IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
COACH AM GROUP HOLDINGS CORP., *et al.*[1]	Case No. 12-10010 (KG)
Debtors.	(Jointly Administered)

MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER PURSUANT TO 11 U.S.C. § 365(d)(4) EXTENDING THE DEBTORS' TIME TO ASSUME OR REJECT NON-RESIDENTIAL REAL PROPERTY LEASES

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**"), by and through their counsel, submit this motion (the "**Motion**"), for entry of an order, pursuant to section 365(d)(4) of title 11 of the United States Code (the "**Bankruptcy Code**"), extending the time within which the Debtors may assume or reject unexpired leases of nonresidential real property (the "**Leases**"). In support of the Motion, the Debtors respectfully state as follows:

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[1] Coach Am Group Holdings Corp. (4830); Coach Am Holdings Corp. (1816); Coach America Holdings, Inc. (2841); American Coach Lines, Inc. (2470); America Charters, Ltd. (8246); American Coach Lines of Atlanta, Inc. (4003); American Coach Lines of Jacksonville, Inc. (0136); American Coach Lines of Miami, Inc. (7867); American Coach Lines of Orlando, Inc. (0985); Coach America Group, Inc. (2816); B & A Charter Tours, Inc. (9392); Dillon's Bus Service, Inc. (5559); Florida Cruise Connection, Inc. (9409); Hopkins Airport Limousine Services, Inc. (1333); Lakefront Lines, Inc. (5309); The McMahon Transportation Company (0030); Midnight Sun Tours, Inc. (2791); Royal Tours of America, Inc. (2313); Southern Coach Company (6927); Tippet Travel, Inc. (8787); Trykap Airport Services, Inc. (0732); Trykap Transportation Management, Inc. (2727); KBUS Holdings, LLC (6419); ACL Leasing, LLC (2058); CAPD, LLC (4454); Coach America Transportation Solutions, LLC (6909); CUSA, LLC (3523); CUSA ASL, LLC (2030); CUSA AT, LLC (2071); CUSA AWC, LLC (2084); CUSA BCCAE, LLC (2017); CUSA BESS, LLC (3610); CUSA CC, LLC (1999); CUSA CSS, LLC (9896); CUSA EE, LLC (1982); CUSA ELKO, LLC (4648); CUSA ES, LLC (1941); CUSA FL, LLC (1920); CUSA GCBS, LLC (1891); CUSA GCT, LLC (1833); CUSA KBC, LLC (1808); CUSA K-TCS, LLC (1741); CUSA Leasing, LLC (1321); CUSA PCSTC, LLC (1701); CUSA PRTS, LLC (1591); CUSA RAZ, LLC (0640); CUSA Transit Services, LLC (8847); Get A Bus, LLC (1907); Coach BCCAE, L.P. (3488); Coach Leasing BCCAE, L.P. (6784). The Debtors' corporate offices are located at 8150 North Central Expressway, Suite M1000, Dallas, Texas 75206.

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicate for the relief sought herein is section 365(d)(4) of the Bankruptcy Code.

BACKGROUND

A. General Background

3. On January 3, 2012 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (collectively, the "**Chapter 11 Cases**").

4. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

5. By order dated January 5, 2012, this Court has authorized the joint administration of the Chapter 11 Cases. *See* Docket No. 44.

6. On January 13, 2012, the Office of the United States Trustee appointed an official committee of unsecured creditors (the "**Committee**") pursuant to section 1102(a)(1) of the Bankruptcy Code. *See* Docket No. 92.

7. Detailed information regarding the Debtors' business and the events leading to the Chapter 11 Cases is set forth in the *Declaration in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 3] (the "**First Day Declaration**").

B. Sale of the Debtors' Assets

8. On January 13, 2012, the Debtors filed the Motion of the Debtors for Orders (I) Approving (A) Bidding Procedures, (B) Form and Manner of Sale Notices, and (C) Sale Hearing Date, and (II) Authorizing and Approving (A) Sale of Substantially All of the

Assets Free and Clear of Liens, Claims, and Encumbrances, and (B) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases [Docket No. 102] (the "**Sale Motion**").

9. On January 27, 2012, the Court entered the *Order Pursuant to 11 U.S.C. §§ 105(a), 363 and 365 and Fed. R. Bankr. P. 2002, 6004, 6006 and 9014 Approving (I) Bidding Procedures, (II) Form and Manner of Sale Notices, and (III) Sale Hearing Date* [Docket No. 161] (the "**Bidding Procedures Order**").

10. Pursuant to the Bidding Procedures Order, on April 25, 2012, the Debtors conducted the Auction (as defined in the Bidding Procedures Order). The Sale Motion is scheduled to be heard on May 3, 2012.

RELIEF REQUESTED

11. By this Motion, the Debtors request the entry of an order, pursuant to section 365(d)(4) of the Bankruptcy Code, granting an extension of the period to assume or reject the Leases, which currently expires on May 2, 2012, for an additional ninety (90) days, through and including July 31, 2012. This extension will be without any prejudice to the rights of the Debtors to seek additional extensions of such period with the consent of the affected lessors, as provided under section 365(d)(4)(B)(ii) of the Bankruptcy Code.

BASIS FOR RELIEF

12. Bankruptcy Code Section 365(d)(4) provides as follows:

> (A) Subject to paragraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of —
>
> (i) the date that is 120 days after the date of the order for relief; or
>
> (ii) the date of the entry of an order confirming a plan.

> (B) (i) The Court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.
>
> (ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

11 U.S.C. § 365(d)(4). Thus, upon a showing of cause, a court has the discretion to grant an extension of 90 days after the conclusion of the initial 120 days allotted to debtors to assume or reject nonresidential real property leases.

13. What constitutes "cause" for the approval of an extension is not specifically defined in the Bankruptcy Code. However, courts have articulated certain factors that indicate whether there is cause to grant the relief. These factors include:

> (i) whether the debtor is paying for the use of the property;
>
> (ii) whether the debtor's continued occupation could damage the lessor beyond the compensation available under the Bankruptcy Code;
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> (iii) whether the lease is the debtor's primary asset;
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> (iv) whether the debtor has had sufficient time to formulate a plan of reorganization;
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> (v) complexity of the case facing the debtor; and
>
> (vi) number of leases the debtor must evaluate.

South St. Seaport Ltd. P'ship. v. Burger Boys, Inc. (In re Burger Boys, Inc.), 94 F.3d 755, 760-61 (2d Cir. 1996). *See also Vermont Partners, Ltd. v. Thaler*, 377 B.R. 52, 61 (E.D.N.Y. 2007); *In re Wedtech Corp.*, 72 B.R. 464, 471 (Bankr. S.D.N.Y. 1987). Additionally, courts have considered the particular needs of the debtor in considering whether to grant an extension. *See e.g., In re Channel Home Ctrs., Inc.*, 989 F.2d 682, 689 (3d Cir. 1993), *cert. denied,* 510 U.S. 865 (1993). *See also In re GST Telecom Inc.*, 2001 U.S. Dist. LEXIS 8817, *9 (D. Del. 2001)

(stating that "equity dictates that courts can grant debtors additional time in which to decide whether to assume or reject a particular lease").

14. Applying these factors to the circumstances of the Debtors' Chapter 11 Cases leads to the overwhelming conclusion that the relief requested should be granted. First, the Debtors have been paying for the use of the premises that are subject to the Leases and will continue to pay for such use of the premises until the Leases are assumed or rejected. Second, the Debtors are not aware of any basis for the lessors to assert that the Debtors' continued occupation in the premises that are subject to the Leases would damage such lessors beyond the compensation available under the Bankruptcy Code. Third, the Leases are important assets of the Debtors. Fourth, the Debtors have committed significant time and energy to dealing with various matters, including among other things: (i) obtaining significant "first day" and other relief, including the continuation or implementation of important employee benefit programs and customer programs, maintenance of their existing cash management systems, and obtaining DIP financing, (ii) preparing and filing the Schedules and Statements for each of the fifty (50) Debtors, (iii) analyzing and rejecting numerous burdensome executory contracts and unexpired leases and winding down certain unprofitable operations, (iv) preparing and filing monthly operating reports, (v) negotiating a settlement with the Committee with respect to the Committee's objections to the DIP Motion, as set forth in the Final DIP Order, (vi) addressing and resolving by a consensual order more than two dozen contested motions for relief from the automatic stay, (vii) working diligently to commence and consummate the sale of substantially all of their assets and (viii) negotiating with the Prepetition First Lien Agent and DIP Agent regarding a proposed plan. Fifth, the numerous business and legal issues facing the Debtors are at least as complex (if not more so) as those facing debtors in bankruptcy cases of similar size.

15. Despite progress made in many areas, given the competing demands on their time and resources since the Petition Date, many of which are continuing, the initial 120-day time frame does not afford the Debtors the necessary time to determine whether to assume or reject their remaining Leases. Prudence dictates that maximum flexibility be retained and that

final assumption decisions not be made hastily. To foreclose the opportunity to assume, or to require premature assumption, would hinder the Debtors' ability to maximize value for their estates.

16. During the course of these Chapter 11 Cases, the Debtors have continued to uphold their obligations under the Leases and the Debtors will continue to do so until the Leases are assumed and assigned or rejected. Therefore, the counterparties to the Leases will not be harmed by the 90-day extension. Finally, should the Debtors ultimately decide to reject the Leases, nothing will prejudice the rights of the affected lessors to assert rejection damage claims as provided for in the Bankruptcy Code.

17. Courts in this district and others have granted similar relief in other large chapter 11 cases. *See e.g. In re Premier Int'l*, Case No. 09-12019 (Bankr. D. Del. Oct. 6, 2009); *In re Eddie Bauer Holdings, Inc.*, Case No. 09-12099 (Bankr. D. Del. July 23, 2009); *In re Journal Register Co.*, Case No. 09-10769 (Bankr. S.D.N.Y. June 16, 2009); *In re Tribune Co.*, Case No. 08-13141 (Bankr. D. Del. Mar. 25, 2009); *In re Pierre Foods, Inc.*, Case No. 08-11480 (Bankr. D. Del. Oct. 29, 2008); *In re Tropicana Entm't LLC*, Case No. 10856 (Bankr. D. Del. Aug. 8, 2008); *In re Linens Holdings Co.*, Case No. 08-10832 (Bankr. D. Del. June 4, 2008).

13. Accordingly, the Debtors respectfully submit that cause exists for an extension of the time within which the Debtors must assume or reject the Leases for an additional ninety (90) days, through and including July 31, 2012, without prejudice to the Debtors' rights to seek additional extensions of this deadline with the consent of the affected lessors as provided under section 365(d)(4)(B)(ii) of the Bankruptcy Code.

NOTICE

18. No trustee or examiner has been appointed in the Chapter 11 Cases. Notice of this Motion has been given to (i) the Office of the United States Trustee for the District of Delaware, Attn: Tiiara Patton, Esq.; (ii) counsel to JPMorgan Chase Bank, N.A., as the DIP Agent and the Prepetition First Lien Agent; (iii) counsel to The Bank of New York Mellon, as

administrative agent for the Debtors' prepetition subordinated lenders; (iv) counsel to the Committee; (v) all parties that have requested notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002; and (vi) the non-debtor counterparties to the Leases. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

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WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form submitted herewith, granting the relief requested herein and such other and further relief as this Court deems just and proper.

Respectfully submitted,

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Dated: May 1, 2012
Wilmington, Delaware