



**IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.**

**Dated: June 16, 2010**

*Craig A. Gargotta*  
CRAIG A. GARGOTTA  
UNITED STATES BANKRUPTCY JUDGE

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

<b>In re</b>	§	<b>Chapter 11</b>
	§	
<b>CRESCENT RESOURCES, LLC, et al.,</b>	§	
	§	<b>Case No. 09-11507 (CAG)</b>
<b>Debtors.</b>	§	
	§	
	§	<b>Jointly Administered</b>

**ORDER PURSUANT TO SECTIONS 105(a), 363(b), 363(f), AND 365 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6004 AND 6006 AUTHORIZING THE DEBTORS TO SELL THE RIVER HALL PROJECT PURSUANT TO THAT CERTAIN PURCHASE AND SALE AGREEMENT FREE AND CLEAR OF CERTAIN LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS**

Upon the motion dated (the "Motion") of Crescent Resources, LLC ("Crescent") and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors"), for an order pursuant to sections 105(a), 363(b), 363(f), and 365 of the Bankruptcy Code<sup>1</sup> and Bankruptcy Rules 6004 and 6006, authorizing two of the Debtors, Hawk's Haven Developers, LLC and Hawk's Haven Golf Course Community

<sup>1</sup> All capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

Developers, LLC (the “River Hall Seller”), to (i) sell the River Hall Project to Greenpointe Communities, LLC (the “Purchaser”), pursuant to the terms of the River Hall Agreement, as more fully set forth in the Motion; (ii) assume and assign the River Hall Prepetition Contracts free and clear of all liens, claims, encumbrances, and other interests, except the Tax<sup>2</sup> and CDD Liens, to the Purchaser; and (iii) proceed immediately with such sale notwithstanding the possible applicability of Bankruptcy Rules 6004(h) and 6006(d); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion and the Hearing (as defined below) having been provided to the Notice Parties and no further notice is necessary; and the Court having held a hearing to consider the requested relief (the “Hearing”); and upon the record of the Hearing, and all the proceedings before the Court, the Court finds and determines that the relief sought is in the best interests of the Debtors and their estates; and the Court finds and determines that the relief sought is an exercise of Debtors’ sound business judgment; and the Court finds and determines that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and upon sufficient cause appearing therefor, it is

ORDERED that the River Hall Agreement, and all of the terms and conditions therein, is approved; and it is further

ORDERED that pursuant to sections 363(b) and 363(f) of the Bankruptcy Code, and in accordance with the terms of the River Hall Agreement, the Debtors are authorized to (i) consummate the sale of the River Hall Assets to the Purchaser free and clear of any and all

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<sup>2</sup> For purposes of this Order, any reference to “Taxes” or “Tax Liens” shall include, but not be limited to those certain *ad valorem* property taxes due to and owing the Lee County, Florida tax collector with respect to the River Hall Project.

mortgages, liens, claims, encumbrances, except the Tax and CDD Liens (collectively, "Liens"), and with all such Liens to attach to the net proceeds of the sale of the River Hall Assets, with the same validity, force, effect, and priority as such Liens had immediately prior to the sale, subject to the rights and defenses of the Debtors and any party in interest with respect to any such asserted Liens and (ii) perform their obligations under and comply with the terms of the River Hall Agreement; and it is further

ORDERED that any and all liens imposed by the River Hall CDD (the "CDD Liens") shall continue to represent first priority governmental liens *pari passu* with ad valorem taxes and superior to any other liens. Any and all past due, current, and future CDD Liens imposed by the River Hall CDD shall not be affected in any way by the River Hall Agreement, this Order, or any final or supplemental sale order. Any CDD Liens, including but not limited to any unpaid special assessments levied by the River Hall CDD that would be collected directly by the River Hall CDD, shall remain on the property until paid pursuant to the terms of the River Hall CDD's assessment resolutions and applicable non-bankruptcy law. This Order shall not affect in any way the River Hall CDD's authority or right to enforce any CDD Liens against the real property within the River Hall Assets, the Purchaser, and any other future landowners of said real property consistent with the terms of the River Hall CDD's assessment resolutions and applicable law; and it is further

ORDERED that the Debtors are authorized to execute and deliver, and are empowered to perform under, consummate, and implement the River Hall Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the River Hall Agreement, and to take all further actions as may be reasonably required for the purpose of assigning, transferring, granting, conveying and conferring to the

Purchaser or reducing to possession, the River Hall Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the River Hall Agreement and to implement and effectuate the transactions contemplated by this Order; and it is further

ORDERED that notwithstanding anything to the contrary in this Order, pending closing, the Purchaser shall be entitled to negotiate directly with the respective CDDs and taxing authorities with respect to the amounts owed to such entities with respect to the River Hall Assets, it being understood that the Purchaser intends to seek a modification and reduction of certain CDD and tax liabilities associated with the River Hall Assets in order to effectuate the River Hall Agreement; and it is further

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

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

ORDERED that title agents and title insurance underwriters may rely upon the filing of a copy of this Order in Lee County, Florida to issue their title policies on properties located within each such county without exception to any Liens, except for the Tax and CDD Liens, whether asserted or unasserted, known or unknown; and it is further

ORDERED that effective upon the closing of the River Hall Agreement and conditioned upon payment of the Closing Cure Payments (as defined below), the Debtors are

authorized to assume and assign the River Hall Prepetition Contracts listed on Exhibit 1 to this Order, which assumption and assignment is hereby approved; and execute and deliver to Purchaser such assignment documents as may be necessary to assign the River Hall Prepetition Contracts; and it is further

ORDERED that (a) the Cure Amounts set forth on Exhibit 1 to this Order are true, correct, final and fixed amounts as of the date of this Order; (b) the only amounts that are required to be paid at closing upon assumption of the River Hall Prepetition Contracts pursuant to section 365(b)(i)(A) and (B) of the Bankruptcy Code shall be (i) the Cure Amounts and (ii) undisputed amounts which have accrued pursuant to the terms of the River Hall Prepetition Contracts and are unpaid from and after the date of this Order through the date of the closing (the "Accrued Amounts"), and together with the Cure Amounts, hereinafter the "Closing Cure Payments"), and payment of the Closing Cure Payments shall constitute a cure of all monetary defaults under the River Hall Prepetition Contracts; (c) to the extent that there is a dispute as to the amount of any Accrued Amount, the Debtors shall pay the undisputed portion as a part of the Closing Cure Payments, and shall reserve from the purchase price the amount in dispute, subject to a determination by this Court of the amount payable on account of such disputed Accrued Amount, provided that, notwithstanding the existence of any such disputed Accrued Amount, the assumption and assignment of the applicable River Hall Prepetition Contract shall be effective as of the closing without regard to whether such dispute has been resolved, and the counterparty to the affected River Hall Prepetition Contract shall be bound thereby; and (d) the Closing Cure Payments shall not be subject to further dispute or audit, including based on performance prior to the assumption, assignment and sale of any of the River Hall Prepetition Contracts, irrespective

of whether such River Hall Prepetition Contracts contain an audit or similar clause; and it is further

ORDERED that upon the assumption and assignment of the River Hall Prepetition Contracts at closing, each counterparty to a River Hall Prepetition Contract is hereby forever barred, estopped, and permanently enjoined from asserting against the Debtors, the Purchaser, or the River Hall Assets any default, additional amounts or other claims related to the Closing Cure Payments existing as of the date of such assumption and assignment with respect to such River Hall Prepetition Contract, whether declared or undeclared or known or unknown, and such counterparties to a River Hall Prepetition Contract are also forever barred, estopped, and permanently enjoined from asserting against Purchaser any counterclaim, defense or setoff, or any other claim, lien or interest, asserted or assertable against the Debtors related to its respective portion of the Closing Cure Payments with respect to such River Hall Prepetition Contract; and it is further

ORDERED that the designation of an agreement as a River Hall Prepetition Contract shall not be a determination that such agreement is an executory contract within the meaning of section 365 of the Bankruptcy Code; and it is further

ORDERED that the Purchaser is expressly assuming the responsibility for satisfaction of the River Hall Taxes and Assessments pursuant to this Order and the terms of the River Hall Agreement; and it is further

ORDERED that the transfer of the River Hall Assets, including the Tax and CDD Liens which shall follow the River Hall Assets, to the Purchaser pursuant to the River Hall Agreement constitutes a legal, valid, and effective transfer of the River Hall Assets, and shall vest the Purchaser with all right, title, and interest of the Debtors in and to the River Hall Assets

free and clear of any and all Liens and/or encumbrances of any kind or nature whatsoever, except the Tax and CDD Liens, and it is further

ORDERED that except as provided in the River Hall Agreement or this Order, after the closing, the Debtors and their estates shall have no further liabilities or obligations to any party, including the River Hall Taxing Authority and the River Hall CDDs, with respect to any assumed liabilities, including the Tax and CDD Liens which shall follow the River Hall Assets, and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors, their successors or assigns, their property or their assets or estates; and it is further

ORDERED that the transaction contemplated by the River Hall Agreement is undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale shall not affect the validity of the sale of the River Hall Assets to the Purchaser, unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the River Hall Assets, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code; and it is further

ORDERED that the failure specifically to include any particular provisions of the River Hall Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the River Hall Agreement be authorized and approved in its entirety; and it is further

ORDERED that the River Hall Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without

further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates; and it is further

ORDERED that other than with respect to the Cure Amounts set forth on Exhibit 1 of this Order, nothing in this Order shall impair the ability of the Debtors or appropriate party in interest to contest any claim of any creditor pursuant to applicable law or otherwise dispute, contest, setoff, or recoup any claim, or assert any rights, claims or defenses related thereto; and it is further

ORDERED that the Debtors will file a notice with the court when the transaction contemplated by the River Hall Agreement closes; and it is further

ORDERED that upon entry of this Order, that certain Application for Payment of Ad Valorem Taxes as an Administrative Expense (Dkt. No. 984) filed by Lee County, Florida shall be deemed withdrawn without prejudice to the same being reurged if the River Hall Seller fails to effectuate the transactions and transfer contemplated under the River Hall Agreement; and it is further

ORDERED that the ten (10) day stay under Bankruptcy Rules 6004(h) and 6006(d) is hereby waived, and this Order shall be effective immediately; and it is further

ORDERED that this Court retains jurisdiction to interpret and enforce the term of this Order.

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# **EXHIBIT 1**

Exhibit 1

Counterparty	Address	City	State	Zip	Crescent Debtor	Type of Contract	Name of Contract	Date of Contract	Cure Amount	Contract Code
Time Warner Cable Inc.	1610 40 <sup>th</sup> Terrace SW	Naples	FL	34116	Hawk's Haven Developers, LLC	Service Agreement	Cable Television and Communications Service Access Agreement	June 1, 2005	\$0	H268
Prager, Sealy & Co., LLC	200 South Orange Avenue Suite 1900	Orlando	FL	32801	Hawk's Haven Developers, LLC; Hawk's Haven Golf Course Community Developers, LLC	Disclosure Agreement	Continuing Disclosure Agreement	October 1, 2005	\$0	H269
	4890 West Kennedy Boulevard Suite 288	Tampa	FL	33609						