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### Capmark Bankruptcy Filing

As you may be aware by now from press reports, on Sunday, October 25, 2009, Capmark Financial Group Inc., along with multiple subsidiaries and affiliates, filed for Chapter 11 protection in the United States Bankruptcy Court for the District of Delaware.

The various subsidiaries that are covered by the filing include Capmark Finance Inc., Capmark Capital Inc., Capmark Equity Investments, Inc., Mortgage Investments, LLC, Net Lease Acquisition LLC, SJM Cap, LLC, Capmark Affordable Equity Holdings Inc., Capmark REO Holding LLC, Summit Crest Ventures, LLC, Capmark Affordable Equity Inc., and multiple additional affordable housing and low income tax credit investment entities.

Importantly, the various Capmark entities that are not presently filing for bankruptcy protection include Capmark Bank, a Utah Industrial Bank, Capmark Investments LP, a registered investment adviser, and Capmark Securities Inc., a registered broker dealer.

According to Capmark's bankruptcy petition, total assets of the various debtor and nondebtor entities were, as of June 30, 2009, approximately \$20.1 billion and total liabilities were approximately \$21.0 billion.

Bankruptcy Judge Christopher Sontchi has been assigned to the case. Judge Sontchi has been involved in a number of other significant cases, including the Chicago Sun Times, Linens 'N Things, Visteon, Delta Financial and American Home Mortgage.

Capmark reportedly engaged in "months of discussions and negotiations" with its creditor constituencies, but the parties did not reach agreement as to a consensual restructuring. Accordingly, it is unclear whether this bankruptcy case will see disputes with, or among, Capmark's creditor groups.

Capmark proposes to sell its servicing and certain mortgage banking business lines in a so-called 363 sale. In addition to servicing rights and other assets used by Capmark in its servicing and mortgage banking business, the sale will include \$303 million in warehoused loans and \$294 million in servicing advances presently owned by Capmark Bank. The proposed buyer of these assets is Berkadia Commercial Mortgage LLC, an entity formed by Berkshire Hathaway Inc. and Leucadia National Corporation. The proposed purchase price is about \$1.093 billion, but this is subject to higher and better offers as may result from an auction of the assets. The auction and other sale procedures will be brought before the court for approval in the coming days, and a closing of the transaction is expected before December 31, 2009.

Until the sale is consummated, it is unclear whether Capmark's bankruptcy will have much of an effect upon borrowers under loans extended or serviced by Capmark. For example, the bankruptcy should not relieve the borrowers of their repayment obligations. Moreover, Capmark's bankruptcy filings make it clear that Capmark intends to operate in the ordinary course (which is generally permitted under the Bankruptcy Code). This will mean, among other things, that normal servicing activities will continue – including activities concerning the maintenance of tax and insurance escrows, addressing defaulted loans (including by advancing property protection costs, negotiating with borrowers and engaging in enforcement action), and paying borrowers interest accrued on funds held in escrow. In furtherance of its ordinary course operations, Capmark has requested Court confirmation that its cash management system may continue without interference. This will include the maintenance of escrow accounts such as lockboxes, payment clearing accounts, custodial accounts, distribution clearing accounts and securitization collection accounts.

Additional information, including copies of court filings, can be obtained for free from Capmark's claims and noticing agent, Epiq Bankruptcy Solutions, at the following site:

<http://chap11.epiqsystems.com/clientdefault.aspx?pk=a0b52fef-c064-4c08-8319-39b22241fc7c>

If you have loans from Capmark you should check your records to determine whether or not the lender entity is part of the bankruptcy filing. Many of Capmark's real estate loans were extended through the nondebtor Capmark Bank. The bankruptcy filings, however, reference the fact that the debtors are lenders with respect to approximately 275 commercial mortgage loans with an outstanding balance of approximately \$2.4 billion. Similarly, you may have loans that were not originated with Capmark but are presently serviced by a division of Capmark. If you have any questions about how these filings may impact you as a borrower with loans with Capmark, either as a lender, co-lender and/or servicer, or if you have other dealings with Capmark and have questions, please contact [Kirk L. Brett](mailto:kbrett@dslip.com) (212.692.5525; [kbrett@dslip.com](mailto:kbrett@dslip.com)) or [Norman N. Kinel](mailto:nkinel@dslip.com) (212.692.5985; [nkinel@dslip.com](mailto:nkinel@dslip.com)) of our [Bankruptcy and Business Reorganizations](#) Group or any of the following partners in our [Distressed Real Estate](#) Group:

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## Firm Facts

Duval & Stachenfeld LLP is pleased to announce that our [Bankruptcy and Business Reorganizations](#) Group is acting as counsel for the Official Committee of Unsecured Creditors in the Tavern on the Green bankruptcy case in New York City.

Please contact Caitlin Velez at (212) 672-3747 or [newsletter@dslip.com](mailto:newsletter@dslip.com) with any questions or comments.

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