

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

In re: CBL & ASSOCIATES PROPERTIES, INC., et al., Debtors.¹	§ § § § § §	Chapter 11 Case No. 20-35226 (DRJ) (Jointly Administered)
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**MOTION OF DEBTORS
FOR ENTRY OF AN ORDER (I) APPROVING
ASSUMPTION OF CERTAIN UNEXPIRED NONRESIDENTIAL
REAL PROPERTY LEASES AND (II) GRANTING RELATED RELIEF**

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txsb.uscourts.gov/> within twenty-one (21) days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. 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**”):

Preliminary Statement

1. In the ordinary course of business, the Debtors are lessees to certain unexpired nonresidential real property leases, including certain ground leases related to their properties and leases for office space (collectively, the “**Leases**”). The Debtors therefore believe that, in the exercise of their sound business judgment, assumption of the Leases is in the best interest of their estates and will minimize both disruption to their operations and any rejection

¹ 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.

damages claims. In addition, the Debtors believe that assumption of the Leases is consistent with section 365 of title 11 of the United States Code (the “**Bankruptcy Code**”) because there are no defaults under the Leases that must be cured.

2. Moreover, given that the Debtors have noticed the assumption of each of the Leases in accordance with sections 8.1(a) and 8.1(b) of the Plan and the Court entered the Confirmation Order, the Court has already approved the Debtors’ assumption of the Leases. Pursuant to the Section 365(d)(4) Extension Orders, however, the deadline for the Debtors to assume unexpired leases to which the Debtors are lessees is August 31, 2021. The Debtors do not anticipate the Effective Date of the Plan will occur until November 1, 2021. Although the Debtors believe that the Confirmation Order constitutes an assumption of the Leases for purposes of the deadline to assume the Leases pursuant to section 365(d)(4) of the Bankruptcy Code, out of an abundance of caution, the Debtors file this Motion to avoid inadvertently rejecting any of the Leases during the interim period prior to the Effective Date.

3. Accordingly, for the reasons set forth herein, the Debtors believe that assumption of the Leases has been approved by the Court’s entry of the Confirmation Order, or, in the alternative, should now be approved, in each case with the assumption of the Leases being effective as of the date of entry of an order granting the relief requested herein.

Relief Requested

4. By this Motion, pursuant to sections 365(a), 365(d)(4), and 105(a) of the Bankruptcy Code and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors request entry of an order (a)(i) confirming that the Confirmation Order constitutes approval of the Debtors’ assumption of all Leases under which the Debtors are lessees, including the Leases set forth on **Exhibit 1** attached to the Proposed Order (as defined herein) or, in the alternative, (ii) approving the Debtors’ assumption of such Leases, in each case with

assumption of the Leases being effective as of the date of entry of an order granting the relief requested herein and (b) granting related relief.

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

Jurisdiction

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

Background

7. Beginning on November 1, 2020 (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 1015-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the “**Local Rules**”). On November 13, 2020, the United States Trustee for Region 7 (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors (the “**Creditors’ Committee**”) in these chapter 11 cases pursuant to section 1102 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases.

8. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Mark Renzi in Support of Debtors’ Chapter 11 Petitions and First Day Motions*, sworn to on November 2, 2020 (the “**First Day Declaration**”) (Docket No. 3).

9. On March 8, 2021, the Court entered the *Order Extending Time to Assume or Reject Unexpired Leases of Nonresidential Real Property* (Docket No. 936), thereby extending the period within which the Debtors must assume or reject unexpired leases of nonresidential real property under section 365(d)(4) of the Bankruptcy Code through and including May 31, 2021. On June 16, 2021, the Court entered the *Order Further Extending Time to Assume or Reject Unexpired Leases of Nonresidential Real Property* (Docket No. 1253), thereby further extending the period within which the Debtors must assume or reject unexpired leases of nonresidential real property under section 365(d)(4) of the Bankruptcy Code through and including August 30, 2021 (together with the March 8 order, the “**Section 365(d)(4) Extension Orders**”).

10. On August 11, 2021, the Court entered an order (Docket No. 1397) (the “**Confirmation Order**”) confirming the *Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors (with Technical Modifications)* (Docket No. 1369) (as has been and may be further amended, supplemented, or modified from time to time, the “**Plan**”).² The Effective Date of the Plan is subject to certain conditions set forth in section 9.1 of the Plan that have not yet occurred but is anticipated to occur no later than November 1, 2021.

11. Pursuant to section 8.1 of the Plan, and sections 365 and 1123 of the Bankruptcy Code, as of and subject to the occurrence of the Effective Date of the Plan, all of the Debtors’ executory contracts and unexpired leases shall be deemed assumed, unless such contract or lease (i) was previously assumed or rejected by the Debtors, pursuant to Final Order of the Bankruptcy Court, (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto, (iii) is the subject of a motion to reject filed by the Debtors on or before the

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Confirmation Date, or (iv) is specifically designated as a contract or lease to be rejected on the Schedule of Rejected Contracts. On July 19, 2021, the Debtors filed the *Notice of Filing of Plan Supplement for Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Debtor Affiliates* (Docket No. 1315) (as has been and may be further amended, supplemented, or modified from time to time, the “**Plan Supplement**”). Exhibit K to the Plan Supplement, titled *Schedule of Rejected Contracts*, provides that “the Debtors do not intend to reject any executory contracts of unexpired leases” Plan Suppl., Exh. K.

12. Consistent with the foregoing, under the Plan, the Debtors propose to assume each of the Leases. Notice of the Debtors’ intent to assume such Leases (effective on the Effective Date) and the proposed cure treatment was served on each of the counterparties to the Leases and, on July 19, 2021, filed at Docket No. 1317 (as has been and may be further amended, supplemented, or modified from time to time, the “**Cure Notice**”). *See Affidavit of Service* (July 19, 2021) (Docket No. 1314). By this Motion, the Debtors seek an order from the Court confirming the prior approval of the Debtors’ assumption of the Leases or now approving the Debtors’ assumption of the Leases, in each case with assumption being effective as of the date of entry of an order granting the relief requested herein as opposed to the Effective Date.

Description of the Leases

13. The Leases are predominantly ground leases for the land on which certain of the Debtors’ malls and other properties used by the Debtors in the ordinary course of business as offices and for other corporate functions operate. Altogether, the Leases enable the Debtors to seamlessly operate their business. The Debtors believe that these benefits have the net result of maximizing the value of their estates for the benefit of all stakeholders. To capture the value of the Leases while minimizing any potential disruption to lessors that are parties thereto, the Debtors

seek to have assumption of the Leases become effective as of the date of entry of an order granting the relief requested herein as opposed to the Effective Date.

14. The Debtors believe that no cure amounts are necessary for the Debtors to assume any of the Leases (collectively, the “**Cure Costs**”). In addition, the Debtors intend to pay any amounts that become owed under the Leases in the ordinary course of business, without any interruption of payment, if any, to the lessors.

Basis for Relief Requested

15. To the extent not already approved by entry of the Confirmation Order, assumption of the Leases as of the date of entry of an order granting the relief requested herein should be approved under section 365(a) of the Bankruptcy Code. Section 365(a) provides, in pertinent part, that a debtor in possession “subject to the court’s approval, may assume or reject any . . . unexpired lease of the debtor.” 11 U.S.C. § 365(a). Section 365(b)(1) of the Bankruptcy Code establishes certain conditions that must be satisfied before the assumption of an executory contract or unexpired lease:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . .

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

16. Courts apply the “business judgment” standard in evaluating a debtor’s decision to assume or reject an unexpired lease. *See Mirant Corp. v. Potomac Elec. Power Co. (In re Mirant Corp.)*, 378 F.3d 511, 524–25 & n.5 (5th Cir. 2004); *In re Armstrong World Indus., Inc.*,

348 B.R. 136, 162 (D. Del. 2006) (“Under section 365 of the Bankruptcy Code, a debtor may assume an executory contract or unexpired lease if (i) outstanding defaults under the contract or lease have been cured under section 365(b)(1) of the Bankruptcy Code, and (ii) the debtor’s decision to assume such executory contract or unexpired lease is supported by valid business justifications.”); *In re Pisces Energy, LLC*, No. 09-36591H5-11, 2009 WL 7227880, *6 (Bankr. S.D. Tex. Dec. 21, 2009).

17. Under the business judgment test, a court should approve a debtor’s proposed assumption of executory contracts if such assumption will benefit the estate. *In re Pisces Energy*, 2009 WL 7227880, at *6, *In re Gunter Hotel Assocs.*, 96 B.R. 696, 698 (Bankr. W.D. Tex. 1998); *In re Food City, Inc.*, 94 B.R. 91, 93–94 (Bankr. W.D. Tex. 1988). Any more exacting scrutiny would slow the administration of a debtor’s estates, increase costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten this Court’s ability to control a case impartially. *See Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

18. Assumption of the Leases as of the date of entry of an order granting the relief requested herein is well within the Debtors’ exercise of their sound business judgment. First, the Court has already approved the assumption of the Leases when it entered the Confirmation Order. Out of an abundance of caution, and to the extent required by section 365(d)(4) of the Bankruptcy Code, the relief sought by this Motion thus only alters the timing—not the effect—of that assumption. Second, the properties underlying the Leases are important properties in the Debtors’ portfolio and are essential to the continued, uninterrupted operation of the Debtors’ business. Rejection of the Leases—which are predominantly ground leases—could also disrupt the Debtors’ relationships with tenants that rent from the Debtors at those mall locations. The

disruption that would result from rejection of the Leases is therefore far outweighed by the costs of assuming and continuing performance under the Leases. Indeed, as stated above and in the Cure Notice, the Debtors do not believe they owe any Cure Amounts to lessors of the Leases. Thus, there is no incremental cost to the Debtors' estates if assumption of the Leases occurs now as opposed to on Effective Date. Accordingly, the Debtors believe that assuming the Leases now is an exercise of their sound business judgment and is in the best interests of their estates.

19. The Debtors further believe that there is adequate assurance of future performance under the Leases in light of the Debtors' history of timely payments and timely performance of obligations both prepetition and postpetition. Moreover, the Debtors believe that upon consummation of the Plan and the exit financing contemplated thereunder, they will be well-positioned to satisfy any future obligations that may arise under the Leases. Accordingly, the Debtors believe that they have satisfied the requirements for assumption of the Leases set forth in section 365 of the Bankruptcy Code.

Reservation of Rights

20. Except as expressly set forth herein or in the Proposed Order, nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' or any party in interest's rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, or (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Notice

21. 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).

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

Dated: August 30, 2021
Houston, Texas

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Certificate of Service

I hereby certify that on August 30, 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