

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11
 :
 FRANCESCA’S HOLDINGS CORPORATION, : Case No. 20-13076 (BLS)
 et al.,¹ :
 : Joint Administration Requested
 Debtors. :
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**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTORS TO ASSUME THE CONSULTING
AGREEMENT, (II) APPROVING PROCEDURES FOR STORE
CLOSING SALES, AND (III) GRANTING RELATED RELIEF**

Francesca’s Holdings Corporation (“FHC”) and its affiliated debtors and debtors in possession (collectively, the “Debtors”) respectfully request entry of interim and final orders (i) authorizing the Debtors’ to assume that certain *Consulting Agreement for Inventory Disposition Program* dated December 3, 2020, by and between Tiger Capital Group, LLC and FHC (the “Consulting Agreement”); (ii) authorizing and approving the store closing procedures (the “Store Closing Procedures”) pursuant to which the Debtors shall close and wind down certain of the Debtors’ boutique locations (“Store Closings”) through the conduct of promotional sales at such locations, with such sales to be free and clear of all liens, claims, and encumbrances (the “Sales”); (iii) approving the proposed Dispute Resolution Procedures (as defined below) to resolve any disputes with governmental units regarding certain applicable non-bankruptcy laws that regulate liquidation and similar-themed sales; (iv) authorizing abandonment of any FF&E (as defined below) not sold in the Sales at the Closing Stores (as defined below) at the conclusion of

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are Francesca’s Holdings Corporation (4704), Francesca’s LLC (2500), Francesca’s Collections, Inc. (4665), and Francesca’s Services Corporation (5988). The address of the Debtors’ corporate headquarters is 8760 Clay Road, Houston, Texas 77080.

the Sales; and (v) granting certain related relief. In support of this motion, the Debtors rely on and incorporate by reference *Andrew Clarke's Declaration in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* (the "**Clarke Declaration**"), filed concurrently with this motion.² In further support of the motion, the Debtors, by and through their undersigned proposed counsel, respectfully represent:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this motion under 28 U.S.C. §§ 157 and 1334 and venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b).³

BACKGROUND

2. On December 3, 2020 (the "**Petition Date**"), each of the Debtors filed a voluntary petition with this Court for relief under chapter 11 of title 11 of the United States Code, §§ 101-1532, *et seq.* (the "**Bankruptcy Code**"). The Debtors continue to manage and operate their business as debtors in possession under sections 1107(a) and 1108 of title 11 of the United States Code, §§ 101-1532, *et seq.* (the "**Bankruptcy Code**").

3. Francesca's is a specialty retailer that operates a nationwide-chain of boutiques providing a diverse assortment of apparel, jewelry, accessories, and gifts. As of December 1, 2020, the Debtors operate 558 boutiques in 45 states and the District of Columbia and also serve their customers through www.francescas.com, their e-commerce website, and their recently launched mobile app. Additional information on the Debtors' business and capital

² Capitalized terms used but not defined in this motion have the meanings used in the Clarke Declaration.

³ Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), the Debtors hereby expressly confirm their consent to the entry of a final order by this Court in connection with this motion if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection therewith consistent with Article III of the United States Constitution.

structure, as well as a description of the reasons for filing these cases is set forth in the Clarke Declaration.

RELIEF REQUESTED

4. By this motion, pursuant to sections 105(a), 363, 365, and 554 of the Bankruptcy Code and rules 2002, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors respectfully request entry of interim and final orders, substantially in the forms attached as **Exhibit A** (the “**Interim Order**”) and **Exhibit B** (the “**Final Order**”), (i) authorizing the Debtors’ to assume the Consulting Agreement; (ii) authorizing and approving the Store Closing Procedures pursuant to which the Debtors shall conduct Sales and Store Closings at the Closing Stores; (iii) approving the proposed Dispute Resolution Procedures described below to resolve any disputes with governmental units regarding certain applicable non-bankruptcy laws that regulate liquidation and similar-themed sales; and (iv) authorizing abandonment of any FF&E not sold in the Sales at the Closing Stores at the conclusion of the Sales.

BASIS FOR RELIEF REQUESTED

I. FACTS SPECIFIC TO RELIEF REQUESTED

5. As noted above, in the ordinary course of business, the Debtors operate hundreds of retail boutiques throughout the United States. Prior to the Petition Date, the Debtors engaged in a comprehensive review of the financial performance of the Debtors’ boutiques and an analysis of their real estate lease portfolio and the markets in which the Debtors operate. As a result of this analysis, prior to the Petition Date, the Debtors closed 137 boutiques that were no longer viable locations due to the difficult retail environment and changing consumer shopping behavior. The Debtors have also identified an additional 97 boutiques that are currently underperforming relative to lease costs, and which the Debtors intend to close and wind down during these chapter

11 cases (collectively, the “**Closing Stores**”).⁴ Accordingly, the Debtors determined, in their business judgment, that it was in the best interests of their estates, creditors, and all parties-in-interest to seek authority to close and wind down or conduct similar themed sales at the Closing Stores, with such sales to be free and clear of all liens, claims, and encumbrances.

6. To maximize the value of the property of the Debtors’ estates that is attributable to the Store Closings, the Debtors entered into the Consulting Agreement with Tiger Capital Group, LLC (the “**Consultant**”), an affiliate of the DIP Agent (as defined in the DIP Motion), to assist the Debtors with conducting the Sales.⁵ A copy of the Consulting Agreement is attached to the Interim Order as **Exhibit 1**. Under the Consulting Agreement, the Consultant will serve as the exclusive agent to the Debtors in connection with the Sales and Store Closings. More specifically, the Consultant has been engaged to: (a) manage the Sales and Store Closings; (b) sell all goods, saleable in the ordinary course, located in the Closing Stores on the Sale Commencement Date (as defined below) or goods in the Debtors’ distribution center delivered to the Closing Stores after the Sale Commencement Date (collectively, the “**Merchandise**”); (c) sell any owned furnishings, trade fixtures, equipment, and improvements to real property located in the Closing Stores and the Debtors’ distribution center and corporate office (other than Retained FF&E as defined in the Consulting Agreement) (collectively, the “**FF&E**” and together with the Merchandise, the “**Store Closure Assets**”); and (d) otherwise prepare the Closing Stores for turnover to the applicable landlords, all on the terms set forth in the Consulting Agreement. The

⁴ The Debtors reserve the right to remove a boutique from the list or otherwise adjust the timing of the Store Closing.

⁵ Contemporaneously herewith, the Debtors filed the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection to Prepetition Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [D.I. 32] (the “**DIP Motion**”), which seeks approval of the proposed debtor-in-possession financing underwritten by the DIP Agent, including a milestone for the entry of the Interim Order.

Debtors will commence Sales at certain of the Closing Stores as soon as practicable after entry of the Interim Order. It is imperative that the Consulting Agreement and Store Closing Procedures be approved on an interim basis so that the Debtors and the Consultant may commence the Sales and Store Closings in a timely and efficient manner.

A. The Consulting Agreement

7. A summary of the key terms of the Consulting Agreement is set forth below.⁶

Term	Consulting Agreement
<p>Services Provided by Consultant</p> <p><i>See Consulting Agreement, § 1.</i></p>	<p>The Consultant will be retained by the Debtors to provide the following services (collectively, the “Consulting Services”):</p> <ul style="list-style-type: none"> (a) Recommend appropriate discounting to effectively sell all of the Debtors’ goods located at or to be delivered to the Closing Stores, in accordance with a “store closing” or other mutually agreed upon themed sale, and recommend appropriate point-of-purchase, point of sale, and other internal and external advertising in connection therewith; (b) Provide qualified supervision to oversee and implement the conduct of the Sale; (c) Maintain focused and constant communication with Store-level employees and managers to keep them abreast of strategy and timing and to properly effect Store-level communication by the Debtors’ employees to customers and others about the Sale; (d) Monitor accounting functions for the Sale, including evaluation of sales of the Debtors’ goods located at the Closing Stores by category, sales reporting and expense monitoring; (e) Meet with the Debtors, on a weekly or as needed basis, to review sales, sales reporting and expenses in an effort to minimize expenses and maximize overall net recovery of the Sale;

⁶ The following summary chart is for the convenience of the Bankruptcy Court and parties-in-interest. To the extent there is any conflict between this summary and the Consulting Agreement, the Consulting Agreement shall govern in all respects. Capitalized terms used but not defined in this summary shall have the meanings used in the Consulting Agreement.

Term	Consulting Agreement
	<p>(f) Recommend loss prevention strategies;</p> <p>(g) Advise as to appropriate staffing levels for the Closing Stores and appropriate bonus and/or incentive programs (to be funded by Debtors) for Closing Store employees;</p> <p>(h) Assist the Debtors in a program to transition customers to any of the Debtors’ ongoing stores and methods to protect the Debtors’ brand during the Sale;</p> <p>(i) Recommend appropriate point of purchase, point of sale, and external advertising to effectively sell the Merchandise during the Sale Term, consistent with a “Store Closing” theme;</p> <p>(j) Recommend appropriate pricing, display and discounting of Merchandise;</p> <p>(k) Sell all Offered FF&E; and</p> <p>(l) Provide such other related services deemed necessary or prudent by the Debtors and Consultant under the circumstances giving rise to the Sale.</p>
<p>Term of Sale</p> <p><i>See Consulting Agreement, § 2.</i></p>	<p>The “Term” of the Consulting Agreement shall begin upon execution of the Consulting Agreement and conclude on the Sale Termination Date (as defined below).</p> <p>With respect to each respective Closing Store, the “Sale Term” shall commence on a date to be mutually agreed (the “Sale Commencement Date”) and shall end on the date determined by the Debtors, in reasonable consultation with Consultant (the “Sale Termination Date”); <i>provided, however</i>, that the Consultant and the Debtors may mutually agree upon an earlier or later “Sale Commencement Date” or “Sale Termination Date” with respect to any one or more Closing Stores on a Closing Store-by-Closing Store basis.</p> <p>Upon the conclusion of the Sale Term at each Closing Store, Consultant shall leave such Closing Store in broom clean condition with the right to abandon any of the Debtors’ existing fixtures pursuant to Section 6 of the Consulting Agreement.</p>
<p>Expenses of Consultant</p> <p><i>See Consulting Agreement, § 3.</i></p>	<p>Subject to Section 3(b) of the Consulting Agreement, the Debtors shall be responsible for payment of all expenses incident to the Sale and the operation of the Closing Stores during the Term (including without limitation all Store-level and corporate expenses, advertising costs, administrative expenses, and miscellaneous expenses associated with the Sale as agreed between the parties). Consultant</p>

Term	Consulting Agreement								
	shall have no obligation to advance any amounts for Sale expenses but may do so and be reimbursed as set forth in the Consulting Agreement.								
<p>Consultant Compensation</p> <p>See Consulting Agreement, § 4.</p>	<p>In consideration of providing the Consulting Services, the Debtors shall pay Consultant a “Base Fee” equal to one percent (1.0%) of the Gross Proceeds derived from the Sale. In addition, the Consultant shall earn an additional incentive fee (the “Incentive Fee” and together with the Base Fee, the “Consulting Fee”) based upon achieving the following thresholds of Gross Recovery Percentage, calculated back to the first dollar received:</p> <table border="1" data-bbox="553 688 1398 846"> <thead> <tr> <th>Gross Recovery Percentage</th> <th>Total Consulting Fee</th> </tr> </thead> <tbody> <tr> <td>>= 150.0% and < 155.0%</td> <td>1.25% of Gross Proceeds</td> </tr> <tr> <td>>= 155.0% and < 160.0%</td> <td>1.50% of Gross Proceeds</td> </tr> <tr> <td>>= 160.0%</td> <td>1.75% of Gross Proceeds</td> </tr> </tbody> </table> <p>For the avoidance of doubt, the above Consulting Fee if achieved would be the total fee earned and not in addition to the Base Fee (<i>i.e.</i>, if the Gross Recovery Percentage is above 150%, 1.25% would be the Consulting Fee, not 2.25%).</p> <p>On a weekly basis in connection with each weekly reconciliation contemplated by Section 5(b) of the Consulting Agreement, Consultant shall present an invoice and the Debtors shall pay Consultant (1) an amount equal to the Base Fee on account of the prior week’s Gross Proceeds, and (2) any FF&E Commission earned during the prior week. The parties shall determine the definitive Gross Recovery Percentage and any Incentive Fee (and any remaining amounts payable on account of the Base Fee or the FF&E Commission) in connection with the Final Reconciliation. Immediately thereafter (and as part of the Final Reconciliation), the Debtors or Consultant, as the case may be, shall pay any additional amount owed on account of such fees.</p> <p>The Debtors shall pay Consultant a Special Purpose Payment of \$100,000, which shall be held by Consultant as security for payment of the Consulting Fee, the reimbursement of Sale Expenses and payment of any other amounts to Consultant under the Consulting Agreement.</p>	Gross Recovery Percentage	Total Consulting Fee	>= 150.0% and < 155.0%	1.25% of Gross Proceeds	>= 155.0% and < 160.0%	1.50% of Gross Proceeds	>= 160.0%	1.75% of Gross Proceeds
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<p>Insurance Obligations</p> <p>See Consulting Agreement, § 8.</p>	<p>The Debtors shall maintain (at their expense) insurance with respect to the Merchandise in amounts and on such terms and conditions as are consistent with the Debtors’ ordinary course operations, and general liability insurance covering injuries to persons and property</p>								

Term	Consulting Agreement
	in or in connection with the Closing Stores, in such amounts as are reasonable and consistent with its ordinary practices, for bodily injury, personal injury, and/or property damage.
<p>Indemnification by Consultant</p> <p><i>See Consulting Agreement, § 9(a).</i></p>	<p>Consultant shall indemnify and hold the Debtors and its affiliates, and their respective officers, directors, employees, consultants, and independent contractors (collectively, “Debtor Indemnified Parties”) harmless from and against all third-party claims, demands, penalties, losses, liabilities, and damages, including, without limitation, reasonable and documented attorneys’ fees and expenses, directly or indirectly asserted against, resulting from or related to:</p> <ul style="list-style-type: none"> (a) Consultant’s material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained in the Consulting Agreement or in any written agreement entered into in connection with the Consulting Agreement; (b) any harassment or any other unlawful, tortious or otherwise actionable treatment of any employees or agents of the Debtors or any other breaches or violations of human rights laws or regulations by Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives (including without limitation any supervisors); (c) any claims by any party engaged by Consultant as an employee or independent contractor (including without limitation any non-Debtor employee supervisor) arising out of such employment or engagement, including, without limitation, payroll claims, wage claims, claims for taxes required to be withheld from wages, social security, and unemployment compensation claims; or (d) the negligence, willful misconduct or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, Consultants, independent contractors or representatives, provided that Consultant shall not be obligated to indemnify any Debtor Indemnified Party from or against any claims, demands, penalties, losses, liabilities or damages arising primarily from any Debtor Indemnified Party’s gross negligence, willful misconduct, or unlawful act.
Indemnification by the Debtors	The Debtors shall indemnify and hold Consultant, its affiliates and their respective officers, directors, employees, consultants, and independent contractors (collectively, “ Consultant Indemnified ”

Term	Consulting Agreement
<p><i>See Consulting Agreement, § 9(b).</i></p>	<p>Parties) harmless from and against all third-party claims, demands, penalties, losses, liabilities, and damages, including, without limitation, reasonable and documented attorneys’ fees and expenses, directly or indirectly asserted against, resulting from or related to:</p> <ul style="list-style-type: none"> (a) The Debtors’ material breach of or failure to comply with any of their agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith; (b) any claims by any party engaged by the Debtors as an employee or independent contractor arising out of such engagement, except where due to the negligence, willful misconduct or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives; (c) any consumer warranty or products liability claims relating to any Merchandise; and/or (d) the negligence, willful misconduct or unlawful acts of the Debtors, their affiliates or their respective officers, directors, employees, agents, independent contractors or representatives, provided that the Debtors shall not be obligated to indemnify any Consultant Indemnified Party from or against any claims, demands, penalties, losses, liabilities or damages arising primarily from any Consultant Indemnified Party’s gross negligence, willful misconduct, or unlawful act.
<p>Furniture, Fixtures, and Equipment</p> <p><i>See Consulting Agreement, § 6.</i></p>	<p>With respect to all FF&E located at the Closing Stores, the distribution center and corporate office as of the Sale Commencement Date that is not Retained FF&E (as defined in the Consulting Agreement), Consultant shall have the right to sell such FF&E during the Sale Term on a commission basis equal to fifteen percent (15.0%) of the gross sales of Offered FF&E, net only of sales tax (“FF&E Commission”).</p> <p>The Debtors shall reimburse Consultant for its reasonable, documented expenses associated with the sale of the FF&E, not to exceed the amount shown on an FF&E expense budget to be mutually agreed by the parties promptly after the identification/designation of the FF&E and Retained FF&E (which shall be in addition to the Consultant Controlled Expenses budget) (“FF&E Expenses”).</p>

Term	Consulting Agreement
	Consultant shall have the right to abandon any unsold FF&E (and all Retained FF&E) at the Closing Stores, the distribution center, and the corporate office at the conclusion of the Sale Term.

8. By this motion, the Debtors seek to assume the Consulting Agreement on an interim basis so that the Consultant may commence the Sales and Store Closings during the Debtors' chapter 11 cases without delay. The Debtors have determined, in the exercise of their business judgment, that the services provided by the Consultant are necessary for efficient large-scale execution of the Sales and Store Closings, to maximize the value of the Store Closure Assets, and to conduct the Sales and the Store Closings in a timely manner. The Debtors believe that assuming the Consulting Agreement will allow the Debtors to utilize the logistical capabilities, experience, and resources of the Consultant in performing the Sales and Store Closings in a format that allows the Debtors to retain control over the Sales and Store Closings. Moreover, assumption of the Consulting Agreement, as contemplated by this motion, will establish fair and uniform store closing procedures.

B. The Store Closing Procedures

9. The Debtors seek approval of streamlined Store Closing Procedures, as described in **Exhibit 2** to the Interim Order, to sell the Store Closure Assets located at or to be delivered to the Closing Stores, in each case through a Sale free and clear of liens, claims, and encumbrances. The Debtors also seek approval of the Store Closing Procedures to provide newspapers and other advertising media in which the Sales may be advertised with comfort that the Debtors are conducting the Sales in compliance with applicable law and with the Bankruptcy Court's approval. The Debtors are seeking interim approval of the Store Closing Procedures in accordance with the DIP Credit Agreement (as defined in the DIP Motion) and in order for the

Consultant to begin the process of commencing the Sales and Store Closings without delay. The Debtors have determined, in the exercise of their business judgment and in consultation with their advisors, that the Store Closing Procedures will provide the best, most efficient, and most organized means of selling the Store Closure Assets to maximize their value to the estates.

C. Liquidation Sale Laws and Dispute Resolution Procedures

10. Certain states in which the Debtors operate stores have, or may have, licensing or other requirements governing the conduct of store closing, liquidation, or other inventory clearance sales, including, without limitation, federal, state, and local laws, statutes, rules, regulations, and ordinances (collectively, the “**Liquidation Sale Laws**”). Liquidation Sale Laws may include licensing, permitting, or bonding requirements, waiting periods, time limits, bulk sale restrictions, and augmentation limitations that would otherwise apply to the Store Closings. Such requirements would hamper the Debtors’ ability to maximize value in selling their inventory. Accordingly, subject to the Bankruptcy Court’s approval, the Debtors intend to conduct the Store Closings in accordance with the Store Closing Procedures. To the extent the Store Closing Procedures conflict with the Liquidation Sale Laws, the Debtors seek authority to conduct the Store Closings in accordance with the Store Closing Procedures without complying with the Liquidation Sale Laws.⁷

11. To facilitate the orderly resolution of any disputes between the Debtors and any Governmental Units (as defined in section 101(27) of the Bankruptcy Code) arising due to the Store Closing Procedures and the alleged applicability of any Liquidation Sale Laws, the Debtors respectfully request that the Bankruptcy Court authorize the Debtors to implement the following

⁷ The Debtors will continue to comply with applicable laws, rules, regulations and ordinances that are for the protection of the health and safety of the public and in support of consumer protection laws.

dispute resolution procedures (the “**Dispute Resolution Procedures**”), on an interim and final basis:

- (a) Provided that the Sales are conducted in accordance with the terms of the Interim Order or the Final Order, as applicable, and the Store Closing Procedures, and in light of the provisions in the laws of many Governmental Units that exempt court-ordered sales from their provisions, the Debtors and the Consultant will be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of the Interim Order and/or the Final Order, as applicable, and the Store Closing Procedures without the necessity of further showing compliance with any such Liquidation Sale Laws.
- (b) Within five business days of the entry of the Interim Order, the Debtors will serve by email, facsimile, or first-class mail, copies of the Interim Order, the proposed Final Order, the Consulting Agreement, and the Store Closing Procedures on the following: (i) the landlords for the Closing Stores; (ii) the Attorney General’s office for each state in which the Sales are being held; (iii) the county consumer protection agency or similar agency for each county in which the Sales are being held; (iv) the division of consumer protection for each state in which the Sales are being held; and (v) the chief legal counsel for each local jurisdiction in which the Sales are being held (collectively, the “**Dispute Notice Parties**”).
- (c) To the extent that there is a dispute arising from or relating to the Sales, the Interim Order or the proposed Final Order, as applicable, the Consulting Agreement, or the Store Closing Procedures, which dispute relates to any Liquidation Sale Laws (a “**Reserved Dispute**”), the Bankruptcy Court shall retain exclusive jurisdiction to resolve such Reserved Dispute. Any time within ten business days following entry of the Interim Order any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the “**Dispute Notice**”) explaining the nature of the dispute to: (i) proposed co-counsel for the Debtors, O’Melveny & Myers LLP, Times Square Tower, Seven Times Square, New York, New York 10036 (Attn: Maria DiConza, Esq. (mdiconza@omm.com) and Diana M. Perez, Esq. (dperez@omm.com)); (ii) proposed co-counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. (collins@rlf.com), Michael J. Merchant, Esq. (merchant@rlf.com), and Jason M. Madron, Esq. (madron@rlf.com)); (iii) the Consultant, Tiger Capital Group, LLC, 350 N. LaSalle Street, 11th Floor, Chicago, IL 60654 (Attn: Mark P Naughton (mnaughton@tigergroup.com)) and (iv) Greenberg Traurig, LLP, One International Place, Suite 200, Boston, MA 02110 (Attn: Jeffrey M. Wolf, Esq. (wolfje@gtlaw.com)). If the Debtors, the Consultant, and the Governmental Unit are unable to resolve the Reserved Dispute within 15 business days after service of the Dispute

Notice, the Governmental Unit may file a motion with the Bankruptcy Court requesting that the Court resolve the Reserved Dispute (a “**Dispute Resolution Motion**”).

- (d) In the event that a Dispute Resolution Motion is filed, nothing in the Interim Order or the Final Order, as applicable, shall preclude the Debtors, a landlord, the Consultant, or any other interested party from asserting (i) that the provisions of any Liquidation Sale Laws are preempted by the Bankruptcy Code or (ii) that neither the terms of the Interim Order or the Final Order, as applicable, nor the conduct of the Debtors or the Consultant pursuant to the Interim Order or the Final Order, as applicable, violates such Liquidation Sale Laws. Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of the Interim Order or the Final Order or to limit or interfere with the Debtors’ or the Consultant’s ability to conduct or to continue to conduct the Sales pursuant to the Interim Order or the Final Order, absent further order of the Court. Upon the entry of the Interim Order or the Final Order, the Court grants authority for the Debtors and the Consultant to conduct the Sales pursuant to the terms of the Interim Order or the Final Order, the Consulting Agreement, and/or the Store Closing Procedures and to take all actions reasonably related thereto or arising in connection therewith. The Governmental Unit will be entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Sale Laws or the lack of any preemption of such Liquidation Sale Laws by the Bankruptcy Code. Nothing in the Interim Order or the Final Order will constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.
- (e) If, at any time, a dispute arises between the Debtors and/or the Consultant and a Governmental Unit as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in the Interim Order or the Final Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions of subparagraphs (c) and (d) above by serving a notice to the applicable parties and proceeding thereunder in accordance with those paragraphs. Any determination with respect to whether a particular law is a Liquidation Sale Law shall be made *de novo*.

D. Lease Restrictions

12. The Debtors also respectfully request a waiver of any contractual restrictions that could otherwise inhibit or prevent the Debtors from maximizing value for creditors through the Sales and Store Closings. In certain cases, the contemplated Sales and Store Closings may be inconsistent with certain provisions of leases or other documents with respect to the premises in which the Debtors operate, including, without limitation, reciprocal easement

agreements, agreements containing covenants, conditions, and restrictions (including, without limitation, “go dark” provisions and landlord recapture rights), or other similar documents or provisions. Such restrictions would hamper the Debtors’ ability to maximize value in selling their inventory.

13. The Debtors also request that no entity, including, without limitation, utilities, landlords, shopping center managers and personnel, creditors, and all persons acting for or on their behalf shall interfere with or otherwise impede the conduct of the Sales and Store Closings, or institute any action against the Debtors in any court (other than this Court) or before any administrative body that in any way directly or indirectly interferes with, obstructs, or otherwise impedes the conduct of the Sales and Store Closings or the advertising and promotion (including through the posting of signs) of the Sales.

II. LEGAL BASIS FOR RELIEF REQUESTED

A. The Court Should Authorize the Assumption of the Consulting Agreement

14. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “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). Courts employ the business judgment standard in determining whether to approve a debtor’s decision to assume or reject an executory contract or unexpired lease. *See, e.g., In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (assumption or rejection of lease “will be a matter of business judgment by the bankruptcy court”); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that a debtor’s decision to assume or reject executory contract is governed by business judgment standard and may only be overturned if decision is product of bad faith, whim, or caprice). The “business judgment” test in this context only requires that a debtor demonstrate that assumption or rejection of an executory

contract or unexpired lease benefits the estate. *See Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989).

15. The assumption of the Consulting Agreement is beneficial to the Debtors' estates, and, therefore, is a reasonable exercise of the Debtors' business judgment. In consultation with their advisors, the Debtors have determined that the Store Closure Assets should be liquidated as expeditiously as possible for the benefit of the Debtors' estates and their creditors. The Debtors determined that entering into the Consulting Agreement will provide the greatest return to the Debtors' estates for the Store Closure Assets. The Debtors believe that the terms set forth in the Consulting Agreement comprise fair and commercially reasonable terms available for the conduct of the Sales and Store Closings.

16. The Consultant has extensive expertise in conducting liquidation sales and can oversee and assist in the management and implementation of the Sales and Store Closings in an efficient and cost-effective manner. Assumption of the Consulting Agreement will enable the Debtors to utilize the skills and resources of the Consultant to effectively and efficiently conduct the Sales and Store Closings for the benefit of all stakeholders. If the Consulting Agreement is not approved on an interim basis, the Sales and Store Closings would lose the benefit of the Consultant's oversight and might be delayed or suspended entirely, leading to loss of additional liquidity and increased administrative expenses during the chapter 11 cases. Moreover, it is imperative that the Consulting Agreement be approved on an interim basis so that the Debtors and Consultant can immediately begin to advertise the Sales as "Store Closing," "Everything Must Go," "Everything on Sale," "Going out of Business," or similarly themed Sales. Based on the Consultant's experience, the ability to advertise using this language will generate the most proceeds for the Debtors and their estates.

B. The Debtors Have a Valid Business Justification for the Sales

17. The sale of Merchandise in the Debtors' boutiques is an ordinary-course transaction under section 363(c)(1) of the Bankruptcy Code and does not require Court approval. Nonetheless, out of an abundance of caution, the Debtors seek authority to sell the Store Closure Assets under section 363(b)(1) of the Bankruptcy Code.

18. Section 363(b)(1) of the Bankruptcy Code, which governs asset sales outside of the ordinary course of business, provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of a debtor's estate, courts have approved the authorization of a sale of a debtor's assets if such sale is based upon the sound business judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Abbotts Dairies, Inc.*, 788 F.2d 143, 147-48 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of *Lionel Corp.*, and requiring good faith); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephen Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Delaware & Hudson Ry, Co.*, 124 B.R. 169, 175-76 (D. Del. 1991) (concluding that the Third Circuit adopted the “sound business judgment” test in the *Abbotts Dairies* decision).

19. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was provided to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. *See In re Decora Indus., Inc.*, No. 00-4459 (JJF), 2002 WL

32332749, at *2 (D. Del. May 20, 2002) (citing *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)). Where a debtor demonstrates a valid business justification for a decision, it is presumed 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. 1992).

20. Store closing or liquidation sales are a routine occurrence in chapter 11 cases involving retail debtors. *See Ames Dept. Stores, Inc.*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (noting that liquidation sales are an important part of “overriding federal policy requiring [a] Debtor to maximize estate assets”). As such, bankruptcy courts in this District and other Districts have routinely approved similar store closing sales.⁸

21. Sufficient business justification exists to approve the proposed Sales under section 363(b)(1) of the Bankruptcy Code. The Debtors, with the assistance of their advisors, have determined that the Sales represent the best alternative to maximize recoveries to the Debtors’ estates with respect to the Store Closure Assets. There are meaningful amounts of Merchandise, in the aggregate, that will be monetized most efficiently and quickly through an orderly process conducted in consultation with the Consultant, an experienced liquidating firm. Further, delay in commencing the Sales would diminish the recovery tied to monetization of the Store Closure

⁸ *See, e.g., In re Lucky Brand Dungarees, LLC*, Case No. 20-11768 (CSS) (Bankr. D. Del. July 3, 2020); *In re GNC Holdings, Inc.*, Case No. 20-11662 (KBO) (Bankr. D. Del. June 24, 2020); *In re SFP Franchise Corp.*, Case No. 20-10134 (JTD) (Bankr. D. Del. Feb. 14, 2020); *In re Lucky’s Market Parent Company, LLC*, Case No. 20-10166 (JTD) (Bankr. D. Del. Jan. 27, 2020); *In re Destination Maternity Corp.*, Case No. 19-12256 (BLS) (Bankr. D. Del. Nov. 14, 2019); *In re Charming Charlie Holdings Inc.*, Case No. 17-12906 (CSS) (Bankr. D. Del. Aug. 14, 2019); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019); *In re Things Remembered, Inc.*, Case No. 19-10234 (KG) (Bankr. D. Del. Feb. 28, 2019); *In re Samuel Jewelers, Inc.*, Case No. 18-11818 (KJC) (Bankr. D. Del. Aug. 7, 2018); *In re Southeastern Grocers, LLC*, Case No. 18-10700 (Bankr. D. Del. Mar. 27, 2018); *In re General Wireless Operations Inc. dba Radioshack, Inc.*, Case No. 17-10506 (Bankr. D. Del. Apr. 10, 2017); *In re C. Wonder LLC*, No. 15-11127, (MBK) (Bankr. D.N.J. Jan. 26, 2015).

Assets. The Debtors will realize an immediate benefit in terms of financial liquidity upon the sale of the Store Closure Assets and the termination of operations at the Closing Stores. Further, uninterrupted and orderly Sales will allow the Debtors to timely reject leases associated with the Closing Stores, which are unlikely to be assumed and assigned and, therefore, avoid the accrual of unnecessary administrative expenses for rent and related costs. Suspension of the Sales until entry of the Final Order may cause the Debtors to incur large, unnecessary claims for rent at many of these Closing Stores, which the Debtors may be required to pay in full.

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

22. The Debtors request approval to sell the Store Closure Assets on a final “as is” basis, free and clear of any and all liens, claims, and encumbrances in accordance with section 363(f) of the Bankruptcy Code. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests and encumbrances 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 value of all liens on such property;
- (d) such interest is in bona fide dispute; or
- (e) such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see also In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *Citicorp*

Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988) (same). Moreover, the Third Circuit has indicated that a debtor possesses broad authority to sell assets free and clear of liens. *See In re TWA Inc.*, 322 F.3d 283, 289-90 (3d Cir. 2003).

23. Although the term “any interest” is not defined in the Bankruptcy Code, the Third Circuit has noted that the trend in modern cases is toward “a broader interpretation which includes other obligations that may flow from ownership of the property.” *Folger Adam Security, Inc. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 258 (3d Cir. 2000). As the Fourth Circuit held in *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581-82 (4th Cir. 1996) (cited with approval by the Third Circuit in *Folger Adam*), the scope of section 363(f) is not limited to *in rem* interests in a debtor’s assets. Thus, a debtor can sell its assets under section 363(f) “free and clear of successor liability that otherwise would have arisen under federal statute.” *Folger Adam*, 209 F.3d at 258.

24. Section 363(f) of the Bankruptcy Code is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a); *see also Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of claims] is within the court’s equitable powers when necessary to carry out the provisions of [the Bankruptcy Code].”).

25. With respect to any party asserting a lien, claim, or encumbrance against the Store Closure Assets, the Debtors anticipate that they will be able to satisfy one or more of the conditions set forth in section 363(f) of the Bankruptcy Code. In connection with the sale of the Store Closure Assets, the Debtors propose that any liens, claims, and encumbrances asserted against the Store Closure Assets be transferred to and attach to the amounts earned by the Debtors

under the Sales with the same force, effect, and priority as such liens currently have on the Store Closure Assets.

D. The Court Should Waive Compliance with Liquidation Sale Laws and Approve the Dispute Resolution Procedures

26. The Debtors' ability to conduct the Sales in accordance with the Store Closing Procedures and without strict compliance with all Liquidation Sale Laws is critical to the Sales' success. Although the Debtors intend to comply with state and local health and safety laws and consumer protection laws in conducting the Sales, many Liquidation Sale Laws require special and cumbersome licenses, waiting periods, time limits, and other procedures for store closing, liquidation, or similar sales.

27. To eliminate the time, delay, and expense associated with the administrative procedures necessary to comply with the Liquidation Sale Laws, the Debtors propose the Store Closing Procedures as a way to streamline the administrative burdens on their estates while still adequately protecting the broad and varied interests of both landlords and applicable governmental agencies charged with enforcing any Liquidation Sale Laws that may apply to the Store Closings. As such, the Debtors believe the Store Closing Procedures mitigate any concerns that their landlords or governmental agencies may raise with respect to the Store Closings and, therefore, the requested relief is in compliance with any applicable Liquidation Sale Laws.

28. The Debtors submit that there is strong support for waiving compliance with the Liquidation Sale Laws. *First*, certain state statutes and regulations provide that, if a liquidation or bankruptcy sale is court-authorized, a company need not comply with the Liquidation Sale Laws. *See, e.g.*, N.Y. Gen. Bus. Law § 584(a) (exempting “[p]ersons acting pursuant to an order or process of a court of competent jurisdiction” from New York State’s regime on going out of business sales). *Second*, pursuant to section 105(a) of the Bankruptcy Code, the Court has the

authority to permit the Sales and Store Closings to proceed notwithstanding contrary Liquidation Sale Laws as it is essential to the continued operation of the Debtors' business. *Third*, this Court will be able to supervise the Sales and Store Closings because the Debtors and their assets are subject to this Court's exclusive jurisdiction. *See* 28 U.S.C. § 1334. As such, creditors and the public interest are adequately protected by notice of this motion and the ongoing jurisdiction and supervision of the Court because the Debtors are only seeking interim relief at the outset of these cases, and parties-in-interest will be able to raise any further issues at the final hearing.

29. Further, bankruptcy courts have consistently recognized, with limited exception, that federal bankruptcy law preempts state and local laws that contravene the underlying policies of the Bankruptcy Code. *See Belculfine v. Aloe (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 [a debtor] where the result would contradict the priorities established by the federal bankruptcy code."), *aff'd*, 112 F.3d 633 (3d Cir. 1997). Under similar circumstances, courts in this District have recognized that the Bankruptcy Code preempts certain state laws and have granted relief similar to that requested herein.⁹

30. Courts in some jurisdictions have found that preemption of state law is not appropriate if the laws deal with public health and safety. *See Baker & Drake, Inc. v. Pub. Serv.*

⁹ *See, e.g., In re SFP Franchise Corp.*, Case No. 20-10134 (JTD) (Bankr. D. Del. Feb. 14, 2020) (authorizing debtors to conduct store closing sales under the terms of the order, which included a provision that "no further approval, license, or permit of any Governmental Unit shall be required"); *In re Destination Maternity Corp.*, Case No. 19-12256 (BLS) (Bankr. D. Del. Nov. 14, 2019) (same); *In re Charming Charlie Holdings Inc.*, Case No. 17-12906 (CSS) (Bankr. D. Del. Aug. 14, 2019) (same); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (same); *In re Things Remembered, Inc.*, Case No. 19-10234 (KG) (Bankr. D. Del. Feb. 28, 2019) (same); *In re General Wireless Operations Inc. dba Radioshack, Inc.*, Case No. 17-10506 (Bankr. D. Del. Apr. 10, 2017) (ordering that "[n]either the Debtors nor any of their officers, employees, or agents shall be required to obtain the approval of any third party, including (without limitation) any Governmental Unit . . . to conduct the Store Closing Sales and to take the related actions authorized herein).

Comm'n of Nev. (In re Baker & Drake, Inc.), 35 F.3d 1348, 1353-54 (9th Cir. 1994) (holding that the Bankruptcy Code did not preempt state law prohibiting taxicab leasing that was promulgated in part as public safety measure). However, preemption is appropriate where, as here, the state laws involved concern economic regulation rather than the protection of public health and safety. *See In re Baker & Drake, Inc.*, 35 F.3d at 1353 (finding that “federal bankruptcy preemption is more likely . . . where a state statute is concerned with economic regulation rather than with protecting the public health and safety”).

31. Under the circumstances of these chapter 11 cases, enforcing the strict requirements of the Liquidation Sale Laws would undermine the fundamental purpose of section 363(b) of the Bankruptcy Code by placing constraints on the Debtors’ ability to maximize estate assets for the benefit of creditors. Accordingly, authorizing the Sales and Store Closings without the delays and burdens associated with obtaining various state and local licenses, observing state and local waiting periods or time limits, and/or satisfying any additional requirements with respect to advertising and similar items is necessary and appropriate. The Debtors do not seek a general waiver of all state and local law requirements, but only those that apply specifically to retail liquidation sales. Indeed, the requested waiver is narrowly tailored to facilitate the successful consummation of the Sales and Store Closings. Moreover, the Debtors will comply with applicable state and local public health and safety laws, and applicable tax, labor, employment, environmental, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising.

32. Finally, the Dispute Resolution Procedures provide an orderly means for resolving any disputes arising between the Debtors and/or the Consultant and any Governmental

Units or Dispute Notice Parties with respect to the applicability of any Liquidation Sale Laws and should therefore be approved.

E. The Court Should Waive Compliance with Any Restrictions in the Leases

33. Certain of the Debtors' leases governing the Debtors' tenancy at the Closing Stores may contain provisions purporting to restrict or prohibit the Debtors from conducting store closing, liquidation, or similar sales. Such provisions have been held to be unenforceable in chapter 11 cases as they constitute an impermissible restraint on a debtor's ability to properly administer its bankruptcy case and maximize the value of its assets under section 363 of the Bankruptcy Code. *See Ames Dep't Stores*, 136 B.R. at 359 (deciding that enforcement of such lease restrictions would "contravene overriding federal policy requiring debtor to maximize estate assets. . . ."); *In re R.H. Macy and Co., Inc.*, 170 B.R. 69, 73-74 (Bankr. S.D.N.Y. 1994) (holding that the lessor could not recover damages for breach of a covenant to remain open throughout the lease term, because the debtor had a duty to maximize the value to the estate and the debtor fulfilled this obligation by holding a store closing sale and closing the store); *In re Tobago Bay Trading Co.*, 112 B.R. 463, 467-68 (Bankr. N.D. Ga. 1990) (finding that a debtor's efforts to reorganize would be significantly impaired to the detriment of creditors if lease provisions prohibiting a debtor from liquidating its inventory were enforced); *In re Lisbon Shops, Inc.*, 24 B.R. 693, 695 (Bankr. E.D. Mo. 1982) (holding restrictive lease provision unenforceable in chapter 11 case where debtor sought to conduct a liquidation sale).

34. Court in this District have held that restrictive lease provisions affecting store liquidation sales in chapter 11 cases are unenforceable.¹⁰ Thus, to the extent that such

¹⁰ *See, e.g., In re Coldwater Creek*, No. 14-10867 (BLS) (Bankr. D. Del. May 7, 2014) (ordering that store closing sales be conducted without the further need for compliance with, among other things, lease provisions); *In re Boscov's*, No. 08--11637 (KG) (Bankr. D. Del. Aug. 15, 2008) (same); *In re Goody's Family Clothing, Inc.*, No. 08-11133 (CSS)

provisions or restrictions exist in any of the Closing Stores' leases, the Debtors request that the Court authorize the Debtors and/or the Consultant to conduct the Sales and Store Closings without reference to any such restrictive provisions or interference by any landlords or other persons affected, directly or indirectly, by the Sales.

F. The Court Should Approve the Abandonment of Certain Property in Connection with Any Liquidation Sales

35. Section 554(a) of the Bankruptcy Code provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a); *see also Hanover Ins. Co. v. Tyco Indus., Inc.*, 500 F.2d 654, 657 (3d Cir. 1974) (“[A trustee] may abandon his claim to any asset, including a cause of action, he deems less than valuable than the cost of asserting that claim.”); *In re Contract Research Solutions, Inc.*, No. 12-11004 (KJC), 2013 WL 1910286, at *4 (Bankr. D. Del. May 1, 2013) (“[A debtor] need only demonstrate that [it] has exercised sound business judgment in making the determination to abandon.”) (citations omitted). The right to abandon property is virtually unfettered, unless (a) abandonment of the property will contravene laws designed to protect public health and safety or (b) abandonment of the property poses an imminent threat to the public’s welfare. *See In re Midlantic Nat’l Bank*, 474 U.S. 494, 501 (1986). Neither of these limitations is relevant under the facts and circumstances presented here.

36. The Debtors are seeking to sell all FF&E remaining in the Closing Stores, the distribution center, and the corporate office. However, the Debtors may determine that the costs associated with holding or selling certain property or FF&E exceeds the proceeds that will

(Bankr. D. Del. June 13, 2008) (same); *In re Linens Holding Co.*, No. 0810832 (CSS) (Bankr. D. Del. May 30, 2008) (same).

be realized upon its sale or that such property is not sellable at all. In such event, the property is of inconsequential value and benefit to the estates and/or may be burdensome to retain.

37. To maximize the value of the Debtors' assets and to minimize the costs to the estates, the Debtors respectfully request authority to abandon, any of remaining FF&E or other property located at any of the Closing Stores, the distribution center, and the corporate office without incurring liability to any person or entity in accordance with the terms of the Consulting Agreement. The Debtors further request that the landlords of each Closing Store at which FF&E or other property is abandoned be authorized to dispose of such property without liability to any third parties.

38. Notwithstanding the foregoing, the Debtors will utilize all commercially reasonable efforts to remove or cause to be removed any confidential or personal identifying information (which means information that, alone or in conjunction with other information, identifies an individual, including, but not limited to, an individual's name, social security number, date of birth, government-issued identification number, account number, and credit or debit card number) in any of the Debtors' hardware, software, computers, cash registers, or similar equipment that is to be sold or abandoned.

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

39. Section 363(b)(1) of the Bankruptcy Code provides that a debtor may not sell or release personally identifiable information about individuals unless such sale or lease is consistent with its policies or upon appointment of a consumer privacy ombudsman pursuant to section 332 of the Bankruptcy Code. The Debtors will not be selling or releasing personally identifiable information in the course of the Sales. Therefore, appointment of a consumer privacy ombudsman is unnecessary.

H. Interim Relief Is Necessary to Avoid Immediate and Irreparable Harm

40. Under Bankruptcy Rule 6003, the Court may grant a motion to “use . . . property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” within 21 days after the chapter 11 case’s commencement to the extent “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. Here, the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as set forth in the Clarke Declaration, and relief on an interim basis is therefore appropriate under Bankruptcy Rule 6003, if applicable.

41. The urgency of the relief requested justifies immediate relief. To ensure the relief requested is implemented immediately, the Debtors request that the Court waive the notice requirements under Bankruptcy Rule 6004(a), if applicable, and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

42. Nothing contained in this motion is an admission of the validity of any claim against the Debtors, a waiver of the Debtors’ or any other party’s rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease, other than the Consulting Agreement, under section 365 of the Bankruptcy Code. If this Court grants the relief requested in this motion, any Court-authorized payment is not an admission of the validity of any claim or a waiver of the Debtors’ or any other party’s rights to subsequently dispute such claim. In addition, authorization to pay the claims described in this motion will not be deemed a direction to the Debtors to pay such claims; rather, the Debtors will make such payments in their discretion.

NOTICE

43. The Debtors will provide notice of this motion by facsimile, e-mail, overnight delivery, or hand delivery to: (i) the Office of the United States Trustee for the District

of Delaware; (ii) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (iii) all agents under the Debtors' prepetition debt instruments; (iv) counsel to the agents under the Debtors' prepetition debt instruments; (v) the Internal Revenue Service; (vi) the Securities and Exchange Commission; (vii) the landlords for the Closing Stores; and (viii) any other party entitled to receive notice pursuant to Local Rule 9013-1(m). Following the hearing, a copy of this motion and any order entered with respect to it will be served on the foregoing parties and all parties having filed requests for notice in these chapter 11 cases. A copy of this motion is also available on the Debtors' case website at <https://cases.stretto.com/francescas>.

44. As this motion is seeking "first day" relief, notice of this motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). Due to the urgency of the relief requested, the Debtors submit that no other or further notice is necessary.

NO PRIOR MOTION

45. The Debtors have not made any prior motion for the relief sought in this motion to this Court or any other.

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WHEREFORE, the Debtors respectfully request entry of an interim and a final order granting the relief requested in its entirety and any other relief as is just and proper.

Dated: December 4, 2020
Wilmington, Delaware

/s/ Jason M. Madron

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*Proposed Attorneys for the
Debtors and Debtors in Possession*

Exhibit A

Proposed Interim Order

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

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In re:	:	Chapter 11
	:	
FRANCESCA’S HOLDINGS CORPORATION, <i>et al.</i> , ¹	:	Case No. 20-13076 (BLS)
	:	
Debtors.	:	Joint Administration Requested
	:	
	:	Re: D.I.

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INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO ASSUME THE CONSULTING AGREEMENT; (II) APPROVING PROCEDURES FOR STORE CLOSING SALES; AND (III) GRANTING RELATED RELIEF

Upon the motion (the “**Motion**”)² of Francesca’s Holdings Corporation (“**FHC**”) and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an interim order (this “**Interim Order**”) (i) authorizing the Debtors to assume the Consulting Agreement; (ii) authorizing and approving the Store Closing Procedures pursuant to which the Debtors shall close and wind down certain of the Debtors’ boutique locations (“**Store Closings**”) through the conduct of promotional sales at such locations, with such sales to be free and clear of all lien, claims, and encumbrances (the “**Sales**”); (iii) approving the proposed Dispute Resolution Procedures to resolve any disputes with governmental units regarding certain applicable non-bankruptcy laws that regulate liquidation and similar-themed sales; (iv) authorizing abandonment of any FF&E not sold in the Sales at the Closing Stores at the conclusion of the Sales; and (v) granting certain related relief, all as more fully set forth in the Motion; and due and sufficient

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are Francesca’s Holdings Corporation (4704), Francesca’s LLC (2500), Francesca’s Collections, Inc. (4665), and Francesca’s Services Corporation (5988). The address of the Debtors’ corporate headquarters is 8760 Clay Road, Houston, Texas 77080.

² Capitalized terms used but not defined in this Interim Order have the meanings used in the Motion.

notice of the Motion having been provided under the particular circumstances, and it appearing that no other or further notice need be provided; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and a hearing having been held to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and upon the Clarke Declaration and the record of the Hearing; and the Court having found and determined the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003, and such relief is in the best interests of the Debtors, their estates and creditors, and any parties in interest; and the legal and factual bases set forth in the Motion and at the Hearing having established just cause for the relief granted herein; and after due deliberation thereon and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. The Debtors have advanced sound business reasons for seeking to assume the Consulting Agreement and adopt the Store Closing Procedures on an interim basis, as set forth in the Motion and at the Hearing, such that entering into the Consulting Agreement is a reasonable exercise of the Debtors’ business judgment and in the best interests of the Debtors and their estates.

B. The Store Closing Procedures are reasonable, and the conduct of the Sales and Store Closings in accordance with the Store Closing Procedures will provide an efficient

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact where appropriate. *See* Fed. R. Bankr. P. 7052.

means for the Debtors to liquidate and dispose of the Store Closure Assets as quickly and effectively as possible and will maximize the returns on the Store Closure Assets.

C. The Consulting Agreement was negotiated, proposed, and entered into by the Consultant and the Debtors without collusion, in good faith, and from arm's length bargaining positions.

D. The assumption of the Consulting Agreement is a sound exercise of the Debtors' business judgment.

E. The Dispute Resolution Procedures are fair and reasonable and comply with applicable law.

F. The relief set forth herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates and the Debtors have demonstrated good, sufficient, and sound business purposes and justifications for the relief approved herein.

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

H. The Debtors have represented that they are neither selling nor leasing personally identifiable information pursuant to the Motion, although the Consultant will be authorized to distribute emails and promotional materials to the Debtors' customers.

I. The entry of this Interim Order is in the best interests of the Debtors and their estates and creditors as well as all other parties-in-interest herein; and now therefore

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.

2. The final hearing (the "**Final Hearing**") on the Motion will be held on _____, 2020, at ___:___ [a/p].m. (Eastern Standard Time). Any objections or responses to entry of a final order on the Motion must be filed on or before 4:00 p.m. (Eastern Standard

Time) on _____, 2020, and served on the following parties: (i) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Linda Casey (Linda.Casey@usdoj.gov)); (ii) O'Melveny & Myers LLP, Times Square Tower, Seven Times Square, New York, New York 10036 (Attn: Maria DiConza, Esq. (mdiconza@omm.com) and Diana M. Perez, Esq. (dperez@omm.com)), proposed co-counsel for the Debtors; (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. (collins@rlf.com), Michael J. Merchant, Esq. (merchant@rlf.com), and Jason M. Madron, Esq. (madron@rlf.com)), proposed co-counsel for the Debtors; and (iv) counsel for the DIP Agent, Greenberg Traurig LLP, (A) 1007 North Orange Street, Suite 1200, Wilmington, DE 19801, (Attn: Dennis A. Meloro (melorod@gtlaw.com)), and (B) MetLife Building, 200 Park Avenue, New York, NY 10166, (Attn: Leo Muchnik (MuchnikL@gtlaw.com)). In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtors and the Consultant are authorized and empowered to take any and all actions as may be reasonably necessary or appropriate to give effect to this Interim Order. The failure to specifically include any particular provision of the Consulting Agreement in this Interim Order shall not diminish or impair the effectiveness of such provisions, it being the intent of this Court that the Consulting Agreement and all of its provisions, payments, and transactions, be and hereby are authorized and approved as and to the extent provided for in this Interim Order.

4. To the extent of any conflict between this Interim Order, the Store Closing Procedures, and the Consulting Agreement, the terms of this Interim Order shall control over all other documents and the Store Closing Procedures shall control over the Consulting Agreement.

A. Authority to Assume the Consulting Agreement

5. The assumption of the Consulting Agreement by the Debtors pursuant to section 365 of the Bankruptcy Code is approved on an interim basis. The Debtors are authorized to act and perform in accordance with the terms of the Consulting Agreement, including, but not limited to, paying all fees and reimbursing all expenses as required by the Consulting Agreement to the Consultant on a weekly basis from Gross Proceeds (as defined in the Consulting Agreement) and pursuant to the terms governing the Final Reconciliation (as defined in the Consulting Agreement), and paying Consultant the Special Purpose Payment, in each case as set forth in more detail in the Consulting Agreement, without the need for any application of the Consultant or a further order of the Court.

6. With respect to reasonable and documented costs and expenses incurred by the Consultant pursuant to the Consulting Agreement and fees due to the Consultant on account of services provided from the Petition Date through the date of entry of this Interim Order (if any), the Consultant shall be entitled to and shall receive reimbursement of such reasonable and documented costs and expenses incurred and fees earned pursuant to the Consulting Agreement within seven business days of entry of this Interim Order.

7. All fees and expenses payable to the Consultant under the terms of the Consulting Agreement shall be payable without the necessity of any application by the Consultant or any further order of the Court; *provided* that all Consultant's fees and expenses shall be paid to Consultant from Gross Proceeds and without adherence to any debtor-in-possession financing or cash collateral budget associated therewith.

8. Subject to the restrictions set forth in this Interim Order and the Store Closing Procedures, the Debtors and the Consultant hereby are authorized to take any and all

actions as may be necessary or desirable to implement the Consulting Agreement and the Sales and Store Closings and each of the transactions contemplated by the Consulting Agreement. Subject to the restrictions set forth in this Interim Order and the Store Closing Procedures, any actions taken by the Debtors and the Consultant necessary or desirable to implement the Consulting Agreement and/or the Sales prior to the date of this Interim Order, are hereby approved and ratified.

9. Notwithstanding anything to the contrary in the Consulting Agreement, the Debtors and their estates shall not indemnify the Consultant for any damages arising primarily out of the Consultant's fraud, willful misconduct, or gross negligence.

B. Authority to Engage in Sales and Conduct Store Closings

10. The Debtors are authorized, on an interim basis, pending the Final Hearing, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to immediately begin conducting the Sales and Store Closings at the Closing Stores in accordance with this Interim Order, the Store Closing Procedures, and the Consulting Agreement.

11. The Store Closing Procedures are approved in their entirety on an interim basis.

12. The Debtors are authorized to discontinue operations at the Closing Stores in accordance with this Interim Order and the Store Closing Procedures.

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

14. Subject to the provisions set forth herein, neither the Debtors nor the Consultant nor any of their officers, employees, or agents shall be required to obtain the approval of any third party, including, without limitation, any Governmental Unit (as defined in section 101(27) of the Bankruptcy Code) or landlord, to conduct the Sales and Store Closings and to take the related actions authorized herein.

C. Conduct of the Sales

15. All newspapers and other advertising media in which the Sales and Store Closings may be advertised and all landlords are directed to accept this Interim Order as binding authority so as to authorize the Debtors and the Consultant to conduct the Sales and Store Closings pursuant to the Consulting Agreement, including, without limitation, to conduct and advertise the sale of the Merchandise and FF&E in the manner contemplated by and in accordance with this Interim Order, the Store Closing Procedures, and the Consulting Agreement.

16. Subject to the Dispute Resolution Procedures provided for in this Interim Order, the Debtors and Consultant are hereby authorized to take such actions as may be necessary and appropriate to implement the Consulting Agreement and to conduct the Sales and Store Closings without necessity of further order of this Court as provided in this Interim Order, the Consulting Agreement, or the Store Closing Procedures, including, but not limited to, advertising the Sales and Store Closings as a “store closing sale,” “sale on everything,” “everything must go,” “going out of business,” or similar-themed sales through the posting of signs (including the use of exterior banners at non-enclosed mall closing locations, and at enclosed mall closing locations to the extent the applicable closing location entrance does not require entry into the enclosed mall common area), use of sign-walkers, and street signage.

17. Notwithstanding anything herein to the contrary, and in view of the importance of the use of sign-walkers, banners, and other advertising to the sale of the Merchandise and FF&E, to the extent that, prior to the Final Hearing, disputes arise regarding laws regulating the use of sign-walkers, banners, or other advertising and the Debtors and the Consultant are unable to resolve the matter consensually, any party may request an immediate telephonic hearing with this Court pursuant to these provisions. Such hearing will, to the extent practicable, be scheduled initially no later than the earlier of (a) the Final Hearing and (b) within two business days of such request. This scheduling shall not be deemed to preclude additional hearings for the presentation of evidence or arguments as necessary.

18. Except as expressly provided in the Consulting Agreement, the sale of the Merchandise and FF&E shall be conducted by the Debtors and the Consultant notwithstanding any restrictive provision of any lease, sublease, license, reciprocal easement agreement, restrictive covenant, or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Sales or Store Closings (including the sale of the Merchandise and FF&E), the necessity of obtaining any third party consents, the rejection of leases, abandonment of assets, or “going dark” provisions, and such provisions shall not be enforceable in conjunction with the Sales or the Store Closings. Breach of any such provisions in conjunction with Sales or Store Closings shall not constitute a default under a lease or provide a basis to terminate such lease; *provided* that the Sales and Store Closings are conducted in accordance with the terms of this Interim Order and the Store Closing Procedures. The Consultant and landlords of the Closing Stores are authorized to enter into agreements (“**Side Letters**”) between themselves modifying the Store Closing Procedures without further order of the Court, and such Side Letters shall be binding between and among the Debtors, the Consultant, and such landlords, *provided* that nothing in such Side Letters affects the

provisions of paragraph 26 of this Interim Order. In the event of any conflict between the Store Closing Procedures, this Interim Order, and any Side Letter, the terms of such Side Letter shall control.

19. Except as expressly provided for herein or in the Store Closing Procedures, and except with respect to relief expressly granted to any Governmental Unit elsewhere in this Interim Order, no person or entity, including, but not limited to, any landlord, licensor, property owner/manager, service provider, utility, or creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation or continuation of the Sales or Store Closings, or the advertising and promotion (including the posting of signs and exterior banners or the use of sign-walkers) of same, and all such parties and persons of every nature and description, including, but not limited to, any landlord, licensor, property owner/manager, service provider, utility, and creditor and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with, obstructing, or otherwise impeding the conduct of the Sales and/or Store Closings and/or (b) instituting any action or proceeding in any court (other than this Court) or before any administrative body seeking an order or judgment against, among others, the Debtors, the Consultant, or the landlords at the Closing Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sales or Store Closings and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein.

20. In accordance with and subject to the terms and conditions of the Consulting Agreement, the Consultant shall have the right to use the Closing Stores and all related services, furniture, fixtures, equipment, and other assets of the Debtors for the purpose of conducting the

Sales and Store Closings, free of any interference from any entity or person, subject to compliance with the Store Closing Procedures and this Interim Order.

21. During the Sale Term (as defined in the Consulting Agreement), the Consultant shall accept the Debtors' validly issued Gift Cards (as defined in the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Maintain Customer and Honor Related Prepetition Obligations, and (II) Granting Related Relief* (the "**Customer Programs Motion**")) and honor the Debtors' Refund and Exchange Program (as defined in the Customer Programs Motion). For the avoidance of doubt, proceeds from Merchandise sold pursuant to Gift Cards shall be treated as Gross Proceeds (as defined in the Consulting Agreement) for purposes of calculating Consultant's fee under the Consulting Agreement.

22. All sales of Merchandise and FF&E sold on or after the Petition Date shall be "as is" and final. However, all state and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms "as is" or "final sales."

23. The Consultant shall not be liable for sales taxes except as expressly provided in the Consulting Agreement and the payment of any and all sales taxes is the responsibility of the Debtors. The Debtors are directed to remit all taxes arising from the Sales to the applicable Governmental Units as and when due, *provided* that in the case of a *bona fide* dispute the Debtors are only directed to pay such taxes upon the resolution of the dispute if and to the extent that the dispute is decided in favor of the applicable Governmental Unit. For the avoidance of doubt, sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other party, other than the applicable Governmental Unit for which the sales taxes are collected. The Consultant shall collect, remit to the Debtors, and account for sales taxes as and to

the extent provided in the Consulting Agreement. This Interim Order does not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under state law, and does not constitute a declaratory judgment with respect to any party's liability for taxes under state law.

24. Pursuant to section 363(f) of the Bankruptcy Code, the Consultant, on behalf of the Debtors, is authorized to sell the Store Closure Assets—and all sales of Store Closure Assets, whether by the Consultant or the Debtors, shall be—free and clear of any and all liens, claims, encumbrances, defenses (including, without limitation, rights of setoff and recoupment) and interests, including, without limitation, security interests of whatever kind or nature, mortgages, conditional sales or title retention agreements, pledges, deeds of trust, hypothecations, liens, encumbrances, assignments, preferences, debts, easements, charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, taxes (including foreign, state, and local taxes), licenses, covenants, restrictions, indentures, instruments, leases, options, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, environmental, tax, labor, ERISA, CERCLA, alter ego, and/or other liabilities, causes of action, contract rights, and claims, to the fullest extent of the law, in each case, of any kind or nature (including, without limitation, all “claims” as defined in section 101(5) of the Bankruptcy Code), known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable (collectively, “**Encumbrances**”); as provided for herein because in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied; *provided, however*, that any such Encumbrances shall attach

to the applicable proceeds of the sale of the Store Closure Assets with the same validity, in the amount, with the same priority as, and to the same extent that any such Encumbrances attached to the Store Closure Assets prior to such sale, subject to any claims and defenses that any party may possess with respect thereto and subject to the Consultant's fees and expenses (as provided in the Consulting Agreement).

25. To the extent that the Debtors propose to sell or abandon FF&E that may contain personal and/or confidential information about the Debtors' employees and/or customers (the "**Confidential Information**"), the Debtors shall remove the Confidential Information from such items of FF&E before such sale or abandonment.

26. The Debtors and/or the Consultant (as the case may be) are authorized and empowered to transfer Merchandise and FF&E among, and into, the Closing Stores. The Consultant is authorized to sell the Debtors' FF&E and abandon same, in each case as provided for and in accordance with the terms of the Consulting Agreement, including, but not limited to, with respect to signage related to the Sales and Store Closings. Any abandoned FF&E left in a Store after the later of the date the lease is rejected or the date the Debtors vacate the premises shall be deemed abandoned, and such landlord is authorized to dispose of the abandoned FF&E without further notice and without any liability to any individual or entity that may claim an interest in such property. The automatic stay is modified to the extent necessary to allow such dispositions.

D. Dispute Resolution Procedures with Governmental Units

27. Nothing in this Interim Order, the Consulting Agreement, or the Store Closing Procedures, releases, nullifies, or enjoins the enforcement of any liability to a Governmental Unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the

owner, lessor, lessee, or operator of the property after the date of entry of this Interim Order. Nothing contained in this Interim Order, the Consulting Agreement, or the Store Closing Procedures shall in any way (a) diminish the obligation of any entity to comply with environmental laws or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The Sales and Store Closings shall not be exempt from laws of general applicability, including, without limitation, public health and safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, “**General Laws**”). Nothing in this Interim Order, the Consulting Agreement, or the Store Closing Procedures, shall alter or affect obligations to comply with all applicable federal safety laws and regulations. Nothing in this Interim Order shall be deemed to bar any Governmental Unit (as such term is defined in section 101(47) of the Bankruptcy Code) from enforcing General Laws, subject to the Debtors’ rights to assert that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code or this Interim Order. Notwithstanding any other provision in this Interim Order, no party waives any rights to argue any position with respect to whether conduct was or is in compliance with this Interim Order and/or any applicable law or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Interim Order shall be deemed to have made any rulings on any such issues.

28. To the extent that the sale of Merchandise and FF&E is subject to any Liquidation Sale Laws, including any federal, state, and local laws, statutes, rules, regulations, and ordinances, directed at regulating “going out of business,” “store closing,” similar inventory liquidation sales, or bulk sale laws, laws restricting safe, professional, and non- deceptive

customary advertising such as signs, banners, posting of signage, and use of sign-walkers solely in connection with the Sales and including ordinances establishing license or permit requirements, waiting periods, time limits, or bulk sale restrictions that would otherwise apply solely to the sale of the Merchandise and FF&E, the following Dispute Resolution Procedures shall apply:

- (a) Provided that the Sales are conducted in accordance with the terms of this Interim Order and the Store Closing Procedures, and in light of the provisions in the laws of many Governmental Units that exempt court-ordered sales from their provisions, the Debtors and the Consultant will be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of this Interim Order and the Store Closing Procedures without the necessity of further showing compliance with any such Liquidation Sale Laws.
- (b) Within five business days of the entry of this Interim Order, the Debtors will serve by email, facsimile, or first-class mail, copies of this Interim Order, the proposed Final Order, the Consulting Agreement, and the Store Closing Procedures on the following: (i) the landlords for the Closing Stores; (ii) the Attorney General's office for each state in which the Sales are being held; (iii) the county consumer protection agency or similar agency for each county in which the Sales are being held; (iv) the division of consumer protection for each state in which the Sales are being held; and (v) the chief legal counsel for each local jurisdiction in which the Sales are being held (collectively, the "**Dispute Notice Parties**").
- (c) To the extent that there is a dispute arising from or relating to the Sales, this Interim Order or the proposed Final Order, as applicable, the Consulting Agreement, or the Store Closing Procedures, which dispute relates to any Liquidation Sale Laws (a "**Reserved Dispute**"), the Bankruptcy Court shall retain exclusive jurisdiction to resolve such Reserved Dispute. Any time within ten business days following entry of this Interim Order any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the "**Dispute Notice**") explaining the nature of the dispute to: (i) proposed co-counsel for the Debtors, O'Melveny & Myers LLP, Times Square Tower, Seven Times Square, New York, New York 10036 (Attn: Maria DiConza, Esq. (mdiconza@omm.com) and Diana M. Perez, Esq. (dperez@omm.com)); (ii) proposed co-counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. (collins@rlf.com), Michael J. Merchant, Esq. (merchant@rlf.com), and Jason M. Madron, Esq. (madron@rlf.com)); (iii) the Consultant, Tiger Capital Group, LLC, 350 N. LaSalle Street, 11th Floor, Chicago, IL 60654 (Attn: Mark P Naughton (mnaughton@tigergroup.com)); and (iv) Greenberg Traurig, LLP, One International Place, Suite 200, Boston, MA

02110 (Attn: Jeffrey M. Wolf, Esq. (wolfje@gtlaw.com)). If the Debtors, the Consultant, and the Governmental Unit are unable to resolve the Reserved Dispute within 15 business days after service of the Dispute Notice, the Governmental Unit may file a motion with the Bankruptcy Court requesting that the Court resolve the Reserved Dispute (a “**Dispute Resolution Motion**”).

- (d) In the event that a Dispute Resolution Motion is filed, nothing in this Interim Order shall preclude the Debtors, a landlord, the Consultant or any other interested party from asserting (i) that the provisions of any Liquidation Sale Laws are preempted by the Bankruptcy Code or (ii) that neither the terms of this Interim Order nor the conduct of the Debtors or the Consultant pursuant to this Interim Order, violates such Liquidation Sale Laws. Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of this Interim Order or to limit or interfere with the Debtors’ or the Consultant’s ability to conduct or to continue to conduct the Sales pursuant to this Interim Order, absent further order of the Court. Upon the entry of this Interim Order, the Court grants authority for the Debtors and the Consultant to conduct the Sales pursuant to the terms of this Interim Order, the Consulting Agreement, and/or the Store Closing Procedures and to take all actions reasonably related thereto or arising in connection therewith. The Governmental Unit will be entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Sale Laws or the lack of any preemption of such Liquidation Sale Laws by the Bankruptcy Code. Nothing in this Interim Order will constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.
- (e) If, at any time, a dispute arises between the Debtors and/or the Consultant and a Governmental Unit as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in this Interim Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions of subparagraphs (c) and (d) above by serving a notice to the applicable parties and proceeding thereunder in accordance with those paragraphs. Any determination with respect to whether a particular law is a Liquidation Sale Law shall be made *de novo*.

29. Subject to paragraphs 27 and 28 above, each and every federal, state, or local agency, departmental unit, or Governmental Unit with regulatory authority over the Sales and Store Closings, and all newspapers and other advertising media in which the Sales and Store Closings are advertised shall consider this Interim Order as binding authority such that no further

approval, license, or permit of any Governmental Unit shall be required, nor shall the Debtors or the Consultant be required to post any bond, to conduct the Sales and Store Closings.

E. Other Provisions

30. The Consultant shall not be liable for any claims against the Debtors, and the Debtors shall not be liable for any claims against Consultant, in each case, other than as expressly provided for in the Consulting Agreement.

31. Except with respect to the Consultant and the Consulting Agreement, nothing in the Motion or this Interim Order or the relief granted herein (including any actions taken or payments made by the Debtors) is to be construed as (i) an admission of the validity of any claim against the Debtors; (ii) an admission with respect to the validity, extent, or perfection of any lien; (iii) a waiver of the Debtors' rights or those of any party in interest to dispute, contest, setoff, or recoup any claim, or assert any related rights, claims, or defenses; (iv) a waiver of the Debtors' rights or those of any party in interest over the validity, extent, perfection, or possible avoidance of any lien; or (v) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code.

32. Notwithstanding entry of this Interim Order, nothing herein shall create, or is intended to create, any rights in favor of, or enhance the status of, any claim held by any party.

33. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief sought in this Interim Order is necessary to avoid immediate and irreparable harm.

34. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

35. Notwithstanding the applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry. This Interim Order is effective only from the date of entry through this Court's disposition of the Motion

on a final basis; *provided* that the Court's ultimate disposition of the Motion on a final basis shall not impair or otherwise affect any action taken pursuant to this Interim Order.

36. The Debtors and the Consultant are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Interim Order.

37. This Court retains jurisdiction over all matters arising from or related to the implementation or interpretation of this Interim Order.

Exhibit 1

Consulting Agreement

December 3, 2020

Francesca's Holdings Corporation
8760 Clay Road
Houston, TX 77080

Re: Consulting Agreement for Inventory Disposition Program

Ladies and Gentlemen:

This letter shall serve as the agreement (the "Agreement") of Tiger Capital Group, LLC ("Tiger" or "Consultant") and Francesca's Holdings Corporation ("Merchant" and together with Consultant, the "Parties") pursuant to which Consultant shall serve as the exclusive consultant to Merchant to conduct a "store closing" or other themed inventory disposition sale (the "Sale") at Merchant's retail stores identified on **Exhibit A** attached hereto (collectively the "Stores"), to assist with promotions and merchandising for the Stores and other matters in connection with the Sale.

1. RETENTION:

Subject to entry of the Approval Order, and payment of the Special Purpose Payment, Merchant hereby retains Consultant as its exclusive, independent consultant to conduct the Sale at the Stores and to provide the following services during the Term (collectively, the "Consulting Services"):

- a. Recommend appropriate discounting to effectively sell all of Merchant's goods located at or to be delivered to the Stores, in accordance with a "store closing" or other mutually agreed upon themed sale, and recommend appropriate point-of-purchase, point of sale, and other internal and external advertising in connection therewith;
- b. Provide qualified supervision to oversee and implement the conduct of the Sale;
- c. Maintain focused and constant communication with Store-level employees and managers to keep them abreast of strategy and timing and to properly effect Store-level communication by Merchant's employees to customers and others about the Sale;

- d. Monitor accounting functions for the Sale, including evaluation of sales of Merchant's goods located at the Stores by category, sales reporting and expense monitoring;
 - e. Meet with the Merchant, on a weekly or as needed basis, to review sales, sales reporting and expenses in an effort to minimize expenses and maximize overall net recovery of the Sale;
 - f. Recommend loss prevention strategies;
 - g. Advise as to appropriate staffing levels for the Stores and appropriate bonus and/or incentive programs (to be funded by Merchant) for Store employees;
 - h. Assist Merchant in a program to transition customers to any of Merchant's ongoing stores and methods to protect the Merchant's brand during the Sale;
 - i. Recommend appropriate point of purchase, point of sale and external advertising to effectively sell the Merchandise during the Sale Term, consistent with a "Store Closing" theme;
 - j. Recommend appropriate pricing, display and discounting of Merchandise;
 - k. Sell all Offered FF&E (as defined in Section 6 below); and
 - l. Provide such other related services deemed necessary or prudent by Merchant and Consultant under the circumstances giving rise to the Sale.
- 2. TERM; SALE TERM; ADDING STORES; VACATING STORES**
- a. Subject to entry of the Approval Order, the "Term" of this Agreement shall begin upon execution of this Agreement (the "Effective Date") and conclude on the Sale Termination Date (as defined below).
 - b. The "Sale Term" with respect to each respective Store shall commence on a date to be mutually agreed (such commencement date, the "Sale Commencement Date") and shall end on the date determined by Merchant, in reasonable consultation with Consultant (the "Sale Termination Date"); provided, however, that Consultant and Merchant may mutually agree upon an earlier or later "Sale Commencement Date" or "Sale Termination Date" with respect to any one or more Stores on a Store-by-Store basis.

- c. Upon the conclusion of the Sale Term at each Store, Consultant shall leave such Store in broom clean condition with the right to abandon any of Merchant's existing fixtures pursuant to Section 6 below.

3. EXPENSES

- a. Subject to Section 3(b) below, Merchant shall be responsible for payment of all expenses incident to the Sale and the operation of the Stores during the Term (including without limitation all Store-level and corporate expenses, advertising costs, administrative expenses, and miscellaneous expenses associated with the Sale as agreed between the Parties). Consultant shall have no obligation to advance any amounts for Sale expenses but may do so and be reimbursed as set forth below.
- b. Attached hereto as **Exhibit B** is an expense budget for the "Consultant Controlled Expenses" (including for Sale-related supervision, advertising, administrative, and miscellaneous expenses) to be incurred during the Sale Term. The expense budget may only be modified by mutual agreement of the Parties. Notwithstanding the foregoing, unless agreed by the parties, Merchant shall not be obligated to pay "Consultant Controlled Expenses" that exceed the budgeted amount for all Consultant Controlled Expenses shown on **Exhibit B**.

4. CONSULTANT COMPENSATION

- a. **Definitions:** As used herein, the following terms shall have the following meanings:
 - (i) "Cost Value" with respect to each item of Merchandise sold, shall be determined by reference to the lower of (1) the lowest per unit vendor cost in the File for each store or in Merchant's books and records for each store, maintained in the ordinary course consistent with historic practices; or (2) the Retail Price.
 - (ii) "File" shall mean the inventory file mutually agreed to by the parties.
 - (iii) "Gross Proceeds" shall mean the sum of the gross proceeds realized from all sales of Merchandise (including as a result of the redemption of any gift card, gift certificate, or merchandise credit) during the Sale Term, net only of sales taxes.
 - (iv) "Gross Recovery Percentage" shall mean the Gross Proceeds divided by the sum of the aggregate Cost Value of all of the Merchandise.
 - (v) "Merchandise" shall mean all goods, saleable in the ordinary course, located in the Stores on the Sale Commencement Date or goods in the Distribution Center delivered to the Stores after the Sale Commencement

Date, the aggregate amount of which shall be determined using the gross rings inventory taking method. "Merchandise" does not mean and shall not include: (1) goods that belong to sublessees, licensees, or concessionaires of Merchant; (2) owned furnishings, trade fixtures, equipment and improvements to real property that are located in the Stores (collectively, "FF&E"); (3) damaged or defective merchandise that cannot be sold for the purpose for which reasonably intended; or (4) goods held by Merchant on memo, on consignment, or as bailee.

(vi) "Retail Price" shall mean with respect to each item of Merchandise sold, the lower of the lowest ticketed, marked, shelf stickered, hang-tag, or File price.

- b. **Consulting Fees:** In consideration of providing the Consulting Services hereunder, Merchant shall pay Consultant a "Base Fee" equal to one percent (1.0%) of the Gross Proceeds derived from the Sale. In addition, Consultant shall earn an additional incentive fee (the "Incentive Fee" and together with the Base Fee, the "Consulting Fee") based upon achieving the following thresholds of Gross Recovery Percentage, calculated back to the first dollar received:

Gross Recovery Percentage	Total Consulting Fee
>= 150.0% and < 155.0%	1.25% of Gross Proceeds
>= 155.0% and < 160.0%	1.50% of Gross Proceeds
>= 160.0%	1.75% of Gross Proceeds

For the avoidance of doubt, the above Consulting Fee if achieved would be the total fee earned and not in addition to the Base Fee (i.e., if the Gross Recovery Percentage is above 150%, 1.25% would be the Consulting Fee, not 2.25%).

- c. **Gross Rings:** For purposes of calculating the Retail Price, Cost Value, Gross Proceeds, Gross Recovery Percentage and the Consulting Fee, the parties shall use the "Gross Rings" method, wherein Consultant and Merchant shall jointly keep (i) a strict count of gross register receipts less applicable sales taxes and (ii) cash reports of sales within each Store. Register receipts shall show for each item sold the Retail Price (as reflected on Merchant's books and records) for such item, and the markdown or other discount granted in connection with such sale. All such records and reports shall be made

available to Consultant and Merchant during regular business hours upon reasonable notice.

- d. **Payment of Consulting Fees:** For the Consulting Fee, on a weekly basis in connection with each weekly reconciliation contemplated by Section 5(b) below, Consultant shall present an invoice and Merchant shall pay Consultant an amount equal to the Base Fee on account of the prior week's Gross Proceeds; and (2) any FF&E Commission (as defined below) earned during the prior week. The parties shall determine the definitive Gross Recovery Percentage and any Incentive Fee (and any remaining amounts payable on account of the Base Fee or the FF&E Commission) in connection with the Final Reconciliation. Immediately thereafter (and as part of the Final Reconciliation), Merchant or Consultant, as the case may be, shall pay any additional amount owed on account of such fees.

5. CONDUCT OF SALE; OTHER SALE MATTERS

- a. Merchant shall have control over the personnel in the Stores and shall handle the cash, debit and charge card payments for all Merchandise in accordance with Merchant's normal cash management procedures, subject to Consultant's right to audit any such items in the event of a good faith dispute as to the amount thereof. Merchant (and not Consultant) shall be responsible for ensuring that the Sale, and the operation of the Stores (before, during, and after the Term), shall be conducted in compliance with applicable laws and regulations.
- b. The parties will meet on each Wednesday (or such other mutually agreed upon day during each weekly period) during the Sale Term to review any Sale matters reasonably requested by either party; and all amounts payable or reimbursable to Consultant for the prior week (or the partial week in the case of the first and last weeks) shall be reconciled and paid immediately thereafter. No later than twenty (20) days following the end of the Sale, the parties shall complete a final reconciliation and settlement of all amounts contemplated by this Agreement ("Final Reconciliation"). From time to time upon request, each party shall prepare and deliver to the other party such other reports as either Party may reasonably request. Each party to this Agreement shall, at all times during the Term and during the one (1) year period, thereafter, provide the other with access to all information, books and records reasonably relating to the Sale and to this Agreement. All records and reports shall be made available to Consultant and Merchant during regular business hours upon reasonable notice.

- c. Merchant shall be solely responsible for the computing, collecting, holding, reporting, and paying all sales taxes associated with the sale of Merchandise in the Stores (including without limitation, Merchandise sold during the Sale Term), and Consultant shall have absolutely no responsibilities or liabilities therefor except as expressly otherwise provided in this Agreement.
- d. Although Consultant shall undertake its obligations under this Agreement in a manner designed to achieve the desired results of the Sale and to maximize the recovery to the Merchant, Merchant expressly acknowledges that Consultant is not guaranteeing the results of the Sale.
- e. Merchant acknowledges that: (i) the parties are not conducting an inventory of Merchant's goods located at the Stores; (ii) Consultant has made no independent assessment of the beginning levels of such goods or the levels of such goods as of the Sale Commencement Date; and (iii) Consultant shall not bear any liability for shrink or other loss to Merchant's goods located at the Stores (including without limitation Merchandise).
- f. All sales of Merchandise in the Stores during the Sale Term shall be made in the name, and on behalf, of Merchant.
- g. All sales of Merchandise in the Stores during the Sale Term shall be "final sales" and "as is," and all advertisements and sales receipts will reflect the same.
- h. Consultant shall, during the Sale Term, cooperate with Merchant in respect of Merchant's procedures governing returns of goods otherwise sold by Merchant (e.g., not in the Stores during the Sale Term).
- i. Subject to compliance with any applicable laws, as applicable, Merchant hereby permits the Sale to be, and shall ensure that the Sale otherwise may be, advertised as a "store closing" or such other mutually agreed upon themed sale throughout the Sale Term.
- j. As a condition to Consultant's obligations under this Agreement, subject to the entry of the Approval Order, Merchant shall fund to Consultant \$100,000 (the "Special Purpose Payment") which shall be held by Consultant as security for payment of the Consulting Fee, the reimbursement of Sale Expenses and payment of any other amounts to Consultant hereunder. Without limiting any of Consultant's other rights, Consultant may apply the Special Purpose Payment to any unpaid obligation owing by Merchant to Consultant under this

Agreement. Any portion of the Special Purpose Payment not used to pay amounts explicitly contemplated by this Agreement shall be returned to Merchant at the time of the Final Reconciliation.

6. FF&E

- a. As soon as practicable, following the Sale Commencement Date, Merchant shall inform Consultant of those items of FF&E located at the Stores, the distribution center and the corporate offices which are not to be sold because Merchant does not have the right to sell such items, because Merchant wishes to retain such items for itself or otherwise (collectively, "Retained FF&E").
- b. With respect to all FF&E located at the Stores, the distribution center and the corporate offices as of the Sale Commencement Date which is not Retained FF&E (collectively, the "Offered FF&E"), Consultant shall have the right to sell such Offered FF&E during the Sale Term on a commission basis equal to fifteen percent (15.0%) of the gross sales of Offered FF&E, net only of sales tax ("FF&E Commission").
- c. Merchant shall reimburse Consultant for its reasonable, documented expenses associated with the sale of the Offered FF&E, not to exceed the amount shown on an FF&E expense budget to be mutually agreed by the parties promptly after the identification/designation of the Offered FF&E and Retained FF&E (which shall be in addition to the Consultant Controlled Expenses budget) ("FF&E Expenses").
- d. Consultant shall have the right to abandon any unsold Offered FF&E (and all Retained FF&E) at the Stores, the distribution center and the corporate offices at the conclusion of the Sale Term. Consultant shall not have any obligation or responsibility whatsoever to cap any electrical or plumbing outlets or purchase, sell, make, store, handle, treat, dispose, or remove any hazardous materials (including without limitation Freon) in connection with the FF&E (the full responsibility of which shall remain with Merchant whether or not any such FF&E containing such hazardous materials is or is not sold).

7. RESERVED

8. INSURANCE; RISK OF LOSS

- a. During the Sale Term, Merchant shall maintain (at its expense) insurance with respect to the Merchandise in amounts and on such terms and conditions as

are consistent with Merchant's ordinary course operations, and general liability insurance covering injuries to persons and property in or in connection with the Stores, in such amounts as are reasonable and consistent with its ordinary practices, for bodily injury, personal injury and/or property damage.

- b. Notwithstanding any other provision of this Agreement, Merchant and Consultant agree that Consultant shall not be deemed to be in possession or control of the Stores, the Merchandise or other assets located therein or associated therewith, or Merchant's employees located at the Stores, and Consultant does not assume any of Merchant's obligations or liabilities with respect thereto. At all times and for all purposes the Merchandise and its respective proceeds shall be the exclusive property of Merchant and shall at all times remain subject to the exclusive control of Merchant subject to the terms of this Agreement.
- c. Notwithstanding any other provision of this Agreement, Merchant and Consultant agree that Merchant shall bear all responsibility for liability claims (product liability and otherwise) of customers, employees and other persons arising from events occurring at the Stores, and Merchandise sold in the Stores, before, during and after the Term, except to the extent any such claim arises from the negligence, willful misconduct or unlawful acts of Consultant.

9. INDEMNIFICATION

- a. Consultant shall indemnify and hold Merchant and its affiliates, and their respective officers, directors, employees, consultants, and independent contractors (collectively, "Merchant Indemnified Parties") harmless from and against all third-party claims, demands, penalties, losses, liabilities and damages, including, without limitation, reasonable and documented attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to:
 - (i) Consultant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
 - (ii) any harassment or any other unlawful, tortious or otherwise actionable treatment of any employees or agents of Merchant or any other breaches or violations of human rights laws or regulations by Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives (including without limitation any supervisors);
 - (iii) any claims by any party engaged by Consultant as an employee or independent contractor (including without limitation any non-Merchant employee supervisor) arising out of such employment or engagement, including, without

limitation, payroll claims, wage claims, claims for taxes required to be withheld from wages, social security, and unemployment compensation claims; or
(iv) the negligence, willful misconduct or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, Consultants, independent contractors or representatives, provided that Consultant shall not be obligated to indemnify any Merchant Indemnified Party from or against any claims, demands, penalties, losses, liabilities or damages arising primarily from any Merchant Indemnified Party's gross negligence, willful misconduct, or unlawful act.

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

(i) Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;

(ii) any claims by any party engaged by Merchant as an employee or independent contractor arising out of such engagement, except where due to the negligence, willful misconduct or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives;

(iii) any consumer warranty or products liability claims relating to any Merchandise; and/or

(iv) the negligence, willful misconduct or unlawful acts of Merchant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives,

provided that Merchant shall not be obligated to indemnify any Consultant Indemnified Party from or against any claims, demands, penalties, losses, liabilities or damages arising primarily from any Consultant Indemnified Party's gross negligence, willful misconduct, or unlawful act.

10. MISCELLANEOUS

- a. Upon the filing of a Bankruptcy Case by Merchant, Merchant shall seek approval of this Agreement, including retention of Consultant and conduct of the Sale set forth herein, from the Bankruptcy Court. In such case, but expressly subject to Merchant's fiduciary duties, and the approval of the Bankruptcy Court, Merchant shall promptly seek to have this Agreement and the transactions contemplated by this Agreement approved by the Bankruptcy Court pursuant to sections 363 and 365 of the United States Bankruptcy Code (and not pursuant to sections 327, 328, 330, or 331 thereof) pursuant to an order with terms reasonably acceptable to both Merchant and Consultant that provides, among other things, as follows: (i) approving the payment of all fees and reimbursement of expenses hereunder to Consultant without further order of the court free and clear of all liens, claims and encumbrances; (ii) approving payment of the Special Purpose Payment and that all such payments of fees and reimbursement of expenses be made on a weekly basis without further order of the Bankruptcy Court and otherwise in accordance with this Agreement; (iii) approving the transactions contemplated hereby; (iv) authorizing the Sale without the necessity of complying with state and local rules, laws, ordinances and regulations in respect of "going out of business", "store closing" or similar-themed sales, including, without limitation, permitting and licensing requirements, that could otherwise govern the Sale but in compliance with the Sale Guidelines attached hereto as **Exhibit C** and laws and regulations relating to privacy, consumer protection, occupational health and safety and the environment; (v) authorizing the Sale notwithstanding restrictions in leases, reciprocal easement agreements or other contracts that purport to restrict the Sale or the necessity of obtaining any third party consents; (vi) authorizing Merchant to take all further actions as are necessary or appropriate to carry out the terms and conditions of this Agreement; and (vii) including protection of Consultant's fees and expenses by providing that all such fees and expenses shall be paid to Consultant from Gross Proceeds and without adherence to any DIP or cash collateral budget associated therewith (the "Approval Order"). In such event, any legal action, suit or proceeding arising in connection with this Agreement shall be submitted to the exclusive jurisdiction of the Bankruptcy Court having jurisdiction over Merchant, and each Party hereby waives any defenses or objections based on lack of jurisdiction, improper venue, and/or forum non conveniens. From and after entry of the Approval Order, if applicable, Consultant shall conduct the Sale in accordance with the terms of the Approval Order and the Sale Guidelines in all material respects. In the event the Approval Order is not entered by the Bankruptcy Court or does not include the terms and

conditions contained herein, (i) Merchant shall reimburse Consultant for any documented Consultant Controlled Expenses actually incurred in connection with the Sale through and including the day immediately after denial of such motion by the Bankruptcy Court and (ii) Consultant may, in its sole discretion, elect to terminate this Agreement. In the event of a bankruptcy filing, the Bankruptcy Court shall have exclusive jurisdiction to resolve any issues arising under this Agreement.

- b. This Agreement shall be governed by and construed in accordance with the United States Bankruptcy Code, as applicable, and laws of the State of New York, without giving effect to conflict of laws provisions.
- c. This Agreement constitutes the entire agreement between the parties with respect to the matters contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, letters of intent or representations, written or oral, with respect thereto. This Agreement may not be modified except in a written instrument executed by each of the parties hereto. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. The failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.
- d. Nothing contained in this Agreement shall be deemed to create any relationship between Merchant and Consultant other than that of Consultant as an independent contractor of Merchant, and it is stipulated that the parties are not partners or joint ventures in any way. Unless expressly set forth herein to the contrary, to the extent that either party's consent is required/requested hereunder, such consent shall not be unreasonably withheld or delayed. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns; provided, however, that this Agreement may not be assigned by either party without the prior written consent of the other.

- e. Written notices contemplated by this Agreement shall be sent by email (i) if to Merchant at the address set forth above; and (ii) if to Consultant c/o Mark P Naughton at 350 N. LaSalle Street, 11th Floor, Chicago, IL 60654, email: mnaughton@tigergroup.com.

Very truly yours,
Tiger Capital Group, LLC
By: *s/Michael McGrail*
Chief Operating Officer

AGREED TO AND ACCEPTED BY:
Francesca's Holdings Corporation

By: *Cindy Thomassee*

Name: Cindy Thomassee
Title: Chief Financial Officer

EXHIBIT LIST

Exhibit A

List of Stores

Exhibit B

Budget

Exhibit C

Sale Guidelines

Exhibit A
List of Stores

	COUNTERPARTY-LANDLORD	COUNTERPARTY-LANDLORD ADDRESS	DEBTOR	PROPERTY ADDRESS
1.	2-26 State Stree Nominee Trust	One Wells Avenue c/o Newburyport Manager, LLC, New England Development Newton, MA 02459	FCI	16 State Street 16 State Street Newburyport, MA 19500
2.	2547 Brindle Drive Real Estate, LLC	307 Fellowship Road Suite 300 Attn: Elaine Maneval, Property Manager Care Of: Metro Commercial Management Services, Inc. Mount Laurel, NJ 08054	FCI	The Shoppes at Susquehanna Marketplace 2617 Brindle Drive C2 Harrisburg, PA 17110
3.	ABT Owner 1, L.P.	c/o Starwood Retail Property Management, LLC One East Wacker Dr Chicago, IL 60601	FCI	The Arboretum of South Barrington 100 West Higgins Road South Barrington, IL 60010
4.	Aspen GRF2, LLC	973 Lomas Santa Fe Drive Solana Beach, CA 92075	FCI	Aspen Grove 7301 S Santa Fe Dr 420-B Littleton, CO 80120
5.	Beachwood Place Mall, LLC	350 N. Orleans St. Suite 300 Attention to: Law/Lease Administration Department Care of: Beachwood Place Chicago, IL 60654	FCI	Beachwood Place 26300 Cedar Rd. 1115 Beachwood, OH 44122
6.	Birch Run Outlets II L.L.C.	225 West Washington Street Care of: Simon Premium Outlets Indianapolis, IN 46204	FCI	Birch Run Premium Outlets 12156 S. Beyer Rd. V015 Birch Run, MI 48415
7.	Bloomfield Holdings, LLC	200 Bass Pro Dr. Suite 125 Pearl, MS 39208	FCI	Outlets of Mississippi 200 Bass Pro Dr. 402 Pearl, MS 39208
8.	Brookfield Corners LLC	30 S. Wacker Dr. Suite 2850 Attention to: Jay Eck Care of: the Bradford Real Estate Companies Chicago, IL 60606	FCI	Corners of Brookfield 290 High Street E118 Brookfield, WI 53045
9.	Burnsville Center SPE, LLC	2030 Hamilton Place Blvd. CBL Center - Suite 500 Chattanooga, TN 37421	FCI	Burnsville Center 1034 Burnsville Center Burnsville, MN 55306
10.	Cafaro-Peachcreek Joint Venture Partnership	5577 Youngstown-Warren Road Niles, OH 44446	FCI	Millcreek Mall 654 Millcreek Mall 420 Erie, PA 16565
11.	Centralia Factory Outlets LLC	1145 Broadway Suite 1300 Tacoma, WA 98402	FCI	Centralia Outlets 1414 Lum Road Centralia, WA 98531
12.	Chicago Premium Outlets, LLC	225 West Washington Street Care of: Simon Premium Outlets Indianapolis, IN 46204	FCI	Chicago Premium Outlets 1650 Premium Outlet Blvd. 1237 Aurora, IL 60502

	COUNTERPARTY-LANDLORD	COUNTERPARTY-LANDLORD ADDRESS	DEBTOR	PROPERTY ADDRESS
13.	Clackamas Mall L.L.C.	350 N. Orleans St. Suite 300 Attention to: Law/Lease Administration Department Care of: Clackamas Town Center Chicago, IL 60654	FCI	Clackamas Town Center 1200 SE 82nd Ave. E101 Happy Valley, OR 97086
14.	Colorado Mills Mall Limited Partnership	225 West Washington Street Care of: M.S. Management Associates Inc. Indianapolis, IN 46204	FCI	Colorado Mills 14500 W. Colfax Avenue 244 Lakewood, CO 80401
15.	Columbia Grand Forks, LLC	2800 Columbia Rd. Attn to: Mall Management Grand Forks, ND 58201	FCI	Columbia Mall 2800 Columbia Rd. Grand Forks, ND 58201
16.	Columbia Mall Partnership	225 West Washington Street Care of: M.S. Management Associates Inc. Indianapolis, IN 46204	FCI	Columbia Center 1321 N. Columbia Center Blvd. 507 Kennewick, WA 99336
17.	CPG Partners, L.P.	225 West Washington Street Attention to: Premium Outlets Care of: Simon Property Group, Inc. Indianapolis, IN 46204	FCI	North Georgia Premium Outlets 800 Highway 400 South 930 Dawsonville, GA 30534
18.	Domain Northside Retail Property Owner LP	11821 Rock Rose Ave. Suite 142 Attention to: General Manager Care of: Domain Northside Management Office Austin, TX 78758	FCI	River Park Square 808 W. Main Ave. 245 Spokane, WA 99201
19.	Edwards Realty Company	14400 S. John Humphrey Drive Suite 200 Orland Park, IL 60462	FCI	Orland Park Crossing 14215 La Grange Rd 118 Orland Park, IL 60462
20.	Eskridge (E&A), LLC	1221 Main Street Suite 1000 Attention to: Legal Department Care of: Edens Limited Partnership Columbia, SC 29201	FCI	Mosaic District 2910 District Ave C10 Fairfax, VA 22031
21.	Fashion Outlets at Foxwoods, LLC	3200 Northline Avenue Suite 360 Attention to: Legal Department Greensboro, NC 27408	FCI	Foxwoods Outlet 455 Trolley Line Blvd 560 Mashantucket, CT 6338
22.	Fashion Outlets II LLC	401 Wilshire Boulevard Suite 700 Attention to: Legal Counsel - Fashion Outlets of Niagara Santa Monica, CA 90401	FCI	Fashion Outlets of Niagara Falls 1900 Military Road 248 Niagara Falls, NY 14304
23.	Fashion Outlets of Chicago LLC	401 Wilshire Boulevard Suite 700 Attention to: Correspondence Routing System/Legal Department Care of: Macerich Santa Monica, CA 90407	FCI	Fashion Outlets of Chicago 5220 Fashion Outlets Way 1083 Rosemont, IL 60018
24.	Fashion Square Mall CMBS, LLC	2030 Hamilton Place Blvd. CBL Center - Suite 500 Chattanooga, TN 37421	FCI	Fashion Square 4800 Fashion Square Mall A- 132 Saginaw, MI 48604

	COUNTERPARTY-LANDLORD	COUNTERPARTY-LANDLORD ADDRESS	DEBTOR	PROPERTY ADDRESS
25.	FEDERAL REALTY INVESTMENT TRUST	909 Rose Avenue Suite 200 Attention to: Legal Department North Bethesda, MD 20852	FCI	Bethesda Row 4844 Bethesda Avenue Bethesda, MD 20814
26.	Federal Realty Investment Trust	909 Rose Avenue Suite 200 Attention to: Legal Department North Bethesda, MD 20852	FCI	Assembly Row 621 Assembly Row Somerville, MA 2145
27.	Flagstaff Aspen Place, LLC	c/o RED Development, LLC One East Washington St., Ste 300 Phoenix, AZ 85004	FCI	Aspen Place 319 South Regent Street 201 Flagstaff, AZ 86001
28.	FlatIron Property Holding, L.L.C.	401 Wilshire Boulevard Suite 700 Attention to: Legal Department Santa Monica, CA 90407	FCI	Flat Iron Crossing 1 West Flatiron Crossing Drive 1188A Broomfield, CO 80021
29.	Forbes/Cohen Florida Properties Limited Partnership	100 Galleria Officentre Suite 427 Southfield, MI 48034	FCI	The Gardens Mall 3101 PGA Blvd. F-100 Palm Beach Gardens, FL 33410
30.	GALLERIA AT WOLFCHASE, LLC	225 West Washington Street Care of: M.S. Management Associates Inc. Indianapolis, IN 46204	FCI	Wolfchase Galleria 2760 N. Germantown Pky. 139 Memphis, TN 38133
31.	Georgetown One, LLC	13150 Glen Rd. Attention to: Helene Brody Bushwick Care of: Helene Brody Bushwick North Potomac, MD 20878	FCI	3128 M Street 3128 M St NW Washington, DC 20007
32.	GGP-Otay Ranch,L.P	350 N. Orleans St. Suite 300 Attention to: Law/Lease Administration Department Care of: Otay Ranch Town Center Chicago, IL 60654	FCI	Otay Ranch Town Center 2015 Birch Road 903 Chula Vista, CA 91915
33.	Gilroy Premium Outlets, LLC	225 West Washington Street Care of: Simon Premium Outlets Indianapolis, IN 46204	FCI	Gilroy Premium Outlets 8300 Arroyo Circle B050 Gilroy, CA 95020
34.	Governor's Square Mall, LLC	350 N. Orleans St. Suite 300 Attention to: Law/Lease Administration Department Chicago, IL 60654	FCI	Governor's Square 1500 Apalachee Parkway 2060 Tallahassee, FL 32301
35.	Grand Prairie Outlets, LLC	225 West Washington Street Care of: Simon Premium Outlets Indianapolis, IN 46204	FCI	Grand Prairie Premium Outlets 2950 W. Interstate 20 445 Grand Prairie, TX 75052
36.	Grapevine Mills Limited Partnership	225 West Washington St. c/o M.S. Management Associates Inc. Indianapolis, IN 46204	FCI	Grapevine Mills 3000 Grapevine Mills Pkwy 133 Grapevine, TX 76051
37.	Gulf Coast Factory Shops Limited Partnership	225 West Washington Street Care of: Simon Premium Outlets Indianapolis, IN 46204	FCI	Ellenton Premium Outlets 5649 Factory Shops Blvd. Ellenton, FL 34222

	COUNTERPARTY-LANDLORD	COUNTERPARTY-LANDLORD ADDRESS	DEBTOR	PROPERTY ADDRESS
38.	H/S Florence LLC	1190 Interstate Parkway Attention to: James M. Hull c/o Hull Storey Retail Group, LLC Augusta, GA 30909	FCI	Regency Square 301 Cox Creek Parkway 1032 Florence, AL 35630
39.	Hamilton Mall Realty LLC	150 Great Neck Road Suite 304 Care Of: Namdar Realty Group Great Neck, NY 11021	FCI	Hamilton Mall 4403 Black Horse Pike 1117B Mays Landing, NJ 08330
40.	Hulen Mall, LLC	350 N. Orleans St. Suite 300 Attention to: Law/Lease Administration Department Care of: Hulen Mall Chicago, IL 60654	FCI	Hulen Mall 4800 S Hulen St. Fort Worth, TX 76132
41.	JG ELIZABETH II, LLC	225 West Washington Street Care of: M.S. Management Associates Inc. Indianapolis, IN 46204	FCI	The Mills at Jersey Gardens 651 Kapkowski Rd. 2224 Elizabeth, NJ 7201
42.	Lakeview Pointe Shopping Center, LLC	6310 Lamar Suite 220 c/o Rubenstein Real Estate Co., LC Overland Park, KS 66202	FCI	Lake View Pointe 1920 North Perkins Road A-4 Stillwater, OK 74075
43.	Livermore Premium Outlets, LLC	225 West Washington Street Attention to: Premium Outlets Care of: Simon Property Group Indianapolis, IN 46204	FCI	San Francisco Premium Outlets 2728 Livermore Outlets Dr. Livermore, CA 94551
44.	LVP St. Augustine Outlets LLC	1985 Cedar Bridge Ave. Suite 1 c/o The Lightstone Group Lakewood, NJ 08701	FCI	St. Augustine Outlet 510 Outlets Mall Blvd. 1060 Saint Augustine, FL 32084
45.	Macerich Deptford LLC	1750 Deptford Center Rd. Deptford, NJ 08096	FCI	Deptford Mall 1750 Deptford Center Rd. 2029 DeptFord, NJ 8096
46.	Mall at Jefferson Valley, LLC	180 East Broad St. c/o WP Glimcher Inc. Columbus , OH 43215	FCI	Jefferson Valley Mall 650 Lee Blvd. Suite 0G08A Yorktown Heights, NY 10598
47.	Mall at Lima, LLC	180 East Broad Street Attention to: General Counsel Care of: WP Glimcher Inc. Columbus, OH 43215	FCI	Lima Mall 2400 Elida Road 354 Lima, OH 45805
48.	MALL AT ROCKINGHAM, LLC	225 West Washington Street Care of: M.S. Management Associates Inc. Indianapolis, IN 46204	FCI	The Mall at Rockingham Park 99 Rockingham Park Blvd. E135 Salem, NH 3079
49.	Mall St. Vincent, LLC	200 Vesey Street 25th Floor Attention to: Legal Department Care of: Brookfield Properties (R) LLC New York, NY 10281	FCI	Mall at St. Vincent 1133 St. Vincent Avenue 170 Shreveport, LA 71104

	COUNTERPARTY-LANDLORD	COUNTERPARTY-LANDLORD ADDRESS	DEBTOR	PROPERTY ADDRESS
50.	McCain Mall Company Limited Partnership	225 West Washington Street Care of: M.S. Management Associates Inc. Indianapolis, IN 46204	FCI	McCain Mall 3929 McCain Blvd. North Little Rock, AR 72116
51.	Merrimack Premium Outlets Center, LLC	225 West Washington Street Care of: Simon Premium Outlets Indianapolis, IN 46204	FCI	Merrimack Premium Outlets 80 Premium Outlets Blvd 673 Merrimack, NH 3054
52.	Mid-South Outlet Shops, LLC	3200 Northline Avenue Suite 360 Attention to: Legal Department Greensboro, NC 27408	FCI	Memphis Outlet 5205 Airways Blvd 855 Southaven, MS 38671
53.	MISSION VIEJO ASSOCIATES, L.P.	225 West Washington Street Care of: M.S. Management Associates Inc. Indianapolis, IN 46204	FCI	The Shops at Mission Viejo 906 Shoppes at Mission Viejo Mission Viejo, CA 92691
54.	MSH76LLC	15 Maiden Lane Suite 1300 Care of: The Propeller Co. LLC New York, NY 10038	FCI	1327 Third Avenue 1327 Third Avenue New York, NY 10021
55.	Muncie Mall LLC	2100 W 7th St. Fort Worth, TX 76107	FCI	Muncie Mall 3501 N. Granville Ave. H11 Muncie, IN 47303
56.	NED Little Rock LLC	75 Park Plaza 3rd Floor c/o New England Development Boston, MA 02116	FCI	Outlets at Little Rock 11201 Bass Pro Pkwy M114 Little Rock, AR 72209
57.	Ontario Mills Limited Partnership	225 West Washington Street Care of: M.S. Management Associates Inc. Indianapolis, IN 46204	FCI	Ontario Mills 1 Mills Circle 1016 Ontario, CA 91764
58.	Outlets at Traverse Mountain, LLC	4100 MacArthur Boulevard Suite 200 Newport Beach, CA 92660	FCI	Outlets at Traverse Mountain 3700 N. Cabalas Blvd. 321 Lehi, UT 84043
59.	Outlets at Westgate, LLC	3200 Northline Avenue Suite 360 Attention to: Legal Department Greensboro, NC 27408	FCI	Westgate Outlet 6800 North 95th Avenue 305 Glendale, AZ 85305
60.	Paseo Nuevo Management, LLC	100 N. Sepulveda Blvd. Suite 1925 Attention to: Gary Karl Care of: Pacific Retail Capital Partners El Segundo, CA 90245	FCI	Paseo Nuevo 727 State St. Santa Barbara, CA 93101
61.	Pecanland Mall LLC	350 N. Orleans St. Suite 300 Attention to: Law/Lease Administration Dept Care of: Pecanland Mall Chicago, IL 60654	FCI	Pecanland Mall 4700 Millhaven Road #2000 1042 Monroe, LA 71203
62.	Pembroke Lakes Mall LLC	350 N. Orleans St. Suite 300 Attention to: Law/Lease Administration Care of: Pembroke Lakes Mall Chicago, IL 60654	FCI	Pembroke Lakes Mall 11401 Pines Blvd. 540 Pembroke Pines, FL 33026

	COUNTERPARTY-LANDLORD	COUNTERPARTY-LANDLORD ADDRESS	DEBTOR	PROPERTY ADDRESS
63.	PIER PARK, LLC	225 W Washington St Care of: M.S. Management Associates Inc. Indianapolis, IN 46204	FCI	Pier Park 200 Blue Fish Drive 110 Panama City Beach, FL 32413
64.	Poughkeepsie Galleria, LLC	The Clinton Exchange Four Clinton Square Attention to: Management Syracuse, NY 13202	FCI	Poughkeepsie Galleria 2001 South Road Poughkeepsie, NY 12601
65.	PPF RTL Atlantic Town Center, LLC	3224 Peachtree Rd., NE 9th Floor Attention to: Devin Barnwell Care of: Morgan Stanley Real Estate Investing Atlanta, GA 30326	FCI	Atlantic Station 260 18th Street 10105 Atlanta, GA 30363
66.	PR Springfield Town Center LLC	200 South Broad Street 3rd Floor Attention to: General Counsel Care of: PREIT Services LLC Philadelphia, PA 19102	FCI	Springfield Town Center 6787 Springfield Mall Springfield, VA 22150
67.	Premium Outlet Partners, L.P.	225 West Washington Street Attention to: Premium Outlets Care of: Simon Property Group Indianapolis, IN 46204	FCI	Woodbury Common Premium Outlets 430 Dune Rd. 430 Central Valley, NY 10917
68.	Renaissance Partners I, LLC	8750 North Central Expressway Suite 1740 Attention to: Chief Operating Officer Care of: Centennial Real Estate Management, LLC Dallas, TX 75231	FCI	Pueblo Mall 3519 Dillon Dr. F-9 Pueblo, CO 81008
69.	Rolling Oaks Mall, LLC	225 West Washington Street Care of: M.S. Management Associates, Inc. Indianapolis, IN 46204	FCI	Rolling Oaks Mall 6909 N Loop 1604 E C01C San Antonio, TX 78247
70.	Route 140 School Street, LLC	33 Boylston Street Suite 3000 Attention to: Lease Compliance Chestnut Hill, MA 02467	FCI	Mansfield Crossing 280 School Street Mansfield, MA 2048
71.	Rymsbran Continental Corp	619 West 54th St. Suite 10A New York, NY 10019	FCI	2345 Broadway 2345 Broadway New York, NY 10024
72.	SIMON PROPERTY GROUP (TEXAS), L.P	225 West Washington St. c/o M.S. Management Associates Inc. Indianapolis, IN 46204	FCI	Broadway Square 4601 S. Broadway Tyler, TX 75703
73.	SIMON/CHELSEA LAS VEGAS DEVELOPMENT, LLC	60 Columbia Road Bldg. B, 3rd Floor Care of: Simon Premium Outlets Morristown, NJ 07960	FCI	Las Vegas Premium Outlet North 875 South Grand Central Pkwy 1644 Las Vegas, NV 89106

	COUNTERPARTY-LANDLORD	COUNTERPARTY-LANDLORD ADDRESS	DEBTOR	PROPERTY ADDRESS
74.	Slidell Development Company, L.L.C.	2030 Hamilton Place Blvd. CBL Center, Suite 500 Attention to: David Neuhoff, Vice President of Development Chattanooga, TN 37421	FCI	Fremaux Town Center 840 Town Center Parkway Slidell, LA 70458
75.	SM EASTLAND MALL, LLC	c/o The Macerich Company Attn: Legal Dept 401 Wilshire Blvd, #700 Santa Monica, CA 90401	FCI	Eastland Mall 800 North Green River Road 72 Evansville, IN 47715
76.	Somerset Collection Limited Partnership	100 Galleria Officentre Suite 427 Southfield, MI 48034	FCI	The Somerset Collection North 2800 W. Big Beaver Road Q-121 Troy, MI 48084
77.	Southgate Mall Montana II LLC	180 East Broad St. c/o Washington Prime Group Columbus, OH 43215	FCI	Southgate Mall 2901 Brooks Street D-13 Missoula, MT 59801
78.	Southland Center, LLC	200 Vesey Street 25th Floor Attention to: Legal Department Care of: Brookfield Properties (R) LLC New York, NY 10281	FCI	Southland Mall 23000 Eureka Taylor, MI 48180
79.	SouthPointe Pavilions Shopping Center	One East Washington Street Suite 300 Attention to: Lease Legal Notices Care of: Red Development, LLC Phoenix, AZ 85004	FCI	SouthPointe Pavilions SC 2910 Pine Lake Road L Lincoln, NE 68516
80.	Southridge Limited Partnership	225 West Washington Street Care of: MS Management Associates Inc. Indianapolis, ID 46201-3438	FCI	Southridge Mall 5300 S 76th St Greendale, WI 53129
81.	Star-West Louis Joliet, LLC	3340 Mall Loop Drive #1249 Attention to: General Manager Joliet, IL 60431	FCI	Louis Joliet Mall 3340 Mall Loop Dr. 1276 Joliet, IL 60431
82.	Station Park CenterCal, LLC	1600 East Franklin Avenue Attention to: General Counsel Care of: CenterCal Properties, LLC El Segundo, CA 90245	FCI	Station Park 861 W East Promontory H-120 Farmington, UT 84025
83.	Sunrise Mall LLC	2049 Century Park East 41st Floor Attention to: Legal Department Los Angeles, CA 90067	FCI	Sunrise Mall 1 Sunrise Mall 1280 Massapequa, NY 11758
84.	TACOMA MALL PARTNERSHIP	225 West Washington Street Care of: M.S. Management Associates Inc. Indianapolis, IN 46204	FCI	Tacoma Mall 4502 S. Steele St 670 Tacoma, WA 98409
85.	Tanger Outlets Deer Park, LLC	3200 Northline Avenue Suite 360 Attention to: Legal Department Greensboro, NC 27408	FCI	Deer Park Outlets 316 The Arches Circle Deer Park, NY 11729

	COUNTERPARTY-LANDLORD	COUNTERPARTY-LANDLORD ADDRESS	DEBTOR	PROPERTY ADDRESS
86.	Tanger Properties Limited Partnership	3200 Northline Avenue Suite 360 Attention to: Legal Department Greensboro, NC 27408	FCI	Locust Grove Outlet 1000 Tanger Dr. 506 Locust Grove, GA 30248
87.	Tanger Properties Limited Partnership	3200 Northline Avenue Suite 360 Attention to: Legal Department Greensboro, NC 27408	FCI	Howell Outlet Center 1475 N. Burkhart Rd. B120 Howell, MI 48855
88.	The Retail Property Trust	225 West Washington Street Care of: M.S. Management Associates Inc. Indianapolis, IN 46204	FCI	Roosevelt Field 630 Old Country Road Garden City, NY 11530
89.	Trumbull Shopping Center #2 LLC	11601 Wilshire Blvd 11th Fl Attention to: Legal Department Los Angeles, CA 90025	FCI	Westfield Trumbull 5065 Main Street 2075 Trumbull, CT 6611
90.	TSO Vero Beach, LP	1170 Peachtree Street, NE Suite 2000 Attention to: A. Boyd Simpson Care of: The Simpson Organization, Inc. Atlanta, GA 30309	FCI	Vero Beach Outlets 1824 94th Dr. B-190 Vero Beach, FL 32966
91.	UTC VENTURE LLC	2049 Century Park East 41st Floor Attention to: Legal Department Los Angeles, CA 90067	FCI	Westfield UTC 4307 La Jolla Village Dr. 2215 San Diego, CA 92122
92.	Valley Plaza Mall, LP	350 N. Orleans St. Suite 300 Attention to: Law/Lease Administration Department Care of: Valley Plaza Mall CA Chicago, IL 60654	FCI	Valley Plaza Mall 2701 Ming Avenue 253 Bakersfield, CA 93304
93.	Ward & O'Donnell Westfield, LLC	PO Box 2547 Westfield, NJ 07090	FCI	161 E Broad Street 161 E Broad St Westfield, NJ 7090
94.	Wells Fargo Bank, NA as Trustee for CSMS 2008-C1	5221 N. O'Connor Blvd Suite 800 Attention to: Laura McWilliams Care of: C-III Asset Management LLC Irving, TX 75039	FCI	Killeen Mall 2100 South WS Young Dr. 1440 Killeen, TX 76543
95.	Woodbridge Center Property, LLC	350 N. Orleans St. Suite 300 Attention to: Law/Lease Administration Department Care of: Woodbridge Center Chicago, IL 60654	FCI	Woodbridge Center 216 Woodbridge Center Dr. Woodbridge, NJ 7095
96.	Woodburn Premium Outlets, LLC	225 West Washington Street Care of: Simon Premium Outlets Indianapolis, IN 46204	FCI	Woodburn Premium Outlets 1001 Arney Road 417 Woodburn, OR 97071
97.	Yonkers Associates, LLC	600 Superior Ave. East, Ste 1500 Cleveland, OH 44114	FCI	Ridge Hill 136 Market Street Yonkers, NY 10710

Exhibit B

Francesca's - Phase 2 Budget

Consultant Expenses: (1)

Advertisement	\$229,640
Supervision	434,094
Miscellaneous	15,000
Total Consultant Exp.	\$678,734

Note:

(1) Assumes a 6.4-week Sale.

Exhibit C

STORE CLOSING PROCEDURES¹

The following procedures (the “**Store Closing Procedures**”) shall apply to the Sales to be held at the Closing Stores subject to the Consulting Agreement:

1. The Sales will be conducted during normal business hours or such hours as otherwise permitted by the applicable unexpired lease.

2. The Sales will be conducted in accordance with applicable state and local “Blue Laws.” Accordingly, where Blue Laws apply, no Store Closings will be conducted on Sundays unless the Debtors have been operating such Closing Stores on Sundays.

3. On “shopping center” property, neither the Debtors nor the Consultant shall distribute handbills, leaflets, or other written materials to customers outside of any Store’s premises, unless permitted by the applicable lease or customary in the “shopping center” in which a Store is located; *provided* that the Debtors and the Consultant may solicit customers in the Closing Stores themselves.

4. On “shopping center” property, neither the Debtors nor the Consultant shall use any flashing lights or amplified sound to advertise the Store Closings or solicit customers, except as permitted under the applicable lease or agreed in writing by the landlord.

5. The Debtors and the Consultant shall have the right to use and sell the FF&E. The Debtors and the Consultant may advertise the sale of the FF&E in a manner consistent with these Store Closing Procedures. The purchasers of any FF&E sold during the Sales shall be permitted to remove the FF&E either through the back or

¹ Capitalized terms used but not defined herein shall have the meanings used in the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume the Consulting Agreement; (II) Approving Procedures for Store Closing Sales; and (III) Granting Related Relief*, or the Consulting Agreement, as applicable.

alternative shipping areas at any time or through other areas after Store business hours; *provided, however*, that the foregoing shall not apply to *de minimis* FF&E sales made whereby the item can be carried out of a Store in a shopping bag.

6. The Consultant and Debtors may abandon any FF&E not sold in the Sales at the Closing Stores at the conclusion of the Sales, including, but not limited to, Store signage related to the Sales and Store Closings. Any abandoned FF&E left in a Store after a lease is rejected shall be deemed abandoned by the Debtors, with the landlord having a right to dispose of the same as it chooses without any liability whatsoever to any party and without waiver of any damage claims against the Debtors. To the extent that the Debtors propose to sell or abandon FF&E that may contain Confidential Information, the Debtors shall remove the Confidential Information from such items of FF&E before such sale or abandonment.

7. The Debtors and the Consultant may, but are not required to, advertise all of the Sales and Store Closings as “store closing,” “sale on everything,” “everything must go,” “going out of business,” or similarly themed sales. The Debtors and the Consultant may also have a “countdown to closing” sign prominently displayed in a manner consistent with these Store Closing Procedures.

8. The Debtors and the Consultant shall be permitted to utilize sign-walkers, displays, hanging signs, and interior banners in connection with the Sales and Store Closings; *provided* that such sign-walkers, displays, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. Neither the Debtors nor the Consultant shall use neon or day-glo on its sign-walkers, displays, hanging signs, or interior banners if prohibited by the applicable lease or applicable law. Furthermore, with respect to enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Store Closing Procedures. The Debtors and the Consultant shall be permitted to utilize exterior banners

at (a) Closing Stores in non-enclosed malls and (b) Closing Stores in enclosed malls to the extent the entrance to the applicable Store does not require entry into the enclosed mall common area; *provided, however*, that such banners shall be located or hung so as to make clear that the Sale or Store Closing is being conducted only at the affected Store and shall not be wider than the storefront of the Store. In addition, the Debtors shall be permitted to utilize sign-walkers in a safe and professional manner. Nothing contained in these Store Closing Procedures shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable lease agreement.

9. Neither the Debtors nor the Consultant shall make any alterations to the storefront, roof, or exterior walls of any Closing Stores or shopping centers or to interior or exterior store lighting except as authorized by the applicable lease. The hanging of store signage shall not constitute an alteration to a Store.

10. Affected landlords will have the ability to negotiate with the Debtors or, at the Debtors' direction, the Consultant with respect to any particular modifications to the Store Closing Procedures. The Consultant, at the direction of the Debtors, and the landlord of any Store are authorized to enter into Side Letters without further order of the Court, *provided* that such agreements do not have a material adverse effect on the Debtors or their estates.

11. Conspicuous signs will be posted in each of the affected Closing Stores to the effect that all sales are "final."

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

13. An unexpired nonresidential real property lease will not be deemed rejected by reason of a Store Closing or the adoption of these Store Closing Procedures.

14. The rights of landlords against the Debtors for any damages to a Store shall be reserved in accordance with the provisions of the applicable lease

15. If and to the extent that the landlord of any Store contends that the Debtors or the Consultant are in breach of or default under these Store Closing Procedures, such landlord shall provide at least five (5) days' written notice, served by email or overnight delivery, on:

If to the Debtors: Francesca's Holdings Corporation
Attn: Cindy Thomassee
8760 Clay Road
Houston, Texas 77080
Email: cindy.thomassee@francescas.com

with copies (which shall not constitute notice) to: O'Melveny & Myers, LLP
Attn: Maria DiConza, Esq. and Diana M. Perez, Esq.
Times Square Tower
7 Times Square
New York, New York 10036
Email: mdiconza@omm.com
dperez@omm.com

If to Consultant: Tiger Capital Group, LLC
Attn: Mark P. Naughton, Esq.
350 N. LaSalle Street, 11th Floor
Chicago, Illinois 60654
Email: MNaughton@tigergroup.com

with copies (which shall not constitute notice) to: Greenberg Traurig, LLP
Attn: Jeffrey M. Wolf, Esq.
One International Place, Suite 200
Boston, MA 02110
E-Mail: wolfje@gtlaw.com

16. If the parties are unable to resolve the dispute, either the landlord or the Debtors shall have the right to schedule a hearing before the Court on no less than five (5) days' written notice to the applicable parties, served by email or overnight delivery.

Exhibit 2

STORE CLOSING PROCEDURES¹

The following procedures (the “**Store Closing Procedures**”) shall apply to the Sales to be held at the Closing Stores subject to the Consulting Agreement:

1. The Sales will be conducted during normal business hours or such hours as otherwise permitted by the applicable unexpired lease.

2. The Sales will be conducted in accordance with applicable state and local “Blue Laws.” Accordingly, where Blue Laws apply, no Store Closings will be conducted on Sundays unless the Debtors have been operating such Closing Stores on Sundays.

3. On “shopping center” property, neither the Debtors nor the Consultant shall distribute handbills, leaflets, or other written materials to customers outside of any Store’s premises, unless permitted by the applicable lease or customary in the “shopping center” in which a Store is located; *provided* that the Debtors and the Consultant may solicit customers in the Closing Stores themselves.

4. On “shopping center” property, neither the Debtors nor the Consultant shall use any flashing lights or amplified sound to advertise the Store Closings or solicit customers, except as permitted under the applicable lease or agreed in writing by the landlord.

5. The Debtors and the Consultant shall have the right to use and sell the FF&E. The Debtors and the Consultant may advertise the sale of the FF&E in a manner consistent with these Store Closing Procedures. The purchasers of any FF&E sold during the Sales shall be permitted to remove the FF&E either through the back or alternative shipping areas at any time or

¹ Capitalized terms used but not defined herein shall have the meanings used in the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume the Consulting Agreement; (II) Approving Procedures for Store Closing Sales; and (III) Granting Related Relief*, or the Consulting Agreement, as applicable.

through other areas after Store business hours; *provided, however*, that the foregoing shall not apply to *de minimis* FF&E sales made whereby the item can be carried out of a Store in a shopping bag.

6. The Consultant and Debtors may abandon any FF&E not sold in the Sales at the Closing Stores at the conclusion of the Sales, including, but not limited to, Store signage related to the Sales and Store Closings. Any abandoned FF&E left in a Store after a lease is rejected shall be deemed abandoned by the Debtors, with the landlord having a right to dispose of the same as it chooses without any liability whatsoever to any party and without waiver of any damage claims against the Debtors. To the extent that the Debtors propose to sell or abandon FF&E that may contain Confidential Information, the Debtors shall remove the Confidential Information from such items of FF&E before such sale or abandonment.

7. The Debtors and the Consultant may, but are not required to, advertise all of the Sales and Store Closings as “store closing,” “sale on everything,” “everything must go,” “going out of business,” or similarly themed sales. The Debtors and the Consultant may also have a “countdown to closing” sign prominently displayed in a manner consistent with these Store Closing Procedures.

8. The Debtors and the Consultant shall be permitted to utilize sign-walkers, displays, hanging signs, and interior banners in connection with the Sales and Store Closings; *provided* that such sign-walkers, displays, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. Neither the Debtors nor the Consultant shall use neon or day-glo on its sign-walkers, displays, hanging signs, or interior banners if prohibited by the applicable lease or applicable law. Furthermore, with respect to enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise

expressly permitted in these Store Closing Procedures. The Debtors and the Consultant shall be permitted to utilize exterior banners at (a) Closing Stores in non-enclosed malls and (b) Closing Stores in enclosed malls to the extent the entrance to the applicable Store does not require entry into the enclosed mall common area; *provided, however*, that such banners shall be located or hung so as to make clear that the Sale or Store Closing is being conducted only at the affected Store and shall not be wider than the storefront of the Store. In addition, the Debtors shall be permitted to utilize sign-walkers in a safe and professional manner. Nothing contained in these Store Closing Procedures shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable lease agreement.

9. Neither the Debtors nor the Consultant shall make any alterations to the storefront, roof, or exterior walls of any Closing Stores or shopping centers or to interior or exterior store lighting except as authorized by the applicable lease. The hanging of store signage shall not constitute an alteration to a Store.

10. Affected landlords will have the ability to negotiate with the Debtors or, at the Debtors' direction, the Consultant with respect to any particular modifications to the Store Closing Procedures. The Consultant, at the direction of the Debtors, and the landlord of any Store are authorized to enter into Side Letters without further order of the Court, *provided* that such agreements do not have a material adverse effect on the Debtors or their estates.

11. Conspicuous signs will be posted in each of the affected Closing Stores to the effect that all sales are "final."

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

13. An unexpired nonresidential real property lease will not be deemed rejected by reason of a Store Closing or the adoption of these Store Closing Procedures.

14. The rights of landlords against the Debtors for any damages to a Store shall be reserved in accordance with the provisions of the applicable lease

15. If and to the extent that the landlord of any Store contends that the Debtors or the Consultant are in breach of or default under these Store Closing Procedures, such landlord shall provide at least five (5) days' written notice, served by email or overnight delivery, on:

If to the Debtors:

Francesca's Holdings Corporation
Attn: Cindy Thomasee
8760 Clay Road
Houston, Texas 77080
Email: cindy.thomasee@francescas.com

with copies (which shall not constitute notice) to:

O'Melveny & Myers, LLP
Attn: Maria DiConza, Esq. and Diana M. Perez, Esq.
Times Square Tower
7 Times Square
New York, New York 10036
Email: mdiconza@omm.com
dperez@omm.com

If to Consultant:

Tiger Capital Group, LLC
Attn: Mark P. Naughton, Esq.
350 N. LaSalle Street, 11th Floor
Chicago, Illinois 60654
Email: MNaughton@tigergroup.com

with copies (which shall not constitute notice) to:

Greenberg Traurig, LLP
Attn: Jeffrey M. Wolf, Esq.
One International Place, Suite 200
Boston, MA 02110
E-Mail: wolfje@gtlaw.com

16. If the parties are unable to resolve the dispute, either the landlord or the Debtors shall have the right to schedule a hearing before the Court on no less than five (5) days' written notice to the applicable parties, served by email or overnight delivery.

Exhibit B

Proposed Final Order

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

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In re:	:	Chapter 11
	:	
FRANCESCA’S HOLDINGS CORPORATION, <i>et al.</i> , ¹	:	Case No. 20-13076 (BLS)
	:	
Debtors.	:	Joint Administration Requested
	:	
	:	Re: D.I.

----- x

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO ASSUME THE CONSULTING AGREEMENT; (II) APPROVING PROCEDURES FOR STORE CLOSING SALES; AND (III) GRANTING RELATED RELIEF

Upon the motion (the “**Motion**”)² of Francesca’s Holdings Corporation (“**FHC**”) and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”), for entry of a final order (this “**Final Order**”) (i) authorizing the Debtors to assume the Consulting Agreement; (ii) authorizing and approving the Store Closing Procedures pursuant to which the Debtors shall close and wind down certain of the Debtors’ boutique locations (“**Store Closings**”) through the conduct of promotional sales at such locations, with such sales to be free and clear of all liens, claims, and encumbrances (the “**Sales**”); (iii) approving the proposed Dispute Resolution Procedures to resolve any disputes with governmental units regarding certain applicable non-bankruptcy laws that regulate liquidation and similar-themed sales; (iv) authorizing abandonment of any FF&E not sold in the Sales at the Closing Stores at the conclusion of the Sales; and (v) granting certain related relief, all as more fully set forth in the Motion; and due and sufficient

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are Francesca’s Holdings Corporation (4704), Francesca’s LLC (2500), Francesca’s Collections, Inc. (4665), and Francesca’s Services Corporation (5988). The address of the Debtors’ corporate headquarters is 8760 Clay Road, Houston, Texas 77080.

² Capitalized terms used but not defined in this Final Order have the meanings used in the Motion.

notice of the Motion having been provided under the particular circumstances, and it appearing that no other or further notice need be provided; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court's entry of a final order being consistent with Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and hearings having been held to consider the relief requested in the Motion on an interim basis and, if necessary, on a final basis (together, the "**Hearings**"); and the Court having entered an order granting the Motion on an interim basis; and upon the Clarke Declaration and the record of the Hearings; and the Court having found and determined the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors, and any parties in interest; and the legal and factual bases set forth in the Motion and at the Hearings having established just cause for the relief granted herein; and after due deliberation thereon and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. The Debtors have advanced sound business reasons for seeking to assume the Consulting Agreement and adopt the Store Closing Procedures on a final basis, as set forth in the Motion and at the Hearings, such that entering into the Consulting Agreement is a reasonable exercise of the Debtors' business judgment and in the best interests of the Debtors and their estates.

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact where appropriate. *See* Fed. R. Bankr. P. 7052.

B. The Store Closing Procedures are reasonable, and the conduct of the Sales and Store Closings in accordance with the Store Closing Procedures will provide an efficient means for the Debtors to liquidate and dispose of the Store Closure Assets as quickly and effectively as possible and will maximize the returns on the Store Closure Assets.

C. The Consulting Agreement was negotiated, proposed, and entered into by the Consultant and the Debtors without collusion, in good faith, and from arm's length bargaining positions.

D. The assumption of the Consulting Agreement is a sound exercise of the Debtors' business judgment.

E. The Dispute Resolution Procedures are fair and reasonable and comply with applicable law.

F. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for the relief approved herein.

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

H. The Debtors have represented that they are neither selling nor leasing personally identifiable information pursuant to the Motion, although the Consultant will be authorized to distribute emails and promotional materials to the Debtors' customers.

I. The entry of this Final Order is in the best interests of the Debtors and their estates and creditors as well as all other parties-in-interest herein; and now therefore

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** on a final basis as set forth herein.
2. The Debtors and the Consultant are authorized and empowered to take any and all further actions as may be reasonably necessary or appropriate to give effect to this Final

Order. The failure to specifically include any particular provision of the Consulting Agreement in this Final Order shall not diminish or impair the effectiveness of such provisions, it being the intent of this Court that the Consulting Agreement and all of its provisions, payments, and transactions, be and hereby are authorized and approved as and to the extent provided for in this Final Order.

3. To the extent of any conflict between this Final Order, the Store Closing Procedures, and the Consulting Agreement, the terms of this Final Order shall control over all other documents and the Store Closing Procedures shall control over the Consulting Agreement.

A. Authority to Assume the Consulting Agreement

4. The assumption of the Consulting Agreement by the Debtors pursuant to section 365 of the Bankruptcy Code is approved on a final basis. The Debtors are authorized to act and perform in accordance with the terms of the Consulting Agreement, including, but not limited to, paying all fees and reimbursing all expenses as required by the Consulting Agreement to the Consultant on a weekly basis from Gross Proceeds (as defined in the Consulting Agreement) and pursuant to the terms governing the Final Reconciliation (as defined in the Consulting Agreement), and paying Consultant the Special Purpose Payment, in each case as set forth in more detail in the Consulting Agreement, without the need for any application of the Consultant or a further order of the Court.

5. With respect to reasonable and documented costs and expenses incurred by the Consultant pursuant to the Consulting Agreement and fees due to the Consultant on account of services provided from the Petition Date through the date of entry of this Final Order (if any), the Consultant shall be entitled to and shall receive reimbursement of such reasonable and documented costs and expenses incurred and fees earned pursuant to the Consulting Agreement within seven business days of entry of this Final Order.

6. All fees and expenses payable to the Consultant under the terms of the Consulting Agreement shall be payable without the necessity of any application by the Consultant or any further order of the Court; *provided* that all Consultant's fees and expenses shall be paid to Consultant from Gross Proceeds and without adherence to any debtor-in-possession financing or cash collateral budget associated therewith.

7. Subject to the restrictions set forth in this Final Order and the Store Closing Procedures, the Debtors and the Consultant hereby are authorized to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and the Sales and Store Closings and each of the transactions contemplated by the Consulting Agreement. Subject to the restrictions set forth in this Final Order and the Store Closing Procedures, any actions taken by the Debtors and the Consultant necessary or desirable to implement the Consulting Agreement and/or the Sales prior to the date of this Final Order, are hereby approved and ratified.

8. Notwithstanding anything to the contrary in the Consulting Agreement, the Debtors and their estates shall not indemnify the Consultant for any damages arising primarily out of the Consultant's fraud, willful misconduct, or gross negligence.

B. Authority to Engage in Sales and Conduct Store Closings

9. The Debtors are authorized, on a final basis, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to immediately begin conducting the Sales and Store Closings at the Closing Stores in accordance with this Final Order, the Store Closing Procedures, and the Consulting Agreement.

10. The Store Closing Procedures are approved in their entirety on a final basis.

11. The Debtors are authorized to discontinue operations at the Closing Stores in accordance with this Final Order and the Store Closing Procedures.

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

13. Subject to the provisions set forth herein, neither the Debtors nor the Consultant nor any of their officers, employees, or agents shall be required to obtain the approval of any third party, including, without limitation, any Governmental Unit (as defined in section 101(27) of the Bankruptcy Code) or landlord, to conduct the Sales and Store Closings and to take the related actions authorized herein.

C. Conduct of the Sales

14. All newspapers and other advertising media in which the Sales and Store Closings may be advertised and all landlords are directed to accept this Final Order as binding authority so as to authorize the Debtors and the Consultant to conduct the Sales and Store Closings pursuant to the Consulting Agreement, including, without limitation, to conduct and advertise the sale of the Merchandise and FF&E in the manner contemplated by and in accordance with this Final Order, the Store Closing Procedures, and the Consulting Agreement.

15. Subject to the Dispute Resolution Procedures provided for in this Final Order, the Debtors and Consultant are hereby authorized to take such actions as may be necessary and appropriate to implement the Consulting Agreement and to conduct the Sales and Store Closings without necessity of further order of this Court as provided in this Final Order, the Consulting Agreement, or the Store Closing Procedures, including, but not limited to, advertising the Sales and Store Closings as a “store closing sale,” “sale on everything,” “everything must go,” “going out of business,” or similar-themed sales through the posting of signs (including the use of

exterior banners at non-enclosed mall closing locations, and at enclosed mall closing locations to the extent the applicable closing location entrance does not require entry into the enclosed mall common area), use of sign-walkers, and street signage.

16. Notwithstanding anything herein to the contrary, and in view of the importance of the use of sign-walkers, banners, and other advertising to the sale of the Merchandise and FF&E, to the extent that disputes arise during the course of such sale regarding laws regulating the use of sign-walkers, banners, or other advertising and the Debtors and the Consultant are unable to resolve the matter consensually, any party may request an immediate telephonic hearing with this Court pursuant to these provisions. Such hearing will, to the extent practicable, be scheduled within two business days of such request. This scheduling shall not be deemed to preclude additional hearings for the presentation of evidence or arguments as necessary.

17. Except as expressly provided in the Consulting Agreement, the sale of the Merchandise and FF&E shall be conducted by the Debtors and the Consultant notwithstanding any restrictive provision of any lease, sublease, license, reciprocal easement agreement, restrictive covenant, or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Sales or Store Closings (including the sale of the Merchandise and FF&E), the necessity of obtaining any third party consents, the rejection of leases, abandonment of assets, or “going dark” provisions, and such provisions shall not be enforceable in conjunction with the Sales or the Store Closings. Breach of any such provisions in conjunction with Sales or Store Closings shall not constitute a default under a lease or provide a basis to terminate such lease; *provided* that the Sales and Store Closings are conducted in accordance with the terms of this Final Order and the Store Closing Procedures. The Consultant and landlords of the Closing Stores are authorized to enter into agreements (“**Side Letters**”) between themselves modifying the Store Closing Procedures

without further order of the Court, and such Side Letters shall be binding between and among the Debtors, the Consultant, and such landlords, *provided* that nothing in such Side Letters affects the provisions of paragraph 25 of this Final Order. In the event of any conflict between the Store Closing Procedures, this Final Order, and any Side Letter, the terms of such Side Letter shall control.

18. Except as expressly provided for herein or in the Store Closing Procedures, and except with respect to relief expressly granted to any Governmental Unit elsewhere in this Final Order, no person or entity, including, but not limited to, any landlord, licensor, property owner/manager, service provider, utility, or creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation or continuation of the Sales or Store Closings, or the advertising and promotion (including the posting of signs and exterior banners or the use of sign-walkers) of same, and all such parties and persons of every nature and description, including, but not limited to, any landlord, licensor, property owner/manager, service provider, utility, and creditor and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with, obstructing, or otherwise impeding the conduct of the Sales and/or Store Closings and/or (b) instituting any action or proceeding in any court (other than this Court) or before any administrative body seeking an order or judgment against, among others, the Debtors, the Consultant, or the landlords at the Closing Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sales or Store Closings and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein.

19. In accordance with and subject to the terms and conditions of the Consulting Agreement, the Consultant shall have the right to use the Closing Stores and all related services,

furniture, fixtures, equipment, and other assets of the Debtors for the purpose of conducting the Sales and Store Closings, free of any interference from any entity or person, subject to compliance with the Store Closing Procedures and this Final Order.

20. During the Sale Term (as defined in the Consulting Agreement), the Consultant shall accept the Debtors' validly issued Gift Cards (as defined in the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Maintain Customer and Honor Related Prepetition Obligations, and (II) Granting Related Relief* (the "**Customer Programs Motion**")) and honor the Debtors' Refund and Exchange Program (as defined in the Customer Programs Motion). For the avoidance of doubt, proceeds from Merchandise sold pursuant to Gift Cards shall be treated as Gross Proceeds (as defined in the Consulting Agreement) for purposes of calculating Consultant's fee under the Consulting Agreement.

21. All sales of Merchandise and FF&E sold on or after the Petition Date shall be "as is" and final. However, all state and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms "as is" or "final sales."

22. The Consultant shall not be liable for sales taxes except as expressly provided in the Consulting Agreement and the payment of any and all sales taxes is the responsibility of the Debtors. The Debtors are directed to remit all taxes arising from the Sales to the applicable Governmental Units as and when due, *provided* that in the case of a *bona fide* dispute the Debtors are only directed to pay such taxes upon the resolution of the dispute if and to the extent that the dispute is decided in favor of the applicable Governmental Unit. For the avoidance of doubt, sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other party, other than the applicable Governmental Unit for which the sales taxes are

collected. The Consultant shall collect, remit to the Debtors, and account for sales taxes as and to the extent provided in the Consulting Agreement. This Final Order does not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under state law, and does not constitute a declaratory judgment with respect to any party's liability for taxes under state law.

23. Pursuant to section 363(f) of the Bankruptcy Code, the Consultant, on behalf of the Debtors, is authorized to sell the Store Closure Assets—and all sales of Store Closure Assets, whether by the Consultant or the Debtors, shall be—free and clear of any and all liens, claims, encumbrances, defenses (including, without limitation, rights of setoff and recoupment) and interests, including, without limitation, security interests of whatever kind or nature, mortgages, conditional sales or title retention agreements, pledges, deeds of trust, hypothecations, liens, encumbrances, assignments, preferences, debts, easements, charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, taxes (including foreign, state, and local taxes), licenses, covenants, restrictions, indentures, instruments, leases, options, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, environmental, tax, labor, ERISA, CERCLA, alter ego, and/or other liabilities, causes of action, contract rights, and claims, to the fullest extent of the law, in each case, of any kind or nature (including, without limitation, all “claims” as defined in section 101(5) of the Bankruptcy Code), known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable (collectively, “**Encumbrances**”); as provided for herein because in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the

Bankruptcy Code has been satisfied; *provided, however*, that any such Encumbrances shall attach to the applicable proceeds of the sale of the Store Closure Assets with the same validity, in the amount, with the same priority as, and to the same extent that any such Encumbrances attached to the Store Closure Assets prior to such sale, subject to any claims and defenses that any party may possess with respect thereto and subject to the Consultant's fees and expenses (as provided in the Consulting Agreement).

24. To the extent that the Debtors propose to sell or abandon FF&E that may contain personal and/or confidential information about the Debtors' employees and/or customers (the "**Confidential Information**"), the Debtors shall remove the Confidential Information from such items of FF&E before such sale or abandonment.

25. The Debtors and/or the Consultant (as the case may be) are authorized and empowered to transfer Merchandise and FF&E among, and into, the Closing Stores. The Consultant is authorized to sell the Debtors' FF&E and abandon same, in each case as provided for and in accordance with the terms of the Consulting Agreement, including, but not limited to, with respect to signage related to the Sales and Store Closings. Any abandoned FF&E left in a Store after the later of the date the lease is rejected or the date the Debtors vacate the premises shall be deemed abandoned, and such landlord is authorized to dispose of the abandoned FF&E without further notice and without any liability to any individual or entity that may claim an interest in such property. The automatic stay is modified to the extent necessary to allow such dispositions.

D. Dispute Resolution Procedures with Governmental Units

26. Nothing in this Final Order, the Consulting Agreement, or the Store Closing Procedures, releases, nullifies, or enjoins the enforcement of any liability to a Governmental Unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost

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

27. To the extent that the sale of Merchandise and FF&E is subject to any Liquidation Sale Laws, including any federal, state, and local laws, statutes, rules, regulations, and ordinances, directed at regulating “going out of business,” “store closing,” similar inventory liquidation sales, or bulk sale laws, laws restricting safe, professional, and non- deceptive

customary advertising such as signs, banners, posting of signage, and use of sign-walkers solely in connection with the Sales and including ordinances establishing license or permit requirements, waiting periods, time limits, or bulk sale restrictions that would otherwise apply solely to the sale of the Merchandise and FF&E, the following Dispute Resolution Procedures shall apply:

- (a) Provided that the Sales are conducted in accordance with the terms of this Final Order and the Store Closing Procedures, and in light of the provisions in the laws of many Governmental Units that exempt court-ordered sales from their provisions, the Debtors and the Consultant will be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of this Final Order and the Store Closing Procedures without the necessity of further showing compliance with any such Liquidation Sale Laws.
- (b) Within five business days of the entry of this Final Order, the Debtors will serve by email, facsimile, or first-class mail, copies of this Final Order, the Consulting Agreement, and the Store Closing Procedures on the following: (i) the landlords for the Closing Stores; (ii) the Attorney General's office for each state in which the Sales are being held; (iii) the county consumer protection agency or similar agency for each county in which the Sales are being held; (iv) the division of consumer protection for each state in which the Sales are being held; and (v) the chief legal counsel for each local jurisdiction in which the Sales are being held (collectively, the "**Dispute Notice Parties**").
- (c) To the extent that there is a dispute arising from or relating to the Sales, this Final Order, the Consulting Agreement, or the Store Closing Procedures, which dispute relates to any Liquidation Sale Laws (a "**Reserved Dispute**"), the Bankruptcy Court shall retain exclusive jurisdiction to resolve such Reserved Dispute. Any time within ten business days following entry of this Final Order, any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the "**Dispute Notice**") explaining the nature of the dispute to: (i) proposed co-counsel for the Debtors, O'Melveny & Myers LLP, Times Square Tower, Seven Times Square, New York, New York 10036 (Attn: Maria DiConza, Esq. (mdiconza@omm.com) and Diana M. Perez, Esq. (dperez@omm.com)); (ii) proposed co-counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. (collins@rlf.com), Michael J. Merchant, Esq. (merchant@rlf.com), and Jason M. Madron, Esq. (madron@rlf.com)); (iii) the Consultant, Tiger Capital Group, LLC, 350 N. LaSalle Street, 11th Floor, Chicago, IL 60654 (Attn: Mark P Naughton (mnaughton@tigergroup.com)); and (iv) Greenberg Traurig, LLP, One International Place, Suite 200, Boston, MA 02110 (Attn: Jeffrey M. Wolf,

Esq. (wolfje@gtlaw.com)). If the Debtors, the Consultant, and the Governmental Unit are unable to resolve the Reserved Dispute within 15 business days after service of the Dispute Notice, the Governmental Unit may file a motion with the Bankruptcy Court requesting that the Court resolve the Reserved Dispute (a “**Dispute Resolution Motion**”).

- (d) In the event that a Dispute Resolution Motion is filed, nothing in this Final Order shall preclude the Debtors, a landlord, the Consultant or any other interested party from asserting (i) that the provisions of any Liquidation Sale Laws are preempted by the Bankruptcy Code or (ii) that neither the terms of this Final Order nor the conduct of the Debtors or the Consultant pursuant to this Final Order, violates such Liquidation Sale Laws. Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of this Final Order or to limit or interfere with the Debtors’ or the Consultant’s ability to conduct or to continue to conduct the Sales pursuant to this Final Order, absent further order of the Court. Upon the entry of this Final Order, the Court grants authority for the Debtors and the Consultant to conduct the Sales pursuant to the terms of this Final Order, the Consulting Agreement, and/or the Store Closing Procedures and to take all actions reasonably related thereto or arising in connection therewith. The Governmental Unit will be entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Sale Laws or the lack of any preemption of such Liquidation Sale Laws by the Bankruptcy Code. Nothing in this Final Order will constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.
- (e) If, at any time, a dispute arises between the Debtors and/or the Consultant and a Governmental Unit as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in this Final Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions of subparagraphs (c) and (d) above by serving a notice to the applicable parties and proceeding thereunder in accordance with those paragraphs. Any determination with respect to whether a particular law is a Liquidation Sale Law shall be made *de novo*.

28. Subject to paragraphs 26 and 27 above, each and every federal, state, or local agency, departmental unit, or Governmental Unit with regulatory authority over the Sales and Store Closings, and all newspapers and other advertising media in which the Sales and Store Closings are advertised shall consider this Final Order as binding authority such that no further approval, license, or permit of any Governmental Unit shall be required, nor shall the Debtors or the Consultant be required to post any bond, to conduct the Sales and Store Closings.

E. Other Provisions

29. The Consultant shall not be liable for any claims against the Debtors, and the Debtors shall not be liable for any claims against Consultant, in each case, other than as expressly provided for in the Consulting Agreement.

30. Except with respect to the Consultant and the Consulting Agreement, nothing in the Motion or this Final Order or the relief granted herein (including any actions taken or payments made by the Debtors) is to be construed as (i) an admission of the validity of any claim against the Debtors; (ii) an admission with respect to the validity, extent, or perfection of any lien; (iii) a waiver of the Debtors' rights or those of any party in interest to dispute, contest, setoff, or recoup any claim, or assert any related rights, claims, or defenses; (iv) a waiver of the Debtors' rights or those of any party in interest over the validity, extent, perfection, or possible avoidance of any lien; or (v) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code.

31. Notwithstanding entry of this Final Order, nothing herein shall create, or is intended to create, any rights in favor of, or enhance the status of, any claim held by any party.

32. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

33. Notwithstanding the applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

34. The Debtors and the Consultant are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Final Order.

35. This Court retains jurisdiction over all matters arising from or related to the implementation or interpretation of this Final Order.