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Hearing Time: 10:00 a.m.

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: :  
: Chapter 11  
:   
QUEBECOR WORLD (USA) INC., et al., : Case No. 08-10152 (JMP)  
: (Jointly Administered)  
Debtors. :  
: Honorable James M. Peck  
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LIMITED OBJECTION OF CORPORATE PROPERTY ASSOCIATES 9, L.P. TO THE  
DEBTORS' FIRST OMNIBUS MOTION FOR AN ORDER PURSUANT TO  
SECTION 365 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 6006  
AUTHORIZING THE DEBTORS TO ASSUME CERTAIN UNEXPIRED  
NONRESIDENTIAL REAL PROPERTY LEASES (DOCKET NO. 904)

Corporate Property Associates 9, L.P. ("Landlord"), by its undersigned counsel,  
submits this limited objection to the motion (the "Motion") of Quebecor World (USA) Inc., et  
al., the debtors and debtors in possession in the above-captioned cases (collectively, the  
"Debtors"),<sup>1</sup> for an order pursuant to section 365 of title 11 of the United States Code (the

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<sup>1</sup> The Debtors are the following entities: Quebecor World (USA) Inc., Quebecor Printing Holding Company, Quebecor World Capital Corporation, Quebecor World Capital II GP, Quebecor World Capital II LLC, WCZ, LLC, Quebecor World Lease GP, Quebecor World Lease LLC, QW Memphis Corp., The Webb Company, Quebecor World Printing (USA) Corp., Quebecor World Loveland Inc., Quebecor World Systems Inc., Quebecor World San Jose Inc., Quebecor World Buffalo Inc., Quebecor World Johnson & Hardin Co., Quebecor World Northeast Graphics Inc., Quebecor World UP / Graphics Inc., Quebecor World Great Western Publishing Inc., Quebecor World DB Acquisition Corp., WCP-D, INC., Quebecor World Taconic Holdings Inc., Quebecor World Retail Printing Corporation, Quebecor World Arcata Corp., Quebecor World Nevada Inc., Quebecor World Atglen Inc., Quebecor World Krueger Acquisition Corp., Quebecor World Book Services LLC, Quebecor World Dubuque Inc., Quebecor World Pendell Inc., Quebecor World Fairfield Inc., QW New York Corp., Quebecor World Dallas II Inc., Quebecor World

“Bankruptcy Code”) authorizing the Debtors to assume certain unexpired nonresidential real property leases, and respectfully represents as follows:

BACKGROUND

1. Landlord owns certain non-residential real property located in DeKalb County, Georgia (the “Premises”). Pursuant to a lease agreement, dated as of May 1, 1996, as subsequently amended by the assignment and assumption of lease agreement, dated January 22, 1997, and the first amendment to lease agreement, dated March 1, 1997 (as amended, the “Lease”), Quebecor Printing Atlanta Inc. (“Tenant”), which is not a Debtor in these cases, leased the Premises from Landlord. Pursuant to Guaranty and Suretyship Agreement, dated as of March 1, 1997, as amended by a joinder, dated July 29, 2002 (collectively, the “Guaranty”), Quebecor World Inc., the corporate parent of Tenant and the Debtors and a debtor under the Companies’ Creditors Arrangements Act of Canada (“Parent”), unconditionally and irrevocably guaranteed Tenant’s obligations under the Lease.

2. Although Tenant is not one of the Debtors, the Debtors represent that Quebecor World Atlanta II LLC, a Debtor in these cases (“QWA”), is a tenant under the Lease as “the premises are occupied by [QWA] and that Debtor is responsible for performing under the Lease.” See Motion, Exhibit B, n.1.

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Nevada II LLC, Quebecor World Dallas, L.P., Quebecor World Mt. Morris II LLC, Quebecor World Petty Printing Inc., Quebecor World Hazleton Inc., Quebecor World Olive Branch Inc., Quebecor World Dittler Brothers Inc., Quebecor World Atlanta II LLC, Quebecor World RAI Inc., Quebecor World KRI Inc., Quebecor World Century Graphics Corporation, Quebecor World Waukee Inc., Quebecor World Logistics Inc., Quebecor World Mid-South Press Corporation, Quebecor Printing Aviation Inc., Quebecor World Eusey Press Inc., Quebecor World Infiniti Graphics Inc., Quebecor World Magna Graphic Inc., Quebecor World Lincoln Inc, and Quebecor World Memphis LLC.

LIMITED OBJECTIONS

3. Section 365(b)(1) of the Bankruptcy Code provides, in pertinent part, that if there is a default under an unexpired lease, a debtor may not assume such lease unless, the debtor:

(A) cures, or provides adequate assurance that the [debtor] will promptly cure, such default . . . ; (B) compensates, or provides adequate assurance that the [debtor] will promptly compensate, a party other than the debtor to such . . . lease, for any actual pecuniary loss to such party resulting from such default; and (C) provides adequate assurance of future performance under such . . . lease.

11 U.S.C. § 365(b)(1).

4. While Landlord does not object to QWA's assumption of the Lease in accordance with the Bankruptcy Code, Landlord has the following limited objections to assumption of the Lease on the terms proposed by the Debtors: (a) the proposed cure amount of \$0.00 is insufficient; (b) the Debtors fail to provide adequate assurance of future performance of the tenant's obligations under the Lease; and (c) the Debtors' proposed order contains an overly broad reservation of rights, a confusing and ambiguous statement that the Debtors have not waived any rights with respect to the Lease, and an inappropriate release of certain claims of Landlord.

A. Cure Amount

5. Landlord objects to the Debtors' proposed cure amount for the Lease of \$0.00. See Motion, Exhibit B. Any assumption of the Lease must be accompanied by payment to Landlord of all amounts currently due under the Lease. The Lease provides that Landlord is entitled to reimbursement of its reasonable attorneys' fees and costs incurred in connection with

enforcement of the Lease and any event of default. See Lease § 20(c),<sup>2</sup> 19(a)(vi)(A). See also Travelers Cas. & Sur. Co. of Am. v. Pac. Gas and Elec. Co., 127 S. Ct. 1199, 1205–06 (2007) (holding that contractual attorney fees could be recovered where Congress had not expressly disallowed claims); In re Westview 74th St. Drug Corp., 59 B.R. 747, 756–57 (Bankr. S.D.N.Y. 1986) (“[A]n express contractual provision for attorney’s fees gives rise to a right to obtain a reasonable attorney’s fee as part of curing the debtor’s default and in compensation for the landlord’s actual pecuniary loss under section 365 of the Code.”); In re Ribs of Greenwich Vill., Inc., 57 B.R. 319, 321–22 (Bankr. S.D.N.Y. 1986) (allowing reasonable attorneys’ fees where debtor filed a motion seeking to assign a lease that the landlord was required to defend).

6. Landlord now holds a liquidated cure claim of approximately \$75,000, which consists of costs and expenses, including attorneys’ fees, incurred by Landlord in connection with Landlord’s enforcement of its rights under the Lease and the Guaranty. That amount continues to accrue and does not include additional rent concerning the prepetition period that will become due under the Lease, such as amounts that have accrued, but for which payment is not yet due (including, without limitation, real property taxes) or future costs and expenses incurred for legal fees, etc. Additionally, Tenant must remain responsible for indemnification and other obligations that may have accrued under the Lease, but are not yet known at this time.<sup>3</sup> As discussed below, any order approving the Debtors’ assumption of the

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<sup>2</sup> Section 20(c) of the Lease provides, in pertinent part, as follows: “Tenant shall pay to Landlord, as Additional Rent, all the expenses incurred by Landlord in connection with any Event of Default or the exercise of any remedy by reason of an Event of Default or otherwise in connection with the enforcement of this Lease, including reasonable attorneys’ fees and expenses.”

<sup>3</sup> See, e.g., Lease § 10 (requiring Tenant “to pay, protect, indemnify, defend, save and hold harmless Landlord . . . against any and all liabilities, losses, damages, penalties, costs, expenses (including all reasonable attorneys’ fees and expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever, howsoever caused . . .”).

Lease may not interfere with Landlord's right to recover such additional Lease obligations as and when they become due.

B. Adequate Assurance

7. Section 365(b)(1)(C) of the Bankruptcy Code provides, in pertinent part, that a debtor may not assume an unexpired lease "unless, at the time of the assumption of such contract or lease, the [debtor] provides adequate assurance of future performance under such contract or lease." 11 U.S.C. § 365(b)(1)(C). Landlord further objects to QWA's assumption of the Lease because of the absence of adequate assurance of future performance of the tenant's Lease obligations. As such, QWA's assumption of the Lease must be accompanied by a demonstration that QWA will be capable of meeting the tenant's obligations under the Lease.

8. The Motion offers no meaningful assistance regarding adequate assurance. Instead, the declaration of Mario R. D'Arienzo in support of the Motion (the "D'Arienzo Declaration") merely suggests that "the Debtors' continued performance under the Assumed Leases following the Petition Date, together with the liquidity and resources provided by their billion dollar debtor-in-possession financing previously approved by the Court, constitutes adequate assurance of their ability to continue to perform under each of the Assumed Leases." See D'Arienzo Declaration ¶ 21.

9. Accordingly, Landlord objects to QWA's assumption of the Lease unless and until: (a) Landlord has been provided, has had an adequate opportunity to evaluate, and has been satisfied by substantive assurances of QWA's and the guarantors' future performance of the tenant's obligations under the Lease; and (b) Parent's prepetition Guaranty of the tenant's Lease obligations has been either reinstated on a postpetition basis in Parent's Canadian bankruptcy case under the Companies' Creditors Arrangements Act or replaced by a guaranty of a financially responsible entity.

C. Objections to Proposed Order/Additional Cure Issues

10. Landlord objects to paragraph 4 of the proposed order annexed to the Motion, which would reserve the Debtors' right to seek to assign the Lease, unless such paragraph also provides for a full reservation of Landlord's right to object to any proposed assignment of the Lease pursuant to section 365(f) of the Bankruptcy Code.

11. Landlord also objects to paragraph 5 of the Debtors' proposed order, which provides that "the cure amount to be paid to cure all prepetition defaults under each Assumed Lease, pursuant to section 365(b) of the Bankruptcy Code, shall be the applicable Cure Payments set forth on the attached Schedule I." As discussed above, any order providing for assumption of the Lease must provide for the assumption of all obligations under the Lease, including any Lease obligation that is unknown, not yet quantifiable, or not yet due as well as require the tenant to pay related amounts as and when they become due. Otherwise, QWA would be assuming only a portion of the Lease, which would be impermissible.

12. Landlord also objects to paragraph 8 of the Debtors' proposed order, which provides that "[t]he Debtors shall not be deemed to have waived any right, argument or legal position, with respect to the Assumed Leases by not having raised or addressed any issue or potential issue with regard to the Assumed Leases in the Motion." This paragraph should be stricken as it is unintelligible, vague, and without justification.

13. Additionally, the proposed order should expressly provide that Landlord's rights against Parent and Tenant are preserved.<sup>4</sup>

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<sup>4</sup> Regarding the preservation of Landlord's claims against QWA, the language in Schedule I to the proposed order suggesting the Lease has been assigned to QWA by Tenant should be stricken.

D. Adoption of Other Landlord Objections

14. Landlord also adopts the objections to the Motion filed by other landlords to the extent such objections are not inconsistent with this limited objection.

E. Reservation of Rights

15. Landlord reserves its right to amend this limited objection as circumstances may require and to assert any and all claims against the Debtors, relating to the Lease.

CONCLUSION

WHEREFORE, Landlord respectfully requests that the Court: (a) deny the Debtors' Motion as it applies to assumption of the Lease unless and until: (i) the appropriate cure amount now due is required to be paid and QWA is obligated to pay all other amounts required under the Lease as and when they become due; (ii) Landlord has been provided with adequate assurance of the tenant's future performance under the Lease; and (iii) Landlord's objections to the proposed order have been addressed in accordance with this limited objection; and (b) grant Landlord such other and further relief as the Court deems just and proper.

Dated: August 12, 2008

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