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The Forbes Company

7 **UNITED STATES BANKRUPTCY COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9 **LOS ANGELES DIVISION**

10	In re	)	Case No. 2:18-bk-11744-NB
11	B&B LIQUIDATING, LLC,	)	Chapter 11
12	Debtor.	)	RESPONSE OF LANDLORD THE
13		)	FORBES COMPANY TO SECURED
14		)	LENDER'S MOTION FOR RELIEF
15		)	FROM THE AUTOMATIC STAY
16		)	(PERSONAL PROPERTY)
17		)	Date: September 4, 2018
		)	Time: 10:00 a.m.
		)	Place: Courtroom 1545
		)	255 East Temple Street
		)	Los Angeles, CA 90012

18 The Forbes Company is the managing agent for the landlord of Somerset Collection North
19 (“Forbes”) located in Troy, Michigan. The Debtor operates its Store No. 64 at Somerset Collection
20 North (the “Premises”). Forbes files this response to the Motion of Siena Lending Group, LLC
21 (“Siena”) for Relief From the Automatic Stay (Personal Property) (*see* Docket No. 205; the
22 “Motion”) because: (1) August 2018 rent and charges for the Premises of \$41,130.03 has not been
23 paid; and, (2) Siena has failed (despite a prior request) to confirm that no fixtures will be removed
24 from the Premises as it realizes on the Collateral.¹ Moreover, any order on the Motion must make
25 it clear that the Premises must be completely vacated no later than September 14, 2018 - - the last
26 day use and occupancy is permitted under 11 U.S.C. § 365(d)(4).

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28 ¹ Capitalized terms not otherwise defined have the same meaning ascribed to them in the Motion.

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1 In support of its Response, Forbes respectfully represent as follows:

2 1. The Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the
3 United States Code on February 16, 2018.

4 2. The Debtor and Forbes are parties to a written lease for retail sales space (the
5 “Lease”) at Somerset Collection North (the “Premises”). The Lease is a “lease of real property in a
6 shopping center” as that term is used in 11 U.S.C. § 365(b)(3). *See In re Joshua Slocum, Ltd.*, 922
7 F.2d 1081, 1086-1087 (3rd Cir. 1990).

8 3. Forbes does not dispute Siena’s ability to seek (or, upon suitable proof, obtain) relief
9 from the automatic stay, but that cannot be the end of the analysis.

10 Unpaid Rent

11 4. No one can seriously dispute that the store closing sales currently under way benefit
12 anyone other than Siena. Indeed, in recognition of that premise and from the earliest stages of this
13 case, Siena has been paying monthly rent and charges for the Premises directly to Forbes. However,
14 August 2018 rent and charges (totaling \$41,130.03) have not been paid. This was brought to the
15 attention of Siena’s counsel as early as August 15, 2018, but as of August 23, 2018, nothing has
16 been paid. Siena should not be allowed to benefit from the store closing sales *and* realize on the
17 Collateral without paying all rent due under the Lease through the last day the Premises are used
18 (either for a sale, or to remove the Collateral).

19 Removal of the Collateral

20 5. Section 10.03 of the Lease states in relevant part that “All alterations, decorations,
21 additions and improvements made by Tenant shall be deemed to have attached to the leasehold and
22 to have become property of Landlord” In an effort to avoid any dispute as to what Siena may
23 remove (and to avoid filing this Response), counsel for Forbes reached out to Siena’s counsel on
24 August 15, 2018 for confirmation that only non-fixture personal property will be removed from the
25 Premises. As of August 23, 2018, Siena’s counsel has provided no such confirmation. If relief
26 from the automatic stay is granted, the order on the Motion must specify that only non-fixture
27 Collateral may be removed from the Premises.

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The Premises Must be Surrendered No Later Than September 14, 2018

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6. Whatever Siena may elect to do to realize on the Collateral, it must be completed no later than September 14, 2018. The Lease will be deemed rejected as of September 14, 2018. See Docket No. 186. Forbes does not and will not consent to any extension of the September 14, 2018 deadline, and nothing in any order granting the motion may be construed in any way to extend the deadline under 11 U.S.C. § 365(d)(4). Thus, if Siena is granted relief from the automatic stay, and elects either to continue the store closing sales or simply remove the Collateral, the Premises must be surrendered to Forbes with all Collateral removed no later than September 14, 2018 (*i.e.*, the sale cannot end on September 14th and Siena then takes several thereafter to remove the Collateral), and the same should be reflected in any order on the Motion.

Dated: August 23, 2018

BALLARD SPAHR LLP
Brian D. Huben
Dustin P. Branch

By: /s/ Brian D. Huben
Brian D. Huben

Attorneys for Landlord Creditor
The Forbes Company

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 2029 Century Park East, Suite 800, Los Angeles, CA 90067-2909.

A true and correct copy of the foregoing document described as **RESPONSE OF LANDLORD THE FORBES COMPANY TO SECURED LENDER'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY (PERSONAL PROPERTY)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On **August 23, 2018**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Charla L Brown on behalf of Creditor Texas Comptroller of Public Accounts
charla.brown@cpa.texas.gov

Shirley Cho on behalf of Creditor Committee Official Committee Of Unsecured Creditors
scho@pszjlaw.com

Brian L Davidoff on behalf of Debtor B&B Liquidating, LLC
bdavidoff@greenbergglusker.com, calendar@greenbergglusker.com;jking@greenbergglusker.com

John P Dillman on behalf of Creditor Harris County
houston_bankruptcy@publicans.com

Jeffrey W Dulberg on behalf of Creditor Committee Official Committee Of Unsecured Creditors
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Brian D Huben on behalf of Creditor Centennial Real Estate Company
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Brian D Huben on behalf of Creditor Starwood Retail Partners LLC
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Brian D Huben on behalf of Creditor The Forbes Company
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Hamid R Rafatjoo on behalf of Interested Party ModernHR
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Martin W Taylor on behalf of Creditor Israel Discount Bank of New York
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Ronald M Tucker, Esq on behalf of Creditor Simon Property Group, Inc.
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United States Trustee (LA)
ustpregion16.la.ecf@usdoj.gov

Elizabeth Weller on behalf of Creditor Dallas county
dallas.bankruptcy@publicans.com

Elizabeth Weller on behalf of Creditor c/o Elizabeth Weller City of Frisco
dallas.bankruptcy@publicans.com

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On **August 23, 2018**, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. *Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.*

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **August 23, 2018**, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. *Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.*

Honorable Neil W. Bason
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Suite 1552 / Courtroom 1545
Los Angeles, CA 90012

VIA HAND DELIVERY

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

August 23, 2018
Date

Donna Carolo
Type Name

/s/ Donna Carolo
Signature