IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
WEST MARINE, INC., *et al*.,[1]	Case No. 26-10794 (KBO)
Debtors.	(Jointly Administered)
	Related to Docket Nos. 13 & 71

LIMITED OBJECTION OF COLUMBIANA STATION (E&A), LLC, GG REIF I SEA TURTLE, LLC, MARIN GRF3 LLC, AND REALTY INCOME CORPORATION TO DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) USE CASH COLLATERAL, AND (B) GRANT LIENS AND PROVIDE SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (II) GRANTING ADEQUATE PROTECTION TO CERTAIN PREPETITION SECURED PARTIES, (III) MODIFYING THE AUTOMATIC STAY, (IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF

Columbiana Station (E&A), LLC, GG REIF I Sea Turtle, LLC, Marin GRF3 LLC, and Realty Income Corporation (collectively, the "Landlords"), through their undersigned counsel, file this limited objection (the "Limited Objection") to the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Use Cash Collateral, and (B) Grant Liens and Provide Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the "Cash Collateral Motion") [D.I. 13],[2] and respectfully represent as follows:

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: West Marine, Inc. (5502); Marine One Holdco, LLC (2231); Marine One Parent, Inc. (0402); Rising Tide Holdings Inc. (2628); Rising Tide Parent Inc. (6153); Seascapes, Inc. (3739); W Marine Management Company, Inc. (4151); and West Marine Products, Inc. (4523). For purposes of these chapter 11 cases, the Debtors' service address is West Marine Headquarters, 1 East Broward Blvd., Suite 200, Fort Lauderdale, FL 33301.

[2] Terms not otherwise defined herein shall have the meaning given to them in the Cash Collateral Motion and accompanying documents.

I. BACKGROUND FACTS

1. On May 17, 2026 (the "Petition Date"), the Debtors filed their voluntary petitions for relief under chapter 11 of title 11 of the United States Code. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.[3]

2. The Debtors lease retail space (the "Premises") from the Landlords pursuant to unexpired leases of nonresidential real property (individually, a "Lease," and collectively, the "Leases") at the locations (the "Properties" and, as applicable, the "Centers") set forth on the attached **Schedule A**.

3. The Leases are leases "of real property in a shopping center" as that term is used in Section 365(b)(3). See In re Joshua Slocum, Ltd., 922 F.2d 1081, 1086-87 (3d Cir. 1990).

4. On May 18, 2026, the Debtors filed the Cash Collateral Motion, seeking, *inter alia*, authority for the use of cash collateral of the Prepetition Secured Parties on an interim and final basis, and the granting of adequate protection to such Prepetition Secured Parties in the form of superiority replacement liens, superpriority claims, certain permanent prepayments of the Prepetition ABL Obligations, the payment of certain fees and expenses, certain reporting obligations, compliance with certain case milestones, among other protections, including the waiver of any of the Debtors' surcharge rights under section 506(c) of the Bankruptcy Code with respect to the Prepetition Secured Parties upon entry of a final order (the "506(c) Waiver").

5. On May 19, 2026, the Court entered an order approving the Cash Collateral Motion on an interim basis [D.I. 71] (the "Interim Order"). The Interim Order excludes the Leases from

[3] Unless otherwise specified, all statutory references to "Section" are to 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code").

the liens granted pursuant to the Interim Order, and limiting such liens to only the proceeds of the sale or disposition of the Leases ("Lease Lien Limitation"). See Interim Order, ¶¶ 3(a) & 3(c). Additionally, the Interim Order limits the Prepetition ABL Agent, the Prepetition Term Loan Agent, and the Prepetition Secured Parties' access to the Premises upon an Event of Default in accordance with: (a) any agreement in writing between the Prepetition ABL Agent, the Prepetition Term Loan Agent, or the other applicable Prepetition Secured Parties and any applicable landlord; (b) pre-existing rights of the Prepetition ABL Agent, the Prepetition Term Loan Agent, or the other Prepetition Secured Parties under applicable law; (c) consent of the applicable landlord; or (d) further order of this Court following notice and a hearing ("Access Limitation"). See Interim Order, ¶ 9. Finally, the Interim Order preserves the respective rights of the Debtors, lenders', and Landlords with respect to any insurance proceeds arising from loss or damage to Landlords' property ("Insurance Limitation"). See Interim Order, ¶ 3(a) & 3(c) (the Lease Lien Limitation, Access Limitation, and Insurance Limitation provisions, together with any other modifications to the Interim Order made at the request of Landlords, the "Landlord Protections").

6. The Interim Order also includes a consolidated, summary 13-week budget, extending through the week ending August 14, 2026 (the "Budget").

7. On May 21, 2026, the Debtors also filed a motion for approval of procedures to govern store closing sales (the "GOB Sales") for certain West Marine locations (the "GOB Procedures Motion") [D.I. 80].

8. Despite the Debtors' ongoing use and occupancy of the Premises to conduct their business, including to conduct GOB Sales outside the ordinary course of business at one or more of the Lease locations, the Debtors have failed to adequately budget, reserve or otherwise provide for the payment of the post-petition rent for the Debtors' use and occupancy of the Premises for

the period from the Petition Date through May 31, 2026 (the "Stub Rent"). According to the Debtors' first day declarant, Paulee Day [*see* D.I. 15], "the chapter 11 cases will be funded through (a) the consensual use of cash collateral, (b) proceeds from the Debtors' ordinary course operations and/or store closing sales, and (c) proceeds from any sale transaction or inventory liquidation." *See* D.I. 15, at ¶¶ 16 & 76. However, the Debtors have advised that while their total Stub Rent obligations are approximately $1.4 million, the Budget attached to the Interim Order includes only approximately half of the estimated Stub Rent obligations budgeted intermittently over the 13-week period, and does not provide for any payment of such Stub Rent until the conclusion of the cases following the confirmation and effective date of a plan. Following entry of the Interim Order, the Landlords and the Debtors have continued discussions with respect to the funding of the Stub Rent in these cases, and understand that the remaining half of the Stub Rent obligations are now to be added for budgeting purposes in the next turn of the Budget, although payment is still an end of the case item. Further, Landlords have not yet been provided with a copy of the proposed Budget and have not been able to confirm whether the Budget is adequate to provide the Landlords' with sufficient adequate protection of their interest in the Stub Rent, all of which remains subject to the Debtors ongoing negotiations for rent relief with the Landlords. As stated, the Debtors intend only to pay their Stub Rent obligations upon the closing of a sale as part of any cure due (for assigned leases) or on the effective date of a plan. Moreover, the consolidated nature of the Budget with a combined "Rent/Utilities" line item makes it impossible to discern whether the Budget provides sufficient funds for the payment of the Stub Rent at anytime in these cases, or to ensure that there is adequate funding for any and all other additional post-petition rental obligations as and when they come due under the Leases pursuant to Section 365(d)(3) of the Bankruptcy Code from the Petition Date through the date of any such assumption or rejection of

the Leases (together with the Stub Rent, the "Post-Petition Rent"), including, but not limited to, the June, July, and August rents at all remaining locations in these cases, and for any bi-annual real estate taxes or annual reconciliation or adjustment billings to be paid by the tenant, and other like charges that may arise outside of the monthly recurring rental obligations that may not have been budgeted.

9. The Debtors' position that Stub Rent will remain unpaid until the end of the cases with other administrative claims forces Landlords to wait months to be paid for the Debtors' May use and occupancy of the Premises and places the risk of administrative insolvency squarely upon the Landlords' shoulders, while the Debtors attempt to sell or restructure their businesses for the benefit of their lenders.

10. As such, Landlords object to the approval of any 506(c) Waiver for the benefit of the Prepetition Secured Parties prior to the payment of, reserving for, or otherwise providing adequate protection of the Debtors' ability to pay the Post-Petition Rent, including the administrative Stub Rent, incurred in these cases. The Debtors and the Prepetition Secured Parties must pay the freight of a bankruptcy in order to enjoy its benefits, sometimes known as "pay to play," and this case is no different.

11. Furthermore, for the costs associated with any stores where the Debtors are conducting GOB sales, including the potential for GOB sales to begin at additional locations or for this to pivot to a full chain liquidation, the Prepetition Secured Parties should not obtain the benefit of a 506(c) Waiver, unless and until all Post-Petition Rent is paid or Landlords are otherwise provided with adequate protection of the Debtors' ability to pay the Post-Petition Rent, including the Stub Rent, through any date of rejection of a Lease subject to the GOB Sales. To allow otherwise, would permit the Debtors and the Prepetition Secured Parties to utilize the

bankruptcy process to conduct closing sales outside the ordinary course of business and in violation of the Leases, for the sole benefit of the Debtors and the Prepetition Secured Parties, and without having to pay for the attendant expenses of such sales in exchange for that benefit. Finally, the Landlords would be severely prejudiced if the Court were to grant a 506(c) Waiver while the future and administrative solvency of the cases is uncertain, and it is already clear there are at least $700,000 in administrative expense obligations to the extent of the Stub Rent alone that are not even accounted for in the Budget. This Court should not allow the Debtors and the Prepetition Secured Parties to do so absent payment of all Post-Petition Rent and charges for their use and occupancy of the Premises, including the Stub Rent.

12. While Landlords are engaging in discussions with the Debtors and are willing to continue in those discussions with the Debtors regarding a potential resolution of the issues described herein, Landlords file this Objection to outline for the Court the open issues and legal support for the Landlords' positions in the event a consensual resolution is not reached.

II. ARGUMENT

A. Any Final Order Should Maintain the Landlord Protections Included in the Interim Order.

13. Landlords understand that the Landlord Protections will be incorporated into the proposed final order approving the Cash Collateral Motion (the "Proposed Final Order"); however, the Landlords have not had an opportunity to review the Proposed Final Order and therefore, to the extent that the Proposed Final Order does not incorporate the Landlord Protections, Landlords

hereby object to its entry, and reserve all rights to argue issues related to the Landlord Protections at the final hearing.

B. Landlords Are Entitled to Adequate Protection for the Post-Petition Use and Occupancy of the Premises as Part of Any Proposed Final Order.

14. Landlords do not oppose the Debtors use of Cash Collateral and the relief requested in the Cash Collateral Motion, provided the Landlord Protections are maintained in any Proposed Final Order and Landlords receive adequate protection of the Debtors' ability to pay all Post-Petition Rent accrued under all Leases—including the Stub Rent—regardless of whether the Leases are ultimately assumed or rejected. Since the bankruptcy filing, Landlords have provided and continue to provide critical benefits to the Debtors and the Lenders in terms of their continued use of the Premises in order to operate the Debtors' business to maximize the value of the Lenders' collateral, providing space for the secure storage and sale of the Lenders' collateral, and paying out of pocket expenses such as taxes, common area maintenance, utilities, and insurance. Moreover, for the locations where the GOB Sales will be conducted, the Landlords will be providing further benefits to the Lenders through the ongoing GOB Sales outside of the ordinary course of business at those Premises for the sole purpose of liquidating the Lenders' collateral.

15. Moreover, here the requested relief is for use of the Prepetition Lenders' Cash Collateral. The Prepetition Lenders are not providing any financing to the Debtors and there is no new money being advanced, nonetheless, the Debtors and the Prepetition Lenders are seeking $72 million in pay downs on the ABL, while also seeking authorization for a permanent waiver of the protections that creditors are provided under the Bankruptcy Code pursuant to section 506(c) and 552. Under this construct, if authorized, the Prepetition Lenders would be materially enhancing their position while failing to show any likelihood of diminution of value, in a case where the

Debtors are simply using cash collateral on consent, while forcing the Landlords to bear the risk of the case.

16. The Debtors recognize that their business is dependent on the ongoing use of their leased locations, and that Landlords are correspondingly critical to their potential success. That fact notwithstanding, the current Budget unfairly fails to provide for certain Post-Petition Rent, placing Landlords in a position unlike any other administrative creditor by relegating Landlords to the position of an involuntary, unsecured, post-petition, interest-free lender to the Debtors in the amount of the Stub Rent, which funds were likely utilized to pay other post-petition budgeted expenses of these estates, including the paydowns to the ABL Lenders. This is the very result that Section 365(d)(3) was intended to counteract. See In re Warehouse Club, Inc., 184 B.R. 316, 318 (Bankr. N.D. Ill. 1994). Upon information and belief, the Budget provides for the payment of all other post-petition administrative expenses of these estates, including professional fees, although it does not provide for the payment of the Stub Rent at any point in the budget period, and it is unclear when and whether the Budget is sufficient to pay certain other post-petition Lease obligations, such as for bi-annual real estate taxes or annual reconciliations. The Interim Order (and presumably the Proposed Final Order) provides that the Debtors can only use the Cash Collateral as provided by the Budget, and the use of Cash Collateral in any manner that is not consistent with the Budget is an event of default. (See Interim Order, ¶ 2 & 8(d)). As a result, if an expense is not included in the Budget or is included months into the future, the Debtors cannot and will not be in a position to pay it now or ever.

17. This structure places the ultimate payment of the Stub Rent at a risk that is not shared by other administrative creditors. While Landlords may not ever recover on account of the pre-petition rent that the Debtors have failed to pay if their Leases are rejected, this Court should

not further permit the Debtors or their Lenders the ability to avoid paying for their post-petition use and occupancy of the Premises, while availing themselves of the benefits of the Bankruptcy Code (and simultaneously avoiding its obligations). There is ample support for Landlords' entitlement to adequate protection under the Bankruptcy Code.

18. Adequate protection for the Post-Petition Rent is warranted as a condition of a sale or plan that involves the use of the Premises under Section 363(e), which provides:

> Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, ***the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest*** . . . .

11 U.S.C. § 363(e) (emphasis added).

19. Section 363(e) provides a basis to grant adequate protection to real property lessors to the extent of their Post-Petition Rent. See, e.g., Matter of Cont'l Airlines, Inc., 154 B.R. 176, 180 (Bankr. D. Del. 1993) (finding that adequate protection is available under § 363(e) for a decrease in value due to the use, sale, ***or lease*** of an entity's interest in property) (emphasis added); In re P.J. Clarke's Rest. Corp., 265 B.R. 392, 404 (Bankr. S.D.N.Y. 2001) (providing that a "landlord's right to adequate protection seems to follow clearly from the language of Section 363(e)"); In re Ernst Home Ctr., Inc., 209 B.R. 955, 966-67 (Bankr. W.D. Wash. 1997) (finding that adequate protection is available to real property lessors under Section 363(e)); In re RB Furniture, Inc., 141 B.R. 706, 713-14 (Bankr. C.D. Cal. 1992) (adequate protection under Section 363(e) may even be broader than the rights encompassed under Section 365(d)(3), given it "is a fluid concept that reflects all the circumstances surrounding a debtor's use of property").

20. While all parties hope these cases will ultimately be administratively solvent, it is too early to tell if this will be true in these proceedings. The Debtors' path in this bankruptcy is

still uncertain, as the Debtors have only just begun GOB Sales and sought approval of the procedures for their market test sale process. The Debtors assert that they have sufficient Cash Collateral for these cases and that their RSA will provide for smooth sailing in what is otherwise a quick reorganization case, which is not so certain as the Debtors make it seem, but the Debtors' intention to take advantage of occupancy and subject Landlords to the maximum risk of loss in these cases is untenable. How many months should a Landlord be forced to wait to (maybe) receive the May Stub Rent? In the not so recent case of *Linens Holding Co., et al.*, pending at Case No. 08-10832 before Judge Walrath, months turned into **18 years** and landlords ultimately only received a de minimus pro rata recovery on account of their Stub Rent claims, following the conversion of the cases to chapter 7 after a confirmed plan of reorganization failed to go effective.

21. Here, the Debtors have failed to reserve for or provide for the payment of the Stub Rent or otherwise provide the Landlords with any adequate protection of their interest in the Stub Rent other than to state (without any disclosure) that it is in the Budget. Everyone, including Landlords, are hopeful that the Debtors can achieve their goals in these cases, but that outcome remains uncertain at this time and Landlords should not be the only administrative creditors to shoulder this risk. Simply giving the Landlords an administrative expense claim for the Stub Rent will not adequately protect Landlords. See 11 U.S.C. § 361(3). In fact, Section 361(3) makes clear that adequate protection may not take the form of a deferred administrative claim. 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.").

22. The Debtors are still open and operating in Landlords' Premises, as they were for all of May. Unlike other creditors, Landlords have no choice but to allow the Debtors to continue

to use and occupy their Premises. This Court has seen many cases where the debtors and their professionals have stated (and believed) that there would be money to pay administrative claims at the end of a case, only later to concede that the estates are administratively insolvent. Indeed, even where debtors have been compelled to budget for Post-Petition Rent to address these precise concerns, Landlords have recently seen cases where those budgeted rent payments during the course of a bankruptcy case were not paid, despite the DIP lenders or prepetition lenders receiving the benefit of a 506(c) Waiver in exchange for such protection. See, e.g., In Party City HoldCo Inc., Case No. 24-90621 (ARP) (Bankr. S.D. Tex.); In re Big Lots, Case No. 24-11967 (JKS) (Bankr. D. Del.); In re Christmas Tree Shops, Case No 23-10576 (TMH) (Bankr. D. Del.); In re WeWork, Case No. 23-19865 (JKS) (Bankr. D.N.J.). Landlords do not want to see this case added to this ever-growing string cite.

23. The Court should require the Debtors to provide adequate protection for the continued use of the Premises through the date of the payment of their Post-Petition Rent, including the Stub Rent. Thus, any order approving the Cash Collateral Motion on a final basis must provide adequate protection to the Landlords.

C. Adequate Protection Can be Provided to the Landlords in Various Ways.

24. Because the Landlords are entitled to adequate protection of the Post-Petition Rent, the Court may consider the various forms of adequate protection that can be provided.

i. Payment Is a Form of Adequate Protection.

25. The best form of adequate protection the Debtors could provide is the payment of all of the Post-Petition Rent obligations that have accrued or will accrue through the assumption, assumption and assignment, or rejection of the Leases to be paid on a current basis, including for the Stub Rent. See, e.g., In re ZB Company, Inc., 302 B.R. 316, 320 (Bankr. D. Del. 2003) (holding

that rent should be paid to landlords on a per diem basis during the pre-rejection period in order to avoid the potential that the landlord could be left with an allowed administrative claim against an administratively insolvent estate).

26. No provision of the Bankruptcy Code permits the Debtors to receive the benefits and protections of chapter 11 while simultaneously shirking their attendant obligations. In circumstances where there is a potential risk of administrative insolvency, it is appropriate for adequate protection to take the form of budgeting and immediate cash payments for post-petition use of the Premises. See 11 U.S.C. § 361; In re Kellstrom Indus., Inc., 282 B.R. 787, 794 (Bankr. D. Del. 2002).

27. Moreover, the Court may also allow the unpaid Post-Petition Rent, including Stub Rent, as an administrative expense of the Debtors under Section 503(b)(1), and order its immediate payment. Section 503(b)(1) provides for an administrative expense claim for "the actual, necessary costs and expenses of preserving the estate. See 11 U.S.C. § 503(b)(1). Section 365(d)(3) does not preclude the Court from ruling that Stub Rent is an administrative expense under Section 503(b)(1). See In re Goody's Family Clothing Inc., 610 F.3d 812, 816-19 (3d Cir. 2010); In re Garden Ridge Corp., 323 B.R. 136, 142-43 (Bankr. D. Del. 2005) (citing ZB Co. Inc., 302 B.R. at 319 (landlords entitled to prorated rent from the Petition Date—despite the fact that the billing date occurred the day before the petition date)). A landlord's administrative claim under Section 503(b)(1) is equal to the lease contract rate. See ZB Co. Inc., 302 B.R. at 319 (contract rate is presumed to be the fair rental value).

28. Courts have discretion to determine the timing of the administrative payments. See, e.g., In re Carbon Health Technologies, Inc., Case No. 26-90305 (CML) (Bankr. S.D. Tex. Feb. 27, 2026) (Final Order Authorizing Debtors to Obtain Postpetition Financing) [D.I.. 194 , at ¶9.4]

(requiring payment of stub rent within the earliest to occur of 14 days of lease rejection, 5 business days of the receipt of cash proceeds, and 5 business days after entry of a confirmation order); In re Saks Global Enterprises LLC, Case No. 26-90103 (ARP) (Bankr. S.D. Tex. Feb. 20, 2026) (Final Order Authorizing Debtors to Obtain Postpetition Financing) [D.I.. 917 , at ¶19] (requiring payment of stub rent within 10 business days of the entry of the order); In re Claire's Holdings LLC, Case No. 25-11454 (BLS) (Bankr. D. Del. Sept. 9, 2025) (Final Order Authorizing Debtors to Object Postpetition Financing) [D.I. 419, at ¶31] (providing for stub rent claims to be paid within five (5) business days of the effective date of an assumption, assumption and assignment or rejection of a lease from an established stub rent reserve); Garden Ridge Corp., 323 B.R. at 143 (citing In re HQ Global Holdings, Inc., 282 B.R. 169, 173 (Bankr. D. Del. 2002) (entering interim orders directing the full contract rent for February 2004 to each landlord); ZB Co., Inc., 302 B.R. at 320. "In determining the time of payment, courts consider prejudice to the debtor, hardship to the claimant, and potential detriment to other creditors." See Garden Ridge Corp., 323 B.R. at 143; see also HQ Global, 282 B.R. at 173.

29. The hardship to Landlords outweighs any prejudice to the Debtors or other creditors. Without immediate payment of Post-Petition Rent, including the Stub Rent, or at least providing adequate protection that Landlords will receive such payment in one of the manners set forth herein, Landlords bear the risk of administrative insolvency, while the Debtors and Prepetition Secured Parties continue to benefit from the use of their Premises. Other creditors do not provide post-petition services to the Debtors without payment. Forcing Landlords to act as involuntary post-petition lenders is contrary to the Bankruptcy Code and directing payment (or adequate protection for payment) of the unpaid Post-Petition Rent, including Stub Rent, is appropriate under the circumstances. See In re Travel 2000, Inc., 264 B.R. 444 (Bankr. W.D.

Mich. 2001) (finding that Congress and courts have determined that a landlord should receive the benefit of its bargain to compensate a landlord for being compelled by the Bankruptcy Code to continue providing a debtor with a critical service); In re Simbaki, Ltd., Case No. 13-36878, 2015 WL 1593888 at *2 (Bankr. S.D. Tex. Apr. 6, 2015) ("Unlike other creditors, landlords often cannot choose to cease doing business with the debtor."). Therefore, this Court may allow and require the immediate payment of the Stub Rent under Section 503(b)(1).

ii. Post-Petition Rent Can Be Escrowed as a Form of Adequate Protection.

30. Short of immediate payment of the Post-Petition Rent owed to Landlords, the Debtors should escrow sufficient funds to provide adequate protection for the Post-Petition Rent, including Stub Rent. The Court was faced with a similar situation in *CEC Entertainment, Inc.*, where the debtors' financing budget failed to provide sufficient funds for the payment of stub rent and other outstanding post-petition lease obligations, and the debtors similarly sought a 506(c) waiver before those amounts would be paid to landlords. There, the Court fashioned a remedy of an escrow for the outstanding stub rent to provide adequate protection to landlords until the catchup payment could be made by the debtors. CEC Entm't Inc., Case No. 20-33163, Tr. Hr'g 10/8/20 pp. 74:4-75:3, relevant portions attached hereto as **Exhibit 1**. See also In re The Sports Authority, Inc., et al., Case No. 16-10527 (MFW) (Bankr. D. Del. May 3, 2016) (Final Order Authorizing Debtors to Obtain Postpetition Financing) [D.I. 1699, at § 40] (requiring reserve of stub rent for closing locations); In re Party City Holdco Inc., Case No. 24-90621 (ARP) (Bankr. S.D. Tex. Feb. 5, 2025) (Second Interim Order Approving Use of Cash Collateral) [D.I. 468, at ¶ 21] (providing for a stub rent reserve and the payment of stub rent in installments); In re New Rite Aid, LLC, Case No. 25-14861 (MBK) (Bankr. D.N.J. Sept. 22, 2025) (Amended Final Order Authorizing Debtors to Obtain Postpetition Financing) [D.I.. 2536, at ¶49] (requiring a stub rent escrow); In re

Francesca's Acquisition, LLC, Case No. 26-11312 (MEH) (Bankr. D.N.J. Mar. 26, 2026) (Stipulation and Agreed Order Regarding Stub Rent Reserve) [D.I.. 330] (establishing a stub rent reserve to resolve landlord objections to use of cash collateral); In re WeWork, Case No. 23-19865 (JKS) (Bankr. D.N.J. December 11, 2023) (Final Order Authorizing Use of Cash Collateral) [D.I. 428] (providing for the funding of a stub rent reserve and the payment of stub rent upon the assumption or rejection of a lease).

iii. A Carve Out or Condition to Any Surcharge Waiver under Section 506(c) Can Provide Landlords Adequate Protection.

31. As set forth in the Cash Collateral Motion, the Debtors are seeking a waiver of their surcharge rights under Section 506(c) in connection with a Proposed Final Order. Section 506(c) provides that a trustee or debtor in possession may recover from property securing an allowed secured claim the "reasonable, necessary costs and expenses of preserving or disposing of, such property to the extent of any benefit to the holder of such claim . . . ." 11 U.S.C. § 506(c); see Precision Steel Shearing, Inc. v. Fremont Fin. Corp. (In re Visual Ind., Inc.), 57 F.3d 321, 325 (3d Cir. 1995). The premise underlying Section 506(c) is that the unsecured creditors should not be required to bear the costs of preserving a secured creditor's collateral. See In re Evanston Beauty Supply Inc., 136 B.R. 171, 175 (Bankr. N.D. Ill. 1992). "Ample case authority exists which permits lessors to recover under Section 506(c) provided that the standards for recovery are met." In re World Wines, Ltd., 77 B.R. 653, 658 (Bankr. N.D. Ill. 1987). Standards for recovery are that the services were necessary and beneficial to the lender. Visual Indus., Inc., 57 F.3d at 325. Here, despite stating that the Debtors have sufficient cash collateral for these cases, the Debtors are proposing to push off the payment of certain Post-Petition Rent for an indeterminate time and subject to an indeterminate Budget. The Debtors and Prepetition Secured Parties continue to

benefit from the post-petition use and occupancy of the Premises, which are vital to the Debtors' bankruptcy goals, and there is no legitimate reason that they should not pay for that benefit.

32. Courts may surcharge secured lenders for post-petition rents and storage charges owed to them for storing lender's collateral, as necessary and directly beneficial to the lender. In re Scopetta-Senra P'ship III, 129 B.R. 700 (Bankr. S.D. Fla. 1991) (determining that a landlord that provided post-petition lease space provided benefit to the secured creditor by storing its collateral and ensuring the debtor's continued operations); In re Gain Electronics Corp., 138 B.R. 464, 465 (Bankr. D.N.J. 1992); In re World Wines, Ltd., 77 B.R. at 658 (finding that landlord was entitled to be paid by the bank for the use and occupancy of its premises for storage of wine pursuant to Section 506(c)); In re Proto-Specialties, Inc., 43 B.R. 81 (Bankr. D. Ariz. 1984).

33. The Debtors and the Prepetition Secured Parties are requesting a waiver of the Debtors' (and any other party's) ability to surcharge the Prepetition Secured Parties under Section 506(c). This places the risk of the Debtors' administrative insolvency on the Landlords in the amount of the unpaid Post-Petition Rent, as well as any other post-petition obligations that are not provided for in the Budget. Shifting this risk to unsecured creditors—and involuntary unsecured creditors, at that—is contrary to the purpose of Section 506(c) and results in an unwarranted windfall to the lenders. As a result, courts have increasingly required that lenders pay for such benefits, which requirement is sometimes referred to as the "pay to play" concept. See, e.g., In re The Sports Authority, Inc., et al., Case No. 16-10527 (MFW) (Bankr. D. Del. May 3, 2016) (Final Order Authorizing Debtors to Obtain Postpetition Financing) [D.I. 1699] (preserving Section 506(c) rights for the Debtors or any party with standing absent providing for payment of Stub Rent and Section 503(b)(9) claims); In re Claire's Holdings LLC, Case No. 25-11454 (BLS) (Bankr. D. Del. Sept. 9, 2025) (Final Order Authorizing Debtors to Object Postpetition Financing) [D.I. 419,

at ¶14] (limiting the effectiveness of any surcharge waiver unless and until a stub rent reserve was fully funded). Given that the Prepetition Secured Parties have and will substantially benefit from the continued use and occupancy of Debtors' retail locations through the preservation and disposition of collateral located in the leased Premises, the Prepetition Secured Parties should be required to allow the payment of the expenses incurred for their benefit rather than escape any responsibility for occupancy costs through attempted waivers of Sections 506(c) and 552.

34. Indeed, courts in a number of other jurisdictions, in addition to Delaware precedent, have adopted this "pay to play" concept. In the Eighth Circuit, for instance, the case law provides that "if a secured creditor consents to the debtor's continued operation, it also impliedly consents to the debtor surcharging the necessary operating expenses of continuing its business against the creditor's secured claim." See In re Machinery, Inc., 287 B.R. 755, 768 (Bankr. E.D. Mo. 2002); citing Underwriters Ins. v. Magna Bank (In re Hen House Interstate, Inc.), 150 F.3d 868, 871-72 (8th Cir. 1998) rev'd on other grounds 150 F.3d 868 (8th Cir.1998) (en banc) *aff'd.* 530 U.S. 1 (2000); United States v. Boatmen's First Nat'l. Bank, 5 F.3d 1157, 1159-60 (8th Cir.1993). "[B]oth Boatmen's and Hen House . . . require a finding that the secured creditor does in fact impliedly consent [to surcharging of its collateral] when it agrees to the debtor's continued operation of its business." Machinery, Inc., 287 B.R. at 768. This is just another way of stating the "pay to play" concept to make sure that Landlords and other unsecured creditors do not solely bear the risk of administrative insolvency.

35. If the Debtors and the Prepetition Secured Parties are unable or unwilling to pay or escrow the Stub Rent in full, then any waiver of the Debtors' surcharge rights under Section 506(c) should carve out the Stub Rent and any other unbudgeted Post-Petition Rent to make such waiver effective to Post-Petition Rent only after such amounts are escrowed or paid to the Landlords. This

conditional 506(c) waiver is another means of providing Landlords with the adequate protection to which they are entitled under the Bankruptcy Code. See In re American Signature, Inc., Case No. 25-12105 (JKS) (Bankr. D. Del. Jan. 8, 2026) (Final Order Authorizing Debtors to Obtain Postpetition Financing) [D.I. 350, at ¶35]; In re The Sports Authority, Inc., et al., Case No. 16-10527 (MFW) (Bankr. D. Del. May 3, 2016) (Final Order Authorizing Debtors to Obtain Postpetition Financing) [D.I. 1699, at ¶43(a)]; In re Claire's Holdings LLC, Case No. 25-11454 (BLS) (Bankr. D. Del. Sept. 9, 2025) (Final Order Authorizing Debtors to Object Postpetition Financing) [D.I. 419, at ¶14]. It is improper for the Debtors to seek to waive the statutory provisions specifically intended to protect Landlords' Post-Petition Rent claims while providing absolutely no means for such claims to be paid.[4]

D. The Bankruptcy Code Requires Equal Treatment of Administrative Expense Creditors.

36. Moreover, the Bankruptcy Code does not allow the Debtors to treat similarly situated administrative claimants differently. In re Lazar, 83 F.3d 306, 308-09 (9th Cir. 1996) ("Under the Bankruptcy Code, administrative expense creditors must be treated equally and the court should not set up its own order of priorities."). Through their Budget, the Debtors are establishing different classes of administrative claimants to receive payment, to the exclusion of others (namely, the Landlords), in violation of the Bankruptcy Code. Further, the Debtors chose to pay the May rents in full to certain landlords in these cases, while withholding such rents from other landlords, which unpaid rents were presumably utilized to pay other post-petition budgeted expenses. This alone should justify the immediate payment of or reserving for the Stub Rent or,

[4] It has been observed that bankruptcy courts "should not ignore the basic injustice of an agreement in which a debtor, acting out of desperation, has compromised the rights of unsecured creditors." In re FCX, Inc., 54 B.R. 833, 838 (Bankr. E.D.N.C. 1985); accord, In re Defender Drug Stores, Inc., 145 B.R. 312, 317 (9th Cir. BAP 1992) (recognizing that debtors-in-possession "generally enjoy little negotiating power" with secured lenders, "particularly where the lender has a prepetition lien on cash collateral.").

at a minimum, the non-payment of other similarly situated administrative claims until such time as the Stub Rent is paid.

III. RESERVATION OF RIGHTS

37. Landlords reserve the right to make such other and further objections as may be appropriate, and do not waive and hereby preserve all of their rights, remedies, and arguments with respect to the Leases.

IV. JOINDER IN OBJECTIONS

38. To the extent consistent with the objections expressed herein, Landlords also join in the objections of any other landlords or the official committee of unsecured creditors to the Debtors' proposed relief.

V. CONCLUSION

Landlords respectfully request that the Court require any Final Cash Collateral Order to be modified consistent with this Objection, and grant such further relief as the Court deems just and proper.

[Signature Page follows]

Dated: June 12, 2026
Wilmington, Delaware

/s/ Leslie C. Heilman

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SCHEDULE A

COLUMBIANA STATION (E&A), LLC		
Store No. Unknown	Columbiana Station	Columbia, SC
GG REIF I SEA TURTLE, LLC		
Store No. 1324	Sea Turtle Marketplace	Hilton Head Island, SC
MARIN GRF3 LLC		
Store No. 1299	Marin Gateway Center	Marin City, CA
REALTY INCOME CORPORATION		
Store No. 785	427 E. 23rd Street	Panama City, FL
Store No. 548	1860 S. Tamiami Trail S.	Venice, FL
Store No. 1292	2401 S. Andrew Avenue	Fort Lauderdale, FL
Store No. 6853	5303 N. Davis Highway	Pensacola, FL
Store No. 540	8401 Dimond D. Circle	Anchorage, AK
Store No. 1298	16723 General Puller Highway	Deltaville, VA
Store No. 57	30060 S. River Road	Harrison Township, MI

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CEC Entertainment, Debtors.	CASE NO: 20-33163 Houston, Texas Thursday, October 8, 2020 3:43 p.m.- 6:02 p.m.

TRIAL

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For The Official Committee of Unsecured Creditors:	JASON ADAMS Kelley Drye & Warren LLP 101 Park Avenue New York, NY 10178
For Kimco Realty Corporation, Site Centers Corporation and Various Other Landlords:	MICHELLE SHRIRO Singer & Levick PC 16200 Addison Road, Suite 140 Addison, Texas 75001
For Wilmington Trust, National Association, as Indenture Trustee:	JASON ANGELO MICHAEL COOLEY Reed Smith LLP 811 Main Street, Suite 1700 Houston, TX, 77002-6110
For The Official Committee of Unsecured Creditors:	TODD A. ATKINSON Womble Bond Dickinson (US) LLP 811 Main St Suite 3130 Houston, TX 77002
For Debtors:	MATT BARR SCOTT BOWLING CLIFFORD CARLSON PAUL GENENDER ALFREDO PEREZ

(indiscernible) given that -- (indiscernible) didn't know that (indiscernible) due to (indiscernible) often happens (indiscernible), that's all we have. We (indiscernible) again in this argument. Thank you.

THE COURT: Thank you. Any other opponents? All right. Probably makes the most sense to go to Mr. Rubin but if the debtor wants to address issues first that's fine. Mr. Rubin, why don't you - - I'm sorry, go ahead. Mr. Carlson, go ahead.

CARLSON: So Your Honor, the objections really come down to objection to specific terms, they want me to cut a deal negotiated heavily by the debtors. We (indiscernible) and Mr. Walters helped the (indiscernible) process, reached out to several different parties including the committee and the (indiscernible) crew and ultimately negotiated a deal that included these protections here, subject to (indiscernible) surcharge.

And you know, I've seen (indiscernible) -- negotiations were done in the package and the 506(c) surcharge (indiscernible) other protections were provided in exchange for the DIP lenders offering to provide the $200 million in financing and the use of (indiscernible) cash in these cases.

And so you know, given that background and sort of what the debtors -- the debtors are seeking approval that

(indiscernible) we thought it was a fair deal and we fought hard for it, and to the (indiscernible) request of the Court for that and an order within (indiscernible).

THE COURT: Mr. Carlson, if we were to order the debtors to establish a $13 million catch-up reserve next week, is that consistent with what your rights are under the DIP order?

CARLSON: If we are permitted to do a $13 million reserve for catch-up payments?

THE COURT: Right, if I ordered it -- when this money gets funded, that you take 13 million and you put it into a reserve next week so that you then have it for the November rent catch-up payment, does that in any way violate any of your obligations under this DIP order?

CARLSON: It may violate -- well, taking a look at it, it may violate communications on (indiscernible) that, in paragraph 21 that provide limitations on use of (indiscernible). It would not be necessarily consistent with our budget in that paragraph. But I think that is (indiscernible) the DIP order probably would not allow for that.

THE COURT: So Mr. Rubin, let me ask you a couple questions. I'm not sure that it would violate the terms but I'm not sure it wouldn't if I were to order that the debtors go ahead and establish a $13 million reserve for those catch-up payments. That would eliminate a lot of the

landlords' concerns over giving the 506(c) waiver up front. Which is something that they're raising pretty hard. And I don't know that it hurts your clients at all to do that.

And then the second question that I have for you about a change in the order -- and I am worried despite the fact that I said to Mr. Adams that doesn't prohibit you from doing things, it just prohibits you from getting paid for it. It would seem to me that the committee has to get funded by the debtors, and that if they're doing their job that doesn't include a challenge to your lien position or a suit against you all up until the point of default.

That that language can largely be eliminated just by adding language at the beginning of it that says prior to the event of a default they can be -- or after an event of default they can't be paid for these things and they can never be paid for suing you. I don't see much injury to your client because we all know that the professional fees have to get paid in the case.

And it is a bit distasteful to do it -- I don't know that it's wrong, I don't know that I shouldn't approve it and I'm not -- trying not to dictate to you, but just kind of raising those two questions for you as maybe reasonable actions to take at this point. What's your reaction?

MR. RUBIN: Sure, Your Honor. Jason Rubin from

Akin Gump. I'm on behalf of the DIP lenders. I will take your questions in order. First question, Your Honor, is if the Court were to request or order that the debtors need to provide a $13 million reserve for rent in order for the DIP lenders to be given the 506(c) waiver, I do believe that is something we could agree to.

We do believe that testimony that was presented to the Court today clearly demonstrated by the $200 million, should be more than sufficient to pay operating expenses while (indiscernible) expense claims and all (indiscernible) landlord claim and all the (indiscernible) fees throughout the case. But if Your Honor confirmed and would like to see a reserve established in order to grant the 506(c) waiver, I believe that is something we would be okay with.

Your second one Your Honor, there is no intention of the DIP lenders or the pre petition secure parties to restrict the ability of the committee to do what committees need to do to represent their constituents. As Your Honor noted, there are certainly a lot of words on that page but the limitation that -- as you summarized it is probably accurate, as you said (indiscernible) our clients in a general sense.

We added language at the committee's request to the DIP order in paragraph 21, we did -- that may clear that -- per their prosecution and preparation of their objections

to the DIP motion were not intended to be covered by the restriction on investigation matters. That's here in the red line in paragraph 21.

Similarly, Your Honor, you know, prosecution (indiscernible) objection, again, we would not expect the (indiscernible) subject to the committee investigation but if that's set forth in paragraph 21, so potentially Your Honor, you know, we could work on the language. That was not the intention and I can represent that.

And then lastly, myriad language at the end of paragraph 21 that does make (indiscernible) that in the extent there are expenses incurred that (indiscernible) challenge (indiscernible), this is not prejudicing the right of the committee to have those expenses paid under our (indiscernible) bankruptcy code.

THE COURT: Yeah, I just -- and I appreciate that language. I want to be sure that there isn't -- and I'm not suggesting your clients were doing this. I want Mr. Adams not to feel that level of leverage on your clients' part. And I appreciate the fact that your client would be willing to make those two changes.

I think that the evidence is pretty overwhelming that this DIP ought to be approved. And although I have additional objections to those that have been resolved by agreement I think, by three principle agreements, I find

that this DIP is necessary and in the best interest of the estate.

The fact that the DIP wasn't taken down in the beginning and that the debtors have used their money to operate with seems entirely appropriate to me. The fact is that on the 13 week budget which no one contests, next week the debtor will drop below its $25 million optimum cash reserves if the DIP isn't funded immediately. And we will jeopardize this business and jeopardize the jobs and jeopardize any more point of recovery for the various creditors in the case.

The lenders can't be charged for the administrative expenses in the case. They can't be charged for the losses of the debtor that are the routine losses that aren't directly related to their collateral. And the fact is, this estate's going to lose in cash flow over $100 million during the course of this bankruptcy case.

Are we funding too large of a DIP? No way. We are in wholly uncharted territory for the United States and maybe for the world in terms of what's going on. We know the money is needed next week in some amount, and the fact that the forecasts don't show that all $200 million will be used doesn't mean that this debtor from a stability point of view doesn't need additional money. It needs pretty much as much as it can get in order to assure its stability and

ability to emerge as a going concern business.

I find that the DIP should be approved and it should be approved in full with the three changes that we have talked about. So just to run through those and then we'll get an order uploaded that does that, number one is there will be a remedies provision added. Number two is that there will be, out of the first $100 million of funding, $13 million set aside out of which the debtors may pay all of their catch-up payments in order to bring the landlords current.

That does not excuse the debtors from any additional obligation to bring them current. It doesn't set an amount -- if that turns out to be in excess of what is needed, the debtors can then put it into their regular bank account. But that reserve will be inviolate until those amounts are paid.

And then the third change is I just want cleaner language to be sure that the UCC can do its job without fear of leverage. And I think those have all been agreed to by the lenders. I should say for the record that I think my role is either to approve or not approve the DIP. I can't approve it and impose additional conditions. And so these three conditions that I am now requiring are done because the lender has agreed to it.

As to whether I would have approved this without

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the lenders' agreement to those things is a different question. But my choice is either approve or don't approve, it isn't approve and then print something on it because the lenders have volunteered in terms of advancing additional money.

They've done this voluntarily at this -- as voluntarily as they can be when asked a question like I asked. They've still done it voluntarily and solved the problems. So I'm going to approve it. Mr. Carlson, can you -- I think this needs to be done tomorrow. Can you work on this -- I hate to do this to you overnight during the storm if it comes in, and get an order uploaded tomorrow that I'll be able to sign tomorrow?

MR. CARLSON: Not a problem (indiscernible).

THE COURT: All right. I want the landlords to tell me -- one landlord lawyer that Mr. Carlson can consult with. I want Mr. Adams signing off with it and then one of the landlord lawyers. Can you all designate one person that can consult with the rest of you all so that Mr. Carlson's not having to deal with six people all with identical interests?

THE COURT: Let's volunteer Ms. Roglen, Your Honor.

MR. RUBIN: That's fine with me, Your Honor.

THE COURT: Ms. Roglen?

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MS. ROGLEN: That's fine for me as well, thanks.

THE COURT: Yeah, I'll have them confer with you. I do think this resolves your objection as I understand it as well, and I hope that -- it's not what you asked for but I think it's actually better than what you asked for. So. Hopefully you all can agree.

MS. ROGLEN: I think it's a very (indiscernible) Your Honor.

MR. ADAMS: Yes, Your Honor, thank you.

THE COURT: All right. Is there anything else that we need to get done tonight? Okay, thank you. I know it's been a long day for you all and I know I started a little bit late just from other hearings, so. I appreciate your courtesies towards me. We will go ahead and adjourn for the night. I'll get an order in tomorrow.

CARLSON: Thank you, Your Honor.

THE COURT: Mr. Carlson, if you will contact Ms. Stowe the minute that gets filed, I'll need to get that done tomorrow and I want to do it right away on an emergency basis.

CARLSON: We'll do that, thanks, Your Honor.

THE COURT: Thank you all. Good night, everyone.

MR. RUBIN: Thank you, Your Honor.

(Proceedings adjourned at 6:02 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Sonya Ledanski Hyde

Veritext Legal Solutions
330 Old Country Road
Suite 300
Mineola, NY 11501

Date: October 16, 2020

CERTIFICATE OF SERVICE

I, Leslie C. Heilman, hereby certify that on this 12th day of June 2026, I caused a true and correct copy of the ***Limited Objection of Columbiana Station (E&A), LLC; GG REIF I Sea Turtle, LLC; Marin GRF3 LLC; and Realty Income Corporation to Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Use Cash Collateral, and (B) Grant Liens and Provide Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief*** to be served by electronic notice upon all parties registered to receive notice via CM/ECF in these cases, and also upon the parties listed on the attached service list in the manner indicated.

Dated: June 12, 2026
Wilmington, Delaware

/s/ Leslie C. Heilman
Leslie C. Heilman
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