

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

In re

BORDERS GROUP, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 11-10614 (MG)

(Jointly Administered)

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

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for an order pursuant to sections 105, 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) seeking approval of, among other things, the sale of certain of the Debtors’ assets free and clear of Encumbrances (as defined herein), and authority to enter into an agency agreement with liquidators to conduct going out of business sales at all of the Debtors’ store locations; and it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and it appearing that consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157; and adequate

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

² All terms not otherwise defined herein shall have the meanings assigned to them in the Motion or the Agency Agreement, as applicable.

notice of the Motion having been given and it appearing that no other notice need be given; and a joint venture (the “Agent”) composed of Hilco Merchant Resources, LLC, SB Capital Group, LLC, Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC and Great American Group W.F. LLC and the Debtors having agreed upon terms and conditions for the Agent to act as the Debtors’ exclusive agent to conduct sales (the “Sales”) of certain of the Debtors’ assets (“Assets”), which terms and conditions are set forth in that certain Agency Agreement, dated July 13, 2011, by and between the Agent and the Debtors, a copy of which is attached hereto as Exhibit A (the “Agency Agreement”); and the transaction represented by the Agency Agreement having been determined to be the highest and best offer for the Assets; and a hearing having been held on July 14, 2011, whereupon the Court entered an Order approving bidding procedures and the Debtors’ designation of the Agency Agreement as a stalking horse bid [Docket No. 1253] (the “Sale Procedures Order”); and a hearing having been held on July 21, 2011 (the “Sale Hearing”) to consider the remaining relief requested in the Motion and approval of the Agency Agreement; and appearances of all interested parties having been noted on the record of the Sale Hearing; and upon the Declarations of Richard Klein and Holly Etlin, each dated June 30, 2011 and filed with the Motion; and upon all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore, it is hereby

FOUND AND DETERMINED THAT:³

A. **Jurisdiction:** This Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1134. Approval of the Debtors' entry into the Agency Agreement, and the transactions contemplated thereby is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) , (D), (N) and (O).

B. **Venue:** Venue of these cases in this district is proper pursuant to 28 U.S.C. § 1409(a).

C. **Statutory predicates:** The statutory predicates for the approval of the Agency Agreement and transactions contemplated therein are sections 105, 363, 364 and 554 of the Bankruptcy Code and Rules 2002, 4001, 6004 and 9014 of the Bankruptcy Rules.

D. **Notice:** Proper, timely, adequate and sufficient notice of the Motion and entry into the Agency Agreement, and the Sale Hearing has been provided in accordance with sections 102(1), 105(a), and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and in compliance with the Sale Procedures Order. No other or further notice is required.

E. **Opportunity to be Heard:** A reasonable opportunity to object or be heard regarding the relief requested in the Motion, the Agency Agreement, and the transactions pursuant thereto has been afforded to all interested persons and entities, including, without limitation, the following: (i) the Office of the United States Trustee, (ii) counsel to General Electric Capital Corporation and GA Capital LLC, as agents (in such capacity, together, the "DIP

³ The findings of fact and the conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

Agents”) for the lenders party to the DIP Credit Agreement;¹ (iii) counsel to the Creditors’ Committee, (iv) all parties who are known to assert a security interest, lien, or claim in any of the Assets, (v) all the Debtors’ landlords, (vi) all applicable federal, state, and local taxing authorities (collectively, the “Taxing Authorities”), (vii) all applicable county and state consumer protection agencies, (viii) all applicable state attorneys general, (ix) all other government agencies required to receive notice under the Bankruptcy Rules and (x) all other applicable parties in interest, including all entities on the 2002 service list as of the date of entry of the Sale Procedures Order ((i) through (x) collectively, the “Notice Parties”). Objections, if any, to the Motion have been overruled, withdrawn or resolved.

F. **Marketing Process:** As demonstrated by: (i) the declarations of Holly Felder Etlin and Richard Klein filed with the Motion, (ii) the testimony and other evidence proffered or adduced at the Sale Hearing and (iii) the representations of counsel made on the record at the Sale Hearing, the Debtors have thoroughly marketed the Assets and have conducted the bidding solicitation fairly, with adequate opportunity for parties that either expressed an interest in acquiring or liquidating Assets, or who the Debtors believed may have an interest in acquiring or liquidating the Assets, to submit competing bids. The Debtors and the Agent have respectively negotiated and undertaken their roles leading to the Sales and entry into the Agency Agreement in a diligent, noncollusive, fair and good faith manner.

G. **Highest and Best Offer:** The Agency Agreement attached hereto as **Exhibit A**, including the form and total consideration to be realized by the Debtors pursuant to

¹ The term “DIP Credit Agreement” has the meaning given to it in the *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens and Providing Superiority Administrative Expense Status, (4) Granting Adequate Protection, and (5) Modifying Automatic Stay* (Docket No. 404) (the “Final DIP Order”).

the Agency Agreement, (i) is the highest and best offer received by the Debtors for the Assets, (ii) is fair and reasonable, and (iii) is in the best interests of the Debtors, their estates, their creditors and all other parties in interest. There is no legal or equitable reason to delay entry into the Agency Agreement, and the transactions contemplated therein, including, without limitation, the Sales.

H. **Business Judgment:** The Debtors' decision to (i) enter into the Agency Agreement, and (ii) perform under and make payments required by the Agency Agreement, is a reasonable exercise of the Debtors' sound business judgment consistent with their fiduciary duties and is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest.

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

J. **Time of the Essence:** Time is of the essence in effectuating the Agency Agreement and proceeding with the Sales contemplated therein without interruption. Based on the record of the Sale Hearing, the Motion, and for the reasons stated on the record at the Sale Hearing, Sales under the Agency Agreement must be commenced on or before July 22, 2011 to maximize the value that the Agent may realize from the Sales, and the value that the Debtors may realize from entering into the Agency Agreement. Accordingly, cause exists to lift the stay to the extent necessary, as contemplated by Bankruptcy Rule 6004(h) and permit the immediate effectiveness of this Order.

K. **Sale Free and Clear:** A sale of the Assets other than one free and clear of liens, claims, encumbrances, defenses (including, without limitation, rights of setoff and recoupment) and interests, including, without limitation, security interests of whatever kind or nature, mortgages, conditional sales or title retention agreements, pledges, deeds of trust, hypothecations, liens, encumbrances, assignments, preferences, debts, easements, charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, taxes (including foreign, state and local taxes), licenses, covenants, restrictions, indentures, instruments, leases, options, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, environmental, tax, labor, ERISA, CERCLA, alter ego and other liabilities, causes of action, contract rights and claims, to the fullest extent of the law, in each case, of any kind or nature (including, without limitation, all “claims” as defined in section 101(5) of the Bankruptcy Code), known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable (collectively, “Encumbrances”) and without the protections of this Order would hinder the Debtors’ ability to obtain the consideration provided for in the Agency Agreement and, thus, would impact materially and adversely the value that the Debtors’ estates would be able to obtain for the sale of such Assets. But for the protections afforded to the Agent under the Bankruptcy Code and this Order, the Agent would not have offered to pay the consideration contemplated in the Agency Agreement. In addition, each entity with an Encumbrance upon the Assets, (i) has consented to the Sales or is deemed to have consented to the Sales, (ii) could be compelled in a

legal or equitable proceeding to accept money satisfaction of such interest, or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code, and therefore, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Encumbrances who did not object, or who withdrew their objections, to the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Therefore, approval of the Agency Agreement and the consummation of the Sales free and clear of Encumbrances is appropriate pursuant to section 363(f) of the Bankruptcy Code and is in the best interests of the Debtors' estates, their creditors and other parties in interest.

L. **Arms-length Sale:** The consideration to be paid by the Agent under the Agency Agreement was negotiated at arm's-length and constitutes reasonably equivalent value and fair and adequate consideration for the Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and the laws of the United States, any state, territory, possession thereof or the District of Columbia. The terms and conditions set forth in the Agency Agreement are fair and reasonable under these circumstances and were not entered into for the purpose of, nor do they have the effect of, hindering, delaying or defrauding any of the Debtors or their creditors under any applicable laws.

M. **Good Faith:** The Debtors, their management and their board of directors, and the Agent, its members and their respective officers, directors, employees, agents and representatives, actively participated in the bidding process and acted in good faith. The Agency Agreement between the Agent and the Debtors was negotiated and entered into in good faith, based upon arm's length bargaining, and without collusion or fraud. The Debtors were free to deal with any other party interested in buying or selling on behalf of the Debtors' estates some or all of the Assets. Neither the Debtors nor the Agent has engaged in any conduct that would

cause or permit the Sales, the Agency Agreement, or any related action or the transactions contemplated thereby to be avoided under section 363(n) of the Bankruptcy Code, or that would prevent the application of section 363(m) of the Bankruptcy Code. The Agent has not violated section 363(n) of the Bankruptcy Code by any action or inaction. Specifically, the Agent has not acted in a collusive manner with any person and was not controlled by any agreement among bidders. The Agent's prospective performance and payment of amounts owing under the Agency Agreement are in good faith and for valid business purposes and uses. The Agent has disclosed, to the Debtors, the Court, the DIP Agents and the Creditors Committee in these cases that certain affiliates of Gordon Brothers Retail Partners, LLC and Great American Group W.F. LLC hold debt under the DIP Credit Agreement and that DJM Realty, the Court-approved real estate consultant for the Debtors, is an affiliate of Gordon Brothers Retail Partners, LLC.

N. **Insider Status:** The Agent is not an "insider" as that term is defined in section 101(31) of the Bankruptcy Code. No common identity of directors or controlling stockholders exists between the Agent and the Debtors.

O. **Security Interests:** The liens and superpriority administrative expense claims provided for in the Agency Agreement and this Order to secure the Debtors' obligations under the Agency Agreement to the Agent are necessary to induce the Agent to agree to terms for the Agency Agreement that maximize value for the Debtors' estates. The absence of such protections would impact materially and adversely the value available to the Debtors in the liquidation of their stores in partnership with a liquidation agent. But for the protections afforded to the Agent under the Bankruptcy Code, this Order, and the Agency Agreement, the Agent would not have agreed to pay the Debtors the compensation provided for under the Agency Agreement. In addition, the DIP Agents, which hold a security interest in the property to which

the Agent's security interests attach, have consented to the superpriority administrative expense claims and security interests provided for in the Agency Agreement, subject to the satisfaction of the conditions set forth in the Agency Agreement and in Paragraph 33 of this Order.

P. **Corporate Authority:** Each of the Debtors (i) has full corporate or other power to execute, deliver and perform its obligations under the Agency Agreement and all other transactions contemplated thereby, and entry into the Agency Agreement has been duly and validly authorized by all necessary corporate or similar action, (ii) has all of the corporate or other power and authority necessary to consummate the transactions contemplated by the Agency Agreement, and (iii) has taken all actions necessary to authorize and approve the Agency Agreement and the transactions contemplated thereby. No consents or approvals, other than those expressly provided for herein or in the Agency Agreement, are required for the Debtors to consummate such transactions.

Q. **No Successor Liability:** No sale, transfer or other disposition of the Assets pursuant to the Agency Agreement or entry into the Agency Agreement will subject the Agent to any liability for claims, obligations or Encumbrances asserted against the Debtors or the Debtors' interests in such Assets by reason of such transfer under any laws, including, without limitation, any bulk-transfer laws or any theory of successor or transferee liability, antitrust, environmental, product line, de facto merger or substantial continuity or similar theories. The Agent is not a successor to the Debtors or their respective estates.

R. **No Sub Rosa Plan:** Entry into the Agency Agreement and the transactions contemplated thereby neither impermissibly restructure the rights of the Debtors'

creditors, nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. Entry into the Agency Agreement does not constitute a *sub rosa* chapter 11 plan.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED

THAT:

A. Motion Granted, Objections Overruled

1. The relief requested in the Motion is granted as set forth herein.
2. Any remaining objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections are overruled in all respects and denied.

B. Agency Agreement Approved and Authorized

3. The Agency Agreement is approved pursuant to section 363 of the Bankruptcy Code. The Debtors are hereby authorized and empowered to enter into and perform under the Agency Agreement, and the Agency Agreement (and each of the transactions contemplated therein) is hereby approved in its entirety and is incorporated herein by reference. The failure to include specifically any particular provision of the Agency Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Agency Agreement and all of its provisions, payments and transactions, be authorized and approved in their entirety. Likewise, all of the provisions of this Order are nonseverable and mutually dependent. The entity name in the Agency Agreement named "Great American Group, LLC" is "Great American Group WF, LLC" and Great American Group WF, LLC is the party to the Agency Agreement.

4. All amounts payable to the Agent under the Agency Agreement shall be payable to the Agent without the need for any application of the Agent therefor or any further order of the Court.

5. Subject to the provisions of this Order, the Debtors and the Agent are hereby authorized, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to conduct the Sales in accordance with the Agency Agreement and the sale guidelines (the “GOB Sale Guidelines”) attached hereto as Exhibit B, which GOB Sale Guidelines are hereby approved in their entirety.

6. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors, the Agent and each of their respective officers, employees and agents are hereby authorized and directed to execute such documents and to do such acts as are necessary or desirable to carry out the Sales and effectuate the Agency Agreement and each of the transactions and related actions contemplated or set forth therein.

C. Use of Consideration

7. Immediately upon the Payment Date, the Debtors are authorized and directed to (i) fully fund the Carve-Out to the Carve-Out Amount (each as defined in the DIP Credit Agreement) (the “Carve-Out Funding”); (ii) repay, or cause to be repaid, the DIP Obligations (as defined in the Final DIP Order) indefeasibly in full in cash by making one or more payments to the DIP Agents, for the benefit of the DIP Lenders (as defined in the Final DIP Order), in such amounts as are necessary to repay in full in cash at closing all DIP Obligations outstanding thereunder, including the cash collateralization of all L/C Reimbursement Obligations (as defined in the DIP Credit Agreement) and (iii) to fully fund the Ad Valorem Tax Reserve Funding (defined below). Notwithstanding anything herein or in the Agency Agreement to the contrary, the Agent is authorized to pay the Payoff Amount (as defined below) in accordance

with the Payoff Letter (as defined below) and such payment shall satisfy (a) the Agent's obligations to the Debtors under the Agency Agreement to the extent (but only to the extent) of the Payoff Amount, and (b) the Debtors' obligations under the DIP Loan Documents to the extent (but only to the extent) of the Payoff Amount. Following the Carve-out Funding, the DIP Agents and the DIP Lenders shall have no further funding or other obligation with respect to the Carve-Out and the obligations of the DIP Agents and the DIP Lenders under the Final DIP Order and the DIP Loan Documents (as defined in the Final DIP Order) with respect to the Carve-Out shall be, and shall be deemed to be, fully and finally discharged and satisfied. Neither Debtors nor the DIP Agents or the DIP Lenders shall have any obligation to fund the Working Capital Indemnity Account or Term B Indemnity Account (each as defined in the DIP Credit Agreement). Without limiting the foregoing, and notwithstanding anything herein to the contrary, upon (i) receipt by the DIP Agents of a payoff letter, substantially in the form of Exhibit C hereto (the "Payoff Letter") acknowledged by the Debtors, (ii) the payment, in full, in cash of the Payoff Amount plus the Per Diem Amount (if any) (each as defined in the Payoff Letter), and (iii) entry of this Order (the "Payoff Effective Time"), all liens on property of the Debtors relating to the Debtors' Obligations under the DIP Credit Agreement shall automatically, without further action by the Debtors, the DIP Agents or the DIP Lenders, be deemed released, and the DIP Agents shall take all reasonably requested actions to confirm the removal of any liens on the assets securing the claims under the DIP Credit Agreement, with related costs borne by the Debtors and the Termination Date (as defined in the DIP Credit Agreement) shall be deemed to have occurred. The Debtors are hereby authorized and directed to execute and deliver to the DIP Agents the Payoff Letter. The Working Capital Agent (as defined in the Final DIP Order) shall return to the Debtors cash from the cash collateralization of

L/C Reimbursement Obligations (as defined in the DIP Credit Agreement), or portions thereof in accordance with the provisions of the DIP Credit Agreement relating to the cash collateralization of Letter of Credit Obligations (as defined in the DIP Credit Agreement) or at such earlier time as determined by the Working Capital Agent.

8. On the Payment Date, the Debtors shall establish a segregated account into which there shall be deposited an amount equal to \$1.343 million to provide for the payment of claims or liens of Taxing Authorities holding Identified Prior Claims which are secured by Prepetition Permitted Liens (each as defined in the Final DIP Order) with respect to ad valorem and similar taxes (the “Ad Valorem Tax Reserve Funding”). These segregated funds shall be on the order of adequate protection and shall constitute neither the allowance of the claims of the Taxing Authorities, nor a cap on the amounts they may be entitled to receive and nothing in this Order shall be deemed to release any claims against the Debtors asserted by, or liens of, Taxing Authorities holding Identified Prior Claims which are secured by Prepetition Permitted Liens. Furthermore, the claims and liens of the Taxing Authorities shall remain subject to any objections any party would otherwise be entitled to raise as to the priority, validity or extent of such liens. The Encumbrances of any such Taxing Authorities shall attach to the funds held in such segregated account in the same priority, validity and extent as the Prepetition Permitted Liens and no DIP Secured Party (as defined in the Final DIP Order) shall have any liability with respect to any such obligations or to provide for the payment of any such obligations. The funds held in such segregated account may be distributed only upon agreement between the applicable Taxing Authority and the Debtors, in consultation with the Creditors Committee, or else by subsequent Order of the Court, upon a motion duly noticed to the applicable Taxing Authority. For the avoidance of doubt, nothing in this provision is intended to limit or alter the security

interest granted to the Agent in the Agency Agreement and this Order.

D. Order Binding

9. This Order shall be binding upon and shall govern the acts of all entities, including, without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Assets.

10. This Order and the terms and provisions of the Agency Agreement shall be binding on all of the Debtors' creditors (whether known or unknown), the Debtors, the Agent, and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting an interest in the Assets, notwithstanding any subsequent appointment of any trustee, party, entity or other fiduciary under any section of the Bankruptcy Code with respect to the forgoing parties, and as to such trustee, party, entity or other fiduciary, such terms and provisions likewise shall be binding. The provisions of this Order and the terms and provisions of the Agency Agreement, and any actions taken pursuant hereto or thereto shall survive the entry of any order which may be entered confirming or consummating any plan of the Debtors or converting the Debtors' cases from chapter 11 to chapter 7, and the terms and provisions of the Agency Agreement, as well as the rights and interests granted pursuant to this Order and the Agency Agreement, shall continue in these or any superseding cases and shall be binding upon the Debtors, the Agent and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code. Any trustee appointed in these

cases shall be and hereby is authorized to operate the business of the Debtors to the fullest extent necessary to permit compliance with the terms of this Order and the Agency Agreement, and Agent and the trustee shall be and hereby are authorized to perform under the Agency Agreement upon the appointment of the trustee without the need for further order of this Court.

E. Good Faith.

11. Entry into the Agency Agreement is undertaken by the parties thereto in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and Agent shall be protected by section 363(m) of the Bankruptcy Code in the event that this Order is reversed or modified on appeal. The reversal or modification on appeal of the authorization provided herein to enter into the Agency Agreement and consummate the transactions contemplated thereby shall not affect the validity of the such transactions, unless such authorization is duly stayed pending such appeal. The Agent is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code. The transactions contemplated by the Agency Agreement are not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.

F. Conduct of the Sales

12. Except as otherwise provided in the Agency Agreement, pursuant to section 363(f) of the Bankruptcy Code, the Agent shall be authorized to sell all Merchandise and other Assets to be sold pursuant to the Agency Agreement free and clear of any and all Encumbrances, including, without limitation, the liens and security interests, as the same may have been amended from time to time, of the DIP Agents and the Debtors' prepetition lenders whether arising by agreement, any statute or otherwise and whether arising before, on or after the date on which this chapter 11 case was commenced, with any presently existing liens encumbering all or any portion of the Assets or the Proceeds thereof attaching only to the Guaranteed Amount or, subject to the Agent's liens granted pursuant to the Agency Agreement and this Order, other

amounts payable to the Debtors under the Agency Agreement (or, with respect to Identified Prior Claims secured by Prepetition Permitted Liens, attaching only to the Ad Valorem Tax Reserve Funding), with the same validity, force and effect as the same had with respect to the assets at issue, subject to any and all defenses, claims and/or counterclaims or setoffs that may exist. For the sake of clarity, however, nothing in this paragraph is intended to diminish the liens in favor of the Agent, as reflected in the Agency Agreement and this Order, that attach to, among other things, the proceeds of the Sales.

13. If any person or entity that has filed financing statements, mortgages, construction or mechanic's liens, *lis pendens* or other documents or agreement evidencing liens on or interests in the Assets shall not have delivered to the Debtors, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of any Encumbrances which the person or entity has with respect to the Assets, each such person or entity is hereby directed to deliver all such statements, instruments and releases and the Debtors and the Agent are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity asserting the same and the Agent is authorized to file a copy of this Order which, upon filing, shall be conclusive evidence of the release and termination of such interest. Each and every federal, state and local governmental unit is hereby directed to accept any and all documents and instruments necessary or appropriate to give effect to the Sales and related transactions.

14. All entities that are presently in possession of some or all of the Assets or other property in which the Debtors hold an interest that are or may be subject to the Agency Agreement hereby are directed to surrender possession of such Assets or other property to the Agent.

15. The Debtors and the Agent shall not extend the Sale Termination Date beyond November 13, 2011 without notice and further order of the Court; provided, however, that no notice or further order of the Court shall be required for one extension that does not exceed ten (10) days.

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

17. Nothing in this Order or the Agency Agreement 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) that any entity would be subject to as the owner, lessor, lessee, or operator of the property after the date of entry of this Order. Nothing contained in this Order or in the Agency Agreement shall in any way (i) diminish the obligation of any entity to comply with environmental laws, or (ii) 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. Nothing herein shall be construed to be a determination that the Agent is an operator with respect to any environmental law or regulation. Moreover, the Sales shall not be exempt from, and the Agent shall be required to comply with, laws of general applicability, including, without limitation, public health and

safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, “General Laws”). Nothing in this order shall alter or affect the Debtors’ and Agent’s obligations to comply with all federal safety laws and regulations. Specifically, the Debtors and the Agent must comply with all security requirements and federal regulations to obtain proper security badges or similar documentation necessary for entry and operation in airport terminals. Nothing in this Order shall be deemed to bar any Governmental Unit (as defined in Bankruptcy Code section 101(27)) from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors’ or the Agent’s right to assert in that forum or before this Court that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code, this Order, or otherwise, pursuant to Paragraph 18 hereunder. Notwithstanding any other provision in this Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Order and/or any applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Order shall be deemed to have made any rulings on any such issues.

18. Disputes Between Government Units and the Debtors or the Agent. To the extent that the Sales are subject to any federal, state or local statute, ordinance, or rule, or licensing requirement solely directed at regulating “going out of business,” “store closing,” similar inventory liquidation sales, or bulk sale laws (each a “GOB Law,” and together, the “GOB Laws”), including laws restricting safe, professional and non-deceptive, customary advertising such as signs, banners, posting of signage, and use of sign-walkers solely in connection with the Sales and including ordinances establishing license or permit requirements, waiting periods, time

limits or bulk sale restrictions that would otherwise apply solely to Sales (collectively, the “Liquidation Laws”), the following provisions shall apply:

a. Provided that the Sales are conducted in accordance with the terms of this Order, the Agency Agreement and the GOB Sale Guidelines, and in light of the provisions in the laws of many Governmental Units that exempt court-ordered sales from their provisions, the Debtors shall be presumed to be in compliance with any GOB Laws and Liquidation Laws and, subject to Paragraphs 17 and 18 herein, are authorized to conduct the Sales in accordance with the terms of this Order and the GOB Sale Guidelines without the necessity of further showing compliance with any such GOB Laws and Liquidation Laws.

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

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

thereafter. If the Debtors, the Agent and the Governmental Unit are unable to resolve the Reserved Dispute within fifteen (15) days of service of the notice, the aggrieved party may file a motion with this Court requesting that this Court resolve the Reserved Dispute (a “Dispute Resolution Motion”).

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

e. If, at any time, a dispute arises between the Debtors and/or the Agent and a Governmental Unit as to whether a particular law is a GOB Law and/or Liquidation Law, and subject to any provisions contained in this Order related to GOB Laws and/or Liquidation Laws, then any party to that dispute may utilize the provisions of Subparagraphs (b) and (c) hereunder

by serving a notice to the other party and proceeding thereunder in accordance with those Paragraphs. Any determination with respect to whether a particular law is a GOB Law and/or Liquidation Law shall be made de novo.

f. Notwithstanding anything herein to the contrary, and in view of the importance of the use of sign-walkers, banners, and other advertising to the Sales, to the extent that disputes arise during the course of the Sales regarding laws regulating the use of sign-walkers and banner advertising and the Debtors and the Agent are unable to resolve the matter consensually with the Governmental Unit, any party may request an immediate telephonic hearing with this Court pursuant to these provisions. Such hearing will, to the extent practicable, be scheduled initially within two (2) business days of such request. This scheduling shall not be deemed to preclude additional hearings for the presentation of evidence or arguments as necessary.

19. Except to the extent of the reserved rights of Governmental Units expressly granted elsewhere in this Order, the Debtors and Agent are hereby authorized to take such actions as may be necessary and appropriate to implement the Agency Agreement and to conduct the Sales without necessity of further order of this Court as provided in the Agency Agreement or the GOB Sale Guidelines, including, but not limited to, advertising the Sales as “going out of business,” “total liquidation,” “store-closing” or similar-themed sales through the posting of signs (including the use of exterior banners at non-enclosed mall Stores, and at enclosed mall Stores to the extent the applicable Store entrance does not require entry into the enclosed mall common area), use of signwalkers and street signage.

20. Except as expressly provided in the Agency Agreement, the Sales shall be conducted by the Debtors and the Agent notwithstanding any restrictive provision of any lease,

sublease or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Sales, the rejection of leases, abandonment of assets or “going dark” provisions. The Agent and landlords of the Stores are authorized to enter into agreements (“Side Letters”) between themselves modifying the GOB Sale Guidelines without further order of the Court, and such Side Letters shall be binding as among the Agent and any such landlords, provided that nothing in such Side Letters affects the provisions of Paragraphs 17 and 18. In the event of any conflict between the GOB Sale Guidelines and any Side Letter, the terms of such Side Letter shall control.

21. Except as expressly provided for herein or in the GOB Sale Guidelines, and except with respect to any Governmental Unit (as to which Paragraphs 17 and 18 shall apply), no person or entity, including but not limited to any landlord, licensor, or creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Sales, or the advertising and promotion (including the posting of signs or the use of signwalkers) of such Sales, and all such parties and persons of every nature and description, including landlords, licensors, creditors and utility companies and all those acting for or on behalf of such parties, are prohibited and enjoined from (i) interfering in any way with, or otherwise impeding, the conduct of the Sales and/or (ii) instituting any action or proceeding in any court or administrative body seeking an order or judgment against, among others, the Debtors, the Agent, or the landlords at the Debtors’ Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sales or other liquidation sales at the Stores and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease or license based upon any relief authorized herein.

22. The Agent shall have the right to use the Debtors' stores and all related store services, furniture, fixtures, equipment and other assets of the Debtors for the purpose of conducting the Sales, free of any interference from any entity or person, subject to compliance with the GOB Sale Guidelines and this Order and subject to Paragraphs 17 and 18 of this Order.

23. Nothing in this Order shall (a) alter or affect the Debtors' obligations to comply with section 365(d)(3) of the Bankruptcy Code or (b) alter or modify the rights of any lessor or other counterparty to a lease with the Debtors to file an appropriate motion or otherwise seek appropriate relief if the Debtors fail to comply with section 365(d)(3) of the Bankruptcy Code; provided that the conduct of the Sales in accordance with the Sale Guidelines shall not be a violation of section 365(d)(3) of the Bankruptcy Code.

24. Pursuant to section 554(a) of the Bankruptcy Code, the Debtors and the Agent, as applicable, are permitted to abandon property of the Debtors' estates in accordance with the terms and provisions of the Agency Agreement, including those terms and provisions contained in section 3.2 (b) of the Agency Agreement, without incurring liability to any person or entity provided, however, that, unless the Agent otherwise consents, the Debtors may only abandon property located in any Store on or after the applicable Sale Termination Date. In the event of any such abandonment, all applicable landlords shall be authorized to dispose of such property without any liability to any individual or entity that may claim an interest in such abandoned property, and such abandonment shall be without prejudice to any landlord's right to assert any claim based on such abandonment and without prejudice to the Debtors or other party in interest to object thereto.

25. Before any sale, abandonment or other disposition of the Debtors' computers (including software) and/or cash registers and any other point of sale Owned FF&E located at the

Stores (collectively, “POS Equipment”) which may contain customer lists, identifiable personal and/or confidential information about the Debtors’ employees and/or customers, or credit card numbers (“Confidential Information”) takes effect, the Debtors shall remove or cause to be removed the Confidential Information from the POS Equipment.

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

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

provided that, the discount provided under such program will be limited to an additional 10% off purchases. From the Sale Commencement Date through July 31, 2011, the Agent shall accept Borders Bucks. In each case, the Debtors shall not pay or reimburse the Agent for the costs of honoring such program, such costs shall not be deemed "Expenses" under the Agency Agreement, and the Agent shall indemnify the Debtors for any costs or obligations the Debtors incur in connection with the Agent honoring of such programs. For the avoidance of doubt, Agent shall not be required to honor any other Borders Rewards or loyalty programs during the Sale Term.

28. All state and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms "as is" or "final sales." The Debtors and/or the Agent shall accept return of any goods purchased during the Sales that contain a defect which the lay consumer could not reasonably determine was defective by visual inspection prior to purchase for a full refund, provided that the consumer must return the merchandise within twenty-one (21) days of their purchase, the consumer must provide a receipt, and the asserted defect must in fact be a "latent" defect. The Debtors shall promptly reimburse Agent in cash for any refunds Agent is required to issue to customers in respect of any goods purchased during the Sales that contain such a latent defect.

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

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

31. The Agent shall not be liable for sales taxes except as expressly provided in the Agency 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 Taxing Authorities 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 Taxing Authority. For the avoidance of doubt, sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor other than the Taxing Authority for which the sales taxes are collected. The Agent shall collect, remit to the Debtors and account for sales taxes as and to the extent provided in the Agency Agreement. If Agent fails to perform its responsibilities in accordance with Section 8.3 of the Agency Agreement, Agent shall indemnify and hold harmless the Debtors from and against any and all costs, including, but not limited to, reasonable attorneys' fees, assessments, fines or penalties which the Debtors sustain or incur as a result or consequence of the failure by Agent to collect and/or remit Sales Taxes and/or the failure by Agent to promptly deliver any and all reports and other documents required to enable the Debtors to file any requisite returns with Taxing Authorities. Funds used to repay the DIP Obligations (as defined in the Final DIP Order) and to cash collateralize Letters of Credit (as defined in the DIP Credit Agreement) as set forth in

paragraph 7 hereof constitute proceeds of the DIP Collateral (as defined in the Final DIP Order). 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.

32. Subject to the terms set forth in the Agency Agreement, the Debtors and/or the Agent (as the case may be) are authorized and empowered to transfer Assets among the Debtors' distribution centers and/or the Stores. As set forth in the Agency Agreement, the Agent is authorized to include in the Sales (a) additional non-book merchandise procured by Agent which is of like kind and no lesser quality to the Merchandise located in the Stores (provided, however, that the aggregate Cost Value of such non-book items shall not exceed 3% of the aggregate Cost Value of the Merchandise included in the Sales) and (b) certain items of merchandise located on the Sale Commencement Date at a storage facility in North Carolina not to exceed \$3,800,000 at cost, which items the Agent purchased in connection with the prior liquidation sales approved by the Court. The Agent is authorized to sell the Debtors' furniture, fixtures and equipment as provided for and in accordance with the terms of the Agency Agreement.

G. Liens Granted To Agent

33. In accordance with the terms of the Agency Agreement and effective upon issuance of the Letter of Credit and the Payment Date, pursuant to section 364(d) of the Bankruptcy Code, Agent is granted (x) a valid and perfected first priority security interest in and lien upon (i) the Merchandise, (ii) Books in Storage, (iii) Additional Agent Merchandise and the proceeds thereof, (iv) Agent Sale FF&E and the proceeds realized from the disposition of the Agent Sale FF&E, (v) proceeds realized from the disposition of the Corporate FF&E up to the amount of the Agent's disposition commission related to Corporate FF&E as provided for in Section 15.9 and (vi) the Proceeds, to secure all obligations of Merchant to Agent under the

Agency Agreement and (y) to secure Merchant's obligations pursuant to Section 3.3(e) of the Agency Agreement to repay any Over Payment Amount to the Agent, a superpriority administrative expense claim payable from, and a valid and perfected first priority security interests in and lien upon, each of the following (as defined in the Agency Agreement²): (i) Intellectual Property, (ii) the Kobo Interest (which shall remain subject to its shareholder agreement), (iii) proceeds of Real Property Leases, (iv) Corporate FF&E, (v) Merchant's Additional Goods Recovery Amount, (vi) Merchant's portion of proceeds related to Merchant Consignment Goods, (vii) the Recovery Amount and (viii) proceeds related to any the foregoing (the "Over Payment Collateral"); provided, however, that the foregoing security interest and administrative expense claims shall remain junior and subordinate in all respects to (a) Merchant's rights to receive payment of the Guaranteed Amount, Agent Sale FF&E Guarantee and, Expenses and any other undisputed amounts due from Agent to Merchant under the Agency Agreement (collectively, the "Agent's Payment Obligations") and (b) the liens, security interests and claims of the DIP Agents, on behalf of themselves and the DIP Lenders, to the extent of any unpaid portion of Agent's Payment Obligations, if any.

34. The security interests granted herein and in the Agency Agreement to the Agent shall be deemed properly perfected as and when they arise without the necessity of filing financing statements or other documentation. To the extent that there may be an emergence from bankruptcy by the Debtors or a dismissal of the Debtors' Bankruptcy Cases, the Debtors, as requested by the Agent, are directed, at their cost, to file financing statements or other documentation evidencing the liens granted under the Agency Agreement and this Order.

² The Agency Agreement refers to the Asset Purchase Agreement located at Docket No. 1130 to define items (i), (ii) and (iii).

35. Upon the earlier occurrence of (a) date of the Final Inventory Report as reviewed, verified and reconciled by Merchant and Agent and payment of any Over Payment Amount, if any, (b) Agent's express written waiver of its rights to the Over Payment Amount or (c) entry by the Court of an Order finding that the Merchant satisfied its obligations to the Agent pursuant to Section 3.3(e) of the Agency Agreement, (the "Over Payment Collateral Release Date"), the Agent's liens on the Over Payment Collateral shall be deemed automatically released and the Agent will immediately disburse all amounts held in the Over Payment Escrow (as defined below) to the Merchant.

36. During the period commencing on the Sale Commencement Date and after payment of the Guaranteed Amount Deposit and Agent Sale FF&E Guarantee and ending on the Over Payment Collateral Release Date (a) the Merchant shall not sell, assign, abandon or otherwise dispose of any item of Over Payment Collateral without Agent's consent, which consent will not be unreasonably withheld, (b) the proceeds of the sale of any Over Payment Collateral shall be placed in a segregated account with Agent (the "Over Payment Escrow") and Agent's liens shall attach to such proceeds in the same priority, validity and extent they encumbered such collateral, (c) the Agent is authorized to hold all proceeds due to the Merchant with respect to the Recovery Amount, Merchant's Additional Goods Recovery Amount and Merchant's portion of proceeds related to Merchant Consignment Goods in the Over Payment Escrow and (d) in the event the Agent seeks to foreclose on its security interest in proceeds of Real Property Leases, then as part of the Agent's exercise of remedies thereupon, the Debtors shall assume and assign any Real Property Leases directed by the Agent; provided, that the Debtors shall not incur any out-of-pocket costs for such assumption or assigning and provided

further, that the foregoing shall not impair or waive the Debtors' rights to oppose any such foreclosure or to contest the Over Payment Amount.

37. The Agent's performance under the Agency Agreement will be made in good faith and for valid business purposes and uses, and accordingly the Agent is entitled to the protection and benefits of section 364(e) of the Bankruptcy Code. In the event any provisions of this Order are modified, amended or vacated by a subsequent order of the Bankruptcy Court or any other court, the Agent shall be entitled to the protections provided in section 364(e) of the Bankruptcy Code and no such appeal, modification, amendment or vacatur shall affect the validity and enforceability of the liens or priority authorized or created under the Agency Agreement or this Order.

38. **Releases.** Effective as of the Payoff Effective Time, each of (x) the Debtors, on behalf of themselves and their respective estates, officers and directors (collectively, the "Debtor Released Parties") and each a "Debtor Released Party") and (y) the Creditors Committee shall be deemed to have released and discharged the DIP Agents and the DIP Lenders, and their respective officers and directors (collectively, the "DIP Released Parties" and each a "DIP Released Party") of and from any and all past, present and future actions, causes of action, demands, suits, claims, liabilities, Encumbrances, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including, without limitation, any avoidance actions arising under Sections 541 through 550 of the Bankruptcy Code or applicable state law and any interest or other carrying costs, penalties, legal, accounting or other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed

or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may hereafter accrue against any of the DIP Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact event or omission or other matter, cause or thing occurring at any time prior to and including the Payoff Effective Time in any way directly or indirectly arising out of, connected with or relating to the DIP Credit Agreement, the other DIP Loan Documents, the Final DIP Order and the transactions contemplated thereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing; provided, however, that nothing herein shall release any DIP Released Party from any act or omission of such DIP Released Party to the extent that such act or omission is determined in a final, non-appealable order or judgment of this Court or another court of competent jurisdiction to have constituted gross negligence or willful misconduct. Effective as of the Payoff Effective Time, the DIP Released Parties shall be deemed to have released and discharged the Debtor Released Parties and the Creditors Committee of and from any and all past, present and future actions, causes of action, demands, suits, claims, liabilities, Encumbrances, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise, whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may hereafter accrue against any of the Debtor Released Parties or the Creditors Committee, whether held in a personal or representative capacity, and which are based on any act, fact event or omission or other matter, cause or thing occurring at any time prior to and including the

Payoff Effective Time in any way directly or indirectly arising out of, connected with or relating to the DIP Credit Agreement, the other DIP Loan Documents, the DIP Final Order and the transactions contemplated thereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing; provided, however, that nothing herein shall release any Debtor Released Party or the Creditors Committee from any act or omission of such Debtor Released Party or the Creditors Committee to the extent that such act or omission is determined in a final, non-appealable order or judgment of this Court or another court of competent jurisdiction to have constituted gross negligence or willful misconduct, and provided, further that, notwithstanding anything to the contrary contained in this Order, the Payoff Letter or in any related document, (i) the obligations and liabilities of the Debtors to the DIP Secured Parties under or in respect of the DIP Loan Documents insofar as such obligations and liabilities survive termination of the DIP Loan Documents or relate to cash collateralization of Letters of Credit shall continue in full force and effect in accordance with their terms, and (ii) the Debtors acknowledge and agree that their respective obligations and liabilities under the DIP Loan Documents, including without limitation the Final DIP Order, and the liens securing those obligations and liabilities (subject to this Order), shall be reinstated with full force and effect or in such amount as is refunded if, at any time on or after the Payoff Effective Time, all or any portion of the Payoff Amount or the Per Diem Amount paid to either DIP Agent, in each case on behalf of itself and the applicable DIP Lenders, is voided, rescinded or refunded for any reason, including, without limitation, reversal, modification or vacatur of the Final DIP Order, all as though such payment had not been made, but in all cases, including (i) and (ii) above, such liens being subordinated to the Agent's liens granted pursuant to the Agency Agreement and Paragraph 33 of this Order. For the avoidance of doubt, the obligations of the

parties set forth in the Payoff Letter shall not be extinguished or affected by the foregoing releases.

H. Books-A-Million, Inc. Transaction

39. Without affecting any other provision in this Order, and to the extent such authorization is necessary, the Court hereby approves and authorizes the Agent to enter into a sale of inventory, furniture, fixtures and equipment to Books-A-Million, Inc. ("BAM") as a bulk sale pursuant to Section 3.2(b) of the Agency Agreement as described on the record at the hearing on this matter, but such sale shall occur only with the express written consent of the Debtors, the Committee and the Agent, which consent may be withheld for any reason. The Debtors are authorized to assume and assign any or all of the leases (the "BAM Leases"), listed on Exhibit D hereto, to BAM, but only with the consent of the Debtors, the Committee and each landlord and other parties to the respective BAM Leases, which consent may be withheld for any reason. Such assumptions and assignments shall (i) obligate BAM to pay all cure costs (including, but not limited to, rent, taxes and CAM charges) and (ii) include a release of the Debtors and the estates pursuant to 11 U.S.C. § 365(k). Nothing herein shall preclude the Debtors from seeking to assume and assign the BAM Leases on a contested basis. Any transaction with BAM shall be subject to the execution of definitive documentation acceptable in form and substance to BAM, the Debtors, the Committee and the Agent.

40. In connection with and effective upon the closing of any transaction with BAM: (i) Agent shall no longer be responsible for any Expenses accruing after the closing with respect to any store that is the subject of the BAM Leases; and (ii) the Sale Term with respect to any store that is the subject of the BAM Leases shall be deemed automatically terminated without further action and Agent shall be excused from providing any notices otherwise required under the Order or the Agency Agreement.

41. Notwithstanding anything to the contrary in this Order, nothing in this Order shall be construed to give the Debtors or the Agent the power to convey any interest in or authorize the purchasers to use the trademarks, trade names, trade dress, trade secrets, and other intellectual property (collectively, the “SBC IP”) of Seattle’s Best Coffee LLC (“SBC”). To the extent that any purchaser takes custody of, or otherwise acquires control over, any property that is marked with, includes, or otherwise carries any instance of SBC IP, the purchaser shall have no greater rights in or to that property than the Debtors held after the effective date of rejection and termination of the licensing agreement between the Debtors and SBC. After entry of this Order, SBC will retain the power to enforce its rights with respect to the SBC IP against any purchaser and the Debtors, including the right to seek injunctive relief and damages for any violations of SBC’s rights in the SBC IP (provided that remedies against the Debtors may be limited by applicable bankruptcy law, and this Order does not prejudice either SBC or the Debtors with respect to arguments about the extent and effect of applicable bankruptcy law).

42. The Bankruptcy Court for the Southern District of New York shall retain exclusive jurisdiction over any matters related to the BAM Transactions that may arise between BAM and any other party.

I. Other Provisions

43. The Agent shall not be liable for any claims against the Debtors, and the Debtors shall not be liable for any claims against Agent, in each case, other than as expressly provided for in the Agency Agreement. The Agent shall have no successor liability whatsoever with respect to any Encumbrances or claims of any nature that may exist against the Debtors, including, without limitation, the Agents shall not be, or to be deemed to be: (i) a successor in interest or within the meaning of any law, including any revenue, successor liability, pension, labor, ERISA, bulk-transfer, products liability, tax or environmental law, rule or regulation, or

any theory of successor or transferee liability, antitrust, environmental, product line, *de facto* merger or substantial continuity or similar theories; or (ii) a joint employer, co-employer or successor employer with the Debtors, and the Agent shall have no obligation to pay the Debtors' wages, bonuses, severance pay, vacation pay, WARN act claims (if any), benefits or any other payments to employees of the Debtors, including pursuant to any collective bargaining agreement, employee pension plan, or otherwise, except as expressly set forth in the Agency Agreement.

44. The Agent is a party in interest and shall have the ability to appear and be heard on all issues related to or otherwise connected to this Order, the various procedures contemplated herein, any issues related to or otherwise connected to the Sales, and the Agency Agreement.

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

46. The Agency 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, provided that any such modification, amendment or supplement is not material and adverse to the Debtors and, provided further, that at least three business days prior notice of any such modification, amendment or supplement shall be provided to the Creditors Committee and, prior to the Payoff Effective Date, to the DIP Agents.

47. Except with respect to any Governmental Unit (as to which the provisions of Paragraph 17 and 18 shall apply), this Court shall retain exclusive jurisdiction with regard to all

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

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

49. To the extent that anything contained in this Order explicitly conflicts with a provision in the Agency Agreement or the GOB Sale Guidelines, this Order shall govern and control.

Dated: July 21, 2011
New York, New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge