

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

In re:

HDC Holdings II, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-12307 (TMH)

(Joint Administration Requested)

**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING
(I) THE DEBTORS TO ASSUME THE AGENCY AGREEMENT, (II) THE
CONDUCT OF THE STORE CLOSING SALES, WITH SUCH SALES TO BE FREE
AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES, (III) CUSTOMARY
BONUSES TO EMPLOYEES OF CLOSING STORES AND DISTRIBUTION CENTERS,
(IV) THE DEBTORS TO REIMBURSE THE AGENT FOR ITS REASONABLE AND
NECESSARY EXPENSES INCURRED IN CONNECTION
WITH CONDUCTING THE STORE CLOSING SALES, AND (V) RELATED RELIEF**

HDC Holdings II, LLC and its debtor-affiliates (collectively, the “Debtors”), as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”), hereby move the Court (this “Motion”), pursuant to sections 105, 363, 365, 364 and 554 of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 2002, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for the entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the “Interim Order”), and a final order (the “Final Order” and, together with the Interim Order, the “Proposed Orders”), substantially in the form attached hereto as **Exhibit B**, (i) authorizing the Debtors, upon entry of the Final Order,

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: HDC Holdings II, LLC (2013); HDC Holdings III, LLC (3296); CCM Capital Assets, LLC (9451); Channel Control Merchants, LLC (3319); Dirt Cheap I, LLC (9433); CCM Support Services, LLC (2059); CCM Wholesale SE, LLC (7219); Channel Control Merchants of Texas, LLC (8091); Creative Sales Solutions, LLC (1691); Dirt Cheap Arkansas, LLC (0244); Dirt Cheap Building Supplies, LLC (0880); Dirt Cheap of Georgia, LLC (0269); Dirt Cheap of Louisiana, LLC (0067); Dirt Cheap SE, LLC (4928); Dirt Cheap Tennessee, LLC (1273); Treasure Hunt, LLC (9393); CCM Wholesale, LLC (7219); Channel Control Merchants of California, LLC (9011); and CAL Support Services, LLC (2859). The Debtors’ headquarters are located at 6892 US Hwy 49 North, Hattiesburg, Mississippi 39402.

to assume the Letter Agreement Governing Inventory Disposition dated January 30, 2023 as amended by the Amendment to Letter Agreement dated October 1, 2024 (the “Amendment” and, together, the “Agreement”)², by and between Debtor Channel Control Merchants, LLC, on the one hand, and Hilco Merchant Resources, LLC (“Hilco” or the “Agent”), on the other hand, a copy of which is attached as **Exhibit 1** to each Proposed Order, (ii) authorizing the Debtors to conduct store closing or similar themed sales in accordance with the terms of the Agreement and the store closing sale guidelines (the “Sale Guidelines”), a copy of which is attached as **Exhibit 2** to each Proposed Order with such sales to be free and clear of all liens, claims, and encumbrances; (iii) authorizing, but not directing, the payment of small retention bonuses to employees at the Closing Stores and Distribution Centers (defined below) pursuant to the Agreement; (iv) authorizing the Debtors to reimburse the Agent for its reasonable and necessary expenses incurred in connection with conducting the Store Closing Sales (defined below); and (v) granting certain related relief. Notably, the Debtors do not propose to pay the Agent any fees, transaction or otherwise, for the services rendered under the Agreement, and the Agent shall only be reimbursed for its expenses incurred in connection with conducting the store closing sales contemplated hereby. In support of this Motion, the Debtors rely upon the *Declaration of Jeffrey Martin in Support of Chapter 11 Petitions and Requests for First Day Relief* (the “First Day Declaration”),³ which was filed contemporaneously with this Motion and is incorporated herein by reference. In further support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”)

² Pursuant to this Motion, the Debtors seek, in the Interim Order, confirmation that the Agreement is operative and effective, and, in the Final Order, authorization to assume the Agreement.

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. 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”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue of these Chapter 11 Cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105, 363, 365, 364 and 554 of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004.

BACKGROUND

A. Background

5. On the date hereof (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. To date, no trustee, examiner or statutory committee has been appointed in these Chapter 11 Cases.

6. Additional factual background relating to the Debtors’ business, capital structure and the commencement of these Chapter 11 Cases is set forth in detail in the First Day Declaration.

B. The Debtors' Sale Efforts

7. The Debtors, a leading provider of quality secondary merchandise, serve a loyal customer base of treasure hunters and value seekers in underserved secondary and tertiary retail markets in the southern United States. The Debtors' brands include *Dirt Cheap*, *Treasure Hunt*, and *Dirt Cheap Building Supplies*. Through these business lines, the Debtors sell a variety of quality merchandise, including apparel and footwear, building supplies, toys and electronics, furniture, seasonal items, and health and beauty products, among others. The Debtors focus on addressing the retail needs of their consumer customers through brick-and-mortar retail locations located throughout the southern United States.

8. As described in more detail in the First Day Declaration, the Debtors have recently suffered operational losses stemming from, among other things, onerous lease obligations, underperforming retail locations, and the continued growth of online competitors and decline of in-store shoppers. Additionally, the Debtors faced financial headwinds as the costs of goods, labor, and transportation increased. In this context, the Debtors and their advisors began exploring restructuring alternatives. After considering numerous potential ways to address the Debtors' debt structure and liquidity issues, the Debtors' Board of Directors determined that it was appropriate to wind down the Debtors' brick-and-mortar operations prior to, and during, these Chapter 11 Cases.

9. Accordingly, during October 2024, the Debtors, working with Hilco Merchant Resources, LLC (an affiliate of the Debtors' majority equity holder) as Agent, commenced store closing sales at all of their retail locations (collectively, the "Closing Stores," and such sales, the "Store Closing Sales") pursuant to the Agreement. As noted above, pursuant to the Agreement, the Agent is not charging a fee for its services in connection with the Store Closing Sales and only seeks reimbursement of hard costs (such costs, the "Agent Expenses"). The Debtors intend to vacate the

Closing Stores and tender possession to applicable landlords upon conclusion of the Store Closing Sales, which the Debtors expect to happen on a rolling basis and, in any event, no later than December 31, 2024.

10. The Debtors operate in an extremely competitive retail environment, facing competition from other secondary merchandise retail stores and mass-market discount retailers, many of which are located in close proximity to the Closing Stores. In addition to long standing traditional competitors, the Debtors also must contend with liquidation firms that acquire unwanted inventory which is then resold to wholesalers or traditional retailers. Due to increased competition and various issues with their foundational supplier, the Debtors have faced significant pressure to maintain market share, which has directly and negatively affected their profitability. Additionally, due to the financial constraints on the Debtors' intended customer base, the Debtors were unable to pass the costs associated with meeting the demands of the market on to the consumers.

11. While the Debtors explored transactions with potential strategic purchasers, the Debtors ultimately determined, in their business judgment, that it was apparent they had no alternative but to proceed with the liquidation of their inventory while continuing to assess strategic alternatives. Absent an acquiror emerging during the liquidation process, the Debtors determined that an orderly liquidation of the remaining inventory would result in a net higher yield to the Debtors' estates than continuing operations, at an ongoing loss, while pursuing a going concern sale process. At this time, the Debtors also instructed the Agent to begin marketing and selling FF&E at the Debtors' headquarters located in Hattiesburg, Mississippi (the "Headquarters") and the Debtors' distribution centers (the "Distribution Centers").

C. The Store Closing Sales and the Agreement

12. Once it became clear that the Debtors, in consultation with Hilco (as an affiliate

of the Debtors' majority equity holder) would wind down their brick-and-mortar operations on a chain-wide level and with Court oversight, the Debtors retained Hilco to serve as the Agent in connection with liquidating the inventory at the Closing Stores.⁴

13. Under the terms of the Agreement, as recently amended on October 1, 2024, the Agent has agreed to serve as the exclusive agent to the Debtors for the purpose of conducting a sale of (a) merchandise at the Closing Stores (the "Store Merchandise"); and (b) the furniture, fixtures, and equipment owned by the Debtors (together with the Store Merchandise, the "Store Closing Assets") in the Closing Stores, at the Headquarters, and at the Distribution Centers using the procedures outlined in the Sale Guidelines, and, subject to the terms set forth in the Agreement. The Debtors seek to assume the Agreement so that they may leverage the experience and resources of the Agent in performing large-scale liquidations while retaining control over the sale process, which the Debtors believe will provide the maximum benefit to the estates.

14. The material terms of the Agreement are described in the summary chart below.⁵

Provision	Description
Merchandise <i>Agreement ¶ A</i>	" <u>Merchandise</u> " shall mean all goods, saleable in the ordinary course, located in the Stores and the Merchant's distribution centers (" <u>Distribution Centers</u> ") on the Sale Commencement Date (defined below), as well as any additional goods Merchants elects to include in the Sale. "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, " <u>FF&E</u> "); or (3) damaged or defective merchandise that cannot be sold.

⁴ The Initial terms of the Agreement provided that the Agent would perform liquidation services at eight (8) of the Debtors' stores in exchange for a fee and reimbursement of expenses. Those liquidations completed in March 2023, but the Debtors and Agent have occasionally amended the scope of the Agreement to include additional stores or support.

⁵ Capitalized terms used but not otherwise in this summary chart shall have the meanings ascribed to them in the Agreement. To the extent that this summary differs in any way from the terms set forth in the Agreement, the terms of the Agreement shall control. As used in this summary chart, the term "Merchant" refers to Debtor Channel Control Merchants, LLC.

Provision	Description
Sale of FF&E & Abandonment Thereof <i>Agreement ¶ I</i>	To the extent expressly requested by Merchant, as part of the Sale, Agent shall sell FF&E in the Merchant's Headquarters, Distribution Centers and Stores from the location(s) where such FF&E is situated; provided, however, Agent shall only sell FF&E that is specifically identified by Merchant. Merchant shall be responsible for all reasonable 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. Agent shall remit to Merchant all Gross Proceeds from the sale of FF&E. Pursuant to the Amendment, the Agent has waived its fee as set forth in Paragraph E of the Agreement and any fee for selling FF&E as set forth in paragraph I of the Agreement.
Additional Agent Goods <i>Agreement ¶ R (pursuant to the Amendment)</i>	Agent shall have the right, upon mutual agreement with Merchant, to supplement the Merchandise in the Sale at the Stores (including Additional Stores) with additional goods procured by Agent at Agent's sole cost and expense which are of like kind, and no lesser quality to the Merchandise in the Sale at the Stores ("<u>Additional Agent Goods</u>"); provided, that the cost of Additional Agent Goods shall not exceed twenty percent (20%) of the aggregate cost of Merchandise in the Sale. The Additional Agent Goods shall be purchased by Agent as part of the Sale, and delivered to the Stores at Agent's sole expense (including as to labor, freight and insurance relative to shipping such Additional Agent Goods to the Stores). Sales of Additional Agent Goods shall be run through Merchant's cash register systems; provided however, that 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. Agent and Merchant shall also cooperate so as 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-Merchant goods. Additionally, Agent shall provide signage in the Stores notifying customers that the Additional Agent Goods have been included in the Sale. With respect to the Additional Stores set forth on Exhibit 1, Agent shall pay to Merchant an amount equal to five percent (5%) (the "<u>Additional Agent Goods Fee</u>") of the gross proceeds (excluding Sale Taxes) from the sale of the Additional Agent Goods (the "<u>Additional Agent Goods Proceeds</u>"). Agent shall retain all remaining amounts from the sale of the Additional Agent Goods. Agent shall pay Merchant its Additional Agent Goods Fee in connection with each weekly sale reconciliation with respect to sales of Additional Agent Goods sold by Agent during each then prior week (or at such other mutually agreed upon time). Should Merchant elect to add additional Stores to the scope of this Agreement as Additional Stores, the Merchant reserves the right to negotiate revised terms for the Additional Agent Goods Fee for such additional Stores. Agent and Merchant intend that the transactions relating to the Additional Agent Goods are, and shall be construed as, a true consignment from Agent to Merchant in all respects and not a consignment for security purposes. Subject solely to Agent's obligations to pay to Merchant the Additional Agent Goods Fee, at all times and for all purposes the Additional Agent Goods and their proceeds shall be the exclusive property

Provision	Description
	of Agent, and no other person or entity shall have any claim against any of the Additional Agent Goods or their proceeds. The Additional Agent Goods shall at all times remain subject to the exclusive control of Agent. Merchant shall, at Agent's sole cost and expense, insure the Additional Agent Goods and, if required, promptly file any proofs of loss with regard to same with 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. Merchant acknowledges, and the Approval Order shall provide, that the Additional Agent Goods shall be consigned to Merchant as a true consignment under Article 9 of the Uniform Commercial Code. Agent is hereby granted a first priority security interest in and lien upon (i) the Additional Agent Goods and (ii) the Additional Agent Goods proceeds, and which security interest shall be deemed perfected pursuant to the Approval Order without the requirement of filing UCC financing statements or providing notifications to any prior secured parties (provided that Agent is hereby authorized to deliver all required notices and file all necessary financing statements and amendments thereof under the applicable UCC identifying Agent's interest in the Additional Agent Goods as consigned goods thereunder and the Merchant as the consignee therefor, and Agent's security interest in and lien upon such Additional Agent Goods and Additional Agent Goods proceeds).
Sale Term <i>Amendment</i>	The Supplemental Sale will commence on or about October 3, 2024 (the " <u>Supplemental Sale Commencement Date</u> ") and will terminate no later than December 31, 2024, unless extended by mutual agreement of the Parties (the " <u>Supplemental Sale Termination Date</u> ").
Expenses of the Sale <i>Amendment</i>	Upon execution of the Amendment, the Merchant shall pay by wire transfer to the Agent an initial advance payment of costs and expenses delineated in the Supplemental Budget of \$585,000 (the " <u>Supplemental Sale Expense Advance</u> ") which shall be held by Agent and applied towards Supplemental Budget items as incurred. Any portion of the Supplemental Sale Expense Advance not so used shall be returned to Merchant within three days following the final reconciliation. Upon reasonable request by Agent, Merchant shall increase the amount of the Supplemental Sale Expense Advance.
Agent Compensation; Sharing <i>Amendment</i> ¶	For the purpose of the Additional Stores, Headquarters and Distribution Center, the Agent will waive its (i) Agent fee as set forth in paragraph E of the Agreement and (ii) fee for selling FF&E as set forth in paragraph I of the Agreement.
Debtors' Indemnification <i>Agreement</i> ¶ F(i)	Merchant shall indemnify, defend, and hold Agent and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential coinvestors, 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 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,

Provision	Description
	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 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.
Agent Indemnification <i>Agreement ¶ F(ii)</i>	Agent shall indemnify, defend and hold Merchant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential coinvestors, 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, 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.
Agent's Security Interest	Merchant acknowledges, and the Approval Order shall provide, that the Additional Agent Goods shall be consigned to Merchant as a true consignment under Article 9 of the Uniform Commercial Code. Agent is hereby granted a first priority security interest in and lien upon (i) the Additional Agent Goods and (ii) the Additional Agent Goods proceeds, and which security interest shall be deemed perfected pursuant to the Approval Order without the requirement of filing UCC financing statements or providing notifications to any prior secured parties (provided that Agent is hereby authorized to deliver all required notices and file all necessary financing statements and amendments thereof under the applicable UCC identifying Agent's interest in the Additional Agent Goods as consigned goods thereunder and the Merchant as the consignee therefor, and Agent's security interest in and lien upon such Additional Agent Goods and Additional Agent Goods proceeds).
Merchandise Returns <i>Agreement ¶ D.</i>	Consistent with the Debtors' policy, no returns are accepted and no returns will be accepted during the Store Closing Sales.

Provision	Description
Employee Retention Bonus <i>Agreement</i>	Retained Employees at the Debtors' Closing Stores and Distribution Centers will be eligible for retention bonuses if they remain within the Debtors' employ until the applicable Closing Store(s) or Distribution Center(s) to which they are assigned are closed. Bonuses will be paid in the following manner: <u>Total Payout for Closing Stores - (877 employees)</u> Area Manager / District Manager: \$2,500 Store Manager: \$1,750 Asst. Manager: \$1,000 Key Holder: \$750 Associate (essential): \$2 an hour increase, plus \$1 week to week accruing until and paid upon the conclusion of the Store Closing Sale for the applicable Closing Store(s). <u>Total Payout for Distribution Centers - (563 employees)</u> Manager: \$2,500 Supervisor: \$1,850 Equipment Operator: \$1,250 Hourly Employee: \$1 an hour increase, plus \$2 week to week accruing until and paid upon the conclusion of the Store Closing Sale for the applicable Distribution Center.

15. In accordance with the Agreement, the Agent shall not sell gift cards.⁶

RELIEF REQUESTED

16. By this Motion, the Debtors seek entry of the Proposed Orders (i) authorizing the Debtors, upon entry of the Final Order, to assume the Agreement, (ii) authorizing the Debtors to continue and conduct the Store Closing Sales in accordance with the terms of the Agreement and the Sale Guidelines, with such sales to be free and clear of all liens, claims, and encumbrances, (iii) authorizing the payment of the Store Closing Bonuses (as defined below), (iv) authorizing the Debtors to reimburse the Agent for its reasonable and necessary costs of conducting the Store Closing

⁶ The Debtors have not historically had a gift card program. In certain instances, the Debtors would provide gift cards to influencers who promote the Debtors' business on social media. However, the Debtors have discontinued that program.

Sales in accordance with the terms of the Agreement, and (v) granting certain related relief.

BASIS FOR RELIEF REQUESTED

A. Assumption of the Agreement is Warranted Under the Circumstances

17. The Debtors request authority to assume the Agreement, upon entry of the Final Order, pursuant to section 365 of the Bankruptcy Code. 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). A debtor’s determination to assume or reject an executory contract is governed by the “business judgment” standard. *See, e.g., In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. Oct. 27, 2009) (finding that a debtor’s decision to assume or reject an executory contract will stand so long as “a reasonable business person would make a similar decision under similar circumstances.”); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (stating a debtor’s decision to reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was the product of bad faith, whim, or caprice). “The business judgment rule ‘is a presumption that in making a 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 interest of the company.’” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

18. The business judgment rule is crucial in chapter 11 cases and shields a debtor’s management from judicial second-guessing. *See In re Integrated Res.*, 147 B.R. at 656; *see also Comm. of Asbestos Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attached to a debtor’s management

decisions.”). Generally, courts defer to a debtor in possession’s business judgment to assume or reject an executory contract or lease. *See, e.g., 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) (stating that the business judgment test “requires only that the trustee [or debtor in possession] demonstrate that [assumption] or rejection of the contract will benefit the estate.”).

19. The Debtors, in consultation with their professional advisors, determined that the Closing Stores should be closed and the Store Closing Assets should be liquidated for the benefit of the Debtors’ estates and creditors. Furthermore, the Debtors have retained a nationally-recognized liquidator to conduct the Store Closing Sales at no cost to the Debtors’ estates (except reimbursement of the Agent Expenses)—thus providing the greatest return to the Debtors’ estates for the Store Closing Assets. Additionally, the Debtors believe that the terms set forth in the Agreement are fair and equitable and present the best path forward with respect to winding down their operations.

20. Further, for the Debtors to conclude the Store Closing Sales as quickly and efficiently as possible, and thereby minimize any unnecessary administrative expenses in connection with the prosecution of these Chapter 11 Cases, it is essential that the Debtors be permitted to continue performing pursuant to the Agreement. The Agent has been conducting store closing sales since no later than October 3, 2024, and, as an affiliate of the majority equity owner of the Debtors, is familiar with the Debtors’ operations and the Debtors’ ongoing wind down efforts. Moreover, the Agent has overseen similar store closing sales for retailers entering and proceeding through chapter 11 and, therefore, best knows how to maximize the value to be obtained by the Debtors during the remainder of such sales.

21. Failure by the Debtors to continue performing pursuant to the Agreement at this point would lead only to unnecessary delay and expense that would, in turn, disrupt these Chapter

11 Cases and the Debtors' efforts to maximize value for all stakeholders. Among other things, the Debtors and their advisors would be compelled to devote valuable time and effort, at considerable expense to the Debtors and their estates, to locating new agents to conduct the Store Closing Sales. Given the effectiveness of the Debtors' prepetition efforts to obtain the best possible terms for liquidation of the Merchandise and FF&E, the Debtors believe that they would be unable to locate alternate agents willing to conduct the Store Closing Sales with terms as favorable to the Debtors and their stakeholders as those set forth in the Agreement; indeed, the Agent is not receiving any fees for its services, which would not be feasible were the Debtors to utilize an alternate provider.

22. In contrast to the harm that any failure to perform under the Agreement would undoubtedly cause the Debtors and their estates, the Debtors believe that they will receive significant benefits from performing under the Agreement and allowing the Store Closing Sales to proceed in an efficient and cost effective manner during these Chapter 11 Cases under the guidance and expertise of the Agent.

23. Accordingly, the Debtors submit that there is sufficient business justification for assumption of the Agreement upon entry of the Final Order.

B. Sufficient Business Justification Exists for Continuation of the Store Closing Sales

24. The Debtors request authority, pursuant to section 363(b) of the Bankruptcy Code, to sell the Store Closing Assets through the continuation of the Store Closing Sales in accordance with the Agreement and the Sale Guidelines. Section 363(b) of the Bankruptcy Code provides that a 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). Although section 363(b) does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, courts have required that such use, sale, or lease be based upon the sound business judgment of the debtor. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir.

1996) (internal citation omitted); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070–71 (2d Cir. 1983); *In re Abbotts Dairies, Inc.*, 788 F.2d 143, 147–48 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of Lionel Corp.); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991) (holding that the Third Circuit adopted the “sound business judgment” test in *Abbotts Dairies*); *Dai-Icho Kangyo Bank v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (Bankr. D. Del. 1999) (same).

25. As set forth above, the demonstration of a valid business justification by the debtor leads to a strong presumption “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.*, 147 B.R. at 656. Accordingly, similar store closing or liquidation sales are routinely approved by courts in this district in chapter 11 cases involving retail debtors.

26. As described above and in the First Day Declaration, sound business reasons exist to justify the continuation of the Store Closing Sales. Based upon the results of their exhaustive analysis of the Debtors’ ongoing and future business prospects, the Debtors and their professional advisors have concluded that conducting the Store Closing Sales in accordance with the procedures set forth in the Agreement and the Sale Guidelines is the best method to maximize recoveries to the estates. As set forth in the First Day Declaration, due to increased competition and various issues with their foundational supplier, the Debtors have faced significant pressure to maintain market share, which has directly and negatively affected their profitability. While the Debtors explored transactions with potential strategic purchasers, the Debtors ultimately determined, in their business judgment, that a liquidation of their inventory will likely result in a net higher yield to the Debtors’ estates than pursuing a going concern sale process. The efficient and effective liquidation sales and procedures,

as contemplated the Sale Guidelines and the services to be provided by Agent, will allow the Debtors to quickly vacate the Closing Stores upon conclusion of applicable Store Closing Sales and avoid the accrual of unnecessary administrative expenses, while maximizing the value of the Store Closing Assets.

27. Accordingly, the Debtors submit that they have compelling business justifications for the continuation of the Store Closing Sales in accordance with the terms of the Agreement and Sale Guidelines.

C. The Sale of the Store Closing Assets Free and Clear of All Liens, Encumbrances, and Other Interests is Authorized Under Section 363(f) of the Bankruptcy Code

28. The Debtors request authority to sell the Store Closing Assets on a final “as is” basis, free and clear of liens, claims, interests and encumbrances, in accordance with section 363 of the Bankruptcy Code. A debtor in possession may sell property under section 363(b) of the Bankruptcy Code “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:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interests;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) 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 *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that because section 363(f) is written in the disjunctive, a court may approve a sale free and clear if any one subsection is met); see also *Mich. Emp’t Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (same).

29. Although the term “any interest” is not defined in the Bankruptcy Code, the trend in modern cases is toward a “broader interpretation which includes other obligations that may flow from ownership of the property.” *See Folger Adam Security, Inc. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 258–59 (3d Cir. 2000). The scope of section 363(f) is not limited to *in rem* interests in a debtor’s assets. *Id.* (citing *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581–82 (4th Cir. 1996)). A debtor can therefore sell its assets under section 363(f) free and clear of successor liability that otherwise would have arisen under federal statute. *Id.*

30. The Debtors submit that it is appropriate to sell the Store Closing 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 because one or more of the tests of section 363(f) are satisfied. In particular, the Debtors believe that at least section 363(f)(2) of the Bankruptcy Code will be met because the Debtors’ prepetition secured lenders are secured by, among other things, the Store Closing Assets and have consented to the sale of the Store Closing Assets free and clear. Moreover, with respect to any other party asserting a lien, claim, or encumbrance against the Store Closing Assets, the Debtors anticipate that they will be able to satisfy one or more of the conditions set forth in section 363(f). Furthermore, the Debtors propose that any liens, claims, and encumbrances asserted against the Store Closing Assets be transferred and attach to the amounts earned by the Debtors under the Store Closing Sales.

31. Accordingly, the Debtors propose that section 363(f) of the Bankruptcy Code authorizes the transfer and conveyance of the Store Closing Assets free and clear of any liens, claims, and encumbrances.

D. The Court Should Approve the Proposed Sale Guidelines

32. As set forth in greater detail below, many Liquidation Laws (defined below) require special and cumbersome licenses, waiting periods, time limits, and other procedures in

connection with store closing and liquidation sales. Therefore, although the Debtors intend to comply fully with applicable state and local health and safety and consumer protection laws in connection with the Store Closing Sales, the Debtors seek a waiver of compliance with the Liquidation Laws and instead request the authority to conduct such sales in accordance with the Sale Guidelines.

33. The Debtors developed the Sale Guidelines with the intent to provide a means of controlling the administrative burdens on their estates that are associated with complying with the Liquidation Laws, while at the same time protecting the interests of their landlords and the applicable governmental agencies enforcing such laws. Accordingly, the Debtors submit that the Sale Guidelines adequately address any concerns that their landlords or the governmental agencies may raise with respect to the Store Closing Sales and, therefore, the requested relief with respect to waiver of Liquidation Laws should be approved.

E. Payment of the Agent Claims Is Authorized Under Section 363 of the Bankruptcy Code

34. The Debtors request authorization, on an interim basis, to pay any amounts owed under the Agreement to the Agent (the “Agent Claims”) subject to the procedures set forth herein. Under section 363 of the Bankruptcy Code, a bankruptcy court is empowered to authorize a chapter 11 debtor to expend funds in the bankruptcy court’s discretion outside the ordinary course of business. *See* 11 U.S.C. § 363. In order to obtain approval for the use of estate assets outside the ordinary course of business, the debtor must articulate a valid business justification for the requested use. *See In re Ionosphere Clubs*, 98 B.R. at 176.

35. As discussed above, the Debtors have determined, in the sound exercise of their business judgment, that they will receive significant benefits from performing under the Agreement and allowing the Store Closing Sales to proceed during the interim period under the guidance of the Agent. In particular, the assets subject to the Store Closing Sales will be monetized

most efficiently and quickly through an orderly process conducted in consultation with an experienced liquidation firm like the Agent.

36. The Debtors' ability to successfully maximize the value of their assets depends in large part upon their ability to continue using the experience and knowledge of the Agent—including its experience with and knowledge of the Debtors' business—to continue the Store Closing Sales. The Agent has already committed significant capital, energy and efforts to commence the Store Closing Sales, which will continue during the pendency of these proceedings. Any disruption to the Store Closing Sales during the interim period would cause significant and unnecessary delays to the process of selling the Store Closing Assets and may impair the Debtors' ability to generate maximum proceeds therefrom. For the overall benefit to the Debtors' wind down efforts, payment of the Agent Claims will ensure maximum value for all interested parties. The Debtors believe that, to avoid delays in their efforts to conduct the Store Closing Sales, it is critical that they be authorized to pay the Agent on account of the Agent Claims which relate only to reimbursable expenses and costs incurred in administering the Store Closing Sales. Accordingly, the Debtors submit that the Court should grant the requested relief under section 363 of the Bankruptcy Code.

37. Because the Agent is affiliated with an insider of the Debtors, the Debtors recognize that heightened scrutiny of the Agent's reimbursement requests is appropriate in this context. Accordingly, the Debtors propose the following procedures to govern their reimbursement of the Agent Expenses (the "Expense Reimbursement Procedures"):

- a) The Agent shall submit a detailed report of its expenses to the Debtors on a monthly basis. Following the Debtors' review and approval of the Agent Expenses, on or after the twentieth (20th) day of each calendar month following the month for which payment of Agent Expenses is sought, the Debtors shall file a notice of the proposed payment of the Agent Expenses, which shall include applicable invoices, with a detailed report of the Agent Expenses that it proposes to pay (an "Expense Notice"), and serve a copy of such Expense Notice by email on the following parties (collectively, the "Notice Parties"): (i) the Office of the United States Trustee, J. Caleb

Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, DE 19801, Attn: Rosa Sierra-Fox, Esq. (rosa.sierra-fox@usdoj.gov); (ii) counsel to BMO Bank, N.A., Vedder Price, 1633 Broadway 31st Floor New York, NY 10019, Attn: Michael L. Schein, Esq. (mschein@vedderprice.com); (iii) counsel to Hancock Whitney Bank, Carver Darden Koretzky Tessier Finn Blossman & Areaux LLC, 1100 Poydras Street, Suite 3100 New Orleans, LA 70163, Attn: David F. Waguespack, Esq. (waguespack@carverdarden.com); and (iv) counsel to any statutory committee appointed in these Chapter 11 Cases (collectively, the “Notice Parties”).

- b) Each Notice Party will have ten (10) days after service of an Expense Notice to object to the requested payment of the Agent Expenses (the “Objection Deadline”). Upon the expiration of the Objection Deadline, the Debtors may file with the Court a certificate of no objection (a “CNO”) with respect to the unopposed portion of the Agent Expenses requested in the Expense Notice. After a CNO is filed, the Debtors are authorized to pay the Agent an amount equal to 100% of the requested Agent Expenses not subject to an objection pursuant to subparagraph (c) below.
- c) If any Notice Party objects to an Expense Notice, it must, on or before the Objection Deadline, file with the Court and serve on the Debtors and the Agent and each other Notice Party a written objection (an “Objection”) so as to be received on or before the Objection Deadline. Any such Objection shall identify with specificity the objectionable Agent Expenses, including the amount of such objected to Agent Expenses, and the basis for such Objection. Thereafter, the objecting party and the Agent may attempt to resolve the Objection on a consensual basis.
- d) The pendency of an Objection to an Expense Notice shall not disqualify the Agent from the future payment of Agent Expenses pursuant to these Expense Reimbursement Procedures.

F. Authorization of Payment of the Store Closing Bonuses Is Warranted

38. Pursuant to the Agreement, the Agent may use the Debtors’ employees in the conduct of the Store Closing Sales and at the Distribution Centers to the extent that the Agent deems such bonuses necessary for the Store Closing Sales (as selected by the Agent, the “Retained Employees”). Use of such Retained Employees is critical to the success of the Store Closing Sales, as the Debtors recognize that its enterprise-wide liquidation efforts will necessarily result in employees leaving and looking for alternative employment. Accordingly, the Agent has requested as part of the Agreement and, through this Motion, the Debtors are requesting the authority, but not direction, to pay store closing bonuses (the “Store Closing Bonuses”) to Retained Employees who

are employed by the Debtors during the Store Closing Sales who do not voluntarily leave employment and are not terminated “for cause”, as the Agent, with advance approval by the Debtors, may determine in their reasonable discretion. Under the Agreement, if approved, the amount of such bonuses shall be in an amount determined by the Agent, with advance approval by the Debtors, in its discretion, and shall be payable within thirty (30) days after the Sale Termination Date. The Debtors believe that the Store Closing Bonuses will motivate Retained Employees during the Store Closing Sales and will enable the Debtors to retain those employees necessary to successfully complete the Store Closing Sales. The total aggregate cost of the Store Closing Bonus program will not exceed 10% of the base payroll for all Retained Employees, including payroll taxes.

39. The Court has the authority, pursuant to sections 105 and 363(b) of the Bankruptcy Code, to authorize the Debtors to pay the Store Closing Bonuses. Store Closing Bonuses are a typical practice in many store liquidations, and courts in this jurisdiction have approved such payments when debtors choose to enter into an Agreement with liquidators. *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 Avenue Stores, LLC*, No. 19-11842 (LSS) (Bankr. D. Del. Sept. 13, 2019); *In re Samuel Jewelers, Inc.*, No. 18-11818 (KJC) (Bankr. D. Del. Sept. 18, 2018); *In re Brookstone Holdings Corp.*, No. 18-11780 (BLS) (Bankr. D. Del. Sept. 10, 2018); *In re Bon-Ton Stores, Inc.*, No. 18-10248 (MFW) (Bankr. D. Del. Feb. 7, 2018); *In re Aerogroup Int’l, Inc.*, No. 17-11962 (KJC) (Bankr. D. Del. Sept. 19, 2017); *In re ModelReorg Acquisition, LLC*, No. 17-11794 (CSS) (Bankr. D. Del. Aug. 29, 2017); *In re Quiksilver Inc.*, No. 15-11880 (BLS) (Bankr. D. Del. Sept. 10, 2015); *In re Radioshack Corp.*, No. 15-10197 (BLS) (Bankr. D. Del. Feb. 20, 2015); *In re Ultimate Acquisition Partners, LP*, No. 11-10245 (MFW) (Bankr. D. Del. Feb. 11, 2011). In addition, the bonuses are not barred by section 503(c) of the Bankruptcy Code. As

demonstrated by the First Day Declaration, the individuals who are receiving the bonuses are store level or Distribution Center employees and not insiders as that term is defined in section 101(31) of the Bankruptcy Code, and the bonuses are justified by the facts and circumstances of these Chapter 11 Cases.

40. In these Chapter 11 Cases, payment of the Store Closing Bonuses to the Retained Employees in the Closing Stores and at the Distribution Centers in connection with the Store Closing Sales will aid in maximizing the value of the Debtors' estates by inducing employees who are needed to manage and complete the Store Closing Sales to remain with the Debtors and to maximize the returns from such Store Closing Sales. Should the Debtors be unable to pay the Store Closing Bonuses, the Debtors would likely lose a number of their current employees at the Closing Stores. Such loss would require the hiring of additional employees who would not be as familiar with the Debtors' merchandise and operations, which will result in additional expense and delay and may reduce the overall success and profitability of the Store Closing Sales. Therefore, the Debtors submit that the Store Closing Bonuses are justified and that the authorization to pay such bonuses, subject to the Agreement and subject to the limitations set forth herein, should be approved.

G. Exemption from Liquidation Laws is Warranted and Appropriate

41. The states in which the Closing Stores are located have or may have licensing and other requirements governing the conduct of store closing, liquidation, or other inventory clearance sales, including (but not limited to) state and local rules, laws, ordinances, and regulations related to store closing and liquidation sales, establishing licensing, permitting, or bonding requirements, waiting periods, time limits, bulk sale restrictions, augmentation limitations or fast pay laws that would otherwise apply to the Store Closing Sales, or consumer fraud laws, with the exception of deceptive advertising laws (collectively, the "Liquidation Laws"). Many such Liquidation Laws, however, provide that court-authorized liquidation sales are exempt from

compliance therewith.

42. The Debtors, therefore, request that the Court authorize the Debtors to conduct the Store Closing Sales without the necessity of, and the delay associated with, complying with the Liquidation Laws. Because the Debtors and their assets are subject to the Court's jurisdiction, *see* 28 U.S.C. § 1334, the Court will be able to supervise the Store Closing Sales. The Store Closing Sales are legitimate methods by which the Debtors can maximize the return from the sale of the Store Closing Assets for the benefit of their estates and creditors. Moreover, creditors and the public interest are adequately protected by the jurisdiction and supervision of the Court.

43. Even if a state or local law does not expressly except bankruptcy sales from its ambit, the Debtors submit that, to the extent that such state or local law conflicts with federal bankruptcy laws, it is preempted by the Supremacy Clause of the United States Constitution. To hold otherwise would severely impair the relief otherwise available under section 363 of the Bankruptcy Code. In concert with this premise, bankruptcy courts have consistently recognized that federal bankruptcy law preempts state and local laws that contravene the underlying policies of the Bankruptcy Code. *See, e.g., Aloe v. Shenango Inc. (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 them where the result would contradict the priorities established by the federal bankruptcy code.").

44. While preemption of state law is not always appropriate, as when the protection of public health and safety is involved, *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) (finding no preemption when state law prohibiting taxicab leasing was promulgated in part as a public safety measure), it is appropriate when, as here, the only state laws involved concern economic regulation. *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”). Moreover, pursuant to section 105 of the Bankruptcy Code, the Court has the authority to permit the Store Closing Sales to proceed notwithstanding contrary Liquidation Laws. *See* 11 U.S.C. § 105(a).

45. Here, section 363 of the Bankruptcy Code, which requires the Debtors to operate their business in a way that maximizes recoveries for creditors, will be undermined if the Court does not provide for the waiver of the Liquidation Laws because the Liquidation Laws constrain the Debtors’ ability to marshal and maximize assets for the benefit of creditors. Moreover, given the supervision of the Court, the requested waiver will not unduly undermine state and local requirements that would otherwise apply to the Store Closing Sales. The Debtors only request that the Court authorize the Debtors to conduct the Store Closing Sales without the necessity of, and the delay associated with, obtaining various state licenses or permits, observing state and local waiting periods or time limits, and/or satisfying any additional requirements with respect to conducting the Store Closing Sales as store closings or similar type sales. The Debtors fully intend to be bound by and comply with remaining statutes and regulations, such as health and safety laws.

46. The Debtors also request that no other person or entity, including (but not limited to) any lessor or federal, state, or local agency, department, or governmental authority, be allowed to take any action to prevent, interfere with, or otherwise hinder consummation of the Store Closing Sales, or the advertising and promotion (including through the posting of signs) of the Store Closing Sales, in the manner set forth in the Proposed Orders.

47. Notwithstanding such requests, the Debtors propose to serve, within two (2) business days of the entry of the Proposed Orders, copies of such Proposed Orders and the Sale Guidelines attached thereto, by email, facsimile, or regular mail on the following parties: (a) the

Attorney General's office for each state in which the Debtors operate a retail location, (b) the City Attorney of each city in which the Debtors operate a retail location, (c) the county consumer protection agency or similar agency for each county in which the Debtors operate a retail location, (d) the division of consumer protection for each state in which the Debtors operate a retail location, (e) the chief legal counsel for each local jurisdiction in which the Debtors operate a retail location (collectively, clauses (a) through (e), the "Applicable Governmental Units"), and (f) the applicable landlord or mortgage lender for each Store (collectively, the "Landlords").

48. The Debtors further propose that, to the extent there is a dispute arising from or relating to the Store Closing Sales between any governmental unit (as defined in section 101(27) of the Bankruptcy Code) (each a "Governmental Unit") and the Debtors relating to the Liquidation Laws (such dispute, a "Liquidation Dispute"), the following procedures shall apply (the "Resolution Procedures"):

- a) The Court shall retain exclusive jurisdiction to resolve the Liquidation Dispute which such Liquidation Dispute will be heard at the Final Hearing, absent a party obtaining expedited relief. Nothing in this Interim Order shall constitute a ruling with respect to any issues to be raised with respect to a Liquidation Dispute. Any Governmental Unit may assert a Liquidation Dispute and shall send a notice (the "Dispute Notice") explaining the nature of the dispute to: (i) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: S. Alexander Faris, Esq. and Andrew M. Lee, Esq. (afaris@ycst.com and alee@ycst.com); (ii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, DE 19801, Attn: Rosa Sierra-Fox, Esq. (rosa.sierra.fox@usdoj.gov); (iii) counsel to BMO Bank, N.A., Vedder Price, 1633 Broadway 31st Floor New York, NY 10019, Attn: Michael L. Schein, Esq. (mschein@vedderprice.com); (iv) counsel to Hancock Whitney Bank, Carver Darden Koretzky Tessier Finn Blossman & Areaux LLC, 1100 Poydras Street, Suite 3100 New Orleans, LA 70163, Attn: David F. Waguespack, Esq. (waguespack@carverdarden.com); and (v) counsel to any statutory committee appointed in these Chapter 11 Cases, no later than fourteen (14) days following the service of the Interim Order.
- b) If the Debtors, the Agent and the Governmental Unit are unable to resolve the Liquidation Dispute within fourteen (14) days of service of the notice, the aggrieved party may file a motion with this Court requesting that this Court resolve

the Liquidation Dispute (a “Dispute Resolution Motion”).

- c) Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of this Order or to limit or interfere with the Debtors’ or the Agent’s ability to conduct or to continue to conduct the Store Closing Sales pursuant to this Order and the Agreement, absent further order of this Court.

H. The Court Should Waive Compliance with Any Restriction in the Leases

49. Certain of the Debtors’ leases governing the premises of the stores subject to the Store Closing Sales 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 ability to properly administer its reorganization case and maximize the value of its assets under section 363 of the Bankruptcy Code. *See Ames Dep’t Stores*, 136 B.R. at 359 (deciding that enforcement of such lease restrictions would “contravene overriding federal policy requiring debtor to maximize estate assets. . . .”); *In re R. H. Macy and Co., Inc.*, 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 debtor sought to conduct a liquidation sale).

50. Thus, as a result of the above and to the extent that such provisions or restrictions exist in any of the leases of the stores subject to the Store Closing Sales, the Debtors request that the Court authorize the Debtors and/or the Agent to conduct any liquidation sales without

interference by any landlords or other persons affected, directly or indirectly, by the liquidation sales.

I. The Abandonment of Certain Property in Connection with the Store Closing Sales Is Justified

51. Section 554(a) of the Bankruptcy Code provides that after notice and a hearing, a debtor-in-possession “may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” *See Hanover Ins. Co. v. Tyco Indus., Inc.*, 500 F.2d 654, 657 (3d Cir. 1974) (stating that a debtor “may abandon his claim to any asset, including a cause of action, he deems less valuable than the cost of asserting that claim”); *In re Grossinger’s Assoc.*, 184 B.R. 429, 432 (Bankr. S.D.N.Y. 1995); *see also Midlantic Nat’l Bank v. N.J. Dep’t of Env’tl. Prot.*, 474 U.S. 494, 507, n.9 (1986) (“[A] trustee [in bankruptcy] may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards This exception to the abandonment power . . . is a narrow one.”); *In re Bryson*, 53 B.R. 3, 4–5 (Bankr. M.D. Tenn. 1985) (“The effect of the abandonment is to remove the asset from the jurisdiction of the bankruptcy court.”).

52. The Debtors intend to sell all Store Closing Assets remaining in the Closing Stores. However, in the event that the Debtors are unable to sell or dispose of all of the Store Closing Assets following the Store Closing Sales, or determine that the costs associated with holding or selling certain Store Closing Assets exceeds the proceeds that will be realized upon their sale or that such Store Closing Assets are not sellable at all, it would be costly and burdensome to the Debtors’ estates to retain such Store Closing Assets. Thus, to the extent that the Agent does not sell all of the Store Closing Assets, the Debtors request that they be authorized upon the conclusion of the Store Closing Sales to abandon the same without incurring liability to any person or entity to maximize the value of the Debtors’ assets and to minimize the costs to the estates.

53. Notwithstanding the foregoing, the Debtors and the Agent will utilize all

commercially reasonable efforts to remove or cause to be removed any confidential or personally identifying information (which means information which 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, cash registers, or similar equipment that are to be sold or abandoned. The Debtors do not anticipate that there is any hazardous material that will be implicated or abandoned.

J. Appointment of a Consumer Privacy Ombudsman Is Unnecessary

54. Section 363(b)(1) of the Bankruptcy Code provides that a debtor may not sell or release personally identifiable information about individuals unless such sale or lease is consistent with its policies or upon appointment of a consumer privacy ombudsman pursuant to section 332 of the Bankruptcy Code. The Debtors will not be selling or releasing personally identifiable information in the course of the Store Closing Sales. In light of the foregoing, the Debtors believe that appointment of a consumer privacy ombudsman is unnecessary under the circumstances of the Store Closing Sales.

SATISFACTION OF BANKRUPTCY RULE 6003(b)

55. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code within twenty-one (21) days of the Petition Date requires the Debtors to demonstrate that such relief "is necessary to avoid immediate and irreparable harm." As evidenced by the First Day Declaration, the Debtors' failure to continue to conduct the Store Closing Sales without interruption would result in immediate and irreparable harm to the Debtors' estates by causing unnecessary delay and expense that would, in turn, disrupt the Debtors' liquidation efforts and decrease the recovery to the Debtors' estates from the Store Closing Sales.

56. For the reasons set forth herein, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

57. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth throughout this Motion and supported by the First Day Declaration, any delay in the Debtors’ ability to continue to conduct the Store Closing Sales without interruption would be detrimental to the Debtors, their creditors and estates, and would impair the Debtors’ ability to optimize their business performance at this critical time as they begin the chapter 11 process.

58. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable.

NOTICE

59. Notice of this Motion has been given to (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel for BMO Bank, N.A.; (iii) counsel for Hancock Whitney Bank; (iv) holders of the thirty (30) largest unsecured claims on a consolidated basis against the Debtors; (v) the Internal Revenue Service; (vi) the Office of the United States Attorney for the District of Delaware; (vii) all known parties asserting liens in the Store Closing Assets; (viii) the Debtors’ landlords or mortgage lenders for each of the Closing Stores; (ix) the Applicable Governmental Units; (x) and any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule

9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Orders granting the relief sought herein and such other and further relief as may be just and proper.

Dated: October 10, 2024
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ S. Alexander Faris

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

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

In re:

HDC Holdings II, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-12307 (TMH)

(Jointly Administered)

Docket Ref. No. ____

**INTERIM ORDER AUTHORIZING (I) THE DEBTORS TO PERFORM IN
ACCORDANCE WITH THE AGREEMENT, (II) THE CONDUCT OF THE STORE
CLOSING SALES, WITH SUCH SALES TO BE FREE AND CLEAR OF ALL LIENS,
CLAIMS, AND ENCUMBRANCES, (III) CUSTOMARY BONUSES TO EMPLOYEES
OF CLOSING STORES AND DISTRIBUTION CENTERS, AND (IV) RELATED RELIEF**

Upon the *Debtors' Motion for Interim and Final Orders Authorizing (I) the Debtors to Assume the Agreement, (II) the Conduct of the Store Closing Sales, With Such Sale to be Free and Clear of All Liens, Claim, and Encumbrances, (III) Customary Bonuses to Employees of Closing Stores and Distribution Centers, and (IV) Granting Related Relief* (the "Motion")² and upon consideration of the First Day Declaration; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that venue of these Chapter 11 Cases and the Motion in this

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: HDC Holdings II, LLC (2013); HDC Holdings III, LLC (3296); CCM Capital Assets, LLC (9451); Channel Control Merchants, LLC (3319); Dirt Cheap I, LLC (9433); CCM Support Services, LLC (2059); CCM Wholesale SE, LLC (7219); Channel Control Merchants of Texas, LLC (8091); Creative Sales Solutions, LLC (1691); Dirt Cheap Arkansas, LLC (0244); Dirt Cheap Building Supplies, LLC (0880); Dirt Cheap of Georgia, LLC (0269); Dirt Cheap of Louisiana, LLC (0067); Dirt Cheap SE, LLC (4928); Dirt Cheap Tennessee, LLC (1273); Treasure Hunt, LLC (9393); CCM Wholesale, LLC (7219); Channel Control Merchants of California, LLC (9011); and CAL Support Services, LLC (2859). The Debtors' headquarters are located at 6892 US Hwy 49 North, Hattiesburg, Mississippi 39402.

² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion or Agreement, as applicable.

district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that notice of the Motion has been given as set forth in the Motion and that such notice is adequate under the circumstances and no other or further notice need be given; and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having found that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND, CONCLUDED AND DETERMINED that:³

A. The Debtors' decision to, on an interim basis, and subject to entry of a final order granting the requested relief, (i) enter into the Agreement, a copy of which is attached hereto as Exhibit 1, and (ii) perform under and make expense reimbursement payments required by the Agreement, is a reasonable exercise of the Debtors' sound business judgment consistent with their fiduciary duties and is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest.

B. Time is of the essence in effectuating the Agreement and continuing with the Store Closing Sales contemplated therein without interruption. The conduct of the Store Closing Sales will provide an efficient means for the Debtors to dispose of the Store Closing Assets. The Store Closing Sales under the Agreement must be permitted to continue to maximize the value that the Agent may realize from the Store Closing Sales and the value that the Debtors may realize from

³ The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

assuming the Agreement.

C. The Sale Guidelines, as described in the Motion and attached as Exhibit 2 hereto, are reasonable and will maximize the returns on the Store Closing Assets for the benefit of the Debtors' estates and creditors.

D. The Store Closing Sales, in accordance with the Sale Guidelines and with the assistance of the Agent, will provide an efficient means for the Debtors to liquidate and dispose of the Store Closing Assets as quickly and effectively as possible, and are in the best interests of the Debtors' estates.

E. The Resolution Procedures are fair and reasonable

F. The Expense Reimbursement Procedures are fair and reasonable.

G. The Debtors have represented that, pursuant to the Motion, they are not seeking to either sell or lease personally identifiable information during the course of the Store Closing Sales at the Closing Stores or Distribution Centers.

H. A sale of the Store Closing Assets in accordance with the Agreement shall be free and clear of any interest in such assets, with any prior claims and interests in applicable Store Closing Assets attaching to the proceeds generated by the disposition thereof, is appropriate under the circumstances and in the best interest of the Debtors' estates and all interested parties.

I. No sale, transfer or other disposition of the Store Closing Assets pursuant to the Agreement or entry into the Agreement will subject the Agent, solely in its capacity as Agent under the Agreement, to any liability for claims, obligations or Encumbrances asserted against the Debtors or the Debtors' interests in such Store Closing Assets by reason of such transfer under any laws, including, without limitation, any bulk-transfer laws or any theory of successor or transferee liability, antitrust, environmental, product line, de facto merger or substantial continuity or similar

theories. The Agent, in its capacity as Agent under the Agreement, is not a successor to the Debtors or their respective estates.

J. 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.

K. The entry of this Interim Order is in the best interest of the Debtors, their estates and creditors, and all other parties in interest herein.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. Objections to entry of an order granting the Motion on a final basis must be filed by _____, 2024 at 4:00 p.m. (ET) and served on: (i) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Andrew L. Magaziner, Esq. and S. Alexander Faris, Esq. (amagaziner@ycst.com and afaris@ycst.com); (ii) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Rosa Sierra-Fox, Esq. (rosa.sierra-fox@usdoj.gov); (iii) counsel to BMO Bank, N.A., Vedder Price, 1633 Broadway 31st Floor New York, NY 10019, Attn: Michael L. Schein, Esq. (mschein@vedderprice.com); (iv) counsel to Hancock Whitney Bank, Carver Darden Koretzky Tessier Finn Blossman & Areaux LLC, 1100 Poydras Street, Suite 3100 New Orleans, LA 70163, Attn: David F. Waguespack, Esq. (waguespack@carverdarden.com); and (v) counsel to any statutory committee appointed in these Chapter 11 Cases. A final hearing, if required, on the Motion will be held on _____, 2024 at _____ .m. (ET). If no objections are filed to the Motion, this Court may enter a final order without further notice or hearing.

3. The Debtors are authorized and empowered, on an interim basis, to take all actions necessary to implement the relief granted in this Interim Order. The failure to specifically include any particular provision of the Agreement in this Interim Order shall not diminish or impair the effectiveness of such provisions, it being the intent of this Court that the Debtors and Agent are authorized to perform and act under the terms of the Agreement on an interim basis, subject to approval of the Agreement upon final order of this Court granting such relief.

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

A. Effectiveness of Agreement

5. The Agreement is operative and effective on an interim basis. The Debtors are authorized to act and perform in accordance with the terms of the Agreement, including, but not limited to, making payments required by the Agreement to the Agent subject to the Expense Reimbursement Procedures.

6. Subject to the restrictions set forth in this Interim Order and the Sale Guidelines, the Debtors and the Agent are authorized to take any and all actions as may be necessary or desirable to implement the Agreement and the Store Closing Sales; and each of the transactions contemplated by the Agreement, and any actions taken by the Debtors and the Agent necessary or desirable to implement the Agreement and/or the Store Closing Sales from the Petition Date to the date of this Interim Order are approved and ratified.

B. Authority to Engage in the Store Closing Sales

7. The Debtors are authorized, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to immediately continue and conduct the Store Closing Sales in accordance with this Interim Order, the Sale Guidelines, the Agreement and any Side Letter (defined below), as

applicable.

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

9. Subject to entry of a final order granting such relief, all entities that are presently in possession of some or all of the Store Closing Assets in which the Debtors hold an interest that are or may be subject to the Agreement or this Interim Order hereby are directed to surrender possession of such Store Closing Assets to the Debtors or the Agent.

10. Except as provided herein, 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 or any Landlord, to conduct the Store Closing Sales and any related activities in accordance with the Sale Guidelines.

11. The Debtors are authorized to discontinue operations at the Closing Stores and Distribution Centers in accordance with this Interim Order, the Sale Guidelines, and the Agreement.

C. Interim Order Binding

12. This Interim Order shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Store Closing Assets.

13. This Interim Order and, subject to approval on a final basis of the assumption of the Agreement, the terms and provisions of the Agreement shall be binding on all of the Debtors' creditors (whether known or unknown), the Debtors, the Agent, and their respective affiliates,

successors and assigns, and any affected third parties including, but not limited to, all persons asserting an interest in the Store Closing Assets, notwithstanding any subsequent appointment of any trustee, party, entity or other fiduciary under any section of the Bankruptcy Code with respect to the forgoing parties, and as to such trustee, party, entity or other fiduciary, such terms and provisions likewise shall be binding. The provisions of this Interim Order and the terms and provisions of the Agreement, and any actions taken pursuant hereto or thereto shall survive the entry of any order which may be entered confirming or consummating any plan(s) of the Debtors or converting the Debtors' cases from chapter 11 to chapter 7, and the terms and provisions of the Agreement, as well as the rights and interests granted pursuant to this Interim Order and the Agreement, shall continue in these or any superseding cases and shall be binding upon the Debtors, the Agent and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code. Any trustee appointed in this case shall be and hereby is authorized to operate the business of the Debtors to the fullest extent necessary to permit compliance with the terms of this Interim Order and the Agreement, and Agent and the trustee shall be and hereby are authorized to perform under the Agreement upon the appointment of the trustee without the need for further order of this Court.

D. Conducting the Store Closing Sales

14. Except as otherwise provided in the Agreement, pursuant to section 363(f) of the Bankruptcy Code, the Agent shall be authorized to sell all the Store Closing Assets to be sold pursuant to the Agreement free and clear of any and all Encumbrances, including, without limitation, the liens and security interests, as the same may have been amended from time to time, of BMO whether arising by agreement, any statute or otherwise and whether arising before, on or after the date on which these Chapter 11 Cases were commenced, with any presently existing liens

encumbering all or any portion of the Store Closing Assets or the proceeds thereof attaching to the amounts to be received by the Debtors under the Agreement that are not payable to Agent under the Agreement.

15. Other than filings made by BMO with respect to its liens and security interests in the Store Closing Assets, subject to entry of a final order granting such relief, if any person or entity that has filed financing statements, mortgages, construction or mechanic's liens, lis pendens or other documents or agreement evidencing liens on or interests in the Store Closing Assets shall not have delivered to the Debtors, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of any Encumbrances which the person or entity has with respect to the Store Closing Assets, each such person or entity is hereby directed to deliver all such statements, instruments and releases and the Debtors and the Agent are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity asserting the same and the Agent is authorized to file a copy of this Interim Order which, upon filing, shall be conclusive evidence of the release and termination of such interest. Each and every federal, state and local governmental unit is hereby authorized to accept any and all documents and instruments necessary or appropriate to give effect to the Store Closing Sales and related transactions.

16. All newspapers and other advertising media in which the Store Closing Sales may be advertised and all Landlords or licensors, as applicable, of the Closing Stores and Distribution Centers, as applicable, are authorized to accept this Interim Order as binding authority so as to authorize the Debtors and the Agent to conduct the Store Closing Sales and the sale of Store Closing Assets pursuant to the Agreement and the Sale Guidelines, including, without limitation, to conduct and advertise the sale of the Store Closing Assets and the Additional Agent Goods in

the manner contemplated by and in accordance with this Interim Order, the Sale Guidelines, and the Agreement.

17. Nothing 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) that any entity would be subject to 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 or in the Agreement shall in any way (i) diminish the obligation of any entity to comply with environmental laws, or (ii) 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. Nothing herein shall be construed to be a determination that the Agent is an operator with respect to any environmental law or regulation. Moreover, the sale of the Store Closing Assets shall not be exempt from, and the Debtors and the Agent shall be required to comply with laws and regulations of general applicability, including, without limitation, public health and safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, “General Laws”). Nothing in this Interim Order shall alter or affect the Debtors’ and Agent’s obligations to comply with all applicable federal safety laws and regulations. Nothing in this Interim Order shall be deemed to bar any Governmental Unit from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors’ or the Agent’s right 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, this Interim Order, or otherwise, pursuant to paragraph 31 hereunder. 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.

18. In accordance with and subject to the terms and conditions of the Agreement, the Agent shall have the right to use the Closing Stores and Distribution Centers and all related store services, furniture, fixtures, equipment, and other assets of the Debtors for the purpose of conducting the Store Closing Sales, free and clear of any interference from any entity or person, subject to compliance with the Sale Guidelines and this Interim Order.

19. Subject to the Resolution Procedures provided in paragraph 31 hereof, the Debtors and the Agent are hereby authorized to take such actions as may be necessary and appropriate to implement the Agreement and to conduct the Store Closing Sales without the need for a further order of this Court, including, but not limited to, advertising the sale as a “store closing,” “sale on everything,” “everything must go,” “liquidation sale,” “going out of business” or similar themed sale through the posting of signs (including the use of exterior banners at non-enclosed mall Closing Stores, and at enclosed mall Closing Stores to the extent the applicable Store entrance does not require entry into the enclosed mall common area), use of signwalkers and street signage, in accordance with the Interim Order, Agreement, and Sale Guidelines.

20. Notwithstanding anything herein to the contrary, and in view of the importance of the use of sign-walkers, banners, and other advertising to the sale of the Store Closing Assets, to the extent that, prior to the Final Hearing, disputes arise during the course of such sale 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 with a Governmental Unit, any party may request an immediate telephonic hearing with this Court pursuant to these provisions. Such hearing

will, to the extent practicable, be scheduled initially no later than the earlier of (i) the Final Hearing or (ii) within two (2) business days of such request. This scheduling shall not be deemed to preclude additional hearings for the presentation of evidence or arguments as necessary.

21. Except as expressly provided in the Agreement, the sale of the Store Closing Assets shall be conducted by the Debtors and the Agent notwithstanding any restrictive provision of any lease, sublease, license, reciprocal easement agreement, restrictive covenant, or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Store Closing Sales, the rejection of leases or licenses, the necessity of obtaining any third party consents, abandonment of assets, or “going dark” provisions, and such provisions shall not be enforceable in conjunction with the Store Closing Sales. The Agent, along with landlords and licensors, as applicable, of the Closing Stores and Distribution Center(s) are authorized to enter into agreements (“Side Letters”) between themselves modifying the Sale Guidelines without further order of this Court, and such Side Letters shall be binding as among the Agent and any such landlords or licensors, as applicable, of the Closing Stores and Distribution Center(s), provided that nothing in such Side Letters affects the provisions of paragraphs 17, 19, 20, and 31 of this Interim Order. In the event of any conflict between the Sale Guidelines and any Side Letter, the terms of such Side Letter shall control.

22. Except as expressly provided for herein or in the Sale Guidelines, and except with respect to any Governmental Unit (as to which paragraphs 17 and 31 of this Interim Order shall apply), no person or entity, including, but not limited to, any landlord, licensor, service providers, utilities, and creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder the continuation of the Store Closing Sales or the sale of Sale Closing Assets, or the advertising and promotion (including the posting of signs and exterior banners or the

use of signwalkers) 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 creditor and all those acting for or on behalf of such parties, are prohibited and enjoined from (i) interfering in any way with, obstructing, or otherwise impeding, the conduct of the Store Closing Sales and/or (ii) instituting any action or proceeding in any court (other than before this Court) or administrative body seeking an order or judgment against, among others, the Debtors, the Agent, or the landlords or licensors, as applicable, at the Closing Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Store Closing Sales or sale of the Store Closing Assets or other liquidation sales at the Closing Stores and/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.

23. All sales of all Store Closing Assets shall be “as is” and final. Conspicuous signs stating that “all sales are final” and “as is” will be posted at the cash register areas at all Stores. However, 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.”

24. Except as expressly provided for in the Agreement, nothing in this Interim Order or the Agreement, and none of the Agent’s actions taken in respect of the Store Closing Sales shall be deemed to constitute an assumption by Agent of any of the Debtors’ obligations relating to any of the Debtors’ employees. Moreover, the Agent shall not become liable under any collective bargaining or employment agreement or be deemed a joint or successor employer with respect to such employees.

25. The Agent shall not be liable for sales taxes except as expressly provided in

the Agreement, and the Debtors remain responsible for the payment of any and all sales taxes. The Debtors are directed to remit all taxes accruing from the Store Closing 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 the 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. This Interim Order does not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under state law, and does not constitute a declaratory judgment with respect to any party's liability for taxes under state law.

26. To the extent that the Debtors ultimately propose to sell or abandon Store Closing Assets that may contain any personal and/or confidential information about the Debtors' employees and/or customers (the "Confidential Information"), the Debtors shall remove all such the Confidential Information from such Store Closing Assets before they are sold or abandoned.

27. The Debtors are authorized and empowered to transfer Store Closing Assets among the Closing Stores and Distribution Centers.

28. Nothing in this Interim Order shall (a) alter or affect the Debtors' obligations to comply with section 365(d)(3) of the Bankruptcy Code or (b) alter or modify the rights of any lessor or other counterparty to a lease with the Debtors to file an appropriate motion or otherwise seek appropriate relief if the Debtors fail to comply with section 365(d)(3) of the Bankruptcy Code; provided that the conduct of the Store Closing Sales in accordance with the Sale Guidelines, as may have been modified by Side Letter, shall not be a violation of section 365(d)(3) of the Bankruptcy Code.

29. During the Sales Term, the Agent shall be granted a limited license and right to use the trade names, logos, e-mail lists, mailing lists, customer lists, and e-commerce sites (including (without limitation) websites and social media sites such as Facebook and Twitter), including a banner on such sites and a store locator to identify the Closing Stores, relating to and used in connection with the operation of the stores as identified in the Agreement, solely for the purpose of advertising the Store Closing Sales in accordance with the terms of the Agreement; *provided, however*, that the Agent shall not receive Personally Identifiable Information from the Debtors.

E. Resolution Procedures for Disputes Regarding Liquidation Laws

30. To the extent that the Store Closing Sales at the Closing Stores or Distribution Centers are conducted in accordance with this Interim Order and the Sale Guidelines, and are therefore conducted under the supervision of this Court, such Store Closing Sales are authorized notwithstanding any federal, state, or local statute, ordinance, rule, or licensing requirement directed at regulating “going out of business,” “store closing,” similar inventory liquidation sales, bulk sale laws, or fast pay laws, including laws restricting safe, professional and non-deceptive, customary advertising such as signs, banners, posting of signage, and use of sign-walkers in connection with the sale and including ordinances establishing license or permit requirements, waiting periods, time limits or bulk sale restrictions (collectively, the “Liquidation Laws”).

31. Provided that the Store Closing Sales are conducted in accordance with the terms of this Interim Order, the Agreement and the Sale Guidelines, and in light of the provisions in the laws of many Governmental Units that exempt court-ordered sales from their provisions, the Debtors shall be presumed to be in compliance with any Liquidation Laws and, subject to paragraphs 17 and 20 herein, are authorized to conduct the Store Closing Sales in accordance with

the terms of this Interim Order and the Sale Guidelines without the necessity of further showing compliance with any such Liquidation Laws. To the extent that between the Petition Date and the date of the Final Hearing there is a dispute arising from or relating to the Store Closing Sales, this Interim Order, the Agreement, or the Sale Guidelines, which dispute relates to any Liquidation Sales Laws (a “Liquidation Dispute”), the following procedures shall apply (the “Resolution Procedures”):

- a) This Court shall retain exclusive jurisdiction to resolve the Liquidation Dispute which such Liquidation Dispute will be heard at the Final Hearing, absent a party obtaining expedited relief. Nothing in this Interim Order shall constitute a ruling with respect to any issues to be raised with respect to a Liquidation Dispute. Any Governmental Unit may assert a Liquidation Dispute and shall send a notice (the “Dispute Notice”) explaining the nature of the dispute to: (i) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: S. Alexander Faris, Esq. and Andrew M. Lee, Esq. (afaris@ycst.com and alee@ycst.com); (ii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, DE 19801, Attn: Rosa Sierra-Fox, Esq. (rosa.sierra.fox@usdoj.gov); (iii) counsel to BMO Bank, N.A., Vedder Price, 1633 Broadway 31st Floor New York, NY 10019, Attn: Michael L. Schein, Esq. (mschein@vedderprice.com); (iv) counsel to Hancock Whitney Bank, Carver Darden Koretzky Tessier Finn Blossman & Areaux LLC, 1100 Poydras Street, Suite 3100 New Orleans, LA 70163, Attn: David F. Waguespack, Esq. (waguespack@carverdarden.com); and (v) counsel to any statutory committee appointed in these Chapter 11 Cases, no later than fourteen (14) days following the service of the Interim Order.
- b) If the Debtors, the Agent and the Governmental Unit are unable to resolve the Liquidation Dispute within fourteen (14) days of service of the notice, the aggrieved party may file a motion with this Court requesting that this Court resolve the Liquidation Dispute (a “Dispute Resolution Motion”).
- c) Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of this Order or to limit or interfere with the Debtors’ or the Agent’s ability to conduct or to continue to conduct the Store Closing Sales pursuant to this Order and the Agreement, absent further order of this Court.

32. Within two (2) business days of the entry of this Interim Order, the Debtors shall serve copies of this Interim Order, which includes the Agreement and the Sale Guidelines, by email, facsimile, or regular mail on the Applicable Governmental Units and the Landlords.

F. Procedures for Reimbursement of Agent Expenses

33. The following procedures to govern their reimbursement of the Agent Expenses (the “Expense Reimbursement Procedures”):

- a. The Agent shall submit a detailed report of its expenses to the Debtors on a monthly basis. Following the Debtors’ review and approval of the Agent Expenses, on or after the twentieth (20th) day of each calendar month following the month for which payment of Agent Expenses is sought, the Debtors shall file a notice of the proposed payment of the Agent Expenses with a detailed report of the Agent Expenses, which shall include applicable invoices, that it proposes to pay (an “Expense Notice”), and serve a copy of such Expense Notice by email on the following parties (collectively, the “Notice Parties”): (i) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, DE 19801, Attn: Rosa Sierra-Fox, Esq. (rosa.sierra-fox@usdoj.gov); (ii) counsel to BMO Bank, N.A., Vedder Price, 1633 Broadway 31st Floor New York, NY 10019, Attn: Michael L. Schein, Esq. (mschein@vedderprice.com); (iii) counsel to Hancock Whitney Bank, Carver Darden Koretzky Tessier Finn Blossman & Areaux LLC, 1100 Poydras Street, Suite 3100 New Orleans, LA 70163, Attn: David F. Waguespack, Esq. (waguespack@carverdarden.com); and (iv) counsel to any statutory committee appointed in these Chapter 11 Cases.
- b. Each Notice Party will have ten (10) days after service of an Expense Notice to object to the requested payment of the Agent Expenses (the “Objection Deadline”). Upon the expiration of the Objection Deadline, the Debtors may file with the Court a certificate of no objection (a “CNO”) with respect to the unopposed portion of the Agent Expenses requested in the Expense Notice. After a CNO is filed, the Debtors are authorized to pay the Agent an amount equal to 100% of the requested Agent Expenses not subject to an objection pursuant to subparagraph (c) below.
- c. If any Notice Party objects to an Expense Notice, it must, on or before the Objection Deadline, file with the Court and serve on the Debtors and the Agent and each other Notice Party a written objection (an “Objection”) so as to be received on or before the Objection Deadline. Any such Objection shall identify with specificity the objectionable Agent Expenses, including the amount of such objected to Agent Expenses, and the basis for such Objection. Thereafter, the objecting party and the Agent may attempt to resolve the Objection on a consensual basis.
- d. The pendency of an Objection to an Expense Notice shall not disqualify the Agent from the future payment of Agent Expenses pursuant to these Expense Reimbursement Procedures.

G. Store Closing Bonuses

34. On an interim basis and pending the Final Hearing, the Debtors shall have the authority, but not the obligation, to pay store closing bonuses (the “Store Closing Bonuses”) to the Retained Employees as provided for in the Agreement. Subject to the terms of the Agreement, the Agent shall have the authority, with advanced approval from the Debtors, to determine the individual amounts of each Store Closing Bonus, except that the total aggregate cost of the Store Closing Bonus program shall not exceed ten percent (10%) of the base payroll for all Retained Employees. For the avoidance of doubt, no Store Closing Bonuses shall be paid to any executives, directors, or “insiders,” as that term is defined in the Bankruptcy Code, absent further Court order.

H. Additional Agent Goods

35. In accordance with Paragraph R of the Agreement, the Agent is authorized to supplement the Merchandise in the Store Closing Sales with additional goods procured by Agent which are of like kind, and no lesser quality to the Merchandise in the Store Closing Sales (the “Additional Agent Goods”). The Additional Agent Goods shall be purchased by Agent as part the Store Closing Sales at Agent’s sole expense (and such purchase price shall constitute an Expense). Sales of Additional Agent Goods shall be run through the Debtors’ cash register systems, *provided however*, 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. Agent and the Debtors shall also cooperate so as 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-Debtor goods. Additionally, Agent shall provide signage in the Closing Stores notifying customers that the Additional Agent Goods have been included in the Store Closing Sales.

36. The Additional Agent Goods shall be consigned to the Debtors as a true consignment under Article 9 of the Uniform Commercial Code (as the same may be in effect from time to time in the State of Delaware). Subject solely to Agent's obligations to pay to the Debtors their portion of the Proceeds from the sale of the Additional Agent Goods, 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. The Additional Agent Goods shall at all times remain subject to the exclusive control of Agent, and the Debtors shall, as an Expense, insure the Additional Agent Goods and, if required, promptly file any proofs of loss with regard thereto with the Debtors' insurers. Agent is hereby granted a first priority security interest in and lien upon (i) the Additional Agent Goods and (ii) the Additional Agent Goods proceeds, which security interest shall be deemed perfected pursuant to this Interim Order without the requirement of filing UCC financing statements or providing notifications to any prior secured parties (provided that Agent is hereby authorized to deliver all required notices and file all necessary financing statements and amendments thereof under the applicable UCC identifying Agent's interest in the Additional Agent Goods as consigned goods thereunder and the Debtors as the consignee therefor, and Agent's security interest in and lien upon such Additional Agent Goods and Additional Agent Goods proceeds).

H. Miscellaneous

37. No later than seven (7) business days prior to the Objection Deadline to entry of the Final Order, the Agent shall file a declaration disclosing its connections to the Debtors, their creditors, and other parties in interest in these Chapter 11 Cases, and the Debtors shall serve the same on the U.S. Trustee, any official committee of unsecured creditors appointed in these 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.

38. Nothing in this Interim Order shall be deemed to constitute a postpetition assumption of any agreement under section 365 of the Bankruptcy Code.

39. Subject to entry of the Final Order granting such relief, any transfers by the Debtors to the Agent prior to the Petition Date (including, without limitation, any Proceeds under the Agreement and the valid, binding, and enforceable security interests granted to the Agent) are not subject to avoidance.

40. Non-material modifications, amendments, or supplementations to the Agreement and related documents by the parties may be made in accordance with the terms thereof without further order of this Court.

41. Nothing contained in any plan confirmed in these Chapter 11 Cases or any order of this Court confirming such plan or in any other order in these Chapter 11 Cases (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the Agreement or the terms of this Interim Order.

42. The Agent, solely in its capacity as Agent contemplated under the Agreement and for exclusively the purposes contemplated therein, shall not be liable for any claims against the Debtors, and the Debtors shall not be liable for any claims against Agent, in each case, other than as expressly provided for in the Agreement. The Agent, in the capacity described in this Paragraph 42, shall have no successor liability whatsoever with respect to any Encumbrances or claims of any nature that may exist against the Debtors, including, without limitation, the Agent shall not be, or to be deemed to be: (i) a successor in interest or within the meaning of any law, including any revenue, successor liability, pension, labor, ERISA, bulk- transfer, products liability, tax or environmental law, rule or regulation, or any theory of successor or transferee liability, antitrust,

environmental, product line, de facto merger or substantial continuity or similar theories; or (ii) a joint employer, co-employer or successor employer with the Debtors, and the Agent shall have no obligation to pay the Debtors' wages, bonuses, severance pay, vacation pay, WARN act claims (if any), benefits or any other payments to employees of the Debtors, including pursuant to any collective bargaining agreement, employee pension plan, or otherwise, except as expressly set forth in the Agreement.

43. This Court shall retain exclusive jurisdiction with regard to all issues or disputes arising from or relating to the implementation, interpretation, or enforcement of this Interim Order or the Agreement, including, but not limited to, any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit the Store Closing Sales in accordance with the Sale Guidelines, including but not limited to any efforts to prohibit, restrict or limit banner and signwalker advertising, including with respect to any allegations that such advertising is not being conducted in a safe, professional and non-deceptive manner, or any other disputes related to the Store Closing Sales or the assertion of Encumbrances related to the Store Closing Assets.. No parties or person shall take any action against the Debtors, the Agent, or the Store Closing 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.

44. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of payments made in accordance with this Interim Order that are dishonored or rejected.

45. Each of the Debtors' banks and financial institutions is authorized, but not directed, to honor checks presented for payment and all fund transfer requests made by the Debtors,

to the extent that sufficient funds are on deposit in the applicable accounts, in accordance with this Interim Order and any other order of this Court.

46. Notwithstanding the relief granted herein and any actions taken hereunder, except with respect to the Agent, nothing contained herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

47. Nothing in this Interim Order is intended to affect any rights of any Applicable Governmental Unit to enforce any law affecting the Debtors' conduct of the Store Closing Sales prior to the Petition Date.

48. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

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

EXHIBIT 1

Agreement



January 30, 2023

VIA EMAIL

Chris Homewood
Channel Control Merchants, LLC
6892 US 49
Hattiesburg, MS 39402
chris.homewood@ccmlc.com

Re: **Letter Agreement Governing Inventory Disposition**

Dear Chris:

By executing below, this letter shall serve as an agreement ("Agreement") between Hilco Merchant Resources, LLC, on the one hand ("Agent" or a "Party"), and Channel Control Merchants, LLC, 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 the Merchant's eight (8) stores set forth on Exhibit A (each a "Store" and collectively, the "Stores") through a "Store Closing", "Everything Must Go", "Everything on Sale" or similar themed sale (the "Sale"). The Parties may mutually agree to include additional stores and/or distribution centers (collectively, "Additional Locations") to this Agreement at any time.

A. Merchandise

For purposes hereof, "Merchandise" shall mean all goods, saleable in the ordinary course, located in the Stores and the Merchant's distribution centers ("Distribution Centers") on the Sale Commencement Date (defined below), as well as any additional goods Merchants elects to include in the Sale. "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.

B. Sale Term

For each Store, the Sale shall commence on February 2, 2023 (the "Sale Commencement Date") and conclude no later than March 10, 2023 (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.

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) recommend 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 and controlling 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) implement Agent's affiliate CareerFlex program for Merchant's Store level and other employees; and (j) 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 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; (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) assist Agent with implementing the CareerFlex program for Merchant's Store level and other employees; and (j) 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. 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, 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.

E. Agent Fee and Expenses in Connection with the Sale

In consideration of its services hereunder, Merchant may pay Agent a fee. The Agent's fee will be based on and subject to the Merchant's satisfaction with Agent's execution of the Sale and the performance thereof. Agent's typical fees may range from 1.5% to 2.5% of Gross Proceeds of Merchandise sold during the Sale. "Gross Proceeds" means gross receipts calculated using the "gross rings" method, net of applicable sales taxes.

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, 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 anticipated to be incurred by Agent in connection with the Sale, including (without limitation) payment of the costs of supervision (including (without limitation) Supervisors' wages, fees, travel, and deferred compensation) and advertising costs (including signage and the shipping, freight, and sales tax related thereto where applicable). The Expense Budget for the Sale is attached hereto as Exhibit B. The Expense Budget may only be modified by mutual agreement of Agent and Merchant. The costs of supervision set forth on Exhibit B include, among other things, industry standard deferred compensation. Merchant shall reimburse Agent for all costs incurred by Agent that are consistent with the Expense Budget regardless of whether Merchant elects to pay Agent a fee as set forth in the preceding paragraph.

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 (the "Final Reconciliation").

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 \$81,000 (the “Expense Advance”) which shall be held by Agent and applied towards Expense Budget items as incurred in connection with the Sale. Any portion of the Sale Expense Advance not so used shall be returned to Merchant within three days following the final reconciliation. In the event Merchant elects to include Additional Locations in the Sale, Merchant and Agent shall mutually agree upon a reasonable increase to the Sale Expense Advance prior to the commencement of the Sale at the Additional Locations.

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 or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortuous 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, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortuous 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), comprehensive public liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the Stores, and shall cause Agent to be named 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, Agent shall 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 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

To the extent expressly requested by Merchant, as part of the Sale, Agent shall sell FF&E in the Merchant's corporate office, Distribution Centers and Stores from the location(s) where such FF&E is situated; provided, however, Agent shall only sell FF&E that is specifically identified by Merchant. Merchant shall be responsible for all reasonable 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 twenty percent (20%) 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.

J. 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: Ian S. Fredericks; or (c) such other address as may be designated in writing by Merchant or Agent.

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. 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.

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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

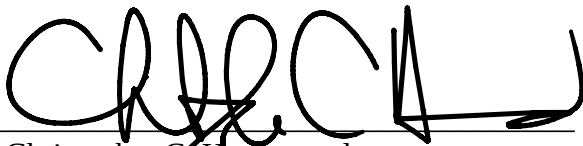


By: Sarah Baker

Its: VP & Deputy General Counsel, Managing Member

**AGREED AND ACCEPTED as of the 30th day
of January, 2023:**

CHANNEL CONTROL MERCHANTS, LLC,



By: Christopher C. Homewood

Its: Chief Executive Officer

CCM (Dirt Cheap & Treasure Hunt)
Exhibit A

Store List

Store #	Location Type	Name	Address	City	State	Zip	Closing Group	Gross Sq. Ft.	Selling Sq. Ft.
71	Dirt Cheap	Brewton DC	2045 Douglas Ave	Brewton	AL	36427	8 Stores	17,464	17,897
96	Dirt Cheap	Ozark DC	1177 Andrews Ave	Ozark	AL	36360	8 Stores	35,000	29,785
217	Dirt Cheap	Phenix City DC	2019 W 280 Bypass	Phenix City	AL	36867	8 Stores	29,968	23,873
218	Dirt Cheap	Auburn DC	1625 E. University Dr.	Auburn	AL	36830	8 Stores	30,000	24,829
303	Dirt Cheap	Millington TN DC	8235 Hwy 51 North	Millington	TN	38053	8 Stores	30,000	26,045
412	Dirt Cheap	Stephenville DC	2900 West Washington St.	Stephenville	TX	76401	8 Stores	26,000	21,094
414	Dirt Cheap	Wichita Falls DC	2801 Southwest Pkwy	Wichita Falls	TX	76308	8 Stores	26,500	22,304
421	Dirt Cheap	Abilene DC	841 N. Judge Ely Blvd	Abilene	TX	79602	8 Stores	32,199	26,094

CCM (Dirt Cheap & Treasure Hunt)
Exhibit B
8 Stores

Expense Budget (1)

Advertising

Media	28,800
Signs (2)	28,000
Sign Walkers	30,400
Subtotal Advertising	87,200

Supervision

Fees / Wages / Expenses (3)(4)	195,074
Subtotal Supervision	195,074

Miscellaneous /Legal (5)	-
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Total Expenses	282,274
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Notes:

1. This Expense Budget contemplates a sale term of February, 2, 2023 through March 10, 2023 . The Expense Budget remains subject to modification in the event that this term is extended, or as otherwise agreed to by the parties.
2. Includes Sales Tax.
3. Supervision includes 1 projected lead, 1 financial lead, 2 full time supervisors and 1 part time supervisor for 2 weeks.
4. Includes Deferred Compensation and Insurance.
5. 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.



October 1, 2024

VIA EMAIL

Channel Control Merchants, LLC
Attn: Jeff Martin
Chief Restructuring Officer
6892 US 49
Hattiesburg, MS 39402
jeff@mgpartners.ca

Re: **Amendment to Letter Agreement**

Dear Jeff:

Reference is made to that certain letter agreement dated January 30, 2023 (as supplemented or amended, the "Agreement") by and between Channel Control Merchants, LLC (the "Merchant" or a "Party"), on the one hand, and Hilco Merchant Resources, LLC ("Agent" or a "Party" and together with Merchant, the "Parties"), on the other hand. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

The Parties hereby amend the Agreement as follows (the "Amendment"):

As set forth in the Agreement, Agent was engaged to act as the exclusive agent for the purpose of providing certain services in connection with the disposition of the Merchandise and FF&E located at Merchant's retail locations reflected on Exhibit A to the Agreement (defined in the Agreement as "Stores"). Agent and Merchant have agreed to supplement Exhibit A to the Agreement by adding the (i) the 68 additional stores reflected on Exhibit 1 to this Amendment and (ii) any other Stores designated for disposition by Merchant from the date of this Amendment (the "Additional Stores").

Agent will assist Merchant in disposing of the Merchandise and FF&E at the Additional Stores through the conduct of "Going Out of Business", "Store Closing", "Everything Must Go", "Everything on Sale" or similar themed sales (such sales, the "Supplemental Sale"). The Supplemental Sale will commence on or about October 3, 2024 (the "Supplemental Sale Commencement Date") and will terminate no later than December 31, 2024, unless extended by mutual agreement of the Parties (the "Supplemental Sale Termination Date"). The period from the Supplemental Sale Commencement Date to the Supplemental Sale Termination Date shall be referred to as the "Supplemental Sale Term."

To control expenses of the Supplemental Sale, Merchant and Agent have established a not to exceed aggregate budget (the "Supplemental Budget," a copy of which is attached hereto as Exhibit 2) of certain delineated expenses, including costs of supervision, deferred compensation, advertising (including signage and the shipping, freight, and sales tax related thereto where applicable), and other costs.

In addition to the Additional Stores, Agent shall also sell FF&E at the Merchant's headquarters located in Hattiesburg, Mississippi (the "Headquarters") and Distribution Centers. The

definition of FF&E is hereby amended to include “owned furnishings, trade fixtures, equipment and improvements to real property that are located in the Stores, Headquarters, and Distribution Centers.” For the avoidance of doubt, Merchandise under the Agreement shall include all goods in transit to or from the Distribution Centers to the Stores as of the Supplemental Sale Commencement Date, and the definition of Merchandise is hereby amended and restated as follow: “Merchandise” “shall mean all goods, saleable in the ordinary course, located in or in transit to or from the Stores or Distributions Centers on the Supplemental Sale Commencement Date, as well as any additional goods Merchant elects to include in the Supplemental Sale.”

For the purpose of the Additional Stores, Headquarters and Distribution Center, the Agent will waive its (i) Agent fee as set forth in paragraph E of the Agreement and (ii) fee for selling FF&E as set forth in paragraph I of the Agreement. Upon execution of this Amendment, the Merchant shall pay by wire transfer to the Agent an initial advance payment of costs and expenses delineated in the Supplemental Budget of \$585,000 (the “Supplemental Sale Expense Advance”) which shall be held by Agent and applied towards Supplemental Budget items as incurred. Any portion of the Supplemental Sale Expense Advance not so used shall be returned to Merchant within three days following the final reconciliation. Upon reasonable request by Agent, Merchant shall increase the amount of the Supplemental Sale Expense Advance.

Both the Agreement and this Amendment shall govern the Supplemental Sale at the Additional Stores, Headquarters and Distribution Centers. For purposes of interpreting the Agreement and the Amendment, the following defined terms and exhibits shall be replaced in the Agreement with the corresponding defined terms and exhibits in or attached to this Amendment:

Agreement	Amendment
Budget	Supplemental Budget
FF&E	FF&E
Merchandise	Merchandise
Sale	Supplemental Sale
Store or Stores	Additional Store or Additional Stores
Sale Commencement Date	Supplemental Sale Commencement Date
Sale Termination Date	Supplemental Sale Termination Date
Sale Term	Supplemental Sale Term

Moreover, paragraph M of the Agreement is hereby replaced and reinstated as follows:

“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. 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 legal representatives, successors and permitted assigns. Notwithstanding the foregoing, Agent shall have the right to syndicate the transaction contemplated by this Agreement by providing Merchant with written notice of such syndication. This Agreement shall be binding upon and inure to the benefit of the

Parties and their respective heirs, legal representatives, successors and permitted assigns.”

Additionally, new paragraph R is added to the Agreement as follows:

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 and all fees and expenses to be paid to the Agent shall be part of and included in the “carve out” of the collateral of the pre-petition secured and/or debtor-in-possession lenders and paid to the Agent without offset or setoff; (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.”

Additionally, new paragraph S is added to the Agreement as follows:

S. Additional Agent Goods

“Agent shall have the right, upon mutual agreement with Merchant, to supplement the Merchandise in the Sale at the Stores (including Additional Stores) with additional goods procured by Agent at Agent’s sole cost and expense which are of like kind, and no lesser quality to the Merchandise in the Sale at the Stores (“Additional Agent Goods”); provided, that the cost of Additional Agent Goods shall not exceed twenty percent (20%) of the aggregate cost of Merchandise in the Sale. The Additional Agent Goods shall be purchased by Agent as part of the Sale, and delivered to the Stores at

Agent's sole expense (including as to labor, freight and insurance relative to shipping such Additional Agent Goods to the Stores). Sales of Additional Agent Goods shall be run through Merchant's cash register systems; provided however, that 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. Agent and Merchant shall also cooperate so as 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-Merchant goods. Additionally, Agent shall provide signage in the Stores notifying customers that the Additional Agent Goods have been included in the Sale.

With respect to the Additional Stores set forth on Exhibit 1, Agent shall pay to Merchant an amount equal to five percent (5%) (the "Additional Agent Goods Fee") of the gross proceeds (excluding Sale Taxes) from the sale of the Additional Agent Goods (the "Additional Agent Goods Proceeds"). Agent shall retain all remaining amounts from the sale of the Additional Agent Goods. Agent shall pay Merchant its Additional Agent Goods Fee in connection with each weekly sale reconciliation with respect to sales of Additional Agent Goods sold by Agent during each then prior week (or at such other mutually agreed upon time). Should Merchant elect to add additional Stores to the scope of this Agreement as Additional Stores, the Merchant reserves the right to negotiate revised terms for the Additional Agent Goods Fee for such additional Stores.

Agent and Merchant intend that the transactions relating to the Additional Agent Goods are, and shall be construed as, a true consignment from Agent to Merchant in all respects and not a consignment for security purposes. Subject solely to Agent's obligations to pay to Merchant 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 Agent, and no other person or entity shall have any claim against any of the Additional Agent Goods or their proceeds. The Additional Agent Goods shall at all times remain subject to the exclusive control of Agent.

Merchant shall, at Agent's sole cost and expense, insure the Additional Agent Goods and, if required, promptly file any proofs of loss with regard to same with 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.

Merchant acknowledges, and the Approval Order shall provide, that the Additional Agent Goods shall be consigned to Merchant as a true consignment under Article 9 of the Uniform Commercial Code. Agent is hereby granted a first priority security interest in and lien upon (i) the Additional Agent Goods and (ii) the Additional Agent Goods proceeds, and which security interest shall be deemed perfected pursuant to the Approval Order without the requirement of filing UCC financing statements or providing notifications to any prior secured parties (provided that Agent is hereby authorized to deliver all required notices and file all necessary financing statements and amendments thereof under the applicable UCC identifying Agent's interest in the Additional Agent Goods as consigned goods thereunder and the Merchant as the

consignee therefor, and Agent's security interest in and lien upon such Additional Agent Goods and Additional Agent Goods proceeds)."

With respect to this Amendment, (i) Merchant hereby reaffirms the representations, warranties, and agreements set forth in section H(i). of the Agreement, and (ii) Agent hereby reaffirms the representations, warranties, and agreements set forth in section H(ii). of the Agreement.

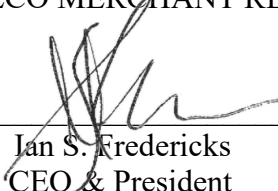
This Amendment, together the Agreement, all prior amendments or supplements, and all schedules and exhibits attached hereto and thereto, constitutes a single, integrated written contract expressing the entire agreement of the parties concerning the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any party to this Amendment except as specifically set forth in this Amendment or the Agreement.

* * *

If this Amendment is acceptable to you, kindly execute a copy in the space provided, and return a countersigned version to the undersigned.

Very truly yours,

HILCO MERCHANT RESOURCES, LLC



By: Ian S. Fredericks
Its: CEO & President

**AGREED AND ACCEPTED as of the ____ day
of October, 2024:**

CHANNEL CONTROL MERCHANTS, LLC

By:
Its:

CCM
Exhibit 1

Store List

Store ID	Concept/Banner	Name	Address	City	State	Country	Selling Sq. Ft.
1002	Treasure Hunt	1002-Gulfport Treasure Hunt	9120 Highway 49 N	Gulfport	MS	US	41,650
1005	Dirt Cheap	1005-Magee MS Dirt Cheap	1700 Simpson Hwy 49 Suite 2	Magee	MS	US	30,360
1007	Dirt Cheap	1007-Bogalusa LA Dirt Cheap	218 Cumberland St Suite C	Bogalusa	LA	US	30,153
1008	Dirt Cheap	1008-Waveland MS Dirt Cheap	344 B, Highway 90, Choctaw Plaza Shopping Center	Waveland	MS	US	40,507
1009	Dirt Cheap	1009-Petal MS Dirt Cheap	334 N Main St	Petal	MS	US	27,270
1015	Dirt Cheap	1015-Lucedale MS Dirt Cheap	12101 Highway 63 South	Lucedale	MS	US	38,906
1017	Dirt Cheap	1017-Gautier MS Dirt Cheap	2707 US-90 Jackson Square Shopping Center	Gautier	MS	US	52,625
1021	Dirt Cheap	1021-Jackson AL Dirt Cheap	1121 College Ave Jackson Plaza	Jackson	AL	US	23,635
1024	Dirt Cheap	1024-Hattiesburg MS Dirt Cheap	5912 US 49	Hattiesburg	MS	US	67,975
1025	Dirt Cheap	1025-Picayune MS Dirt Cheap	736 Memorial Blvd Pine Tree Plaza Suite 3	Picayune	MS	US	49,600
1026	Dirt Cheap	1026-Philadelphia MS Dirt Cheap	716 Pecan Avenue Suite 1	Philadelphia	MS	US	18,180
1028	Dirt Cheap	1028-Meridian MS Dirt Cheap	2300 N. Frontage Rd	Meridian	MS	US	59,600
1029	Dirt Cheap	1029-Natchez MS Dirt Cheap	261 Devereaux	Natchez	MS	US	25,000
1031	Dirt Cheap	1031-Franklinton LA Dirt Cheap	1908 Washington St SE	Franklinton	LA	US	28,445
1033	Dirt Cheap	1033-Carthage MS Dirt Cheap	500 Hwy 16 W	Carthage	MS	US	20,775
1034	Dirt Cheap	1034-Thomasville AL Dirt Cheap	33091 Hwy 43 S	Thomasville	AL	US	25,600
1035	Dirt Cheap	1035-Wiggins MS Dirt Cheap	1131 West Central Ave.	Wiggins	MS	US	25,874
1036	Dirt Cheap	1036-Tuscaloosa Skyland AL Dirt Cheap	1500 Skyland Blvd	Tuscaloosa	AL	US	44,936
1037	Dirt Cheap	1037-Amite LA Dirt Cheap	759 West Oak St.	Amite	LA	US	39,000
1038	Dirt Cheap	1038-Long Beach MS Dirt Cheap	19099 Pineville Rd, Suite D-1	Long Beach	MS	US	16,731
1041	Dirt Cheap	1041-Columbus MS Dirt Cheap	509 N 18th Ave	Columbus	MS	US	40,000
1042	Dirt Cheap	1042-Starkville MS Dirt Cheap	800 Louisville St.	Starkville	MS	US	27,000
1044	Dirt Cheap	1044-Brookhaven MS Dirt Cheap	542 Schwem Ave	Brookhaven	MS	US	35,475
1048	Dirt Cheap Building	1048-Hammond LA DCBS	1000 Roma Ave Suite B	Hammond	LA	US	59,875
1049	Dirt Cheap Building	1049-Ridgeland, MS DCBS	379 Hwy 51 N	Ridgeland	MS	US	51,641
1050	Dirt Cheap Building	1050- Bossier City DCBS	3045 East Texas St. Suite 200	Bossier City	LA	US	46,507
1066	Dirt Cheap	1066-Amory MS Dirt Cheap	1211 Hwy 278 East	Amory	MS	US	22,400
1068	Dirt Cheap	1068-Atmore AL Dirt Cheap	150 Lindberg Avenue Adams Plaza Shopping Center	Atmore	AL	US	18,720
1074	Dirt Cheap	1074-Waynesboro MS Dirt Cheap	1108 Mississippi Dr. Unit B	Waynesboro	MS	US	15,000
1077	Dirt Cheap	1077-Louisville MS Dirt Cheap	3244 N Church Ave	Louisville	MS	US	15,000
1078	Dirt Cheap	1078-Demopolis Dirt Cheap	505 US-80	Demopolis	AL	US	24,385
1079	Dirt Cheap	1079-Zachary LA Dirt Cheap	5460 Main St.	Zachary	LA	US	22,055
1081	Dirt Cheap	1081-Monroe LA Dirt Cheap	3128 Louisville Ave	Monroe	LA	US	25,000
1082	Dirt Cheap	1082-Gulfport MS Dirt Cheap	11312 N Hwy 49 Suite G 13	Gulfport	MS	US	30,170
1084	Dirt Cheap	1084-Pearl MS Dirt Cheap	3111 Hwy 80 East, Suite C Pearl Marketplace	Pearl	MS	US	29,500

CCM
Exhibit A

Store List

Store ID	Concept/Banner	Name	Address	City	State	Country	Selling Sq. Ft.
1086	Dirt Cheap	1086-Lafayette LA Dirt Cheap	3324 Ambassador Caffery Parkway	Lafayette	LA	US	32,000
1087	Dirt Cheap	1087-McComb MS Dirt Cheap	1623 Delaware Avenue Suite #7	McComb	MS	US	28,000
1089	Dirt Cheap	1089-Hammond LA Dirt Cheap	1000 Roma Ave	Hammond	LA	US	59,875
1091	Dirt Cheap	1091-Slidell LA Dirt Cheap	108 Gause Blvd W	Slidell	LA	US	25,600
1092	Dirt Cheap	1092-Dothan AL Dirt Cheap	2214 Ross Clark Cir.	Dothan	AL	US	30,000
1094	Dirt Cheap	1094-Houma LA Dirt Cheap	1218 Saint Charles St Suite A	Houma	LA	US	32,000
1095	Dirt Cheap	1095- Bossier City LA Dirt Cheap	3045 East Texas St. Suite 300	Bossier	LA	US	77,147
1097	Dirt Cheap	1097 Andalusia AL Dirt Cheap	1413 MLK Jr. Expressway	Andalusia	AL	US	25,000
1203	Dirt Cheap	1203-Tupelo MS Dirt Cheap	1136 West Main St.	Tupelo	MS	US	28,340
1205	Dirt Cheap	1205-Blue Mountain MS Dirt Cheap	6451 Hwy 15 North	Blue Mountain	MS	US	20,000
1211	Dirt Cheap	1211-Corinth MS Dirt Cheap	1108 Hwy 72 East	Corinth	MS	US	30,500
1212	Dirt Cheap	1212-Greenwood MS Dirt Cheap	2302 Hwy 82 W, Green West Shopping Center Unit Numl	Greenwood	MS	US	25,357
1213	Dirt Cheap	1213-Birmingham AL Dirt Cheap	146 Wildwood Parkway	Birmingham	AL	US	30,000
1214	Dirt Cheap	1214-Anniston AL Dirt Cheap	620 S. Quintard Ave.	Anniston	AL	US	23,248
1216	Dirt Cheap	1216-Batesville MS Dirt Cheap	200 Keating Rd	Batesville	MS	US	34,533
1222	Dirt Cheap	Mobile Tillman AL	-	Mobile	AL	US	-
1304	Dirt Cheap	1304-Madison TN Dirt Cheap	1142 Gallatin Pike South	Madison	TN	US	32,148
1305	Dirt Cheap	1305-Lewisburg TN Dirt Cheap	1800 Mooresville Hwy	Lewisburg	TN	US	44,620
1307	Dirt Cheap	1307-Fairview TN Dirt Cheap	2239 Fairview Blvd	Fairview	TN	US	33,067
1308	Dirt Cheap	1308-Murfreesboro TN Dirt Cheap	902 Mercury Blvd.	Murfreesboro	TN	US	34,560
1309	Dirt Cheap	1309-Smyrna, TN DRT	565 South Lowry Street	Smyrna	TN	US	34,854
1403	Dirt Cheap	1403-Euless TX Dirt Cheap	1201 W. Airport Freeway, Suite 300	Euless	TX	US	35,848
1415	Dirt Cheap	1415-Pasadena TX Dirt Cheap	4802 Fairmont Pkwy Suite 100	Pasadena	TX	US	24,000
1425	Dirt Cheap	New Hillsboro	-	Hillsboro	TX	US	24,565
1427	Dirt Cheap	New Garland	-	Garland	TX	US	26,160
1501	Dirt Cheap	1501-Pensacola Davis FL Dirt Cheap	8102 N Davis Hwy	Pensacola	FL	US	27,039
1502	Dirt Cheap Building	1502-Pensacola, FL DCBS	8102 North Davis Hwy Unit C700 Ferry Pass Plaza	Pensacola	FL	US	61,453
1503	Dirt Cheap	1503-Pensacola Fairfield FL Dirt Cheap	8187 W. Fairfield	Pensacola	FL	US	33,157
1551	Dirt Cheap	1551-Ft. Oglethorpe GA Dirt Cheap	1873 Battlefield Pkwy	Ft. Oglethorpe	GA	US	37,224
1650	Dirt Cheap	1650-Jacksonville AR Dirt Cheap	612 JP Wright Loop Road	Jacksonville	AR	US	68,633
1652	Dirt Cheap	1652-Searcy AR Dirt Cheap	2702 E. Race Ave.	Searcy	AR	US	34,724
68							34,491

CCM
Exhibit 2

Supplemental Expense Budget (1)
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Advertising

Digital & Media	461,000
Signs (2)	90,000
Sign Walkers	404,000
Subtotal Advertising	955,000

Supervision

Fees / Wages / Expenses (3)	1,630,478
Subtotal Supervision	1,630,478

Miscellaneous

Miscellaneous /Legal (4)	65,000
Subtotal Miscellaneous	65,000

Total Expenses	2,650,478
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Notes:

1. This Expense Budget contemplates a sale term of October, 3, 2024 through December 31, 2024. The Expense Budget remains subject to modification in the event that this term is extended, or as otherwise agreed to by the parties.
2. Includes Sales Tax.
3. Includes Deferred Compensation and Insurance.
4. 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

- A. The Store Closing Sales shall be conducted so that the Stores in which sales are to occur will remain open no longer than during the normal hours of operation provided for in the respective leases for the Stores.
- B. The Store Closing Sales shall be conducted in accordance with applicable state and local “Blue Laws”, where applicable, so that no Store Closing Sales shall be conducted on Sunday unless the Merchant had been operating such Store on a Sunday.
- C. On “shopping center” property, the Agent shall not distribute handbills, leaflets or other written materials to customers outside of any Stores’ premises, unless permitted by the lease or, if distribution is customary in the “shopping center” in which such Store is located; provided that Agent may solicit customers in the Stores themselves. On “shopping center” property, the Agent shall not use any flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.
- D. At the conclusion of the Store Closing Sales, the Agent shall vacate the Stores in broom clean condition, ordinary wear and tear excepted, in accordance with Paragraph B of the Agreement, provided, however, that the Merchant and the Agent hereby do not undertake any greater obligation than as set forth in an applicable lease with respect to a Store. The Agent and Merchant may abandon any FF&E (as defined below) not sold in the Store Closing Sales at the Stores at the conclusion of the Store Closing Sales. Any abandoned FF&E left in a Store after a lease is rejected shall be deemed abandoned to the landlord having a right to dispose of the same as the landlord chooses without any liability whatsoever on the part of the landlord to any party and without waiver of any damage claims against the Merchant. For the avoidance of doubt, as of the Sale Termination Date, the Agent may abandon, in place and without further responsibility, any FF&E located at a Store.
- E. The Merchant and the Agent may advertise the Sale as a “store closing” “sale on everything”, “everything must go”, or similar themed sale, or “going out of business.”
- F. Agent shall be permitted to utilize display, hanging signs, and interior banners in connection with the Sale; provided, however, that such display, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. The Merchant and the Agent shall not use neon or day-glo on its display, hanging signs, or interior banners. 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 the Agent shall be permitted to utilize exterior banners at (i) non-enclosed mall Stores and (ii) enclosed mall Stores to the extent the entrance to the applicable 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 Sale is being conducted only at the affected Store, shall not be wider than the storefront of the Store, and shall not be larger than 4 feet x 40 feet. In addition, the Merchant and the Agent shall be permitted to utilize sign walkers and A-frames in a safe and professional manner and in accordance with the terms of the Approval Order. Nothing contained in these Sale Guidelines shall be construed to create or impose upon the Agent any additional restrictions not contained in the applicable lease agreement.

¹ Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the *Debtors’ Motion for Interim and Final Orders Authorizing (I) the Debtors to Assume the Agreement, (II) the Conduct of the Store Closing Sales, With Such Sales to Be Free and Clear of All Liens, Claims, and Encumbrances, (III) Customary Bonuses to Employees of Closing Stores, , and (IV) Related Relief or Agreement*, as applicable.

F. Conspicuous signs shall be posted in the cash register areas of each of the affected Stores to effect that “all sales are final.”

G. Except with respect to the hanging of exterior banners, the Agent shall not make any alterations to the storefront or exterior walls of any Stores.

H. The Agent shall not make any alterations to interior or exterior Store lighting. No property of the landlord of a Store shall be removed or sold during the Sale. The hanging of exterior banners or in-Store signage and banners shall not constitute an alteration to a Store.

I. The Agent shall keep Store premises and surrounding areas clear and orderly consistent with present practices.

J. Subject to the provisions of the Agreement, the Agent shall have the right to sell all furniture, fixtures, and equipment located at the Stores, the Headquarters, and the Distribution Centers (the “FF&E”). The Agent may advertise the sale of the FF&E in a manner consistent with these guidelines at the Closing Stores, the Headquarters, and the Distribution Centers. The purchasers of any FF&E sold during the sale shall be permitted to remove the FF&E either through the back shipping areas at any time, or through other areas after Store business hours; *provided, however*, that the foregoing shall not apply to *de minimis* FF&E sales made whereby the item(s) can be carried out of the Store in a shopping bag or shopping cart. For the avoidance of doubt, as of the Sale Termination Date, the Agent may abandon, in place and without further responsibility, any FF&E.

K. The Agent shall be entitled to include Additional Agent Goods in the Sale in accordance with the terms of the Approval Order and the Agreement.

L. At the conclusion of the Store Closing Sales at each Store, pending assumption or rejection of applicable leases, the landlords of the Stores shall have reasonable access to the Stores’ premises as set forth in the applicable leases. The Merchant, the Agent and their agents and representatives shall continue to have exclusive and unfettered access to the Stores.

M. The rights of landlords against Merchant for any damages to a Store shall be reserved in accordance with the provisions of the applicable lease.

N. If and to the extent that the landlord of any Store affected hereby contends that the Agent or Merchant is in breach of or default under these Sale Guidelines, such landlord shall email or deliver written notice by overnight delivery on the Merchant’s counsel and the Agent’s counsel as follows:

If to the Merchant:

Chanel Control Merchants, LLC
c/o Jeffry Martin, CRO
6892 US Hwy 49
Hattiesburg, Mississippi 39402

With copies to:

Young Conaway Stargatt & Taylor, LLP
1000 North King Street
Wilmington, Delaware 19801
Attention: Michael Nestor, Andrew Magaziner, S. Alexander Faris
mnestor@ycst.com, amagaziner@ycst.com, afaris@ycst.com

If to the Agent:

HILCO MERCHANT RESOURCES, LLC
5 Revere Drive, Suite 206
Northbrook, IL 60062
Attention: Ian S. Fredericks
Tel: (847) 418-2075
Fax: (847) 897-0859
Email: ifredericks@hilcotrading.com

EXHIBIT B

Proposed Final Order

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

In re:

HDC Holdings II, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-12307 (TMH)

(Jointly Administered)

Ref. Docket Nos. ____

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

Upon the *Debtors' Motion for Interim and Final Orders Authorizing (I) the Debtors to Assume the Agreement, (II) the Conduct of the Store Closing Sales, with such Sale to be Free and Clear of All Liens, Claim, and Encumbrances, (III) Customary Bonuses to Employees of Closing Stores and Distribution Centers, and (IV) Granting Related Relief* (the "Motion");² and upon consideration of the First Day Declaration [D.I. ____]; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that venue of these Chapter 11 Cases and the

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: HDC Holdings II, LLC (2013); HDC Holdings III, LLC (3296); CCM Capital Assets, LLC (9451); Channel Control Merchants, LLC (3319); Dirt Cheap I, LLC (9433); CCM Support Services, LLC (2059); CCM Wholesale SE, LLC (7219); Channel Control Merchants of Texas, LLC (8091); Creative Sales Solutions, LLC (1691); Dirt Cheap Arkansas, LLC (0244); Dirt Cheap Building Supplies, LLC (0880); Dirt Cheap of Georgia, LLC (0269); Dirt Cheap of Louisiana, LLC (0067); Dirt Cheap SE, LLC (4928); Dirt Cheap Tennessee, LLC (1273); Treasure Hunt, LLC (9393); CCM Wholesale, LLC (7219); Channel Control Merchants of California, LLC (9011); and CAL Support Services, LLC (2859). The Debtors' headquarters are located at 6892 US Hwy 49 North, Hattiesburg, Mississippi 39402.

² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion or Agreement, as applicable.

Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that due and sufficient notice of the Motion has been given under the particular circumstances and that no other or further notice of the Motion need be given; and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and this Court having entered the *Interim Order Authorizing (I) the Debtors to Perform in Accordance with the Agreement, (II) the Conduct of the Store Closing Sales, With Such Sales to Be Free and Clear of all Liens, Claims, and Encumbrances, (III) Customary Bonuses to Employees of Closing Stores and Distribution Centers, and (IV) Granting Related Relief* [D.I. ____]; and this Court having found and determined that the relief sought in the Motion is in the best interest of the Debtors, their estates and creditors, and all other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND, CONCLUDED AND DETERMINED that:³

A. The Debtors' decision to (i) enter into the Agreement, a copy of which is attached hereto as Exhibit 1, and (ii) perform under and make expense reimbursement payments required by the Agreement, is a reasonable exercise of the Debtors' sound business judgment consistent with their fiduciary duties and is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest.

B. Time is of the essence in effectuating the Agreement and continuing with the Store Closing Sales contemplated therein without interruption. The conduct of the Store

³ The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Closing Sales will provide an efficient means for the Debtors to dispose of the Store Closing Assets. The Store Closing Sales under the Agreement must be permitted to continue to maximize the value that the Agent may realize from the Store Closing Sales and the value that the Debtors may realize from assuming the Agreement.

C. The Sale Guidelines, as described in the Motion and attached as Exhibit 2 hereto, are reasonable and will maximize the returns on the Store Closing Assets for the benefit of the Debtors' estates and creditors.

D. The Store Closing Sales, in accordance with the Sale Guidelines and with the assistance of the Agent, will provide an efficient means for the Debtors to liquidate and dispose of the Store Closing Assets as quickly and effectively as possible, and are in the best interests of the Debtors' estates.

E. The Resolution Procedures are fair and reasonable.

F. The Expense Reimbursement Procedures are fair and reasonable.

G. The Debtors have represented that, pursuant to the Motion, they are not seeking to either sell or lease personally identifiable information during the course of the Store Closing Sales at the Closing Stores or Distribution Centers.

H. A sale of the Store Closing Assets other than one free and clear of liens, claims, encumbrances, defenses (including, without limitation, rights of setoff and recoupment) and interests, including, without limitation, security interests of whatever kind or nature, mortgages, conditional sales or title retention agreements, pledges, deeds of trust, hypothecations, liens, encumbrances, assignments, preferences, debts, easements, charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, taxes (including foreign, state and local taxes), licenses, covenants,

restrictions, indentures, instruments, leases, options, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, environmental, tax, labor, ERISA, CERCLA, alter ego and other liabilities, causes of action, contract rights and claims, to the fullest extent of the law, in each case, of any kind or nature (including, without limitation, all “claims” as defined in section 101(5) of the Bankruptcy Code), known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable (collectively, “Encumbrances”) pursuant to the terms provided in the Agreement and without the protections of this Final Order would hinder the Debtors’ ability to obtain the consideration provided for in the Agreement and, thus, would impact materially and adversely the value that the Debtors’ estates would be able to obtain for the sale of such Store Closing Assets. But for the protections afforded to the Agent under the Bankruptcy Code and this Final Order, the Agent would not have offered to provide the consideration contemplated in the Agreement. The Debtors and the Agent may sell the Store Closing Assets free and clear of all Encumbrances as provided for herein because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of any such Encumbrances who did not object, or who withdrew their objections, to the entry of this Final Order are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of any such Encumbrances who did object fall within one or more of the other subsections of section 363(f) and are adequately protected by having such Encumbrances attaching to the proceeds of the sale of the applicable Store Closing Assets with the same validity and priority and to the same extent and amount that any such Encumbrances had with respect to such Store

Closing Assets. Therefore, approval of the Agreement and the consummation of the Store Closing Sales free and clear of Encumbrances is appropriate pursuant to section 363(f) of the Bankruptcy Code and is in the best interests of the Debtors' estates, their creditors and other parties in interest.

I. No sale, transfer or other disposition of the Store Closing Assets pursuant to the Agreement or entry into the Agreement will subject the Agent, solely in its capacity as Agent under the Agreement, to any liability for claims, obligations or Encumbrances asserted against the Debtors or the Debtors' interests in such Store Closing Assets by reason of such transfer under any laws, including, without limitation, any bulk-transfer laws or any theory of successor or transferee liability, antitrust, environmental, product line, de facto merger or substantial continuity or similar theories. The Agent, in its capacity as Agent under the Agreement, is not a successor to the Debtors or their respective estates.

J. 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.

K. The entry of this Final Order is in the best interest of the Debtors, their estates and creditors, and all other parties in interest herein.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. The Debtors are authorized to take all actions necessary to implement the relief granted in this Final Order. The failure to specifically include any particular provision of the Agreement in this Final Order shall not diminish or impair the effectiveness of such provisions, it being the intent of this Court that the Agreement and all of its provisions, payments, and

transactions, be and hereby are authorized and approved as and to the extent provided for in this Final Order.

3. To the extent there is any conflict between this Final Order, the Sale Guidelines, and the Agreement, the terms of this Final Order shall control over all other documents, and the Sale Guidelines shall control over the Agreement.

A. Assumption of the Agreement

4. The Agreement is hereby assumed pursuant to section 365 of the Bankruptcy Code. The Debtors are authorized to act in accordance with the terms of the Agreement, including, but not limited to, making payments required by the Agreement to the Agent.

5. Subject to the restrictions set forth in this Final Order and the Sale Guidelines, the Debtors and the Agent are authorized to take any and all actions as may be necessary or desirable to implement the Agreement and the Store Closing Sales; and each of the transactions contemplated by the Agreement, and any actions taken by the Debtors and the Agent necessary or desirable to implement the Agreement and/or the Store Closing Sales from the Petition Date to the date of this Final Order are approved and ratified.

B. Authority to Engage in the Store Closing Sales

6. The Debtors are authorized, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to immediately continue and conduct the Store Closing Sales in accordance with this Final Order, the Sale Guidelines, the Agreement, and any Side Letter (defined below).

7. The Sale Guidelines are approved in their entirety.

8. All entities that are presently in possession of some or all of the Store Closing Assets in which the Debtors hold an interest that are or may be subject to the Agreement

or this Final Order hereby are directed to surrender possession of such Store Closing Assets to the Debtors or the Agent.

9. Except as provided herein, 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 or any Landlord, to conduct the Store Closing Sales and any related activities in accordance with the Sale Guidelines.

10. The Debtors are authorized to discontinue operations at the Closing Stores and Distribution Centers in accordance with this Final Order, the Sale Guidelines, and the Agreement.

C. Order Binding

11. This Final Order shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Store Closing Assets.

12. This Final Order and the terms and provisions of the Agreement shall be binding on all of the Debtors' creditors (whether known or unknown), the Debtors, the Agent, and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting an interest in the Store Closing Assets, notwithstanding any subsequent appointment of any trustee, party, entity or other fiduciary under any section of the Bankruptcy Code with respect to the forgoing parties, and as to such trustee, party, entity or other fiduciary, such terms and provisions likewise shall be binding. The provisions of this Final Order

and the terms and provisions of the Agreement, and any actions taken pursuant hereto or thereto shall survive the entry of any order which may be entered confirming or consummating any plan(s) of the Debtors or converting the Debtors' cases from chapter 11 to chapter 7, and the terms and provisions of the Agreement, as well as the rights and interests granted pursuant to this Final Order and the Agreement, shall continue in these or any superseding cases and shall be binding upon the Debtors, the Agent and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code. Any trustee appointed in this case shall be and hereby is authorized to operate the business of the Debtors to the fullest extent necessary to permit compliance with the terms of this Final Order and the Agreement, and Agent and the trustee shall be and hereby are authorized to perform under the Agreement upon the appointment of the trustee without the need for further order of this Court.

D. Conducting the Store Closing Sales

13. Except as otherwise provided in the Agreement, pursuant to section 363(f) of the Bankruptcy Code, the Agent shall be authorized to sell all the Store Closing Assets to be sold pursuant to the Agreement free and clear of any and all Encumbrances, including, without limitation, the liens and security interests, as the same may have been amended from time to time, of BMO whether arising by agreement, any statute or otherwise and whether arising before, on or after the date on which these Chapter 11 Cases were commenced, with any presently existing liens encumbering all or any portion of the Store Closing Assets or the proceeds thereof attaching only to the amounts to be received by the Debtors under the Agreement that are not payable to Agent under the Agreement.

14. Other than filings made by BMO with respect to its liens and security interests in the Store Closing Assets, if any person or entity that has filed financing statements,

mortgages, construction or mechanic's liens, lis pendens or other documents or agreement evidencing liens on or interests in the Store Closing Assets shall not have delivered to the Debtors, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of any Encumbrances which the person or entity has with respect to the Store Closing Assets, each such person or entity is hereby directed to deliver all such statements, instruments and releases and the Debtors and the Agent are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity asserting the same and the Agent is authorized to file a copy of this Final Order which, upon filing, shall be conclusive evidence of the release and termination of such interest. Each and every federal, state and local governmental unit is hereby authorized to accept any and all documents and instruments necessary or appropriate to give effect to the Store Closing Sales and related transactions.

15. All newspapers and other advertising media in which the Store Closing Sales may be advertised and all Landlords or licensors, as applicable, of the Closing Stores and Distribution Centers, as applicable, are authorized to accept this Final Order as binding authority so as to authorize the Debtors and the Agent to conduct the Store Closing Sales and the sale of Store Closing Assets pursuant to the Agreement and the Sale Guidelines, including, without limitation, to conduct and advertise the sale of the Store Closing Assets and the Additional Agent Goods in the manner contemplated by and in accordance with this Final Order, the Sale Guidelines, and the Agreement.

16. Nothing 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) that any entity would be subject to 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 or in the Agreement shall in any way (i) diminish the obligation of any entity to comply with environmental laws, or (ii) 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. Nothing herein shall be construed to be a determination that the Agent is an operator with respect to any environmental law or regulation. Moreover, the sale of the Store Closing Assets shall not be exempt from, and the Debtors and the Agent shall be required to comply with laws and regulations of general applicability, including, without limitation, public health and safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, “General Laws”). Nothing in this Final Order shall alter or affect the Debtors’ and Agent’s obligations to comply with all applicable federal safety laws and regulations. Nothing in this Final Order shall be deemed to bar any Governmental Unit from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors’ or the Agent’s right 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, this Final Order, or otherwise, pursuant to paragraph 30 hereunder. 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.

17. In accordance with and subject to the terms and conditions of the Agreement, the Agent shall have the right to use the Closing Stores and Distribution Centers and

all related store services, furniture, fixtures, equipment, and other assets of the Debtors for the purpose of conducting the Store Closing Sales, free and clear of any interference from any entity or person, subject to compliance with the Sale Guidelines and this Final Order.

18. Subject to the Resolution Procedures provided in paragraph 30 hereof, the Debtors and the Agent are hereby authorized to take such actions as may be necessary and appropriate to implement the Agreement and to conduct the Store Closing Sales without the need for a further order of this Court, including, but not limited to, advertising the sale as a “store closing,” “sale on everything,” “everything must go,” “liquidation sale,” “going out of business” or similar themed sale through the posting of signs (including the use of exterior banners at non-enclosed mall Closing Stores, and at enclosed mall Closing Stores to the extent the applicable Store entrance does not require entry into the enclosed mall common area), use of signwalkers and street signage, in accordance with the Final Order, Agreement, and Sale Guidelines.

19. Notwithstanding anything herein to the contrary, and in view of the importance of the use of sign-walkers, banners, and other advertising to the sale of the Store Closing Assets, to the extent that disputes arise during the course of such sale 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 with a Governmental Unit, any party may request an immediate telephonic hearing with this Court pursuant to these provisions. Such hearing will, to the extent practicable, be scheduled initially no later than within two (2) business days of such request. This scheduling shall not be deemed to preclude additional hearings for the presentation of evidence or arguments as necessary.

20. Except as expressly provided in the Agreement, the sale of the Store Closing Assets shall be conducted by the Debtors and the Agent notwithstanding any restrictive provision

of any lease, sublease, license, reciprocal easement agreement, restrictive covenant, or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Store Closing Sales, the rejection of leases or licenses, the necessity of obtaining any third party consents, abandonment of assets, or “going dark” provisions, and such provisions shall not be enforceable in conjunction with the Store Closing Sales. The Agent, along with landlords and licensors, as applicable, of the Closing Stores and Distribution Center(s) 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 Agent and any such landlords or licensors, as applicable, of the Closing Stores and Distribution Center(s), provided that nothing in such Side Letters affects the provisions of paragraphs 16, 18, 19, and 30 of this Final Order. In the event of any conflict between the Sale Guidelines and any Side Letter, the terms of such Side Letter shall control.

21. Except as expressly provided for herein or in the Sale Guidelines, and except with respect to any Governmental Unit (as to which paragraphs 16 and 30 of this Final Order shall apply), no person or entity, including, but not limited to, any landlord, licensor, service providers, utilities, and creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder the continuation of the Store Closing Sales or the sale of Sale Closing Assets, or the advertising and promotion (including the posting of signs and exterior banners or the use of signwalkers) 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 creditor and all those acting for or on behalf of such parties, are prohibited and enjoined from (i) interfering in any way with, obstructing, or otherwise impeding, the conduct of the Store Closing Sales and/or (ii) instituting any action or proceeding in any court (other than before this Court) or

administrative body seeking an order or judgment against, among others, the Debtors, the Agent, or the landlords or licensors, as applicable, at the Closing Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Store Closing Sales or sale of the Store Closing Assets or other liquidation sales at the Closing Stores and/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.

22. All sales of all Store Closing Assets shall be “as is” and final. Conspicuous signs stating that “all sales are final” and “as is” will be posted at the cash register areas at all Stores. However, 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. Except as expressly provided for in the Agreement, nothing in this Final Order or the Agreement, and none of the Agent’s actions taken in respect of the Store Closing Sales shall be deemed to constitute an assumption by Agent of any of the Debtors’ obligations relating to any of the Debtors’ employees. Moreover, the Agent shall not become liable under any collective bargaining or employment agreement or be deemed a joint or successor employer with respect to such employees.

24. The Agent shall not be liable for sales taxes except as expressly provided in the Agreement, and the Debtors remain responsible for the payment of any and all sales taxes. The Debtors are directed to remit all taxes accruing from the Store Closing 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 the 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. This Final Order does not enjoin, suspend or restrain the assessment, levy or collection of any tax under state law, and does not constitute a declaratory judgment with respect to any party's liability for taxes under state law

25. The Debtors shall not sell any personal and/or confidential information about the Debtors' employees and/or customers (the "Confidential Information"). To the extent that the Debtors propose to sell or abandon Store Closing Assets that may contain Confidential Information, the Debtors shall remove all such Confidential Information from such Store Closing Assets before they are sold or abandoned.

26. The Debtors are authorized and empowered to transfer Store Closing Assets among the Closing Stores and Distribution Centers.

27. Nothing in this Final Order shall (a) alter or affect the Debtors' obligations to comply with section 365(d)(3) of the Bankruptcy Code or (b) alter or modify the rights of any lessor or other counterparty to a lease with the Debtors to file an appropriate motion or otherwise seek appropriate relief if the Debtors fail to comply with section 365(d)(3) of the Bankruptcy Code; provided that the conduct of the Store Closing Sales in accordance with the Sale Guidelines, as may have been modified by Side Letter, shall not be a violation of section 365(d)(3) of the Bankruptcy Code.

28. During the Sales Term, the Agent shall be granted a limited license and right to use the trade names, logos, e-mail lists, mailing lists, customer lists, and e-commerce sites (including (without limitation) websites and social media sites such as Facebook and Twitter), including a banner on such sites and a store locator to identify the Closing Stores, relating to and

used in connection with the operation of the stores as identified in the Agreement, solely for the purpose of advertising the Store Closing Sales in accordance with the terms of the Agreement; *provided, however*, that the Agent shall not receive Personally Identifiable Information from the Debtors.

E. Resolution Procedures for Disputes Regarding Liquidation Laws

29. To the extent that the Store Closing Sales at the Closing Stores and Distribution Centers are conducted in accordance with this Final Order and the Sale Guidelines, and are therefore conducted under the supervision of this Court, such Store Closing Sales are authorized notwithstanding any federal, state, or local statute, ordinance, rule, or licensing requirement directed at regulating “going out of business,” “store closing,” similar inventory liquidation sales, bulk sale laws, or fast pay laws, including laws restricting safe, professional and non-deceptive, customary advertising such as signs, banners, posting of signage, and use of sign-walkers in connection with the sale and including ordinances establishing license or permit requirements, waiting periods, time limits or bulk sale restrictions, (collectively, the “Liquidation Laws”).

30. Provided that the Store Closing Sales are conducted in accordance with the terms of this Final Order, the Agreement and the Sale Guidelines, and in light of the provisions in the laws of many Governmental Units that exempt court-ordered sales from their provisions, the Debtors shall be presumed to be in compliance with any Liquidation Laws and, subject to paragraphs 16 and 19 herein, are authorized to conduct the Store Closing Sales in accordance with the terms of this Final Order and the Sale Guidelines without the necessity of further showing compliance with any such Liquidation Laws. To the extent that between the Petition Date and the date of the Final Hearing there is a dispute arising from or relating to the Store Closing Sales, this Final Order, the Agreement, or the Sale Guidelines, which dispute relates to any Liquidation Sales

Laws (a “Liquidation Dispute”), the following procedures shall apply (the “Resolution Procedures”):

- a) This Court shall retain exclusive jurisdiction to resolve the Liquidation Dispute which such Liquidation Dispute will be heard at the Final Hearing, absent a party obtaining expedited relief. Nothing in this Interim Order shall constitute a ruling with respect to any issues to be raised with respect to a Liquidation Dispute. Any Governmental Unit may assert a Liquidation Dispute and shall send a notice (the “Dispute Notice”) explaining the nature of the dispute to: (i) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: S. Alexander Faris, Esq. and Andrew M. Lee, Esq. (afaris@ycst.com and alee@ycst.com); (ii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, DE 19801, Attn: Rosa Sierra-Fox, Esq. (rosa.sierra.fox@usdoj.gov); (iii) counsel to BMO Bank, N.A., Vedder Price, 1633 Broadway 31st Floor New York, NY 10019, Attn: Michael L. Schein, Esq. (mschein@vedderprice.com); (iv) counsel to Hancock Whitney Bank, Carver Darden Koretzky Tessier Finn Blossman & Areaux LLC, 1100 Poydras Street, Suite 3100 New Orleans, LA 70163, Attn: David F. Waguespack, Esq. (waguespack@carverdarden.com); and (v) counsel to any statutory committee appointed in these Chapter 11 Cases, no later than fourteen (14) days following the service of the Interim Order.
- b) If the Debtors, the Agent and the Governmental Unit are unable to resolve the Liquidation Dispute within fourteen (14) days of service of the notice, the aggrieved party may file a motion with this Court requesting that this Court resolve the Liquidation Dispute (a “Dispute Resolution Motion”).
- c) 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 Store Closing Sales pursuant to this Final Order and the Agreement, absent further order of this Court.

31. Within two (2) business days of the entry of this Final Order, the Debtors shall serve copies of this Final Order, which includes the Agreement and the Sale Guidelines, by email, facsimile, or regular mail on the Applicable Governmental Units and the Landlords.

F. Procedures for Reimbursement of Agent Expenses

31. The following procedures to govern their reimbursement of the Agent Expenses (the “Expense Reimbursement Procedures”):

- a. The Agent shall submit a detailed report of its expenses to the Debtors on a monthly basis. Following the Debtors' review and approval of the Agent Expenses, on or after the twentieth (20th) day of each calendar month following the month for which payment of Agent Expenses is sought, the Debtors shall file a notice of the proposed payment of the Agent Expenses with a detailed report of the Agent Expenses, which shall include applicable invoices, that it proposes to pay (an "Expense Notice"), and serve a copy of such Expense Notice by email on the following parties (collectively, the "Notice Parties"): (i) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, DE 19801, Attn: Rosa Sierra-Fox, Esq. (rosa.sierra-fox@usdoj.gov); (ii) counsel to BMO Bank, N.A., Vedder Price, 1633 Broadway 31st Floor New York, NY 10019, Attn: Michael L. Schein, Esq. (mschein@vedderprice.com); (iii) counsel to Hancock Whitney Bank, Carver Darden Koretzky Tessier Finn Blossman & Areaux LLC, 1100 Poydras Street, Suite 3100 New Orleans, LA 70163, Attn: David F. Waguespack, Esq. (waguespack@carverdarden.com); and (iv) counsel to any statutory committee appointed in these Chapter 11 Cases.
- b. Each Notice Party will have ten (10) days after service of an Expense Notice to object to the requested payment of the Agent Expenses (the "Objection Deadline"). Upon the expiration of the Objection Deadline, the Debtors may file with the Court a certificate of no objection (a "CNO") with respect to the unopposed portion of the Agent Expenses requested in the Expense Notice. After a CNO is filed, the Debtors are authorized to pay the Agent an amount equal to 100% of the requested Agent Expenses not subject to an objection pursuant to subparagraph (c) below.
- c. If any Notice Party objects to an Expense Notice, it must, on or before the Objection Deadline, file with the Court and serve on the Debtors and the Agent and each other Notice Party a written objection (an "Objection") so as to be received on or before the Objection Deadline. Any such Objection shall identify with specificity the objectionable Agent Expenses, including the amount of such objected to Agent Expenses, and the basis for such Objection. Thereafter, the objecting party and the Agent may attempt to resolve the Objection on a consensual basis.

32. The pendency of an Objection to an Expense Notice shall not disqualify the Agent from the future payment of Agent Expenses pursuant to these Expense Reimbursement Procedures.

G. Store Closing Bonuses

33. The Debtors shall have the authority, but not the obligation, to pay store closing bonuses (the "Store Closing Bonuses") to the Retained Employees as provided for in the

Agreement. Subject to the terms of the Agreement, the Agent shall have the authority, with advanced approval from the Debtors, to determine the individual amounts of each Store Closing Bonus, except that the total aggregate cost of the Store Closing Bonus program shall not exceed ten percent (10%) of the base payroll for all Retained Employees. For the avoidance of doubt, no Store Closing Bonuses shall be paid to any executives, directors, or “insiders”, as that term is defined in the Bankruptcy Code, absent further Court order.

H. Additional Agent Goods

34. In accordance with Paragraph R of the Agreement, the Agent is authorized to supplement the Merchandise in the Store Closing Sales with additional goods procured by Agent which are of like kind, and no lesser quality to the Merchandise in the Store Closing Sales (the “Additional Agent Goods”). The Additional Agent Goods shall be purchased by Agent as part the Store Closing Sales at Agent’s sole expense (and such purchase price shall constitute an Expense). Sales of Additional Agent Goods shall be run through the Debtors’ cash register systems, *provided however*, 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. Agent and the Debtors shall also cooperate so as 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-Debtor goods. Additionally, Agent shall provide signage in the Closing Stores notifying customers that the Additional Agent Goods have been included in the Store Closing Sales.

35. The Additional Agent Goods shall be consigned to the Debtors as a true consignment under Article 9 of the Uniform Commercial Code (as the same may be in effect from time to time in the State of Delaware). Subject solely to Agent’s obligations to pay to the Debtors their portion of the Proceeds from the sale of the Additional Agent Goods, 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. The Additional Agent Goods shall at all times remain subject to the exclusive control of Agent, and the Debtors shall, as an Expense, insure the Additional Agent Goods and, if required, promptly file any proofs of loss with regard thereto with the Debtors' insurers. Agent is hereby granted a first priority security interest in and lien upon (i) the Additional Agent Goods and (ii) the Additional Agent Goods proceeds, which security interest shall be deemed perfected pursuant to this Final Order without the requirement of filing UCC financing statements or providing notifications to any prior secured parties (provided that Agent is hereby authorized to deliver all required notices and file all necessary financing statements and amendments thereof under the applicable UCC identifying Agent's interest in the Additional Agent Goods as consigned goods thereunder and the Debtors as the consignee therefor, and Agent's security interest in and lien upon such Additional Agent Goods and Additional Agent Goods proceeds).

I. Miscellaneous

36. Any transfers by the Debtors to the Agent prior to the Petition Date (including, without limitation, any Proceeds under the Agreement and the valid, binding, and enforceable security interests granted to the Agent) are not subject to avoidance.

37. Non-material modifications, amendments, or supplementations to the Agreement and related documents by the parties may be made in accordance with the terms thereof without further order of this Court.

38. Nothing contained in any plan confirmed in these Chapter 11 Cases or any order of this Court confirming such plan or in any other order in these Chapter 11 Cases (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the Agreement or the terms of

this Final Order.

39. The Agent, solely in its capacity as Agent contemplated under the Agreement and for exclusively the purposes contemplated therein, shall not be liable for any claims against the Debtors, and the Debtors shall not be liable for any claims against Agent, in each case, other than as expressly provided for in the Agreement. The Agent, in the capacity described in this paragraph 39, shall have no successor liability whatsoever with respect to any Encumbrances or claims of any nature that may exist against the Debtors, including, without limitation, the Agent shall not be, or to be deemed to be: (i) a successor in interest or within the meaning of any law, including any revenue, successor liability, pension, labor, ERISA, bulk-transfer, products liability, tax or environmental law, rule or regulation, or any theory of successor or transferee liability, antitrust, environmental, product line, de facto merger or substantial continuity or similar theories; or (ii) a joint employer, co-employer or successor employer with the Debtors, and the Agent shall have no obligation to pay the Debtors' wages, bonuses, severance pay, vacation pay, WARN act claims (if any), benefits or any other payments to employees of the Debtors, including pursuant to any collective bargaining agreement, employee pension plan, or otherwise, except as expressly set forth in the Agreement.

40. This Court shall retain exclusive jurisdiction with regard to all issues or disputes arising from or relating to the implementation, interpretation, or enforcement of this Final Order or the Agreement, including, but not limited to, any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit the Store Closing Sales in accordance with the Sale Guidelines, including but not limited to any efforts to prohibit, restrict or limit banner and signwalker advertising, including with respect to any allegations that such advertising is not being conducted in a safe, professional and non-deceptive manner, or any other disputes related to

the Store Closing Sales or the assertion of Encumbrances related to the Store Closing Assets. No parties or person shall take any action against the Debtors, the Agent, or the Store Closing 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.

41. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of payments made in accordance with this Final Order that are dishonored or rejected.

42. Each of the Debtors' banks and financial institutions is authorized, but not directed, to honor checks presented for payment and all fund transfer requests made by the Debtors, to the extent that sufficient funds are on deposit in the applicable accounts, in accordance with this Final Order and any other order of this Court.

43. Notwithstanding the relief granted herein and any actions taken hereunder, except with respect to the Agent, nothing contained herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

44. Nothing in this Final Order is intended to affect any rights of any Applicable Governmental Unit to enforce any law affecting the Debtors' conduct of the Store Closing Sales prior to the Petition Date.

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

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

47. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

EXHIBIT 1

Agreement

EXHIBIT 2

Sale Guidelines

- A. The Store Closing Sales shall be conducted so that the Stores in which sales are to occur will remain open no longer than during the normal hours of operation provided for in the respective leases for the Stores.
- B. The Store Closing Sales shall be conducted in accordance with applicable state and local “Blue Laws”, where applicable, so that no Store Closing Sales shall be conducted on Sunday unless the Merchant had been operating such Store on a Sunday.
- C. On “shopping center” property, the Agent shall not distribute handbills, leaflets or other written materials to customers outside of any Stores’ premises, unless permitted by the lease or, if distribution is customary in the “shopping center” in which such Store is located; provided that Agent may solicit customers in the Stores themselves. On “shopping center” property, the Agent shall not use any flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.
- D. At the conclusion of the Store Closing Sales, the Agent shall vacate the Stores in broom clean condition, ordinary wear and tear excepted, in accordance with Paragraph B of the Agreement, provided, however, that the Merchant and the Agent hereby do not undertake any greater obligation than as set forth in an applicable lease with respect to a Store. The Agent and Merchant may abandon any FF&E (as defined below) not sold in the Store Closing Sales at the Stores at the conclusion of the Store Closing Sales. Any abandoned FF&E left in a Store after a lease is rejected shall be deemed abandoned to the landlord having a right to dispose of the same as the landlord chooses without any liability whatsoever on the part of the landlord to any party and without waiver of any damage claims against the Merchant. For the avoidance of doubt, as of the Sale Termination Date, the Agent may abandon, in place and without further responsibility, any FF&E located at a Store.
- E. The Merchant and the Agent may advertise the Sale as a “store closing” “sale on everything”, “everything must go”, or similar themed sale, or “going out of business.”
- F. Agent shall be permitted to utilize display, hanging signs, and interior banners in connection with the Sale; provided, however, that such display, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. The Merchant and the Agent shall not use neon or day-glo on its display, hanging signs, or interior banners. 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 the Agent shall be permitted to utilize exterior banners at (i) non-enclosed mall Stores and (ii) enclosed mall Stores to the extent the entrance to the applicable 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 Sale is being conducted only at the affected Store, shall not be wider than the storefront of the Store, and shall not be larger than 4 feet x 40 feet. In addition, the Merchant and the Agent shall be permitted to utilize sign walkers and A-frames in a safe and professional manner and in accordance with the terms of the Approval Order. Nothing contained in these Sale Guidelines shall be construed to create or impose upon the Agent any additional restrictions not contained in the applicable lease agreement.
- F. Conspicuous signs shall be posted in the cash register areas of each of the affected Stores to effect that “all sales are final.”

G. Except with respect to the hanging of exterior banners, the Agent shall not make any alterations to the storefront or exterior walls of any Stores.

H. The Agent shall not make any alterations to interior or exterior Store lighting. No property of the landlord of a Store shall be removed or sold during the Sale. The hanging of exterior banners or in-Store signage and banners shall not constitute an alteration to a Store.

I. The Agent shall keep Store premises and surrounding areas clear and orderly consistent with present practices.

J. Subject to the provisions of the Agreement, the Agent shall have the right to sell all furniture, fixtures, and equipment located at the Stores, the Headquarters, and the Distribution Centers (the “FF&E”). The Agent may advertise the sale of the FF&E in a manner consistent with these guidelines at the Closing Stores, the Headquarters, and the Distribution Centers. The purchasers of any FF&E sold during the sale shall be permitted to remove the FF&E either through the back shipping areas at any time, or through other areas after Store business hours; *provided, however*, that the foregoing shall not apply to *de minimis* FF&E sales made whereby the item(s) can be carried out of the Store in a shopping bag or shopping cart. For the avoidance of doubt, as of the Sale Termination Date, the Agent may abandon, in place and without further responsibility, any FF&E.

K. The Agent shall be entitled to include Additional Agent Goods in the Sale in accordance with the terms of the Approval Order and the Agreement.

L. At the conclusion of the Store Closing Sales at each Store, pending assumption or rejection of applicable leases, the landlords of the Stores shall have reasonable access to the Stores’ premises as set forth in the applicable leases. The Merchant, the Agent and their agents and representatives shall continue to have exclusive and unfettered access to the Stores.

M. The rights of landlords against Merchant for any damages to a Store shall be reserved in accordance with the provisions of the applicable lease.

N. If and to the extent that the landlord of any Store affected hereby contends that the Agent or Merchant is in breach of or default under these Sale Guidelines, such landlord shall email or deliver written notice by overnight delivery on the Merchant’s counsel and the Agent’s counsel as follows:

If to the Merchant:

Chanel Control Merchants, LLC
c/o Jeffrey Martin, CRO
6892 US Hwy 49
Hattiesburg, Mississippi 39402

With copies to:

Young Conaway Stargatt & Taylor, LLP
1000 North King Street
Wilmington, Delaware 19801
Attention: Michael Nestor, Andrew Magaziner, S. Alexander Faris
mnestor@ycst.com, amagaziner@ycst.com, afaris@ycst.com

If to the Agent:

HILCO MERCHANT RESOURCES, LLC
5 Revere Drive, Suite 206
Northbrook, IL 60062
Attention: Ian S. Fredericks
Tel: (847) 418-2075
Fax: (847) 897-0859
Email: ifredericks@hilcotrading.com