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020000

March 6, 2002

BY HAND

Civil Clerk's Office
United States Bankruptcy Court
Eastern Division of the District of Massachusetts
1101 Thomas P. O'Neill Federal Office Building
10 Causeway Street
Boston, MA 02222-1074

Re: Essential.com, Inc.; Chapter 11 Case No. 01-15339-WCH.

Dear Sir or Madam:

Enclosed is Burlington Woods Office Trust No. 1's Opposition to Plan Trustee's Omnibus Objection to Proofs of Claim and a Certificate of Service 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: Alex Mattera, Esquire (by facsimile and First Class mail)
Service List (by First Class mail)

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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-WCH
Chapter 11

**BURLINGTON WOODS OFFICE TRUST NO. 1 OPPOSITION
TO PLAN TRUSTEE'S OMNIBUS OBJECTION TO PROOFS OF CLAIM**

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

Burlington Woods Office Trust No. 1 ("BWOT") opposes the Plan Trustee's Omnibus Objection To Proofs of Claim on the grounds that its lease rejection claim in the amount of \$1,446,793.80 should be allowed in its entirety. The Court should reject the Plan Trustee's claim that BWOT's claim should be denied or reduced because BWOT has relet a portion of the premises formerly occupied by the Debtor. Accordingly, BWOT requests that the Court deny the Plan Trustee's objection to its claim and allow BWOT unsecured claim in the full amount of \$1,446,793.80. In further support of its opposition, BWOT states:

1. On or about October 11, 2001, BWOT timely filed its proof of claim in the amount of \$1,446,793.80 arising from the Debtor's rejection of its lease dated April, 2000 (the "Lease") for premises at One Burlington Woods Drive, Burlington, Massachusetts (the "Premises"). As set forth on Exhibit A to BWOT's proof of claim, BWOT properly calculated its claim under 11 U.S.C. § 502(b) for the greater of: (a) rent for one year under the Lease, \$ 1,718,920.40; or (b) 15% of remaining term of such lease, ($.15 * \$6,992,779.50 = \$ 1,048,916.90$), not to exceed 3 years, ($\$1,718,920.40 * 3 = \$5,156,761.20$). After deducting amounts held by BWOT under a letter

of credit for \$272,126.62 from the one year rent obligation of \$1,718,920.40, BWOT's proper unsecured claim is \$1,446,793.80.

2. Apparently, the Plan Trustee claims that BWOT's unsecured claim should be reduced for rents now paid to BWOT arising from its reletting of a portion of the Premises to new tenants.¹ The Plan Trustee is wrong. As a majority of courts have found, "the statutory cap is computed in accordance with the ordinary language of section 502(b)(6) *ignoring mitigation*." *In re Fifth Avenue Jewelers, Inc.*, 203 B.R. 372, 381 (W.D. Pa. 1996)(citations omitted)(emphasis in original). The cap number is not reduced by amounts received by the landlord upon reletting. *Id.* Rather, such mitigation figures are calculated as part of the landlord's damages prior to application of the cap. *Id.*; *see also In re Financial News Network, Inc.*, 149 B.R. 348, 353 (Bankr. S.D.N.Y. 1993).

3. Under the foregoing, even if you reduced the total rent figure due to BWOT under the Lease, \$6,992,779.50, by the amount due BWOT upon reletting, \$922,878.00, BWOT's claim remains at \$1,446,793.80.²

¹ BWOT has relet a portion of the Premises as follows: (a) lease with USA Telecom for 1,961 square feet under which USA Telecom shall pay at total of \$25,983.00 for a six month term; and (b) lease with WTC for 14,250 square feet for 36 months at a monthly rent of \$24,913.75 or total rent of \$896,895.00. Thus, the total rent BWOT is likely to receive upon reletting is \$922,878.00.

² The modified § 502(b) calculation is as follows: Greater of (a) rent for one year, \$ 1,718,920.40; or (b) 15% of remaining term of such lease less amounts paid to BWOT for reletting, (.15*(\$6,992,779.50-922,878)=\$ 910,485.22), not to exceed 3 years, (\$1,718,920.40*3=\$5,156,761.20). Therefore, BWOT's claim under § 502(b) is \$1,718,920.40 less sums on balance of security deposit of \$272,126.62, for a net number of \$1,446,793.80.

UNITED STATES BANKRUPTCY COURT
EASTERN DIVISION OF THE DISTRICT OF MASSACHUSETTS

In re:

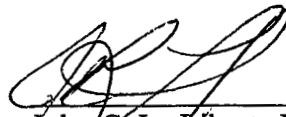
ESSENTIAL.COM, INC.

Debtor.

Case No. 01-15339-WCH
Chapter 11

CERTIFICATE OF SERVICE

I, John C. La Liberte, hereby certify that on March 6, 2002, I caused to be served a copy of the Burlington Woods Office Trust No. 1's Opposition to Plan Trustee's Omnibus Objection to Proofs of Claim by first class mail, postage prepaid, unless otherwise indicated, to the parties listed on the attached list.



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Dated: March 6, 2002

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