

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

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

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**ORDER (I) AUTHORIZING THE DEBTORS TO ENTER INTO  
AN AMENDMENT TO THE AGENCY AGREEMENT, (II) APPROVING  
PROCEDURES FOR STORE CLOSING SALES (III) SHORTENING THE  
NOTICE AND OBJECTION PERIODS AND, (IV) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”): (a) authorizing the Debtors to enter into the Amendment, attached hereto as **Exhibit 1**, to the Agency Agreement approved in the *Final Order (I) Authorizing the Debtors to Assume the Agency Agreement, (II) Approving Procedures for Store Closing Sales, and (III) Granting Related Relief* entered on March 29, 2017 [Docket No. 235] (the “Final Store Closing Order,” attached hereto as **Exhibit 2**); (b) authorizing and approving the application of the Store Closing Procedures approved in the Final Store Closing Order to the Store Closing Sales at the Additional Stores, with such sales to be free and clear of all liens, claims, and encumbrances; (c) shortening the notice and objection periods; and (d) granting related relief; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of*

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<sup>1</sup> 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.

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

*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 this Court having determined that the legal and factual bases set forth in the Motion 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:

**THE COURT HEREBY FINDS AND DETERMINES THAT:**

1. The findings and conclusions set forth herein constitute the 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 that 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.

2. The Debtors have advanced sound business reasons to enter into the Amendment to the Agency Agreement and for conducting the Store Closings in accordance with the terms of the Store Closing Procedures previously approved by this Court pursuant to the Final Store Closing Order, and entering into the Amendment is a reasonable exercise of the Debtors' business judgment and is in the best interests of the Debtors and their estates.

3. The Debtors have shown cause to shorten the notice and objection periods in connection with the relief requested by the Motion.

4. The conduct of the Store Closings in accordance with the Store Closing Procedures will provide an efficient means for the Debtors to dispose of the Store Closure Assets.

5. The Amendment was negotiated, proposed, and entered into by the Agent and the Debtors without collusion, in good faith, and from arm's-length bargaining positions.

6. The entry into the Amendment is a sound exercise of the Debtors' business judgment.

7. The Store Closings are in the best interest of the Debtors' estates, and the Debtors have demonstrated good, sufficient, and sound business purposes and justifications for the relief approved herein.

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

**IT IS HEREBY ORDERED THAT:**

9. The Motion is granted as provided herein.

10. The Debtors are authorized and empowered to take any and all further actions as may be reasonably necessary or appropriate to give effect to this Order.

11. To the extent of any conflict between this Order, the Store Closing Procedures, and the Amendment, the terms of this Order shall control over all other documents and the Store Closing Procedures shall control over the Amendment.

12. Notwithstanding Bankruptcy Rule 6004(h), this Order shall take effect immediately upon its entry.

13. The Debtors' notice of the Motion, opportunity for a hearing on the Motion, and opportunity to object to the relief requested by the Motion no later than June 30, 2017, at

11:00 a.m. (prevailing Eastern Time) was appropriate under the circumstances and no other notice or opportunity to object need be provided.

**I. Authority to Enter Into the Amendment to the Agency Agreement.**

14. The Debtors are authorized pursuant to sections 363 and 105 of the Bankruptcy Code to enter into the Amendment to the Agency Agreement. The Debtors are further authorized to act and perform in accordance with the terms of the Amendment.

15. Subject to the restrictions set forth in this Order and the Store Closing Procedures, the Debtors and the Agent hereby are authorized to take any and all actions as may be necessary or desirable to implement the Amendment to the Agency Agreement and the Store Closings; and each of the transactions contemplated by the Amendment, and any actions taken by the Debtors and the Agent necessary or desirable to implement the Amendment and/or the Store Closings prior to the date of this Order, hereby are approved and ratified.

**II. Authority to Engage in Store Closings.**

16. Except as set forth herein, all provisions of the Final Store Closing Order shall apply to the Store Closing Sales at the Additional Stores to the same extent that they applied to the Original Stores, including, but not limited to, the conduct of the Store Closings, the Store Closing Procedures, and the dispute resolution procedures with Governmental Units.

17. The Debtors are authorized pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to immediately conduct the Store Closings at the Additional Stores in accordance with the Amendment to the Agency Agreement, this Order, the Final Store Closing Order, and the Store Closing Procedures.

18. The Debtors are authorized to discontinue operations at the Additional Stores in accordance with this Order, the Final Store Closing Order, and the Store Closing Procedures.

19. The Agent 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 Amendment to the Agency Agreement.

20. This Court shall retain exclusive jurisdiction with regard to all issues or disputes relating to this Order or the Amendment to the Agency Agreement.

New York, New York  
Dated: June 30, 2017

/S/ Shelley C. Chapman  
THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**Agency Agreement**



June 26, 2017

**VIA EMAIL**

BCBG MAX AZRIA GROUP, LLC  
c/o Holly Felder Etlin  
Chief Restructuring Officer  
2761 Fruitland Avenue  
Vernon, CA 90058  
+1.212.297.1594  
Email: [hetlin@alixpartners.com](mailto:hetlin@alixpartners.com)

Re: **First Amendment to Letter Agreement Governing Inventory Disposition**

Dear Holly:

Reference is made to that certain letter agreement dated February 1, 2017 (the "Agreement") by and between Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC, on the one hand ("Agent" or a "Party"), and BCBG MAX AZRIA GROUP, LLC, on the other hand ("Merchant" or a "Party" and together with the Agent, the "Parties"). Reference is further made to that certain *Final Order (I) Authorizing the Debtors to Assume the Agency Agreement, (II) Approving Procedures for Store Closing Sales, and (III) Granting Related Relief* [Docket No. 235] entered on March 29, 2017 (the "Store Closing Sales Order") by the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement and the Store Closing Sales Order, as applicable.

The Agreement provides for, among other things, a list of Merchant's Stores included in the Store Closings, and the fee and budgeted expenses of Agent related thereto. The Parties desire to supplement the Stores to be included in the Store Closings (collectively, the "Additional Stores"), and amend the Agreement to provide for the Sale Term, fee and budgeted expenses related to the Additional Stores. All terms and conditions of the Agreement and the Store Closing Sales Order, including the Store Closing Procedures, shall continue and apply in full force and effect to the Additional Stores except as specifically, and only to the extent, modified herein.

Accordingly, the Parties, subject to the approval of the Bankruptcy Court, hereby amend and/or supplement the Agreement as follows (this "First Amendment"):

1. Additional Stores. Agent and Merchant have agreed to adopt Exhibit A-1 attached hereto as the list of Additional Stores to be added to the Store Closings (the "Store Closing List"). By filing a notice with the Bankruptcy Court, Agent and Merchant may further supplement the Store Closing List with additional stores, each of which shall constitute an Additional Store, and Agent and Merchant shall mutually agree upon the applicable Sale Commencement and Sale Termination Dates, Agent's Fee, and Expense Budget(s).

On or before June 30, 2017, Merchant may, in its sole discretion, remove Additional Stores from the Store Closing List. And upon such removal, the Agent and Merchant will use commercially reasonable efforts to agree on a revised Expense Budget reflecting the revised Store Closing List.

2. Sale Term for Additional Stores. For each Additional Store, the Sale Commencement Date shall be June 30, 2017, and the Sale Termination Date shall be September 27, 2017.

3. Agent's Fee.

As used in this First Amendment, the following terms shall have the following meanings:

(i) "Gross Proceeds" shall mean the sum of the gross proceeds of all sales of Merchandise made in the Additional Stores during the Sale Term using the "gross rings" method, net only of sales taxes.

(ii) "Net Proceeds" shall mean aggregate Gross Proceeds, less Agent's actual expenses incurred pursuant to the Expense Budget.

In connection with its services for the Additional Stores, Agent shall earn a fee equal to one and one-half percent (1.5%) of the aggregate Net Proceeds, provided that, Merchant may, in its sole discretion, increase the fee to Agent for the Additional Stores up to an additional one and one-half percent (1.5%) of the aggregate Net Proceeds based on Agent's performance in providing the services for the Additional Stores.

4. Expense Budget for Additional Stores. Merchant shall be responsible for all expenses of the Sale, including (without limitation) all Additional 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, including (without limitation) payment of the costs of supervision (including (without limitation) Supervisors' wages, fees, travel, and deferred compensation) and advertising costs. The Expense Budget for the Additional Stores is attached hereto as Exhibit B-1. The Expense Budget may only be modified by mutual written agreement of Agent and Merchant and Merchant may review, verify, and/or audit the expenses at any time. Notwithstanding anything herein to the contrary, unless otherwise agreed to by Merchant, Merchant shall not be obligated to pay costs of supervision and advertising costs that have not been included, or provided for, in the Expense Budget, as may be amended in accordance with this Agreement.

5. FF&E. In accordance with section I. of the Agreement, the Agent shall sell the FF&E at the Additional Stores.

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



hereby reaffirms the representations, warranties, and agreements set forth in section H. of the Agreement.

7. This First 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 First Amendment except as specifically set forth in this First Amendment or the Agreement.

8. Upon receipt of a fully executed copy of this First Amendment, Merchant agrees to seek entry of an order, in form and substance acceptable to the Parties, with the Bankruptcy Court approving this First Amendment and the Sale of the Additional Stores pursuant to and on the same conditions as set forth in the Store Closing Sales Order. From and after entry of such an order, Agent shall conduct the Sale for the Additional Stores in accordance with the terms of the Store Closing Sales Order in all material respects.

\* \* \*

If this First Amendment 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

/s/ Ian S. Fredericks

By: Ian S. Fredericks

Its: EVP

GORDON BROTHERS RETAIL PARTNERS, LLC

/s/ Robert Grosskopf

By: Robert Grosskopf

Its: Co President

**AGREED AND ACCEPTED as of the 26th day  
of June 2017:**

BCBG MAX AZRIA GROUP, LLC

/s/ Holly Felder Etlin

By: Holly Felder Etlin

Its: Chief Restructuring Officer

BCBG  
Exhibit A-1

Store List

| Store # | Location Type  | Concept | Name                            | Address                    | Address2  | City           | State | Zip   | Open Date | Lease End Date | Landlord                    | Selling Sq. Ft.        |              |
|---------|----------------|---------|---------------------------------|----------------------------|-----------|----------------|-------|-------|-----------|----------------|-----------------------------|------------------------|--------------|
| 400     | Outdoor Outlet | Factory | FTY, Citadel                    | 100 Citadel Drive          | Spc#608   | Los Angeles    | CA    | 90040 | 11/15/94  | 01/31/18       | Craig                       | 2,932                  |              |
| 406     | Outdoor Outlet | Factory | FTY, Waialele                   | 94-798 Lumiaina St         | Spc#410   | Waipahu        | HI    | 96797 | 12/20/95  | 06/30/18       | Simon                       | 3,383                  |              |
| 417     | Outdoor Outlet | Factory | FTY, Carlsbad                   | 5630 Paseo Del Norte       | Spc#D110  | Carlsbad       | CA    | 92008 | 10/15/98  | 03/31/19       | Simon                       | 5,131                  |              |
| 424     | Indoor Outlet  | Factory | FTY, Dolphin Mall               | 11401 NW 12th St.          | Spc#362   | Miami          | FL    | 33172 | 03/03/01  | 01/31/26       | Taubman                     | 2,985                  |              |
| 482     | Outdoor Outlet | Factory | FTY, Park City                  | 6699 N. Landmark Dr.       | Spc#H110  | Park City      | UT    | 84098 | 12/15/06  | 12/31/18       | Tanger                      | 2,985                  |              |
| 501     | Indoor Outlet  | Factory | FTY, Great Lakes Mall           | 4058 Baldwin Rd.           | Spc#230   | Auburn Hills   | MI    | 48326 | 09/04/09  | 01/31/19       | Taubman                     | 2,954                  |              |
| 514     | Indoor Outlet  | Factory | FTY, Rosemont Fashion Outlets   | 5220 Fashion Outlet Way    | Spc#2145  | Rosemont       | IL    | 60018 | 8/1/2013  | 12/31/23       | Macerich                    | 3,500                  |              |
| 604     | Inside Mall    | BCBG    | San Francisco Centre            | 845 Market Street          | Spc#241   | San Francisco  | CA    | 94103 | 11/25/94  | 01/31/17       | Westfield                   | 3,953                  |              |
| 606     | Inside Mall    | BCBG    | Las Vegas                       | 3200 Las Vegas Blvd        | Spc#2295  | Las Vegas      | NV    | 89109 | 05/05/95  | 07/31/17       | GGP                         | 3,849                  |              |
| 609     | Street         | BCBG    | Sunset Plaza                    | 8634 W. Sunset Blvd.       | -         | West Hollywood | CA    | 90069 | 12/11/98  | MTM            | MONTGOMERY MGMT             | 2,279                  |              |
| 632     | Street         | BCBG    | Georgetown                      | 3210 M Street NW           | -         | Washington     | DC    | 20007 | 06/18/98  | 12/31/17       | GEORGETOWN RENAISSANCE, LLC | 4,800                  |              |
| 637     | Inside Mall    | BCBG    | Plaza Las Americas              | 525 FD Roosevelt Ave.      | Spc#072   | Hato Rey       | PR    | 00918 | 12/30/98  | 06/30/21       | Plaza Las Americas          | 2,785                  |              |
| 638     | Inside Mall    | BCBG    | Venetian                        | 3377 Las Vegas Blvd. South | Spc#2235  | Las Vegas      | NV    | 89109 | 07/15/99  | 06/30/19       | GGP                         | 4,161                  |              |
| 644     | Inside Mall    | BCBG    | Tyson's Galleria                | 2001 International Drive   | Spc#1114  | McLean         | VA    | 22102 | 05/22/00  | 07/31/20       | GGP                         | 4,000                  |              |
| 645     | Inside Mall    | BCBG    | Miracle Mile                    | 3663 Las Vegas Blvd. South | #E012     | Las Vegas      | NV    | 89109 | 09/01/00  | 01/31/18       | Miracle Mile Shops          | 4,049                  |              |
| 654     | Inside Mall    | BCBG    | Scottsdale Fashion Square       | 7014 E. Camelback Rd.      | Spc#1096  | Scottsdale     | AZ    | 85251 | 03/31/01  | 01/31/26       | Macerich                    | 3,744                  |              |
| 669     | Outside Mall   | BCBG    | Waterside                       | 4776 Admiralty Way         | Spc#C-7.3 | Marina del Rey | CA    | 90292 | 07/03/08  | 01/31/19       | Caruso                      | 3,200                  |              |
| 681     | Outside Mall   | BCBG    | The Shops at La Cantera         | 15900 La Cantera Pkwy      | Spc#3380  | San Antonio    | TX    | 78256 | 07/24/06  | 09/30/20       | GGP                         | 3,342                  |              |
| 696     | Street         | BCBG    | Flatiron 5th Avenue             | 168 5th Ave.               | -         | New York       | NY    | 10010 | 06/30/06  | 07/31/17       | 168 FIFTH AVE REALTY CORP   | 7,800                  |              |
| 700     | Lifestyle      | BCBG    | Yacht Haven                     | 5322 Yacht Haven Grand     | Spc#106   | St. Thomas     | VI    | 00802 | 02/02/07  | 01/31/18       | Yacht Haven USVI, LLC       | 2,180                  |              |
| 706     | Lifestyle      | BCBG    | Shops at Wailea                 | 3750 Wailea Alanui Dr.     | Spc#EW18  | Wailea         | HI    | 96753 | 03/08/07  | 01/31/17       | Hart Wailea                 | 2,886                  |              |
| 710     | Lifestyle      | BCBG    | Perkins Rowe                    | 10156 Perkins Rowe         | Spc#160   | Baton Rouge    | LA    | 70810 | 10/26/07  | 02/28/18       | CRAWFISH LLC                | 4,100                  |              |
| 729     | Outside Mall   | BCBG    | Oakbrook                        | 290 Oakbrook Center        | -         | Oak Brook      | IL    | 60523 | 05/18/07  | 03/31/17       | GGP                         | 2,748                  |              |
| 732     | Inside Mall    | BCBG    | Cherry Hill                     | 2000 RT 38                 | Spc#1775  | Cherry Hill    | NJ    | 08002 | 07/31/08  | 07/31/18       | Preit                       | 4,600                  |              |
| 737     | Lifestyle      | BCBG    | Americana                       | 529 Americana Way          | -         | Glendale       | CA    | 91204 | 05/01/08  | 01/31/19       | Caruso                      | 5,028                  |              |
| 757     | Outside Mall   | BCBG    | Santa Monica Place              | 395 Santa Monica Place     | Spc#170W  | Santa Monica   | CA    | 90401 | 08/06/10  | 01/31/20       | Macerich                    | 4,173                  |              |
| 759     | Inside Mall    | BCBG    | Cherry Creek                    | 3000 E. First Ave          | Spc#276   | Denver         | CO    | 80206 | 05/20/10  | 01/31/20       | Taubman                     | 4,000                  |              |
| 763     | Inside Mall    | BCBG    | Short Hills                     | 1200 Morris Tpke           | SPC#D135  | Short Hills    | NJ    | 07078 | 07/01/10  | 01/31/20       | Taubman                     | 4,492                  |              |
| 777     | Inside Mall    | BCBG    | BCBG, International Marketplace | 2330 Kalakaua Ave.         | Space 176 | Honolulu       | HI    | 96815 | 01/00/00  | 01/31/27       | Taubman                     | 2,063                  |              |
|         |                |         |                                 |                            |           |                |       |       |           |                | <b>29</b>                   | <b>Average Sq. Ft.</b> | <b>3,728</b> |

**BCBG**  
**Exhibit B-1**

|                       |
|-----------------------|
| <b>Expense Budget</b> |
|-----------------------|

**Advertising**

|                      |               |
|----------------------|---------------|
| Media                | 10,000        |
| Signs                | 51,034        |
| Sign Walkers         | -             |
| Subtotal Advertising | <u>61,034</u> |

**Supervision**

|                             |                |
|-----------------------------|----------------|
| Fees / Wages / Expenses (1) | 496,413        |
| Subtotal Supervision        | <u>496,413</u> |

|                |                       |
|----------------|-----------------------|
| Total Expenses | <u><u>557,447</u></u> |
|----------------|-----------------------|

**Note(s):**

*1. Includes Deferred Compensation and Insurance.*

**EXHIBIT 2**

**Final Store Closing Order**

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

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

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**FINAL ORDER (I) AUTHORIZING THE DEBTORS  
TO ASSUME THE AGENCY AGREEMENT, (II) APPROVING PROCEDURES  
FOR STORE CLOSING SALES AND, (III) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Order”), (a) authorizing the Debtors to assume the Agency Agreement, (b) authorizing and approving the Store Closing Procedures, with such sales to be free and clear of all liens, claims and encumbrances, and (c) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration; 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

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<sup>1</sup> 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.

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

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 a hearing 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:

**THE COURT HEREBY FINDS AND DETERMINES THAT:**

1. The findings and conclusions set forth herein constitute the 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 that 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.

2. The Debtors have advanced sound business reasons for seeking to assume the Agency Agreement and adopt the Store Closing Procedures, as set forth in the Motion and at the Hearing, and entering into the Agency Agreement is a reasonable exercise of the Debtors' business judgment and in the best interests of the Debtors and their estates.

3. The conduct of the Store Closings in accordance with the Store Closing Procedures will provide an efficient means for the Debtors to dispose of the Store Closure Assets.

4. The Agency Agreement was negotiated, proposed and entered into by the Agent and the Debtors without collusion, in good faith and from arm's length bargaining positions.

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

6. 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.

7. The Store Closings are in the best interest of the Debtors' estates.

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

**IT IS HEREBY ORDERED THAT:**

9. The Motion is granted on a final basis as provided herein.

10. The Debtors are authorized and empowered to take any and all further actions as may be reasonably necessary or appropriate to give effect to this Interim Order.

11. To the extent of any conflict between this Order, the Store Closing Procedures, and the Agency Agreement, the terms of this Order shall control over all other documents and the Store Closing Procedures shall control over the Agency Agreement.

12. Notwithstanding Bankruptcy Rule 6004(h), this Order shall take effect immediately upon its entry.

**I. Authority to Assume the Agency Agreement.**

13. The assumption of the Agency Agreement by the Debtors pursuant to section 365 of the Bankruptcy Code is approved on an interim basis. The Debtors are authorized to act and perform in accordance with the terms of the Agency Agreement, including, making payments required by the Agency Agreement to the Agent without the need for any application of the Agent or a further order of the Court.



14. Subject to the restrictions set forth in this Order and the Store Closing Procedures, the Debtors and the Agent hereby are authorized to take any and all actions as may be necessary or desirable to implement the Agency Agreement and the Store Closings; and each of the transactions contemplated by the Agency Agreement, and any actions taken by the Debtors and the Agent necessary or desirable to implement the Agency Agreement and/or the Store Closings prior to the date of this Order, hereby are approved and ratified.

**II. Authority to Engage in Store Closings.**

15. The Debtors are authorized pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to immediately continue and conduct the Store Closings in accordance with this Order, the Store Closing Procedures and the Agency Agreement.

16. The Store Closing Procedures are approved in their entirety on a final basis.

17. The Debtors are authorized to discontinue operations at the Stores in accordance with this Order and the Store Closing Procedures.

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

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

20. Treatment of Proceeds from Sale of Texas Assets. As adequate protection for the claims of the Local Texas Tax Authorities,<sup>3</sup> which are asserted on a secured basis, on or before May 1, 2017, the Debtors will fund a segregated account (the “Local Texas Tax Account”) in the amount of \$144,288.07 from the proceeds of the non-ordinary course sale of any of the Debtors’ assets located in the state of Texas occurring on or after February 28, 2017. The liens asserted by the Local Texas Tax Authorities (and all other liens junior to those of the Local Texas Tax Authorities) shall attach to the Local Texas Tax Account to the same extent and with the same priority as the liens the Local Texas Tax Authorities assert against such assets of the Debtors. The Local Texas Tax Account shall be maintained solely for the purpose of providing adequate protection for the Local Texas Tax Authorities prior to the distribution of any proceeds to any other creditor and shall constitute neither the allowance of the claims of the Local Texas Tax Authorities, nor a floor or cap on the amounts the Local Texas Tax Authorities may be entitled to receive. All parties’ rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Local Texas Tax Authorities are fully preserved. Funds in the Local Texas Tax Account may be distributed upon agreement between the Local Texas Tax Authorities and the Debtors, with the consent of the DIP Agents, or by subsequent order of the Court, duly noticed to the Local Texas Tax Authorities and the DIP Agents.

### **III. Conduct of the Sale.**

21. All newspapers and other advertising media in which the Store Closings may be advertised and all landlords are directed to accept this Order as binding authority so as to authorize the Debtors and the Agent to conduct the Sale and the sale of Merchandise and FF&E

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<sup>3</sup> As used herein, “Local Texas Tax Authorities” shall mean Arlington ISD, HC MUD 358, HC WCID 155, City of Mercedes, Bexar County, Cameron County, Cypress - Fairbanks ISD, Dallas County, El Paso, Fort Bend County, Frisco, Harris County, Hidalgo County, McAllen, McLennan County, Montgomery County, Nueces County, San Marcos CISD, Smith County, Tarrant County, and Lewisville ISD.

pursuant to the Agency Agreement, including, without limitation, to conduct and advertise the sale of the Merchandise and FF&E in the manner contemplated by and in accordance with this Order, the Store Closing Procedures, and the Agency Agreement.

22. The Debtors and Agent are hereby authorized to take such actions as may be necessary and appropriate to implement the Agency Agreement and to conduct the Store Closings without necessity of further order of this Court as provided in the Agency Agreement or the Store Closing Procedures, including, but not limited to, advertising the sale as a “store closing sale”, “sale on everything”, “everything must go”, or similar-themed sales through the posting of signs (including the use of exterior banners at non-enclosed mall closing locations, and at enclosed mall closing locations to the extent the applicable closing location entrance does not require entry into the enclosed mall common area), use of sign-walkers and street signage; *provided, however*, that only Merchant-approved terminology will be used at each Store in connection with the Store Closings.

23. 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 Merchandise and FF&E, 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, 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 business days of such request. This scheduling shall not be deemed to preclude additional hearings for the presentation of evidence or arguments as necessary.

24. Except as expressly provided in the Agency Agreement, the sale of the Merchandise and FF&E shall be conducted by the Debtors and the Agent notwithstanding any restrictive provision of any lease, sublease, or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Sale, the rejection of leases, abandonment of assets, or “going dark” provisions. The Debtors and landlords of the closing locations are authorized to enter into agreements (“Side Letters”) between themselves modifying the Store Closing Procedures without further order of the Court, and such Side Letters shall be binding as among the Debtors and any such landlords. In the event of any conflict between the Store Closing Procedures, this Final Order, and any Side Letter, the terms of such Side Letter shall control.

25. Except as expressly provided for herein or in the Store Closing Procedures, 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 consummation of the Sale or the sale of Merchandise or FF&E, or the advertising and promotion (including the posting of signs and exterior banners or the use of sign-walkers) of such sales, and all such parties and persons of every nature and description, including, but not limited to, any landlord, licensor, service providers, utilities, and 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 Closings and/or (ii) instituting any action or proceeding in any court (other than in the Bankruptcy Court) or administrative body seeking an order or judgment against, among others, the Debtors, the Agent, or the landlords at the closing locations that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sale or sale of the Merchandise or FF&E or other liquidation sales at the closing locations 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.

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

27. All sales of Store Closure Assets shall be “as is” and final. However, as to the Stores, all state and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms “as is” or “final sales.”

28. The Agent shall not be liable for sales taxes except as expressly provided in the Agency Agreement and the payment of any and all sales taxes is the responsibility of the Debtors. The Debtors are directed to remit all taxes arising from the Sale 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. The Agent shall collect, remit to the Debtors and account for sales taxes as and to the extent provided in the Agency Agreement. This 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.

29. Pursuant to section 363(f) of the Bankruptcy Code, the Agent, on behalf of the Debtors, is authorized to sell and all sales of Store Closure Assets, whether by the Agent or the Debtors, shall be free and clear of any and all of any liens, claims, encumbrances, and other interests; provided, however, that any such liens, claims, encumbrances, and other interests shall attach to the proceeds of the sale of the Store Closure Assets with the same validity, in the amount, with the same priority as, and to the same extent that any such liens, claims, and encumbrances have with respect to the Store Closure Assets, subject to any claims and defenses that the Debtors may possess with respect thereto and the Agent's fees and expenses (as provided in the Agency Agreement).

30. To the extent that the Debtors propose to sell or abandon FF&E which may contain personal and/or confidential information about the Debtors' employees and/or customers (the "Confidential Information"), the Debtors shall remove the Confidential Information from such items of FF&E before such sale or abandonment.

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

32. Notwithstanding this or any other provision of this Order, nothing shall prevent or be construed to prevent the Agent (individually, as part of a joint venture, or otherwise) or any of its affiliates from bidding on the Debtors' assets not subject to the Agency Agreement pursuant to an agency agreement or otherwise ("Additional Assets"). The Agent is hereby authorized to bid on and guarantee or otherwise acquire such Additional Assets notwithstanding anything to

the contrary in the Bankruptcy Code or other applicable law, provided that such guarantee, transaction or acquisition is approved by separate order of this Court.

**IV. Dispute Resolution Procedures with Governmental Units.**

33. Nothing in this Order, the Agency Agreement or the Store Closing Procedures, releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or operator of the property after the date of entry of this Order. Nothing contained in this Order, the Agency Agreement, or the Store Closing Procedures shall in any way (a) diminish the obligation of any entity to comply with environmental laws or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with its rights and obligations as debtor in possession under the Bankruptcy Code. The Store Closings shall not be exempt from laws 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 Order, the Agency Agreement or the Store Closing Procedures, shall alter or affect obligations to comply with all applicable federal safety laws and regulations. Nothing in this Order shall be deemed to bar any Governmental Unit (as such term is defined in section 101(47) of the Bankruptcy Code) from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors’ rights to assert in that forum or before this Court that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code, this Order, or otherwise, pursuant to paragraph 31 herein. Notwithstanding any other provision in this Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Order and/or any

applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Order shall be deemed to have made any rulings on any such issues.

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

- (i) Provided that the Store Closings are conducted in accordance with the terms of this Order and the Store Closing Procedures, 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 Sale Laws and, subject to Paragraph 10 hereof, are authorized to conduct the Store Closings in accordance with the terms of this Order and the Sale Guidelines without the necessity of further showing compliance with any Liquidation Sale Laws.
- (ii) Within two business days after entry of this Order, the Debtor shall serve copies of this Order, the Agency Agreement and the Store Closing Procedures via email, facsimile, or regular mail, on the following: (i) the Attorney General’s office for each state where the Store Closings are being held, (ii) the county consumer protection agency or similar agency for each county where the Store Closings will be held, (iii) the division of consumer protection for each state where the Store Closings will be held, (iv) the chief legal counsel for the local jurisdiction, and (v) the landlords for the Stores.
- (iii) To the extent there is a dispute arising from or relating to the Store Closings, this Order, the Agency Agreement, or the Store Closing Procedures, which dispute relates to any Liquidation Sale Laws (a “Reserved Dispute”), this Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within ten days following entry of this Order, any Governmental Unit may assert that a Reserved Dispute exists by serving written notice of such Reserved Dispute to counsel for the Debtors so as to ensure delivery thereof within one business day



thereafter. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within 15 days after service of the notice, the aggrieved party may file a motion with this Court requesting that this Court resolve the Reserved Dispute (a "Dispute Resolution Motion").

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

35. Except as expressly provided for herein or in the Store Closing Procedures, and except with respect to any Governmental Unit (as to which paragraphs 32 and 33 shall apply), no person or entity, including but not limited to any landlord, licensor, or creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Store Closings, or the advertising and promotion (including the posting of signs or the use of sign walkers) of the Store Closings, and all such parties and persons of every nature and description, including landlords, licensors, creditors and utility companies and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with,

or otherwise impeding, the conduct of the Store Closings and/or (b) instituting any action or proceeding in any court or administrative body seeking an order or judgment against, among others, the Debtors, Agent, or the landlords at the Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Store Closings and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease or license based upon any relief authorized herein.

36. Any restrictions in any lease agreement, restrictive covenant, or similar documents purporting to limit, condition, or impair the Debtors' ability to conduct the Store Closings shall not be enforceable in conjunction with the Store Closings, nor shall any breach of such provisions in these chapter 11 cases in conjunction with the Store Closings constitute a default under a lease or provide a basis to terminate the lease; provided, the Store Closings are conducted in accordance with the terms of this Order and the Store Closing Procedures.

37. Subject to Paragraphs 32 and 33 above, each and every federal, state, or local agency, departmental or governmental unit with regulatory authority over the Store Closings and all newspapers and other advertising media in which the Store Closings are advertised shall consider this Order as binding authority that no further approval, license, or permit of any governmental unit shall be required, nor shall the Debtors be required to post any bond, to conduct the Store Closings.

**V. Other Provisions.**

38. The Agent 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 Agency Agreement.

39. To the extent the Debtors are subject to any state "fast pay" laws in connection with the Store Closings, the Debtors shall be presumed to be in compliance with such laws to the

extent, in applicable states, such payroll payments are made by the later of (a) the Debtors' next regularly scheduled payroll and (b) seven calendar days following the termination date of the relevant employee, and in all such cases consistent with, and subject to, any previous orders of this Court regarding payment of same.

40. This Court shall retain exclusive jurisdiction with regard to all issues or disputes relating to this Order or the Agency Agreement, including, but not limited to, (i) any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit banner and sign-walker advertising, including with respect to any allegations that such advertising is not being conducted in a safe, professional, and non-deceptive manner, (ii) any claim of the Debtors, the landlords and/or the Agent for protection from interference with the Sale, (iii) any other disputes related to the Sale, and (iv) to protect the Debtors and/or the Agent against any assertions of of any liens, claims, encumbrances, and other interests. No such parties or person shall take any action against the Debtors, the Agent, the landlords or the Sale 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.

New York, New York  
Dated: March 28, 2017

/S/ Shelley C. Chapman  
THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE