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Proposed Counsel to the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
BCBG MAX AZRIA GLOBAL HOLDINGS, LLC, <i>et al.</i> , ¹)	Case No. 17-10466 (SCC)
Debtors.)	(Jointly Administered)

**NOTICE OF FILING OF REVISED PROPOSED ORDER (I) AUTHORIZING
AND APPROVING PROCEDURES TO REJECT OR ASSUME EXECUTORY
CONTRACTS AND UNEXPIRED LEASES AND (II) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on March 14, 2017, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Debtors’ Motion for Entry of an Order (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases and (II) Granting Related Relief* [Docket No. 134] (the “Motion”).

PLEASE TAKE FURTHER NOTICE that the Debtors hereby file a revised proposed *Order (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: BCBG Max Azria Global Holdings, LLC (6857); BCBG Max Azria Group, LLC (5942); BCBG Max Azria Intermediate Holdings, LLC (3673); Max Rave, LLC (9200); and MLA Multibrand Holdings, LLC (3854). The location of the Debtors’ service address is: 2761 Fruitland Avenue, Vernon, California 90058.

Unexpired Leases and (II) Granting Related Relief attached hereto as **Exhibit A** (the “**Revised Proposed Order**”).

PLEASE TAKE FURTHER NOTICE THAT a comparison between the Revised Proposed Order and order filed with the Motion is attached hereto as **Exhibit B**.

PLEASE TAKE FURTHER NOTICE that, as a result of negotiations among all relevant parties, the Revised Proposed Order resolves all formal and informal objections the Debtors have received to the relief requested by the Motion.

PLEASE TAKE FURTHER NOTICE that the hearing to consider approval of the Motion will be held before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, in Courtroom 623, One Bowling Green, New York, New York on **March 28, 2017, at 3:00 p.m.** (prevailing Eastern Time) or as soon thereafter as counsel may be heard.

PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these chapter 11 cases may be obtained free of charge by visiting the website of Donlin, Recano & Company, Inc. at <https://www.donlinrecano.com/bcbg>. You may also obtain copies of any pleadings by visiting the Court’s website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: March 27, 2017

/s/ Joshua A. Sussberg

Joshua A. Sussberg, P.C.

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Revised Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
BCBG MAX AZRIA GLOBAL HOLDINGS, LLC, <i>et al.</i> , ¹)	Case No. 17-10466 (SCC)
)	
Debtors.)	(Jointly Administered)

**ORDER (I) AUTHORIZING AND APPROVING PROCEDURES
TO REJECT OR ASSUME EXECUTORY CONTRACTS
AND UNEXPIRED LEASES AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing and approving procedures for rejecting or assuming executory contracts and unexpired leases, and (b) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: BCBG Max Azria Global Holdings, LLC (6857); BCBG Max Azria Group, LLC (5942); BCBG Max Azria Intermediate Holdings, LLC (3673); Max Rave, LLC (9200); and MLA Multibrand Holdings, LLC (3854). The location of the Debtors’ service address is: 2761 Fruitland Avenue, Vernon, California 90058.

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

a hearing, if any, before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. The following procedures (the “Rejection Procedures”) are approved in connection with rejecting Contracts:

- a. **Rejection Notice.** The Debtors shall file a notice in the form attached as **Exhibit B** to the Motion (the “Rejection Notice”) to reject a Contract or Contracts pursuant to section 365 of the Bankruptcy Code, which Rejection Notice shall set forth, among other things: (i) the Contract or Contracts to be rejected; (ii) the names and addresses of the counterparties to such Contracts; (iii) the effective date of the rejection for each such Contract (the “Rejection Date”); (iv) if any such Contract is a lease, the personal property to be abandoned, if any, and if practicable an estimate of the book value of such property (the “Abandoned Property”); and (v) the deadlines and procedures for filing objections to the Rejection Notice (as set forth below). The Rejection Notice may list multiple Contracts; *provided* that the number of counterparties to Contracts listed on the Rejection Notice shall be limited to no more than 100.
- b. **Service of Rejection Notice.** The Debtors will cause the Rejection Notice to be served by overnight delivery service upon the Contract counterparties affected by the Rejection Notice at the notice address provided in the applicable Contract (and their counsel, if known) and all parties who may have any interest in any Abandoned Property, and by first class mail, email, or fax upon: (i) the Master Service List and (ii) the 2002 List (each as defined in the *Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures and (II) Granting Related Relief* [Docket No. 90] (the “Case Management Order”)).
- c. **Objection Procedures.** Parties objecting to a proposed rejection must file and serve a written objection so that such objection is filed with this Court on the docket of the Debtors’ chapter 11 cases and **actually received** by the following parties (collectively, the “Objection Service Parties”) no later than 7 days after the date the Debtors file and serve the relevant Rejection Notice (the “Rejection Objection Deadline”): (i) Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654 (Attn: Benjamin M. Rhode and John R. Luze), the proposed attorneys for the Debtors; (ii) the Office of the United States Trustee for Region 2, U.S.

Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: Brian Masumoto, Esq.); (iii) Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, 34th Floor, New York, New York 10017-2024 (Attn: Bradford Sandler and Robert Feinstein), the proposed attorneys for the Official Committee of Unsecured Creditors; (iv) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110 (Attn: Marc R. Leduc and Matthew F. Furlong), attorneys to the administrative agent under the Debtors' prepetition and postpetition asset-based revolving credit facilities; and (v) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt Barr), attorneys to the administrative agent under the Debtors' prepetition and postpetition term loan credit facilities.

- d. ***No Objection.*** If no objection to the rejection of any Contract is timely filed, each Contract listed in the applicable Rejection Notice shall be rejected as of the applicable Rejection Date set forth in the Rejection Notice or such other date as the Debtors and the counterparty or counterparties to such Contract(s) agree; *provided, however* that the Rejection Date for a rejection of a lease of non-residential real property shall not occur until the later of (i) the Rejection Date set forth in the Rejection Notice and (ii) the date the Debtors relinquish control of the premises by notifying the affected landlord in writing of the Debtors' surrender of the premises and (A) turning over keys, key codes, and security codes, if any, to the affected landlord or (B) notifying the affected landlord in writing that the keys, key codes, and security codes, if any, are not available, but the landlord may rekey the leased premises; *provided, further* that the Rejection Date for a rejection of a lease of non-residential real property shall not occur earlier than the date the Debtors filed and served the applicable Rejection Notice.
- e. ***Unresolved Objections.*** If an objection to the rejection of any Contracts listed in the applicable Rejection Notice is timely filed and not withdrawn or resolved, the Debtors shall file a notice for a hearing to be held on not less than 7 days' notice to the applicable Contract counterparty to consider the objection for the Contract or Contracts to which such objection relates. If such objection is overruled or withdrawn, such Contract or Contracts shall be rejected as of the applicable Rejection Date set forth in the Rejection Notice or such other date as the Debtors and the counterparty to such Contract agree.
- f. ***No Application of Security Deposits.*** If the Debtors have deposited monies with a Contract counterparty as a security deposit or other arrangement, such Contract counterparty may not setoff, recoup, or otherwise use such monies without further order of this Court, unless the Debtors and the counterparty or counterparties to such Contract otherwise agree.

- g. **Abandoned Property.** The Debtors are authorized but not directed, at any time on or before the applicable Rejection Date, to remove or abandon any of the Debtors' personal property that may be located on the Debtors' leased premises that are subject to a rejected Contract. The Debtors shall generally describe the abandoned personal property in the Rejection Notice. Absent a timely objection, the property will be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, effective as of the Rejection Date. For the avoidance of doubt, any and all property located on the Debtors' leased premises on the Rejection Date of the applicable lease of nonresidential real property shall be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, effective as of the Rejection Date. Landlords may, in their sole discretion and without further notice or order of this Court, utilize and/or dispose of such property without liability to the Debtors or third parties and, to the extent applicable, the automatic stay is modified to allow such disposition.
- h. **Rejection Damages.** Claims arising out of the rejection of Contracts, if any, must be filed on or before the later of (i) the deadline for filing proofs of claim established in these chapter 11 cases, if any, and (ii) 30 days after the later of (A) the Rejection Objection Deadline, if no objection is filed and (B) the date that all such filed objections have either been overruled or withdrawn. If no proof of claim is timely filed, such claimant shall be forever barred from asserting a claim for damages arising from the rejection and from participating in any distributions on such a claim that may be made in connection with these chapter 11 cases.

3. The following procedures (the "Assumption Procedures") are approved in connection with assuming and assuming and assigning Contracts:

- a. **Assumption Notice.** The Debtors will file a notice in the form attached as **Exhibit C** to the Motion (the "Assumption Notice") to assume a Contract or Contracts pursuant to section 365 of the Bankruptcy Code, which shall set forth, among other things: (i) the Contract or Contracts to be assumed; (ii) the names and addresses of the counterparties to such Contracts; (iii) the identity of the proposed assignee of such Contracts (the "Assignee"), if applicable; (iv) the effective date of the assumption for each such Contract (the "Assumption Date"); (v) the proposed cure amount, if any for each such Contract; (vi) a description of any material amendments to the Contract made outside of the ordinary course of business; and (vii) the deadlines and procedures for filing objections to the Assumption Notice (as set forth below). The Assumption Notice may list multiple Contracts; *provided* that the number of counterparties to Contracts listed on the Assumption Notice shall be limited to no more than 100.

- b. ***Service of Assumption Notice and Evidence of Adequate Assurance.*** The Debtors will cause the Assumption Notice to be served by overnight delivery service upon the Contract counterparties affected by the Assumption Notice at the address set forth in the notice provision of the applicable Contract (and their counsel, if known) and by first class mail, email, or fax upon: (i) the Master Service List and (ii) the 2002 List (each as defined in the Case Management Order).³ To the extent the Debtors seek to assume and assign a lease of non-residential real property, the Debtors will cause evidence of adequate assurance of future performance to be served with the Assumption Notice by overnight delivery service upon the Contract counterparties affected by the Assumption Notice at the address set forth in the notice provision of the applicable Contract (and their counsel, if known, by electronic mail).
- c. ***Objection Procedures.*** Parties objecting to a proposed assumption and assignment, as applicable, of a Contract other than a lease of non-residential real property must file and serve a written objection so that such objection is filed with this Court and ***actually received*** by the Objection Service Parties no later than 7 days after the date the Debtors file and serve the applicable Assumption Notice; *provided, however* that parties objecting to a proposed assumption and assignment, as applicable, of a lease of non-residential real property must file and serve a written objection so that such objection is filed with this Court and ***actually received*** by the Objection Service Parties no later than 14 days after the date the Debtors file and serve the applicable Assumption Notice.
- d. ***No Objection.*** If no objection to the assumption of any Contract is timely filed, each Contract shall be assumed as of the Assumption Date set forth in the applicable Assumption Notice or such other date as the Debtors and the counterparty or counterparties to such Contract agree and the proposed cure amount shall be binding on all counterparties to such Contract and no amount in excess thereof shall be paid for cure purposes; *provided, however* that the Assumption Date for a lease of nonresidential real property shall not occur earlier than the date the Debtors filed and served the applicable Assumption Notice.
- e. ***Unresolved Objections.*** If an objection to the assumption of any Contract is timely filed and not withdrawn or resolved, the Debtors shall file a notice for a hearing to be held on not less than 7 days' notice to the applicable Contract counterparty to consider the objection for the Contract or Contracts to which such objection relates. If such objection is overruled or withdrawn, such Contract shall be assumed as of the

³ The Debtors shall serve (by electronic mail, if requested) a counterparty to a Contract other than a lease of non-residential real property to be assumed under the Contract Procedures with evidence of adequate assurance forthwith upon such counterparty's written request to the Debtors' counsel.

Assumption Date set forth in the Assumption Notice or such other date as the Debtors and the counterparty or counterparties to such Contract agree.

4. With regard to Contracts to be assigned, pursuant to section 363(f) of the Bankruptcy Code, the assignment of any Contract shall: (a) be free and clear of (i) all liens (and any liens shall attach to the proceeds in the same order and priority subject to all existing defenses, claims, setoffs, and rights) and (ii) any and all claims (as that term is defined in section 101(5) of the Bankruptcy Code), obligations, demands, guarantees of or by the Debtors, debts, rights, contractual commitments, restrictions, interests, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity, or otherwise (including, without limitation, claims, and encumbrances that purport to give to any party a right or option to effect any forfeiture, modification, or termination of the interest of any Debtor or Assignee, as the case may be, in the Contract(s) (but only in connection with the assignment by the Debtor to the Assignee)), *provided, however* that any such assignment shall not be free and clear of any accrued but unbilled or not due rent and charges under a lease of non-residential real property including adjustments, reconciliations and indemnity obligations, liability for which shall be assumed by the Debtors or the applicable Assignee, as agreed by and among the Debtors and the Applicable Assignee; and (b) constitutes a legal, valid, and effective transfer of such Contract(s) and vests the applicable Assignee with all rights, titles, and interests to the applicable Contract(s). For the avoidance of doubt, all provisions of the applicable assigned Contract, including any provision limiting assignment, shall be binding on the applicable Assignee.

5. Subject to the other provisions of this Order (including the aforementioned Assumption Procedures), the Debtors are hereby authorized in accordance with sections 365(b) and (f) of the Bankruptcy Code to (a) assume and assign to any Assignees any applicable

Contract, with any applicable Assignee being responsible only for the post-assignment liabilities or defaults under the applicable Contract except as otherwise provided for in this Order and (b) execute and deliver to any applicable Assignee such assignment documents as may be reasonably necessary to sell, assign, and transfer any such Contract.

6. The Debtors' right to assert that any provisions in the Contract that expressly or effectively restrict, prohibit, condition, or limit the assignment of or the effectiveness of the Contract to an Assignee are unenforceable anti-assignment or *ipso facto* clauses is fully reserved.

7. Approval of the Contract Procedures and this Order will not prevent the Debtors from seeking to reject or assume a Contract by separate motion.

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

9. Notwithstanding anything to the contrary contained herein, any assumption, assumption and assignment, or rejection by the Debtors pursuant to the authority granted in this Order must be in compliance with, and shall be subject to, the requirements imposed on the Debtors under the Debtor-in-Possession Term Loan Credit and Guaranty Agreement (the "DIP Agreement"), including section 6.15 thereof, and the terms and conditions of the interim and final orders, as applicable, approving the DIP Agreement and governing the Debtors' use of cash collateral.

10. The 14-day stay required of any assignment of any Contract pursuant to Bankruptcy Rule 6006(d) is hereby waived.

11. All rights and defenses of the Debtors are preserved, including all rights and defenses of the Debtors with respect to a claim for damages arising as a result of a Contract rejection, including any right to assert an offset, recoupment, counterclaim, or deduction. In addition, nothing in this Order or the Motion shall limit the Debtors' ability to subsequently

assert that any particular Contract is terminated and is no longer an executory contract or unexpired lease, respectively.

12. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of the Bankruptcy Rules and the Local Rules are satisfied by such notice.

13. Notwithstanding anything to the contrary, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

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

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

New York, New York

Dated: _____, 2017

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Redline

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
BCBG MAX AZRIA GLOBAL HOLDINGS, LLC, <i>et al.</i> , ¹)	Case No. 17-10466 (SCC)
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Debtors.)	(Jointly Administered)

**ORDER (I) AUTHORIZING AND APPROVING PROCEDURES
TO REJECT OR ASSUME EXECUTORY CONTRACTS
AND UNEXPIRED LEASES AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing and approving procedures for rejecting or assuming executory contracts and unexpired leases, and (b) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at

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

a hearing, if any, before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. The following procedures (the "Rejection Procedures") are approved in connection with rejecting Contracts:

- a. **Rejection Notice.** The Debtors shall file a notice in the form attached as **Exhibit B** to the Motion (the "Rejection Notice") to reject a Contract or Contracts pursuant to section 365 of the Bankruptcy Code, which Rejection Notice shall set forth, among other things: (i) the Contract or Contracts to be rejected; (ii) the names and addresses of the counterparties to such Contracts; (iii) the effective date of the rejection for each such Contract (the "Rejection Date"); (iv) if any such Contract is a lease, the personal property to be abandoned, if any, and if practicable an estimate of the book value of such property; ~~(the "Abandoned Property")~~; and (v) the deadlines and procedures for filing objections to the Rejection Notice (as set forth below). The Rejection Notice may list multiple Contracts; *provided* that the number of counterparties to Contracts listed on the Rejection Notice shall be limited to no more than 100.

- b. **Service of Rejection Notice.** The Debtors will cause the Rejection Notice to be served by overnight delivery service upon the Contract counterparties affected by the Rejection Notice at the notice address provided in the applicable Contract (and their counsel, if known) and all parties who may have any interest in any Abandoned Property, and by first class mail, email, or fax upon: (i) the Master Service List and (ii) the 2002 List (each as defined in the *Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures and (II) Granting Related Relief* [Docket No. 90] (the "Case Management Order")).

- c. **Objection Procedures.** Parties objecting to a proposed rejection must file and serve a written objection so that such objection is filed with this Court on the docket of the Debtors' chapter 11 cases and **actually received** by the following parties (collectively, the "Objection Service Parties") no later than 7 days after the date the Debtors ~~serve the relevant Rejection Notice (the "Rejection Objection Deadline")~~: ~~(i) the Master Service List and (ii) the 2002 List (each as defined in the Case Management Order)~~; file and serve the relevant Rejection Notice (the "Rejection Objection Deadline"): (i) Kirkland & Ellis LLP, 300 North

LaSalle Street, Chicago, Illinois 60654 (Attn: Benjamin M. Rhode and John R. Luze), the proposed attorneys for the Debtors; (ii) the Office of the United States Trustee for Region 2, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: Brian Masumoto, Esq.); (iii) Pachulski Stang Ziehl & Jones LLP, 780 Third Avenue, 34th Floor, New York, New York 10017-2024 (Attn: Bradford Sandler and Robert Feinstein), the proposed attorneys for the Official Committee of Unsecured Creditors; (iv) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110 (Attn: Marc R. Leduc and Matthew F. Furlong), attorneys to the administrative agent under the Debtors' prepetition and postpetition asset-based revolving credit facilities; and (v) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt Barr), attorneys to the administrative agent under the Debtors' prepetition and postpetition term loan credit facilities.

- d. ***No Objection.*** If no objection to the rejection of any Contract is timely filed, each Contract listed in the applicable Rejection Notice shall be rejected as of the applicable Rejection Date set forth in the Rejection Notice or such other date as the Debtors and the counterparty or counterparties to such Contract(s) agree; provided, however that the Rejection Date for a rejection of a lease of non-residential real property shall not occur until the later of (i) the Rejection Date set forth in the Rejection Notice and (ii) the date the Debtors relinquish control of the premises by notifying the affected landlord in writing of the Debtors' surrender of the premises and (A) turning over keys, key codes, and security codes, if any, to the affected landlord or (B) notifying the affected landlord in writing that the keys, key codes, and security codes, if any, are not available, but the landlord may rekey the leased premises; provided, further that the Rejection Date for a rejection of a lease of non-residential real property shall not occur earlier than the date the Debtors filed and served the applicable Rejection Notice.
- e. ***Unresolved Objections.*** If an objection to the rejection of any Contracts listed in the applicable Rejection Notice is timely filed and not withdrawn or resolved, the Debtors shall file a notice for a hearing to be held on not less than 7 days' notice to the applicable Contract counterparty to consider the objection for the Contract or Contracts to which such objection relates. If such objection is overruled or withdrawn, such Contract or Contracts shall be rejected as of the applicable Rejection Date set forth in the Rejection Notice or such other date as the Debtors and the counterparty to such Contract agree.
- f. ***No Application of Security Deposits.*** If the Debtors have deposited monies with a Contract counterparty as a security deposit or other arrangement, such Contract counterparty may not setoff, recoup, or otherwise use such monies without further order of this Court, unless the

Debtors and the counterparty or counterparties to such Contract otherwise agree.

- g. **Abandoned Property.** The Debtors are authorized but not directed, at any time on or ~~after~~before the applicable Rejection Date, to remove or abandon any of the Debtors' personal property that may be located on the Debtors' leased premises that are subject to a rejected Contract. The Debtors shall generally describe the abandoned personal property in the Rejection Notice. Absent a timely objection, the property will be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, effective as of the Rejection Date.³ For the avoidance of doubt, any and all property located on the Debtors' leased premises on the Rejection Date of the applicable lease of nonresidential real property shall be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, effective as of the Rejection Date. Landlords may, in their sole discretion and without further notice or order of this Court, utilize and/or dispose of such property without liability to the Debtors or third parties and, to the extent applicable, the automatic stay is modified to allow such disposition.
- h. **Rejection Damages.** Claims arising out of the rejection of Contracts, if any, must be filed on or before the later of (i) the deadline for filing proofs of claim established in these chapter 11 cases, if any, and (ii) 30 days after the ~~Rejection Date~~later of (A) the Rejection Objection Deadline, if no objection is filed and (B) the date that all such filed objections have either been overruled or withdrawn. If no proof of claim is timely filed, such claimant shall be forever barred from asserting a claim for damages arising from the rejection and from participating in any distributions on such a claim that may be made in connection with these chapter 11 cases.

3. The following procedures (the "Assumption Procedures") are approved in connection with assuming and assuming and assigning Contracts:

- a. **Assumption Notice.** The Debtors will file a notice in the form attached as **Exhibit C** to the Motion (the "Assumption Notice") to assume a Contract or Contracts pursuant to section 365 of the Bankruptcy Code, which shall set forth, among other things: (i) the Contract or Contracts to be assumed; (ii) the names and addresses of the counterparties to such Contracts; (iii) the identity of the proposed assignee of such Contracts (the "Assignee"), if applicable; (iv) the effective date of the assumption for each such Contract (the "Assumption Date"); (v) the proposed cure amount, if any for each such Contract; (vi) a description of any material

³~~If the Rejection Date specified in the Rejection Notice with respect to any Contract that is a lease of nonresidential real property predates the removal of any property not otherwise generally described in the Rejection Notice, the Rejection Date will not become effective until such date the property is removed from the leased premises.~~

amendments to the Contract made outside of the ordinary course of business; and (vii) the deadlines and procedures for filing objections to the Assumption Notice (as set forth below). The Assumption Notice may list multiple Contracts; *provided* that the number of counterparties to Contracts listed on the Assumption Notice shall be limited to no more than 100.

- b. ***Service of Assumption Notice; and Evidence of Adequate Assurance.***
The Debtors will cause the Assumption Notice to be served by overnight delivery service upon the Contract counterparties affected by the Assumption Notice at the address set forth in the notice provision of the applicable Contract (and their counsel, if known) and by first class mail, email, or fax upon: (i) the Master Service List and (ii) the 2002 List (each as defined in the Case Management Order).⁴ To the extent the Debtors seek to assume and assign a lease of non-residential real property, the Debtors will cause evidence of adequate assurance of future performance to be served with the Assumption Notice by overnight delivery service upon the Contract counterparties affected by the Assumption Notice at the address set forth in the notice provision of the applicable Contract (and their counsel, if known, by electronic mail).
- c. ***Objection Procedures.*** Parties objecting to a proposed assumption and assignment, as applicable, of a Contract other than a lease of non-residential real property must file and serve a written objection so that such objection is filed with this Court and ***actually received*** by the Objection Service Parties no later than 7 days after the date the Debtors ~~serve the applicable Assumption Notice (the "Assumption Objection Deadline")~~ file and serve the applicable Assumption Notice; provided, however that parties objecting to a proposed assumption and assignment, as applicable, of a lease of non-residential real property must file and serve a written objection so that such objection is filed with this Court and ***actually received*** by the Objection Service Parties no later than 14 days after the date the Debtors file and serve the applicable Assumption Notice.
- d. ***No Objection.*** If no objection to the assumption of any Contract is timely filed, each Contract shall be assumed as of the Assumption Date set forth in the applicable Assumption Notice or such other date as the Debtors and the counterparty or counterparties to such Contract agree and the proposed cure amount shall be binding on all counterparties to such Contract and no amount in excess thereof shall be paid for cure purposes; provided, however that the Assumption Date for a lease of nonresidential real

⁴ The Debtors shall serve (by electronic mail, if requested) a counterparty to a Contract other than a lease of non-residential real property to be assumed under the Contract Procedures with evidence of adequate assurance forthwith upon such counterparty's written request to the Debtors' counsel.

property shall not occur earlier than the date the Debtors filed and served the applicable Assumption Notice.

- e. ***Unresolved Objections.*** If an objection to the assumption of any Contract is timely filed and not withdrawn or resolved, the Debtors shall file a notice for a hearing to be held on not less than 7 days' notice to the applicable Contract counterparty to consider the objection for the Contract or Contracts to which such objection relates. If such objection is overruled or withdrawn, such Contract shall be assumed as of the Assumption Date set forth in the Assumption Notice or such other date as the Debtors and the counterparty or counterparties to such Contract agree.

4. With regard to Contracts to be assigned, pursuant to section 363(f) of the Bankruptcy Code, the assignment of any Contract shall: (a) be free and clear of (i) all liens (and any liens shall attach to the proceeds in the same order and priority subject to all existing defenses, claims, setoffs, and rights) and (ii) any and all claims (as that term is defined in section 101(5) of the Bankruptcy Code), obligations, demands, guarantees of or by the Debtors, debts, rights, contractual commitments, restrictions, interests, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity, or otherwise (including, without limitation, claims, and encumbrances ~~(A)~~ that purport to give to any party a right or option to effect any forfeiture, modification, or termination of the interest of any Debtor or Assignee, as the case may be, in the Contract(s), ~~or (B) in respect of any taxes;~~) (but only in connection with the assignment by the Debtor to the Assignee), provided, however that any such assignment shall not be free and clear of any accrued but unbilled or not due rent and charges under a lease of non-residential real property including adjustments, reconciliations and indemnity obligations, liability for which shall be assumed by the Debtors or the applicable Assignee, as agreed by and among the Debtors and the Applicable Assignee; and (b) constitutes a legal, valid, and effective transfer of such Contract(s) and vests the applicable Assignee with all rights, titles, and interests to the applicable Contract(s). For the avoidance of doubt, all provisions of the applicable

assigned Contract, including any provision limiting assignment, shall be binding on the applicable Assignee.

5. Subject to the other provisions of this Order (including the aforementioned Assumption Procedures), the Debtors are hereby authorized in accordance with sections 365(b) and (f) of the Bankruptcy Code to (a) assume and assign to any Assignees any applicable Contract, with any applicable Assignee being responsible only for the post-assignment liabilities or defaults under the applicable Contract except as otherwise provided for in this Order and (b) execute and deliver to any applicable Assignee such assignment documents as may be reasonably necessary to sell, assign, and transfer any such Contract.

6. The Debtors' right to assert that any provisions in the Contract that expressly or effectively restrict, prohibit, condition, or limit the assignment of or the effectiveness of the Contract to an Assignee are unenforceable anti-assignment or *ipso facto* clauses is fully reserved.

7. Approval of the Contract Procedures and this Order will not prevent the Debtors from seeking to reject or assume a Contract by separate motion.

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

9. Notwithstanding anything to the contrary contained herein, any assumption, assumption and assignment, or rejection by the Debtors pursuant to the authority granted in this Order must be in compliance with, and shall be subject to, the requirements imposed on the Debtors under the Debtor-in-Possession Term Loan Credit and Guaranty Agreement (the "DIP Agreement"), including section 6.15 thereof, and the terms and conditions of the interim and final orders, as applicable, approving the DIP Agreement and governing the Debtors' use of cash collateral.

10. The 14-day stay required of any assignment of any Contract pursuant to Bankruptcy Rule 6006(d) is hereby waived.

11. All rights and defenses of the Debtors are preserved, including all rights and defenses of the Debtors with respect to a claim for damages arising as a result of a Contract rejection, including any right to assert an offset, recoupment, counterclaim, or deduction. In addition, nothing in this Order or the Motion shall limit the Debtors' ability to subsequently assert that any particular Contract is terminated and is no longer an executory contract or unexpired lease, respectively.

12. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of the Bankruptcy Rules and the Local Rules are satisfied by such notice.

13. Notwithstanding anything to the contrary, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

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

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

New York, New York
Dated: _____, 2017

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE