

If a Cure Schedule Objection is timely filed and the parties are unable to settle such Cure Schedule Objection, the Bankruptcy Court shall schedule an evidentiary hearing to determine the amount of any cure amount and to adjudicate any objection to the assumption of the subject Lease.

In the event that no Cure Schedule Objection is timely filed with respect to a Lease, the counterparty to such Lease will be deemed to have consented to the assumption of the Lease and the Proposed Cure Amount and shall be forever enjoined and barred from seeking any additional amount(s) on account of the Cure under § 365 of the Bankruptcy Code or otherwise from the Debtors.

Debtors, Tijuana Flats #176, LLC and Tijuana Flats Restaurants, LLC (“Debtors”), move the Court pursuant to 11 U.S.C. § 365(a) and Bankruptcy Rule 6006(e)(3) and (f), to assume on an omnibus basis the non-residential real property leases described on **Exhibit A** attached hereto (the “Leases”), and in support of the motion state:

Jurisdiction And Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicate for the relief sought herein is 11 U.S.C. § 365(a).

Request for Authority to File Omnibus Motion

4. Bankruptcy Rule 6006(e) provides that a trustee (or here, the debtor-in-possession) may not assume multiple executory contracts and unexpired leases with multiple parties in one motion, unless the Court authorizes such a motion to be filed.

5. Here, the Debtors desire to assume 39 Leases which they deem essential to the continued operation of their businesses.² It is far more efficient and cost-effective to allow the Debtors to assume these Leases by Omnibus Motion, rather than requiring individual motions, and it does not prejudice any of the counter-parties whose leases are being assumed. Therefore, the Debtors request the authority to assume all of the Leases listed on **Exhibit A** in this Omnibus Motion, pursuant to Bankruptcy Rule 6006(e)(3).

6. Bankruptcy Rule 6006(f) provides that if a motion to assume multiple executory contracts is permitted under Rule 6006(e), then the motion shall state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion; list the parties alphabetically; specify the terms, including the curing of defaults, for each requested assumption; and be limited to no more than 100 Leases. The Debtors submit that this Omnibus Motion meets these requirements.

Background

7. On April 19, 2024 (the “Petition Date”), Tijuana Flats #176, LLC (“TJ 176”), filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

8. Later that same morning, its parent, Tijuana Flats Restaurants, LLC (“TF Restaurants”), filed its voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code.

² Prior to filing this motion, Debtors have assumed, as modified, 27 commercial leases, including the lease for the Debtors’ administrative headquarters. The Leases identified on Exhibit A represent the balance of all non-residential real property leases to which the Debtors are a party.

9. The Debtors are continuing in possession of their properties and are managing their businesses, as debtors in possession, pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

10. Restaurants, LLC owns and operates 65 “Tijuana Flats” restaurants located across Florida, inclusive of TJ #176. Its restaurants provide fast, casual dining featuring a “Tex-Mex” cuisine.

11. Previously, each of the company restaurants operated as a separate limited liability company, all owned by Restaurants, LLC, under a “stand alone” lease which may or may not have been guaranteed by Restaurants LLC. On April 15, 2024, however, all but one of the operating subsidiaries were “rolled up” and merged into Restaurants, LLC. As a result, Restaurants LLC is now the tenant under the leases for the 65 company-owned stores.

12. On November 14, 2024, the Debtors filed their Joint Disclosure Statement and Joint Chapter 11 Plan or Reorganization (the “Plan”). The Plan contemplates a continuation of the Debtors’ business operations at all remaining locations, with administration of its system-wide advertising, food provision and employees from their headquarters in Maitland, Florida.

The Leases

13. The Leases listed in **Exhibit A**, representing the balance of the unexpired non-residential real property leases not previously assumed, have been identified as essential to the continued operation of the Debtors’ businesses.

14. These are Leases that in most cases have been in place for many years in communities where Debtors have been involved and at locations well-known to Debtors' customers. It would be too costly to move to new locations. The Debtors, in the exercise of their business judgment, have therefore elected to assume the Leases instead of closing the restaurants or finding alternative locations from which to operate.

15. **Exhibit A** also contains a schedule listing the amounts which the Debtors' records reflect as being owed under the Leases, including any rents suspended by the Court's recent order excusing the payment of November rents due to the business interruption occasioned by Hurricanes Helene and Milton (the "Cure Schedule").

16. The Cure Schedule does not include attorney fees or costs which the landlords may claim and the Debtors are opposed to paying any such fees. Thus, to the extent a landlord claims entitlement to attorney fees as part of its cure payment, the amount sought should be specifically stated in the Cure Schedule Objection, with supporting documentation attached, to enable the Debtors or the Court to determine entitlement to such fees and costs.

Relief Requested

17. By this Motion, the Debtors seek the entry of an order: (i) authorizing the Debtors to assume the Leases; (ii) approving the Cure Schedule and method of addressing the defaults under the Leases as provided herein, and (iii) granting such further relief as is appropriate.

Basis for Relief

18. Pursuant to 11 U.S.C. § 365(a), a trustee may “assume or reject any executory contract or unexpired lease of the debtor.” Pursuant to 11 U.S.C. § 1107(a), a debtor-in-possession is considered the functional equivalent of a trustee and therefore has the right to assume or reject executory contracts and unexpired leases of the debtor.

19. “The policy behind Section 365 is that the [debtor] is empowered to make decisions that assist in [its] reorganization and benefit the estate.” *In re Prestige Motorcar Gallery, Inc.*, 456 B.R. 541, 544 (Bankr. N.D. Fla. 2011); *see also, In re Government Securities Corp.*, 101 B.R. 343, 349 (Bankr. S.D. Fla.1989)(“The purpose underlying the provision allowing the trustee or the debtor to assume or reject a contract is to benefit the estate . . .”). The decision to assume or reject an executory contract is therefore governed by the “business judgment rule.” *NLRB v. Bildisco and Bildisco*, 465 U.S. 513, 104 S.Ct. 1188 (1986). The “business judgment” standard is not a strict standard; it requires only a showing that rejection of the contract will benefit the estate. *In re Surfside Resort and Suites, Inc.*, 325 B.R. 465, 469 (Bankr. M.D. Fla. 2005). As long as the debtor has a valid business justification for the assumption or rejection, the Court should not substitute its judgment for the debtor’s. *See e.g. In re Wells*, 227 B.R. 553, 564 (Bankr. M.D. Fla. 1998) (“[T]he decision to assume or reject an executory contract is left entirely to the debtor . . . subject to the ‘business judgment rule’”).

20. Pursuant to 11 U.S.C. § 365(b), if there has been a default in an executory contract or unexpired lease, the debtor may not assume it unless the debtor promptly cures the default and provides adequate assurance of future performance. The amounts which

the Debtors believe are needed to cure the defaults under the Leases is also set forth on **Exhibit A** on a lease-by-lease basis.

21. The Bankruptcy Code does not contain a definition of a “prompt cure,” but instead leaves the Court with some discretion to determine what constitutes prompt cure on a case-by-case basis. *See, e.g. Matter of Southern Biotech, Inc.* 37 B.R. 311, 314 (Bankr. M.D. Fla. 1983)(“It is well established that a prompt curing provision of the Code is not etched in cement and there is no hard and fast mathematical formula that determines which curing is prompt and which is not prompt”).

22. In these cases, the Debtors will be making cure payments of at least \$830,302.18 on account of the Leases (the “Lease Cure Amount”) and another \$339,164.57 or more on the other executory contracts the Debtors are expected to assume (the “Executory Contract Cure Amount”). The Lease Cure Amount includes \$200,105.38 in rents due to certain landlords whose November rent was suspended by virtue of this Court’s order dated November 5, 2024 [Docket No. 469]. The suspended November rents will likely be paid by month-end, but are nonetheless included in the Lease Cure Schedule in the event they are not. Final cure payments will be adjusted accordingly.

23. If cured on a six-month basis, the combined monthly Lease Cure Amount and Executory Contract Cure Amount would be \$194,911.13. The Debtors do not have the wherewithal to carry such a heavy monthly cure burden. Instead, Debtors propose to cure the arrearages on the Leases and Executory Contracts over a twelve-month cure period, with the initial payment commencing January 2025, along with the regularly scheduled payment, which will effectively reduce the monthly debt burden associated with the cure payments to \$97,455.56 in the aggregate.

24. Cure periods of twelve or more months have routinely been approved in circumstances similar to those present here. *See, e.g. In re Everest Crossing, LLC*, Case No. 09-16664, 2010 WL 18696750 (Bankr. D. Mass. Feb. 24, 2010)(18 month cure period); *In re Citrus Tower Blvd. Imaging Center, LLC*, Case No. 11-70284, 2012 WL 1820814 (Bankr. N.D. Ga. April 12, 2012)(12 month cure period); *In re Brown*, Case No. 05-55925, 2006 WL 2546824 (Bankr. S.D. Miss. Sept. 1, 2016)(12 month cure period); and *In re Coors of N. Mississippi, Inc.*, 27 B.R. 918 (Bankr. N.D. Miss 1983)(3 year cure period).

25. The alternative to assumption of the Leases is not pretty. Absent assumption, the 39 Tijuana Flats restaurants at issue would have no premises from which to operate. Relocation of the affected restaurants is not a viable option, as the Debtors must maintain a critical mass of operations to fund their exit from the Chapter 11 -- prolonged store closings due to relocation will devastate Debtors' reorganization efforts. If the businesses fail, 1,200 employees will lose their jobs, 65 landlords will lose their tenant and associated rental income stream, and no payments will be made on account of *any* arrearage to *any* party. Prior store closing history tells us that the liquidation value of the Debtors' equipment is approximately \$5,000 per store. Inasmuch as the secured indebtedness owing to Debtors' secured lender, LCS2022, LLC, is over \$18,500,000, unsecured creditors will receive absolutely no distribution in the event of a liquidation. The Court should not therefore force the Debtors into a cure period which they cannot meet.

26. Obviously, to maintain their business operations post-confirmation, it is necessary for Debtors to continue their relationships with their landlords. The Leases each have terms and provisions which are customary and consistent with current conditions in the commercial market. Assumption of the Leases will allow Debtors to continue their

normal and ordinary business operations. In addition, assumption of the Leases at the time of their emergence from Chapter 11 sends a positive message to the Debtors' customers that they have successfully reorganized.

27. Debtors have therefore determined, in the exercise of their business judgment, that the assumption of the Leases listed on **Exhibit A** is in the best interest of the estates.

28. The pro-forma financial statements appended to the Disclosure Statement and the availability of a \$1,000,000 exit facility loan being provided by LCS2022, LLC, establish the Debtors' ability to make the required lease and cure payments on a going-forward basis, as will confirmation of the proposed Plan which requires that the Debtors prove that the Plan is feasible and not likely to be followed by the need for further reorganization.

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) allowing the Debtors to file this Omnibus Motion pursuant to Bankruptcy Rule 6006(e)(3); (ii) authorizing Debtors to assume the Leases listed on **Exhibit A**; (iii) permitting the "cure payments" on the Leases to be paid over a 12-month period; (iv) finding that landlord claimants shall recover cure amounts solely in the amount listed on the Cure Schedule or as otherwise determined by the Court and not on the basis of amounts claimed due in filed Proofs of Claim; and (v) granting such other relief as the Court deems just and proper.

DATED: November 14, 2024.

THAMES | MARKEY

/s/ Richard R. Thames

By _____

Richard R. Thames
Bradely R. Markey

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Attorneys for the Debtors

Exhibit A

<u>Store No.</u>	<u>Landlord</u>	<u>Cure Amount</u> ³
#121	3687 Tampa Road Crossing, LLC c/o Christopher Hixson, Esq. Hixon Law Group 18167 US 19 N., Suite 600 Clearwater, Florida 33764	\$16,309.80
#135	Brandon Commons, LLC c/o Harris J. Koroglu, Esq. Shutts & Bowen LLP 200 South Biscayne Boulevard, Suite 4100 Miami, Florida 33131	\$9,140.48
#134	BRE Mariner Carrollwood LLC c/o William B. McDaniel, Esq. Lansing Roy, P.A. 1710 Shadowood Lane, Suite 210 Jacksonville, Florida 32207 c/o Ballard Spahr LLP Attn: Leslie C. Heilman, Esq. 919 North Market Street, 11 th Floor Wilmington, Delaware 19801	\$29,982.21
#147	BRE Throne Beneva Village Shoppes, LLC c/o William B. McDaniel, Esq. Lansing Roy, P.A. 1710 Shadowood Lane, Suite 210 Jacksonville, Florida 32207 c/o Ballard Spahr LLP Attn: Leslie C. Heilman, Esq. 919 North Market Street, 11 th Floor Wilmington, Delaware 19801	\$0
#152*	CHR J Hodges, LLC and JLR Hodes, LLC Post Office Box 9527 Asheville, North Carolina 28815	\$18,483.22
#179*	Country Isles Plaza LLC c/o Longpoint Realty Partners 116 Huntington Avenue, Suite 1001 Boston, Massachusetts 02116	\$45,876.87
#167*	Dikeou Realty 543 Wymore Road North Maitland, Florida 32751	\$21,655.80

³ Includes rents suspended pursuant to the Court's November 4, 2024, Order Granting, in Part, and Denying, In Part, Debtors' Emergency Motion for Authority to Suspend November 2024 Non-Residential Real Property Lease Payments Due to Hurricane Interruption [Docket No. 469].

#120	Dionis Malo c/o Stavros Tingirides, Esq. 762 North Belcher Road Clearwater, Florida 33765	\$35,133.65
#238*	Dunlawton Yorktowne Unit 4 LLC c/o R. Scott Shuker, Esq. Shuker & Dorris, P.A. 121 South Orange Avenue, Suite 1120 Orlando, Florida 32801	\$30,227.44
#129	Dunwoody Properties, LLC c/o Jonathan M. Sykes, Esq. 135 West Central Boulevard, Suite 300 Orlando, Florida 32801 c/o Jesus Lozano, Esq. Nardella & Nardella PLLC 135 West Central Boulevard, Suite 300 Orlando, Florida 32801	\$5,511.63
#222	Eustis Covenant Group LLC c/o Melissa Davis Lowe, Esq. Shulman Bastian Friedman & Bui LLP 100 Spectrum Center Drive, Suite 600 Irvine, California 92618	\$9,375
#112	FCR St. Petersburg LLC c/o Pedro J. Jimenez Lopez, Esq. Englander Fischer 721 First Avenue North St. Petersburg, Florida 33701	\$34,852.57
#198*	Greenspot Largo LLC c/o PM Real Estate Management, Inc. 4000 South Poplar Street Casper, Wyoming 82601	\$20,857.90
#114*	Home Depot USA Attn: Jeffrey M. Poole 2455 Paces Ferry Road, NW Atlanta, Georgia 30339	\$17,597.09
#117*	Hunters Creek Shoppes, LLC c/o Real Property Specialists, Inc. 2345 West Sand Lake Road, Suite 100 Orlando, Florida 32809	\$24,992.03
#239*	Hutton Team, LLC Attn: Allan Lloyd, Director of RE 736 Cherry Street Chattanooga, Tennessee 37402	\$27,700.65

#181	Ibis Walk Retail I, LLC and Ibis Retail II, LLC c/o Ryan C. Reinert, Esq. and Bridget M. Dennis, Esq. Shutts & Bowen LLP 4301 West Boy Scout Boulevard, Suite 300 Tampa, Florida 33607	\$7,183.23
#232	NGOC HOA Bloomingdale, LLC c/o Scott A. Stichter, Esq. Stichter Riedel Blain & Postler, P.A. 100 East Madison Street, Suite 200 Tampa, Florida 33602	\$30,550.48
#246	NTC-REG, LLC c/o Regency Centers Corporation One Independent Drive, Suite 114 Jacksonville, Florida 32202	\$10,243.05
#227	Palscher, Inc. c/o Townsend J. Belt, Esq. and John W. Landkammer, Esq. Anthony & Partners, LLC 100 South Ashley Drive, Suite 1600 Tampa, Florida 33602	\$6,292.18
#154*	Park Sheridan Plaza, Ltd. 1930 Harrison Street, Suite 503 Hollywood, Florida 33020	\$9,143.58
#184	PRD Owner, LLC c/o William B. McDaniel, Esq. Lansing Roy, P.A. 1710 Shadowood Lane, Suite 210 Jacksonville, Florida 32207 c/o Ballard Spahr LLP Attn: Leslie C. Heilman, Esq. 919 North Market Street, 11 th Floor Wilmington, Delaware 19801	\$7,646.89
#249*	Prestige Properties – Van Dyke Commons, LLC Lockbox No. 864919 Post Office Box 947919 Atlanta, Georgia 30394	\$18,743.51
#172	Ramco Jacksonville, LLC c/o Ruel W. Smith, Esq. and Krishna Vasudevan, Esq. Hinshaw & Culbertson, LLP 100 Ashley Drive South, Suite 1310 Tampa, Florida 33602	\$22,616.78
#111	Real Sub, LLC c/o Stephanie C. Lieb, Esq. Trenam Law 101 East Kennedy Boulevard, Suite 2700 Tampa, Florida 33602	\$26,013.54

#187	Riviera Trading & Marketing, Inc. and Scribe Enterprises, Inc. c/o Michael C. Foster, Esq Young Foster PLLC 1600 South Federal Highway, Suite 570 Pompano Beach, Florida 33062	\$12,115.13
#230	SCG Buckingham Square, LLC Attn: Adrian J. Alvarez, Esq. De Biase Alvarez 595 S. Federal Highway, Suite 620 Boca Raton, Florida 33432 adrian@dbaalaw.com	\$48,492.04
#176	SCG Riverside Market, LLC 300 Galleria Parkway, 12 th Floor Atlanta, Georgia 30339	\$22,600.70
#140	Sembler Family Partnership #41, Ltd. c/o Eric E. Ludin, Esq. Englander Fischer 721 First Avenue North St. Petersburg, Florida 33701	\$14,775.84
#177	SJR Plaza II, LLC 1430 Broadway, Suite 903 New York, New York 10018	\$44,067.20
#190	Skylark Plaza OP, LLC 1801 South Keene Road Clearwater, Florida 33756	\$37,425.71
#128	Southgate Properties, LLLP c/o James A. Timko, Esq. Dean, Mead, Egerton, et al. 420 South Orange Avenue, Suite 700 Orlando, Florida 32801	\$21,183.40
#170	SVAP III Coral Landings, LLC / Coral Landings Joint Venture Post Office Box 209372 Austin, Texas 78720	\$25,250.66
#183*	Tramlaw, LLC a/k/a Benderson 85-1 Trust 7978 Cooper Creek Boulevard Bradenton, Florida 34201	\$35,921.41
#223	United Hampshire US Holdings LLC / St. Lucie West 2016, LLC Box 200285 Pittsburg, Pennsylvania 15251	\$21,938.58
#133	University Collection – FCA, LLC c/o Luis Martinez-Monfort, Esq. Martinez-Monfort, P.A. 4427 West Kennedy Boulevard, Suite 205 Tampa, Florida 33609	\$18,336.41

#102*	V 3 HC Retail, LLC 496 South Hunt Club Boulevard Apopka, Florida 32703	\$11,077.30
#241	Victoria Plaza, Inc. c/o Robert B. Worman, Esq. Worman & Sheffer, P.A. 2600 Lake Lucien Drive, Suite 405 Maitland, Florida 32751	\$19,742.22
#104	Wiengarten Nostat, LLC c/o Ruel W. Smith, Esq. and Krishna Vasudevan, Esq. Hinshaw & Culbertson, LLP 100 Ashley Drive South, Suite 1310 Tampa, Florida 33602	\$11,246
	TOTAL	<u>\$830,302.18</u>

* Leases where no Proof of Claim filed