

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

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In re:

CBRM Realty Inc. *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 25–15343 (MBK)  
(Jointly Administered)

**NOLA DIP LENDERS’ RESPONSE IN SUPPORT OF THE DEBTORS’ MOTION  
FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO  
OBTAIN POSTPETITION FINANCING, (II) GRANTING LIENS AND  
SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) MODIFYING  
THE AUTOMATIC STAY, AND (IV) GRANTING RELATED RELIEF**

CKD Funding LLC (“**CKD Funding**”), CKD Investors Penn (“**CKD Penn**”) and DH1 Holdings LLC (“**DH1**,” and together with CKD Funding and CKD Penn, each, a “**NOLA DIP Lender**,” and collectively, the “**NOLA DIP Lenders**”) submit this response (the “**Response**”) in support of the *Debtors’ Motion for Entry of an Order (i) Authorizing the Debtors to Obtain Postpetition Financing, (ii) Granting Liens and Superpriority Administrative Expense Claims, (iii) Modifying the Automatic Stay, and (iv) Granting Related Relief*[ECF No. 61] (the “**DIP Financing**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: CBRM Realty Inc. (2420), Crown Capital Holdings LLC (1411), Kelly Hamilton Apts LLC (1115), Kelly Hamilton Apts MM LLC (0765), RH Chenault Creek LLC (8987), RH Copper Creek LLC (0874), RH Lakewind East LLC (6963), RH Windrun LLC (0122), RH New Orleans Holdings LLC (7528), and RH New Orleans Holdings MM LLC (1951). The location of the Debtors’ service address in these chapter 11 cases is: In re CBRE Realty, Inc., et al., c/o White & Case LLP, 1221 Avenue of the Americas, New York, New York 10020.



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**Motion**)<sup>2</sup> and in opposition to the objection [ECF No. 168] (the “**Objection**”) filed by Cleveland International Fund – NRP West Edge, Ltd. (“**CIF**”).

### **PRELIMINARY STATEMENT**

1. CIF’s lack of standing as a creditor of non-debtor Laguna Reserve Apts Investor LLC (“**Laguna**”), renders CIF’s objection to the DIP Financing Motion in these Chapter 11 Cases meritless and only results in the inefficient use of estate resources. CIF’s business relationship with Laguna, the sole member and manager of debtor RH Lakewind East LLC (“**Lakewind**”), is a result of CIF making an unsecured loan to Laguna for which it received a Class B membership interest in Laguna. In connection with its loan to Laguna, and months after CKD Funding and CKD Penn had validly recorded mortgages on Lakewind’s property, CIF notified Laguna of certain alleged loan defaults, appointed itself manager of Laguna, and purported to grant itself a mortgage on Lakewind’s property, thereby collateralizing its otherwise unsecured loan to Laguna without providing any consideration to Lakewind. CIF now attempts to use its fabricated mortgage on Lakewind to oppose the DIP Financing Motion, and such a position given CIF’s lack of standing cannot be condoned.

2. Notwithstanding its own naked self-dealing, CIF has the gall to challenge the validity of liens granted to the only parties that actually made loans to Lakewind (and the other NOLA Debtors). That challenge is meritless. The NOLA DIP Lenders gave consideration to the NOLA Debtors in exchange for the mortgages they received, which is more than CIF can claim. Further, each of CKD Funding and CKD Penn’s mortgages attached sworn and notarized certificates of authority certifying that Mark Silber (“**Silber**”) had the requisite authority to execute those documents and that any prior consents needed to borrow funds had been received. All of

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<sup>2</sup> Capitalized terms not defined in this Response have the meanings stated in the DIP Financing Motion.

this was done without their knowledge of CIF's existence and well before CIF purportedly (and improperly) took control of Lakewind.

3. CIF's qualms with respect to the terms of the NOLA DIP Facility also are unfounded. Indeed, each of the CKD Funding prepetition loans as well as the CKD Penn guaranty obligations, were cross collateralized and secured by liens on each of the NOLA Debtors, which mirror the liens granted on a super-priority basis to the NOLA DIP Lenders as part of the NOLA DIP Facility. CIF cites no authority requiring allocation of financing amongst the NOLA Debtors and can point to no lender (including CIF itself) willing to provide alternative financing on such (or better) terms.

4. With its Objection and separate motion to dismiss the Lakewind case, CIF not only impermissibly seeks to deny Lakewind of its right to borrow funds in aid of its efforts to reorganize, but CIF further seeks to strip Lakewind of its statutory right to the protections of the Bankruptcy Code. The Court cannot permit CIF to succeed with such efforts. Instead, the Court should overrule CIF's Objection and grant the DIP Financing Motion because the proposed financing is in the best interest of the bankruptcy estate.

### **BACKGROUND**

#### **A. CIF's Loan to Non-Debtor Laguna**

5. Lakewind owns the Laguna Reserve Apartments located at 5131 Bundy Road, New Orleans, LA 70127 (the "**Project**"), which is part of a larger real estate portfolio (the "**Crown Capital Portfolio**") formed by Silber and certain affiliates to hold dozens of multifamily housing projects across the United States, with nearly 10,000 individual units. *See Declaration of Matthew Dundon, Principal of Island Dundon LLC, in Support of Debtors' Chapter 11 Petitions and First*

*Day Pleadings*, ¶ 8 [ECF No. 44] (the “**First Day Declaration**”). The Project has been continuously managed by Lynd Management Group LLC (“**Lynd**”) since September 16, 2019.

6. In April 2023, Silber engaged in a transaction designed to direct and distribute equity value from the Project to himself. To effectuate that distribution, on April 25, 2023, Laguna entered into a certain Credit Agreement with CIF (the “**CIF Loan Agreement**”) pursuant to which Laguna agreed to borrow up to \$5 million “to allow for distribution of equity from the Project to Guarantor.” *See Declaration of Stephen Strnisha* [ECF No. 170] (“**Strnisha Decl.**”), Ex. A, at 6. Section 2.1 of the CIF Loan Agreement further provides that “Borrower will use the proceeds of the Loan to fund a distribution of Guarantor’s equity to Guarantor.” *Strnisha Decl.*, at 10.

7. The CIF Loan Agreement defines the Guarantor as Silber. Lakewind is neither an obligor nor a guarantor of the obligations contained in, or the indebtedness arising from, the CIF Loan Agreement.

**B. CKD Funding’s First Mortgage on the Project**

8. In the first half of 2024, the NOLA Debtors had fallen behind on their insurance and tax obligations and were concerned they could not make payroll. As a result, Silber approached the NOLA DIP Lenders to see if they would advance loans to the NOLA Debtors in order to, among other things, cure their unpaid insurance and tax debts, meet their payroll obligations, and provide working capital for the NOLA Debtors (including property management fees to Lynd). The NOLA DIP Lenders agreed to provide the necessary liquidity to the NOLA Debtors in exchange for first liens on the NOLA Properties.

9. On July 8, 2024, CKD Funding made a commercial loan to Lakewind, which was evidenced by a Non-Revolving Commercial Line of Credit Note in the principal amount of up to

\$10 million (the “**CKD Funding Note**”).<sup>3</sup> On the same date, each of debtors RH Windrun LLC (“**Windrun**”) and RH Copper Creek LLC (“**Copper Creek**”) entered into similar \$10 million non-revolving loan facilities with CKD Funding.<sup>4</sup>

10. The CKD Funding Note was secured by a Multiple Indebtedness Mortgage, Pledge of Leases and Rents and Security Agreement dated July 8, 2024 (the “**CKD Funding Mortgage**”) on the Project. *See Declaration of Aron Gittleson* (the “**Gittleson Decl.**”), Ex. 1.<sup>5</sup> The CKD Funding Mortgage served as collateral for CKD Funding’s loans to the NOLA Debtors. Windrun and Copper Creek granted similar mortgages on their respective properties that also served as collateral for any of CKD Funding’s loans to the NOLA Debtors. *See id.*, Exs. 2-3. In this manner, the obligations of the NOLA Debtors became cross-collateralized.

11. Attached to the CKD Funding Mortgage is a sworn and notarized Certificate of Authority of RH Lakewind East LLC whereby Laguna, as Lakewind’s sole member, certified that „Silber (in his capacity as “Sole Member”)“ was authorized to execute the CKD Funding Mortgage on Lakewind’s behalf. Gittleson Decl., Ex. 1. The Certificate of Authority further provides that:

Third parties may rely on this certification of the Sole Member of [Lakewind] that Mark Silber, as Authorized Representative, acting alone, has the full authority to act for [Lakewind] in connection with the transactions described above, and that the necessary consent to said action has been obtained, and that said action is authorized, and in compliance with the Certificate of Organization and the Operating Agreement of [Lakewind].

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<sup>3</sup> CIF notes that that CKD Funding was formed shortly before the CKD Funding Mortgage was recorded and before Silber’s plea agreement. But nothing nefarious about this timing exists. It is common for a new lending entity to be formed just prior to funding.

<sup>4</sup> DH1 also made a separate loan to debtor RH Chenault Creek LLC (“**Chenault**”) on or about April 4, 2024 evidenced by a Non-Revolving Commercial Line of Credit Note in the principal amount of \$7,500,000.00, as amended by that certain Amendment to Non-Revolving Commercial Line of Credit dated April 4, 2024, which increased the maximum principal amount of the DH1 Prepetition First Lien Loan to \$10,000,000, and as further amended by that certain Amendment No.2 to Non-Revolving Commercial Line of Credit Note dated July 5, 2024, which increased the maximum principal amount of the DH1 Prepetition First Lien Loan to \$25,000,000. That loan was secured by a Multiple Indebtedness Mortgage, Pledge of Lease and Rents and Security Agreement dated as of April 4, 2024, on property owned by Chenault.

<sup>5</sup> The Gittleson Declaration is filed contemporaneously with this Response.

*Id.* Similar certificates attached to the mortgages granted by Windrun and Copper Creek. *See id.*, Exs. 2-3.

12. At the time CKD Funding loaned monies to Lakewind, CKD Funding was not aware of CIF's existence. *Id.* ¶ 8. A title search of the Project did not reveal any other lender claiming an interest in the Project, and CKD Funding received nothing that contradicted the Certificate of Authority attached to the CKD Funding Mortgage. *Id.* At all times during the transaction, Silber was the Manager of Laguna, and Lynd was the property manager for the Project. *Id.*

**C. CKD Penn Second Mortgage on the Project**

13. Following the closing of the loan transaction with CKD Funding, Silber sought to obtain bank financing to, *inter alia*, recapture cash equity from, make capital improvements to, and provide working capital for, a portfolio of eight properties in Pittsburgh, PA owned indirectly by Crown, CBRM and Silber, and housed within the Crown Capital Portfolio (the "**Pittsburgh Portfolio**").<sup>6</sup> In order to procure that financing from Bankwell Bank ("**Bankwell**"), Silber needed to provide additional credit support to Bankwell, and Silber contacted Daryl Hagler ("**Hagler**"), the principal of CKD Funding and DH1, his existing lenders on the NOLA Properties, to obtain the requisite credit support. Hagler agreed to provide Bankwell with a personal guaranty as well as a corporate guaranty from another Hagler entity, CKD Penn; provided that, among other things, (i) a portion of the proceeds from the Bankwell loan would be used to repay a portion of the outstanding indebtedness on the CKD Funding loans made to Lakewind, Windrun, and Copper Creek, (ii) CKD Penn would receive a second mortgage on the NOLA Properties for any amounts

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<sup>6</sup> The property level entities that own the Pittsburgh Portfolio are non-debtors Bedcliff Apts LLC, Bethesda Wilkinsburg Apts LLC, Bethome Apts LLC, Central Hill Apts LLC, Elhome Apts LLC, Hill Com I Apts LLC, Hill Com II Apts LLC, and Tribad Apts LLC (collectively, the **Bankwell 8 Borrowers**").

paid on the guarantees of Hagler and CKD Penn on the Bankwell loan, and (iii) certain preapproved rights with Bankwell with respect to the purchase of any properties in the Pittsburgh Portfolio.

14. On August 16, 2024, Bankwell entered into a Term Loan and Security Agreement with the Bankwell 8 Borrowers (the “**Bankwell Loan Agreement**”) providing for a term loan in the aggregate principal amount of \$28 million. The obligations of the Bankwell 8 Borrowers were supported by a personal guaranty of Hagler and a corporate guaranty of CKD Penn (the “**CKD Penn Guaranty**”). The terms of the Bankwell Loan Agreement provided that some proceeds of the loan would be used to repay a portion of the CKD Funding loans to Lakewind, Windrun, and Copper Creek.

15. Contemporaneously with the foregoing loan and guarantees, on August 16, 2024, Lakewind and the other NOLA Debtors granted a Multiple Indebtedness Mortgage, Pledge of Leases and Rents and Security Agreement in favor of CKD Penn (the “**CKD Penn Mortgage**”). Gittleson Decl., Ex. 4. The CKD Penn Mortgage provided collateral for the CKD Penn’s guaranty obligations.

16. Attached to the CKD Penn Second Mortgage are sworn and notarized Certificates of Authority for each of the NOLA Debtors certifying that Silber was authorized to sign on their behalf. *Id.* Here as well, Laguna certified that Silber was authorized to sign on Lakewind’s behalf. *Id.*

17. At the time CKD Penn recorded the CKD Penn Mortgage, it was not aware of CIF’s existence. *Id.* ¶ 13. Again, a title search of the property owned by Lakewind revealed no lien other than the CKD Funding Mortgage, and CKD Penn received no evidence that contradicted the Certificates of Authority attached to the Second Mortgage. *Id.* Further, at all times during the

Bankwell transaction, Silber was the Manager of Laguna, and Lynd was the property manager for the Project. *Id.*

**D. The Independent Fiduciary's Appointment and CIF's Self-Granted Mortgage**

18. Silber and his co-investors became the targets of an extensive investigation by the federal government related to certain real estate projects unrelated to the Crown Capital Portfolio. First Day Decl. ¶¶ 7-10. On April 17, 2024, Silber entered into a plea agreement with the Fraud Section of the Department of Justice and the United States Attorney for the District of New Jersey for conspiracy to commit wire fraud. *Id.* ¶ 9.

19. Once Silber's plea became public, certain investors (the "**Noteholders**") who purchased notes (the "**Crown Notes**") from Crown, as issuer, with CBRM as guarantor, became concerned about certain properties within Crown Capital Portfolio and the ability to repay principal and interest under the Crown Notes. *Id.* As a result, on August 29, 2024, Crown and CBRM entered into a forbearance agreement with certain of their Noteholders (the "**Forbearance Agreement**") which, among other things, gave the Noteholders the right to appoint an independent fiduciary over CBRM, Crown, and certain other subsidiaries and provide that individual with an irrevocable proxy for so long as the Forbearance Agreement remained pending. On September 26, 2024, the Noteholder parties exercised their rights and appointed Elizabeth LaPuma as independent fiduciary (the "**Independent Fiduciary**"). On December 9, 2024, the Independent Fiduciary became the manager of the Debtors, including Lakewind.

20. During this time, CIF attempted to take control of Lakewind and its property. In November 2024, CIF declared a default under its Credit Agreement with Laguna alleging a change of management at Lakewind or Laguna as a result of the Independent Fiduciary's appointment. On December 4, 2024, in connection with this purported default, CIF, in its capacity as Class B



Member of Laguna, declared itself Laguna's new Manager. Then, on December 11, 2024, CIF used its purported managerial authority to grant itself a mortgage on Lakewind's property. No consent to the granting of this mortgage was provided by the Independent Fiduciary (for Laguna and Crown), and CIF provided no consideration to Lakewind in exchange for said mortgage.

**E. The Debtors' Bankruptcy and DIP Motion**

21. The Debtors commenced their Chapter 11 Cases on May 19, 2025, and the DIP Financing Motion was filed on May 28, 2025.

22. Under the proposed terms of the NOLA DIP Facility, NOLA DIP Lenders will extend a credit facility in the aggregate principal amount of \$17,422,728, which includes a new money commitment of \$8,461,524 and a roll-up of \$8,961,204 of pre-petition debt owed by the NOLA Debtors to NOLA DIP Lenders. As the Debtors note in the DIP Financing Motion, they did not receive any alternative proposals with superior terms.

**ARGUMENT**

**I. CIF Lacks Standing to Object to the DIP Financing Motion.**

23. While CIF opposes the DIP Financing Motion with respect to Lakewind, CIF is not even a legitimate creditor of Lakewind. Its Credit Agreement and mortgage make clear that it is a creditor only of non-debtor Laguna. But for its illegitimate mortgage, CIF would have no stake in the outcome of the DIP Financing Motion. And, even assuming CIF is a legitimate creditor of Laguna, which it is not, and Laguna is a creditor of Lakewind; a creditor of a creditor lacks standing to participate in a bankruptcy case. *In re Mt. Creek Resort, Inc.*, 616 B.R. 45, 52 (Bankr. D. N.J. 2020).

## **II. NOLA DIP Lenders' Liens Are Valid.**

24. CIF's challenges to the CKD Funding Mortgage and CKD Penn Mortgage lack merit. As to CIF's claim that the mortgages were unauthorized, even assuming Silber lacked actual authority under Laguna's operating agreement to grant those mortgages, he had apparent authority to do so.

25. Under Delaware law, applicable here because Lakewind is a Delaware LLC, apparent authority "is the power held by an agent or other actor to affect a principal's legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations." *Sarissa Capital Domestic Fund LP v. Innoviva, Inc.*, No. 2017-0309-JRS, 2017 WL 6209597, at \*19 (Del. Ch. Dec. 8, 2017). A corporate principal may manifest an agent's authority by placing the agent in charge of a transaction or situation. *Id.*

26. Silber had apparent authority to execute the CKF Funding Mortgage and CKD Penn Mortgage. Lakewind's operating agreement provides that Laguna is its manager, Strnisha Decl., Ex. D at § 6 [Page 87 of 253], and Laguna's operating agreement provides, in turn, that Silber is the sole manager of the company, *Id.*, Ex. C at § 4.1 [Page 57 of 253]. Silber was the Manager of Laguna at all times during each of the transactions with CKD Funding and CKD Penn, and Laguna placed Silber in charge of negotiating Lakewind's mortgage grants. Even more, Silber executed Certificates of Authority affirming that he was authorized and empowered on behalf of Laguna, and received all necessary consents, to sign the CKF Funding Mortgage and CKD Penn Mortgage. At no point prior to the execution of those mortgages did CIF or anyone else place Silber's authority in doubt. Thus, it was entirely reasonable for CKD Funding and CKD Penn to rely on Silber's authority. *Cf. Sarissa*, 2017 WL 6209597, at \*19 (finding an agent had apparent authority

where he was principal's lead negotiator and the only point of contact, and no evidence existed that the principal ever indicated that the agent was not authorized to enter a settlement agreement on the principal's behalf); *see also London & Lancashire Ins. Co. v. McWilliams*, 110 So. 909, 910 (Ala. 2026) (certificate of authority gave insurer's agent apparent authority to act on its behalf); *Maryland Cas. Co. v. Moon*, 203 N.W. 885, 887-88 (Mich. 1925) (same).

27. CIF's conjecture that the underlying loans did not benefit Lakewind also is unfounded. Under the CKD Funding Note, CKD Funding provided monies directly to Lakewind. And, in exchange for the CKD Penn guaranty (secured by the CKD Penn Mortgage), the Bankwell loan expressly authorized the borrowers to use certain proceeds to repay a portion of Lakewind's indebtedness to CKD Funding.

### **III. No Allocation of the NOLA DIP Facility Amongst the NOLA Debtors is Required.**

28. CIF's contention that Lakewind should not be joint and severally liable with the other NOLA Debtors and that there should be an allocation among the four properties owned by the NOLA Debtors is wholly unsupported and inappropriate. As the Court is aware, it is customary to impose joint and several liability obligations among several debtors to protect a DIP lender, and this Court routinely approves DIP facilities that include such provisions. *See In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. Apr. 4, 2024) [ECF No. 297]; *In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. Feb. 29, 2024) [ECF No. 327]; *In re Rite Aid Corporation*, No. 23-18993 (MBK) (Bankr. D.N.J. Dec. 22, 2023) [ECF No. 1159]; *In re Bed Bath & Beyond, Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. June 15, 2023) [ECF No. 729]. In fact, the model interim DIP financing order promulgated by the U.S. Bankruptcy Court for the Southern District of New York provides for joint and several liability amongst multiple debtors.<sup>7</sup>

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<sup>7</sup> Available at: [https://www.nysb.uscourts.gov/sites/default/files/4001-2\\_model\\_order.docx](https://www.nysb.uscourts.gov/sites/default/files/4001-2_model_order.docx) (last visited June 19, 2025).

CIF does not cite to any authority that suggests otherwise, and the NOLA DIP Lenders are not aware of any.

29. Critically, the NOLA DIP Facility that is proposed is the only proposed debtor in possession that is being made available. No other lenders (including CIF) have expressed any willingness or desire to provide DIP financing to the NOLA Debtor Borrowers. Given this reality, CIF's solution—to let the Debtors fail, to the detriment of their legitimate creditors—is no solution at all and is not in the best interest of the bankruptcy estate. The NOLA DIP Facility is fair and reasonable, provides significant benefit to each of the Debtor Borrowers and their estates, and the Debtor Borrowers have met their burden under the Bankruptcy Code to obtain DIP financing on a senior secured super-priority basis.

For these reasons, the NOLA DIP Lenders request that the Court overrule CIF's Objection, grant the DIP Financing Motion, and grant the NOLA DIP Lenders such other and further relief as the Court deems just and proper.

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