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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
TUESDAY MORNING	§	Case No. 20-31476-HDH-11
CORPORATION, et al., ¹	§	
	§	(Jointly Administered)
Debtors.	§	Re: Docket No. 1107

**LIMITED OBJECTION TO CURE AMOUNT AND REQUIREMENT TO PROVIDE
ADEQUATE ASSURANCE OF FUTURE PERFORMANCE IN CONNECTION WITH
NOTICE OF (I) DEBTORS' REQUEST FOR AUTHORITY TO ASSUME AND ASSIGN
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (II)
DEBTORS' PROPOSED CURE AMOUNTS**

CR Plantation Commons, LLC (the "Landlord"), by and through its undersigned counsel, hereby files this limited objection to the *Notice of (I) Debtors' Request for Authority to Assume and Assign Certain Executory Contracts and Unexpired Leases, and (II) Debtors' Proposed Cure Amounts* [Docket No. 1107] (the "Notice").² In support thereof, the Landlord states as follows:

1. The Landlord and debtor Tuesday Morning, Inc. ("Tuesday Morning") are parties to an unexpired lease dated January 13, 2015, as amended from time to time (together with all

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Tuesday Morning Corporation (8532; TMI Holdings, Inc. (6658); Tuesday Morning, Inc. (2994); Friday Morning, LLC (3440); Days of the Week, Inc. (4231); Nights of the Week, Inc. (7141); and Tuesday Morning Partners, Ltd. (4232). The location of the Debtors' service address is 6250 LBJ Freeway, Dallas, Texas 75240.

²Capitalized terms not defined herein shall have the meanings ascribed to them in the Notice.

modifications, amendments, and extensions, the “Lease”), for the premises located at Plantation Commons, 4489-E Commons Drive, West Destin, FL 32541(the “Store”).

2. On May 27, 2020, (the “Petition Date”), the Debtors, including Tuesday Morning filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Texas (Dallas Division) (the “Court”). The Debtors continue to operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. The Debtors’ cases are being jointly administered.

3. On October 1, 2020, the Court entered the *Order Approving Sale and Bidding Procedures in Connection with a Potential Sale of Assets of the Debtors and Granting Related Relief* [Docket No. 1090] (the “Bidding Procedures Order”).

4. In connection with the Bidding Procedures Order, the Debtors also filed the Notice on October 1, 2020, whereby the Debtors seek to potentially assume and assign the Lease. The Debtors set forth a cure amount of \$0.00.

LIMITED OBJECTION

5. The Landlord and Tuesday Morning have agreed to amend the Lease and abate certain pre-petition amounts pursuant to the lease amendment (the “Lease Amendment”). However, the Lease Amendment is subject to certain conditions subsequent. Therefore, the Landlord is filing this limited objection simply out of an abundance of caution in the event that a final non-appealable order approving the assumption of the Lease (as amended by the Lease Amendment) is not entered. If the Lease Amendment were to become null and void pursuant to its terms, the actual cure amount for the Lease is \$47,162.04.

6. Section 365 of the Bankruptcy Code provides the standard for assuming executory contracts and unexpired leases. All defaults, both pre-petition and post-petition, must be cured in connection with an assumption. Pursuant to 11 U.S.C. § 365(b)(1), the Landlord objects to any assumption and assignment of the Lease unless and until the entire cure amounts are paid to the Landlord and the Landlord receives adequate assurance that these pre-petition amounts and future amounts due under the Lease will be paid.

7. Additionally, the proposed cure amount set forth in the Notice does not reflect all accrued but unbilled charges which may come due under the Lease, including those accrued but unbilled charges for common area maintenance, real estate taxes, insurance, and post-petition administrative rent. The Landlord reserves its right to amend the cure amount to add any of the foregoing charges. Any order entered in connection with the Notice must require that the Debtors comply with all obligations under the Lease and to cure any additional defaults that may occur under the Lease prior to the effective date of any assumption.

8. Section 365 also requires that “the debtor [] provide adequate assurance that it, too, will continue to perform, and [that] the debtor [] cure any defaults in its past performance.” *In re Wolflin Oil, L.L.C.*, 318 B.R. 392, 396–97 (Bankr. N.D. Tex. 2004). The Landlord objects to the Notice to the extent that Notice also fails to provide the Landlord with adequate assurance of future performance and the Debtors’ ability to comply with future obligations under the Lease.

9. If the Lease including the Lease Amendment is ultimately assumed, the Landlord agrees to the cure amount set forth in the Lease Amendment and requires that Tuesday Morning provide assurances of future performance as set forth therein.

10. The Landlord does not waive any of its rights under the Lease or applicable bankruptcy law. The Landlord expressly reserves all rights to amend, modify, or supplement this limited objection.

WHEREFORE, the Landlord respectfully requests that (1) this Court enter an order providing that in the event that a final order approving the assumption and assignment of the Lease (as amended by the Lease Amendment) is not entered, the Debtors are obligated to pay the entire cure amount for the Lease as provided herein; (2) any order approving the assumption and assignment of the Lease (as amended by the Lease Amendment) provides adequate assurance of future performance under the Lease; and (3) grant such other and further relief as is just and appropriate under the circumstances.

Dated: Dallas, Texas
October 14, 2020

Respectfully submitted,

/s/ Andrew B. Zollinger

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-and-

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via ECF on all parties receiving notice through the Court's ECF system and on the parties listed below via email as indicated on October 14, 2020:

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