

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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In re : Chapter 11  
HRP Myrtle Beach Holdings, LLC, *et al.*,<sup>1</sup> : Case No. 08-12193 (KJC)  
Debtors. : (Jointly Administered)  
: **Objection Deadline: 1/5/09 at 12:00 p.m.**  
: **Hearing Date: 1/6/09 at 10:00 a.m.**  
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**MOTION OF DEBTORS AND DEBTORS IN POSSESSION FOR AN ORDER  
CONVERTING THE DEBTORS' CHAPTER 11 BANKRUPTCY CASES  
TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby move the Court for entry of an Order converting the Debtors’ chapter 11 bankruptcy cases to cases under chapter 7 of the bankruptcy code (the “Motion”), pursuant to chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”). In support of this Motion, the Debtors states as follows:

**Jurisdiction and Venue**

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is section 1112(a) of the Bankruptcy Code.

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<sup>1</sup> The Debtors are the following seven entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): HRP Myrtle Beach Holdings, LLC (1546), HRP Myrtle Beach Holdings Capital Corp. (5553), HRP Myrtle Beach Operations, LLC (1625), HRP Myrtle Beach Capital Corp. (4272), HRP Myrtle Beach Management, LLC (0297), HRP Global Management LLC (2138) and We Got Your Back Security Co., LLC (3877). The address of each of the Debtors is 211 George Bishop Parkway, Myrtle Beach, South Carolina 29579.

## Background

2. On September 24, 2008 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (collectively, the "Bankruptcy Cases"). The Debtors are continuing to operate their businesses as debtors and debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. The Office of the United States Trustee (the "U.S. Trustee") appointed an Official Committee of Unsecured Creditors (the "Committee") on October 14, 2008. No trustee has been appointed in these cases.

3. The Debtors own and operate Hard Rock Park (the "Park"), a 50-acre destination theme park (as part of a 140 acre development) located in Myrtle Beach, South Carolina. As the world's first rock-'n-roll theme park, the Park offers visitors an entertainment experience that features six unique, custom-designed zones celebrating the culture, lifestyle and legends of rock music entertainment. The Debtors are not affiliated with Hard Rock Café International, Inc., but have branded and operate the Park pursuant to a license agreement with Hard Rock Café International (USA), Inc.

4. The Park opened on time and under budget in April 2008, after nearly two years of construction. Although guest satisfaction levels were strong and guests spent considerable amounts on food, beverage and retail items, overall attendance at the Park was lower than expected, primarily as a result of macroeconomic conditions that significantly depressed overall demand in the travel and leisure industry, as well as the Debtors' inability to devote sufficient resources to local, regional and out-of-market marketing in their initial year of operations. The Debtors accordingly faced significant liquidity constraints at the conclusion of their first season of operations and, in that context, a substantially overleveraged balance sheet.

5. Notwithstanding the diligent pursuit of out-of-court alternatives, including attempts to refinance prepetition secured debt and add working capital availability, the Debtors

were unable to conclude these efforts within the necessary timeframe. The Debtors ultimately determined that the commencement of these cases: (a) was necessary to address their pressing liquidity problems, and (b) would provide the opportunity to, among other things, stabilize the Debtors' business through structural improvements, implement marketing changes and evaluate and eliminate of liabilities that served only as a drain on the Debtors' profitability.

6. Subsequent to the Petition Date, the Debtors determined, in consultation with their counsel and financial advisors and in the exercise of their business judgment, that the sale of all or substantially all of the Debtors' assets to a third party pursuant to section 363 of the Bankruptcy Code would maximize the value of the Debtors' estates for their creditors. Accordingly, on November 20, 2008, the Debtors obtained an *Order (I) Approving Procedures in Connection with the Sale of the Debtors' Assets; (II) Scheduling The Related Auction and Hearing to Consider Approval of Sale; (III) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (IV) Approving the Form and Manner of Notice Thereof; and (V) Granting Related Relief* [Dkt. 194] (the "Bid and Sale Order"). Thereafter, the Debtors diligently marketed the Park and solicited bids from third parties. The Bid and Sale Order contemplated an auction to commence on December 15, 2008, and an ensuing sale approval hearing on December 18, 2008.

#### **Relief Requested**

7. By this Motion, the Debtors request the entry of an order immediately converting their chapter 11 bankruptcy cases to chapter 7 cases and directing the U.S. Trustee to appoint a chapter 7 Trustee for the Debtors.

#### **Basis for the Relief Requested**

8. Under Bankruptcy Code § 1112(a), the Debtors have the absolute right to convert their chapter 11 bankruptcy cases to cases under chapter 7. See In re Dieckhaus

Stationers of King of Prussia, Inc., 73 B.R. 969, 971 (Bankr. E.D. Pa. 1987) (Section 1112(a) “gives the debtor an absolute right to convert”). The Debtors hereby seek to convert their chapter 11 cases to cases under chapter 7 of the Bankruptcy Code.

9. Despite considerable effort on the part of, among others, the Debtors, the Committee, the Debtors’ prepetition and postpetition secured lenders (collectively, “Lenders”) and their respective advisors, the Debtors were unable to consummate a sale of all, or substantially all, of their assets on terms and conditions acceptable to the Debtors, the Committee, and the Lenders within sufficient time to permit an orderly conclusion of these cases under chapter 11, given the considerable constraints on, and ultimate unavailability of, postpetition financing.


10. Because the bid and sale process has been unsuccessful thus far, there exists no reasonable prospect of success in the immediate future, and the financing provided to the Debtors by certain postpetition lenders pursuant to this Court’s *Order (FINAL) (A) Authorizing the Debtors to Obtain Super-Priority Senior Secured Postpetition Financing (B) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lenders, on a Limited Basis, and (C) Providing Related Adequate Protection* [Dkt. 113], entered on October 22, 2008 (as subsequently extended), has expired, the Debtors are unable to continue their efforts to maximize the value of their estates under chapter 11 of the Bankruptcy Code. Regrettably, conversion of these cases to cases under chapter 7 of the Bankruptcy Code thus appears to be the only remaining means of allowing the Debtors’ assets to be liquidated and potential causes of action to be pursued and monetized for the benefit of creditors. The Debtors therefore submit that the conversion of their chapter 11 bankruptcy cases to cases under chapter 7 of the Bankruptcy Code is appropriate and in the best interests of the Debtors’ bankruptcy estates and creditors.

Notice

11. Notice of this Motion has been provided to: (a) the U.S. Trustee, (b) counsel for the Committee, (c) counsel to the Debtors' prepetition lenders, (d) counsel to the Debtors' postpetition lenders, (e) counsel to the prepetition indenture trustees and (f) any parties requesting notices in these cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief herein, the Debtors respectfully submit that no further notice of this Motion is required.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A: (i) granting the relief requested herein and (ii) granting such other and further relief as the Court may deem proper.

Dated: January 2, 2009  
Wilmington, Delaware

Respectfully submitted,  


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ATTORNEYS FOR DEBTORS AND DEBTORS IN  
POSSESSION

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

-----X  
In re : Chapter 11  
HRP Myrtle Beach Holdings, LLC, *et al.*,<sup>1</sup> : Case No. 08-12193 (KJC)  
Debtors. : (Jointly Administered)  
 : Hearing Date: 1/6/09 at 10:00 a.m. (requested)  
 : Objection Deadline: 1/5/09 at 12:00 p.m. (requested)  
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**NOTICE OF MOTIONS AND HEARING**

PLEASE TAKE NOTICE that, on January 2, 2009, the above-captioned debtors and debtors in possession (the “Debtors”) filed the **Motion of Debtors and Debtors in Possession for an Order Converting the Debtors’ Chapter 11 Bankruptcy Cases to Cases Under Chapter 7 of the Bankruptcy Code** (the “Conversion Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that, on January 2, 2009, the Debtors also filed the **Motion of the Debtors and Debtors in Possession for an Order Shortening Notice With Respect to the Motion of the Debtors and Debtors in Possession for an Order Converting the Debtors’ Chapter 11 Bankruptcy Cases to Cases Under Chapter 7 of the Bankruptcy Code** (the “Motion to Shorten”), pursuant to which the Debtors have requested

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<sup>1</sup> The Debtors are the following seven entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): HRP Myrtle Beach Holdings, LLC (1546), HRP Myrtle Beach Holdings Capital Corp. (5553), HRP Myrtle Beach Operations, LLC (1625), HRP Myrtle Beach Capital Corp. (4272), HRP Myrtle Beach Management, LLC (0297), HRP Global Management LLC (2138) and We Got Your Back Security Co., LLC (3877). The address of each of the Debtors is 211 George Bishop Parkway, Myrtle Beach, South Carolina 29579.

approval of a shortened notice period and objection deadline in connection with the Conversion Motion.

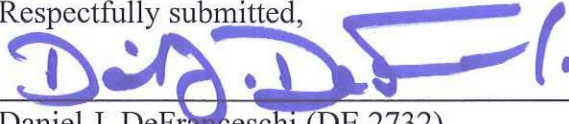
PLEASE TAKE FURTHER NOTICE that, any responses or objections to the Conversion Motion must be in writing, filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned counsel for the Debtors on or before **January 5, 2009 at noon (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that, if the Bankruptcy Court grants the relief requested in the Motion to Shorten a hearing to consider the Conversion Motion and any objections thereto will be held before The Honorable Kevin J. Carey, United States Bankruptcy Judge for the District of Delaware at the Bankruptcy Court, 824 Market Street, 5<sup>th</sup> Floor, Courtroom 5, Wilmington, Delaware 19801 on **January 6, 2009 at 10:00 a.m. (prevailing Eastern Time)**.

IF NO RESPONSES TO THE CONVERSION MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE CONVERSION MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: January 2, 2009  
Wilmington, Delaware

Respectfully submitted,



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ATTORNEYS FOR DEBTORS AND DEBTORS IN  
POSSESSION

**EXHIBIT A**

**[Proposed Order]**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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	:	
In re	:	Chapter 11
	:	
HRP Myrtle Beach Holdings, LLC, <i>et al.</i> , <sup>1</sup>	:	Case No. 08-12193 (KJC)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	Re: Docket No. _____

**ORDER GRANTING MOTION OF DEBTORS AND DEBTORS IN POSSESSION FOR  
AN ORDER CONVERTING THE DEBTORS' CHAPTER 11 BANKRUPTCY CASES  
TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE**

This matter coming before the Court on the *Motion of Debtors and Debtors in Possession for an Order Converting the Debtors' Chapter 11 Bankruptcy Cases to Cases Under Chapter 7 of the Bankruptcy Code* (the "Motion"),<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); the Court having reviewed the Motion and having scheduled a hearing before the Court (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iv) notice of the Motion and the Hearing was sufficient under the circumstances and (v) and good and sufficient cause having been shown; and after due deliberation and sufficient cause appearing therefore,

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED.
2. All capitalized terms used herein and not defined shall have the meanings ascribed to them in the Motion.
3. The Debtors' chapter 11 cases are converted, pursuant to 11 U.S.C. § 1112(a), to cases under chapter 7 of the United States Bankruptcy Code, effective as of the entry of this Order (the "Conversion Date").
4. The Debtors shall:
  - (a) forthwith turn over to the chapter 7 trustee all records and property of the estate under its custody and control as required by Rule 1019(4) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules");
  - (b) within 15 days of the date of entry of this order, file a schedule of unpaid debts incurred after commencement of the superseded case, including the name and address of each creditor, as required by Bankruptcy Rule 1019(5); and
  - (c) within 30 days from the date of this order, file and transmit to the Office of the United States Trustee a final report and account, as required by Bankruptcy Rule 1019(5)(A).
5. All professionals employed by the Debtors or the Committee in these chapter 11 cases shall file, within 45 days of the date of entry of this Order, a final fee application for approval of all fees and expenses incurred through the Conversion Date ("Final Fee Applications").
6. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to this Order.

Dated: \_\_\_\_\_, 2009  
Wilmington, Delaware

\_\_\_\_\_  
The Honorable Kevin J. Carey  
Chief United States Bankruptcy Judge