Docket #0536 Date Filed: 11/10/2026

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

IN RE:	Chapter 11
BRD LAND & INVESTMENT, et al.	Case No. 26-30215
Debtors.[1]	(Jointly Administered)

DEBTOR'S SUPPLEMENTAL BRIEF IN OPPOSITION TO DLP CAPITAL LENDING CH LLC'S RENEWED MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND REQUEST FOR INTERIM HEARING UNDER SECTION 362(e) OF THE BANKRUPTCY CODE

BRDL Warden Station, LLC (the "Debtor"), debtor and debtor in possession in the above-captioned case, submits the following supplemental brief (the "Brief") in opposition to *DLP Capital Lending CH LLC's Renewed Motion for Relief from the Automatic Stay and for Adequate Protection and Request for Interim Hearing under Section 362(e) of the Bankruptcy Code* [Docket No. 475] (the "Second Motion"). In support of this Brief, the Debtor respectfully states as follows:

The Court need not hear several witnesses, need not take live testimony and need not allow the admission of evidence to determine whether DLP[2] is entitled to any relief. Instead, as was argued in the Debtor's Response, DLP has failed to meet its burden.

In fact, DLP's own allegations and evidence mandate that the Second Motion be denied. The exchange of declarations, affidavits and exhibits on Friday, November 6, 2026, reinforces that conclusion. Consequently, the Debtor respectfully requests the Court deny the Second Motion on the papers or otherwise allow argument at the beginning of the hearing on November 17, 2026, to

[1] The Debtors in these jointly administered cases are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): BRD Land & Investment, a South Carolina partnership (6940), BRDL Warden Station Holding Co LLC (0184), and BRDL Warden Station, LLC (4687). The Debtors' address is 6433 Bannington Road, Charlotte, NC 28226.
[2] Capitalized terms not defined herein shall have the meaning given to them by the Response or the Second Motion.

determine whether the Court and parties must slog through a hearing based on papers showing DLP is not entitled to any relief.

DLP's claim[3] is the first input into an equity analysis.

DLP asserts various claim amounts in the Second Motion and the *Declaration[4] of Josh Fuller in Support of DLP Capital Lending CH LLC's Renewed Motion for Relief from the Automatic Stay and for Adequate Protection* (the "Fuller Declaration"), blending the prepetition claim amount and post-petition fees and interest under Section 506(b). The Second Motion does not cite its prepetition claim amount but instead asserts total claims of $13,373,341.31 as of July 22, 2026, Second Motion, ¶ 55; and $15,975,632.56 as of April 1, 2027, Second Motion, ¶ 57.

The Fuller Declaration provides additional detail, starting with the prepetition principal balance of $10,838,000.00, Fuller Dec., ¶ 26, and an acknowledgement that all prepetition interest had been paid, Fuller Dec., ¶ 24 ("From June 1, 2025 through February 1, 2026, BRD kept the monthly interest payments current.").

The Fuller Declaration then asserts claim amounts[5] plus projected real estate taxes of $14,438,637.59 as of September 30, 2026, Fuller Dec., ¶ 56; $14,638,565.81 as of October 31,

[3] The specific starting point for DLP's claim is its prepetition claim asserted in an amount of $12,178.387.00 in Amended Claim No. 4, consisting of principal, accrued interest, default interest, principal late fee, exit fee, appraisal fee and a loan release fee. In the Second Motion and Fuller Declaration, DLP asserts entitlement to post-petition interest and fees, which is only available to a secured creditor under Section 506(b) if the secured creditor is over-secured—in other words, if equity exists in the collateral. DLP's assertion that it is entitled to post-petition interest and fees is an admission that it is oversecured and that equity exists in Warden Station, consequently pushing the parties to a second level of analysis—at which point, if ever, might the equity cushion deteriorate to $0. Because DLP admits an equity cushion, the Debtor focuses its argument on this second level of analysis.

[4] The Declaration was provided to the Debtor on November 7, 2026, the deadline by which the parties agreed to exchange exhibits and declarations. The Debtor does not include the Declaration in full here (but understands the Court has requested the exchanged declarations) and provides citations for ease of reference. For the avoidance of doubt, the Debtor reserves all rights to object to its admissibility in whole or in part.

[5] For the avoidance of doubt, the Debtor disputes several of the line items and categories of claim amounts asserted in the Fuller Declaration and Second Motion, including but not limited to default interest, late fees, legal fees, exit fees, and principal late fees. See, e.g., In re Bate Land & Timber, LLC, 541 B.R. 601, 613 (Bankr. E.D.N.C. 2015) (analyzing factors to determine whether an oversecured creditor is entitled to default interest). Even if those line items and categories were properly collectible, though, DLP is still not entitled to stay relief.

2026, id.; $14,806,396.60 as of the hearing date, November 17, 2026, according to DLP's October 31, 2026, balance multiplied by seventeen (17) days of interest accruing at $7,225.34 each day plus DLP's projected real estate taxes, Fuller Dec., ¶ 58; and $15,975,632.56 as of April 1, 2027, Fuller Dec., ¶ 56.

Warden Station's value is the second input into an equity analysis.

Once establishing the possible claim amount as well as DLP's position as an over-secured creditor, the Court must then establish the value of the collateral itself to determine whether equity exists. Here, DLP commits several fatal flaws. The first is its failure to offer any independent valuation opinions. Neither the Fuller Declaration nor the *Declaration of Adam McAbee* [Docket No. 527] (the "McAbee Declaration")[6] provide any independent valuation of Warden Station. Consequently, DLP fails to put Warden Station's value and the Debtor's statements as to that value at issue. In fact, DLP's only independent evidence of value is found in its proposed Exhibit 3 consisting of Horry County tax bills from 2025, which show an appraised taxable value of roughly $17.5 million.

The first fatal failure inevitably leads to DLP's second fatal failure—relying on the Debtor's own valuations of Warden Station. And that second fatal failure leads to a third—DLP cites to and focuses on the Debtor's *hypothetical* liquidation values of $10.5 million to $12 million. See Fuller Dec., ¶ 73; Second Motion, ¶¶ 2, 44, 47, 49, 51, 55, 56, 58, 77.

Consequently, with DLP parroting the Debtor's hypothetical liquidation values, DLP provides no reason for the Court to reject the Debtor's projected gross proceeds of roughly $18 million found in the Liquidation Budget attached as Exhibit A to the Disclosure Statement. Ultimately, DLP fails to offer its own valuation, instead picking the lowest values provided by the

[6] The Debtor reserves its rights to challenge the admission of the McAbee Declaration as well as Mr. McAbee's qualifications as an expert witness.

Debtor despite those values' irrelevance, consequently leaving unchallenged the Debtor's values of $16 million asserted in the response and $18 million asserted in the Disclosure Statement.

Equity exists in Warden Station—confirmed by DLP's own arguments and evidence—supporting denial of DLP's requested relief.

By its own arguments and evidence, DLP fails to meet its burden. The moving party "has the initial burden of proving cause exists for relief from the automatic stay, including lack of adequate protection, and lack of equity in the property." In re Morgan, 630 B.R. 476, 479 (Bankr. D.S.C. 2021); see also Response, ¶ 8; 11 U.S.C. § 362(g)(1). In examining whether equity exists in a property, "the term 'equity' means the difference between the value of the property and encumbrances against it." First Am. Bank v. Monica Rd. Assocs., 147 B.R. 385, 389 (Bankr. E.D. Va. 1992); see also Response, ¶ 11.

DLP first fails to carry its burden because it fails to offer any independent valuation of Warden Station that the Court could reference to analyze the collateral's equity. Second, DLP fails to carry its burden because equity exists by DLP's own calculations[7] and the market-value figure provided by the Debtor in the same documents used by DLP to cite hypothetical liquidation values. DLP itself acknowledges this equity cushion still existing in April 2028. See Second Motion, ¶ 72 (asserting a two percent (2%) equity cushion totaling $195,898.44 measured against a prior contractual price of $16,171,531).

More specifically, the roughly $18.3 million value cited by the Debtor in its Disclosure Statement generates equity of nearly $3.5 million—a nineteen percent (19%) equity cushion—as of the November 17, 2026, hearing date. Even using the potential alternative $16 million purchase

[7] Again, the Debtor disputes certain of the line-items and categories of charges generating DLP's total asserted prepetition and post-petition claims. In other words, the equity cushion is larger than argued herein. In any event, the category-by-category analysis is unnecessary given the equity cushion that exists counting every dollar DLP asserts it is owed.

price generates equity of nearly $1.2 million, representing a seven percent (7%) equity cushion as of November 17, 2026, if DLP were entitled to each and every assertion of its damages, which it is not. Removing inappropriate charges such as default interest, late fees and the late principal fee drops DLP's claim and projected real estate taxes to nearly $12.9 million, which in turn generates equity of $3.1 million, representing a nineteen percent (19%) equity cushion.

DLP's own cases support the conclusion that its interest is adequately protected as of November 17, 2026. See Second Motion, ¶ 70 (citing case law for the proposition that a twenty percent (20%) or greater equity cushion constitutes adequate protection and equity cushions between twelve percent (12%) and twenty percent (20%) are analyzed on a case-by-case basis). Ultimately, the claim amount and value as of the hearing date should guide the parties and the Court in its analysis, which provides an equity cushion of roughly twenty percent (20%) at a sale price of roughly $18 million and counting every dollar DLP asserts as collectible or alternatively an equity cushion of roughly nineteen percent (19%) at a sale price of roughly $16 million while still providing for DLP's principal, post-petition interest and certain miscellaneous fees and charges, which the Debtor still disputes. See In re Deep River Warehouse, Inc., 2005 Bankr. LEXIS 1090, at *24 (Bankr. M.D.N.C. March 14, 2005) ("[I]t is appropriate in the context of a motion seeking relief from the automatic stay to value the property subject to the creditor's claim as of the date of the hearing inasmuch as the hearing date provides the best approximation of the extent of the debtor's equity in the property that exists to adequately protect the creditor should its motion be denied.").

In fact, even if an equity cushion erodes, courts may review the erosion in the context of the then-existing equity cushion. See In re Rogers Dev. Corp., 2 B.R. 679, 685 (Bankr. E.D. Va. 1980) ("In this case the Court concludes that although the amount of the equity cushion may

decrease daily as a result of the accruing interest and other cost exceeding any enhancement of value in the security, the amount of the cushion is sufficiently large at this time to make a grant of the relief from stay a premature action.").

The Court can deny the Second Motion without taking testimony or evidence.

In sum, the Court and parties need not spend hours taking testimony and evidence because the Second Motion fails based on its own arguments and assertions. For the first input, DLP's own claim amounts show equity cushions in Warden Station as of the Petition Date and into the spring of 2027. For the second input, DLP provides no independent value for Warden Station. Ultimately, DLP fails to meet its burden[8] to entitle it to any of the relief sought. And because DLP fails to meet its burden on the papers, faring no better with its proposed exhibits and declarations, the Debtor believes the Court can dispense with the time and expense of an evidentiary hearing because DLP itself has shown it is not entitled to any relief.

Dated: November 10, 2026
Charlotte, North Carolina

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[8] Even if DLP manages to carry its burden and show a lack of equity, it must then show that Warden Station is not necessary for an effective reorganization. See Response, ¶ 8. DLP cannot. See In re Conroe Forge & Mfg. Corp., 82 B.R. 781, 785 (Bankr. W.D. Pa. 1988) ("In a liquidating Chapter 11 where Debtor has ceased operations and collateral value is not decreasing, ordinarily all property will be necessary for an effective reorganization."); In re Kadlubek Family Revocable Living Trust, 545 B.R. 660, 666-67 (Bankr. D.N.M. 2016) ("Under a liquidation plan, property may further the interest of the estate or creditors if retaining and liquidating it would benefit the estate.").