

**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: July 15, 2024**  
**Time: 10:00 a.m.**

**Objections Due: July 8, 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 THIRD 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 **July 15, 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](http://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 **July 8, 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  
June 17, 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.**  
Proposed Counsel to the Chapter 7 Trustee  
Kenneth P. Silverman, Esq.  
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**CHAPTER 7 TRUSTEE’S THIRD OMNIBUS MOTION  
FOR AN ORDER (I) FIXING THE DATE OF  
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”), by his proposed counsel, Rimon P.C., submits this omnibus motion (this “Motion”) seeking entry of an order, substantially in the form annexed hereto as **Exhibit A**, (i) fixing the date of 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, 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 was 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 the 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 two (2) stipulations, subject to Court approval, with certain of the Debtor's landlords, whereby the Trustee seeks to (i) fix the date of rejection of certain of the leases, (ii) fix certain of the landlord's allowed general unsecured claims arising for the leases and the rejection thereof, 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 Fashion Place, LLC (“Fashion Place”), Saint Louis Galleria LLC (“Galleria”), Perimeter Mall, LLC (“Perimeter”), Norwalk Land Development LLC (“Norwalk”), GGP Ala Moana LLC (“GGP Hawaii”), GGP Staten Island Mall LLC (“GGP Staten Island”), Fashion Show Mall LLC (“Fashion Show”), Stonebriar Mall, LLC (“Stonebriar”), Park Meadows Mall, LLC (“Park Meadows”), Christiana Mall LLC (“Christiana”), and Baybrook Mall, LLC (“Baybrook”)**

11. The Trustee and Fashion Place, LLC (“Fashion Place”), Saint Louis Galleria LLC (“Galleria”), Perimeter Mall, LLC (“Perimeter”), Norwalk Land Development LLC (“Norwalk”), GGP Ala Moana LLC (“GGP Hawaii”), GGP Staten Island Mall LLC (“GGP Staten Island”), Fashion Show Mall LLC (“Fashion Show”), Stonebriar Mall, LLC (“Stonebriar”), Park Meadows Mall, LLC (“Park Meadows”), Christiana Mall LLC (“Christiana”), and Baybrook Mall, LLC (“Baybrook” and, collectively with Fashion Place, Galleria, Perimeter, Norwalk, GGP Hawaii, GGP Staten Island, Fashion Show, Stonebriar, Park Meadows, and Christiana, “Brookfield”), entered into a stipulation (the “Brookfield Stipulation”), by which (i) the Trustee rejects, surrenders and terminates Brookfield’s leases as of May 7, 2024; (ii) all remaining personal property left in each of the premises, including any inventory, is deemed abandoned and may be disposed of by Brookfield 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) Brookfield shall have an allowed general unsecured claim in the Debtor’s case in the total amount of \$2,683,119.39 (the “Brookfield Allowed Claim”); and (iv) Brookfield shall have an allowed administrative expense claim in the Debtor’s case in the total amount of \$259,626.72 (the “Brookfield Administrative Claim”); A copy of the proposed Brookfield Stipulation is annexed hereto as **Exhibit C**.

**B. Trustee’s Stipulation with Dimond Center Holdings, LLC (“Dimond”), Fashion Outlets of Chicago LLC (“Chicago”), Macerich Fresno Limited Partnership (“Fresno”), Brooklyn Kings Plaza LLC (“Kings Plaza”), and Macerich Queens Expansion, LLC (“Queens”)**

12. The Trustee and Dimond Center Holdings, LLC (“Dimond”), Fashion Outlets of Chicago LLC (“Chicago”), Macerich Fresno Limited Partnership (“Fresno”), Brooklyn Kings Plaza LLC (“Kings Plaza”), and Macerich Queens Expansion, LLC (“Queens” collectively with Dimond, Chicago, Fresno, and Kings Plaza, the “Dimond Landlord”) have entered into a stipulation (the “Dimond Stipulation”), by which (i) the Trustee rejects, surrenders and terminates the Debtor’s lease with the Dimond Landlord as of April 22, 2024; (ii) all remaining personal property left in the premises, including any inventory, is deemed abandoned and may be disposed of by the Dimond 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 Dimond Landlord shall have an allowed administrative expense claim in the Debtor’s case in the total amount of \$92,803.98 (the “Dimond Administrative Claim”); and (iv) the Dimond Landlord shall have an allowed general unsecured claim in the Debtor’s case in the total amount of \$577,343.03 (the “Dimond Allowed Claim”). A copy of the proposed Dimond Stipulation is annexed hereto as **Exhibit D.**

**RELIEF REQUESTED**

13. 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 landlord’s 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**

14. 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).

15. 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).

16. 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").

17. 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.

18. Moreover, absent agreement from the relevant landlord, each of the Leases would have been rejected automatically by operation of Bankruptcy Code §365(d)(1) as of May 7, 2024. 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".<sup>1</sup> 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."<sup>2</sup> In evaluating the 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.

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<sup>1</sup> *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).

<sup>2</sup> *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.

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 the respective Landlord’s 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 continued 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 (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 Landlord's claims and the issues surrounding the Landlord's 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 Landlord's 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. The Stipulations were negotiated at arms-length by and among the Trustee and his counsel and the Landlord's 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.

28. 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.

29. 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**

30. 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.

31. 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).

32. 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 Landlords to remove the inventory quickly and market the premises to prospective new tenants without having to wait for the Trustee to determine how to proceed with the remaining inventory.

33. Rule 6007-1 of the Local Rules requires that notice of a proposed abandonment describe the property to be abandoned, state the reason for the proposed abandonment, and identify the entity to whom the property is proposed to be abandoned, unless the Court orders otherwise. The Trustee submits that given the description provided herein, the requirements of the Local Rules have been satisfied.

34. The Trustee also requests that the abandonment of the inventory should be effective as of the proposed effective date of rejection set forth in the respective Leases.

**CONCLUSION**

35. Based on the foregoing, the Trustee submits that the relief requested is necessary and appropriate, is in the best interests of the Debtor's estate and its creditors, and should be granted in all respects.

36. No prior motion for the relief requested herein has been made to this or any other Court.

**WHEREFORE**, the Trustee respectfully requests entry of an order substantially in the form annexed hereto as **Exhibit A**, which grants the relief requested herein and for such other, further and different relief as the Court deems just and proper.

Dated: Jericho, New York  
June 17, 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



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Upon the motion (the “Motion”)<sup>1</sup> 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 July 15, 2024 (the “Hearing”), the

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<sup>1</sup> 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 and D**, are hereby approved.
3. Fashion Place, LLC ("Fashion Place"), Saint Louis Galleria LLC ("Galleria"), Perimeter Mall, LLC ("Perimeter"), Norwalk Land Development LLC ("Norwalk"), GGP Ala Moana LLC ("GGP Hawaii"), GGP Staten Island Mall LLC ("GGP Staten Island"), Fashion Show Mall LLC ("Fashion Show"), Stonebriar Mall, LLC ("Stonebriar"), Park Meadows Mall, LLC ("Park Meadows"), Christiana Mall LLC ("Christiana"), and Baybrook Mall, LLC ("Baybrook" and, collectively with Fashion Place, Galleria, Perimeter, Norwalk, GGP Hawaii, GGP Staten Island, Fashion Show, Stonebriar, Park Meadows, and Christiana, "Brookfield") shall have an allowed general unsecured claim against the Debtor's estate in the amount of \$2,683,119.39.
4. Brookfield shall have an allowed administrative expense claim against the Debtor's estate in the amount of \$259,626.72.
5. Dimond Center Holdings, LLC ("Dimond"), Fashion Outlets of Chicago LLC ("Chicago"), Macerich Fresno Limited Partnership ("Fresno"), Brooklyn Kings Plaza LLC ("Kings Plaza"), and Macerich Queens Expansion, LLC ("Queens" collectively with Dimond, Chicago, Fresno, and Kings Plaza, the "Dimond Landlord") shall have an allowed general unsecured claim against the Debtor's estate in the amount of \$577,343.03.

6. The Dimond Landlord shall have an allowed administrative expense claim against the Debtor's estate in the amount of \$92,803.98.

7. The Leases shall each be deemed rejected pursuant to Bankruptcy Code § 365(a) as of the dates set forth in the Stipulations.

8. 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.

9. 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  
July \_\_, 2024

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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.  
-----X

**DECLARATION OF KENNETH P. SILVERMAN, ESQ.  
IN SUPPORT OF CHAPTER 7 TRUSTEE'S THIRD OMNIBUS  
MOTION FOR AN ORDER (I) FIXING THE DATE OF  
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**

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")<sup>1</sup> seeking entry of an order (i) fixing the date of 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 "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

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

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 was 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 the 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) fix the date of rejection of certain of the leases, (ii) fix certain of the landlord's allowed general unsecured claims arising for the leases and the rejection thereof, (iii) fix certain of the landlord's administrative claims, and (iv) 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 Fashion Place, LLC ("Fashion Place"), Saint Louis Galleria LLC ("Galleria"), Perimeter Mall, LLC ("Perimeter"), Norwalk Land Development LLC ("Norwalk"), GGP Ala Moana LLC ("GGP Hawaii"), GGP Staten Island Mall LLC ("GGP Staten Island"), Fashion Show Mall LLC ("Fashion Show"), Stonebriar Mall, LLC ("Stonebriar"), Park Meadows Mall, LLC ("Park Meadows"), Christiana Mall LLC ("Christiana"), and Baybrook Mall, LLC ("Baybrook")**

11. I, on behalf of the Estate, and Fashion Place, LLC ("Fashion Place"), Saint Louis Galleria LLC ("Galleria"), Perimeter Mall, LLC ("Perimeter"), Norwalk Land Development LLC ("Norwalk"), GGP Ala Moana LLC ("GGP Hawaii"), GGP Staten Island Mall LLC ("GGP Staten Island"), Fashion Show Mall LLC ("Fashion Show"), Stonebriar Mall, LLC ("Stonebriar"), Park Meadows Mall, LLC ("Park Meadows"), Christiana Mall LLC ("Christiana"), and Baybrook Mall, LLC ("Baybrook") and, collectively with Fashion Place, Galleria, Perimeter, Norwalk, GGP Hawaii, GGP Staten Island, Fashion Show, Stonebriar, Park Meadows, and Christiana, the "Brookfield"), entered into a stipulation (the "Brookfield Stipulation"), by which (i) the Trustee rejects, surrenders and terminates Brookfield's leases as of May 7, 2024; (ii) all remaining personal property left in each of the premises, including any inventory, is deemed abandoned and may be disposed of by Brookfield 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) Brookfield shall have an allowed general unsecured claim in the Debtor's case in the total amount of \$2,683,119.39 (the "Brookfield Allowed Claim"); and (iv) Brookfield shall have an allowed administrative expense claim in the Debtor's case in the total amount of \$259,626.72 (the "Brookfield Administrative Claim"). A copy of the proposed Brookfield 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, Dimond Center Holdings, LLC (“Dimond”), Fashion Outlets of Chicago LLC (“Chicago”), Macerich Fresno Limited Partnership (“Fresno”), Brooklyn Kings Plaza LLC (“Kings Plaza”), and Macerich Queens Expansion, LLC (“Queens” collectively with Dimond, Chicago, Fresno, and Kings Plaza, the “Dimond Landlord”) have entered into a stipulation by which (i) the Trustee rejects, surrenders and terminates the Debtor’s lease with the Dimond Landlord as of April 22, 2024; (ii) all remaining personal property left in the premises, including any inventory, is deemed abandoned and may be disposed of by the Dimond 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 Dimond Landlord shall have an allowed administrative expense claim in the Debtor’s case in the total amount of \$92,803.98 (the “Dimond Administrative Claim”); and (iv) the Dimond Landlord shall have an allowed general unsecured claim in the Debtor’s case in the total amount of \$577,343.03 (the “Dimond Allowed Claim”). A copy of the proposed Dimond Stipulation is annexed to the Motion as Exhibit D.

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

Executed in Jericho, New York on June 17, 2024.

s/ Kenneth P. Silverman  
Kenneth P. Silverman, Esq.



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 Fashion Place, LLC (“Fashion Place”), Saint Louis Galleria LLC (“Galleria”), Perimeter Mall, LLC (“Perimeter”), Norwalk Land Development LLC (“Norwalk”), GGP Ala Moana LLC (“GGP Hawaii”), GGP Staten Island Mall LLC (“GGP Staten Island”), Fashion Show Mall LLC (“Fashion Show”), Stonebriar Mall, LLC (“Stonebriar”), Park Meadows Mall, LLC (“Park Meadows”), Christiana Mall LLC (“Christiana”), and Baybrook Mall, LLC (“Baybrook” and, collectively with Galleria, Perimeter, Norwalk, GGP Hawaii, GGP Staten Island, Fashion Show, Stonebriar, Park Meadows, Christiana, the “Landlord” and, together with the Trustee, the “Parties” and each a “Party”), by its counsel, Kelley Drye & Warren 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 to one or more lease agreements as set forth on Schedule A hereto (the “Retail Leases”), and certain storage space leases as set forth on Schedule B (together with all schedules and exhibits and as may have been amended, the “Storage Leases,” and together with the Retail Leases, the “Leases”), for certain premises in which the Debtor conducted its business prior to the Petition Date (the “Premises”); and

**WHEREAS**, as of May 7, 2024, the Leases were deemed rejected pursuant to Bankruptcy Code § 365(d)(1); and

**WHEREAS**, the Landlord asserts that it has claims for unpaid prepetition rent due and damages arising from the rejection of Leases in the aggregate amount of \$2,683,119.39, as limited by Bankruptcy Code § 502(b)(6) (the “Rejection Damages Claim”); and

**WHEREAS**, the Landlord asserts that it has claims in the total amount of \$259,626.72 on account of unpaid post-petition rent and accrued charges under the Leases (the “Administrative Claim” and, together with the Rejection Damages Claim, the “Landlord Claims”), 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 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. The Premises are hereby deemed surrendered to the Landlord as of the date hereof, with such surrender 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 Unsecured Claim. The Landlord shall have an allowed general unsecured claim in the Debtor's case in the amount of \$2,683,119.39 (the "Allowed Unsecured Claim").

4. Allowed Administrative Claim. The Landlord shall have an allowed administrative expense claim in the Debtor's case in the amount of \$259,626.72 (the "Allowed Administrative Claim"). The Parties have agreed that the Allowed Administrative Claim shall be subordinate in right of payment to payment of the allowed fees and expenses of the Trustee and his retained professionals in this case.

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, 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  
June \_\_, 2024

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

By: 

\_\_\_\_\_  
Brian Powers  
Partner  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753

Dated: New York, New York  
June \_\_, 2024

**KELLEY DRYE & WARREN LLP**  
Counsel to Brookfield Properties

By: 

\_\_\_\_\_  
Robert L. LeHane  
Partner  
3 World Trade Center  
175 Greenwich Street  
New York, NY 10007

**SCHEDULE A – RETAIL LEASES**

1.	Fashion Place LLC Fashion Place City of Murray County of Salt Lake Utah Space No. 1430
2.	Saint Louis Galleria LLC Saint Louis Galleria City of Saint Louis County of Saint Louis Missouri Space No. 02047
3.	Perimeter Mall, LLC Perimeter Mall City of Atlanta County of DeKalb Georgia Space No. 2610
4.	Norwalk Land Development, LLC The SoNo Collection City of Norwalk County of Fairfield Connecticut Space No. 1185
5.	GGP Ala Moana LLC Ala Moana Center City of Honolulu County of Honolulu Hawaii Space No. 1138
6.	GGP Staten Island Mall, LLC Staten Island Mall Phase I City of New York County of Richmond New York Space No. 1275
7.	Fashion Show Mall LLC Fashion Show City of Las Vegas County of Clark Nevada Space No. 1810
8.	Stonebriar Mall, LLC Stonebriar Centre

	City of Frisco County of Collin Texas Space No. 1057
9.	Park Meadows Mall, LLC Park Meadows City of Lone Tree County of Douglas Colorado Space No. 1201
10.	Christiana Mall LLC Christiana Mall City of Newark County of Newcastle Delaware Space No. 1630
11.	Baybrook Mall, LLC Baybrook Mall City of Friendswood County of Harris Texas Space No. 1372

**SCHEDULE B - STORAGE LEASES**

1.	Fashion Show Mall LLC Fashion Show City of Las Vegas County of Clark Nevada Space No. W230 – 30 s.f.
2.	Christiana Mall LLC Christiana Mall City of Newark County of Newcastle Delaware Space No. STR-POD2 – 100 s.f.
3.	GGP Staten Island Mall, LLC Staten Island Mall Phase I City of New York County of Richmond New York Space No. W240 – 155 s.f.
4.	GGP Ala Moana LLC Ala Moana Center City of Honolulu County of Honolulu Hawaii Space Nos. I112D – 60 s.f. and I112E – 60 s.f.



**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 Dimond Center Holdings, LLC ("Dimond"), Fashion Outlets of Chicago LLC ("Chicago"), Macerich Fresno Limited Partnership ("Fresno"), Brooklyn Kings Plaza LLC ("Kings Plaza"), and Macerich Queens Expansion, LLC ("Queens" collectively with Dimond, Chicago, Fresno, and Kings Plaza, the "Landlords" and, together with the Trustee, the "Parties" and each a "Party"), by its attorneys Ballard Spahr 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 Landlords are parties to 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 Landlords allege that, upon the rejection of Leases, Landlords would be entitled to claims pursuant to Bankruptcy Code § 502(b)(6) (the "Rejection Damages Claims"); and

**WHEREAS**, the Landlords assert post-petition charges under the Leases have accrued (the "Administrative Claims"), which would be entitled to administrative priority pursuant to Bankruptcy Code § 503(b); and

**WHEREAS**, the Trustee and the Landlords, by and through counsel, have engaged in arms-length negotiations with respect to the rejection of the Leases, the fixing of the Administrative 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, surrendered, and terminated as of April 22, 2024 (the "Effective Date of Rejection"), with such surrender and termination acknowledged by the Landlords and the Trustee. Possession of the Premises shall be deemed delivered to Landlords as of the Effective Date of Rejection and Landlords may immediately re-take possession of, and secure, the Premises (by changing the locks or otherwise) in reliance thereon. The Trustee's surrender of the Premises to Landlords shall not

constitute a common law termination of the Leases. As of the Effective Date of Rejection, any right to possession of the Premises by the Debtor, the Chapter 7 Trustee, or the estate, and/or anyone claiming any interest in the Premises on behalf of or through them is also terminated and forfeited under applicable non-bankruptcy law.

2. Abandonment of Personal Property. All remaining personal property left at the Premises, including any inventory, is hereby deemed abandoned and may be used or disposed of by the Landlords without further notice or order of this Court or 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. Administrative Claims. The Debtor and Landlords agree that the Administrative Claims shall be allowed administrative priority claims pursuant to 11 U.S.C. §§ 503(b) and/or 365(d)(3) in the amounts set forth as in Schedule A in full and final satisfaction of the administrative expense claims for services allegedly provided to the Debtors after the Petition Date. The Administrative Claims shall receive distributions simultaneously and on the same priority as all other allowed administrative expense claims under the Bankruptcy Code.

4. Rejection Damages. The Debtor and Landlords agree that the Rejection Damages Claims shall be allowed general unsecured claims pursuant to 11 U.S.C. § 502(b)(6) in the amounts set forth as in Schedule A in full and final satisfaction of the Landlords' claims against the Debtor under the Leases prior to the Petition Date. The Rejection Damages Claims shall receive distributions simultaneously and on the same priority as all other allowed general unsecured claims under the Bankruptcy Code.

5. Allowance of Claims. The Administrative Claims and Rejection Damages Claims are allowed based on this Stipulation and without any need for Landlords to file proofs of claim with the Bankruptcy Court.

6. 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.

7. 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.

8. 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.

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

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

11. 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: June 17, 2024  
Jericho, New York

**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: June 17, 2024  
Los Angeles, California

**BALLARD SPAHR LLP**  
Counsel to Dimond Center Holdings, LLC, Fashion  
Outlets of Chicago LLC, Macerich Fresno Limited  
Partnership, Brooklyn Kings Plaza LLC, and  
Macerich Queens Expansion, LLC

By:                     *s/ Nahal Zarnighian*                      
Nahal Zarnighian  
2029 Century Park East, Suite 1400  
Los Angeles, California 90067-2915

**SCHEDULE A – LEASES AND CLAIMS**

	<b>PROPERTY</b>	<b>ALLOWED ADMINISTRATIVE CLAIMS</b>	<b>ALLOWED UNSECURED CLAIMS</b>
1.	Dimond Center Holdings LLC Dimond Center – Space No. 103 City of Anchorage, Anchorage Municipality, Alaska	\$5,942.29	\$53,978.42
2.	Fashion Outlets of Chicago, LLC Fashion Outlets of Chicago – Space No. 1089 City of Chicago, County of Cook, Illinois	\$1,101.41	\$18,980.40
3.	Macerich Fresno Limited Partnership Fashion Fair – Space M09 City of Fresno, County of Fresno, California	\$15,925.23	\$140,211.22
4.	Brooklyn Kings Plaza LLC Kings Plaza – Space 2230 City of Brooklyn, County of Kings, New York	\$38,283.82	\$323,015.04
5.	Macerich Queens Expansion LLC Queens Center – Space No. 2040 City of Elmhurst, County of Queens, New York	\$31,551.23	\$41,157.95