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PROPOSED ATTORNEYS FOR THE DEBTORS

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re: § Chapter 11
Tuesday Morning Corporation, *et al.*,¹ §
§ Case No. 23-90001
§
Debtors. § Joint Administration Requested

**DEBTORS’ EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) APPROVING PROCEDURES FOR STORE CLOSING SALES;
(II) APPROVING THE SALE OF MERCHANDISE FREE AND CLEAR OF ALL
LIENS, CLAIMS AND ENCUMBRANCES, (III) WAIVING COMPLIANCE WITH
APPLICABLE STATE LAWS AND APPROVING DISPUTE RESOLUTION
PROCEDURES; AND (III) GRANTING RELATED RELIEF**

**Emergency relief has been requested. Relief is requested not later than
February 15, 2023.**

**If you object to the relief requested or you believe that emergency
consideration is not warranted, you must appear at the hearing if one
is set, or file a written response prior to the date that relief is requested
in the preceding paragraph. Otherwise, the Court may treat the
pleading as unopposed and grant the relief requested.**

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Tuesday Morning Corporation (8532) (“TMC Corp.”); TMI Holdings, Inc. (6658) (“TMI Holdings”); Tuesday Morning, Inc. (2994) (“TMI”); Friday Morning, LLC (3440) (“FM LLC”); Days of the Week, Inc. (4231) (“DOTW”); Nights of the Week, Inc. (7141) (“NOTW”); and Tuesday Morning Partners, Ltd. (4232) (“TMP”). The location of the Debtors’ service address is 6250 LBJ Freeway, Dallas, TX 75240.

A virtual hearing will be conducted on this matter on February 15, 2023 at 2:00 p.m. (CT) in Room 204, U.S. Courthouse, 501 W. Tenth Street, Fort Worth, Texas 76102. You may participate in the hearing by an audio and video connection.

Audio communication will be by use of the Court’s dial-in facility. You may access the facility at 1.650.479.3207. Video communication will be by the use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge Morris’s home page. The meeting code is 473 581 124. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Tuesday Morning Corporation and its debtor affiliates, as debtors and debtors-in-possession in the above-referenced chapter 11 cases (collectively, the “Debtors”) hereby file this *Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Approving Procedures for Store Closing Sales; (II) Approving the Sale of Merchandise Free and Clear of All Liens, Claims and Encumbrances; (III) Waiving Compliance with Applicable State Laws and Approving Dispute Resolution Procedures; and (IV) Granting Related Relief* (the “Motion”). In support of the Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

1. The United States District Court for the Northern District of Texas (the “District Court”) has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. § 1334. The District Court’s jurisdiction has been referred to this Court pursuant to 28 U.S.C. § 157 and the District Court’s Miscellaneous Order No. 33, *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* dated August 3, 1984. This is a core matter pursuant to 28 U.S.C. § 157(b), which may be heard and finally determined by this Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On February 14, 2023 (the "Petition Date"), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") commencing the above captioned cases (the "Chapter 11 Cases"). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. An official committee of unsecured creditors has yet to be appointed in these Chapter 11 Cases. Further, no trustee or examiner has been requested or appointed in these Chapter 11 Cases.

4. A detailed description of the Debtors and their business, and the facts and circumstances supporting the Motion and the Debtors' Chapter 11 Cases, are set forth in greater detail in the *Declaration of Andrew T. Berger in Support of the Debtors' Chapter 11 Petitions and First Day Motions* and *Declaration of Dell Young in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "First Day Declarations"), which are incorporated by reference in this Motion.

Relief Requested

5. By this Motion, the Debtors seek the entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the "Interim Order" and the "Final Order"): (i) approving the procedures for conducting store closing or similarly themed sales; (ii) approving the sale of Merchandise free and clear of all liens, claims, and encumbrances,

(iii) waiving compliance with Applicable State Laws (defined below) and approving Dispute Resolution Procedures (defined below); and (iv) granting related relief.

A. Store Closings

6. The Debtors have faced unprecedented challenges, including underperforming sales at their 464 retail locations (the “Stores”). To address these challenges, the Debtors’ management team, in the exercise of their sound business judgment and in consultation with their advisors, ultimately determined that immediate liquidation of the Company’s inventory at its underperforming store locations (the “Closing Stores”) under the supervision of the Bankruptcy Court is the best strategy to maximize value for the benefit of creditors. As such, the Debtors have determined, in their business judgment, that it is in the best interests of their estates, creditors, and all parties-in-interests to seek authority to close and wind down or conduct similar themed sales (the “Sales”) to conduct store closing sales at the Closing Stores (the “Store Closings”).

7. In conjunction with their analysis of the Stores’ performance, the Debtors also conducted a review and analysis of their inventory levels at the Closing Stores. Such inventory (the “Merchandise”) will be included in and sold as part of the Sales. The Debtors expect that the bulk of the Sales and the shuttering of the Closing Stores will take approximately 8 weeks to complete. Once the Sales and closings are complete, the Debtors intend to prepare those Closing Stores for turnover to the applicable landlords.

8. The Debtors have determined, in an exercise of their business judgment, that the Sales are necessary to maximize the value of the assets being sold. At this time the Debtors are capable of continuing and completing the Sales and Store Closings without the assistance, and without the significant expense, of a liquidation consultant.²

² The prepetition lenders that provided the ABL DIP Proposal (as defined in the DIP motion) required that the Debtors negotiate and enter into a consultant agreement with Gordon Brothers. Since the Debtors found alternative, more

9. The Store Closings are a critical component of the Debtors' bankruptcy strategy, and the relief sought in this Motion will allow the Debtors to conduct the Store Closings in an efficient, controlled manner that will maximize value for the Debtors' estates. The relief requested in this Motion is integral to maximizing the value of the estates, as it will permit the Debtors to commence the Store Closings in an efficient manner and will establish fair and uniform sale guidelines to assist the Debtors and their creditors through these Chapter 11 Cases.

B. The Sale Guidelines

10. The Debtors seek approval of the streamlined sale procedures and guidelines set forth in this Motion to sell the Merchandise and conduct the Sales and Store Closings. The Debtors also seek approval of the sale guidelines to provide newspapers and other advertising media in which the Sales may be advertised with comfort that the Debtors are conducting the Sales in compliance with applicable law and with the Bankruptcy Court's approval.

11. The Debtors have determined, in the exercise of their business judgment and in consultation with their advisors, that these sale guidelines will provide the best and most efficient means of selling the Merchandise in order to maximize their value to the estate. The Debtors estimate that the majority of the Sales and Store Closings will take approximately 8 weeks to complete.

C. Liquidation Sale Laws and Dispute Resolution Procedures

12. Certain states 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, without limitation, state, provincial, and local laws, statutes, rules,

favorable DIP financing, the Debtors have filed a motion seeking to reject such agreement as an exercise of their sound business judgment.

regulations, and ordinances (the “Liquidation Sale Laws”). Liquidation 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 Store Closings. Such requirements hamper the Debtors’ ability to maximize value in selling their inventory. Subject to the Bankruptcy Court’s approval, the Debtors intend to conduct the Store Closings in accordance with the attached proposed interim and final orders, and to the extent such orders conflict with the Liquidation Sale Laws, the orders shall control.

13. For the purpose of orderly resolving any disputes between the Debtors and any Governmental Units (as defined in Bankruptcy Code § 101(27)) arising due to the Sales, the Store Closings and the alleged applicability of any Liquidation Sale Laws, the Debtors respectfully request that the Bankruptcy Court authorize the Debtors to implement the following dispute resolution procedures (the “Dispute Resolution Procedures”), as set forth in the Interim Order and the Final Order:

- i. Provided that the Sales are conducted in accordance with the terms of the Interim Order, or the Final Order, as applicable, and in light of the provisions in the laws of many Governmental Units that exempt court-ordered sales from their provisions, the Debtors will be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of the Interim Order, or the Final Order, as applicable, without the necessity of further showing compliance with any Liquidation Sale Laws.
- ii. Within **three business days** after entry of the Interim Order, the Debtors will serve, by first-class mail, copies of the Interim Order, the proposed Final Order on the following: (a) the Attorney General’s office for each state where the Sales are being held; (b) the county consumer protection agency or similar agency for each county where the Sales are being held; (c) the division of consumer protection for each state where the Sales are being held; (d) the chief legal counsel for the local jurisdiction; and (e) the landlords for the Closing Stores and their counsel of record (if applicable) (collectively, the “Dispute Notice Parties”).
- iii. To the extent that there is a dispute arising from or relating to the Sales, the Interim Order, or the Final Order, as applicable, which dispute relates to any Liquidation Sale Laws (a “Reserved Dispute”), the Bankruptcy Court

shall exercise jurisdiction to resolve the Reserved Dispute. Any time **within ten days** following entry of the Interim Order, any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the “Dispute Notice”) explaining the nature of the dispute to: (a) the Debtors; (b) proposed counsel to the Debtors, Munsch Hardt Kopf & Harr P.C., 500 N. Akard St., Ste. 3800, Dallas, TX 75201, Attn: Deborah Perry (dperry@munsch.com), Kevin Lippman (klippman@munsch.com), and Julian Vasek (jvasek@munsch.com); and (c) counsel for the DIP Agent. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within **fifteen days** after service of the Dispute Notice, the Governmental Unit may file a motion with the Bankruptcy Court requesting that the Bankruptcy Court resolve the Reserved Dispute (a “Dispute Resolution Motion”).

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

D. Fast Pay Laws

14. Many states in which the Debtors operate have laws and regulations that require the Debtors to pay an employee substantially contemporaneously with his or her termination (the

“Fast Pay Laws” and together with the Liquidation Sale Laws, the “Applicable State Laws”). These laws often require payment to occur immediately or within a period of only a few days from the date such employee is terminated.

15. The nature of the Store Closings contemplated by this Motion will result in employees being terminated during the Store Closings. To be clear, the Debtors intend to pay their terminated employees as expeditiously as possible and under normal payment procedures; however, the Debtors’ payroll system will simply be unable to process the payroll information associated with these terminations in a manner that will be compliant with the Fast Pay Laws. Under ordinary circumstances, the Debtors’ payroll department is able to coordinate delivery of final checks to coincide with an employee’s final day of work where required by state law. This process requires the Debtors’ payroll department to calculate individual termination payments, prepare each termination payment check, obtain authorization for each such check and then prepare each such check for mailing. Given the number of employees who will be terminated during the Store Closings, this process could easily take several days, making compliance with the Fast Pay Laws burdensome to the Debtors’ estates, if not impossible.

E. Lease Restrictions

16. The Debtors also respectfully request relief from any contractual restrictions that could otherwise inhibit or prevent the Debtors from maximizing value for creditors through the Store Closings and Sales. In certain cases, the contemplated Store Closings and Sales 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 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.

17. The Debtors also request that no entity, including, without limitation, utilities, landlords, shopping center managers and personnel, creditors, and all persons acting for or on their behalf shall interfere with or otherwise impede the conduct of the Store Closings, the Sales or institute any action against the Debtors in any court (other than in the Bankruptcy Court) or before any administrative body that in any way directly or indirectly interferes with, obstructs, or otherwise impedes the conduct of the Store Closings, the Sales or the advertising and promotion (including through the posting of signs) of the Sales.

Basis for Relief Requested

A. Authorization to Conduct the Sales and Store Closings in accordance with the Sale Guidelines and procedures outlined in this Motion is in the Best Interest of the Debtors' Estates

18. The Court may authorize the Debtors to consummate the Store Closings pursuant to Bankruptcy Code §§ 105(a) and 363(b). Bankruptcy Code § 363(b)(1) provides, in relevant part, that, "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Further, § 105(a) of the Bankruptcy Code provides, in relevant part, that, "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a).

19. A debtor must demonstrate sound business judgment for a sale of assets outside of the ordinary course of business. *See, e.g., Institutional Creditors of Cont'l Airlines, Inc. v. Cont'l Airlines, Inc. (In re Cont'l Airlines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986). Courts look to various factors to determine whether to approve a motion under § 363(b) of the Bankruptcy Code,

such as: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed in good faith; and (d) whether adequate and reasonable notice is provided. *See, e.g., In re Condere*, 228 B.R. 615, 626 (Bankr. S.D. Miss. 1998).

20. In addition, the Court may authorize the Store Closings based on Bankruptcy Code § 105(a), which 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." § 105(a).

21. The relief requested by this Motion represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates and is justified under §§ 105(a) and 363(b). In consultation with their advisors, the Debtors determined that the Closing Stores are a burden to their estates based on their current profitability, and that the Merchandise at the Closing Stores should be liquidated for the benefit of the Debtors' estates and their creditors. If the requested relief is not approved on an interim basis, there could be substantial harm to all stakeholders.

22. The Debtors and their advisors believe that the sale guidelines and procedures set forth herein represent the most efficient and appropriate means of maximizing the value of the Merchandise, while balancing the potentially competing concerns of landlords and other parties in interest.

23. Further, delay in consummating the Store Closings would diminish the recovery tied to monetization of the Merchandise for a number of reasons, chief among them that the Closing Stores fail to currently generate positive cash flow and therefore are a drain on liquidity. Thus, the Debtors will realize an immediate benefit in terms of financial liquidity upon the sale of the Merchandise and the termination of operations at the Closing Stores. Further, the swift and

orderly commencement of the Store Closings will allow the Debtors to timely reject the applicable Store leases, and therefore avoid the accrual of unnecessary administrative expenses for rent.

24. Numerous bankruptcy courts have approved sale guidelines in chapter 11 cases on an interim basis, and numerous courts have granted retail debtors first-day authority to implement such procedures. *See, e.g., In re Francesca's Holdings Corp.*, No. 20-13076 (BLS) (Bankr. D. Del. Dec. 8, 2020) (approving sale guidelines on an interim basis); *In re Tuesday Morning Corp.*, No. 20-31476 (HDH) (Bankr. N.D. Tex. May 27, 2020) (same); *In re Pier 1 Imports, Inc.*, No. 20-30805 (KRH) (Bankr. E.D. Va. Feb. 18, 2020) (same); *In re Modell's Sporting Goods, Inc.*, 20-14179 (VFP) (Bankr D. N.J. March 13, 2020) (same); *In re A'GACI, L.L.C.*, No. 18-50049 (RBK) (Bankr. W.D. Tex. Jan. 11, 2018 (same); *In re rue21, inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. May 18, 2017) (same); *In re BCBG Max Azria Glob. Holdings, LLC*, No. 17-10466 (Bankr. S.D.N.Y. Mar. 2, 2017) (same); *In re Aèropostale, Inc.*, No. 16-11275 (Bankr. S.D.N.Y. May 6, 2016) (same); *In re Sports Authority Holdings, Inc.*, No. 16-10527 (Bankr. D. Del. March 3, 2016) (same); *In re Quiksilver, Inc.*, No. 15-11880 (Bankr. D. Del. Sept. 10, 2015) (same); *In re Radioshack Corp.*, No. 15-10197 (Bankr. D. Del. Feb. 6, 2015) (same). The sale guidelines approved in the foregoing cases are substantially similar to those proposed herein.

B. The Court Should Approve the Sale of the Merchandise Free and Clear of all Liens, Encumbrances, and Other Interests Under Section 363(f) of the Bankruptcy Code.

25. The Debtors request approval to sell the Merchandise on a final “as is” basis, free and clear of any and all liens, claims, and encumbrances in accordance with Bankruptcy Code § 363(f). A debtor in possession may sell property under §§ 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: (i) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (ii) such entity consents; (iii) 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; (iv) such interest is in *bona fide* dispute; or (v) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f).

26. The Debtors anticipate that, to the extent there are liens on the Merchandise, all holders of such liens will consent to the Sales 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. Any and all liens on the Merchandise sold under the Sales would attach to the remaining net proceeds of such Sales with the same force, validity, 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. Moreover, all identified lienholders will receive notice and will be given sufficient opportunity to object to the relief requested on a final basis.

27. Accordingly, the Debtors submit that the Sale of the Merchandise satisfies the statutory requirements of § 365(f) and should, therefore, be free and clear of any liens, claims, encumbrances, and other interests.

C. Compliance with Applicable State Laws Should be Waived and the Dispute Resolution Procedures Should be Approved.

28. The Debtors' ability to conduct the Sales in accordance with the proposed sale guidelines and without complying with Applicable State Laws is critical to the success of the Sales. Although the Debtors intend to comply with state and local health and safety laws and consumer protection laws in conducting the Sales, many Liquidation Sale Laws require special and cumbersome licenses, waiting periods, time limits, and other procedures for store closing, liquidation, or similar sales. Additionally, compliance with Fast Pay Laws would require the Debtors to pay terminated employees within a time frame that would be detrimental to the conduct of the Chapter 11 Cases, if not impossible.

29. To eliminate the time, delay, and expense associated with the administrative procedures necessary to comply with the Applicable State Laws, the Debtors propose the sale guidelines described herein 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 Liquidation Sale Laws that may apply to the Store Closings. As such, the Debtors believe the sale guidelines mitigate any concerns that their landlords or governmental agencies may raise with respect to the Store Closings, and therefore, the below requested relief is in compliance with any applicable Liquidation Sale Laws.

30. The Debtors submit that there is strong support for granting them the authority not to comply with the Liquidation Sale Laws. *First*, it is generally accepted that many state statutes and regulations provide that, if a liquidation or bankruptcy sale is court authorized, a company need not comply with the Liquidation Sale Laws. *See, e.g.*, TEX. BUS. & COM. CODE ANN. § 17.91(3) (exempting sales conducted pursuant to court order); CAL. COM. CODE § 6103 (exempting sales pursuant to any court order); HAW. REV. STAT. § 481D-2 (2013) (same); 815

ILCS 350/3 (same); TENN. CODE ANN. § 6-55-412 (2016) (same); OHIO ADMIN. CODE 109:4-3-17(c)(1) (provided that suppliers in bankruptcy shall be subject to this rule unless enforcement would conflict and be preempted by federal law). **Second**, pursuant to Bankruptcy Code § 105(a), the Court has the authority to permit the Store Closings to proceed notwithstanding contrary Applicable State Laws as it is essential to the continued operation of the Debtors' business. **Third**, this Court will be able to supervise the Store Closings because the Debtors and their assets are subject to this Court's exclusive jurisdiction. *See* 28 U.S.C. § 1334(e)(1). As such, creditors and the public interest are adequately protected by notice of this Motion and the ongoing jurisdiction and supervision of the Bankruptcy Court because the Debtors are only seeking interim relief at the outset of these cases, and parties in interest will be able to raise any further issues at the final hearing.

31. Further, bankruptcy 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 In re Map 1978 Drilling P'ship*, 95 B.R. 432, 436 (Bankr. N.D. Tex. 1989) (holding that federal law pre-empts state law since determining how the votes will be counted for approval of a plan conflicted with § 1126(d) of the Bankruptcy Code); *see also In re LandAmerica Fin. Grp., Inc.*, 470 B.R. 759, 780 (Bankr. E.D. Va. 2012) (holding that the "scope of preemption under § 1123(a) of the Bankruptcy Code is broad enough to preempt any state law that would restrict the objectives and operation of a debtor's reorganization plan."); *In re Williams*, No. 06-32921 KRH, 2007 WL 2122131, at *9 (Bankr. E.D. Va. July 19, 2007) ("When a conflict exists between state law and bankruptcy laws enacted by Congress, the state law is superseded.").

32. 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). Preemption, however, is appropriate where, as is the case here, the only state laws involved concern economic regulation rather than 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”).

33. Under the circumstances of these Chapter 11 Cases, enforcing the strict requirements of the Liquidation Sale Laws would undermine the fundamental purpose of § 363(b) by placing constraints on the Debtors’ ability to maximize estate assets for the benefit of creditors. Accordingly, authorizing the Sales 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 Debtors do not seek a general waiver of *all* state and local law requirements, but only those that apply specifically to retail liquidation sales. Indeed, the requested waiver is narrowly tailored to facilitate the successful consummation of the Sales. Moreover, 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. Finally, the Dispute Resolution Procedures provide an ordered means for resolving any disputes arising between the Debtors and any Governmental Units with respect to the applicability of any Liquidation Sale Laws, and should therefore be approved.

34. Courts have granted similar relief in other bankruptcy cases under similar circumstances. *See, e.g., In re Francesca’s Holdings Corp.*, No. 20-13076 (BLS) (Bankr. D. Del.

Dec. 8, 2020) (authorizing store closing sales while presuming compliance with applicable store closing or liquidation sale laws); *In re Stein Mart Inc.*, No. 20-02387 (JAF) (Bankr. M.D. Fla. Aug. 14, 2020) (same); *In re Tuesday Morning Corp.*, No. 20-31476 (HDH) (Bankr. N.D. Tex. May 27, 2020) (same); *In re Modell's Sporting Goods, Inc.*, 20-14179 (VFP) (Bankr. D. N.J. March 13, 2020) (same); *In re A'GACI, L.L.C.*, No. 18-50049 (RBK) (Bankr. W.D. Tex. Jan. 11, 2018) (same); *In re BCBG Max Azria Glob. Holdings, LLC*, No. 17-10466 (Bankr. S.D.N.Y. Mar. 2, 2017) (same); *In re Aèropostale, Inc.*, No. 16-11275 (Bankr. S.D.N.Y. May 6, 2016) (same); *In re The Great Atl. & Pac. Tea Co., Inc.*, No. 15-23007 (Bankr. S.D.N.Y. Aug. 13, 2015) (same); *In re Daffy's, Inc.*, No. 12-13312 (Bankr. S.D.N.Y. 2012) (same); *In re Blockbuster Inc.*, No. 10-14997 (Bankr. S.D.N.Y. Jan. 20, 2011) (same); *In re Finlay Enters., Inc.*, No. 09-14873 (Bankr. S.D.N.Y. Sept. 25, 2009) (same); *In re The Bombay Company, Inc.*, No. 07-44084 (DML) (Bankr. N.D. Tex. Oct. 16, 2007) (same); *In re Gadzooks, Inc.*, No. 04-31486 (HDH) (Bankr. N.D. Tex. Feb. 11, 2004) (same).

35. Courts have also granted similar relief from Fast Pay Laws in other bankruptcy cases under similar circumstances. *See, e.g., In re Stein Mart Inc.*, No. 20-02387 (JAF) (Bankr. M.D. Fla. Aug. 14, 2020) (granting relief from federal, state or local laws including “any fast pay laws” in connection with store closing sales); *In re Tuesday Morning Corp.*, No. 20-31476 (HDH) (Bankr. N.D. Tex. May 27, 2020) (presuming compliance with fast pay laws in connection with store closing sales); *In re Pier 1 Imports, Inc.*, No. 20-30805 (KRH) (Bankr. E.D. Va. Feb. 18, 2020) (same); *In re rue21, inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. May 18, 2017) (same); *In re Golfsmith Int'l Holdings, Inc.*, No. 16-12033 (Bankr. D. Del. Oct. 13, 2016) (same); *In re Vestis Retail Grp, LLC*, No. 16-10971 (LSS) (Bankr. D. Del. May 16, 2016); *In re Hancock Fabrics*, No. 16-10296 (BLS) (Bankr. D. Del. Feb. 25, 2016); *In re Fresh & Easy, LLC*, No. 15-12220 (BLS)

(Bankr. D. Del. Nov. 24, 2015); *In re Haggan Holdings, LLC*, No. 15-11874 (KG) (Bankr D. Del. Oct. 15, 2015); *In re Coldwater Creek Inc.*, No. 14-10867 (BLS) (Bankr. D. Del. May 7, 2014) (ruling that “fast pay” laws and regulations were not enforceable against debtors in connection with store closing sales).

D. Compliance with Restrictions in the Debtors’ Leases Should be Waived

36. Certain of the Debtors’ leases governing the premises of the Closing Stores subject to the Store Closings 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 Bankruptcy Code § 363. *See In re Ames Dep’t Stores, Inc.*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (deciding that enforcement of such lease restrictions would “contravene overriding federal policy requiring debtor to maximize estate assets. . . .”); *In re R.H. Macy and Co., Inc.*, 170 B.R. 69, 73–74 (Bankr. S.D.N.Y. 1994) (holding that the lessor could not recover damages for breach of a covenant to remain open throughout the lease term, because the debtor had a duty to maximize the value to the estate and the debtor fulfilled this obligation by holding a store closing sale and closing the store.); *In re Tobago Bay Trading Co.*, 112 B.R. 463, 467–68 (Bankr. N.D. Ga., 1990) (finding that a debtor’s efforts to reorganize would be significantly impaired to the detriment of creditors if lease provisions prohibiting a debtor from liquidating its inventory were enforced); *In re Lisbon Shops, Inc.*, 24 B.R. 693, 695 (Bankr. E.D. Mo. 1982) (holding restrictive lease provision unenforceable in chapter 11 case where debtor sought to conduct a liquidation sale).

37. Store closing sales are a routine part of chapter 11 cases involving retail debtors. Such sales are consistently approved by courts, despite provisions in recorded documents or agreements purporting to forbid such sales. Indeed, courts have repeatedly deemed such restrictive

contractual provisions unenforceable as impermissible restraints on a debtor's ability to maximize the value of its assets under section 363 of the Bankruptcy Code. *See, e.g., In re Francesca's Holdings Corp.*, No. 20-13076 (BLS) (Bankr. D. Del. Dec. 8, 2020) (authorizing store closing sales notwithstanding restrictive provisions in any lease, sublease, or other agreement relative to occupancy); *In re Stein Mart Inc.*, No. 20-02387 (JAF) (Bankr. M.D. Fla. Aug. 14, 2020) (same); *In re Tuesday Morning Corp.*, No. 20-31476 (HDH) (Bankr. N.D. Tex. May 27, 2020) (same); *In re A'GACI, L.L.C.*, No. 19-51919 (RBK) (Bankr. W.D. Tex. Aug. 30, 2019) (same); *In re rue21, inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. May 18, 2017) (authorizing store closing sales without requiring compliance with lease provisions affecting store closing or liquidation sales); *see also In re BCBG Max Azria Glob. Holdings, LLC*, No. 17-10466 (Bankr. S.D.N.Y. Mar. 2, 2017) (same); *In re Aèropostale, Inc.*, No. 16-11275 (Bankr. S.D.N.Y. May 6, 2016) (same); *In re Sports Authority Holdings, Inc.*, No. 16-10527 (Bankr. D. Del. March 3, 2016) (same); *In re The Great Atl. & Pac. Tea Co., Inc.*, No. 15-23007 (Bankr. S.D.N.Y. August 13, 2015) (same); *In re Blockbuster Inc.*, No. 10-14997 (Bankr. S.D.N.Y. Jan. 20, 2011) (same); *In re The Bombay Company, Inc.*, No. 07-44084 (DML) (Bankr. N.D. Tex. Oct. 16, 2007) (ordering any lease provisions restricting store closing sales unenforceable); *In re Gadzooks, Inc.*, No. 04-31486 (HDH) (Bankr. N.D. Tex. Feb. 25, 2004) (confirming lease provisions purporting to restrict or prohibit store closing sales are unenforceable as an impermissible restraint on the debtor's ability to maximum the value of its assets).

38. Thus, to the extent that such provisions or restrictions exist in any of the leases of the Closing Stores subject to the Store Closings, the Debtors request that the Court authorize the Debtors to conduct any liquidation sales without interference by any landlords or other persons affected, directly or indirectly, by the liquidation sales.

E. Consumer Privacy Ombudsman Not Required

39. Bankruptcy Code § 363(b)(1) provides that a debtor may not sell or release personally identifiable information about individuals unless such sale or lease is consistent with its policies or upon appointment of a consumer privacy ombudsman pursuant to § 332. The Debtors will not be selling or releasing personally identifiable information in the course of the Sales. Therefore, appointment of a consumer privacy ombudsman is unnecessary.

Request for Waiver of Stay

40. To the extent that the relief sought in the Motion constitutes a use of property under Bankruptcy Code § 363(b), the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue the Sales, operate their businesses, and preserve the value of the estates.

Notice

41. Notice of this Motion will be provided to: (i) the Office of the United States Trustee; (ii) the Debtors' secured creditors; (iii) any party whose interests are directly affected by this specific pleading; (iv) those persons who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rules 2002 and 3017; (v) counsel for the DIP Agent, Polsinelli, P.C., 2950 N. Harwood, Suite 2100, Dallas, TX 75201, Attn: Liz Boydston, lboydston@polsinelli.com; (vi) counsel for the ABL Agent, Choate, Hall & Stewart LLP, Two International Place, Boston, MA 02110, Attn: Kevin J. Simard, ksimard@choate.com; Jonathan D. Marshall, jmarshall@choate.com; (vii) counsel to the Ad Hoc Group, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654, Attn: Ryan Blaine Bennett, P.C., rbennett@kirkland.com, Patricia Walsh Loureiro, patricia.walsh@kirkland.com; (viii) counsel for any official committees

appointed by this Court; (ix) the consolidated list of the 40 largest unsecured creditors of the Debtors; and (x) all governmental agencies having a regulatory or statutory interest in these cases. Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submits that no further notice is required.

WHEREFORE, based on the foregoing, the Debtors respectfully request that the Court (i) grant the Motion, and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 14th day of February, 2023.

MUNSCH HARDT KOPF & HARR, P.C.

By: */s/ Deborah M. Perry*

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PROPOSED ATTORNEYS FOR DEBTORS

EXHIBIT A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re: § Chapter 11
Tuesday Morning Corporation, *et al.*,¹ § Case No. 23-90001
Debtors. § Jointly Administered

INTERIM ORDER GRANTING THE DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) APPROVING PROCEDURES FOR STORE CLOSING SALES; (II) APPROVING THE SALE OF MERCHANDISE FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES; (III) WAIVING COMPLIANCE WITH APPLICABLE STATE LAWS AND APPROVING DISPUTE RESOLUTION PROCEDURES; AND (IV) GRANTING RELATED RELIEF

Upon the motion (the "Motion")² of the Debtors for the entry of an order (the "Interim Order"), (i) approving certain sale guidelines; (ii) approving the Sale of Merchandise free and clear of all liens, claims and encumbrances; (iii) waiving compliance with Applicable State Laws and

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Tuesday Morning Corporation (8532) ("TM Corp."); TMI Holdings, Inc. (6658) ("TMI Holdings"); Tuesday Morning, Inc. (2994) ("TMI"); Friday Morning, LLC (3440) ("FM LLC"); Days of the Week, Inc. (4231) ("DOTW"); Nights of the Week, Inc. (7141) ("NOTW"); and Tuesday Morning Partners, Ltd. (4232) ("TMP"). The location of the Debtors' service address is 6250 LBJ Freeway, Dallas, TX 75240.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion or the Consulting Agreement.

approving Dispute Resolution Procedures; and (iv) granting related relief; and the Court having reviewed the Motion and the First Day Declarations and having considered the statements of counsel and the evidence adduced with respect to the Motion at any hearing before the Court (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334, (ii) venue is proper in this District pursuant to 28 U.S.C. § 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iv) the notice of the Motion and the Hearing was sufficient under the circumstances, and (v) there is good cause to waive the stay of Bankruptcy Rules 6004(h) and 6006(d); after due deliberation determined that the relief requested in the Motion is necessary and essential for the Debtors' Chapter 11 Cases and such relief is in the best interests of the Debtors, their estates and creditors; and upon the record herein; and after due deliberation thereon; and good and sufficient cause have been shown; it is hereby:

FOUND AND DETERMINED THAT:³

1. The Debtors have advanced sound business reasons for conducting the Sales and Store Closings and adopting the certain sale guidelines, on an interim basis subject to the Final Hearing, as set forth in the Motion and at the Hearing as a reasonable exercise of the Debtors' business judgment and in the best interests of the Debtors and their estates.

2. Conducting the Store Closings in accordance with such sale guidelines will provide an efficient means for the Debtors to dispose of the Merchandise.

3. 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.

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact where appropriate. *See* FED. R. BANKR. P. 7052.

4. The Store Closings and the Sales are in the best interest of the Debtors' estates.

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

IT IS THEREFORE ORDERED THAT:

6. The Motion is **GRANTED ON AN INTERIM BASIS** as provided herein.

7. The final hearing (the "Final Hearing") on the Motion shall be held on the ____ day of _____ 2023 at ____ a.m./p.m. (prevailing Central Time) in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, 501 W. Tenth Street, Courtroom No. 204, Fort Worth Texas, 76102. Any objections or responses to entry of a final order on the Motion shall be filed on or before _____, 2023, and served on the Complex Service List including the following parties: (i) the Debtors, Tuesday Morning Corporation and its affiliates; (ii) proposed counsel to the Debtors, Munsch Hardt Kopf & Harr P.C., 500 N. Akard St., Ste. 3800, Dallas, TX 75201, Attn: Deborah Perry, dperry@munsch.com; Kevin Lippman, klippman@munsch.com; and Julian Vasek, jvasek@munsch.com; (iii) the Office of the United States Trustee for the Northern District of Texas; (iv) counsel for the DIP Agent, Polsinelli, P.C., 2950 N. Harwood, Suite 2100, Dallas, TX 75201, Attn: Liz Boydston, lboydston@polsinelli.com; (v) counsel for the ABL Agent, Choate, Hall & Stewart LLP, Two International Place, Boston, MA 02110, Attn: Kevin J. Simard, ksimard@choate.com; Jonathan D. Marshall, jmarshall@choate.com; (vi) counsel to the official committee of unsecured creditors once appointed in this Chapter 11 Case; and (viii) the landlords for the Closing Stores and their counsel of record (if applicable) (collectively, the "Notice Parties"). 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.

8. 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.

9. Notwithstanding Bankruptcy Rules 6003(b) and 6004(h) the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

A. Authority To Engage in Store Closing Sales

10. The Debtors are authorized, pursuant to Bankruptcy Code §§ 105(a) and 363(b)(1), to immediately continue and conduct Sales at the Closing Stores in accordance with this Interim Order.

11. The Debtors are authorized to discontinue operations at the Closing Stores in accordance with this Interim Order.

12. All entities that are presently in possession of some or all of the Merchandise in which the Debtors hold an interest that is or may be subject to this Interim Order are hereby directed to surrender possession of such Merchandise to the Debtors.

13. Neither the Debtors 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 § 101(27)) or landlord, to conduct the Store Closings and to take the related actions authorized herein.

B. Conduct of the Sales

14. All newspapers and other advertising media in which the Sales may be advertised and all landlords are directed to accept this Interim Order as binding authority so as to authorize the Debtors to conduct the Sales and the sale of Merchandise including, without limitation, to conduct and advertise the sale of the Merchandise in the manner contemplated by and in accordance with this Interim Order.

15. Except as provided for in this Interim Order and the DIP Orders, the Debtors are hereby authorized to take such actions as may be necessary and appropriate to conduct the Sales without necessity of further order of this Court, including, but not limited to, advertising the sale as a "store closing sale," "sale on everything," "everything must go," "going-out-of-business," or similar-themed sales through the posting of signs (including the use of exterior banners at non-enclosed mall Closing Stores, and at enclosed mall Closing Stores to the extent the applicable Closing Store entrance does not require entry into the enclosed mall common area), use of sign-walkers, and street signage.

16. Except as expressly provided herein, the sale of the Merchandise shall be conducted by the Debtors notwithstanding any restrictive provision of any lease, sublease or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Sales, the rejection of leases, abandonment of assets, or "going dark" provisions.

17. Except as expressly provided for herein, no person or entity, including, but not limited to, any landlord, licensor, service provider, utility, and creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Sales or the sale of Merchandise, or the advertising and promotion (including the posting of signs and exterior banners or the use of sign-walkers) of such sales, and all such parties and persons of every nature and description, including, but not limited to, any landlord, licensor, service provider, utility, and creditor and all those acting for or on behalf of such parties, are prohibited from (i) interfering in any way with, obstructing, or otherwise impeding the conduct of the Sales and/or (ii) instituting any action or proceeding in any court (other than in the Bankruptcy Court) or administrative body seeking an order or judgment against, among others, the Debtors or their landlords at the Closing Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely

affect the conduct of the Sales or sale of the Merchandise or other liquidation sales at the Closing Stores and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein.

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 Merchandise, 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 are unable to resolve the matter consensually with disputing party or Governmental Unit, any party may request a hearing with this Court pursuant to these provisions. Subject to the Court's schedule and to the extent practicable, such hearing shall be scheduled 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. All sales of Merchandise at the Closing Stores shall be "as is," final, and not subject to the Debtors' refund policy. Returns related to the purchase of Merchandise shall not be accepted; *provided, however*, the Debtors shall accept returns of any goods that contain a material 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 required 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.

20. The Debtors are directed to remit all taxes arising from the Sales to the applicable Governmental Units as and when due, provided that in the case of a bona fide dispute the Debtors are only directed to pay such taxes upon the resolution of the dispute, if and to the extent that the

dispute is decided in favor of the applicable Governmental Unit. Sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other party, other than the applicable Governmental Unit for which the sales taxes are collected. This Interim Order does not enjoin, suspend or restrain the assessment, levy or collection of any tax under state law, and does not constitute a declaratory judgment with respect to any party's liability for taxes.

21. Pursuant to Bankruptcy Code § 363(f), the Debtors are authorized to sell and all sales of Merchandise pursuant to the Sales shall be free and clear of any and all encumbrances; *provided, however*, that any such encumbrances shall attach to the proceeds of the Sales with the same validity, in the same amount, with the same priority as, and to the same extent that any such liens, claims, and encumbrances had with respect to the Merchandise, subject to any claims and defenses that the Debtors may possess with respect thereto. The Debtors are authorized and empowered to transfer Merchandise among the Stores.

22. The Debtors shall not sell anything that contains personal and/or confidential information about the Debtors' employees and/or customers as such term is defined in Bankruptcy Code § 101(41A).

C. Dispute Resolution Procedures

23. To the extent that the sale of the Merchandise is subject to any Liquidation Sale Laws, including but not limited to any federal, state or local statute, ordinance, or rule, or licensing requirement directed at regulating "going out of business," "store closing," similar inventory liquidation sales; bulk sale laws; laws restricting safe, professional, and non-deceptive advertising such as signs, banners, posting of signage, and use of sign-walkers; laws and ordinances establishing license or permit requirements, waiting periods, time limits, or bulk sale restrictions

that would otherwise apply to the sale of the Merchandise, the following dispute resolution procedures shall apply:

- i. Provided that the Sales are conducted in accordance with the terms of the Interim Order, or the Final Order, as applicable, and in light of the provisions in the laws of many Governmental Units that exempt court-ordered sales from their provisions, the Debtors will be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of the Interim Order, or the Final Order, as applicable, without the necessity of further showing compliance with any Liquidation Sale Laws.
- ii. Within **three business days** after entry of the Interim Order, the Debtors will serve, by first-class mail, copies of the Interim Order, the proposed Final Order on the following: (a) the Attorney General's office for each state where the Sales are being held; (b) the county consumer protection agency or similar agency for each county where the Sales are being held; (c) the division of consumer protection for each state where the Sales are being held; (d) the chief legal counsel for the local jurisdiction; and (e) the landlords for the Closing Stores and their counsel of record (if applicable) (collectively, the "Dispute Notice Parties").
- iii. To the extent that there is a dispute arising from or relating to the Sales, the Interim Order, or the Final Order, as applicable, which dispute relates to any Liquidation Sale Laws (a "Reserved Dispute"), the Bankruptcy Court shall exercise jurisdiction to resolve the Reserved Dispute. Any time **within ten days** following entry of the Interim Order, any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the "Dispute Notice") explaining the nature of the dispute to: (a) the Debtors; (b) proposed counsel to the Debtors, Munsch Hardt Kopf & Harr P.C., 500 N. Akard St., Ste. 3800, Dallas, TX 75201, Attn: Deborah Perry (dperry@munsch.com), Kevin Lippman (klippman@munsch.com), and Julian Vasek (jvasek@munsch.com); and (c) counsel for the DIP Agent. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within **fifteen days** after service of the Dispute Notice, the Governmental Unit may file a motion with the Bankruptcy Court requesting that the Bankruptcy Court resolve the Reserved Dispute (a "Dispute Resolution Motion").
- iv. In the event that a Dispute Resolution Motion is filed, nothing in the Interim Order, or the Final Order, as applicable, shall preclude the Debtors, a landlord, or any other interested party from asserting (A) that the provisions of any Liquidation Sale Laws are preempted by the Bankruptcy Code, or (B) that neither the terms of the Interim Order or the Final Order nor the conduct of the Debtors pursuant to the Interim Order or the Final Order, violates such Liquidation Sale Laws. Filing a Dispute Resolution Motion as

set forth herein shall not be deemed to affect the finality of any Interim Order or Final Order or to limit or interfere with the Debtors' ability to conduct or to continue to conduct the Sales pursuant to the Interim Order or the Final Order, absent further order of the Bankruptcy Court. Upon the entry of the Interim Order or the Final Order, as applicable, the Bankruptcy Court grants authority for the Debtors to conduct the Sales pursuant to the terms of the Interim Order or the Final Order, as applicable, and to take all actions reasonably related thereto or arising in connection therewith. A Governmental Unit will be entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Sale Laws or the lack of any preemption of such Liquidation Sale Laws by the Bankruptcy Code. Nothing in the Interim Order or the Final Order will constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.

- v. If, at any time, a dispute arises between the Debtors and a Governmental Unit as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in the Interim Order or the Final Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions above by serving a notice to the other party and proceeding thereunder in accordance with those paragraphs. Any determination with respect to whether a particular law is a Liquidation Sale Law shall be made *de novo*.

24. Notwithstanding anything to the contrary in this Interim Order, the term "Liquidation Sale Laws" shall be deemed not to include any public health or safety laws or any state and local laws, regulations, ordinance, or police powers of general applicability (the "General Laws") regarding matters such as consumer protection, labor and employment, taxes (including but not limited to, the collection of sales taxes), the sale of gift certificates, layaway programs, return of goods, express or implied warranties of goods, and "weights and measures" regulation and monitoring, and the Debtors shall continue to be required to comply, as applicable, with such General Laws, subject to any applicable provision of the Bankruptcy Code and federal law, and nothing in this Interim Order shall be deemed to bar Governmental Units (as defined in Bankruptcy Code § 101(27)) or any public officials from enforcing General Laws.

25. Subject to the terms of this Interim Order, each and every federal, state, or local agency, department, or Governmental Unit with regulatory authority over the Sales, and all

newspapers and other advertising media in which the Sales 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 Sales.

26. Provided that the Sales are conducted in accordance with the terms of this Interim Order, and in light of the provisions in the laws that exempt court-ordered sales, the Debtors and the landlords of the Closing Stores shall be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of this Interim Order without the necessity of further showing compliance with any such Liquidation Sale Laws.

D. Other Provisions.

27. The Debtors, in the exercise of their reasonable business judgment, and subject to the prior written consent of the DIP Agent, may remove stores from the list of Closing Stores attached to this Interim Order as **Schedule 1** at any time and without notice or further order of this Court.

28. To the extent the Debtors are subject to any state “fast pay” laws in connection with the Store Closings, the Debtors shall be presumed to be in compliance with such laws to the extent, in applicable states, such payroll payments are made by the later of: (a) the Debtors’ next regularly scheduled payroll; and (b) **seven calendar days** following the termination date of the relevant employee, and in all such cases consistent with, and subject to, any previous orders of this Court regarding payment of same.

29. Subject to the terms of the DIP order and the DIP credit agreement, the Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order.

END OF ORDER

Submitted by:

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State Bar No. 00784479

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PROPOSED ATTORNEYS FOR DEBTORS

Schedule 1

List of Closing Stores

Store #	State	Address
1154	AL	1695 McFarland Blvd. Unit BNorthport, AL 35476-3256
0185	AL	Bailey Cove Shopping Center7900 Bailey Cove RoadSuite 8Huntsville, AL 35802
0359	AL	Brook Highland Plaza5291 Highway 280, Unit 2BBirmingham, AL 35242
0679	AL	Circle West3114 Ross Clark CircleDothan, AL 36303
0184	AL	Eastwood Village1620 Montclair Rd.Irondale, AL 35210
0542	AL	Midtown Mart3051 Dauphin StreetMobile, AL 36606
0712	AL	Paradise Isle1720 Gulf Shores PkwyGulf Shores, AL 36542
0546	AL	Riverchase Promenade1705 Montgomery Hwy SHoover, AL 35244
0717	AL	Southland Plaza2019 Sixth Ave SEDecatur, AL 35601
0567	AL	Westside Centre6275 University Dr NW, Unit 8Huntsville, AL 35806-1776
1180	AR	Highland Square2008 S. Caraway Rd.Jonesboro, AR 72401
1003	AR	Rockwood Plaza204 South Rockwood Dr., Suite ECabot, AR 72023
0274	AZ	Arrowhead Plaza20165 N. 67th Ave., #118Glendale, AZ 85308
0544	AZ	Bell Towne Plaza245 E. Bell RoadSuite 26Phoenix, AZ 85022
0164	AZ	Broadway Wilmot6228 E. Broadway Blvd., Suite 150Tucson, AZ 85711
0866	AZ	Gateway Village10273 W. McDowell Rd.Avondale, AZ 85392
1211	AZ	Lake Pleasant Towne Center10096 West Happy Valley Rd.Peoria, AZ 85281
0788	AZ	Las Tiendas Village2815 South Alma School Rd, Ste 1Chandler, AZ 85286
0159	AZ	McClintock Fountains 1840 E. Warner Road Suite M-2Tempe, AZ 85284
0699	AZ	Mesa Pavilions North6952 E. Hampton Ave.Mesa, AZ 85206
0606	AZ	Sonora Village15449 N. Hayden Rd, Ste 101Scottsdale, AZ 85260
0810	AZ	Ventana Village Shopping Center6884 East Sunrise Dr., Unit 150Tucson, AZ 85750
1178	AZ	Village Square II4643 Cactus RoadPhoenix, AZ 85032
0176	CA	23855 Hawthorne Blvd.Torrance, CA 90505
0437	CA	890 Blossom Hill RoadSan Jose, CA 95123
0294	CA	901 Santa Monica Blvd.Santa Monica, CA 90401
0597	CA	Camarillo Village Square2450 Las Posas Road, Ste HCamarillo, CA 93010
0327	CA	Fairway Commons Shopping Center5771A Five Star Blvd.Roseville, CA 95678
1102	CA	Folsom Faire685 East Bidwell St.Folsom, CA 95630
0345	CA	Glendora East Shopping Center1000 E. Route 66Suite EGlendora, CA 91740
0393	CA	Granada Hills Town Center18040 Chatsworth St.Granada Hills, CA 91344
0663	CA	Hilltop / Redding Plaza1635 A-C & M Hilltop Dr.Redding, CA 96002
0877	CA	Lakewood Marketplace5432 Woodruff Ave.Lakewood, CA 90713
0740	CA	North County Plaza1824 Marron Rd.Carlsbad, CA 92008
0201	CA	Pacific Plaza Shopping Center1772-D Garnet AvenueSan Diego, CA 92109
0220	CA	Pride Shopping Center22950 Victory Blvd.Woodland Hills, CA 91367
1220	CA	Rancho San Diego Towne Center2983 Jamacha Rd.El Cajon, CA 92019
0443	CA	Redlands Town Center9940 Alabama Street, Suite CRedlands, CA 92374
0857	CA	Redwood Gateway1355 N. McDowell Blvd.Petaluma, CA 94954
0261	CA	Regency Plaza7255 Greenback LnCitrus Heights, CA 95621
0451	CA	Riviera Plaza (Telephone Plaza)4756 Telephone Road, Suite #3Ventura, CA 93003
0448	CA	Rosedale Village Shopping Center2721 Calloway DriveBakersfield, CA 93312-2618
0406	CA	San Marin Plaza191 San Marin DriveNovato, CA 94945
0489	CA	Santiago Hills Marketplace8520 E. Chapman AveOrange, CA 92869
0168	CA	Sav-On Drug Center17120 Magnolia StreetFountain Valley, CA 92708
0616	CA	Skypark Plaza Shopping Center2485 Notre Dame Blvd.Suite 410Chico, CA 95928
0400	CA	Terra Vista Town Center11098 East Foothill Blvd., Ste 120Rancho Cucamonga, CA 91730-3681
0415	CA	The Trading Post Shopping Center850 Herndon Ave., Ste 102Clovis, CA 93619
0736	CA	Town Center Plaza44250 Town Center Way, Ste C-11Palm Desert, CA 92260
1092	CA	UC Marketplace3338 Governor Dr.San Diego, CA 92122
0262	CA	Valley Del Rio Shopping Center4242 Camino Del RioSuite 7San Diego, CA 92108
0721	CA	Village La Verne2139 Foothill Blvd.La Verne, CA 91750
0579	CA	Vintage Plaza3250 Dale RoadModesto, CA 95356
1030	CA	Woodcrest Plaza17126 Van Buren Blvd.Riverside, CA 92504
1111	CO	Applewood Village3354 Youngfield St.Wheat Ridge, CO 80033
0013	CO	Bowles Crossing8055 W. Bowles Ave., Ste 800Littleton, CO 80123
0084	CO	Erindale Center5677 N. Academy BlvdColorado Springs, CO 80918

0253 CO Harmony Marketplace4426 South College Ave.Ft. Collins, CO 80525
1196 CO Johnstown Plaza4909 Thompson PkwyJohnstown, CO 80534
0049 CO Market at Southpark7951 S. BroadwayLittleton, CO 80122-2715
1081 CO Northglenn Marketplace10606 Melody Dr.Northglenn, CO 80234-4114
0474 CO Parker Marketplace II18721 East Ponderosa Dr., Units A&BParker, CO 80134-8824
1213 CO Powers Pointe5637 Barnes Rd.Colorado Springs, CO 80917
0462 CO Pueblo Shopping Center220 W. 29th St.Pueblo, CO 81008
0521 CO Red Cliff Pointe2650 North AvenueSuites 111 - 115Grand Junction, CO 81501
1150 CO River Point at Sheridan3640 River Point Pkwy, Ste ASheridan, CO 80110
1101 CO Summit Place Shopping Center209 - 237 Summit Place Shopping CenterSilverthorne, CO 80498
0928 CO The Centre on Plum Creek774 S Perry St., Ste CCastle Rock, CO 80104
0458 CO University Hills South2890 S. Colorado Blvd.Suite 1-ADenver, CO 80222
0656 CO Village at Twin Peaks1240 S. Hover St., Ste 500Longmont, CO 80501
0204 DE Lantana Square Shopping Center154-156 Lantana DriveHockessin, DE 19707
0977 DE Rehoboth Mall18904 Rehoboth Mall Blvd.Rehoboth Beach, DE 19971
0358 FL Butler Plaza Central3728 SW Archer Rd.Gainesville, FL 32608
1052 FL Corridors at Ponte Vedra Shopping Center840 A1A North, Suite 210Ponte Vedra, FL 32082
0551 FL Cortez Commons 5630 Cortez Road WestBradenton, FL 34210
0227 FL Countryside Centre2561 Countryside Blvd, Suite 3Clearwater, FL 33761
1186 FL Cypress Trace13300 S. Cleveland Ave. Ste 47Fort Myers, FL 33907-3883
1100 FL Gateway Market Center7895 Martin Luther King Jr. Street NorthSt. Petersburg, FL 33702-4111
0895 FL Granada Shoppes1000 Immokalee Rd.Naples, FL 34110
0095 FL Hollieanna Center701 S. Orlando Ave.Winter Park, FL 32789
0932 FL Lady Lake Crossing486 N. Hwy 27/441Lady Lake, FL 32159
0559 FL Lake Washington Square2447 N. Wickham RoadSuite 112Melbourne, FL 32935
1179 FL Landings Shopping Center4768 S. Tamiami TrailSarasota, FL 34231
0550 FL McGregor Pointe S/C15271 McGregor Blvd.Ft. Myers, FL 33908
1005 FL Nature Coast Commons1377 Wendy CourtSpring Hill, FL 34607-3917
0236 FL Northdale Promenade15692 Dale Mabry HwyTampa, FL 33618 - 1606
0818 FL Palm Cay Plaza745 N. Courtenay Pkwy.Merritt Island, FL 32953
0592 FL Plantation Commons4489-E Commons Drive WestDestin, FL 32541
0289 FL Pompano Plaza949 - A East Mcnab Rd.Pompano Beach, FL 33062
1204 FL Seminole City Center11201 Park Blvd.Seminole, FL 33618-1606
0202 FL Shoppes of Oakbrook11692 US Hwy 1North Palm Beach, FL 33408
1045 FL Sun City Center Plaza1615 Sun City Center PlazaSun City Center, FL 33573
1159 FL Suntime Square Shopping Center7777 N. Wickham Rd., Ste #1Melbourne, FL 32940
1192 FL Titus Landing2420 Washington AveTitusville, FL 32781
1140 FL Venice Village Shoppes4127 Tamiami Trl SVenice, FL 34293
0612 FL West Volusia Regional SC2661 S. Woodland Blvd.Deland, FL 32720
0329 GA Alps Village191 Alps Road, Suite 13BAthens, GA 30606
0826 GA Dalton Outlet Shops1001 Market Street, Ste 22Dalton, GA 30720
1209 GA Dawson Marketplace136 Marketplace ParkwayDawsonville, GA 30534-7274
1156 GA Deerfield Place13069 Hwy 9N, Suite 2520Milton, GA 30004
0525 GA Galleria Square Shopping Center4025 Watson Blvd.Suite 180 & 200Warner Robins, GA 31093
0796 GA Mall of Georgia C171999 Mall of Georgia Blvd., Ste A-200Buford, GA 30519
0004 GA North Lake Business Park1901 Montreal Road Suite 129Tucker, GA 30084
0520 GA Parkside Shops5920 Roswell Road, NEBox 45 - Suite C-204Atlanta, GA 30328
0198 GA Picadilly Square10010 Abercorn St.Unit 1Savannah, GA 31406
1161 GA Presidential Commons1708A Scenic Highway N.Snellville, GA 30078
0132 GA Roswell Towne Center608 Holcomb Bridge Rd., Ste 220Roswell, GA 30076-1712
0524 GA Shallowford Crossing2421 Shallowford Road, NESuite 120Marietta, GA 30066
0334 IA Clocktower Square2900 University Ave, Ste 230West Des Moines, IA 50266
0709 IA Coral Ridge Mall1451 Coral Ridge AvenueCoralville, IA 52241
0539 IA Village Shopping Center902 W. Kimberly RoadSuite 10Davenport, IA 52806
0683 ID Coeur D' Alene Center227 W. Appleway Ave.Coeur D' Alene, ID 83814
0608 IL Garden Market4700 Gilbert StreetSuite 25Western Springs, IL 60558
0565 IL Marketview Center45 E Marketview Dr.Champaign, IL 61820-7832
0605 IL Town And Country Shopping Center2345 S. MacArthur Blvd.Springfield, IL 62704

0593 IL University Square1401 West GlenSuite APeoria, IL 61614
0784 IL Village Crossing S/C5613 W. Touhy Ave.Niles, IL 60714
0604 IN JoAnn's Plaza4710 Coldwater Rd.Fort Wayne, IN 46825
0469 IN McKinley Town & Country Shopping Centre2548 Miracle LaneMishawaka, IN 46545
0615 IN Parkwest Shopping Center3962 West Jefferson Blvd.Ft. Wayne, IN 46804
0127 IN Plaza East217 N. Green River RoadEvansville, IN 47715
0574 IN Sagamore @ 26 Shopping Center311 Sagamore Pkwy NorthLafayette, IN 47904
0120 KS Regency Lakes Shopping Center2423 N. GreenwichWichita, KS 67226
1086 KY Alexandria Village Green6929 Alexandria PikeAlexandria, KY 41001
0105 KY Crossroads Shopping Center125 E. Reynolds Rd., Ste 145Lexington, KY 40517
0929 KY Florence Plaza7800 Connector Dr., Store #09AFlorence, KY 41042
0388 KY Gateway Commons Phase I2600 Calumet TraceOwensboro, KY 42303-2125
0880 KY Kentucky Oaks Plaza3250 James Sanders Blvd.Paducah, KY 42001
0171 KY Town Fair Center1915 S. Hurstbourne PkwyLouisville, KY 40220
0921 KY Woodhill Circle1555 East New Circle Rd.Lexington, KY 40509
0083 LA Hammond Aire Plaza9626 Airline Hwy, Ste C1Baton Rouge, LA 70815-5556
0924 LA Westside South Shopping Center64 Westbank Expressway, Unit GGretna, LA 70053
0107 MD Bay Ridge Plaza121 Hillsmere PlazaAnnapolis, MD 21403
0023 MD Congressional Plaza1616 East Jefferson St #12BRockville, MD 20852
0821 MD Free State Shopping Center15500 Annapolis Rd., Ste. 120Bowie, MD 20715
1237 MD Magothy Gateway139 Ritchie Hwy, Ste CSeverna Park, MD 21146
0624 MD Northgate Plaza Shopping Center13832 Georgia AvenueSilver Spring, MD 20906
0425 MD Rock Spring S/C1447 Rock Spring RoadBel Air, MD 21014
0739 MD South End Shopping Center1171 Maryland Ave.Hagerstown, MD 21740
0096 MD St. John's Plaza9150 Baltimore National Pike, Ste 1BEllicott City, MD 21042
0426 MI Centerpointe Mall3661 28th Street SEGrand Rapids, MI 49512-1605
0472 MI Southland Shopping Center6140 South Westnedge Ave.Portage, MI 49002
0336 MI Troy Commons905 East Big Beaver Rd.Troy, MI 48083
0247 MN 7 & 41 Crossings Center2497 Highway 7Excelsior, MN 55331
0572 MN Division Place I2730 Division St.St. Cloud, MN 56301-3817
0221 MN Har Mar Mall2100 N. Snelling Avenue #2Roseville, MN 55113
0104 MO Creve Coeur Plaza780 N. New Ballas Rd.Creve Coeur, MO 63141
0845 MO Olivette S/C9656 Olive Blvd.Olivette, MO 63132
0569 MO Stateline Station1130 W. 136th StKansas City, MO 64145
0091 MO Tiffany Springs Market Center8986 NW Skyview AveKansas City, MO 64154
0732 MS Big Oaks Crossing3885 N. Gloster St.Tupelo, MS 38804-9732
0801 MS South Lake Centre195 Goodman Rd. W.Southaven, MS 38671-9033
0930 NC 774 E. King St.Boone, NC 28607
0570 NC Akers Center1495 E. Franklin Blvd.Gastonia, NC 28054
0357 NC Battleground Plaza3726-A Battleground AvenueGreensboro, NC 27410
0284 NC Beaver Creek Crossings South1593 Beaver Creek CommonsApex, NC 27502
0728 NC Brennan Station8111 Creedmoor Road #127Raleigh, NC 27613
0806 NC Cheshire Place3716 West W.T. Harris Blvd, Suite BCharlotte, NC 28269
0144 NC Creekside Crossing404 East Six Forks RoadRaleigh, NC 27609
0741 NC Greenville Square703 Greenville Blvd SEGreenville, NC 27858
0871 NC Morehead Plaza2900 Arendell St. Ste 15Morehead City, NC 28557
0799 NC New Hope Commons5426 New Hope Commons Dr.Durham, NC 27707
1123 NC Outer Banks Mall5050 S. Croatan HwyNags Head, NC 27959
0147 NC Park Square Shopping Center2442 Park Rd.Charlotte, NC 28203
1222 NC Rivergate Shopping Center14151 Steele Creek Rd H200Charlotte, NC 28273
723 NC South Hills Mall & Plaza1297 Buck Jones Rd.Raleigh, NC 27606
0835 NC Wakefield Crossing Shopping Center13200 New Falls of Neuse Rd. Suite 127Raleigh, NC 27614
0231 NC Whitaker Square Shopping Center1947 North Pease Haven Road, Space #1947Winston-Salem, NC 27106
0146 NC Windsor Square Shopping Center9945 E. Independence Blvd.Matthews, NC 28105-4621
0392 NE East Park Shopping Center200 N. 66th St, Suite 6Lincoln, NE 68505
0781 NJ Midland Park Shopping Center85 Godwin Ave., Unit 31AMidland Park, NJ 07432
1184 NM Cottonwood Corners10420 Coors Bypass NW., Suite 96Albuquerque, NM 87114
0288 NM Plaza de Santa Fe II3553 Zafarano Dr.Santa Fe, NM 87507

1093 NV Del Monte Plaza6013 S. Virginia St.Reno, NV 89502
0399 NV Montecito Crossing6650 N. Durango Dr. Ste 110Las Vegas, NV 89149
0298 NV Rampart Plaza8520 Del Webb Blvd.Las Vegas, NV 89134
755 NV Southgate Shopping Center3921 South Carson StreetCarson City, NV 89701
0631 NY Greenlawn Plaza773 Pulaski RoadUnit #5Greenlawn, NY 11740
0618 NY Hamburg Village Square140 Pine StreetHamburg, NY 14075
1106 NY Panorama Plaza1601 Penfield Rd.Penfield, NY 14625
0541 OH Belden Village Commons4844 Everhard Rd. NorthwestCanton, OH 44718
0477 OH Centerville Place1079 South Main StreetCenterville, OH 45458
0282 OH Cherry Grove Plaza454 Ohio Pike, Unit 54Cincinnati, OH 45255
0675 OH Glenway Crossing5056 Glencrossing Way #158Cincinnati, OH 45238
0671 OH Mill Run Square3655 Fishinger Blvd.Hilliard, OH 43026
0149 OH Olentangy Plaza885 Bethel Rd.Columbus, OH 43214
1158 OH Southland Shopping Center6845 Pearl Rd.Middleburg Heights, OH 44130
0374 OK Rockwell-Northwest Shopping Center6920 NW Expressway, Suite COklahoma City, OK 73132-3532
1202 OK The Shops at Turkey Creek501 SE Washington Blvd, Ste CBartlesville, OK 74006
0738 OR Bear Creek Plaza850 Biddle Rd.Medford, OR 97504
0719 OR Bend Factory Stores61334 S. Highway 97, Ste 280Bend, OR 97702
0395 OR Cedar Hills Crossing3485 SW Cedar Hills Blvd., Ste 160Beaverton, OR 97005-1337
0523 OR Gresham Square 56 NW BurnsideGresham, OR 97030
0691 OR Hilfiker Square4450 Commercial St. SESalem, OR 97302
0769 OR Milwaukie Marketplace10890 SE Oak StreetMilwaukie, OR 97222
0687 PA Donaldson's Crossroads3911 Washington Rd., Unit 1McMurray, PA 15317
0814 PA Lakewood Plaza2169 W. 12th St.Erie, PA 16505
1047 PA Pilgrim Gardens Shopping Center1043 Pontiac RoadDrexel Hill, PA 19026
644 PA Southampton Shopping Center500 2nd Street PikeSouthampton, PA 18966
1035 PA The Shoppes at Valley Forge228 Schuylkill RoadPhoenixville, PA 19460
1015 PA Village of East Side6401 Penn AvenuePittsburgh, PA 15206
0802 SC Aiken Exchange Shopping Center2529 Whiskey Rd.Aiken, SC 29803
1174 SC Belle Hall Shopping Center680 Long Point Rd.Mount Pleasant, SC 29464-8216
573 SC Cashua Place Shopping Center1900 West Palmetto StreetFlorence, SC 29501
0186 SC Harbison Court264 Harbison Blvd #14Columbia, SC 29212-2282
0192 SC St. Andrews Center975 Savannah Hwy. # 254 TuCharleston, SC 29407
0718 SC Town 'N Country Shopping Plaza6101 Calhoun MemorialEasley, SC 29640
1235 SD Plaza 412721 West 41st StreetSioux Falls, SD 57105
0005 TN Eastgate Center5056 Park AveMemphis, TN 38117-5709
0137 TN Germantown Plaza Shopping Center2031 Exeter Rd., Ste 101 & 102Germantown, TN 38138
0029 TN Indian Lake West Shopping Center259 Indian Lake Blvd.Hendersonville, TN 37075
0537 TN Ken's Plaza3122-A East OaklandJohnson City, TN 37601
0798 TN Kingsport Shopping Center1409 East Stone DrKingsport, TN 37660
0563 TN Malco Plaza 2853 Bartlett Blvd.Bartlett, TN 38134
0813 TN Pigeon River Crossing2727 Teaster LanePigeon Forge, TN 37863
1009 TN Providence Commons Shopping Center655 S. Mt. Juliet Rd.Mt. Juliet, TN 37122-6319
0353 TN The Commons at Dexter Lake1625 Germantown Parkway, Suite 101Cordova, TN 38016
0610 TN The Maples Shopping Center1010 Murfreesboro Rd., Ste 192Franklin, TN 37064
0834 TX Atascocita Market Square8072 FM 1960 EastHumble, TX 77346
0439 TX Brodie Oaks S/C4006 S. LamarSuite 850Austin, TX 78704
0713 TX Burleson Shopping Center654 SW Willshire Blvd.Burleson, TX 76028
0824 TX Firewheel Commons3046 Lavon Drive, Suite 129BGarland, TX 75040
1225 TX Granbury Lakeside Center1406 E. US Hwy 377Granbury, TX 76048
0035 TX Harwood Village North609 Harwood Rd.Bedford, TX 76021
0074 TX Hulen Fashion Center5240 South Hulen StreetFort Worth, TX 76132
1190 TX Lewisville Towne Crossing4750 State Hwy 121, Ste #300Lewisville, TX 75056-2913
1232 TX Northcross Shopping Center5217-A N Navarro StVictoria, TX 77904
0197 TX Parkdale Place4150 Dowlen RoadBeaumont, TX 77706
1193 TX Parker Central Plaza Shopping Center3304 Central ExpresswayPlano, TX 75074-2307
0075 TX Pipeline Village1323 W. Pipeline Rd.Hurst, TX 76053
0536 TX Post Oak Square Shopping Center1210 Harvey Rd.College Station, TX 77840

1119	TX	Presidio Towne Crossing2225 Porter Creek Dr.Fort Worth, TX 76177
0893	TX	Santa Fe Square3950 E. 42nd StreetOdessa, TX 79762
1218	TX	Shops at Chisholm Trail Ranch5517 Sierra Springs LaneFort Worth, TX 76123
0067	TX	Tanglewood Village Shopping Center2110 W. Slaughter LaneSuite 168Austin, TX 78748
0014	TX	The B Spot on Burnet7301 Burnet RoadSuite 300Austin, TX 78757
0009	TX	Village at Camp Bowie3501 Bernie Anderson Ave.Fort Worth, TX 76116-5458
0056	TX	Weslayan Plaza West Shopping Center5442-A Wesleyan StreetHouston, TX 77005
0303	TX	West Towne Marketplace6450 N. Desert Blvd., Ste 5El Paso, TX 79912
0031	TX	Westheimer Commons12568 Westheimer Rd.Houston, TX 77077
1175	TX	Westhill Village Shopping Center7525 WestheimerHouston, TX 77063
1181	TX	Wichita Falls Shopping Center4319 Kemp Blvd., Unit BWichita Falls, TX 76308
0538	UT	4050 Riverdale Rd.Riverdale, UT 84405
0547	UT	Brickyard Shopping Center1130 Brickyard Rd.Salt Lake City, UT 84106
0276	UT	Family Center of Orem168 East University ParkwayOrem, UT 84058
0655	UT	The Shoppes at Zion250 Red Cliffs Dr.Suites 37, 38, & 39St. George, UT 84790
0548	VA	118 W. 21st StreetNorfolk, VA 23517
654	VA	Ashland Hanover Shopping Center251A N. Washington Hwy.Ashland, VA 23005
0131	VA	Broad Shopping Center9125 W. Broad St., Ste JRichmond, VA 23294
0588	VA	Hancock Village14613 Hancock Village St.Chesterfield, VA 23832-2758
0702	VA	Hanover Village S/C7043 Mechanicsville TurnpikeMechanicsville, VA 23111
1083	VA	Jefferson Green12233 Jefferson AveNewport News, VA 23602
0701	VA	Manaport Plaza8371 Sudley Rd.Manassas, VA 20109
0641	VA	Rose Hill Plaza6140-A Rose Hill Dr.Alexandria, VA 22310
0090	VA	Smoketown Station2890 Prince William PkwyWoodridge, VA 22192
0339	VA	The Shops at Stratford Hills7101 Forest Hill Ave., Ste FRichmond, VA 23225-1553
0549	VA	Warwick Village S/C11006 Warwick Blvd.Suite 426-A Newport News, VA 23601
0181	VA	West Springfield Shopping Center6230 Rolling RoadBays N,O,PWest Springfield, VA 22152
0673	WA	Evergreen Crossing Shopping Center13808 E. Indiana Ave.Spokane Valley, WA 99216
0752	WA	Hazel Dell Marketplace628 NE 81st St.Suites D & CVancouver, WA 98665
1130	WA	Meridian Town Center13410 Meridian Ave EastPuyallup, WA 98373
0858	WA	South Sound Center719 Sleater - Kinney Rd. SE, Suite 162Lacey, WA 98503
0791	WI	Greenfield Place4930 South 74th StreetGreenfield, WI 53220
1231	WI	The Shoppes at Fox River1110 West Sunset Sr., Ste 140Waukesha, WI 53189-8423

EXHIBIT B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
Tuesday Morning Corporation, <i>et al.</i> , ¹	§	Case No. 23-90001
	§	
Debtors.	§	Jointly Administered

FINAL ORDER GRANTING THE DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) APPROVING PROCEDURES FOR STORE CLOSING SALES; (II) APPROVING THE SALE OF MERCHANDISE FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES; (III) WAIVING COMPLIANCE WITH APPLICABLE STATE LAWS AND APPROVING DISPUTE RESOLUTION PROCEDURES; AND (IV) GRANTING RELATED RELIEF

Upon the motion (the "Motion")² of the Debtors for the entry of an order (i) approving certain sale guidelines; (iii) approving the Sale of Merchandise free and clear of all liens, claims and encumbrances; (iii) waiving compliance with Applicable State Laws and approving Dispute

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Tuesday Morning Corporation (8532) ("TM Corp."); TMI Holdings, Inc. (6658) ("TMI Holdings"); Tuesday Morning, Inc. (2994) ("TMI"); Friday Morning, LLC (3440) ("FM LLC"); Days of the Week, Inc. (4231) ("DOTW"); Nights of the Week, Inc. (7141) ("NOTW"); and Tuesday Morning Partners, Ltd. (4232) ("TMP"). The location of the Debtors' service address is 6250 LBJ Freeway, Dallas, TX 75240.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

Resolution Procedures; and (iv) granting related relief; and the Court having reviewed the Motion and the First Day Declarations and having considered the statements of counsel and the evidence adduced with respect to the Motion at any hearing before the Court (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334, (ii) venue is proper in this District pursuant to 28 U.S.C. § 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iv) notice of the Motion and the Hearing was sufficient under the circumstances, and (v) there is good cause to waive the stay of Bankruptcy Rules 6004, and after due deliberation determined that the relief requested in the Motion is necessary and essential for the Debtors' reorganization and such relief is in the best interests of the Debtors, their estates and their creditors; and upon the record herein; and after due deliberation thereon; and good and sufficient cause have been shown; it is hereby:

FOUND AND DETERMINED THAT:³

1. The Debtors have advanced sound business reasons for conducting the Sales and Store Closings, on a final basis, as set forth in the Motion and at the Hearing as a reasonable exercise of the Debtors' business judgment and in the best interests of the Debtors and their estates.
2. Conducting the Store Closings in accordance with this Final Order will provide an efficient means for the Debtors to dispose of the Merchandise.
3. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for the relief approved herein.
4. The Store Closings and the Sales are in the best interest of the Debtors' estates.

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact where appropriate. *See* FED. R. BANKR. P. 7052.

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

IT IS THEREFORE ORDERED THAT:

6. The Motion is **GRANTED ON A FINAL BASIS** as provided herein.

7. 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.

8. Notwithstanding Bankruptcy Rules 6003(b) and 6004(h) the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

A. Authority To Engage in Store Closing Sales

9. The Debtors are authorized, pursuant to Bankruptcy Code §§ 105(a) and 363(b)(1), to immediately continue and conduct Sales at the Closing Stores in accordance with this Final Order.

10. The Debtors are authorized to discontinue operations at the Closing Stores in accordance with this Final Order.

11. All entities that are presently in possession of some or all of the Merchandise in which the Debtors hold an interest that are or may be subject to this Final Order are hereby directed to surrender possession of such Merchandise to the Debtors.

12. Neither the Debtors 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 § 101(27)) or landlord, to conduct the Store Closings and to take the related actions authorized herein.

B. Conduct of the Sales

13. All newspapers and other advertising media in which the Sales may be advertised and all landlords are directed to accept this Final Order as binding authority so as to authorize the Debtors to conduct the Sales and the sale of Merchandise including, without limitation, to conduct and advertise the sale of the Merchandise in the manner contemplated by and in accordance with this Final Order.

14. Except as provided for in this Final Order and any DIP orders, the Debtors are hereby authorized to take such actions as may be necessary and appropriate to conduct the Sales without necessity of further order of this Court, including, but not limited to, advertising the sale as a "store closing sale," "sale on everything," "everything must go," "going-out-of-business," or similar-themed sales through the posting of signs (including the use of exterior banners at non-enclosed mall Closing Stores, and at enclosed mall Closing Stores to the extent the applicable Closing Store entrance does not require entry into the enclosed mall common area), use of sign-walkers, and street signage.

15. Except as expressly provided herein, the sale of the Merchandise shall be conducted by the Debtors notwithstanding any restrictive provision of any lease, sublease or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Sales, the rejection of leases, abandonment of assets, or "going dark" provisions.

16. Except as expressly provided for herein, no person or entity, including, but not limited to, any landlord, licensor, service provider, utility, and creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Sales or the sale of Merchandise, or the advertising and promotion (including the posting of signs and exterior banners or the use of sign-walkers) of such sales, and all such parties and persons of every nature

and description, including, but not limited to, any landlord, licensor, service provider, utility, and creditor, and all those acting for or on behalf of such parties, are prohibited from (i) interfering in any way with, obstructing, or otherwise impeding, the conduct of the Sales and/or (ii) instituting any action or proceeding in any court (other than in the Bankruptcy Court) or administrative body seeking an order or judgment against, among others, the Debtors or their landlords at the Closing Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sales or sale of the Merchandise or other liquidation sales at the Closing Stores and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein.

17. Notwithstanding anything herein to the contrary, and in view of the importance of the use of sign-walkers, banners, and other advertising to the sale of the Merchandise, to the extent that disputes arise during the course of such sale regarding laws regulating the use of sign-walkers, banners or other advertising and the Debtors are unable to resolve the matter consensually with disputing party or Governmental Unit, any party may request a hearing with this Court, and subject to the Court's schedule and to the extent practicable, such hearing shall be scheduled 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.

18. All sales of Merchandise at the Closing Stores shall be "as is," final, and not subject to the Debtors' refund policy. Returns related to the purchase of Merchandise shall not be accepted; *provided, however*, the Debtors shall accept returns of any goods that contain a material 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 required 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.

19. The Debtors are directed to remit all taxes arising from the Sales to the applicable Governmental Units as and when due, provided that in the case of a bona fide dispute the Debtors are only directed to pay such taxes upon the resolution of the dispute, if and to the extent that the dispute is decided in favor of the applicable Governmental Unit. Sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other party, other than the applicable Governmental Unit for which the sales taxes are collected. This Final Order does not enjoin, suspend or restrain the assessment, levy or collection of any tax under state law, and does not constitute a declaratory judgment with respect to any party's liability for taxes.

20. Pursuant to Bankruptcy Code § 363(f), the Debtors are authorized to sell the Merchandise, and all sales of Merchandise pursuant to the Sales shall be free and clear of any and all liens, claims and encumbrances; provided, however, that any such liens, claims and encumbrances shall attach to the proceeds of the Sales with the same validity, in same the amount, with the same priority as, and to the same extent that any such liens, claims, and encumbrances had with respect to the Merchandise, subject to any claims and defenses that the Debtors may possess with respect thereto. The Debtors are authorized and empowered to transfer Merchandise among the Stores.

21. The Debtors shall not sell anything that contains personal and/or confidential information about the Debtors’ employees and/or customers as such term is defined in Bankruptcy Code § 101(41A).

C. Dispute Resolution Procedures

22. To the extent that the sale of the Merchandise is subject to any Liquidation Sale Laws, including but not limited to any federal, state or local statute, ordinance, or rule, or licensing requirement directed at regulating “going out of business,” “store closing,” similar inventory liquidation sales; bulk sale laws; laws restricting safe, professional, and non-deceptive advertising such as signs, banners, posting of signage, and use of sign-walkers; laws and ordinances establishing license or permit requirements, waiting periods, time limits, or bulk sale restrictions that would otherwise apply to the sale of the Merchandise, the following dispute resolution procedures shall apply:

- i. Provided that the Sales are conducted in accordance with the terms of the Interim Order, or the Final Order, as applicable, and in light of the provisions in the laws of many Governmental Units that exempt court-ordered sales from their provisions, the Debtors will be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of the Interim Order, or the Final Order, as applicable, without the necessity of further showing compliance with any Liquidation Sale Laws.
- ii. Within **three business days** after entry of the Interim Order, the Debtors will serve, by first-class mail, copies of the Interim Order, the proposed Final Order on the following: (a) the Attorney General’s office for each state where the Sales are being held; (b) the county consumer protection agency or similar agency for each county where the Sales are being held; (c) the division of consumer protection for each state where the Sales are being held; (d) the chief legal counsel for the local jurisdiction; and (e) the landlords for the Closing Stores and their counsel of record (if applicable) (collectively, the “Dispute Notice Parties”).
- iii. To the extent that there is a dispute arising from or relating to the Sales, the Interim Order, or the Final Order, as applicable, which dispute relates to any Liquidation Sale Laws (a “Reserved Dispute”), the Bankruptcy Court shall exercise jurisdiction to resolve the Reserved Dispute. Any time **within ten days** following entry of the Interim Order, any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the “Dispute Notice”) explaining the nature of the dispute to: (a) the Debtors; (b) proposed counsel to the Debtors, Munsch Hardt Kopf & Harr P.C., 500 N. Akard St., Ste. 3800, Dallas, TX 75201,

Attn: Deborah Perry (dperry@munsch.com), Kevin Lippman (klippman@munsch.com), and Julian Vasek (jvasek@munsch.com); and (c) counsel for the DIP Agent. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within **fifteen days** after service of the Dispute Notice, the Governmental Unit may file a motion with the Bankruptcy Court requesting that the Bankruptcy Court resolve the Reserved Dispute (a "Dispute Resolution Motion").

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

23. Notwithstanding anything to the contrary in this Final Order, the term "Liquidation Sale Laws" shall be deemed not to include any public health or safety laws or any state and local laws, regulations, ordinance, or police powers of general applicability (the "General Laws") regarding matters such as consumer protection, labor and employment, taxes (including but not

limited to, the collection of sales taxes), the sale of gift certificates, layaway programs, return of goods, express or implied warranties of goods, and "weights and measures" regulation and monitoring, and the Debtors shall continue to be required to comply, as applicable, with such General Laws, subject to any applicable provision of the Bankruptcy Code and federal law, and nothing in this Interim Order shall be deemed to bar Governmental Units (as defined in Bankruptcy Code § 101(27)) or any public officials from enforcing General Laws.

24. Subject to the terms of this this Final Order, each and every federal, state, or local agency, department, or Governmental Unit with regulatory authority over the Sales, and all newspapers and other advertising media in which the Sales 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 Sales.

25. Provided that the Sales are conducted in accordance with the terms of this Final Order, and in light of the provisions in the laws that exempt court-ordered sales, the Debtors and the landlords of the Closing Stores shall be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of this Final Order without the necessity of further showing compliance with any such Liquidation Sale Laws.

D. Other Provisions.

26. The Debtors, in the exercise of their reasonable business judgment, and subject to the prior written consent of the DIP Agent, may remove stores from the list of Closing Stores attached to this Final Order as **Schedule 1** at any time and without notice or further order of this Court.

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

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

28. Subject to the terms of the DIP order and the DIP credit agreement, the Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

End of Order

Submitted by:

Deborah M. Perry
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Kevin M. Lippman
State Bar No. 00784479
Julian P. Vasek
State Bar No. 24070790
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Dallas, TX 75201
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Email: dperry@munsch.com
Email: klippman@munsch.com
Email: jvasek@munsch.com

PROPOSED ATTORNEYS FOR DEBTORS

Schedule 1

List of Closing Stores

Store #	State	Address
1154	AL	1695 McFarland Blvd. Unit BNorthport, AL 35476-3256
0185	AL	Bailey Cove Shopping Center7900 Bailey Cove RoadSuite 8Huntsville, AL 35802
0359	AL	Brook Highland Plaza5291 Highway 280, Unit 2BBirmingham, AL 35242
0679	AL	Circle West3114 Ross Clark CircleDothan, AL 36303
0184	AL	Eastwood Village1620 Montclair Rd.Irondale, AL 35210
0542	AL	Midtown Mart3051 Dauphin StreetMobile, AL 36606
0712	AL	Paradise Isle1720 Gulf Shores PkwyGulf Shores, AL 36542
0546	AL	Riverchase Promenade1705 Montgomery Hwy SHoover, AL 35244
0717	AL	Southland Plaza2019 Sixth Ave SEDecatur, AL 35601
0567	AL	Westside Centre6275 University Dr NW, Unit 8Huntsville, AL 35806-1776
1180	AR	Highland Square2008 S. Caraway Rd.Jonesboro, AR 72401
1003	AR	Rockwood Plaza204 South Rockwood Dr., Suite ECabot, AR 72023
0274	AZ	Arrowhead Plaza20165 N. 67th Ave., #118Glendale, AZ 85308
0544	AZ	Bell Towne Plaza245 E. Bell RoadSuite 26Phoenix, AZ 85022
0164	AZ	Broadway Wilmot6228 E. Broadway Blvd., Suite 150Tucson, AZ 85711
0866	AZ	Gateway Village10273 W. McDowell Rd.Avondale, AZ 85392
1211	AZ	Lake Pleasant Towne Center10096 West Happy Valley Rd.Peoria, AZ 85281
0788	AZ	Las Tiendas Village2815 South Alma School Rd, Ste 1Chandler, AZ 85286
0159	AZ	McClintock Fountains 1840 E. Warner Road Suite M-2Tempe, AZ 85284
0699	AZ	Mesa Pavilions North6952 E. Hampton Ave.Mesa, AZ 85206
0606	AZ	Sonora Village15449 N. Hayden Rd, Ste 101Scottsdale, AZ 85260
0810	AZ	Ventana Village Shopping Center6884 East Sunrise Dr., Unit 150Tucson, AZ 85750
1178	AZ	Village Square II4643 Cactus RoadPhoenix, AZ 85032
0176	CA	23855 Hawthorne Blvd.Torrance, CA 90505
0437	CA	890 Blossom Hill RoadSan Jose, CA 95123
0294	CA	901 Santa Monica Blvd.Santa Monica, CA 90401
0597	CA	Camarillo Village Square2450 Las Posas Road, Ste HCamarillo, CA 93010
0327	CA	Fairway Commons Shopping Center5771A Five Star Blvd.Roseville, CA 95678
1102	CA	Folsom Faire685 East Bidwell St.Folsom, CA 95630
0345	CA	Glendora East Shopping Center1000 E. Route 66Suite EGlendora, CA 91740
0393	CA	Granada Hills Town Center18040 Chatsworth St.Granada Hills, CA 91344
0663	CA	Hilltop / Redding Plaza1635 A-C & M Hilltop Dr.Redding, CA 96002
0877	CA	Lakewood Marketplace5432 Woodruff Ave.Lakewood, CA 90713
0740	CA	North County Plaza1824 Marron Rd.Carlsbad, CA 92008
0201	CA	Pacific Plaza Shopping Center1772-D Garnet AvenueSan Diego, CA 92109
0220	CA	Pride Shopping Center22950 Victory Blvd.Woodland Hills, CA 91367
1220	CA	Rancho San Diego Towne Center2983 Jamacha Rd.El Cajon, CA 92019
0443	CA	Redlands Town Center9940 Alabama Street, Suite CRedlands, CA 92374
0857	CA	Redwood Gateway1355 N. McDowell Blvd.Petaluma, CA 94954
0261	CA	Regency Plaza7255 Greenback LnCitrus Heights, CA 95621
0451	CA	Riviera Plaza (Telephone Plaza)4756 Telephone Road, Suite #3Ventura, CA 93003
0448	CA	Rosedale Village Shopping Center2721 Calloway DriveBakersfield, CA 93312-2618
0406	CA	San Marin Plaza191 San Marin DriveNovato, CA 94945
0489	CA	Santiago Hills Marketplace8520 E. Chapman AveOrange, CA 92869
0168	CA	Sav-On Drug Center17120 Magnolia StreetFountain Valley, CA 92708
0616	CA	Skypark Plaza Shopping Center2485 Notre Dame Blvd.Suite 410Chico, CA 95928
0400	CA	Terra Vista Town Center11098 East Foothill Blvd., Ste 120Rancho Cucamonga, CA 91730-3681
0415	CA	The Trading Post Shopping Center850 Herndon Ave., Ste 102Clovis, CA 93619
0736	CA	Town Center Plaza44250 Town Center Way, Ste C-11Palm Desert, CA 92260
1092	CA	UC Marketplace3338 Governor Dr.San Diego, CA 92122
0262	CA	Valley Del Rio Shopping Center4242 Camino Del RioSuite 7San Diego, CA 92108
0721	CA	Village La Verne2139 Foothill Blvd.La Verne, CA 91750
0579	CA	Vintage Plaza3250 Dale RoadModesto, CA 95356
1030	CA	Woodcrest Plaza17126 Van Buren Blvd.Riverside, CA 92504
1111	CO	Applewood Village3354 Youngfield St.Wheat Ridge, CO 80033
0013	CO	Bowles Crossing8055 W. Bowles Ave., Ste 800Littleton, CO 80123
0084	CO	Erindale Center5677 N. Academy BlvdColorado Springs, CO 80918

0253 CO Harmony Marketplace4426 South College Ave.Ft. Collins, CO 80525
1196 CO Johnstown Plaza4909 Thompson PkwyJohnstown, CO 80534
0049 CO Market at Southpark7951 S. BroadwayLittleton, CO 80122-2715
1081 CO Northglenn Marketplace10606 Melody Dr.Northglenn, CO 80234-4114
0474 CO Parker Marketplace II18721 East Ponderosa Dr., Units A&BParker, CO 80134-8824
1213 CO Powers Pointe5637 Barnes Rd.Colorado Springs, CO 80917
0462 CO Pueblo Shopping Center220 W. 29th St.Pueblo, CO 81008
0521 CO Red Cliff Pointe2650 North AvenueSuites 111 - 115Grand Junction, CO 81501
1150 CO River Point at Sheridan3640 River Point Pkwy, Ste ASheridan, CO 80110
1101 CO Summit Place Shopping Center209 - 237 Summit Place Shopping CenterSilverthorne, CO 80498
0928 CO The Centre on Plum Creek774 S Perry St., Ste CCastle Rock, CO 80104
0458 CO University Hills South2890 S. Colorado Blvd.Suite 1-ADenver, CO 80222
0656 CO Village at Twin Peaks1240 S. Hover St., Ste 500Longmont, CO 80501
0204 DE Lantana Square Shopping Center154-156 Lantana DriveHockessin, DE 19707
0977 DE Rehoboth Mall18904 Rehoboth Mall Blvd.Rehoboth Beach, DE 19971
0358 FL Butler Plaza Central3728 SW Archer Rd.Gainesville, FL 32608
1052 FL Corridors at Ponte Vedra Shopping Center840 A1A North, Suite 210Ponte Vedra, FL 32082
0551 FL Cortez Commons 5630 Cortez Road WestBradenton, FL 34210
0227 FL Countryside Centre2561 Countryside Blvd, Suite 3Clearwater, FL 33761
1186 FL Cypress Trace13300 S. Cleveland Ave. Ste 47Fort Myers, FL 33907-3883
1100 FL Gateway Market Center7895 Martin Luther King Jr. Street NorthSt. Petersburg, FL 33702-4111
0895 FL Granada Shoppes1000 Immokalee Rd.Naples, FL 34110
0095 FL Hollieanna Center701 S. Orlando Ave.Winter Park, FL 32789
0932 FL Lady Lake Crossing486 N. Hwy 27/441Lady Lake, FL 32159
0559 FL Lake Washington Square2447 N. Wickham RoadSuite 112Melbourne, FL 32935
1179 FL Landings Shopping Center4768 S. Tamiami TrailSarasota, FL 34231
0550 FL McGregor Pointe S/C15271 McGregor Blvd.Ft. Myers, FL 33908
1005 FL Nature Coast Commons1377 Wendy CourtSpring Hill, FL 34607-3917
0236 FL Northdale Promenade15692 Dale Mabry HwyTampa, FL 33618 - 1606
0818 FL Palm Cay Plaza745 N. Courtenay Pkwy.Merritt Island, FL 32953
0592 FL Plantation Commons4489-E Commons Drive WestDestin, FL 32541
0289 FL Pompano Plaza949 - A East Mcnab Rd.Pompano Beach, FL 33062
1204 FL Seminole City Center11201 Park Blvd.Seminole, FL 33618-1606
0202 FL Shoppes of Oakbrook11692 US Hwy 1North Palm Beach, FL 33408
1045 FL Sun City Center Plaza1615 Sun City Center PlazaSun City Center, FL 33573
1159 FL Suntime Square Shopping Center7777 N. Wickham Rd., Ste #1Melbourne, FL 32940
1192 FL Titus Landing2420 Washington AveTitusville, FL 32781
1140 FL Venice Village Shoppes4127 Tamiami Trl SVenice, FL 34293
0612 FL West Volusia Regional SC2661 S. Woodland Blvd.Deland, FL 32720
0329 GA Alps Village191 Alps Road, Suite 13BAthens, GA 30606
0826 GA Dalton Outlet Shops1001 Market Street, Ste 22Dalton, GA 30720
1209 GA Dawson Marketplace136 Marketplace ParkwayDawsonville, GA 30534-7274
1156 GA Deerfield Place13069 Hwy 9N, Suite 2520Milton, GA 30004
0525 GA Galleria Square Shopping Center4025 Watson Blvd.Suite 180 & 200Warner Robins, GA 31093
0796 GA Mall of Georgia C171999 Mall of Georgia Blvd., Ste A-200Buford, GA 30519
0004 GA North Lake Business Park1901 Montreal Road Suite 129Tucker, GA 30084
0520 GA Parkside Shops5920 Roswell Road, NEBox 45 - Suite C-204Atlanta, GA 30328
0198 GA Picadilly Square10010 Abercorn St.Unit 1Savannah, GA 31406
1161 GA Presidential Commons1708A Scenic Highway N.Snellville, GA 30078
0132 GA Roswell Towne Center608 Holcomb Bridge Rd., Ste 220Roswell, GA 30076-1712
0524 GA Shallowford Crossing2421 Shallowford Road, NESuite 120Marietta, GA 30066
0334 IA Clocktower Square2900 University Ave, Ste 230West Des Moines, IA 50266
0709 IA Coral Ridge Mall1451 Coral Ridge AvenueCoralville, IA 52241
0539 IA Village Shopping Center902 W. Kimberly RoadSuite 10Davenport, IA 52806
0683 ID Coeur D' Alene Center227 W. Appleway Ave.Coeur D' Alene, ID 83814
0608 IL Garden Market4700 Gilbert StreetSuite 25Western Springs, IL 60558
0565 IL Marketview Center45 E Marketview Dr.Champaign, IL 61820-7832
0605 IL Town And Country Shopping Center2345 S. MacArthur Blvd.Springfield, IL 62704

0593 IL University Square1401 West GlenSuite APeoria, IL 61614
0784 IL Village Crossing S/C5613 W. Touhy Ave.Niles, IL 60714
0604 IN JoAnn's Plaza4710 Coldwater Rd.Fort Wayne, IN 46825
0469 IN McKinley Town & Country Shopping Centre2548 Miracle LaneMishawaka, IN 46545
0615 IN Parkwest Shopping Center3962 West Jefferson Blvd.Ft. Wayne, IN 46804
0127 IN Plaza East217 N. Green River RoadEvansville, IN 47715
0574 IN Sagamore @ 26 Shopping Center311 Sagamore Pkwy NorthLafayette, IN 47904
0120 KS Regency Lakes Shopping Center2423 N. GreenwichWichita, KS 67226
1086 KY Alexandria Village Green6929 Alexandria PikeAlexandria, KY 41001
0105 KY Crossroads Shopping Center125 E. Reynolds Rd., Ste 145Lexington, KY 40517
0929 KY Florence Plaza7800 Connector Dr., Store #09AFlorence, KY 41042
0388 KY Gateway Commons Phase I2600 Calumet TraceOwensboro, KY 42303-2125
0880 KY Kentucky Oaks Plaza3250 James Sanders Blvd.Paducah, KY 42001
0171 KY Town Fair Center1915 S. Hurstbourne PkwyLouisville, KY 40220
0921 KY Woodhill Circle1555 East New Circle Rd.Lexington, KY 40509
0083 LA Hammond Aire Plaza9626 Airline Hwy, Ste C1Baton Rouge, LA 70815-5556
0924 LA Westside South Shopping Center64 Westbank Expressway, Unit GGretna, LA 70053
0107 MD Bay Ridge Plaza121 Hillsmere PlazaAnnapolis, MD 21403
0023 MD Congressional Plaza1616 East Jefferson St #12BRockville, MD 20852
0821 MD Free State Shopping Center15500 Annapolis Rd., Ste. 120Bowie, MD 20715
1237 MD Magothy Gateway139 Ritchie Hwy, Ste CSeverna Park, MD 21146
0624 MD Northgate Plaza Shopping Center13832 Georgia AvenueSilver Spring, MD 20906
0425 MD Rock Spring S/C1447 Rock Spring RoadBel Air, MD 21014
0739 MD South End Shopping Center1171 Maryland Ave.Hagerstown, MD 21740
0096 MD St. John's Plaza9150 Baltimore National Pike, Ste 1BEllicott City, MD 21042
0426 MI Centerpointe Mall3661 28th Street SEGrand Rapids, MI 49512-1605
0472 MI Southland Shopping Center6140 South Westnedge Ave.Portage, MI 49002
0336 MI Troy Commons905 East Big Beaver Rd.Troy, MI 48083
0247 MN 7 & 41 Crossings Center2497 Highway 7Excelsior, MN 55331
0572 MN Division Place I2730 Division St.St. Cloud, MN 56301-3817
0221 MN Har Mar Mall2100 N. Snelling Avenue #2Roseville, MN 55113
0104 MO Creve Coeur Plaza780 N. New Ballas Rd.Creve Coeur, MO 63141
0845 MO Olivette S/C9656 Olive Blvd.Olivette, MO 63132
0569 MO Stateline Station1130 W. 136th StKansas City, MO 64145
0091 MO Tiffany Springs Market Center8986 NW Skyview AveKansas City, MO 64154
0732 MS Big Oaks Crossing3885 N. Gloster St.Tupelo, MS 38804-9732
0801 MS South Lake Centre195 Goodman Rd. W.Southaven, MS 38671-9033
0930 NC 774 E. King St.Boone, NC 28607
0570 NC Akers Center1495 E. Franklin Blvd.Gastonia, NC 28054
0357 NC Battleground Plaza3726-A Battleground AvenueGreensboro, NC 27410
0284 NC Beaver Creek Crossings South1593 Beaver Creek CommonsApex, NC 27502
0728 NC Brennan Station8111 Creedmoor Road #127Raleigh, NC 27613
0806 NC Cheshire Place3716 West W.T. Harris Blvd, Suite BCharlotte, NC 28269
0144 NC Creekside Crossing404 East Six Forks RoadRaleigh, NC 27609
0741 NC Greenville Square703 Greenville Blvd SEGreenville, NC 27858
0871 NC Morehead Plaza2900 Arendell St. Ste 15Morehead City, NC 28557
0799 NC New Hope Commons5426 New Hope Commons Dr.Durham, NC 27707
1123 NC Outer Banks Mall5050 S. Croatan HwyNags Head, NC 27959
0147 NC Park Square Shopping Center2442 Park Rd.Charlotte, NC 28203
1222 NC Rivergate Shopping Center14151 Steele Creek Rd H200Charlotte, NC 28273
723 NC South Hills Mall & Plaza1297 Buck Jones Rd.Raleigh, NC 27606
0835 NC Wakefield Crossing Shopping Center13200 New Falls of Neuse Rd. Suite 127Raleigh, NC 27614
0231 NC Whitaker Square Shopping Center1947 North Pease Haven Road, Space #1947Winston-Salem, NC 27106
0146 NC Windsor Square Shopping Center9945 E. Independence Blvd.Matthews, NC 28105-4621
0392 NE East Park Shopping Center200 N. 66th St, Suite 6Lincoln, NE 68505
0781 NJ Midland Park Shopping Center85 Godwin Ave., Unit 31AMidland Park, NJ 07432
1184 NM Cottonwood Corners10420 Coors Bypass NW., Suite 96Albuquerque, NM 87114
0288 NM Plaza de Santa Fe II3553 Zafarano Dr.Santa Fe, NM 87507

1093 NV Del Monte Plaza6013 S. Virginia St.Reno, NV 89502
0399 NV Montecito Crossing6650 N. Durango Dr. Ste 110Las Vegas, NV 89149
0298 NV Rampart Plaza8520 Del Webb Blvd.Las Vegas, NV 89134
755 NV Southgate Shopping Center3921 South Carson StreetCarson City, NV 89701
0631 NY Greenlawn Plaza773 Pulaski RoadUnit #5Greenlawn, NY 11740
0618 NY Hamburg Village Square140 Pine StreetHamburg, NY 14075
1106 NY Panorama Plaza1601 Penfield Rd.Penfield, NY 14625
0541 OH Belden Village Commons4844 Everhard Rd. NorthwestCanton, OH 44718
0477 OH Centerville Place1079 South Main StreetCenterville, OH 45458
0282 OH Cherry Grove Plaza454 Ohio Pike, Unit 54Cincinnati, OH 45255
0675 OH Glenway Crossing5056 Glencrossing Way #158Cincinnati, OH 45238
0671 OH Mill Run Square3655 Fishinger Blvd.Hilliard, OH 43026
0149 OH Olentangy Plaza885 Bethel Rd.Columbus, OH 43214
1158 OH Southland Shopping Center6845 Pearl Rd.Middleburg Heights, OH 44130
0374 OK Rockwell-Northwest Shopping Center6920 NW Expressway, Suite COklahoma City, OK 73132-3532
1202 OK The Shops at Turkey Creek501 SE Washington Blvd, Ste CBartlesville, OK 74006
0738 OR Bear Creek Plaza850 Biddle Rd.Medford, OR 97504
0719 OR Bend Factory Stores61334 S. Highway 97, Ste 280Bend, OR 97702
0395 OR Cedar Hills Crossing3485 SW Cedar Hills Blvd., Ste 160Beaverton, OR 97005-1337
0523 OR Gresham Square 56 NW BurnsideGresham, OR 97030
0691 OR Hilfiker Square4450 Commercial St. SESalem, OR 97302
0769 OR Milwaukie Marketplace10890 SE Oak StreetMilwaukie, OR 97222
0687 PA Donaldson's Crossroads3911 Washington Rd., Unit 1McMurray, PA 15317
0814 PA Lakewood Plaza2169 W. 12th St.Erie, PA 16505
1047 PA Pilgrim Gardens Shopping Center1043 Pontiac RoadDrexel Hill, PA 19026
644 PA Southampton Shopping Center500 2nd Street PikeSouthampton, PA 18966
1035 PA The Shoppes at Valley Forge228 Schuylkill RoadPhoenixville, PA 19460
1015 PA Village of East Side6401 Penn AvenuePittsburgh, PA 15206
0802 SC Aiken Exchange Shopping Center2529 Whiskey Rd.Aiken, SC 29803
1174 SC Belle Hall Shopping Center680 Long Point Rd.Mount Pleasant, SC 29464-8216
573 SC Cashua Place Shopping Center1900 West Palmetto StreetFlorence, SC 29501
0186 SC Harbison Court264 Harbison Blvd #14Columbia, SC 29212-2282
0192 SC St. Andrews Center975 Savannah Hwy. # 254 TuCharleston, SC 29407
0718 SC Town 'N Country Shopping Plaza6101 Calhoun MemorialEasley, SC 29640
1235 SD Plaza 412721 West 41st StreetSioux Falls, SD 57105
0005 TN Eastgate Center5056 Park AveMemphis, TN 38117-5709
0137 TN Germantown Plaza Shopping Center2031 Exeter Rd., Ste 101 & 102Germantown, TN 38138
0029 TN Indian Lake West Shopping Center259 Indian Lake Blvd.Hendersonville, TN 37075
0537 TN Ken's Plaza3122-A East OaklandJohnson City, TN 37601
0798 TN Kingsport Shopping Center1409 East Stone DrKingsport, TN 37660
0563 TN Malco Plaza 2853 Bartlett Blvd.Bartlett, TN 38134
0813 TN Pigeon River Crossing2727 Teaster LanePigeon Forge, TN 37863
1009 TN Providence Commons Shopping Center655 S. Mt. Juliet Rd.Mt. Juliet, TN 37122-6319
0353 TN The Commons at Dexter Lake1625 Germantown Parkway, Suite 101Cordova, TN 38016
0610 TN The Maples Shopping Center1010 Murfreesboro Rd., Ste 192Franklin, TN 37064
0834 TX Atascocita Market Square8072 FM 1960 EastHumble, TX 77346
0439 TX Brodie Oaks S/C4006 S. LamarSuite 850Austin, TX 78704
0713 TX Burleson Shopping Center654 SW Willshire Blvd.Burleson, TX 76028
0824 TX Firewheel Commons3046 Lavon Drive, Suite 129BGarland, TX 75040
1225 TX Granbury Lakeside Center1406 E. US Hwy 377Granbury, TX 76048
0035 TX Harwood Village North609 Harwood Rd.Bedford, TX 76021
0074 TX Hulen Fashion Center5240 South Hulen StreetFort Worth, TX 76132
1190 TX Lewisville Towne Crossing4750 State Hwy 121, Ste #300Lewisville, TX 75056-2913
1232 TX Northcross Shopping Center5217-A N Navarro StVictoria, TX 77904
0197 TX Parkdale Place4150 Dowlen RoadBeaumont, TX 77706
1193 TX Parker Central Plaza Shopping Center3304 Central ExpresswayPlano, TX 75074-2307
0075 TX Pipeline Village1323 W. Pipeline Rd.Hurst, TX 76053
0536 TX Post Oak Square Shopping Center1210 Harvey Rd.College Station, TX 77840

1119	TX	Presidio Towne Crossing2225 Porter Creek Dr.Fort Worth, TX 76177
0893	TX	Santa Fe Square3950 E. 42nd StreetOdessa, TX 79762
1218	TX	Shops at Chisholm Trail Ranch5517 Sierra Springs LaneFort Worth, TX 76123
0067	TX	Tanglewood Village Shopping Center2110 W. Slaughter LaneSuite 168Austin, TX 78748
0014	TX	The B Spot on Burnet7301 Burnet RoadSuite 300Austin, TX 78757
0009	TX	Village at Camp Bowie3501 Bernie Anderson Ave.Fort Worth, TX 76116-5458
0056	TX	Weslayan Plaza West Shopping Center5442-A Wesleyan StreetHouston, TX 77005
0303	TX	West Towne Marketplace6450 N. Desert Blvd., Ste 5El Paso, TX 79912
0031	TX	Westheimer Commons12568 Westheimer Rd.Houston, TX 77077
1175	TX	Westhill Village Shopping Center7525 WestheimerHouston, TX 77063
1181	TX	Wichita Falls Shopping Center4319 Kemp Blvd., Unit BWichita Falls, TX 76308
0538	UT	4050 Riverdale Rd.Riverdale, UT 84405
0547	UT	Brickyard Shopping Center1130 Brickyard Rd.Salt Lake City, UT 84106
0276	UT	Family Center of Orem168 East University ParkwayOrem, UT 84058
0655	UT	The Shoppes at Zion250 Red Cliffs Dr.Suites 37, 38, & 39St. George, UT 84790
0548	VA	118 W. 21st StreetNorfolk, VA 23517
654	VA	Ashland Hanover Shopping Center251A N. Washington Hwy.Ashland, VA 23005
0131	VA	Broad Shopping Center9125 W. Broad St., Ste JRichmond, VA 23294
0588	VA	Hancock Village14613 Hancock Village St.Chesterfield, VA 23832-2758
0702	VA	Hanover Village S/C7043 Mechanicsville TurnpikeMechanicsville, VA 23111
1083	VA	Jefferson Green12233 Jefferson AveNewport News, VA 23602
0701	VA	Manaport Plaza8371 Sudley Rd.Manassas, VA 20109
0641	VA	Rose Hill Plaza6140-A Rose Hill Dr.Alexandria, VA 22310
0090	VA	Smoketown Station2890 Prince William PkwyWoodridge, VA 22192
0339	VA	The Shops at Stratford Hills7101 Forest Hill Ave., Ste FRichmond, VA 23225-1553
0549	VA	Warwick Village S/C11006 Warwick Blvd.Suite 426-A Newport News, VA 23601
0181	VA	West Springfield Shopping Center6230 Rolling RoadBays N,O,PWest Springfield, VA 22152
0673	WA	Evergreen Crossing Shopping Center13808 E. Indiana Ave.Spokane Valley, WA 99216
0752	WA	Hazel Dell Marketplace628 NE 81st St.Suites D & CVancouver, WA 98665
1130	WA	Meridian Town Center13410 Meridian Ave EastPuyallup, WA 98373
0858	WA	South Sound Center719 Sleater - Kinney Rd. SE, Suite 162Lacey, WA 98503
0791	WI	Greenfield Place4930 South 74th StreetGreenfield, WI 53220
1231	WI	The Shoppes at Fox River1110 West Sunset Sr., Ste 140Waukesha, WI 53189-8423