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*Proposed Counsel to the Debtor*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re : Chapter 11  
: :  
Doral Financial Corporation,<sup>1</sup> : Case No. 15- \_\_\_\_\_ ( )  
: :  
Debtor. :  
-----X

**DEBTOR'S MOTION FOR AN  
ORDER AUTHORIZING (I) REJECTION OF CERTAIN  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY  
AND (II) ABANDONMENT OF CERTAIN PROPERTY OF THE ESTATE**

The debtor in the above-captioned case (the “Debtor”) submits this motion (the “Motion”) for entry of an order authorizing the Debtor to: (i) reject certain unexpired leases of nonresidential real property effective as of the date set forth on Schedule 1, attached hereo (ii) abandon certain property of the estate located on the premises associated with the Leases (as

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<sup>1</sup> The last four digits of the taxpayer identification number of the Debtor are 2162.

defined herein). In support of the Motion, the Debtor, by and through its undersigned proposed counsel, respectfully represents:

### **Jurisdiction**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 365(a) and 554(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Rules 6006 and 6007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 6006-1 and 6007-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

### **Background**

2. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. Sections 1107(a) and 1108 of the Bankruptcy Code authorize the Debtor to continue to operate its businesses and manage its properties as a debtor in possession. No request for the appointment of a trustee or examiner has been made in this chapter 11 case, and no committee has been appointed or designated.

3. A summary of the Debtor’s business, the Debtor’s capital structure, and the events leading to this chapter 11 case, as well as the facts and circumstances supporting this Motion, are set forth in the *Declaration of Carol Flaton in Support of First Day Motions* (the “Flaton Declaration”)<sup>2</sup>, filed contemporaneously herewith.

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Flaton Declaration.

### **The Debtor's Lease Obligations**

4. The Debtor is party as tenant or sub lessor to a number of leases of non-residential real property as set forth and described in Schedule 1 (each a "Lease" and collectively, the "Leases").<sup>3</sup> By separate motion filed contemporaneously herewith, the Debtor is seeking authority to reject other non-real estate related executory contracts.

5. The Debtor no longer requires the premises that it leases as tenant pursuant to the Leases, and the Leases pursuant to which the Debtor is a sub-lessor are unprofitable. Therefore, the Debtor seeks authority to reject the Leases. Rejection of the Leases will result in immediate savings for the estate by avoiding the further accrual of rent or other administrative expenses.

6. The Debtor has removed all personal property of more than *de minimis* value from the premises associated with the Leases in which the Debtor is a tenant and, to the extent that the Debtor leaves any property in such premises, including, but not limited to, personal property, furniture, fixtures and/or equipment (collectively, "Expendable Property"), the Debtor has determined that such Expendable Property is of no continuing value to its estate and should be abandoned.

### **Relief Requested**

7. By this Motion, the Debtor requests entry of an order authorizing the Debtor to (i) reject the Leases, pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006; and (ii) abandon the Expendable Property located in the premises associated with the Leases (the "Premises"), pursuant to section 554(a) of the Bankruptcy Code and Bankruptcy Rule 6007. The Debtor seeks to reject the Leases effective as of the date set forth on Schedule 1.

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<sup>3</sup> Copies of the Leases may be requested from counsel to the Debtor.

The Debtor has, contemporaneously herewith, tendered occupancy of the leased Premises back to the subject landlords.

8. The following is a summary of the Leases and the Debtor's reasons for their rejection:

- a. Lease of Space at 623 Fifth Avenue, New York: The Debtor leases several floors at 623 Fifth Avenue, New York, New York under a Lease with Fifth Avenue Building Company LLC and a Lease with Union Bancaire Privée Asset Management, LLC. Much of the space was used for the operations of Doral Bank and its subsidiaries. As discussed in the Flaton Declaration, Doral Bank was recently placed into receivership and is no longer a subsidiary of the Debtor. The Debtor has recently moved its New York operations from the Premises to another location in the city. The Debtor has also determined, after a review of comparable market rents, that the terms of these Leases are close to market, and thus the Debtor does not believe there is material value in an assignment of these Leases.
- b. Subleases at 623 Fifth Avenue, New York: The Debtor has subleased space at 623 Fifth Avenue to HCL America Inc. and BankUnited N.A. Under the 623 Fifth Avenue subleases, the Debtor is subleasing space for a rent that is insufficient to compensate for the Debtor's obligations under the master lease. As the Debtor is rejecting the master lease for 623 Fifth Avenue, as discussed above, the Debtor also seeks to reject these subleases.
- c. Lease of Space at 1451 FDR Ave, Puerto Rico: The Debtor leases space at 1451 FDR Ave, a building owned by the Debtor's non-debtor subsidiary, Doral Properties, Inc. The Debtor no longer has any operations in Puerto Rico and accordingly has no need for the space at 1451 FDR Ave. The Debtor has also determined, after a review of comparable market rents, that the terms of this Lease are at or above market, and thus the Debtor does not believe there is material value in an assignment of this Lease.

9. Thus, the Debtor, in the exercise of its business judgment, has determined to reject the Leases in an effort to prevent the accumulation of unnecessary administrative expenses associated with the Leases.

**Rejection of the Leases Is Supported By the Debtor's  
Business Judgment and Should Be Approved By the Court**

10. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or

unexpired lease of the debtor.” 11 U.S.C. § 365(a); see also NLRB v. Bildisco & Bildisco, 465 U.S. 513, 521 (1984); In re Lavigne, 114 F.3d 379, 386 (2d Cir. 1997); In re Old Carco LLC, 424 B.R. 633, 638 (Bankr. S.D.N.Y. 2010) (citations omitted). “The purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to ‘renounce title to and abandon burdensome property.’” Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993).

11. Courts defer to a debtor’s business judgment in determining which executory contracts and unexpired leases to reject and, upon finding that a debtor has exercised sound business judgment, approve the rejection under section 365(a) of the Bankruptcy Code. See, e.g. Bildisco & Bildisco, 465 U.S. at 523 (recognizing courts’ use of the business judgment standard in evaluating whether rejection of executory contracts or leases is appropriate); Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.), 78 F.3d 18, 25 (2d Cir. 1996) (same); In re Gucci, 193 B.R. 411, 415 (S.D.N.Y. 1996) (business judgment test is the standard courts should use in evaluating motions to reject or assume an executory contract); In re Helm, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006) (courts need only ensure that debtors use sound business judgment in determining whether to assume or reject an executory contract); In re Penn Traffic Co., 322 B.R. 63, 68 (Bankr. S.D.N.Y. 2005) (“It is well established that the decision whether to assume or reject an executory contract under section 365(a) is a matter of business judgment to be exercised in the best interests of the debtor in possession and its creditors.”), rev’d in part on other grounds, No. 05-3755, WL 2276879 (S.D.N.Y. Sept. 16, 2005).

12. The “business judgment” standard is not a strict standard; it requires only a showing that either assumption or rejection of the executory contract or unexpired lease will

benefit the debtor's estate. See In re Helm, 335 B.R. at 538 (“To meet the business judgment test, the debtor in possession must ‘establish that rejection will benefit the estate.’”) (citation omitted); In re Balco Equities Ltd., Inc., 323 B.R. 85, 99 (Bankr. S.D.N.Y. 2005) (“In determining whether the debtor has employed reasonable business discretion, the court for the most part must only determine that the rejection will likely benefit the estate.”) (quoting In re G Survivor Corp., 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994), aff'd, 187 B.R. 111 (S.D.N.Y. 1995)); In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997) (in deciding whether to assume or reject an executory contract, a debtor must demonstrate whether such assumption or rejection confers a benefit on the estate).

13. As discussed above, the Debtor has examined the needs of its business and its obligation under the Leases and has concluded that the Leases, and the obligations thereunder, constitute unnecessary expenses of the Debtor's estate. Continued compliance with the terms of the Leases, therefore, is burdensome and provides little, if any, benefit to the Debtor and its estate.

14. Accordingly, the Debtor seeks to reject the Leases pursuant to section 365(a) of the Bankruptcy Code, effective as of the date set forth on Schedule 1. The Debtor believes the relief requested is warranted and appropriate in the present circumstances. The requested relief will expedite the Debtor's relief from the onerous obligations under the Leases, is fair and equitable, and is consistent with decisions of Courts in this district and elsewhere. See, e.g., Adelphia Bus. Solutions, Inc. v. Abnos (In re Adelphia Bus. Solutions, Inc.), 482 F.3d 602 (2d Cir. 2007) (affirming the bankruptcy court's discretionary authority to approve rejection as of the date of commencement of the debtors' chapter 11 cases); In re At Home Corp., 392 F.3d 1064, 1075 (9th Cir. 2004) (same), cert. denied, 126 S.Ct. 338 (2005); In re New World Pasta Co.,

Case No. 1-04-02817 (MDF) (Bankr. M.D. Pa. 2004) (rejection effective as of the date of the rejection motion); In re Acterna Corp., Case No. 03-12837 (BRL) (Bankr. S.D.N.Y. 2003) (rejection effective as of the date the cases were commenced); In re Velocita Corp., Case No. 02-35895 (DHS) (Bankr. D.N.J. 2002) (same).

15. In light of the foregoing, the Debtor respectfully requests, pursuant to section 365(a) of the Bankruptcy Code, that the Court approve the rejection of the Leases in the manner requested herein as a sound exercise of its business judgment.

**Abandonment of Expendable Property is Supported by the Debtor's Business Judgment and Should be Approved by the Court**

16. As of the date of the filing of the Motion, the Premises associated with the Leases contain only a minimal amount of personal property owned by the Debtor, and which property is ancillary to the Debtor's business operations. To the extent such Expendable Property remains on the Premises, it is of inconsequential value and of no benefit to the Debtor's estate. Pursuant to section 554(a) of the Bankruptcy Code, the Debtor seeks authorization to abandon all such Expendable Property.

17. Section 554(a) of the Bankruptcy Code provides in relevant part that a debtor in possession "after a notice and hearing . . . may abandon any property of the estate that . . . is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

18. The Debtor has determined that the Expendable Property, which primarily consists of office furniture, materials, and other equipment, is of no value to the Debtor's estate. The Expendable Property will be abandoned to the landlord for the relevant Leases. To the best of the Debtor's knowledge, the abandonment of the Expendable Property is not in violation of any state statutes or regulations reasonably designed to protect the public health or safety from identified hazards.

19. Rule 6007-1(a) of the Local Bankruptcy Rules requires that a notice of a proposed abandonment describe the property to be abandoned, state the reason for the proposed abandonment, and identify the entity to whom the property is proposed to be abandoned. The Debtor submits that the information set forth herein satisfies the foregoing requirements.

20. The Debtor requests that the abandonment of the Expendable Property be effective as of the effective date of rejection of the Leases in accordance with the Order approving the Motion.

21. Accordingly, based on the foregoing, the Debtor submits that the requested relief is necessary and appropriate, is in the best interests of its estate and creditors, and should be granted in all respects.

#### **Notice**

22. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the entities listed on the Debtor's List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) the landlords for the subject Leases; and (d) the indenture trustees for the DFC Notes and the AFICA Bonds. In light of the nature of the relief requested, the Debtor submits that no other or further notice is necessary.



**CONCLUSION**

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

Dated: March 11, 2015  
New York, New York

/s/ Mark I. Bane  
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*Proposed Counsel to the Debtor*

**Schedule 1**

<b>Name of Non-Debtor Counterparty to Lease Agreement</b>	<b>Type of Agreement</b>	<b>Basic Terms</b>	<b>Rejection Date</b>
Doral Properties	Lease Agreement	Location: 1451 Roosevelt Ave., San Juan, PR Term: Expires January 31, 2017 Monthly Rent: \$21,302.00	3/11/2015
Fifth Avenue Building Company LLC	Lease Agreement	Location: 623 Fifth Avenue, New York, NY, 13 <sup>th</sup> Floor Term: 10 years, 3 months after commencement, plus the number of days required to have the term expire on the last day of a calendar month (expires December 31, 2017) Monthly Rent: \$92,154.17 for 2015 First Amendment: January 11, 2010. Leased part of 16 <sup>th</sup> Floor for term ending January 31, 2018 for \$26,872.08 per month. Second Amendment: June 22, 2011. Surrendered 16 <sup>th</sup> Floor and leased entire 19 <sup>th</sup> Floor for an additional \$88,123.17 per month. Third Amendment: December 14, 2011. Doral did not surrender 16 <sup>th</sup> Floor and wishes to lease additional space on 16 <sup>th</sup> Floor for an additional \$29,766.00 per month. Fourth Amendment: June 28, 2012. Surrendered part of 16 <sup>th</sup> Floor and leased entire 20 <sup>th</sup> Floor for \$88,123.17 per month. Fifth Amendment: November 26, 2012. Surrendered part of	3/12/2015

		16 <sup>th</sup> Floor and leased entire 21 <sup>st</sup> Floor for \$88,123.17 per month. Sixth Amendment: May 8, 2013. Surrendered part of 15 <sup>th</sup> Floor and leased entire 18 <sup>th</sup> Floor for \$95,366.17.	
Union Bancaire Privee Asset Management, LLC	Sublease Agreement	Location: 623 Fifth Avenue, New York, NY, 17 <sup>th</sup> Floor Term: Expiring the earlier of February 27, 2017 or the expiration date of the Overlease. Monthly Rent: \$72,430.00 for 2015.	3/12/2015
Bankunited N.A. (as subtenant)	Sublease Agreement	Location: 623 Fifth Avenue, New York, NY, 13 <sup>th</sup> Floor Term: Expiring the earlier of December 30, 2019 or the expiration date of the Overlease. Monthly Rent: \$71,816.67.	3/12/2015
HCL America Inc. (as subtenant)	Sublease Agreement	Location: 623 Fifth Avenue, New York, NY, 19 <sup>th</sup> Floor Term: Expiring December 30, 2022. Monthly Rent: \$94,159.00 during 2015, 2016, 2017 and 2018; \$98,987.67 per month during 2019, 2020, 2021 and 2022.	3/12/2015

**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
In re : Chapter 11  
 :  
Doral Financial Corporation,<sup>1</sup> : Case No. 15-\_\_\_\_\_ ( )  
 :  
Debtor. :  
-----X

**ORDER AUTHORIZING (I) REJECTION OF CERTAIN  
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY  
AND (II) ABANDONMENT OF CERTAIN PROPERTY OF THE ESTATE**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtor (the “Debtor”), for entry of an order (i) authorizing the Debtor to reject the Leases, effective as of the date set forth on Schedule 1, attached hereto, (ii) authorizing the Debtor to abandon certain property of the estate, and (iii) granting such other and further relief as is just and proper; and upon the Flaton Declaration; and this Court having found that it has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334; and this Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that venue of this chapter 11 case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and this Court having reviewed the Motion and having heard statements in support of the Motion and the evidence submitted at a hearing held before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and the Flaton Declaration and at the Hearing establish just cause for the relief granted herein; and any objections to the relief

<sup>1</sup> The last four digits of the taxpayer identification number of the Debtor are 2162.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

requested herein having been withdrawn or overruled on the merits; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby

**ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Leases are hereby rejected as of the date set forth on Schedule 1.
3. Any Expendable Property that remains at the premises associated with the Leases as of the rejection date shall be and hereby is abandoned under section 554 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 6007 without further notice or order of the Court.
4. The rights of all parties, including those of the Debtor, to contest any and all claims arising out of, or related to, the rejection of the Leases and/or the removal or disposition of the Expendable Property are fully preserved.
5. The requirements set forth in Federal Rule of Bankruptcy Procedure 6006 and 6007, including Local Rules 6006-1 and 6007-1, are satisfied by the contents of the Motion or otherwise deemed waived.
6. The counterparties to the Leases are hereby prohibited from setting off or otherwise using security deposits or other monetary deposits in their possession or control to reduce their claim(s) against the Debtor without prior approval of this Court.
7. Any proofs of claim for rejection damages or other claims, if any, asserted by counterparties to the Agreements shall be filed by a date established by this Court as the bar date for filing proofs of claim against the Debtor.
8. The Debtor shall serve this Order on the counterparties to each of the Leases within three (3) business days of its entry.

9. The Debtor is authorized and empowered to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

10. Consistent with Bankruptcy Rule 6006(g), this Order constitutes a separate order with respect to each Agreement covered hereby.

11. Notwithstanding any applicability of any of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of this Order.

Dated: \_\_\_\_\_, 2015  
New York, New York

/s/ \_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**Schedule 1**

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