

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE:)
BRUNO'S SUPERMARKETS, LLC,)
) **Chapter 11**
Debtor.) **Case No. 06-00634**

**DEBTOR'S EMERGENCY MOTION FOR ENTRY OF AN INTERIM AND FINAL
ORDER PURSUANT TO §§ 105 AND 363: (I) AUTHORIZING AND APPROVING (A)
THE SALE OF CERTAIN OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL
LIENS, CLAIMS AND ENCUMBRANCES, AND (B) THE CONDUCTION OF STORE
CLOSING OR SIMILARLY THEMED SALES; (II) APPROVING THE CONSULTING
AGREEMENT AND AUTHORIZING HILCO MERCHANT RESOURCES, LLC TO
ACT AS DEBTOR'S LIQUIDATION AGENT; AND (III) GRANTING RELATED
RELIEF**

COMES NOW, Bruno's Supermarket, LLC ("Bruno's" or "Debtor"), as debtor and debtor-in-possession, and, pursuant to §§ 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), moves this Court (this "Motion") to enter an order (i) authorizing Debtor to (A) sell certain of the Debtor's assets which are located at the Closing Stores (as hereinafter defined) free and clear of all liens, claims and encumbrances, and (B) conduct store closing or similarly themed sales in accordance with the terms of the *Store Closing Guidelines* (the "Sale Guidelines") annexed as Exhibit "D" to the Consulting Agreement, (ii) approving the Consulting Agreement and authorizing Hilco Merchant Resources, LLC ("Hilco" or "the Consultant") to act as Debtor's liquidation agent pursuant to the Consulting Agreement between Debtor and Hilco and (iii) granting such other and further relief as this Court deems necessary. In support of this Motion, Debtor states as follows:



JURISDICTION AND VENUE

1. On February 5, 2009 (the "Petition Date"), Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Clerk of this Court. Debtor continues to operate its businesses and manage its properties as a debtor-in-possession pursuant to §§ 1107(a) and 1108.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of Debtor's chapter 11 cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code §§ 105(a) and 363(b).

FACTUAL BACKGROUND

Company Background and Industry

3. Bruno's is a privately held company headquartered in Birmingham, Alabama that owns and operates three grocery store chains: Bruno's, Food World, and FoodMax. Combined, Bruno's has a total of 66 locations in Alabama and the Florida panhandle. There are a total of 2 FoodMax locations. Food World has 41 locations with approximately 34 stores in Alabama and 7 stores in Florida. Bruno's has a total of 23 locations with 21 stores in Alabama and 2 stores in Florida. Bruno's employs a total of approximately 4,200 employees, approximately 40% of which are full time employees and approximately 60% of which are part time employees. Bruno's has a total of 2,600 union employees and 1,600 non-union employees. Bruno's is a party to certain collective bargaining agreements with the United Food & Commercial Workers Local #1657 (collectively, the "CBA"), and the majority of Bruno's employees are covered by the CBA.

4. Bruno's was founded in 1933 by Joe Bruno with the opening of an 800 square foot corner grocery store in Birmingham, Alabama. By 1959, Bruno's had grown to be a chain

of 10 grocery stores. In 1972, Bruno's launched Food World, which was designed as a chain of discount grocery stores. By the early 1990s, Bruno's was one of the Top 40 grocery store chains in the country as measured by sales volume. In 1995, after a prolonged period of stagnant sales and earnings, Bruno's was acquired by Kohlberg Kravis Roberts & Co in a leveraged buyout. Due to the significant debt incurred by Bruno's through the leveraged buyout and substantial losses in 1996 and 1997, Bruno's filed for bankruptcy under chapter 11 of the Bankruptcy Code in early 1998. At the time of Bruno's emergence from bankruptcy in 2000, Bruno's operated approximately 152 stores in Alabama, Georgia, Florida and Mississippi. Bruno's was acquired, in 2001, by Ahold USA, Inc., the U.S. subsidiary of Royal Ahold, an international supermarket conglomerate. In 2005, Bruno's was sold to Lone Star Fund V (U.S.), L.P. ("Lone Star Five"), one of the funds held by the private equity firm Lone Star Funds. Following the sale to Lone Star Five, Bruno's sold approximately 100 of its stores to C & S Wholesale Grocers.

Debt Structure

5. Bruno's had a revolving line of credit with Regions Bank (the "Revolver"). The current amount outstanding under the Revolver is approximately \$10.8 million. The Revolver is secured by the majority of Bruno's assets. Bruno's owes approximately \$22.5 million in accounts payable to trade and other creditors. There is also approximately \$6.8 million owed to various state and local taxing authorities. Bruno's also owes an affiliated company, Bi-Lo, LLC ("Bi-Lo"), approximately \$3.5 million.

6. The vast majority of Bruno's grocery stores are located on leased property. Bruno's does, however, own the real property on which five of its stores are located.

Events Leading to Bankruptcy

7. Debtor's bankruptcy filing has been precipitated by a variety of factors that have led to a deterioration in Bruno's business and a lack of liquidity. Over the past 18 months, the country has seen a significant decline in the economy as a whole. The economic decline has resulted in a significant decrease in consumer spending, including food and grocery items. This decreased demand has led to a decline in Bruno's sales.

8. Furthermore, Bruno's has also seen an increased amount of competition in its core market from other grocers. With an abundance of older locations, Bruno's has had difficulty competing with the newer grocery stores that have moved into its markets. This increased competition from newer grocery stores has reduced Bruno's market share.

9. Additionally, the frozen credit markets have limited the availability of capital for improvements to Bruno's stores to allow Bruno's to compete with the newer stores of its competitors. Additionally, the lack of available capital has resulted in Bruno's being unable to locate sufficient working capital with which to operate its stores.

10. Finally, as stated above, Bruno's is party to the CBA. Under this agreement, Bruno's provides benefits and working conditions for Bruno's union employees which significantly exceed those provided to other area workers in the industry. Furthermore, Bruno's is party to an exclusive distribution agreement with unfavorable terms for the majority of the goods that Bruno's sells through its stores.

RELIEF REQUESTED

11. After exploring alternative strategies to maximize value and as part of its reorganization efforts, Debtor, in its business judgment, has decided to close ten of its 66 stores (the "Ten Stores"). In addition to the Ten Stores, Debtor ceased operations of at least four stores

pre-petition¹ (the “Four Stores” and together with the Ten Stores, the “Closing Stores”). A list of the Closing Stores is annexed to the Consulting Agreement as Exhibits “A” and “C”. Debtor has determined, in its business judgment, that utilizing the services of a liquidation firm to sell certain assets remaining at the Closing Stores will maximize value to Debtor’s estate and creditors. By this Motion, Debtor seeks entry of an order (i) authorizing Debtor to (A) sell the Assets (as hereinafter defined) free and clear of all liens, claims and encumbrances, and (B) conduct store closing or similarly themed sales (the “Store Closing Sales”) in accordance with the terms of the Consulting Agreement and the Sale Guidelines, (ii) approving the terms of the Consulting Agreement and authorizing the Debtor to utilize the services of Hilco as Debtor’s liquidation agent pursuant to the Consulting Agreement between Debtor and Hilco and (iii) granting such other and further relief as this Court deems necessary.

THE PROPOSED STORE CLOSING SALES

12. As part of its reorganization efforts, Debtor has analyzed the performance of all 66 of its grocery stores. During that evaluation, the Closing Stores were identified as underperforming stores. After evaluating many options to potentially rehabilitate the Closing Stores, Debtor determined, in its business judgment, to close the Closing Stores and to sell the Assets.

13. Debtor considered a number of possibilities regarding the timing and structure of the Store Closing Sales, including whether to conduct the Store Closing Sales itself or to engage a liquidation firm to enter into a consultant based agreement or to consummate an equity-based deal. Debtor received, and ultimately accepted, an offer from Hilco to serve as consultant in

¹ To the best of Debtor’s knowledge, all Merchandise (as hereinafter defined) has been removed from the Four Stores and only FF&E (as hereinafter defined) remains in the Four Stores. Subject to this Court’s approval, the FF&E located at the Four Stores will be sold pursuant to the Consulting Agreement.

connection with the Store Closing Sales, subject to this Court's approval. In order to facilitate the Store Closing Sales, Debtor and the Consultant entered into the "Consulting Agreement"). After consulting with its advisors and the Consultant, Debtor determined that it was necessary to commence the Store Closing Sales immediately and to attempt to conclude such sales on or prior to March 31, 2009.

14. Pursuant to the Consulting Agreement, the Consultant will advise Debtor with respect to the sale of Debtor's merchandise (the "Merchandise")² and furniture, fixtures and equipment (the "FF&E", and together with the Merchandise, the "Assets") at the Closing Stores. No inventory will be sold to the Consultant. Rather, the Consultant will earn a fee based upon the gross recovery from Debtor's Assets.

15. The significant terms of the Consulting Agreement are as follows:³

- i. Services: The Consultant will serve as an independent consultant to Debtor in connection with the conduct of the Store Closing Sales and will provide Debtor with the following Services with respect to the conduct of the Store Closing Sales:
 - a. Provide Debtor with qualified supervisors engaged by the Consultant as independent contractors to oversee the management of the Closing Stores;
 - b. Determine the appropriate point-of-sale and external advertising for the Closing Stores;
 - c. Determine the appropriate pricing of the Merchandise, staffing levels for the Closing Stores, and appropriate bonus and incentive programs for the Store Location's employees;

² Merchandise also includes DSD Merchandise, as further explained in paragraph D of the Consulting Agreement.

³ The following description of the significant terms of the Consulting Agreement is a summary of the terms of the Consulting Agreement. Capitalized terms used but not defined in this section shall have the meanings ascribed to them in the Consulting Agreement. To the extent that this summary differs in any way from the terms set forth in the Consulting Agreement, the terms of the Consulting Agreement shall control.

- d. Oversee display of Merchandise for the Closing Stores;
 - e. To the extent that information is available, coordinate accounting functions for the Closing Stores, including evaluation of the sales of Merchandise by category, sales reporting and monitoring of expenses using Debtor's infrastructure;
 - f. Maintain the confidentiality of all propriety or non-public information regarding Debtor of which the Consultant or its representatives become aware, except for information that is public as of the date of the Consulting Agreement or otherwise becomes public through no fault of the Consultant;
 - g. Provide such other related service deemed necessary or appropriate by Debtor and Consultant;
 - h. Assist Debtor in connection with managing and controlling loss prevention; and
 - i. Provide support in obtaining authorization to conduct the Store Closing Sale for state and local authorities, if necessary.
- ii. Sale Termination Date: The Store Closing Sales shall terminate on March 31, 2009 (the "Sale Termination Date") unless otherwise mutually agreed to by the parties to extend such date; provided, that the Consultant may terminate the Store Closing Sale at any particular store prior to the Sale Termination Date.
- iii. Store Closing Sales Expenses:
- a. In connection with the Store Closing Sales, Debtor shall be responsible for the payment of all expenses incurred in connection with the Store Closing Sales, including without limitation all sale expenses. To control sale expenses, the Consultant has provided Debtor with an expense budget (the "Expense Budget")⁴ of certain items, including payment of the cost of supervision, advertising and other costs. The Expense Budget may be modified by mutual agreement of the parties. A copy of the Expense Budget is annexed to the Consulting Agreement as Exhibit "B."

⁴ As explained herein, there is an additional budget for Consultant's expenses to sell the FF&E.

- b. Pursuant to the Consulting Agreement, the Consultant has requested, and Debtor has agreed to provide, an advanced payment each week of the estimated Expense Budget items for such week. Reconciliation of any pre-paid Expense Budget items will be conducted on a weekly basis in accordance with the reconciliation process set forth in the Consulting Agreement.
- iv. Consultant's Fee: The Consultant shall be paid a fee equal to three percent (3%) of the gross sale proceeds related to the Merchandise (the "Fee").

Debtor is currently working with Debtor's pre-petition and post-petition lender, Regions Bank ("Regions") to obtain Region's agreement that the Fee and the costs actually incurred by the Consultant for the items set forth in the Expense Budget and the FF&E Expense Budget (as may be amended by mutual agreement), shall be entitled to treatment as a claim pursuant to section 506(c) of the Bankruptcy Code to surcharge against Region's collateral.

- v. Fixture Disposition: The Consultant shall sell the FF&E in any such Closing Stores for Debtor's benefit. In consideration of providing such services, the Consultant shall be entitled to a commission of fifteen percent (15%) of the gross receipts from all sales or other dispositions of FF&E at the Closing Stores. In addition, Debtor shall reimburse the Consultant for the Consultant's reasonable out of pocket expenses incurred in connection with the sale or other disposition of the FF&E pursuant to a budget of budgets to be established from time to time by mutual agreement of the parties. To control sale expenses, the Consultant has provided Debtor with an FF&E expense budget (the "FF&E Expense Budget") of certain items, including payment of the cost of supervision, advertising and other costs. The FF&E Expense Budget may be modified by mutual agreement of the parties. A copy of the FF&E Expense Budget is annexed to the Consulting Agreement as Exhibit "C."
- vi. Sale Proceeds; Sale Reconciliation: On Wednesday of each week, all accounting matters (including without limitation, all amounts reimbursable or payable to the Consultant) shall be reconciled, and Debtor shall immediately pay to the Consultant, in connection with such weekly settlement, all Fees earned and the cost of items in the Expense Budget for the previous week incurred but not previously advanced (in whole or in part). Overages will be credited against the current week's expenses.

The parties shall complete a final reconciliation and settlement of all amounts contemplated by the Consulting Agreement (including, without limitation, Expense Budget items and fees earned pursuant to the

Consulting Agreement) no later than thirty (30) days following the Sale Termination Date (as may be extended by agreement).

vii. Indemnification:

1. Debtor shall indemnify and hold the Consultant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, affiliates and Supervisors (collectively, "Agent Indemnified Parties"), harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from, or related to: (i) the willful or negligent acts or omissions of Debtor or its consultants, members, employees, representatives and principals (other than the Agent Indemnified Parties); (ii) Debtor's breach of any provision of the Consulting Agreement; (iii) any liability or other claims, including without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or other), or any other person (excluding Agent Indemnified Parties) against an Agent Indemnified Party, except claims arising from the Consultant's negligence, intentional acts, or unlawful behavior; and (iv) Debtor's failure to pay over to the appropriate taxing authority any taxes required to be paid by Debtor during the GOB Process in accordance with applicable law.
2. The Consultant shall indemnify and hold Debtor and Regions Bank⁵ and their officers, directors, principals, members, consultants and employees (collectively, "Agent Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from, or related to: (i) the willful or negligent acts or omissions of the Consultant or its consultants, members, employees, representatives, principals and Supervisors; (ii) the breach of any provision of, or failure to perform any obligation under, the Consulting Agreement by the Consultant; (iii) any liability or other claims made by the Consultant's consultants, members, employees, representatives, principals and Supervisors or any other person (excluding Merchant Indemnified Parties) against a Merchant Indemnified Party arising out of or related to the Consultant's conduct of the Store Closing Sales, except claims arising from Debtor's negligence, intentional acts or unlawful behavior.

⁵ The Consultant's indemnification of Regions is subject to Regions consenting to the Store Closure Sales and the Consulting Agreement.

BASIS FOR RELIEF REQUESTED

I. Authorizing the Sale of the Assets and the Store Closing Sales

16. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor in possession, “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); *see also In re Ames Dep’t Stores, Inc.*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (holding that going-out-of-business sales are governed by section 363(b)). A debtor-in-possession is given these rights by § 1107(a) of the Bankruptcy Code. 11 U.S.C. § 1107(a). Moreover, § 105(a) of the Bankruptcy Code provides that bankruptcy courts “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).

a. Business Judgment

17. Although § 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor’s assets, sales of assets of a debtor should be authorized when there is an articulated business justification for doing so. *In re Gulf States Steel, Inc. of Ala.*, 285 B.R. 497, 515 (Bankr. N.D. Ala. 2002). *See also, e.g., Stephens Indus., Inc. v. McClung*, 789 F. 2d 386, 390 (6th Cir. 1986); *In re Lionel Corp.*, 722 F. 2d 1063 (2d Cir. 1983); *In re Titusville Country Club*, 128 B.R. 396 (Bankr. W.D. Pa. 1991); *In re Delaware & Hudson Railway Co.*, 124 B.R. 169, 176 (D. Del. 1991).

18. Whether a transaction has a sufficient articulated business justification depends on the facts of the case. *See In re Continental Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986). A bankruptcy court should consider “all salient factors pertaining to the proceeding and accordingly, act to further the diverse interests of Debtor, creditors and equity holders alike.” *Id.*; *Lionel*, 722 F.2d at 1071. Relevant factors may include: “the proportionate value of the asset

to the estate as a whole; the amount of elapsed time since the filing; the likelihood that a plan of reorganization will be proposed and confirmed in the near future; the effect of the proposed disposition on the future plan of reorganization; the amount of proceeds to be obtained from the sale versus appraised values of the property; and whether the asset is decreasing or increasing in value." *See Continental*, 780 F.2d at 1226; *Lionel*, 722 F.2d at 1071; *In re Delaware & Hudson R.R. Co.*, 124 B.R. 169, 176 (D.Del. 1991); *In re Condere Corporation*, 228 B.R. 615, 628 (Bankr. S.D. Miss. 1998).

19. Courts have made it clear that a showing of a sound business justification need not be unduly exhaustive but, rather, a § 363 movant is "simply required to justify the proposed disposition with sound business reasons." *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Whether there are sufficient business reasons to justify a sale depends upon the facts and circumstances of each case. *Lionel*, 722 F. 2d at 1071.

20. Sound business reasons exist to sell the Assets in this case. The sale of the Assets by the Consultant and pursuant to the Consulting Agreement and the Sale Guidelines ensures that the highest possible price will be received for the Assets. The Assets are made up of, among other things, perishable and nonperishable groceries. The Store Closing Sales will enable the Assets to be sold in the most efficient and expeditious fashion, thereby minimizing the potential loss in value of the Assets.

21. Given its financial condition, a sale of the Assets pursuant to the Consulting Agreement and Sale Guidelines is the best option available to Debtor that will maximize value for its estate and creditors. To maximize the recovery from the Store Closing Sales, it is essential that Debtor has maximum customer traffic in the Closing Stores, especially during the early days of the Store Closing Sales. Because of the poor state of the economy in general and

the severe downturn in consumer spending and its resulting negative effect on sales, time is of the essence if Debtor is to receive maximum value for its Assets. Accordingly, Debtor, in consultation with its advisors, determined that commencing Store Closing Sales immediately after obtaining Court approval will maximize the value of the Assets and should allow Debtor to reduce operating expenses since the Store Closing Sales will conclude by March 31, 2009.

22. Store closing or liquidation sales are a routine occurrence in chapter 11 cases. *See In re Ames Dep't Stores, Inc.*, 136 B.R. at 359 (holding that “going-out-of-business” sales are an important part of “overriding federal policy requiring [a] debtor to maximize estate assets”). Moreover, the disposition of the Assets in accordance with the Sale Guidelines represents an accepted method for the sale of assets that has been approved previously in other cases in this District. *See In re Parnell Distribution Center, LLC*; Case No. 06-40542-JJR11 (Bankr. N.D. Ala. April 21, 2006).

23. In addition, the Store Closing Sales are not a *sub rosa* plan of reorganization because Debtor seeks only to liquidate assets and will not restructure the rights of creditors. *See Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc.*, 780 F.2d 1223 (5th Cir. 1986); *PBGC v. Braniff Airways, Inc.*, 700 F.2d 935 (5th Cir.) *reh'g denied*, 705 F.2d 450 (5th Cir. 1983); *see also In re Naron & Wagner, Chartered*, 88 B.R. 85 (Bankr. D. Md. 1988) (proposed sale is not a *sub rosa* plan because it seeks only to liquidate assets and will not restructure the rights of creditors).

24. Accordingly, approval of the Store Closing Sales in accordance with the Sale Guidelines is in the best interests of Debtor, its estate, creditors and other parties in interest, and necessary to maximize the value of Debtor's estate for the benefit of its stakeholders.

A. Approving Sale Of Assets Free And Clear Of All Encumbrances

25. Debtor requests approval to sell the Assets on a final “as is” basis, free and clear of any and all liens, claims and encumbrances (collectively, the “Liens”) in accordance with section 363(f) of the Bankruptcy Code with any Liens in such Assets attaching to the proceeds in the order or priority and with the same force, validity and effect they had with respect to the Assets prior to the sale. A debtor-in-possession may sell property under sections 363(b) and 363(f) “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied:

- 1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- 2) such entity consents;
- 3) 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;
- 4) such interest is in bona fide dispute; or
- 5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

26. Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the five requirements enumerated therein will suffice to warrant the sale of the Assets free and clear of the Liens.

27. Debtor believes that the sale of the Assets pursuant to the terms of the Sale Guidelines will satisfy one or more of the section 363(f) requirements. Debtor is currently negotiating with Regions to obtain Region’s consent to the Store Closing Sales and the sale of the Assets. Thus, Debtor anticipates being able to show this Court at the hearing on this Motion that the sale of the Assets, with respect to the lenders’ collateral, is authorized pursuant to section 363(f)(2) of the Bankruptcy Code.

B. Approving The Sale Guidelines In Connection With The Store Closing Sales

28. As a necessary part of this process, Debtor requests the authority to conduct the Store Closing Sales in accordance with the Sale Guidelines and without complying with certain state and local laws, statutes, rules and/or ordinances governing store closing, liquidation or “going-out-of-business” sales, except for such laws, statutes, rules or ordinances which are for the protection of the health and safety of the public and consumer protection laws. Debtor intends to comply with the state and local health and safety laws and consumer protection laws in conducting the Store Closing Sales. However, many state and local laws, statutes, rules and ordinances require special and cumbersome licenses, waiting periods, time limits and other procedures for store closing, liquidation or similar sales. Such requirements may be fatal to the sale of the Assets, which are made up partly of perishable food items. To eliminate the time, delay and expense associated with the administrative procedures necessary for non-bankruptcy sales, Debtor requests that the Court expressly authorize the Store Closing Sales in accordance with the Sale Guidelines. By virtue of 28 U.S.C. § 1334, this Court has exclusive jurisdiction over Debtor’s property wherever located. In the context of bankruptcy cases, therefore, since creditors receive notice of the proposed sale, as well as opportunity to be heard in this Court, enforcement of such statutes and regulations is redundant and unnecessary.

29. The Bankruptcy Code preempts state and local laws that conflict with its underlying policies. *See In re Shenango Group, Inc.*, 186 B.R. 623, 628 (Bankr. W.D. Pa. 1995) (“Trustees and debtors-in-possession have unique fiduciary and legal obligations pursuant to the bankruptcy code ... [A] state statute cannot place burdens on them where the result would contradict the priorities established by the federal bankruptcy code.”), *aff’d*, 112 F.3d 633 (3d Cir. 1997). Preemption of state law is appropriate where, as here, the only state laws involved

concern economic regulation rather than the protection of public health and safety.⁶ *In re Baker & Drake, Inc.*, 35 F.3d 1348, 1353 (9th Cir. 1994) (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”); *see also In re Scott Housing Sys. Inc.*, 91 B.R. 190, 196-97 (Bankr. S.D. Ga. 1988) (holding that automatic stay under Section 362 is broad and preempts state law except for those laws designed to protect public health and safety).

30. Here, state and local licensing requirements, time limits or other restrictions on liquidation sales would undermine the fundamental purpose of section 363(b) of the Bankruptcy Code by placing constraints on Debtor’s ability to marshal and maximize the value of the Assets. Accordingly, authorizing the Store Closing Sales in accordance with the Sale Guidelines without the delays and burdens associated with obtaining various state and local licenses, observing state and local waiting periods or time limits, and/or satisfying any additional requirements with respect to advertising and the like is necessary and appropriate. Moreover, the delays inherent in satisfying such requirements will no doubt force Debtor into paying an additional month of rent and overhead for each of the Closing Stores, as well as foist significant administrative expenses upon Debtor to satisfy the requirements of the various states, counties and municipalities in which Debtor operates.

31. It is also necessary that any action by any lessor or any federal, state or local agency, department or governmental authority or any other entity to prevent, interfere with or otherwise hinder consummation of the Store Closing Sales or advertisement of such sales be enjoined. *See Missouri v. U.S. Bankruptcy Court*, 647 F.2d 768, 776 (8th Cir. 1981), *cert.*

⁶ Debtor will comply with applicable state and local public health and safety laws (“Safety Laws”), and applicable tax, labor, employment, environmental, and certain consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, the “General Laws”).

denied, 454 U.S. 1162 (1982) (holding that attempt to enforce state regulations governing liquidation of grain warehouses directly conflicted with bankruptcy court's control over property of debtor's estate and therefore violated automatic stay).

32. The requested waiver is narrowly tailored to facilitate the successful consummation of the Store Closing Sales. Debtor does not seek a general waiver of all state and local requirements, but only those that apply specifically to liquidation sales. As noted above, Debtor fully intends to be bound by and comply with all General and Safety Laws.

33. Similar relief has been granted in bankruptcy cases in this District. *See, e.g., In re Parnell Distribution Center, LLC, supra* (final order authorizing debtor to conduct store closing sales pursuant to store closing agreement).

Dispute Procedures

34. Debtor requests that, except as expressly provided for in the proposed Order attached hereto or in the Sale Guidelines, all persons or entities, including, but not limited to, any landlord or federal or local governmental unit, (i) served with a copy of the Sale Motion; or (ii) served with a copy of an Order approving this Motion that does not object pursuant to the provisions of this Order, shall be enjoined from taking any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Store Closing Sales, or the advertising and promotion (including the posting of signs and use of sign walkers) of such Store Closing Sales, and all such parties and persons of every nature and description, including landlords and utility companies and all those acting for or on behalf of such parties, be prohibited and enjoined from (a) interfering in any way with, or otherwise impeding the conduct of the Store Closing Sales and/or (b) instituting any action or proceeding in any court or administrative body seeking an order or judgment against, among others, Debtor, the Consultant, or Debtor's

landlords for the Closing Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Store Closing Sales and/or seek to recover damages for breach(es) of covenants or provisions in any lease or sublease based upon any relief authorized herein. Moreover, Debtor requests this Court retain exclusive jurisdiction to resolve such disputes, and such parties or persons shall take no action against Debtor, the Consultant or the landlords until this Court has resolved such dispute.

35. Debtor proposes that disputes from any interested party by resolved by the respective procedures detailed in the proposed Order, attached hereto as Exhibit “B,” (the “Dispute Procedures”), whereby this Court shall hear the requests of such persons or parties with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

C. Approving Waiver Of Any Lease Restrictions That May Negatively Impact Debtor’s Ability To Conduct The Store Closing Sales

36. Because Debtor regularly conducts “sales” at the Closing Stores, Debtor does not believe that the Store Closing Sales should interfere with lease provisions that are intended to protect the image of a shopping center, mall or other location or avoid disruption of normal commerce. Nonetheless, certain of the leases governing the premises of the Closing Stores (collectively, the “Leases”) may contain provisions purporting to restrict or prohibit Debtor 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 case and maximize the value of its assets under section 363 of the Bankruptcy Code. *See, e.g., In re Ames Dep’t Stores, Inc.*, 136 B.R. at 359 (holding that enforcement of such lease restrictions would “contravene overriding federal policy requiring debtor to maximize estate assets...”); *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 going-out-of-business sale).

37. As such, to the extent that such provisions or restrictions exist in any of the Leases for the Closing Stores, such landlords may not interfere with or otherwise seek to restrict Debtor from conducting the Store Closing Sales. Accordingly, Debtor requests that the Court authorize Debtor to conduct the Store Closing Sales without interference by any landlords or other persons affected, directly or indirectly, by the Store Closing Sales.

38. The Sale Guidelines are substantially similar to sale guidelines approved in connection with store closing sales approved by bankruptcy courts in other jurisdictions. *See, e.g., In re Whitehall Jewelers Holdings, Inc.*, Ch. 11 Case No. 08-11261 (KG) (Bankr. D. Del. Aug. 8, 2008) (approving store closing sales pursuant to sale guidelines); *and In re Goody's Family Clothing, Inc.*, Ch. 11 Case No. 08-11133 (CSS) (Bankr. D. Del. June 13, 2008) (same). The Sale Guidelines, like the sale guidelines approved in the cases cited herein, provide the appropriate protections to any legitimate concerns that landlords might otherwise have concerning the conduct of the Store Closing Sales. Accordingly, for the reasons set forth above, Debtor believes that the conduct of the Store Closing Sales pursuant to the terms of the Sale Guidelines is the most efficient means of preserving and maximizing the value of the Assets for the benefit of their stakeholders.

APPROVAL OF THE CONSULTING AGREEMENT

39. Section 363(b) of the Bankruptcy Code provides, in relevant part, that the trustee or debtor-in-possession, "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). Section 363 of the Bankruptcy Code provides that transactions not in the ordinary course of business must be approved by court order.

40. Further, section 105(a) of the Bankruptcy Code provides that the 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. Under applicable case law, in this and other jurisdictions, if a debtor’s proposed use of its assets pursuant to section 363(b) of the Bankruptcy Code represents a reasonable business judgment on the part of Debtor, such use should be approved. *See, e.g., In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991)); *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (courts have applied the “sound business purpose” test to evaluate motions brought pursuant to section 363); *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where 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 Debtor’s conduct”).

42. It is without question that Debtor’s decision to utilize the services of the Consultant is a reasonable exercise of its business judgment. To avoid immediate and irreparable harm to the estate by compromising Debtor’s efforts to maximize the value of the Assets through the Store Closing Sales, Debtor determined it was necessary to hire a national liquidator with significant experience in a large-scale liquidation. At the conclusion of its marketing efforts, the best offer Debtor ultimately received was from the Consultant to perform the Store Closing Sales. Debtor engaged in good-faith arm’s length negotiations with the

Consultant regarding the terms of the Consulting Agreement. Debtor believes that the terms of the Consulting Agreement are fair and reasonable and are designed to maximize the value of the Assets.

43. The Consultant has extensive expertise in conducting store closing sales and can oversee, and assist in the management and implementation of, the Store Closing Sales in an efficient and cost effective manner. The Consulting Agreement will enable Debtor to utilize the experience, skills and resources of the Consultant to effectively and efficiently conduct the Store Closing Sales and, thus, significantly improve the potential value to be received through the Store Closing Sales for the benefit of all stakeholders.

44. Further, the Consultant's fee is based on its sale of the Assets. As explained above, Debtor will pay Consultant a fee equal to three percent (3%) of the gross sale proceeds related to the Merchandise and equal to fifteen percent (15%) of the gross sale proceeds related to the FF&E.

45. Accordingly, for the foregoing reasons, Debtor requests that the Court approve the Consulting Agreement and authorize Debtor to utilize the services of the Consultant under section 363 of the Bankruptcy Code.

REQUEST FOR WAIVER OF STAY

46. Debtor requests a waiver of any stay of the effectiveness of the order approving the relief requested in this Motion. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." Given the harm to the estate if Debtor cannot conduct these sales immediately upon approval of the Motion and complete such sales as anticipated, Debtor believes it is in its best interest to commence the Store Closing Sales on or before January 20, 2009 and complete the Store Closing Sales on or before March 31, 2009. Accordingly,

Debtor submits that more than ample cause exists to justify a waiver of the ten-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d), to the extent that they apply.

NOTICE

47. Notice of this Motion will be provided to: (1) the Master Service List; (2) all parties known to be asserting a lien in the Assets; (3) each of the Closing Stores' real property lessors; (4) the Florida and Alabama State Attorney Generals' consumer protection divisions; and (5) the local mayor or similar representative of each village, or city official, and the county or parish for each of the Closing Stores, addressed to the attention of the municipal, city or county attorney, in each case to the consumer protection division, if possible. In light of the nature of the relief requested herein, Debtor submits that no other or further notice is necessary.

CONCLUSION

WHEREFORE Debtor requests entry of an Order, substantially similar to the order attached hereto as Exhibit "B," (i) authorizing Debtor to (A) sell the Assets free and clear of all liens, claims and encumbrances, and (B) conduct the Store Closing Sales in accordance with the terms of the attached proposed Order, the Consulting Agreement and the Sale Guidelines, (ii) approving the terms of the Consulting Agreement and authorizing the Debtor to utilize the services of Hilco as Debtor's liquidation agent pursuant to the Consulting Agreement and (iii) granting such other and further relief as this Court deems necessary.

/s/ Derek F. Meek

Robert B. Rubin
Derek F. Meek
Marc P. Solomon

Attorneys for Debtor
BRUNO'S SUPERMARKETS

OF COUNSEL:

BURR & FORMAN LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
Telephone: (205) 251-3000
Facsimile: (205) 458-5100

EXHIBIT A

Hilco Merchant Resources

February 17, 2009

James Grady
CRO
Bruno's Supermarkets, LLC
1800 International Park Drive, suite 500
Birmingham, AL 35243

Re: Letter Agreement Governing Store Closing Sales

Dear James:

Further to our recent discussions, this letter will serve as a letter agreement ("Agreement") between Hilco Merchant Resources, LLC, (the "Consultant") and Bruno's Supermarkets, LLC ("Merchant"), which has filed a voluntary petition for relief under Title 11 of the United States Code (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Northern District of Alabama (the "Court") on February 5, 2009, under which Consultant will act as the exclusive consultant for the purpose of providing the services hereinafter set forth ("Services") in connection with the disposition of the saleable inventory sold in the ordinary course of Merchant's business, consistent with historical practices, except greeting cards (the "Merchandise") located at Merchant's retail locations listed on Exhibit A attached hereto (collectively, the "Stores") as of the Commencement Date (defined below).

Consultant will assist Merchant in disposing of the Merchandise through the conduct of a "store closing sale" or other mutually agreed upon sale handle at the Stores (the "Sale") in accordance with the Sale Procedures attached hereto as Exhibit D. The Sale will commence after entry of the Order (as defined below), but no later than February 21, 2009 (the "Commencement Date") and will terminate at each Store no later than March 31, 2009 (the "Conclusion Date"). The period from the Sale Commencement Date to the Conclusion Date shall be referred to as the "Term." Please, note, however, that prior to the Term, and as an Expense, hereunder, Consultant will work with Merchant to reduce inventory levels at the Stores.

A. Project Management.

(i) Consultant's Undertakings

During the Term, Consultant shall (a) provide qualified supervisors, (the "Supervisors") engaged by Consultant as independent contractors to manage the inventory reduction at of the Stores; (b) recommend and implement appropriate store signage and mixed media advertising for the Stores; (c) recommend and implement appropriate pricing of Merchandise, staffing levels at the Stores, and, if necessary and at the request of Merchant, bonus and incentive programs for Merchant's employees; (d) oversee display of Merchandise at the Stores; (e) coordinate accounting functions at the Stores, including evaluation of sales of Merchandise by category, sales reporting, and monitoring of expenses using Merchant's existing infrastructure; (f) maintain the confidentiality of all proprietary or non-public information provided by Merchant to Consultant; (g) provide such other related services deemed necessary or appropriate by Merchant; (h) manage and control loss prevention at the Stores; (i) provide support in obtaining appropriate authorization and permits to conduct the Sale from state and

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local authorities; and (j) recommend appropriate levels of DSD Merchandise (hereinafter defined) to be included in the Sale.

It is expressly understood and agreed between Consultant and Merchant that all Supervisors are and shall be independent contractors of Consultant and that Merchant shall have no liability to the Supervisors or to Consultant for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination, taxes, costs and expenses or any other liability arising from Consultant's hiring or retention of the Supervisors.

(ii) Merchant's Undertakings

During the Term, Merchant shall (a) be the employer of the Store employees, other than the Supervisors, and Consultant shall have no liability to the Store employees for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Merchant's employment of the Store employees, including obligations under any collective bargaining agreement; (b) pay all taxes, costs, expenses, accounts payable and other liabilities relating to the Stores, the Store employees and other consultants and representatives of Merchant, other than Consultant and Supervisors; (c) prepare and process all tax forms and other documentation; (d) collect all sales taxes and pay them to the appropriate taxing authorities for the Stores; (e) supervise Merchant's employees in implementing the recommendations of the Consultant and the Supervisors with respect to those matters for which Consultant is responsible and which Merchant has approved or authorized hereunder; (f) execute all agreements, other than agreements with Supervisors or other third parties hired or retained by Consultant, determined by the Merchant and Consultant to be necessary or desirable for the operation of the Stores during the Sale; (g) arrange for the maintenance of all point-of-sale equipment required for the Stores; and shall have sole and exclusive authority to ensure compliance with Merchant's policies and procedures and job performance requirements, and the right to issue any appropriate disciplinary action that might flow from Merchant's employee's non-compliance with such policies and procedures.

B. The Sale.

All sales of Merchandise shall be made on behalf of Merchant. Consultant does not have, nor shall it have, any right, title or interest in the Merchandise. All sales of Merchandise shall be by cash or credit card and, at Merchant's discretion, by check, manufacturer's coupons, government subsidy programs, WIC, food stamps and similar currencies and shall be "final" with no returns accepted or allowed, unless otherwise directed by Merchant. All sales of DSD Merchandise (defined below) shall be made on behalf of Merchant, and Consultant shall have no right, title, and interest in such DSD Merchandise.

C. Expenses; Sale Reconciliation.

(i) Merchant will be responsible for all expenses of the Sale, including, but not limited to, all Store level operating expenses and Consultant's out-of-pocket costs for "Advertising" and "Supervision", up to the amount listed on Exhibit B. Attached hereto as Exhibit B is an initial expense budget with respect to Consultant's expected out-of-pocket expenses in connection with "Advertising" and "Supervision" (the "Expense Budget"). Merchant shall advance Consultant the first

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week of Consultant's expected out-of-pocket expenses as set forth on Exhibit B (\$125,000) upon entry of the Order (as defined below).

(ii) On Wednesday of each week, commencing on the first Wednesday following the Commencement Date, Consultant and Merchant shall reconcile the results of the Sale for the prior week, including, without limitation, Gross Proceeds of Merchandise and Additional DSD Merchandise, sales of FF&E, Consultant's out-of-pocket costs for "Advertising" and "Supervision", any Consulting Fee, and any FF&E Fee earned and payable hereunder, and Merchant shall, to the extent not already advanced, pay to Consultant on a weekly basis, in connection with such weekly settlement, mutually agreed (i) "Advertising" and "Supervision" expenses incurred or paid by Consultant for such prior week, (ii) anticipated "Advertising" and "Supervision" for the next succeeding week of the Sale, and (iii) Consulting Fee and FF&E Fee.

D. DSD Merchandise.

In addition, to maximize the return on the Merchandise, Consultant may seek to include "direct store delivery" inventory ("DSD Merchandise") in the Sale so long as Merchant approves the acquisition of such DSD Merchandise. The expense incident to acquiring and selling the DSD Merchandise shall be an expense of the Merchant.

E. Indemnification.

(i) Merchant's Indemnification

Merchant shall indemnify and hold Consultant and its consultants, members, officers, directors, employees, principals and Supervisors (collectively, "Consultant Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to: (a) the willful or negligent acts or omissions of Merchant or its consultants, members, employees, representatives and principals (other than Consultant Indemnified Parties); (b) the breach of any provision of this Agreement by Merchant; and (c) any liability or other claims, including without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), or any other person (excluding Consultant Indemnified Parties) against a Consultant Indemnified Party, except claims arising from Consultant's negligence, intentional acts or unlawful behavior.

(ii) Consultant's Indemnification

Consultant shall indemnify and hold Merchant and Regions Bank and its officers, directors, principals, members, consultants and employees (collectively, "Merchant Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to (a) the willful or negligent acts or omissions of Consultant or its consultants, members, employees, representatives, principals and Supervisors; (b) the breach of any provision of, or the failure to perform any obligation under, this Agreement by Consultant; and (c) any liability or other claims made by Consultant's consultants, members, employees, representatives, principals, Supervisors or any other person (excluding Merchant Indemnified Parties) against a Merchant Indemnified Party arising out of or related to Consultant's

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conduct of the Sale, except claims arising from Merchant's negligence, intentional acts or unlawful behavior.

F. Insurance.

(i) Merchant's Insurance Obligations

Merchant shall maintain throughout the Term, liability insurance policies (including, but not limited to, products liability, workers compensation insurance, comprehensive public liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the Stores, and shall cause Consultant to be an additional insured with respect to all such policies; provided, however, that Merchant may self-insure against the risks contemplated hereunder. If applicable and at Consultant's request, Merchant shall provide Consultant with a certificate or certificates evidencing the insurance coverage required hereunder and that Consultant is an additional insured thereunder.

(ii) Consultant's Insurance Obligations

Consultant shall maintain throughout the Term, liability insurance policies (including, but not limited to, products liability/completed operations, contractual liability, comprehensive public liability and auto liability insurance) on an occurrence basis in an amount of at least One Million dollars (\$1,000,000) covering injuries to persons and property in or in connection with Consultant's provision of services at the Stores, and shall cause Merchant to be an additional insured with respect to all such policies. At Merchant's request, Consultant shall provide Merchant with a certificate or certificates evidencing the insurance coverage required hereunder and that Merchant is an additional insured thereunder.

G. Advertising.

Consultant shall advertise the Sale. No signage design, content, or locations or advertisements in any media may impugn the brand image, integrity, or reputation of Merchant, and accordingly will be subject to approval by Merchant. Consultant will present any signage and advertising to Merchant for Merchant's approval, which approval will be deemed given unless Merchant otherwise notifies Consultant within twenty-four hours of presentment.

H. Fee

Consultant shall earn a fee equal to three percent (3%) of the gross sales proceeds related to the Merchandise and DSD Merchandise. For the purposes hereof, "Gross Proceeds" shall mean the aggregate of: (a) the total amount (in U.S. dollars) of all sales of Merchandise and DSD Merchandise made under this Agreement, exclusive of all sales taxes attributable to sales of Merchandise and DSD Merchandise and (b) any proceeds of Merchant's insurance for loss or damage to Merchandise or DSD Merchandise or loss of cash arising from events occurring during the Sale Term (the "Consulting Fee"). The Consulting Fee shall be paid weekly as it is earned in connection with the weekly reconciliation. The Consulting Fee shall not be subject to any liens, claims or encumbrances.

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I. Representations, Warranties and Agreements.

(i) Merchant warrants, represents, covenants and agrees that from January 1, 2009 through the Sale Commencement Date, with the exception of selected GM/HBC merchandise involved in SKU rationalization, (a) all ticketing of Merchandise at the Stores has been and will be done in accordance with Merchant's customary ticketing practices; (b) all normal course hard markdowns on the Merchandise have been, and will be, taken consistent with customary practices, including Merchandise transferred into the Sale, and (c) the Stores will be operated in the ordinary course of business in all respects, including, without limitation, replenishment, other than expressly agreed to by Merchant and Consultant.

(ii) Consultant warrants, represents, covenants and agrees that (a) Consultant is a company duly organized, validly existing and in good standing under the laws of the state and/or country of its principal office, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and maintains its principal executive office at the address set forth herein, (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of Consultant and this Agreement constitutes a valid and binding obligation of Consultant enforceable against Consultant in accordance with its terms and conditions, and the consent of no other entity or person is required for Consultant to fully perform all of its obligations herein or the Services hereunder, (c) Consultant shall comply with and act in accordance with any and all applicable laws and other legal obligations of all governmental authorities.

J. Furniture, Fixtures and Equipment.

Consultant will liquidate the furniture, fixtures and equipment in the Stores. In addition, Consultant will liquidate the furniture, fixtures and equipment in the stores identified on Exhibit C (collectively with the furniture, fixtures and equipment in the Stores, the "FF&E"). In consideration for providing this service, Consultant shall be entitled to a commission equal to fifteen percent (15%) of the proceeds (net of applicable sales taxes) from the sale of the FF&E. Merchant shall be responsible for all expenses incurred in connection with the sale of FF&E, which expenses shall be incurred pursuant to the budget attached hereto as Exhibit C.

K. Notices.

All notices, certificates, approvals, and payments provided for herein shall be sent as follows: (a) To Merchant: Bruno's Supermarkets, LLC, 1800 International Park Drive, suite 500, Birmingham, AL 35243, Attn: James Grady, CRO; (b) To Consultant: Hilco Merchant Resources, LLC, One Northbrook Place, 5 Revere Drive, Suite 206, Northbrook, IL 60062, Attn: Joseph Malfitano; or (c) such other address as may be designated in writing by Merchant or Consultant.

L. Independent Consultant.

Consultant's relationship to Merchant is that of an independent contractor without the capacity to bind Merchant in any respect. No employer/employee, principal/agent, joint venture or other such relationship is created by this Agreement. Consultant is not authorized to enter into any contracts or

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agreements on behalf of Merchant or to otherwise create any obligations of Merchant to third parties unless authorized in writing to do so by Merchant. Consultant shall have no control over the hours that Merchant or its employees or assistants work, or the means or manner in which they perform their work. Consultant is authorized only to make recommendations in this regard, which Merchant shall use reasonable efforts to effectuate.

M. Governing Law, Venue, Jurisdiction and Jury Waiver.

This Agreement, and its validity, construction and effect, shall be governed by and enforced in accordance with the internal laws of the State of Illinois (without reference to the conflicts of laws provisions therein and the federal laws of the United States). Any and all issues, disputes, claims or causes of action which relate or pertain to, or result or arise from this agreement or the Agent's services hereunder, shall be subject to the exclusive jurisdiction of the Court.

N. Non-Assignment.

Neither this Agreement nor any of the rights hereunder may be transferred or assigned by either party hereto without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns, including, but not limited to, any chapter 11 or chapter 7 trustee.

O. Severability.

If any term or provision of this Agreement, as applied to either party or any circumstance, for any reason shall be declared by a court of competent jurisdiction to be invalid, illegal, unenforceable, inoperative or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable; provided, however, that if any term or provision of this Agreement pertaining to the Services shall be declared invalid, illegal, unenforceable, inoperative or otherwise ineffective, Merchant shall have the right to terminate this Agreement as provided herein. If the surviving portions of the Agreement fail to retain the essential understanding of the parties, the Agreement may be terminated by mutual consent of the parties.

P. Waiver, Modification and Amendment.

No modification, amendment or waiver of any of the provisions contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon any party to this Agreement unless made in writing and signed by a duly authorized representative or agent of such party. The failure by either party to enforce, or the delay by either party in enforcing, any of said party's rights under this Agreement shall not be construed as a continuing waiver of such rights, and said party may, within such time as is provided by the laws established by any government with applicable jurisdiction, commence appropriate suits, actions or proceedings to enforce any or all of such rights. A waiver by either party of a default in one or more instances shall not be construed as a waiver in other instances.

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Q. Entire Agreement.

This Agreement, together with all additional schedules and exhibits attached hereto, constitutes a single, integrated written contract expressing the entire agreement of the parties concerning the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any party to this Agreement except as specifically set forth in this Agreement. All prior agreements, discussions and negotiations are entirely superseded by this Agreement.

R. Court Approval.

This Agreement is subject to the approval of the Bankruptcy Court. Moreover, the Merchant shall promptly seek an order from the Court, in form and substance reasonably satisfactory to Consultant, to approve this Agreement, which order shall provide at a minimum, (a) approval of the transaction contemplated hereby, (b) authorizing the Sale without the necessity of complying with state and local rules, laws, ordinances and regulations, including, without limitation, licensing requirements, that would otherwise govern the Sale, (c) authorizing the Sale notwithstanding restrictions in leases, reciprocal easement agreements or other contracts that purport to restrict the Sale or the necessity of obtaining any third party consents, (d) authorizing and directing Merchant to pay Consultant's fees and expenses payable hereunder on a weekly basis without further order of the Court, and (e) providing the Consultant with adequate protection that its fees and expenses will be paid as an expense of preserving the collateral of the Company's secured lenders (the "Order").

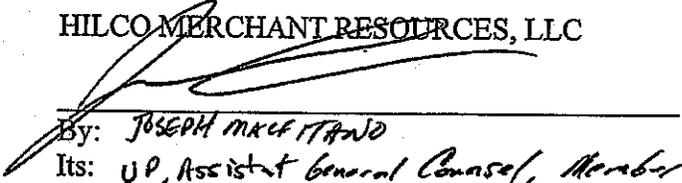
February 17, 2009
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* * *

If this Agreement is acceptable to you, kindly execute a copy thereof in the space provided, and return it to the undersigned. Thank you for this opportunity -- we look forward to working with you.

Very truly yours,

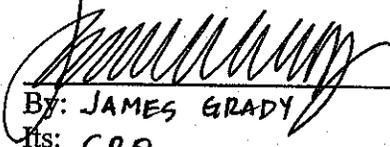
HILCO MERCHANT RESOURCES, LLC


By: JOSEPH MCFITTAND

Its: VP, Assistant General Counsel, Member

AGREED AND ACCEPTED:

Bruno's Supermarkets, LLC


By: JAMES GRADY

Its: CEO.

**Bruno's
 Exhibit A**

Location List							Average
Location #	Banner	Name	City	State	Zip	Average Selling Sq Feet	
2	Food World	Bessemer, AL	Bessemer	AL	35020	49,140	
5	Bruno's Food & Pharm	Montgomery, AL	Montgomery	AL	36104	32,004	
28	Food World	Montgomery, AL	Montgomery	AL	36104	40,600	
36	Food World	Wetumpka, AL	Wetumpka	AL	36092	32,095	
82	Bruno's Food & Pharm	Birmingham, AL	Birmingham	AL	35203	37,920	
115	Food World	Adamsville, AL	Adamsville	AL	35005	32,004	
125	Bruno's Supercenter	Homewood, AL	Homewood	AL	35209	36,464	
144	Food World	Fairhope, AL	Fairhope	AL	36532	29,994	
254	Food World	Millbrook, AL	Millbrook	AL	36504	30,414	
255	Bruno's	Auburn, AL	Auburn	AL	36830	37,380	

**Bruno's
Exhibit B**

Expense Budget

Advertising	
Media	72,922
Signs	59,400
Sign Walkers	55,000
Subtotal advertising	<u>187,322</u>
Supervision	
Base fees, including bonus accrual	159,814
Travel and insurance	37,320
Subtotal supervision	<u>197,134</u>
Total Expenses	<u><u>384,456</u></u>

Note(s):

The expense budget assumes a 4.5 week sale term. The sale term may be reduced or extended subject to mutual agreement between the parties.

**Bruno's
Exhibit C**

10 Closing Stores - FF&E Expense Budget

Advertising

Signs	3,000
Subtotal advertising	3,000

Supervision

Base fees, including bonus accrual	114,750
Travel and insurance	18,865
Subtotal supervision	133,615

Other

Miscellaneous Store Expense	3,000
Temp Labor	6,000
Subtotal Other	9,000

Total Expenses	145,615
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4 Dark Stores - FF&E Expense Budget

Advertising

Signs	2,800
Subtotal advertising	2,800

Supervision

Base fees, including bonus accrual	72,000
Travel and insurance	8,500
Subtotal supervision	80,500

Other

Miscellaneous Store Expense	4,300
Temp Labor	18,200
Subtotal Other	22,500

Total Expenses	105,800
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Note(s):

1. Expense budget excludes dumpster expense.
2. Merchant is responsible for removal of HAZMAT materials (Freon, etc).
3. Four dark stores include:
Store # 59 - 885 Dennison Ave, Birmingham, AL
Store # 196 - 1123 Cikkege Ave, Jackson, AL
Store # 29 - 2804 Crestwood Blvd, Irondale, AL
Store # 251 - 3313 Loma Rd, Suite 33, Hoover, AL

EXHIBIT D

STORE CLOSING GUIDELINES

The following procedures shall apply to the Sale¹ to be held at the Stores and the disposal of the FF&E in the Stores:

1. The Sale shall be conducted so that the Stores in which sales are to occur remain open no longer than the normal hours of operation provided for in the respective leases or other occupancy agreements for the Stores.
2. The Sale shall be conducted in accordance with applicable state and local "Blue Laws," and thus, where applicable, no Sale shall be conducted on Sunday unless the Merchant had been operating such Stores on a Sunday.
3. All display and hanging signs used by the Merchant and the Consultant in connection with Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. The Merchant and the Consultant may advertise the Sale as a "sale on everything", "store closing", or similar theme sale at the Stores as provided by the Agreement. The Merchant and the Consultant shall not use neon or day-glo signs. Furthermore, with respect to enclosed mall locations no exterior signs or signs in common areas of a mall shall be used. Nothing contained herein shall be construed to create or impose upon the Merchant and the Consultant any additional restrictions not contained in the applicable lease or other occupancy agreement. In addition, the Merchant and the Consultant shall be permitted to utilize exterior banners at (i) non-enclosed mall Stores, and (ii) enclosed mall Stores to the extent the applicable Store entrance 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 Sale is being conducted only at the affected store, shall not be wider than the Storefront of the Store, and shall not be larger than 4 feet by 40 feet. In addition, the Merchant and the Consultant shall be permitted to utilize sign walkers and street signage, notwithstanding any state, county or local law or ordinance; provided however the use of sign walkers and use of street signage shall be done in a safe manner and shall not be permitted on mall or shopping center property.
4. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final."
5. Within a "Shopping Center", the Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores, unless permitted by the applicable lease or, if distribution is customary in the shopping center in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.
6. At the conclusion of the Sale, Consultant shall vacate the Stores in "broom-clean" condition, and shall otherwise leave the Stores in the same condition as on the commencement of the Sale, ordinary wear and tear excepted; provided, however, that the Merchant and Consultant hereby do not undertake any greater obligation than as set forth in an applicable lease with respect to a Store. The Merchant may abandon any FF&E or other materials (the "Abandoned Property") not sold in the Sale at a Store premises at the conclusion of the Sale. Any Abandoned Property left in a Store after a lease is

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Letter Agreement Governing Store Closing Sales, dated February 17, 2009 (the "Agreement").

rejected shall be deemed abandoned with the landlord having the 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.

7. Subject to the provisions of the Agreement, the Consultant shall have the right to sell FF&E located in the Stores. The Consultant may advertise the sale of the FF&E consistent with the guidelines provided in paragraphs 4 and 6 hereof. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas or through other areas after store business hours unless otherwise agreed by on-site mall management. For the avoidance of doubt, as of the Sale Termination Date, Consultant may abandon, in place, and without further responsibility, any unsold FF&E located at the Stores; provided that any abandonment of the FF&E by the Debtor's shall only be authorized by order of the Court.

8. The Consultant shall not make any alterations to interior or exterior Store lighting. No property of any landlord of a Store shall be removed or sold during the Sale. The hanging of exterior banners or other signage shall not constitute an alteration to a Store.

9. At the conclusion of the Sale at each Store, pending assumption or rejection of applicable leases, the landlords of the Stores shall have reasonable access to the Store premises as set forth in the applicable leases. The Merchant, the Consultant and their agents and representatives shall continue to have exclusive and unfettered access to the Stores.

10. Post-petition obligations shall be paid by the Merchant as required by the Bankruptcy Code until the rejection or assumption and assignment of each lease.

11. The rights of the landlords for any damages to the Stores shall be reserved in accordance with the applicable leases, and subject to the jurisdiction of the Court.

12. The Merchant shall notify a representative of the relevant landlord of the date on which the Sale is scheduled to conclude at a particular Store, within three business days of the Merchant's receipt of such notice from the Consultant.

13. To the extent that any Store landlord affected hereby contends that the Merchant is in breach or default under these Store Closing Guidelines, such landlord shall provide at least five (5) days' written notice, served by facsimile and overnight delivery, on the Merchant and the Merchant's counsel, and the Consultant, at the following facsimile numbers and addresses:

If to the Merchant: Bruno's, Inc.
1600 INTERNATIONAL PARK DR., SUITE 500
BIRMINGHAM, AL 35243
Attn: JIM GRADY - CLO
Tel: 205-916-5266
Fax: _____

With a copy to: BURR & FORMAN, LLP

Birmingham, AL 35203
Attn: Robert Rubin, Esquire
Derek Meek, Esquire
Tel: _____
Fax: _____

If to the Consultant: Hilco Merchant Resources, LLC
One Northbrook Place
5 Revere Drive
Suite 206
Northbrook, IL 60062
Attn: Joseph Malfitano
Assistant General Counsel
Tel: (847) 504-3257
Fax: (847) 897-0868

If the parties are unable to resolve the dispute between themselves, either the landlord or the Merchant shall have the right to schedule a "status hearing" before the Bankruptcy Court on no less than five (5) days notice to the other parties.

EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE:
BRUNO'S SUPERMARKETS, LLC,

Debtor.

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**Chapter 11
Case No. 06-00634**

**ORDER (I) AUTHORIZING AND APPROVING (A) THE SALE OF CERTAIN OF
DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND
ENCUMBRANCES, AND (B) THE CONDUCTION OF STORE CLOSING OR
SIMILARLY THEMED SALES; (II) APPROVING THE CONSULTING AGREEMENT
AND AUTHORIZING HILCO MERCHANT RESOURCES, LLC TO ACT AS
DEBTOR'S LIQUIDATION AGENT; AND (III) GRANTING RELATED RELIEF**

Upon consideration of the Motion, dated February 18, 2009, filed by the above-captioned debtor and debtor-in-possession herein ("Bruno's" or the "Debtor"), requesting, *inter alia*, the issuance and entry of an order approving (A) the sale of certain of Debtor's assets free and clear of all liens, claims and encumbrances, and (B) the conduction of store closing or similarly themed sales; (ii) approving the Consulting Agreement and authorizing Debtor to utilize the services of Hilco Merchant Resources, LLC ("Hilco"); and (iii) granting related relief (the "Sale Motion"); and the Court having subject matter jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the relief requested therein being a "core" proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other notice need be given; and a hearing on the Motion having been held before the Court on February __, 2009, at __:__ a.m. (Central Time) (the "Sale Hearing"); and upon the record of the Sale Hearing; and it appearing that the relief requested in the Motion is in the best interest of Debtor, its estate and creditors;

and any objections filed to the Motion having been resolved, withdrawn, or otherwise overruled by the Court as provided in this Order; and after due deliberation, and sufficient cause appearing therefor,

IT IS HEREBY FURTHER FOUND AND DETERMINED, AS FOLLOWS:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. Notice of the Sale Motion and of the Sale Hearing was given in accordance with the directive of the Court and as otherwise required by applicable law, as evidenced by the affidavits of service on file with the Clerk of the Court.

D. The notice provided of the Sale Motion and of the Sale Hearing was adequate and sufficient under the circumstances, and any otherwise applicable requirement for notice is hereby waived and dispensed with.

E. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Motion or the Consulting Agreement between Debtor and Hilco Merchant Resources, LLC (the "Consultant") in the form attached hereto as Exhibit "1" attached hereto and incorporated herein (the "Consulting Agreement").

F. The Consultant is acting in good faith, as that term is used in the Bankruptcy Code and the decisions thereunder, and is entitled to the protections of Bankruptcy Code §§ 363(m) and (n) with respect to all of the Assets (as defined in the Sales Motion) and in

connection with all of the transactions contemplated by the Consulting Agreement. The Consulting Agreement was negotiated and entered into in good faith, based upon arm's length bargaining, and without collusion or fraud. Neither Debtor nor the Consultant have engaged in any conduct that would prevent the application of Bankruptcy Code § 363(m) or cause the application of or implicate Bankruptcy Code § 363(n) to the Consulting Agreement or to the consummation of the transactions contemplated thereby. The Consultant is entitled to all the protections and immunities of Bankruptcy Code § 363(m).

G. The offer of the Consultant upon the terms and conditions set forth in the Consulting Agreement, including the form and total consideration to be realized by Debtor pursuant to the Consulting Agreement, (i) is the highest and best offer received by Debtor; (ii) is fair and reasonable; and (iii) is in the best interests of Debtor's creditors and estate.

H. The closing of the ten stores (the "Ten Stores") described in the Motion is in the best interest of Debtor's estate and creditors. Further, the sale of the FF&E (as defined in the Motion) at the four additional stores described in the Motion (the "Four Stores" and together with the Ten Stores, the "Closing Stores") is in the best interest of Debtor's estate and creditors. The Closing Stores are listed on Exhibits "A" and "C" annexed to Exhibit 1.

I. The Store Closing Sales at the Closing Stores will provide an efficient means for Debtor to dispose of the merchandise and other assets located at the Closing Stores in accordance with the terms of the Consulting Agreement.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED AS FOLLOWS:

1. The Motion is **GRANTED** to the extent provided herein. All objections to the Motion that have not been withdrawn, waived, settled, or specifically addressed in this Order,

and all reservations of rights included in such objections, are overruled in all respects on the merits and denied.

Authorization for Sales Free and Clear of Liens

2. Debtor is hereby authorized, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code to sell the Assets, including the conduction of the Store Closing Sales at the Closing Stores in accordance with the Consulting Agreement. No bulk sale, “going-out-of-business”, or similar law shall prohibit Debtor or the Consultant from taking any action contemplated by the Consulting Agreement.

3. Except as otherwise provided for in the Consulting Agreement, pursuant to section 363(f) of the Bankruptcy Code, Debtor is authorized to sell the Assets free and clear of any and all mortgages, security interests, conditional sales or title retention agreements, pledges, hypothecations, liens, judgments, encumbrances or claims of any kind or nature (including, without limitation, any and all “claims” as defined in section 101(5) of the Bankruptcy Code), including, without limitation, the liens and security interests of any lenders whether arising by agreement, any statute or otherwise and whether arising before, on or after the date on which these chapter 11 cases were commenced (collectively, the “Liens”), with such Liens, if any, to attach to the net Proceeds of such sales with the same validity, force and effect as the same had with respect to the assets at issue, subject to any and all defenses, claims and/or counterclaims or setoffs that may exist.

Approval of the Consulting Agreement and Authorization to Conduct the Store Closing Sales

4. Debtor is hereby authorized and empowered to enter into the Consulting Agreement, and the Consulting Agreement is hereby approved in its entirety and is incorporated herein by reference, and it is further ordered that all amounts payable to the Consultant under the

Consulting Agreement shall be payable to the Consultant without the need for any application of the Consultant therefor or a further order of the Court.

5. Subject to applicable state and local public health and safety laws (“Safety Laws”), and applicable tax, labor, employment, environmental, and certain consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, “General Laws”), Debtor and the Consultant are authorized to take such actions necessary and appropriate to implement the Consulting Agreement and to conduct the Store Closing Sales without the necessity of a further order of this Court as provided by the Consulting Agreement, including, but not limited to, advertising the Store Closing Sales through the posting of signs (including the use of exterior banners at (i) non-enclosed mall Stores, and (ii) enclosed mall Stores to the extent the applicable Store entrance does not require entry into the enclosed mall common area, use of sign walkers and street signage, in accordance with the Consulting Agreement and as otherwise provided in the sale guidelines attached to the Consulting Agreement (the “Sale Guidelines”), which Sale Guidelines are hereby approved in the form attached as Exhibit D to Exhibit 1 attached hereto.

6. Except as expressly provided for in the Consulting Agreement, nothing in this Order or the Consulting Agreement and none of the Consultant’s actions taken in respect of the Store Closing Sales shall be deemed to constitute an assumption by Consultant of any of Debtor’s obligations relating to any of Debtor’s employees, nor shall Consultant become liable under any collective bargaining or employment agreement or be deemed a joint or successor employer with respect to such employees.

7. All of the transactions contemplated by the Consulting Agreement shall be protected by section 363(m) of the Bankruptcy Code in the event that this Order is reversed or modified on appeal.

8. The provisions of this Order shall be self-executing notwithstanding any restrictions in the Consulting Agreement on the Consultant's ability to conduct the Store Closing Sales in compliance with applicable laws or Closing Stores' leases. Unless otherwise ordered by the Court, all newspapers and other advertising media in which the Store Closing Sales may be advertised, and all landlords are directed to accept this Order as binding authority so as to authorize Debtor and the Consultant to consummate the Consulting Agreement and to conduct the Store Closing Sales at the Closing Stores, including, without limitation, conducting and advertising of the Store Closing Sales (at the contractual rates charged to Debtor prior to the Petition Date) in accordance with the Consulting Agreement, the Sale Guidelines and this Order; and no further approval, license or permits of any governmental authority shall be required.

9. Except as expressly provided for herein or in the Sale Guidelines, no person or entity, including, but not limited to, any landlord or Federal or Local Governmental Unit (as defined below), (i) served with a copy of the Sale Motion; or (ii) served with a copy of this Order who does not object pursuant to the provisions of this Order, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Store Closing Sales, or the advertising and promotion (including the posting of signs and use of sign walkers) of such Store Closing Sales, and all such parties and persons of every nature and description, including landlords and utility companies and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with, or otherwise impeding the conduct of the Store Closing Sales and/or (b) instituting any action or proceeding

in any court or administrative body seeking an order or judgment against, among others, Debtor, the Consultant, or Debtor's landlords for the Closing Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Store Closing Sales and/or seek to recover damages for breach(es) of covenants or provisions in any lease or sublease based upon any relief authorized herein, this Court shall retain exclusive jurisdiction to resolve such dispute, and such parties or persons shall take no action against Debtor, the Consultant or the landlords until this Court has resolved such dispute. This Court shall hear the request of such persons or parties with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances. No Governmental Units (as defined in section 101(27) of the Bankruptcy Code) shall be bound by this injunctive provision unless it was either previously served with the Sale Motion or subsequently served with this Order, and has had an opportunity to object as provided in this Order, and failed to timely file an objection.

10. The Store Closing Sales at the Closing Stores shall be conducted by Debtor and the Consultant without the necessity of compliance with any federal, state or local statute or ordinance; lease provision or licensing requirement affecting store closing, "going out of business," liquidation or auction sales, or affecting advertising, including signs, banners, posting of signage, and use of sign walkers, other than Safety Laws and General Laws, except as may otherwise expressly be provided for in the Sale Guidelines. NOTWITHSTANDING THE FOREGOING SENTENCE, OR ANY OTHER PROVISION OF THIS ORDER, OR OF THE CONSULTING AGREEMENT, OR OF THE SALE GUIDELINES TO THE CONTRARY, with respect solely to the Consultant's use, in conformity with the Sale Guidelines, of (i) signwalkers; (ii) interior store signage and banners; and (ii) exterior banners ("Banner and

Signwalker Advertising”), (A) Consultant is unconditionally authorized to use Banner and Signwalker Advertising (except only to the extent limited by an agreement between Consultant and a landlord entered into in connection with the Store Closing Sales) notwithstanding any laws or lease provisions which purport to regulate, prohibit, restrict, or in any way limit such activity so long as such activity is undertaken by Consultant in a safe and professional manner; (B) any person (including without limitation any landlord or Governmental Unit who, after having received a copy of this Order, and after having been specifically advised in writing of the provisions of this Section, continues to interfere with any Banner and Signwalker Advertisement, including any action by a Governmental Unit taken against a landlord based on the activities of Consultant undertaken pursuant to this Order (other than by seeking redress to this Court as provided in this Section or as permitted by further ruling of the Court as a result thereof), shall be liable to Consultant and/or Debtor and affected landlord(s) for any and all damages resulting from such continued interference; and (C) this Court shall retain exclusive jurisdiction with respect to any claim or issue by any person (including without limitation any Governmental Unit or landlord) that seeks to regulate, prohibit, restrict, or in any other way limit Banner and Signwalker Advertising, or that alleges that Banner and Signwalker Advertising is not being undertaken in a safe and professional manner, with any such claim or issue to be heard by this Court on an expedited basis.

11. Except as expressly provided for in the Consulting Agreement, the Store Closing Sales shall be conducted by Debtor and the Consultant without the necessity of compliance with any federal, state or local statute or ordinance, including any Landmark ordinance; lease provision or licensing requirement affecting store closing, “going out of business,” liquidation or auction sales, shall be conducted by Debtor and the Consultant notwithstanding any restrictive

provision of any lease, sublease or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Store Closing Sales, the rejection of leases, abandonment of assets or “going dark” provisions, provided, however, that nothing in this Order shall impact any objection that any of Debtor’s landlords may have to assumption, assignment or rejection of their respective lease or to any proposed cure amount or rejection damages claim in association with such assumption, assignment or rejection.

12. Except as may otherwise be specifically set forth in the Sale Guidelines, or any side agreement between the Consultant and the subject landlord, Debtor and/or the Consultant (as the case may be), are authorized and empowered to transfer assets among the Stores.

13. Except as expressly provided in this Order, nothing in this Order shall be deemed to bar any Governmental Units from enforcing Safety Laws and General Laws in the applicable non-bankruptcy forum, subject to Debtor’s or Consultant’s right to assert that any such laws are not in fact Safety Laws or General Laws or that such enforcement is impermissible under the Bankruptcy Code, this Order or otherwise, and provided further that the Governmental Unit shall in the first instance present the matter to this Court for resolution, or to request that they be permitted to proceed with the matter in the applicable non-bankruptcy forum, provided however the Governmental Unit shall provide Debtor and Consultant and any affected landlord with reasonable notice and opportunity to cure any such alleged violation absent extenuating circumstances and/or to oppose the relief sought by such Governmental Unit; provided further, however, cessation of alleged unlawful conduct after notice shall not, in and of itself, render court action by any State moot, under any circumstances, any injunctive relief that may lie even if Debtor or the Consultant has ceased the alleged unlawful conduct. Debtor and/or the Consultant and affected landlord do not waive the right to argue that the conduct was in

compliance with this Order and/or any applicable law, or preempted by applicable law. In the event that Debtor and the Consultant are unable to have such Governmental Unit withdraw any citations that may be issued by a Governmental Unit against a landlord, then such landlord shall have the right to file a claim for its reasonable costs and expenses, including attorneys fees, incurred in connection with such citation.

14. Debtor shall serve copies of this Order within five (5) business days, via first class mail, upon (1) the Master Service List; (2) all parties known to be asserting a lien in the Assets; (3) each of the Closing Stores' real property lessors; (4) the Florida and Alabama State Attorney Generals' consumer protection divisions; and (5) the local mayor or similar representative of each village, or city official, and the county or parish for each of the Closing Stores, addressed to the attention of the municipal, city or county attorney, in each case to the consumer protection division, if possible. Except as provided for below, this Court shall retain exclusive jurisdiction to resolve any dispute arising under any Liquidation Sales Laws (as defined herein) and related to the Sale Guidelines, the Consulting Agreement, or this Order, by any Local Governmental Unit filed within twenty (20) calendar days of service of this Order. Except as provided herein with respect to Banner and Signwalker Advertising, nothing herein shall preclude any Governmental Unit from enforcing Safety Laws or General Laws in an appropriate non bankruptcy forum.

15. Debtors are authorized to conduct the Store Closing Sales in accordance with the terms of this Order, the Sale Guidelines and the Consulting Agreement. Provided that the Store Closing Sales are so conducted (and subject to the provisions of this Order) Debtor, the Consultant, and Debtor's landlords, shall be presumed to be in compliance with any State, county, parish, or municipal or other local government's (hereinafter referred to as "Local")

requirements governing the conduct of the Store Closing Sales, including but not limited to Local statutes, regulation and ordinances establishing licensing or permitting requirements, waiting periods, time limits, or bulk sale restrictions that would otherwise apply to the Store Closing Sales (collectively, the “Liquidation Sale Laws”) of (i) any Local Governmental Unit (which means all Governmental Units other than the States or federal Governmental Units) served with a copy of the Motion; and (ii) any Local Governmental Unit served with this Order and who does not object pursuant to the provisions of this Order. The terms “Liquidation Sale Law” and “Liquidation Sale Laws” shall be deemed not to include any Safety Laws or General Laws. Except as provided herein with respect to Banner and Signwalker Advertising, nothing herein shall (i) exempt Debtor and/or the Consultant from compliance with any Safety Laws or General Laws, or (ii) preclude any Governmental Unit from enforcing Safety Laws or General Laws in an appropriate non bankruptcy forum.

16. If there is a dispute (a “Reserved Dispute”) over the enforceability of a Liquidation Sale Law, resolution of such Reserved Dispute will take place before this Court, as provided herein and shall only operate prospectively.

17. Any time before the twentieth (20th) day following the service of this Order as provided for above, any Local Governmental Unit may assert a Reserved Dispute by sending a notice explaining the nature of the dispute to Debtor’s and Consultant’s counsel. If Debtor and the objecting Local Governmental Unit (as the case may be, the “Objecting Party”) are unable to resolve the Reserved Dispute within fifteen (15) days of receipt of the Objecting Parties notice, either party may file a motion with the Court requesting a resolution of the dispute (“Dispute Resolution Motion”). If such a Dispute Resolution Motion is timely filed, Debtor and Consultant shall each be entitled to assert that the provisions in question are preempted by the

Bankruptcy Code and/or that neither the terms of this Order nor the conduct of the Store Closing Sales violate the Liquidation Sales Law. The timely filing of a Dispute Resolution Motion, will not affect the finality of this Order or limit or interfere with the ability to conduct the Store Closing Sales. By timely filing a Dispute Resolution Motion, all Governmental Units shall be entitled to assert any jurisdictional, procedural or substantive argument that it might heretofore have been entitled to raise. Any such Dispute Resolution Motion will also be served upon any affected landlord.

Authorization To Utilize The Services Of Hilco

18. In addition to Paragraph 4 above, Debtor is hereby authorized to utilize the services of the Consultant in connection with the Consulting Agreement.

19. Nothing herein shall be deemed to constitute a ruling on whether any non-bankruptcy state law, regulation or rule applicable to the Store Closing Sales is pre-empted by the Bankruptcy Code nor as to whether the automatic stay applies nor is this Order a ruling with respect to whether sovereign immunity applies.

20. This Court shall retain exclusive jurisdiction with regard to all issues or disputes in connection with the order and the relief provided for herein, including, without limitation, to protect Debtor, the landlords and/or the Consultant from interference with the Store Closing Sales, and to resolve any disputes related to the Store Closing Sales or arising under the Consulting Agreement or the implementation thereof.

21. The Consultant shall not be liable for any claims against Debtor other than as expressly provided for in the Consulting Agreement.

22. Debtor, the Consultant and each of their respective officers, employees and Consultants be, and they hereby are, authorized to execute such documents and to do such acts

as are necessary or desirable to carry out the Store Closing Sales and effectuate the Consulting Agreement and the related actions set forth therein.

23. The Consultant shall have the right to use the Closing Stores and all related Closing Store services, furniture, fixtures, equipment and other assets of Debtor as designated hereunder for the purpose of conducting the Store Closing Sales, in accordance with the provisions of the Consulting Agreement through the Sale Termination Date (as defined in the Consulting Agreement).

24. The provisions of this Order and the Consulting Agreement and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered confirming or consummating any plan of reorganization of Debtor, or which may be entered converting Debtor's cases from chapter 11 to chapter 7, and the terms and provisions of the Consulting Agreement as well as the rights and interests granted pursuant to this Order and the Consulting Agreement shall continue in this or any superseding case and shall be binding upon Debtor, the Consultant and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of Debtor under chapter 7 or chapter 11 of the Bankruptcy Code. Any trustee appointed in these cases shall be and hereby is authorized to operate the business of Debtor to the fullest extent necessary to permit compliance with the terms of this Order and the Consulting Agreement and the Consultant and the trustee shall be and hereby are authorized to perform under this Agreement upon the appointment of a trustee with the need for further order of this Court. In the event the chapter 7 trustee determines that it needs further order of this Court in connection with the continued operation of the business, such motion shall be heard on an expedited basis.

Other Provisions

25. This Order constitutes an authorization of conduct by Debtor and nothing contained herein shall be deemed to constitute a ruling with regard to the sovereign immunity of any state, and the failure of any state to object to the entry of this Order shall not operate as a waiver with respect thereto.

26. To the extent, if any, anything contained in this Order conflicts with a provision in the Consulting Agreement or the Sale Guidelines, this Order shall govern and control. The Court shall retain jurisdiction with respect to any matters, claims, rights, or disputes arising from or related to the implementation of this Order.

27. To the extent that the disposition of the assets under the Consulting Agreement would constitute the sale of an interest in a consumer credit transaction that is subject to the Truth in Lending Act or an interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations (January 1, 2004), as amended from time to time, then the purchaser shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.

28. The transactions contemplated by the Consulting Agreement are not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.

29. Notwithstanding Bankruptcy Rules 6004, and 6006, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. Immediately upon entry of this order, Debtor and the Consultant are free to perform under the Consulting Agreement at any time, subject to the terms of the Consulting Agreement, and the Consultant shall be afforded the protections of section 363(m) of the Bankruptcy Code as to all aspects of

the transactions under and pursuant to the Consulting Agreement if this Order or any authorization contained herein is reversed or modified on appeal.

30. The Consultant is a party in interest and shall have the ability to appear and be heard on all issues related to or otherwise connected to this Consulting Agreement and the conduction of the Store Closing Sales.

31. Notwithstanding any other order entered by this Court, Regions Bank (“Regions”), Debtor’s pre-petition and post-petition secured lender, agrees that Debtor is entitled to a claim pursuant to section 506(c) of the Bankruptcy Code in the actual amount of unpaid fees and expenses earned and incurred by Consultant under the Consulting Agreement (the “506(c) Claim”), which amount represents reasonable, necessary and actual costs and expenses incurred by Debtor in the course of preserving, and selling the Merchandise and FF&E for the benefit of Regions. Regions consents to the allowance of the 506(c) Claim, and the application of the funds derived therefrom, in the manner set forth in this paragraph.

Dated: Birmingham, Alabama

February __, 2009

UNITED STATES BANKRUPTCY JUDGE