



Order Filed on June 10, 2024
by Clerk,
U.S. Bankruptcy Court
District of New Jersey

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)
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In re:

SAM ASH MUSIC CORPORATION, *et al.*

Debtors.¹

Chapter 11

Case No. 24-14727 (SLM)

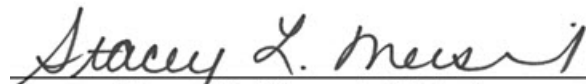
Judge: Stacey L. Meisel

(Jointly Administered)

**ORDER (I) AUTHORIZING THE EMPLOYMENT AND RETENTION OF A&G
REALTY PARTNERS, LLC AS REAL ESTATE CONSULTANT AND ADVISOR
TO THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF THE
RETENTION DATE, (II) APPROVING THE TERMS OF A&G'S EMPLOYMENT, (III)
WAIVING CERTAIN TIMEKEEPING REQUIREMENTS, AND
(IV) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered two (2) through nine (9), is
ORDERED.

DATED: June 10, 2024


Honorable Stacey L. Meisel
United States Bankruptcy Judge

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Sam Ash Music Corporation (3915); Samson Technologies Corp. (4062); Sam Ash Megastores, LLC (9955); Sam Ash California Megastores, LLC (3598); Sam Ash Florida Megastores, LLC (7276); Sam Ash Illinois Megastores, LLC (8966); Sam Ash Nevada Megastores, LLC (6399); Sam Ash New York Megastores, LLC (7753); Sam Ash New Jersey Megastores, LLC (8788); Sam Ash CT, LLC (5932); Sam Ash Music Marketing, LLC (2024); and Sam Ash Quikship Corp. (7410). The location of debtor Sam Ash Music Corporation's principal place of business is 278 Duffy Avenue, P.O. Box 9047, Hicksville, NY 11802.

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Upon the *Debtors' Application for Entry of an Order (I) Authorizing the Employment and Retention of A&G Realty Partners, LLC as Real Estate consultant and Advisor to the Debtors and Debtors in Possession Effective as of the Retention Date, (II) Approving the Terms of A&G's Employment, (III) Waiving Certain Timekeeping Requirements, and (IV) Granting Related Relief* (the "Application") of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order (this "Order") (a) authorizing the Debtors to, under sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016(a), and Local Rules 2014-1 and 2016-1, employ and retain A&G Realty Partners, LLC ("A&G"), as real estate consultant and advisor to the Debtors in accordance with that certain real estate services agreement executed in May 23, 2024 by and between Debtors and A&G, a copy of which is attached hereto as **Exhibit 1** (the "Real Estate Services Agreement"), effective as of the Retention Date; (b) approving the terms of A&G's employment and retention, including the fee and expense structure set forth in the Real Estate Services Agreement; (c) waiving certain timekeeping requirements of the Bankruptcy Rules, Local Rules, and the Trustee Guidelines; and (d) granting related relief, all as more fully set forth in the Application; and upon the First Day Declaration and the Amendola Declaration; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Reference to the Bankruptcy Court Under Title 11 of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28

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U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Application was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; 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 Application is **GRANTED** on a basis as set forth herein.
2. In accordance with sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016(a), and Local Rules 2014-1 and 2016-1, the Debtors are hereby authorized to employ and retain A&G as their real estate consultant and advisor in accordance with the terms and conditions set forth in the Application and the Real Estate Services Agreement, as modified by this Order, effective as of the Retention Date.
3. The Real Estate Services Agreement, together with all annexes and exhibits thereto and all compensation set forth therein, including, without limitation, the Fee Structure and indemnification provisions is approved pursuant to section 328(a) of the Bankruptcy Code and A&G shall be compensated and reimbursed pursuant to section 328(a) of the Bankruptcy Code in accordance with the terms of, and at the times specified in, the Real Estate Services Agreement, as modified by this order.

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4. The terms and provisions of the Real Estate Services Agreement are approved, and the Debtors are authorized to compensate A&G in accordance with the Real Estate Services Agreement. A&G shall not be required to file interim fee applications for its fixed fee Services; *provided, however*, that A&G shall be required to file a final fee application upon completion of its Services which shall be subject to the standard of review provided for in section 328(a) of the Bankruptcy Code, subject to the rights of the U.S. Trustee to review pursuant to section 330 of the Bankruptcy Code as set forth in paragraph 6 herein.

5. Notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, orders of this Court, and the United States Trustee Program's *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases* (the "U.S. Trustee Guidelines"), A&G shall be granted a limited waiver of the information requirements such that A&G shall not be required to maintain records of detailed time entries in connection with the Services as that term is defined in the Real Estate Services Agreement; *provided* that in the event that A&G provides any Additional Services to the Debtors, A&G shall be required to file interim and final fee applications on an hourly basis only and the time detail provided for such fees may be provided in a summary fashion. Specifically, A&G will submit time records setting forth the hours spent on each activity and a description of the Additional Services provided but will not break out its time into tenth-of-an-hour increments. Any compensation for Additional Services performed on an hourly basis shall be subject to review under the reasonableness standard in section 330 of the Bankruptcy Code.

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6. Notwithstanding anything to the contrary in this Order, the Application, the Real Estate Services Agreement or the Amendola Declaration, the U.S. Trustee shall retain the right and be entitled to object to A&G's fees and expenses based on the reasonableness standard provided for in section 330 of the Bankruptcy Code. The Debtors and A&G further stipulate and agree that this Order and the record relating to the Court's consideration of the Application shall not prejudice or otherwise affect the rights of the U.S. Trustee to challenge the reasonableness of A&G's compensation and reimbursement requests under section 330 and 331 of the Bankruptcy Code. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding the U.S. Trustee on appeal or otherwise, with respect to the reasonableness of A&G's fees and compensation and reimbursement requests.

7. In the event that, during the pendency of these Chapter 11 Cases, A&G requests reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys shall be included in A&G's fee applications, and such invoices and time records shall be in compliance with the Local Rules, the U.S. Trustee Guidelines and approval of the Court under the standards of section 330 and 331 of the Bankruptcy Code, without regard to whether such attorneys have been retained under section 327 of the Bankruptcy Code and without regard to whether such attorney's services satisfy section 330(a)(3)(C) of the Bankruptcy Code. Notwithstanding the foregoing, A&G shall only be reimbursed for any legal fees incurred in connection with these Chapter 11 Cases to the extent permitted under applicable law and the decisions of this Court.

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8. A&G shall disclose any and all facts that may have a bearing on whether A&G, its affiliates, and/or any individuals working on the engagement hold or represent any interest adverse to the Debtors, their creditors, or other parties in interest in these cases. The obligation to disclose identified in this paragraph shall be a continuing obligation.

9. With respect to controversies or claims arising out of or in any way related to the Services in the Real Estate Services Agreement notwithstanding any arbitration, dispute resolution, or exclusive jurisdiction provisions contained in the Real Estate Services Agreement, any disputes arising under the Real Estate Services Agreement shall be heard in this Court.

10. To the extent A&G is entitled to any indemnification in rendering the Services such indemnification shall be subject during the pendency of these cases to the following:

- a. A&G shall not be entitled to indemnification, contribution, or reimbursement set forth in the Indemnification Provision, unless such indemnification, contribution, or reimbursement is approved by the Court;
- b. notwithstanding any provision of the Application and the Real Estate Services Agreement to the contrary, the Debtors shall have no obligation to indemnify or provide contribution or reimbursement to any Indemnified Person under the Real Estate Services Agreement for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from such Indemnified Person's gross negligence, willful misconduct, bad faith, fraud or self-dealing to which the Debtors have not consented; (ii) for a contractual dispute in which the Debtors allege the breach of A&G's contractual obligations under the Real Estate Services Agreement unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, [315 F.3d 217](#) (3d Cir. 2003); or (iii) settled without the Debtors' consent prior to a judicial determination as to the Indemnified Person's gross negligence, willful misconduct, bad faith, fraud, or unconsented self-dealing, but determined by this Court, after notice and a hearing, to be a claim or expense for which such Indemnified Person should not receive

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indemnification, contribution, or reimbursement under the terms of the Real Estate Services Agreement, as modified by this Order;

- c. if, before the earlier of: (i) the entry of an order confirming a chapter 11 plan in the chapter 11 cases (that order having become a final order no longer subject to appeal); and (ii) the entry of an order closing the chapter 11 cases, any Indemnified Person believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Indemnification Letter (as modified by this Order), including, without limitation, the advancement of defense costs, such Indemnified Person must file an application therefor in this Court, and the Debtors may not pay any such amounts to the Indemnified Person before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses for indemnification, contribution, and/or reimbursement by any Indemnified Persons, and is not a provision limiting the duration of the Debtors' obligation to indemnify, or make contributions or reimbursements to, the Indemnified Persons. All parties in interest shall retain the right to object to any demand by any Indemnified Person for indemnification, contribution, and/or reimbursement. The U.S. Trustee and all other parties in interest shall retain the right to object to any request for indemnification by A&G under the relevant standards set forth above that apply, respectively, to the U.S. Trustee and to all other parties in interest.; and
- d. any limitation on liability pursuant to the Real Estate Services Agreement shall be eliminated.

11. A&G will work to ensure that the services to be provided by A&G will not duplicate the services of any of the other professionals retained by the Debtors. As such, A&G shall use its best efforts to avoid any duplication of services provided by any of the Debtors' other retained professionals in these Chapter 11 Cases

12. None of the fees payable to A&G under the Real Estate Services Agreement shall constitute a "bonus" or fee enhancement under applicable law.

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13. A&G shall not seek the reimbursement of any fees or costs, including attorney fees and costs, arising from the defense of any objections to any of A&G's fee applications in these cases.

14. To the extent A&G utilizes the services of independent contractors ("Contractors") in connection with rendering Services to the Debtors pursuant to the Real Estate Services Agreement, A&G will: (a) pass through the costs of such Contractors at the same rate that A&G pays the Contractors; (b) seek reimbursement for actual costs only; (c) ensure that the Contractors are subject to the same conflict checks as required for A&G, and (d) file with the Court such disclosures as are required by Bankruptcy Rule 2014 with respect to the Contractors. A&G shall include a statement under oath in any fee applications filed in these cases setting forth that A&G complied with the above requirements concerning its use of Contractors.

15. To the extent that there may be any inconsistency between the terms of the Application, the Amendola Declaration, the Real Estate Services Agreement, and this Order, the terms of this Order shall govern.

16. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

17. The Debtors and A&G are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

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18. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.