

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

In re:

ORECK CORPORATION, *et al.*,

Case No. 13-04006
(Jointly Consolidated)
Chapter 11
Judge Keith M. Lundin

Debtors.

**JOINDER OF URBANCAL OAKLAND PLAZA LLC TO THE OBJECTIONS OF
OTHER LANDLORDS TO THE MOTION BY DEBTORS PURSUANT TO 11 U.S.C. §§
363(B), (F), (K), AND (M), AND 365 AND FED. R. BANKR. P. 2002, 6004, AND 6006, TO
(I) APPROVE (A) THE SALE TRANSACTION PURSUANT TO THE ASSET
PURCHASE AGREEMENT WITH ORECK ACQUISITION HOLDINGS LLC, FREE
AND CLEAR OF CLAIMS, LIENS, ENCUMBRANCES, AND OTHER INTERESTS;
(B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS
AND UNEXPIRED LEASES; AND (II) (A) ESTABLISH SALE AND BIDDING
PROCEDURES; AND (B) SCHEDULE A SALE APPROVAL HEARING**

UrbanCal Oakland Plaza, LLC (the “Landlord”), by and through counsel, Clark Hill PLC, submits this joinder (this “Joinder”) to the objections of other landlords, including but not limited to, (i) Brixmor Property Group, Inc. and Novi Town Center Investors, LLC (Docket No. 535), (ii) The Macerich Company, Passco Companies LLC, UCR Asset Services, and Deutsche Asset & Wealth Management (Docket No. 544), and (iii) PFP Columbus II, LLC (Docket No. 554) (collectively, the “Landlord Objections”), to *the Motion By Debtors Pursuant to 11 U.S.C. §§ 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (A) the Sale Transaction Pursuant to the Asset Purchase Agreement with Oreck Acquisitions Holdings LLC, Free and Clear of Claims, Liens, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (II) (A) Establish Sale and Bidding Procedures; and (B) Schedule a Sale Approval Hearing* (the “Sale

Motion”) (Docket No. 93). In support of this Joinder, UrbanCal Oakland Plaza, LLC respectfully states:

1. On May 6, 2013, the above captioned debtors (the “Debtors”) filed a petition for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the Middle District of Tennessee (the “Court”).

2. Upon information and belief, the Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. Landlord is the owner of a shopping center in which the Debtors operate their retail stores pursuant to a written lease (the “Lease”) which is affected by the relief sought by the Debtor’s Sale Motion.

4. A Debtor is tenant under an unexpired lease of real property located at Oakland Plaza in Troy, Michigan (Store #147).

5. The Landlord’s premises is located in a shopping center, as that term is used in 11 U.S.C. §365(b)(3). *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086-87 (3d Cir. 1990). Accordingly, the Landlord is entitled to the protections that Bankruptcy Code §365(b)(3) grants to landlords of shopping centers.

6. On May 16, 2013, the Debtors filed the Sale Motion. Pursuant to the Sale Motion, the Debtors seek, among other things, the approval of the sale of substantially all of the Debtors’ assets and authority to assume and assign certain of the Debtors’ non-residential real property leases. On June 20, 2013, this Court entered an order (the “Sale Procedures Order”) (Docket No. 361) approving, among other things, the Debtors’ proposed procedures with respect

to the potential sale of certain of the Debtors' assets (the "Sale Procedures") and the Debtors' proposed procedures in connection with the potential assumption and assignment of certain of the Debtors' leases (the "Assumption and Assignment Procedures").

7. On July 2, 2013, UrbanCal Oakland Plaza, LLC timely and properly filed its *Limited Objection of UrbanCal Oakland Plaza, LLC to the Notice of (I) Debtors' Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Nonresidential Real Property and (II) Cure Amounts Related Thereto* ("Cure Objection") (Docket No. 442). UrbanCal Oakland Plaza, LLC incorporates the Cure Objection by this reference as if it were set forth in full as part of this Joinder.

8. On July 8, 2013, pursuant to the Sale Procedures Order, an auction was held in connection with the proposed sale of the Debtors' assets. On July 9, 2013, the Debtors filed a *Notice of Completion of Auction* (the "Initial Auction Notice") (Docket No. 508) providing, among other things, that Royal Appliance Manufacturing Company was declared the winning bidder (the "Successful Bidder"), and that Oreck Acquisition Holdings LLC was declared the back-up bidder (the "Back-Up Bidder"). The Initial Auction Notice also references a list of non-residential real property leases (including the Lease), which the Debtors seek to assume and assign to the Successful Bidder.

9. On July 12, 2013, the Debtors filed a Supplemental Notice Regarding Completion of Auction and Clarification of Matters Going Forward at Sale Hearing Scheduled for July 16, 2013 at 9:00 a.m. (CT) (the "Supplemental Auction Notice") (Docket No. 546). The Supplemental Auction Notice provides, among other things, that (1) the list of non-residential real property leases referenced in the Initial Auction Notice as proposed to be assumed and assigned to the Successful Bidder is incorrect; (2) the Successful Bidder has not yet decided

which non-residential real property leases it will seek to have assumed and assigned and has sixty (60) days under the asset purchase agreement for the winning bid (the “Royal APA”) to decide whether to seek the assumption and assignment or rejection of any non-residential real property leases, including designating that the Debtors seek to assign any such non-residential real property leases to third parties; (3) no objections to cure amounts will be going forward at the hearing to approve the proposed sale, scheduled for July 16, 2013 at 9:00 a.m. (CT) (the “Sale Hearing”); (4) at the Sale Hearing, the Debtors will not be seeking the assumption and assignment to the Successful Bidder of any non-residential real property leases for the Debtors’ retail stores (the “Store Leases”) and landlords need not file objections to the Successful Bidder as a proposed assignee of the Store Leases; and (5) the Debtors will incorporate into the proposed Sale Order certain procedures with respect to any proposed assumption and assignment of the Store Leases in the future following the Sale Hearing, including procedures for assignments with the consent of the landlord (if applicable), and providing landlords with adequate assurance information for a proposed assignee and the opportunity to object prior to a hearing on the proposed assignment.

10. As of the filing of this Joinder, UrbanCal Oakland Plaza, LLC has not been provided with copies of the Royal APA or any proposed order approving the proposed sale of the Debtors’ assets to the Successful Bidder (the “Sale Order”). Although the Supplemental Auction Notice provides that the Debtors will not move forward with the proposed assumption and assignment of any Store Leases at the Sale Hearing and that landlords do not need to file objections to the Successful Bidder as a proposed assignee of the Store Leases, given the objection deadline of noon (CT) on July 15, 2013, as well as the presence of a number of issues that remain of concern to UrbanCal Oakland Plaza, LLC, as aptly described in the Landlord

Objections, Urban Cal Oakland Plaza, LLC files this Joinder at this time, out of an abundance of caution.

11. Urban Cal Oakland Plaza, LLC hereby adopts the arguments raised in the Landlord Objections and joins in the Landlord Objections and any consistent requests that have been or may be filed by other landlords.

12. Urban Cal Oakland Plaza, LLC further expressly reserves the right to assert any additional objections with respect to the Sale Motion or such other relief as may be requested at the Sale Hearing or otherwise, and to: (i) raise any additional objections at the Sale Hearing or any further hearing; (ii) object to any proposed assumption and assignment of the Lease (including, without limitation, to the Successful Bidder, the Back-Up Bidder and/or any other party), on any and all grounds under section 365 of the Bankruptcy Code or as otherwise may be available to Urban Cal Oakland Plaza, LLC; (iii) object to the form of any proposed Sale Order; (iv) object to any lease designation rights and/or any procedures with respect to the future proposed assumption and assignment of the Lease; and (v) otherwise object to any relief requested in the Sale Motion or such relief that may subsequently be sought by the Debtors to be granted pursuant to any proposed Sale Order or otherwise, as such requested relief relates to the Lease and/or the interests of Urban Cal Oakland Plaza, LLC.

WHEREFORE, UrbanCal Oakland Plaza, LLC respectfully requests that this Court enter an Order consistent with this Joinder and the Landlord Objections and grant UrbanCal Oakland Plaza, LLC such other and further relief as this Court deems just and proper.

CLARK HILL, PLC

By:/s/ David M. Blau

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Date: July 15, 2013

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 and via US Mail to the parties listed below on this 15th day of July, 2013:

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