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PROPOSED ATTORNEYS FOR DEBTORS

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: § Chapter 11
§
Tuesday Morning Corporation, *et al.*,¹ § Case No. 20-31476-HDH-11
§
Debtors. § Joint Administration Requested

DEBTORS’ EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO ASSUME THE CONSULTING AGREEMENT; (II) APPROVING PROCEDURES FOR STORE CLOSING SALES; (III) APPROVING THE SALE OF STORE CLOSURE ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES; (IV) WAIVING COMPLIANCE WITH APPLICABLE STATE LAWS AND APPROVING DISPUTE RESOLUTION PROCEDURES; (V) APPROVING PROCEDURES TO CONDUCT SALES IN ADDITIONAL CLOSING STORES; AND (VI) GRANTING RELATED RELIEF

Tuesday Morning Corporation and its debtor affiliates, as debtors and debtors-in-possession in the above-referenced chapter 11 cases (collectively, the “Debtors”) hereby file this *Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume the Consulting Agreement; (II) Approving Procedures for Store Closing Sales;*

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Tuesday Morning Corporation (8532) (“TM Corp.”); TMI Holdings, Inc. (6658) (“TMI Holdings”); Tuesday Morning, Inc. (2994) (“TMI”); Friday Morning, LLC (3440) (“FM LLC”); Days of the Week, Inc. (4231) (“DOTW”); Nights of the Week, Inc. (7141) (“NOTW”); and Tuesday Morning Partners, Ltd. (4232) (“TMP”). The location of the Debtors’ service address is 6250 LBJ Freeway, Dallas, TX 75240.

(III) Approving the Sale of Store Closure Assets Free and Clear of All Liens, Claims and Encumbrances; (IV) Waiving Compliance with Applicable State Laws and Approving Dispute Resolution Procedures; (V) Approving Procedures to Conduct Sales in Additional Closing Stores; and (VI) Granting Related Relief (the “Motion”). In support of the Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

1. The United States District Court for the Northern District of Texas (the “District Court”) has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. § 1334. The District Court’s jurisdiction has been referred to this Court pursuant to 28 U.S.C. § 157 and the District Court’s Miscellaneous Order No. 33, *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* dated August 3, 1984. This is a core matter pursuant to 28 U.S.C. § 157(b), which may be heard and finally determined by this Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On May 27, 2020 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the above captioned cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. An official committee of unsecured creditors has yet to be appointed in these Chapter 11 Cases. Further, no trustee or examiner has been requested or appointed in these Chapter 11 Cases.

4. A detailed description of the Debtors and their businesses, and the facts and circumstances supporting the Motion and the Debtors' Chapter 11 Cases are set forth in greater detail in the *Declaration of Barry Folsie in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "Folsie Declaration"), which was filed on the Petition Date and is incorporated by reference in this Motion.

Relief Requested

5. By this Motion, the Debtors seek the entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the "Interim Order" and the "Final Order"): (i) authorizing the Debtors to assume the consulting agreement dated as of May 6, 2020 (as amended, revised, or supplemented from time to time, the "Consulting Agreement") by and among the Debtors (the "Merchants") and Great American Group, LLC (the "Consultant")² (a copy of which is annexed as **Schedule 1** to the proposed Interim Order); (ii) approving the procedures for conducting store closing or similarly themed sales, starting on June 1, 2020, in accordance with the terms of the sale guidelines (the "Sale Guidelines") annexed as **Schedule 2** to the proposed Interim Order; (iii) approving the sale of Store Closure Assets (defined below) free and clear of all liens, claims, and encumbrances (the "Sales"); (iv) waiving compliance with Applicable State Laws (defined below) and approving Dispute Resolution Procedures (defined below); (v) approving procedures to conduct the Sales at any Additional Closing Stores (defined below); and (vi) granting related relief.

A. Store Closings

6. Due to the COVID-19 pandemic, the Debtors have faced unprecedented challenges including rapidly declining sales at their retail locations. To address those challenges the Debtors'

² Unless the Court orders otherwise, a declaration regarding Consultant's disinterestedness in this Chapter 11 Case will be filed prior to the entry of a Final Order.

management team, in the exercise of their sound business judgment and in consultation with their advisors, ultimately determined that it is appropriate to close and wind down certain store locations (the “Closing Stores”) to increase liquidity, maximize cost savings, and strengthen the Company’s overall financial position. There are 133 Stores expected to be closed beginning June 1, 2020 (the “Wave 1 Closing Stores”).³ The list of Wave 1 Closing Stores is attached to the Consulting Agreement as Exhibit A. Further, the Debtors’ management team and advisors continue to evaluate whether certain of the Closing Stores should instead remain open and whether additional stores beyond the Closing Stores should be closed. The determination of the final number of stores to close will depend on, among other considerations, whether the Debtors are able to negotiate more favorable lease terms and rent reductions for certain stores with their landlords (the “Lease Negotiations”). The Debtors have retained A&G Realty Partners, LLC (“A&G”) to assist with the ongoing Lease Negotiations. The Debtors reserve the right to add or remove stores from that list in the exercise of their reasonable business judgment and depending on the outcome of the Lease Negotiations, subject to entry of the Interim Order or the Final Order, as applicable.

7. In formulating the list of Closing Stores, the Debtors considered, among other factors, historical store profitability, recent sales trends, the geographic market in which the store is located, the potential to realize negotiated rent reductions with applicable landlords, and specific circumstances related to a store’s performance. In identifying the Closing Stores, the Debtors also considered individual store performance as well as geographic considerations by comparing relative performance of applicable stores against the Debtors’ remaining portfolio and analyzing the relative sales trends in its various geographic markets. In order to maximize the value of their estates, the Debtors may need to close additional stores during the Chapter 11 Cases

³ The list of Wave 1 Closing Stores and Additional Closing Stores (if any) are subject to change based on further review by the Debtors’ management team.

not identified in the Consulting Agreement (such stores, the “Additional Closing Stores,” and together with the Closing Stores, the “Stores”).

8. In conjunction with their analysis of store performance, the Debtors also conducted a review and analysis of their inventory levels at the Closing Stores. Such inventory will be included in and sold as part of the Sales (collectively, the “Merchandise”). The Debtors expect that the bulk of the Sales and Store Closings will take approximately 10 weeks to complete.

9. After determining that the Consultant was well qualified and negotiating the terms of the engagement at arms’ length with the assistance of their advisors, the Debtors selected and engaged the Consultant to manage the Store Closings as well as to sell their furniture, fixtures, and equipment (the “FF&E” and, together with the Merchandise, the “Store Closure Assets”) located in the Closing Stores and otherwise prepare those stores for turnover to the applicable landlords on the terms set forth in the Consulting Agreement.

10. By this Motion, the Debtors seek to assume the Consulting Agreement so that the Consultant may continue its preparation for the Store Closings on a postpetition basis without interruption. The Debtors have determined, in an exercise of their business judgment, that (a) the services of the Consultant are necessary for a seamless and efficient large-scale execution of the Store Closings and Sales, as is contemplated by this Motion, and to maximize the value of the assets being sold, and (b) the Consultant is capable of performing the required tasks on favorable financial terms, as determined by the evaluation process.

11. Further, the Store Closings are a critical component of the Debtors’ go-forward business plan, and assumption of the Consulting Agreement will allow the Debtors to conduct the Store Closings in an efficient, controlled manner that will maximize value for the Debtors’ estate. The relief requested in this Motion is integral to maximizing the value of the Debtors’

estate. It will permit the Debtors to commence the Store Closings in a timely manner as contemplated by this Motion and will establish fair and uniform sale guidelines to assist the Debtors and their creditors through the Debtors’ transition to a smaller, more profitable enterprise.

B. The Consulting Agreement

12. Assumption of the Consulting Agreement will allow the Debtors to utilize the logistical capabilities, experience, and resources of the Consultant in performing large-scale liquidations in a format that allows the Debtors to retain control over the sale process. A summary of the salient terms of the Consulting Agreement is set forth below.⁴

TERM	CONSULTING AGREEMENT
Services Provided by Consultant	<p>The Consultant shall be retained as the Debtors’ exclusive, independent consultant to conduct the Sale at the Stores during the Sale Term, and in connection therewith, Consultant shall, throughout the Sale Term provide services incident thereto as more fully described in Section 1 of the Consulting Agreement.</p> <p>Consultant shall, throughout the Sale Term provide services including:</p> <ul style="list-style-type: none"> (a) provide qualified “Supervisors” to oversee the Sale and management of the Stores in an effort to maximize revenue and sell all of the “<u>Merchandise</u>” prior to the end of the Sale, in the Expense Budget with any additional Supervisors to be subject to the reasonable advance approval of Consultant; (b) determine appropriate point-of-sale and external advertising, subject to the reasonable advance approval of Merchant; (c) determine appropriate discounts of Merchandise, staffing levels, and appropriate bonus and incentive programs, if any, for the Stores’ employees, each subject to the reasonable advance approval of Merchant; (d) oversee display of Merchandise for the Stores; (e) evaluate sales of Merchandise by category, provide sales reporting (but only if, and to the extent that, Merchant provides access to the point of sale data in the normal course), and monitor expenses; (f) maintain the confidentiality of all proprietary or non-public information

⁴ The following summary chart is for the convenience of the Bankruptcy Court and parties in interest. To the extent there is any conflict between this summary and the Consulting Agreement, the Consulting Agreement shall govern in all respects.

TERM	CONSULTING AGREEMENT
	<p>regarding Merchant in accordance with the provisions of the confidentiality agreement signed by the parties;</p> <p>(g) communicate with Merchant, on a weekly basis, to review the sales of Merchandise and the sales reporting and expenses, in an effort to minimize expenses and maximize overall net recovery of the Sale;</p> <p>(h) assist Merchant with managing and controlling loss prevention and employee relations matters;</p> <p>(i) to the extent necessary, assist Merchant in obtaining any required permits and governmental consents required to conduct the Sale;</p> <p>(j) price, market, and sell the “FF&E” on behalf of Merchant; and</p> <p>(k) provide such other related services deemed necessary or appropriate by Merchant and Consultant.</p> <p>Consultant is also entitled to include in the Sale supplemental goods of like kind and no lesser quality to the Merchandise (“<u>Additional Consultant Goods</u>”) located in the Stores and shall be procured by Consultant. The sale of Additional Consultant Goods, including, but not limited to, the specific products to be sold and the volume of products to be sold, shall be subject to Merchant’s prior approval, which shall be exercised in Merchant’s sole discretion.</p>
Term of Sale	To be agreed upon finalization of sale strategy at selected stores.
Expenses of Consultant	<p>Merchant is responsible for all costs and expenses during the Sale. Attached to the Consulting Agreement as <u>Exhibit B</u> is an Expense Budget established by Merchant and Consultant that caps certain expenses in connection with the Sale, including payment of the costs of supervision, advertising costs, and Consultant’s corporate travel/legal expenses. The Expense Budget will be updated in connection with any modification of the lists of Stores and agree to cooperate in good faith with respect to such updates.</p> <p>If the Sale Commencement Date occurs before Merchant commences the Chapter 11 Cases, Merchant shall pay Consultant a \$300,000 deposit, which shall be applied against Consultant Expenses or the Base Fee at the end of the Sale Term.</p> <p>Merchant is also responsible for all reasonable costs and expenses incurred by Consultant in connection with the sale of FF&E. Merchant shall pay to Consultant fifteen percent (15.0%) of all Gross Proceeds of FF&E.</p> <p>Merchant bears the expense of remaining in compliance with any local, state, and national laws regarding the outbreak of COVID-19.</p>

TERM	CONSULTING AGREEMENT
Compensation for Consultant	<p>As used in the Consulting Agreement, the following terms shall have the following meanings: (i) “<u>Gross Proceeds</u>” means the sum of all gross proceeds thereof (including, as a result of the redemption of any gift card or credit or wholesale sales to third parties); (ii) “<u>Merchandise</u>” means all first quality goods, saleable in the ordinary course, located in the Stores on the Sale Commencement Date or delivered thereto after the Sale Commencement Date pursuant to the terms of this Agreement; (iii) “<u>Base Fee</u>” means (a) one and one-half of one percent (1.5%) of all Gross Proceeds of Merchandise, calculated from the first dollar recovered, <i>plus</i> (b) fifteen percent (15.0%) of all Gross Proceeds of FF&E.</p> <p>As consideration for its services under this Agreement, Merchant shall pay to Consultant the Base Fee. For purposes of calculating Gross Proceeds and the Base Fee, the parties shall use the “<u>Gross Rings</u>” method, wherein Consultant and Merchant shall joint keep (i) strict count of gross register receipts less applicable sales taxes and (ii) cash reports of sales within each Store. Register receipts shall show for each item sold the retail price for such item, and the markdown or discount granted in connection with such sale. All such records and reports shall be made available to Consultant and Merchant during regular business hours upon reasonable notice.</p> <p>Merchant to pay Consultant fees and expenses weekly within seven (7) days of submission invoices.</p> <p>Final reconciliation and settlement of all amounts payable to Consultant will occur no later than forty-five (45) days following the Sale Termination Date for the last Store.</p>
Conduct of Sale; Other Sale Matters	<p>During the Sale Term, Consultant shall, in collaboration with Merchant: (a) provide qualified supervisors (the “Supervisors”) engaged by Consultant to oversee the Sale and management of the Stores in an effort to maximize revenue and sell all of the Merchandise prior to the end of the Sale; (b) determine appropriate point-of-sale and external advertising, subject to the reasonable advance approval of Merchant; (c) determine appropriate discounts of Merchandise, staffing levels, and appropriate bonus and incentive programs, if any, for the Stores’ employees, each subject to the reasonable advance approval of Merchant; (d) oversee display of Merchandise for the Stores; (e) evaluate sales of Merchandise by category, provide sales reporting (but only if, and to the extent that, Merchant provides Consultant access to the point of sale data in the normal course), and monitor expenses; (f) maintain the confidentiality of all proprietary or non-public information regarding Merchant in accordance with the provisions of the confidentiality agreement signed by the Parties; (g) assist Merchant in connection with managing and controlling loss prevention and employee relations matters; (h) to the extent necessary, assist Merchant in obtaining any required permits and governmental consents required to conduct the Sale; (i) price, market, and sell the FF&E on behalf of Merchant; and (j)</p>

TERM	CONSULTING AGREEMENT
	<p>provide such other related services deemed necessary or appropriate by Merchant and Consultant.</p> <p>During the Sale Term, Merchant shall (a) be the employer of the Store's employees, other than the Supervisors; (b) pay all taxes, costs, expenses, accounts payable, and other liabilities relating to the Stores, the Stores' employees and other representatives of Merchant; (c) prepare and process all tax forms and other documentation; (d) collect all sales taxes and pay them to the appropriate taxing authorities; (e) use reasonable efforts to cause Merchant's employees to cooperate with Consultant and the Supervisors; (f) execute all agreements determined by Merchant and/or Consultant to be necessary or desirable for the operation of the Stores during the Sale; (g) arrange for the ordinary maintenance in order to maintain in good working order all point-of-sale equipment, HVAC systems, other mechanical devices and overall facilities reasonably required to allow for the conduct of the Sale and operation of the Stores; (h) provide peaceful use and occupancy of, and full access (including reasonable before and after hours access and normal utilities/phone service) to, the Stores, and to Merchant's warehouse, distribution center, and corporate offices, if and as applicable, for the purpose of preparing for, conducting, and completing the Sale, and performing its obligations under this Agreement.</p> <p>Merchant shall provide throughout the Sale Term central administrative services necessary for the Sale, including internal payroll processing, MIS services, cash and inventory reconciliation, data processing and reporting, email preparation and distribution, information technology updates, functionality, and maintenance, and accounting, all at no cost to Consultant.</p> <p>All sales of Merchandise and FF&E shall be made on behalf of, and solely in the name of, Merchant. Consultant does not have, nor shall it have, any right, title, or interest in the Merchandise or FF&E. All sales of Merchandise or FF&E shall be by cash, gift card, gift certificate, merchandise credit, debit card, or credit card and, at Merchant's discretion, by check or otherwise in accordance with Merchant's policies, and shall be "final" with no returns accepted or allowed, unless otherwise directed by Merchant.</p>
FF&E	<p>Merchant shall be responsible for all reasonable costs and expenses incurred by Consultant in connection with the sale of FF&E. Consultant shall have the right to abandon at the Stores any unsold FF&E. Unless otherwise agreed to by Merchant, the sale of the FF&E in each Store shall conclude at the same time as Merchandise sales conclude.</p>
Insurance Obligations	<p>During the Sale Term: (a) Merchants shall maintain (at their expense) insurance with respect to commercial liability, auto liability, and the Merchandise in amounts and on such terms and conditions as are consistent with Merchants' ordinary course operations and shall cause Consultant to</p>

TERM	CONSULTING AGREEMENT
	<p>be named as additional insured, and (b) Consultant shall maintain, throughout the Sale Term, liability insurance policies on an occurrence basis in an amount of at least one million dollars (\$1,000,000) and an aggregate basis of at least five million dollars (\$5,000,000) covering injuries to persons and property in or in connection with Consultant's provision of services at the Stores and name Merchant as an additional insured and loss payee under such policy. In addition, Consultant shall maintain throughout the Sale Term, workers compensation insurance compliance with all statutory requirements. Further, should Consultant engage third parties, Consultant will ensure that such third parties are covered by Consultant's insurance or maintain all of the same insurance as Consultant is required to maintain.</p>
<p>Indemnification by Consultant</p>	<p>Consultant hereby indemnifies, defends, and holds Merchant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, principals, and affiliates (other than Consultant or the Consultant Indemnified Parties) (collectively, the "<u>Merchant Indemnified Parties</u>") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to (a) the willful or grossly negligent acts or omissions of Consultant or the Consultant Indemnified Parties; (b) the breach of any provision of, or the failure to perform any obligation under, this Agreement by Consultant; (c) any liability or other claims made by the Consultant's Indemnified Parties or any other person (excluding Merchant Indemnified Parties) against a Merchant Indemnified Party arising out of or related to Consultant's conduct of the Sale, except claims arising from Merchant's own negligence, willful misconduct, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of the Merchant Indemnified Parties or Merchant's customers by Consultant or any of the Consultant Indemnified Parties and (e) any claims made by any party engaged by Consultant as an employee, agent, representative or independent contractor arising out of such engagement.</p>
<p>Indemnification by Merchants</p>	<p>Merchant hereby indemnifies, defends, and holds Consultant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, principals, affiliates, and Supervisors (collectively, the "<u>Consultant Indemnified Parties</u>") harmless from and against all liabilities, claims, demands, damages, costs, and expenses (including reasonable attorneys' fees) arising from or related to (a) the acts or omissions of Merchant or Merchant Indemnified Parties (as defined below); (b) the material breach of any provision of this Agreement by Merchant; (c) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), or any other person (excluding the Consultant Indemnified Parties) against Consultant or any Consultant</p>

TERM	CONSULTING AGREEMENT
	Indemnified Party, except claims arising from Consultant's own gross negligence, willful misconduct, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious, or otherwise actionable treatment of any Consultant Indemnified Parties or Merchant's customers by Merchant or any Merchant Indemnified Parties; and (e) Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by Merchant during the Sale Term in accordance with applicable law.

C. The Sale Guidelines

13. The Debtors seek approval of streamlined procedures (*i.e.*, the Sale Guidelines) to sell the Store Closure Assets, in each case free and clear of liens, claims and encumbrances. The Debtors also seek approval of the Sale Guidelines to provide newspapers and other advertising media in which the Sales may be advertised with comfort that the Debtors are conducting the Sales in compliance with applicable law and with the Bankruptcy Court's approval. The Debtors seek interim approval of the Sale Guidelines in light of the need to start the sales on June 1, 2020, so that the Debtors can complete the Sales prior to the Debtors' emergence from chapter 11.

14. The Debtors have determined, in the exercise of their business judgment and in consultation with their advisors, that the Sale Guidelines will provide the best and most efficient means of selling the Store Closure Assets in order to maximize their value to the estate. The Debtors estimate that consummation of the majority of the Sales and Store Closings will take approximately 10 weeks to complete.

D. Liquidation Sale Laws and Dispute Resolution Procedures

15. Certain states in which the Debtors operates stores have or may have licensing or other requirements governing the conduct of store closing, liquidation, or other inventory clearance sales, including, without limitation, state, provincial, and local laws, statutes, rules,

regulations, and ordinances (the “Liquidation Sale Laws”). Liquidation Sale Laws may establish licensing, permitting or bonding requirements, waiting periods, time limits, and bulk sale restrictions and augmentation limitations that would otherwise apply to the Store Closings. Such requirements hamper the Debtors’ ability to maximize value in selling their inventory. Subject to the Bankruptcy Court’s approval, the Debtors intend to conduct the Store Closings in accordance with the Sale Guidelines, and to the extent such guidelines conflict with the Liquidation Sale Laws, the Sale Guidelines shall control.

16. For the purpose of orderly resolving any disputes between the Debtors and any Governmental Units (as defined in Bankruptcy Code § 101(27)) arising due to the Sale Guidelines and the alleged applicability of any Liquidation Sale Laws, the Debtors respectfully request that the Bankruptcy Court authorize the Debtors to implement the following dispute resolution procedures (the “Dispute Resolution Procedures”), as set forth in the Interim Order and the Final Order:

- i. Provided that the Sales are conducted in accordance with the terms of the Interim Order, or the Final Order, as applicable, 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 and the Consultant will be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of the Interim Order, or the Final Order, as applicable, and the Sale Guidelines without the necessity of further showing compliance with any Liquidation Sale Laws.
- ii. Within three business days after entry of the Interim Order, the Debtors will serve by first-class mail, copies of the Interim Order, the proposed Final Order, the Consulting Agreement, and the Sale Guidelines on the following: (a) the Attorney General’s office for each state where the Sales are being held; (b) the county consumer protection agency or similar agency for each county where the Sales are being held; (c) the division of consumer protection for each state where the Sales are being held; (d) the chief legal counsel for the local jurisdiction; (e) the landlords for the Closing Stores; and (f) Consultant and (if applicable) Consultant’s counsel (collectively, the “Dispute Notice Parties”).
- iii. With respect to any Additional Closing Stores, within three business days after

filing any Additional Closing Store List with the Bankruptcy Court, the Debtors will serve by first-class mail, copies of the Interim Order or Final Order, as applicable, the Consulting Agreement, and the Sale Guidelines on the Dispute Notice Parties.

- iv. To the extent that there is a dispute arising from or relating to the Sales, the Interim Order, or the proposed Final Order, as applicable, the Consulting Agreement, or the Sale Guidelines, which dispute relates to any Liquidation Sale Laws (a “Reserved Dispute”), the Bankruptcy Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within ten days following entry of the Interim Order, or service of an Additional Store Closing List, as applicable, any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the “Dispute Notice”) explaining the nature of the dispute to: (a) the Debtors, (b) counsel to the Debtors, (c) Vinson & Elkins, LLP, Trammel Crow Center, 2001 Ross Avenue, Suite 3900, Dallas, Texas 75201, Attn: William L. Wallander and Bradley R. Foxman, as counsel to the DIP Agent; (d) counsel to the official committee of unsecured creditors, if one is appointed, and (e) the United States Trustee for the Northern District of Texas. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within 15 days after service of the notice, the Governmental Unit may file a motion with the Bankruptcy Court requesting that the Bankruptcy Court resolve the Reserved Dispute (a “Dispute Resolution Motion”).
- v. In the event that a Dispute Resolution Motion is filed, nothing in the Interim Order, or the Final Order, as applicable, shall preclude the Debtors, a landlord, or any other interested party from asserting (A) that the provisions of any Liquidation Sale Laws are preempted by the Bankruptcy Code, or (B) that neither the terms of the Interim Order or the Final Order nor the conduct of the Debtors pursuant to the Interim Order or the Final Order, violates such Liquidation Sale Laws. Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of any Interim Order or Final Order or to limit or interfere with the Debtors’ or the Consultant’s ability to conduct or to continue to conduct the Sales pursuant to the Interim Order or the Final Order, absent further order of the Bankruptcy Court. Upon the entry of the Interim Order or the Final Order, as applicable, the Bankruptcy Court grants authority for the Debtors and the Consultant to conduct the Sales pursuant to the terms of the Interim Order or the Final Order, as applicable, the Consulting Agreement, and/or the Sale Guidelines and to take all actions reasonably related thereto or arising in connection therewith. The Governmental Unit will be entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Sale Laws or the lack of any preemption of such Liquidation Sale Laws by the Bankruptcy Code. Nothing in the Interim Order or the Final Order will constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.
- vi. If, at any time, a dispute arises between the Debtors and/or the Consultant and

a Governmental Unit as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in the Interim Order or the Final Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions of subparagraphs (iv) and (v) above 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 Liquidation Sale Law shall be made *de novo*.

E. Fast Pay Laws

17. Many states in which the Debtors operate have laws and regulations that require the Debtors to pay an employee substantially contemporaneously with his or her termination (the “Fast Pay Laws” and together with the Liquidation Sale Laws, the “Applicable State Laws”). These laws often require payment to occur immediately or within a period of only a few days from the date such employee is terminated.

18. The nature of the Store Closings contemplated by this Motion will result in a substantial number of employees being terminated during the Store Closings. To be clear, the Debtors intend to pay their terminated employees as expeditiously as possible and under normal payment procedures. However, the Debtors’ payroll system will simply be unable to process the payroll information associated with these terminations in a manner that will be compliant with the Fast Pay Laws. Under ordinary circumstances, the Debtors’ payroll department is able to coordinate delivery of final checks to coincide with an employee’s final day of work where required by state law. This process requires the Debtors’ payroll department to calculate individual termination payments, prepare each termination payment check, obtain authorization for each such check and then prepare each such check for mailing. Given the number of employees who will likely be terminated during the Store Closings, this process could easily take several days, making compliance with the Fast Pay Laws burdensome to the Debtors’ estates, if not impossible.

F. Lease Restrictions

19. The Debtors also respectfully request a waiver of any contractual restrictions that could otherwise inhibit or prevent the Debtors from maximizing value for creditors through the Store Closings and Sales. In certain cases, the contemplated Store Closings and Sales may be inconsistent with certain provisions of leases, subleases, or other documents with respect to the premises in which the Debtors operate, including (without limitation) reciprocal easement agreements, agreements containing covenants, conditions, and restrictions (including, without limitation, “go dark” provisions and landlord recapture rights), or other similar documents or provisions. Such restrictions would also hamper the Debtors’ ability to maximize value in selling their inventory.

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

Basis for Relief Requested

A. Authorization to Assume the Consulting Agreement is in the Best Interest of the Debtors’ Estates

21. Bankruptcy Code § 365(a) provides, in pertinent part, that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or [unexpired] lease of the debtor.” 11 U.S.C. § 365(a). A decision to assume or reject an executory contract pursuant to Bankruptcy Code § 365 must be based on the debtor’s business judgment. *See Richmond*

Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1309 (5th Cir. 1985); *In re Taylor*, 913 F.2d 102 (3d Cir. 1990); *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36 (3d Cir. 1989); *In re Gardinier, Inc.*, 831 F.2d 974, 975 n.2 (11th Cir. 1987). The business judgment test is not a strict standard and merely requires a showing that either assumption of rejection of the contract at issue will benefit the debtor's estate. See *In re Bildisco*, 682 F.2d 72, 79 (3d Cir. 1982), *aff'd sub nom, NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984).

22. Upon a finding that a debtor has exercised its sound business judgment in determining that assumption of an agreement is in the best interests of its estate, the court should approve the assumption under Bankruptcy Code § 365(a). See, e.g., *In re Child World, Inc.*, 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992); *In re TS Indus., Inc.*, 117 B.R. 682, 685 (Bankr. D. Utah 1990); *In re Del Grosso*, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 673 (Bankr. S.D.N.Y. 1989).

23. The assumption of the Consulting Agreement represents a reasonable exercise of the Debtors' business judgment. In consultation with their advisors, the Debtors determined that the Closing Stores are a burden to their estates based on their current profitability, and that the Store Closure Assets should be liquidated for the benefit of the Debtors' estates and their creditors. Further, after arm's-length negotiations, the Debtors believe that the Consulting Agreement contains the most favorable terms available under the circumstances.

24. The Consultant has extensive expertise in conducting liquidation sales and can oversee, and assist in the management and implementation of, the Store Closings in an efficient and cost effective manner. Assumption of the Consulting Agreement will enable the Debtors to utilize the skills and resources of the Consultant to effectively and efficiently conduct the Store Closings and Sales for the benefit of all stakeholders. If the Consulting Agreement is not assumed

on an interim basis, there could be substantial harm to all stakeholders. For example, the estate would lose the benefit of the momentum and preparation that has already been started by the Consultant regarding the Store Closings prepetition. Finally, given the number of Closing Stores and the particular issues in administering the Store Closings, it is not certain the Debtors could retain a liquidator able to conduct the process as efficiently and effectively as the Consultant, without added delay or cost.

25. Courts in other Chapter 11 cases filed by retailers have recently approved the assumption of similar consulting agreements. *See, e.g., In re Pier 1 Imports, Inc., et al.*, No. 20-30805 (KRH) (Bankr. E.D. Va. Feb. 18, 2020) (approving assumption of consulting agreement in connection with store closing sales); *In re Modell's Sporting Goods, Inc., et al.*, 20-14179 (VFP) (Bankr. D. N.J. March 13, 2020) (same); *In re A'GACI, LLC*, No. 18-50049 (RBK) (Bankr. W.D. Tex. Jan. 25, 2018) (authorizing assumption of consulting agreement); *In re rue21, inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. May 18, 2017) (same); *In re BCBG Max Azria Glob. Holdings, LLC*, No. 17-10466 (SCC) (Bankr. S.D.N.Y. Mar. 2, 2017) (same); *In re Aéropostale, Inc.*, No. 16-11275 (SHL) (Bankr. S.D.N.Y. May 6, 2016) (same); *In re Sports Authority Holdings, Inc.*, No. 16-10527 (MFW) (Bankr. D. Del. Mar. 3, 2016) (same); *In re Quiksilver, Inc.*, No. 15-11880 (BLS) (Bankr. D. Del. Sept. 10, 2015) (same); *In re Radioshack Corp.*, No. 15-10197 (BLS) (Bankr. D. Del. Feb. 6, 2015) (same); *In re FFW OPCO, Ltd.*, No. 10-33761 (HDH) (Bankr. N.D. Tex. June 9, 2010) (same); *In re Gadzooks, Inc.*, No. 04-31486 (HDH) (Bankr. N.D. Tex. Feb. 25, 2004) (same).

B. The Sale Guidelines Should be Approved

26. The Court may authorize the Debtors to consummate the Store Closings pursuant to Bankruptcy Code §§ 105(a) and 363(b). Bankruptcy Code § 363(b)(1) provides, in relevant

part, that, “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Further, § 105(a) of provides, in relevant part, 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. A debtor must demonstrate sound business judgment for a sale of assets outside of the ordinary course of business. *See, e.g., Institutional Creditors of Cont’l Airlines, Inc. v. Cont’l Airlines, Inc. (In re Cont’l Airlines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986). Courts look to various factors to determine whether to approve a motion under § 363(b) of the Bankruptcy Code, such as: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed in good faith; and (d) whether adequate and reasonable notice is provided. *See, e.g., In re Condere*, 228 B.R. 615, 626 (Bankr. S.D. Miss. 1998).

28. In addition, the Court may authorize the Store Closings based on Bankruptcy Code § 105(a), which codifies the Court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” § 105(a).

29. The relief requested by this Motion represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates and is justified under §§ 105(a) and 363(b). The Debtors and their advisors believe that the Sale Guidelines represent the most efficient and appropriate means of maximizing the value of the Store Closure Assets, while balancing the potentially competing concerns of landlords and other parties in interest.

30. Furthermore, ample business justification exists to conduct the Store Closings. Prior to the Petition Date, the Debtors, with the assistance of their advisors, engaged in a

review of each of their stores to: (a) identify underperforming stores; (b) consider whether the store's performance can be improved by various initiatives, including through the negotiation of lease concessions with landlords; and (c) determine what stores should be closed promptly to eliminate their ongoing negative impact on the Debtors' financial performance and to improve the Debtors' liquidity. This process has resulted in the Debtors' identification of the Closing Stores.

31. Further, delay in consummating the Store Closings would diminish the recovery tied to monetization of the Store Closure Assets for a number of reasons, chief among them that the Closing Stores fail to currently generate positive cash flow and therefore are a drain on liquidity. Thus, the Debtors will realize an immediate benefit in terms of financial liquidity upon the sale of the Store Closure Assets and the termination of operations at the Closing Stores. Further, the swift and orderly commencement of the Store Closings will allow the Debtors to timely reject the applicable Store leases, and therefore avoid the accrual of unnecessary administrative expenses for rent payment.

32. Numerous bankruptcy courts have recently approved sale guidelines in chapter 11 cases on an interim basis, and numerous courts have granted retail debtors first-day authority to implement such procedures. *See, e.g., In re Pier 1 Imports, Inc.*, No. 20-30805 (KRH) (Bankr. E.D. Va. Feb. 18, 2020) (approving sale guidelines on an interim basis); *In re Modell's Sporting Goods, Inc.*, 20-14179 (VFP) (Bankr D. N.J. March 13, 2020) (same); *In re A'GACI, L.L.C.*, No. 18-50049 (RBK) (Bankr. W.D. Tex. Jan. 11, 2018 (same); *In re rue21, inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. May 18, 2017) (same); *In re BCBG Max Azria Glob. Holdings, LLC*, No. 17-10466 (Bankr. S.D.N.Y. Mar. 2, 2017) (granting first-day relief and authorizing the debtors, pursuant to Bankruptcy Code §§ sections 105(a) and 363(b)(1), to immediately continue and conduct the contemplated store closings); *In re Aèropostale, Inc.*, No. 16-11275 (Bankr. S.D.N.Y.

May 6, 2016) (same); *In re Sports Authority Holdings, Inc.*, No. 16-10527 (Bankr. D. Del. March 3, 2016) (same); *In re Quiksilver, Inc.*, No. 15-11880 (Bankr. D. Del. Sept. 10, 2015) (same); *In re Radioshack Corp.*, No. 15-10197 (Bankr. D. Del. Feb. 6, 2015) (same). The sale guidelines approved in the foregoing cases are substantially similar to the Sale Guidelines attached hereto.

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

33. The Debtors request approval to sell the Store Closure Assets on a final “as is” basis, free and clear of any and all liens, claims, and encumbrances in accordance with Bankruptcy Code § 363(f). A debtor in possession may sell property under §§ 363(b) and 363(f) “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied: (i) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (ii) such entity consents; (iii) 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; (iv) such interest is in *bona fide* dispute; or (v) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. § 363(f).

34. The Debtors anticipate that, to the extent there are liens on the Store Closure Assets, all holders of such liens will consent to the Sales because they provide the most effective, efficient, and time-sensitive approach to realizing proceeds for, among other things, the repayment of amounts due to such parties. Any and all liens on the Store Closure Assets sold under the Sales would attach to the remaining net proceeds of such sales with the same force, validity, effect, and priority as such liens currently have on these assets, subject to the rights and defenses, if any, of the Debtors and of any party-in-interest with respect thereto. Moreover, all identified lienholders will receive notice and will be given sufficient opportunity to object to the relief requested on a final basis.

35. Accordingly, the Debtors submit that the sale of the Store Closure Assets satisfies the statutory requirements of § 365(f) and should, therefore, be free and clear of any liens, claims, encumbrances, and other interests.

D. Compliance with Applicable State Laws Should be Waived and the Dispute Resolution Procedures Should be Approved

36. The Debtors' ability to conduct the Sales in accordance with the Sale Guidelines and without complying with Applicable State Laws is critical to the Sales' success. Although the Debtors intend to comply with state and local health and safety laws and consumer protection laws in conducting the Sales, many Liquidation Sale Laws require special and cumbersome licenses, waiting periods, time limits, and other procedures for store closing, liquidation, or similar sales. Additionally, compliance with Fast Pay Laws would require the Debtors to pay terminated employees within a time frame that would be detrimental to the conduct of the Chapter 11 Cases, if not impossible.

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

38. The Debtors submit that there is strong support for granting them the authority to not comply with the Liquidation Sale Laws. *First*, it is generally accepted that many state statutes and regulations provide that, if a liquidation or bankruptcy sale is court authorized, a

company need not comply with the Liquidation Sale Laws. *See, e.g.*, TEX. BUS. & COM. CODE ANN. § 17.91(3) (exempting from subchapter sales conducted pursuant to court order); CAL. COM. CODE § 6103 (exempting from the provisions of the chapter sales pursuant to any court order); HAW. REV. STAT. § 481D-2 (2013) (same); 815 ILCS 350/3 (same); TENN. CODE ANN. § 6-55-412 (2016) (same); OHIO ADMIN. CODE 109:4-3-17(c)(1) (provided that suppliers in bankruptcy shall be subject to this rule unless enforcement would conflict and be preempted by federal law). **Second**, pursuant to Bankruptcy Code § 105(a), the Court has the authority to permit the Store Closings to proceed notwithstanding contrary Applicable State Laws as it is essential to the continued operation of the Debtors' business. **Third**, this Court will be able to supervise the Store Closings because the Debtors and their assets are subject to this Court's exclusive jurisdiction. *See* 28 U.S.C. § 1334. As such, creditors and the public interest are adequately protected by notice of this Motion and the ongoing jurisdiction and supervision of the Bankruptcy Court because the Debtors are only seeking interim relief at the outset of these cases, and parties in interest will be able to raise any further issues at the final hearing.

39. Further, bankruptcy courts have consistently recognized, with limited exception, that federal bankruptcy law preempts state and local laws that contravene the underlying policies of the Bankruptcy Code. *See In re Map 1978 Drilling P'ship*, 95 B.R. 432, 436 (Bankr. N.D. Tex. 1989) (holding that federal law pre-empts state law since determining how the votes will be counted for approval of a plan conflicted with § 1126(d) of the Bankruptcy Code); *see also In re LandAmerica Fin. Grp., Inc.*, 470 B.R. 759, 780 (Bankr. E.D. Va. 2012) (holding that the "scope of preemption under § 1123(a) of the Bankruptcy Code is broad enough to preempt any state law that would restrict the objectives and operation of a debtor's reorganization plan."); *In re Williams*,

No. 06-32921 KRH, 2007 WL 2122131, at *9 (Bankr. E.D. Va. July 19, 2007) (“When a conflict exists between state law and bankruptcy laws enacted by Congress, the state law is superseded.”).

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

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

ordered means for resolving any disputes arising between the Debtors and any Governmental Units with respect to the applicability of any Liquidation Sale Laws, and should therefore be approved.

42. Bankruptcy Courts have granted similar relief in other bankruptcy cases under similar circumstances. *See, e.g., In re Modell's Sporting Goods, Inc.*, 20-14179 (VFP) (Bankr D. N.J. March 13, 2020) (authorizing store closing sales while presuming compliance with applicable store closing or liquidation sale laws); *In re A'GACI, L.L.C.*, No. 18-50049 (RBK) (Bankr. W.D. Tex. Jan. 11, 2018) (same); *In re BCBG Max Azria Glob. Holdings, LLC*, No. 17-10466 (Bankr. S.D.N.Y. Mar. 2, 2017); *In re Aèropostale, Inc.*, No. 16-11275 (Bankr. S.D.N.Y. May 6, 2016); *In re The Great Atl. & Pac. Tea Co., Inc.*, No. 15-23007 (Bankr. S.D.N.Y. August 13, 2015); *In re Daffy's, Inc.*, No. 12-13312 (Bankr. S.D.N.Y. 2012); *In re Blockbuster Inc.*, No. 10-14997 (Bankr. S.D.N.Y. Jan. 20, 2011); *In re Finlay Enters., Inc.*, No. 09-14873 (Bankr. S.D.N.Y. Sept. 25, 2009); *In re The Bombay Company, Inc.*, No. 07-44084 (DML) (Bankr. N.D. Tex. Oct. 16, 2007) (authorizing store closing sales while presuming compliance with applicable local and state requirements and bulk sale laws); *In re Gadzooks, Inc.*, No. 04-31486 (HDH) (Bankr. N.D. Tex. Feb. 11, 2004) (same).

43. Courts have also granted similar relief from Fast Pay Laws in other bankruptcy cases under similar circumstances. *See, e.g., In re Pier 1 Imports, Inc.*, No. 20-30805 (KRH) (Bankr. E.D. Va. Feb. 18, 2020) (presuming compliance with fast pay laws in connection with store closing sales); *In re rue21, inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. May 18, 2017) (same); *In re Golfsmith Int'l Holdings, Inc.*, No. 16-12033 (Bankr. D. Del. Oct. 13, 2016) (granting relief from federal, state or local laws including "any fast pay laws" in connection with store closing sales); *In re Vestis Retail Grp, LLC*, No. 16-10971 (LSS) (Bankr. D. Del. May 16, 2016); *In re Hancock Fabrics*, No. 16-10296 (BLS) (Bankr. D. Del. Feb. 25, 2016); *In re Fresh & Easy*,

LLC, No. 15-12220 (BLS) (Bankr. D. Del. Nov. 24, 2015); *In re Hagen Holdings, LLC*, No. 15-11874 (KG) (Bankr. D. Del. Oct. 15, 2015); *In re Coldwater Creek Inc.*, No. 14-10867 (BLS) (Bankr. D. Del. May 7, 2014) (ruling that “fast pay” laws and regulations were not enforceable against debtors in connection with store closing sales).

E. Compliance with Restrictions in the Debtors’ Leases Should be Waived

44. Certain of the Debtors’ leases governing the premises of the Closing Stores subject to the Store Closings may contain provisions purporting to restrict or prohibit the Debtors from conducting store closing, liquidation, or similar sales. Such provisions have been held to be unenforceable in chapter 11 cases as they constitute an impermissible restraint on a debtor’s ability to properly administer its reorganization case and maximize the value of its assets under section 363 of the Bankruptcy Code. *See In re Ames Dep’t Stores, Inc.*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (deciding that enforcement of such lease restrictions would “contravene overriding federal policy requiring debtor to maximize estate assets. . . .”); *In re R.H. Macy and Co., Inc.*, 170 B.R. 69, 73–74 (Bankr. S.D.N.Y. 1994) (holding that the lessor could not recover damages for breach of a covenant to remain open throughout the lease term, because the debtor had a duty to maximize the value to the estate and the debtor fulfilled this obligation by holding a store closing sale and closing the store.); *In re Tobago Bay Trading Co.*, 112 B.R. 463, 467–68 (Bankr. N.D. Ga., 1990) (finding that a debtor’s efforts to reorganize would be significantly impaired to the detriment of creditors if lease provisions prohibiting a debtor from liquidating its inventory were enforced); *In re Lisbon Shops, Inc.*, 24 B.R. 693, 695 (Bankr. E.D. Mo. 1982) (holding restrictive lease provision unenforceable in chapter 11 case where debtor sought to conduct a liquidation sale).

45. Store closing sales are a routine part of chapter 11 cases involving retail debtors. Such sales are consistently approved by courts, despite provisions in recorded documents or

agreements purporting to forbid such sales. Indeed, courts have repeatedly deemed such restrictive contractual provisions unenforceable as impermissible restraints on a debtor's ability to maximize the value of its assets under section 363 of the Bankruptcy Code. *See, e.g., In re A'GACI, L.L.C.*, 19-51919 (RBK) (Bankr. W.D. Tex. Aug. 30, 2019 (authorizing store closing sales notwithstanding restrictive provisions in any lease, sublease, or other agreement relative to occupancy); *In re rue21, inc.*, No. 17-22045 (GLT) (Bankr. W.D. Pa. May 18, 2017) (authorizing store closing sales without requiring compliance with lease provisions affecting store closing or liquidation sales); *see also In re BCBG Max Azria Glob. Holdings, LLC*, No. 17-10466 (Bankr. S.D.N.Y. Mar. 2, 2017) (authorizing store closing sales without requiring compliance with lease provisions affecting store closing or liquidation sales); *In re Aèropostale, Inc.*, No. 16-11275 (Bankr. S.D.N.Y. May 6, 2016) (same); *In re Sports Authority Holdings, Inc.*, No. 16-10527 (Bankr. D. Del. March 3, 2016) (same); *In re The Great Atl. & Pac. Tea Co., Inc.*, No. 15-23007 (Bankr. S.D.N.Y. August 13, 2015) (same); *In re Blockbuster Inc.*, No. 10-14997 (Bankr. S.D.N.Y. Jan. 20, 2011) (same); *In re The Bombay Company, Inc.*, No. 07-44084 (DML) (Bankr. N.D. Tex. Oct. 16, 2007) (ordering any lease provisions restricting store closing sales unenforceable); *In re Gadzooks, Inc.*, No. 04-31486 (HDH) (Bankr. N.D. Tex. Feb. 25, 2004) (confirming lease provisions purporting to restrict or prohibit store closing sales are unenforceable as an impermissible restraint on the debtor's ability to maximum the value of its assets).

46. Thus, to the extent that such provisions or restrictions exist in any of the leases of the Closing Stores subject to the Store Closings, the Debtors request that the Court authorize the Debtors and or the Consultant to conduct any liquidation sales without interference by any landlords or other persons affected, directly or indirectly, by the liquidation sales.

F. Abandonment of Certain Property in Connection with any Liquidation Sales Should be Approved

47. After notice and a hearing, a debtor “may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. §554(a).

48. The Debtors are seeking to sell all FF&E remaining in the Closing Stores. However, the Debtors may determine that the costs associated with holding or selling certain property or FF&E exceeds the proceeds that will be realized upon its sale, or that such property is not sellable at all. In such event, the property is of inconsequential value and benefit to the estates and/or may be burdensome to retain.

49. To maximize the value of the Debtors’ assets and to minimize the costs to the estate, the Debtors respectfully request authority to abandon any of their remaining FF&E or other property located at any of the Closing Stores without incurring liability to any person or entity. Following abandonment, any person (including, without limitation, the landlords) asserting rights, liens, claims, encumbrances, and/or interests in the abandoned property under non-bankruptcy law may freely exercise such rights, liens, claims, encumbrances, and/or interests in the abandoned property, without further notice or order from this Court, without any liability to the Debtors, and without waiver of any claim such person may have against the Debtors.

50. Notwithstanding the foregoing, the Debtors will utilize all commercially reasonable efforts to remove or cause to be removed any confidential or personal identifying information (which means information 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.

G. The Procedures Relating to the Additional Closing Stores Should be Approved.

51. The Debtors request that the Sale Guidelines and the Interim Order or Final Order, as applicable, apply to any Additional Closing Stores. In order to provide landlords and other parties in interest with information regarding the ultimate disposition of the stores, to the extent that the Debtors seek to conduct the Sales at any Additional Closing Store, the Debtors will file a list of such Additional Closing Stores with the Bankruptcy Court (the "Additional Closing Store List"), and serve a notice of their intent to conduct the Sales at the Additional Closing Stores on the applicable landlords (the "Additional Closing Store Landlords") and interested parties, including the U.S. Trustee, the Debtors' secured lenders, and any statutory committee of creditors appointed in the Merchants' bankruptcy cases, by email (to the extent available to the Debtors) or overnight mail. With respect to Additional Closing Store Landlords, the Debtors will mail such notice to the notice address set forth in the lease for such Additional Closing Store (or, if none, at the last known address available to the Debtors).

52. The Debtors propose that the Additional Closing Store Landlords (each of whom will have already been served with this Motion, the Interim Order and possibly the Final Order) and any interested parties have seven (7) days after service of the applicable Additional Closing Store List to object to the application of the Interim Order or the Final Order to their stores. If no timely objections are filed with respect to the application of the Interim Order or the Final Order to an Additional Closing Store, then the Debtors should be authorized, pursuant to Bankruptcy Code §§ 105(a), and 363(b) and (f), to proceed with conducting the Sales at the Additional Closing Store in accordance with the Interim Order or the Final Order, as applicable, the Sale Guidelines,

and the Consulting Agreement, and any such Additional Closing Stores shall be deemed “Closing Stores” for purposes of the foregoing..

53. If any objections are filed with respect to the application of the Interim Order or the Final Order, as applicable, to an Additional Closing Store, and such objections are not resolved, the objections and the application of the Interim Order or the Final Order, as applicable, to the Additional Closing Store will be considered by the Court at the next regularly scheduled omnibus hearing, subject to the rights of any party to seek relief on an emergency basis on shortened notice, to the extent necessary so that the Debtors can move promptly to maximize value and minimize expenses for the benefit of their creditors and stakeholders.

H. Consumer Privacy Ombudsman Not Required

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

Request for Waiver of Stay

55. To the extent that the relief sought in the Motion constitutes a use of property under Bankruptcy Code § 363(b), the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Similarly, to the extent that the relief sought in the Motion constitutes assumption of the Consulting Agreement under Bankruptcy Code § 365(a), the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6006(d). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of the estates.

Notice

56. Notice of this Motion will be provided to: (i) the Office of the United States Trustee; (ii) the Debtors' secured creditors; (iii) any party whose interests are directly affected by this specific pleading; (iv) those persons who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rules 2002 and 3017; (v) counsel for the proposed DIP Agent;⁵ (vi) counsel for any official committees appointed by this Court; (vii) the 40 largest unsecured creditors of the Debtors; and (viii) all governmental agencies having a regulatory or statutory interest in these cases (collectively, the "Notice Parties"). Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submits that no further notice is required.

WHEREFORE, based on the foregoing, the Debtors respectfully request that the Court (i) grant the Motion, and (ii) grant such other and further relief as is just and proper.

⁵ "DIP Agent" means JPMorgan Chase Bank, N.A., in its capacity as administrative agent under that certain [Senior Secured Super Priority Debtor-in-Possession Credit Agreement] dated May 27, 2020 between Debtor Tuesday Morning, Inc., as borrower, Guarantors (as defined therein), the DIP Agent, and the lenders party thereto (the "DIP Credit Agreement").

RESPECTFULLY SUBMITTED this 27th day of May, 2020.

HAYNES AND BOONE, LLP

By: /s/ Ian T. Peck

Ian T. Peck

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PROPOSED ATTORNEYS FOR DEBTORS

EXHIBIT A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
Tuesday Morning Corporation, <i>et al.</i> , ¹	§	Case No. 20-31476-HDH-11
	§	
Debtors.	§	Joint Administration Requested

INTERIM ORDER GRANTING THE DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO ASSUME THE CONSULTING AGREEMENT; (II) APPROVING PROCEDURES FOR STORE CLOSING SALES; (III) APPROVING THE SALE OF STORE CLOSURE ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES; (IV) WAIVING COMPLIANCE WITH APPLICABLE STATE LAWS AND APPROVING DISPUTE RESOLUTION PROCEDURES; (V) APPROVING PROCEDURES TO CONDUCT SALES IN ADDITIONAL CLOSING STORES; AND (VI) GRANTING RELATED RELIEF

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Tuesday Morning Corporation (8532) ("TM Corp."); TMI Holdings, Inc. (6658) ("TMI Holdings"); Tuesday Morning, Inc. (2994) ("TMI"); Friday Morning, LLC (3440) ("FM LLC"); Days of the Week, Inc. (4231) ("DOTW"); Nights of the Week, Inc. (7141) ("NOTW"); and Tuesday Morning Partners, Ltd. (4232) ("TMP"). The location of the Debtors' service address is 6250 LBJ Freeway, Dallas, TX 75240.

Upon the motion (the "Motion")² of the Debtors for the entry of an order (the "Interim Order"), (i) authorizing the Debtors to assume the Consulting Agreement; (ii) approving the Sale Guidelines; (iii) approving the Sale of Store Closure Assets free and clear of all liens, claims and encumbrances; (iv) waiving compliance with Applicable State Laws and approving Dispute Resolution Procedures; (v) approving procedures to conduct Sales in Additional Closing Stores; and (vi) granting related relief; and the Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at any hearing before the Court (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334, (ii) venue is proper in this District pursuant to 28 U.S.C. § 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iv) the notice of the Motion and the Hearing was sufficient under the circumstances, and (v) there is good cause to waive the stay of Bankruptcy Rules 6004(h) and 6006(d); after due deliberation determined that the relief requested in the Motion is necessary and essential for the Debtors' reorganization and such relief is in the best interests of the Debtors, their estates and creditors; and upon the record herein; and after due deliberation thereon; and good and sufficient cause have been shown; it is hereby:

FOUND AND DETERMINED THAT:³

1. The Debtors have advanced sound business reasons for seeking to assume the Consulting Agreement and adopt the Sale Guidelines, on an interim basis subject to the Final Hearing, as set forth in the Motion and at the Hearing, and entering into the Consulting Agreement

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion or the Consulting Agreement.

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

is a reasonable exercise of the Debtors' business judgment and in the best interests of the Debtors and their estates.

2. Conducting the Store Closings in accordance with the Sale Guidelines will provide an efficient means for the Debtors to dispose of the Store Closure Assets.

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

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

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

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

7. The entry of this Interim Order is in the best interest of the Debtors and their estates, creditors, interest holders, and all other parties in interest; and now therefore;

IT IS HEREBY ORDERED THAT:

8. The Motion is GRANTED ON AN INTERIM BASIS as provided herein.

9. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2020. Any objections or responses to entry of a final order on the Motion shall be filed on or before _____, 2020 and served on the following parties: (i) the Debtors, Tuesday Morning Corporation and its affiliates; (ii) proposed counsel to the Debtors, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, Attn: Ian Peck, Steve Pezanosky, and Jarom Yates; (iii) the Office of the United States Trustee for the Northern District of Texas; (iv) Vinson & Elkins,

LLP, Trammel Crow Center, 2001 Ross Avenue, Suite 3900, Dallas, Texas 75201, Attn: William L. Wallander and Bradley R. Foxman, counsel for JPMorgan Chase Bank, N.A., as DIP Agent; (v) counsel to the official committee of unsecured creditors (if any) appointed in this Chapter 11 Case; (vi) Consultant, Great American Group; and (vii) counsel for Consultant, (collectively, the “Notice Parties”).

10. The Debtors are authorized and empowered to take any and all further actions as may be reasonably necessary or appropriate to give effect to this Interim Order.

11. To the extent of any conflict between this Interim Order, the Sale Guidelines, and the Consulting Agreement, the terms of this Interim Order shall control over all other documents and the Sale Guidelines shall control over the Consulting Agreement.

12. Notwithstanding Bankruptcy Rules 6003(b), 6004(h), and 6006(d), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

A. Authority To Assume the Consulting Agreement

13. The Consulting Agreement, a copy of which is attached to this Interim Order as **Schedule 1**, is hereby assumed pursuant to Bankruptcy Code § 365 on an interim basis. The Debtors are authorized to act and perform in accordance with the terms of the Consulting Agreement, including making payments required by the Consulting Agreement to the Consultant without the need for any application of the Consultant or a further order of the Court; provided however, such payments are subject to the DIP Order (defined below).

14. Subject to the restrictions set forth in this Interim Order, the DIP Order, and the Sale Guidelines, the Debtors and the Consultant are hereby authorized to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and the Sales; and each of the transactions contemplated by the Consulting Agreement, and any actions taken by the

Debtors and the Consultant necessary or desirable to implement the Consulting Agreement and/or the Sales prior to the date of this Interim Order, hereby are approved and ratified.

B. Authority To Engage in Store Closing Sales

15. The Debtors are authorized, pursuant to Bankruptcy Code §§ 105(a) and 363(b)(1), to immediately continue and conduct Sales at the Closing Stores in accordance with this Interim Order, the Sale Guidelines, and the Consulting Agreement.

16. The Sale Guidelines, which are attached to this Interim Order as **Schedule 2**, are approved in their entirety on an interim basis.

17. The Debtors are authorized to discontinue operations at the Closing Stores in accordance with this Interim Order and the Sale Guidelines.

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

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

C. Conduct of the Sales

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

sale of the Merchandise and FF&E in the manner contemplated by and in accordance with this Interim Order, the Sale Guidelines, and the Consulting Agreement.

21. Except as provided for in this Interim Order and the DIP Order, the Debtors and Consultant are hereby authorized to take such actions as may be necessary and appropriate to implement the Consulting Agreement and to conduct the sale without necessity of further order of this Court as provided in the Consulting Agreement or the Sale Guidelines, including, but not limited to, advertising the sale as a "store closing sale", "sale on everything", "everything must go", or similar-themed sales through the posting of signs (including the use of exterior banners at non-enclosed mall Closing Locations, and at enclosed mall Closing Locations to the extent the applicable Closing Location entrance does not require entry into the enclosed mall common area), use of sign-walkers, and street signage.

22. Notwithstanding anything herein to the contrary, and in view of the importance of the use of sign-walkers, banners, and other advertising to the sale of the Merchandise and FF&E, to the extent that, prior to the Final Hearing, disputes arise during the course of such sale regarding laws regulating the use of sign-walkers, banners or other advertising and the Debtors and the Consultant are unable to resolve the matter consensually with a 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 no later than the earlier of (a) the Final Hearing or (b) within two business days of such request. This scheduling shall not be deemed to preclude additional hearings for the presentation of evidence or arguments as necessary.

23. Except as expressly provided in the Consulting Agreement, the sale of the Merchandise and FF&E shall be conducted by the Debtors and the Consultant notwithstanding any restrictive provision of any lease, sublease 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. The Consultant and landlords of the Closing Locations 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 Consultant and any such landlords, provided that nothing in such Side Letters affects the provisions of this Interim Order. In the event of any conflict between the Sale Guidelines and any Side Letter, the terms of such Side Letter shall control. Both the Sale Guidelines and any Side Letters shall at all times be subject to, and controlled by, the provisions of this Interim Order.

24. Except as expressly provided for herein or in the Sale Guidelines, no person or entity, including, but not limited to, any landlord, licensor, service providers, utilities, and creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Sales or the sale of Merchandise or FF&E, or the advertising and promotion (including the posting of signs and exterior banners or the use of sign-walkers) of such sales, and all such parties and persons of every nature and description, including, but not limited to, any landlord, licensor, service providers, utilities, and creditor and all those acting for or on behalf of such parties, are prohibited and enjoined from (i) interfering in any way with, obstructing, or otherwise impeding, the conduct of the Sales and/or (ii) instituting any action or proceeding in any court (other than in the Bankruptcy Court) or administrative body seeking an order or judgment against, among others, the Debtors, the Consultant, or the landlords at the Closing Locations that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sales or sale of the Merchandise or FF&E or other liquidation sales at the Closing Locations and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein.

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

26. All sales of Store Closure Assets shall be "as is" and final. Returns related to the purchase of Store Closure Assets shall not be accepted at stores that are not participating in the Store Closings.

27. The Consultant shall not be liable for sales taxes except as expressly provided in the Consulting Agreement and the payment of any and all sales taxes is the responsibility of the Debtors. The Debtors are directed to remit all taxes arising from the Sales to the applicable Governmental Units as and when due, provided that in the case of a bona fide dispute the Debtors are only directed to pay such taxes upon the resolution of the dispute, if and to the extent that the dispute is decided in favor of the applicable Governmental Unit. Sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other party, other than the applicable Governmental Unit for which the sales taxes are collected. The Consultant shall collect, remit to the Debtors and account for sales taxes as and to the extent provided in the Consulting Agreement. This Interim Order does not enjoin, suspend or restrain the assessment, levy or collection of any tax under state law, and does not constitute a declaratory judgment with respect to any party's liability for taxes under state law.

28. Pursuant to Bankruptcy Code § 363(f), the Consultant, on behalf of the Debtors, is authorized to sell and all sales of Merchandise or FF&E (each as defined in the Consulting Agreement) pursuant to the Sales, whether by the Consultant or the Debtors, shall be free and clear

of any and all Encumbrances; provided, however, that any such Encumbrances shall attach to the proceeds of the Sales with the same validity, in the amount, with the same priority as, and to the same extent that any such liens, claims, and encumbrances have with respect to the Merchandise and FF&E, subject to any claims and defenses that the Debtors may possess with respect thereto and the Consultant's fees and expenses (as provided in the Consulting Agreement).

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

30. The Debtors and/or the Consultant (as the case may be) are authorized and empowered to, upon prior written notice to the DIP Agent, transfer Merchandise and FF&E among the Stores. The Consultant is authorized to sell the Debtors' FF&E and, subject to the prior written consent of the DIP Agent, abandon the same, in each case, as provided for and in accordance with the terms of the Consulting Agreement. Any claims arising as a result of such abandonment, including but not limited to claims by landlords related to the removal of abandoned property, shall be junior in priority to any superpriority administrative claims granted under the DIP Order, regardless of when such superpriority administrative claims may arise, (including without limitation, any Adequate Protection Claims (as defined in the DIP Order)). Following abandonment, any person (including, without limitation, the landlords) asserting rights, liens, claims, encumbrances, and/or interests in such abandoned property under non-bankruptcy law may freely exercise such rights, liens, claims, encumbrances, and/or interests in the abandoned property, without further notice or order from this Court, without any liability to the Debtors, and without waiver of any claim such person may have against the Debtors.

31. Notwithstanding this or any other provision of this Interim Order, nothing shall prevent or be construed to prevent the Consultant (individually, as part of a joint venture, or otherwise) or any of its affiliates from providing additional services to and/or bidding on the Debtors' assets not subject to the Consulting Agreement pursuant to an agency agreement or otherwise ("Additional Assets"). The Consultant (individually, as part of a joint venture, or otherwise) or any of its affiliates are hereby authorized to bid on, guarantee, or otherwise acquire such Additional Assets, or offer to provide additional services, notwithstanding anything to the contrary in the Bankruptcy Code or other applicable law, provided that such services guarantee, transaction, or acquisition is approved by separate order, acceptable in form and substance to the DIP Agent, of this Court.

D. Procedures Relating to Additional Store Closings

32. To the extent that the Debtors seek to conduct the Sales at any Additional Closing Stores, the Sale Guidelines and this Interim Order shall apply to the Additional Closing Stores; provided that any requests to conduct such Sales at Additional Closing Stores pursuant to this Interim Order shall be made prior to the date of confirmation of any chapter 11 plan and this Order shall only apply to such Sales through the effective date of such chapter 11 plan.

33. Prior to conducting the Sales at any Additional Closing Store, the Debtors will file a list, in form and substance acceptable to the DIP Agent, of such Additional Closing Stores with this Court (the "Additional Closing Store List") and serve a notice of their intent to conduct the Sales and the Additional Closing Stores on the applicable landlords (the "Additional Closing Store Landlords") and interested parties, including the U.S. Trustee, secured creditors, and any statutory committee of creditors appointed in the Chapter 11 Case, by email (to the extent available to the Debtors) or overnight mail. With respect to Additional Closing Store Landlords, the Debtors will

mail such notice to the notice address set forth in the lease for such Additional Closing Store (or, if none, at the last known address available to the Debtors).

34. The Additional Closing Store Landlords and any interested parties shall have seven days after service of the applicable Additional Closing Store List to object to the application of this Interim Order. If no timely objections are filed with respect to the application of this Interim Order to an Additional Closing Store, the Debtors shall be authorized, pursuant to Bankruptcy Code § 105(a), to proceed with conducting the Sales at the Additional Closing Store in accordance with this Interim Order, as applicable, the Sale Guidelines, and the Consulting Agreement. If any objections are filed with respect to the application of this Interim Order, to an Additional Closing Store, and such objections are not resolved, the objections and the application of this Interim Order to the Additional Closing Store will be considered by the Court at the next regularly scheduled omnibus hearing, subject to the rights of any party to seek relief on an emergency basis on shortened notice, to the extent necessary so that the Debtors can move promptly to maximize value and minimize expenses for the benefit of their creditors and stakeholders.

35. The Debtors, in the exercise of their reasonable business judgment, subject to the prior written consent of the DIP Agent, and depending on the outcome of the Lease Negotiations, may remove stores from the Additional Closing Store List at any time and without notice or further order of this Court.

E. Dispute Resolution Procedures with Governmental Units

36. Nothing in this Interim Order, the Consulting Agreement, or the Sale Guidelines, releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or

operator of the property after the date of entry of this Interim Order. Nothing contained in this Interim Order, the Consulting Agreement, or the Sale Guidelines shall in any way: (a) diminish the obligation of any entity to comply with environmental laws; or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with its rights and obligations as debtor in possession under the Bankruptcy Code. The Store Closings and the Sales shall not be exempt from laws of general applicability, including, without limitation, public health and safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, “General Laws”). Nothing in this Interim Order, the Consulting Agreement, or the Sale Guidelines, shall alter or affect obligations to comply with all applicable federal safety laws and regulations. Nothing in this Interim Order shall be deemed to bar any Governmental Unit (as such term is defined in Bankruptcy Code § 101(47)) from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors’ rights 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 or this Interim Order. Notwithstanding any other provision in this Interim Order, no party waives any rights to argue any position with respect to whether 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 Interim Order shall be deemed to have made any rulings on any such issues.

37. To the extent that the sale of Store Closure Assets is subject to any Liquidation Sale Laws, including any federal, state or local statute, ordinance, or rule, or licensing requirement directed at regulating “going out of business,” “store closing,” similar inventory liquidation sales, or bulk sale laws, laws restricting safe, professional and non-deceptive, customary advertising such

as signs, banners, posting of signage, and use of sign-walkers solely in connection with the sale and including ordinances establishing license or permit requirements, waiting periods, time limits or bulk sale restrictions that would otherwise apply solely to the sale of the Store Closure Assets, the dispute resolution procedures in this section shall apply:

- i. Provided that the Sales are conducted in accordance with the terms of the Interim Order, or the Final Order, as applicable, 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 and the Consultant will be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of the Interim Order, or the Final Order, as applicable, and the Sale Guidelines without the necessity of further showing compliance with any Liquidation Sale Laws.
- ii. Within three business days after entry of the Interim Order, the Debtors will serve by first-class mail, copies of the Interim Order, the proposed Final Order, the Consulting Agreement, and the Sale Guidelines on the following: (a) the Attorney General's office for each state where the Sales are being held; (b) the county consumer protection agency or similar agency for each county where the Sales are being held; (c) the division of consumer protection for each state where the Sales are being held; (d) the chief legal counsel for the local jurisdiction; (e) the landlords for the Closing Stores; and (f) Consultant (collectively, the "Dispute Notice Parties").
- iii. With respect to any Additional Closing Stores, within three business days after filing any Additional Closing Store List with the Bankruptcy Court, the Debtors will serve by first-class mail, copies of the Interim Order or Final Order, as applicable, the Consulting Agreement, and the Sale Guidelines on the Dispute Notice Parties.
- iv. To the extent that there is a dispute arising from or relating to the Sales, the Interim Order, or the proposed Final Order, as applicable, the Consulting Agreement, or the Sale Guidelines, which dispute relates to any Liquidation Sale Laws (a "Reserved Dispute"), the Bankruptcy Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within ten days following entry of the Interim Order, or service of an Additional Store Closing List, as applicable, any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the "Dispute Notice") explaining the nature of the dispute to: (a) Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, Attn: Ian Peck, Steve Pezanosky, and Jarom Yates; (b) Vinson & Elkins, LLP, Trammel Crow Center, 2001 Ross Avenue, Suite 3900, Dallas, Texas 75201, Attn: William L. Wallander and Bradley R. Foxman, as counsel to the DIP Agent; (c)

counsel to the official committee of unsecured creditors, if one is appointed, (d) the United States Trustee for the Northern District of Texas; (d) Consultant, and (e) Consultant's counsel. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within 15 days after service of the notice, the Governmental Unit may file a motion with the Bankruptcy Court requesting that the Bankruptcy Court resolve the Reserved Dispute (a "Dispute Resolution Motion").

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

38. Subject to paragraphs 36 and 37 above, each and every federal, state, or local agency, departmental, or Governmental Unit with regulatory authority over the Sales and all newspapers and other advertising media in which the Sales are advertised shall consider this Interim Order as binding authority that no further approval, license, or permit of any Governmental

Unit shall be required, nor shall the Debtors or the Consultant be required to post any bond, to conduct the Sales.

39. Provided that the Sales are conducted in accordance with the terms of this Interim Order, the Consulting Agreement, and the Sale Guidelines, and in light of the provisions in the laws that exempt court-ordered sales from their provisions, the Debtors and Consultant shall be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of this Interim Order and the Sale Guidelines without the necessity of further showing compliance with any such Liquidation Sale Laws.

40. Within three business days of the entry date of this Interim Order, the Debtors shall serve copies of this Interim Order, the Consulting Agreement, and the Sale Guidelines via email, facsimile, or regular mail, on: (i) the Office of the United States Trustee for the Northern District of Texas; (ii) counsel to the DIP Agent; (iii) counsel to the official committee of unsecured creditors (if any) appointed in this Chapter 11 Case; (iv) all state attorneys general in which the Store Closure Assets are Located; (v) municipalities in which the Store Closure Assets are located; (vi) all of the Debtors' landlords at the locations of the Stores; (vii) all applicable state and consumer protection agencies; (viii) all parties who are known by the Debtors to assert liens against the Store Closure Assets; and (ix) any party that has requested notice pursuant to Bankruptcy Rule 2002.

F. Other Provisions.

41. The Consulting Agreement and related documents may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court.

42. The Debtors, in the exercise of their reasonable business judgment, and subject to the prior written consent of the DIP Agent, and depending on the outcome of the Lease Negotiations, may remove stores from the list of Closing Stores attached to the Consulting Agreement as **Exhibit A** at any time and without notice or further order of this Court.

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

44. To the extent the Debtors are subject to any state “fast pay” laws in connection with the Store Closings, the Debtors shall be presumed to be in compliance with such laws to the extent, in applicable states, such payroll payments are made by the later of: (a) the Debtors’ next regularly scheduled payroll; and (b) seven calendar days following the termination date of the relevant employee, and in all such cases consistent with, and subject to, any previous orders of this Court regarding payment of same.

45. Notwithstanding anything to the contrary herein, nothing in this Interim Order authorizes the use of cash collateral or debtor-in-possession financing. Any payments authorized to be made pursuant to the Motion shall be made only to the extent authorized under the cash collateral and debtor-in-possession financing order approved by the Court in effect as of the time such payment is to be made (together with any approved budgets in connection therewith, the “DIP Order”), and such payments shall be subject to the terms, conditions, limitations, and requirements of the DIP Order in all respects.

46. Subject to the terms of the DIP Order and the DIP Credit Agreement, the Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order.

END OF ORDER

Submitted by:

HAYNES AND BOONE, LLP

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PROPOSED ATTORNEYS FOR DEBTORS

Schedule 1

Consulting Agreement

CONSULTANT AGREEMENT

This Consultant Agreement (collectively with all Exhibits hereto, the “Agreement”) is made as of May 6, 2020, by and between Tuesday Morning Corp., a Delaware corporation (“Merchant”), as debtor in possession, and Great American Group, LLC, a California limited liability company (“Consultant” and together with Merchant, the “Parties” and each a “Party”).

RECITALS

WHEREAS, Merchant operates retail stores and desires that Consultant act as Merchant’s Consultant for the limited purposes of (a) selling all of the Merchandise (as hereinafter defined) from Merchant’s retail store locations listed on Exhibit A attached hereto, which list may be amended in writing from time to time (including by adding or removing Stores), by mutual agreement of the Parties (each individually a “Store,” and collectively the “Stores”), by means of a “store closing”, “location closing”, “sale on everything”, “everything must go”, or similar themed sale, as agreed between the Parties, and (b) disposing of the FF&E (defined below) in the Stores, on the terms and conditions set forth in this Agreement (the “Sale”).

WHEREAS, Merchant and certain of its affiliates expect to commence voluntary chapter 11 bankruptcy cases (the “Bankruptcy Cases”) in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) in May 2020.

WHEREAS, subject to the approval of the Bankruptcy Court, Consultant is willing to serve as Merchant’s consultant for the purpose of providing such consulting services, upon the terms and conditions and in the manner set forth in this Agreement.

AGREEMENT

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 Parties agree as follows:

Section 1. Appointment of Consultant

Effective as of the date hereof, subject to approval by the Bankruptcy Court pursuant to section 363 of title 11 of the United States Code (the “Bankruptcy Code”), Merchant hereby appoints Consultant, and Consultant hereby agrees to serve, as Merchant’s exclusive agent for the limited purpose of conducting the Sale and assisting Merchant in the sale of the Merchandise and FF&E (each as defined below) in accordance with the terms and conditions of this Agreement. Subject to the above, Consultant shall be authorized to advertise the Sale as a “store closing”, “location closing”, “sale on everything”, “everything must go”, or similar-themed sale, and shall not be authorized to advertise the Sale as a “going out of business” sale.

Section 2(a). Merchandise

As used in this Agreement, “Merchandise” means all first quality goods, saleable in the ordinary course, located in the Stores on the Sale Commencement Date (defined below) or delivered thereto after the Sale Commencement Date pursuant to the terms of this Agreement. “Merchandise” excludes (1) goods that belong to sublessees, licensees, or concessionaires of Merchant, as identified by Merchant prior to the Sale Commencement Date; (2) goods, saleable in the ordinary course that Merchant desires to retain and transport to its store locations that are not listed on Exhibit A attached hereto, (3) FF&E (defined below) and improvements to real property that are located in the Stores; (4) damaged or defective goods; (5) goods

held by Merchant on memo, on consignment, or as bailee; and (6) gift cards (third party and Merchant branded).

Section 2(b). FF&E.

As used in this Agreement, “FF&E” means the furniture, furnishings, trade fixtures, machinery, equipment, office supplies, supplies, conveyor systems, racking, rolling stock, and other tangible personal property owned by Merchant and located in the Stores.

Section 3. Sale Term

The Sale shall commence on or about June 1, 2020 (the “Sale Commencement Date”) and conclude no later than August 7, 2020 (the “Sale Termination Date”); provided, however, that the Parties may mutually agree in writing to extend or terminate the Sale at any Store(s) prior to the Sale Termination Date. The date on which the Sale has concluded at all of the Stores is the “Sale Termination Date” and the period between the Sale Commencement Date and the Sale Termination Date, inclusive, is the “Sale Term”. At the conclusion of the Sale for each Store, Consultant shall surrender the premises for such Store to Merchant in broom clean condition with any unsold FF&E to be left in place at the Stores.

At any time prior to the Sale Termination Date, with the consent of Consultant and, ((if necessary) the approval of the Bankruptcy Court, Merchant shall have the right to designate one or more stores for inclusion in the Sale (upon such designation, each such additional store shall be a “Store” or an “Additional Store,” and collectively all of such shall be the “Additional Stores”). Upon Merchant’s designation of the Additional Store(s), the parties shall agree upon a revised Expense Budget for the Additional Store(s) (together with a mutually agreed adjustment to the Expense Budget (as defined below)).

Section 4. Project Management

(A) Consultant’s Undertakings

During the Sale Term, Consultant shall, in collaboration with Merchant: (a) provide qualified supervisors (the “Supervisors”) engaged by Consultant to oversee the Sale and management of the Stores in an effort to maximize revenue and sell all of the Merchandise prior to the end of the Sale, as set forth in the Expense Budget (defined below in Section 6.(iv) below), and with the any additional Supervisors to be subject to the reasonable advance approval of Merchant; (b) determine appropriate point-of-sale and external advertising, subject to the reasonable advance approval of Merchant; (c) determine appropriate discounts of Merchandise, staffing levels, and appropriate bonus and incentive programs, if any, for the Stores’ employees, each subject to the reasonable advance approval of Merchant; (d) oversee display of Merchandise for the Stores; (e) evaluate sales of Merchandise by category, provide sales reporting (but only if, and to the extent that, Merchant provides Consultant access to the point of sale data in the normal course), and monitor expenses; (f) maintain the confidentiality of all proprietary or non-public information regarding Merchant in accordance with the provisions of the confidentiality agreement signed by the Parties; (g) communicate with Merchant, on a weekly basis, to review the sales of Merchandise and the sales reporting and expenses, in an effort to minimize expenses and maximize overall net recovery of the Sale; (h) assist Merchant in connection with managing and controlling loss prevention and employee relations matters; (i) to the extent necessary, assist Merchant in obtaining any required permits and governmental consents required to conduct the Sale; (j) price, market, and sell the FF&E on behalf of Merchant; and (k) provide such other related services deemed necessary or appropriate by Merchant and Consultant.

Consultant shall have the right to sell all FF&E at the Stores, except the FF&E that Merchant designates for transfer to stores not listed on Exhibit A attached hereto. Merchant shall reimburse Consultant for its reasonable costs and expenses incurred by Consultant in connection with the sale of the FF&E, based upon a mutually agreed upon budget. Consultant shall have the right to abandon at the Stores any unsold FF&E. Unless otherwise agreed to by Merchant, the sale of the FF&E in each Store shall conclude at the same time as Merchandise sales conclude.

The Parties expressly acknowledge and agree that Merchant shall have no liability to the Supervisors for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination, or any other liability arising from Consultant's hiring or engagement of the Supervisors, and the Supervisors shall not be considered employees of Merchant.

The Parties further acknowledge that Consultant does not warranty or guarantee that it will be able to assist Merchant in obtaining all of the permits and governmental consents required to conduct the Sale, and Consultant shall have no liability to Merchant or any permitting or governmental agencies for the payment of any fines, costs or assessments that may be charged to Merchant or Consultant to the extent that any such required permits or governmental consents are not properly or timely obtained.

The Parties acknowledge that this Agreement is being entered into in the midst of the outbreak of the COVID-19 virus pandemic and that local, state and national laws and responses are continuously developing, often in unpredictable ways. Merchant hereby agrees that, while Consultant will fully cooperate with Merchant to adhere to any restrictions, regulations or recommendations imposed by local, state or federal governmental entities, or similar regulatory or authoritative agencies, that may be imposed on any aspect of Merchant's ability to operate the Stores in response to the COVID-19 pandemic, the responsibility and expense of complying with any such laws, regulations or orders, including their enforce and implementation, shall be the sole responsibility of Merchant. Examples of such restrictions, regulations or recommendations may include, without limitation: (a) providing protective gear (such as masks, sanitizers, and similar items) aimed at reducing the spread of the virus to Merchant's employees, customers, vendors, etc.; (b) implementing physical restrictions with regard to Store operations, including monitoring the number of customers allowed into a Store at any given time; and (c) enforcing daily cleaning and sanitizing procedures at the Stores. Merchant and its employees shall be solely responsible to facilitate, enforce, and implement any such restrictions or regulations, at Merchant's sole cost and expense.

(B) Merchant's Undertakings

During the Sale Term, Merchant shall (a) be the employer of the Store's employees, other than the Supervisors; (b) pay all taxes, costs, expenses, accounts payable, and other liabilities relating to the Stores, the Stores' employees and other representatives of Merchant; (c) prepare and process all tax forms and other documentation; (d) collect all sales taxes and pay them to the appropriate taxing authorities; (e) use reasonable efforts to cause Merchant's employees to cooperate with Consultant and the Supervisors; (f) execute all agreements determined by Merchant and/or Consultant to be necessary or desirable for the operation of the Stores during the Sale; (g) arrange for maintenance and repairs reasonably required to allow for the conduct of the Sale and operation of the Stores in order to ensure a reasonably comfortable work and shopping environment for Merchant's employees and customers at the Stores; and (h) provide peaceful use and occupancy of, and full access (including reasonable before and after hours access and normal utilities/phone service) to, the Stores, and to Merchant's warehouse, distribution center, and corporate offices, if and as applicable, for the purpose of preparing for, conducting, and completing the Sale, and performing its obligations under this Agreement.

Merchant shall provide throughout the Sale Term central administrative services necessary for the Sale, including internal payroll processing, MIS services, cash and inventory reconciliation, data processing and

reporting, email preparation and distribution, information technology updates, functionality, and maintenance, and accounting, all at no cost to Consultant.

Consultant shall have no liability to Merchant's employees for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Merchant's employment, hiring or retention of its employees, and such employees shall not be considered employees of Consultant.

Section 5. The Sale

All sales of Merchandise and FF&E shall be made on behalf of, and solely in the name of, Merchant. Consultant does not have, nor shall it have, any right, title, or interest in the Merchandise or FF&E. All sales of Merchandise or FF&E shall be by cash, gift card, gift certificate, merchandise credit, debit card, or credit card and, at Merchant's discretion, by check or otherwise in accordance with Merchant's policies, and shall be "final" with no returns accepted or allowed, unless otherwise directed by Merchant.

Section 6. Consultant Fee and Expenses in Connection with the Sale

(i) Gross Proceeds

With respect to Merchandise or FF&E, as applicable, that is sold through the Sale, "Gross Proceeds" means the sum of all gross proceeds thereof (including, as a result of the redemption of any gift card, gift certificate, or merchandise credit as well as wholesale sales to third parties) during the Sale Term, after the application of all discounts including, without limitation, any discount coupons issued by Merchant in the ordinary course of its business, and net only of sales taxes. For the avoidance of doubt, proceeds from the sale of Additional Consultant Goods pursuant to Section 7 hereof shall not constitute "Gross Proceeds."

(ii) Consultant's Fee

As consideration for its services under this Agreement, Merchant shall pay to Consultant a base fee (the "Base Fee") equal to (a) one and one-half of one percent (1.5%) of all Gross Proceeds of Merchandise, calculated from the first dollar recovered, *plus* (b) fifteen percent (15.0%) of all Gross Proceeds of FF&E.

If during the period from the date of this Agreement through the Sale Termination Date, the Consultant modifies existing agreements and/or enters into new agreements with other clients that contain a lower Base Fee, the Consultant shall lower the Base Fee in this Agreement to that of the other more favorable agreements.

(iii) Gross Rings

For purposes of calculating Gross Proceeds and the Base Fee, the Parties shall use the "Gross Rings" method, wherein Consultant and Merchant shall jointly keep (i) a strict count of gross register receipts less applicable sales taxes and (ii) cash reports of sales within each Store. Register receipts shall show for each item sold the retail price (as reflected on Merchant's books and records) for such item, and the markdown or other discount granted in connection with such sale. All such records and reports shall be made available to Consultant and Merchant during regular business hours upon reasonable notice.

(iv) Expenses

Merchant shall be responsible for all costs and expenses of the Sale, including but not limited to all Store-level operating expenses. To control the Sale expenses, Merchant and Consultant have established a

budget (the “Expense Budget”) of certain expenses in connection with the Sale, including payment of the costs of supervision (including Supervisors’ wages, fees, travel, and deferred compensation), advertising costs, and Consultant’s corporate travel/legal expenses, which aggregate sum Consultant shall not exceed absent Merchant’s prior written consent. The Expense Budget is attached hereto as **Exhibit B**. The Expense Budget shall not be modified absent mutual written agreement of the Parties. Upon Merchant’s designation of any Additional Store(s), the Parties shall agree upon a revised Expense Budget to account for the adjustment relating to the Additional Store(s). Merchant shall not be responsible for Consultant’s expenses that exceed the Expense Budget. The Parties acknowledge that the Expense Budget will be updated in connection with any modification of the lists of Stores and agree to cooperate in good faith with respect to such updates.

(v) Advance on Expenses

In the event that Sale Commencement Date is scheduled to occur before Merchant commences the Bankruptcy Cases, as an advance against the expenses of the Sale, and to secure payment of the same and any other amounts due Consultant, no later than one week before the Sale Commencement Date, Merchant shall pay to Consultant a deposit in the amount of **\$300,000**, which shall be applied against Consultant Expenses or Base Fee at the end of the Sale Term and to the extent not expended when the Sale concludes (assuming Consultant claims no other amounts are due under the Agreement by Consultant or no other damages were incurred) shall be returned to Merchant as part of the Final Reconciliation or such other time that Merchant and Consultant mutually agree.

(vi) Reconciliation

Consultant shall submit invoices to Merchant on a weekly basis setting forth (i) the Base Fee earned during the preceding week, and (ii) any expenses incurred by Consultant during the preceding week for which Consultant is entitled to reimbursement. No later than seven (7) days of submission, such invoices shall be paid in full by Merchant via wire transfer to Consultant.

The Parties shall complete a final reconciliation and settlement of all amounts payable to Consultant under this Agreement (including, without limitation, Expense Budget items and fees) no later than forty-five (45) days following the Sale Termination Date for the last Store.

Section 7. Additional Consultant Goods

Consultant shall also be entitled to include in the Sale supplemental goods of like kind and no lesser quality to the Merchandise (“Additional Consultant Goods”) located in the Stores and shall be procured by Consultant. The sale of Additional Consultant Goods, including, but not limited to, the specific products to be sold and the volume of products to be sold, shall be subject to Merchant’s prior approval, which shall be exercised in Merchant’s sole discretion. Consultant shall be responsible for payment of the out-of-pocket costs directly associated with procuring any Additional Consultant Goods, which costs shall not constitute expenses reimbursable pursuant to the Expense Budget under this Agreement; provided, however, that such costs shall not include any occupancy expenses related to the Stores. Merchant shall have no liability whatsoever for any shrink relating to the Additional Consultant Goods. Consultant will ring the Additional Consultant Goods using either a “dummy” SKU or department number, or in such other manner as will enable the Parties to distinguish sales of the Additional Consultant Goods from sales of the Merchandise. Consultant shall pay Merchant six and one-half of one percent (6.5%) of the aggregate gross proceeds of the sale of Additional Consultant Goods during the Sale (net only of sales taxes related thereto) (the “Additional Consultant Goods Fee”).

Consultant and Merchant intend that the transactions relating to the Additional Consultant Goods are, and shall be construed as, a true consignment from Consultant to Merchant in all respects and not a consignment for security purposes. At all times and for all purposes the Additional Consultant Goods and the proceeds thereof shall be the exclusive property of Consultant, and no other person or entity shall have any claim against any of the Additional Consultant Goods or its proceeds. The Additional Consultant Goods shall at all times remain subject to the exclusive control of Consultant. Subject solely to Consultant's obligations to pay Merchant the Additional Consultant Goods Fee, the Additional Consultant Goods and the identifiable proceeds thereof are not property of Merchant (or Merchant's estate) and do not constitute property of Merchant (or Merchant's estate) subject to any lender's lien.

Consultant acknowledges, and the Approval Order shall provide, that the Additional Consultant Goods shall be consigned to the Company as a true consignment under Article 9 of the Code and, to the extent necessary, Consultant is hereby granted a first priority security interest in and lien upon the Additional Consultant Goods and the proceeds thereof, which security interest shall be deemed perfected pursuant to the Approval Order without the requirement of filing UCC financing statements or providing notifications to any prior secured parties (provided that Consultant is hereby authorized to deliver all required notices and file all necessary financing statements and amendments thereof under the applicable UCC identifying its interest in the Additional Consultant Goods as consigned goods thereunder and the Company as the consignee therefor).

Upon Consultant's request, the Company at Consultant's sole expense, and not as a Sale Expense, shall insure the Additional Consultant Goods and, if required, promptly file any proofs of loss with regard to same with its insurers. Consultant shall be responsible for payment of any deductible under any such insurance in the event of any casualty affecting the Additional Consultant Goods, which amount shall not be deemed a Sale Expense.

Section 8. Indemnification

(i) Merchant's Indemnification

Merchant hereby indemnifies, defends, and holds Consultant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, principals, affiliates, and Supervisors (collectively, the "Consultant Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs, and expenses (including reasonable attorneys' fees) arising from or related to (a) the acts or omissions of Merchant or Merchant Indemnified Parties (as defined below); (b) the material breach of any provision of this Agreement by Merchant; (c) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), or any other person (excluding the Consultant Indemnified Parties) against Consultant or any Consultant Indemnified Party, except claims arising from Consultant's own gross negligence, willful misconduct, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious, or otherwise actionable treatment of any Consultant Indemnified Parties or Merchant's customers by Merchant or any Merchant Indemnified Parties; and (e) Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by Merchant during the Sale Term in accordance with applicable law.

(ii) Consultant's Indemnification

Consultant hereby indemnifies, defends, and holds Merchant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, principals, and affiliates (other than Consultant or the Consultant Indemnified Parties) (collectively, the "Merchant Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys'

fees) arising from or related to (a) the willful or grossly negligent acts or omissions of Consultant or the Consultant Indemnified Parties; (b) the breach of any provision of, or the failure to perform any obligation under, this Agreement by Consultant; (c) any liability or other claims made by the Consultant's Indemnified Parties or any other person (excluding Merchant Indemnified Parties) against a Merchant Indemnified Party arising out of or related to Consultant's conduct of the Sale, except claims arising from Merchant's own negligence, willful misconduct, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of the Merchant Indemnified Parties or Merchant's customers by Consultant or any of the Consultant Indemnified Parties and (e) any claims made by any party engaged by Consultant as an employee, agent, representative or independent contractor arising out of such engagement.

Section 9. Insurance

(A) Merchant's Insurance Obligations

Merchant shall maintain, throughout the Sale Term, liability insurance policies (including, without limitation, products liability, comprehensive commercial general liability insurance, and auto liability insurance), with at least the coverage limits currently existing thereunder, covering injuries to persons and property in or in connection with the Stores and/or the Merchandise, and shall cause Consultant to be named an additional insured with respect to all such policies. At Consultant's request, Merchant shall provide Consultant with a certificate or certificates evidencing the insurance coverage required hereunder and that Consultant is an additional insured thereunder. In addition, Merchant shall maintain throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all applicable statutory requirements.

(B) Consultant's Insurance Obligations

Consultant shall maintain, throughout the Sale Term, liability insurance policies (including, without limitation, products liability/completed operations, contractual liability, comprehensive commercial general liability, and auto liability insurance) on an occurrence basis in an amount of at least one million dollars (\$1,000,000) and an aggregate basis of at least five million dollars (\$5,000,000) covering injuries to persons and property in or in connection with Consultant's provision of services at the Stores. Consultant shall name Merchant as an additional insured and loss payee under such policy, and upon execution of this Agreement provide Merchant with a certificate or certificates evidencing the insurance coverage required hereunder. In addition, Consultant shall maintain throughout the Sale Term, workers compensation insurance compliance with all statutory requirements. Further, should Consultant employ or engage third parties to perform any of Consultant's undertakings with regard to this Agreement, Consultant will ensure that such third parties are covered by Consultant's insurance or maintain all of the same insurance as Consultant is required to maintain pursuant to this paragraph and name Merchant as an additional insured and loss payee under the policy for each such insurance.

Section 10. Representations, Warranties, Covenants and Agreements

(A) Merchant's Representations, Warranties, Covenants and Agreements.

Merchant warrants, represents, covenants, and agrees that (a) Merchant is a company duly organized, validly existing, and in good standing under the laws of its state of organization, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder (subject to Bankruptcy Court approval) and maintains its principal executive office at the address set forth herein; (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of Merchant and this Agreement constitutes a valid and binding obligation of Merchant

enforceable against Merchant in accordance with its terms and conditions, and the consent of no other entity or person is required for Merchant to fully perform all of its obligations herein; (c) all ticketing of Merchandise at the Stores has been and will be done in accordance with Merchant's customary ticketing practices; (d) all normal course hard markdowns on the Merchandise have been, and will be, taken consistent with customary Merchant's practices; and (e) the Stores will be operated in the ordinary course of business in all respects, other than any necessary reduction in business hours, which determination shall be within Merchant's sole discretion, and any other ordinary course modifications expressly mutually agreed to by Merchant and Consultant. Between execution of this Agreement by both Parties and the earlier to occur of (a) entry of the Approval Order (as defined below) and (b) denial by the Bankruptcy Court of Merchant's motion seeking entry of the Approval Order, Merchant shall not enter into an agreement with any entity other than Consultant to conduct the Sale or a similar sale at all or any of the Stores.

(B) Consultant's Representations, Warranties, Covenants and Agreements.

Consultant warrants, represents, covenants and agrees that: (a) Consultant is a company duly organized, validly existing, and in good standing under the laws of its state of organization, with full power and authority to execute and deliver this Agreement and to perform Consultant's obligations hereunder, and maintains its principal executive office at the addresses set forth herein; (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of Consultant and this Agreement constitutes a valid and binding obligation of Consultant enforceable against Consultant in accordance with its terms and conditions, and the consent of no other entity or person is required for Consultant to fully perform all of its obligations herein; (c) Consultant shall conduct the sale in accordance with the terms of this Agreement; (d) no non-emergency repairs or maintenance in the Stores will be conducted without Merchant's prior written consent; and (e) Consultant will not take any disciplinary action against any employee of Merchant.

Section 11. Termination

The following shall constitute "Termination Events" hereunder:

- (a) Merchant's or Consultant's failure to perform any of their respective material obligations hereunder, which failure remains uncured for seven (7) business days after receipt of written notice thereof to the defaulting Party;
- (b) Any representation or warranty made by Merchant or Consultant is untrue in any material respect as of the date made or at any time and throughout the Sale Term;
- II.
- (c) The Sale is terminated or materially interrupted or impaired for any reason other than an event of default by Consultant or Merchant; or
- (d) Merchant or Consultant, in its sole and reasonable business judgement, elects to terminate this Agreement.
- (e) The Bankruptcy Court does not approve Merchant's entry into and performance under this Agreement on or before June 1, 2020.

If a Termination Event occurs, the non-defaulting Party (in the case of an event of default) or either Party (if the Sale is otherwise terminated or materially interrupted or impaired) may, in its discretion, elect to terminate this Agreement by providing seven (7) business days' written notice thereof to the other Party, and, in the case of an event of default, in addition to terminating this Agreement, pursue any and all rights and remedies and damages resulting from such default. If this Agreement is terminated, Merchant shall be

obligated to pay Consultant all undisputed amounts due under this Agreement through such termination date.

Section 12. Notices

All notices and communications provided for pursuant to this Agreement shall be in writing, and sent by hand, by facsimile, or a recognized overnight delivery service, or email, as follows:

If to Consultant:

Great American Group, LLC
21255 Burbank Blvd., Suite 400
Woodland Hills, CA 91367
Attention: Scott K. Carpenter
and Marina Fineman
Tel: (818) 746-9309
Email:
scarpenter@greatamerican.com
mfineman@greatamerican.com

If to the Merchant:

Tuesday Morning Corporation
6250 LBJ Freeway
Dallas, Texas 75240
Attention: Bridgett Zeterberg and
Steven Becker
Email:
bzeterberg@tuesdaymorning.com
sbecker@tuesdaymorning.com

With a copy (which shall not constitute notice) to:

Haynes and Boone, LLP
2323 Victory Avenue
Suite 700
Dallas, TX 75219
Attn: Ian Peck
Email:
ian.peck@haynesboone.com

Section 13. Independent Consultant

Consultant's relationship to Merchant is that of an independent contractor without the capacity to bind Merchant in any respect, except with respect to ordinary course sales of Merchandise through the Sale. No employer/employee, principal/agent, joint venture, or other such relationship is created by this Agreement. Merchant shall have no control over the hours that Consultant or its employees or assistants or the Supervisors work or the means or manner in which the services that will be provided are performed and Consultant is not authorized to enter into any contracts or agreements on behalf of Merchant or to otherwise create any obligations of Merchant to third parties, unless authorized in writing to do so by Merchant.

Section 14. Non-Assignment

Neither this Agreement nor any rights hereunder may be transferred or assigned by either Party without the prior written consent of the other Party. No modification, amendment, or waiver of any of the provisions contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon either Party unless made in writing and signed by a duly authorized representative or agent of such Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors, and permitted assigns.

Section 15. Severability

If any term or provision of this Agreement, as applied to either Party or any circumstance, for any reason shall be declared by a court of competent jurisdiction to be invalid, illegal, unenforceable, inoperative, or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. If the surviving portions of the Agreement fail to retain the essential understanding of the Parties, the Agreement may be terminated by mutual consent of the Parties.

Section 16. Governing Law, Venue, Jurisdiction, and Jury Waiver

This Agreement and its validity, construction and effect shall be governed by and enforced in accordance with the internal laws of the State of Texas (without reference to the conflict of laws provisions therein). The parties agree that all claims, controversies, or disputes arising with regard to this Agreement shall be tried and litigated only in the state courts or federal courts located in Dallas County, Texas and each party hereto submits to the exclusive jurisdiction and venue of such courts relative to any such claim, controversy or dispute. Merchant and Consultant waive their respective rights to trial by jury of any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding, and/or hearing brought by either Party against the other on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship between Merchant and Consultant, any claim of injury or damage or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect. Upon Merchant's commencement of the Bankruptcy Cases, the Bankruptcy Court shall have jurisdiction over all disputes arising from this Agreement or the interpretation or enforcement hereof, and each Party hereby waives any defenses or objections thereto based on lack of jurisdiction, improper venue, and/or forum non conveniens.

Section 17. Entire Agreement

This Agreement, together with all additional schedules and exhibits attached hereto, constitutes a single, integrated written contract expressing the entire agreement of the Parties concerning the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party except as specifically set forth in this Agreement. All prior agreements, discussions, and negotiations with respect to the subject matter of this Agreement are entirely superseded by this Agreement.

Section 18. Execution

This Agreement may be executed simultaneously in counterparts (including by means of electronic mail, facsimile, or portable document format (pdf) signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same instrument. This Agreement, and any amendments hereto, to the extent signed and delivered by means of electronic mail, a facsimile machine or electronic transmission in portable document format (pdf), shall be

treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

Section 19. Bankruptcy Court Approval

Forthwith upon Merchant's commencement of the Bankruptcy Cases, and in no case later than three (3) days after the petition date, Merchant shall file a motion to assume this Agreement under section 365 of the Bankruptcy Code, and utilize its commercially reasonable efforts to ensure that such motion is approved by an order (the "Approval Order") that provides, among other things, as follows: (i) approval and/or assumption of this Agreement; (ii) the payment of all fees and reimbursement of expenses hereunder to Consultant without further order of the court, free and clear of all liens, claims and encumbrances, and on a weekly basis without further order of the Bankruptcy Court and otherwise in accordance with this Agreement; (iv) approval of the transaction contemplated hereby; (iii) authorizing the Sale without the necessity of complying with state and local rules, laws, ordinances and regulations, including, without limitation, permitting and licensing requirements, that could otherwise govern the Sale; (iv) authorizing the Sale notwithstanding restrictions in leases, reciprocal easement agreements or other contracts that purport to restrict the Sale or the necessity of obtaining any third party consents; and (v) authorizing Merchant to take such further actions as are necessary or appropriate to carry out the terms and conditions of this Agreement. From and after entry of the Approval Order, Consultant shall conduct the Sale in accordance with the terms of the Approval Order in all material respects.

[Remainder of Page Intentionally Left Blank]

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

Great American Group, LLC

By: Scott K. Carpenter
Its: President, GA Retail Solutions

Tuesday Morning Corp.

By: Steven Becker
Its: Chief Executive Officer

FIRST AMENDMENT TO CONSULTANT AGREEMENT

This FIRST AMENDMENT (this "Amendment") to the "Consultant Agreement" dated December 5, 2019 (the "Agreement"), is entered into this 19th day of May, 2020 (the "Effective Date"), by and between Great **American Group, LLC**, a California limited liability company ("Consultant"), with offices located at 21255 Burbank Blvd., Suite 400 South, Woodland Hills, California 91367, and **Tuesday Morning Corp.**, a Delaware corporation ("Merchant"), having a principal place of business at 6250 LBJ Freeway, Dallas, Texas 75240.

WHEREAS, Merchant and Consultant entered into the Agreement for the provision of certain services, as described in the Agreement; and

WHEREAS, Merchant and Consultant wish to amend the Agreement upon the terms and subject to the conditions set forth in this Amendment.

1. Exhibit A. The additional Stores listed on Attachment 1 hereto shall supplement, and be added and incorporated in its entirety into, **Exhibit A** of the Agreement.

2. Exhibit B. The Expense Budget attached as **Exhibit B** to the Agreement is hereby deleted in its entirety and replaced and substituted by the Expense Budget attached hereto as Attachment 2, which shall be deemed to be **Exhibit B** to the Agreement.

3. Definitions: Incorporation by Reference. The recitals set forth above are incorporated herein by reference. All attachments to this Amendment are hereby incorporated into the Agreement. Unless, otherwise specified, all terms used herein shall have those meanings ascribed to them in the Agreement.

4. No Waiver. Nothing contained in this Amendment shall be deemed or constitute a waiver of any of the parties' rights and remedies under the Agreement.

5. Entire Agreement. This Amendment, as to its subject matter, exclusively and completely states the rights, duties and obligations of the parties and supersedes all prior and contemporaneous representations, letters, proposals, discussions and understandings by or between the parties. Except as expressly modified herein, the terms of the Agreement (including all exhibits and attachments thereto) remain in full force and effect. This Amendment may only be amended in a writing signed by the authorized representatives of both parties. In the event of a conflict with the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall prevail. The parties, by their representatives signing below, agree with the terms of this Amendment and further certify that their respective signatories are duly authorized this Amendment.

6. Effective Date. This Amendment shall become effective as of the Effective Date and become a part of the Agreement between the Parties.

TUESDAY MORNING CORP.,
a Delaware corporation

By: /s/ Steven Becker
Name: Steven Becker
Its: Chief Executive Officer

Date: May 20, 2020

GREAT AMERICAN GROUP, LLC,
a California limited liability company

By: 
Name: Scott K. Carpenter

Its: President, GA Retail Solutions

Date: May 20, 2020

Attachment 1

Additional Stores (Supplement to Exhibit A to tire Agreement)

Additional Stores. The Stores set forth below shall supplement Exhibit A of the Agreement and shall be incorporated into, and made part of, Exhibit A of the Agreement.

Store			
No.	Store	City	State
277	MADI	MADISON	WI
518	ATLA	ATLANTA	GA
621	YOUN	YOUNGSTOWN	OH

Attachment 2

Expense Budget (Exhibit B to the Agreement)

Expense Budget. The Expense Budget attached as Exhibit B to the Agreement is hereby deleted in its entirety and replaced and substituted by the Expense Budget attached hereto, which shall be deemed to be Exhibit B to the Agreement.

Exhibit A

Wave 1 Closing Stores

Exhibit A

Wave 1 Closing Stores – 133 Locations

#	Store	RE	RVP	State	Rentable SF	Total SF (Per Lease)	Store Address
8	WASH	AG	GV	VA	9,409	9,409	3501 Carlin Springs Road Bailey's Crossroads, VA 22041
20	ATLA	AG	GV	GA	12,086	12,086	Parkway Pointe 3101 Cobb Parkway SE, Suite 120 Atlanta, GA 30339
38	LITT	AG	DB	AR	10,897	10,897	Bowman Heights Shopping Center 301 S. Bowman Road Little Rock, AR 72211
47	JACK	AG	GV	FL	18,364	18,364	Tuesday Morning Plaza 291 Blanding Blvd. Orange Park, FL 32073
51	WASH	AG	GV	VA	6,005	6,005	Vienna Shopping Center 136-138 D Maple Avenue West Vienna, VA 22182
63	ATLA	AG	GV	GA	18,300	18,300	Fayette Pavilion III 240 Pavilion Pkwy Fayetteville, GA 30214
64	WASH	AG	GV	VA	7,680	7,680	Sugarland Crossing Shopping Center 47100 Community Plaza Suite 138 (Store 60) Sterling, VA 20164
71	DALL	AG	DB	TX	11,488	11,488	1750 E. Belt Line Rd., Ste 100 Richardson, TX 75081
76	ATLA	AG	GV	GA	20,184	20,184	The Village at Peachtree Corners 5270 Peachtree Parkway Norcross, GA 30092
97	ORLA	AG	GV	FL	30,000	30,000	Colonial Shoppes Bear Lake 3030 E. Semoran Blvd. Suite 140 Apopka, FL 32703
116	CHIC	BB	SC	IL	10,094	10,094	Naper West Plaza 586 S. IL Route 59 Naperville, IL 60540
125	KNOX	AG	GV	TN	8,579	8,579	The Shops At Western Plaza 4553 Kingston Pike Knoxville, TN 37919
130	RICH	AG	GV	VA	12,225	12,225	Pocono Crossing 10364 Midlothian Turnpike Richmond, VA 23236

133	DALL	AG	DB	TX	8,796	8,796	Irving Towne Center 3401 W. Airport Frwy, Ste 118 Irving, TX 75062
134	ATLA	AG	GV	GA	14,981	14,981	Georgetown Shopping Center 4490 Chamblee- Dunwoody Rd., Ste 104B Dunwoody, GA 30338
143	RALE	AG	GV	NC	10,791	10,791	Plantation Point 6411 Triangle Plantation Dr. Raleigh, NC 27616
157	CLEV	BB	DB	OH	8,250	8,250	River Square 19875 Detroit Road Rocky River, OH 44116
190	CHAT	AG	GV	TN	10,530	11,950	Eastgate Town Center 5600 Brainerd Road Suite D-26 Chattanooga, TN 37411
208	OMAH	BB	SC	NE	13,608	13,608	Westwood Plaza 12119 West Center Rd. Omaha, NE 68144
229	INDI	BB	SC	IN	12,659	12,659	Shoppes at County Line 8705 Hardegan St. Indianapolis, IN 46227- 7211
260	FORT	AG	DB	TX	7,690	7,690	Courtside Plaza Shopping Center 5930 IH 20 West Arlington, TX 76017
264	CHIC	BB	SC	IL	11,998	11,998	Rice Lake Square 229 Rice Lake Square, Ste 229, Wheaton, IL 60189-2136
273	INDI	BB	SC	IN	10,660	10,660	Willow Lake East 2620 Lake Circle Dr. Indianapolis, IN 46268
297	SANF	BB	SC	CA	10,000	10,000	Union Landing 31320 Courthouse Dr. Union City, CA 94587
301	LOSA	BB	SC	CA	8,140	8,140	Sierra Vista Plaza 1850 N. Placencia Avenue Placencia, CA 92870
338	CDRP	BB	SC	IA	11,896	11,896	Collins Road Square 1370 Twixt Town Rd. Marion, IA 52302-3079
350	CBUS	AG	GV	GA	14,644	14,644	Cross Country Plaza 3201 Macon Road Columbus, GA 31906
369	LOSA	BB	SC	CA	8,166	8,166	Hastings Ranch Shopping Center 3705 East Foothill Blvd. Pasadena, CA 91107
377	LOSA	BB	SC	CA	9,500	9,500	Westchester Village 8801 South Sepulveda Blvd. Westchester, CA 90045
380	BALT	AG	GV	MD	11,545	11,545	Goucher Commons 803 Goucher Blvd. Towson, MD 21286
383	HARR	BB	GV	PA	7,500	7,500	Carpet Mart Plaza 5103 Carlisle Pike Mechanicsburg, PA 17050
397	FRES	BB	SC	CA	10,000	10,000	Blackstone & Barstow Shopping Center 5380 N. Blackstone Ave. Fresno, CA 93710

398	FTLA	AG	GV	FL	10,800	10,800	Emerald Woods Plaza 3900 North 46th Street Hollywood, FL 33021
414	MONM	BB	GV	NJ	9,977	9,977	Union Square Shopping Center 500 Highway 35 Suite 6B-6E Middletown, NJ 07748
419	PLMB	AG	GV	FL	8,508	8,508	Tequesta Shoppes 115-A N. Hwy US 1 Tequesta, FL 33469
424	WASH	AG	GV	VA	10,257	10,257	Village Center Shopping Center 5619 Stone Road Space # 3 Centreville, VA 20120
429	WICH	BB	DB	KS	12,077	12,077	2350 N. Maize Rd. Wichita, KS 67205
482	SACR	BB	SC	CA	8,698	8,698	Laguna Pavilion 7440 Laguna Blvd., Ste 108 Elk Grove, CA 95758
490	AUST	AG	DB	TX	9,990	9,990	Plaza 183 13450 Research Blvd. Suite 240 Austin, TX 78750
501	OCEA	BB	GV	NJ	8,950	8,950	Bey Lea Plaza 1232 Hooper Ave., Ste 10 Toms River, NJ 08753
504	DALL	AG	DB	TX	9,422	9,422	Arapaho Village 819 Arapaho Road Suite 14 Richardson, TX 75080
511	MORR	BB	GV	NJ	11,000	11,000	Castle Ridge Plaza 388 State Rt 10 West East Hanover, NJ 07936
515	ALBN	BB	GV	NY	12,000	12,000	Crossgates Commons 161 Washington Avenue Extension Albany, NY 12205
534	SEAT	BB	SC	WA	9,051	9,051	Rosehill Plaza 12042 NE 85th Street Kirkland, WA 98033
557	VIRG	AG	GV	VA	8,520	8,520	London Bridge Shopping Center 2346 Virginia Beach Blvd. Suites 7E-8 Virginia Beach, VA 23454
560	MONT	AG	DB	AL	13,524	13,524	Promenade Montgomery 2572 Eastern Blvd Montgomery, AL 36117
578	FRED	AG	GV	VA	10,000	15,000	Gateway Village / Fredericksburg Design Center 2340 Plank Road Fredericksburg, VA 22401
581	FTLA	AG	GV	FL	14,472	14,472	Turtle Crossing 4396 N. State Rd 7 Coral Springs, FL 33073
590	DALL	AG	DB	TX	11,801	11,801	Best Buy S/C 9384 N. Central Expressway Dallas, TX 75231
595	BUFF	BB	DB	NY	11,911	11,911	Eastview Plaza 8190-8250 Transit Road Amherst, NY 14221
							Bellair Plaza 2435 N. Atlantic Ave. Daytona Beach, FL 32118-3201

596	DBCH	AG	GV	FL	12,014	12,014	
600	PITT	BB	DB	PA	8,000	8,000	Southland Four Seasons S/C 641-643 Clairton Blvd. Storerooms #45 & 46 Pleasant Hills, PA 15236
622	IFLS	BB	SC	ID	8,455	8,455	Teton Village Plaza 2131 E. 17th Street Idaho Falls, ID 83404
636	COLO	BB	SC	CO	7,152	7,152	Southern Cross Shopping Center 1833 S. Nevada Ave. Colorado Springs, CO 80906
645	MNSP	BB	SC	MN	11,421	11,421	Southdale Square 2940 W 66th St Richfield, MN 55423
657	SLOB	BB	SC	CA	8,100	8,100	Marigold Center 3860-1 Broad Street Suite 1 San Luis Obispo, CA 93401
659	TACO	BB	SC	WA	9,100	9,100	Michael's Center 3701 S. Cedar St. Tacoma, WA 98409
669	CINC	BB	DB	OH	9,000	9,000	Springdale Plaza 473 East Kemper Road Springdale, OH 45246
684	LOSA	BB	SC	CA	6,120	6,120	Pico Plaza 43 Calle De Industrias San Clemente, CA 92672
688	RCNY	BB	DB	NY	14,908	14,908	Cobblestone Court 8000 Pittsford-Victor Road Victor, NY 14564
705	SALT	BB	SC	UT	9,000	9,000	Gateway Crossing Shopping Center 268 S. 500 W. Bountiful, UT 84010
708	NAPL	AG	GV	FL	7,500	7,500	Gulf Gate Plaza 2648 Tamiami Trail Naples, FL 34112
714	PLMB	AG	GV	FL	12,075	12,075	Westward Shopping Center 2471 Okeechobee Blvd., Suite 2505 E West Palm Beach, FL 33409
722	CONW	AG	DB	AR	16,875	16,875	Kroger Center 205 W. Oak St. Conway, AR 72032
724	ORLA	AG	GV	FL	12,000	12,000	Loop West Shopping Center 2003 W Osceola Pkwy Kissimmee, FL 34741- 0731
730	POCA	BB	SC	ID	7,584	7,584	Yellowstone Plaza 675 Yellowstone Ave. Pocatello, ID 83201
737	TAMP	AG	GV	FL	8,629	8,629	Barclay Square 13819 L-M Walsingham Rd. Largo, FL 33774
761	STLO	BB	SC	MO	10,480	10,480	Watson Plaza Shopping Center 233 Watson Plaza St. Louis, MO 63126

762	STLO	BB	SC	MO	10,198	10,198	Chesterfield Commons Technology Park 17353 Edison Ave. Chesterfield, MO 63005
766	SANF	BB	SC	CA	6,275	6,275	Carmelo Plaza 1630 Contra Costa Blvd., Suite F Pleasant Hill, CA 94523
774	SALS	AG	GV	MD	11,954	11,954	The Centre at Salisbury 2300 N. Salisbury Blvd. Salisbury, MD 21801
776	ROAN	AG	GV	VA	10,000	10,000	Midway Shopping Center 3165 N. Franklin St. Christiansburg, VA 24073
778	TAMP	AG	GV	FL	7,500	7,500	Tyrone Gardens 931 Tyrone Blvd. North St. Petersburg, FL 33710
793	HOUS	AG	DB	TX	7,200	7,200	Plantation Plaza 105 Dixie Dr. Clute, TX 77531
797	DETR	BB	SC	MI	6,125	12,005	New Towne Plaza 44524 Ford Rd. Space No. B-100 Canton, MI 48187
804	BALT	AG	GV	MD	12,000	12,000	Beltway Crossing Shopping Center 6322 Ritchie Hwy., Suite 4 Glen Burnie, MD 21061
808	CHIC	BB	SC	IL	13,007	13,007	Butterfield Plaza 1310 Butterfield Road Downers Grove, IL 60515
812	SEAT	BB	SC	WA	10,173	10,173	SeaTac Village Shopping Center 1718 South 320th St. Federal Way, WA 98003
817	HOUS	AG	DB	TX	8,460	8,460	Miramar Shopping Center 2124 Bayport Blvd. Seabrook, TX 77586
825	LOSA	BB	SC	CA	10,000	10,000	Culver Center 3844 Culver Center #A Culver City, CA 90232
830	LOSA	BB	SC	CA	8,000	8,000	The Commons At Aliso Town Center 26505 Aliso Creek Rd. Aliso Viejo, CA 92656
836	SEAT	BB	SC	WA	8,400	8,400	Parkway Super Center 17720 South Center Parkway Tukwila, WA 98188
840	LUFK	AG	DB	TX	10,594	10,594	Chestnut Village Shopping Center 535 S. Chestnut St. Lufkin, TX 75901
863	MANH	BB	SC	KS	7,200	7,200	Town East Center 441 E. Poyntz Ave. Manhattan, KS 66502
892	OMAH	BB	SC	NE	9,576	9,576	Eagle Run Shopping Center 13320 West Maple Rd. Omaha, NE 68164
909	ATLA	AG	GV	GA	18,278	18,278	Brighten Park 2480 Briarcliff Road Atlanta, GA 30329-3034
912	COLU	BB	DB	OH	14,732	14,732	Easton Square 3886A Morse Road Columbus, OH 43230

920	CHIC	BB	SC	IN	8,460	8,460	Merrillville Plaza 1635 East 80th Ave. Merrillville, IN 46410
925	NASH	AG	GV	TN	8,359	8,359	4108 Hillsboro Pike Nashville, TN 37215
945	WKBA	BB	GV	PA	13,831	13,831	Wilkes Barre Commons 3460 Wilkes Barre Blvd Wilkes Barre, PA 18702
956	GADS	AG	DB	AL	10,004	10,004	Riverview Plaza Shopping Center 407 George Wallace Dr., Ste #1D Gadsden, AL 35903
986	EURE	BB	SC	CA	7,920	7,920	The Eureka Mall 800 W. Harris St., Ste 33 Eureka, CA 95503
1004	PORT	BB	SC	OR	12,766	12,766	Prime Square 205 9800 SE Washington St. Portland, OR 97216
1038	CULL	AG	DB	AL	8,000	8,000	Town Square Shopping Center 1646 Town Square SW Cullman, AL 35055
1050	WASH	AG	GV	VA	8,758	8,758	Warrenton Towne Centre 619 Frost Avenue Warrenton, VA 20186
1060	WASH	AG	GV	VA	8,450	8,450	The Market at Shelton Shop 901 Garrisonville Rd. Stafford, VA 22556
1073	PITT	BB	DB	PA	11,780	11,780	Penn Center East 3430 William Penn Hwy Pittsburgh, PA 15235
1075	CLEV	BB	DB	OH	9,600	9,600	Solon Square Shopping Center 33507 Aurora Rd. Solon, OH 44139
1084	SANA	AG	DB	TX	8,648	8,648	Village at Stone Oak 2606 TPC Pkwy, Ste 110 San Antonio, TX 78259
1095	WASH	AG	GV	VA	7,000	7,432	Fairfax Circle Shopping Center 9709 Fairfax Blvd. Fairfax, VA 22031
1107	DALL	AG	DB	TX	9,380	9,380	Murphy Marketplace 104 North Murphy Rd., Suite 200 Murphy, TX 75094
1127	MREY	BB	SC	CA	9,839	9,839	842 Lighthouse Ave Monterey, CA 93940
1160	SOME	BB	GV	NJ	11,047	11,047	Blue Star Shopping Center 1701-75 Route 22 West Store #20 Watchung, NJ 07069
1163	SEAT	BB	SC	WA	14,242	14,242	653-156th Avenue NE Bellevue, WA 98007
1164	BERG	BB	GV	NJ	15,140	15,140	Paramus Place 165 Route 4 West, Space #3 Paramus, NJ 07652
1168	MIDD	BB	GV	NJ	21,300	21,300	Middlesex Mall 6781 Hadley Rd. South Plainfield, NJ 07080
1169	DETR	BB	SC	MI	18,131	18,131	Gratiot Center 31902 Gratiot Ave. Roseville, MI 48066

1171	BERG	BB	GV	NJ	10,100	10,100	The Ramsey Square Shopping Center 1300 New Jersey 17 #5 Ramsey, NJ 07446
1172	PLMB	AG	GV	FL	9,300	9,300	Buckingham Plaza 310 South State Road 7 Royal Palm Beach, FL 33414
1173	HOUS	AG	DB	TX	12,000	12,000	The Market at Crenshaw 4581 E. Sam Houston Pkwy S. Pasadena, TX 77505- 3949
1176	SANF	BB	SC	CA	9,378	9,378	Santa Rita Square 3170 Santa Rita Rd. Pleasanton, CA 94566
1183	BLMI	BB	SC	IN	9,923	9,923	Fresh Thyme 3600 W 3rd Street Bloomington, IN 47404
1185	FTLA	AG	GV	FL	13,500	13,500	Westfork Plaza 15891 Pines Blvd. Pembroke Pines, FL 33027
1187	MNSP	BB	SC	MN	15,732	15,732	Woodbury Village Shopping Center 7150 Valley Creek Plaza, Suite 226 Woodbury, MN 55125
1194	PHIL	BB	GV	PA	12,780	12,780	Trainer's Corner Shopping Center 200 N West End Blvd. Quakertown, PA 18951- 2308
1198	VISA	BB	SC	CA	12,000	12,000	Packwood Creek East 4256 S. Mooney Blvd. Visalia, CA 93277
1203	HARR	BB	GV	PA	13,534	13,534	Colonial Commons 5098 Jonestown Rd., Ste 2 Harrisburg, PA 17112
1205	PITT	BB	DB	PA	13,000	13,000	North Hills Village 4801 McKnight Rd. Pittsburgh, PA 15237
1207	WILM	AG	GV	DE	12,600	12,600	Concord Square 4431 Concord Pike Wilmington, DE 19803
1210	DBCH	AG	GV	FL	12,022	12,022	Tomoka Town Center 1115 Cornerstone Blvd., Suite S Daytona Beach, FL 32117-7100
1214	GRBY	BB	SC	WI	20,448	20,448	Green Bay Plaza 1481 - 1535 W. Mason Street Green Bay, WI 54304
1215	NAPL	AG	GV	FL	12,000	17,705	Coconut Point Town Center 8012 Mediterranean Dr. Esteros, FL 39928
1216	ATLA	AG	GV	GA	11,200	11,200	McDonough Commons 1541 Hwy 20 W, Ste 110 McDonough, GA 30253- 7309
1217	LOSA	BB	SC	CA	14,347	14,347	Conejo Valley Plaza 1350 North Moorpark Rd. Thousand Oaks, CA 91360
1223	SEAT	BB	SC	WA	14,354	14,354	Alderwood Parkway Place 19225 Alderwood Mall Pkwy, Suite 110 Lynnwood, WA 98036- 4870

1224	SANF	BB	SC	CA	13,967	13,967	Nut Tree Shopping Center 1661 E. Monte Vista Ave Vacaville, CA 95688
1226	BOCA	AG	GV	FL	17,960	17,960	Mission Bay Plaza 20415-A S.R. 7 Boca Raton, FL 33498
1227	TUCS	BB	SC	AZ	20,138	20,138	Northmall Centre 4841 North Stone Ave, Ste 115 Tucson, AZ 85704
1234	ATLA	AG	GV	GA	12,000	12,000	Canton Exchange Shopping Center 2243 Cumming Hwy, Ste. 124 Canton, GA 30115-8071
277	MADI	BB	SC	WI	15,462	15,462	Greenway Station Shopping Center 1 700 Deming Way, Suite 102 Middleton, WI 53562
518	ATLA	AG	GV	GA	8,828	8,828	Crossgates Commons 161 Washington Avenue Extension Albany, NY 12205
621	YOUN	BB	DB	OH	10,080	10,080	Tiffany Square 1 300 Boardman Poland Rd. Poland, OH 44514-1934
122	TOPE	BB	SC	KS	7,500	7,500	Wanamaker 21 1930A1 SW Wanamaker Rd. Topeka, KS 66604

Exhibit B

Expense Budget

**Tuesday Morning
Agent Expense Budget
Exhibit B**

	6/1/2020 Start
Number of Stores	132
Est. Sale Start Date	06/08/20
Est. End Date	08/17/20
# of Days	70
Est. Avg. Sale Term (weeks)	10.0

Estimated Beginning Inventory at Retail:	\$ 50,988,694
Estimated Beginning Inventory at Cost:	\$ 23,202,771
Estimated Transfer Inventory at Retail¹:	\$ 5,431,781
Estimated Transfer Inventory at Cost¹:	\$ 2,471,771
Estimated Sales	\$ 33,689,000

<u>Agent Expenses</u>	Total	Per Store
Advertising - Signs & Displays	\$ 217,800	1,650
Advertising - Email, Digital and Social	\$ 65,000	492
Supervision - 1	758,000	5,742
Travel	69,000	523
Subtotal - Expenses	1,109,800	8,408

Footnotes:

1) Assumes Supervision team of 1 Lead, 1 F&A and 13 Field Supervisors for 10 wks

Schedule 2

Sale Guidelines

Sale Guidelines¹

1. The Sales shall be conducted so that the Stores in which sales are to occur will remain open no longer than during the normal hours of operation provided for in the respective leases for the Stores.
2. The Sales shall be conducted in accordance with applicable state and local “Blue Laws”, where applicable, so that no Sales shall be conducted on Sunday unless the Merchants had been operating such Store on a Sunday.
3. On “shopping center” property, Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any Stores’ premises, unless permitted by the lease or, if distribution is customary in the “shopping center” in which such Store is located; *provided* that Consultant may solicit customers in the Stores themselves. On “shopping center” property, Consultant shall not use any flashing lights or amplified sound to advertise the Sales or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.
4. At the conclusion of the Sales, Consultant shall vacate the Stores in broom clean condition, and shall leave the Stores in the same condition as on Sale Commencement Date, ordinary wear and tear excepted; provided, however, that the Merchants and the Consultant hereby do not undertake any greater obligation than as set forth in an applicable lease with respect to a Store. The Consultant and Merchants may abandon any furniture, fixtures and equipment (including, but not limited to, machinery, rolling stock, office equipment and personal property, and conveyor systems and racking) (“FF&E”) not sold in the Sale at the Stores at the conclusion of the Sales, without cost or liability of any kind to Consultant. Any abandoned FF&E left in a Store after a lease is rejected shall be deemed abandoned. Following abandonment, any person asserting rights, liens, claims, encumbrances, and/or interests (including, without limitation, the landlords) in the FF&E under non-bankruptcy law may freely exercise such rights, liens, claims, encumbrances, and/or interests in the FF&E, without further notice or order from the Court, without any liability to the Debtors, and without waiver of any claim such landlord may have against the Merchants. As of the Sale Termination Date, Consultant may abandon, in place and without further responsibility or liability of any kind, any FF&E located at a Store.
5. Consultant may advertise the Sales as a “store closing”, “sale on everything”, “everything must go”, “everything on sale” or similar-themed sale. All signs, banners, ads and other advertising collateral, promotions, and campaigns will be approved by the Merchants, prior to purchase.
6. Consultant shall be permitted to utilize display, hanging signs, and interior banners in connection with the Sales; *provided* that such display, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. The Merchants and Consultant shall not use neon or day-glo on its display, hanging signs, or interior banners. Furthermore, with respect to enclosed mall locations, no exterior signs or signs in common

¹ Capitalized terms used but not defined in these Sale Guidelines shall have the meanings given to them in the Motion.

areas of a mall shall be used unless otherwise expressly permitted in these Sale Guidelines. In addition, the Merchants and Consultant shall be permitted to utilize exterior banners at (i) non-enclosed mall Stores and (ii) enclosed mall Stores to the extent the entrance to the applicable Store does not require entry into the enclosed mall common area; provided, however, that such banners shall be located or hung so as to make clear that the Sales are being conducted only at the affected Store, shall not be wider than the storefront of the Store, and shall not be larger than 4 feet x 40 feet. In addition, the Merchants and Consultant shall be permitted to utilize sign walkers in a safe and professional manner and in accordance with the terms of the Interim Order or Final Order. Nothing contained in these Sale Guidelines shall be construed to create or impose upon Consultant any additional restrictions not contained in the applicable lease agreement.

7. Conspicuous signs shall be posted in the cash register areas of each of the affected Stores to effect that “all sales are final.”
8. Except with respect to the hanging of exterior banners, Consultant shall not make any alterations to the storefront or exterior walls of any Stores.
9. Consultant shall not make any alterations to interior or exterior Store lighting. No property of the landlord of a Store shall be removed or sold during the Sales. The hanging of exterior banners or in-Store signage and banners shall not constitute an alteration to a Store.
10. Consultant shall keep Store premises and surrounding areas clear and orderly consistent with present practices.
11. Subject to the provisions of the Consulting Agreement, Consultant shall have the right to sell all Owned FF&E, approved by the Merchants. Consultant may advertise the sale of the Owned FF&E in a manner consistent with these guidelines. The purchasers of any Owned FF&E sold during the sale shall be permitted to remove the Owned FF&E either through the back shipping areas at any time, or through other areas after applicable business hours. As of the Sale Termination Date or the Vacate Date, as applicable, Consultant may abandon, in place and without further responsibility, any FF&E.
12. At the conclusion of the Sales at each Store, pending assumption or rejection of applicable leases, the landlords of the Stores shall have reasonable access to the Stores’ premises as set forth in the applicable leases. The Merchants, Consultant and their agents and representatives shall continue to have access to the Stores as provided for in the Consulting Agreement.
13. Rent that becomes due post-petition shall be paid by the Merchants as required by the Bankruptcy Code until the rejection or assumption and assignment of each lease. Consultant shall have no responsibility to the landlords therefor.
14. The rights of landlords against Merchants for any damages to a Store shall be reserved in accordance with the provisions of the applicable lease.
15. If and to the extent that the landlord of any Store affected hereby contends that Consultant or Merchants are in breach of or default under these Sale Guidelines, such landlord shall

email or deliver written notice by overnight delivery on the Merchants and Consultant as follows:

If to Consultant:

Great American Group, LLC
21255 Burbank Blvd., Suite 400
Woodland Hills, CA 91367
Attention: Scott K. Carpenter
and Marina Fineman
Tel: (818) 746-9309
Email:
scarpenter@greatamerican.com
mfineman@greatamerican.com

If to the Merchant:

Tuesday Morning Corporation
6250 LBJ Freeway
Dallas, Texas 75240
Attention: Bridgett Zeterberg and
Steven Becker
Email:
bzeterberg@tuesdaymorning.com
sbecker@tuesdaymorning.com

With a copy (which shall not constitute notice) to:

Haynes and Boone, LLP
2323 Victory Avenue
Suite 700
Dallas, TX 75219
Attn: Ian Peck
Email:
ian.peck@haynesboone.com

EXHIBIT B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
Tuesday Morning Corporation, <i>et al.</i> , ¹	§	Case No. 20-31476-HDH-11
	§	
Debtors.	§	Joint Administration Requested

FINAL ORDER GRANTING THE DEBTORS' EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO ASSUME THE CONSULTING AGREEMENT; (II) APPROVING PROCEDURES FOR STORE CLOSING SALES; (III) APPROVING THE SALE OF STORE CLOSURE ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES; (IV) WAIVING COMPLIANCE WITH APPLICABLE STATE LAWS AND APPROVING DISPUTE RESOLUTION PROCEDURES; (V) APPROVING PROCEDURES TO CONDUCT SALES IN ADDITIONAL CLOSING STORES; AND (VI) GRANTING RELATED RELIEF

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Tuesday Morning Corporation (8532) ("TM Corp."); TMI Holdings, Inc. (6658) ("TMI Holdings"); Tuesday Morning, Inc. (2994) ("TMI"); Friday Morning, LLC (3440) ("FM LLC"); Days of the Week, Inc. (4231) ("DOTW"); Nights of the Week, Inc. (7141) ("NOTW"); and Tuesday Morning Partners, Ltd. (4232) ("TMP"). The location of the Debtors' service address is 6250 LBJ Freeway, Dallas, TX 75240.

Upon the motion (the "Motion")² of the Debtors for the entry of an order (the "Order"), (i) authorizing the Debtors to assume the Consulting Agreement; (ii) approving the Sale Guidelines; (iii) approving the Sale of Store Closure Assets free and clear of all liens, claims and encumbrances; (iv) waiving compliance with Applicable State Laws and approving Dispute Resolution Procedures; (v) approving procedures to conduct Sales in Additional Closing Stores; and (vi) granting related relief; and the Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at any hearing before the Court (the "Hearing"); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334, (ii) venue is proper in this District pursuant to 28 U.S.C. § 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iv) the notice of the Motion and the Hearing was sufficient under the circumstances, and (v) there is good cause to waive the stay of Bankruptcy Rule 6004(h); after due deliberation determined that the relief requested in the Motion is necessary and essential for the Debtors' reorganization and such relief is in the best interests of the Debtors, their estates and their creditors; and upon the record herein; and after due deliberation thereon; and good and sufficient cause have been shown; it is hereby:

FOUND AND DETERMINED THAT:³

1. The Debtors have advanced sound business reasons for seeking to assume the Consulting Agreement and adopt the Sale Guidelines, as set forth in the Motion and at the Hearing, and entering into the Consulting Agreement is a reasonable exercise of the Debtors' business judgment and in the best interests of the Debtors and their estates.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion or the Agreement (defined below).

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

2. Conducting the Store Closings in accordance with the Sale Guidelines will provide an efficient means for the Debtors to dispose of the Store Closure Assets.

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

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

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

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

7. The entry of this Order is in the best interest of the Debtors and their estates, creditors, interest holders, and all other parties in interest; and now therefore;

IT IS HEREBY ORDERED THAT:

8. The Motion is GRANTED on a final basis as provided herein.

9. The Debtors are authorized and empowered to take any and all further actions as may be reasonably necessary or appropriate to give effect to this Order.

10. To the extent of any conflict between this Order, the Sale Guidelines, and the Consulting Agreement, the terms of this Order shall control over all other documents and the Sale Guidelines shall control over the Consulting Agreement.

11. Notwithstanding Bankruptcy Rules 6003(b) and 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

A. Authority To Assume the Consulting Agreement

12. The Consulting Agreement, a copy of which is attached to this Order as Schedule 1, is hereby assumed pursuant to Bankruptcy Code § 365 on a final basis. The Debtors are authorized to act and perform in accordance with the terms of the Consulting Agreement, including making payments required by the Consulting Agreement to the Consultant without the need for any application of the Consultant or a further order of the Court; provided however, such payments are subject to the DIP Order (defined below).

13. Subject to the restrictions set forth in this Order, the DIP Order, and the Sale Guidelines, the Debtors and the Consultant hereby are authorized to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and the Sales; and each of the transactions contemplated by the Consulting Agreement, and any actions taken by the Debtors and the Consultant necessary or desirable to implement the Consulting Agreement and/or the Sales prior to the date of this Order, hereby are approved and ratified.

B. Authority To Engage in Store Closing Sales

14. The Debtors are authorized, pursuant to Bankruptcy Code §§ 105(a) and 363(b)(1), to immediately continue and conduct Sales at the Closing Stores in accordance with this Order, the Sale Guidelines, and the Consulting Agreement.

15. The Sale Guidelines, which are attached to this Order as Schedule 2, are approved in their entirety on a final basis.

16. The Debtors are authorized to discontinue operations at the Closing Stores in accordance with this Order and the Sale Guidelines.

17. All entities that are presently in possession of some or all of the Merchandise or FF&E in which the Debtors hold an interest that are or may be subject to the Consulting Agreement

or this Order are hereby directed to surrender possession of such Merchandise or FF&E to the Debtors or the Consultant.

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

C. Conduct of the Sales

19. 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 Consultant to conduct the Sales and the sale of Merchandise and FF&E pursuant to the Consulting Agreement, including, without limitation, to conduct and advertise the sale of the Merchandise and FF&E in the manner contemplated by and in accordance with this Order, the Sale Guidelines, and the Consulting Agreement.

20. Except as provided for in this Order and the DIP Order, the Debtors and Consultant are hereby authorized to take such actions as may be necessary and appropriate to implement the Consulting Agreement and to conduct the sale without necessity of further order of this Court as provided in the Consulting Agreement or the Sale Guidelines, including, but not limited to, advertising the sale as a "store closing sale", "sale on everything", "everything must go", or similar-themed sales through the posting of signs (including the use of exterior banners at non-enclosed mall Closing Locations, and at enclosed mall Closing Locations to the extent the applicable Closing Location entrance does not require entry into the enclosed mall common area), use of sign-walkers, and street signage.

21. Except as expressly provided in the Consulting Agreement, the sale of the Merchandise and FF&E shall be conducted by the Debtors and the Consultant notwithstanding any restrictive provision of any lease, sublease 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. The Consultant and landlords of the Closing Locations 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 Consultant and any such landlords, provided that nothing in such Side Letters affects the provisions of this Order. In the event of any conflict between the Sale Guidelines and any Side Letter, the terms of such Side Letter shall control. Both the Sale Guidelines and any Side Letters shall at all times be subject to, and controlled by, the provisions of this Order.

22. Except as expressly provided for herein or in the Sale Guidelines, no person or entity, including, but not limited to, any landlord, licensor, service providers, utilities, and creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Sales or the sale of Merchandise or FF&E, or the advertising and promotion (including the posting of signs and exterior banners or the use of sign-walkers) of such sales, and all such parties and persons of every nature and description, including, but not limited to, any landlord, licensor, service providers, utilities, and creditor and all those acting for or on behalf of such parties, are prohibited and enjoined from (i) interfering in any way with, obstructing, or otherwise impeding, the conduct of the Sales and/or (ii) instituting any action or proceeding in any court (other than in the Bankruptcy Court) or administrative body seeking an order or judgment against, among others, the Debtors, the Consultant, or the landlords at the Closing Locations that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the

conduct of the Sales or sale of the Merchandise or FF&E or other liquidation sales at the Closing Locations and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein.

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

24. All sales of Store Closure Assets shall be "as is" and final. Returns related to the purchase of Store Closure Assets shall not be accepted at stores that are not participating in the Store Closings.

25. The Consultant shall not be liable for sales taxes except as expressly provided in the Consulting Agreement and the payment of any and all sales taxes is the responsibility of the Debtors. The Debtors are directed to remit all taxes arising from the Sales to the applicable Governmental Units as and when due, provided that in the case of a bona fide dispute the Debtors are only directed to pay such taxes upon the resolution of the dispute, if and to the extent that the dispute is decided in favor of the applicable Governmental Unit. For the avoidance of doubt, sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other party, other than the applicable Governmental Unit for which the sales taxes are collected. The Consultant shall collect, remit to the Debtors and account for sales taxes as and to the extent provided in the Consulting Agreement. This Order does not enjoin, suspend or restrain the assessment, levy or collection of any tax under state law, and does not constitute a declaratory judgment with respect to any party's liability for taxes under state law.

26. Pursuant to Bankruptcy Code § 363(f), the Consultant, on behalf of the Debtors, is authorized to sell and all sales of Merchandise or FF&E (each as defined in the Consulting Agreement) pursuant to the Sales, whether by the Consultant or the Debtors, shall be free and clear of any and all Encumbrances; provided, however, that any such Encumbrances shall attach to the proceeds of the Sales with the same validity, in the amount, with the same priority as, and to the same extent that any such liens, claims, and encumbrances have with respect to the Merchandise and FF&E, subject to any claims and defenses that the Debtors may possess with respect thereto and the Consultant's fees and expenses (as provided in the Consulting Agreement).

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

28. The Debtors and/or the Consultant (as the case may be) are authorized and empowered to, upon prior written notice to the DIP Agent, transfer Merchandise and FF&E among the Stores. The Consultant is authorized to sell the Debtors' FF&E and, subject to the prior written consent of the DIP Agent, abandon the same, in each case, as provided for and in accordance with the terms of the Consulting Agreement. Any claims arising as a result of such abandonment, including but not limited to claims by landlords related to the removal of abandoned property, shall be junior in priority to any superpriority administrative claims granted under the DIP Order, regardless of when such superpriority administrative claims may arise, (including without limitation, any Adequate Protection Claims (as defined in the DIP Order)). Following abandonment, any person (including, without limitation, the landlords) asserting rights, liens, claims, encumbrances, and/or interests in such abandoned property under non-bankruptcy law may

freely exercise such rights, liens, claims, encumbrances, and/or interests in the abandoned property, without further notice or order from this Court, without any liability to the Debtors, and without waiver of any claim such person may have against the Debtors.

29. Notwithstanding this or any other provision of this Order, nothing shall prevent or be construed to prevent the Consultant (individually, as part of a joint venture, or otherwise) or any of its affiliates from providing additional services to and/or bidding on the Debtors' assets not subject to the Consulting Agreement pursuant to an agency agreement or otherwise ("Additional Assets"). The Consultant (individually, as part of a joint venture, or otherwise) or any of its affiliates are hereby authorized to bid on, guarantee, or otherwise acquire such Additional Assets, or offer to provide additional services, notwithstanding anything to the contrary in the Bankruptcy Code or other applicable law, provided that such services guarantee, transaction, or acquisition is approved by separate order, acceptable in form and substance to the DIP Agent, of this Court.

D. Procedures Relating to Additional Store Closings

30. To the extent that the Debtors seek to conduct the Sales at any Additional Closing Stores, the Sale Guidelines and this Order shall apply to the Additional Closing Stores; provided that any requests to conduct such Sales at Additional Closing Stores pursuant to this Order shall be made prior to the date of confirmation of any chapter 11 plan and this Order shall only apply to such Sales through the effective date of such chapter 11 plan.

31. Prior to conducting the Sales at any Additional Closing Store, the Debtors will file a list, in form and substance acceptable to the DIP Agent, of such Additional Closing Stores with this Court (the "Additional Closing Store List") and serve a notice of their intent to conduct the Sales and the Additional Closing Stores on the applicable landlords (the "Additional Closing Store Landlords") and interested parties, including the U.S. Trustee, secured creditors, and any statutory

committee of creditors appointed in the Chapter 11 Case, by email (to the extent available to the Debtors) or overnight mail. With respect to Additional Closing Store Landlords, the Debtors will mail such notice to the notice address set forth in the lease for such Additional Closing Store (or, if none, at the last known address available to the Debtors).

32. The Additional Closing Store Landlords and any interested parties shall have seven days after service of the applicable Additional Closing Store List to object to the application of this Order. If no timely objections are filed with respect to the application of this Order to an Additional Closing Store, the Debtors shall be authorized, pursuant to Bankruptcy Code §§ 105(a), and 363(b) and (f), to proceed with conducting the Sales at the Additional Closing Store in accordance with this Order, as applicable, the Sale Guidelines, and the Consulting Agreement. If any objections are filed with respect to the application of this Order, to an Additional Closing Store, and such objections are not resolved, the objections and the application of this Order to the Additional Closing Store will be considered by the Court at the next regularly scheduled omnibus hearing, subject to the rights of any party to seek relief on an emergency basis on shortened notice, to the extent necessary so that the Debtors can move promptly to maximize value and minimize expenses for the benefit of their creditors and stakeholders.

33. The Debtors, in the exercise of their reasonable business judgment, subject to the prior written consent of the DIP Agent, and depending on the outcome of the Lease Negotiations, may remove stores from the Additional Closing Store List at any time and without notice or further order of this Court.

E. Dispute Resolution Procedures with Governmental Units

34. Nothing in this Order, the Consulting Agreement, or the Sale Guidelines, releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under environmental

laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or operator of the property after the date of entry of this Order. Nothing contained in this Order, the Consulting Agreement, or the Sale Guidelines shall in any way: (a) diminish the obligation of any entity to comply with environmental laws; or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The Store Closings and the Sales shall not be exempt from laws of general applicability, including, without limitation, public health and safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, “General Laws”). Nothing in this Order, the Consulting Agreement, or the Sale Guidelines, shall alter or affect obligations to comply with all applicable federal safety laws and regulations. Nothing in this Order shall be deemed to bar any Governmental Unit (as such term is defined in Bankruptcy Code § 101(47)) from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors’ rights 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 or this Order. 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.

35. To the extent that the sale of Store Closure Assets is subject to any Liquidation Sale Laws, including any federal, state or local statute, ordinance, or rule, or licensing requirement directed at regulating “going out of business,” “store closing,” similar inventory liquidation sales,

or bulk sale laws, laws restricting safe, professional and non-deceptive, customary advertising such as signs, banners, posting of signage, and use of sign-walkers solely in connection with the sale and including ordinances establishing license or permit requirements, waiting periods, time limits or bulk sale restrictions that would otherwise apply solely to the sale of the Store Closure Assets, the dispute resolution procedures in this section shall apply:

- i. Provided that the Sales are conducted in accordance with the terms of the Interim Order, or the Final Order, as applicable, 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 and the Consultant will be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of the Interim Order, or the Final Order, as applicable, and the Sale Guidelines without the necessity of further showing compliance with any Liquidation Sale Laws.
- ii. Within three business days after entry of the Interim Order, the Debtors will serve by first-class mail, copies of the Interim Order, the proposed Final Order, the Consulting Agreement, and the Sale Guidelines on the following: (a) the Attorney General's office for each state where the Sales are being held; (b) the county consumer protection agency or similar agency for each county where the Sales are being held; (c) the division of consumer protection for each state where the Sales are being held; (d) the chief legal counsel for the local jurisdiction; (e) the landlords for the Closing Stores; and (f) Consultant (collectively, the "Dispute Notice Parties").
- iii. With respect to any Additional Closing Stores, within three business days after filing any Additional Closing Store List with the Bankruptcy Court, the Debtors will serve by first-class mail, copies of the Interim Order or Final Order, as applicable, the Consulting Agreement, and the Sale Guidelines on the Dispute Notice Parties.
- iv. To the extent that there is a dispute arising from or relating to the Sales, the Interim Order, or the proposed Final Order, as applicable, the Consulting Agreement, or the Sale Guidelines, which dispute relates to any Liquidation Sale Laws (a "Reserved Dispute"), the Bankruptcy Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within ten days following entry of the Interim Order, or service of an Additional Store Closing List, as applicable, any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the "Dispute Notice") explaining the nature of the dispute to: (a) Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, Attn: Ian Peck, Steve Pezanosky, and Jarom Yates; (b) Vinson & Elkins, LLP, Trammel Crow

Center, 2001 Ross Avenue, Suite 3900, Dallas, Texas 75201, Attn: William L. Wallander and Bradley R. Foxman, as counsel to the DIP Agent; (c) counsel to the official committee of unsecured creditors, if one is appointed, (d) the United States Trustee for the Northern District of Texas; (e) Consultant, and (f) Consultant's counsel. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within 15 days after service of the notice, the Governmental Unit may file a motion with the Bankruptcy Court requesting that the Bankruptcy Court resolve the Reserved Dispute (a "Dispute Resolution Motion").

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

36. Subject to paragraphs 34 and 35 above, each and every federal, state, or local agency, departmental, or Governmental Unit with regulatory authority over the Sales and all newspapers and other advertising media in which the Sales are advertised shall consider this Order

as binding authority that no further approval, license, or permit of any Governmental Unit shall be required, nor shall the Debtors or the Consultant be required to post any bond, to conduct the Sales.

37. Provided that the Sales are conducted in accordance with the terms of this Order, the Consulting Agreement, and the Sale Guidelines, and in light of the provisions in the laws that exempt court-ordered sales from their provisions, the Debtors and Consultant shall be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of this Order and the Sale Guidelines without the necessity of further showing compliance with any such Liquidation Sale Laws.

38. Within three business days of the entry date of this Order, the Debtors shall serve copies of this Order, the Consulting Agreement, and the Sale Guidelines via email, facsimile, or regular mail on: (i) the Office of the United States Trustee for the Northern District of Texas, (ii) counsel to the DIP Agent; (iii) counsel to the official committee of unsecured creditors (if any) appointed in the Chapter 11 Cases; (iv) all state attorneys general in which Store Closure Assets are located; (v) municipalities in which the Store Closure Assets are located, (vi) all of the Debtors' landlords at the locations of the Stores, (vii) all applicable state and consumer protection agencies, (viii) all parties who are known by the Debtors to assert liens against the Store Closure Assets, and (ix) any party that has requested notice pursuant to Bankruptcy Rule 2002.

F. Other Provisions.

39. The Consulting Agreement and related documents may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court.

40. The Debtors, in the exercise of their reasonable business judgment, subject to the prior written consent of the DIP Agent, and depending on the outcome of the Lease Negotiations,

may remove stores from the list of Closing Stores attached to the Consulting Agreement as **Exhibit A** at any time and without notice or further order of this Court.

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

42. To the extent the Debtors are subject to any state “fast pay” laws in connection with the Store Closings, the Debtors shall be presumed to be in compliance with such laws to the extent, in applicable states, such payroll payments are made by the later of: (a) the Debtors’ next regularly scheduled payroll; and (b) seven calendar days following the termination date of the relevant employee, and in all such cases consistent with, and subject to, any previous orders of this Court regarding payment of same.

43. Notwithstanding anything to the contrary herein, nothing in this Order authorizes the use of cash collateral or debtor-in-possession financing. Any payments authorized to be made pursuant to the Motion shall be made only to the extent authorized under the cash collateral and debtor-in-possession financing order approved by the Court in effect as of the time such payment is to be made (together with any approved budgets in connection therewith, the “DIP Order”), and such payments shall be subject to the terms, conditions, limitations, and requirements of the DIP Order in all respects.

44. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

END OF ORDER

Submitted by:

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PROPOSED ATTORNEYS FOR DEBTORS