

Debtors' (I) Second Omnibus Motion for Entry of an Order (a) Authorizing the Assumption or Assumption and Assignment of Certain Unexpired Leases of Non-Residential Real Property and (b) Establishing Cure Amounts (the "Assumption Motion"), and (II) Seventh Omnibus Motion to Reject Certain Unexpired Leases and Executory Contracts Effective as of February 27, 2009 (the "Rejection Motion" and, together with the Assumption Motion, the "Lease Motions")

Under section 365(d)(4) of the Bankruptcy Code, if the Debtors do not assume or reject a nonresidential real property lease by the date that is 210 days after the petition date (the "Assumption Deadline") and do not obtain the landlord's consent to a further extension, such lease will be deemed rejected.¹ Because the Assumption Deadline is March 2, 2009, the Debtors filed the Assumption Motion to assume those Leases (as defined below) which the Debtors believe are necessary to their continued operations.

Because of the impending Assumption Deadline, by the Assumption Motion, the Debtors seek entry of an order (i) authorizing the Debtors to assume 22 unexpired nonresidential real property leases (collectively, the "Assumed Leases"), which include leases for (a) submerged land used for the Debtors' marinas, (b) office space, (c) storage space, and (d) a model home, and (ii) establish cure amounts in connection with assumption and assignment of the Assumed Leases (the "Cure Amounts"). The Debtors believe that each of the Assumed Leases holds value for their estates, and they estimate that the total aggregate Cure Amounts under section 365(b) of the Bankruptcy Code is \$45,853. To the extent a Cure Amount exists, the Debtors intend to pay such amount within fifteen days after entry of an order approving the Assumption Motion.

In determining to assume the Assumed Leases, the Debtors concluded that the monthly lease obligations under each Assumed Lease are at least comparable to the fair market value of such Assumed Lease or that costs associated with relocating would exceed the benefits of lower monthly lease obligations. In addition, the Debtors assert that certain of the Assumed Leases relate to submerged land leases that provide significant value to the estates.

As set forth above, pursuant to section 365(d)(4) of the Bankruptcy Code, unexpired nonresidential leases of real property under which the Debtors are lessees would be deemed rejected as of the Assumption Deadline if the Debtors do not formally assume them. Nevertheless, out of an abundance of caution and to provide finality to the lease counterparties, by the Rejection Motion, the Debtors seek authority to reject 22 leases of nonresidential real property (the "Property Leases") and an unexpired personal property lease with IBM Credit LLC (the "IBM Lease") and, collectively with the Property Lease, the "Rejected Leases" and, together with the Assumed Leases, the "Leases") that, in the Debtors' opinion, are either burdensome or unnecessary to their ongoing business operations. Specifically, the Debtors seek to reject (i) the Property Leases, which include Leases for (a) office space, (b) model homes, (c) ground space, (d) a welcome center lease, and (e) billboard advertising space, effective as of February 27, 2009, and (ii) the IBM Lease.

¹ The Debtors have obtained the consent of one lessor, One Reserve Road, LLC, to extend the deadline to reject or assume their lease to May 1, 2009. Additionally, the Court-ordered deadline with respect to the Debtors' ground lease with Great Expectations, LLC and Mansion Ridge Sewer Co., Inc. is February 24, 2009.

After reviewing the Rejected Leases, the Debtors have determined that they are not a source of value to the Debtors' future operations or the Debtors' estates. The Debtors estimate that rejection of the Rejected Leases will save the Debtors' estates in excess of \$78,000 in monthly lease obligations. The Debtors assert that many of the Property Leases are underutilized because of the Debtors' workforce reductions. Furthermore, the Debtors maintain that the IBM Lease is no longer necessary since it relates to an upgrade to computer hardware at office space located in Valhalla, New York, the lease of which the Debtors have already rejected. Additionally, the Debtors assert that they are current on their obligations under the IBM Lease through February 28, 2009.

The Debtors assert that they have not been able to find any party willing to accept assignment of the Rejected Leases by the Assumption Deadline, despite the Debtors' diligent efforts. The Debtors have concluded that the Rejected Leases are burdensome and unnecessary for the Debtors' successful reorganization and, therefore, rejection of the Rejected Leases is in the best interest of the Debtors and their estates.

The Debtors also request that the relief requested by the Lease Motions be severable as to each Lease, such that the Debtors, in their sole discretion, may modify or withdraw their request to assume or reject any Lease at or prior to the hearing on the Lease Motions, without prejudicing the relief sought with respect to the other Leases.