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**PROPOSED ATTORNEYS FOR DEBTOR**

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

In re: § Chapter 11  
§  
TPP ACQUISITION, INC. d/b/a The § Case No. 16-33437-hdh-11  
Picture People, §  
§  
Debtor. §

**DEBTOR’S EXPEDITED SECOND OMNIBUS MOTION TO REJECT CERTAIN  
UNEXPIRED REAL PROPERTY LEASES PURSUANT TO BANKRUPTCY CODE  
§ 365 AND BANKRUPTCY RULE 6006 NUNC PRO TUNC TO THE PETITION DATE**

**IF YOU HAVE RECEIVED THIS MOTION AND ARE A LESSOR OF  
THE DEBTOR, PLEASE REVIEW EXHIBIT A, ATTACHED HERETO,  
TO DETERMINE IF THIS MOTION AFFECTS YOUR RIGHTS  
THEREUNDER.**

**AN EXPEDITED HEARING HAS BEEN REQUESTED ON THIS  
MATTER FOR SEPTEMBER 7, 2016 AT 10:00 AM (CDT). IF YOU  
OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN  
WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF  
THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT,  
YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE  
BANKRUPTCY COURT PRIOR TO THE HEARING DATE. YOU MUST  
SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT  
YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE  
PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.**



TPP Acquisition, Inc. d/b/a The Picture People (“TPP” or the “Debtor”), hereby files its *Expedited Second Omnibus Motion to Reject Certain Unexpired Real Property Leases Pursuant to Bankruptcy Code § 365 and Bankruptcy Rule 6006 Nunc Pro Tunc to the Petition Date* (the “Motion”), and in support thereof would respectfully show the Court as follows:

**Jurisdiction**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The Motion constitutes a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**Background**

2. To preserve the value of its assets and restructure its financial affairs, on September 2, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the above captioned case (the “Chapter 11 Case”). The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. To date, no official committee of unsecured creditors, equity interest holders, or other parties in interest has been appointed in the Case.

4. A detailed description of the Debtor and its business, and the facts and circumstances supporting the Motion and the Debtor’s Chapter 11 Case are set forth in greater detail in the *Statement of Background Information and Declaration of Stuart Noyes, Chief Restructuring Officer of TPP Acquisition, Inc. d/b/a The Picture People in Support of Debtor’s Chapter 11 Petition and First-Day Motions* [Docket No. 3] (the “First Day Declaration”), which is incorporated herein by reference.

5. Through this Motion the Debtor is seeking to reject the unexpired leases identified on **Exhibit A**, attached hereto (the “Leases”), relating to 14 mall-based studios that have underperformed and/or otherwise generated losses for the Debtor (the “Rejected Store Locations”). Prior to the Petition Date, the Debtor either closed or was locked out of all the Rejected Store Locations.

6. The Debtor believes that the landlords at each of the Rejected Store Locations are already aware that the Debtor has vacated and surrendered the premises of each of the Rejected Store Locations. However, out of an abundance of caution, contemporaneously with the filing of this Motion, the Debtor is sending notices to each of the landlords at the Rejected Store Locations informing the landlords that as of August 31, 2016 or such earlier date as might be applicable, the Debtor had vacated the premises at each of the Rejected Store Locations and was surrendering possession of each of the Rejected Store Locations (each a “Surrender Notice”).

### **Relief Requested**

7. By this Motion, the Debtor seeks an order rejecting the Leases pursuant to Bankruptcy Code § 365, effective *nunc pro tunc* to Petition Date.

### **Basis for Relief Requested**

#### **A. Rejection of the Leases is Justified**

8. Bankruptcy Code § 365(a) provides, in pertinent part, as follows: “the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Rejection under § 365 is generally intended to enable a debtor to relieve itself and the bankruptcy estate from burdensome and unprofitable contracts and leases in order to preserve and maximize the value of the bankruptcy estate. *See Stewart Title Gaur. Co. v. Old Rep. Nat’l Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (noting that section 365

“allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.”) (citation omitted). Bankruptcy courts use the business judgment standard to determine whether to approve a lease or contract rejection. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (quoting *Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 318 U.S. 523, 550 (1943)) (“It is well established that ‘the question whether a lease should be rejected . . . is one of business judgment.’”).

9. In the sound exercise of its business judgment, the Debtor has determined that rejecting the Leases is in the best interests of its estate and creditors. Rejection of the Leases and closure of the Debtor’s stores at each rejected Lease location is central to the Debtor’s effort to return its business to profitability. For each of the Leases, the Debtor has (i) been evicted from the Rejected Store Location and has determined that the Lease may have been terminated or that it would be otherwise unduly burdensome to re-enter the premises and/or (ii) carefully reviewed the revenues generated and expenses incurred at the Rejected Store Locations and determined that the stores are unprofitable. The Rejected Store Locations are not necessary to the Debtor’s business and are a drain on the Debtor’s resources.

10. Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) allows a debtor to file an omnibus motion to reject multiple executory contracts or unexpired leases. FED. R. BANKR. P. 6006(f). Such an omnibus motion to reject multiple contracts and leases must (1) conspicuously state the parties subject to the rejection, (2) list such parties alphabetically and identify their contract or leases, (3) be numbered consecutively with other omnibus motions, and (4) be limited to no more than 100 executory contracts or unexpired leases. FED. R. BANKR. P. 6006(f). The Debtor has listed the parties that are subject to this

Motion in Exhibit A and those parties are listed alphabetically. This Motion is numbered consecutively and no more than 100 contracts are listed for rejection herein. The Debtor submits that it has satisfied the requirements of Bankruptcy Rule 6006.

**B. Rejection of the Leases *Nunc Pro Tunc* to the Petition Date is Appropriate**

11. The Debtor requests that the rejection of the Leases be applied retroactively to the Petition Date. There is substantial authority permitting a rejection retroactive to the later date of the date the motion seeking rejection is filed and the date the lease space is vacated. *See In re Cafeteria Operators, L.P.*, 299 B.R. 384 (Bankr. N.D. Tex. 2003) (approving rejection of closed restaurants retroactively to the later of the date the motion to reject was filed or the date the leased space was vacated); *In re Amber's Stores, Inc.*, 193 B.R. 819, 827 (Bankr. N.D. Tex. 1996) (“nothing precludes a bankruptcy court, based on the equities of the case, from approving the trustee’s rejection of a non-residential real property lease retroactively to an earlier date.”); *see also In re At Home Corp.*, 392 F.3d 1064, 1071 (9th Cir. 2004), *cert. denied*, 546 U.S. 814 (2005) (holding that a bankruptcy court, in exercising its equitable powers, may approve the retroactive rejection of a non-residential real property lease; lease was rejected retroactively to date motion was filed where debtor never had possession of leased premises); *In re Thinking Machs. Corp.*, 67 F.3d 1021, 1028-1029 (1st Cir. 1995) (acknowledging that a bankruptcy court “has the equitable power, in suitable cases, to order a rejection to operate retroactively”); *In re CCI Wireless, LLC*, 279 B.R. 590, 595 (Bankr. D. Colo. 2002), *aff'd*, 297 B.R. 133 (D. Colo. 2003) (holding that retroactive rejection may be allowed when principles of equity so dictate and allowed rejection effective as of the filing of the motion to reject).

12. Additionally, other courts in this district have granted relief similar to the relief sought herein. *See, e.g., In re Forest Park Medical Center at Southlake, LLC*, Case No. 16-

40273-rfn-11 (Bankr. N.D. Tex.); *In re Centennial Beverage Group, LLC*, Case No. 12-37901-bjh-11 (Bankr. N.D. Tex.).

13. Here, the equities weigh in favor of granting the relief requested with respect to the Leases as of the Petition Date. The Debtor surrendered, or was locked out of, each of the Rejected Store Locations prior to the Petition Date. Contemporaneously with the filing of this Motion, the Debtor sent the Surrender Notice in accordance with the notice provisions in each of the Leases. The Debtor believes that previous notices of surrender have been provided or that the landlords of the Leases were otherwise aware of the fact that the Debtor had vacated the premises of the Rejected Store Locations. The Leases are no longer of value to the estate or its creditors and rejection effective as of the Petition Date will permit the Debtor to avoid paying rent for the Rejected Store Locations, and thereby minimize the Debtor's administrative expense obligations.

14. Based on the foregoing facts and circumstances, the Debtor submits that the rejection of the Leases in the manner set forth above is supported by sound business judgment, and is necessary, prudent, and in the best interests of the Debtor, its estate, and its creditors.

#### **Notice**

15. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) the Debtor's secured creditors; (iii) the landlords listed on Exhibit A to the Motion; (iv) those persons who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rules 2002 and 3017; (v) counsel for and the members of any official committees appointed by this Court; (vi) the 20 largest unsecured creditors of the Debtor; and (vii) all governmental agencies having a regulatory or statutory interest in this case. No other or further notice need be provided.

WHEREFORE, the Debtor respectfully requests that the Court (i) grant the Motion and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 2nd day of September, 2016.

**HAYNES AND BOONE, LLP**

By: /s/ Robert D. Albergotti

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State Bar No. 24013306  
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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
TPP ACQUISITION, INC. d/b/a The	§	Case No. 16-33437-hdh-11
Picture People,	§	
	§	
Debtor.	§	

**ORDER GRANTING DEBTOR’S EXPEDITED SECOND OMNIBUS MOTION TO  
REJECT CERTAIN UNEXPIRED REAL PROPERTY LEASES PURSUANT TO  
BANKRUPTCY CODE § 365 AND BANKRUPTCY RULE 6006 NUNC PRO TUNC TO  
THE PETITION DATE**

On \_\_\_\_\_, 2016, the Court conducted a hearing to consider the *Debtor’s Expedited Second Omnibus Motion to Reject Certain Unexpired Real Property Leases Pursuant to Bankruptcy Code § 365 and Bankruptcy Rule 6006 Nunc Pro Tunc to the Petition Date* (the “Motion”), filed by the above-captioned debtor (the “Debtor”). The Court finds that: (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this



is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtor, its estate, and its creditors; (iv) proper and adequate notice of the Motion has been given and no other or further notice is necessary; and (v) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein.

Therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to Bankruptcy Code § 365 and Bankruptcy Rule 6006, the leases included on Exhibit A of this Order (collectively, the “Leases”) shall be deemed rejected effective as of the Petition Date without further order of the Court and without the need for further action by the Debtor or any other party.
3. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
4. To the extent that Bankruptcy Rule 6004(h) is applicable, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
5. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

### END OF ORDER ###

**Submitted by:**

Robert D. Albergotti  
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Ian T. Peck  
State Bar No. 24013306

Jarom J. Yates  
State Bar No. 24071134

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# **EXHIBIT “A”**

Lease Counterparty	Lease Location	Counterparty Address	Property Location
199 Clackamas (Lakeline Developers)	Lakeline	Lakeline Developers 225 West Washington St. Indianapolis, IN 46204-3438	11200 Lakeline Mall Drive Cedar Park, TX 78613
Centennial Real Estate (Fox Valley Mall LLC)	Fox Valley	Fox Valley Mall LLC 11601 Wilshire Boulevard, 11th Floor Los Angeles, California 90025 Attn: Legal Department	1428 Fox Valley Ctr E17 Aurora, IL 60504
Edgewood Properties	Cherry Hill - Garden State	1260 Stelton Road Edgewood Properties Attn: Andrea Piscataway, NJ 08854-5282	957 Haddonfield Road 160 Cherry Hill, NJ 08002
General Growth Properties, Inc.	Valley Plaza	Valley Plaza Mall c/o Valley Plaa Mall, LP 110 N. Wacker Dr. Chicago, IL 60606 Attn: Law/Lease Administration Department  Valley Plaza Mall 2701 Ming Ave. Bakersfield, CA 93304 Attn: General Manager	2701 Ming Avenue 234 Bakersfield, CA 93304
General Growth Properties, Inc.	Perimeter	4400 Ashford Dunwoody Road #1685 Atlanta, GA 30346	4400 Ashford Dunwoody Rd. 1685 Atlanta, GA 30346
General Growth Properties, Inc. (GGP Meadows Mall L.L.C.)	The Meadows	GGP Meadows Mall L.L.C. c/o Meadows Mall 110 N. Wacker Dr. Chicago, IL 60606 Attn: Law/Lease Administration Dept.  Meadows Mall 4300 Meadows Lane, Suite 10 Las Vegas, NV 89107 Attn: General Manager	4300 Meadows Lane 112 Las Vegas, NV 89107
General Growth Properties, Inc. (Park Mall L.L.C.)	Park Place	Park Mall L.L.C. c/o Park Place 110 N. Wacker Dr. Chicago, IL 60606  Park Place 5870 East Broadway Blvd. Tucson, AZ 85711 Attn: General Manager	5870 E. Broadway Blvd. 362 Tucson, AZ 85711
JLL (Chico Mall Investors, LLC)	Chico Mall	Chico Mall Investors, LLC 900 North Michigan Avenue Suite 1450 Chicago, IL 60611	1950 E. 20th. Street B233 Chico, CA 95928
Macerich Co. (Macerich North Park Mall LLC)	Northpark	Macerich North park Mall LLC 225 West Washington Street Indianapolis, Indiana 46204	320 West Kimberly 236 Davenport, IA 52806
Simon Property Group (MNH Mall, LLC)	New Hampshire	MNH Mall, LLC 225 West Washington St. Indianapolis, Indiana 46204	1500 S. Willow St., E139 E139 Manchester, NH 03103
Simon Property Group (Pheasant Lane Realty Trust)	Pheasant Lane	Pheasant Lane Realty Trust 225 West Washington St. Indianapolis, IN 46204	310 Danial Webster Hwy, W113 W113 Nashua, NH 03060

Lease Counterparty	Lease Location	Counterparty Address	Property Location
Steadfast Properties (Steadfast Sunrise V, LLC)	Sunrise Mall	<p>Steadfast Commercial Management Co., Inc.            Attn: Ann Marie Del Rio,            Chief Administrative Officer            18100 Von Karman, Suite 500            Irvine, CA 92612</p> <p>Steadfast Commercial Management Co., Inc.            Attn: Lisa Whitney, Vice President            18100 Von Karman, Suite 500            Irvine, CA 92612</p>	6166 Sunrise Blvd. A-4A Citrus Heights, CA 95610
Westfield Corp. (Oakridge Mall LLC)	Oakridge	Oakridge Mall LLC 11601 Wilshire Boulevard, 11th Floor Los Angeles, California 90025 Attention: Legal Department	925 Blossom Hill Road D16 San Jose, CA 95123
Westfield Corp. (Roseville Shoppingtown LLC)	The Galleria at Roseville	Roseville Shoppingtown LLC 11601 Wilshire Blvd., 11th Floor Los Angeles, CA 90025 Attn: Legal Department	1151 Galleria Blvd. 242 Roseville, CA 95678