

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

In re:

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

(Joint Administration Requested)

**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING
(A) THE MAINTENANCE OF THE CASH MANAGEMENT SYSTEM;
(B) MAINTENANCE OF THE EXISTING BANK ACCOUNTS; (C) CONTINUED
USE OF EXISTING BUSINESS FORMS; (D) CONTINUED PERFORMANCE
OF INTERCOMPANY TRANSACTIONS IN THE ORDINARY COURSE OF
BUSINESS AND GRANT OF ADMINISTRATIVE EXPENSE STATUS
FOR POSTPETITION INTERCOMPANY CLAIMS AND
(E) GRANTING RELATED RELIEF**

Brookstone Holdings Corp. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors") hereby move the Court (this "Motion") for entry of an interim order (the "Interim Order") and a final order (the "Final Order"), substantially in the form annexed hereto as Exhibit A and Exhibit B, pursuant to sections 105, 345, 363, 364(b), 503(b), 1107(a), and 1108 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), (a) authorizing the Debtors to (i) continue to use their Cash Management System as described in the diagram attached hereto as Exhibit C,² (ii) maintain the existing Bank Accounts

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are: Brookstone Holdings Corp. (4638), Brookstone, Inc. (2895), Brookstone Company, Inc. (3478), Brookstone Retail Puerto Rico, Inc. (5552), Brookstone International Holdings, Inc. (8382), Brookstone Purchasing, Inc. (2514), Brookstone Stores, Inc. (2513), Big Blue Audio LLC (N/A), Brookstone Holdings, Inc. (2515), and Brookstone Properties, Inc. (2517). The Debtors' corporate headquarters and the mailing address for each Debtor is One Innovation Way, Merrimack, NH 03054.

² All capitalized terms used in this introductory paragraph, but not otherwise defined, have the meanings ascribed to them below.

identified on the list attached hereto as Exhibit D, (iii) continue to use existing Business Forms, (iv) continue to perform regarding the Intercompany Transactions, and related thereto granting administrative expense status for postpetition Intercompany Claims, (v) in their discretion and in consultation with the DIP Administrative Agent and DIP Term Agent, (A) pay any Bank Account related fees, and (B) to close or otherwise modify the terms of certain of the Bank Accounts and open new debtor in possession accounts as may be necessary to facilitate their Chapter 11 Cases and operations, or as may otherwise be necessary to comply with the requirements of any debtor in possession financing and/or cash collateral order entered in these cases, and (vi) deposit funds in and withdraw funds from all Bank Accounts, subject to the same access rights and limitations existing prior to the Petition Date, including, but not limited to, checks, wire transfers, automated clearinghouse transfers, electronic funds transfers, and other debits and to treat the Bank Accounts for all purposes as debtor in possession accounts and (b) granting an interim suspension of the deposit and investment requirements of section 345(b) of the Bankruptcy Code. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Greg Tribou in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief* (the "First Day Declaration"),³ which was filed concurrently herewith. In further support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a

³ All capitalized terms used and not defined herein shall have the meanings ascribed to them in the First Day Declaration.

final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105, 345, 363, 364(b), 503(b), 1107(a), and 1108 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2.

BACKGROUND

A. General Background

2. On the date hereof (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to manage their financial affairs as debtors in possession.

3. Contemporaneously herewith, the Debtors filed a motion seeking joint administration of their chapter 11 cases (collectively, the "Chapter 11 Cases") pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Chapter 11 Cases.

4. Information regarding the Debtors' history and business operations, capital structure and primary secured indebtedness, and the events leading up to the commencement of the Chapter 11 Cases can be found in the First Day Declaration.

B. The Debtors' Cash Management System

5. Prior to the Petition Date, as described more fully in the First Day Declaration, the Debtors have maintained a centralized cash management system (the "Cash Management System"). The Cash Management System ensures the Debtors' ability to effectively and

efficiently monitor and control their cash position. A diagram of the Cash Management System with account-specific information is annexed hereto as Exhibit C.

6. The Cash Management System includes bank accounts (collectively, the “Bank Accounts”) at various banks (collectively, the “Banks”), each listed in the schedule annexed hereto as Exhibit D. The Cash Management System operates as follows:

Store Deposit Accounts: The Debtors maintain a number of individual store deposit accounts (each, a “Store Deposit Account” and, collectively, the “Store Deposit Accounts”) at certain of the Banks. The Store Deposit Accounts are used for the deposit of cash and check payments made by the Debtors’ retail customers. Deposits into the Store Deposit Accounts are generally made on a daily basis, with the exception of cash and check payments made by retail customers at the Debtors’ airport stores, which are picked up and deposited on a scheduled basis that varies by location.

Master Accounts: Funds collected in the Store Deposit Accounts that are held at Bank of America, National Association (“Bank of America”) are transferred into a Bank of America store master account (the “BoA Master Account”) and funds collected in the Store Deposit Accounts that are held at Wells Fargo, National Association (“Wells Fargo”) are transferred into a Wells Fargo store master account (the “WF Master Account”) and, together with the BoA Master Account, the “Master Accounts”).

Concentration Accounts and Application of Funds: Funds collected in the Store Deposit Accounts that are held at Banks other than Bank of America and Wells Fargo are transferred to a Wells Fargo concentration account on a weekly basis (the “WF Concentration Account”). Funds transferred into the BoA Master Account are swept electronically each night into the WF Concentration Account. Credit card settlements are also deposited into the WF Concentration Account. Funds in the WF Master Account are applied to the Wells Fargo line of credit facility (the “WF Line of Credit”) and any additional available funds from the WF Concentration Account are applied automatically each day to the WF Line of Credit.

Operating Account: Daily transactions that are debited from the Wells Fargo operating account (the “WF Operating Account”) are funded with a daily advance request to the WF Line of Credit. Generally, \$100,000 is held in the WF Operating Account in order to cover any unexpected disbursements. Funds are then transferred from the WF Operating Account to the following disbursement accounts: a Wells Fargo payroll account and a Wells Fargo controlled disbursement account. The WF Operating Account is also utilized for the issuance of letters of credit.

Other Accounts: The Debtors also maintain various accounts for mail order deposits, petty cash, and fringe benefits and investments.

7. The Cash Management System is managed on a day-to-day basis by the Debtors' financial personnel at the Debtors' offices located in Merrimack, New Hampshire.

8. The Cash Management System provides numerous benefits, including the ability to (a) quickly track and control corporate funds, (b) ensure cash availability and prompt payment of corporate-, employee-, and vendor-related expenses, and (c) reduce administrative costs by facilitating the efficient movement of funds.

C. The Debtors' Existing Business Forms and Check Stock

9. In the ordinary course of business, the Debtors use blank check stock with the Debtors' logo printed thereon. To minimize expenses to their estates and avoid unnecessarily confusing their employees, customers, and suppliers, the Debtors believe it is appropriate to continue to use all checks, correspondence, and other business forms (including, without limitation, letterhead, purchase orders, and invoices) (collectively, the "Business Forms") as such forms were in existence immediately before the Petition Date—without reference to the Debtors' status as debtors in possession—rather than requiring the Debtors to incur the expense and delay of ordering entirely new business forms. With respect to checks, the Debtors will, as debtors in possession, use the existing check stock until depleted and then reorder checks with a reference to the Debtors' status as debtors in possession and bankruptcy case as soon as it is reasonably practicable to do so.

D. The Debtors' Intercompany Transactions

10. In the ordinary course of their business, the Debtors engage in intercompany transactions and transfers amongst themselves and non-Debtor affiliates that own some of Brookstone's airport stores (the "Intercompany Transactions") related to, among other things, the expenses of conducting their retail operations. These Intercompany Transactions result in

intercompany receivables and payables (the “Intercompany Claims”).⁴ The Intercompany Transactions are not accounted through the Cash Management System, but rather through maintained book entries on the Debtors’ books and records.

11. Postpetition, the Debtors intend to continue to engage in Intercompany Transactions. Discontinuing the Intercompany Transactions would disrupt the Debtors’ business operations, harming their creditors and other parties in interest. The Debtors will continue to retain records of these Intercompany Transactions, which will be reconciled at intervals and properly maintained. As a result, the Debtors will be able to account for all Intercompany Transactions. Accordingly, the Debtors seek authority to continue the Intercompany Transactions, and request, pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, that postpetition Intercompany Claims resulting from ordinary course Intercompany Transactions be accorded administrative priority.

E. The Debtors’ Depository Policies and Practices

12. Prior to the Petition Date, in the ordinary course of their business, the Debtors developed policies and practices for deposits (“Prepetition Practices”) of funds within the Cash Management System. In particular, under the Prepetition Practices, certain funds within the Cash Management System are either (a) maintained in domestic bank accounts below amounts insured by the United States (through FDIC or FSLIC), (b) maintained in domestic banks that have signed Uniform Depository Agreements with the United States Trustee for Region Three, or (c) used to pay down outstanding loan balances.

13. The Debtors seek an interim suspension for forty-five (45) days of section 345(b) of the Bankruptcy Code. The suspension would permit the Debtors to maintain their Bank

⁴ The Debtors expect that, over the next two months, their interests in the non-Debtor joint ventures that operate airport retail outlets will, net of costs, including the Intercompany Transfers, result in a gain to the estates of over \$100,000.

Accounts without posting a bond or other security, as would otherwise be required under section 345(b), while the Debtors take steps to comply with the requirements of the Bankruptcy Code, if necessary.

RELIEF REQUESTED

14. The Debtors seek entry of the Interim Order and the Final Order, pursuant to sections 105, 345, 363, 364(b), 503(b), 1107(a), and 1108 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2, (a) authorizing the Debtors to (i) continue to use their Cash Management System, (ii) maintain the existing Bank Accounts, (iii) continue to use existing Business Forms, (iv) continue to perform regarding the Intercompany Transactions, and related thereto granting administrative expense status for postpetition Intercompany Claims, (v) in their discretion and in consultation with the DIP Administrative Agent and DIP Term Agent, (A) pay any Bank Account related fees and (B) to close or otherwise modify the terms of certain of the Bank Accounts and open new debtor-in-possession accounts as may be necessary to facilitate their Chapter 11 Cases and operations, or as may otherwise be necessary to comply with the requirements of any debtor in possession financing and/or cash collateral order entered in these cases, and (vi) deposit funds in and withdraw funds from all Bank Accounts, subject to the same access rights and limitations existing prior to the Petition Date, including, but not limited to, checks, wire transfers, automated clearinghouse transfers, electronic funds transfers, and other debits and to treat the Bank Accounts for all purposes as debtor in possession accounts and (b) granting an interim suspension of the deposit and investment requirements of section 345(b) of the Bankruptcy Code.

15. To enable the Debtors to carry out the relief requested, the Debtors also request that the Court authorize the Banks to continue to service and administer the Bank Accounts as

accounts of the Debtors as debtors in possession without interruption and in the usual and ordinary course, and to receive, process, honor, and pay any and all checks and drafts drawn on, or electronic transfer requests made on, the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be, in accordance with the orders of this Court.

BASIS FOR RELIEF REQUESTED

A. Maintenance of the Cash Management System Is Essential to the Debtors' Business Operations

16. In light of the size and complexity of the Debtors' business needs and operations, the maintenance of the current Cash Management System is important for the preservation and enhancement of the value of the Debtors' business. The Debtors conduct business through hundreds of retail stores across the country and the Cash Management System is designed to allow the Debtors to efficiently manage these national operations.

17. The Debtors' request for authorization to continue to use their Cash Management System postpetition is consistent with section 363(c)(1) of the Bankruptcy Code, which authorizes a debtor in possession to "use property of the estate in the ordinary course of business, without notice or a hearing." 11 U.S.C. § 363(c)(1). Section 363(c)(1) is intended to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business. *See, e.g., In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992); *see also In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 796 (Bankr. D. Del. 2007). Included within the purview of section 363(c) is a debtor's ability to continue the routine transactions necessitated by its cash management system. *See Amdura Nat'l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996). Nevertheless, the Debtors bring this Motion out of an abundance of caution, to the extent any aspect of the Cash Management System could be considered as outside the ordinary course of business for purposes of section 363(c).

18. Courts in this and other districts have noted that an integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *rev’d on other grounds*, 997 F.2d 1039 (3d Cir. 1993); *see also Southmark Corp. v. Grosz (In re Southmark Corp.)*, 49 F.3d 1111, 1114 (5th Cir. 1995) (finding cash management system allows a debtor “to administer more efficiently and effectively its financial operations and assets”). The United States Court of Appeals for the Third Circuit has agreed, emphasizing that requiring a debtor to maintain separate accounts “would be a huge administrative burden and economically inefficient.” *In re Columbia Gas Sys., Inc.*, 997 F.2d 1039, 1061 (3d Cir. 1993). For these reasons, the Debtors should be permitted to continue their Cash Management System.

19. The Cash Management is an essential part of the Debtors’ business operations that will efficiently collect, transfer, and disburse funds generated through the Debtors’ operations and accurately record such collections, transfers, and disbursements as they are made. In addition, authorizing the Debtors to utilize the Cash Management System postpetition will help to maintain stability in the Debtors’ ongoing business operations.

20. The Debtors’ Cash Management System is similar to those commonly employed by retail chains with comparable operations to the Debtors. The widespread use of such systems generally demonstrates the numerous benefits they provide, including the ability to control and monitor corporate funds, ensure cash availability, and reduce administrative expenses by facilitating the movement of funds. In light of the size and complexity of the Debtors’ operations, it would be difficult to maximize the value of the Debtors’ estates if the Cash Management System is not utilized.

21. Furthermore, parties in interest will not be harmed by the Debtors' maintenance of the Cash Management System, including the Bank Accounts, because the Debtors have implemented appropriate mechanisms to ensure that unauthorized payments will not be made on account of obligations incurred prior to the Petition Date. Specifically, with the assistance of their professionals, the Debtors will continue to maintain detailed records of all transfers of cash and record all transactions on applicable accounts. Therefore, the Debtors should be permitted to continue to manage their cash in accordance with the Cash Management System.

B. The Court Should Authorize the Debtors to Maintain the Existing Bank Accounts

22. The U.S. Trustee has established several operating guidelines for chapter 11 debtors in possession, including a requirement that the debtor in possession open new bank accounts and close all existing accounts. This requirement was designed to provide a clear line of demarcation between prepetition and postpetition claims and payments and to help protect against the inadvertent payment of prepetition claims. The U.S. Trustee's guidelines also require opening a separate operating account and a special tax payment account into which all funds (including funds held in trust for employee tax withholdings) that may be collected and/or payable during the pendency of a debtor's case be deposited. This requirement is meant to provide cash collateral for, and ensure payment of, certain priority tax claims such as federal and state payroll taxes and sales taxes.

23. The Debtors request that they be permitted to continue to use the existing Bank Accounts without establishing separate accounts for cash collateral or tax payments. Allowing the Debtors to maintain the Bank Accounts will aid in creating a smooth transition into chapter 11 and avoid any confusion or disruption caused by closing the Bank Accounts and opening new accounts. Continuing to use the existing Bank Accounts will also avoid the

potential for negative impacts that can arise from opening new accounts, including misdirected deposits, misapplied funds, or other delays.

24. In addition, the Debtors believe that tax obligations can be paid most efficiently out of the existing Bank Accounts. As part of the Cash Management System, the Debtors have systems in place to ensure that priority tax obligations are satisfied on a timely basis. Altering the Bank Account structure would disrupt these systems, thereby jeopardizing the Debtors' prompt and timely payment of their tax obligations. Further, the U.S. Trustee can adequately monitor the flow of funds related to the Bank Accounts and the Debtors' tax obligations through the Debtors' required monthly operating reports. As a result, the Debtors believe that the protections required by the U.S. Trustee guidelines—ensuring payment of taxes—are met without requiring the creation of new accounts and payment procedures.

25. Moreover, the Debtors can distinguish between prepetition and postpetition obligations and payments without closing the Bank Accounts and opening new bank accounts. Additionally, the Debtors will immediately advise the Banks not to honor checks, advises, drafts, or other requests for payment issued prior to the Petition Date, except as otherwise expressly permitted by an order of the Court and directed by the Debtors. Therefore, the goals of the U.S. Trustee guidelines can be satisfied, and the Debtors' creditors can be protected, without closing the Bank Accounts.

26. Thus, the Debtors respectfully request that the Court authorize the Banks to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course of business. In this regard, the Banks should be authorized to receive, process, honor, and pay any and all checks, automated clearing house payments (“ACH Payments”), and other instructions, and drafts payable through,

drawn, or directed on the Bank Accounts after the Petition Date by holders, makers, or other parties entitled to issue instructions with respect thereto, whether such checks, drafts, wires, or ACH Payments are dated prior to or subsequent to the Petition Date consistent with any order of the Court and governing law; *provided, however*, that any check, advise, draft, or other notification that the Debtors advised the Banks to have been drawn, issued, or otherwise presented prior to the Petition Date may be honored by the Banks only to the extent authorized by an order of the Court.

27. The Debtors also request that, to the extent the Banks honor a prepetition check or other item drawn on any account that is the subject of this Motion either (a) at the direction of the Debtors, (b) in a good-faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as the result of an innocent mistake despite the above-described protective measures, the Banks will not be deemed to be liable to the Debtors or to their estates on account of such prepetition check or other item honored postpetition. Both as part of this Motion and in other motions that have been concurrently filed, the Debtors are requesting authority, but not direction, to pay certain prepetition obligations. With respect to some of these obligations, the Debtors issued checks prior to the Petition Date that have yet to clear the banking system. In other instances, the Debtors will create the relevant check once the Court enters an order permitting the Debtors to do so. The Debtors intend to inform the Banks which such checks should be so honored. Therefore, the Debtors request that the Banks be authorized to rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtor prior to the Petition Date should be honored. The Debtors respectfully submit that such relief is reasonable and appropriate because the Banks are not in a

position to independently verify or audit whether a particular item may be paid in accordance with an order of the Court or otherwise.

28. In the ordinary course of business, the Banks charge, and the Debtors pay, honor, or allow the deduction from the appropriate account, certain service charges and other fees, costs, and expenses (collectively, the “Bank Fees”). The Debtors respectfully request that the Court authorize the Banks to (a) continue to charge the Debtors the Bank Fees and (b) charge-back returned items to the Bank Accounts in the ordinary course of business, whether such items are dated prior to, on, or subsequent to the Petition Date.

29. Although the Debtors are requesting the waiver of the requirement that they close all bank accounts and open new debtor in possession bank accounts, the Debtors may determine, in their business judgment, that opening new bank accounts and/or closing the existing Bank Accounts is in the best interests of the estates. Nothing contained herein should prevent the Debtors from opening any additional bank accounts, or closing the Bank Accounts, as they may deem necessary and appropriate in their discretion (and in consultation with the DIP Administrative Agent and DIP Term Agent), or as required by any debtor in possession financing agreement that is approved by the Court; *provided, however*, that any new domestic account is established at a bank that is insured with the FDIC or the FSLIC and organized under the laws of the United States or any State therein, or, in the case of accounts that may carry a balance exceeding the insurance limitations set thereby, on the U.S. Trustee’s List of Authorized Bank Depositories for the District of Delaware.

C. The Debtors Should be Authorized to Use Existing Check Stock and Related Business Forms

30. Local Rule 2015-2(a) provides:

Where the debtor uses pre-printed checks, upon motion of the debtor, the Court may, without notice and hearing, permit the debtor to use its existing checks

without the designation “Debtor-in-Possession” and use its existing bank accounts. However, once the debtor’s existing checks have been used, the debtor shall, when reordering checks, require the designation “Debtor-in-Possession” and the corresponding bankruptcy number on all such checks.

Del. Bankr. L.R. 2015-2(a).

31. The Debtors use numerous Business Forms in the ordinary course of their business. In order to minimize expenses to their estates, the Debtors request authority to continue using their existing prepetition Business Forms without reference to their status as debtors in possession or any other alteration.

32. It is essential that the Debtors be authorized to continue using their existing Business Forms because they routinely deal with a large number of vendors and customers, and changing business forms would impose a substantial burden without a corresponding benefit. Furthermore, most parties doing business with the Debtors undoubtedly will be aware of the Debtors’ status as debtors in possession as a result of the publicity surrounding these Chapter 11 Cases, targeted communications from the Debtors to key vendors and customers, and the notice of commencement of the Chapter 11 Cases will be provided to parties in interest. As with the existing Cash Management System, requiring the Debtors to change their existing Business Forms would unnecessarily distract the Debtors from their restructuring efforts and impose needless expenses on the estates.

33. With respect to checks, the Debtors will use the existing check stock until depleted and then reorder postpetition checks with the legend “Debtor in Possession” and the Debtors’ bankruptcy case number in accordance with Local Rule 2015-2(a).

D. Cause Exists to Permit Continued Use of Intercompany Transactions and Postpetition Intercompany Claims Should Be Given Administrative Priority Status

34. As described above, the Debtors enter into certain Intercompany Transactions in the ordinary course of business. The Intercompany Transactions reduce the administrative costs

incurred by the Debtors by centralizing administrative functions and permitting the Debtors to, among other things, efficiently meet the needs of their customers and vendors. If the Intercompany Transactions were to be discontinued, the Cash Management System and related administrative controls would be disrupted.

35. The Debtors request authority to continue to enter into Intercompany Transactions in the ordinary course of the Debtors' business. The continuation of the Intercompany Transactions will not prejudice the Debtors' estates or their creditors and the Debtors maintain strict records of all transfers of cash and can account for all such Intercompany Transactions. Accordingly, the Debtors believe that continuation of the Intercompany Transactions is in the best interests of the Debtors' estates and creditors.

36. Because the Debtors engage in Intercompany Transactions on a regular basis and such transactions are common among similar enterprises, the Debtors believe the Intercompany Transactions are ordinary course transactions within the meaning of section 363(c)(1) of the Bankruptcy Code and, therefore, do not require the Court's approval. Nonetheless, out of an abundance of caution, the Debtors are seeking express authority to engage in such transactions on a postpetition basis. The continued performance of the ordinary course Intercompany Transactions is necessary to ensure the Debtors' ability to operate their business after the Petition Date.

37. Section 503(b)(1) of the Bankruptcy Code provides, in pertinent part, that after notice and a hearing "there shall be allowed administrative expenses . . . including the actual, necessary costs and expenses of preserving the estate including – wages, salaries, and commissions for services rendered after the commencement of the case[.]" 11 U.S.C. § 503(b)(1). To ensure that each individual Debtor will not fund, at the expense of its own

creditors, the operations of another Debtor, the Debtors respectfully request that, pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, all Intercompany Claims arising after the Petition Date be awarded administrative expense priority status. If all Intercompany Claims against the Debtors are accorded administrative expense priority status, each entity will continue to bear the ultimate payment responsibility for such ordinary course transactions.

E. Cause Exists to Grant an Interim Suspension of Section 345(b) to Allow the Debtors to Continue Use of Their Cash Management System Without the Need to Post a Bond or Provide Other Security

38. Pursuant to section 345(b) of the Bankruptcy Code, any deposit or other investment made by a debtor, except those insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States, must be secured by a bond in favor of the United States that is secured by the undertaking of a corporate surety approved by the U.S. Trustee or by the deposit of securities of the kind specified in 31 U.S.C. § 9303. *See* 11 U.S.C. § 345(b). Section 345(b) provides further, however, that a bankruptcy court may allow the use of alternatives to these approved investment guidelines “for cause.” *Id.*; *see also In re Serv. Merch. Co.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999). Moreover, Local Rule 2015-2 provides that, if a motion for waiver of the section 345 requirements is filed on the first day of a chapter 11 case, the Court may grant an interim waiver of the section 345 requirements until such motion is heard. *See* Local Rule 2015-2.

39. In *Service Merchandise*, the court identified the following factors for determining whether cause exists to waive the requirements of Bankruptcy Code section 345(b):

- (a) the sophistication of the debtor’s business;
- (b) the size of the debtor’s business operations;
- (c) the amount of investments involved;

- (d) the bank ratings of the financial institutions where the debtor's funds are held;
- (e) the complexity of the case;
- (f) the safeguards in place within the debtor's own business for insuring the safety of the funds;
- (g) the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- (h) the benefit to the debtor of current practices;
- (i) the harm, if any, to the estate; and
- (j) the reasonableness of the debtor's request for relief from the section 345(b) requirements in light of the overall circumstances of the case.

Service Merchandise, 240 B.R. at 896. Examining these factors, the *Service Merchandise* court concluded that "cause" existed in that case because the debtors were "large, sophisticated [companies] with a complex cash management system," with the ability to shift money as needed to insure the safety of their funds. *Id.* Moreover, the benefits to the debtor of waiving the section 345(b) requirements far outweighed any potential harm to the estate, and the failure to waive the requirements "would needlessly handcuff this debtor's reorganization efforts." *Id.* at 896-97.

40. As in *Service Merchandise*, the Debtors operate a sophisticated enterprise with a complex Cash Management System that provides the Debtors with the ability to transfer funds rapidly to ensure their safety. In light of the *Service Merchandise* factors and the safety of the institutions that the Debtors propose to utilize as a continuation of their Prepetition Practices, the Debtors believe that sufficient cause exists to allow deviation from the investment guidelines set forth in section 345(b) of the Bankruptcy Code. Satisfaction of those requirements would

impose needless costs on the Debtors' estates and the process of satisfying those requirements would lead to needless inefficiencies in the management of the Debtors' business.

41. The Debtors hereby request that this Court grant them a 60-day extension of the time to comply with the investment requirements of section 345 and authorize the Debtors to continue investing their excess funds in accordance with the Prepetition Practices. During the extension period, the Debtors propose to discuss with the U.S. Trustee what modifications to their Prepetition Practices, if any, would be appropriate under the circumstances.

F. The Court Should Authorize the Banks to Continue to Service and Administer the Bank Accounts

42. In connection with the foregoing, the Debtors respectfully request that the Court (a) authorize the Banks to receive, process, honor, and pay all checks and transfers issued by the Debtors in accordance with this Motion, without regard to whether any checks or transfers were issued before or after the Petition Date; (b) provide that the Banks may rely on the representations of the Debtors with respect to whether any check or transfer issued or made by the Debtors before the Petition Date should be honored pursuant to this Motion (the Banks having no liability to any party for relying on such representations by the Debtors provided for herein); and (c) authorize the Debtors to issue replacement checks or transfers to the extent any checks or transfers that are issued and authorized to be paid in accordance with this Motion are dishonored or rejected by the Banks.

G. Immediate Relief Is Justified

43. Pursuant to Bankruptcy Rule 6003, the Court may grant relief within twenty-one (21) days after the filing of the petition regarding a motion to "use, sell, lease, or otherwise incur an obligation regarding property of the estate" only if such relief is necessary to avoid immediate and irreparable harm. Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where

the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001).

44. Moreover, Bankruptcy Rule 6003 authorizes the Court to grant the relief requested herein to avoid harm to the Debtors' customers and other third parties. Unlike Bankruptcy Rule 4001, Bankruptcy Rule 6003 does not condition relief on imminent or threatened harm to the estate alone. Rather, Bankruptcy Rule 6003 speaks of "immediate and irreparable harm" generally. *Cf.* Fed. R. Bankr. P. 4001(b)(2), (c)(2) (referring to "irreparable harm to the estate"). Indeed, the "irreparable harm" standard is analogous to the traditional standards governing the issuance of preliminary injunctions. *See* 9 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 4001.07[b][3] (16th ed. 2018) (discussing source of "irreparable harm" standard under Rule 4001(c)(2)). Courts will routinely consider third-party interests when granting such relief. *See, e.g., Capital Ventures Int'l v. Argentina*, 443 F.3d 214, 223 n.7 (2d Cir. 2006); *see also Linnemeir v. Bd. of Trs. of Purdue Univ.*, 260 F.3d 757, 761 (7th Cir. 2001).

45. As described herein and in the First Day Declaration, the Debtors will suffer immediate and irreparable harm without Court authorization for the relief requested herein. Accordingly, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

REQUEST FOR WAIVER OF STAY

46. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the

court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

DEBTORS’ RESERVATION OF RIGHTS

47. Nothing contained herein is intended or should be construed as an admission of the validity of, or a promise to pay with respect to, any claim against the Debtors; a waiver of the Debtors’ right to dispute any claim; or an approval, assumption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

NOTICE

48. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) holders of the 30 largest unsecured claims on a consolidated basis against the Debtors; (c) counsel to Wells Fargo Bank, National Association in its capacity as DIP Administrative Agent and as Agent under the Credit Agreement, dated as July 7, 2014; (d) counsel to Gordon Brothers Finance Company, in its capacity as DIP Term Agent and as Term Agent under the Term Note dated June 3, 2015; (e) counsel to Wilmington Trust, National Association, in its capacity as Trustee under the Indenture dated as of July 7, 2014; (f) counsel to Sanpower (Hong Kong) Company Limited as Lender under certain secured and unsecured notes; (g) the Banks; and (h) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the

nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: August 2, 2018
Wilmington, Delaware

/s/ Andrew L. Magaziner

YOUNG CONAWAY STARGATT & TAYLOR, LLP
Michael R. Nestor (No. 3526)
Sean M. Beach (No. 4070)
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-and-

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

PROPOSED INTERIM ORDER

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

In re:

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

(Jointly Administered)

Ref. Docket No. ____

INTERIM ORDER AUTHORIZING (A) THE MAINTENANCE OF THE CASH MANAGEMENT SYSTEM; (B) MAINTENANCE OF THE EXISTING BANK ACCOUNTS; (C) CONTINUED USE OF EXISTING BUSINESS FORMS; (D) CONTINUED PERFORMANCE OF INTERCOMPANY TRANSACTIONS IN THE ORDINARY COURSE OF BUSINESS AND GRANT OF ADMINISTRATIVE EXPENSE STATUS FOR POSTPETITION INTERCOMPANY CLAIMS; AND (E) GRANTING RELATED RELIEF

Upon the *Debtors' Motion for Interim and Final Orders Authorizing (A) the Maintenance of the Cash Management System; (B) Maintenance of the Existing Bank Accounts; (C) Continued Use of Existing Business Forms; (D) Continued Performance of Intercompany Transactions in the Ordinary Course of Business and Grant of Administrative Expense Status for Postpetition Intercompany Claims; and (E) Granting Related Relief* (the "Motion")² filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that venue of these cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are: Brookstone Holdings Corp. (4638), Brookstone, Inc. (2895), Brookstone Company, Inc. (3478), Brookstone Retail Puerto Rico, Inc. (5552), Brookstone International Holdings, Inc. (8382), Brookstone Purchasing, Inc. (2514), Brookstone Stores, Inc. (2513), Big Blue Audio LLC (N/A), Brookstone Holdings, Inc. (2515), and Brookstone Properties, Inc. (2517). The Debtors' corporate headquarters and the mailing address for each Debtor is One Innovation Way, Merrimack, NH 03054.

² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

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

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein on an interim basis until such time as this Court conducts a final hearing on this matter (the “Final Hearing”).
2. The Final Hearing shall take place on _____, 2018 at __:__ .m. (prevailing Eastern Time). Any objections or responses to the Motion shall be filed on or before 4:00 p.m. (prevailing Eastern Time) _____, 2018 and served on (a) the Office of the United States Trustee for the District of Delaware, (b) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166 (Attn: Matthew J. Williams, David M. Feldman, Matthew K. Kelsey, and Keith R. Martorana), (c) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Michael R. Nestor, Sean M. Beach, Andrew L. Magaziner), (d) counsel to any statutory committee appointed in these Chapter 11 Cases, (e) counsel to the DIP Administrative Agent, Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110 (Attn: Christopher L. Carter), and (f) counsel to the DIP Term

Agent, Choate, Hall & Stewart LLP, Two International Place, Boston, MA 02110 (Attn: Jonathan D. Marshall).

3. The Debtors are authorized to maintain and use the Cash Management System as described in the Motion.

4. The Debtors are authorized to (a) continue to use, with the same account numbers, the Bank Accounts, (b) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession, and (c) use, in their present form, all Business Forms, without reference to their status as debtors in possession, except as otherwise provided in this Order.

5. The Banks are hereby authorized to continue to service and administer the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the usual and ordinary course, and to receive, process, honor, and pay any and all checks and drafts drawn on, or electronic transfer requests made on, the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; *provided, however*, that any check drawn or issued by the Debtors before the Petition Date may be honored by the Banks only if specifically authorized by order of this Court.

6. Notwithstanding any other provision of this Order, if the Banks honor a prepetition check or other item drawn on any account that is the subject of this Order (a) at the direction of the Debtors, (b) in good faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as the result of an innocent mistake made despite implementation of reasonable item handling procedures, it shall not be deemed to be liable to the Debtors or their estates or otherwise in violation of this Order.

7. The Banks are authorized to debit the Bank Accounts in the ordinary course of business without need for further order of this Court for: (a) all checks, automated clearing house

entries, and other items deposited or credited to the Bank Accounts prior to filing of the Chapter 11 Cases that have been dishonored, reversed, or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to filing of the Chapter 11 Cases and (b) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to the Banks as service charges for the maintenance of the Cash Management System.

8. The Banks may rely on the representations of the Debtors with respect to whether any check, item, or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this or any other order of this Court, and the Banks shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

9. Those certain existing deposit agreements between the Debtors and the Banks shall continue to govern the postpetition cash management relationship between the Debtors and the Banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect. The Debtors may, without further order of this Court, implement changes to the Debtors' Cash Management System in the ordinary course of business pursuant to the terms of those existing deposit agreements, including, without limitation, the opening and closing of bank accounts. Notwithstanding the foregoing or anything to the contrary contained herein, however, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the Debtors' postpetition financing agreements (the "DIP Documents") and any orders approving the DIP Documents and governing the Debtors' use of cash collateral (including with respect to any budgets governing or relating thereto).

10. The Debtors are authorized, upon prior notice to the DIP Administrative Agent and the DIP Term Agent, to open any new bank accounts or close the existing Bank Accounts as they may deem necessary and appropriate in their discretion and in consultation with the DIP Administrative Agent and the DIP Term Agent; *provided* that the Debtors give notice within fifteen (15) days thereafter to the U.S. Trustee and any statutory committees appointed in the Chapter 11 Cases; *provided, further*, that the Debtors shall only open any such new bank accounts at banks that have executed a Uniform Depository Agreement with the U.S. Trustee, or at banks that are willing to immediately execute such an agreement. To the extent the Debtor open any new bank accounts with a bank other than the Banks, the provisions of this Order shall apply with equal force to such banks.

11. The Debtors are authorized to use their existing Business Forms; *provided*, that once the Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor in Possession" and the corresponding bankruptcy case number on all checks; *provided further* that, with respect to checks which the Debtors or their agents print themselves, the Debtors shall begin printing the "Debtor in Possession" legend on such items within ten (10) days of the date of entry of this Order.

12. The Debtors are authorized to continue performing Intercompany Transactions in the ordinary course of business and to honor and pay obligations in connection with the Intercompany Transactions.

13. The Debtors shall maintain accurate and detailed records of all transfers, including Intercompany Transfers, so that all transactions may be readily ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions.

14. All Intercompany Claims owed by a Debtor to another Debtor shall be accorded administrative priority status of the kind specified in section 503(b) of the Bankruptcy Code to the extent such obligations arise after the Petition Date.

15. The Debtors' time to comply with section 345(b) of the Bankruptcy Code is hereby extended until the date that is forty-five (45) days after the date hereof, without prejudice to the Debtors' right to seek further suspensions from the U.S. Trustee without further Order of this Court.

16. Notwithstanding use of a consolidated Cash Management System, the Debtor shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which entity pays those disbursements.

17. Within five (5) business days from the date of the entry of this Order, the Debtors shall (i) serve a copy of this Order on the Banks and (ii) request that the Banks internally code the Bank Accounts as "debtor in possession" accounts.

18. Nothing in this Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors, (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates, or (c) shall be construed as a promise to pay a claim.

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

20. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief requested in the Motion, as granted hereby, is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

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

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

Dated: August ___, 2018
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

PROPOSED FINAL ORDER

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

In re:

BROOKSTONE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-____ (____)

(Jointly Administered)

Ref. Docket Nos. ____ & ____

FINAL ORDER AUTHORIZING (A) THE MAINTENANCE OF THE CASH MANAGEMENT SYSTEM; (B) MAINTENANCE OF THE EXISTING BANK ACCOUNTS; (C) CONTINUED USE OF EXISTING BUSINESS FORMS; (D) CONTINUED PERFORMANCE OF INTERCOMPANY TRANSACTIONS IN THE ORDINARY COURSE OF BUSINESS AND GRANT OF ADMINISTRATIVE EXPENSE STATUS FOR POSTPETITION INTERCOMPANY CLAIMS; AND (E) GRANTING RELATED RELIEF

Upon the *Debtors' Motion for Interim and Final Orders Authorizing (A) the Maintenance of the Cash Management System; (B) Maintenance of the Existing Bank Accounts; (C) Continued Use of Existing Business Forms; (D) Continued Performance of Intercompany Transactions in the Ordinary Course of Business and Grant of Administrative Expense Status for Postpetition Intercompany Claims; and (E) Granting Related Relief* (the "Motion")² filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that venue of these cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court

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² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and upon consideration of the First Day Declaration; and this Court having previously entered the *Interim Order Authorizing (A) the Maintenance of the Cash Management System; (B) Maintenance of the Existing Bank Accounts; (C) Continued Use of Existing Business Forms; (D) Continued Performance of Intercompany Transactions in the Ordinary Course of Business and Grant of Administrative Expense Status for Postpetition Intercompany Claims; and (E) Granting Related Relief* [Docket No. ___] (the “Interim Order”); and a hearing having been held to consider the relief requested in the Motion; and upon the record of the hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein on a final basis.
2. The Debtors are authorized to maintain and use the Cash Management System as described in the Motion.
3. The Debtors are authorized to (a) continue to use, with the same account numbers, the Bank Accounts, (b) treat the Bank Accounts for all purposes as accounts of the Debtors as

debtors in possession, and (c) use, in their present form, all Business Forms, without reference to their status as debtors in possession, except as otherwise provided in this Order.

4. The Banks are hereby authorized to continue to service and administer the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the usual and ordinary course, and to receive, process, honor, and pay any and all checks and drafts drawn on, or electronic transfer requests made on, the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; *provided, however*, that any check drawn or issued by the Debtors before the Petition Date may be honored by the Banks only if specifically authorized by order of this Court.

5. Notwithstanding any other provision of this Order, if the Banks honor a prepetition check or other item drawn on any account that is the subject of this Order (a) at the direction of the Debtors, (b) in good faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as the result of an innocent mistake made despite implementation of reasonable item handling procedures, it shall not be deemed to be liable to the Debtors or their estates or otherwise in violation of this Order.

6. The Banks are authorized to debit the Bank Accounts in the ordinary course of business without need for further order of this Court for: (a) all checks, automated clearing house entries, and other items deposited or credited to the Bank Accounts prior to filing of the Chapter 11 Cases that have been dishonored, reversed, or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to filing of the Chapter 11 Cases and (b) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to the Banks as service charges for the maintenance of the Cash Management System.

7. The Banks may rely on the representations of the Debtors with respect to whether any check, item, or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this or any other order of this Court, and the Banks shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

8. Those certain existing deposit agreements between the Debtors and the Banks shall continue to govern the postpetition cash management relationship between the Debtors and the Banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect. The Debtors may, without further order of this Court, implement changes to the Debtors' Cash Management System in the ordinary course of business pursuant to the terms of those existing deposit agreements, including, without limitation, the opening and closing of bank accounts. Notwithstanding the foregoing or anything to the contrary contained herein, however, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the Debtors' postpetition financing agreements (the "DIP Documents") and any orders approving the DIP Documents and governing the Debtors' use of cash collateral (including with respect to any budgets governing or relating thereto).

9. The Debtors are authorized, upon prior notice to the DIP Administrative Agent and the DIP Term Agent, to open any new bank accounts or close the existing Bank Accounts as they may deem necessary and appropriate in their discretion and in consultation with the DIP Administrative Agent and the DIP Term Agent; *provided* that the Debtors give notice within fifteen (15) days thereafter to the U.S. Trustee and any statutory committees appointed in the Chapter 11 Cases; *provided, further*, that the Debtors shall only open any such new bank

accounts at banks that have executed a Uniform Depository Agreement with the U.S. Trustee, or at banks that are willing to immediately execute such an agreement. To the extent the Debtor open any new bank accounts with a bank other than the Banks, the provisions of this Order shall apply with equal force to such banks.

10. The Debtors are authorized to use their existing Business Forms; *provided*, that once the Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor in Possession" and the corresponding bankruptcy case number on all checks.

11. The Debtors are authorized to continue performing Intercompany Transactions in the ordinary course of business and to honor and pay obligations in connection with the Intercompany Transactions.

12. The Debtors shall maintain accurate and detailed records of all transfers, including Intercompany Transfers, so that all transactions may be readily ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions.

13. All Intercompany Claims owed by a Debtor to another Debtor shall be accorded administrative priority status of the kind specified in section 503(b) of the Bankruptcy Code to the extent such obligations arise after the Petition Date.

14. The Debtors' time to comply with section 345(b) of the Bankruptcy Code is hereby extended until the date that is forty-five (45) days after the date hereof, without prejudice to the Debtors' right to seek further suspensions from the U.S. Trustee without further Order of this Court.

15. Notwithstanding use of a consolidated Cash Management System, the Debtor shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which entity pays those disbursements.

16. Within five (5) business days from the date of the entry of this Order, the Debtors shall (i) serve a copy of this Order on the Banks and (ii) request that the Banks internally code the Bank Accounts as “debtor in possession” accounts.

17. Nothing in this Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors, (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates, or (c) shall be construed as a promise to pay a claim.

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

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

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

Dated: _____, 2018
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

CASH MANAGEMENT SYSTEM

The Company has 170 bank accounts:
 - 164 bank accounts for the retail stores
 - 6 corporate bank accounts

Store deposits are generally made on a daily basis, with the exception of airport locations where they are picked up and deposited to the bank on a scheduled basis (frequency varies by location).

The concentration account is the Wells Fargo Concentration Account (#xxxxxx1690), which concentrates all Store Depository Accounts except for deposits made to the Wells Fargo Store Master Account (#xxxxxx1886), which are directly applied to the line of credit at Wells Fargo.

The Bank of America Store Master Account (#xxxxxx4914) is swept electronically each night to the Wells Fargo Concentration Account (#xxxxxx1690).

Credit card settlements are deposited directly into the Wells Fargo Concentration Account (#xxxxxx1690).

Available funds from the Wells Fargo concentration account are transferred automatically each day to the Wells Fargo Line of Credit Facility.

Daily transactions that are debited to the Wells Fargo Operating Account (#xxxxxx1708) are funded with a daily advance request to the Wells Fargo Line of Credit Facility. In general, \$100K is held in the Wells Fargo Operating Account in order to cover any unexpected disbursements.

Funds are transferred from the Wells Fargo Operating Account to the following disbursement accounts as required: the Wells Fargo Payroll Account (#xxxxxx1716) and the Wells Fargo Controlled Disbursements Account (#xxxxxx0447).

In addition, there are various insignificant accounts for mail order deposits, petty cash, fringe benefit and investment accounts.

The Wells Fargo Operating Account is also utilized for the issuance of letters of credit.

The Wells Fargo Controlled Disbursement Account checks are electronically signed by the Chief Financial Officer. If the check amount is greater than \$100,000.00, the internal requirement is that there must be a second signature.

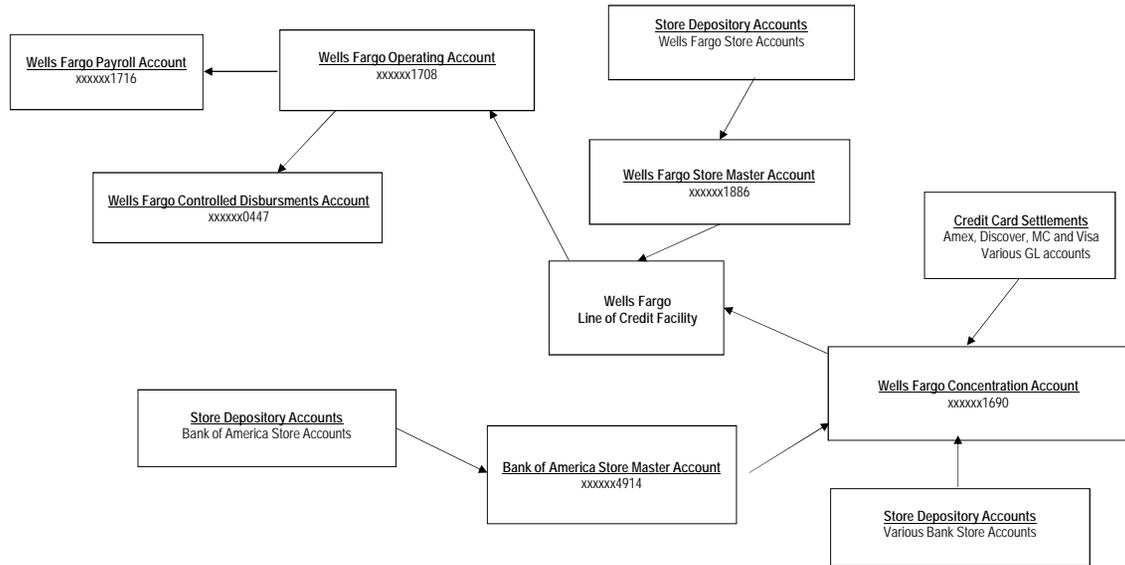


EXHIBIT D

BANK ACCOUNTS

Store/Cost Center	Description	Bank	Bank Account
353	Int'l Market Place	American Savings Bank	8103924495
105	Cherry Creek	ANB Bank	1684379
233	Plaza Las Americas	Banco Popular	19215533
265	Oak Park Mall	Bank Midwest	10001104
817	Bank of America Master Account	Bank of America	5486854914
11	Columbia	Bank of America	5486854707
21	Short Hills	Bank of America	5562559230
25	South Coast Plaza	Bank of America	5486853436
28	Crystal	Bank of America	229052597106
40	Del Amo	Bank of America	1229052588432
55	Ft. Lauderdale	Bank of America	1800122711
68	Pheasant Lane	Bank of America	5562559243
69	Valley Fair	Bank of America	5486854888
74	Boca Raton	Bank of America	1612128496
86	Stonestown	Bank of America	5486853591
107	Towson Town Center	Bank of America	5498557937
108	Menlo Park	Bank of America	229052581552
111	Burlington Mall	Bank of America	5562559285
113	South Shore Plaza	Bank of America	5562559298
123	Brea Mall	Bank of America	5486854846
136	Hillsdale	Bank of America	898008562943
140	Sun Valley	Bank of America	5486854833
148	Natick Mall	Bank of America	5562559311
149	The Avenues	Bank of America	2181711473
162	Westchester	Bank of America	229052579124
173	Aventura Mall	Bank of America	1596493694
174	Lenox Square	Bank of America	898026065354
180	Dallas Galleria	Bank of America	5486854817
216	Fashion Show	Bank of America	5486853630
221	Somerset Collection	Bank of America	898028603358
223	Macarthur Center	Bank of America	898032376833
227	Town East Square	Bank of America	5486854781
238	30 Rock	Bank of America	5486853407
244	Stonebriar Centre	Bank of America	5486853517
245	Roseville Galleria	Bank of America	5486853504
248	Woodland Mall	Bank of America	898028603361
249	3rd Street Promenade	Bank of America	5486853494
255	Coronado Center	Bank of America	5486854778
266	Twelve Oaks	Bank of America	898032374589
270	Irvine Spectrum	Bank of America	5486853481
275	Santa Rosa	Bank of America	898005964670
287	International Plaza	Bank of America	3448279445
288	Shops @ Willow Bend	Bank of America	3448279458
313	Westfield Oakridge	Bank of America	898008541731
332	Victoria Gardens	Bank of America	5502709930
333	Treasure Coast Square	Bank of America	5562561451
351	Baybrook Mall	Bank of America	5486853737
358	Corte Madera	Bank of America	898035605349
389	Tyrone Square	Bank of America	5488743308

Store/Cost Center	Description	Bank	Bank Account
390	Alderwood Mall	Bank of America	5498559016
393	Northeast Mall	Bank of America	898047835479
407	Pittsburgh Int'l Airport	Bank of America	898052287627
419	Miami Int'l South Terminal	Bank of America	898008560301
431	Logan Airport Terminal A	Bank of America	5562560371
437	Miami Airport	Bank of America	5562559023
453	Houston (G. Bush) Airport	Bank of America	5486852709
454	IAH George Bush Term A	Bank of America	229052591597
457	Detroit - McNamara Terminal	Bank of America	898042577389
466	Houston George Bush	Bank of America	898052366205
472	Carry On DTW	Bank of America	229052594989
727	Ala Moana Center	Bank of Hawaii	0008-218595/008-213933
387	Dadeland Mall	BB&T	1100001101569
320	Coconut Point	Capital Bank	722000409506
234	Lakeside Mall	Capital One	882108961
144	Walt Whitman Mall	Chase	937139400
184	Smith Haven Mall	Chase	9362388914
261	Palisades Center	Chase	9362264130
262	Mall of Louisiana	Chase	7900568643
388	Fashion Place Mall	Chase	645307034
443	Indianapolis Airport	Chase	849083308
291	Mohegan Sun	Citizens Bank	xxxxxx5951
24	North Park - Dallas	Comerica Bank	1880388812
800	Distribution Center	Commerce Bank	xxxxx6591
70	Palm Desert	First Bank	xxxxxx0108
408	Atlanta T-F	First Citizens Bank	9062697481
433	Atlanta - Concourse B	First Citizens Bank	9062697123
435	Hartsfield Atlanta T	First Citizens Bank	9062684138
444	Charlotte Terminal B	First Citizens Bank	7411228728
338	Branson Landing	First Community Bank of the Ozarks	60631601
160	West Town Mall	First Tennessee	4451236
65	Houston Galleria	IBC Bank	6000810024
214	West County	Midland States Bank	2366200910
314	Scottsdale Fashion Square	NYCB Family of Banks	xxxxx2564
254	Danbury Fair	People's United Bank	6500021634
99	Riverside	PNC Bank	8004118555
166	Christiana Mall	PNC Bank	5795635597
167	Circle Center	PNC Bank	1138251173
364	Fayette Mall	PNC Bank	1131752928
432	Denver Intl Airport Con B	Public Service Credit Union	9200204522
386	Destin Commons	Regions Bank	105657547
404	Chicago T-5	State Bank of Texas	80938101
486	O'Hare Concourse C	State Bank of Texas	79121002
488	Chicago American	State Bank of Texas	79121004
169	Seminole Town Center	Sun Trust	390007024061
459	Orlando Int'l Airport	Sun Trust	1000023517120
87	Settlers Green	TD Bank	9240488670
98	Maine Mall	TD Bank	27282433
258	Rockaway Town Square	TD Bank	9246256542
327	Parkway Place	Trustmark	1810310662
185	Penn Square	UMB Bank	9811023942

Store/Cost Center	Description	Bank	Bank Account
330	Southdale	US Bank	153910345724
27	Paramus	Valley National Bank	5055012656
800	Wells Fargo Operating	Wells Fargo	4125521708
800	Wells Fargo Disbursement	Wells Fargo	9630000447
800	Wells Fargo Concentration	Wells Fargo	4125521690
800	Wells Fargo Payroll	Wells Fargo	4125521716
816	Wells Fargo Store Deposits	Wells Fargo	4100061886
10	King of Prussia	Wells Fargo	4941870560
16	Fair Oaks	Wells Fargo	4940623986
26	Beverly Center	Wells Fargo	4942290214
36	Crabtree	Wells Fargo	4945618700
58	Shops at La Cantera	Wells Fargo	4945713402
60	North County Fair	Wells Fargo	4944262120
72	Stoneridge	Wells Fargo	4945453801
80	Princeton	Wells Fargo	4063512099
94	Palm Beach Gardens	Wells Fargo	4945618551
97	Santa Anita	Wells Fargo	4123216251
110	Mall of America	Wells Fargo	4942290222
116	Tysons	Wells Fargo	4942290230
163	Roosevelt Field	Wells Fargo	4945618643
171	Arden Fair	Wells Fargo	4945685360
181	Park Meadows Mall	Wells Fargo	4942290248
182	Florida Mall	Wells Fargo	4945316693
187	Hanes Mall	Wells Fargo	4945618569
225	Dulles Town Center	Wells Fargo	4941566374
260	Fashion Valley	Wells Fargo	4944262351
376	Coastal Grand	Wells Fargo	4945618585
412	Salt Lake City Int'l Airport	Wells Fargo	4678389842
413	Houston SR-5	Wells Fargo	4120561436
417	San Diego T 2W	Wells Fargo	4940150287
421	McCarran Concourse C	Wells Fargo	4948918800
422	Sacramento Airport	Wells Fargo	4942110784
425	JFK Terminal 8	Wells Fargo	4940623978
426	Anchorage Airport	Wells Fargo	4944652668
427	Dallas Fort Worth Term A	Wells Fargo	4944262401
428	San Antonio Terminal 1	Wells Fargo	4944836410
441	Atlanta - Concourse C	Wells Fargo	4945618593
446	John Wayne Airport	Wells Fargo	4942182536
448	LAX T-1	Wells Fargo	4124097296
451	PDX Temporary Space	Wells Fargo	4944261874
452	Carry On SLC T-2	Wells Fargo	4945687184
456	San Francisco Int'l	Wells Fargo	4941079840
461	Atlanta, Terminal D	Wells Fargo	4132000670
464	Dulles (IAD)	Wells Fargo	4405691189
468	Houston-RMU-Hobby Airport	Wells Fargo	4940528227
485	Phil Int'l Airport	Wells Fargo	4940469430
495	Newark Terminal C3	Wells Fargo	4940629884
704	University Town Center	Wells Fargo	4941026106
909	BELLEVUE SQUARE MALL	Wells Fargo	4945685170
931	Garden State Plaza	Wells Fargo	4941986044