

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:

Oreck Corp., *et al.*,

Debtors.

Chapter 11

Case No. 13-04006 (KML)

(Jointly Administered)

**OBJECTION AND RESERVATION OF RIGHTS OF DDR CORP., DDRTC
FAYETTE PAVILION I AND II, LLC, BRE DDR RIVERDALE VILLAGE
INNER RING, LLC, REGENCY CENTERS, L.P., AND REGENCY CENTERS
CORP. WITH RESPECT TO THE MOTION OF THE DEBTORS TO
SUBSTANTIVELY CONSOLIDATE THE DEBTORS' BANKRUPTCY CASES**

DDR Corp., DDRTC Fayette Pavilion I and II, LLC, and BRE DDR Riverdale Village Inner Ring, LLC, Regency Centers, L.P., and Regency Centers Corp. (collectively, the “Landlords”), by and through their attorneys, Kelley Drye & Warren LLP, hereby object to and reserve their rights in connection with the *Motion Of The Debtors To Substantively Consolidate The Debtors' Bankruptcy Cases*¹ (the “Substantive Consolidation Motion”) filed by the above-captioned debtors (the “Debtors”). In support of this objection and reservation of rights, the Landlords respectfully state as follows:

BACKGROUND

1. On May 6, 2013, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with this Court.
2. To date, the Debtors have continued to manage their businesses as debtors and debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

¹ Docket Entry No. 125.

3. The Debtors lease retail space from the Landlords pursuant to written leases (the “Leases”) at the locations identified in the chart attached hereto as Exhibit A (the “Leased Premises”). The Leased Premises are located in shopping centers as that term is used in section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081 (3d Cir. 1990).

4. On May 18, 2013, the Debtors filed the Substantive Consolidation Motion, which seeks to substantively consolidate all of the Debtors’ bankruptcy cases.

OBJECTION AND RESERVATION OF RIGHTS

5. Substantive consolidation is an equitable remedy which must be used sparingly. *In re Owens Corning*, 419 F.3d 195, 208-09 (3d Cir. 2005). It affects distributions to innocent creditors by morphing claims of creditors against separate debtors into claims against the consolidated survivor. *Id.* at 206. For certain creditors, “instead of looking to assets of the subsidiary with whom they dealt, they now must share those assets with all creditors of all consolidated entities, raising the specter for some of a significant distribution diminution.” *Id.*

6. In the Substantive Consolidation Motion, the Debtors did not provide any evidence proving that substantive consolidation of the cases will not have a negative impact on creditors of any one of those cases. Unless and until the Landlords receive and are able to analyze such evidence, the Motion should be denied.

7. Furthermore, to the extent that the Debtors provide the Landlords with such an analysis, the Landlords reserve their rights to review and object to that analysis and to be heard at the hearing on the Substantive Consolidation Motion.

WHEREFORE, the Landlords respectfully request that the Court enter an Order
(i) denying the Substantive Consolidation Motion unless it is modified as set forth herein, and (ii)
granting such other and further relief as the Court deems just and proper.

Dated: July 2, 2013

Respectfully submitted,

Frost Brown Todd LLC

/s/ Robin Bicket White

Robin Bicket White, Esq. (TN Bar No. 019740)

Robert A. Guy, Jr., Esq. (TN Bar No. 016715)

Jason M. Bergeron, Esq. (TN Bar No. 23507)

150 3rd Avenue South, Suite 1900

Nashville, Tennessee 37201

(615) 251-5550

(615) 251-5551 Fax

rwhite@fbtlaw.com

bguy@fbtlaw.com

jbergeron@fbtlaw.com

-and-

KELLEY DRYE & WARREN LLP

Robert L. LeHane

Jennifer D. Raviele

101 Park Avenue

New York, New York 10178

Tel: (212) 808-7800

Fax: (212) 808-7897

*Counsel for Counsel for DDR Corp., DDRTC Fayette
Pavilion I and II, LLC, and BRE DDR Riverdale Village
Inner Ring, LLC, Regency Centers, L.P., and Regency
Centers Corp.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via ECF Noticing
to all parties receiving ECF Notice in these chapter 11 cases on this 2nd day of July, 2013.

/s/ Robin Bicket White

Robin Bicket White

EXHIBIT A

<u>Store No.</u>	<u>Mall Name</u>	<u>Location</u>	<u>Landlord</u>
57	Fayette Pavilion	Fayetteville, GA	DDRTC Fayette Pavilion I and II, LLC
133	Gateway Shopping Center	Wayne, PA	Regency Centers Corporation
181	Riverdale Village	Coon Rapids, MN	BRE DDR Riverdale Village Inner Ring, LLC