Hearing Date and Time: March 8, 2011 at 10:00 a.m. (prevailing Eastern Time)
Objection Deadline: March 1, 2011 at 4:00 p.m. (prevailing Eastern Time)

James H.M. Sprayregen, P.C.
Paul M. Basta
Ray C. Schrock
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

- and -

James J. Mazza, Jr.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Counsel to the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., *et al.*	)	Case No. 10-24549 (RDD)
Debtors.	)	Jointly Administered

NOTICE OF HEARING ON DEBTORS' MOTION PURSUANT TO SECTIONS 105, 363, AND 365 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6004 AND 6006 (I) AUTHORIZING AND APPROVING (A) GLOBAL STORE RATIONALIZATION PROCEDURES, (B) THE SALE OF ASSETS IN CONNECTION THEREWITH FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES, (C) THE DEBTORS' ENTRY INTO A LIQUIDATION CONSULTING AGREEMENT, AND (D) GLOBAL PROCEDURES FOR ASSUMPTION AND ASSIGNMENT AND REJECTION OF UNEXPIRED LEASES; AND (II) GRANTING RELATED RELIEF

1024549110215000000000018

PLEASE TAKE NOTICE that the undersigned[1] will present the attached *Debtors' Motion Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006 (I) Authorizing and Approving (A) Global Store Rationalization Procedures, (B) The Sale of Assets in Connection Therewith Free and Clear of All Liens, Claims, and Encumbrances, (C) the Debtors' Entry Into A Liquidation Consulting Agreement, and (D) Global Procedures For Assumption and Assignment and Rejection of Unexpired Leases; and (II) Granting Related Relief* (the "***Motion***") to the Honorable Judge Robert D. Drain, Bankruptcy Judge of the United States Bankruptcy Court for the Southern District of New York (the "***Bankruptcy Court***"), at 300 Quarropas Street, White Plains, New York 10601, at a hearing to be held on **March 8, 2011 at 10:00 a.m. (prevailing Eastern Time)** (the "***Hearing***").

PLEASE TAKE FURTHER NOTICE that the Motion requests authority to commence store closing sales at 32 locations identified on Exhibit C to the Motion. The Debtors intend to close such store locations on around April 15, 2011 and exit the premises on or around April 30,

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: The Great Atlantic & Pacific Tea Company, Inc. (0974); 2008 Broadway, Inc. (0986); AAL Realty Corporation (3152); Adbrett Corporation (5661); Amsterdam Trucking Corporation (1165); APW Supermarket Corporation (7132); APW Supermarkets, Inc. (9509); Bergen Street Pathmark, Inc. (1604); Best Cellars DC Inc. (2895); Best Cellars Inc. (9550); Best Cellars Licensing Corp. (2896); Best Cellars Massachusetts, Inc. (8624); Best Cellars VA Inc. (1720); Bev, Ltd. (9046); Borman's Inc. (9761); Bridge Stuart, Inc. (8652); Clay-Park Realty Co., Inc. (0902); Compass Foods, Inc. (0653); East Brunswick Stuart, LLC (9149); Farmer Jack's of Ohio, Inc. (5542); Food Basics, Inc.(1210); Gramatan Foodtown Corp. (5549); Grape Finds At DuPont, Inc. (9455); Grape Finds Licensing Corp. (7091); Grapefinds, Inc. (4053); Greenlawn Land Development Corp. (7062); Hopelawn Property I, Inc. (6590); Kohl's Food Stores, Inc. (2508); Kwik Save Inc. (8636); Lancaster Pike Stuart, LLC (9158); LBRO Realty, Inc. (1125); Lo-Lo Discount Stores, Inc. (8662); Mac Dade Boulevard Stuart, LLC (9155); McLean Avenue Plaza Corp. (5227); Milik Service Company, LLC (0668); Montvale Holdings, Inc. (6664); North Jersey Properties, Inc. VI (6586); Onpoint, Inc. (6589); Pathmark Stores, Inc. (9612); Plainbridge, LLC (5965); SEG Stores, Inc. (4940); Shopwell, Inc. (3304); Shopwell, Inc. (1281); Spring Lane Produce Corp. (5080); Super Fresh/Sav-A-Center, Inc. (0228); Super Fresh Food Markets, Inc. (2491); Super Market Service Corp. (5014); Super Plus Food Warehouse, Inc. (9532); Supermarkets Oil Company, Inc. (4367); The Food Emporium, Inc. (3242); The Old Wine Emporium of Westport, Inc. (0724); The South Dakota Great Atlantic & Pacific Tea Company, Inc (4647); Tradewell Foods of Conn., Inc. (5748); Upper Darby Stuart, LLC (9153); and Waldbaum, Inc. (8599). The location of the Debtors' corporate headquarters is Two Paragon Drive, Montvale, New Jersey 07645.

2011, subject to Court approval of the Motion. Please carefully review Exhibit C to the Motion as you may be affected by the relief granted in the Motion.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion must comply with the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court for the Southern District of New York, must be set forth in a writing describing the basis therefore and must be filed with the Bankruptcy Court electronically in accordance with General Order M-399 by registered users of the Bankruptcy Court's electronic case filing system (the User's Manual for the Electronic Case Filing System can be found at http://www.nysb.uscourts.gov, the official website of the Bankruptcy Court) and, by all other parties in interest, on a 3 ½ inch disk, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format (with a hard copy delivered directly to Chambers) and served in accordance with General Order M-182 or by first-class mail upon each of the following: (a) counsel for the Debtors, Kirkland & Ellis LLP, 600 Lexington Avenue, New York, New York 10022, Attn.: Paul M. Basta, Attn.: Ray C. Schrock, Attn.: James J. Mazza, Jr.; (b) counsel to the administrative agent for the Debtors' postpetition secured lenders, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York, 10017, Attn.: Donald S. Bernstein, Attn.: Marshall S. Huebner; (c) the Office of the United States Trustee for the Southern District of New York at 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn.: Susan Golden, Attn.: Richard Morrissey; (d) proposed counsel to the official committee of unsecured creditors, Milbank, Tweed, Hadley & McCloy LLP, Attn.: Dennis F. Dunne, Attn.: Abhilash M. Raval, Attn.: Matthew S. Barr; (e) any other parties as specified in the *Order Establishing Certain Notice, Case Management and Administrative*

Procedures [Docket No. 75] (the "***Case Management Procedures***") so as to be actually received **no later than March 1, 2011 at 4:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that only those responses that are timely filed, served and received will be considered at the Hearing. Failure to file a timely objection may result in entry of a final order granting the Motion as requested by the Debtors without further notice. The parties are required to attend the Hearing and failure to attend in person or by counsel may result in relief being granted or denied upon default.

PLEASE TAKE FURTHER NOTICE that, in accordance with Rule 9014-2(f) of the Local Bankruptcy Rules for the Southern District of New York and Section 1 of the Case Management Procedures, the Bankruptcy Court's Hearing shall be an evidentiary hearing to the extent necessary or appropriate with respect to the relief requested by the Motion and/or if objections to the relief requested in the Motion are filed and not withdrawn or resolved.

New York, New York
Dated: February 15, 2011

/s/ Paul M. Basta

James H.M. Sprayregen, P.C.
Paul M. Basta
Ray C. Schrock
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

- and -

James J. Mazza Jr.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Counsel to the Debtors and Debtors in Possession

James H.M. Sprayregen, P.C.
Paul M. Basta
Ray C. Schrock
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

- and -

James J. Mazza, Jr.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Counsel to the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., *et al.*	)	Case No. 10-24549 (RDD)
Debtors.	)	Jointly Administered
	)	**Hearing Date: March 8, 2011 at 10:00 a.m. ET**
	)	**Response Date: March 1, 2011 at 4:00 p.m. ET**

DEBTORS' MOTION PURSUANT TO SECTIONS 105, 363, AND 365 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6004 AND 6006 (I) AUTHORIZING AND APPROVING (A) GLOBAL STORE RATIONALIZATION PROCEDURES, (B) THE SALE OF ASSETS IN CONNECTION THEREWITH FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES, (C) THE DEBTORS' ENTRY INTO A LIQUIDATION CONSULTING AGREEMENT, AND (D) GLOBAL PROCEDURES FOR ASSUMPTION AND ASSIGNMENT AND REJECTION OF UNEXPIRED LEASES; AND (II) GRANTING RELATED RELIEF

The Great Atlantic & Pacific Tea Company, Inc. ("***A&P***") and certain of its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"),[1] file this motion (the "***Motion***") for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "***Order***"): (a) authorizing the Debtors to commence store closing sales (the "***Store Closing Sales***") at stores the Debtors may identify from time to time for closure in accordance with certain store rationalization procedures, attached hereto as **Exhibit B** (the "***Store Rationalization Procedures***"), and notwithstanding any contractual provisions or certain state and local laws that may restrict such Store Closing Sales; (b) authorizing and approving the sale of certain of the Debtors' assets in connection with the Store Closing Sales free and clear of all liens, claims, and encumbrances; (c) approving the Debtors' entry into a consulting agreement (the "***Consulting Agreement***") with a liquidation consultant who the Debtors determine in their business judgment proposes the most favorable terms to the company (the "***Liquidation Consultant***"); and (d) authorizing the Debtors to assume and assign or reject unexpired leases subject of the Store

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: The Great Atlantic & Pacific Tea Company, Inc. (0974); 2008 Broadway, Inc. (0986); AAL Realty Corporation (3152); Adbrett Corporation (5661); Amsterdam Trucking Corporation (1165); APW Supermarket Corporation (7132); APW Supermarkets, Inc. (9509); Bergen Street Pathmark, Inc. (1604); Best Cellars DC Inc. (2895); Best Cellars Inc. (9550); Best Cellars Licensing Corp. (2896); Best Cellars Massachusetts, Inc. (8624); Best Cellars VA Inc. (1720); Bev, Ltd. (9046); Borman's Inc. (9761); Bridge Stuart, Inc. (8652); Clay-Park Realty Co., Inc. (0902); Compass Foods, Inc. (0653); East Brunswick Stuart, LLC (9149); Farmer Jack's of Ohio, Inc. (5542); Food Basics, Inc.(1210); Gramatan Foodtown Corp. (5549); Grape Finds At DuPont, Inc. (9455); Grape Finds Licensing Corp. (7091); Greenlawn Land Development Corp. (7062); Hopelawn Property I, Inc. (6590); Kohl's Food Stores, Inc. (2508); Kwik Save Inc. (8636); Lancaster Pike Stuart, LLC (9158); LBRO Realty, Inc. (1125); Lo-Lo Discount Stores, Inc. (8662); Mac Dade Boulevard Stuart, LLC (9155); McLean Avenue Plaza Corp. (5227); Milik Service Company, LLC (0668); Montvale Holdings, Inc. (6664); North Jersey Properties, Inc. VI (6586); Onpoint, Inc. (6589); Pathmark Stores, Inc. (9612); Plainbridge, LLC (5965); SEG Stores, Inc. (4940); Shopwell, Inc. (3304); Shopwell, Inc. (1281); Spring Lane Produce Corp. (5080); Super Fresh/Sav-A-Center, Inc. (0228); Super Fresh Food Markets, Inc. (2491); Super Market Service Corp. (5014); Super Plus Food Warehouse, Inc. (9532); Supermarkets Oil Company, Inc. (4367); The Food Emporium, Inc. (3242); The Old Wine Emporium of Westport, Inc. (0724); The South Dakota Great Atlantic & Pacific Tea Company, Inc (4647); Tradewell Foods of Conn., Inc. (5748); Upper Darby Stuart, LLC (9153); and Waldbaum, Inc. (8599). The location of the Debtors' corporate headquarters is Two Paragon Drive, Montvale, New Jersey 07645.

Closing Sales in accordance with certain expedited procedures. In support of the Motion, the Debtors respectfully state as follows:[2]

Preliminary Statement

1. The Debtors are in the midst of executing a multi-faceted operational restructuring plan upon which they are formulating their long-term strategic business plan and ultimately a plan of reorganization to maximize value for their stakeholders. A fundamental component of this operational restructuring plan is the rationalization of the Debtors' store footprint. To that end, the Debtors, with the assistance of their advisors and in consultation with the unsecured creditors' committee, have engaged in a comprehensive review of their store portfolio with the objective of identifying and closing unprofitable and non-core store locations.

2. The Debtors now seek approval of global procedures to effectuate the Store Closing Sales in a streamlined and efficient manner so that they can maximize estate value. Pursuant to the proposed procedures, the Debtors would have the authority to liquidate closing stores' remaining inventory, furniture, and fixtures in an efficient manner with the assistance of a liquidation consulting firm (from whom the Debtors are currently soliciting bids) and without having to comply with burdensome local laws and lease provisions restricting the manner and timing of such sales.[3] Additionally, the proposed procedures establish a process to notify landlords of the Debtors' proposed treatment—i.e., rejection or assumption and assignment—of leases associated with the closing stores, so that the Debtors might harness the value of any such

[2] To the extent evidentiary support is needed in support of the Motion, the Debtors will present direct evidence at the hearing on the Motion.

[3] Although the Debtors believe that the Store Closing Sales may qualify as an ordinary course activity for which specific court approval would not be required under 363(c) of the Bankruptcy Code, they are requesting the relief herein to ensure that they have the imprimatur of this Court to conduct the necessary liquidation sales without having to comply with lease and local law restrictions that may impede such sales.

leases for the estates' benefit and also ensure that they can completely exit the closing stores in a timely fashion without accruing additional postpetition rental obligations under section 365(d)(3) of the Bankruptcy Code.[4]

3. Working with their advisors, the Debtors have devised a systematic process to identify store closure candidates. In particular, this analysis has focused on each store's current and projected profitability, as well as each store's potential for rehabilitation. In order to mitigate the ongoing negative EBITDA and cash flow impact of these stores, the Debtors intend to close their irreversibly unprofitable stores as soon as possible. In this regard, the Debtors have specifically identified 32 stores to be closed on or around April 15, 2011 based on such stores' current and projected negative "four-wall" EBITDA and the Debtors' belief that such stores cannot feasibly be rehabilitated.[5] In conjunction with the filing of this Motion, the Debtors have notified affected landlords, unions, and relevant regulatory authorities, among other parties, to apprise them of these initial store closures to which these procedures will apply.[6]

Jurisdiction

4. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

---

[4] The Debtors intend to file an application to be heard at the March 8, 2011 omnibus hearing seeking authority to retain Hilco Real Estate Advisor, LLC ("***Hilco***"), under section 327 of the Bankruptcy Code to assist with the marketing and potential assignment of leases associated with the store closures.

[5] One of the 32 initial stores identified for closure is currently profitable but the store lease is nearing expiration and the Debtors do not have an option to extend the lease.

[6] Simultaneously with service of this Motion, the Debtors shall also serve upon affected employees and their union representatives required notice under the Worker Adjustment and Retraining Notification Act. To the extent the Debtors identify additional stores for closure, they shall file a motion seeking authority under section 363(b) of the Bankruptcy Code to apply the procedures described herein and all parties in interest shall have a right to object to the relief sought.

6. The statutory bases for the relief requested herein are sections 105(a), 363(b), (c), (f), and (m), 365, and 554 of title 11 of the United States Code (the "***Bankruptcy Code***"); Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"); and Rule 6004 of the Local Bankruptcy Rules for the Southern District of New York (the "***Local Rules***").

Background

7. On December 12, 2010 (the "***Commencement Date***"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code. The chapter 11 cases are being jointly administered. On December 21, 2010, the United States Trustee for the Southern District of New York appointed the official committee of unsecured creditors (the "***Creditors' Committee***").

8. As of the Commencement Date, the Debtors operated approximately 395 conventional supermarkets, combination food and drug stores, discount food stores, and distribution centers and were party to over 765 non-residential real estate leases and owned another 22 properties. Like many retail businesses, the Debtors have recognized that their reorganization efforts in part hinge on the ability to close unprofitable store locations and reject costly, unmarketable leases. Accordingly, at the outset of these cases, the Debtors sought and obtained approval to reject 73 burdensome "dark store" leases and 25 underperforming leases and 26 related subleases.[7]

[7] *See Amended Order Authorizing Rejection of Certain Unexpired Nonresidential Real Property Leases* (*First Omnibus Rejection Motion*) [Docket No. 508]; *Order Authorizing Rejection of Certain Unexpired Nonresidential Real Property Leases* [Docket No. 81].

Relief Requested

9. By this Motion, the Debtors seek entry of the Order, pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006 authorizing the Debtors to (a) commence the Store Closing Sales in accordance with the Store Rationalization Procedures, (b) sell assets in connection therewith free and clear of liens, claims, or encumbrances, (c) enter into the Consulting Agreement with the Liquidation Consultant, and (d) assume and assign or reject leases in accordance with certain expedited procedures.

The Proposed Store Closing Sales

10. In conjunction with the development of their business plan and the July 10, 2011 lease assumption deadline, the Debtors and their advisors have engaged in a systematic process to determine which of their stores no longer fit into their long-term business strategy. As an initial matter, the Debtors and their advisors identified those stores with negative "four-wall" EBITDA as potential store closure candidates.[8] Using "four-wall" EBITDA as an initial barometer for potential closure, the Debtors further honed their analysis by taking into account the cash proceeds from inventory liquidation, the potential to monetize the underlying leasehold interest, and each store's ongoing capital expenditure requirements, as well as certain store closure costs, including hung marketing costs, warehouse costs, and labor costs.[9] The net financial impact of each store closure, including all closure impacts as described above, was then compared to the projected cash flows of each store after a potential rehabilitation. In evaluating

[8] "Four-wall" EBITDA measures earnings before interest, taxes, depreciation, and amortization on a store-by-store basis so that while the costs of operating each store are taken into account, there is no allocation for corporate overhead costs or store-level capital expenditures.

[9] Certain allocated costs cannot be eliminated upon closing a store, including certain fixed warehouse expenses and marketing expenses. Additionally, closing stores can, in some instances, increase the labor costs of the remaining stores due to certain labor bumping provisions in the collective bargaining agreements that allow senior employees of stores being closed to displace more junior-level employees of stores that remain open.

a store's rehabilitation prospects, the Debtors also considered a number of factors independent of current profitability, including sale growth projections, projected operating costs and margins, future labor costs, impacts from competitor actions (e.g., store openings and store remodels), and required capital expenditures to maintain the stores. Those underperforming stores that the Debtors determine cannot be rehabilitated and do not fall into their long-term strategic business plan will be closed as soon as possible. The Debtors have kept the Creditors' Committee apprised of this process and have consulted with the Creditors' Committee's professionals in identifying stores for closure. While this process is ongoing, the Debtors to date have identified 32 stores for closure (the "***Initial Closing Stores***," and together with later identified stores for closure, the "***Closing Stores***").[10] The Debtors believe that closure of the Initial Closing Stores will generate approximately $24 million in annual EBITDA improvement. To the extent that additional stores are identified for closure, the Debtors shall file a motion seeking authority to apply the procedures described herein to such closures and Store Closing Sales at such locations.[11]

11. In executing the initial store closures (as well as subsequent closures), the Debtors intend to conduct the Store Closing Sales in accordance with the Store Rationalization Procedures described herein without complying with certain state and local laws, statutes, rules and/or ordinances governing store closing, liquidation or "going-out-of-business" sales (the "***Liquidation Sale Laws***"). The Liquidation Sale Laws may require special and cumbersome licenses, waiting periods, time limits, and other procedures for store closing, liquidation, or

[10] A list of the Initial Closing Stores is attached hereto as **Exhibit C.**

[11] The Debtors shall provide 15 days' notice of any motion seeking approval to commence Store Closing Sales at later identified stores.

similar sales. Such requirements may hamper the Debtors' efforts to maximize estate value in selling their inventory, a significant portion of which consists of perishable items. The Debtors believe the Store Rationalization Procedures will ensure a fair, consistent, and efficient sales process, and in order to eliminate the time, delay, and expense associated with the administrative procedures necessary for non-bankruptcy sales, request that the Store Closing Sales not be required comply with the Liquidation Sale Laws.[12]

12. The Debtors also considered a number of possibilities regarding the timing and structure of the Store Closing Sales, including whether to conduct the Store Closing Sales themselves or to engage a liquidation firm to enter into a consultant based agreement or to sell the assets to a liquidation agent. Given the expected cost savings from the store closures and the cash generated from the Store Closing Sales, the Debtors believe their estates would be best served by commencing the Store Closing Sales at the Initial Closing Stores immediately upon Court approval of this Motion so they may close the relevant stores on or around April 15, 2010 and surrender the properties to their landlords on or around April 30, 2011 if the underlying leases will not be assumed and assigned after marketing a process is conducted.

13. Given these considerations, the Debtors have begun a request-for-proposal process to select a liquidation consultant to assist with the initial store closures.[13] To facilitate a competitive process, the Debtors distributed to three nationally recognized liquidation firms, a term sheet upon which proposals would be submitted.[14]

---

[12] The Debtors will continue to comply with laws, statutes, rules, or ordinances which are for the protection of the health and safety of the public and consumer protection laws.

[13] The Debtors shall file a motion seeking further relief to the extent the Debtors seek to have the Liquidation Consultant assist in Store Closing Sales in locations other than the Initial Closing Stores.

[14] The term sheet laid out a similar fee structure to that used in a prepetition consulting agreement with Gordon Brothers Retail Partners, LLC ("***Gordon Brothers***"), which the Debtors retained to perform (*continued*) …

14. In general the term sheet provides that the Liquidation Consultant will advise the Debtors with respect to the sale of their inventory (the "***Inventory***"), as well as furniture, fixtures, and equipment, if and when directed by the Debtors (the "***FF&E***," and together with the Inventory, the "***Assets***") at the Closing Stores. Specifically, the Liquidation Consultant will, among other things, (a) provide the Debtors with qualified supervisors as independent contractors to oversee the management of the Closing Stores, (b) determine the appropriate pricing of the Assets, staffing levels for the Closing Stores, and advertising of the Store Closing Sales, (c) coordinate accounting functions for the Closing Stores, including evaluation of the sales of Inventory by category, sales reporting, and monitoring of expenses using the Debtors' infrastructure, and (d) dispose of any unsold Assets at the Closing Stores and clean the premises. The Liquidation Consultant will not directly sell the Inventory, but rather will earn a fee equal to a percentage of the gross sale proceeds related to the Inventory (the "***Inventory Fee***"). The Liquidation Consultant may also sell the FF&E in the Closing Stores at the direction of the Debtors, and if so, will receive a commission equal to a percentage of the gross receipts from all sales or other dispositions of FF&E at the Closing Stores (the "***FF&E Commission***"). In addition, the Debtors propose to reimburse the Liquidation Consultant for certain reasonable out-of-pocket expenses incurred in connection with the sale or other disposition of the Assets pursuant to a budget agreed to by the parties. As described above, the selection process will ensure that the Inventory Fee, FF&E Commission, and any other fees agreed to by the Debtors are reasonable and market based.

---

going-out-of-business sales at 25 of the Debtors' stores. Given the success and familiarity with the prepetition consulting arrangement, the Debtors determined that entry into a similarly structured arrangement to conduct the Store Closing Sales in bankruptcy would be beneficial to the estates.

15. In addition to grocery operations, the Debtors also operate pharmacies at twenty of the Initial Closing Stores. The prescription drug products and the customer prescriptions themselves (the "***Pharmaceutical Assets***") at these pharmacies will not be sold to the general public in sales facilitated by the Liquidation Consultant. Instead, the Debtors are required by applicable state law to make the customer prescriptions available to customers at pharmacies in close proximity to the Closing Store location.[15] Where the Debtors operate another pharmacy nearby the Closing Store location, the Pharmaceutical Assets will be transferred to the sister store. Where there is not a sister store in close proximity, the Debtors will market the Pharmaceutical Assets to other pharmacies located in close proximity where such pharmacies have signed confidentiality agreements to ensure the best price is received for the Pharmaceutical Assets. The Debtors intend to solicit bids for the Pharmaceutical Assets at approximately half of the closing pharmacy locations and transfer the Pharmaceutical Assets from the remaining closing pharmacies to sister store locations. The prescription drug products will be sold at cost given that a potential purchaser has no reason to pay more when they can obtain the same drugs at equal or less cost directly from the drug manufacturer. Based on the Debtors' historical experience with pharmaceutical sales, the Debtors expect to sell the customer prescriptions at each store location for no more than approximately $120,000 to $430,000 depending on the number of customer prescriptions at each store location.

16. Because customers need access to their prescription drugs immediately, any delay in the closure of the pharmacy to the transfer of the Pharmaceutical Assets will greatly depress

[15] *See* N.J. Admin. Code §§ 13:39-4.10 and 13:39-4.11 (2010) (providing that where a pharmacy is to be discontinued and closed for any reason, all medications, prescriptions, and copies of patient profiles must be transferred to another location); N.Y. Educ. Law § 6812 (McKinney 2010) (same); 24 Del. Admin. Code § 2500-4 (2011) (same).

any potential bid on the Pharmaceutical Assets. Therefore, in order to ensure the bid process is concluded by the hearing on this Motion, the Debtors intend to begin soliciting bids on the Pharmaceutical Assets simultaneously with filing this Motion and seek authority to transfer the Pharmaceutical Assets to the highest and best bidder identified at the conclusion of the bid process.[16]

17. Lastly, simultaneously with evaluating the performance of their stores, the Debtors and Hilco, acting as the Debtors' real estate advisor, will assess the Debtors' unexpired leases to determine whether the leases associated with the Closing Stores could be marketed to potential purchasers, coordinate the diligence process with interested parties, and evaluate bids received.[17] In connection with this process and to maximize the value realized in connection with the Store Closing Sales, the Debtors are seeking approval of procedures outlined below that will permit expedited assumption and assignment of leases to the highest purchaser as identified by Hilco through a private marketing process (the "***Assumption and Assignment Procedures***") and certain procedures that will permit the expedited rejection of leases that the Debtors and Hilco determine are unprofitable (the "***Rejection Procedures***," and with the Assumption and Assignment Procedures, the "***Lease Procedures***").

[16] Contemporaneously herewith, the Debtors are filing a motion seeking approval of sale procedures for the sale of *de minimis* assets with a selling price of less than $5,000,000. The Debtors believe that the sales of the Pharmaceutical Assets will fall within the parameters of a *de minimis* asset sale and shall comply with the requirements set forth in the *de minimis* asset sale motion, to the extent applicable. The Debtors nonetheless seek authority pursuant to this Motion to sell the Pharmaceutical Assets in connection with the Store Closing Sales.

[17] The Debtors intend to file an application to retain Hilco under section 327 of the Bankruptcy Code to be heard at the March 8, 2011 omnibus hearing.

Basis for Relief

I. The Store Closing Sales Should Be Authorized Under Section 363 of the Bankruptcy Code As a Sound Exercise of the Debtors' Business Judgment

18. The closure of underperforming, non-core stores and the sale of the Assets of such stores is a sound exercise of the Debtors' business judgment. The store closures and the Store Closing Sales will pave the way for development of a business plan focused on a scaled-down number of the Debtors' most profitable stores and provide a foundation for a plan of reorganization. Moreover, the process under which the Debtors may close additional stores through a rigorous analysis of those stores' profitability, prospects for rehabilitation, and position in the Debtors' core operations is sound. While the Debtors seek to have the procedures described herein apply to any future Store Closing Sales, the Debtors will file a motion seeking authority to apply such procedures to any later identified Closing Stores, which shall give all parties in interest an opportunity to be heard by the Court.

19. 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 need only show a legitimate business justification for the proposed action.[18] *See, e.g., Comm. of Equity Sec. Holders v. Lionel Corp.* (*In re Lionel Corp.*), 722 F.2d 1063, 1070 (2d Cir. 1983); *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp.* (*In re Johns-Manville Corp.*), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("Where the debtor articulates a reasonable basis for its business decisions (as distinct from a

[18] In light of the Debtors' past practice to review their store portfolio so as to maximize profitability by closing underperforming stores and selling off inventory, the Debtors believe the Store Closing Sales are among the routine activities relating to the management of their business, and that they would therefore be authorized to continue to engage in Store Closing Sales in the ordinary course of their business pursuant to section 363(c)(1) of the Bankruptcy Code. However, to minimize potential conflicts with landlords and other interested parties, and to ensure that the Debtors are able to effectuate the Store Closing Sales in the most efficient manner, the Debtors, out of an abundance of caution, seek authority, pursuant to section 363(b) of the Bankruptcy Code, to conduct the Store Closing Sales in accordance with the Store Rationalization Procedures. The Debtors reserve their right to conduct future ordinary course sales and related activities without relief from the Court.

decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct.") (citation omitted). When a valid business justification exists, the law vests the debtor's decision to use property out of the ordinary course of business 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) (*quoting Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Accordingly, parties challenging a debtor's decision must make a showing of "bad faith, self-interest or gross negligence." *Integrated Res.*, 147 B.R. at 656 (citations omitted).

20. Ample business justification for the Store Closing Sales exists here. The Debtors, with the assistance of their advisors, have begun an extensive review of each of their stores to (a) identify underperforming and unprofitable stores, (b) consider whether the store's performance can be improved by various initiatives, and (c) determine what stores should be closed immediately to eliminate their ongoing negative impact on the Debtors' liquidity and financial performance. This process has already resulted in the Debtors' identification of the Initial Closing Stores to be closed on or around April 15, 2011.

21. The Store Closing Sales will allow the Debtors to dispose of the Assets associated with the Closing Stores in the most economical and efficient manner possible as moving and storing excess Inventory in their other stores would be inefficient and uneconomical given the inordinate expenses involved and the fact that much of the Inventory is perishable food items. The Debtors, with the assistance of the Liquidation Consultant, will sell the Assets associated with the Closing Stores in accordance with the Store Rationalization Procedures and ordinary

course practice. Any Assets not sold during the Store Closing Sales will be transferred to surrounding locations or abandoned.[19]

22. With respect to the Pharmaceutical Assets, the Debtors are required by applicable non-bankruptcy law to transfer the customer prescriptions at the Initial Closing Stores to a nearby pharmacy. Where the Debtors operate another pharmacy in close proximity to the closing pharmacy, the Debtors will transfer the Pharmaceutical Assets to such sister store, which will be able to profit off of the ongoing business generated by the customer prescriptions. For the remaining closing pharmacy locations, the Debtors will solicit bids from other pharmacies in close proximity that have agreed to become restricted. The sale or transfer of the Pharmaceutical Assets is a necessary step in the ability of the Debtors to close the unprofitable Initial Closing Stores on the desired schedule and the bid process utilized by the Debtors will ensure the best price is received for any Pharmaceutical Assets sold to a third party.

23. Any interruption or delay in the Debtors' ability to efficiently close unprofitable stores during these chapter 11 cases could have serious negative consequences for the Debtors' estates. First, each of the Closing Stores are unprofitable and have been losing money for some time. The sooner the Assets associated with the Closing Stores are liquidated and the leases associated with the Closing Stores are either sold or rejected, the sooner the Debtors may improve their liquidity for the benefit of the estates. Indeed, the Debtors believe that closure of the Initial Closing Stores alone will generate a $24 million EBITDA improvement from last year. Second, the delays in the liquidation process have unique implications for the Debtors, as

[19] Contemporaneously herewith, the Debtors are filing a motion seeking approval of certain procedures to abandon *de minimis* assets of the estates, which shall be heard at the March 8, 2011 omnibus hearing. Subject to approval of the abandonment procedures, the Debtors may abandon Assets of the Closing Stores consistent with such procedures.

grocers, given the limited shelf-life of much of the Inventory they sell. Thus, to maintain the value of the Inventory to be sold in the Store Closing Sales, it is important that the Court permit the Debtors to commence the sales in the most expeditious and efficient manner possible.

24. Lastly, courts commonly approve store closing or liquidation sales in chapter 11 cases involving retail debtors. *See In re Ames Dept. Stores, Inc.*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (holding that "going-out-of-business" sales are an important part of "overriding federal policy requiring [a] Debtor to maximize estate assets . . . ."). Bankruptcy Courts have approved similar requests by debtors to conduct store closing sales, finding the debtors' requested relief consistent with applicable provisions of the Bankruptcy Code. *See, e.g.*, *In re Blockbuster, Inc.*, No. 10-14997 (Bankr. S.D.N.Y. Jan. 20, 2011); *In re Movie Gallery, Inc.*, No. 10-30696 (Bankr. E.D. Va. Feb. 4, 2010); *In re Finlay Enters., Inc.*, No. 09-14873 (Bankr. S.D.N.Y. Sept. 25, 2009); *In re Value City Holdings, Inc.*, No. 08-14203 (Bankr. S.D.N.Y. Nov. 20, 2008); *In re Circuit City Stores, Inc.*, No. 08-35653 (Bankr. E.D. Va. Nov. 10, 2008); *In re Steve and Barry's Manhattan LLC*, No. 08-12579 (Bankr. S.D.N.Y. Aug. 22, 2008); *In re BFW Liquidation, LLC, f/k/a Bruno's Supermarkets, LLC*, No. 09-00634 (Bankr. N.D. Ala. March 2, 2009); *In re Goody's Family Clothing*, No. 08-11153 (Bankr. D. Del. June 13, 2008); *In re Sharper Image Corp.*, No. 08-10322 (Bankr. D. Del. Mar. 14, 2008); *In re Winn-Dixie Stores, Inc.*, No. 05-03817 (Bankr. M.D. Fla. July 27, 2005).

II. Sales of the Assets Free And Clear Of All Encumbrances Is Warranted

25. Pursuant to section 363(f) of the Bankruptcy Code, a debtor may sell property of the estate "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:

(a) applicable non-bankruptcy law permits sale of such property free and clear of such interest;

(b) such entity consents;

(c) 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;

(d) such interest is in bona fide dispute; or

(e) 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)(1)-(5).

26. With respect to any party asserting a lien, claim, or encumbrance against the Assets to be sold as part of the Store Closing Sales, the Debtors believe that they satisfy one or more of the conditions set forth in section 363(f) of the Bankruptcy Code. First, the Assets and Pharmaceutical Assets will be sold to the public or other pharmacies, respectively, with all liens attaching to the proceeds of the sales. Second, the Debtors are also in discussions with their postpetition debtor-in-possession lenders (the "***DIP Lenders***"), who hold a lien on substantially all the Debtors' assets, regarding the assumption and assignment or rejection of unexpired leases in connection with any store closure and expect to engage in a continual open dialogue with their DIP Lenders regarding their consent to disposition of the Assets through the Store Closing Sales. Further, the DIP Lenders and all other identified lien holders will have received notice of this Motion, and will be given sufficient opportunity to object to the relief requested. Any such entity that does not object to the sale should be deemed to have consented. *See Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) ("It is true that the Bankruptcy Code limits the conditions under which an interest can be extinguished by a bankruptcy sale, but one of those conditions is the consent of the interest holder, and lack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt's assets had to execute a formal consent before they could be sold." (internal citations omitted)); *Hargrave v. Twp. of*

Pemberton (*In re Tabone, Inc.*), 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (finding failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *Citicorp Homeowners Serv., Inc. v. Elliot* (*In re Elliot*), 94 B.R. 343, 345 (E.D. Pa. 1988) (same); *see also In re Enron Corp.*, No. 01-16034, 2003 WL 21755006, at *2 (Bankr. S.D.N.Y. July 28, 2003) (order deeming all parties who did not object to proposed sale to have consented under section 363(f)(2)).

III. The Court Should Invalidate Contractual Restrictions That Impair the Debtors' Ability to Conduct the Store Closing Sales

27. The stores subject to the Store Closing Sales are located on properties that are leased by the Debtors. Because the Debtors regularly conduct "sales" at the Closing Stores, the Debtors do not believe that the Store Closing Sales should interfere with lease provisions that are intended to protect the image of a shopping center or avoid disruption of normal commerce.[20] Nonetheless, certain of the leases governing the premises of the Closing Stores may contain provisions purporting to restrict or prohibit the Debtors from conducting the Store Closing Sales, including certain restrictions on "going-dark" or continuous operation provisions.

28. Courts routinely holds such provisions to be unenforceable in chapter 11 cases as they constitute an impermissible restraint on a debtor's ability to properly administer its case and maximize the value of its assets under section 363 of the Bankruptcy Code. *See In re Bradlees Stores, Inc.*, No. 00-16035 (Bankr. S.D.N.Y. Jan. 4, 2001) (authorizing debtors to conduct going out of business sales notwithstanding state rules or statutes governing closing, liquidation, or "going out of business" sales and notwithstanding provision in leases restricting Debtor's ability

[20] The Debtors are in the process of reviewing the leases associated with the Initial Closing Stores to ensure they are not in violation of lease provisions that are intended to protect the image of a shopping center or avoid disruption of normal commerce.

to conduct such sales); *In re R.H. Macy & Co.*, 170 B.R. 69, 77 (Bankr. S.D.N.Y. 1994) (holding restrictive lease provision unenforceable against debtor that sought to conduct going out of business sale "because it conflicts with the Debtor's fiduciary duty to maximize estate assets"); *In re Ames Dep't Stores, Inc.*, 136 B.R. at 359 (finding that "to enforce the anti-GOB sale clause of the [l]ease would contravene overriding federal policy requiring Debtor to maximize estate assets by imposing additional constraints never envisioned by Congress."); *In re Tobago Bay Trading Co.*, 112 B.R. 463, 467 (Bankr. N.D. Ga. 1990) (finding anti-going-out-of-business sales clause in lease unenforceable); *In re Lisbon Shops, Inc.*, 24 B.R. 693, 695 (Bankr. E.D. Mo. 1982) (finding that lease could not restrict debtor from conducting going out of business sales). Moreover, the Store Rationalization Procedures, like the sale guidelines approved in other cases cited herein, provide the appropriate protections to any legitimate concerns that landlords might otherwise have concerning the conduct of the Store Closing Sales.

29. Accordingly, the Debtors request that the Court authorize the Debtors to conduct the Store Closing Sales without interference by any landlords or other persons affected, directly or indirectly, by the Store Closing Sales.

IV. The Court Should Waive Compliance with Any State and Local Laws, Statutes, Rules, and Ordinances Restricting Store Closing Sales

30. Certain states in which the Debtors operate stores have licensing and other requirements governing the conduct of store closing, liquidation, or other inventory clearance sales, including (but not limited to) federal, state, and local laws, statutes, rules, regulations, and ordinances related to store closing and liquidation sales, establishing licensing, permitting, or bonding requirements, waiting periods, time limits, and bulk sale restrictions that may otherwise apply to the Store Closing Sales. However, typical statutes and regulations provide that if a

liquidation or bankruptcy sale is court authorized, however, then a company need not comply with these Liquidation Sale Laws.

31. Under section 959(b) of title 28 of the United States Code, a debtor must "manage and operate the property [of its estate] . . . according to the requirements of the valid laws of the state in which such property is situated . . . ." Courts, however, have held that a debtor in possession that is liquidating estate assets does not "manage and operate" the property for the purposes of section 959(b). *See Ala. Surface Mining Comm'n v. N.P. Mining Co., Inc.* (*In re N.P. Mining Co., Inc.*), 963 F.2d 1449,1460-61 (11th Cir. 1992) (holding that section 959(b) does not apply when debtor in possession is liquidating property and not operating business); *Mo. v. U.S. Bankr. for E.D. Ark.*, 647 F.2d 768, 778 n.18 (8th Cir. 1981) (same), *cert. denied*, 454 U.S. 1162 (1982); *Mo. Dept. of Natural Res. v. Valley Steel Prods. Co., Inc.* (*In re Valley Steel Products Co., Inc.*), 157 B.R. 442, 447-48 (Bankr. E.D. Mo. 1993) (same); *In re Corona Plastics, Inc.*, 99 B.R. 231, 235-36 (Bankr. D.N.J. 1989) (same); *Walker v. Maury Cnty.* (*In re Scott Hous. Sys. Inc.*), 91 B.R. 190, 196 (Bankr. S.D. Ga. 1988) (same); *In re Boume Chem. Co., Inc.*, 54 B.R. 126, 135 (Bankr. D.N.J. 1984) (holding that "[s]ection 959(b) is applicable only where the property is being managed or operated for the purpose of continuing operations . . . ."). Because the Debtors seek to liquidate Assets at their stores completely, based on the foregoing case law, section 959(b) does not require compliance with these state and local licensing procedures and other regulations, even if such procedures or regulations do not expressly except bankruptcy sales from their ambit.

32. In addition, to the extent that state or local laws conflict with federal bankruptcy law, the state and local laws are preempted by the Supremacy Clause of the United States Constitution. To hold otherwise would severely impair the relief otherwise available under

section 363 of the Bankruptcy Code. In accord with this premise, bankruptcy courts have consistently recognized that federal bankruptcy law preempts state and local laws that contravene the underlying policies of the Bankruptcy Code. *See, e.g., Belculfine v. Shenango Inc.* (*In re Shenango Grp., 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."). While preemption of state law is not always appropriate, as when the protection of public health and safety is involved, *see Baker & Drake, Inc. v. Pub. Serv. Comm'n of Nev.* (*In re Baker & Drake, Inc.*), 35 F. 3d 1348, 1353-54 (9th Cir. 1994) (finding no preemption when state law prohibiting taxicab leasing was promulgated in part as a public safety measure), it is appropriate when, as here, the only state laws involved concern economic regulation. *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").

33. Here, section 363 of the Bankruptcy Code, which requires the Debtors to operate their business in a way that maximizes recoveries for creditors, will be undermined if the Court does not provide for the waiver of the Liquidation Sale Laws because the Liquidation Sale Laws constrain the Debtors' ability to marshal and maximize the return on the Assets for the benefit of creditors. Similar relief has been granted in other bankruptcy cases in this and other jurisdictions. *See, e.g., In re Blockbuster, Inc.*, No. 10-14997 (Bankr. S.D.N.Y. Jan. 20, 2011); *In re Movie Gallery, Inc.*, No. 10-30696 (Bankr. E.D. Va. Feb. 4, 2010); *In re Finlay Enters., Inc.*, No. 09-14873 (Bankr. S.D.N.Y. Sept. 25, 2009); *In re Value City Holdings, Inc.*, No. 08-14203 (Bankr. S.D.N.Y. Nov. 20, 2008); *In re Circuit City Stores, Inc.*, No. 08-35653 (Bankr. E.D. Va.

Nov. 10, 2008); *In re Steve and Barry's Manhattan LLC*, No. 08-12579 (Bankr. S.D.N.Y. Aug. 22, 2008); *In re BFW Liquidation, LLC, f/k/a Bruno's Supermarkets, LLC*, No. 09-00634 (Bankr. N.D. Ala. March 2, 2009); *In re Goody's Family Clothing*, No. 08-11153 (Bankr. D. Del. June 13, 2008); *In re Sharper Image Corp.*, No. 08-10322 (Bankr. D. Del. Mar. 14, 2008); *In re Winn-Dixie Stores, Inc.*, No. 05-03817 (Bankr. M.D. Fla. July 27, 2005).

34. Importantly, given the supervision of this Court, the requested waiver will not unduly undermine state and local requirements that would otherwise apply to the Store Closing Sales, especially when the Debtors will conduct the Store Closing Sales in accordance with the Store Rationalization Procedures, which ensure that the Store Closing Sales are conducted in a fair, consistent, and efficient manner. The Debtors only request that this Court authorize the Debtors to conduct the Store Closing Sales without the necessity of, and the delay associated with, obtaining various state licenses or permits, observing state and local waiting periods or time limits, and/or satisfying any additional requirements with respect to advertising, conducting the Store Closing Sales as store closings or similar type sales, or transferring merchandise to or between the stores and/or distribution centers being closed. This will ensure the Debtors are able to exit the properties in a timely fashion and minimize postpetition rental obligations under section 365(d)(3) of the Bankruptcy Code. The Debtors fully intend to be bound by and comply with remaining statutes and regulations, such as health and safety laws.

35. The Debtors further request that no other person or entity, including (but not limited to) any lessor or federal, state, or local agency, department, or governmental authority, be allowed to take any action to prevent, interfere with, or otherwise hinder consummation of the Store Closing Sales, or the advertising and promotion (including through the posting of signs) of the Store Closing Sales, in the manner set forth in the proposed Order. *See Mo. v. U.S. Bankr.*

for E.D. Ark., 647 F.2d at 776 (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).

V. Entry into the Consulting Agreement is in the Best Interests of the Debtors and Their Estates

36. As described above, to use estate property to pay the Liquidation Consultant for services under the Consulting Agreement, the Debtors need only show a legitimate business justification. *See, e.g., In re Lionel Corp.*, 722 F.2d at 1070.[21] It is without question that the Debtors' decision to utilize the services of the Liquidation Consultant is a reasonable exercise of their business judgment. To maximize the value of the Assets through the Store Closing Sales, the Debtors determined it was necessary to hire a national liquidator with significant experience in a large-scale liquidation. The firms that the Debtors have solicited proposals from each have extensive expertise in conducting store closing sales and can oversee, and assist in the management and implementation of, the Store Closing Sales in an efficient and cost effective manner. The Consulting Agreement will enable the Debtors to utilize the experience, skills, and resources of the Liquidation Consultant to effectively and efficiently conduct the Store Closing Sales and, thus, significantly improve the potential value to be received through the Store Closing Sales for the benefit of all stakeholders.

37. Further, the Liquidation Consultant's fees will each be based on the successful sale of the Assets. The Debtors believe that the competitive marketing process will ensure the fee percentages they ultimately agree to will be market based, and consistent with the fees other

[21] The Debtors believe entry into the Consulting Agreement may be an ordinary course activity for which Court approval is not required given that the Debtors have entered such agreements historically and that such agreements are common in the industry for conducting store closures, but are nonetheless seeking Court approval out of an abundance of caution and to give transparency to the selection process.

courts have approved in connection with entry into liquidating consulting agreements. *See, e.g.*, *In re Lack's Stores, Inc.*, No. 10-60149 (Bankr. S.D. Tex. Nov. 16, 2010) (approving a $4,500 per store base fee, a fee equal to 20% of net proceeds of sales of merchandise in excess of 64% of the cost value of the merchandise, and 15% of proceeds from sales of furniture, fixtures, and equipment); *In re Bruno's Supermarkets, LLC*, No. 09-00634 (Bankr. N.D. Ala. Mar. 2, 2009) (approving a fee equal to 3% of net proceeds of sales of merchandise and 15% of proceeds from sales of furniture, fixtures, and equipment; *In re Value City Holdings, Inc.*, No. 08-14197 (Bankr. S.D.N.Y. Nov. 20, 2008) (approving a $25,00 per store base fee, up to a $25,000 per store success fee based on a 54.6% gross return on merchandise adjusted downward for lower gross return percentages, and a fee equal to 10% of gross proceeds from sales of furniture, fixtures, and equipment).

VI. The Lease Procedures Are In the Best Interests of the Estates

38. In connection with the Store Closing Sales and to maximize estate value, the Debtors must evaluate the leases associated with the Closing Stores to determine whether to market the leases to potential purchasers or reject those leases deemed unmarketable. Hilco will market all leases during the store closure process to determine if such leases can be assumed and assigned for value. Otherwise, the underlying leases will be rejected. To further this process, the Debtors propose the Lease Procedures described below. As designed, the Lease Procedures will allow the Debtors to quickly realize the value of leases that the Debtors receive bids on (the "***Purchased Leases***"), minimize administrative expenses for rejected leases, and will eliminate substantial legal expenses that would otherwise be incurred if multiple hearings were held on separate motions with respect to every lease that the Debtors seek to assume and assign or reject. The Lease Procedures are also fair and reasonable to lease counterparties because they afford

parties in interest the opportunity to appear and be heard with respect to the assumption and assignment or rejection of the Debtors' leases.

39. The Lease Procedures provide for a process for the Debtors to either reject or assume and assign the leases associated with the Closing Stores. In particular, for those unexpired leases deemed unmarketable, the Debtors propose the following Rejection Procedures for leases associated with the Closing Stores:

(a) Rejection Notice. The Debtors will file a notice (the "***Rejection Notice***") to reject the identified unexpired lease(s) pursuant to section 365 of the Bankruptcy Code, which Rejection Notice shall set forth, among other things: (i) unexpired lease(s) to be rejected; (ii) the names and addresses of the counterparties to such unexpired lease(s); (iii) the proposed effective date of the rejection for each such unexpired lease(s), which date may not be before the date of service of the Rejection Notice or the Debtors' surrender of the leased premises (the "***Rejection Date***"); and (iv) the deadlines and procedures for filing objections to the Rejection Notice (as set forth below).

(b) Service of the Rejection Notice. The Debtors will cause the Rejection Notice to be served: (i) by overnight mail upon the unexpired lease counterparties affected by the Rejection Notice and (ii) by e-mail upon: (A) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York, 10004, Attn.: Susan Golden, Attn.: Richard Morrissey; (B) counsel to the agent for the Debtors' postpetition secured lenders, Davis Polk & Wardwell LLP, 450 Lexington Avenue New York, New York, 10017, Attn.: Donald S. Bernstein, Attn.: Marshall S. Huebner; (C) counsel for Wilmington Trust Company as indenture trustee for the Debtors' prepetition unsecured notes, Covington & Burling LLP, 620 Eighth Ave, New York, New York, 10018, Attn.: Michael B. Hopkins, Attn.: Ronald A. Hewitt; (D) counsel for The Bank of New York Mellon Trust Company, N.A., as successor trustee and collateral agent for the Debtors' prepetition secured notes, Dechert LLP, 1095 Avenue of the Americas, New York, New York 10036, Attn.: Glenn E. Siegel, Attn.: Craig P. Druehl; (E) counsel for the official committee of unsecured creditors, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005, Attn.: Dennis F. Dunne, Attn.: Abhilash M. Raval, Attn.: Matthew S. Barr; and (F) those persons who have formally appeared and requested service in these proceedings pursuant to Bankruptcy Rule 2002 (collectively, the "***Notice Parties***").

(c) Objection Procedures. Parties objecting to a proposed rejection must file and serve a written objection so that such objection is filed with the Court and is actually received by the Notice Parties no later than ten (10) calendar days after the date the Debtors serve the relevant Rejection Notice (the "***Rejection Objection Deadline***").

(d) Event of No Objection. Absent an objection being filed by the Rejection Objection Deadline, the Debtors may submit a proposed order (the "***Rejection Order***"), together with a statement confirming the absence of any timely objections to the relief granted by the Rejection Order. The Rejection Order shall set forth the applicable bar date for filing claims arising from the rejection of such unexpired lease(s) and the Rejection Date.

(e) Unresolved Objections. If an objection to the rejection of any unexpired lease(s) is timely filed and not withdrawn or resolved, the Debtors shall file a notice for a hearing for the Court to consider the objection(s) for the unexpired lease(s) to which such objection(s) relates at the next scheduled omnibus hearing which is at least ten (10) calendar days after the Rejection Objection Deadline, unless the Debtors agree to an earlier hearing. If such objection is overruled or withdrawn, such unexpired lease(s) shall be deemed rejected as of the Rejection Date or such other date to which the Debtors and the counterparty to such unexpired lease(s) have agreed.[22]

40. In addition, the Debtors seek approval of the following Assumption and Assignment Procedures for the Purchased Leases associated with the Closing Stores:

(a) Assumption and Assignment Notice. The Debtors will file a notice (the "***Assumption and Assignment Notice***") to assume and assign any Purchased Lease(s) pursuant to section 365 of the Bankruptcy Code, which Assumption and Assignment Notice shall set forth, among other things: (i) the Purchased Lease(s) to be assumed and assigned; (ii) the names and addresses of the counterparties to such Purchased Lease(s); (iii) the proposed effective date of the assumption and assignment for each such Purchased Lease(s), which date may not be before the date of service of the Assumption and Assignment Notice; (iv) the proposed cure amount, if any; (v) the assignee(s) of the Purchased Lease(s); (vi) a certification that each assignee has demonstrated to the Debtors the financial wherewithal and willingness to perform under the Purchased Lease; and

[22] The Rejection Procedures are consistent with the procedures previously approved by this Court in connection with the "dark store" leases that the Debtors rejected during the early days of these cases. *See Order Authorizing Rejection of Certain Unexpired Nonresidential Real Property Leases* [Docket No. 81].

(vii) the deadlines and procedures for filing objections to the Assumption and Assignment Notice (as set forth below).

(b) Service of the Assumption and Assignment Notice. The Debtors will cause the Assumption and Assignment Notice to be served by overnight mail upon the Purchased Lease counterparties affected by the Assumption and Assignment Notice and by e-mail on the Notice Parties.

(c) Objection Procedures. Parties objecting to a proposed assumption and assignment, including to the proposed cure amount, must file and serve a written objection so that such objection is filed with the Court and is actually received by the Notice Parties no later than ten (10) calendar days after the date the Debtors serve the relevant Assumption and Assignment Notice (the "***Assumption and Assignment Objection Deadline***").

(d) Event of No Objection. If an objection to the assumption and assignment of any Purchased Lease(s) is not timely filed by the Assumption and Assignment Objection Deadline, then: (i) the Debtors' proposed cure amount shall be binding upon the non-debtor party to the Purchased Lease for all purposes in these chapter 11 cases and will constitute a final determination of the assumption; (ii) the effective date of such assumption and assignment will be as set forth in the Assumption and Assignment Notice or such other date to which the Debtors and the counterparty or counterparties to such Purchased Lease have agreed; and (iii) the Debtors shall submit a proposed order to the Court granting the unopposed requested relief, together with a statement that there were no timely objections to the proposed relief.

(e) Unresolved Objections. If an objection to the assumption and assignment of any Purchased Lease is timely filed and not withdrawn or resolved, the Debtors shall file a notice for a hearing for the Court to consider the objection(s) for the Purchased Lease(s) to which such objection(s) relates at the next scheduled omnibus hearing which is at least ten (10) calendar days after the Assumption and Assignment Objection Deadline, unless the Debtors agree to an earlier hearing. If such objection is overruled or withdrawn, such unexpired lease(s) shall be assumed with the effective date of such assumption and assignment to be as set forth in the Assumption and Assignment Notice or such other date to which the Debtors and the counterparty to such Purchase Lease(s) have agreed.[23]

[23] The Debtors expect to send out the relevant notices for the Initial Closing Stores on or before April 8, 2011 so that any objections with respect to such leases shall be heard at the April 28, 2011 omnibus hearing. Approval of the Lease Procedures is not intended to invalidate the DIP Lenders' right to receive 75 days of notice of a rejection of any unexpired lease pursuant to *Final Order* (*I*) *Authorizing Debtors* (*A*) *to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364*(*c*)(*1*)*, 364*(*c*)(*2*)*, 364*(*c*)(*3*)*, 364*(*d*)(*1*) *and 364*(*e*) *and* (*B*) *to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363,* (*II*) *Granting Adequate Protection to Pre-Petition* (*continued*) …

41. Under section 365(a) of the Bankruptcy Code, a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an executory contract or unexpired lease of a debtor, providing, in relevant part, that:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the [debtor]—
>
> (A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

42. The standard to be applied by a court in determining whether the assumption or rejection of an executory contract or unexpired lease pursuant to section 365(a) of the Bankruptcy Code should be approved is the "business judgment" test, which requires that the debtor have determined that the requested assumption or rejection would be beneficial to its estate. *See, e.g., Group of Inst. Investors, Inc. v. Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 318 U.S. 523, 550 (1943) (noting "the question [of assumption] is one of business judgment"); *Orion Pictures Corp. v. Showtime Networks, Inc.* (*In re Orion Pictures Corp.*), 4 F.3d 1095, 1098-99 (2d Cir. 1993) (finding that to decide a motion to assume the court must put itself in the position of the trustee and determine whether such assumption would be a good decision or a bad

---

Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 and (*III*) *Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001*(*b*) *and* (*c*) [Docket No. 479] (the "***DIP Order***").

one); *Nat'l Sugar Ref. Co. v. Stroehmann Bros. Co.* (*In re Nat'l Sugar Ref. Co.*), 26 B.R. 765, 767 (Bankr. S.D.N.Y. 1983) (holding that absent invalidation, a debtor seeking to assume a profitable contract should be allowed to do so); *In re Gucci*, 193 B.R. 411, 415 (S.D.N.Y. 1996) (finding that the decision to assume was good business judgment where assumption would allow the debtor estate to substantially reduce an outstanding proof of claim and receive payments in the future).

43. Upon finding that a debtor has exercised its sound business judgment in determining that the assumption or rejection of an executory contract or unexpired lease is in the best interests of the debtors, its creditors and all parties in interest, the court should approve such assumption or rejection under section 365(a) of the Bankruptcy Code. *See, e.g., In re Riodizio, Inc.*, 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997); *Westbury Real Estate Ventures, Inc. v. Bradless, Inc.* (*In re Bradlees Stores, Inc.*), 194 B.R. 555, 558 (Bankr. S.D.N.Y. 1996); *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 673 (Bankr. S.D.N.Y. 1989).

44. Some courts have defined the elements of the business judgment standard in the context of an assumption of an executory contract or unexpired lease as (a) whether the contract or lease is profitable or advantageous to the debtor and (b) whether the estate will be able to perform its contractual obligations under the contract or lease. *See Nat'l Sugar*, 26 B.R. at 767; *In re Del Grosso*, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990). Under the "business judgment" standard, the debtor's decision to assume or reject "should not be interfered with, absent a showing of bad faith or abuse of business discretion." *See In re Chipwich, Inc.*, 54 B.R. 427, 430-31 (Bankr. S.D.N.Y. 1985).

45. Here, the marketing process to be conducted by the Debtors and Hilco will ensure that the highest price is received for each of the Purchased Leases. The Assumption and Assignment Notice that the Debtors will send to the lease counterparties will list the amounts necessary to cure any defaults under the Purchased Leases pursuant to section 365(b)(1)(A) of the Bankruptcy Code and the lease counterparties will have opportunity to dispute the amount. The Debtors will also evaluate each purchaser of a Purchased Lease to determine if such purchaser has adequate financial capacity to perform its obligations under the lease pursuant to section 365(b)(1)(C) of the Bankruptcy Code and shall include a representation there is sufficient adequate assurance of future performance of each Purchased Lease on the Assumption and Assignment Notice. The Debtors therefore believe that they will meet the requirements for assumption and assignment of the Purchased Leases through compliance with the Lease Procedures. The rejection of unmarketable leases is also in the best interests of the estates because it will eliminate significant future rent obligations.

VII. The Lease Procedures Comply with the Procedural Requirements of Bankruptcy Rule 6006

46. As a procedural matter, "[a] proceeding to assume, reject, or assign an executory contract or unexpired lease . . . is governed by Rule 9014." Fed. R. Bankr. P. 6006(a). Bankruptcy Rule 9014 provides that: "In a contested matter . . . , not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). The notice and hearing requirements for contested matters under Bankruptcy Rule 9014 are satisfied if appropriate notice and an opportunity for hearing are given in light of the particular circumstances. *See* 11 U.S.C. § 102(1)(A) (defining "after notice and a hearing" or a similar phrase to mean such notice and an opportunity for hearing "as [are] appropriate in the particular

circumstances"). The Lease Procedures provide for notice to lease counterparties and an opportunity to be heard at a hearing, and thus satisfy the requirement of Bankruptcy Rules 6006(a) and 9014.

47. Under Bankruptcy Rule 6006(e), a debtor may join requests for authority to assume and assign or reject multiple unexpired leases in one motion, subject to Bankruptcy Rule 6006(f). *See* Fed. R. Bankr. P. 6006(e). Bankruptcy Rule 6006(f) sets forth six requirements that motions to assume or reject multiple unexpired leases must satisfy. These requirements are procedural in nature. A motion to assume or reject multiple unexpired leases that are not between the same parties shall:

(a) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;

(b) list parties alphabetically and identify the corresponding contract or lease;

(c) specify the terms, including the curing of defaults, for each requested assumption or assignment;

(d) specify the terms, including the identity of each assignee and the adequate assurance of future performance by each assignee, for each requested assignment;

(e) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and

(f) be limited to no more than 100 executory contracts or unexpired leases.

Fed. R. Bankr. P. 6006(f).

48. The Lease Procedures satisfy Bankruptcy Rule 6006(f). The clear purpose of Bankruptcy Rule 6006(f) is to protect the due process rights of counterparties to the Debtors' leases. Counterparties must be able to locate their leases and readily determine whether their leases are being assumed or rejected. The Debtors will comply with all applicable procedural

requirements of Bankruptcy Rule 6006(f) when serving the Rejection Notices and Assumption and Assignment Notices.

49. Under the circumstances, given the number of leases the Debtors may be seeking to assume and assign or reject in connection with the Store Closing Sales, or outside of the Store Closing Sales process, obtaining Court approval of each assumption and assignment or rejection would impose unnecessary administrative burdens on the Debtors and the Court and result in costs to the Debtors' estates that may decrease the economic benefits of rejection or assumption and assignment. Therefore, the Debtors request approval of the Lease Procedures as the most efficient and economical way for the Debtors to address their unexpired leases and maximize the value such leases can bring to the estates.

Motion Practice

50. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Rule 9013-1(a) of the Local Bankruptcy Rules.

Waiver of Rule 6004 Stay

51. The Debtors request a waiver of any stay of the effectiveness of the Order approving the relief requested in this Motion. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Given the harm to the estates if the Debtors cannot commence the Store Closing Sales for the Initial Closing Stores on or before March 9, 2011 and complete the Store Closing Sales for the Initial Closing Stores on or around April 15, 2011, the Debtors submit that more than ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rules 6004(h), to the extent that it applies.

Notice

52. Notice of this Motion to be provided by electronic mail, facsimile, and/or by overnight mail to: (a) the Office of the United States Trustee for the Southern District of New York; (b) counsel to the official committee of unsecured creditors; (c) counsel to the agent for the Debtors' postpetition secured lenders; (d) counsel to the agent for the Debtors' prepetition secured lenders; (e) the indenture trustees for each of the Debtors' secured and unsecured outstanding bond issuances; (f) the Internal Revenue Service; (g) the Securities and Exchange Commission; (h) each counterparty to the Debtors' unexpired leases; (i) all of the Debtors' lien holders; (j) the State Attorney General's offices (upon the Chief or Director of the Consumer Protection Division or Bureau and Chief or Director of the Bankruptcy Division or Bureau); (k) the State Consumer Protection Agency for each state in which a retail store is located, and (l) the chief legal counsel for each local jurisdiction where a retail store is located, addressed to the attention of the consumer protection division; (m) all the of the Debtors' taxing authorities; and (n) any other parties as specified in the *Order Establishing Certain Notice, Case Management and Administrative Procedures* [Docket No. 75]. The Debtors respectfully submit that further notice of this Motion is neither required nor necessary. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

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

WHEREFORE, the Debtors respectfully request that the Court enter the Order granting the relief requested herein and such other or further relief as is just.

New York, New York
Dated: February 15, 2011

/s/ Paul M. Basta

James H.M. Sprayregen, P.C.
Paul M. Basta
Ray C. Schrock
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

- and -

James J. Mazza, Jr.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., *et al.*	)	Case No. 10-24549 (RDD)
Debtors.	)	Jointly Administered

ORDER PURSUANT TO SECTIONS 105, 363, AND 365 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6004 AND 6006 (I) AUTHORIZING AND APPROVING (A) GLOBAL STORE RATIONALIZATION PROCEDURES, (B) THE SALE OF ASSETS IN CONNECTION THEREWITH FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES, (C) THE DEBTORS' ENTRY INTO A LIQUIDATION CONSULTING AGREEMENT, AND (D) GLOBAL PROCEDURES FOR ASSUMPTION AND ASSIGNMENT AND REJECTION OF UNEXPIRED LEASES; AND (II) GRANTING RELATED RELIEF

Upon the motion (the "***Motion***")[1] of The Great Atlantic & Pacific Tea Company, Inc. ("***A&P***") and certain of its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***") for the entry of an order (this "***Order***") authorizing: (a) the Debtors to commence Store Closing Sales at stores the Debtors may identify from time to time for closure in accordance with the Store Rationalization Procedures and notwithstanding any contractual provisions or state and local laws that may restrict such Store Closing Sales; (b) the sale of certain of the Debtors' assets in connection with the Store Closing Sales free and clear of all liens, claims, and encumbrances; (c) the Debtors' entry into the Consulting Agreement with the Liquidation Consultant who the Debtors determine in their business judgment proposes the most favorable terms to the company; and (d) the Debtors to assume and assign or reject unexpired leases in accordance with the Lease Procedures, all as more fully set forth in the Motion; and the

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper pursuant to 28 U.S.C. §§ 1408 and 1409; 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 the Debtors having provided adequate and appropriate notice of the Motion under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted in its entirety.

2. All objections to the Motion that have not been withdrawn, waived, settled, or specifically addressed in this Order, and all reservations of rights included in such objections, are overruled in all respects on the merits and denied.

3. The Debtors are immediately authorized, pursuant to sections 363 and 105(a) of the Bankruptcy Code, to conduct Store Closing Sales at the Initial Closing Stores, in their sole discretion, in accordance with the procedures set forth in the Motion without further authorization or notice to the Court.

4. The Debtors shall seek further relief from the Court prior to commencing Store Closing Sales at any subsequently identified Closing Store. Such relief may be sought on 15 days notice to affected landlords, unions, local and state regulatory agencies, and the Notice Parties.

5. The Debtors are authorized to sell the Pharmaceutical Assets to the highest and best bidder(s) as identified by the Debtors in their business judgment. To the extent applicable, the Debtors shall comply with the requirements for the sale of *de minimis* assets, as approved by this Court.

6. Pursuant to section 363(f) of the Bankruptcy Code, the Assets and Pharmaceutical Assets being sold 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 DIP Lenders (collectively, the "***Liens***'"), with such Liens, if any, attaching to the proceeds.

7. To the extent that there is any inconsistency between this Order and the terms of the DIP Order or related documents (including, without limitation, sections 5.06 and 6.05 of the debtor-in-possession credit agreement), the DIP Order and related documents shall control.

8. The Store Rationalization Procedures attached to the Motion as Exhibit B are approved, provided that the Debtors and landlords are authorized to enter into agreements modifying the Store Rationalization Procedures without further order of the Court; provided that such agreements do not have a material adverse effect on the Debtors or their estates.

9. No entity shall interfere with or otherwise impede the conduct of the Store Closing Sales, or institute any action against the Debtors or landlords in any court (other than in this Court) or before any administrative body which in any way directly or indirectly interferes with, obstructs, or otherwise impedes the conduct of the Store Closing Sales.

10. Any restrictions in any lease agreement, restrictive covenant, or similar documents purporting to limit, condition, or impair the Debtors' ability to conduct the Store Closing Sales shall not be enforceable, nor shall any breach of such provisions constitute a default under a lease or provide a basis to terminate the lease.

11. The Closing Stores may "go-dark" during the Store Closing Sales and remain "dark" despite any lease restriction, real estate local act, local law, or ordinance to the contrary, and any "continuous operation" or similar clause in any of the leases (or any lease provision that purports to increase the rent or impose any penalty for "going dark") may not be enforced to hinder or interrupt the Store Closing Sales (and the "going dark" under such leases shall not be a basis to cancel or terminate the leases).

12. Subject to applicable state and local public health and safety laws (the "***Safety Laws***'"), and applicable tax, labor, employment, environmental, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, the "***General Laws***"), but excluding Liquidation Sale Laws, the Debtors are authorized to take such actions as necessary and appropriate 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.

13. Provided that the Store Closing Sales are conducted in accordance with the terms of this Order and the Store Rationalization Procedures, and in light of the provisions in the laws of many local and state laws that exempt court-ordered sales from their provisions, the Debtors shall be presumed to be in compliance or otherwise excused from compliance with any Liquidation Sale Laws, and are authorized to conduct the Store Closing Sales in accordance with the terms of this Order without the necessity of compliance with any such Liquidation Sale Laws.

14. The Debtors shall be entitled to use sign walkers, hang signs, and/or interior or exterior banners advertising the Store Closing Sales in accordance with the Store Rationalization Procedures (or as otherwise agreed between the Debtors and the respective landlords), including, without limitation, advertising the Store Closing Sales as "store closing," "sale on everything,"

or similar themed sales and by means of media advertising, A-frames, banners, and similar signage, without further consent of any person and without compliance with the Liquidation Sale Laws; *provided, however,* that the use of banners and sign walkers is done in a safe and responsible manner, such sign walkers and banners, in and of themselves, shall not be deemed to be in violation of Safety Laws and/or General Laws.

15. Each and every federal, state, or local agency, departmental or governmental unit with regulatory authority over the Store Closing Sales and all newspapers and other advertising media in which the Store Closing Sales are advertised shall consider this Order as binding authority that no further approval, license, or permit of any governmental unit shall be required, nor shall the Debtors be required to post any bond, to conduct the Store Closing Sales.

16. State and/or local authorities shall not fine, assess, or otherwise penalize the Debtors or any of the landlords of the Closing Stores for conducting or advertising the Store Closing Sales in a manner inconsistent with state or local law; *provided, however,* that the Store Closing Sales are conducted and advertised in a manner contemplated by this Order.

17. The Debtors are authorized to enter into the Consulting Agreement with the Liquidation Consultant.

18. The following Rejection Procedures for leases associated with the Closing Stores are hereby approved:

(a) Rejection Notice. The Debtors will file a notice (the "***Rejection Notice***") to reject the identified unexpired lease(s) pursuant to section 365 of the Bankruptcy Code, which Rejection Notice shall set forth, among other things: (i) the unexpired lease(s) to be rejected; (ii) the names and addresses of the counterparties to such unexpired lease(s); (iii) the proposed effective date of the rejection for each such unexpired lease(s), which date may not be before the date of service of the Rejection Notice or the Debtors' surrender of the leased premises (the "***Rejection Date***"); and (iv) the deadlines and procedures for filing objections to the Rejection Notice (as set forth below).

(b) Service of the Rejection Notice. The Debtors will cause the Rejection Notice to be served: (i) by overnight mail upon the unexpired lease counterparties affected by the Rejection Notice and (ii) by e-mail upon: (A) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York, 10004, Attn.: Susan Golden, Attn.: Richard Morrissey; (B) counsel to the agent for the Debtors' postpetition secured lenders, Davis Polk & Wardwell LLP, 450 Lexington Avenue New York, New York, 10017, Attn.: Donald S. Bernstein, Attn.: Marshall S. Huebner; (C) counsel for Wilmington Trust Company as indenture trustee for the Debtors' prepetition unsecured notes, Covington & Burling LLP, 620 Eighth Ave, New York, New York, 10018, Attn.: Michael B. Hopkins, Attn.: Ronald A. Hewitt; (D) counsel for The Bank of New York Mellon Trust Company, N.A., as successor trustee and collateral agent for the Debtors' prepetition secured notes, Dechert LLP, 1095 Avenue of the Americas, New York, New York 10036, Attn.: Glenn E. Siegel, Attn.: Craig P. Druehl; (E) counsel for the official committee of unsecured creditors, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005, Attn.: Dennis F. Dunne, Attn.: Abhilash M. Raval, Attn.: Matthew S. Barr; and (F) those persons who have formally appeared and requested service in these proceedings pursuant to Bankruptcy Rule 2002 (collectively, the "***Notice Parties***").

(c) Objection Procedures. Parties objecting to a proposed rejection must file and serve a written objection so that such objection is filed with the Court and is actually received by the Notice Parties no later than ten (10) calendar days after the date the Debtors serve the relevant Rejection Notice (the "***Rejection Objection Deadline***").

(d) Event of No Objection. Absent an objection being filed by the Rejection Objection Deadline, the Debtors may submit a proposed order (the "***Rejection Order***"), together with a statement confirming the absence of any timely objections to the relief granted by the Rejection Order. The Rejection Order shall set forth the applicable bar date for filing claims arising from the rejection of such unexpired lease(s) and the Rejection Date.

(e) Unresolved Objections. If an objection to the rejection of any unexpired lease(s) is timely filed and not withdrawn or resolved, the Debtors shall file a notice for a hearing for the Court to consider the objection for the unexpired lease(s) to which such objection(s) relates at the next scheduled omnibus hearing which is at least ten (10) calendar days after the Rejection Objection Deadline, unless the Debtors agree to an earlier hearing. If such objection is overruled or withdrawn, such unexpired lease(s) shall be deemed rejected as of the Rejection Date or such other date to which the Debtors and the counterparty to such unexpired lease(s) have agreed.

19. The following Assumption and Assignment Procedures for Purchased Leases associated with the Closing Stores are hereby approved:

(a) Assumption and Assignment Notice. The Debtors will file a notice (the "***Assumption and Assignment Notice***") to assume and assign any Purchased Lease(s) pursuant to section 365 of the Bankruptcy Code, which Assumption and Assignment Notice shall set forth, among other things: (i) the Purchased Lease(s) to be assumed; (ii) the names and addresses of the counterparties to such Purchased Lease(s); (iii) the proposed effective date of the assumption and assignment for each such Purchased Lease(s), which date may not be before the date of service of the Assumption and Assignment Notice; (iv) the proposed cure amount, if any; (v) the assignee(s) of the Purchased Lease(s); (vi) a certification that each assignee has demonstrated to the Debtors the financial wherewithal and willingness to perform under the Purchased Lease; and (vii) the deadlines and procedures for filing objections to the Assumption and Assignment Notice (as set forth below).

(b) Service of the Assumption and Assignment Notice. The Debtors will cause the Assumption and Assignment Notice to be served by overnight mail upon the Purchased Lease counterparties affected by the Assumption and Assignment Notice and by e-mail on the Notice Parties.

(c) Objection Procedures. Parties objecting to a proposed assumption and assignment, including to the proposed cure amount, must file and serve a written objection so that such objection is filed with the Court and is actually received by the Notice Parties no later than ten (10) calendar days after the date the Debtors serve the relevant Assumption and Assignment Notice (the "***Assumption and Assignment Objection Deadline***").

(d) Event of No Objection. If an objection to the assumption and assignment of any Purchased Lease(s) is not timely filed by the Assumption and Assignment Objection Deadline, then: (i) the Debtors' proposed cure amount shall be binding upon the non-debtor party to the Purchased Lease for all purposes in these chapter 11 cases and will constitute a final determination of the assumption; (ii) the effective date of such assumption and assignment will be as set forth in the Assumption and Assignment Notice or such other date to which the Debtors and the counterparty or counterparties to such Purchased Lease have agreed; and (iii) the Debtors shall submit a proposed order to the Court granting the unopposed requested relief, together with a statement that there were no timely objections to the proposed relief.

(e) Unresolved Objections. If an objection to the assumption and assignment of any Purchased Lease is timely filed and not withdrawn or resolved, the Debtors shall file a notice for a hearing for the Court to consider the objection(s) for the Purchased Lease(s) to which such objection(s) relates at the next scheduled omnibus hearing which is at least ten (10) calendar days after the Rejection Objection Deadline, unless the Debtors agree to an earlier hearing. If such objection is overruled or withdrawn, such Purchased Lease(s) shall be assumed with the effective date of such assumption to be as set forth in the Assumption and Assignment Notice or such other date to which the Debtors and the counterparty to such unexpired lease(s) have agreed.

20. The Lease Procedures shall not invalidate or modify the DIP Lenders' right to receive 75 days' notice of any rejection of any unexpired lease pursuant to the DIP Order.

21. Counterparties to unexpired leases that are rejected pursuant to the Rejection Procedures are hereby required to file a proof of claim relating to the rejection of such unexpired leases, if any, by the later of (a) any applicable claims bar date established in these chapter 11 cases or (b) thirty (30) days after the entry of the Rejection Order.

22. The Lease Procedures comply with the requirements of Bankruptcy Rule 6006(f).

23. Approval of the Lease Procedures and this Order will not prevent the Debtors from seeking to reject or assume an unexpired lease by separate motion.

24. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

25. The requirement to file a report of the Assets sold in the Store Closing Sales pursuant to Bankruptcy Rule 6004(f) is hereby waived.

26. Notwithstanding Bankruptcy Rule 6004 or otherwise, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing.

27. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

White Plains, New York
Date: _____, 2011

United States Bankruptcy Judge

Exhibit B

Store Rationalization Procedures

Store Rationalization Procedures

1. The Store Closing Sales shall be conducted during normal business hours or such hours as otherwise permitted by the applicable lease; provided that the Debtors shall abide by any applicable shopping center guidelines regarding maintenance, security, and trash removal.

2. The Store Closing Sales shall be conducted in accordance with applicable state and local "Blue Laws," and thus, where applicable, no Store Closing Sales shall be conducted on Sunday, unless the Debtors have been operating such stores on Sundays.

3. All display and hanging signs used by the Debtors in connection with the Store Closing Sales shall be professionally lettered and all hanging signs shall be hung in a professional manner. Nothing herein shall be construed to create or impose upon the Debtors any additional restrictions not contained in the applicable lease. In addition, the Debtors shall be permitted to utilize exterior banners and signwalkers.

4. If Store Closing Sales are to be considered "final," conspicuous signs shall be posted in each of the affected stores to the effect that all sales are "final."

5. The Debtors shall not make any alterations to interior or exterior store lighting, and shall not use any type of amplified sound to advertise the Store Closing Sales or solicit customers.

6. No alterations shall be made to the Closing Stores, except as authorized pursuant to the applicable lease. The hanging of exterior banners or other signage shall not constitute an alteration to a store.

7. No property of any landlord of a store shall be removed or sold during the Store Closing Sales.

8. The Debtors shall keep store premises and surrounding areas clear and orderly, consistent with past practices.

9. A lease shall only be deemed rejected in accordance with the Rejection Procedures.

10. A lease shall only be assumed and assigned in accordance with the Assumption and Assignment Procedures.

Exhibit C

Initial Closing Stores

Initial Store Closing Locations

Store ID Number	Banner	Location
5380	Pathmark	Bethlehem, PA
5377	Superfresh	Lionville, PA
6281	Pathmark	Livingston, NJ
3698	A&P	Flanders, NJ
3309	Waldbaums	Valley Stream, NY
5493	Superfresh	Hammonton, NJ
2540	Pathmark	Glasgow, DE
6287	Pathmark	Whippany, NJ
3125	A&P	Camel, NY
5476	Superfresh	Cape May, NJ
9614	A&P	Greenburgh, NY
5460	Superfresh	Mt. Holly, NJ
3155	Pathmark	North Hackensack, NJ
6539	Pathmark	Deptford, NJ
3810	A&P	Bamegat, NJ
3425	Pathmark	South Plainfield, NJ
7246	A&P	Portchester, NY
3413	A&P	Manville, NJ
6577	Pathmark	Middletown, NJ
6437	Pathmark	Gillette, NJ

Store ID Number	Banner	Location
7638	Waldbaums	Farmingdale, NJ
5404	Superfresh	East Windsor, NJ
5258	Superfresh	Yardley, PA
6668	Pathmark	Brooklyn, NY
6620	Pathmark	Commack, NY
2892	Superfresh	Ocean City, MD
3198	A&P	New Rochelle, NY
3523	Food Basics	Bridgeport, CT
6440	Pathmark	Hillsborough, NJ
7278	Waldbaums	Smithtown, NY
5420	Superfresh	Hamilton Twp, NJ
6294	Pathmark	Hartsdale, NY