

Hearing Date and Time: TBD
Objection Deadline: TBD

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

BORDERS GROUP, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 11-10614 (MG)

(Jointly Administered)

DEBTORS' MOTION FOR ENTRY OF ORDER (I) AUTHORIZING THE DEBTORS TO SELL CERTAIN ASSETS THROUGH STORE CLOSING SALES, (II) APPROVING BIDDING PROCEDURES TO SELECT LIQUIDATING AGENT TO CONDUCT STORE CLOSING SALES, (III) AUTHORIZING DEBTORS TO ABANDON UNSOLD PROPERTY, (IV) WAIVING COMPLIANCE WITH CONTRACTUAL STORE CLOSING SALE RESTRICTIONS, (V) EXEMPTING LAWS RESTRICTING STORE CLOSING SALES AND (VI) GRANTING RELATED RELIEF

TO THE HONORABLE MARTIN GLENN,
UNITED STATES BANKRUPTCY JUDGE:

Borders Group, Inc. and its affiliated debtors, as debtors and debtors in possession
(collectively, the "Debtors"), by their undersigned counsel, respectfully submit this motion (the

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Borders Group, Inc. (4588); Borders International Services, Inc. (5075); Borders, Inc. (4285); Borders Direct, LLC (0084); Borders Properties, Inc. (7978); Borders Online, Inc. (8425); Borders Online, LLC (8996); and BGP (UK) Limited.

“Motion”) for an order (I) authorizing the Debtors to sell certain assets, consisting of merchandise (the “Merchandise”) and owned furniture, fixtures and equipment (“Owned FF&E”) located at up to 51 of their stores (the “Closing Stores”) identified in Exhibit A², through store closing sales (the “SCSs”), free and clear of all liens, claims or encumbrances and to enter into an Agency Agreement in substantially the form annexed hereto as Exhibit B with the liquidator selected to conduct the SCSs (the “Liquidating Agent”), (II) approving bidding procedures to select the Liquidating Agent, (III) authorizing the Debtors to abandon unsold Merchandise and Owned FF&E after conclusion of the SCSs, (IV) waiving compliance with provisions in the Debtors’ agreements restricting store closing sales (the “Contractual Restrictions”), (V) exempting the Debtors from state and local rules, statutes or ordinances restricting store closing sales (the “Applicable Law Restrictions”), and (VI) granting related relief. In support of this Motion, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT³

For months, the Debtors and their advisors have worked diligently to obtain extensions of the September 14, 2011 deadline to assume or reject leases from their landlords. The Debtors’ efforts have been fruitful; they have received extensions for nearly 365 or approximately 90% of their leases as of the date of this Motion. The Debtors continue their discussions with landlords and believe that, with additional time, they can obtain extensions at many of the remaining 51 locations. Nonetheless, the Debtors will not be able to obtain extensions for at least some of their locations.

² As discussed *infra*, the Debtors will continue to negotiate extensions with landlords and, as such, the number of Closing Stores may decrease after filing this Motion and before the hearing thereon.

³ Capitalized terms used in this Preliminary Statement, but not defined, are ascribed the definitions contained elsewhere in this Motion.

Most of the stores for which the Debtors have not obtained extension stipulations are among the most profitable in the portfolio or have leases which are under market. The Debtors would assume these leases, but various creditor constituencies have indicated that they would oppose any such assumption outside of the context of a sale of the business as a going concern or confirmation of a plan of reorganization. As the Debtors recently informed the Court, the Debtors are actively negotiating a going concern sale with multiple potential buyers; these buyers have indicated that they also wish to purchase some of the stores that are subject to this Motion.

The Debtors believe in their business judgment that the stores to be liquidated pursuant to this Motion should not be liquidated under these circumstances. The liquidation of these stores may not maximize their value for the benefit of creditors and will result in a significant loss of jobs. Indeed, if this Motion is granted, the Debtors will not be able to sell the stores subject to this Motion to a going concern buyer because they likely will have liquidated pursuant to this Motion first. Unfortunately, the Debtors' DIP financing facility requires the Debtors to commence store closing sales within certain deadlines before the assumption/rejection deadline. This leaves the Debtors with a Hobson's choice: the Debtors can proceed with store closing sales at these stores under these unfortunate circumstances or, if they refuse to do so, risk being placed into default by DIP lenders.

The Debtors have requested a waiver of the requirement to liquidate these stores pending the proposed scheduling of a hearing to consider the sale of the entire business on or about July 21, 2011.⁴ While the DIP lenders are considering the proposal, they have not provided such consent as of yet and good faith negotiations are ongoing. The Debtors hope to obtain such

⁴ While previously the DIP Lenders offered the Debtors a one week extension to the deadlines in the DIP Facility, that extension clearly was insufficient to allow a going concern buyer time to complete due diligence and to consummate the transaction.

consent before the hearing on this Motion. The Debtors also expect to remove many stores from the store closing list once they receive agreements with additional landlords extending the assumption/rejection deadline. These negotiations are ongoing despite the filing of this Motion.

* * * * *

If the Debtors are forced to proceed with a hearing on this Motion, they respectfully submit that the Motion should be granted. Working within the confines of the DIP Facility, the Debtors have done their best to maximize the value they can recover through the SCSs. The Debtors modeled their solicitation process after the one undertaken in the first round store closing sales conducted in February (“Phase I SCSs”), which generated more than \$182 million for the Debtors’ estates through impressive results widely supported by the creditor constituencies. On June 1, 2011, the Debtors sent bid solicitation letters to each of the nationally-recognized liquidator firms to identify the highest and best bidder willing to serve as stalking horse and be subject to an auction. The Debtors are continuing to negotiate with the potential bidders and to evaluate their available options. In the upcoming days, the Debtors intend to select the stalking horse bid (and sign up an agreement that is subject to Court approval by the June 15, 2011 DIP Facility deadline) and to conduct an auction to solicit higher and better bids on June 16, 2011.

By this Motion, the Debtors ask the Court to authorize the Debtors to conduct the SCSs at the Closing Stores and to enter into the Agency Agreement with the stalking horse bidder or the successful bidder at the auction (the “Liquidating Agent”). The Debtors believe that it is critical to commence the SCSs by June 22, 2011⁵ to avoid triggering a default under the DIP Facility. As is customarily granted where Debtors effectuate store closing sales, the Debtors also request

⁵ The Debtors intend to file a motion to shorten notice and for an expedited hearing to have this Motion heard on or before June 21, 2011, so that the SCSs can commence by the DIP Facility’s June 22, 2011 deadline.

certain related relief to obviate any contractual or state or local laws that could inhibit the SCSs. Finally, the Debtors ask the Court to approve the bidding procedures utilized by the Debtors in arriving at the Liquidating Agent's bid including appropriate bid protections requested by the stalking horse bidder.⁶

For the reasons set forth below, the Debtors should be authorized to engage in the SCSs as set forth herein.

Jurisdiction

1. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

2. By this Motion, the Debtors seek entry of an order pursuant to sections 105(a), 363(b) and 554(a) of the Bankruptcy Code in substantially the form annexed hereto as Exhibit C (the "Proposed Order") (i) authorizing the Debtors to sell the Merchandise and Owned FF&E at the Closing Stores through the SCSs free and clear of all liens, claims and encumbrances and to enter into the Agency Agreement with the Liquidating Agent, (ii) approving bidding procedures to select the Liquidating Agent including bid protections for the stalking horse bid to be identified prior to the hearing, (iii) authorizing the Debtors to abandon unsold Merchandise or Owned FF&E at the Closing Stores following conclusion of the SCSs, (iv) waiving compliance with Contractual Restrictions, (v) exempting Applicable Laws Restrictions, and (vii) granting related relief.

⁶ Given the timing constraints imposed by the DIP Facility, the terms and protections for a stalking horse bid are not known at this time. Through a supplemental filing, the Debtors will provide notice of such terms and protections, as well as continuing to consult with the UCC and DIP Lenders, in real time.

BACKGROUND

3. On February 16, 2011 (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors’ cases (the “Bankruptcy Cases”) are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

DEBTORS’ BUSINESS

A. Operations

4. The Debtors are a leading operator of book, music and movie superstores and mall-based bookstores. At January 29, 2011, the Debtors operated 642 stores, under the Borders, Waldenbooks, Borders Express and Borders Outlet names, as well as Borders-branded airport stores in the United States, of which 639 stores are located in the United States and three in Puerto Rico. Pursuant to the Court’s *Order Approving Agency Agreement, Store Closing Sales and Related Relief* [Docket No. 91] (the “Phase I SCSs Order”) entered on February 18, 2011, the Debtors closed and liquidated the inventory at 226 of their retail locations. *See* Section C, *infra*. In addition, the Debtors operate a proprietary e-commerce web site, www.Borders.com, launched in May 2008, which includes both in-store and online e-commerce components.

5. The Debtors currently employ approximately 3,792 full-time employees and approximately 7,244 part-time employees, located throughout the United States and Puerto Rico. The Debtors’ employees are not subject to any collective bargaining agreements.

B. Financials

6. For the fiscal year ended January 29, 2011, the Debtors recorded net sales of approximately \$2.3 billion. As of December 25, 2010, the Debtors had incurred net year-to-date

losses of approximately \$168.2 million. The Debtors' Schedules list \$1,649,799,850 of assets and \$2,626,757,691 of liabilities. *See* Debtors' Schedules [Docket Nos. 491, 493, 495, 497, 499, 501, 503, 505, each at 2].

7. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to these chapter 11 cases is contained in the *Declaration of Scott Henry Pursuant to Local Bankruptcy Rule 1007-2 in Support of First Day Motions* [Docket No. 20].

C. Previous Store Closing Sales Conducted In These Cases

8. Prior to the Petition Date, the Debtors, in consultation with their advisors and their key constituents, concluded that it was in the best interests of the Debtors and their stakeholders to close and liquidate the inventory at 200 stores and another up to 75 additional "put option" stores. The Debtors' process for soliciting bids for the Phase I SCSs is detailed in the *Declaration of Holly Felder Etlin in Support of Store Closing Sale Motion* [Docket No. 10] (the "Phase I Etlin Decl.").

9. The Debtors through their advisors transmitted to the nation's largest liquidation firms bid solicitation packages containing: (a) a form non-disclosure agreement, and (b) a bid solicitation letter informing the parties of the Debtors' intentions to conduct Phase I SCSs and setting forth procedures for parties to request more information and to submit bids. Phase I Etlin Decl. ¶ 11. The Debtors' advisors also provided each of those parties copies of a draft form agency agreement and began providing them diligence materials, including, among other items, (a) detailed information regarding the closing stores including, as to each store: (i) the address, (ii) a schedule of Occupancy Expenses (as defined in the Agency Agreement) to be paid by the liquidators, (iii) 2010 P&Ls, (iv) historical weekly sales by SKU, and (v) inventory by SKU; (b) a summary of the Debtors' perpetual inventory; (c) promotional calendars for the first and second quarters of 2011; (d) a detailed listing of certain inventory contained in the debtors

distribution center to be included in the sale; and (e) employee manuals and benefits plan summary. *Id.* ¶ 14.

10. Two bidding groups, one consisting of Great American Group LLC and Gordon Brothers Retail Partners LLC, and the other consisting of Hilco Merchant Resources, LLC, Tiger Capital, and SB Capital Group submitted bids. *Id.* ¶ 17. Following extensive discussions with the Debtors' advisors each bidding group improved its bid. *Id.* ¶ 18. The group consisting of Hilco Merchant Resources, LLC, Tiger Capital, and SB Capital Group emerged as the party with the higher and better bid and agreed to have their bid subject to an auction on the condition it be afforded a break-up fee if its bid was not the winning bid at an auction.

11. On the Petition Date, the Debtors filed *Debtors' Emergency Motion for Entry of Orders (I) Authorizing the Debtors to Sell Certain Assets Through Store Closing Sales and to Enter Into Agency Agreement with (A) Joint Venture Composed of Hilco Merchant Resources, LLC, SB Capital Group, LLC, and Tiger Capital Group, LLC or (B) Other Successful Bidder at The Auction, (II) Approving Stalking Horse Protections, (III) Authorizing Debtors To Abandon Unsold Property, (IV) Waiving Compliance With Contractual Store Closing Sale Restrictions, (V) Exempting (A) State and Local "Fast Pay" Laws and (B) Laws Restricting Store Closing Sales, and (VI) Granting Related Relief* [Docket No. 7] (the "Phase I SCSs Motion"), requesting authority to conduct the Phase I SCSs.

12. Also on the Petition Date, the Debtors conducted an auction to identify the highest and best bid for the Phase I SCSs. After approximately 15 rounds of bidding over more than 10 hours, a joint bid by Hilco Merchant Resources, LLC, Tiger Capital, SB Capital Group and Gordon Brothers Retail Partners, LLC (collectively, the "Phase I Liquidating Agent") emerged

as the highest and best bid and provided an 85.75% guaranteed amount of the cost value of Merchandise (up from 73% in the stalking horse bid).

13. On February 17, 2011, the Court held a hearing on the Phase I SCSs Motion at which the Court heard arguments by several parties and testimony from Ms. Etlin. On February 18, 2011, the Court entered the Phase I SCSs Order approving the Phase I SCSs.

14. The Phase I SCSs commenced at 200 of the Debtors' retail locations on February 19, 2011. On March 24, 2011, pursuant to the Phase I SCSs Order, the Debtors executed a agency agreement with the Phase I Liquidating Agent governing the liquidation of 26 additional store locations, referred to as the "put stores." Liquidation sales at the put stores commenced on March 24, 2011. As of the date hereof, the liquidation sales at all 226 locations have ended and the Debtors and the Phase I Liquidating Agent have reconciled all amounts due under the two agency agreements.

D. The DIP Credit Agreement⁷

15. On the Petition Date, the Debtors filed the *Debtors' Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection, and (5) Modifying Automatic Stay* [Docket No. 27] (the "DIP Motion").

16. On March 16, 2011, the Court entered the *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens and Providing Superpriority Administrative Expense Status,*

⁷ All capitalized terms used in this Section of the Motion but not defined shall have the meanings ascribed to them in the Final DIP Order and DIP Credit Agreement.

(4) *Granting Adequate Protection*, and (5) *Modifying Automatic Stay* [Docket No. 404] (the “Final DIP Order”).

17. Pursuant to the Final DIP Order, the Debtors have been authorized to obtain senior secured, superpriority, postpetition financing in the form of a first lien new money superpriority priming credit facility with a maximum outstanding principal amount of up to \$505,000,000 (the “DIP Loan”) pursuant to the terms and conditions of that certain Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement (as the same may be amended, supplemented, restated, or otherwise modified from time to time, the “DIP Facility”).

18. Article VII of the DIP Facility outlines certain events of default. To avoid an event of default under the DIP Facility, Section 7.1(m)(ii)-(v) requires that the Debtors take certain actions within a specified time frame prior to the Lease Rejection Date (defined below). Specifically, Section 7.1(m)(ii)-(v) states that any of the following occurrences shall constitute an event of default:

(ii) on or before fifteen (15) weeks prior to the Lease Rejection Date, the Credit Parties have not distributed bid packages to solicit bids (with separate bids as to furniture, fixtures and equipment, which bids may be included as part of any bid submitted for the Inventory and which may be on a commission basis) from Approved Liquidators with respect to assets located on the properties that are subject to leases to be rejected on the Lease Rejection Date;

(iii) on or before fourteen (14) weeks prior to the Lease Rejection Date, the Credit Parties have not filed a motion or series of motions seeking authority to establish bidding procedures and to engage an Approved Liquidator to conduct the Affected Asset Sale as the so called "stalking horse", which bidding procedures shall be reasonably acceptable to the Agents;

(iv) on or before thirteen (13) weeks prior to the Lease Rejection Date, the Credit Parties have not entered into a stalking horse bid with an Approved Liquidator pursuant to an Approved Liquidation Agreement with respect to the Affected Asset Sale;

(v) on or before twelve (12) weeks prior to the Lease Rejection Date, the Credit Parties have not (i) received Bankruptcy Court approval of the Affected Asset Sale or (ii) commenced the Affected Asset Sale . . .

19. Under the DIP Facility (and herein) “Lease Rejection Date” means the last day of the 120-day lease rejection/assumption period, as such period may be extended or shortened by the Court. The period was extended for all of the Debtors’ leases through September 14, 2011 by order of the Court dated March 15, 2011 [Docket No. 383].

20. Pursuant to section 365(d)(4)(B) of the Bankruptcy Code, the September 14, 2011 Lease Rejection Date cannot be further extended absent landlord consent. Thus, at all locations where landlord consent has not been given, the Debtors must do the following to avoid triggering an event of default: (1) transmit bid solicitation packages by no later than June 1, 2011, (2) file an approval motion by June 8, 2011, (3) enter into a stalking horse agency agreement by June 15, 2011 and (4) obtain Court approval and begin SCSs by June 22, 2011.

E. The Lease Rejection Date Extensions

21. Throughout these cases, the Debtors and their advisors have worked to obtain landlord consents to extend Lease Rejection Dates. *See Declaration of Holy Felder Etlin In Support Of Second Store Closing Sale Motion* (the “Etlin Decl.”) ¶ 4, filed simultaneously herewith. Through the date of this Motion, the Debtors have succeeded in finalizing stipulations extending deadlines at nearly 365 or approximately 90% of their leased locations. *Id.* The Debtors are still negotiating with most of the 51 remaining locations (herein, the Closing Stores) to obtain extension stipulations. *Id.* ¶ 5. Thus, the Debtors hope to shorten the Closing Stores list by the hearing on the Motion. *Id.* In the meantime, however, due to the impending DIP Facility deadlines, the Debtors are preparing to include all Closing Stores in the SCSs and have solicited bids on that basis. *Id.*

F. The Solicitation Process And Proposed Bidding Procedures

22. As required by the DIP Facility, on June 1, 2011, the Debtors sent a bid solicitation letter (the “June 1 Bid Solicitation Letter”) to each of the nationally recognized liquidation firms, which are the same entities involved with or expressing interest in the Phase I SCSs. *Id.* ¶ 9. The June 1 Bid Solicitation Letter, a copy of which is attached to the Etlin Decl. at Exhibit 1, is substantially similar to the bid solicitation letter transmitted in connection with the Phase I SCSs. *Id.*

23. The June 1 Bid Solicitation Letter informed recipients that the Debtors were seeking proposals to select a liquidating agent that, subject to Court approval, would conduct the SCSs at the Closing Stores. *Id.* ¶ 10. The letter enclosed a copy of a form agency agreement and offered due diligence materials for the Closing Stores to all parties subject to a confidentiality agreement. *Id.* The letter contained the following dates and deadlines: (a) Monday, June 6, 2011 as the deadline for submitting bids, consisting of a proposal and a marked-up agency agreement, (b) Tuesday, June 7, 2011 as the Debtors’ deadline for selecting a stalking horse bidder among the bids timely received, (c) Thursday, June 16, 2011 as the auction and (d) Wednesday, June 22, 2011 as the last date that, subject to Court approval, the SCSs could begin (a date imposed by the DIP Facility). *Id.*

24. The Debtors received no bids by the bidding deadline in the June 1 Bid Solicitation Letter. *Id.* ¶ 11. However, prior the bidding deadline, the Debtors received a letter from a joint venture of liquidators, which indicated that “[t]he Joint Venture is very interested in the potential transaction outlined in the [Bid Solicitation Letter] and any other transaction that may develop in connection with the liquidation of assets of the Debtors.” *Id.* The letter further indicated that the joint venture was “not presenting a proposal or a bid at this time” citing a provision in the June 1 Bid Solicitation Letter requiring the Debtors to approve any joint bids and

to Paragraph P of the Phase I SCSs Order which provides as follows: “Hilco Merchant Resources, LLC, SB Capital Group, LLC, Tiger Capital Group, LLC, on the one hand, and Gordon Brothers Retail Partners, LLC, on the other, each agree that neither party shall submit any joint bid at any future auction of Borders Group, Inc. and its affiliate Debtors without the prior consent of the Debtors and the agent for the Debtors’ debtor-in-possession lenders.” *Id.*

25. The Debtors are currently considering the joint venture’s request, and will consult with the DIP Lenders and the Committee on this issue. *Id.* ¶ 12.

BASIS FOR RELIEF

26. Section 363(b) of the Bankruptcy Code provides, in relevant part, 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 . . .” *See* 11 U.S.C. § 363(b)(1); *see also In re Ames Dept. Stores, Inc.* (Ames I), 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (noting that “going-out-of-business” sales are governed by section 363(b)); Fed. R. Bankr. P. 6004(f)(1) (“All sales not in the ordinary course of business may be by private sale or by public auction.”). Moreover, section 105(a) of the Bankruptcy Code provides that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

27. The decision to sell assets outside the ordinary course of business is based upon the sound business judgment of the debtor. *See, e.g., In re Chateaugay Corp.*, 973 F.2d 141, 145 (2d Cir. 1992); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (“The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application.”); *see also Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (stating

“the business judgment rule is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company,” and has continued applicability in bankruptcy) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993).

I. AUTHORITY TO SELL ASSETS THROUGH STORE CLOSING SALES

28. Due to the deadlines imposed by the DIP Facility, the Debtors, in consultation with their advisors, have determined that it is in the best interests of their estates and creditors to conduct SCSs at the Closing Stores as required by the DIP Facility. Based on applicable precedent, the Court should authorize the Debtors to do so as set forth herein to avoid the disastrous result that should befall them upon a DIP Facility default.

A. Approval of Store Closing Sales Under Section 363 is Warranted

29. Store closing or liquidation sales are a routine occurrence in chapter 11 cases involving retail debtors. *See Ames Dept. Stores, Inc.* (Ames I), 136 B.R. at 359 (holding that “going-out-of-business” sales are an important part of “overriding federal policy requiring [a] Debtor to maximize estate assets”); *see also In re Ames Dept. Stores, Inc.* (Ames II), Ch 11 Case No. 01-42217 (REG) (Bankr. S.D.N.Y. Aug. 20, 2001) (approving store closing sales and agency agreement on first day). Bankruptcy Courts have approved similar requests by debtors to conduct store closing sales, finding the debtors’ requested relief consistent with applicable provisions of the Bankruptcy Code. *See, e.g., In re Blockbuster Inc.*, Ch. 11 Case No. 10-14997 (BRL) (Bankr. S.D.N.Y. Jan. 20, 2011) [Docket No. 864] (authorizing debtors to continue self-administered going out of business sales).

30. The Debtors have concluded that defaulting on their DIP Facility would have dire consequences to these Bankruptcy Cases and to their constituents. Upon a DIP Facility default,

the Debtors would lose the ability to borrow funds and use cash collateral, which would force a full liquidation.

B. To the Extent Applicable, Assets Should Be Sold Free and Clear of Liens, Claims and Encumbrances.

31. The Debtors request approval to sell assets subject to the Agency Agreement on a final “as is” basis, free and clear of any and all liens, claims and encumbrances in accordance with section 363(f) of the Bankruptcy Code. A debtor in possession may sell property under sections 363(b) and 363(f) “free and clear of any interest in such property of an entity other than the estate” if anyone of the following conditions is satisfied:

- applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- such entity consents;
- such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- such interest is a *bona fide* dispute; or
- such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)-(5); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that since Section 363(f) is written in the disjunctive, the court may approve a sale free and clear if anyone subsection is met).

32. The DIP Lenders consented to nearly identical treatment of their liens and claims in connection with the Phase I SCSs. Indeed, the Agency Agreement and the Proposed Order incorporate extensive comments provided by the DIP Lenders in connection with the Phase I SCSs agency agreement and the subsequent “put stores” agency agreement. The DIP Lenders received the form agency agreement delivered to potential bidders with the June 1 Bid Solicitation Letter and provided minimal comments, each of which was incorporated into the

Agency Agreement. Thus, these sales are not only occurring because of the DIP Lenders' consent, they are happening at the DIP Lenders' insistence.

33. With respect to any other party asserting a lien, claim, or encumbrance against the assets to be sold pursuant to the Agency Agreement, the Debtors anticipate that they will be able to satisfy one or more of the conditions set forth in section 363(f). In connection with the sale of the assets pursuant to the terms and conditions of the Agency Agreement, the Debtors propose that any liens, claims, and encumbrances asserted against sold assets be transferred to and attach to the amounts payable to the Debtors under the Agency Agreement, in the same order of priority and subject to the rights, claims, defenses, and objections, if any, of all parties with respect thereto. The Court granted such relief in the Phase I SCSs Order and the Debtors propose substantially similar language for the Proposed Order.⁸

34. Accordingly, the Debtors submit that, to the extent applicable, the Court should authorize the Debtors to sell the Merchandise and other SCSs assets free and clear of any liens, claims, encumbrances, or other interests that may exist, with any of the same to be transferred

⁸ The Phase I SCSs Order provides:

Except as otherwise provided in the Agency Agreement, pursuant to section 363(f) of the Bankruptcy Code, upon payment of the Guaranteed Amount Deposit and delivery of the Letter of Credit, the Agent shall be authorized to sell all Assets pursuant to the Agency Agreement free and clear of any and all mortgages, security interests, conditional sales or title retention agreements, pledges, hypothecations, liens, judgments, encumbrances or claims of any kind or nature (including, without limitation, any and all "claims" as defined in section 101(5) of the Bankruptcy Code), including, without limitation, the liens and security interests of GECC and GA, as agents for Lenders under the DIP Facility, as the same may have been amended from Time to time, and the Debtors' prepetition lenders whether arising by agreement, any statute or otherwise and whether arising before, on or after the date on which this chapter 11 case was commenced (collectively, the "Liens"), with any presently existing liens encumbering all or any portion of the Assets or the Proceeds thereof attaching only to the Guaranteed Amount, or other amounts payable to the Debtors under the Agency Agreement (collectively, the "Transaction Proceeds") with the same validity, force and effect as the same had with respect to the assets at issue, subject to any and all defenses, claims and/or counterclaims or setoffs that may exist.

and attached to the net proceeds of the sale, with the same validity and priority that such liens, claims, encumbrances, or interests had against the assets.

C. The Auction Process

35. The Debtors have determined, in an exercise of their business judgment that conducting a final auction to select the Liquidating Agent for the SCSs is in the best interests of their estates. As such, the Debtors will conduct the Auction on Thursday, June 16, 2011 beginning at 10:00 AM (EST) at the offices of Kasowitz, Benson, Torres & Friedman LLP, 1633 Broadway, New York, New York, 10019. The Debtors are providing notice of the Auction to all key constituencies. The Debtors and their advisors, in consultation with their key constituents, will establish the terms and conditions of the auction and the successful bidder at the auction will be deemed the Liquidating Agent.

36. The Debtors submit that the forgoing procedures are fair, transparent and will derive the highest and best bids for the Closing Store assets. The Debtors also believe that going forward on an expedited basis will in no way impair recoveries because (a) all of the nationally-recognized potential liquidators (the only parties that can effectuate a transaction of this magnitude) have been directly involved in the process, (b) those parties were provided all necessary diligence and have expertise in quickly formulating and executing such bids, (c) the solicitation process run by the Debtors' advisors was routine for such situations, consistent with the process for the Phase I SCSs, (d) the form of agency agreement used is nearly identical to the form previously approved by the Court and acceptable to bidders and to the Debtors' constituents in connection with the Phase I SCSs, and (e) the DIP Agent as well as representatives of the UCC have been kept apprised of the process. *See* Etlin Decl. ¶ 13.

II. AUTHORITY TO RETAIN THE STALKING HORSE BIDDER OR THE SUCCESSFUL BIDDER AT THE AUCTION AS LIQUIDATING AGENT

A. Need to Retain a Liquidator

37. The Debtors seek authority to dispose of the assets under the terms of the Agency Agreement with the Liquidating Agent selected at the auction.

38. The DIP Facility requires the Debtors to engage an “Approved Liquidator,” defined as “a nationally recognized liquidator of recognized standing approved by Agents” to conduct “Affected Asset Sales,” defined as “a liquidation in one or a series of related transactions of the assets located on the property that are subject to leases rejected on the Lease Rejection Date.” (Page 116-18); *see also* provision quoted in Paragraph 18, *supra*. Accordingly, the Debtors are obligated to retain a liquidating agent rather than conducting SCSs themselves.

39. Moreover, engaging the Liquidating Agent will provide the Debtors with several benefits. First, allowing a professional liquidator to liquidate the assets will enable the Debtors to maximize sale proceeds while minimizing distraction from the restructuring effort. *See* Etlin Decl. ¶ 8. Second, it is more cost effective for the Debtors to allow a Liquidation Agent to conduct the SCSs than to conduct such sales on their own because, among other reasons, the Liquidating Agent will reimburse the Debtors for expenses of the SCSs. *Id.* Moreover, liquidation agents generally have extensive knowledge, expertise and experience in conducting store closing sales. *Id.* Therefore, the Debtors’ decision to retain a liquidating agent to conduct the SCSs is an exercise of sound business judgment.

40. The Debtors submit, and will demonstrate at the hearing on this Motion, that any such prevailing bidder is entitled to the protections of section 363(m) of the Bankruptcy Code, as the Agency Agreement is the product of a good faith, arm’s-length transaction.

41. Pursuant to the arrangement proposed herein, the Liquidating Agent will have the right to use the Closing Stores and the Debtors’ related services, FF&E and other assets located

in the Closing Stores in conducting the SCSs. In addition, pursuant to the Agency Agreement, the Liquidating Agent will also have a right to establish and implement advertising, signage and promotional programs consistent with “store closing” or similar theme (but not “going out business” or any similar theme).

42. The Liquidating Agent will conduct the SCSs pursuant to the same sale guidelines previously approved by the Court in connection with the Phase I SCSs. *See* Agency Agreement § 8.1; Proposed Order ¶ 3. The Debtors prepared those sale guidelines in consultation with counsel representing many of the Debtors’ most significant landlords. Moreover, all landlords will be provided an opportunity *after* approval of the SCSs to seek relief from the Sale Guidelines, using the same procedures approved by the Court in connection with the Phase I SCSs. *See* Section II.A., *infra*.

43. This Court – in approving the Phase I SCSs and in other cases -- as well as other courts, in numerous highly-publicized chapter 11 cases, have approved the similar use of a liquidator to conduct store closing sales.

B. The Agency Agreement

44. The Debtors respectfully request authority to enter into an agency agreement with the Liquidating Agent containing materially the same provisions as the Agency Agreement annexed here. The Agency Agreement is nearly identical to the agreement utilized in, and approved by the Court, in the Phase I SCSs.

45. Although the Debtors respectfully refer the Court to the Agency Agreement in its entirety, certain of the material terms are set forth below⁹:

⁹ Capitalized terms used in this summary shall have the meanings ascribed to them in the Agency Agreement. This summary of the Agency Agreement is for summary purposes only and is qualified in its entirety by the terms and provision of the Agency Agreement.

- Assets. All Merchandise at the Closing Stores as of the Sale Commencement Date and, subject to agreement on economic terms among the parties with constituent input, Merchandise located at the distribution centers. The Closing Stores will consist of up to 51 stores identified in Exhibit A hereto.
- Guaranteed Amount. As a guaranty of the Liquidating Agent's performance under the Agency Agreement, the Liquidating Agent will guarantee the Debtors' receipt of a certain percentage of the Cost Value of the Merchandise included in the sale (the "Guaranty Percentage").
- Sale of Owned FF&E, Newsstand Inventory and Café/Candy Inventory. The Liquidating Agent will sell the FF&E, Newsstand Inventory and Café/Candy Inventory located at the Closing Stores (except excluded items identified by the Debtors, with lender consent), in exchange for a fee of 20% of the net proceeds from such sales.
- Payment Timing. On the Sale Commencement Date, the Liquidating Agent will wire to the Debtors 80% as payment of a portion of the Guaranteed Amount (the "Guaranteed Amount Deposit"). The Liquidating Agent will pay the remaining Guaranteed Amount and all other amounts due to the Debtors, pursuant to the timing in the Agency Agreement, as and when the parties reconcile the Guaranteed Amount.
- Expenses of Sale. From the Sale Commencement Date through and including the Sale Termination Date, the Liquidating Agent will be unconditionally responsible for all Expenses enumerated in Section 4.1 of the Agency Agreement (including, without limitation, Occupancy Expenses, Payroll, benefits for Retained Employees, Agent's on-site supervision related costs, signs and banners, promotional costs, Sale supplies, telephone, postage/overnight or delivery/courier charges, utility charges, credit card and bank fees, costs related to moving, transferring or consolidating merchandise between Closing Stores, insurance costs, trash removal and cleaning costs, security and building alarm costs, cost of capital and letter of credit fees, and any Retention Bonuses for Retained Employees and an agreed percentage of the costs of the physical inventory taking), incurred in conducting the Sale during the Sale Term, which Expenses may be funded and paid from Proceeds of the Sale to the extent available, or directly by the Liquidating Agent.
- Employees. The Liquidating Agent shall have the right to use the Debtors' store-level employees during the Sale Term and will reimburse the Debtors for actual payroll, and Employee Benefits up to an agreed upon cap based upon a percentage of the aggregate base payroll. The Liquidating Agent may also elect to pay, as an expense, a retention bonus to certain retained employees. The employees will remain the Debtors' employees at all times.
- Cost Value / Inventory Taking. The Cost Value of Merchandise is the average landed actual cost for an item of Merchandise, as reflected in the Debtors'

perpetual inventory file as of the Sale Commencement Date. The Debtors and Liquidating Agent will jointly conduct a physical inventory taking at each of the Closing Stores, for purposes of testing the Cost Value of the Merchandise in the Closing Stores. The Agency Agreement provides a procedure for adjusting the Cost Value used in the sale, based on results of the inventory taking.

- Sale Term. The Liquidating Agent will have the right to conduct the Store Closing Sales commencing the day after entry of the Order approving the SCSs (which the Debtors request to occur on or before June 22, 2011 to comply with the DIP Facility deadlines). The SCSs will continue until August 31, 2011; provided, however, that under certain circumstances, the Liquidating Agent may terminate the sales at certain Closing Stores prior to such date.
- Sale Guidelines. The SCSs shall be conducted in accordance with the sale guidelines approved by the Court in connection with the Phase I SCSs.
- Merchandise Returns/Gift Cards/Other Programs. Although sales of all items of Merchandise sold during the Sale Term shall be a “final sale”, the Liquidating Agent will accept returns of Merchandise sold prior to the Sale Commencement Date provided that such return is accompanied by the original Store register receipt and is otherwise in compliance with Debtors’ return and price adjustment policy in effect as of the date such item was purchased. During the Sale Term, the Liquidating Agent will accept the Debtors’ gift cards, Borders Rewards Plus Loyalty Program discounts, and Merchandise credits issued by the Debtors prior to the Sale Commencement Date, but solely to the extent that the Court previously authorized the Debtors to honor such items in connection with the Debtors’ customer programs motion. The Debtors shall reimburse the Liquidation Agent for such amounts during the weekly sale reconciliation. The Liquidating Agent shall not honor any employee discounts.
- Letter of Credit / Security Interests. To secure its obligations under the Agency Agreement, the Liquidating Agent will post a letter of credit for the benefit of the Debtors. The Liquidating Agent will be granted, upon issuance of the Letter of Credit and effective as of the Payment Date, a valid and perfected first priority security interest in and lien upon (x) the Merchandise, (y) proceeds realized from the disposition of the Agent Sale FF&E up to the amount of the Agent’s disposition commission related to Agent Sale FF&E, and (z) the Proceeds, to secure all obligations of Merchant to Agent. Such security interest shall remain junior and subordinate in all respects to the Agent’s Payment Obligations, and the liens, security interests and claims of the GECC and the Lenders, to the extent of the unpaid portion of Agent’s Payment Obligations. Upon entry of the Approval Order, and payment of the Guaranteed Amount Deposit, and the issuance of the Letter of Credit, the security interest granted to the Agent will be deemed properly perfected without the necessity of filing financing statements or other documentation.

C. The SCSs Do Not Require Appointment of A Consumer Privacy Ombudsman

46. Section 363(b)(1) of the Bankruptcy Code provides that a debtor may not sell or lease personally identifiable information 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.

47. Pursuant to the Agency Agreement, the Liquidating Agent will *not* have access to the Debtors' customer lists and the Debtors will not disclose any personally identifiable information regarding the Debtors' customers. Therefore, appointment of a consumer privacy ombudsman is unnecessary.

D. Stalking Horse Bid / Bid Protections

48. In the upcoming days, the Debtors will continue to discuss potential bids with bidders to identify the highest and best bid to serve as stalking horse bidder. The DIP Facility requires the Debtors to enter into an agreement with a stalking horse bidder by June 15, 2011. As of the date hereof, the Debtors do not yet know what terms a stalking horse bid will contain or what bid protections the stalking horse will require. The Debtors will consult with the DIP Lenders and the Committee with respect to any such protections and concerning bidding procedures for the auction. Moreover, the Debtors plan to supplement this Motion with the agreement executed with the stalking horse bidder to provide notice of the bid protections and to supplement the Etlin Decl. regarding same.¹⁰

¹⁰ Courts in the Second Circuit analyze the appropriateness of bidding incentives such as bid protections under the "business judgment rule" standard, and it is well established in this district that courts consider whether (a) the relationship of the parties who negotiated the break-up fee is devoid of taint by self-dealing or manipulation, (b) the fee encourages, rather than hampers, bidding, and (c) the amount of the fee is reasonable relative to the proposed purchase price. See *Integrated Res.*, 147 B.R. at 657-8 (to evaluate bid protections, courts should employ the business judgment rule, which proscribes judicial second-guessing of the corporate debtor's actions taken in good faith, absent self-dealing, and in the exercise of honest judgment); see also *In re Metaldyne Corp.*, 409 B.R. 661, 670 (Bankr. S.D.N.Y. 2009) (approving bid protections because, among other factors, "the

* * *

49. The Debtors believe that the terms of the Agency Agreement are typical, customary and reasonable under the circumstances in the exercise of their prudent business judgment. They are substantially similar to the terms approved by the Court in connection with the Phase I SCSs. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to enter into an agency agreement substantially similar to the Agency Agreement with the Liquidating Agent.

III. WAIVER OF CONTRACTUAL RESTRICTIONS AND EXEMPTION OF LAWS RESTRICTING STORE CLOSING SALES

50. The Debtors respectfully request waiver of certain contractual or applicable law restrictions that could otherwise inhibit or prevent the Debtors' ability to maximize recovery through the SCSs, and which are customarily waived in sales such as these.

A. Waiver of Contractual Restrictions

51. The Debtors request that the Court override or invalidate any Contractual Restrictions that may impair the Debtors' ability to close stores and conduct the SCSs. The stores subject to the SCSs are located on properties that are leased by the Debtors. In certain cases, the contemplated SCSs may be inconsistent with certain provisions of such leases, subleases, or other documents with respect to any such leased premises, 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.

stalking horse bid brings value to the estate by setting a floor on the price and providing a structure for potential competing bids . . . [and] would provide comfort to the Debtors' employees and customers that the company was entering the auction with a locked-in bid.").

52. Store closing or liquidation sales are a routine part of chapter 11 cases involving retail debtors. Such sales are consistently approved by courts despite provisions of recorded documents or agreements purporting to forbid such sales. Indeed, other such restrictive provisions in contracts have been deemed unenforceable in other chapter 11 cases as impermissible restraints on a debtor's ability to maximize the value of its assets under section 363 of the Bankruptcy Code. *See In re Blockbuster Inc.*, Ch. 11 Case No. 10-14997 (BRL) (Bankr. S.D.N.Y. Jan. 20, 2011) [Docket No. 864] at ¶¶ 7, 8; *In re Bradlees Stores, Inc.*, Case No. 00-16035 (BRL) (Bankr. S.D.N.Y. Jan. 4, 2001) (authorizing Debtors to conduct GOB sales notwithstanding state rules or statutes governing closing, liquidation, or "going-out-of-business" sales and notwithstanding provision in leases restricting Debtor's ability to conduct such sales); *In re R.H. Macy & Co.*, 170 B.R. 69, 77 (Bankr. S.D.N.Y. 1994) (holding restrictive lease provision unenforceable against debtor that sought to conduct going-out-of-business sale "because it conflicts with the Debtor's fiduciary duty to maximize estate assets"); *Ames Dep't Stores, Inc.* (Ames I), 136 B.R. at 359 (finding that "to enforce the anti-GOB sale clause of the [l]ease would contravene overriding federal policy requiring Debtors to maximize estate assets by imposing additional constraints never envisioned by Congress").

53. In connection with the Phase I SCSs, the Court approved sale guidelines, which govern certain rights of landlords during the sales. The Debtors propose that those same guidelines also govern the SCSs. *See* Proposed Order ¶ 30. Similarly, the Phase I SCSs Order contains a procedure for landlords to challenge the sale guidelines, which the Debtors propose also exist with respect to the SCSs.¹¹ *Id.*

¹¹ The Phase I SCSs Order provides as follows:

Any landlord seeking relief from the Sales Guidelines approved in this Order (the "Sales Guidelines Relief") must follow the procedures set forth in this Paragraph for seeking such relief.

54. Based on well-established precedent, and given the additional protections that the Debtors will afford landlords similar to the same procedures utilized in the Phase I SCSs, the Court should ensure that no Contractual Restriction is an impediment to the SCSs, closures of Closing Stores, or the activities in connection therewith. To the extent such Contractual Restrictions exist, they should not be permitted to interfere with, or otherwise restrict the Debtors from conducting the SCSs or the closing of any Closing Stores.

B. Exemption From Applicable Law Restrictions

55. Certain states in which the Closing Stores are located have or may have licensing and other requirements governing the conduct of store closing, liquidation, or other inventory clearance sales, including (but not limited to) state, and local laws, statutes, rules, regulations, and ordinances related to store closing and liquidation sales, establishing licensing, permitting, or bonding requirements, waiting periods, time limits, bulk sale restrictions, augmentation limitations that would otherwise apply to the SCSs, or consumer fraud laws, with the exception of deceptive advertising laws (the “Liquidation Sale Laws”). Typical statutes and regulations provide that if a liquidation or bankruptcy sale is court authorized, however, then a company need not comply with these Liquidation Sale Laws.

At any time before the fifth (5th) business day following entry of this Order, or with respect to any Put Option Store before the fifth (5th) business day following service of a notice that any such store has been selected as a Put Option Store, any landlord (other than a landlord that is a party to a Side Letter with respect to the Store(s) at issue) may seek Sales Guidelines Relief . . . If the Debtors, the Agent and the landlord are unable to resolve the landlord’s request for Sales Guidelines Relief within five (5) days of service of a notice of Sales Guidelines Relief, the landlord may file an objection with the Court seeking the Sales Guidelines Relief (a “Sales Guidelines Relief Objection”) to be heard by the Court on an expedited basis subject to the Court’s availability. Any issues relating to any Sales Guidelines Relief shall not affect the finality of this Order or limit or interfere with the conduct of the Sales prior to any ruling by this Court on the Sales Guidelines Relief Objection.

56. The Debtors, therefore, request that the Court authorize the Debtors to conduct the SCSs without the necessity of, and the delay associated with, complying with the Liquidation Sale Laws. Because the Debtors and their assets are subject to this Court's jurisdiction, *see* 28 U.S.C. § 1334, this Court will be able to supervise the SCSs. The SCSs are legitimate methods by which the Debtors can maximize the return from the sale of assets for the benefit of their estates and creditors. Moreover, creditors and the public interest are adequately protected by the jurisdiction and supervision of this Court.

57. Even if a state or local law does not expressly except bankruptcy sales from its ambit, the Debtors submit that, to the extent that such state or local law conflicts with federal bankruptcy laws, it is preempted by the Supremacy Clause of the United States Constitution. To hold otherwise would severely impair the relief otherwise available under section 363 of the Bankruptcy Code. In concert with this premise, bankruptcy courts have consistently recognized that federal bankruptcy law preempts state and local laws that contravene the underlying policies of the Bankruptcy Code. *See, e.g., Aloe v. Shenango Inc. (In re Shenango Group, Inc.)*, 186 B.R. 623, 628 (Bankr. W.D. Pa. 1995) (“Trustees and debtors-in-possession have unique fiduciary and legal obligations pursuant to the bankruptcy code. . . . [A] state statute [] cannot place burdens on them where the result would contradict the priorities established by the federal bankruptcy code.”). While preemption of state law is not always appropriate, as when the protection of public health and safety is involved, *see Baker & Drake, Inc. v. Pub. Serv. Comm’n of Nev. (In re Baker & Drake, Inc.)*, 35 F.3d 1348, 1353-54 (9th Cir. 1994) (finding no preemption when state law prohibiting taxicab leasing was promulgated in part as a public safety measure), it is appropriate when, as here, the only state laws involved concern economic regulation. *Id.* at 1353 (finding that “federal bankruptcy preemption is more likely . . . where a state statute is concerned

with economic regulation rather than with protecting the public health and safety”). Moreover, pursuant to section 105 of the Bankruptcy Code, the Court has the authority to permit the SCSs to proceed notwithstanding contrary Liquidation Sale Laws. *See* 11 U.S.C. § 105(a).

58. Here, section 363 of the Bankruptcy Code, which requires the Debtors to operate their businesses in a way that maximizes recoveries for creditors, will be undermined if the Court does not provide for the waiver of the Liquidation Sale Laws because the Liquidation Sale Laws constrain the Debtors’ ability to marshal and maximize assets for the benefit of creditors.

Similar relief has been granted by courts in this jurisdiction. *See, e.g., In re Blockbuster Inc.*, Ch. 11 Case No. 10-14997 (BRL) [Docket No. 864] (Bankr. S.D.N.Y. Jan. 20, 2011) at ¶¶ 9, 10; *In re Finlay Enters., Inc.*, Ch. 11 Case No. 09-14873 (JMP) [Docket No. 262] (Bankr. S.D.N.Y. Sept. 25, 2009) at ¶ 11; *In re Steve & Barry’s Manhattan LLC*, Ch 11 Case No. 08-12579 (ALG) [Docket No. 628] (Bankr. S.D.N.Y. Aug. 22, 2008) at ¶ 36.

59. Importantly, given the supervision of this Court, the requested waiver will not unduly undermine state and local requirements that would otherwise apply to the SCSs. The Debtors only request that this Court authorize the Debtors to conduct the SCSs without the necessity of, and the delay associated with, obtaining various state licenses or permits, observing state and local waiting periods or time limits, and/or satisfying any additional requirements with respect to advertising, conducting the SCSs as store closings or similar type sales, or transferring merchandise from the distribution centers to the Closing Stores. The Debtors fully intend to be bound by and comply with remaining statutes and regulations, such as health and safety laws.

60. The Debtors also request that no other person or entity, including (but not limited to) any lessor or federal, state, or local agency, department, or governmental authority, be allowed to take any action to prevent, interfere with, or otherwise hinder consummation of the

SCSs, or the advertising and promotion (including through the posting of signs) of SCSs, in the manner set forth in the Proposed Order.

61. The Debtors are entitled to the foregoing relief, which is routinely granted in connection with store closing sales. Indeed, the Court granted such relief in connection with the Phase I SCSs. *See* Phase I SCSs Order ¶ 9. The Debtors propose granting governmental authorities an opportunity to dispute the sale *after* entry of an order granting this Motion, which parallels the protections in the Phase I SCSs Order.¹² *See* Proposed Order ¶¶ 7, 8.

IV. AUTHORITY TO ABANDON UNSOLD PROPERTY FOLLOWING STORE CLOSING SALES

62. Section 554(a) of the Bankruptcy Code provides that after notice and a hearing, the trustee, and therefore the debtor in possession, “may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” *See 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 valuable than the cost of asserting that claim”); *In re Grossinger’s Assoc.*, 184 B.R. 429, 432 (Bankr. S.D.N.Y. 1995). *See also Midlantic Nat’l Bank v. New Jersey Dep’t of Env’tl. Protection*, 474 U.S. 494, 507, n.9 (1986) (“[A] trustee [in bankruptcy] may not abandon property in contravention of a state statute

¹² The Phase I SCSs Order provides as follows:

To the extent there is a dispute arising from or relating to the Sales, this Order, the Agency Agreement, or the Sale Guidelines, which dispute relates to any GOB Laws or Liquidation Laws (a "Reserved Dispute"), the Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within fifteen (15) days following service of this Order, any Governmental Unit may assert that a Reserved Dispute exists by serving written notice of such Reserved Dispute to counsel for the Debtors and counsel for the Agent at the addresses set forth in the Agency Agreement so as to ensure delivery thereof within one (1) business day thereafter. If the Debtors, the Agent and the Governmental Unit are unable to resolve the Reserved Dispute within fifteen (15) days of service of the notice, the aggrieved party may file a motion with this Court requesting that this Court resolve the Reserved Dispute (a “Dispute Resolution Motion”).

Phase I SCSs Order ¶ 9(c).

or regulation that is reasonably designed to protect the public health or safety from identified hazards . . . This exception to the abandonment power . . . is a narrow one.”); *In re Bryson*, 53 B.R. 3, 4-5 (Bankr. M.D. Tenn. 1985) (“The effect of the abandonment is to remove the asset from the jurisdiction of the bankruptcy court.”).

63. Under the Agency Agreement, any Merchandise remaining at the Closing Stores following the SCSs can be sold by the Liquidating Agent, with the proceeds thereof treated as Proceeds for purposes of compensation computation. To the extent, however, that the Liquidating Agent does not sell any Merchandise, Owned FF&E, Newsstand Inventory or Café/Candy Inventory, the Debtors request that they be authorized upon the conclusion of the SCSs to abandon same without incurring liability to any person or entity. The Debtors submit that if they are unable to sell or dispose of any such assets following the SCSs, it would be costly and burdensome to the estate to retain them.

64. Notwithstanding the foregoing, the Debtors and the Liquidating Agent will utilize all commercially reasonable efforts to remove or cause to be removed any confidential or personal identifying information (which means information which 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 or cash registers or similar equipment that are to be sold or abandoned.

65. This Court granted the foregoing relief in connection with the Phase I SCSs. *See* Phase I SCSs Order ¶ 27. Consistent therewith, the Debtors request that in event of an abandonment, the applicable landlord be authorized to dispose of property without any liability to any individual or entity that may claim an interest in such abandoned property and that such

abandonment be without prejudice to any landlord's right to assert any claims based on such abandonment and without prejudice to the Debtors or other party-in-interest to object thereto.

See Proposed Order ¶ 25.

VI. WAIVER OF STAY UNDER BANKRUPTCY RULES 6004(h) AND 6006(d)

66. Pursuant to Bankruptcy Rule 6004(h), unless a court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for 14 days after entry of the order. Fed. R. Bankr. P. 6004(h). The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before the order is implemented. *See* Fed. R. Bankr. P. 6004(h) advisory committee note.

67. In order to avoid a default under the DIP Facility, the Debtors request that any order approving the Motion be effective immediately by providing that the 14-day stay under Bankruptcy Rules 6004(h) is waived.

VII. COMPLIANCE WITH LOCAL RULE 6004-1

68. The Debtors submit that, given the description of the SCSs provided herein, the requirements of Rule 6004-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Bankruptcy Rules") have been satisfied. Alternatively, to the extent the Court finds that the Debtors have not met any applicable provisions of Local Bankruptcy Rule 6004-1, the Debtors respectfully request that the Court waive such requirements with respect to this Motion.

NOTICE

69. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion has been given in accordance with this Court's order, dated February 16, 2011, implementing certain notice and case management procedures [Docket No. 64] (the "Case Management Order"), which includes the offices of the attorneys general and the consumer

protection agencies for each state in which the Debtors operate a Closing Store, the applicable county consumer protection agencies, the landlords for the Closing Stores and the municipalities in which the Closing Stores are located. The Debtors submit that no other or further notice need be provided.

70. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: June 8, 2011
New York, New York

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP

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*Attorneys for Debtors
and Debtors in Possession*

Borders Group, Inc
Closing Stores List - Subject to Change

51						
Store	Format	Name	Address	City	State	Zip
120	BSS	School Street (Downtown Crossing)	10-24 School Street	Boston	MA	02108
163	BSS	Park Meadows Mall	8401 Park Meadows Center Drive	Littleton	CO	80124
180	BSS	Woodward Avenue	34300 Woodward	Birmingham	MI	48009
190	BSS	Laguna Crossroads	7415 Laguna Blvd.	Elk Grove	CA	95758
208	BSS	Presidential Market Center	1929 Scenic Hwy.	Snellville	GA	30078
219	BSS	Main Street	162 E. Main St.	Mt. Kisco	NY	10549
249	BSS	Arlington Highlands	4000 Arlington Highlands Blvd.	Arlington	TX	76018
270	BSS	Jericho Turnpike	425 Jericho Turnpike	Syosset	NY	11791
276	BSS	Church Street	29 Church Street	Burlington	VT	05401
370	BSS	Huntington Mall	120 Mall Road	Barboursville	WV	25504
434	BSS	Sandusky Mall	4314 Milan Road	Sandusky	OH	44870
463	BSS	The River At Rancho Mirage	71800 Highway 111	Rancho Mirage	CA	92270
472	BSS	Dogwood Festival Market	100 Dogwood Blvd.	Flowood	MS	39232
521	BSS	Plaza El Paseo	22372 El Paseo	Rancho Santa Margari	CA	92688
551	BSS	Monte Vista Crossings	2831 Countryside Drive	Turlock	CA	95380
582	BSS	Two Penn Plaza (Penn Station)	Two Penn Plaza	New York	NY	10019
592	BSS	Columbus Circle	10 Columbus Circle	New York	NY	10019
594	BSS	Riverhead Centre	1500 Old Country Road	Riverhead	NY	11901
599	BSS	Plaza El Segundo	710 South Sepulveda Blvd	El Segundo	CA	90245
625	BSS	Kennedy Mall	555 John F. Kennedy Road	Dubuque	IA	52002
661	BSS	Pearlridge Center	98-1025 Moanalua Road	Oahu	HI	96701
686	BSS	Baybrook Passage	19419 Gulf Freeway	Webster	TX	77598
724	BSR	Cross County Mall	700 East Broadway	Mattoon	IL	61938
725	BSR	Trumbull Shopping Park	Main Street	Trumbull	CT	06611
727	BSR	Carolina Mall	1480 US Highway 29 North	Concord	NC	28025
739	BSR	Royal Hawaiian Shopping Center	Royal Hawaiian Shopping Center	Honolulu	HI	96815
742	BSR	Ohio Valley Mall	Unit #310	St. Clairsville	OH	43950
757	Airport	Indianapolis International Airport	7800 Col. H. Weir Cook Memorial Drive	Indianapolis	IN	46241
758	Airport	Logan Int'l Airport - Term E	Logan International Airport	Boston	MA	02128
763	Airport	Baltimore/Washington Int'l Airport AB Core	808 Barkwood Ct. Suites Q-W	Baltimore	MD	21090
764	Airport	Baltimore/Washington Int'l Airport AB Core	808 Barkwood Ct. Suites Q-W	Baltimore	MD	21090
766	Airport	Phoenix Sky Harbor International Airport	3800 Sky Harbor Blvd.	Phoenix	AZ	85034
773	Airport	Dallas Fort Worth Int'l A/P	Terminal A	Dallas	TX	75261
774	Airport	Detroit Metro Airport	North Terminal	Romulus	MI	48197
775	Airport	Detroit Metro Airport	North Terminal	Romulus	MI	48197
776	Airport	JFK International A/P	Terminal 5	New York	NY	11430
777	Airport	Raleigh - Durham A/P	Terminal 2	Raleigh	NC	27623
795	BSR	Sumter Mall	1057 Broad Street	Sumter	SC	29150
889	BSR	Southside Mall	Rd #2/Rt 23 Nys	Oneonta	NY	13820
891	BSR	Blue Ridge Mall	1800 Four Seasons Blvd.	Hendersonville	NC	28739
907	BSR	Westland Shopping Center	3500 West Warren	Westland	MI	48185
912	BSR	Auburn Mall	550 Center Street	Auburn	ME	04210
931	BSR	The Mall of Monroe fka Frenchtown Square	2121 N. Monroe Street	Monroe	MI	48161
932	BSR	Town Center Of Mililani	1249 Meheula Parkway	Milalani	HI	96789
937	BSR	Fountain Square S/C (Wb& More)	302 E Bell Rd	Phoenix	AZ	85022
938	BSR	Shawnee Mall	4901 N. Kickapoo St.	Shawnee	OK	74801
945	BSR	Roosevelt Boulevard	2212 N. Roosevelt Blvd.	Key West	FL	33040
956	BSR	Citrus Park Town Center	8021 Citrus Park Town Center	Tampa	FL	33625
963	BSR	Eastbrook Mall	Route 195	Willimantic	CT	06226
970	BSR	Swampscott Mall	970 Paradise Road	Swampscott	MA	01907
987	BSR	Rye Ridge S/C	106 South Ridge Street	Portchester	NY	10573

EXHIBIT B TO MOTION
DRAFT FORM AGREEMENT

AGENCY AGREEMENT

This Agency Agreement (this “Agreement”) is made as of June [____], 2011, by and between Borders Group, Inc., a Michigan corporation, with executive offices located at 100 Phoenix Drive, Ann Arbor, MI 48108, and its affiliated companies set forth in **Exhibit A** hereto (collectively, the “Merchant”) and [_____] (collectively, the “Agent”).

RECITALS

WHEREAS, on February 16, 2011, the Merchant commenced voluntarily bankruptcy cases (the “Bankruptcy Cases”) under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”); and

WHEREAS, the Merchant operates retail stores in the United States and desires that the Agent act as the Merchant’s exclusive agent for the limited purpose of (a) selling all of the Merchandise located in Merchant’s retail store location(s) identified on Exhibit 1 attached hereto (each individually a “Store” and collectively, the “Stores”) by means of a promotional “store closing” or similar themed sale (as further described below, the “Sale”); and (b) disposing of the Agent Sale FF&E, News Stand Inventory and Café/Candy Inventory.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Agent and the Merchant hereby agree as follows:

Section 1. Defined Terms. The terms set forth below are defined in the referenced sections of this Agreement:

<u>Defined Term</u>	<u>Section Reference</u>
Agency Accounts	Section 7.2(b)
Agency Documents	Section 11.1(b)
Agent	Preamble
Agent Indemnified Parties	Section 13.1
Agent Sale FF&E	Section 15.9
Applicable General Laws	Section 2(c)
Approval Order	Section 2(b)
Bankruptcy Cases	Preamble
Bankruptcy Court	Preamble
Bankruptcy Code	Preamble
Beneficiaries	Section 3.4
Benefits Cap	Section 4.1(b)
Café/Candy Inventory	Section 5.2(b)

Central Service Expenses	Section 4.1(i)
Cost Factor	Section 11.1(m)
Cost Factor Threshold	Section 11.1(m)
Cost Value	Section 5.3(a)
Defective Merchandise	Section 5.2(b)
Designated Deposit Accounts	Sections 7.2(a)
DIP Facility	Section 3.5
Display Merchandise	Section 5.2(b)
Distribution Center Inventory	Section 5.2(b)
Distribution Center Expenses	Section 5.5
Events of Default	Section 14
Excluded Benefits	Section 4.1(ii)
Excluded Defective Merchandise	Section 5.2(b)
Excluded Owned FF&E	Section 15.9
Excluded Price Adjustments	Section 5.3(b)
Expenses	Section 4.1
February 18 Order	Section 2(b)
FF&E	Section 5.2(a)
Final Inventory Report	Section 3.5
GA	Section 15.9
GECC	Section 3.5
Global Inventory Adjustment	Section 5.3(b)
Gross Rings	Section 5.1(d)
Guaranteed Amount	Section 3.1(a)
Guaranteed Amount Deposit	Section 3.3(a)
Guaranty Percentage	Section 3.1(a)
Inventory Taking	Section 5.1(a)
Inventory Taking Service	Section 5.1(a)
Lenders	Section 3.5
Letter of Credit	Section 3.4
Liquidation Sale Laws	Section 2(c)
Lowest Location Price	Section 11.1(m)
Merchandise	Section 5.2(a)
Merchandise Threshold	Section 3.1(c)
Merchant	Preamble
Merchant Account	Section 3.3(a)
Merchant Consignment Goods	Sections 5.4
News Stand Inventory	Section 5.2(b)
Occupancy Expenses	Section 4.1(iii)
Owned FF&E	Section 15.9
Payment Date	Section 3.3(a)
Perpetual Inventory File	Section 5.3(a)
Proceeds	Section 7.1
Remaining Guaranteed Amount	Section 3.3(b)
Remaining Merchandise	Section 3.2(b)

Retail Price	Section 11.1(m)
Retained Employee	Section 9.1
Retention Bonuses	Section 9.4
Returned Defective Merchandise	Section 8.5
Returned Merchandise	Section 8.5
Sale	Recitals
Sale Commencement Date	Section 6.1
Sale Guidelines	Section 8.1
Sale Term	Section 6.1
Sale Termination Date	Section 6.1
Sales Taxes	Section 8.3(a)
Sales Taxes Account	Section 8.3(a)
Store(s)	Recitals
Supplies	Section 8.4
Vacate Notice	Section 6.1

Section 2. Appointment of Agent/Approval Order.

(a) Effective on the date hereof and subject to the entry of the Approval Order, the Merchant hereby appoints the Agent, and the Agent hereby agrees to serve, as the Merchant's exclusive agent for the limited purpose of conducting the Sale at the Stores and disposing of the Agent Sale FF&E in the Stores in accordance with the terms and conditions of this Agreement.

(b) On June [__], 2011, Merchant filed a motion with the Bankruptcy Court for entry of an order approving this Agreement and authorizing Merchant to conduct the Sale in connection with the Merchandise, the News Stand Inventory, the Café/Candy Inventory and the Agent Sale FF&E in accordance with the terms hereof (the "Approval Order"). The Approval Order shall be in substantially the same form as the *Order Approving Agency Agreement, Store Closing Sales and Related Relief* (the "February 18 Order") entered by the Bankruptcy Court on February 18, 2011 [Docket No. 91], a copy of which is annexed hereto as Exhibit 2(b).

(c) Subject to entry of the Approval Order, Agent shall be authorized to advertise the Sale as a "store closing" or similar-themed sale, and the Approval Order shall provide that Agent shall be required to comply with applicable federal, state and local laws, regulations and ordinances, including, without limitation, all laws and regulations relating to advertising, permitting, privacy, consumer protection, occupational health and safety and the environment, together with all applicable statutes, rules, regulations and orders of, and applicable restrictions imposed by, governmental authorities (collectively, the "Applicable General Laws"), other than all applicable laws, rules and regulations in respect of "store closing" or similar-themed sales (collectively, the "Liquidation Sale Laws"), provided that such Sale is conducted in accordance with the terms of this Agreement, the Sale Guidelines and Approval Order; and provided further that the Approval Order shall provide that so long as the Sale is conducted in accordance with the Sale Guidelines and in a safe and professional manner, Agent shall be deemed to be in compliance with any Applicable General Laws.

Section 3. Consideration to Merchant and Agent.

3.1 Payments to Merchant.

(a) As a guaranty of Agent's performance hereunder, Agent guarantees that Merchant shall receive: (i) [_____] percent ([_____]%) (the "Guaranty Percentage") of the aggregate Cost Value of the Merchandise included in the Sale (the "Guaranteed Amount") plus (ii) the aggregate amount calculated in accordance with Section 7.4.

(b) The Guaranteed Amount, shall be paid in the manner and at the times specified in Section 3.3 below. The Guaranteed Amount will be calculated based upon the aggregate Cost Value of the Merchandise as determined by (A) the final certified report of the Inventory Taking Service after verification and reconciliation thereof by Agent and Merchant plus (B) amount of Gross Rings, as adjusted for shrinkage per this Agreement.

(c) The Guaranty Percentage has been fixed based upon the aggregate Cost Value of the Merchandise (excluding Distribution Center Inventory, if any) not being less than \$[_____] and no more than \$[_____] (the "Merchandise Threshold") as of the Sale Commencement Date, excluding News Stand Inventory and Café/ Candy Inventory, periodical items, and other café items. To the extent that the aggregate Cost Value of the Merchandise included in the Sale is less than or more than the Merchandise Threshold, the Guaranty Percentage shall be adjusted in accordance with Exhibit 3.1(c) annexed hereto (in addition to any adjustment applicable pursuant to section 11.1(m) hereof), as and where applicable.

3.2 Compensation to Agent. Subject to the entry of the Approval Order (a) Agent shall be entitled to the Proceeds above the Guaranteed Amount and Expenses. Agent shall also be entitled to receive a commission based on the net proceeds of the sale of the Agent Sale FF&E as provided for in Section 15.9 hereof and the News Stand Inventory and Café/Candy Inventory.

(b) Provided that no Event of Default has occurred and continues to exist on the part of the Agent, and after all payments are made to Merchant as required hereunder, all Merchandise remaining at the Sale Termination Date (the "Remaining Merchandise") shall become the property of Agent, free and clear of all liens, claims and encumbrances of any kind or nature, and the proceeds received by Agent from the disposition, in a commercially reasonable manner, of such unsold Merchandise shall constitute Proceeds hereunder. Notwithstanding the foregoing, Agent shall exercise commercially reasonable efforts to dispose of all of the Merchandise during the Sale Term. Merchant shall have the right to audit Agent's books and records to verify its share of the Proceeds. Agent shall not sell any Remaining Merchandise to wholesalers for return to publishers. To the extent that Agent desires to sell any Merchandise or Remaining Merchandise in bulk to a non-retail customer or abandon the Remaining Merchandise Agent shall provide 48 hours written notice, via e-mail, to the official committee of unsecured creditors so that the committee may verify that the prospective purchaser does not have return to vendor privileges or approve of the proposed abandonment. If the official committee of

unsecured creditors objects to the proposed sale or the proposed abandonment, the parties will request the Bankruptcy Court resolve the matter on an emergent basis.

3.3 Time of Payments.

(a) On the Sale Commencement Date (the "Payment Date"), Agent shall pay 80% of the estimated Guaranteed Amount to Merchant (the "Guaranteed Amount Deposit") by wire transfer to the account(s) designated on Exhibit 3.3(a) annexed hereto (the "Merchant Account"). The Guaranteed Amount Deposit shall be based on the estimated Cost Value (as determined in accordance with Section 5.1 of the Agreement) of the Merchandise in the Stores on the Sale Commencement Date.

(b) The balance of the Guaranteed Amount (the "Remaining Guaranteed Amount"), shall be paid as follows: Agent shall pay the unpaid and undisputed balance of the Guaranteed Amount, which amount shall be paid to the Merchant Account no later than the earlier of (i) the date that is forty five (45) days after the Sale Commencement Date (in which case payment shall be of the undisputed portion of the balance of the estimated Guaranteed Amount) and (ii) the second business day following the issuance of the Final Inventory Report, and Agent's failure to pay such balance or undisputed portion shall entitle the Merchant and GECC to draw upon the Agent Letter of Credit (as defined below) in accordance with section 3.4 to the extent of such balance or undisputed portion. In the event that after the issuance of the Final Inventory Report as verified and reconciled, the Guaranteed Amount is greater than the sum of the Guaranteed Amount Deposit plus the payment of the undisputed portion of the estimated Guaranteed Amount, Agent shall pay the remainder of the Guaranteed Amount to the Merchant within two (2) business days after the Final Inventory Report has been issued as verified and reconciled. In the event that there is a dispute with respect to the reconciliation of the aggregate Cost Value of the Merchandise following the Inventory Taking, then any such dispute shall be resolved in the manner and at the times set forth in Section 8.6 hereof.

(c) All amounts required to be paid by Agent or Merchant under any provision of this Agreement shall be made by wire transfer of immediately available funds which shall be wired by Agent or Merchant, as applicable, no later than 2:00 p.m. (Eastern Time) on the date that such payment is due; provided, however, that all of the information necessary to complete the wire transfer has been received by Agent or Merchant, as applicable, by 10:00 a.m. (Eastern Time) on the date that such payment is due. In the event that the date on which any such payment is due is not a business day, then such payment shall be made by wire transfer on the next business day.

(d) Merchant agrees that if at any time during the Sale Term, Merchant holds any undisputed amounts due to Agent as Proceeds hereunder, Agent may, in its discretion, offset such Proceeds being held by Merchant against any amounts due and owing to Merchant pursuant to this Section 3.3 or otherwise under this Agreement. In addition, Merchant and Agent further agree that except as provided in the following sentence, if at any time during the Sale Term, Agent holds any undisputed amounts due to Merchant under this Agreement, Agent may, in its discretion, offset such amounts being held by it against any amounts due and owing by, or required to be paid by, Merchant hereunder. Notwithstanding the foregoing or any other

provision to the contrary herein, in no event shall Agent offset any amounts against the proceeds realized from the disposition of the Agent Sale FF&E.

(e) If and to the extent that Agent over-funds any amounts in respect of the Guaranteed Amount based on the results of the Final Inventory Report, then Merchant agrees to promptly reimburse such undisputed overpayment amounts to Agent. To the extent that any over-funded amounts in respect of the Guaranteed Amount based on the results of the Final Inventory Report have been received by GECC and have not been reimbursed by Merchant, Agent shall inform GECC by written notice of such overpayment and GECC agrees to disgorge such overpayment to Agent within two (2) business days of such notice.

3.4 Letter of Credit. In order to secure the Agent's obligations under this Agreement, in respect of (x) the payment of the Remaining Guaranteed Amount, and (y) Expenses of the Sale on the Payment Date, Agent shall furnish Merchant an irrevocable standby letter of credit naming Merchant and GECC as co-beneficiaries (collectively, the "Beneficiaries") as beneficiary in the aggregate original face amount equal to the sum of (i) twenty percent (20%) of the estimated Guaranteed Amount, plus (ii) three (3) weeks estimated Expenses that would be payable by Merchant, which shall be in the form of Exhibit 3.4 hereof (collectively, the "Letter of Credit"). The Letter of Credit shall have an expiry date of no earlier than sixty (60) days after the Sale Termination Date. Unless the parties shall have mutually agreed, in consultation with GECC, that they have completed the final reconciliation under this Agreement, then, at least thirty (30) days prior to the initial or any subsequent expiry date, the Beneficiaries shall receive an amendment to the Letter of Credit solely extending (or further extending, as the case may be) the expiry date by at least sixty (60) days. If the Beneficiaries fail to receive such amendment to the Letter of Credit no later than thirty (30) days before the expiry date, then all amounts hereunder shall become immediately due and payable and the Beneficiaries, individually or collectively, shall be permitted to draw under the Letter of Credit in payment of amounts owed and the Beneficiaries shall hold the balance of the amount drawn under the Letter of Credit as security for amounts that may become due and payable to Merchant hereunder. At Agent's request, the Beneficiaries shall take all actions reasonably required to reduce the amount available to be drawn under the Letter of Credit by amounts credited against the Guaranteed Amount; provided, however, that the Letter of Credit shall not be reduced below three (3) weeks of estimated Expenses of the Sale. In the event that Agent, after receipt of three (3) business days notice (which notice shall not be required if Agent or any member of Agent shall be a debtor under title 11, United States Code), fails to pay the Guaranteed Amount, or portion thereof or any Expenses when due, the Beneficiaries, individually or collectively, may draw on the Letter of Credit in an amount equal to the unpaid, past due, amount of the Agent's obligations hereunder that is not the subject of a reasonable dispute.

3.5 Inventory Reconciliation. Within twenty (20) days after the completion of the Inventory Taking, Merchant, Agent and General Electric Capital Corporation ("GECC"), in its capacity as administrative agent for itself and the other lenders (the "Lenders") party to the Merchant's senior secured, super-priority debtor-in-possession credit facility (the "DIP Facility"), shall review, reconcile and verify the final report of the aggregate Cost Value of the Merchandise by the Inventory Taking Service (the "Final Inventory Report").

Section 4. Expenses of the Sale.

4.1 Expenses. Agent shall be unconditionally responsible for all Expenses incurred in conducting the Sale during the Sale Term, which expenses shall be paid by Agent in accordance with Section 4.2 below. As used herein, “Expenses” shall mean the Store-level operating expenses of the Sale which arise during the Sale Term including those set forth below:

(a) all payroll and commissions, if applicable, for all Retained Employees used in conducting the Sale for actual days/hours worked during the Sale Term as well as payroll, to the extent retained by Agent for the Sale, for any of Merchant’s former employees or temporary labor;

(b) any amounts payable by Merchant for benefits for Retained Employees in respect of FICA, unemployment taxes, workers’ compensation and healthcare insurance, and vacation benefits that accrue during the Sale Term, exclusive of Excluded Benefits for Retained Employees used in the Sale, in an amount equal to 24% of the base payroll for each Retained Employee on a per store, per month basis (the “Benefits Cap”);

(c) costs of all security in the Stores (to the extent customarily provided in the Stores) including, without limitation, security systems, courier and guard service, building alarm service and alarm service maintenance;

(d) 50% of the fees and costs of the Inventory Taking Service to conduct the Inventory Taking at the Stores; provided that Agent shall be responsible for the actual payroll and related costs for the Retained Employees who work at a Store during the Inventory Taking at such Inventoried Location;

(e) Retention Bonuses for Retained Employees, as provided for in Section 9.4 below;

(f) except as included in Section 4.1 (s), advertising and direct mailings relating to the Sale, signwalking expenses, and Store interior and exterior signage and banners relating to the Sale;

(g) local and long-distance telephone and internet/wifi expenses incurred at the Stores;

(h) credit card fees, chargebacks and discounts with respect to Merchandise sold in the Sale;

(i) bank service charges (for Store and corporate accounts), check guarantee fees, and bad check expenses to the extent attributable to the Sale;

(j) costs for additional Supplies used at the Stores to the extent requested by Agent;

- (k) Intentionally Omitted;
- (l) Store cash theft and other store cash shortfalls in the registers;
- (m) any and all costs relating to the processing, transfer and consolidation of Merchandise between and among the Stores, including delivery and freight costs, it being understood that Agent shall be responsible for coordinating such transfer of Merchandise;
- (n) housekeeping and cleaning expenses related to the Stores;
- (o) Store trash and snow removal;
- (p) on-site supervision of the Stores, including base fees and bonuses of Agent's field personnel, travel to and from the Stores and incidental out-of-pocket and commercially reasonable travel expenses relating thereto (including reasonable and documented corporate travel to monitor and manage the Sale);
- (q) postage, courier and overnight mail charges to and from or among the Stores and central office to the extent relating to the Sale;
- (r) actual Occupancy Expenses for the Stores listed on Exhibit 4.1(r) on a per location and per diem basis in an amount equal to the per Store per diem amount set forth therein plus for the Stores designated on Exhibit 4.1(r) hereto as "Percentage Rent Stores," on a per location basis, the amount calculated using the percentage rent for such Store set forth therein;
- (s) Central Service Expenses equal to \$25,000 per week plus the charges with respect to e-mail distribution set forth on Exhibit 4.1(s);
- (t) Agent's actual cost of capital (including Letter of Credit fees), insurance and legal fees; and
- (u) a pro-rata portion of Merchant's insurance attributable to the Merchandise.

Notwithstanding anything herein to the contrary, to the extent that any Expense category listed in Section 4.1 is also included on Exhibit 4.1(r), then Exhibit 4.1(r) shall control, and such Expenses shall not be double counted. There will be no double payment of Expenses to the extent that Expenses appear or are contained in more than one Expense category.

As used herein, the following terms have the following respective meanings:

- (i) "Central Service Expenses" means costs and expenses for Merchant's central administrative services necessary for the Sale, including, but not limited to, MIS services, payroll processing, cash reconciliation, inventory processing and handling, data

processing and reporting, and, subject to separate charges set forth in Exhibit 4.1(s), e-mail distribution.

(ii) “Excluded Benefits” means benefits in excess of the Benefits Cap.

(iii) “Occupancy Expenses” means base rent, percentage rent, HVAC, utilities, CAM, storage costs, real estate and use taxes, merchant’s association dues and expenses, and a pro rata portion of comprehensive public liability insurance attributable to the Stores personal property leases (including, without limitation, point of sale equipment), cash register maintenance, building maintenance and rental for furniture, fixtures and equipment, all of the foregoing only as categorized and reflected on Exhibit 4.1(r) hereto.

“Expenses” shall not include: (i) Excluded Benefits; (ii) Central Service Expenses, except as provided in Section 4.1(s); (iii) Occupancy Expenses, except as provided in Section 4.1(r); and (iv) any other costs, expenses or liabilities payable by Merchant not provided for herein.

4.2 Payment of Expenses. Effective from the Sale Commencement Date:

(a) Agent shall be responsible for the payment of all Expenses, whether or not there are sufficient Proceeds collected to pay such Expenses after the payment of the Guaranteed Amount. All Expenses incurred during each week of the Sale (i.e. Sunday through Saturday) shall be paid by Agent to or on behalf of Merchant immediately following the weekly Sale reconciliation by Merchant and Agent pursuant to Section 8.6 below; provided, however, in the event that the actual amount of an Expense is unavailable on the date of the reconciliation (such as payroll), Merchant and Agent shall agree to an estimate of such amounts, which amounts will be reconciled once the actual amount of such Expense becomes available. Agent and/or Merchant may review or audit the Expenses at any time.

(b) Notwithstanding anything herein to the contrary, (i) Merchant shall not be required to fund or otherwise pay any Expenses of Sale except to the extent there are sufficient Proceeds and (ii) without limitation on Expenses that may be funded in advance by Agent at Merchant’s reasonable request, to the extent that Proceeds are insufficient, Agent shall fund, in advance, all payroll and related expenses for Retained Employees at least two (2) business days prior to the date that such payments are due by Merchant.

Section 5. Inventory Valuation; Merchandise.

5.1 Inventory Taking.

(a) Subject to the provisions of this paragraph, the parties have agreed to use the average landed cost of inventory as reflected in the master inventory file(s) provided to Agent on [_____], 2011 (the “Perpetual Inventory File”) to determine the aggregate Cost Value of the Merchandise located in the Stores on the Sale Commencement Date and the Distribution Center Inventory (to the extent included in the Sale). In order to test the validity of the aggregate Cost Value of the Merchandise as reflected on Merchant’s current books and records, subject to the availability of the Inventory Taking Service, on or within ten (10) days

after the Sale Commencement Date (the “Inventory Completion Date”), Merchant and Agent shall cause to be taken an SKU and Retail Price physical inventory (the “Inventory Taking”) of the Merchandise located in the Stores and the Distribution Center Inventory (to the extent included in the Sale). (The date of the Inventory Taking at each Store shall be referred to as the “Inventory Date” for such Store). Merchant and Agent shall jointly employ RGIS, LLC or another mutually acceptable inventory taking service (the “Inventory Taking Service”), in consultation with GECC, to conduct the Inventory Taking in accordance with procedures set forth on Exhibit 5.1 annexed hereto. Merchant, Agent, and at its election, GECC, shall each have representatives present during the Inventory Taking, and shall each have the right to review and verify the listing and tabulation of the Inventory Taking Service. Merchant and Agent agree that during the conduct of the Inventory Taking in each of the Stores, the applicable Stores shall be closed to the public and no sales or other transactions shall be conducted.

(b) The results of the Inventory Taking at the Stores (the “Store Results”) shall be used to determine any adjustment as may be required to the calculation of the aggregate Cost Value of the Merchandise located in the Stores on the Sale Commencement Date, as follows: for purposes of calculating the aggregate Cost Value of the Merchandise at the Stores (collectively, the “Inventoried Stores”), the actual Store Results for the Inventoried Stores, as adjusted by Gross Rings for the period between the Sale Commencement Date and the applicable Inventory Date (the “Gross Rings Period”).

(c) The Agent and Merchant agree that they will, and agree to cause their respective representatives to, cooperate and assist in the preparation and the calculation of the aggregate Cost Value of the Merchandise included in the Sale, including, without limitation, making available to the extent necessary, books, records, work papers and personnel.

(d) In the event that the Sale commences at any Store prior to the completion of the Inventory Taking at such Store, then, for the period from the Sale Commencement Date for such Store until the Inventory Date for such Store, Agent and Merchant shall jointly keep (i) a strict count of gross register receipts less applicable Sales Taxes but excluding any prevailing discounts (“Gross Rings”), and (ii) cash reports of sales within such Store. Agent and Merchant shall keep a strict count of register receipts and reports to determine the actual Cost Value and Retail Price of the Merchandise sold by SKU and the markdown, if any, granted by the Agent. All such records and reports shall be made available to Agent and Merchant during regular business hours upon reasonable notice. Any Merchandise included in the Sale using the Gross Rings shall be included in Merchandise using the average landed cost of such Merchandise as set forth in the Perpetual Inventory File. Agent shall pay that portion of the Guaranteed Amount calculated on the Gross Rings basis to account for shrinkage on the basis of 103% of the aggregate Cost Value of the Merchandise (without taking into account any of Agent’s point of sale discounts or point of sale markdowns) sold during the Gross Rings period.

5.2 Merchandise Subject to This Agreement.

(a) For purposes of this Agreement, “Merchandise” shall mean: all finished goods inventory that is owned by Merchant and located at the Stores as of the Sale Commencement

Date, including (A) Defective Merchandise; (B) Display Merchandise, (C) Distribution Center Inventory (to the extent included in the Sale), and (D) Merchandise subject to Gross Rings. Notwithstanding the foregoing, “Merchandise” shall not include: (1) goods which belong to sublessees, licensees, department lessees, or concessionaires of Merchant; (2) goods held by Merchant on memo, on consignment, or as bailee; (3) supplies not packaged for retail sale to customers, furnishings, trade fixtures, equipment and/or improvements to real property which are located in the Stores (collectively, “FF&E”); provided that, Agent shall sell Agent Sale FF&E (other than Excluded Owned FF&E) as set forth in Section 15.9; (4) Excluded Defective Merchandise; and (5) Merchant Consignment Goods which includes News Stand Inventory and Café/Candy Inventory.

(b) As used in this Agreement, the following terms have the respective meanings set forth below:

“Café/Candy Inventory” means items of inventory designated by Merchant, in the ordinary course of business, as “café and candy”.

“Defective Merchandise” means any item of Merchandise that is defective or otherwise not saleable in the ordinary course because it is worn, scratched, broken, faded, torn, mismatched, tailored or affected by other similar defenses rendering it not first quality. Display Merchandise shall not per se be deemed to be Defective Merchandise.

“Display Merchandise” means those items of inventory used in the ordinary course of business as displays or floor models, including inventory that has been removed from its original packaging for the purpose of putting such item on display but not customarily sold or saleable by Merchant, which goods are not otherwise damaged or defective. For the avoidance of doubt, Merchandise created for display and not saleable in the ordinary course of business shall not constitute Display Merchandise.

“Distribution Center Inventory” means those items of merchandise located on the Sale Commencement Date at each of the Distribution Centers as identified on Exhibit 5.2 attached hereto, which Merchant and Agent may agree to include in the Sale at economics mutually agreed to by the Merchant, Agent and GECC. Distribution Center Inventory, to the extent included, will be paid for as part of a weekly reconciliation if and when the parties mutually agree on whether to include and the price for such goods.

“Excluded Defective Merchandise” means those items of Defective Merchandise that are not saleable in the ordinary course because they are so damaged or defective that such inventory cannot reasonably be used for their intended purpose.

“News Stand Inventory” means items of inventory designated by Merchant, in the ordinary course of business, as “news stand.”

5.3 Valuation.

(a) For purposes of this Agreement, “Cost Value” shall mean with respect to each item of Merchandise, the lower of (i) average landed actual cost for such item of Merchandise, as reflected in the Perpetual Inventory File ; which landed actual costs values include vendor cost, freight from the vendor to the Distribution Centers, duties, harbor maintenance fees, drayage, brokers fees, insurance, commissions, processing costs and other costs directly associated with landing the product in the Distribution Centers or (ii) the Retail Price for such item of Merchandise. The Perpetual Inventory File does not account for any advertising co-op allowances or discounts associated with expedited payment terms offered by any vendor.

(b) Other than Excluded Defective Merchandise, in lieu of any other adjustments to the Cost Value of Merchandise under this Agreement (*e.g.*, adjustments for Defective Merchandise, clearance merchandise, mis-mates and near-mates, sample merchandise and/or Excluded Price Adjustments), the aggregate Cost Value of the Merchandise shall be adjusted (*i.e.*, reduced) by means of a single global downward adjustment equal to one half of one percent (0.5%) of the aggregate Cost Value of (a) the Merchandise in the Stores and (b) the Distribution Center Inventory (to the extent included in the Sale) on the Sale Commencement Date (the “Global Inventory Adjustment”).

For the purposes of this Agreement, “Excluded Price Adjustments” means the following discounts or price adjustments offered by the Merchant: (i) point of sale discounts or similar adjustments regardless of duration for which the current selling price is reflective of point of sale discounts, as reflected on the Perpetual Inventory File; (ii) Borders Rewards Plus Loyalty Program discounts; (iii) multi-unit purchase discounts; (iv) adjustments for damaged, defective or “as-is” items; (v) gift cards; (vi) obvious ticketing or marking errors; (vii) instant (in-store) or mail in rebates; or (viii) similar customer specific, temporary, or employee non-product specific discounts or pricing accommodations.

(c) Excluded Defective Merchandise located in the Stores shall be identified and counted during the Inventory Taking and thereafter removed from the sales floor and segregated. Other than as identified during the Inventory Taking at a Store, no other goods can be categorized as Excluded Defective Merchandise, regardless of their condition.

5.4 Excluded Goods. Merchant shall retain all responsibility for any goods not included as “Merchandise” hereunder. If Merchant elects at the beginning of the Sale Term, Agent shall accept goods not included as “Merchandise” hereunder for sale as “Merchant Consignment Goods” at prices established by the Agent. News Stand Inventory, Café/Candy Inventory and warranty inventory (SKU nos 3195901, and 3195902) shall be deemed Merchant Consignment Goods. The Agent shall retain 20% of the sale price for all sales of Merchant Consignment Goods, and Merchant shall receive 80% of the receipts in respect of such sales. Merchant shall receive its share of the receipts of sales of Merchant Consignment Goods on a weekly basis in accordance with Section 3.3, immediately following the weekly Sale reconciliation by Merchant and Agent pursuant to Section 8.6 below. If Merchant does not elect to have Agent sell goods not included as Merchandise, then all such items will be removed by Merchant from the Stores at its expense as soon as practicable after the Sale Commencement

Date.

5.5 Distribution Center Expenses. To the extent that Agent and Merchant agree to include any Distribution Center Inventory in the Sale, Agent shall be responsible for allocating and designating the shipment of the Distribution Center Inventory to the Stores. The actual costs and expenses, including use and occupancy at the Distribution Centers, transfer and delivery (ticketed in the ordinary course consistent with historic practices), related to the processing, transfer and consolidation of Distribution Center Inventory from the Distribution Center to the Stores (collectively, the “Distribution Center Expenses”) for a period commencing on the Sale Commencement Date through the Sale Termination Date shall be the obligation of the Merchant; provided however, that in the event Agent chooses to use a method of picking-up or transportation in a manner that is not consistent with Merchant’s ordinary course method of transport, then Agent shall be solely responsible for all increased costs and expenses associated with such modification (such additional costs shall be treated as an Expense hereunder); provided further, no Distribution Center Inventory shall be shipped to the Stores prior to the Inventory Date for any applicable Store.

Section 6. Sale Term.

6.1 Term. Subject to satisfaction of the conditions precedent set forth in Section 10 hereof, the Sale shall commence at each Store on the first day following the entry of the Approval Order, but in no event later than June 22, 2011 (the “Sale Commencement Date”). Subject to the prior expiration of the term of any Store Lease (as reflected on Exhibit 4.1(r)), the Agent shall complete the Sale at each Store and vacate such Store in broom-clean condition by no later than August 31, 2011, unless the Sale is extended by mutual written agreement of Agent, Merchant and GECC (the “Sale Termination Date”; the period from the Sale Commencement Date to the Sale Termination Date as to each Store being the “Sale Term”). The Agent may, in its discretion, terminate the Sale at any Store upon not less than seven (7) days’ prior written notice (a “Vacate Notice”) to Merchant. In the event the Agent fails to provide Merchant with such timely notice, Agent shall be liable for and pay Occupancy Expenses for the days by which notice of a Store closing was less than seven (7) days.

6.2 Vacating the Stores. At the conclusion of the Sale, Agent agrees to leave the Stores in “broom clean” condition, ordinary wear and tear excepted, except for unsold items of FF&E, Café/Candy Inventory and News Stand Inventory and remaining Supplies. Agent shall vacate the Stores on or before the Sale Termination Date, as provided for herein, at which time Agent shall surrender and deliver the Store premises and Store keys to Merchant. Agent’s obligations to pay Occupancy Expenses, for each Store shall continue until the later of (i) the date specified in the Vacate Notice (which must be at least seven days from the date of the Vacate Notice) and (ii) the date the Agent vacates such Store. All assets of Merchant used by Agent in the conduct of the Sale (e.g. FF&E, Cafe/Candy Inventory, News Stand Inventory, etc.) shall be returned by Agent to Merchant at the end of the Sale Term to the extent the same have not been consumed in the conduct of the Sale (e.g., Supplies) or sold. Agent shall be responsible for all Occupancy Expenses (irrespective of any per diem cap on Occupancy Expenses) for a

Store for which Merchant is or becomes obligated resulting from Agent's failure to vacate such Store in a satisfactory and timely manner.

Section 7. Sale Proceeds.

7.1 Proceeds. For purposes of this Agreement, "Proceeds" shall mean the aggregate of (a) the total amount (in dollars) of all sales of Merchandise (and Distribution Center Inventory to the extent included) made under this Agreement, exclusive of Sales Taxes; and (b) all proceeds of Merchant's insurance for loss or damage to Merchandise (and Distribution Center Inventory to the extent included) or loss of cash arising from events occurring during the Sale Term. Proceeds shall also include any and all proceeds received by Agent from the disposition, in a commercially reasonable manner, of unsold Merchandise at the end of the Sale, whether through salvage, bulk sale or otherwise.

7.2 Deposit of Proceeds.

(a) All Proceeds of the Sale, Agent Sale FF&E, News Stand Inventory and Café/Candy Inventory (including credit card proceeds) shall be collected by Agent and deposited on a daily basis into depository accounts designated by Merchant for the Stores, which accounts shall be designated solely for the deposit of Proceeds of the Sale (including credit card proceeds), and the disbursement of amounts payable by Agent hereunder (the "Designated Deposit Accounts"), and Merchant shall exercise sole signatory authority and control with respect to the Designated Deposit Accounts. Upon request, Merchant shall deliver to Agent copies of all bank statements and other information relating to such accounts. Merchant shall not be responsible for, and Agent shall pay as an Expense hereunder, all bank fees and charges, including wire transfer charges, related to the Designated Deposit Accounts, whether notice of such expense is received during or after the Sale Term.

(b) Agent may establish its own accounts, dedicated solely for the deposit of the Proceeds and the disbursement of amounts payable to Agent hereunder (the "Agency Accounts") and Merchant shall promptly upon Agent's request execute and deliver all necessary documents to open and maintain the Agency Accounts; provided, however, Agent may elect to continue to use Merchant's Designated Deposit Accounts (as defined above) as the Agency Accounts. The Agency Accounts shall be dedicated solely to the deposit of Proceeds and the disbursement of amounts payable hereunder, and Agent shall exercise sole signatory authority and control with respect to the Agency Accounts. Upon request, Agent shall deliver to Merchant and GECC copies of all bank statements and other information relating to such accounts. Merchant shall not be responsible for, and Agent shall pay as an Expense hereunder, all bank fee and charges, including wire transfer charges, related to the Agency Accounts, whether received during or after the Sale Term. Upon Agent's designation of the Agency Accounts, all Proceeds of the Sale (including credit card proceeds) shall be deposited into the Agency Accounts. To the extent that Agent uses the Merchant's Designated Accounts as the Agency Accounts, Merchant shall pay by wire funds transfer, on a daily basis, to Agent all collected funds constituting Proceeds (including credit card proceeds) deposited in Merchant's Designated Deposit Accounts (but not any other

funds, including, without limitation, any proceeds of Merchant's inventory sold prior to the Sale Commencement Date).

7.3 Credit Card Proceeds. To the extent available, Agent shall use Merchant's credit card facilities (including Merchant's credit card terminals and processor(s), credit card processor coding, Merchant identification number(s) and existing bank accounts) for credit card Proceeds relating solely to the Sale, sales of News Stand Inventory and Café/Candy Inventory and Agent Sale FF&E. Merchant shall process credit card transactions on behalf of Agent and for Agent's account, applying customary practices and procedures. Agent may accept Merchant's proprietary card. Merchant shall cooperate with Agent to down-load data from all credit card terminals each day during the Sale Term and to effect settlement with Merchant's credit card processor(s) and shall take such other actions necessary to process credit card transactions on behalf of Agent under Merchant's identification number(s). Merchant shall not be responsible for, and Agent shall pay as an Expense hereunder, all credit card fees, charges and chargebacks related to the Sale, sales of News Stand Inventory and Café/Candy Inventory and Agent Sale FF&E, whether received during or after the Sale Term.

7.4 Petty Cash. In addition to the Guaranteed Amount, Agent shall purchase all cash in the Stores on and as of the start of business on the Sale Commencement Date and shall reimburse Merchant on a dollar for dollar basis therefor. Agent also shall purchase, on a dollar for dollar basis, all cash located in Merchant's bank accounts which are used by Agent hereunder, which shall be determined, and paid for, as of the Sale Commencement Date.

Section 8. Conduct of the Sale. Subject to the entry of the Approval Order, the Agent shall be permitted to conduct the Sale in accordance with the Approval Order. In addition to any other rights granted to Agent hereunder, in conducting the Sale, Agent, in the exercise of its sole discretion, shall have the following rights, limited only by the Sale Guidelines:

8.1 Rights of Agent. Subject to the Approval Order, the Agent shall be permitted to conduct the Sale as a "store closing" or similar themed sale throughout the Sale Term. The Agent shall conduct the Sale in the name of and on behalf of the Merchant in a commercially reasonable manner and in compliance with the terms of this Agreement and, except as modified by the Approval Order, all governing laws and applicable agreements to which Merchant is a party. The Agent shall conduct the Sale in accordance with the sale guidelines approved by the Bankruptcy Court in the February 18 Order (the "Sale Guidelines") and annexed hereto as Exhibit 8.1(a). In addition to any other rights granted to Agent hereunder in conducting the Sale, but subject to any applicable agreements to which Merchant is a party except as modified by the Approval Order, as applicable, the Agent, in the exercise of its reasonable discretion, shall have the right:

(a) to establish Sale prices and Store hours which are consistent with the terms of applicable leases and local laws or regulations, including without limitation Sunday closing laws; provided however, to the extent that Agent extends the hours of operation at one or more of the Stores beyond the hours historically operated by Merchant, which results in additional utilities and increased Occupancy Expenses in excess of the amounts set forth on

Exhibit 4.1(r), Agent shall reimburse Merchant the amounts, if any, of such additional costs and such additional costs shall constitute Expenses of the Sale.

(b) except as otherwise expressly included as an Expense and subject to applicable privacy and other laws, to use without charge during the Sale Term all FF&E, Store-level customer lists, mailing lists and email lists for the Stores (provided, however, such access shall be provided solely through Merchant's outside advertisement services for which Merchant shall use commercially reasonable efforts to cause such outside service providers to cooperate with and assist Agent, and the Agent shall not have direct access to any personally identifiable information contained therein), computer hardware and software, existing supplies located at the Stores, intangible assets (including Merchant's name, logo and tax identification numbers), Store keys, case keys, security codes and safe and lock combinations required to gain access to and operate the Stores, and any other assets of Merchant located at the Stores (whether owned, leased, or licensed) consistent with applicable terms of leases or licenses (except as modified by the Approval Order);

(c) so long as such access does not unreasonably disrupt the business operations of Merchant, to use (i) Merchant's central office facilities, central administrative services and personnel to process payroll, perform MIS and provide other central office services necessary for the Sale to the extent that such services are normally provided by Merchant in house, at no additional cost to Agent (except where otherwise designated as an Expense pursuant to Section 4.1(s) hereof); provided, however, that, in the event that Agent expressly requests Merchant to provide services other than those normally provided to the Stores and relating to the sale of merchandise by Merchant, Agent shall be responsible for the actual incremental cost of such services as an Expense; and (ii) sufficient office space located at Merchant's central office facility;

(d) to establish and implement advertising, signage and promotion programs consistent with "store closing" or similar theme (including, without limitation, by means of media advertising, A-frame and similar interior and exterior signs and banners and use of sign walkers) in a manner consistent with the Sale Guidelines and the Approval Order; and

(e) to transfer Merchandise between and among the Stores; provided, however, the Agent shall not transfer Merchandise between Stores unless the Inventory Taking at the transferring Store has been completed; provided, further, that Agent shall provide Merchant with prior written notice of all such transfers.

8.2 Terms of Sales to Customers.

(a) All sales of Merchandise will be "final sales" and "as is," and all advertisements and sales receipts will reflect the same. Agent shall not warrant the Merchandise in any manner, but will, to the extent legally permissible, pass on all manufacturers' warranties to customers. All sales will be made only for cash, nationally recognized bank credit cards and, in Agent's discretion, personal checks, provided, however, if Agent determines to accept personal checks, Agent shall bear the risk of nonpayment or loss with respect thereto. Agent shall clearly mark all tickets and receipts for the Merchandise sold at the Stores during the Sale Term, so as to

distinguish such Merchandise from the merchandise sold prior to the Sale Commencement Date and shall use commercially reasonable efforts to have all UPC codes blacked out with a marker at the point of sale.

(b) Gift Cards/Borders Rewards Plus Loyalty Program/Discounts. During the Sale Term, Agent shall accept Merchant's gift cards, Borders Rewards Plus Loyalty Program discounts, Borders Bucks, and Merchandise credits issued by Merchant prior to the Sale Commencement Date to the extent the Merchant has authority to honor such items from the Bankruptcy Court and Merchant shall reimburse Agent for such amounts during the weekly sale reconciliation provided for in Section 8.6.

8.3 Sales Taxes.

(a) During the Sale Term, all sales, excise, gross receipts and other taxes attributable to sales of Merchandise, sales of News Stand Inventory and Café/Candy Inventory and Agent Sale FF&E, as indicated on Merchant's point of sale equipment (other than taxes on income) payable to any taxing authority having jurisdiction (collectively, "Sales Taxes") shall be added to the sales price of Merchandise, News Stand Inventory, Café/Candy Inventory and Agent Sale FF&E and collected by Agent, on Merchant's behalf, at the time of sale. All Sales Taxes shall be deposited into a segregated account designated by Merchant and Agent solely for the deposit of such Sales Taxes (the "Sales Taxes Account"). Provided that Agent has collected all Sales Taxes during the Sale and remitted the proceeds thereof to Merchant, Merchant shall prepare and file all applicable reports and documents required by the applicable taxing authorities, and Merchant shall promptly pay all Sales Taxes from the Sales Taxes Account. Merchant will be given access to the computation of gross receipts for verification of all such tax collections. If Agent fails to perform its responsibilities in accordance with this Section 8.3, Agent shall indemnify and hold harmless Merchant from and against any and all costs, including, but not limited to, reasonable attorneys' fees, assessments, fines or penalties which Merchant sustains or incurs as a result or consequence of the failure by Agent to collect and/or remit Sales Taxes and/or the failure by Agent to promptly deliver any and all reports and other documents required to enable Merchant to file any requisite returns with such taxing authorities.

(b) Without limiting the generality of Section 8.3(a) hereof, it is hereby agreed that, as Agent is conducting the Sale solely as agent for Merchant, various payments that this Agreement contemplates that one party may make to the other party (including the payment by Agent of the Guaranteed Amount) do not represent the sale of tangible personal property and, accordingly, are not subject to Sales Taxes.

8.4 Supplies. Agent shall have the right to use, without charge, all existing supplies located at the Stores, including, without limitation, boxes, bags, paper, twine and similar sales materials (collectively, "Supplies"). In the event that additional Supplies are required in any of the Stores during the Sale, Merchant agrees to promptly provide the same to Agent to the extent reasonably practicable and if available, which shall constitute an Expense pursuant to Section 4.1(j) hereof. Merchant does not warrant that the existing Supplies as of the Sale Commencement Date are adequate for the purposes of the Sale.

8.5 Returns of Merchandise. During the Sale Term, Agent shall accept returns of merchandise sold by Merchant prior to the Sale Commencement Date (“Returned Merchandise”), provided that such return is accompanied by the original Store register receipt and is otherwise in compliance with Merchant’s return and price adjustment policy in effect as of the date such item was purchased. Subject to Merchant’s right to return such defective goods to Merchant’s vendors, if such Returned Merchandise is saleable as first-quality Merchandise, it shall be included in Merchandise and valued at the Cost Value applicable to such item multiplied by the difference between 100% and the prevailing discount on similar items of Merchandise as of the date such item is returned to a Store. In the event that Returned Merchandise constitutes Defective Merchandise (“Returned Defective Merchandise”), Merchant and Agent shall mutually agree upon the Cost Value for such item of Returned Defective Merchandise; provided, however, in the event that Merchant and Agent cannot mutually agree upon the Cost Value for such Returned Defective Merchandise, or such Returned Defective Merchandise constitutes Excluded Defective Merchandise, then such Returned Defective Merchandise shall constitute Merchant Consignment Goods or Excluded Defective Merchandise and excluded from the Sale. The aggregate Cost Value of the Merchandise shall be increased by the Cost Value of any Returned Merchandise included in Merchandise (determined in accordance with this Section 8.5), and the Guaranteed Amount shall be adjusted accordingly. Merchant shall promptly reimburse Agent in cash for any refunds Agent is required to issue to customers in respect of any Returned Merchandise. Returned Merchandise not included in Merchandise shall be disposed of by Agent in accordance with instructions received from Merchant or, in the absence of such instructions, treated as Merchant Consignment Goods. Any increases in the Guaranteed Amount in connection with returned Merchandise shall be accounted for on a weekly basis. Except to the extent that Merchant and Agent agree that Merchant’s POS or other applicable systems can account for returns of Merchandise, all returns must be noted and described in a detailed log and shall identify the receipt number for the original receipt and the date the item was purchased (the “Returned Merchandise Log”), to be maintained by Agent in a form acceptable to Merchant. Agent shall provide Merchant with a copy of any Returned Merchandise Log on a weekly basis during the Sale. Agent shall not be entitled to any adjustment, credit or payment for Returned Merchandise which is not properly noted and described in the Returned Merchandise Log (or otherwise reflected in Merchant’s POS systems).

8.6. Sale Reconciliation. On each Wednesday during the Sale Term, commencing on the second Wednesday after the Sale Commencement Date, Agent and Merchant shall cooperate to reconcile Proceeds, Expenses, Distribution Center Inventory, if any, and all other items identified herein for weekly reconciliation, and such other Sale-related items as either party shall reasonably request, in each case for the prior week or partial week (i.e. Sunday through Saturday), all pursuant to procedures agreed upon by Merchant and Agent (with a copy thereof to be provided to GECC). Within thirty (30) days after the end of the Sale Term, Agent and Merchant shall complete a final reconciliation of the Sale, the written results of which shall be certified by representatives of each of Merchant and Agent as a final settlement of accounts between Merchant and Agent (with a copy thereof to be provided to GECC).

8.7 Force Majeure. If any casualty, act of terrorism, or act of God prevents or substantially inhibits the conduct of business in the ordinary course at any Store, such Store and

the Merchandise located at such Store shall, in Agent's discretion, be eliminated from the Sale and considered to be deleted from this Agreement as of the date of such event, and Agent and Merchant shall have no further rights or obligations hereunder with respect thereto; provided, however, that (i) subject to the terms of Section 7.1 above, the proceeds of any insurance attributable to such Merchandise shall constitute Proceeds hereunder, and (ii) the Guaranteed Amount shall be reduced to account for any Merchandise eliminated from the Sale which is not the subject of insurance proceeds, and, to the extent the Agent has paid the Guaranteed Amount, Merchant shall reimburse Agent for the amount the Guaranteed Amount is so reduced prior to the end of the Sale Term.

8.8 Merchant's Right to Monitor. Merchant shall have the right to monitor the Sale and activities attendant thereto and to be present in the Stores during the hours when the Stores are open for business; provided that Merchant's presence does not unreasonably disrupt the conduct of the Sale. Merchant shall also have a right of access to the Stores at any time in the event of an emergency situation and shall promptly notify Agent of such emergency.

Section 9. Employee Matters.

9.1 Merchant's Employees. Agent may use Merchant's employees in the conduct of the Sale to the extent Agent deems expedient, and Agent may select and schedule the number and type of Merchant's employees required for the Sale. Agent shall identify any such employees to be used in connection with the Sale (each such employee, a "Retained Employee") prior to the Sale Commencement Date. Notwithstanding the foregoing, Merchant's employees shall at all times remain employees of Merchant. Agent's selection and scheduling of Merchant's employees shall at all times comply with all applicable laws and regulations. Merchant and Agent agree that, except to the extent that wages and benefits of Retained Employees constitute Expenses hereunder, nothing contained in this Agreement and none of Agent's actions taken in respect of the Sale shall be deemed to constitute an assumption by Agent of any of Merchant's obligations relating to any of Merchant's employees including, without limitation, Excluded Benefits, WARN Act claims and other termination type claims and obligations, or any other amounts required to be paid by statute or law; nor shall Agent become liable under any employment agreement or be deemed a joint or successor employer with respect to such employees. Agent shall comply in the conduct of the Sale with all applicable laws and Merchant's employee rules, regulations, guidelines and policies which have been provided to Agent in writing. Merchant shall not, without the prior consent of Agent, raise the salary or wages or increase the benefits for, or pay any bonuses or other extraordinary payments to, any Store employees prior to the Sale Termination Date. Merchant shall not transfer any Retained Employee during the Sale Term without Agent's prior consent, which consent shall not be unreasonably withheld or delayed.

9.2 Termination of Employees. Agent may in its discretion stop using any Retained Employee at any time during the Sale, subject to the conditions provided for herein. In the event that Agent desires to cease using any Retained Employee, Agent shall notify Merchant at least seven (7) days prior thereto, so that Merchant may coordinate the termination of such employee; provided, however, that, in the event that Agent determines to cease using an employee "for

cause” (which shall consist of dishonesty, fraud or breach of employee duties), the seven (7) day notice period shall not apply, provided further, however, that Agent shall immediately notify Merchant of the basis for such “cause” so that Merchant can arrange for termination of such employee. From and after the date of this Agreement and until the Sale Termination Date, Merchant shall not transfer or dismiss Retained Employees except “for cause” without Agent’s prior consent. Notwithstanding the foregoing, Agent shall not have the right to terminate the actual employment of any Retained Employee, but rather may only cease using such employee in the Sale and paying any Expenses with respect to such employee.

9.3 Payroll Matters. During the Sale Term, Merchant shall process the base payroll for all Retained Employees as well as payroll for any of Merchant’s former employees or temporary labor retained by Agent for the Sale. Each Wednesday (or such other date as may be reasonably requested by Merchant to permit the funding of the payroll accounts before such payroll is due and payable) during the Sale Term, Merchant shall transfer, or, to the extent that the Payment Date has passed or existence of any shortfall, Agent shall transfer, to Merchant’s payroll accounts an amount equal to the base payroll for Retained Employees plus related payroll taxes, workers’ compensation and benefits for such week which constitute Expenses hereunder.

9.4 Employee Retention Bonuses. Agent may pay, as an Expense, retention bonuses (“Retention Bonuses”) (which bonuses shall be inclusive of payroll taxes, but as to which no benefits shall be payable), up to a maximum of ten percent (10%) of base payroll for all Retained Employees, to such Retained Employees who do not voluntarily leave employment and are not terminated “for cause,” as it may determine in its discretion. The amount of such Retention Bonuses shall be in an amount to be determined by Agent, in its discretion, and shall be payable within thirty (30) days after the Sale Termination Date, and shall be processed through Merchant’s payroll system. Agent shall provide Merchant with a copy of Agent’s Retention Bonus plan prior to the Sale Commencement Date.

Section 10. Conditions Precedent and Subsequent. The willingness of Agent and Merchant to enter into the transactions contemplated under this Agreement is directly conditioned upon the satisfaction of the following conditions at the time or during the time periods indicated, unless specifically waived in writing by the applicable party:

(a) All representations and warranties of Merchant and Agent hereunder shall be true and correct in all material respects and no Event of Default shall have occurred at and as of the date hereof and as of the Sale Commencement Date; and

(b) Merchant shall have obtained the Approval Order on or before June 21, 2011.

Section 11. Representations, Warranties and Covenants.

11.1 Merchant’s Representations, Warranties and Covenants. Merchant hereby represents, warrants and covenants in favor of Agent as follows:

(a) each entity comprising Merchant (i) is a corporation duly organized, validly existing and in good standing under the laws of the state or province of its formation (except as may be a result of the commencement and/or pendency of the Merchant's Chapter 11 Cases); (ii) subject to compliance with the Bankruptcy Code, has all requisite corporate power and authority to own, lease and operate its assets and properties and to carry on its business as presently conducted; and (iii) is, and during the Sale Term will continue to be, duly authorized and qualified to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification, including all jurisdictions in which the Stores are located, except, in each case, to the extent that the failure to be in good standing or so qualified could not reasonably be expected to have a material adverse effect on the ability of Merchant to execute and deliver this Agreement and perform fully its obligations hereunder.

(b) Except as may be required in connection with the issuance of the Approval Order: (i) the Merchant has the right, power and authority to execute and deliver this Agreement and each other document and agreement contemplated hereby (collectively, together with this Agreement, the "Agency Documents") and to perform fully its obligations thereunder; (ii) Merchant has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents, and no further consent or approval is required for Merchant to enter into and deliver the Agency Documents, to perform its obligations thereunder and to consummate the Sale, except for any such consent the failure of which to be obtained could not reasonably be expected to have a material adverse effect on the ability of Merchant to execute and deliver this Agreement and perform fully its obligations hereunder; and (iii) each of the Agency Documents has been duly executed and delivered by Merchant and constitutes the legal, valid and binding obligation of Merchant enforceable in accordance with its terms.

(c) Merchant owns, and will own at all times during the Sale Term, good and marketable title to all of the Merchandise and Owned FF&E to be included in the Sale, free and clear of all liens, claims and encumbrances of any nature, other than the liens listed on Exhibit 11.1(c), any applicable statutory liens, and any super-priority liens, claims or encumbrances approved by Bankruptcy Code in connection with the Merchant's debtor-in-possession financing. Merchant shall not create, incur, assume or suffer to exist any security interest, lien or other charge or encumbrance upon or with respect to any of the Merchandise, the Owned FF&E or the Proceeds other than as provided for herein (including those listed on Exhibit 11.1(c)). Any Approval Order shall provide that all such liens shall be transferred to and attach only to the Guaranteed Amount or other amounts payable to Merchant hereunder.

(d) Merchant has maintained its pricing files in the ordinary course of business (including the Perpetual File), and prices charged to the public for goods are the same in all material respects as set forth in such pricing files (including Perpetual File) for the periods indicated therein (without consideration of any point of sale markdowns where the point of sale markdown is reflected in the price files (including Perpetual File)), and all pricing files (including Perpetual File) and records are true and accurate in all material respects as to the actual cost to Merchant for purchasing the goods referred to therein, the costs related thereto and as to the selling price to the public for such goods (without consideration of any point of sale markdowns) as of the dates and for the periods indicated therein. Merchant represents that to its

knowledge (i) the ticketed prices of all items of Merchandise do not and shall not include any Sales Taxes and (ii) all registers located at the Stores are programmed to correctly compute materially all Sales Taxes required to be paid by the customer under applicable law, as such calculations have been identified to Merchant by its retained service provider.

(e) Except with respect to Merchant's termination of point of sale events prior to the Sale Commencement Date in the manner previously disclosed to Agent, to its knowledge Merchant has not marked up or raised, and shall not up to the Sale Commencement Date mark up or raise, the price of any items of Merchandise, or removed or altered any tickets or any indicia of clearance merchandise, except in the ordinary course of business and except for the effects of the termination of promotional events.

(f) Through the Sale Commencement Date, Merchant shall use reasonable efforts to ticket or mark all items of inventory received at the Stores prior to the Sale Commencement in a manner consistent with similar Merchandise located at the Stores and in accordance with Merchant's ordinary course past practices and policies relative to pricing and marking inventory.

(g) Since [_____, 2011], Merchant has not, and through the completion of the Inventory Taking, Merchant shall not purchase for or transfer to or from the Stores any Merchandise outside the ordinary course except for the transfer of Distribution Center Inventory (to the extent included in the Sale). Merchant's replenishment has not and will not be consistent with historic and customary levels or practices, as a result of, among other things, Merchant's Chapter 11 filing and/or delays in procuring shipments from its vendors. From and after the date hereof, Merchant shall discontinue issuing new orders for replenishment for the Stores.

(h) To the best of Merchant's knowledge, all Merchandise is in compliance with all applicable federal, state or local product safety laws, rules and standards. Merchant shall use reasonable efforts to provide Agent with its historic policies and practices, if any, regarding product recalls prior to the Sale Commencement Date.

(i) Subject to the provisions of the Approval Order, throughout the Sale Term, the Agent shall have the right to the unencumbered use and occupancy of, and peaceful and quiet possession of, each of the Stores, the assets currently located at the Stores and the utilities and other services provided at the Stores. Throughout the Sale Term and subject to Agent complying with its obligations to reimburse Merchant, the Merchant shall use commercially reasonable efforts to (a) maintain or (b) cause any applicable landlord to comply with its obligations under applicable Lease and occupancy agreements to maintain, in good working order, condition and repair all cash registers, heating systems, air conditioning systems, elevators, escalators and all other mechanical devices, but solely to the extent that the Merchant reasonably deems necessary for the Sale to be conducted without material interruption and in a manner that is safe and in compliance with applicable laws at the Stores; provided that, it is understood that the maintenance of cash registers, heating systems, air conditioning systems, elevators, and escalators are necessary for the Sale to be conducted without material interruption. Except as may be impacted by the Chapter 11 Case filing or otherwise restricted by the Chapter 11 Case

filing or as otherwise provided in this Agreement, and absent a bona fide dispute, throughout the Sale Term, Merchant shall remain current on all expenses and payables necessary for the conduct of the Sale.

(j) Except as may be impacted by the Chapter 11 Case filing or otherwise restricted by the Chapter 11 Case filing, Merchant had paid, and will continue to pay throughout the Sale Term, all self-insured or Merchant funded employee benefit programs for Store employees, including health and medical benefits and insurance and all proper claims made or to be made in accordance with such program.

(k) Since [_____, 2011], Merchant has not intentionally taken, and shall not throughout the Sale Term intentionally take, any actions with the intent of increasing the Expenses of Sale, including, without limitation, increasing salaries or other amounts payable to employees, except (i) there may have been instances that, in an effort to encourage one or more employees to remain in Merchant's employ, Merchant increased the salaries of such employees (such action not being with any intent to increase any Expense of the Sale or in anticipation thereof); and (ii) to the extent an employee was due an annual raise.

(l) Except as may be impacted by the filing for Chapter 11 protection or otherwise restricted by the Chapter 11 filing, Merchant covenants to continue to operate the Stores in all material respects in the ordinary course of business from the date of this Agreement to the Sale Commencement Date by: (i) selling inventory during such period at customary prices consistent with the ordinary course of business; (ii) not promoting or advertising any sales or in-store promotions (including POS promotions) to the public (except for Merchant's pending advertisements as of the date of this Agreement and/or Merchant's promotions for the period through the Sale Commencement Date, as reflected on Exhibit 11.1(l)); (iii) except as may occur in the ordinary course of business or as may be required by applicable law, not returning inventory to vendors and not transferring inventory or supplies between or among Stores; and (iv) except as may occur in the ordinary course of business, not making any management personnel moves or changes at the Stores without prior written notice to and consultation with (but not approval of) Agent.

(m) The aggregate Cost Value of the Merchandise as a percentage of the aggregate Retail Price of the Merchandise (as determined in accordance with the Inventory Taking with respect to the Merchandise, but excluding Distribution Center Inventory, if any) (the "Cost Factor") shall not be greater than [_____] % (the "Cost Factor Threshold"). To the extent that the actual Cost Factor for the Merchandise is greater than the Cost Factor Threshold, then such deviation shall not constitute a breach of any representation or warranty, or an Event of Default; provided, however, that, then the Guaranty Percentage shall adjust (in addition to any adjustment applicable pursuant to section 3.1(c) hereof) in accordance with Exhibit 11.1(m). For the purposes of this Agreement, "Retail Price" means the lower of (i) the lowest ticketed, marked or shelf price, (ii) the current selling price for such item of Merchandise, excluding in each instance Excluded Price Adjustments or (iii) the current retail or aged price, as applicable, for each item of Merchandise, as reflected in the Merchant's Perpetual File. If an item of Merchandise has more than one ticketed price, or if multiple items of the same SKU are ticketed

at different prices, or have a different PLU price, and such pricing does not otherwise qualify as an Excluded Price Adjustment, the lowest ticketed, marked or PLU price on any such item shall prevail for such item or for all such items within the same SKU, as the case may be, that are located within the same location (as the case may be, the “Lowest Location Price”), unless it is reasonably determined by Merchant and Agent that the applicable Lowest Location Price was mismarked or such item was priced because it was damaged or marked as “as is,” in which case the higher price shall control; provided, however, in determining the Lowest Location Price with respect to any item of Merchandise at a Store, the Lowest Location Price shall be determined based upon the lowest ticketed, marked or PLU price for such item on a per Store basis. No adjustment to Retail Price shall be made with respect to different ticketed price, marked price, or PLU prices for items located in different Stores. For purposes of this Agreement, the Cost Factor shall be calculated by dividing the aggregate Cost Value of the Merchandise by the aggregate Retail Price of the Merchandise.

(n) To the best of Merchant’s knowledge, all documents, written information and supplements provided by Merchant to Agent in connection with Agent’s due diligence and the negotiation of this Agreement were true and accurate in all material respects at the time provided.

(o) To the best of Merchant’s knowledge, Merchant has not since [_____] 2011 shipped any Excluded Defective Merchandise from the Distribution Centers to the Stores. Merchant will not ship any Excluded Defective Merchandise from the date of this Agreement from the Distribution Centers to the Stores.

(p) Merchant will not, prior to the Sale Termination Date, offer any promotions or discounts at its retail store locations that are not closing, except with respect to Other Store Closings or as detailed on Exhibit 11.1(p) and other than in connection with further store closing sales approved by the Bankruptcy Court.

(q) Merchant will not, prior to the Sale Termination Date, offer any promotions or discounts at its on-going retail store locations, except as disclosed to Agent in due diligence, provided, that, Merchant may increase the discounts previously disclosed to Agent from [___%] to [___%].

(r) Since [_____] 2011, Merchant has not, and through the completion of the Inventory Taking, Merchant shall not transfer any Distribution Center Inventory or any other merchandise to the Stores without Agent’s consent other than ordinary course replenishment.

11.2 Agent’s Representations, Warranties and Covenants. Agent hereby represents, warrants and covenants in favor of Merchant as follows:

(a) Agent: (i) is a limited partnership, corporation or limited liability company (as the case may be) duly and validly existing and in good standing under the laws of the State of its organization; and (ii) has all requisite power and authority to carry on its business as presently conducted and to consummate the transactions contemplated hereby.

(b) Agent has the right, power and authority to execute and deliver each of the Agency Documents to which it is a party and to perform fully its obligations thereunder. Agent has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents, and no further consent or approval is required on the part of Agent for Agent to enter into and deliver the Agency Documents, to perform its obligations thereunder and to consummate the Sale. Each of the Agency Documents has been duly executed and delivered by the Agent and constitutes the legal, valid and binding obligation of Agent enforceable in accordance with its terms. No court order or decree of any federal, state or local governmental authority or regulatory body is in effect that would prevent or impair, or is required for, Agent's consummation of the transactions contemplated by this Agreement (other than the Approval Order), and no consent of any third party which has not been obtained is required therefor, other than as provided herein. No contract or other agreement to which Agent is a party or by which Agent is otherwise bound will prevent or impair the consummation of the transactions contemplated by this Agreement.

(c) No action, arbitration, suit, notice or legal administrative or other proceeding before any court or governmental body has been instituted by or against Agent, or has been settled or resolved or, to Agent's knowledge, has been threatened against or affects Agent, which questions the validity of this Agreement or any action taken or to be taken by Agent in connection with this Agreement or which, if adversely determined, would have a material adverse effect upon Agent's ability to perform its obligations under this Agreement.

(d) The Sale shall be conducted in compliance with all applicable state and local laws, rules and regulations and Merchant's leases and other agreements, except as provided for in the Sale Guidelines and Approval Order.

(e) Absent prior consent by the Merchant, Agent will not cause any non-emergency repairs or maintenance (emergency repairs are repairs necessary to preserve the security of a premise or to ensure customer safety) to be conducted at the Stores.

Section 12. Insurance.

12.1 Merchant's Liability Insurance. Merchant shall continue until the Sale Termination Date, at Agent's cost as an Occupancy Expense hereunder and in such amounts as it currently has in effect, all of its liability insurance policies covering injuries to persons and property in, or in connection with, Merchant's operation of the Stores and shall endeavor to cause Agent to be named as an additional named insured (as its interest may appear) with respect to all such policies. Merchant shall deliver to Agent certificates evidencing such insurance setting forth the duration thereof and naming Agent as an additional named insured, in form reasonably satisfactory to Agent. All such policies shall require at least thirty (30) days' prior notice to Agent of cancellation, non-renewal or material change during the Sale Term. In the event of a claim under any such policies, Merchant shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder (which amounts shall be paid by Agent as an Occupancy Expense), unless it is determined that liability arose by reason of the

wrongful acts or omissions or negligence of Agent, or Agent's employees, independent contractors or agents (including Merchant's employees being supervised by Agent).

12.2 Merchant's Casualty Insurance. Merchant will provide throughout the Sale Term, at Agent's cost as an Occupancy Expense hereunder, fire, flood, theft and extended coverage casualty insurance covering the Merchandise in a total amount equal to no less than the retail value thereof. In the event of a loss to the Merchandise on or after the date of this Agreement, the Proceeds of such insurance attributable to the Merchandise, plus any self insurance amounts and the amount of any deductible or self-insured retention (which amounts shall be paid by Agent as an Expense), shall constitute Proceeds hereunder. Merchant shall deliver to Agent certificates evidencing such insurance, setting forth the duration thereof, in form and substance reasonably satisfactory to Agent. All such policies shall require at least thirty (30) days' prior notice to the Agent of cancellation, non-renewal or material change during the Sale Term. Merchant shall not make any change in the amount of any deductibles or self insurance amounts prior to the Sale Termination Date without Agent's prior written consent.

12.3 Agent's Insurance. Agent shall maintain as an Expense hereunder throughout the Sale Term, in such amounts as it currently has in effect and as set forth in Exhibit 12.3 hereto, comprehensive public liability insurance policies covering injuries to persons and property in or in connection with Agent's agency at the Stores, and shall cause Merchant and GECC to be named as additional insureds and loss payees with respect to such policies. Agent shall deliver to Merchant certificates evidencing such insurance policies setting forth the duration thereof and naming Merchant as additional insureds, in form and substance reasonably satisfactory to Merchant. In the event of a claim under any such policies, Agent shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder, unless it is determined that liability arose by reason of the wrongful acts or omissions or negligence of Merchant or Merchant's independent contractors or agents, other than Agent or Agent's employees, agents or independent contractors (including Merchant's employees under Agent's supervision). All such policies shall require at least thirty (30) days' prior notice to the Merchant of cancellation, non-renewal or material change during the Sale Term. Agent shall not make any change in the amount of any deductibles or self insurance amounts prior to the Sale Termination Date without Merchant's prior written consent.

12.4 Worker's Compensation Insurance. Merchant shall at all times during the Sale Term maintain in full force and effect workers' compensation insurance (including employer liability insurance) covering all Retained Employees in compliance with all statutory requirements and subject to approval of the Bankruptcy Court.

Section 13. Indemnification

13.1 Merchant Indemnification. Merchant shall indemnify and hold Agent and its officers, directors, employees, agents and independent contractors (collectively, "Agent Indemnified Parties") harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from, or related to: (i) Merchant's material breach of or

failure to comply with any of its agreements, covenants, representations or warranties contained in any Agency Document; (ii) subject to Agent's satisfaction of its obligations pursuant to Section 4.1(a) and (b) hereof, any failure of Merchant to pay to its employees any wages, salaries or benefits due to such employees during the Sale Term; (iii) subject to Agent's compliance with its obligations under Section 8.3 hereof, any failure by Merchant to pay any Sales Taxes to the proper taxing authorities or to properly file with any taxing authorities any reports or documents required by applicable law to be filed in respect thereof; (iv) any liability or other claims asserted by customers, any of Merchant's employees, or in connection with the performance of the terms of this Agreement any other person against any Agent Indemnified Party (including, without limitation, claims by employees arising under collective bargaining agreements, worker's compensation or under the WARN Act); or (v) the gross negligence (including omissions) or willful misconduct of Merchant, or its officers, directors, employees agents or representatives.

13.2 Agent Indemnification. Agent shall indemnify and hold Merchant and its officers, directors, employees, agents and representatives harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from, or related to: (i) Agent's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained in any Agency Document; (ii) any claims by any party engaged by Agent as an employee, agent, representative or independent contractor arising out of such engagement; (iii) any harassment or any other unlawful, tortious or otherwise actionable treatment of any of the Merchant's employees or agents by Agent or any of its employees, agents, representatives or independent contractors; (iv) as set forth in Section 8.3 hereof and (v) the gross negligence (including omissions) or willful misconduct of Agent, its officers, directors, employees, agents, representatives or independent contractors.

Section 14. Defaults. The following shall constitute "Events of Default" hereunder:

(a) The Merchant or Agent shall fail to perform any of their respective material obligations hereunder if such failure remains uncured seven (7) days after receipt of written notice thereof to the defaulting party;

(b) Any representation or warranty made by Merchant or Agent proves untrue in any material respect as of the date made and, to the extent curable, continues uncured seven (7) days after written notice to the defaulting party;

(c) The Sale is terminated or materially interrupted or impaired for any reason other than (i) an Event of Default by Agent; or (ii) any other material breach or action by Agent not authorized under the Agency Agreement; provided however, it is expressly understood that Merchant's conduct of "going out of business", "store closing", "total liquidation", "everything must go", or similar themed sales at stores other than the Stores (the "Other Store Closings") during a period that overlaps with the Sale Term shall not be deemed an Event of Default, or a material interruption or impairment of the Sale or this Agreement Agent acknowledges that it has no remedies under this Agreement in connection with, or a result of, such Other Store Closings.

In the event of an Event of Default, the non-defaulting party may, in its discretion, elect to terminate this Agreement upon seven (7) business days' written notice to the other party.

Any party's damages or entitlement to equitable relief on account of an Event of Default shall be determined by the Bankruptcy Court.

Section 15. Miscellaneous.

15.1 Notices. All notices and communications provided for pursuant to this Agreement shall be in writing and sent (i) by email and (ii) by hand, by facsimile or by Federal Express or other recognized overnight delivery service, as follows (with Merchant and Agent to receive all notices regardless of their origin):

If to the Agent: [TO BE ADDED]

With a copy to: [TO BE ADDED]

If to the Merchant: BORDERS GROUP INC.
100 Phoenix Drive
Ann Arbor, MI 48108
Attn: Matt Chosid
Fax: (734) 477-1370
Email: mchosid1@bordersgroupinc.com

With a copy to: KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP
1633 Broadway
New York, NY 10019
Attn: Andrew K. Glenn, Esq.
Barry Rutcofsky, Esq.
Daniel A. Fliman, Esq.
Tel: (212) 506-1700
Fax: (212) 506-1800
Email: aglenn@kasowitz.com
brutcofsky@kasowitz.com
dfliman@kasowitz.com

If to GECC: GE CAPITAL
Corporate Retail Finance
500 West Monroe Street
10th Floor
Chicago, IL 60661-3679 USA
Attn: Kristina M. Miller
Senior Vice President
Tel: (312) 463-2257
Fax: (312) 441-6817
Mob: (219) 680-0779
Email: KristinaMMiller@ge.com
www.gelending.com

With a copy to: GENERAL ELECTRIC CAPITAL
CORPORATION
201 Merritt 7
PO Box 5201
Norwalk, CT 06851
Attn: Borders/John Pistocchi
Fax: (203) 956-4002

If to GA: GA Capital
One Post Office Square
Suite 3765
Boston, MA 02109
Attention: David Storer, Director
Tel: 617 692-8303
Email: dstorer@greatamerican.com

With a copy to: Kevin J. Simard
Riemer & Braunstein LLP
Three Center Plaza
Boston, Massachusetts 02108
Direct: (617) 880-3431
Direct Fax: (617) 692-3431
Firm Fax: (617) 880-3456
ksimard@riemerlaw.com

15.2 Governing Law. This Agreement shall be governed and construed in accordance with the laws of New York without regard to conflicts of laws principles thereof, except where governed by the Bankruptcy Code. Each of the parties hereto irrevocably and unconditionally submits, for itself and its properties, to the exclusive jurisdiction of the Bankruptcy Court, in any action or proceeding arising out of or relating to this Agreement.

15.3 Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the transactions 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.

15.4 Amendments. This Agreement may not be modified except in a written instrument executed by each of the parties hereto and with the prior written consent of GECC.

15.5 No Waiver. 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. 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.

15.6 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Agent and Merchant and their respective successors and assigns; provided, however, that this Agreement may not be assigned by Merchant or Agent to any party without the prior written consent of the other.

15.7 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one agreement. This Agreement shall be effective upon delivery of original signature pages or “pdf” or facsimile copies thereof executed by each of the parties.

15.8 Section Headings. The headings of sections of this Agreement are inserted for convenience only and shall not be considered for the purpose of determining the meaning or legal effect of any provisions hereof.

15.9 FF&E. Agent shall sell FF&E (other than Excluded Owned FF&E) owned by Merchant located at the Stores and any café supplies not packaged for retail sale (which for the avoidance of doubt excludes Café/Candy Inventory) (the “Owned FF&E”); provided, however, that within seven (7) days of the Sale Commencement Date, Merchant shall deliver to Agent a list of FF&E (with the consent of GA Capital, LLC (“GA”), as Term B Agent to the DIP Facility and with copies to be provided to GECC) located at the Stores to be excluded from Agent’s sale (the “Excluded Owned FF&E”) (the Owned FF&E less the Excluded Owned FF&E is referred to herein as the “Agent Sale FF&E”). Agent shall be entitled to receive a commission equal to 20% of the net proceeds from the sale of Agent Sale FF&E (net of Sales Taxes and the expenses of disposing of the FF&E); provided however that Merchant shall be responsible for payment of expenses incurred in connection with the disposition of the Agent Sale FF&E in accordance with a budget to be mutually agreed upon between Merchant and Agent (in consultation with GA with copies to be provided to GECC). In either event, as of the Sale Termination Date, Agent may abandon, in place, any unsold Agent Sale FF&E, at the Stores. All proceeds from the disposition of the Agent Sale FF&E shall be deposited in a segregated account designated solely for the deposit of the proceeds from the Agent Sale FF&E which shall be a Merchant’s Designated Deposit Account.

15.10 Reporting. Agent shall furnish Merchant and GECC with weekly reports (including reports that comply with Merchant’s current weekly cash reporting to its central office) reflecting the progress of the Sale, which shall specify the Proceeds (including proceeds from the sale of News Stand and Café/Candy Inventory) received to date and shall furnish Merchant and GECC with such other information regarding the Sale as Merchant reasonably requests. The Agent will maintain and provide to Merchant and GECC sales records to permit calculation of and compliance with any percentage of rent obligations under Store leases.

During the course of the Sale, Merchant and GECC shall have the right to have representatives continually act as observers of the Sale in the Stores, so long as they do not interfere with the conduct of the Sale.

15.11 Agent. All references to “Agent” hereunder shall mean [_____].

Section 16. Security Interest. In consideration of Agent’s payment of the Guaranteed Amount Deposit, Expenses and the provision of services hereunder to Merchant, upon issuance of the Letter of Credit and effective as of the Payment Date, Merchant hereby grants to Agent a valid and perfected first priority security interest in and lien (subject to the subordination provisions set forth herein below) upon (x) the Merchandise, (y) proceeds realized from the disposition of the Agent Sale FF&E up to the amount of the Agent’s disposition commission related to Agent Sale FF&E as provided for in Section 15.9, and (z) the Proceeds, to secure all obligations of Merchant to Agent hereunder provided, however, that the security interest granted to Agent hereunder shall remain junior and subordinate in all respects to (a) Merchant’s rights to receive payment of the Guaranteed Amount and, Expenses and any other undisputed amounts due from Agent to Merchant hereunder (collectively, the “Agent’s Payment Obligations”), and (b) the liens, security interests and claims of the GECC and the Lenders, to the extent of the unpaid portion of Agent’s Payment Obligations. Upon the entry of the Approval Order and upon payment of the Guaranteed Amount Deposit pursuant to Section 3.3(a) hereof, and the issuance of the Letter of Credit, the security interest granted to the Agent hereunder shall be deemed properly perfected without the necessity of filing financing statements or other documentation.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Agent and Merchant hereby execute this Agreement by their duly authorized representatives as a sealed instrument as of the day and year first written above.

BORDERS GROUP INC.

On Behalf of Itself and the Companies Set Forth In Exhibit A hereto

By: _____

Name:

Its:

[Signature Page to Agency Agreement]

[TO BE ADDED]

By: _____
Name:
Title:

[Signature Page to Agency Agreement]

CONSENTED AND AGREED TO
AS IT RELATES TO SECTIONS 3.3(e), 3.4 and 16 HEREOF, BY:

GENERAL ELECTRIC CAPITAL CORPORATION

By: _____

Name

Title

[Signature Page to Agency Agreement]

CONSENTED AND AGREED TO
AS IT RELATES TO SECTION 16 HEREOF, BY:

GA CAPITAL LLC, as Term Agent

By: _____

Name

Title

[Signature Page to Agency Agreement]

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
: **Chapter 11**
: **Case No. 11-10614**
: **(Jointly Administered)**
: **Debtors.¹**
: **BORDERS GROUP, INC., et al.,**
: **In re**
-----X

**ORDER APPROVING AGENCY AGREEMENT,
STORE CLOSING SALES AND RELATED RELIEF**

Upon the Debtors’ Motion for Entry of Order (I) Authorizing the Debtors to Sell Certain Assets Through Store Closing Sales, (II) Approving Bidding Procedures to Select Liquidating Agent to Conduct Store Closing Sales, (III) Authorizing Debtors To Abandon Unsold Property, (IV) Waiving Compliance With Contractual Store Closing Sale Restrictions, (V) Exempting Laws Restricting Store Closing Sales, and (VI) Granting Related Relief (the “Motion”);² and the Declaration of Holly Felder Etlin in Support of Second Store Closing Sale Motion (the “Etlin Declaration”); 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 Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being

¹ The Debtors in these cases, along with the last four digits of the federal tax identification number for the Debtors are the following: Borders Group, Inc. (4588); Borders International Services, Inc. (5075); Borders, Inc. (4285); Borders Direct, LLC (0084); Borders Properties, Inc. (7978); Borders Online, Inc. (8425); Borders Online, LLC (8996); and BGP (UK) Limited.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agency Agreement.

proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties set for in the Motion; and it appearing that no other or further notice need be provided; and an auction having been held on June 16, 2011 (the “Auction”); and [_____] (the “Agent”) having been the successful bidder at the Auction; and the Debtors and the Agent having agreed to the terms of the sales (the “Sales”) of certain assets (the “Assets”) in accordance with that certain Agency Agreement, dated June [___], 2011, by and between the Agent and the Debtors, a copy of which is attached hereto as Exhibit A (the “Agency Agreement”), pursuant to which the Agent shall act as the Debtors’ exclusive agent for the Sales of the Assets as set forth in the Agency Agreement; and a hearing having been held on June [___], 2011 (the “Sale Hearing”) to consider the relief requested in the Motion and approval of the Agency Agreement; and the appearances of all interested parties having been noted in the record of the Hearing; and upon all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore, it is

FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief requested are §§105(a), 363, 364, 365 and 554 of the Bankruptcy Code and Rules 2002, 4001, 6003, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

C. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law constitute findings of fact, they are adopted as such.

D. Notice of the Motion and of the Hearing was provided as set forth in the Motion and as required by applicable law.

E. The notice of the Motion and of the Hearing was adequate and sufficient under the circumstances, and any otherwise applicable requirement for notice is hereby waived and dispensed with. A reasonable opportunity to object or to be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities.

F. As demonstrated by the Etlin Declaration and representations of counsel to the Debtors and other parties in interest made at the Hearing, the Debtors have conducted the bidding solicitation and auction process fairly, with adequate opportunity for parties that either expressed an interest in liquidating the Debtors' assets or who the Debtors believed may have an interest in liquidating the Debtors' assets to submit competing bids.

G. The Agency Agreement attached hereto as Exhibit A, including the form and total consideration to be realized by the Debtors pursuant to the Agency Agreement, (i) is the highest and best offer received by the Debtors, (ii) is fair and reasonable, and (iii) is in the best interest of the Debtors, their estates, their creditors and all other parties in interest.

H. The Debtors' decision to (i) enter into the Agency Agreement and (ii) perform under and make payments required by the Agency Agreement is a reasonable exercise of the

Debtors' sound business judgment consistent with their fiduciary duties and is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest.

I. The transactions contemplated by the Agency Agreement do not include the sale or lease of personally identifiable information, as defined in section 101(41A) of the Bankruptcy Code ("Personally Identifiable Information") (or assets containing personally identifiable information).

J. Time is of the essence in effectuating the Agency Agreement and proceeding with the Sales contemplated therein uninterrupted. Based on the record of the Sale Hearing, the Etlin Declaration and for the reasons stated on the record at the Sale Hearing, the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

K. The Debtors (i) have full corporate power and authority to execute and deliver the Agency Agreement and all other documents contemplated thereby, and the Sales of the Assets have been duly and validly authorized by all necessary corporate action of the Debtors, (ii) have all of the corporate power and authority necessary to consummate the transactions contemplated by the Agency Agreement, and (iii) have taken all corporate action necessary to authorize and approve the Agency Agreement and the consummation of the transactions contemplated thereby. No consents or approvals, other than those expressly provided for in the Agency Agreement, are required for the Debtors to consummate such transactions.

L. The Agency Agreement was negotiated between the Agent and the Debtors and entered into in good faith, based upon arm's length bargaining, and without collusion or fraud. Neither the Debtors nor Agent has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or cause the application of or implicate section 363(n) of the Bankruptcy Code to the Agency Agreement or to the consummation of the transactions

contemplated thereby. The Agent's performance and payment of the Guaranteed Amount under the Agency Agreement are in good faith and for valid business purposes and uses.

M. The Debtors have demonstrated a compelling and sound business justification for authorization to enter into the Agency Agreement.

N. The Debtors were free to deal with any other party interested in liquidating some or all of the Assets. The Agent has not violated section 363(n) of the Bankruptcy Code by any action or inaction. Specifically, the Agent has not acted in a collusive manner with any person and was not controlled by any agreement among bidders. The Agent is not an "insider" as that term is defined in section 101(31) of the Bankruptcy Code. No common identity of directors or controlling stockholders exists between the Agent and the Debtors.

Now, therefore, it is hereby ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted to the extent provided herein. All objections to the Motion that have not been withdrawn, waived, settled, or specifically addressed in this Order, and all reservations of rights, are overruled in all respects and denied.

2. The Agency Agreement is approved pursuant to section 363 of the Bankruptcy Code. The Debtors are hereby authorized and empowered to enter into the Agency Agreement, and the Agency Agreement (and each of the transactions contemplated therein) is hereby approved in its entirety and is incorporated herein by reference. All amounts payable to the Agent under the Agency Agreement shall be payable to the Agent without the need for any application of the Agent therefor or any further order of the Court.

3. Subject to the provisions of this Order, the Debtors and the Agent are hereby authorized, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to conduct the Sales at the Stores in accordance with the Agency Agreement and the sale guidelines approved in

the Court's February 18, 2011 *Order Approving Agency Agreement, Store Closing Sales and Related Relief* [Docket No. 91] (the "Sale Guidelines"), a copy of which are attached hereto as Exhibit B, which Sale Guidelines are hereby approved in their entirety. To the extent that anything contained in this Order explicitly conflicts with a provision in the Agency Agreement or the Sale Guidelines, this Order shall govern and control.

4. Except as otherwise provided in the Agency Agreement, pursuant to section 363(f) of the Bankruptcy Code, upon payment of the Guaranteed Amount Deposit and delivery of the Letter of Credit, the Agent shall be authorized to sell all Assets pursuant to the Agency Agreement free and clear of any and all mortgages, security interests, conditional sales or title retention agreements, pledges, hypothecations, liens, judgments, encumbrances or claims of any kind or nature (including, without limitation, any and all "claims" as defined in section 101(5) of the Bankruptcy Code), including, without limitation, the liens and security interests of GECC and GA, as agents for Lenders under the DIP Facility, as the same may have been amended from time to time, and the Debtors' prepetition lenders whether arising by agreement, any statute or otherwise and whether arising before, on or after the date on which this chapter 11 case was commenced (collectively, the "Liens"), with any presently existing liens encumbering all or any portion of the Assets or the Proceeds thereof attaching only to the Guaranteed Amount, or other amounts payable to the Debtors under the Agency Agreement (collectively, the "Transaction Proceeds") with the same validity, force and effect as the same had with respect to the assets at issue, subject to any and all defenses, claims and/or counterclaims or setoffs that may exist.

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

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

6. Unless otherwise ordered by the Court, all newspapers and other advertising media in which the Sales may be advertised and all landlords are directed to accept this Order as binding authority so as to authorize the Debtors and the Agent to consummate the Agency Agreement and to consummate the transactions contemplated therein, including, without limitation, to conduct and advertise the Sales in the manner contemplated by the Agency Agreement, including, without limitation, conducting and advertising of the Sales (at the contractual rates charged to the Debtors prior to the Petition Date) in accordance with the Agency Agreement, the Sale Guidelines, and this Order.

7. The Sales shall not be exempt from, and the Agent shall be required to comply with, 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 Order shall be deemed to bar any Governmental Unit (as defined in Bankruptcy Code section 101(27)) from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors' or the Agent's right to assert in that forum or before this Court that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code, this Order, or otherwise, pursuant to Paragraph 8 hereunder. Notwithstanding any other provision in this Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Order and/or any applicable law, or that enforcement of such applicable law is preempted by the

Bankruptcy Code. Nothing in this Order shall be deemed to have made any rulings on any such issues.

8. To the extent that the Sales are subject to any federal, state or local statute, ordinance, or rule, or licensing requirement solely directed at regulating "going out of business," "store closing," similar inventory liquidation sales, or bulk sale laws (each a "GOB Law," and together, the "GOB Laws"), including 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 GOB Sales and including ordinances establishing license or permit requirements, waiting periods, time limits or bulk sale restrictions that would otherwise apply solely to GOB Sales (collectively, the "Liquidation Laws"), the following provisions shall apply:

a. Provided that the Sales are conducted in accordance with the terms of this Order, the Agency Agreement and the Sale Guidelines, and in light of the provisions in the laws of many Governmental Units that exempt court-ordered sales from their provisions, the Debtors shall be presumed to be in compliance with any GOB Laws and Liquidation Laws and, subject to Paragraphs 7 and 8 herein, are authorized to conduct the Sales in accordance with the terms of this Order and the Sale Guidelines without the necessity of further showing compliance with any such GOB Laws and Liquidation Laws.

b. Within five (5) business days of entry of this Order, the Debtors shall serve copies of this Order, the Agency Agreement and the Sale Guidelines via e-mail, facsimile or regular mail, on: (i) the Attorney General's office for each state where the Sales are being held, (ii) the county consumer protection agency or similar agency for each county where the Sales will be held, (iii) the division of consumer protection for each state where the Sales will be held; and (iv) the chief legal counsel for the local jurisdiction.

c. To the extent there is a dispute arising from or relating to the Sales, this Order, the Agency Agreement, or the Sale Guidelines, which dispute relates to any GOB Laws or Liquidation Laws (a "Reserved Dispute"), the Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within fifteen (15) days following service of this Order, any Governmental Unit may assert that a Reserved Dispute exists by serving written notice of such Reserved Dispute to counsel for the Debtors and counsel for the Agent at the addresses set forth in the Agency Agreement so as to ensure delivery thereof within one (1) business day thereafter. If the Debtors, the Agent and the Governmental Unit are unable to resolve the Reserved Dispute within fifteen (15) days of service of the notice, the aggrieved party may file a motion with this Court requesting that this Court resolve the Reserved Dispute (a "Dispute Resolution Motion").

d. In the event a Dispute Resolution Motion is filed, nothing in this Order shall preclude the Debtors, a landlord, the Agent or other interested party from asserting (i) that the provisions of any GOB Laws and/or Liquidation Laws are preempted by the Bankruptcy Code or (ii) that neither the terms of this Order, nor the Debtors or the Agent's conduct pursuant to this Order, violates such GOB Laws and/or Liquidation Laws. Filing a motion as set forth in this Paragraph shall not be deemed to affect the finality of this Order or to limit or interfere with the Debtors' or the Agent's ability to conduct or to continue to conduct the Sales pursuant to this Order and the Agency Agreement, absent further order of this Court. The Court grants authority for the Debtors and the Agent to conduct the Sales pursuant to the terms of this Order, the Agency Agreement, and/or the Sale Guidelines attached hereto and to take all actions reasonably related thereto or arising in connection therewith. The Governmental Unit shall be entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Laws or the lack of any preemption of such GOB Laws and/or

Liquidation Laws by the Bankruptcy Code. Nothing in this Order shall 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 Agent and a Governmental Unit as to whether a particular law is a GOB Law and/or Liquidation Law, and subject to any provisions contained in this Order related to GOB Laws and/or Liquidation Laws, then any party to that dispute may utilize the provisions of Subparagraphs (c) and (d) hereunder by serving a notice to the other party and proceeding thereunder in accordance with those Paragraphs. Any determination with respect to whether a particular law is a GOB Law and/or Liquidation Law shall be made *de novo*.

f. Notwithstanding anything herein to the contrary, and in view of the importance of the use of sign-walkers, banners, and other advertising to the Sales, to the extent that disputes arise during the course of the Sales regarding laws regulating the use of sign-walkers and banner advertising and the Debtors and the Agent are unable to resolve the matter consensually with the Governmental Unit, 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 within two (2) business days of such request. This scheduling shall not be deemed to preclude additional hearings for the presentation of evidence or arguments as necessary.

9. Except to the extent of the reserved rights of Governmental Units expressly granted elsewhere in this Order, the Debtors and Agent are hereby authorized to take such actions necessary and appropriate to implement the Agency Agreement and to conduct the Sales without necessity of further order of this Court as provided in the Agency Agreement or the Sale Guidelines, including, but not limited to, advertising the Sales as “store-closing” or similar-

themed sales through the posting of signs (including the use of exterior banners at non-enclosed mall Stores, and at enclosed mall Stores to the extent the applicable Store entrance does not require entry into the enclosed mall common area), use of signwalkers and street signage. The Agent shall not conduct the Sales as a “going out of business” or similar-themed sale.

10. Except as expressly provided in the Agency Agreement, the Sales shall be conducted by the Debtors and the Agent notwithstanding any restrictive provision of any lease, sublease or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Sales, the rejection of leases, abandonment of assets or “going dark” provisions; provided, however, that nothing in this Order shall impact any objection that any of the Debtors’ landlords may have to the assumption, assignment or rejection of their respective lease or to any proposed cure amount or rejection damages claim in association with such assumption, assignment or rejection. The Agent and landlords of the Stores are authorized to enter into agreements (“Side Letters”) between themselves modifying the Sale Guidelines without further order of the Court, and such Side Letters shall be binding as among the Agent and any such landlords, provided that nothing in such Side Letters affects the provisions of Paragraphs 7 and 8. In the event of any conflict between the Sale Guidelines and any Side Letter, the terms of such Side Letter shall control.

11. Except as expressly provided for herein or in the Sale Guidelines, and except with respect to any Governmental Unit (as to which Paragraphs 7 and 8 shall apply), no person or entity, including but not limited to any landlord, licensor, or creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Sales, or the advertising and promotion (including the posting of signs or the use of signwalkers) of such Sales, and all such parties and persons of every nature and description, including landlords,

licensors, creditors and utility companies and all those acting for or on behalf of such parties, are prohibited and enjoined from (i) interfering in any way with, or otherwise impeding, the conduct of the Sales and/or (ii) instituting any action or proceeding in any court or administrative body seeking an order or judgment against, among others, the Debtors, the Agent, or the landlords at the Debtors' Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sales or other liquidation sales at the Stores and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease or license based upon any relief authorized herein.

12. Except with respect to any Governmental Unit (as to which the provisions of Paragraph 7 and 8 shall apply), this Court shall retain exclusive jurisdiction with regard to all issues or disputes relating to this Order or the Agency Agreement, including, but not limited to, (i) any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit banner and signwalker advertising, including with respect to any allegations that such advertising is not being conducted in a safe, professional and non-deceptive manner, (ii) any claim of the Debtors, the landlords and/or the Agent for protection from interference with the Sales, and (iii) any other disputes related to the Sales. No such parties or person shall take any action against the Debtors, the Agent, the landlords or the Sales until this Court has resolved such dispute. This Court shall hear the request of such parties or persons with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

13. The Agent shall have the right to use the Stores and all related Store services, furniture, fixtures, equipment and other assets of the Debtors for the purpose of conducting the Sales, free of any interference from any entity or person, subject to compliance with the Sale Guidelines and this Order and subject to Paragraphs 7 and 8 of this Order.

14. During the Sale Term, Agent shall accept Debtors' gift cards, Borders Rewards Plus Loyalty Program discounts, Borders Bucks, and Merchandise credits issued by the Debtors and the Debtors shall reimburse Agent for such amounts during the weekly sale reconciliation provided for in Section 8.6 of the Agency Agreement. During the Sale Term, the Agent shall accept returns of merchandise sold by the Debtors prior to the Sale Commencement Date, provided that such return is accompanied by the original Store register receipt and is otherwise in compliance with the Debtors' return and price adjustment policy in effect as of the date such item was purchased. The Debtors shall promptly reimburse Agent in cash for any refunds Agent is required to issue to customers in respect of any such returns.

15. 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". Debtors and/or Agent shall accept return of any goods purchased during the Sales that contain a defect which the lay consumer could not reasonably determine was defective by visual inspection prior to purchase for a full refund, provided that the consumer must return the merchandise within twenty-one (21) days of their purchase, the consumer must provide a receipt, and the asserted defect must in fact be a "latent" defect. The Debtors shall promptly reimburse Agent in cash for any refunds Agent is required to issue to customers in respect of any goods purchased during the Sales that contain such a latent defect.

16. Until the Sale Termination Date, the Agent shall be granted a limited license and right to use the trade names, logos and customer, mailing and e-mail lists relating to and used in connection with the operation of the Stores, solely for the purpose of advertising the Sale in accordance with the terms of the Agency Agreement; provided, however, that the Agent shall not receive Personally Identifiable Information from the Debtors.

17. Except as expressly provided for in the Agency Agreement, nothing in this Order or the Agency Agreement, and none of the Agent's actions taken in respect of the Sale shall be deemed to constitute an assumption by Agent of any of the Debtors' obligations relating to any of the Debtors' employees. Moreover, the Agent shall not become liable under any collective bargaining or employment agreement or be deemed a joint or successor employer with respect to such employees.

18. The Agent shall not be liable for sales taxes except as expressly provided in the Agency Agreement and the payment of any and all sale taxes is the responsibility of the Debtors. The Agent shall collect, remit to the Debtors and account for sales taxes as and to the extent provided in the Agency Agreement. If Agent fails to perform its responsibilities in accordance with Section 8.3 of the Agency Agreement, Agent shall indemnify and hold harmless the Debtors from and against any and all costs, including, but not limited to, reasonable attorneys' fees, assessments, fines or penalties which the Debtors sustain or incur as a result or consequence of the failure by Agent to collect and/or remit Sales Taxes and/or the failure by Agent to promptly deliver any and all reports and other documents required to enable the Debtors to file any requisite returns with taxing authorities.

19. Except as set forth in the Agency Agreement or the Sale Guidelines, the Debtors and/or the Agent (as the case may be) are authorized and empowered to transfer assets among the Debtors' distribution center and/or the Stores as provided in the Agency Agreement.

20. In accordance with the terms of the Agency Agreement and effective as of the Payment Date, pursuant to section 364(d) of the Bankruptcy Code, Agent is granted a valid, binding, enforceable and perfected first priority security interest in and lien upon (x) the Merchandise, (y) proceeds realized from the disposition of the Newsstand Inventory,

Café/Candy Inventory and Agent Sale FF&E up to the amount of the Agent's disposition commission related to Newsstand Inventory, Café/Candy Inventory or Agent Sale FF&E as provided for in Sections 5.4 and 15.9 of the Agency Agreement, and (z) the Proceeds, to secure all obligations of the Debtors to Agent under the Agency Agreement, provided, however, that the security interest granted to Agent shall remain junior and subordinate in all respects to (a) Agent's Payment Obligations and (b) the liens, security interests and claims of the GECC and the Lenders, to the extent of the unpaid portion of Agent's Payment Obligations. Upon entry of this Order and payment of the Guaranteed Amount Deposit and the issuance of the Letter of Credit, the security interest granted to the Agent shall be deemed properly perfected without the necessity of filing financing statements or other documentation. Subject to the Agent having satisfied its payment obligations under the Agency Agreement, any amounts owed by the Debtors to the Agent under the Agency Agreement are granted and shall have the status and priority of superpriority liens and claims pursuant to section 364(c) of the Bankruptcy Code, junior to the superpriority claims of the Lenders.

21. The Debtors and the Agent shall not extend the Sale Termination Date beyond August 31, 2011 without notice and further order of the Court; *provided, however*, that no notice or further order of the Court shall be required for an extension that does not exceed ten (10) days.

22. The Agent's performance and payment of the Guaranteed Amount under the Agency Agreement will be made in good faith and for valid business purposes and uses, and accordingly the Agent is entitled to the protection and benefits of section 364(e) of the Bankruptcy Code. In the event any provisions of this Order are modified, amended or vacated by a subsequent order of the Bankruptcy Court or any other court, the Agent shall be entitled to

the protections provided in section 364(e) of the Bankruptcy Code and no such appeal, modification, amendment or vacatur shall affect the validity and enforceability of the liens or priority authorized or created under the Agency Agreement or this Order.

23. This Order and the terms and provisions of the Agency Agreement shall be binding on all of the Debtors' creditors (whether known or unknown), the Debtors, the Agent, and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting an interest in the Assets, notwithstanding any subsequent appointment of any trustee, party, entity or other fiduciary under any section of the Bankruptcy Code with respect to the forgoing parties, and as to such trustee, party, entity or other fiduciary, such terms and provisions likewise shall be binding. The provisions of this Order and the Agency Agreement, and any actions taken pursuant hereto or thereto shall survive the entry of any order which may be entered confirming or consummating any plan of the Debtors or converting the Debtors' cases from chapter 11 to chapter 7, and the terms and provisions of the Agency Agreement, as well as the rights and interests granted pursuant to this Order and the Agency Agreement, shall continue in these or any superseding cases and shall be binding upon the Debtors, the Agent and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code. Any trustee appointed in these cases shall be and hereby is authorized to operate the business of the Debtors to the fullest extent necessary to permit compliance with the terms of this Order and the Agency Agreement, and Agent and the trustee shall be and hereby are authorized to perform under the Agency Agreement upon the appointment of the trustee without the need for further order of this Court.

24. The Agent shall not be liable for any claims against the Debtors, and the Debtors shall not be liable for any claims against Agent, in each case, other than as expressly provided for in the Agency Agreement. The Agent shall have no successor liability whatsoever with respect to any Liens or claims of any nature that may exist against the Debtors.

25. Pursuant to section 554(a) of the Bankruptcy Code, the Debtors and the Agent, as applicable, are permitted to abandon property of the Debtors' estates in accordance with the terms and provisions of the Agency Agreement without incurring liability to any person or entity. In the event of any such abandonment, all applicable landlords shall be authorized to dispose of such property without any liability to any individual or entity that may claim an interest in such abandoned property, and such abandonment shall be without prejudice to any landlord's right to assert any claim based on such abandonment and without prejudice to the Debtors or other party in interest to object thereto.

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

27. All entities that are presently in possession of some or all of the Assets in which the Debtors hold an interest hereby are directed to surrender possession of the Assets to the Agent.

28. The Debtors, the Agent and each of their respective officers, employees and agents are hereby authorized to execute such documents and to do such acts as are necessary or

desirable to carry out the Sales and effectuate the Agency Agreement and each of the transactions and related actions contemplated or set forth therein.

29. The Agent and Debtors agree that no FFE (which includes supplies) at Seattle Best Coffee's ("SBC") Borders cafes will be sold without SBC's prior consent as to the protections, if applicable, of its trademarks, trade names and other propriety information / trade secrets under its licensing agreement with the Debtor, such consent not to be unreasonably withheld. Without limitation, the parties, including SBC, understand and agree that retail inventory will be sold to consumers as part of the going out of business sale by Agent (but not in bulk to third parties), café supplies subject to the SBC license agreement will be transferred to other SBC Borders cafes (and not sold in bulk to third parties), FFE bearing SBC marks may be sold after being de-identified, and espresso machines may be sold after removal of any SBC marks and proprietary data (including computer chips).

30. Any landlord seeking relief from the Sales Guidelines approved in this Order (the "Sales Guidelines Relief") must follow the procedures set forth in this Paragraph for seeking such relief. At any time before the fifth (5th) business day following entry of this Order, any landlord (other than a landlord that is a party to a Side Letter with respect to the Store(s) at issue) may seek Sales Guidelines Relief by first emailing and faxing a notice explaining the nature of such relief to (i) counsel for the Debtors (Kasowitz, Benson, Torres & Friedman LLP, 1633 Broadway, New York, New York 10019, Attn: Andrew K. Glenn and Daniel A. Fliman, email: AGlenn@kasowitz.com; DFliman@kasowitz.com, fax: (212) 506-1800) and (ii) counsel for the Agent ([_____]). If the Debtors, the Agent and the landlord are unable to resolve the landlord's request for Sales Guidelines Relief within five (5) days of service of a notice of Sales Guidelines Relief, the landlord may file an objection with the Court seeking the Sales Guidelines

Relief (a “Sales Guidelines Relief Objection”) to be heard by the Court on an expedited basis subject to the Court’s availability. Any issues relating to any Sales Guidelines Relief shall not affect the finality of this Order or limit or interfere with the conduct of the Sales prior to any ruling by this Court on the Sales Guidelines Relief Objection.

31. Nothing contained in any plan confirmed in the Debtors’ chapter 11 cases or any order of this Court confirming such plan or in any other order in these chapter 11 cases (including any order entered after any conversion of these cases to cases under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the Agency Agreement or the terms of this Order.

32. Notwithstanding Bankruptcy Rules 4001 and 6004, or any other law that would serve to stay or limit the immediate effect of this Order, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Debtors and the Agent are free to perform under the Agency Agreement at any time, subject to the terms of the Agency Agreement.

33. Based on the record of the Sale Hearing, the Motion, the Etlin Declaration, and for the reasons stated on the record at the Sale Hearing, the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and accordingly the requirements of Bankruptcy Rule 6003 have been satisfied.

34. The Agent is a party in interest and shall have the ability to appear and be heard on all issues related to or otherwise connected to this Agency Agreement and the conduct of the Sale.

Dated: June ___, 2011
New York, New York

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A
AGENCY AGREEMENT

EXHIBIT B
SALE GUIDELINES