

Paul S. Aronzon (CA State Bar No. 88781)
Thomas R. Kreller (CA State Bar No. 161922)
MILBANK, TWEED, HADLEY & McCLOY LLP
601 South Figueroa Street, 30th Floor
Los Angeles, California 90017
Telephone: (213) 892-4000
Facsimile: (213) 629-5063

Reorganization Counsel for
Debtors and Debtors in Possession

Bruce T. Beesley (NV SBN 1164)
Laury Macauley (NV SBN 11413)
LEWIS AND ROCA LLP
50 West Liberty Street, Suite 410
Reno, Nevada 89501
Telephone: (775) 823-2900
Facsimile: (775) 823-2929
bbeesley@lrlaw.com; lmacauley@lrlaw.com

Local Reorganization Counsel for
Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

STATION CASINOS, INC.

- ☐ 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

Chapter 11

Case No. BK-09-52477
Jointly Administered
BK 09-52470 through BK 09-52487

**DEBTORS' MOTION PURSUANT
TO 11 U.S.C. §§ 105(a) AND 1121(d),
FED. R. BANKR. PROCEDURE 9014
AND LOCAL RULE 9014 FOR AN
ORDER EXTENDING THE
DEBTORS' EXCLUSIVE PERIODS
WITHIN WHICH TO FILE A PLAN
OF REORGANIZATION AND TO
SOLICIT ACCEPTANCES
THERE TO**

Hearing Date: November 20, 2009
Hearing Time: 10:00 a.m.

300 Booth Street
Reno, Nevada 89501

1 TO THE HONORABLE, GREGG ZIVE, UNITED STATES BANKRUPTCY JUDGE, THE
 2 OFFICE OF THE UNITED STATES TRUSTEE AND ALL PARTIES IN INTEREST:

3 Station Casinos, Inc. ("SCI") and its affiliated debtors and debtors in possession
 4 (collectively, the "Debtors") in the above-captioned Chapter 11 cases (the "Chapter 11 Cases"),
 5 hereby submit this motion (the "Motion") for entry of an order, pursuant to sections 105(a) and
 6 1121(d) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the
 7 "Bankruptcy Code"), Rule 9014 of the Federal Rules of Bankruptcy Procedure and Local Rule
 8 9014, extending the periods during which only the Debtors may file a plan of reorganization (the
 9 "Exclusive Filing Period") and solicit acceptances thereto (the "Exclusive Solicitation Period")
 10 and, together with the Exclusive Filing Period, the "Exclusivity Periods"). In support of this
 11 Motion, the Debtors submit the Declaration of Richard J. Haskins, filed concurrently with the
 12 Motion (the "Haskins Decl."), and respectfully state as follows:

13 **I. JURISDICTION AND RELIEF REQUESTED**

14 This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. § 1334.
 15 This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

16 These Chapter 11 Cases were commenced on July 28, 2009. Pursuant to
 17 Bankruptcy Code section 1121(b), the Debtors' initial Exclusive Filing Period is set to expire on
 18 November 25, 2009 and their Exclusive Solicitation Period is set to expire on January 24, 2010.
 19 By this Motion, the Debtors seek to extend each of the Exclusivity Periods for 120 days for the
 20 reasons set forth herein. Accordingly, the Debtors request extension of the Exclusive Filing
 21 Period to March 25, 2010 and extension of the Exclusive Solicitation Period to May 24, 2010, in
 22 each case without prejudice to the Debtors' right to seek further extensions if circumstances in
 23 these Chapter 11 Cases warrant.

24 **II. INTRODUCTION**

25 The Chapter 11 Cases are extremely large and complex, perhaps among the
 26 largest Chapter 11 cases ever filed in the District of Nevada. The filings were precipitated by a
 27 severe economic recession that continues unabated. The Debtors' businesses have been and
 28

1 continue to be negatively impacted by the continuing recession. The financial performance of
2 many of the Debtors' key business units have yet to stabilize, making valuation of the Debtors'
3 businesses and assessment of their future prospects – and therefore the formulation of a plan of
4 reorganization – extraordinarily challenging.

5 Compounding those challenges are the intercreditor tensions inherent in the
6 Debtors complex capital structure. The competing (and conflicting) interests of the Debtors'
7 major creditor constituents – principally the OpCo secured lenders, the PropCo secured lenders
8 and the OpCo unsecured bondholders – have been clearly apparent in various Court hearings to
9 date and have also prominently manifested themselves in the ongoing discussions the Debtors
10 have had with all of their constituents since the Chapter 11 Cases were filed. While the Debtors
11 will continue to strive to focus the parties' attention on preserving the value of the Debtors'
12 businesses and arriving at a sensible, fair and equitable plan of reorganization as quickly as
13 possible, it may well be inevitable that the various creditor constituents will continue to jockey
14 for position amongst themselves. Indeed, in the face of this intercreditor jockeying, the Debtors
15 may be the only parties in a position to advance a plan of reorganization that properly balances
16 the interests of all of the estates and their respective stakeholders.

17 These Chapter 11 Cases are a mere four months old. The Debtors should be
18 granted sufficient time to work constructively with all of their constituents to try to arrive at a
19 restructuring that balances all of those competing interests. Viewed in relation to the size of the
20 Chapter 11 Cases and the complexities and challenges facing the Debtors, the 120-day
21 extensions requested are brief and designed solely to provide the Debtors with a full and fair
22 opportunity to formulate and propose a viable plan of reorganization and then to solicit
23 acceptances thereto. Allowing Debtors to remain in control of the plan process will enable the
24 Debtors to fulfill the primary objectives of Chapter 11: the formulation, confirmation and
25 consummation of a plan of reorganization. Moreover, the additional time requested by the
26 Debtors herein is necessary to allow the Debtors to act as an "honest broker" among the various
27 creditor groups. The added breathing room, with exclusivity intact, is necessary to harmonize
28

1 the diverse and competing interests that exist among the creditor constituencies in a reasoned and
2 balanced manner.

3 Ultimately, allowing the Debtors to remain in control of the Chapter 11 plan
4 process will save time and money and likely lead to the filing of a reorganization plan that has
5 the best possible chance of success for the reorganization of the Debtors' businesses,
6 preservation of thousands of jobs and the restructuring of the Debtors' entire complex capital
7 structure. Indeed, allowing the Debtors' exclusivity to lapse at this early stage in the Chapter 11
8 Cases might well lead to the filing of a number of self-interested and unnecessarily provocative
9 plans by creditor constituents as a direct result of the Debtors' having been given an insufficient
10 opportunity to try to create an appropriate level of consensus and compromise in these cases.

11 12 **III. STATEMENT OF RELEVANT FACTS**

13 On July 28, 2009 (the "Petition Date"), the Debtors commenced these Chapter 11
14 Cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The
15 Debtors continue to manage and operate their businesses as debtors in possession pursuant to
16 Bankruptcy Code sections 1107 and 1108. (October 23, 2009 Declaration of Richard J. Haskins
17 filed concurrently herewith ("Haskins Decl."), ¶6.) Pursuant to this Court's order, the Chapter
18 11 Cases are being jointly administered for procedural purposes.

19 The United States Trustee appointed the Official Committee of Unsecured
20 Creditors (the "Committee") on August 13, 2009.

21 **A. SCI is the Nerve Center of a Large, Complex and Historically Successful Hotel,** 22 **Gaming and Development Company.**

23 SCI is a privately held Nevada corporation based in Las Vegas that owns and
24 operates eighteen (18) casino properties in Clark County, Nevada and manages a casino in
25 California for a Native American tribe. (Haskins Decl., ¶7.)

26 Altogether, SCI owns and operates fifty-seven (57) wholly owned direct or
27 indirect subsidiaries and in addition owns fifty percent interests in and manages an additional
28 eight (8) joint venture companies. (Haskins Decl., ¶8.)

1 SCI's direct and indirect non-debtor subsidiaries include SCI's licensed gaming
2 companies, management and development companies for Native American gaming activities, a
3 licensed construction and development company, real estate holding and development
4 companies, and other service companies used in the overall management of the business
5 enterprise. (Haskins Decl., ¶9.) Needless to say, the maintenance of all necessary licenses and
6 compliance with all applicable gaming regulations is critical to the Debtors' ability to maximize
7 the value of their businesses and will be a necessary component of any successful reorganization.
8 The Debtors believe they are in full compliance with all of their regulatory requirements and
9 have kept the gaming regulators apprised of developments in the Chapter 11 Cases on an
10 ongoing basis. (Haskins Decl., ¶10.)

11 SCI owns and operates thirteen gaming and entertainment complexes in the Las
12 Vegas metropolitan area. SCI also holds 50% interests in, and is the manager of, the Green
13 Valley Ranch Resort Spa Casino, Aliante Station Casino & Hotel, Barley's Casino & Brewing
14 Company, The Greens Gaming & Dining, and Wildfire Casino & Lanes. (Haskins Decl., ¶11.)

15 Two of SCI's fifty percent owned casinos, Green Valley Ranch Resort Spa
16 Casino and Aliante Station Casino & Hotel, are independently financed under two separate credit
17 facilities with total outstanding balances due of approximately \$1,150,000,000. SCI manages
18 both of these properties through wholly owned non-debtor subsidiaries. SCI directly provides
19 the same level of central services to Green Valley Ranch Resort Spa Casino and Aliante Station
20 Casino & Hotel as it does to its own wholly owned properties. (Haskins Decl., ¶12.) Like all
21 Las Vegas gaming properties, Green Valley Ranch Resort Spa Casino and Aliante Station Casino
22 & Hotel have experienced the impact of the recession. (Haskins Decl., ¶13.)

23 Additionally, SCI manages Thunder Valley Casino in Placer County, California,
24 on behalf of its owner, the United Auburn Indian Community. (Haskins Decl., ¶14.) SCI has
25 also entered into four other development and management agreements for gaming facilities to be
26 constructed by other Native American Tribes. (Haskins Decl., ¶15.) SCI also has significant
27 undeveloped real estate holdings in the Las Vegas and Reno areas. (Haskins Decl., ¶16.)
28

B. SCI Has a Complex Capital Structure Including a Complex Sale and Leaseback Transaction, Secured Bank Financing, Commercial Mortgage Backed Securities Financing, Mezzanine Financing and Senior Unsecured and Subordinated Unsecured Bond Financing.

SCI was taken private in 2007 (the “Going Private Transaction”). As a result of the Going Private Transaction, the non-voting equity of SCI is owned by Debtors FCP Holding, Inc. and Fertitta Partners, LLC, and all of the voting stock is held by FCP VoteCo, LLC. (Haskins Decl., ¶17.)

In connection with the Going Private Transaction, the Debtors incurred approximately \$3,375,000,000 of secured debt. SCI, as borrower, is party to the Credit Agreement, dated as of November 7, 2007 pursuant to which it received (i) a \$250,000,000 term loan facility and (ii) a \$650,000,000 revolving credit facility, for total loan commitments of \$900,000,000, which amount was fully drawn prior to the petition date (the “OpCo Credit Facilities”). (Haskins Decl., ¶18.) In addition, the CMBS Debtors¹ arranged a first mortgage loan for \$1,800,000,000 in term loan facilities (“the Mortgage Loan”) secured by all of the real property owned by FCP PropCo LLC (“PropCo”), and several of the other CMBS Debtors borrowed an aggregate of \$675,000,000 in additional mezzanine style term loan facilities (together with the Mortgage Loan, the “CMBS Credit Facilities”). (Haskins Decl., ¶19.)

Prior to the Going Private Transaction, SCI had issued unsecured senior and senior subordinated notes outstanding in aggregate principal amounts of \$850,000,000 and \$1,450,000,000, respectively, all of which remains outstanding (the “Unsecured Indebtedness”). (Haskins Decl., ¶20.)

The central feature of the Going Private Transaction was the formation of the CMBS Debtors, which became wholly owned subsidiaries of SCI, and the transfer from certain non-debtor SCI subsidiaries to debtor PropCo of the real property and improvements (the “CMBS Properties”) used in connection with (i) Palace Station Hotel & Casino (“Palace

¹ The “CMBS Debtors” are, collectively, FCP MezzCo Parent, LLC, FCP MezzCo Parent Sub, LLC, FCP MezzCo Borrower VII, LLC, FCP MezzCo Borrower VI, LLC, FCP MezzCo Borrower V, LLC, FCP MezzCo Borrower IV, LLC, FCP MezzCo Borrower III, LLC, FCP MezzCo Borrower II, LLC, FCP MezzCo Borrower I, LLC, and FCP PropCo, LLC.

1 Station”), (ii) Boulder Station Hotel & Casino (“Boulder Station”), (iii) Sunset Station Hotel &
2 Casino (“Sunset Station”), and (iv) Red Rock Casino Resort Spa (“Red Rock” and collectively
3 with Palace Station, Boulder Station and Sunset Station, the “CMBS Casinos”). PropCo
4 purchased the CMBS Properties for cash using the proceeds of the CMBS Credit Facilities and a
5 portion of the cash equity contributed into the CMBS Debtors in connection with the Going
6 Private Transaction. (Haskins Decl., ¶21.)

7 Immediately following PropCo’s acquisition of the CMBS Properties, PropCo
8 entered into a ground lease (the “Master Lease”) with SCI, pursuant to which PropCo leased the
9 CMBS Properties back to SCI under a fifteen year triple net lease. SCI, in turn, subleased the
10 four CMBS Properties back to the applicable non-debtor subsidiary that operates the hotel and
11 casino complex located on the applicable CMBS Property. (Haskins Decl., ¶22.)

12 Various creditor constituents, including the Committee and the “Independent
13 Lenders,” have focused most of their attention on the Master Lease, and in particular the
14 magnitude of the rental payments from OpCo to PropCo required thereunder. These creditors
15 have filed pleadings publicly advocating a variety of approaches to reduce the cash impact of the
16 Master Lease on SCI, from rejection to recharacterization and various suggested points in
17 between. Indeed, as pointed out elsewhere in this Motion, treatment of the Master Lease is a
18 central issue cited by the “Independent Lenders” in support of their motion for an examiner.

19 PropCo’s secured lenders, on the other hand, have been equally adamant in
20 protecting the Master Lease, which provides substantial credit enhancement to the value of the
21 Mortgage Loans.

22 Resolution of the Master Lease undoubtedly will be a critical component of SCI’s
23 plan of reorganization. Coming to a resolution of the Master Lease that satisfies the
24 requirements of all of SCI’s stakeholders will require careful and patient negotiation that will
25 materially impact all other facets of the restructured SCI. And to the contrary, any rash,
26 premature or ill-conceived decisions regarding the Master Lease will jeopardize the prospects for
27 successful reorganizations of *any* of the Debtors. (Haskins Decl., ¶23.)
28

1 Finally, the complexity of the Debtors' capital structure not surprisingly give rise
2 to similarly complex tax issues. Any potential plan of reorganization that the Debtors or any of
3 their constituents consider undoubtedly will bring with it a set of potential tax consequences and
4 implications. Accordingly, any plan negotiations will require reasoned and thoughtful analysis
5 of the relevant tax consequences attendant thereto. The Debtors have already begun providing
6 information to and discussing certain tax issues with all of their major creditor constituents and
7 will continue to do so as part of leading plan discussions and negotiations. (Haskins Decl., ¶24.)

8 **C. SCI Has a Complex and Centrally Administered Cash Management System.**

9 Prior to the Petition Date, SCI negotiated with its secured creditors over the use of
10 intercompany postpetition financing and cash collateral, the reconfiguration of its cash
11 management system by transferring the treasury function to its subsidiary Past Enterprises, Inc.,
12 and the creation of a new system of intercompany lending and full enterprise weekly budgeting
13 to assure both SCI and its secured lenders that SCI would be able to operate and finance all of its
14 non-debtor business operations smoothly after the Petition Date. (Haskins Decl., ¶25.)

15 These cash management and budgeting procedures, working in conjunction with
16 SCI's commitment in the final cash collateral orders to share with the Committee and the US
17 Trustee all financial reporting and budgeting information that SCI provides to its secured
18 creditors, provides all parties in interest in these Chapter 11 Cases with a full and timely picture
19 of SCI's overall financial condition and operations, including all non-debtor subsidiaries.
20 (Haskins Decl., ¶26.)

21 These successful negotiations permitted SCI to avoid putting any of its operating
22 subsidiaries into bankruptcy proceedings, thus minimizing the impact of the bankruptcy
23 proceedings on employees, unsecured trade creditors and gaming regulators, while preserving
24 the SCI secured lenders' interest in cash collateral and providing transparency and oversight by
25 all constituencies. (Haskins Decl., ¶27.)

D. The Debtors' Creditor Constituents Have Demanded Significant Attention From The Debtors.

The Debtors devoted a substantial amount of time to addressing objections to virtually every step the Debtors have taken to administer these Chapter 11 Cases in an orderly, consensual manner and to make progress toward a confirmable, and hopefully consensual, plan of reorganization.

Various combinations of creditors have objected orally and in writing to many of the Debtors' first day motions, ranging from employment of professionals, to maintenance of cash management systems, to use of cash collateral, to compensation and reimbursement of directors. A wide variety of creditors have attacked the Master Lease and proposed their views on the best approach to the Master Lease. Finally various creditor contingencies have publically disparaged Debtors' management as conflicted and under the control of the secured lenders, culminating in the filing of a motion for the appointment of an examiner. (Haskins Decl., ¶28.) These skirmishes have distracted not only the Debtors, but other key constituents, from giving full attention to the formulation and pursuit of a plan of reorganization. (Haskins Decl., ¶29.)

E. The SCI Special Committee has Only Recently Filed Its Report on the Going Private Transaction and has Just Recently Commenced Work on A Supplemental Report on the Master Lease Which Will Impact any Proposed Restructuring.

SCI's board created a special litigation committee (the "OpCo Special Committee") headed by David Weekly. The OpCo Special Committee, with the assistance of independent counsel and financial advisors, has been tasked with investigating the Going Private Transaction to determine if any remedial action is available to OpCo as a result of those transactions. (Haskins Decl., ¶30.)

On September 22, 2009, the final report of the OpCo Special Committee (the "Report") was publically filed in the Chapter 11 Cases. [Docket No. 353-1] In the wake of that filing, independent counsel for the OpCo Special Committee presented a status report to the Bankruptcy Court at a status conference on September 30, 2009.

1 Following the filing of the Report, SCI expanded the mandate of the OpCo
2 Special Committee to investigate and report on additional potential claims and causes of action
3 that might be available to SCI with respect to the Master Lease, including but not limited to the
4 possible rejection or recharacterization of the Master Lease, as has been suggested by various
5 creditor groups. The newly tasked work of the SCI Special Committee is ongoing, and the
6 results of that work may prove to be an important component of the ultimate restructuring
7 discussions. (Haskins Decl., ¶31.)

8 **F. Debtors Have Successfully Established Post-Petition Operations and Smooth**
9 **Administration of the Chapter 11 Cases.**

10 Since the Petition Date, the Debtors have continued to operate all of their
11 businesses and pursue attractive development opportunities. In addition, the Debtors have
12 addressed the numerous administrative matters that are attendant with their transition into
13 operating as Chapter 11 debtors. These matters include:

- 14 • The Debtors' successful negotiation of complex consensual cash management,
15 cash collateral and debtor in possession financing arrangements for the SCI
16 Credit Facilities and separately for the PropCo mortgage loan which in both
17 cases received the support of the Committee after consultation and vigorous
18 negotiation over a sixty-day period.
- 19 • Negotiation of arrangement to assure the Debtors' directors that they would
20 have the benefit of prepetition indemnification and expense reimbursement
21 arrangements, as well as access to independent counsel and financial advisors,
22 to assist them in the conduct of their duties to the Debtors. As a result of
23 consultation and vigorous negotiation, these arrangements were also approved
24 by the Court with the consent of the Committee.
- 25 • Preparation of the 15-day information package and delivery of same to the
26 United States Trustee.
- 27 • Preparing and filing retention applications for professionals and advisors.
- 28 • Arranging for immediate payment of prepetition employee wage claims.

- Preparing for the first meeting of creditors pursuant to section 341(a) of the Bankruptcy Code.
- Preparing the Schedules and Statement of Affairs for each Debtor.
- Negotiating consensual extensions of the time to assume or reject non-residential real property leases with the Debtors various landlords and tenants.
- Continuous formal and informal contacts with all of the major creditor constituencies with respect to plan formulation as described in greater detail below. (Haskins Decl., ¶32.)

G. Debtors are in Substantial Compliance with Reporting and Other Administrative Obligations and Making Efforts to Comply with Remaining Requirements.

On October 20, 2009, the Debtors each filed their schedules and statements of financial affairs (collectively, the “Schedules and SOFAs”). The foregoing was a complicated and time-consuming task. SCI’s Schedules, alone, are over 750 pages. In addition, the Debtors, their financial advisors and counsel have been working with the office of the U.S. Trustee to develop an acceptable form of Monthly Operating Report and anticipate filing the Report for August and September 2009 shortly. The Debtors are also preparing, and will file prior to the hearing, the forms required by FRBP Rule 2015.3. (Haskins Decl., ¶33.)

The Debtors also have provided the Office of the United States Trustee with “15-day Package” information and documentation. The “initial debtor interview” is scheduled to take place on November 3, 2009 and the meeting of creditors pursuant to Bankruptcy Code Section 341(a) was commenced on August 31, 2009 and has been continued to November 9, 2009. (Haskins Decl., ¶34.)

The Debtors are working toward satisfying the foregoing reporting obligations, the Debtors are also current in the payment of all administrative expenses and adequate protection payments. (Haskins Decl., ¶35.) Finally, the Debtors have complied with requirements under the entered cash collateral orders. (Haskins Decl., ¶36.)

1 **H. Debtors' Efforts to Negotiate and Formulate a Plan of Reorganization of This**
2 **Complex Business are Ongoing.**

3 Since the Petition Date, SCI's senior executives and restructuring professionals
4 have been in regular contact with senior executives and restructuring professionals representing
5 SCI's major creditor constituencies. (Haskins Decl., ¶37.)

6 In addition to telephonic contact, several face to face meetings of senior
7 executives have taken place and restructuring professionals have met numerous times. (Haskins
8 Decl., ¶37.)

9 The Debtors also have been responding to creditor requests for a tremendous
10 amount of financial and other information, all of which will be used in the negotiation of a plan
11 of reorganization. The Debtors' management and professionals have been preparing financial
12 models and term sheets and they have engaged with creditor groups in reorganization
13 discussions. (Haskins Decl., ¶38.)

14 The process of negotiating a plan that is acceptable to the widest possible cross
15 section of stakeholders is complicated by the Debtors' capital structure, which results in
16 conflicting economic interests between our secured creditor groups, as well as between secured
17 creditors, as a whole, and unsecured creditors. SCI has discharged its obligations to all
18 stakeholder constituencies by working to design a legal and financial structure for the
19 reorganized Debtors that best preserves the interests of all constituencies and provides the
20 reorganized Debtors with the best chance for future economic success. (Haskins Decl., ¶39.)

21 There can be no assurance of success in the plan process, but progress is
22 underway and the Debtors are committed to trying to reach agreement on a consensual plan for
23 their reorganization as soon as possible. (Haskins Decl., ¶34.)

24 **I. The Debtors Have Exercised Their Best Business Judgment and Satisfied Their**
25 **Obligation to Act in the Best Interest of all Stakeholders in Seeking to Retain**
26 **Exclusivity.**

27 The relief requested in the Motion is necessary, essential and appropriate for the
28 continued operation of the Debtors' businesses and the management and preservation of the

Debtors' assets and property. (Haskins Decl., ¶41.) The decision to seek 120-day extensions were made by Debtors' management after consultation with its counsel and financial advisors and after giving due consideration to the interests of the creditors and the impact the extensions would have on the estates. (Haskins Decl., ¶42.) After due deliberation, the Debtors determined that it was in the best interests of the Debtors and the estates that the Debtor continue to have the exclusive right to file a plan of reorganization and solicit acceptances thereto, in order for the Debtors to continue to discuss, negotiate and formulate a confirmable, and hopefully consensual, plan of reorganization. (Haskins Decl., ¶43.)

The extensions requested herein will facilitate full flexibility for the Debtors and all parties in connection with the expeditious and cost-effective discussion, negotiation and formulation of a confirmable plan of reorganization.

The relief sought in the Motion, represents valid business purposes and does not harm any creditor nor prejudice any creditor's substantive rights in the Chapter 11 Cases (other than the limited restrictions on filing or soliciting a plan).

IV. STATUTORY BASIS FOR RELIEF REQUESTED

Section 1121(d) of the Bankruptcy Code provides, in part:

... on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d).²

V. ARGUMENT

A. The Court has Discretion to Extend the Exclusivity Periods For "Cause".

The decision to extend exclusivity for cause rests within the Court's discretion. *In re Adelphia Communications Corp.*, 352 B.R. 578, 586 (Bankr. S.D.N.Y. 2006). Although the Bankruptcy Code does not define "cause," legislative history and case law make it plain that

² The extensions requested herein do not implicate either the 18-month or 20-month deadlines set forth in Section 1121(d)(2)(A) and (B), respectively of the Bankruptcy Code.

“cause” is a flexible standard. *See* H.R. Rep. No. 95-595, at 231-32 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6191; *see also United Savings Assoc. of Texas v. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Associates, Ltd.)*, 808 363, 372 n.15 (5th Cir. 1987).

Bankruptcy courts typically examine several non-exclusive factors in determining whether there is “cause” to extend exclusivity, including:

- (i) the size and complexity of a debtor’s case;
- (ii) the necessity for sufficient time to permit a debtor to negotiate a plan of reorganization and prepare adequate information;
- (iii) the existence of good faith progress towards reorganization;
- (iv) the fact that a debtor is paying its bills as they become due;
- (v) whether a debtor has demonstrated reasonable prospects for filing a viable plan;
- (vi) whether a debtor has made progress in negotiations with its creditors;
- (vii) the amount of time which has elapsed in the case;
- (viii) whether a debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtors’ reorganization demands; and
- (ix) whether an unresolved contingency exists.

In re Adelphia Communications Corp., 352 B.R. at 587 (listing all nine factors) (*citing In re Dow Corning Corp.*, 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997) (“Dow Corning”). The factors enumerated in Dow Corning are “standardly considered.” *In re Henry Mayo Newhall Memorial Hosp.*, 282 B.R. 444, 452 (9th Cir. B.A.P. 2002). Not all factors, however, are relevant to every case, and courts have found “cause” to extend exclusivity based on various combinations of these factors, as well as others. *See, e.g., Rinehart v. Hoffinger Indus., Inc. (In re Hoffinger Indus., Inc.)*, 292 B.R. 639, 644 (B.A.P. 8th Cir. 2003) (“It is within the discretion of the bankruptcy court to decide which factors are relevant and give appropriate weight to each.”); *In re Express One Int’l*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996) (finding “cause” based on only

four factors); *In re United Press Int'l, Inc.*, 60 B.R. 265, 269 (Bankr. D.D.C. 1986) (finding “cause” based on only three factors).

In Henry Mayo, the Ninth Circuit Bankruptcy Appellate Panel affirmed a bankruptcy court’s finding of “cause” based on the following:

(1) a first extension; (2) in a complicated case; (3) that had not been pending for a long time, relative to its size and complexity; (4) in which the debtor did not appear to be proceeding in bad faith; (5) had improved operating revenues so that it was paying current expenses; (6) had shown a reasonable prospect for filing a viable plan; (7) was making satisfactory progress negotiating with key creditors; (8) did not appear to be seeking an extension of exclusivity to pressure creditors; and (9) was not depriving the creditors committee of material or relevant information.

In re Henry Mayo, 282 B.R. at 452.

B. The Debtors Have Established Cause For The Requested Extensions Of The Exclusivity Periods For “Cause”.

1. The Size and Complexity of the Cases Warrants the Relief Requested.

It is indisputable that the Chapter 11 Cases are large and complex in terms of capital structure, indebtedness, operations and management, competing interests of creditor constituencies and the legal issues to be resolved in a plan. Indeed, the confirmation of a plan in this case will reorganize not only the Debtors but also their 56 non-debtor subsidiaries and the \$5,675,000,000 of secured and unsecured indebtedness described above. Size and complexity of a Chapter 11 case is the most common ground upon which courts grant extensions of the exclusive periods. *See generally, In re Texaco, Inc.*, 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987) (“The large size of a debtor and the consequent difficulty in formulating a plan of reorganization for a huge debtor with a complex financial structure are important factors which generally constitute cause for extending the exclusivity periods”); *In re Express One*, 194 B.R. at 100 (finding “cause” to extend exclusivity where case was sufficiently large and complex and debtor had been diligent in its attempts to reorganize). Here, the Court has already recognized the complexity of the Debtors’ operations and financing in connection with the entry of final orders

1 for use of cash collateral and approving the cash management system, and when it granted, for
2 cause shown, extensions of the deadline to file the schedules and statements of financial affairs.³

3 **2. Extension of the Exclusivity Periods Is Necessary to Enable the**
4 **Debtors To Continue Active Plan Negotiations.**

5 The exclusive periods afford a debtor a full and fair opportunity to propose a
6 confirmable, and hopefully consensual, plan and solicit acceptances thereto without the
7 deterioration and disruption caused by competing plans. Here, the Debtors request a brief but
8 meaningful extension to conclude existing efforts to formulate, document and confirm such a
9 plan. In light of the strides towards reorganization already accomplished by the Debtors, and the
10 active participation of the various constituencies in Debtor-led negotiations, the request is
11 reasonable and appropriate under the circumstances of these Chapter 11 Cases. *See, In re Ames*
12 *Dep't Stores Inc.*, 1991 WL 259036, at *3 (S.D.N.Y. Nov. 25, 1991) ("The purpose of the
13 Bankruptcy Code's exclusivity period is to allow the debtor flexibility to negotiate with its
14 creditors"); *In re Adelphia Communications Corp.*, 352 B.R. at 586 (exclusivity contemplates the
15 "negotiation of a plan of reorganization that may be acceptable to creditors and other interested
16 parties.") (quoting, *In re Texaco Inc.*, 81 B.R. 806, 810 (Bankr. S.D.N.Y. 1988)).

17 Simply put, given the size and complexity of the Chapter 11 Cases, the initial
18 120-day exclusivity period was an insufficient amount of time for the Debtors to stabilize their
19 operations, address myriad case administration issues and develop, negotiate and reach
20 agreement with creditors on a plan and draft a disclosure statement. *See In re Amko Plastics,*
21 *Inc.*, 197 B.R. 74 (Bankr. S.D. Ohio 1996) (finding "cause" to extend exclusivity where
22 insufficient time had passed for debtor to negotiate realistically with creditors).

23 **3. The Debtors Have Made Good Faith Progress Towards Formulation**
24 **of a Plan.**

25
26 ³ See Final Order Pursuant to 11 U.S.C. § 521, Fed. R. Bankr. P. 1007 and Local Rule 1007 Extending Time to
27 File Schedules and statement of Financial Affairs, entered on August 5, 2009 [Docket No. 46]; Order Granting
28 Emergency Motion, Pursuant to 11 U.S.C. § 521, Fed. R. Bankr. P. 1007 and Local Rule 1007, For an Order Further
Extending Time to File Schedules and Statement of Financial Affairs [Docket No. 381]. The Debtors' Schedules
were filed on October 20, 2009.

1 While the Debtors have made substantial progress in laying the groundwork for
2 reorganization, they still must, among other things, negotiate the terms of a plan with their
3 creditor constituents. The Debtors have kept in sight the need to deal with all of the parties in
4 interest in these Chapter 11 Cases. The Debtors and their professionals are in regular contact
5 with all the constituencies regarding the major substantive and administrative matters in these
6 Chapter 11 Cases.

7 As the foregoing demonstrates, Debtors have been focused on administering their
8 estates and complying with the statutory obligations in anticipation of submitting a plan of
9 reorganization that will garner creditor support and provide for an efficient exit from Chapter 11.
10 The Debtors' request to extend the Exclusivity Periods is clearly intended to facilitate an orderly,
11 efficient and cost-effective process for the benefit of all creditors. *See In re McLean Indus., Inc.*,
12 87 B.R. at 830 (Bankr. S.D.N.Y. 1987) (stating courts may assess conduct during case to
13 determine whether debtor's motives for seeking extension of exclusivity are proper).
14 Accordingly, an extension of the Exclusivity Periods is warranted. *see, e.g., In re Homestead*
15 *Partners, Ltd.*, 197 B.R. 706, 720 (Bankr. N.D. Ga. 1996) (finding "cause" to extend exclusivity
16 where substantial progress towards plan had been made and complex legal issues have occupied
17 much of the debtor's plan-making opportunities).

18
19 **4. Debtors Are Functioning Fully as Debtors in Possession.**

20 The Debtors are active and effective debtors in possession entitled to retain
21 control over the reorganization process. The administration of the Chapter 11 Cases is
22 proceeding efficiently. The Debtors and their professionals have spent considerable time
23 negotiating two consensual stipulations regarding the use of cash collateral and, for SCI, debtor
24 in possession financing and financing by the debtor of the operations of its non-debtor
25 subsidiaries. As a result, the Debtors cannot be faulted if some of the time that would otherwise
26 have been spent working on the plan, was diverted to other pressing issues. *In re United Press*
27 *Int'l. Inc.*, 60 B.R. 265, 269 (Bankr. D.D.C. 1986) (extending exclusivity and citing, among other
28 factors, the diversion of debtor's energies to the need for use of cash collateral which was dealt

1 with promptly and skillfully); *In re Newark Airport/Hotel L.P.*, 156 B.R. at 444 (Bankr. D.N.J.
2 1993) (finding “cause” to extend exclusivity where plan negotiations were slowed by, among
3 other things, protracted cash collateral dispute).

4 The Debtors are administratively solvent and are able to pay post-petition debts;
5 another factor that militates in favor of granting the relief requested. Moreover, in light of
6 Debtors’ liquidity position, Debtors believe they will have sufficient cash to continue paying
7 their post-petition obligations as they come due; further reducing potential adverse risk to the
8 reorganization process if the extensions are granted. *See In re Hoffinger Indus.*, 292 B.R. at 644
9 (affirming extension of exclusivity based, in part, on evidence that debtor “is paying its
10 postpetition expenses as they become due and adequate cash and lines of credit are in place to
11 pay administrative claims in the future”).

12
13 **5. The Debtors Have Minimized Contentious Issues.**

14 The Debtors have managed the process effectively to date. Specifically,
15 cognizant of the potential issues surrounding the Going Private Transaction, the Debtor arranged
16 pre-petition for the appointment of the SCI special committee to investigate the Going Private
17 Transaction. That task, as the Court is aware, was recently accomplished and the Debtors, in full
18 transparency, made the Report available publicly. The Debtors have also offered to cooperate in
19 the Committee’s reasonable investigation and vetting of the Report.

20 In addition, the Debtors are vigorously defending an unwarranted request for the
21 appointment of an examiner;⁴ which request unfortunately has sidetracked and delayed
22 expeditious reorganization. The Debtors ability to reduce interference from ancillary issues and
23 continue to strive towards the fundamental objective of reorganization militates in favor of
24 granting the requested extensions. *See, e.g., In re Newark Airport/Hotel L.P.*, 156 B.R. at 444
25 (Bankr. D.N.J. 1993) (extending exclusivity and citing, among other factors, “that the debtor has

26
27 ⁴ *See* Amended Motion of the Independent Lenders to Station Casinos, Inc. for the Appointment of an
28 Examiner,” filed on September 3, 2009 [Docket No. 272].

1 obviously spent a considerable amount of time [litigating various issues] and the cash collateral
2 dispute, all of which arose very early in the administration of the case”).

3
4 **6. This is the Debtors’ First Request for an Extension.**

5 This is the Debtors’ first request for an extension of the Exclusivity Periods and is
6 made less than four months after the Petition Date. 11 U.S.C. § 1121(b). The Debtors are not
7 seeking extensions to delay the reorganization or pressure the creditors to accede to a plan they
8 find unacceptable. To the contrary, Debtors seek the extensions to provide the Debtors with time
9 to reach a consensus on a confirmable plan of reorganization and the creation of viable,
10 sustainable reorganized debtors. The Debtors earnestness in this regard cannot be challenged.
11 Thus, at this early stage of the Chapter 11 Cases, an extension of the Exclusivity Periods will not
12 harm or prejudice any party in interest. [Finally, no other party has expressed an interest in
13 terminating the Debtors’ exclusivity rights or in proposing or pursuing a competing plan of
14 reorganization; to the contrary, the Committee supports the relief requested herein.]

15 In *Henry Mayo*, the Bankruptcy Appellate Panel noted that “a transcendent
16 consideration is whether adjustment of exclusivity will facilitate moving the case toward a fair
17 and equitable resolution.” *Henry Mayo*, 282 B.R. at 453, *citing Dow Corning*, 208 B.R. at 670.
18 The Debtors are in the best position to resolve numerous competing interests because only the
19 Debtors have a fiduciary duty to act in the best interests of the bankruptcy estate and all of its
20 various stakeholders. Thus, the extension of the Exclusivity Periods will provide stability to the
21 Debtors’ businesses and the reorganization process. *See Tranel v. Adams Bank and Trust Co. (In*
22 *re Tranel)*, 940 F.2d 1168, 1170 (8th Cir. 1991).

1 **VI. CONCLUSION**

2 For all of the foregoing reasons, the Debtors respectfully request that the Court extend the
3 Exclusive Filing Period through March 25, 2010 and extend the Exclusive Solicitation Period
4 through May 24, 2010. The Debtors also respectfully request that the Court preserve the
5 Debtors' right to seek further extensions of the Exclusivity Periods and grant such other relief as
6 the Court deems just and proper.

7
8 Dated: October 23, 2009

Respectfully submitted,

9 By: _____/s/
10 Paul S. Aronzon, CA State Bar #88781
11 Thomas R. Kreller, CA State Bar #161922
12 MILBANK, TWEED, HADLEY & McCLOY LLP
13 601 South Figueroa Street, 30th Floor
14 Los Angeles, California 90017

15 Reorganization Counsel for
16 Debtors and Debtors in Possession

17 Bruce T. Beesley, #1164
18 Laury Macauley, #11413
19 LEWIS AND ROCA LLP
20 50 W. Liberty Street, Ste. 410
21 Reno, NV 89501

22 Local Reorganization Counsel
23 For Debtors and Debtors in Possession
24
25
26
27
28