UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

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In Re: DAMIS Holdings, LLC, *et al.*, Debtors.	Case No. 26-16439 (CMG) Chapter 11

LIMITED OBJECTION OF COMPUTERSHARE TRUST COMPANY, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED HOLDERS OF BENCHMARK 2025-V18 MORTGAGE TRUST, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2025-V18 TO DAMIS DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO PUTATIVE SECURED PARTIES; (III) MODIFYING THE AUTOMATIC STAY; (IV) SCHEDULING A FINAL HEARING; AND (V) GRANTING RELATED RELIEF (DOCKET NO. 152)

Computershare Trust Company, National Association, as Trustee for the Registered Holders of Benchmark 2025-V18 Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2025-V18 ("Fee Creditor") hereby files this supplemental limited objection to the DAMIS Debtors' *Motion For Entry Of Interim And Final Orders (I) Authorizing The Debtors To Use Cash Collateral; (II) Granting Adequate Protection To Putative Secured Parties; (III) Modifying The Automatic Stay; (Iv) Scheduling A Final Hearing; And (V) Granting Related Relief* (the "Motion") and in support states as follows:

PRELIMINARY STATEMENT

1. Fee Creditor is aware of certain limited objections to the Motion previously filed by other secured creditors of tenants of certain of the Debtors. While joining in the general legal points raised in those objections, Fee Creditor respectfully submits this limited objection to set forth its own position as to certain Debtors.

2. Fee Creditor joins other secured creditors who have objected to the Motion by stating that no entry of an order authorizing use of cash collateral by any Ground Tenant Debtor (defined below) should be able to prejudice rights of any creditor such as Fee Creditor arising from any failure of any obligation of the corresponding Ground Tenant Debtors to keep post-petition lease obligations current under the Bankruptcy Code, even if use of cash collateral in an approved budget does not include funds for payment of the corresponding ground lease, real estate taxes and insurance (as more particularly described below, the "Required Lease Payments"). In addition, Fee Creditor respectfully submits that failure of Ground Tenant Debtors to make Required Lease Payments may result in a failure of the proposed cash collateral order to provide adequate protection to the Ground Lease Mortgagees (defined below), who may be forced to make protective advances under the SNDAs (defined below) if Required Lease Payments are not timely paid.

BACKGROUND

3. As set forth in the *Declaration of Justin Weinfeld* filed contemporaneously herewith (the "Weinfeld Declaration"), Fee Creditor holds Mortgages from Borrowers Greentree Augusta Development LLC ("Greentree Borrower") and Equity Holdings of Cheektowaga LLC ("Cheektowaga Borrower"; together with Greentree Borrower, "Borrowers") on the fee interests

in properties leased by the Borrowers to certain affiliated Ground Tenant Debtors via 99-year ground leases (the "Ground Leases"). See Weinfeld Declaration, ¶¶ 2 – 6.

4. The Ground Tenant Debtors who have Ground Leases from the Borrowers are 2195 Harlem Road Real Estate LLC and 2195 Harlem Road Leasing LLC (collectively, "Greentree Tenants") and 1323 Augusta West Parkway Real Estate LLC and 1323 Augusta West Parkway Leasing LLC (collectively, "Cheektowaga Tenants," together with Greentree Tenants, the "Ground Tenants"). The Ground Tenants are chapter 11 debtors in the above administratively consolidated cases (the "Ground Tenant Debtors"). It is Fee Creditor's understanding that none of the Borrowers have filed chapter 11 petitions and none are debtors in the above-captioned administratively consolidated cases. *Ibid*.

5. The Ground Lease payments are the primary source of cash flow to each Borrower, enabling each Borrower to make debt service payments as required under the Note to Fee Creditor. The Mortgages secure repayment of a promissory note (the "Note") in the original principal amount of $13,040,000.00, dated September 30, 2025. See Weinfeld Declaration, Exhibit A.

6. The Weinfeld Declaration further sets out (a) the structure and key terms of the SNDAs, including the cure rights and protective advance provisions described below; and (b) the annual debt service owing to the Fee Creditor of $859,372.22 (based on calculation of days elapsed over a 360-day year), and the aggregate Ground Lease payments of $945,000 per year, which exceed the annual debt service by $85,627.78. *See* Weinfeld Declaration, ¶¶ 10-11.

7. This demonstrates the magnitude of the potential protective advances each Ground Lease Mortgagee would need to make, and thus the extent of the erosion of adequate protection, if the cash collateral order does not require timely payment of the Required Lease Payments. In essence, any amount of rent, taxes, or insurance that goes unpaid by a Ground Tenant Debtor is an

amount that a Ground Lease Mortgagee may need to advance to maintain the Ground Lease. That could increase such Ground Lease Mortgagee's secured claim amount. This could correspondingly reduce its already-diminished collateral cushion (or worsen its deficiency).

8. Each Ground Tenant Debtor has mortgaged its leasehold interest under its Ground Lease to a lender (each, a "Ground Lease Mortgagee"). Each Borrower, Ground Tenant Debtor, and Ground Lease Mortgagee is a party, together with Fee Creditor as successor in interest to the original payee of the Note, to a Ground Lease Recognition, Subordination, Non-Disturbance, Estoppel and Attornment Agreement (each, an "SNDA"). *See* Weinfeld Declaration, Exhibit C.

9. Fee Creditor holds, under its corresponding Mortgage, an assignment of leases and rents from the corresponding Borrower, including that of each Ground Tenant. Fee Creditor's consent is required for any modification of any Ground Lease. Fee Creditor has not given any such consent to date. Fee Creditor has not waived any obligation of any Borrower to enforce the Ground Lease according to its terms. *See* Weinfeld Declaration, ¶¶ 7 - 9.

ARGUMENT

A. Post-Petition Lease Obligations Must Be Kept Current.

10. A chapter 11 debtor is obligated to timely perform its post-petition obligations under unexpired leases, including the payment of rent as it comes due. This obligation exists independent of any cash collateral order. *See* 11 U.S.C. § 365(d)(3) ("The trustee shall timely perform all the obligations of the debtor, … arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title."); *In re Montgomery Ward Holding Corp.*, 268 F.3d 205, 209 (3d Cir. 2001) ("The clear and express intent of § 365(d)(3) is to require the trustee to perform the lease in accordance with its terms."). The Third Circuit's reading of § 365(d)(3)

effectively gives landlords something stronger than an ordinary § 503(b)(1) administrative expense analysis because the statute states the debtor must perform "notwithstanding section 503(b)(1)."

11. The Ground Tenant Debtors cannot use a cash collateral order to excuse or defer their post-petition Ground Lease payment obligations to the Borrowers. Each Ground Lease is an unexpired lease within the meaning of 11 U.S.C. § 365, and each Ground Tenant Debtor is obligated to timely perform all obligations thereunder arising after the petition date, including the full and timely payment of rent.

12. Any cash collateral order that does not require full and timely payment of the Required Lease Payments is inconsistent with, and cannot absolve, the Ground Tenant Debtors' obligations under the Bankruptcy Code. Thus, this Court should condition the use of cash collateral on payment of the Required Lease Payments.

B. Ground Lease Mortgagees' Cure Rights Under the SNDAs and Resulting Lack of Adequate Protection

13. Under each SNDA, if a Ground Tenant Debtor defaults on its Ground Lease, including by failing to pay rent, real property taxes, or insurance, the corresponding Ground Lease Mortgagee has the right (but not the obligation) to cure such default by making protective advances to maintain the Ground Lease in existence.

14. Specifically, the Greentree Tenants SNDA expressly provide, at Section 9 ("Notice to Leasehold Mortgagee and Right to Cure"), that the landlord (*i.e.*, the Borrower) shall notify the Ground Lease Mortgagee of any default by the Ground Tenant under the Ground Lease and that no notice of cancellation of the Ground Lease shall be effective unless the Ground Lease Mortgagee "shall have received notice of default giving rise to such cancellation" and, in the case of monetary defaults, until thirty (30) days have elapsed following such notice, or in the case of

non-monetary defaults, until sixty (60) days have elapsed after the later of the date of the notice or the Greentree Tenants' cure period. Critically, this SNDA further provides that the Ground Lease Mortgagee "shall continue to cure all monetary defaults of Tenant."

15. This SNDA further provides that if the Ground Lease is terminated as a result of a default, or is rejected in any bankruptcy proceeding, the Ground Lease Mortgagee shall have the option to obtain a new lease "upon payment . . . of all amounts then remaining unpaid and the curing of any such default." See Section 7 of Greentree Tenants SNDA.

16. The practical consequence of these SNDA provisions is as follows: if Required Lease Payments are not paid by the Ground Tenant Debtors, each Ground Lease Mortgagee may be compelled to make protective advances, thereby paying those Required Lease Payments amounts itself, in order to prevent termination of the Ground Lease and thereby protect its leasehold mortgage collateral from termination and thus evisceration.

17. Any such protective advance increases the indebtedness secured by the Ground Lease Mortgagee's leasehold mortgage. Thus:

(a) Any Ground Lease Mortgagee that is currently undersecured will become *more* undersecured if forced to make protective advances on account of Ground Tenant Debtors' failure to pay Required Lease Payments; and

(b) Any Ground Lease Mortgagee that is currently barely secured (*i.e.*, has a minimal equity cushion) is at risk of becoming undersecured if non-payment continues and protective advances become necessary.

18. Therefore, any cash collateral order that excuses or defers payment of Ground Lease rent, real property taxes, and insurance poses a likelihood of failure to provide adequate protection to the Ground Lease Mortgagees under 11 U.S.C. § 363(e).

19. The purpose of this Supplemental Objection is to put in perspective how much more undersecured each Ground Lease Mortgagee could be rendered by cash collateral orders excusing payment of these items if the Ground Lease Mortgagee has to make a protective advance to stave off termination rights under the SNDAs. It also reinforces Fee Creditor's position that no cash collateral order should be able to effectuate, by affiliate atrophy by Borrowers, excusing the Ground Tenant Debtors from their Required Lease Payment obligations.

RESERVATION OF RIGHTS

20. Fee Creditor reserves all rights regarding the Motion, including but not limited to: (a) the right to object further to the Motion on any grounds; (b) all rights and remedies of Fee Creditor under the Mortgages, the Note, the assignments of leases and rents, and all other loan documents; (c) all rights and remedies of Fee Creditor under the SNDAs, including without limitation the right to enforce any and all provisions thereof; (d) all rights to seek adequate protection, relief from the automatic stay, or other relief under the Bankruptcy Code; (e) the right to assert claims against Ground Tenant Debtors' estates for any damage caused by non-payment of Ground Lease obligations; and (f) all rights with respect to enforcement of the Ground Leases and pursuit of remedies thereunder in the event of non-payment by Ground Tenant Debtors.

WHEREFORE, Fee Creditor respectfully requests the Court (a) deny the Motion, or condition any relief upon requiring full and timely payment of Ground Lease obligations, including rent, real property taxes, and insurance; (b) alternatively, if the Court is inclined to grant any relief, that the Court provide adequate protection to the Ground Lease Mortgagees against the increased indebtedness resulting from protective advances that may be necessitated by non-payment of Ground Lease obligations; and (c) grant such other and further relief as is just and proper.

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