

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

In re:)	
)	Chapter 11
)	
MARSH SUPERMARKETS HOLDING, LLC, <i>et al.</i> , ¹)	Case No. 17-11066 (___)
)	
Debtors.)	(Joint Administration Requested)
)	

**DECLARATION OF LEE A. DIERCKS IN SUPPORT OF DEBTORS’
CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS AND APPLICATIONS**

I, Lee A. Diercks, declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury that:

1. I am the Chief Restructuring Officer (the “CRO”) of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”). The appointment of a CRO was required by the Sixth Amendment to the Senior Lien Credit Agreement discussed more fully below. I am also a Founding Partner of Clear Thinking Group LLC (“CTG”), and currently lead its Value Preservation Practice. I have served as CRO since March 27, 2017.

2. I have over 40 years of direct management and leadership experience with such companies as JCPenney, Coast to Coast Hardware, Herman’s Sporting Goods, Venator Group – Woolworth & Champs Sports, including roles in executive management in operations, logistics and distribution, merchandising, planning and allocation, marketing, and strategy development. For the last 18 years, I have worked in the corporate renewal/turnaround industry with companies in manufacturing, distribution, consumer products, and retail, including many

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Marsh Supermarkets Holding, LLC (1568); Marsh Merger Sub, LLC (8837); Marsh Supermarkets Company, LLC (8179); A.L. Ross & Sons, LLC (3470); Contract Transport Holding, LLC (5675); Contract Transport, LLC (3718); CT Logistics, LLC (9775); LoBill Foods, LLC (9461); Marsh Drugs Holding, LLC (5755); Marsh Drugs, LLC (3717); Marsh International, LLC (0875); Marsh RE Property, LLC (0641); Marsh Supermarkets, LLC (7924); MS Property, LLC (9199); Marsh Supermarkets of Illinois, LLC (6423); and O’Malia Food Markets, LLC (5222). The mailing address for each of the Debtors is 9800 Crosspoint Blvd., Indianapolis, Indiana 46256.

companies facing severe financial distress. I have served at times as Interim Chief Executive Officer, Chief Operating Officer and Chief Restructuring Officer of such businesses, and have provided immediate leadership and direction to them. I have extensive experience in dealing with companies in chapter 11, and have helped lead a number of companies successfully out of bankruptcy.

3. Since being appointed as CRO, among other things, I have been principally responsible for advising the Debtors regarding their restructuring plans and strategies, and ultimately, commencing many of the initiatives described herein. As such, I am generally familiar with the Debtors' day-to-day business operations, their businesses and affairs, and their books and records.

4. On the date hereof (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "**Bankruptcy Code**"), thereby commencing the above-captioned chapter 11 cases (collectively, the "**Chapter 11 Cases**"). The Debtors intend to continue in possession of their assets and the management of their businesses as debtors-in-possession during the pendency of the Chapter 11 Cases.

5. This declaration (this "**Declaration**") is submitted (i) to provide a brief overview of the Debtors and the Chapter 11 Cases, and (ii) in support of the Debtors' chapter 11 petitions and "first day" motions and applications (collectively, the "**First Day Motions**"), which have been filed, among other things, to minimize the adverse effects of the Debtors' filing for chapter 11 protection, and to enhance the Debtors' ability to maximize value for the benefit of their estates and creditors.

6. A chart detailing the organizational structure of the Debtors as of the Petition Date is attached hereto as **Exhibit A**.

7. Except as otherwise indicated herein, all facts set forth in this Declaration are based upon my personal knowledge, and the knowledge I have acquired from those who report to me, including my colleagues at CTG who are assisting me in my role as CRO, my review of certain relevant documents, or my opinion based upon experience, knowledge and information concerning the Debtors' business operations and financial condition. If called upon to testify, I could and would testify competently to the facts set forth herein. I am duly authorized to submit this Declaration on behalf of the Debtors.

GENERAL BACKGROUND

A. Overview of the Debtors' Businesses

8. Since their founding in 1931, the Debtors, headquartered in Indianapolis, Indiana, have been a leading independent grocery retailer in Indiana and Ohio. The Debtors operate the substantial majority of their stores under the Marsh Supermarkets banner, and a handful of stores operate as O'Malia Food Markets. The Debtors' stores feature traditional grocery store items, specialty food departments (including prepared food and bakeries), and other service centers, such as floral departments and banks. The Debtors operate their stores primarily through Debtors Marsh Supermarkets Company, LLC, Marsh Supermarkets, LLC and O'Malia Food Markets, LLC. The Debtors' pharmacy business, the assets of which were sold shortly before the Petition Date in connection with the Pharmacy Sale discussed below, was operated through Marsh Drugs, LLC ("**Marsh Drugs**"). The Debtors' corporate headquarters and all of

their store locations are leased, although the Debtors indirectly own a warehouse located in Yorktown, Indiana.²

9. As of the Petition Date, the Debtors operate a total of 60 stores in Indiana and Ohio (collectively, the “**Remaining Stores**”), and have a workforce of approximately 4,400 employees. Approximately 215 of those employees are employed on a salaried basis, with the balance serving as hourly employees. In addition, approximately 10 of the Employees are employed by the Debtors on a temporary basis. None of the Debtors’ employees are union members.³

B. Equity Ownership

10. The Debtors were publicly traded until May 2006, when they were acquired by affiliates of Sun Capital Partners IV, LP (“**Sun Capital**”) and certain independent investors. Sun Capital and other investors owned 100% of the equity interests of the Debtors’ indirect (non-Debtor) parent MSH Holding, LLC (“**MSH Holding**”) until March 2017, when they sold 25% of the economic rights and all of the voting and control rights in MSH Holding to JT Grocery Consulting, LLC in a change of control transaction.

C. Capital Structure

11. The Debtors’ current capital structure is generally described below:

² The Debtors do not conduct any operations at this warehouse and vacated the property in 2016. As of the Petition Date, the mortgage for this property was in default.

³ As discussed below, a portion of the Debtors workforce was unionized prior to 2012.

*i. Senior Lien Credit Facility*⁴

12. Each of the Debtors other than Marsh Merger Sub, LLC (collectively, the “**Borrower Debtors**”) are parties with Wells Fargo Bank, National Association,⁵ in its capacities as agent and lender pursuant to the Credit Agreement (in such capacities, the “**Senior Lien Agent**”) to that certain Credit Agreement, dated as of March 10, 2011 (as amended from time to time prior to the Petition Date, the “**Senior Lien Credit Agreement**” and, together with the other loan documents, the “**Senior Lien Credit Documents**”). The Senior Lien Credit Documents provide for a revolving credit facility in the maximum principal amount of \$60,000,000.

13. As of the Petition Date, the Borrower Debtors were jointly and severally indebted and liable under the Senior Lien Credit Documents in an aggregate principal amount not less than \$5,243,449.20, consisting of Loans in the aggregate principal amount of \$2,536,863.20, and Letters of Credit in the aggregate undrawn face amount of \$2,706,586.00, plus all interest accrued and accruing thereon, together with all costs, fees, expenses (including attorneys’ fees and legal expenses) and all other Obligations accrued, accruing or chargeable in respect thereof or in addition thereto (collectively, the “**Senior Prepetition Obligations**”).⁶

14. In connection with the Senior Lien Credit Agreement, the Borrower Debtors entered into that certain Guaranty and Security Agreement, dated as of March 10, 2011 (as amended from time to time prior to the Petition Date, the “**Senior Lien Security Agreement**”), by and between the Borrower Debtors, as Grantors, and the Senior Lien Agent. Pursuant to the Senior Lien Security Agreement and other Senior Lien Credit Documents, each

⁴ Capitalized terms used but not otherwise defined in this subsection shall have the meanings ascribed to such terms in the Senior Lien Credit Agreement.

⁵ As the successor to General Electric Capital Corporation.

⁶ Shortly before the Petition Date, the outstanding aggregate principal amount of the Loans was approximately \$38.3 million. Largely as a result of the Pharmacy Sale (defined below), the Debtors reduced the principal balance of the Loans to the amount provided for herein.

Borrower Debtor granted senior liens upon and security interests in substantially all of such Borrower Debtor's assets other than the Excluded Property (as such term is defined in the Senior Lien Security Agreement) to the Senior Lien Agent as security for the Senior Prepetition Obligations.

ii. June 2016 Junior Note

15. Prior to the Petition Date, Debtor Marsh Supermarkets Company, LLC ("**Marsh Supermarkets Co.**") issued that certain Second Amended and Restated and Consolidated Subordinated Promissory Note, dated as of June 30, 2016 (as amended from time to time prior to the Petition Date, the "**June 2016 Junior Note**" and, together with each Security Document (as defined in the June 2016 Junior Note), the "**June 2016 Junior Note Documents**"), in favor of (non-Debtor) Marsh Group Finance, LLC (together with its successors and assigns, the "**Junior Noteholder**"), which provided for a loan in the principal amount of \$24,440,449.00. The Junior Noteholder is a wholly owned subsidiary of Marsh Group Holding, LLC, which entity also owns 75% of the economic rights in MSH Holding.

16. As of the Petition Date, Marsh Supermarkets Co. was indebted and liable to the Junior Noteholder under the June 2016 Junior Note Documents in an aggregate amount not less than \$25,678,460.57 (inclusive of both principal and interest), plus additional interest accruing thereon, together with all costs, fees, expenses (including attorneys' fees and legal expenses) and all other obligations accrued, accruing or chargeable in respect thereof or in addition thereto.

17. In connection with the June 2016 Junior Note, Marsh Supermarkets Co. entered into that certain Pledge and Security Agreement, dated as of June 30, 2016 (as amended from time to time prior to the Petition Date, the "**June 2016 Junior Security Agreement**"), by

and between Marsh Supermarkets Co., as Grantor, and the Junior Noteholder. Pursuant to the June 2016 Junior Security Agreement, Marsh Supermarkets Co. granted a security interest in substantially all of its assets other than any property excluded under the June 2016 Junior Security Agreement.

18. The Senior Lien Agent, the Junior Noteholder and Marsh Supermarkets Co. are parties to that certain Subordination and Intercreditor Agreement, dated as of June 30, 2016 (as amended from time to time prior to the Petition Date, the “**June 2016 Subordination Agreement**”). The June 2016 Subordination Agreement, among other things: (a) confirms the senior priority of the security interests of the Senior Lien Agent in the assets and properties of Marsh Supermarkets Co. to the junior priority security interests of the Junior Noteholder; (b) provides for the senior right of repayment of the Senior Debt (as defined in the June 2016 Subordination Agreement) prior to any repayment of the Subordinated Debt (as defined in the June 2016 Subordination Agreement); (c) provides that the Junior Noteholder shall be deemed to have consented to the use of cash collateral by Marsh Supermarkets Co. upon notice of the Senior Lien Agent’s consent to such use of cash collateral; and (d) provides certain other rights and obligations between the Senior Lien Agent, on the one hand, and the Junior Noteholder, on the other hand, relating to the relevant collateral.

iii. October 2016 Junior Note

19. Prior to the Petition Date, the Borrower Debtors issued that certain Subordinated Promissory Note, dated October 28, 2016 (as amended from time to time prior to the Petition Date, the “**October 2016 Junior Note**” and, together with each Loan Document (as defined in the October 2016 Junior Note), the “**October 2016 Junior Note Documents**”), in

favor of the Junior Noteholder, which provided for a loan in the principal amount of \$6,000,000.00.

20. As of the Petition Date, the Borrower Debtors were indebted and liable to the Junior Noteholder under the October 2016 Junior Note Documents in an aggregate amount not less than \$6,338,184.74 (inclusive of both principal and interest), plus additional interest accruing thereon, together with all costs, fees, expenses (including attorneys' fees and legal expenses) and all other obligations accrued, accruing or chargeable in respect thereof or in addition thereto.

21. In connection with the October 2016 Junior Note, the Borrower Debtors entered into that certain Guaranty and Security Agreement, dated as of October 28, 2016 (as amended from time to time prior to the Petition Date, the "**October 2016 Junior Security Agreement**"), by and among the Borrower Debtors, as Grantors, and the Junior Noteholder. Pursuant to the October 2016 Junior Security Agreement, each Borrower Debtor granted a security interest in substantially all of the Borrower Debtors' assets other than the Excluded Property (as defined in the October 2016 Junior Security Agreement).

22. The Senior Lien Agent, the Junior Noteholder and the Borrower Debtors are parties to that certain Subordination and Intercreditor Agreement, dated as of October 28, 2016 (as amended from time to time prior to the Petition Date, the "**October 2016 Subordination Agreement**"). The October 2016 Subordination Agreement, among other things: (a) confirms the senior priority of the security interests of the Senior Lien Agent in the assets and properties of the Borrower Debtors to the junior priority security interests of the Junior Noteholder; (b) provides for the senior right of repayment of the Senior Debt (as defined in the October 2016 Subordination Agreement) prior to any repayment of the Subordinated Debt (as defined in the October 2016 Subordination Agreement); (c) provides that the Junior Noteholder

shall be deemed to have consented to the use of cash collateral by the Borrower Debtors upon notice of the Senior Lien Agent's consent to such use of cash collateral; and (d) provides certain other rights and obligations between the Senior Lien Agent, on the one hand, and the Junior Noteholder, on the other hand, relating to the relevant collateral.

iv. Trade Debt

23. As of the Petition Date, the Debtors' books and records list approximately \$30 million in outstanding trade liabilities.

v. Real Property Lease Obligations

24. The Debtors estimate that, as of the date hereof, the aggregate amount of outstanding real property lease-related expenses is approximately \$11 million.

vi. Pension Liabilities

25. While none of the Debtors' current employees are union members, certain of the Debtors' former employees were employed under a collective bargaining agreement (the "CBA"). In connection with the CBA, certain of the Debtors participated in a multiemployer pension plan (the "MEPP"), which those Debtors exited in November of 2012. As a result of their exit from the MEPP, certain of the Debtors incurred withdrawal liability totaling approximately \$62 million. As of the Petition Date, certain of the Debtors owe approximately \$55 million in connection with their withdrawal from the MEPP.

26. Prior to the Petition Date, the Debtors also provided a single-employer defined benefit pension plan (the "Marsh Pension Plan") to certain of their employees, which was frozen effective as of January 1, 1997. According to the most recently performed actuarial valuation, the Marsh Pension Plan is currently underfunded in the approximate amount of at least \$21.75 million.

D. Events Leading to the Commencement of the Chapter 11 Cases

27. The grocery retailing industry is highly competitive and characterized by local, regional, and national competitors operating on slim profit margins. The competitive nature of the grocery industry has been exacerbated in recent years due to the entry of mega-retailers and specialty chains into the grocery business, as well as falling produce and retail food prices. Indeed, many other grocery retailers have commenced chapter 11 proceedings in recent years, including Fairway Group Holdings Corp., The Great Atlantic & Pacific Tea Company, Inc. (twice), Fresh & Easy, LLC (twice), Winn Dixie, Inc., Haggen Holdings, LLC and, just last week, Central Grocers, Inc.

28. In this difficult retail environment, improving consumer experience through technological advances and capital improvements has become increasingly critical to surviving. In recent years, the Debtors' competitors have significantly increased capital spending. The Debtors' top competitors, Kroger and Meijer, invested capital in excess of \$100 million into the regional marketplace, with multiple remodels and new store construction. Over the last two fiscal years, the Debtors invested more than \$15 million in capital expenditures to keep pace with store refurbishments and remodels. While certain of these stores outperformed total chain results, they did not achieve the sales lift that the Debtors were anticipating. Further, openings from several of the Debtors' competitors resulted in double-digit declining same-store sales for the Debtors. As a result, the Debtors began facing liquidity challenges.

E. Prepetition Restructuring Efforts

29. With the arrival of a new leadership team in early 2013, the Debtors engaged in a number of cost-saving initiatives. For instance, the Debtors closed 13 unproductive stores, and eliminated approximately \$20 million in store and G&A operating costs, resulting in significant operating profit improvements for the following two years. To counteract increased competitive activity, the Debtors launched many merchandising and customer loyalty programs, including: (i) Indiana Grown, a partnership with the Indiana State Department of Agriculture, to feature local farmers meat, produce and specialty foods items; (ii) Instacart, which offers in-home grocery delivery and curbside pickup services; (iii) an upgraded web site and mobile application technology, including in-store beacon applications for customer offer management; (iv) expanded frequency and distribution of core shopper direct mail programs; (v) added loyalty rewards continuity programs; and (vi) implemented more than \$2.5 million in price reductions to maintain competitive pricing models. In September 2016, the Debtors successfully exited an underperforming supply chain distribution contract, in favor of a partnership with SuperValu. This decision resulted in the closure of two of the Debtors' warehouses (together, the "**Dark Warehouses**") that were utilized by the Debtors' prior distribution provider.⁷

30. In late 2016, the Debtors engaged Hilco Real Estate, LLC ("**Hilco Real Estate**") in an effort to lower the overall costs of their real property leases. Hilco Real Estate attempted to negotiate modifications to the terms of the Debtors' real property leases with the Debtors' landlords, but these efforts ultimately did not result in significant cost savings to the Debtors.

⁷ The Debtors did not have any employees at these two locations.

31. Furthermore, the Debtors, in consultation with their professional advisors, completed a comprehensive review of the performance of all of their retail stores to analyze, among other things, the profitability and viability of each store location. The results of this analysis led to the Debtors: (i) ceasing operations at and exiting 11 of their stores (collectively, the “**Dark Stores**”); (ii) planning an orderly liquidation of and exit from 19 underperforming and/or unprofitable Remaining Stores in an effort to conserve resources and maximize utility (collectively, the “**Closing Stores**”); and (iii) planning an orderly and efficient chapter 11 auction and sale process for the balance of the Remaining Stores (collectively, the “**Core Stores**”), which collectively represent the Debtors’ most valuable store locations.

32. In furtherance of this, in September 2016, the Debtors engaged Peter J. Solomon Company (“**PJS**”) as their investment banking advisor to solicit interest from third parties in a going concern transaction. With respect to the going concern sale process, in total, PJS has thus far contacted more than 40 parties, approximately 35 of which have entered into confidentiality agreements in connection with receiving access to the Debtors’ confidential information. Out of the 35 parties who entered into a confidentiality agreement, 5 parties expressed an interest in various groups of stores representing nearly all of the 44 Core Stores. Despite this interest, going concern buyers for the Debtors have not yet emerged, however, some of these parties are still engaged in active due diligence. The Debtors, with the assistance of PJS, are continuing to actively market the Debtors’ assets for sale to potential buyers in connection with these chapter 11 cases.

33. As a result, the Debtors decided to undertake a number of other value maximizing initiatives, including the commencement of marketing efforts with respect to all of the prescription assets of their pharmacies (collectively, the “**Pharmacy Assets**”). Through these

efforts, the Debtors sold (the “**Pharmacy Sale**”) the Pharmacy Assets located at 37 of their pharmacies to an affiliate of CVS Pharmacy Inc. for approximately \$38 million. The Pharmacy Sale closed on a rolling basis between May 3-5, 2017, and the proceeds of the sale were used to reduce the Senior Prepetition Obligations. Subsequent to this closing, the Debtors no longer operate any pharmacies.

34. In February 2017, the Debtors, in consultation with their secured prepetition lenders, engaged Hilco Merchant Resources, LLC (“**Hilco**”) to assist with the liquidation of the Debtors’ assets at their Closing Stores, which commenced in April 2017 and are currently anticipated to conclude by the end of May 2017.

F. Objectives in the Chapter 11 Cases

35. For the reasons outlined above, the Debtors believe that the commencement of the Chapter 11 Cases is a necessary and prudent measure to maximize the value for their estates and stakeholders. The Debtors intend to engage in a number of value-maximizing initiatives during the Chapter 11 Cases, including, without limitation, an auction and sale process for their Core Stores. To that end, on the date hereof, the Debtors filed a motion (the “**Bidding Procedures Motion**”) seeking authority to proceed with a bidding and auction process in order to consummate a sale (the “**Sale**”) that they expect will generate maximum value for the Core Stores. In consultation with their professional advisors, the Debtors developed certain bidding procedures (the “**Bidding Procedures**”), which are designed to preserve flexibility in this sale process, generate the greatest level of interest, and result in the highest or best value for the assets.

36. Among other things, these Bidding Procedures create an appropriate timetable for the Sale, consistent with the milestones under the Debtors’ proposed cash collateral order and the Debtors’ anticipated liquidity position. The Bidding Procedures contemplate a

hearing to consider approval of the Sale on June 15, 2017, with bids due on or before June 7th and an auction on June 12th. While the Debtors will maintain sufficient liquidity during the proposed sale process and the timeline contemplated thereby, their liquidity position only affords the Debtors a limited opportunity to market and sell their assets, including the Core Stores. The Debtors must be in a position to either assume and assign or reject the Core Stores by the June 19, 2017 closing date contemplated by the Bidding Procedures, as July rent for a number of the Core Stores will come due on June 25th, and the Debtors are simply not in a position to incur July rent for the related leases.

37. In light of this, concurrently with the filing of this Declaration, the Debtors have filed a motion (the “**Motion to Shorten**”) seeking to have the Bidding Procedures Motion heard on shortened notice as it pertains to the Debtors’ request for the entry of the Bidding Procedures Order. The Debtors believe that consideration of the Bidding Procedures Order on shortened notice as requested in the Motion to Shorten, and approval of the Bidding Procedures and the timeline provided for therein, is justified under the circumstances of the Chapter 11 Cases, and necessary, prudent and in the best interests of the Debtors, their estates and creditors.

38. At the outset of the Chapter 11 Cases, the Debtors have also sought approval to continue the store closing sales at the Closing Stores to the extent that such sales did not finish prior to the Petition Date,⁸ and to conduct store closing sales at the Core Stores to the extent that the Debtors determine it is necessary (collectively, the “**Store Closing Sales**”). This way, the Debtors will have maximum flexibility to preserve and maximize the value of their estates in the event that they determine, in their business judgment, that it is necessary and prudent to conduct store closing sales at any of the Core Stores.

⁸ The store closing sales finished prior to the Petition Date at 3 of the Closing Stores, which stores the Debtors seek to reject effective as of the Petition Date (collectively, the “**Rejected Closing Stores**”).

39. In addition, to avoid incurring any unnecessary administrative expenses with respect to the Dark Stores, the Dark Warehouses and the Rejected Closing Stores, the Debtors have sought to reject the related leases *nunc pro tunc* to the Petition Date. The Debtors will also take a number of steps to reduce their expenses moving forward, including filing additional contract and lease rejection motions as the Store Closing Sales run their course, pursuant to which the Debtors will seek to reject store leases and contracts that the Debtors and their advisors have determined are unlikely to be assumed and assigned and will no longer be necessary to the Debtors' business operations.

40. Finally, as the Chapter 11 Cases, the auction and sale process for the Core Stores, and the Store Closing Sales each progress, the Debtors will continue to analyze their asset portfolio and available disposition alternatives with respect to all available assets in order to preserve and maximize estate value.

FIRST DAY MOTIONS⁹

A. Facts in Support of First Day Motions

41. To enable the Debtors to operate effectively and to avoid the adverse effects of the chapter 11 filings, the Debtors have filed, or intend to file, the motions and applications described below.

42. In connection with the preparation for the Chapter 11 Cases, I have reviewed each of the First Day Motions referenced below. The First Day Motions were prepared with my input and assistance, or the input and assistance of employees or designees working under my supervision. I believe the information contained in the First Day Motions is accurate and correct. As set forth more fully below, I believe that the entry of orders granting the relief

⁹ Capitalized terms used in this section but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Motions, as applicable.

requested in these motions and applications is critical to the Debtors' ability to preserve the value of their estates, assist in their chapter 11 efforts, and avoid any interruption to their business operations that might otherwise be caused by the commencement of the Chapter 11 Cases.

B. Administrative First Day Motions

i. Debtors' Motion for an Order, Pursuant to Bankruptcy Rule 1015 and Local Rule 1015-1, Authorizing the Joint Administration of the Debtors' Chapter 11 Cases (the "Joint Administration Motion")

43. The Debtors seek the joint administration of their Chapter 11 Cases for procedural purposes only. I believe that it would be far more practical and expedient for the administration of the Chapter 11 Cases if this Court were to authorize their joint administration. Joint administration will reduce costs and facilitate the administrative process by avoiding the need for duplicative notices, applications and orders. It is my understanding that no prejudice will befall any party by the joint administration of the Debtors' cases as the relief sought therein is solely procedural and is not intended to affect substantive rights.

ii. Debtors' Application for an Order Appointing Prime Clerk LLC as Claims and Noticing Agent for the Debtors, Nunc Pro Tunc to the Petition Date (the "Prime Clerk Retention Application")

44. The Debtors request entry of an order, pursuant to section 156(c) of title 28 of the United States Code and Local Rule 2002-1(f), authorizing the retention and appointment of Prime Clerk, LLC ("**Prime Clerk**") as claims and noticing agent in the Chapter 11 Cases. I believe that the relief requested in the Prime Clerk Retention Application will ease the administrative burden on the Clerk of the Court in connection with the Chapter 11 Cases. In addition, I have been advised by counsel that Prime Clerk's retention is required by the Local Rules in light of the anticipated number of creditors in the Chapter 11 Cases.

45. Therefore, on behalf of the Debtors, I respectfully request that the Prime Clerk Retention Application be approved.

C. Operational First Day Motions

iii. Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105(a) and 366 of the Bankruptcy Code, (I) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services, (II) Deeming Utility Companies Adequately Assured of Future Payment, (III) Establishing Procedures for Determining Additional Adequate Assurance of Payment, and (IV) Setting a Final Hearing Related Thereto (the "Utilities Motion")

46. The Debtors request through the Utilities Motion the entry of interim and final orders, among other things: (a) prohibiting the Utility Companies from altering, refusing, or discontinuing Utility Services on account of pre-petition invoices, including the making of demands for security deposits or accelerated payment terms; (b) deeming the Utility Companies adequately assured of future payment; (c) establishing procedures for determining additional adequate assurance of future payment and authorizing the Debtors to provide additional adequate assurance of future payment to the Utility Companies; and (d) setting a final hearing related to the relief requested in the Utilities Motion.

47. The Utility Companies provide the Debtors with natural gas, electricity, telecommunications, internet connectivity, water, waste disposal and other similar services. The Utility Companies service the Debtors' headquarters and their retail stores. The Debtors could not operate their businesses or serve their customers in the absence of continuous Utility Services. Thus, any interruption in such services would disrupt the Debtors' day-to-day operations and be incredibly harmful to their businesses.

48. In general, the Debtors have established a good payment history with the Utility Companies, making payments on a regular and timely basis. Historically, the Debtors have paid on average approximately \$1,480,000 per month on account of the Utility Services. To

provide adequate assurance to the Utility Companies, as required under section 366 of the Bankruptcy Code, the Debtors propose to deposit a sum of \$740,000, which represents 50% of the Debtors' estimated monthly cost of Utility Services subsequent to the Petition Date, into a segregated account to be maintained during the pendency of the Chapter 11 Cases in the manner provided for in the Proposed Orders.

49. I believe and am advised that the Assurance Procedures are necessary, because if such procedures were not approved, the Debtors could be forced to address numerous additional adequate assurance requests by the Utility Companies in a disorganized manner during the critical first weeks of the Chapter 11 Cases. Moreover, a Utility Company could unilaterally determine, on or after the 30th day following the Petition Date, that it is not adequately assured of future payment and discontinuing service or making an exorbitant demand for payment to continue service.

50. Accordingly, on behalf of the Debtors, I respectfully request that the Utilities Motion be approved.

iv. Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 507(a)(8), 541, 1107(a) and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Taxes and Fees and Related Obligations and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto (the "Taxes and Fees Motion")

51. The Debtors request authority to pay certain prepetition taxes and fees that, in the ordinary course of business, accrued or arose before the Petition Date. In the ordinary course of business, the Debtors incur or collect certain Taxes and Fees and remit such Taxes and Fees to various Authorities in accordance with applicable law. Any failure to pay the Taxes and Fees could impair the Debtors' ability to continue their business operations. Any unexpected or inopportune interruption of the Debtors' operations during the course of the Chapter 11 Cases

could diminish estate value and frustrate the Debtors' chapter 11 efforts. In addition, certain of the Authorities may take precipitous action against the Debtors' directors and officers for certain unpaid Taxes and Fees that undoubtedly would distract those individuals from their duties related to the Debtors' prosecution of these cases. Finally, based on my knowledge and conversations with the Debtors' professional advisors, it is my understanding that certain of the Taxes and Fees are entitled to priority status under the Bankruptcy Code and, as a result, must be paid in full before any general unsecured obligations may be satisfied.

52. Therefore, on behalf of the Debtors, I respectfully request that the Taxes and Fees Motion be approved.

- v. ***Debtors' Motion for Interim and Final Orders, Pursuant to Sections 105(a), 363 and 364 of the Bankruptcy Code, (I) Authorizing (A) Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection with Insurance Programs, Including Payment of Policy Premiums, Broker Fees, and Claims Administration Fees, (B) Continuation of Insurance Premium Financing Programs, and (C) Continuation of Surety Bond Program and Payment of Prepetition Obligations Incurred in Connection Therewith; and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto (the "Insurance Motion")***

53. The Debtors request the entry of an order authorizing, but not directing, the Debtors to (a) continue and, to the extent necessary, renew liability, property and other insurance programs and pay policy premiums, broker fees and claims administration fees arising thereunder or in connection therewith, including prepetition obligations arising in the ordinary course of business, (b) continue the Debtors' insurance premium financing programs and renew or enter into new premium financing programs, as necessary, under substantially similar terms, and (c) continue and, to the extent necessary, renew the Debtors' Surety Bond Program and pay premiums arising thereunder or in connection therewith, including prepetition obligations arising

in the ordinary course of business, and maintain and post collateral in accordance with applicable agreements or as otherwise necessary.

54. In the ordinary course of business, the Debtors have maintained, and continue to maintain, a number of insurance programs for directors and officers, error and omissions, general liability, property, umbrella and excess liability. Continuation of the Insurance Programs is essential for preserving the value of the Debtors' assets and, in most cases, such coverage is required by the various contracts and laws that govern the Debtors. Furthermore, it is my understanding that, pursuant to the chapter 11 operating guidelines issued by the United States Trustee for Region 3 pursuant to 28 U.S.C. § 586, the Debtors are obligated to maintain certain insurance coverage, which coverage is provided by the policies included in the Insurance Programs.

55. Similarly, the services provided by the Brokers are critical to ensuring that the Debtors obtain the necessary insurance coverage on advantageous terms at competitive rates, and the Brokers have a significant amount of institutional knowledge regarding the Debtors' insurance needs. Likewise, the services provided by the Administrator are critical to ensuring that claims related to the Liability Insurance Program are administered in a timely and efficient manner. If the Debtors were forced to replace the Brokers and the Administrator, the Debtors would necessarily be required to spend time, energy and resources getting a new insurance broker and third-party claims administrator up to speed on the Debtors' insurance needs.

56. Because it is not economically advantageous for the Debtors to pay the premiums on each of their Insurance Programs on an annualized basis, from time to time, in the ordinary course of business, the Debtors finance the premiums on certain of the Insurance Programs. If the Debtors are unable to continue making payments under the PFAs, the Premium

Financing Company may be permitted to terminate the Financed Insurance Programs. The Debtors would then be required to obtain replacement insurance on an expedited basis and likely at a significantly increased cost.

57. Finally, in the ordinary course of business, the Debtors are required to provide surety bonds to governmental units or other regulatory agencies to secure the Debtors' compliance with applicable laws and regulations and as a condition to operating their businesses. Failure to provide, maintain, or timely replace these surety bonds could prevent the Debtors from operating their businesses.

58. Accordingly, on behalf of the Debtors, I respectfully request that the Insurance Motion be approved.

- vi. ***Debtors' Motion (I) for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 503(b), 1107(a) and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Pay Certain Prepetition Claims (A) Arising Under the Perishable Agricultural Commodities Act and the Packers and Stockyards Act of 1921, (B) of Lien Vendors, and (C) of Critical Vendors and Service Providers, (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto, and (III) Granting Certain Related Relief, and (2) for Entry of a Final Order, Pursuant to Sections 105(a) and 503(b)(9) of the Bankruptcy Code, Establishing Exclusive Procedures for the Assertion, Resolution, Allowance and Satisfaction of Claims Arising Under Section 503(b)(9) of the Bankruptcy Code (the "Vendor Motion")***

59. Through the Vendor Motion, the Debtors request authority, in their discretion, to pay, in the ordinary course of business, prepetition claims (i) arising under PACA or PASA, (ii) upon which a lien may arise as a result of the Debtors' shipping and distribution network, and (iii) of certain critical vendors and service providers.

60. The Debtors rely on certain vendors which supply the Debtors with, among other items, meat, poultry, dairy products, frozen foods, and produce protected by PACA or PASA, and these vendors may be eligible to assert PACA/PASA claims, in priority ahead of all

other creditors in the Chapter 11 Cases. In addition, an integral component of operating the Debtors' stores is the efficient flow of inventory and products. Accordingly, the Debtors rely extensively on, among others, certain common commercial carriers, movers, shippers, warehousemen, truckers, shipping auditing services, customs brokers, and certain other third-party vendors and service providers, ship, transport, store, and deliver inventory, raw materials, and other products used in the Debtors' ordinary course operations. The Debtors also regularly use service providers to repair, maintain, and improve their stores and their personal property. These vendors could potentially assert liens against the Debtors' property for amounts that the Debtors owe to them.

61. Finally, to maintain consistency and keep their businesses running efficiently and seamlessly, the Debtors rely heavily on certain key vendors and service providers that supply the Debtors with goods and services that are critical to the Debtors' business. It is essential that the Debtors are able to maintain their business relationships with, and honor outstanding payment obligations to, these Critical Vendors given the role that they play in the Debtors' business.

62. The goods and services provided by the Vendors are necessary to ensure that there are not any unexpected or inopportune interruptions to the Debtors' operations, because the Vendors are the most cost-efficient and, in many cases, the only source from which the Debtors can procure critical goods and services within a timeframe that would permit the Debtors to avoid unanticipated interruptions, delays or shutdowns in operations. Any failure to pay the Vendor Claims would, in the Debtors' business judgment, result in the Vendors refusing to provide necessary goods and services to the Debtors. Any unexpected or inopportune interruption, delay or shutdown in the Debtors' operations resulting from a refusal by the Vendors

to do business with the Debtors on a post-petition basis would have disastrous effects on the Debtors' business and undermine the Debtors' ability to preserve and maximize the value of their estates.

63. Moreover, the PACA/PASA Vendors will be eligible to assert PACA/PASA Claims, likely granting them priority ahead of all other creditors in the Chapter 11 Cases, and the Lien Vendors may assert and perfect possessory liens or other similar statutory liens on the Debtors' assets, thereby jeopardizing the Debtors' ability to prosecute these cases in a timely and efficient manner. With respect to the Critical Vendor Claims, the Debtors have reviewed their accounts payable and undertaken a process to identify those vendors which are essential to avoid any unexpected or inopportune interruptions to their operations.

64. I believe that the authority to pay Vendor Claims is vital to the Debtors' efforts to preserve and maximize estate value. Also, for a significant portion of the PACA/PASA Claims and the Critical Vendor Claims, the Debtors' payment of the same merely affects the timing of such payments, and not the amount to be received by these Vendors on account of their Vendor Claims which, based on my knowledge and conversations with the Debtors' professional advisors, are likely afforded administrative expense priority under section 503(b)(9) of the Bankruptcy Code.

65. Through the Vendor Motion, the Debtors also seek to establish exclusive procedures for the assertion, resolution, allowance and satisfaction of claims asserted pursuant to section 503(b)(9) of the Bankruptcy Code in the Chapter 11 Cases. I believe that establishing and implementing the Proposed 503(b)(9) Procedures is necessary and appropriate, and will allow the Debtors to address the Asserted 503(b)(9) Claims in a timely and efficient manner. I am advised that the Proposed 503(b)(9) Procedures and related notice requirements comply with the

Bankruptcy Rules, and are reasonably calculated to provide notice to all parties that may wish to assert a claim pursuant to section 503(b)(9) of the Bankruptcy Code in the Chapter 11 Cases.

66. Therefore, on behalf of the Debtors, I respectfully request that the Vendor Motion be approved.

vii. Debtors' Motion for an Order, Pursuant to Sections 105(a), 363(c), 503(b)(1), 1107(a), and 1108 of the Bankruptcy Code, (I) Authorizing the Debtors to Honor Prepetition Obligations Related to Customer Programs and Otherwise Continue Customer Programs in the Ordinary Course of Business and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto (the "Customer Programs Motion")

67. The Debtors request (i) authority to, in their discretion, continue, maintain, implement new, and/or terminate, and to pay, honor, and otherwise satisfy pre-petition obligations related to, their pre-petition customer practices and programs, in the ordinary course of business and in a manner consistent with past practice, and (ii) an order authorizing banks and other financial institutions to honor and process check and electronic transfer requests related to the foregoing.

68. The success and viability of the Debtors' business depends upon the loyalty of their customers. To maximize customer loyalty, the Debtors have maintained and followed, in the ordinary course of their business, practices and programs for the benefit of their customers (collectively, the "**Customer Programs**"), including, but not limited to, (i) return, refund, exchange, price-guarantee, and rain check policies, (ii) the honoring of gift cards, (iii) coupon redemption and store promotion programs, (iv) the sale of bus passes, postage stamps, and hunting and fishing licenses, (v) lottery programs, (vii) bottle deposit programs, (viii) charitable giving programs, (ix) utility payment programs, (x) money order and Western Union services, (xi) Coinstar kiosks, (xii) the sale of Blue Rhino propane, and (xiii) Rug Doctor carpet cleaning machine rentals.

69. The Debtors use the Customer Programs to, among other things, reward customer loyalty, attract customers to their stores, and provide incentives to customers to buy products from their stores. Many, if not most, of the Customer Programs are standard in the grocery store industry. Without the ability to continue the Customer Programs and to satisfy any related pre-petition obligations, the Debtors risk surrendering their market share of business to their competitors. Moreover, some of the Customer Programs are charitable contribution programs.

70. Accordingly, on behalf of the Debtors, I respectfully request that the Customer Programs Motion be approved.

viii. Debtors' Motion for an Order, Pursuant to Sections 105(a), 345, 363, 1107(a) and 1108 of the Bankruptcy Code, Bankruptcy Rule 2015, and Local Rule 2015-2, (I) Authorizing and Approving Continued Use of Cash Management System, (II) Authorizing Use of Prepetition Bank Accounts and Business Forms, (III) Authorizing Payments of Prepetition Costs and Fees Associated with Customer Credit and Debit Card Transactions, (IV) Waiving the Requirements of Section 345(b) on an Interim Basis, (V) Granting Administrative Expense Status to Post-Petition Intercompany Claims, and (VI) Granting Certain Related Relief (the "Cash Management Motion")

71. Through the Cash Management Motion, the Debtors request: (i) authorization to continue the use of their existing cash management system; (ii) a waiver of certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with (a) the Debtors' practices in connection with their cash management system or (b) any action taken by the Debtors in accordance with any order granting the relief requested in the Cash Management Motion or any other order entered in the Chapter 11 Cases; (iii) authorization to pay or otherwise satisfy, in their discretion, prepetition Card Processing Fees; (iv) authorization to continue their deposit practices and a waiver of the requirements of section 345(b) of the Bankruptcy Code in connection therewith on an interim

basis; (v) the granting of administrative expense status to postpetition intercompany claims; and (vi) granting certain related relief.

72. In the ordinary course of business, the Debtors utilize a centralized cash management system to collect, transfer, and disburse funds generated by their operations (the “**Cash Management System**”). By the Cash Management Motion, the Debtors seek authority to continue utilizing their current Cash Management System. It is critical that the Debtors be able to consolidate management of cash and centrally coordinate transfers of such funds in order to efficiently and effectively operate their business. In particular, because the Debtors process large amounts of cash on a daily basis, any disruption to the Cash Management System would seriously harm the Debtors. Maintenance of the existing Cash Management System will prevent any unexpected or inopportune interruption to the Debtors’ business operations while protecting the Debtors’ cash for the benefit of their estates. Requiring the Debtors to change their Cash Management System at this critical time would cause unnecessary disruption to the Debtors and their business affairs.

73. The Cash Management System provides significant benefits to the Debtors, including the ability to: (i) closely track, and thus control, all corporate funds; (ii) ensure cash availability; and (iii) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information. The Debtors will ensure that appropriate procedures are in place so that checks issued prior to the Petition Date, but presented after the Petition Date, will not be honored absent approval from the Court. The Debtors will also maintain records of post-petition transfers within the Cash Management System, so that transfers and transactions will be documented in their books and

records to the same extent such information was maintained by the Debtors prior to the Petition Date.

74. Furthermore, if enforced, the U.S. Trustee Guidelines would cause enormous disruption to the Debtors' business and would impair the Debtors' chapter 11 efforts. I believe that maintaining the Bank Accounts is necessary to avoid delays in paying debts incurred post-petition, and to ensure as smooth a transition into chapter 11 as possible. If the Debtors are required to transfer their existing Bank Accounts, it will be disruptive, time consuming, and expensive. Likewise, it would be costly and disruptive to require the Debtors to begin using new stationary and business forms.

75. Finally, the success of the Debtors' chapter 11 efforts is dependent upon, among other things, the ability to process customer credit and debit card transactions. The ability to pay Card Processing Fees, including related pre-petition amounts, is critical to the Debtors' successful prosecution of the Chapter 11 Cases, as any inability on the Debtors' part to continue to satisfy pre-petition obligations with respect to Card Processing Fees I believe threatens the Debtors' ability to maximize estate value.

76. Accordingly, on behalf of the Debtors, I respectfully request that the Cash Management Motion be approved.

- ix. Debtors' Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 507(a)(4) and 507(a)(5) of the Bankruptcy Code, (A) Authorizing (I) Payment of Prepetition Employee Wages, Salaries and Other Compensation; (II) Payment of Prepetition Employee Business Expenses; (III) Contributions to Prepetition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course; (IV) Payment of Workers' Compensation Obligations; (V) Payments for Which Prepetition Payroll Deductions Were Made; (VI) Payment of All Costs and Expenses Incident to the Foregoing Payments and Contributions; and (VII) Payment to Third Parties of All Amounts Incident to the Foregoing Payments and Contributions; and (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto (the "Employee Wage Motion")***

77. The Debtors request the entry of an order: (a) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to (i) pay prepetition employee wages, salaries and other accrued compensation, (ii) pay prepetition employee business expenses, (iii) make contributions to prepetition benefit programs and continue such programs in the ordinary course of their business, (iv) honor workers' compensation obligations, (v) make payments for which prepetition payroll deductions were made, (vi) pay processing costs and administrative expenses relating to the foregoing payments and contributions, and (vii) make payments to third parties incident to the foregoing payments and contributions, and (b) authorizing banks and other financial institutions to honor and process check and electronic transfer requests related to the foregoing.

78. As of April 17, 2017, the Debtors employed approximately 4,400 Employees. Approximately 215 of the Debtors' Employees are salaried, with the balance serving as hourly employees. In addition, approximately 10 of the Employees are employed by the Debtors on a temporary basis. None of the Employees are union members.

79. The Employees perform a variety of critical functions for the Debtors, and their knowledge, skills and understanding of the Debtors' infrastructure, business operations and vendor relations is essential to the success of the Chapter 11 Cases. Without the continued service and dedication of the Employees, it will be difficult, if not impossible, to operate the Debtors' business without an unexpected or inopportune interruption and to prosecute the Chapter 11 Cases in a manner that will maximize the value of the Debtors' estates. The Employees have an intimate knowledge of the Debtors' infrastructure and operations, and any deterioration in the Employees' morale and welfare at this critical time undoubtedly would adversely impact the

Debtors and the success of these cases. Additionally, maintaining the Workers' Compensation Program is justified because applicable state law mandates this coverage.

80. Thus, to operate the Debtors' business without an unexpected or inopportune interruption and to prosecute the Chapter 11 Cases in a manner that will maximize the value of the Debtors' estates and to minimize the personal hardship that the Employees will suffer if prepetition Employee-related obligations are not paid when due or as otherwise expected, and to maintain Employee morale and a focused workforce during this critical time, the Debtors believe that it is necessary and in the best interest of their estates and all stakeholders to seek the relief requested herein.

81. Accordingly, on behalf of the Debtors, I respectfully request that the Wages Motion be approved.

- x. ***Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Assume the Disposition Agreement; (II) Authorizing and Approving the Conduct of Store Closing Sales, with Such Sales To Be Free and Clear of All Liens, Claims, and Encumbrances; (III) Approving the Debtors' Store Closing Plan; and (IV) Granting Related Relief (the "Store Closing Sale Motion")***

82. Through the Store Closing Sale Motion, the Debtors request entry of the Proposed Orders, (i) authorizing the Debtors, upon entry of the Proposed Final Order, to assume the Agreement, (ii) authorizing the Debtors to conduct Store Closing Sales in accordance with the terms of the Agreement and the Sale Guidelines, with such sales to be free and clear of all liens, claims, and encumbrances, (iii) approving the Debtors' Store Closing Plan, and (iv) granting certain related relief.

83. Prior to the Petition Date, the Debtors, in consultation with their professional advisors, completed a comprehensive review of the performance of all of their retail stores to analyze, among other things, the profitability and viability of each store location. These

efforts culminated in the Store Closing Plan, which the Debtors continue to refine from time to time, whereby the Debtors have (i) sought to reject the Dark Stores *nunc pro tunc* to the Petition Date, and (ii) planned an orderly exit from 19 underperforming and/or unprofitable store locations in an effort to conserve resources and maximize utility. The store closing sales at 3 of these 19 underperforming and/or unprofitable store locations finished prior to the filing of the Chapter 11 Cases, and the Debtors have sought to reject the leases for these locations effective as of the Petition Date.

84. To implement the Store Closing Plan in connection with the Chapter 11 Cases and maximize the value of their assets for the benefit of their estates and creditors, the Debtors seek authority, but not the obligation, to conduct store closing sales at all of the Remaining Stores. Although the Debtors seek authority, but not direction, pursuant to the Store Closing Sale Motion to conduct store closing sales at all of their Remaining Stores, the Debtors, at this time, have determined to conduct such sales only at the Initial Closing Stores, and not at the Core Stores. However, the Debtors, in their business judgement, may determine that it is necessary and prudent to conduct Additional Store Closing Sales at some or all of the Core Stores (any such stores at which Additional Store Closing Sales are conducted, collectively, the “**Additional Closing Stores**”), and therefore, through the Store Closing Sale Motion, they request authority, but not direction, to conduct store closing sales at all of their Remaining Stores, including the Core Stores.

85. As part of the Store Closing Plan, in February 2017, the Debtors, in consultation with their secured pre-petition lenders, contacted the Agent, a nationally-recognized liquidator, to conduct the Store Closing Sales. The Debtors discussed the Store Closing Sales with such nationally-recognized liquidator firms and solicited bids from them to conduct the

same. After determining that the Agreement and the compensation structure provided for therein appeared to be reasonable and marked-based, the Debtors engaged the Agent to conduct the Store Closing Sales, and determined to liquidate the Store Closing Assets at each of the Closing Stores in accordance with the terms of the Agreement and the Sale Guidelines.

86. I believe that the Debtors' decision to continue the Store Closing Sales at the Initial Closing Stores, and establishing a path to conduct the Store Closing Sales at any Core Stores should it be necessary, represents the best path forward for maximizing recoveries to the Debtors' estates with respect to the Store Closing Assets. Efficient and effective liquidation sales and procedures, as contemplated in the Proposed Orders, the Agreement, and the Sale Guidelines, and the services to be provided by Hilco under the Agreement, will allow the Debtors to quickly vacate the Closing Stores (and any Core Stores that become Additional Closing Stores) and avoid the accrual of unnecessary administrative expenses, while maximizing the value of the Store Closing Assets for the benefit of all stakeholders.

87. Further, I believe that the terms set forth in the Agreement are fair and equitable, and present the best path forward for the Debtors and their estates with respect to winding down some or all of their business operations. Failure by the Debtors to continue performing pursuant to the Agreement at this point would lead only to unnecessary delay and expense that would, in turn, disrupt the Debtors' efforts to maximize value for their estates. Among other things, the Debtors and their professional advisors would be compelled to devote valuable time and effort, at considerable expense to the Debtors and their estates, to locating new agents to conduct the Store Closing Sales. Given the effectiveness of the Debtors' prepetition efforts to obtain the best possible terms for liquidation of the Store Closing Assets, I believe the

Debtors would be unable to locate alternate agents willing to conduct the Store Closing Sales with terms as favorable to the Debtors and their stakeholders as those set forth in the Agreement.

88. Therefore, on behalf of the Debtors, I respectfully request that the Store Closing Sale Motion be approved.

xi. Debtors' Motion for Interim and Final Orders (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection, (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b), and (D) Granting Related Relief (the "Cash Collateral Motion")

89. Through the Cash Collateral Motion, the Debtors request entry of an order: (a) authorizing the Debtors to use Cash Collateral; (b) providing adequate protection with respect to the diminution in value, if any, of the interests of the Senior Lien Agent and the Junior Noteholder as may result from the use of Cash Collateral; (c) scheduling, pursuant to Bankruptcy Rule 4001, a Final Hearing granting the relief requested in the Cash Collateral Motion on a final basis pursuant to a Final Order; and (d) granting related relief.

90. The Debtors require immediate access to Cash Collateral to ensure that they are able to continue the operation of their businesses, as the Cash Collateral is the Debtors' sole source of funding for their operations and the costs of administering the chapter 11 process. Absent authority to immediately use Cash Collateral, the Debtors would suffer irreparable harm because the Debtors would immediately cease operations, which, in turn, would cause an immediate and pronounced deterioration in the value of the Debtors' business. Thus, the Debtors' access to Cash Collateral is absolutely necessary to preserve and maximize value for the benefit of all of the Debtors' stakeholders.

91. Access to existing Cash Collateral on an interim basis will provide the Debtors with the liquidity necessary to ensure that the Debtors have sufficient working capital and liquidity to operate their business and thus preserve and maintain the going concern value of the

Debtors' estates. Without such access to liquidity, the Debtors' ability to navigate through the chapter 11 process will be jeopardized, to the detriment of the Senior Lien Agent and the Junior Noteholder and all of the Debtors' other stakeholders. As a result, the Debtors have an immediate need to use Cash Collateral to ensure sufficient liquidity throughout the pendency of the Chapter 11 Cases.

92. For the reasons noted above, the Debtors have determined, in the exercise of their sound business judgment, that they require the use of Cash Collateral to preserve and maximize value for the benefit of all of the Debtors' stakeholders. Entry of the proposed Interim Order is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

93. Accordingly, on behalf of the Debtors, I respectfully request that the Cash Collateral Motion be approved.

xii. Motion to Shorten for Bidding Procedures Motion

94. Pursuant to the Motion to Shorten, the Debtors seek entry of an order (i) shortening the notice period with respect to the hearing (the "**Bidding Procedures Hearing**") to consider entry of the order approving the Bidding Procedures, so that the matter can be heard on or before May 24, 2017, and (ii) authorizing the Debtors to publish and serve the form of notice of the Sale in advance of the Bidding Procedures Hearing to provide as much notice as possible of the Sale under the circumstances of the Chapter 11 Cases.

95. As discussed above, the Bidding Procedures will facilitate a timely and efficient auction and sale process that will preserve and maximize the value of the Debtors' estates by generating the highest or best value for the assets and avoiding any unnecessary administrative expenses in connection with the Chapter 11 Cases. The terms of the Debtors' consensual access to cash collateral—which is conditioned on the Debtors' achievement of certain

milestones during the Chapter 11 Cases—and the Debtors’ liquidity position only afford the Debtors an opportunity to market and sell their assets on the timeline contemplated by the Bidding Procedures. The Debtors must be in a position to either assume and assign or reject the Core Stores by the June 19, 2017 closing date contemplated by the Bidding Procedures, as July rent for a number of the Core Stores will come due on June 25th, and the Debtors are not in a position to incur July rent for such leases. If the Debtors are unable to execute the sale process and obtain value for the Assets within the contemplated timeline for the Chapter 11 Cases, the Debtors could be left with no other option but to immediately commence store closing sales at the Core Stores, which will result in a fire-sale liquidation of the Assets.

96. I also believe that a timely and efficient auction and sale process, such as that contemplated by the Bidding Procedures, is necessary to stabilize the Debtors’ businesses and provide assurances to the Debtors’ existing vendors and customers.

97. Accordingly, on behalf of the Debtors, I respectfully request that the Motion to Shorten be approved.

CONCLUSION

In furtherance of their chapter 11 efforts, for the reasons stated herein and in each of the First Day Motions, the Debtors respectfully request that the relief sought in the First Day Motions be approved.

Dated: May 11, 2017

/s/ Lee A. Diercks

Lee A. Diercks, Chief Restructuring Officer

EXHIBIT A

Organizational Chart

