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August 21, 2001

BY HAND

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United States Bankruptcy Court
Eastern Division of the District of Massachusetts
1101 Thomas P. O'Neill Federal Office Building
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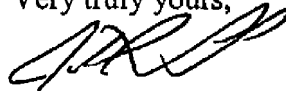
Re: Essential.com, Inc.; Chapter 11 Case No. 01-15339-WCH.

Dear Sir or Madam:

Enclosed is Burlington Woods Office Trust No. 1's Limited Objection To Motion By Debtor: (1) To Extend The Deadline Within Which To Assume Or Reject Lease of Nonresidential Real Property; and (2) To Establish The Terms For Payment of Postpetition Rent and a Certificate of Service thereof for filing in the above-referenced matter.

Please date stamp the enclosed copy of this letter and return it to our messenger.

Very truly yours,



John C. La Liberte

Enclosures

cc: Service List

- APP _____
- CAF _____
- CMP _____
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UNITED STATES BANKRUPTCY COURT
EASTERN DIVISION OF THE DISTRICT OF MASSACHUSETTS

In re:

ESSENTIAL.COM, INC.

Debtor.

Case No. 01-15339

Chapter 11

**BURLINGTON WOODS OFFICE TRUST NO. 1'S LIMITED
OBJECTION TO MOTION BY DEBTOR: (1) TO EXTEND THE
DEADLINE WITHIN WHICH TO ASSUME OR REJECT LEASE
OF NONRESIDENTIAL REAL PROPERTY; AND (2) TO ESTABLISH
THE TERMS FOR PAYMENT OF POSTPETITION RENT**

To William C. Hillman, Chief United States Bankruptcy Judge:

Pursuant to 11 U.S.C. §§ 105 and 365, Fed. R. Bankr. P. 6004, Burlington Woods Office Trust No. 1 ("BWOT") objects to the Motion By Debtor: (1) To Extend The Deadline Within Which To Assume Or Reject Lease Of Nonresidential Real Property; and (2) To Establish The Terms For Payment Of Postpetition Rent (the "Motion") on the grounds that the Debtor's proposed payment of postpetition, prerejection rent is contrary to 11 U.S.C. § 365(d)(3). In further support of its objection, BWOT states:

Background

1. In the Motion, the Debtor requests leave to pay postpetition rent on a *per diem* basis pending its decision to assume or reject its lease with BWOT for premises known as Building No. 1 of Burlington Woods Office Park, One Burlington Woods Drive, Burlington, Massachusetts (the "Premises"). (Motion, at ¶ 16(iii)). The lease, however, provides that rent be paid on the first of every month.

2. Such **modified payment terms** are contrary to the parties' Stipulation Regarding Payment of Postpetition Rent (the "Stipulation"), entered as an order of this Court on

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August 2, 2001. The Stipulation unequivocally states that “[t]he Debtor shall pay to BWOT on a timely basis all obligations arising under the Lease, the Sublease, and the Consent, including without limitation all rent, taxes, expenses and additional rent collected from Nokia until the Lease is assumed or rejected. . . .”

3. Moreover, the Debtor’s request is contrary to Section 365(d)(3)’s mandate that the Debtor “timely perform all the obligations . . . arising from and after the order for relief under any unexpired lease of nonresidential real property, **until** such lease is assumed or rejected. . . .” (Emphasis added).

4. *In re Koenig Sporting Goods, Inc.*, 203 F.3d 986 (6th Cir. 2000) is directly on point. On similar facts as present here, the Bankruptcy Court for the Northern District of Ohio, the Sixth Circuit Bankruptcy Appellate Panel, and the Sixth Circuit Court of Appeals all ruled that under section 365(d)(3), a lessor of nonresidential real property is entitled to payment of a full month’s rent notwithstanding the Debtor’s rejection of the lease on the second day of the month. *Id.* at 989-90. Notably, the Sixth Circuit rejected the Debtor’s argument that its ruling was a windfall to the landlord. It stated:

The debtor argues that policy considerations, equity, and “common sense” compel adoption of the proration method in this context. We disagree. The debtor alone was in position to control [the landlord’s] entitlement to payment of rent. . . . If the debtor had rejected the lease effective November 30, 1997, rather than December 2, it would not have been obligated to pay rent for December under 11 U.S.C. § 365(d)(3). Instead, an election was made to reject the lease effective December 2, one day *after* the debtor’s monthly rent obligation would arise. In this case, involving a month-to-month, payment-in-advance lease, where the debtor had complete control over the obligation, we believe that equity as well as the statute favors full payment to [the landlord].

Id. at 989, citing *In re Krystal Co.*, B.R. 161, 164 (Bankr. E.D. Tenn. 1996)(“Congress intended § 365(d)(3) to shift the burden of indecision to the debtor: the debtor must now continue to perform all the obligations of its lease or make up its mind to reject it before some onerous payment comes due during the prerejection period.”)

5. As in *Koenig*, it was completely within the Debtor’s power to reject its lease with BWOT prior to its obligation to pay rent on September 1, 2001. Having failed to do so, the Debtor is obligated to pay the full month’s rent under 11 U.S.C. § 365(d)(3).

Accordingly, the Debtor’s request to pay rent on a *per diem* basis should be rejected.

BURLINGTON WOODS OFFICE TRUST NO. 1

By its attorneys,



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Dated: August 21, 2001

UNITED STATES BANKRUPTCY COURT
EASTERN DIVISION OF THE DISTRICT OF MASSACHUSETTS

In re:

ESSENTIAL.COM, INC.

Debtor.

Case No. 01-15339-WCH

Chapter 11

CERTIFICATE OF SERVICE

I, John C. La Liberte, hereby certify that on August 21, 2001, I caused to be served a copy of the Burlington Woods Office Trust No. 1's Limited Objection to Motion by Debtor: (1) to Extend the Deadline Within Which to Assume or Reject Lease of Nonresidential Real Property; and (2) to Establish the Terms for Payment of Postpetition Rent by first class mail, postage prepaid mail, unless otherwise indicated, to the parties listed on the attached list.

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