

Edward O. Sassower, P.C.
Joshua A. Sussberg, P.C. (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

James H.M. Sprayregen, P.C.
Anup Sathy, P.C.
Chad J. Husnick, P.C. (admitted *pro hac vice*)
Robert A. Britton (admitted *pro hac vice*)
Emily E. Geier (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

-and-

Michael A. Condyles (VA 27807)
Peter J. Barrett (VA 46179)
Jeremy S. Williams (VA 77469)
KUTAK ROCK LLP
901 East Byrd Street, Suite 1000
Richmond, Virginia 23219-4071
Telephone: (804) 644-1700
Facsimile: (804) 783-6192

Co-Counsel to the Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

)	
In re:)	Chapter 11
)	
TOYS "R" US, INC., <i>et al.</i> , ¹)	Case No. 17-34665 (KLP)
)	
Debtors.)	(Jointly Administered)
)	

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING
THE DEBTORS TO ENTER INTO THE CONSULTING AGREEMENTS,
(II) AUTHORIZING AND APPROVING THE CONDUCT OF STORE CLOSING
SALES, WITH SUCH SALES TO BE FREE AND CLEAR OF ALL LIENS, CLAIMS,
AND ENCUMBRANCES, (III) AUTHORIZING CUSTOMARY BONUSES TO
EMPLOYEES OF CLOSING STORES, AND (IV) GRANTING RELATED RELIEF**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 78]. The location of the Debtors' service address is One Geoffrey Way, Wayne, NJ 07470.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)² respectfully state as follows in support of this motion (this “Motion”).

Relief Requested

1. The Debtors seek entry of an order, substantially in the forms attached hereto as **Exhibit A** (the “Order”): (a) authorizing the Debtors to enter into those certain Consulting Agreements, each dated as of January 17, 2018 (together, the “Consulting Agreements”) by and between (i) Toys “R” Us - Delaware, Inc. (“Toys - Delaware” or the “Merchant”) and a joint venture comprised of Tiger Capital Group, LLC and Great American Group, LLC (“Tiger/GA”) and (ii) the Merchant and a joint venture comprised of Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC (“Hilco/GB,” and together with Tiger/GA, the “Consultants”), copies of which are attached hereto as **Schedule 1** and **Schedule 2** to **Exhibit A**, respectively; (b) authorizing the Debtors to conduct store closing or similar themed sales, in accordance with the terms of the Consulting Agreements and the sale guidelines (the “Sale Guidelines”) attached hereto as **Schedule 3** to **Exhibit A**, with such sales to be free and clear of all liens, claims, and encumbrances (the “Sales”); (c) authorizing customary bonuses to non-insider Closing Store employees who remain employed for the duration of the store closing process (the “Store Closing Bonuses”); and (d) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Eastern District of Virginia (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the

² A detailed description of the Debtors and their businesses, and the facts and circumstances supporting the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of David A. Brandon, Chief Executive Officer of Toys “R” Us, Inc., in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), on September 18, 2017 (the “Petition Date”).

Standing Order of Reference from the United States District Court for the Eastern District of Virginia, dated July 10, 1984. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The bases for the relief requested herein are sections 105, 363, 365, and 554 of the Bankruptcy Code, Bankruptcy Rules 2002, 6003, and 6004, and rule 9013.1-(C) of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the “Local Bankruptcy Rules”).

5. In support of this Motion, the Debtors respectfully submit the *Declaration of Joseph Malfitano in Support of Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors to Enter into the Consulting Agreements, (II) Authorizing and Approving the Conduct of Store Closings and Sales, with Such Sales To Be Free and Clear of All Liens, Claims, and Encumbrances, (III) Authorizing Customary Bonuses to Employees of Closing Stores, and (IV) Granting Related Relief* (the “Malfitano Declaration”), attached hereto as **Exhibit C**.

Background

I. The Store Closings.

6. Over the past several years, the Debtors have faced a challenging commercial environment exacerbated by increased competition from traditional competitors and a shift in consumer preferences away from shopping at brick and mortar stores to online retail channels. These factors have left the Debtors with a significant number of stores operating at sub-optimal performance levels.

7. Recognizing the need to right-size the Debtors' store base, the Debtors' management team and advisors, including Lazard Frères & Co. LLC ("Lazard"), Alvarez & Marsal North America LLC ("A&M"), A&G Realty Partners, LLC ("A&G"), and Keen-Summit Capital Partners LLC ("Keen"), conducted an extensive store-by-store performance analysis of all existing stores evaluating, among other factors, historical and recent store profitability, historical and recent sales trends, occupancy costs, the geographic market in which each store is located, the potential to downsize certain stores, the potential to consolidate certain Toys "R" Us and Babies "R" Us locations within a reasonable proximity of one another, the potential to negotiate rent reductions with applicable landlords, and specific operational circumstances related to each store's performance (the "Performance Evaluation").

8. The Debtors' management team and advisors ultimately determined that it may be appropriate to close and wind down (the "Store Closings") up to 182³ underperforming brick-and-

³ Of these, 60 of the Closing Stores are owned or leased by Toys "R" Us Property Company I, LLC or its subsidiaries, TRU 2005 RE II Trust, Wayne Real Estate Company, LLC, TRU 2005 RE I, LLC, and MAP Real Estate, LLC (collectively, "Propco I"), all of which are non-Debtor affiliates. The Propco I Closing Stores are subject to that certain Amended and Restated Master Lease Agreement, by and among Toys - Delaware as Tenant, and TRU 2005 RE II Trust, Wayne Real Estate Company, LLC, TRU 2005 RE I, LLC, and MAP Real Estate, LLC, collectively as Landlord, dated as of July 9, 2009, and as may be amended, supplemented, or modified from time to time (the "Propco I Master Lease"). The Debtors do not seek any relief in this Motion with respect to the Propco I Closing Stores to the extent such relief would not be in compliance with the Propco I Master Lease.

In addition, 8 of the Closing Stores are owned or leased by Debtor Toys "R" Us Property Company II, LLC ("Propco II"). The Propco II Closing Stores are subject to that certain Second Amended and Restated Master Lease Agreement, by and among Merchant as Tenant, and Propco II, as Landlord, dated as of November 3, 2016, and as may be amended, supplemented, or modified from time to time (the "Propco II Master Lease"). The Debtors do not seek any relief in this Motion with respect to the Propco II Closing Stores to the extent such relief would not be in compliance with the Propco II Master Lease; *provided, however*, that Propco II shall be entitled to all of the relief provided by the Order in its capacity as a tenant under any third-party leases or related property documents.

Of the remaining Closing Stores, 105 are owned or leased by Toys - Delaware and 9 are owned or leased by Map 2005 Real Estate, LLC ("Mapco"), both of which are Debtors.

Store number 9238 in Naperville, IL is already in the process of closing in the ordinary course of business and store numbers 8723 (Carolina) and 8720 (Hatillo) located in Puerto Rico have been and will remain closed as a result of the hurricanes in Puerto Rico. Additionally, four Toys "R" Us Express stores, store number 5571 (Midtown Miami), store number 5544 (Kahului), store number 6855 (Michigan City) and store number 7073

mortar store locations (the “Initial Closing Stores”) constituting approximately 6.9 million square feet of retail space on a cumulative basis, contingent upon finalizing ongoing lease negotiations with the Debtors’ third-party landlords. The determination of whether or not to close all 182 stores will depend on whether the Debtors and non-Debtor affiliate Propco I are able to negotiate more favorable lease terms and rent reductions for certain stores with their landlords (the “Lease Negotiations”). The Debtors have retained A&G and Keen to assist with the ongoing Lease Negotiations. These Lease Negotiations are continuing as of the date of the filing of this motion with certain landlords.

9. An overwhelming majority of the Initial Closing Stores have negative sales trends and have failed to meet the performance standards set by the Debtors. In order to maximize the value of their estates, the Debtors may need to close additional stores (such stores, the “Additional Closing Stores,” and together with the Closing Stores, the “Closing Stores”) following the conclusion of the Lease Negotiations. To obtain additional time to make these lease determinations, prior to filing this Motion, the Debtors filed a motion to provide third-party landlords with consideration in exchange for extensions of the time for the Debtors to determine whether to assume or reject a particular lease. *See Motion of the Debtors for an Order Granting (I) Authority to Provide Consideration to Landlords in Exchange for Extending the 365(d)(4) Deadline and (II) Related Relief* [Docket No. 1450]. This relief is intended to provide the Debtors with the necessary additional time to develop and implement a real estate strategy with respect to certain Closing Stores that is aligned with their go-forward business plan, and will maximize the value of the estates for all stakeholders.

(Robstown) are in the process of closing in the ordinary course of business. Accordingly, these seven locations do not appear on the lists of closing stores attached to the Consulting Agreements.

10. In conjunction with the Performance Evaluation, the Debtors also conducted a detailed review and analysis of their inventory levels, identifying additional aged inventory owned by the Debtors and historically sold in their stores or online. In order to maximize the value of the Debtors' assets, portions of this inventory owned by the Debtors will be included in and sold as part of the Sales along with the Debtors' other salable store inventory already existing in the Closing Stores (collectively, the "Merchandise"). The Debtors expect that the Sales and Store Closings subject to third-party Debtor leases will continue until no later than April 16, 2018, the current deadline for the Debtors to assume or reject their leases, *provided* that certain Sales may continue beyond this period with the consent of the affected landlords. Sales and Store Closings for real estate properties owned by the Debtors or leased by Propco I may continue for a longer period of time if necessary or required.

11. Given the desire to commence the Store Closings expeditiously, the Debtors, in consultation with their asset disposition advisor Malfitano Advisors, LLC ("MA"), conducted an extensive solicitation and bidding process for liquidators. Malfitano Decl. ¶¶ 8-23. The process included, among other things, a formal request for proposal, access to all information provided by the Debtors, diligence provided through a virtual data room, and standard requirements for the submission or recovery rates, forecasts and analysis. *Id.* at ¶¶ 10, 12. As of the bid deadline, the Debtors received four proposals from four bidding groups. *Id.* at ¶ 13. Each bidding group was evaluated based on, among other things, whether it (a) had realistic views on overall recovery on both the in-store inventory and the inactive and discontinued inventory owned by the Debtors (the "X'D Inventory"), (b) had recent experience liquidating retail toy stores, including, in some respects, the Debtors' own stores, (c) would dedicate the best resources to accomplish the Debtors' goals, (d) had shown the ability to execute the liquidation of excess and aged inventory in recent

transactions, and (e) was sensitive to the Debtors' desire to retain and transition customers to their ongoing stores and online platform. *Id.* at ¶ 14. This last factor was particularly important to the Debtors as the Debtors are continuing ordinary course operations at their remaining stores and proper messaging to customers that these sales do not impact operations going forward is paramount.

12. Based on this extensive evaluation, conducted in coordination with the Debtors' lenders and the official committee of unsecured creditors appointed in these cases (the "Committee"), the Debtors selected and engaged two bidding groups—Hilco/GB and Tiger/GA—to manage the Store Closings and sell the Merchandise as well as to sell their furniture, fixtures, and equipment (the "FF&E" and, together with the Merchandise, the "Store Closure Assets") located in the Closing Stores and otherwise prepare the Closing Stores for turnover to the applicable landlords on the terms set forth in the Consulting Agreements. The Consultants will split the Closing Stores geographically, a division that will ultimately allow the Debtors to (a) obtain best-in-class supervision from the industry's premier liquidators, (b) drive competition between the Consultants to deliver the best results, and (c) obtain different perspectives and operational strategies to maximize returns, assist with the liquidation of the X'D Inventory, and preserve and direct customers to remaining stores and the company's online platform. *Id.* at ¶¶ 16-19.

13. By this Motion, the Debtors seek approval to enter into the Consulting Agreements so that the Consultants may commence the Store Closings and Sales. The Debtors have determined, in the reasonable exercise of their business judgment, that (a) the services of the Consultants are necessary for a seamless and efficient large-scale execution of the Store Closings and Sales, as is contemplated by this Motion, and to maximize the value of the assets being sold,

and (b) the Consultants are capable of performing the required tasks on favorable financial terms, as determined by the evaluation process.

14. Further, the Store Closings are a critical component of the go-forward business plan under development by the Debtors, and entry into the Consulting Agreements will allow the Debtors to conduct the Store Closings in an efficient, controlled manner that will maximize value for the Debtors’ estates. Further, the relief requested herein will permit the Debtors to conduct the Store Closings in a timely manner and will establish fair and uniform procedures to assist the Debtors and their creditors through the Debtors’ transition to a smaller, more profitable enterprise.

II. The Consulting Agreements.

15. Pursuant to the Consulting Agreements, Tiger/GA will serve as the Consultant to the Debtors in connection with the Store Closings and Sales of certain retail stores, and Hilco/GB will serve as the Consultant to the Debtors in connection with the Store Closings and Sales of certain other retail stores. The Initial Closing Stores are identified and included in the applicable Consulting Agreement as Exhibit A. Approval of the Consulting Agreements will allow the Debtors to utilize the logistical capabilities, experience, and resources of the Consultants in performing large-scale liquidations in a format that allows the Debtors to retain control over the sale process. A summary of the salient terms of each of the Consulting Agreements (which are substantially similar) is set forth below.⁴ With the exception of the store lists and expense budgets attached to the Consulting Agreements, the Consulting Agreements are otherwise identical.

TERM	CONSULTING AGREEMENTS
Services Provided by Consultants	The Consultants will each be retained as the Debtors’ agent to conduct the Sales at certain identified Closing Stores during the Sale Term (as defined below) to, among other things: (a) recommend appropriate discounting to effectively sell all of Merchant’s goods located

⁴ The following summary chart is for the convenience of the Bankruptcy Court and parties in interest. To the extent there is any conflict between this summary and the applicable Consulting Agreement, that Consulting Agreement shall govern in all respects.

TERM	CONSULTING AGREEMENTS
	<p>at the Closing Stores as of the Sale Commencement Date in accordance with a “store closing,” “everything must go,” “sale on everything,” or other mutually agreed upon themed sale, and recommend appropriate point-of-purchase, point-of-sale, and other internal and external advertising in connection therewith; (b) provide qualified supervision to oversee the conduct of the Sale; (c) maintain focused and constant communication with Closing Store-level employees and managers to keep them abreast of strategy and timing and to properly effect Closing Store-level communication by Merchant’s employees to customers and other about the sale; (d) establish and monitor accounting functions for the Sale, including evaluation of sales of Merchant’s goods located at the Closing Stores by category, sales reporting, and expense monitoring; (e) recommend loss prevention strategies; (f) coordinate with Merchant so that the operation of the Closing Stores is being properly maintained, including ongoing customer services and housekeeping activities; (g) recommend customized strategies to transition Merchant’s customers to Merchant’s ongoing retail stores and e-commerce platform; (h) recommend appropriate staffing levels for the Closing Stores and appropriate bonus and/or incentive programs (to be funded by Merchant) for Closing Store employees; (i) assist Merchant to commence the Sale as a “sale on everything,” “everything must go,” “store closing,” or such other themed sale approved by Merchant prior to any bankruptcy filing by Merchant, and the Bankruptcy Court; and (j) advise Merchant with respect to the legal requirements of affecting the Sale as a “store closing” or other mutually agreed upon theme in compliance with applicable state and local “going out of business” laws as modified by any order of the Bankruptcy Court. In connection with such obligation, Consultants will (i) advise Merchant of the applicable waiting period under such laws, and/or (ii) prepare (in Merchant’s name and for Merchant’s signature) all permitting paperwork as may be necessary under such laws, deliver all such paperwork to Merchant, and file, on behalf of Merchant, all such paperwork where necessary, and/or (iii) advise where permitting paperwork and/or waiting periods do not apply.</p>
Term of Sale	<p>Subject to the Court’s approval, the term “<u>Sale Term</u>” with respect to each respective Closing Store shall commence on February 7, 2018 (the “<u>Sale Commencement Date</u>”) and shall end with respect to each respective store no later than April 15, 2018 (the “<u>Sale Termination Date</u>”); <i>provided, however</i>, that Merchant may decide on an earlier or later “Sale Commencement Date” or “Sale Termination Date” with respect to any one or more Closing Stores (on a Closing Store-by-Closing Store basis). After the date hereof, at the option of the Merchant, and subject to Bankruptcy Court approval, the Merchant may appoint either Consultant, and the Consultants have agreed to serve, as the Merchant’s independent consultants in connection with the conduct of sales at additional stores on the terms and conditions of the applicable Consulting Agreement (subject only to appropriate adjustments to the Sale Commencement Date and the Sale Termination Date and the Consultant Controlled Expenses (each as defined in the applicable Consulting Agreement)), which stores shall be set forth in a written supplement to Exhibit A of the applicable Consulting Agreement and provided by Merchant to the applicable Consultant.</p>
Expenses of Consultants	<p>All expenses incident to the conduct of the Sale and the operation of the Closing Stores during the Sale Term (including without limitation all Consultant Controlled Expenses and all other store-level and corporate expenses associated with the Sale) shall be borne by Merchant; <i>except</i> solely for any of the specifically enumerated “Consultant Controlled Expenses” that exceed the aggregate budgeted amount (as provided in Section 3(B) of the applicable Consulting Agreement) for such Consultant Controlled Expenses.</p> <p>Attached as Exhibit B to the applicable Consulting Agreement is an expense budget for the “Consultant Controlled Expenses.” Each Consultant will advance funds for its respective Consultant Controlled Expenses, and Merchant shall reimburse the applicable</p>

TERM	CONSULTING AGREEMENTS
	<p>Consultant therefor (up to the aggregate budgeted amount) in connection with each weekly reconciliation contemplated by Section 5(B) of the applicable Consulting Agreement upon presentation of reasonable documentation for such actually-incurred expenses. All Consultant Controlled Expenses shall be billed at cost, without markup, and evidence of incurrence shall be provided, if requested. The parties may from time to time mutually agree in writing to increase the budget of Consultant Controlled Expenses based upon circumstances of the Sale.</p> <p>The parties will meet on each Wednesday during the Sale Term to review any Sale matters reasonably requested by either party; and all amounts payable or reimbursable to each Consultant for the prior week (or the partial week in the case of the first and last weeks) shall be reconciled and paid immediately thereafter. No later than twenty (20) days following the end of the Sale, the parties shall complete a final reconciliation and settlement of all amounts contemplated by the Consulting Agreements (the "<u>Final Reconciliation</u>"). From time to time upon request, the Consultants shall prepare and deliver to the Merchant such other reports as the Merchant may reasonably request. Each party to the Consulting Agreements shall, at all times during the Sale Term and during the one (1) year period thereafter, provide the counterparty on the applicable Consulting Agreement with access to all information, books and records reasonably relating to the Sale and to the applicable Consulting Agreement. All records and reports shall be made available to the applicable Consultant and Merchant during regular business hours upon reasonable notice.</p>
<p>Compensation for Consultants</p>	<p>As used in the respective Consulting Agreements, the following terms shall have the following meanings: (a) "<u>Gross Proceeds</u>" shall mean the gross proceeds of all sales of Merchandise during the Sale Term, net only of sales taxes; and (b) "<u>Merchandise</u>" shall mean the goods actually sold in the Closing Stores during the Sale Term, the aggregate amount of which shall be determined using the gross rings inventory taking method.</p> <p>Merchant shall pay Consultant a "<u>Base Fee</u>" equal to one and one tenth percent (1.10%) of Gross Proceeds.</p> <p>At the sole and absolute discretion of the Merchant, in consultation with the official committee of unsecured creditors, Merchant may pay the applicable Consultant an "<u>Incentive Fee</u>" up to an additional 0.3% of Gross Proceeds based on overall performance, assistance with a strategy to sell all of the X'D Inventory and performance in transitioning customers to the Merchant's ongoing stores and on-line platform.</p> <p>On a weekly basis in connection with each weekly reconciliation contemplated by Section 5(B) of the applicable Consulting Agreement, Merchant shall pay Consultant an amount equal to one and one tenth percent (1.10%) of Gross Proceeds on account of the prior week's sales as an advance on account of the fee payable hereunder. The parties shall determine the definitive Base Fee and Incentive Fee, if any, in connection with the Final Reconciliation. Immediately thereafter (and as part of the Final Reconciliation), Merchant shall pay each Consultant any additional amount owed on account of the Base Fee and Incentive Fee.</p>

TERM	CONSULTING AGREEMENTS
<p>Insurance Obligations</p>	<p>During the Sale Term: (a) Merchant shall maintain (at its expense) insurance with respect to the Merchandise in amounts and on such terms and conditions as are consistent with Merchant’s ordinary course operations, and (b) each of Merchant and Consultants shall maintain (at each party’s respective expense) comprehensive auto liability for owned and non-owned autos and general liability insurance covering injuries to persons and property in or in connection with the Closing Stores, in such amounts as are reasonable and consistent with its ordinary practices, for bodily injury, personal injury and/or property damage. Consultants shall add Merchant as an additional insured with respect to their respective insurance policies covering Consultants and their supervisors, and (c) each of Merchant and Consultant shall maintain statutory workers’ compensation, statutory disability, and Employer’s Liability coverage of at least \$500,000 covering its own employees. Consultant shall produce evidence of such by the Sale Commencement Date.</p> <p>Notwithstanding any other provision of the Consulting Agreements, Merchant and each Consultant agree that Merchant shall bear all responsibility for product liability relating to products sold under this Agreement, before, during and after the Sale Term.</p>
<p>Indemnification by Consultants</p>	<p>Each respective Consultant shall indemnify and hold Merchant and its affiliates, and their respective officers, directors, employees, consultants, and independent contractors (collectively, the “<u>Merchant Indemnified Parties</u>”) harmless from and against all third-party claims, demands, penalties, losses, liabilities and damages, including, without limitation, reasonable and documented attorneys’ fees and expenses, directly or indirectly asserted against, resulting from or related to: (a) the respective Consultant’s material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained in the respective Consulting Agreement or in any written agreement entered into in connection therewith; (b) any harassment or any other unlawful, tortious or otherwise actionable treatment of any employees or agents of Merchant by the respective Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives (including without limitation any supervisors); (c) any claims by any party engaged by the respective Consultant as an employee or independent contractor (including without limitation any non-Merchant employee supervisor) arising out of such employment or engagement; or (d) the negligence, willful misconduct or unlawful acts of the respective Consultant, its affiliates or their respective officers, directors, employees, Consultants, independent contractors or representatives, <i>provided that</i> the applicable Consultant shall not be obligated to indemnify any Merchant Indemnified Party from or against any claims, demands, penalties, losses, liabilities, or damages arising primarily from any Merchant Indemnified Party’s gross negligence, willful misconduct, or unlawful act.</p>

TERM	CONSULTING AGREEMENTS
Indemnification by Merchant	Merchant shall indemnify and hold each respective Consultant, its affiliates and their respective officers, directors, employees, consultants, and independent contractors (collectively, " <u>Consultant Indemnified Parties</u> ") harmless from and against all claims, demands, penalties, losses, liabilities and damages, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to: (a) Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection therewith; (b) any claims by any party engaged by Merchant as an employee or independent contractor arising out of such engagement; (c) any consumer warranty or products liability claims relating to any Merchandise; and/or (d) the negligence, willful misconduct or unlawful acts of Merchant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives; <i>provided that</i> Merchant shall not be obligated to indemnify the applicable Consultant Indemnified Party from or against any claims, demands, penalties, losses, liabilities or damages arising primarily from any Consultant Indemnified Party's gross negligence, willful misconduct, or unlawful act.

III. The Sale Guidelines.

16. The Debtors seek approval of streamlined procedures (*i.e.*, the Sale Guidelines) to sell the Store Closure Assets, in each case free and clear of liens, claims, and encumbrances. 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.

17. The Debtors have determined, in the exercise of their reasonable business judgment and in consultation with their advisors, that the Sale Guidelines will provide the best and most efficient means of selling the Store Closure Assets in order to maximize their value to the estates. The Debtors estimate that the Store Closings will continue until no later than April 16, 2018, the current deadline for the Debtors to assume or reject their leases, *provided that* certain Sales may continue beyond this period with the consent of the affected landlords.

18. Notwithstanding anything herein to the contrary, the Debtors do not intend to take any action that is not in compliance with the Propco I Master Lease or the Propco II Master Lease, without amendment or waiver under the Propco I Master Lease or the Propco II Master Lease, as

applicable, or entry of further order of the Court, *provided, however*, that the Debtors request authorization to conduct the Sales in reliance upon the relief sought in paragraphs 27-30 of the proposed Order, notwithstanding any provision in the underlying lease or related property document, so long as conducting the Sales in such manner is not materially adverse to Propco I under the Propco I Master Lease. For the avoidance of doubt, the Store Closing Guidelines and Dispute Resolution Procedures shall apply to such Sales.

IV. Liquidation Sale Laws and Dispute Resolution Procedures.

19. 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, regulations, and ordinances (collectively, the “Liquidation Sale Laws”). The Liquidation Sale Laws may establish licensing, permitting or bonding requirements, waiting periods, time limits, 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 Sale Guidelines, and to the extent such guidelines conflict with the Liquidation Sale Laws, the Sale Guidelines shall control.

20. For the purpose of orderly resolving any disputes between the Debtors and any Governmental Units (as defined in section 101(27) of the Bankruptcy Code) arising due to the Sale Guidelines 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 Order:

- i. Provided that the Sales are conducted in accordance with the terms of the Order and the Sale Guidelines, and in light of the provisions in the laws of many Governmental Units that exempt court-ordered sales from their provisions, the

Debtors and the Consultants 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 Order and the Sale Guidelines without the necessity of further showing compliance with any Liquidation Sale Laws.

- ii. Within three business days after entry of the Order, the Debtors will serve by first-class mail, copies of the Order, the Consulting Agreements, and the Sale Guidelines 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 (collectively, the "Dispute Notice Parties").
- iii. With respect to any Additional Closing Stores, within three business days after filing any Additional Closing Store List with the Bankruptcy Court, the Debtors will serve by first-class mail, copies of the Order, the Consulting Agreements, and the Sale Guidelines on the Dispute Notice Parties.
- iv. To the extent that there is a dispute arising from or relating to the Sales, the Order, the Consulting Agreements, or the Sale Guidelines, which dispute relates to any Liquidation Sale Laws (a "Reserved Dispute"), the Bankruptcy Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within ten days following entry of the Order, or service of an Additional Store Closing List, as applicable, 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) Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Chad J. Husnick, P.C., Robert A. Britton, and Emily E. Geier, and Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C.; (b) Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia, Attn: Michael A. Condyles, Peter J. Barrett, and Jeremy S. Williams; (c) Kramer Levin Naftalis & Frankel LLP, 1177 6th Avenue, New York, NY 10036, Attn: Kenneth Eckstein, Stephen Zide, and Adam C. Rogoff; and (d)(i) on behalf of Hilco/GB, Gordon Brothers Retail Partners, LLC, 800 Boylston Street, 27th Floor, Boston, Massachusetts 02199, Attn: Mackenzie L. Shea; and (i) on behalf of Tiger/.GA, Tiger Capital Group, LLC, 300 North La Salle St., 11th Floor, Chicago, IL 60654, Attn: Mark Naughton. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within 15 days after service of the 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").
- v. In the event that a Dispute Resolution Motion is filed, nothing in the Order 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 Order nor the conduct of the Debtors pursuant to the Order, violates such Liquidation Sale Laws. Filing a

Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of the Order or to limit or interfere with the Debtors' or the Consultants' ability to conduct or to continue to conduct the Sales pursuant to the Order, absent further order of the Bankruptcy Court. Upon the entry of the Order, the Debtors and the Consultants shall be authorized to conduct the Sales pursuant to the terms of the Order, the Consulting Agreements, and the Sale Guidelines and to take all actions reasonably related thereto or arising in connection therewith. The 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 Order will constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.

- vi. If, at any time, a dispute arises between the Debtors and/or either of the Consultants and a Governmental Unit as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in the Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions of subparagraphs (iv) and (v) 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*.

V. Fast Pay Laws.

21. 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.

22. The nature of the Store Closings contemplated by this Motion will result in a substantial number of 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 systems 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 likely 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.

VI. Lease Restrictions.

23. The Debtors also respectfully request a waiver of 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.

24. 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.

VII. Abandonment.

25. The Debtors respectfully request that the Court authorize the abandonment of certain owned FF&E remaining in the Closing Stores. The Debtors intend to sell any marketable owned FF&E present in the Closing Stores. However, the Debtors may determine that the cost of holding or selling associated with holding or selling that property exceeds the proceeds that will be realized from its sale, or such property may not be saleable at all. In such cases, retaining the property would be burdensome to the estate and the property would be of inconsequential value. Accordingly, the Debtors respectfully submit that abandonment of such property is in the best interests of their estates and request that the Court authorize them to do so where they determine in their business judgment that abandonment is the appropriate course of action.

VIII. Store Closing Bonus Plan.

26. Through this Motion, the Debtors are requesting the authority, but not the obligation, to pay Store Closing Bonuses (the "Store Closing Bonus Plan") to store-level non-insider employees, who remain in the employ of the Debtors during the Sales. The Debtors believe that the Store Closing Bonus Plan will motivate employees during the Sales and will enable the Debtors to retain those employees necessary to successfully complete the Sales.

27. The amount of the bonuses offered under the Store Closing Bonus Plan will vary depending upon a number of factors, including the employee's position with the Debtors and the performance of the Closing Store in which the relevant employees work. For store managers and assistant store managers eligible to receive Store Closing Bonuses, such bonuses shall replace any awards that such individuals were eligible to receive under the Team Achieved Gainsharing Plan described more fully in the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses, and (B) Continue Employee Benefit Programs, and (II) Granting Related Relief* [Docket

No. 21]. Any Store Closing Bonuses paid pursuant to the Store Closing Bonus Plan will be paid in consultation with the Committee.

28. The Debtors will set the amounts of the Store Closing Bonuses and eligible employees in consultation with the Consultants and MA, who typically utilize such bonuses to retain employees and incentivize higher recoveries during store closing sales and are well acquainted with optimal methods for designing such bonus plans.⁵

29. In addition, at the beginning of the Debtors' fiscal year, per the Debtors' corporate human resource policy, certain employees at the Closing Stores will be awarded an allowance for certain paid time off and non-statutory sick pay for year 2018 service (together, "Paid Time Off"). In order to ensure that the employees do not rush to utilize the Paid Time Off during the Closing Sales, the Debtors propose to pay the employees at the Closing Stores who are eligible for Paid Time Off, a portion of the amount of such Paid Time Off as compensation for not utilizing such benefits during the Closing Sales, including in states where such payment is not required by law. Given that the Paid Time Off is an advance for year 2018 service and not based on year 2017 service, the Debtors believe this is a fair amount to pay employees to ensure their cooperation during the Closing Sales and based on the expected length of service in the year 2018.

30. The total aggregate cost of the Store Closing Bonus Plan will also vary depending on how many Closing Stores are ultimately closed. If the Debtors were to close every Closing Store the aggregate amount of Store Closing Bonuses paid will be not more than \$3.6 million, assuming one hundred percent (100%) of the performance targets were met during the Closing Sales at every Closing Store. Additionally, the maximum amount of payments made on account

⁵ The final terms of the Store Closing Bonus Plan are still being formulated in consultation with MA and the Consultants.

of Paid Time Off will not exceed \$3.2 million, \$1 million of which was previously authorized by the Court pursuant to the *Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* [Docket No. 703].

31. Providing such non-insider bonus benefits is critical to ensuring that key employees that will be affected by the reduction in the Debtors' work force due to the Store Closings will continue to provide critical services to the Debtors during the ongoing Store Closing process. For the avoidance of doubt, the Debtors do not propose to make any payment on account of Store Closing Bonuses to any insiders.

32. In order to ensure a successful Store Closing and Sale process and maximize revenues for the benefit of the Debtors' estates, the Store Closing Bonuses incentivize store management to provide uninterrupted leadership during this challenging period, and ties payment incentives to a retail manager's primary duty: to realize successful sales performance.

33. Accordingly, the Debtors respectfully submit that the Store Closing Bonus Plan is in the best interests of their estates and request that the Court authorize payments under the Store Closing Bonus Plan as a sound exercise of their business judgment.

IX. Consumer Privacy Ombudsman.

34. The Debtors respectfully request that the Court not appoint a consumer privacy ombudsman pursuant to section 332 of the Bankruptcy Code. The Debtors will utilize all commercially reasonable efforts to remove, or cause to be removed, any confidential or personally identifiable information (which means information which alone or in conjunction with other information identifies an individual, including, but not limited to, an individual's name, social security number, date of birth, government-issued identification number, account number, and credit or debit card number) from any property to be sold or abandoned as part of the Sale.

Accordingly, the Debtors respectfully submit that the appointment of a consumer privacy ombudsman is not necessary.

Basis for Relief

I. Business Justification Exists Under Section 363(b) of the Bankruptcy Code for the Debtors to Enter into the Consulting Agreement.

35. The Debtors seek to enter into the Consulting Agreements pursuant to section 363(b)(1) of the Bankruptcy Code, which provides that a 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). Although section 363(b) does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, courts have required that such use, sale, or lease be based upon the sound business judgment of the debtor. *See, e.g., In re On-Site Sourcing, Inc.*, 412 B.R. 817, 824 (Bankr. E.D. Va. 2009) (noting that the movant must establish “a business justification for the transaction and the bankruptcy court must conclude, from the evidence, that the movant satisfied its fiduciary obligations and established a valid business justification.”) (citing *In re Gulf Coast Oil Corp.*, 404 B.R. 407, 415 (Bankr. S.D. Tex. 2009)); *In re U.S. Airways Grp., Inc.*, 2002 WL 31829093, at *1 (Bankr. E.D. Va. Dec. 16, 2002) (holding that the debtors’ sound business judgment was a sufficient basis to allow the debtors to terminate applicable mortgages).

36. “The business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company.’” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Specifically, to determine whether the business judgment standard is met, a court need only “examine whether a reasonable business person would make a similar decision under similar

circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006), *vacated on other grounds* 607 F.3d 957 (3d Cir. 2010); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor’s business decision when that decision involves “a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor’s] authority under the [Bankruptcy] Code”).

37. Here, the Debtors have exercised their sound business judgment in determining to enter into the Consulting Agreements. After engaging in arm’s length negotiations with nationally recognized liquidators regarding the Store Closings and Sales, the Debtors determined that entering into the Consulting Agreements would provide the greatest return for their Merchandise and FF&E. By engaging the two Consultants—which include firms affiliated with the Debtors’ previous inventory appraiser and store closing liquidator—the Debtors determined that they could both capitalize on the knowledge of a consultant already familiar with the Debtors’ liquidation performance as well as foster competition between the two Consultants in order to ultimately deliver the best results for the Debtors. Further, the Debtors believe that the terms set forth in the Consulting Agreements are fair and reasonable and present the best path for the Sales. Moreover, the Consultants have extensive expertise in conducting liquidation sales and will be able to effectively oversee and implement the Sales in an efficient and cost-effective manner.

38. Courts hearing chapter 11 cases filed by retailers have recently approved the assumption and/or approval of similar consulting agreements. *See, e.g., In re The Gymboree Corporation*, No. 17-32986 (KLP) (Bankr. E.D. Va. July 11, 2017) (authorizing the assumption of consulting agreement on a final basis); *In re Vitamin World, Inc.*, No. 17-11933 (KJC) (Bankr. D. Del. Nov. 21, 2017) (authorizing entry into consulting agreement); *In re rue21, inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. June 12, 2017) (authorizing the assumption of consulting

agreement on a final basis); *In re BCBG Max Azria Glob. Holdings, LLC*, No. 17-10466 (SCC) (Bankr. S.D.N.Y. Mar. 2, 2017) (same); *In re Aéropostale, Inc.*, No. 16-11275 (SHL) (Bankr. S.D.N.Y. May 6, 2016) (same); *In re Sports Authority Holdings, Inc.*, No. 16 10527 (MFW) (Bankr. D. Del. Mar. 3, 2016) (same).⁶

39. The Debtors submit that they have exercised reasonable business judgment in negotiating the Consulting Agreements and engaging the Consultants to conduct the Store Closings and Sales. Accordingly, the Debtors respectfully request that the Court authorize their entry into the Consulting Agreements.

II. The Court Should Approve the Sale Guidelines.

40. The Court may authorize the Debtors to consummate the Store Closings pursuant to sections 105(a) and 363(b) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code 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, section 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).

41. As discussed herein, pursuant to section 363(b) of the Bankruptcy Code, for the purpose of conducting the Store Closings, the Debtors need only show a legitimate business justification for the proposed action. *See, e.g., On-Site Sourcing, Inc.*, 412 B.R. at 822; *In re U.S. Airways Grp., Inc.*, 2002 WL 31829093, at *1 (Bankr. E.D. Va. Dec. 16, 2002).

⁶ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.

42. In addition, the Court may authorize the Store Closings based on section 105(a) of the Bankruptcy Code. Section 105(a) codifies the Court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Under section 105(a), courts may authorize any action that is essential to the continued operation of a debtor's businesses. *See In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (holding that a court may permit pre-plan payments of prepetition obligations when essential to the continued operation of the debtor); *see also In re Fin. News Network Inc.*, 134 B.R. 732, 735–36 (Bankr. S.D.N.Y. 1991) (holding that the "doctrine of necessity" stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor's organization").

43. 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 sections 105(a) and 363(b) of the Bankruptcy Code. The Debtors and their advisors believe that the Sale Guidelines represent the most efficient and appropriate means of maximizing the value of the Store Closure Assets, while balancing the potentially competing concerns of landlords and other parties in interest.

44. Furthermore, ample business justification exists to conduct the Store Closings. Prior to the Petition Date, the Debtors, with the assistance of their advisors, engaged in an extensive review of each of their stores to: (a) identify underperforming stores; (b) consider whether the store's performance can be improved by various initiatives, including through the negotiation of lease concessions with landlords; (c) determine which stores were candidates for downsizing; (d) assess the potential to consolidate certain Toys "R" Us and Babies "R" Us stores within a reasonable proximity of one another; and (e) determine what stores should be closed promptly to

eliminate their ongoing negative impact on the Debtors' financial performance and to improve the Debtors' liquidity. This process has resulted in the Debtors' identification of the Closing Stores.

45. While it was the Debtors' business judgment that the Store Closings should not be commenced until after the holiday season, further delay in consummating the Store Closings would diminish the recovery tied to monetization of the Store Closure Assets for a number of reasons, chief among them that the Initial Closing Stores, which generated \$925 million in sales and \$2.4 million of EBITDA over the twelve month period ended December 31, 2017, are a drain on liquidity. Thus, the Debtors will realize an immediate benefit in terms of financial liquidity upon the sale of the Store Closure Assets 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 payment. Delaying the Store Closings may cause the Debtors to pay postpetition rent at many of these stores; over the last twelve months the aggregate rent at the Initial Closing Stores totaled \$69 million. Additionally, given the Debtors' current section 365(d)(4) deadline, there is a finite number of days that the Sales can run without obtaining further consents from landlords.

46. Courts in this jurisdiction and other districts have recently approved sale guidelines in chapter 11 cases, and numerous courts have granted retail debtors authority to implement such procedures. *See, e.g., In re Roomstore, Inc.*, No. 11-37790 (Bankr. E.D. Va. Jan. 5, 2012) (authorizing the debtors, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to sell inventory and assets from closing stores); *In re Vitamin World, Inc.*, No. 17-11933 (KJC) (Bankr. D. Del. Nov. 21, 2017) (same); *In re rue21, inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. July 11, 2017) (same); *see also In re BCBG Max Azria Glob. Holdings, LLC*, No. 17-10466 (Bankr.

S.D.N.Y. Mar. 2, 2017) (authorizing the debtors, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to immediately continue and conduct the contemplated store closings); *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).⁷ The sale guidelines approved in the foregoing cases are substantially similar to the Sale Guidelines attached hereto.

III. The Court Should Approve the Sale of the Store Closure Assets Free and Clear of all Liens, Encumbrances, and Other Interests under section 363(f) of the Bankruptcy Code.

47. The Debtors request approval to sell the Store Closure Assets on a final “as is” basis, free and clear of any and all liens, claims, and encumbrances in accordance with section 363(f) of the Bankruptcy Code. A debtor in possession may sell property under sections 363(b) and 363(f) of the Bankruptcy Code “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); *see also In re Collins*, 180 B.R. 447, 450 (Bankr. E.D. Va. 1995) (noting that since section 363(f) is written in the disjunctive, the court may approve a sale free and clear if any one subsection is met).

⁷ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.

48. The Debtors anticipate that, to the extent there are liens on the Store Closure Assets, 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 Store Closure Assets sold under the Sales would attach to the remaining net proceeds of such sales with the same force, effect, and priority as such liens currently have on these assets, subject to the rights and defenses, if any, of the Debtors and of any party-in-interest with respect thereto. Moreover, all identified lienholders have received sufficient notice and have been given sufficient opportunity to object to the relief requested.

49. Accordingly, the Debtors submit that the sale of the Store Closure Assets satisfies the statutory requirements of section 365(f) of the Bankruptcy Code and should, therefore, be free and clear of any liens, claims, encumbrances, and other interests.

IV. The Court Should Waive Compliance with Applicable State Laws and Approve the Dispute Resolution Procedures.

50. The Debtors' ability to conduct the Sales in accordance with the Sale Guidelines and without complying with Applicable State Laws is critical to the Sales' success. 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 these chapter 11 cases, if not impossible.

51. 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 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.

52. The Debtors submit that there is strong support for granting them the authority to not 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.*, Ark. Code Ann. § 4-74-103 (exempting from the provisions of the chapter sales pursuant to any court order); Fla. Stat. Ann. 559.25(2) (same); Ga. Code Ann. § 10-1-393(b)(24)(C)(iv) (same); 815 ILCS 350/3 (same); La. Rev. Stat. Ann. § 51:43(1) (same); N.Y. Gen. Bus. Law § 584(a) (same); Or. Rev. Stat. Ann. § 646A.100(2)(b) (“‘Going out of business sale’ does not include a sale conducted by a bankruptcy trustee.”); Tex. Bus. & Com. Code Ann. § 17.91(3) (exempting from subchapter sales conducted pursuant to court order). *Second*, pursuant to section 105(a) of the Bankruptcy Code, the Court has the authority to permit the Store Closings to proceed notwithstanding any 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. 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.

53. 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 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.”); *In re WBQ P’ship*, 189 B.R. 97, 108 (Bankr. E.D. Va. 1995) (holding that the Bankruptcy Code preempted the provisions of Va. Code § 32.1-329 since Virginia law inhibited the sale of assets free and clear in contravention of section 363(f); *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 Harrison*, No. ADV. 93-3129S, 1994 WL 16191613, at *2 (Bankr. E.D. Va. Jan. 14, 1994) (holding that the provisions of the Bankruptcy Code preempt the holdings of the state supreme court as it pertains to treatment of interest on arrearages).

54. Courts in some jurisdictions have found that preemption of state law is not appropriate if the laws deal with public health and safety. *See Baker & Drake, Inc. v. Pub. Serv. Comm’n of Nev. (In re Baker & Drake, Inc.)*, 35 F.3d 1348, 1353–54 (9th Cir. 1994) (holding that Bankruptcy Code did not preempt state law prohibiting taxicab leasing that was promulgated in part as public safety measure). However, preemption is appropriate where, as is the case here, the 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”).

55. Under the circumstances of these chapter 11 cases, enforcing the strict requirements of the Liquidation Sale Laws would undermine the fundamental purpose of section 363(b) of the Bankruptcy Code by placing constraints on the Debtors’ ability to maximize estate assets for the

benefit of creditors. Accordingly, authorizing the 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, sales, 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.

56. Based on the foregoing, courts in this district and other jurisdictions have granted similar relief in other bankruptcy cases under similar circumstances. *See, e.g., In re the Gymboree Corp.*, No. 17-32986 (KLP) (Bankr. E.D. Va. July 11, 2017) (authorizing the assumption of consulting agreement); *In re Roomstore, Inc.*, No. 11-37790 (Bankr. E.D. Va. Jan. 5, 2012) (same); *In re rue21, inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. July 11, 2017) (same); *In re BCBG Max Azria Glob. Holdings, LLC*, No. 17-10466 (Bankr. S.D.N.Y. Mar. 2, 2017) (authorizing store closing sales while presuming compliance with laws affecting store closing or liquidation sales); *In re Aèropostale, Inc.*, No. 16-11275 (Bankr. S.D.N.Y. May 6, 2016) (same).⁸

⁸ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

57. Courts have also granted similar relief from Fast Pay Laws in other bankruptcy cases under similar circumstances. *See, e.g., In re the Gymboree Corp.*, No. 17-32986 (KLP) (Bankr. E.D. Va. July 11, 2017) (authorizing store closing sales and deeming presumed compliance with “Fast Pay Laws”); *In re Roomstore, Inc.*, No. 11-37790 (Bankr. E.D. Va. Jan. 5, 2012) (authorizing store closing sales and waiving compliance with any lease restrictions, sale laws, and “Fast Pay Laws”); *In re rue21, inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. July 11, 2017) (same); *In re Golfsmith Int’l Holdings, Inc.*, No. 16-12033 (Bankr. D. Del. Oct. 13, 2016) (granting relief from federal, state or local laws including “any fast pay laws” in connection with store closing sales); *In re Vestis Retail Grp, LLC*, No. 16-10971 (LSS) (Bankr. D. Del. May 16, 2016) (authorizing the continuation of store closing sales, and applying dispute resolution procedures to the extent that federal, state, or local laws, or any Fast Pay Laws, would apply).⁹

V. The Court Should Waive Compliance with Restrictions in the Debtors’ Leases.

58. Certain of the Debtors’ leases governing the premises of the 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 section 363 of the Bankruptcy Code. *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*

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

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).

59. 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 overlooked such restrictive contractual provisions in order to authorize a retail debtor’s store closings. *See, e.g., In re the Gymboree Corp.*, No. 17-32986 (KLP) (Bankr. E.D. Va. July 11, 2017) (authorizing store closing sales without requiring compliance with lease provisions affecting store closing or liquidation sales); *In re Roomstore, Inc.*, No. 11-37790 (Bankr. E.D. Va. Jan. 5, 2012) (same); *In re rue21, inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. July 11, 2017) (same); *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).¹⁰

60. Thus, to the extent that such provisions or restrictions exist in any of the leases of the stores subject to the Store Closings, the Debtors request that the Court authorize the Debtors

¹⁰ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.

and the Consultants to conduct any liquidation sales without interference by any landlords or other persons affected, directly or indirectly, by the liquidation sales.

VI. The Court Should Approve the Abandonment of Certain Property In Connection with Any Liquidation Sales.

61. After notice and a hearing, a debtor “may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. §554(a); *see also In re Jalajel*, No. 09-11453, 2010 WL 3946420, at *4 (Bankr. E.D. Va. Oct. 8, 2010) (stating that if a trustee “believes the assets are of de minimus value, he will abandon them.”).

62. The Debtors are seeking to sell all owned FF&E remaining in the Closing Stores. However, the Debtors may determine that the costs associated with holding or selling certain property or FF&E exceeds the proceeds that will be realized upon its sale, or that such property is not sellable at all. In such event, the property is of inconsequential value and benefit to the estates and/or may be burdensome to retain.

63. To maximize the value of the Debtors’ assets and to minimize the costs to the estates, the Debtors respectfully request authority to abandon any of their remaining FF&E or other property located at any of the Closing Stores without incurring liability to any person or entity. The Debtors further request that the landlord of each Closing Store with any abandoned FF&E or other property be authorized to dispose of such property without liability to any third parties.

64. Notwithstanding the foregoing, the Debtors will utilize all commercially reasonable efforts to remove or cause to be removed any confidential or personal identifying information (which means information which alone or in conjunction with other information identifies an individual, including, but not limited to, an individual’s name, social security number, date of birth, government-issued identification number, account number and credit or debit card number) in any

of the Debtors' hardware, software, computers or cash registers or similar equipment that are to be sold or abandoned.

VII. The Bankruptcy Court Should Approve the Procedures Relating to the Additional Closing Stores.

65. The Debtors request that the Sale Guidelines and the Order, apply to any Additional Closing Stores. In order to provide landlords and other parties in interest with information regarding the ultimate disposition of the Closing Stores, to the extent that the Debtors seek to conduct the Sales at any Additional Closing Store, the Debtors will file a list of such Additional Closing Stores, identifying the applicable Consultant conducting the Store Closing at each Additional Closing Store, with the Bankruptcy Court (the "Additional Closing Store List"), and serve a notice of their intent to conduct the Sales at the Additional Closing Stores, on the applicable landlords (the "Additional Closing Store Landlords") and any other interested parties by email (to the extent available to the Debtors) or overnight mail. With respect to Additional Closing Store Landlords, the Debtors will mail such notice to the notice address set forth in the lease for such Additional Closing Store (or, if none, at the last known address available to the Debtors).

66. The Debtors propose that the Additional Closing Store Landlords (each of whom will have already been served with this Motion and the Order) and any interested parties have seven days after service of the applicable Additional Closing Store List to object to the application of the Order to their Closing Stores. If no timely objections are filed with respect to the application of the Order to an Additional Closing Store, then the Debtors should be authorized, pursuant to sections 105(a), and 363(b) and (f) of the Bankruptcy Code, to proceed with conducting the Sales at the Additional Closing Store in accordance with the Order, the Sale Guidelines, and the Consulting Agreements. If any objections are filed with respect to the application of the Order to an Additional Closing Store, and such objections are not resolved, the objections and the

application of the Order to the Additional Closing Store will be considered by the Court at the next regularly scheduled omnibus hearing, subject to the rights of any party to seek relief on an emergency basis on shortened notice, to the extent necessary so that the Debtors can move promptly to maximize value and minimize expenses for the benefit of their creditors and stakeholders. Similar relief has been granted in recent retail bankruptcy cases. *See In re the Gymboree Corp.*, No. 17-32986 (KLP) (Bankr. E.D. Va. July 11, 2017) (approving similar procedures for supplemental stores); *In re rue21, inc.*, No. 17-22045 (Bankr. W.D. Pa. July 11, 2017) (same); *In re APP Winddown, LLC (f/k/a American Apparel, LLC)*, No. 16-12551 (Bankr. D. Del. Dec. 19, 2016) (same); *In re Golfsmith Int'l Holdings, Inc.*, No. 16-12033 (LSS) (Bankr. D. Del. Oct. 13, 2016) (same); *In re Orchard Supply Hardware Stores Corp.*, No. 13-11565 (CSS) (Bankr. D. Del. June 28, 2013) (same).¹¹

VIII. The Store Closing Bonus Plan Is a Sound Exercise of the Debtors' Business Judgment and Should Be Approved.

67. Section 363 of the Bankruptcy Code 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). Under this section, a court may authorize a debtor to use property of the estate when such use has a “sound business purpose” and when the use of the property is proposed in good faith. *See In re W.A. Mallory Co.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997); *In re WBQ P'ship*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995).

68. Courts generally require a debtor to demonstrate that a valid business purpose exists for the use of estate property in a manner that is not in the ordinary course of business. *See In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2d Cir. 1983). Once the debtor has articulated a valid

¹¹ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

business justification, a presumption arises that the debtor's decision was made on an informed basis, in good faith, and in the honest belief the action was in the best interest of the company. *See In re Integrated Res., Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992). Furthermore, once "the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). The business judgment rule shields a debtor's management from judicial second-guessing. *See Integrated Res.*, 147 B.R. at 656; *Johns-Manville*, 60 B.R. at 615–16 (noting that "the Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions"). Thus, if a debtor's actions satisfy the business judgment rule, then the actions in question should be approved under section 363(b)(1).

69. In this case, the Store Closing Bonus Plan is a sound exercise of the Debtors' business judgment and is in the best interests of the Debtors and all their estates' stakeholders. The store employees—along with their skills, knowledge, and hard work—are more critical now than ever. Through their commitment and performance, they can ensure that the Debtors continue to maximize stakeholder value in a challenging economic environment and at a time when those employees' positions will soon be terminated.

70. Additionally, the total cost of the Store Closing Bonus Plan is reasonable in light of competitive market practice and involves compensation structures often used in other restructuring situations to incentivize employees to continue optimal performance despite the added stress inherent in the chapter 11 process.

71. The Store Closing Bonus Plan is comparable to employee incentive plans regularly paid as "expenses of sale" by liquidating agents in other "store closing" and similar-themed sales.

As in those other instances, the specific Store Closing Bonus Plan here was devised with the input of the Consultants based upon their views of maximizing the sale process and recoveries for creditors. As such, courts have approved incentive payments similar to those completed in the Store Closing Bonus Plan. *See e.g. In re rue21, inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. June 12, 2017) (authorizing store closing retention bonus program on a final basis); *In re Payless Holdings LLC*, No. 17-42267 (KAS) (Bankr. E.D. Mo. May 9, 2017) (same); *In re Golfsmith Int'l Holdings, Inc.*, No. 16-12033 (LSS) (Bankr. D. Del. Oct. 13, 2016) (same); *In re Sports Authority Holdings, Inc.*, No. 16-10527 (MFW) (Bankr. D. Del. May 3, 2016) (same).

72. Accordingly, the Debtors submit that the relief requested with respect to the Store Closing Bonus Plan is a valid exercise of the Debtors' business judgment and the approval of the Store Closing Bonus Plan is appropriate under section 363 of the Bankruptcy Code and is in the best interests of the Debtors, their estates, and all parties in interest in these chapter 11 cases.

IX. The Store Closing Bonus Plan is Justified by the Facts and Circumstances of these Chapter 11 Cases.

73. Section 503(c)(3) of the Bankruptcy Code generally prohibits certain transfers made to officers, managers, consultants, and others that are not justified by the facts and circumstances of the case. *See* 11 U.S.C. § 503(c)(3). Though section 503(c)(3) is not applicable here because this Motion does not seek authorization to pay incentive payments to insiders, if it did apply, the Store Closing Bonus Plan would be well within the "facts and circumstances" test articulated therein. Importantly, section 503(c)(3)'s "facts and circumstances" justification test "creates a standard no different than the business judgment standard under section 363(b) of the Bankruptcy Code." *In re Borders Grp., Inc.*, 453 B.R. at 473; *see also In re Global Home Prods., LLC*, 369 B.R. at 783 ("If [the key employee retention program is] intended to incentivize management, the analysis utilizes the more liberal business judgment review under § 363"); *In re*

Nobex Corp., No. 05 20050 (MFW), 2006 WL 4063024, at *3 (Bankr. D. Del. Jan. 19, 2006) (concluding that the standard under section 503(c)(3) of the Bankruptcy Code reiterates the business judgment standard). For the reasons discussed above, a possible loss of the employees would disrupt the Debtors' ability to effectively close the Closing Stores and maximize value for the benefit of all stakeholders. Because implementation of the Store Closing Bonus Plan will incentivize store level employees to enhance the value of the Debtors' estates, the Store Closing Bonus Plan is justified by the facts and circumstances of these chapter 11 cases and is a sound exercise of the Debtors' business judgment. *See, e.g., In re Mesa Air Grp., Inc.*, No. 10 10018 (MG), 2010 WL 3810899, *4 (Bankr. S.D.N.Y. Sept. 24, 2010) (holding that bonus payments are "'justified by the facts and circumstances of the case' under section 503(c)(3) [where] they are within the 'sound business judgment' of the Debtors" (citation omitted)).

X. The Court Should Find That Any Sale of the Store Closure Assets Does Not Require the Appointment of a Consumer Privacy Ombudsman.

74. Section 363(b)(1) of the Bankruptcy Code 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 section 332 of the Bankruptcy Code. 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

75. The Debtors also seek a waiver of any stay of the effectiveness of the orders approving the relief requested in this Motion and the order. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a

motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate.” Further, pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth above, the Debtors submit that ample cause exists to justify (a) the immediate entry of an order granting the relief sought herein, and (b) a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

Waiver of Memorandum of Points and Authorities

76. The Debtors respectfully request that this Court treat this Motion as a written memorandum of points and authorities or waive any requirement that this Motion be accompanied by a written memorandum of points and authorities as described in Local Bankruptcy Rule 9013-1(G).

Notice

77. The Debtors will provide notice of this application via first class mail and email (where available) to the: (a) Office of the United States Trustee for the Eastern District of Virginia, Attn: Robert B. Van Arsdale and Lynn A. Kohen; (b) counsel to the official committee of unsecured creditors; (c) DIP ABL Agent and the advisors and counsel thereto; (d) DIP Taj Term Loan Agent and the advisors and counsel thereto; (e) DIP Delaware Term Loan Agent and the advisors and counsel thereto; (f) indenture trustee for the TRU Taj 12.00% Senior Notes and the advisors and counsel thereto; (g) administrative agent for the prepetition Secured Revolving Credit Facility and the advisors and counsel thereto; (h) administrative agent for the prepetition Secured Term Loan B Facility and the advisors and counsel thereto; (i) prepetition administrative agent for the Propco I Unsecured Term Loan Facility and the advisors and counsel thereto; (j) agent for the Propco II Mortgage Loan and the advisors and counsel thereto; (k) agent for the Giraffe Junior Mezzanine Loan and the advisors and counsel thereto; (l) administrative agent for the prepetition

European and Australian Asset-Based Revolving Credit Facility and the advisors and counsel thereto; (m) administrative agent for the Senior Unsecured Term Loan Facility and the advisors and counsel thereto; (n) indenture trustee for the Debtors' 7.375% Senior Notes and the advisors and counsel thereto; (o) indenture trustee for the Debtors' 8.75% Unsecured Notes and the advisors and counsel thereto; (p) counsel to the ad hoc group of the Term B 4 Holders; (q) counsel to the Ad Hoc Committee of Taj Noteholders; (r) monitor in the CCAA proceeding and counsel thereto; (s) Debtors' Canadian Counsel; (t) Internal Revenue Service; (u) office of the attorneys general for the states in which the Debtors operate; (v) Securities and Exchange Commission; (w) the attorneys general for each state where the Sales are being held; (x) the county consumer protection agency or similar agency for each county where the Sales are being held; (y) the division of consumer protection for each state where the Sales are being held; (z) the chief legal counsel for the local jurisdiction; (aa) the landlords for the Store; and (bb) other parties that have requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

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

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Richmond, Virginia
Dated: January 23, 2018

/s/ Jeremy S. Williams

KUTAK ROCK LLP

Michael A. Condyles (VA 27807)
Peter J. Barrett (VA 46179)
Jeremy S. Williams (VA 77469)
901 East Byrd Street, Suite 1000
Richmond, Virginia 23219-4071
Telephone: (804) 644-1700
Facsimile: (804) 783-6192
Email: Michael.Condyles@KutakRock.com
Peter.Barrett@KutakRock.com
Jeremy.Williams@KutakRock.com

*Co-Counsel to the Debtors
and Debtors in Possession*

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Edward O. Sassower, P.C.
Joshua A. Sussberg, P.C. (admitted *pro hac vice*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: edward.sassower@kirkland.com
joshua.sussberg@kirkland.com

-and-

James H.M. Sprayregen, P.C.
Anup Sathy, P.C.
Chad J. Husnick, P.C. (admitted *pro hac vice*)
Robert A. Britton (admitted *pro hac vice*)
Emily E. Geier (admitted *pro hac vice*)
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: james.sprayregen@kirkland.com
anup.sathy@kirkland.com
chad.husnick@kirkland.com
robert.britton@kirkland.com
emily.geier@kirkland.com

*Co-Counsel to the Debtors
and Debtors in Possession*

Exhibit A

Proposed Order

similar themed sales, contingent upon lease negotiations with the Debtors' landlords, in accordance with the terms of the Consulting Agreements and the Sale Guidelines, with such sales to be free and clear of all liens, claims, and encumbrances, (c) authorizing the Debtors to pay short-stay bonuses to non-insider Closing Store employees who remain employed for the duration of the store closing process under the Debtors' proposed retention plan (the "Store Closing Bonus Plan") and (d) granting related relief; all as more fully set forth in the Motion; and upon the Malfitano Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated July 10, 1984; and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:³

A. The Debtors have advanced sound business reasons for entering into the Consulting Agreements, as set forth in the Motion and at the Hearing, and such entry is a reasonable exercise of the Debtors' business judgement and in the best interest of the Debtors and their estates.

B. The Consulting Agreements were negotiated, proposed, and entered into by the Consultants and the Debtors without collusion, in good faith and from arm's length bargaining positions.

C. The conduct of the Store Closings and Sales will provide an efficient means for the Debtors to dispose of the Merchandise and FF&E in the Closing Stores.

D. The Debtors have represented that they will neither sell nor lease personally identifiable information pursuant to the relief requested in the Motion, although the Consultants will be authorized to distribute emails and promotional materials to the Debtors' customers consistent with the Debtors' existing policies on the use of consumer information.

E. The entry of this Order is in the best interests of the Debtors and their estates, creditors, and interest holders and all other parties in interest herein; and now therefore it is hereby

ORDERED THAT:

1. The Motion is granted as provided herein.
2. The conduct of the Store Closings in accordance with the Sale Guidelines will provide an efficient means for the Debtors to dispose of the Store Closure Assets.

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.

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.

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

5. The Debtors are authorized, but not directed to make payments under the Store Closing Bonus Plan, including payments on account of Paid Time Off, in consultation with the Committee. The Debtors are authorized to make payments on account of Paid Time Off under the Store Closing Bonus Plan in states where such payments are not required by applicable state law.

I. Authority to Enter into the Consulting Agreements.

6. The Debtors are authorized, pursuant to section 363(b)(1) of the Bankruptcy Code, to enter into the Consulting Agreements, copies of which are attached to this Order as **Schedule 1** and **Schedule 2**. The Debtors are authorized to act and perform in accordance with the terms of the Consulting Agreements, including making payments required by the Consulting Agreements, including fees and reimbursement of expenses to the Consultants without the need for any application of the Consultants or a further order of this Court, provided that payment of any incentive fee to any Consultant shall only be made after consultation with the Committee, and absent the consent of the Committee, further order of this Court. All such payments of fees and reimbursement of expenses shall be free and clear of any and all encumbrances.

7. Subject to the restrictions set forth in this Order and the Sale Guidelines, which are attached hereto as **Schedule 3**, the Debtors and the Consultants are hereby authorized to take any and all actions as may be necessary or desirable to implement the Consulting Agreements and the Sales, and each of the transactions contemplated by the Consulting Agreements, and any actions taken by the Debtors and the Consultants necessary or desirable to implement the Consulting Agreements and/or the Sales prior to the date of this Order, are hereby approved and ratified.

8. The Consulting Agreements and related documents may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court, *provided* that any such modification, amendments, or supplements shall only be made after consultation with the Committee and absent the consent of the Committee, further order of this Court.

II. Authority to Engage in Store Closings.

9. The Debtors are authorized pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to immediately conduct the Store Closings in accordance with this Order, the Sale Guidelines, and the Consulting Agreements.

10. The Sale Guidelines are approved in their entirety.

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

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

13. Neither the Debtors nor the Consultants 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 under section 101(27) of the Bankruptcy Code) or landlord, to conduct the Store Closings and to take the related actions authorized herein.

III. Conduct of the Sales.

14. All newspapers and other advertising media in which the Store Closings may be advertised and all landlords are directed to accept this Order as binding authority so as to authorize the Debtors and the Consultants to conduct the Sales pursuant to the Consulting Agreements,

including, without limitation, to conduct and advertise the sale of the Merchandise and FF&E in the manner contemplated by and in accordance with this Order, the Sale Guidelines, and the Consulting Agreements.

15. The Debtors and Consultants are hereby authorized to take such actions as may be necessary and appropriate to implement the Consulting Agreements and to conduct the Store Closings without necessity of further order of this Court as provided in the Consulting Agreements or the Sale Guidelines, including, but not limited to, advertising the sale as a “store closing sale”, “sale on everything”, “everything must go”, or similar-themed sales through the posting of signs (including the use of exterior banners at non-enclosed mall closing locations, and at enclosed mall closing locations to the extent the applicable closing location entrance does not require entry into the enclosed mall common area), use of signwalkers and street signage.

16. Except as expressly provided in the Consulting Agreements, the sale of the Merchandise and FF&E shall be conducted by the Debtors and the Consultants notwithstanding any restrictive provision of any lease, sublease, restrictive covenant, or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Store Closings or the Sales (including the sale of the Merchandise and FF&E) the rejection of leases, abandonment of assets, or “going dark” provisions shall not be enforceable in conjunction with the Store Closings or the Sales. Breach of any such provisions in these chapter 11 cases in conjunction with the Store Closings or the Sales shall not constitute a default under a lease or provide a basis to terminate the lease; *provided* that the Store Closings and Sales are conducted in accordance with the terms of this Order and the Sale Guidelines. The Consultants and landlords of the closing locations are authorized to enter into agreements (“Side Letters”) between themselves modifying the Sale Guidelines without further order of the Court, and such Side Letters shall be binding as among

such Consultants and any such landlords, *provided* that nothing in such Side Letters affects the provisions of this Order. In the event of any conflict between the Sale Guidelines and any Side Letter, the terms of such Side Letter shall control. The Consultants may, but shall not be required to, consult and coordinate with each other to negotiate Side Letters as to Closing Stores for which the leases are held by the same landlord, on the one hand, (regardless of which particular Consultants team may be closing such store) and landlord for those stores, on the other hand.

17. Except as expressly provided for herein or in the Sale Guidelines, no person or entity, including, but not limited to, any landlord, licensor, service providers, utilities, or creditors, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Sales or the sale of Merchandise or FF&E, or the advertising and promotion (including the posting of signs and exterior banners or the use of sign-walkers) of such sales, and all such parties and persons of every nature and description, including, but not limited to, any landlord, licensor, service providers, utilities, and creditors and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with, obstructing, or otherwise impeding, the conduct of the Store Closings, and/or (b) instituting any action or proceeding in any court (other than in the Bankruptcy Court) or administrative body seeking an order or judgment against, among others, the Debtors, the Consultants, or the landlords at the closing locations that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sales or sale of the Merchandise or FF&E or other liquidation sales at the closing locations and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein. Any restrictions in any lease agreement, restrictive covenant, or similar documents purporting to limit, condition, or impair the Debtors' or the Consultants' ability to conduct the Store Closings or Sales

shall not be enforceable, nor shall any breach of such provisions in these chapter 11 cases constitute a default under a lease or provide a basis to terminate the lease; *provided that* the Store Closings or Sales are conducted in accordance with the terms of this Order and the Sale Guidelines.

18. In accordance with and subject to the terms and conditions of the Consulting Agreements, the Consultants shall have the right to use the Closing Stores and all related Closing Store services, furniture, fixtures, equipment and other assets of the Debtors for the purpose of conducting the Sales, free of any interference from any entity or person, subject to compliance with the Sale Guidelines and this Order.

19. All sales of Store Closure Assets shall be “as is” and final. Returns related to the purchase of Store Closure Assets shall not be accepted at stores that are not participating in the Store Closings.

20. The Consultants shall not be liable for sales taxes except as expressly provided in the Consulting Agreements and the payment of any and all sales taxes is the responsibility of the Debtors. The Debtors are directed to remit all taxes arising from the 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 such dispute, if and to the extent that the dispute is decided in favor of the applicable Governmental Unit. For the avoidance of doubt, sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other party, other than the applicable Governmental Unit for which the sales taxes are collected. The Consultants shall collect, remit to the Debtors, and account for sales taxes as and to the extent provided in the Consulting Agreements. This Order does not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under state law, and does not constitute a declaratory judgment with respect to any party’s liability for taxes under state law.

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

22. The Debtors and/or the Consultants (as the case may be) are authorized and empowered to transfer Store Closure Assets among, and into, the Closing Stores. The Consultants are authorized to sell the Debtors' FF&E and abandon the same, in each case, as provided for and in accordance with the terms of the Consulting Agreements.

23. Notwithstanding anything to the contrary in the Consulting Agreements or this Order, the Debtors shall utilize all commercially reasonable efforts to remove or cause to be removed any confidential or personal identifying information (which means information which alone or in conjunction with other information identifies an individual, including, but not limited to, an individual's name, social security number, date of birth, government-issued identification number, account number, and credit or debit card number) from any property sold or abandoned as part of the Sales. Accordingly, no consumer privacy ombudsman shall be appointed pursuant to section 332 of the Bankruptcy Code.

IV. Procedures Relating to Additional Closing Stores.

24. To the extent that the Debtors seek to conduct Sales at any Additional Closing Store, the Sale Guidelines and this Order shall apply to the Additional Closing Stores.

25. Prior to conducting the Sales at any Additional Closing Store, the Debtors will file a list including such Additional Closing Store and identifying the applicable consultant conducting the Store Closing at each such Additional Closing Store with this Court (each, an “Additional Closing Store List”), and serve a notice of their intent to conduct the Sales at the Additional Closing Store on the applicable landlord (collectively, the “Additional Closing Store Landlords”) and other interested parties, by email (to the extent available to the Debtors) or overnight mail. With respect to Additional Closing Store Landlords, the Debtors will mail, if applicable, such notice to the notice address set forth in the lease for such Additional Closing Store (or, if none, at the last known address available to the Debtors).

26. The Additional Closing Store Landlords and any interested parties shall have seven days after service of the applicable Additional Closing Store List to object to the application of this Order. If no timely objections are filed with respect to the application of this Order to an Additional Closing Store, the Debtors all be authorized, pursuant to sections 105(a), and 363(b) and (f) of the Bankruptcy Code, to proceed with conducting the Sales at the Additional Closing Stores in accordance with this Order, the Sale Guidelines, and the Consulting Agreements. If any objections are filed with respect to the application of this Order, to an Additional Closing Store, and such objections are not resolved, the objections and the application of this Order to the Additional Closing Store will be considered by the Court at the next regularly scheduled omnibus hearing, subject to the rights of any party to seek relief on an emergency basis on shortened notice, to the extent necessary so that the Debtors can move promptly to maximize value and minimize expenses for the benefit of their creditors and stakeholders. Landlords of the affected Closing Stores are permitted to dispose of any such abandoned property.

V. Dispute Resolution Procedures with Governmental Units.

27. Nothing in this Order, the Consulting Agreements, or the Sale Guidelines, releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or operator of the property after the date of entry of this Order. Nothing contained in this Order, the Consulting Agreements, or the Sale Guidelines shall in any way: (a) diminish the obligation of any entity to comply with environmental laws; or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The Store Closings and the Sales shall not be exempt from laws of general applicability, including, without limitation, public health and safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, “General Laws”). Nothing in this Order, the Consulting Agreements, or the Sale Guidelines, shall alter or affect obligations to comply with all applicable federal safety laws and regulations. Nothing in this Order shall be deemed to bar any Governmental Unit (as such term is defined in section 101(47) of the Bankruptcy Code) from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors’ rights to assert in that forum or before this Court that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code or this Order. Notwithstanding any other provision in this Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Order and/or any applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Order shall be deemed to have made any rulings on any such issues.

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

- i. Provided that the Sales are conducted in accordance with the terms of this Order and the Sale Guidelines, and in light of the provisions in the laws of many Governmental Units that exempt court-ordered sales from their provisions, the Debtors and the Consultants 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 this Order and the Sale Guidelines without the necessity of further showing compliance with any Liquidation Sale Laws.
- ii. Within three business days after entry of this Order, the Debtors will serve by first-class mail, copies of this Order, the Consulting Agreements, and the Sale Guidelines 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 (collectively, the “Dispute Notice Parties”).
- iii. With respect to any Additional Closing Stores, within three business days after filing any Additional Closing Store List with the Bankruptcy Court, the Debtors will serve by first-class mail, copies of this Order, the Consulting Agreements, and the Sale Guidelines on the Dispute Notice Parties.
- iv. To the extent that there is a dispute arising from or relating to the Sales, this Order, the Consulting Agreements, or the Sale Guidelines, which dispute relates to any Liquidation Sale Laws (a “Reserved Dispute”), the Bankruptcy Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within ten days following entry of this Order, or service of an Additional Store Closing List, as applicable, 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) Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Chad J. Husnick, P.C., Robert A. Britton, and Emily E. Geier, and Kirkland & Ellis LLP,

601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C.; (b) Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia, Attn: Michael A. Condyles, Peter J. Barrett, and Jeremy S. Williams; (c) Kramer Levin Naftalis & Frankel LLP, 1177 6th Avenue, New York, NY 10036, Attn: Kenneth Eckstein, Stephen Zide, and Adam C. Rogoff; and (d)(i) on behalf of Hilco/GB, Gordon Brothers Retail Partners, LLC, 800 Boylston Street, 27th Floor, Boston, Massachusetts 02199, Attn: Mackenzie L. Shea; and (i) on behalf of Tiger/.GA, Tiger Capital Group, LLC, 300 North La Salle St., 11th Floor, Chicago, IL 60654, Attn: Mark Naughton. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within 15 days after service of the 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”).

- v. In the event that a Dispute Resolution Motion is filed, nothing in this Order 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 this Order nor the conduct of the Debtors pursuant to this Order, violates such Liquidation Sale Laws. Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of this Order or to limit or interfere with the Debtors’ or the Consultants’ ability to conduct or to continue to conduct the Sales pursuant to this Order, absent further order of the Bankruptcy Court. Upon the entry of this Order, the Bankruptcy Court grants authority for the Debtors and the Consultants to conduct the Sales pursuant to the terms of this Order, the Consulting Agreements, and the Sale Guidelines and to take all actions reasonably related thereto or arising in connection therewith. The 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 this Order will constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.
- vi. If, at any time, a dispute arises between the Debtors and/or the Consultants and a Governmental Unit as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in this Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions of subparagraphs (iv) and (v) 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*.

29. Subject to paragraphs 27 and 28 above, each and every federal, state, or local agency, departmental, 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 Order as binding authority that no further approval, license, or permit of any Governmental Unit shall be

required, nor shall the Debtors or the Consultants be required to post any bond, to conduct the Sales.

30. Provided that the Sales are conducted in accordance with the terms of this Order, the Consulting Agreements, and the Sale Guidelines, and in light of the provisions in the laws that exempt court-ordered sales from their provisions, the Debtors and Consultants 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 Order and the Sale Guidelines without the necessity of further showing compliance with any such Liquidation Sale Laws.

VI. Other Provisions.

31. 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.

32. Notwithstanding anything to the contrary in this Order, the Debtors shall not take any action that is not in compliance with the Propco I Master Lease without amendment or waiver under the Propco I Master Lease or entry of further order of the Court, *provided, however*, that the Debtors may conduct the Sales in reliance upon the relief granted in paragraphs 27-30 of this Order, notwithstanding any provision in underlying lease or related property document, so long as conducting Sales in such manner is not materially adverse to Propco I under the Propco I Master Lease.

33. Notwithstanding anything to the contrary in this Order, Debtor Toys - Delaware shall not take any action that is not in compliance with the Propco II Master Lease without

amendment or waiver under the Propco II Master Lease or entry of further order of the Court; *provided, however*, that, for the avoidance of doubt, Debtor Propco II is entitled to all of the relief provided by this Order in its capacity as tenant under any of its third-party leases or related property documents.

34. Notwithstanding anything to the contrary in this Order, Debtors Toys “R” Us Europe, LLC, TRU Taj Holdings 1, LLC, TRU Taj Holdings 2, Limited, TRU Taj Holdings 3, LLC, TRU Taj LLC, TRU Taj (Europe) Holdings, LLC, TRU Asia, LLC, and Tru Taj Finance, Inc. shall not be authorized to make any payments under this Order, including, but not limited to, any payments related to any costs or expenses relating to the store closings, including the Consulting Agreements and the Store Closing Bonuses.

35. Neither the Consultants, nor any of the liquidation consulting firms that submitted proposals to the Debtors to serve as liquidation consultant, or any of their respective affiliates (whether individually, as part of a joint venture, or otherwise, shall be precluded from providing additional services to the Debtors and/or bidding on the Debtors’ assets in connection with any other future process that may or may not be undertaken by the Debtors to close additional stores, *provided* that any such services and/or transactions is approved by separate order of this Court.

36. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any claim, (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365

of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, priority or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Any payment made pursuant to this Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

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

38. To the extent of any conflict between this Order, the Sale Guidelines, and the Consulting Agreements, the terms of this Order shall control over all other documents and the Sale Guidelines shall control over the Consulting Agreements.

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

40. Notice of the Motion as provided therein is deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules of this Court are satisfied by such notice.

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

42. Cause exists to shorten the notice period set forth in Bankruptcy Rule 2002, to the extent applicable.

43. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is hereby waived to the extent necessary.

44. This Court shall retain jurisdiction with regard to all issues or disputes relating to this Order or the Consulting Agreements, including, but not limited to, (a) any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit banner and sign-walker advertising, including with respect to any allegations that such advertising is not being conducted in a safe, professional, and non-deceptive manner, (b) any claim of the Debtors, the landlords and/or the Consultants for protection from interference with the Store Closings or Sales, (c) any other disputes related to the Store Closings or Sales, and (d) protect the Debtors and/or the Consultants against any assertions of any liens, claims, encumbrances, and other interests. No such parties or person shall take any action against the Debtors, the Consultants, the landlords, the Store Closings, or the Sales until this Court has resolved such dispute. This Court shall hear the request of such parties or persons with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

Dated: _____, 2018
Richmond, Virginia

United States Bankruptcy Judge

WE ASK FOR THIS:

/s/ Michael A. Condyles

Michael A. Condyles (VA 27807)

Peter J. Barrett (VA 46179)

Jeremy S. Williams (VA 77469)

KUTAK ROCK LLP

901 East Byrd Street, Suite 1000

Richmond, Virginia 23219-4071

Telephone: (804) 644-1700

Facsimile: (804) 783-6192

- and -

Edward O. Sassower, P.C.

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

- and -

James H.M. Sprayregen, P.C.

Anup Sathy, P.C.

Chad J. Husnick, P.C. (admitted *pro hac vice*)

Robert A. Britton (admitted *pro hac vice*)

Emily E. Geier (admitted *pro hac vice*)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

Co-Counsel to the Debtors and Debtors in Possession

CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Michael A. Condyles

Schedule 1

Hilco/GB Consulting Agreement



January 17, 2018

To: Toys "R" Us - Delaware, Inc. ("Merchant")
One Geoffrey Way
Wayne, NJ. 07470
Attn: Mr. James Young

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

and

Hilco Merchant Resources, LLC
5 Revere Drive
Suite 206
Northbrook, IL 60062

Re: Store Closing Program – Consulting Agreement

Ladies and Gentlemen:

This letter shall serve as the agreement of a contractual joint venture comprised of Gordon Brothers Retail Partners, LLC and Hilco Merchant Resources, LLC (together, "Consultant") and Merchant pursuant to which Consultant shall serve as the consultant to Merchant to conduct a "store closing," "everything must go," "sale on everything," or other mutually agreed upon themed sale (the "Sale") at Merchant's retail stores identified on Exhibit A attached hereto (including any stores that may be added to Exhibit A after the date hereof in accordance with the terms of this Agreement, each a "Store" and collectively the "Stores"), subject to the terms and conditions set forth herein. It is understood that the Stores will be identified by the Merchant by January 23, 2018, subject to Merchant's right thereafter to add or to remove any Store from Exhibit A at any time subject to the provisions hereof.

Consultant acknowledges that Merchant is engaging a different consultant to handle a similarly themed sale at certain other stores of Merchant during the Sale Term (as defined below).

1. **RETENTION**

(A) Subject to the approval of the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court"), Merchant hereby retains Consultant as its independent consultant to conduct the Sale at the Stores during the Sale Term, and in connection therewith, Consultant shall, throughout the Sale Term:

- (i) Recommend appropriate discounting to effectively sell all of Merchant's goods located at or to be delivered to the Stores in accordance with a "store closing," "everything must go," "sale on everything," or other mutually agreed upon themed sale, and recommend appropriate point-of-purchase, point-of-sale, and other internal and external advertising in connection therewith.
- (ii) Provide qualified supervision to oversee the conduct of the Sale, which supervisors, once identified to Merchant, shall not be removed from the Sale event unless Merchant otherwise agrees or requests removal.
- (iii) Maintain focused and constant communication with Store-level employees and managers to keep them abreast of strategy and timing and to properly effect Store-level communication by Merchant's employees to customers and others about the Sale.
- (iv) Establish and monitor accounting functions for the Sale, including evaluation of sales of Merchant's goods located at the Stores by category, sales reporting and expense monitoring, all of which shall be shared with the Merchant's advisors monitoring the Sale.
- (v) Recommend loss prevention strategies.
- (vi) Coordinate with Merchant so that the operation of the Stores is being properly maintained including ongoing customer service and housekeeping activities.
- (vii) Recommend customized strategies to transition Merchant's customers to Merchant's ongoing retail stores and e-commerce platform.
- (viii) Recommend strategies and provide analytical support to the Merchant to assist with the sale of certain excess inventory (known as "X'D Inventory") in the Stores, Merchant's other ongoing stores and other channels.
- (ix) Recommend appropriate staffing levels for the Stores and appropriate bonus and/or incentive programs (to be funded by Merchant) for Store employees.
- (x) Assist Merchant to commence the Sale as a "sale on everything," "everything must go," "store closing," or such other themed sale approved by Merchant and the Bankruptcy Court; and
- (xi) Advise Merchant with respect to the legal requirements of affecting the Sale as a "store closing" or other mutually agreed upon theme in compliance with applicable state and local "going out of business" laws as modified by any order of the

Bankruptcy Court. In connection with such obligation, to the extent applicable, Consultant will (i) advise Merchant of the applicable waiting period under such laws, and/or (ii) prepare (in Merchant's name and for Merchant's signature) all permitting paperwork as may be necessary under such laws, deliver all such paperwork to Merchant, and file, on behalf of Merchant, all such paperwork where necessary, and/or (iii) advise where permitting paperwork and/or waiting periods do not apply.

2. **SALE TERM; VACATING STORES**

(A) Subject to Bankruptcy Court approval, the term "Sale Term" with respect to each respective Store shall commence on February 7, 2018 (the "Sale Commencement Date") and shall end with respect to each respective store no later than April 15, 2018 (the "Sale Termination Date"); provided, however, that Merchant may decide on an earlier or later "Sale Commencement Date" or "Sale Termination Date" with respect to any one or more Stores (on a Store-by-Store basis). After the date hereof, at the option of the Merchant, and subject to Bankruptcy Court approval, the Merchant may appoint the Consultant, and the Consultant hereby agrees to serve, as the Merchant's independent consultant in connection with the conduct of sales at additional stores on the terms and conditions of this Agreement (subject only to appropriate adjustments to the Sale Commencement Date and the Sale Termination Date and the Consultant Controlled Expenses (each as defined herein)), which stores shall be set forth in a written supplement to Exhibit A provided by Merchant to Consultant.

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

3. **EXPENSES**

(A) All expenses incident to the conduct of the Sale and the operation of the Stores during the Sale Term (including without limitation all Consultant Controlled Expenses and all other store-level and corporate expenses associated with the Sale) shall be borne by Merchant; except solely for any of the specifically enumerated "Consultant Controlled Expenses" that exceed the aggregate budgeted amount (as provided in Section 3(B) below) for such Consultant Controlled Expenses.

(B) Attached hereto as Exhibit B is an expense budget for the "Consultant Controlled Expenses." It is understood that the expense budget for the "Consultant Controlled Expenses" will be mutually agreed to by Merchant and Consultant by January 25, 2018. Consultant will advance funds for the Consultant Controlled Expenses, and Merchant shall reimburse Consultant therefor (up to the aggregate budgeted amount) in connection with each weekly reconciliation contemplated by Section 5(B) upon presentation of reasonable documentation for such actually-incurred expenses. All Consultant Controlled Expenses shall be billed at cost, without markup, and evidence of incurrence shall be provided, if requested. The parties may from time to time mutually agree in writing to increase or decrease the budget of Consultant Controlled Expenses based upon circumstances of the Sale and the addition or removal of Stores from the Sale.

4. **CONSULTANT COMPENSATION**

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

- (i) "**Gross Proceeds**" shall mean the gross proceeds of all sales of Merchandise during the Sale Term, net only of sales taxes.
- (ii) "**Merchandise**" shall mean the goods actually sold in the Stores during the Sale Term, the aggregate amount of which shall be determined using the gross rings inventory taking method.

(B) Merchant shall pay Consultant a "**Base Fee**" equal to one and one tenth percent (1.10%) of Gross Proceeds.

(C) At the sole and absolute discretion of the Merchant, Merchant may pay Consultant an "**Incentive Fee**" up to an additional 0.3% of Gross Proceeds based on overall performance, assistance with a strategy to sell all of the X'D Inventory and performance in transitioning customers to Merchant's ongoing stores and on-line platform.

(D) On a weekly basis in connection with each weekly reconciliation contemplated by Section 5(B) below, Merchant shall pay Consultant an amount equal to one and one tenth percent (1.10%) of Gross Proceeds on account of the prior week's sales as an advance on account of the fee payable hereunder. The parties shall determine the definitive Base Fee and Incentive Fee, if any, in connection with the Final Reconciliation. Immediately thereafter (and as part of the Final Reconciliation), Merchant shall pay Consultant any additional amount owed on account of the Base Fee and Incentive Fee.

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

(A) Merchant shall have control over the personnel in the Stores and shall handle the cash, debit and charge card payments for all Merchandise in accordance with Merchant's normal cash management procedures, subject to Consultant's right to audit any such items in the event of a good faith dispute as to the amount thereof. Subject to Section 1(A)(xi) above, Merchant (and not Consultant) shall be responsible for ensuring that the Sale, and the operation of the Stores (before, during, and after the Sale Term) shall be conducted in compliance with all applicable laws and regulations.

(B) The parties will meet on each Wednesday during the Sale Term to review any Sale matters reasonably requested by either party; and all amounts payable or reimbursable to Consultant for the prior week (or the partial week in the case of the first and last weeks) shall be reconciled and paid immediately thereafter. No later than twenty (20) days following the end of the Sale, the parties shall complete a final reconciliation and settlement of all amounts contemplated by this Agreement (the "**Final Reconciliation**"). From time to time upon request, each party shall prepare and deliver to the other party such other reports as either party may reasonably request. Each party to this Agreement shall, at all times during the Sale Term and during the one (1) year period thereafter, provide the other with access to all information, books and records reasonably relating to the Sale and to this Agreement. All records and reports shall be made available to Consultant and Merchant during regular business hours upon reasonable notice.

- (C) Merchant shall be solely responsible for computing, collecting, holding, reporting, and paying all sales taxes associated with the sale of Merchandise during the Sale Term, and Consultant shall have no responsibilities or liabilities therefor.
- (D) Although Consultant shall undertake its obligations under this Agreement in a manner designed to achieve the desired results of the Sale and to maximize the recovery to the Merchant, Merchant expressly acknowledges that Consultant is not guaranteeing the results of the Sale.
- (E) Merchant acknowledges that (i) the parties are not conducting an inventory of Merchant's goods located at the Stores; (ii) Consultant has made no independent assessment of the beginning levels of such goods; and (iii) Consultant shall not bear any liability for shrink or other loss to Merchant's goods located at the Stores (including without limitation Merchandise) unless such shrink or loss is primarily attributed to the actions of Consultant. Merchant may, at its election, conduct an inventory at some or all of the Stores and Consultant agrees to cooperate with such inventory taking if and when done.
- (F) All sales of Merchandise in the Stores during the Sale shall be made in the name, and on behalf, of Merchant.
- (G) All sales of Merchandise in the Stores during the Sale Term shall be "final sales" and "as is," and all advertisements and sales receipts will reflect the same.
- (H) Consultant shall, during the Sale Term at the Stores, cooperate with Merchant in respect of Merchant's procedures governing returns of goods otherwise sold by Merchant (e.g., not in the Stores during the Sale Term).
- (I) Subject to compliance with any applicable laws and any order of the Bankruptcy Court, Merchant hereby permits the Sale to be, and shall ensure that the Sale otherwise may be, advertised as a "store closing" or other mutually agreed upon handle throughout the term of the Sale.

6. FF&E

- (A) Following the Sale Commencement Date, Merchant shall inform Consultant of those items of furniture, fixtures, and equipment located at the Stores which are not to be sold (because Merchant does not have the right to sell such items, because Merchant wishes to retain such items for itself, or otherwise) (collectively, "Retained FF&E").
- (B) With respect to all furniture, fixtures, and equipment located at the Stores as of the Sale Commencement Date which is not Retained FF&E (collectively the "Offered FF&E"), Consultant shall have the right to sell such Offered FF&E during the Sale Term on a commission basis equal to fifteen percent (15.00%) of the gross sales of Offered FF&E, net only of sales tax ("FF&E Commission").
- (C) Merchant shall reimburse Consultant for its reasonable expenses associated with the sale of the Offered FF&E based upon a mutually agreed upon budget.
- (D) Consultant shall have the right to abandon any unsold Offered FF&E (and all Retained FF&E) at the Stores at the conclusion of the Sale Term without liability to Merchant or any third party.

7. INSURANCE; RISK OF LOSS

During the Sale Term: (a) Merchant shall maintain (at its expense) insurance with respect to the Merchandise in amounts and on such terms and conditions as are consistent with Merchant's ordinary course operations, and (b) each of Merchant and Consultant shall maintain (at each party's respective expense) comprehensive auto liability for owned and non-owned autos and general liability insurance covering injuries to persons and property in or in connection with the Stores, in such amounts as are reasonable and consistent with its ordinary practices, for bodily injury, personal injury and/or property damage. Consultant shall add Merchant as an additional insured with respect to its insurance policies covering Consultant and its supervisors, and (c) each of Merchant and Consultant shall maintain statutory worker's compensation, statutory disability and Employer's Liability coverage of at least \$500,000 covering its own employees. Consultants shall produce evidence of such by the Sale Commencement Date.

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

Notwithstanding any other provision of this Agreement, Merchant and Consultant agree that Merchant shall bear all responsibility for product liability relating to the products sold under this Agreement, before, during and after the Sale Term.

8. INDEMNIFICATION

(A) Consultant shall indemnify and hold Merchant and its affiliates, and their respective officers, directors, employees, consultants, and independent contractors (collectively, the "Merchant Indemnified Parties") harmless from and against all third-party claims, demands, penalties, losses, liabilities and damages, including, without limitation, reasonable and documented attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to:

- (i) Consultant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
- (ii) any harassment or any other unlawful, tortious or otherwise actionable treatment of any employees or agents of Merchant by Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives (including without limitation any supervisors);
- (iii) any claims by any party engaged by Consultant as an employee or independent contractor (including without limitation any non-Merchant employee supervisor) arising out of such employment or engagement; or
- (iv) the negligence, willful misconduct or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, Consultants, independent contractors or representatives, *provided that* Consultant shall not be obligated to

indemnify any Merchant Indemnified Party from or against any claims, demands, penalties, losses, liabilities or damages arising primarily from any Merchant Indemnified Party's gross negligence, willful misconduct, or unlawful act.

(B) Merchant shall indemnify and hold Consultant, its affiliates and their respective officers, directors, employees, consultants, and independent contractors (collectively, "Consultant Indemnified Parties") harmless from and against all third-party claims, demands, penalties, losses, liabilities and damages, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to:

- (i) Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
- (ii) any claims by any party engaged by Merchant as an employee or independent contractor arising out of such engagement;
- (iii) any consumer warranty or products liability claims relating to any Merchandise; and/or
- (iv) the negligence, willful misconduct or unlawful acts of Merchant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives, *provided that* Merchant shall not be obligated to indemnify any Consultant Indemnified Party from or against any claims, demands, penalties, losses, liabilities or damages arising primarily from any Consultant Indemnified Party's gross negligence, willful misconduct, or unlawful act.

9. MISCELLANEOUS

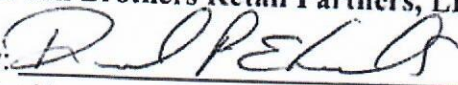
(A) This Agreement, including retention of Consultant and conduct of the Sale set forth herein, is subject to the approval of the Bankruptcy Court. Merchant shall promptly seek to have this Agreement, and the transactions contemplated by this Agreement approved by the Bankruptcy Court pursuant to an order and terms acceptable to both Merchant and Consultant. The Bankruptcy Court shall have exclusive jurisdiction to resolve any issues arising under this Agreement.

(B) This Agreement constitutes the entire agreement between the parties with respect to the matters contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, letters of intent or representations, written or oral, with respect thereto. This Agreement may not be modified except in a written instrument executed by each of the parties hereto. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. The failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. Nothing contained in this Agreement shall be deemed to create any relationship between Merchant and Consultant other than that of Consultant as an independent contractor of Merchant, and it is

stipulated that the parties are not partners or joint venturers in any way. Unless expressly set forth herein to the contrary, to the extent that either party's consent is required/requested hereunder, such consent shall not be unreasonably withheld or delayed. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns; *provided however*, that this Agreement may not be assigned by either party without the prior written consent of the other. Written notices contemplated by this Agreement shall be sent by email (i) if to Merchant at the address set forth above; and (ii) if to Consultant c/o Mackenzie Shea at mshea@gordonbrothers.com and Ian Fredericks at ifredericks@hilcoglobal.com.

[Remainder of Page Intentionally Left Blank]

Very truly yours,
Gordon Brothers Retail Partners, LLC

By: 

Print Name and Title:
Richard Edwards
-and- CO-President - Retail

Hilco Merchant Resources, LLC

By: _____
Print Name and Title:

Agreed and Accepted:
Toys "R" Us - Delaware, Inc.

By: 
Print Name and Title:

DAVID P PICOT
SVP - PROPERTY DEVELOPMENT

- Exhibits:
A Stores
B Budget of Consultant Controlled Expenses

Very truly yours,
Gordon Brothers Retail Partners, LLC

By: _____
Print Name and Title:

-and-

Hilco Merchant Resources, LLC

By: _____
Print Name and Title:

RYAN LAWLER
VP SAGC, managing member

Agreed and Accepted:
Toys "R" Us - Delaware, Inc.

By: _____
Print Name and Title:

DAVID P PICOT
SVP - PROPERTY DEVELOPMENT

Exhibits:

- A Stores
- B Budget of Consultant Controlled Expenses

Exhibit A

Stores

East/West	Number	Store Name	Address	State	Chain	Entity	Lease Type	Expiration
East	9519	Cape Girardeau	201 Silver Springs Rd.	MO	TRU	Delaware	Lease	1/30/2021
East	9551	Bridgeton	5590 St. Louis Mills Blvd	MO	BRU	Propco I	Owned	N/A
East	9586	Chesterfield	220 THF Blvd	MO	BRU	Propco I	GL	1/31/2022
East	6044	Minnnetonka	14100 Wayzata Blvd.	MN	SBS	Propco I	Lease	1/31/2027
East	6047	Blaine	170 89th Ave.	MN	SBS	Propco I	Lease	1/31/2024
East	6551	Woodbury	8236 Tamarack Village	MN	BRU	Propco I	GL	1/31/2022
East	9536	Rapid City	450 E. Disk Drive	SD	TRU	Delaware	GL	1/31/2020
East	9560	Richfield	900 West 78th Street South	MN	BRU	Delaware	Lease	1/31/2022
East	6547	Brookfield	18550 W. Bluemound Rd.	WI	BRU	Delaware	Lease	1/31/2025
East	6552	Madison	2161 Zeier Road	WI	BRU	Propco II	Owned	N/A
East	6507	Omaha	3505 S. 140th Plaza	NE	BRU	Delaware	Lease	1/31/2020
East	9517	S. Des Moines	1211 E. Army Post Rd.	IA	TRU	Delaware	GL	1/31/2022
East	9587	Des Moines	8801 University Ave	IA	BRU	Delaware	Lease	1/31/2020
East	6026	Highland Park	1610 Deerfield Rd.	IL	TRU	Delaware	Owned	N/A
East	9236	Schaumburg	16 East Golf Road	IL	BRU	Delaware	Lease	3/31/2021
East	9293	Vernon Hills	295 Center Drive	IL	BRU	Delaware	GL	1/31/2022
East	6021	Matteson	5001 Lincoln Highway	IL	TRU	Propco I	Owned	N/A
East	6544	Bricktown	6420 W. Fullerton	IL	BRU	Delaware	Lease	1/31/2028
East	9246	Burbank	7750 South Cicero Avenue	IL	BRU	Delaware	Lease	1/31/2022
East	9285	Niles	5660 Touhy Avenue	IL	BRU	Delaware	GL	1/31/2025
East	9243	Indianapolis	3928 E 82nd Street	IN	BRU	Delaware	Lease	12/31/2019
East	6078	Muskegon	5363 Harvey Street	MI	TRU	Propco I	GL	1/31/2022
East	6079	Traverse City	2620 Crossing Circle	MI	TRU	Propco I	GL	1/31/2022
East	6543	Lansing	5900 W. Saginaw Highway	MI	BRU	Delaware	Lease	1/31/2025
East	9260	Grand Rapids	4923 28th Street South East	MI	BRU	Propco I	GL	1/31/2019
East	6442	Ann Arbor	3725 Carpenter Road	MI	BRU	Propco I	GL	1/31/2021
East	9270	Ann Arbor	3725 Washtenaw	MI	TRU	Delaware	Lease	1/31/2020
East	7076	Simpsonville	1155 Buck Creek Rd.	KY	Outlet	Delaware	Lease	1/31/2028
East	9237	Greenwood	8800 US 31 South	IN	BRU	Delaware	Lease	1/31/2021
East	8929	Western Hills	6251 Glenway Ave.	OH	TRU	Map 2005	Lease	1/31/2019
East	9240	Dayton	2661 Miamisburg-Centerville Rd.	OH	BRU	Map 2005	Lease	2/29/2020
East	6470	Erie	6680 Peach St.	PA	BRU	Propco I	GL	1/31/2019
East	9283	Mentor	7841 Mentor Ave	OH	BRU	Map 2005	Lease	1/31/2020
East	9242	Dublin	3610 West Dublin-Granville Rd.	OH	BRU	Map 2005	Lease	1/31/2021
East	9523	Columbia	1901 Bernadette	MO	TRU	Propco I	Lease	1/31/2019
East	7712	Little Rock	2616 S. Shackelford Rd	AR	BRU	Delaware	Lease	1/31/2023
East	7804	Oklahoma City	1119 SE 66th St.	OK	TRU	Delaware	GL	1/31/2030
East	7821	Fort Smith	5609-E Rogers Ave.	AR	TRU	Delaware	Lease	1/31/2020
East	7834	Norman	560 Ed Noble Pkwy.	OK	TRU	Delaware	GL	1/31/2026
East	7813	Irving	7730 N. MacArthur Blvd	TX	SBS	Delaware	Lease	1/31/2019
East	9542	Lewisville	420 E. Round Grove Rd	TX	BRU	Delaware	Lease	7/31/2022
East	9561	Dallas Galleria	13710 Dallas Parkway	TX	SBS	Delaware	Lease	1/31/2022
East	7708	Hurst	1309 W. Pipeline Rd	TX	BRU	Delaware	Lease	1/31/2022
East	9582	Hulen	5800 Overton Ridge Blvd	TX	BRU	Propco I	GL	1/31/2021
East	6411	Yonkers	2700 Central Park Ave	NY	BRU	Propco I	GL	1/31/2021
East	6344	Wayne	7 Wayne Hills Mall	NJ	TRU	Delaware	Lease	1/31/2020
East	6386	Paramus	545 Route 17 South	NJ	BRU	Delaware	Lease	1/31/2024
East	6503	East Hanover	98 Route 10 West.	NJ	BRU	Propco I	GL	1/31/2025
East	6333	Middle Village	66 Metropolitan Ave.	NY	SBS	Delaware	Lease	1/31/2023
East	6357	Westbury	1350 Corporate Drive.	NY	BRU	Propco I	GL	1/31/2020

East/West	Number	Store Name	Address	State	Chain	Entity	Lease Type	Expiration
East	6365	Elizabeth-KidsWo	900 Center Drive	NJ	SBS	Delaware	Lease	1/31/2027
East	6389	College Point	139-19 20th Ave	NY	BRU	Propco I	Lease	1/31/2020
East	6538	Union Square	24-30 Union Square E	NY	BRU	Delaware	Lease	1/31/2020
East	6374	Sayville	5181 Sunrise Hwy	NY	BRU	Delaware	Lease	1/31/2023
East	6424	Massapequa	5214 Sunrise Hwy	NY	BRU	Delaware	Lease	10/31/2018
East	6430	Portland	200 Running Hill Road	ME	BRU	Propco I	GL	1/31/2022
East	6492	Nashua	29 Gusabel Avenue	NH	BRU	Delaware	GL	1/31/2020
East	7519	Bangor	6 Bangor Mall Blvd.	ME	TRU	Propco I	Owned	N/A
East	6450	Framingham	Shoppers World Plaza,1 Worcester R	MA	BRU	Propco I	Lease	1/31/2023
East	6366	North Haven	376 North Universal Drive	CT	SBS	Delaware	Lease	1/31/2025
East	7509	Waterbury	275 Union St.	CT	SBS	Propco I	Lease	1/31/2023
East	7536	Newington	3491 Berlin Turnpike	CT	TRU	Propco I	Lease	1/31/2022
East	6429	Manchester	169 Hale Road	CT	BRU	Delaware	GL	1/31/2022
East	6468	Millbury	70 Worcester Providence Tpk/Rt 146	MA	BRU	Map 2005	GL	1/31/2019
East	6555	Holyoke	50 Holyoke Street	MA	BRU	Map 2005	Lease	6/30/2018
East	7535	Bellingham	217 Hartford Ave.	MA	TRU	Map 2005	GL	1/31/2022
East	9008	Northborough	6110 Shops Way	MA	SBS	Delaware	Lease	1/31/2027
East	6356	Kingston	401 Frank Sottile Boulevard	NY	TRU	Propco I	Owned	N/A
East	6367	Glens Falls	708 Upper Glen St.	NY	TRU	Propco I	Lease	1/31/2017
East	6494	Latham	221 Wade Road Extension	NY	BRU	Propco I	GL	1/31/2020
East	6375	Bridgewater	100 Promenade Blvd.	NJ	BRU	Propco I	GL	1/31/2020
East	6377	Union	2700 Route 22 East.	NJ	BRU	Propco I	Lease	1/31/2023
East	6369	North Brunswick	909 US Hwy 1 South.	NJ	BRU	Delaware	Lease	1/31/2019
East	8365	Burlington	Rt. 541 & Cadillac Road	NJ	TRU	Propco I	Lease	1/31/2022
East	6379	Cherry Hill	2135 Route 38	NJ	BRU	Delaware	GL	1/31/2023
East	8320	Dover	1061 N. Dupont Highway	PA	TRU	Propco I	Lease	10/31/2023
East	8322	Horsham	100 Welsh Road	PA	SBS	Delaware	Lease	1/31/2025
East	6382	Phillipsburg	1280 Rt. 22 & St. James Ave.	NJ	SBS	Propco I	GL	1/31/2023
East	6479	Mt. Olive	50 International Drive South.	NJ	BRU	Propco I	GL	1/31/2019
East	8323	Williamsport	461 Lycoming Mall Circle	PA	TRU	Propco II	Owned	N/A
East	9225	Greece	1530 Ridge Rd. West	NY	TRU	Delaware	Lease	1/31/2021
East	9281	Henrietta	2335 Marketplace Drive	NY	BRU	Delaware	GL	1/31/2020
East	9282	Amherst	1569 Niagara Falls Blvd	NY	BRU	Delaware	Lease	1/31/2020
East	6454	Exton	104 Bartlett Ave.	PA	BRU	Map 2005	GL	1/31/2023
East	9215	Ross Park Mall	2003 Cheryl Dr.	PA	TRU	Propco II	GL	1/31/2028
East	9216	Washington	301 Oakspring Road	PA	TRU	Propco I	Lease	1/31/2024
East	9218	Beaver Valley	Route 18/Valley View Dr.	PA	TRU	Propco II	Owned	N/A
East	8316	Clinton	8401 Mike Shapiro Drive	MD	TRU	Propco I	Owned	N/A
East	8885	Potomac Mills	14173 Crossing Place	VA	BRU	Delaware	GL	1/31/2020
East	6439	Newport News	12153 Jefferson Ave.	VA	BRU	Propco I	GL	1/31/2022
East	8816	Asheville	801 Fairview Road	NC	BRU	Delaware	Lease	7/31/2021
East	8890	Columbia	254 Harbison Boulevard	SC	BRU	Propco II	Owned	N/A
East	7044	Slidell	137 Northshore Blvd.	LA	TRU	Delaware	GL	1/31/2026
East	9590	Meridian	1003 Bonita Lakes Circle	MS	TRU	Propco I	GL	1/31/2023
East	5748	Pearl	200 Bass Pro Dr.	MS	Outlet	Delaware	Lease	1/31/2019
East	6756	Memphis	7676 Polo Ground Blvd.	TN	SBS	Delaware	Lease	1/31/2026
East	8848	Tuscaloosa	2600 McFarland Blvd. East	AL	TRU	Delaware	Lease	8/31/2021
East	9009	Birmingham	335 SUMMIT BOULEVARD	AL	SBS	Delaware	Lease	1/31/2027
East	8860	Nashville	5731 Nolensville Rd	TN	BRU	Delaware	Lease	1/31/2020
East	9257	Lexington	1965 Star Shoot Parkway	KY	BRU	Propco I	GL	1/31/2020

East/West	Number	Store Name	Address	State	Chain	Entity	Lease Type	Expiration
East	8864	Alpharetta	6380 No. Point Parkway	GA	BRU	Delaware	Lease	1/31/2019
East	8892	Dunwoody	1155 Mt. Vernon Hwy	GA	BRU	Delaware	Lease	1/31/2022
East	6403	Douglasville	6875 Douglas Boulevard	GA	BRU	Propco I	GL	1/31/2021
East	6437	Conyers	8160 Mall Parkway	GA	BRU	Propco I	GL	1/31/2020
East	6519	Newnan	221 Newnan Crossing Bypass	GA	BRU	Propco I	GL	1/31/2020
East	8820	Fayetteville	132 Pavilion Parkway	GA	SBS	Propco I	GL	1/31/2022
East	6562	Durham	7001 Fayetteville Road	NC	BRU	Delaware	GL	1/31/2022
East	8381	Durham	3300 Westgate Drive	NC	TRU	Delaware	GL	9/30/2020
East	8730	Tallahassee	1625 Apalachee Pkwy.	FL	SBS	Propco I	GL	12/31/2021
East	8842	Albany	2601 Dawson Rd.	GA	TRU	Propco I	Lease	1/31/2023
East	8735	St. Petersburg	1900 Tyrone Blvd.	FL	TRU	Delaware	Lease	1/31/2019
East	8859	Tampa	3908 West Hillsborough Avenue	FL	BRU	Delaware	Lease	1/31/2020
East	6428	Orange Park	6001 Argyle Forest Blvd	FL	BRU	Propco I	Lease	1/31/2022
East	8893	Altamonte Spring	708 West State Rd 436	FL	BRU	Delaware	Lease	7/31/2022
East	6409	Boca Raton	21697 State Road # 7	FL	BRU	Propco I	Lease	1/31/2021
East	6577	Port St. Lucie	10732 SW Village Pkwy	FL	BRU	Delaware	GL	3/31/2018
East	8702	Royal Palm Beach	450 South SR 7	FL	SBS	Delaware	Lease	1/31/2028
East	8805	Smyrna	2955 COBB PARKWAY	GA	SBS	Delaware	Lease	
East	6605	Kissimmee	2601 W.Osceola Parkway	FL	BRU	Delaware	Lease	
East	8888	N. Charleston	7220 Rivers Avenue	SC	BRU	Propco I	GL	
East	6755	Coral Springs	6001 West Sample Road	FL	SBS	Delaware	Lease	
East	8914	St. Mathews	4900 Shelbyville Rd	KY	TRU	Delaware	Lease	
East	7543	Kissimmee	3214 N John Young Pkwy.	FL	TRU	Delaware	Lease	
East	6385	Warwick	300 Quaker Lane	RI	BRU	Delaware	Lease	
East	6452	Monroeville	3700 William Penn Highway	PA	BRU	Map 2005	Lease	
East	6378	COMMACK	108 Veterans Memorial Highway	NY	RSBS	Propco I	Lease	
East	6313	Eatontown	137 Route 35	NJ	TRU	Delaware	Lease	
East	7507	Dedham	302 Providence Hwy	MA	SBS	Delaware	Lease	

Exhibit B

Consultant Controlled Expenses

[TO COME]

Schedule 2

Tiger/GA Consulting Agreement



GREAT AMERICAN GROUP

TIGER
ASSET INTELLIGENT

January 17, 2018

To: Toys "R" Us - Delaware, Inc. ("Merchant")
One Geoffrey Way
Wayne, NJ. 07470
Attn: Mr. James Young

From: Tiger Capital Group, LLC and

Great American Group, LLC
21255 Burbank Blvd., Suite 400
Woodland Hills, California 91367

Attn: Scott K. Carpenter, President Retail

Re: Store Closing Program – Consulting Agreement

Ladies and Gentlemen:

This letter shall serve as the agreement of a joint venture comprised of Tiger Capital Group, LLC and Great American Group, LLC (together, "Consultant") and Merchant pursuant to which Consultant shall serve as the consultant to Merchant to conduct a "store closing," "everything must go," "sale on everything," or other mutually agreed upon themed sale (the "Sale") at Merchant's retail stores identified on Exhibit A attached hereto (including any stores that may be added to Exhibit A after the date hereof in accordance with the terms of this Agreement, each a "Store" and collectively the "Stores"), subject to the terms and conditions set forth herein. It is understood that the Stores will be identified by the Merchant by January 23, 2018, subject to Merchant's right thereafter to add or to remove any Store from Exhibit A at any time subject to the provisions hereof.

Consultant acknowledges that Merchant is engaging a different consultant to handle a similarly themed sale at certain other stores of Merchant during the Sale Term (as defined below).

1. **RETENTION**

(A) Subject to the approval of the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court"), Merchant hereby retains Consultant as its independent consultant to conduct the Sale at the Stores during the Sale Term, and in connection therewith, Consultant shall, throughout the Sale Term:

- (i) Recommend appropriate discounting to effectively sell all of Merchant's goods located at or to be delivered to the Stores in accordance with a "store closing," "everything must go," "sale on everything," or other mutually agreed upon themed sale, and recommend appropriate point-of-purchase, point-of-sale, and other internal and external advertising in connection therewith.
- (ii) Provide qualified supervision to oversee the conduct of the Sale, which supervisors, once identified to Merchant, shall not be removed from the Sale event unless Merchant otherwise agrees or requests removal.
- (iii) Maintain focused and constant communication with Store-level employees and managers to keep them abreast of strategy and timing and to properly effect Store-level communication by Merchant's employees to customers and others about the Sale.
- (iv) Establish and monitor accounting functions for the Sale, including evaluation of sales of Merchant's goods located at the Stores by category, sales reporting and expense monitoring, all of which shall be shared with the Merchant's advisors monitoring the Sale.
- (v) Recommend loss prevention strategies.
- (vi) Coordinate with Merchant so that the operation of the Stores is being properly maintained including ongoing customer service and housekeeping activities.
- (vii) Recommend customized strategies to transition Merchant's customers to Merchant's ongoing retail stores and e-commerce platform.
- (viii) Recommend strategies and provide analytical support to the Merchant to assist with the sale of certain excess inventory (known as "X'D Inventory") in the Stores, Merchant's other ongoing stores and other channels.
- (ix) Recommend appropriate staffing levels for the Stores and appropriate bonus and/or incentive programs (to be funded by Merchant) for Store employees.
- (x) Assist Merchant to commence the Sale as a "sale on everything," "everything must go," "store closing," or such other themed sale approved by Merchant and the Bankruptcy Court; and
- (xi) Advise Merchant with respect to the legal requirements of affecting the Sale as a "store closing" or other mutually agreed upon theme in compliance with

applicable state and local "going out of business" laws as modified by any order of the Bankruptcy Court. In connection with such obligation, to the extent applicable, Consultant will (i) advise Merchant of the applicable waiting period under such laws, and/or (ii) prepare (in Merchant's name and for Merchant's signature) all permitting paperwork as may be necessary under such laws, deliver all such paperwork to Merchant, and file, on behalf of Merchant, all such paperwork where necessary, and/or (iii) advise where permitting paperwork and/or waiting periods do not apply.

2. SALE TERM; VACATING STORES

(A) Subject to Bankruptcy Court approval, the term "Sale Term" with respect to each respective Store shall commence on February 7, 2018 (the "Sale Commencement Date") and shall end with respect to each respective store no later than April 15, 2018 (the "Sale Termination Date"); provided, however, that Merchant may decide on an earlier or later "Sale Commencement Date" or "Sale Termination Date" with respect to any one or more Stores (on a Store-by-Store basis). After the date hereof, at the option of the Merchant, and subject to Bankruptcy Court approval, the Merchant may appoint the Consultant, and the Consultant hereby agrees to serve, as the Merchant's independent consultant in connection with the conduct of sales at additional stores on the terms and conditions of this Agreement (subject only to appropriate adjustments to the Sale Commencement Date and the Sale Termination Date and the Consultant Controlled Expenses (each as defined herein)), which stores shall be set forth in a written supplement to Exhibit A provided by Merchant to Consultant.

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

3. EXPENSES

(A) All expenses incident to the conduct of the Sale and the operation of the Stores during the Sale Term (including without limitation all Consultant Controlled Expenses and all other store-level and corporate expenses associated with the Sale) shall be borne by Merchant; except solely for any of the specifically enumerated "Consultant Controlled Expenses" that exceed the aggregate budgeted amount (as provided in Section 3(B) below) for such Consultant Controlled Expenses.

(B) Attached hereto as Exhibit B is an expense budget for the "Consultant Controlled Expenses." It is understood that the expense budget for the "Consultant Controlled Expenses" will be mutually agreed to by Merchant and Consultant by January 25, 2018. Consultant will advance funds for the Consultant Controlled Expenses, and Merchant shall reimburse Consultant therefor (up to the aggregate budgeted amount) in connection with each weekly reconciliation contemplated by Section 5(B) upon presentation of reasonable documentation for such actually-incurred expenses. All Consultant Controlled Expenses shall be billed at cost, without markup, and evidence of incurrence shall be provided, if requested. The parties may from time to time mutually agree in writing to increase or

decrease the budget of Consultant Controlled Expenses based upon circumstances of the Sale and the addition or removal of Stores from the Sale.

4. **CONSULTANT COMPENSATION**

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

(i) "Gross Proceeds" shall mean the gross proceeds of all sales of Merchandise during the Sale Term, net only of sales taxes.

(ii) "Merchandise" shall mean the goods actually sold in the Stores during the Sale Term, the aggregate amount of which shall be determined using the gross rings inventory taking method.

(B) Merchant shall pay Consultant a "Base Fee" equal to one and one tenth percent (1.10%) of Gross Proceeds.

(C) At the sole and absolute discretion of the Merchant, Merchant may pay Consultant an "Incentive Fee" up to an additional 0.3% of Gross Proceeds based on overall performance, assistance with a strategy to sell all of the X'D Inventory and performance in transitioning customers to Merchant's ongoing stores and on-line platform.

(D) On a weekly basis in connection with each weekly reconciliation contemplated by Section 5(B) below, Merchant shall pay Consultant an amount equal to one and one tenth percent (1.10%) of Gross Proceeds on account of the prior week's sales as an advance on account of the fee payable hereunder. The parties shall determine the definitive Base Fee and Incentive Fee, if any, in connection with the Final Reconciliation. Immediately thereafter (and as part of the Final Reconciliation), Merchant shall pay Consultant any additional amount owed on account of the Base Fee and Incentive Fee.

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

(A) Merchant shall have control over the personnel in the Stores and shall handle the cash, debit and charge card payments for all Merchandise in accordance with Merchant's normal cash management procedures, subject to Consultant's right to audit any such items in the event of a good faith dispute as to the amount thereof. Subject to Section 1(A)(xi) above, Merchant (and not Consultant) shall be responsible for ensuring that the Sale, and the operation of the Stores (before, during, and after the Sale Term) shall be conducted in compliance with all applicable laws and regulations.

(B) The parties will meet on each Wednesday during the Sale Term to review any Sale matters reasonably requested by either party; and all amounts payable or reimbursable to Consultant for the prior week (or the partial week in the case of the first and last weeks) shall be reconciled and paid immediately thereafter. No later than twenty (20) days following the end of the Sale, the parties shall complete a final reconciliation and settlement of all amounts contemplated by this Agreement (the "Final Reconciliation"). From time to time upon request, each party shall prepare and deliver to the other party such other reports as either party may reasonably request. Each party to this Agreement shall, at all times during the Sale Term and during the one (1) year period thereafter, provide the other with access to all

information, books and records reasonably relating to the Sale and to this Agreement. All records and reports shall be made available to Consultant and Merchant during regular business hours upon reasonable notice.

(C) Merchant shall be solely responsible for computing, collecting, holding, reporting, and paying all sales taxes associated with the sale of Merchandise during the Sale Term, and Consultant shall have no responsibilities or liabilities therefor.

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

(E) Merchant acknowledges that (i) the parties are not conducting an inventory of Merchant's goods located at the Stores; (ii) Consultant has made no independent assessment of the beginning levels of such goods; and (iii) Consultant shall not bear any liability for shrink or other loss to Merchant's goods located at the Stores (including without limitation Merchandise) unless such shrink or loss is primarily attributed to the actions of Consultant. Merchant may, at its election, conduct an inventory at some or all of the Stores and Consultant agrees to cooperate with such inventory taking if and when done.

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

(G) All sales of Merchandise in the Stores during the Sale Term shall be "final sales" and "as is," and all advertisements and sales receipts will reflect the same.

(H) Consultant shall, during the Sale Term at the Stores, cooperate with Merchant in respect of Merchant's procedures governing returns of goods otherwise sold by Merchant (e.g., not in the Stores during the Sale Term).

(I) Subject to compliance with any applicable laws and any order of the Bankruptcy Court, Merchant hereby permits the Sale to be, and shall ensure that the Sale otherwise may be, advertised as a "store closing" or other mutually agreed upon handle throughout the term of the Sale.

6. **FF&E**

(A) Following the Sale Commencement Date, Merchant shall inform Consultant of those items of furniture, fixtures, and equipment located at the Stores which are not to be sold (because Merchant does not have the right to sell such items, because Merchant wishes to retain such items for itself, or otherwise) (collectively, "Retained FF&E").

(B) With respect to all furniture, fixtures, and equipment located at the Stores as of the Sale Commencement Date which is not Retained FF&E (collectively the "Offered FF&E"), Consultant shall have the right to sell such Offered FF&E during the Sale Term on a commission basis equal to fifteen percent (15.00%) of the gross sales of Offered FF&E, net only of sales tax ("FF&E Commission").

(C) Merchant shall reimburse Consultant for its reasonable expenses associated with the sale of the Offered FF&E based upon a mutually agreed upon budget.

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

7. INSURANCE: RISK OF LOSS

During the Sale Term: (a) Merchant shall maintain (at its expense) insurance with respect to the Merchandise in amounts and on such terms and conditions as are consistent with Merchant's ordinary course operations, and (b) each of Merchant and Consultant shall maintain (at each party's respective expense) comprehensive auto liability for owned and non-owned autos and general liability insurance covering injuries to persons and property in or in connection with the Stores, in such amounts as are reasonable and consistent with its ordinary practices, for bodily injury, personal injury and/or property damage. Consultant shall add Merchant as an additional insured with respect to its insurance policies covering Consultant and its supervisors, and (c) each of Merchant and Consultant shall maintain statutory worker's compensation, statutory disability and Employer's Liability coverage of at least \$500,000 covering its own employees. Consultants shall produce evidence of such by the Sale Commencement Date.

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

Notwithstanding any other provision of this Agreement, Merchant and Consultant agree that Merchant shall bear all responsibility for product liability relating to the products sold under this Agreement, before, during and after the Sale Term.

8. INDEMNIFICATION

(A) Consultant shall indemnify and hold Merchant and its affiliates, and their respective officers, directors, employees, consultants, and independent contractors (collectively, the "Merchant Indemnified Parties") harmless from and against all third-party claims, demands, penalties, losses, liabilities and damages, including, without limitation, reasonable and documented attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to:

- (i) Consultant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
- (ii) any harassment or any other unlawful, tortious or otherwise actionable treatment of any employees or agents of Merchant by Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives (including without limitation any supervisors);

- (iii) any claims by any party engaged by Consultant as an employee or independent contractor (including without limitation any non-Merchant employee supervisor) arising out of such employment or engagement; or
- (iv) the negligence, willful misconduct or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, Consultants, independent contractors or representatives, *provided that* Consultant shall not be obligated to indemnify any Merchant Indemnified Party from or against any claims, demands, penalties, losses, liabilities or damages arising primarily from any Merchant Indemnified Party's gross negligence, willful misconduct, or unlawful act.

(B) Merchant shall indemnify and hold Consultant, its affiliates and their respective officers, directors, employees, consultants, and independent contractors (collectively, "Consultant Indemnified Parties") harmless from and against all third-party claims, demands, penalties, losses, liabilities and damages, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to:

- (i) Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
- (ii) any claims by any party engaged by Merchant as an employee or independent contractor arising out of such engagement;
- (iii) any consumer warranty or products liability claims relating to any Merchandise; and/or
- (iv) the negligence, willful misconduct or unlawful acts of Merchant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives, *provided that* Merchant shall not be obligated to indemnify any Consultant Indemnified Party from or against any claims, demands, penalties, losses, liabilities or damages arising primarily from any Consultant Indemnified Party's gross negligence, willful misconduct, or unlawful act.

9. **MISCELLANEOUS**

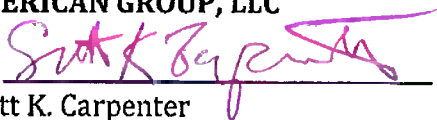
(A) This Agreement, including retention of Consultant and conduct of the Sale set forth herein, is subject to the approval of the Bankruptcy Court. Merchant shall promptly seek to have this Agreement, and the transactions contemplated by this Agreement approved by the Bankruptcy Court pursuant to an order and terms acceptable to both Merchant and Consultant. The Bankruptcy Court shall have exclusive jurisdiction to resolve any issues arising under this Agreement.

(B) This Agreement constitutes the entire agreement between the parties with respect to the matters contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, letters of intent or representations, written or oral, with respect thereto. This Agreement may not be modified except in a written instrument executed by each of the parties hereto. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. The failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. Nothing contained in this Agreement shall be deemed to create any relationship between Merchant and Consultant other than that of Consultant as an independent contractor of Merchant, and it is stipulated that the parties are not partners or joint venturers in any way. Unless expressly set forth herein to the contrary, to the extent that either party's consent is required/requested hereunder, such consent shall not be unreasonably withheld or delayed. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns; *provided however*, that this Agreement may not be assigned by either party without the prior written consent of the other. Written notices contemplated by this Agreement shall be sent by email (i) if to Merchant at the address set forth above; and (ii) if to Consultant at the address set forth above with a copy to Mark P. Naughton, Tiger Group, 350 North LaSalle Street, 11th Floor, Chicago, IL 60654.

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Very truly yours,

**A joint venture comprised of TIGER
CAPITAL GROUP, LLC and GREAT
AMERICAN GROUP, LLC**

By: 
Scott K. Carpenter

President, GA Retail Solutions, for the
Joint Venture

Agreed and Accepted:
Toys "R" Us - Delaware, Inc.

By: 
Print Name and Title:

DAVID P. PICOT
SVP - PROPERTY DEVELOPMENT

Exhibits:

- A Stores
- B Budget of Consultant Controlled Expenses

Exhibit A

Stores

East/West	Number	Store Name	Address	State	Chain	Entity	Lease Type	Expiration
West	5620	Indio	42500 Jackson St.	CA	SBS	Delaware	Lease	1/31/2027
West	5663	Yuma	801 W. 32nd Street	AZ	TRU	Propco I	Owned	N/A
West	6540	Simi Valley	1189 Simi Town Ctr Way	CA	BRU	Delaware	GL	1/31/2021
West	6581	Santa Clarita	26573 Carl Boyer Dr.	CA	BRU	Delaware	Lease	1/31/2019
West	5604	Covina	960 Lakes Drive	CA	SBS	Delaware	Lease	1/31/2027
West	5614	Puente Hills	1600 S. Azusa Ave.	CA	SBS	Delaware	Lease	1/31/2022
West	5672	Brea	2575 E. Imperial Highway	CA	BRU	Delaware	GL	1/31/2023
West	6463	Westminster	530 Westminster Mall	CA	BRU	Propco I	GL	1/31/2024
West	5680	Torrance	20120 Hawthorne Blvd.	CA	BRU	Delaware	Lease	1/31/2020
West	5618	Riverside	2550 Canyon Springs Pkwy S.	CA	SBS	Delaware	Lease	1/31/2024
West	6622	Corona	3665 Grand Oaks	CA	SBS	Delaware	Lease	1/31/2019
West	5628	Mission Bay	1240 W. Morena Blvd.	CA	TRU	Propco I	Lease	1/31/2028
West	6557	Mira Mesa	8181 Mira Mesa Blvd.	CA	BRU	Delaware	GL	1/31/2020
West	9581	Vista	1990 University Drive	CA	BRU	Propco II	Owned	N/A
West	6515	Ogden	4042 Riverdale Rd.	UT	BRU	Propco II	Owned	N/A
West	9568	Midvale	1122 Fort Union Boulevard	UT	BRU	Delaware	Lease	1/31/2024
West	5674	NW Las Vegas	2150 North Rainbow Blvd.	NV	BRU	Propco I	GL	1/31/2023
West	6580	Spring Valley	7020 Arroyo Crossing Parkway	NV	BRU	Delaware	Lease	1/31/2023
West	5645	Paradise Valley	12801 North Tatum Blvd.	AZ	TRU	Delaware	GL	1/31/2020
West	5652	Scottsdale	9139 Indian Bend Rd.	AZ	TRU	Delaware	GL	1/31/2022
West	5694	Tucson	4619 N. Oracle Rd	AZ	BRU	Propco II	Owned	N/A
West	6465	Scottsdale	7000 E. Mayo Blvd	AZ	BRU	Delaware	GL	1/31/2019
West	6561	Mesa	US 60 and Signal Butte Rd	AZ	BRU	Delaware	GL	1/31/2022
West	6550	Wichita	4646 W. Kellogg	KS	BRU	Propco I	Owned	N/A
West	9556	Overland Park	8500 W 135th ST	KS	BRU	Propco I	GL	1/31/2020
West	6438	Albuquerque	45 Hotel Circle	NM	BRU	Delaware	Lease	1/31/2022
West	8013	Silverdale	3567 N.W. Randall Way	WA	TRU	Propco I	Owned	N/A
West	8016	Everett	1325A S.E. Everett Mall Parkway	WA	TRU	Propco I	Owned	N/A
West	6553	Spokane	6104 N. Division Street	WA	BRU	Propco I	Lease	1/31/2019
West	5832	Yuba City	700 "A" Onstott Rd.	CA	TRU	Delaware	Lease	1/31/2019
West	6447	Folsom	2785 E. Bidwell St.	CA	BRU	Delaware	GL	1/31/2023
West	5804	Pinole	1330 Fitzgerald	CA	SBS	Propco I	GL	1/31/2027
West	5825	Pittsburg	4505 Century Blvd.	CA	TRU	Propco I	Lease	1/31/2022
West	5829	San Rafael	600 Francisco Blvd.	CA	SBS	Propco I	GL	1/31/2023
West	5857	Brentwood	5461 Lone Tree Way	CA	BRU	Delaware	GL	1/31/2022
West	6549	Fairfield	1400 Gateway Blvd	CA	BRU	Propco I	Owned	N/A
West	6554	EMERYVILLE	3938 Horton	CA	SBS	Delaware	Owned	N/A
West	5819	E. San Jose	2179 Monterey Hwy	CA	SBS	Delaware	Lease	1/31/2023
West	9569	San Jose / Almaden	865 Blossom Hill Road	CA	BRU	Delaware	Lease	8/24/2022
West	5802	Fresno	3520 W. Shaw Ave.	CA	TRU	Delaware	GL	1/31/2022
West	6431	Union City	31250 Court House Drive	CA	BRU	Delaware	GL	1/31/2022
West	6490	Stockton	10640 Trinity Pkwy	CA	BRU	Propco I	GL	1/31/2020
West	7028	West El Paso	801 Mesa Hills Dr.	TX	TRU	Delaware	Lease	
West	7004	Katy	9730 Katy Freeway	TX	SBS	Delaware	Lease	
West	9528	Aurora	1150 S. Ironton	CO	SBS	Delaware	GL	
West	7812	Allen	170 E. Stacy Road	TX	SBS	Delaware	Lease	
West	7081	Santa Ana	3900 Bristol Street	CA	TRU	Delaware	Lease	

Exhibit B

Consultant Controlled Expenses

[TO COME]

Schedule 3

Sale Guidelines

Sale Guidelines¹

1. The Sales shall be conducted so that the Closing Stores in which sales are to occur will remain open no longer than during the normal hours of operation or such hours as otherwise provided for in the respective leases for the Closing Stores.
2. The Sales shall be conducted in accordance with applicable state and local “Blue Laws”, where applicable, so that no Sale shall be conducted on Sunday unless the Merchant had been operating such Closing Store on a Sunday prior to the commencement of the Sales.
3. On “shopping center” property, the Consultants shall not distribute handbills, leaflets or other written materials to customers outside of any Closing Stores’ premises, unless permitted by the lease or, if distribution is customary in the “shopping center” in which such Closing Store is located; *provided* that the Consultants may solicit customers in the Closing Stores themselves. On “shopping center” property, the Consultants shall not use any flashing lights or amplified sound to advertise the Sales or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.
4. At the conclusion of the Sale, the applicable Consultant shall vacate the Closing Stores in broom clean condition; *provided* that Consultant may abandon any furniture, fixtures and equipment (including, but not limited to, machinery, rolling stock, office equipment and personal property, and conveyor systems and racking) (“FF&E”) not sold in the Sales at the conclusion of the Sales, without cost or liability of any kind to the applicable Consultant. The applicable Consultant shall notify the Merchant of its intention to abandon any FF&E at least two (2) days prior to the Termination Date. The Merchant will have the option to remove the FF&E, at its own cost prior to the termination date. Any abandoned FF&E left in a Closing Store after a lease is rejected shall be deemed abandoned to the landlord having a right to dispose of the same as the landlord chooses without any liability whatsoever on the part of the landlord to any party and without waiver of any damage claims against the Merchant. For the avoidance of doubt, as of the Sale Termination Date, the applicable Consultant may abandon, in place and without further responsibility or liability of any kind, any FF&E.
5. The Consultants may advertise the Sales as “store closing”, “sale on everything”, “everything must go”, “everything on sale” or similar-themed sales. The Consultants may also have a “countdown to closing” sign prominently displayed in a manner consistent with these Sale Guidelines. All signs, banners, ads and other advertising collateral, promotions, and campaigns will be approved by the Merchant, prior to purchase, in accordance with these Sale Guidelines.
6. The Consultants shall be permitted to utilize sign walkers, display, hanging signs, and interior banners in connection with the Sales; *provided* that such sign walkers, display, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. The Merchant and Consultants shall not use neon or day-glo on its sign walkers, display, hanging signs, or interior banners. Furthermore, with respect to

¹ Capitalized terms used but not defined in these Sale Guidelines have the meanings given to them in the Motion.

enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Sale Guidelines. In addition, the Merchant and Consultants shall be permitted to utilize exterior banners at (i) non-enclosed mall Closing Stores and (ii) enclosed mall Closing Stores to the extent the entrance to the applicable Closing Store does not require entry into the enclosed mall common area; *provided*, however, that such banners shall be located or hung so as to make clear that the Sales are being conducted only at the affected Closing Store, and shall not be wider than the storefront of the Closing Store. In addition, the Merchant and Consultants shall be permitted to utilize sign walkers in a safe and professional manner and in accordance with the terms of the Order. Nothing contained in these Sale Guidelines shall be construed to create or impose upon the applicable Consultant any additional restrictions not contained in the applicable lease agreement.

7. Conspicuous signs shall be posted in the cash register areas of each of the affected Closing Stores to effect that “all sales are final.”
8. Except with respect to the hanging of exterior banners, the Consultants shall not make any alterations to the storefront or exterior walls of any Closing Stores, except as authorized by the applicable lease.
9. The Consultants shall not make any alterations to interior or exterior Closing Store lighting, except as authorized by the applicable lease. No property of the landlord of a Closing Store shall be removed or sold during the Sales. The hanging of exterior banners or in-Closing Store signage and banners shall not constitute an alteration to a Closing Store.
10. The Consultants shall keep Closing Store premises and surrounding areas clear and orderly consistent with present practices.
11. Subject to the provisions of the Agreement, the Consultants shall have the right to use and sell all Owned FF&E, approved by the Merchant. The Consultants may advertise the sale of the Owned FF&E in a manner consistent with these guidelines. The purchasers of any Owned FF&E sold during the sale shall be permitted to remove the Owned FF&E either through the back or alternative shipping areas at any time, or through other areas after applicable business hours, *provided, however* that the foregoing shall not apply to *de minimis* FF&E sales made whereby the item can be carried out of the Closing Store in a shopping bag. For the avoidance of doubt, as of the Sale Termination Date, the applicable Consultant may abandon, in place and without further responsibility, any FF&E.
12. At the conclusion of the Sales at each Closing Store, pending assumption or rejection of applicable leases, the landlords of the Closing Stores shall have reasonable access to the Closing Stores’ premises as set forth in the applicable leases. The Merchant, Consultants and their agents and representatives shall continue to have access to the Closing Stores as provided for in the Consulting Agreement.
13. The rights of landlords against Merchant for any damages to a Closing Store shall be reserved in accordance with the provisions of the applicable lease.

14. If and to the extent that the landlord of any Closing Store affected hereby contends that the Merchant or applicable Consultant is in breach of or default under these Sale Guidelines, such landlord shall email or deliver written notice by overnight delivery on the Merchant and applicable Consultant as follows:

If to Tiger/GA:

Great American Group, LLC
21255 Burbank Blvd., Suite 400
Woodland Hills, California 91367
Attn: Scott Carpenter
Email: scarpenter@greatamerican.com

- and -

Tiger Capital Group, LLC
350 North LaSalle Street, 11th Floor
Chicago, IL 60654
Attn: Mark Naughton
Email: MNaughton@tigergroup.com

If to Hilco/GB:

Gordon Brothers Retail Partners, LLC
800 Boylston Street
27th Floor
Boston, MA 02199
Attn: Mackenzie Shea
Email: mshea@gordonbrothers.com

- and -

Hilco Merchant Resources, LLC
5 Revere Drive
Suite 206
Northbrook, IL 60062
Attn: Ian Fredericks
Email: ifredericks@hilcoglobal.com

If to Merchant:

Toys "R" Us, Inc.
One Geoffrey Way
Wayne, New Jersey 07470
Attention: Legal Department
Facsimile: (415) 278-2562

with copies (which shall not constitute notice) to:

Kutak Rock LLP
901 East Byrd Street, Suite 1000
Richmond, Virginia 23219-4071
Attention: Michael A. Condyles, Peter J. Barrett, and Jeremy S. Williams
Email: Michael.Condyles@KutakRock.com
Peter.Barrett@KutakRock.com
Jeremy.Williams@KutakRock.com

- and -

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Joshua A. Sussberg, P.C.
Email: joshua.sussberg@kirkland.com

- and -

Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attention: Chad J. Husnick, P.C., Robert Britton, and Emily E. Geier
E-mail: chad.husnick@kirkland.com
robert.britton@kirkland.com
emily.geier@kirkland.com

- and -

Malfitano Advisors, LLC
747 Third Ave., 2nd Floor
New York, NY 10017
Attention: Joseph Malfitano
E-mail: jm@malfitanopartners.com

EXHIBIT C

Malfitano Declaration

Edward O. Sassower, P.C.
Joshua A. Sussberg, P.C. (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

James H.M. Sprayregen, P.C.
Anup Sathy, P.C.
Chad J. Husnick, P.C. (admitted *pro hac vice*)
Robert A. Britton (admitted *pro hac vice*)
Emily E. Geier (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

-and-

Michael A. Condyles (VA 27807)
Peter J. Barrett (VA 46179)
Jeremy S. Williams (VA 77469)
KUTAK ROCK LLP
901 East Byrd Street, Suite 1000
Richmond, Virginia 23219-4071
Telephone: (804) 644-1700
Facsimile: (804) 783-6192

Co-Counsel to the Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:)
) Chapter 11
)
TOYS “R” US, INC., *et al.*,¹) Case No. 17-34665 (KLP)
)
)
Debtors.) (Jointly Administered)
)

**DECLARATION OF JOSEPH MALFITANO IN SUPPORT OF
DEBTORS’ MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING
THE DEBTORS TO ENTER INTO THE CONSULTING AGREEMENTS,
(II) AUTHORIZING AND APPROVING THE CONDUCT OF STORE CLOSING
SALES, WITH SUCH SALES TO BE FREE AND CLEAR OF ALL LIENS,
CLAIMS, AND ENCUMBRANCES, (III) AUTHORIZING CUSTOMARY BONUSES
TO EMPLOYEES OF CLOSING STORES, AND (IV) GRANTING RELATED RELIEF**

I, Joseph Malfitano, declare as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief [Docket No. 78]. The location of the Debtors’ service address is One Geoffrey Way, Wayne, New Jersey 07470.

1. I am the founder and sole principal of Malfitano Advisors, LLC (“MA”). On or about December 11, 2017, MA was retained by the above-captioned debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (these “Cases”), to serve as asset disposition advisors and consultants. Unless otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my discussions with the Debtors’ senior management, and Alvarez & Marsal North America, LLC (“A&M”), my review of relevant documents, or my opinion based upon experience, knowledge, and information concerning the Debtors’ operations. If called upon to testify, I would testify competently to all of the facts set forth herein.

2. This declaration (this “Declaration”) is being submitted in connection with the *Debtors’ Motion For Entry of an Order (I) Authorizing the Debtors to Enter Into the Consulting Agreements, (II) Authorizing and Approving the Conduct of Store Closing Sales, With Such Sales to be Free and Clear of All Liens, Claims, and Encumbrances, (III) Authorizing Customary Bonuses to Employees of Closing Stores, and (IV) Granting Related Relief* (the “Store Closing Motion”), filed concurrently herewith. I have reviewed and am familiar with the Store Closing Motion and the relief sought therein.

Qualifications

3. I hold a Bachelor of Science degree from the State University of New York, College at Buffalo and a Juris Doctorate from Temple University School of Law. I began my career in the year 2000 as a lawyer with Young Conaway Stargatt & Taylor, LLP in Wilmington, Delaware, where the primary emphasis of my practice was on the representation of debtors in chapter 11 proceedings, particularly cases that involved the sale of the business/section 363 sales.

4. In 2007, I joined Hilco Global (“Hilco”) as its in-house global transactional counsel. Hilco is one of the leading valuation and monetization companies for retail inventory, furniture, fixtures and equipment, real estate, accounts receivable and intellectual property. In that role, I documented and closed hundreds of transactions around the globe representing an aggregate asset valuation in excess of ten billion dollars.

5. In 2011, I transitioned from the legal group at Hilco to become a senior business executive for the holding company for all of the Hilco entities (consisting of over 20 businesses during my tenure). In my capacity as an Executive Vice President, I was responsible for sourcing and structuring distressed and non-distressed transactions that involved the investment of Hilco capital across all of its platform companies, including its retail disposition platform company, Hilco Merchant Resources, LLC. In addition, I was principally involved with all operational aspects of Hilco’s various asset disposition transactions.

6. In January 2016, I left Hilco and launched a legal practice, Malfitano, PLLC, and MA, which serves clients worldwide by creating value in asset acquisition or disposition transactions in distress situations. We partner with companies, corporate boards and management, business, asset or debt acquirers, investors, investment bankers and financial advisors, other law firms and others who value independent strategic thinking, critical insights, and hands on expertise. Since launching MA and Malfitano, PLLC, I have assisted clients in analyzing, negotiating, documenting and closing several dozen transactions representing an aggregate asset valuation of nearly one billion dollars.

7. Further, I have principally been involved, either as a lawyer, advisor, or principal, in some of the largest retail bankruptcies in this country’s history, including, but not limited to, Linens ‘n Things, Borders Group, The Sharper Image, Circuit City, hhgregg, Levitz

Furniture, Boater's World, Eastern Outfitters, Goody's Family Clothing, and Golfsmith International. I am intimately familiar with the structure and metrics that drive a successful retail liquidation. I have also previously proffered testimony and/or testified in bankruptcy cases and been retained as an advisor and an expert in the liquidation industry.

Process to Select an Asset Disposition Firm

8. Upon its engagement, MA reviewed initial proposals from national liquidation firms that had been previously solicited by the Debtors and began working with the Debtors' senior management and their other advisors to evaluate a potential store closing timeline for certain stores that were no longer necessary for the ongoing business. Immediately thereafter, MA worked with the Debtors to resolicit "fee" based liquidation proposals² from the various national liquidation firms that can handle the disposition of the Debtors' inventory and owned furniture, fixtures, and equipment in the anticipated closing stores (collectively, the "Assets").

9. The Company and I were focused on finding the best "fee" based structure for the company in order to maximize the return for the Assets, give the company the required flexibility to add or remove stores based on changing economic factors, and enable the company to liquidate large amounts of inactive and discontinued inventory ("X'D Inventory") as part of the sale.

10. MA worked diligently with the Debtors and their other advisors to establish a data room with all of the information necessary for the liquidation firms to make an appropriate

² A "fee" based structure generally provides for a commission or fee to the liquidation firm in exchange for assisting with the sale of particular asset(s) in addition to reimbursing the liquidation firm for its out of pocket expenses. The "fee" based structure allows the company to retain a majority of the dollars realized for the asset(s) since the liquidation firms do not risk their own capital and also gives the company the maximum amount of flexibility in the process.

proposal. A vast majority of the required information was posted in the data room by December 15, 2017 and all potential bidders were engaged in the process as of that date.

11. In connection with MA's solicitation of proposals, MA contacted the following entities, each of which signed non-disclosure agreements with the Debtors prior to MA's involvement: Gordon Brothers Retail Partners, LLC; Hilco Merchant Resources, LLC; Tiger Capital Group, LLC; Great American Group, LLC; SB Capital Group, LLC; 360 Merchant Solutions; Eaton Hudson, Inc.; and HMY Capital LLC d/b/a Yellen Partners ("Yellen"). Additionally, prior to MA's involvement, the following firms submitted bids as joint ventures: Gordon Brothers Retail Partners, LLC and Hilco Merchant Resources, LLC ("Hilco/GB"); Tiger Capital Group, LLC and Great American Group, LLC ("Tiger/GA"); and SB Capital Group, LLC, 360 Merchant Solutions and Eaton Hudson, Inc. ("SB Group").

12. On December 14, 2017, MA sent a request for resubmission of proposals ("RFP") to the bidding groups, setting the deadline to submit proposals (the "Bid Deadline") at 4:00 p.m. eastern standard time on December 19, 2017. MA provided a form agreement for the bidders to use in submitting a proposal. The RFP additionally required each of the bidders to provide a projected cash-flow statement for the transaction, financial model with projected recovery rates for both in-store inventory and X'D Inventory, expense budget with breakdown of supervision and advertising, and a biography for the lead supervisor that would be assigned to the transaction. MA encouraged all bidders to submit any additional materials they wanted the company to consider in making a selection and responded to additional information requests from the potential bidders. Each of the bidding groups spent considerable time, resources, and effort in evaluating the opportunity; none sought additional time prior to submitting bids.

13. On the Bid Deadline, the Debtors received proposals from each of the four bidding groups (Hilco/GB, Tiger/GA, SB Group, and Yellen). Each of the proposals provided a “fee” based structure and the other information required by the RFP.

14. When evaluating the proposals, our goal was to select the liquidation firm partner or partners that (i) had the most realistic view on overall recovery on both in-store inventory and X'D Inventory, (ii) had recent experience liquidating retail toy stores, (iii) would dedicate the best resources to accomplish the company’s goals, (iv) had shown the ability to execute the liquidation of excess/aged inventory in recent transactions, and (v) was sensitive to the company’s desire to retain and transition customers to their ongoing stores and online platform.

15. It became apparent that the bidding groups had limited recent liquidation experience in the retail toy space. Additionally, most of the experience was small in scale, combined with other categories, specialized clearance events (not full closings), or almost ten years old.

16. One bidding group, Hilco/GB, had certain experience with the company. A sister company of Hilco Merchant Resources, LLC has historically been the appraiser for the company’s inventory and Gordon Brothers Retail Partners, LLC (“GBRP”) has and is currently conducting store closings for the Debtors in the ordinary course of business. In light of this and the overall limited experience of the bidding groups in the toy retail space, we believed it was important to foster competition between liquidation groups while capitalizing on the most up to date information on the company’s store liquidation performance and lessons learned by GBRP in the previous store closings.

17. Thus, in consultation with the Debtors and their other advisors, MA recommended splitting the store closing project between two bidding groups: Hilco/GB and Tiger/GA. These firms were selected based on the criteria set forth above and after considering other factors, including, but not limited to, (i) recent liquidation experience in general, (ii) the amount and type of supervisors designated by the liquidators to handle the project, (iii) potential upside that could be realized under a “fee” based structure, (iv) overall economics, and (v) flexibility under the “fee” based structure.

18. MA recommended splitting the project based on geography, assigning Hilco/GB approximately seventy percent (70%) of the closing stores and Tiger/GA approximately thirty percent (30%) of the closing stores, with each getting a mix of the company’s different concept stores. Given the importance of the project and that Hilco/GB had experience and knowledge about the company, MA allocated Hilco/GB a majority of the stores.

19. I believe splitting the project as set forth above will allow the company to (i) obtain best-in-class supervision from the industry’s premier providers at a time when the liquidation industry may see increased activity, (ii) create competition between the two groups on the project to deliver the best results for the company, and (iii) obtain different perspectives and operational strategies to maximize the return, assist with the liquidation of the X’D Inventory, and preserve and transition customers during the liquidation to go-forward stores and the company’s online platform.

20. MA negotiated the fee with both Hilco/GB and Tiger/GA and is in the process of finalizing the advertising and supervision budgets for the project with both groups.³ These negotiations were arms’ length and in good faith between sophisticated parties represented by

³ We expect the final advertising and supervision budgets for the project to be finalized by no later than January 25, 2018.

sophisticated counsel. The Debtors and the official committee of unsecured creditors in these Cases were regularly apprised of the status of these negotiations. Significant changes to the benefit of the Debtors were made during these negotiations.

21. In my view, the process that the Debtors engaged in to select a liquidation firm was fair and reasonable under the circumstances, and the consulting agreements executed with Hilco/GB and Tiger/GA reflect market rates for transactions of this type. In addition, I am not aware of any facts to suggest that there was any fraud or collusion in connection with the bidding process.

22. Hilco/GB and Tiger/GA are comprised of four nationally recognized liquidation firms, have extensive experience in conducting liquidation sales and are best suited to oversee and assist in the management and implementation of the liquidation of the Store Closing Assets in an efficient and cost-effective manner.

23. The commencement of the Sales at the Closing Stores as soon as possible is imperative to maximize the value of the Assets. Given the company's current section 365(d)(4) deadline, there is a finite number of days that the sale can run without obtaining further consents from the company's landlords. Moreover, the lack of, or minimal, replenishment of the stores will impact the composition of the inventory (*i.e.*, more desirable inventory is being sold off leaving the stores with slower moving or less desirable inventory). Coupled with the desire to liquidate as much of the X'D Inventory as possible through this closing event, it is imperative that the current in-store inventory be liquidated in a way to keep the stores fresh overall to maximize the value of the Assets.

Procedures for Store Closing Sales

24. Absent an order from a court, certain states in which the Debtors operate stores have or may have licensing or other requirements governing the conduct of store closings, liquidations, or other inventory clearance sales, including (but not limited to) state and local laws, statutes, rules, regulations, and ordinances (the “Liquidation Sale Laws”). Liquidation Sale Laws may establish licensing, permitting, or bonding requirements, waiting periods, time limits, bulk sale restrictions, or augmentation limitations that would otherwise apply to store closing sales. Additionally, many of the Debtors’ occupancy agreements (collectively, “Leases”) with their landlords restrict the use of “store closing” or similar themed signage.

25. When a company is trying to maximize the value of its inventory and fixed assets through a store closing event, the most important factor is the ability to drive a message to the consumer that creates some urgency to purchase. In a retail environment where everything is essentially on sale all the time, being able to advertise a store closing sale is an essential element to obtain the necessary consumer traffic to the stores to drive recovery on the inventory and fixed assets. If sales volume cannot be increased through appropriate advertising such as “store closing” signage, the Debtors may be forced to incur additional liabilities, including additional rent and payroll liability, to obtain the same recovery over a longer period of time and may not be able to liquidate the desired amount of inventory during the event.

26. In my view, having to comply with Liquidation Sales Laws and the Debtor’s Leases, which may delay or prevent the use of the “store closing” message, signage, or advertising in connection with the sale, will significantly impair sales at the Closing Stores and the value that the Debtors will be able to generate from the store closings.

27. Sale guidelines similar to those attached to the Store Closing Motion have been used in many retail chapter 11 cases. The guidelines provide a uniform framework for how the sale will be conducted and afford the Debtors' landlords with a fair and reasonable process to voice their opposition while balancing the Debtors' need to maximize value of the inventory and fixed assets without delay.

Store Closing Bonus Plan

28. Additionally, the Debtors are requesting the authority, but not the obligation, to pay Store Closing Bonuses (the "Store Closing Bonus Plan") to store-level non-insider employees, who remain in the employ of the Debtors during the Sales. I believe that the Store Closing Bonus Plan will motivate employees during the Sales and will enable the Debtors to retain those employees necessary to successfully complete the Sales.

29. The amount of the bonuses offered under the Store Closing Bonus Plan will vary depending upon a number of factors, including the employee's position with the Debtors and the performance of the Closing Store in which the relevant employees work. The total aggregate cost of the Store Closing Bonus Plan will also vary depending on how many Closing Stores are ultimately closed. If the Debtors were to close every Closing Store, the aggregate cost of the Store Closing Bonus Plan will be not more than \$3.6 million, assuming one hundred percent (100%) of the performance targets were met during the Closing Sales at every Closing Store.⁴

30. The Debtors will set the amounts and metrics of the Store Closing Bonus Plan and eligible employees in consultation with MA and the Consultants. Bonus plans for store-

⁴ The exact terms of the Store Closing Bonus Plan are still being formulated in consultation with MA and the Consultants. To the extent the Debtors pay the store closing employees a portion of the Paid-Time Off per their corporate policy at the end of the Sales as set forth in the Motion, such payments will not exceed \$3.2 million.

level employees are typically recommended to retain employees and to incentivize them to achieve higher recoveries during store closing sales.

31. I believe that providing such non-insider bonus benefits is critical to ensuring that key employees that will be affected by the reduction in the Debtors' work force due to the Store Closings will continue to provide critical services to the Debtors during the ongoing Sales.

32. I believe that the Store Closing Bonus Plan is in the best interests of the Debtors' estates and a sound exercise of the Debtors' business judgment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: January 23, 2018

/s/ Joseph A. Malfitano
Joseph A. Malfitano
Founder and Managing Member
Malfitano Advisors, LLC