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and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

**CENTURY 21 DEPARTMENT STORES LLC,
et al.,**

Debtors.¹

Chapter 11

Case No. 20-12097 (SCC)

(Joint Administration Requested)

**MOTION OF DEBTORS FOR AUTHORIZATION TO
PAY CERTAIN PREPETITION TAXES AND FEES**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

¹ The Debtors in these chapter 11 cases (the “**Chapter 11 Cases**”), along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Century 21 Department Stores LLC (4073), L.I. 2000, Inc. (9619), C21 Department Stores Holdings LLC (8952), Giftco 21 LLC (0347), Century 21 Fulton LLC (4536), C21 Philadelphia LLC (2106), Century 21 Department Stores of New Jersey, L.L.C. (1705), Century 21 Gardens Of Jersey, LLC (9882), C21 Sawgrass Blue, LLC (8286), C21 GA Blue LLC (5776), and Century Paramus Realty LLC (5033). The Debtors’ principal place of business is: 22 Cortlandt Street, 5th Floor, New York, NY 10007.

Century 21 Department Stores LLC and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (the “**Motion**”):

Background

1. On the date hereof (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

2. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

3. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the Petition Date is set forth in the *Declaration of Norman R. Veit Jr. Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York*, sworn to on the date hereof (the “**Veit Declaration**”),² and the *Debtors’ Memorandum in Support of Chapter 11 Filings*, each filed with the Court contemporaneously herewith and incorporated by reference herein.

Jurisdiction

4. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference M-431, dated January 31, 2012

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Veit Declaration.

(Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The Debtors confirm their consent, pursuant to Rule 7008 of the Bankruptcy Rules, to the entry of a final order by the Bankruptcy Court in connection with this Application to the extent that it is later determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

Relief Requested

6. By this Motion, pursuant to sections 105(a), 363(b), 507(a), and 541 of the Bankruptcy Code, the Debtors request authority, but not direction, to pay certain taxes, assessments, fees, and other charges in the ordinary course of business (without regard to whether such obligations accrued or arose before or after the Petition Date), including any such taxes, assessments, fees, and charges subsequently determined upon audit, or otherwise, to be owed (collectively, the “**Taxes and Fees**”).

7. A proposed form of order granting the relief requested herein on an interim basis is annexed hereto as **Exhibit A** (the “**Proposed Interim Order**”), and a proposed form of order granting the relief requested on a final basis is attached as **Exhibit B** (the “**Proposed Final Order**”),

The Debtors’ Taxes and Fees

8. In the ordinary course of operating their businesses, the Debtors collect, withhold and incur an assortment of Taxes and Fees that they remit periodically to various federal, state and local taxing, licensing, regulatory and other governmental authorities (collectively, the “**Authorities**”).

9. The Taxes and Fees generally fall into the following categories: (i) Sales and Use Taxes, (ii) Franchise Taxes, and (iii) Real Property Taxes, (each as defined and described below).

10. The Debtors believe that many of the Taxes and Fees collected prepetition are not property of the Debtors' estates but, rather, are held in trust for the Authorities. The Debtors also seek to pay certain Taxes and Fees to, among other things, forestall Authorities from taking actions that may interfere with the Debtors' administration of their chapter 11 cases. Such interference could include bringing personal liability actions against directors, officers, and other key employees (whose full-time attention to the Debtors' chapter 11 cases is required to avoid business disruptions and to maximize recoveries to the Debtors' creditors), asserting liens on the Debtors' property, or assessing penalties or significant interest on past-due taxes. In addition, non-payment of the Taxes and Fees may give rise to priority claims pursuant to section 507(a)(8) of the Bankruptcy Code. Accordingly, the Debtors submit that the relief requested herein is in the best interest of the Debtors' estates.

A. Sales and Use Taxes

11. The Debtors incur or collect from customers an assortment of state and local sales taxes in connection with the sale of various products and services to their customers ("**Sales Taxes**"). Sales Taxes are essentially general consumption taxes charged at the point of purchase for certain goods and services, which are usually set by the applicable Authority as a percentage of the retail price of the good or service purchased.

12. The Debtors incur use taxes on account of the purchase of various inventory, supplies, or other goods utilized by the Debtors in the ordinary course of business ("**Use Taxes**" and, together with Sales Taxes, "**Sales and Use Taxes**"). Use Taxes typically arise if a supplier

does not have business operations in the state in which it is supplying goods and, therefore, does not charge sales tax on goods that are otherwise taxable to the purchaser.

13. The Debtors are required to remit Sales and Use Taxes to the applicable Authorities on a monthly basis, generally paying such taxes on the 20th of each month. Although the Debtors believe they are current with respect to their payment of Sales and Use Taxes, the Debtors estimate that, as of the Petition Date, they owe approximately \$1.285 million in prepetition Sales and Use Taxes that have not yet become due and payable. Additionally, the Debtors estimate that approximately \$1.073 million of Sales and Use Taxes will become due and payable within twenty-one (21) days following the Petition Date.

B. Franchise Taxes

14. The Debtors incur franchise taxes or fees assessed by certain Authorities to operate their businesses in the applicable jurisdiction (“**Franchise Taxes**”). Franchise Taxes vary by jurisdiction but are approximately \$10,000 per month. Although the Debtors believe that they are current with respect to their payment of Franchise Taxes, the Debtors estimate that, as of the Petition Date, they have accrued approximately \$10,000 in prepetition Franchise Taxes that have not yet become due and payable. The Debtors estimate that \$10,000 in Franchise Taxes will become due and payable within twenty-one (21) days following the Petition Date.

C. Real and Personal Property Taxes

15. State and local laws in the jurisdictions where the Debtors operate generally grant the applicable Authorities the power to levy property taxes against the Debtors’ real and personal property (“**Real Property Taxes**”). Real Property Taxes may create a lien on or security interest in the property so taxed. The Debtors generally pay Real Property Taxes in one of two ways: (i) direct payment to the relevant Authorities if the Debtors lease underlying property in a jurisdiction that requires lessees to pay Real Property Taxes directly to the Authorities

(collectively, “**Direct Real Property Taxes**”); or (ii) reimbursement to landlords that pay the property taxes on certain properties that the Debtors’ lease (“**Indirect Real Property Taxes**”). The Debtors seek authority to pay all Real Property Taxes, including Indirect Real Property Taxes for leases the Debtors expect to assume.

16. The Debtors have four leases for which they remit Direct Real Property Taxes to the applicable Authorities, for which they paid \$324,329.36 to the applicable Authorities on June 30, 2020. The Debtors do not believe that any Direct Real Property Taxes will become due and payable within twenty-one (21) days following the Petition Date.

Relief Requested Should Be Granted

17. Ample cause exists to authorize the payment of the Taxes and Fees, including that (i) certain of the Taxes and Fees may not be property of the Debtors’ estates; (ii) the failure to pay the Taxes and Fees may interfere with the Debtors’ continued operations and chapter 11 strategy; (iii) the failure to pay prepetition Property Taxes may increase the scope of secured and priority claims held by the applicable Authorities against the Debtors’ estates; (iv) the payment of Taxes and Fees affects only the timing of payments, because most, if not all, of the Taxes and Fees are afforded priority status under the Bankruptcy Code; and (v) the Court has authority to grant the requested relief under sections 105(a) and 363(b) of the Bankruptcy Code.

A. Certain of the Taxes and Fees May Not Be Property of the Debtors’ Estates

18. Section 541(d) of the Bankruptcy Code provides, in relevant part:

Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate . . . only to the extent of the debtor’s legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

11 U.S.C. § 541(d).

19. Many of the Taxes and Fees constitute “trust fund” taxes, which the Debtors are required to collect from the customers and hold in trust for payment to the Authorities. As a result, courts have held that such funds do not constitute property of the Debtors’ estates. *See, e.g., Begier v. IRS*, 496 U.S. 53, 58-60 (1990) (holding that any prepetition payment of trust fund taxes is not a transfer subject to avoidance because such funds are not the debtor’s property); *Shank v. Walsh, State Dept. of Revenue (In re Shank)*, 792 F.2d 829, 833 (9th Cir. 1986) (sales tax required by state law to be collected by sellers from their customers is a “trust fund” tax and not released by bankruptcy discharge); *DeChiaro v. N.Y. State Tax Comm’n*, 760 F. 2d 432, 435-36 (2d Cir. 1985) (same). To the extent these “trust fund” taxes are collected, they are not property of the Debtors’ estates under section 541(d). *See, e.g. In re Am. Int’l Airways, Inc.*, 70 B.R. 104-6 (Bankr. E.D. Pa. 1987); *Dameron v. Tyler (In re Dameron)*, 155 F.3d 718, 721-22 (4th Cir. 1998) (funds from various lenders held by closing agent in trust for designated third parties not property of debtor’s estate). Accordingly, the Debtors generally do not have an equitable interest in such funds, and they should be permitted to pay the applicable Taxes and Fees to the Authorities as they become due.

B. Payment of the Taxes and Fees Eliminate Unnecessary Distractions from Administration of Chapter 11 Estates

20. If the Debtors fail to pay the Taxes and Fees in a timely manner, the Authorities may assert as to some that the Debtors’ directors and officers are personally liable for payment of the Taxes and Fees. This is the case even if such a failure to pay such Taxes and Fees was not a result of malfeasance on their part. Any claims or litigation related to the failure to pay Taxes and Fees would be distracting for the Debtors, their directors and officers, as well as this Court, which may be asked to entertain various motions seeking injunctions relating to potential court actions. As such, it is in the best interest of the Debtors’ estates to eliminate the possibility

of these distractions and to enable the Debtors to continue operating without interruption and focusing on their restructuring efforts.

C. Certain of the Taxes and Fees May Be Secured or Entitled to Special Treatment

21. Certain of the Taxes and Fees may be subject to tax liens. Arguably, the relation back of a tax lien to the assessment or tax status date generally does not affect the enforceability of the tax lien against a debtor or violate the automatic stay imposed by section 362(a) of the Bankruptcy Code. *See* 11 U.S.C. § 362(b)(3). In fact, the creation and perfection of such a lien may not violate the automatic stay—even if the lien arises under applicable law for taxes due after the Petition Date. *See* 11 U.S.C. § 362(b)(18) (automatic stay does not apply to “the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not *ad valorem*, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition.”); *see also In re Gifaldi*, 207 B.R. 54, 56 n.1 (Bankr. W.D.N.Y. 1997) (noting that section 362(b)(18) reversed case law that had held that the creation of a statutory lien for *ad valorem* property taxes violated the automatic stay). Thus, the Debtors’ failure to pay their Real Property Taxes or Personal Property Taxes, for example, may inadvertently increase the scope of secured claims held against the Debtors’ estates.

22. Indeed, absent the granting of the relief requested herein, many Authorities may hold oversecured claims against the Debtors’ estates related to the Taxes and Fees. The Bankruptcy Code provides that oversecured claims may accrue interest during a chapter 11 case. *See* 11 U.S.C. § 506(b); *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241-43 (1989) (nonconsensual lienholders may receive interest on their claims under section 506(b) of the Bankruptcy Code); *see also Lincoln Sav. Bank v. Suffolk County Treasurer (In re Parr Meadows Racing Ass’n, Inc.)*, 880

F.2d 1540, 1549 (2d Cir. 1989) (citing *Ron Pair* and holding that oversecured liens entitled a tax authority to postpetition interest). If the Debtors are required to pay interest on such tax claims, section 511 of the Bankruptcy Code provides that “the rate of interest shall be the rate determined under applicable nonbankruptcy law,” which may exceed prevailing market interest rates. *See* 11 U.S.C. § 511(a). Accordingly, prompt payment of the Taxes and Fees may eliminate claims for interest at potentially above-market rates for any resulting secured claims.

D. Many of the Taxes and Fees are Priority Claims, the Payment of Which Will Affect Only the Timing of Payments

23. Claims for some or all of the Taxes and Fees owed by the Debtors may be entitled to priority status under section 507(a)(8) of the Bankruptcy Code and thus payment of such Taxes and Fees would give the Authorities no more than that to which they otherwise would be entitled under a chapter 11 plan and will save the Debtors potential interest expense, legal expense, and penalties that otherwise might accrue on, or be incurred in connection with, such Taxes and Fees.

24. Section 507(a)(8) of the Bankruptcy Code provides that claims entitled to priority status include unsecured claims of governmental units for (i) taxes on or measured by income or gross receipts for a taxable year ending on or before the Petition Date, for which a return, if required, is last due after three years prior to the Petition Date, and which is assessed within 240 days before the Petition Date, *see* 11 U.S.C. § 507(a)(8)(A); (ii) property taxes incurred before the Petition Date and last payable without penalty after one year before the Petition Date, *see* 11 U.S.C. § 507(a)(8)(B); and (iii) taxes required to be collected or withheld and for which the debtor is liable in whatever capacity, *see* 11 U.S.C. § 507(a)(8)(C). Moreover, to the extent that the Taxes and Fees are entitled to priority treatment under section 507(a)(8)(B) of the Bankruptcy Code, the governmental unit also may attempt to assess penalties that may also be accorded priority status.

See 11 U.S.C. § 507(a)(8)(G) (granting eighth-priority status to “a penalty related to a claim of a kind specified in [section 507(a)(8)] and in compensation for actual pecuniary loss”).

25. Based on the foregoing, payment of certain of the Taxes and Fees likely will give the Authorities no more than that to which they otherwise would be entitled under a chapter 11 plan and will save the Debtors potential interest expense, legal expense, and penalties that otherwise might accrue on, or be incurred in connection with, the Taxes and Fees.

E. Ample Authority Exists to Support Payment of the Taxes and Fees

26. The Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code. Section 363(b) of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under section 363 of the Bankruptcy Code, a court may authorize a debtor to pay certain prepetition claims if a sound business purpose exists for doing so. See *In re Ionosphere Clubs, Inc.*, 98 B.R. 174 (Bankr. S.D.N.Y. 1989) (finding that there must be a sound business justification to justify payment of prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 of the Bankruptcy Code to allow contractor to pay prepetition claims for suppliers). The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” See, e.g., *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). Moreover, if “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re*

Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted). Courts in this District consistently have declined to interfere with corporate decisions absent a showing a bad faith, self-interest, or gross negligence, and have upheld a board's decisions as long as such decisions are attributable to any "rational business purpose." *Integrated*, 147 B.R. at 656 (quoting *CRTF Corp. v. Federated Dep't Stores*, 683 F. Supp. 422, 436 (S.D.N.Y. 1988)).

27. In addition, the Court has the authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein, because such relief is necessary for the Debtors to carry out their fiduciary duties under section 1107(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code empowers bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105. Section 1107(a) of the Bankruptcy Code "contains an implied duty of the debtor-in-possession" to "protect and preserve the estate, including an operating business' going-concern value," on behalf of a debtor's creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) ("[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.").

28. The Court may also authorize the payment of prepetition claims in appropriate circumstances under section 105(a) of the Bankruptcy Code and the doctrine of necessity when such payment is essential to the continued operation of a debtor's business. *See, e.g., In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *In re Fin. News Network Inc.*, 134 B.R. 732, 735-36 (Bankr. S.D.N.Y. 1991); *CoServ*, 273 B.R. at 497 ("[I]t is only

logical that the bankruptcy court be able to use § 105(a) of the Bankruptcy Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate.”); and *Just for Feet*, 242 B.R. 821, 824-25 (D. Del. 1999) (holding that section 105(a) of Bankruptcy Code provides a statutory basis for payment of prepetition claims under doctrine of necessity and noting that the Court has “power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”).

29. The relief requested by this Motion represents a sound exercise of the Debtors’ business judgment, and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. Accordingly, the Debtors submit that the proposed relief with respect to the payment of Taxes is warranted in these chapter 11 cases.

Reservation of Rights

30. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors’ or any appropriate party in interest’s rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder; or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court’s order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors’ rights to dispute such claim subsequently.

Debtors Have Satisfied Bankruptcy Rule 6003(b)

31. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a Bankruptcy Court may issue an order granting “a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a

motion to pay all or part of a claim that arose before the filing of the petition” before twenty-one (21) days after filing of the petition. The Taxes and Fees currently outstanding and due will need to be paid to avoid the harmful consequences noted above to the Debtors’ business and chapter 11 strategy. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

Bankruptcy Rules 6004(a) and (h)

32. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances, and waive the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the Veit Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

Notice

33. Notice of this Motion has been provided to (i) the United States Trustee for Region 2 (“U.S. Trustee”); (ii) the holders of the Debtors’ thirty (30) largest unsecured creditors on a consolidated basis; (iii) the United States Attorney’s Office for the Southern District of New York; (iv) counsel to the Prepetition Agent, Julia Frost-Davies (julia.frost-davies@morganlewis.com) and David Riley (david.riley@morganlewis.com); and (v) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”).

34. The Debtors respectfully submit that no further notice is required. No previous request for the relief sought herein has been made by the Debtors to this or any other Court.

Conclusion

WHEREFORE the Debtors respectfully request entry of the Proposed Interim Order and Proposed Final Order and such other and further relief as the Court may deem just and appropriate.

Dated: September 10, 2020
New York, New York

Respectfully submitted,

/s/ Lucy F. Kweskin

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*Proposed Attorneys for Debtors
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Exhibit A

Proposed Interim Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

**CENTURY 21 DEPARTMENT STORES LLC,
et al.,**

Debtors.¹

Chapter 11

Case No. 20-12097 (SCC)

(Joint Administration Requested)

**[PROPOSED] INTERIM ORDER AUTHORIZING DEBTORS TO
PAY CERTAIN PREPETITION TAXES AND FEES**

Upon the motion (the “**Motion**”)² of Century 21 Department Stores LLC and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), pursuant to sections 105(a), 363(b), 507(a), and 541 of title 11 of the United States Code (the “**Bankruptcy Code**”), for an order (i) authorizing the Debtors to remit and pay certain taxes, assessments, fees, and charges in the ordinary course of business (without regard to whether such obligations accrued or arose before or after the Petition Date), including any such taxes, assessments, fees, and charges subsequently determined, upon audit or otherwise, to be owed (collectively, the “**Taxes and Fees**”); and (ii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper

¹ The Debtors in these chapter 11 cases (the “**Chapter 11 Cases**”), along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Century 21 Department Stores LLC (4073), L.I. 2000, Inc. (9619), C21 Department Stores Holdings LLC (8952), Giftco 21 LLC (0347), Century 21 Fulton LLC (4536), C21 Philadelphia LLC (2106), Century 21 Department Stores of New Jersey, L.L.C. (1705), Century 21 Gardens Of Jersey, LLC (9882), C21 Sawgrass Blue, LLC (8286), C21 GA Blue LLC (5776), and Century Paramus Realty LLC (5033). The Debtors’ principal place of business is: 22 Cortlandt Street, 5th Floor, New York, NY 10007.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and upon the Veit Declaration, filed contemporaneously with the Motion, and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT

1. The Motion is granted on an interim basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, in the ordinary course of business as such obligations become due, to pay the Taxes and Fees (without regard to whether such Taxes and Fees accrued or arose before or after the Petition Date), including all of those Taxes and Fees subsequently determined, upon audit or otherwise, to be owed.
3. In accordance with this Interim Order (or any other order of this Court), each of the financial institutions at which the Debtors maintain their accounts relating to the payment of any obligations described in the Motion are authorized and directed to (i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those

accounts and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise, and without liability for the following the Debtors' instructions.

4. Nothing in the Motion or this Interim Order shall be deemed to authorize the Debtors to accelerate any payments not otherwise due prior to the date of the final hearing to consider the relief requested in the Motion (the "**Final Hearing**").

5. Notwithstanding anything to the contrary in this Interim Order, any payment made or action taken by any of the Debtors pursuant to the authority granted in this Interim Order, and any authorization contained in this Interim Order, shall be in compliance with, and shall be subject to (i) any interim or final order approving the Debtors' use of cash collateral (the "**Cash Collateral Order**"), and (ii) the Budget (as defined in such Cash Collateral Order). To the extent there is any inconsistency between the terms of the Cash Collateral Order and this Interim Order, the terms of the Cash Collateral Order shall control.

6. Nothing anything contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

7. Nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

8. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

9. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

10. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

11. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order.

12. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Interim Order.

13. The Final Hearing shall be held on _____, **2020**, at _____ (**Prevailing Eastern Time**) and any objections or responses to the Motion shall be in writing, filed with the Court, and served upon (i) the proposed attorneys for the Debtors, Proskauer Rose, LLP, Eleven Times Square, New York, New York 10036 (Attn: Lucy F. Kweskin, Esq.); 2029 Century Park East, Suite 2400, Los Angeles, CA 90067-3010 (Attn: Peter J. Young, Esq.); (ii) the U.S. Trustee; and (iii) counsel to the Prepetition Agent, Julia Frost-Davies (julia.frost-davies@morganlewis.com) and David Riley (david.riley@morganlewis.com), in each case, so as to be actually received on or prior to **4:00 p.m. (Prevailing Eastern Time)** on _____ **2020**.

Dated: _____, 2020
New York, New York

HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

**CENTURY 21 DEPARTMENT STORES LLC,
et al.,**

Debtors.¹

Chapter 11

Case No. 20-12097 (SCC)

(Joint Administration Requested)

**[PROPOSED] FINAL ORDER AUTHORIZING DEBTORS TO
PAY CERTAIN PREPETITION TAXES AND FEES**

Upon the motion (the “**Motion**”)² of Century 21 Department Stores LLC and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), pursuant to sections 105(a), 363(b), 507(a), and 541 of title 11 of the United States Code (the “**Bankruptcy Code**”), for an order (i) authorizing the Debtors to remit and pay certain taxes, assessments, fees, and charges in the ordinary course of business (without regard to whether such obligations accrued or arose before or after the Petition Date), including any such taxes, assessments, fees, and charges subsequently determined, upon audit or otherwise, to be owed (collectively, the “**Taxes and Fees**”); and (ii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper

¹ The Debtors in these chapter 11 cases (the “**Chapter 11 Cases**”), along with the last four digits of each Debtor’s federal tax identification number, as applicable, are Century 21 Department Stores LLC (4073), L.I. 2000, Inc. (9619), C21 Department Stores Holdings LLC (8952), Giftco 21 LLC (0347), Century 21 Fulton LLC (4536), C21 Philadelphia LLC (2106), Century 21 Department Stores of New Jersey, L.L.C. (1705), Century 21 Gardens Of Jersey, LLC (9882), C21 Sawgrass Blue, LLC (8286), C21 GA Blue LLC (5776), and Century Paramus Realty LLC (5033). The Debtors’ principal place of business is: 22 Cortlandt Street, 5th Floor, New York, NY 10007.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Interim Hearing**”); and the Court having entered an order granting the relief requested in the motion on an interim basis (ECF No. __) (the “**Interim Order**”); and the Court having held a hearing to consider the relief requested in the Motion on final basis (the “**Final Hearing**”); and upon the Veit Declaration, filed contemporaneously with the Motion, and the record of the Interim Hearing and the Final Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT

1. The Motion is granted on a final basis.
2. The Debtors are authorized, but not directed, in the ordinary course of business as such obligations become due, to pay the Taxes and Fees (without regard to whether such Taxes and Fees accrued or arose before or after the Petition Date), including all of those Taxes and Fees subsequently determined, upon audit or otherwise, to be owed.
3. In accordance with this Final Order (or any other order of this Court), each of the financial institutions at which the Debtors maintain their accounts relating to the payment of any obligations described in the Motion are authorized and directed to (i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by

the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise, fility for the following the Debtors' instructions.

4. Notwithstanding anything to the contrary in this Final Order, any payment made or action taken by any of the Debtors pursuant to the authority granted in this Final Order, and any authorization contained in this Final Order, shall be in compliance with, and shall be subject to (i) any interim or final order approving the Debtors' use of cash collateral (the "**Cash Collateral Order**"), and (ii) the Budget (as defined in such Cash Collateral Order). To the extent there is any inconsistency between the terms of the Cash Collateral Order and this Final Order, the terms of the Cash Collateral Order shall control.

5. Nothing anything contained in the Motion or this Final Order, nor any payment made pursuant to the authority granted by this Final Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

6. Nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

7. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

8. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

9. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

10. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Final Order.

11. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Final Order.

Dated: _____, 2020
New York, New York

HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE