

Electronically Filed August 26, 2009

BRAD ERIC SCHELER (SBN BS-0397)
BONNIE STEINGART (SBN BS-8004)
[pro hac vice pending]
**FRIED, FRANK, HARRIS,
SHRIVER & JACOBSON LLP**
One New York Plaza
New York, NY 10004
Telephone: (212) 859-8000
Facsimile: (212) 859-4000
Email: bonnie.steingart@friedfrank.com
brad.eric.scheler@friedfrank.com
[Proposed] Counsel for the Official
Committee of Unsecured Creditors

BRETT A. AXELROD, ESQ.
Nevada Bar No. 5859
ANNE M. LORADITCH, ESQ.
Nevada Bar No. 8164
GREENBERG TRAUIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002
Email: axelrodb@gtlaw.com
loraditcha@gtlaw.com
[Proposed] Nevada Counsel for the Official
Committee of Unsecured Creditors

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
STATION CASINOS, INC.

Chapter 11
Case Nos. BK-09-52470-GWZ through
BK-09-52487-GWZ

Jointly Administered under BK 09-52477

- Affects this Debtor
- Affects all Debtors
- Affects Northern NV Acquisitions, LLC
- Affects Reno Land Holdings, LLC
- Affects River Central, LLC
- Affects Tropicana Station, LLC
- Affects FCP Holding, Inc.
- Affects FCP Voteco, LLC
- Affects Fertitta Partners LLC
- Affects FCP MezzCo Parent, LLC
- Affects FCP MezzCo Parent Sub, LLC
- Affects FCP MezzCo Borrower VII, LLC
- Affects FCP MezzCo Borrower VI, LLC
- Affects FCP MezzCo Borrower V, LLC
- Affects FCP MezzCo Borrower IV, LLC
- Affects FCP MezzCo Borrower III, LLC
- Affects FCP MezzCo Borrower II, LLC
- Affects FCP MezzCo Borrower I, LLC
- Affects FCP PropCo, LLC

**OBJECTION TO MOTION FOR
INTERIM AND FINAL ORDERS
PURSUANT TO 11 U.S.C. §§ 361, 362
AND 363 APPROVING STIPULATION
FOR (i) ADEQUATE PROTECTION
AND (ii) USE OF CASH COLLATERAL
WITH RESPECT TO SECURED LOANS
FOR FCP PROPCO, LLC**

Hearing Date: September 2, 2009
Hearing Time: 9:30 a.m.
Place: 300 Booth Street
Reno, NV 89509

TO THE HONORABLE GREGG W. ZIVE AND ALL PARTIES IN INTEREST:

The Official Committee of Unsecured Creditors (the "Committee") in the above-captioned chapter 11 bankruptcy cases, hereby files this objection (the "Objection") to the *Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 361, 362 and 363 Approving Stipulation for*

1 (i) Adequate Protection and (ii) Use of Cash Collateral With Respect to Secured Loans for FCP
 2 PropCo, LLC [Docket No. 32] (the “Motion”)¹ filed by the above-captioned chapter 11 debtors-
 3 in-possession (collectively, the “Debtors”).

4 **I. INTRODUCTION**

5 The Stipulation for (i) Adequate Protection and (ii) Use of Cash Collateral With Respect
 6 to Secured Loans to FCP PropCo, LLC (the “PropCo Stip”)² attempts to provide the Mortgage
 7 Lenders and Deutsche Bank with a complete whitewash of their liens and claims and protection
 8 from other challenges seeking to, *inter alia*, recharacterize the Master Lease. See PropCo Stip,
 9 3:20-21. Given the Debtors’ own attempts to investigate whether the transactions that gave rise
 10 to such liens and agreements are subject to challenge, the whitewash provisions and other
 11 challenge protections in the PropCo Stip are especially inappropriate and are an affront to the
 12 equitable principles that underlie the bankruptcy process.

13 In addition to the whitewash provisions, the PropCo Stip fails to preserve Station Casinos,
 14 Inc.’s (“SCI”) ability to obtain flowback portions of the payments made under the Master Lease.
 15 Such flowback payments were routinely made prior to the bankruptcy filing and are monies that
 16 exceed all interest and other payments due to the Mortgage Lenders and, therefore, should be
 17 placed in escrow pending resolution of challenges to the liens and the Master Lease itself.
 18 Finally, the PropCo Stip is objectionable because it fails to provide the Committee with the right
 19 to review the budget and periodic financial reports and contains a provision that states “the
 20 Mortgage Lenders and PropCo may agree to the application of additional amounts in the CMBS
 21 Bank Account to reduce the principal balance of the mortgage loan, and may implement such
 22 payment application after notice and a hearing” Such payments are inconsistent with the
 23 Bankruptcy Code and are not available as a form of adequate protection.

24 For convenience, Schedule 1 attached to this Objection, and made a part hereof by this
 25 reference, sets forth the precise provisions in the Motion, the PropCo Stip and the proposed order
 26

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

28 ² Citations to the PropCo Stip herein refer to the final version of the PropCo Stip circulated to the Committee by the Debtors, rather than the interim version that approved on an interim basis by the Court on August 7, 2009.

1 that are objectionable and the Committee's proposed modifications to such provisions. Without
2 these modifications, the rights and interests of the Debtors' estates and creditors will be
3 prejudiced. In support of this Objection, the Committee respectfully states as follows:

4 **II. PROCEDURAL HISTORY**

5 On July 28, 2009 (the "Petition Date"), the Debtors filed their petitions for chapter 11
6 relief in this Court. Along with the petitions, the Debtors filed a motion for authorization to use
7 cash collateral related to SCI and the remaining Debtors, other than the PropCo and its
8 subsidiaries (collectively, the "OpCo Debtors"),³ which the Court approved on an interim basis at
9 the "first day" hearing held on July 30, 2009. On August 3, 2009, the Debtors filed the Motion
10 that is the subject of this Objection, which the Court approved on an interim basis on August 7,
11 2009. On August 13, 2009, the Office of the United States Trustee appointed the Committee.
12 Both this Motion and the cash collateral motion related to the OpCo Debtors are scheduled for
13 final hearing on September 2, 2009.

14 **III. BACKGROUND**

15 The PropCo liens and Master Lease that are the subject of the whitewash provisions of the
16 PropCo Stip arose in connection with a leveraged buy out transaction ("LBO"). Prior to
17 November 7, 2007 — the date of the LBO — Debtor SCI was a publicly traded company which,
18 much as it does today, owned and operated various casinos through wholly owned subsidiaries,
19 including four valuable casinos (Boulder Station Hotel & Casino, Palace Station Hotel & Casino,
20 Red Rock Casino Resort Spa and Sunset Station Hotel & Casino) (the "Transferred Properties")
21 that were "sold" as part of the LBO. By way of the LBO, the Debtors (i) bought out public and
22 insider shareholders of SCI for a total cost to the Debtors of approximately \$4.17 billion, (ii)
23 incurred new net debts in the total amount of \$1.6 billion (the "LBO Obligations") split between a
24 mortgage loan (the "Mortgage Loan Agreement") and a series of mezzanine loan agreements (the
25 "Mezzanine Loan Agreements"), (iii) granted liens to the Mortgage Lenders on the Transferred
26 Properties — some of the Debtors' most valuable assets, (iv) provided payment to insiders of

27
28 ³ Concurrently herewith, the Committee has filed a separate objection to the OpCo Debtors' motion for use of cash collateral.

1 approximately \$500 million, including \$300 million to the Fertitta family, and (v) resulted in
2 ownership by insiders of approximately 25%.

3 The net result of the LBO was that SCI leveraged to the hilt four of its most valuable
4 properties, leaving SCI and its creditors questionable benefit in return, while insiders of the
5 Debtors benefited immensely. The LBO occurred during a time when the overall economy, as
6 well as the credit markets, were becoming strained. Almost within a year of the closing of the
7 LBO transaction, SCI was unable to make payments under its pre-existing bond obligations.

8 **IV. THE PROPCO STIP INAPPROPRIATELY CUTS OFF SUBSTANTIAL CLAIMS**
9 **CONCERNING THE LEGITIMACY OF THE LBO.**

10 The facts surrounding the LBO, the financial condition of SCI after the LBO, and the
11 resulting bankruptcy filing of the Debtors require close investigation by the Committee and
12 assessment by this Court. At this stage, the facts ascertainable to the Committee suggest a basis
13 for at least fraudulent conveyance and recharacterization claims, and continued work by the
14 Committee should be done to bring claims before the Court. With the investigation into the LBO
15 transaction in the initial stages, the PropCo Stip should not be approved absent removal of the
16 whitewash provisions and imposition of an escrow on “rent” payments that exceed interest
17 payments to the Mortgage Lenders and costs of operations of PropCo.

18 **A. The LBO May Be Avoidable Under Fraudulent Transfer Laws.**

19 A transfer is avoidable as a “constructive” fraudulent transfer under both Section 548 of
20 the Bankruptcy Code and the Nevada Uniform Fraudulent Transfer Act (“NUFTA”) if: (1) the
21 transfer was made (a) within two years of filing for bankruptcy relief if under Section 548; or (b)
22 four years if under the NUFTA; (2) the transfer involved property of the debtor and/or the
23 incurrence of an obligation of the debtor; (3) on account of the transfer the debtor “received less
24 than a reasonably equivalent value;” and (4) the debtor was (a) insolvent at the time of the
25 transaction, (b) rendered insolvent by the transaction, (c) left with insufficient capitalization after
26 the transaction, or (d) incurring debts that were beyond the debtor’s ability to pay back. See 11
27 U.S.C. § 548(a)(1)(B); Nev.Rev.Stat. § 112.180(1)(b).

28 ///

1 The facts currently available suggest that each of these factors may be established. First,
2 both Section 548 and the NUFTA are applicable to the LBO because the LBO occurred within
3 two (2) years of the Petition Date in these cases. The second requirement – that the transfer at
4 issue must involve property of the debtors – is easily established in this case for two reasons.
5 Each of the transfers executed in connection with the LBO was made directly by the Debtors in
6 these cases. Specifically, the LBO Obligations and the mortgages were transferred by PropCo
7 directly to the Mortgage Lenders, and the proceeds of the LBO were transferred directly to public
8 shareholders by SCI. Since both SCI and PropCo are Debtors in these cases, their collective
9 estates will satisfy the requirement for purposes of “constructive” fraudulent transfer law that the
10 LBO transfers involved property of the Debtors.

11 The third requirement – that the Debtors receive less than reasonably equivalent value – is
12 also highly fact-intensive, but ostensibly, SCI and its subsidiaries received less than reasonably
13 equivalent value in exchange for the LBO transfers.⁴ As a result of the LBO, the total debt for
14 SCI and its subsidiaries increased by \$1.6 billion, with SCI retaining only approximately \$21
15 million of those proceeds.

16 The fourth and final requirement – whether a transfer was made when a debtor was
17 insolvent or rendered a debtor insolvent, or left a debtor with unreasonably small capital for
18 purposes of “constructive” fraudulent transfer law – is also highly factual. See, e.g., In re
19 Viscount Air Svcs., Inc., 232 B.R. 416 (Bankr. D. Ariz. 1998) (determining the issue of
20 insolvency by choosing between competing experts). It appears that the parties to the LBO did
21 not obtain a solvency opinion at the time of the transaction. What is established by publicly
22 available information is that the LBO was followed with the almost immediate financial collapse
23 of the Debtors burdened by this huge debt structure.

24 ///

25 ///

26 ///

27 ⁴ Reasonable equivalence is determined from the perspective of creditors, and not from the defendant’s
28 perspective. In re 3dfx Interactive, Inc., 389 B.R. 842, 863 (Bankr. N.D. Cal. 2008); In re Maddalena, 176 B.R. 551,
555 (Bankr. C.D. Cal. 1995); In re Richards & Conover Steel, Co., 267 B.R. 602, 613 (B.A.P. 8th Cir. 2001).

1 While further investigation is certainly required, there are undeniably substantial issues
2 that must be addressed concerning whether the LBO transactions involved constructive and/or
3 actual fraudulent transfers.⁵

4 **B. Recharacterization of Master Lease.**

5 As with the claims of fraudulent conveyance, the whitewash provisions of the PropCo Stip
6 would foreclose challenges to the Master Lease. Here, too, there are serious issues that warrant
7 further investigation by the Committee. The Master Lease is little more than a conduit for the
8 payment of the LBO Obligations and the monthly amounts owing to the swap counterparty under
9 the Swap with excess lease proceeds flowing back up to SCI, the lessee making the payment. As
10 reflected in the proposed budget attached as Exhibit A to the Motion, the rent payments due from
11 SCI under the Master Lease are used by PropCo for essentially nothing more than servicing the
12 LBO Obligations and amounts owing under the Swap, and paying certain other routine
13 administrative costs of PropCo, including professional fees and the like.⁶

14 **1. Waterfall Payment Structure and “Cash Trap.”**

15 Specifically, under the Master Lease, SCI is obligated to pay “base rent” in a fixed amount
16 of \$249,450,019 for each of the first 5 years of the Master Lease, at which time rent increases for
17 the remainder of the term. Master Lease §3.1. Rent is payable in advance in 12 monthly
18 installments. Master Lease §3.1. Under the Master Lease and Mortgage Loan Agreement, SCI
19 pays rent to an PropCo holding account, from which PropCo transfers amounts to various sub-
20 accounts to be held for loan payments, reserves for taxes, insurance, rent, payment under
21 derivatives, and other payments. Master Lease § 11.1; Mortgage Loan Agreement § 3.1. Absent
22 an event of default, the balance of these accounts (“Excess Cash Flow”) is transferred to
23 PropCo’s account (Mortgage Loan Agreement § 3.1.6(xv)), and then released to SCI. Mortgage
24 Loan Agreement § 3.1.15. However, if SCI fails to meet certain financial benchmarks or
25

26 ⁵ To the extent that any creditor received avoidable transfers, their claims may be subject to disallowance
27 under 11 U.S.C. § 502(d). In addition, the Committee is investigating whether the claims of any creditor involved in
the LBO may be subject to subordination under 11 U.S.C. § 510.

28 ⁶ Indeed, rent payments are timed under the Master Lease to coincide with FCP PropCo’s scheduled monthly
payments under the Prepetition LBO Loan Agreements.

1 otherwise defaults under the Mortgage Loan Agreement, then 80%-100% of the Excess Cash
2 Flow is trapped in PropCo's account and not released back to SCI.

3 The Committee understands that the Debtors have acknowledged defaults under the
4 Mortgage Loan Agreement for the 1st and 2nd quarters of 2009, and the Mortgage Lenders have
5 been trapping Excess Cash Flow since April 1, 2009. Historically, SCI was returned
6 approximately \$10 million in Excess Cash Flow on a monthly basis. However, since April 1,
7 2009, approximately \$47 million in Excess Cash Flow has built up in PropCo's account that
8 would have otherwise been available to SCI for the operation of its business. If the PropCo Stip
9 is approved and this cash-trapping mechanism is allowed to continue, approximately \$30 million
10 in additional funds will be trapped under the 13-week budget proposed by the Debtors, which is
11 attached as Exhibit A to the Motion.

12 If the Master Lease is recharacterized as a financing, all of the Excess Cash Flow would
13 immediately be retained by SCI. Many factors that establish the grounds for such
14 recharacterization are present here. The Committee plans to diligently pursue this issue but has
15 concerns about preserving the status quo in the interim. In the meantime, the Committee requests
16 that this Court escrow the Excess Cash Flow and not permit such amounts to fall into the
17 Mortgage Lenders' grip.⁷

18 **2. Recharacterization of the Master Lease.**

19 The Ninth Circuit has long adhered to the principle that courts should look to the
20 substance of a transaction, rather than the form or the self-serving statements of the parties,⁸ in
21 determining whether a transaction is properly characterized as a lease or a secured financing.⁹ In

22 ⁷ Indeed, having anticipated the recharacterization argument, the PropCo Lenders built in a termination
23 provision for the PropCo cash collateral in the event of a rejection or recharacterization of the Master Lease (Motion
5:20-21). See also PropCo Stip 6:2-5; 8:24-9:2.

24 ⁸ Given the clear directive of the courts in this regard, it is of no moment that the parties have inserted into
25 section 28.1 of the Master Lease a wholly self-serving provision stating that the Master Lease is in fact a true lease,
and not a secured financing.

26 ⁹ See In re Moreggia & Sons, Inc., 852 F.2d 1179, 1184 (9th Cir. 1988) (holding that the substance of a
27 transaction, rather than the form, would dictate whether an agreement is a lease or a secured financing under the
28 Bankruptcy Code); Pacific Express, Inc. v. Teknekron Infoswitch Corporation (In re Pacific Express, Inc.), 780 F.2d
1482, 1485 (9th Cir. 1986) (same); Baker v. Harris Pine Mills (In re Harris Pine Mills), 862 F.2d 217, 221 (9th Cir.
1988) (same); see also United Airlines, Inc. v. U.S. Bank National Association, Inc. (In re United Airlines, Inc.), 447
F.3d 504, 508 (7th Cir. 2006) (same).

1 this regard, courts look to the “economic realities” of a transaction, taking into consideration a
 2 series of factors, including:

- 3 • whether rental payments were calculated to compensate the lessor for
 4 the use of the land, or rather were structured for some other purpose,
 such as to ensure a particular return on investment;
- 5 • whether the property was purchased by the lessor specifically for the
 lessee’s use;
- 6 • whether the transaction was structured as a lease to secure certain tax
 advantages;
- 7 • whether the lessee assumed many of the obligations normally
 associated with outright ownership, including the responsibility for
 8 paying property taxes and insurance;
- 9 • whether the lease permits or requires the lessee to purchase the
 premises for a nominal sum at the end of the lease term.

10 See *Liona Corporation v. PCH Assocs. (In re PCH Assocs.)*, 804 F.2d 193, 201 (2d Cir. 1986); In
 11 re *Hotel Syracuse, Inc.*, 155 B.R. 824, 838 (Bankr. N.D.N.Y. 1993); In re *KAR Development*
 12 *Assocs., L.P.*, 180 B.R. 629, 639 (Bankr. D. Kan. 1995).

13 Courts have also considered whether the lease contains a “hell or high water” provision;
 14 whether the lessor has any reversionary interest in the real estate; and the existence of a balloon
 15 payment or significant pre-payment of the rent obligations. See *United Airlines*, 447 F.3d at 508
 16 (holding that transaction was a secured financing, rather than a lease, based on analysis of the
 17 factors); *International Trade Administration v. Rensselaer Polytechnic Institute*, 936 F.2d 744,
 18 749 (2d Cir. 1991) (same). Moreover, the notion of “collapsing” transactions, such as the Master
 19 Lease, may be particularly appropriate in the leveraged buyout context. *See In re Best Prods. Co.*,
 20 157 B.R. 222, 229 (Bankr. S.D.N.Y. 1993) (noting the need to consider substance over form, in
 21 particular, in the LBO context).

22 Many of the factors favoring recharacterization are present here. In addition to the rent
 23 obligations, SCI is also responsible under the Master Lease for a myriad of payments and other
 24 obligations that connote an ownership interest in the Transferred Properties, including the
 25 payment of taxes (Master Lease §3.1(b)(1)); insurance premiums (Master Lease §3.1(b)(2));
 26 utility charges (Master Lease §3.1(c)(1); and maintenance and repair costs (Master Lease
 27 §9.1(a)). Additionally, the Master Lease contains a “hell or high water” provision, which
 28 obligates SCI to continue performing under the lease regardless of, among other things, (i) any

1 damage to or destruction of the Transferred Properties from whatever cause, (ii) any taking of the
2 Transferred Properties by a governmental authority, (iii) the interruption or discontinuance of any
3 service or utility to the Transferred Properties, or (iv) any claim SCI may have against PropCo by
4 reason of default or breach of any warranty under the Master Lease. Master Lease §4.1.

5 Tellingly, the structure of the LBO indicates that PropCo was created mainly to hold the
6 Transferred Properties, and purchased the Transferred Properties with the sole intent to lease such
7 properties back to SCI.

8 The Committee believes that within a reasonably prompt time it will be able to show that
9 the Master Lease is nothing more than a thinly veiled pass through for financing payments under
10 the Mortgage Loan Agreement and Mezzanine Loan Agreements. These efforts should not be cut
11 short by the overreaching demands of the Mortgage Lenders.

12 On the basis of the foregoing, the relief requested in the Motion should not be granted and
13 the PropCo Stip and the proposed final order should be modified as provided in Schedule 1
14 attached hereto and made a part hereof by this reference. Absent these modifications, the relief as
15 requested in the Motion shall prejudice the Debtors' estates and creditors.

16 **V. RESERVATION OF RIGHTS**

17 The Committee reserves all of its rights, claims, defenses, and remedies, including,
18 without limitation, the right to amend, modify, or supplement this Objection, to seek discovery,
19 and to raise additional objections during the final hearing on the Motion.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **VI. CONCLUSION**

2 WHEREFORE, for all of the foregoing reasons, the Committee objects to the relief
3 requested in the Motion absent the modifications set forth in Schedule 1.

4 DATED: August 26, 2009

5 **GREENBERG TRAURIG, LLP**

6
7 By s/ Anne M. Loraditch

8 BRETT AXELROD, ESQ.
9 Nevada Bar No. 5859
10 ANNE M. LORADITCH, ESQ.
11 Nevada Bar No. 8164
12 3773 Howard Hughes Parkway
13 Suite 400 North
14 Las Vegas, Nevada 89169
15 Telephone: (702) 792-3773

16 *[Proposed]* Nevada Counsel to the Official
17 Committee of Unsecured Creditors

18 – and –

19 **FRIED, FRANK, HARRIS, SHRIVER
20 & JACOBSON LLP**

21 BRAD ERIC SCHELER (SBN BS-0397)
22 Bonnie Steingart (SBN BS-8004)
23 *[pro hac vice pending]*
24 One New York Plaza
25 New York, NY 10004
26 Telephone: (212) 859-8000

27 *[Proposed]* Counsel for the Official Committee of
28 Unsecured Creditors

SCHEDULE 1

| <u>Relief Sought by Debtors</u> | <u>Objection/ Proposed Modification</u> |
|---|---|
| <p>The Excess Cash flow paid under the Master Lease is currently being held by PropCo, and will continue to accrue throughout these cases. Absent the bankruptcy filing, these funds would have been available to SCI per the terms of the Master Lease.</p> | <p>The retained cash amounts paid by SCI to PropCo pursuant to the Master Lease that are not used by PropCo to service the LBO Obligations — approximately \$47 million as of the date of this filing and an additional \$30 million over 13 weeks according the Debtors' budget — should be transferred to an SCI escrow account pending resolution of the Committee's investigation of the LBO transaction and any claims arising therefrom, including, but not limited to any fraudulent conveyance or recharacterization claims. In addition, such relief should not qualify as a termination event under any agreements related to the LBO. (PropCo Stip, 8:24-9:2).</p> |
| <p>Paragraph 5 of the PropCo Stip states that the Collateral Agent for the Mortgage Lenders has valid, perfected, and unavoidable first priority liens upon and security interests in certain of PropCo's assets.</p> | <p>Paragraph 5 should be subject to a reservation of rights by the Committee. (PropCo Stip, 3:20-21).</p> |
| <p>Paragraph (a) of the PropCo Stip provides for continuation of lease payments under the terms of the Master Lease.</p> | <p>Paragraph (a) should be modified to escrow the portion of the Master Lease payment that is the Excess Cash Flow without any effect on the assumption, rejection or recharacterization of the Master Lease. (PropCo Stip, 4:12-20).</p> |
| <p>Paragraph (b) of the PropCo Stip provides that extension of the Budget after expiration of the 13-week period is under the Mortgage Lenders' unilateral control.</p> | <p>Paragraph (b) should be modified to provide the Committee with consultation rights on any budget extension, including delivery to and review by the Committee of all copies of financial reports, notices, and financial analyses or otherwise delivered to the Mortgage Lenders. (PropCo Stip, 5:28-6:5).</p> |
| <p>Paragraph (b) of the PropCo Stip provides, "the Mortgage Lenders and PropCo may agree to the application of any additional amounts in the CMBS Bank Account to reduce the principal balance of the Mortgage Loan, and may implement such payment application after notice and a hearing and further approval by the Bankruptcy Court."</p> | <p>This should be deleted. Such payment is inconsistent with the Bankruptcy Code and not available as a form of adequate protection. (PropCo Stip, 6:5-9).</p> |

| | | |
|--|---|--|
| <p>1 2 3</p> | <p>Paragraph (b) of the PropCo Stip provides that Master Lease payments made prior to the Petition Date shall be used only for certain enumerated purposes and for no other purpose.</p> | <p>For the avoidance of doubt, this provision does not address the timing or resources available to the Committee to investigate the LBO, any liens against PropCo assets or the Master Lease, or to raise any challenges thereto.</p> |
| <p>4 5</p> | <p>As drafted, it is unclear in paragraph (c) of the PropCo Stip who is bound by its terms.</p> | <p>Paragraph (c) should be subject to a reservation of rights by the Committee. (PropCo Stip, 6:23-26).</p> |
| <p>6 7 8</p> | <p>As drafted, paragraph (h) of the PropCo Stip is not sufficiently clear with respect to its applicability to the Committee.</p> | <p>Paragraph (h) should be modified to include a reservation of rights by the Official Committee similar to that provided for the Mortgage Lenders and PropCo. (PropCo Stip, 7:28-8:4).</p> |
| <p>9 10 11 12</p> | <p>Paragraph (i) of the PropCo Stip provides that the Mortgage Lenders shall receive, on account of any diminution in value of the Mortgage Lenders' interest in their collateral, replacement liens upon and security interests in all of the Mortgage Lenders' collateral, whether existing as of the Petition Date, or acquired thereafter.</p> | <p>Paragraph (i) should be clarified so that it is clear that such paragraph does not in any way prejudice the Committee's rights to investigate and prosecute any actions or claims related to, or arising out of the LBO and related transactions, or otherwise challenge the validity of the Mortgage Lenders' liens. (PropCo Stip, 8:9-16).</p> |
| <p>13 14 15 16 17</p> | <p>As drafted, it is unclear in paragraph (j) of the PropCo Stip who is bound by its terms.</p> | <p>Paragraph (j) should be modified so that the terms of the PropCo Stip are <u>not</u> binding on the Committee, and do not otherwise prejudice the Committee's rights to investigate and prosecute any actions or claims related to, or arising out of the LBO and related transactions, or otherwise challenge the validity of the Mortgage Lenders' liens. (PropCo Stip, 8:17-23).</p> |
| <p>18 19 20 21 22 23 24 25</p> | <p>Paragraph (k) of the PropCo Stip provides that the Debtors' rights to use cash collateral are immediately terminated in the event (A) the Committee files a motion or pleading seeking an order (i) reducing the rent or other cash amounts payable, or avoidance of payment by SCI of the full amount of the rent due, under the Master Lease, or (ii) rejecting or recharacterizing the Master Lease, or (B) the Committee files a motion or pleading challenging or effecting the validity, priority, perfection and/or amount of the Mortgage Lenders' liens or claims against PropCo or its assets.</p> | <p>Paragraph (k) should be modified so that the Debtors' rights to use cash collateral are <u>not</u> immediately terminated in the event (A) the Committee files a motion or pleading seeking an order (i) reducing the rent or other cash amounts payable, or avoidance of payment by SCI of the full amount of the rent due, under the Master Lease, or (ii) rejecting or recharacterizing the Master Lease, or (B) the Committee files a motion or pleading challenging or effecting the validity, priority, perfection and/or amount of the Mortgage Lenders' liens or claims against PropCo or its assets. (PropCo Stip, 8:24-9:14).</p> |

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| | |
|---------------------------------------|--|
| Detail supporting the proposed Budget | Despite repeated efforts and requests, neither the Ad Hoc Committee nor the Committee has been provided with the detail supporting the proposed Budget. Such detail is necessary to ensure that deal professional fees noted on line 3.15 of the proposed Budget do not include fees for any of the Mezzanine Lenders' professionals, as the Committee believes the Mezzanine Lenders may be undersecured. The Debtors must be required to provide the Committee with a detailed breakdown of the Budget and with monthly reports concerning invoices submitted by lender professionals. |
|---------------------------------------|--|