participation as to major matters which protocol, upon arriving at a mutual agreement, the Debtors' intend to present to this Court for approval. The Committee did not respond and, instead of focusing on major issues, the Committee filed the Opposition to the typical and ordinary relief sought by the Debtors in the Contested Matters. Once the Committee focuses on the correct issues, an agreement as to a reasonable "protocol" will resolve all of the issues raised by the Committee in the Opposition.

7. Accordingly, the relief requested in the Opposition should be denied and the May 7 Motions and Applications should be approved without further modification. The parties can then attempt to reach agreement upon a proper protocol as to major matters.

### **ARGUMENT**

#### **A. The Committee's Purported Bases for Objecting to the First Day Motions Should be Rejected As Specious**

8. The Committee's first purported basis for objecting to the Contested Matters is that "this case is different than most" because Arcapita is a financial institution, not a manufacturer or distributor. Opposition ¶ 2. Yet, the Debtors are hardly the first financial institutions to seek chapter 11 relief. *E.g.*, *In re Lehman Brothers, Holdings Inc.*, No. 08-13555 (JMP) (S.D.N.Y.); *In re Capmark Fin. Group Inc.*, No. 09-13684 (CSS) (D. Del.); *In re Ambac Fin. Group, Inc.*, No. 10-15973 (SCC) (S.D.N.Y.).<sup>5</sup> The relief requested by the Committee in the Opposition remains unprecedented, despite the numerous chapter 11 cases of financial institutions.<sup>6</sup> The Debtors are unaware of any chapter 11 case where an official committee

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<sup>5</sup> The Debtors were particularly surprised by the Committee's statement describing this case as unique given Committee counsel's prominent involvement in both *Lehman* (as committee counsel) and *Capmark* (as counsel to an ad-hoc group of unsecured bank debt holders). Copies of the orders concerning employee wages, insurance, critical and foreign vendors, and ordinary course professionals that were entered in each of these cases are attached hereto as Exhibit A.

<sup>6</sup> *E.g.*, *In re CIT Group Inc.*, No. 09-16565 (S.D.N.Y.); *In re Finova Group, Inc.*, No. 01-00697-PJW (D. Del.); *In re MF Global Holdings Ltd.*, No. 11-15059 (MG) (S.D.N.Y.); *In re Washington Mutual, Inc.*, No. 08-12229

received all of the rights the Committee seeks by the Opposition. Nor has the Committee identified any case as precedent for its requests (despite its claims that there are “many large chapter 11 cases” where such relief was awarded). Even in *Lehman* which was devoid of any real continuing management, Committee participation was achieved through a negotiated and consensual protocol and not by demanding a judicial proclamation expanding the statutory mandate of the Committee.

9. This case differs in at least one important aspect as compared to *Lehman*. The Debtors here have an ongoing business with experienced management in place fully capable of fulfilling its duties under the Bankruptcy Code and who intend to confirm a plan of reorganization, maximizing value for all estate constituents. *Lehman* had no prospect of emerging as a reorganized debtor and, hence, its future would not be affected by administrative costs. Here, by contrast, excessive administrative costs resulting from Committee micromanaging will negatively impact the Debtors’ prospects for reorganization. These distinctions would seem to call for less participation and “approval rights” by the Committee than consensually agreed to in *Lehman*, but instead, the Committee here wants more.

10. A comparison between the relief requested by the Committee and its other purported reasons for seeking such relief quickly reveals that the Committee’s other cited justifications are also specious. In paragraph 2, the Committee asserts that the Opposition reflects the need to “prevent the transfer of cash to [non-Debtor] entities in jurisdictions outside the effective jurisdiction of the Court.” This argument is a *non sequitur*; the Contested Matters

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(MFW) (D. Del.); *In re AMCORE Fin., Inc.*, No. 10-37144 (SPS) (N.D. Ill.); *In re Fair Finance Co.*, No. 10-50494 (MSS) (N.D. Ohio); *In re New Stream Secured Capital, Inc.*, No. 11-10753 (MFW) (D. Del.); *In re BankUnited Fin. Corp.*, No. 09-19940-LMI (S.D. Fla.); *In re Land Am. Fin. Group, Inc.*, 08-35994 (KRH) (E.D. Va.); *In re Commercial Mortg. & Fin. Co.*, No. 08-73242 (N.D. Ill.); *In re IFC Credit Corp.*, 09-bk-27094 (N.D. Ill.); *In re Interbank Funding Corp.*, No. 02-41590 (BRL) (S.D.N.Y.); *In re The ShoreBank Corp.*, No. 12-B-00581 (N.D. Ill.).

concern Debtor payments to their employees, ordinary course professionals, insurers, and vendors, not Arcapita's non-Debtor subsidiaries and investments. The Committee acknowledges this fact by agreeing to the funding provided in the current interim budget.

11. It is equally uncontested that the Debtors have gone to substantial lengths to provide Committee professionals with a tremendous amount of information regarding the Contested Matters and the chapter 11 cases as a whole. Indeed, in its Opposition, the Committee details the extensive disclosures and concessions already made to the Committee by the Debtors. By the Committee's own account, for a majority of the May 7 Motions and Applications, the Committee has been satisfied with the level of disclosure to date and has no reason to doubt the propriety of the Debtors' actions going forward. Opposition ¶ 27 ("Based upon experience to date, the Committee has reason to believe that the Debtors will, in fact, involve it and its advisors in future decisions regarding the propriety and timing of the Postpetition Payments."). Certainly, the Provisional Liquidator who is receiving the same information has lodged no complaint with this Court. With regard to the Foreign/Critical Vendors Motion, the Committee admits that the Debtors provided it with "detailed information" about the identity of the vendors, the nature of the services rendered, and the amounts currently outstanding and concludes "most of the payment contemplated and already made to the Critical and Foreign Vendors appear to satisfy the criteria set forth in the applicable legal precedent." Opposition ¶ 19.<sup>7</sup> Nevertheless, without citing concerns as to the flow of information or statutory support for its position, the Committee argues that it needs additional protections and consent rights.

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<sup>7</sup> The Committee's request with respect to the Foreign/Critical Vendors Motion directly belies any assertion that its requests for relief are measured or calculated. In the Opposition, the Committee requests consent rights over the payment of any Foreign Vendor that has not executed a Critical Vendor Letter Agreement, yet admits that most Foreign Vendors "do not appear to have 'minimum contacts' with the United States. Opposition ¶ 19. As outlined at length in the Foreign/Critical Vendors Motion, while the Debtors are seeking to have Foreign



**B. The Committee Seeks to Expand Its Statutorily Defined Rights To Include the Exercise of Unprecedented Control Over Decisions that Are Subject to the Debtors' Business Judgment**

12. By adopting the Bankruptcy Reform Act of 1978, Congress sought to encourage companies to file for chapter 11 relief when doing so would maximize the value of a debtor's estate. One of the key incentives granted by the revised Bankruptcy Code was the assurance that the debtor would remain in possession and control over its estate absent a showing that a trustee was necessary. "The Bankruptcy Code favors the continued operation of a business by the debtor as debtor-in-possession . . ." *In re Columbia Motor Express, Inc.*, 33 B.R. 389, 393 (M.D. Tenn. 1983) (citing *In re Garland Corp.*, 6 B.R. 456, 460 (Bankr. 1st Cir. 1980); *In re Bonded Mailings, Inc.*, 20 B.R. 781, 785 (Bankr. E.D.N.Y. 1982); *In re Harper Indus., Inc.*, 18 B.R. 773, 775 (Bankr. S.D. Ohio 1982)).

13. A debtor's power to manage its own business is grounded in sections 1107 and 1108 of the Bankruptcy Code. 11 U.S.C. §§ 1107, 1108. Section 1108 permits a trustee to "operate the debtor's business." 11 U.S.C. § 1108. And, absent the appointment of a trustee or any limitations or conditions imposed by a court, section 1107 specifies that "a debtor in possession shall have all the rights . . . and powers, and shall perform all the functions and duties . . . of a trustee serving in a case under this chapter." 11 U.S.C. § 1107. *See also In re UNR Industries, Inc.*, 30 B.R. 609, 612 (N.D. Ill. 1983) (citing *In re Halux, Inc.*, 665 F.2d 213, 216 (8th Cir. 1981)) ("[D]ebtors acting in the place of the Trustee act for the benefit of creditors, and it is the debtor's duty, not creditors, to protect and preserve assets.").

14. To further the debtor's ability to preserve its assets, a debtor has a well-established right to operate its own business and to continue to manage the property of its estate

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Vendors execute Critical Vendor Letter Agreements, their lack of personal jurisdiction in the United States provides an independent justification for their payment.

in the ordinary course of business. 11 U.S.C. § 363. Pursuant to section 363(c)(1), “the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c). As debtors in possession, the Debtors are entitled to make discretionary decisions regarding the operation of their businesses and their decisions are entitled to a presumption of reasonableness. *In re All Seasons Industries, Inc.*, 121 B.R. 822, 825 (N.D. Ill. 1990) (citing *In re Johns-Manville Corp.*, 60 Bankr. 612, 616 (Bankr. S.D.N.Y. 1986)) (“[A] debtor-in-possession’s actions are cloaked with an aura of propriety and, thus, the debtor is entitled to a presumption concerning the reasonableness of its decisions.”).

15. The “strong presumption in Chapter 11 cases that the debtor in possession should be permitted to remain in control of the corporation absent a showing of need for the appointment of a trustee . . . is rooted in the debtor-in-possession’s familiarity with the business both before and after the filing of bankruptcy.” *In re Intercat, Inc.*, 247 B.R. 911, 920 (S.D. Ga. 2000) (citing *In re Marvel Entertainment Group, Inc.*, 140 F.3d 463, 471 (3rd Cir. 1998)). Here, the Debtors are in the best position to manage their business and thereby maximize the value of the estates because they are familiar their own operations. They have also filed applications seeking to retain experienced professionals who are also intimately familiar with both the duties of a debtor in possession generally and specifically the Debtors’ business and management and who will further assist in the efficient management of the Debtors’ assets in a fashion that will maximize the value of the estates for the benefit of all stakeholders. Moreover, in considering the steps that will benefit the long-term value of the estates, the Debtors’ management and advisors have been extraordinary inclusive, seeking the opinions of multiple constituencies,

including major creditors. In contrast, placing day-to-day operational decisions in the hands of a Committee with diverse interests that convenes on a weekly basis is a sure way to prevent maximizing the value of the Debtors' estate.

16. The duties and rights of the Committee are similarly well defined by the Bankruptcy Code. *UNR Industries*, 30 B.R. at 612 (“The duties of creditors committees are finely delineated [by the Bankruptcy Code].”). A committee shall provide access to information to creditors and solicit and receive comments from creditors. 11 U.S.C. § 1102. Moreover, the Committee may “consult” with the debtor, “investigate the acts, conduct, assets, liabilities, and financial condition of the debtor,” “participate in the formulation of a plan,” “request the appointment of a trustee,” or “perform such other services as are in the interest of those represented.” 11 U.S.C. § 1103(c). Significantly, none of the Committee’s express powers or duties includes the right to audit the Debtors’ day-to-day management decisions. For instance, there is no “creditor in possession” provision in the Bankruptcy Code, no unsecured creditor “cash collateral” provisions in the Bankruptcy Code, no provisions establishing a committee’s right to adequate protection, and no case law that supports the Committee’s claim that it is entitled to “assur[ances that] the creditors and their fiduciaries are sufficiently involved in significant business decisions.” Opposition ¶ 3. Indeed, the Bankruptcy Code indicates the exact opposite: a creditors’ committee may consult and investigate and participate in the formulation of the plan, but the right to manage is squarely within the debtor’s discretion. 7-1103 Collier on Bankruptcy § 1103(c) (“The obligation of the debtor to meet and consult with the committee does not mean that management or the board of directors must abdicate their responsibilities or that the power to make decisions should be shifted to official committees.”).

**C. Granting the Relief Requested in the Opposition Would Establish A Harmful Precedent and Deter Other Businesses from Filing for Chapter 11 Relief**

17. In addition to being contrary to the express terms of the Bankruptcy Code, granting the Committee's Opposition would undermine the Bankruptcy Code's explicit goal of encouraging businesses in distress to file for chapter 11 relief. Under the Committee's reformulation of the Bankruptcy Code, businesses in distress would be deterred from filing for chapter 11 relief because they could not be confident that the protections for debtors crafted by the Bankruptcy Code would be honored.

18. Although the Committee makes a cursory attempt to distinguish this case from other bankruptcy cases, this case is not unique. If the Committee were permitted to usurp the Debtors' right to possession based on nothing more than a desire to micromanage management decisions, other creditors' committees would likely capitalize on the opportunity to insert themselves into management decisions. Granting the relief requested in the Opposition would send a strong message to all debtors and potential debtors in the Southern District of New York, and indeed to debtors across the country, that the powers of the creditors' committee are in fact much more expansive than is articulated in the Bankruptcy Code.

19. Further, the Committee's unique interpretation of its duties and rights would dramatically increase the demands on this Court and administrative costs by requiring the Debtors to seek Court intervention every time there was a disagreement regarding the Debtors' ordinary course operations. The Bankruptcy Code grants the Debtors a presumptive right to possession and management precisely to avoid burdening the Court with hearing motions regarding the ordinary operation of business. *See* H.R. Rep. 95-595, 95th Cong., 1st Sess. 404 (1977) ("[I]n a reorganization case, operation of the business will be the rule, and it will not be necessary to go to the court to obtain an order authorizing operation.").

20. The Committee asserts that a protocol “would allow the cases to function without imposing on the Court with respect to each and every transaction.” Opposition ¶ 3. The Debtor agrees that a reasonable and consensual protocol based on the realities of the Debtors’ business, such as the one already expressly proposed by the Debtors to the Committee, which it has thus far ignored, is the proper way for the Committee to participate in the ongoing operations of the Debtors leading to plan. However, the court-mandated “protocol” that the Committee asks this Court to impose as to every future transaction, no matter how mundane, would lead to countless disputes, many appearances before this courts and unwarranted costs to the detriment of the estate. Even if the consent procedures outlined by the Committee were within its statutorily defined rights, which they are not, the cost of monitoring and micromanaging the Debtors’ business would far outweigh any possible benefit that it could confer upon the Debtors’ creditors.

### **CONCLUSION**

There is no basis to support the Committee’s demand to obtain its approval in order for the Debtors to operate in the ordinary course of business. Nor does the Committee cite any authority for seeking its prior consent before paying amounts authorized in first day motions that are typical of complex, chapter 11 cases. The Committee’s attempt to usurp management and deprive the Debtors of their rights and duties as debtors in possession should not be approved.

WHEREFORE, the Debtors respectfully request that the Court overrule all Committee objections to the Contested Matters, as set forth in the Opposition.

Dated: New York, New York  
May 4, 2012

Respectfully submitted,

/s/ Michael A. Rosenthal

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PROPOSED ATTORNEYS FOR THE DEBTORS  
AND DEBTORS IN POSSESSION

**EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>In re</b>	:	
	:	<b>Chapter 11 Case No.</b>
	:	
<b>LEHMAN BROTHERS HOLDINGS INC., et al.,</b>	:	<b>08-13555 (JMP)</b>
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
	:	
	:	

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**ORDER PURSUANT TO SECTIONS 105(a), 327, 328, AND 330  
OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO  
EMPLOY PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion, dated October 13, 2008 (the “Motion”), of Lehman Brothers Holdings Inc. (“LBHI”) and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors-in-possession (collectively, the “Debtors” and, together with their non-debtor affiliates, “Lehman”), pursuant to sections 105(a), 327, 328 and 330 of chapter 11 of the title 11 of the United States Code (the “Bankruptcy Code”) for authorization to employ professionals utilized in the ordinary course of business (the “Ordinary Course Professionals”), all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with the procedures set forth in the order entered September 22, 2008 governing case management and administrative procedures [Docket No. 285] to (i) the United States Trustee for the Southern



District of New York; (ii) the attorneys for the Official Committee of Unsecured Creditors; (iii) the Securities and Exchange Commission; (iv) the Internal Revenue Service; (v) the United States Attorney for the Southern District of New York; and (vi) all parties who have requested notice in these chapter 11 cases, and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted; and it is further

ORDERED that, pursuant to sections 105(a), 327, 328, and 330 of the Bankruptcy Code, to the extent deemed necessary by the Debtors, the Debtors are authorized to employ, *nunc pro tunc* to September 15, 2008, the Ordinary Course Professionals listed on Exhibit C hereto in the ordinary course of their businesses in accordance with the procedures set forth herein, effective as of the date of commencement of the Debtors' chapter 11 cases; and it is further

ORDERED that each Ordinary Course Professional shall provide the Debtors' attorneys as promptly as possible following (i) the entry of an order granting this Motion, or (ii) the date on which the Ordinary Course Professional commences services for the Debtors: (a) an affidavit (the "Ordinary Course Professional Affidavit"), substantially in the form annexed hereto as Exhibit A, certifying that such Ordinary Course Professional does not represent or hold any interest adverse to the Debtors or their estates with respect to the matter on which the professional is to be employed; and (b) a completed retention questionnaire (the "Retention Questionnaire"), substantially in the form annexed hereto as Exhibit B; and it is further

ORDERED that the Debtors' attorneys shall file the Ordinary Course Professional

Affidavits and Retention Questionnaires with the Court and serve a copy thereof upon the Reviewing Parties (as defined below); and it is further

ORDERED that the Debtors are authorized to supplement the list of Ordinary Course Professionals from time to time during these chapter 11 cases, as the need arises, and file a notice with the Court listing such additional Ordinary Course Professionals and attach thereto the relevant Ordinary Course Professional Affidavits and Retention Questionnaires (collectively, the “Supplemental Notice of Ordinary Course Professionals”), and serve the Supplemental Notice of Ordinary Course Professionals on the (i) U.S. Trustee, and (ii) attorneys for the official committee of unsecured creditors appointed in these chapter 11 cases (together with the Debtors, the “Reviewing Parties”); and it is further

ORDERED that the Reviewing Parties shall have 10 days after receipt of either the Ordinary Course Professional Affidavit and the Retention Questionnaire, in the case of Ordinary Course Professionals listed on Exhibit C, or the Supplemental Notice of Ordinary Course Professionals, in the case of any additional Ordinary Course Professionals, to object to the retention, employment or compensation of the Ordinary Course Professional stemming from the contents of the Ordinary Course Professional Affidavit or the Retention Questionnaire (the “Objection Deadline”); and it is further

ORDERED that if no objections are filed by the Objection Deadline, the retention, employment, and compensation of the Ordinary Course Professional shall be deemed approved pursuant to sections 327 and 328 of the Bankruptcy Code without the need for a hearing and without further order from the Court; *provided, however*, that if an objection is filed and any such objection cannot be resolved within 20 days, the matter shall be set for a hearing before the Court; and it is further

ORDERED that the Debtors are authorized to pay compensation and reimburse expenses to each of the Ordinary Course Professionals retained pursuant to this Order in the customary manner in the full amount billed by each such Ordinary Course Professional upon receipt of reasonably detailed invoices indicating the nature of the services rendered and calculated in accordance with such professional's standard billing practices (without prejudice to the Debtors' right to dispute any such invoices); *provided, however*, that the payments do not exceed \$150,000 per month per Ordinary Course Professional; and it is further

ORDERED that payment to any one Ordinary Course Professional shall not exceed \$1 million for the period prior to the conversion of, dismissal of, or entry of a confirmation order in these chapter 11 cases (the "Chapter 11 Period"); and it is further

ORDERED that in the event payment to any Ordinary Course Professional exceeds \$1 million during the Chapter 11 Period, such Ordinary Course Professional shall be required to file a retention application to be retained as a professional pursuant to sections 327 and 328 of the Bankruptcy Code; and it is further

ORDERED that in the event that an Ordinary Course Professional seeks more than \$150,000 per month, that professional will be required to file a fee application for the full amount of its fees and expenses for that month in accordance with sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, the Fee Guidelines promulgated by the U.S. Trustee, and any and all orders of the Court; and it is further

ORDERED that the Debtors reserve the right to amend the monthly compensation limitations set forth in this order upon notice and hearing; and it is further

ORDERED that this Order shall not apply to any professional retained by the Debtors pursuant to a separate order of the Court.

Dated: New York, New York  
November 5, 2008

s/ James M. Peck  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**(Ordinary Course Professional Affidavit)**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>In re</b>	:	<b>Chapter 11 Case No.</b>
	:	
<b>LEHMAN BROTHERS HOLDINGS INC., et al.,</b>	:	<b>08-13555 (JMP)</b>
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
	:	

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**AFFIDAVIT AND DISCLOSURE STATEMENT OF \_\_\_\_\_,**

**ON BEHALF OF \_\_\_\_\_**

STATE OF \_\_\_\_\_ )  
) ss:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn, upon his oath, deposes and says:

1. I am a [INSERT TITLE] of \_\_\_\_\_, located at \_\_\_\_\_ (the "Firm").
  
2. Lehman Brothers Holdings Inc. ("LBHI") and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (together, the "Debtors") and, collectively with their non-debtor affiliates, "Lehman"), have requested that the Firm provide \_\_\_\_\_ services to the Debtors, and the Firm has consented to provide such services.
  
3. The Firm may have performed services in the past and may perform services in the future, in matters unrelated to these chapter 11 cases, for persons that are parties in interest in the Debtors' chapter 11 cases. As part of its customary practice, the Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be claimants or employees of the Debtors, or other parties in interest in these chapter 11 cases. The Firm does not perform services for any such person in connection with

these chapter 11 cases. In addition, the Firm does not have any relationship with any such person, their attorneys, or accountants that would be adverse to the Debtors or their estates.

4. Neither I, nor any principal of, or professional employed by the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principals and regular employees of the Firm.

5. Neither I, nor any principal of, or professional employed by the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates.

6. The Debtors owe the Firm \$\_\_\_\_\_ for prepetition services.

7. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Affidavit.<sup>1</sup>

By: \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
Notary Public

<sup>1</sup> If necessary.

**EXHIBIT B**

**(Retention Questionnaire)**



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>In re</b>	:	<b>Chapter 11 Case No.</b>
	:	
<b>LEHMAN BROTHERS HOLDINGS INC., et al.,</b>	:	<b>08-13555 (JMP)</b>
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
	:	

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**RETENTION QUESTIONNAIRE**

TO BE COMPLETED BY PROFESSIONALS EMPLOYED BY LEHMAN BROTHERS HOLDINGS INC. OR ANY OF ITS DEBTOR AFFILIATES (collectively, the “Debtors”) DO NOT FILE THIS QUESTIONNAIRE WITH THE COURT.

RETURN IT FOR FILING BY THE DEBTORS, TO:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attn: Jennifer Sapp  
Christopher Stauble

All questions **must** be answered. Please use “none,” “not applicable,” or “N/A,” as appropriate. If more space is needed, please complete on a separate page and attach.

1. Name and address of firm:  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_
  
2. Date of retention: \_\_\_\_\_
  
3. Type of services provided (accounting, legal, etc.):  
  
\_\_\_\_\_  
  
\_\_\_\_\_

4. Brief description of services to be provided:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Arrangements for compensation (hourly, contingent, etc.)

\_\_\_\_\_

(a) Average hourly rate (if applicable):

\_\_\_\_\_

(b) Estimated average monthly compensation based on prepetition retention (if firm was employed prepetition):

\_\_\_\_\_

6. Prepetition claims against the Debtors held by the firm:

Amount of claim: \$ \_\_\_\_\_

Date claim arose: \_\_\_\_\_

Source of Claim: \_\_\_\_\_

7. Prepetition claims against the Debtors held individually by any member, associate, or professional employee of the firm:

Name: \_\_\_\_\_

Status: \_\_\_\_\_

Amount of Claim: \$ \_\_\_\_\_

Date claim arose: \_\_\_\_\_

Source of claim: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. Stock of the Debtors currently held by the firm:

Kind of shares: \_\_\_\_\_

No. of shares: \_\_\_\_\_

9. Stock of the Debtors currently held individually by any member, associate, or professional employee of the firm:

Name: \_\_\_\_\_

Status: \_\_\_\_\_

Kind of shares: \_\_\_\_\_

No. of shares: \_\_\_\_\_

10. Disclose the nature and provide a brief description of any interest adverse to the Debtors or to their estates with respect to the matters on which the above-named firm is to be employed.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Name of individual completing this form:

\_\_\_\_\_

**EXHIBIT C**

**(Ordinary Course Professionals)**

<i>Professional</i>	<i>Address</i>	<i>Service Performed by Professional</i>
Kramer Levin Naftalis & Frankel LLP	1177 Avenue of the Americas New York, NY 10036	Employment Counsel
Thacher Proffitt & Wood LLP	Two World Financial Center New York, NY 10281	Corporate and Real Estate Counsel
Ballard Spahr Andres & Ingersoll, LLP	Plaza 1000-Suite 500 Main Street Voorhees, NJ 08043	Corporate and Real Estate Counsel
Andrews & Kurth LLP	450 Lexington Ave. New York, NY 10017	Corporate Counsel
Herrick & Feinstein LLP	One Gateway Center Newark, NJ 07102	Corporate and Real Estate Counsel
Benesch, Fiedlander, Coplan & Arnoff LLP	200 Public Square, #2300 Cleveland, OH 44114	Corporate and Real Estate Counsel
Latham & Watkins, LLP	885 Third Avenue New York, NY 10022-4834	Corporate Counsel
Schulte, Roth & Zabel LLP	919 Third Avenue New York, NY 10022	Corporate Counsel
Heller Ehrman LLP <sup>1</sup> Peter J. Benvenuti	333 Bush Street San Francisco, CA 94104	Litigation Counsel <sup>2</sup>
White & Case LLP	ul. Marszalkowska 142 00-061 Warszawa Poland	Litigation Counsel in Warsaw
Freshfields Bruckhaus Deringer	Seilergrasse 16 1010 Vienna Austria	Litigation Counsel in Austria
Dorsey & Whitney LLP	136 South Main Street Suite 1000 Salt Lake City, UT 84101	Litigation Counsel

<sup>1</sup> The firm of Heller Ehrman LLP is currently in dissolution. Peter J. Benvenuti, the primary attorney working on Lehman matters at Heller Ehrman, will be moving to a new firm in the future. When that determination occurs, the Debtors will supplement the list of ordinary course professionals to include his new firm.

<sup>2</sup> Litigation Counsel is defined throughout the list of ordinary course professionals as counsel who represent Lehman Brothers Holdings Inc. or one of its affiliates in a Plaintiff capacity.

<i>Professional</i>	<i>Address</i>	<i>Service Performed by Professional</i>
Snell & Wilmer LLP	One Arizona Center Phoenix, AZ 85004	Litigation Counsel in Arizona
Squire, Sanders & Dempsey L.L.P.	Two Renaissance Square 40 North Central Avenue Suite 2700 Phoenix, AZ 85004	Litigation Counsel in Arizona
Lewis and Roca LLP	One South Church Ave. Suite 700 Tucson, Arizona 85701	Litigation Counsel in Arizona
Hahn Loeser & Parks LLP	200 Public Square Suite 2800 Cleveland, OH 44114	Litigation Counsel in Ohio
Windels Marx Lane & Mittendorf, LLP	156 West 56th Street, New York, NY 10019	Real Estate Counsel
Woodbury & Santiago, P.A.	Two Datan Center - Ph 1A 9130 South Dadeland Blvd. Miami, Florida 33156	Real Estate Counsel in Florida
Blake Cassels & Graydon LLP	199 Bay Street Suite 2800 Commerce Court West Toronto, ON M5L, 1A9 Canada	Corporate Counsel in Toronto and Vancouver
Willkie Farr & Gallagher LLP	787 Seventh Avenue New York, NY 10019	Real Estate Counsel
Menter, Rudin & Trivelpiece, P.C.	308 Maltbie Street, Suite 200 Syracuse, NY 13204-1498	Litigation Counsel
Jeffer, Mangels, Butler & Marmaro	1900 Avenue of the Stars 7th Floor Los Angeles, CA 90067	Litigation and Real Estate Counsel in California
Click & Null, P.C.	3475 Piedmont Road, #1910 Atlanta, GA 30305	Corporate and Real Estate Counsel
Paul, Weiss, Rifkind, Wharton & Garrison LLP	1285 Avenue of the Americas New York, NY 10019-6064	Litigation Counsel
Foster, Graham, Milstein & Calisher, LLP	621 Seventeenth Street, 19th Floor Denver, CO 80293	Litigation and Real Estate Counsel
Reilly Pozner & Connelly LLP	511 16th Street Suite 700 Denver, CO 80202	Litigation and Real Estate Counsel
Akerman Senterfitt	Attorneys at Law 350 East Las Olas Blvd. Suite 1600 Ft. Lauderdale, FL 33301	Litigation and Real Estate Counsel

<i>Professional</i>	<i>Address</i>	<i>Service Performed by Professional</i>
Baker & McKenzie LLP	111 Brickell Avenue Suite 1700 Miami, FL 33131	Litigation and Real Estate Counsel
Gianni, Origoni Grippo & Partners	20, Via delle Quattro Fontane 00184 Rome, Italy	Italian Counsel
Kleyr Grasso Associes	Avocats À La Cour 122, Rue A. Fischer B.P. 559 L-2015 Luxembourg	Luxembourg Counsel
Cederquist	Advokatfirman Cederquist KB Hovslagargatan 3 P.O. Box 1670 111 96 Stockholm Sweden	Swedish Counsel
Mitsui Company	Akasaka 2.14 Plaza Bldg. 14-32, Akasaka 2-chome Minato-ku, Tokyo 107-0052 Japan	Japanese Counsel
Oh-Ebashi LPC & Partners	2F Kishimoto Building 2-1 Marunouchi 2-chome Chiyoda-ku, Tokyo 100-0005 Japan	Japanese Counsel
Morrison & Foerster LLP	Shin-Marunouchi Building, 29th Floor 5-1, Marunouchi 1-chome Chiyodaku, Tokyo 100-6529 Japan	Japanese Counsel
LS Horizon Ltd.	14th Floor Diethelm Tower A 93/1 Wireless Road Lumpini, Pathumwan, 2 Bangkok 10330 Thailand	Thai Counsel
Herbert Smith Ltd.	1403 Abdulrahim Place 990 Rama IV Road Bangkok 10500 Thailand	Thai Counsel
NBP Clems	Rúa Colón 33-35, 4º A-B 36.201 Vigo (Pontevedra) Spain	Spanish Counsel
HBN Law	L.B. Smithplein 3 Curaçao, Netherlands Antilles	Netherlands Antilles Counsel
DLA Piper	500 Eight Street, N.W. Washington, D.C. 20004	Governmental Affairs

<i>Professional</i>	<i>Address</i>	<i>Service Performed by Professional</i>
Brand Law Group, PC	923 15th Street, N.W. Washington, D.C. 20005	Governmental Affairs
Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis	101 East Kennedy Boulevard Suite 2700 Tampa, FL 33602	Litigation and Real Estate Counsel
Norton Rose LLP	3 More London Riverside London SE1 2AQ United Kingdom	Regulatory Advisors under English Law
Pekin & Pekin	Lamartine Caddesi 10 Taksim 34437 Istanbul Turkey	Turkish Counsel
Herbert Smith CIS LLP	10 Ulitsa Nikolskaya Moscow 109012 Russia	Russian Counsel
Bär & Karrer AG	Brandschenkestrasse 90 CH-8027 Zurich Switzerland	Swiss Counsel
Cains	15-19 Athol Street Douglas Isle of Man IM1 7JN	Isle of Man Counsel
Cassels Brock & Blackwell LLP	2100 Scotia Plaza 40 King Street West Toronto Canada M5H 3C2	Corporate Counsel in Toronto
Clifford Chance LLP	31 West 52nd Street New York, NY 10019	Corporate Counsel
Fried Frank	1001 Pennsylvania Avenue, NW Washington, DC 20004	Litigation and Real Estate Counsel
Brownstein Hyatt Farber Schreck, LLP	410 Seventeenth Street Suite 2200 Denver, CO 80202	Litigation and Real Estate Counsel
Paul, Hastings, Janofsky & Walker LLP	Park Avenue Tower 75 E. 55th Street First Floor New York, NY 10022	Litigation and Real Estate Counsel
Cadwalader, Wickersham & Taft LLP	One World Financial Center New York, New York 10281	Litigation and Real Estate Counsel
Gibson, Dunn & Crutcher LLP	2029 Century Park East Los Angeles, CA 90067	Litigation and Real Estate Counsel
Sidley Austin LLP	787 Seventh Avenue New York, NY 10019	Corporate and Real Estate Counsel
Lubojka & Thau, LLP	10 East 40th Street, 30th Floor New York, NY 10016	Litigation and Employment Counsel

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>In re</b>	:	<b>Chapter 11 Case No.</b>
	:	
<b>LEHMAN BROTHERS HOLDINGS INC., et al.,</b>	:	<b>08-13555 (JMP)</b>
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
	:	
	:	

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**FINAL ORDER PURSUANT TO SECTIONS 105(a), 362(d), 363(b),  
AND 503(b) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES  
4001, 6003 AND 6004 FOR ORDER (A) (i) AUTHORIZING DEBTOR TO  
CONTINUE ITS WORKERS' COMPENSATION PROGRAMS AND ITS  
LIABILITY, PRODUCT, PROPERTY, AND OTHER INSURANCE PROGRAMS,  
(ii) AUTHORIZING DEBTOR TO PAY ALL PREPETITION OBLIGATIONS  
IN RESPECT THEREOF, AND (B) AUTHORIZING FINANCIAL  
INSTITUTIONS TO HONOR AND PROCESS CHECKS AND TRANSFERS  
RELATED TO SUCH OBLIGATIONS**

Upon the motion, dated October 1, 2008 (the "Motion"), of Lehman Brothers Holdings Inc. ("LBHI") and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors-in-possession (collectively, the "Debtors" and, together with their non-debtor affiliates, "Lehman"), for entry of an order, pursuant to sections 105(a), 362(d), 363(b), and 503(b) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 4001, 6003 and 6004 of the Federal Rules of Bankruptcy Procedure, for authority to (a) (i) continue their workers' compensation programs (the "Workers' Compensation Programs") and their liability, product, property, and other insurance programs (together with the Workers' Compensation Programs, the "Insurance Programs") including but not limited to those set forth on the schedule annexed hereto as Exhibit A, (ii) pay all prepetition obligations in respect thereof, on an uninterrupted basis, consistent with their practices in effect prior to the commencement of



the Debtors' chapter 11 cases, including the payment of all premiums, claims, deductibles, administrative expenses, and all other charges incurred, whether relating to the period prior to or after the commencement of these chapter 11 cases (collectively, "Insurance Obligations"), (iii) modify the automatic stay solely and for the limited purpose of permitting employees with claims under the Workers' Compensation Program to proceed with their claims in accordance with such program in the appropriate judicial or administrative forum; and (B) schedule a hearing to consider the relief requested on a permanent basis (the "Final Hearing"), all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided in accordance with the procedures set forth in the order entered September 22, 2008 governing case management and administrative procedures to (i) the United States Trustee; (ii) counsel for the Creditors' Committee; (iii) counsel for those lenders making daily postpetition clearing advances to the Debtors pursuant to the Order Confirming Status of Clearing Advances (the "Postpetition Lenders"); (iv) the Securities and Exchange Commission; (v) the Internal Revenue Service; (vi) the United States Attorney for the Southern District of New York; and (vii) all parties who have requested notice in these chapter 11 cases, and it appearing that no other or further notice need be provided; and a hearing having been

held to consider the relief requested in the Motion (the “Interim Hearing”); and upon the Affidavit of Ian T. Mowitt Pursuant to Rule 1007-2 for the Local Bankruptcy Rules of the Southern District of New York in Support of First-Day Motions and Applications, sworn to on September 14, 2008, the record of the Interim Hearing and Final Hearing, and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted on a final basis as provided herein; and it is further

ORDERED that the Debtors are authorized and empowered to maintain their Insurance Programs including but not limited to those set forth on the schedule annexed hereto as Exhibit A without interruption, on the same basis, and in accordance with the same practices and procedures that were in effect prior to the commencement of the Debtors’ chapter 11 cases; and it is further

ORDERED that the Debtors are authorized, but not required, to pay, in their sole discretion, all Insurance Obligations that are or become payable prior to the Final Hearing, including, without limitation, all premiums, claims, deductibles, excess, retrospective adjustments, administrative and brokers’ fees, and all other obligations arising under the Insurance Programs, including those Insurance Obligations that (i) were due and payable or related to the period before the commencement of these chapter 11 cases, without further Order of the Court; *provided, however*, that the Debtors shall

consult with the Official Creditors' Committee prior to the payment of any such claims exceeding \$250,000 and shall obtain the consent of the Official Creditors' Committee prior to the payment of such claims exceeding \$500,000 (which consent shall not be unreasonably withheld) or further order of the Court, and (ii) are or become due and payable or related to the period after the commencement of these chapter 11 cases; and it is further

ORDERED that, pursuant to section 362(d) of the Bankruptcy Code, to the extent any of the Debtors' employees hold claims under the Debtors' Workers' Compensation Programs, these employees are authorized, at the Debtors' discretion, to proceed with their workers' compensation claims through and including the collection of any judgment in the appropriate judicial or administrative forum under the Workers' Compensation Programs; provided, that the prosecution of such claims is in accordance with the Workers' Compensation Program and the recoveries are limited to the proceeds available under the Workers' Compensation Program; and it is further

ORDERED that nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtors or other parties in interest as provided under the Bankruptcy Code to dispute or contest the amount of or basis for any claims against the Debtors in connection with or relating to the Debtors' Insurance Programs; and it is further

ORDERED that, to the extent that any Insurance Program or any related contract or agreement is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, neither this Order nor any payments made in accordance with this Order shall constitute the postpetition assumption of any such Insurance Program,

contract, or related agreement pursuant to section 365 of the Bankruptcy Code; and it is further

ORDERED that notwithstanding any applicability of Rules 6004(h),<sup>1</sup> 7062, or 9014 of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rules 4001(d) and 6004(a) are waived.

Dated: New York, New York  
November 5, 2008

s/ James M. Peck  
UNITED STATES BANKRUPTCY JUDGE

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<sup>1</sup> Bankruptcy Rule 6004(h) is an interim bankruptcy rule adopted pursuant to standing General Order M-308 of the United States Bankruptcy Court for the Southern District of New York, signed on October 11, 2005 by Chief Judge Stuart M. Bernstein.

**EXHIBIT A**

**(Insurance Programs)**

Lehman Brothers Holdings Inc., et al.

	<i>CARRIER</i>	<i>POLICY NUMBER</i>	<i>BROKER</i>	<i>EFFECTIVE DATE</i>	<i>EXPIRATION DATE</i>	<i>LIMITS</i>	<i>DEDUCTIBLE</i>	<i>POLICY PREMIUM</i>	<i>ANNUAL PREMIUM</i>	<i>GEOGRAPHIC SCOPE</i>
UK Engineering Inspection Coverage	Royal & Sun Alliance	CY/EKD7000537	Marsh UK	05/01/2008	09/29/2008	Statutory	N/A	GBP 3,204.81	GBP6,549.58	UK
LBCS Cargo Insurance	Lloyds of London	JC715106	Marsh - Portland	01/09/2007	09/30/2008	\$50mm for named location; \$10mm for any one conveyance and/or pipeline; \$5mm for unnamed location	\$100,000 per occurrence	\$25,000 minimum & deposit	\$25,000 minimum & deposit	Worldwide
LBCS Energy Liability	Lloyds of London	B0509HB177007 (Primary); B0509HE307607 (Excess)	Marsh	08/01/2007	09/30/2008	\$100mm Primary ; \$150 xs \$100 Excess (total limits: \$250mm)	\$50,000 SIR; \$100,000 SIR for Oil Trading	\$136,920 (primary \$100mm); \$173,400 (Excess\$150mm)	\$136,920 (primary \$100mm); \$173,400 (Excess\$150mm)	Worldwide
Canadian General Liability	ACE	CGL323128	Integro	09/30/2007	09/30/2008	\$1,000,000 per occ.	Nil	\$2,500	\$2,500	Canada
Auto Liability	AIG	AL 1607101	Marsh	09/30/2007	09/30/2008	\$1MM Liability; PIP statutory; \$10,000 Medial payments	N/A	\$107,691	\$107,691	USA
General Liability (Commercial)	AIG	1595543	Marsh	09/30/2007	09/30/2008	\$1MM/loss \$10MM aggregate	\$0	\$381,031	\$381,031	USA
Punitive Damages Wrap Around Coverage	AIG CAT	TBD	Marsh Bermuda	09/30/2007	09/30/2008	\$25MM excess of Primary	N/A	\$35,000	\$35,000	Global
Umbrella/Excess Liability	AIG, Liberty Mutual, Zurich, ACE Bermuda	Various	Marsh	09/30/2007	09/30/2008	\$250MM/loss, excess of scheduled underlying limits	N/A	\$939,896	\$939,896	Worldwide

Lehman Brothers Holdings Inc., et al.

	<i>CARRIER</i>	<i>POLICY NUMBER</i>	<i>BROKER</i>	<i>EFFECTIVE DATE</i>	<i>EXPIRATION DATE</i>	<i>LIMITS</i>	<i>DEDUCTIBLE</i>	<i>POLICY PREMIUM</i>	<i>ANNUAL PREMIUM</i>	<i>GEOGRAPHIC SCOPE</i>
Workers Compensation and Employers Liability	AIG	5455585(FL); 5455585(CA); 5455586(AOS); 5455587(NY); 5455588(AR,MA,TN,VA); 5455589(MI,WI); 5455590(OR); 5455591(TX)	Marsh	09/30/2007	09/30/2008	Workers Compensation statutory benefits for states covered. Employers Liability \$1MM each accident and each employee.	\$250,000	\$3,612,198	\$3,612,198	USA
Aviation Finance Group Contingent Hull & Liability (Corporate Aircraft)	AIG Aviation	FI-1859476-01	AON Aviation	10/25/2007	10/25/2008	\$200mm per occ with various sublimits	N/A	\$17,500	\$17,500	Worldwide
Aviation Hull and Liability (including Non-Owned Aircraft and Excess Coverage for the fractional)	AIG Aviation, National Union -(Fractional Policy)	TBD	Aon Aviation	10/30/2007	10/30/2008	Aircraft Hull: 1995 Gulfstream IV \$34,170,000 2001 Gulfstream IV \$38,760,000 1998 Sikorsky \$8,800,000	N/A	\$437,550	\$437,550	Global
Fine Arts Liability	Travelers	QT-660-3077B165-FA 103107	Dewitt Stern Group	10/31/2007	10/31/2008	\$12MM scheduled locations; \$1MM transit; \$3MM any other location world wide	\$1,000 in transit; \$15,000 all other	\$26,145	\$26,145	Global

Lehman Brothers Holdings Inc., et al.

	<i>CARRIER</i>	<i>POLICY NUMBER</i>	<i>BROKER</i>	<i>EFFECTIVE DATE</i>	<i>EXPIRATION DATE</i>	<i>LIMITS</i>	<i>DEDUCTIBLE</i>	<i>POLICY PREMIUM</i>	<i>ANNUAL PREMIUM</i>	<i>GEOGRAPHIC SCOPE</i>
Petrol Properties GL	Lexington	107253	Integro	11/18/2007	11/18/2008	\$2MM aggregate; \$2MM products/oper; \$1MM/loss; \$1MM personal injury; \$50K Fire Damage; Legal Excluded Medical Payments	\$10,000/occurrence	\$27,000 (Minimum and Deposit)	\$25,000	USA
Non 40 Act Asset Management - D&O/E&O	AIG, XL, Chubb, HCC, Arch, Travelers, Starr, PIA, ACE USA, Axis USA	AIG: 003019007, XL: ELU101620-07, Chubb: 68005473, HCC: 24MGU07A15762, Arch: IAP0018995-01, Travelers: 0590CM3054, Starr: 349-4864, PIA: U707-60579, ACE USA: DOX 62161222-002, Axis USA: MNN	Willis	11/30/2007	11/30/2008	\$100MM	\$0 Individual; Corporate Reimbursement \$3MM	\$2,302,752	\$2,302,752	Global
Private Equity D&O and E&O	Chubb, AIG, XL	Chubb: 70434566, AIG: 003029441, XL: ELU101654-07	Marsh	11/30/2007	11/30/2008	\$30MM	\$0 Individual; Corporate Reimbursement \$500,000	\$481,750	\$481,750	Global
Pro Bono Professional Liability	Lloyds of London	86335	Complete Equity Markets	01/10/2008	01/10/2009	\$1MM aggregate (sub-limits for certain coverages)	\$500 per claim	\$1,979 plus taxes (\$2,054.20 with taxes)	\$1,979 plus taxes (\$2,054.20 with taxes)	
Aviation Finance Group Contingent Hull & Liability	Lloyds of London	B0823AM0852581	AON	01/16/2008	01/16/2009	\$500mm plus various sublimits	\$10k for All Risk; \$1,250 for Baggage/personal effects	\$441,216 Deposit	\$441,216 Deposit	Worldwide
Comprehensive Crime (Fidelity Coverage) including Computer Crime	Lloyds & Various U.S. insurers	B0509QA005308/1 Primary	Marsh	01/31/2008	01/31/2009	\$175MM per loss subject to \$175MM aggregate	\$10MM per claim	\$4,001,734	\$4,001,734	Global
Comprehensive Crime Mortgage Bank Excess In-fill	AIG	Bond: 003002193 Computer: 003008225	Marsh	01/31/2008	01/31/2009	\$5MM excess of \$5MM retention	\$5MM/loss	\$74,767	\$74,767	
Terrorism Coverage (Nuclear, Biological and Chemical)	Wharf Reinsurance	2008-NBC-01	Marsh	02/11/2008	02/11/2009	\$1.425B	\$1MM	\$2,720,938	\$2,720,938	USA



Lehman Brothers Holdings Inc., et al.

	<i>CARRIER</i>	<i>POLICY NUMBER</i>	<i>BROKER</i>	<i>EFFECTIVE DATE</i>	<i>EXPIRATION DATE</i>	<i>LIMITS</i>	<i>DEDUCTIBLE</i>	<i>POLICY PREMIUM</i>	<i>ANNUAL PREMIUM</i>	<i>GEOGRAPHIC SCOPE</i>
Excess SIPC Surety Bond	Customer Asset Protection Company	2002-02, 1002-03lbi, 1003-03nb	Marsh	02/16/2008	02/16/2009	N/A	N/A	\$904,243		LBI, NB LLC, LBIE
All Risk & NBCR Excess (excluding UK)	Wharf Reinsurance	XS-002	Marsh	12/31/2007	03/15/2009	\$575MM per occ for NBC; \$300MM per occ /agg for Global All Risk (excl. UK); \$100MM Flood except \$25MM for high hazard flood zones, \$100MM CA EQ	Excess underlying policies	All Risk= \$57,744 NBC=\$115,488	All Risk= \$48,000 NBC=\$96,000	Global
ALS/BNC/LBB/LBSBF/PML Mortgage Impairment Policy	Lloyd's	B066408164A07 B066408164B07	Integro	12/31/2007	03/15/2009	\$30MM A1 & A2; \$25MM CA Earthquake	\$5,000, except \$10K for windstorm & flood, \$1M for direct loss of damages from balance of perils	\$1,198,766 GBP30,075 for PML	\$996,480 GBP25,000 for PML	Global
Global Property, Business Interruption and Boiler and Machinery	Zurich, Chubb, Lexington, Lloyds, ACE USA, Max Bermuda, AWAC, Arch, Allianz, Montpelier RE, GEP, Axis US, Swiss RE, Lancashire, ACE	Various		12/31/2007	03/15/2009	\$1.4 B w/various sub limits	\$1MM/occurrence all loss except, 5% for CA Quake and Named Windstorm with \$1mm minimum, 24 hours waiting period for service interruption	\$6,142,640.37	\$5,106,102.40	Global

Lehman Brothers Holdings Inc., et al.

	CARRIER	POLICY NUMBER	BROKER	EFFECTIVE DATE	EXPIRATION DATE	LIMITS	DEDUCTIBLE	POLICY PREMIUM	ANNUAL PREMIUM	GEOGRAPHIC SCOPE
Terrorism Standalone - International (excluding US, UK)	Lexington	9406835	Marsh	12/31/2007	03/15/2009	Limits of Liability per location not to exceed the amounts shown in Property and BI columns respectively for each location, for each business. Subject to	\$5MM/occurrence as respects to property damage. 3 days as respects BI and Extra Expense	\$111,149	\$92,393	Global (excluding US,UK)
TRIPRA	Wharf Reinsurance	2008-T-02	Marsh	12/31/2007	03/15/2009	\$2 B	\$1MM/occurrence all loss	\$1,904,789.00	\$1,583,366.00	USA
UK All Risk Property Policy	Wharf Reinsurance	2008PRIUK-01	Marsh	12/31/2007	03/15/2009	\$1.7 B USD with various sublimits	\$1MM per occurrence with a 24 hour waiting period with respect to service interruption	\$515,786	\$428,750	UK
UK Terrorism -Pool RE Endorsement	Wharf Reinsurance	Attaches to Policy 2008-PRIUK-01	Marsh	12/31/2007	03/15/2009	\$1.7B with various sublimits	\$1MM per occurrence with a 24 hour waiting period with respect to service interruption	\$1,043,736	\$867,611	UK
Special Risk	Great American Insurance Co.	SCI273610130-06	Marsh	03/30/2006	03/30/2009	\$50MM per Insured Event subject to sub-limits	\$0 (NIL)	\$60,795	\$20,265	Global
Directors and Officers Liability	XL, Chubb, HCC, Axis, Zurich, Lloyds, ACE Bda, Arch, AIG Cat Excess/AWAC, Liberty, AIG, Endurance, RSUI, CNA, AIG, Axis, ACE	ELU104715-08, 7043-0876, 24-MGU-08-A16690, MNN713535/01/2008, DOC7995104-10, B0509QA027108, LEH-11930D, 00DOX0112000403, ELU1047515-08, C002007/006, 078365-018, 005082352, 006333004, 0063310070007	Marsh	05/16/2008	05/16/2009	\$180MM - A&B \$250MM - A	(A) Individual coverage \$0; (B) Company reimbursement \$25MM	\$11,756,796.00	\$11,756,796.00	Global
Employment Practices Insurance	XL, ACE Bermuda, AWAC, Axis Bermuda, Endurance	BM00023596EP08A, LEHM-11929E, C006345/002, 1131670108QA, P006960002	Marsh Bermuda	05/16/2008	05/16/2009	\$100MM	\$10MM	\$1,821,408	\$1,821,408	Global
Fiduciary Liability (Pension Trust)	AIG, St. Paul Travelers, CNA, HCC, Zurich	507-47-13, EC09001745, 169856703, 14-MGU-08-A16695, FLC5979655-04	Marsh	05/16/2008	05/16/2009	\$50MM	\$250K for; \$2.5M for derivative or class representative action; \$10M for all loss in connection with any Claim made against any	\$593,909	\$593,909	Global

Lehman Brothers Holdings Inc., et al.

	<i>CARRIER</i>	<i>POLICY NUMBER</i>	<i>BROKER</i>	<i>EFFECTIVE DATE</i>	<i>EXPIRATION DATE</i>	<i>LIMITS</i>	<i>DEDUCTIBLE</i>	<i>POLICY PREMIUM</i>	<i>ANNUAL PREMIUM</i>	<i>GEOGRAPHIC SCOPE</i>
Charterers Legal Liability	International Marine Underwriters	N5JH01111	Integro	05/31/2008	05/31/2009	\$5MM	\$10,000 any one loss or occurrence	\$5,000	\$5,000	Global
Global Real Estate Group Liability (General Liability, Liquor Liability, Auto Liability, & Garage Liability)	AIG	GL 4571645 LIQ 4572469 CA 1469944 CA 4576013	Integro	08/01/2008	08/01/2009	\$1mm per occ/\$2mm agg per location; \$1mm for non-owned & Hired Auto; \$1mm for Liquor Liability	N/A	\$851,213	\$851,213	per scheduled locations
Global Real Estate Group Property	Lexington, ACE, CNA, Glacier, Inter Hannover, Liberty Mutual, Swiss Re, Zurich	Various	Integro	08/01/2008	08/01/2009	\$250mm with various sublimits	\$25k; \$100k for Garden Apts; \$250k or 5% for Flood, Named Storm, Flood as a result of Named Storm & CA Earthquake	\$3,301,467 plus applicable taxes	\$3,301,467 plus applicable taxes	per scheduled locations
Global Real Estate Group Umbrella/Excess Liability	AIG, Lexington, ACE Westchester, AIG CAT Excess, Chubb, Fireman's Fund	6081831, 7769720, G23810815002,9497745, 93635835, SHX 00079403960	Integro	08/01/2008	08/01/2009	\$200mm per occ / agg Per location	\$25,000 SIR	\$1,157,460 plus applicable taxes	\$1,157,460 plus applicable taxes	per scheduled locations
Cranford Storage Tank Liability	ACE	G21861492002	Marsh	08/15/2008	08/15/2009	\$1mm per pollution incident; \$1mm aggregate legal defense expense; \$1mm aggregate limit	\$5,000	\$473	\$473	USA
International Casualty	Ace	PHFD37282236	Integro	09/30/2007	09/30/2009	\$1MM CGL; \$2MM Auto; \$1MM Employers Liability	\$1,000 for EBL; N/A for all others	\$261,895	\$130,948	Global ex US
Excess Securities (J)	Lloyd's	509/ZF003708	Marsh	01/31/2008	01/31/2011	\$325MM each and every loss	Excess of underlying \$175M Bond Aggregate	\$532,500	\$177,500	Global
Mail (Lehman Brothers)	Chubb		Marsh	Continuous (7/30 anniversary date)	Continuous (7/30 anniversary date)	\$50MM subject to sub-limits	\$0 (NIL)	\$35,000	\$35,000	Global

**ORIGINAL**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----X  
: **Chapter 11 Case No.**  
: **09 - 13684 (CSS)**  
: **(Jointly Administered)**  
: **Debtors.**  
: **CAPMARK FINANCIAL GROUP INC., et al.,**  
: **In re**  
-----X

**ORDER PURSUANT TO SECTIONS  
105(a), 363(b), AND 503(b) OF THE BANKRUPTCY CODE  
(I) AUTHORIZING DEBTORS TO MAINTAIN INSURANCE PROGRAMS  
AND PAY ALL PREPETITION AND POSTPETITION OBLIGATIONS  
IN RESPECT THEREOF, AND (II) DIRECTING FINANCIAL  
INSTITUTIONS TO HONOR AND PROCESS POSTPETITION  
CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS**

Upon the motion dated October 25, 2009 (the "Motion"), of Capmark  
Financial Group Inc. ("CFGI") and certain of its subsidiaries and affiliates, as debtors and  
debtors in possession (collectively, the "Debtors"),<sup>1</sup> pursuant to sections 105(a), 363(b),

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four (4) digits of each Debtor's federal tax identification number, are: Summit Crest Ventures, LLC (5690), Capmark Financial Group Inc. (2188), Capmark Capital Inc. (6496), Capmark Finance Inc. (3444), Commercial Equity Investments, Inc. (4153), Mortgage Investments, LLC (6319), Net Lease Acquisition LLC (9658), SJM Cap, LLC (0862), Capmark Affordable Equity Holdings Inc. (2379), Capmark REO Holding LLC (3951), Paramount Managing Member AMBAC II, LLC (3934), Paramount Managing Member AMBAC III, LLC (3999), Paramount Managing Member AMBAC IV, LLC (0117), Paramount Managing Member AMBAC V, LLC (3366), Paramount Managing Member LLC (0184), Paramount Managing Member II, LLC (7457), Paramount Managing Member III, LLC (0196), Paramount Managing Member IV, LLC (0199), Paramount Managing Member V, LLC (0201), Paramount Managing Member VI, LLC (5857), Paramount Managing Member VII, LLC (5855), Paramount Managing Member VIII, LLC (5854), Paramount Managing Member IX, LLC (5452), Paramount Managing Member XI, LLC (5455), Paramount Managing Member XII, LLC (5457), Paramount Managing Member XVIII, LLC (3087), Paramount Managing Member XIV, LLC (4194), Paramount Managing Member XV, LLC (4192), Paramount Managing Member XVI, LLC (4186), Paramount Northeastern Managing Member, LLC (3086), Capmark Affordable Properties Inc. (3435), Paramount Managing Member XXIII, LLC (4754), Paramount Managing Member XXIV, LLC (3615), Paramount Managing Member 30, LLC (6824), Paramount Managing Member 31, LLC (6826), Paramount Managing Member 33, LLC (6831), Broadway Street California, L.P. (7722), Broadway Street 2001, L.P. (0187), Broadway Street XV, L.P. (7730), Broadway Street XVI, L.P. (7725), Broadway Street XVIII, L.P. (9799), Broadway Street Georgia I, LLC (9740), Capmark Managing Member 4.5 LLC (8979), and Capmark Affordable Equity Inc. (2381). CFGI's corporate headquarters is located at 116 Welsh Road,

and 503(b) of title 11, United States Code (the “Bankruptcy Code”) and the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for an order (i) authorizing, but not directing, the Debtors to continue their workers’ compensation program (the “Workers’ Compensation Program”) and their liability, property, directors and officers’ liability, and other insurance programs, including, without limitation, all of the policies set forth on Exhibit A, attached hereto (together with the Workers’ Compensation Program, the “Insurance Programs”), and pay all prepetition Insurance Obligations (as defined below) related thereto, and (ii) authorizing and directing the Debtors’ banks and financial institutions (the “Banks”) to honor and process all postpetition checks issued or to be issued, and electronic fund transfers requested or to be requested, by the Debtors with respect to the Insurance Obligations, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and no trustee, examiner, or statutory creditors’ committee having been appointed in these chapter 11 cases, and due and proper notice of the Motion having been provided by facsimile, electronic mail transmission, overnight delivery and/or hand delivery to (i) the U.S. Trustee, (ii) Citibank, N.A. and Citicorp North America, Inc., as administrative agents under the Debtors’ prepetition senior credit facility, bridge loan agreement and term loan facility, (iii) Deutsche Bank Trust Company Americas, as trustee under the prepetition senior unsecured floating rate note and 5.875% senior unsecured note

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Horsham, Pennsylvania, 19044. The addresses for all of the Debtors are available at the following World Wide Web address: <http://chapter11.epiqsystems.com/capmark>.

indentures, (iv) Wilmington Trust FSB, as successor trustee under the prepetition 6.300% senior unsecured note indenture, (v) counsel for the ad hoc committee of prepetition unsecured noteholders of CFGI, (vi) Law Debenture Trust Company of New York, as trustee under CFGI's prepetition floating rate junior subordinated indenture, (vii) any proposed DIP lender, (viii) those creditors holding the thirty (30) largest unsecured claims against the Debtors' estates (on a consolidated basis), and (ix) the Federal Deposit Insurance Corporation, and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the "Hearing"); and upon the Declaration of Thomas L. Fairfield, Executive Vice President, General Counsel and Secretary of CFGI, in Support of the Debtors' Chapter 11 Petitions and First Day Motions and Applications, the Motion, the record of the Hearing, and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted as may be modified herein; and it is further

ORDERED that the Debtors are authorized, but not directed, to pay all premium adjustments, deductibles, and other related charges arising under the Insurance Programs (the "Insurance Obligations"), whether such Insurance Obligations relate to the period before or after the commencement of these chapter 11 cases, in an amount up to \$3.0 million without further Order from the Court; and it is further

ORDERED that the Banks are authorized ~~and directed~~ to honor, process, and pay, to the extent of funds on deposit, any and all postpetition checks issued and electronic fund transfers requested by the Debtors with respect to their Insurance Obligations; and it is further

ORDERED that nothing in this Order or the Motion shall be construed as prejudicing the Debtors' rights to dispute the amount of or basis for any claims against the Debtors in connection with or relating to the Insurance Programs; and it is further

ORDERED that, to the extent that any Insurance Program or any related contract or agreement is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, neither this Order nor any payments made in accordance with this Order shall constitute the postpetition assumption of any such Insurance Program, contract, or related agreement pursuant to section 365 of the Bankruptcy Code; and it is further

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

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

Dated: 10/27, 2009  
Wilmington, Delaware

  
UNITED STATES BANKRUPTCY JUDGE

**ORIGINAL**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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**In re:** : **Chapter 11**  
: **CAPMARK FINANCIAL GROUP INC., et al.,** : **Case No. 09-13684 (CSS)**  
: **Debtors.** : **Jointly Administered**  
: **Re: Docket Nos. 15, 41, 62 and 73**  
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**FINAL ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a) AND 363(b) AND BANKRUPTCY RULES 6003 AND 6004 (I) AUTHORIZING DEBTORS TO PAY PREPETITION (a) WAGES, COMPENSATION, PAYROLL TAXES, AND EMPLOYEE OBLIGATIONS, (b) BUSINESS EXPENSES, AND (c) CONTRIBUTIONS TO, AND UNDER, EMPLOYEE BENEFIT PLANS, (II) AUTHORIZING DEBTORS TO PAY PREPETITION PAYROLL SERVICES AND BENEFITS PROVIDERS AND (III) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS**

Upon the motion dated October 25, 2009 (the "Motion"), of Capmark Financial Group Inc. ("CFGI") and certain of its subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"),<sup>1</sup> seeking entry of an interim order (the "Interim Order"), pursuant

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four (4) digits of each Debtor's federal tax identification number, are: Summit Crest Ventures, LLC (5690), Capmark Financial Group Inc. (2188), Capmark Capital Inc. (6496), Capmark Finance Inc. (3444), Commercial Equity Investments, Inc. (4153), Mortgage Investments, LLC (6319), Net Lease Acquisition LLC (9658), SJM Cap, LLC (0862), Capmark Affordable Equity Holdings Inc. (2379), Capmark REO Holding LLC (3951), Paramount Managing Member AMBAC II, LLC (3934), Paramount Managing Member AMBAC III, LLC (3999), Paramount Managing Member AMBAC IV, LLC (0117), Paramount Managing Member AMBAC V, LLC (3366), Paramount Managing Member LLC (0184), Paramount Managing Member II, LLC (7457), Paramount Managing Member III, LLC (0196), Paramount Managing Member IV, LLC (0199), Paramount Managing Member V, LLC (0201), Paramount Managing Member VI, LLC (5857), Paramount Managing Member VII, LLC (5855), Paramount Managing Member VIII, LLC (5854), Paramount Managing Member IX, LLC (5452), Paramount Managing Member XI, LLC (5455), Paramount Managing Member XII, LLC (5457), Paramount Managing Member XVIII, LLC (3087), Paramount Managing Member XIV, LLC (4194), Paramount Managing Member XV, LLC (4192), Paramount Managing Member XVI, LLC (4186), Paramount Northeastern Managing Member, LLC (3086), Capmark Affordable Properties Inc. (3435), Paramount Managing Member XXIII, LLC (4754), Paramount Managing Member XXIV, LLC (3615), Paramount Managing Member 30, LLC (6824), Paramount Managing Member 31, LLC (6826), Paramount Managing Member 33, LLC (6831), Broadway Street California, L.P. (7722), Broadway Street 2001, L.P. (0187), Broadway Street XV, L.P. (7730), Broadway Street XVI, L.P. (7725), Broadway Street XVIII, L.P. (9799), Broadway Street Georgia I, LLC (9740), Capmark Managing Member 4.5 LLC (8979), and Capmark Affordable Equity Inc. (2381). CFGI's corporate headquarters is located at 116 Welsh Road, Horsham, Pennsylvania, 19044. The addresses for all of the Debtors are available at the following World Wide Web address: <http://chapter11.epiqsystems.com/capmark>.



to sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing the Debtors to pay wages, compensation, payroll taxes, and employee benefits, business expenses, and contributions to, and under, employee benefit plans, other than employee bonus and award payments and severance pay benefits, (ii) authorizing the Debtors to pay prepetition payroll services and benefits providers, (iii) authorizing financial institutions to honor and process checks and transfers related to such obligations, and (iv) scheduling a final hearing (the “Final Hearing”) to consider entry of an order granting the relief requested in the Motion on a permanent basis, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and no trustee or examiner having been appointed in these chapter 11 cases, and due and proper notice of the Motion having been provided by facsimile, electronic mail transmission, overnight delivery and/or hand delivery to (i) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”), (ii) Citibank, N.A. and Citicorp North America, Inc., as administrative agents under the Debtors’ prepetition senior credit facility, bridge loan agreement and term loan facility, (iii) Deutsche Bank Trust Company Americas, as trustee under the prepetition senior unsecured floating rate note and 5.875% senior unsecured note indentures, (iv) Wilmington Trust FSB, as successor trustee under the prepetition 6.300% senior unsecured note indenture, (v) counsel for the ad hoc committee of prepetition unsecured noteholders of CFGI, (vi) Law Debenture Trust Company of New York, as trustee under CFGI’s prepetition floating rate junior subordinated indenture, (vii) any proposed DIP lender, (viii) those

creditors holding the thirty (30) largest unsecured claims against the Debtors' estates (on a consolidated basis), and (ix) the Federal Deposit Insurance Corporation (collectively, the "Notice Parties"), and a hearing having been held to consider the relief requested in the Motion on an interim basis; and the Court having entered the Interim Order on October 27, 2009 granting the relief requested in the Motion on an interim basis [Docket No. 62]; and notice of (a) entry of the Interim Order and (b) scheduling the Final Hearing to consider granting the relief requested in the Motion on a final basis and setting an objection deadline (the "Objection Deadline") for the relief sought in the Motion having been provided to all Notice Parties; and it appearing that no other or further notice need be provided; the Debtors having agreed to extend the Objection Deadline for the U.S. Trustee and the official statutory committee of unsecured creditors (the "Creditors Committee"), and the Debtors having filed a supplemental brief (the "Debtors' Supplemental Brief") in support of the certain final relief requested in the Motion; and the U.S. Trustee having filed a response to the Motion and the Debtors' Supplemental Brief; and a hearing having been held to consider the relief requested in the Motion on a final basis (the "Hearing"); and upon the Declaration of Thomas L. Fairfield, Executive Vice President, General Counsel and Secretary of CFGI, in Support of the Debtors' Chapter 11 Petitions and First Day Motions and Applications; the record of the Final Hearing, and all of the proceedings had before the Court; and all objections, if any, to the final relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and the Court having found and determined that the relief sought in the Motion, as further supported by the Debtors' Supplemental Brief is in the best interests of the Debtors, their estates and creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore, it is

ORDERED that the Motion is granted on a final basis as may be modified herein; and it is further

ORDERED that except as set forth below, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors are authorized, but not directed, to continue to honor the existing Employee Obligations as the same were in effect as of the Commencement Date, in the ordinary course of business; and it is further

ORDERED that pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors are authorized, but not required, to make all payments (i) with respect to prepetition and postpetition Employee Obligations<sup>2</sup>, including, but not limited to, the obligations arising under the Employee plans and programs set forth on Exhibit A to the Motion, and (ii) including ordinary prepetition wages arising under the Commission Plan, including the prepetition amounts due under the Commission Plan set forth on Exhibit A hereto, as and when such amounts come due as provided on Exhibit A hereto; and it is further

ORDERED that the Bonus and Awards Programs and Severance Plan set forth on Exhibit A hereto (and as amended on Exhibit A hereto) are hereby approved; and it is further

ORDERED that notwithstanding the foregoing, the Debtors shall make no payments to Employees in respect of the amounts proposed to be paid under the Employee Bonus and Awards Programs (as estimated on Exhibit A hereto) and the Severance Plan, pending a hearing to be held on December 10, 2009, at 2:00 p.m. (prevailing Eastern Time), and further order of the Court<sup>3</sup>; and it is further

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<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

<sup>3</sup> Pursuant to section 503(c) of the Bankruptcy Code, the Debtors have requested authorization to make payments under the Employee Bonus and Awards Programs, and the Severance Plan only to non-insider Employees. The Court will hold a further hearing to determine which Employees are non-insiders entitled to receive payments under such plans and programs.

ORDERED that any objections to the payments proposed to be made to non-insider Employees under the Bonus and Awards Programs and Severance Plan shall be filed on or before December 7, 2009 at 4 p.m. (prevailing Eastern Time) and served on the following parties: (i) counsel to the Debtors, (ii) the Office of the United States Trustee (iii) Citibank, N.A. and Citicorp North America, Inc., as administrative agents under the Debtors' prepetition senior credit facility, bridge loan agreement and term loan facility, (iv) the Creditors Committee, (v) the Federal Deposit Insurance Corporation, and (vi) all other persons required to be served with the Motion under Local Rule 2002-1(b); and it is further

ORDERED that all applicable banks and other financial institutions (the "Banks") listed on Exhibit B attached hereto, are authorized, at the Debtors' request, to receive, honor, process, and pay any and all prepetition and postpetition checks drawn on the Debtors' payroll accounts and all postpetition checks related to the other Disbursement Accounts and any other transfers that are related to the prepetition Employee Obligations authorized to be paid pursuant to this Order and the costs and expenses incidental thereto, provided that sufficient funds are available in the Disbursement Accounts to make such payments; and it is further

ORDERED that the Debtors are authorized (consistent with this Order) to issue postpetition checks or to effect postpetition funds transfer requests in replacement of any checks or funds transfer requests related to Employee Obligations authorized to be paid hereunder; and it is further

ORDERED that nothing in the Motion shall be deemed a request by the Debtors for authority to assume, and nothing in this Order shall be deemed authorization or approval to assume, any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; and it is further

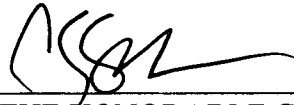
ORDERED that nothing in the Motion or this Order shall be construed as impairing the Debtors' rights to contest the validity or amount of any Employee Obligation; and it is further

ORDERED that, consistent with the provisions of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

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

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

Dated: November 24, 2009  
Wilmington, Delaware



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THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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**In re:** : **Chapter 11**  
: **CAPMARK FINANCIAL GROUP INC., et al.,** : **Case No. 09-13684 (CSS)**  
: **Debtors.** : **Jointly Administered**  
: **Re: Docket Nos. 12 and 99**  
-----X

**ORDER PURSUANT TO SECTIONS 105(a), 327, 328, AND  
330 OF THE BANKRUPTCY CODE AUTHORIZING THE  
DEBTORS TO EMPLOY ORDINARY COURSE PROFESSIONALS**

Upon the motion, dated October 25, 2009 (the "Motion"), of Capmark Financial Group Inc. ("CFGI") and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "Debtors"),<sup>1</sup> pursuant to sections 105(a), 327, 328, and 330 of title 11 of the United States Code (the "Bankruptcy Code") for authorization to employ professionals utilized in the ordinary course of business, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four (4) digits of each Debtor's federal tax identification number, are: Summit Crest Ventures, LLC (5690), Capmark Financial Group Inc. (2188), Capmark Capital Inc. (6496), Capmark Finance Inc. (3444), Commercial Equity Investments, Inc. (4153), Mortgage Investments, LLC (6319), Net Lease Acquisition LLC (9658), SJM Cap, LLC (0862), Capmark Affordable Equity Holdings Inc. (2379), Capmark REO Holding LLC (3951), Paramount Managing Member AMBAC II, LLC (3934), Paramount Managing Member AMBAC III, LLC (3999), Paramount Managing Member AMBAC IV, LLC (0117), Paramount Managing Member AMBAC V, LLC (3366), Paramount Managing Member LLC (0184), Paramount Managing Member II, LLC (7457), Paramount Managing Member III, LLC (0196), Paramount Managing Member IV, LLC (0199), Paramount Managing Member V, LLC (0201), Paramount Managing Member VI, LLC (5857), Paramount Managing Member VII, LLC (5855), Paramount Managing Member VIII, LLC (5854), Paramount Managing Member IX, LLC (5452), Paramount Managing Member XI, LLC (5455), Paramount Managing Member XII, LLC (5457), Paramount Managing Member XVIII, LLC (3087), Paramount Managing Member XIV, LLC (4194), Paramount Managing Member XV, LLC (4192), Paramount Managing Member XVI, LLC (4186), Paramount Northeastern Managing Member, LLC (3086), Capmark Affordable Properties Inc. (3435), Paramount Managing Member XXIII, LLC (4754), Paramount Managing Member XXIV, LLC (3615), Paramount Managing Member 30, LLC (6824), Paramount Managing Member 31, LLC (6826), Paramount Managing Member 33, LLC (6831), Broadway Street California, L.P. (7722), Broadway Street 2001, L.P. (0187), Broadway Street XV, L.P. (7730), Broadway Street XVI, L.P. (7725), Broadway Street XVIII, L.P. (9799), Broadway Street Georgia I, LLC (9740), Capmark Managing Member 4.5 LLC (8979), and Capmark Affordable Equity Inc. (2381). CFGI's corporate headquarters is located at 116 Welsh Road, Horsham, Pennsylvania, 19044. The addresses for all of the Debtors are available at the following World Wide Web address: <http://chapter11.epiqsystems.com/capmark>.

with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and no trustee or examiner having been appointed, and due and proper notice of the Motion having been provided by facsimile, electronic mail transmission, overnight delivery and/or hand delivery to (i) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), (ii) Citibank, N.A. and Citicorp North America, Inc., as administrative agents under the Debtors' prepetition senior credit facility, bridge loan agreement and term loan facility, (iii) Deutsche Bank Trust Company Americas, as trustee under the prepetition senior unsecured floating rate note and 5.875% senior unsecured note indentures, (iv) Wilmington Trust FSB, as successor trustee under the prepetition 6.300% senior unsecured note indenture, (v) counsel for the ad hoc committee of prepetition unsecured noteholders of CFGI, (vi) Law Debenture Trust Company of New York, as trustee under CFGI's prepetition floating rate junior subordinated indenture, (vii) any proposed DIP lender, (viii) those creditors holding the thirty (30) largest unsecured claims against the Debtors' estates (on a consolidated basis), and (ix) the Federal Deposit Insurance Corporation; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the "Hearing"); and the appearances of all interested parties having been noted in the record of the Hearing; and upon the Declaration of Thomas L. Fairfield, Executive Vice President, General Counsel and Secretary of CFGI, in Support of the Debtors' Chapter 11 Petitions and First Day Motions and Applications, the record of the Hearing, and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion

establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, the Court hereby ORDERS that:

1. The Motion is granted to the extent set forth herein.
2. The Debtors are authorized, pursuant to sections 105(a), 327, 328, and 330 of the Bankruptcy Code, to retain and compensate professionals that the Debtors employ in the ordinary course of their businesses (each, an "Ordinary Course Professional," and collectively, the "Ordinary Course Professionals"), including, but not limited to, those professionals listed on Exhibit "1" annexed hereto (the "Ordinary Course Professionals List"), effective as of the commencement date of these cases or, with respect to professionals not listed on Exhibit "1", such later date identified in this Order.
3. Each Ordinary Course Professional shall, within thirty (30) days after (i) for Ordinary Course Professionals listed on Exhibit "1", the date of entry of this Order, and (ii) for Ordinary Course Professionals not listed on Exhibit "1", the date on which each retained Ordinary Course Professional commences services for the Debtors, provide to the Debtors' attorneys the following: (a) an affidavit, substantially in the form annexed hereto as Exhibit "2", certifying that such professional does not represent or hold any interest adverse to the Debtors or their estates for the matter on which the professional is to be employed (the "Ordinary Course Professional Affidavit")<sup>2</sup> and (b) a completed retention questionnaire, substantially in the form annexed hereto as Exhibit "3" (the "Retention Questionnaire").
4. The Debtors' attorneys shall file the Ordinary Course Professional Affidavit and the Retention Questionnaire with the Court within five (5) business days of

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<sup>2</sup> To the extent that an Ordinary Course Professional Affidavit is not filed for an Ordinary Course Professional within 30 days of the later of entry of this order or commencing services for the Debtors, the Ordinary Course Professional should expressly provide in such Ordinary Course Professional Affidavit that the filing is beyond such period and explain why *nunc pro tunc* (or retroactive) relief is warranted.



receiving same from the Ordinary Course Professional and serve them upon (i) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attention: Joseph J. McMahon, Jr., Esq., and (ii) counsel to the creditors committee appointed in these cases, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attention: Thomas Moers Mayer, Esq. and Amy Caton, Esq. (collectively, the “Reviewing Parties”). The Reviewing Parties shall have twenty (20) days following the date of service to notify Debtors’ counsel, in writing, of any objection to the retention based on the contents of the Ordinary Course Professional Affidavit and the Retention Questionnaire (“Retention Objection Deadline”) and file any such objection with the Court, with service of any objection to be made upon (i) Dewey & LeBoeuf LLP, 1301 Avenue of the Americas, New York, New York 10019, Attention: Michael P. Kessler, Esq. and Judy G.Z. Liu, Esq., and (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attention: Mark D. Collins, Esq. and Jason M. Madron, Esq., so that any such objection is actually received by the Retention Objection Deadline.

5. If no timely objection is received to a filed Ordinary Course Professional Affidavit and/or Retention Questionnaire, the retention, employment, and compensation of such Ordinary Course Professional shall be deemed approved by the Court pursuant to sections 327 and 328 of the Bankruptcy Code, without further order from the Court, and, except as expressly provided herein, the Debtors may pay the Ordinary Course Professional 100% of fees and 100% of expenses sought by each Ordinary Course Professional retained pursuant to this Order, without application to the Court, upon the submission to and approval by the Debtors of reasonably detailed invoices indicating the nature of the services rendered and disbursements actually incurred; provided, however, that the following Fee Limits apply to:

(a) **Ordinary Course Professionals other than (i) Arnold and Porter LLP; (ii) Baker Donelson Bearman Caldwell; (iii) Ballard Spahr Andrews & Ingersoll LLP; (iv) Barnes & Thornburg LLP; (v) Dechert LLP; (vi) Duane Morris LLP; (vii) Foley & Lardner LLP; (viii) Holland & Knight LLP; (ix) Kutak Rock LLP; (x) Locke Lord Bissell & Liddell LLP; (xi) Simpson Thacher & Bartlett LLP; and (xii) Sullivan & Cromwell LLP (the “Excluded Ordinary Course Professionals”)**

(i) In the aggregate, fees and disbursements to an Ordinary Course Professional (other than the Excluded Ordinary Course Professionals) shall not exceed a total of \$35,000 per month on a “rolling basis” (the “OCP Fee Limit”).

(ii) Paying fees on a “rolling basis” shall mean that an Ordinary Course Professional (other than the Excluded Ordinary Course Professionals) whose fees and disbursements are less than \$35,000 in any month will be eligible to apply the difference between \$35,000 and the amount billed in such month to any subsequent month in which fees and disbursements exceed \$35,000; provided, however, that the payment to any such Ordinary Course Professional in any such subsequent month shall not exceed \$45,000.

(b) **Excluded Ordinary Course Professionals**

(i) In the aggregate, fees and disbursements to an Excluded Ordinary Course Professional shall not exceed a total of \$60,000 per month (the “Excluded OCP Fee Limit,” and together with the OCP Fee Limit, the “Fee Limits”); provided, however, that the U.S. Trustee may, in her sole discretion, revisit the amount of, and/or object to, the aforementioned monthly “cap” after three (3) months have elapsed from the Petition Date; provided further, that this Court may resolve any dispute between the Debtors and the U.S. Trustee with respect to the appropriate amount of the monthly “cap” applicable to Excluded Ordinary Course Professionals for the fourth (4<sup>th</sup>) post-petition month going forward.

6. If a timely objection is filed to the proposed retention of an Ordinary Course Professional hereunder, and any such objection cannot be resolved within fifteen (15) days, the matter shall be set for a hearing before the Court.

7. The Debtors shall not pay an Ordinary Course Professional any amounts for invoiced fees and expense reimbursement until its Ordinary Course Professional Affidavit

and Retention Questionnaire have been filed with the Court and the Retention Objection Deadline has passed and, if an objection is filed within the Retention Objection Deadline, after the Court signs an order overruling such objection.

8. In the event that an Ordinary Course Professional seeks an amount in excess of the applicable Fee Limit, such Ordinary Course Professional will be required to file a fee application for the full amount of its fees and disbursements for such month in accordance with sections 330 and 331 of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, orders of the Court, and Fee Guidelines promulgated by the U.S. Trustee.

9. The Debtors are authorized to modify or supplement the list of Ordinary Course Professionals from time to time during these chapter 11 cases, as needed, and to file with the Court and serve upon the Reviewing Parties a notice listing Ordinary Course Professionals added to the Ordinary Course Professionals List (the "Supplemental Notice of Ordinary Course Professionals"), along with the attendant Ordinary Course Affidavit and Retention Questionnaire.

10. If no objection to the retention of an additional Ordinary Course Professional listed on the Supplemental Notice of Ordinary Course Professionals is filed with this Court and served upon the Debtors' counsel within fifteen (15) days after the service thereof, the retention of such Ordinary Course Professionals shall be deemed approved by the Court pursuant to sections 327 and 328 of the Bankruptcy Code without the need for a hearing, effective as of a date that is no earlier than thirty-seven (37) days prior to the filing of the Supplemental Notice of Ordinary Course Professionals and accompanying Ordinary Course

Affidavit and Retention Questionnaire unless the Ordinary Course Affidavit contains an express request for *nunc pro tunc* relief; provided, however, if an objection is served and filed, and cannot be resolved within fifteen (15) days, the matter shall be set for a hearing before the Court.

11. Any Ordinary Course Professional retained pursuant to a supplemental list of Ordinary Course Professionals will be paid in accordance with the terms and conditions of this Order.

12. The right of any party in interest to dispute any invoices shall not be affected or prejudiced in any manner by the relief granted in this Order.

13. All Ordinary Course Professionals who are not law firms and law firm Ordinary Course Professionals who did not represent the Debtors prior to the Filing Date who are employed pursuant to this Order shall, once their employment is effective pursuant to this Order, be deemed to have waived any and all pre-petition claims they may have against the Debtors.

14. Every ninety (90) days (commencing on the first day of the month following the ninetieth day after the entry of this Order), the Debtors shall file with the Court a report summarizing payments to Ordinary Course Professionals (an “Ordinary Course Professionals Report”), and serve the Ordinary Course Professionals Report on the Notice Parties.

15. The Ordinary Course Professionals Report shall include the following information for each Ordinary Course Professional receiving payments from the Debtors during the applicable Reporting Period (as defined below): (i) the name of such Ordinary Course Professional; (ii) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional during the preceding

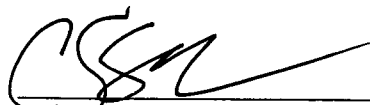
ninety (90) day period ending at the conclusion of the prior calendar month (the "Reporting Period"); and (iii) a general description of the services rendered by such Ordinary Course Professional.

16. This Order shall not apply to any professional retained by the Debtors pursuant to a separate order of the Court.

17. The Debtors shall serve this Order within three (3) business days of its entry on the parties in interest identified in Local Rule 2002-1(b).

18. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: December 3, 2009  
Wilmington, Delaware



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THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE