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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

In re:

DAVID'S BRIDAL, LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-\_\_\_\_ ( )

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING THE DEBTORS TO ASSUME AND PERFORM UNDER THE  
CONSULTING AGREEMENT RELATED TO THE SALE OF INVENTORY,  
(II) APPROVING PROCEDURES FOR THE SALE OF INVENTORY,  
(III) APPROVING MODIFICATIONS TO CERTAIN CUSTOMER PROGRAMS, AND  
(IV) GRANTING RELATED RELIEF**

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: David's Bridal, LLC (4563); DBI Midco, Inc. (7392); DBI Holdco II, Inc. (7512); DBI Investors, Inc. (3857); David's Bridal Canada, Inc. (N/A); and Blueprint Registry, LLC (2335). The location of debtor David's Bridal, LLC's principal place of business and the debtors' service address in these chapter 11 cases is 1001 Washington Street, Conshohocken, Pennsylvania 19428.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion (this “Motion”):<sup>2</sup>

**Preliminary Statement**

1. As set forth in the First Day Declaration, the Debtors filed these chapter 11 cases with the intent to conduct a going concern sale process for all or some of their assets, on an expedited basis, and simultaneously initiating “soft” sales in their retail stores to monetize their inventory. This dual path process is necessary to maintain optionality, conserve liquidity, and maximize the value of the Debtors’ assets. In the event that the Debtors are unable to find a buyer for their assets, the Debtors will not have sufficient liquidity to continue to operate in the ordinary course and will be forced to wind-down their operations and liquidate the inventory in all of their retail stores. By this Motion, the Debtors seek to establish procedures related to the sale of their inventory and, if necessary, store closing sales (collectively, the “Sale”) that are substantially similar to those procedures used by other retailers in similar circumstances. Importantly, to the extent the Debtors’ contemporaneous sale process results in a purchaser committing to acquire the Debtors’ business as a going concern, the Debtors will quickly pivot to cease sales at any stores needed to implement the transaction.

2. Notably, the Debtors propose to pursue Sales in Canada as well. David’s Bridal, LLC, as proposed foreign representative, will shortly commence an ancillary proceeding in Canada (the “Canadian Proceedings”) on behalf of the Debtors’ estates under Part IV of the Companies’

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<sup>2</sup> A detailed description of the Debtors, their business, and the facts and circumstances supporting these chapter 11 cases is set forth in the *Declaration of James Marcum, Chief Executive Officer of the Debtors, in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration.

Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”) in the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”) to request that the Canadian Court recognize these chapter 11 cases as “foreign main proceedings” under the applicable provisions of the CCAA in order to, among other things, protect the Debtors’ assets and operations in Canada and obtain a stay of proceedings with respect to landlords that may have remedies upon the Debtors’ filing and in respect of the proposed Sale. The Debtors will begin Sales with respect to stores in Canada after the Canadian Court recognizes the Interim Order (defined herein) and allows the Debtors to proceed with the Sales.

3. To effectuate the Sale, the Debtors intend to capitalize on their pre-petition relationship with Gordon Brothers Retail Partners, LLC (in respect of the Debtors’ retail stores located in the United States, the “U.S. Consultant”) and Gordon Brothers Canada ULC (in respect of the Debtors’ retail stores located in Canada, the “Canadian Consultant” and together with U.S. Consultant, “Gordon Brothers” or “Consultant”). Having been engaged pre-petition, Gordon Brothers has knowledge of the Debtors’ systems, protocols, and customers. Additionally, Gordon Brothers is facilitating the Sale on a fee structure substantially similar to the fee structure on which it is retained in other similar chapter 11 cases. These factors support the Debtors’ business judgment to retain Gordon Brothers.

4. The Debtors have designed Sale Procedures (defined below) that they believe will maximize value. The Sale Procedures reflect the industry standard and will ensure a value-maximizing sale process. The Debtors also seek certain relief to enact procedures to facilitate the Sale, including authority to make customary liquidation incentive payments pursuant to the Debtors’ budget and to modify certain customer programs as the Debtors deem appropriate in their business judgment and in consultation with their advisors. The relief requested herein is

substantially similar to relief obtained by other retail debtors conducting similar sales and is warranted under the circumstances to facilitate a value maximizing Sale process.

**Relief Requested**

5. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”):

- a. authorizing the Debtors to assume and perform under that certain *Store Closing Consulting Agreement* dated as of April 5, 2023, as amended on April 15, 2023 (the “Consulting Agreement”) by and among the Consultant, on the one hand, David’s Bridal, LLC (the “U.S. Merchant”) and David’s Bridal Canada, Inc. (the “Canadian Merchant,” and together with the U.S. Merchant, “Merchant”), a copy of which is attached as Exhibit 1 to the Interim Order);
- b. approving the procedures for effectuating the Sale (attached as Exhibit 2-A to the Interim Order, the “U.S. Sale Procedures” with respect to the stores located in the United States, and as Exhibit 2-B the “Canadian Sale Procedures” with respect to the stores located in Canada and collectively, the “Sale Procedures”), with any sales occurring thereunder to be free and clear of all liens, claims, encumbrances, and other interests (collectively, “Encumbrances”);
- c. approving modifications to certain customer programs, including the Debtors’ return policy and acceptance of gift cards;
- d. authorizing the sale or disposition of the Offered Assets (defined herein) free and clear of all Encumbrances;
- e. approving the abandonment of certain burdensome Offered Assets;
- f. approving incentive programs for the Debtors’ remaining store, distribution center, and corporate employees, as necessary, to manage orderly and efficient Sales, as is included in the Debtors’ budget (the “Sale Incentive Program”); and
- g. granting related relief.

6. In addition, the Debtors request that the Court schedule a final hearing within approximately twenty-one days of the commencement of these chapter 11 cases, or as soon thereafter as is convenient for the Court, to consider approval of this Motion on a final basis.

### **Jurisdiction and Venue**

7. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a final order 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.

8. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

9. The bases for the relief requested herein are sections 105, 363, 365 and 554 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 9013-1 and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

10. As set forth in the First Day Declaration, the Debtors are international bridal and special occasion retailers. The Debtors sell a broad assortment of bridal gowns, bridesmaid dresses, special occasion dresses and accessories. As of the date hereof, the Debtors and their non-debtor subsidiaries operate 294 stores across the United States and Canada and franchise 8 stores in Mexico. The Debtors are headquartered in Conshohocken, Pennsylvania and currently employ approximately 10,000 employees.

11. On the date hereof (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors filed a motion

requesting procedural consolidation and joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no official committees have been appointed or designated.

**I. The Sale.**

12. The Debtors plan to conduct the Sale in a manner that maximizes the value of their assets. Accordingly, the purpose of this Motion is to put a process in place so that the Debtors can conduct the Sale as expeditiously as possible under the circumstances. Although, the Consulting Agreement contemplates that the Sale will conclude approximately 17 weeks after it commences, the Debtors cannot provide parties in interest certainty with respect to the ultimate Sale end date. Indeed, as set forth in the First Day Declaration, if a viable going concern buyer emerges, the Debtors intend to pivot away from the Sale in order to effectuate a going concern sale.

13. As set forth above, on April 5, 2023, the Debtors entered into the Consulting Agreement. The Debtors had previously agreed in November of 2022 to retain Gordon Brothers in the event it became necessary to conduct a Sale. Specifically, as consideration for 1903P Loan Agent, LLC extending a first in, last out term loan to the Debtors in the amount of \$10.1 million, the Debtors agreed to retain Gordon Brothers for any “going-out-of-business”, “store closing”, auction or similar liquidation of the Debtors’ inventory in five percent (5%) or more of their retail stores. Notwithstanding the Debtors’ November 2022 agreement to retain Gordon Brothers, the terms of the Consulting Agreement were finalized after extensive arm’s-length negotiations to ensure that the terms thereof are market. The Debtors submit that the Consulting Agreement contains the most favorable terms available under the circumstances.

14. The Debtors believe in their business judgment that (a) the services of the Consultant are necessary (i) for a seamless and efficient large-scale inventory liquidation process, to the extent such process becomes necessary, and (ii) to maximize the value of the saleable

inventory (as further described in the Consulting Agreement, the “Merchandise”) located at the 279 stores in the U.S. listed on Exhibit A-1 to the Consulting Agreement and the 12 stores in Canada listed on Exhibit A-2 to the Consulting Agreement (the “Stores”), and the associated owned furniture, fixtures, and equipment (as further described in the Consulting Agreement, the “Offered FF&E” and, together with the Merchandise, the “Offered Assets”), and (b) the Consultant is qualified and capable of performing the required tasks in a value-maximizing manner. Accordingly, by this Motion, the Debtors seek to assume the Consulting Agreement.

15. A summary of the material terms of the Consulting Agreement is set forth below.<sup>3</sup>

TERM	CONSULTING AGREEMENT
<b>Services</b>	<p>Consultant shall, throughout the Sale Term:</p> <ul style="list-style-type: none"> <li>(i) Recommend appropriate strategies to effectively sell all of the goods located at the Stores during the Sale Term or thereafter delivered to the Stores (whether from Merchant’s existing orders or warehouse goods) by mutual agreement of the Parties and the Offered FF&amp;E, in accordance with a “special promotional event,” “sale on everything/everything on sale,” “everything must go,” “store closing,” (upon mutual agreement of the Parties, “going out of business”), and other mutually agreed upon themed sale;</li> <li>(ii) Recommend appropriate point-of-purchase, point-of-sale, or other internal and external advertising in connection therewith;</li> <li>(iii) Provide qualified supervision to oversee the conduct of the Sale;</li> <li>(iv) Maintain focused and constant communication with Store-level employees and managers to keep them abreast of strategy and timing and to properly effect Store-level communication by Merchant’s employees to customers and others about the Sale;</li> </ul>

<sup>3</sup> The following summary chart is for the convenience of the Court and parties. To the extent this summary conflicts with the Consulting Agreement, the Consulting Agreement shall govern. Capitalized terms used but not defined in the following summary shall have the meaning ascribed to them in the Consulting Agreement. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Consulting Agreement.

TERM	CONSULTING AGREEMENT
	<p>(v) Establish and monitor accounting functions for the Sale, including evaluation of Sale of Merchant's goods located at the Stores by category, Sale reporting, and expense monitoring;</p> <p>(vi) Recommend loss prevention strategies;</p> <p>(vii) Coordinate with Merchant so that the operation of the Stores is being properly maintained including ongoing customer service and housekeeping activities;</p> <p>(viii) Recommend appropriate staffing levels for the Stores and appropriate bonus and/or incentive programs (to be funded by Merchant) for Store employees;</p> <p>(ix) Assist Merchant to commence the Sale as a "special promotional event," "sale on everything/everything on sale," "everything must go," "store closing," (upon mutual agreement of the Parties, "going out of business"), and such other themed sale as may be approved (i) by Merchant with the prior consent of the applicable landlords for the Stores and any required permitting or (ii) (x) in the event Merchant becomes subject to any chapter 11 proceeding (a "<u>Bankruptcy Case</u>") before any United States Bankruptcy Court (the "<u>Bankruptcy Court</u>"), in respect to the U.S. Stores, by the Bankruptcy Court in any Approval Order and (y) in the event Merchant becomes subject to any order of the Ontario Superior Court of Justice (Commercial List) (the "<u>Canadian Court</u>") recognizing the Bankruptcy Case as a "foreign main proceedings" pursuant to section 49 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "<u>CCAA</u>") (such recognition proceedings under the CCAA, the "<u>CCAA Proceedings</u>"), in respect of the Canada Stores, by the Approval Order and the Canadian Court pursuant to an order recognizing and giving effect to the Approval Order in Canada;</p>



TERM	CONSULTING AGREEMENT
	<p>(x) Advise Merchant with respect to the legal requirements of affecting the Sale as a “special promotional event,” “sale on everything/everything on sale,” “everything must go,” “store closing,” (upon mutual agreement of the Parties, “going out of business”) or other mutually agreed upon theme in compliance with applicable state and local “going out of business” laws. In connection with such obligation, Consultant will advise Merchant of the applicable waiting period under such permitting requirements, and/or prepare (in Merchant’s name and for Merchant’s signature) all permitting paperwork as may be necessary under such provisions, deliver all such paperwork to Merchant, and file, on behalf of Merchant, all such paperwork where necessary, and/or advise where permitting paperwork and/or waiting periods do not apply; and</p> <p>(xi) At Merchant’s request, Consultant may assist with the sale of goods through Merchant’s e-commerce site(s), in which case, (i) the sale of such goods shall be considered part of the “Sale” for purposes of the Consulting Agreement and (ii) the goods sold through the e-commerce site(s) shall constitute “Merchandise” for purposes of the Consulting Agreement.</p>
<b>Sale Term; Vacating Stores</b>	<p>(A) The “<u>Sale Term</u>” commenced on April 6, 2023 and shall end on or before July 31, 2023; <u>provided</u>, that the Parties may mutually agree in writing to amend the Sale Term with respect to any one or more Stores. The Sale Term shall include an initial “soft sale” period (the “<u>Soft Sale Period</u>”), which Consultant shall transition to a typical “store closing” or “going out of business,” subject to the consent of Merchant (not to be unreasonably withheld).</p> <p>(B) Upon the conclusion of the Sale Term, Consultant shall leave the Stores in broom clean condition, subject to Consultant’s right pursuant to Section 6 of the Consulting Agreement to abandon in a neat and orderly manner all unsold Offered FF&amp;E and all Retained FF&amp;E.</p>
<b>Expenses</b>	<p>(A) Merchant shall be responsible for all expenses incident to the conduct of the Sale and the operation of the Stores or Merchant’s e-commerce site(s) during the Sale Term, including without limitation all Consultant Controlled Expenses and all other Store-level and corporate expenses associated with the Sale.</p> <p>(B) Consultant will advance funds for certain expenses associated with the Sale (“<u>Consultant Controlled Expenses</u>”). Merchant shall reimburse Consultant for Consultant Controlled Expenses incurred by Consultant in connection with each weekly reconciliation</p>

TERM	CONSULTING AGREEMENT
	<p>contemplated by Section 5(B) of the Consulting Agreement, subject to the budgets attached to the Consulting Agreement as Exhibit B-1 (the “<u>U.S. Budget</u>”) and Exhibit B-2 (the “<u>Canada Budget</u>” and together with the U.S. Budget (the “<u>Budget</u>”). The parties may from time to time, including through email correspondence, mutually agree in writing to amend the Budget based upon circumstances of the Sale. All Consultant Controlled Expenses, to the extent not previously reimbursed during the Sale Term, shall be reimbursed in connection with the Final Reconciliation pursuant to Section 5(B) of the Consulting Agreement. In addition to, and not as part of, the Consultant Controlled Expenses, Merchant shall reimburse Consultant for its reasonable and documented legal fees and expenses incurred in connection with a Bankruptcy Case and CCAA Proceedings and the negotiation of any “side letters” with landlords of the Stores.</p>
<b>Consultant Compensation</b>	<p>(A) Merchandise Fee. In consideration of Consultant’s services hereunder, Merchant shall pay Consultant a fee equal to 2.0% of the Gross Proceeds of Merchandise sold at the Stores during the Sale Term (the “<u>Base Fee</u>”).<sup>4</sup> In addition to the Base Fee, Merchant shall pay Consultant from Gross Proceeds an additional fee based upon the applicable Gross Recovery Percentage set forth below (calculated back to the first dollar) (the “<u>Incentive Fee</u>” and together with the Base fee, the “<u>Merchandise Fee</u>”):</p> <ul style="list-style-type: none"> <li>(i) For Gross Recovery Percentage between 145% and 150%, an Additional Incentive Fee of 0.50% of Gross Proceeds.</li> <li>(ii) For Gross Recovery Percentage between 150.01% and 155%, an Additional Incentive Fee of 0.75% of Gross Proceeds.</li> <li>(iii) For Gross Recovery Percentage above 155%, an Additional Incentive Fee of 1.00% of Gross Proceeds.</li> </ul> <p>(B) Gross Rings. For purposes of calculating Gross Proceeds and the Merchandise Fee, the Parties shall use the “Gross Rings” method, wherein Consultant and Merchant shall jointly keep (i) a strict count of gross register receipts less applicable sales taxes, and (ii) cash reports of sales within each Store. Register receipts shall show for each item sold the Retail Price (as reflected on Merchant’s books and records) for such item, and the markdown or other discount</p>

<sup>4</sup> The Base Fee is consistent with the Debtors’ November 2022 agreement to retain Gordon Brothers to the extent a Sale became necessary.

TERM	CONSULTING AGREEMENT
	<p>granted in connection with such sale. All such records and reports shall be made available to Consultant and Merchant during regular business hours upon reasonable notice.</p> <p>(C) Weekly Payments. On a weekly basis in connection with the weekly reconciliations contemplated by Section 5(B) of the Consulting Agreement, Merchant shall pay Consultant (i) an amount equal to the Merchandise Fee payable on account of the prior week's Sale as an advance towards the total Merchandise Fee; (ii) any FF&amp;E Commission earned during the prior week; and (iii) all proceeds from Additional Consultant Goods. The parties shall determine the definitive Merchandise Fee, FF&amp;E Commission and Additional Consultant Goods Fee in connection with the Final Reconciliation. Immediately thereafter (and as part of the Final Reconciliation), Merchant or Consultant, as the case may be, shall pay any additional amount owed on account of such fees.</p>
<p><b>Conduct of Sale and Other Matters</b></p>	<p>(A) Merchant shall have control over the personnel in the Stores and shall handle the cash, debit, and charge card payments for all Merchandise in accordance with Merchant's normal cash management procedures, subject to Consultant's right to audit any such items in the event of a good faith dispute as to the amount thereof. Merchant (and not Consultant) shall be responsible for ensuring that the Sale, and the operation of the Stores is conducted in compliance with all applicable laws and regulations, and in compliance with all applicable lease provisions with respect to the Stores.</p> <p>(B) The Parties will meet on each Wednesday during the Sale Term to review any Sale matters reasonably requested by either party and, in connection with such weekly meetings, all amounts payable (under Section 4(D) of the Consulting Agreement) or reimbursable (under Section 3(B) of the Consulting Agreement) to Consultant for the prior week (or the partial week in the case of the first and last weeks) shall be reconciled and paid immediately thereafter. No later than twenty (20) days following the end of the Sale, the Parties shall complete a final reconciliation, allocation and settlement of all amounts contemplated by the Consulting Agreement (the "<u>Final Reconciliation</u>").</p> <p>(C) From time to time upon request, each party shall prepare and deliver to the other party such other reports as either party may reasonably request. Each party to the Consulting Agreement shall, at all times during the Sale Term and during the one-year period thereafter, provide the other with access to all information, books, and records</p>

TERM	CONSULTING AGREEMENT
	<p>relating to the Sale and to the Consulting Agreement. All records and reports shall be made available to Consultant and Merchant during regular business hours upon reasonable notice.</p> <p>(D) Merchant shall be solely responsible for computing, collecting, holding, reporting, and paying all sales taxes associated with the sale of Merchandise during the Sale Term, and Consultant shall have absolutely no responsibilities or liabilities therefor.</p> <p>(E) Although Consultant shall undertake its obligations under the Consulting Agreement in a manner designed to achieve the desired results of the Sale and to maximize the recovery to the Merchant, Merchant expressly acknowledges that Consultant is not guaranteeing the results of the Sale.</p> <p>(F) Merchant acknowledges that (i) the Parties are not conducting an inventory of Merchant's goods located at the Stores; (ii) Consultant has made no independent assessment of the beginning levels of such goods; and (iii) Consultant shall not bear any liability for shrink or other loss to Merchant's goods located at the Stores (including without limitation Merchandise).</p> <p>(G) All Sale of Merchandise during the Sale Term shall be made in the name, and on behalf, of Merchant.</p> <p>(H) All Sale of Merchandise during the Sale Term shall be "final sale" and "as is," and all advertisements and Sale receipts will reflect the same; provided, that during the Soft Sale Period, the foregoing shall only apply to certain limited categories (e.g., clearance items).</p> <p>(I) Merchant hereby permits the Sale to be, and shall ensure that the Sale otherwise may be, advertised as a "special promotional event," "sale on everything/everything on sale," "everything must go," "store closing," (upon mutual agreement of the Parties, "going out of business"), or such other mutually agreed upon themed sale throughout the term of the Sale.</p> <p>(J) Consultant will make best efforts to assist Merchant in fulfilling orders from customers who have previously provided deposits and ensuring timely delivery of alterations and other services related to such Merchandise.</p> <p>(K) Upon the execution of, and as a condition to Consultant's obligations under, the Consulting Agreement, U.S. Merchant funded to Consultant \$1,000,000 (the "<u>Special Purpose Payment</u>") which shall be held by Consultant until the Final Reconciliation</p>

TERM	CONSULTING AGREEMENT
	<p>(and U.S. Merchant shall not apply the Special Purpose Payment to, or otherwise offset any portion of, the Special Purpose Payment against, any weekly reimbursement, payment of fees, or other amount owing to Consultant under the Consulting Agreement prior to the Final Reconciliation). To the extent Consultant incurs any fees or expenses (including Consultant Controlled Expenses) before the Sale Term, Merchant shall reimburse Consultant for such fees or expenses on demand and ensure that the Special Purpose Payment is replenished. Without limiting any of Consultant's other rights, Consultant may apply the Special Purpose Payment to any unpaid obligation owing by Merchant to Consultant under the Consulting Agreement. Any portion of the Special Purpose Payment not used to pay amounts explicitly contemplated by the Consulting Agreement shall be returned to U.S. Merchant within three days following the Final Reconciliation.</p>
<b>FF&amp;E</b>	<p>(A) Promptly following the commencement of the Sale Term, Merchant shall inform Consultant of those items of owned furnishings, trade fixtures, equipment, machinery, office supplies, conveyer systems, racking, rolling stock, signage, any vehicles or other modes of transportation, and other personal property (collectively, "<u>FF&amp;E</u>") located at the Stores which are not to be sold (because Merchant does not have the right to sell such items, because Merchant wishes to retain such items for itself, or otherwise) (collectively, "<u>Retained FF&amp;E</u>").</p> <p>(B) With respect to all FF&amp;E located at the Stores as of the commencement of the Sale Term which is not Retained FF&amp;E and any FF&amp;E identified by Merchant located at Merchant's non-Store locations listed on Exhibit A-1 of the Consulting Agreement (collectively, the "<u>Offered FF&amp;E</u>"), Consultant shall have the right to sell such Offered FF&amp;E during the Sale Term on a commission basis equal to 15% of the gross sale of Offered FF&amp;E, net only of sales tax.</p> <p>(C) Merchant shall reimburse Consultant for its reasonable sale expenses associated with the sale of the Offered FF&amp;E, not to exceed the amount shown on an FF&amp;E expense budget (which shall be in addition to the Consultant Controlled Expenses budget), to be mutually agreed to by the Parties promptly after Merchant identifies the Offered FF&amp;E and Retained FF&amp;E.</p> <p>(D) Consultant shall have the right to abandon any unsold Offered FF&amp;E (and all Retained FF&amp;E) at the Stores (or non-Store</p>

TERM	CONSULTING AGREEMENT
	locations, as applicable) at the conclusion of the Sale Term without Consultant having any liability to Merchant or any third party.
<b>Additional Consultant Goods</b>	<p>(A) In connection with the Sale, Consultant shall have the right, at Consultant's sole cost and expense, to supplement the Merchandise in the Sale with additional goods procured by Consultant which are of like kind, and no lesser quality, to the Merchandise in the Sale solely at the U.S. Stores ("<u>Additional Consultant Goods</u>"). The Additional Consultant Goods shall be purchased by Consultant and delivered to the U.S. Stores at Consultant's sole expense (including labor, freight and insurance relative to shipping such Additional Consultant Goods to the U.S. Stores). Sale of Additional Consultant Goods shall be run through U.S. Merchant's cash register systems; provided, however, that Consultant shall mark the Additional Consultant Goods using either a "dummy" SKU or department number, or in such other manner so as to distinguish the sale of Additional Consultant Goods from the sale of Merchandise. Consultant and U.S. Merchant shall also cooperate so as to ensure that the Additional Consultant Goods are marked in such a way that a reasonable consumer could identify the Additional Consultant Goods as non-U.S. Merchant goods. Additionally, Consultant shall provide signage in the U.S. Stores notifying customers that the Additional Consultant Goods have been included in the Sale. Absent U.S. Merchant's written consent, and Consultant's agreement to reimburse U.S. Merchant for any associated expenses, Consultant shall not use U.S. Merchant's distribution centers for any Additional Consultant Goods.</p> <p>(B) Consultant shall pay U.S. Merchant an amount equal to 7.5% of the gross proceeds (excluding sales taxes) from the sale of the Additional Consultant Goods (the "<u>Additional Consultant Goods Fee</u>"), and Consultant shall retain all remaining amounts from the sale of the Additional Consultant Goods.</p> <p>(C) Consultant and U.S. Merchant intend that the transactions relating to the Additional Consultant Goods are, and shall be construed as, a true consignment from Consultant to U.S. Merchant in all respects and not a consignment for security purposes. Subject solely to Consultant's obligations to pay to U.S. Merchant the Additional Consultant Goods Fee, at all times and for all purposes the Additional Consultant Goods and their proceeds shall be the exclusive property of Consultant, and no other person or entity shall have any claim against any of the Additional Consultant Goods or their proceeds.</p>

TERM	CONSULTING AGREEMENT
	<p>The Additional Consultant Goods shall at all times remain subject to the exclusive control of Consultant.</p> <p>(D) U.S. Merchant shall, at Consultant's sole cost and expense, insure the Additional Consultant Goods and, if required, promptly file any proofs of loss with regard to same with U.S. Merchant's insurers. Consultant shall be responsible for payment of any deductible (but only in relation to the Additional Consultant Goods) under any such insurance in the event of any casualty affecting the Additional Consultant Goods.</p> <p>(E) U.S. Merchant acknowledges that the Additional Consultant Goods shall be consigned to U.S. Merchant as a true consignment under Article 9 of the Uniform Commercial Code (the "UCC"). Consultant is hereby granted a first-priority security interest in and lien upon (i) the Additional Consultant Goods and (ii) the Additional Consultant Goods proceeds, and Consultant is hereby authorized to file UCC financing statements and provide notifications to any prior secured parties.</p>
<b>Insurance; Risk of Loss</b>	<p>(A) During the Sale Term: (a) Merchant shall maintain (at its expense) insurance with respect to the Merchandise in amounts and on such terms and conditions as are consistent with Merchant's ordinary course operations, and (b) each of Merchant and Consultant shall maintain (at each party's respective expense) comprehensive liability insurance covering injuries to persons and property, in such amounts as are reasonable and consistent with its ordinary practices, for bodily injury, personal injury and/or property damage. Each party shall be added as an additional insured on all such insurance of the other party, all such insurance shall provide that it shall be non-cancelable and non-changeable except after 30 days' prior written notice to the other party, and each party shall provide the other with certificates of all such insurance prior to the commencement of the Sale.</p> <p>(B) Notwithstanding any other provision of the Consulting Agreement, Merchant and Consultant agree that Consultant shall not be deemed to be in possession or control of the Stores, or the Merchandise or other assets located therein or associated therewith, or of Merchant's employees located at the Stores; and Consultant does not assume any of Merchant's obligations or liabilities with respect thereto.</p> <p>(C) Notwithstanding any other provision of the Consulting Agreement, Merchant and Consultant agree that Merchant shall bear all responsibility for liability claims (product liability and otherwise)</p>

TERM	CONSULTING AGREEMENT
	of customers, employees and other persons arising from events occurring at the Stores, and Merchandise sold in the Stores, before, during and after the Sale Term.
<b>Indemnification</b>	<p>(A) Consultant shall indemnify and hold Merchant and its affiliates, and their respective officers, directors, employees, consultants, and independent contractors (collectively, “<u>Merchant Indemnified Parties</u>”) harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys’ fees and expenses, directly or indirectly asserted against, resulting from, or related to:</p> <ul style="list-style-type: none"> <li>(i) Consultant’s material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection with the Consulting Agreement;</li> <li>(ii) any harassment or any other unlawful, tortious, or otherwise actionable treatment of any employees or agents of Merchant by Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives (including without limitation any supervisors);</li> <li>(iii) any claims by any party engaged by Consultant as an employee or independent contractor (including without limitation any non-Merchant employee supervisor) arising out of such employment or engagement; or</li> <li>(iv) the gross negligence, willful misconduct or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, Consultants, independent contractors or representatives.</li> </ul> <p>(B) Merchant shall indemnify and hold Consultant, its affiliates, Auctioneer, and their respective officers, directors, employees, consultants, and independent contractors (collectively, “<u>Consultant Indemnified Parties</u>”) harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys’ fees and expenses, directly or indirectly asserted against, resulting from, or related to:</p> <ul style="list-style-type: none"> <li>(i) Merchant’s material breach of or failure to comply with any of its agreements, covenants, representations, or warranties contained in the Consulting Agreement or in any written</li> </ul>



TERM	CONSULTING AGREEMENT
	<p>agreement entered into in connection with the Consulting Agreement;</p> <p>(ii) any claims by any party engaged by Merchant as an employee or independent contractor arising out of such engagement;</p> <p>(iii) any third-party claims relating to any Merchandise, Offered FF&amp;E, or the Stores;</p> <p>(iv) any claim by any owner or landlord of the Stores with respect the Sale and Auction being conducted at such premises;</p> <p>(v) the gross negligence, willful misconduct, or unlawful acts of Merchant, its affiliates, or their respective officers, directors, employees, agents, independent contractors, or representatives.</p>

## II. The Sale Procedures.

16. The Consultant will effectuate the Sale in accordance with the Sale Procedures. The Debtors have determined, in the sound exercise of their business judgment and in consultation with their advisors, that the Sale Procedures provide the best and most efficient means of selling the Offered Assets to maximize the value to their estates. The U.S. Sale Procedures are substantially similar to sale procedures approved in this Court and other courts in this District. The Canadian Sale Procedures are substantially similar to relief more customary in Canada, and are being approved by this Motion so that the Debtors can seek recognition of the Interim Order and the Final Order in the Canadian Proceeding.

17. Certain jurisdictions in which the Debtors operate stores have or may have licensing or other requirements governing the conduct of store closing, liquidation, or other inventory clearance sales, including (but not limited to) state and local laws, statutes, rules, regulations, and ordinances (the “Applicable Sale Laws”). The Applicable Sale Laws may establish licensing, permitting, or bonding requirements, waiting periods, time limits, and bulk sale restrictions and

augmentation limitations that would otherwise apply to the Sale. Such requirements hamper the Debtors' ability to maximize value in selling their inventory. The Debtors intend to conduct the Sale in accordance with the Sale Procedures without complying with the Applicable Sale Laws (except as set forth in the Sale Procedures).

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

19. The Debtors also request that no entity, including, without limitation, utilities, landlords, creditors, and all persons acting for or on their behalf shall be permitted to interfere with or otherwise impede the conduct of the Sale, or institute any action against the Debtors in any court (other than in this Court or the Canadian Court) or before any administrative body that in any way directly or indirectly interferes with, obstructs, or otherwise impedes the conduct of the Sale or the advertising and promotion (including through the posting of signs) of the Sale. An overview of the material terms of the Sale Procedures is set forth below.<sup>5</sup>

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<sup>5</sup> The following summary chart is for the convenience of the Court and parties. To the extent this summary conflicts with the Sale Procedures, the Sale Procedures for the applicable store shall govern. Capitalized terms used but not defined in the following summary shall have the meaning ascribed in the Consulting Agreement.

TERM	SALE PROCEDURES
	<p>(i) The Sale will be conducted during normal business hours or such hours as otherwise permitted by the applicable unexpired lease.</p> <p>(ii) In the US, the Sale will be conducted in accordance with applicable state and local “Blue Laws,” and thus, where such a law is applicable, no Sale will be conducted on Sunday unless the Debtors have been operating such stores on Sundays. In Canada, the Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations</p> <p>(iii) On “shopping center” property, neither the Debtors nor the Consultant shall distribute handbills, leaflets, or other written materials to customers outside of any stores’ premises, unless permitted by the applicable lease or if distribution is customary in the “shopping center” in which such store is located; <i>provided</i> that the Debtors and the Consultant may solicit customers in the stores themselves. On “shopping center” property, neither the Debtors nor the Consultant shall use any flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable lease or agreed in writing by the landlord.</p> <p>(iv) The Debtors and the Consultant shall have the right to use and sell the Offered FF&amp;E. The Debtors and the Consultant may advertise the sale of the Offered FF&amp;E in a manner consistent with the Sale Procedures. The purchasers of any Offered FF&amp;E sold during the Sale shall be permitted to remove the Offered FF&amp;E either through the back or alternative shipping areas at any time, or through other areas after Store business hours; <i>provided</i>, however, that the foregoing shall not apply to <i>de minimis</i> Offered FF&amp;E sales made whereby the item can be carried out of a Store in a shopping bag.</p> <p>(v) After the Soft Sale Period, the Debtors and the Consultant may, but are not required to, advertise the Sale as “store closing,” “sale on everything/everything on sale,” “everything must go,” (upon mutual agreement of the Parties, “going out of business”) or similarly themed Sale. In the US, the Debtors and the Consultant may also have a “countdown to closing” sign prominently displayed in a manner consistent with the Sale Procedures.</p> <p>(vi) The Debtors and the Consultant shall be permitted to utilize sign walkers, displays, hanging signs, and interior banners in connection with the Sale; <i>provided</i> that such sign walkers, displays, hanging signs, and interior banners shall be professionally produced and</p>

TERM	SALE PROCEDURES
	<p>hung in a professional manner. Neither the Debtors nor the Consultant shall use neon or day-glo on its sign walkers, displays, hanging signs, or interior banners if prohibited by the applicable lease or applicable law. Furthermore, with respect to enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in the Sale Procedures. In addition, the Debtors and the Consultant shall be permitted to utilize exterior banners at (a) non-enclosed mall stores and (b) enclosed mall stores to the extent the entrance to the applicable Store does not require entry into the enclosed mall common area; <i>provided</i>, however, that such banners shall be located or hung so as to make clear that the Store Closing is being conducted only at the affected Store and shall not be wider than the storefront of the Store. In addition, the Debtors shall be permitted to utilize sign walkers in a safe and professional manner. Nothing contained in the Sale Procedures shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable lease agreement.</p> <p>(vii) Neither the Debtors nor the Consultant shall make any alterations to the storefront, roof, or exterior walls of any stores or shopping centers, or to interior or exterior store lighting, except as authorized by the applicable lease. The hanging of in-Store signage shall not constitute an alteration to a Store.</p> <p>(viii) Affected landlords will have the ability to negotiate with the Debtors, or at the Debtors' direction, the Consultant, modifications to the Sale Procedures. The Debtors and the landlord of any Store are authorized to enter into agreements ("<u>Side Letters</u>") without further order of the Court, <i>provided</i> that Side Letters do not have a material adverse effect on the Debtors or their estates.</p> <p>(ix) To the extent relevant, and as set forth in more detail in the Consulting Agreement, conspicuous signs will be posted in each of the affected stores to the effect that all Sale are "final."</p> <p>(x) The Debtors and the Consultant will keep store premises and surrounding areas clear and orderly, consistent with past practices.</p> <p>(xi) An unexpired nonresidential real property lease will not be deemed rejected by reason of a Store Closing or the adoption of the Sale Procedures.</p> <p>(xii) The rights of landlords against the Debtors for any damages to a store shall be reserved in accordance with the provisions of the</p>

TERM	SALE PROCEDURES
	applicable lease.

### III. Customer Programs.

20. The Sale requires that the Debtors make certain modifications to their customer programs to reflect new realities. Accordingly, the Debtors intend to implement the following changes, which will be clearly posted for customers to see at cash registers and on the Debtors' website for the duration of the Sale.<sup>6</sup>

- **Returns.** For the first 30 days after the Petition Date, the Debtors shall accept returns of merchandise sold by the Debtors in the ordinary course of business so long as the return is otherwise in compliance with the Debtors' return policies in effect as of the date such item was purchased and the customer is not repurchasing the same item so as to take advantage of the sale price being offered in connection with the Sale. Returns of items sold on a "final" basis shall not be accepted.
- **Gift Cards.** For the first 30 days after the Petition Date, the Stores will continue to accept the Debtors' validly-issued gift certificates and gift cards, in each case only where issued prior to the Petition Date, for in-person purchases only in the ordinary course of business. After the expiration of the 30 days period, the Debtors may no longer accept validly-issued gift certificates and gift cards. Once the Debtors decide to no longer accept validly-issued gift certificates and gift cards, such gift cards and gift certificates will be deemed to have no remaining value. Notwithstanding any policy or law to the contrary, the gift cards are not redeemable for cash at any time. The Debtors will post notice of the changes to gift cards, gift certificates and customer programs on their website and at cash registers in their stores.
- **Latent Defects.** The Debtors shall comply with all state and federal laws relating to implied warranties for latent defects, and such laws are not superseded by the Sale or the use of the terms "as is" or "final sale," as set forth in the Interim and Final Orders.

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<sup>6</sup> In the event that the Debtors locate a buyer for a going concern transaction, however, the Debtors reserve the right to continue their customer programs for a longer period of time.

**IV. Abandonment of Burdensome Property.**

21. In effectuating the Sale, the Debtors intend to liquidate all Offered Assets, as set forth herein. The Debtors may determine, however, in their business judgment, that certain personal property, Merchandise, and Offered FF&E (the “Burdensome Property”) will be difficult or expensive to remove, ship, or store, such that the economic benefits of removing, selling, shipping, or storing some or all of the Burdensome Property will be exceeded by the attendant costs thereof. To the extent the Burdensome Property exceeds the scope of the property abandoned pursuant to the Sale Procedures—such as Burdensome Property held by shippers or other agents of the Debtors—the Debtors request the Court’s approval to abandon any Burdensome Property for the benefit of their estates and creditors.

**V. The Employee Incentive Program.**

22. The Debtors seek approval of non-insider incentive programs for the Remaining Employees (defined herein) that are needed to ensure an orderly and efficient Sale process. The Debtors will notify all of their employees of the Sales and (to the extent required by applicable law) have sent their employees conditional WARN notices providing such employees notice that their employment may be terminated on or around July 30, 2023. The Debtors will need many employees in their stores and headquarters to complete the Sales effectively and efficiently (the “Remaining Employees”).<sup>7</sup> Remaining Employees will assist the Consultant with Sales (and any transition period, as needed), and complete financial and legal reporting requirements.

23. The Debtors and their prepetition lenders recognize that absent a financial incentive to meet certain goals, the Remaining Employees may not be sufficiently motivated to assist in the

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<sup>7</sup> To the extent any employee is needed for longer than the requisite WARN notice period, the Debtors will supplement the WARN notice as required by applicable law.

Sales. Accordingly, the Debtors' budget includes approximately \$3.5 million for reasonable incentive payments to certain store, distribution center, and corporate employees to help facilitate the Sale process.

### **Basis for Relief Requested**

#### **I. A Business Justification Exists for the Sale Under Section 363(b) of the Bankruptcy Code.**

24. Section 363(b)(1) of the Bankruptcy Code, which governs asset sales outside of a debtor's ordinary course of business, provides that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). When selling assets outside of the ordinary course of business, a debtor must articulate a valid business justification to obtain court approval. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citation omitted); *In re Abbotts Dairies, Inc.*, 788 F.2d 143, 147-48 (3d Cir. 1986) (implicitly adopting the "sound business judgment" test of *Lionel Corp.* and requiring good faith); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070-71 (2d Cir. 1983); *In re Delaware & Hudson Ry, Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (concluding that the Third Circuit adopted the "sound business judgment" test in the *Abbotts Dairies* decision). When a debtor demonstrates a valid business justification for a decision, a strong presumption arises "that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990) (holding that the Delaware business judgment rule has "vitality by analogy" in Chapter 11, especially where the debtor is a Delaware corporation (quotations omitted)).

25. Store closing or liquidation sales are a routine feature in retail chapter 11 cases. *See In re Ames Dept. Stores*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (noting that liquidation sales are an important part of “overriding federal policy requiring [a] Debtor to maximize estate assets”). As such, bankruptcy courts in this jurisdiction and elsewhere have approved similar store closing sales. *See In re Christopher & Banks Corporation, et al.*, No. 21-10269 (ABA) (Bankr. D.N.J. Feb. 8, 2021) (authorizing procedures for store closing Sale); *In re RTW Retailwinds, Inc., et al.*, No. 20-18445 (JKS) (Bankr. D.N.J. Aug. 8, 2020) (same); *In re Modell’s Sporting Goods, Inc., et al.*, No. 20-14179 (VFP) (same) (Bankr. D.N.J. June 23, 2020); *In re SLT Holdco, Inc., et al.*, No. 20-18368 (MBK) (Bankr. D.N.J. July 29, 2020) (same); *In re Avenue Stores, LLC*, No. 19-11842 (LSS) (Bankr. D. Del. Sept. 13, 2019); *In re Charming Charlie Holdings, Inc.*, No. 19- 11534 (CSS) (Bankr. D. Del. August 14, 2019); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019).<sup>8</sup>

26. The Sale is supported by sound business justification and should be approved by the Court. While the Debtors intend to pursue a marketing process to sell all or part of their assets on a going-concern basis, the Debtors require the flexibility to close certain unprofitable or otherwise burdensome Stores during the pendency of their bankruptcy cases and, ultimately a wind-down of their operations if a going concern buyer does not materialize. The Debtors believe that this dual-path process will best maximize value for all stakeholders. Under these circumstances, executing the Sale is a sound exercise of the Debtors’ business judgment.

27. Delay in consummating the Sale would diminish the recovery tied to monetization of the store closures. First, the Sale process drives revenue to the Debtors’ estates, offsetting fixed

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<sup>8</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors’ proposed counsel.



costs such as rent obligations. Second and relatedly, the swift and orderly commencement of Sale will allow the Debtors to timely reject the applicable store leases, and therefore avoid the accrual of unnecessary administrative expenses on account of rent payments. The delay of the Sale may cause the Debtors to incur additional postpetition rent at many of these stores, to the detriment of general unsecured creditors.

**II. A Business Justification Exists for the Debtors to Assume and Perform Under the Consultant Agreement Under Sections 363(b) and 365 of the Bankruptcy Code.**

28. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or [unexpired] lease of the debtor.” 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor’s decision to assume or reject an executory contract or unexpired lease is whether the debtor’s reasonable business judgment supports assumption or rejection. *See, e.g., In re HQ Glob. Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that debtor’s decision to assume or reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was a product of bad faith, whim, or caprice); *see also In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (finding that assumption or rejection of lease “will be a matter of business judgment by the bankruptcy court”).

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

30. Assumption and performance under the Consulting Agreement represents a sound exercise of the Debtors' business judgment. In consultation with their advisors, the Debtors determined that the Offered Assets should be monetized for the benefit of the Debtors' estates and creditors. Further, after arm's-length negotiations, the Consulting Agreement contains the most favorable terms available under the circumstances.

31. The Consultant has extensive expertise in conducting similar sales and can oversee, and assist in the management and implementation of, the Sale in an efficient and cost-effective manner. Entry into and performance under the Consulting Agreement will enable the Debtors to utilize the Consultant's skills and resources to efficiently conduct the Sale for the benefit of all stakeholders. If the Debtors are not authorized to assume and perform under the Consulting Agreement on an interim basis, their stakeholders could be substantially harmed. For example, the Debtors' estates would lose the benefit of the momentum and preparation that has already been started by the Consultant in preparation for the Sale, including the "soft" sales process that was commenced before the Petition Date. Finally, given the number of stores and the Consultant's knowledge of Debtors' business operations and pre-petition preparation for the Sale, the Debtors believe the Consultant is best suited to conduct the process efficiently and effectively.

**III. Adoption of the Sale Procedures Is Warranted Pursuant to Section 105(a) and 363(b) of the Bankruptcy Code.**

32. The Court may authorize the Debtors to consummate the Sale pursuant to sections 105(a) and 363(b) of the Bankruptcy Code. Section 105(a) codifies the Court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. It is widely acknowledged that section 105 confers broad powers on bankruptcy courts:

Section 105 of the Bankruptcy Code is an omnibus provision phrased in such general terms as to be the basis for a broad exercise

of power in the administration of a bankruptcy case. The basic purpose of section 105 is to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.

2 Collier on Bankruptcy P 105.01 (16th ed. 2023) (citing *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 760 (5th Cir. 1995); *In re L&S Indus., Inc.*, 989 F.2d 929, 932 (7th Cir. 1993); *In re James*, 20 B.R. 145, 150 (Bankr. E.D. Mich. 1982); *In re Howell*, 4 B.R. 102, 104 (Bankr. M.D. Tenn. 1980); *In re Buren*, 4 B.R. 109, 110 (Bankr. M.D. Tenn. 1980)). The Third Circuit has recognized that section 105(a) of the Bankruptcy Code confers bankruptcy courts with broad authority to enter orders to carry out other provisions of the Bankruptcy Code, provided the bankruptcy court does not authorize an action prohibited elsewhere in the Bankruptcy Code. *In re Nixon*, 404 F. App'x 575, 578 (3d Cir. 2010). The major premise of chapter 11 is the continued and uninterrupted operation of the debtor in possession and the maximization of the value of the estate. Thus, the relief requested herein furthers the provisions of the Bankruptcy Code. *See Gillman v. Cont'l Airlines (In re Cont'l Airlines)*, 203 F.3d 203, 211 (3d Cir. 2000) (stating that section 105(a) supplements specifically enumerated bankruptcy court powers).

33. More specifically, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors' estates and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. The Debtors and their advisors believe that the Sale Procedures represent the most efficient and appropriate means of maximizing the value of the Offered Assets, while balancing the potentially competing concerns of landlords and other parties in interest.

34. Courts in this jurisdiction have recently approved Sale Procedures in chapter 11 cases on an interim basis, and numerous courts have granted retail debtors interim authority to implement such procedures at the outset of the chapter 11 process. *See, e.g., In re Christopher & Banks Corporation, et al.*, No. 21-10269 (ABA) (Bankr. D.N.J. Feb. 8, 2021) (authorizing

procedures for store closing Sale); *In re RTW Retailwinds, Inc., et al.*, No. 20-18445 (JKS) (Bankr. D.N.J. Aug. 8, 2020) (same); *In re Modell's Sporting Goods, Inc., et al.*, No. 20-14179 (VFP) (same) (Bankr. D.N.J. June 23, 2020); *In re SLT Holdco, Inc., et al.*, No. 20-18368 (MBK) (Bankr. D.N.J. July 29, 2020) (same); *In re Avenue Stores, LLC*, No. 19-11842 (LSS) (Bankr. D. Del. Sept. 13, 2019); *In re Charming Charlie Holdings, Inc.*, No. 19- 11534 (CSS) (Bankr. D. Del. August 14, 2019); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019).<sup>9</sup> The Sale Procedures are substantially similar to the Sale Procedures approved in the foregoing cases.

**IV. The Sale of Offered Assets Free and Clear of all Encumbrances Is Warranted Under Section 363(f) of the Bankruptcy Code.**

35. The Debtors request approval to sell the Offered Assets on a final “as is” basis, free and clear of any and all Encumbrances in accordance with section 363(f) of the Bankruptcy Code. A debtor in possession may sell property under sections 363(b) and 363(f) “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied: (a) applicable non-bankruptcy law permits the sale of such property free and clear of such interest; (b) such entity consents; (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (d) such interest is in bona fide dispute; or (e) such entity could be compelled, in a legal or equitable proceeding, to a money satisfaction of such interest. *See* 11 U.S.C. § 363(f); *see also Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that since section 363(f) of the Bankruptcy Code is written in the disjunctive, the court may approve a sale free and clear if any one subsection is met). Moreover, the Third Circuit has indicated that a debtor

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<sup>9</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors’ proposed counsel.

possesses broad authority to sell assets free and clear of liens. *See In re TWA Inc.*, 322 F.3d 283, 289 (3d Cir. 2003).

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

37. The Debtors anticipate that, to the extent there are liens on the Offered Assets, the holders of all such liens will consent to the Sale because they provide the most effective, efficient, and time-sensitive approach to realizing proceeds for, among other things, the repayment of amounts due to such parties. The Debtors’ prepetition secured lenders and/or postpetition DIP lenders consent to the relief requested herein. Any and all liens on the Offered Assets sold under the Sale would attach to the remaining net proceeds of such Sale with the same force, effect, and priority as such liens currently have on these assets, subject to the rights and defenses, if any, of the Debtors and of any party-in-interest with respect thereto.

38. Moreover, all identified lienholders will receive notice of the Sale and will be given sufficient opportunity to object to the relief requested on a final basis, including the Prepetition Senior Superpriority Term Loan Agent (as defined in the DIP and Cash Collateral Order). Any such entity that does not object to the Sale should be deemed to have consented. *See Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) (“It is true that the Bankruptcy Code

limits the conditions under which an interest can be extinguished by a bankruptcy sale, but one of those conditions is the consent of the interest holder, and lack of objection (provided of course there is notice) counts as consent.”) (internal citations omitted).

39. Accordingly, the Debtors submit that the sale of the Offered Assets satisfies the statutory requirements of section 363(f) of the Bankruptcy Code and should, therefore, be free and clear of any Encumbrances.

**V. Waiver of Compliance with Laws Regarding Applicable Sale Is Warranted.**

40. As a necessary part of the Sale and Sale Procedures, the Debtors request the authority to conduct the Sale in accordance with the Sale Procedures and without complying with Applicable Sale Laws (except as set forth in the Sale Procedures). Although the Debtors intend to comply with state and local health and safety laws and consumer protection laws in conducting the Sale, many Applicable Sale Laws require special and cumbersome licenses, waiting periods, time limits, and other procedures for store closing, liquidation, or similar sales. These restrictions would impair the value realizable through the Sales.

41. To eliminate the time, delay, and expense associated with the administrative procedures necessary to comply with the Applicable Sale Laws, the Debtors propose the Sale Procedures as a way to streamline the administrative burdens on their estates while still adequately protecting the broad and varied interests of both landlords and applicable governmental agencies charged with enforcing any Applicable Sale Laws that may apply.

42. Creditors and the public interest are adequately protected by notice of this Motion and the ongoing jurisdiction and supervision of this Court because the Debtors are only seeking interim relief, and parties in interest will be able to raise any further issues at the final hearing. Moreover, 28 U.S.C. § 959, which requires debtors to comply with state and other laws in performance of their duties, does not apply to the Sale. *See, e.g., In re Borne Chemical Co.*, 54

B.R. 126, 135 (Bankr. D.N.J. 1984) (holding that 28 U.S.C. § 959(b) is only applicable when property is being managed or operated for the purpose of continuing operations). As such, the Debtors believe the Sale Procedures mitigate any concerns that their landlords, other creditors, or governmental agencies may raise with respect to the Sale, and therefore, the waiver of certain state and local laws and lease provisions is appropriate.

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

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

45. Under the circumstances of these cases, enforcing the strict requirements of the Applicable Sale Laws would undermine the fundamental purpose of section 363(b) of the

Bankruptcy Code by placing constraints on the Debtors' ability to maximize estate assets for the benefit of creditors. Accordingly, authorizing the Sale without the delays and burdens associated with obtaining various state and local licenses, observing state and local waiting periods or time limits, and/or satisfying any additional requirements with respect to advertising and similar items is necessary and appropriate. The requested waiver is narrowly tailored to facilitate the successful consummation of Sale. The Debtors do not seek a general waiver of all state and local requirements, but only those that apply specifically to retail liquidation sales. The Debtors will comply with applicable state and local public health and safety laws, and applicable tax, labor, employment, environmental, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising.

46. Further, courts in this district and elsewhere have recognized that the Bankruptcy Code preempts certain state laws and have granted relief similar to that requested herein. *See, e.g., In re Christopher & Banks Corporation, et al.*, No. 21-10269 (ABA) (Bankr. D.N.J. Feb. 8, 2021) (authorizing debtors to conduct store closing Sale under the terms of the order and finding that "no further approval, license, or permit of any Governmental Unit shall be required"); *In re RTW Retailwinds, Inc., et al.*, No. 20-18445 (JKS) (Bankr. D.N.J. Aug. 8, 2020) (same); *In re Modell's Sporting Goods Inc., et al.*, No. 20-14179 (VFP) (Bankr. D.N.J. June 24, 2020) (same); *In re SLT Holdco, Inc., et al.*, No. 20-18368 (MBK) (Bankr. D.N.J. July 29, 2020) (same); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (same); *In re Things Remembered, Inc.*, No. 19-10234 (KG) (Bankr. D. Del. Feb. 28, 2019) (same); *In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Jan. 10, 2018) (same).<sup>10</sup>

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<sup>10</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.



**VI. Waiver of Compliance With Any Restriction in the Leases Is Warranted.**

47. Certain of the Debtors' leases may contain provisions purporting to restrict or prohibit the Debtors from conducting store closing, liquidation, or similar sales. Such provisions have been held to be unenforceable in chapter 11 cases as they constitute an impermissible restraint on a debtor's ability to properly administer its reorganization case and maximize the value of its assets under section 363 of the Bankruptcy Code. *See In re Ames Dep't Stores*, 136 B.R. at 359 (noting that if a conflict existed between a restrictive covenant prohibiting a liquidation sale and "a debtor-in-possession's duty to maximize assets for the estate, the latter would certainly take precedent [sic] upon the filing of a bankruptcy petition"); *In re R. H. Macy and Co., Inc.*, 170 B.R. 69, 73–74 (Bankr. S.D.N.Y. 1994) (holding that the lessor could not recover damages for breach of a covenant to remain open throughout the lease term because the debtor had a duty to maximize the value to the estate and the debtor fulfilled this obligation by holding a store closing sale and closing the store); *In re Tobago Bay Trading Co.*, 112 B.R. 463, 467–68 (Bankr. N.D. Ga., 1990) (finding that a debtor's efforts to reorganize would be significantly impaired to the detriment of creditors if lease provisions prohibiting a debtor from liquidating its inventory were enforced); *In re Lisbon Shops, Inc.*, 24 B.R. 693, 695 (Bankr. E.D. Mo. 1982) (holding restrictive lease provision unenforceable in chapter 11 case where debtor sought to conduct a liquidation sale).

48. Courts in this district and elsewhere have held that restrictive lease provisions affecting store liquidation sales in chapter 11 cases are unenforceable. *See, e.g., In re Christopher & Banks Corporation, et al.*, No. 21-10269 (ABA) (Bankr. D.N.J. Feb. 8, 2021) (ordering that restrictive lease provisions shall not be enforceable in conjunction with Sale); *In re RTW Retailwinds, Inc., et al.*, No. 20-18445 (JKS) (Bankr. D.N.J. Aug. 8, 2020) (same); *In re Modell's Sporting Goods Inc., et al.*, No. 20-14179 (VFP) (Bankr. D.N.J. June 24, 2020) (same); *In re SLT Holdco, Inc., et al.*, No. 20-18368 (MBK) (Bankr. D.N.J. July 29, 2020) (same); *In re Z Gallerie*,

*LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (same); *In re Things Remembered, Inc.*, No. 19-10234 (KG) (Bankr. D. Del. Feb. 28, 2019) (same); *In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Jan. 10, 2018) (same).<sup>11</sup>

49. Store closing sales are a routine part of retail chapter 11 cases. To the extent that such provisions or restrictions exist in any of the leases of the stores subject to the Sale, the Debtors request that the Court authorize the Debtors and/or the Consultant to conduct the Sale without interference by any landlords or other persons affected, directly or indirectly, by such Sale.

**VII. Abandonment of Certain Property in Connection With Any Store Closure Is Warranted under Section 554 of the Bankruptcy Code.**

50. After notice and a hearing, a debtor “may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a); *see also Hanover Ins. Co. v. Tyco Indus., Inc.*, 500 F.2d 654, 657 (3d Cir. 1974) (stating that a trustee “may abandon his claim to any asset, including a cause of action, he deems less valuable than the cost of asserting that claim”). The right to abandon property is virtually unfettered, unless: (a) abandonment of the property will contravene laws designed to protect public health and safety; or (b) the property poses an imminent threat to the public’s welfare. *See In re Midlantic Nat’l Bank*, 474 U.S. 494, 501 (1986). Neither of these limitations is relevant here.

51. The Debtors are seeking to sell the Offered FF&E in the Stores.<sup>12</sup> However, the Debtors may determine that the costs associated with holding or selling certain Offered FF&E exceeds the proceeds that will be realized upon its sale, or that such property is not sellable at all.

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<sup>11</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors’ proposed counsel.

<sup>12</sup> The Debtors are also seeking to sell the Offered FF&E in their 5 prom pop-up stores for which the leases naturally expire on April 30, 2023. In the event the Debtors are unable to sell the Offered FF&E at those pop-up stores, the Debtors seek to abandon that Offered FF&E as set forth in this Motion.

In such event, the property in question may be of inconsequential value and benefit to the estates and may be burdensome to retain.

52. To maximize the value of the Debtors' assets and to minimize the costs to the estates, the Debtors request authority to abandon any of the Offered FF&E located at any of the Stores without incurring liability to any person or entity. The Debtors similarly request authority to abandon any of the Retained FF&E located at any of the Stores without incurring liability to any person or entity to the extent the owner of such Retained FF&E does not seek to reclaim it on or before the date on which the Debtors vacate the Store at which such Retained FF&E is located. The Debtors further request that the landlord of each store with any FF&E be authorized to dispose of such property without liability to any third parties.

53. Notwithstanding the foregoing, the Debtors will utilize all commercially reasonable efforts to remove or cause to be removed any confidential or personal identifying information (which means information that, alone or in conjunction with other information, identifies an individual, including, but not limited to, an individual's name, social security number, date of birth, government-issued identification number, account number, and credit or debit card number) in any of the Debtors' hardware, software, computers, cash registers, or similar equipment that are to be sold or abandoned.

**VIII. The Proposed Modifications to the Debtors' Customer Programs are Appropriate.**

54. The Debtors have contemporaneously filed their *Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (II) Granting Related Relief* (the "Customer Programs Motion"). As set forth in the Customer Programs Motion, given that the Debtors are pursuing a going concern sale, they believe, at least initially, it is prudent to continue to honor their customer programs. In the event that a going concern transaction does not

materialize, the Debtors must be able to modify their customer programs during the course of the Sale. Thus, the Debtors believe it is appropriate to give all parties with validly issued gift cards the opportunity to utilize their gift cards for the first 30 days following the Petition Date, thus providing customers with ample opportunity to spend any remaining balances prior to the termination of the gift certificate and gift card program. The Debtors do not know the identity of gift certificate and gift card holders, as most holders receive their gift certificates and gift cards as gifts from the original purchaser. Accordingly, the Debtors propose that providing notice of the policy at all cash registers will provide adequate notice of the deadline. Unless the Debtors have entered into an agreement for a sale of their assets, after the 30-day deadline has passed, the gift certificates and gift cards will no longer have any value. The Debtors will post notice of the changes to gift certificates and gift cards programs on their website and at cash registers in their stores.

55. Courts in other jurisdictions authorizing sales or liquidations often set deadlines for the use of gift cards. *See, e.g., In re Modell's Sporting Goods Inc., et al.*, No. 20-14179 (VFP) (Bankr. D.N.J. Mar. 13, 2020) (authorizing the debtors to accept gift cards for up to 90 days after entry of the store closing sale order); *In re Toys "R" Us, Inc.*, No. 17-34665 (KLP) (Bankr. E.D. Va. Mar. 22, 2018) (authorizing the debtors to accept gift cards for 30 days following entry of the wind-down order); *In re Skin Sense, Inc.*, 2017 WL 474317, at \*4 (Bankr. E.D.N.C. Feb. 3, 2017) ("In cases involving liquidating retailers, courts have implemented various approaches to allow consumers to redeem gift cards and to avoid the claims process, such as setting deadlines by which a gift card must be redeemed or establishing express conditions for redemption.") (citations omitted); *In re City Sports, Inc.*, 554 B.R. 329, 332 (Bankr. D. Del. 2016) (noting that gift cards were accepted at stores and redeemable for 30 days after entry of the order approving the sale of

substantially all of the debtors' assets); *In re Sports Authority Holdings, Inc.*, No. 16-10527 (MFW) (Bankr. D. Del. May 24, 2016) (allowing customers to redeem prepetition gift cards for a 34-day period).

56. Further, given the unknown identities of the gift certificate and gift card holders, only constructive notice of the deadline to use the gift cards is required. *See In re BGI, Inc.*, 476 B.R. 812, 821–23 (Bankr. S.D.N.Y. 2012) (finding that gift card holders were only entitled to constructive notice of the claims bar date and stating “gift cards, as their name illustrates, are not intended to be used by the purchaser but are instead intended as gifts, so even if the Debtors were able to identify the purchasers of the gift cards, they would have no way of tracing the ultimate recipients.”).

57. Courts in this district and elsewhere have also authorized restrictions on or the elimination of returns, exchanges, or refunds of good purchased post-petition. *See In re Christopher & Banks Corporation, et al.*, No. 21-10269 (ABA) (Bankr. D.N.J. Feb. 8, 2021) (approving assumption, on a final basis, of consulting agreement that provided all sales were “as is” and final, with no returns, unless otherwise directed by the Debtor); *In re SLT Holdco, Inc., et al.*, No. 20-18368 (MBK) (Bankr. D.N.J. July 13, 2020) (“All sales of Merchandise and FF&E sold on or after the Petition Date shall be “as is” and shall be on a final basis with no Merchandise subject to return, exchange, or refund.”); *In re Independent Pet Partners Holdings, LLC, et al.*, No. 23-10153 (LSS) (Bankr. D. Del. Feb. 8, 2023) (same); *In re Francesca’s Holdings Corporation, et al.*, No. 20-13076 (BLS) (Bankr. D. Del. Dec. 16, 2020) (same); *In re Century 21*

*Department Store, LLC, et al.*, No. 20-12097 (SCC) (Bankr. S.D.N.Y. Sept. 15, 2020) (same); *In re Forever 21, Inc., et al.*, No. 19-12122 (KG) (Bankr. D. Del. Oct. 28, 2019) (same).<sup>13</sup>

**IX. The Sale Incentive Program Satisfies the Applicable Standards.**

58. The Debtors' implementation of the Sale Incentive Program is proper under section 503 of the Bankruptcy Code. *See* 11 U.S.C. § 503(c)(3). Section 503(c)(3) prohibits certain transfers made to officers, managers, consultants, and others that are both outside the ordinary course of business and not justified by the facts and circumstances of the case. *Id.* Payments characterized as "incentive plans" have received approval under section 503(c)(3) from courts even where the key employees are officers. *In re Alpha Nat. Res., Inc.*, 546 B.R. 348, 359 (Bankr. E.D. Va. 2016) (approving an incentive-based plan and noting that "every dollar earned under the KEIP is earned based on the financial and operational performance of the Debtors"); *In re Fieldstone Mortg. Co.*, 427 B.R. 357, 363 (Bankr. D. Md. 2010) (distinguishing incentive and retention plans). Because the Sale Incentive Program is designed to incentivize the Remaining Employees to maximize the Debtors' value while managing the Sales, not to induce insiders to stay, this Motion does not implicate section 503(c)(1) of the Bankruptcy Code. *See id.* (holding that incentive pay to senior managers is not governed by the provisions in section 503(c)(1) prohibiting retentive pay to insiders).

59. Section 503(c)(3) of the Bankruptcy Code provides, in relevant part, that "there shall be neither allowed nor paid . . . other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case..." 11 U.S.C. § 503(c)(3).

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<sup>13</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

60. A majority of courts agree that the requirement of section 503(c)(3) of the Bankruptcy Code that a transaction be “justified by the facts and circumstances of the case” is the same as the business judgment standard under section 363(b) of the Bankruptcy Code. *See, e.g., Alpha Nat.*, 546 B.R. at 356 (collecting cases applying the business judgment standard to approve an insider compensation program); *In re Dana Corp.*, 358 B.R. 567, 576 (Bankr. S.D.N.Y. 2006) (“[S]ection 503(c)(3) gives the court discretion as to bonus and incentive plans, which are not primarily motivated by retention or in the nature of severance.”); *In re Glob. Home Prods., LLC*, 369 B.R. 778, 783 (Bankr. D. Del. 2007) (“If [the proposed plans are] intended to incentivize management, the analysis utilizes the more liberal business judgment review under § 363.”).

61. Courts have found that a debtor’s use of reasonable performance-based payments and other employee incentives is a valid exercise of a debtor’s business judgment. *See, e.g., Alpha Nat.*, 546 B.R. at 363 (approving the KEIP as a valid exercise of business judgment); *In re Am. W. Airlines, Inc.*, 171 B.R. 674, 678 (Bankr. D. Ariz. 1994) (noting that it is the proper use of a debtor’s business judgment to propose payments for employees who helped propel the debtor successfully through the bankruptcy process). Many courts have approved employee payment programs as valid exercises of business judgment. *See, e.g., In re Velo Holdings, Inc.*, 472 B.R. 201, 209 (Bankr. S.D.N.Y. 2012) (noting that Bankruptcy Code section 503(c) does not “foreclose a chapter 11 debtor from reasonably compensating employees, including ‘insiders,’ for their contribution to the debtors’ reorganization”); *Glob. Home Prods. LLC*, 369 B.R. at 778 (approving management incentive program for benefit of nine employees of the debtors provided that such employees fulfilled their obligations to the debtors through the closing of a sale of substantially all of the Debtors’ assets). While predominantly or purely retentive payments to insiders are expressly prohibited by the terms of section 503(c)(1), incentive payments that may

have some retentive effect are permissible so long as they motivate senior management “to produce and increase the value of the estate.” *Dana Corp.*, 358 B.R. at 571.

62. The Sale Incentive Program amply satisfies these standards. Given the uncertain and demanding circumstances in these chapter 11 cases, it is absolutely critical that the Debtors incentivize the Remaining Employees to implement the Sale process on the contemplated timeline. Without the tireless efforts of the Remaining Employees to execute the Sales, the Debtors will likely fail to realize significant value that would otherwise be distributable to their stakeholders.

63. Courts in this district have approved similar incentive plans, even at the early stages of respective bankruptcy cases. *See In re Christopher & Banks Corporation, et al.*, No. 21-10269 (ABA) (Bankr. D.N.J. Feb. 8, 2021) (authorizing the debtors to make bonus payments to eligible employees consistent with the first day relief entered by the court and the approved budget); *In re RTW Retailwinds, Inc., et al.*, No. 20-18445 (JKS) (Bankr. D.N.J. July 15, 2020) (same); *In re SLT Holdco, Inc., et al.*, No. 20-18368 (MBK) (Bankr. D.N.J. July 13, 2020) (same); *In re Modell's Sporting Goods Inc., et al.*, No. 20-14179 (VFP) (Bankr. D.N.J. June 24, 2020) (same).<sup>14</sup>

#### **The Requirements of Bankruptcy Rule 6003 are Satisfied**

64. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” An immediate and orderly transition into chapter 11 is critical to the viability of the Debtors’ operations and any delay may hinder the Debtors’ operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture and imperil

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<sup>14</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors’ proposed counsel.



the Debtors' ability to maximize value through the Sale. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support the relief requested herein.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

65. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h).

**Waiver of Memorandum of Law**

66. The Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to Local Rule 9013-1(a)(3) because the legal basis upon which the Debtors rely is set forth herein and the Motion does not raise any novel issues of law.

**Reservation of Rights**

67. Notwithstanding anything to the contrary herein, nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or should be construed as (a) an admission as to the validity of any particular claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds, (c) a promise or requirement to pay any particular claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion, (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (f) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid, and the rights of all parties are expressly reserved

to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

**No Prior Request**

68. No prior request for the relief sought in this Motion has been made to this or any other court.

**Notice**

69. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel for Bank of America, N.A., in its capacity as the ABL Agent and DIP Agent, (i) Morgan, Lewis & Bockius LLP, Matthew Furlong, Esq. and Christopher L. Carter, Esq., and (ii) Greenberg Traurig, LLP, Alan Brody, Esq.; (d) counsel for 1903P Loan Agent, LLC, in its capacity as First In Last Out Agent, (i) Riemer & Braunstein LLP, Steven E. Fox, Esq. and Brendan C. Recupero, Esq., and (ii) Lowenstein Sandler LLP, Kenneth A. Rosen, Esq.; (e) counsel for CPPIB Credit Investments III Inc. and its affiliates and managed accounts, in their capacity as Prepetition Senior Superpriority Term Loan Lenders, Weil, Gotshal & Manges LLP, Matt Barr, Esq., Matthew P. Goren, Esq. and F. Gavin Andrews, Esq.; (f) the United States Attorney's Office for the District of New Jersey; (g) the Internal Revenue Service; (h) the offices of the attorneys general for the states in which the Debtors operate; (i) the National Association of Attorneys General; (j) counsel to the Consultant, Katten Muchin Rosenman LLP, Cindi M. Giglio, Esq. and Grace Thompson, Esq.; (k) the state attorneys general for states in which the Debtors conduct business; (l) any known lienholder with a lien on any of the Offered Assets; (m) the Debtors' landlords; and (n) any party that has requested notice pursuant to Bankruptcy

Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**WHEREFORE**, the Debtors respectfully request that the Court enter interim and final orders, in substantially the forms submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

*[Remainder of page left intentionally blank]*

DATED: April 17, 2023

Respectfully submitted,

**COLE SCHOTZ P.C.**

By: /s/Michael D. Sirota

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**EXHIBIT A**

**Proposed Interim Order**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

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*Proposed Counsel to Debtors*

In re:

DAVID'S BRIDAL, LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. Case No. 23-\_\_\_\_ (\_\_\_\_)

Judge: \_\_\_\_\_

(Joint Administration Requested)

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: David's Bridal, LLC (4563); DBI Midco, Inc. (7392); DBI Holdco II, Inc. (7512); DBI

Page (2)

Debtor: DAVID'S BRIDAL, LLC, *et al.*

Case No.: 23-\_\_\_\_\_(\_\_\_\_)

Caption of Order: INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO ASSUME AND PERFORM UNDER THE CONSULTING AGREEMENT RELATED TO THE SALE OF INVENTORY, (II) APPROVING PROCEDURES FOR THE SALE OF INVENTORY, (III) APPROVING MODIFICATIONS TO CERTAIN CUSTOMER PROGRAMS, AND (IV) GRANTING RELATED RELIEF

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**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO ASSUME AND PERFORM UNDER THE CONSULTING AGREEMENT RELATED TO THE SALE OF INVENTORY, (II) APPROVING PROCEDURES FOR THE SALE OF INVENTORY, (III) APPROVING MODIFICATIONS TO CERTAIN CUSTOMER PROGRAMS, AND (IV) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered three (3) through twenty-six (26), is hereby ORDERED.

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Investors, Inc. (3857); David's Bridal Canada, Inc. (N/A); and Blueprint Registry, LLC (2335). The location of debtor David's Bridal, LLC's principal place of business and the debtors' service address in these chapter 11 cases is 1001 Washington Street, Conshohocken, Pennsylvania 19428.

Page (3)

Debtor: DAVID'S BRIDAL, LLC, *et al.*

Case No.: 23-\_\_\_\_ (\_\_\_\_)

Caption of Order: INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO ASSUME AND PERFORM UNDER THE CONSULTING AGREEMENT RELATED TO THE SALE OF INVENTORY, (II) APPROVING PROCEDURES FOR THE SALE OF INVENTORY, (III) APPROVING MODIFICATIONS TO CERTAIN CUSTOMER PROGRAMS, 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 interim order (this “Interim Order”), (a) authorizing the Debtors to assume and perform under the Consulting Agreement, a copy of which is attached hereto as **Exhibit 1**; (b) authorizing the Debtors to conduct closings or similarly themed sales at the locations subject to the Consulting Agreement (the “Stores”) in accordance with the terms of the Sale Procedures attached hereto as **Exhibit 2**, with any such related Sale to be free and clear of all Encumbrances; (c) approving modifications to certain customer programs, including the return policy and acceptance of gift certificates and gift cards; (d) authorizing the sale or disposition of the Offered Assets free and clear of Encumbrances; (e) authorizing the abandonment of certain burdensome Merchandise, FF&E, and personal property; (f) approving the continuation of the non-insider Sale Incentive Program and (g) 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 *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court

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



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having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; 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,

**THE COURT HEREBY FINDS AND DETERMINES THAT:<sup>3</sup>**

1. The Debtors have sound business reasons for seeking to commence the Sale, assume and perform under the Consulting Agreement, and adopt the Sale Procedures, on an interim basis subject to the Final Hearing (defined below), as set forth in the Motion and at the hearing thereon, and entering into the Consulting Agreement is a reasonable exercise of the Debtors' business judgment and in the best interests of the Debtors and their estates.

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<sup>3</sup> 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.

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2. The conduct of the Sale in accordance with the Sale Procedures will provide an efficient means for the Debtors to dispose of the Offered Assets.

3. The Consulting Agreement was negotiated, proposed, and entered into by the Consultant and the Debtors without collusion, in good faith, and from arm's-length bargaining positions.

4. The Debtors' assumption of the Consulting Agreement is a sound exercise of the Debtors' business judgment.

5. The Sale is in the best interest of the Debtors' estates.

6. The Debtors have represented that they are neither selling nor leasing personally identifiable information pursuant to the Motion, although the Consultant will be authorized to distribute emails and promotional materials to the Debtors' customers consistent with the Debtors' existing policies on the use of customer information.

7. 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.

8. The entry of this Interim Order is in the best interest of the Debtors and their estates.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on an interim basis as set forth herein.

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2. The final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2023, at \_\_:\_\_.m., prevailing Eastern Time. Objections, if any, that relate to the Motion shall be filed and served so as to be actually received by the Debtors' proposed counsel on or before \_\_\_\_\_, 2023 at 4:00 p.m. (Eastern Time). In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. 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.

4. The Debtors' implementation and effectuation of the Sale is approved as set forth herein, pursuant to section 105(a) and 363(b) of the Bankruptcy Code.

5. The Debtors are authorized, pursuant to sections 105(a), 363(b), and 365 of the Bankruptcy Code and without further notice or relief from the Court except as provided herein, to take any and all actions consistent with this Interim Order that are necessary or appropriate in the exercise of their reasonable business judgment to implement the Sale.

6. To the extent of any conflict between this Interim Order, the Sale Procedures, and the Consulting Agreement, the terms of this Interim Order shall control over all other documents and the Sale Procedures shall control over the Consulting Agreement.

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

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

**I. Authority to Assume and Perform under the Consulting Agreement.**

9. The Debtors are authorized to assume and perform under the Consulting Agreement pursuant to sections 363 and 365 of the Bankruptcy Code, including: (a) making payments required by the Consulting Agreement to the Consultant without the need for any application of the Consultant or a further order of the Court, (b) allowing the sale of Additional Consultant Goods, and (c) participating in an augmentation program, all as permitted under the Consulting Agreement. Consultant's fees and expenses shall be paid from the gross proceeds of the Sale, without adherence to any weekly, monthly or aggregate limitation in a debtor-in-possession financing or cash collateral budget entered in connection with these chapter 11 cases, but shall be subject to the terms of the Consulting Agreement itself, including as to any expense budget attached thereto.

10. Subject to the restrictions set forth in this Interim Order and the Sale Procedures, the Debtors and the Consultant hereby are authorized to take any and all actions as may be

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necessary or desirable to implement the Consulting Agreement and the Sale; and each of the transactions contemplated by the Consulting Agreement, and any actions taken from or after the Petition Date.

11. On a confidential basis and for professionals' "eyes only" and upon the written (including email) request of the U.S. Trustee or the official committee of unsecured creditors, if any, and counsel for Bank of America, N.A., in its capacity as the ABL Agent and DIP Agent (as defined in the DIP and Cash Collateral Order), (i) Morgan, Lewis & Bockius LLP, Matthew Furlong, Esq. and Christopher L. Carter, Esq., and (ii) Greenberg Traurig, LLP, Alan Brody, Esq., the Debtors shall provide such requesting party, if any, with copies of periodic reports and information regarding the calculation of fees paid to the Consultant and expenses reimbursed concerning the Sales that are prepared by the Debtors, their professionals or the Consultant, provided, that the foregoing shall not require the Debtors, their professionals, or the Consultant to prepare or undertake to prepare any additional or new reporting not otherwise being prepared by the Debtors, their professionals, or the Consultant in connection with the Sales.

12. No later than seven (7) business days prior to the Final Hearing, the Consultant shall file a declaration disclosing its connections to the Debtors, their creditors, and other parties in interest in these chapter 11 cases.

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## **II. Authority to Engage in Sale.**

13. The Debtors are authorized, but not directed, on an interim basis pending the Final Hearing, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to immediately conduct the Sale at the Stores in accordance with this Interim Order, the Sale Procedures, and the Consulting Agreement.

14. The Sale Procedures are approved in their entirety on an interim basis.

15. The Debtors are authorized to operate at the Stores in accordance with the Consulting Agreement, this Interim Order and the Sale Procedures.

16. All entities that are presently in possession of some or all of the Offered Assets in which the Debtors hold an interest that are or may be subject to the Consulting Agreement or this Interim Order hereby are directed to surrender possession of such Offered Assets to the Debtors or the Consultant. Debtors shall immediately serve a copy of this Interim Order on any party alleged to be in possession of said Offered Assets.

17. Subject to Section IV of this Interim Order, neither the Debtors nor the Consultant 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.

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

18. All newspapers and other advertising media in which the Sale may be advertised and all landlords are directed to accept this Interim Order as binding authority so as to authorize the Debtors and the Consultant to conduct the Sale and the sale of the Offered Assets pursuant to the Consulting Agreement, including, without limitation, to conduct and advertise the sale of the Offered Assets in the manner contemplated by and in accordance with this Interim Order, the Sale Procedures (as may be modified by a Side Letter (defined below)), and the Consulting Agreement. Nothing herein shall be construed to require newspapers or other advertising media to change or modify their normal process for accepting advertising relevant to any Sale.

19. Subject to the Dispute Resolution Procedures (as defined below) provided for in this Interim Order and any Side Letter, the Debtors and the Consultant are hereby authorized to take such actions as may be necessary and appropriate to implement the Consulting Agreement and to conduct the Sale without necessity of further order of this Court as provided in the Consulting Agreement or the Sale Procedures, including, but not limited to, advertising the sale as a “store closing sale,” “sale on everything/everything on sale,” “everything must go,” “going out of business,” or similar-themed Sale through the posting of signs (including the use of exterior banners at non-enclosed mall Stores, and at enclosed mall Stores to the extent the applicable closing location entrance does not require entry into the enclosed mall common area), use of

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sign-walkers, and street signage; provided, however, that only Debtor-approved terminology will be used at each Store in connection with the Sale.

20. Notwithstanding anything herein to the contrary, and in view of the importance of the use of sign-walkers, banners, and other advertising to the Sale of the Offered Assets, to the extent that, prior to the Final Hearing, disputes arise during the course of such Sale regarding laws regulating the use of sign-walkers, banners, or other advertising, and the Debtors and the Consultant are unable to resolve the matter consensually, any party may request a 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 (a) the Final Hearing or (b) 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.

21. Nothing in the Consulting Agreement, the Sale Procedures, or this Interim Order releases, nullifies, or enjoins the enforcement of any liability to a Governmental Unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or operator of the property after the date of entry of this Interim Order. Nothing contained in this Interim Order, the Consulting Agreement, or the Sale Procedures shall in any way: (a) diminish the obligation of any entity to comply with environmental laws; or (b) diminish the obligations of



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the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code, and the Debtors reserve all rights related thereto.

22. Except as expressly provided in the Consulting Agreement, the sale of the Offered Assets shall be conducted by the Debtors and the Consultant 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 Stores are authorized to enter into agreements (“Side Letters”) between themselves modifying the Sale 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 Sale Procedures and any Side Letter, the terms of such Side Letter shall control.

23. Except as expressly provided for herein or in the Sale Procedures, no person or entity, including, but not limited to, any landlord, licensor, service providers, utilities, or creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Sale, or the advertising and promotion (including the posting of signs and exterior banners or the use of sign-walkers) of such Sale, and all such parties and persons of every nature and description, including, but not limited to, any landlord, licensor, service providers, utilities, or creditor and all those acting for or on behalf of such parties, are prohibited and enjoined

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from (a) interfering in any way with, obstructing, or otherwise impeding, the conduct of the Sale and/or (b) instituting any action or proceeding in any court (other than in the Court or the Canadian Court) or administrative body seeking an order or judgment against, among others, the Debtors, the Consultant, 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 Sale or other liquidation sale at the Stores and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein.

24. In accordance with and subject to the terms and conditions of the Consulting Agreement, the Consultant 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 Sale Procedures and this Interim Order.

25. Except as set forth in the Consulting Agreement, all Sales of Offered Assets shall be “as is” and final. However, all 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 sale.” The Debtors shall accept return of any goods purchased during the Sale that contain a defect which the lay consumer could not reasonably determine was defective by visual inspection prior to purchase for a full refund; provided, that the consumer must return the merchandise within

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30 days of their purchase, the consumer must provide a receipt for the purchase to the Debtors, and the asserted defect must in fact be a “latent” defect, which goods shall not be resold by the Debtors.

26. The Consultant shall accept return of any goods that contain a defect which the lay consumer could not reasonably determine was defective by visual inspection prior to purchase for a full refund, provided that the consumer must return the merchandise within the time period proscribed by the Debtors’ return policy that was in effect when the merchandise was purchased, the consumer must provide a receipt, and the asserted defect must in fact be a “latent” defect., which goods shall not be resold by the Debtors.

27. The Consultant shall not be liable for sales taxes 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 Consultant shall collect, remit to the Debtors, and account for sales taxes as and to the extent provided in the Consulting Agreement. This Interim Order does

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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.

28. Pursuant to section 363(f) of the Bankruptcy Code, the Consultant, on behalf of the Debtors, is authorized to sell the Offered Assets, and all Sales of Offered Assets, whether by the Consultant or the Debtors, shall be free and clear of any and all of any Encumbrances; provided, however, that any such Encumbrances shall attach to the proceeds of the sale of the Offered Assets with the same validity, in the same amount, with the same priority as, and to the same extent that any such Encumbrances have with respect to the Offered Assets, subject to any claims and defenses that the Debtors may possess with respect thereto and the Consultant's fees and expenses (as provided in the Consulting Agreement).

29. To the extent that the Debtors propose to sell or abandon any Offered Assets 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 Offered Assets before such sale or abandonment.

30. The Debtors and/or the Consultant (as the case may be) are authorized and empowered to transfer Offered Assets among the stores. The Consultant is authorized to sell the Debtors' Offered Assets and abandon the same, in each case, as provided for and in accordance

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with the terms of the Consulting Agreement, provided that, to the extent prohibited by applicable law, the Consultant and Debtors are not authorized to abandon, and the Debtors are directed to remove and properly dispose of, any hazardous materials defined under applicable law of the jurisdiction in which the materials are located from any leased premises as and to the extent required by applicable law of the jurisdiction in which the lease premises lies.

31. Consultant is hereby granted a first priority security interest and lien upon (i) the Additional Consultant Goods and (ii) the proceeds thereof, which security interest shall be deemed perfected pursuant to this Interim Order without the requirement of filing UCC financing statements or providing notification to any prior secured parties (provided that Consultant is hereby authorized to deliver any notices and file any financing statements and amendments thereof under the applicable UCC identifying Consultant's interest in the Additional Consultant Goods (and any proceeds thereof) as consigned goods thereunder and the Debtors as consignee therefor, and Consultant's security interest in such Additional Consultant Goods and the Additional Consultant Goods proceeds). As part of the weekly reconciliation, the Debtors shall turnover all proceeds from the sale of Additional Consultant Goods to the Consultant.

32. Notwithstanding this or any other provision of this Interim Order, nothing shall prevent or be construed to prevent the Consultant (individually, as part of a joint venture, or otherwise) or any of its affiliates from bidding on the Debtors' assets, pursuant to a consulting

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agreement, or otherwise (“Additional Assets”). The Consultant 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 Interim Order is intended to affect any rights of any applicable Government Unit to enforce any law affecting the Debtors’ conduct of any store closing sale that occurred prior to the Petition Date.

34. Nothing in this Interim Order, the Consulting Agreement, or the Sale 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 Interim Order. Nothing contained in this Interim Order, the Consulting Agreement, or the Sale 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 Sale shall not be exempt from laws of general applicability, including, without limitation, public health and safety, criminal, tax, labor,

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employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including local laws, regulations, ordinances, or police powers of general applicability regarding matters such as regulating deceptive practices and false advertising (collectively, “General Laws”). Nothing in this Interim Order, the Consulting Agreement, or the Sale Procedures, shall alter or affect obligations to comply with all applicable federal safety laws and regulations. Nothing in this Interim Order shall be deemed to bar any Governmental Unit (as such term is defined in section 101(47) of the Bankruptcy Code) from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors’ rights to assert in that forum or before this Court (or the Canadian Court) that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code, this Interim Order, or otherwise, pursuant to paragraph 35 herein. Notwithstanding any other provision in this Interim Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Interim Order and/or any applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Interim Order shall be deemed to have made any rulings on any such issues.

35. To the extent that the sale of Offered Assets is subject to any Applicable 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 sale, or bulk sale laws, including laws restricting safe, professional, and non-deceptive customary advertising

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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 Offered Assets, or any similar laws, the dispute resolution procedures in this section shall apply (provided that, subject to recognition of this Interim Order by the Canadian Court, these dispute resolution procedures shall not apply with respect to the sale of Offered Assets in Canadian stores, and that any such disputes shall be dealt with by the Canadian Court):

- a. *Provided* that the Sale is conducted in accordance with the terms of this Interim Order and the Sale 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 Applicable Sale Laws and are authorized to conduct the Sale in accordance with the terms of this Interim Order and the Sale Procedures without the necessity of further showing compliance with any Applicable Sale Laws.
- b. Within two business days after entry of this Interim Order, the Debtor shall serve copies of this Interim Order, the Consulting Agreement and the Sale Procedures via email, facsimile, or regular mail, on the following: (i) the United States Trustee; (ii) the state attorney general's office for each state where the Sale are being held; (iii) the county consumer protection agency or similar agency for each county where the Sale will be held; (iv) the division of consumer protection for each state where the Sale will be held; (v) the chief legal counsel for the local jurisdiction; and (vi) the landlords for the stores.
- c. To the extent there is a dispute arising from or relating to the Sale, this Interim Order, the Consulting Agreement, or the Sale Procedures, which dispute relates to any Applicable Sale Laws (a "Reserved Dispute"), this



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Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within ten days (10) following entry of this Interim Order, any Governmental Unit may assert that a Reserved Dispute exists by serving written notice of such Reserved Dispute (which may be by e-mail) on 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 fifteen days (15) after service of the notice, the non-Debtor party may file a motion with this Court requesting that this Court resolve the Reserved Dispute (a "Dispute Resolution Motion").

- d. In the event a Dispute Resolution Motion is filed, nothing in this Interim Order shall preclude the Debtors, a landlord, or other interested party from asserting (i) that the provisions of any Applicable Sale Laws are preempted by the Bankruptcy Code or (ii) that neither the terms of this Interim Order nor the conduct of the Debtors pursuant to this Interim Order, violates such Applicable 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 Consultant's ability to conduct or to continue to conduct the Sale pursuant to this Interim Order, absent further order of this Court. This Court grants authority for the Debtors and the Consultant to conduct the Sale pursuant to the terms of this Interim Order, the Consulting Agreement, and/or the Sale 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 Applicable Sale Laws or the lack of any preemption of such Applicable Sale Laws by the Bankruptcy Code. Nothing in this Interim Order shall constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.
- e. If, at any time, a dispute arises between the Debtors and/or the Consultant and a Governmental Unit as to whether a particular law is an Applicable Sale Law, and subject to any provisions contained in this Interim Order related to the Applicable Sale Laws, then any party to that dispute may utilize the provisions hereunder by serving a notice to the other party and

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Debtor: DAVID'S BRIDAL, LLC, *et al.*

Case No.: 23-\_\_\_\_ (\_\_\_\_)

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proceeding thereunder in accordance with those paragraphs. Any determination with respect to whether a particular law is an Applicable Sale Law shall be made *de novo*.

36. Except as expressly provided for herein or in the Sale Procedures, and except with respect to any Governmental Unit (as to which paragraphs 34 and 35 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 Sale, or the advertising and promotion (including the posting of signs or the use of sign walkers) of the Sale, 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 Sale and/or (b) instituting any action or proceeding in any court or administrative body seeking an order or judgment against, among others, the Debtors, the Consultant, 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 Sale 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.

37. Any restrictions in any lease agreement, restrictive covenant, or similar documents purporting to limit, condition, or impair the Debtors' ability to conduct the Sale shall not be enforceable, nor shall any breach of such provisions in these chapter 11 cases constitute a default

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under a lease or provide a basis to terminate the lease; provided that the Sale is conducted in accordance with the terms of this Interim Order and the Sale Procedures.

38. Subject to Paragraphs 34 and 35, each and every federal, state, foreign, or local agency, departmental or Governmental Unit with regulatory authority over the Sale and all newspapers and other advertising media in which the Sale are advertised shall consider this Interim Order as binding authority that no further approval, license, or permit of any governmental unit shall be required, nor shall the Debtors be required to post any bond, to conduct the Sale.

39. To the extent that between the Petition Date and the date of the Final Hearing there is Reserved Dispute, the Court shall retain exclusive jurisdiction to resolve the Reserved Dispute which such Reserved Dispute will be heard at the Final Hearing, absent a party obtaining expedited relief. Nothing in this Interim Order shall constitute a ruling with respect to any issues to be raised with respect to a Reserved Dispute. Any Governmental Unit may assert a Reserved Dispute by sending a written notice (which may be by e-mail) explaining the nature of the dispute to: (a) David's Bridal, LLC, 1001 Washington Street, Conshohocken, Pennsylvania 19428, Attn: Lori Kinkade; (b) proposed co-counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com), Christopher T. Greco, P.C. (christopher.greco@kirkland.com), and Rachael M. Bentley (rachael.bentley@kirkland.com), Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago,

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Illinois 60654, Attn.: Alexandra Schwarzman, P.C. (alexandra.schwarzman@kirkland.com), and Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07602, Attn.: Michael D. Sirota (msirota@coleschotz.com), Felice R. Yudkin (fyudkin@coleschotz.com) and Rebecca W. Hollander (rhollander@coleschotz.com; (c) the United States Trustee for the District of New Jersey, One Newark Center, 1085 Raymond Boulevard, Suite 2100, Newark, New Jersey 07102, Attn.: Fran B. Steele, Esq. and Peter J. D'Auria, Esq.; (d) counsel to any statutory committee appointed in these chapter 11 cases; and (e) counsel to the Consultant, Katten Muchin Rosenman LLP, Cindi M. Giglio, Esq. and Grace Thompson, Esq. 575 Madison Avenue, New York, New York 10022, Attn.: Cindi M. Giglio (cgiglio@katten.com) and Grace Thompson (grace.thompson@katten.com).

**V. Consumer Provisions.**

40. For the first 30 days following the Petition Date, the Debtors shall accept returns of merchandise sold by the Debtors in the ordinary course prior to any Store Closing; provided that such return is otherwise in compliance with the Debtors' return policies in effect as of the date such item was purchased and the customer is not repurchasing the same item so as to take advantage of the sale price being offered in the Sale; provided, further, that (a) returns of items sold on a "final" basis shall not be accepted and (b) gift cards may not be returned for cash.

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41. For the first 30 days following the Petition Date, stores will continue to accept the Debtors' validly-issued gift certificates and gift cards issued prior to the Petition Date for in-person (and only in person) purchases in the ordinary course of business. After the expiration of the 30 days to utilize gift certificates and gift cards, all such validly-issued gift certificates and gift cards will no longer be accepted by the Debtors and deemed to have no remaining value. Notwithstanding any policy or law to the contrary, the gift cards are not redeemable for cash at any time.

42. In accordance with the Sale Guidelines, the Debtors and the Consultant shall post conspicuous signs in their stores, including at their cash registers, explaining the above "consumer provisions" to customers, including the return policies and gift certificate and gift card policy, which shall remain posted throughout the duration of the Sale. In addition, the Debtors will post notice of the changes to gift certificate, gift cards, and customer programs on their website.

**V. Store Closing Incentive Program.**

43. The Debtors are authorized to continue and honor obligations related to the Store Closing Incentive Program; *provided*, however, that such authority shall not extend to any Insider without further order of this Court.

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**VI. Other Provisions.**

44. The Consultant shall not be liable for any claims against the Debtors, and the Debtors shall not be liable for any claims against the Consultant, in each case, other than as expressly provided for in the Consulting Agreement.

45. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

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

47. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after entry of this Order.

48. Any party may move for modification of this Order in accordance with Local Rule 9013-5(e).

49. This Court shall retain exclusive jurisdiction with regard to all issues or disputes relating to this Interim Order or the Consulting Agreement, including, but not limited to, (a) any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit banner and sign-walker advertising, including with respect to any allegations that such advertising

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is not being conducted in a safe, professional, and non-deceptive manner, (b) any claim of the Debtors, the landlords, and/or the Consultant for protection from interference with the Sale, (c) any other disputes related to the Sale, and (d) to protect the Debtors and/or the Consultant against any assertions of any Encumbrances; provided that, notwithstanding anything to the contrary herein and subject to recognition of this Interim Order by the Canadian Court in the Canadian Proceeding, the Canadian Court shall retain jurisdiction with regard to all issues or disputes in respect of the Sale at Canadian Stores. No such parties or person shall take any action against the Debtors, the Consultant, 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.

**EXHIBIT 1**

**Consulting Agreement**





# Gordon Brothers

Dated as of April 15, 2023

To: David's Bridal, LLC  
1001 Washington St.  
Conshohocken, PA 19428

David's Bridal Canada, Inc.  
1001 Washington St.  
Conshohocken, PA 19428

From: Gordon Brothers Retail Partners, LLC  
800 Boylston Street, 27<sup>th</sup> Floor  
Boston, MA 02199

Gordon Brothers Canada ULC  
c/o Gordon Brothers Group, LLC  
800 Boylston Street, 27<sup>th</sup> Floor  
Boston, MA 02199

**Re: A&R Store Closing Consulting Agreement**

Ladies and Gentlemen:

This letter shall serve as the amended and restated agreement (the "Agreement") between Gordon Brothers Retail Partners, LLC (in respect of services provided in the United States, "US Consultant"), Gordon Brothers Canada ULC (in respect of services provided in Canada, "Canada Consultant") and together with US Consultant, "Consultant"), on the one hand, David' Bridal, LLC ("US Merchant") and David's Bridal Canada, Inc. ("Canada Merchant" and together with US Merchant, "Merchant"), pursuant to which Consultant shall serve as the exclusive consultant to Merchant to conduct a store closing or other mutually agreed-upon themed sale (the "Sale") at Merchant's retail store locations identified on **Exhibit A-1** (each a "US Store") and **Exhibit A-2** (each, a "Canada Store" and together with the US Stores, the "Stores") and, if applicable, through

Merchant's e-commerce site(s), subject to the terms and conditions set forth herein.<sup>1</sup> Consultant and Merchant are collectively referred to herein as the "Parties."

## **1. RETENTION**

(A) Merchant hereby retains Consultant as its exclusive, independent consultant to conduct the Sale during the Sale Term and provide the following services:

- (i) Recommend appropriate strategies to effectively sell all of the goods located at the Stores during the Sale Term or thereafter delivered to the Stores (whether from Merchant's existing orders or warehouse goods) by mutual agreement of the Parties and the Offered FF&E, in accordance with a "special promotional event," "sale on everything," "everything must go," "store closing," (upon mutual agreement of the Parties, "going out of business"), and other mutually agreed upon themed sale;
- (ii) Recommend appropriate point-of-purchase, point-of-sale or other internal and external advertising in connection therewith;
- (iii) Provide qualified supervision to oversee the conduct of the Sale;
- (iv) Maintain focused and constant communication with Store-level employees and managers to keep them abreast of strategy and timing and to properly effect Store-level communication by Merchant's employees to customers and others about the Sale;
- (v) Establish and monitor accounting functions for the Sale, including evaluation of sales of Merchant's goods located at the Stores by category, sales reporting and expense monitoring;
- (vi) Recommend loss prevention strategies;
- (vii) Coordinate with Merchant so that the operation of the Stores is being properly maintained including ongoing customer service and housekeeping activities;
- (viii) Recommend appropriate staffing levels for the Stores and appropriate bonus and/or incentive programs (to be funded by Merchant) for Store employees;
- (ix) Assist Merchant to commence the Sale as a "special promotional event," "sale on everything," "everything must go," "store closing," (upon mutual agreement of the Parties, "going out of business"), and such other themed sale as may be approved (i) by Merchant with the prior consent of the applicable landlords for the Stores and any required permitting or (ii) (x) in the event Merchant becomes subject to any chapter 11 proceeding (a "Bankruptcy Case") before any United States Bankruptcy Court (the "Bankruptcy Court"), in respect of the US Stores, by the Bankruptcy Court in any Approval Order (as defined below), and (y) in the event Merchant becomes subject to any order of the Ontario Superior Court of Justice (Commercial List) (the "Canadian

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<sup>1</sup> This Agreement amends and restates that certain Store Closing Consulting Agreement between US Consultant and US Merchant dated as of April 5, 2023.

Court”) recognizing the Bankruptcy Case as a “foreign main proceedings” pursuant to section 49 of the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”) (such recognition proceedings under the CCAA, the “CCAA Proceedings”), in respect of the Canada Stores, by the Approval Order and the Canadian Court pursuant to an order recognizing and giving effect to the Approval Order in Canada;

- (x) Advise Merchant with respect to the legal requirements of affecting the Sale as a “special promotional event,” “sale on everything,” “everything must go,” “store closing,” (upon mutual agreement of the Parties, “going out of business”) or other mutually agreed upon theme in compliance with applicable state and local “going out of business” laws. In connection with such obligation, Consultant will (i) advise Merchant of the applicable waiting period under such permitting requirements, and/or (ii) prepare (in Merchant’s name and for Merchant’s signature) all permitting paperwork as may be necessary under such provisions, deliver all such paperwork to Merchant, and file, on behalf of Merchant, all such paperwork where necessary, and/or (iii) advise where permitting paperwork and/or waiting periods do not apply; and
- (xi) At Merchant’s request, Consultant may assist with the sale of goods through Merchant’s e-commerce site(s), in which case, (i) the sale of such goods shall be considered part of the “Sale” for purposes of this Agreement and (ii) the goods sold through the e-commerce site(s) shall constitute “Merchandise” for purposes of this Agreement.

## **2. SALE TERM; VACATING STORES**

(A) The “Sale Term” shall commence on April 6, 2023 and shall end on or before July 31, 2023; provided, that the Parties may mutually agree in writing to amend the Sale Term with respect to any one or more Stores. The Sale Term shall include an initial “soft sale” period (the “Soft Sale Period”), which Consultant shall transition to a typical “store closing” or “going out of business,” subject to the consent of Merchant (not to be unreasonably withheld).

(B) Upon the conclusion of the Sale Term, Consultant shall leave the Stores in broom clean condition, subject to Consultant’s right pursuant to Section 6 below to abandon in a neat and orderly manner all unsold Offered FF&E and all Retained FF&E.

## **3. EXPENSES**

(A) Merchant shall be responsible for all expenses incident to the conduct of the Sale and the operation of the Stores or Merchant’s e-commerce site(s) during the Sale Term, including without limitation all Consultant Controlled Expenses (defined below) and all other Store-level and corporate expenses associated with the Sale.

(B) Consultant will advance funds for certain expenses associated with the Sale (“Consultant Controlled Expenses”). Merchant shall reimburse Consultant for Consultant Controlled Expenses incurred by Consultant in connection with each weekly reconciliation contemplated by Section 5(B), subject to the budgets attached as Exhibit B-1 (the “US Budget”) and Exhibit

**B-2** (the “Canada Budget” and together with the US Budget, the “Budget”). The parties may from time to time, including through email correspondence, mutually agree in writing to amend the Budget based upon circumstances of the Sale. All Consultant Controlled Expenses, to the extent not previously reimbursed during the Sale Term, shall be reimbursed in connection with the Final Reconciliation pursuant to Section 5(B) below. In addition to, and not as part of, the Consultant Controlled Expenses, Merchant shall reimburse Consultant for its reasonable and documented legal fees and expenses incurred in connection with a Bankruptcy Case and CCAA Proceedings and the negotiation of any “side letters” with landlords of the Stores.

#### 4. **CONSULTANT COMPENSATION**

(A) **Definitions.** As used herein, the following terms shall have the following meanings:

- (i) “Cost Value” means, with respect to each item of Merchandise, the lowest per unit vendor cost for such Merchandise in the File or in Merchant’s books and records, maintained in the ordinary course consistent with historic practices.
- (ii) “File” means the Excel file provided by Merchant to Consultant on April 5, 2023 entitled *03.a.c.d.Inventory Request 3A C and D With Mar-23 Totals.xlsx*.
- (iii) “Gross Proceeds” means the sum of the gross proceeds of all sales of Merchandise (including as a result of the redemption of any gift card, gift certificate, merchandise credit or payment of balances due on special orders) during the Sale Term, net only of sales taxes.
- (iv) “Gross Recovery Percentage” means the Gross Proceeds divided by the sum of the aggregate Cost Value of the Merchandise sold during the Sale Term.
- (v) “Merchandise” shall mean all goods (excluding FF&E) actually sold in the Stores during the Sale Term, the aggregate amount of which shall be determined using the gross rings inventory taking method.
- (vi) “Retail Price” means, with respect to each item of Merchandise, the lower of the lowest ticketed, marked, shelf, stickered, hang-tag, or File price.

(B) **Merchandise Fee.** In consideration of Consultant’s services hereunder, Merchant shall pay Consultant a fee equal to 2.0% of the Gross Proceeds of Merchandise sold at the Stores during the Sale Term (the “Base Fee”). In addition to the Base Fee, Merchant shall pay Consultant from Gross Proceeds an additional fee based upon the applicable Gross Recovery Percentage set forth below (calculated back to the first dollar) (the “Incentive Fee” and together with the Base fee, the “Merchandise Fee”):

<b>Gross Recovery Percentage</b>	<b>Incentive Fee</b>
Between 145% and 150%	0.50% of Gross Proceeds
Between 150.01% and 155%	0.75% of Gross Proceeds
Above 155%	1.00% of Gross Proceeds

(C) **Gross Rings.** For purposes of calculating Gross Proceeds and the Merchandise Fee, the Parties shall use the “Gross Rings” method, wherein Consultant and Merchant shall jointly keep (i) a strict count of gross register receipts less applicable sales taxes, and (ii) cash reports of sales within each Store. Register receipts shall show for each item sold the Retail Price (as reflected on Merchant’s books and records) for such item, and the markdown or other discount granted in connection with such sale. All such records and reports shall be made available to Consultant and Merchant during regular business hours upon reasonable notice.

(D) **Weekly Payments.** On a weekly basis in connection with the weekly reconciliations contemplated by Section 5(B) below, Merchant shall pay Consultant (i) an amount equal to the Merchandise Fee payable on account of the prior week’s sales as an advance towards the total Merchandise Fee; (ii) any FF&E Commission earned during the prior week; and (iii) all proceeds from Additional Consultant Goods. The parties shall determine the definitive Merchandise Fee, FF&E Commission and Additional Consultant Goods Fee in connection with the Final Reconciliation. Immediately thereafter (and as art of the Final Reconciliation), Merchant or Consultant, as the case may be, shall pay any additional amount owed on account of such fees.

## **5. CONDUCT OF SALE; OTHER SALE MATTERS**

(A) Merchant shall have control over the personnel in the Stores and shall handle the cash, debit and charge card payments for all Merchandise in accordance with Merchant’s normal cash management procedures, subject to Consultant’s right to audit any such items in the event of a good faith dispute as to the amount thereof. Merchant (and not Consultant) shall be responsible for ensuring that the Sale, and the operation of the Stores is conducted in compliance with all applicable laws and regulations, and in compliance with all applicable lease provisions with respect to the Stores.

(B) The Parties will meet on each Wednesday during the Sale Term to review any Sale matters reasonably requested by either party and, in connection with such weekly meetings, all amounts payable (under Section 4(D)) or reimbursable (under Section 3(B)) to Consultant for the prior week (or the partial week in the case of the first and last weeks) shall be reconciled and paid immediately thereafter. No later than twenty (20) days following the end of the Sale, the Parties shall complete a final reconciliation, allocation and settlement of all amounts contemplated by this Agreement (the “Final Reconciliation”).

(C) From time to time upon request, each party shall prepare and deliver to the other party such other reports as either party may reasonably request. Each party to this Agreement shall, at all times during the Sale Term and during the one-year period thereafter, provide the other with access to all information, books and records relating to the Sale and to this Agreement. All records and reports shall be made available to Consultant and Merchant during regular business hours upon reasonable notice.

(D) Merchant shall be solely responsible for computing, collecting, holding, reporting, and paying all sales taxes associated with the sale of Merchandise during the Sale Term, and

Consultant shall have absolutely no responsibilities or liabilities therefor.

(E) Although Consultant shall undertake its obligations under this Agreement in a manner designed to achieve the desired results of the Sale and to maximize the recovery to the Merchant, Merchant expressly acknowledges that Consultant is not guaranteeing the results of the Sale.

(F) Merchant acknowledges that (i) the Parties are not conducting an inventory of Merchant's goods located at the Stores; (ii) Consultant has made no independent assessment of the beginning levels of such goods; and (iii) Consultant shall not bear any liability for shrink or other loss to Merchant's goods located at the Stores (including without limitation Merchandise).

(G) All sales of Merchandise during the Sale Term shall be made in the name, and on behalf, of Merchant.

(H) All sales of Merchandise during the Sale Term shall be "final sales" and "as is," and all advertisements and sales receipts will reflect the same; provided, that during the Soft Sale Period, the foregoing shall only apply to certain limited categories (e.g., clearance items).

(I) Merchant hereby permits the Sale to be, and shall ensure that the Sale otherwise may be, advertised as a "special promotional event," "sale on everything," "everything must go," "store closing," (upon mutual agreement of the Parties, "going out of business"), or such other mutually agreed upon themed sale throughout the term of the Sale.

(J) Consultant will make best efforts to assist Merchant in fulfilling orders from customers who have previously provided deposits and ensuring timely delivery of alterations and other services related to such Merchandise.

(K) Upon the execution of, and as a condition to Consultant's obligations under, this Agreement, US Merchant shall fund to Consultant \$1,000,000 (the "Special Purpose Payment") which shall be held by Consultant until the Final Reconciliation (and US Merchant shall not apply the Special Purpose Payment to, or otherwise offset any portion of, the Special Purpose Payment against, any weekly reimbursement, payment of fees, or other amount owing to Consultant under this Agreement prior to the Final Reconciliation). To the extent Consultant incurs any fees or expenses (including Consultant Controlled Expenses) before the Sale Term, Merchant shall reimburse Consultant for such fees or expenses on demand and ensure that the Special Purpose Payment is replenished. Without limiting any of Consultant's other rights, Consultant may apply the Special Purpose Payment to any unpaid obligation owing by Merchant to Consultant under this Agreement. Any portion of the Special Purpose Payment not used to pay amounts explicitly contemplated by this Agreement shall be returned to US Merchant within three days following the Final Reconciliation.

## **6. FF&E**

(A) Promptly following the commencement of the Sale Term, Merchant shall inform Consultant of those items of owned furnishings, trade fixtures, equipment, machinery, office supplies, conveyer systems, racking, rolling stock, any vehicles or other modes of



transportation, and other personal property (collectively, “FF&E”) located at the Stores which are not to be sold (because Merchant does not have the right to sell such items, because Merchant wishes to retain such items for itself, or otherwise) (collectively, “Retained FF&E”).

(B) With respect to all FF&E located at the Stores as of the commencement of the Sale Term which is not Retained FF&E and any FF&E identified by Merchant located at Merchant’s non-Store locations listed on Exhibit A-1 (collectively, the “Offered FF&E”), Consultant shall have the right to sell such Offered FF&E during the Sale Term on a commission basis equal to 15% of the gross sales of Offered FF&E, net only of sales tax.

(C) Merchant shall reimburse Consultant for its reasonable sale expenses associated with the sale of the Offered FF&E, not to exceed the amount shown on an FF&E expense budget (which shall be in addition to the Consultant Controlled Expenses budget), to be mutually agreed to by the Parties promptly after Merchant identifies the Offered FF&E and Retained FF&E.

(D) Consultant shall have the right to abandon any unsold Offered FF&E (and all Retained FF&E) at the Stores (or non-Store locations, as applicable) at the conclusion of the Sale Term without Consultant having any liability to Merchant or any third party.

## **7. ADDITIONAL CONSULTANT GOODS**

(A) In connection with the Sale, Consultant shall have the right, at Consultant’s sole cost and expense, to supplement the Merchandise in the Sale with additional goods procured by Consultant which are of like kind, and no lesser quality to the Merchandise in the Sale solely at the US Stores (“Additional Consultant Goods”). The Additional Consultant Goods shall be purchased by Consultant and delivered to the US Stores at Consultant’s sole expense (including labor, freight and insurance relative to shipping such Additional Consultant Goods to the US Stores). Sales of Additional Consultant Goods shall be run through US Merchant’s cash register systems; provided, however, that Consultant shall mark the Additional Consultant Goods using either a “dummy” SKU or department number, or in such other manner so as to distinguish the sale of Additional Consultant Goods from the sale of Merchandise. Consultant and US Merchant shall also cooperate so as to ensure that the Additional Consultant Goods are marked in such a way that a reasonable consumer could identify the Additional Consultant Goods as non-US Merchant goods. Additionally, Consultant shall provide signage in the US Stores notifying customers that the Additional Consultant Goods have been included in the Sale. Absent US Merchant’s written consent, and Consultant’s agreement to reimburse US Merchant for any associated expenses, Consultant shall not use US Merchant’s distribution centers for any Additional Consultant Goods.

(B) Consultant shall pay to US Merchant an amount equal to 7.5% of the gross proceeds (excluding sales taxes) from the sale of the Additional Consultant Goods (the “Additional Consultant Goods Fee”), and Consultant shall retain all remaining amounts from the sale of the Additional Consultant Goods.

(C) Consultant and US Merchant intend that the transactions relating to the Additional Consultant Goods are, and shall be construed as, a true consignment from Consultant to US Merchant in all respects and not a consignment for security purposes. Subject solely to

Consultant's obligations to pay to US Merchant the Additional Consultant Goods Fee, at all times and for all purposes the Additional Consultant Goods and their proceeds shall be the exclusive property of Consultant, and no other person or entity shall have any claim against any of the Additional Consultant Goods or their proceeds. The Additional Consultant Goods shall at all times remain subject to the exclusive control of Consultant.

(D) US Merchant shall, at Consultant's sole cost and expense, insure the Additional Consultant Goods and, if required, promptly file any proofs of loss with regard to same with US Merchant's insurers. Consultant shall be responsible for payment of any deductible (but only in relation to the Additional Consultant Goods) under any such insurance in the event of any casualty affecting the Additional Consultant Goods.

(E) US Merchant acknowledges that the Additional Consultant Goods shall be consigned to US Merchant as a true consignment under Article 9 of the Uniform Commercial Code (the "UCC"). Consultant is hereby granted a first-priority security interest in and lien upon (i) the Additional Consultant Goods and (ii) the Additional Consultant Goods proceeds, and Consultant is hereby authorized to file UCC financing statements and provide notifications to any prior secured parties.

## **8. INSURANCE; RISK OF LOSS**

(A) During the Sale Term: (a) Merchant shall maintain (at its expense) insurance with respect to the Merchandise in amounts and on such terms and conditions as are consistent with Merchant's ordinary course operations, and (b) each of Merchant and Consultant shall maintain (at each party's respective expense) comprehensive liability insurance covering injuries to persons and property, in such amounts as are reasonable and consistent with its ordinary practices, for bodily injury, personal injury and/or property damage. Each party shall be added as an additional insured on all such insurance of the other party, all such insurance shall provide that it shall be non-cancelable and non-changeable except after 30 days' prior written notice to the other party, and each party shall provide the other with certificates of all such insurance prior to the commencement of the Sale.

(B) Notwithstanding any other provision of this Agreement, Merchant and Consultant agree that Consultant shall not be deemed to be in possession or control of the Stores, or the Merchandise or other assets located therein or associated therewith, or of Merchant's employees located at the Stores; and Consultant does not assume any of Merchant's obligations or liabilities with respect thereto.

(C) Notwithstanding any other provision of this Agreement, Merchant and Consultant agree that Merchant shall bear all responsibility for liability claims (product liability and otherwise) of customers, employees and other persons arising from events occurring at the Stores, and Merchandise sold in the Stores, before, during and after the Sale Term.

## **9. INDEMNIFICATION**

(A) Consultant shall indemnify and hold Merchant and its affiliates, and their respective



officers, directors, employees, consultants, and independent contractors (collectively, “Merchant Indemnified Parties”) harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys’ fees and expenses, directly or indirectly asserted against, resulting from or related to:

- (i) Consultant’s material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
- (ii) any harassment or any other unlawful, tortious or otherwise actionable treatment of any employees or agents of Merchant by Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives (including without limitation any supervisors);
- (iii) any claims by any party engaged by Consultant as an employee or independent contractor (including without limitation any non-Merchant employee supervisor) arising out of such employment or engagement; or
- (iv) the gross negligence, willful misconduct or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, Consultants, independent contractors or representatives.

(B) Merchant shall indemnify and hold Consultant, its affiliates, Auctioneer, and their respective officers, directors, employees, consultants, and independent contractors (collectively, “Consultant Indemnified Parties”) harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys’ fees and expenses, directly or indirectly asserted against, resulting from or related to:

- (i) Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
- (ii) any claims by any party engaged by Merchant as an employee or independent contractor arising out of such engagement;
- (iii) any third party claims relating to any Merchandise, Offered FF&E, or the Stores;
- (iv) any claim by any owner or landlord of the Stores with respect the Sale and Auction being conducted at such premises;
- (v) the gross negligence, willful misconduct or unlawful acts of Merchant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives.

## **10. MISCELLANEOUS**

(A) In the event of Merchant’s filing under chapter 11 of the United States Bankruptcy Code

(the “Bankruptcy Code”), which is recognized by the Canadian Court as a “foreign main proceeding” in the CCAA Proceedings, this Agreement, including retention of Consultant and conduct of the Sale set forth herein, shall be subject to the approval of the applicable Bankruptcy Court and recognition by the Canadian Court. Merchant shall promptly seek to have this Agreement, and the transactions contemplated by this Agreement approved by the Bankruptcy Court pursuant to sections 363 and 365 of the Bankruptcy Code (and not pursuant to sections 327, 328, 330, or 331 thereof) and an order with terms acceptable to both Merchant and Consultant that provides, among other things, for: (i) the payment of all fees and reimbursement of expenses hereunder to Consultant is approved without further order of the court and shall be free and clear of all liens, claims and encumbrances; (ii) all such payments of fees and reimbursement of expenses shall be made on a weekly basis without further order of the Bankruptcy Court or Canadian Court and otherwise in accordance with this Agreement; (iii) approval of the transaction contemplated hereby; (iv) authorizing the Sale without the necessity of complying with state and local rules, laws, ordinances and regulations, including, without limitation, permitting and licensing requirements, that could otherwise govern the Sale; (v) authorizing the Sale notwithstanding restrictions in leases, reciprocal easement agreements or other contracts that purport to restrict the Sale or the necessity of obtaining any third party consents; (vi) authorizing the sale of Additional Consultant Goods and granting Consultant a first priority senior security interest and lien upon the Additional Consultant Goods and proceeds thereof as provided herein; (vii) take all further actions as are necessary or appropriate to carry out the terms and conditions of this Agreement; and (viii) including protection of Consultant’s fees and expenses as part of any “carve out” in any financing order entered by the Bankruptcy Court, which protection shall provide that all such fees and expenses shall be paid to Consultant from Gross Proceeds and without adherence to any debtor-in-possession financing or cash collateral budget associated therewith, and further including additional protections with respect to proceeds of Additional Consultant Goods (the “Approval Order”), and to have the Approval Order recognized and given full force and effect by the Canadian Court in the CCAA Proceedings.


(B) In such event, any legal action, suit or proceeding arising in connection with this Agreement shall be submitted to the exclusive jurisdiction of the Bankruptcy Court having jurisdiction over Merchant, and each Party hereby waives any defenses or objections based on lack of jurisdiction, improper venue, and/or forum non conveniens. From and after entry of the Approval Order, Consultant shall conduct the Sale in accordance with the terms of the Approval Order in all material respects. In the event the Approval Order is not entered by the Bankruptcy Court or Merchant does not comply with the terms of this Agreement or the Approval Order does not include the terms and conditions contained herein, (i) Merchant shall reimburse Consultant for any Consultant Controlled Expenses incurred in connection with the Sale at the US Stores through and including the day immediately after denial of such motion by the Bankruptcy Court or the date of Merchant’s breach of this Agreement, as applicable; and (ii) Consultant may, in its sole discretion, elect to terminate this Agreement. Further upon disclosure to Merchant, Consultant shall have the right to syndicate and partner with additional entities to serve as “Consultant” hereunder as to this Agreement and as to any similar agreements. In the event the Approval Order is not recognized and given full force and effect by the Canadian Court in the CCAA Proceedings, (x) Merchant shall reimburse Consultant for any Consultant Controlled Expenses incurred in connection with the Sale at the Canada Stores through and including the day immediately after denial of recognition by the Canadian Court;

and (y) the Consultant may, in its sole discretion, elect to terminate this Agreement but solely with respect to the Canada Stores and the Sale in Canada. The Bankruptcy Court shall have exclusive jurisdiction to resolve any issues arising under this Agreement.


(C) This Agreement constitutes the entire agreement between the parties with respect to the matters contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, letters of intent or representations, written or oral, with respect thereto. This Agreement may not be modified except in a written instrument executed by each of the parties hereto. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. The failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. Nothing contained in this Agreement shall be deemed to create any relationship between Merchant and Consultant other than that of Consultant as an independent contractor of Merchant, and it is stipulated that the parties are not partners or joint venturers in any way. Unless expressly set forth herein to the contrary, to the extent that either party's consent is required/requested hereunder, such consent shall not be unreasonably withheld or delayed. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and assigns; provided, however, that this Agreement may not be assigned by either party without the prior written consent of the other. Written notices contemplated by this Agreement shall be sent by email (i) if to Merchant c/o Stephen Coulombe at scoulombe@thinkbrg.com and Mackenzie Shea mshea@thinkbrg.com ; and (ii) if to Consultant c/o Rick Edwards at redwards@gordonbrothers.com and David Braun at dbraun@gordonbrothers.com.

*[Signature Pages Follow]*

Very truly yours,  
**Gordon Brothers Retail Partners, LLC**

DocuSigned by:  
  
By: \_\_\_\_\_  
Name: Richard Edwards  
Title: President - Retail

**Gordon Brothers Canada ULC**

DocuSigned by:  
  
By: \_\_\_\_\_  
Name: Patricia Parent  
Title: Vice President, Assistant  
Treasurer, Assistant Secretary

Agreed and Accepted:  
**David's Bridal, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**David's Bridal Canada, Inc.**

By: \_\_\_\_\_  
Name:  
Title:

Exhibits:

- A-1 US Stores
- A-2 Canada Stores
- B-1 US Budget
- B-2 Canada Budget

Very truly yours,  
**Gordon Brothers Retail Partners, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**Gordon Brothers Canada ULC**

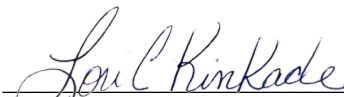
By: \_\_\_\_\_  
Name:  
Title:

Agreed and Accepted:

**David's Bridal, LLC**

By:   
Name: James Marcum  
Title: Chief Executive Officer

**David's Bridal Canada, Inc.**

By:   
Name: Lori C. Kinkade  
Title: SVP-Head of Legal & Corporate Secretary/  
Canada Director

Exhibits:

- A-1 US Stores
- A-2 Canada Stores
- B-1 US Budget
- B-2 Canada Budget



## Store List

## Exhibit A-1

Store No.	Store	Concept	Address	City	State	Zip Code	Square Ft
15	Pembroke Pines	In Line	14546 SW 5th Street, Space #7030	Pembroke Pines	FL	33027	9,400
17	Altamonte Springs	End Cap	451 E Altamonte Springs Drive-Space # 1473	Altamonte Springs	FL	32701	10,122
18	West Palm Beach	End Cap	4254 Okeechobee Blvd	West Palm Beach	FL	33409	12,640
19	Tampa	Free Standing	4503 W. Kennedy Blvd	Tampa	FL	33609	11,720
20	Baltimore	In Line	6320 Governor Ritchie Hwy, Suite D	Baltimore	MD	21061	19,973
21	Springfield	In Line	7206 Old Keene Mill Road	Springfield	VA	22150	13,399
22	Westbury	End Cap	1250 Corporate Drive	Westbury	NY	11590	15,380
23	Union	In Line	1634 State Route 22	Watchung	NJ	07069	7,802
24	Duluth	End Cap	1705 Mall of Georgia Blvd.	Buford	GA	30519	12,000
25	Paramus	Free Standing	153 Route 4 West	Paramus	NJ	07652	15,500
26	Springfield Pa	In Line	965 Baltimore Pike	Springfield	PA	19064	11,200
27	Cleveland	In Line	5445 Mayfield Road	Mayfield Heights	OH	44124	11,900
28	Pittsburgh	End Cap	6258 Northway Drive	Pittsburgh	PA	15237	9,000
29	Buffalo	In Line	1204 Niagara Falls Blvd	Tonawanda	NY	14150	9,600
30	Columbus	End Cap	6262 Sawmill Road	Dublin	OH	43017	9,000
31	Wilkes Barre		81 Mundy Street	Wilkes Barre	PA	18702	8,108
32	Cincinnati	In Line	7598 Voice of America Center Drive	West Chester	OH	45069	9,566
33	Virginia Beach	In Line	4485 Virginia Beach Blvd, Suite B3	Virginia Beach	VA	23462	10,820
34	Sunrise	Free Standing	12605 West Sunrise Boulevard	Sunrise	FL	33323	15,000
35	Danvers	In Line	8-10 Newbury Street	Danvers	MA	01923	15,874
36	Cool Springs	Free Standing	1728 Galleria Boulevard, Suite 101	Franklin	TN	37067	8,500
37	Allentown	In Line	2548 MacArthur Road	Whitehall	PA	18052	9,000
38	Charlotte	End Cap	9717 Northlake Center Parkway, Suite L	Charlotte	NC	28216	10,011
39	Glendale	In Line	7759 West Bell Road	Phoenix	AZ	85382	11,747
40	Westwood	End Cap	249 University Avenue	Westwood	MA	02090	12,000
41	Madison Heights	In Line	32127 John R. Road	Madison Heights	MI	48071	12,480
42	Memphis	In Line	2765 Wolf Creek Parkway	Memphis	TN	38133	10,985
43	Oak Lawn	End Cap	9536 S. Western Ave.	Evergreen Park	IL	60805	10,200
44	Birmingham	In Line	1723 Montgomery Highway South	Hoover	AL	35244	11,900
45	Frisco	End Cap	9288 State Highway 121, Suite 100	Frisco	TX	75034	10,000
46	Lombard	End Cap	421 E. Roosevelt Road	Lombard	IL	60148	13,255
47	Rockville	In Line	12268 Rockville Pike, Suite F	Rockville	MD	20852	8,045
48	East Brunswick	In Line	611 Route 18 South	East Brunswick	NJ	08816	10,000
49	Lenexa	Free Standing	9310 Marshall Drive	Lenexa	KS	66215	10,500
50	Las Vegas	In Line	2600 W. Sahara Avenue, Suite 109	Las Vegas	NV	89102	12,600
51	Arlington	In Line	137 Merchants Row, Suite 145	Arlington	TX	76018	7,168
52	Oklahoma City	In Line	13740 North Pennsylvania Avenue	Oklahoma City	OK	73109	11,000
54	Greensboro	End Cap	4216 West Wendover Avenue	Greensboro	NC	24704	11,000
55	Schaumburg	In Line	560 East Golf Road	Schaumburg	IL	60173	11,092
56	Maple Shade	Free Standing	539 Route 38 West, Route 38 & 73	Maple Shade	NJ	08052	10,600
57	Richfield	In Line	840 W. 78th Street	Richfield	MN	55423	11,609
59	Manchester	Free Standing	82 E. Buckland Street & Toland Turnpike	Manchester	CT	06040	11,356
60	Rochester	In Line	3333 West Henrietta Road	Rochester	NY	14623	10,000
61	Jacksonville East	End Cap	13221 City Station Drive #155	Jacksonville	FL	32218	7,524
62	Kennesaw	End Cap	440 Ernest Barrett Parkway, Suite #36	Kennesaw	GA	30144	11,553
63	Greenville	End Cap	301 Haywood Road	Greenville	SC	29607	10,433
65	Metairie	Free Standing	4630 Veterans Memorial Boulevard	Metairie	LA	70006	14,072
66	Yonkers	In Line	2572 Central Park Avenue	Yonkers	NY	10710	10,400
67	Orange	End Cap	112-118 Boston Post Road	Orange	CT	06477	8,600
68	North Olmsted	In Line	25102 Brookpark Road, Suite 168	North Olmsted	OH	44070	10,500
69	Knoxville	Free Standing	7900 Kingston Pike	Knoxville	TN	37919-5522	11,290
70	Louisville	In Line	3008 Bardstown Road	Louisville	KY	40205	12,784
71	Westminster	End Cap	9270 Sheridan Boulevard	Westminster	CO	80030	13,000
72	Richmond	In Line	12292 West Broad Street	Richmond	VA	23233	8,610
73	Coral Gables	In Line	37-41 Miracle Mile	Coral Gables	FL	33134-5403	9,400
74	Monroeville	In Line	3747 William Penn Highway	Monroeville	PA	15146	10,246
75	Brookfield	In-Line	16900-CW Blue Mound Road	Brookfield	WI	53005	8,361
76	Independence	In Line	19850 East Jackson Drive, Suite B	Independence	MO	64057	12,460
77	Morrow	End Cap	1902 Mount Zion Road	Morrow	GA	30260	8,759
78	Albany Ny	Free Standing	1440 Central Avenue	Colonie	NY	12205	12,266
80	Dayton	In Line	7-15 Prestige Plaza Drive	Miamisburg	OH	45342	8,610
81	Raleigh	End Cap	4229 Louisburg Road	Raleigh	NC	27604	12,000
82	Littleton	In Line	8680-B Park Meadows Court Drive	Lone Tree	CO	80124	12,000
83	Vista	In Line	1980 Hacienda Drive	Vista	CA	92083	8,832
84	Madison	Free Standing	2321 Gallatin Pike North	Madison	TN	37115	8,000
85	Taylor	Free Standing	23520 Eureka Road	Taylor	MI	48180	8,000
86	Freehold	End Cap	3633 Route 9 North	Freehold	NJ	07728	11,820
87	Wilmington	In Line	1100 Fashion Center Blvd., Space #325	Newark	DE	19702	10,408
88	Feasterville	End Cap	729 Bustelton Pike	Feasterville	PA	19053	10,988
89	Portland	In Line	374 Maine Mall Road	South Portland	ME	04106	9,163
90	Salt Lake City	In Line	389 West 1830 South, Suite 400	Salt Lake City	UT	84115	15,000
91	Ontario	In Line	4410 Ontario Mills Parkway	Ontario	CA	91764	10,000
92	Friendswood	Free Standing	18210 Gulf Freeway	Friendswood	TX	77546	10,000

## Store List

## Exhibit A-1

Store No.	Store	Concept	Address	City	State	Zip Code	Square Ft
93	Long Beach	In Line	7621 Carson Street	Long Beach	CA	90808	10,000
94	Tulsa	End Cap	10123 E. 71st Street South	Tulsa	OK	74133	12,000
95	Fairview Heights	In Line	#14 Plaza Drive	Fairview Heights	IL	62208	9,775
96	Ahwatukee	In Line	5043 E. Ray Road	Phoenix	AZ	85044	9,945
97	Albuquerque	In Line	2100 Louisiana Boulevard NE	Albuquerque	NM	87110-5419	9,230
98	Houston-Galleria	End Cap	4520 San Felipe Street, Suite 100	Houston	TX	77027	11,862
99	Torrance	Free Standing	21712 Hawthorne Blvd, Suite 310E	Torrance	CA	90503	9,170
100	Deptford	In Line	1555 A Almonesson Road, Space S-2A	Deptford	NJ	08096	13,329
101	Woodbridge	In Line	14403 Potomac Mills Road	Woodbridge	VA	22192	10,012
103	Long Island City	In Line	3460 48th Street	Long Island City	NY	11101	6,880
104	Costa Mesa	End Cap	901-D South Coast Drive, Suite 200	Costa Mesa	CA	92626	14,578
105	San Antonio	In Line	125 NW Loop 410, Suite 501	San Antonio	TX	78216	12,000
106	Little Rock West	In Line	12801-D Chenal Parkway	Little Rock	AR	72211	8,000
108	Milwaukee South	In Line	8450 Sura Lane	Greenfield	WI	53228	6,710
109	Syracuse	In Line	3133 Erie Blvd East	Syracuse	NY	13214	14,000
110	Warwick	In Line	1276 Bald Hill Road	Warwick	RI	02886	10,675
111	Houston North	End Cap	1600 Lake Woodlands Drive	The Woodlands	TX	77380	10,544
112	North Attleboro	In Line	40 Cumberland Avenue	North Attleboro	MA	02760	11,700
113	Maple Grove	In Line	12965 Elm Creek Blvd	Maple Grove	MN	55369	9,706
114	Indianapolis	In Line	5025 E.82nd Street, Suite 1800	Indianapolis	IN	46250	9,690
115	Oxnard	In Line	1865 East Ventura Boulevard	Oxnard	CA	93036	5,977
117	Vernon Hills	In Line	700 N. Milwaukee Avenue, Suite 114	Vernon Hills	IL	60061	9,480
118	Northridge	In Line	19240-2D Nordhoff Avenue	Northridge	CA	91324	11,800
119	La Mesa	Free Standing	9820 Mission Gorge Rd	Santee	CA	92071	10,060
120	Charleston Wv	End Cap	2800 Mountaineer Blvd	South Charleston	WV	25309	12,692
121	Hurst	Free Standing	804 Northeast Loop 820	Hurst	TX	76053	10,200
123	Natick	In Line	1286 Worcester Street	Natick	MA	01760	13,197
124	Naperville	Free Standing	530 IL Route 59	Naperville	IL	60540	9,217
125	North Dallas	Free Standing	13330 Preston Road	Dallas	TX	75240	9,000
126	Flint	Free Standing	4340 B Miller Road	Flint	MI	48507	12,170
128	Mesquite	End Cap	1616 North Towne East Blvd	Mesquite	TX	75150	12,000
129	Pinole	In Line	1212 Fitzgerald Drive	Pinole	CA	94564	9,400
130	Harrisburg	Free Standing	5125 Jonestown Road, Suite 165	Harrisburg	PA	17112	11,000
131	Austin North	In Line	9607 Research Blvd, Suite 650	Austin	TX	78759	12,388
132	Toledo	Free Standing	5162 Monroe Street	Toledo	OH	43623	11,000
133	Canton	In Line	5514 Dressler Road	Canton	OH	44720	11,025
134	Chattanooga	In Line	1820 Gunbarrell Road, Suite 400	Chattanooga	TN	37421	10,000
136	Merrillville	In Line	1700 East 80th Street	Merrillville	IN	46410	13,266
137	Des Moines	In Line	10201 University Avenue	Clive	IA	50325	10,857
138	Wichita	In Line	8241 East Kellogg Drive, Space 2A	Wichita	KS	67207	6,321
139	Orland Park	End Cap	14916 LaGrange Road	Orland Park	IL	60462	12,340
140	Nashua	End Cap	256 Daniel Webster Highway	Nashua	NH	03060	10,025
141	Plymouth Meeting	End Cap	2600 Chemical Road	Plymouth Meeting	PA	19462	10,625
142	St Peters	Free Standing	5858 Suemandy Road	St. Peters	MO	63376	12,000
143	Brea	In Line	810 East Imperial Highway	Brea	CA	92821	10,350
144	Jackson	End Cap	179 Grandview Blvd.	Madison	MS	39110	9,000
145	Orlando South	In Line	4665 Millenia Plaza Way, Space B-2	Orlando	FL	32839	11,262
147	Omaha	Free Standing	535 North 98th Street	Omaha	NE	68114	11,375
148	Mobile	Free Standing	3342 Airport Boulevard	Mobile	AL	36606	10,080
149	Colorado Springs	End Cap	7320 North Academy Blvd	Colorado Springs	CO	80920	9,000
150	Beaumont	End Cap	6155 Eastex Freeway, Suite D-430	Beaumont	TX	77706	6,000
151	Henderson	In Line	631 Marks Street, Suite C-1	Henderson	NV	89014	12,250
152	Boise	End Cap	8047 West Emerald Street	Boise	ID	83704	9,711
153	Lynnwood	In Line	19225 Alderwood Parkway Plaza, Suite 120	Lynnwood	WA	98036	14,301
154	Greenwood	In Line	1238 U.S. Highway 31 North	Greenwood	IN	46142	10,000
155	Springfield	Free Standing	3803 South Glenstone Avenue	Springfield	MO	65804	12,371
156	Youngstown	Free Standing	2070 Niles Cortland Road	Warren	OH	44484-3038	9,520
157	Fayetteville	End Cap	1920 Shibo Road, Suite 101	Fayetteville	NC	28314	10,000
159	Fort Wayne	Free Standing	1005 Northcrest Shopping Center	Fort Wayne	IN	46805	13,000
160	Beaverton	In Line	9125 SW Cascade Avenue, Suite 100	Beaverton	OR	97008	10,200
161	Lansing	In Line	4940 Marsh Road	Okemos	MI	48864	10,083
162	Peoria	End Cap	5212 Big Hollow Road, Suite B	Peoria	IL	61615	9,946
163	Tacoma	In Line	4502 Sough Steele Street, Suite #413-A	Tacoma	WA	98409	11,186
164	Shreveport	In Line	2950 East Texas Street, Space G/Box #508	Bossier City	LA	71111	10,061
165	Spokane	End Cap	15319 East Indiana Avenue, Spaces A&B	Spokane	WA	99216	10,000
166	Appleton	End Cap	4625 Michaels Drive	Grand Chute	WI	54915	10,000
167	Danbury	In Line	15 Backus Avenue, Space 13-15	Danbury	CT	06810	12,425
168	Tukwila	In Line	17740 Southcenter Parkway	Tukwila	WA	98188	12,945
169	Roseville	In Line	1140 Galleria Boulevard	Roseville	CA	95678	12,000
170	Middletown	In Line	400 Route 211 East & Carpenter Ave.	Middletown	NY	10940	10,450
171	Burbank	Free Standing	2050 Empire Avenue	Burbank	CA	91504	9,460
172	Fresno	End Cap	455 East Shaw Avenue	Fresno	CA	93710	11,000
173	Roanoke	End Cap	4873 Valley View Boulevard, NW	Roanoke	VA	24012	9,020
174	Macon	End Cap	1625 Bass Road, Suite #220	Macon	GA	31210	9,000

## Store List

## Exhibit A-1

Store No.	Store	Concept	Address	City	State	Zip Code	Square Ft
175	Baton Rouge	End Cap	5915 Bluebonnet Boulevard	Baton Rouge	LA	70836	9,998
176	Lafayette	Free Standing	3600 Ambassador Caffery Parkway	Lafayette	LA	70503	11,700
177	Columbus-Easton	In Line	4187 Worth Avenue	Columbus	OH	43219	9,709
178	Bakerfield	Free Standing	1210 Wible Street	Bakerfield	CA	93304	10,000
179	Winston Salem	End Cap	125 Hanes Square Circle	Winston-Salem	NC	27104	10,069
180	Fargo	In Line	1500 13th Avenue East, Suite E	West Fargo	ND	58078	10,125
181	Sunset Hills	End Cap	10760 Sunset Hills Plaza	Sunset Hills	MO	63127	13,511
182	Mishawaka	In Line	6502 Grape Road, Space 792	Mishawaka	IN	46544	10,800
183	Amarillo	In Line	3140 Soncy Road	Amarillo	TX	79124	8,993
184	Davenport	In Line	5252 Elmore Avenue, Suite A	Davenport	IA	52807	9,000
185	Augusta	In Line	3671 Walton Way Extension	Augusta	GA	30909	9,000
186	Springfield	In Line	3201 South Veterans Parkway	Springfield	IL	62704	9,000
187	Montgomery	In Line	8043 EastChase Parkway	Montgomery	AL	36117	6,000
188	Tallahassee	In Line	1634 Governors Marketplace	Tallahassee	FL	32301	9,000
189	Fort Myers	End Cap	4224 #8 Cleveland Avenue	Ft. Myers	FL	33901	10,000
190	Grand Rapids	Free Standing	3585 28th Street SE	Grand Rapids	MI	49512	10,000
191	Lewisville	End Cap	2401 South Stemmons Freeway	Lewisville	TX	75067	9,554
192	Tyler	In Line	8930 S. Broadway Avenue, Suite 220	Tyler	TX	75703	9,500
194	Slidell	End Cap	61123 Airport Road, Suite 1	Slidell	LA	70460	10,000
195	Fayetteville	In Line	3855 North Mall Avenue	Fayetteville	AR	72703	12,063
196	Aurora Co	End Cap	100 South Abilene Street, Unit B	Aurora	CO	80012	10,815
197	Altoona	End Cap	196 Falon Lane	Altoona	PA	16602	9,000
198	Bowie	In Line	3821 Evergreen Parkway	Bowie	MD	20716	11,000
200	Clackamas	End Cap	12225 Southeast 82nd Avenue	Happy Valley	OR	97086	12,000
202	Evansville	In Line	300 North Green River Road	Evansville	IN	47715	10,000
203	Tucson	Free Standing	497 West Auto Mall Drive	Tucson	AZ	85705	10,000
204	Rockford	End Cap	713 South Perryville Road	Rockford	IL	61108	9,000
206	Florence	In Line	7721 Mall Road	Florence	KY	41042	9,598
207	Columbia	In Line	275 Harbison Boulevard, Suite MM	Columbia	SC	29212	10,191
208	Pineville	In Line	10420-D Centrum Parkway	Pineville	NC	28134	11,678
209	Huntsville	End Cap	6421-A University Drive NW	Huntsville	AL	35806	9,000
211	Champaign	In Line	2022 North Prospect Avenue	Champaign	IL	61822	9,000
212	Robinson	In Line	6525 Robinson Centre Drive	Pittsburgh	PA	15205	10,027
213	Paducah	In Line	3051 New Holt Road, Suite B	Paducah	KY	42001	9,000
214	Erie	Free Standing	2094 Interchange Road, Parcel #30	Erie	PA	16509	9,375
216	Eugene	End Cap	1069 Valley River Way, Space A	Eugene	OR	97401	6,000
217	McAllen	In Line	1316 U.S. 83 Expressway, Building B	McAllen	TX	78501	10,400
218	Kalamazoo	Free Standing	200 Mall Dirve	Portage	MI	49024	9,000
219	Madison	End Cap	8118 Mineral Point Road	Madison	WI	53719	10,000
220	Waco	End Cap	2316 West Loop 340	Waco	TX	76711	9,000
221	Asheville	End Cap	285 Tunnel Road	Asheville	NC	28805	13,100
222	Riverside	In Line	10325 Magnolia Avenue	Riverside	CA	92505	9,300
224	Fort Collins	End Cap	4300 South College Avenue	Ft. Collins	CO	80525	9,000
225	Clearwater	End Cap	2637 Gulf Bay Boulevard	Clearwater	FL	33759	9,890
226	Jacksonville South	End Cap	9990 Southside Boulevard	Jacksonville	FL	32256	10,000
227	San Jose	In Line	3111 Stevens Creek Boulevard	San Jose	CA	95117	13,392
228	Hampton	In Line	32 Coliseum Crossing	Hampton	VA	23666	12,320
229	Hamburg	In Line	South 3670 McKinley Parkway, Space 5A	Blasdell	NY	14219	7,933
230	Durham	In Line	6911 Fayetteville Road, Suite 107	Durham	NC	27713	9,633
231	Charleston	End Cap	7250 Rivers Avenue, Building 1300	North Charleston	SC	29406	10,000
232	Sugarland	In Line	2745 Town Center Boulevard, Suite B	Sugarland	TX	77479	9,610
233	Greenville	In Line	3150 Evans Street, Suite J	Greenville	NC	27834	8,353
234	Austin South	In Line	5400 Brodie Lane, Suite 990	Austin	TX	78745	10,000
235	Reno	Free Standing	6745 South Virginia Street	Reno	NV	89511	9,000
238	Mission Valley	End Cap	980 Camino de la Reina, Suite A	San Diego	CA	92108	10,771
239	Saginaw	In Line	3425 Tittabawassee Road	Saginaw	MI	48604	9,900
241	Duluth	Free Standing	5115 Burning Tree Road, Suite 100	Duluth	MN	55811	9,040
242	Johnson City	End Cap	3135 Peoples Street, Suite 100	Johnson City	TN	37604	9,000
243	Rochester	End Cap	1340 Salem Road SW, Suite #101	Rochester	MN	55902	9,000
245	Topeka	Free Standing	1530 SW Wanamaker Road	Topeka	KS	66604	7,750
246	Savannah	End Cap	7925 Abercorn Street	Savannah	GA	31406	10,483
247	Kansas City North	End Cap	8111 NW Roanridge Road	Kansas City	MO	64151	12,500
248	Corpus Christi	In Line	4750 South Padre Island Drive, Suite 102	Corpus Christi	TX	78411	9,028
250	Cincinnati-Kenwood	End Cap	7788-B Montgomery Road	Cincinnati	OH	45236	10,770
251	Strongsville	In Line	17982 Royalton Road	Strongsville	OH	44136	9,000
252	Green Bay	In Line	2605 South Oneida Street, Suite 120	Ashwaubenon	WI	54304	8,000
253	Fort Worth	Free Standing	4470 Hulen Park Drive South	Ft. Worth	TX	76132	9,000
255	Sioux Falls	Free Standing	4004 West 41st Street	Sioux Falls	SD	57106	9,731
258	Murrieta	In Line	24430 Village Walk Place	Murrieta	CA	92562	9,650
259	Columbia Mo	In Line	203 North Stadium Boulevard	Columbia	MO	65203	8,318
260	Lincoln	End Cap	4 Gateway Mall, Unit 300	Lincoln	NE	68505	10,263
261	Southaven	In Line	6458 Towne Center Loop	Southaven	MS	38671	8,000
262	Elmira	In Line	3345 Chambers Road South, Suite 8	Horseheads	NY	14845	8,000
263	Medford	In Line	1251 East McAndrews Road, Suite 108	Medford	OR	97501	8,000



## Store List

## Exhibit A-1

Store No.	Store	Concept	Address	City	State	Zip Code	Square Ft
264	Kennewick	Free Standing	7415 West Canal Drive	Kennewick	WA	99336	8,000
265	Cedar Rapids	In Line	1402 Twixt Town Road	Marion	IA	52302	9,000
267	Lexington	In Line	111 W. Reynolds Road, Suite 130	Lexington	KY	40503	10,000
268	Oakdale	End Cap	8304 3rd Street North	Oakdale	MN	55128	9,000
270	Hattiesburg	End Cap	24 Cross Creek Parkway, Suite 10	Hattiesburg	MS	39402	8,000
271	Hagerstown	In Line	17231 Cole Road	Hagerstown	MD	21740	8,000
273	Billings	End Cap	2090 King Avenue West, Suite #101	Billings	MT	59102	8,000
274	Abilene	Free Standing	3701 Catclaw Drive	Abilene	TX	79606	8,000
275	Clarksville	End Cap	1025 Veterans Parkway, Suite 100	Clarksville	IN	47129	8,510
276	Tupelo	In Line	3944 North Gloster Street	Tupelo	MS	38804	9,000
277	Wilmington	In Line	6865 Monument Drive	Wilmington	NC	28405	5,000
279	Novi	In Line	43831 West Oaks Drive	Novi	MI	48377	11,242
282	Grand Junction	In Line	632-A Market Street	Grand Junction	CO	81505	8,000
283	Lake Grove	Free Standing	108 Alexander Ave.	Lake Grove	NY	11755	12,500
285	Eau Claire	End Cap	4840 Keystone Crossing	Eau Claire	WI	54701	8,000
286	Modesto	In Line	2225 Plaza Parkway, Suite J-3	Modesto	CA	95350	8,000
288	Florence	In Line	2853-B David H. McLeod Boulevard	Florence	SC	29501	5,599
289	York	In Line	2821 Concord Road	York	PA	17402	5,500
290	Orem	In Line	301 East University Parkway	Orem	UT	84058	10,763
291	Athens	In Line	1850 Epps Bridge Parkway, Suite 209	Athens	GA	30606	5,500
292	Salem	In Line	6335 Ulali Drive NE	Keizer	OR	97303	5,500
293	Bowling Green	End Cap	2475 Scottsville Road, Suite 107	Bowling Green	KY	42104	5,590
295	Murfreesboro	In Line	2615 Medical Center Parkway, Suite 100	Murfreesboro	TN	37129	9,060
297	Waldorf	End Cap	2901 Festival Way	Waldorf	MD	20601	7,500
298	Layton	Free Standing	2098 North Harris Boulevard	Layton	UT	84041	8,000
299	West Springfield	In Line	935 Riverdale Street, Unit F100	West Springfield	MA	01089	7,000
302	Sioux City	In Line	5001 Sergeant Road, Suite 330	Sioux City	IA	51106	6,322
303	Akron	In Line	3265 West Market Street, Room 296B	Fairlawn	OH	44333	6,464
304	San Antonio Sw	End Cap	5841 NW Loop 410, Suite 101	San Antonio	TX	78238	8,000
305	Rapid City	In Line	1635 Eglin Street	Rapid City	SD	57701	5,517
306	Anchorage	In Line	601 East Dimond Boulevard, Suite 7	Anchorage	AK	99515	7,550
307	Manhattan	In Line	45 West 25th Street	New York	NY	10010	12,756
308	Lincoln Park	End Cap	2749 North Elston Avenue	Chicago	IL	60647	9,743
309	Chico	End Cap	1515 Springfield Drive, Suite 100	Chico	CA	95928	5,525
310	Lubbock	In Line	2912 W Loop 289	Lubbock	TX	79407	9,000
311	Dartmouth	In Line	154 North Dartmouth Mall, Space 1354D	North Dartmouth	MA	02747	6,000
312	Pensacola	In Line	5912 North Davis Highway, Suite B	Pensacola	FL	32503	6,000
313	Lafayette In	In Line	200 South Creasy Lane, Suite 2070	Lafayette	IN	47905	6,400
314	Mays Landing	In Line	520 Hamilton Commons	Mays Landing	NJ	08330	7,200
315	Gainesville	In Line	3965 Plaza Boulevard, Suite 20	Gainesville	FL	32608	10,000
317	Massapequa	In Line	5290 Sunrise Highway	Massapequa Park	NY	11762	9,000
318	Pearl City	In Line	1140 Kuala Street, Suite 100	Pearl City	HI	96782	8,078
322	Port Orange	End Cap	5515 South Williamson Boulevard, Suite 215	Port Orange	FL	32128	5,900
323	Columbus	Free Standing	5450 Whittlesey Boulevard, Suite 1	Columbus	GA	31909	5,970
324	South Burlington	In Line	861 Williston Road	South Burlington	VT	05403	5,600
325	Santa Maria	Free Standing	227 East Betteravia Road	Santa Maria	CA	93454	4,860
326	College Station	In Line	1731 University Drive East	College Station	TX	77840	5,579
327	West Melbourne	In Line	205 Palm Bay Road, Suite 105	West Melbourne	FL	32904	5,000
329	Totowa	Free Standing	562 US Highway 46 East	Totowa	NJ	07512	10,820
330	Jonesboro	End Cap	3009 East Highland Drive, Suite B	Jonesboro	AR	72401	5,200
331	Spartanburg	In Line	225 West Blackstock Road, Suite 3	Spartanburg	SC	29301	5,126
334	Los Angeles	In Line	6151 West Pico Boulevard	Los Angeles	CA	90035	9,101
335	Spring Hill	In Line	1333 Wendy Court	Spring Hill	FL	34607	5,998
336	Avondale	End Cap	9945 West McDowell Road, Suite 101	Avondale	AZ	85392	7,720
338	Sacramento	In Line	1892 Arden Way	Sacramento	CA	95815	10,343
850	Buckhead	Free Standing	3234 Peachtree Road NE	Atlanta	GA	30305	6,800
852	Scottsdale	End Cap	9029 E. Talking Stick Way	Scottsdale	AZ	85250	9,390
902	El Paso	End Cap	1117 Geronimo Drive	El Paso	TX	79925	9,193

## 279 All Stores

511	Distribution Center	444 North Lane	Conshohocken	PA	19428	174,400
514	Call Center	5595 Equity Avenue	Reno	NV	89509	3,600
560	Corporate Office	1001 Washington Street	Conshohocken	PA	19428	77,000
574	Design Offices	264 West 40th Street, 12th & 13th Floors	New York	NY	10018	12,505
577	Distributon Center	100 Crossings Drive	Bristol	PA	19007	192,000

**David's Bridal Canada****Store List****Exhibit A-2**

<b>Store No.</b>	<b>Store</b>	<b>Concept</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip Code</b>	<b>Square Ft</b>
400	Scarborough	In Line	1900 Eglinton Avenue East, Unit B5	Scarborough	ON	M1L 2L9	10,094
401	Meadowvale Shopping Center	In Line	3105 Argentia Road, Unit T6	Mississauga	ON	L5N 8P7	8,069
402	The Ottawa Trainyards	End Cap	145 Trainyards Drive, Unit 1	Ottawa	ON	K1G 3X8	8,323
403	South Edmonton Common	In Line	10185 - 13th Avenue NW	Edmonton	AB	T6N 0B6	8,208
404	Kenaston Common	End Cap	160 - 1570 Kenaston Boulevard	Winnipeg	MB	R3P 0Y4	6,136
405	RioCan Langley Centre	End Cap	20070 Langley Bypass, Unit 10	Langley	BC	V3A 9J7	7,734
406	Southgate Centre	In Line	1025 Wellington Road, Unit 1	London	ON	N6E 1W4	7,022
407	Kingsland Village	In Line	319, 7337 Macleod Trail	Calgary	AB	T2H 0L8	8,500
408	Kingfisher Square	In Line	10 & 11 - 920 Upper Wentworth Street	Hamilton	ON	L9A 5C5	7,782
409	Smart Centres	In Line	70 Pinebush Road, Unit #5	Cambridge	ON	N1R 8K5	7,077
410	Dartmouth Crossing	End Cap	85 Countryview Drive, Unit 5A	Dartmouth	NS	B3B 0G4	7,165
411	RioCan Colossus Centre	In Line	67 Colossus Drive, Unit D-50	Woodbridge	ON	L4L 9J8	11,120

**David's Bridal- US Stores**  
**GBRP's Controlled Expenses**  
**Exhibit B-1**

<b># Stores</b>	<b>279</b>
<b>Start Date</b>	<b>4/6/2023</b>
<b>End Date</b>	<b>7/30/2023</b>
<b># Weeks</b>	<b>16.6</b>

	<div style="border: 1px solid black; padding: 2px 10px;">\$</div>
<b>Advertising</b>	<b>6,893,086</b>
<b>Supervision</b>	<b>3,333,742</b>
<b>Legal</b>	<b>200,000</b>
<b>Miscellaneous/Due Diligence</b>	<b>100,000</b>

<b>Total Expenses</b>	<b>10,526,828</b>
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This expense budget is based upon the above start and end dates.  
Any changes in these dates may result in adjustments to the expense budget, which will be agreed upon by Consultant and Merchant.

**David's Bridal- Canada**  
**GBRP's Controlled Expenses**  
**Exhibit B-2**

<b># Stores</b>	<b>12</b>
<b>Start Date</b>	<b>4/6/2023</b>
<b>End Date</b>	<b>6/30/2023</b>
<b># Weeks</b>	<b>12.3</b>

	<div style="border: 1px solid black; padding: 2px 10px;">\$</div>
<b>Advertising</b>	<b>228,629</b>
<b>Supervision</b>	<b>217,626</b>
<b>Legal</b>	<b>50,000</b>
<b>Miscellaneous/Due Diligence</b>	<b>10,000</b>

<b>Total Expenses</b>	<b>506,255</b>
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This expense budget is based upon the above start and end dates. Any changes in these dates may result in adjustments to the expense budget, which will be agreed upon by Consultant and Merchant.

All figures in USD.

**EXHIBIT 2-A**

**U.S. Sale Procedures**

### **Sale Procedures**<sup>1</sup>

1. The Sale will be conducted during normal business hours or such hours as otherwise permitted by the applicable unexpired lease.
2. The Sale will be conducted in accordance with applicable state and local “Blue Laws,” and thus, where such a law is applicable, no Sale will be conducted on Sunday unless the Debtors have been operating such stores on Sundays.
3. On “shopping center” property, neither the Debtors nor the Consultant shall distribute handbills, leaflets, or other written materials to customers outside of any stores’ premises, unless permitted by the applicable lease or if distribution is customary in the “shopping center” in which such store is located; *provided* that the Debtors and the Consultant may solicit customers in the stores themselves. On “shopping center” property, neither the Debtors nor the Consultant shall use any flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable lease or agreed in writing by the landlord.
4. The Debtors and the Consultant shall have the right to use and sell the Offered FF&E. The Debtors and the Consultant may advertise the sale of the Offered FF&E in a manner consistent with these Sale Procedures. The purchasers of any Offered FF&E sold during the Sale shall be permitted to remove the Offered FF&E either through the back or alternative shipping areas at any time, or through other areas after Store business hours; *provided*, however, that the foregoing shall not apply to *de minimis* Offered FF&E sales made whereby the item can be carried out of a Store in a shopping bag.
5. The Debtors and the Consultant may, but are not required to, advertise the Sale as “store closing,” “sale on everything/everything on sale,” “everything must go,” “going out of business,” or similarly themed Sale. The Debtors and the Consultant may also have a “countdown to closing” sign prominently displayed in a manner consistent with these Sale Procedures.
6. The Debtors and the Consultant shall be permitted to utilize sign walkers, displays, hanging signs, and interior banners in connection with the Sale; *provided* that such sign walkers, displays, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. Neither the Debtors nor the Consultant shall use neon or day-glo on its sign walkers, displays, hanging signs, or interior banners if prohibited by the applicable lease or applicable law. Furthermore, with respect to enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Sale Procedures. In addition, the Debtors and the Consultant shall be permitted to utilize exterior banners at (a) non-enclosed mall stores and (b) enclosed mall stores to the extent the entrance to the applicable Store does not require entry into the enclosed mall common area; *provided*,

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<sup>1</sup> Capitalized terms used but not defined in these Sale Procedures have the meanings given to them in the Interim Order to which these Sale Procedures are attached as Exhibit 2, or the Motion to which the Interim Order is attached, as applicable.

however, that such banners shall be located or hung so as to make clear that the Store Closing is being conducted only at the affected Store and shall not be wider than the storefront of the Store. In addition, the Debtors shall be permitted to utilize sign walkers in a safe and professional manner. Nothing contained in these Sale Procedures shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable lease agreement.

7. Neither the Debtors nor the Consultant shall make any alterations to the storefront, roof, or exterior walls of any stores or shopping centers, or to interior or exterior store lighting, except as authorized by the applicable lease. The hanging of in-Store signage shall not constitute an alteration to a Store.
8. Affected landlords will have the ability to negotiate with the Debtors, or at the Debtors' direction, the Consultant, modifications to the Sale Procedures. The Debtors and the landlord of any Store are authorized to enter into agreements ("Side Letters") without further order of the Court, *provided* that Side Letters do not have a material adverse effect on the Debtors or their estates.
9. To the extent relevant, and as set forth in more detail in the Consulting Agreement, conspicuous signs will be posted in each of the affected stores to the effect that all Sale are "final."
10. The Debtors will keep store premises and surrounding areas clear and orderly, consistent with past practices.
11. An unexpired nonresidential real property lease will not be deemed rejected by reason of a Store Closing or the adoption of these Sale Procedures.
12. The rights of landlords against the Debtors for any damages to a store shall be reserved in accordance with the provisions of the applicable lease.
13. If and to the extent that the landlord of any Store contends that the Debtors or the Consultant are in breach of or default under these Sale Procedures, such landlord shall provide at least five days' written notice, served by email or overnight delivery, on:

If to the Debtors:

David's Bridal, LLC  
1001 Washington Street  
Conshohocken, Pennsylvania 19428  
Attention: Lori Kinkade  
E-mail address: LKinkade@dbi.com

with copies to:

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, New York 10022  
Attention: Joshua A. Sussberg, P.C., Christopher T. Greco, P.C., and Rachael M. Bentley  
E-mail address: josh.sussberg@kirkland.com, christopher.greco@kirkland.com, and rachael.bentley@kirkland.com  
-and-

Kirkland & Ellis LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Attention: Alexandra Schwarzman, P.C.  
E-mail address: alexandra.schwarzman@kirkland.com  
-and-

Cole Schotz P.C.  
Court Plaza North  
25 Main Street  
Hackensack, New Jersey 07602  
Attention: Michael D. Sirota, Esq. Felice R. Yudkin, Esq. and Rebecca W. Hollander, Esq.  
E-mail Address: msirota@coleschotz.com, fyudkin@coleschotz.com, rhollander@coleschotz.com

If to the Consultant:

Gordon Brothers Retail Partners, LLC  
800 Boylston Street  
27th Floor  
Boston, MA 01299  
Attention: David Braun  
E-mail address: dbraun@gordonbrothers.com

with copies (which shall not constitute notice) to:

Katten Muchin Rosenman LLP  
50 Rockefeller Plaza  
New York, New York 10020  
Attention: Cindi Giglio  
E-mail address: cgiglio@katten.com



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

**Exhibit 2-B**

## CANADIAN SALE GUIDELINES

Capitalized terms used but not defined in these Sale Guidelines shall have the meanings ascribed to them in the Debtors'<sup>1</sup> motion for entry of the US Store Closing Order (as defined herein).

The following procedures shall apply to the Sale to be held at the Debtors' retail stores located in Canada (collectively, the "**Stores**").

1. Except as otherwise expressly set out herein, and subject to: (i) the Interim Order and Final Order of the Bankruptcy Court made in the cases commenced by the Debtors under the Bankruptcy Code (the "**Chapter 11 Cases**") authorizing, among other things, the Debtors to assume that certain Store Closing Consulting Agreement dated as of April 5, 2023, as amended on April 15, 2023 (the "**Consulting Agreement**"), by and between [David's Bridal, LLC (in respect of the Debtors' retail stores located in the United States), David's Bridal Canada, Inc. (in respect of the Stores)] (the "**Merchant**") and Gordon Brothers Retail Partners, LLC (in respect of the Debtors' retail stores located in the United States, "**U.S. Consultant**"), Gordon Brothers Canada ULC (in respect of the Debtors' retail stores located in the Canada, "**Canadian Consultant**" and together with U.S. Consultant, the "**Consultant**") and the transactions contemplated thereunder (collectively, the Interim Order and the Final Order, as applicable, the "**U.S. Store Closing Order**"); or (ii) the Orders of the Canadian Court recognizing and giving full force and effect to the U.S. Store Closing Order in Canada, subject to the terms of such Orders, pursuant to section 49 of the CCAA (such recognition proceedings under the CCAA, the "**CCAA Proceedings**"); or (iii) further Order of the Bankruptcy Court or the Canadian Court or recognition of a further Order of the Bankruptcy Court by the Canadian Court, as applicable; or (iv) any subsequent written agreement or Side Letter between Merchant and its applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**") and approved by Consultant, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements for each of the affected Stores (individually, a "**Lease**" and, collectively, the "**Leases**"). However, nothing contained herein shall be construed so as to create or impose upon Merchant or Consultant any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Consulting Agreement (the "**Vacate Date**"), and in all cases no later than July 31, 2023 (such date, or such other date as determined in accordance with the U.S. Store Closing Order or any Order of the Canadian Court in the CCAA Proceedings, the "**Sale Termination Date**"). Rent payable under the respective Leases shall be paid as required pursuant to the Chapter 11 Cases.

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<sup>1</sup> The "**Debtors**" are David's Bridal, LLC, DBI Midco, Inc., DBI Holdco II, Inc., DBI Investors, Inc., David's Bridal Canada, Inc. and Blueprint Registry, LLC.

3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise set out herein or ordered by the Canadian Court in the CCAA Proceedings.
4. All display and hanging signs used by Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, Consultant may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” or similar theme sale at the Stores (provided, however, that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request from a Landlord, the Landlord’s counsel or the Merchant, Consultant shall provide the proposed signage packages along with proposed dimensions by email to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. Consultant shall not use neon or day-glow signs or any handwritten signage (save that handwritten “you pay” or “topper” signs may be used). If a Landlord is concerned with “Store Closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, Merchant, Consultant and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Canadian Court, which may be sought on an expedited basis on notice to the service list in the CCAA Proceedings (the “**Service List**”). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of Consultant.
5. Consultant shall be permitted to utilize sign-walkers and street signage; provided, however, such sign-walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall be entitled to include additional merchandise of the Debtors in the Sale; provided that: (i) such merchandise is currently in the possession or control of the Debtors (including in any distribution centre used by the Debtors) or is or has been ordered by or on behalf of the Debtors from their existing vendors or partners, or is currently in transit to the Debtors (including to any distribution centre used by the Debtors) or a Store;

and (ii) such merchandise is of like kind and category and no lesser quality to the merchandise in the Stores at the commencement of the Sale.

7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are “final” and customers with any questions or complaints are to call Merchant’s hotline number.
8. Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord’s property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, Consultant may solicit customers in the Stores themselves. Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord, and no advertising trucks shall be used on Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
9. At the conclusion of the Sale in each Store, Consultant shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than Merchant FF&E (as defined below) for clarity) may be removed without the applicable Landlord’s written consent unless otherwise provided by the applicable Lease and in accordance with the U.S. Store Closing Order and the Orders of the Canadian Court in the CCAA Proceedings. Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been rejected by Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon Consultant’s obligations under the Consulting Agreement.
10. Subject to the terms of paragraph 9 above, Consultant may sell furniture, fixtures and equipment owned by Merchant (“**Merchant FF&E**”) and located in the Stores during the Sale. For greater certainty, Merchant FF&E does not include any portion of the Stores’ HVAC system, fire suppression system and fire alarm or sprinkler system. Merchant and Consultant may advertise the sale of Merchant FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any Merchant FF&E sold during the Sale shall only be permitted to remove such Merchant FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if Merchant FF&E can fit in a shopping bag, with the Landlord’s supervision as required by the Landlord and in accordance with the U.S. Store Closing Order and the Orders of the Canadian Court in the CCAA Proceedings. Consultant shall repair any damage to the Stores resulting from the removal of any Merchant FF&E by Consultant or by third party purchasers of Merchant FF&E from Consultant.

11. Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
12. Merchant hereby provides notice to the Landlords of Merchant and Consultant's intention to sell and remove Merchant FF&E from the Stores. Consultant shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with Consultant to identify Merchant FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes Consultant's entitlement to sell or remove any Merchant FF&E under the provisions of the Lease, such Merchant FF&E shall remain on the premises and shall be dealt with as agreed between Merchant, Consultant and such Landlord, or by further Order of the Canadian Court upon application by Merchant on at least two (2) days' notice to such Landlord and any Information Officer appointed in the CCAA Proceedings. If Merchant has rejected the Lease governing such Store in accordance with the an Order of the Bankruptcy Court in the Chapter 11 Cases, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in any Order of the Bankruptcy Court in the Chapter 11 Cases), and the rejection of the Lease shall be without prejudice to Merchant's or Consultant's claim to Merchant FF&E in dispute.
13. If a notice of rejection is delivered pursuant to an Order of the Bankruptcy Court in the Chapter 11 Cases to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (i) during the notice period prior to the effective time of the rejection, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Merchant, any Information Officer appointed in the CCAA Proceedings and Consultant twenty-four (24) hours' prior written notice; and (ii) at the effective time of the rejection, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.
14. Consultant and its agents and representatives shall have the same access rights to the Stores as Merchant under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
15. Merchant and Consultant shall not conduct any auctions of Merchandise or Merchant FF&E at any of the Stores.
16. Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Monique Sassi, 40 King Street West, Toronto, Ontario, M5H3C2, who may be reached by phone at 416-860-6886 or email at msassi@cassels.com. If the parties are unable to resolve

the dispute between themselves, the Landlord or Merchant shall have the right to schedule a “status hearing” before the Canadian Court on no less than two (2) days’ written notice to the other party or parties and any Information Officer appointed in the CCAA Proceedings, during which time Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Canadian Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, Consultant shall not be required to take any such banner down pending determination of any dispute.

17. Nothing herein or in the Consulting Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sale Guidelines may be amended by written agreement between Consultant, Merchant and the applicable Landlord; provided, however, that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Bankruptcy Court or Canadian Court approving such amended Sale Guidelines.

**EXHIBIT B**

**Proposed Final Order**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

**COLE SCHOTZ P.C.**

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*Proposed Counsel to Debtors*

In re:

DAVID'S BRIDAL, LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. Case No. 23-\_\_\_\_ (\_\_\_\_)

Judge: \_\_\_\_\_

(Joint Administration Requested)

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: David's Bridal, LLC (4563); DBI Midco, Inc. (7392); DBI Holdco II, Inc. (7512); DBI

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Caption of Order: FINAL ORDER (I) AUTHORIZING THE DEBTORS TO ASSUME AND PERFORM UNDER THE CONSULTING AGREEMENT RELATED TO THE SALE OF INVENTORY, (II) APPROVING PROCEDURES FOR THE SALE OF INVENTORY, (III) APPROVING MODIFICATIONS TO CERTAIN CUSTOMER PROGRAMS, AND (IV) GRANTING RELATED RELIEF

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**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO ASSUME AND PERFORM  
UNDER THE CONSULTING AGREEMENT RELATED TO THE SALE OF  
INVENTORY, (II) APPROVING PROCEDURES FOR THE SALE OF INVENTORY,  
(III) APPROVING MODIFICATIONS TO CERTAIN CUSTOMER PROGRAMS, AND  
(IV) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered three (3) through twenty-three (23), is hereby ORDERED.

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Investors, Inc. (3857); David's Bridal Canada, Inc. (N/A); and Blueprint Registry, LLC (2335). The location of debtor David's Bridal, LLC's principal place of business and the debtors' service address in these chapter 11 cases is 1001 Washington Street, Conshohocken, Pennsylvania 19428.

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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 “Final Order”), (a) authorizing the Debtors to assume and perform under the Consulting Agreement, (b) authorizing the Debtors to conduct closings or similarly themed Sale at the locations subject to the Consulting Agreement (the “Stores”) in accordance with the terms of the Sale Procedures attached to the Interim Order as Exhibit 2, with any such related Sale to be free and clear of all Encumbrances; (c) approving modifications to certain customer programs, including the return policy and acceptance of gift certificates and gift cards, resulting from the Sale; (d) authorizing the sale or disposition of the Offered Assets free and clear of Encumbrances; (e) authorizing the abandonment of certain burdensome Merchandise, FF&E, and personal property; (f) approving the continuation of the non-insider Sale Incentive Program and (g) 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 *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having

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

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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 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; 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,

**THE COURT HEREBY FINDS AND DETERMINES THAT:<sup>3</sup>**

1. The Debtors have sound business reasons for seeking to assume and perform under the Consulting Agreement, and adopt the Sale Procedures, as set forth in the Motion and at the Final Hearing, and entering into the Consulting Agreement is a reasonable exercise of the Debtors' business judgment and in the best interests of the Debtors and their estates.

2. The conduct of the Sale in accordance with the Sale Procedures will provide an efficient means for the Debtors to dispose of the Offered Assets.

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<sup>3</sup> 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.

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3. The Consulting Agreement was negotiated, proposed, and entered into by the Consultant and the Debtors without collusion, in good faith, and from arm's-length bargaining positions.

4. The Debtors' assumption of the Consulting Agreement is a sound exercise of the Debtors' business judgment.

5. The Sale is in the best interest of the Debtors' estates.

6. The Debtors have represented that they are neither selling nor leasing personally identifiable information pursuant to the Motion, although the Consultant will be authorized to distribute emails and promotional materials to the Debtors' customers consistent with the Debtors' existing policies on the use of customer information.

7. 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.

8. The entry of this Final Order is in the best interest of the Debtors and their estates.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.

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

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3. The Debtors' implementation and effectuation of the Sale is approved as set forth herein, pursuant to section 105(a) and 363(b) of the Bankruptcy Code.

4. The Debtors are authorized, pursuant to sections 105(a), 363(b), and 365 of the Bankruptcy Code and without further notice or relief from the Court except as provided herein, to take any and all actions consistent with this Final Order that are necessary or appropriate in the exercise of their reasonable business judgment to implement the Sale.

5. To the extent of any conflict between this Final Order, the Interim Order, the Sale Procedures, and the Consulting Agreement, the terms of this Final Order shall control over all other documents and the Sale Procedures shall control over the Consulting Agreement.

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

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

**I. Authority to Assume and Perform under the Consulting Agreement.**

8. The Debtors are authorized to assume and perform under the Consulting Agreement pursuant to sections 363 and 365 of the Bankruptcy Code, including: (a) making payments required by the Consulting Agreement to the Consultant without the need for any application of the

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Consultant or a further order of the Court, (b) allowing the sale of Additional Consultant Goods, and (c) participating in an augmentation program, all as permitted under the Consulting Agreement. Consultant's fees and expenses shall be paid from the gross proceeds of the Sale, without adherence to any weekly, monthly or aggregate limitation in a debtor-in-possession financing or cash collateral budget entered in connection with these chapter 11 cases, but shall be subject to the terms of the Consulting Agreement itself, including as to any expense budget attached thereto.

9. Subject to the restrictions set forth in this Final Order and the Sale Procedures, the Debtors and the Consultant hereby are authorized to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and the Sale; and each of the transactions contemplated by the Consulting Agreement, and any actions taken from or after the Petition Date.

10. On a confidential basis and for professionals' "eyes only" and upon the written (including email) request of the U.S. Trustee or the official committee of unsecured creditors, if any, and counsel for Bank of America, N.A., in its capacity as the ABL Agent and DIP Agent (as defined in the DIP and Cash Collateral Order), (i) Morgan, Lewis & Bockius LLP, Matthew Furlong, Esq. and Christopher L. Carter, Esq., and (ii) Greenberg Traurig, LLP, Alan Brody, Esq., the Debtors shall provide such requesting party, if any, with copies of periodic reports and information regarding the calculation of fees paid to the Consultant and expenses reimbursed

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concerning the Sales that are prepared by the Debtors, their professionals or the Consultant, provided, that the foregoing shall not require the Debtors, their professionals, or the Consultant to prepare or undertake to prepare any additional or new reporting not otherwise being prepared by the Debtors, their professionals, or the Consultant in connection with the Sales.

## **II. Authority to Engage in Sale.**

11. The Debtors are authorized pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to immediately continue and conduct the Sale at the Stores in accordance with this Final Order, the Sale Procedures, and the Consulting Agreement.

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

13. The Debtors are authorized to operate at the Stores in accordance with the Consulting Agreement, this Final Order and the Sale Procedures.

14. All entities that are presently in possession of some or all of the Offered Assets in which the Debtors hold an interest that are or may be subject to the Consulting Agreement or this Final Order hereby are directed to surrender possession of such Offered Assets to the Debtors or the Consultant. Debtors shall immediately serve a copy of this Final Order on any party alleged to be in possession of said Offered Assets.

15. Subject to Section IV of this Final Order, neither the Debtors nor the Consultant nor any of their officers, employees, or agents shall be required to obtain the approval of any third



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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.

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

16. All newspapers and other advertising media in which the Sale may be advertised and all landlords are directed to accept this Final Order as binding authority so as to authorize the Debtors and the Consultant to conduct the Sale and the sale of the Offered Assets pursuant to the Consulting Agreement, including, without limitation, to conduct and advertise the Sale of the Offered Assets in the manner contemplated by and in accordance with this Final Order, the Sale Procedures (as may be modified by a Side Letter (as defined below)), and the Consulting Agreement. Nothing herein shall be construed to require newspapers or other advertising media to change or modify their normal process for accepting advertising relevant to any Sale.

17. Subject to the Dispute Resolution Procedures (as defined below) provided for in this Interim Order and any Side Letter the Debtors and the Consultant are hereby authorized to take such actions as may be necessary and appropriate to implement the Consulting Agreement and to conduct the Sale without necessity of further order of this Court as provided in the Consulting Agreement or the Sale Procedures, including, but not limited to, advertising the sale as a “store closing sale,” “sale on everything/everything on sale,” “everything must go,” “going out of business,” or similar-themed Sale through the posting of signs (including the use of exterior

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banners at non-enclosed mall Stores, and at enclosed mall Stores 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 Debtor-approved terminology will be used at each Store in connection with the Sale.

18. 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 Offered Assets, to the extent that, prior to the Final Hearing, disputes arise during the course of such sale regarding laws regulating the use of sign-walkers, banners, or other advertising, and the Debtors and the Consultant are unable to resolve the matter consensually, any party may request a 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 (a) the Final Hearing or (b) 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.

19. Nothing in the Consulting Agreement, the Sale Procedures, or this Final Order releases, nullifies, or enjoins the enforcement of any liability to a Governmental Unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or operator of the property after the date of entry of this Final Order. Nothing contained in this Final

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Order, the Consulting Agreement, or the Sale 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 their rights and obligations as debtors in possession under the Bankruptcy Code, and the Debtors reserve all rights related thereto.

20. Except as expressly provided in the Consulting Agreement, the sale of the Offered Assets shall be conducted by the Debtors and the Consultant 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 Stores are authorized to enter into agreements (“Side Letters”) between themselves modifying the Sale 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 Sale Procedures and any Side Letter, the terms of such Side Letter shall control.

21. Except as expressly provided for herein or in the Sale Procedures, no person or entity, including, but not limited to, any landlord, licensor, service providers, utilities, or 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 Sale, and

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all such parties and persons of every nature and description, including, but not limited to, any landlord, licensor, service providers, utilities, or creditor and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with, obstructing, or otherwise impeding, the conduct of the Sale and/or (b) instituting any action or proceeding in any court (other than in the Court or the Canadian Court) or administrative body seeking an order or judgment against, among others, the Debtors, the Consultant, 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 Sale or other liquidation sale at the Stores and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein.

22. In accordance with and subject to the terms and conditions of the Consulting Agreement, the Consultant 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 Sale Procedures and this Final Order.

23. Except as set forth in the Consulting Agreement, all Sales of Offered Assets shall be “as is” and final. However, all 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

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“final sale.” The Debtors shall accept return of any goods purchased during the Sale that contain a defect which the lay consumer could not reasonably determine was defective by visual inspection prior to purchase for a full refund; *provided*, that the consumer must return the merchandise within 30 days of their purchase, the consumer must provide a receipt for the purchase to the Debtors, and the asserted defect must in fact be a “latent” defect, which goods shall not be resold by the Debtors.

24. The Consultant shall accept return of any goods that contain a defect which the lay consumer could not reasonably determine was defective by visual inspection prior to purchase for a full refund, provided that the consumer must return the merchandise within the time period proscribed by the Debtors’ return policy that was in effect when the merchandise was purchased, the consumer must provide a receipt, and the asserted defect must in fact be a “latent” defect., which goods shall not be resold by the Debtors.

25. The Consultant shall not be liable for sales taxes 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

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be used to pay any creditor or any other party, other than the applicable Governmental Unit for which the sales taxes are collected. The Consultant shall collect, remit to the Debtors, and account for sales taxes as and to the extent provided in the Consulting Agreement. This Final Order does not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under state law, and does not constitute a declaratory judgment with respect to any party's liability for taxes under state law.

26. Pursuant to section 363(f) of the Bankruptcy Code, the Consultant, on behalf of the Debtors, is authorized to sell the Offered Assets, and all Sales of Offered Assets, whether by the Consultant or the Debtors, shall be free and clear of any and all of any Encumbrances; provided, however, that any such Encumbrances shall attach to the proceeds of the sale of the Offered Assets with the same validity, in the same amount, with the same priority as, and to the same extent that any such Encumbrances have with respect to the Offered Assets, subject to any claims and defenses that the Debtors may possess with respect thereto and the Consultant's fees and expenses (as provided in the Consulting Agreement).

27. To the extent that the Debtors propose to sell or abandon any Offered Assets 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 Offered Assets before such sale or abandonment.

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28. The Debtors and/or the Consultant (as the case may be) are authorized and empowered to transfer Offered Assets among the stores. The Consultant is authorized to sell the Debtors' Offered Assets and abandon the same, in each case, as provided for and in accordance with the terms of the Consulting Agreement, provided that, to the extent prohibited by applicable law, the Consultant and Debtors are not authorized to abandon, and the Debtors are directed to remove and properly dispose of, any hazardous materials defined under applicable law of the jurisdiction in which the materials are located from any leased premises as and to the extent required by applicable law of the jurisdiction in which the lease premises lies.

29. Consultant is hereby granted a first priority security interest and lien upon (i) the Additional Consultant Goods and (ii) the proceeds thereof, which security interest shall be deemed perfected pursuant to this Final Order without the requirement of filing UCC financing statements or providing notification to any prior secured parties (provided that Consultant is hereby authorized to deliver any notices and file any financing statements and amendments thereof under the applicable UCC identifying Consultant's interest in the Additional Consultant Goods (and any proceeds thereof) as consigned goods thereunder and the Debtors as consignee therefor, and Consultant's security interest in such Additional Consultant Goods and the Additional Consultant Goods proceeds). As part of the weekly reconciliation, the Debtors shall turnover all proceeds from the sale of Additional Consultant Goods to the Consultant.

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30. Notwithstanding this or any other provision of this Final Order, nothing shall prevent or be construed to prevent the Consultant (individually, as part of a joint venture, or otherwise) or any of its affiliates from bidding on the Debtors' assets, pursuant to a consulting agreement, or otherwise ("Additional Assets"). The Consultant 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.**

31. Nothing in this Final Order is intended to affect any rights of any applicable Government Unit to enforce any law affecting the Debtors' conduct of any store closing sale that occurred prior to the Petition Date.

32. Nothing in this Final Order, the Consulting Agreement, or the Sale 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 Final Order. Nothing contained in this Final Order, the Consulting Agreement, or the Sale Procedures shall in any way (a) diminish the obligation of any entity to comply with environmental laws or (b) diminish the obligations of the



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Debtors to comply with environmental laws consistent with its rights and obligations as debtor in possession under the Bankruptcy Code. The Sale 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 local laws, regulations, ordinances, or police powers of general applicability regarding matters such as regulating deceptive practices and false advertising (collectively, “General Laws”). Nothing in this Final Order, the Consulting Agreement, or the Sale Procedures, shall alter or affect obligations to comply with all applicable federal safety laws and regulations. Nothing in this Final Order shall be deemed to bar any Governmental Unit (as such term is defined in section 101(47) of the Bankruptcy Code) from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors’ rights to assert in that forum or before this Court (or the Canadian Court) that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code, this Final Order, or otherwise, pursuant to paragraph 33 herein. Notwithstanding any other provision in this Final Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Final Order and/or any applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Final Order shall be deemed to have made any rulings on any such issues.

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33. To the extent that the sale of Offered Assets is subject to any Applicable 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 sale, 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 Offered Assets, or any similar laws, the dispute resolution procedures in this section shall apply (provided that, subject to recognition of this Final Order by the Canadian Court, these dispute resolution procedures shall not apply with respect to the sale of Offered Assets in Canadian stores, and that any such disputes shall be dealt with by the Canadian Court):

- a. *Provided* that the Sale is conducted in accordance with the terms of this Final Order and the Sale 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 Applicable Sale Laws and are authorized to conduct the Sale in accordance with the terms of this Final Order and the Sale Procedures without the necessity of further showing compliance with any Applicable Sale Laws.
- b. Within two business days after entry of this Final Order, the Debtor shall serve copies of this Final Order, the Consulting Agreement and the Sale Procedures via email, facsimile, or regular mail, on the following: (i) the United States Trustee; (ii) the state attorney general’s office for each state

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where the Sale are being held; (iii) the county consumer protection agency or similar agency for each county where the Sale will be held; (iv) the division of consumer protection for each state where the Sale will be held; (v) the chief legal counsel for the local jurisdiction; and (vi) the landlords for the stores.

- c. To the extent there is a dispute arising from or relating to the Sale, this Final Order, the Consulting Agreement, or the Sale Procedures, which dispute relates to any Applicable Sale Laws (a "Reserved Dispute"), this Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within ten days (10) following entry of this Final Order, any Governmental Unit may assert that a Reserved Dispute exists by serving written notice of such Reserved Dispute (which may be by e-mail) on 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 fifteen days (15) after service of the notice, the non-Debtor party may file a motion with this Court requesting that this Court resolve the Reserved Dispute (a "Dispute Resolution Motion").
- d. In the event a Dispute Resolution Motion is filed, nothing in this Final Order shall preclude the Debtors, a landlord, or other interested party from asserting (i) that the provisions of any Applicable Sale Laws are preempted by the Bankruptcy Code or (ii) that neither the terms of this Final Order nor the conduct of the Debtors pursuant to this Final Order, violates such Applicable 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 Consultant's ability to conduct or to continue to conduct the Sale pursuant to this Final Order, absent further order of this Court. This Court grants authority for the Debtors and the Consultant to conduct the Sale pursuant to the terms of this Final Order, the Consulting Agreement, and/or the Sale 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 Applicable Sale Laws or the lack of any preemption of such Applicable Sale Laws by the Bankruptcy Code. Nothing in this Final Order shall constitute

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a ruling with respect to any issues to be raised in any Dispute Resolution Motion.

- e. If, at any time, a dispute arises between the Debtors and/or the Consultant and a Governmental Unit as to whether a particular law is an Applicable Sale Law, and subject to any provisions contained in this Final Order related to the Applicable Sale Laws, then any party to that dispute may utilize the provisions 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 an Applicable Sale Law shall be made *de novo*.

34. Except as expressly provided for herein or in the Sale 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 Sale, or the advertising and promotion (including the posting of signs or the use of sign walkers) of the Sale, 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 Sale and/or (b) instituting any action or proceeding in any court or administrative body seeking an order or judgment against, among others, the Debtors, the Consultant, or the landlords at the stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the

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conduct of the Sale 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.

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

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

**V. Consumer Provisions.**

37. For the first 30 days following the Petition Date, the Debtors shall accept returns of merchandise sold by the Debtors in the ordinary course prior to any Store Closing; *provided that* such return is otherwise in compliance with the Debtors' return policies in effect as of the date such item was purchased and the customer is not repurchasing the same item so as to take

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advantage of the sale price being offered in the Sale; provided, further, that (a) returns of items sold on a “final” basis shall not be accepted, and (b) gift cards may not be returned for cash.

38. For the first 30 days following the Petition Date, stores will continue to accept the Debtors’ validly-issued gift certificates and gift cards issued prior to the Petition Date for in-person (and only in person) purchases in the ordinary course of business. After the expiration of the 30 days to utilize gift certificates and gift cards, all such validly-issued gift certificates and gift cards will no longer be accepted by the Debtors and deemed to have no remaining value. Notwithstanding any policy or law to the contrary, the gift cards are not redeemable for cash at any time.

39. In accordance with the Sale Guidelines, the Debtors and the Consultant shall post conspicuous signs in their stores, including at their cash registers, explaining the above “consumer provisions” to customers, including the return policies and gift certificate and gift card policy, which shall remain posted throughout the duration of the Sale. In addition, the Debtors will post notice of the changes to gift certificate, gift cards, and customer programs on their website.

#### **VI. Store Closing Incentive Program.**

40. The Debtors are authorized to continue and honor obligations related to the Store Closing Incentive Program; *provided*, however, that such authority shall not extend to any Insider without further order of this Court.

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## **VII. Other Provisions.**

41. The Consultant shall not be liable for any claims against the Debtors, and the Debtors shall not be liable for any claims against the Consultant, in each case, other than as expressly provided for in the Consulting Agreement.

42. This Court shall retain exclusive jurisdiction with regard to all issues or disputes relating to this Final Order or the Consulting Agreement, including, but not limited to, (a) any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit banner and sign-walker advertising, including with respect to any allegations that such advertising is not being conducted in a safe, professional, and non-deceptive manner, (b) any claim of the Debtors, the landlords, and/or the Consultant for protection from interference with the Sale, (c) any other disputes related to the Sale, and (d) to protect the Debtors and/or the Consultant against any assertions of any Encumbrances; provided that, notwithstanding anything to the contrary herein and subject to recognition of this Final Order by the Canadian Court in the Canadian Proceeding, the Canadian Court shall retain jurisdiction with regard to all issues or disputes in respect of the Sale at Canadian Stores. No such parties or person shall take any action against the Debtors, the Consultant, 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.