

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

DBSI, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 08-12687 (PJW)

Jointly Administered

STIPULATION BY AND BETWEEN THE DEBTORS AND [_____] REGARDING THE WAIVER OF ANY AND ALL ADMINISTRATIVE CLAIMS UNDER THE BANKRUPTCY CODE WITH RESPECT TO THAT CERTAIN MASTERLEASE AGREEMENT

The above-captioned debtors and debtors-in-possession (each a “Debtor” and collectively, the “Debtors”) and [_____] (along with their affiliates, successor or successors in interest or assigns, the “TIC Parties”) hereby stipulate and agree, as of November [____], 2008 (the “Stipulation”), pursuant to section 105(a), 363, 365 and 503 of title 11 of the United States Code, §§ 101 et seq. (the “Bankruptcy Code”), as follows:

RECITALS

WHEREAS, on November 6 and 10, 2008 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the “Court”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or official committee has been appointed in these cases;

¹ The last four digits of DBSI Inc.’s federal tax identification number are 5037. The mailing address for DBSI Inc. is 12426 West Explorer Drive, Suite 220, Boise, Idaho 83713. Due to the large number of Debtors in these jointly administered cases, a complete list of the Debtors, the last four digits of their federal tax identification numbers and their addresses is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ noticing and claims agent at www.kccllc.net/dbsi, or by contacting the proposed undersigned counsel for the Debtors.

WHEREAS, prior to the Petition Date, the Debtors and the TIC Parties entered into that certain [_____] (the “Masterlease Agreement”) related to certain property owned by the TIC Parties (the “Premises”);

WHEREAS, on November 18, 2008, the Debtors, filed the Debtors’ Third Motion, Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, for an Order (I) Granting Authority to Reject Certain Unexpired Leases of Non-Residential Real Property Effective as of December 4, 2008, or Such Other Earlier Date as the Court May Order; (II) Approving Procedures for the Rejection of Certain Subleases of Non-Residential Real Property; (III) Authorizing the Debtors to Enter Into Administrative Claim Waivers; (IV) Approving Procedures for Modifying Certain Unexpired Leases of Non-Residential Real Property; (V) Approving Procedures for Assuming and Assigning Certain Unexpired Leases and Subleases of Non-Residential Real Property; and (VI) Waiving the Ten-Day Stay Period Under Bankruptcy Rules 6004 and 6006 [Docket No. 88] (the “Lease Rejection Alternative Motion”) and therein set forth the following options for treatment of the Masterlease Agreement going forward from the date thereof: (i) the Debtors’ rejection of the Masterlease Agreement pursuant to 365 of the Bankruptcy Code, effective as of December 4, 2008, or such other earlier date that the Court may order such Masterlease Agreement rejected (a “Masterlease Rejection”); (ii) assignment by the Debtors to the TIC Parties of the Masterlease Agreement (a “TIC Assignment”); or (iii) the TIC Parties entry into an agreement with the Debtors, substantially in the form attached to the Lease Rejection Alternative Motion (a “Masterlease Modification Agreement”), modifying the Masterlease Agreement and consenting to the Debtors’ assumption and assignment of the Masterlease Agreement to a potential purchaser through a Court-supervised sale process (a “Sale”);

WHEREAS, as an alternative to a Masterlease Rejection, the TIC Parties desire to pursue a TIC Assignment;

WHEREAS, in order to facilitate the foregoing, the Debtors and the TIC Parties (each a “Party,” and collectively the “Parties”) having engaged in good faith negotiations have agreed to the terms of this Stipulation.

NOW, THEREFORE, subject to approval of the Court, in order to avoid the costs, risks and inconveniences of litigation, it is hereby stipulated and agreed as follows:

1. Notwithstanding any terms of the Masterlease Agreement or any related agreements to the contrary, the Parties hereby acknowledge and agree that the TIC Parties waive (the “Administrative Expense Waiver”) any and all claims for administrative rent and other administrative claims against the Debtors’ estates, including, but not limited to, the kind specified in section 503 of the Bankruptcy Code, arising from, or relating to the Masterlease Agreement or the Premises, now known or unknown, filed or unfiled, that the TIC Parties have or may have against (i) the Debtors, their estates and affiliated entities and (ii) the current and former officers, directors, employees, agents, professionals, successor or successors in interest or assigns of the Debtors, their estates and affiliated entities (a) to, through and including June 30, 2009, or (b) such other time as the Parties may agree, except to the extent cash has been received by the Debtors post-petition in relation to the Premises in excess of the liabilities that have accrued post-petition in relation to such Premises, including liabilities approved under any cash collateral or other Bankruptcy Court order, under the Bankruptcy Code, or under applicable non-bankruptcy law and is otherwise available to be paid to the TIC Parties.

2. The Parties hereby further acknowledge and agree that nothing set forth in this Stipulation is, nor shall it be construed as, an assumption of the Masterlease Agreement, or

any other agreements related thereto, pursuant to section 365 or any other provision of the Bankruptcy Code.

3. The Parties hereby further acknowledge and agree that nothing set forth in this Stipulation, including, but not limited to, the Administrative Expense Waiver, is, nor shall it be construed as, a waiver of or limitation on the Debtors' rights or ability to seek to reject at any time and in their sole discretion the Masterlease Agreement, or any other agreements related thereto, pursuant to the terms and conditions of the Lease Rejection Alternative Motion or otherwise pursuant to section 365 of the Bankruptcy Code.

4. The Parties hereby agree that this Stipulation is entered into solely for the convenience of the Parties and neither this Stipulation nor the fact of its execution will constitute any admission or acknowledgment of liability or wrongdoing on the part of any of the Parties. The Parties will not offer this Stipulation or the fact of its execution into evidence in any proceeding other than a proceeding to approve or enforce this Stipulation or any of its terms.

5. This Stipulation is subject only to the Court's approval of the Lease Rejection Alternative Motion. If the Court does not approve the Lease Rejection Alternative Motion, the Parties shall revert to their pre-Stipulation positions, without any prejudice from having entered into this Stipulation, and the terms of this Stipulation shall not be admissible for any purpose.

6. Each party shall bear its own attorneys' fees and costs with respect to the execution and delivery of this Stipulation. Each of the undersigned are duly authorized and empowered to execute and deliver this Stipulation.

7. This Court shall retain exclusive jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation.

8. All of the recitals set forth above are incorporated by reference as if fully set forth herein. This Stipulation constitutes the complete express agreement of the Parties hereto concerning the subject matter hereof, and no modification or amendment to this Stipulation shall be valid unless it is in writing, signed by the Party or Parties to be charged and approved by the Court.

9. It is acknowledged that each Party has participated in and jointly consented to the drafting of this Stipulation and that any claimed ambiguity shall not be construed for or against either Party on account of such drafting.

10. This Stipulation may be executed in counterparts, any of which may be transmitted by facsimile or electronic mail, and each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

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11. This Stipulation shall become effective immediately upon entry of an order of the Court approving the Lease Rejection Alternative Motion.

Young Conaway Stargatt & Taylor, LLP [_____]

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[_____]

Counsel for TIC Parties

Dated: _____

Counsel for Debtor and Debtor-in-Possession

Dated: _____