**UNITED STATES BANKRUPTCY COURT**
**WESTERN DISTRICT OF NORTH CAROLINA**
**CHARLOTTE DIVISION**

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| In re: | Chapter 11<br>Case No. 26-30215 (LTB)<br>(Jointly Administered) |
| **BRD LAND & INVESTMENT, et al.,** | |
| Debtors. | Hon. Laura T. Beyer<br>Hearing Date: November 17, 2026, 9:30 a.m.<br>Related Doc. Nos. 475, 495, 500, 505, 527 |

**SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF DLP CAPITAL LENDING CH LLC'S RENEWED MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND FOR ADEQUATE PROTECTION**

DLP Capital Lending CH LLC ("DLP LendingCH" or "DLP"), by and through undersigned counsel, respectfully submits this Supplemental Memorandum of Law in support of its *Renewed Motion for Relief from the Automatic Stay and for Adequate Protection* [Doc. No. 475] (the "Renewed Motion"), in reply to the *Debtors' Response* [Doc. No. 495] (the "Response") and the *Affidavit of William B. Lilly, Jr.* which Debtors intend to submit in support of the Response (the "Lilly Affidavit" or "Lilly Aff."), and in reliance on the *Declaration of Adam McAbee* dated November 6, 2026, and the Zonda market study attached to it [Doc. No. 527] (the "McAbee Declaration" or "McAbee Decl."), and states as follows.

**PRELIMINARY STATEMENT**

The Debtors' own October 2026 cash reports and Monthly Operating Reports establish BRDL Warden Station, LLC, the entity that owns DLP's collateral and that owns nothing else, has a total of **$29.65** in the bank, a balance that has not changed since March 2026.

Every day the senior real estate tax lien on DLP's collateral grows by $926.08 reducing the value of DLP's interest dollar for dollar. DLP's claim grows by another $7,225.33 in contract interest, a combined **$8,151.41 per day**, or roughly $244,928 every thirty days, charged against



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land that produces no income and is worth less to DLP every day.

The Response does not engage with any of this. It argues instead that three undisclosed "offers" of $15 million to $18 million, described only generally in the Lilly Affidavit and withheld "to protect the ongoing negotiations," prove an equity cushion, so DLP is "oversecured" and needs no adequate protection. Resp. ¶¶ 14–16, 21; Lilly Aff. ¶¶ 14–16. That argument fails on its own terms. At the low end of the Debtors' own range ($15 million), DLP is underwater by approximately $890,803 once the 7% cost of sale the *Debtors themselves* apply in their Liquidation Analysis and the senior tax lien are deducted. At the Debtors' own "fair market value" figure of $16,171,531, the cushion is approximately $198,720 (about 1.2% of gross price), which the per diem erases in roughly twenty-four days. Only at the very top of the Debtors' speculative range does any cushion appear, and even that is before any § 506(c) surcharge, carve-out, or further accrual. *See* Table 1.

The Lilly Affidavit confirms that arithmetic. The Debtors' own broker testifies that the value of Warden Station has been, at best, flat since June 2026: roughly $16 million then, and $15 million to roughly $18 million now. Lilly Aff. ¶ 15. Flat value against a senior tax lien that has nearly doubled during this case is erosion. The affidavit also concedes that the June contract collapsed in due diligence and that the Bucksport Water System utility agreement, "the single most significant of the contingencies in any transaction," was never ratified, "leaving the project without assured water and sewer service." *Id.* ¶¶ 11, 13. Nor will time rescue the Debtors: DLP's market expert, Adam McAbee of Zonda, testifies that Conway is oversupplied with vacant developed lots and that any builder of Warden Station will need approximately fourteen years to sell the last home. McAbee Decl. ¶¶ 4–5, 14. And the market has deteriorated while this case has been pending: Conway's vacant developed lot inventory rose roughly 24% between the last full quarter

before the Petition Date and the third quarter of 2026, to an "all-time high," while Moody's forecasts "slight price declines in 2026." *Id.* Ex. A.

The Response's legal framing fares no better. The Debtors invoke *In re Westchase I Associates* for the proposition that adequate protection requires a demonstrated decline in the value of the collateral, and assert that "the pertinent snapshot in time is today." Resp. ¶¶ 20, 22. But the collateral *is* declining in value to DLP, and measurably so: the senior tax lien ahead of DLP has grown from approximately $323,107 on the Petition Date to approximately $635,018 today; the entitlements that supply nearly all of its value are in default or unfunded; it is uninsured as to DLP; and the Plan's own definition of "Net Sale Proceeds" exposes it to a § 506(c) surcharge DLP has never consented to. A snapshot taken today shows a mortgagee whose collateral is worth less to it each morning than it was the night before.

Nor can the Debtors have it both ways. If DLP is oversecured, as the Response insists, its claim accrues under § 506(b) and consumes the very cushion the Debtors rely on. If DLP is undersecured, as the Debtors' own Liquidation Analysis suggests by valuing Warden Station at $10.5 to $12 million against secured debt of $11,422,328, then DLP receives no postpetition interest under *Timbers* and suffers wholly uncompensated delay. Either way, DLP loses, and it loses every day.

Finally, the Debtors have not shown how they can confirm the Plan they have proposed. Section 1129(a)(9)(A) requires that allowed administrative claims be paid in full, in cash, on the Effective Date[1] absent each holder's agreement. The estate continues to accrue professional fees, seeks to employ another professional at an $85,000 flat fee, and faces Liquidating Agent

[1] The Plan defines Effective Date as "first Business Day following the thirtieth (30th) day after the day upon which the Confirmation Order becomes Final Order. Thus, with a December 9, 2026, confirmation hearing the soonest the Effective Date can be is January 25, 2027.

compensation, quarterly fees, post-petition real estate taxes, and a broker commission. Warden Station has $29.65 in cash and has identified no funds to pay the City of Conway $297,500,[2] Bucksport Water System, the county tax collector, or an insurer. The Debtors have disclosed neither the cash to pay administrative claims on the Effective Date nor the claimants' agreement to defer them, as § 1129(a)(9)(A) requires. And a liquidating plan premised on a sale that has not materialized, and cannot close without a Bucksport agreement, is not feasible under § 1129(a)(11).

## SUPPLEMENTAL FACTUAL BACKGROUND

### *A. The Collapsing Value Trail and the Unfiled "Offers."*

The valuation record in this case has moved in one direction. The Property was scheduled at $26,775,231.65. The Debtors' broker then marketed it, and the Greenstead transaction, which failed, was priced at $16,171,531, a figure the Debtors characterized as fair market value. The Debtors' own Liquidation Analysis now values Warden Station at $10.5 to $12 million. Renewed Mot. ¶ 77.

Against that trajectory, the Response asserts that "three offers" between $15 million and $18 million establish equity. Resp. ¶ 16. As of this filing, no offer has been filed with the Court, and any contract signed before the hearing would remain subject to the Bucksport agreement Mr. Lilly calls "the single most significant" contingency. Lilly Aff. ¶ 13. Mr. Lilly withholds the offers' terms, contingencies, financing, diligence periods, and offerors "to protect the ongoing negotiations," describing them only as carrying "varying terms." *Id*. ¶¶ 14, 16. The Debtors concede that comparisons are "challenging," Resp. n.6, and place value at $15 to $18 million only

[2] See the Debtors' own Schedules which list City of Conway as owed $297,500, a cure this Court required to be paid at the previous attempted sale to Greenstead.

"depending upon continued negotiations," id. ¶ 21. An offer subject to continued negotiation is not a valuation; it is an aspiration.[3]

***B. The October 2026 Cash Reports: Warden Station Has $29.65.***

Attached as Exhibits A and B are the Debtors' cash reports as of November 5, 2026.

Warden Station's Wells Fargo account ending 9685 held $29.65 as of October 31, 2026. Warden Station has no income, little cash, and no capacity to pay real estate taxes, insurance premiums, the City of Conway, Bucksport Water System, or any professional. Its sworn August 2026 Monthly Operating Report likewise reports an opening balance of $29.65.[4] It is, in the most literal sense, a shell holding DLP's dirt.[5]

## ARGUMENT

### I. CAUSE EXISTS TO LIFT THE STAY UNDER § 362(d)(1) BECAUSE DLP IS RECEIVING NO ADEQUATE PROTECTION WHILE SENIOR TAX OBLIGATIONS AND OTHER COLLATERAL RISKS REMAIN UNADDRESSED.

Section 362(d)(1) requires the Court to grant relief from the stay "for cause, including the lack of adequate protection of an interest in property." 11 U.S.C. § 362(d)(1). Adequate protection may take the form of periodic cash payments, additional or replacement liens, or the "indubitable equivalent" of the creditor's interest. *Id.* § 361. The burden allocation is statutory and lopsided:

[3]The Debtors also dispute approximately $1.6 million of DLP's claim, comprising default interest, legal fees, and the principal late fee. Resp. n.4. That dispute narrows, but does not close, the gap. Even excluding the entire disputed amount, the margins at the low end of the Debtors' own range remain thin once the 7% cost of sale, the senior tax lien, and the continuing per diem are applied. The disputed components are, in any event, disavowed by the fact the Debtor was aware of the default. The Debtor's principal asked DLP for forbearance agreements and was notified in writing the loan would remain in default.

[4] Doc. No. 32.

[5] The Debtors are not substantively consolidated. To the extent the Debtors contend another Debtor solves administrative insolvency that is not the case. BRD Land & Investment's Wells Fargo account ending 1569 closed October 2026 at $649,219.18, with unpaid professional fees and fees accruing. In addition, Debtors applied to employ Robert S. Guyton, P.C. ("Guyton Law") as additional special South Carolina transactional counsel, for a flat fee of $85,000, plus expenses. Doc. Nos. 510, 511, 525. The estate also owes the Liquidating Agent's hourly compensation (Plan § 9.7), City of Conway's $297,500, Bucksport fees, quarterly fees (28 U.S.C. § 1930; Plan § 9.8), and a broker commission at any closing.

the movant bears the burden only on the issue of equity, and "the party opposing such relief has the burden of proof on all other issues." *Id.* § 362(g). The Debtors therefore bear the burden of establishing that DLP *is* adequately protected. They have not attempted to carry it.

DLP has received no adequate protection payments at any time in this case. Meanwhile, contract interest accrues at $7,225.33 per day under the Note, and the senior real estate tax lien grows at $926.08 per day. That is a combined $8,151.41 daily, $244,928.12 every thirty days, and roughly $2.98 million annualized, all charged against undeveloped land that is not being improved, is not generating income, and is not being maintained.[6] The continuance of the hearing on the Renewed Motion from October 28 to November 17, 2026 alone added approximately $163,028.20 (twenty days at $8,151.41).

The Fourth Circuit instructs that the stay-relief inquiry under § 362(d)(1) is equitable and fact-bound, requiring the bankruptcy court to balance the hardships to the parties. *In re Robbins*, 964 F.2d 342, 345 (4th Cir. 1992). That balance here is not close. Protecting DLP would cost the Debtors little beyond what the loan documents and their own budget already contemplate, while DLP's position erodes by $8,151.41 for each day it goes unpaid. And although the Debtors' professionals continue to be paid in cash, the secured creditor whose collateral is the estate's principal asset has received nothing.

***A. The Debtors' Reliance on Westchase and Benfield Overlooks That DLP's Interest in the Collateral Is Declining.***

The Response's central legal move is to invoke *In re Westchase I Associates*, 126 B.R. 692, 694 (W.D.N.C. 1991), and *In re Jeff Benfield Nursery, Inc.*, 565 B.R. 603, 614–15 (Bankr. W.D.N.C. 2017), for the proposition that adequate protection is owed only where the collateral is

[6]Renewed Mot. ¶¶ 50–51; see Table 1. The $29.65 balance in Warden Station's account confirms that no maintenance, no insurance, no tax payment, and no entitlement funding is occurring.

declining in value, and then to assert that no decline has been shown. Resp. ¶¶ 20, 24. The Debtors misapply the cases by treating "value of the collateral" as "appraised value of the dirt in the abstract," divorced from the creditor's actual position in it. *Benfield* itself protects against any decrease in "the value of the secured creditor's interest in the collateral." Resp. ¶ 20.

The protected interest is the *secured creditor's interest in the property*, not the gross appraised value of the land. 11 U.S.C. § 361. A mortgagee's interest erodes whenever the value reachable by that mortgagee at a sale declines, and here it is declining through at least four independent and documented channels:

**First, the senior tax lien.** Unpaid real estate taxes stood at $338,018.63 as of May 31, 2026 and are accruing at $28,168.22 per month. Renewed Mot. ¶¶ 30, 51. As of April 1, 2027 the real estate taxes due and owing will be $679,901.15. Those taxes prime DLP's mortgage and must be paid at closing from the same proceeds DLP looks to. Every month of delay transfers approximately $28,168 of recovery from DLP to Horry County. That is a decline in the value of DLP's interest in the most direct sense the Code recognizes; it is the paradigm case. *Cf. In re James River Associates*, 148 B.R. 790, 796–97 (E.D. Va. 1992) (equity cushion of roughly 2% was insufficient where it was being eroded by accruing interest and delinquent real estate taxes).

**Second, the § 506(c) and carve-out exposure.** The Plan defines "Net Sale Proceeds" as sale proceeds less closing costs *and less any § 506(c) costs*. Plan § 1.2.49. DLP has consented to no surcharge and no carve-out, but the exposure embedded in the Plan the Debtors ask this Court to confirm is a present diminution in what DLP can expect to realize. *See* Part V, infra.

**Third, the entitlement risk.** As set forth above, the Conway Development Agreement and the Bucksport Utility Development Agreement have carry funding obligations that Warden Station, with $29.65, cannot satisfy. A default under the Conway Agreement permits the City to

withhold permits and to terminate or modify the Agreement. Entitlements that lapse do not lapse gradually; they lapse.

**Fourth, the uninsured casualty and liability exposure.** An uninsured 1,800-acre parcel on which third parties are hunting from elevated stands and driving past closed gates is a parcel exposed to loss that no one will pay for.

***B. The Debtors' "Oversecured" Argument Is a Trap That Closes on Them Either Way.***

The Response argues that DLP must be oversecured because DLP claims postpetition interest, and reasons that "[i]f no equity exists . . . [DLP's] claim is frozen . . . [and] daily interest of $7,225.33 would not be accruing." Resp. ¶¶ 14–15 & n.5. The argument is circular, because it infers the collateral's value from the contents of DLP's proof of claim. It is also self-defeating.

DLP's claim figures reflect *contractual* accrual under the Note. Whether that accrual is ultimately *allowed* under 11 U.S.C. § 506(b) is a separate question, not presented here, and DLP reserves all rights on it. But take the Debtors' dichotomy on its own terms:

> **If DLP is oversecured,** then § 506(b) entitles it to postpetition interest and reasonable fees, and those amounts accrue against and consume the very equity cushion the Debtors invoke. At $7,225.33 per day in interest alone, the cushion at the Greenstead price is gone in under twenty-eight days. The Debtors' premise destroys their conclusion.
>
> **If DLP is undersecured,** as the Debtors' own Liquidation Analysis indicates, then under *United Savings Association of Texas v. Timbers of Inwood Forest Associates*, 484 U.S. 365, 372–73 (1988), DLP receives no postpetition interest whatsoever and is suffering months of wholly uncompensated delay in realizing on its collateral. That is the precise injury for which stay relief exists.

***C. Any Equity Cushion Is Too Thin to Constitute Adequate Protection, and It Is Shrinking.***

An equity cushion can supply adequate protection, but only if it is substantial enough to absorb the creditor's accruals and the costs of sale during the time the debtor needs. Courts have generally treated cushions below roughly 11% as insufficient and those above roughly 20% as

adequate, with the middle range turning on the facts. *See In re McKillips*, 81 B.R. 454, 458 (Bankr. N.D. Ill. 1987); *In re McCullough*, 495 B.R. 692, 696 (Bankr. E.D.N.C. 2013); *NationsBank of Va., N.A. v. DCI Publishing of Alexandria, Inc.*, 160 B.R. 538, 541 (Bankr. E.D. Va. 1993); *In re L & M Properties, Inc.*, 102 B.R. 481, 483–84 (Bankr. E.D. Va. 1989).

Table 1 applies the Debtors' own 7% cost of sale and the senior tax lien to the Debtors' own range of asserted values. The results defeat the Response.

At $15,000,000, the bottom of the range the Debtors themselves assert, DLP is short by approximately $890,803.43. At $16,171,531, the Greenstead price the Debtors called fair market value, the cushion is approximately $198,720.40, or 1.2% of gross price, which the combined per diem of $8,151.41 erases in roughly twenty-four days. A 1.2% cushion is thinner than the roughly 2% cushion rejected in *James River Associates*, 148 B.R. at 796–97, and is eroding for the identical reason: accruing interest and delinquent taxes. Only at $18,345,621, the top of the Debtors' asserted range, does a cushion of approximately $2.22 million (12.1%) appear, and that figure is stated before any § 506(c) surcharge, before any carve-out, and before further accrual at $244,928.12 per thirty days.

And the Debtors' Liquidation Analysis, which is their own sworn estimate and not DLP's, values Warden Station at $10.5 to $12 million against secured debt of $11,422,328, projecting a shortfall of ($922,096) at the low end. Doc. No. 452, Ex. B; Doc. No. 471. On the Debtors' own numbers, DLP is underwater. A debtor cannot tell its creditors in a Disclosure Statement that the collateral is worth $10.5 million and tell the Court in a stay-relief response that it is worth $18 million.

Where a senior lien is consuming the cushion, as here, protection should address that erosion directly through payment or escrow of the accruing taxes, not paper assurances. *See In re*

*Om Shivai, Inc.*, 447 B.R. 459, 463 (Bankr. D.S.C. 2011); *In re Morgan*, 630 B.R. 476, 479 (Bankr. D.S.C. 2021); *In re Frye*, 323 B.R. 396, 401 (Bankr. D. Vt. 2005). The Debtors bear the burden on this issue, 11 U.S.C. § 362(g)(2), and must carry it with evidence rather than the prospect of a sale. Yet they propose no protection at all: no payment, no replacement lien, and no tax escrow. Lilly Aff. ¶¶ 14–16.

***D. The Lilly Affidavit Does Not Carry the Debtors' Burden, and Its Own Testimony Shows That DLP's Position Is Eroding.***

Under § 362(g)(2), the Debtors bear the burden on every issue but equity. The Lilly Affidavit is their only evidence, and it cannot carry that burden. It attaches no offer, no letter of intent, and no contract. It identifies no offeror and discloses no price, contingency, financing source, diligence period, or closing date for any offer. It withholds all of that expressly, offering only "general information to protect the ongoing negotiations." Lilly Aff. ¶ 16. DLP respects the Debtors' interest in confidentiality, but the Debtors cannot rest an adequate protection defense on evidence that neither DLP nor the Court may examine. If the offers matter, they can be produced under seal; if they are not produced, they cannot be weighed.

If the Debtors produce an executed purchase agreement before or at the hearing, DLP asks the Court to assess it on its terms: the amount, funding, and refundability of the deposit; evidence of the purchaser's ability to fund closing; the Bucksport and other material conditions; diligence and termination rights; the outside closing date; and net proceeds available to DLP after senior taxes and actual closing costs. A signed agreement may show progress, as the June contract did before it collapsed in diligence. But it must show a reasonable possibility of closing within a reasonable time, and it does not relieve the Debtors of their obligation to provide adequate protection in the interim.

The affidavit's weight is limited in other respects as well. Mr. Lilly is the Debtors' retained

broker, not an appraiser, and his testimony rests in part on discussions with the Debtors' officers, directors, and professionals and on a summary of undisclosed negotiations. Id. ¶¶ 1, 3.

More fundamentally, the affidavit proves DLP's point. Mr. Lilly's central claim is that Warden Station "is not declining in value" because it was under contract for roughly $16 million in June 2026 and draws offers of $15 million to roughly $18 million today. Lilly Aff. ¶ 15. Accepted at face value, that testimony establishes that the gross value of the Property has been, at best, flat. DLP's claim has not been flat. Between July 22, 2026 and today, the claim grew by approximately $787,560.97, and between May 31, 2026 and today the unpaid taxes ahead of it grew by approximately $148,249.74, roughly $935,810 of new exposure against a value the Debtors' own broker says has not moved. A flat gross value against a claim and senior lien growing at $8,151.41 per day is a declining interest by definition. Nor is "flat" the most the record supports. *See* Part I.E, infra. *Westchase* and *Benfield* require a decline; the Debtors' own witness supplies it.

The terminated June contract cuts against the Debtors, not for them. Mr. Lilly treats that contract as establishing value. *Id.* ¶ 15. But by his own account, it did not close: the buyer terminated during due diligence because it could not satisfy its investment committee "in light of the nuances associated with the project." *Id.* ¶ 11. Those nuances (the size of the site, the scale of the project, and the missing utility agreement) have not changed. *Id.* ¶ 12. A contract that collapsed in diligence is evidence of what a buyer would offer before learning the facts, not of what a buyer will pay after learning them. And the prior purchaser that walked away is among the current offerors. *Id.* ¶ 11.

The affidavit's treatment of Bucksport is the most significant concession in the record. Mr. Lilly calls the utility agreement "the single most significant of the contingencies in any transaction" and admits that it was never ratified, "leaving the project without assured water and

sewer service." *Id.* ¶ 13. Every offer in the Debtors' range is therefore contingent on a utility agreement that does not exist. The Debtors propose to negotiate a new agreement through counsel they did not apply to employ until October 28, 2026, on a ninety-day timeline that rests on counsel's suggestion. *Id.* ¶¶ 12–13; Doc. No. 505. Ninety days at $8,151.41 per day is approximately $733,627 of additional accrual before a single offer could become unconditional. And the existing Bucksport agreement requires $110,000 within twenty days of execution, a $250,000 advance within thirty days, and letters of credit, none of which Warden Station can fund. *See* Part III.B, infra.

***E. The McAbee Declaration Shows That the Market Will Not Rescue the Debtors' Cushion.***

The Debtors' position depends on the premise that time is on the estate's side, that is, that a buyer at the top of the range will emerge if DLP simply waits. The McAbee Declaration refutes that premise. Mr. McAbee, who has thirty-two years of experience analyzing residential and mixed-use markets, concludes that the Conway market for vacant residential land is "over saturated," that conditions are slow, and that any builder developing Warden Station will need approximately fourteen years to sell the last home and recover its investment. McAbee Decl. ¶¶ 2, 4.

The supply side is unfavorable. Conway has 29.1 months of vacant developed lot supply, well above the 20-to-24-month range considered balanced; more than 2,700 new-home inventory units; and 39 active new-home projects competing for buyers, nearly double the number of four years ago. *Id.* ¶¶ 5–7. Thirty comparable communities have 2,344 lots or homes left to sell, and another 2,375 lots are planned within five miles. *Id.* ¶ 8. A purchaser of Warden Station would add roughly 2,138 for-sale units to that pipeline. *Id.* ¶ 3. Zonda also reports that vacant developed lot

supply is at an all-time high and that Moody's forecasts slight home-price declines in 2026. *Id.* Ex. A.

Critically, the market has not stood still while DLP waits; it has worsened during this case. Zonda reports that vacant developed lot supply "is at all-time highs in both the Myrtle Beach MSA and Conway." McAbee Decl. Ex. A. Conway's vacant developed lot inventory rose from 2,751 lots in the fourth quarter of 2025, the last full quarter before the Petition Date, to 3,022 in the first quarter of 2026, 3,254 in the second quarter, and 3,418 in the third quarter, an increase of approximately 24% during the pendency of this case. *Id.* Across the Myrtle Beach MSA, inventory rose from 8,206 to 8,999 lots over the same period. *Id.* Throughout that period, Conway's months of supply has remained above the balanced range, reaching 29.1 months in the third quarter of 2026. *Id.*

Pricing and demand tell the same story. Moody's "forecasts a slight cooling in the market in the near term, with slight price declines in 2026," with the median existing single-family price falling from $342,448 in 2025 to a forecast $338,680 in 2026. McAbee Decl. Ex. A. Median values have been "declining at an average annual rate of 0.3% between 2022 and 2025," and appreciation "has since plateaued." *Id.*; *see also* McAbee Decl. ¶ 9. As of September 2026, existing-home months of supply and days on market are "near historical highs," reflecting "a buyer's market with more supply that challenges home sellers (and homebuilders) to achieve healthy sales velocity." *Id.* Ex. A; *id.* ¶ 9. New-home inventory is likewise "near all time highs." *Id.* Ex. A. Builders "are already offering incentives and price reductions to sell homes." *Id.* ¶ 12. And demand is weakening: job growth in the MSA "has declined for three consecutive years," to roughly one-fourth of its 2022 level, while unemployment is forecast to remain at or above 5.0% through 2028.

*Id.* ¶ 10. In Mr. McAbee's words, the Conway market for vacant residential land "is not a booming market." *Id.* ¶ 15.

The consequence for this motion is direct. The buyer of Warden Station is a developer or builder that must, in Mr. McAbee's words, "carry its investment for well over a decade before selling the last home." McAbee Decl. ¶ 14. Even that timeframe "could prove optimistic," because the Property has no utility agreement with Bucksport, and the infrastructure challenges of extending water and sewer service "could extend the land development period, and in turn the home sales timeline, beyond 14 years." *Id.* DLP's independent expert thus identifies the same impediment the Debtors' own broker calls "the single most significant of the contingencies in any transaction." Lilly Aff. ¶ 13. Such buyers price that carry and risk into what they pay for land and walk away in diligence when the risk cannot be underwritten, exactly as the June buyer did. Lilly Aff. ¶ 11. A rising inventory of competing lots, falling home prices, and builder discounting all reduce what a builder can pay for raw land. The market evidence thus explains why, more than eight months into the case, the only contract signed collapsed in diligence, and it forecloses any suggestion that appreciation will outrun an accrual of $8,151.41 per day.

**II. THE ESTATE IS ADMINISTRATIVELY INSOLVENT, WHICH IS BOTH CAUSE FOR STAY RELIEF AND CAUSE FOR CONVERSION UNDER § 1112(b).**

Section 1112(b)(1) directs that the court *shall* convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, upon a showing of cause. The enumerated examples in § 1112(b)(4) are illustrative, not exclusive, and at least three of them are present here. Administrative insolvency is independently relevant to stay relief: a debtor cannot offer adequate protection it has no money to fund, and a § 507(b) superpriority claim against an administratively insolvent estate is worth nothing.

***A. The Estate Cannot Pay Its Professionals, Post-Petition Real Estate Taxes and Therefore Cannot Confirm a Plan.***

Section 1129(a)(9)(A) is unforgiving. Absent the agreement of each holder, every allowed administrative expense claim under § 507(a)(2) must be paid *in full, in cash, on the effective date*. 11 U.S.C. § 1129(a)(9)(A). This estate cannot do that with only $29.65, and the Plan does not even purport to try.[7]

Plan § 3.3 provides that administrative claims will be paid on the later of the Effective Date *or "the date when sufficient Cash becomes available."* That is not a payment provision; it is an acknowledgment that the money is not there. A plan that pays administrative claimants if and when cash materializes does not satisfy § 1129(a)(9)(A) unless every such claimant has agreed to that treatment, and no such agreement has been disclosed. Plan § 1.2.48 compounds the point by defining "Net Estate Cash" as cash remaining after Allowed Secured, Administrative, and Priority Tax Claims, which on this record is a null set.

The jointly administered Debtor, BRD Land & Investment has approximately $649,219.18 in cash left. Seven professionals are retained and accruing, and the Debtors seek to add another. The Liquidating Agent has not yet begun work. The Debtors budgeted $22,613 for October quarterly fees and paid $0.00.[8] A broker commission will be payable at any closing, and fee applications for October through confirmation are forthcoming.

Guyton Law, whose application will be heard on shortened notice on November 17, 2026, requests a flat fee of $85,000, payable upon final approval and execution of that agreement, plus

[7] DLP recognizes that conversion is ordinarily sought by separate motion on notice under Rule 2002 and § 1112(b), and DLP does not ask the Court to convert these cases on the present record without that notice. DLP asks the Court to consider these facts in evaluating whether cause exists to lift the stay, because they bear directly on whether this estate can ever provide adequate protection or confirm a plan. DLP also advises that it reserves the right to file a motion to convert under § 1112(b).

[8] 26-30215_BRD Land & Investment, Cash Reporting, 10-31-2026, tab "BRD Land & Investment - Oct," cells I34 ($22,613 budgeted) and H34 ($0.00 paid).

expenses. Doc. No. 505 at 1, ¶¶ 5–8; Doc. Nos. 510, 511, 525.

Nor can the Debtors pay assessed post-petition real estate taxes.

***B. The Plan Is Not Feasible Under § 1129(a)(11), and "Even Liquidating Plans Must Be Feasible."***

Section 1129(a)(11) requires a finding that confirmation is not likely to be followed by liquidation or the need for further financial reorganization, except as proposed in the plan. The Plan is a liquidating plan, Doc. No. 452, currently set for a confirmation hearing on December 9, 2026, Doc. No. 490, and already facing creditor objections, Doc. Nos. 482, 489. But a liquidating plan must still work, and this one depends entirely on a sale that has not happened.

The Plan's own milestones illustrate how long DLP is asked to wait. Section 9.2.2.1 requires only a *motion* to sell by April 1, 2027. Section 9.2.2.2 permits closing within ten days after a Final Order. Section 9.2.2.3 contemplates an auction motion within thirty business days after a failure, at which DLP may credit bid. And § 9.2.2.4 provides that surrender occurs only if the auction fails to produce a purchaser acceptable to the Debtor *in its "sole discretion and business judgment."* Under § 11.2, the Effective Date does not arrive until the first business day after the thirtieth day after the Confirmation Order becomes final. Stacked end to end, these provisions keep DLP stayed well into 2027 and beyond, at $244,928.12 per thirty days, with the exit ramp controlled by the Debtors' sole discretion.

The Response characterizes these milestones as "guardrails." Resp. ¶ 17. A guardrail that the driver may remove at his sole discretion is not a guardrail. Courts have refused to countenance precisely this structure:

> Plans that keep secured creditors on hold while the debtor attempts to sell property are "speculative ventures which place all the risk on the respective secured creditors," and "[e]ven liquidating plans must be feasible." *In re Calvanese*, 169 B.R. 104, 107–09 (Bankr. E.D. Pa. 1994).

That describes this Plan exactly. As to Warden Station, the asset on which the Plan actually depends, there is no binding, unconditional contract, and the Debtors' broker withholds even the terms of the offers. Lilly Aff. ¶ 16. *Accord In re Trail's End Lodge, Inc.*, 54 B.R. 898 (Bankr. D. Vt. 1985); *In re Griswold Building, LLC*, 420 B.R. 703, 704 (Bankr. E.D. Mich. 2009) (debtor may not gamble with the bank's money); *In re Washington*, No. 14-05589-DD, 2015 Bankr. LEXIS 637, at *9 (Bankr. D.S.C. Feb. 26, 2015).

***C. Cause Exists Under § 1112(b)(4)(A), (C), and (I).***

**(1) Section 1112(b)(4)(I): failure to pay postpetition taxes.**

The provision is triggered by the debtor's "failure timely to pay taxes owed after the date of the order for relief." Real estate taxes on the Property stood at $338,018.63 unpaid as of May 31, 2026 and have accrued at $28,168.22 per month since, reaching approximately $486,268.37 by November 8, 2026 and projected at $679,901.15 by April 1, 2027. Renewed Mot. ¶¶ 30, 51. Warden Station has $29.65 and has made no tax payment at any point in this case. Its August 2026 Monthly Operating Report shows $0.00 disbursed and projects $0.00 in disbursements for the following month. Case No. 26-30214, Doc. No. 32, lines 21, 36. The cash reports show no tax disbursement by either Debtor. This is not a close question under the statutory text.

**(2) Section 1112(b)(4)(A): substantial or continuing loss with no reasonable likelihood of rehabilitation.**

Both elements are satisfied on the Debtors' own reporting. The loss is substantial and continuing: BRD's cash fell from $1,424,776.58 to $649,219.18 between March and October 2026, a 54% decline, with October receipts of $1,311.06 consisting entirely of bank interest against $285,691.39 of October disbursements. Warden Station generates nothing at all. And rehabilitation is not merely unlikely, the Debtors have abandoned it proposed a liquidating plan. Doc. No. 452.

**Section 1112(b)(4)(C): failure to maintain appropriate insurance posing a risk to the estate or the public.** This ground is addressed below, but it is squarely implicated: an 1,800-acre parcel with no insurance naming the mortgagee, on which the photographs at Doc. No. 500 depict elevated hunting stands, vehicular trespass, and dumping, presents exactly the risk to the estate and to the public that § 1112(b)(4)(C) contemplates.

## III. THE DEBTORS CANNOT FUND THE CONWAY AND BUCKSPORT OBLIGATIONS, AND THE ENTITLEMENTS THAT GIVE THE LAND ITS VALUE ARE AT RISK.

### *A. The City of Conway Development Agreement.*

The recorded Development Agreement obligates the Developer to pay a one-time $250,000 Transportation Enhancement Fee on or before issuance of the land disturbance permit for the Spine Road, to pay per-unit Enhancement Fees escalating annually, to construct the Spine Road, five intersection improvements, sewer pump stations, and stormwater facilities, and to convey approximately 500 acres of City Recreation Acreage not later than the third anniversary of recording, approximately February 27, 2027.[9]

The timing is critical and has not been addressed by the Debtors at all. If the recreation-acreage conveyance is due by approximately February 27, 2027, that obligation matures *before* the Plan requires the Debtors even to *move* for approval of a sale. Neither the Plan nor the Disclosure Statement acknowledges this deadline. A buyer will not ignore it.

Planning Director Jessica Hucks advised by email dated February 12, 2025 that the $250,000 Transportation Enhancement Fee must be paid prior to issuance of any permits, declined at that time to approve the mass grading plans, and directed that an invoice for the $250,000 issue.

[9]Development Agreement, recorded Horry County Deed Book 4779, Page 997 (Feb. 27, 2024), as amended by First Amendment adding BRDL Warden Station, LLC as a Developer.

Warden Station's entire liquid net worth is $29.65. It cannot pay $250,000; it cannot build a Spine Road; it cannot construct five intersections or a pump station.

The City is also already owed $297,500.00. Doc. No. 95, Schedule E/F, line 3.101. At the Greenstead sale hearing, City counsel Andrew Tarr required that the arrearage be paid at closing, and the sale order conditioned assumption and assignment of the Development Agreement on "the payment to the City of Conway at closing of the cure amount of $297,500 due under the Development Agreement." Doc. No. 387 ¶ 2. Warden Station's sworn August 2026 Monthly Operating Report shows no money to pay that cure outside a sale: $29.65 in cash and $0.00 in receipts, disbursements, and projected disbursements. Case No. 26-30214, Doc. No. 32, lines 19–23, 35–37. Any buyer that wants the Development Agreement must therefore see the $297,500 cure paid at closing, one more deduction from the proceeds DLP looks to, on top of the $250,000 Transportation Enhancement Fee.

Developer Default under the Agreement includes failure to continue Development Work for more than six months after written notice, subject to a thirty-day cure. The City's remedies include withholding building permits, injunctive relief, specific performance, and termination or modification of the Agreement under the South Carolina Local Government Development Agreement Act. Development Work on this Property has not merely slowed; the cash reports establish that Warden Station has spent $0.00 on anything since March 2026. The six-month clock is a live risk, and DLP has no ability to cure it from outside the stay.

***B. The Bucksport Water System Utility Development Agreement.***

The Debtors have told this Court that the Bucksport Utility Development Agreement, finally approved December 4, 2025, remains unexecuted, limits the buyer pool, caps capacity at 3,000 units, and carries an initial cost of $6,360,000 that a purchaser must assume at closing. Renewed Mot. ¶ 39. Its terms require the Developer to reimburse Bucksport's Initial Soft Cost of

approximately $110,000 within twenty days of execution; to reimburse monthly costs within twenty days of invoice, with time expressly of the essence; to fund Well/Tank #1 at an estimated $6,000,000; to advance $250,000 for Well #2 within thirty days of execution; to post letters of credit; and to convey a Facilities Expansion Site of up to fifteen acres within sixty days. Payment does not guarantee service.

Warden Station cannot fund the $110,000, let alone the $250,000 advance or the $6,000,000 well, and no issuer would extend a letter of credit to an entity holding $29.65 whose sole asset is fully encumbered. Yet the Disclosure Statement says nothing about the Agreement's status, Renewed Mot. ¶¶ 39, 85, leaving creditors to vote on a liquidation of entitled land without knowing whether the entitlement that supplies the water is executed, funded, or expired.

The consequence for adequate protection is direct. DLP's mortgage attaches to the Property as it is, with whatever rights run with it. If the Conway Agreement is terminated or modified for default, or if the Bucksport capacity is lost or repriced, DLP's collateral loses value that no appraisal of raw acreage will recapture. That is a present and ongoing diminution in DLP's interest, occurring on the Debtors' watch and beyond DLP's control, and it is independent cause under § 362(d)(1).

**IV. THE PROPERTY IS UNINSURED AS TO DLP WHILE THIRD PARTIES HUNT AND DUMP ON IT, WHICH IS CAUSE UNDER § 362(d)(1) AND § 1112(b)(4)(C).**

The loan documents are explicit. Loan and Security Agreement § 4.1 requires the borrower to keep the collateral insured for the Lender's benefit; § 4.4 requires a mortgagee endorsement naming the Lender as insured; and § 4.5 requires deposit of policies and certificates with the Lender. Warden Station has complied with none of them. Renewed Mot. ¶¶ 6, 81–82. DLP is the mortgagee of an 1,800-acre parcel and has no loss-payee protection of any kind.

The photographs at Doc. No. 500 depict an elevated box-style hunting camp on metal legs,

roughly eight to ten feet high. The exposures are obvious and serious: discharge of firearms by unidentified persons creates premises-liability risk; vehicles and campfires on 1,800 acres of timber create wildfire risk; dumping; and any of these can mature into a casualty loss or a third-party claim. An uninsured judgment or cleanup obligation against Warden Station would become an administrative or lien claim competing with, or even priming, DLP, or would simply reduce the value of the only asset backing DLP's loan. Section 1112(b)(4)(C) identifies precisely this as cause: failure to maintain appropriate insurance that poses a risk to the estate or to the public.

Courts routinely authorize debtors to maintain, renew, revise, and modify insurance programs in the ordinary course of business, including by adjusting named insureds and loss payees, precisely because doing so preserves estate assets rather than depleting them. *See In re Exide Technologies*, No. 13-11482-KJC, 2012 WL 13330990, at *1 (Bankr. D. Del. Aug. 17, 2012); *In re SP Newsprint Holdings LLC*, No. 11-13649 (CSS), 2011 WL 6841135, at *1 (Bankr. D. Del. Nov. 10, 2011); *In re dELiA*s, Inc.*, No. 14-23678-RDD, 2012 WL 13338138, at *1 (Bankr. S.D.N.Y. Nov. 1, 2012); *cf. In re Texscan Corp.*, 976 F.2d 1269, 1272–73 (9th Cir. 1992).

## V. DEDUCTIONS FOR BROKER COMMISSION, REAL ESTATE TAXES, AND CLOSING COSTS LEAVE DLP UNDERWATER AT THE DEBTORS' OWN NUMBERS.

Three deductions come off the top before DLP sees a dollar. **First**, the broker commission: Plan § 9.2.4 nets sale proceeds of "commissions due and owing to the Brokers," Plan § 9.7 deems the brokers employed by the Liquidating Agent, and the rate under the Brokers Application is 4%. Doc. No. 65. Second, the senior real estate taxes of $679,901.15 reflected in Table 1, which grow at $28,168.22 per month, prime DLP's mortgage, and must be paid at closing. Third, all other closing costs (transfer and recording fees, title charges, prorations, survey, and attorneys' fees), which the Debtors' own Liquidation Analysis bundles at 7% of gross price for Warden Station. Doc. No. 452, Ex. B; Doc. No. 471.

DLP has not invented that 7%; it is the Debtors' figure, applied by the Debtors' financial advisor to this Debtor's property in a document filed to solicit votes. Table 1 simply applies that percentage and the senior tax lien to the Debtors' own asserted values. At $15,000,000, the floor of the range the Response itself advances, DLP recovers approximately $13,270,098.85 against a claim of approximately $14,160,902.28, a shortfall of approximately $890,803.43.

And the Plan adds a fourth deduction that no ordinary closing carries: § 1.2.49 defines "Net Sale Proceeds" as proceeds less closing costs *and less any § 506(c) costs*. Section 506(c) is a remedy of the trustee or debtor in possession and requires that any surcharged expense be reasonable, necessary, and incurred primarily for the benefit of the secured creditor. *See Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000). DLP has not consented to any § 506(c) surcharge or carve-out, and it does not consent now. Any order short of outright stay relief should say so expressly.

**VI. RELIEF IS ALSO WARRANTED UNDER § 362(d)(2) AND, IF THE PROPERTY IS SINGLE ASSET REAL ESTATE, UNDER § 362(d)(3).**

Relief must be granted where the debtor lacks equity in the property and the property is not necessary to an effective reorganization. On equity, DLP bears the burden, and it is carried by the Debtors' own Liquidation Analysis valuing Warden Station at $10.5 to $12 million against secured debt of $11,422,328, and by Table 1, which shows DLP underwater at the Debtors' own floor value of $15 million once the Debtors' own 7% cost of sale and the senior tax lien are applied. On the second element, the Debtors bear the burden under § 362(g), and they cannot carry it, because they have abandoned reorganization altogether. *Timbers* holds that "necessary to an effective reorganization" requires a reasonable possibility of a successful reorganization within a reasonable time. 484 U.S. at 375–76. There is no reorganization in prospect here; there is a liquidating plan whose only engine is a sale that has not materialized and cannot close without a utility agreement

that does not yet exist. Property cannot be necessary to a reorganization that the Debtors concede will not occur.

DLP's Renewed Motion invoked § 362(d)(3),[10] which requires a single asset real estate debtor, within ninety days of the order for relief, either to file a plan with a reasonable possibility of confirmation within a reasonable time or to commence monthly payments to the secured creditor at the non-default contract rate. If the designation applies, the subsection is dispositive: Warden Station has made no payment of any kind, and the only plan on file is a liquidating plan that, for the reasons in Part II, cannot satisfy §§ 1129(a)(9)(A) or 1129(a)(11).

## CONCLUSION AND RELIEF REQUESTED

DLP has waited more than eight months. In that time the estate has paid its professionals approximately $1.58 million, paid its insurers and payroll, and paid DLP nothing, while DLP's claim and the senior tax lien grew by $8,151.41 a day. Warden Station holds $29.65 and cannot pay a tax bill, an insurance premium, the City of Conway, or Bucksport Water System. The sale on which the Plan depends has no contract and, by the Debtors' own broker's account, no assured water and sewer service. On the Debtors' own cost-of-sale percentage and floor valuation, DLP is underwater today.

WHEREFORE, DLP Capital Lending CH LLC respectfully requests that the Court enter an order:

> (i) Granting relief from the automatic stay under 11 U.S.C. § 362(d)(1), (d)(2), and (d)(3) to permit DLP to exercise all rights and remedies under its loan documents and applicable non-bankruptcy law with respect to the Property and related collateral, and waiving the fourteen-day stay imposed by Fed. R. Bankr. P. 4001(a)(3);

[10] See Doc. No. 1, Case no. 26-30214.

(ii) In the alternative, conditioning the continuation of the stay on each of the following, with the stay to terminate automatically upon any failure to comply, without further hearing and upon the filing of a declaration of default:

(a) commencement, within ten (10) days of entry of the order, of monthly adequate protection payments to DLP equal to accruing interest of approximately $216,759.90 per thirty days (at the contract per diem of $7,225.33), or such other amount as the Court determines, *plus* approximately $28,168.22 per month on account of accruing real estate taxes;

(b) payment of all delinquent and accruing real estate taxes on the Property, together with proof of payment to DLP;

(c) delivery to DLP, within ten (10) days, of proof of insurance complying with Loan and Security Agreement §§ 4.1, 4.4, and 4.5, naming DLP Capital Lending CH LLC as mortgagee and loss payee, and including general liability coverage addressing the trespass, hunting, and dumping exposure depicted in the photographs at Doc. No. 500;

(d) monthly written reporting to DLP on marketing activity, all offers received and their material terms, and the status of the Bucksport Utility Development Agreement, the City of Conway Development Agreement, and all entitlements and permits;

(e) a date certain by which the Debtors must obtain a Court-approved, binding purchase agreement sufficient to pay DLP in full at closing, failing which the stay terminates without further hearing; and

(f) an express provision that no § 506(c) surcharge and no carve-out shall be imposed upon or satisfied from DLP's collateral or the proceeds thereof without DLP's prior written consent;

(iii) Granting DLP a superpriority administrative claim under 11 U.S.C. § 507(b) to the extent of any diminution in the value of DLP's interest in the Property occurring from and after the Petition Date;

(iv) Finding that the estate is administratively insolvent and that cause exists under 11 U.S.C. § 1112(b), including under § 1112(b)(4)(A), (C), and (I), and setting the matter for further consideration of conversion to chapter 7; and

(v) Granting DLP such other and further relief as the Court deems just and proper.

Dated: November 10, 2026.

Respectfully submitted,

AKERMAN LLP

/s/ Esther McKean
Esther McKean, Esquire
(Admitted Pro Hac Vice)
Florida Bar No. 28124
Texas Bar No. 24122145
420 South Orange Avenue, Suite 1200
Orlando, FL 32801
Phone: (407) 423-4000 / Fax: (407) 843-6610
esther.mckean@akerman.com

ALEXANDER RICKS PLLC
Louis G. Spencer
N.C. Bar No. 36019
1420 E. 7th Street, Suite 100
Charlotte, NC 28204
Phone: (980) 335-0711
louis@alexanderricks.com

Counsel for DLP Lending Fund LLC and DLP Capital Lending CH LLC

**Table 1: Net Proceeds to DLP (Real Estate Taxes of $679,901.15)[11]**

| **Gross sale price** | **Less 7% cost of sale** | **Net after costs** | **Net after taxes ($679,901.15)** | **DLP position vs. claim of $14,160,902** |
|---|---|---|---|---|
| $15,000,000 | ($1,050,000.00) | $13,950,000.00 | $13,270,098.85 | Shortfall ($890,803.43) |
| $16,171,531 | ($1,132,007.17) | $15,039,523.83 | $14,359,622.68 | Cushion $198,720.40 (1.2%) |
| $18,345,621 | ($1,284,193.47) | $17,061,427.53 | $16,381,526.38 | Cushion $2,220,624.10 (12.1%) |
| $12,000,000 | ($840,000.00) | $11,160,000.00 | $10,480,098.85 | Shortfall ($3,680,803.43) |
| $10,500,000 | ($735,000.00) | $9,765,000.00 | $9,085,098.85 | Shortfall ($5,075,803.43) |

[11] The 7% cost of sale is the *Debtors' own* figure from their Liquidation Analysis. Doc. No. 452, Ex. B; Doc. No. 471. The $16,171,531 row is the failed Greenstead price; the $18,345,621 row is the top of the Debtors' asserted range (Resp. ¶ 16); the $12,000,000 and $10,500,000 rows are the high and low of the Liquidation Analysis. Every figure in the final column is stated *before* any § 506(c) surcharge, carve-out, or further accrual.