

RIMON P.C.
Proposed Counsel to the Chapter 7 Trustee
Kenneth P. Silverman, Esq.
100 Jericho Quadrangle Suite 300
Jericho, New York 11753
Brian Powers
Haley Trust
Courtney M. Roman

Hearing Date: June 13, 2024
Time: 10:00 a.m.

Objections Due: June 6, 2024
Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.

-----X

**NOTICE OF HEARING ON
CHAPTER 7 TRUSTEE’S SECOND OMNIBUS MOTION
FOR AN ORDER (I) AUTHORIZING AND APPROVING
REJECTION OF CERTAIN UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY PURSUANT TO 11 U.S.C. §365
AND BANKRUPTCY RULE 6006, (II) AUTHORIZING AND APPROVING
STIPULATIONS FIXING CLAIMS ARISING FROM REJECTION OF
CERTAIN LEASES PURSUANT TO BANKRUPTCY RULE 9019, AND (III)
AUTHORIZING AND APPROVING ABANDONMENT OF PERSONAL PROPERTY
PURSUANT TO 11 U.S.C. § 554 AND BANKRUPTCY RULE 6007**

PLEASE TAKE NOTICE THAT, upon the motion (the “Motion”) of Kenenth P. Silverman, the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), by his proposed counsel, Rimon P.C., will move before the Honorable David S. Jones, United States Bankruptcy Judge, for the United States Bankruptcy Court of the Southern District of New York, via Zoom for Government, on **June 13, 2024 at 10:00 a.m.** (the “Hearing”), or as soon thereafter as counsel can be heard, for entry of an order, substantially in the form annexed to the Motion as **Exhibit A**, for signature (i) authorizing and approving the rejection of certain unexpired leases of nonresidential real property (collectively, the “Leases”) pursuant to section 365 of title 11, United States Code (the “Bankruptcy Code”) and Rule 6006 of the Federal



Rules of Bankruptcy Procedure the (the “Bankruptcy Rules”), (ii) authorizing and approving stipulations fixing claims arising from the rejection of certain leases pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 9019, (iii) authorizing and approving the abandonment of the Debtor’s personal property pursuant to section 554 of the Bankruptcy Code and Bankruptcy Rule 6007, (iv) authorizing and approving the collective stipulations (collectively, the “Stipulations”) pursuant to Bankruptcy Rule 9019, and (v) for such further relief as the Court deems proper.

PLEASE TAKE FURTHER NOTICE, that prior to the Hearing, any party wishing to appear at the Hearing is required to register their appearance by 4:00 p.m. one (1) business day in advance of the Hearing using the Court’s eCourt Appearances platform: <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl>.

PLEASE TAKE FURTHER NOTICE, that objections to the relief sought in the Motion shall be in writing, conform to the requirements of the Bankruptcy Code, Bankruptcy Rules, and the Local Rules of this Court, must set forth the name of the objecting party, the basis for the objection and the specific grounds therefore, and must be filed electronically with the Bankruptcy Court in accordance with General Order M-399 (General Order M-399 and the User’s Manual for the Electronic Case Filing System may be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court) by registered users of the Bankruptcy Court’s case filing system, and by all other parties in interest on a disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with courtesy copies delivered directly to Chambers), and must be served upon (i) proposed counsel to the Trustee, Rimon P.C., 100 Jericho Quadrangle, Suite 300, Jericho, New York, 11753, Attn: Brian Powers, Esq. and (ii) The Office of the United States Trustee, Alexander Hamilton Custom House, One Bowling Green,

Room 534, New York, New York, 10004-1408, Attn: Mark Bruh, Esq., no later than **June 6, 2024**
at 4:00 p.m.

PLEASE TAKE FURTHER NOTICE, that the Hearing may be adjourned without further notice other than the announcement of such adjournment in open Court or by the filing of such notice of adjournment on the docket sheet for the Debtor’s case.

PLEASE TAKE FURTHER NOTICE, that you need not appear at the Hearing if you do not object to the relief requested in the Motion.

Dated: Jericho, New York
May 15, 2024

RIMON P.C.
Counsel to Kenneth P. Silverman, Esq.,
the Chapter 7 Trustee

By: *s/ Brian Powers*
Brian Powers
Partner
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753

RIMON P.C.
Counsel to the Chapter 7 Trustee
Kenneth P. Silverman, Esq.
100 Jericho Quadrangle Suite 300
Jericho, New York 11753
Brian Powers
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**CHAPTER 7 TRUSTEE’S SECOND OMNIBUS
MOTION FOR AN ORDER (I) AUTHORIZING AND
APPROVING REJECTION OF CERTAIN UNEXPIRED
LEASES OF NONRESIDENTIAL REAL PROPERTY PURSUANT TO
11 U.S.C. §365 AND BANKRUPTCY RULE 6006, (II) AUTHORIZING AND
APPROVING STIPULATIONS FIXING CLAIMS ARISING FROM
REJECTION OF CERTAIN LEASES PURSUANT TO BANKRUPTCY RULE 9019,
AND (III) AUTHORIZING AND APPROVING ABANDONMENT OF PERSONAL
PROPERTY PURSUANT TO 11 U.S.C. § 554 AND BANKRUPTCY RULE 6007**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), submits this omnibus motion (this “Motion”) seeking entry of an order, substantially in the form annexed hereto as **Exhibit A**, (i) authorizing and approving the rejection of certain unexpired leases of nonresidential real property (collectively, the “Leases”) pursuant to section 365 of title 11, United States Code (the “Bankruptcy Code”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure the (the “Bankruptcy Rules”), (ii) authorizing and approving stipulations fixing claims arising from the rejection of certain leases pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 9019, (iii) authorizing and approving the abandonment of the Debtor’s personal property pursuant to section 554 of the

Bankruptcy Code and Bankruptcy Rule 6007, and (iv) for such further relief as the Court deems proper, and respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory basis for the relief requested herein are sections 105(a), 365(a), 502(b), and 554(a) of the Bankruptcy Code, Bankruptcy Rules 6004, 6006 and 6007, and rules 6006-1(a) and 6007(1) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

BACKGROUND

I. The Bankruptcy Case

4. On March 8, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code.
5. On March 9, 2024, Kenneth P. Silverman, Esq., was appointed the interim chapter 7 trustee of the Debtor’s estate.
6. The Debtor is a cosmetic and skin care retailer that is a subsidiary of the Body Shop International Limited, a UK based company.

II. The Debtor’s Inventory Remaining at Debtor’s Store Locations and The Trustee’s Investigation to Hire a Liquidator

7. Prior to the Petition Date, the Debtor was a tenant under a number of nonresidential real property leases from which it operated its retail locations. As set forth in the Declaration of Kenneth P. Silverman, Esq., (the “Silverman Declaration”) filed in support of this Motion and annexed hereto as **Exhibit B**, due to the Debtor being in chapter 7 rather than chapter 11, the

Trustee determined, in his business judgment, that the leases would be burdensome and would provide no corresponding benefit to the Debtor or its estate. Moreover, the Trustee determined that, due in part to the amount of rent outstanding at many of the locations and the current market for retail space, there would be limited, if any, value to the estate from the assumption and assignment of its leases.

8. As part of the Trustee's review and analysis of the Debtor's financial affairs, the Trustee and his retained professionals also undertook a comprehensive investigation of the inventory remaining at the Debtor's store locations. This analysis involved the Trustee and his retained professionals engaging in discussions with various liquidators to market and sell the Debtor's inventory remaining in its store locations. Ultimately, the Trustee received a proposal from a nationally recognized liquidator to marshal, market, and sell the Debtor's inventory currently remaining in the various store locations across the United States.

9. Simultaneously, the Trustee and his professionals entered into negotiations with the Debtor's landlords with respect to rejection of existing leases, potential waivers of claims, and the fixing of certain rejection damages claims. Accordingly, the Trustee determined that, on a store-by-store basis, greater value may be achieved through agreements with landlords than the liquidation of remnant inventory.

III. The Stipulations By and Between the Trustee and Certain Landlords

10. As described below, the Trustee and his retained professionals have entered into three (3) stipulations, subject to Court approval, with certain of the Debtor's landlords, whereby the Trustee seeks to (i) reject certain of the leases, (ii) fix certain of the landlord's allowed general unsecured claims, and (iii) abandon the personal property and inventory left remaining at those premises. The Trustee believes that the settlements reached with each landlord are fair and

reasonable, and provide benefits to the estate (including full administrative and substantial unsecured claims waivers) greater than that which would be obtained through the liquidation of the inventory remaining in each premises.

A. Trustee’s Stipulation with Liberty Place Retail Associates L.P.

11. The Trustee and Liberty Place Retail Associates L.P. (“Liberty Landlord”), entered into a stipulation (the “Liberty Stipulation”), by which (i) the Trustee rejects, surrenders and terminates Liberty’s lease as of May 10, 2024; (ii) all remaining personal property left in each of the premises, including any inventory, is deemed abandoned and may be disposed of by the Liberty Landlord without any liability or responsibility to the Debtor’s estate, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary; (iii) the Liberty Landlord shall have an allowed general unsecured claim in the Debtor’s case in the total amount of \$134,867.90 (the “Liberty Allowed Claim”); and (iv) the Liberty Landlord agrees to waive any and all other claims it may have against the Debtor and its estate arising under the Debtor’s lease with the Liberty Landlord. A copy of the proposed Liberty Stipulation is annexed hereto as **Exhibit C**.

B. Trustee’s Stipulation with Simon

12. The Trustee and Bellwether Properties of Massachusetts Limited Partnership, SDG Fashion Mall Limited Partnership, Florida Mall Associates, LTD., Milpitas Mills Limited Partnership, Meadowood Mall SPE, LLC, Shopping Center Associates, Newport Centre, LLC, The Retail Property Trust, Sunrise Mills (MLP) Limited Partnership, SouthPark Mall Limited Partnership, Simon Property Group (Texas), L.P., and Del Amo Fashion Center Operating Company, L.L.C. (collectively, the “Simon Landlord”) have entered into a stipulation (the “Simon Stipulation”), by which (i) the Trustee rejects, surrenders and terminates the Debtor’s leases with the Simon Landlord as of May 8, 2024; (ii) all remaining personal property left in the

premises, including any inventory, is deemed abandoned and may be disposed of by the Simon Landlord without any liability or responsibility to the Debtor's estate, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary; (iii) the Simon Landlord shall have an allowed general unsecured claim in the Debtor's case in the total amount of \$1,429,197.55 (the "Simon Allowed Claim"); and (iv) the Simon Landlord agrees to waive any and all claims it has or may have, whether known or unknown, asserted or unasserted, including any other claims for rejection damages pursuant to Bankruptcy Code § 502(b)(6), against the Debtor and its estate. A copy of the proposed Simon Stipulation is annexed hereto as **Exhibit D**.

C. Trustee's Stipulation with HSC Property Owner LLC

13. The Trustee and HSC Property Owner LLC ("HSC Landlord," and together with the Liberty Landlord and Simon Landlord, the "Landlords"), entered into a stipulation (the "HSC Stipulation"), by which (i) the Trustee rejects, surrenders and terminates HSC's lease; (ii) all remaining personal property left in each of the premises, including any inventory, is deemed abandoned and may be disposed of by the HSC Landlord without any liability or responsibility to the Debtor's estate, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary; (iii) the HSC Landlord shall have an allowed general unsecured claim in the Debtor's case in the total amount of \$44,554.80 (the "HSC Allowed Claim"); (iv) the HSC Landlord agrees to waive any and all claims it has or may have, whether known or unknown, asserted or unasserted, including any other claims for rejection damages pursuant to Bankruptcy Code § 502(b)(6), against the Debtor and its estate; and (v) the Trustee agrees, on behalf of the Debtor's estate, to waive any and all claims he may have against the HSC Landlord, including claims under Bankruptcy Code §§ 547-550. A copy of the proposed HSC Stipulation is annexed hereto as **Exhibit E**.

RELIEF REQUESTED

14. As set forth above and in the Silverman Declaration, the Trustee has determined in his business judgment that the Leases provide little to no value to the Debtor's estate. Therefore, in an effort to avoid the risks and costs associated with the Debtor remaining in the various premises and/or the assignment of the Leases to a third-party, as well as any litigation that may arise over the nature, extent and validity of the certain Landlords' potential administrative and/or unsecured general claims against the Debtor's estate, the Trustee and the certain Landlords have entered into the Stipulations to resolve all disputes relating to the Leases. Accordingly, by this Motion the Trustee seeks approval of the Stipulations.

I. Rejection of the Leases and Surrender of the Premises Reflects the Trustee's Sound Business Judgment

15. Section 365(a) of the Bankruptcy Code provides that a trustee "subject to the court's approval, may . . . reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). "This provision allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed." *Stewart Title Guar. Co. v. Old Republic Nat'l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (citing *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)); see also *In re Orion Pictures Corp.*, 4 F.3d 1095, 1098 (2d Cir. 1993) (noting that the purpose of rejection of executory contracts is to permit the debtor-in-possession to renounce title to and abandon burdensome property).

16. The Trustee's rejection of an executory contract or unexpired lease is governed by the "business judgment" standard. See *Orion Pictures*, 4 F.3d at 1098-99; *In re Enron Corp.*, No. 01-16034, 2006 WL 898033, at *4 (Bankr. S.D.N.Y. Mar. 24, 2006) ("In determining whether to approve a [debtor's] decision to reject such lease or contract, a court applies the 'business judgment' test which is met if the rejection is beneficial to the estate.") *In re Ames Dep't Stores*,

Inc., 306 B.R. 43, 51 (Bankr. S.D.N.Y. 2004); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (recognizing the “business judgment” standard used to approve rejection of executory contracts); *In re Klein Sleep Prods., Inc.*, 78 F.3d 18, 25 (2d Cir. 1996) (same). The business judgment standard requires a court to approve a Trustee’s business decision unless that decision is the product of bad faith, whim, or caprice. *See Westbury Real Estate Ventures v. Bradlees, Inc. (In re Bradlees Stores, Inc.)*, 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996), *appeal dismissed*, 210 B.R. 506 (S.D.N.Y. 1997).

17. Rejection of an executory contract or an unexpired lease is appropriate where such rejection would benefit the estate. *See Orion Pictures Corp.*, 4 F.3d at 1098-99; *In re Stable Mews Assocs., Inc.*, 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984). Upon finding that a trustee exercised its sound business judgment in determining that rejection of certain contracts or leases is in the best interests of its creditors and all parties in interest, a court should approve the rejection under section 365(a). *See In re Summit Land Co.*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that absent extraordinary circumstances, court approval of a debtors’ decision to assume or reject an executory contract “should be granted as a matter of course”).

18. The Trustee believes that the rejection of the Leases is well within the Trustee’s business judgment and is in the best interests of the Debtor’s estate. As noted above, each of the premises underlying the Leases is currently unused as the Debtor is no longer operating upon the filing of its chapter 7 case. In addition, in order to realize any value from the assignment of the Leases, the substantial, accruing arrears for each Lease which would need to be cured, thus effectively eliminating any potential value to the estate. Accordingly, the Trustee has determined that the Leases constitute an unnecessary drain on the Debtor’s resources, do not provide any benefit to the Debtor’s estate, and are not necessary to the Trustee’s administration of the Debtor’s

estate. Therefore, the Trustee's decision to reject the Leases is an exercise of the Trustee's sound business judgment.

A. Waiver of Stay Under Bankruptcy Rule 6006(d)

19. Under Bankruptcy Rules 6006(d), all orders authorizing the rejection of executory contracts or unexpired leases pursuant to section 365 of the Bankruptcy Code are automatically stayed for fourteen (14) days after entry of the order, unless otherwise ordered by the Court. FED. R. BANKR. P. 6006(d). The stay period is intended to provide sufficient time for an objecting party to appeal the same before the order is implemented. *See* Advisory Committee Notes to FED. R. BANKR. P. 6006(d).

20. In this case, the Trustee seeks to deliver possession of the respective premises to the respective Landlords as of the date the order is entered. Accordingly, the Trustee requests that the order approving the Stipulations be made effect as of the date the order is entered, notwithstanding the provisions of Bankruptcy Rule 6006(d). As set forth above, the benefits of the Stipulations greatly outweigh any possible burden to the Debtor's estate and, accordingly, no party will be harmed by waiver of this stay.

II. The Stipulations Should Be Approved Under Rule 9019

21. Bankruptcy Rule 9019 governs the approval of compromises and settlements, and provides in relevant part as follows:

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States Trustee, the debtor, and indentured trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a).

22. In approving the compromise and settlement, the Bankruptcy Court is required to make an “informed and independent judgment” as to whether the compromise and settlement is fair and equitable based on an:

educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.

Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-425, *reh'g denied*, 391 U.S. 909 (1968). See *In re Arrow Air, Inc.*, 85 B.R. 886, 891 (Bankr. S.D. Fla. 1988); *In re Bell & Beckwith*, 77 B.R. 606, 611 (Bankr.N.D. Ohio), *aff'd*, 87 B.R. 472 (N.D. Ohio 1987); *Cf. Magill v. Springfield Marine Bank (In re Heissinger Resources Ltd.)*, 67 B.R. 378, 383 (C.D. Ill. 1986) (“the law favors compromise”).

23. In making its determination on the “propriety of the settlement”, the Court should consider whether the proposed settlement is in the “best interest of the estate”.¹ As stated in *Arrow Air*, the “approval of [a] proposed compromise and settlement is a matter of this Court's sound discretion”. *Arrow Air*, 85 B.R. at 891. In passing upon a proposed settlement, “the bankruptcy court does not substitute its judgment for that of the trustee”. *In re Depo*, 77 B.R. at 384 (citations omitted). The bankruptcy court is not required “to decide the numerous questions of law and fact raised by [objectors]. . . . [R]ather [the Court should] canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.”² In evaluating the

¹ *Handler v. Roth (In re Handler)*, 386 B.R. 411, 420 (Bankr. E.D.N.Y. 2007) (quoting *In re Adelpia Communications Corp.*, 327 B.R. 143, 158 (Bankr. S.D.N.Y. 2005)); *Depo v. Chase Lincoln First Bank, N.A. (In re Depo)*, 77 B.R. 381, 383 (N.D.N.Y. 1987), *aff'd*, 863 F.2d 45 (2d Cir. 1988).

² *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983), *cert denied*, 464 U.S. 822 (1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972), *cert denied*, 409 U.S. 1039 (1972); see also *In re Handler*, 386 B.R. at 420-21.

reasonableness of a proposed compromise, the Court "may give weight to the opinions of the Trustee, the parties and their counsel." *Bell & Beckwith*, 77 B.R. at 612; *see also In re Handler*, 386 B.R. at 421.

24. The U.S. Court of Appeals for the Second Circuit outlined the following seven factors (the "Iridium Criteria") to be considered by a court in deciding whether to approve a compromise or settlement:

- i. the balance between the litigation's possibility of success and the settlement's present and future benefits;
- ii. the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment if the settlement is not approved;
- iii. the paramount interest of the creditors, including the proportion of class members who do not object to or who affirmatively support the settlement;
- iv. whether other parties in interest support the settlement;
- v. the competency and experience of the counsel who support the proposed settlement;
- vi. the relative benefits to be received by individuals or groups within the class; and
- vii. the extent to which the settlement is the product of arms-length bargaining.

Motorola, Inc. v. Official Comm. of Unsecured Creditors et al. (In re Iridium Operating LLC et al.), 478 F.3d 452, 462; *In re Handler*, 386 B.R. at 421.

25. The proposed Stipulations, among other things: (i) resolve all of the legal issues between the Trustee and the respective Landlords; (ii) fix and/or waive the respective Landlords' claims to be asserted against the Debtor's estate; (iii) reduce the total aggregate sum of (a) the administrative claims for post-petition rent that continue to accrue under the respective Leases and

(b) the general unsecured claims to be filed against the Debtor's estate for pre-petition rents owed by the Debtor and rejection of the various leases under Bankruptcy Code § 365(d); and (iv) significantly reduces the administrative costs to the Debtor's estate for the continued administration, including potential litigation associated with the Landlord's claims, and the potential costs associated therewith.

26. The Trustee has determined that settling the Landlords' claims and the issues surrounding the Landlords' claims, upon the terms and conditions of the respective proposed Stipulations, is in the best interests of the Debtor's estate, falls well within the lowest ranges of reasonableness, and is the most economical and efficient way to avoid the inherent risks and fees associated with would could be extremely costly, protracted, and complex litigation should the Trustee object to the Landlords' claims. Further, the Stipulations bypass all of the potential complexities and delays associated with litigation and authorizes the Trustee to continue with the administration of the Debtor's estate.

27. Moreover, under the terms of certain of the Stipulations, the Landlords have waived their administrative claims for post-petition rent, further reducing administrative burdens to the estate.

28. The Stipulations were negotiated at arms-length by and among the Trustee and his counsel and the Landlords and their respective counsel. Both the Trustee and the Landlords exercised their business judgment when entering into the Stipulations and have taken into consideration the unknown casts, risks, and delays attendant to proceeding with the potential litigation.

29. The Trustee and the Landlords believe the Stipulations are fair and equitable and in the best interests of the Debtor's estate, and respectfully request that the Court approves the Stipulations.

30. Under the circumstances of this case, the Stipulations should be approved because it is in the best interests of the Debtor, its estate and its creditors, falls above the lowest range of reasonableness, and represents the reasonable exercise of the Trustee's business judgment.

III. Abandonment of Personal Property, Including Any Inventory, Remaining in the Leased Premises Should Be Approved by the Court

31. With respect to the Trustee's request for authority to abandon the personal property, including the Debtor's inventory, remaining in the lease premises, the Trustee submits that the standard set forth in Bankruptcy Code § 554(a) is satisfied.

32. Section 554(a) provides that a debtor in possession may abandon, subject to court approval, "property of the estate that . . . is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). Before authorizing abandonment of property, a bankruptcy court must find either: (i) the property is burdensome to the estate or (ii) the property is both of inconsequential value and inconsequential benefit to the estate. *See, e.g., Midlantic Nat'l bank v. N.J. Dep't of Env'tl. Prot.*, 474 U.S. 494, 497) (1986), *reh'g denied*, 475 U.S. 1091 (1986).

33. As stated herein, the Trustee and his retained professionals thoroughly investigated the inventory remaining at the Debtor's store locations, and sought proposals from potential liquidators. As a result of that investigation, the Trustee determined, in his sound business judgment, that the abandonment of the inventory in each of the premises subject to the Leases would be more beneficial to the estate as part of agreements with the Landlords. The immediate abandonment of the inventory helped ease negotiations with the Landlords as it enables the

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**ORDER GRANTING CHAPTER 7 TRUSTEE’S SECOND
OMNIBUS MOTION FOR AN ORDER (I) AUTHORIZING AND
APPROVING REJECTION OF CERTAIN UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY PURSUANT TO 11 U.S.C. §365
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AND APPROVING ABANDONMENT OF PERSONAL PROPERTY
PURSUANT TO 11 U.S.C. § 554 AND BANKRUPTCY RULE 6007**

Upon the motion (the “Motion”)¹ of Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) of the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), seeking the entry of an order (i) authorizing and approving the rejection of certain unexpired leases of nonresidential real property (collectively, the “Leases”) pursuant to section 365 of title 11, United States Code (the “Bankruptcy Code”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure the (the “Bankruptcy Rules”), (ii) authorizing and approving stipulations (collectively, the “Stipulations”) fixing claims arising from the rejection of certain leases pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 9019, (iii) authorizing and approving the abandonment of the Debtor’s personal property pursuant to section 554 of the Bankruptcy Code and Bankruptcy Rule 6007, and (iv) for such further relief as the Court deems proper; and upon the Declaration of Kenneth P. Silverman, Esq. filed in support of the Motion, annexed to the Motion as **Exhibit B**; and upon the hearing on the Motion held before the Court on June 13, 2024 (the “Hearing”), the

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

transcript of which is incorporated herein by reference; and notice of the Motion, the Hearing, and the relief sought in the Motion having been good and sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establishing sufficient cause for the relief requested; now, therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. The Stipulations, annexed to the Motion as Exhibits C, D and E, are hereby approved.
3. Liberty Place Retail Associates L.P. shall have an allowed general unsecured claim against the Debtor's estate in the amount of \$134,867.90.
4. Bellwether Properties of Massachusetts Limited Partnership, SDG Fashion Mall Limited Partnership, Florida Mall Associates, LTD., Milpitas Mills Limited Partnership, Meadowood Mall SPE, LLC, Shopping Center Associates, Newport Centre, LLC, The Retail Property Trust, Sunrise Mills (MLP) Limited Partnership, SouthPark Mall Limited Partnership, Simon Property Group (Texas), L.P., and Del Amo Fashion Center Operating Company, L.L.C. (collectively, the "Simon Landlord") shall have an allowed general unsecured claim against the Debtor's estate in the amount of \$1,429,197.55.
5. HSC Property Owner LLC shall have an allowed general unsecured claim against the Debtor's estate in the total amount of \$44,554.80.
6. The Leases shall each be deemed rejected pursuant to Bankruptcy Code § 365(a) as of the dates set forth in the Stipulations.
7. The abandonment of the Debtor's personal property remaining in the premises subject to Leases is hereby approved, as set forth in the Stipulations. The Trustee is authorized to

take any and all actions reasonably necessary to perform or enforce any and all obligations contemplated by this Order.

8. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
June __, 2024

HONORABLE DAVID S. JONES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.
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**DECLARATION OF KENNETH P. SILVERMAN, ESQ.
IN SUPPORT OF CHAPTER 7 TRUSTEE’S SECOND OMNIBUS
MOTION FOR AN ORDER (I) AUTHORIZING AND
APPROVING REJECTION OF CERTAIN UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY PURSUANT TO 11 U.S.C. §365
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AND APPROVING ABANDONMENT OF PERSONAL PROPERTY
PURSUANT TO 11 U.S.C. § 554 AND BANKRUPTCY RULE 6007**

I, Kenneth P. Silverman, Esq., declare as follows:

1. I am a partner of Rimon P.C. and the chapter 7 trustee (the “Trustee”) of the bankruptcy estate (the “Estate”) of Buth-Na-Bodhaige, Inc. (the “Debtor”), with offices located at 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753. I am duly admitted to practice before this Court and the courts of the State of New York.

2. I submit this declaration (this “Declaration”) in support of the second omnibus motion (the “Motion”)¹ seeking entry of an order (i) authorizing and approving the rejection of certain unexpired leases of nonresidential real property (collectively, the “Leases”) pursuant to section 365 of title 11, United States Code (the “Bankruptcy Code”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure the (the “Bankruptcy Rules”), (ii) authorizing and approving stipulations fixing claims arising from the rejection of certain leases pursuant to section 502(b) of the Bankruptcy Code and Bankruptcy Rule 9019, (iii) authorizing and approving the abandonment

¹ All capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

of the Debtor's personal property pursuant to section 554 of the Bankruptcy Code and Bankruptcy Rule 6007, (iv) authorizing and approving the collective stipulations (collectively, the "Stipulations") pursuant to Bankruptcy Rule 9019, and (v) for such further relief as the Court deems proper.

3. I have reviewed the Motion and relevant documents thereto and certify that its contents are true and correct to the best of my knowledge, and those facts are incorporated herein by reference.

I. The Bankruptcy Case

4. On March 8, 2024 (the "Petition Date"), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code.

5. On March 9, 2024, I was appointed the interim chapter 7 trustee of the Debtor's estate.

6. The Debtor is a cosmetic and skin care retailer that is a subsidiary of the Body Shop International Limited, a UK based company.

II. The Debtor's Inventory Remaining at Debtor's Store Locations and The Trustee's Investigation to Hire a Liquidator

7. Prior to the Petition Date, the Debtor was a tenant under a number of nonresidential real property leases from which it operated its retail locations. Due to the Debtor being in chapter 7 rather than chapter 11, I determined, in my business judgment, that the leases would be burdensome and would provide no corresponding benefit to the Debtor or its estate. Moreover, I determined that, due in part to the amount of rent outstanding at many of the locations and the current market for retail space, there would be limited, if any, value to the estate from the assumption and assignment of its leases.

8. As part of my review and analysis of the Debtor's financial affairs, my retained professionals and I also undertook a comprehensive investigation of the inventory remaining at the Debtor's store locations. This analysis involved me and my retained professionals engaging in discussions with various liquidators to market and sell the Debtor's inventory remaining in its store locations. Ultimately, I received a proposal from a nationally recognized liquidator to marshal, market, and sell the Debtor's inventory currently remaining in the various store locations across the United States.

9. Simultaneously, me and my professionals entered into negotiations with the Debtor's landlords with respect to rejection of existing leases, potential waivers of claims, and the fixing of certain rejection damages claims. Accordingly, I determined that, on a store-by-store basis, greater value may be achieved through agreements with landlords than the liquidation of remnant inventory.

III. The Stipulations By and Between the Trustee and Certain Landlords

10. As described below and in the Motion, my retained professionals and I have entered into two (2) stipulations, subject to Court approval, with certain of the Debtor's landlords, whereby the Trustee seeks to (i) reject certain of the leases, (ii) fix certain of the landlord's allowed general unsecured claims, and (iii) abandon the personal property and inventory left remaining at those premises. I believe that the settlements reached with each landlord are fair and reasonable, and provide benefits to the estate (including full administrative and substantial unsecured claims waivers) greater than that which would be obtained through the liquidation of the inventory remaining in each premises.

A. Trustee's Stipulation with Liberty Place Retail Associates L.P.

11. I, on behalf of the Estate, and Liberty Place Retail Associates L.P. ("Liberty Landlord"), entered into a stipulation (the "Liberty Stipulation"), by which (i) the Estate rejects, surrenders and terminates Liberty's lease as of May 10, 2024; (ii) all remaining personal property left in each of the premises, including any inventory, is deemed abandoned and may be disposed of by the Liberty Landlord without any liability or responsibility to the Debtor's estate, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary; (iii) the Liberty Landlord shall have an allowed general unsecured claim in the Debtor's case in the total amount of \$134,867.90 (the "Liberty Allowed Claim"); and (iv) the Liberty Landlord agrees to waive any and all other claims it may have against the Debtor and its estate arising under the Debtor's lease with the Liberty Landlord. A copy of the proposed Liberty Stipulation is annexed to the Motion as Exhibit C.

B. Trustee's Stipulation with Bellwether Properties of Massachusetts Limited Partnership, SDG Fashion Mall Limited Partnership, Florida Mall Associates, LTD., Milpitas Mills Limited Partnership, Meadowood Mall SPE, LLC, Shopping Center Associates, Newport Centre, LLC, The Retail Property Trust, Sunrise Mills (MLP) Limited Partnership, SouthPark Mall Limited Partnership, Simon Property Group (Texas), L.P. , and Del Amo Fashion Center Operating Company, L.L.C

12. I, on behalf of the Estate, Bellwether Properties of Massachusetts Limited Partnership ("Bellwether"), SDG Fashion Mall Limited Partnership ("SDG"), Florida Mall Associates, LTD. ("FMA"), Milpitas Mills Limited Partnership ("Milpitas"), Meadowood Mall SPE, LLC ("Meadowood"), Shopping Center Associates ("SCA"), Newport Centre, LLC ("Newport"), The Retail Property Trust ("TRPT"), Sunrise Mills (MLP) Limited Partnership ("Sunrise"), SouthPark Mall Limited Partnership ("SouthPark"), Simon Property Group (Texas), L.P. ("Simon Texas"), and Del Amo Fashion Center Operating Company, L.L.C. ("Del

Amo" and, collectively with Bellwether, SDG, FMA, Milpitas, Meadowood, SCA, Newport, TRPT, MLP, Sunrise, Southpark, Simon Texas, the "Simon Landlord") have entered into a stipulation by which (i) the Estate rejects, surrenders and terminates the Debtor's lease with the Simon Landlord as of May 8, 2024; (ii) all remaining personal property left in the premises, including any inventory, is deemed abandoned and may be disposed of by the Simon Landlord without any liability or responsibility to the Debtor's estate, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary; and (iii) the Simon Landlord, shall have an allowed general unsecured claim in the Debtor's case in the total amount of \$1,429,197.55 (the "Simon Allowed Claim"); (iv) the Simon Landlord waives any and all claims it has or may have, whether known or unknown, asserted or unasserted, including any other claims for rejection damages pursuant to Bankruptcy Code § 502(b)(6), against the Debtor and its estate. A copy of the proposed Simon Stipulation is annexed to the Motion as Exhibit D.

C. Trustee's Stipulation with HSC Property Owner LLC

1. I, on behalf of the Estate, and HSC Property Owner LLC entered into a stipulation (the "HSC Stipulation"), by which (i) the Estate rejects, surrenders and terminates HSC's lease; (ii) all remaining personal property left in each of the premises, including any inventory, is deemed abandoned and may be disposed of by the HSC Landlord without any liability or responsibility to the Debtor's estate, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary; (iii) the HSC Landlord shall have an allowed general unsecured claim in the Debtor's case in the total amount of \$44,554.80 (the "HSC Allowed Claim"); (iv) the HSC Landlord agrees to waive any and all claims it has or may have, whether known or unknown, asserted or unasserted, including any other claims for rejection damages pursuant to Bankruptcy Code § 502(b)(6), against the Debtor and its estate; and (v) I agree, on behalf of the Debtor's Estate, to waive any and all

claims he may have against the HSC Landlord, including claims under Bankruptcy Code §§ 547-550. A copy of the proposed HSC Stipulation is annexed hereto as Exhibit E.

13. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Jericho, New York on May 16, 2024.

s/ Kenneth P. Silverman

Kenneth P. Silverman, Esq.

RIMON P.C.

Proposed Counsel to the Chapter 7 Trustee
Kenneth P. Silverman, Esq.
100 Jericho Quadrangle Suite 300
Jericho, New York 11753
Brian Powers
Haley Trust
Courtney M. Roman

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.

-----X

**STIPULATION WITH RESPECT TO REJECTION OF
DEBTOR’S LEASE OF NON-RESIDENTIAL REAL PROPERTY;
FIXING ALLOWED CLAIM OF LANDLORD RELATED TO SAME;
AND ABANDONMENT OF PERSONAL PROPERTY**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), by his proposed attorneys, Rimon P.C., and Liberty Place Retail Associates L.P. (the “Landlord” and, together with the Trustee, the “Parties” and each a “Party”), by its attorneys Faegre Drinker Biddle & Reath LLP, hereby enter into this stipulation (this “Stipulation”) and agree as follows:

RECITALS

WHEREAS, on March 8, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of title 11, United States Code (the “Bankruptcy Code”); and

WHEREAS, on March 9, 2024, Kenneth P. Silverman, Esq., was appointed the interim chapter 7 trustee of the Debtor’s estate, and has since duly qualified; and

WHEREAS, the Debtor and the Landlord are parties that certain Lease Agreement dated October 11, 1993 (together with all schedules and exhibits, and as amended, the “Retail Lease”),

and that certain Storage Space Lease dated October 8, 2014 (together with all schedules and exhibits, and as may have been amended, the “Storage Lease,” and together with the Retail Lease, collectively, the “Lease”) pursuant to which Landlord leased premises to the Debtor as lessee located at 1625 Chestnut Street, Philadelphia, Pennsylvania 19103, in which the Debtor conducted its business prior to the Petition Date (the “Premises”); and

WHEREAS, prior to the Petition Date, the Debtor surrendered the Premises to the Landlord and abandoned personal property, including inventory, at the Premises; and

WHEREAS, the Trustee has determined that the assumption of the Lease and taking possession of the personal property located at the Premises will provide little to no value to the Debtor’s estate, and that the rejection of the Lease and abandonment of the personal property is warranted under the circumstances; and

WHEREAS, the Landlord alleges that, upon the rejection of Lease, Landlord would be entitled to a claim of \$121,072.88 pursuant to Bankruptcy Code § 502(b)(6) (the “Rejection Damages Claim”); and

WHEREAS, the Landlord asserts that Lease charges of not less than \$13,795.02 have accrued since the Petition Date (the “Administrative Claim” and, together with the Rejection Damages Claim, the “Landlord Claims”) and such charges continue to accrue with the passage of time, which would be entitled to administrative priority under the Bankruptcy Code; and

WHEREAS, the Trustee and the Landlord, by and through counsel, have engaged in arms-length negotiations with respect to the rejection of the Lease, the fixing of the Landlord Claims, and the disposition of the Debtor’s personal property including inventory that may remain at the Premises, and engaged in negotiations in effort to reach an amicable resolution to the issues between the Parties without protracted litigation; and

NOW, THEREFORE, it is hereby stipulated and agreed by and among the Parties hereto, that the matters set forth above be resolved upon the terms and conditions set forth herein as follows:

1. Termination of Lease. The Lease is deemed rejected and terminated as of the date hereof, with termination acknowledged by the Landlord and the Trustee.

2. Abandonment of Personal Property. All remaining personal property left at the Premises, including any inventory, is hereby deemed abandoned and may be disposed of by the Landlord without any liability or responsibility to the Debtor's estate or any third party claiming an interest in such personal property and/or inventory, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary.

3. Treatment of Landlord Claims. The Landlord Claims shall be deemed to be a single allowed general unsecured claim in the Debtor's bankruptcy case in the amount of \$134,867.90 (the "Allowed Claim"). The Landlord shall not be required to file a proof of claim. The Allowed Claim shall be deemed timely filed.

4. Waiver of Claim for Additional Lease Charges. Except for the right to retain the Allowed Claim, the Landlord hereby waives any and all claims for rejection of and/or charges under the Lease against the Debtor and its estate.

5. Approval of Court. This Stipulation is subject to the approval of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). In the event the Bankruptcy Court fails to authorize and approve this Stipulation in its entirety within thirty (30) days of the date hereof, this Stipulation shall be null and void, and will have no further force and effect, and nothing contained herein shall be deemed an admission or waiver of the rights of any party.

6. No Modification, Amendment, or Waiver. No provision of this Stipulation shall be modified, amended, or waived in any way except in a writing signed with the handwritten signature of an authorized agent of the Parties, which writing identifies this Stipulation and expressly provides that it is intended to amend it.

7. Jurisdiction. The Parties expressly consent to the exclusive jurisdiction of the Bankruptcy Court with respect to any and all disputes arising out of or in connection with this Stipulation, without regard to choice of law.

8. Governing Law. This Settlement Agreement shall be governed by the laws of the State of New York.

9. Authority. Each signatory hereto, represents and warrants that they hold and are exercising the requisite authority to bind their respective clients.

10. Counterparts. For the convenience of the Parties, this Stipulation may be executed in counterparts that shall together constitute an original, and any signatures to this Stipulation that are delivered between the Parties or their counsel via email or facsimile shall, for evidentiary purposes, have the same validity and effect as the original signatures.

[ONE SIGNATURE PAGE TO FOLLOW]

Dated: Jericho, New York
May 10, 2024

RIMON P.C.
Counsel to Kenneth P. Silverman, Esq.,
the Chapter 7 Trustee

By: s/ Brian Powers
Brian Powers
Partner
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753

Dated: Wilmington, Delaware
May 10, 2024

FAEGRE DRINKER BIDDLE & REATH LLP
Counsel to Liberty Place Retail Associates L.P.

By: s/ Joseph N. Argentina Jr.
Joseph N. Argentina, Jr.
222 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801

RIMON P.C.

Proposed Counsel to the Chapter 7 Trustee
Kenneth P. Silverman, Esq.
100 Jericho Quadrangle Suite 300
Jericho, New York 11753
Brian Powers
Haley Trust
Courtney M. Roman

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.

-----X

**STIPULATION WITH RESPECT TO REJECTION OF
DEBTOR’S LEASES OF NON-RESIDENTIAL REAL PROPERTY;
FIXING ALLOWED CLAIM OF LANDLORDS RELATED TO SAME;
AND ABANDONMENT OF PERSONAL PROPERTY**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), by his proposed attorneys, Rimon P.C., and Bellwether Properties of Massachusetts Limited Partnership (“Bellwether”), SDG Fashion Mall Limited Partnership (“SDG”), Florida Mall Associates, LTD. (“FMA”), Milpitas Mills Limited Partnership (“Milpitas”), Meadowood Mall SPE, LLC (“Meadowood”), Shopping Center Associates (“SCA”), Newport Centre, LLC (“Newport”), The Retail Property Trust (“TRPT”), Sunrise Mills (MLP) Limited Partnership (“Sunrise”), SouthPark Mall Limited Partnership (“SouthPark”), Simon Property Group (Texas), L.P. (“Simon Texas”), and Del Amo Fashion Center Operating Company, L.L.C. (“Del Amo” and, collectively with Bellwether, SDG, FMA, Milpitas, Meadowood, SCA, Newport, TRPT, MLP, Sunrise, SouthPark, Simon Texas, the “Landlord” and, together with the Trustee, the “Parties” and each a “Party”), hereby enter into this stipulation (this “Stipulation”) and agree as follows:

RECITALS

WHEREAS, on March 8, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of title 11, United States Code (the “Bankruptcy Code”); and

WHEREAS, on March 9, 2024, Kenneth P. Silverman, Esq., was appointed the interim chapter 7 trustee of the Debtor’s estate; and

WHEREAS, the Debtor and the Landlord are Parties to one or more lease agreements as set forth on Schedule A hereto (the “Leases”), for certain premises in which the Debtor conducted its business prior to the Petition Date (the “Premises”); and

WHEREAS, the Trustee has determined that the assumption of the Leases will provide little to no value to the Debtor’s estate, and that the rejection of the Leases are warranted under the circumstances; and

WHEREAS, the Landlord alleges that, upon the rejection of Leases, Landlord collectively would be entitled to a claim of \$1,837,916.41, comprised of pre-petition totaling \$203,237.41, post-petition totaling \$272,501.07 and rejection damages totaling \$1,362,177.93 (the “Landlord Claims”); and

WHEREAS, the Trustee and the Landlord, by and through counsel, have engaged in arms-length negotiations with respect to the rejection of the Leases, the fixing of the Landlord Claims, and the disposition of the Debtor’s inventory remaining at the Premises, and engaged in negotiations in effort to reach an amicable resolution to the issues between the Parties without protracted litigation; and

NOW, THEREFORE, it is hereby stipulated and agreed by and among the Parties hereto, that the matters set forth above be resolved upon the terms and conditions set forth herein as follows:

1. Surrender of Premises and Termination of Leases. The Leases are deemed rejected pursuant to Bankruptcy Code § 365(a), surrendered, and terminated as of the date of the full execution of this Stipulation, with such surrender and termination acknowledged by the Landlord and the Trustee.

2. Abandonment of Personal Property. All remaining personal property left at the Premises, including any inventory, is hereby deemed abandoned and may be disposed of by the Landlord without any liability or responsibility to the Debtor's estate or any third party claiming an interest in such personal property and/or inventory, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary.

3. Allowed Claim. The Landlord, collectively, shall have an allowed general unsecured claim in the Debtor's case in the amount of \$1,429,197.55 (the "Allowed Claim"), and all other claims shall be waived.

4. Approval of Court. This Stipulation is subject to the approval of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). In the event the Bankruptcy Court fails to authorize and approve this Stipulation in its entirety, this Stipulation shall be null and void, and will have no further force and effect, and nothing contained herein shall be deemed an admission or waiver of the rights of any party.

5. No Modification, Amendment, or Waiver. No provision of this Stipulation shall be modified, amended, or waived in any way except in a writing signed with the handwritten signature of an authorized agent of the Parties, which writing identifies this Stipulation and expressly provides that it is intended to amend it.

6. Jurisdiction. The Parties expressly consent to the exclusive jurisdiction of the Bankruptcy Court with respect to any and all disputes arising out of or in connection with this Stipulation, without regard to choice of law.

7. Governing Law. This Stipulation shall be governed by the laws of the State of New York.

8. Authority. Each signatory hereto, represents and warrants that they hold and are exercising the requisite authority to bind their respective clients.

9. Counterparts. For the convenience of the Parties, this Stipulation may be executed in counterparts that shall together constitute an original, and any signatures to this Stipulation that are delivered between the Parties or their counsel via email or facsimile shall, for evidentiary purposes, have the same validity and effect as the original signatures.

[ONE SIGNATURE PAGE TO FOLLOW]

Dated: Jericho, New York
May 8, 2024

RIMON P.C.
Counsel to Kenneth P. Silverman, Esq.,
the Chapter 7 Trustee

By: s/ Brian Powers
Brian Powers
Partner
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753

Dated:
May 8, 2024

By: s/ Ronald M. Tucker
Ronald M. Tucker
Vice President and Bankruptcy Counsel
Simon Property Group, Inc.,
and its affiliates
225 W. Washington Street
Indianapolis, IN 46204

SCHEDULE A - LEASES

1.	Bellewether Properties of Massachusetts Limited Partnership Burlington Mall City of Burlington County of Middlesex Massachusetts Room 2013
2.	SDG Fashion Mall Limited Partnership Fashion Mall at Keystone City of Indianapolis County of Marion Indiana Room 152
3.	Florida Mall Associates, LTD. Florida Mall City of Orlando County of Orange Florida Room 124
4.	Milpitas Mills Limited Partnership The Great Mall of the Bay Area City of Milpitas County of Santa Clara California Room 157A
5.	Meadowood Mall SPE, LLC Meadowood City of Reno County of Washoe Nevada Room F126A
6.	Shopping Center Associates Menlo Park Mall City of Edison County of Middlesex New Jersey
7.	Newport Centre, LLC Newport Centre City of Jersey City County of Hudson New Jersey Room A16E
8.	The Retail Trust Property Brea Mall City of Brea

	County of Orange California Room 1108
9.	The Retail Property Trust Lenox Square City of Atlanta County of Fulton Georgia Room 3120
10.	The Retail Property Trust Roosevelt Field Mall City of Garden City County of Nassau New York Room 495A
11.	Sunrise Mills (MLP) Limited Partnership Sawgrass Mills Malls Sunrise Florida Room 6714
12.	Southpark Mall Limited Partnership SouthPark Mall City of Charlotte County of Mecklenberg North Carolina Room G05
13.	Simon Property Group (Texas), L.P. Barton Creek Square City of Austin County of Travis Texas Room K11
14.	Del Amo Fashion Center Operating Company, L.L.C. Del Amo Fashion Center City of Torrance County of Los Angeles California Room 467

RIMON P.C.

Proposed Counsel to the Chapter 7 Trustee
Kenneth P. Silverman, Esq.
100 Jericho Quadrangle Suite 300
Jericho, New York 11753
Brian Powers
Haley Trust
Courtney M. Roman

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.

-----X

STIPULATION WITH RESPECT TO REJECTION OF DEBTOR’S LEASE OF NON-RESIDENTIAL REAL PROPERTY AND FOR RELATED RELIEF

Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), by his proposed attorneys, Rimon P.C., and HSC Property Owner LLC (the “Landlord” and, together with the Trustee, the “Parties” and each a “Party”), by its attorneys Law Offices of Kevin S. Neiman, pc, hereby enter into this stipulation (this “Stipulation”) and agree as follows:

RECITALS

WHEREAS, on March 8, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of title 11, United States Code (the “Bankruptcy Code”); and

WHEREAS, on March 9, 2024, Kenneth P. Silverman, Esq., was appointed the interim chapter 7 trustee of the Debtor’s estate; and

WHEREAS, the Debtor and the Landlord are successor parties to a lease agreement (the “Lease”) for the premises known as Space No. 1078 and located at Hillsdale Shopping Center, San Mateo, California, which the Debtor used prior to the Petition Date (the “Premises”); and

WHEREAS, the Debtor and the Landlord are also parties to that certain Short Term Storage License Agreement (the “License Agreement”) for use by the Debtor of temporary storage facilities in the basement area of the shopping center where the Premises are located (the “Storage Area”); and

WHEREAS, the Trustee has determined that the assumption of the Lease and License Agreement will provide little to no value to the Debtor’s estate, and that the rejection of the Lease and the License Agreement is warranted under the circumstances and is in the best interests of the Debtor’s bankruptcy estate; and

WHEREAS, the Landlord alleges that, upon the rejection of Lease and License Agreement, Landlord collectively would be entitled to a claim of \$52,417.42 pursuant to Bankruptcy Code § 502(b)(6) (the “Rejection Damages Claim”); and

WHEREAS, the Landlord collectively asserts that a total of \$25,235.70 will have accrued in post-petition charges under the Lease and License Agreement as of May 1, 2024 (the “Administrative Claim” and, together with the Rejection Damages Claim, the “Landlord Claims”), which would be entitled to administrative priority pursuant to Bankruptcy Code § 503(b); and

WHEREAS, the Trustee and the Landlord, by and through counsel, have engaged in arms-length negotiations with respect to the rejection of the Lease and License Agreement, the fixing of the Landlord Claims, and the disposition of the Debtor’s inventory remaining at the Premises and Storage Area, and related matters, and engaged in negotiations in effort to reach an amicable resolution to the issues between the Parties without protracted litigation; and

NOW, THEREFORE, it is hereby stipulated and agreed by and between the Parties hereto, that the matters set forth above be resolved upon the terms and conditions set forth herein as follows:

1. Approval of Court. This Stipulation is subject to the approval of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), which approval date is the “Effective Date.” In the event the Bankruptcy Court fails to approve this Stipulation in its entirety, this Stipulation shall be null and void, and will have no further force and effect, and nothing contained herein shall be deemed an admission or waiver of the rights of any Party.

2. Rejection and termination of Lease. As of the Effective Date, the Lease and License Agreement are deemed (i) rejected pursuant to Bankruptcy Code § 365, and (ii) terminated.

3. Surrender of Premises and Storage Area. As of the Effective Date, the Trustee surrenders the Premises and Storage Area to Landlord and gives, grants, and surrenders unto Landlord all of the Trustee’s, the bankruptcy estate’s, and the Debtor’s right, title, and interest in and to the Premises and Storage Area, including, without limitation, all of the Debtor’s right, title, and interest in, to, and under the Lease and License Agreement, and Landlord hereby accepts such surrender. From after the Effective Date, the Lease and License Agreement, and all rights and obligations of the parties thereunder, shall be deemed to have expired and terminated as fully and completely and with the same force and effect as if such date were the expiry date set forth in the Lease and License Agreement.

4. Access; Preservation and Securing. On or before the Effective Date, the Trustee shall return or provide to the Landlord access to the keys, key codes, lockbox codes, and/or security codes or if such points of access, if any are in the possession or control of the Trustee. Landlord may rekey the Premises and Storage Area, remove and replace the Debtor as an account holder in relation to any utilities related to the Premises and Storage Area, and otherwise may take all actions necessary to preserve and secure the Premises and Storage Area.

5. Abandonment of Personal Property. Pursuant to Bankruptcy Code § 554(a), all personal property located at the Premises and Storage Area as of the Effective Date, including any inventory, is hereby deemed abandoned free and clear of all liens, claims, encumbrances, or interests, as is, and may be used or disposed of by the Landlord, in its sole and absolute discretion, without any notice, liability, or responsibility to the Trustee, the Debtor, the Debtor's estate, or any third parties. The Trustee is unaware of any personal property located at the Premises and Storage Area that is considered to be hazardous or containing any "personally identifiable information," as that term is defined in Bankruptcy Code § 101(41A). To the extent that there is any such personal property identified by Landlord, the Trustee is authorized to, and shall, coordinate and implement the removal and/or disposition of any such property in advance of abandonment and Landlord shall reasonably cooperate with Trustee.

6. Stay Relief. As of the Effective Date, the Landlord is granted relief from the automatic stay pursuant to Bankruptcy Code § 362(d) for all purposes in relation to this Stipulation, including taking possession and control of the Premises and Storage Area, preserving and securing the Premises and Storage Area, and using and disposing of any abandoned personal property, including any inventory. The 14-day stay under F.R.B.P. 4001(a)(3) is waived.

7. Allowed Claim. Automatically upon the Effective Date, without any further action by the Landlord (including filing any claim with the Bankruptcy Court or the Trustee's claim agent), the Landlord shall have an allowed general unsecured claim in the Debtor's case in the amount of \$44,554.80 (the "Allowed Claim"), which allowed claim shall not be subject to dispute, objection, setoff, reduction, or contingency.

8. Waiver Claims. Except for the right to retain and receive any distribution on the Allowed Claim, and its rights under this Stipulation, the Landlord hereby waives any and all claims

it has or may have, including the Administrative Claim, whether known or unknown, asserted or unasserted, including any other claims for rejection damages pursuant to Bankruptcy Code § 502(b)(6), against the Trustee, the Debtor, and the Debtor's estate. Except for his rights under this Stipulation, the Trustee, for himself, the Debtor, and the Debtor's estate, hereby waives any and all claims he has or may have, whether known or unknown, asserted or unasserted, including any claims pursuant to Chapter 5 of the Bankruptcy Code (such as pursuant to 11 U.S.C. §§ 547-550), against the Landlord.

9. No Modification, Amendment, or Waiver. No provision of this Stipulation shall be modified, amended, or waived in any way except in a writing signed with the handwritten signature of an authorized agent of the Parties, which writing identifies this Stipulation and expressly provides that it is intended to amend it.

10. Jurisdiction. The Parties expressly consent to the exclusive jurisdiction of the Bankruptcy Court with respect to any and all disputes arising out of or in connection with this Stipulation, without regard to choice of law.

11. Governing Law. This Stipulation shall be governed by the laws of the State of New York.

12. Authority. Each signatory hereto, represents and warrants that he or she holds and is exercising the requisite authority to bind his or her respective client.

13. Counterparts. For the convenience of the Parties, this Stipulation may be executed in counterparts that shall together constitute an original, and any signatures to this Stipulation that are delivered between the Parties or their counsel via email or facsimile shall, for evidentiary purposes, have the same validity and effect as the original signatures.

14. Binding Nature. This Stipulation and each of its provisions are binding upon and shall inure to the benefit of the Trustee's and the Debtor's successors and assigns, including, without limitation, any subsequent trustee or fiduciary, if any, subsequently appointed under chapter 7 or chapter 11 of the Bankruptcy Code.

15. Further Cooperation. Each Party shall take all necessary steps, cooperate, and use reasonable best efforts to obtain and achieve the objectives and fulfill the obligations of this Stipulation. Each Party shall cooperate with each other and shall execute and deliver any and all additional notices, papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of this Stipulation.

Dated: Jericho, New York
May 2, 2024

RIMON P.C.
Counsel to Kenneth P. Silverman, Esq.,
the Chapter 7 Trustee

By: s/ Brian Powers
Brian Powers
Partner
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753

Dated: Denver, Colorado
May 2, 2024

LAW OFFICES OF KEVIN S. NEIMAN, PC
Counsel to HSC Property Owner LLC

By: s/ Kevin Neiman
Kevin S. Neiman
999 18th Street, Suite 1230 S
Denver, Colorado 80202