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*Counsel to the Debtor and
Debtor-in-Possession*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

**HOLLISTER CONSTRUCTION
SERVICES, LLC,¹**

Debtor.

Chapter 11
Case No. 19-27439 (MBK)
Hearing Date: March 5, 2020 at 10:00 a.m. (ET)
Obj. Deadline: February 27, 2020 at 4:00 p.m. (ET)

**NOTICE OF DEBTOR’S MOTION FOR ENTRY OF AN ORDER
APPROVING SETTLEMENT OF ADVERSARY PROCEEDING
PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE**

PLEASE TAKE NOTICE that on **March 5, 2020 at 10:00 a.m.** or as soon thereafter as counsel may be heard, the above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its undersigned counsel, shall move (the “Motion”) before the Honorable Michael B. Kaplan, United States Bankruptcy Judge, in Courtroom 8 of the United States Bankruptcy Court for the District of New Jersey, 402 East State Street, Trenton, New Jersey 08608, for entry of an

¹ The Debtor in this chapter 11 case and the last four digits of its taxpayer identification number is: Hollister Construction Services, LLC (5404).

order, substantially in the form submitted herewith, approving the settlement of the Direct Adversary Proceeding (as defined in the Motion) and the Settlement Agreement attached to the Motion as Exhibit A pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

PLEASE TAKE FURTHER NOTICE that the Debtor shall rely upon the Motion filed herewith. A proposed form of order was also submitted therewith. Oral argument is requested in the event an objection is timely filed.

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed with the Clerk of the Court together with proof of service thereof, and served so as to be **actually received** no later than **February 27, 2020 at 4:00 pm. (Eastern Time)** by: (i) counsel to the Debtor, Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, New Jersey 07068, Attn: Kenneth A. Rosen, Esq. and Mary E. Seymour, Esq.

PLEASE TAKE FURTHER NOTICE that objections to the Motion, if any, must: (a) be in writing; (b) comply with the Bankruptcy Rules, the Local Rules, and other case management rules or orders of this Court; and (c) state with particularity the legal and factual basis for the objection.

PLEASE TAKE FURTHER NOTICE that unless an objection is timely filed and served in accordance with this notice, it may not be considered by the Bankruptcy Court. In the event that no objections are filed, the relief requested in the Motion may be granted without a hearing.

[Remainder of the page intentionally left blank]

Dated: February 10, 2020

Respectfully submitted,

LOWENSTEIN SANDLER LLP

/s/ Kenneth A. Rosen

Kenneth A. Rosen, Esq.

Bruce Buechler, Esq.

Joseph J. DiPasquale, Esq.

Mary E. Seymour, Esq.

Jennifer B. Kimble, Esq. (admitted *pro hac vice*)

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*Counsel to the Debtor and
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

**HOLLISTER CONSTRUCTION
SERVICES, LLC,¹**

Debtor.

Chapter 11

Case No. 19-27439 (MBK)

Hearing Date: March 5, 2020 at 10:00 a.m. (ET)
Obj. Deadline: February 27, 2020 at 4:00 p.m. (ET)

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER APPROVING
SETTLEMENT OF THE DIRECT ADVERSARY PROCEEDING PURSUANT TO
RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

The above-captioned debtor and debtor in possession (the “Debtor”), by and through its undersigned counsel, submits this motion (the “Motion”) for entry of an order, substantially in the form submitted herewith (the “Proposed Order”), approving the Debtor’s settlement of the Direct Adversary Proceeding (defined below) and the settlement agreement attached to the Proposed Order as Exhibit A (the “Settlement Agreement”) pursuant to Rule 9019 of the Federal Rules of

¹ The Debtor in this chapter 11 case and the last four digits of its taxpayer identification number is: Hollister Construction Services, LLC (5404).

Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION, VENUE, AND STATUTORY PREDICATES

1. This Court has jurisdiction over this Motion 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 on July 23, 1984, as amended on September 18, 2012 (Simandle, C.J.). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

3. The Debtor consents to the entry of a final order on the Motion by this Court if it is determined that the Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution.

4. The statutory predicates for the relief requested in this Motion are section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), and Rule 9019 of the Bankruptcy Rules.

BACKGROUND

5. On September 11, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby initiating the above-captioned chapter 11 case (the “Chapter 11 Case”). The Debtor continues to operate its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner.

6. On September 23, 2019, the Office of the United States Trustee appointed an official committee of unsecured creditors in this Chapter 11 Case (the “Committee”).

7. Additional details regarding the Debtor's business, the facts and circumstances leading up to the filing of the Chapter 11 Case and supporting the relief requested herein are set forth in the *Declaration of Brendan Murray in Support of First Day Relief* [Docket No. 15].

8. On November 7, 2019, the Debtor filed a Complaint in this Court against Direct Cabinet Sales-USLBM LLC ("Direct"), denominated as Direct Cabinet Sales of Red Bank Inc. in the Complaint and denominated as Direct Cabinet Sales US LBM LLC on its proof of claim no. 198. The Complaint sought, *inter alia*, to avoid and recover preferential transfers made to Direct pursuant to 11 U.S.C. §§ 547 and 550 and Bankruptcy Rule 7001, commenced adversary proceeding no. 19-02251 (MBK) (the "Direct Adversary Proceeding").

9. On November 11, 2019, Direct filed proof of claim no. 198, asserting a general unsecured claim in the amount of \$24,753.73, against the Debtor in this Bankruptcy Case.

10. After engaging in negotiations, the Debtor and Direct each recognize that there are costs and uncertainty in the litigation process and each desire to amicably resolve the Direct Adversary Proceeding to avoid incurring any additional costs. Accordingly, the Debtor and Direct have agreed to settle the Direct Adversary Proceeding and have entered into a settlement agreement (the "Settlement Agreement"). A copy of the Settlement Agreement is attached to the Proposed Order as Exhibit A.

11. The key terms of the Settlement Agreement include (i) a payment of \$100,000.00 from Direct to Debtor within eight (8) business days of the Bankruptcy Court's entry of an order approving the Settlement Agreement, subject to a four (4) business day cure period; (ii) mutual releases of all claims by and between Direct and Debtor (including the Debtor's officers, directors, members, and managers); and (iii) a waiver by Direct of any right to file or receive a distribution on account of any proof of claim in the Debtor's Chapter 11 Case.

RELIEF REQUESTED

12. By this Motion, the Debtor seeks the entry of an order, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, approving the Settlement Agreement attached to the Proposed Order as Exhibit A.

BASIS FOR RELIEF

13. Section 105(a) of the Bankruptcy Code provides that a bankruptcy court may “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Moreover, Bankruptcy Rule 9019(a) provides, in pertinent part, that upon a motion, and after notice and a hearing, the Court may approve a compromise or settlement.

14. It has long been recognized that compromises are favored in the bankruptcy context “[t]o minimize litigation and expedite the administration of a bankruptcy estate.” *Martin v. Myers (In re Martin)*, 91 F. 3d 389, 393 (3d Cir. 1996). “The authority to approve a compromise [or] settlement is within the sound discretion of the bankruptcy court.” *In re Northwestern Corp.*, No. 03–12872 (KJC), 2008 WL 2704341, at *6 (Bankr. D. Del. Jul. 10, 2008) (quoting *Key3media Grp., Inc. v. Pulver.Com, Inc. (In re Key3media Group, Inc.)*, 336 B.R. 87, 92 (Bankr. D. Del. 2005) (“In exercising this discretion, the bankruptcy court must determine whether the compromise is fair, reasonable, and in the best interests of the estate.”)).

15. The Supreme Court has recognized that “in administering a reorganization proceeding in an economical and practical manner, it will often be wise to arrange a settlement of claims in which there is substantial and reasonable doubts.” *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (noting that

“[c]ompromises are ‘a normal part of the process of reorganization.’”) (citation omitted), *reh’g denied*, 391 U.S. 909 (1968).

16. Further, the settlement of time-consuming and burdensome litigation, especially in the bankruptcy context, is encouraged. *See In re Penn Central Transp.*, 596 F.2d 1102 (3d Cir. 1979); *In re Mavrode*, 205 B.R. 716, 719 (Bankr. D.N.J. 1997).

17. The Third Circuit, applying *TMT Trailer* in the context of a settlement pursuant to Bankruptcy Rule 9019(a), established four factors to be considered: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996).

18. In determining whether to approve a settlement, the Bankruptcy Court should not substitute its judgment for that of the debtor and the parties. *See In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986). The Bankruptcy Court is not to decide the numerous questions of fact or law raised by the controversy, but rather should “canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness.” *Cosoffi v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608, 613 (2d Cir.) (citations omitted), *cert denied*, 464 U.S. 822 (1983); *Mavrode*, 205 B.R. at 720. Thus, in reaching its decision regarding the approval of the proposed compromise this Court need not conclusively determine the claims, which are the subject of the compromise, nor find that the compromise constitutes the best result obtainable. *See W.T. Grant*, 699 F.2d at 613.

19. The Debtor respectfully submits that the Settlement Agreement, attached to the Proposed Order as Exhibit A is fair and prudent, in the best interests of the estate, and falls within the “range of reasonableness.” When the attendant costs and risks of litigation are balanced against

the probability of success, the Debtor believes, in the good faith exercise of its sound business judgment, that there is little probability of achieving a result that is more beneficial to its estate by litigating the claims between and among the Debtor and Direct. Therefore, the continued prosecution of the Direct Adversary Proceeding, in light of the terms of the Settlement Agreement, could well result in the unnecessary wasting of limited estate assets. Thus, the Debtor believes that the settlement is in the best interest of the Debtor's bankruptcy estate, its creditors, and other interested parties and should therefore, be approved.

WAIVER OF MEMORANDUM OF LAW

20. The Debtor respectfully requests that the Court waive the requirement to file a separate memorandum of law pursuant to D.N.J. LBR 9013-1(a)(3) because the legal basis upon which the Debtor relies is set forth herein and the Motion does not raise any novel issues of law.

NO PRIOR REQUEST

21. No prior request for the relief sought in this Motion with respect to this Settlement has been made to this or any other court.

NOTICE

22. Notice of this Motion has been given to (i) the Office of the United States Trustee for the District of New Jersey, One Newark Center, Suite 2100, Newark, NJ 07102, Attention: Lauren E. Bielskie, Esq.; (ii) counsel for PNC Bank, the Debtor's pre-petition secured lender, Duane Morris LLP, 30 South 17th Street, Philadelphia, PA 19103-4196, Attention: James J. Holman, Esq.; (iii) counsel for the Committee, McManimon, Scotland & Baumann, LLC, 75 Livingston Avenue, Roseland, NJ 07068, Attention: Sam Della Fera, Esq.; (iv) all parties that have requested to receive notice pursuant to Bankruptcy Rule 2002; and (v) counsel for Direct, the Law Office of Bart J. Klein, 2066 Millburn Avenue, Suite 101, Maplewood, NJ 07040, Attention: Bart

J. Klein, Esq. In light of the nature of the relief requested herein, the Debtor respectfully submits that no other or further notice is required.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed Order in the form submitted herewith, (i) approving pursuant to Bankruptcy Rule 9019 the Settlement Agreement attached as Exhibit A to the Proposed Order; and (ii) granting the Debtor such other and further relief as the Court deems just and equitable.

Dated: February 10, 2020

Respectfully submitted,

LOWENSTEIN SANDLER LLP

/s/ Kenneth A. Rosen

Kenneth A. Rosen, Esq.

Bruce Buechler, Esq.

Joseph J. DiPasquale, Esq.

Mary E. Seymour, Esq.

Jennifer B. Kimble, Esq. (admitted *pro hac vice*)

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Counsel to the Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

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

LOWENSTEIN SANDLER LLP

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Counsel to the Debtor and Debtor-in-Possession

In re:

**HOLLISTER CONSTRUCTION
SERVICES, LLC,¹**

Debtor.

Chapter 11

Case No. 19-27439 (MBK)

**ORDER APPROVING SETTLEMENT OF THE DIRECT ADVERSARY
PROCEEDING PURSUANT TO RULE 9019 OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

The relief set forth on the following pages, numbered two (2) through and including three (3) is hereby **ORDERED**.

¹ The Debtor in this chapter 11 case and the last four digits of its taxpayer identification number is: Hollister Construction Services, LLC (5404).

(Page 2)

Debtor: Hollister Construction Services, LLC

Case No.: 19-27439 (MBK)

Caption of Order: Order Approving Settlement of the Direct Adversary Proceeding Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure

Upon consideration of the motion (the “Motion”)² of the above-captioned debtor and debtor-in-possession (the “Debtor”) for entry of an order approving the settlement agreement by and between the Debtor and Direct attached hereto as Exhibit A (the “Settlement Agreement”) pursuant to Bankruptcy Rule 9019; and the Court having jurisdiction over this matter 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 on July 23, 1984, as amended on September 18, 2012 (Simandle, C.J.); and venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and notice of the Motion being sufficient under the circumstances; and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its estate and creditors; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein.
2. The Settlement Agreement attached hereto as Exhibit A is hereby approved.
3. For the avoidance of doubt, the Debtor’s estate and/or any fiduciary acting on behalf of the Debtor’s estate, such as the Debtor, or any trustee appointed in this Chapter 11 Case, are authorized to enter into and take all actions necessary to effectuate the Settlement Agreement.

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

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Debtor: Hollister Construction Services, LLC

Case No.: 19-27439 (MBK)

Caption of Order: Order Approving Settlement of the Direct Adversary Proceeding Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure

4. The notice provided by the Debtor of the Motion is hereby deemed sufficient under the circumstances.

5. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or is otherwise waived.

6. The Order shall be effective immediately upon entry, notwithstanding anything to the contrary in the Bankruptcy Rules or the Local Rules of the United States Bankruptcy Court for the District of New Jersey.

7. This Court shall retain exclusive jurisdiction to hear and decide any and all disputes related to or arising from the implementation, interpretation or enforcement of this Order.

EXHIBIT A

Settlement Agreement

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (the “**Agreement**”) is made and entered into on this 10th day of January, 2020 by and between the debtor and debtor-in-possession Hollister Construction Services, LLC (the “**Debtor**”) on the one hand, and Direct Cabinet Sales-USLBM, LLC, improperly denominated on the Adversary Complaint (defined below) as Direct Cabinet Sales of Red Bank Inc. and denominated as Direct Cabinet Sales US LBM LLC on its filed Proof of Claim No. 198 (“**Direct**”) on the other hand (collectively, the “**Parties**”).

WHEREAS, on September 11, 2019, the Debtor filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of New Jersey (the “**Bankruptcy Court**”), *see* Case No. 19-27439 (MBK); and

WHEREAS, a review of the Debtor’s books and records indicates that Direct allegedly received one or more payments and/or transfers from the Debtor, which the Debtor alleges constitute avoidable preferential transfers; and

WHEREAS, on November 7, 2019, the Debtor filed an *Adversary Complaint to Avoid and Recover Preferential Transfers and to Disallow Claims Pursuant to 11 U.S.C. §§ 547, 550 and 502(d)* (the “**Adversary Complaint**”) against Direct, seeking to recover the aggregate amount of \$173,504.71, among other relief, *see* Case 19-02251 (MBK), Docket No. 1; and

WHEREAS, Direct denies all liability; and

WHEREAS, the Debtor and Direct mutually desire to resolve any and all disputes relating to alleged payments made by the Debtor to Direct, which settlement shall not be deemed or construed to be an admission of liability or wrongdoing by Direct, but which constitutes a good faith settlement that is being entered into solely to avoid the costs of litigation.

NOW, THEREFORE, subject to Bankruptcy Court approval, the Debtor and Direct stipulate and agree as follows:

1. This Agreement is subject to the entry of an order of the Bankruptcy Court approving this Agreement. The settlement embodied in this Agreement shall not be effective until both of the following occur: (a) entry of an order by the Bankruptcy Court approving this Agreement, and (b) the Debtor’s receipt of the Payment (defined below) from Direct in good funds. In the event this Agreement is not approved by the Bankruptcy Court, or not consummated, then this Agreement shall be deemed null and void and not binding on the Parties.
2. **Payment.** Direct shall remit a check or wire in the amount of **\$100,000.00** payable to “Hollister Construction Services, LLC” in reference to “Hollister Construction Services, LLC” (the “**Payment**”) within eight (8) business days of the Bankruptcy Court’s entry of an order approving of this Agreement, which shall be delivered to:

Hollister Construction Services, LLC
c/o Arielle B. Adler, Esq.
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, New Jersey 07068

The Payment will be deposited into one of the Debtor's accounts at PNC Bank.

In the event Direct fails to make the Payment in accordance with the schedule described above, the Debtor will provide notice of default to counsel for Direct, Bart J. Klein, via email to bart@bartjkleinlaw.com. Thereafter, Direct has four (4) business days to cure said default. In the event said default is not cured within four (4) business days, the Debtor has the discretion to declare in writing that the Agreement is null and void.

3. Mutual Release and Settlement of All Claims.

- a. Subject to the provisions hereof, and specifically paragraph 1 above, and only upon the Debtor's receipt in full of collected funds with respect to the Payment, the Debtor shall be deemed to release, acquit and forever discharge Direct and its respective agents, employees, representatives, officers, attorneys, shareholders, directors, assigns and successors-in-interest from any and all claims (as defined in section 101(5) of the Bankruptcy Code), causes of action, liabilities, obligations or suits that the Debtor or the Debtor's bankruptcy estate now have, or ever will have, against Direct.
- b. Subject to the provisions hereof, and specifically paragraph 1 above, Direct shall be deemed to release, acquit, and forever discharge the Debtor, the Debtor's bankruptcy estate, and the Debtor's agents, managers, employees, representatives, principals, directors, officers, members, attorneys, parent and/or subsidiary corporations, affiliates, assigns and successors-in-interest from any and all claims (as defined in section 101(5) of the Bankruptcy Code), whether scheduled or filed, causes of action, suits, debts or obligations, liabilities, demands, losses, costs and expenses, or for attorneys' fees of any kind, character or nature whatsoever, known or unknown, fixed or contingent, foreseen or unforeseen, which Direct may have or claim, or ever will have or claim to have, against the other.

If Direct was scheduled as a creditor, or if Direct filed or files a proof of claim in the Debtor's bankruptcy case, there shall be no distribution on account of any such claim and any such claim shall be deemed disallowed and expunged. Direct agrees that it has waived any right to file a proof of claim for the Payment under Section 502(h) of the Bankruptcy Code or any other provision of the Bankruptcy Code and/or the Bankruptcy Rules. Notwithstanding the foregoing, Direct reserves all rights to proceed as against Newkirk Realty Urban Renewal for the unpaid value of its work at 61-65 Newkirk Street, Jersey City, N.J.

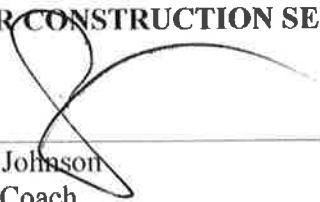
4. Retention of Jurisdiction. The Debtor and Direct agree that the Bankruptcy Court shall retain jurisdiction of all matters arising under or related to this Agreement.
5. Representations and Warranties. Direct represents and warrants that the person signing this Agreement on behalf of Direct is duly authorized to do so. The Debtor represents and warrants that the person signing this Agreement on behalf of the Debtor is duly authorized to do so.
6. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and this Agreement cannot be orally altered, amended or modified.
7. Counterparts; Facsimile Signatures. This Agreement may be executed in one or more counterparts, which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures shall be treated in all manner and respects as a binding and original document, and the signature of any party shall be considered for these purposes as an original signature.
8. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States, including the Bankruptcy Code, governs any matters set forth herein, in which case such federal law shall govern.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Debtor and Direct hereby have executed this Settlement Agreement and General Release as of the date and year first above written.


HOLLISTER CONSTRUCTION SERVICES, LLC

By: _____


Chris Johnson
Head Coach
339 Jefferson Road
Parsippany, NJ 07054

DIRECT CABINET SALES-USLBM, LLC

By: _____


Name: SEAN TEITELBAUM
Title: VP
Address: 180 Hedden Blvd
Dumont, NJ 08910