

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

<p>In re:</p> <p>HRI HOLDING CORP., et al.,</p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 19-12415 (Jointly Administered)</p> <p>Hearing Date: December 13, 2019</p> <p>Ref. Docket Nos.: 14, 89</p>
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SUPPLEMENT TO LIMITED OBJECTION AND RESERVATION OF RIGHTS OF LEVIN MANAGEMENT CORPORATION, AS AGENT FOR HARMON MEADOW OWNER, LLC TO DEBTORS' NOTICE OF ASSUMPTION AND CURE COST WITH RESPECT TO EXECUTORY CONTRACTS OR UNEXPIRED LEASES POTENTIALLY TO BE ASSUMED AND ASSIGNED IN CONNECTION WITH SALE OF DEBTORS' ASSETS¹

Levin Management Corporation, agent for the Harmon Meadow Owner, LLC (the "Landlord"), by and through its counsel, hereby files the following supplement to the limited objection and reservation of rights (the "Objection") to the above-captioned debtors' (the "Debtors") Notice of Assumption and Cure Costs (the "Cure Notice").

1. Landlord previously file an objection, specifically to the cure amount for property known as 700 Plaza Drive, Secaucus, NJ at the Plaza at Harmon Meadow, also designated as Store # 233 by the Debtors (the "Lease"), which is owed \$111,256.18, plus any unbilled amounts.

2. Landlord noted that it did not object to assumption of its respective Lease, but did object to the cure amount as noted, as well as any request to extend the time to assume or reject.

3. Landlord modifies its objection to also include that all provisions of the Lease, including the guaranty that exists, should be complied with in any assumption.

4. Upon designation of a lease for assignment, Debtors must demonstrate adequate assurance of future performance. 11 U.S.C. § 365(b)(1)(C); see also 11 U.S.C. § 365(f)(2).

¹ All capitalized terms shall have the same meaning as provided in the December 5, 2019 Limited Objection.



5. Debtors bear the burden of persuasion under Section 365. See In re Lafayette Radio Electronics Corp., 12 B.R. 302, 312 (Bankr. E.D.N.Y. 1991); In re Rachels Industries, Inc., 109 B.R. 797, 802 (Bankr. W.D. Tenn. 1990); see also Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1309 (5th Cir. 1985) (Holding a specific factual showing through competent evidence to determine adequate assurance of future performance). See e.g., Matter of Haute Cuisine, Inc., 58 B.R. 390 (Bankr. 5 M.D. Fla. 1986) (even though experts presented cash flow projections, the court found that insufficient documentary evidence had been presented).

6. Section 365(b)(3) heightens the adequate assurance requirements for shopping center leases. See In re Sun TV and Appliances, Inc., 234 B.R. 356, 359 (Bankr. D. Del. 1999). To assume and assign shopping center leases, Debtors must satisfy the heightened requirements set forth in 11 U.S.C. § 365(b)(3)(A) - (D). See In re Joshua Slocum, 922 F.2d at 1086; see also L.R.S.C. Co. v. Rickel Home Centers, Inc. (In re Rickel Home Centers, Inc.), 209 F.3d 291, 299 (3d Cir. 2000). The heightened adequate assurance includes:

- the source of rent and that the financial condition and operating performance of the proposed assignee and its guarantors, if any, must be similar to the financial condition and operating performance of the debtor and its guarantor(s), if any, as of the time the debtor became the lessee. See 11 U.S.C. § 365(b)(3)(A);
- any percentage rent due under the lease will not decline substantially. See 11 U.S.C. § 365(b)(3)(B);
- assumption and assignment of the lease is subject to all provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision, and will not breach of any such provision in any other lease, financing agreement, or master agreement relating to such shopping center. See 11 U.S.C. § 365(b)(3)(C); and
- assumption and assignment of the lease will not disrupt the tenant mix or balance in the shopping center. See 11 U.S.C. § 365(b)(3)(D).

17. Here, the Landlord's Lease provided a guarantee.

18. The adequate assurance package provided only contains a limited guarantee.

19. As such, Landlord requests additional adequate assurance to conform with the guarantee provided with the Lease.

**JOINDER IN OBJECTIONS RAISED BY OTHER LANDLORDS
AND RESERVATION OF RIGHTS**

20. To the extent consistent with the objections expressed herein, Landlord also joins in the objections of other lease counter-parties. Further, Landlord reserves all rights to make further and/or future objections based upon any facts or arguments that come to light prior to the hearing on these issues.

WHEREFORE, Landlord respectfully requests that any order entered be consistent with their objections, and that the Court grant such other and further relief as is just and proper.

JOHN R. WEAVER, JR., P.A.

By: /s/ John R. Weaver, Jr.
John R. Weaver, Jr.

Dated: December 13, 2019

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