

Form PTO-1594  
(rev 3/1)

**RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY**

U. S. Department of Commerce  
Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

**US Bankruptcy Court for the District of Delaware  
824 North Market Street, 3<sup>rd</sup> Floor  
Wilmington, DE 19801**

- Individual(s)  Association
- General Partnership
- Limited Partnership
- Corporation
- Other - Court

Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and Address of receiving party(ies)

**Wherehouse Entertainment, Inc.  
19701 Hamilton Avenue  
Torrance, CA 90502-1334**

Individual(s) citizenship

- Association
- General Partnership
- Limited Partnership
- Corporation - Delaware
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:

- Assignment  Merger
- Security Agreement  Change of Name
- Other: **US Bankruptcy Court order releasing all security interests.**

Execution Date: **September 29, 2003**

4. Application number(s) or registration number(s):

A. Trademark Application No(s).

B. Trademark Registration No(s).

**Please see attached.**

Additional numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

**Carole Aciman, Esq.  
SKADDEN, ARPS, SLATE, MEAGHER  
& FLOM LLP  
Four Times Square  
New York, New York 10036**

6. Total number of applications/registrations involved: **21**

7. Total fee (37 CFR 3.41) **\$540**

All fees and any deficiencies are authorized to be charged to Deposit Account  
**(Our Ref. 082100/2)**

8. Deposit Account No. **19-2385**

**DO NOT USE THIS SPACE**

9. Statement and signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

Carole Aciman

Name

Carole Aciman  
Signature

October 9, 2003

Date

Total number of pages including cover sheet, attachments, and document: **33**

CH \$540.00 192385 2220453

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## CONTINUATION OF ITEM 4. Trademark Application and Registration Numbers

A. Trademark Application No(s).	B. Trademark Registration No(s).
	2220453
	2190710
	2086053
	2042097
	1770887
	1387785
	1870164
	1580778
	1023400
	1520242
	1393547
	1759018
	2049909
	1125648
	2121182
	2052666
	1712399
	2256229
	1303263
	2502374
	2043013
	2048783

# ORIGINAL

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

In re:	)	Chapter 11
	)	
WHEREHOUSE ENTERTAINMENT, INC.,	)	
a Delaware corporation; <u>et al.</u> <sup>1</sup>	)	Case No. 03-10224 (PJW)
	)	(Jointly Administered)
Debtors.	)	Re: Docket No. 1009

**ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105, 363 AND 365 AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 6004 AND 6006 (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTORS, (B) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF UNEXPIRED LEASES IN CONNECTION THEREWITH, (C) EXTENDING THE TIME TO ASSUME OR REJECT UNEXPIRED LEASES, (D) APPROVING PROCEDURES FOR THE REJECTION OF UNEXPIRED LEASES AND AUTHORIZING THE DEBTORS TO CONDUCT STORE CLOSING SALES AT CERTAIN STORE LOCATIONS AND (E) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of Wherehouse Entertainment, Inc., and its direct and indirect wholly-owned subsidiaries Wherehouse Holding I Co., Inc., Wherehouse Holding II Co., Inc., Wherehouse Subsidiary I Co., Inc., Wherehouse Subsidiary II Co., Inc., Wherehouse Subsidiary III Co., Inc. and Wherehouse.com, Inc., each as a debtor and debtor in possession (collectively, the "Debtors"), for the entry of an order pursuant to Bankruptcy Code Sections 105, 363 and 365 and Bankruptcy Rules 6004 and 6006 (i) authorizing the Debtors to enter into the Agency Agreement to sell (the "Sale") substantially all of their assets (the "Assets") to Trans World or other parties designated by the Joint Venture, in return for the Acquisition Consideration, free and clear of all liens, claims, encumbrances or other interests of any kind asserted therein, (ii) establishing procedures for the subsequent filing of motions to assume and assign Leases to parties designated by the Joint Venture, (iii) further extending the time to assume or reject Leases, (iv) approving procedures for the rejection of Leases and authorizing the Debtors to conduct store closing sales at certain store locations and (v) granting

<sup>1</sup> The Debtors are the following entities: Wherehouse Entertainment, Inc., Wherehouse Holding I Co., Inc., Wherehouse Holding II Co., Inc., Wherehouse Subsidiary I Co., Inc., Wherehouse Subsidiary II Co., Inc., Wherehouse Subsidiary III Co., Inc., and Wherehouse.com, Inc.

<sup>2</sup> Capitalized terms used, but not defined, herein shall have the meaning assigned to them in the Motion.

related relief; the Court having reviewed the Motion, and having heard the statements of counsel regarding the Motion at a hearing before the Court (the "Hearing"); the Court having previously entered an order on August 11, 2003 (the "Procedures Order") authorizing bidding procedures in connection with the auction (the "Auction") of substantially all of the Debtors' assets and potential sale of such assets and granting related relief; and the Court finding that (1) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (2) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and (3) that notice of this Motion and the Hearing was sufficient under the circumstances and that no other or further notice need be provided; and the Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief granted herein is in the best interests of the Debtors and their estates; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief sought in the Motion are sections 105(a), 363(b), (f), (k), (m), and (n) and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code") and Fed. R. Bankr. P. 2002, 6004, 6006, 9014 and 9019.

C. Proper timely, adequate and sufficient notice of the Auction, Motion and Hearing has been provided in accordance with 11 U.S.C. §§ 102(1), 363 and 365 and Fed. R. Bankr. P. 2002, 6004, 9014 and 9019 and in compliance with the Procedures Order, and such notice was good and sufficient, and appropriate under the particular circumstances, and no other or further notice of the Auction, Motion or Hearing is or shall be required.

D. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Hearing and (ii) the representations of counsel made on the record at the Hearing,

the Debtors have complied with the Procedures Order and the Joint Venture made the highest and best offer for the Assets at an auction conducted on September 12, 2003.

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

F. Approval of the Agency Agreement and consummation of the transactions contemplated by the Agency Agreement at this time are in the best interests of the Debtors, their creditors, their estates, and other parties in interest.

G. The Debtors have demonstrated both (i) good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for the Sale pursuant to 11 U.S.C. § 363(b) prior to, and outside of, a plan of reorganization.

H. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities, including: (i) the Office of the United States Trustee, (ii) counsel for the Joint Venture, (iii) counsel for the Debtors, (iv) counsel for the Unsecured Creditors' Committee, (v) counsel to the Secured Trade Committee; (vi) all entities who have filed and served requests for notices in these cases, (vii) all other parties-in-interest, (viii) all appropriate state and local taxing authorities which may be affected by the proposed sale and (ix) all entities that have previously submitted written bids to acquire the Debtors' assets.

I. Pursuant to the Amended and Restated Loan and Security Agreement, dated October 26, 1998, by and among Congress Financial Corporation (Western) ("Lender")

and the Debtors (as the same has been amended, modified, supplemented, extended, renewed, restated, ratified, or replaced, including, without limitation, by the Ratification and Amendment Agreement, dated May 9, 2003, collectively, the "Loan Agreement"), the other Financing Agreements (as defined in the Loan Agreement) and the Permanent Financing Order (as defined in the Loan Agreement), dated May 9, 2003 (hereinafter, the Final DIP Order"), Lender made loans, advances and other credit and financial accommodations to Debtors and was granted super-priority administrative expense claims and first priority liens and security interests in and upon all of the Collateral (as defined in the Loan Agreement), including, without limitation, the Assets.

J. The Agency Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith, and from arms-length bargaining positions. The Joint Venture is a good faith purchaser under 11 U.S.C. § 363(m) and, as such, is entitled to all of the protections afforded thereby. The Joint Venture will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in closing the transactions contemplated by the Agency Agreement at all times after the entry of this Order. Neither the Debtors nor the Joint Venture have engaged in any conduct that would cause or permit the Agency Agreement to be avoided under 11 U.S.C. § 363(n).

K. The consideration provided by the Joint Venture in connection with the Assets pursuant to the Agency Agreement (i) is fair and reasonable, (ii) is the highest and best offer for the Assets, (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

L. The sale of the Assets must be approved and consummated promptly in order to preserve the value of the Assets.

M. The transfer and sale of the Assets pursuant to the Agency Agreement will be a legal, valid, and effective transfer of the Assets, and will vest the purchasers with all right,

title, and interest of the Debtors to the Assets free and clear of any and all claims, liens, rights, interests, encumbrances, mortgages, deeds of trust, guarantees, security agreements, security interests, pledges, options, easements, servitudes, rights of way, rights of first refusal, rights of first offer, rights of first use or occupancy, tenancies, indentures, encroachments, hypothecations, charges, licenses to a third party, leases to a third party, obligations (including without limitation any escheat obligations) and restrictions, or other adverse claims, restrictions or limitations of any kind in respect of such property or asset or irregularities in title thereto, whether arising prior to or subsequent to the Petition Date and whether imposed by agreements, understanding, law, equity or otherwise. other adverse claims, restrictions or limitations of any kind in respect of such property or asset or irregularities in title thereto (collectively, "Interests"), including any Interests (A) that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtors' or the purchaser's interest in the Assets, or any similar rights, or (B) relating to taxes or any other liabilities arising under or out of, in connection with, or in any way relating to, the Assets, the Debtors or their operations or activities prior to the Closing Date, other than liabilities assumed under the Agency Agreement.

N. The Joint Venture would not have entered into the Agency Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors, their estates, and their creditors, if the sale of the Assets was not free and clear of all Interests of any kind or nature whatsoever (other than liabilities assumed under the Agency Agreement), or if a purchaser or the Joint Venture would, or in the future could, be liable for any of the Interests, including, without limitation, the liabilities excluded under the Agency Agreement.

O. The Debtors may sell the Assets free and clear of all Interests of any kind or nature whatsoever because, in each case, one or more of the standards set forth in 11 U.S.C. § 363(f)(1)-(5) has been satisfied. Those holders of Interests who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented pursuant to 11 U.S.C. § 363(f)(2). Those holders of Interests are adequately protected by having their Interests,

if any, attach to the Acquisition Consideration ultimately attributable to the property against or in which they claim an Interest.

P. The sale and transfer of the Assets will not subject a purchaser or the Joint Venture to any liability whatsoever with respect to the Assets, the Debtors or their operations or activities prior to the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of successor or transferee liability.

IT IS HEREBY ORDERED THAT:

General Provisions

- 1. The Motion is granted, as further described herein.
- 2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled on the merits.

Approval of the Agency Agreement

- 3. The Agency Agreement, and all of the terms and conditions thereof, is hereby approved.
- 4. Pursuant to 11 U.S.C. § 363(b), the Debtors are authorized and directed to consummate the transactions contemplated by the Agency Agreement, pursuant to and in accordance with the terms and conditions of the Agency Agreement.
- 5. The Debtors are authorized to execute and deliver, and empowered to perform under, consummate and implement, the Agency Agreement and Sale, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agency Agreement and Sale, and to take all further actions as may be requested by the Joint Venture for the purpose of assigning, transferring, granting, conveying and conferring to the purchasers or reducing to possession, the Assets, or as may be necessary or



appropriate to the performance of the obligations as contemplated by the Agency Agreement and Sale.

Transfer of Assets

6. Pursuant to 11 U.S.C. §§ 105(a) and 363(f), the Assets transferred to purchasers pursuant to the Agency Agreement shall be free and clear of all Interests of any kind or nature whatsoever, other than the liabilities assumed under the Agency Agreement, with all such Interests of any kind or nature whatsoever to attach to the Acquisition Consideration in the order of their priority, with the same validity, force and effect which they now have as against the Assets, subject to any claims and defenses the Debtors may possess with respect thereto, but in no event shall such Interests attach to any amounts payable to the Joint Venture pursuant to the Agency Agreement or this Order. The Debtors will direct the Joint Venture to remit directly to Lender the amount of proceeds from the Acquisition Consideration necessary to pay in full <sup>in cash</sup> all of the Obligations (as defined in the Loan Agreement and Final DIP Order) due Lender, with such amount to be set forth in a pay-out letter to be agreed upon by the Debtors and Lender.

7. Except as otherwise specifically provided by the Agency Agreement or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors, holding Interests of any kind or nature whatsoever against or in the Debtors or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Assets, the Debtors or their operations or activities prior to the date of the Closing Date, or the transfer of the Assets, hereby are forever barred, estopped, and permanently enjoined from asserting against purchasers or the Joint Venture, its successors or assigns, its property, or the Assets, such persons' or entities' Interests.

8. The transfer of the Assets pursuant to the Agency Agreement constitutes a legal, valid, and effective transfer of the Assets, and shall vest the purchasers of the Assets with

all right, title, and interest of the Debtors in and to the Assets free and clear of all interests of any kind or nature whatsoever, other than the liabilities assumed under the Agency Agreement.

9. The obligations payable to the Joint Venture pursuant to the Agency Agreement shall constitute administrative claims pursuant to 11 U.S.C. 507(a) notwithstanding anything set forth in any other order entered in these cases to the contrary.

10. On the Closing Date, as security for the obligations of the Debtors to the Joint Venture pursuant to the Agency Agreement, the Joint Venture shall have and is by this Order granted (effective upon the date of this Order and without the necessity of the execution by the Joint Venture of security agreements, pledge agreements, financing statements or otherwise) valid and perfected first priority security interests and liens (collectively, the "Liens") pursuant to 11 U.S.C. §§ 364(c) and 364(d) on the Assets, wherever located, and any proceeds, products or profits thereof, notwithstanding anything set forth in any other order entered in these cases to the contrary.

11. Except as otherwise agreed by the Joint Venture in writing, the Debtors may not assert a claim under 11 U.S.C. § 506(c) against the Joint Venture for any costs and expenses incurred in connection with the preservation, protection, or enhancement of, or realization by the Joint Venture upon the Assets, the Sale or any proceeds, products or profits derived therefrom. The Joint Venture is not required to file or serve financing statements, notices of lien or similar instruments which otherwise may be required under federal or state law in any jurisdiction, or take any action, including taking possession, to validate and perfect the Liens. If, however, the Joint Venture in its sole discretion, determines to file any such financing statements, notices of lien or similar instruments, or to otherwise confirm perfection of such Liens, the Debtors are directed to cooperate in such process, the stay imposed by 11 U.S.C. § 362(a) is lifted by this Order to allow the filing and recording of a certified copy of this Order or any such financing statements, notice of lien or similar instruments, and all such documents are deemed to have been filed or recorded at the time of and on the date of this Order.

Additional Provisions

12. The consideration provided by the Joint Venture under the Agency Agreement shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

13. The consideration provided by the Joint Venture for the Assets under the Agency Agreement is fair and reasonable and may not be avoided under Section 363(n) of the Bankruptcy Code.

14. On the Closing Date, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in the Assets, if any, as such Interests may have been recorded or may otherwise exist.

15. This Order (a) shall be effective as a determination that, upon the Closing Date, all Interests of any kind or nature whatsoever existing as to the Debtors or the Assets prior to the Closing Date (other than the liabilities assumed under the Agency Agreement) have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) 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, registrars of internet domain names 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 any of the Assets.

16. Upon receipt by Lender of the proceeds as set forth in paragraph 6 above, the obligations of Lender, in accordance with the terms of the Loan Agreement and the Final DIP Order, including, without limitation, any obligations to hold, reserve or otherwise fund the Professional Fee Carve-Out (as defined in the Final DIP Order) and/or to pay, fund, or otherwise

satisfy the fees and expenses of any such Professionals (as defined in the Final DIP Order), shall be terminated and deemed fully satisfied and discharged and each of Lender and its participants and its and their respective successors and assigns shall be jointly and severally, absolutely and unconditionally and irrevocably released and forever discharged from any and all obligations and commitments and from all claims, demands, debts, accounts, contracts, liabilities, actions and causes of action, whether in law or in equity, known or unknown, pre-petition or post-petition, present or future of every kind or nature that the Debtors, their estates, the Committee or their respective successors and assigns, including, without limitation any Chapter 11 or 7 Trustee in bankruptcy, may now or hereafter own, hold, have or claim to have against the Lender and its participants and each of their respective officers, directors, agents or employees, successors and assigns for and on account of, or in relation to, or in any way in connection with the Loan Agreement, the other Financing Agreements and/or the Final DIP Order, and the Debtors are hereby authorized to execute and deliver a release agreement, in form and substance acceptable to Lender, and any other agreement, document, or instrument as Lender may require in its discretion to effectuate any of the foregoing.

17. Each and every federal, state, and local governmental agency or department, and any other person or entity is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agency Agreement.

18. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing interests in the Debtors or the Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the person or entity has with respect to the Debtors or the Assets or otherwise, then (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets and (b) the Joint Venture is hereby authorized to file, register, or

otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Interests in the Assets of any kind or nature whatsoever.

19. All entities who are presently, or upon the Closing Date may be, in possession of some or all of the Assets are hereby directed to surrender possession of the Assets to the Debtors or the Joint Venture upon the Closing Date.

20. The purchasers of the Assets and the Joint Venture shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Assets or otherwise other than for liabilities assumed under the Agency Agreement. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein and in the Agency Agreement, the purchasers of the Assets and the Joint Venture shall not be liable for any claim against the Debtors or any of their predecessors or affiliates, and the purchasers of the Assets and the Joint Venture shall have no successor or transferee liabilities of any kind or character whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the Assets, the Debtors or their operations or activities prior to the Closing Date.

21. Under no circumstances shall the purchasers of the Assets or the Joint Venture be deemed a successor of or to the Debtors for any Interest against or in the Debtors or the Assets of any kind or nature whatsoever except pursuant to the liabilities assumed under the Agency Agreement. The sale, transfer, assignment and delivery of the Assets shall not be subject to any Interests, and Interests of any kind or nature whatsoever (other than the liabilities assumed under the Agency Agreement) shall remain with, and continue to be obligations of, the Debtors. All persons holding Interests against or in the Debtors or the Assets of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests of any kind or nature

whatsoever against the purchasers of the Assets or the Joint Venture, their property, their successors and assigns, or the Assets with respect to any Interest of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtors, their estates, officers, directors, shareholders, or the Assets. Following the Closing Date, no holder of an Interest in the Debtors shall interfere with the purchaser's or the Joint Venture's title to or use and enjoyment of the Assets based on or related to such Interest, or any actions that the Debtors may take in their Chapter 11 cases.

22. Pursuant to Section 365(d)(4) of the Bankruptcy Code, the time period within which the Debtors must file a motion to assume and assign or reject their Leases is extended through and including six months after the Closing Date, without prejudice to the right of the Debtors to seek further extensions of time for cause pursuant to Section 365(d)(4) of the Bankruptcy Code. Notwithstanding the foregoing, this Order is without prejudice to the right of a lessor to seek an order, upon notice to the Debtors and a showing of sufficient cause, requiring the Debtors to elect to assume or reject a Lease prior to six months after the Closing Date. No provision of this Order shall extend the term of any Lease or impair any rights of landlords under Section 362(b)(10) of the Bankruptcy Code with respect to any expired Lease.

23. The Debtors are authorized to reject any of the Leases pursuant to the following procedures:

- a. The Debtors shall file a written notice (the "Notice") to reject any such lease, and will serve the Notice via Federal Express (or similar overnight delivery service) upon (i) the landlord affected by the Notice, (ii) counsel to the landlord if such counsel has provided contact information to counsel for the Debtors or has appeared on behalf of the landlord prior to the filing of the written notice, (iii) other interested parties to each lease sought to be rejected by the Debtors, including subtenants to the affected lease, (iv) counsel to the Official Committee of Unsecured Creditors, (v) the Office of the United States Trustee, (vi) counsel to Congress Financial Corporation (Western), and (vii) counsel to the Informal Committee of Secured Trade Vendors (collectively, the "Service Parties"), advising the Service Parties of the Debtors' intent to reject the specified lease.

- b. The Notice shall be in the form of Exhibit A hereto and shall set forth the following information: to the best of the Debtors' knowledge, (i) the street address of real property that is the subject of the Lease that the Debtors seek to reject, (ii) the monthly rental obligation specified in the affected Lease, (iii) the remaining term specified for the affected Lease, (iv) the name and address of the affected landlord or subtenant, and (v) a description of the deadlines and procedures for filing objections to the Notice (as set forth below).
- c. Should a party-in-interest object to the rejection by the Debtors of a Lease, such party must file and serve a written objection so that such rejection is filed with this Court and actually received by the following parties (the "Objection Notice Parties") no later than ten (10) days after the date that the Debtors served the Notice to reject the Lease at issue: (i) counsel to the Debtors: Richards, Layton & Finger, One Rodney Square, 920 King Street, Wilmington, Delaware 19899, Attention: Mark Collins, Esq., and O'Melveny & Myers LLP, 400 South Hope Street, 15th Floor, Los Angeles, California 90071, Attention: Ben H. Logan, Esq.; (ii) counsel to the Official Committee of Unsecured Creditors: Pachulski Stang Ziehl Young Jones & Weintraub, P.C., 919 N. Market Street, Suite 1600, Wilmington, Delaware 19801, Attention: Laura Davis Jones, Esq. and Pachulski Stang Ziehl Young Jones & Weintraub, P.C., 10100 Santa Monica Boulevard, Los Angeles, California 90067, Attention: Marc A. Beilinson, Esq.; (iii) counsel to Congress Financial Corporation (Western): Morris Nichols Arshat & Tunnel, 1201 North Market Street, P.O. Box 1347, Wilmington, Delaware 19899, Attention: Robert J. Dehney, Esq.; (iv) counsel to the Informal Committee of Secured Trade Vendors: Morgan, Lewis & Bockius LLP, 1701 Market Street, Philadelphia, Pennsylvania 19103, Attention: Michael A. Bloom, Esq. and Klett Rooney Lieber & Schorling, PC, The Brandywine Building, 1000 West Street, Suite 1410, Wilmington, Delaware 19801, Attention: Teresa K.D. Currier, Esq.; and (v) the Office of the United States Trustee, 844 King Street, Room 2313, Lockbox 35, Wilmington, Delaware 19899, Attention: Margaret Harrison, Esq.
- d. Absent an objection being filed in compliance with subparagraph (c) of this paragraph, the rejection of each Lease shall become effective on the later of (the "Rejection Effective Date") (i) ten (10) days from the date the applicable Notice was filed with the Court or (ii) the date that the Debtors unequivocally relinquish control of the premises to the affected landlord by turning over any and all keys or "key codes" to the affected landlord, without further notice, hearing or order of this Court; provided, however, that the Debtors must relinquish control of the premises to the affected landlord no later than ninety (90) days from the date the applicable Notice was filed with the Court.

- e. If an objection is properly filed and served on the Objection Notice Parties as specified above, the Court will schedule a hearing to consider that objection. If that objection is overruled by the Court or withdrawn, the rejection of the affected Lease shall be deemed effective on the later of (i) ten (10) days from the date the applicable Notice was filed with the Court, or (ii) the date that the Debtors unequivocally relinquish control of the premises to the affected landlord by turning over any and all keys or "key codes" to the affected landlord.
- f. With respect to any personal property of the Debtors located at any of the premises subject to any notice, the Debtors shall remove such property prior to the expiration of the period within which a party must file and serve a written objection to the Notice. If the Debtors determine that the value of the property at a particular location has a de minimis value or the cost of removing the property exceeds the value of such property, the Debtors shall generally describe the property in the Notice and the property will be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, where is, effective as of the date of the rejection of the underlying Lease.

24. The Debtors are authorized to abandon any unsold trade fixtures or other property of de minimis value located on the premises of any of the rejected Leases (the "Abandoned Property") without any liability to any of their landlords for rental charges or occupancy of the leased premises after the Rejection Effective Date; provided, however, that the Debtors shall provide notice of any such abandonment to the landlord and/or its counsel and to any party with a known interest in the Abandoned Property contemporaneously with the rejection Notice, which shall notify such third party that it must retrieve the property prior to the date of rejection or such property shall be deemed abandoned without further order of the Court and landlord or its designee shall be free to dispose of same without liability or recourse to the landlord. The right of any party in interest to assert a claim against the Debtors' estate for costs associated with the removal or disposition of the Abandoned Property is fully preserved; provided, however, that any such claim must be filed on or before the deadline established for filing proofs of claim set forth in paragraph 26 below. The Debtors' right to contest any such claim is fully preserved.

25. Prior to the effective date of rejection, the Debtors shall unequivocally relinquish control of the premises to the affected landlord by turning over any and all keys or



"key codes" to the affected landlord. The Debtors shall leave the premises in "broom clean" condition; provided, however, that the Debtors shall be authorized to leave the Abandoned Property in the premises subject to the terms of paragraph 24.

26. Pursuant to Rules 2002 and 3003(c) of the Federal Rules of Bankruptcy Procedure, any proof of claim for damages arising from the rejection of any of the Leases must be filed by the respective lessor on or before sixty (60) days following the Rejection Effective Date.

27. Nothing herein shall prevent the Debtors from assuming or assigning some or all of the Leases, subject to Court approval and appropriate notice to parties in interest. Notwithstanding the foregoing, unless otherwise agreed to, in writing, by the Joint Venture, no Lease shall be rejected while a Closing Sale is proceeding at the Store covered by such Lease.

28. The Debtors and the Joint Venture are authorized to allow the Properties (as that term is defined in the Agency Agreement) to go (and remain) dark during the Marketing Period despite any lease provisions, REA's or local laws to the contrary.

29. So long as the Debtor and the Joint Venture comply with the terms of this Order, the Sale Guidelines and the Agency Agreement, provisions contained in the Leases, such as "going dark," alteration, use restrictions, and recapture provisions, clauses which impose a fee or a penalty or a profit sharing upon assignment, clauses which seek to increase the rent or impose a penalty or to modify or terminate a lease or REA as a result of "going dark," and rights of first refusal or purchase option provisions in favor of third parties, continuous operating covenants, covenants that any user of the Debtors' premises operate under the Debtors' tradenames, and similar provisions contained in the reciprocal easement agreements or other documents with respect to the Properties shall be unenforceable against the Debtors and the Joint Venture during the Marketing Period, and the Debtors' or the Joint Venture's failure to comply with such provisions during the Marketing Period shall not restrict, limit, or prohibit the sale or assumption and assignment of the Leases.

30. Extension and renewal options contained in the Leases which purport to be personal only to the Debtors or to be exercisable only by the Debtors constitute an unenforceable restriction on assignment and may be freely exercised by the Debtors or the Joint Venture to their full extent.

31. Pursuant to Section 363(b) of the Bankruptcy Code, the Debtors, through the Joint Venture, shall be, and hereby are, authorized and empowered to conduct Closing Sales at the Stores in accordance with the sale guidelines set forth in Exhibit B hereto, which are approved in their entirety (the "Sale Guidelines"), regardless of whether those Stores are ultimately rejected or assumed and assigned by the Debtors. All Closing Sales shall be completed on or before ninety (90) days after their commencement. The Debtors shall provide interested parties, including the Attorneys General of all affected states, with at least twenty (20) days notice of a hearing on any motion to extend the term of the Closing Sales.

32. Until the effective date of rejection of a Lease, the Debtors shall comply with the terms of each Lease in accordance with Section 365(d)(3) of the Bankruptcy Code, to the extent such obligations are not inconsistent with the provisions of this Order or the Sale Guidelines.

33. Except as provided otherwise in paragraphs 40 and 41 of this Order, all private parties and persons of every nature and description, including, but not limited to, landlords, utility companies, creditors, newspapers, other advertising mediums, and all those acting for or on their behalf (including governmental agencies, sheriffs, marshals or other public officers), shall be, and they hereby are, jointly and severally restrained and enjoined from (a) in any way interfering with or otherwise impeding the conduct of the Closing Sales, or the Debtors' right to use the Stores, and all services, furniture, fixtures, equipment and other assets located at these Stores, or (b) instituting any action or proceeding in any court, other than this Court or an appeal of a decision of this Court, or other administrative body having as its objective the obtaining of an order or judgment that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Closing Sales.

34. The Sale and Closing Sales shall be conducted notwithstanding (i) any liquidation sale law, or (ii) any anti-alienation provision in any recorded document purporting to restrict, limit or otherwise regulate such sales.

35. The Court hereby confirms that any provisions in the Leases purporting to restrict or prohibit the Debtors from conducting going-out-of-business, store closing, liquidation or similar sales pursuant to the Sale Guidelines (collectively, the "Restrictive Lease Provisions") are unenforceable against the Debtors in these chapter 11 cases with regard to the Stores as they constitute an impermissible restraint on Debtors' ability to maximize the value of their assets under Section 363 of the Bankruptcy Code. Accordingly, the Court grants to the Debtors authority to conduct the Closing Sales pursuant to the Sale Guidelines (without prejudice to the ability of the Debtors or other parties in interest to seek modification of those guidelines and procedures at a later date) and take all actions reasonably related thereto or arising in connection therewith, including, without limitation, advertising such sales as "store closing sales" or "going-out-of-business sales" in media advertisements, and on interior and exterior banners and other signage that the Debtors deem appropriate, without complying with any Restrictive Lease Provisions except as provided in the Sale Guidelines, and enjoins the lessors under the Leases from in any way interfering with or otherwise restricting the Debtors, the Joint Venture or their employees or consultants from conducting the Closing Sales and from seeking to recover damages for breach of any Restrictive Lease Provision; provided, however, that the Debtors, the Joint Venture and their employees and consultants shall comply with the Sale Guidelines and all state and local health, safety and welfare laws and consumer protection laws in conducting the Closing Sales.

36. The Joint Venture shall be, and hereby is, granted a limited license and right to use the trade names, logos and customer lists relating to and used in connection with the operation of the Stores, for the purpose of conducting the Sale and the Closing Sales.

37. In the case of Assets sold by the Joint Venture at Stores that are not TWEC Stores, the Joint Venture shall not be responsible for the payment of any sales taxes associated with such sales.

38. Consistent with the terms of the Agency Agreement, Retained Employees (as that term is defined in the Agency Agreement) shall at all times remain employees of the Debtors and are not employees of the Joint Venture.

39. Notwithstanding anything to the contrary in this Order, the right of any landlord to file a motion to compel the Debtors to assume or reject a lease with respect to a Store is fully preserved.

40. The Debtors shall serve copies of this Order, via first class U.S. Mail, upon (i) the Attorney General's office for each state where a Store is located, (ii) the county consumer protection agency or similar agency (or if none, the local District Attorney(s)) for each county where a Store is located and (iii) the division of consumer protection for each state where a Store is located (collectively, the "Agencies"), within five (5) business days of the entry of this Order. This Court shall retain exclusive jurisdiction to resolve any dispute arising from or relating to the Sale Guidelines, the Closing Sales, this Order, and the conduct of the Closing Sales as they relate to any state and local law and/or administrative regulation that specifically governs, regulates, or restricts the conduct of "going out of business," inventory liquidation or similar sales (i.e., licensing laws and laws that limit the length of such sales) (collectively, "Liquidation Sale Laws"); provided, however, that nothing herein shall preclude any governmental entity from enforcing any public health, consumer protection, or safety laws in the appropriate non-bankruptcy forum. If there is a dispute as to whether a particular law is a Liquidation Sale Law subject to this Order (a "Reserved Dispute"), the resolution of that Reserved Dispute shall take place before this Court as provided herein.

41. If at any time within ten (10) days following service of the entry of this Order as set forth in paragraph 40, any Agency wishes to assert that a Closing Sale conducted pursuant to this Order and the Sale Guidelines is in violation of a Liquidation Sale Law, it shall

send written notice of such Reserved Dispute to counsel for the Debtors and counsel to the Joint Venture (Skadden, Arps, Slate, Meagher, & Flom, 333 West Wacker Drive, Suite 2100, Chicago, IL 60606, Attn: Timothy R. Pohl, Esq. and Eric W. Kaup, Esq.). If the Debtors, the Joint Venture and such Agency 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. In the event such a motion is filed, and notwithstanding anything to the contrary in this Order, nothing in this Order shall preclude the Debtors or the Joint Venture from asserting (i) that the provisions of any Liquidation Sale Law are pre-empted by the Bankruptcy Code, in whole or in part or (ii) that neither the terms of this Order, nor the Debtors conduct pursuant to this Order and the Sale Guidelines violate such Liquidation Sale Law. Filing a motion as set forth in this paragraph shall not be deemed to affect the finality of this Order, or to limit or interfere with the Debtors' or the Joint Venture's ability to conduct or to continue to conduct the Closing Sales pursuant to this Order or the Sale Guidelines. Until an order is entered by this Court resolving any Reserved Dispute, the Debtors shall be authorized to conduct or to continue to conduct such Sales in accordance with the terms of this Order and the Sale Guidelines.

42. Nothing contained herein shall be deemed to constitute a ruling with regard to the sovereign immunity of any State.

43. The Debtors and the Joint Venture shall not be required (a) to obtain the approval of any federal, state, or local government agency, department or other authority, any landlord or any other third parties to conduct the Closing Sales, or (b) to execute, obtain or file releases, termination statements, assignments, consents, or other instruments to effect, consummate and implement the provisions hereof.

44. Except as provided in paragraphs 40 and 41, no bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Closing Sales and the transactions contemplated in conjunction therewith.

45. The Debtors and the Joint Venture, as well as their officers, employees, consultants and agents, shall be, and hereby are, authorized to take all actions and/or execute any and all documents as may be necessary or desirable to conduct the Closing Sales and the liquidation of the inventory, fixtures and equipment located at the Stores.

46. Notwithstanding anything in the order or the approved procedures to the contrary, nothing in this Order is either expanding or limiting whatever the Debtors' postpetition rights and obligations are under applicable state and federal public health, safety or consumer protection laws, including any obligation to accept returns from consumers.

47. In the event of any conflict between the Motion, this Order, the Agency Agreement or the Sale Guidelines, the terms and provisions of this Order shall govern.

48. This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of the Agency Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects and, except as provided in paragraphs 40 and 41, to resolve any dispute arising from or related to the Closing Sales including, but not limited to, retaining jurisdiction to (a) compel delivery of the Assets to the Joint Venture or purchasers, (b) resolve any disputes arising under or related to the Agency Agreement, except as otherwise provided therein, (c) interpret, implement, and enforce the provisions of this Order, and (d) protect the Joint Venture and purchasers against (i) any of the liabilities excluded under the Agency Agreement or (ii) any Interests in the Debtors or the Assets, of any kind or nature whatsoever, attaching to the Acquisition Consideration.

49. Nothing contained in any plan of reorganization or liquidation confirmed in these cases or any order of this Court confirming such plan shall conflict with or derogate from the provisions of the Agency Agreement or the terms of this Order.

50. The transfer of the Assets to Trans World or other parties designated by the Joint Venture pursuant to the Agency Agreement shall not subject such parties to any liability (other than the liabilities assumed under the Agency Agreement) with respect to the Assets, the

Debtors or their operations or activities prior to the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of successor or transferee liability.

51. The transactions contemplated by the Agency Agreement are undertaken by the Joint Venture in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the transactions contemplated by the Agency Agreement or the Sale shall not affect the validity of the transactions contemplated by the Agency Agreement or the Sale, unless such authorization is duly stayed pending such appeal. In the absence of a stay pending appeal, if the Joint Venture elects to close under the Agency Agreement at any time after entry of this Order, then the Joint Venture is a purchaser in good faith, and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code if this Order or any authorization contained herein is reversed or modified on appeal.

52. The terms and provisions of the Agency Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, their creditors, purchasers of the Assets, and the Joint Venture, and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting interests in the Assets to be sold to purchasers pursuant to the Agency Agreement (including any claims with respect to liabilities excluded under the Agency Agreement), notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.


53. The failure specifically to include any particular provisions of the Agency Agreement in this Order shall not diminish or impair the effectiveness of any such provisions, it being the intent of the Court that the Agency Agreement be authorized and approved in its entirety.

54. The Agency Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

55. This Order shall be effective and enforceable immediately upon entry. The stay otherwise imposed by Fed. R. Bankr. P. 6004(g) is waived. Time is of the essence in closing the transaction and the Debtors and the Joint Venture intend to sell the Assets and close the Sale as soon as possible. Therefore, any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay or risk their appeal being foreclosed as moot.

56. The provisions of this Order are nonseverable and mutually dependent.

Dated: September 29, 2003  
Wilmington, Delaware

  
The Honorable Peter J. Walsh  
United States Bankruptcy Judge



**EXHIBIT A**

1-1049825 5  
PI-2651086-1

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

In re: ) Chapter 11  
WHEREHOUSE ENTERTAINMENT, INC., )  
a Delaware corporation, et al<sup>1</sup>, ) Case No. 03-10224 (PJW)  
Debtors. ) (Jointly Administered)  
Re Docket No.: \_\_\_\_\_

**NOTICE OF REJECTION OF UNEXPIRED LEASE  
OF NON-RESIDENTIAL REAL PROPERTY**

TO: [Name and address of affected landlord]  
Re: [Store Number, Lease Date, Store Location] (the "Lease")  
Monthly Rental Obligations, Remaining Term]

PLEASE TAKE NOTICE that on September \_\_, 2003 the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") entered the "Order Pursuant to Bankruptcy Code Sections 105, 363 and 365 and Federal Rules of Bankruptcy Procedure 6004 and 6006 (A) Authorizing the Sale of Substantially All of the Assets of the Debtors, (B) Approving Procedures for the Assumption and Assignment of Unexpired Leases in Connection Therewith, (C) Extending the Time to Assume or Reject Unexpired Leases, (D) Approving Procedures for the Rejection of Unexpired Leases and Authorizing the Debtors to Conduct Store Closing Sales at Certain Store Locations and (E) Granting Related Relief; [Docket No. \_\_\_\_] (the "Order").

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Order, the above-captioned debtors and debtors-in-possession (the "Debtors") hereby provide notice of their intent to reject the above-referenced Lease. Pursuant to the terms of the Order, and absent an objection to the rejection of the Lease by the Debtors, the Lease

<sup>1</sup> The Debtors are the following entities: Wherehouse Entertainment, Inc., Wherehouse Holding I Co., Inc., Wherehouse Holding II Co., Inc., Wherehouse Subsidiary I Co., Inc., Wherehouse Subsidiary II Co., Inc., Wherehouse Subsidiary III Co., Inc and Wherehouse.com, Inc.

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shall be deemed rejected effective as of the later of (the "Effective Date of Rejection") (i) ten (10) days from the date of this notice, or (ii) the date that the Debtors unequivocally relinquish control of the premises to the affected landlord by turning over any and all keys or "key codes" to the affected landlord, provided however, that the Debtors must relinquish control of the premises to the affected landlord no later than ninety (90) days from the date this Notice was filed with the Bankruptcy Court.

**PLEASE TAKE FURTHER NOTICE** that the Debtors have determined that the value of the following property located at the premises has a de minimis value and/or the cost of removing the property exceeds the value of such property: \_\_\_\_\_  
Any third party with an interest in such property must retrieve the property prior to the Effective Date of Rejection or such property will be deemed abandoned, as is, where is, effective as of the Effective Date of Rejection without further order of the Bankruptcy Court and the landlord or its designee shall be free to dispose of same without liability or recourse to the landlord.

**PLEASE TAKE FURTHER NOTICE** that, should you object to the Debtors' rejection of the Lease, you must file and serve a written objection so that such objection is filed with this Bankruptcy Court and actually received no later than ten (10) days after the date that the Debtors served this "Notice of Rejection of Unexpired Lease of Non-Residential Real Property" (the "Notice") by the following parties (the "Objection Notice Parties"): (i) counsel to the Debtors: Richards, Layton & Finger, One Rodney Square, 920 King Street, Wilmington, Delaware 19899, Attention: Mark Collins, Esq., and O'Melveny & Myers LLP, 400 South Hope Street, 15th Floor, Los Angeles, California 90071, Attention: Ben H. Logan, Esq.; (ii) counsel to the Official Committee of Unsecured Creditors, Pachulski Stang Ziehl Young Jones & Weintraub, P.C., 919 N. Market Street, 16th Floor, Wilmington, Delaware 19801, Attention: Laura Davis Jones, Esq. and Pachulski Stang Ziehl Young Jones & Weintraub, P.C., 10100 Santa Monica Boulevard, Los Angeles, California 90067, Attention: Marc A. Beilinson, Esq.; (iii)

counsel to Congress Financial Corporation (Western): Morris Nichols Arsht & Tunnel, 1201 North Market Street, P.O. Box 1347, Wilmington, Delaware 19899, Attention: Robert J. Dehney, Esq.; (iv) counsel to the Informal Committee of Secured Trade Vendors: Morgan, Lewis & Bockius LLP, 1701 Market Street, Philadelphia, Pennsylvania 19103, Attention: Michael A. Bloom, Esq. and Klett Rooney Lieber & Schorling, PC, The Brandywine Building, 1000 West Street, Suite 1410, Wilmington, Delaware 19801, Attention: Teresa K.D. Currier, Esq.; and (v) the Office of the United States Trustee, 844 King Street, Room 2313, Lockbox 35, Wilmington, Delaware 19899, Attention: Margaret Harrison, Esq. Absent such an objection being filed and served in compliance with the foregoing, the rejection of the Lease shall become effective on the Effective Date of Rejection without further notice, hearing or order of the Bankruptcy Court.

**PLEASE TAKE FURTHER NOTICE** that, if an objection is properly filed and served on the Objection Notice Parties as specified above, the Bankruptcy Court will schedule a hearing to consider that objection. If that objection is overruled by the Bankruptcy Court or withdrawn, the rejection of the Lease shall be deemed effective as of the later of (i) ten (10) days from the date of this Notice, or (ii) the date that the Debtors unequivocally relinquish control of the premises to the affected landlord by turning over any and all keys or "key codes" to the affected landlord.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Order, any party who may hold, or who may claim to hold, a claim or claims against the Debtors arising from the rejection of the Lease shall submit a proof of claim for such rejection damages, if at all, to Berger & Associates, LLC, 16501 Ventura Blvd., Suite 440, Encino, California 91436, on or before sixty (60) days following the Effective Date of Rejection of the Lease, or be forever barred from asserting a claim for rejection damages.

Dated: \_\_\_\_\_, 2003  
Wilmington, Delaware

Respectfully submitted,

\_\_\_\_\_  
Mark D. Collins (No. 2981)  
Paul N. Heath (No. 3704)  
Marc T. Foster (No. 4256)  
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Ben H. Logan  
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400 South Hope St.  
Los Angeles, California 90071  
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ATTORNEYS FOR DEBTORS AND  
DEBTORS IN POSSESSION

**EXHIBIT B**

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RLFI-2651086-1

### SALE GUIDELINES

The following procedures (the "Sales Guidelines") shall apply to any Closing Sales (collectively referred to herein as the "Sales") to be held at the Stores:<sup>1</sup>

1. The Sales may be conducted by the Debtors and the Joint Venture, through their officers, employees, agents and/or through a consultant (provided the Debtors' engagement of such a consultant has been authorized and approved by the Bankruptcy Court).
2. The Sales shall be conducted during hours that are deemed appropriate by the Debtors the Joint Venture and consistent with any operating hours restriction provision contained in any of the Leases, provided, however, as to stores located within shopping centers, the Debtors shall abide by any applicable shopping center guidelines regarding operating hours, maintenance, security and trash removal. The Debtors shall comply with relevant lease provisions regarding the maintenance of insurance.
3. The Sales shall be conducted in accordance with applicable state and local "Blue Laws," and thus, where applicable, no Sales shall be conducted on Sunday unless the Debtors had been operating such stores on a Sunday.
4. The Debtors and the Joint Venture shall not distribute handbills, leaflets or other written materials to customers outside of any stores' premises, unless permitted by the lease. Otherwise, the Debtors and the Joint Venture may solicit customers in the stores themselves. The Debtors and the Joint Venture shall not use flashing lights or any type of amplified sound to advertise the Sales or solicit customers.
5. At the conclusion of the Sales, the Debtors shall vacate the stores in a broom-clean condition, and shall leave the stores in the same condition as on the commencement of the Sales, ordinary wear and tear excepted; provided however, that the

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning given to them in the Motion.

Debtors shall be authorized to leave Abandoned Property (as that term is defined herein) in the Stores.

6. No permanent fixtures may be removed without the landlords' written consent. No property of any landlord of a Store shall be removed or sold during Sales. With respect to Stores located within a (enclosed or a non-enclosed) shopping center, removal of other furniture, fixtures and equipment shall take place through service or other exits and corridors designated by the landlord, and in the case of enclosed shopping centers before or after regular hours of the shopping center. The Debtors may abandon any of Debtors' trade fixtures or other materials of de minimis value (the "Abandoned Property") not sold in the Sales at the store premises at the conclusion of the Sales.

7. The Debtors shall not conduct auctions at the Stores.

8. All display and hanging signs used by the Debtors and the Joint Venture in connection with Sales shall be professionally produced and all hanging signs shall be hung in a professional manner. The Debtors and the Joint Venture shall not use the terms "bankruptcy court authorized," "bankruptcy court approved," "court ordered," or "Chapter 11 sale" in any signs used by the Debtors in connection with the Sales. The Debtors and the Joint Venture shall not use neon or "day-glo" signs. Furthermore, with respect to (enclosed and non-enclosed) shopping center locations, the following provisions shall apply: (i) with respect to enclosed malls only, no exterior signs shall be used, nor shall signs be used in the common area of an enclosed mall; (ii) interior signs shall be no larger than 28" x 40" with no more than ten (10) hanging signs per 1000 feet of retail space; (iii) signs in windows shall be no greater in size than 36" x 60" and, with respect to enclosed malls only, interior signs shall be set back from the window at least one foot; and (iv) no more than two 3' x 15' interior banner signs may be placed inside the store. Nothing contained herein shall be construed to create or impose upon the Debtors or the Joint Venture any additional restrictions not contained in the applicable

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lease agreement. The Debtors and the Joint Venture shall be permitted to utilize exterior banners at non-enclosed mall stores, provided however that such banners shall not be wider than the storefront of the Store and shall be located or hung as to make clear that the Sale is being conducted only at the Store.

9. Unless the print media requires the bankruptcy case number, the Debtors and the Joint Venture may only use the terms "Liquidation Sale," "Total Liquidation Sale" or "Store Closing Sale" as applicable, to advertise the Sales in the stores.

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

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

12. The Debtors shall keep store premises and surrounding area clear and orderly consistent with present practices.

13. The landlords of the stores shall have reasonable access to the store premises upon conclusion of the Sales solely for the purpose of dressing store windows to minimize the appearance of a dark store, which access shall not constitute rejection or acceptance of the premises.

14. The Debtors shall designate a party to be contacted by landlords should an issue arise concerning the conduct of the Sales within five (5) days of entry of the Order.