

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

<hr/> In re: CBL & ASSOCIATES PROPERTIES, INC., <i>et al.</i> , ¹ Debtors.	§ § § § § § § §	Chapter 11 Case No. 20-35226 (DRJ) (Jointly Administered)
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**COVER SHEET TO THIRD INTERIM APPLICATION OF
MCDERMOTT WILL & EMERY LLP FOR ALLOWANCE OF COMPENSATION
FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES
INCURRED AS COUNSEL TO THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF CBL & ASSOCIATES PROPERTIES, INC., *ET AL.*,
FOR THE PERIOD FROM MAY 1, 2021
THROUGH AND INCLUDING JULY 31, 2021**

Name of Applicant:	McDermott Will & Emery LLP	
Applicant's Role in Case:	Counsel to the Official Committee of Unsecured Creditors	
Date Order of Employment Signed:	January 12, 2021 ²	
Time Period Covered in Application:	Beginning of Period	Ending of Period
	May 1, 2021	July 31, 2021
Time Period covered by prior applications:	November 17, 2020	April 30, 2021 ³
Total amounts awarded in all prior applications:	\$2,962,177.79	
Total fees requested in this Application:	\$825,514.50	
Total fees requested in this Application, calculated using rates as of the date of retention:	\$749,803.50	
Total professional fees requested in this Application:	\$765,062.50	
Total actual professional hours covered by this Application:	772.50	
Average hourly rate for professionals:	\$990.37	
Total paraprofessional fees requested in this Application:	\$60,452.00	
Total actual paraprofessional hours covered by this Application:	115.80	
Average hourly rate for paraprofessionals:	\$522.04	
Reimbursable expenses sought in this Application:	\$8,217.37	

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.

² ECF No. 792.

³ ECF Nos. 966, 1045, 1244 and 1304.

Total to be Paid to Priority Unsecured Creditors:	Class 1: Other Priority Claims. The legal, equitable, and contractual rights of the holders of Allowed Other Priority Claims are unaltered by the Plan. Except to the extent that a holder of an Allowed Other Priority Claim agrees to different treatment, on the later of the Effective Date and the date that is twenty (20) days after the date such Other Priority Claim becomes an Allowed Claim, or as soon thereafter as is reasonably practicable, each holder of an Allowed Other Priority Claim shall receive, on account of such Allowed Claim, at the option of the Reorganized Debtors (i) Cash in an amount equal to the Allowed amount of such Claim or (ii) other treatment consistent with the provisions of section 1129 of the Bankruptcy Code. ⁴
Anticipated % Dividend to Priority Unsecured Creditors:	100% ⁵

⁴ See Third Amended Joint Chapter 11 Plan of CBL & Associates, Inc. and its Affiliated Debtors (with Technical Modifications) dated August 9, 2021 [ECF No. 1397, Exhibit A] (the “Plan”) § 4.1(a). Capitalized terms used but not otherwise defined in this Cover Sheet shall have the meanings ascribed to them in the Plan.

⁵ See Disclosure Statement for Third Amended Joint Chapter 11 Plan of CBL & Associates, Inc. and its Affiliated Debtors [ECF No. 1164] (the “Disclosure Statement”), Art.I.B.

<p>Total to be Paid to General Unsecured Creditors:</p>	<p>Class 5: Ongoing Trade Claims. Except to the extent that a holder of an Allowed Ongoing Trade Claim agrees to different treatment, on and after the Effective Date, or as soon as reasonably practicable thereafter, each holder of an Allowed Ongoing Trade Claim shall receive:</p> <p>(i) if a holder of an Ongoing Trade Claim executes a trade agreement (a “<u>Trade Agreement</u>”) with the Debtors (the form and terms of such Trade Agreement to be determined by the Debtors in consultation with the (A) Required Consenting Noteholders and the Creditors’ Committee and, (B) solely with respect to the Exit Credit Facility Subsidiaries, the Required Consenting Bank Lenders), four (4) equal Cash installments, payable on a quarterly basis, which payments shall result in full payment in the Allowed amount of such Ongoing Trade Claim; or</p> <p>(ii) if a holder of an Ongoing Trade Claim does not execute a Trade Agreement, such holder’s Pro Rata share of the Unsecured Claims Recovery Pool in accordance with section 4.7 of the Plan.⁶</p> <p>Class 7: Unsecured Claims. Except to the extent that a holder of an Allowed Unsecured Claim agrees to different treatment, on and after the Effective Date, or as soon as reasonably practicable thereafter, each holder of an Allowed Unsecured Claim shall receive, in full and final satisfaction of such Claim, such holder’s Pro Rata share of the Unsecured Claims Recovery Pool; <u>provided</u> that each Consenting Noteholder (and, for the avoidance of doubt, only a Consenting Noteholder) entitled to receive New Senior Secured Notes on account of its Notes Claim shall be able to make the Convertible Notes Election; <u>provided</u>, <u>however</u>, that, if the Debtors determine that, pursuant to section 1129(a)(7)(ii), such holder would be entitled to a greater recovery than the foregoing if the Debtor against whom such holder’s Allowed Unsecured Claim is asserted were to liquidate under chapter 7 of the Bankruptcy Code, then such holder shall receive Cash in an amount necessary to satisfy section 1129(a)(7)(ii).⁷</p>
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⁶ See Plan § 4.5(a).

Anticipated % Dividend to General Unsecured Creditors:	Class 5. 100% ⁸ Class 7. Estimated to be 54%-56% ⁹
Date of confirmation hearing:	August 11, 2021
Indicate whether the plan has been confirmed:	Yes ¹⁰

Dated: September 14, 2021

Respectfully submitted,

MCDERMOTT WILL & EMERY LLP

By: /s/ Charles R. Gibbs

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*Bankruptcy Counsel to the Official Committee of
Unsecured Creditors*

⁷ See Plan § 4.7(a).

⁸ See Disclosure Statement Art.I.B; *see also* Declaration of Mark A. Renzi in Support of Confirmation of Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and its Affiliated Debtors [ECF No. 1377] (the “Renzi Declaration”).

⁹ See Disclosure Statement Art.I.B; *see also* Renzi Declaration.

¹⁰ ECF No. 1397.

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

In re:	§	
	§	Chapter 11
	§	
CBL & ASSOCIATES	§	Case No. 20-35226 (DRJ)
PROPERTIES, INC., <i>et al.</i> , ¹	§	
	§	(Jointly Administered)
Debtors.	§	
	§	

**THIRD INTERIM APPLICATION OF MCDERMOTT WILL & EMERY LLP
FOR ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED
AND REIMBURSEMENT OF EXPENSES INCURRED AS COUNSEL
TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
OF CBL & ASSOCIATES PROPERTIES, INC., *ET AL.*, FOR THE PERIOD
FROM MAY 1, 2021 THROUGH AND INCLUDING JULY 31, 2021**

THIS APPLICATION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE APPLICATION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE APPLICATION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE APPLICATION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE APPLICATION AT THE HEARING. REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

McDermott Will & Emery LLP (“McDermott”), as counsel to the Official Committee of Unsecured Creditors (the “Committee”) appointed in the above-captioned cases (the “Chapter 11 Cases” or the “Cases”) of CBL & Associates Properties, Inc. and the affiliated debtors and debtors in possession (collectively, the “Debtors”), hereby files its third interim application (the

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.

“Application”) for allowance of compensation for services rendered and reimbursement of expenses incurred for the period from May 1, 2021 through and including July 31, 2021 (the “Application Period”) pursuant to sections 330 and 331 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rules 2016-1 and 9013-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Southern District of Texas (the “Local Rules”), and the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* (the “Interim Compensation Order”).² For the Application Period, McDermott seeks interim allowance of \$825,514.50 as fees for services rendered and \$8,217.37 as reimbursement for expenses incurred. In support of this Application, McDermott submits the Declaration of Charles R. Gibbs (the “Gibbs Declaration”), attached hereto as **Exhibit 1** and a proposed order granting the Application, attached hereto as **Exhibit 2**. In further support of this Application, McDermott respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Southern District of Texas (this “Court”) has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 330, 331 and 1103 of the Bankruptcy Code, Bankruptcy Rule 2016, and Local Rules 2016-1 and 9013-1.

² ECF No. 350.

3. McDermott consents to the entry of a final judgment or order with respect to this Application if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

BACKGROUND

4. Beginning on November 1, 2020 (the “Petition Date”), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code.³ Since the Petition Date, the Debtors have remained in possession of their assets, and have continued to operate and manage their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On November 13, 2020, the Office of the United States Trustee for Region 7 (the “U.S. Trustee”) appointed a three-member Committee consisting of: (i) Delaware Trust Company, in its capacity as successor indenture trustee for the 5.25% Senior Notes due 2023, the 4.60% Senior Notes due 2024, and the 5.95% Senior Notes due 2026 (“Delaware Trust Company”); (ii) ERMCo, LLC; and (iii) SecurAmerica, LLC.⁴ On March 19, 2021, the U.S. Trustee appointed an amended Committee consisting of (i) Delaware Trust Company, (ii) ERMCo TN LLC, and (iii) SecurAmerica TN LLC.⁵

6. The Committee selected McDermott as its counsel. The Committee also selected AlixPartners, LLP (“AlixPartners”) to serve as its financial advisor.⁶

³ On May 26, 2021, Debtor Laredo Outlet Shoppes, LLC (“Laredo”) commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code [Case No. 21-31717, ECF No. 1]. On June 1, 2021, this Court issued an order directing the joint administration of the Laredo chapter 11 case with the above-captioned cases [Case No. 21-31717, ECF No. 13]. On August 19, 2021, this Court entered an order approving settlement agreement and dismissing the Laredo chapter 11 case [ECF No. 1417].

⁴ ECF No. 204.

⁵ ECF No. 975.

⁶ ECF No. 766.

7. On January 12, 2021, the Court entered the *Order Authorizing the Employment and Retention of McDermott Will & Emery LLP as Counsel to the Official Committee of Unsecured Creditors Effective as of November 17, 2020* (the “Retention Order”).⁷

8. The Retention Order authorizes the Debtors to compensate and reimburse McDermott in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and such other procedures as may be fixed by the Court, including those provided for in the Interim Compensation Order.

9. On August 11, 2021, the Court entered its *Findings of Fact, Conclusions of Law and Order (I) Confirming Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and Its Affiliated Debtors and (II) Granting Related Relief*.⁸

**SUMMARY OF PROFESSIONAL COMPENSATION
AND REIMBURSEMENT OF EXPENSES REQUESTED**

10. McDermott seeks interim allowance of \$825,514.50 in fees calculated at the hourly billing rates of McDermott’s professionals who worked on these Cases, and \$8,217.37 in expenses incurred by McDermott while providing services to the Committee during the Application Period. During the Application Period, McDermott attorneys and paraprofessionals expended a total of 888.30 hours for which compensation is requested.

11. Pursuant to the Interim Compensation Order, during these Chapter 11 Cases, McDermott has served monthly fee statements for services rendered and expenses incurred during the Application Period to the Fee Notice Parties (as defined in the Interim Compensation Order) for the following periods: (i) May 1, 2021 through and including May 31, 2021 (the “May Fee Statement”); (ii) June 1, 2021 through and including June 30, 2021 (the “June Fee Statement”);

⁷ ECF No. 792.

⁸ ECF No. 1397.

and (iii) July 1, 2021 through and including July 31, 2021 (the “July Fee Statement”). McDermott did not receive any objection to either the May Fee Statement or the June Fee Statement. In accordance with the Interim Compensation Order, the deadline for any Fee Notice Party to object to the July Fee Statement is September 27, 2021.

12. As of the date of this Application, McDermott has received payment of 80% of fees and 100% of expenses for services rendered and expenses incurred from May 1, 2021 through May 31, 2021. A summary of the amounts paid to McDermott in accordance with the Interim Compensation Order for monthly fee statements relating to the Application Period is set forth below:

Date Submitted to Fee Notice Parties	Period Covered	Fees & Expenses Incurred		Fees & Expenses Paid		20% Holdback
		Fees	Expenses	Fees	Expenses	
July 7, 2021	May 1, 2021 – May 31, 2021	\$321,214.00	\$2,599.51	\$256,971.20	\$2,599.51	\$64,242.80
August 16, 2021	June 1, 2021 – June 30, 2021	\$295,189.00	\$4,699.62	\$-	\$-	\$59,037.80
September 13, 2021	July 1, 2021 – July 31, 2021	\$209,111.50	\$918.24	Objection Deadline is September 27, 2021	Objection Deadline is September 27, 2021	\$41,822.30
Totals:		\$825,514.50	\$8,217.37	\$256,971.20	\$2,599.51	\$165,102.90

13. Pursuant to this Application, McDermott seeks interim allowance of all fees and expenses incurred from May 1, 2021 through and including July 31, 2021. McDermott further seeks payment of: (i) the 20% holdback amount in connection with the May Fee Statement, and (ii) to the extent not yet paid, 100% of fees and expenses in connection with the June Fee Statement and the July Fee Statement.

14. The fees charged by McDermott in these Chapter 11 Cases are billed in accordance with McDermott's agreed billing rates and procedures in effect during the Application Period.⁹ McDermott charged its standard hourly rates for engagements of this type for all attorneys, legal assistants, and staff who provide services to the Committee in these Chapter 11 Cases. Such fees are reasonable based on the customary compensation charged by comparably skilled practitioners in comparable bankruptcy and non-bankruptcy cases in a competitive national legal market. Attached hereto as **Exhibit 3** is McDermott's customary Comparable Compensation Disclosures.

15. Attached hereto as **Exhibit 4** is McDermott's Compensation by Timekeeper, a summary breakdown of hours and amounts billed by timekeeper during the Application Period. The exhibit lists those McDermott professionals and paraprofessionals who performed services for the Committee during the Application Period; the capacities in which each individual is employed by McDermott; the practice area in which each individual practices; the year in which each attorney was admitted to practice law, where applicable; the hourly billing rate charged by McDermott for services performed by such individual; and the aggregate number of hours expended in this matter during the Application Period and fees billed therefor.

16. Attached hereto as **Exhibit 5** is McDermott's Compensation by Category, a summary breakdown of hours and amounts billed by project category during the Application Period.

17. Attached hereto as **Exhibit 6** is McDermott's Expense Summary, a summary of McDermott's expenses incurred during the Application Period.

⁹ As disclosed in the *Supplemental Declaration of Charles R. Gibbs* [ECF No. 808], in the ordinary course of McDermott's business and in keeping with its established billing practices and procedures, McDermott's billing rates were adjusted firm wide on January 1, 2021. No party objected to McDermott's adjusted rates.

18. McDermott maintains computerized records of the time spent by all McDermott attorneys and paraprofessionals in connection with these Chapter 11 Cases. As described above, copies of these computerized records were served with McDermott's monthly fee statements in the format and by the procedure specified by the Interim Compensation Order. Copies of the monthly fee statements for May 2021 through July 2021, together with the applicable time records, are attached hereto as **Exhibit 7**.

19. McDermott reserves the right to request additional compensation for the Application Period to the extent that it is later determined that time or disbursement charges for services rendered or disbursements incurred during such time period have not yet been submitted.

SUMMARY OF SERVICES RENDERED

20. The following narrative provides a summary of the services rendered by McDermott on behalf of the Committee, organized by project category. The summary that follows is not intended to be a detailed description of the work performed by McDermott during the Application Period, as those day-to-day services and the time expended in performing such services are fully set forth in the contemporaneous time records that are attached hereto as **Exhibit 7**. Rather, the following summary highlights those areas in which services were rendered to the Committee.

Case Administration

McDermott Billing Code: B110

Fees: \$93,916.50/Hours Billed: 110.40

21. This category represents time spent by McDermott addressing general and administrative matters regarding these Cases. During the Application Period, McDermott conducted weekly internal meetings to discuss case status, work streams, open case issues and strategies to effectively address the same. McDermott also conferred with AlixPartners regarding various diligence matters and the Debtors' business operations. In connection therewith,

McDermott coordinated with Debtors' counsel on a weekly basis. McDermott also reviewed the schedules and statement of financial affairs of the Laredo debtor, and maintained and continuously updated a critical dates chart to track case progress and deadlines.

Asset Analysis and Recovery
McDermott Billing Code: B120
Fees: \$0.00 /Hours Billed: 0.00

22. McDermott did not provide services related to Asset Analysis and Recovery during the Application Period.

Asset Disposition
McDermott Billing Code: B130
Fees: \$13,088.00/Hours Billed: 13.10

23. This category represents time spent by McDermott related to the analysis and disposition of the Debtors' assets. In connection therewith, McDermott reviewed and analyzed documents provided in connection with the Debtors' proposed sale(s) of certain de minimis assets, and conferred with AlixPartners, Debtors' counsel, and the Debtors' financial advisor regarding the same.

Relief From Stay/Adequate Protection Proceedings
McDermott Billing Code: B140
Fees: \$917.00/Hours: 1.10

24. This category represents time spent by McDermott reviewing and analyzing motions to lift the automatic stay filed by various tort claimants and conferring with Debtors' counsel in connection with the same.

Creditor Meetings and Communication
McDermott Billing Code: B150
Fees: \$160,708.00/Hours Billed: 165.40

25. This category represents time spent by McDermott (i) preparing for and conducting regular Committee meetings; (ii) communicating with the Committee members on an individual basis from time to time; and (iii) responding to inquiries regarding the Cases from individual

creditors as such inquiries were received. McDermott prepared for and conducted weekly meetings with the Committee, and prepared email updates regarding Committee business, case status and various outstanding matters. McDermott also coordinated with AlixPartners to prepare for the weekly Committee calls, including preparing, discussing and reviewing Committee presentations on a number of topics including case status, the feasibility of the *Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and its Affiliated Debtors (With Technical Modifications)* [ECF No. 1397, Ex. A] (the “Plan”), operations and financial results, the Laredo chapter 11 case, and the Debtors’ sales of various properties.

26. Additionally, McDermott regularly updated the Committee on recent case developments, including routine motions, filings in the Laredo chapter 11 case and the related mediation, the Plan and related *Disclosure Statement for the Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and its Affiliated Debtors* [ECF No. 1164] (the “Disclosure Statement”), the Debtors’ objection to certain preferred shareholders’ motions to appoint an equity committee, and the Debtors’ sales of de minimis assets.

Court Hearings

McDermott Billing Code: B155

Fees: \$42,400.50/Hours Billed: 44.40

27. This category represents time spent by McDermott preparing for and attending the hearing to approve the Disclosure Statement, the hearing to confirm the Plan, the hearing on certain preferred shareholders’ motions to appoint an equity committee, hearings in the Laredo chapter 11 case, and related status conferences.

Fee/Employment Applications

McDermott Billing Code: B160

Fees: \$80,341.00/Hours Billed: 112.20

28. This category represents time spent by McDermott related to the fee and employment applications of McDermott and other professionals. During the Application Period,

McDermott prepared McDermott's Second Interim Fee Application, McDermott's May Fee Statement, June Fee Statement, and July Fee Statement, and coordinated with the Debtors' professionals in connection with the same. McDermott also reviewed AlixPartners' Second Interim Fee Application and monthly fee statements and coordinated with the Debtors' professionals in connection with the same. McDermott prepared and filed certificates of no objection to McDermott's and AlixPartners' Second Interim Fee Applications. McDermott also coordinated with Debtors' counsel in connection with the Debtors' proposed employment of ordinary course professionals.

Fee/Employment Objections

McDermott Billing Code: B170

Fees: \$2,263.00/Hours Billed: 2.50

29. This category represents time spent by McDermott related to fee requests of other estate professionals. During the Application Period, McDermott reviewed the Debtors' proposed employment of ordinary course professionals and conferred with Debtors' counsel in connection with the same. McDermott also reviewed the Debtors' notice of hiring additional ordinary course professionals, monthly fee statements, and interim fee applications of the Debtors' professionals.

Avoidance Action Analysis

McDermott Billing Code: B180

Fees: \$9,645.50/Hours Billed: 10.10

30. This category represents time spent by McDermott related to the evaluation of potential avoidance actions in these Chapter 11 Cases. During the Application Period, McDermott reviewed U.S. Bank's financing documents and security instruments in connection with the Laredo chapter 11 case.

Assumption/Rejection of Leases
McDermott Billing Code: B185
Fees: \$829.50/Hours Billed: 0.90

31. This category represents time spent by McDermott related to the Debtors' potential assumption, assignment, and rejection of leases. During the Application Period, McDermott reviewed the Debtors' motion to further extend time to assume or reject leases and conferred with the Debtors' professionals in connection with the same.

Other Contested Matters
McDermott Billing Code B190
Fees: \$166,712.50/Hours Billed: 173.60

32. This category represents time spent by McDermott related to preferred shareholders' motions to appoint an equity committee and the Laredo chapter 11 case. In connection with the motion to appoint an equity committee, McDermott conducted legal research, prepared an objection on behalf of the Committee, and conferred with Debtors' counsel and AlixPartners concerning the same. In connection with the Laredo chapter 11 case, McDermott analyzed pleadings, provided markups of the same to Debtors' counsel, conducted legal research in connection with the joint motion to dismiss, conferred with Debtors' counsel and AlixPartners, and participated in the related mediation.

Non-Working Travel
McDermott Billing Code B195
Fees: \$0.00 /Hours Billed: 0.00

33. McDermott did not provide services related to Non-Working Travel during the Application Period.

Business Operations

McDermott Billing Code B210

Fees: \$1,611.50/Hours Billed: 1.50

34. This category represents time spent by McDermott analyzing the Debtors' cash flow and business operations. During the Application Period, McDermott reviewed the Debtors' draft consulting agreement with their retiring Chief Operating Officer and the Debtors' monthly operating reports and business plan.

Employee Benefits and Pensions

McDermott Billing Code B220

Fees: \$0.00 /Hours Billed: 0.00

35. McDermott did not provide services related to Employee Benefits and Pensions during the Application Period.

DIP, Cash Collateral and Financing Issues

McDermott Billing Code B230

Fees: \$9,564.50/Hours Billed: 8.80

36. This category represents time spent by McDermott related to the review and analysis of Laredo's cash collateral motion, the related proposed order, the cash collateral budget, and the related objection by U.S. Bank. During the Application Period, McDermott conferred with AlixPartners, Debtors' counsel, and counsel to U.S. Bank and also provided comments on the proposed interim cash collateral order.

Tax Issues

McDermott Billing Code B240

Fees: \$0.00 /Hours Billed: 0.00

37. McDermott did not provide services related to Tax Issues during the Application Period.

Real Estate

McDermott Billing Code B250

Fees: \$0.00 /Hours Billed: 0.00

38. McDermott did not provide services related to Real Estate during the Application Period.

Board of Directors Matters

McDermott Billing Code B260

Fees: \$0.00 /Hours Billed: 0.00

39. McDermott did not provide services related to Board of Directors Matters during the Application Period.

Utilities

McDermott Billing Code B270

Fees: \$0.00 /Hours Billed: 0.00

40. McDermott did not provide services related to Utilities during the Application Period.

Vendor Matters

McDermott Billing Code B280

Fees: \$0.00 /Hours Billed: 0.00

41. McDermott did not provide services related to Vendor Matters during the Application Period.

Insurance

McDermott Billing Code B290

Fees: \$191.00/Hours: 0.20

42. This category represents time spent by McDermott related to the payment of director and officer liability insurance proceeds to Debtors' counsel. During the Application Period, McDermott conferred with Debtors' counsel and AlixPartners concerning the same.

Claims Administration and Objections

McDermott Billing Code B310

Fees: \$7,086.00/Hours Billed: 7.40

43. This category represents time spent by McDermott related to the analysis of claims against the Debtors' estates. During the Application Period, McDermott conferred with AlixPartners in connection with AlixPartners' claims analysis process and also reviewed filings relating to various claims transfer agreements.

Plan and Disclosure Statement

McDermott Billing Code B320

Fees: \$187,400.00/Hours Billed: 181.90

44. This category represents time spent by McDermott related to the Debtors' Disclosure Statement and Plan. During the Application Period, McDermott reviewed the Debtors' Plan, related solicitation materials, plan supplement documents, property-level guarantee claim settlements, drafts of formation and governing documents for the reorganized Debtors, drafts of exhibits to the Disclosure Statement, the draft proposed Disclosure Statement approval order, the Debtors' liquidation and valuation analyses, various objections to the Plan and Disclosure Statement filed by preferred shareholders, securities class action plaintiffs, and tenants, and analyzed and researched potential issues for unsecured creditors in connection with the same. Additionally, McDermott conferred with AlixPartners concerning feasibility of the Plan. McDermott also prepared a letter in support of the Plan on behalf of the Committee to unsecured creditors, reviewed the Debtors' motion to extend exclusivity and related objections, reviewed and

provided comments on the draft convertible notes election procedures, and conferred with Debtors' counsel concerning each of the foregoing.

General Bankruptcy Advice and Opinions

McDermott Billing Code B410

Fees: \$43,246.50/Hours Billed: 47.90

45. This category represents time spent by McDermott related to general bankruptcy advice given to the Committee that is not applicable to any other project category. During the Application Period, McDermott routinely reviewed and kept a record of summaries of pleadings as they were filed on the docket and also separately conferred with each of AlixPartners, Debtors' counsel, and counsel to the Ad Hoc Bondholder Group¹⁰ on a weekly basis or as otherwise needed.

Restructurings

McDermott Billing Code B420

Fees: \$0.00 /Hours Billed: 0.00

46. McDermott did not provide services related to Restructurings during the Application Period.

Internal Investigation

McDermott Billing Code B430

Fees: \$0.00 /Hours Billed: 0.00

47. McDermott did not provide services related to Internal Investigation during the Application Period.

¹⁰ The "Ad Hoc Bondholder Group" is the informal group of certain holders, or investment managers, advisers or sub-advisers acting on behalf of funds and/or accounts or their respective subsidiaries that are holders of (i) 5.25% Senior Notes due 2023, issued pursuant to that certain Indenture, dated as of November 26, 2013, among CBL & Associates Limited Partnership, as issuer, CBL & Associates Properties, Inc., as limited guarantor, and Delaware Trust Company, as successor trustee, as amended, modified or supplemented from time to time (the "Indenture"), (ii) 4.60% Senior Notes due 2024, issued pursuant to the Indenture, and (iii) 5.95% Senior Notes due 2026, issued pursuant to the Indenture. *See generally, Verified Statement of the Ad Hoc Noteholder Group Pursuant to Bankruptcy Rule 2019* [ECF No. 254].

Securities Law Issues

McDermott Billing Code B450

Fees: \$5,593.50/Hours Billed: 6.90

48. This category represents time spent by McDermott in connection with researching and analyzing the Debtors' public filings. McDermott reviewed the filings and consulted with AlixPartners in connection with the same.

General Corporate

McDermott Billing Code B460

Fees: \$0.00 /Hours Billed: 0.00

49. McDermott did not provide services related to General Corporate during the Application Period.

SUMMARY OF ACTUAL AND NECESSARY EXPENSES

50. During the Application Period, McDermott incurred \$8,217.37 in expenses on behalf of the Committee. It is McDermott's policy to charge its clients in all areas of practice for out-of-pocket expenses incurred in connection with the client's case. These customary items include, among other things, photocopying, facsimiles, travel, business meals, computerized research, postage, witness fees, and other fees related to trials and hearings. Internal costs or overhead cost and document production services (including regular secretarial and word processing time) will not be charged for separately. McDermott charges for these expenses in a manner and at rates consistent with charges made generally to its other clients. A summary of McDermott's expenses incurred during the Application Period is provided in **Exhibit 6**.

BASIS FOR THE RELIEF REQUESTED

51. Section 331 of the Bankruptcy Code provides for interim compensation of professionals once every 120 days after the commencement of the Cases and incorporates the substantive standards of section 330 to govern the Court's award of such compensation. 11 U.S.C. § 331. Section 330 provides that a Court may award a professional employed under section 327

of the Bankruptcy Code “reasonable compensation for actual, necessary services rendered . . . ; and reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1).

52. Section 330 sets forth the following criteria for the award of such compensation and reimbursement:

In determining the amount of reasonable compensation to be awarded to . . . [a] professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including –

- A. the time spent on such services;
- B. the rates charged for such services;
- C. whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- D. whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- E. with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- F. whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.¹¹

53. As a supplement to the factors enumerated in section 330, courts within the Fifth Circuit consider the twelve factors identified in *Johnson v. Ga. Highway Express, Inc.* to determine the reasonableness of compensation incurred by a professional based upon the particular circumstances of a given case.¹² These factors include: (1) the time and labor required; (2) the novelty and difficulty of the questions presented; (3) the skill requisite to perform the legal

¹¹ 11 U.S.C. § 330(a)(3).

¹² See *Johnson v. Ga. Highway, Inc.*, 488 F.2d 714, 717 (5th Cir. 1974).

services; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances of the case; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.¹³

54. Utilizing these factors and the standards customarily applied to fee awards under sections 330 and 331 of the Bankruptcy Code, McDermott respectfully submits that its request for compensation and reimbursement of expenses is reasonable and proper, and that such request should be allowed in the amounts sought herein. The following analysis of the *Johnson* factors supports the reasonableness of McDermott's requested fees and expenses:

- (a) *The Time and Labor Required.* The foregoing summary, together with the Exhibits attached hereto, detail the time, nature and extent of the professional services rendered by McDermott for the benefit of the Committee during the Application Period. The total number of hours expended, 888.30, indicates that McDermott devoted substantial time to these matters on a wide variety of legal issues presented in these Cases. McDermott regularly communicated with the Committee to ensure that the rights of unsecured creditors were protected and that the Committee judiciously proceeded with motion practice only when appropriate.
- (b) *The Novelty and Difficulty of Questions.* The issues presented by these Cases demanded a high level of skill during a short period of time. McDermott spent considerable time analyzing difficult restructuring issues exacerbated by the COVID-19 pandemic, preparing relevant pleadings as necessary and negotiating with the relevant interested parties to protect the interests of, and maximize value for, unsecured creditors.
- (c) *The Skill Required to Perform the Legal Services Properly.* In rendering services to the Committee, McDermott demonstrated substantial legal skill and expertise in

¹³ See *In re First Colonial Corp. of America*, 544 F.2d 1291, 1298–99 (5th Cir. 1977), *cert. denied*, 431 U.S. 904 (1977) (applying the twelve-factor test to an analysis of fee awards in bankruptcy cases).

the areas of bankruptcy, corporate law, commercial law, debtor-creditor rights, real estate law, secured transactions and litigation.

- (d) *The Preclusion of Other Employment by Applicant Due to Acceptance of these Cases.* Given the size and depth of McDermott's restructuring practice, McDermott's representation of the Committee has not precluded it from seeking other engagements. However, McDermott's devotion of time to one matter inevitably detracts from its ability to seek out other employment opportunities.
- (e) *The Customary Fee.* McDermott agreed to perform its services for the Committee during the pendency of these Cases pursuant to its customary compensation practices for engagements of this type and regular hourly billing practices. McDermott is normally compensated on an hourly basis and bills clients on a periodic basis, which is most often monthly.
- (f) *Whether the Fee is Fixed or Contingent.* The fees charged in this Application are based on McDermott's standard hourly rates for engagements of this type.
- (g) *Time Limitations Imposed by Client or other Circumstances.* Although these Cases are not necessarily proceeding on an expedited timeline, there were numerous instances that necessitated McDermott's provision of capable legal services on short notice and under significant time constraints in order to address complex legal issues.
- (h) *The Amount Involved and Results Obtained.* For the reasons described in this Application, McDermott respectfully submits that the amount of fees for which compensation is sought is reasonable under the circumstances given the size of the Debtors' operations, the amount of secured debt, and the number and complexity of the issues addressed. McDermott conducted extensive research and analysis on various issues impacting the Debtors' business including but not limited to various tort claimants' motions to lift stay, the Debtors' Plan and Disclosure Statement, the request for appointment of an official committee of preferred shareholders, and contested matters in the Laredo chapter 11 case.
- (i) *The Experience, Reputation and Ability of the Attorneys.* McDermott is a well-known law firm, and has proven substantial ability in the fields of bankruptcy, litigation, corporate, tax, and real estate, among others. Charles R. Gibbs and Kristin Going, both partners at McDermott, along with Stacy Lutkus, employee counsel at McDermott, had primary responsibility for these Cases. Mr. Gibbs, Ms. Going, and Ms. Lutkus all have a wide breadth of experience in bankruptcy matters, particularly with respect to representing creditor interests and official creditor committees, enabling them to effectively render services to the Committee in an efficient manner. In addition, McDermott's restructuring & insolvency attorneys were supported by partners from the litigation practice group at McDermott.
- (j) *The Undesirability of the Cases.* While this engagement is not "undesirable," these Cases are challenging given the current pandemic, the complexity of the Debtors'

restructuring, the contested nature of the Laredo chapter 11 case, and the related mediation.

- (k) *Nature and Length of Professional Relationship.* McDermott had no relationship with the Committee prior to being retained in these Cases, subject to the disclosures set forth in the *Application of the Official Committee of Unsecured Creditors for Entry of an Order Authorizing the Employment and Retention of McDermott Will & Emery LLP as Counsel Effective November 17, 2020*, accompanying *Declaration of Charles R. Gibbs* attached thereto as Exhibit B,¹⁴ and the Second,¹⁵ Third,¹⁶ Fourth,¹⁷ and Fifth¹⁸ Supplemental Declarations of Charles R. Gibbs.
- (l) *Awards In Similar Cases.* The fees and expenses for which McDermott seeks compensation and reimbursement are not excessive and are substantially similar to those awarded in similar cases for similar services rendered and results obtained.

55. This is McDermott's third interim fee application. This Application complies with the requirements of section 331 of the Bankruptcy Code that a professional only apply for compensation once every 120 days.¹⁹

56. In sum, the services rendered by McDermott were reasonable, necessary and intended to benefit and preserve the Debtors' estates and the interests of unsecured creditors. These services required a high level of professional competence and expertise, and McDermott believes that the services were performed efficiently and effectively. Accordingly, approval of the compensation for professional services and reimbursement of the expenses sought herein is warranted.

57. No previous application for the relief sought herein has been made to this or any other Court.

¹⁴ ECF No. 336.

¹⁵ ECF No. 981.

¹⁶ ECF No. 1085.

¹⁷ ECF No. 1106.

¹⁸ ECF No. 1255.

¹⁹ See 11 U.S.C. § 331.

58. In accordance with the Interim Compensation Order, this Application will be served upon (i) the Fee Notice Parties (as defined in the Interim Compensation Order); and (ii) all parties requesting notice pursuant to Bankruptcy Rule 2002.

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WHEREFORE, McDermott respectfully requests that the Court:

- (a) approve the allowance of \$825,514.50 for compensation for professional services rendered by McDermott to the Committee during the Application Period;
- (b) approve the reimbursement of \$8,217.37 of out-of-pocket expenses incurred by McDermott in connection with the rendering of such services during the Application Period;
- (c) authorize and direct the Debtors to immediately pay to McDermott the unpaid portion of such allowed fees and expenses in accordance with the Interim Compensation order; and
- (d) award such other relief as the Court deems just and proper.

Dated: September 14, 2021

Respectfully submitted,

MCDERMOTT WILL & EMERY LLP

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*Bankruptcy Counsel to the Official Committee of
Unsecured Creditors*

CERTIFICATE OF SERVICE

I certify that on September 14, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas. Additionally, pursuant to the Interim Compensation Order, a copy of the foregoing document has been served upon:

- (i) the Debtors c/o CBL & Associates Properties, Inc., Attn.: Jeff Curry, Esq. (jeff.curry@cblproperties.com);
- (ii) counsel to the Debtors, Weil Gotshal & Manges LLP, Attn.: Ray C. Schrock, P.C., Alfredo R. Perez, Esq. and Garrett A. Fail, Esq. (ray.schrock@weil.com, alfredo.perez@weil.com, and garrett.fail@weil.com);
- (iii) Office of the U.S. Trustee for the Southern District of Texas, Attn.: Hector Duran and Stephen Statham (hector.duran.jr@usdoj.gov; and stephen.statham@usdoj.gov);
- (iv) counsel for the Ad Hoc Bondholder Group, Akin Gump Strauss Hauer & Feld LLP, Attn: Michael Stamer, Esq., Meredith Lahaie, Esq. and Kevin Zuzolo, Esq. (mstamer@akin.com, mlaiaie@akin.com, and kzuzolo@akin.com); and
- (v) counsel for Wells Fargo Bank, National Association, Jones Day LLP, Attn: David Paulson, Esq., Brett Barragate, Esq. and Benjamin Rosenblum, Esq., (dipaulson@jonesday.com, bpbarragate@jonesday.com, and brosenblum@jonesday.com).

/s/ Charles R. Gibbs
Charles R. Gibbs