

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

LL FLOORING HOLDINGS, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11680 (___)

(Joint Administration Pending)

MOTION OF DEBTORS
FOR ENTRY OF INTERIM AND
FINAL ORDERS (I) AUTHORIZING
THE DEBTORS TO ASSUME THE AGENCY
AGREEMENT; (II) AUTHORIZING AND APPROVING
THE CONDUCT OF STORE CLOSING SALES, WITH SUCH
SALES TO BE FREE AND CLEAR OF ALL LIENS, CLAIMS, AND
ENCUMBRANCES; (III) AUTHORIZING CUSTOMARY BONUSES TO
EMPLOYEES OF CLOSING STORES; AND (IV) GRANTING RELATED RELIEF

LL Flooring Holdings, Inc. and certain of its affiliates, as the debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors” and, together with their non-Debtor affiliates, the “Company”), respectfully represent as follows in support of this motion (this “Motion”):

BACKGROUND

1. On the date hereof (the “Petition Date”), each Debtor commenced a case by filing a petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors have requested that these voluntary cases (the “Chapter 11 Cases”) be jointly administered.

¹ The Debtors in these chapter 11 cases, along with the last four (4) digits of their respective tax identification numbers, are as follows: LL Flooring Holdings, Inc. (0817); LL Flooring, Inc. (9199); Lumber Liquidators Leasing, LLC (N/A); LL Flooring Services, LLC (5960); and Lumber Liquidators Foreign Holdings, LLC (4568). The address of the Debtors’ corporate headquarters is 4901 Bakers Mill Lane, Richmond, VA 23230.

2. The Debtors continue to operate their business and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. To date, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) has not appointed a creditors’ committee in the Chapter 11 Cases, nor has any trustee or examiner been appointed therein.

4. The Company is one of North America’s leading specialty retailers of flooring. The Company carries a wide range of hard-surface floors and carpets in a range of styles and designs, and primarily sells to consumers or flooring focused professionals.

5. Additional factual background regarding the Company, including their business operations, corporate and capital structure, and the events leading up to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration of Holly Etlin in Support of Chapter 11 Petitions and First Day Papers* (the “First Day Declaration”),² filed contemporaneously herewith and incorporated herein by reference.

JURISDICTION AND VENUE

6. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these Chapter 11 Cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

7. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”),

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

the Debtors consent to the entry of a final judgment or order by the Court with respect to this Motion if it is later determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

RELIEF REQUESTED

8. By this Motion, pursuant to sections 105, 363, 365, and 554 of the Bankruptcy Code, Rules 2002, 4001, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 9013-1, the Debtors respectfully request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order” and, collectively, the “Proposed Orders”), (i) authorizing, but not directing, the Debtors to assume that certain letter agreement dated as of August 8, 2024, a copy of which is attached as Exhibit 1 to the Interim Order (the “Agency Agreement”), made by and between the Debtors and Hilco Merchant Resources, LLC (the “Agent”), (ii) authorizing and approving the continuation of 94 store closings or similar themed sales at the stores listed on Exhibit A to the Agency Agreement (collectively, the “Initial Closing Stores”), (iii) authorizing the Debtors to conduct store closings at additional stores or through the Debtors’ e-commerce platform, if any are designated by the Debtors, and which, for the avoidance of doubt, may include any or all other stores as may be designated by the Debtors at a later date or dates pursuant to the procedures set forth herein and in the Agency Agreement (collectively, the “Additional Closing Stores,” if any, and, together with the Initial Closing Stores, the “Closing Stores”), with such sales to be free and clear of all liens, claims, and encumbrances (the “Sales” or “Store Closings”), in accordance with the terms of the store closing sale guidelines in the United States (the “Sale Guidelines”), attached as Exhibit 2 to the Interim Order, (iv) authorizing customary bonuses to non-insider Closing Store employees who remain employed for the duration of the store closing process (the “Store Closing Bonuses”); and (v) granting related relief. In addition, the Debtors

request that the Court schedule a final hearing (the “Final Hearing”) within approximately twenty-one (21) days after the commencement of these Chapter 11 Cases to consider entry of an order approving the relief requested herein on a final basis.

THE DEBTORS’ STORE CLOSING PLAN

I. The Store Closings.

9. In the past several years, the Debtors have endured a challenging commercial environment brought on by both large-scale economic and retail-specific market pressures. Given the expenses associated with a substantial brick-and-mortar presence and given a changing flooring market, characterized by lower levels of home improvements, depressed discretionary spending, and the subsiding of the COVID-19 demand bubble for home renovation projects, a significant number of the Debtors’ stores are operating at sub-optimal performance levels.

10. The Debtors’ management team and advisors determined that it is appropriate to close and wind down 94 Initial Closing Stores. The Sales commenced on August 9, 2024 (the “Sale Commencement Date”) and shall conclude no later than September 22, 2024 (the “Sale Termination Date”); provided, however, that the Debtors and Agent may mutually agree in writing to extend or terminate the Sale at any Closing Store prior to the Sale Termination Date.

II. The Agent.

11. The Debtors entered into the Agency Agreement with the Agent, which sets forth the terms pursuant to which the Agent will operate the Store Closings for the Debtors. The Debtors evaluated other national liquidation firms before selecting the Agent and believe that the terms set forth in the Agency Agreement are the best alternative for the conduct of Sales and Store Closings. The Debtors believe that utilizing the skills and resources of the Agent to effectively and efficiently conduct the Sales and Store Closings will maximize value for all stakeholders. In light of this, the Debtors concluded in their business judgment that (i) the services of the Agent are necessary (a)

for a seamless and efficient large-scale store closing process, as is contemplated by this Motion, and (b) to maximize the value of the saleable inventory located in the Closing Stores as of the Sale Commencement Date or shipped to the Closing Stores from the Debtors' distribution centers (as defined in greater detail in the Agency Agreement, the "Merchandise") during the period between the Sale Commencement Date and the Sale Termination Date (the "Sale Term"), and the associated furniture, fixtures, and equipment (as defined in the Agency Agreement, the "FF&E" and, together with the Merchandise, the "Store Closure Assets"), and (ii) the Agent is qualified and capable of performing the required tasks in a value-maximizing manner. By this motion, the Debtors seek to assume the Agency Agreement, allow the Agent to continue its work as described herein and in the Agency Agreement uninterrupted, and to enter into additional agreements, if necessary, on terms materially consistent with the Debtors' historic practices.

12. The Store Closings are critical for the Debtors to efficiently administer their estates during the pendency of these Chapter 11 Cases, and assumption of the Agency Agreement will allow the Debtors to conduct the Sales and Store Closings in an efficient, controlled manner that will maximize value for the Debtors' estates. In fact, the relief requested in this motion overall is integral to maximizing the value of the Debtors' estates. It will permit the Debtors to continue the Sales and Store Closings without interruption and will establish fair and uniform store closing procedures that will maximize the benefit to the Debtors' estates.

13. To maximize the value of the Store Closure Assets, the Agent may determine that it will syndicate and partner with additional entities to serve as Agents (the "Additional Agents").

III. The Agency Agreement.

14. Pursuant to the Agency Agreement, the Agent will serve as Agent to the Debtors in connection with the sale of the Store Closure Assets. What follows is a summary of the material terms of the Agency Agreement.³

TERM	AGENCY AGREEMENT
Services Provided by Agent	Agent will be retained as the Debtors' agent to conduct the Sales at certain identified Closing Stores during the Sale Term, to: Agent will, in collaboration with the Debtors, (a) provide qualified Supervisors engaged by Agent to oversee the management of the Stores; (b) determine appropriate point-of-sale and external advertising for the Stores, approved in advance by the Debtors; (c) determine appropriate discounts of Merchandise, staffing levels for the Stores, approved in advance by the Debtors, and appropriate bonus and incentive programs, if any, for the Stores' employees, approved in advance by the Debtors; (d) oversee display of Merchandise for the Stores; (e) to the extent that information is available, evaluate sales of Merchandise by category and sales reporting and monitor expenses; (f) maintain the confidentiality of all proprietary or non-public information regarding the Debtors in accordance with the provisions of the confidentiality agreement signed by the Parties; (g) assist the Debtors in connection with managing loss prevention and employee relations matters; (h) determine the necessity for obtaining any applicable permits and governmental approvals to conduct the Sale, including working with the Debtors to obtain each in a timely and orderly fashion and preparing or causing to be prepared all forms necessary to assist in the Debtors' securing any applicable permits and governmental approvals necessary to conduct the Sale, the costs and expenses of which will be paid by the Debtors and will be in addition to the costs and expenses set forth on the Expense Budget; (i) include Additional Agent Goods in the Sale in its discretion under the terms set forth in the Agency Agreement; and (k) provide such other related services deemed necessary or appropriate by the Debtors and Agent. At the conclusion of the Sale, Agent will surrender the premises for each Store to the Debtors in broom clean condition and in accordance with the lease requirements for such premises. At the conclusion of the Sale at each Store, Agent will photographically document the condition of each such Store.
Term of Sale	The Sales commenced on the Sale Commencement Date (August 9, 2024) and will conclude no later than the Sale Termination Date (September 22, 2024); provided, however, that the Parties may mutually agree in writing to extend or terminate the Sale at any Store prior to the Sale Termination Date.
Expenses in Connection with the Sales	The Debtors will be responsible for all expenses of the Sale, including (without limitation) all Store-level operating expenses, all costs and expenses related to the Debtors' other retail store operations, the Debtors' costs for operating the Distribution Centers, and Agent's other reasonable, documented out of pocket expenses. To control expenses of the Sale, the Debtors and Agent have established an aggregate budget (the "<u>Expense Budget</u>") of certain delineated expenses, including (without limitation) payment of the costs of supervision (including (without limitation) Supervisors' wages, fees, travel, and deferred compensation) and advertising costs. The Expense Budget for the Sale is attached to the Agency

³ The following summary chart is for the convenience of the Court and parties in interest. To the extent of any conflicts between this summary and the Agency Agreement, the Agency Agreement shall govern in all respects. Capitalized terms used but not defined in the following summary shall have the meaning ascribed to them in the Agency Agreement.

TERM	AGENCY AGREEMENT						
	Agreement as <u>Exhibit B</u>. The Expense Budget may only be modified by mutual agreement of Agent and the Debtors, provided that appropriate modifications to the Expense Budget, if any, will be mutually agreed prior to the Debtors' addition of any stores for disposition under the Agency Agreement. The costs of supervision set forth on <u>Exhibit B</u> to the Agency Agreement include, among other things, industry standard deferred compensation.						
Compensation for Agent	In consideration of its services hereunder, Agent will earn a base retail fee equal to two percent (2%) of the Gross Proceeds of Merchandise sold at the Stores (the "<u>Base Retail Fee</u>"). Agent will earn a base wholesale fee of seven and one half percent (7.5%) of the Gross Proceeds of Merchandise sold through Agent's wholesale channels (the "<u>Wholesale Fee</u>"). For purposes of the Agency Agreement, "<u>Gross Proceeds</u>" means gross receipts calculated using the "gross rings" method, net of applicable sales taxes. In addition to the Base Retail Fee and the Wholesale Fee, and not in lieu thereof, the Debtors will pay to Agent from Gross Proceeds an additional fee based upon the Gross Recovery Percentages achieved as set forth in the following table (the "<u>Additional Incentive Compensation</u>"). The Additional Incentive Compensation will be equal to the aggregate sum of the percentages set forth in the "Additional Incentive Compensation" column of the table (e.g., calculated back to first dollar) for the corresponding Gross Recovery Percentage achieved; provided, however, no Additional Incentive Compensation will be earned or payable where the Gross Recovery Percentage is less than 94.74%. Agent will be entitled to a commission from the sale of the FF&E equal to 17.5% of the Gross Proceeds of the sale of the FF&E. <table border="1" data-bbox="467 1003 1325 1199"> <thead> <tr> <th data-bbox="467 1003 727 1066"><u>Gross Cost Recovery Percentage</u></th><th data-bbox="727 1003 1325 1066"><u>Additional Incentive Compensation</u></th></tr> </thead> <tbody> <tr> <td data-bbox="467 1066 727 1129">Between 94.75% and 95.5%</td><td data-bbox="727 1066 1325 1129">An additional 0.25% of Gross Proceeds (total fee equal to 2.25% of Gross Proceeds)</td></tr> <tr> <td data-bbox="467 1129 727 1199">Above 95.5%</td><td data-bbox="727 1129 1325 1199">An additional 0.25% of Gross Proceeds (total fee equal to 2.5% of Gross Proceeds)</td></tr> </tbody> </table>	<u>Gross Cost Recovery Percentage</u>	<u>Additional Incentive Compensation</u>	Between 94.75% and 95.5%	An additional 0.25% of Gross Proceeds (total fee equal to 2.25% of Gross Proceeds)	Above 95.5%	An additional 0.25% of Gross Proceeds (total fee equal to 2.5% of Gross Proceeds)
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Above 95.5%	An additional 0.25% of Gross Proceeds (total fee equal to 2.5% of Gross Proceeds)						
Conduct of Sale; Other Sale Matters	All sales of Merchandise will be made on behalf of the Debtors. In conducting the Sale, Agent will have the right to use the LL Flooring and Lumber Liquidators names to market the Merchandise. Agent does not have, nor will it have, any right, title or interest in the Merchandise. All sales of Merchandise will be by cash, gift card, gift certificate, merchandise credit, debit card, voucher, or credit card and, at the Debtors' discretion, by check or otherwise in accordance with the Debtors' policies, and will be "final" with no returns accepted or allowed, unless otherwise directed by the Debtors; provided, however, that purchases via voucher, gift card, or gift certificate shall only be accepted for the time and pursuant to the terms set forth in the Court's orders approving this Motion on an interim or final basis, as applicable. For the avoidance of doubt, the Debtors' pre-Sale return policies will be honored during the Sale Term to allow returns of items sold pre-Sale in accordance with the Debtors' applicable return policy for the products sought to be returned. Agent will sell the FF&E in the Stores from the Stores themselves and from the Distribution Centers from the Distribution Centers themselves. The Debtors will be responsible for all reasonable costs and expenses incurred by Agent in connection with the sale of FF&E, which costs and expenses will be incurred pursuant to a budget or budgets to be established from time to time by mutual agreement of the Parties. Agent will have the right to abandon at the Stores any unsold FF&E.						

TERM	AGENCY AGREEMENT
Insurance Obligations of the Debtors	The Debtors will maintain throughout the Sale Term, liability insurance policies (including, without limitation, products liability (to the extent currently provided), commercial general liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the Stores, and will cause Agent to be named an additional insured with respect to all such policies. At Agent's request, the Debtors will provide Agent with a certificate or certificates evidencing the insurance coverage required hereunder and shall use commercially reasonable efforts to cause Agent to be covered as an additional insured with respect to all such policies. In addition, the Debtors will maintain throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all statutory requirements.
Insurance Obligations of Agent	As an expense of the Sale, Agent will maintain throughout the Sale Term, liability insurance policies (including, without limitation, products liability/completed operations, contractual liability, comprehensive public liability and auto liability insurance) on an occurrence basis in an amount of at least two million dollars (\$2,000,000) and an aggregate basis of at least five million dollars (\$5,000,000) covering injuries to persons and property in or in connection with Agent's provision of services at the Stores. Agent will name the Debtors as an additional insured and loss payee under such policy, and upon execution of the Agency Agreement provided the Debtors with a certificate or certificates evidencing the insurance coverage required hereunder. In addition, Agent will maintain throughout the Sale Term, workers compensation insurance compliance with all statutory requirements. Further, should Agent employ or engage third parties to perform any of Agent's undertakings with regard to the Agency Agreement, Agent will ensure that such third parties are covered by Agent's insurance or maintain all of the same insurance as Agent is required to maintain pursuant to paragraph G(ii) of the Agency Agreement and name the Debtors as an additional insured and loss payee under the policy for each such insurance.
Indemnification by Agent	Agent will indemnify, defend and hold the Debtors and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, and affiliates (other than the Agent or the Agent Indemnified Parties) (collectively, " <u>Merchant Indemnified Parties</u> ") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to (a) the willful or negligent acts or omissions of Agent or the Agent Indemnified Parties; (b) the breach of any provision of, or the failure to perform any obligation under, the Agency Agreement by Agent; (c) any liability or other claims made by Agent's Indemnified Parties or any other person (excluding Merchant Indemnified Parties) against a Merchant Indemnified Party arising out of or related to Agent's conduct of the Sale, except claims arising from the Debtors' negligence, willful misconduct, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Merchant Indemnified Parties, or the Debtors' customers by Agent or any of the Agent Indemnified Parties and (e) any claims made by any party engaged by Agent as an employee, agent, representative or independent contractor arising out of such engagement.
Indemnification by the Debtors	The Debtors will indemnify, defend, and hold Agent and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, affiliates, and Supervisors (collectively, " <u>Agent Indemnified Parties</u> ") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to: (a) the willful or negligent acts or omissions of the Debtors or the Merchant Indemnified Parties (as defined below); (b) the material breach of any provision of the Agency Agreement by the Debtors; (c) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), or any other person (excluding Agent Indemnified Parties) against Agent or an Agent Indemnified Party, except claims arising from Agent's negligence, willful misconduct or unlawful behavior; (d) any harassment, discrimination or violation of

TERM	AGENCY AGREEMENT
	any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Agent's Indemnified Parties or the Debtors' customers by the Debtors or Merchant Indemnified Parties; and (e) the Debtors' failure to pay over to the appropriate taxing authority any taxes required to be paid by the Debtors during the Sale Term in accordance with applicable law.

IV. The Sale Guidelines.

15. The Debtors seek approval of streamlined procedures to sell the Store Closure Assets, in each case free and clear of liens, claims, and encumbrances. As set forth below, the Sale Guidelines are substantially similar to sale guidelines approved in retail bankruptcies around the United States. The Debtors also seek approval of the Sale Guidelines to provide newspapers and other advertising media in which the Sales may be advertised with comfort that the Debtors are conducting the Sales in compliance with applicable law and with the Court's approval. The Debtors seek interim approval of the Sale Guidelines to allow the continuation of the Sales at the Closing Stores.

16. The Debtors have determined, in the exercise of their reasonable business judgment and in consultation with their advisors, that the Sale Guidelines will provide the best and most efficient means of selling the Store Closure Assets in order to maximize their value to the estates. The Debtors estimate that the currently contemplated Store Closings will conclude by September 22, 2024 but not later than September 28, 2024.

V. Liquidation Sale Laws and Dispute Resolution Procedures.

17. Certain states in which the Debtors operate stores have or may have licensing or other requirements governing the conduct of store closing, liquidation, or other inventory clearance sales, including, without limitation, state, provincial, and local laws, statutes, rules, regulations, and ordinances (collectively, the "Liquidation Sale Laws"). The Liquidation Sale Laws may establish licensing, permitting or bonding requirements, waiting periods, time limits, bulk sale

restrictions, and augmentation limitations that would otherwise apply to the Store Closings. Such requirements hamper the Debtors' ability to maximize value in selling their inventory. Subject to the Court's approval, the Debtors intend to conduct the Store Closings in accordance with the Sale Guidelines, and to the extent such guidelines conflict with the Liquidation Sale Laws, the Sale Guidelines shall control.

18. For the purpose of orderly resolving any disputes between the Debtors and any Governmental Units (as defined in section 101(27) of the Bankruptcy Code) arising due to the Sale Guidelines and the alleged applicability of any Liquidation Sale Laws, the Debtors respectfully request that the Court authorize the Debtors to implement the following dispute resolution procedures (the "Dispute Resolution Procedures"), as set forth in the Interim and Final Orders:

- (i) Provided that the Sales are conducted in accordance with the Interim Order, any Final Order, and the Sale Guidelines, the Debtors, the Agent, and the Debtors' landlords shall be deemed to be in compliance with any requirements of all county, parish, or municipal or other local government (hereinafter referred to as "Local") and state liquidation laws establishing licensing or permitting requirements, waiting periods or time limits, or bulk sale restrictions that would otherwise apply to the Sales and sales of the Store Closure Assets of any state or Local Governmental Unit (as defined in Bankruptcy Code section 101(27)); *provided*, that the term "Liquidation Sale Laws" shall be deemed not to include any public health or safety laws of any state (collectively, "Safety Laws"), and the Debtors and the Agent shall continue to be required to comply, as applicable, with such Safety Laws and General Laws (as defined in the Interim Order), subject to any applicable provision of the Bankruptcy Code and federal law, and nothing in this Order shall be deemed to bar Governmental Units (as defined in section 101(27) of the Bankruptcy Code) or public officials from enforcing Safety Laws or General Laws.
- (ii) Within five (5) business days after entry of the Interim Order, the Debtors will serve by first-class mail, copies of the Interim Order, the proposed Final Order, the Agency Agreement, and the Sale Guidelines on the following: (a) the Attorney General's office for each state where the Sales are being held; (b) the county consumer protection agency or similar agency for each county where the Sales are being held; (c) the division of consumer protection for each state where the Sales are being held; and (d) the landlords for the Closing Stores (collectively, the "Dispute Notice Parties").

- (iii) With respect to any Additional Closing Stores, within five (5) business days after filing any Additional Closing Store List (as defined below) with the Court, the Debtors will serve by first-class mail, copies of the Interim Order, or the Final Order, as applicable, the Agency Agreement, and the Sale Guidelines on the Dispute Notice Parties.
- (iv) To the extent that there is a dispute arising from or relating to the Sales, the Interim Order or Final Order, as applicable, the Agency Agreement, or the Sale Guidelines, which dispute relates to any Liquidation Sale Laws (a “Reserved Dispute”), the Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within ten (10) days following entry of the Interim Order, any Governmental Unit (as defined in Bankruptcy Code section 101(27)) may assert that a Reserved Dispute exists by sending a notice (the “Dispute Notice”) explaining the nature of the dispute to: (a) Skadden, Arps, Slate, Meagher & Flom LLP, 920 North King Street, Wilmington, Delaware 19801, Attn: Joseph O. Larkin and Jason M. Liberi, and Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York 10001, Attn.: Lisa Laukitis, Elizabeth Downing, and Chambliss Williams; (b) counsel for Hilco Merchant Resources, LLC, Chipman Brown Cicero & Cole, LLP, 1313 N. Market Street, Suite 5400, Wilmington, DE 19801, Attn: Mark L. Desgrosseilliers (desgross@chipmanbrown.com); (d) counsel to the DIP ABL Agent and the Prepetition ABL Agent, (i) Morgan Lewis & Bockius LLP, One Federal Street, Boston, MA 02110, Attn: Christopher L. Carter (christopher.carter@morganlewis.com), and (ii) Reed Smith LLP, 1201 Market Street, Suite 1500, Wilmington, DE 19801, Attn: Kurt F. Gwynne (KGwynne@ReedSmith.com); and (e) the affected landlord, if applicable. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within fifteen (15) days after service of the notice, the Governmental Unit may file a motion with the Court requesting that the Court resolve the Reserved Dispute (a “Dispute Resolution Motion”).
- (v) In the event that a Dispute Resolution Motion is filed, nothing in the Interim Order or the Final Order, as applicable, shall preclude the Debtors, a landlord, or any other interested party from asserting (a) that the provisions of any Liquidation Sale Laws are preempted by the Bankruptcy Code, or (b) that neither the terms of the Interim Order or the Final Order nor the conduct of the Debtors pursuant to the Interim Order or the Final Order, violates such Liquidation Sale Laws. Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of the Interim Order or the Final Order or to limit or interfere with the Debtors’ or the Agent’s ability to conduct or to continue to conduct the Sales pursuant to the Interim Order or the Final Order, as applicable, absent further order of the Court. Upon the entry of the Interim or Final Order, the Debtors and the Agent shall be authorized to conduct the Sales pursuant to the terms of the Interim Order or the Final Order, the Agency Agreement, and the Sale Guidelines and to take all actions reasonably related thereto or arising in

connection therewith. The Governmental Unit will be entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Sale Laws or the lack of any preemption of such Liquidation Sale Laws by the Bankruptcy Code. Nothing in the Interim Order or the Final Order will constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.

- (vi) If, at any time, a dispute arises among the Debtors or the Agent, on the one hand, and a Governmental Unit, on the other hand, as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in the Interim Order or the Final Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions of subparagraphs (iv) and (v) above by serving a notice to the other party and proceeding thereunder in accordance with those paragraphs. Any determination with respect to whether a particular law is a Liquidation Sale Law shall be made *de novo*.

VI. Fast Pay Laws.

19. Many U.S. states in which the Debtors operate have laws and regulations that require the Debtors to pay an employee substantially contemporaneously with his or her termination (the “Fast Pay Laws” and together with the Liquidation Sale Laws, the “Applicable State Laws”). These laws often require payment to occur immediately or within a period of only a few days from the date such employee is terminated.

20. The nature of the Store Closings contemplated by this Motion will result in a substantial number of employees being terminated during the Store Closings. To be clear, the Debtors intend to pay their terminated employees as expeditiously as possible and under normal payment procedures. However, the Debtors’ payroll systems will simply be unable to process the payroll information associated with these terminations in a manner that will be compliant with the Fast Pay Laws. Under ordinary circumstances, the Debtors’ payroll department is able to coordinate delivery of final checks to coincide with an employee’s final day of work where required by applicable law. This process requires the Debtors’ payroll department to calculate individual payments upon termination, prepare each termination payment check, obtain

authorization for each such check and then prepare each such check for mailing. Given the number of employees who will be terminated during the Store Closings, this process could easily take several days, making compliance with the Fast Pay Laws burdensome to the Debtors' estates, if not impossible.

VII. Lease Restrictions.

21. The Debtors also respectfully request a waiver of any contractual restrictions that could otherwise inhibit or prevent the Debtors from maximizing value for creditors through the Store Closings and Sales. In certain cases, the contemplated Store Closings and Sales may be inconsistent with certain provisions of leases, subleases, or other documents with respect to the premises in which the Debtors operate, including (without limitation) reciprocal easement agreements, agreements containing covenants, conditions, and restrictions (including, without limitation, "go dark" provisions and landlord recapture rights), or other similar documents or provisions. Such restrictions would also hamper the Debtors' ability to maximize value in selling their inventory.

22. The Debtors also request that no entity, including, without limitation, utilities, landlords, shopping center managers and personnel, creditors, and all persons acting for or on their behalf shall interfere with or otherwise impede the conduct of the Store Closings, the Sales, or institute any action against the Debtors in any court (other than in the Court) or before any administrative body that in any way directly or indirectly interferes with, obstructs, or otherwise impedes the conduct of the Store Closings, the Sales, or the advertising and promotion (including through the posting of signs) of the Sales.

23. Given that the Debtors are seeking this relief on an interim basis, the Debtors seek to resolve the concerns of landlords as expeditiously as possible. In other similar cases, other debtors have proposed store closing procedures with materially similar lease restrictions. Other

debtors in these situations have obtained store closing orders which included a provision allowing for “side letters” between a debtor and landlord to resolve landlord concerns. *See, e.g., In re New Rue21 Holdco, Inc.*, No. 24-10939 (BLS) (Bankr. D. Del. May 23, 2024); *In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 15, 2024); *In re Christmas Tree Shops, LLC*, No. 23-10576 (TMH) (Bankr. D. Del. May 31, 2023); *In re Indep. Pet Partners Holdings, LLC*, No. 23-10153 (LSS) (Bankr. D. Del. Mar. 1, 2023); *In re Rite Aid Corp.*, No. 23-18993 (MBK) (Bankr. D.N.J. Nov. 20, 2023); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. June 7, 2023); *In re Pier 1 Imps., Inc.*, No. 20-20805 (KRH) (Bankr. E.D. Va. Mar. 17, 2020). The Debtors have included this provision in the Interim Order so as to expeditiously address landlord concerns.

VIII. Abandonment.

24. The Debtors respectfully request that the Court authorize the abandonment of certain owned FF&E remaining in the Closing Stores. The Debtors intend to sell any marketable owned FF&E present in the Closing Stores. However, the Debtors may determine that the cost associated with holding or selling that property exceeds the proceeds that will be realized from its sale, or such property may not be saleable at all. In such cases, retaining the property would be burdensome to the estate and the property would be of inconsequential value. For the avoidance of doubt, the Debtors will not sell any personal identifying information (which means information that alone or in conjunction with other information identifies an individual, including, but not limited to, an individual’s name, social security number, date of birth, government-issued identification number, account number, and credit or debit card number) as part of the Store Closings, and all personal identifying information will be removed from any FF&E prior to abandonment of same. Accordingly, the Debtors respectfully submit that abandonment of such property is in the best interests of their estates and request that the Court authorize them to do so

where they determine in their business judgment that abandonment is the appropriate course of action.

IX. Store Closing Bonus Plan.

25. Through this motion, the Debtors request authority, but not direction, to pay Store Closing Bonuses (such bonuses paid pursuant to the “Store Closing Bonus Plan”) to store-level, non-insider employees who remain in the employ of the Debtors for the during the Sales. The Debtors believe that the Store Closing Bonus Plan will motivate employees during the Sales and will enable the Debtors to retain those employees necessary to successfully complete the Sales.

26. Payments under the Store Closing Bonus Plan will be made exclusively to non-insider employees, on the condition that the Agent chooses to continue to retain the employee for the duration of the Sale Term and the employee continues to remain employed to assist with the Sale at their respective store through the date on which the respective employee’s store closes. Employees satisfying these requirements are eligible to receive an additional payment at or following the date such employees store closes. The total payments for Store Closing Bonuses will not exceed 20% of the total Sale Term payroll for the Store Closing employees.

27. Providing such non-insider bonus benefits is critical to ensuring that key employees that will be affected by the reduction in the Debtors’ work force due to the Store Closings will continue to provide critical services to the Debtors during the ongoing Store Closing process. For the avoidance of doubt, the Debtors do not propose to make any payment on account of Store Closing Bonuses to any insiders.

28. In order to ensure a successful Store Closing and Sale process and maximize revenues for the benefit of the Debtors’ estates, the Store Closing Bonuses incentivize store management to provide uninterrupted leadership during this challenging period, and tie payment to maintaining employment with the Debtors through the conclusion of the Sales.

29. Accordingly, the Debtors respectfully submit that the Store Closing Bonus Plan is in the best interests of their estates and request that the Court authorize payments under the Store Closing Bonus Plan.

X. Modifications to Closing Stores' Customer Programs and Policies.

30. The below list summarizes the Closing Stores' anticipated programs and policies governing customer transactions (the "Customer Programs"). Certain of these modifications to the Debtors' Customer Programs are not limited to the Closing Stores and will be implemented in all of the Debtors' stores at the same time postpetition, in which case the modifications for all of the Debtors' Customer Programs are included in the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Honor Certain Prepetition Obligations to Customers and (B) Continue Certain Customer Programs in the Ordinary Course of Business; and (II) Granting Related Relief* filed concurrently herewith (the "Customer Programs Motion"), but are also included in this Motion and the Proposed Orders, given that the entered versions of the Proposed Orders govern the terms of the Agency Agreement. Any such programs are specified as such below.

- (a) **Customer Deposits.** Prior to the Petition Date, the Closing Stores enacted a deposit policy providing that Closing Stores will continue to honor open, pre-Sale customer deposits as long as merchandise requested to fulfill these orders is available in the applicable Closing Store. The Debtors request authority to continue implementing this policy postpetition. Additionally, consistent with the relief sought in the Customer Programs Motion, to the extent a customer seeks a refund for a deposit placed prepetition and their claims for such deposits may be entitled to priority under section 507 of the Bankruptcy Code, the Debtors seek the authority to refund such deposits solely to the extent such refund is otherwise consistent with the Debtors' general refund policies and solely in an amount up to the priority cap of \$3,350 as discussed in the Customer Programs Motion.
- (b) **New Orders.** During the Sale Term, solely at the Closing Stores, the Closing Stores will not accept new orders unless there is available, on-hand Merchandise located in the applicable Closing Store to fulfill any such new order. These new orders must be picked up within 48 hours of the order being placed.

- (c) **Installation Services.** During the Sale Term, solely at the Closing Stores, the Closing Stores will not offer installation services but will offer third-party installer recommendations to interested customers. Any refunds requested on account of pre-Sale customer deposits for installation services shall be provided only to extent such refund is permitted as set forth in item (a) above.
- (d) **Return Policy.** The Closing Stores instituted an amended return policy prepetition. During the Sale Term, solely at the Closing Stores, all sales will be on a final, “as-is” basis and no returns will be accepted for purchases of Closing Store inventory purchased during the Sale Term. The Closing Stores will otherwise continue to honor returns for purchases made pre-Sale to the extent such returns are permitted under the Debtors’ pre-Sale return policy applicable to the items sought to be returned. The Closing Stores have the discretion to refuse to honor returns of pre-Sale items if the customer seeking to make a return intends to repurchase the same item(s) so as to take advantage of the discounts offered in the Sale.
- (e) **Gift Cards, Gift Certificates.** All of the Debtors’ stores, including the Closing Stores, request authorization to cease honoring any of the Debtors’ unexpired gift cards or gift certificates, if any, after twenty-on (21) days following entry of the interim order approving the Customer Programs Motion explaining such policy change, which notices are included in the Customer Programs Motion and will be served upon entry of the Customer Programs Motion’s interim order.
- (f) **Employee Discounts.** The Debtors’ will continue to honor their current employee discount program for Closing Stores’ employees, *provided, however*, that the level of discount available for the Closing Stores’ employees will be capped at the prevailing discount rate offered at the applicable Closing Store. In other words, the standard employee discount rates available under the existing employee discount program will apply in ordinary course until the rate of discount under the employee plan become greater than or equal to the applicable Closing Store’s prevailing discount rate, at which point the Closing Store’s prevailing discount rate shall apply.
- (g) **Latent Defects.** The Debtors shall comply with all state and federal laws relating to implied warranties for latent defects, which laws are not superseded by the terms Closing Stores’ policy that are sales are final or the use of the terms “as is” or “final sales,” as set forth in the Proposed Orders.

RELIEF REQUESTED SHOULD BE GRANTED

I. The Court Should Authorize the Assumption of the Agency Agreement.

31. 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). The standard governing bankruptcy court

approval of a debtor's decision to assume or reject an executory contract or unexpired lease is whether the debtor's reasonable business judgment supports assumption or rejection. *In re HQ Glob. Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that debtor's decision to assume or reject an executory contract is governed by the business judgement standard and it can only be overturned if the decision was a product of bad faith, whim, or caprice).

32. The business judgment test "requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the executory contract will benefit the estate." *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co.*, (*In re Wheeling-Pittsburgh Steel Corp.*), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (citation omitted). Any more exacting scrutiny would slow the administration of a debtor's estate and increase costs, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten a court's ability to control a case impartially. *See Richmond Leasing Co. v. Cap. Bank*, 762 F.2d 1303, 1311 (5th Cir. 1985).

33. Here, the Debtors have exercised their sound business judgment in determining to assume the Agency Agreement. The Agent has extensive expertise in conducting liquidation sales and will be able to effectively oversee and implement the Sales in an efficient and cost-effective manner. Courts hearing Chapter 11 Cases filed by retailers have recently approved the assumption of agency agreements. *See, e.g., In re New Rue21 Holdco, Inc.*, No 24-10939 (BLS) (Bankr. D. Del. May 23, 2024) (authorizing assumption of agency agreement); *In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 15, 2024) (same); *In re Christmas Tree Shops, LLC*, No. 23-10576 (TMH) (Bankr. D. Del. May 31, 2023) (same); *In re Indep. Pet Partners Holdings, LLC*, No. 23-10153 (LSS) (Bankr. D. Del. Mar. 1, 2023) (same); *In re Olympia Sports Acquisitions, LLC*, No. 22-10853 (MFW) (Bankr. D. Del. Oct. 6, 2022) (same); *In re Francesca's Holdings*

Corp., No. 20-13076 (BLS) (Bankr. D. Del. Jan. 4, 2021) (same); *In re Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del Nov. 14, 2019) (same).

34. The Debtors submit that they have exercised reasonable business judgment in engaging the Agent to conduct the Store Closings and Sales. Given the number of stores and the Agent's familiarity with the Debtors' business and expertise in conducting similar sales, and given that the Debtors solicited bids from other liquidators and Agent's proposal was the superior offer, it is unlikely the Debtors could retain an alternate liquidator able to conduct the process on terms as favorable as the Agent. If the Agency Agreement is not assumed on a final basis, the Sales would lose the benefit of the Agent's oversight and might be delayed or suspended entirely, leading to loss of additional liquidity and increased administrative expense. Accordingly, the Debtors respectfully request that the Court authorize their assumption of the Agency Agreement.

II. The Debtors Have a Valid Business Justification for the Sales.

35. Section 363(b)(1) of the Bankruptcy Code, which governs asset sales outside of a debtor's ordinary course of business, provides that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). When selling assets outside of the ordinary course of business, a debtor must articulate a valid business justification to obtain court approval. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147-48 (3d Cir. 1986) (implicitly adopting the "sound business judgment" test of *Lionel Corp.*, and requiring good faith); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070-71 (2d Cir. 1983); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (concluding that the Third Circuit adopted the "sound business judgment" test in the *Abbotts Dairies* decision). When a debtor demonstrates a valid business justification for a decision, a strong presumption arises "that in making [the] business decision the directors of a corporation

acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (holding that the Delaware business judgment rule has “vitality by analogy” in chapter 11, especially where the debtor is a Delaware corporation).

36. Store closing or liquidation sales are a routine occurrence in Chapter 11 Cases involving retail debtors. *See, e.g., In re New Rue21 Holdco, Inc.*, No 24-10939 (BLS) (Bankr. D. Del. May 23, 2024) (authorizing procedures for store closing sales); *In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 15, 2024) (same); *In re Ave. Stores, LLC*, No. 19-11842 (LSS) (Bankr. D. Del. Sept. 13, 2019) (same); *In re Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del. Nov. 14, 2019) (same); *In re Charming Charlie Holdings, Inc.*, No. 19-11534 (CSS) (Bankr. D. Del. August 14, 2019) (same); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (same); *In re Rite Aid Corp.*, No. 23-18993 (MBK) (Bankr. D.N.J. Jan. 29, 2024) (same); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. June 7, 2023) (same); *In re Christopher & Banks Corp.*, No. 21-10269 (ABA) (Bankr. D.N.J. Feb. 8, 2021) (same); *In re RTW Retailwinds, Inc.*, No. 20-18445 (JKS) (Bankr. D.N.J. Aug. 8, 2020) (same); *In re Modell’s Sporting Goods, Inc.*, No. 20-14179 (VFP) (same) (Bankr. D.N.J. June 23, 2020); *In re SLT Holdco, Inc.*, No. 2018368 (MBK) (Bankr. D.N.J. July 29, 2020) (same).

37. Sufficient business justification exists to approve the proposed Sales under section 363(b)(1). The Debtors, with the assistance of their advisors, have determined that the Sales represent the best alternative to maximize recoveries to the Debtors’ estates with respect to the Store Closure Assets and provide the Debtors with much-needed liquidity while optimizing their remaining fleet of stores for a potential going concern sale of substantially all of the Debtors’ remaining assets. Meaningful amounts of Merchandise, in the aggregate, will be monetized most

efficiently and quickly through an orderly process conducted in consultation with an experienced liquidation firm like the Agent. Further, delay in continuing the Sales would diminish the recovery tied to monetization of the Store Closure Assets. All of the Closing Stores fail to generate positive cash flow and therefore are a significant drain on liquidity. As such, the Debtors will realize an immediate benefit in terms of financial liquidity from the sale of the Store Closure Assets and the termination of operations at the Closing Stores. Further, uninterrupted and orderly Sales will allow the Debtors to timely reject leases associated with the Closing Stores, and therefore avoid the accrual of unnecessary administrative expenses for rent and related costs.

III. The Court Should Approve the Sale Guidelines.

38. The Court may authorize the Debtors to consummate the Store Closings pursuant to sections 105(a) and 363(b) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that, “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Further, section 105(a) of the Bankruptcy Code provides, in relevant part, that, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

39. As discussed herein, pursuant to section 363(b) of the Bankruptcy Code, for the purpose of conducting the Store Closings, the Debtors need only show a legitimate business justification for the proposed action. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996).

40. In addition, the Court may authorize the Store Closings based on section 105(a) of the Bankruptcy Code. Section 105(a) codifies the Court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may authorize any action that is essential to the

continued operation of a debtor's businesses. *See In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (holding that a court may permit pre-plan payments of prepetition obligations when essential to the continued operation of the debtor); *see also In re Fin. News Network Inc.*, 134 B.R. 732, 735-36 (Bankr. S.D.N.Y. 1991) (holding that the “‘doctrine of necessity’ stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor’s reorganization”).

41. The relief requested by this motion represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates, and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. The Debtors and their advisors believe that the Sale Guidelines represent the most efficient and appropriate means of maximizing the value of the Store Closure Assets, while balancing the potentially competing concerns of landlords and other parties in interest.

42. Furthermore, ample business justification exists to conduct the Store Closings. Prior to the Petition Date, the Debtors, with the assistance of their advisors, engaged in an extensive review of each of their stores to identify underperforming stores and determine what stores should be closed promptly to eliminate their ongoing negative impact on the Debtors’ financial performance and to improve the Debtors’ liquidity. This process has resulted in the Debtors’ identification of the Initial Closing Stores.

43. Further delay in consummating the Store Closings would diminish the recovery tied to monetization of the Store Closure Assets for a number of reasons, chief among them is that the Closing Stores are a drain on liquidity. Thus, the Debtors will realize an immediate benefit in terms of financial liquidity upon the sale of the Store Closure Assets and the termination of operations at the Closing Stores. Further, the swift and orderly continuation of the Store Closings

will allow the Debtors to timely reject the applicable store leases, and therefore avoid the accrual of unnecessary administrative expenses for rent payment. Additionally, given the Debtors' section 365(d)(4) deadline, there are a finite number of days that the Sales can run without obtaining further consents from landlords.

44. Courts in this and other districts have routinely approved sale guidelines in Chapter 11 Cases, and numerous courts have granted retail debtors authority to implement such procedures. *See, e.g., In re New Rue21 Holdco, Inc.*, No 24-10939 (BLS) (Bankr. D. Del. May 23, 2024) (authorizing the debtors, pursuant to sections 105(a) and 363(b), to conduct store closings in accordance with court-approved procedures); *In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 15, 2024) (same); *In re Christmas Tree Shops, LLC*, No. 23-10576 (TMH) (Bankr. D. Del. May 31, 2023); *In re Indep. Pet Partners Holdings, LLC*, No. 23-10153 (LSS) (Bankr. D. Del. Mar. 1, 2023) (same); *In re Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del. Nov. 14, 2019) (same); *In re Rite Aid Corp.*, No. 2318993 (MBK) (Bankr. D.N.J Jan. 29, 2024) (same); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J June 7, 2023) (same).⁴ The sale guidelines approved in the foregoing cases are substantially similar to the Sale Guidelines attached hereto.

IV. The Court Should Approve the Sale of the Store Closure Assets Free and Clear of all Liens, Encumbrances, and Other Interests under Section 363(f) of the Bankruptcy Code.

45. The Debtors request approval to sell the Store Closure Assets on a final "as is" basis, free and clear of any and all liens, claims, and encumbrances in accordance with section 363(f) of the Bankruptcy Code. A debtor in possession may sell property under sections 363(b)

⁴ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

and 363(f) “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied: (i) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (ii) such entity consents; (iii) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (iv) such interest is in bona fide dispute; or (v) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f); *see also Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that since section 363(f) is written in the disjunctive, the court may approve a sale free and clear if any one subsection is met). Moreover, the Third Circuit has indicated that a debtor possesses broad authority to sell assets free and clear of liens. *See In re Trans World Airlines, Inc.*, 322 F.3d 283, 289 (3d Cir. 2003).

46. The Debtors anticipate that, to the extent there are liens on the Store Closure Assets, all holders of such liens will consent to the Sales because they provide the most effective, efficient, and time-sensitive approach to realizing proceeds for, among other things, the repayment of amounts due to such parties. Any and all liens on the Store Closure Assets sold under the Sales would attach to the remaining net proceeds of such sales with the same force, effect, and priority as such liens currently have on these assets, subject to the rights and defenses, if any, of the Debtors and of any party-in-interest with respect thereto. Moreover, all identified lienholders have received sufficient notice and have been given sufficient opportunity to object to the relief requested.

47. Accordingly, the Debtors submit that the sale of the Store Closure Assets satisfies the statutory requirements of section 363(f) of the Bankruptcy Code and should, therefore, be free and clear of any liens, claims, encumbrances, and other interests.

V. The Court Should Waive Compliance with Applicable State Laws and Approve the Dispute Resolution Procedures.

48. The Debtors' ability to conduct the Sales in accordance with the Sale Guidelines and without complying with Applicable State Laws is critical to the Sales' success. Although the Debtors intend to comply with state and Local health and Safety Laws and consumer protection laws in conducting the Sales, many Liquidation Sale Laws require special and cumbersome licenses, waiting periods, time limits, and other procedures for store closing, liquidation, or similar sales. Additionally, compliance with Fast Pay Laws would require the Debtors to pay terminated employees within a time frame that would be detrimental to the conduct of these Chapter 11 Cases, if not impossible.

49. To eliminate the time, delay, and expense associated with the administrative procedures necessary to comply with the Applicable State Laws, the Debtors propose the Sale Guidelines as a way to streamline the administrative burdens on their estates while still adequately protecting the broad and varied interests of both landlords and applicable governmental agencies charged with enforcing any Liquidation Sale Laws that may apply to the Store Closings. As such, the Debtors believe the Sale Guidelines mitigate any concerns that their landlords or governmental agencies may raise with respect to the Store Closings, and therefore, the below requested relief is in compliance with any applicable Liquidation Sale Laws.

50. The Debtors submit that there is strong support for granting them the authority to not comply with the Liquidation Sale Laws, subject to the Sale Guidelines. *First*, it is generally accepted that many state statutes and regulations provide that, if a liquidation or bankruptcy sale is court-authorized, a company need not comply with the Liquidation Sale Laws. *See, e.g.*, Ga. Code Ann. § 10-1-393(b)(24)(C)(iv) (exempting from the provisions of the chapter sales pursuant to legal process); 815 ILCS 350/3 (same); La. Rev. Stat. Ann. § 51:43(1) (same); N.Y. Gen. Bus.

Law § 584(a) (same); Or. Rev. Stat. Ann. § 646A.100(2)(b) (“Going out of business sale’ does not include a sale conducted by a bankruptcy trustee.”); Tex. Bus. & Com. Code Ann. § 17.91(3) (exempting from subchapter sales conducted pursuant to court order). *Second*, pursuant to section 105(a) of the Bankruptcy Code, the Court has the authority to permit the Store Closings to proceed notwithstanding any contrary Applicable State Laws as it is essential to the continued operation of the Debtors’ business. *Third*, this Court will be able to supervise the Store Closings because the Debtors and their assets are subject to this Court’s exclusive jurisdiction. *See* 28 U.S.C. § 1334. As such, creditors and the public interest are adequately protected by notice of this motion and the ongoing jurisdiction and supervision of the Bankruptcy Court.

51. Further, bankruptcy courts have consistently recognized, with limited exception, that federal bankruptcy law preempts state and local laws that contravene the underlying policies of the Bankruptcy Code. *See Belculfine v. Aloe (In re Shenango Group, Inc.)*, 186 B.R. 623, 628 (Bankr. W.D. Pa. 1995) (“Trustees and debtors-in-possession have unique fiduciary and legal obligations pursuant to the bankruptcy code [A] state statute . . . cannot place burdens on [a debtor] where the result would contradict the priorities established by the federal bankruptcy code.”), *aff’d*, 112 F.3d 633 (3d Cir. 1997).

52. Courts in some jurisdictions have found that preemption of state law is not appropriate if the laws deal with public health and safety. *See Baker & Drake, Inc. v. Pub. Serv. Comm’n of Nev. (In re Baker & Drake, Inc.)*, 35 F.3d 1348, 1353-54 (9th Cir. 1994) (holding that Bankruptcy Code did not preempt state law prohibiting taxicab leasing that was promulgated in part as public safety measure). However, preemption is appropriate where, as is the case here, the only state laws involved concern economic regulation rather than the protection of public health and safety. *See Id.* at 1353 (finding that “federal bankruptcy preemption is more likely . . . where

a state statute is concerned with economic regulation rather than with protecting the public health and safety”).

53. Under the circumstances of these Chapter 11 Cases, enforcing the strict requirements of the Liquidation Sale Laws would undermine the fundamental purpose of section 363(b) of the Bankruptcy Code by placing constraints on the Debtors’ ability to maximize estate assets for the benefit of creditors. Accordingly, authorizing the Sales without the delays and burdens associated with obtaining various state and Local licenses, observing state and Local waiting periods or time limits, and/or satisfying any additional requirements with respect to advertising, sales, and similar items is necessary and appropriate. The Debtors do not seek a general waiver of all state and Local law requirements, but only those that apply specifically to retail liquidation sales. Indeed, the requested waiver is narrowly tailored to facilitate the successful consummation of the Sales. Moreover, the Debtors will comply with applicable state and Local public health and Safety Laws, and applicable tax, labor, employment, environmental, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising. Finally, the Dispute Resolution Procedures provide an ordered means for resolving any disputes arising between the Debtors and any Governmental Units with respect to the applicability of any Liquidation Sale Laws and should therefore be approved.

54. Further, courts in this district, and in other districts, have recognized that the Bankruptcy Code preempts certain state laws and have granted relief similar to that requested herein. *See, e.g., In re New Rue21 Holdco, Inc.*, No 24-10939 (BLS) (Bankr. D. Del. May 23, 2024) (authorizing debtors to conduct store closing sales under the terms of the order and finding that “no further approval, license, or permit of any Governmental Unit shall be required”); *In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 15, 2024) (same); *In re Christmas Tree*

Shops, LLC, No. 23-10576 (TMH) (Bankr. D. Del. May 31, 2023) (same); *In re Indep. Pet Partners Holdings, LLC*, No. 23-10153 (LSS) (Bankr. D. Del. Mar. 1, 2023) (same); *In re Olympia Sports Acquisitions, LLC*, No. 22-10853 (MFW) (Bankr. D. Del. Oct. 6, 2022) (same); *In re Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del. Nov. 14, 2019) (same); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (same); *In re Rite Aid Corp.*, No. 23-18993 (MBK) (Bankr. D.N.J. Jan. 29, 2024) (same).

55. Courts have also granted similar relief from Fast Pay Laws in other bankruptcy cases under similar circumstances. *See, e.g., In re New Rue21 Holdco, Inc.*, No. 24-10939 (BLS) (Bankr. D. Del. May 23, 2024) (granting relief from federal, state, or local laws including “fast pay laws” in connection with store closing sales); *In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 15, 2024) (same); *In re Christmas Tree Shops, LLC*, No. 23-10576 (TMH) (Bankr. D. Del. May 31, 2023) (same); *In re Indep. Pet Partners Holdings, LLC*, No. 23-10153 (LSS) (Bankr. D. Del. Mar. 1, 2023) (same); *In re Olympia Sports Acquisitions, LLC*, No. 22-10853 (MFW) (Bankr. D. Del. Oct. 6, 2022) (same); *In re Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del. Nov. 14, 2019) (same); *In re Z Gallerie, LLC*, No. 1910488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (same).⁵

VI. The Court Should Waive Compliance with Restrictions in the Debtors’ Leases.

56. Certain of the Debtors’ leases governing the premises of the stores subject to the Store Closings may contain provisions purporting to restrict or prohibit the Debtors from conducting store closing, liquidation, or similar sales. Such provisions have been held to be unenforceable in Chapter 11 Cases as they constitute an impermissible restraint on a debtor’s

⁵ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors’ proposed counsel.

ability to properly administer its reorganization case and maximize the value of its assets under section 363 of the Bankruptcy Code. *See In re Ames Dep't Stores, Inc.*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (deciding that enforcement of such lease restrictions would “contravene overriding federal policy requiring [the debtor] to maximize estate assets. . .”); *In re R.H. Macy & Co.*, 170 B.R. 69, 73-74 (Bankr. S.D.N.Y. 1994) (holding that the lessor could not recover damages for breach of a covenant to remain open throughout the lease term, because the debtor had a duty to maximize the value to the estate and the debtor fulfilled this obligation by holding a store closing sale and closing the store); *In re Tobago Bay Trading Co.*, 112 B.R. 463, 467-68 (Bankr. N.D. Ga., 1990) (finding that a debtor’s efforts to reorganize would be significantly impaired to the detriment of creditors if lease provisions prohibiting a debtor from liquidating its inventory were enforced); *In re Lisbon Shops, Inc.*, 24 B.R. 693, 695 (Bankr. E.D. Mo. 1982) (holding restrictive lease provision unenforceable in chapter 11 case where the debtor sought to conduct a liquidation sale).

57. Courts in this district and others have authorized waivers of compliance with restrictive lease provisions affecting store liquidation sales in Chapter 11 Cases. *See, e.g., In re New Rue21 Holdco, Inc.*, No. 24-10939 (BLS) (Bankr. D. Del. May 23, 2024) (ordering that store closing sales be conducted without the further need for compliance with, among other things, lease provisions); *In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 15, 2024) (same); *In re Christmas Tree Shops, LLC*, No. 23-10576 (TMH) (Bankr. D. Del. May 31, 2023) (same); *In re Indep. Pet Partners Holdings, LLC*, No. 23-10153 (LSS) (Bankr. D. Del. Mar. 1, 2023) (same); *In re Olympia Sports Acquisitions, LLC*, No. 22-10853 (MFW) (Bankr. D. Del. Oct. 6, 2022) (same); *In re Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del. Nov. 14, 2019) (same); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (same).

58. Thus, to the extent that such provisions or restrictions exist in any of the leases of the stores subject to the Store Closings, the Debtors request that the Court authorize the Debtors and the Agent to conduct any liquidation sales without interference by any landlords or other persons affected, directly or indirectly, by the liquidation sales.

VII. The Court Should Approve the Abandonment of Certain Property in Connection with any Liquidation Sales.

59. After notice and a hearing, a debtor “may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. §554(a); *see also Hanover Ins. Co. v. Tyco Indus., Inc.*, 500 F.2d 654, 657 (3d Cir. 1974) (stating that a trustee “may abandon his claim to any asset, including a cause of action, he deems less valuable than the cost of asserting that claim”).

60. The Debtors are seeking to sell all owned FF&E remaining in the Closing Stores. However, the Debtors may determine that the costs associated with holding or selling certain property or FF&E exceeds the proceeds that will be realized upon its sale, or that such property is not sellable at all. In such event, the property is of inconsequential value and benefit to the estates and/or may be burdensome to retain.

61. To maximize the value of the Debtors’ assets and to minimize the costs to the estates, the Debtors respectfully request authority to abandon any of their remaining FF&E or other property located at any of the Closing Stores without incurring liability to any person or entity. The Debtors further request that the landlord of each Closing Store with any abandoned FF&E or other property be authorized to dispose of such property without liability to any third parties.

62. Notwithstanding the foregoing, the Debtors will utilize all commercially reasonable efforts to remove or cause to be removed any confidential or personal identifying information (which means information that alone or in conjunction with other information identifies an

individual, including, but not limited to, an individual's name, social security number, date of birth, government-issued identification number, account number, and credit or debit card number) in any of the Debtors' hardware, software, computers or cash registers or similar equipment that are to be sold or abandoned.

VIII. The Bankruptcy Court Should Approve the Procedures Relating to the Additional Closing Stores.

63. The Debtors request that the Sale Guidelines and the Interim Order or the Final Order, as applicable, apply to any Additional Closing Stores. In order to provide landlords and other parties in interest with information regarding the ultimate disposition of the Closing Stores, to the extent that the Debtors seek to conduct the Sales at any Additional Closing Store, the Debtors will file a list of such Additional Closing Stores with the Bankruptcy Court (the "Additional Closing Store List"), and serve a notice of their intent to conduct the Sales at the Additional Closing Stores on the applicable landlords (the "Additional Closing Store Landlords") and any other interested parties by email (to the extent available to the Debtors) or overnight mail. With respect to Additional Closing Store Landlords, the Debtors will mail such notice to the notice address set forth in the lease for such Additional Closing Store (or, if none, at the last known address available to the Debtors).

64. The Debtors propose that the Additional Closing Store Landlords (each of whom will have already been served with this motion, the Interim Order, and the Final Order) and any interested parties have seven (7) days after service of the applicable Additional Closing Store List to object to the application of the Interim or Final Order to their Closing Stores. If no timely objections are filed with respect to the application of the Interim Order or the Final Order to an Additional Closing Store, then the Debtors should be authorized, pursuant to sections 105(a), and 363(b) and (f) of the Bankruptcy Code, to proceed with conducting the Sales at the Additional

Closing Store in accordance with the Interim Order or the Final Order, the Sale Guidelines, and the Agency Agreement. If any objections are filed with respect to the application of the Interim Order or the Final Order, as applicable, to an Additional Closing Store, and such objections are not resolved, the objections and the application of the Interim Order or the Final Order, as applicable, to the Additional Closing Store will be considered by the Court at the next regularly scheduled omnibus hearing, subject to the rights of any party to seek relief on an emergency basis on shortened notice, to the extent necessary so that the Debtors can move promptly to maximize value and minimize expenses for the benefit of their creditors and stakeholders. Similar relief has been granted in recent retail bankruptcy cases. *See e.g., In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 15, 2024) (approving similar procedures for additional stores); *In re Christmas Tree Shops, LLC*, No. 23-10576 (TMH) (Bankr. D. Del. May 31, 2023) (same); *In re Indep. Pet Partners Holdings, LLC*, No. 23-10153 (LSS) (Bankr. D. Del. Mar. 1, 2023) (same); *In re GNC Holdings, Inc.*, No. 20-11662 (KBO) (Bankr. D. Del. July 21, 2020) (same); *In re Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del. Nov. 14, 2019) (same); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (same); *In re Things Remembered, Inc.*, No. 19-10234 (KG) (Bankr. D. Del. Feb. 28, 2019) (same); *In re APP Winddown, LLC (f/k/a Am. Apparel, LLC)*, No. 16-12551 (BLS) (Bankr. D. Del. Dec. 19, 2016) (same).

IX. The Store Closing Bonus Plan Is a Sound Exercise of the Debtors' Business Judgment and Should Be Approved.

65. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to use property of the estate when such use has a “sound business purpose” and when the use of

the property is proposed in good faith. *See e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Abbotts Dairies, Inc.*, 788 F.2d, 143, 147-48 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of *Lionel Corp.*, and requiring good faith); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d. 1063, 1070-71 (2d. Cir. 1983); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (concluding that the Third Circuit adopted the “sound business judgment” test in the *Abbotts Dairies* decision).

66. Courts generally require a debtor to demonstrate that a valid business purpose exists for the use of estate property in a manner that is not in the ordinary course of business. *See In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2d Cir. 1983). Once the debtor has articulated a valid business justification, a presumption arises that the debtor’s decision was made on an informed basis, in good faith, and in the honest belief the action was in the best interest of the company. *See In re Integrated Res., Inc.*, 147 B.R. at 656. Furthermore, once “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). The business judgment rule shields a debtor’s management from judicial second-guessing. *See In re Integrated Res.*, 147 B.R. at 656; *In re Johns-Manville Corp.*, 60 B.R. at 615-16 (noting that “the Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions”). Thus, if a debtor’s actions satisfy the business judgment rule, then the actions in question should be approved under section 363(b)(1).

67. In this case, the Store Closing Bonus Plan is a sound exercise of the Debtors’ business judgment and is in the best interests of the Debtors and all their estates’ stakeholders. The employees at Closing Stores—along with their skills, knowledge, and hard work—are more

critical now than ever. Through their commitment and performance, they can ensure that the Debtors continue to maximize stakeholder value in a challenging economic environment and at a time when those employees' positions will soon be terminated.

68. Additionally, the total cost of the Store Closing Bonus Plan is reasonable in light of the total revenue projected from the Sales and competitive market practice and involves compensation structures often used in other restructuring situations to incentivize employees to continue optimal performance despite the added stress inherent in the chapter 11 process.

69. The Store Closing Bonus Plan is comparable to employee incentive plans regularly paid in other "store closing" and similar-themed sales in chapter 11 situations to incentivize employees to continue optimal performance despite the added stress inherent in the chapter 11 process. As such, courts have approved incentive payments similar to those completed in the Store Closing Bonus Plan. *See, e.g., In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 15, 2024) (authorizing debtor to implement and make payments under the store closing bonus program to sale-level employees with payments totaling \$700,000 for employees at 95 closing stores); *In re Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del. Nov. 14, 2019) (authorizing \$350,000 in store closing bonuses, which were only offered to non-insider store managers and assistant managers); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (authorizing up to \$500,000 in store closing bonus plans); *In re Things Remembered, Inc.*, No. 19-10234 (KG) (Bankr. D. Del. Feb. 28, 2019) (authorizing a \$1600 per store bonus for the store managers and assistant managers to incentivize employees to complete store closings); *In re Bon-Ton Stores, Inc.*, No. 18-10248 (MFW) (Bankr. D. Del. Feb. 7, 2018) (authorizing discretionary bonus payments in an amount no more than 10 percent of payroll for store employees); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. June 7, 2023) (authorizing debtor to

continue store closing bonus program which increased store employees hourly wages by amounts determined by employees position, with payments of all hourly increases paid in a lump sum in the employees' last pay check following the stores closing); *In re Christopher & Banks Corp.*, No. 21-10269 (ABA) (Bankr. D.N.J. Feb. 8, 2021) (approving customary store closing bonus plan); *In re RTW Retailwinds, Inc.*, No. 20-18445 (JKS) (Bankr. D.N.J. Aug. 8, 2020) (same); *In re Modell's Sporting Goods Inc.*, No. 20-14179 (VFP) (Bankr. D.N.J. June 24, 2020) (same); *In re SLT Holdco, Inc.*, No. 20-18368 (MBK) (Bankr. D.N.J. July 29, 2020) (same).

70. The Store Closing Bonus Plan is comparable to employee incentive plans regularly paid as “expenses of sale” by liquidating agents in other “store closing” and similar-themed sales. As such, courts have approved incentive payments similar to those contemplated in the Store Closing Bonus Plan. *See, e.g., In re Express, Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 15, 2024); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (authorizing store closing retention bonus program on a final basis); *In re Things Remembered, Inc.*, No. 19-10234 (KG) (Bankr. D. Del. Feb. 28, 2019) (same); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. June 7, 2023) (same); *In re Modell's Sporting Goods, Inc.*, No. 20-14179 (VFP) (Bankr. D.N.J. June 23, 2020) (same); *In re Rue21, Inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. June 12, 2017).

71. Accordingly, the Debtors submit that the relief requested with respect to the Store Closing Bonus Plan is a valid exercise of the Debtors' business judgment and approval of the Store Closing Bonus Plan is appropriate under section 363 of the Bankruptcy Code and is in the best interests of the Debtors, their estates, and all parties in interest in these Chapter 11 Cases.

X. The Store Closing Bonus Plan is Justified by the Facts and Circumstances of These Chapter 11 Cases.

72. Section 503(c)(3) of the Bankruptcy Code generally prohibits certain transfers made to officers, managers, consultants, and others that are not justified by the facts and circumstances of the case. *See* 11 U.S.C. § 503(c)(3). Though section 503(c)(3) is not applicable here because this motion does not seek authorization to pay Store Closing Bonuses to insiders, if it did apply, the Store Closing Bonus Plan would be well within the “facts and circumstances” test articulated therein. Importantly, section 503(c)(3)’s “facts and circumstances” justification test “creates a standard no different than the business judgment standard under section 363(b) [of the Bankruptcy Code].” *In re Borders Grp., Inc.*, 453 B.R. 459, 473 (Bankr. S.D.N.Y. 2011); *see also In re Glob. Home Prods., LLC*, 369 B.R. 778, 783 (Bankr. D. Del. 2007) (“If [the key employee retention program is] intended to incentivize management, the analysis utilizes the more liberal business judgment review under § 363.”); *In re Nobex Corp.*, No. 05-20050 (MFW), 2006 WL 4063024, at *2-3 (Bankr. D. Del. Jan. 19, 2006) (concluding that the standard under section 503(c)(3) of the Bankruptcy Code reiterates the business judgment standard). For the reasons discussed above, a possible loss of the employees would disrupt the Debtors’ ability to effectively close the Closing Stores and maximize value for the benefit of all stakeholders. Because implementation of the Store Closing Bonus Plan will incentivize store level employees to enhance the value of the Debtors’ estates, the Store Closing Bonus Plan is justified by the facts and circumstances of these Chapter 11 Cases and is a sound exercise of the Debtors’ business judgment. *See, e.g., In re Mesa Air Grp., Inc.*, No. 10-10018 (MG), 2010 WL 3810899, *4 (Bankr. S.D.N.Y. Sept. 24, 2010) (holding that bonus payments are “‘justified by the facts and circumstances of the case’ under section 503(c)(3) [where] they are within the ‘sound business judgment’ of the Debtors”) (citation omitted).

XI. The Proposed Modifications to Certain of the Debtors' Customer Programs are Appropriate.

73. The Court may authorize payment of prepetition claims arising under customer or other programs including gift card, gift certificate, voucher, or deposit obligations, in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) codifies the Court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." This "doctrine of necessity" functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow for modifications of customer programs not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See In re United Am., Inc.*, 327 B.R. 776, 781 (Bankr. E.D. Va. 2005) (acknowledging that the doctrine of necessity "is a necessary deviation because otherwise there will be no reorganization and no creditor will have an opportunity to recoup any part of its pre-petition claim"); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) ("Under [section 105(a)] the court can permit pre-plan payment of a pre petition obligation when essential to the continue operation of the debtor."); *see also In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to debtor's continued operation); *In re Just for Feet, Inc.*, 241 B.R. 821, 824-25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code "provides a statutory basis for payment of prepetition claims" under the doctrine of necessity).

74. Accordingly, the Court has authority to authorize the Debtors to continue to honor or modify the Customer Programs in the ordinary course of business, and to pay any prepetition claims arising thereunder, pursuant to sections 363(b) and 105(a) of the Bankruptcy Code. Continuing to administer these programs in connection with the Store Closings is critical to preserving customer goodwill. The Sales and Store Closing necessitate that such programs must

conclude to provide finality and an efficient closing period. The Debtors submit that the notice provided through this motion is adequate and proper under the circumstances. Similar relief has been granted in recent retail bankruptcy cases. *See e.g., In re Lucky Brand Dungarees, LLC*, No. 20-11768 (CSS) (Bankr. D. Del. July 28, 2020) (authorizing debtors to no longer accept gift cards after 30 days from the start of store closing sales); *In re GNC Holdings, Inc.*, No. 2011662 (KBO) (Bankr. D. Del. July, 21, 2020) (same); *In re Destination Maternity Corp.*, No. 1912256 (BLS) (Bankr. D. Del. Nov. 14, 2019) (authorizing debtors to no longer accept gift cards 30 days after the petition date); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. Apr. 25, 2023) (authorizing debtors to no longer accept gift cards 14 days following entry of interim order); *In re J.C. Penney Company, Inc.*, No. 20-20182 (DRJ) (Bankr. S.D. Tex. June 11, 2020) (authorizing debtors to no longer accept gift cards upon conclusion of store closing sales); *In re Sears Holdings Corp.*, No. 18-23538 (RDD) (Bankr. S.D.N.Y. Nov. 19, 2018) (authorizing debtors to no longer accept gift cards after 30 days from the start of store closing sales).

XII. Cause Exists to Authorize the Banks to Honor Checks and Electronic Fund Transfers.

75. The Debtors anticipate having sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of access to cash on hand and anticipated access to debtor-in-possession financing. In addition, under the Debtors' existing cash management system, the Debtors can identify readily whether checks or wire transfer requests are payments authorized by the relief requested in this Motion. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that the Court should authorize financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfers in respect of the relief requested herein, to the extent the Debtors have sufficient funds on deposit in their accounts with such Banks, and

such Banks may rely on the representations of the Debtors without any duty of further inquiry and without liability for following the Debtors' instructions.

IMMEDIATE AND UNSTAYED RELIEF IS NECESSARY

76. Bankruptcy Rule 6003 empowers a court to grant certain relief within the first twenty-one days after the petition date only "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, the Debtors believe an immediate and orderly transition into chapter 11 is critical, and the failure to receive the requested relief during the first twenty-one days of these Chapter 11 Cases could impact the Debtors' operations at this important juncture. The requested relief is necessary for the Debtors to preserve the ongoing value of their operations, and maximize value of their estates for the benefit of all stakeholders. The Debtors have demonstrated that the requested relief is "necessary to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003, and the Court should grant the requested relief.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

77. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

78. Nothing in this Motion should be construed as (i) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (ii) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (iii) a promise to pay any claim or other

obligation; (iv) granting third party beneficiary status or bestowing any additional rights on any third party; or (v) being otherwise enforceable by any third party.

NOTICE

79. Notice of this Motion will be given to: (i) the U.S. Trustee; (ii) the parties included on the Debtors' consolidated list of their thirty (30) largest unsecured creditors; (iii) the office of the attorney general for each of the states in which the Debtors operate; (iv) the Internal Revenue Service; (v) the Securities and Exchange Commission; (vi) the Office of the United States Attorney for the District of Delaware; (vii) the United States Department of Justice; (viii) counsel to the DIP ABL Agent and the Prepetition ABL Agent; (ix) landlords for the Closing Stores; (x) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (xi) all parties entitled to notice pursuant to Local Rules 2002-1(b) and 9013-1(m). The Debtors submit that no other or further notice is required.

NO PRIOR REQUEST

80. No previous request for the relief sought therein has been made to this Court or any other court.

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CONCLUSION

The Debtors respectfully request that this Court enter the Proposed Orders, each substantially in the form attached hereto, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: August 12, 2024
Wilmington, Delaware

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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Proposed Counsel to Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

LL FLOORING HOLDINGS, INC., et al.,

Debtors.¹

Chapter 11

Case No. 24-11680 (___)

(Joint Administration Pending)

**INTERIM ORDER (I) AUTHORIZING
THE DEBTORS TO ASSUME THE AGENCY
AGREEMENT; (II) AUTHORIZING AND APPROVING
THE CONDUCT OF STORE CLOSING SALES, WITH SUCH
SALES TO BE FREE AND CLEAR OF ALL LIENS, CLAIMS, AND
ENCUMBRANCES; (III) AUTHORIZING CUSTOMARY BONUSES TO
EMPLOYEES OF CLOSING STORES; AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the Debtors for an interim order (this “Interim Order”) and a final order (i) authorizing, but not directing, the Debtors to assume that certain letter agreement dated as of August 8, 2024, a copy of which is attached as **Exhibit 1** to this Interim Order (the “Agency Agreement”), made by and between the Debtors and Hilco Merchant Resources, LLC (the “Agent”), (ii) authorizing and approving the continuation of 94 store closings or similar themed sales at the stores listed on the Agency Agreement (collectively, the “Initial Closing Stores”), (iii) authorizing the Debtors to conduct store closings at additional stores or through the Debtors’ e-commerce platform, if any are designated by the Debtors, and which, for the avoidance of doubt, may include any or all other stores as may be designated by the Debtors at a later date or dates pursuant to the procedures set forth herein and in the Agency Agreement

¹ The Debtors in these Chapter 11 Cases, along with the last four (4) digits of their respective tax identification numbers, are as follows: LL Flooring Holdings, Inc. (0817); LL Flooring, Inc. (9199); Lumber Liquidators Leasing, LLC (N/A); LL Flooring Services, LLC (5960); and Lumber Liquidators Foreign Holdings, LLC (4568). The address of the Debtors’ corporate headquarters is 4901 Bakers Mill Lane, Richmond, VA 23230.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

(collectively, the “Additional Closing Stores,” if any, and, together with the Initial Closing Stores, the “Closing Stores”), with such sales to be free and clear of all liens, claims, and encumbrances (the “Sales” or “Store Closings”), in accordance with the terms of the store closing sale guidelines in the United States (the “Sale Guidelines”), attached as **Exhibit 2** to this Interim Order, (iv) authorizing the Debtors to provide customary bonuses to non-insider Closing Store employees who remain employed for the duration of the store closing process (the “Store Closing Bonuses”); and (v) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice is necessary; and this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “Hearing”); and upon the First Day Declaration and the record of the Hearing; and all objections to the relief requested in the Motion on an interim basis, if any, having been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, their creditors,

and other parties in interest; and upon all of the proceedings had before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. The Debtors have advanced sound business reasons for assuming the Agency Agreement and adopting the Sale Guidelines, on an interim basis subject to the Final Hearing, as set forth in the Motion and at the Hearing, and assuming the Agency Agreement is a reasonable exercise of the Debtors' business judgement and in the best interest of the Debtors and their estates.

B. The Agency Agreement, a copy of which is attached to this Interim Order as **Exhibit 1**, was negotiated, proposed, and entered into by the Agent and the Debtors without collusion, in good faith and from arm's length bargaining positions.

C. The assumption of the Agency Agreement on an interim basis is a sound exercise of the Debtors' business judgment.

D. The Sale Guidelines, which are attached hereto as **Exhibit 2**, are reasonable and appropriate, and the conduct of the Sales in accordance with the Sale Guidelines will provide an efficient means for the Debtors to dispose of the Store Closure Assets, and are in the best interest of the Debtors' estates.

E. The relief set forth herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates and the Debtors have demonstrated good, sufficient and sound business purposes and justifications for the relief approved herein.

F. The Store Closings and Sales are in the best interest of the Debtors' estates.

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact where appropriate. See Fed. R. Bankr. P. 7052.

G. The Dispute Resolution Procedures are fair and reasonable and comply with applicable law.

H. The Debtors have represented that they intend to neither sell nor lease personally identifiable information pursuant to the relief requested in the Motion, although the Agent will be authorized to distribute emails and promotional materials to the Debtors' customers consistent with the Debtors' existing policies on the use of consumer information.

I. The Store Closing Bonus Plan is justified by the facts and circumstances of these Chapter 11 Cases, is a sound exercise of the Debtors' business judgment, and is necessary to maximize value to the Debtors' estates.

J. The entry of this Interim Order is in the best interests of the Debtors and their estates, creditors, and interest holders and all other parties in interest herein; and now therefore

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Final Hearing on the Motion shall be held on [], 2024 at [], prevailing Eastern Time. Any objections or responses to the entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on [], 2024, and shall be served on: (i) LL Flooring Holdings, Inc., 4901 Bakers Mill Lane, Richmond, VA 23230 (Attn: Alice Givens, Esq. (agivens@llflooring.com)); (ii) proposed counsel for the Debtors, Skadden, Arps, Slate, Meagher & Flom LLP, 920 North King Street, Wilmington, Delaware 19801 (Attn: Joseph O. Larkin, Esq. (joseph.larkin@skadden.com) and Jason M. Liberi, Esq. (jason.liberi@skadden.com)) and One Manhattan West, New York, New York 10001 (Attn: Lisa Laukitis, Esq. (lisa.laukitis@skadden.com); Elizabeth M. Downing, Esq. (elizabeth.downing@skadden.com); and Chambliss Williams, Esq. (chambliss.williams@skadden.com)); (iii) the United States Trustee

for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Rosa Sierra-Fox, Esq. (rosa.sierra-fox@usdoj.gov)); (iv) counsel to the DIP ABL Agent and the Prepetition ABL Agent, (a) Morgan Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110 (Attn: Christopher L. Carter, Esq. (christopher.carter@morganlewis.com)) and (b) Reed Smith LLP, 1201 Market Street, Suite 1500, Wilmington, Delaware 19801 (Attn: Kurt E. Gwynne, Esq. (KGwynne@ReedSmith.com)); and (v) counsel to any statutory committee appointed in the Chapter 11 Cases. If no objections or responses are filed and served, this Court may enter a final order without further notice or hearing.

3. The Debtors are authorized, but not directed, to make payments under the Store Closing Bonus Plan, as may be amended and modified from time to time.

4. To the extent any conflict between this Interim Order, the Sale Guidelines, and the Agency Agreement, the terms of this Interim Order shall control over all other documents and the Sale Guidelines shall control over the Agency Agreement.

I. Authority to Assume the Agency Agreement.

5. The Debtors are authorized to assume and perform under the Agency Agreement pursuant to sections 363 and 365 of the Bankruptcy Code, including: (a) making payments required by the Agency Agreement to the Agent without the need for any application of the Agent or a further order of the Court, (b) allowing the sale of Additional Agent Goods, and (c) participating in an augmentation program, all as permitted under the Agency Agreement. Agent's fees and expenses shall be paid from the gross proceeds of the Sale subject to the terms of the Agency Agreement itself, including as to any expense budget attached thereto.

6. Subject to the restrictions set forth in this Interim Order, the Sale Guidelines, and any Side Letters (as defined below), the Debtors and the Agent are hereby authorized to take any and all actions as may be necessary or desirable to implement the Agency Agreement and the

Sales, and each of the transactions contemplated by the Agency Agreement, and any actions taken by the Debtors and the Agent necessary or desirable to implement the Agency Agreement and/or the Sales prior to the date of this Interim Order, are hereby approved and ratified.

7. The Agency Agreement and related documents may be modified, amended, or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court. The Debtors are hereby authorized to enter into additional agreements in connection with any Closing Stores, or Sales related thereto, on terms materially consistent with the Debtors' historic practices.

8. Notwithstanding anything to the contrary in the Agency Agreement, the Debtors and their estates shall not indemnify the Agent for any damages arising out of the Agent's fraud, willful misconduct, or gross negligence.

9. To the extent the Agent seeks to contract with Additional Agents, the Agent is authorized to enter into an agreement with Additional Agents.

10. The failure to include any provisions of the Agency Agreement in this Interim Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that such provisions of the Agency Agreement be, and hereby are, authorized and approved.

II. Authority to Engage in Sales and Conduct Store Closings.

11. The Debtors are authorized, on an interim basis pending the Final Hearing, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to continue to conduct the Sales at the Closing Stores in accordance with this Interim Order, the Sale Guidelines, and the Agency Agreement, as may be modified by any Side Letters (as defined below) between the Debtors or the Agent and the landlords at the Closing Stores.

12. The Sale Guidelines are approved in their entirety on an interim basis.

13. The Debtors are authorized to discontinue operations at the Closing Stores in accordance with this Interim Order and the Sale Guidelines.

14. All entities that are presently in possession of some or all of the Merchandise or FF&E in which the Debtors hold an interest that are or may be subject to the Agency Agreement or this Interim Order hereby are directed to surrender possession of such Merchandise or FF&E to the Debtors or the Agent.

15. Neither the Debtors nor the Agent nor any of their officers, employees, or agents shall be required to obtain the approval of any third party, including (without limitation) any Governmental Unit (as defined under section 101(27) of the Bankruptcy Code) or landlord, to conduct the Sales and Store Closings and to take the related actions authorized herein.

16. Notwithstanding anything to the contrary in the Agency Agreement, the Debtors shall consult with the DIP ABL Agent and the Prepetition ABL Agent prior to any agreement with the Agent regarding the expense budget or any modifications thereto and no modification of the Agent's fees and expenses (or the expense budget attached hereto) shall be approved without the consent of the DIP ABL Agent and the Prepetition ABL Agent.

III. Conduct of the Sales.

17. All newspapers and other advertising media in which the Sales and Store Closings may be advertised and all landlords are directed to accept this Interim Order as binding authority so as to authorize the Debtors and the Agent to conduct the Sales and Store Closings pursuant to the Agency Agreement, including, without limitation, to conduct and advertise the sale of the Merchandise and FF&E in the manner contemplated by and in accordance with this Interim Order, the Sale Guidelines, and the Agency Agreement.

18. The Debtors and Agent are hereby authorized to take such actions as may be necessary and appropriate to implement the Agency Agreement and to conduct the Sales and Store

Closings without necessity of further order of this Court as provided in the Agency Agreement and the Sale Guidelines (subject to any Side Letters, as defined below), including, but not limited to, advertising the sale as a “store closing sale”, “sale on everything”, “everything must go”, or similar-themed sales as contemplated in the Sale Guidelines through the posting of signs (including the use of exterior banners at non-enclosed mall closing locations, and at enclosed mall closing locations to the extent the applicable closing location entrance does not require entry into the enclosed mall common area), use of sign-walkers, A-frames, and other street signage, as contemplated in the Sale Guidelines.

19. Except as expressly provided in the Agency Agreement and the Sale Guidelines, the sale of the Merchandise and FF&E shall be conducted by the Debtors and the Agent notwithstanding any restrictive provision of any lease, sublease, restrictive covenant, or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Store Closings or the Sales (including the sale of the Merchandise and FF&E), the rejection of leases, abandonment of assets, or “going dark” provisions shall not be enforceable in conjunction with the Store Closings or the Sales. Breach of any such provisions in these Chapter 11 Cases in conjunction with the Store Closings or the Sales shall not constitute a default under a lease or provide a basis to terminate the lease; *provided* that the Store Closings and Sales are conducted in accordance with the terms of this Interim Order, any Side Letter (as defined below), and the Sale Guidelines. The Debtors, the Agent, and the landlords of the Closing Stores are authorized to enter into agreements (“Side Letters”) between themselves modifying the Sale Guidelines without further order of the Court, and such Side Letters shall be binding as among the Debtors, the Agent, and any such landlords, *provided* that nothing in such Side Letters affects the provisions of this

Interim Order. In the event of any conflict between the Sale Guidelines, the Agency Agreement, any Side Letter, and this Interim Order, the terms of such Side Letter shall control.

20. Except as expressly provided for herein or in the Sale Guidelines, no person or entity, including, but not limited to, any landlord, licensor, service providers, utilities, or creditors, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Sales or the sale of Merchandise or FF&E, or the advertising and promotion (including the posting of signs and exterior banners or the use of sign-walkers) of such sales, and all such parties and persons of every nature and description, including, but not limited to, any landlord, licensor, service providers, utilities, and creditors and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with, obstructing, or otherwise impeding, the conduct of the Store Closings, or (b) instituting any action or proceeding in any court (other than in the Bankruptcy Court) or administrative body seeking an order or judgment against, among others, the Debtors, the Agent, or the landlords at the closing locations that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sales or sale of the Merchandise or FF&E or other liquidation sales at the closing locations or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein.

21. In accordance with and subject to the terms and conditions of the Agency Agreement, the Agent shall have the right to use the Closing Stores and all related Closing Store services, furniture, fixtures, equipment, and other assets of the Debtors for the purpose of conducting the Sales, free of any interference from any entity or person, subject to compliance with the Sale Guidelines (as modified by any Side Letters) and this Interim Order.

22. All in-store sale of Store Closure Assets and the Additional Agent Goods, if any, shall be “as is” and final as of the Sale Commencement Date. Conspicuous signs stating that “all sales are final” and “as is” will be posted at the point-of-sale areas at all Closing Stores. As to the Closing Stores, all state and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms “as is” or “final sales.”

23. The Agent shall not be liable for sales taxes except as expressly provided in the Agency Agreement and the payment of any and all sales taxes is the responsibility of the Debtors. The Debtors are directed to remit all taxes arising from the Sales to the applicable Governmental Units as and when due, *provided* that in the case of a *bona fide* dispute the Debtors are only directed to pay such taxes upon the resolution of such dispute, if and to the extent that the dispute is decided in favor of the applicable Governmental Unit. For the avoidance of doubt, sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other party, other than the applicable Governmental Unit for which the sales taxes are collected. The Agent shall collect, remit to the Debtors, and account for sales taxes as and to the extent provided in the Agency Agreement. This Interim Order does not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under state, provincial or federal law, and does not constitute a declaratory judgment with respect to any party’s liability for taxes under state, provincial or federal law.

24. Pursuant to section 363(f) of the Bankruptcy Code, the Agent, on behalf of the Debtors, is authorized to sell the Store Closure Assets and all sales of Store Closure Assets, whether by the Agent or the Debtors, shall be free and clear of any and all liens, claims, encumbrances, and other interests; *provided, however*, that any such liens, claims, encumbrances, and other interests shall attach to the proceeds of the sale of the Store Closure Assets with the same

validity, in the amount, with the same priority as, and to the same extent that any such liens, claims, and encumbrances have with respect to the Store Closure Assets, subject to any claims and defenses that the Debtors may possess with respect thereto and the Agent's fees and expenses (as provided in the Agency Agreement).

25. The Debtors or the Agent (as the case may be) are authorized and empowered to transfer Store Closure Assets among, and into, the Closing Stores in accordance with the Sale Guidelines, as applicable. The Agent is authorized to sell the Debtors' FF&E and abandon the same, in each case, as provided for and in accordance with the terms of the Agency Agreement and the Sale Guidelines.

26. The Agent is authorized to supplement the Merchandise in the Sales with Additional Agent Goods; *provided*, that the Debtors may reasonably object to the inclusion of Additional Agent Goods that are not of like kind and are of lesser quality to the Merchandise in the Sale at the Closing Stores or through the e-commerce platform, in which case the Debtors and the Agent shall work in good faith to resolve such objection, which resolution may require the exclusion of such Additional Agent Goods subject to the objection; *provided, further*, that the cost of Additional Agent Goods shall not exceed fifteen percent (15%) of the aggregate Cost Value (as defined in the Agency Agreement) of the Merchandise in the Sale. The Additional Agent Goods shall be purchased by the Agent as part of the Sales and delivered to the Closing Stores at the Agent's sole expense (including as to labor, freight, and insurance relative to shipping such Additional Agent Goods to the Closing Stores). Sales of Additional Agent Goods shall be run through the Debtors' cash register systems; *provided, however*, that the Agent shall mark the Additional Agent Goods using either a "dummy" SKU or department number, or in such other manner so as to distinguish the sale of Additional Agent Goods from the sale of Merchandise. The

Agent and Debtors shall cooperate to ensure that the Additional Agent Goods are marked in such a way that a reasonable consumer could identify the Additional Agent Goods from the Merchandise. The Agent shall provide signage in the Stores notifying customers that the Additional Agent Goods have been included in the Sale.

27. The Agent shall pay the Debtors an amount equal to five percent (5%) of the gross proceeds (excluding Sales taxes) from the Sale of the Additional Agent Goods (the “Additional Agent Goods Fee”). The Agent shall retain all remaining amounts from the sale of the Additional Agent Goods. The Agent shall pay the Debtors the Additional Agent Goods Fee in connection with each weekly reconciliation with respect to the sales of Additional Agent Goods sold by the Agent during each then prior week (or at such other mutually agreed upon time).

28. All transactions relating to the Additional Agent Goods are, shall be construed as, and are acknowledged by the Debtors to be, a true consignment from the Agent to the Debtors under Article 9 of the Uniform Commercial Code (the “UCC”) and not a consignment for security purposes. Subject solely to Agent’s obligations to pay to the Debtors the Additional Agent Goods Fee, at all times and for all purposes the Additional Agent Goods and their proceeds shall be the exclusive property of the Agent, and no other person or entity (including, without limitation, the Debtors, or any third person claiming a security interest in the Debtors’ property, including any of the Debtors’ secured lenders) shall have any claim against any of the Additional Agent Goods or the proceeds thereof. The Additional Agent Goods shall at all times remain subject to the exclusive control of the Agent. The Debtors shall, at Agent’s sole cost and expense, insure the Additional Agent Goods and, if required, promptly file any proofs of loss with regard thereto. The Agent shall be responsible for payment of any deductible under any such insurance in the event of any casualty affecting the Additional Agent Goods.

29. The Agent is hereby granted a first-priority security interest in and lien upon (a) the Additional Agent Goods and (b) the Additional Agent Goods proceeds, which security interest shall be deemed perfected without the requirement of filing UCC financing statements or providing notifications to any prior secured parties (provided that the Agent is hereby authorized to deliver all required notices and file all necessary financing statements and amendments thereof under the applicable UCC identifying the Agent's interest in the Additional Agent Goods as consigned goods thereunder and the Debtors as the consignee therefor, and the Agent's security interest in and lien upon such Additional Agent Goods and the Additional Agent Goods proceeds).

30. Neither the Sale Guidelines, Agency Agreement, nor this Interim Order authorize the Debtors to transfer or sell to Agent or any other party the personal identifying information (which means information that alone or in conjunction with other information identifies an individual, including but not limited to an individual's first name (or initial) and last name, physical address, electronic address, telephone number, social security number, date of birth, government-issued identification number, account number and credit or debit card number) ("PII") of any customers unless such sale or transfer is permitted by the Debtors' privacy policy and state, provincial or federal privacy and/or identity theft prevention laws and rules (collectively, the "Applicable Privacy Laws"). The foregoing shall not limit the Agent's use of the Debtors' customer lists and mailing lists in accordance with the Agency Agreement solely for purposes of advertising and promoting the Sales.

31. The Debtors shall remove or cause to be removed any confidential and/or PII in any of the Debtors hardware, software, computers or cash registers or similar equipment which are to be sold or abandoned so as to render the PII unreadable or undecipherable. At the conclusion of the Sales, the Agent shall provide the Debtors with written verification that the Agent has not

removed, copied, or transferred any customer PII and that any records containing PII were shredded, erased, or otherwise modified to render the PII unreadable or undecipherable.

32. Nothing herein shall limit the Debtors' right to pause or discontinue a Sale at a Closing Store on notice to affected parties, including counsel to the DIP ABL Agent and the Prepetition ABL Agent.

33. Nothing herein is intended to affect any rights of any applicable government unit to enforce any law affecting the Debtors' conduct of any store closing sale that occurred before the Petition Date.

IV. Procedures Relating to Additional Closing Stores.

34. To the extent that the Debtors seek to conduct Sales at any Additional Closing Store, the Sale Guidelines and this Interim Order shall apply to the Additional Closing Stores.

35. Prior to conducting the Sales at any Additional Closing Store, the Debtors will file a list including such Additional Closing Store with this Court (each, an "Additional Closing Store List"), and serve a notice of their intent to conduct the Sales at the Additional Closing Store on the applicable landlords (collectively, the "Additional Closing Store Landlords") and other interested parties by email (to the extent available to the Debtors) or overnight mail. With respect to Additional Closing Store Landlords, the Debtors will mail, if applicable, such notice to the notice address set forth in the lease for such Additional Closing Store (or, if none, at the last known address available to the Debtors).

36. The Additional Closing Store Landlords and any interested parties shall have seven (7) days after service of the applicable Additional Closing Store List to object to the application of this Interim Order. If no timely objections are filed with respect to the application of this Interim Order to an Additional Closing Store, the Debtors are authorized, pursuant to sections 105(a), and 363(b) and (f) of the Bankruptcy Code, to proceed with conducting the Sales

at the Additional Closing Stores in accordance with this Interim Order, the Sale Guidelines, and the Agency Agreement. If any objections are filed with respect to the application of this Interim Order, to an Additional Closing Store, and such objections are not resolved, the objections and the application of this Interim Order or the Final Order to the Additional Closing Store will be considered by the Court at the next regularly scheduled omnibus hearing, subject to the rights of any party to seek relief on an emergency basis on shortened notice, to the extent necessary. Any objections as to particular Additional Closing Stores will not affect the Debtors' and Agent's rights to begin Sales at non-objected Additional Closing Stores.

V. Dispute Resolution Procedures with Governmental Units.

37. Nothing in this Interim Order, the Agency Agreement, the Sale Guidelines, or any Side Letter releases, nullifies, or enjoins the enforcement of any liability to a Governmental Unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or operator of the property after the date of entry of this Interim Order. Nothing contained in this Interim Order, the Agency Agreement, the Sale Guidelines, or any Side Letter shall in any way: (a) diminish the obligation of any entity to comply with environmental laws; or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The Store Closings and the Sales shall not be exempt from laws of general applicability, including, without limitation, public health and Safety, criminal, tax, (including, but not limited to, the collection of Sales Taxes), labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including consumer laws regulating deceptive practices and false advertising, consumer protection, the sale of gift certificates, layaway programs, return of goods, express or implied warranties of goods, and "weights and measures" regulation and monitoring

(collectively, “General Laws”). Nothing in this Interim Order, the Agency Agreement, the Sale Guidelines, or any Side Letter shall alter or affect obligations to comply with all applicable federal Safety Laws and regulations. Nothing in this Interim Order shall be deemed to bar any Governmental Unit (as such term is defined in section 101(47) of the Bankruptcy Code) from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors’ rights to assert in that forum or before this Court, that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code or this Interim Order. Notwithstanding any other provision in this Interim Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Interim Order and/or any applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Interim Order shall be deemed to have made any rulings on any such issues.

38. To the extent that the sale of Store Closure Assets is subject to any Liquidation Sale Laws, including any federal, state or local statute, ordinance, rule, or licensing requirement directed at regulating “going out of business,” “store closing,” or similar inventory liquidation sales, or bulk sale laws, laws restricting safe, professional and non-deceptive, customary advertising such as signs, banners, signage, and use of sign-walkers solely in connection with the sale of the Store Closure Assets, including ordinances establishing license or permit requirements, waiting periods, time limits or bulk sale restrictions that would otherwise apply solely to the sale of the Store Closure Assets, the dispute resolution procedures in this section shall apply and the Dispute Resolution Procedures shall control over any Side Letters:

- (i) Provided that the Sales are conducted in accordance with this Interim Order, any Final Order, and the Sale Guidelines, the Debtors, the Agent, and the Debtors’ landlords, shall be deemed to be in compliance with any requirements of all county, parish, or municipal or other local government (hereinafter referred to as “Local”) and State requirements governing the conduct of the Sales of the Store Closure Assets, including but not limited to Local statutes,

regulation and ordinances establishing licensing or permitting requirements, waiting periods or time limits, or bulk sale restrictions that would otherwise apply to the Sales and sales of the Store Closure Assets (collectively, the “Liquidation Sale Laws”) of any state or Local Governmental Unit (as defined in Bankruptcy Code section 101(27)); provided, that the term “Liquidation Sale Laws” shall be deemed not to include any public health or safety laws of any state (collectively, “Safety Laws”), and the Debtors and the Agent shall continue to be required to comply, as applicable, with such Safety Laws and General Laws, subject to any applicable provision of the Bankruptcy Code and federal law, and nothing in this Order shall be deemed to bar Governmental Units (as defined in section 101(27) of the Bankruptcy Code) or public officials from enforcing Safety Laws or General Laws.

- (ii) Within five (5) business days after entry of this Interim Order, the Debtors will serve by first-class mail, copies of this Interim Order, the proposed Final Order, the Agency Agreement, and the Sale Guidelines on the following: (a) the Attorney General’s office for each state where the Sales are being held; (b) the county consumer protection agency or similar agency for each county where the Sales are being held; (c) the division of consumer protection for each state where the Sales are being held; and (d) the landlords for the Closing Stores (collectively, the “Dispute Notice Parties”).
- (iii) With respect to any Additional Closing Stores, within five (5) business days after filing any Additional Closing Store List with the Court, the Debtors will serve by first-class mail, copies of the Interim Order, or the Final Order, as applicable, the Agency Agreement, and the Sale Guidelines on the Dispute Notice Parties.
- (iv) To the extent that there is a dispute arising from or relating to the Sales, this Interim Order, the Agency Agreement, or the Sale Guidelines, which dispute relates to any Liquidation Sale Laws (a “Reserved Dispute”), the Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Within ten (10) days following entry of this Interim Order, any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the “Dispute Notice”) explaining the nature of the dispute to: (a) Skadden, Arps, Slate, Meagher & Flom LLP, 920 North King Street, Wilmington, Delaware 19801, Attn.: Joseph O. Larkin (Joseph.Larkin@skadden.com) and Jason M. Liberi (Jason.Liberi@skadden.com), One Manhattan West, New York, New York 10001, Attn.: Lisa Laukitis (Lisa.Laukitis@skadden.com), Elizabeth Downing (Elizabeth.Downing@skadden.com), and Chambliss Williams (Chambliss.Williams@skadden.com); (b) counsel to Hilco Merchant Resources, LLC, Chipman Brown Cicero & Cole, LLP, Attn: Mark L. Desgrosseilliers (desgross@chipmanbrown.com); (c) counsel to the DIP ABL Agent and the Prepetition ABL Agent, (i) Morgan Lewis & Bockius LLP, One Federal Street, Boston, MA 02110, Attn: Christopher L. Carter (christopher.carter@morganlewis.com), and (ii) Reed Smith LLP, 1201 Market Street, Suite 1500, Wilmington, DE 19801, Attn: Kurt F. Gwynne

(KGwynne@ReedSmith.com); and (d) the affected landlord. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within fifteen (15) days after service of the notice, the Governmental Unit may file a motion with the Court requesting that the Bankruptcy Court resolve the Reserved Dispute (a “Dispute Resolution Motion”).

- (v) In the event that a Dispute Resolution Motion is filed, nothing in this Interim Order or the Final Order, as applicable, shall preclude the Debtors, a landlord, or any other interested party from asserting (A) that the provisions of any Liquidation Sale Laws are preempted by the Bankruptcy Code, or (B) that neither the terms of this Interim Order or the Final Order nor the conduct of the Debtors pursuant to this Interim Order or the Final Order, violates such Liquidation Sale Laws. Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of this Interim Order or the Final Order or to limit or interfere with the Debtors’ or the Agent’s ability to conduct or to continue to conduct the Sales pursuant to this Interim Order or the Final Order, as applicable, absent further order of the Court. Upon the entry of this Interim Order or the Final Order, the Court grants authority for the Debtors and the Agent to conduct the Sales pursuant to the terms of this Interim Order or the Final Order, the Agency Agreement, and the Sale Guidelines (as may be modified by Side Letters) and to take all actions reasonably related thereto or arising in connection therewith. The Governmental Unit will be entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Sale Laws or the lack of any preemption of such Liquidation Sale Laws by the Bankruptcy Code. Nothing in this Interim Order or the Final Order will constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.
- (vi) If, at any time, a dispute arises between the Debtors and/or the Agent and a Governmental Unit as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in this Interim Order or the Final Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions of subparagraphs (iv) and (v) above by serving a notice to the other party and proceeding thereunder in accordance with those paragraphs. Any determination with respect to whether a particular law is a Liquidation Sale Law shall be made *de novo*.

39. Subject to paragraphs 377 and 388 above, each and every federal, state, or Local agency, departmental, or Governmental Unit with regulatory authority over the Sales and all newspapers and other advertising media in which the Sales are advertised shall consider this Interim Order as binding authority that no further approval, license, or permit of any Governmental

Unit shall be required, nor shall the Debtors or the Agent be required to post any bond, to conduct the Sales.

40. Provided that the Sales are conducted in accordance with the terms of this Interim Order, the Agency Agreement, and the Sale Guidelines (as may be modified by Side Letters) and in light of the provisions in the laws that exempt court-ordered sales from their provisions, the Debtors and Agent shall be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of this Interim Order and the Sale Guidelines (as may be modified by Side Letters) without the necessity of further showing compliance with any such Liquidation Sale Laws.

41. Nothing in this Interim Order, the Agency Agreement, the Sale Guidelines, or any Side Letter releases, nullifies, or enjoins the enforcement of any liability to a Governmental Unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or operator of the property after the date of entry of this Interim Order. Nothing contained in this Interim Order, the Agency Agreement, the Sale Guidelines, or any Side Letter shall in any way: (a) diminish the obligation of any entity to comply with environmental laws; or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code.

42. Notwithstanding anything to the contrary herein, in view of the importance of the use of sign-walkers, banners, and other advertising to the Sales and the Store Closings, to the extent that disputes arise during the course of the Sales regarding laws regulating the use of sign-walkers, banners, or other advertising and the Debtors and the Agent are unable to resolve the matter consensually, any party may request an immediate telephonic hearing with this Court. Such

hearing will, to the extent practicable and subject to the Court's availability, be scheduled initially no later than the earlier of (a) the Final Hearing or (b) within three (3) business days of such request. This scheduling procedure shall not be deemed to preclude additional hearings for the presentation of evidence or arguments as necessary.

VI. Closing Store Procedures and Policies.

43. *Customer Deposits.* The Debtors are authorized to continue to honor open, pre-Sale customer deposits insofar as merchandise requested to fulfill these orders is available in the applicable Closing Store. The Debtors may honor refund requests for prepetition deposits up to the priority cap of \$3,350.

44. *Returns and Implied Warranties..* The Debtors are authorized to accept returns of Merchandise sold by the Debtors in the ordinary course prior to the commencement of any Sale; *provided*, that such return is otherwise in compliance with the Debtors' return policies in effect as of the date such item was purchased. The Debtors, in their discretion may, refuse to accept returns of pre-Sale purchases where the customer seeks to make a return and repurchase the same item so as to take advantage of the sale price being offered in the Store Closings; *provided, further*, that returns of items sold on a final, "as is" basis, including items sold in the Closing Stores on a "final" basis pursuant to this Interim Order, shall not be accepted. The Debtors shall comply with all state and federal laws relating to implied warranties for latent defects, which laws are not superseded by the sale of said goods or the use of the terms "as is" or "final sales," as set forth in the Proposed Orders.

45. Notwithstanding anything herein, all state and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms "as is" or "final sales." The Debtors shall accept return of any goods purchased during the Store Closings that contain a defect which the lay consumer could not

reasonably determine was defective by visual inspection prior to purchase for a full refund; *provided*, that the consumer must return the merchandise within the applicable time period for their purchase, the consumer must provide a receipt for the purchase to the Debtors, and the asserted defect must in fact be a “latent” defect, which goods shall not be resold by the Debtors.

46. *Gift Cards and Gift Certificates.* All sales of Merchandise shall be made by cash, gift card, gift certificate, voucher (subject to paragraph 47 below), merchandise credit, debit card, credit card or as otherwise set forth in the Agency Agreement and, at Debtor’s discretion, by check or otherwise in accordance with the Debtors’ policies.

47. For the first twenty one (21) days following the mailing of customer notices notifying all of the Debtors’ customers of altered gift card and gift certificate policies, the Debtors shall continue to accept the Debtors’ validly-issued gift certificates, gift cards, and vouchers in their e-commerce business or in-store in the ordinary course of business. After the expiration of the twenty one days to utilize gift certificates and gift cards on the e-commerce platform (if applicable) or in-store, all such validly-issued gift certificates, gift cards, and loyalty certificates will no longer be accepted by the Debtors and deemed to have no remaining value. This policy change is consistent with the change set forth and described in the Customer Programs Motion.

48. *Employee Discounts.* The Debtors’ are authorized to continue to honor their current employee discount program for Closing Stores’ employees subject to certain modifications, including capping the applicable discount and the applicable Closing Stores’ prevailing discount rate.

VII. Other Provisions.

49. To the extent the Debtors are subject to any state Fast Pay Laws in connection with the Store Closings, the Debtors shall be presumed to be in compliance with such laws to the extent, in applicable states, such payroll payments are made by the later of: (i) the Debtors’ next regularly

scheduled payroll; and (ii) seven (7) calendar days following the termination date of the relevant employee, and in all such cases consistent with, and subject to, any previous orders of this Court regarding payment of same.

50. On an interim basis and pending entry of the Final Order, the Debtors shall have the authority, but not the obligation, to make payments under the Store Closing Bonus Plan, as may be amended from time to time.

51. Neither the Agent nor any of its respective affiliates (whether individually, as part of a joint venture, or otherwise), shall be precluded from providing additional services to the Debtors or bidding on the Debtors' assets in connection with any other future process that may or may not be undertaken by the Debtors to close stores.

52. Not later than seven (7) days prior to the objection deadline related to entry of an order approving the Motion on a final basis, the Agent shall file a declaration disclosing connections to the Debtors, their creditors, and other parties in interest in these Chapter 11 Cases, and all parties who have filed requests for service under Bankruptcy Rule 2002, by email, or if the email address is not available to the Debtors, then by first class mail.

53. Agent shall act solely as Agent to the Debtors and shall not be liable for any claims against the Debtors other than as expressly provided in the Agency Agreement (including the Agent's indemnity obligations thereunder) or the Sale Guidelines, with the exception of acts of gross negligence or willful misconduct and, for greater certainty, the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labor standards or pension benefits or health and Safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successor liability whatsoever.

54. The Debtors are authorized and permitted to transfer to the Agent personal information in the Debtors' custody and control solely for the purposes of assisting with and conducting the Sales and only to the extent necessary for such purposes, *provided* that Agent removes such personal information from the FF&E prior to the abandonment of the same.

55. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to any interim and final orders, as applicable, approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreements, and any budgets in connection therewith governing any such postpetition financing and/or use of cash collateral (each such order, a "DIP Order"); provided, however, that, without limiting the terms of such DIP Order, all amounts due to the Agent under the Agency Agreement shall not be reduced or capped by the terms or conditions of any DIP Order.

56. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (i) an admission as to the validity of any particular claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (iii) a promise or requirement to pay any particular claim; (iv) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (v) a request or authorization to assume any agreement, contract, or lease, pursuant to section 365 of the Bankruptcy Code; (vi) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (vii) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid, and the rights of all parties are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. Any

payment made pursuant to this Interim Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim, other than with respect to payments made to the Agent, which are governed by the reconciliation procedures in the Agency Agreement.

57. No payment may be made by the Debtors to, or for the benefit of, any non-Debtor Insider (as defined in section 101 of the Bankruptcy Code) or any non-Debtor affiliate of or related party to any such Insider pursuant to this Interim Order without further court approval on notice to parties in interest.

58. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

59. Nothing contained in the Motion or this Interim Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Interim Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of, or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Interim Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease

pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

60. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with the relief granted herein.

61. The Debtors have demonstrated that the requested relief is "necessary to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003.

62. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

63. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

64. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

65. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

66. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

67. This Court shall retain jurisdiction with regard to all issues or disputes relating to this Interim Order or the Agency Agreement, including, but not limited to, (a) any claim or issue

relating to any efforts by any party or person to prohibit, restrict or in any way limit banner and sign-walker advertising, including with respect to any allegations that such advertising is not being conducted in a safe, professional, and non-deceptive manner, (b) any claim of the Debtors, the landlords and/or the Agent for protection from interference with the Store Closings or Sales, (c) any other disputes related to the Store Closings or Sales, and (d) protect the Debtors and/or the Agent against any assertions of any liens, claims, encumbrances, and other interests. No such parties or person shall take any action against the Debtors, the Agent, the landlords, the Store Closings, or the Sales until this Court has resolved such dispute. This Court shall hear the request of such parties or persons with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

EXHIBIT B

Proposed Final Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

LL FLOORING HOLDINGS, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11680 (___)

(Joint Administration Pending)

**FINAL ORDER (I) AUTHORIZING
THE DEBTORS TO ASSUME THE AGENCY
AGREEMENT; (II) AUTHORIZING AND APPROVING
THE CONDUCT OF STORE CLOSING SALES, WITH SUCH
SALES TO BE FREE AND CLEAR OF ALL LIENS, CLAIMS, AND
ENCUMBRANCES; (III) AUTHORIZING CUSTOMARY BONUSES TO
EMPLOYEES OF CLOSING STORES; AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the Debtors for an Interim Order and a final order (this “Final Order”) (i) authorizing, but not directing, the Debtors to assume that certain letter agreement dated as of August 8, 2024, a copy of which is attached as **Exhibit 1** to this Final Order (the “Agency Agreement”), made by and between the Debtors and Hilco Merchant Resources, LLC (the “Agent”), (ii) authorizing and approving the continuation of 94 store closings or similar themed sales at the stores listed on the Agency Agreement (collectively, the “Initial Closing Stores”), (iii) authorizing the Debtors to conduct store closings at additional stores or through the Debtors’ e-commerce platform, if any are designated by the Debtors, and which, for the avoidance of doubt, may include any or all other stores as may be designated by the Debtors at a later date or dates pursuant to the procedures set forth herein and in the Agency Agreement (collectively, the

¹ The Debtors in these Chapter 11 Cases, along with the last four (4) digits of their respective tax identification numbers, are as follows: LL Flooring Holdings, Inc. (0817); LL Flooring, Inc. (9199); Lumber Liquidators Leasing, LLC (N/A); LL Flooring Services, LLC (5960); and Lumber Liquidators Foreign Holdings, LLC (4568). The address of the Debtors’ corporate headquarters is 4901 Bakers Mill Lane, Richmond, VA 23230.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

“Additional Closing Stores,” if any, and, together with the Initial Closing Stores, the “Closing Stores”), with such sales to be free and clear of all liens, claims, and encumbrances (the “Sales” or “Store Closings”), in accordance with the terms of the store closing sale guidelines in the United States (the “Sale Guidelines”), attached as **Exhibit 2** to this Final Order, (iv) authorizing the Debtors to provide customary bonuses to non-insider Closing Store employees who remain employed for the duration of the store closing process (the “Store Closing Bonuses”); and (v) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice is necessary; and this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion on an interim basis and final basis (the “Hearings”); and upon the First Day Declaration and the record of the Hearings, and the Interim Order entered on [], 2024; and all objections to the relief requested in the Motion on a final basis, if any, having been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and upon all of the proceedings had before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. The Debtors have advanced sound business reasons for assuming the Agency Agreement and adopting the Sale Guidelines, on a final basis, as set forth in the Motion and at the Hearing, and assuming the Agency Agreement is a reasonable exercise of the Debtors' business judgement and in the best interest of the Debtors and their estates.

B. The Agency Agreement, a copy of which is attached to this Final Order as **Exhibit 1**, was negotiated, proposed, and entered into by the Agent and the Debtors without collusion, in good faith and from arm's length bargaining positions.

C. The assumption of the Agency Agreement is a sound exercise of the Debtors' business judgment.

D. The Sale Guidelines, which are attached hereto as **Exhibit 2**, are reasonable and appropriate, and the conduct of the Sales in accordance with the Sale Guidelines will provide an efficient means for the Debtors to dispose of the Store Closure Assets, and are in the best interest of the Debtors' estates.

E. The Store Closings and Sales are in the best interest of the Debtors' estates.

F. The Dispute Resolution Procedures are fair and reasonable and comply with applicable law.

G. The Debtors have represented that they intend to neither sell nor lease personally identifiable information pursuant to the relief requested in the Motion, although the Agent will be authorized to distribute emails and promotional materials to the Debtors' customers consistent with the Debtors' existing policies on the use of consumer information.

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact where appropriate. See Fed. R. Bankr. P. 7052.

H. The Store Closing Bonus Plan is justified by the facts and circumstances of these Chapter 11 Cases, is a sound exercise of the Debtors' business judgment, and is necessary to maximize value to the Debtors' estates.

I. The entry of this Final Order is in the best interests of the Debtors and their estates, creditors, and interest holders and all other parties in interest herein; and now therefore

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized and empowered to take any and all further actions as may be reasonably necessary or appropriate to give effect to this Final Order.
3. The Debtors are authorized, but not directed, to make payments under the Store Closing Bonus Plan, as may be amended and modified from time to time.
4. To the extent any conflict between this Final Order, the Sale Guidelines, and the Agency Agreement, the terms of this Final Order shall control over all other documents and the Sale Guidelines shall control over the Agency Agreement.

I. Authority to Assume the Agency Agreement.

5. The Debtors are authorized to assume and perform under the Agency Agreement pursuant to sections 363 and 365 of the Bankruptcy Code, including: (a) making payments required by the Agency Agreement to the Agent without the need for any application of the Agent or a further order of the Court, (b) allowing the sale of Additional Agent Goods, and (c) participating in an augmentation program, all as permitted under the Agency Agreement. Agent's fees and expenses shall be paid from the gross proceeds of the Sale subject to the terms of the Agency Agreement itself, including as to any expense budget attached thereto.

6. Subject to the restrictions set forth in this Final Order, the Sale Guidelines, and any Side Letters (as defined below), the Debtors and the Agent are hereby authorized to take any and

all actions as may be necessary or desirable to implement the Agency Agreement and the Sales, and each of the transactions contemplated by the Agency Agreement, and any actions taken by the Debtors and the Agent necessary or desirable to implement the Agency Agreement and/or the Sales prior to the date of this Final Order, are hereby approved and ratified.

7. The Agency Agreement and related documents may be modified, amended, or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court. The Debtors are hereby authorized to enter into additional agreements in connection with any Closing Stores, or Sales related thereto, on terms materially consistent with the Debtors' historic practices.

8. Notwithstanding anything to the contrary in the Agency Agreement, the Debtors and their estates shall not indemnify the Agent for any damages arising out of the Agent's fraud, willful misconduct, or gross negligence.

9. To the extent the Agent seeks to contract with Additional Agents, the Agent is authorized to enter into an agreement with Additional Agents.

10. The failure to include any provisions of the Agency Agreement in this Final Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that such provisions of the Agency Agreement be, and hereby are, authorized and approved.

II. Authority to Engage in Sales and Conduct Store Closings.

11. The Debtors are authorized, on a final basis, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to continue to conduct the Sales at the Closing Stores in accordance with this Final Order, the Sale Guidelines, and the Agency Agreement, as may be modified by any Side Letters (as defined below) between the Debtors or the Agent and the landlords at the Closing Stores.

12. The Sale Guidelines are approved in their entirety on a final basis.

13. The Debtors are authorized to discontinue operations at the Closing Stores in accordance with this Final Order and the Sale Guidelines.

14. All entities that are presently in possession of some or all of the Merchandise or FF&E in which the Debtors hold an interest that are or may be subject to the Agency Agreement or this Final Order hereby are directed to surrender possession of such Merchandise or FF&E to the Debtors or the Agent.

15. Neither the Debtors nor the Agent nor any of their officers, employees, or agents shall be required to obtain the approval of any third party, including (without limitation) any Governmental Unit (as defined under section 101(27) of the Bankruptcy Code) or landlord, to conduct the Sales and Store Closings and to take the related actions authorized herein.

16. Notwithstanding anything to the contrary in the Agency Agreement, the Debtors shall consult with the DIP ABL Agent and the Prepetition ABL Agent prior to any agreement with the Agent regarding the expense budget or any modifications thereto, as contemplated in the Agency Agreement, and no modification of the Agent's fees and expenses (or the expense budget attached hereto) shall be approved without the consent of the DIP ABL Agent and the Prepetition ABL Agent.

III. Conduct of the Sales.

17. All newspapers and other advertising media in which the Sales and Store Closings may be advertised and all landlords are directed to accept this Final Order as binding authority so as to authorize the Debtors and the Agent to conduct the Sales and Store Closings pursuant to the Agency Agreement, including, without limitation, to conduct and advertise the sale of the Merchandise and FF&E in the manner contemplated by and in accordance with this Final Order, the Sale Guidelines, and the Agency Agreement.

18. The Debtors and Agent are hereby authorized to take such actions as may be necessary and appropriate to implement the Agency Agreement and to conduct the Sales and Store Closings without necessity of further order of this Court as provided in the Agency Agreement and the Sale Guidelines (subject to any Side Letters, as defined below), including, but not limited to, advertising the sale as a “store closing sale”, “sale on everything”, “everything must go”, or similar-themed sales as contemplated in the Sale Guidelines through the posting of signs (including the use of exterior banners at non-enclosed mall closing locations, and at enclosed mall closing locations to the extent the applicable closing location entrance does not require entry into the enclosed mall common area), use of sign-walkers, A-frames, and other street signage, as contemplated in the Sale Guidelines.

19. Except as expressly provided in the Agency Agreement and the Sale Guidelines, the sale of the Merchandise and FF&E shall be conducted by the Debtors and the Agent notwithstanding any restrictive provision of any lease, sublease, restrictive covenant, or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Store Closings or the Sales (including the sale of the Merchandise and FF&E), the rejection of leases, abandonment of assets, or “going dark” provisions shall not be enforceable in conjunction with the Store Closings or the Sales. Breach of any such provisions in these Chapter 11 Cases in conjunction with the Store Closings or the Sales shall not constitute a default under a lease or provide a basis to terminate the lease; *provided* that the Store Closings and Sales are conducted in accordance with the terms of this Final Order, any Side Letter (as defined below), and the Sale Guidelines. The Debtors, the Agent, and the landlords of the Closing Stores are authorized to enter into agreements (“Side Letters”) between themselves modifying the Sale Guidelines without further order of the Court, and such Side Letters shall be binding as among the Debtors, the Agent,

and any such landlords, *provided* that nothing in such Side Letters affects the provisions of this Final Order. In the event of any conflict between the Sale Guidelines, the Agency Agreement, any Side Letter, and this Final Order, the terms of such Side Letter shall control.

20. Except as expressly provided for herein or in the Sale Guidelines, no person or entity, including, but not limited to, any landlord, licensor, service providers, utilities, or creditors, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Sales or the sale of Merchandise or FF&E, or the advertising and promotion (including the posting of signs and exterior banners or the use of sign-walkers) of such sales, and all such parties and persons of every nature and description, including, but not limited to, any landlord, licensor, service providers, utilities, and creditors and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with, obstructing, or otherwise impeding, the conduct of the Store Closings, or (b) instituting any action or proceeding in any court (other than in the Bankruptcy Court) or administrative body seeking an order or judgment against, among others, the Debtors, the Agent, or the landlords at the closing locations that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sales or sale of the Merchandise or FF&E or other liquidation sales at the closing locations or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein.

21. In accordance with and subject to the terms and conditions of the Agency Agreement, the Agent shall have the right to use the Closing Stores and all related Closing Store services, furniture, fixtures, equipment, and other assets of the Debtors for the purpose of conducting the Sales, free of any interference from any entity or person, subject to compliance with the Sale Guidelines (as modified by any Side Letters) and this Final Order.

22. All in-store sale of Store Closure Assets and the Additional Agent Goods, if any, shall be “as is” and final as of the Sale Commencement Date. Conspicuous signs stating that “all sales are final” and “as is” will be posted at the point-of-sale areas at all Closing Stores. As to the Closing Stores, all state and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms “as is” or “final sales.”

23. The Agent shall not be liable for sales taxes except as expressly provided in the Agency Agreement and the payment of any and all sales taxes is the responsibility of the Debtors. The Debtors are directed to remit all taxes arising from the Sales to the applicable Governmental Units as and when due, *provided* that in the case of a *bona fide* dispute the Debtors are only directed to pay such taxes upon the resolution of such dispute, if and to the extent that the dispute is decided in favor of the applicable Governmental Unit. For the avoidance of doubt, sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other party, other than the applicable Governmental Unit for which the sales taxes are collected. The Agent shall collect, remit to the Debtors, and account for sales taxes as and to the extent provided in the Agency Agreement. This Final Order does not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under state, provincial or federal law, and does not constitute a declaratory judgment with respect to any party’s liability for taxes under state, provincial or federal law.

24. Pursuant to section 363(f) of the Bankruptcy Code, the Agent, on behalf of the Debtors, is authorized to sell the Store Closure Assets and all sales of Store Closure Assets, whether by the Agent or the Debtors, shall be free and clear of any and all liens, claims, encumbrances, and other interests; *provided, however*, that any such liens, claims, encumbrances, and other interests shall attach to the proceeds of the sale of the Store Closure Assets with the same

validity, in the amount, with the same priority as, and to the same extent that any such liens, claims, and encumbrances have with respect to the Store Closure Assets, subject to any claims and defenses that the Debtors may possess with respect thereto and the Agent's fees and expenses (as provided in the Agency Agreement).

25. The Debtors or the Agent (as the case may be) are authorized and empowered to transfer Store Closure Assets among, and into, the Closing Stores in accordance with the Sale Guidelines, as applicable. The Agent is authorized to sell the Debtors' FF&E and abandon the same, in each case, as provided for and in accordance with the terms of the Agency Agreement and the Sale Guidelines.

26. The Agent is authorized to supplement the Merchandise in the Sales with Additional Agent Goods; *provided*, that the Debtors may reasonably object to the inclusion of Additional Agent Goods that are not of like kind and are of lesser quality to the Merchandise in the Sale at the Closing Stores or through the e-commerce platform, in which case the Debtors and the Agent shall work in good faith to resolve such objection, which resolution may require the exclusion of such Additional Agent Goods subject to the objection; *provided, further*, that the cost of Additional Agent Goods shall not exceed fifteen percent (15%) of the aggregate Cost Value (as defined in the Agency Agreement) of the Merchandise in the Sale. The Additional Agent Goods shall be purchased by the Agent as part of the Sales and delivered to the Closing Stores at the Agent's sole expense (including as to labor, freight, and insurance relative to shipping such Additional Agent Goods to the Closing Stores). Sales of Additional Agent Goods shall be run through the Debtors' cash register systems; *provided, however*, that the Agent shall mark the Additional Agent Goods using either a "dummy" SKU or department number, or in such other manner so as to distinguish the sale of Additional Agent Goods from the sale of Merchandise. The

Agent and Debtors shall cooperate to ensure that the Additional Agent Goods are marked in such a way that a reasonable consumer could identify the Additional Agent Goods from the Merchandise. The Agent shall provide signage in the Stores notifying customers that the Additional Agent Goods have been included in the Sale.

27. The Agent shall pay the Debtors an amount equal to five percent (5%) of the gross proceeds (excluding Sales taxes) from the Sale of the Additional Agent Goods (the “Additional Agent Goods Fee”). The Agent shall retain all remaining amounts from the sale of the Additional Agent Goods. The Agent shall pay the Debtors the Additional Agent Goods Fee in connection with each weekly reconciliation with respect to the sales of Additional Agent Goods sold by the Agent during each then prior week (or at such other mutually agreed upon time).

28. All transactions relating to the Additional Agent Goods are, shall be construed as, and are acknowledged by the Debtors to be, a true consignment from the Agent to the Debtors under Article 9 of the Uniform Commercial Code (the “UCC”) and not a consignment for security purposes. Subject solely to Agent’s obligations to pay to the Debtors the Additional Agent Goods Fee, at all times and for all purposes the Additional Agent Goods and their proceeds shall be the exclusive property of the Agent, and no other person or entity (including, without limitation, the Debtors, or any third person claiming a security interest in the Debtors’ property, including any of the Debtors’ secured lenders) shall have any claim against any of the Additional Agent Goods or the proceeds thereof. The Additional Agent Goods shall at all times remain subject to the exclusive control of the Agent. The Debtors shall, at Agent’s sole cost and expense, insure the Additional Agent Goods and, if required, promptly file any proofs of loss with regard thereto. The Agent shall be responsible for payment of any deductible under any such insurance in the event of any casualty affecting the Additional Agent Goods.

29. The Agent is hereby granted a first-priority security interest in and lien upon (a) the Additional Agent Goods and (b) the Additional Agent Goods proceeds, which security interest shall be deemed perfected without the requirement of filing UCC financing statements or providing notifications to any prior secured parties (provided that the Agent is hereby authorized to deliver all required notices and file all necessary financing statements and amendments thereof under the applicable UCC identifying the Agent's interest in the Additional Agent Goods as consigned goods thereunder and the Debtors as the consignee therefor, and the Agent's security interest in and lien upon such Additional Agent Goods and the Additional Agent Goods proceeds).

30. Neither the Sale Guidelines, Agency Agreement, nor this Final Order authorize the Debtors to transfer or sell to Agent or any other party the personal identifying information (which means information that alone or in conjunction with other information identifies an individual, including but not limited to an individual's first name (or initial) and last name, physical address, electronic address, telephone number, social security number, date of birth, government-issued identification number, account number and credit or debit card number) ("PII") of any customers unless such sale or transfer is permitted by the Debtors' privacy policy and state, provincial or federal privacy and/or identity theft prevention laws and rules (collectively, the "Applicable Privacy Laws"). The foregoing shall not limit the Agent's use of the Debtors' customer lists and mailing lists in accordance with the Agency Agreement solely for purposes of advertising and promoting the Sales.

31. The Debtors shall remove or cause to be removed any confidential and/or PII in any of the Debtors hardware, software, computers or cash registers or similar equipment which are to be sold or abandoned so as to render the PII unreadable or undecipherable. At the conclusion of the Sales, the Agent shall provide the Debtors with written verification that the Agent has not

removed, copied, or transferred any customer PII and that any records containing PII were shredded, erased, or otherwise modified to render the PII unreadable or undecipherable.

32. Nothing herein shall limit the Debtors' right to pause or discontinue a Sale at a Closing Store on notice to affected parties, including counsel to the DIP ABL Agent and the Prepetition ABL Agent.

33. Nothing herein is intended to affect any rights of any applicable government unit to enforce any law affecting the Debtors' conduct of any store closing sale that occurred before the Petition Date.

IV. Procedures Relating to Additional Closing Stores.

34. To the extent that the Debtors seek to conduct Sales at any Additional Closing Store, the Sale Guidelines and this Final Order shall apply to the Additional Closing Stores.

35. Prior to conducting the Sales at any Additional Closing Store, the Debtors will file a list including such Additional Closing Store with this Court (each, an "Additional Closing Store List"), and serve a notice of their intent to conduct the Sales at the Additional Closing Store on the applicable landlords (collectively, the "Additional Closing Store Landlords") and other interested parties by email (to the extent available to the Debtors) or overnight mail. With respect to Additional Closing Store Landlords, the Debtors will mail, if applicable, such notice to the notice address set forth in the lease for such Additional Closing Store (or, if none, at the last known address available to the Debtors).

36. The Additional Closing Store Landlords and any interested parties shall have seven (7) days after service of the applicable Additional Closing Store List to object to the application of this Final Order. If no timely objections are filed with respect to the application of this Final Order to an Additional Closing Store, the Debtors are authorized, pursuant to sections 105(a), and 363(b) and (f) of the Bankruptcy Code, to proceed with conducting the Sales at the

Additional Closing Stores in accordance with this Final Order, the Sale Guidelines, and the Agency Agreement. If any objections are filed with respect to the application of this Final Order, to an Additional Closing Store, and such objections are not resolved, the objections and the application of this Final Order to the Additional Closing Store will be considered by the Court at the next regularly scheduled omnibus hearing, subject to the rights of any party to seek relief on an emergency basis on shortened notice, to the extent necessary. Any objections as to particular Additional Closing Stores will not affect the Debtors' and Agent's rights to begin Sales at non-objected Additional Closing Stores.

V. Dispute Resolution Procedures with Governmental Units.

37. Nothing in this Final Order, the Agency Agreement, the Sale Guidelines, or any Side Letter releases, nullifies, or enjoins the enforcement of any liability to a Governmental Unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or operator of the property after the date of entry of this Final Order. Nothing contained in this Final Order, the Agency Agreement, the Sale Guidelines, or any Side Letter shall in any way: (a) diminish the obligation of any entity to comply with environmental laws; or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The Store Closings and the Sales shall not be exempt from laws of general applicability, including, without limitation, public health and Safety, criminal, tax, (including, but not limited to, the collection of Sales Taxes), labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including consumer laws regulating deceptive practices and false advertising, consumer protection, the sale of gift certificates, layaway programs, return of goods, express or implied warranties of goods, and "weights and measures" regulation and monitoring (collectively,

“General Laws”). Nothing in this Final Order, the Agency Agreement, the Sale Guidelines, or any Side Letter shall alter or affect obligations to comply with all applicable federal Safety Laws and regulations. Nothing in this Final Order shall be deemed to bar any Governmental Unit (as such term is defined in section 101(47) of the Bankruptcy Code) from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors’ rights to assert in that forum or before this Court, that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code or this Final Order. Notwithstanding any other provision in this Final Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Final Order and/or any applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Final Order shall be deemed to have made any rulings on any such issues.

38. To the extent that the sale of Store Closure Assets is subject to any Liquidation Sale Laws, including any federal, state or local statute, ordinance, rule, or licensing requirement directed at regulating “going out of business,” “store closing,” or similar inventory liquidation sales, or bulk sale laws, laws restricting safe, professional and non-deceptive, customary advertising such as signs, banners, signage, and use of sign-walkers solely in connection with the sale of the Store Closure Assets, including ordinances establishing license or permit requirements, waiting periods, time limits or bulk sale restrictions that would otherwise apply solely to the sale of the Store Closure Assets, the dispute resolution procedures in this section shall apply and the Dispute Resolution Procedures shall control over any Side Letters:

- (i) Provided that the Sales are conducted in accordance with this Final Order, any Final Order, and the Sale Guidelines, the Debtors, the Agent, and the Debtors’ landlords, shall be deemed to be in compliance with any requirements of all county, parish, or municipal or other local government (hereinafter referred to as “Local”) and State requirements governing the conduct of the Sales of the Store Closure Assets, including but not limited to Local statutes, regulation and

ordinances establishing licensing or permitting requirements, waiting periods or time limits, or bulk sale restrictions that would otherwise apply to the Sales and sales of the Store Closure Assets (collectively, the “Liquidation Sale Laws”) of any state or Local Governmental Unit (as defined in Bankruptcy Code section 101(27)); provided, that the term “Liquidation Sale Laws” shall be deemed not to include any public health or safety laws of any state (collectively, “Safety Laws”), and the Debtors and the Agent shall continue to be required to comply, as applicable, with such Safety Laws and General Laws, subject to any applicable provision of the Bankruptcy Code and federal law, and nothing in this Order shall be deemed to bar Governmental Units (as defined in section 101(27) of the Bankruptcy Code) or public officials from enforcing Safety Laws or General Laws.

- (ii) Within five (5) business days after entry of this Final Order, the Debtors will serve by first-class mail, copies of this Final Order, the Agency Agreement, and the Sale Guidelines on the following: (a) the Attorney General’s office for each state where the Sales are being held; (b) the county consumer protection agency or similar agency for each county where the Sales are being held; (c) the division of consumer protection for each state where the Sales are being held; and (d) the landlords for the Closing Stores (collectively, the “Dispute Notice Parties”).
- (iii) With respect to any Additional Closing Stores, within five (5) business days after filing any Additional Closing Store List with the Court, the Debtors will serve by first-class mail, copies of this Final Order, the Consulting Agreement, and the Sale Guidelines on the Dispute Notice Parties.
- (iv) To the extent that there is a dispute arising from or relating to the Sales, this Final Order, the Agency Agreement, or the Sale Guidelines, which dispute relates to any Liquidation Sale Laws (a “Reserved Dispute”), the Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Within ten (10) days following entry of this Final Order, any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the “Dispute Notice”) explaining the nature of the dispute to: (a) Skadden, Arps, Slate, Meagher & Flom LLP, 920 North King Street, Wilmington, Delaware 19801, Attn.: Joseph O. Larkin (Joseph.Larkin@skadden.com) and Jason M. Liberi (Jason.Liberi@skadden.com), One Manhattan West, New York, New York 10001, Attn.: Lisa Laukitis (Lisa.Laukitis@skadden.com), Elizabeth Downing (Elizabeth.Downing@skadden.com), and Chambliss Williams (Chambliss.Williams@skadden.com); (b) counsel to Hilco Merchant Resources, LLC, Chipman Brown Cicero & Cole, LLP, Attn: Mark L. Desgrosseilliers (desgross@chipmanbrown.com); (c) counsel to the DIP ABL Agent and the Prepetition ABL Agent, (i) Morgan Lewis & Bockius LLP, One Federal Street, Boston, MA 02110, Attn: Christopher L. Carter (christopher.carter@morganlewis.com), and (ii) Reed Smith LLP, 1201 Market Street, Suite 1500, Wilmington, DE 19801, Attn: Kurt F. Gwynne (KGwynne@ReedSmith.com); and (d) the affected landlord. If the Debtors and

the Governmental Unit are unable to resolve the Reserved Dispute within fifteen (15) days after service of the notice, the Governmental Unit may file a motion with the Court requesting that the Bankruptcy Court resolve the Reserved Dispute (a “Dispute Resolution Motion”).

- (v) In the event that a Dispute Resolution Motion is filed, nothing in this Final Order shall preclude the Debtors, a landlord, or any other interested party from asserting (A) that the provisions of any Liquidation Sale Laws are preempted by the Bankruptcy Code, or (B) that neither the terms of this Final Order nor the conduct of the Debtors pursuant to this Final Order, violates such Liquidation Sale Laws. Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of this Final Order or to limit or interfere with the Debtors’ or the Agent’s ability to conduct or to continue to conduct the Sales pursuant to this Final Order, as applicable, absent further order of the Court. Upon the entry of this Final Order, the Court grants authority for the Debtors and the Agent to conduct the Sales pursuant to the terms of this Final Order, the Agency Agreement, and the Sale Guidelines (as may be modified by Side Letters) and to take all actions reasonably related thereto or arising in connection therewith. The Governmental Unit will be entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Sale Laws or the lack of any preemption of such Liquidation Sale Laws by the Bankruptcy Code. Nothing in this Final Order will constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.
- (vi) If, at any time, a dispute arises between the Debtors and/or the Agent and a Governmental Unit as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in this Final Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions of subparagraphs (iv) and (v) above by serving a notice to the other party and proceeding thereunder in accordance with those paragraphs. Any determination with respect to whether a particular law is a Liquidation Sale Law shall be made de novo.

39. Subject to paragraphs 38 and 39 above, each and every federal, state, or Local agency, departmental, or Governmental Unit with regulatory authority over the Sales and all newspapers and other advertising media in which the Sales are advertised shall consider this Final Order as binding authority that no further approval, license, or permit of any Governmental Unit shall be required, nor shall the Debtors or the Agent be required to post any bond, to conduct the Sales.

40. Provided that the Sales are conducted in accordance with the terms of this Final Order, the Agency Agreement, and the Sale Guidelines (as may be modified by Side Letters) and in light of the provisions in the laws that exempt court-ordered sales from their provisions, the Debtors and Agent shall be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of this Final Order and the Sale Guidelines (as may be modified by Side Letters) without the necessity of further showing compliance with any such Liquidation Sale Laws.

41. Nothing in this Final Order, the Agency Agreement, the Sale Guidelines, or any Side Letter releases, nullifies, or enjoins the enforcement of any liability to a Governmental Unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or operator of the property after the date of entry of this Final Order. Nothing contained in this Final Order, the Agency Agreement, the Sale Guidelines, or any Side Letter shall in any way: (a) diminish the obligation of any entity to comply with environmental laws; or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code.

VI. Closing Store Procedures and Policies.

42. *Customer Deposits.* The Debtors are authorized to continue to honor open, pre-Sale customer deposits insofar as merchandise requested to fulfill these orders is available in the applicable Closing Store. The Debtors may honor refund requests for prepetition deposits up to the priority cap of \$3,350.

43. *Returns and Implied Warranties.* The Debtors are authorized to accept returns of Merchandise sold by the Debtors in the ordinary course prior to the commencement of any Sale; *provided*, that such return is otherwise in compliance with the Debtors' return policies in effect as

of the date such item was purchased. The Debtors, in their discretion may, refuse to accept returns of pre-Sale purchases where the customer seeks to make a return and repurchase the same item so as to take advantage of the sale price being offered in the Store Closings; *provided, further*, that returns of items sold on a final, “as is” basis, including items sold in the Closing Stores on a “final” basis pursuant to this Interim Order, shall not be accepted. The Debtors shall comply with all state and federal laws relating to implied warranties for latent defects, which laws are not superseded by the sale of said goods or the use of the terms “as is” or “final sales,” as set forth in the Proposed Orders.

44. Notwithstanding anything herein, all state and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms “as is” or “final sales.” The Debtors shall accept return of any goods purchased during the Store Closings that contain a defect which the lay consumer could not reasonably determine was defective by visual inspection prior to purchase for a full refund; *provided*, that the consumer must return the merchandise within the applicable time period for their purchase, the consumer must provide a receipt for the purchase to the Debtors, and the asserted defect must in fact be a “latent” defect, which goods shall not be resold by the Debtors.

45. *Gift Cards and Gift Certificates.* All sales of Merchandise shall be made by cash, gift card, gift certificate, voucher (subject to paragraph 46 below), merchandise credit, debit card, credit card or as otherwise set forth in the Agency Agreement and, at Debtor’s discretion, by check or otherwise in accordance with the Debtors’ policies.

46. For the first twenty one (21) days following the mailing of customer notices notifying all of the Debtors’ customers of altered gift card and gift certificate policies, the Debtors shall continue to accept the Debtors’ validly-issued gift certificates, gift cards, and vouchers in

their e-commerce business or in-store in the ordinary course of business. After the expiration of the twenty one days to utilize gift certificates and gift cards on the e-commerce platform (if applicable) or in-store, all such validly-issued gift certificates, gift cards, and loyalty certificates will no longer be accepted by the Debtors and deemed to have no remaining value. This policy change is consistent with the change set forth and described in the Customer Programs Motion.

47. *Employee Discounts.* The Debtors' are authorized to continue to honor their current employee discount program for Closing Stores' employees subject to certain modifications, including capping the applicable discount and the applicable Closing Stores' prevailing discount rate.

VII. Other Provisions.

48. To the extent the Debtors are subject to any state Fast Pay Laws in connection with the Store Closings, the Debtors shall be presumed to be in compliance with such laws to the extent, in applicable states, such payroll payments are made by the later of: (i) the Debtors' next regularly scheduled payroll; and (ii) seven (7) calendar days following the termination date of the relevant employee, and in all such cases consistent with, and subject to, any previous orders of this Court regarding payment of same.

49. The Debtors shall have the authority, but not the obligation, to make payments under the Store Closing Bonus Plan, as may be amended from time to time.

50. Neither the Agent nor any of its respective affiliates (whether individually, as part of a joint venture, or otherwise), shall be precluded from providing additional services to the Debtors or bidding on the Debtors' assets in connection with any other future process that may or may not be undertaken by the Debtors to close stores.

51. Not later than seven (7) days prior to the objection deadline related to entry of an order approving the Motion on a final basis, the Agent shall file a declaration disclosing

connections to the Debtors, their creditors, and other parties in interest in these Chapter 11 Cases, and all parties who have filed requests for service under Bankruptcy Rule 2002, by email, or if the email address is not available to the Debtors, then by first class mail.

52. Agent shall act solely as Agent to the Debtors and shall not be liable for any claims against the Debtors other than as expressly provided in the Agency Agreement (including the Agent's indemnity obligations thereunder) or the Sale Guidelines, with the exception of acts of gross negligence or willful misconduct and, for greater certainty, the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labor standards or pension benefits or health and Safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successor liability whatsoever.

53. The Debtors are authorized and permitted to transfer to the Agent personal information in the Debtors' custody and control solely for the purposes of assisting with and conducting the Sales and only to the extent necessary for such purposes, provided that Agent removes such personal information from the FF&E prior to the abandonment of the same.

54. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to any interim and final orders, as applicable, approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreements, and any budgets in connection therewith governing any such postpetition financing and/or use of cash collateral (each such order, a "DIP Order"); provided, however, that, without limiting the terms of such DIP Order, all amounts due to the Agent under the Agency Agreement shall not be reduced or capped by the terms or conditions of any DIP Order.

55. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (i) an admission as to the validity or amount of any particular claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (iii) a promise or requirement to pay any particular claim; (iv) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (v) a request or authorization to assume any agreement, contract, or lease, pursuant to section 365 of the Bankruptcy Code; (vi) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (vii) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid, and the rights of all parties are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. Any payment made pursuant to this Final Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim, other than with respect to payments made to the Agent, which are governed by the reconciliation procedures in the Agency Agreement.

56. No payment may be made by the Debtors to, or for the benefit of, any non-Debtor Insider (as defined in section 101 of the Bankruptcy Code) or any non-Debtor affiliate of or related party to any such Insider pursuant to this Final Order without further court approval on notice to parties in interest.

57. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented

for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

58. Nothing contained in the Motion or this Final Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Final Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of, or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Final Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

59. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with the relief granted herein.

60. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

61. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

62. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

63. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

64. This Court shall retain jurisdiction with regard to all issues or disputes relating to this Final Order or the Agency Agreement, including, but not limited to, (a) any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit banner and sign-walker advertising, including with respect to any allegations that such advertising is not being conducted in a safe, professional, and non-deceptive manner, (b) any claim of the Debtors, the landlords and/or the Agent for protection from interference with the Store Closings or Sales, (c) any other disputes related to the Store Closings or Sales, and (d) protect the Debtors and/or the Agent against any assertions of any liens, claims, encumbrances, and other interests. No such parties or person shall take any action against the Debtors, the Agent, the landlords, the Store Closings, or the Sales until this Court has resolved such dispute. This Court shall hear the request of such parties or persons with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

EXHIBIT 1

Agency Agreement

*Attorney Work Product
Privileged & Confidential
SASMF Draft as of 8/7/2024*



August 8, 2024

VIA EMAIL

LL Flooring Holdings, Inc.
4901 Bakers Mill Lane
Richmond, VA 23230
Attention: Holly Etlin
Chief Restructuring Officer

Re: **Letter Agreement Governing Inventory Disposition**

Dear Holly:

By executing below, subject to section R hereof, this letter shall serve as an agreement ("Agreement") between Hilco Merchant Resources, LLC, on the one hand ("Agent" or a "Party"), and LL Flooring Holdings, Inc., on the other hand ("Merchant" or a "Party" and together with the Agent, the "Parties"), under which Agent shall act as the exclusive agent for the purpose of conducting a sale of certain Merchandise (as defined below) at (i) the Merchant's stores set forth on Exhibit A and (ii) any other stores as may be designated for disposition by Merchant from the date of this Agreement (each a "Store" and collectively, the "Stores") and Merchant's e-commerce platform if designated for disposition by Merchant, subject to the terms and conditions set forth herein, through a "Store Closing", "Everything Must Go", "Everything on Sale" or similar themed sale (the "Sale").

A. Merchandise

For purposes hereof, "Merchandise" shall mean all goods, saleable in the ordinary course, either located in the Stores on the Sale Commencement Date (defined below) or shipped to the Stores from Merchant's distribution centers during the Sale Term. "Merchandise" does not mean and shall not include: (1) goods that belong to sublessees, licensees or concessionaires of Merchant; (2) owned furnishings, trade fixtures, equipment and improvements to real property that are located in the Stores (collectively, "FF&E"); or (3) damaged or defective merchandise that cannot be sold. For the avoidance of doubt, Merchandise includes goods that are marked damaged, but are nonetheless saleable.

B. Sale Term

For each Store, the Sale shall commence on Friday, August 9, 2024 (the "Sale Commencement Date") and conclude no later than Sunday, September 29, 2024 (the "Sale Termination Date"); provided, however, that the Parties may mutually agree in writing to extend or terminate the Sale at any Store prior to the Sale Termination Date. The period between the Sale Commencement Date and the Sale Termination Date shall be referred to as the "Sale Term." At the conclusion of the Sale, Agent shall surrender the premises for each Store to Merchant in broom clean condition and in accordance with the lease requirements for such premises; provided, however, Merchant shall bear all costs and expenses associated with surrendering the premises in accordance with the lease requirements for such premises according to a budget mutually agreed to between the Agent and

Merchant. At the conclusion of the Sale at each Store, Agent shall photographically document the condition of each such Store. Photographs shall reference with specificity each Store by number, name, and/or location.

C. Project Management

(i) Agent's Undertakings

During the Sale Term, Agent shall, in collaboration with Merchant, (a) provide qualified supervisors (the "Supervisors") engaged by Agent to oversee the management of the Stores; (b) determine appropriate point-of-sale and external advertising for the Stores, approved in advance by Merchant; (c) determine appropriate discounts of Merchandise, staffing levels for the Stores, approved in advance by Merchant, and appropriate bonus and incentive programs, if any, for the Stores' employees, approved in advance by Merchant; (d) oversee display of Merchandise for the Stores; (e) to the extent that information is available, evaluate sales of Merchandise by category and sales reporting and monitor expenses; (f) maintain the confidentiality of all proprietary or non-public information regarding Merchant in accordance with the provisions of the confidentiality agreement signed by the Parties; (g) assist Merchant in connection with managing loss prevention and employee relations matters; (h) determine the necessity for obtaining any applicable permits and governmental approvals to conduct the Sale, including working with Merchant to obtain each in a timely and orderly fashion and preparing or causing to be prepared all forms necessary to assist in Merchant's securing any applicable permits and governmental approvals necessary to conduct the Sale, the costs and expenses of which shall be paid by Merchant and shall be in addition to the costs and expenses set forth on the Expense Budget; (i) include Additional Agent Goods in the Sale in its discretion under the terms set forth in this Agreement; and (k) provide such other related services deemed necessary or appropriate by Merchant and Agent.

The Parties expressly acknowledge and agree that Merchant shall have no liability to the Supervisors for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Agent's hiring or engagement of the Supervisors, and the Supervisors shall not be considered employees of Merchant.

(ii) Merchant's Undertakings

During the Sale Term, Merchant shall (a) be the employer of the Stores' employees, other than the Supervisors; (b) pay all taxes, costs, expenses, accounts payable, and other liabilities relating to the Stores, the Stores' employees and other representatives of Merchant; (c) prepare and process all tax forms and other documentation; (d) collect all sales taxes and pay them to the appropriate taxing authorities for the Stores; (e) use reasonable efforts to cause Merchant's employees to cooperate with Agent and the Supervisors; (f) execute all agreements mutually determined by the Merchant and Agent to be necessary or desirable for the operation of the Stores during the Sale; (g) arrange for the ordinary maintenance of all point-of-sale equipment required for the Stores and any computer servers necessary to operate the Sale; (h) apply for and obtain, with Agent's assistance and support, all applicable permits and authorizations (including landlord approvals and consents) for the Sale; (i) ensure that Agent has quiet use and enjoyment of the Stores for the Sale Term in order to perform its obligations under this Agreement.

Merchant shall provide throughout the Sale Term central administrative services necessary for the Sale, including (without limitation) customary POS administration, sales audit, cash reconciliation, accounting, and payroll processing, all at no cost to Agent.

The Parties expressly acknowledge and agree that Agent shall have no liability to Merchant's employees for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Merchant's employment, hiring or retention of its employees, and such employees shall not be considered employees of Agent.

D. The Sale

All sales of Merchandise shall be made on behalf of Merchant. In conducting the Sale, Agent shall have the right to use the LL Flooring and Lumber Liquidators names to market the Merchandise. Agent does not have, nor shall it have, any right, title or interest in the Merchandise. All sales of Merchandise shall be by cash, gift card, gift certificate, merchandise credit, debit card, voucher, or credit card and, at Merchant's discretion, by check or otherwise in accordance with Merchant's policies, and shall be "final" with no returns accepted or allowed, unless otherwise directed by Merchant, provided, however, that purchases via voucher, gift card, or gift certificate shall only be accepted for the time period and pursuant to the terms set forth in the Approval Order (as defined below). For the avoidance of doubt, Merchant's pre-Sale return policy will be honored to allow returns of items sold pre-Sale in accordance with Merchant's pre-Sale return policy applicable to the product(s) sought to be returned.

E. Agent Fee and Expenses in Connection with the Sale

In consideration of its services hereunder, Agent shall earn a base retail fee equal to two percent (2.0%) of the Gross Proceeds of Merchandise sold at the Stores (the "Base Retail Fee"). Agent shall earn a base wholesale fee of seven and one half percent (7.5%) of the Gross Proceeds of Merchandise sold through Agent's wholesale channels (the "Wholesale Fee"). For purposes of this Agreement, "Gross Proceeds" means gross receipts calculated using the "gross rings" method, net of applicable sales taxes.

In addition to the Base Retail Fee and the Wholesale Fee, and not in lieu thereof, the Merchant shall pay to Agent from Gross Proceeds an additional fee based upon the Gross Recovery Percentages achieved as set forth in the following table (the "Additional Incentive Compensation"). The Additional Incentive Compensation shall be equal to the aggregate sum of the percentages set forth in the "Additional Incentive Compensation" column of the table (e.g., calculated back to first dollar) for the corresponding Gross Recovery Percentage achieved; provided, however, no Additional Incentive Compensation shall be earned or payable where the Gross Recovery Percentage is less than 94.74%:

<u>Gross Cost Recovery Percentage</u>	<u>Additional Incentive Compensation</u>
Between 94.75% and 95.5%	An additional 0.25% of Gross Proceeds (total fee equal to 2.25% of Gross Proceeds)
Above 95.5%	An additional 0.25% of Gross Proceeds (total fee equal to 2.50% of Gross Proceeds)

For purposes of the Additional Incentive Compensation:

“Cost Value” with respect to each item of Merchandise sold shall mean the lower of (i) the lowest per unit vendor cost in the File or in the Merchant’s books and records, maintained in the ordinary course consistent with historic practices; or (ii) the Retail Price.

“File” shall mean the following files provided to Agent: “Total Inventory by Site and Article as of 07.31.24.xlsx” and “June EOM Inventory by Site with Price.xlsx,” and all subsequent merchandise files created or updated through the Sale Commencement Date.

“Gross Recovery Percentage” shall mean the Gross Proceeds divided by the sum of the aggregate Cost Value of all of the Merchandise.

“Retail Price” shall mean with respect to each item of Merchandise sold, the retail price reflected at the register for such item, excluding the discount granted in connection with such sale.

Merchant shall be responsible for all expenses of the Sale, including (without limitation) all Store-level operating expenses, all costs and expenses related to Merchant’s other retail store operations, Merchant’s costs for operating the Distribution Centers (as defined below), and Agent’s other reasonable, documented out of pocket expenses. To control expenses of the Sale, Merchant and Agent have established an aggregate budget (the “Expense Budget”) of certain delineated expenses, including (without limitation) payment of the costs of supervision (including (without limitation) Supervisors’ wages, fees, travel, and deferred compensation) and advertising costs. The Expense Budget for the Sale is attached hereto as Exhibit B. The Expense Budget may only be modified by mutual written (including email) agreement of Agent and Merchant, provided that appropriate modifications to the Expense Budget, if any, will be mutually agreed prior to Merchant’s addition of any stores for disposition under this Agreement. The costs of supervision set forth on Exhibit B include, among other things, industry standard deferred compensation. Notwithstanding anything herein to the contrary, unless otherwise agreed to by Merchant, Merchant shall not be obligated to pay costs that have not been included, or provided for, in the Expense Budget, as may be amended in accordance with this Agreement.

All accounting matters (including, without limitation, all fees, expenses, or other amounts reimbursable or payable to Agent) shall be reconciled on every Wednesday for the prior week and shall be paid within seven (7) days after each such weekly reconciliation. The Parties shall complete a final reconciliation and settlement of all amounts payable to Agent and contemplated by this Agreement (including, without limitation, Expense Budget items, and fees earned hereunder) no later than forty five (45) days following the Sale Termination Date for the last Store.

Upon execution of this Agreement, the Merchant shall pay by wire transfer to the Agent an advance payment of costs and expenses delineated in the Expense Budget of \$708,360 (the "Sale Expense Advance") which shall be held by Agent and applied towards Expense Budget items as incurred. Any portion of the Sale Expense Advance not so used shall be returned to Merchant within three days following the final reconciliation.

F. Indemnification

(i) Merchant's Indemnification

Merchant shall indemnify, defend, and hold Agent and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, affiliates, and Supervisors (collectively, "Agent Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to: (a) the willful or negligent acts or omissions of Merchant or the Merchant Indemnified Parties (as defined below); (b) the material breach of any provision of this Agreement by Merchant; (c) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), or any other person (excluding Agent Indemnified Parties) against Agent or an Agent Indemnified Party, except claims arising from Agent's negligence, willful misconduct, actual fraud, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Agent's Indemnified Parties or Merchant's customers by Merchant or Merchant's Indemnified Parties; and (e) Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by Merchant during the Sale Term in accordance with applicable law.

(ii) Agent's Indemnification

Agent shall indemnify, defend and hold Merchant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, and affiliates (other than the Agent or the Agent Indemnified Parties) (collectively, "Merchant Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to (a) the willful or negligent acts or omissions of Agent or the Agent Indemnified Parties; (b) the breach of any provision of, or the failure to perform any obligation under, this Agreement by Agent; (c) any liability or other claims made by Agent's Indemnified Parties or any other person (excluding Merchant Indemnified Parties) against a Merchant Indemnified Party arising out of or related to Agent's conduct of the Sale, except claims arising from Merchant's negligence, willful misconduct, actual fraud, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Merchant Indemnified Parties, or Merchant's customers by Agent or any of the Agent Indemnified Parties and (e) any claims made by any party engaged by Agent as an employee, agent, representative or independent contractor arising out of such engagement.

G. Insurance**(i) Merchant's Insurance Obligations**

Merchant shall maintain throughout the Sale Term, liability insurance policies (including, without limitation, products liability (to the extent currently provided), commercial general liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the Stores, and shall use commercially reasonable efforts to cause Agent to be named as an additional insured with respect to all such policies. At Agent's request, Merchant shall provide Agent with a certificate or certificates evidencing the insurance coverage required hereunder and that Agent is an additional insured thereunder. In addition, Merchant shall maintain throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all statutory requirements.

(ii) Agent's Insurance Obligations

As an expense of the Sale and as included in the Expense Budget, Agent shall maintain (at Agent's expense) throughout the Sale Term, liability insurance policies (including, without limitation, products liability/completed operations, contractual liability, comprehensive public liability and auto liability insurance) on an occurrence basis in an amount of at least Two Million dollars (\$2,000,000) and an aggregate basis of at least five million dollars (\$5,000,000) covering injuries to persons and property in or in connection with Agent's provision of services at the Stores. Agent shall name Merchant as an additional insured and loss payee under such policy, and upon execution of this Agreement provide Merchant with a certificate or certificates evidencing the insurance coverage required hereunder. In addition, Agent shall maintain throughout the Sale Term, workers compensation insurance compliance with all statutory requirements. Further, should Agent employ or engage third parties to perform any of Agent's undertakings with regard to this Agreement, Agent will ensure that such third parties are covered by Agent's insurance or maintain all of the same insurance as Agent is required to maintain pursuant to this paragraph and name Merchant as an additional insured and loss payee under the policy for each such insurance.

H. Representations, Warranties, Covenants and Agreements

(i) Merchant warrants, represents, covenants and agrees that (a) Merchant is a company duly organized, validly existing and in good standing under the laws of its state of organization, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and maintains its principal executive office at the address set forth herein, (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of Merchant and this Agreement constitutes a valid and binding obligation of Merchant enforceable against Merchant in accordance with its terms and conditions, and the consent of no other entity or person is required for Merchant to fully perform all of its obligations herein, (c) all ticketing of Merchandise at the Stores has been and will be done in accordance with Merchant's customary ticketing practices; (d) all normal course hard markdowns on the Merchandise have been, and will be, taken consistent with customary Merchant's practices, and (e) the Stores will be operated in the ordinary course of business in all respects, other than those expressly agreed to by Merchant and Agent.

(ii) Agent warrants, represents, covenants and agrees that (a) Agent is a company duly organized, validly existing and in good standing under the laws of its state of organization, with full power and authority to execute and deliver this Agreement and to perform the Agent's obligations hereunder, and maintains its principal executive office at the addresses set forth herein, (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of Agent and this Agreement constitutes a valid and binding obligation of Agent enforceable against Agent in accordance with its terms and conditions, and the consent of no other entity or person is required for Agent to fully perform all of its obligations herein, (c) Agent shall comply with and act in accordance with any and all applicable state and local laws, rules, and regulations, and other legal obligations of all governmental authorities, (d) no non-emergency repairs or maintenance in the Stores will be conducted without Merchant's prior written consent, and (e) Agent will not take any disciplinary action against any employee of Merchant.

I. Furniture, Fixtures and Equipment

Agent shall sell the FF&E in the Stores from the Stores themselves and from Merchant's distribution centers (the "Distribution Centers") from the Distribution Centers themselves. Merchant shall be responsible for all reasonable and documented costs and expenses incurred by Agent in connection with the sale of FF&E, which costs and expenses shall be incurred pursuant to a budget or budgets to be established from time to time by mutual agreement of the Parties. Agent shall have the right to abandon at the Stores any unsold FF&E.

In consideration for providing the services set forth in this section I, Agent shall be entitled to a commission from the sale of the FF&E equal to 15.0% of the Gross Proceeds of the sale of the FF&E.

Agent shall remit to Merchant all Gross Proceeds from the sale of FF&E. During each weekly reconciliation described in section E above, Agent's FF&E fee shall be calculated, and Agent's calculated FF&E fee and all FF&E costs and expenses then incurred shall be paid within seven (7) days after each such weekly reconciliation.

II. Termination

The following shall constitute "Termination Events" hereunder:

- (a) Merchant's or Agent's failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting Party;
- (b) Any representation or warranty made by Merchant or Agent is untrue in any material respect as of the date made or at any time and throughout the Sale Term; or
- (c) the Sale is terminated or materially interrupted or impaired for any reason other than an event of default by Agent or Merchant.

If a Termination Event occurs, the non-defaulting Party (in the case of an event of default) or either Party (if the Sale is otherwise terminated or materially interrupted or impaired) may, in its

discretion, elect to terminate this Agreement by providing seven (7) business days' written notice thereof to the other Party and, in the case of an event of default, in addition to terminating this Agreement, pursue any and all rights and remedies and damages resulting from such default. If this Agreement is terminated, Merchant shall be obligated to pay Agent all amounts due under this Agreement through and including the termination date.

K. Notices

All notices, certificates, approvals, and payments provided for herein shall be sent by fax or by recognized overnight delivery service as follows: (a) To Merchant: at the address listed above; (b) To Agent: c/o Hilco Merchant Resources, LLC, One Northbrook Place, 5 Revere Drive, Suite 206, Northbrook, IL 60062, Fax: 847- 849-0859, Attn: T. Kellan Grant; or (c) such other address as may be designated in writing by Merchant or Agent. To the extent that a writing or written agreement is required by this Agreement, such writing or written agreement may be memorialized in and transmitted by electronic mail.

L. Independent Consultant

Agent's relationship to Merchant is that of an independent contractor without the capacity to bind Merchant in any respect. No employer/employee, principal/agent, joint venture or other such relationship is created by this Agreement. Merchant shall have no control over the hours that Agent or its employees or assistants or the Supervisors work or the means or manner in which the services that will be provided are performed and Agent is not authorized to enter into any contracts or agreements on behalf of Merchant or to otherwise create any obligations of Merchant to third parties, unless authorized in writing to do so by Merchant.

M. Non-Assignment

Neither this Agreement nor any of the rights hereunder may be transferred or assigned by either Party without the prior written consent of the other Party; provided, however, that Agent may syndicate this transaction with one or more third parties upon notice to, but not the consent of Merchant. No modification, amendment or waiver of any of the provisions contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon any Party to this Agreement unless made in writing and signed by a duly authorized representative or agent of such Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns.

N. Severability

If any term or provision of this Agreement, as applied to either Party or any circumstance, for any reason shall be declared by a court of competent jurisdiction to be invalid, illegal, unenforceable, inoperative or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. If the surviving portions of the Agreement fail to retain the essential understanding of the Parties, the Agreement may be terminated by mutual consent of the Parties.

O. Governing Law, Venue, Jurisdiction and Jury Waiver

This Agreement, and its validity, construction and effect, shall be governed by and enforced in accordance with the internal laws of the State of Illinois (without reference to the conflicts of laws provisions therein). Merchant and Agent waive their respective rights to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Agent against Merchant or Merchant against Agent on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship between Merchant and Agent, any claim of injury or damage or the enforcement of any remedy under any law, statute or regulation, emergency or otherwise, now or hereafter in effect.

P. Entire Agreement

This Agreement, together with all additional schedules and exhibits attached hereto, constitutes a single, integrated written contract expressing the entire agreement of the Parties concerning the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party except as specifically set forth in this Agreement. All prior agreements, discussions and negotiations are entirely superseded by this Agreement.

Q. Execution

This Agreement may be executed simultaneously in counterparts (including by means of electronic mail, facsimile or portable document format (pdf) signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same instrument. This Agreement, and any amendments hereto, to the extent signed and delivered by means of electronic mail, a facsimile machine or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

R. Bankruptcy

If the Merchant commences a case under Chapter 11 of title 11, United States Code (the "Bankruptcy Code"), with a bankruptcy court (the "Bankruptcy Court"), the Merchant shall promptly file a motion to assume sections of this Agreement under section 365 and/or 363 of the Bankruptcy Code, and utilize its reasonable best efforts to ensure that such motion is approved by an order that provides, among other things, as follows (the "Approval Order"): (i) the payment of all fees and reimbursement of expenses under this Agreement is approved without further order of the court; (ii) all such payments of fees and reimbursement of expenses related to such Approval Order shall be made on a weekly basis without further order of the Bankruptcy Court and otherwise in accordance with this Agreement; (iii) the payment of all fees and reimbursement of expenses to Agent related to such Approval Orders shall be included in any approved debtor in possession, cash collateral, or other post-petition financing budget as a condition to the Assumption of the Agreement; (iv) authorizing the Sale without the necessity of complying with state and local rules, laws, ordinances and regulations, including, without limitation, permitting and licensing requirements, that could otherwise govern the Sale; (v) authorizing the Sale notwithstanding restrictions in leases, reciprocal easement agreements or other contracts that purport to restrict the Sale or the necessity of obtaining any third party consents; (vi) approving the sale of Additional Agent Goods in accordance with the terms and

conditions hereof; and (vii) take all further actions as are necessary or appropriate to carry out the terms and conditions of this Agreement. In such event, any legal action, suit or proceeding arising in connection with this Agreement shall be submitted to the exclusive jurisdiction of the Bankruptcy Court having jurisdiction over the Merchant, and each Party waives any defenses or objections based on lack of jurisdiction, improper venue, and/or forum non conveniens. From and after entry of the Approval Order, Agent shall conduct the Sale in accordance with the terms of the Approval Order in all material respects.

S. Additional Agent Goods

- (1) Exercisable in its reasonable discretion, Agent shall have the right to supplement the Merchandise in the Sale with additional goods procured by Agent which are of like kind, and no lesser quality to the Merchandise in the Sale ("Additional Agent Goods"), provided that Merchant may reasonably object to the inclusion of Additional Agent Goods that are not of like kind and are of lesser quality to the Merchandise in the Sale at the Closing Stores or through the e-commerce platform. Any Additional Agent Goods shall be purchased by Agent as part the Sale at Agent's sole expense, with the total cost of any such Additional Agent Goods not to exceed fifteen percent (15%) of the aggregate Cost Value in any particular Store. Sales of Additional Agent Goods shall be run through Merchant's cash register systems, so long as Agent has marked the Additional Agent Goods using either a "dummy" SKU or department number, or in such other manner so as to distinguish the sale of Additional Agent Goods from the sale of Merchandise. Agent and Merchant shall also cooperate to ensure that the Additional Agent Goods are marked in such a way that a reasonable consumer could identify the Additional Agent Goods as non-Merchandise. Additionally, Agent shall provide signage in the Stores notifying customers that the Additional Agent Goods have been included in the Sale.
- (2) Agent shall pay to Merchant an amount equal to five percent (5%) of the gross proceeds (excluding sales taxes) from the sale of Additional Agent Goods (the "Additional Agent Goods Fee") completed during the Sale Term and Agent shall retain all remaining amounts from the sale of the Additional Agent Goods. Agent shall pay to Merchant the then-reconciled Additional Agent Goods Fee in connection with the weekly reconciliation with respect to the sales of Additional Agent Goods sold by the Agent during each then prior week (or at such other mutually agreed upon time). Agent and the Merchant intend that the transactions relating to the Additional Agent Goods are, and shall be construed as, a true consignment from Agent to the Merchant in all respects and not a consignment for security purposes. Subject solely to Agent's obligations to pay to the Merchant the Additional Agent Goods fee described in this Agreement, at all times and for all purposes the Additional Agent Goods and their proceeds shall be the exclusive property of Agent, and no other person or entity shall have any claim against any of the Additional Agent Goods or their proceeds. At Agent's sole cost and expense, the Merchant shall insure the Additional Agent Goods and, if required, promptly file any proofs of loss with regard to same with the Merchant's insurers. Agent shall be responsible for

payment of any deductible under any such insurance in the event of any casualty affecting the Additional Agent Goods.

- (3) The Merchant acknowledges that the Additional Agent Goods shall be consigned to the Merchant as a true consignment under Article 9 of the Code. Any Approval Order shall contain provisions reasonable acceptable to Agent governing the treatment and sale of Additional Agent Goods.

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If this Agreement is acceptable to you, kindly execute a copy in the space provided, and return a countersigned version to the undersigned. Thank you again for this opportunity -- we look forward to working with you.

Very truly yours,

HILCO MERCHANT RESOURCES, LLC

Kellan Grant

By: T. Kellan Grant
Its: EVP Commercial Counsel

**AGREED AND ACCEPTED as of the 8th day
of August, 2024**

LL FLOORING HOLDINGS, INC.

By: Charles Tyson
Its: Chief Executive Officer

If this Agreement is acceptable to you, kindly execute a copy in the space provided, and return a countersigned version to the undersigned. Thank you again for this opportunity -- we look forward to working with you.

Very truly yours,

HILCO MERCHANT RESOURCES, LLC

By: T. Kellan Grant
Its: EVP Commercial Counsel

**AGREED AND ACCEPTED as of the 8th day
of August, 2024**

LL FLOORING HOLDINGS, INC.

Charles Tyson

By: Charles Tyson
Its: Chief Executive Officer

EXHIBIT A

Stores

LL Flooring, LLC
Exhibit A

Store List

Count	Loc #	Name	Address	City	State	Zip	Country	Phone	District	Region	Open Date	Lease End Date	Gross Sq. Ft.	WH Sq Ft	Selling Sq. Ft.
1	1019	1019 PHOENIX, AZ	2120 S. 7th Street	Phoenix	AZ	85034	USA	(602) 454-2552	WESTUS	REGION 27	09/01/01	06/30/25	8,400	6,902	1,498
2	1059	1059 RANCHO CUCAMONGA, CA	10920 Foothill Blvd. (Foothill Crossing)	Rancho Cucamonga	CA	91730	USA	(909) 937-1122	WESTUS	REGION 14	12/14/04	05/31/25	7,039	5,430	1,609
3	1076	1076 COLUMBUS, OH	4242 West Broad Street	Columbus	OH	43228	USA	(614) 851-4500	EASTUS	REGION 28	12/19/05	04/30/28	6,900	5,399	1,501
4	1089	1089 CHANHASSEN, MN	2973 Water Tower Place	Chanhassen	MN	55317	USA	(952) 314-4975	SOUTHS	REGION 17	11/07/06	09/30/26	6,356	5,553	803
5	1094	1094 NORWALK, CT	651 Connecticut Ave	Norwalk	CT	06854	USA	(203) 842-0840	EASTUS	REGION 5	03/08/07	03/31/27	5,740	4,760	999
6	1125	1125 MCALLEN, TX	3300 West Frontage Rd (Palms Crossing)	McAllen	TX	78503	USA	(956) 467-5679	WESTUS	REGION 24	01/02/08	01/31/30	15,000	12,558	2,442
7	1126	1126 EAST PEORIA, IL	1467 N. Main Street	East Peoria	IL	61611	USA	(309) 740-1801	EASTUS	REGION 8	02/02/08	01/31/28	9,450	8,305	1,145
8	1127	1127 LONGMONT, CO	633 Frontage Road	Longmont	CO	80501	USA	(720) 204-3477	WESTUS	REGION 27	02/29/08	12/31/24	6,000	5,170	830
9	1131	1131 BURLINGAME, CA	1501 Adrian Road	Burlingame	CA	94010	USA	(650) 204-4663	WESTUS	REGION 19	10/11/08	02/28/25	7,200	6,192	1,008
10	1145	1145 DAVENPORT, IA	321 West Kimberly Road	Davenport	IA	52806	USA	(563) 726-0682	SOUTHS	REGION 9	10/17/08	12/31/24	5,500	4,595	905
11	1170	1170 FRESNO, CA	5091 N. Fresno Street, Suite 140 (Gallery Plaza)	Fresno	CA	93710	USA	(559) 708-4281	WESTUS	REGION 25	08/15/09	09/30/26	8,144	6,957	1,187
12	1177	1177 WESTBURY, NY	24 Kinkel St	Westbury	NY	11590	USA	(516) 874-2033	EASTUS	REGION 5	11/16/09	08/31/28	9,900	8,434	1,466
13	1179	1179 ROCHESTER, MN	5139 Highway 52N	Rochester	MN	55901	USA	(507) 216-0978	SOUTHS	REGION 17	10/02/09	03/31/25	5,388	4,474	914
14	1187	1187 BROUSSARD, LA	3401 Hwy 90	East Broussard	LA	70518	USA	(337) 326-4683	SOUTHS	REGION 16	10/17/09	09/30/26	7,100	6,200	900
15	1189	1189 BAKERSFIELD, CA	3601 Ming Avenue	Bakersfield	CA	93309	USA	(661) 412-0063	WESTUS	REGION 25	11/27/09	05/31/28	8,500	6,970	1,530
16	1208	1208 EDGEWOOD, MD	2710 Pulaski Highway	Edgewood	MD	21040	USA	(443) 490-0180	EASTUS	REGION 3	06/14/10	10/31/24	5,000	4,076	924
17	1213	1213 SAN DIEGO, CA	2222 Verus Street Suite A & B	San Diego	CA	92154	USA	(619) 207-4667	WESTUS	REGION 14	08/13/10	09/30/25	7,339	6,139	1,200
18	1223	1223 SHERMAN, TX	1215 S Sam Rayburn Freeway	Sherman	TX	75090	USA	(903) 487-0368	WESTUS	REGION 11	12/10/10	02/28/25	4,317	3,409	908
19	1227	1227 GENEVA, IL	1530 South Randall Road	Geneva	IL	60185	USA	(630) 206-1535	EASTUS	REGION 8	12/04/10	01/31/30	6,000	4,542	1,458
20	1232	1232 NORTH HAVEN, CT	410 Universal Drive N	North Haven	CT	06473	USA	(203) 889-4703	EASTUS	REGION 5	02/25/11	12/31/24	6,397	4,893	1,504
21	1244	1244 GREENWOOD, IN	2117 Independence Drive (Summerfield Commons)	Greenwood	IN	46143	USA	(317) 522-0076	EASTUS	REGION 28	05/26/11	08/31/26	5,800	4,650	1,150
22	1254	1254 CHAMPAIGN, IL	301 W. Marketview Drive	Champaign	IL	61822	USA	(217) 903-5632	EASTUS	REGION 8	09/19/11	08/31/26	7,091	5,861	1,230
23	1285	1285 ARLINGTON, TX	808 Interstate 20 Frontage Road	Arlington	TX	76017	USA	(817) 789-6160	WESTUS	REGION 11	04/17/13	08/31/28	7,841	6,240	1,601
24	1290	1290 LAS VEGAS, NV	4588 North Rancho Drive, Suites 1-6 (Rancho Pines Shopping Center)	Las Vegas	NV	89130	USA	(702) 802-0873	WESTUS	REGION 14	06/26/13	08/31/27	6,000	4,511	1,489
25	1293	1293 STATEN ISLAND, NY	2040 Forest Ave (Forest Plaza)	Staten Island	NY	10303	USA	(917) 426-0580	EASTUS	REGION 26	02/14/13	06/30/29	7,070	5,569	1,501
26	1295	1295 CRYSTAL LAKE, IL	4500 US Highway 14	Crystal Lake	IL	60014	USA	(815) 219-4832	EASTUS	REGION 8	07/27/13	09/30/25	6,347	4,826	1,521
27	1310	1310 WOODBRIDGE, NJ	503-507 King Georges Road	Woodbridge	NJ	07095	USA	(908) 259-4170	EASTUS	REGION 26	10/28/13	01/31/29	6,450	4,949	1,501
28	1311	1311 WOODBURY, NJ	1450 Clemments Bride Road, Suite 16 & 17 (The Plaza at Deptford)	Woodbury	NJ	08096	USA	(856) 291-6500	EASTUS	REGION 22	10/02/13	01/31/26	7,000	5,499	1,501
29	1314	1314 FAIRFIELD, CA	1595 Holiday Lane, Suite B-4 (Holiday Galleria)	Fairfield	CA	94534	USA	(707) 439-8500	WESTUS	REGION 19	05/19/14	11/30/24	6,430	4,938	1,492
30	1316	1316 LAFAYETTE, IN	4315 Commerce Drive	Lafayette	IN	47905	USA	(765) 588-3554	EASTUS	REGION 28	12/24/13	03/31/25	8,000	6,499	1,501
31	1317	1317 REYNOLDSBURG, OH	2736 Brice Road (Brice Park Shopping Center)	Reynoldsburg	OH	43068	USA	(614) 285-3101	EASTUS	REGION 28	07/13/14	07/31/29	7,200	5,705	1,495
32	1318	1318 ROSWELL, GA	593 Holcomb Bridge Road, Suite 593	Roswell	GA	30009	USA	(404) 692-4483	SOUTHS	REGION 6	12/21/13	01/31/33	5,466	4,070	1,396
33	1319	1319 CINCINNATI, OH	454 Ohio Pike, Unit No. 58 (Cherry Grove Plaza)	Cincinnati	OH	45255	USA	(513) 823-2544	EASTUS	REGION 28	04/14/14	01/31/25	6,035	4,565	1,470
34	1324	1324 SANTEE, CA	240-102 Town Center Parkway (Santee Town Center)	Santee	CA	92071	USA	(619) 363-7661	WESTUS	REGION 14	10/10/15	12/31/25	6,081	4,576	1,505
35	1325	1325 WATERBURY, CT	1012 Wolcott Street	Waterbury	CT	06705	USA	(203) 721-6145	EASTUS	REGION 26	07/12/14	09/30/26	6,500	5,015	1,485
36	1335	1335 FLORIDA CITY, FL	33550 S. Dixie Hwy (Florida City Centre	Florida City	FL	33038	USA	(786) 838-0638	SOUTHS	REGION 10	04/18/14	08/31/26	7,034	5,464	1,570
37	1341	1341 LEOMINSTER, MA	489-493 North Main Street (WaterTower Plaza)	Leominster	MA	01453	USA	(978) 751-3745	EASTUS	REGION 1	06/16/14	08/31/29	7,967	6,186	1,781
38	1344	1344 PHILADELPHIA, PA	1530 South Columbus Blvd.	S. Philadelphia	PA	19147	USA	(267) 314-7030	EASTUS	REGION 22	11/14/14	12/31/24	6,235	4,743	1,492
39	1345	1345 LUTHERVILLE TIMONIUM, MD	2153 York Road (Timonium Sq.)	Timonium	MD	21093	USA	(443) 846-0430	EASTUS	REGION 3	07/25/14	12/31/27	7,500	5,986	1,514
40	1350	1350 MILFORD, CT	1389 Boston Post Road (Milford Crossing)	Milford	CT	06460	USA	(203) 693-4022	EASTUS	REGION 5	04/24/15	05/31/25	5,587	3,999	1,588
41	1352	1352 TORRANCE, CA	1431 W. Knox Street, Suite 200 (The Shops at South Bay)	Torrance	CA	90501	USA	(424) 271-0014	WESTUS	REGION 14	10/14/14	02/28/25	5,175	3,488	1,687
42	1355	1355 SOUTH ELGIN, IL	356 Randall Road (Shops at South Elgin/Shops at Randall Road)	South Elgin	IL	60177	USA	(847) 481-6987	EASTUS	REGION 8	06/10/15	08/31/27	8,400	6,928	1,472
43	1359	1359 FORT WORTH, TX	425 Sherry Lane (Westover Village Shopping Center)	Ft. Worth	TX	76114	USA	(882) 207-6770	WESTUS	REGION 11	06/11/15	09/30/27	7,500	5,980	1,520
44	1363	1363 DENTON, TX	2311 Colorado Blvd. (Colorado Square)	Denton	TX	76205	USA	(940) 312-1292	WESTUS	REGION 11	08/28/15	10/31/25	7,168	5,625	1,543
45	1366	1366 KATY, TX	455 Katy Fort Bend Road (Mission at Katy Mills Center)	Katy	TX	77494	USA	(281) 819-2900	WESTUS	REGION 24	11/21/15	02/28/26	7,500	5,917	1,583
46	1372	1372 FAIRLESS HILLS, PA	146 Lincoln Hwy.	Fairless Hills	PA	19030	USA	(267) 281-6360	EASTUS	REGION 22	11/04/15	06/30/26	8,045	6,550	1,495
47	1376	1376 TAMPA, FL	8444 West Hillsborough Avenue (Ross Plaza)	Tampa	FL	33615	USA	(813) 867-2760	SOUTHS	REGION 12	08/27/16	11/30/25	7,000	5,816	1,184
48	1379	1379 OLYMPIA, WA	1520 Cooper Point Road SW, Suite 250 (Cooper Point Pavilion)	Olympia	WA	98502	USA	(360) 529-4481	WESTUS	REGION 30	11/17/16	11/30/28	7,181	5,980	1,201
49	1385	1385 GAINESVILLE, FL	2607 NW 13th Street (Gainesville Plaza)	Gainesville	FL	32601	USA	(352) 340-2433	SOUTHS	REGION 12	12/01/17	03/31/27	9,677	8,345	1,332
50	1386	1386 RIVERDALE, UT	4040 Riverdale Road, Suite A-1	Riverdale	UT	84405	USA	(385) 205-8034	WESTUS	REGION 15	12/01/17	01/31/28	8,000	6,598	1,402
51	1388	1388 MESA, AZ	1845 S. Power Road	Mesa	AZ	85206	USA	(480) 207-2516	WESTUS	REGION 27	09/01/17	06/30/29	7,988	6,656	1,332
52	1389	1389 SALINAS, CA	1043 N. Main Street	Salinas	CA	93906	USA	(831) 269-3995	WESTUS	REGION 19	01/26/18	04/30/28	7,038	5,711	1,327
53	1393	1393 Loveland, CO	2985 North Garfield Avenue	Loveland	CO	80538	USA	(970) 624-0126	WESTUS	REGION 27	02/23/18	04/30/28	8,034	6,678	1,356
54	1394	1394 LAKE CHARLES, LA	3415 Derek Drive (Lake Charles Power Center)	Lake Charles	LA	70607	USA	(337) 214-2963	SOUTHS	REGION 16	04/27/18	07/31/28	9,930	8,358	1,572
55	1396	1396 KILLEEN, TX	1101 South Fort Hood Street, Suite 300 (Wendland Plaza)	Killeen	TX	76541	USA	(254) 242-3384	WESTUS	REGION 24	03/16/18	05/31/25	5,884	4,400	1,484
56	1398	1398 SAINT CLOUD, MN	3320 Division Street West (Division Street Plaza)	S. Cloud	MN	56301	USA	(320) 227-4667	SOUTHS	REGION 17	05/18/18	06/30/25	8,004	6,452	1,552
57	1401	1401 ELK GROVE, CA	8777 Elk Grove Boulevard (Elk Grove Shopping Center)	Elk Grove	CA	95624	USA	(916) 226-1746	WESTUS	REGION 19	05/25/18	09/30/26	8,927	7,595	1,332
58	1405	1405 New Hartford, NY	8619 Clinton Street (The Orchard Shopping Center)	New Hartford	NY	13413	USA	(315) 756-0096	EASTUS	REGION 4	06/29/18	11/30/25	6,000	4,616	1,384
59	1408	1408 THORNTON, CO	930 East 104th Avenue	Thornton	CO	80233	USA	(303) 552-3028	WESTUS	REGION 27	08/28/19	07/31/29	10,855	5,078	5,777
60	1410	1410 Woodbridge, VA	14516 Potomac Mills Road (Festival at Manassas Center)	Woodbridge	VA	22192	USA	(571) 343-4000	EASTUS	REGION 20	10/12/18	10/31/28	7,160	5,814	1,346
61	1412	1412 S SAN ANTONIO, TX	3142 SE Military Drive, Ste 116 (City Base Landing)	San Antonio #2	TX	78223	USA	(210) 504-3000	WESTUS	REGION 24	11/09/18	10/31/25	8,100	6,732	1,368
62	1413	1413 KANSAS CITY, MO	2618 NE Vivian Road	Kansas City (North)	MO	64119	USA	(816) 548-1724	SOUTHS	REGION 9	05/03/19	03/31/29	6,500	5,086	1,414
63	1417	1417 CHESTERFIELD, MO	17724-17726 Chesterfield Airport Road	Chesterfield	MO	63005	USA	(636) 237-6115	SOUTHS	REGION 9	03/22/19	06/30/26	4,520	2,807	1,713
64	1419	1419 PARKERSBURG, WV	2838 Pike Street, Suite 1A and 2	Parkersburg	WV	26101	USA	(681) 315-4007	EASTUS	REGION 23	05/17/19	06/30/29	6,430	5,014	1,416
65	1423	1423 KENTWOOD, MI	4260 28th Street SE Kentwood (Kentwood Towne Center)	Kentwood	MI	49512	USA	(616) 226-1042	EASTUS	REGION 7	12/06/19	01/31/29	8,400	5,691	2,709
66	1424	1424 SOLO, OH	6025 Kruse Drive, Suite 141 (Uptown Solon Center)	Solon	OH	44139	USA	(440) 769-0808	EASTUS	REGION 4	05/29/20	07/31/25	8,000	5,325	2,675
67	1426	1426 BLOOMINGTON, IL	1701 N Empire Street, Suite 305-310	Bloomington	IL	61704	USA	(309) 834-1752	EASTUS	REGION 8	08/14/20	10/31/27	6,651	5,440	1,211
68	1427	1427 College Station, TX	1128 Harvey Road	College Station	TX	77840	USA	(979) 633-4613	WESTUS	REGION 24	05/29/20	07/31/27	6,435	5,022	1,413
69	1428	1428 Albany, OR	1241 Clay Street SE	Albany	OR	97322	USA	(541) 801-3008	WESTUS	REGION 15	06/26/20	07/31/27	7,219	5,678	1,541
70	1430	1430 Clarksville, TN	115 Terminal Road	Clarksville	TN	37040	USA	(931) 354-1430	SOUTHS	REGION 10	11/20/20	10/31/25	12,272	10,854	1,418
71	1431	1431 MEDFORD, NY	700-47 E Patchogue Yaphank Road	Medford	NY	11763	USA	(631) 618-4074	EASTUS	REGION 5	05/03/21	01/31/28	10,121	8,472	1,649

LL Flooring, LLC
Exhibit A

Store List

Count	Loc #	Name	Address	City	State	Zip	Country	Phone	District	Region	Open Date	Lease End Date	Gross Sq. Ft.	WH Sq Ft	Selling Sq. Ft.	
72	1433	1433 FRANKLIN, TN	209 S. Royal Oaks Blvd. (Watson Glen Shopping Center)	Franklin	TN	37064	USA	(615) 544-4501	SOUTHUS	REGION 10	03/26/21	04/30/26	6,467	5,102	1,365	
73	1434	1434 Exton, PA	213 W. Lincoln Highway (Whiteland Town Center)	Exton	PA	19341	USA	(484) 713-9091	EASTUS	REGION 22	04/21/21	06/30/26	5,845	4,346	1,499	
74	1435	1435 HOUSTON Galleria, TX	8366 Westheimer Road	Houston	TX	77063	USA	(832) 696-0283	WESTUS	REGION 24	09/03/21	05/31/26	2,013	474	1,539	
75	1436	1436 CLEARWATER, FL	2613 Gulf to Bay Blvd	Clearwater	FL	33759	USA	(727) 330-2746	SOUTHUS	REGION 12	07/16/21	10/31/26	2,000	611	1,389	
76	1437	1437 VISALIA, CA	3725 S. Mooney Boulevard (Gateway Plaza)	Visalia	CA	93277	USA	(559) 931-0491	WESTUS	REGION 25	11/29/21	11/30/28	10,300	8,891	1,409	
77	1440	1440 Hattiesburg, MS	4700 Hardy Street	Hattiesburg	MS	39402	USA	(601) 255-8005	SOUTHUS	REGION 16	06/28/21	08/31/26	7,574	6,170	1,404	
78	1441	1441 BECKLEY, WV	1020 N. Eisenhower Drive (Cranberry Creek Shopping Center)	Beckley	WV	25801	USA	(304) 712-3340	EASTUS	REGION 20	06/28/21	08/31/26	8,450	7,046	1,404	
79	1442	1442 Jackson, TN	1241 Vann Drive	Jackson	TN	38305	USA	(731) 249-0073	SOUTHUS	REGION 16	09/15/21	10/31/26	5,500	4,062	1,438	
80	1444	1444 Muncie, IN	1515 W McGalliard Road (Northwest Plaza)	Muncie	IN	47304	USA	(765) 400-2494	EASTUS	REGION 28	01/10/22	03/31/27	8,275	6,860	1,415	
81	1445	1445 Framingham, MA	235 Old Connecticut Path	Framingham	MA	01701	USA	(508) 202-4157	EASTUS	REGION 1	02/14/22	02/28/29	6,560	5,001	1,559	
82	1446	1446 Mount Holly, NJ	531 High Street	Mt. Holly	NJ	08060	USA	(609) 534-2640	EASTUS	REGION 22	04/25/22	03/31/27	9,602	8,182	1,420	
83	1447	1447 Yakima, WA	2319 S. First Street, Suite 101	Yakima	WA	98903	USA	(509) 408-1449	WESTUS	REGION 30	12/06/21	01/31/32	11,015	9,533	1,482	
84	1449	1449 Burlington, NC	1807-1809 S. Church Street (Grove Park Plaza)	Burlington	NC	27215	USA	(336) 270-2748	SOUTHUS	REGION 2	03/28/22	06/30/32	7,915	6,220	1,695	
85	1450	1450 SAINT AUGUSTINE, FL	330 CBL Dr.	St. Augustine	FL	32086	USA	(904) 342-6006	SOUTHUS	REGION 12	03/21/22	04/30/27	9,000	7,596	1,404	
86	1451	1451 MENOMONEE FALLS, WI	N81W15086 Appleton Ave	Menomonee Falls	WI	53051	USA	(262) 257-9412	SOUTHUS	REGION 17	01/31/22	06/30/33	8,569	7,181	1,388	
87	1453	1453 Bellingham, WA	145 E Stuart Rd.	Bellingham	WA	28226	USA	(360) 483-0303	WESTUS	REGION 30	11/07/22	12/31/27	7,522	6,118	1,404	
88	1454	1454 Cumming, GA	580 Atlanta Road, Suite 203B	Cumming	GA	30040	USA	(770) 881-8187	SOUTHUS	REGION 6	06/13/22	07/31/27	5,980	4,576	1,404	
89	1455	1455 Tuscaloosa, AL	3305 McFarland Blvd	Tuscaloosa	AL	35405	USA	(205) 614-5625	SOUTHUS	REGION 6	03/28/22	05/31/27	6,200	4,796	1,404	
90	1458	1458 Battle Creek, MI	5700 Beckley Rd. Suite 14	Battle Creek	MI	49015	USA	(269) 249-1993	EASTUS	REGION 7	06/13/22	07/31/27	8,036	6,552	1,484	
91	1459	1459 Joplin, MO	732 Rangeline, Northtown Center	Joplin	MO	64801	USA	(417) 691-8599	SOUTHUS	REGION 9	12/05/22	12/31/27	7,004	5,639	1,365	
92	1460	1460 Prescott Valley, AZ	6689 E 1st Street	Prescott Valley	AZ	86314	USA	(928) 582-5500	WESTUS	REGION 27	09/19/22	12/31/32	11,560	10,156	1,404	
93	1462	1462 MUNDELEIN, IL	3080 W. Route 60	Mundelein	IL	60060	USA	(224) 499-7024	EASTUS	REGION 8	10/27/22	11/30/32	6,789	5,385	1,404	
94	1463	1463 Abilene, TX	4127 S. Danville Drive	Abilene	TX	79605	USA	(325) 244-0899	WESTUS	REGION 11	09/22/22	10/31/27	6,027	4,630	1,397	
94													Average Sq. Ft.	7,315	5,837	1,479

EXHIBIT B

Expense Budget

LL Flooring, LLC
Exhibit B

Expense Budget

	1st Week	Each Subsequent Week
<u>Advertising</u>		
Digital & Media	22,400	22,400
Signs (1)	76,637	-
Sign Walkers	67,561	67,561
Subtotal Advertising	166,598	89,961
 <u>Supervision</u>		
Fees / Wages / Expenses (2)	232,100	169,700
Subtotal Supervision	232,100	169,700
 <u>Miscellaneous</u>		
Miscellaneous /Legal (3)	50,000	-
Subtotal Miscellaneous	50,000	-
 Total Expenses	448,699	259,661

Notes:

1. Includes Sales Tax.
2. Includes Deferred Compensation and Insurance.
3. Any legal expenses associated with issues raised by or disputes with landlords, including (without limitation) negotiations in respect of landlord side letters, shall be in addition to and not part of the budgeted legal expenses.

EXHIBIT 2

Sale Guidelines

Sale Guidelines¹

1. The Sales shall be conducted so that the Closing Stores in which sales are to occur will remain open no longer than during the normal hours of operation or such hours as otherwise provided for in the respective leases for the Closing Stores.
2. The Sales shall be conducted in accordance with applicable state and local “Blue Laws,” where applicable, so that no Sale shall be conducted on Sunday unless the Merchant had been operating such Closing Store on a Sunday prior to the commencement of the Sales.
3. On “shopping center” property, the Agent shall not distribute handbills, leaflets, or other written materials to customers outside of any Closing Stores’ premises, unless permitted by the lease or, if distribution is customary in the “shopping center” in which such Closing Store is located; *provided* that the Agent may solicit customers in the Closing Stores themselves. On “shopping center” property, the Agent shall not use any flashing lights or amplified sound to advertise the Sales or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.
4. The Debtors and the Agent shall have the right to use and sell the Store Closure Assets and the Additional Agent Goods. The Debtors and the Agent may advertise the sale of the Store Closure Assets and the Additional Agent Goods in a manner consistent with these Sale Guidelines. The purchasers of any of the Store Closure Assets and the Additional Agent Goods sold during the Sales shall be permitted to remove the Store Closure Assets and the Additional Agent Goods either through the back or alternative shipping areas at any time, or through other areas after store business hours; *provided, however*, that the foregoing shall not apply to the sale of de minimis Store Closure Assets and Additional Agent Goods, whereby the item(s) can be carried out of the store in a shopping bag.
5. At the conclusion of the Sales, the Agent shall vacate the Closing Stores; *provided* that Agent may abandon any furniture, fixtures, and equipment (including, but not limited to, machinery, rolling stock, office equipment and personal property, and conveyor systems and racking) (“FF&E”) not sold in the Sales at the conclusion of the Sales (the “Termination Date”), without cost or liability of any kind to the Agent. The Agent shall notify the Merchant of its intention to abandon any FF&E at least two (2) days prior to the Termination Date. The Merchant will have the option to remove the FF&E, at its own cost prior to the Termination Date, or abandon the FF&E. For the avoidance of doubt, as of the Termination Date, the Agent may abandon, in place and without further responsibility or liability of any kind, any FF&E.
6. The Agent may advertise the Sales as “store closing,” “sale on everything,” “everything must go,” “everything on sale,” or similar-themed sales. The Agent may also have a

¹ Capitalized terms used but not defined in these Sale Guidelines have the meanings given to them in the Debtors’ *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume the Agency Agreement, (II) Authorizing and Approving the Conduct of Store Closing Sales, with Such Sales to Be Free and Clear of All Liens, Claims, and Encumbrances, (III) Authorizing Customary Bonuses to Employees of Closing Stores, and (IV) Granting Related Relief* (the “Store Closing Motion”).

“countdown to closing” sign prominently displayed in a manner consistent with these Sale Guidelines. All signs, banners, ads and other advertising material, promotions, and campaigns will be approved by the Merchant, prior to purchase, in accordance with the Agency Agreement.

7. The Agent shall be permitted to utilize sign-walkers, display, hanging signs, and interior banners in connection with the Sales; *provided* that such sign walkers, display, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. The Merchant and Agent shall not use neon or day-glo on its sign walkers, display, hanging signs, or interior banners if prohibited by the applicable lease or applicable law. Furthermore, with respect to enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Sale Guidelines. In addition, the Merchant and Agent shall be permitted to utilize exterior banners at (i) non-enclosed mall Closing Stores and (ii) enclosed mall Closing Stores to the extent the entrance to the applicable Closing Store does not require entry into the enclosed mall common area; *provided, however*, that such banners shall be located or hung so as to make clear that the Sales are being conducted only at the affected Closing Store, and shall not be wider than the storefront of the Closing Store. In addition, the Merchant and Agent shall be permitted to utilize sign walkers in a safe and professional manner and in accordance with the terms of the Order. Nothing contained in these Sale Guidelines shall be construed to create or impose upon the Agent or Merchant any additional restrictions not contained in the applicable lease agreement.
8. Conspicuous signs shall be posted in the cash register areas of each of the affected Closing Stores to effect that “all sales are final.”
9. Except with respect to the hanging of exterior banners, the Agent shall not make any alterations to the storefront, roof, or exterior walls of any Closing Stores, except as authorized by the applicable lease.
10. The Agent shall not make any alterations to interior or exterior Closing Store lighting, except as authorized by the applicable lease. No property of the landlord of a Closing Store shall be removed or sold during the Sales. The hanging of exterior banners or in-Closing Store signage and banners shall not constitute an alteration to a Closing Store.
11. The Agent shall keep Closing Store premises and surrounding areas clear and orderly consistent with present practices.
12. The Agent, at the direction of the Debtors, and the landlord of any Store are authorized to enter into Side Letters without further order of the Court, *provided* that such agreements do not have a material adverse effect on the Debtors or their estates.
13. Subject to the provisions of the Agency Agreement, the Agent shall have the right to use and sell all FF&E owned by the Merchant (the “Owned FF&E”), approved by the Merchant. The Agent may advertise the sale of the Owned FF&E in a manner consistent with these guidelines and the Agency Agreement. The purchasers of any Owned FF&E sold during the sale shall be permitted to remove the Owned FF&E either through the back

or alternative shipping areas at any time, or through other areas after applicable business hours, *provided, however*, that the foregoing shall not apply to *de minimis* FF&E sales made whereby the item can be carried out of the Closing Store in a shopping bag. For the avoidance of doubt, as of the Sale Termination Date, the Agent may abandon, in place and without further responsibility, any FF&E.

14. At the conclusion of the Sales at each Closing Store, pending assumption or rejection of applicable leases, the landlords of the Closing Stores shall have reasonable access to the Closing Stores' premises as set forth in the applicable leases. The Merchant, Agent and their agents and representatives shall continue to have access to the Closing Stores as provided for in the Agency Agreement.
15. The rights of landlords against Merchant for any damages to a Closing Store shall be reserved in accordance with the provisions of the applicable lease; *provided* that to the extent certain leases of Closing Stores require written confirmation of receipt of a key to effectuate surrender, this requirement is waived.
16. If and to the extent that the landlord of any Closing Store affected hereby contends that the Merchant or Agent is in breach of or default under these Sale Guidelines, such landlord shall email or deliver written notice by overnight delivery on the Merchant and Agent as follows:

If to Agent:

Hilco Merchant Resources, LLC
One Northbrook Place
5 Revere Drive, Suite 206
Northbrook, IL 60062
Facsimile: AMcKeown@hilcoglobal.com
Attention: Alexander McKeown.

with copies (which shall not constitute notice) to:

Chipman, Brown, Cicero & Cole, LLP
1313 North Market Street
Suite 5400
Wilmington, Delaware 19801
Attention: Mark Desgrosseilliers
Email: desgross@chipmanbrown.com

If to Merchant: LL Flooring Holdings, Inc.
4901 Bakers Mill Lane
Richmond, VA 23230
Attention: Holly Etlin
Email: hetlin@alixpartners.com

with copies (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, New York 10001
Attention: Lisa Laukitis, Elizabeth M. Downing, and
Angeline J. Hwang
Email: Lisa.Laukitis@skadden.com
Elizabeth.Downing@skadden.com
Angeline.Hwang@skadden.com

– and –

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
920 N. King Street
Wilmington, Delaware 19801
Attention: Joseph O. Larkin and Jason M. Liberi
Email: Joseph.Larkin@skadden.com
Jason.Liberi@skadden.com

17. If the parties are unable to resolve the dispute, either the landlord or the Debtors shall have the right to schedule a hearing before the Court on no less than three (3) business days' written notice to the other party, served by email or overnight delivery.