Docket #0204 Date Filed: 06/25/2025

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1

WHITE & CASE LLP
Gregory F. Pesce (admitted *pro hac vice*)
111 South Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 881-5400
Email: gregory.pesce@whitecase.com

-and-

Andrew Zatz
Samuel P. Hershey (admitted *pro hac vice*)
Barrett Lingle (admitted *pro hac vice*)
1221 Avenue of the Americas
New York, New York 10020
Telephone: (212) 819-8200
Email: azatz@whitecase.com
sam.hershey@whitecase.com
barrett.lingle@whitecase.com

Proposed Counsel to Debtors and Debtors-in-Possession

KEN ROSEN ADVISORS PC
Kenneth A. Rosen
80 Central Park West
New York, New York 10023
Telephone: (973) 493-4955
Email: ken@kenrosenadvisors.com

Proposed Co-Counsel to Debtors and Debtors-in-Possession

In re:	Chapter 11
CBRM REALTY INC., *et al.*,	Case No. 25-15343 (MBK) (Jointly Administered)
Debtors.[1]	**Re: Docket Nos. 61, 168** **Hearing Date: June 26, 2025**

[1] 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'

25153432506250000000000005

DEBTORS' REPLY 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

The above-captioned debtors and debtors in possession (the "**Debtors**") respectfully state as follows 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* [Docket No. 61] (the "**Motion**")[2] and in reply (the "**Reply**") to the *Objection of Cleveland International Fund – NPR West Edge, Ltd. to 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* [Docket. No. 168] (the "**CIF Objection**"):[3]

Preliminary Statement

1. The Court should approve the proposed NOLA DIP Facility, which is the only financing available to the Debtors to maintain their multi-family housing facilities in New Orleans, Louisiana, which house approximately 1000 residents in 595 units. Moreover, the proposed NOLA

service address in these chapter 11 cases is: In re CBRM Realty Inc., et al., c/o White & Case LLP, 1221 Avenue of the Americas, New York, New York 10020.

[2] Capitalized terms used but not otherwise defined shall have the meanings ascribed to such terms in the Motion.

[3] The Debtors have filed the *Declaration of Barrett Lingle in Support of the Debtors' Reply 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* (the "**Lingle Declaration**") contemporaneously herewith in support of this Reply.

DIP Facility—which is being underwritten by prepetition lenders DH1 Holdings LLC, CKD Funding LLC, and CKD Investor Penn LLC—will provide funding for the Debtors to administer these chapter 11 cases, including paying their counsel and other professionals, and locking in $750,000 of funding for the litigation trust contemplated by the Debtors' forthcoming chapter 11 plan. There is no dispute that the proposed NOLA DIP Facility is in the best interest of the Debtors, their estates, and all stakeholders.

2. Two objections were filed to the proposed NOLA DIP Facility. First, Spano Investor LLC ("**Spano**"), which holds a purported judgment lien against Debtor CBRM Realty Inc. ("**CBRM**"), objected on the grounds that it was improper for the proposed NOLA DIP Facility to encumber the assets of Debtor Crown Capital Holdings LLC ("**Crown**").[4] The Debtors have engaged in extensive dialogue with Spano and its counsel, and the Debtors are pleased to report that Spano's objection has been consensually resolved. More specifically, the Debtors and the NOLA DIP Lender have agreed to add the following language to the "No Marshaling" provision of the proposed NOLA Final Order: "*provided further*, *however*, that, following an Event of Default, the NOLA DIP Lender shall use reasonable best efforts to utilize the proceeds of DIP Collateral owned by a Debtor other than Crown to satisfy its obligations under the DIP Facility prior to utilizing the proceeds of DIP Collateral owned by Crown to satisfy obligations under the DIP Facility." The Debtors have, furthermore, agreed to make a representation on the record at the hearing on the Motion regarding the Debtors' corporate structure chart and the ownership of the entities that own the NOLA Debtors.

[4] *Limited Objection and Reservation of Rights of Spano Investor LLC with Respect to Final DIP Financing Orders* [Docket No. 135].

3. The remaining objection was filed by Cleveland International Fund – NRP West Edge, Ltd. ("**CIF**"), a financing party and insider whose prepetition self-dealing will soon be the subject of significant claims by the Debtors for the benefit of their true creditors. More specifically, pre-petition, CIF extended credit to a non-debtor entity, Laguna APTS Investor LLC ("**Laguna**"), which, in turn, owns Debtor RH Lakewind East LLC ("**Lakewind**"). CIF demanded that Laguna permit CIF to record a mortgage in Louisiana with respect to Lakewind and its assets, despite the fact that Lakewind is not a party to the underlying credit agreement between CIF and Laguna. Lakewind, under the direction of its independent fiduciary, refused to consent to CIF's request to record a mortgage against Lakewind (which consent was required under Lakewind's limited liability company operating agreement). CIF then retaliated against Lakewind, asserting a dubious default under the Laguna credit agreement and installing itself, through its principal, as Laguna's manager. Thereafter, CIF's principal, acting as the manager of Laguna, purported to allow CIF to record a mortgage against Lakewind and its assets.

4. CIF's and its principal's outlandish and unlawful self-serving conduct raises grave concerns that warrant close scrutiny by the Debtors, regulators, and law enforcement. The Debtors, for their part, plan to commence litigation to invalidate CIF's purported mortgage—which is, in reality, an actual fraudulent transfer and preference—and sue CIF and its principal for breaching their fiduciary duties as insiders, and tortiously interfering with the Debtors' business affairs by using CIF's self-granted mortgage as ransom over vital postpetition financing. For now, the Court should overrule the meritless CIF Objection.[5]

[5] The Debtors incorporate by reference the *Debtors' Objection to Cleveland International Fund – NRP West Edge, Ltd.'s Motion to Dismiss the Chapter 11 Case of RH Lakewind East LLC* [Docket No. 175].

5. CIF makes outlandish claims that it is not adequately protected under the NOLA DIP Facility. That is false. CIF's protections include (i) junior replacement liens, (ii) a junior superpriority claim, (iii) an agreement for Lakewind to escrow cash on account of postpetition interest (at the non-default rate) under the Credit Agreement, which interest shall be released to CIF upon the entry of a final order, and, provided CIF does not object to the approval of NOLA DIP Facility on a final basis and withdraws or resolves its motion to dismiss, for Lakewind to continue to pay postpetition interest (accruing at the non-default rate) to CIF (iv) access to financial reporting, and (v) enhanced value of its purported collateral, the property of Lakewind, while it continues to operate. Moreover, Lakewind and its creditors benefit from the NOLA DIP Facility in a multitude of ways, as it will be used to (i) facilitate the rehabilitation of their affordable housing assets, (ii) fund the costs of the investigation, development, and prosecution of causes of action against certain of the Debtors' insiders and other parties for the benefit of the Debtors' unsecured creditors, and (iii) provide essential liquidity to preserve the Debtors' estates to continue business operations, including working capital and operational needs during these chapter 11 cases.

6. CIF also challenges the joint and several liability of Lakewind under the NOLA DIP Facility and seeks to impose "allocation requirements" without any citations to legal authority and contrary to the terms of DIP financing orders commonly approved in this jurisdiction. CIF's unsupported arguments should be rejected out of hand.

7. The Debtors have met their burden to have their requested relief granted. Therefore, the Court should approve the proposed NOLA DIP Facility.

Background

I. Lakewind Is Formed, and Lynd Is Appointed the Manager of the Lakewind Property.

8. Lakewind is a member-managed limited liability company formed on October 26, 2017 under the laws of Delaware to own, develop, manage and operate a 348-unit apartment complex known as the Laguna Reserve Apartments, located at 5131 Bundy Road, New Orleans, Louisiana 70127 (the "**Lakewind Property**"). Lingle Decl. Ex. A (Certificate of Formation of RH Lakewind East LLC). Lakewind is part of a larger real estate portfolio (the "**Crown Capital Portfolio**") that was formed by real estate investor Moshe "Mark" Silber and certain affiliated parties 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 [Docket No. 44] (the "**First Day Declaration**"). The Crown Capital Portfolio is indirectly owned by ultimate parent company CBRM. *Id.*

9. The equity interests in Lakewind were initially owned by RH New Orleans Holding LLC ("**NOH**") pursuant to that certain *Operating Agreement of RH Lakewind East LLC*, dated December 2017. Lingle Decl. Ex. B (Operating Agreement of RH Lakewind East LLC) § 5. On September 16, 2019, Mr. Silber retained Lynd to provide property management services for the Lakewind Property. *See* Lingle Decl. Ex. C (Lynd Property Management Agreement).[6]

II. Mr. Silber Orchestrates a Loan from CIF, Which He Uses to Extract Equity Value from Lakewind.

10. On April 25, 2023, Mr. Silber entered into a series of transactions aimed at distributing the equity value of the Lakewind Property to himself.

[6] On June 18, 2025, the Court entered an order approving the Debtors' assumption of an amended and restated Lynd Property Management Agreement with respect to the Lakewind Property. Docket No. 171.

11. First, Mr. Silber entered into a credit agreement (the "**Credit Agreement**") under which CIF, as lender, loaned $4.5 million to Laguna, as borrower, with Mr. Silber acting as guarantor. *See* Strnisha Decl. Ex. A (Credit Agreement) § 2.1. The Credit Agreement does not seek to hide its purpose, but rather discloses that "Borrower has requested a loan from CIF in the amount of up to Five Million Dollars ($5,000,000.00) to allow for the distribution of equity from the [Lakewind Property] to the Guarantor" (*i.e.*, Mr. Silber). *See id.* Recitals § C. Lakewind was not the borrower under the Credit Agreement. *See id.*; *see also* CIF Obj. ¶ 5. Shortly thereafter, Laguna purportedly contributed the proceeds of the loan to Lakewind, where they would be available to Mr. Silber, as Lakewind's beneficial owner. CIF Obj. ¶ 6.

12. Section 9.1(j) of the Credit Agreement provides that an event of default occurs if there is "[t]he occurrence of any change in the management of [Laguna] or Lakewind except as permitted or required under the operating agreement of [Laguna] or Lakewind, respectively[.]" *See* Strnisha Decl. Ex. A (Credit Agreement) § 9.1(j). The Credit Agreement does not define the term "management." *See id.* Additionally, Section § 9.1(j) of the Credit Agreement carves out from an event of default any changes in management "as permitted or required under the operating agreement of [Laguna] or Lakewind." *Id.*

13. Second, Mr. Silber, on behalf of CBRM and Crown, entered into the *Amended and Restated Operating Agreement of RH Lakewind East LLC* dated April 25, 2023 (the "**Amended Lakewind OA**"). The Amended Lakewind OA provides, "concurrently with the execution of this Agreement, [NOH] has assigned one hundred percent (100%) of the membership interests in [Lakewind] to [Laguna]." *See* Strnisha Decl. Ex. D (Amended Lakewind OA), Recitals.

14. Third, Mr. Silber entered into the *Operating Agreement of Laguna Reserve APTS Investor LLC* dated April 25, 2023 (the "**Laguna Operating Agreement**"). Strnisha Decl. Ex. C

(Laguna Operating Agreement). Exhibit A to the Laguna Operating Agreement provides that the equity of Laguna is owned 100% by Crown, as Laguna's "Class A Member." *Id.* The Laguna Operating Agreement further provides that CIF is the "Class B Member." *Id.*; CIF Obj. ¶ 7. The Laguna Operating Agreement notes that the "Class B Unit is issued to [CIF] in consideration of its agreement to make a loan to [Laguna], with such Class B Unit having only those rights, including the right to approve certain Major Decisions, expressly set forth herein." Strnisha Decl. Ex. C (Laguna Operating Agreement), Preliminary Statement § B. CIF, as Class B Member, was not provided any ownership interest in Laguna. *See id.*

15. Under the Laguna Operating Agreement, "Major Decisions" require the consent of both Crown, as Class A Member, and CIF, as Class B Member. *Id.* § 4.4. "Major Decisions" include: (i) Laguna granting a lien or a security interest; (ii) Laguna and Lakewind engaging in any business or activity other than the acquisition, development, ownership, operation, and maintenance of the Lakewind Property; (iii) Laguna or Lakewind incurring any debt other than unsecured trade and operational debt; (iv) Laguna or Lakewind entering into any contract or agreement with any partner, member, principal, shareholder, owner, equity holder, or affiliate; and (v) Laguna or Lakewind filing a voluntary petition or otherwise initiating proceedings to be "adjudicated bankrupt or insolvent" or filing "a petition seeking or consenting to reorganization or relief . . . under any applicable federal or state law relating to bankruptcy, insolvency or other relief for debtors." *Id.* § 4.4, Sched. 4.1(d) ¶¶ (d), (1), (8), (12), (22).

16. The Laguna Operating Agreement endows Crown, as the Class A Member, with the right to remove the Manager of Laguna. *Id.* § 4.1(e). The "Manager" under the Laguna Operating Agreement is "a Person designated as a Manager pursuant to the terms herein and who is responsible for managing or participating in the management of [Laguna], and any successor of

a Manager who is appointed as Manager in accordance with the provisions of this Agreement. A Manager need not be a Member." *Id.* § 1.7(ee). Crown, as the Class A Member, "may remove any Manager with or without cause, at any time," and such vacancy "shall be filled by one or more new Managers selected by the Class A Member." *Id.* § 4.1(e).

17. By contrast, CIF, as the Class B Member, may remove a "Manager" only under specific circumstances, such as when there exists a default. *Id.* § 12.4 ("at any time a default exists and is continuing under any of the Class B Loan Documents beyond any applicable grace and/or notice and cure period thereunder, the Class B Member may, but is not obligated to, remove any Manager with or without cause and appoint one or more new Managers selected by the Class B Member.").

III. The Lakewind Property Is Granted as Collateral in Connection with the July CKD Mortgage and August CKD Mortgage.

18. In 2024, the NOLA Debtors had fallen behind on their insurance and tax obligations and faced concerns regarding their payroll obligations. The NOLA DIP Lender was approached for funding, in order for, among other things, the NOLA Debtors to cure their unpaid insurance and tax debts, meet their payroll obligations, and receive working capital. The NOLA DIP Lender agreed to provide this necessary liquidity in exchange for first liens on the NOLA Debtors' properties.

19. Loans were issued to the NOLA Debtors evidenced by a certain *Non-Revolving Commercial Line of Credit Note,* dated as of July 8, 2024, in the original principal amount of up to $10,000,000, in favor of CKD Funding LLC and secured by a *Multiple Indebtedness Mortgage, Pledge of Leases and Rents and Security Agreement*, dated as of July 8, 2024 (the "**July CKD Mortgage**"). First Day Decl. ¶ 19(ii). Additionally, CKD Investor Penn LLC holds a mortgage on the properties held by the NOLA Debtors pursuant to a *Multiple Indebtedness Mortgage, Pledge*

of Leases and Rents and Security Agreement, dated as of August 16, 2024 (the "**August CKD Mortgage**"). *See id.* ¶ 20. The Lakewind Property was granted as collateral in connection with the prepetition financing. *See* Strnisha Decl. Ex. F (July CKD Mortgage) §§ 1.1, 3.1, Ex. A; *id.* (August CKD Mortgage) §§ 1.1, 3.1, Ex. A-2.

IV. Mr. Silber Pleads Guilty to Fraud, Leading to His Resignation and the Appointment of Ms. LaPuma as the Independent Fiduciary for CBRM and Crown.

20. Mr. Silber and his co-investors were 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, Mr. 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 affecting an institution, pursuant to 18 U.S.C. § 371. *Id.* ¶ 9.

21. During the course of the investigations and plea negotiations, Mr. Silber neglected the management of the Crown Capital Portfolio, leading to numerous properties falling into default or becoming subject to receivership proceedings. *Id.* ¶ 10. Once the plea became public, Mr. Silber was disqualified from continuing to manage the Crown Capital Portfolio. *Id.* ¶ 11. The Crown Capital Portfolio's stakeholders, including certain investors (the "**Noteholders**") who purchased notes (the "**Notes**") from Crown, as issuer, with CBRM as guarantor, were concerned about these developments because the Crown Capital Portfolio's value supported the payment of principal and interest under the Notes. *Id.*

22. Following discussions between Mr. Silber's counsel and the Noteholders' counsel (Faegre Drinker Biddle & Reath LLP) and financial advisor (IslandDundon LLC), on August 29, 2024, the parties entered into a forbearance agreement (the "**Forbearance Agreement**"). *See* Lingle Decl. Ex. D (Forbearance Agreement). The Forbearance Agreement addressed various

matters involving pending defaults under the Notes and Mr. Silber's go-forward involvement with the portfolio, and established a process to ensure that the Crown Capital Portfolio had sufficient fiduciary oversight. *See generally id.* Among other things, Section 5.3 of the Forbearance Agreement states that Mr. Silber was required to "engage, at [his] own expense, the services of an individual . . . to function as an independent fiduciary" of CBRM and Crown and provide that individual with an irrevocable proxy for so long as the obligations under the Forbearance Agreement remained pending. *See id.* § 5.3.

23. On September 26, 2024, the Noteholders party to the Forbearance Agreement consented to the appointment of Ms. LaPuma—a restructuring professional with over 20 years' experience as an investment banker and corporate director, including for companies in distress—as the independent fiduciary of CBRM and Crown (the "**Independent Fiduciary**"). First Day Decl. ¶ 13. On December 9, 2024, Ms. LaPuma was appointed as manager of the Debtors, including Crown and Lakewind, through an omnibus written consent (the "**Omnibus Written Consent**"). *See* Lingle Decl. Ex. E (Omnibus Written Consent).

V. CIF Manufactures the Alleged Default under the Credit Agreement to Appoint Itself Manager of Laguna, and then Uses Its Purported Position to Grant Itself a Mortgage on the Lakewind Property.

24. On November 27, 2024, CIF sent Laguna a notice of default and reservation of rights (the "**Notice**"), alleging that Laguna was in default of Section 9.1(j) of the Credit Agreement, which prohibits a change of "management" at Lakewind or Laguna, because Mr. Silber, the original manager of Laguna (the "**Manager**") and ultimate owner of Crown, was no longer acting

as Manager following the appointment of Ms. LaPuma as the Independent Fiduciary for Crown (the "**Alleged Default**").[7] *See* Lingle Decl. Ex. F (Notice).

25. CIF, however, was mistaken about the terms of the Credit Agreement. There was no change in "management," which is undefined under the Credit Agreement, as Mr. Silber had appointed Lynd to manage the Lakewind Property in 2019—years before CIF entered the picture—and Lynd has continuously managed the Lakewind Property since its appointment. *See* Lingle Decl. Ex. C (Lynd Property Management Agreement). Additionally, Section 9.1(j) carves out changes in management that occur "as permitted or required under the operating agreement of [Laguna] or Lakewind," Strnisha Decl. Ex. A (Credit Agreement) § 9.1(j). The Laguna Operating Agreement allows Crown, as the Class A Member, to "remove any Manager with or without cause, at any time," and fill such vacancy "by one or more new Managers selected by the Class A Member." Strnisha Decl. Ex. C (Laguna Operating Agreement) § 4.1(e). Nonetheless, CIF, invoking section 12.4 of the Laguna Operating Agreement, improperly used the Alleged Default to appoint itself as the new Manager of Laguna. *See* Lingle Decl. Ex. F (Notice); CIF Obj. ¶ 25 n.5; Strnisha Decl. Ex. G (writing that "Mr. Strnisha replaced Mark Silber as manager of [Laguna] on or about December 4, 2024").

26. On December 11, 2024, CIF, as supposed Manager of Laguna through Mr. Strnisha, purported to grant itself a mortgage interest in the Lakewind Property (the "**Self-Granted Mortgage**"). *See* CIF Obj. ¶ 11, ¶ 25 n.5; Strnisha Decl. Ex. E (Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing). As explained above, Section 4.4 of the Laguna Operating Agreement states that the incurrence of secured debt by Lakewind is a "Major

[7] The Notice was signed by Stephen Strnisha, who was later installed by CIF as manager of Laguna. *See* Lingle Decl. Ex. F (Notice); Obj. ¶ 25 n.5.

Decision" requiring the consent of Crown as Class A Member. Strnisha Decl. Ex. C (Laguna Operating Agreement) § 4.4, Sched. 4.1(d). The same is true of Lakewind's granting of a lien or security interest, and entry into a contract with a member (like CIF). *Id.*

27. CIF has presented no evidence that it obtained Crown's consent in connection with the Self-Granted Mortgage—because it did not. Nor does CIF claim that Lakewind received any consideration in connection with the Self-Granted Mortgage—because it did not. *See* CIF Obj. ¶¶ 10-11 (explaining that it would agree to forebear exercising default remedies against Laguna and that "[i]n exchange for such forbearance, Laguna caused Lakewind to grant CIF a mortgage on the Property . . . to secure Laguna's obligations under the Credit Agreement").

VI. The Debtors Rectify CIF's Self-Appointment as Manager of Laguna.

28. On May 19, 2025, Crown, as Class A Member of Laguna, executed the Written Consent of Crown Capital Holdings LLC (the "**Crown Written Consent**"), pursuant to which Ms. LaPuma was appointed the Manager of Laguna in accordance with the Laguna Operating Agreement. *See* Lingle Decl. Ex. G (Crown Written Consent). The Crown Written Consent provides that "the Class A Member, out of an abundance of caution, has appointed the Independent Fiduciary as the new Manager of the Company [and] that the Independent Fiduciary is hereby appointed as Manager of the Company in accordance with the Class A Member's rights under the Operating Agreement." *Id.* The Crown Written Consent further provides that Lynd would continue to manage Laguna and its properties. *See id.*

29. That same day, White & Case LLP (proposed counsel to the Debtors) sent a letter to CIF attaching the Crown Written Consent and notifying CIF of its removal as purported Manager of Laguna (to the extent it ever properly filled that role). Lingle Decl. Ex. G (W&C Correspondence).

VII. Lakewind and Certain of Its Affiliates File for Chapter 11 Protection.

30. On May 19, 2025 (the "**Petition Date**"), each Debtor, including Lakewind and other affiliates of CBRM, filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing the above-captioned chapter 11 cases. The Debtors' chapter 11 cases are being jointly administered. Docket No. 51. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

31. On May 28, 2025, the Debtors filed the Motion. On June 5, 2025, the Court entered the *Interim 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* [Docket No. 110] (the "**Interim Order**"). On June 19, 2025, the Court granted a final DIP order with respect to the other DIP Facility in these chapter 11 cases. *See Final Order (I) Authorizing the Kelly Hamilton DIP Loan Parties to Obtain Senior Secured Priming Superpriority Postpetition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [Docket No. 178].

Argument

I. The Court Should Approve the Proposed NOLA DIP Facility.

32. The Debtors have met their burden under the Bankruptcy Code and applicable law, and the Court should approve the proposed NOLA DIP Facility. The entry into the NOLA DIP Facility and related documents is an exercise of the Debtors' sound business judgment. *See* Mot. ¶¶ 18-23. Given the Debtors' significant liquidity constraints and their obligations to tenants (who depend on the Debtors for clean, safe, and affordable housing), vendors, and the federal government, entry into the NOLA DIP Facility is essential to the Debtors' restructuring efforts.

See Declaration of Matthew Dundon 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 [Docket No. 156] (the "**Dundon Declaration**") ¶ 24. The Debtors have no viable alternative options, further supporting that entry into the NOLA DIP Facility represents a sound exercise of the Debtors' business judgment. *Id.* ¶¶ 17-24.

33. Additionally, section 363(b) of the Bankruptcy Code permits a debtor to use, sell, or lease property, other than in the ordinary course of business, with court approval. The Third Circuit is clear that such transactions should be approved when they are supported by a sound business purpose. *See In re Abbots Dairies, Inc.*, 788 F.2d 143 (3d Cir. 1986) (holding that in the Third Circuit, a debtor's use of assets outside the ordinary course of business under section 363(b) of the Bankruptcy Code should be approved if the debtor can demonstrate a sound business justification for the proposed transaction). The business judgment rule shields a debtor's management from judicial second-guessing. *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) ("[T]he [Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.").

34. A roll-up, or the repayment of prepetition funded indebtedness with postpetition financing, is common in DIP financing arrangements. Courts in this jurisdiction have routinely approved "roll-up" DIP financing features. *See, e.g.*, *In re Rite Aid Corporation, et al.*, No. 23-18993 (MBK) (Bankr. D.N.J. Jun. 19, 2024) (authorizing approximately $3.25 billion in DIP financing that included a roll-up of a $2.85 billion prepetition ABL facility and a $400 million FILO facility); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. Jun. 6, 2023) (authorizing an approximately $200 million DIP financing that included a roll-up of up to $36

million in prepetition first lien term loans debt pursuant to interim order); *In re David's Bridal, LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. May 24, 2023) (authorizing a "creeping" roll-up of prepetition ABL facility pursuant to interim order and a final roll up of remaining amounts pursuant to final order); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. Apr. 24, 2023) (authorizing an approximately $240 million DIP financing that included a roll-up of up to $200 million in prepetition secured first in, last out term loans debt pursuant to interim order).

35. As part of the Debtors' sound business judgment, the Debtors agreed to roll up the NOLA DIP Lender's prepetition secured claims, which was an integral part of the proposed NOLA DIP Facility and requirement for the NOLA DIP Lender. *See* Dundon Decl. ¶¶ 9.b, 24. Without agreeing to the terms of the NOLA DIP Facility, including the roll up of the NOLA DIP Lender's prepetition debt, there would be no NOLA DIP Facility. *See id.* ¶¶ 23-24. Without the DIP Facilities, the NOLA Debtors would not be able to reorganize under these chapter 11 cases, as there would be no funding for them to rehabilitate their properties and pursue the contemplated marketing and auction process. *See id.* ¶¶ 10-12. The roll up of funds into the NOLA DIP Facility is a sound exercise of the Debtors' business judgment, is a material component of the NOLA DIP Facility, and is required by the NOLA DIP Lender in order to provide postpetition financing.

36. The Debtors have met their burden to satisfy the requirements under section 364(c) of the Bankruptcy Code to obtain financing on a senior secured and superpriority status. *See* Mot. ¶¶ 26-31. The Debtors were unable to obtain unsecured credit or an alternative DIP financing on better terms (Dundon Decl. ¶ 23), the NOLA DIP Facility is necessary to preserve the Debtors' estates (*id.* ¶¶ 12, 22), and the terms of the NOLA DIP Facility are fair, reasonable, and adequate under the circumstances (Dundon Decl. ¶¶ 19-24).

37. The Debtors have met their burden to satisfy the requirements under section 364(d) of the Bankruptcy Code to obtain priming liens. *See* Mot. ¶¶ 26-37. The Debtors were unable to obtain unsecured credit or an alternative DIP financing on better terms (Dundon Decl. ¶ 23), the NOLA DIP Facility is necessary to preserve the Debtors' estates (*id.* ¶¶ 12, 22), the terms of the NOLA DIP Facility are fair, reasonable, and adequate under the circumstances (*id.* ¶¶ 19-24), and the NOLA DIP Facility was negotiated in good faith and at arm's length (*id.* ¶¶ 14-19). Additionally, for the reasons discussed, *infra*, the NOLA DIP Facility provides adequate protection to CIF. *See also* Mot. ¶¶ 38-40.

38. Moreover, the Debtors have met the various other requirements under the Bankruptcy Code and applicable law for the Court to grant the requested relief. The Debtors should be authorized to pay the fees to the NOLA DIP Lender under the NOLA DIP Facility because they are integral to the NOLA DIP Lender's agreement to provide postpetition financing and are consistent with the market. *See* Mot. ¶¶ 41-43; *see also* Dundon Decl. ¶¶ 19-20. The Debtors meet the requirements of sections 363(c)(2) and (e) of the Bankruptcy Code because the NOLA DIP Lender has consented to the use of their cash collateral, and CIF will receive an adequate protection package. Mot. ¶¶ 44-45. The NOLA DIP Lender should be deemed a good faith lender under section 364(e) of the Bankruptcy Code. *See* Mot. ¶¶ 46-48; *see also* Dundon Decl. ¶¶ 14-19. Lastly, a modification of the automatic stay in these circumstances is an ordinary and standard feature of DIP financing arrangements and is fair and reasonable in the Debtors' business judgment. Mot. ¶¶ 49-50.

II. The Court Should Overrule CIF's Objection to the NOLA DIP Facility.

A. The Court Should Overrule CIF's Objection that CIF Is Not Adequately Protected.

39. CIF's objection is limited to the issue of whether the proposed NOLA DIP Facility adequately protects CIF based on its alleged security interest on the Lakewind Property via the Self-Granted Mortgage. As noted, the Debtors do not believe that CIF has any valid prepetition secured debt and intend to seek to disallow such debt and pursue all available remedies in connection with its incurrence. That said, until such debt is disallowed, and as discussed in the Motion, CIF receives substantial adequate protection under the NOLA DIP Facility because (i) the NOLA Debtors will continue operate their multifamily residential properties and generate revenue for the benefit of all their creditors, and (ii) CIF will be granted replacement liens and superpriority claims in each case junior in all respects to the Carve-Out, the NOLA DIP Facility, and the liens and collateral granted to DH1 Holdings LLC as NOLA DIP Lender under the NOLA DIP Facility, which is appropriate under the circumstances and consistent with the market. Mot. ¶¶ 39-40.

40. As further laid out in the Interim Order,[8] CIF is receiving adequate protection to the extent of any postpetition diminution in value of its purported mortgage interest in the Lakewind Property. *See* Interim Order ¶ 9. These protections include (i) junior replacement liens, defined as the CIF Adequate Protection Liens in the Interim Order, (ii) a junior superpriority claim, defined as the CIF Adequate Protection Superpriority Claim in the Interim Order, (iii) an agreement for Lakewind to escrow cash on account of postpetition interest (at the non-default rate) under the Credit Agreement, which interest shall be released to CIF upon the entry of a final order, and, provided CIF does not object to the approval of NOLA DIP Facility on a final basis and

[8] A proposed form of final order will be filed with the Court in advance of the hearing scheduled for June 26, 2025.

withdraws or resolves its motion to dismiss, for Lakewind to continue to pay postpetition interest (accruing at the non-default rate) to CIF, and (iv) access to financial reporting, all while the Lakewind Property continues to operate. Each of these protections satisfies the Debtors' adequate protection burden.

41. *First*, CIF is granted a valid, perfected junior replacement liens on Lakewind's assets under sections 361 and 363(e) of the Bankruptcy Code. *See id.* The junior replacement liens, or CIF Adequate Protection Liens, are junior only to the components of the DIP Facility: the DIP Liens, the Prepetition First Priority Liens (until they are satisfied), the CKD Penn Prepetition Junior Liens, the CKD Penn Adequate Protection Liens, and the Carve-Out. *See id.* The CIF Adequate Protection Liens are senior to all other claims against CIF's Prepetition Collateral. *See id.*

42. *Second*, CIF is granted a superpriority administrative expense claim under sections 503(b), 507(a), and 507(b) of the Bankruptcy Code. *See id.* The superpriority administrative expense claim, or the CIF Adequate Protection Superpriority Claim, is junior only to the Carve-Out, the DIP Superpriority Claims, the CKD Penn Adequate Protection Superpriority Claims, and any superpriority claims of the Prepetition First Lien Lenders. *See id.* The CIF Adequate Protection Superpriority Claim is senior to all other administrative expense claims against the estate of Lakewind. *See id.*

43. *Third*, Lakewind has agreed escrow cash on account of postpetition interest (at the non-default rate) under the Credit Agreement, which interest shall be released to CIF upon the entry of a final order. *See id.* Furthermore, Lakewind will agree to continue to pay postpetition interest (accruing at the non-default rate) to CIF, provided that CIF does not object to the approval of NOLA DIP Facility on a final basis and withdraws or resolves its motion to dismiss.

44. *Fourth*, subject to CIF's execution of a customary confidentiality agreement, the Debtor Borrowers agree to provide CIF with a copy of the reporting package provided to the DIP Lender. *See id.*

B. The Court Should Overrule CIF's Other Adequate Protection Arguments.

45. Despite these demonstrated layers of adequate protection, CIF claims—without citing a single case in support—that its interests are not adequately protected under the NOLA DIP Facility. CIF Obj. ¶¶ 35-43. CIF's arguments fail.[9]

46. CIF asserts that it is not adequately protected because the Debtors have not provided an allocation among the four NOLA Debtors showing how and what amount of the proposed NOLA DIP Facility is needed for each of them, including Lakewind. *See* CIF Obj. ¶¶ 31, 41. Such information, however, is not required for approval of DIP financing or to demonstrate adequate protection, and CIF cites nothing stating otherwise. *See, e.g.*, *In re Allegiance Coal USA Ltd.*, 661 B.R. 874, 890-891 (D. Del. 2024) (rejecting creditor's objection to the allowance of the fees because the DIP order did not preclude the payment of professional fees: "A secured creditor is entitled to adequate protection against the risk that its collateral may diminish in value over the course of a bankruptcy case. But a debtor that can meet its evidentiary burden of showing its ability to provide adequate protection . . . is entitled in the first instance to manage the business affairs of the estate."); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. Apr. 4, 2024) [Docket No. 297] at 6, 15 (granting DIP order where Debtors requested use the proceeds of the DIP Loans and the Prepetition Collateral "to provide working capital for, and for other general corporate purposes of, the Debtors and certain of the Debtors' subsidiaries"); *id.* at Ex. A (DIP

[9] The NOLA DIP Lender addresses the validity of its prepetition liens in its reply to CIF's Objection, filed contemporaneously.

loan proceeds budget for Thrasio Holdings, Inc. without allocation to specific debtor-guarantors); *In re Bed Bath & Beyond, Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. June 15, 2023) [Docket No. 729] at Ex. B (DIP loan proceeds budget for debtors without allocation to specific debtor-guarantors).

47. Moreover, the continued operation of the Lakewind Property provides adequate protection to CIF by enhancing its (purported) collateral. *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631-32 (Bankr. S.D.N.Y. 1992) (finding that improvements to collateral financed by postpetition financing proceeds would improve collateral value in excess of loans and, therefore, provided adequate protection); *see also In re Hubbard Power & Light*, 202 B.R. 680, 684-85 (Bankr. E.D.N.Y. 1996) (approving postpetition financing to be used, in part, to fund cleanup costs of encumbered property anticipated to improve the value of the collateral, thereby serving the goal of adequate protection). Courts have made this finding in the context of disputes involving priming loans. *See In re 495 Cent. Park Ave. Corp.*, 136 B.R. at 628, 631-32 (finding adequate protection where the postpetition financing would enhance the value of the collateral and would prime secured position of other creditors); *In re Hubbard Power & Light*, 202 B.R. at 682-85 (same). Here, the NOLA DIP Facility is needed to rehabilitate and operate the Lakewind Property, and will thus enhance the value of that property. Dundon Decl. ¶ 10 ("The proceeds of the DIP Facilities will enable the Debtors to . . . facilitate the rehabilitation of their affordable housing assets in Louisiana and Pennsylvania."). That enhancement provides a further source of adequate protection to CIF.

48. CIF attempt to distinguish one of Debtors' cases in the Motion, *In re Salem Plaza Assoc.*, 135 B.R. 753 (Bankr. S.D.N.Y. 1992), is unavailing. CIF argues that since the case involved the use of cash collateral to pay ongoing operating expenses and did not concern a

priming DIP loan, the holding should be limited to this context. However, the court held that continued operation of the debtor's business preserved the equity cushion and provided adequate protection under section 361 of the Bankruptcy Code, which is also applicable here. Moreover, as discussed above, courts have found that continued operations and the enhancement of collateral provide adequate protection in priming loan disputes. Notably, CIF does not cite any authority in support of its argument, and all of the Debtors' other cases in the Motion go unrebutted.

49. CIF suggests that the NOLA DIP Facility somehow does not benefit Lakewind or its creditors. CIF Obj. ¶¶ 29-31, 34, 41-42. Not so. The NOLA DIP Facility will enable the Debtors to undertake the necessary rehabilitation of their affordable housing assets, to the benefit of all creditors. Additionally, proceeds from the NOLA DIP Facility will be used to (i) fund the costs of the investigation, development, and prosecution of valuable claims and causes of action against certain of the Debtors' insiders and other parties for the benefit of the Debtors' unsecured creditors, (ii) provide the Debtors with liquidity to preserve the Debtors' estates, (iii) continue the operation of their businesses, including their properties, (iv) fund necessary capital expenditures, (v) satisfy their obligations to tenants and the federal government, (vi) pay wage and salary obligations for their employees, and (vii) continue to satisfy other working capital and operational needs during these chapter 11 cases. Dundon Decl. ¶¶ 10, 22. All of these things will benefit creditors, including creditors of Lakewind.

C. The Court Should Authorize the NOLA DIP Facility on a Joint-and-Several Basis as to Each NOLA Debtor.

50. CIF asserts that Lakewind should not be made jointly and severally liable under the NOLA DIP Facility because these chapter 11 cases are not substantively consolidated. CIF Obj. ¶¶ 29-31, 34. This argument lacks merit. DIP financing arrangements that make debtor-borrowers jointly and severally liable without being substantively consolidated are common in chapter 11

cases, and such provisions are routinely approved by courts in this jurisdiction. *See In re Rite Aid Corporation*, No. 23-18993 (MBK) (Bankr. D.N.J. Dec. 22, 2023) [Docket No. 1159] (final DIP order allowing the debtors to incur postpetition financing on a joint and several liability basis despite the cases not being substantively consolidated); *In re Thrasio Holdings, Inc.*, No. 24-11840 (CMG) (Bankr. D.N.J. Apr. 4, 2024) [Docket No. 297] (same); *In re Bed Bath & Beyond, Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. June 15, 2023) [Docket No. 729] (same); *In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. Feb. 29, 2024) [Docket No. 327] (same).

51. CIF asserts that Lakewind's joint and several liability under the NOLA DIP Facility is improper because it is not clear to what extent Lakewind benefitted from the NOLA DIP Lender's prepetition financing. CIF Obj. ¶¶ 21-24, 33, 37. This question is irrelevant. The Lakewind Property was granted as collateral in connection with the NOLA DIP Lender's prepetition financing. *See* Strnisha Decl. Ex. F (July CKD Mortgage) §§ 1.1, 3.1, Ex. A; *id.* (August CKD Mortgage) §§ 1.1, 3.1, Ex. A-2. Consequently, Lakewind secured the full amount of that financing—not just the amounts of the prepetition loans that Lakewind borrowed directly.

Reservation of Rights

52. The Debtors respectfully reserve all rights with respect to the subject matter of the Motion, including, without limitation, the right to amend or supplement the Motion or the arguments made herein at any hearing the Court schedules on the Motion and to assert other and/or additional defenses. The Debtors also reserve all rights, claims and causes of action against CIF, including in connection with the matters set forth herein.

Conclusion

53. For the reasons set forth herein and in the Motion, the Debtors respectfully request that the Court overrule the CIF Objection and grant the Motion.

Dated: June 25, 2025
New York, New York

Respectfully submitted,

/s/ *Andrew Zatz*

WHITE & CASE LLP
Gregory F. Pesce (admitted *pro hac vice*)
111 South Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 881-5400
Email: gregory.pesce@whitecase.com

- and -

Andrew Zatz
Samuel P. Hershey (admitted *pro hac vice*)
Barrett Lingle (admitted *pro hac vice*)
1221 Avenue of the Americas
New York, New York 10020
Telephone: (212) 819-8200
Email: azatz@whitecase.com
sam.hershey@whitecase.com
barrett.lingle@whitecase.com

Proposed Counsel to Debtors and Debtors-in-Possession

KEN ROSEN ADVISORS PC
Kenneth A. Rosen
80 Central Park West
New York, New York 10023
Telephone: (973) 493-4955
Email: ken@kenrosenadvisors.com

Proposed Co-Counsel to Debtors and Debtors-in-Possession