

with Prendergast Declaration, the “Declarations”). In further support of the Motion, the Debtor, by and through its undersigned counsel, respectfully represents:

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363(b), and 365(a) and Bankruptcy Rule 6006.

BACKGROUND

2. On June 29, 2009 (the “Petition Date”), the Debtor filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtor, including its business operations, its capital and debt structure, and the events leading to the filing of this bankruptcy case, is set forth in detail in the Declarations, fully incorporated herein by reference.

3. The Debtor continues to manage and operate its business as debtor in possession under Bankruptcy Code sections 1107 and 1108.

THE LEASES

4. As set forth in Exhibit A hereto, the Leases are five (5) unexpired leases of real nonresidential property used to operate the Debtor’s retail stores located in Lynwood, WA; Happy Valley, OR; Riverside, CA; Glendale, CA; and San Francisco, CA. The Debtor entered into each of the Leases with, respectively, Alderwood Mall L.L.C; Stonetown Shopping Center L.P.; Glendale Mall Associates, LLC; Tyler Mall Limited Partnership; and Clackas Mall L.L.C.

(each a “Landlord” and together, the “Landlords”) on various dates between June 10, 2005 and June 26, 2006.

KEY TERMS OF THE LEASE AMENDMENTS

5. On December 22, 2009, after negotiation between and the Debtor and each of the Landlords, the Debtor and each Landlord executed, pending approval of this Motion, a Lease Amendment with regard to each of the relevant Premises.

6. The Lease Amendments provides for the continued existence of the stores at these locations under terms and conditions that will aid the Debtor’s reorganization efforts and save the Debtor a significant amount over the terms of the Leases. A copy of the Lease Amendments, along with a summary of the savings and benefits thereof (the “Summary”), will constitute Exhibit C hereto. Because of competitive and confidentiality provisions, simultaneously with the filing hereof, the Debtor will file a motion for an order seeking authority to file Exhibit C under seal.

RELIEF REQUESTED

7. By this Motion, the Debtor requests the entry of an order under Bankruptcy Code sections 105(a) and 365(a) (a) authorizing the Debtor to enter into the Lease Amendments, each amending one of the Leases and (b) authorizing the Debtor to assume the Leases, as amended.

BASIS FOR RELIEF

8. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor in possession, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363 does not set forth a standard for determining when it is appropriate for a court to authorize the debtor to

amend a lease or contract, courts in this Circuit and others, in applying this section, have required that decisions regarding the disposition of assets outside the ordinary course of business be based upon the debtor's sound business judgment and a finding of "good faith." See Meyers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee's judgment concerning use of property under section 363(b) when there is a legitimate business justification); In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 149–50 (3d Cir. 1986) (requiring a finding of "good faith" to approve a sale under section 363(b)); Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.), 242 B.R. 147,153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property under [section 363(b)], courts require the debtor to show that a sound business purpose justifies such actions."); In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991) (examining the history of the standard required for a pre-confirmation sale of assets under section 363(b) and opining that the Third Circuit has implicitly abandoned the "emergency" test under earlier precedent and has adopted the "sound business judgment" test as utilized by other courts).

9. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject an executory contract or an unexpired lease." 11 U.S.C. § 365(a); see also Univ. Med. Ctr. v. Sullivan (In re Univ. Med. Ctr.), 973 F.2d 1065, 1075 (3d Cir. 1992). The Court may approve a debtor's assumption of an unexpired lease or executory contract if such assumption is made in the exercise of such debtor's sound business judgment, and if such assumption benefits its estate. See, e.g., Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp., 872 F.2d 36, 39 (3d Cir. 1989); NLRB v. Bildisco & Bildisco (In re Bildisco), 682 F.2d 72,79 (3d Cir. 1982), aff'd, 465 U.S. 513 (1984); In re Network Access Solutions, Corp., 330

B.R. 67 (Bankr. D. Del. 2005) (“The standard for approving the assumption of an executory contract is the business judgment rule”); Westbury Real Estate Ventures, Inc. v. Bradlees, Inc. (In re Bradlees, Inc.), 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996) (“In reviewing a debtor’s decision to assume ... an executory contract, the court must examine the contract and circumstances and apply its best ‘business judgment’ to determine if the assumption ... would be beneficial ... to the estate”). It is enough if a debtor determines in its business judgment that a benefit will be realized. Sharon Steel Corp., 872 F.2d at 39 (citing Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987)). The business judgment standard requires that the Court approve the debtor’s business decision unless it is the product of bad faith, whim or caprice. See In re Trans World Airlines, Inc., 261 B.R. 103, 121 (Bankr. D. Del. 2001); see also Lubrizol Enter., Inc. v. Richmond Metal Finishers, 756 F.2d 1043, 1047 (4th Cir. 1985), cert. denied, 475 U.S. 1057 (1986).

10. If a valid business justification exists – as it surely does in this case – the law vests the debtors’ decision to use property out of the ordinary course of business with a strong presumption “that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that that action take was in the best interests of the company.” Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985). Accordingly, parties challenging a debtor’s decision making must make a showing of “bad faith, self-interest or gross negligence.” Id.

11. The Debtor submits that sound business reasons exist for the authorizing the Debtors to enter into the Lease Amendments and to assume the Leases, as amended. After vigorous, arms-length negotiation of the terms of the Lease Amendments, and upon

consideration of the needs of the Debtor's business operation, the Debtor has determined, in its business judgment, that the terms of the Lease Amendments are favorable to the Debtor and will allow the Debtor to continue operating its business at each of the relevant retail Premises.

12. If the Motion is not approved, the Debtor may be forced to reject each of the Leases and terminate its operation of the five retail stores located on the Premises, which would result in a significant reduction of revenues for the Debtor and the loss of employment of the employees at the five retail stores. The rejection of the Leases will also result in significant rejection damages being asserted by Landlord against the Debtor's estate pursuant to section 502(b)(6) of the Bankruptcy Code.

13. Considering both the significant benefit provided by the Lease Amendments and the great potential harm to both the Debtor's estate and its employees that would result from a rejection of the Leases, the Debtor respectfully submit that the Motion should be granted and the Court should authorize the Debtor to enter into the Lease Amendments and to assume the Leases, as amended.

NOTICE

14. Notice of this Motion has been provided to: (i) the United States Trustee for the District of Delaware; (ii) the parties included on the Debtor's list of twenty (20) largest unsecured creditors; (iii) the Landlords (collectively, the "Initial Notice Parties"); and (iv) any party that has requested notice of filed pleadings in this Chapter 11 case. The Debtor submits that, under the circumstances, no other or further notice is necessary.

NO PRIOR REQUEST

15. No prior request for the relief requested herein has been made to this or any other Court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests this Court enter an order, substantially in the form annexed hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: January 14, 2010

**WOMBLE CARLYLE SANDRIDGE
& RICE, PLLC**

/s/ Thomas M. Horan

Mark L. Desgrosseilliers (DE Bar No. 4083)
Thomas M. Horan (DE Bar No. 4641)
222 Delaware Avenue, Suite 1501
Wilmington, DE 19801
Telephone: (302) 252-4320
Facsimile: (302) 252-4330
E-mail: mdesgrosseilliers@wcsr.com
E-mail: thoran@wcsr.com

-and-

Dennis J. Drebsky
NIXON PEABODY LLP
437 Madison Avenue
New York, New York 10022
Telephone: (212) 940-3000
Facsimile: (212) 940-3111

Counsel for the Debtor and Debtor-in-Possession

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth in this Order.
2. Each of the Lease Amendments is approved and all of its terms and conditions shall be valid and binding against the Debtor and each relevant Landlord.
3. The Debtor is authorized to assume the Leases, each as amended by the relevant Lease Amendment, with such assumption effective as of the date of this Order.
4. This Court shall retain jurisdiction with respect to any and all matters relating to or arising from the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
_____, 2010

HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
PUMPKIN PATCH LLC, ¹)	Case No. 09-12200 (BLS)
)	
Debtor.)	Objections Due: February 1, 2010 at 4:00 p.m. EST
)	Hearing Date: February 9, 2010 at 10:15 a.m. EST
)	

NOTICE OF DEBTOR’S MOTION FOR ORDER UNDER 11 U.S.C. §§ 105(a), 363(b), AND 365(a) AND FED. R. BANKR. P. 6006 (A) AUTHORIZING AND APPROVING AMENDMENTS OF UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND (B) AUTHORIZING ASSUMPTION OF LEASES, AS AMENDED

Pumpkin Patch LLC (the “Debtor”), by and through its undersigned counsel, has filed the attached **Motion for Order Under 11 U.S.C. §§ 105(a), 363(b), and 365(a) and Fed. R. Bankr. P. 6006 (A) Authorizing and Approving Amendments of Unexpired Leases of Nonresidential Real Property and (B) Authorizing Assumption of Leases, as Amended** (the “Motion”).

You are required to file a response to the Motion, on or before **February 1, 2010 at 4:00 p.m.** (the “Objection Deadline”).

At the same time, you must also serve a copy of the response upon:

Dennis J. Drebsky NIXON PEABODY LLP 437 Madison Avenue New York, New York 10022 Telephone: (212) 940-3000 Facsimile: (212) 940-3111	Thomas M. Horan (DE Bar No. 4641) WOMBLE CARLYLE SANDRIDGE & RICE, PLLC 222 Delaware Avenue, Suite 1501 Wilmington, DE 19801 Telephone: (302) 252-4320 Facsimile: (302) 252-4330 E-mail: mdesgrosseilliers@wcsr.com E-mail: thoran@wcsr.com
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A HEARING ON THE MOTION WILL BE HELD ON FEBRUARY 9, 2010 AT 10:15 A.M., ONLY IF OBJECTIONS ARE TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE.

¹ The last four digits of Pumpkin Patch LLC’s federal tax identification number are 4007. The mailing address for Pumpkin Patch LLC is 837 15th Street, #D, Santa Monica, CA 90403.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: January 14, 2010

**WOMBLE CARLYLE SANDRIDGE
& RICE, PLLC**


____/s/ Thomas M. Horan_____
Mark L. Desgrosseilliers (DE Bar No. 4083)
Thomas M. Horan (DE Bar No. 4641)
Ericka F. Johnson (DE Bar No. 5024)
222 Delaware Avenue, Suite 1501
Wilmington, DE 19801
Telephone: (302) 252-4320
Facsimile: (302) 252-4330
E-mail: mdegrosseilliers@wcsr.com
E-mail: thoran@wcsr.com
E-mail: erjohnson@wcsr.com

-and-

Dennis J. Drebsky
NIXON PEABODY LLP
437 Madison Avenue
New York, New York 10022
Telephone: (212) 940-3000
Facsimile: (212) 940-3111

*Counsel for the Debtor
and Debtor-in-Possession*

EXHIBIT "A"



List of Leases

1. Lease between Alderwood Mall L.L.C. and Pumpkin Patch LLC dated May 31, 2006 for premises located in the Alderwood Mall in the City of Lynnwood, County of Snohomish, State of Washington.
2. Lease between Stonestown Shopping Center, L.P. and Pumpkin Patch LLC dated March 30, 2006 for premises located in the Stonestown Shopping Center in the City and County of San Francisco, State of California.
3. Lease between Glendale I Mall Associates, LLC and Pumpkin Patch LLC dated June 10, 2005 for premises located in the Glendale Galleria in the City of Glendale, County of Los Angeles, State of California.
4. Lease between Tyler Mall Limited Partnership and Pumpkin Patch LLC dated July 25, 2005 for premises located in the Galleria at Tyler in the City and County of Riverside, State of California.
5. Lease between Clackamas Mall L.L.C. and Pumpkin Patch LLC dated June 26, 2006 for premises located in the Clackamas Town Center in the City of Portland, County of Clackamas, State of Oregon.

EXHIBIT "B"

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PUMPKIN PATCH LLC,¹

Debtor.

Chapter 11

Case No. 09-12200 (BLS)

**DECLARATION OF MATTHEW WASHINGTON IN SUPPORT
OF (I) LEASE AMENDMENT MOTION AND (II) MOTION TO SEAL**

Under 28 U.S.C. § 1746, Matthew John Washington, declares as follows under the penalty of perjury:

1. I am the Chief Financial Officer of Pumpkin Patch LLC (the “Debtor”), a corporation organized under the laws of the state of Delaware.
2. I have been the Chief Financial Officer of the Debtor since its formation in 2005 and am familiar with the Debtor’s day-to-day operations, business affairs, and books and records.
3. On June 29, 2009 (the “Petition Date”), the Debtor commenced a case in this Court by filing a voluntary petition under chapter 11 of the Bankruptcy Code.
4. Concurrent with the filing of this Declaration, the Debtor will file (I) the Debtor’s Motion for Order under 11 U.S.C. §§ 105(a), 363(b), and 365(a) and Fed. R. Bankr. 6006 (a) Authorizing and Approving Amendments of Unexpired Leases of Non-residential Real Property and (b) Authorizing Assumption of Leases, as Amended (the “Lease Amendment Motion”)² and (II) the Debtor’s Motion for Order Authorizing the Debtor to file certain Lease Amendments and

¹ The last four digits of Pumpkin Patch LLC’s federal tax identification number are 4007. The mailing address for Pumpkin Patch LLC is 837 15th Street, #D, Santa Monica, CA 90403.

Summary under Seal (the “Motion to Seal” and, together with the Lease Amendment Motion, the “Motions”)

5. I have read the Motions and am familiar with the facts set forth therein. I have personal knowledge of the matters set forth in the Motions to the extent they relate to the Debtor or have gained knowledge of such matters from the Debtor’s employees or retained advisors that report to me in the ordinary course of my responsibilities as Chief Financial Officer and, if called as a witness, would testify thereto.³

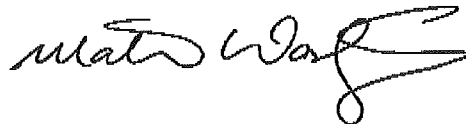
6. The Debtor believes, and I agree, that it is in the Debtor’s best interest to enter into the Lease Amendments and to assume the Leases, as amended.

7. The Debtor believes, and I agree, that the authorizing the filing of the Lease Amendments and the Summary under Seal and preserving the confidentiality of sensitive commercial information is in the best interest of the Debtor and the estate.

8. I hereby declare under the penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: January 14, 2010

PUMPKIN PATCH LLC
Debtor and Debtor in Possession



Matthew Washington
Chief Financial Officer

(Footnote continued from previous page)

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Lease Amendment Motion.

³ Certain of the disclosures in the Declaration relate to matters within the knowledge of other employees of the Debtor and are based on information provided by them.

EXHIBIT "C"

Filed Under Seal