

ROPES & GRAY LLP
Mark I. Bane
Meredith S. Tinkham (*pro hac vice* pending)
1211 Avenue of the Americas
New York, NY 10036-8704
Telephone: (212) 596-9000
Facsimile: (212) 596-9090

-and-

James A. Wright III
Prudential Tower
800 Boylston Street
Boston, MA 02199-3600
Telephone: (617) 951-7000
Facsimile: (617) 951-7050

Proposed Counsel to the Debtor

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re : Chapter 11
: :
Doral Financial Corporation,¹ : Case No. 15- _____ ()
: :
Debtor. :
-----X

**DEBTOR’S MOTION FOR AN ORDER AUTHORIZING
REJECTION OF CERTAIN EXECUTORY CONTRACTS**

The debtor in the above-captioned case (the “Debtor”) submits this motion (the “Motion”) for entry of an order authorizing the Debtor to reject certain executory contracts effective as of the date set forth on Schedule 1, attached hereto. In support of the Motion, the Debtor, by and through its undersigned proposed counsel, respectfully represents:

¹ The last four digits of the taxpayer identification number of the Debtor are 2162.

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 section 365(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6006-1 of the Local Rules for the Bankruptcy Court 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”)², filed contemporaneously herewith.

The Debtor’s Executory Contracts

4. The Debtor is party to a number of executory contracts as set forth and described in Schedule 1 (each an “Executory Contract” and collectively, the “Executory Contracts”).³

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

³ Copies of the Executory Contracts may be requested from proposed counsel to the Debtor.

5. The Debtor no longer believes that the continuation of the Executory Contracts will provide a benefit to the Debtor's estate and therefore seeks the authority to reject such Executory Contracts. As discussed in the Flaton Declaration, Doral Bank, the Debtor's former subsidiary, was placed into receivership on February 27, 2015. Many of the Executory Contracts that the Debtor seeks to reject are either (a) for services previously used by Doral Bank or its employees, or (b) related to certain of the Debtor's operations that have been rendered moot by Doral Bank being placed into receivership. The Debtor is also seeking authority to reject real estate leases pursuant to a separate motion filed contemporaneously herewith.

Relief Requested

6. The Debtor requests entry of an order authorizing the Debtor to reject the Executory Contracts, pursuant to section 365(a) of the Bankruptcy Code, Rule 6006 of the Bankruptcy Code, and Local Bankruptcy Rule 6006-1. The Debtor seeks to reject the Executory Contracts effective as of the date set forth on Schedule 1.

7. The following table summarizes the Executory Contracts and the Debtor's reasons for seeking rejection:

<u>Schedule 1</u> Contract Numbers	Reason for Rejection
1, 2, 4, 9, 14, 15, 17	These Executory Contracts were entered into for services previously used, in large measure, by Doral Bank or its employees.
3, 5, 6, 7, 8, 10, 11, 12, 13, 16	These Executory Contracts relate to certain of the Debtor's operations or locations that have been rendered moot by Doral Bank being placed into receivership.

8. The Debtor, in the exercise of its business judgment, has determined to reject the Executory Contracts in an effort to prevent the accumulation of unnecessary administrative expenses associated with the Executory Contracts.

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

9. 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).

10. 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).

11. 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).

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

13. The Debtor seeks to reject the Executory Contracts 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 Executory Contracts, is fair and equitable, and is consistent with decisions of Courts in this district and elsewhere. See, e.g., Adelpia Bus. Solutions, Inc. v. Abnos (In re Adelpia 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).

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

Notice

15. 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 counterparties for the relevant Executory Contracts; 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
ROPES & GRAY LLP
Mark I. Bane
Meredith S. Tinkham (*pro hac vice* pending)
1211 Avenue of the Americas
New York, NY 10036-8704
Telephone: (212) 596-9000
Facsimile: (212) 596-9090
Email: mark.bane@ropesgray.com
meredith.tinkham@ropesgray.com

-and-

James A. Wright III
Prudential Tower
800 Boylston Street
Boston, MA 02199-3600
Telephone: (617) 951-7000
Facsimile: (617) 951-7050
Email: james.wright@ropesgray.com

Proposed Counsel to the Debtor

Schedule 1

#	Contract Counterparty Name and Address	Contract Description	Rejection Date
1	<p>AT&T Mobility National Accounts LLC</p> <p>AT&T Mobility National Accounts, LLC 16331 NE 72nd Way, RTC 1 Redmond, WA 98052</p> <p>Facsimile Number: 908-532-1263</p>	<p>Contract for mobile data services</p> <p>[Account No. 287257451264]</p>	3/11/2015
2	<p>Qwest Communications Company, LLC d/b/a CenturyLink QCC</p> <p>1801 California Street #900 Denver, CO 80202</p> <p>Facsimile Number: 888-778-0054</p>	<p>Contract for communications services</p>	3/11/2015
3	<p>Cohen Brothers Realty Corporation</p> <p>750 Lexington Ave., New York, NY 10022</p> <p>Facsimile Number: 212-755-8070</p>	<p>Contract for cleaning services at 623 Fifth Ave, Floors 13, 17, 19, 20, and 21, New York, New York, 10022</p>	3/11/2015
4	<p>Communicar, Inc.</p> <p>73-10 88th Street Glendale, NY 11385</p> <p>Facsimile Number: 718-418-1939</p>	<p>Contract for ground transportation services [Account No. 13444]</p>	3/11/2015
5	<p>Harland Financial Solutions, Inc.</p> <p>400 SW Sixth Avenue Portland, OR 97204</p>	<p>Software license agreement</p>	3/11/2015
6	<p>IBM Corporation</p> <p>6100 Oak Tree Blvd Independence, OH 44131</p>	<p>Software license, maintenance and support agreement</p>	3/11/2015
7	<p>International Business Machines Corporation</p> <p>7100 Highland Parkway Smyrna, GA 30082</p>	<p>Hardware services agreement.</p>	3/11/2015

8	Kaback Enterprises, Inc. 45 West 25 th Street New York, NY 10010	Air conditioning services agreement	3/11/2015
9	Navex Global, Inc. 6000 Meadows Road, Suite 200 Lake Oswego, Oregon 97035	Hotline services agreement	3/11/2015
10	NCP Solutions, LLC 5200 East Lake Boulevard Birmingham, AL 35217	Agreement for preparation of coupon books and related services.	3/11/2015
11	TPG Software, Inc. 5858 Westheimer Road Houston, TX 77057	Software license, support and customer services agreement	3/11/2015
12	Oracle Caribbean, Inc. 270 Muñoz Rivera Avenue Piso 1 Eurobank Building Hato Rey, PR 00918	Agreement for various Oracle services	3/11/2015
13	SAS Institute Inc. SAS Campus Drive Cary, North Carolina 27513	Software license agreement	3/11/2015
14	Christopher Poulton Address withheld	Employment agreement	3/11/2015

15	Seguros De Vida Triple-S Seguros Triple S, Inc. Attention Vanessa Rodriguez PO Box 70313 San Juan, PR 00936-0313	Group Insurance Agreement and Related Insurance Agreements	4/1/2015
16	Vertex 1041 Old Cassatt Road Berwyn, PA 19312	Software License Agreement	3/11/2015
17	Vision Service Plan Insurance Company Vision Service Plan Insurance Company 3333 Quauty Drive Rancho Cordova, California 95670	Group Insurance Agreement	4/1/2015

Exhibit A

Proposed Order

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

-----X
In re : Chapter 11
 :
Doral Financial Corporation,¹ : Case No. 15-_____ ()
 :
Debtor. :
-----X

**ORDER AUTHORIZING REJECTION OF
CERTAIN OF THE DEBTOR’S EXECUTORY CONTRACTS**

Upon the motion (the “Motion”)² of the above-captioned debtor (the “Debtor”), (i) for entry of an order authorizing the Debtor to reject certain Executory Contracts, effective as of the date set forth in Schedule 1, and (ii) 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

¹ The last four digits of the taxpayer identification numbers of the Debtor are 2162.

² 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. Each of the contracts listed on Schedule 1 attached hereto are hereby rejected as of the date set forth on Schedule 1.
3. 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 Executory Contracts are fully preserved.³
4. The requirements set forth in Federal Rule of Bankruptcy Procedure 6006, including Local Rule 6006-1, are satisfied by the contents of the Motion or otherwise deemed waived.
5. The counterparties to the Executory Contracts 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.
6. Any proofs of claim for rejection damages or other claims, if any, asserted by counterparties to the Executory Contracts shall be filed by a date established by this Court as the bar date for filing proofs of claim against the Debtor.
7. The Debtor shall serve this Order on the counterparties to each of the Executory Contracts within three (3) business days of its entry.
8. The Debtor is authorized and empowered to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

³ The Motion does not constitute an admission and this Order does not constitute a determination that the Executory Contracts are existing and in effect and the rights of all parties are preserved to argue that the Executory Contracts are non-executory or previously expired or were previously terminated.

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

10. 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.

11. 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

#	Contract Counterparty Name and Address	Contract Description	Rejection Date
1	<p>AT&T Mobility National Accounts LLC</p> <p>AT&T Mobility National Accounts, LLC 16331 NE 72nd Way, RTC 1 Redmond, WA 98052</p> <p>Facsimile Number: 908-532-1263</p>	<p>Contract for mobile data services</p> <p>[Account No. 287257451264]</p>	3/11/2015
2	<p>Qwest Communications Company, LLC d/b/a CenturyLink QCC</p> <p>1801 California Street #900 Denver, CO 80202</p> <p>Facsimile Number: 888-778-0054</p>	<p>Contract for communications services</p>	3/11/2015
3	<p>Cohen Brothers Realty Corporation</p> <p>750 Lexington Ave., New York, NY 10022</p> <p>Facsimile Number: 212-755-8070</p>	<p>Contract for cleaning services at 623 Fifth Ave, Floors 13, 17, 19, 20, and 21, New York, New York, 10022</p>	3/11/2015
4	<p>Communicar, Inc.</p> <p>73-10 88th Street Glendale, NY 11385</p> <p>Facsimile Number: 718-418-1939</p>	<p>Contract for ground transportation services [Account No. 13444]</p>	3/11/2015
5	<p>Harland Financial Solutions, Inc.</p> <p>400 SW Sixth Avenue Portland, OR 97204</p>	<p>Software license agreement</p>	3/11/2015
6	<p>IBM Corporation</p> <p>6100 Oak Tree Blvd Independence, OH 44131</p>	<p>Software license, maintenance and support agreement</p>	3/11/2015
7	<p>International Business Machines Corporation</p> <p>7100 Highland Parkway Smyrna, GA 30082</p>	<p>Hardware services agreement.</p>	3/11/2015

8	Kaback Enterprises, Inc. 45 West 25 th Street New York, NY 10010	Air conditioning services agreement	3/11/2015
9	Navex Global, Inc. 6000 Meadows Road, Suite 200 Lake Oswego, Oregon 97035	Hotline services agreement	3/11/2015
10	NCP Solutions, LLC 5200 East Lake Boulevard Birmingham, AL 35217	Agreement for preparation of coupon books and related services.	3/11/2015
11	TPG Software, Inc. 5858 Westheimer Road Houston, TX 77057	Software license, support and customer services agreement	3/11/2015
12	Oracle Caribbean, Inc. 270 Muñoz Rivera Avenue Piso 1 Eurobank Building Hato Rey, PR 00918	Agreement for various Oracle services	3/11/2015
13	SAS Institute Inc. SAS Campus Drive Cary, North Carolina 27513	Software license agreement	3/11/2015
14	Christopher Poulton Address withheld	Employment agreement	3/11/2015
15	Seguros De Vida Triple-S Seguros Triple S, Inc. Attention Vanessa Rodriguez PO Box 70313 San Juan, PR 00936-0313	Group Insurance Agreement and Related Insurance Agreements	4/1/2015

16	Vertex 1041 Old Cassatt Road Berwyn, PA 19312	Software License Agreement	3/11/2015
17	Vision Service Plan Insurance Company Vision Service Plan Insurance Company 3333 Quauty Drive Rancho Cordova, California 95670	Group Insurance Agreement	4/1/2015