

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

LEISURE INVESTMENTS HOLDINGS INC.,
et al.,¹

Debtors.

Chapter 11

Case No. 25-10606 (LSS)

(Jointly Administered)

Re: Docket Nos. 9, 40 & 134

**LIMITED OBJECTION OF KEYS HOTEL OPERATOR INC. TO DEBTORS' MOTION
OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING
DEBTORS TO OBTAIN POSTPETITION FINANCING PURSUANT TO SECTION 364
OF THE BANKRUPTCY CODE, (II) AUTHORIZING THE USE OF CASH
COLLATERAL PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE, ETC.**

Keys Hotel Operator Inc. ("Objecting Landlord") respectfully submits its limited objection (the "Limited Objection") to the *Motion of Debtors For Interim and Final Orders (I) Authorizing Debtors To Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Authorizing the Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (III) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, (IV) Granting Liens and Superpriority Claims, (V) Modifying the Automatic Stay and (VI) Scheduling a Final Hearing* [D.I. 9] (the "Financing

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are as follows: Leisure Investments Holdings LLC (7260); Triton Investments Holdings LLC (6416); MS Leisure Company (7257); Icarus Investments Holdings LLC (2636); Ejecutivos de Turismo Sustentable S.A. de C.V. (5CA4); Dolphin Capital Company, S. de R.L. de C.V. (21H8); Dolphin Leisure, Inc. (7073); Dolphin Austral Holdings, S.A. de C.V. (6A13); Aqua Tours, S.A. de C.V. (6586); Viajero Cibernético, S.A. de C.V. (1CZ7); Promotora Garrafón, S.A. de C.V. (0KA2); Marineland Leisure, Inc. (7388); GWMP, LLC (N/A); Gulf World Marine Park, Inc. (0348); and The Dolphin Connection, Inc. (0322). For the purposes of these chapter 11 cases, the address for the Debtors is Leisure Investments Holdings LLC, c/o Riveron Management Services, LLC, 600 Brickell Avenue, Suite 2550, Miami, FL 33131.



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Motion”) and the entry of a final order thereon. In support of this Limited Objection, the Objecting Landlord respectfully states as follows:

I. PRELIMINARY STATEMENT

1. Objecting Landlord does not object to the Debtors’ attempt to enhance liquidity to appropriately fund these Chapter 11 cases through post-petition financing. Objecting Landlord does object, however, to certain terms of the Interim Order² and any proposed Final Order with respect to the Financing Motion (“Proposed Final Order”) that would grant the Debtors’ Lenders a secured lien on all “property of the estate,” including contracts, contract rights, leases and other interests in leaseholds and real property, contrary to contractual restrictions on assignment contained in Debtors’ license agreement with Objecting Landlord. Debtors fail to justify why the DIP Lenders requires a lien directly on Debtors’ interest in the license agreement, particularly where the plain terms of the license agreement and Florida law would prohibit a collateral assignment, and provides no basis, statutory or otherwise, for the attempt to invalidate or modify the terms of the License Agreement to facilitate debtor-in-possession financing.

2. Further, Debtors also seek to grant the Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties, as adequate protection, a replacement lien on the DIP Collateral, including Debtors’ interest in its license agreement with Objecting Landlord. No legal or factual justification is offered for such expansion of the scope of the Prepetition Collateral contrary to Objecting Landlord’s bargained for contractual rights.

3. Moreover, the Financing Motion is not supported by an adequate post-petition operating budget that provides reasonable assurance of the payment of post-petition occupancy

² All terms not otherwise defined herein shall have the same meaning as defined in Debtors’ Financing Motion.

expenses, particularly given Debtors' acknowledgment that it lacks complete books and records of Debtors' businesses, as evidenced by pending litigation in this Court. Under such circumstances, as a form of adequate protection, Debtors should not be permitted to waive the bankruptcy estate's rights under Bankruptcy Code sections 506(c) and 552(b) at this time.

II. FACTUAL AND PROCEDURAL BACKGROUND

4. Objecting Landlord, doing business as Hawks Cay Resort, as licensor, and debtor Dolphin Connection, Inc. ("Dolphin Connection"), as licensee, are parties to that certain written License Agreement dated October 2021, granting Dolphin Connection a limited license to use a portion of the Hawks Cay Resort, located at 61 Hawks Cay Boulevard, Duck Key, Monroe County, Florida (the "Licensed Premises") for the operation of a "dolphin encounter" attraction for resort guests and the public.

5. On or about March 31, 2025 (the "Petition Date"), Leisure Investment Holdings LLC, along with fourteen (14) affiliates, including licensee The Dolphin Connection, Inc. (collectively, the "Debtors"), filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). No trustee or examiner has been appointed and Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

6. Objecting Landlord, described as "Hawks Cay Resorts," has been identified by Debtors as their largest unsecured creditor. *See Notice of Filing of Initial List of Creditors Who Have the 30 Largest Unsecured Claims and are Not Insiders* [D.I. 77].

7. On the Petition Date, Debtors filed the Financing Motion. Following the "first day" hearing in these Chapter 11 cases, on April 4, 2025, this Court entered its *Interim Order (A) Authorizing Debtors To Obtain Postpetition Financing Pursuant to Section 364 of the*

Bankruptcy Code, (II) Authorizing the Use Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (III) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, (IV) Granting Liens and Superpriority Claims; (V) Modifying the Automatic Stay, and (IV) Scheduling a Final Hearing [D.I. 40] (the “First Interim Order”).

8. On May 9, 2025, this Court entered its *Second Interim Order (A) Authorizing Debtors To Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Authorizing the Use Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (III) Granting Adequate Protection to the Prepetition Secured Parties Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, (IV) Granting Liens and Superpriority Claims; (V) Modifying the Automatic Stay, and (IV) Scheduling a Final Hearing [D.I. 134] (the “Second Interim Order”).* Exhibit B to the Second Interim Order is the Initial Approved Budget, a rolling 8-week cash flow budget ending the week of May 25, 2025.

III. ARGUMENT

A. The License Agreement Does Not Permit Assignment of an Interest in the License Agreement and Debtors Cannot Render License Provisions Unenforceable In Connection with Post-Petition Financing.

9. The Financing Motion seeks authorization for Debtors to obtain post-petition financing in the form of a senior secured debtor-in-possession term loan facility and a delayed draw term loan facility, as well as a “roll up” of Prepetition First Lien Secured Obligations. *See* Financing Motion at ¶ 7. In connection with the DIP Financing, the Debtors seeks to grant, as part of the DIP Collateral (and related Adequate Protection Liens), DIP Liens on “all property of the Debtors,” including, among other things, Debtors’ contracts, contract rights, properties, leases and other interests in leaseholds, and real property. Financing Motion at ¶ 2(j); Interim Order at ¶ 2(j).

10. As a threshold matter, as a matter of Florida law, Debtor cannot assign or convey an interest in its License Agreement for collateral purposes. It is well-established that the determination of property rights in the assets of a bankruptcy estate is a matter of state law. *Butner v. United States*, 440 U.S. 48, 54, 99 S.Ct. 914, 918 (1979); *O’Dowd v. Trueger (In re O’Dowd)*, 233 F.3d 197, 202 (3d Cir. 2000) (“While federal law defines what types of property comprise the estate, state law generally determines what interest, if any, a debtor has in property.”).

11. Under Florida law, a license is a personal, revocable privilege to use property for a specific purpose, not a property interest. *See generally Dance v. Tatum*, 629 So. 2d 127 (Fla. 1993). A license “conveys no interest in the land and may not be assigned or conveyed by the licensee.” *Nazia, Inc. v. Amscot Corporation*, 275 So.3d 702, 706 (Fla. 2019) (quoting *Brevard Cty. v. Blasky*, 875 So.2d 6, 12 (Fla. 2004)). Thus, under Florida law, a license agreement to use real property is generally *not assignable* unless the agreement explicitly permits assignment or the licensor consents. Here, Section 33.1 of the License Agreement is unambiguous:

This Agreement shall create the relationship of Licensor and Licensee between Hawks Cay Resort and Licensee, and no estate shall pass out of Hawks Cay Resort. Licensee has only a right to use the Premises, Parking Lots and/or any appurtenances thereto, as set forth in this Agreement, not subject to levy or sale and not assignable by Licensee except as expressly provided by this Agreement.

12. Section 43.1 of the License Agreement is even more explicit:

Licensee shall not assign, pledge, hypothecate or any other manner attempt to transfer the rights and obligations under this Agreement without the prior written consent of Hawks Cay Resort – which consent may be withheld by Hawk’s Cay Resort in its sole discretion.

(Emphasis added).

13. The inclusion of Debtors’ interest in the License Agreement in the broad “all prepetition and postpetition property” of the Debtors’ definition of the “DIP Collateral” sought by

the Financing Motion (*see* Interim Order ¶¶ 2(j) and 3(a)(i)) effectively strikes the anti-assignment and anti-encumbrance language of the License Agreement, or at the least, requires that this Court determine the language inconsistent with the provisions of the Bankruptcy Code vis-à-vis the Debtors' request for post-petition financing. Granting this aspect of the Financing Motion requires that this Court ignore specific contractual prohibitions, negotiated at arms-length, and which are otherwise enforceable under state law. Application of anti-assignment provisions that restrict the ability to encumber leases and rental agreements are critical to a landlord's ability to control its real property, to comply with its own financing and investment covenants, and any compromise of these provisions detracts from the marketability of their property as a whole.

14. Further, Debtors cannot find support for the grant of a lien on its interest in the License Agreement under the Bankruptcy Code. While Debtors' License Agreement is an agreement to use real property, and not a lease, Bankruptcy Code section 365(m) provides that "[f]or purposes of this section 365 and sections 541(b)(2) and 362(b)(10), leases of real property include any rental agreement to use real property." Bankruptcy Code section 365(d)(3) requires that the Debtor "timely perform *all of the obligations of the debtor*, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title." (Emphasis added). *See In re Cukierman*, 265 F.3d 846, 850 (9th Cir. 2001) ("Congress made the provision for trustee [or debtor-in-possession] compliance broad, extending it to cover all the obligations under a lease."). Debtors' purported grant of a lien on its License Agreement is a failure of post-petition performance, contrary to the terms of the License Agreement and the post-petition performance requirements of Bankruptcy Code section 365.

15. The problem with granting a security interest in the License Agreement, and the fundamental alteration of Debtors' License Agreement with Objecting Landlord, is highlighted by the events which would follow a default by Debtors under the proposed DIP Financing. The DIP Lenders would then seek to foreclose on their DIP Collateral, including the proposed security interest in the License Agreement. In that event, Objecting Landlord would be denied both the benefit of its bargain in entering into the License Agreement, as well as adequate assurance of future performance required by the Bankruptcy Code in the event of an assignment. *See* 11 U.S.C. § 365(b)(1)(C). Following a foreclosure, Debtors' lenders could potentially seek to sell and assign the License Agreement to another operator, thereby creating, among other things, uncertainty and the prospect of litigation over compliance with assignment restrictions and other covenants of the License Agreement as well as responsibility for the substantial outstanding arrearages in Debtors' monetary obligations under the License Agreement. These uncertainties "cloud" Objecting Landlord's interest in the licensed premises and objections to such uncertainty are more than justified. Indeed, this scenario is precisely what the Bankruptcy Code sought to avoid with the requirements of Section 365(b).

B. The Bankruptcy Code Does Not Provide Any General Right to Render Lease Provisions Unenforceable Under a Request to Obtain Financing Pursuant to Section 364.

16. Objecting Landlord objects to any provision in a final order that seeks blanket relief rendering provisions of the License Agreement unenforceable. Section 364, while authorizing Debtor to obtain financing, does not provide the Debtor or its DIP Lenders with authority to override or alter the terms of the License Agreement. Nothing in Section 364's language grants rights to alter leases and other real property agreements or to pre-empt or override the rights and protections otherwise granted to landlords under Section 365. More specifically, nowhere does Section 364 authorize the Debtors, for the benefit of a non-debtor, to render any provision of a

lease or rental agreement unenforceable. Congress knows how to grant such authority when it so chooses. *See, e.g.*, 11 U.S.C. § 365(e) and (f). If Congress intended to allow the Debtors to render lease provisions unenforceable in connection with post-petition financing, Congress would have included a provision similar to Section 365(f)(1) in Section 364 but did not. Thus, while the Debtor may obtain post-petition financing pursuant to Section 364, the Debtors cannot violate the terms of its nonresidential real property leases and similar agreements to do so.

17. There are two primary instances where the Bankruptcy Code can potentially render a lease provision unenforceable. The first instance is where a provision is a so-called “*ipso facto*” clause, i.e., a lease provisions that would purport to cause a default or termination based upon the: (i) insolvency or financing condition of the debtor; (ii) the commencement of a bankruptcy case; or (iii) the appointment of a trustee or custodian in a bankruptcy case. The Bankruptcy Code provides such a provision is unenforceable. *See* 11 U.S.C. § 365(e)(1). This section is inapplicable here to the relief sought by the Financing Motion.

18. A bankruptcy court may also render certain nonresidential lease provisions unenforceable pursuant to Section 365(f)(1). Bankruptcy Code section 365(f)(1) authorizes a debtor to assign an executory contract or unexpired lease (subject to compliance with Section 365(b) and (c)) to a third party, notwithstanding that such contract or lease otherwise prohibits or restricts assignment. Section 365(f)(1) provides a limited ability for the Bankruptcy Court to permit the assumption and assignment of a non-residential real property lease in connection with a motion to assume and assign a lease brought under Section 365, but only after the debtor and proposed assignee comply with the adequate assurance of future performance requirements set forth in Section 365(b) and (c). As the 2005 amendments to the Bankruptcy Code make clear, Section 365(f)(1) is specifically subject to the other subparagraphs of Section 365.

There is no reference in the Congressional record or caselaw that Section 365(f)(1) applies outside of a motion to assume and assign a lease.³

19. The changes embodied in the BAPCPA specifically preserve a nonresidential landlords' right to enforce use and other lease provisions. Even if Debtors' interest in the License Agreement was assignable, notwithstanding its terms and governing Florida law, in the absence of clear instruction from Congress to the contrary, there is no legitimate argument that Section 365(f)(1) can eviscerate the terms of the License Agreement with respect to a proposed collateral assignment, especially where the Debtors' authority to obtain financing does not even arise under Section 365.

20. BAPCPA clarified Section 365 to reflect the Congressional intent that Section 365(f)(1) cannot be used by debtors to avoid lease provisions. Therefore, to the extent Debtors seek to assign any interest in the License Agreement to its lenders, such attempted assignment must remain subject to all provisions of the underlying License Agreement – which prohibits it. There is no authority for the proposition that such an assignment (under the guise of pledging the Debtors' License Agreement as collateral), and independent of the safeguards of Sections 365(b)(3) and (f)(2), would be permissible, and no basis exists for Section 365(f)(1) to apply to render any provision of the License Agreement unenforceable at this time, as contemplated by the imposition of a lien on Debtors' license through the broad grant of liens on all property of the Debtors provided by the Financing Motion (at ¶ 10(c)) and the Interim Order (at ¶ 2(j) (DIP Collateral) and ¶ 3 (Adequate Protection Lien)).

³ Through the Bankruptcy Abuse Prevention And Consumer Protection Act of 2005 (“BAPCPA”), “Section 365(f)(1) [was] amended to make sure that all of the provisions of Section 365(b) are adhered to and that 365(f) of the code does not override Section 365(b).” Floor Statement of Senator Orrin Hatch, 151 Cong. Rec. S. 2459, 2461-62 (daily ed. March 10, 2005).

C. Objecting Landlord Is Entitled To Adequate Protection.

21. Unlike most motions seeking approval of post-petition financing and/or the use of cash collateral, Debtors' Financing Motion did not initially include a proposed post-petition budget. Indeed, the Financing Motion provides that an Initial Approved Budget shall be delivered to the DIP Agent and the DIP Lenders within fifteen (15) days after entry of the Interim Order. Interim Order at ¶ 2(e).

22. The Second Interim Order, however, attached an eight-week Initial Approved Budget. Given the Debtors' acknowledgement that they lack complete books and records as to Debtors' facilities, property and finances, the subject of pending requests for relief from this Court (*see Debtors' Motion For Entry of an Order (I) Compelling Debtors' Former Officers and Other Required Persons to Turn Over Records and (II) Granting Related Relief* [D.I. 7]), what assurance does Objecting Landlord, along with other creditors, have that this Initial Approved Budget is complete, capturing not just anticipated ordinary course expenses but non-recurring, transition expenses associated with these Chapter 11 cases? For example, the fees payable by Debtors under the License Agreement are based on gross receipts (Section 7 of License Agreement) which vary from month-to-month due to seasonality. Are these fluctuations with respect to the License Agreement, as well as similar gross receipts or revenue-based occupancy arrangements at Debtors' other locations, adequately accounted for in the Initial Approved Budget? Further, at the Section 341(a) Meeting of Creditors conducted on May 8, 2025 (the day prior to the filing of the Initial Approved Budget), Debtors' representatives acknowledged that Debtors' insurance coverage had certain "deficiencies." Assuming there are shortfalls in insurance coverage, does the Initial Approved Budget contain adequate estimates for additional premium costs to remedy shortfalls for insurance coverage for Debtors' on-going operations?

23. Notwithstanding this “state of play,” Debtors’ Financing Motion seeks a waiver of the bankruptcy estates’ rights under Bankruptcy Code sections 506(c) and 552 (*see* Interim Order ¶¶ 2(n), 7) without the filing of a Supplemental Approved Budget (*see* Second Interim Order at ¶ 2(e)) before a Final Order is entered, potentially leaving Objecting Landlord and other post-petition landlords and vendors vulnerable if the Initial Approved Budget (and any subsequent budget) is incorrect or incomplete. Indeed, the “Ending Cash Balance” at the end of the Initial Approved Budget is only \$121,000, leaving little “wiggle room.”

24. Under these circumstances, Objecting Landlord, along with Debtors’ other landlords and licensors, is entitled, at a minimum, to adequate protection under Bankruptcy Code section 363(e) with respect to the payment of accruing post-petition occupancy costs. It is well-settled that real property lessors are entitled to seek adequate protection. *See, e.g., Memphis-Shelby County Airport Authority v. Braniff Airways, Inc. (In re Braniff Airways, Inc.)*, 783 F.2d 1283, 1286-87 (5th Cir. 1986) (recognizing landlord’s right to adequate protection); *In re P.J. Clarke’s Restaurant Corp.*, 265 B.R. 392, 404 (Bankr. S.D.N.Y. 2001) (noting that a “landlord’s right to adequate protection seems to follow clearly from the language of § 363(e) . . .”); *In re Ernst Home Center, Inc.*, 209 B.R. 955, 965-66 (Bankr. W.D. Wash. 1997); *In re MS Freight Distribution, Inc.*, 172 B.R. 976, 980 n. 4 (Bankr. W.D. Wash. 1994) (“Section 363(e) by its express terms authorizes an entity whose property is to be leased by the debtor to seek adequate protection.”); *In re RB Furniture, Inc.*, 141 B.R. 706, 713 (Bankr. C.D. Cal. 1992) (adequate protection under § 363(e) may even be broader than the rights provided lessors under § 365(d)(3) given that it “is a fluid concept that reflects all the circumstances surrounding a debtor’s use of property.”).

25. Under the facts and circumstances of these Chapter 11 cases, the preservation of the Debtors’ ability to surcharge its lenders for the cost of preservation and potential disposition

of the DIP Collateral, including on-going occupancy costs for Debtors' operating locations, and the preservation of Debtors' "going concern" value, would be a form of adequate protection.⁴ Accordingly, Debtors should not be permitted to waive the bankruptcy estates' rights under Bankruptcy Code sections 506(c) and 552, as sought by the Financing Motion (at ¶ 10(e)).

26. Section 506(c) of the Bankruptcy Code allows a debtor to charge the costs of preserving or disposing of a secured lender's collateral to the collateral itself. 11 U.S.C. § 506(c). This provision ensures that the cost of liquidating a secured lender's collateral is not paid from unsecured recoveries. *See, e.g., Precision Steel Shearing v. Fremont Fin. Corp. (In re Visual Indus., Inc.)*, 57 F.3d 321, 325 (3d Cir. 1995) ("[S]ection 506(c) is designed to prevent a windfall to the secured creditor"); *Kivitz v. CIT Group/Sales Fin., Inc.*, 272 B.R. 332, 334 (D. Md. 2000) (stating that "the reason for [section 506(c)] is that unsecured creditors should not be required to bear the cost of protecting property that is not theirs"); *In re Codesco Inc.*, 18 B.R. 225, 230 (Bankr. S.D.N.Y. 1982) ("The underlying rationale for charging a lienholder with the costs and expenses of preserving or disposing of the secured collateral is that the general estate and unsecured creditors should not be required to bear the cost of protecting what is not theirs.").⁵ Similarly, the "equities of the case" exception in Bankruptcy Code section 552(b) allows a debtor, creditors' committee or other party-in-interest to exclude post-petition proceeds from pre-petition

⁴ The mere allowance of an administrative priority claim for accruing post-petition rents is not adequate protection. *In re Attorneys Office Management, Inc.*, 29 B.R. 96, 99 (Bankr. C.D. Cal. 1983) ("In §361(3) it is made clear that an administrative claim under § 503(b)(1) in itself will not constitute adequate protection.").

⁵ It is well-settled, however, that administrative claimants do not have an independent right to seek payment of otherwise unsatisfied claims under Section 506(c) from property encumbered by a secured creditor's lien since the statute reserves that right to a trustee (or debtor-in-possession in a Chapter 11 case). *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6, 120 S.Ct. 1942, 1947 (2000).

collateral on equitable grounds, including to avoid having unencumbered assets fund the cost of a secured lender's foreclosure or other disposition of assets. 11 U.S.C. § 552(b).

27. Here, these Chapter 11 cases can be fairly characterized as being run for the benefit of Debtors' lenders, as evidenced by the exercise of pre-petition collateral rights granted to remove all then-existing members of Debtors' boards of directors, the opportunity "to conduct free-and-clear asset sales, and the opportunity to restructure debts through a plan of reorganization" (see *Declaration of Steven Robert Strom In Support of The Debtors' Chapter 11 Petitions and First Day Pleadings* [D.I. 10] at ¶¶ 57-59, 62), as well as Debtors' payment of significant Upfront Fees. See DIP Credit Agreement at ¶ 2.06. Accordingly, the risk of administrative insolvency should be borne by Debtors' lenders, not post-petition creditors such as Objecting Landlord. Under such circumstances, the lenders should be required to fund the expenses of these benefits rather than escape any responsibility for occupancy costs through attempted waivers of Sections 506(c) and 552. In denying a Section 506(c) waiver in *In re Sports Authority Holdings, Inc.*, Case No. 16-10527 (MFW) (Bankr. D. Del.), Judge Walrath observed that where a Chapter 11 case is being run for the "benefit of the lenders," then "the lenders are going to have to pay the cost of that. And that includes all administrative. It includes the rent." April 26, 2016 hearing transcript in *In re Sports Authority Holdings, Inc.* [Docket No. 1463] at 194:10 to 195:16.⁶

28. In the simplest terms, the Initial Approved Budget is for eight weeks but the Section 506(c) waiver sought by the DIP Lenders (as well as the Prepetition First and Second Lien Secured Parties) would extend over the life of this case, leaving Objecting Landlord and other

⁶ Objecting Landlord's concerns regarding potential administrative insolvency are only heightened by the administrative insolvencies in several high-profile Chapter 11 cases such as *In re Big Lots, Inc., et al.*, District of Delaware Case No. 24-11967, and *In re Party City Holdco Inc., et al.*, Southern District of Texas Case No. 24-90621.

creditors at the risk of administrative insolvency. Indeed, there is no apparent requirement that a Supplemental Approved Budget be publicly-filed or be subject to any general creditor scrutiny before a Final Order is entered. Given the circumstances of these Chapter 11 cases, it is simply *too early* for a final (and permanent) waiver of the bankruptcy estate's surcharge rights should Debtors' and lenders' assumptions, based on currently incomplete information, turn out to be incorrect.

29. Debtors should not be allowed to waive their statutory ability to compel their lenders to "pay to play" in these Chapter 11 cases without providing Objecting Landlord with adequate protection. Either (1) any final order approving the Financing Motion should not waive Debtors' rights under Bankruptcy Code sections 506(c) and 552(b) without adequate provisions for the ultimate payment of ongoing occupancy obligations, or (2) the Financing Motion should be approved only a further, interim basis until there is greater clarity as to Debtors' financial condition.

IV. JOINDER

30. To the extent not inconsistent with the foregoing, Objecting Landlord hereby joins in, adopts and incorporates by reference, any objection to Debtors' Financing Motion filed by Debtors' other creditors.

V. CONCLUSION

31. For the foregoing reasons, this Court should not enter a Final Order granting DIP Lenders and the Prepetition First and Second Lien Secured Parties the rights described in Debtors' Financing Motion, insofar as they attempt to assign a collateral interest in Debtors' license to use a portion of the Hawks Cay Resort property, in violation of the terms of the License Agreement with Objecting Landlord and Section 365 of the Bankruptcy Code. Adequate provisions must be

made in any budget for the payment of accruing post-petition occupancy costs, as well as appropriate contingencies. Debtors should not be permitted to waive the bankruptcy estates' rights under Bankruptcy Code sections 506(c) and 552 absent adequate protection of Objecting Landlords' rights to receive payment of post-petition occupancy costs.

Dated: May 14, 2025
Wilmington, Delaware

Respectfully submitted,

/s/ Laurel D. Roglen

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CERTIFICATE OF SERVICE

I, Laurel D. Roglen, hereby certify that, on this 14th day of May, 2025, I caused a true and correct copy of the foregoing ***Limited Objection of Keys Hotel Operator Inc. to Debtors' Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Authorizing the Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, etc.*** to be served upon all parties who have requested notice in this case via the Court's CM/ECF system.

Dated: May 14, 2025
Wilmington, Delaware

/s/ Laurel D. Roglen
Laurel D. Roglen
BALLARD SPAHR LLP