

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

In re:	)	
	)	
SOFA EXPRESS, INC.	)	Case No. 07-09024
	)	Chapter 11
Debtor.	)	Judge Paine
_____	)	

**ORDER AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF  
LEASE FOR STORE LOCATED AT 4217 WEST WENDOVER  
AVENUE, GREENSBORO, NORTH CAROLINA TO  
KLAUSSNER RETAIL HOLDINGS, INC.**

This matter coming before the Court on the Motion of Debtor for an Order Authorizing the Assumption and Assignment of Lease for Store and Warehouse located at 4217 West Wendover Avenue, Greensboro, North Carolina (the "Greensboro Lease") to Klaussner Retail Holdings, Inc. ("KRH") (the "Motion"), filed by the above captioned debtor (the "Debtor") and the Amended Objection of DDR-SAU Wendover Phase II, L.L.C. (the "Landlord") to the Motion (the "Landlord's Objection"); the Court having reviewed the Motion and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); and the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. § 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (d) notice of the Motion and the Hearing was sufficient under the

circumstances, (e) the Debtor's proposed assumption and assignment of the Greensboro Lease is a reasonable, informed and good faith exercise of the Debtor's business judgment; and (f) the conditions for assumption of the Greensboro Lease under Section 365 of the Bankruptcy Code, including the cure of any existing defaults thereunder, have been satisfied; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish grounds for the relief granted herein; and the Landlord's Objection having been resolved;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.
3. The Debtor is authorized to assume and assign the Greensboro Lease to KRH (including all of seller's right, title and interest in and to all lighting fixtures in, at, on or about the Premises), free and clear of all liens, claims and encumbrances, pursuant to Section 363 and 365 of the Bankruptcy Code and Bankruptcy Rule 6006.
4. The Debtor's (a) assumption of the Greensboro Lease and (b) assignment of the Greensboro Lease (including all lighting fixtures) to KRH is hereby approved, pursuant to Sections 363 and 365 of the Bankruptcy Code, effective as of the first calendar date following the Vacate Date (as defined in Section 6.2 of the Agency Agreement). The Debtor shall provide notice of the Vacate Date to the Landlord and KRH five days prior to the Vacate Date. The Debtor shall remain obligated to the Landlord for all obligations due and owing to the Landlord under the Greensboro Lease through and including the Vacate Date and the Debtor agrees that it shall timely perform

all of its obligations thereunder. Notwithstanding Section 6.2 of the Agency Agreement, the Vacate Date shall be no later than April 30, 2008.

5. In full satisfaction of the Debtor's obligation under Section 365(b)(1) of the Bankruptcy Code to cure any existing defaults under the Greensboro Lease in connection with the assumption authorized herein, the Debtor shall pay to the Landlord (a) in cash no later than the effective date of the assumption and assignment to KRH \$78,292.51<sup>1</sup> on account of Debtor's defaults prior to March 31, 2008; (b) for base rent in the amount of \$22,139.58 for April 2008 when it comes due, and for estimated common area expenses and real estate taxes for April 2008 in the amount of no greater than \$7,258.31<sup>2</sup> (collectively, "April Rent"); and (c) any and all amounts due and owing under the Greensboro Lease for year-end reconciliations for calendar years 2007 and 2008, but limited for the calendar year 2008 to pro rata amount for January 1, 2008 through the Vacate Date, which are capped at \$10,000, and which shall be held in escrow by the Debtor until such time as the year end reconciliation amounts have been definitively determined by Landlord, but no later than March 1, 2009, and then paid to the Landlord within five (5) business days upon providing the final invoice and statement to the Debtor (subparagraph's 5(a) and 5(c) are collectively, the "Cure Amount"). Landlord agrees that its attorneys' fees and costs will not be part of the

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<sup>1</sup> Per the terms of the Designation Rights Agreement, the Debtor shall pay \$75,000 towards the amount required to cure obligations under the Greensboro Lease, satisfying in full the Debtor's obligation to pay cure costs under the Agency Agreement and the Designation Rights Agreement. Per the terms of the Agency Agreement and Designation Rights Agreement, the Agent is obligated to pay all amounts due and owing to cure obligations under the Greensboro Lease that exceed the \$75,000 paid by the Debtor. However, the Agent and KRH have agreed that KRH will pay any and all cure obligations that exceed \$75,000 up to an amount less than or equal to \$50,000.

<sup>2</sup> To the extent the Vacate Date and the effective date of the assumption occurs prior to April 30, 2008, KRH is obligated to reimburse the Debtor for amounts paid by the Debtor for April 2008 base rent, common area expenses, and taxes on a pro rata basis for the period from the effective date through the remainder of April 2008.

Cure Amount. Except with respect to the Cure Amount and April Rent (to the extent not paid), the Landlord shall be barred and enjoined from asserting against the Debtor's estate any claims for defaults under the Greensboro Lease existing as of the Vacate Date (whether or not such claims have been included in filed proofs of claim), except for claims that may be made after the Vacate Date by third parties for personal injury or property damage occurring on or prior to the Vacate Date, which would be covered under the Debtor's liability insurance policies.

6. Any and all obligations arising under the Greensboro Lease which are attributable to the period prior to the Vacate Date, including but not limited to the Cure Amount, shall be the obligation of the Debtor or the Agent (as such obligations are apportioned between the Debtor and the Agent pursuant to the Agency Agreement and the Designation Rights Agreement). KRH shall not be responsible for any obligations under the Greensboro Lease arising on or prior to the Vacate Date and/or attributable to periods on or prior to the Vacate Date, except, that KRH shall be solely responsible for its pro rata share from the day after the Vacate Date through the remainder of 2008 for any and all year end reconciliation(s) that become due and owing under the Greensboro Lease for calendar year 2008. KRH's parent, Klaussner Corporation, has agreed by separate guaranty (the "Guaranty") that it will guaranty KRH's obligations under the Greensboro Lease through and including December 31, 2008. Commencing January 1, 2009, the Guaranty will be limited to 3 months' Rent (as defined in the lease agreement underlying the Greensboro Lease).

7. Upon the assignment becoming effective pursuant to this Order, the Debtor shall deliver to KRH an assignment and assumption of lease, generally in the

form attached as Exhibit A, and a bill of sale regarding the lighting fixtures, generally in the form attached as Exhibit B.

8. Any objection to the assumption and assignment of the Greensboro Lease that has not been withdrawn, waived or settled, and all reservations of rights included in such objections or addressed by this Order, are hereby overruled.

9. The Debtor is authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

10. Except as otherwise provided herein, all persons holding interests in or claims against the Debtor or the Debtor's predecessors, or the Debtor's estate of any kind or nature whatsoever arising prior to the entry of this Order shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such interest of any kind or nature whatsoever against KRH, its property, its successors and assigns or the Greensboro Lease. Following the entry of this Order, no holder of an interest in or claim against the Debtor or its estate shall interfere with KRH's right to use and enjoyment of the Greensboro Lease based on or related to such interest or claim or any actions that the Debtor might take.

11. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

<p><b>THIS ORDER WAS SIGNED AND ENTERED ELECTRONICALLY AS INDICATED AT THE TOP OF THE FIRST PAGE.</b></p>
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APPROVED FOR ENTRY:

/s/ William L. Norton III

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*Attorneys for Debtor*

## ASSIGNMENT AND ASSUMPTION OF LEASE

**THIS ASSIGNMENT AND ASSUMPTION OF LEASE** (this "Agreement") is made as of \_\_\_\_\_, 2008, by and between **SOFA EXPRESS, INC.**, as Debtor and Debtor-in-Possession, with an address at \_\_\_\_\_ ("Assignor") and **KLAUSSNER RETAIL HOLDINGS, INC.**, with an address at P.O. Office Drawer 220, Asheboro, North Carolina 27204 ("Assignee").

**WHEREAS**, under a lease dated as of November 12, 2003 and annexed hereto as Exhibit A (the "Lease") by and between Assignor, as tenant, and Wendover Village, LLC (as assigned to Inland Southeast Wendover Phase II, LLC), as landlord (the "Landlord"), Landlord leased to Assignor certain retail store space located at 4217 West Wendover Avenue, Greensboro, North Carolina and more particularly described in the Lease (the "Premises"); and

**WHEREAS**, Assignor desires to assign all of Assignor's right, title and interest in and to the Lease to Assignee, and Assignee desires to assume all of Tenant's obligations and enjoy all of Tenant's rights under the Lease, all in accordance with the following terms and provisions;

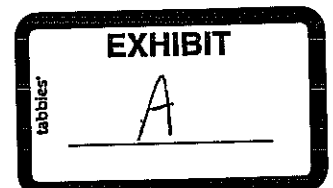
**NOW, THEREFORE**, in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, receipt of which by Assignor is hereby acknowledged, and in further consideration of the mutual promises, covenants and conditions herein contained, the parties, intending to be legally bound, do hereby agree as follows:

1. Assignor hereby assigns to Assignee, and Assignee hereby accepts and assumes from Assignor, all right, title, and interest of Assignor in and to the Lease, effective as of \_\_\_\_\_, 2008 (said date the "Effective Date"), all as fully as though Assignee were the original named Tenant under the Lease. From and after the Effective Date, Assignee shall perform all of the obligations of the Tenant under the Lease and enjoy all of Tenant's rights under the Lease, and Assignor will be released from any and all obligations under the Lease arising from and after the Effective Date. Assignor shall not be liable for any loss, liability, damage, claim or expense whatsoever (including, but not limited to, reasonable attorneys' fees and disbursements) arising prior to the date hereof in connection with the Lease.

2. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

3. The validity, performance, construction and effect of this Agreement shall be governed by the laws of the State of North Carolina, without regard to the law and principles regarding conflicts of law.

4. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original instrument, and all of which shall be deemed to constitute but one and the same agreement.



**IN WITNESS WHEREOF**, the parties have executed and delivered this Agreement as of the date first set forth above.

**ASSIGNOR:**

**SOFA EXPRESS, INC.**, as Debtor and  
Debtor-in-Possession

By:\_\_\_\_\_

**ASSIGNEE:**

**KLAUSSNER RETAIL HOLDINGS,  
INC.**

By:\_\_\_\_\_



STATE OF )  
 ) ss.:  
COUNTY OF )

On the \_\_\_ day of \_\_\_\_\_ in the year 2008 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument in \_\_\_\_\_ [city, state].

\_\_\_\_\_  
Notary Public

STATE OF )  
 ) ss.:  
COUNTY OF )

On the \_\_\_ day of \_\_\_\_\_ in the year 2008 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument in \_\_\_\_\_ [city, state].

\_\_\_\_\_  
Notary Public

**BILL OF SALE**

**THIS BILL OF SALE** is dated as of \_\_\_\_\_, 2008 and is made by **SOFA EXPRESS, INC.**, debtor and debtor-in-possession under Case No. 07-09204 in the United States Bankruptcy Court for the Middle District of Tennessee (the "Seller"), in favor of **KLAUSSNER RETAIL HOLDINGS, INC.** (the "Buyer").

**W I T N E S S E T H:**

**WHEREAS**, pursuant to an Assignment and Assumption of Lease of even date herewith, the Seller is assigning to the Buyer all of the Seller's right, title and interest in and to that certain lease dated as of November 12, 2003 by and between the Seller, as tenant, and Wendover Village, LLC (as assigned to Inland Southeast Wendover Phase II, LLC), as landlord, for certain retail store space located at 4217 West Wendover Avenue, Greensboro, North Carolina (the "Leased Premises");

**NOW, THEREFORE**, in consideration of TEN and NO/100 DOLLARS (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller does hereby sell, convey, assign, transfer and deliver unto the Buyer and the Buyer's successors and assigns, forever, all of the Seller's right, title and interest in and to all lighting fixtures located in, at, on or about the Leased Premises (the "Lighting Fixtures").

**TO HAVE AND TO HOLD** the Lighting Fixtures unto the Buyer and its successors and assigns, **FOREVER**.

**THIS BILL OF SALE** may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

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IN WITNESS WHEREOF, the undersigned has executed this instrument on the date first above written.

SOFA EXPRESS, INC., as debtor and as debtor-in-possession

By: \_\_\_\_\_  
Name:  
Title:

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2008 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument in \_\_\_\_\_  
\_\_\_\_\_ [insert city, state].

\_\_\_\_\_  
Notary Public