

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

In re

ULTIMATE ACQUISITION,  
PARTNERS, LP, *et al.*,<sup>1</sup>

Debtors.

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Chapter 11  
Case No. 11-10245 (MFW)

Jointly Administered  
Objection Deadline: TBD  
Hearing Date: TBD

**MOTION OF DEBTORS AND DEBTORS IN POSSESSION FOR AN  
ORDER APPROVING STORE LIQUIDATING CONSULTANTS, CONSULTANT  
AGREEMENT, STORE CLOSING SALES AND RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this motion (the “Motion”) seeking entry of an order: (a) authorizing the Debtors to retain Gordon Brothers Retail Partners, LLC (“Gordon”) and Hilco Merchant Resources, LLC (“Hilco”, and together with Gordon, the “Consultants”) as liquidating consultants; (b) authorizing the Debtors to close their retail stores and other locations; (c) authorizing the Debtors to conduct store closing sales free and clear of liens pursuant to sections 363(b) and (f) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”); (d) authorizing the Debtors to enter into a liquidation consulting agreement providing for the liquidation of merchandise inventory and other assets with the Consultants; and (e) granting such other related relief as may be appropriate. In support of the Motion, the Debtors rely upon and incorporate by reference the Declaration of F. Bruce Giesbrecht (“Giesbrecht Declaration”), attached as Exhibit A, and respectfully represent:

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<sup>1</sup> The Debtors and the last four digits of their respective tax payer identification numbers are as follows: Ultimate Acquisition Partners, LP (2837) and CC Retail, LLC (7780). The Debtors’ address is 321 West 84<sup>th</sup> Avenue, Suite A, Thornton, Colorado 80260.



## **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 327(a), 328 and 363 of title 11 of the Bankruptcy Code, Rules 2002, 2014, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

## **BACKGROUND<sup>2</sup>**

2. On January 26, 2011 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

3. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. No trustee, examiner or official committee of unsecured creditors (“Committee”) has been appointed in the Debtors’ cases.

## **RELIEF REQUESTED**

5. The Debtors filed their chapter 11 petitions as a result of a variety of negative factors related to their businesses. These factors included a significant loss in their operations for the 11 months ending December 31, 2011, a loss of vendor support in providing goods and services to the Debtors and a loss of liquidity. Subsequent to the Petition Date, the Debtors’

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<sup>2</sup> A detailed description of the Debtors and their businesses, and the facts and circumstances supporting the Debtors’ chapter 11 cases, is set forth in greater detail in the Declaration of F. Bruce Giesbrecht in Support of Chapter 11 Petitions and First Day Pleadings filed on the Petition Date.

management has continued to analyze the Debtors' operations and the options available to the Debtors to maximize the value of their assets for the benefit of their estates. The analysis has included a review of the profitability of the Debtors' stores, the ability of the Debtors to obtain delivery of additional goods post-petition, the position of the Debtors' secured lender General Electric Capital Corporation ("GECC"), the availability of the Debtors' continued use of cash collateral, and customer store traffic in light of the chapter 11 filings. The Debtors were aided in this analysis with the support of their consultants and financial advisors, FTI Consulting, Inc. and Falcon Advisors, Inc.

6. As set forth in the Giesbrecht Declaration, which is incorporated herein in its entirety, the Debtors have determined that an organized sale of their existing inventory in all forty-six (46) of their retail stores, utilizing a "going out of business structure", is in the best interest of their estates and their creditors.. First, the Debtors do not have any debtor-in-possession ("DIP") financing and have not secured any DIP financing. Accordingly, they do not have the requisite funding to operate their businesses as a going concern on a prospective basis. Second, GECC has not agreed to permit the Debtors to use their cash collateral to acquire new inventory for their stores. Third, the Debtors are concerned that the assets will lose value if an immediate liquidation of their assets does not occur because inventory is not being replenished with newer model merchandise. Moreover, delays in the liquidation process could cause the inventory in the closing stores to become unbalanced or out of "season", thus, reducing the value of the Merchandise (as defined below). Fourth, the Debtors are concerned about shrinkage in the retail market environment, thereby further reducing the value of the assets. Commencing the store closing sales (the "Store Closing Sales") expeditiously avoids the risk of inventory "shrink." Finally, the Debtors have analyzed other business models and alternatives short of

liquidation of the assets of the estate and, based thereon, have determined that the highest and best value of the assets of the estates will be achieved for the benefit of their creditors through a liquidation sale. If the Debtors are not able to effectuate a quick and efficient liquidation of their assets, they will lose money and experience a drain on liquidity. The sooner the Debtors' assets are liquidated (and the closing stores' leases are either sold or rejected), the sooner the Debtors will be able maximize the value of the assets for the benefit of all of the creditors of their estates.

7. The Debtors propose engaging in an orderly wind-down of their operations through sales of inventory from each of their store locations, as identified on Exhibit B. Depending on the progress of the sales, the Debtors will close their various stores at various points during the Store Closing Sales, reposition inventory in other stores as needed and seek appropriate orders from the Court authorizing the Debtors to reject their various leases, if a purchaser of the Debtors' leaseholds is not found.

8. In order to maximize the value of the inventory to be included in the Store Closing Sales at the closing stores (the "Merchandise") and the owned furniture, fixtures and equipment in the closing stores (the "Owned FF&E," and together with the Merchandise, the "Liquidation Assets"), the Debtors intend to obtain the assistance of the Consultants who specialize in, among other things, the large scale liquidation of the Liquidation Assets on this type and scale. Through the use of the Consultants, the Debtors will ensure the most feasible, economical, and efficient means of achieving the disposition of the Liquidation Assets.

#### **THE PROPOSED LIQUIDATING CONSULTANTS, CONSULTING AGREEMENT AND STORE CLOSING SALES**

9. The Debtors propose to commence the Store Closing Sales immediately following the Hearing on this Motion, and thereby stem the losses resulting from the continued operation of the Debtors. The Debtors also seek authority to enter into the consulting agreement (attached as

Exhibit C and incorporated herein, the “Consulting Agreement”) to allow the Consultants to serve as the Debtors’ liquidating consultants in conducting the Store Closing Sales in a manner consistent with the Sales Guidelines attached hereto as Exhibit D, which procedures and guidelines are typical of and consistent with those that have been approved in this and other districts nationwide in similar transactions.

10. The Debtors believe that retaining the Consultants to act as the Debtors’ liquidation consultants in connection with the conduct of the Store Closing Sales is the best way to maximize the value of the Liquidation Assets. Toward that end, the Debtors request that the Court approve the Consulting Agreement.

11. The Debtors believe that the Consultants are uniquely qualified to assist with the Store Closing Sales because, among other reasons, Gordon has performed appraisals of, and is knowledgeable about, the composition and value of the Debtors’ inventory. Additionally, both of the Consultants have expertise in operating and liquidating multi-store electronics retail chains where, as here, the inventory will not be replaced once sold.

12. The Debtors believe that the retention of the Consultants is necessary to assist them in maximizing the value of their assets for the benefit of their estates.

### **STORE CLOSING SALES NOTICE**

13. Under Bankruptcy Rule 2002(a) and (c), the Debtors are required to notify their creditors of the terms and conditions of the Store Closing Sales. In furtherance of that goal, the Debtors prepared the notice attached hereto as Exhibit E (the “Store Closing Sales Notice”). The Debtors respectfully request that the form of the Store Closing Sales Notice be approved and that service of the Store Closing Sales Notice be made on or before the second business day after the Hearing on this Motion on: (i) the Office of the United States Trustee; (ii) counsel to GECC; (iii) counsel to the Committee, if one is appointed; (iv) the top 30 creditors of the Debtors’

estates, on a consolidated basis; (v) all parties known to be asserting a lien in the Debtors' Liquidation Assets; (vi) each of the Debtors' landlords for the closing stores; (vii) all state attorneys general in states in which the closing stores are located; (viii) various federal and state tax and environmental authorities, including the Internal Revenue Service and the Environmental Protection Agency; and (ix) all entities requesting notice pursuant to Bankruptcy Rule 2002. The Debtors request that such notice be deemed adequate and sufficient notice as required by the Bankruptcy Rules.

**APPROVAL OF STORE CLOSING SALES UNDER  
SECTION 363 AND FOR THE SALE OF MERCHANDISE  
FREE AND CLEAR OF ALL ENCUMBRANCES IS WARRANTED**

14. Section 363(b)(1) of the Bankruptcy Code provides:

The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate

11 U.S.C. § 363(b)(1); *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)).

15. To obtain Court approval to use property under section 363(b) of the Bankruptcy Code for the purpose of a store closing sale, the Debtors must articulate a business reason for the proposed action. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991)); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070-71 (2d Cir. 1983); *In re Abbotts Dairies, Inc.*, 788 F.2d 143, 147-48 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of *Lionel Corp.* and requiring good faith); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (concluding that the Third Circuit adopted the “sound business judgment” test in the *Abbotts Dairies* decision); *Dai-Icho Kangyo Bank v.*

*Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (Bankr. D. Del. 1999) (same).

16. When a valid business justification exists, the law vests the debtor's decision to use its property with a strong presumption "that in making a business decision[,] the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990) (holding that the Delaware business judgment rule has "vitality by analogy" in chapter 11, especially where the debtor is a Delaware corporation) (quotations omitted); *In re Delaware and Hudson Ry. Co.*, 124 B.R. at 176; *accord In re Decora Indus., Inc.*, 2002 WL 32332749 at \*3 (D. Del. 2002); *see also In re Integrated Res., Inc.*, 147 B.R. at 656 (parties challenging a debtor's sound business decision must show bad faith, self-interest or gross negligence).

17. Ample business justification exists in these cases to approve the proposed Store Closing Sales. The Debtors, with the assistance of their advisors, have determined to liquidate their businesses by means of the Store Closing Sales as set forth in the Consulting Agreement, and begin liquidating the Liquidation Assets. Time is of the essence to preserve and maximize the value of the Debtors' assets before the Merchandise significantly declines in value, and to reduce on-going administrative expenses. Each of the Debtors' stores contains significant levels of Merchandise that will be included in the Store Closing Sales. The realization of fair value for these assets as promptly as possible will inure to the benefit of all parties in interest. Therefore, the Debtors propose to commence the Store Closing Sales immediately upon Court approval of the Consulting Agreement.

18. Store closing or liquidation sales are a routine occurrence in chapter 11 cases involving retail debtors. *See In re Ames Dept. 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”). Bankruptcy courts in this District have approved similar store closing sales. *See, e.g., In re Tweeter Home Entm’t Group, Inc.*, Ch. 11 Case No. 07-10787 (NW) (Bankr. D.Del. July 13, 2007) (final order authorizing debtor to continue store closing sales pursuant to store closing agreement); *In re Three A’s Holdings, L.L.C.*, Ch. 11 Case No. 06-10886 (BLS) (Bankr. D.Del. Sept. 25, 2006) (order authorizing, among other things, agent to conduct store closing sales); *In re M T S Inc.*, Ch. 11 Case No. 04-10394 (PJW) (Bankr. D. Del, Mar, 2, 2004) (same); *In re Wherehouse Entm’t, Inc.*, Ch. 11 Case No. 03-10224 (PJW) (Bankr. D.Del. Feb. 21, 2003) (same); *In re Zany Brainy, Inc.*, Ch. 11 Case No. 01-1749 (MFW) (SLR) (Bankr. D. Del. Oct. 11, 2001) (same).

**THE COURT SHOULD WAIVE COMPLIANCE WITH ANY STATE AND LOCAL LAWS, STATUTES, RULES AND ORDINANCES RESTRICTING STORE CLOSING SALES.**

19. 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. By virtue of 28 U.S.C. § 1334, this Court has exclusive jurisdiction over the Debtors’ property wherever located. 28 U.S.C. § 1334. 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.

20. The Bankruptcy Code preempts state and local laws that conflict with its underlying policies. *See Belculfine v. Aloe (In re Shenango Group, Inc.)*, 186 B.R. 623, 628 (Bankr. W.D. Pa. 1995) (“Trustees and debtors-in-possession have unique fiduciary and legal obligations pursuant to the bankruptcy code.’ ... ‘[A] state statute[] cannot place burdens on them



where the result would contradict the priorities established by the federal bankruptcy code.”), *aff’d*, 112 F.3d 633 (3d Cir. 1997). While preemption of state law is not always appropriate, *see Baker & Drake, Inc. v. Public Serv. Comm’n of Nev. (In re Baker & Drake, Inc.)*, 35 F.3d 1348, 1353-54 (9th Cir. 1994) (holding that Bankruptcy Code did not preempt state law prohibiting taxicab leasing that was promulgated in part as public safety measure), preemption is appropriate where, as here, the only state laws involved concern economic regulation rather than the protection of public health and safety.<sup>3</sup> *See id.* at 1353 (finding that “federal bankruptcy preemption is more likely. . . where a state statute is concerned with economic regulation rather than with protecting the public health and safety”); *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).

21. In the instant cases, 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 the Debtors’ ability to marshal and maximize estate assets for the benefit of creditors. Accordingly, authorizing the Store Closing Sales without the delays and burdens associated with obtaining various state and local licenses, observing state and local waiting periods or time limits, and/or satisfying any additional requirements with respect to advertising and the like is necessary and appropriate.

22. 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) (same), *cert.*

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<sup>3</sup> The Debtors will comply with applicable state and local public health and safety laws (“Safety Laws”), and applicable tax, labor, employment, environmental, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, “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).

23. The requested waiver is narrowly tailored to facilitate the successful consummation of the Store Closing Sales. The Debtors do not seek a general waiver of all state and local requirements, but only those that apply specifically to liquidation sales. As noted above, the Debtors fully intend to be bound by and comply with all Consumer and Safety Laws, and will require that the Consultants do the same.

24. Similar relief has been granted in other bankruptcy cases in this District. *See, e.g., In re Tweeter Home Entm't Group, Inc.*, Ch. 11 Case No. 07-10787 (PM) (Jointly Administered) (Bankr. D. Del, July 13, 2007) (final order authorizing debtor to continue store closing sales pursuant to store closing agreement); *In re Three A's Holdings, L.L.C.*, Ch. 11 Case No. 06-10886 (BLS) (Jointly Administered) (Bankr. D. Del. Sept, 25, 2006) (order authorizing, among other things, agent to conduct store closing sales); *In re M T S Inc.*, Ch. 11 Case No. 04-10394 (PJW) (Bankr. D. Del. Mar. 2, 2004) (same); *In re Zany Brainy, Inc.*, Ch. 11 Case No. 01-1749 (MFW) (Bankr. D. Del. Oct. 11, 2001) (SLR) (same).

**THE COURT SHOULD WAIVE ANY RESTRICTION IN THE LEASES AS UNENFORCEABLE**

25. Certain of the leases governing the premises of the closing stores (the "Leases") may contain provisions purporting to restrict or prohibit the Debtors from conducting store closing, liquidation, or similar sales. Such provisions have been held to be unenforceable in chapter 11 cases as they constitute an impermissible restraint on a debtor's ability to properly administer its reorganization case and maximize the value of its assets under section 363 of the Bankruptcy Code. *See, 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 R. H. Macy and Co., Inc.*, 170 B.R. 69, 73-74 (Bankr. S.D.N.Y. 1994) (holding that the lessor could not recover damages for breach of a covenant to stay open because the debtor had a duty to maximize the value to the estate and the debtor fulfilled this obligation by holding a store closing sale and closing the store); *In re Tobago Bay Trading Co.*, 112 B.R. 463, 467-68 (Bankr. N.D. Ga. 1990) (finding that a debtor’s efforts to reorganize would be significantly impaired to the detriment of creditors if lease provisions prohibiting a debtor from liquidating its inventory were enforced); *In re Lisbon Shops, Inc.*, 24 B.R. 693, 695 (Bankr. E.D. Mo. 1982) (holding restrictive lease provision unenforceable in Chapter 11 case where debtor sought to conduct going-out-of-business sale).

26. As such, to the extent that such provisions or restrictions exist in any of the Leases of the closing stores, such landlords may not interfere with or otherwise seek to restrict the Debtors and/or the Consultants from conducting the Store Closing Sales. Accordingly, the Debtors request that the Court authorize the Debtors and/or the Consultants to conduct the Store Closing Sales without interference by any landlords or other persons affected, directly or indirectly, by the Store Closing Sales.

27. Bankruptcy courts in this District have held that restrictive lease provisions affecting store closing sales in chapter 11 cases are unenforceable. *See, e.g., In re Tweeter Home Entm’t Group, Inc.*, Ch. 11 Case No. 07-10787 (PJW) (Jointly Administered) (Bankr. D. Del. July 13, 2007) (final order authorizing debtor to continue store closing sales pursuant to store closing agreement); *In re Three A’s Holdings, L.L.C.*, Ch. 11 Case No. 06-10886 (RLS) (Jointly Administered) (Bankr. D. Del. Sept. 25, 2006) (order authorizing, among other things, agent to conduct store closing sales); *In re MTS, Inc.*, Ch. 11 Case No. 04-10394 (BLS) (Bankr. D. Del. Mar. 2, 2004) (same); *In re Wherehouse Entm’t, Inc.*, Ch. 11 Case No. 03-10024 (PJW) (Bankr.

D. Del. Feb. 21, 2003) (same); *In re Zany Brainy, Inc.*, Ch. 11 Case No. 01-1749 (MFW) (opinion by Robinson, D.J.) (Bankr. D. Del. Oct. 11, 2001) (same); *In re Just For Feet, Inc.*, Case No. 99-4110 (RRM) (Bankr. D. Del. Nov. 26, 1999) (same); *In re London Fog, Inc.*, Case No. 99-3446 (PJW) (Bankr. D. Del. Oct. 7, 1999) (same).

**A SALE OF LIQUIDATION ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES IS WARRANTED**

28. The Debtors request approval to sell the Liquidation Assets subject to the Consulting Agreement, on a final “as is” basis, free and clear of any and all liens, claims and encumbrances in accordance with section 363(f) of the Bankruptcy Code. A debtor in possession may sell property under sections 363(b) and 363(f) “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:

- applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- such entity consents;
- 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;
- such interest is in bona fide dispute; or
- 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); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that since section 363(f) is written in the disjunctive, the court may approve a sale free and clear if any one subsection is met). GECC, which is secured by, among other things, the Liquidation Assets, has consented to the sale of the Liquidation Assets. With respect to any other party asserting a lien, claim, or encumbrance against the Merchandise or the Owned FF&E, the Debtors anticipate that they will be able to satisfy one or more of the

conditions set forth in section 363(f). In connection with the sale of the Liquidation Assets pursuant to the terms and conditions of the Consulting Agreement, the Debtors propose that any liens, claims, and encumbrances asserted against the Merchandise be transferred to and attach to the amounts payable to the Debtors under the Consulting Agreement, in the same order of priority and subject to the rights, claims, defenses, and objections, if any, of all parties with respect thereto, provided that the Debtors' share of the proceeds of the Store Closing Sales shall be applied in accordance with any interim or final orders approving DIP financing herein.

### **REQUEST FOR WAIVER OF STAY**

29. In addition, by this Motion, the Debtors seek a waiver of any stay of the effectiveness of any order approving the relief requested in this Motion. Pursuant to Bankruptcy Rule 6004(h), an order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth above, the Debtors are facing significant liquidity constraints and the continued delay in selling the Liquidation Assets will further decrease the value of the Liquidation Assets. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d), to the extent that they apply.

### **REQUEST FOR AUTHORITY TO PAY STAY INCENTIVES TO KEY EMPLOYEES**

30. Because the Debtors will no longer operate as a going concern, the Debtors anticipate a noticeable increase in employee turnover. This turnover threatens the Debtors' ability to implement the Store Closing Sales, liquidate the Debtors' businesses and maximize value for their estates and their creditors. Thus, to successfully complete the liquidation of the Debtors' remaining operations effectively and efficiently, the Debtors determined that formulating an incentive bonus plan was in the best interest of their estates and creditors. Such a plan would help ensure that employees who are essential to the

liquidation process and critical to managing the effective and timely liquidation of the Debtors' stores are retained and appropriately motivated to maximize value (the "Key Employees"). The Key Employees include the Debtors' retail store managers, assistant managers and other employees who have oversight responsibilities for the Debtors' stores. Importantly, none of the Key Employees are Insiders of the Debtors as that term is defined in section 101 of the Bankruptcy Code.

31. Courts have found that a debtor's use of reasonable performance bonuses and other incentives for employees is a valid exercise of a debtor's business judgment. *See, e.g., In re America West Airlines, Inc.*, 171 B.R. 674, 678 (Bankr. D.Ariz. 1994) (noting that it is the proper use of a debtor's business judgment to propose bonuses for employees who helped propel the debtor successfully through the bankruptcy process); *In re Interco Inc.*, 128 B.R. 229, 234 (Bankr. E.D.Mo. 1991) (stating that a debtor's business judgment was controlling in the approval of a "performance/retention program").

32. More importantly, perhaps, even after the recent amendments to the Bankruptcy Code, courts have approved employee bonus programs as valid exercises of business judgment. *See, e.g., In re Blue Water Automotive Systems, Inc.*, Case No. 08-43196 (McIvor, J.) (Bankr. E.D. Mich. May 12, 2008) (approving incentive payments to employees in connection with a potential sale of assets); *In re Nellson Nutraceutical, Inc.*, 68 B.R. 787, 801 (Bankr. D. Del. 2007) (Bankruptcy Code section 503(c)(1) does not restrict incentive payments to noninsider employees); *In re Dana Corp.*, 358 B.R. 567 (Lifland, J.) (Bankr. S.D.N.Y. Nov. 30, 2006) (approving management incentive plan under the business judgment standard), *appeal docketed* Case No. 07-CV-01888 (PKC) (S.D.N.Y. Mar. 5, 2007) (appeal dismissed by consent of parties); *In re Global Home Prods., LLC*, 369 B.R.

778 (Bankr. D. Del. 2007) (approving management incentive program for benefit of nine employees of the debtors provided that such employees fulfilled their obligations to the debtors through the closing of a sale of substantially all of the Debtors' assets).

33. Accordingly, the Debtors request authority from the Court to pay mutually agreeable incentive and retention bonuses to Key Employees, of up to ten percent (10%) of the Key Employees' annual base salary (the "Incentive Bonus"). The Debtors believe that their ability to pay the Incentive Bonus is crucial in order to retain these critical store employees during the liquidation of the Debtors' business and to ensure an orderly liquidation of the Debtors' stores.

### **NOTICE**

34. Notice of this Motion has been provided to (i) the Office of the United States Trustee; (ii) counsel to GECC; (iii) counsel to the Committee, if any; (iv) the top 30 creditors; (v) all parties known to be asserting a lien in the Debtors' Liquidation Assets; (vi) each of the Debtors' landlords for the closing stores; (vii) all state attorneys general in states in which the closing stores are located; (viii) various federal and state tax and environmental authorities, including the Internal Revenue Service and the Environmental Protection Agency; and (ix) all entities having filed a request for the notice pursuant to Bankruptcy Rule 2002 in these chapter 11 cases. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

### **NO PRIOR REQUEST**

35. No previous application for the relief requested herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request the entry of an Order substantially in the form attached hereto as Exhibit F granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: February 4, 2011  
Wilmington, Delaware

**CAMPBELL & LEVINE, LLC**

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*Proposed Counsel for Debtors and Debtors-in-Possession*



## Exhibit A

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re

ULTIMATE ACQUISITION,  
PARTNERS, LP, *et al.*,<sup>1</sup>

Chapter 11  
Case No. 11-10245 (MFW)

Jointly Administered

Debtors.

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**DECLARATION OF F. BRUCE GIESBRECHT IN SUPPORT OF MOTION OF  
DEBTORS AND DEBTORS IN POSSESSION FOR AN ORDER APPROVING  
STORE LIQUIDATING CONSULTANT, CONSULTANT AGREEMENT,  
STORE CLOSING SALES AND RELATED RELIEF**

F. Bruce Giesbrecht, being duly sworn, deposes as follows:

1. I am the Chief Executive Officer and Secretary of Ultimate Acquisition Partners, LP (“UAP”), a Delaware limited partnership, and the President of CC Retail, LLC (“CC Retail”), a Delaware limited liability company (UA and CC Retail are hereinafter collectively referred to as the “Debtors”). I am personally familiar with and competent to testify to the facts set forth in this Declaration. If called as a witness, I could and would testify consistent with the representations set forth herein.

2. I submit this Declaration in support of the Motion of Debtors and Debtors in Possession for an Order Approving Store Liquidating Consultants, Consultant Agreement, Store Closing Sales and Related Relief (“Motion”) and the Ex Parte Motion of the Debtors to Shorten Notice and set Hearing on an Expedited Basis Regarding the Motion (“Ex Parte Motion”). By the Motion, the Debtors seek entry of an order: (a) authorizing the Debtors to retain Gordon Brothers Retail Partners, LLC (“Gordon”) and Hilco Merchant Resources, LLC (“Hilco”, and

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<sup>1</sup> The Debtors and the last four digits of their respective tax payer identification numbers are as follows: Ultimate Acquisition Partners, LP (2837) and CC Retail, LLC (7780). The Debtors’ address is 321 West 84<sup>th</sup> Avenue, Suite A, Thornton, Colorado 80260.

together with Gordon, the “Consultants”) as liquidating consultants; (b) authorizing the Debtors to close their retail stores and other locations; (c) authorizing the Debtors to conduct store closing sales free and clear of liens pursuant to sections 363(b) and (f) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”); (d) authorizing the Debtors to enter into a liquidation consulting agreement providing for the liquidation of merchandise inventory and other assets with the Consultants; and (e) granting such other related relief as may be appropriate. By the Ex Parte Motion, the Debtors seek an expedited hearing, on or before February 11, 2001, with respect to the Motion.

3. I am familiar with the Debtors’ day to day business operations and affairs, as well as their books and records.

4. As a result of my review of this information, I believe that it is essential and in the best interests of the Debtors’ estates that the Debtors be authorized to immediately proceed to conduct Store Closing Sales<sup>2</sup> as requested in the Motion because, among other reasons, any delay in commencing the Store Closing Sales would diminish the value of the assets to the detriment of the Debtors’ estates and their creditors.

5. Prior to the commencement of these bankruptcy cases, the Debtors faced a variety of negative factors related to their businesses including: (i) a significant loss in their operations for the eleven (11) months ending December 31, 2010, (ii) a loss of vendor support in providing goods and services to the Debtors, and (iii) a loss of liquidity.

6. Subsequent to the commencement of these bankruptcy cases on January 26, 2001 (the “Petition Date”), the Debtors’ management, including myself, continued to analyze the Debtors’ operations and the options available to the Debtors to maximize the value of their assets

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning given to them in the Motion.

for the benefit of their estates. The Debtors were aided in their analysis by their consultants and financial advisors, including FTI Consulting, Inc. and Falcon Advisors, Inc.

7. The analysis included, among other things, a review of the profitability of the Debtors' stores both before and after the Petition Date, the ability of the Debtors to obtain delivery of additional goods and services post-petition, the position of the Debtors' secured lender General Electric Capital Corporation ("GECC"), the availability of the Debtors' continued use of cash collateral, and customer store traffic in light of the chapter 11 filings.

8. Based on this analysis, I believe that an organized liquidation sale of the Debtors' existing inventory in all forty-six (46) of their retail stores, utilizing a "going out of business structure", is in the best interest of the Debtors' estates and their creditors for the following reasons:

a) The Debtors do not have any debtor-in-possession ("DIP") financing and have not secured any DIP financing. Additionally, GECC has not agreed to permit the Debtors to use their cash collateral to acquire new inventory for the Debtors' retail stores. Thus, the Debtors do not have the requisite funding to operate their businesses as a going concern on a prospective basis;

b) The Debtors' assets will likely lose value absent an immediate liquidation because inventory is not being replenished with newer model merchandise. As the Debtors' competitors obtain such newer model merchandise, the value of the Debtors' current merchandise will decrease;

c) Shrinkage in the retail market environment would likely further reduce the value of the assets. Commencing the Store Closing Sales expeditiously avoids the risk of inventory "shrink";

d) Other business models and alternatives short of liquidation of the assets of the estates likely would not result in a greater return to the Debtors' estates and their creditors;

e) Absent a quick and efficient liquidation of their assets, the Debtors will continue to lose money and experience a drain on liquidity and declining value of their assets;

f) The sooner the Debtors' assets are liquidated (and the closing stores' leases are either sold or rejected), the sooner the Debtors will be able to eliminate the continued accrual of administrative expenses against their estates and maximize the value of their assets.

9. The retention of the Consultants who specialize in, among other things, the large scale liquidation of assets similar to the Debtors' assets will ensure the most feasible, economical and efficient means of liquidating such assets, thereby maximizing the value of same.

10. I believe that the Consultants are uniquely qualified to assist with the Store Closing Sales because, among other reasons, Gordon has performed appraisals of, and is knowledgeable about, the composition and value of the Debtors' inventory. Additionally, I understand that the Consultants have expertise in operating and liquidating multi-store electronics retail chains where, as here, the inventory will not be replaced once sold.

11. In order to motivate and retain certain key employees (*i.e.* retail store managers, assistant managers and other employees who have oversight responsibilities in the Debtors' retail stores) (collectively, the "Key Employees"), I, along with my advisors and consultants, created the incentive bonuses described in the Motion (the "Incentive Bonus Plan").

12. The Incentive Bonus Plan is an essential component of the Store Closing Sales in that it will help ensure that those employees who are essential to the liquidation process are retained and properly motivated to maximize the value of the Debtors' assets.

13. Each of the Key Employees have the necessary skill and experience to implement the Store Closing Sales as discussed in the Motion and are critical to the successful completion thereof.

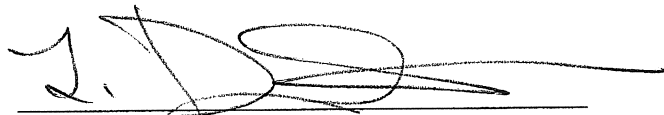
14. I am concerned that many of the Key Employees may leave the company prior to the completion of the Store Closing Sales absent approval of the Incentive Bonus Plan.

15. I believe that the cost of hiring or promoting and training other employees or individuals to replace the Key Employees, if such Key Employees should leave, will be significantly higher than the proposed payments under the Incentive Bonus Plan. The loss of knowledge alone would likely impair the Debtors' current efforts.

### CONCLUSION

For the reasons described herein and in the Motion, I believe that the best interests of the Debtors and their estates are served by granting the relief requested in the Motion and authorizing the Debtors to immediately proceed to conduct the Store Closing Sales consistent with the procedures, and with the assistance of the Consultants, as set forth in the Motion.

Dated: February 4, 2011

A handwritten signature in black ink, appearing to read 'F. Bruce Giesbrecht', is written over a horizontal line.

F. BRUCE GIESBRECHT  
CEO and Secretary of UAP and  
President of CC Retail

## Exhibit B



## Ultimate Electronics

### Store List

Store No.	Store	Address	City	State	Zip Code	Telephone No.	Square Feet
101	Flatiron Crossing	51 Flat Iron Circle #1122	Broomfield	CO	80021	(303) 425-6700	30,391
102	University Park	3909 East Evans Ave #B	Denver	CO	80210	(303) 759-5401	19,392
103	Park Meadows	9657 E County Line Rd	Englewood	CO	80112	(303) 754-0450	41,250
104	Chanson Plaza	8196 W Bowles Ave	Littleton	CO	80123	(303) 979-8900	39,074
105	Denver West	14391 W Colfax Av	Lakewood	CO	80401	(303) 277-9299	40,371
106	Boulder	1955 28th St	Boulder	CO	80301	(303) 442-3600	35,000
107	Thornton	321 W 84th Ave Ste C	Thornton	CO	80260	(303) 657-5880	39,216
110	Fort Collins	4357 Corbett Drive	Ft Collins	CO	80525	(970) 223-3666	24,000
111	Colorado Springs No	7207 N Academy Blvd	Colorado Springs	CO	80920	(719) 278-3898	34,800
601	Tulsa	10021 E 71st St S	Tulsa	OK	74133	(918) 250-3664	50,480
602	OKC I-240	515 SW 74th St	Oklahoma City	OK	73139	(405) 644-4141	37,272
603	Quail Springs	2120 W Memorial Rd	Oklahoma City	OK	73134	(405) 753-9525	33,085
1501	Bradley Fair	1800 N Rock Rd Ste 120	Wichita	KS	67206	(316) 631-1251	29,500
301	Pavilions at San Mateo (Albuquerque)	4700 Cutler Ave	Albuquerque	NM	87110	(505) 884-3005	36,926
1003	Chandler Pavilions	845 N 54th St	Chandler	AZ	85226	(480) 496-8834	33,487
1004	Arrowhead	17510 N 75th Ave	Glendale	AZ	85308	(623) 776-0455	34,827
1005	Chandler Festival	2820 W Chandler Blvd	Chandler	AZ	85224	(480) 899-5130	32,241
1006	Northsight Village (Scottsdale)	15020 N Northsight Blvd	Scottsdale	AZ	85260	(480) 951-4960	34,277
1007	Mesa Spectrum	1655 S Stapley Dr	Mesa	AZ	85204	(480) 507-2880	33,948
1008	Desert Ridge	21001 N Tatum Blvd Ste 26	Phoenix	AZ	85050	(480) 538-0801	34,195
401	Rainbow Plaza	741 S Rainbow Blvd	Las Vegas	NV	89145	(702) 258-8800	31,558
402	Tropicana	2555 E Tropicana Ave	Las Vegas	NV	89121	(702) 456-8800	33,000
702	Burnsville Plaza	14232 Burnhaven Dr	Burnsville	MN	55306	(952) 435-8933	14,456
703	Tamarack Bus Campus (Woodbury)	8401 Tamarack Rd	Woodbury	MN	55125	(651) 730-4378	36,253
704	Sportmart Plaza (Minnetonka)	12324 Wayzata Blvd	Minnetonka	MN	55305	(952) 546-4040	15,000
706	Roseville	1723 W County Rd B2	Roseville	MN	55113	(651) 636-3686	17,393
707	Centennial Lakes (Edina)	7435 France Ave S	Edina	MN	55435	(952) 830-0010	31,830
709	Shoppes at Arbor Lake (Maple Grove)	12201 Elm Creek Boulevard	Maple Grove	MN	55369	(763) 420-5983	32,373
1101	Crossings at Mid Rivers	301 Costco Way	St Peters	MO	63376	(636) 278-8223	33,305
1102	Gravois Bluffs (Fenton)	185 Gravois Bluffs Plaza Dr	Fenton	MO	63026	(636) 349-5800	34,030
1103	Olde Towne Plaza (Manchester)	14850 Manchester Rd	Ballwin	MO	63011	(636) 391-5800	33,500
1201	Lincoln Place (Fairview Hts)	5925 N Illinois St	Fairview Heights	IL	62208	(618) 235-0819	31,984
3401	Mall at Whitney Field (Leominster)	100 Commerical RD #55	Leominster	MA	01453	(978) 798-3040	39,936
4102	Crossgates Commons (Albany)	161 Washington Ave. Ext.	Albany	NY	12205	(518) 218-5070	37,261
1009	Oracle-Wetmore (Tucson)	4380 N. Oracle Rd. #E0A	Tucson	AZ	85705	(520) 292-3420	33,959
3403	Holyoke Crossing	33 Holyoke Street, Unit 5	Holyoke	MA	01040	(413) 887-6360	32,362
3901	South Broadway (Salem)	412 S. Broadway	Salem	NH	03079	(603) 824-9340	33,016
4103	Carousel Center (Syracuse)	9090 Carousel Center Dr.	Syracuse	NY	13290	(315) 484-5250	34,999
4601	Meadowbrook Crossing (York)	2980 Whiteford Rd.	York	PA	17402	(717) 781-8150	32,993
1602	Slide Road (Lubbock)	6701 Slide Rd.	Lubbock	TX	79424	(806) 698-3800	33,107
3402	King Phillips Crossing (Seekonk)	201 Highland Ave.	Seekonk	MA	02771	(508) 336-2300	28,000
5401	Greenfield	4585 South 76th St.	Greenfield	WI	53220	(414) 944-0700	42,460
1601	NW Expressway (McAllen)	507 W. Expressway 83	McAllen	TX	78503	(956) 217-3230	32,000
3404	Endicott Square (Danvers)	180 Endicott St.	Danvers	MA	01923	(978) 716-3080	36,192
4101	Walden Village (Cheektowaga)	2001 Walden Avenue	Cheektowaga	NY	14425	(716) 206-3180	33,190
4501	Cascade Ave (Tigard Ultimate Elec)	10031 SW Cascade Ave.	Tigard	OR	97223	(414) 944-0700	40,041

## Exhibit C

February 4, 2011

Ultimate Acquisition Partners, L.P.  
CC Retail LLC  
321 West 84<sup>th</sup> Avenue, Suite 1  
Thornton, CO 80260  
Attention: Mark Wattles

Re: Store Closing Project

Ladies and Gentlemen:

This letter shall serve as the agreement of the joint venture of Gordon Brothers Retail Partners, LLC and Hilco Merchant Resources, LLC (together, "Consultant") and Ultimate Acquisition Partners, L.P. and CC Retail LLC and their affiliated debtors and debtors-in-possession (collectively, "Merchant") pursuant to which Consultant shall serve as the exclusive consultant to Merchant in connection with a "going out of business," "store closing," or other mutually agreed upon themed sale ("Sale") at Merchant's forty-six (46) retail stores identified on Exhibit A (the "Stores" and each individually a "Store").

**1. RETENTION**

Merchant hereby retains Consultant as its exclusive, independent consultant to conduct the Sale at the Stores during the Sale Term, and in connection therewith, Consultant shall, throughout the Sale Term:

- (i) Recommend and implement appropriate point-of-purchase, point-of-sale, presentation and external and internal advertising and signage necessary to effectively sell all of the Merchandise in accordance with a "going out of business," "store closing" or other mutually agreed upon themed sale.
- (ii) Provide qualified supervisors with respect to the Stores, to oversee the conduct of the Sale, and to oversee the Sale process in the Stores.
- (iii) Recommend and implement expense savings strategies with respect to minimizing the Operating Expenses of the Sale and reducing corporate overhead.
- (iii) Maintain focused and constant communication with Store-level employees and managers to keep them abreast of strategy and timing and to properly effect Store-level communication by Merchant's employees to customers and others about the Sale.
- (iv) Establish and provide oversight of accounting functions for the Sale, including evaluation of sales of Merchandise by category, sales reporting and expense monitoring.
- (v) Coordinate with Merchant so that the operation of the Stores is being properly maintained including ongoing customer service and housekeeping activities.
- (vi) Recommend appropriate staffing levels for the Stores and appropriate bonus and/or incentive programs for Store employees.
- (vii) Provide recommendations for loss prevention initiatives.

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

The "Sale Term" with respect to each respective Store shall commence on the first day following entry of the "Approval Order" (but in no event later than February 12, 2011) ("Sale Commencement Date") and shall terminate no later than April 15, 2011 ("Sale Termination Date"); provided however that Consultant may from time to time establish an earlier "Sale Termination Date" with respect to any one or more Stores (on a per Store basis) upon five (5) days prior notice to Merchant. Upon the conclusion of the Sale Term at each Store, Consultant shall leave such Store in broom clean condition, subject to Consultant's right pursuant to "FF&E" below to abandon in a neat and orderly manner all unsold FF&E.

## **3. EXPENSES**

(A) All expenses incident to the conduct of the Sale and the operation of the Stores during the Sale Term shall be borne by Merchant, including without limitation the Operating Expenses and the Consultant Controlled Expenses (in each case as defined below).

(B) Consultant will advance funds for the "Consultant Controlled Expenses" (defined as all Sale advertising, promotion, signage, signwalkers, Consultant's Supervisor's fees/deferred fees/expenses, and miscellaneous, home office, due diligence, and reasonable and documented legal expenses); and Merchant shall reimburse Consultant for all such Consultant Controlled Expenses in connection with each weekly reconciliation contemplated by Section 5(B) below upon presentation of reasonable documentation for such actually-incurred expenses. Merchant shall be obligated to reimburse Consultant for the Consultant Controlled Expenses in addition to all fees, commissions, and other reimbursements contemplated by this Agreement; provided that the parties shall produce a mutually acceptable budget no later than February 9, 2011 and Consultant Controlled Expenses shall not exceed the amount of such expenses set forth in that budget without the mutual consent of Merchant and Consultant.

## **4. CONSULTANT COMPENSATION**

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

- (i) "Merchandise" shall mean all saleable inventory sold in the Stores during the Sale Term.
- (ii) "Gross Proceeds" shall mean the gross proceeds of all sales of Merchandise, warranties, and services made in the Stores during the Sale Term, net only of sales, excise and gross receipts taxes.
- (iii) "Operating Expenses" shall mean the following:
  - (a) actual Store-level occupancy expenses, on a per Store and per diem (during the Sale Term) basis, but not to exceed the per Store per diem amount set forth on Exhibit B hereto.
  - (b) payroll for Store-level employees used in connection with the Sale for actual days/hours worked during the Sale Term.
  - (c) amounts payable for benefits for Store-level employees used in connection with the Sale for actual days/hours worked during the Sale Term (including FICA, unemployment taxes, worker's compensation, and health care insurance and paid time-off benefits that accrue during the Sale Term in connection with the Sale); provided that such amounts shall not exceed 17% of the aggregate base payroll for Store-level employees used in connection with the Sale for actual days/hours worked during the Sale Term.
  - (d) retention bonuses paid to Store-level employees used in connection with the Sale not to exceed 10% of a Store-level employee's annual base salary.
  - (e) actually incurred Consultant Controlled Expenses.
  - (f) an amount equal to twenty-five thousand dollars (\$25,000) per week during the Sale Term (representing an estimate of central services to be provided by Merchant to Consultant in

connection with the Sale such as distribution center payroll, MIS support, POS support and other corporate services).

(g) Store-level local, leased line, satellite broadband connections and long distance telephone expenses incurred in the conduct of the Sale.

(h) credit card, bank card processing and other fees, chargebacks, discounts, bad debt expense, and any other bank charges in connection with the Sale.

(i) Store-level security costs (including without limitation personnel and alarm services in the Stores as well as cash shortfalls in registers).

(j) a pro-rata portion of Merchant's insurance attributable to the Merchandise.

(k) costs relating to the processing, transfer and consolidation of Merchandise between and among Stores, including delivery and freight costs.

(l) costs for additional Store-level supplies.

(m) Store-level postage, courier, and overnight mail charges.

(n) Store-level housekeeping, cleaning services, and trash removal.

There shall be no double-counting of Operating Expenses that fall into more than one category as set forth above, and to the extent an Operating Expense falls into a category with a cap, the lowest cap shall apply.

(iv) "Net Proceeds" shall mean Gross Proceeds minus Operating Expenses and the Base Fee.

(iv) "Cost Value" of the Merchandise shall be determined with reference to Merchant's books and records maintained in the ordinary course, consistent with historic periods, and consistent with the information provided by Merchant to Consultant in connection with Consultant's due diligence review of this transaction.

(v) "Retail Value" shall be determined using the gross rings method with reference to the lowest of the ticketed, shelf, PLU, or file price. For purposes of determining "gross rings", GBRP and Merchant shall jointly keep (i) a strict count of gross register receipts less applicable sales taxes, and (ii) cash reports of sales within the Store. Register receipts shall show for each item sold the retail price for such item and the markdown or discount granted by Consultant in connection with such sale. All such records and reports shall be made available to Consultant and Merchant during regular business hours upon reasonable notice. In addition, there shall be an "inferred shrink" adjustment of 1% applied to the gross rings calculation. Thus, for example, if the total gross register receipts shown as part of gross rings equal \$1,000, excluding sales and similar taxes (that \$1,000 value would be Gross Proceeds), and the total markdowns/discounts granted by Consultant shown as part of gross rings equals \$600, then the Retail Value (e.g., beginning merchandise level) would equal \$1,000+\$600 (\$1,600) plus 1% for inferred shrink, or \$1,616.

(vi) "Aggregate Recovery Percentage" shall mean the Net Proceeds divided by the aggregate Cost Value of all Merchandise.

(B) Merchant shall pay Consultant a "Base Fee" equal to three-quarters of one percent (0.75%) of the Gross Proceeds. Merchant shall pay the Base Fee weekly (in connection with each weekly reconciliation contemplated by Section 5(B) below) on account of sales made during the prior week (or partial week in the case of the first and last weekly reconciliation).

(C) In addition to the Base Fee, Merchant shall, in connection with the Final Reconciliation, pay Consultant an "Incentive Fee" calculated, on a cumulative basis, based upon the following increments:

<u>Aggregate Recovery Percentage</u>	<u>Incentive Fee</u>
Below 77.5%	No Incentive Fee
77.5% to 78.25%	Three quarters of one percent (0.75%) of the Cost Value of the Merchandise.
78.25% to 79.25%	Forty percent (40%) of all incremental Net Proceeds which are in excess of an amount equal to the dollar amount represented by a seventy-eight and one-quarter percent (78.25%) Aggregate Recovery Percentage, but which are less than an amount equal to the dollar amount represented by a seventy-nine and one-quarter percent (79.25%) Aggregate Recovery Percentage.
79.25% and Above	Twenty percent (20%) of all Net Proceeds which are in excess of an amount equal to the dollar amount represented by a seventy-nine and one-quarter percent (79.25%) Aggregate Recovery Percentage.

For example, assuming: (a) \$86.5mm of Merchandise at Cost Value; (b) Gross Proceeds of \$91.5mm; and (c) aggregate Operating Expenses of \$20.0mm; then:

- (i) the "Net Proceeds" would be \$70,813,750.
- (ii) the "Aggregate Recovery Percentage" would be 81.87% (\$70,813,750/\$86,500,000).
- (iii) the dollar amount represented by a seventy-eight and one-quarter percent (78.25%) Aggregate Recovery Percentage would be \$67,686,250.
- (iv) the dollar amount represented by a seventy-nine and one-quarter percent (79.25%) Aggregate Recovery Percentage would be \$68,551,250.
- (v) Consultant would earn a "Base Fee" of \$686,250 (0.75%\*\$91.5mm).
- (vi) Consultant would earn an Incentive Fee of \$1,447,250, calculated as the sum of:
  - a. 0.75% of \$86.5mm or \$648,750; plus
  - b. 40% of \$865,000 or \$346,000 (representing 40% of the incremental \$865,00 of Net Proceeds between \$67,686,250 and \$68,551,250; plus
  - c. 20% of \$2,262,500 or \$452,500 (representing 20% of the incremental \$2,262,500 of Net Proceeds which are in excess of \$68,551,250.
- (vii) Consultant's total Fee (Base Fee plus Incentive Fee) would be \$2,133,500.

Merchant expressly acknowledges to Consultant that it understands that the Aggregate Recovery Percentage performance hurdles and the Incentive Fee formulations have been established based upon the parties' shared expectation that (i) the aggregate Cost Value of the Merchandise included in the Sale shall be eighty-six million, five hundred thousand dollars (\$86,500,000); (ii) the Cost Value-to-Retail Value of the Merchandise included in the Sale shall be not greater than sixty-four and one quarter percent (64.25%); and (iii) Merchant will accept Consultant's recommendations concerning the operations of Sale. In the event that upon completion of the Final Reconciliation it is determined that the foregoing expectations were not materially accurate, to the detriment of the Consultant, the parties shall meet in good faith to negotiate an equitable adjustment to the Incentive Fee/Incentive Fee formulation set forth above (and if the parties are unable to negotiate such an adjustment, the Incentive Fee (which shall be in addition to the Base Fee) shall be fixed at three-quarters of one percent (0.75%) of Gross Proceeds.

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

(A) Merchant shall have control over the personnel in the Stores and shall handle the cash, debit and charge card payments for all Merchandise sold during the Sale Term in accordance with Merchant's normal cash management procedures, subject to Consultant's right to audit any such items.

(B) The parties will meet on each Wednesday during the Sale Term to review any Sale matters reasonably requested by either party; and all amounts payable or reimbursable to Consultant for the prior week (or the partial week in the case of the first and last weeks) shall be reconciled and paid immediately thereafter (including without limitation payment by Merchant on account of the Base Fee, any FF&E Commission, and reimbursement by the Merchant of all reimbursable Consultant Controlled Expenses and/or FF&E Expenses). No later than thirty (30) days following the end of the Sale, the parties shall complete a final reconciliation and settlement of all amounts contemplated by this Agreement ("Final Reconciliation"), including without limitation a final determination and payment of (i) any remaining reimbursements due to Consultant; (ii) any remaining amounts due to Consultant on account of the Base Fee; (iii) amounts (if any) due to Consultant on account of the Incentive Fee; (iv) amounts due to Consultant on account of the FF&E Commission. From time to time upon request, each party shall prepare and deliver to the other party such other reports as either party may reasonably request. Each party to this Agreement shall, at all times during the Sale Term and during the one (1) year period thereafter, provide the other with access to all information, books and records relating to the Sale and to this Agreement. All records and reports shall be made available to Consultant and Merchant during regular business hours upon reasonable notice.

(C) Merchant shall collect all sales taxes associated with the sale of Merchandise during the Sale Term, and Merchant shall be solely responsible for reporting and paying the same to the appropriate taxing authorities in accordance with applicable law.

(D) Each of Consultant and Merchant shall comply with all federal, state and local laws, rules and regulations applicable to them in connection with the transactions contemplated by this Agreement (subject to any exemptions pursuant to the Approval Order).

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

(F) Merchant acknowledges that the parties are not conducting an inventory of the merchandise to be included in the Sale, and that Consultant has made no independent assessment of the beginning levels of such merchandise, and Consultant shall not bear any liability for shrink or other loss to any merchandise.

(G) All sales of Merchandise in the Stores during the Sale shall be made in the name, and on behalf, of Merchant. All such sales shall be "final sales" and "as is," and all advertisements and sales receipts will reflect the same.

(H) The Sale will be advertised as a "going out of business," "store closing" or other mutually agreed upon themed sale; and Merchant shall provide Consultant with the right to use signs and internal and external banners and signwalkers reflecting this message without interruption by any person.

(I) In each case solely for purposes in furtherance of the Sale, Merchant shall provide to Consultant, at no cost to Consultant, with: (i) the right of access to the Stores; (ii) central and distribution center services ordinarily provided to the Stores by Merchant; (iii) the use of Merchant's employees (in quantities consistent with historical periods); and (iv) all Store-level assets of the Merchant and the Stores (including, but not limited to, trade names, logos, customer lists (including email lists and internet/social media access), all credit card facilities, bank accounts, computer hardware and software, and furniture, fixtures and equipment).

**6. FF&E**

Promptly following the Sale Commencement Date, Merchant shall inform Consultant of those items of furniture, fixtures, and equipment located at the Stores which are not to be sold (because Merchant does not have the right to sell such items, because Merchant wishes to retain such items for itself, or otherwise) (collectively, "Retained FF&E"). With respect to all furniture, fixtures, and equipment located at the Stores as of the Sale Commencement Date which is not Retained FF&E (collectively the "FF&E"), Consultant shall have the right to sell such FF&E during the Sale Term on a commission basis equal to twenty percent (20%) of the gross proceeds of FF&E net only of sales tax ("FF&E Commission"). Merchant shall reimburse Consultant for its reasonable sale expenses associated with the sale of FF&E, not to exceed the amount shown on an FF&E expense budget to be mutually and reasonably agreed to by the parties promptly after the identification of the Retained FF&E ("FF&E Expenses"). In lieu of such commission arrangement for the sale of FF&E, Consultant and Merchant may mutually agree upon an FF&E guarantee structure. Consultant shall have the right to abandon any unsold FF&E at the Stores at the conclusion of the Sale Term without liability to Merchant or any third party (and Consultant shall have no responsibility with respect to the Retained FF&E).

**7. INSURANCE; RISK OF LOSS**

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

Notwithstanding any other provision of this Agreement, Merchant and Consultant agree that (i) Consultant shall not be deemed to be in possession or control of the Stores or the Merchandise or other assets located therein or associated therewith, or of Merchant's employees located at the Stores, and (ii) Consultant does not assume any of Merchant's obligations or liabilities with respect to any of the matters addressed in subsection (i) above, except to the extent any such claim arises from the gross negligence, willful misconduct or unlawful acts of Consultant or its agents and representatives.

Notwithstanding any other provision of this Agreement, Merchant and Consultant agree that Merchant shall bear all responsibility for liability claims (product liability and otherwise) of customers, employees and other persons arising from events occurring at the Stores, and Merchandise sold in the Stores, before, during and after the Sale Term, except to the extent any such claim arises from the gross negligence, willful misconduct or unlawful acts of Consultant or its agents and representatives.

**8. INDEMNIFICATION**

(A) Consultant shall indemnify and hold each Merchant and each Merchant's affiliates, and their respective officers, directors, managers, general partners, employees, consultants, and independent contractors (collectively, "Merchant Indemnified Parties") harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to:



- (i) Consultant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
- (ii) any harassment or any other unlawful treatment of any employees or agents of Merchant by Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives; or
- (iii) the gross negligence, willful misconduct or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, consultants, independent contractors or representatives.

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

- (i) Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
- (ii) any claims by any party engaged by Merchant as an employee or independent contractor arising out of such engagement, except where due to the gross negligence, willful misconduct or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives;
- (iii) any consumer warranty or products liability claims relating to any Merchandise; and/or
- (iv) the gross negligence, willful misconduct or unlawful acts of Merchant, its affiliates or their respective officers, directors, employees, agents, consultants (other than Consultant's) independent contractors or representatives.

## **9. CERTAIN BANKRUPTCY MATTERS**

(A) Merchant shall, as soon as practicable following execution of this Agreement, file a motion seeking to obtain an order from the United States Bankruptcy Court for the District of Delaware approving this Agreement on the terms set forth herein ("Approval Order"). The Approval Order shall contain provisions reasonably acceptable to Consultant.

(B) The parties acknowledge that Consultant intends to take certain actions in preparation for the Sale during the period commencing on or about February 5, 2011 through the date of the entry of the Approval Order; and so long as the Approval Order is eventually entered on or before February 12, 2011, the Sale Term for all purposes under this Agreement shall be deemed to have commenced on February 5, 2011. If the Approval Order is not entered on or before February 12, 2011, Consultant shall have the option to terminate this Agreement without penalty.

(C) Consultant hereby discloses that Gordon Brothers Asset Advisors, LLC, an affiliate of Gordon Brothers Retail Partners, LLC, provided an appraisal to GE Corporate Financial Services with respect to Merchant's merchandise, most recently on or about October 29, 2010.

**10. MISCELLANEOUS**

This Agreement constitutes the entire agreement between the parties with respect to the matters contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, letters of intent or representations, written or oral, with respect thereto. This Agreement may not be modified except in a written instrument executed by each of the parties hereto. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. The failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. Unless expressly set forth herein to the contrary, to the extent that either party's consent is required/requested hereunder, such consent shall not be unreasonably withheld or delayed. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns; provided, however, that this Agreement may not be assigned by either party without the prior written consent of the other. Written notices contemplated by this Agreement shall be sent by email (i) if to Merchant c/o Bruce Giesbrecht at [bruce.giesbrecht@ulte.com](mailto:bruce.giesbrecht@ulte.com); and (ii) if to Consultant c/o Michael Chartock at [mchartock@gordonbrothers.com](mailto:mchartock@gordonbrothers.com) and to Joseph Malfitano at [jmalfitano@hilcotrading.com](mailto:jmalfitano@hilcotrading.com).

Very truly yours,

**Gordon Brothers Retail Partners, LLC**  
**Hilco Merchant Resources, LLC**

By: 

Print Name and Title:

*Robert Grosskopf*

*Principal & Managing Director*  
*Gordon Brothers Group*

Agreed and Accepted:

**ULTIMATE ACQUISITION PARTNERS, L.P.**  
**and its affiliated debtors and debtors-in-possession**

By: 

Print Name and Title:

*F. Bruce Giesbrecht CEO*

**CC RETAIL, LLC**

**and its affiliated debtors and debtors-in-possession**

By: 

Print Name and Title:

*F. Bruce Giesbrecht Pres*

**Exhibit A**  
**Ultimate Electronics**  
**Store List**

Store No.	Store	Address	City	State	Zip Code	Telephone No.	Square Feet
101	Flatiron Crossing	51 Flat Iron Circle #1122	Broomfield	CO	80021	(303) 425-6700	30,391
102	University Park	3909 East Evans Ave #8	Denver	CO	80210	(303) 759-5401	19,392
103	Park Meadows	9657 E County Line Rd	Englewood	CO	80112	(303) 754-0450	41,250
104	Charlson Plaza	8196 W Bowles Ave	Littleton	CO	80123	(303) 979-8900	39,074
105	Denver West	14391 W Colfax Av	Lakewood	CO	80401	(303) 277-9299	40,371
106	Boulder	1955 28th St	Boulder	CO	80301	(303) 442-3600	35,000
107	Thornton	321 W 84th Ave Ste C	Thornton	CO	80260	(303) 657-5880	39,216
110	Fort Collins	4357 Corbett Drive	Ft Collins	CO	80525	(970) 223-3666	24,000
111	Colorado Springs No	7207 N Academy Blvd	Colorado Springs	CO	80920	(719) 278-3898	34,800
601	Tulsa	10021 E 71st St S	Tulsa	OK	74133	(918) 250-3664	50,480
602	OKC I-240	515 SW 74th St	Oklaoma City	OK	73139	(405) 644-4141	37,272
603	Qual Springs	2120 W Memorial Rd	Oklaoma City	OK	73134	(405) 753-9525	33,085
1501	Bradley Fair	1800 N Rock Rd Ste 120	Wichita	KS	67206	(316) 631-1251	29,500
301	Pavilions at San Mateo (Albuquerque)	4700 Cutler Ave	Albuquerque	NM	87110	(505) 884-3005	36,926
1003	Chandler Pavilions	845 N 54th St	Chandler	AZ	85226	(480) 496-8834	33,487
1004	Arrowhead	17510 N 75th Ave	Chandler	AZ	85308	(623) 776-0455	34,827
1005	Chandler Festival	2820 W Chandler Blvd	Chandler	AZ	85224	(480) 899-5130	32,241
1006	Northlight Village (Scottsdale)	15020 N Northlight Blvd	Scottsdale	AZ	85260	(480) 951-4960	34,277
1007	Mesa Spectrum	1655 S Stapley Dr	Mesa	AZ	85204	(480) 507-2880	33,948
1008	Desert Ridge	21001 N Tatum Blvd Ste 26	Phoenix	AZ	85050	(480) 538-0801	34,195
401	Rainbow Plaza	741 S Rainbow Blvd	Las Vegas	NV	89145	(702) 258-8800	31,558
402	Tropicana	2555 E Tropicana Ave	Las Vegas	NV	89121	(702) 456-8800	33,000
702	Burnsville Plaza	14232 Burnhaven Dr	Burnsville	MN	55306	(952) 435-8933	14,456
703	Tamarack Bus Campus (Woodbury)	8401 Tamarack Rd	Woodbury	MN	55125	(651) 730-4378	36,253
704	Sportmart Plaza (Minnetonka)	12324 Wayzata Blvd	Minnetonka	MN	55305	(952) 546-4040	15,000
706	Roseville	1723 W County Rd B2	Roseville	MN	55113	(651) 636-3686	17,393
707	Centennial Lakes (Edina)	7435 France Ave S	Edina	MN	55435	(952) 830-0010	31,830
709	Shoppes at Arbor Lake (Maple Grove)	12201 Elm Creek Boulevard	Maple Grove	MN	55369	(763) 420-5983	32,373
1101	Crossings at Mid Rivers	301 Costco Way	St Peters	MO	63376	(636) 278-8223	33,305
1102	Gravois Bluffs (Fenton)	185 Gravois Bluffs Plaza Dr	Fenton	MO	63026	(636) 349-5800	34,030
1103	Olde Towne Plaza (Manchester)	14850 Manchester Rd	Ballwin	MO	63011	(636) 391-5800	33,500
1201	Lincoln Place (Fairview Hts)	5925 N Illinois St	Fairview Heights	IL	62208	(618) 235-0819	31,984
3401	Mail at Whitney Field (Leominster)	100 Commerical RD #55	Leominster	MA	01453	(978) 798-3040	39,936
4102	Crossgates Commons (Albany)	161 Washington Ave. Ext.	Albany	NY	12205	(518) 218-5070	37,261
1009	Oracle-Wetmore (Tucson)	4380 N. Oracle Rd. #EOA	Tucson	AZ	85705	(520) 292-3420	33,959
3403	Holyoke Crossing	33 Holyoke Street, Unit 5	Holyoke	MA	01040	(413) 887-6360	32,362
3501	South Broadway (Salem)	412 S. Broadway	Salem	NH	03079	(603) 824-9340	33,016
4103	Carousel Center (Syracuse)	9090 Carousel Center Dr.	Syracuse	NY	13290	(315) 484-5250	34,999
4601	Meadowbrook Crossing (York)	2980 Whiteford Rd.	York	PA	17402	(717) 781-8150	32,993
1602	Slide Road (Lubbock)	6701 Slide Rd.	Lubbock	TX	79424	(806) 698-3800	33,107
3402	King Phillips Crossing (Seekonk)	201 Highland Ave.	Seekonk	MA	02771	(508) 336-2300	28,000
5401	Greenfield	4585 South 76th St.	Greenfield	WI	53220	(414) 944-0700	42,460
1601	NW Expressway (McAllen)	507 W. Expressway 83	McAllen	TX	78503	(956) 217-3230	32,000
3404	Endicott Square (Danvers)	180 Endicott St.	Danvers	MA	01923	(978) 716-3080	36,192
4101	Walden Village (Cheektowaga)	2001 Walden Avenue	Cheektowaga	NY	14425	(716) 206-3180	33,190
4501	Cascade Ave (Tigard Ultimate Elec)	10031 SW Cascade Ave.	Tigard	OR	97223	(414) 944-0700	40,041

Exhibit e  
Ultimate Electronics  
Per Diem Occupancy

Store No.	Location

101	Flatiron Crossing	24	326	3	0	919	0	1	3	-1	15	400	24	4	0	219	1,937
102	University Park	14	141	4	0	972	0	1	2	0	0	213	24	4	0	123	1,513
103	Park Meadows	16	160	3	0	1,693	0	1	4	0	26	410	24	4	0	267	2,609
104	Chenover Plaza	17	145	3	0	1,051	0	3	3	0	21	313	24	4	0	257	1,841
105	Denver West	15	257	2	0	1,242	0	6	4	0	24	490	24	4	0	264	2,332
106	Boulder	14	777	9	0	1,755	0	0	12	0	26	311	24	4	0	245	3,177
107	Thornton	30	18	2	0	0	0	4	14	29	35	183	24	4	0	211	553
110	Fort Collins	22	92	6	0	1,168	0	2	4	0	21	184	24	4	0	180	1,707
111	Colorado Springs No	20	49	15	0	1,188	0	3	5	0	24	255	24	4	0	202	1,792
601	Tulsa	3	69	2	0	1,199	0	3	12	0	106	116	24	4	0	209	1,748
602	OKC 1-240	15	36	2	0	1,418	0	2	0	0	94	106	24	4	0	185	1,886
603	Quail Springs	15	102	9	0	1,145	0	9	1	0	99	172	24	4	0	176	1,758
1501	Bradley Fair	13	165	6	0	1,306	0	5	2	0	0	456	24	4	0	204	2,185
301	Pavilions at San Mateo (Albuquerque)	20	261	8	0	818	0	7	4	0	12	114	24	4	0	220	1,493
1003	Chandler Pavilions	6	159	2	0	1,215	0	2	1	0	7	245	24	4	0	207	1,872
1004	Arrowhead	9	87	2	0	1,527	0	6	0	0	6	304	24	4	0	301	2,270
1005	Chandler Festival	18	182	2	0	1,225	0	6	1	0	7	168	24	4	0	220	1,856
1006	Northlight Village (Scottsdale)	6	148	2	0	1,405	0	7	0	0	6	336	24	4	0	263	2,200
1007	Mesa Spectrum	6	290	9	0	1,389	0	4	0	0	4	180	24	4	0	216	2,126
1008	Desert Ridge	15	431	2	0	1,651	0	4	1	0	11	189	24	4	0	259	2,590
401	Rainbow Plaza	11	134	2	13	1,133	0	6	0	23	7	93	24	4	0	178	1,627
402	Tropicana	12	113	2	10	659	0	6	0	17	2	108	24	4	0	218	1,176
702	Burnsville Plaza	29	99	2	0	649	0	2	10	0	0	165	24	4	0	138	1,121
703	Tamarack Bus Campus (Woodbury)	4	72	2	1	1,383	0	6	4	0	0	349	24	4	0	194	2,042
704	Sportmart Plaza (Minnetonka)	3	150	2	0	813	0	2	13	0	0	240	24	4	0	97	1,348
706	Roseville	4	69	2	0	714	0	3	11	0	0	235	15	4	0	143	1,199
707	Centennial Lakes (Edina)	6	292	2	0	855	0	3	6	0	0	630	24	4	0	132	1,953
709	Shoppes at Arbor Lake (Maple Grove)	17	520	2	0	1,512	0	3	12	0	0	651	33	4	0	272	3,027
1101	Crossings at Mid Rivers	6	87	2	0	1,628	0	0	1	0	4	171	24	4	0	178	2,105
1102	Gravels Bluffs (Fenton)	12	119	3	0	937	0	0	1	0	6	212	24	4	0	199	1,517
1103	Olde Towne Plaza (Manchester)	15	151	11	17	1,143	0	1	2	0	7	321	24	4	0	194	1,887
1201	Lincoln Place (Fairview Hts)	7	-20	2	1	1,199	0	1	0	0	0	155	24	4	0	166	1,539
3401	Mall at Whitney Field (Leominster)	13	177	4	1	1,464	0	3	4	2	18	265	24	4	0	204	2,185
4102	Crossgates Commons (Albany)	13	177	4	1	1,170	0	4	4	2	18	265	24	4	0	204	1,891
1009	Oracle-Westmore (Tucson)	13	177	4	1	1,238	0	3	4	2	18	265	24	4	0	204	1,959
3403	Holyoke Crossing	13	177	4	1	1,237	0	3	4	2	18	265	24	4	0	204	1,958
3901	South Broadway (Salem)	13	177	4	1	1,709	0	3	4	2	18	265	24	4	0	204	1,958
4103	Carousel Center (Syracuse)	13	177	4	1	724	0	3	4	2	18	265	24	4	0	204	2,430
4601	Meadowbrook Crossing (York)	13	177	4	1	1,079	0	3	4	2	18	265	24	4	0	204	1,445
1602	Slide Road (Lubbock)	13	177	4	1	1,289	0	3	4	2	18	265	24	4	0	204	1,801
3402	King Phillips Crossing (Seekonk)	13	177	4	1	926	0	3	4	2	18	265	24	4	0	204	2,010
5401	Greenfield	13	177	4	1	1,096	0	3	4	2	18	265	24	4	0	204	1,647
1601	NW Expressway (McAllen)	13	177	4	1	1,255	0	3	4	2	18	265	24	4	0	204	1,817
3404	Endicott Square (Danvers)	13	177	4	1	1,773	0	3	4	2	18	265	24	4	0	204	1,576
4101	Walden Village (Cheektowaga)	13	177	4	1	1,119	0	3	4	2	18	265	24	4	0	204	2,495
4501	Cascade Ave (Tigard Ultimate Elec)	13	177	4	1	1,322	0	3	4	2	18	265	24	4	0	204	1,840
46	Total	608	8,163	175	63	54,311	0	154	190	97	841	12,185	1,114	185	0	9,397	87,483

## Exhibit D

## **STORE CLOSING GUIDELINES**

The following procedures shall apply to the Store Closing Sales to be held at the Debtors' forty-six (46) retail stores (the "Closing Stores"):

1. The Store Closing Sale shall be conducted so that the Closing 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 Closing Stores.

2. The Store Closing Sale shall be conducted in accordance with applicable state and local "Blue Laws."

3. All display and hanging signs used by the Merchant and the Consultants in connection with Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. The Merchant and the Consultants may advertise the Store Closing Sale as a "sale on everything", "going out of business," "store closing", or similar theme sale at the Closing Stores as provided by the Consulting Agreement. Nothing contained herein shall be construed to create or impose upon the Merchant and the Consultants any additional restrictions not contained in the applicable lease or other occupancy agreement. The Merchant and the Consultants shall be permitted to utilize exterior banners at non-enclosed mall Closing Stores; provided, however, that such banners shall be located or hung so as to make clear that the Store Closing Sale is being conducted only at the affected store and shall not be wider than the Closing Storefront of the Closing Store. In addition, the Merchant and the Consultants shall be permitted to utilize sign walkers and street signage, notwithstanding any state, county or local law or ordinance.

4. Conspicuous signs shall be posted in the cash register areas of each Closing Store to the effect that all sales are "final" and that customers with any questions or complaints subsequent to the conclusion of the Store Closing Sale may contact a named representative of the Merchant or the Consultants at a specified telephone number.

5. The Merchant and/or the Consultants may sell Owned FF&E located in the Closing Stores during the Store Closing Sale. The Merchant or the Consultants, as the case may be, may advertise the Store Closing Sale of the Owned FF&E consistent with the guidelines provided herein.

6. No property of any landlord of a Closing Store shall be removed or sold during the Store Closing Sale.

7. Post-petition rents shall be paid and other lease obligations shall be performed by the Merchant as required by the Bankruptcy Code, except as modified pursuant to applicable order, until the rejection or assumption and assignment of each lease.

8. The rights of the landlords for any damages to the Closing Stores shall be reserved in accordance with the applicable leases.

9. To the extent that any Store landlord affected hereby contends that the Merchant is in breach or default under these 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 Consultants and the Consultants' counsel, at the following facsimile numbers and addresses:

10. 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 E



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re

ULTIMATE ACQUISITION,  
PARTNERS, LP, *et al.*,<sup>1</sup>

Chapter 11  
Case No. 11-10245 (MFW)

Jointly Administered

Debtors.

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**STORE CLOSING SALES NOTICE**

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed a motion the "Motion") for entry of an order, among other things: (i) approving the employment of a liquidating consultants (the "Consultants") to conduct store closing sales (the "Store Closing Sales") at all of the Debtors' forty-six (46) retail stores (the "Closing Stores"), (ii) approving a Consulting Agreement with the Consultants, (iii) approving the Store Closing Sales, and (iv) approving related relief.

PLEASE TAKE FURTHER NOTICE that objections to the Motion must be in writing, conform to the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, and be filed with the Bankruptcy Court and served upon (i) the US Trustee; (ii) counsel to GECC; (iii) counsel to the Unsecured Creditors' Committee, if one is appointed; (iv) the top 30 creditors; (v) all parties known to be asserting a lien in the Debtors' Liquidation Assets in the Closing Stores; (vi) each of the Debtors' landlords for the Closing Stores; (vii) all state attorneys general in states in which the Closing Stores are located; (viii) various federal and state tax and environmental authorities,

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<sup>1</sup> The Debtors and the last four digits of their respective tax payer identification numbers are as follows: Ultimate Acquisition Partners, LP (2837) and CC Retail, LLC (7780). The Debtors' address is 321 West 84<sup>th</sup> Avenue, Suite A, Thornton, Colorado 80260.

including the Internal Revenue Service and the Environmental Protection Agency; and (ix) all entities requesting notice pursuant to Bankruptcy Rule 2002.

Dated: February \_\_, 2011  
Wilmington, Delaware

CAMPBELL & LEVINE, LLC

By: /s/ Mark T. Hurford  
Mark T. Hurford (DE No. 3299)  
Kathleen Campbell Davis (DE No. 4229)  
800 N. King St., Ste. 300  
Wilmington, DE 19801  
(302) 426-1900  
(302) 426-9947 (facsimile)  
[mhurford@camlev.com](mailto:mhurford@camlev.com)  
[kdavis@camlev.com](mailto:kdavis@camlev.com)

and

JAFFE, RAITT, HEUER & WEISS, P.C.  
Jay L. Welford (P34471)  
Judith Greenstone Miller (P29208)  
27777 Franklin Road, Suite 2500  
Southfield, MI 48034  
(248) 351-3000  
(248) 351-3082 (facsimile)  
[jwelford@jaffelaw.com](mailto:jwelford@jaffelaw.com)  
[jmiller@jaffelaw.com](mailto:jmiller@jaffelaw.com)

*Proposed Counsel for Debtors and Debtors-in - Possession*

## Exhibit F

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re

ULTIMATE ACQUISITION,  
PARTNERS, LP, *et al.*,<sup>1</sup>

Debtors.

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Chapter 11

Case No. 11-10245 (MFW)

Jointly Administered

**ORDER APPROVING STORE LIQUIDATING CONSULTANT, CONSULTING  
AGREEMENT, STORE CLOSING SALES AND RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (each a "Debtor" and collectively, the "Debtors") for the entry of an order (this "Order") approving the Consultant Agreement, Store Closing Sales and related relief; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2); and it appearing that venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of this Motion having been provided; and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefore,

**IT IS HEREBY FURTHER FOUND AND DETERMINED, AS FOLLOWS:**

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<sup>1</sup> The Debtors and the last four digits of their respective tax payer identification numbers are as follows: Ultimate Acquisition Partners, LP (2837) and CC Retail, LLC (7780). The Debtors' address is 321 West 84<sup>th</sup> Avenue, Suite A, Thornton, Colorado 80260.

<sup>2</sup> Capitalized terms used herein shall have the same meaning as assigned to them in the Motion.

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 Motion 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 Motion was adequate and sufficient under the circumstances, and any otherwise applicable requirement for notice is hereby waived and dispensed herewith.

E. The Consultant Agreement attached as Exhibit C to the Motion, including the form and total consideration to be realized by the Debtors pursuant to the Consultant Agreement: (i) is the highest and best offer received by the Debtors; (ii) is fair and reasonable; and (iii) is in the best interests of the Debtors' estates.

F. The closing of the Debtors' forty-six (46) retail stores is in the best interest of the Debtors' estates.

G. The conduct of the Store Closing Sales in accordance with the terms of the Consultant Agreement will provide an efficient means for the Debtors to dispose of the Liquidation Assets.

H. The Debtors have represented to this Court that they are neither selling nor leasing personally identifiable information (or assets containing personally identifiable

information) pursuant to the Motion, although the Consultants will be authorized to distribute emails and promotional materials to the Debtors' customers through the Debtors' retained third party service provider,

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Motion is GRANTED. All objections to the Motion, to the extent not previously withdrawn or resolved, are denied.

2. The Debtors are hereby authorized, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to conduct the Store Closing Sales of the Liquidation Assets at the Debtors' stores identified on Exhibit B to the Motion in accordance with the Consultant Agreement. No bulk sale, "going-out-of-business" or similar law shall prohibit the Debtors or the Consultants from taking any action contemplated by the Consultant Agreement or the Motion.

3. The Debtors are hereby authorized and empowered to enter into the Consultant Agreement, and the Consultant Agreement is hereby approved in its entirety and is incorporated herein by reference, and it is further ordered that all amounts payable to the Consultants under the Consultant Agreement shall be payable to the Consultants without the need for any application of the Consultants therefore or a further order of the Court.

4. The Consultants are parties 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 conduct of the Store Closing Sales.

5. Pursuant to sections 327 and 328 of the Bankruptcy Code, the Debtors are authorized to employ and retain the Consultants as their liquidation consultant pursuant to the Consulting Agreement effective *nunc pro tunc* to February 4, 2011.

6. Consultants shall be compensated, without the need to file an interim or final fee application, in accordance with the terms of the Consulting Agreement.

7. Subject to applicable state and local public health and safety laws ("Safety Laws"), and applicable tax, labor, employment, environmental, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, "General Laws"), but excluding GOB Laws (as defined herein), the Debtors and the Consultants are authorized to take such actions necessary and appropriate to implement the Consultant Agreement and to conduct the Store Closing Sales without the necessity of a further order of this Court including, but not limited to, advertising the Store Closing Sales through the posting of signs (including the use of exterior banners in non-enclosed malls), use of sign walkers and street signage, in accordance with the Consultant Agreement and as otherwise provided in the sale guidelines attached as Exhibit D to the Motion (the "Sale Guidelines"), which Sale Guidelines are hereby approved.

8. Except as otherwise provided in the Consultant Agreement, pursuant to section 363(f) of the Bankruptcy Code, the Liquidation Assets, sold pursuant to the Consultant Agreement shall be sold 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 the Debtors' secured creditor, GECC, 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 amounts payable to the Debtors under the Consultant Agreement with the same validity, force and effect as the

same had with respect to the Liquidation Assets at issue, subject to any and all defenses, claims and/or counterclaims or setoffs that may exist.

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

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

11. The provisions of this Order shall be self-executing notwithstanding any restrictions in the Consultant Agreement (other than the need for the Debtors' prior consent) on the Consultants' ability to conduct the Store Closing Sales in compliance with applicable laws or any leases of the closing stores. 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 the Debtors and the Consultants to consummate the Consultant Agreement and to conduct the Store Closing Sales, including, without limitation, conducting and advertising of the Store Closing Sales (at the contractual rates charged to the Debtors prior to the Petition Date) in accordance with the Consultant Agreement, the Sale Guidelines and this Order; and no further approval, license or permits of any governmental authority shall be required.

12. If any parties or persons, including but not limited to Landlords, subtenants, utility companies, governmental agencies (except to the extent provided otherwise in this Order),



sheriffs, marshals or other public officers, creditors and all those acting for or on their behalf, believe that cause exists to: (a) prohibit the Consultants from advertising the Store Closing Sales, to the extent same is consistent with the Consultant Agreement; (b) in any way interfere with or otherwise impede the conduct of the Store Closing Sales or the use or maintenance of the Liquidation Assets and other assets of the Debtors located at the closing stores; or (c) institute any action or proceeding in any court or other administrative body having as its objective the obtaining of an order or judgment against the Debtors, the Consultants or a Landlord which might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Store Closing Sales or other liquidation sales at the closing stores 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 the Debtors, the Consultants, the Landlord or the Store Closing Sales 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.

13. The Store Closing Sales shall be conducted by the Debtors and the Consultants 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, and posting of signage, other than Safety Laws and General Laws, except to the extent set forth in the Sale Guidelines; provided however, so long as the Store Closing Sale is being conducted in accordance with the Sale Guidelines and in a safe and professional manner, the Consultants shall be deemed to be in compliance with such Safety Laws and General Laws.

14. Except as otherwise expressly provided for in the Consultant Agreement, the Store Closing Sales shall be conducted by the Debtors and the Consultants 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 a Landlord 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,

15. Except as may otherwise be specifically set forth in the Sale Guidelines, the Debtors and/or the Consultants (as the case may be), are authorized and empowered to transfer the Liquidation Assets among the closing stores.

16. Subject to paragraph 17 of this Order, provided that the Store Closing Sales are conducted in accordance with the terms of this Order, the Consultant Agreement and the Sale Guidelines, the Debtors, their Landlords and the Consultants are presumed to be in compliance with the requirements of any applicable "going out of business," "store closing," similar inventory liquidation sales, or bulk sale laws (each a "GOB Law," and together, the "GOB Laws"). To the extent there is a dispute arising from or relating to the Store Closing Sales, this Order, the Consultant Agreement, or the Sale Guidelines, which dispute relates to any GOB Law (a "Reserved Dispute"), the Court shall retain exclusive jurisdiction to resolve the Reserved Dispute.

17. Within five (5) business days of entry of this Order, the Debtors shall serve copies of this Order, the Consultant Agreement and the Sale Guidelines via e-mail, facsimile or regular mail, on: (i) the Attorney General's office for each state where the Store Closing Sale is being

held, (ii) the county consumer protection agency or similar agency for each county where the Store Closing Sale will be held, and (iii) the division of consumer protection for each state where the Store Closing Sale will be held. If, at any time within seven (7) days following service of the entry of this Order, any governmental authority wishes to assert that the Store Closing Sale conducted pursuant to this Order, the Consultant Agreement and/or the Sale Guidelines is in violation of a GOB Law, it shall send written notice of such Reserved Dispute to counsel for the Debtors and counsel for the Consultants at the addresses set forth in the Consultant Agreement so as to ensure delivery thereof within one (1) business day thereafter. If the Debtors, the Consultants and the governmental authority are unable to resolve the Reserved Dispute within fifteen (15) days of service of the notice, the aggrieved party may file a motion with this Court requesting that this Court resolve the Reserved Dispute. In the event such a motion is filed, nothing in this Order shall preclude the Debtors, a Landlord, the Consultants or the other interested party from asserting (i) that the provisions of any GOB Law are preempted by the Bankruptcy Code or (ii) that neither the terms of this Order, nor the Debtors or the Consultants' conduct pursuant to this Order, violates such GOB Law. Filing a motion as set forth in this paragraph shall not be deemed to affect the finality of this Order or to limit or interfere with the Debtors' or the Consultants' ability to conduct or to continue to conduct the Store Closing Sales pursuant to this Order and the Consultant Agreement, absent further order of this Court. The Court grants authority for the Debtors and the Consultants to conduct the Store Closing Sales pursuant to the terms of this Order, the Consultant Agreement, and/or the Sale Guidelines attached hereto and to take all actions reasonably related thereto or arising in connection therewith.

18. The terms "GOB Law" and "GOB Laws" shall be deemed not to include any Safety Laws or General Laws. Notwithstanding any other provision in this Order, nothing herein shall exempt the Debtors and/or the Consultants from compliance with any Safety Laws or General Laws or preclude any governmental entity from enforcing any Safety Laws or General Laws in the appropriate non-bankruptcy forum.

19. 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 the Debtors, the Landlords and/or the Consultants from interference with the Store Closing Sales, and to resolve any disputes related to the Store Closing Sales or arising under the Consultant Agreement or the implementation thereof.

20. The Consultants shall not be liable for any claims against the Debtors other than as expressly provided for in the Consultant Agreement.

21. Subject to Safety Laws and General Laws, the Debtors and the Consultants are hereby authorized to conduct the Store Closing Sales pursuant to the Consultant Agreement and the Sale Guidelines, and take all actions reasonably related thereto or arising in connection therewith, including, without limitation, advertising the Store Closing Sales as "store closing," "sale on everything" or similar themed sales in media advertisements, interior banners, and in closing stores not located in the interior of a mall, exterior banners, and other signage, including street signage and sign-walkers, as the Debtors and the Consultants deem appropriate, notwithstanding any prohibitions in any statutes or ordinances affecting advertising, signs, banners, or the posting of signage, and the requirements of any otherwise applicable bulk sales laws are also hereby waived. Neither the Debtors nor the Consultants shall advertise the Store Closing Sale as a "going-out-of-business" sale.

22. The Debtors, the Consultants and each of their respective officers, employees and agents 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 Consultant Agreement and the related actions set forth therein.

23. Debtors are entitled to a claim pursuant to section 506(c) of the Bankruptcy Code in the actual amount of unpaid expenses incurred by Consultants under the Consultant Agreement (the "506(c) Claim"), which shall be funded directly by GECC to the Liquidation Consultant, regardless of whether such claim is payable following the conversion of this case to a case under chapter 7 of the Bankruptcy Code.

24. The provisions of this Order and the Consultant 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 or liquidation of the Debtors, or which may be entered converting Debtors' cases from chapter 11 to chapter 7, and the terms and provisions of the Consultant Agreement as well as the rights and interests granted pursuant to this Order and the Consultant Agreement shall continue in this or any superseding case and shall be binding upon Debtors, the Consultants and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or 11 of the Bankruptcy Code. Any trustee appointed in these cases shall be and hereby is authorized and directed to operate the business of the Debtors to the fullest extent necessary to permit compliance with the terms of this Order and the Consultant Agreement and the Consultants 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.

25. Within three (3) business days after the Debtors receive a notice of the Sale Termination Date for one or more of the Closing Stores pursuant to Section 2 of the Consultant Agreement, the Debtors shall electronically file a notice of sale termination date with the Court, and shall serve a copy of such notice on the affected landlord(s) for the closing stores; provided, however, such notice shall not serve as a rejection of the lease for such named location, and the Debtors shall have no obligation to serve such notice on the affected landlords or any other party in interest. In the event of an agreement between the Debtors and the Consultants to extend the Sale Closing Sale at a closing location beyond April 15, 2011, the Debtors shall electronically file a notice of such extension, and mail a copy of such notice to the affected landlord, counsel to Debtor's secured creditor, counsel to the Official Committee of Unsecured Creditors, if one has been appointed, the US Trustee, and the Attorney(s) General for the State(s) in which the subject closing store is located, with such parties having the right to object to such extension and to seek an expedited hearing before this Court .

26. The Owned FF&E remaining in the closing stores as of the Sale Termination Date shall, unless the affected lessor has been previously notified in writing by the Debtors or the Consultants to the contrary at least three (3) days prior to the Sale Termination Date, be deemed abandoned by the Debtors and/or the Consultants; provided, however, the Debtors shall provide any known third party holding or asserting a Lien or other interest in such Owned FF&E with five (5) days prior notice of such abandonment and if such third party fails to remove such Owned FF&E or to make arrangements to remove such Owned FF&E within such time as is deemed acceptable to the affected landlord prior to the expiration of such five (5) day notice period, such Owned FF&B shall be deemed abandoned by such third party and the affected Landlord may dispose of such property without liability to the Debtors or a third party.

27. Before any sale, abandonment or other disposition of the Debtors' computers (including software) and/or cash registers and any other point of sale Owned FF&E (collectively, "POS Equipment") which may contain customer lists, identifiable personal and/or confidential information about the Debtors' employees and/or customers, or credit card numbers ("Confidential Information") takes effect, the Debtors shall remove or cause to be removed the Confidential Information from the PUS Equipment.

28. This Order is the "Approval Order" described in the Consultant Agreement.

29. Absent further order of this Court, the Consultants shall not be authorized to supplement the Store Closing Sales with additional, non-Debtor owned Goods.

30. This Order constitutes an authorization of conduct by the Debtors 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.

31. To the extent, if any, anything contained in this Order conflicts with a provision in the Consultant 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.

32. To the extent that the disposition of the Liquidation Assets 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.

33. Gift certificates, gift cards, and merchandise credits issued by the Debtors prior to the Sale Commencement Date (as defined in the Consultant Agreement) shall be accepted and honored by the Consultants during the Sale Term as provided in the Consultant Agreement.

34. Nothing in this Order shall (a) alter or affect the Debtors' obligation to comply with section 365(d)(3) of the Bankruptcy Code or (b) alter or modify the rights of any lessor or other counterparty to a Lease with the Debtors to file an appropriate motion or otherwise seek appropriate relief if the Debtor fails to comply with section 365(d)(3) of the Bankruptcy Code.

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

36. Notwithstanding Bankruptcy Rules 6004, and 6006, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Debtors and the Consultants are free to perform under the Consultant Agreement at any time, subject to the terms of the Consultant Agreement and the Consultants 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 Consultant Agreement if this Order or any authorization contained herein is reversed or modified on appeal.

37. This Order shall be binding on all creditors (whether known or unknown) of the Debtors, all successors and assigns of the Consultants, the Debtors, their affiliates and any subsequent trustee(s) appointed in the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code and shall not be subject to rejection or revocation.



38. The Consultants are a party in interest and shall have the ability to appear and be heard on all issues related to or otherwise connected to this Consultant Agreement and the conduct of the Store Closing Sales.

39. The Debtors are authorized to pay the Incentive Bonus to the Key Employees.

40. This Court shall retain jurisdiction over the terms of this Order.

Dated: February \_\_, 2011  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE