UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
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In re:	Chapter 11
CBRM REALTY INC., *et al.*,	Case No. 25-15343 (MBK) (Jointly Administered)
Debtors.[1]	Re: Docket Nos. 850, 852 Hearing Date: August 31, 2026 at 11:00 a.m.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: CBRM Realty Inc. (2420), Crown Capital Holdings LLC (1411), Kelly Hamilton Apts LLC (9071), Kelly Hamilton Apts MM LLC (0765), RH Chenault Creek LLC (8987), RH Copper Creek LLC (0874), RH Lakewind East LLC (6963), RH Windrun LLC (0122), RH New Orleans Holdings LLC (7528), RH New Orleans Holdings MM LLC (1951), and Laguna Reserve Apts Investor LLC (N/A). The location of the Debtors' service address in these chapter 11 cases is: In re CBRM Realty Inc., et al., c/o White & Case LLP, 1221 Avenue of the Americas, New York, New York 10020.

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CBRM REALTY INC.'S REPLY IN SUPPORT OF CBRM REALTY INC.'S MOTION FOR ENTRY OF AN ORDER (A) ENFORCING CONFIRMED CHAPTER 11 PLANS, (B) REQUIRING CREDITOR RECOVERY TRUSTEE TO TRANSFER CASH TO FEE ESCROW ACCOUNT, AND (C) GRANTING RELATED RELIEF

The above-captioned debtors (collectively, the "**Debtors**"), acting at the direction of the Wind-Down Officer (as defined in the CBRM Plan and the Crown Capital Plan (as each is defined herein)), respectfully state as follows in support of *CBRM Realty Inc.'s Motion for Entry of an Order (A) Enforcing Confirmed Chapter 11 Plans, (B) Requiring Creditor Recovery Trustee to Transfer Cash to Fee Escrow Account, and (C) Granting Related Relief* [Docket No. 850] (the "**Motion**")[2] and in reply (the "**Reply**") to the *Objection of RLA Consulting LLC, in Its Capacity as Trustee of the Creditor Recovery Trust for CBRM Realty Inc. and Crown Capital Holdings, LLC, to CBRM Realty Inc.'s Motion for Entry of an Order (A) Enforcing Confirmed Chapter 11 Plans, (B) Requiring Creditor Recovery Trustee to Transfer Cash to Fee Escrow Account, and (C) Granting Related Relief* [Docket No. 852] (the "**Objection**"):

Preliminary Statement

1. The Court should overrule the Objection, grant the Motion, and ensure the Chapter 11 Plans are enforced as written (and not as the Creditor Recovery Trustee may have hoped those plans were written).

2. At the time that the Court confirmed the Chapter 11 Plans, the Debtors did not have sufficient funding to fully fund the Fee Escrow Account, the escrow account established to satisfy estate professional fee and expense claims after final approval by the Court. The Fee Escrow Account's deficiency, the amount accrued as of the confirmation date that has not been paid so far

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

as provided for in the Chapter 11 Plans, as of the date hereof is approximately $5,914,414.52. Finally, this excludes nearly $2 million in post-confirmation fees that have been accrued to date, largely as a result of disputes involving the Creditor Recovery Trustee, which will remain unpaid.

3. The Debtors' professionals and independent fiduciary could have insisted that the Debtors defer the effectiveness of the Chapter 11 Plans until the Debtors—presumably through litigation recoveries—funded the Fee Escrow Account in full in cash. Such brinksmanship would have risked a post-confirmation chapter 7 conversion of these cases after the hard-fought process to recapitalize the Debtors' affordable housing assets. Instead, they agreed to the Chapter 11 Plans becoming effective notwithstanding the funding deficiency, in reliance on the treatment negotiated in Articles II.A and II.C. Those provisions require the Creditor Recovery Trustee to use Cash from the Creditor Recovery Trust Assets—other than the $883,000 in seed funding provided to the Creditor Recovery Trust (the "**Funding Amount**")—to increase the Fee Escrow Account when filed fee applications exceed the amount held there. The narrow question the Creditor Recovery Trustee has put at issue is whether his performance fee—compensation that arises only by virtue of a distribution and is measured by that distribution—may be treated as an antecedent Trust expense that cuts ahead of the Article II.A claims. The Chapter 11 Plans and the Creditor Recovery Trustee's own Fee Letter—which was not disclosed until filed in connection with the Reply, months after the confirmation hearings—answer that question no. Such a result would undermine Article II, the provisions of which were highly negotiated between the Debtors and the Ad Hoc Group of Crown Capital Noteholders.

4. The Court should reject the Creditor Recovery Trustee's effort to elevate his performance compensation over approximately $5.9 million of unpaid Article II.A administrative claims (which comprise Court-approved pre-confirmation fees and expenses that the Fee Escrow

Account presently lacks funding to pay). Article II.C is mandatory: the Creditor Recovery Trustee "shall use Cash from the Creditor Recovery Trust Assets," which, as noted above, would exclude the Funding Amount—to increase the amount of the Fee Escrow Account to the extent fee applications are Filed in excess of the amount held in the Fee Escrow Account in accordance with Article II.A." CBRM Plan, Art. II.C. The fact that the Creditor Recovery Trustee's Fee Letter purports to provide that his performance fee is earned on "proceeds distributed" to Creditor Recovery Trust Beneficiaries, expressly including distributions made to satisfy Allowed Professional Compensation Claims and the other Article II.A claims, is irrelevant because, as described herein, the Chapter 11 Plans do not permit the Advisory Committee to unilaterally deduct amounts otherwise payable to holders of allowed administrative claims. Objection, Ex. A. This is particularly true where the source of this priority-shifting arrangement is a fee letter that was publicly disclosed only when the Creditor Recovery Trustee objected to the Motion. The Creditor Recovery Trustee cannot convert compensation triggered by and measured on those distributions into a prior expense that reduces the distributions before they occur.

5. The relief requested will not deprive the Creditor Recovery Trust of liquidity needed to operate. The Debtors provided the Funding Amount to the Creditor Recovery Trust to fund its operational expenses (including what we now understand to be Mr. Kamensky's fixed monthly compensation, which could be used to earn a performance fee). Motion, ¶¶ 18, 34.

6. Accordingly, the Debtors request entry of an order confirming that the Creditor Recovery Trustee's performance fee may not be deducted from, or paid ahead of, the Article II.A distributions.

Reply

I. Article II.C Imposes a Mandatory Obligation to Fund the Fee Escrow Account; the Creditor Recovery Trustee's Performance Fee Is Not Applicable to Amounts Transferred to the Fee Escrow Account.

7. The central objection of the Creditor Recovery Trustee is that Article II.C creates only a "conditional top-up obligation" and that Sections 2.4 and 6.1 of the Creditor Recovery Trust Agreement permit him to deduct his performance fee (and, under the Creditor Recovery Trustee's interpretation, ***any*** fees or expenses of the Creditor Recovery Trust) before the Article II.A claims are reached. Objection, ¶¶ 8, 34, 40–45. Article II.C does contain a condition—the amount of filed fee applications must exceed the amount held in the Fee Escrow Account—but that condition indisputably exists here. Once, as is the case here, that condition is satisfied, the operative verb is mandatory: the Creditor Recovery Trustee "shall use Cash from the Creditor Recovery Trust Assets to increase the amount of the Fee Escrow Account" in accordance with Article II.A. CBRM Plan, Art. II.C. The phrase "in accordance with Article II.A" does not make that duty optional and does not authorize the Creditor Recovery Trustee to subordinate Article II.A claims to performance-based compensation obligations to which the administrative claimants did not consent. The Creditor Recovery Trustee's reliance on Sections 2.4 and 6.1 does not establish otherwise. Those provisions permit the Creditor Recovery Trust to incur and reserve for reasonable and necessary costs of administration and monetization. And, to the extent the Creditor Recovery Trust Agreement is read to produce a priority inconsistent with the Chapter 11 Plans, the Chapter 11 Plans govern. *See* CBRM Plan, Art. I.E; Crown Capital Plan, Art. I.E.

II. Approval of the Motion Will Not Render the Creditor Recovery Trust "Unworkable."

8. The Creditor Recovery Trustee's "unworkable Trust" argument attacks a proposition the Debtors need not establish. Objection, ¶¶ 3, 50–54. The Debtors do not ask the Court to hold that the Creditor Recovery Trust can never pay reasonable and necessary expenses

required to monetize its assets or pursue its causes of action (such as any fees that may be payable by the Creditor Recovery Trust to the Creditor Recovery Trustee). The Creditor Recovery Trust received the Funding Amount for administration, including the Creditor Recovery Trustee's compensation and out-of-pocket expenses. Additionally, the Chapter 11 Plans separately authorize the Creditor Recovery Trustee to enter into contingency arrangements and litigation financing arrangements. Such transactions may provide the Creditor Recovery Trustee with additional sources of liquidity (or at least minimize the pre-resolution legal fees and expenses payable to attorneys engaged by the Creditor Recovery Trust) in the future if the Funding Amount is insufficient. CBRM Plan, Art. IV.D.4. What the Creditor Recovery Trustee may not do is use those provisions to elevate his performance fee by basing it on amounts transferred to the Fee Escrow Account, rather than on distributions to the Crown Capital Noteholders whose representatives authorized and approved the fee letter. Recognizing that distinction—i.e., that the Advisory Committee can approve compensation arrangements that are consistent with the Chapter 11 Plans but cannot approve compensation arrangements that are not consistent with the Chapter 11 Plans—leaves Sections 2.4, 6.1, and Article IV.D.4 fully operative and avoids the commercially unreasonable result the Creditor Recovery Trustee attributes to the Debtors' position.

III. Advisory Committee Approval of the Creditor Recovery Trustee's Compensation Does Not Give the Performance Fee Priority Over Article II.A Claims.

9. The Creditor Recovery Trustee emphasizes that his compensation was approved by the Advisory Committee under Section 7.2(b) of the Court-approved Trust Agreement (the Fee Letter being disclosed only recently, upon the filing of the Objection) and is payable "without necessity for review or approval by the Bankruptcy Court or any other Person." Objection, ¶ 49. CBRM does not dispute that Section 7.2 authorizes the Advisory Committee to approve the Creditor Recovery Trustee's compensation or that the Fee Letter need not be separately allowed

by this Court. But authority to set compensation and freedom from fee-application review do not answer the distinct priority question presented here. Nothing in Section 7.2 states that compensation approved by the Advisory Committee (or, for that matter, any other expense incurred by the Creditor Recovery Trust) may be paid ahead of obligations that the confirmed Chapter 11 Plans require to be satisfied in full in cash under Articles II.A and II.C.

10. The distinction between whether the Advisory Committee approved a fee arrangement that is consistent (versus one that is not consistent) with the Chapter 11 Plans matters. More specifically, the Advisory Committee is composed of designees of noteholders whose recoveries are residual to the Article II.A claims. *See* Objection, n.8; *Verified Statement Pursuant to Bankruptcy Rule 2019* [Docket No. 31]. The Creditor Recovery Trustee says his fee economically burdens only those noteholders. But if the Creditor Recovery Trustee deducts before making a $1.00 payment otherwise due on an Article II.A claim, the Article II.A claimant receives only $0.96 while the Creditor Recovery Trustee receives $0.04. The fee therefore dilutes the senior payment unless it is paid from value otherwise allocable to junior beneficiaries after the Article II.A claims are satisfied. The Article II.A claimants consented at confirmation to defer certain payment on the specific terms set out in Articles II.A and II.C. Those terms include Article II.C's requirement that the Creditor Recovery Trustee satisfy any Fee Escrow Account deficiency in full in cash prior to distributions to the Crown Capital Noteholders. Nothing in that consent extends to a further subordination of the deferred payment to a distribution-based performance fee that was approved post-confirmation by the Advisory Committee and given this logic could be modified at any time to any extent by the Advisory Committee without further approval by, or notice to, any party (including administrative claimants whose claims must be paid in full in cash prior to any

prepetition noteholder receiving a recovery, as defined in the Chapter 11 Plans). *See* 11 U.S.C. § 1129(a)(9)(A); *In re Molycorp, Inc.*, 562 B.R. 67, 78 (Bankr. D. Del. 2017).

11. Finally, the Chapter 11 Plans and Creditor Recovery Trust Agreement can be harmonized without rendering any provision meaningless: the Creditor Recovery Trust may use the Funding Amount to pay or reserve for legitimate costs necessary to administer the Creditor Recovery Trust and produce recoveries; the Advisory Committee may set the Creditor Recovery Trustee's compensation; and the Creditor Recovery Trustee may receive his performance fee when a distribution to the Crown Capital Noteholders which triggers that fee is properly made. What the Advisory Committee cannot do is use a compensation arrangement to change the economic priority of non-consenting Article II.A claimants established by the confirmed Chapter 11 Plans. *See SCH Corp. v. CFI Class Action Claimants*, 597 F. App'x 143, 148–49 (3d Cir. 2015); *In re U.S. Brass Corp.*, 169 F.3d 957, 961–62 (5th Cir. 1999).

IV. The Relief Requested Is Ripe.

12. The Creditor Recovery Trustee argues that the dispute is unripe because "no recovery has been realized," "no distribution has been made," and "no cash has been received and withheld from the Fee Escrow Account." Objection, ¶¶ 11, 57. But the dispute is present and concrete. The Creditor Recovery Trustee has expressly rejected the Debtors' interpretation of the governing waterfall and claims a fee on distributions that include payments to Article II.A claimants. The parties, therefore, dispute how the Creditor Recovery Trustee is required under the Chapter 11 Plans to distribute cash to the Fee Escrow Account. Resolving that dispute is conclusive because it determines the parties' rights under the confirmed Chapter 11 Plans and practical because it tells the Creditor Recovery Trustee how to administer recoveries before disputed payments are made. *See Step-Saver Data Sys., Inc. v. Wyse Tech.*, 912 F.2d 643, 647 (3d Cir. 1990). The Court need not determine today the amount of any future litigation reserve or

anticipated expense; it need only determine the legal priority of the distribution-contingent fee relative to Article II.A payments under the plain language of the Court-approved Chapter 11 Plans (namely, that the Creditor Recovery Trustee cannot deduct a performance fee from amounts intended for the Fee Escrow Account). Waiting until a later time and deferring resolution of the disputes regarding the Creditor Recovery Trustee's asserted interpretation would invite precisely the recovery litigation that the relief requested is intended to avoid. The Court expressly retained jurisdiction over disputes concerning the "interpretation, modification, implementation, or enforcement" of the Chapter 11 Plans. Chapter 11 Plans, Art. XI, ¶ 14.

V. Nor Does Approval of the Relief Requested Amount to an Impermissible Post-Confirmation Modification.

13. The Creditor Recovery Trustee next asserts that the Motion is an impermissible post-confirmation modification under Section 1127(b) and invokes the priority that a Chapter 7 trustee's compensation would receive under Section 726(b). Objection, ¶¶ 56, 63–67. The Motion seeks interpretation and enforcement, not modification. Under each Chapter 11 Plan, this Court expressly retains jurisdiction to resolve—among other things—disputes concerning its "interpretation, modification, implementation, or enforcement." Chapter 11 Plans, Art. XI, ¶ 14. Application of ordinary contract principles to a plan may assist with interpretation—a court does not modify a plan merely by resolving how its existing provisions interact. *See In re Shenango Grp. Inc.*, 501 F.3d 338, 344 (3d Cir. 2007). *SCH Corp.*, on which the Creditor Recovery Trustee relies, proves the point rather than undermining it: the arrangement there was impermissible because it substantively altered the plan, whereas here the Debtors ask only whether existing Chapter 11 Plan provisions permit a distribution-contingent fee to be deducted before the distributions that trigger it. *See SCH Corp. v. CFI Class Action Claimants*, 597 F. App'x 143, 148 (3d Cir. 2015). The Chapter 7 analogy does not assist the Creditor Recovery Trustee either. A

Chapter 7 trustee's commission is a statutory compensation regime governed by Sections 326 and 330 and by the Chapter 7 distribution rules. This Creditor Recovery Trustee's performance fee instead arises from a post-confirmation Fee Letter and must operate within the priority structure of these confirmed Chapter 11 Plans and the Creditor Recovery Trust Agreement.

VI. The Creditor Recovery Trustee's Reporting Failures Further Demonstrate the Practical Need for Present Relief.

14. The Creditor Recovery Trustee's failure to provide the bare minimum of monthly reporting that the U.S. Trustee and parties in interest are entitled to receive under the Confirmation Orders reinforces the practical utility of resolving the parties' legal dispute now. The Debtors have no meaningful visibility into whether the Creditor Recovery Trustee has recovered any funds to date or, for that matter, his actual or anticipated future expenditures. CBRM Confirmation Order, ¶ 113; Crown Confirmation Order, ¶ 112. Given that the Creditor Recovery Trustee has also advocated for the power to decide what constitutes a Creditor Recovery Trust expense, the lack of transparency here is especially troubling. According to this view, the Creditor Recovery Trustee could file operating reports that do not properly reflect the amount that otherwise should have been paid to the Fee Escrow Account. Accordingly, the Debtors cannot protect the Chapter 11 Plan-mandated Fee Escrow Account treatment simply by waiting to see whether the Creditor Recovery Trustee eventually makes a disputed payment under the interpretation he has already announced. The absence of required reporting makes ex ante clarification materially more useful, not less.

Conclusion

15. For the foregoing reasons, the Debtors respectfully request that the Court grant the Motion and such other relief as is just and proper.

Dated: August 27, 2026

New York, New York

Respectfully submitted,

/s/ Andrew Zatz

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