

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>  <b>CBL &amp; ASSOCIATES PROPERTIES, INC., <i>et al.</i>,</b>  <b>Debtors.<sup>1</sup></b>	§ § § § § §	<b>Chapter 11</b>   <b>Case No. 20-35226 (DRJ)</b>  <b>(Jointly Administered)</b>
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**DEBTORS' MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING DEBTORS TO FILE THEIR (I) UNREDACTED MOTION  
OF DEBTORS FOR AN ORDER APPROVING SETTLEMENT AGREEMENT  
WITH NEW YORK LIFE INSURANCE COMPANY, AND GRANTING RELATED  
RELIEF AND (II) ACCOMPANYING CONFIDENTIAL EXHIBITS UNDER SEAL**

**IF YOU OBJECT TO THE RELIEF REQUESTED YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

CBL & Associates Properties, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (the “**Motion to Seal**”):<sup>2</sup>

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<sup>1</sup> A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/CBLProperties>. The Debtors’ service address for the purposes of these chapter 11 cases is 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

### **Background**

1. Contemporaneously herewith, the Debtors filed the *Motion of Debtors for an Order (I) Approving Settlement Agreement with New York Life Insurance Company and (II) Granting Related Relief* (the “**Motion**”), seeking, among other things, authorization to enter into that certain consensual settlement agreement attached to the Motion as **Exhibit B** (the “**Settlement Agreement**”) by and between Volusia Mall, LLC (“**Volusia**”), CBL & Associates Limited Partnership (the “**CBL Guarantor**”), and New York Life Insurance Company (“**NYL**,” and together with the Debtors, the “**Parties**”).

2. As described in the Motion, restructuring of the Volusia Loan was needed. Thus, the Debtors negotiated a comprehensive loan modification with NYL, which is memorialized in the Settlement Agreement. The Settlement Agreement represents a restructuring of the Volusia Loan on terms beneficial to the Debtors, which will strengthen the Volusia property going forward.

3. The Motion contains information regarding the terms of the settlement that the Debtors consider commercially sensitive and confidential, particularly given ongoing negotiations with other property-level lenders concerning their loans. Specifically, the Parties seek to redact information regarding the go-forward credit terms provided for under the Settlement Agreement.

### **Jurisdiction**

4. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**Relief Requested**

5. By this Motion, the Debtors respectfully request that the Court: (i) grant them leave to file the unredacted Motion and the Settlement Agreement under seal; (ii) grant them leave to redact confidential portions of the Motion that incorporate the sensitive information (the “**Redacted Information**”); and (iii) order that the unredacted Motion, including all exhibits annexed thereto, shall remain confidential, shall be served on and made available only to (x) the advisors to the Ad Hoc Noteholder Group on a professional eyes only basis, (y) the advisors to the Creditors’ Committee, and (z) the U.S. Trustee, shall not otherwise be made available to the general public, and that the Debtors may provide the unredacted Motion and accompanying exhibits to any additional party who, upon good faith review of a request, the Debtors consent to receiving the information.

6. A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit A** (the “**Proposed Order**”).

**Cause Exists to File the Motion Under Seal**

7. Section 105(a) of the Bankruptcy Code codifies the Court’s inherent equitable powers and empowers it to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Moreover, pursuant to section 107(b)(1) of the Bankruptcy Code, the Court may authorize the Debtors to file the Settlement Agreement and Redacted Information under seal by permitting the issuance of an order that protects entities from potential harm that may result from the disclosure of certain confidential information. *See* 11 U.S.C. § 107(b). Specifically, Section 107(b) provides, in relevant part, that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may —

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . . .

11 U.S.C. § 107(b); *See In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995) (“The court has authority to seal court records, in order to protect trade secrets or confidential research, development, or confidential information, or to protect a person with regard to a scandalous or defamatory matter.”).

8. Bankruptcy Rule 9018 sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 provides, in relevant part, that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information.” Fed. R. Bankr. P. 9018. *See also* Local Rule 9037-1 (“[A] motion, reply or other document may initially be filed under seal if the filing party simultaneously files a motion requesting that the document be maintained under seal.”).

9. Unlike its counterpart in Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate “good cause.” *See, e.g., Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994) (holding that a license agreement authorizing a licensee “to reproduce, manufacture, distribute, and sell videocassettes” of three films contained confidential commercial information). Rather, if the material sought to be protected satisfies one of the categories identified in section 107(b), the court is required to protect a requesting party and has no discretion to deny the application. *See In re 50-Off Stores, Inc.*, 213 B.R. 646, 655–56 (Bankr. W.D. Tex. 1997) (“The statute, on its face, states that the bankruptcy court is *required* to protect such an entity on request of a party in interest.”) (emphasis in original).

10. The Debtors submit that the Redacted Information falls within the scope of commercial information that may be protected by the Court pursuant to section 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018. Commercial information is information which would result in “an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *In re Faucett*, 438 B.R. 564, 567 (Bankr. W.D. Tex. 2010) (citing *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994)). Commercial information need not rise to the level of a “trade secret” to be protected under section 107(b) of the Bankruptcy Code. *See In re Northstar Energy, Inc.*, 315 B.R. 425, 429 (Bankr. E.D. Tex. 2004) (“A bankruptcy court is required to seal documentary information filed in court that does not rise to the level of a trade secret but that is so critical to the operations of the entity seeking the protective order that its disclosure will unfairly benefit that entity’s competitors.”). Rather, section 107(b) of the Bankruptcy Code is “designed to protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.” *Id.* (internal citations omitted).

11. The Redacted Information contains sensitive commercial and confidential information pertaining to the Debtors’ settlement with NYL. The Debtors are engaged in settlement discussions with certain other property-level lenders, and the public disclosure of all of the settlement terms with respect to Volusia may adversely impact the Debtors’ negotiating position with respect to other loans. Further, the Redacted Information is limited to include only certain terms of the Settlement Agreement, demonstrating that there has been a concerted effort only to redact what is necessary while also balancing the need to provide information in this process.

**Notice**

12. Notice of this Motion will be served on any party entitled to notice pursuant to Bankruptcy Rule 2002 and any other party entitled to notice pursuant to Local Rule 9013-1(d).

**No Previous Request**

13. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: August 18, 2021  
Houston, Texas

Respectfully submitted,

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and Debtors in Possession*

**Certificate of Service**

I hereby certify that on August 18, 2021, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Alfredo R. Pérez

Alfredo R. Pérez