

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

CBC RESTAURANT CORP., et al.,¹

Debtors.

Chapter 11

Case No. 23-10245 (KBO)

(Jointly Administered)

Objection Deadline: TBD at 4:00 p.m. (ET)

Hearing Date: TBD

FIRST OMNIBUS MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER: (1) AUTHORIZING THE REJECTION OF CERTAIN UNEXPIRED LEASES AND ABANDONMENT OF CERTAIN PERSONAL PROPERTY (WITH CERTAIN REJECTIONS AND ABANDONMENTS EFFECTIVE *NUNC PRO TUNC* AS OF THE PETITION DATE); AND (3) GRANTING RELATED RELIEF

COUNTERPARTIES RECEIVING THIS MOTION SHOULD LOCATE THEIR NAMES AND LEASES ON THE LIST OF LEASES TO BE REJECTED, ATTACHED TO THE PROPOSED ORDER AS EXHIBIT 1.

Counterparties are hereby provided notice that the Debtors intend to reject the leases, stop performing thereunder, and terminate all related services as of the date specified on Exhibit 1 to the Proposed Order.

CBC Restaurant Corp. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, "Corner Bakery" or the "Debtors"), respectfully state the following in support of this motion (this "Motion").

RELIEF REQUESTED

1. Corner Bakery seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"): (a) authorizing the rejection of certain unexpired leases or

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include CBC Restaurant Corp. (0801), Corner Bakery Holding Company (3981), and CBC Cardco, Inc. (1938). The Debtors' service address is 121 Friends Lane, Suite 301, Newtown PA 18940.



subleases of nonresidential real property, including, to the extent applicable, any agreements, amendments, work letters, supplements, waivers, subleases and side letters related thereto, identified on **Exhibit 1** to the Proposed Order (the “Rejected Leases”) as of either (i) February 22, 2023 (the “Petition Date”), with respect to those Leases for which the Debtors vacated the relevant premises and turned over the keys to the relevant landlords or were evicted, or otherwise were not in possession of the premises as of the Petition Date or (ii) as of the date on which the Debtors vacate the relevant premises and turn over the keys to the landlord, as applicable, all as set forth in greater detail in **Exhibit 1**; (b) authorizing the abandonment of certain *de minimis* equipment, fixtures, furniture, or other personal property located at such premises (the “Personal Property”); and (c) granting related relief.

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (Sleet, C.J.).

3. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BASIS FOR RELIEF

5. The bases for the relief requested in this Motion are sections 105(a), 365(a), and 554(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Bankruptcy Rule 6006, and Local Rule 9013-1(m).

BACKGROUND

A. The Business and Events Leading to These Bankruptcy Filings

6. Corner Bakery is a fast-casual restaurant serving kitchen-crafted breakfast, lunch, and dinner and catering to guests. Its restaurants have been a neighborhood favorite since the brand was established in 1991. The original American Italian bakery cafe was founded on a philosophy of creating a warm and comfortable place for people to relax with friends, family, and neighbors. Today, the restaurant features artisan-inspired, seasonal menu options made with fresh ingredients, while delivering a premier bakery cafe experience in the heart of neighborhoods and urban markets across California, Texas, Pennsylvania, Illinois, Virginia, Maryland, and the District of Columbia.

7. Detailed descriptions of Corner Bakery's business and the facts and circumstances supporting this Motion and the Debtors' chapter 11 cases are set forth in detail in the *Declaration of Jignesh Pandya, Chief Executive Officer and Chief Operating Officer of CBC Restaurant Corp. in Support of Chapter 11 Petitions and First Day Motions* filed on February 23, 2023 [D.I. No. 22] and the *Supplemental Declaration of Jignesh Pandya, Chief Executive Officer and Chief Operating Officer of CBC Restaurant Corp. in Support of Chapter 11 Petitions and First Day Motions* (the "Supplemental Declaration") being filed concurrently with this Motion.

8. On the Petition Date, each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request for the

appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

B. Leases to be Rejected.

9. Corner Bakery does not own the real property on which its restaurants are operated, but instead leases its restaurant locations from numerous counterparties (the “Landlords”). Prior to the Petition Date, the Debtors were parties to 113 leases of nonresidential real property with respect to Corner Bakery locations.

10. The Debtors are reviewing and analyzing all of their leases of nonresidential real property and they have determined that the Leases identified on Exhibit 1 do not provide any value to the Debtors or their estates because the restaurant locations are either not operating or can no longer be operated profitably under the present lease terms. The continued obligation to pay rent or otherwise perform under the Rejected Leases and conduct business at the locations to be rejected will impose upon the Debtors burdensome administrative costs that will be detrimental to the Debtors’ reorganization efforts. In addition to their obligations to pay rent under the Leases, the Debtors would be obligated to pay certain real property taxes, utilities, insurance, and other related charges associated with certain of the Leases. The Debtors have determined in their business judgment that such costs constitute a wasteful drain of estate assets. Additionally, the Debtors have determined in their business judgment that the costs of the Leases exceed any marginal benefits that could potentially be achieved from assignments or subleases of the Leases. Given these circumstances, the Debtors believe that prompt rejection of the Rejected Leases as of the Petition Date is necessary and in the best interests of the Debtors, their estates, and their creditors

11. More particularly, before commencing these cases, the Debtors vacated certain locations that represented a burden on the financial performance of the Debtors’ enterprise. In

connection with vacating those premises, the Debtors generally delivered possession and the keys to the Landlords of the respective Premises. In certain cases, Landlords successfully pursued eviction actions against the Debtors, thereby gaining possession of the leased premises. In other instances, the Debtors entered into Leases but did not take possession of the related premises prior to the Petition Date. The Debtors seek to reject the Leases with respect to all such locations (the "Previously Vacated Premises"), with respect to which they were not in possession of the Leased Premises as of the date that they commenced these Chapter 11 cases, *nunc pro tunc* to the Petition Date. **Exhibit 1** identifies the Previously Vacated Premises.

12. In addition, following the Petition Date, the Debtors have been vacating additional locations (the "Recently Vacated Premises") that represent a burden on the financial performance of the Debtors' enterprise. With respect to such locations, in advance of filing this Motion, the Debtors have begun, and in all or most instances, completed, the process of: (a) notifying each respective Landlord in writing of their (i) unequivocal and irrevocable decision to surrender the Premises and abandon possession to each applicable Landlord and to reject each applicable Rejected Lease and (ii) unequivocal and irrevocable decision to surrender, abandon, and forfeit to the applicable landlord any and all Personal Property located in the Premises; and (b) vacating the locations and returning the keys and/or access codes thereto to the respective Landlords. The Debtors hereby waive their right to withdraw this Motion, absent the consent of the respective Landlord(s). To preserve value for their estates by avoiding unnecessary rent costs the Debtors hereby seek to reject those Rejected Leases for the Recently Vacated Premises as of the date upon which the Debtors vacate the premises and turn over the keys and/or access codes to the relevant Landlord. **Exhibit 1** identifies the Recently Vacated Premises.

C. Personal Property to Be Abandoned

13. Additionally, the Debtors have evaluated the Personal Property that may be located at the Premises and determined that (a) the Personal Property is of inconsequential value or (b) the cost of removing and storing the Personal Property for future use, marketing, or sale exceeds its value to the Debtors' estates. Accordingly, to reduce postpetition administrative costs and in the exercise of the Debtors' sound business judgment, the Debtors believe that the abandonment of the Personal Property is appropriate and in the best interests of the Debtors, their estates, and their creditors.

ARGUMENT

I. Rejection of the Leases Is Appropriate and Provides the Debtors with Significant Cost Savings.

14. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may . . . reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The decision to assume or reject an executory contract or unexpired lease is a matter within the "business judgment" of the debtor. See *Nat'l Labor Relations Bd. v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982) ("The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the 'business judgment' test." (citation omitted)); see also *Glenstone Lodge, Inc. v. Buckhead Am. Corp. (In re Buckhead Am. Corp.)*, 180 B.R. 83, 88 (Bankr. D. Del. 1995). Application of the business judgment standard requires a court to approve a debtor's business decision unless the decision is the product of bad faith, whim, or caprice. See *Lubrizol Enters., Inc. v. Richmond Metal Finishes*, 756 F.2d 1043, 1047 (4th Cir. 1985). Further, "[t]his provision allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed." *Stewart*

Title Guar. Co. v. Old Republic Nat'l Title Ins. Co., 83 F.3d 735, 741 (5th Cir. 1996) (citation omitted).

15. Rejection of an unexpired lease is appropriate where such rejection would benefit the estate. See *Sharon Steel Corp. v. Nan Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 39–40 (3d Cir. 1989). Upon finding that a debtor has exercised its sound business judgment in determining that rejection of certain contracts or leases is in the best interests of its creditors and all parties in interest, a court should approve the rejection under section 365(a). See *In re Federal Mogul Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003); *In re Bradlees Stores, Inc.*, 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996), *appeal dismissed*, 210 B.R. 506 (S.D.N.Y. 1997); *In re Summit Land Co.*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that absent extraordinary circumstances, court approval of a debtors' decision to assume or reject an executory contract "should be granted as a matter of course").

16. The Leases are not a source of potential value for the Debtors' estates, creditors, or interest holders. The Debtors' obligations to pay, for example, postpetition rent, real estate taxes, utilities, insurance, and other related charges eliminates any potential value of the Leases to the Debtors' estates—including any potential value from an assignment or sublease. Accordingly, the Debtors have determined that these Leases constitute unnecessary drains on the Debtors' resources and, therefore, rejection of such Leases reflects the Debtors' exercise of sound business judgment.

II. The Abandonment of Personal Property Is Appropriate.

17. Further, the abandonment of the Personal Property is appropriate and authorized by the Bankruptcy Code. See 11 U.S.C. § 554(a). Section 554(a) provides that "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." *Id.* Courts generally give a debtor in possession great deference to its decision to abandon property. See, e.g., *In re Vel Rey Props., Inc.*,

174 B.R. 859, 867 (Bankr. D.D.C. 1994) (“Clearly, the court should give deference to the trustee’s judgment in such matters.”). Unless certain property is harmful to the public, once a debtor has shown that it is burdensome or of inconsequential value to the estate, a court should approve the abandonment. *Id.*

18. The Debtors have determined that the costs of moving and storing the Personal Property would outweigh any benefit to the Debtors’ estates. Further, any efforts by the Debtors to move or market the Personal Property could unnecessarily delay the Debtors’ surrender of the Premises and the rejection of the Leases. Accordingly, it is in the best interests of the Debtors and their estates for the Debtors to abandon the Personal Property located on the Premises.

19. Courts in this jurisdiction have approved relief similar to the relief requested herein. *See, e.g., In re Dex Media, Inc.*, No. 16-11200 (KG) (Bankr. D. Del. June 8, 2016); *In re Sports Authority Holdings, Inc.*, No. 16-10527 (MFW) (Bankr. D. Del. Apr. 4, 2016); *In re Samson Res. Corp.*, No. 15-11934 (CSS) (Bankr. D. Del. Feb. 19, 2016); *In re Quiksilver, Inc.*, No. 15-11880 (BLS) (Bankr. D. Del. Nov. 16, 2015); *In re The Wet Seal, Inc.*, No. 15-10081 (CSS) (Bankr. D. Del. Feb. 5, 2015).

III. This Court Should Deem Leases for Previously Vacated Premises Rejected *Nunc Pro Tunc* to the Petition Date.

20. Section 365 of the Bankruptcy Code does not restrict a bankruptcy court from applying rejection retroactively. *See In re Jamesway Corp.*, 179 B.R. 33, 37 (S.D.N.Y. 1995) (stating that section 365 does not include “restrictions as to the manner in which the court can approve rejection”); *see also In re CCI Wireless, LLC*, 297 B.R. 133, 138 (D. Colo. 2003) (noting that section 365 “does not prohibit the bankruptcy court from allowing the rejection of [leases] to apply retroactively”). Courts have held, that a bankruptcy court may, in its discretion, authorize rejection retroactively to a date prior to entry of an order authorizing such rejection where the

balance of equities favors such relief. *See In re Thinking Machs. Corp.*, 67 F.3d 1021, 1028–29 (1st. Cir. 1995) (stating “rejection under section 365(a) does not take effect until judicial approval is secured, but the approving court has the equitable power, in suitable cases, to order a rejection to operate retroactively”); *In re Chi-Chi’s, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (stating “the court’s power to grant retroactive relief is derived from the bankruptcy court’s equitable powers so long as it promotes the purposes of § 365(a)”); *CCI Wireless*, 297 B.R. at 140 (holding that a “court has authority under section 365(d)(3) to set the effective date of rejection at least as early as the filing date of the motion to reject”); *BP Energy Co. v. Bethlehem Steel Corp.*, 2002 WL 31548723, at *3 (S.D.N.Y. Nov. 15, 2002) (“We cannot conclude . . . that a bankruptcy court’s assignment of a retroactive rejection date falls outside of its authority when the balance of the equities favors this solution.”); *see also In re At Home Corp.*, 392 F.3d 1064, 1065–66 (9th Cir. 2004) (holding “that a bankruptcy court may approve retroactively the rejection of an unexpired nonresidential lease”). In *In re Namco Cybertainment, Inc.*, the Court stated that retroactive rejection of an unexpired lease was permissible, provided: (a) the premises (and the keys thereto) were surrendered with an unequivocal statement of abandonment to the Landlord; (b) the motion was served on the Landlord; (c) the official committee consented to the requested relief; and (d) the debtor waived its right to withdraw the motion. No. 98-173 (PJW) (Bankr. D. Del. Feb. 6, 1998); *see also TW, Inc. v. Angelastro (In re TW, Inc.)*, No. 03-10785, 2004 WL 115521, at *2 (D. Del. Jan. 14, 2004) (upholding bankruptcy court ruling denying rejection of leases *nunc pro tunc* to the petition date when the debtor had not surrendered possession prior to the petition date).

21. Here, the balance of equities favors rejection of the Leases of Previously Vacated Premises *nunc pro tunc* to the Petition Date. Without such relief, the Debtors will potentially incur unnecessary administrative expenses related to such Rejected Leases—agreements that provide no

benefit to the Debtors' estates in light of their recent operational wind-down. *See* 11 U.S.C. § 365(d)(3). In fact, the Debtors were not in possession of the Previously Vacated Premises on the Petition Date, either as a result of a prior surrender or eviction or because the Debtors never took possession of the premises. Moreover, the Landlords will not be unduly prejudiced if the rejection is deemed effective as of the Petition Date.

22. Contemporaneously with the filing of this Motion, the Debtors will cause notice of this Motion to be served on the Landlords, thereby allowing each party sufficient opportunity to respond accordingly. The Debtors have sought the relief requested at the earliest possible moment in these chapter 11 cases and do not seek to reject the Leases effective *nunc pro tunc* to the Petition Date due to any undue delay on their own part.

23. Courts in this jurisdiction have approved relief similar to that requested herein. *See In re Quicksilver Res. Inc.*, No. 15-10585 (LSS) (Bankr. D. Del. Apr. 15, 2015) (authorizing rejection of executory contracts effective as of specified dates); *In re QCE Fin. LLC*, No. 14-10543 (PJW) (Bankr. D. Del. Apr. 9, 2014) (authorizing rejection of unexpired leases *nunc pro tunc* to the petition date); *In re Longview Power, LLC*, No. 13-12211 (BLS) (Bankr. D. Del. Feb. 26, 2014) (authorizing rejection of unexpired leases *nunc pro tunc* to prior notice date); *In re Prommis Holdings, LLC*, No. 13-10551 (BLS) (Bankr. D. Del. June 14, 2013) (same).

24. Accordingly, the Debtors respectfully submit that the Court should deem the Leases of the Previously Vacated Premises identified on **Exhibit 1** to the Order attached hereto rejected, effective *nunc pro tunc* to the Petition Date.

RESERVATION OF RIGHTS

25. The inclusion of a Lease in the list of Rejected Leases on **Exhibit 1** to the Proposed Order is not an admission by the Debtors that such contract or lease is, in fact, an

executory contract or unexpired lease, and the Debtors expressly reserve all rights in connection therewith. The Debtors further reserve their rights with respect to any existing defaults of the Landlords, and all defenses and counterclaims to any rejection-damages claims are preserved, including without limitation defenses or counterclaims relating to the expiration of a lease or a non-debtor party's default.

BANKRUPTCY RULE 6006(F)

26. Bankruptcy Rule 6006(f) requires that a motion to reject multiple executory contracts or unexpired leases:

- a) State in a state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;
- b) List parties alphabetically and identify the corresponding contract or lease;
- c) Be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and
- d) Be limited to no more than 100 executory contracts or unexpired leases.

27. The Debtors believe that the Motion complies with these requirements.

NOTICE

28. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) SSCP Restaurant Investors LLC ("SSCP"), the Debtor's prepetition lender, Ken Schwab (kschwab@sscpmanagement.com), and counsel to SSCP, Foley & Lardner LLP, 2021 McKinney Avenue, Suite 1600, Dallas, TX. 75201, Attn: Holland N. O'Neil (honeil@foley.com), Mark C. Moore (mmoore@foley.com), and Stephan A. Jones (sajones@foley.com) and Ashby & Geddes, P.A, 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE. 19899, Attn: Ricardo Palacio (RPalancio@ashbygeddes.com); (d) the United States Attorney's Office for the District of Delaware, Attn: Linda Casey

(Linda.Casey@usdoj.gov); (e) the Internal Revenue Service; (f) the office of the attorneys general for the states in which the Debtors operate; (g) the Landlords under the Rejected Leases; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. Corner Bakery submits that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

29. No prior request for the relief sought in this Motion has been made by Corner Bakery to this or any other court.

WHEREFORE, Corner Bakery respectfully requests that the Court enter an Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: February 28, 2023
Wilmington, Delaware

/s/ Mette H. Kurth

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Proposed Counsel to the Debtors and Debtors In Possession

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

CBC RESTAURANT CORP., et al.,¹

Debtors.

Chapter 11

Case No. 23-10245 (KBO)

(Jointly Administered)

Re: D.I. No. [●]

**ORDER: (1) AUTHORIZING THE REJECTION OF CERTAIN UNEXPIRED LEASES
AND ABANDONMENT OF CERTAIN PERSONAL PROPERTY (WITH CERTAIN
REJECTIONS AND ABANDONMENTS EFFECTIVE *NUNC PRO TUNC* AS OF THE
PETITION DATE); AND (3) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (the “Order”): (a) authorizing the rejection of certain unexpired leases or subleases (the “Rejected Leases”) for nonresidential real property located at the premises (collectively, the “Premises”) set forth on **Exhibit 1** attached hereto; (b) authorizing the abandonment of certain equipment, fixtures, furniture, or other personal property (the “Personal Property”) that may be located at the Premises, each effective as of the Petition Date; and (c) granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration and the Supplemental Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include CBC Restaurant Corp. (0801), Corner Bakery Holding Company (3981), and CBC Cardco, Inc. (1938). The Debtors’ service address is 121 Friends Lane, Suite 301, Newtown PA 18940.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

dated February 29, 2012; and this Court finding that it may enter a final order consistent with Article III of the United States Constitution; and this Court finding that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court finding that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** on as set forth herein.
2. The rejection of the Rejected Leases identified on **Exhibit 1** attached to this Order, including, to the extent applicable, any agreements, amendments, work letters, supplements, waivers, subleases and side letters related thereto, is hereby authorized and approved effective as of the Rejection Effective Dates set forth on **Exhibit 1** thereto.
3. The Personal Property is deemed abandoned as of the Rejection Effective Dates set forth on **Exhibit 1** hereto pursuant to section 554 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 6007, and the relevant Landlords are authorized to dispose of such abandoned property without liability to the Debtors.
4. Except as otherwise expressly provided herein, the Debtors are authorized to abandon any Personal Property on the Premises, and the Landlords may dispose of such property on and after the Rejection Date in their sole and absolute discretion without liability to the Debtors or any third party. Notwithstanding the foregoing, the Debtors are not authorized to abandon any

Personal Property (physical or electronic) that (a) contains personally identifiable information of employees, customers or other natural persons or (b) is necessary for the prosecution of this jointly administered bankruptcy case and is not duplicated elsewhere.

5. The Debtors' rights with respect to any existing defaults of the Landlords, and all defenses and counterclaims to any rejection damages claims, are hereby preserved.

6. Notwithstanding Bankruptcy Rule 6004(h) 7062, or 9014, or otherwise, the terms and conditions of this Order are effective and enforceable immediately upon its entry.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

8. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

[Provide 4" blank space on last page for judge's signature]

Exhibit 1

SCHEDULE OF REJECTED LEASES

**TABLE A:
PREVIOUSLY VACATED PREMISES/REJECTION EFFECTIVE AS OF PETITION DATE**

Store No.	Store Name	Store Address	Landlord (Sublandlord where noted)	Landlord Notice Address (Sublandlord Notice Address where noted)	Rejection Effective Date
290	Madison	1425 K St. NW Washington DC 20005	B.G.W. Limited Partnership	<p>Harold Forster MRFOYT, LLC 5245 Topeka Drive Tarzana CA 91356</p> <p>Hendon FGV Center, LLC c/o Hendon Properties 3445 Peachtree Rd. NE Ste. 465 Atlanta GA 30326</p> <p>James M. Tyrone, Esq. Briana A. O'Neil, Esq. Watkins & Eager, PLLC P. O. Box 650 Jackson, MS 39205</p>	Petition Date
163	Woodland Hills	6100 N. Topanga Canyon Blvd. #1330 Woodland Hills, CA 91367	<p><u>Sublandlord:</u> Maggiano's Holding Corporation</p> <p><u>Prime Landlord:</u> Promenade LLC c/o Westfield Corporation Inc.</p>	<p><u>Sublandlord Notice Address:</u> Brinker International, Inc. Attn: General Counsel 6820 LBJ Freeway Dallas TX 75240</p> <p>Brinker CB II, LLC-DE 3000 Olympus Blvd Attention: General Counsel CBK0076 Coppell TX 75019</p> <p>Brinker CB II, LLC-DE 3000 Olympus Blvd Attention: General Counsel CBK0076 Dallas TX 75019-4880</p> <p>Caitlin I. Morgan cmorgan@polsinelli.com D. Rockwell Bower rbower@polsinelli.com Polsinelli, PC 2950 N. Harwood, Suite 2100 Dallas, Texas 75201</p> <p><u>Prime Landlord Notice Address:</u> Westfield Corporation, Inc. 11601 Wilshire Boulevard 12th Floor Los Angeles GA 90025</p>	Petition Date

Store No.	Store Name	Store Address	Landlord (Sublandlord where noted)	Landlord Notice Address (Sublandlord Notice Address where noted)	Rejection Effective Date
263	Chinatown	777 6th St., NW Washington DC 20001	MEPT 777 6th Street, LLC	<p>Robert B. Edwards MEPT 777 6th Street, LLC c/o NewTower Trust Company 7315 Wisconsin Ave. Ste. 350 West Bethesda MD 20814</p> <p>MEPT 777 6th Street, LLC c/o Bentall Kennedy (U.S.) Limited Partnership Attn: Director of Asset Management - MEPT 1201 Third Ave., Ste. 3000 Seattle WA 98101</p> <p>Ryan Gerrety MEPT 777 6th Street, LLC 355 E St. SW Ste. 110 Washington DC 20024</p> <p>Marc O. Winters McNaul Ebel Nawrot & Helgren PLLC 600 University St. Ste. 2700 Seattle WA 98101</p> <p>Bradshaw Rost Tenenbaum & Saas, P.C. 4504 Walsh St. Ste. 200 Chevy Chase, MD 20815 301-961-5300</p>	Petition Date
116	Outlets at Orange	20 City Boulevard West Bldg. G-2, Sp. R-4 Orange, CA 92868	Orange City Mills Limited Partnership	<p>Orange City Mills Limited Partnership c/o The Mills Corporation 5425 Wisconsin Avenue Suite 500 Chevy Chase MD 20815</p> <p>Jonathon J. Herzog, Esq. WESTON HERZOG LLP 550 North Brand Blvd. Suite 1990, Glendale, CA 91203 Tel: (818) 755-8555</p>	Petition Date
155	Preston Forest	11700 Preston Rd. Ste 880 Dallas, TX 75230	Preston Forest SC, LLC	Preston Forest SC, LLC. C/O Stockdale Investment Group, Inc. 5950 Berkshire Lane, Suite 800 Dallas TX 75225	Petition Date

Store No.	Store Name	Store Address	Landlord (Sublandlord where noted)	Landlord Notice Address (Sublandlord Notice Address where noted)	Rejection Effective Date
289	Flowood	108 Market St. Flowood, MS 39232	Realty Management Associates, LLC	Realty Management Associates, LLC P.O. Box 777 Oakhurst, NJ 07755 Ron A. Yarbrough Brunini Law Firm 190 E. Capitol Street Suite 100, The Pinnacle Building Jackson, MS 39201	Petition Date
319	Brandon	2326 W Brandon Blvd. Brandon, FL 33511	Regency Centers, L.P.	John Roschman RJR Investment, LLC 6300 NE 1st Avenue Suite 300 Ft. Lauderdale FL 33334	Petition Date
291	Perimeter	4585 Ashford Dunwoody Road Dunwoody, GA 30346	Rubin Dunwoody, LLC	Sam L. Rubin Rubin Dunwoody, LLC 984 Monument Street Suite 201 Pacific Palisades CA 90272 Catherine Weinberger Rubin Dunwoody, LLC 984 Monument Street Suite 201 Pacific Palisades CA 90272 N. Jackson Gotney; Jr., Esq. Wiles & Wiles, LLP 800 Kennesaw Ave. Suite 400 Marietta Georgia 30060 770-426-4619 jcotney@evlct.net	Petition Date
79	Santa Fe	224 S. Michigan Ave. Chicago IL 60604	Santa Fe Interests, LLC	Santa Fe Interests, LLC c/o Hamilton Partners Office of the Building 224 South Michigan Ave. Chicago IL 60604 John Stephens Burke, Warren, MacKay & Serritella, P.C. 330 N. Wabash Ave. 22nd Fl. Chicago IL 60611 Michael J. Gill Mayer Brown LLP 71 South Wacker Drive Chicago, IL 60606-4637	Petition Date

Store No.	Store Name	Store Address	Landlord (Sublandlord where noted)	Landlord Notice Address (Sublandlord Notice Address where noted)	Rejection Effective Date
299	17th & JFK	1701 Market Street-Floor 1 Philadelphia, PA 19103	Six Penn Center Associates	Six Penn Center Associates Cushman & Wakefield Attn: Lease Administrator (Notices) One Penn Plaza, Ste. 4015 New York NY 10119 Joseph S. Bonventre, Esq. Lexington Realty Trust One Penn Plaza, Ste. 4015 New York NY 10119 STRADLEY RONON STEVENS & YOUNG LLP Julie M. Murphy, Esq. Daniel M. Pereira 2005 Market Street, Suite 2600 Philadelphia, PA 19103 Tel. (215) 564.8000	Petition Date
128	Calabasas	4776 Commons Way, Spc. B-1 Calabasas, CA 91302	The Commons at Calabasas, LLC	The Commons at Calabasas LLC Caruso Affiliated Holdings 101 The Grove Drive, Third Floor Los Angeles CA 90036 Keosian Law LLP 16530 Ventura Blvs., Suite 555 Encino, CA 91436 818-986-9331 mrm@keosianlaw.com	Petition Date
118	Lenox Square	3393 Peachtree Rd., NE #4003 Atlanta, GA 30326	The Retail Property Trust	The Retail Property Trust c/o M.S. Management Associates Inc. 225 West Washington St. Indianapolis IN 46204 Christopher L. Cassidy CLEVELAND LEHNER CASSIDY 6214 Carrollton Ave. Suite 200 Indianapolis, IN 46220 317-388-5424 chris@clcattorneys.com	Petition Date

Store No.	Store Name	Store Address	Landlord (Sublandlord where noted)	Landlord Notice Address (Sublandlord Notice Address where noted)	Rejection Effective Date
269	Towson	823 Goucher Blvd. Towson MD 21286	Towson UE LLC	<p>Towson UE LLC c/o Urban Edge Properties 210 Route 4 East Attn: Chief Operating Officer Paramus NJ 07652</p> <p>Towson UE LLC c/o Urban Edge Properties 210 Route 4 East Attn: Legal Department Paramus NJ 07652</p> <p>Charles S. Hirsch Ballard Spahr LLP 300 East Lombard Street, 18th Fl Baltimore, MD 21202 410-528-5600 hirsch@ballardsaphr.com</p>	Petition Date
281	Cumberland	2973 Cobb Pkwy SE, Suite 100 Atlanta, GA 30339	U.S. 41 & I 285 Company LLC	<p>U.S. 41 & I 285 Company LLC c/o Mall Properties, Inc. Attn: Lease Administration 5500 New Albany Rd. East, Third Fl. New Albany OH 43054</p> <p>C. Knox Withers Arnall Golden Gregory LLP 17117th Street, N.W. Suite 2100 Atlanta, Georgia 30603-1031</p>	Petition Date
191	U2	444 West Jackson Blvd. Chicago, IL 60606	U.S. Fitness, LLC	<p>U.S. Fitness, LLC c/o Fitness Forumla, Ltd. 619 West Jackson Boulevard, First Fl. Chicago IL 60661</p>	Petition Date

SCHEDULE OF REJECTED LEASES

**TABLE B:
RECENTLY VACATED PREMISES/REJECTION EFFECTIVE AS OF DATE TENANT SURRENDERS
POSSESSION TO LANDLORD (“SURRENDER DATE”)**

Store No.	Store Name	Store Address	Landlord (Sublandlord where noted)	Landlord Notice Address (Sublandlord Notice Address where noted)	Rejection Effective Date
242	Courthouse	2111 Wilson Blvd. Suite 111 Arlington VA 22201	2111 Wilson Boulevard, Inc.	<p>Eric Smith L&B Realty Advisors, LLP 5910 N. Central Expressway Suite 1200 Dallas TX 75206</p> <p>L&B Realty Advisors, LLP 5910 N. Central Expressway Suite 1200 Dallas 75206</p> <p>2111 Wilson Boulevard, Inc. c/o L&B Realty Advisors, LLP 5910 N. Central Expressway, Suite 1200 Attn: Asset Manager Dallas TX 75206</p> <p>2111 Wilson Boulevard, Inc. c/o LPC Commercial Services, Inc. 2107 Wilson Boulevard Suite 210 Arlington VA 22201</p> <p>Christopher Bowman Bregman, Berbert, Schwartz & Gilday, LLC 7315 Wisconsin Ave., 800W Bethesda, MD 20814 (301) G5G-2707</p>	Surrender Date
204	McPherson	1425 K St. NW Washington DC 20005	B.G.W. Limited Partnership	<p>B.G.W. Limited Partnership c/o Blake Real Estate, Inc. 1150 Connecticut Ave., NW Ste. 900 Washington DC 20036</p> <p>Michael R. Cogan, Esquire (D.C. & MD) MICHAEL R. COGAN, P.C. 12 South Summit Avenue Suite 250 Gaithersburg MD 20877</p>	Surrender Date

Store No.	Store Name	Store Address	Landlord (Sublandlord where noted)	Landlord Notice Address (Sublandlord Notice Address where noted)	Rejection Effective Date
310*	Bryn Mawr	761 - 763 W. Lancaster Ave. 2B Bryn Mawr, PA 19010	Bryn Mawr Square Associates, Limited Partnership	Bryn Mawr Square Associates Limited Partnership c/o CRBE 555 E Lancaster Ave Suite 120 Radnor PA 19087 Daniel R. Utain Kaplin Stewart 910 Harvest Dr., P.O. Box 3037 Blue Bell, Pa 19422 610-260-6000 dutain@kaplaw.com	Surrender Date
308*	Wayne	613 West Lancaster Avenue Wayne, PA 19087	Eagle Green, LP	Eagle Green, LP c/o Penn Real Estate Group, Inc. 620 Righters Ferry Road Bala Cynwyd PA 19004 Matthew Weinstein, Esq. One Liberty Place Cozen O'Connor 1650 Market Street Suite 2800 Philadelphia PA 19103 Ewalker Law Group, LLC Michelle S. Walker 33 Rock Hill Road, Suite 210 Bala Cynwyd, PA 19004 610-834-8566 mwalker@walkerlawgroupllc.com	Surrender Date
138	Citicorp	500 W. Madison, #C008 Chicago, IL 60661	KBSIII 500 West Madison, LLC	David Clarkson Transwestern 500 West Madison Suite 300 Chicago IL 60661 KBSIII 500 West Madison, LLC Park 288 Industrial, LLC PO Box 809631 Chicago IL 60680-8802 KBSIII 500 West Madison, LLC c/o Transwestern 500 West Madison Ste. 300 Chicago IL 60661	Surrender Date

Store No.	Store Name	Store Address	Landlord (Sublandlord where noted)	Landlord Notice Address (Sublandlord Notice Address where noted)	Rejection Effective Date
72	Tyson's Corner (Brinker Sublease)	2001 W. International Dr. Ste. 1790 McLean, VA 22102	<u>Sublandlord:</u> Maggiano's of Tysons, Inc. <u>Prime Landlord:</u> Tyson's Galleria, L.L.C.	<u>Sublandlord Notice Address:</u> Maggiano's of Tyson's, Inc. Attn: General Counsel c/o Brinker International, Inc. 6820 LBJ Fwy. Dallas TX 75240 Caitlin I. Morgan Bar No. 24074757 cmorgan@polsinelli.com D. Rockwell Bower 24087193 rbower@polsinelli.com Polsinelli, PC 2950 N. Harwood, Suite 2100 Dallas, Texas 75201 Telephone: (214) 397-0030 <u>Prime Landlord Notice Address:</u> Tysons Galleria L.L.C c/o General Growth Properties, Inc. 110 North Wacker Chicago IL 60606	Surrender Date
267	Inner Harbor	500 East Pratt St., Ste. 110 Baltimore, MD 21202	MCM Parkway 500 East Pratt, LLC	MCM Parkway 500 East Pratt, LLC PO Box 358175 Pittsburgh PA 15251-5175 Vicky Chadwell Morning Calm Management, LLC 500 East Pratt Street Suite 250 Baltimore MD 21202	Surrender Date
212	Lake & LaSalle	200 N. LaSalle St., Ste. 100 Chicago, IL 60601	ONNI 200 LaSalle Limited Partnership	Onni 200 LaSalle Limited Partnership Attn: Property Management 1031 S Broadway Suite 400 Los Angeles CA 90015 Isabelle Savoie Onni Group 200 N. LaSalle Ste. 300 Chicago 60601 Onni 200 LaSalle Limited Partnership Attention: Legal Department 1010 Seymour Street Suite 200 Vancouver V6B 3M6	Surrender Date

Store No.	Store Name	Store Address	Landlord (Sublandlord where noted)	Landlord Notice Address (Sublandlord Notice Address where noted)	Rejection Effective Date
231	South Coast Plaza Mall	3333 Bristol St. Ste. 1807 Costa Mesa CA 92626	South Coast Plaza	South Coast Plaza Management Offices Attn: General Manager 3333 Bristol St. Costa Mesa CA 92626 South Coast Plaza Attn: Chief Financial Officer 3315 Fairview Rd. Costa Mesa CA 92626 Ernie Zachary Park, Bewley, Lassleben & Miller, LLP 13215 E. Penn Street, Suite 510 Whittier, Ca 90602-1797 (562) 698-9771 Ernie.Park@Bewleylaw.Com	Surrender Date
297	Hurst	1410 Precinct Line Rd., Ste 200 Hurst, TX 76053	South Texas Land Limited Partnership	South Texas Land Limited Partnership 1233 West Loop South Suite 950 Houston TX 77027	Surrender Date
303	Princeton Market Fair	3535 US Hwy. 1 Princeton, NJ 08540	Teachers Insurance and Annuity Association of America	Teachers Insurance and Annuity Association of America c/o TIAA-CREF Attn: Director Global Real Estate, 730 Third Ave. New York NY 10017 NUVEEN Global Real Estate 730 Third Avenue New York NY 0017	Surrender Date

Store No.	Store Name	Store Address	Landlord (Sublandlord where noted)	Landlord Notice Address (Sublandlord Notice Address where noted)	Rejection Effective Date
182	Palmer House	35 East Monroe St. Chicago IL 60603	Thor Palmer House Office, LLC	<p>Peter Lockhart Thor Palmer House Office, LLC c/o Thor Equities, LLC 25 West 39th St. 3rd fl. New York NY 10018</p> <p>Lino Solis Thor Palmer House Office, LLC c/o Thor Equities, LLC 25 West 39th St. 3rd fl. New York NY 10018</p> <p>George Stanchfield Thor Equities 25 West 39th Street New York NY 10018</p> <p>Mr. Jonathan M. Weis jweis@lgattomeys.com Mr. Roenan Patt rpatt@lgattorneys.com LEVIN GINSBURG 180 North LaSalle Street, Suite 3200 Chicago, Illinois 60601-2800 Telephone: (312) 368-0100</p>	Surrender Date
309	Pico	10759 W Pico Blvd Los Angeles, CA 90064	Tracey P. Hom, Trustee of the Peter and Louise I. Palazzo Family Trust dated August 2008	<p>Tracey P. Hom Peter and Louise I. Palazzo Family Trust dated August 2008 2638 29th Street Santa Monica CA 90405</p> <p>Henry N. Jannol Law Offices of Henry N. Jannol, APC 10850 Wilshire Boulevard #825 Los Angeles CA 90024</p>	Surrender Date

*Locations identified as #308, #310 and #318 were never opened.